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## PACIFIC TRADE AND HUMAN RIGHTS

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# PACIFIC TRADE AND HUMAN RIGHTS



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# Executive Summary

The impacts that the rules, conditions and mechanisms of the international trading system can have on the enjoyment of human rights—both positive and negative, both actual and potential are increasingly understood and considered. In broad terms, economic growth through free trade can increase the resources available that may support the realization of human rights, including for example the right to health and the right to food. At the same time, there are concerns that free trade does not always lead to economic growth, and that economic growth does not automatically lead to greater promotion and protection of human rights. This nexus between trade and human rights raises very real and pressing issues for Pacific Island Countries because of their specific challenges and vulnerabilities and because they are currently negotiating or implementing a wide range of trade agreements.

This report examines the current state of trade policy, including the negotiation and implementation of trade agreements, in Pacific Island Countries. It examines some of the unique economic features and key economic activities in these countries, as well as the main trade policy considerations that confront the region. It then goes on to outline the key features of the international human rights framework, including the human rights obligations of States in the context of trade agreements, the responsibilities of business enterprises, and the need for greater access to remedies. To further illustrate the connection between trade and human rights in Pacific Island Countries, the report includes a number of case studies. The topics examined include: structural reform; tariff reform and government revenue; trade policy, nutrition and public health; and, intellectual property and traditional knowledge.

The overall message is that a human rights-based approach to trade helps to ensure that the processes and outcomes of negotiating and implementing trade and investment agreements protect, respect and fulfill the rights of affected individuals and communities to a greater extent. Human rights help to balance the focus on economic growth with the concerns and impacts on affected stakeholders. A human rights-based approach requires that the trade policies, interventions and processes are guided by human rights standards and principles, including participation and inclusion, equality and non-discrimination, and accountability. Where potential negative impacts on workers or communities are foreseen, the human rights-based approach can help to address these risks and maintain the necessary policy space to develop trade measures that also protect individuals, workers and communities. Human rights also highlight the importance of consultation with affected stakeholders while negotiating and implementing trade agreements.

Key recommendations to governments and policy-makers in Pacific Island Countries include: enhancing government capacity to address trade-related human rights issues; consider the impacts before entering into binding trade agreements by for example conducting human rights impact assessments of proposed trade agreements; ensuring public participation, non-discrimination, consultation, accountability and transparency in trade negotiations; strengthening the legal and institutional framework for linking human rights and trade through adoption and implementation of relevant international human rights treaties; and, actively engaging with global support networks to supplement capacity not currently present at national levels.

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# Acronyms

|          |   |
|----------|---|
| ACP      | African, Caribbean and Pacific group of States                    |
| APEC     | Asia Pacific Economic Cooperation                                 |
| EPA      | Economic Partnership Agreements                                   |
| EU       | European Union  |
| FTA      | Free Trade Agreement  |
| GDP      | Growth Domestic Product   |
| HRIA     | Human Rights Impact Assessment                                    |
| ILO      | International Labour Organisation                                 |
| IMF      | International Monetary Fund                                       |
| IPR      | Intellectual Property Rights                                      |
| MDG/s    | Millennium Development Goal/s                                     |
| MSG      | Melanesian Spearhead Group  |
| MSGTA    | Melanesian Spearhead Group Trade Agreement                        |
| NAFTA    | North American Free Trade Agreement                               |
| NCD/s    | Non-Communicable Disease/s  |
| OHCHR    | Office of the High Commissioner for Human Rights                  |
| PACER    | Pacific Agreement on Closer Economic Relations                    |
| PICs     | Pacific Island Countries  |
| PICTA    | Pacific Island Countries Trade Agreement                          |
| SIDs     | Small Island Developing States                                    |
| SPARTECA | South Pacific Regional Trade & Economic Cooperation Agreement     |
| TK       | Traditional Knowledge   |
| TRIPS    | Trade Related Aspects of Intellectual Property Rights             |
| UNDP     | United Nations Development Programme                              |
| UPOV     | International Union for the Protection of New Varieties of Plants |
| VAT      | Value Added Tax   |
| WHO      | (The) World Health Organization                                   |
| WTO      | (the) World Trade Organization                                    |





# 1. Overview of the report

This report provides an overview of the human rights issues and impacts related to the liberalisation of trade in Pacific Island Countries. The report has been commissioned by the United Nations Development Program (UNDP), the Office of the High Commissioner for Human Rights (OHCHR) and the World Health Organization (WHO) to build greater awareness of the connections between human rights and trade in the region, and to highlight the responsibilities of States and other actors to take human rights into account as they negotiate and implement trade agreements.

For the purposes of this report, Pacific Island Countries have been defined as the 14 members of the Pacific Islands Forum: Cook Islands, Federated States of Micronesia, Fiji (suspended), Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. The report focuses primarily on trade agreements and policies, and therefore issues related to investment are only touched upon incidentally.

Many of the linkages between human rights, development and trade have been accepted at conceptual, policy and legal levels; however, a detailed analysis of the specific impacts of trade agreements on human rights is a relatively recent subject of international attention and analysis. Even though this is an emerging field of inquiry, the inter-relationship between trade and human rights is particularly pertinent for Pacific Island Countries for at least two key reasons:

- First, many Pacific Island Countries are also considered to be ‘Small Island Developing States’, as defined by the United Nations. These countries face particular challenges—including small land masses, small populations and remote locations—for developing their economies, for negotiating beneficial trade agreements and for protecting human rights. Therefore, the realities of Pacific Island Countries often test the limits of contemporary economic theory about the benefits of trade. As such, a human rights analysis can help focus attention on the potential impacts on affected stakeholders.
- Second, many Pacific Island Countries are currently and will continue to engage in the process of negotiating trade agreements at the multilateral, regional and bilateral levels. Although their governments may be under significant domestic and international pressures to finalize trade agreements, the fact that negotiations have not been completed means that there is still an opportunity for Pacific Island Countries to consider their individual and collective policy options from a human rights perspective. In other words, in some instances, the trade agreements are not a ‘done deal.’

After an overview of key trade policy issues for Pacific Island Countries, as well as the relevant international human rights standards, the report includes a number of brief case studies that provide illustrations of the relationship between trade and human rights in the region. Recognising that the human rights analysis of trade measures is relatively nascent, the case studies do not offer definitive findings and conclusions, but rather seek to outline the main policy implications and insights for decision-makers. The case studies were developed based upon a prioritization of human rights issues that are considered most likely to arise in relation to the negotiation and implementation of trade agreements in the Pacific Island Countries. These are based on a review of the literature and the authors’ experience.

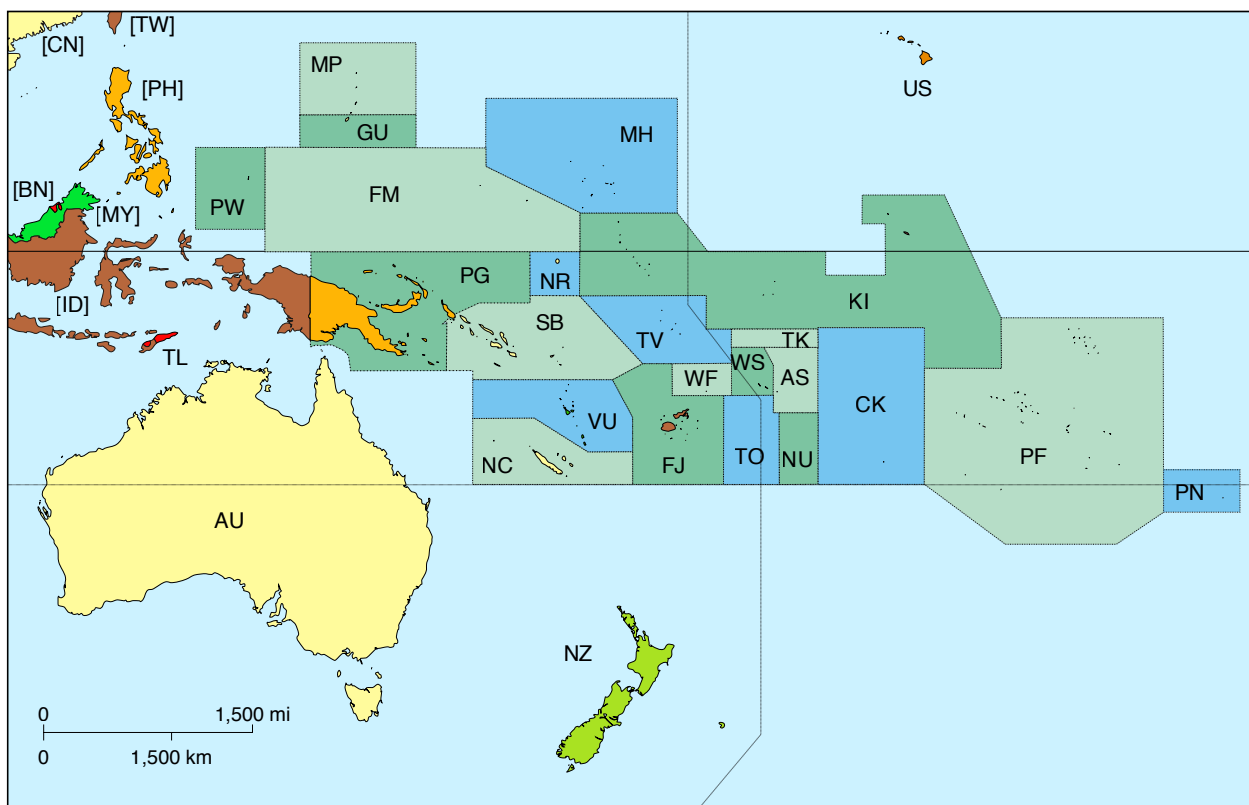
While human rights may sometimes be presented as being opposed to trade liberalisation, the authors have attempted to take a balanced approach and acknowledge that trade agreements may result in both positive and negative impacts on human rights. The ultimate objective of the report is not to oppose free trade, but rather to show how trade, development and human rights can be brought together in a more integrated and inclusive manner, and to ensure that negative impacts on individuals and communities in Pacific Island Countries are more fully considered and addressed.

Trade liberalisation is often promoted as a key component of development. Human rights should also be understood as an integral part of *equitable* development and as such to reinforce the effort of governments to pursue development objectives such as the Pacific Plan and the Millennium Development Goals (MDGs). Development efforts are more likely to be successful if everyone affected is included in the process. The involvement of individuals and communities enables them to have a say and allows the government to better understand their real needs. As a result, policies will be more responsive to the people and governments will be more accountable.<sup>1</sup>

As we approach 2015, which is the 'finish line' for the MDGs, the international community is engaging in a new conversation about how to improve development cooperation and outcomes. Strengthening our common understanding of human rights as a key component of trade can help governments, business enterprises, individuals and communities ensure better processes and outcomes: in other words, a rights-based approach to trade can ensure that strategies for sustainable development do not harm human rights.

## 2. Overview of trade policy and agreements in Pacific Island Countries

Figure 1: States and territories of the Pacific region



**Members of the Pacific Islands Forum:** AU-Australia, CK-Cook Islands, FM-Federated States of Micronesia, KI-Kiribati, MH-Marshall Islands, NR-Nauru, NZ-New Zealand, NU-Niue, PW-Palau, PG-Papua New Guinea, TO-Tonga, VU-Vanuatu, WS- Samoa. **States suspended from the Pacific Islands Forum:** FJ-Fiji (suspended May 2009). **States and Territories with associate membership of the Pacific Islands Forum:** NC-New Caledonia (French collectivity), PF – French Polynesia (French collectivity). **States and Territories with observer status at the Pacific Islands Forum:** AS-American Samoa (US territory), Guam (US territory), MP-Northern Marianas Islands (US Territory), TK-Tokelau (New Zealand Territory), WF-Wallis and Futuna (French collectivity). **Forum Special Observer status:** TL-Timor-Leste (East Timor), **Other Pacific Territories:** PN-Pitcairn Islands (UK Territory), US - United States (Hawai'i).

## ***a. Unique economic features of Pacific Island Countries<sup>2</sup>***

The Pacific Island Countries are diverse and complex. This makes it difficult to speak of economic features common to all of these countries. Nonetheless, there is little doubt that prospects for economic activity in all Pacific Island Countries are heavily determined by factors outside of the immediate control of policy-makers. Factors such as small and dispersed populations, a narrow economic base, distance from external markets, and an acute vulnerability to natural disasters all serve to restrict options available for the effective development of domestic resources and constrain opportunities to benefit from international trade on an equal basis.

Some of the unique features of the Pacific island economies and the policy implications these have include the following:

**All but one of the 14 Pacific Island Countries have a small population of less than one million people each**, and seven of those nations are home to less than 100,000 people. With small populations, Pacific Island Countries have a small domestic market for all goods and services. This limits opportunities for local production and renders most island states to be heavily reliant on imports. The countries also tend to have higher per-capita public infrastructure and governance costs than more populous countries. Furthermore, many of the countries have a “very limited pool of specialised and competitive domestic human resources.”<sup>3</sup>

- **Pacific Island Countries lack economically significant land area yet have large ocean territories.** While the Melanesian states of the south-west Pacific have quite large land masses, most of their Micronesian and Polynesian counterparts do not. The Solomon Islands for example has a total land area of 28,896 km<sup>2</sup>, while Niue has 260 km<sup>2</sup>, Tuvalu has 26 km<sup>2</sup>, and Nauru has just 21 km<sup>2</sup>. Indeed all of the Micronesian states put together have a land mass less than half that of Guadalcanal (where the Solomon Islands capital Honiara is located). The small size of most Pacific Island Countries means they have a very narrow economic base, and consequently exhibit a small suite of potential exports. Many of these countries, however, do have large ocean territories. Kiribati for example has a combined land area of just over 800 km<sup>2</sup>, but has claim to more than 3.5 million km<sup>2</sup> of ocean territory. This potentially gives these countries access to fishing and other underwater resources, although the potential of these resources is often not fully realised by countries themselves as discussed below. Furthermore, as most Pacific Island Countries comprise groups of scattered islands, their domestic markets are highly fragmented.
- **Pacific Island Countries are distant from external markets, and in many cases have poor transport links with global commercial centres.** A 2006 study which sought to quantify remoteness found “the average Pacific island country is 11,500 km away from any other randomly selected country.”<sup>4</sup> The same study found that Pacific Island Countries are not only further away from major economies than other island states—such as those in the Caribbean—but they are also “much further away in terms of airfare-based measures of distance.” It is not only external markets that are distant and expensive to reach: many Pacific islanders face isolation within their countries, as people live across widely dispersed islands or in tropical highlands poorly serviced by road infrastructure. Distance from markets, and consequent transportation costs, means that inputs for production are expensive and export sectors are reliant on limited shipping and air-freight services.
- **Pacific Island Countries are uniquely vulnerable to natural disasters.** Strung out as they are across a warm tropical ocean, and along major tectonic plate lines, these countries “rank among the most vulnerable in the world to natural disasters.”<sup>5</sup> In any given year Pacific Island Countries face cyclones, tsunamis, earthquakes, volcanic eruptions, flooding, landslides and droughts. The impact of natural disasters is particularly acute in small states. In Samoa, for example, a cyclone in 1991 caused damage to homes, crops and livelihoods that was measured to be the equivalent of 230 percent of the country’s GDP.<sup>6</sup> Samoa also experienced a devastating tsunami in 2009, which killed hundreds of people and caused more than \$40 million in property and infrastructure damage. Recurring natural disasters have been particularly damaging for Samoa’s export of traditional root crops. Climate-related disasters, particularly high-intensity cyclones, pose an increasing threat across the Pacific.

Taken together, the unique features of the economies of Pacific Island Countries make it difficult for producers and business enterprises to participate competitively in international trade. The United Nations has recognised the trade-related challenges that beset small island states for decades: in 1994, the UN organised a global conference on Small Island Developing States (SIDS) in Barbados that acknowledged the unique vulnerability of small island economies; and, a twenty-year anniversary conference will be held in Samoa in 2014 focusing on sustainable partnerships. In recent times the World Bank has also acknowledged that “there is likely to be a permanent wedge between the cost of production in the Pacific and the world price in both manufacturing and services, making it difficult for the islands to compete in all but a few niche markets.”<sup>7</sup>

## ***b. Key economic activities in Pacific Island Countries***

Traditional pathways to economic development tend to be based on exports, with a transition from agriculture to manufacturing, through industrialisation, and the growth of a diversified services sector.<sup>8</sup> However, as a result of the structural features discussed above, Pacific Island Countries face unique challenges pursuing these traditional paths to economic growth.

Exports of goods are a relatively small feature of Pacific economies. Only in the larger Melanesian states – Papua New Guinea, Fiji, Solomon Islands and Vanuatu – do goods exports constitute more than 20 percent of national GDP.<sup>9</sup> Petroleum gas and mineral resources are very significant in Papua New Guinea; Fiji has a significant clothing and textiles export industry; otherwise primary agricultural exports predominate throughout the region.<sup>10</sup>

In many cases, colonial-era crops remain important sources of export earnings and rural employment. In Papua New Guinea, for example, it is estimated that more than half of all rural households earn cash from selling coffee destined for export.<sup>11</sup> Key commodities exported from Melanesian states include timber, sugar, oil palm, coffee, copra and coconut products, cocoa, vanilla, beef, and sandalwood and other high-value timbers. Reflecting colonial-era production, even in the new millennium more than half of Pacific agricultural products were exported to the European Union.<sup>12</sup> Other key export destinations include China, Japan, Malaysia and the United States.

Fiji has the most diversified economy in the Pacific, with agricultural exports complemented by some manufacturing and a strong tourism sector. For most of the past century, raw sugar exports to Britain dominated Fiji’s export profile. While in decline in recent years, sugar exports continue to provide direct and indirect employment for some 200,000 people – around 20 percent of the population.<sup>13</sup> Attempts at diversification into higher-value tropical crops have been more successful in Fiji than elsewhere in the Pacific, and around 200 different agricultural products are now sent to 20 different export destinations. Nevertheless in 2010 sugar exports were still worth more than five times the value of Fiji’s other agricultural exports combined.<sup>14</sup>

Marine resources, including the southwest Pacific tuna fishery, are also significant to Pacific Island Countries. By some estimates 70 percent of the world’s tuna is sourced from the Pacific. Despite this, fish remains “a modest export item nearly everywhere in the Pacific.”<sup>15</sup> Most tuna is caught by vessels from distant nations, and Pacific Island Countries earn income by selling fishing licences to foreign vessels. Under such arrangements relatively little of the commercial value of the tuna fishery remains in the Pacific.<sup>16</sup> There are tuna canneries located in Fiji and the Solomon Islands, and tuna processing has expanded significantly in Papua New Guinea in recent years. Underwater exploration for possible future extraction and exploitation of oil, gas and minerals is ongoing in the region.

With relatively few opportunities to pursue competitive goods exports, many Pacific Island Countries have turned to providing services instead. In this regard, tourism is particularly important. For those countries that are well serviced by international flights or cruise ships, attracting visitors from abroad has proved a key source of export earnings. For a number of countries, tourism receipts constitute more than 20 percent of national GDP, namely: Fiji (20.1 percent), Palau (57.5 percent), Samoa (20.5 percent) and Vanuatu (31.5 percent).<sup>17</sup>

In addition to tourism, a number of Pacific Island Countries also pursue opportunities to provide less orthodox international services including so-called “jurisdictional services” such as “offshore banking and related financial services ... citizenship, residency and work permits, and paradiplomacy,”<sup>18</sup> as well as the sale of internet domain names and “flags of convenience” for shipping registration.<sup>19</sup>

Given the relatively few economic opportunities at home, workers from Pacific Island Countries often pursue jobs overseas. For those countries with access to developed country labour markets, money sent home by workers living abroad has also become particularly important. Remittances form a substantial proportion of the GDP of the Cook Islands, Kiribati, Samoa, Tonga and Tuvalu. Indeed Samoa and Tonga are widely recognised as some of the most remittance dependent economies on earth.<sup>20</sup>

Another way that Pacific Island Countries earn income is through aid and concessional loans from the international community. While countries with more successful economies, such as Fiji, receive very low levels of development assistance, aid is particularly important for developing infrastructure and maintaining government services in a number of countries. For example, more than 40 percent of the government budget is provided through aid in Kiribati, Palau, Federated States of Micronesia, Tuvalu, Marshall Islands and Nauru.<sup>21</sup> Increasingly there is a view that for those Pacific Island Countries lacking potential exports of goods and services and/or the abilities to earn significant remittances, aid is likely to be a long-term feature of their economies.<sup>22</sup>

Finally, it should be noted that many Pacific Island Countries have very large traditional economies—which are frequently and variously referred to as the informal sector, the non-monetised sector, or the subsistence sector. Traditional economies revolve around food gardens and small-scale cash cropping, and have proved to be an extraordinarily resilient source of livelihood and food security in the Pacific Islands region. While urbanisation is a growing trend, most Pacific islanders—particularly in larger Melanesian states—live in rural and remote areas and rely on localised economies for much of their needs. Production is characterised by village-level farmers who grow and distribute a large quantity and varied range of fresh vegetables, root crops, nuts and fruits.<sup>23</sup> Because this produce is often shared through cultural systems of exchange, much of this economic activity is not monetised. Indeed Pacific Island Countries have among the lowest rates of monetisation on earth with a regional average of just over 50 percent of GDP.<sup>24</sup> Particularly in the Melanesian states of Papua New Guinea, Solomon Islands and Vanuatu, the vast majority of people are not engaged in formal employment. While the traditional economy is an often under-counted strength of Pacific island societies, some argue the relative “subsistence affluence” enjoyed by Pacific islanders can “act as a disincentive for local people to make trade-offs required for economic growth.”<sup>25</sup>

### ***c. Key trade policy considerations for Pacific Island Countries***

Pacific Island Countries are some of the youngest nations on Earth, having achieved independence from colonial powers only in recent decades (except for Tonga, which was never colonized).<sup>26</sup> For much of the post-colonial period, the countries have had preferential access to developed country markets particularly in Europe, Australia, New Zealand and the United States of America. A number of key exports, including fish, tropical crops, canned tuna, and clothing and textiles, have relied heavily on preferences provided by the 1975 Lomé Convention (and annexed Sugar Protocol) with the EU, and the 1980 South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) with Australia and New Zealand.

Changes in the global economy in the mid-1990s—especially the conclusion of the Uruguay Round of trade negotiations and the establishment of the World Trade Organisation (WTO)—had significant consequences for trading opportunities in the Pacific Island Countries. Crucially, the move towards global free trade served to undermine the value of existing preferential market access arrangements, in turn exposing inherent competitive disadvantages faced by producers located in the Pacific.<sup>27</sup> It had been suggested global trade liberalisation would offer benefits to all developing states; however, closer analysis indicated Pacific Island Countries were at risk of losing out and would face unique difficulties taking advantage of new opportunities.<sup>28</sup>

While globalisation was high on the agenda in the mid-1990s, so too was regionalism: the EU was developing a common market, a North American Free Trade Agreement (NAFTA) was concluded, and the Asia Pacific Economic Cooperation (APEC) states agreed to move toward free trade among themselves. In this context, regional integration was seen by Pacific policy-makers as a suitable response to changes in the global trade regime.<sup>29</sup> Three Melanesian states led the way with the conclusion of a Melanesian Spearhead Group (MSG) Trade Agreement in 1993. Then, in 1997, a Pacific regional trade agreement was proposed among the island states. However, the two developed country members of the South Pacific Forum, Australia and New Zealand, insisted on being included in processes of regional integration. In 2001, two separate trade agreements were negotiated, namely the Pacific Island Countries Trade Agreement (PICTA) and the Pacific Agreement on Closer Economic Relations (PACER). The former provided for the liberalisation of trade in goods among the island states, while the latter provided for the possible future negotiation of a free trade agreement with Australia and New Zealand.

In addition to a general trend toward regionalism, changes in the global trade regime provided an impetus for Pacific regional trade agreements in a more direct sense as well. Following the establishment of the WTO, preferential access to European markets was increasingly deemed to be inconsistent with the EU's obligations to WTO members. Policy-makers in Brussels proposed that trade preferences contained in the Lomé Convention should be replaced with a reciprocal regional trade agreement, thereby bringing the trading relationship in line with WTO obligations. The 2000 Cotonou Agreement provided for the negotiation of a regional Economic Partnership Agreement (EPA) between Pacific island countries and the EU.

By early in the new millennium, the trade policies of Pacific Island Countries were circumscribed by an increasingly complex array of trade arrangements (see Table 1 below). Many of the countries were considering joining the WTO (only three Pacific Island Countries were founding members), and looked set to negotiate and implement free trade agreements among themselves and with the EU, Australia, New Zealand and USA. However, even while these arrangements were being pursued, there remained domestic and international concerns that negotiating reciprocal free trade agreements would not provide significant benefits for Pacific Island Countries.

### **Text Box 1: Pacific Island Countries and contemporary trade theory**

*The current global trade regime is underpinned by neoclassical economic theory, which posits mutual gains if countries focus production on their areas of comparative advantage and liberalise trade with other countries doing likewise. The notion of ‘comparative advantage’ refers to that which can be produced with the lowest possible foregone benefits from not producing something else (i.e. the lowest possible opportunity costs). Broadly speaking, countries have a comparative advantage in goods and services that local firms can produce most efficiently given relative input costs. Neoclassical theory also suggests that free trade will help to restructure national economies. Over time productive resources will be moved to areas in which firms have a genuine comparative advantage. In turn, this should improve the efficiency of the domestic economy as a whole and increase export earnings.*

*While neoclassical theory suggests maximum gains are to be had from liberalising domestic markets to foreign competition, it should be noted that prominent arguments have been made for retaining policy instruments needed to shelter domestic industry from external competition for a time, to help foster new and more dynamic sources of comparative advantage (see for example Stiglitz 2012, Greenwald and Stiglitz 2006). Furthermore, the historical record suggests virtually all developed states have used protectionism to achieve more dynamic sources of comparative advantage before moving towards free trade. When and how states should open their economies to foreign goods, services and capital remain keenly debated questions in contemporary economics.*

*Early in the new millennium, economists interested in the unique vulnerabilities of Small Island Developing States suggested trade liberalisation alone was unlikely to address the underlying structural factors limiting trade in most of these countries. They argued that in island countries the pursuit of comparative advantage was not enough: the cost disadvantages of production in small and remote economies were such that trade liberalisation would be insufficient to develop new economic activity (Winters and Martin 2004). Furthermore, a number of reports pointed to significant revenue losses if the island states concluded trade agreements with developed country partners (Nathan Associates 2007).*

In recent years, policy-makers from Pacific Island Countries have sought to convince key trading partners and the broader international community that innovative solutions would be needed if these countries were to benefit from regional and global trade integration. Allied with other states in the Caribbean, Pacific governments encouraged WTO members to recognise the trade-related challenges faced by small island states, a campaign which bore fruit in 2001 when WTO members formally agreed to establish a work programme for “small, vulnerable economies.”<sup>30</sup> However, no new official category of states with special safeguards or benefits has been created at the WTO, and small island countries are still required to abide by the same WTO obligations as all other developing countries.

Subsequently Pacific Island Countries also sought to pursue unique ‘FTA-Plus’ arrangements in Economic Partnership Agreement negotiations with the EU, and more recently in PACER-Plus negotiations with Australia and New Zealand. Pacific governments proposed unique policies—such as special labour mobility arrangements allowing Pacific islanders to work temporarily in developed-country markets and integrated aid-for-trade commitments—arguing these would help countries take better advantage of international trade. However, it is not clear that these proposals have gained significant traction. Trade negotiations with the EU, Australia and New Zealand, remain an on-going process.



It is widely acknowledged that governments of many Pacific Island Countries face capacity deficits that limit their ability to effectively engage in highly complex international trade negotiations. With small trade departments and a relatively high staff turnover, the governments are typically marked by paucities of expertise regarding both regional and global market opportunities and the contemporary regulatory frameworks that govern multilateral trade. Given such paucities in all but the bigger island states, Pacific policy-makers are presented with a uniquely difficult task when determining their interests in international trade negotiations. It is hardly surprising that when the governments considered participating in new PACER-Plus negotiations the then deputy secretary general of the Pacific Islands Forum Secretariat, Peter Forau, argued bluntly that “the PICs do not have the capacity to negotiate for this agreement.”<sup>31</sup>

**Table 1: A complex trade architecture: Trade agreements in Pacific Island Countries**

| Trade Agreement/s          | Member States (date ratified)   | Status  | Coverage   |
|----------------------------|---|---|--|
| <b>Multilateral</b>        |   |   |  |
| WTO                        | Fiji (1994), Papua New Guinea (1994), Solomon Islands (1994), Tonga (2007), Samoa (2012), Vanuatu (2012)  | Doha Round negotiations (launched in 2000) remain ongoing.  | Commitments made on trade in goods, trade in services, and trade related areas.  |
| <b>Regional</b>            |   |   |  |
| SPARTECA                   | All members of the Pacific Islands Forum. Signed 1980, entered into force 1981.   | SPARTECA rules of origin subject to Periodic reviews.   | Duty-free, quota-free access for island exports to Australia and New Zealand.  |
| Cotonou Agreement          | All Pacific ACP states* signed with the EU (2000)   | Agreement due to expire in 2020.  | Provides for the negotiation of ‘Economic Partnership Agreements’ to replace Lomé-era market preference schemes offered to ACP states. |
| MSGTA                      | Papua New Guinea (1993), Solomon Islands (1993), Vanuatu (1993), Fiji (1996)  | MSGTA substantially revised in 2005 (to encompass more tariff lines). Members currently discussing an ‘MSG-Plus’ agreement. | Trade in goods. Discussion ongoing regarding trade in services, labour mobility and other areas.                                       |
| MSG Skills Movement Scheme | Memorandum of Understanding signed between Fiji, Papua New Guinea, Solomon Islands, and Vanuatu (2012)  | MSG SMS entered into force on September 30, 2012.   | Movement of skilled labour in proscribed occupations.  |
| PICTA                      | Cook Islands (2001), Fiji (2001), Samoa (2001), Tonga (2001), Kiribati (2003), Nauru (2003), Papua New Guinea (2003), Solomon Islands (2003), Vanuatu (2005), Tuvalu (2008) <sup>ii</sup> | Parties to PICTA commenced trading under terms of the agreement in 2007.  | Trade in goods.  |

| Trade Agreement/s                | Member States (date ratified)  | Status   | Coverage   |
|----------------------------------|--|--|--|
| PICTA Trade in Services Protocol | Nauru (2013), Samoa (2013)   | An extension to the PICTA. The Trade In Services Protocol was opened for signature in 2012.            | Trade in Services. Note that negotiations continue with regard to a PICTA 'Protocol on Temporary Movement of Natural Persons'. |
| EPA                              | Negotiations between EU and all Pacific ACP states remain ongoing  | Negotiations launched in 2002 remain ongoing.  | Trade in goods, trade in services, trade related areas.  |
| Interim-EPA                      | Fiji (ratification pending), Papua New Guinea (2009)   | PNG goods trade with the EU subject to the interim-EPA   | Trade in goods.  |
| PACER                            | Cook Islands (2001), Fiji (2001**), New Zealand (2001), Samoa (2001), Tonga (2001), Niue (2002), Australia (2002), Kiribati (2003), Nauru (2003), Papua New Guinea (2003), Solomon Islands (2003). | PACER provides for the negotiation of a trade agreement among all Pacific Islands Forum member states. | Not technically a trade agreement - provides for the negotiation of a trade agreement to replace SPARTECA.                     |
| PACER-Plus                       | Negotiations between 13 member states of the Pacific Islands Forum, formally launched in 2009, remain ongoing. Fiji excluded from talks.   | PACER <i>not</i> formally invoked, but PACER-Plus negotiations were launched in mid-2009.              | Trade in goods, trade in services and trade related areas.   |
| <b>Bilateral</b>                 |  |  |  |
| Australia-PNG TA                 | Australia (1976), Papua New Guinea (1976)  |  | Trade in goods. Allows for duty free access for goods from PNG to Australia.   |
| Compact of Free Association      | Three island states each have Compacts with the United States: Federated States of Micronesia (1986), Republic of Marshall Islands (1986) and Palau (1994)   |  | Trade in goods. Allows for preferential, duty-free access to the United States as part of broader compact.                     |

*Notes:* This table includes trade agreements signed by member states of the Pacific Islands Forum. Non-independent Pacific territories are not included (American Samoa, French Polynesia, Guam, New Caledonia, Northern Marianas Islands, Pitcairn, Rapa Nui, Wallis and Futuna, West Papua). This table does not include bilateral investment treaties. Papua New Guinea has bilateral investment treaties with Australia, China, Germany, Malaysia, and the United Kingdom. This table does not include market preference schemes offered by other states that Forum Island Countries may qualify for, such as the Generalised System of Preferences.

\*Pacific ACP states include all Forum Island Countries, as members of the 'African, Caribbean and Pacific' group of states.

†States with a Compact of Free Association with the United States have not ratified PICTA or PACER.

### 3. The International Human Rights Framework

The following section provides an overview of the international human rights framework and how it applies in the context of trade issues. It begins with a discussion of the linkages between human rights, trade and development in order to help situate these conceptual issues within the broader policy discussions in the Pacific Islands region. It then outlines the obligations of States and the responsibilities of business enterprises with respect to human rights, as well as the need for more effective access to remedies. It also provides information and references about the human rights standards and general issues that are relevant to the analysis of trade in Pacific Island Countries.

The international human rights framework refers to the system of international laws, policies and institutions that have been developed by the Member States of the UN and other international and regional organizations. The framework is built upon the binding commitments of States in constitutions, domestic laws and international treaties. It also includes important declarations of principles, on-going interpretations and guidance from authoritative bodies. As a whole, the international human rights framework establishes universally accepted guarantees that protect the freedom and equality of all individuals. A human rights-based approach to trade means that all actions and processes are guided by human rights standards and principles, including participation and inclusion; equality and non-discrimination; and accountability.

#### *a. State actions concerning obligations and commitments for human rights in the context of trade*

States have the obligation to protect, respect and fulfill human rights. Human rights are recognized in international treaties and domestic laws; and, consequently, human rights obligations can be enforced through a variety of means, including domestic courts, national human rights institutions, and international mechanisms such as treaty bodies.

Elimination of all forms of discrimination is at the core of a human rights-based approach to trade. States have an obligation to ensure both formal and substantive equality. For example, this includes ensuring that agreement do not formally discriminate against a specific groups in the population. It also recognizes that some marginalized groups might need specific attention to ensure that they can catch up with the rest of the population and that they are empowered to benefit equally from trade and development.

In broad terms, the negotiation and implementation of trade and investment agreements have implications for the State's human rights obligations in the following manner:

- **States have an obligation to mobilise the maximum available resources in order to progressively realise economic, social and cultural rights, including the right to health and other health-related rights.**<sup>32</sup> Promoting free trade and investment is one option for governments in supporting economic development that can contribute to the realisation of human rights. However, free trade agreements also often have provisions that have profound effects on governments' existing sources of revenue—which may jeopardise their ability to deliver social programmes. States must therefore be mindful of the short and long-term fiscal impacts of free trade agreements as they affect the resources available to fulfill human rights.

- **States have an obligation for policy coherence.**<sup>33</sup> States should not view their human rights obligations in isolation, but rather as an integral part of the government's overall legal requirements and policy objectives. This means that States should ensure coherence between human rights and the laws and policies that support trade, investment, taxation and business enterprises. As economic development is a dynamic process, States should be very cautious not to limit their "policy space" for the future. In other words, they should resist provisions in trade agreements that could undermine the ability for the government to implement future measures to ensure human rights are protected and respected.
- **It is in the interest of States to conduct Human Rights Impact Assessments (HRIA) of trade and investment agreements.**<sup>34</sup> One practical and evidence-based manner for States to ensure policy coherence is to prepare human rights impact assessments of the trade and investment agreements that they conclude. As stated by the Special Rapporteur on the Right to Food: "Human rights impact assessments can be an important tool for States in negotiating trade and investment agreements, particularly to ensure that they will not make demands or concessions that will make it more difficult for them, or for the other party or parties, to comply with their human rights obligations."<sup>35</sup> Furthermore, human rights principles and considerations can be integrated into other impact assessment processes—such as for environmental, social and/or health impacts.

#### **Text Box 2: UN Guiding Principles on Human Rights Impact Assessment (HRIA) of Trade and Investment Agreements**

*In 2011, the UN Guiding Principles on HRIA of Trade and Investment Agreements was presented to the UN Human Rights Council to provide methodological guidance to conduct such assessments\*.*

*While each State may decide on the methodology by which human rights impact assessments of trade and investment agreements will be prepared, a number of elements should be considered:*

*(a) Making explicit reference to the normative content of human rights obligations;*

*(b) Incorporating human rights indicators into the assessment; and*

*(c) Ensuring that decisions on trade-offs are subject to adequate consultation (through a participatory, inclusive and transparent process), comport with the principles of equality and non-discrimination, and do not result in retrogression (Guiding Principle 5).*

*States should use human rights impact assessments, which aid in identifying both the positive and negative impacts on human rights, including the right to health, of the trade or investment agreement, to ensure that the agreement contributes to the overall protection of human rights as well as health and societal well-being. (Guiding Principle 6).*

*To ensure that the process of preparing a human rights impact assessment of a trade or investment agreement is manageable, the task should be broken down into a number of key steps that ensure both that the full range of human rights impacts will be considered, and that the assessment will be detailed enough on the impacts that seem to matter the most:*

*(a) Screening;*

*(b) Scoping;*

*(c) Evidence gathering;*

*(d) Analysis;*

*(e) Conclusions and recommendations; and*

*(f) Evaluation mechanism (Guiding Principle 7).*

*\*see: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5_en.pdf)*

- **States must protect against human rights abuses within their territory and/or jurisdiction by business enterprises.**<sup>36</sup> The provisions of free trade agreements ultimately will have impacts on local economies that are measurable in terms of increases or decreases in the activities of various business enterprises. In other words, where trade agreements stimulate or facilitate activity in a particular economic sector, the State should be aware of the typical impacts that business enterprises in that sector may have on human rights. The State should take appropriate steps to ensure that such changes in business activities do not result in infringements on the human rights of workers, communities and consumers.
- **States should ensure public consultation and debate prior to the conclusion of free trade agreements.**<sup>37</sup> The right to take part in the conduct of public affairs implies that no trade or investment agreement should be concluded in the absence of a public debate. In principle, trade and investment agreements should be elaborated within a democratic process that provides opportunities for parliamentary approval, participation by stakeholders and access to information. Human rights impact assessments serve to inform such public debate.

## ***b. Responsibilities of business enterprises for human rights***

With the endorsement of the UN Guiding Principles on Business and Human Rights by the UN Human Rights Council in 2011, there is a new global consensus about that all businesses, including multinational and domestic enterprises have the responsibility to respect human rights throughout their operations. Although States have the primary obligation to address the human rights impacts of trade liberalisation, trade agreements form an important backdrop and context for business enterprises to understand their human rights responsibilities given that provisions in these agreements have impacts on the development or decline of specific economic sectors.

The responsibility to respect human rights applies to both the multinational enterprises and the domestic enterprises that will take advantage of and/or be impacted by changes to trade and investment rules in Pacific Island Countries. However, these international human rights principles are more likely to be understood and implemented by large multinational enterprises than by many of the smaller domestic enterprises that will be most affected by trade liberalisation in Pacific Island Countries.

The main responsibilities of business enterprises include the following:

- **Business enterprises' responsibilities to respect human rights.**<sup>38</sup> This means that they shall avoid infringing on the human rights of others and address adverse human rights impacts with which they are involved—including when they take advantage of trade and investment agreements. The responsibility of business enterprises to respect human rights exists concurrently yet separately from States' abilities and/or willingness to fulfill their own human rights obligations, and does not diminish those obligations. And it exists beyond compliance with national laws protecting human rights. Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation.
- **Business enterprises should not undermine States' abilities to meet their own human rights obligations.**<sup>39</sup> In the context of trade and investment agreements, this responsibility applies to the process of negotiating and lobbying for certain types of provisions, concessions and/or exemptions, as well as by actions that might weaken the integrity or effectiveness of mechanisms that protect human rights and provide access to remedies.

**c. Improving access to remedies**

Human rights and obligations demand accountability. This implies that decision makers ought to be transparent about their actions and justify their choices and that redress mechanisms should be established. States should promote better access to remedies for individuals, workers and communities who believe their rights have been infringed, and business enterprises are also encouraged to promote access to remedies—particularly through operational-level grievance mechanisms. In the context of trade and investment agreements, this raises issues related to the dispute mechanisms that are included in the agreements themselves—and whether they are accessible and transparent for affected stakeholders and not just foreign investors. It also involves strengthening the domestic judicial and non-judicial mechanisms that provide persons with access to justice, including through the courts, labour tribunals and national human rights institutions.

Furthermore, at the operational level, business enterprises are encouraged to establish site-level grievance mechanisms that allow affected workers and communities a direct channel to deal with complaints through dialogue with the company.

In Pacific Island Countries, there are many challenges for States to provide access to remedies. This includes the task for States themselves to respond to investors’ challenges raised through the dispute resolution mechanisms in trade and investment agreements in a manner that protects the rights of persons under their jurisdictions. There are imbalances in capacity and resources between the governments of Pacific Island Countries and many of their global trading partners, as well as the multinational enterprises whose activities may have adverse impacts on human rights.

Another key issue with respect to access to remedies at the domestic level relates to the capacity of various actors to establish and/or use formal mechanisms for dispute resolution—especially in a context where there are strong traditional or informal mechanisms to address issues. It is therefore important for any proposals for strengthening access to remedies to be carefully tailored to the local realities and serve to improve effective access for the local population as well as foreign investors.

**d. Key human rights issues in relation to trade**

The full range of international human rights can be linked to trade. However, early experiences of conducting human rights impact assessment of trade agreements demonstrate the non-exhaustive list of connections outlined in the following table.

**Table 2: Potential Trade-Related Impacts on Human Rights**

|   |   |
|---|---|
| <p>Economic, social and cultural rights</p> | <p>Increases in revenues from trade provide governments with the resources to progressively realise the full spectrum of economic, social and cultural rights.</p> <p>Trade can facilitate or create barriers for access to essential medicines, which is a central element of the right to health.</p> <p>The privatisation of public services, often linked with trade liberalisation, can have impacts on the enjoyment of the human rights to health, education, water and sanitation.</p> <p>Changes to tariffs on agricultural products can have impacts on the right to food.</p> <p>Reduction of import tariffs as part of regional trade negotiations impact countries ability to collect revenue and support basic social service such as health care. It does also affect countries ability to implement fiscal measures to limit import of food products high in fat, sugar and salt.</p> |
|---|---|

|  |  |
|--|--|
| Civil and political rights                 | <p>The ability of persons to participate in informed public debate and decision-making about trade policy depends on the right to participate in public affairs (in particular in matters that affect them), freedom of expression and freedom of association.</p> <p>The right to access to remedies implies that individuals and communities have the ability to effectively raise concerns about the impacts of trade agreements through judicial and non-judicial mechanisms at the domestic and international levels.</p>   |
| Women’s human rights                       | <p>Trade agreements raise particular concerns for women, who are affected differently by trade policies. Many women confront sexual violence, lack of security, credit and education as factors impeding their access to markets.</p> <p>Women’s work in the global market – particularly migrant women’s labour – tends to be concentrated in informal sectors which expose them to a heightened risk of abuse, including low wages, long hours and uncertainty of tenure.</p>  |
| Labour rights                              | <p>Trade agreements have impacts on different economic sectors, which filter down to individual business enterprises and their workers. Potential increases or decreases in the availability of jobs have impacts on the right to work.</p> <p>The availability of better quality jobs should fulfill the rights to safe, healthy, just and favourable conditions of work. However, competitive pressures can put these labour rights at risk, and affect the right to organise and to bargain collectively.</p>   |
| Indigenous peoples rights                  | <p>Increased investment and trade can encourage development on the traditional lands and territories of indigenous peoples. This raises issues related to whether there are adequate domestic processes to ensure the right of indigenous peoples to free, prior and informed consent, on-going consultation and participation in the benefits of these developments.</p> <p>Extractive industry projects increasingly take place on indigenous peoples lands and are facilitated by trade agreements. These large-scale projects present opportunities for significant benefits to indigenous peoples through jobs, contracts, taxes and royalties. However, they also present risks to a broad spectrum of indigenous peoples rights related to non-discrimination at work, community development, cultural survival and preservation of the environment.</p>  |
| Rights of minorities and vulnerable groups | <p>Non-discrimination is a cross-cutting human rights issue: all human rights must be implemented in a manner that does not discriminate on the basis of sex, race, colour, language, religion, political or other opinion, national or social origin, economic status, property, birth or other status. Notably, other status is increasingly being defined to include health status, strengthening the legal framework for protection against discrimination on the basis of health status.</p> <p>Concretely, this means that there must be special attention to the potential impacts of trade on children, national, ethnic, linguistic and religious minorities, migrant workers, persons with disabilities, lesbian gay bisexual and transgendered persons (LGBT), older persons and other vulnerable groups. Some of these groups are protected by additional international human rights provisions.</p> |

### e. Key human rights instruments and references

When referring to human rights, this report is focused primarily on the international human rights standards that apply to Pacific Island Countries. These standards are enshrined in binding international legal agreements and in non-binding policy instruments that should be implemented at the national level through domestic legislation, policies and programmes. The ratification and implementation of international human rights standards remains an on-going challenge for many Pacific Island Countries.<sup>40</sup>

**Table 3: International Human Rights Standards Relevant to Trade**

| International Human Rights Standards   | Status   |
|--|--|
| Universal Declaration of Human Rights (1948)   | Key international human rights declaration that applies to all members of the United Nations and that address the full range of civil, political, economic, social and cultural rights.  |
| International Covenant on Economic, Social and Cultural Rights (1966)                | Low level of ratifications of the ICESCR in Pacific Island Countries: Australia, New Zealand, Papua New Guinea and Solomon Islands have ratified; Palau has signed but not ratified.   |
| International Covenant on Civil and Political Rights (1966)                          | Low level of ratification of the ICCPR in Pacific Island Countries: Australia, New Zealand, Papua New Guinea, Samoa and Vanuatu have ratified; Nauru and Palau have signed but not ratified.   |
| UN Convention on the Elimination of All Forms of Discrimination Against Women (1979) | Key international instrument for the protection of women's rights. Higher levels of signature and ratification in Pacific Island Countries in recent years.  |
| The UN Convention on the Rights of the Child – CRC (1990)                            | <p>All PICs are parties sand signatories of the CRC.</p> <p>Article 32: States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.</p> <p>Article 13: right to freedom of expression / For the protection of national security or of public order (ordre public), or of public health or morals.</p> <p>Article 18: States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.</p> <p>Article 24: To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;</p> |



| International Human Rights Standards   | Status   |
|--|--|
| Declaration on the Fundamental Principles and Rights at Work (1998)  | Key international labour rights declaration that applies to all members of the ILO and commits governments to respect and promote principles and rights in four categories: freedom of association and the effective recognition of the right to collective bargaining; the elimination of forced or compulsory labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation. While many Pacific Island Countries have ratified various ILO Conventions, there are on-going concerns about their implementation in terms of domestic labour laws and enforcement mechanisms. |
| UN Declaration on the Rights of Indigenous Peoples (2007)  | Key international indigenous peoples rights declaration that has been accepted by all governments in the Pacific. The UNDRIP contains explicit recognition of indigenous peoples' rights to free, prior and informed consent to developments on their traditional lands and territories.   |
| UN Guiding Principles on Business and Human Rights (2011)  | Key international standard on business and human rights, endorsed by the UN Human Rights Council in 2011. It contains the “Protect, Respect and Remedy” framework that stipulates that States have the primary obligation to protect from business-related human rights harms; that business enterprises have a responsibility to respect the full range of human rights that are affected by their operations; and, that States and businesses share a responsibility to provide effect access to remedies.   |
| UN Guiding Principles on Human Rights Impact Assessment and Trade Agreements (2011)  | Practical guidance prepared by the UN Special Rapporteur on the Right to Food about the principles and methodology to apply to a human rights impact assessment of a trade agreement.  |
| UN Guiding Principles on Extreme Poverty and Human Rights (2012)   | Recent international standard that links extreme poverty to 14 different human rights violations—both as a cause and a consequence of those violations.  |
| Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (2012) | Interpretation by international experts of the scope and nature of extra-territorial obligations for economic, social and cultural rights, in terms of implications for domestic measures and for international cooperation.   |

This chronology of treaties and guiding principles shows how the international human rights system continues to evolve into a comprehensive set of standards that aim to improve the realization of human rights for individuals and groups around the world. In Pacific Island Countries, however, there currently are some significant challenges for the implementation of international human rights standards.

There continues to be a lack of ratification and implementation of key international human rights instruments by many Pacific Island Countries. In particular, more formal recognition through becoming State Parties of key UN human rights treaties such as the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights is needed in order to advance the understanding and institutional foundations for linking human rights, trade and development.

On the ground, the impact of poverty has a profound effect on the realisation of human rights. Poverty deprives people of basic human needs and opportunities. It constrains the ability of individuals to take advantage of jobs and business opportunities; and, it limits the choices individuals may have as consumers. As discussed above, poverty also limits the capacity of governments to negotiate advantageous trade provisions and/or implement adequate remedial measures. Therefore, efforts to combat poverty and to promote human rights should go hand in hand.

## 4. Illustrative Case Studies

This report has presented some of the conceptual, normative and legal implications of the nexus between trade and human rights. This section aims to supplement this discussion by examining four case studies that illustrate the links between human rights and trade in the context of Pacific Island Countries. These illustrative case studies also serve to highlight how a human rights focus can help avoid adverse impacts, promote inclusive processes, and support positive outcomes for affected stakeholders.

### *a. Structural reform resulting from trade liberalisation: Winners and losers in the Pacific?*

#### **Introduction**

This case study provides an overview of the linkages between trade policy changes in the Pacific (often associated with obligations in international trade agreements), the resulting structural changes in Pacific island economies, and the realisation of human rights.

In particular, over recent decades, economists and trade policy advisors have encouraged Pacific governments to cut tariff rates and remove other barriers to trade and investment. Reducing tariffs has led to cheaper prices for many consumer goods –including food (processed foods in particular). Furthermore opening service sectors to foreign competition has sometimes led to increased competition and better service provision. For instance, this has been the case with telecommunications, as new market players (including in Fiji, Papua New Guinea and Vanuatu) have improved the affordability and uptake of mobile phone and Internet technology, with flow on benefits across society.<sup>41</sup>

Trade liberalisation has often led to structural reform as Pacific economies have adjusted to new price signals and international competition. These reforms have had, and will continue to have, both positive and negative implications for the realisation of human rights. In general, more efficient production should in the medium to long term encourage economic growth, helping to create new jobs and improve incomes. Cheaper goods should also leave more money in people's pockets. Both increased employment and greater incomes help to realise the right to work and the right to an adequate standard of living for workers and their families.

However, trade liberalisation can also entail changes to the economy that undermine the realisation of human rights—at least for some. The effects of structural reform are not evenly spread across society, as some people benefit others may lose out. In cases where domestic firms or producers cannot compete with firms based in larger island states or larger countries outside the region, they are likely to face losses – such as a fall in profit, a decline in production, or a reduction in staff numbers. Some businesses may close down altogether, as the following examples from the Pacific illustrate.

#### **Nexus between human rights and structural reform: Pacific examples**

Trade liberalisation among Pacific Island Countries has seen more efficient businesses, generally in larger island countries, displace producers in smaller states – leading to business closures and job losses. Here it is worth considering some recent examples:

- In 2006 a small biscuit manufacturer based on the island of Santo, in Vanuatu, closed down after competition from a larger firm based in Fiji undercut local sales. Vanuatu had committed to reduce tariffs on imports from its island neighbours under both the Melanesian Spearhead Group Free Trade Agreement (MSG-FTA) and under the Pacific Island Countries Trade Agreement (PICTA).

- More recently, in late 2012, a beverage manufacturer in Vanuatu ceased production of a line of soft drinks citing trade policy changes and increased competition from exports of a subsidiary of a global soft-drink firm based in Fiji. This change saw the termination of 42 local staff and furthermore undermined income to bottle-collectors who had recycled the glass bottles of the local soft drink.

Trade liberalisation may not be only the reason that these two businesses had to close, as any business closure is subject to a number of factors. Nonetheless, in both of these examples small firms producing for a small domestic market lost out when that market was opened to more efficient foreign firms. While the resulting job losses may seem tiny, they are significant in the context of a very small formal sector in many Pacific Island Countries. For example, in Vanuatu, a country with a population of around 250,000 people, less than 15 percent of the population is in wage employment.

Limited structural reform arising from regional trade liberalisation among the Pacific Island Countries has seen the closure of less efficient businesses, generally in the smaller island states. Key beneficiaries of such reform have been firms based in the larger economies of Fiji and Papua New Guinea; however, even these firms are likely to face difficulties competing with more efficient producers from outside the region if trade liberalisation is extended to include larger trading partners such as Australia and New Zealand.<sup>42</sup>

### **State responsibilities and policy insights**

While debate continues about the costs and benefits associated with trade liberalisation all sides agree that there are likely to be some ‘losers’ in a move to freer trade in the Pacific Island Countries. Furthermore it is understood that the ‘losers’ may already be poor, or may be pushed into poverty.<sup>43</sup> For vulnerable people who lose their source of employment – even for a short period of time – trade liberalisation can have significant negative impacts on the right to work, right to an adequate standard of living, the right to health and other related human rights.

Furthermore, the redistributive effects of trade liberalisation in the Pacific are realised across borders. Even where trade liberalisation has led to overall economic growth for the region, the primary benefits have tended to accrue to larger firms in more developed island states (though islanders in smaller states also have access to cheaper imports). Policy-makers therefore should take steps to mitigate potential negative impacts of future regional liberalisation for the most vulnerable in smaller island states.

As noted above, Pacific governments have obligations under international law to protect, respect and fulfil human rights. Even where the net effects of structural reform may be desirable, Pacific island governments must consider measures to avoid the negative impacts for all workers and communities. Such an approach “shifts the perspective from aggregate values – from the benefits of trade for the country as a whole – to the impacts of trade-related structural reform on the most vulnerable and insecure.”<sup>44</sup>

In wealthy countries, it is often proposed that consideration be given to special support to workers negatively affected by reform – including temporary subsidies and retraining programs to help access work in new sectors. Such programs may promote the right to work, and the right to education. Furthermore, wealthy countries often have schemes for social security, including unemployment insurance plans, which give effect to the right to social security. Many Pacific Island Countries however lack the resources to provide formal social welfare systems and vocational programs for job re-training, and the unemployed typically fall back on family and subsistence gardening. Policy-makers should give consideration to transitional time periods for the implementation of reform, allowing the possibility for domestic firms to better manage the pace of change or diversify into more competitive enterprise.

## ***b. Tariff reform and government revenue: Fiscal squeeze?***

### **Introduction**

This case study considers the potential human rights impacts of changes to national tax regimes when governments of Pacific Island Countries reduce or remove import taxes.

Pursuing trade liberalisation generally involves fiscal reform. Since border taxes are reduced or removed in order to encourage increased trade, governments face the prospect of declining revenues—at least in the short term.<sup>45</sup> Compared with other developing countries, Pacific governments remain particularly reliant on trade taxes, with tariffs accounting for more than 10 percent of government revenue in most Pacific Island Countries. This is partly because these countries are uniquely import-dependent and have relied on import taxes as a relatively easy-to-collect source of revenue. For smaller island nations like Kiribati and Tuvalu import duties form more than half of government revenue.<sup>46</sup>

In recent years, Pacific island governments have been advised to replace trade taxes with domestic excise tax and/or a consumption tax, typically a Value-Added Tax (VAT).

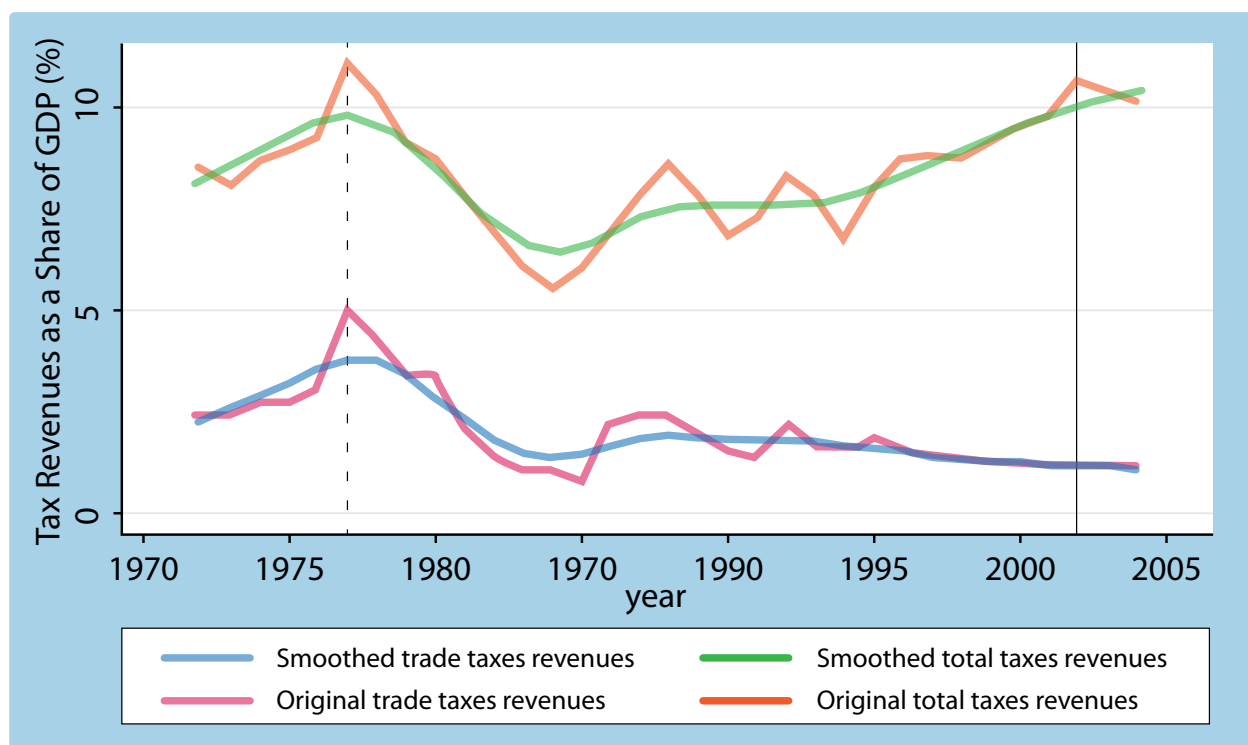
However, new domestic taxes offset at least some of the consumer gains arising from trade liberalisation. Research indicates that if a small Pacific Island Country with relatively little domestic production replaces a 15 percent tariff on a wide range of goods with a 15 percent VAT, the net effect for consumers is relatively small.<sup>47</sup> At the same time, there are also significant administrative costs associated with switching from trade taxes to a greater reliance on domestic taxes. Furthermore some observers posit that pursuing liberalisation is unlikely to encourage market efficiencies in smaller island states, where regulatory factors are not a crucial determinant of pricing or economic activity.<sup>48</sup> In these cases “trade liberalisation simply raises administrative costs as Ministries of Finance search for ways to replace tax revenue.”<sup>49</sup>

Comparative studies suggest that other developing countries have found it difficult to replace trade taxes with revenue from domestic sources. Around the world, a number of countries have taken decades to recover revenue following trade liberalisation or have not fully recovered at all:

- Guatemala implemented tariff reforms in the late 1970s which precipitated a decline in total tax revenue. It took over 25 years (until 2002) for Guatemala’s tax revenue to recover from these reforms (see graph on following page).<sup>50</sup>
- Other developing countries which have struggled to replace lost tariff revenue include Cote d’Ivoire, Egypt, Gambia, Kenya, Morocco, Niger, Sri Lanka and Tunisia.<sup>51</sup> A 2012 analysis of the fiscal consequences of trade liberalisation explored 110 ‘episodes’ of decreases in tariff revenue across 86 countries between 1945 and 2006. It found that decreases in tariff revenue corresponded on average with a 20 percent fall in total tax revenues. The magnitude of revenue decreases ranged between 4 percent of total revenues (Tunisia 1983) and 60 percent (Gambia in 1985). The same study also explored the ability of developing countries to *recover* lost revenue; it found that 45 percent of all countries did not fully recover lost tariff revenues within a decade.<sup>52</sup>
- A 2005 study prepared for the International Monetary Fund (IMF), which looked at tariff reform across 111 countries over 25 years, found that: “revenue recovery has been extremely weak in low income countries which are those most dependent on trade tax revenues; they have recovered, at best, no more than about 30 cents of each dollar lost; and, there is not much evidence that the presence of a value-added tax has in itself made it easier to cope with the effects of trade liberalisation.”<sup>53</sup>

The economics literature suggests a number of reasons for a poor replacement of tariff revenue in low income developing countries, including weak tax administrations and the presence of a large informal sector. Both of these conditions are prevalent in Pacific Island Countries.<sup>54</sup> This is not to suggest that trade liberalisation will automatically lead to revenue losses, especially if reform is accompanied by appropriate reforms to domestic taxation. There may for example be opportunities to generate greater revenue by introducing or increasing so-called 'sin taxes'. Levied on harmful products, like tobacco, such measures could be significant for overall revenues.<sup>55</sup> Nevertheless the historical experience does suggest Pacific Island governments should exercise caution when implementing trade reform that may undermine their existing revenue base.

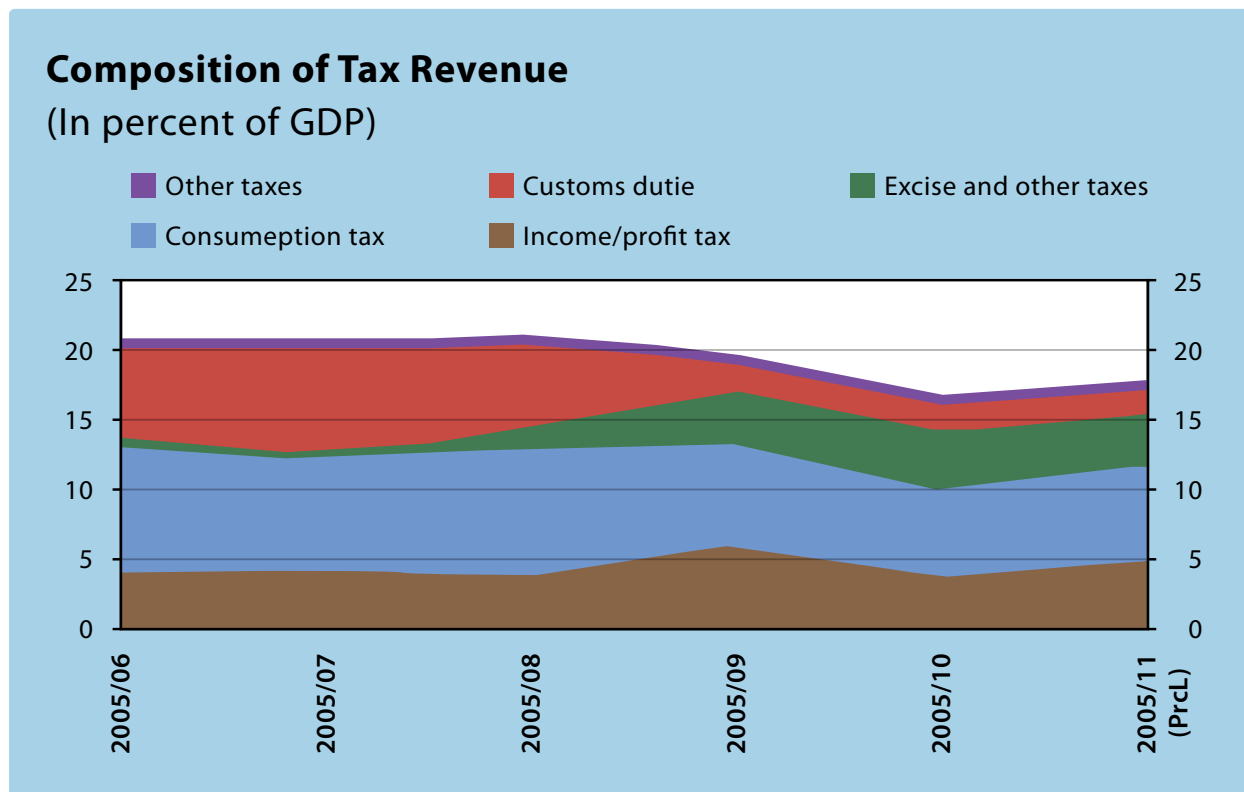
**Figure 2: Recovering from trade-related fiscal shock: The experience of Guatemala**



### Intersections of human rights and fiscal reform: the example of Tonga

Governments in Vanuatu, Samoa and Tonga have all introduced a VAT as part of reforms associated with trade liberalisation, specifically in anticipation of commitments made upon joining the WTO. Kiribati also introduced a VAT in 2014 in anticipation of potential commitments in ongoing trade negotiations. In the following section we look closely at the fiscal impacts of tariff-reform in Tonga.<sup>56</sup>

In 2005, Tonga agreed to join the WTO on terms negotiated with states who were already WTO members. These terms included a commitment to lower Tonga's applied tariffs to 15 percent and to bind tariff rates at 25 percent.<sup>57</sup> Prior to 2005 Tonga had applied an across-the-board import tariff of 25 percent and imposed higher tariffs on some goods (e.g. petroleum at 35 percent; vehicles at 45 percent; alcohol at 200 percent; and tobacco at 330 percent).<sup>58</sup> In anticipation of revenue losses associated with tariff reductions, Tonga introduced a consumption tax in 2005, applied at an across-the-board rate of 15 percent. Then, in 2008, Tonga completed further tax reform required on acceding to the WTO, by converting some tariffs above 25 percent to excise taxes and reducing other tariffs to agreed rates.

**Figure 3: Recent composition of government revenue in Tonga**

Source: International Monetary Fund 2012

It was hoped that the 2005 consumption tax would replace tariff revenue lost on joining the WTO. During the early stages of reform associated with Tonga's WTO accession "revenues increased faster than expected".<sup>59</sup> However Tonga's accession coincided with the 2008 global financial crisis, which had a significant negative effect on the Tongan economy. During the 2008/09 and 2009/10 financial years tax revenues were "significantly lower" than they had been in the lead up to 2008 – by some 20-25 percent in nominal terms.<sup>60</sup> Uniquely exposed to the effects of the global financial crisis, the Tongan economy slowed significantly, trade volumes declined and the tax base contracted. As the World Bank explained in 2010:

*This fall-off in tax revenues was led by import tariffs, the excise tax and the consumption tax. Given the high import component of consumption in Tonga, the tax bases for each of these streams – not only tariffs – are determined primarily by imports. With imports, in turn, dependent on remittances, the sharp decline in remittances caused by the global downturn translated into sharp declines in tax revenues. The contribution of Tonga's newly liberalised tariff regime to stable aggregate tax revenues, however, had been calibrated on the basis of continued increases in imports, which the global downturn has impeded.<sup>61</sup>*

While it had been hoped that joining the WTO would improve Tonga's economic prospects, accession coincided with the onset of a global economic downturn that hit the Tongan economy hard and undermined the country's revenue base.

Unfortunately, it is very difficult to disaggregate the fiscal implications of Tonga's trade policy reform from the impacts of the slow-down in the domestic economy more broadly. While it can be said that Tonga has failed to recover government revenue to levels present before implementing tariff cuts associated with joining the WTO, it cannot be said conclusively that this failure to recover revenue was a result of Tonga's WTO accession process.

Nevertheless Tonga's experience—and the experience of other developing states that have faced difficulties replacing tariff revenue—suggests Pacific Island Countries should exercise caution when committing to trade reform that may have implications for government revenue.

### **State responsibilities and policy implications**

National governments are key duty bearers with regard to the realisation of human rights, and taxation is important if governments are to protect, respect and fulfil human rights. Indeed, the International Covenant on Economic, Social and Cultural Rights (Article 2) stipulates that States must make use of their maximum available resources to realise economic, social and cultural rights – including through domestic taxation.

Since government revenue is essential for the provision of public goods and services that are essential to the realisation of human rights – such as the right to health and the right to education – consideration must be given to managing or mitigating revenue losses associated with tariff reform. Any sudden revenue loss could undermine the ability of Pacific governments to realise human rights and can have severe political, economic and social consequences.

For Pacific island governments considering trade liberalisation through regional trade agreements, the fiscal implications of removing tariffs are not negligible. A number of recent studies predict revenue losses associated with trade liberalisation.<sup>62</sup> For example, a 2007 report for the Pacific Islands Forum Secretariat estimated that after implementing the Pacific Island Countries Trade Agreement (PICTA), an Economic Partnership Agreement (EPA) with the European Union (EU) and a PACER-Plus agreement with Australia and New Zealand, a number of countries would lose more than 20 percent of their revenue (Vanuatu, Tonga, and the Republic of the Marshall Islands) and others would face significant losses as well, such as Kiribati (19 percent), Samoa (16 percent) and Tuvalu (14 percent).<sup>63</sup> It is important that governments consider ways to mitigate these potential revenue losses and/or maintain the policy space needed to levy import taxes for revenue purposes.

Pursuing strategic trade liberalisation should help Pacific Island governments to reduce domestic prices, both for inputs for production and for consumer goods. However because many Pacific economies are reliant on trade taxes for revenue, which is in turn important for providing services essential for the realisation of human rights, it is crucial that trade liberalisation is accompanied by fiscal reform intended to maintain government revenue. Because many developing countries require up to a decade (or even longer) to recover revenue losses associated with trade liberalisation, tariff reductions in Pacific Island Countries should be implemented over time and sequenced appropriately.

There is a dearth of information regarding the success (or lack thereof) of fiscal reform associated with recent trade liberalisation in the Pacific Islands region. The experience of Tonga's WTO accession, explored above, highlights the difficulties involved in drawing definitive conclusions about the fiscal impacts of trade liberalisation in the Pacific.

While uncertainty remains about the ability of small island states to efficiently and sufficiently replace tariff revenue with broader domestic sources of taxation, and given that low income countries have in the past faced difficulties replacing trade tax revenue with domestic sources of taxation, Pacific Island governments should exercise a precautionary principle when making liberalisation commitments in trade negotiations. Pursuing strategic liberalisation on a unilateral basis would allow Pacific Island Countries to re-introduce duties for revenue purposes if required.

However, in the context of international negotiations, trade officials should consider maintaining the policy space needed to levy import taxes for revenue purposes. This can be done by avoiding onerous commitments altogether or by negotiating safeguard clauses. For example the interim Economic Partnership Agreement negotiated in 2007 between the EU and Fiji and Papua New Guinea, contains a safeguard clause specifying that when one of these Pacific countries is threatened with a serious decline in its fiscal position, it may increase tariffs for a set period to remedy adverse fiscal consequences.<sup>64</sup>

Finally, Pacific policymakers searching for a replacement for trade tax revenue should be aware that an across-the-board consumption tax can have regressive effects – by disproportionately shifting the burden of taxation to those already in poverty. Both the wealthy and the poor need to consume basic goods and services, but consumption taxes on essential items make up a greater proportion of the income of poorer people. Regressive taxation measures have been a recent focus of attention for the UN Independent Expert on Extreme Poverty and Human Rights. A 2011 report highlighted that States should be cognisant of their obligations to implement policies in accordance with principles of non-discrimination and equality:

*...in this context, the introduction of or an increase in regressive sales taxes or value added taxes may have a disproportionate impact on those who are already experiencing financial difficulties.<sup>65</sup>*

Where a consumption tax is implemented to replace trade taxes, Pacific policy-makers should consider exempting or ‘zero-rating’ basic foods and other items that are essential to the realisation of human rights (such as water, electricity, and health and education materials) and/or by providing subsidies and credits for poor and vulnerable individuals.

### ***c. Trade policy, nutrition and health: bans and taxes on sugar and fat?***

#### **Introduction**

This case study explores links between trade liberalisation, nutrition and public health in select Pacific Island Countries. Over recent decades, all countries in the region have experienced a “nutrition transition” associated with a shift from consuming local and traditional staples (root crops, select leaves, fish and occasional meat) to increased consumption of imported and processed food and beverages (rice, bleached flour, tinned fish and meats). Changing trends in food production and consumption in low-income countries worldwide have seen national diets become increasingly “high in fat, sugar and salt, with consequent rises in associated chronic diseases.”<sup>66</sup>

As a result, Pacific Island Countries have among the highest rates of non-communicable diseases (NCDs) in the world. Cheaper but unhealthier imported foods have contributed significantly to this disease burden. Heart disease and diabetes in particular are linked with increased consumption of processed foods high in salt, sugar and fat; such as canned meat products, instant noodles, and sugar sweetened beverages. Pacific Island governments have considered a range of policy measures intended to reduce the uptake of less healthy imported foods, and promote greater consumption of healthier local produce.<sup>67</sup>

#### **Intersections of trade liberalisation, the right to health and other health-related rights: Select Pacific examples**

International trade in food and beverages has important implications for the health of Pacific islanders. Recent studies have indicated a causal link between trade liberalisation and an uptake of imported grains, meat, fats, oils, confectionary and pastries.<sup>68</sup> Increasing imports of high-fat-content foods, and high-sugar-content food and drinks have impacted negatively on the health of Pacific Island populations. Food adequacy has been recognised as a critical dimension of the right to food. At the same time, access to nutritious is an important underlying determinant of the right to health. In addition to direct impacts on human health arising from trade liberalisation, commitments made in bilateral and regional free trade agreements, and at the WTO, can reduce the policy space available to Pacific governments to realise the right to health. To explore further the nexus between trade liberalisation and the realisation of human rights it is worth detailing trade-related policy initiatives that have been used in recent years to pursue improved health outcomes. Two key initiatives are discussed below.



### ***Bans on the import and sale of fatty meats in Fiji, Samoa and Tonga***

Imported high fat content meats, such as corned beef, mutton flaps and turkey tails have had a direct causal impact on rising rates of NCDs in Pacific Island Countries.<sup>69</sup> In recent years, with varying degrees of success, bans on fatty meat products have been introduced in Fiji and Samoa, and were considered in Tonga, in an attempt to curb this trend. The compliance of these bans with commitments made in international trade agreements has been called into question. Each case is considered here briefly.

Fiji introduced a ban on the sale of mutton flaps<sup>70</sup> in 2000, accompanied by a consumer awareness campaign explaining the health risks associated with fatty meat consumption. Technically this was not a ban on imports and did not contravene Fiji's commitments at the WTO, as the measure was non-discriminatory and applied only at the point of sale. However up to that point in time, Fiji had imported more than 200 tonnes of mutton flaps each year from New Zealand so the measure had an impact for meat exporters in that country.<sup>71</sup> A 2007 report from the New Zealand government explained that Fiji's action "effectively amounted to an import ban."<sup>72</sup> The New Zealand government "considered action against the ban under the WTO," but this action did not eventuate.<sup>73</sup>

In Samoa, a ban on the import of turkey tails (an off-cut meat sourced primarily from the United States) was introduced in 2007. The ban was introduced after Samoa's Ministry of Health raised concerns about the high-fat content of turkey tails (40-45%) and links between fat intake and non-communicable diseases.<sup>74</sup> Just before the ban was introduced, turkey tail imports totalled about 4,000 tons (>20kg/person). As part of Samoa's WTO accession process a United States trade representative questioned the ban.<sup>75</sup> Furthermore, concerns were expressed about the "prohibition of a single food item in order to address a large and complex problem of obesity."<sup>76</sup> In 2011, a working party of WTO members adopted Samoa's accession package with the condition that the ban be removed. The ban would be replaced with an import duty levelled initially at 300 percent, to be phased down to 100 percent or replaced by another tax regulation.

Tonga considered measures similar to those used in Fiji in order to reduce consumption of mutton flaps. In 2004, legislation was drafted to apply an import quota for meat products containing a high fat content. This measure was drafted following work by the World Health Organization and other public health experts exploring the link between high-fat meat and obesity in Tonga.<sup>77</sup> However the draft act as well as accompanying proposals for policy implementation and monitoring – were shelved when Tongan trade officials became concerned the measures could have implications for Tonga's WTO accession process. As Australia and New Zealand are the main sources of mutton flaps into Tonga, officials were concerned they would need to renegotiate their accession package with Australian and New Zealand officials if the proposed measures restricted imports from those two countries.

Each of the above examples suggests measures intended to restrict the importation of high-fat meats could conflict with commitments made by Pacific Island Countries at the WTO. Multilateral trade rules require that measures intended to protect human health should be scientifically justified, non-discriminatory (i.e. apply to all like products and to both domestic and external producers), and be the 'least trade restrictive' options available. For Pacific governments, measures intended to reduce the consumption of imported high-fat meats that also fit all criteria are likely to be more complex, expensive and administratively burdensome (and probably less effective) than a simple ban on import or sales.<sup>78</sup>

### ***Taxation for health in the Pacific?***

It is well established that the price of food and beverages can be a significant determinant of consumption levels in the Pacific Island region, particularly for low income populations<sup>79</sup>. Although as mentioned above, broadening the tax sources is not without challenges; taxation whether through import duties or excise taxes can be used by policymakers to reduce the consumption of less healthy foods as taxes impact significantly on the price of food and drink. By raising taxes on less healthy products Pacific governments can reduce the consumption of those products *and* collect revenue that can be directed toward preventative health programs.

Commitments made in international trade agreements can restrict the ability of Pacific governments to increase or levy import duties on unhealthy foods. If Pacific Island countries agree to bind import duties at a low rate they cannot raise them beyond that rate. However, the countries *can* introduce excise taxes, which apply to both domestic and imported products, because these taxes do not differentiate between local and traded goods.

Over the past decade a number of Pacific Island Countries have introduced taxes on unhealthy goods including soft drinks and other high-sugar products, alcohol, tobacco products and even some saturated fats. The negative health effects of cigarettes are widely known, as are those associated with excess consumption of alcohol and fatty foods. There is also mounting evidence that increased intake of sugar is linked with a higher incidence of obesity. Five Pacific examples of taxation to improve health are briefly reviewed below.<sup>80</sup>

- In 2013 Tonga introduced new duty and excise tax rates ‘to encourage healthy living’.<sup>81</sup> Existing excises on cigarettes and tobacco were introduced, while import duties on soft drinks and lard/dripping were converted to excise rates (levied at \$1 per litre and \$1 per kg respectively). In addition to increasing tax rates on less healthy foods, Tonga also reduced import duties on foods considered to be healthier than similar alternatives, including fresh fish and vegetable oil.
- In Samoa soft drink taxes have been levied since 1984. These taxes were rationalised in 2007 and raised in 2008 as part of the country’s shift from tariffs to domestic excise taxes and a goods and services tax.
- Nauru introduced a ‘sugar levy’ in 2007 of 30 percent for the specific purpose of discouraging excessive consumption of sugar. The tax is applied to imported sugar, confectionary, carbonated soft drinks, cordials, flavoured milks and drink mixes.<sup>82</sup>
- Fiji introduced a soft drink tax in 2000. Initially charged on both domestic and imported soft drinks, this was soon changed to a tax on imports alone. There are several big soft drink producers in Fiji, so it is not clear what impact an import tax has on domestic soft drink consumption.
- The government of French Polynesia introduced domestic taxes in 2002 on a wide range of products, including soft drinks, alcohol, chocolate and ice cream.<sup>83</sup> These taxes were used to pay for obesity prevention measures. A fund, called *Établissement pour la prévention* (EPAP), was established and used for public health purposes, including health education, preventative training, clinical education and research. A similar arrangement also exists in New Caledonia. The *Agence Sanitaire et Sociale de la Nouvelle Calédonie*, created in 2001, allocates a share of revenues from domestic taxes on alcohol and tobacco to finance health facilities and programmes<sup>84</sup>.

These five examples highlight that Pacific governments can introduce domestic taxes on less-healthy foods without creating undue complications with regard to commitments made in international trade agreements.

### **State responsibilities and policy considerations**

The right to health is an important human right, and Pacific island governments are obliged to progressively realise the highest attainable standard of physical and mental health. Every country in the world has ratified at least one instrument that recognises the right to health.

Article 12 of the International Covenant on Economic, Social and Cultural Rights specifies explicitly that states should take steps toward the realisation of the right to health, including those necessary for “the prevention, treatment and control of epidemic, endemic, occupational and other diseases.” This implies governments are obliged to take steps to mitigate the incidence of non-communicable diseases associated with an increased consumption of less healthy food and beverages.

With regard to trade, nutrition and public health there are at least three key areas of policy intervention for the realisation of the right to health in Pacific Island Countries. The first relates to the availability of less healthy imported foods, the second relates to the promotion of healthy domestic foods and the third relates to increased revenues for health promotion.

Evidence suggests import bans for fatty meats may be effective as a consumer advocacy tool. However, bans may have limited effect with regard to the consumption of high-fat meat if the product can be readily replaced with other cheap high-fat meats.<sup>85</sup> Implementing import controls that reduce the availability and consumption of high fat meat and comply with WTO rules is likely to be difficult. However import bans on a range of fatty meats could be implemented by Pacific Island Countries that are not WTO members or members of other bilateral and multilateral agreements.<sup>86</sup>

Taxation of sugary, fatty and salty products is one way to reduce the intake of less healthy foods and beverages as long as the tax is sufficiently high to effect behaviour change through price disincentive. A number of Pacific Island Countries have successfully introduced excise taxes on sugary products – for both health and revenue purposes. Taxes levied on products by saturated fat content have been implemented in some countries in Europe, notably Denmark and Hungary. Similar “fat taxes” could be considered in the Pacific, although they may be difficult to administer. As shown by the examples of French Polynesia and New Caledonia, taxes on less healthy products can be directed towards national ‘preventative’ funds intended to promote healthy eating and active lifestyles. Samoa and Tonga are considering the establishment of “Health Promotion Foundations” as well.

In addition to domestic taxation, Pacific governments might also consider aligning tariff schedules with the healthfulness of foods “to provide a price incentive for importation and consumption of healthier products.”<sup>87</sup> To do so would require that Pacific Island governments maintain the policy space needed to levy meaningful import taxes, by avoiding onerous commitments at the WTO and in regional trade negotiations. In 2012 Fiji increased the tariff rates for palm oil and monosodium glutamate (MSG) specifically as part of a strategy intended to reduce the incidence non-communicable diseases.<sup>88</sup> At the same time the import duty for fruits and vegetables that cannot be grown in Fiji was reduced. Pacific Island Countries might also consider excise taxes on less healthy foods as an alternative to border tariffs and adjust the level of these taxes to the content of sugar, sodium, fat in the food products under consideration.

As well as attempting to limit the import or production of less healthy foods, Pacific governments should consider policy aimed at supporting domestic production of healthy food where possible. In most Pacific Island Countries – especially the more populous Melanesian countries – “village-level” farmers grow and distribute a large quantity and varied range of fresh vegetables, root crops, nuts and fruits. Access to these foods is essential for food security and an important part of maintaining healthy diets. Ultimately support to domestic production of healthy foods is a key part of realising the right to health. Pacific governments should maintain the policy space needed to provide support to domestic agricultural producers.

Production of tropical fruits and vegetables is also an area of comparative advantage for Pacific Island Countries. Trade policy should be oriented to exploiting opportunities for local produce in local and international markets, as this would create new employment and sources of income and improve domestic food production. Typically, “trade-related investment in technologies and infrastructure that reduce post-harvest losses is also likely to improve food availability in local markets.”<sup>89</sup>

While increasing exports is an important goal, regional trade agreements (and commitments at the WTO) in general are of limited benefit for promoting Pacific food production.<sup>90</sup> Issues such as guaranteeing consistent supply, reducing transport costs, meeting quarantine and labelling requirements, and providing appropriate marketing are far more important than for growing new exports than binding import tariffs at low rates. It is also important that trading partners work actively with Pacific Island governments to ameliorate quarantine issues, and a range of other non-tariff barriers that restrict agricultural exports from the Pacific.

## **d. Trade agreements, intellectual property rules and traditional knowledge**

### **Introduction**

This case study on Vanuatu highlights the human rights dimension of the connection between trade agreements, intellectual property rights (IPR) and traditional knowledge (TK) in Pacific Island Countries. IPR are linked to the enjoyment of a range of economic, social and cultural rights, the rights to health, education, and food in particular.<sup>91</sup> However, it is often very challenging to get a comprehensive understanding of the exact nature of the relationship between IPR and human rights in a particular country or region, as local contexts have a profound effect on their inter-relationship.

The case study addresses the role of IPR in Vanuatu's accession to the World Trade Organisation (WTO) in 2012 in order to illustrate how IPR regimes can impact upon human rights in a Pacific Island Country. We will also see how a lack of knowledge and misunderstandings about IPR and the protection of traditional knowledge can lead to trade negotiators accepting higher IPR standards than are in a nation's best interest. Finally, this case study shows how adopting a human rights aware approach to IPR requirements in trade agreements can help to ensure that the potential negative impacts of IPR commitments on human rights are minimised.

All countries joining the WTO are required to sign up to the Agreement on Trade Related Aspects of Intellectual Property ("TRIPS"), which mandates certain minimum levels of IPR protection that all members of the WTO must both provide and enforce. Many countries are also pressured to make commitments beyond these minimum standards ("TRIPS Plus requirements") as part of the WTO accession process, or through other trade agreements such as a European Partnership Agreement.

### **Links between human rights and IPR: Example of Vanuatu**

The IPR commitments required in Vanuatu's accession package for the WTO were very onerous, and indeed were the most burdensome of all the Least Developed Countries and Small Islands Developing States who joined the WTO in the last ten years.<sup>92</sup> Vanuatu was unable to take full advantage of any of the flexibilities that were available to it as a Least Developed Country,<sup>93</sup> and committed to several TRIPS Plus provisions. These IPR commitments impact on human rights in a variety of ways, the most significant of which are outlined here.

Vanuatu agreed in its accession package to become a member of the International Convention for the Protection of New Varieties of Plants (UPOV). This is a TRIPS Plus requirement that will require the introduction of a statutory regime that grants proprietary rights to commercial plant breeders, and restricts what farmers may do with seed and plant genetic material. This has potential consequences for food security as it will impact upon the relationship between farmers, genetic resources and sustainable agriculture.<sup>94</sup> UPOV-style plant variety rights protection is criticised on the basis that it encourages genetically uniform crops, affects farmers' rights with regard to seed and genetic material, does not recognise the contribution of traditional knowledge and participatory plant breeding and concentrates agricultural control within large agro-industrial corporations.<sup>95</sup> For example, it has been argued that "strong restrictions on access to plant genetic resources may augment the technological divide between those who have reached the technological frontier and latecomers who rely on adaptation of foreign technologies and germplasm for their domestic food needs."<sup>96</sup>

Although it may be argued that plant variety rights will encourage the breeding of new varieties, there are actually no commercial plant breeders in Vanuatu as well as in most Pacific Island Countries and the system is unlikely to be useable by small farmers who do not possess the necessary skills or capital. The Special Rapporteur on The Right to Food observed:

*"No State should be forced to establish a regime for the protection of intellectual property rights which goes beyond the minimum requirements of the TRIPS Agreement: free trade agreements obliging countries to join the 1991 UPOV Convention or to adopt UPOV-compliant legislation, therefore, are questionable".<sup>97</sup>*

Under TRIPS, Vanuatu is required to become a signatory to the Berne Convention, meaning that it has to recognise and uphold the copyright of foreign authors over their work. Vanuatu also agreed to ratify the World Intellectual Property Organization (WIPO) Copyright Conventions (a TRIPS Plus requirement) that mandates certain levels of regulation of access to digital and Internet content.<sup>98</sup> Through the doctrine of copyright, all of these Conventions give owners monopoly rights over their works, which can have a dramatically curtailing effect on access to, and availability of, learning materials both in hard and electronic formats. This is therefore likely to impact upon the right to education.<sup>99</sup> For example, the practice of copying large sections of imported textbooks for use in schools and university is now illegal, as is circumventing technological protection measures that “lock-up” digital content. In a 2002 report the UK Commission on Intellectual Property Rights stated:

*“it is arguably the case that many poor people in developing countries have only been able to access certain copyrighted works through using unauthorised copies available at a fraction of the price of the genuine original product. We are therefore concerned that an unintended impact of stronger protection and enforcement of international copyright rules as required, inter alia, by TRIPS will be simply to reduce access to knowledge products in developing countries”.*<sup>100</sup>

In many countries these negative effects can be mitigated to an extent by the establishment of statutory license schemes, but these do not currently exist in the region and may be too costly to establish given the smallness of the market.<sup>101</sup>

Third, the accession package required Vanuatu to introduce patent legislation that applies to pharmaceutical products and medical technology, thus impacting upon the right to health. In the short term this legislation is not likely to have a significant impact as Vanuatu currently has no local pharmaceutical manufacturing capacity, relies heavily on older essential medicines that are no longer protected by patent, and on donor funding for new pharmaceuticals that are still protected by patent. However, these circumstances may change and by entering into these IPR commitments, Vanuatu has constrained its future abilities to access new pharmaceuticals.<sup>102</sup> For example, such commitments prevent countries from purchasing generic (and therefore much cheaper) anti-malarial and anti-retroviral medicines from manufacturers in other Least Developed Countries.<sup>103</sup> This problem is heightened by the fact that Vanuatu has not included many of the available public health flexibilities permitted under TRIPS into its patent legislation. For example, Vanuatu is arguably entitled to avoid patent protection on pharmaceuticals altogether for as long as it remains a Least Developed Country,<sup>104</sup> due to a waiver agreement negotiated in 2013.<sup>105</sup>

Finally, Vanuatu’s IPR commitments impact indirectly on a variety of human rights by imposing a significant financial and administrative burden on the country. This necessitates a diversion of funds and human capacity that could be used to support health or education programmes.<sup>106</sup> The World Bank estimated that a comprehensive upgrade of the IPR regime in developing countries could require capital expenditure of USD\$1.5 - 2 million,<sup>107</sup> and the issue of administrative burden has been highlighted by many LDCs.

The reasons for agreeing to such commitments are complex, but most likely include:

- pressure from future trade partners,
- weak capacity of negotiators to engage with the complexity of global IPR regimes,<sup>108</sup>
- lack of input from the broad range of sectors potentially affected by a new IPR regime (many of whom simply would not be aware of the dangers due to their lack of previous engagement with the issues involved), and
- misunderstanding amongst negotiators and politicians about the supposed advantages of an IPR regime for Vanuatu.

In regard to this last point, there was a clear belief on the part of a number of politicians that IPR regimes could protect Vanuatu traditional knowledge and natural resources, such as the Pentecost land dive,<sup>109</sup> kava, *kastom*<sup>110</sup> names and local varieties of yams.<sup>111</sup>

However, in fact none of these can be protected by IPR, which are limited to new and original creations and inventions, plant variety rights that are new, distinct, uniform and stable, and artificially created state of affairs. Although there is potential for geographical indications of origin to be used to protect certain aspects of traditional knowledge, there is a real concern that establishing such a regime is a very expensive undertaking, requiring technical and administrative capacity that Pacific Island countries currently lack.<sup>112</sup>

### State responsibilities and policy implications

The State has a responsibility to take into account human rights implications while negotiating trade agreements. The example of Vanuatu demonstrates the challenges of addressing the human rights issues related to IPRs, especially given the limited capacity of negotiators to engage with the technicalities involved in global IPR regimes, and the organisational constraints in consulting with all the different sectors affected (for example, agriculture, health and education).

In light of the above and based on global evidence, the following observations regarding IPR and human rights can help ensure that human rights issues are better considered in future trade negotiations:

**IPR potentially impact negatively upon the realisation of a range of human rights**, primarily the rights to health, education and food.<sup>113</sup> For example, IPR regimes limit access to digital and printed materials, such as textbooks that are essential for ensuring the right to education; they limit access to pharmaceuticals and other new medical technology that are essential for the right to health, and also limit access to plant genetic resources such as seeds, and new agricultural technology that are essential for the right to food. These rights are also interrelated and interdependent. The exact nature of their impact depends a lot upon context, and is likely to vary over time. For example, Pacific Island Countries like any other countries can negotiate with their trade partners for not having intellectual property chapters as requisite, included in trade agreements.

*A 2005 general comment by the UN Committee on Economic, Social and Cultural Rights stipulates e.g. that states should ensure that their legal or other regimes for the protection of the moral and material interests resulting from one's scientific, literary or artistic productions constitute no impediment to their ability to comply with their core obligations in relation to the rights of food, health and education, as well as to take part in cultural life and to enjoy the benefits of scientific progress and its applications, or any other right enshrined in the International Covenant on Economic, Social and Cultural Rights. The private interests of authors should not be unduly favoured and the public interest in enjoying broad access to their productions should be given due consideration. Ultimately intellectual property is a social product and has a social function<sup>114</sup>.*

The TRIPS Agreement contains important flexibilities (see Text Box 3) that can be utilised to mitigate the potential negative impacts of IPRs on a range of human rights, such as the rights to health and to food. Given the potential needs for Pacific Island Countries to access new medicines in the future to combat the rapidly increasing incidence of non-communicable diseases in the region,<sup>115</sup> as well as communicable diseases such as malaria, TB and HIV, **it is crucial that all these flexibilities are incorporated into domestic legislation.**<sup>116</sup>

Many trade agreements contain TRIPS Plus provisions that curtail the use of flexibilities in TRIPS and heighten the likelihood of negative impacts on the range of human rights discussed. For example, this may involve obligations to join other conventions like the Patents Co-operation Treaty,<sup>117</sup> the WIPO Copyright Treaties and UPOV, forgoing transition periods, and including provisions for data exclusivity and linkage. Pacific Island Countries should consider seeking independent expert help in trade agreement negotiations to make sure that they do not unduly agree to provisions that go beyond TRIPS requirements and disproportionately undermine their policy space.<sup>118</sup>

### Text Box 3: TRIPS Flexibilities

**Compulsory licences:** These are mechanisms used by public authorities to authorize use of a patent-protected invention by the government or third parties without the consent of the patent-holder. Patent-holders are to receive adequate compensation, usually in the form of a royalty. As clarified by the Doha Declaration, WTO Members are free to determine the grounds upon which compulsory licences may be granted. Practice shows that they may be issued on various grounds of general interest, such as public health, and are a common feature of patent law in both developed and developing countries. A government use order is a specific type of compulsory licence usually issued in the form of an order by a competent administrative or judicial authority, authorizing a government or a party acting on behalf of the government to exploit a patent provided that such exploitation is in the interests of the country in question.

**Parallel imports:** Companies often charge lower prices for a medicine in one country than in another, taking into account a range of market factors. This means that a country with limited resources can sometimes afford more of a patented medicine by purchasing it abroad at a lower price and importing it, rather than buying it directly in its domestic market at the higher price. Many countries' patent laws determine that once a patent owner sells its goods in any country, it has no right to control the resale of those goods (so called "regime of international exhaustion"). In legal terms, the patent owner has "exhausted" its property rights in the product actually sold – it maintains the exclusive right to manufacture the product, but it cannot use its intellectual property rights to prevent resale of those units it sells. An intermediary could thus buy a patented medicine in one country at the lower price set by the company and then resell the medicine in another country at a price that is higher but still undercuts what the manufacturer is charging for its patented medicine in that country. This is called "parallel importing".

**Bolar provision/regular exception:** This permits the use of a patented invention without authorization from the patent owner in order to obtain marketing approval of a generic product before the patent expires. This allows a generic product to enter the market more quickly after patent expiry, which in turn facilitates access to cheaper medicines.

**Exemptions for least developed countries:** In November 2005, before the WTO Hong Kong Ministerial Conference, the WTO TRIPS Council extended the transition period for least developed countries from mandatory compliance with the TRIPS Agreement other than the provisions providing for non-discriminatory treatment, until July 2013. With specific reference to pharmaceutical products, Paragraph 7 of the Doha Declaration, as implemented by a TRIPS Council Decision of June 2002, exempts least developed countries from having to grant patents and from providing for the protection of undisclosed information until 1 January 2016. These transition periods are subject to further extension upon duly motivated request, Article 66.1 TRIPS Agreement.

UNDP, UNAIDS, WHO Policy Brief: Using TRIPS Flexibilities to improve access to HIV Treatment:

[http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2049\\_PolicyBrief\\_TRIPS\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2049_PolicyBrief_TRIPS_en.pdf)

One reason some countries consider signing up to global IPR systems is to promote overall socio-economic development by supporting local industries. However, empirical evidence suggests that from an economic perspective, less developed countries are "most likely to lose" from implementing TRIPS.<sup>119</sup> For example, introducing global IPR means that locals must pay to access works protected by foreign authors, and these are likely to be far more numerous than foreigners paying to use works by Pacific islanders. Although a few individuals may benefit from intellectual property laws, **in general Pacific Island Countries are net importers of intellectual property and introducing new IPR regimes will therefore result in increased costs to individuals and governments**

Another reason some countries look favourably upon IPR provisions is because of a misguided belief that they can be used to protect traditional knowledge (“TK”). However, **TK cannot be adequately protected by current IPR systems.**<sup>120</sup> Although there have been treaty negotiations to develop a treaty that would do this for over a decade, there is no current international system for the protection of TK<sup>121</sup>, or one likely in the immediate future.<sup>122</sup> Any reference to the protection of TK in a trade agreement is highly likely to be merely aspirational and non-binding, and should not be seen as a worthwhile trade-off for agreeing to high IPR standards. In some situations, IPR systems may prejudice the protection of TK. For example, in 2013 Air Pacific lodged a trademark application in Fiji for 15 marks that were based on traditional *masi* designs, raising public concern that Fijian’s traditional rights to create such artwork may be in jeopardy.<sup>123</sup> To avoid such problems arising, it is essential that any national IPR laws that are agreed to as a result of trade agreements are drafted having regard to the local conditions, including the cultural context, **rather than relying only on model laws.**<sup>124</sup>

**IPR regimes are expensive and require technical capacity that are currently not well developed in Pacific Island Countries.** These costs, together with their cumulative impact upon a variety of human rights through the rents they render payable to developed countries for access to technology and knowledge, are likely to outweigh any benefits from filing fees.

When IPRs are required to be introduced domestically, breaches should ordinarily be treated as civil cases and **not as giving rise to criminal offences.** The TRIPS Agreement<sup>125</sup> only requires countries to provide criminal offences for “wilful trademark counterfeiting or copyright piracy on a commercial scale.”<sup>126</sup> Pacific Island criminal justice systems are all currently under strain and would likely require extra capacity to effectively enforce IPR violations or run the risk of seeing limited resources diverted to enforce such cases.

It is in the interest of developing countries that are making an informed decision to introduce IPRs through trade agreements to at least negotiate for **long transition periods.** Negotiators should also make sure that there is a commitment by the trade partners to providing technical support to building a locally based IPR system that is deliberately tailored to the local context and equitable to all parties. This will require long-term commitment, and is not the type of support usually provided<sup>127</sup>.



## 5. Concluding observations and recommendations

This section presents concluding observations about the human rights issues associated with the negotiation and implementation of trade agreements in Pacific Island Countries and provides six recommendations for consideration by policy makers.

### ***Observation 1: Transversal human rights issues***

One of the main points to take away from this report is that trade agreements have wide-ranging impacts in different sectors of the economy and thus have the potential to affect a broad spectrum of human rights, including the rights to health and to food. In some cases, the human rights impacts can be positive—for example, where new jobs and economic opportunities assist in the realisation of the right to work and the right to an adequate standard of living. On the other hand, there can be corresponding negative impacts on human rights as structural reforms result in job losses or business closures in less competitive sectors.

As is pointed out in the case studies above, the economic benefits brought by trade liberalisation may not be evenly distributed across and within countries; there are likely to be both winners and losers. As those who are the “losers” are likely to be the more vulnerable and least able to adapt to structural reforms, the State must take steps to mitigate the negative impacts of trade reform on domestic workers and communities. Its focus on marginalized groups and their empowerment is one of the added value of a human rights based approach.

The State should also pay attention to potential negative impacts on its own revenues and capacity. For example, a number of the key measures in trade and investment agreements involve the reduction of tariffs and duties; and other provisions may require the establishment of new government institutions and compliance efforts. These can reduce the government’s ability to provide programmes and services that give effect to human rights. Therefore, the overall impact of trade and investment agreements on government capacity needs to be monitored, and governments need to be careful that they maintain the ability to fund and deliver upon their human rights obligations.

This raises a wider concern about how trade and investment agreements can constrain the policy space for the governments of Pacific Island Countries. Once an agreement is signed and ratified, it is difficult for a future government to undo the agreement and pursue an alternative course of economic development. Future policy decisions may contravene commitments made in international trade agreements, and be subject to challenge or even lead to trade sanctions being imposed by other parties to those agreements.

Pacific Island Countries should carefully weigh the potential benefits and costs of new trade agreements, including regarding their impact on economic, social and cultural rights. In some cases, it may be more advantageous for Pacific Island Countries to pursue trade reforms on a unilateral basis. They should also exercise caution when making new commitments, particularly those that have implications for the realisation of human rights. Government negotiators should be as clear and forceful as possible about their intention to maintain the policy space required to fulfill their human rights obligations, now and in the future. In this regard, this report highlights concerns about the relative capacity and negotiating power of governments in Pacific Island Countries to negotiate appropriate and advantageous terms. Further efforts are needed to strengthen the capacity of governments to determine trade policy priorities and should include efforts intended to help Pacific Island governments use trade policy to protect and realise human rights.

## ***Observation 2: Human rights can improve the outcomes of trade liberalisation***

This report is based on the premise that greater attention to human rights in the negotiation and implementation of trade and investment agreements can improve the substantive outcomes—particularly for the people who are most likely to be affected by them in a negative manner. In other words, the human rights framework provides a people-centered and outcome-oriented focus to trade discussions. Rather than just focusing on aggregate economic outcomes, the human rights framework makes it clear that there are additional issues to consider relating to the potential impacts on the people and governments involved.

As illustrated in the case studies above, the potential human rights impacts require taking into account the “ripple effects” of trade agreements on more vulnerable segments of the population and non-economic spheres (e.g. health and education) that might not otherwise be considered. Consideration of these broader impacts of trade on human rights entails consultation with a broader range of stakeholders—including individuals, communities, civil society organizations, and other government departments—when developing trade policy and negotiating agreements. In this regard, a human rights focus can strengthen the democratic processes around key economic issues, as well as improving policy coherence between trade, development and human rights commitments. They do so by providing an internationally legitimated platform from which broader social welfare considerations can be articulated.

Broadly speaking, the human rights based approach to trade and investment has many benefits for Pacific Island Countries, especially as it:

- Respects the principle of non-discrimination.
- Promotes participation of all, including marginalized groups
- Monitors trade processes and outcomes through human rights impact assessments.
- Ensures that progressive trade liberalisation promotes the progressive realization of human rights.
- Promotes the accountability of State actors.
- Promotes ethical and fair business.
- Encourages international cooperation and assistance to ensure that poorer countries also benefit from trade.<sup>128</sup>

## ***Recommendations***

### **Recommendation 1: Increase access to information and enhance capacity for trade policy development and negotiation of trade agreements**

It is widely acknowledged that trade officials and negotiators are “often unaware of the obligations to which human rights give rise to, or feel that the nature of those obligations is vague and unclear.”<sup>129</sup> Nonetheless, governments have obligations to ensure that commitments made in trade agreements help to realise and do not undermine human rights. This points to an immediate need to strengthen the capacity for trade officials and negotiators to understand human rights and to integrate rights-based assessments and measures into agreements. Conversely, it is important for human rights officials and national human rights institutions to improve their capacity to engage on trade issues.

It is also important for all policy-makers interested in the relationship between trade and human rights to have better information about economic trends and human rights issues. Moreover, given the complex and contested assumptions about trade, human rights assessments of trade measures need to include a detailed causal-chain analysis of the links between the specific measures and their economic effects, followed by an analysis of the human rights impacts of the changes in economic activity on affected stakeholders. Such causal-chain analyses require a better foundation of data to support

Informed debate and decision-making than exists at present. Therefore, capacity-building measures should also focus on generating and monitoring appropriate trade and human rights indicators on an on-going basis.

There are resources available for capacity-building for government officials and policy-makers in Pacific Island Countries. Given the similar issues that these countries are facing, capacity-building efforts can likely be organised in a cost-effective manner on a regional basis.

### **Recommendation 2: Take into account the impacts before entering into binding trade agreements**

A considered approach to international trade negotiations -taking into account the impacts both positive and negative, both actual and potential would help Pacific governments maintain policy space that may be useful for the realisation of human rights.

This recommendation does not imply that binding trade agreements should not be considered or entered into, but rather urges governments and policy-makers to question all assumptions pertaining to the benefits and detriments of these agreements.

### **Recommendation 3: Conduct impact assessments of trade agreements**

The governments of Pacific Island Countries are strongly encouraged to consider opportunities for conducting Human Rights Impact Assessments (HRIAs) for new trade and investment agreements as a means to fulfill their international human rights obligations while pursuing their trade and development goals. HRIAs are important tools that can help identify the potential and actual human rights impacts through a participatory assessment process, and help guide actions to minimise the negative impacts and to maximise positive impacts. Moreover, human rights principles can be integrated into other assessment processes in Pacific Island Countries—either macro-level assessments related to trade, development, health, etc. or micro-level assessments of the social and environmental impacts of new business operations that are supported by trade and investment measures.

International funding and technical assistance is available to assist Pacific Island Countries to undertake HRIAs, governments are encouraged to take advantage of these opportunities to strengthen their policy-making process.

### **Recommendation 4: Ensure public participation, consultation and transparency about trade negotiations**

Active, free and meaningful participation is a human rights principle and at the heart of a human rights-based approach to trade. People are entitled to participate in decisions that directly affect them. Participation should be ensured at all stages of trade policy-making, implementation and design. This will require greater consultation and transparency about the process of negotiating and implementing trade agreements.

Active, free and meaningful participation, including the empowerment of marginalized groups, will not be possible without adequate and sustainable financial and technical support. Participation, consultation and transparency require time, which should be understood as a good thing—as it reinforces informed decision-making and social acceptance of important policies. Affected stakeholders can help policy-makers anticipate potential impacts and/or adopt effective measures to address actual impacts when they occur. This also helps strengthen the inter-connections with human rights, reinforce the democratic process and enhance trade outcomes.

**Recommendation 5: Strengthen the adoption and implementation of international human rights treaties relevant to trade agreements**

In order to provide a stronger legal and institutional foundation for the links between human rights and trade, Pacific Island Countries should ratify and continue to implement the international human rights treaties. In particular, the International Covenant on Economic, Social and Cultural Rights provides for the protection, respect and fulfilment of many of the rights that are potentially affected by trade reform.

**Recommendation 6: Exercise maximum caution in undertaking intellectual property commitments**

Given the implications for a number of human rights, the rights to health and to food in particular, policy-makers should exercise extreme caution when considering the inclusion of an intellectual property chapter when entering into new regional free trade agreements, such as a European EPA or Pacer Plus. When entering into existing multilateral free trade agreements, such as joining the WTO, policy-makers should ensure that only the minimum TRIPS standards are agreed to. Further, when implementing any of these intellectual property regimes into domestic law, all the TRIPS flexibilities should be fully incorporated. This recommendation is based on the assessment that the negative human rights impacts of intellectual property regimes may outweigh any potential advantages, in both the short to medium term, given the present state of development of Pacific Island Countries.

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## Endnotes

- 1 For more information, see OHCHR website:
- 2 Much of the information used in this section is drawn from Morgan (forthcoming).
- 3 Grynberg 2006:20.
- 4 Gibson 2006
- 5 World Bank 2006.
- 6 Ibid.
- 7 World Bank 2009
- 8 Armstrong and Read 2002:72
- 9 Hezel 2012:11
- 10 Note that Samoa also has locally significant manufacturing exports. A single firm relocated a labour-intensive component of Australian car manufacturing to the island state in the early 1990s. The car part factory remains the largest private sector employer in Samoa. A number of Pacific countries also have very small-scale local manufacturing and food-processing sectors.
- 11 Allen, Bourke and McGregor 2009:306
- 12 Monge Roffarello et al. 2005:57
- 13 IMF 2011:7.
- 14 McGregor, Gonemaituba and Stice 2009:10
- 15 Hezel 2012:13.
- 16 Ibid.
- 17 Feeny 2010:144
- 18 Baldacchino and Bertram 2009:151
- 19 Hezel 2012:15.
- 20 Brown and Connell 2006.
- 21 Hezel 2012:22.
- 22 Taken together, migration and aid form defining features of some Pacific economies. Bertram and Watters suggested these economies can be understood by the effects of migration, remittances, aid and bureaucracy (the so called MIRAB model). Under the MIRAB model, island states receive “rents” from the international community in the form of aid and remittances. Some argue that Pacific Island Countries should be unapologetic about receiving these rents, as they can often be seen as a “receipt from an invisible export of geostrategic services.” Indeed, some Pacific Island Countries have formalised arrangements with foreign powers that have geostrategic interests in the region. The Federated States of Micronesia, the Marshall Islands and Palau all have compacts of free association with the United States. In return for ceding some aspects of national sovereignty (allowing the US military access to their territories) these states receive significant amounts of aid and have access to US domestic services including postal and aviation services, weather forecasting and disaster response and recovery.
- 23 Bamman 2007
- 24 Feeny 2010:139
- 25 Hezel 2012:29
- 26 Tonga is the only Pacific Island Country that was not at some time a colony of foreign powers.
- 27 Grynberg 2006
- 28 UNESCAP 1997:1
- 29 As then multilateral trade policy advisor at the South Pacific Forum Secretariat, Roman Grynberg, argued: “the question the region must now pose is how to respond to its increased marginalisation in the global economy ... the most obvious response to globalisation in virtually every region of the world has been regionalism” (Grynberg 1998:15). This view was echoed by the General Secretary of the South Pacific Forum, Noel Levi, who explained in 1999 that “we feel that the free trade area option is the best way for our members to deal with the many issues being raised by globalization.”
- 30 WTO 2001.
- 31 Institute for International Trade 2008:86

- 32 ICESCR, article 2(1).
- 33 See Guiding Principles 8 and 9 of the UN Guiding Principles on Business and Human Rights.
- 34 See UN Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements, Section I.
- 35 Ibid., para. 2.
- 36 See Guiding Principles 1 and 3 of the UN Guiding Principle on Business and Human Rights.
- 37 See Commentary 1.2 for Guiding Principle 1. The relevant human rights are protected by article 25 of the International Covenant on Civil and Political Rights.
- 38 See Guiding Principle 11 and its Commentary.
- 39 Ibid.
- 40 Initiative 12.5 of the Pacific Plan supports the “appropriate ratification and implementation of international and regional human rights conventions, covenants and agreements, and support for reporting and other requirements.” For a summary of what treaties have been signed by Pacific Island Countries see <http://www.paclii.org/pits/>.
- 41 While access to telecommunications or Internet are currently not internationally-recognized human rights, they facilitate access to information and services and can support the realization of a range of human rights.
- 42 Narsey (2004:98) found that if a free trade agreement is concluded with Australia and New Zealand “the costs to the Pacific island countries will be substantial, as the bulk of their domestic manufacturing plants will face closure”.
- 43 Winters 2006.
- 44 De Schutter 2009, cited in Harrison 2010:5
- 45 Bandyopadhyay and Younas 2009
- 46 Silva S, Lendle A. 2013. *Managing Fiscal Adjustment Costs of Regional Trading Arrangements: The Case of Small Island Pacific States*. Trade Hot Topics, Issue 96. Commonwealth Secretariat, London.
- 47 See Morgan and Penjueli 2010:215, Kauffman 2009:216
- 48 A 2008 report completed by the Institute for International Trade, based at Adelaide University, found: ‘The expected gains from trade liberalisation may not occur or not be significant in a few smaller PIC economies. In some PICs, distance, market-size and limited resources are very likely to be a bigger barrier to market efficiency than regulatory impediments so that no amount of ‘liberalisation’ would lead to significant (or even noticeable) improvements in trade performance or growth’.
- 49 Pacific Institute for Public Policy 2009:2, see also Girvan 2007
- 50 Cagé J, Gadenne L. 2012. *The Fiscal Costs of Trade Liberalisation*. Working Paper, Harvard University and Paris School of Economics.
- 51 See: International Monetary Fund. 2005. Dealing with the Revenue Consequences of Trade Reform. Background Paper for Review of Fund Work on Trade. International Monetary Fund, Washington. See also: Zafar, A. 2005. Revenue and the fiscal impact of trade liberalisation: The case of Niger. (World Bank Policy Research Working Paper). World Bank, Washington.
- 52 Cagé J, Gadenne L. 2012. *The Fiscal Costs of Trade Liberalisation*. Working Paper, Harvard University and Paris School of Economics.
- 53 Baunsgaard and Keen 2005:1
- 54 Emran and Stiglitz 2005, Wagle 2011
- 55 A 2012 World Bank report found that increasing the excise rate on cigarettes by 50% in Samoa would raise \$1.6 million extra revenue per annum, while doing the same would raise \$1.45 million per annum in Tonga.
- 56 Note however that this case study draws on the existing literature and does not constitute substantive new data collection regarding tariff reductions and fiscal policy reform in Tonga.
- 57 Bound tariff rates represent the *maximum* rate of tariffs that might be applied to goods imported from other WTO members.
- 58 Wallis 2010.
- 59 International Monetary Fund 2012:10
- 60 World Bank 2010:73
- 61 World Bank 2010:73
- 62 See for example: Narsey 2010, Institute for International Trade 2008, Nathan Associates 2007, Watergall Consulting 2007, Scollay 2002, Filmer and Lawson 1999.
- 63 Watergall Consulting 2007:23

- 64 See Article 45 of the agreement
- 65 United Nations General Assembly. 2011. *Report of the Independent Expert on the question of human rights and extreme poverty, Magdalena Sepulveda Carmona. A/HRC/17/34*. United Nations, New York.
- 66 Thow et al. 2010:556.
- 67 See: Thow AM, Swinburn B, Colagiuri S, Diligolevu M, Qusted C, Vivili P, Leeder, S. 2010. 'Trade and food policy: case studies from three Pacific Island Countries'. pp. 556-64. *Food Policy*. Volume 35 (2010). See also: Thow, AM. Heywood, P. Schultz, J. Qusted, C. Jan, S. Colagiuri, S. 2011. 'Trade and the Nutrition Transition: Strengthening Policy for Health in the Pacific', pp. 18-42. *Ecology of Food and Nutrition*. Routledge. Taylor and Francis Group.
- 68 Thow et al. 2011
- 69 Evans et al 2001
- 70 Mutton flaps refer to cheap 'off-cuts' – removed to access better portions of meat – that are of low quality and high fat content. Often these cuts are not sold in wealthy countries, but are exported to low-income states.
- 71 Thow et al. 2010
- 72 NZAID and Ministry of Health 2007.
- 73 Ibid.
- 74 Thow et al 2010:558
- 75 Ibid.
- 76 WTO 2012
- 77 See Evans et al. 2001, Lawrence and Swinburne 2004
- 78 Note that the government of Ghana has introduced import controls for fatty meats (based on percentage of fat content) that are 'designed to protect public health and to be acceptable internationally from a trade perspective' (WHO 2007:12). Such measures might be considered in Pacific contexts.
- 79 See Thow et al 2010, Thow et al 2011
- 80 Much of this information is drawn from publications arising from the *Pacific Obesity Prevention in Communities* project. See Thow et al. 2011, 2011a, 2010, 2009.
- 81 Tongan Ministry of Revenue and Customs. 2013. *New Duty and Excise Tax Rates to Encourage Healthy Living*. Government of Tonga, Nuku'alofa.
- 82 Thow et al 2011
- 83 Clarke and McKenzie 2007:28.
- 84 Agence Sanitaire et Sociale de la Nouvelle Calédonie <http://www.ass.nc/>
- 85 Clarke and McKenzie 2007:12
- 86 Pacific countries *not* currently members of the WTO include: Cook Islands, Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, Republic of the Marshall Islands and Tuvalu.
- 87 Thow et al. 2011:36.
- 88 Government of Fiji. 2012. *'Empowered Fijians and a Modern Economy': 2012 National Budget Address*. Government of Fiji, Suva. Available at: <http://www.fiji.gov.fj/getattachment/d680b063-4689-41d2-b51d-e0c3f3a6f243/Download-2012-Budget-Address-%28pdf%29.aspx>
- 89 Thow and Priyadarshi 2013.
- 90 See: Morgan W. 2013 'Growing Island Exports: High Value Crops and the Future of Agriculture in the Pacific', *Asia and the Pacific Policy Studies Working Paper Series 05/2013*. Australian National University, Canberra.
- 91 See Tzen Wong, 'Intellectual Property Through the Lens of Human Development' in Wong, T and Dutfield, G (eds) *Intellectual Property and Human Development*, 2011, Cambridge University Press, p.1.
- 92 The others were Tonga, Nepal and Cambodia. For example, Vanuatu used the least number of years as a transition period, agreed to join UPOV when Nepal and Tonga managed to avoid this, agreed to linkage during the transition period when Nepal avoided this, indicated 'readiness to join' the Patent Cooperation Treaty which Nepal and Cambodia avoided, and the administrative resource commitments are more onerous than any of the other countries in that they specify the number of officials to be trained, require the establishment of an institution and recruitment of staff, and also the obtaining of facilities and equipment.
- 93 Such as the ability to delay introduction of IPR legislation through transition periods.

- 94 See Miranda Forsyth and Sue Farran, 'Intellectual Property and Food Security in Least Developed Countries' (2013) 34(3) *Third World Quarterly* pp. 516-533
- 95 See Robinson, Daniel 'Sui Generis plant variety protection systems: liability rules and non-UPOV systems of protection' *Journal of Intellectual Property Law and Practice* (2008) 3 (10): 659-665; Dutfield, Graham 'Food, Biological Diversity and Intellectual Property: The Role of the International Union for the Protection of New Varieties of Plants (UPOV),' Quaker United Nations Office, Intellectual Property issue Paper Number 9, (2011) available at [http://www.quno.org/geneva/pdf/economic/Issues/UPOV%20study%20by%20QUNO\\_English.pdf](http://www.quno.org/geneva/pdf/economic/Issues/UPOV%20study%20by%20QUNO_English.pdf)
- 96 C. Chiarolla, *Intellectual Property, Agriculture and Global Food Security: The Privatization of Crop Diversity*, UK: Cheltenham, Edward Elgar, 2011, p.75.
- 97 Olivier de Schutter, Special Rapporteur on the Right to Food, *Seed policies and the right to food: enhancing agrobiodiversity and encouraging innovation*, A/64/170, <http://www.farmersrights.org/pdf/RighttoFood-N0942473.pdf>, 15
- 98 See D Shabalala "Towards a Digital Agenda for Developing Countries" South Centre 2007. Available at <http://www.southcentre.org/publications/researchpapers/ResearchPapers13.pdf>.
- 99 See further Armstrong, C and Jeremy de Beer et al (eds), *Access to Knowledge in Africa: the Role of Copyright*, 2010, Claremont, UCT Press, [http://www.aca2k.org/attachments/281\\_ACA2K-2010-Access%20to%20knowledge%20in%20Africa-s.pdf](http://www.aca2k.org/attachments/281_ACA2K-2010-Access%20to%20knowledge%20in%20Africa-s.pdf), 2.
- 100 Commission on Intellectual Property Rights, *Integrating Intellectual Property Rights and Development Policy*, 2002, [http://www.iprcommission.org/graphic/documents/final\\_report.htm](http://www.iprcommission.org/graphic/documents/final_report.htm), 101
- 101 Although protecting copyright is also argued to be a human right under section 15 of the ICESCR, it has been interpreted as being concerned primarily with the moral right to be attributed as the author of a work, rather than the right to the economic rights associated with copyright. See "CESCR General Comment 17: The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author". UN Economic and Social Council. 12 January 2006. paragraph 12. Available at [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/03902145edbbe797c125711500584ea8/\\$FILE/G0640060.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/03902145edbbe797c125711500584ea8/$FILE/G0640060.pdf).
- 102 See Miranda Forsyth, 'The Developmental Ramifications of Vanuatu's Intellectual Property Commitments on Joining the World Trade Organisation' *Pacific Studies*, 2013 Special Edition (Forthcoming). See also Meads, Sarah, 'Trade, Medicines and Human Rights: protecting Access to Medicines in Fiji and the Pacific' (2008) Masters Thesis, Victoria University of Wellington,70.
- 103 Rwanda, Cambodia and Uganda have all established pharmaceutical companies, exploiting their exemption from international patent rules as part of the LDC status. See [http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2258\\_techbrief\\_TRIPS-access-medicines-LDC\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2258_techbrief_TRIPS-access-medicines-LDC_en.pdf)
- 104 Vanuatu will graduate from the list in 2015. See: United Nations E/RES/2012/32, available at [http://www.un.org/en/development/desa/policy/cdp/ldc2/e2012\\_32.pdf](http://www.un.org/en/development/desa/policy/cdp/ldc2/e2012_32.pdf)
- 105 See <http://pacificinstitute.anu.edu.au/outrigger/2013/06/17/second-chance-for-pacific-island-countries-to-avoid-the-intellectual-property-straightjacket/>; <http://www.ip-watch.org/weblog/wp-content/uploads/2013/06/TRIPS-Council-Decision-on-LCD-Extension-June-2013.pdf>.
- 106 See Deere, Carolyn, *The Implementation Game: The TRIPS Agreement and the Global Politics of Intellectual Property Reform in Developing Countries*, Oxford University Press, 2009, 66-68.
- 107 See Blakeney, Michael and Getachew Mangistie, 'Intellectual Property Policy Formation in LDCs in Sub-Saharan Africa' *African Journal of International and Comparative Law* 19(1), 2011, 66-98, 68. In its accession package Vanuatu agreed to establishment of Intellectual Property office, recruitment of personnel, obtaining facilities and equipment, development of manuals and operating procedures, training of at least 15 officials, customs officers and private sector people as well as educators in TRIPs issues.
- 108 See Grynberg and Joy 2000, p160. See also Wallis p270
- 109 Radio Australia, 'Vanuatu Minister warns against delaying WTO membership', *Pacific Beat*, 17 August 2011.
- 110 *Kastom* refers to customary, traditional, and related to ancestors and the magic in Vanuatu
- 111 See Joshua, J. 2011. Patents Amendment Bill Isolated from Vanuatu's Accession to WTO: Kaltongga. *Vanuatu Daily Post*, 5 December 2011. <http://www.dailypost.vu/content/patents-amendment-bill-isolated-vanuatu%E2%80%99s-accession-wto-kaltongga>
- 112 Michael Handler and Robert Burrell, 'GI Blues: The Global Disagreement Over Geographical Indications' in Kathy Bowrey et al (eds), *Emerging Challenges in Intellectual property*, Oxford University Press, 2011, pp126-144.
- 113 Wong, 'Intellectual property Through the Lens of Human Development' in Wong, T and Dutfield, G (eds) *Intellectual Property and Human Development*, 2011, Cambridge University Press, p.1.

- 114 See CESCR General Comment 17(2005), para. 35. See also See Committee on Economic, Social and Cultural Rights, (2001), "Human Rights and Intellectual Property", Statement by the Committee on Economic, Social and Cultural Rights, 29 November 2001, E/C.12/2001/15.
- 115 The Forum Leaders Communique 2011 highlighted the current threat of non-communicable diseases to the region, observing that it has reached epidemic proportions in Pacific Island countries and territories and has become a "human, social and economic crisis" requiring an urgent and comprehensive response. Pacific Islands Forum Secretariat, *Forum Communique: Forty-Second Pacific Islands Forum Auckland, New Zealand, 7-8 September 2011* <http://www.forumsec.org/resources/uploads/attachments/documents/2011%20Forum%20Communique%20FINAL.pdf>, Annex 2.
- 116 See Correa, Carlos, *Intellectual Property Rights, the WTO and Developing Countries: The TRIPS Agreement and Policy Options*, Penang, Zed Books Ltd, 2000, Sisule Musungu and Cecilia Oh, *The Use of Flexibilities in TRIPS by Developing Countries: Can they promote Access to Medicines?* Available at <http://www.who.int/intellectualproperty/studies/TRIPSFLEXI.pdf>; UNDP, 'Enabling Effective Responses: HIV in Pacific Island Countries,' [http://www.undppc.org/fj/\\_resources/article/files/LowRes\\_3011.pdf](http://www.undppc.org/fj/_resources/article/files/LowRes_3011.pdf).
- 117 See WHO, Regional Office for the Western Pacific, *Informal Intercountry Consultation on Public health and Intellectual Property Rights for Selected Pacific Island Countries*, Nadi, Fiji, 25-27 March 2009, 16. This report notes that PNG joined the PCT in 2003 and according to the statistics for that year, 81% of patent applications were PCT applications. See also Drahos, *The Global Governance of Knowledge: Patent Offices and their Clients*, Cambridge: Cambridge University Press, 270-272.
- 118 For example, the Public Interest Intellectual Property Advisors, see <http://www.piipa.org/>
- 119 Lall, Sanjay "Indicators of the Relative Importance of IPRs in Developing Countries" (2003) 32 *Research Policy* 1657-1680, 1663.
- 120 There is a voluminous literature on this issue. See for example Christoph Antons (ed) *Traditional Knowledge, Traditional Cultural Expressions and Intellectual Property Law in the Asia-Pacific Region* (2009, Kluwer Law International). See also Miranda Forsyth, "The Traditional Knowledge Movement in the Pacific Island Countries: the Challenge of Localism" (2011) 29(3) *Prometheus* 269-286; Miranda Forsyth, "Lifting the lid on "the community": who has the right to control access to traditional knowledge and expressions of culture?" (2012) 19 *International Journal of Cultural Property* 1-31.
- 121 For more information on this topic please see Miranda Forsyth, "How can Traditional Knowledge Best be Regulated? Comparing a Proprietary Rights Approach with a Regulatory Toolbox Approach" (2013) 25(1) *The Contemporary Pacific* 1-31.
- 122 <http://www.wipo.int/tk/en/igc/>
- 123 See Rawali, 'Masi Design Concern' *The Fiji Times Online*, 10 February 2013, available at <http://www.fijitimes.com/story.aspx?id=224837>. Opposition proceedings were initiated against the application and are continuing as at October 2013.
- 124 For example, Vanuatu has made some provisions for dealing with indigenous knowledge in its copyright, patent and trademark laws.
- 125 See note 4 above
- 126 Article 61, TRIPS.
- 127 Wallis argues that "many developed countries are prepared to provide assistance only on an *ad hoc* basis, and without accepting legal obligations to contribute. In addition, developed countries tend to construct technical assistance programmes that pursue their own interests." Wallis, Joanne, "'Friendly islands" in an Unfriendly system: Examining the process of Tonga's WTO accession' *Asia Pacific Viewpoint* 51(3), 2010, 262-277, 273.
- 128 For more information, see OHCHR website on "Globalization – Trade and Investment": <http://www.ohchr.org/EN/Issues/Globalization/Pages/GlobalizationIndex.aspx>
- 129 See Morgan et al 2010:3

## Annex: list of select organisations susceptible to provide technical assistance in relation to trade and human rights.

| Organisation  | Description (as provided)   | Contact   |
|---|---|---|
| Asia-Pacific Economic Cooperation                           | <p>Asia-Pacific Economic Cooperation, or APEC, is the premier forum for facilitating economic growth, cooperation, trade and investment in the Asia-Pacific region.</p> <p>APEC is an intergovernmental grouping that operates on the basis of non-binding commitments, open dialogue and equal respect for the views of all participants. Unlike the WTO or other multilateral trade bodies, APEC has no treaty obligations required of its participants. Decisions made within APEC are reached by consensus and commitments are undertaken on a voluntary basis.</p> | <p>Website : <a href="http://www.apec2013">http://www.apec2013</a><br/>           Email: <a href="mailto:helpdesk@apec2013.or.id">helpdesk@apec2013.or.id</a></p> |
| Bilaterals.org  | <p>Web base resource.</p> <p>Bilaterals.org is a collective effort to share information and stimulate cooperation against bilateral trade and investment agreements that are opening countries to the deepest forms of penetration by transnational corporations.</p>   | <a href="http://bilaterals.org/">http://bilaterals.org/</a>   |
| Consumers International<br>(The global voice for consumers) | <p>Our vision is of a world where people can make informed choices on safe and sustainable goods and services and in which individual and collective Consumer Rights are secure and respected.</p>  | <p>Website : <a href="http://www.consumersinternational.org">http://www.consumersinternational.org</a></p>  |
| Human Rights Watch  | <p>Human Rights Watch is one of the world's leading independent organizations dedicated to defending and protecting human rights.</p>   | <p>Website : <a href="http://www.hrw.org">http://www.hrw.org</a></p>  |

| Organisation                                   | Description (as provided)  | Contact   |
|--|--|---|
| Independent Diplomat (ID)                      | <p>ID provides confidential advice and practical assistance in diplomatic strategy and technique to governments, political groups, international organisations and NGOs. We work to amplify the voices of those who have most at stake in diplomatic processes. Our work thus promotes greater inclusiveness in diplomacy, and contributes to more just and sustainable solutions to international problems and conflict.</p>  | <p>Website: <a href="http://www.independentdiplomat.org">http://www.independentdiplomat.org</a><br/>           Email: <a href="mailto:newyork@independentdiplomat.org">newyork@independentdiplomat.org</a><br/>           Address:<br/>           45 East 20th Street, 6th Floor<br/>           New York, NY 10003<br/>           USA<br/>           Tel: +1 212 594 8295<br/>           Fax: +1 212 594 8430</p> |
| INSouth: an Intellectual Network for the South | <p>INSouth embodies an understanding, from a South perspective, of the new and emerging issues in the international arena, and the challenges and opportunities they pose for the South. INSouth aims to serve as a reference point for the South for:</p> <ul style="list-style-type: none"> <li>• Analysis of existing development paradigms, imbalances in the current global system, and the limits they pose to the development and policy space of the South.</li> <li>• Alternative solutions that address the development needs and priorities of the South.</li> <li>• Promoting new forms of South-South and South-North cooperation.</li> </ul> | <p>Website: <a href="http://www.insouth.org">http://www.insouth.org</a></p>   |
| International Chamber of Commerce (ICC)        | <p>ICC makes cross border trading easier for businesses around the world by offering a wide range of indispensable products.</p>   | <p>Website: <a href="http://www.iccwbo.org">http://www.iccwbo.org</a><br/>           Email: <a href="mailto:icc@iccwbo.org">icc@iccwbo.org</a><br/>           Address:<br/>           33-43 avenue du Président Wilson<br/>           75116 Paris, France<br/>           Telephone: +33 (0) 1 49 53 28 28</p>   |
| Medecins Sans Frontieres (MSF)                 | <p>In 1999, in the wake of Médecins Sans Frontières (MSF) being awarded the Nobel Peace Prize, MSF launched the Access Campaign. Its purpose has been to push for access to, and the development of life-saving and life prolonging medicines, diagnostic tests and vaccines for patients in MSF programmes and beyond.</p>  | <p><a href="http://www.msfacecess.org/">http://www.msfacecess.org/</a></p>  |



| Organisation  | Description (as provided)  | Contact  |
|---|--|--|
| Pacific Network on Globalisation (PANG)             | <p>PANG works across the island countries of the Pacific Islands Forum Secretariat with a focus on Multi- and bilateral trade negotiations and agreements with specific attention to goods, services and investment and other issues of critical importance to the Pacific. PANG advocates for alternative to neo-liberal thinking. PANG has been one of the most outspoken Civil Society Organisations (CSOs) in the Pacific on free trade, economic reform policies, regional policy-making processes, and the agendas of multilateral and bilateral donors.</p> | <p><a href="http://pang.org.fj/">http://pang.org.fj/</a></p>   |
| Pacific Islands Forum Secretariat (PIFS)            | <p>Pacific Islands Trade and Invest aims to provide the region with high-quality export facilitation, investment and tourism promotion services. As part of the Pacific Islands Forum Secretariat, we focus on the development of export-capable businesses and the international promotion and support of exporters in Pacific island countries. Pacific Islands Trade and Invest contributes to the sustainable economic development of the Pacific island countries by creating opportunities for exporters, investors and stakeholders.</p>                    | <p>Website : <a href="http://www.forumsec.org">http://www.forumsec.org</a><br/> Office in Fiji<br/> The Secretary General<br/> Pacific Islands Forum Secretariat<br/> Private Mail Bag<br/> Suva, Fiji<br/> Telephone: +679 3312 600</p>         |
| Pacific Islands Private Sector Organisation (PIPSO) | <p>To be a pivotal partner in harnessing resources to bring about real growth and prosperity for the region.</p>   | <p>Website:<br/> <a href="http://www.pipso.org">http://www.pipso.org</a><br/> Office in Fiji<br/> Pacific Islands Private Sector Organisation<br/> Lot 3 Goodenough Street,<br/> Lynica House<br/> Middle Floor<br/> Telephone: +679 7736301</p> |

| Organisation   | Description (as provided)  | Contact  |
|--|--|--|
| South Centre   | <p>The South Centre undertakes research and analysis oriented on various international policy areas that are relevant to the protection and promotion of the development interests of developing countries.</p> <p>The South Centre helps the countries of the South to develop common points of view and to work together on major international development-related policy issues</p>                                  | <p>Website: <a href="http://www.southcentre.org">http://www.southcentre.org</a><br/>           Email: <a href="mailto:south@southcentre.org">south@southcentre.org</a><br/>           Contact:<br/>           Joseph R. Nanayakkara South Centre<br/>           17-19 chemin du Champ d'Anier<br/>           CH-1209 Petit Saconnex</p>  |
| The Group of 77 (G77)  | <p>The Group of 77 is the largest intergovernmental organization of developing countries in the United Nations, which provides the means for the countries of the South to articulate and promote their collective economic interests and enhance their joint negotiating capacity on all major international economic issues within the United Nations system, and promote South-South cooperation for development.</p> | <p>Website: <a href="http://www.g77.org">http://www.g77.org</a><br/>           Email: <a href="mailto:secretariat@g77.org">secretariat@g77.org</a><br/>           United Nations Headquarters, Room NL-2077<br/>           New York, N.Y. 10017, U.S.A.<br/>           United Nations Headquarters, Room NL-2077<br/>           New York, N.Y. 10017, U.S.A.<br/>           Phone: (212) 963-0192   (212) 963-3816</p> |
| The Office of the United Nations High Commissioner for Human Rights (OHCHR)                      | <p>The Office of the United Nations High Commissioner for Human Rights (OHCHR) represents the world's commitment to universal ideals of human dignity. We have a unique mandate from the international community to promote and protect all human rights.</p>  | <p>Website: <a href="http://www.ohchr.org">http://www.ohchr.org</a><br/>           Email: <a href="mailto:InfoDesk@ohchr.org">InfoDesk@ohchr.org</a><br/>           Office in Fiji<br/>           Address:<br/>           Kadavu house<br/>           Level 5<br/>           Telephone : +679 3310465</p>  |
| The Pacific Research Center for the Prevention of Obesity and Non-Communicable Diseases (C-POND) | <p>Creating the evidence, knowledge exchange and research capacity needed to reverse the Non-Communicable Disease (NCD) and obesity crisis in the Pacific islands.</p>   | <p>Website: <a href="http://www.fsm.ac.fj">http://www.fsm.ac.fj</a><br/>           Office in Fiji<br/>           Address:<br/>           Brown Street<br/>           Suva<br/>           Fiji Islands<br/>           Telephone:: +679 3311700<br/>           Fax: +679 3303469</p>   |

| Organisation   | Description (as provided)   | Contact  |
|--|---|--|
| The Organisation for Economic Co-operation and Development (OECD)                    | The OECD provides a forum in which governments can work together to share experiences and seek solutions to common problems. We work with governments to understand what drives economic, social and environmental change. We measure productivity and global flows of trade and investment. We analyse and compare data to predict future trends. We set international standards on a wide range of things, from agriculture and tax to the safety of chemicals. | Website: <a href="http://www.oecd.org">http://www.oecd.org</a><br>Address:<br>OECD<br>2, rue André Pascal<br>75775 Paris Cedex 16<br>France<br>Telephone: +33 1 45 24 82 00  |
| The Secretariat of the Pacific Community (SPC)/ Regional Rights Resource Team (RRRT) | RRRT is a training institution within SPC providing Human Rights training in the Pacific region, working to build a culture of human rights and assisting nation states to commit to, and observe, international human rights standards.  | <a href="http://www.rrrt.org/">http://www.rrrt.org/</a>  |
| The Third World Network (TWN)  | Third World Network (TWN) is an independent non-profit international network of organisations and individuals involved in issues relating to development, developing countries and North-South affairs.<br>TWN's objectives are to deepen the understanding of the development dilemmas and challenges facing developing countries and to contribute to policy changes in pursuit of just, equitable and ecologically sustainable development.                    | <a href="http://www.twinside.org.sg/">http://www.twinside.org.sg/</a>  |
| The World Trade Organization (WTO)   | The World Trade Organization (WTO) deals with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible.   | Website: <a href="http://www.wto.org">http://www.wto.org</a><br>Email: <a href="mailto:enquiries@wto.org">enquiries@wto.org</a><br>Address:<br>World Trade Organization<br>Centre William Rappard,<br>Rue de Lausanne 154,<br>CH-1211 Geneva 21,<br>Switzerland.<br>Telephone: +41 (0)22 739 51 11 |

| Organisation  | Description (as provided)   | Contact   |
|---|---|---|
| United Nations Conference on Trade and Development (UNCTAD) | It produces often-innovative analyses that form the basis for recommendations to economic policymakers. The aim is to help them take informed decisions and promote the macroeconomic policies best suited to ending global economic inequalities and to generating people-centred sustainable development.   | Website: <a href="http://unctad.org">http://unctad.org</a><br>Address:<br>United Nations Conference on Trade and Development<br>Palais des Nations, 8-14, Av. de la Paix,<br>1211 Geneva 10, Switzerland  |
| United Nations Development Programme (UNDP)                 | UNDP is one of the largest development organization in the world with a broad mandate. UNDP promotes inclusive and sustainable human development and works to reduce poverty in all its dimensions. We focus our efforts on making growth and trade benefit everyone in developing countries. UNDP also supports countries to integrate attention to HIV (and health) in national planning, gender equality and MDG efforts; promote enabling human rights and legislative environments to reduce vulnerability to HIV and strengthen governance and coordination of national responses; and strengthen implementation of complex, multilateral and multi-sectoral funds and programmes including those financed by the Global Fund to Fight AIDS, Tuberculosis and Malaria. UNDP has technical expertise on trade and access to medicines. | Headquarters<br>Regional Bureau for Asia and the Pacific<br>United Nations Development Programme<br>One United Nations Plaza<br>New York, NY, 10017, U.S.A.<br>Tel. +1 212 906-5000<br>Fax. +1 212 906-5898<br><br>Asia-Pacific Regional Centre<br>United Nations Development Programme<br>3rd Floor United Nations Service Building<br>Rajdamnern Nok Avenue, Bangkok 10200,<br>Thailand<br>Tel: +66 2 304-9100<br>Fax: +66 2 280-2700<br>Email: <a href="mailto:registry.th@undp.org">registry.th@undp.org</a><br><br>Pacific Centre<br>United Nations Development Programme<br>Level 7, Kadavu House<br>414 Victoria Parade<br>Suva, Fiji Islands<br>Tel: +679 330 0399<br>Fax: +679 330 1976<br>Email: <a href="mailto:registry.pacificcentre@undp.org">registry.pacificcentre@undp.org</a> |
| World Health Organization (WHO)                             | WHO is the directing and coordinating authority for health within the United Nations system. It is responsible for providing leadership on global health matters, shaping the health research agenda, setting norms and standards, articulating evidence-based policy options, providing technical support to countries and monitoring and assessing health trends  | Website : <a href="http://www.who.int">http://www.who.int</a><br>Office in Fiji<br>Address:<br>Level 4 Provident Plaza One Downtown<br>Boulevard 33 Ellery Street, Suva<br>Postal address:<br>P.O. Box 113, Suva, Fiji<br>Telephone: +679 3304600   |





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