

4. CONCLUSIONS AND RECOMMENDATIONS

4.1 Conclusions

The overarching conclusion of this report is that discrimination on the basis of a wide range of characteristics in Solomon Islands is prevalent and that it persists in the absence of an effective legal and policy framework to eliminate discrimination and advance equality. At the most basic level, the state is failing to meet its obligations arising under international human rights instruments to which it is party to respect, protect and fulfil the rights to equality and non-discrimination.

The report finds evidence of discrimination on the basis of gender, ethnicity, disability, sexual orientation, health status, economic status and citizenship. It finds that **women** are effectively second-class citizens, with both cultural traditions and laws reinforcing gender stereotypes. Rates of gender-based violence are high, and the acceptance of such violence as justified by a majority of both men and women is alarming. Significant inequalities between men and women persist in areas such as education, employment and public life. **Ethnicity** is a complex issue in a country where people are more likely to identify as members of a *wantok* group or as people from a particular island than as citizens of Solomon Islands itself. This report finds evidence of discrimination rooted in the *wantok* system, leading to nepotism in many areas of life. However, despite a history of tension and violence between people from different islands, the report does not identify a clear pattern of disadvantage or underdevelopment for particular islands.

Persons with disabilities are perceived as either “cursed” or in need of charity and are denied equality of participation in education, employment, healthcare and other services, as a result of both direct discrimination and failure to accommodate their needs. **Lesbian, gay and bisexual persons** are also subject to severe social stigma, with the result that there are very few openly gay, lesbian or bisexual persons in the country. Testimony from gays and lesbians collected for this report provides evidence of harassment, violence and discrimination on the basis of sexual orientation. The small population of **persons living with HIV** in Solomon Islands is at risk of direct discrimination in access to services, including health services, as a result of fear fuelled by prejudice and ignorance of the disease. The report

also finds worrying evidence of discrimination on the basis of **economic status** and **citizenship status**.

Solomon Islands is not party to the International Covenant on Civil and Political Rights, which gives rise to an obligation to prohibit discrimination on a wide-ranging list of grounds in all areas of life regulated by law. Nevertheless, it has binding obligations to eliminate many forms of discrimination on each of these grounds, arising under other instruments to which it is party. This report concludes that the country is failing to meet its obligations to eliminate discrimination and advance equality on each of the seven grounds examined.

One major factor which limits Solomon Islands' potential to address these and other patterns of discrimination and disadvantage is the **paucity of the legal and policy framework**. Solomon Islands has a **poor record of participation in international human rights instruments**. Nevertheless, as a party to the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women, Solomon Islands has obligations to enact and implement laws prohibiting discrimination and providing for positive action to advance equality for disadvantaged groups. Yet this report concludes that Solomon Islands has not met this obligation.

The **Constitution of Solomon Islands** provides only a limited protection from discrimination, and no right to equality. The constitutional right to non-discrimination is subject to an array of limitations and exceptions which limit its scope and effectiveness. Yet this narrow and limited right constitutes almost the only legal guarantee against discrimination in the country. The state has neither **comprehensive anti-discrimination legislation** nor any **laws prohibiting discrimination on specific grounds**. Moreover, laws governing conduct in other areas of life – such as education, employment or access to goods and services – provide no protection from discrimination. Enjoyment of the rights to equality and non-discrimination is further undermined by the **lack of effective implementation and enforcement**, either through government policy or institutions, or through the courts.

Yet all is not lost. Ongoing attempts to adopt a new Constitution present an opportunity. If Solomon Islands is to meet its obligations to ensure enjoyment of the rights to equality and non-discrimination – and thereby address

some of the serious patterns of human rights abuse affecting its population – it must ensure that this process is open, consultative and reflective of the country context, and in compliance with international human rights law.

4.2 Recommendations

In light of the foregoing conclusions, the Equal Rights Trust offers to the government of Solomon Islands a set of recommendations, whose purpose is:

1. To strengthen the protection from discrimination through improving the legal and policy framework in respect to equality; and
2. To enable Solomon Islands to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality.

All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality, a document of international best practice which consolidates the most essential elements of international law related to equality.

The recommendations are presented below:

Recommendation 1: Implementation of the Recommendations of the Truth and Reconciliation Commission

- 1(a) The Truth and Reconciliation Commission concluded that “the country’s differences” had become “a source of division [and] conflict” and a “means of discrimination [and] perpetuating and promoting group domination [and] privilege”.⁶⁵⁶ In order to ensure that the country’s future is free from conflict, discrimination and group domination and privilege, Solomon Islands is urged to implement, in full, all recommendations of the Truth and Reconciliation Commission that have not yet been implemented, particularly those that relate to groups exposed to discrimination and disadvantage, and to constitutional and legislative reform.

⁶⁵⁶ Solomon Islands Truth and Reconciliation Commission, *Confronting the Truth for a better Solomon Islands: Final Report, Volume III*, 2012, p. 780, available at: <http://pacificpolicy.org/files/2013/04/Solomon-Islands-TRC-Final-Report-Vol-3.pdf>.

- 1(b) Solomon Islands should integrate the principles of equality and non-discrimination in all future peace-building and development policies and ensure non-discrimination in investment, budgeting, provision of goods and services, and equitable distribution of resources across the country.

**Recommendation 2:
Strengthening of International Commitments Related to Equality**

- 2(a) Solomon Islands is urged to ratify the following international human rights instruments which are relevant to the rights to equality and non-discrimination:

- I. The International Covenant on Civil and Political Rights (1966);
- II. the First Optional Protocol to the International Covenant on Civil and Political Rights (1966);
- III. the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008);
- IV. the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);
- V. the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002);
- VI. the First Optional Protocol to the Convention on the Rights of the Child (involvement of children in armed conflict) (2000);
- VII. the Second Optional Protocol to the Convention on the Rights of the Child (sale of children, child prostitution and child pornography) (2000);
- VIII. the Third Optional Protocol to the Convention on the Rights of the Child (communicative procedure) (2011);
- IX. the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990);
- X. the Convention on the Rights of Persons with Disabilities (2006);
- XI. the Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006);
- XII. the International Convention for the Protection of All Persons from Enforced Disappearances (2006);
- XIII. the International Labour Organization Convention No. 169 on Indigenous and Tribal Peoples;
- XIV. the UN Convention relating to the Status of Refugees (1951); and
- XV. the UN Convention relating to the Status of Stateless Persons (1954).

2(b) Solomon Islands is urged to make a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination allowing individual complaints.

Recommendation 3: Constitutional Reform

(3)(a) The Equal Rights Trust notes and echoes the recommendation of the Truth and Reconciliation Commission that:

[T]he new constitution must ensure that the country's differences do not again become a source of division or conflict or the means of discrimination or perpetuating and promoting group domination or privilege.⁶⁵⁷

On that basis, Solomon Islands is urged to ensure that the new constitution adopted following the constitutional reform process protects the rights to equality and non-discrimination in accordance with international human rights law and best practice. In particular, Solomon Islands is urged to ensure that the new constitution does not replicate the limited protection against discrimination found in section 15 of the 1978 constitution but instead contains provisions which:

- I. Provide for a strong right to equality encompassing (i) the right to recognition of the equal worth and equal dignity of each human being; (ii) the right to equality before the law; (iii) the right to equal protection and benefit of the law; (iv) the right to be treated with the same respect and consideration as all others; and (v) the right to participate on an equal basis with others in any area of economic, social, political, cultural or civil life;
- II. Provide, in addition to the right to a broad right to equality, for a distinct right to non-discrimination applying to all areas of life regulated by law;
- III. Prohibit discrimination on all grounds enumerated in Principle 5 of the Declaration of Principles on Equality, namely race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other

⁶⁵⁷ *Ibid.*

predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds; and contain criteria for the inclusion of additional grounds, so that such grounds could be incorporated as necessary over time without requiring constitutional amendment; and

- IV. Provide definitions of the conducts which are prohibited as violating the right to equality.

Recommendation 4: Repeal or Amendment of National Legislation

Solomon Islands is urged to undertake a review of all legislation and policy in order to (i) assess compatibility with the rights to equality and non-discrimination, as defined under the international instruments to which it is party; and (ii) amend, and, where necessary, abolish existing laws, regulations and policies that conflict with these rights. This process should include review of:

Constitutional Provisions:

- I. Section 5 of the Constitution, which permits the deprivation of liberty of a person “who is, or is reasonably suspected to be, of unsound mind (...) for the purpose of his care or treatment or the protection of the community”.
- II. Section 8 of the Constitution, which excludes from the protection of personal property any law which provides for the “taking of possession or acquisition of (...) property of (...) a person of unsound mind”.
- III. Section 14(3)(c) of the Constitution permitting restrictions in the Constitution and other pieces of legislation to the right to freedom of movement of non-citizens.
- IV. Section 15(5)(b) of the Constitution permitting restrictions in the Constitution and other pieces of legislation to the right to non-discrimination of non-citizens.

Legislative Provisions:

Criminal Law

- I. Section 136 of the Penal Code providing an excessively narrow definition of rape, particularly by overlooking certain forms of sexual violence against women and marital rape.

- II. Section 158 of the Penal Code making it an offence, punishable by life imprisonment, for anyone who intentionally “procure[s] the miscarriage of a woman”, including the woman herself.
- III. Section 160 of the Penal Code criminalising “unnatural offences” (buggery) with up to fourteen years imprisonment.
- IV. Section 161 of the Penal Code criminalising attempts to commit “unnatural offences” as well as indecent assaults against a man with up to seven years imprisonment.
- V. Section 162 of the Penal Code (Amendment) Act 1990 criminalising “gross indecency” between two persons of the same sex with up to five years imprisonment.
- VI. Section 58 of the Evidence Act which does not completely prohibit the use of the past sexual history of a complainant to challenge her truthfulness before the court.

Family Law

- I. Section 10(3) of the Islanders Marriage Act providing that the minimum legal age for marriage is 15 years.
- II. Section 18(1) of the Islanders Divorce Act holding that a husband who has filed a petition for divorce or separation may claim damages from any person found to have committed adultery with the wife of the petitioner.
- III. Section 17 of the Affiliation Separation and Maintenance Act allowing a court to discharge the order to pay maintenance payments to the wife for the benefit of children committed to her custody if the wife commits “an act of adultery”.

Employment Law

- I. Section 2 of the Labour Act excluding certain categories of workers, such as domestic workers, from the rights to claim maternity leave.
- II. Section 36(1) of the Labour Act allowing for the employment of “infirm or disabled persons” at less than the minimum wage with the Commissioner of Labour’s permission.
- III. Section 39 of the Labour Act prohibiting the employment of women at night.
- IV. Section 40 of the Labour Act prohibiting the employment of women in mines.

Citizenship Law

- I. Section 6 of the Citizenship Act not allowing women to transmit their nationality to jointly adopted children.
- II. Section 7(3) of the Citizenship Act excluding women from the possibility to apply on behalf of their children for acquisition of nationality through naturalisation.
- III. Section 7(4)(b)(v) of the Citizenship Act stating that women can apply for nationality after two years of marriage only with the consent of the husband.
- IV. Section 11(1) of the Citizenship Act depriving women of the right to citizenship if, after they have obtained it through marriage with a citizen of Solomon Islands, they divorce and subsequently remarry a non-citizen.

Land Law

Section 2 of the Land and Titles Act restricting the right to hold or to acquire perpetual title to land only to Solomon Islanders that were born in Solomon Islands and have two grand-parents who were members of a group, tribe or line indigenous to Solomon Islands.

Recommendation 5: Substantive Law Protecting the Rights to Equality and Non-Discrimination

5(a) Solomon Islands should adopt appropriate legislative measures for the implementation of the right to equality. Such measures should ensure comprehensive protection across all grounds of discrimination and in all areas of activity regulated by law.

(5)(b) The enactment of comprehensive equality legislation should give effect to the principles of equality under international law and ensure constitutional protection against discrimination and the promotion of the right to equality. Equality legislation should aim at eliminating direct and indirect discrimination and harassment in all areas of life regulated by law; cover all prohibited grounds listed in Principle 5 of the Declaration of Principles on Equality; and attribute obligations to public and private actors, including in relation to the promotion of substantive equality and the collection of data relevant to equality.

- (5)(c) Comprehensive equality legislation could either take the form of:
- I. A single Equality Act, which offers consistent protection against discrimination across all grounds of discrimination and in all areas of life regulated by law; or
 - II. A coherent system of Acts and provisions in other legislation which together address all grounds of discrimination in all areas of life regulated by law.
- (5)(d) Members of groups who may be distinguished by one or more of the prohibited grounds should be given the opportunity to participate in the decision-making processes which lead to the adoption of such legislative measures.
- (5)(e) It is recommended that the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Bill be enacted as soon as possible.
- (5)(f) In order to ensure that the right to equality is effective in Solomon Islands, the government should review its current positive action measures and consider taking further positive action, which includes a range of legislative, administrative and policy measures, in order to overcome past disadvantage and to accelerate progress towards equality of particular groups, including under-represented ethnic groups, women and persons with disabilities.

Recommendation 6: Enforcement

- (6)(a) Solomon Islands is urged to review its procedural law to ensure that persons who have been subjected to discrimination have a right to seek legal redress and obtain an effective remedy. They must have effective access to judicial and administrative procedures, and appropriate legal aid for this purpose.
- (6)(b) Solomon Islands should introduce legislation or other measures to protect individuals from victimisation, defined as any adverse treatment or consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with equality provisions.

- (6)(c) In amending its procedural law related to equality, Solomon Islands should ensure that associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality, may engage, either on behalf or in support of the persons seeking redress, with their approval, or on their own behalf, in any judicial and/or administrative procedure provided for the enforcement of the right to equality.
- (6)(d) In amending its procedural law related to equality, Solomon Islands should adapt legal rules related to evidence and proof in order to ensure that victims of discrimination are not unduly inhibited from obtaining redress. In particular, rules on evidence and proof in civil proceedings should be adapted to ensure that when persons who allege that they have been subjected to discrimination establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination, it shall be for the respondent to prove that there has been no breach of the right of equality.
- (6)(e) Solomon Islands must ensure that sanctions for breach of the right to equality are effective, proportionate and dissuasive. Appropriate remedies should include reparations for material and non-material damages. Sanctions should also include the elimination of discriminatory practices and the implementation of structural, institutional, organisational or policy changes that are necessary for the realisation of the right to equality.
- (6)(f) Solomon Islands is urged to establish and maintain a body or a system of coordinated bodies for the protection and promotion of the right to equality. Equality bodies must comply with the UN Paris Principles, including in terms of their independent status and competences, as well as adequate funding and transparent procedures for the appointment and removal of their members.
- (6)(g) It is recommended that Solomon Islands establish a focal point within government to coordinate policy and action relating to the right to equality.

**Recommendation 7:
Duty to Gather and Disseminate Information**

- (7)(a) During the research for this report, it has been established that there is a significant lack of information, including statistics, in relation to key indicators of equality in Solomon Islands. Solomon Islands should collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality. Wherever statistics are collected in relation to key indicators of equality, they should be disaggregated in order to demonstrate the different experiences of disadvantaged groups within Solomon Islands society. Hate crime statistics must be collected and publicised, including statistics on gender-based violence. Solomon Islands should further ensure that such information is not used in a manner that violates human rights.
- (7)(b) Laws and policies adopted to give effect to the right to equality must be accessible to all persons. Solomon Islands must take steps to ensure that all such laws and policies are brought to the attention of all persons who may be concerned by all appropriate means.
- (7)(c) Solomon Islands should adopt a freedom of information law which would create a legal right for individuals and organisations to obtain information held by the government, and regulate the process for requesting and releasing such information.

**Recommendation 8:
Policies to Respect and Promote the Rights to
Equality and Non-Discrimination**

Solomon Islands should take appropriate measures and adopt policies to ensure that all public authorities and institutions, as well as private sector bodies, respect the rights to equality and non-discrimination. Such measures could include, for example:

- I. Reviewing existing guidelines, policies and practices to ensure that they do not contravene the rights to equality and non-discrimination;

- II. Developing guidelines for public bodies to ensure respect for the rights to equality and non-discrimination;
- III. Taking steps to educate public officials and other agents of the state as to their obligations with respect to the rights to equality and non-discrimination.

**Recommendation 9:
Education on Equality**

Solomon Islands is urged to take action to raise public awareness about equality, and to ensure that all educational establishments, including private, religious and military schools, provide suitable education on equality as a fundamental right. Such action is particularly necessary in order to modify social and cultural patterns of conduct and to eliminate prejudices and customary practices which are based on the idea of the inferiority or superiority of one group within society over another.

**Recommendation 10:
Prohibition of Regressive Interpretation,
Derogations and Reservations**

In adopting and implementing laws and policies to promote equality, Solomon Islands should not allow any regression from the level of protection against discrimination that has already been achieved.

No derogation from the right to equality should be permitted. Any reservation to a treaty or other international instrument, which would derogate from the right to equality, should be considered null and void.