

1. INTRODUCTION

1.1 Purpose and Structure of This Report

The purpose of this report is to highlight and analyse discrimination and inequality in Solomon Islands and to recommend reforms to law, policy and practice to combat discrimination and promote equality. The report explores a number of well-recognised human rights problems, and also seeks to shed light upon less well-known patterns of discrimination in the country. The report brings together – for the first time – evidence of the lived experience of discrimination and inequalities by many different categories of people with an analysis of the laws, policies, practices and institutions established to address them.

The report comprises four parts. **Part 1** sets out its purpose and structure, the conceptual framework which has guided the work and the research methodology. It also provides basic information about Solomon Islands, the country's recent history and the current political situation.

Part 2 presents patterns of discrimination and inequality, examining patterns arising on the basis of ethnicity, gender, disability, religion and belief, sexual orientation and gender identity, citizenship, economic status and health status. In each section of this Part, the report examines evidence of discriminatory laws, discrimination by state actors, discriminatory violence and hate crime and discrimination and inequality in the areas of employment, education, healthcare and participation in public life.

Part 3 begins by reviewing the main international legal obligations of Solomon Islands in the field of equality and non-discrimination in the framework of the United Nations and other international bodies. This part then discusses Solomon Islands national law related to equality and non-discrimination, starting with the Constitution before examining national legislation. Part 3 also reviews state policies relevant to equality. The potential for the realisation of the rights to equality and non-discrimination is illustrated through a review of judicial practice and a review of the operation of government and independent bodies responsible for the implementation of human rights laws.

Part 4 contains the report's conclusions and recommendations, which are based on the analysis of patterns of inequality and discrimination examined

in Part 2 and the limitations of Solomon Islands legislation and state policies revealed in Part 3.

1.2 Conceptual Framework and Research Methodology

This report takes as its conceptual framework the unified human rights perspective on equality, which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation in the field of equality law and policies. The unified human rights framework on equality is a holistic approach which recognises both the uniqueness of each different type of inequality and the overarching aspects of different inequalities. The unified framework brings together: a) types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others; b) types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education, and provision of goods and services, among others; and c) status inequalities and socio-economic inequalities.

The Unified Human Rights Framework on Equality

The unified human rights framework on equality is expressed in the Declaration of Principles on Equality, adopted in 2008, signed initially by 128 and subsequently by thousands of experts and activists on equality and human rights from all over the world.¹ The principles formulated and agreed by the experts are based on concepts and jurisprudence developed in international, regional and national legal contexts.

Since its adoption, the Declaration has been used by those developing anti-discrimination legislation in a number of countries and has received increasing support at the international and regional levels. In 2008, the UN Committee on Economic, Social and Cultural Rights (CESCR) made use of a number of key concepts from the Declaration in its *General Comment 20: Non-discrimination in economic, social and cultural rights*.² In 2011, the Parliamentary Assembly of the Council of Europe adopted a Recommendation

1 *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008.

2 Committee on Economic, Social and Cultural Rights, *General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)*, U.N. Doc. E/C.12/GC/20 (2009).

calling on the 47 Council of Europe member states to take the Declaration into account when developing equality law and policy.³

Principle 1 of the Declaration defines the right to equality:

*The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.*⁴

Thus defined, the right to equality has a broad scope, and its content is richer than that of the right to non-discrimination. The right to equality has as its elements the equal enjoyment of all human rights, as well as the equal protection and benefit of the law. Most importantly, it encompasses equal participation in all areas of life in which human rights apply. This holistic approach to equality recognises the interconnectedness of disadvantages arising in different contexts, which makes it necessary to take a comprehensive approach to inequalities in all areas of life.

This report takes the right to equality, as expressed in the Declaration, as the baseline against which it assesses the presence or degrees of inequality. It goes beyond narrower notions of equality found in many legal systems, by understanding equality not only as a right to be free from all forms of discrimination, but also as a right to substantive equality in practice. As discussed below, this motivates our analysis of disadvantages affecting different groups beyond those which arise as a result of discernible acts of discrimination. From this perspective, many societal inequalities relevant to human rights are seen as a consequence of historic disadvantage, while asserting that the right to equality requires states to address unfair inequalities, however “innocuous” their cause. Thus the unified framework makes *de facto* unfair inequ-

3 Parliamentary Assembly of the Council of Europe, *Resolution and Recommendation: The Declaration of Principles on Equality and activities of the Council of Europe*, REC 1986 (2011), 25 November 2011, available at: <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=13190&lang=en>.

4 See above, note 1, Principle 1, p. 5.

alities, whether or not they result from discrimination, a relevant subject for this report.

Regarding the relationship between the rights to equality and non-discrimination, the Declaration construes the right to non-discrimination as subsumed in the right to equality.⁵ Thus, when examining the situation of a particular group of persons, the report looks both at examples of discrimination and at inequality in participation in areas such as employment or public life, differential access to goods and services and socio-economic disadvantage.

The unified human rights framework on equality makes it desirable and possible to provide a general legal definition of discrimination covering all types of discrimination. Principle 5 of the Declaration offers such a definition:

Discrimination must be prohibited where it is on grounds of 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 predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds.

Discrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.

Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception,

5 *Ibid.*, Principle 4, p. 6.

whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.

Discrimination may be direct or indirect.

Direct discrimination occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.

Indirect discrimination occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

Harassment constitutes discrimination when unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

An act of discrimination may be committed intentionally or unintentionally.⁶

This definition takes a broad view regarding the list of **protected characteristics**. It contains both a list of explicitly prohibited grounds of discrimination and a “test” for the inclusion of further grounds, according to which “can-

6 *Ibid.*, Principle 5, p. 6–7.

didate grounds” should meet at least one of three listed conditions.⁷ Thus, the definition provides a foundation for tackling the full complexity of the problem to be addressed – people’s lived experience of discrimination. It recognises that a single person may experience discrimination on a “combination” of subtly interacting grounds, or on grounds not previously recognised as “prohibited”, and that the cumulative impact of discrimination on different grounds can be bigger than the sum of its parts. The unified perspective acknowledges that the phenomenon of discrimination must be addressed holistically, if it is to be effectively challenged.

The Declaration defines three forms of **prohibited conduct** which constitute discrimination: direct discrimination, indirect discrimination and harassment. All three concepts reflect current expert opinion on the definitions of the different forms of discrimination in international human rights and equality law.⁸ They are used throughout Part 2 to assess the patterns of discrimination identified by the research against the state’s obligation to respect the right to non-discrimination, and in Part 3 as a basis against which to assess the adequacy of legal provisions intended to protect people from discrimination.

The report also relies on a number of other important concepts and definitions contained in the Declaration of Principles on Equality. Thus, the report employs the definition of **reasonable accommodation** provided in Principle 13 of the Declaration:

7 Petrova, D., “The Declaration of Principles on Equality: A Contribution to International Human Rights”, in *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, p. 34: “The definition of discrimination in Principle 5 includes an extended list of ‘prohibited grounds’ of discrimination, omitting the expression ‘or other status’ which follows the list of characteristics in Article 2 of the Universal Declaration of Human Rights. While intending to avoid abuse of anti-discrimination law by claiming discrimination on any number of irrelevant or spurious grounds, the definition nonetheless contains the possibility of extending the list of ‘prohibited grounds’ and includes three criteria, each of which would be sufficient to recognise a further characteristic as a ‘prohibited ground’. This approach is inspired by the solution to the open versus closed list of ‘prohibited grounds’ dilemma provided by the South African Promotion of Equality and Prevention of Unfair Discrimination Act (2000).”

8 See, for example, United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, Para 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 10.

To achieve full and effective equality it may be necessary to require public and private sector organisations to provide reasonable accommodation for different capabilities of individuals related to one or more prohibited grounds.

Accommodation means the necessary and appropriate modifications and adjustments, including anticipatory measures, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others. It should not be an obligation to accommodate difference where this would impose a disproportionate or undue burden on the provider.⁹

In line with international law in this area, the approach taken in the report is that a denial of reasonable accommodation constitutes discrimination.¹⁰ Reflecting an emerging international consensus on this issue, the concept of reasonable accommodation “is extrapolated to cover other forms of disadvantage beyond disability, as well as, more generally, differences which hamper the ability of individuals to participate in any area of economic, social, political, cultural or civil life”.¹¹ Thus, in the context of this report, it is accepted that the duty of reasonable accommodation can arise in respect of grounds other than disability.

Similarly, the report employs the understanding of **positive action** provided in Principle 3 of the Declaration. As with other principles in the Declaration, this principle draws upon emerging approaches in international and regional human rights law, in this case with regard to the concepts of special measures

9 See above, note 1, Principle 13, p. 10–11.

10 See, for example, Convention on the Rights of Persons with Disabilities, G.A. Res. A/RES/61/106, 2006, Article 2; United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 5: Persons with Disabilities*, UN Doc. E/1995/22, 1995, Para 15: “disability-based discrimination” includes “the denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights”.

11 See above, note 7, p. 39.

in the various instruments,¹² whereby “it should be noted that the Declaration captures the growing tendency of interpreting “special measures” as part of, rather than an exception to, equal treatment”.¹³ Principle 3 states:

To be effective, the right to equality requires positive action.

*Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.*¹⁴

The notion of positive action plays an important role in the unified perspective on equality, and, therefore, in the approach of this report. As previously discussed, the right to equality extends beyond a right to be free from discrimination and contains an element of participation on an equal basis with others in all areas of life regulated by law. Positive action is key to addressing those inequalities which are not attributable solely to discrimination. Having identified patterns of substantive inequality in Part 2, Part 3 of this report analyses the adequacy of positive action measures to address these.

The review of laws and policies in Part 3 of this report is based on an assessment against those parts of the Declaration which set out the **obligations of the state** with regard to the rights to equality and non-discrimination, including in particular Principle 11. In this regard, the Declaration applies the understanding of state obligations in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as explained, *inter alia*, in General Comment 3 of the CESCR and General Comment 31 of the UN Human Rights Committee. As stated in the commentary on the Declaration:

12 See, for example, International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), 1965, Article 1(4); Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 1979, Article 4(1); and Organisation of African Unity, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, OAU Doc. CAB/LEG/66.6, 2000, Article 2(1)(d).

13 See above, note 7, p. 32.

14 See above, note 1, Principle 3, p. 5.

By analogy with the interpretation of States' obligations set out in General Comment 3 of the UN Committee on Economic, Social and Cultural Rights, States are required to take all necessary steps, including legislation, to give effect to the right to equality in the domestic order and in their international cooperation programmes. The right to full and effective equality may be difficult to fulfil; however, the State does not have an excuse for failing to take concrete steps in this direction. The requirement to take such steps is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to cultural, economic, political, security, social or other factors.¹⁵

Application of the Unified Human Rights Framework on Equality

Applying the unified human rights framework on equality has a number of consequences for the content, structure and methodology of this report. The **first consequence** is reflected in the subject and scope of the report – the presentation of discrimination and inequality on a number of different grounds in the same study. While it is clearly beyond the scope of the report to provide a detailed analysis of discrimination and inequality arising on every ground, the aim has been to present what appear to be the most significant patterns of discrimination and inequality found in the Solomon Islands context.

Presenting patterns of discrimination and inequality alongside each other requires a specific weighing of the sources of evidence. To some extent, Part 2 of the report relies on pre-existing research into inequalities affecting particular groups, and disaggregated data on the position of different groups in particular areas of life. Such information was available in some areas, but limited in others. For example, there is a lack of published research or data on the position of lesbian, gay and bisexual people in Solomon Islands. In this and other areas where pre-existing research was unavailable, the Equal Rights Trust has relied more heavily on direct testimony from individual victims, or interviews with professionals working on behalf of particular groups. The evidence obtained through field research and desk research has been weighed and contextualised, with a view to presenting patterns of discrimina-

15 See above, note 7, p. 38.

tion and disadvantage in a way which is as representative of Solomon Islands reality as possible. In so doing, it is hoped that the report also illuminates the links between inequalities on different grounds, through identifying overarching issues, instances of multiple discrimination and common experiences.

The **second consequence** of applying the unified human rights framework relates to the material scope of application of the right to equality, which encompasses all areas of life regulated by law. The report seeks to assess people's experience of discrimination across the full range of areas of life, including in respect of interactions with the state, personal safety, employment, education and healthcare. But in this respect, too, the evidence is uneven: there is little evidence of discrimination or inequality in particular areas of life for certain disadvantaged groups, either because persons within these groups do not experience disadvantage in a particular area, or because evidence of such disadvantage was not forthcoming in the course of the research. For example, the report found evidence of direct discrimination in law against non-citizens in the areas of political participation and land ownership, but no evidence of discrimination against this group in other areas of life.

The **third consequence** of applying the unified framework is to require an analysis of both violations of the right to non-discrimination and the right to equality. The report takes the right to equality, as defined in the Declaration of Principles on Equality, as the standard against which it assesses the degree of inequality. Thus, the report investigates historically-generated patterns of substantive inequality, by looking at the element of "participation on an equal basis with others in economic, social, political, cultural or civil life",¹⁶ thereby extending beyond experiences of discrimination. This is the case, for example, with the examination of substantive inequalities between the country's different provinces in levels of access to public services and infrastructure. Our research did not identify evidence that these disparities were the result of direct or indirect discrimination; nevertheless, the disparities themselves, when considered in light of the right to participate on an equal basis with others, are a matter of concern in this report.

The **fourth consequence** of applying the unified framework is the definition of discrimination used, which, reflecting best practice in outlawing discrimi-

16 See above, note 1, p. 5.

nation on grounds that have come to be regarded as unfair in modern society, provides the basis for our consideration of the range of identity-based groups included in the report. Thus, the report examines discrimination on grounds of race and ethnicity; gender; disability; sexual orientation; health status; citizenship; economic status; and religion or belief. Furthermore, the report examines some patterns of discrimination – such as the discrimination suffered by girls – which do not fall exclusively within one specified ground, but which constitute important forms of multiple discrimination. Furthermore, analysis of certain types of discrimination, notably that suffered by children, is interwoven throughout the report, rather than considered separately. This is not because they are less important or widespread, but because they appear to be strongly defined by one or more of the major protected characteristics covered in the report, particularly gender and ethnicity.

The **final consequence** of this approach is to present evidence of factual patterns of discrimination and inequality alongside an analysis of the legal and policy framework related to equality. The existence and enforcement of laws and policies prohibiting discrimination and promoting equality is a critical factor – though by no means the only one – in ensuring enjoyment of the rights to non-discrimination and equality. Protecting people from discrimination by enacting such laws is a key state obligation in respect of these rights. Thus, this report seeks to match an assessment of the lived experience of discrimination and inequality with a review of Solomon Island’s legal and policy framework, in order to establish where the law discriminates, where gaps and inconsistencies in legal protection exist, and where laws are inadequately enforced.

The analysis of patterns of discrimination in Part 2 of the report gives rise to significant concerns about the adequacy of laws and policies designed to address discrimination and inequality in Solomon Islands. Part 3 of this report assesses the adequacy of the legal and policy framework in the light of the Declaration’s principles relating to access to justice for discrimination victims, evidence and proof in discrimination proceedings, and other elements of enforcement of equality rights.¹⁷ While the necessity of effective enforcement of the rights to non-discrimination and equality is illustrated by the findings in Part 2 of this report, these issues are discussed in more detail in Part 3, and Part 4 formulates recommendations about legal and policy reform, imp-

17 *Ibid.*, Principles 18–25, pp. 12–14.

lementation and enforcement. Thus, it is hoped that the information contained in Part 2 provides a strong evidence base for analysing the effectiveness of the laws and policies discussed in Part 3, and therefore ensuring that the conclusions and recommendations in Part 4 are relevant and robust.

Research Methodology

The Equal Rights Trust has been working in Solomon Islands since 2010, in partnership with the Secretariat of the Pacific Community – Solomon Islands Country Office (SPC-SI) and the Secretariat of the Pacific Community Regional Rights Resource Team (SPC RRRT). The three organisations have worked together in the context of two projects designed to empower civil society to combat discrimination and inequality in Solomon Islands.

Throughout these projects, the three partners have undertaken research on discrimination and inequality through interviews, roundtables, focus groups and consultations with those exposed to discrimination in Solomon Islands and with organisations which work with these groups, as well as through reviewing publications and data produced by others. The Equal Rights Trust has also reviewed, analysed and assessed the legal and policy framework related to equality in Solomon Islands.

Research for Part 2 of this report included both desk-based research and field work, with the latter featuring focus group discussions and semi-structured interviews. Initial desk-based research to identify the major patterns of discrimination in Solomon Islands took place in late 2012, with researchers working at the Equal Rights Trust. In mid-2013, SPC-SI and SPC RRRT identified and recruited a group of focal points to act as field researchers in each of Solomon Island's ten provinces. Field researchers were provided with training and guidance, before being asked to conduct focus groups and interviews in their respective localities. This research was then conducted between May and July 2013. In total, 35 focus groups were conducted, while 78 persons gave individual interviews about their personal experiences of discrimination and inequality.

Alongside the field research, desk research continued throughout 2013 and 2014. This involved a review of relevant literature on discrimination and inequality in Solomon Islands, including reports by both the government and NGOs to UN treaty bodies and the Universal Periodic Review (UPR) process;

government and intergovernmental data and reports; and research published by international and national NGOs, academic studies and media reports. The literature review covered relevant aspects of human rights and equality, as well as a number of related issues in fields such as development studies, economics and conflict studies. Given the need to look beyond discrimination and assess equality of participation, traditional methods of human rights documentation were complemented by sociological research, in particular related to employment, education and healthcare.

Wherever possible, statistical data was relied on to improve understanding of inequalities. It should be stressed, however, that statistical data on Solomon Islands is limited, being largely restricted to the last census completed in 2009. Where statistical data has been used, the basic data has come from reports and publications produced by the Solomon Islands National Statistics Office (SIN-SO),¹⁸ complemented by and compared to data from the World Bank, the World Health Organisation (WHO), the United Nations Development Programme (UNDP), the United Nations Educational, Scientific and Cultural Organisation (UNESCO), and other sources. The scarcity of relevant statistical data – in particular data disaggregated by protected characteristics such as gender, ethnicity, age or religion – presented a challenge to effective quantitative research on discrimination and inequality. This in itself is a cause for concern, as the government should ensure that it collects disaggregated data allowing it to assess and address inequalities.¹⁹

18 Solomon Islands National Statistics Office' website, available at <http://www.spc.int/prism/solomons>.

19 States have an obligation to collect data on different groups in certain areas of life under the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities, an obligation which is frequently invoked by treaty bodies when reviewing state compliance. In 2014, the Committee on the Elimination of Discrimination against Women urged Solomon Islands to collect data disaggregated by sex, age, race, ethnicity, disability, geographic location and socioeconomic background. (Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined initial, second and third periodic reports of Solomon Islands*, CEDAW/C/SLB/CO/1-3, 7 November 2014, Para 47). Under the Declaration of Principles of Equality, the obligation to collect disaggregated data covers all characteristics relevant to identifying structural disadvantage. Principle 24 states: "To give full effect to the right to equality States must 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." (*Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 24, p. 14.)

Research on law and policy for Part 3 was undertaken by the Equal Rights Trust. Research on Solomon Islands' international legal obligations benefited from the United Nations Treaty Collection database²⁰ and the website of the Office of the High Commissioner for Human Rights.²¹ Research on Solomon Islands laws, including the Constitution and national legislation, consisted of reviewing primary sources, accessed via the online database maintained by the Pacific Islands Legal Information Institute.²² Research on government policies was undertaken through review of state reports to the UN treaty bodies and documents gathered from government websites.

In order to ensure the accuracy of the report's findings and conclusions, a draft of this report was exposed to a validation process. Between May and October 2014, SPC-SI and SPC RRRT presented and discussed a draft of the report with interested parties from civil society, government, academia, the media and other fields. In these meetings, and in correspondence thereafter, the report was subjected to critical evaluation by a range of stakeholders, with the aim of validating its findings and conclusions. The comments, criticisms and other feedback from these stakeholders were incorporated into the draft prior to publication.

As part of its validation process, on 26 August 2014, SPC convened a consultation meeting to engage with representatives of government ministries and other stakeholders. Representatives from the Ministry of Home Affairs, the Ministry of Justice and Legal Affairs, the Ministry of Public Service, the Ministry of Education and Human Resource Development, the Ministry of Commerce, the Ministry of Development, Planning and Aid Coordination and the Ministry of Fisheries and Marine Resources, together with representatives from the Constitutional Reform Unit in the Office of the Prime Minister and Cabinet, the Law Reform Commission and the Solomon Islands Correctional Services participated in this meeting. During the meeting, participants were given an

20 United Nations, *United Nations Treaty Series Online Collection*, available at: <http://treaties.un.org/pages/UNTSONline.aspx?id=1>.

21 Office of the High Commissioner for Human Rights, available at: <http://www.ohchr.org/EN/Pages/WelcomePage.aspx>.

22 Pacific Islands Legal Information Institute, *Pacific Law Databases: Solomon Islands*, available at: <http://www.paclii.org/databases.html#SB>.

opportunity to review and comment on the findings and conclusions in Parts 2 and 3 of the report, providing updates, correcting inaccuracies or informing the partners of additional relevant facts. The results of this consultation meeting, together with all other feedback from the validation process, were taken into account during the finalisation of this report. In addition, in the interests of balance, we have sought to include the government's perspective on the issues discussed in the report, based on policies and public statements, including in particular official reports to UN treaty bodies, wherever relevant.

Scope and Limitations of the Report

It is not possible for any report to provide an exhaustive account of discrimination and inequality in a given country, and this report is no exception. The reality of discrimination and inequality is such that experiences are as many and varied as the population of Solomon Islands itself. Each person will have their own experiences of discrimination and inequality, arising in different areas of life, in different circumstances, in interaction with different persons, institutions or groups and as a result of any aspect of their identity, or any combination of these aspects.

For these reasons, the aim of Part 2 of this report is to provide a broad overview of the principal patterns of discrimination and inequality felt to be most significant in the national context. The report does not address the experiences of all categories or groups of people in all areas of life. These omissions should not be interpreted as an indication that there is no disadvantage in the omitted areas, or in respect to the omitted groups. Rather, the decision not to include an assessment of discrimination or inequality in a particular area or for a particular group was motivated simply by a lack of evidence during the desk and field research stages of producing this report. Analysis of certain types of discrimination, notably the ones suffered by children, is interwoven in the report, rather than presented separately. The decision to not devote separate sections to these groups is motivated not by their lesser significance in the country context, but by our opinion that, from the point of view of equality and non-discrimination law, discrimination against these groups appears to be strongly defined by one or more of the major protected characteristics covered in the report, particularly gender and ethnicity. For example, the discrimination against girls from a particular province is better understood through the prism of ethnicity and gender, rather than age.

As noted above, the research for this report was seriously constrained by a lack of disaggregated statistical data pertaining to the situation of certain groups, and certain areas of life. Consequently, certain issues, which would usually fall within the scope of a report addressing inequality and discrimination, do not feature in the report at all. Further, the absence of disaggregated data in relation to certain areas of life, such as housing, education, employment, criminal justice, etc., has limited the extent to which the authors have been able to discuss inequalities in all areas of life for every group we have covered in the report. For example, while the report discusses the experiences of some groups in the education system, or employment, it has not been possible to examine all groups' experiences in these areas of life.

1.3 Country Context

Solomon Islands, an archipelago in the South Pacific Ocean, situated to the east of Papua New Guinea and the northeast of Australia, consists of approximately 997 islands.²³ Solomon Islands is among the smaller countries in the world, both in terms of size and population. The total area of the country is 30,407 km²²⁴ and the population is approximately 750,000.²⁵ The capital city, Honiara, located on the largest of the islands, Guadalcanal, has a population of approximately 65,000.²⁶ The country is divided into nine provinces – Central, Choiseul, Guadalcanal, Isabel, Makira-Ulawa, Malaita, Rennell and Bellona, Temotu, and Western, plus the capital territory.²⁷

23 Solomon Islands National Statistics Office, *2009 Population and Housing Census: National Report*, 2009, p. 1, available at: <http://www.spc.int/prism/solomons/index.php/sinso-documents?view=download&fileId=59>.

24 *Ibid.*

25 The total enumerated population at the 2009 census was 515,870, though the National Statistics Office estimated that there had been an “8.3% undercount, and the population size stood more likely at 558 thousand at the time of the Census”. (Solomon Islands National Statistics Office, above note 23, p. 6). The United Nations estimated the population in 2013 to be 561,231. (United Nations Department of Economic and Social Affairs, Population Division, *Population, Development and the Environment 2013*, 2013, available at: <http://www.un.org/en/development/desa/population/publications/development/pde-wallchart-2013.shtml>). In 2015, a report prepared by the Solomon Islands National Statistics Office stated that the “projected 2015 population based on the 2009 census is 762,412” (Gaiafuna, J., *Solomon Islands: Country Report*, Solomon Islands National Statistics Office, 2015, p. 2, available at: http://www.unsiap.or.jp/e-learning/el_material/PSS/1507_Informal/cr/SOL_cr.pdf).

26 See above, note 23, p. 7.

27 *Ibid.*, p. 2.

The overwhelming majority of the Solomon Islands population is Melanesian, constituting approximately 95.3% of the population.²⁸ There are a number of small ethnic minority populations including Polynesians (3.1%) and Micronesians (1.2%).²⁹ Melanesians constitute the majority in all but one of the ten provinces, with Rennell and Bellona being the only one with a Polynesian majority.³⁰ This said, the country's relative racial homogeneity belies deeper ethnic and cultural divisions. Solomon Islanders identify strongly with others on the basis of *wantok* – groups defined by shared linguistic and cultural heritage. Similarly, people identify strongly with their place of origin, defining themselves as part of a community with others residing on the island from which they originate. The number of refugees, asylum seekers and stateless persons is very low: the Office of the United Nations High Commissioner for Refugees (UNHCR) estimated that there were just three asylum seekers in 2014 and no refugees or stateless persons.³¹

Although the country's official language is English, only 1%-2% of the population speak it, the *lingua franca* being Solomons Pijin.³² A Draft Constitution published in 2013 would have made both English and Pijin official languages with other languages “used where appropriate”; and would require that “[a]ll indigenous vernaculars of Solomon Islands shall be equally maintained, respected and promoted”.³³ According to the 2009 census, Solomon Islands is “characterised by a rich linguistic diversity”.³⁴ Approximately 120 indigenous languages are spoken across Solomon Islands.³⁵

Christianity and, in particular Protestantism, is the most widely professed religion in Solomon Islands. Almost three quarters (73.4%) of the population is Protestant, made up of the Church of Melanesia (31.9%), South Seas

28 *Ibid.*, p. 83.

29 *Ibid.*

30 *Ibid.*

31 United Nations High Commissioner for Refugees, *2015 UNHCR regional operations profile – East Asia and the Pacific*, 2015.

32 See above, note 23, p. 3.

33 Draft Federal Constitution of Solomon Islands 2013, section 5(1) and 5(2).

34 See above, note 23, p. 3.

35 United Nations Human Rights Council, Working Group on the Universal Periodic Review, *National Report: Solomon Islands*, UN Doc. A/HRC/WG.6/11/SLB/1, 15 April 2011, Para 9.

Evangelicals (17.1%), Seventh-Day Adventists (11.7%), the United Church (10.1%), and the Christian Fellowship Church (2.5%).³⁶ 19.6% of the population is Roman Catholic, other Christians account for 2.9% of the population, and the remaining 4.1% stated adherence to other religions or none.³⁷

World Bank estimates of Solomon Island's GDP for 2014 stood at around \$1.16 billion (in current US\$),³⁸ placing the country in the lower middle income group. GDP per capita in the same year was \$2,024.2.³⁹ In 2014, the Human Development Index value for Solomon Islands was 0.506, placing it 156th out of 188 countries ranked.⁴⁰

As these figures indicate, Solomon Islands is not a rich country and this fact is reflected in the fields of employment, education and healthcare. The country suffers from high unemployment: according to the 2009 census, while 63% of the population aged 12 and over was economically active, only 24% of the population was in employment.⁴¹ According to the same census, "[t]he bulk of the population depends on agriculture, fishing, and forestry for part of its livelihood", while "[m]ost manufactured goods and petroleum products must be imported".⁴²

School enrolment rates increased significantly between 1999 and 2009,⁴³ though data published by UNESCO indicates that net enrolment at both primary and secondary levels remains low: net enrolment in primary education was 93.2% in 2012, while net enrolment at secondary level was 42.2% in the

36 See above, note 23, p. 81.

37 *Ibid.*

38 World Bank, *Data: Solomon Islands*, 2015, available at: <http://data.worldbank.org/country/solomon-islands>.

39 World Bank, *World Development Indicators: GDP per capita*, available at: <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD/countries>.

40 United Nations Development Programme, *Human Development Report 2015: Work for Human Development*, 2015, p. 210, available at: http://hdr.undp.org/sites/default/files/2015_human_development_report_1.pdf.

41 See above, note 23, p. 204.

42 *Ibid.*, p. 2.

43 *Ibid.*, p. xxviii.

same year.⁴⁴ UNESCO's most recent 2013 data indicates that only 71.5% of children enrolled in primary school completed that stage of their education, though 93.4% of those completing primary school made the transition to secondary school.⁴⁵

Inadequate access to health services in Solomon Islands is a widespread problem, especially for the population residing in the rural areas. Ninety nine percent of residents are not covered by any public or private health insurance scheme and due to a lack of financial means, local traditional healers are often consulted in place of a doctor.⁴⁶ The Health Profile of Solomon Islands produced by the World Health Organisation illustrates that health outcomes in the country are somewhat worse than other countries in the region. Life expectancy at birth is almost 69, which is above the global average, but below the regional average of 76, while life expectancy at age 60 is 17 years, equal to the global average but below the regional average of 21.⁴⁷ Under-five mortality is 30.1 per 1000 live births, which is significantly below the global average (45.6 per 1000 live births) but above the regional average (19.5 per 1000 live births).⁴⁸

Recent History

Undiscovered by non-inhabitants until the 16th century, Solomon Islands was colonised by the United Kingdom in the late 19th century. The southern Solomon Islands (Guadalcanal, Savo, Malaita, San Cristobal and the New Georgia group) became a British Protectorate in 1893 and by the beginning of the 20th Century protectorate status had been extended to cover the whole of the Islands.⁴⁹ Solomon Islands became self-governing in 1976 and achieved inde-

44 United Nations Educational, Scientific and Cultural Organisation Institute for Statistics, *Country Profiles: Solomon Islands*, available at: <http://www.uis.unesco.org/DataCentre/Pages/country-profile.aspx?code=SLB®ioncode=40515>.

45 *Ibid.*

46 *Ibid.*, p. 50.

47 World Health Organisation, *Solomon Islands: Health Profile*, 2015, available at: <http://www.who.int/gho/countries/slb.pdf?ua=1>.

48 See above, note 40, pp. 240-1.

49 Dupont, J., *The Common Law Abroad*, Fred B. Rothman Publications, 2001, p. 1210; Roberts-Wray, K., *Commonwealth and Colonial Law*, Stevens & Sons, 1966, p. 897.

pendence in 1978 with the Solomon Islands Act 1978,⁵⁰ though Elizabeth II remained the head of state as Queen of Solomon Islands. On gaining independence, Solomon Islands immediately joined the Commonwealth of Nations.

In October 1978, only three months after independence, a group of people from Guadalcanal, the country's biggest island, formed a movement to demand the establishment of a "state government" for the province of Guadalcanal. In 1988, another petition was submitted to the government by Guadalcanal people, demanding, among other things, compensation for the deaths of a number of indigenous people, the repatriation of illegal settlers coming mainly from the neighbouring island of Malaita and the reduction of internal migration, reiterating the call for adoption of a "state government".

In the late 1990s, Tensions between the population of Guadalcanal and recent migrants from Malaita over jobs and land rights erupted into violence. During the period 1998-2003, the country experienced armed internal conflict between these different groups known as "the Tensions". In 1999, while Malaitan settlers were being evicted from Guadalcanal, the 1988 Guadalcanal petition was resubmitted with similar demands, although adapted to the new circumstances.⁵¹ The government's failure to find a solution to the grievances of Guadalcanal people and to the underlying ethnic tension resulted in the creation of an armed group, initially called the Guadalcanal Revolutionary Army, and later the Isatabu Freedom Movement (IFM). This group violently harassed settlers and forced up to 20,000 people in and around Honiara to flee to other parts of the country.⁵² In 2000, the Malaita Eagle Force (MEF) was formed in response to the activities of the IFM.

The government proved to be inadequate to halt violence and foster peace talks and several summits and other attempts to establish peace agreements failed. On 5 June 2000, the MEF raided a police armoury in Honiara, seized the capital and overthrew the national government. Fifteen days later, a new

50 Solomon Islands Act 1978 (c.15).

51 Solomon Islands Truth and Reconciliation Commission, *Solomon Islands Truth and Reconciliation Commission: Final Report*, February 2012, Vol. 1, p. 55, available at: <http://pacificpolicy.org/files/2013/04/Solomon-Islands-TRC-Final-Report-Vol1.pdf>.

52 Amnesty International, *Solomon Islands: No Peace in Paradise*, NS 93 AI Index No: ASA 43/01/00, 2000.

government was elected. In October 2000, the national government, the MEF, the IFM and the various provincial governments signed the Townsville Peace Agreement, brokered by Australia and New Zealand. Malaita and Guadalcanal provinces were granted more autonomy. Nevertheless, after the Townsville Peace Agreement, there followed a long period of violence and lawlessness in Honiara and the surrounding area, which lasted until 2003.

Following the failure of a range of reconciliation activities to restore stability, the government requested military assistance from Australia, New Zealand and other Pacific Island countries through the Pacific Islands Forum, which arrived in the form of the Regional Assistance Mission to the Solomon Islands (RAMSI). RAMSI focused its efforts on restoring law and order, re-establishing the machinery of government and improving economic governance.⁵³ RAMSI completed its mandate in 2013 with a phased withdrawal of troops, the last units leaving Solomon Islands in September of that year.⁵⁴

In 2007, Derek Sikua was elected Prime Minister. In 2009, under his leadership, a Truth and Reconciliation Commission (TRC), based on the one established in post-Apartheid South Africa, was formed. The TRC published its report in 2012.⁵⁵ The Commission concluded that an internal armed conflict had occurred between 1 January 1998 and 23 July 2003 and developed through different stages, of which only the first (from 1998 to 5 June 2000) could be classified as “ethnic tension”. The Commission registered 5721 human rights violations, 200 deaths, 212 cases of abduction, 95 cases of illegal detention, 1413 cases of torture and ill treatment, 63 statements about sexual violence, 1882 testimonies of forcibly displaced families, and 1856 cases of property violation.⁵⁶ “The Tensions” also affected the provision of essential services such as health and education.⁵⁷

53 Regional Assistance Mission to Solomon Islands, *Rebuilding a Nation: Ten Years of the RAMSI-Solomon Islands Partnership*, 2013, p. 6, available at: <http://www.ramsi.org/wp-content/uploads/2014/07/Rebuilding-a-Nation-RAMSI-EBook-185ca1c0-4b11-4ea0-86ac-eb-0110e15b66-0.pdf>.

54 Regional Assistance Mission to Solomon Islands, *About RAMSI: Military participation in RAMSI*, available at: <http://www.ramsi.org/works/military>.

55 See above, note 51, available at: <http://pacificpolicy.org/2013/01/solomon-islands-trc-final-report>.

56 *Ibid.*, Vol. 3, p. 737, available at: <http://pacificpolitics.com/files/2013/04/Solomon-Islands-TRC-Final-Report-Vol-3.pdf>.

57 *Ibid.*, Vol. 3, p. 648.

The Commission found that there were a number of underlying and proximate causes for the outbreak of violence, “such as the colonial heritage, lack of national unity, disagreement over land issues, uneven development, mismanagement of successive governments, economic crisis, and/or the weakening of traditional authority structures and law enforcement mechanisms”.⁵⁸ However, one of the key causal factors was the growing resentment among the Guadalcanal people towards migrants from Malaita. This resentment had mounted as economic migration between the islands led to perceptions that Malaitans were over-represented in government and business, and that their immigration had increased pressure on housing and land in Guadalcanal.⁵⁹

In its report, the TRC made two sets of recommendations. The first referred to outstanding issues that had come about as a result of “the Tensions”, whilst the second urged the government to undertake institutional reforms of the governance system. Among the recommended institutional reforms, the TRC urged the government to undertake constitutional reform, land reform, and reform of the justice system (including the signature and/or ratification of the many international human rights treaties to which Solomon Islands is not yet state party). It also recommended that the government restore the law enforcement agencies, introduce programmes to address the consequences of the conflict on people’s health, restructure and reform the education system, and establish a system to effectively support the fight against corruption.⁶⁰

1.4 Government and Politics

As noted above, the Constitution of Solomon Islands was adopted in 1978; it was drafted by the colonial administration at the time of the country’s independence. In recent years, a number of proposed new Constitutions have been drafted, but to date, many remain unpublished and none has been adopted.

According to the 1978 Constitution, Solomon Islands is a constitutional monarchy, where the Monarch is represented by the Governor-General of the So-

58 *Ibid.*, Vol. 1, p. 58, available at: <http://pacificpolicy.org/files/2013/04/Solomon-Islands-TRC-Final-Report-Vol1.pdf>.

59 *Ibid.*, pp. 147–151.

60 *Ibid.*, Vol. 3, p. 796.

lomon Islands. The Constitution recognises the Queen as Head of State,⁶¹ and establishes the office of the Governor-General,⁶² to be appointed by the Head of State in accordance with an address from Parliament. The Governor-General exercises authority on behalf of the Head of State.⁶³ The Constitution mandates the Governor-General to act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet, except where otherwise stated in the Constitution.⁶⁴

The Constitution further establishes the office of Prime Minister, to be elected by the National Parliament,⁶⁵ and allows for the establishment of further Ministries, which may be prescribed by the Governor-General, in accordance with the advice of the Prime Minister.⁶⁶ The Governor-General possesses the power to remove the Prime Minister from office in the event of a vote of no-confidence. In such circumstance, Members of Parliament are required to meet in order to elect a new Prime Minister.⁶⁷ In the event of the death of the Prime Minister, the Governor-General, after consultation with Ministers, possesses the power to appoint one of their number to perform the Prime Minister's functions, until a new person is elected to the office.⁶⁸

The Prime Minister and the other Ministers form the Cabinet of the Solomon Islands.⁶⁹ The Constitution mandates that the Cabinet advise the Governor-General in the government of the Solomon Islands and that it is responsible to the Parliament for any advice given.⁷⁰ The Governor-General may, in turn, acting in accordance with the advice of the Prime Minister, assign responsibility for any business of Government to the Cabinet.⁷¹ The Constitu-

61 Constitution of the Solomon Islands 1978, section 1.

62 *Ibid.*, section 27.

63 *Ibid.*, section 30(2).

64 *Ibid.*, section 31(1).

65 *Ibid.*, section 33(1).

66 *Ibid.*, section 33(2).

67 *Ibid.*, section 34(1).

68 *Ibid.*, section 34(5).

69 *Ibid.*, section 35(1).

70 *Ibid.*, section 35(2).

71 *Ibid.*, section 37.

tion also establishes the office of Attorney-General, who acts as legal advisor to the Cabinet.⁷²

The Constitution establishes a national legislature composed of a single chamber⁷³ and prescribes that Solomon Islands be divided into a number of constituencies, no less than thirty and no more than fifty,⁷⁴ each of which shall be represented by one Member of Parliament.⁷⁵ The current number of constituencies is fifty, the maximum.⁷⁶ The Constitution confers upon the Parliament the power to make laws⁷⁷ in the form of Bills which, when passed by the Parliament, are to be presented to the Governor-General for assent on behalf of the Head of State, in order to become law.⁷⁸ The Parliament may also, following certain procedures, pass a Bill for an Act of Parliament to alter certain provisions of the Constitution.⁷⁹ Such a Bill may not be passed unless it is supported on two separate readings in Parliament by the votes of at least three-quarters of the Members of Parliament.⁸⁰

In the most recent parliamentary elections, in November 2014, a total of six political parties secured representation in the national parliament, with the Democratic Alliance Party winning the largest number of seats – 7 out of 50. However, the move away from established political parties that had started in previous years continued, with independents and others collectively securing 32 parliamentary seats.⁸¹ As of January 2015, the Solomon Islands Election Commission had not published data on the total number of votes cast, the percentage of votes received by each party, or the turnout.⁸²

72 *Ibid.*, section 35(4).

73 *Ibid.*, section 46.

74 *Ibid.*, section 54(1).

75 *Ibid.*, section 47(2).

76 See Inter-Parliamentary Union, *Parline Database: Solomon Islands*, 2014, available at: http://www.ipu.org/parline/reports/2289_E.htm.

77 See above, note 61, section 59(1).

78 *Ibid.*, section 59(2).

79 *Ibid.*, section 61.

80 *Ibid.*, section 61(2).

81 See above, note 76; See also Solomon Islands Electoral Commission, *2014 National General Election Results*, available at: <http://www.siec.gov.sb/index.php/journalist/127-2014-national-general-election-results>.

82 Solomon Islands Electoral Commission, above, note 81.

Party	Seats
Democratic Alliance Party	7
United Democratic Party	5
People's Alliance Party	3
Solomon islands Party for Rural Advancement	1
Solomon Islands People First Party	1
Kadare Party of Solomon Islands	1
Independents and others	32
Total ⁸³	50

The political system is volatile, with new parties often forming ahead of elections and disbanding thereafter, as legislators switch allegiance. Political affiliation is driven largely by personality and clan identity rather than party loyalty.

Many current and former politicians have faced charges of corruption. In October 2012, former Prime Minister Danny Philip was found guilty of misconduct by the Leadership Code Commission for selling government property to his political supporter and Member of Parliament, Namson Tran.⁸⁴ Philip was fined 4,000 Solomon Islands dollars.

The highest court in the judiciary is the Court of Appeal. It has jurisdiction over appeals in civil and criminal matters and it is formed by a President, a number of Justices of Appeal appointed by the Governor-General, the Chief Justice and the judges of the High Court.⁸⁵ Beneath the Court of Appeal sits the High Court which hears appeals from lower courts but also has unlimited original jurisdiction in civil and criminal proceedings.⁸⁶ The lower courts comprise local courts (made up of community elders applying customary law and local by-laws, with limited civil and criminal jurisdiction),⁸⁷ magistrates'

83 See above, note 76; see also Solomon Islands Electoral Commission, above note 81.

84 Solomon Times Online, *Leadership Code Commission Fines Former PM*, *solomontimes.com*, 9 October 2012, available at: <http://www.solomontimes.com/news/leadership-code-commission-fines-former-pm/7305>.

85 See above, note 61, section 85.

86 *Ibid.*, section 77.

87 Local courts are established under the Local Courts Act 1942 [Cap 19].

courts (with greater civil and criminal jurisdiction than local courts and with both original jurisdiction and appellate jurisdiction from local courts),⁸⁸ and the Customary Land Appeal Court⁸⁹ which hears cases relating to the use and ownership of indigenous customary land, on appeal from a local court.

Threats against judges and prosecutors have weakened the independence and rigour of the judicial system. Judges and prosecutors have also been implicated in scandals relating to corruption and abuse of power. A lack of resources has limited the government's ability to ensure lawyers for defendants and timely trials. Victims in rural areas have even less access to the justice system.

Chapter IX of the Constitution establishes an Ombudsman. Under Section 97, the Ombudsman is authorised to investigate the conduct of members of the public service, Police Force, Correctional Service, the government of Honiara City, provincial governments and such other bodies as provided for by Parliament, to ensure the elimination of arbitrary and unfair decisions.⁹⁰ Whilst the office has far-reaching powers to investigate complaints of official abuse and unfair treatment, it generally lacks funds to do so.

The human rights record of Solomon Islands is not good. In 2015, Freedom House rated Solomon Islands as only "partly free", with scores of 3 for civil liberties and 3 for political rights. Solomon Islands was, however, included on the Freedom House list of electoral democracies.⁹¹

88 Magistrates' courts are established under the Magistrates' Courts Act 1962 [Cap 20].

89 Allen, M., Dinnen, S., Evans, D., and Monson, R., *Justice Delivered Locally: Systems, Justice and Innovations in Solomon Islands*, The World Bank, Research Report, July 2013, available at: http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/JDL_July_2013_Final_Online_Report.pdf.

90 See above, note 61, section 97.

91 Freedom House, *Freedom in the World 2015: A Return to the Iron Fist*, p. 8, available at: https://freedomhouse.org/sites/default/files/01152015_FIW_2015_final.pdf.