

Intangible Cultural Heritage within the Laws and Policies of South Pacific Small Island States in the Climate Crisis: Towards a More Resilient and Inclusive Approach

EDITED BY EVA U WAGNER





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Edited by Eva U Wagner

PERISCOPE SPECIAL EDITION
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Periscope Policy Paper
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Kristin Hausler is the Dorset Senior Fellow and the Director of the Centre for International Law at the British Institute of International and Comparative Law, in London. Since joining the Institute in 2007, she has developed and led several research projects, including on human rights and climate change. Her area of expertise is cultural heritage law. She regularly leads training on heritage protection and provides advice on legislative drafting regarding cultural heritage matters. She has also spoken at events around the world, including at the United Nations, and is regularly invited to teach cultural heritage law, such as at the University of Geneva, Leiden University, or Georgetown Law. Previously, she worked in a museum in Canada on a project focused on the return of Ancestral remains to Indigenous communities. Since 2010, she has been an elected member of the ILA Committee on cultural heritage.

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Dr Berenika Drazewska is a Senior Research Fellow at the Yong Pung How Faculty of Law, Singapore Management University. She holds a Ph.D. in international law from the European University Institute in Florence, Italy (2016), an LL.M. (2011) from the same institution, and a Master's degree in law from the University of Warsaw, Poland (2010). Following the completion of her Ph.D., she did postdoctoral research work at the Buchmann Faculty of Law, Tel Aviv University in Israel, and the British Institute of International and Comparative Law (BIICL) in London. Berenika has published and peer-reviewed articles in international law reviews, and published a scholarly monograph which addresses the legal configuration and interpretation of military necessity – an issue critical to the understanding of the protection of cultural heritage in armed conflict in international law (Brill, 2021).

Foreword

Dear Readers,

On behalf of Konrad Adenauer Stiftung – Regional Programme Australia and the Pacific (KAS Australia), I am delighted to present to you the first Special Edition of our Periscope Paper Series. Entitled 'Intangible Cultural Heritage within the Laws and Policies of South Pacific Small Island States in the Climate Crisis: Towards a More Resilient and Inclusive Approach', the edition deals with the protection of intangible cultural heritage in Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.

This Special Edition would not have been possible without special authors, who I would briefly like to introduce. The mastermind behind this research report is Prof Dr Petra Butler from the Law School of Victoria University of Wellington, who also heads the Institute of Small and Micro States. I have known Petra for several years now and can say that throughout this time she has proved to have an excellent command of legal matters of concern to the Pacific region. This includes of course climate change and the impact of rising sea levels on the Pacific region, its peoples and livelihoods.

In order to ensure the research was carried out to the highest possible standard, Petra collaborated with the British Institute of International Comparative Law (BIICL) in London, which is, one of the few organisations worldwide whose researchers are specialising in cultural heritage law, environmental law and climate change law,

including in the Pacific region. The research consortium included:

- Kristin Hausler, the Dorset Senior Fellow and Director of the Centre for International Law at BIICL;
- Alina Holzhausen, a researcher in Environmental and Climate Change Law at BIICL, to carry out the research on Tonga and to provide additional support to the research project.
- Dr Berenika Drazewska, a (now) former postdoctoral researcher at BIICL, who has since moved on to become a Senior Research Fellow at the Yong Pung How Faculty of Law at the Singapore Management University; and

Being a lawyer by background myself, and having closely followed the adoption of the UNESCO Convention on the Protection of Intangible Cultural Heritage in 2003, I was privileged to have had the opportunity to carry out some of the interviews in support of this project.

Let me commend this groundbreaking research report to you, which I trust you find valuable and thought-provoking whether or not intangible cultural heritage is at the core of what you do. May it contribute to the protection of such heritage, and therefore the stability, of the Pacific region.

Eva U Wagner

Senior Programme Coordinator
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List of Key Abbreviations

ABS	Access to Benefit-Sharing [under the Convention on Biological Diversity]
CESCR	Committee on Economic, Social and Cultural Rights
CO ₂	Carbon Dioxide
COP	Conference of the Parties to the United Nations Framework Convention on Climate Change Conference (UNFCCC)
DRM	Disaster Risk Management
DRR	Disaster Risk Reduction
ECHM	Endangered Cultural Heritage Mapping
GHGs	Greenhouse Gases
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICH	Intangible Cultural Heritage
ICJ	International Court of Justice
IDPs	Internally Displaced Persons
IP	Intellectual Property
IPCC	Intergovernmental Panel on Climate Change
MPA	Marine Protected Area
MSG	Melanesian Spearhead Group
NDCs	Nationally Determined Contributions
NGOs	Non-Governmental Organisations
OHCHR	Office of the High Commissioner for Human Rights
SDGs	United Nations Sustainable Development Goals
SIDS	Small Island Developing States
SPC	Secretariat of the Pacific Community
SPREP	South Pacific Regional Environmental Programme
TCE	Traditional Cultural Expressions
TK	Traditional Knowledge
TKEC	Traditional Knowledge and Expressions of Culture
UN	United Nations

UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	UN Framework Convention on Climate Change
UNGA	United Nations General Assembly
WIPO	World Intellectual Property Organization

Executive Summary¹

Climate change is one of the most pervasive threats humanity faces. Although climate science has long warned against climate change impacts, and some efforts have been made to mitigate and adapt to climate change, '[t]he past eight years are on track to be the eight warmest on record, fuelled by ever-rising greenhouse gas concentrations and accumulated heat. Extreme heat-waves, drought and devastating flooding have affected millions and cost billions this year'.² According to a new report from **United Nations (UN)** Climate Change published in October 2022, State measures are insufficient to meet the Paris Agreement's temperature goal of well below 2°C by the end of the century.³ As a consequence of the failure of governments to meet their obligations of 'providing adequate finance and support to less wealthy countries to reduce their carbon emissions and to adapt to the impacts of climate change (...) [and] to provide support and remedy less wealthy countries for the loss and damage they are suffering', the lives, livelihoods, and cultures of millions of people around the world are threatened, augmenting to numerous human rights violations.⁴

Especially low lying Island States are affected by the shifts in sand and beach as their coasts succumb to rising seas, suffering from salinisation of previously fertile ground or even facing a complete disappearance of their islands.⁵ Looking at the South Pacific region, the tremendous change in the climate poses a particular threat to the **intangible cultural heritage (ICH)** of South Pacific Islanders. For example, a Samoan Islander expressed their serious concerns regarding

Tufutafoe [a beach which] is a sacred place in the Samoan culture, [which] is the pathway to the Fafa o Sauali'i – the gathering place of the Samoan spirits, the entry point to Pulotu, the spirit world. We know this place, it is taught to us by our grandparents, and our spirits will go there when we die (...) I wonder if my children, their grandchildren, will see the white expanse that leads to the Fafa o Sauali'i in the future. Will they experience the eeriness of the hardened sand under their feet as they walk the pathway to the ocean, will that pathway still be there?⁶

As cultural heritage is a component of South Pacific Islanders' identity, it is crucial to safeguard it in the climate emergency. Moreover, as ICH is often place-based or associated with a specific ecosystem, it is in danger of getting lost if climate change impacts negatively affect the environment. Thus, this Report looks at eight South Pacific Island States and their ICH, namely Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. In particular, the Report examines whether the Pacific Islanders' ICH is safeguarded in relevant laws and policies more broadly, by considering human rights law, cultural heritage law, **intellectual property (IP)** law, environmental law, and climate change law. The Report also considers whether safeguarding ICH can contribute towards a more resilient and inclusive climate change approach to foster stability and the rule of law and, if so, how.

Part 1 identifies the role of ICH in the climate emergency. Part 2 examines how, and to what extent, ICH is safeguarded from climate change under human rights, cultural heritage, and IP laws and policies. While Part 3 analyses the safeguarding of ICH in environmental laws and policies at the international, regional, and domestic level, Part 4 looks at the safeguarding of ICH in climate change legislation and **disaster risk reduction (DRR)** and **disaster risk management (DRM)** laws and policies at the international, regional, and domestic level. Lastly, Part 5 sets out the key findings of Parts 1 to 4 including gaps

at the international, regional, and domestic level, while at the same time highlighting good practices identified in Parts 2 to 4 in the eight South Pacific Islands States, and setting out recommendations together with a way forward.

The Report has been drafted based on a mixed research method, including analytical and qualitative research methods:

1. analytical research, which consisted first in carrying out desk-based analysis of legal and policy frameworks at the international, regional, and domestic level. The considered instruments included various laws and policies in the field of human rights, cultural heritage, IP, environment, climate change, DRR, and DRM, which can be found in overview tables in the Annex to the Report. The mentioned frameworks present examples of relevant laws and policies among the many instruments applicable to each of these specific areas of human rights, cultural heritage, IP, environment, climate change, DRR, and DRM, to illustrate the extent to which ICH appears to have so far been integrated within them. The considered laws and policies were identified by *inter alia* using databases such as the [PacLII Databases](#) from the Pacific Islands Legal Information Institute, and [Climate Change Laws of the World](#) from the Grantham Research Institute on Climate Change and the Environment. The examination of the identified instruments enabled the Report to include not only key findings, but also analyse gaps

at the international, regional, and domestic level. This desk-based research was then complemented by the qualitative research.

2. qualitative research, with the use of semi-structured interviews of stakeholders. A questionnaire was developed and sent to all interviewees in advance. Depending on the agreement with the respective stakeholder, the interview was conducted with a member of the Report's research consortium in person, where possible, or online. Alternatively, the interviewee provided written answers to the questionnaire, which were received via e-mail. Interview questions included both general and country-specific questions relevant to the topic. Approached stakeholders included representatives in all eight South Pacific Island States from governmental departments such as ministries or disaster and climate change offices, from the cultural sector including museums, from academia such as legal scholars and experts in the field, as well as international experts in the field of ICH, climate change, DRR and DRM.⁷

Overall, the qualitative research informed the analytical research, to verify and complement the outcomes of the desk-based research phase, as well as for the development of recommendations and the way forward.

The **key findings** including identified gaps at the international, regional, and domestic level, as well as good practices in the eight

South Pacific Island States, are discussed in more detail in Part 5 of the Report. The main key findings including identified gaps, good practices, recommendations, and the way forward may be summarised as follows.

The key findings of **Part 1** are that ICH is part of the identity of South Pacific Islanders, crucial for the existence of communities, and the cultural diversity of the South Pacific region. Because of the adverse impacts of climate change, ICH faces particular high threats to such an extent that it might even be lost. While efforts have focussed on the safeguarding of ICH in the climate emergency, it should also be recognised that the protection of ICH can contribute to inclusive mitigation and adaptation measures, and eventually to resilience. Climate change impacts have several implications for South Pacific Islanders, such as internal and cross-border climate displacement, as well as the restriction of the enjoyment of various human rights. Looking at climate change and ICH from a human rights lens ensures greater protection of South Pacific Islanders' rights and the safeguard of ICH, while also fostering the rule of law, international peace, and stability. Lastly, ICH can contribute to achieve sustainable development. A major identified gap in the context of Part 1 is the lack of sufficient protection of South Pacific Islanders' rights and ICH in cross-border displacement processes besides the human rights protection from the receiving State, as current legal and policy frameworks do not cover their protection in a comprehensive manner.

A key finding of **Part 2** is that while ICH is safeguarded under international human rights and cultural heritage laws and policies, it is protected to a lesser degree under IP laws and policies. In addition, while the access to, and enjoyment of, cultural heritage, including ICH, has been recognised at the international level as an element of the human right to participate in cultural life, it is often not possible to allege a violation of the right to participate in cultural life before a treaty body, a supra-national human rights court, or a domestic court; this may be because the relevant State is not a party to the relevant treaty or has not accepted the jurisdiction of the treaty body (or of a supranational court in regions where it has been set up), or because it has not made this right justiciable at the domestic level. However, the Focus States have all ratified the **UN Educational, Scientific and Cultural Organization (UNESCO) Convention for the Safeguarding of the Intangible Cultural Heritage (ICH Convention)** and some have taken clear steps for its implementation at the domestic level, even if their domestic heritage laws do not generally apply to ICH. An exception is Vanuatu, which has implemented (and adapted) a regional model law on traditional knowledge and traditional cultural expressions. Cultural mapping processes in the region have been instrumental in strengthening the safeguarding of ICH and, in some cases, even revitalised endangered ICH. Those processes have also often led to the adoption of national cultural policies and legislation. However, existing national

cultural policies could go much further in linking ICH and climate action, a gap possibly due in part to the lack of such objectives or indicators in the current regional cultural policy. Identified gaps in the context of Part 2 also include the low ratification rate by the Focus States of international human rights frameworks, as well as their protocols. Increased ratification is noted as a possible boost for the UN Treaty Bodies which have a role to play in advocating a human rights approach to climate change, including respect for cultural rights. The lack of domestic legislation that safeguards ICH is also noted, along with limited adoption of the regional model law concerned with traditional knowledge and cultural expressions.

The key findings of **Part 3** are that ICH is (in) directly safeguarded in environmental laws and policies at the international, regional, and domestic level. However, identified gaps in the context of Part 3 are that policies tend to make more direct references to ICH than laws. In general, direct references to the safeguard of ICH are barely existing in environmental laws and policies; it is rather the indirect references to ICH which bring culture into environmental frameworks. In general, adopting laws and policies at the international, regional, and domestic level with clear and direct references to the safeguard of ICH, including obligations to protect ICH, and the inclusion of affected communities as well as of the cultural sector in decisions that may affect ICH and culture more generally, would

ensure an inclusive safeguard of ICH in environmental laws and policies.

Similar to Part 3 are the key findings of **Part 4**, namely that ICH is (in)directly safeguarded in climate change legislation and DRR and DRM laws and policies at the international, regional, and domestic level. Identified gaps in the context of Part 4 are that as for environmental law and policies, it is the climate change and DRR and DRM policies which make more direct references to ICH than laws. In comparison to environmental laws and policies, climate change legislation and DRR and DRM laws and policies seem to include ICH to a greater extent, as the climate change threat to cultural heritage is widely recognised. Regarding the international climate change legal regime, future agreements at the global level should integrate the two facets of cultural heritage in a more direct way, i.e. including both its active and passive components in relation to climate change. At the domestic level, there exists room for improvement to generally include ICH in adaptation measures, to recognise ICH as a means to strengthen climate resilience especially when included in adaptation measures, to ensure the participation of communities in all decisions that may affect their ICH, and to mention the impact on ICH in post-disaster needs assessments. Moreover, with the exception of Fiji, the Solomon Islands and Vanuatu, there exist insufficient laws and policies in the Focus States, regarding potential climate displacement which

ensure ICH is sufficiently safeguarded. Lastly, the laws and policies lack explicit or strong enough references regarding the involvement of relevant stakeholders from planning to responding processes, for example the respective ministry responsible for culture, culture representatives, heritage professionals such as museum staff, or community leaders with cultural knowledge.

Good practices in the Focus States identified throughout Part 2 to 4 include *inter alia* the highlighting of unique cultures within the respective Constitution, as well as the mention of cultural rights in policy documents; the implementation of a relevant regional model law in Vanuatu; the linkage between ICH and climate change in certain national cultural policies; cultural mapping processes; consultation and training at the community level; integrated means of intersectoral coordination, including within national cultural bodies; the inclusion of the integration of traditional ecological knowledge, innovations, and good practices into conservation and sustainable use of biodiversity as in the Fiji National Biodiversity Strategy and Action Plan (NBSAP) 2020-2025; the impact of values constituting the *fa'a Samoa* (the 'Samoa Way') on the preparation of the Samoa National Adaptation Programme of Action (NAPA); and the inclusion of certain representatives from the cultural sector as well as local communities and NGOs, such as in the National Disaster Council in the Solomon Islands.

To ensure the safeguarding of ICH and the integration of ICH in relevant laws and policies in the climate emergency, the **recommendations** of this Report focus on raising awareness of the importance of ICH, on the increased role that ICH should have in laws and policies, and on the need for increased communication and cooperation between all relevant sectors. Thus, the way forward should focus on exchanges with the Focus States and the implementation of these recommendations by the means of field work, including the conduct of more interviews with stakeholders and the organisation of domestic as well as regional workshops. It is hoped that this Report will be used to inform practices in other regions and that lessons can be drawn from the South Pacific experience and expertise.

This Report was prepared by a research consortium, led by [Professor Petra Butler](#) (Victoria University of Wellington), which included the [Institute of Small and Micro States](#) (ISMS), the [Konrad Adenauer Stiftung](#) (KAS) Australia with support from [Eva U Wagner](#), and the [British Institute of International and Comparative Law](#) (BIICL). The Report was drafted by the BIICL team, led by [Kristin Hausler](#), and including [Alina Holzhausen](#), as well as Dr Berenika Drazewska.

The research consortium would like to thank Wera Hack (German Embassy in Wellington) in helping to set up the research project. It also very much appreciates the collaboration from several experts and stakeholders who agreed to an interview,

including (by alphabetical order): Eleala Avaniatele, (Tuvalu Red Cross Society); Professor Lucas Lixinski (UNSW Sydney); Siosinamele Lui (South Pacific Regional Environmental Programme, (SPREP); Professor Jane McAdam (Kaldor Centre for International Refugee Law, UNSW Sydney); Adi Meretui Ratunabuabua (Blue Shield Pasifika); Melaia Tikoitoga; David M Tufi (Ministry of Environment, Climate Change, Disaster Management and Meteorology, Solomon Islands); Wonesai Sithole (IOM UN Migration); and three expert stakeholders from Fiji, Papua New Guinea, and Vanuatu, who prefer to remain anonymous. The research consortium is also grateful for the support of Elke Selter (BIICL) and Ellen Lekka (UNESCO) in the development of this project, and for the comments to an earlier draft made by Juliette Hopkins (UNESCO) and Naomi Hart (Essex Court Chambers).

References

- 1 Any reference in this Report to 'Pacific' or 'Pacific region' refers to the Pacific Islands States at the focus of the research, namely Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu (the Focus States), and not to other States in the Pacific.
- 2 World Meteorological Organization, 'State of the Global Climate in 2022 Report', 6 November 2022, available at <https://public.wmo.int/en/media/press-release/eight-warmest-years-record-witness-upsurge-climate-change-impacts>.
- 3 Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, 'Nationally determined contributions under the Paris Agreement. Synthesis report by the secretariat', UN Doc FCCC/PA/CMA/2022/4, 26 October 2022.
- 4 Amnesty International, 'Any Tidal Wave Could Drown Us. Stories from the Climate Crisis', 3 November 2022, available at <https://www.amnesty.org/en/documents/IOR40/6145/2022/en/>.
- 5 Interview with Wonesai Sithole (IOM UN Migration) on 15th September 2022, conducted as part of this project.
- 6 Lagipoiva Cherelle Jackson, 'The climate crisis threatens to rob us not just of our living, but also of our dead', 3 November 2022, [theguardian.com](https://www.theguardian.com/world/2022/nov/04/the-climate-crisis-threatens-to-rob-us-not-just-of-our-living-but-also-of-our-dead?CMP=Share_iOSApp_Other), available at https://www.theguardian.com/world/2022/nov/04/the-climate-crisis-threatens-to-rob-us-not-just-of-our-living-but-also-of-our-dead?CMP=Share_iOSApp_Other.
- 7 In total, eleven stakeholders agreed to an interview or to written answers to the questionnaire, with three stakeholders from Fiji, two stakeholders from Papua New Guinea, one stakeholder from Samoa, one stakeholder from the Solomon Islands, one stakeholder from Tuvalu, one stakeholder from Vanuatu, and two academics from the University of New South Wales in Australia.

The Role of ICH in the Climate Emergency

The first Part of this Report starts with introducing 'South Pacific Islanders, ICH and Climate Change' (1.1). It then discusses 'Climate Displacement with ICH and Human Rights Implications for Pacific Islanders' (1.2.). In a third step, the Report looks at

'The Rule of Law and International Peace and Stability in the context of ICH, Human Rights and Climate Change' (1.3.). Lastly, this section considers 'ICH's Contribution to Sustainable Development' (1.4.).

1.1 South Pacific Islanders, ICH and Climate Change

A Focus on South Pacific Islanders

The South Pacific Islands represent a culturally rich and diverse region.⁸ Looking at this region in more detail, most South Pacific Island States, including those at the focus of this Report (the 'Focus States', i.e. Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu), are **Small Island Developing States (SIDS)**, which are a distinct group of 38 UN Member States and 20 Non-UN Members or Associate Members of UN Regional Commissions, located in the Caribbean, the Pacific, and the Atlantic, Indian Ocean as well as the South China Sea (AIS).⁹

SIDS were first recognised as a special case both for their environment and development at the 1992 UN Conference on Environment and Development held in Brazil.¹⁰ In particular, all SIDS share certain characteristics, such as limited physical size, generally limited natural resources, and high susceptibility to frequent hurricanes, droughts, tsunamis and volcanic eruptions, which make them particularly vulnerable to economic, social, and environmental changes.¹¹

As South Pacific SIDS are at the forefront of climate change impacts and have been particularly active in seeking redress at the international level, this Report focusses on jurisdictions from the Pacific region. For example, Vanuatu has been advocating a non-binding Advisory Opinion from

Figure 1: Map of Focus Pacific SIDS Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.



the **International Court of Justice (ICJ)** 'to gain clarity how existing International Laws can be applied to strengthen action on climate change, protect people and the environment and save the Paris Agreement'.¹² As Advisory Opinions from the ICJ are only open to five organs of the UN and 16 UN specialised agencies or affiliated organisations,¹³ Vanuatu has led a year's lasting campaign to gain support among UN Member States for requesting an Advisory Opinion. In November 2022, Vanuatu circulated a draft UN General Assembly resolution entitled 'Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change' to all UN Member States, which was prepared by a coalition of 18 States, including Germany and New Zealand, among others.¹⁴

The Living Heritage of South Pacific Islanders

The Pacific region entails a variety of cultural wealth, often described as 'expressed through hundreds of languages, long-standing cultural traditions across largely dispersed island communities, works of Pacific art, and land sites of unique cultural importance for Pacific people'.¹⁵ Vanuatu's sand drawings (*sandroing*), Samoan traditional body tattoos (*pe'a*), and Tuvaluan action songs (*faatele*) are only a few examples of the Region's cultural diversity.¹⁶ As described by Feil, Papua New Guinea's cultural diversity has attracted 'generations of anthropological fieldworkers and other observers', and makes it impossible to treat 'the highlands' as homogenous.¹⁷ Indeed, a cultural expert interviewed for this Report stated that Papua New Guinea

has approx. 800 languages that set the foundation for cultural diversity (...) in Papua New Guinea, we do not

have too many libraries, so a very important way of ensuring the maintenance and sustainability of our traditions is through transmission and practices. All these knowledges are stored in life form for us to maintain our practices since the times of our ancestors.¹⁸

In general, the living heritage or ICH of South Pacific Islanders is a vital element to the existence of communities, amounting to the 'foundation for the identity, continuity and sustainable development of the region'.¹⁹ According to the ICH Convention, adopted in 2003 and nearly universally ratified, ICH can be defined as:

the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. [It is] transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.²⁰

The ICH Convention includes the following main domains of ICH, while recognising that they often overlap and that one practice may relate to multiple domains:

- (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;
- (b) performing arts;
- (c) social practices, rituals and festive events;

(d) knowledge and practices concerning nature and the universe;

(e) traditional craftsmanship.²¹

While tangible forms of cultural heritage, such as traditional wood carvings, the Levuka Historical Port Town in Fiji, the Phoenix Islands Protected Area in Kiribati, the Kuk Early Agricultural Site in Papua New Guinea, East Rennell in the Solomon Islands, and the Chief Roi Mata's Domain in Vanuatu are easier identified and protected by, for example, the UNESCO World Heritage List,²² ICH, including oral traditions, practices, local knowledge, or traditional skills, are not always visible or recognisable. Whilst ICH can be tied to a physical object or site which may render it more visible, that object or site is generally not protected as cultural heritage *per se*.

Nevertheless, ICH is intrinsically linked to the people who created it and/or continue practicing it because of the links with the communities and its intergenerational transmission.²³ For its creators and holders, ICH is a matter of identity and maintenance of their own unique personality, which links it to the preservation and upholding of human dignity more generally.²⁴ Having a dynamic nature and ability to adapt to the evolving needs of communities, ICH is important for South Pacific Islanders' identity, and for cultural diversity in the Region.

ICH and Climate Change: Two Sides of the Same Coin?

However, ICH, and more generally cultural diversity in the South Pacific region, have increasingly been threatened by climate change in recent years. Climate change, defined as 'a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition

to natural climate variability observed over comparable time periods' in the **UN Framework Convention on Climate Change (UNFCCC)**,²⁵ is one of the most pervasive threats humanity faces. It affects weather conditions and variables which lead to higher temperatures and greater frequencies of extreme weather events, impact agricultural and food production, cause the melting of glaciers, the rise of sea level, and redistribute species and vectors of diseases.²⁶ By causing these changes, climate change endangers a safe climate, which can be understood as a climate with not more than 1.5°C global warming and which is absolutely essential to human life and well-being.²⁷

As it is crucial to safeguard South Pacific Islanders' ICH in the climate emergency, ICH has increasingly been at the forefront of the climate change debate for two main reasons. Firstly, climate change is a serious threat to ICH and, therefore, to the cultural survival of those affected. Secondly, while the main reason to safeguard ICH is the ensurance of South Pacific Islanders' cultural identity, ICH can also contribute to inclusive mitigation and adaptation strategies to climate change, and, thus, support resilience to climate change.

Climate Change Impacts on South Pacific Islanders' ICH

While all human beings are threatened by climate change impacts, not all human beings are threatened to the same extent. As acknowledged by the Intergovernmental Panel on Climate Change (IPCC), which is the UN body for assessing the science related to climate change, '[p]eople who are socially, economically, culturally, politically, institutionally, or otherwise marginalized are especially vulnerable to climate change'.²⁸ In general, the impacts of

planetary change are unequally distributed, with developing countries facing the strongest negative effects and tending already marginalised and vulnerable communities to fare worse, and developed countries facing lesser climate change impacts and risks, as their adaptation capacity is much greater.²⁹ South Pacific Islanders, in particular the inhabitants of SIDS, belong to the most vulnerable to climate change due to their unique characteristics.³⁰ For example, Tuvalu's territory rarely rises above 4.5 metres above sea level, with its 26 km² territory being regularly flooded during storm; further, its remoteness makes communication and cooperation difficult.³¹

As Tuvalu may become uninhabitable by 2100, the country is developing a digital format of its nation, which includes cultural heritage through the cataloguing and recording of 'stories, traditional songs, historical documents and recorded cultural practices'. According to Simon Kofe, Tuvalu's Minister for Justice, Communication and Foreign Affairs:

We want to be able to take a snapshot of what culture is today, and allow my children and grandchildren to have that same experience wherever they are in the world. So even if the physical territory is lost, we would never lose the knowledge, culture, and way of life that Tuvaluans have experienced and lived for many centuries.³²

In case of the Solomon Islands, severe shoreline recession has led to 50% of houses having been washed into the oceans in northern Choiseul, destroying villages that have existed since at least 1935.³³ Lastly, Kiribati has a population of just below 120,000 and is rapidly losing land mass; according to scientific climate predictions and to evidence presented in climate change cases, Kiribati will likely become

uninhabitable between 2026 and 2031, as more than 50% of the island of Tarawa, which includes the capital of Kiribati, will be submerged and will pose a threat to over 60% of the island's population.³⁴ Not only the loss of land mass endangers the Islanders, but also groundwater salinisation caused by sea level rise, which 'cascade into risks to livelihoods, settlements, health, well-being, food and water security, and cultural values in the near to long-term'.³⁵

While South Pacific Islanders are already socially, economically, politically, and institutionally marginalised, they are also particularly vulnerable to climate change when it comes to their ICH given their close connection to ecosystems, which are often place-based.³⁶ Their lives, livelihoods, and unique ways of life, many of which amount to ICH, come under particular threat and may be lost as a result of climate change.³⁷ Firstly, climate change affects ICH in specific ways, ranging from altered weather and season patterns rendering obsolete many areas of knowledge and impacting areas such as traditional agriculture and fishing.³⁸ For example, South Pacific Islanders have strong relationships to their marine environment relating to their culture and custom, but they are also highly dependent upon oceanic and coastal fisheries for food security, livelihoods, revenue, employment, and development.³⁹ As the Special Rapporteur in the field of cultural rights noted,

Climate change negatively affects the practice of traditional knowledge in many places, including the very know-how and techniques needed to respond to such change. This is due to unpredictable weather and changing seasons which impair and may render increasingly obsolete such things as knowledge around navigation,

calendars, meteorology, wind patterns, movements of sand, planting and harvests, fishing and food.⁴⁰

However, while previous environmental changes were transient and reversible, recent unprecedented and irreversible changes to their lagoons and adjacent oceans by climate change lead South Pacific Island communities into unfamiliar and unknown territories, struggling to respond to these changes.⁴¹ Such difficulties in the Pacific region more widely have already been recognised by the UN Human Rights Committee, which is a body of independent experts monitoring the implementation of the **International Covenant on Civil and Political Rights (ICCPR)** by its State Parties. In the *Torres Strait Islanders* Petition, which was brought by a group of eight Islanders and six of their children against the Australian government for failing to adapt to climate change, the Committee found that heavy rainfalls and storms reduced their means of subsistence, including those stemming from traditional fishing and farming, which are part of their traditional way of life.⁴²

Secondly, ways of life and ICH relating thereto, such as nomadic pastoralism or living in villages which have been established for decades, are entirely at risk in some areas due to migration away from coastal areas to sites in the inland.⁴³ For example, among the 30.7 million people who were internally displaced due to disasters in 2020 alone, 40% were in the East Asia and Pacific region.⁴⁴ When it comes to traditional ways of life more generally, for example in Fiji, increased hurricanes lead to 'the decimation of trees used to make traditional boats', and practices such as 'traditional medicine is reportedly jeopardized'.⁴⁵ Being unable to live on Ancestral land, not having access to sacred and religious sites

including burial grounds, not being able to practice folklore, song, and dance, not being able to use traditional medicine, and not being able to keep cultural knowledge alive are losses populations of South Pacific SIDS are already, or will be, facing.⁴⁶

ICH in Mitigation, Adaptation, and Resilience Strategies to Climate Change

As mitigation of, and adaptation to, climate change are the main solutions when it comes to tackling climate change, the question arises which part South Pacific Islanders' ICH may play in finding inclusive strategies to prevent climate change impacts and protect their ICH. While mitigation can be understood as '[a] human intervention to reduce the sources or enhance the sinks of **greenhouse gases' (GHGs)**, adaptation can be understood as '[t]he process of adjustment to actual or expected climate and its effects'.⁴⁷ In general, ICH referring to the interaction with, and care for, natural systems will be crucial for stabilising the climate.⁴⁸

Looking at ICH and mitigation, initiatives that are driven by ICH may involve reliance on low-impact agricultural techniques, traditional boat and vessel building, forest management involving low-intensity controlled fires as a means to control wildfires, and many others. The former Special Rapporteur in the field of cultural rights also specifically noted that '[t]raditional land management and land monitoring systems, traditional construction, and planning techniques may also be relevant',⁴⁹ noting, for example, that the traditional open-walled housing in Samoa 'performs well in high winds'.⁵⁰

Considering ICH and adaptation, as the lifestyle of South Pacific Islanders is shaped by interaction with their surrounding

environments, their knowledge and practices concerning nature can make an important contribution to manifold adaptation activities and programmes, such as climate monitoring and reporting, disaster preparedness and response and early warning systems, rainwater harvesting, traditional agriculture techniques, coastal marine management, alternative energy development, and the development of sustainable livelihoods, among others.⁵¹ For example, South Pacific Islanders have been practicing ecosystem-based adaptation for generations, including the protection of coral reefs, reforestation, and fighting coastal erosion through mangrove revegetation.⁵² Regarding fishing, the South Pacific Islands have a long tradition of combining traditional and modern strategies for biodiversity conservation and sustainable use of the seas and marine life, blending in scientific insights with traditional knowledge. This combination is manifested, for example, in the operation of **Marine Protected Areas (MPAs)** and programmes preventing overfishing in Fiji, where traditional celebrations such as funerals and other community rituals are used to regulate fishing stocks and allow fish populations to recover.⁵³ As could be seen in the past, incorporating such traditional systems in adaptation solutions tend to mobilise communities more effectively.⁵⁴ Inclusion of traditional socio-cultural practices in biodiversity conservation initiatives tend to not only bring better conservation results, but also to uphold the practices themselves, keeping traditional institutions and community ties strong.⁵⁵ Former marine conservation projects which have not sufficiently accounted for the socio-cultural practices of, for example, Indigenous Fijians, have reduced conservation success, in addition to potentially undermining the practices themselves and weakening

community relationships.⁵⁶ Overall, inclusive strategies counter negative impacts of both natural and human-induced changes in the environment and build community resilience.⁵⁷ As stated by the UN Special Rapporteur in the field of cultural rights,

analogous to the impact of destruction during armed conflict, the damage and destruction of cultural heritage when those most closely connected to it are suffering from other severe impacts of climate change also takes away a key cultural resource that can build resilience, preserve memory and identities and help these people cope.⁵⁸

For South Pacific Islanders, ICH is a great source of both cultural identity and resilience. According to Wonesai Sithole,

some heritage is passed on through music, songs, drama, through traditional dances that explain what actually happened before [what is that community's history]. And you cannot talk about resilience in a community without understanding that; [this will have an] impact on how they respond to certain events.⁵⁹

For example, in Samoa, the 'Samoan Way' (*fa'a Samoa*) involves not only a way of relating to other people and the environment (thereby fostering social cohesion) and the customs and objects of material culture themselves, but also a traditional capacity for adaptability to a constantly changing environment relying on its close observation and the making of predictions.⁶⁰ As explained by an expert from Fiji in an interview conducted for this Report,

ICH is basically traditional knowledge of our ancestors that is interwoven with an indigenous community, to assist them in developmental issues – I

believe traditional knowledge or ICH is very relevant in today's context, especially when you are trying to assist the community and try to help them be resilient.⁶¹

In general, resilience to climate change is a combination of adaptive coping and transformative capacities. It can be 'associated with a perspective and way of thinking that advocates system-wide changes (...), forward-looking and anticipatory planning for long-term capacity building, and enhancing the ability to absorb shocks and recover from their impacts'. Such resilience can therefore be a complementary strategy to adaptation.⁶² In many cases, taking adaptation action has positive implications for resilience, as it can increase resilience and lead to 'capacity or ability to anticipate and cope with shocks, and to recover from their impacts in a timely and efficient manner'.⁶³ Thus, including ICH in adaptation action can support South Pacific Islanders' resilience to climate change.

Bringing ICH to the centre of climate change debates does not only throw light on the climate change impacts Pacific Islanders are facing and ascertain to what extent ICH can play a role in mitigation and adaptation measures as well as resilience, but also allows to conduct culturally appropriate consultations and decision-making in relation to climate change issues. Climate action should not perpetuate and potentially exacerbate existing inequalities, including in the context of heritage.⁶⁴ This emphasises the need for inclusive, participatory approaches geared toward respecting the cultures (including customary laws, institutions, and relevant traditions) of already marginalised populations facing particular risks from climate change in designing and implementing mitigation and adaptation programmes.⁶⁵ In that

sense, integrating ICH into decision-making processes may not only help to achieve better substantive outcomes by integrating additional knowledge systems, but also procedural justice and more socially acceptable and successful outcomes.⁶⁶ As an example, the so-called Talanoa Call to Action was issued at COP24 in 2018, the annual meeting of the Convention Parties to the United Nations Framework Convention on Climate Change (UNFCCC) to *inter alia* review national communications made in accordance with the Paris Agreement, which is a legally binding international treaty on climate change.⁶⁷ The Talanoa (storytelling) Call to Action represented the outcome of a year-long process that integrated a Fijian traditional way of discussing collective issues, based on participation, mutual empathy, and trust rather than confrontation and involving storytelling to facilitate the understanding of conflicting positions and finding a solution.⁶⁸ By the means of the Talanoa Dialogue, governments and stakeholders discussed climate policies and ways to increase ambition as well as actions in an informal setting. Consisting of key messages from the Talanoa Dialogue and a synthesis report, the Talanoa Call to Action urged governments to 'fulfill the goals of the Paris Agreement, [to] achieve a just transformation towards a better world, [to] unlock the full potential of technology, [to] demonstrate bold leadership, and [to] act together'.⁶⁹

1.2 Climate Displacement with ICH and Human Rights Implications for South Pacific Islanders

Although initiatives such as the Talanoa Call to Action urged governments and stakeholders to rapidly step up their efforts to meet the goals of the Paris Agreement, namely mitigation, adaptation, and climate finance, current climate actions are insufficient to meet these goals. In fact, global GHG emissions in 2030 associated with **Nationally Determined Contributions (NDCs)** announced prior to COP26, which embody mitigation and adaptation efforts by each State Party, 'would make it *likely* that warming will exceed 1.5°C during the 21st century'.⁷⁰ In general, the average annual emissions of GHGs were higher than in any previous decade during 2010-2019, and the largest growth in emissions occurred in **carbon dioxide (CO₂)** from fossil fuels and industry by 2019.⁷¹ In addition, progress on the alignment of financial flows remains slow, is heavily focussed on mitigation, uneven, and has developed heterogeneously across sectors and regions.⁷² At current state, climate change effects continue to cause serious harms as the global temperature keeps increasing, glaciers are melting, and hurricanes are sweeping through countries.⁷³ Consequently, because of climate change impacts such as sea level rise leading to the disappearance of the very existence of some of the South Pacific Island States or rapid erosion and changes in weather patterns, South Pacific Islanders' lives, livelihoods, and cultures are under immense threat. While leaving their home behind is not the first choice of many South Pacific Islanders, flight to safety is a natural adaptation strategy for individuals and communities in the face of a disaster. However, for low-lying islands such as Kiribati, internal relocation

might not be an option. Thus, South Pacific Island communities face not only internal displacement but also displacement across borders.

Regarding internal displacement, research to date has shown that internal movement is more likely than cross-border movement.⁷⁴ For example, the Fiji Islands already have made, or are currently making, efforts to make relocation a community-led process by balancing climate risks and the value of cultural heritage.⁷⁵ However, as the voluntary relocation of residents from the old Korolevu village to the new Korolevu village has shown, finding this balance has been challenging as the villagers lost their traditional, daily connection to the sea by relocating to a new spot two kilometres away and uphill from the coast.⁷⁶ The now limited access to the sea has affected the villagers' fishing traditions, which reduced daily fishing to one or two days a week.⁷⁷ The Vunidogoloa village in Cakaudrove province in Vanua Levu also needed to be relocated from the sea to a new site a couple of kilometres inland and uphill from the initial coastal location because of climate change.⁷⁸ Besides a series of difficult decisions to take, the villagers had to go through the 'harrowing decision to disinter and shift the remains of their ancestors to a new burial site'.⁷⁹ A village representative stated that '[w]e didn't want to leave the cemetery where it was, to be washed away, so the church arranged for the burial site to be moved. Sadly the first burial at the new site was that of a still-born child which is interpreted as a bad omen from our ancestors'.⁸⁰ In the case of the Tukuraki village in Ba province, which needed relocation after being devastated by a landslide that took place after a week of unusually heavy rain, 80% of the village was buried, with most homes being destroyed

alongside the death of four residents. Due to the destruction of their homes and livelihoods without the option of rebuilding, the villagers needed new homes now located in a safer location, but away from their fields and ancestral lands.⁸¹

Regarding climate displacement across international borders, some SIDS such as Kiribati, have bought land in Fiji for resettlement purposes. New Zealand has set up the Pacific Access Category Resident Visa, which is accessible to those aged 18-45 years coming from Fiji, Kiribati, Tonga, and Tuvalu, as well as a Samoan Quota Resident Visa, which allocates resident permits through a ballot system.⁸² However, the ballot system only grants visas to 150 Kiribati citizens, 150 Tuvaluan citizens, 500 Tongan citizens, 500 Fijian citizens, and 1100 Samoans (plus 550 extra places each year until 2026) in 2022 and 2023.⁸³ In addition, several conditions must be fulfilled by the applicants, such as having a job offer with a salary sufficient to support the applicants and their families in New Zealand.⁸⁴ Since 2023, Australia has a similar scheme with its Pacific Engagement Visa.⁸⁵ To address climate displacement, these schemes must ensure allocation to those whose livelihoods are most at risk from the effects of climate change.⁸⁶ Considering that those visas include several conditions including those set out above, it is difficult, however, to categorise them as a 'proper' climate displacement solutions. In 2020, New Zealand's former Minister for Climate Change, James Shaw, announced that the country was considering to issue 'an experimental humanitarian visa', which would be granted for Pacific Islanders displaced by the effects of climate change.⁸⁷ However, this was deemed a form of 'climate refugee' visa which was not welcomed by those concerned by the scheme. The idea, therefore, was dropped soon after the

announcement.⁸⁸ Thus, to be able to stay in their home countries, they called the New Zealand government to reduce emissions, to support adaptation efforts, and to provide legal migration pathways before granting refugee status.⁸⁹

There is no international agreement yet on how to address cross-border relocations, which means that inhabitants of SIDS who are losing their homes because of climate change 'might fall through the cracks when it comes to protection'.⁹⁰ Moreover, their traditional knowledge and cultural practices are at heightened risk of being lost in the displacement process, which renders it even more important to integrate cultures of climate-displaced Pacific Island States into climate action and relocation.⁹¹ The integration of culture in relocation and then reintegration in the host society is also essential to avoid possible cultural clashes, which means that the receiving State needs to, for example, ensure that those under its jurisdiction are educated about the cultures of incoming Islanders.⁹² In general, both internal and cross-border climate displacement can be detrimental for South Pacific Islanders; as noted by McAdam,

culture and cultural heritage is so fundamentally linked with identity and place and all those things are absolutely at the heart of concerns about mobility. Most people don't want to leave their homes; in a lot of Pacific languages, placenta is synonymous with the land and it is so fundamental to who you are that being displaced from your land or your community is absolutely foundational to your identity. So if you talk about moving away from home, you are also talking potentially about disrupting that connection with culture.⁹³

These climate change impacts on South Pacific Islanders' lives, livelihoods, and cultures, also have wider legal implications. The human rights impact of climate change for human beings all over the world has been identified in a report of the **UN High Commissioner for Human Rights (OHCHR)** for the first time in 2009.⁹⁴ Regarding the climate change threat for SIDS inhabitants more specifically, the report states that

[t]he inundation and disappearance of small island States would have implications for the right to self-determination, as well as for the full range of human rights for which individuals depend on the State for their protection. The disappearance of a State for climate change-related reasons would give rise to a range of legal questions, including concerning the status of people inhabiting such disappearing territories and the protection afforded to them under international law (...) While there is no clear precedence to follow, it is clear that insofar as climate change poses a threat to the right of peoples to self-determination, States have a duty to take positive action, individually and jointly, to address and avert this threat.⁹⁵

The inhabitants of Pacific SIDS are, thus, not only at risk of having their right to self-determination violated but also their right to life, their right to food and water, their right to health, their right a livelihood, their freedom of movement, their right not to be displaced, their right to adequate housing,⁹⁶ as well as their right to enjoy and access their cultural heritage, which is a component of their cultural rights.⁹⁷ With regard to the right to life, the UN Human

Rights Committee specifically commented in the *Torres Strait Islanders* Petition that

[e]nvironmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.⁹⁸

In the *Sacchi et al v Argentina et al* Petition before the UN Committee on the Rights of the Child, the petitioners alleged *inter alia* violations of the right to life under Article 6 of the UN Convention on the Rights of the Child (CRC), the right to the highest attainable standard of health (Article 24), and right to enjoy culture (Article 30).⁹⁹ Regarding the cultural rights of Indigenous children,

[t]he authors claim that the State Party's contributions to the climate crisis have already jeopardized millennia-old subsistence practices of the indigenous authors from Alaska the Marshall Islands, and Sapmi, which are not just the main source of their livelihoods, but directly relate to a specific way of being, seeing, and acting in the world, that are essential to their cultural identity.¹⁰⁰

The UN Committee of the Rights of the Child rejected the human right violation claims as inadmissible because domestic remedies had not been exhausted. However, it stated at the same time that

in its Joint Statement on Human Rights and Climate Change, it has expressed that climate change poses significant risks to the enjoyment of the human rights protected by the Convention such as the right to life, the right to adequate food, the right to adequate housing, the right to health, the right

to water and cultural rights. *Failure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States' human rights obligations.*¹⁰¹

To counter the threats and to guarantee a liveable environment in which human rights, including cultural rights, can be enjoyed, efforts have been made to recognise a right to a healthy environment at the international level over the past years. The continuous work from **non-governmental organisations (NGOs)** and individuals, as well as from Indigenous peoples' groups, business groups, experts, UN Agencies and UN Special Rapporteurs came to fruition when the Human Rights Council, an inter-governmental human rights body within the UN system made up of 47 States, adopted a resolution for the recognition of the right of all to a safe, clean, healthy and sustainable environment in 2021.¹⁰² Following the resolution of the Human Rights Council, the **UN General Assembly (UNGA)**, the main policy-making organ of the UN with universal membership, adopted a similar resolution in 2022, recognising the right to a clean, healthy and sustainable environment.¹⁰³

However, when it comes to the displacement of SIDS inhabitants in the context of climate change, the realisation of the right to a healthy environment and the other human rights faces certain obstacles. In case of internal climate displacements, the obligations of States to promote and protect the human rights of all people within their territory or jurisdiction is clearly stated under international human rights treaties, and further clarified by relevant soft law instruments and guidelines such as the UN Guiding Principles

on Internal Displacement.¹⁰⁴ Even domestic law, such as the Fiji Climate Change Act (2021), recommends that at-risk communities should be relocated pursuing approaches which '(i) are human-centred including prioritising community needs from the bottom up; (ii) support the continuation of livelihoods; (iii) are human rights based'.¹⁰⁵ In addition, planned relocation can only take place following a consultation, having obtained the free, prior and informed consent of the communities.¹⁰⁶ However, if such internal displacement is unplanned,¹⁰⁷ additional protections for **internally displaced persons (IDPs)** are needed. While there is no equivalent in the Pacific of the African Union's Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa. the UN Guiding Principles on Internal Displacement define IDPs as persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, *inter alia* as a result of, or in order to, avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters (and who have not crossed an internationally recognised State border).¹⁰⁸ As suggested by McAdam, the UN Guiding Principles could offer a legislative and/or policy model for formalising existing frameworks of temporary protection in case of internal displacement.¹⁰⁹ While the UN Guiding Principles do not directly mention the need to protect culture, the guidelines on the protection of IDPs' property, right to religion, opinion and expression, and right to education respecting the cultural identity, language and religion could have significance to the protection of ICH. For example, education in the traditions and customs of the former ways of life may be crucial for maintaining cultural identity following displacement or emigration.

In case of cross-border displacement, the receiving State is still bound by its international human rights obligations towards all individuals falling under its jurisdiction, irrespective of their citizenship status.¹¹⁰ Questions remain as to whether a special status should be given to 'climate migrants', for example SIDS inhabitants who must flee because the State's territory is entirely submerged. As refugee protection and non-refoulement is based on persecution, the framework of the 1951 UN Refugee Convention does not apply to 'climate migrants', and solutions for this significant protection gap are still needed, as could be seen in the *Ioane Teitiota* case before the UN Human Rights Committee. In this petition, a Kiribati citizen who had sought asylum in New Zealand over climate change induced hardship including, storms, flooding, water contamination, and diseases, which made the island uninhabitable, alleged a violation of the right to life because New Zealand denied the asylum application.¹¹¹ Although the Human Rights Committee found the communication admissible given that the petitioner had proven a risk to his life, it decided that New Zealand's asylum denial was neither arbitrary, nor did it amount to a manifest error or a denial of justice.¹¹² In particular, the Committee viewed the timescale of 10-15 years for the islands of Kiribati to become uninhabitable as not conferring enough urgency to the threat to life under Article 6 ICCPR, stating that it could still allow Kiribati to protect, and where necessary, relocate its population, while also noting that Kiribati was taking measures towards adaptation and building resilience.¹¹³ At the same time, the Committee recognised the future potential of a right to life violation, stating that

without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the *non-refoulement* obligations of sending states. Furthermore, given that risk of an entire country becoming submerged under water is an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized.¹¹⁴

However, the urgency of the situation and the difficult conditions of life in Kiribati were underscored in two dissenting opinions to the Committee's decision to reject the claim, and by commentators who strongly criticised the Committee's attitude of waiting for these conditions to deteriorate before allowing the non-refoulement obligations to be triggered.¹¹⁵ For example, Duncan Laki Muhumuza, a dissenting Committee Member who was of the view that the case reveals a violation of the right to life, argued that '[i]t would indeed be counter-intuitive to the protection of life to wait for deaths to be frequent and considerable in number to consider the threshold of risk as met'.¹¹⁶ In general, concerns over how New Zealand, and also Australia, may approach the issue of climate displacement have been raised in the past. Regarding Australia, its detention centre in Nauru has adopted a strict policy towards asylum seekers.¹¹⁷ It is currently not clear whether the Australian government may change course and accept 'climate migrants'.

1.3 The Rule of Law and International Peace and Stability in the context of ICH, Human Rights and Climate Change

While the recognition that environmental damage has negative implications for the realisation of all human rights has been an important step in protecting human beings from climate change, the threat to SIDS inhabitants and their cultures continues to exist as long as climate change continues to affect them. Thus, this Report also adopts a human rights-based approach to climate change by focusing on the cultural survival of individuals and groups through the safeguarding of their ICH. A human rights approach has both socio-legal benefits such as giving climate change a human face and raising awareness of climate change impacts on human life, livelihoods, and cultures,¹¹⁸ and legal and political benefits such as a positive impact on the rule of law,¹¹⁹ and the maintenance of international peace and stability.¹²⁰

The rule of law refers to

the principle of governance where law is the supreme factor in the relationship between the authorities and the citizen as well as between citizens with conflicting interests. It means that all persons, institutions and entities, public and private, including the state itself, are governed by established laws and accountable to legal institutions.¹²¹

From a substantial point of view, the rule of law implies that the law complies with human rights norms and standards regarding fundamental rights and freedoms, protection of personal integrity, and personal security.¹²² From a procedural point of view, the rule of law requires that laws are established by a democratic and open process,

that they are publicly promulgated as well as objectively and equally implemented and enforced, and that an independent judiciary controls and adjudicates them.¹²³

Putting the rule of law into context with climate change and human rights, including cultural rights, the protection of the environment is no longer viewed in isolation from other issues such as human rights violations or threats to cultural heritage. This has not only important implications for the rule of law, but also for human rights, cultural heritage, and the environment, as relevant bodies of law are brought to consider the climate-human rights and climate-culture nexus, and provide a voice for protecting human rights, cultural heritage, and the environment in various fora.¹²⁴ For example, climate change cases based on the violation of cultural rights enable judicial and quasi-judicial bodies to interpret national legislation with their value-added approach and provide a unified forum when it comes to global problems such as climate change and its impact on cultural heritage.¹²⁵ By exploring and protecting human rights, cultural heritage, and the environment in an interdisciplinary way, and by ensuring that governments are held accountable to their human rights obligations, these bodies support the promotion of the rule of law.¹²⁶

According to the international legal doctrine related to legal personality, States are governed by international human rights' obligations since the beginning of the legal protection of human rights. On the other hand the establishment of human rights obligations for non-state-actors, such as corporations, has been difficult.¹²⁷ However, new human rights developments regarding big oil, coal, and gas producers also known as 'Carbon Majors' have started to emerge, as by 2019 the 'largest growth

in absolute emission occurred in CO₂ from fossil fuels and industry'.¹²⁸ Vanuatu has already announced that it is planning to bring a case against the world's biggest fossil fuel companies.¹²⁹ In particular, Vanuatu's Foreign Minister stated that '90 corporations are responsible for extracting, producing and profiting from fossil fuels that contribute over two-thirds of greenhouse gas emissions in the world', and that they obstruct the necessary measures needed to mitigate, and adapt to, climate change.¹³⁰ In general, the responsibility of 'Carbon Majors' plays a tremendous role in the climate crisis. As the stakes are extremely high for South Pacific Island States, their leaders have made several calls to Australia in the last few years, asking the Australian government to not commit to new gas or coal projects.¹³¹ Overall, examining non-state-actors' obligations under human rights law in the context of climate change in addition to States' obligations, addresses all main actors and stakeholders in the climate emergency, which need to take urgent and unprecedented measures to protect human rights, cultural heritage, and the environment. Thus, as climate change is a cross-border phenomenon which requires solutions from different disciplines and the whole international community, a human rights approach to climate change and its positive impact on the rule of law *inter alia* ensure that the safeguarding of cultural heritage is not neglected.

In addition, the realisation of human rights plays an important role in the prevention of conflict and the maintenance of international peace and stability, which is one of the key purposes of the UN Charter. Violations of human rights tend to drive conflict and insecurity, which in turn can lead to further human rights violations, often

on a broad scale. Climate change is often acknowledged to be a driver, or at least a significant factor, in resource-based conflict, as demonstrated, for example, by the civil conflict in the Solomon Islands in the late 1990s/early 2000s.¹³² Such conflicts are likely to become only more intense and widespread as livelihoods come under ever greater pressures from climate change impacts. Applying, therefore, a human rights approach to safeguarding the ICH of South Pacific Island States and integrating it into climate action also fosters the maintenance of international peace and security.

The link between protecting cultural heritage and the maintenance of international peace and security have already been articulated by the UN Security Council, the UN body mandated to maintain international peace and security.¹³³ In particular, the destruction of cultural heritage is a driver of armed conflict, exacerbating and perpetuating cycles of violence.¹³⁴ However, cultural heritage and ICH in particular can also be a direct asset in dealing with conflicts and risks of insecurity, which are more likely as a result of climate change. For example, the customary systems of the Pacific Islands involve 'an autochthonous process of conflict management that is principally restorative in nature and concerned with maintaining community peace'.¹³⁵ Vanuatu is a good example of handling disputes in the traditional way, with custom (*kastom*) being not only an important ingredient of identity, but also a crucial source of resilience, and playing an important role in the avoidance of conflict and overall stability.¹³⁶ In this sense, ICH's dual role in conflict and transition to peace may be said to mirror the role ICH specifically plays regarding climate change mitigation, adaptation, and resilience.¹³⁷

1.4 ICH's Contribution to Sustainable Development

Lastly, safeguarding ICH fosters sustainable development, which is a principle enshrined in the Rio Declaration on Environment and Development,¹³⁸ that is, the outcome of the 1992 UN Conference on Environment and Development, which was intrinsically linked to the effort to bridge the development gap between the Global North and Global South.¹³⁹ Its current benchmarks, for example the **UN Sustainable Development Goals (SDGs)**, incorporated in the Agenda for Sustainable Development, have replaced the earlier UN Millennium Development Goals (MDGs) in 2015.¹⁴⁰ 193 countries have endorsed the 17 SDGs, which address poverty and inequality in the spirit of solidarity, and have committed to achieve them by 2030. In relation to climate change, the UN SDGs play an important role as they underline the importance of a safe environment, which is vital for SIDS to enjoy their cultural rights and thus their cultural heritage, in particular their ICH.¹⁴¹

While SDG 13 clearly calls for urgent action to combat climate change and its impacts, such as by strengthening resilience and adaptive capacity to climate-related hazards and disasters in all countries,¹⁴² a number of other targets are also relevant in the Report's context, including calls for strengthening efforts to protect and safeguard the world's cultural and natural heritage.¹⁴³ SDG 16, which focusses on the promotion of peaceful and inclusive societies through justice and the rule of law could also be reached through customary legal systems, which tend to emphasise accountability and transparency as well as representation and participation.¹⁴⁴ More broadly, the 2030 Agenda for Sustainable Development regards culture as a driver

and enabler of sustainable development through its potential for social inclusion, peace and stability, development and sustainability. Furthermore, the Hangzhou Declaration 2013, which advocates a human-centred approach by placing culture at the heart of development initiatives,¹⁴⁵ recommends to strengthen resilience to disasters and combat climate change through culture. This should include the safeguarding of relevant traditional knowledge, values and practices, and the integration of culture into DRR, climate-change mitigation, adaptation policies and plans. Building on the Declaration, the Hangzhou Outcomes were adopted in 2015 with a view to fully integrating culture in the implementation of the 2030 Agenda for Sustainable Development.¹⁴⁶ The Outcomes include nine key recommendations to mobilise culture for sustainable development, peace, social cohesion, and resilience, including integrating heritage and traditional knowledge into innovative and culture-based solutions to environmental concerns.

Furthermore, development has also been conceptualised as a right, with Article 13 of the current revised Draft Convention on the Right to Development stating that

States Parties recognize their duty to cooperate to create a social and international order conducive to the realization of the right to development by, *inter alia*:

[...](h) Enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change and extreme weather events, addressing the economic, social and environmental impacts of climate change and enhancing access to international climate finance to support mitigation and adaptation efforts

in developing and least developed countries, especially those that are particularly vulnerable to the adverse effects of climate change.¹⁴⁷

In addition, Article 15 of the Draft Convention on the Right to Development recognises specific and remedial measures to accelerate or achieve de facto equality in the enjoyment of the right to development for

human persons, groups and peoples, owing to their owing to their marginalization or vulnerability because of race, colour, sex, language, religion, political or other opinion, nationality, statelessness, national, ethnic or social origin, property, disability, birth, age or other status, including as human rights defenders.¹⁴⁸

The Draft Convention recognises these measures also for ‘developing and least developed countries, owing to historical injustices, conflicts, environmental hazards, climate change or other disadvantages, including of an economic, technical or infrastructural nature’.¹⁴⁹ Specific and remedial measures should provide inclusive participation in decision-making processes, as well as the facilitation and mobilisation of assistance (financial, technical, infrastructural, etc.) when required to ensure inclusive participation.¹⁵⁰

In general, sustainable development has social, environmental, and economic dimensions, which are, together with peace and security, highly interdependent. ICH can effectively contribute to all of them.¹⁵¹ For example, regarding social development, traditional fishing practices are vital to achieve food security, traditional health practices contribute to well-being and quality healthcare, traditional practices regarding water management contribute to

equitable access to clean and sustainable water, and traditional customs provides living examples of educational contents and methods.¹⁵² Regarding environmental development, ICH can help protect biodiversity by, for example, using methods to breed a variety of food crops and to preserve multiple seeds after many decades of mono-cropping. ICH can also contribute to environmental sustainability by having a significant body of traditional knowledge understanding that well-being depends on nature which leads to a sustainable use of natural resources, and knowledge and coping strategies such as environmental conservation skills and rules or natural resource management systems are foundations for community-based resilience to natural disasters and climate change.¹⁵³ Further, regarding economic development, traditional knowledge can generate revenue and work for a broad range of people and individuals. Lastly, ICH as a living heritage can be a source of innovation for development as new materials can be adapted to respond to old needs, for example when certain raw materials are becoming scarce or unavailable, and communities can benefit from tourism activities related to the practice of traditions.¹⁵⁴

The role of ICH as a driver of sustainable development has also been recognised by the Pacific region. The commitment of the Ministers of Culture of the Focus States and of 18 other members of the Pacific Community (SPC) to promote the role of culture as an enabler for sustainable development was illustrated by endorsing the Regional Culture Strategy: Investing in Pacific Cultures 2010-2020, in 2012.¹⁵⁵ Moreover, the SAMOA Pathway Document 2014, which was the outcome of the Third International Conference on SIDS, also recognises the role of culture as a driver and enabler

of sustainable development, especially in small island developing countries.¹⁵⁶ The SAMOA Pathway strongly supports the efforts of SIDS ‘to enhance tangible and intangible cultural heritage, including local and indigenous knowledge, and involve local people for the benefit of present and future generations’, and ‘to develop domestic mechanisms to conserve, promote, protect and preserve their natural, tangible and intangible cultural heritage practices and traditional knowledge’.¹⁵⁷ While the SAMOA Pathway is primarily concerned with sustainable development, it also recognises a critical need to build the resilience of SIDS as they are disproportionately affected by disasters.¹⁵⁸ In addition, the Pacific Education for Sustainable Development Framework (ESD) was endorsed by the Pacific Islands Forum (PIF) Education Ministers in 2006. Its main objective is to ‘empower Pacific peoples through all forms of locally relevant and culturally appropriate education and learning to make decisions and take actions to meet current and future social, cultural, environmental and economic needs and aspirations’.¹⁵⁹ Moreover, the ‘ESD provides a critical mechanism for achieving long term change to improve environmental sustainability, health, education and training, gender equality, youth involvement and the recognition and protection of cultural values, identities and traditional knowledge’.¹⁶⁰ Lastly, the 2014 Framework for Pacific Regionalism, the objectives of which include ‘sustainable development that combines economic social, and cultural development in ways that improve livelihoods and well-being and use the environment sustainably’, names among its values ‘diversity and heritage of the Pacific and (...) an inclusive future in which cultures, traditions and religious beliefs are valued, honoured and developed’.¹⁶¹

Concluding Remarks Part 1

Culture, and especially ICH, are a vital element of South Pacific Islanders’ cultural identities and of the survival of their communities. Customs and traditions have survived colonisation and globalisation to a larger extent than in many other countries. However, because of the increasing impacts of climate change on the South Pacific Islanders’ ways of life, ICH faces particularly high risks of loss, amounting in some cases to complete extinction due to the close connection of their ICH to ecosystems, which are often place-based. For example, altered weather and season patterns render obsolete many areas of knowledge and impact traditional agriculture and fishing. They also jeopardise traditional medicine and the making of traditional boats. In general, South Pacific Islanders are already, or will be, unable to live on their Ancestral lands, be cut off sacred and religious sites including burial grounds, be unable to practice song, dance, and folklore, and be unable to keep cultural knowledge alive because the opportunities for transmission to younger generations diminish as climate change impacts continue to increase.

Thus, safeguarding ICH from the adverse impacts of climate change is not only crucial for maintaining South Pacific Islanders’ respective distinct cultural identities, but also for the cultural diversity of the South Pacific region and the world. While this is a sufficient reason to safeguard ICH in the climate emergency, ICH can also contribute to inclusive mitigation and adaptation strategies, and, therefore, support resilience to climate change. Low-impact agricultural techniques, traditional boat and vessel building, coastal marine management and rainwater harvesting as well as alternative energy development are only

some of the traditional ways of life of South Pacific Islanders which can be used as inclusive, ICH-preserving adaptation strategies. Taking adaptation measures, and including strategies based on ICH, has positive implications for resilience, as it can increase the capacity or ability to anticipate and cope with shocks, and to recover more rapidly.

However, although mitigation and adaptation measures are in place to tackle climate change, States' actions are not ambitious enough to reach the necessary GHG reduction targets to keep global warming well below 2°C, which is necessary to reduce the melting of glaciers, which in turn leads to sea level rise. Consequently, because of the continuous sea level rise, which might render several South Pacific Island States uninhabitable, their inhabitants face internal and cross-border climate displacement. While their rights might be more protected in internal displacement processes because of existing frameworks, there still exists an immense threat in losing their ICH in the displacement process because it is often place-based or associated with a specific ecosystem, even though ICH is often deemed as only dependent on their holders and practitioners. When it comes to cross-border displacement, current frameworks do not offer any specific protection for 'climate migrants', which leads to South Pacific Islanders and their ICH falling 'through the cracks when it comes to protection'.

In addition, climate change impacts a multitude of the human rights held by South Pacific Islanders including not only the right to life, the right to food and water, the right to health, the right to livelihood, the freedom of movement, the right not to be displaced, the right to adequate housing, the right to self-determination, but also their right to enjoy and access cultural

heritage and live in accordance with their cultures. Adopting, therefore, a human rights, climate change, and culture nexus ensures not only the protection of ICH, but also the realisation of human rights more generally. This has positive impacts on the rule of law, as well as international peace and stability.

Finally, safeguarding ICH also contributes to sustainable development, which ensures a safe environment vital for the full realisation of human rights. The role of ICH in sustainable development has not only been recognised at the international level, but also at the regional and domestic level, and is crucial for the protection of ICH in the climate emergency.

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- 118 Daniel Bodansky, 'Introduction: Climate Change and Human Rights: Unpacking the Issues', *Georgia Journal of International and Comparative Law*, 2013, Vol. 38, No. 3, pp. 511-524.
- 119 Edith Brown Weiss, 'Rule of Law for Nature in a Kaleidoscopic World', in Christina Voigt (ed), *Rule of Law for Nature* (Cambridge University Press 2013), pp. 27-45.
- 120 See for example UN Charter, Article 55, which includes the universal respect for and observance for human 'with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples'.
- 121 Hans Christian Bugge, 'Twelve fundamental challenges in environmental law: an introduction to the concept of rule of law for nature', in Christina Voigt (ed), *Rule of Law for Nature* (Cambridge University Press 2013), pp. 3-26, p. 6.
- 122 *ibid.*, pp. 6, 7.
- 123 *ibid.*, p. 6.
- 124 See Weiss in fn 119 regarding the rule of law and the environment.
- 125 See regarding human rights and climate change cases in general Christina Voigt and Evadne Grant, 'Editorial: The Legitimacy of Human Rights Courts in Environmental Disputes', *Journal of Human Rights and the Environment*, 2015, Vol. 6, pp. 131-138.
- 126 *ibid.*
- 127 Donald K Anton and Dinah L Shelton, *Environmental Protection and Human Rights* (Cambridge University Press 2011).
- 128 See fn 70; Please note that the Human Rights Commission of the Philippines, for example, decided that 'Carbon Majors companies could be found [both] legally and morally liable for human rights violations arising from climate change'. The Commission's decision was based *inter alia* on the UN Guiding Principles on Business and Human Rights, a set of soft law guidelines for States and companies to prevent, address, and remedy human rights violations committed in business operations. It also addressed the climate change impacts on ICH, for example of the Daranghuyan Ancestral Domain in Mt. Kitanglad in southern Philippines, who cannot use 'some of their cultural practices, including planting rituals that depend on cues from nature [because they] have been rendered unreliable and ineffective due to the erratic changes in weather'. A member of the Aeta-Ambala Indigenous community 'shared her fear of losing the cultural traditions of her people because their natural resources could no longer provide the food and medicine they have relied on since time immemorial' during the hearings (Report Commission on Human Rights of the Philippines 'National Inquiry on Climate Change Report' (2022), available at <https://chr.gov.ph/wp-content/uploads/2022/05/CHRP-NICC-Report-2022.pdf>).
- 129 Övunc Kutlu, 'Tiny Pacific nation plans to sue oil majors for climate', 22 November 2018, [aa.com.tr](https://www.aa.com.tr/en/energy/regulation-oil/tiny-pacific-nation-plans-to-sue-oil-majors-for-climate/22411), available at <https://www.aa.com.tr/en/energy/regulation-oil/tiny-pacific-nation-plans-to-sue-oil-majors-for-climate/22411>.
- 130 *ibid.*
- 131 Kate Lyons, 'Australia at odds with neighbouring nations on new coal and gas projects at Pacific Islands Forum', 12 July 2022, [theguardian.com](https://www.theguardian.com/world/2022/jul/12/australia-at-odds-with-neighbouring-nations-on-new-coal-and-gas-projects-at-pacific-island-forum), available at <https://www.theguardian.com/world/2022/jul/12/australia-at-odds-with-neighbouring-nations-on-new-coal-and-gas-projects-at-pacific-island-forum>.
- 132 Alice Blondel, 'Climate Change Fuelling Resource-Based Conflicts in the Asia-Pacific: Asia-Pacific Human Development Report', Background Papers Series 2012/12, UNDP 2012, pp. 44-45, available at <https://www.unclearn.org/wp-content/uploads/library/undp304.pdf>.
- 133 See especially S/Res/2347(2017), preamble rec. 5 and para 1. For commentary, see Kristin Hausler, 'Cultural heritage and the Security Council: Why Resolution 2347 matters', QIL, Zoom-in 48, 2018, pp. 5-19.
- 134 *ibid.*
- 135 See fn 23.
- 136 M. Anne Brown and Anna Nolan, 'Towards effective and legitimate governance: States emerging from hybrid political orders (Vanuatu Report)', Brisbane Australian Centre for Peace and Conflict Studies, 2008, *passim*.
- 137 See fn 36, para 38.
- 138 Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, UN Doc A/CONF.151/26(Vol.1), pp. 3-8 Rio Declaration on Environment and Development.
- 139 Ulrich Beyerlin, 'Sustainable Development', in Rüdiger Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law Online* (Oxford University Press 2013), para 22 (Rio Principles 5 & 6). For more on the link between the environment and development see Part 3 of the Report under 3.1. ICH during the Emergence of Environmental Law.
- 140 UNGA, 'Transforming our world: the 2030 Agenda for Sustainable Development', UN Doc A/RES/70/1, 21 October 2015.

- 141 See UNESCO's interactive visual 'Living Heritage and Sustainable Development', in particular the link with SDG 13, at <https://ich.unesco.org/dive/sdg/>; See also UNESCO, 'Intangible Cultural Heritage and Sustainable Development', <https://ich.unesco.org/doc/src/34299-EN.pdf>.
- 142 SDG 13, Target 13.1; note also calls for integrating climate change measures into national policies, strategies and planning (Target 13.2), improving education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning (Target 13.3), and the need to 'promote mechanisms for raising capacity for effective climate change-related planning and management in least developed countries and small island developing States, including focusing on women, youth and local and marginalized communities' (Target 13.B).
- 143 SGD 11, Target 11.4.
- 144 See, for example, the Working Group on CIJ and SDG16+ (WP CIJ), available at <https://odi.org/en/about/our-work/working-group-on-customary-informal-justice/>.
- 145 The Hangzhou Declaration: Placing Culture at the Heart of Sustainable Development Policies, adopted at the International Congress 'Culture: Key to Sustainable Development' Hangzhou, China (May 2013), available at https://www.icomos.org/images/DOCUMENTS/Working_Groups/SDG/UNESCO_2013_Hangzhou_Declaration_-_Culture_and_Sustainable_Development.pdf.
- 146 International Conference on 'Culture for Sustainable Cities' (10-12 December 2015), 'Hangzhou Outcomes'.
- 147 Human Rights Council, Working Group on the Right to Development, UN Doc A/HRC/WG.2/23/2, 23rd session 16-20 May 2022, Art 13, para 4.
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- 155 Regional Culture Strategy: Investing in Pacific Cultures 2010-2020, Phase 2 available at <https://www.spc.int/resource-centre/publications/regional-culture-strategy-investing-in-pacific-cultures-2010-2020>.
- 156 UNGA, 'SIDS Accelerated Modalities of Action (SAMOA) Pathway', UN Doc A/RES/69/15, 15 December 2014, paras 81.c and 81.e.
- 157 *ibid*.
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- 160 *ibid*.
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PART 2

Safeguarding ICH in Human Rights, Cultural Heritage, IP Laws and Policies

The second Part of this Report first considers safeguarding ICH in Human Rights Law (2.1.). It then discusses its safeguarding in Cultural Heritage Laws and Policies (2.2.), before looking at it from an IP perspective (2.3.).

2.1 Safeguarding ICH in Human Rights Law

ICH within Human Rights Law at the International Level

Under international human rights law, States have obligations towards the people under their jurisdiction which may encompass taking steps to prevent or mitigate the effects of natural hazards, such as those linked with climate change. As observed by the Expert Mechanism on the Rights of Indigenous Peoples, failure by national and local governments, DRR agencies, Indigenous peoples, and other actors to take reasonable preventive action to reduce exposure and vulnerability to natural hazards and to enhance resilience, and to provide effective mitigation, is a human rights issue.¹⁶² Moreover, according to the joint statement by several UN human rights treaty bodies, 'failure to take measures to prevent foreseeable harm to human rights caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States' human rights obligations'.¹⁶³

This statement was affirmed by the UN Human Rights Committee in its decision regarding the *Torres Strait Islanders* Petition, which considered that Australia's

failure to adopt timely adequate adaptation measures to protect the authors' collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources discloses a violation of the State Party's positive obligation to protect the authors' right to enjoy their minority culture.¹⁶⁴

In other words, in addition to a violation of Article 17 ICCPR, which provides for the right to home, private life and family, the Human Rights Committee also found a violation of the petitioners' right under Article 27 ICCPR, which confers minorities the right to enjoy their culture which 'may relate to a way of life which is closely associated with territory and the use of its resources, including such traditional activities as fishing or hunting' and which is thus linked to 'the survival and continued development of the cultural identity'.¹⁶⁵

Cultural rights face a particular, in many cases existential threat in the context of climate change.¹⁶⁶ However, as stated in the 2020 annual report of the Special Rapporteur in the field of cultural rights, although cultural rights, among all human rights, are particularly drastically affected, they tend not to be acknowledged in climate change initiatives.¹⁶⁷ In addition, there is particularly little data about the existing and expected harms to ICH, although the often ICH-rich culture of marginalised populations practicing traditional lifestyles, including Indigenous communities and those living in low-lying SIDS, is at particular risk of cultural extinction.¹⁶⁸

As part of a global, integrated, multi-stakeholder and human rights-based approach to address climate change, culture, and cultural rights, the Special Rapporteur advocates

ensuring that cultural and environmental policies and laws embody a human rights approach; and that cultural policies incorporate climate change and environmental concerns, while environmental and climate change-related policies address related cultural dimensions;

(...)

[to] develop remedies, compensation and mechanisms for accountability for climate-related damage to culture, cultural rights and cultural heritage;

(...)

[to] guarantee that cultural rights defenders and experts, cultural heritage defenders and experts, and cultural practitioners, including representatives of indigenous peoples, women, persons with disabilities, youth and those from zones which are most affected by climate change, are involved in all climate-related policy processes at all levels.¹⁶⁹

Looking more closely at the cultural heritage and human rights nexus, it is the access to, and enjoyment of, cultural heritage which has been recognised as an element of the right to participate in cultural life.¹⁷⁰ And more recently, the right to participate in cultural heritage governance has been considered as another possible component of the right to participate in cultural life.¹⁷¹ The right to participate in cultural life was enshrined in the legally non-binding Universal Declaration of Human Rights (UDHR), with its Article 27 providing for the right of everyone to 'freely to participate in the cultural life of the community', as well as its Article 22 providing for the right 'to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality'.¹⁷² This right became binding with the adoption of the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, to which Fiji, Papua New Guinea, and the Solomon Islands are

Parties. Article 15 ICESCR affirms the right of everyone to take part in cultural life, which has been interpreted to include the right to enjoy and access cultural heritage. State Parties to the ICESCR have an obligation to respect, protect, and fulfil this right with regard to all individuals under their jurisdiction, irrespective of their nationality. The **Committee on Economic, Social and Cultural Rights (CESCR)** has defined cultural life in a way that bears similarities to the definition of ICH as it stated that 'the expression 'cultural life' is an explicit reference to *culture as a living process*, historical, *dynamic* and *evolving*, with a past, a present and a future'.¹⁷³

In addition to the right to participate in cultural life, the ICESCR also provides for the right to education under Article 13. The right to education is relevant for this Report given that education should be offered in a manner that is acceptable to all and, therefore, culturally appropriate. The CESCR has stated in this regard that a State must 'fulfil (facilitate) the acceptability of education by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples'.¹⁷⁴

Economic, social and cultural rights must be progressively realised, including through the resources of the relevant State and 'through international assistance and co-operation' according to Article 2(1) ICESCR. Therefore, States that are unable to fully realise those rights within their jurisdiction must seek the assistance of third States to progress towards their full realisation. Third States must, in turn and to the maximum of their available resources, offer their assistance towards the realisation of those rights to the State requesting assistance. State Parties to human right treaties which include the right to take part in cultural life must, thus, not only respect,

protect, and fulfil the right to access and enjoy cultural heritage with regard to all persons under their jurisdiction, but also with regard to populations outside their territories, in accordance with Articles 55 and 56 of the UN Charter.¹⁷⁵ In general, cooperation for the realisation of human rights is an emerging principle of international law, which seeks 'to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all'.¹⁷⁶

In addition to the ICESCR, the ICCPR, to which Fiji, Papua New Guinea, the Solomon Islands, and Vanuatu are State Parties, includes relevant rights, in particular its Article 27 which affirms the right of ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practice their own religion, or to use their own language. This right is the cornerstone of the cultural rights of minorities and State parties must ensure the protection of their cultures under their jurisdiction.¹⁷⁷ As confirmed by the UN Human Rights Committee with regard to Article 27 ICCPR,

culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.¹⁷⁸

For petitions to be brought before the CESCR or the UN Human Rights Committee, the relevant State must have ratified the Optional Protocol allowing for individual communications once domestic remedies have been exhausted. While the OP-ICESCR has been ratified by 26 State Parties and the OP-ICCPR by 117 State Parties, none of the Focus States have ratified either of the Protocols, which would provide a supranational route to justice in a region which does not benefit from a regional human rights court.¹⁷⁹ Increased participation in those treaties within the Pacific region would also demonstrate support towards the potential of the UN Treaty Body system in further affirming human rights obligations in relation to climate change.

In addition to the rights of minorities as provided for under Article 27 ICCPR, Indigenous rights are another set of human rights exercised collectively, which are relevant to the recognition of cultural rights and, in particular, of traditional knowledge. The only binding Indigenous rights treaty is the 1989 Indigenous and Tribal Peoples Convention (ILO 169), which has been ratified by Fiji. According to ILO 169, its State Parties must develop 'with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity', including measures 'promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions'.¹⁸⁰ Importantly, when applying the provisions of ILO 169, State Parties must

(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever

consideration is being given to legislative or administrative measures which may affect them directly; [and]

(b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them.¹⁸¹

A corollary to the duty to consult is that no decision should be taken without the free, prior and informed consent (FPIC) of the affected parties, including in instances when peoples have to be relocated as an exceptional measure, which could be the case as a result of climate change.¹⁸² The right to FPIC was also recognised in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UNGA in 2007.¹⁸³ The Special Rapporteur on the rights of Indigenous peoples also highlighted that mitigation and adaptation measures undertaken in response to climate change without the free, prior and informed consent of affected Indigenous peoples may undermine their cultural rights, for instance if renewable energy facilities, such as dams, were placed on their lands, or if ecological projects led to their displacement.¹⁸⁴ Consent is also a cultural issue in the sense that traditions may dictate processes around consent, including who may provide consent on behalf of a community and how such a consent should be obtained.

Furthermore, the UNDRIP specifically provides for the safeguard of Indigenous heritage by stating that

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage,

traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.¹⁸⁵

However, according to the International Law Association (ILA) Committee on the Rights of Indigenous Peoples, the elements that may qualify a group as Indigenous include not only 'having distinct social, economic or political systems' and 'having distinct language, culture, beliefs and customary law', but also 'forming non-dominant groups within the society'.¹⁸⁶ Therefore, only a few groups within the Focus States may be considered as falling within the conceptualisation of 'Indigenous peoples' and the protection afforded to them under international law in accordance to that conceptualisation. Nevertheless, the term 'Indigenous people' can be used at the domestic level to refer to those whose ancestors are Indigenous to the land, even if they are not a non-dominant group within a society. For example, the Constitution of Fiji mentions the 'Indigenous people', the *iTaukei*, even if they make up more than half of the population. Thus, especially in a domestic context, the term 'Indigenous people' might not always refer to what is understood under

international law. How the term ‘Indigenous people’ can be understood within human rights law at the domestic level, including in a cultural context, is set out in the following section.

ICH within Human Rights Law at the Domestic Level

Several Focus States include human rights within their Constitutions but, like in many Constitutions around the world, cultural rights are not specifically mentioned.

The Preamble of the Constitution of **Fiji** recognises various Fijian groups including the *iTaukei* and the Rotuman as ‘Indigenous people’ but also the descendants of settler communities, as each having their own ‘culture, customs, traditions and language’.¹⁸⁷ While the Bill of Rights in the Constitution of Fiji does not provide expressly for cultural rights, customary ownership of land and customary fishing rights are both recognised.¹⁸⁸ More generally, it also prohibits unfair discrimination on the grounds of a person’s culture or ethnic origin, among others.¹⁸⁹

In 2019, Fiji specifically recognised ‘the value of a human rights based approach in ensuring recognition and protection of the richness of indigenous knowledge, the multi-cultural and interfaith composition of the Fijian population, when addressing communities experiencing uncertainty about their future due to climate change.’¹⁹⁰ The same year, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment also recognised that ‘environmental protection is essential to fulfilling many of the rights recognised in [the ICCPR and Convention on the Elimination of Discrimination Against Women (CEDAW)], including the rights to

life, health, food, water, culture and development’, where it is of ‘critical importance [to protect] the rights of those who may be most vulnerable to environmental harms and climate change’.¹⁹¹

More specifically, as a result of the need to relocate communities,¹⁹² Fiji launched Planned Relocation Guidelines in 2018, and Displacement Guidelines in 2019, both as a ‘living document’ which may be updated over time.¹⁹³ It also established the world’s first national Relocation Trust Fund for people displaced by climate change, which is funded *inter alia* through revenue from Fiji’s Environment and Climate Adaptation Levy.¹⁹⁴

According to the Planned Relocation Guidelines, in the pre-relocation process, government stakeholders shall

[c]ollaborate with the affected communities ensuring the diverse needs of the community are integrated in preparing and elaborating the relocation plan, in accordance with conserving of traditions and cultural identity, and human rights standards, by initiating a real dialogue with the affected population and out in place measures to remove obstacles to participation and to capture the views of differently affected persons.¹⁹⁵

According to the Displacement Guidelines, among the measures to be taken at the pre-displacement stage, the Fijian government should

[e]nsure that at-risk of displacement communities, households and/or individuals do have permanent access to (basic) human rights, such as rights to food, water, a standard of living adequate for the health and wellbeing of potential at-risk groups, and access to social and cultural rights in

accordance with Fijian law, environmental and climate change polices, including but not limited to the Bill of Rights in the Fijian Constitution, the NAP [National Adaption Plan], NCCP [National Climate Change Policy], and NDRRP [Natural Disaster Risk Reduction Plan] (NDRRP).¹⁹⁶

Other Stakeholders should

[s]upport the Government Stakeholders’ efforts to focus on vulnerable groups and assist in monitoring and evaluating their adaptation capabilities, complement the adaptation measures already in place, and assess the potential emotional, social, cultural and economic impact of potential forceful movement.¹⁹⁷

During the post-relocation stage, the Planned Relocation Guidelines state that government stakeholders ‘[e]nsure appropriate and progressive (improved) standard of living for the affected communities, in accordance with their cultural and basic human rights’.¹⁹⁸ The Displacement Guidelines set out that regarding temporary displacement, the Fijian government should

[e]nsure appropriate standard of living for the displaced group(s), and the host communities in accordance with their cultural and social characteristics, in order to avoid discrimination and conflict at destination and to guarantee protection of human rights, in particular those belonging to vulnerable people during the post-displacement stage.¹⁹⁹

Regarding permanent displacement, both the government and non-governmental stakeholders must consider the cultural challenges along the possible sustainable livelihood income and more in general at their new permanent site.²⁰⁰

The Constitution of **Kiribati** includes the declaration that in its implementation, the customs and traditions of Kiribati will be cherished and upheld.²⁰¹ Culture is also embedded in the Constitution through the use of certain words, such as ‘maneaba’ or ‘beretitendi’, which are the localised version of the term President, and demonstrate ‘an appreciation of sanctity embedded in the use of these terminologies in the highest law and document of the land’.²⁰² The Constitution also includes provisions that recognise the ‘Banaban’ and ‘Banabans’ as Indigenous peoples in stipulating laws relating to the possession of, and claims to, land.²⁰³

Kiribati has highlighted the role played by ongoing initiatives and data collection and storage related to climate change in relation to general measures of implementation of economic, social and cultural rights.²⁰⁴ However, the challenges from climate change and natural disasters, including sea-level rise and king tides, have also been raised as hurdles for the implementation of human rights treaties.²⁰⁵ The scarcity of resources also means that Kiribati has so far been unable to establish a national human rights institution but has, instead, put in place regional ones.²⁰⁶

In its Preamble, the Constitution of **Papua New Guinea** of 1975 acknowledges ‘the worthy customs and traditional wisdoms of [its] people – which have come down (...) from generation to generation’, and calls for

- (1) an equal opportunity for every citizen to take part in the political, economic, social, religious and cultural life of the country; and
- (2) the creation of political structures that will enable effective, meaningful participation by our people in that

life, and in view of the rich cultural and ethnic diversity of our people for those structures to provide for substantial decentralization of all forms of government activity.²⁰⁷

The Constitution also recognises that the cultural and ethnic diversity of Papua New Guinea are a strength in development and calls ‘for the fostering of a respect for, and appreciation of, traditional ways of life and culture, including language, in all their richness and variety, as well as for a willingness to apply these ways dynamically and creatively for the tasks of development’.²⁰⁸ The Constitution also sets out protection from unjust deprivation of property but provides exceptions, such as when the taking of possession or acquisition is in accordance with custom or when any restriction regarding the property ‘is reasonably necessary for the preservation of the environment or of the national cultural inheritance’.²⁰⁹

While the Constitution of **Samoa** does not refer to cultural rights as such, its Preamble recognises the State’s roots including Christian values and ‘Samoan custom and tradition’.²¹⁰ With a Constitution Amend-ment Bill in 2020, together with the Land and Titles Bill 2020 and the Judicature Bill 2020, the objective was to adopt modern values alongside ‘customary values in moving forward, so that Samoan customs and usages are not lost, not now, not in the near future, and it is hoped for a very long time to come’.²¹¹ At the same time, the Land and Titles Court would be removed from the constitutional umbrella, and the new court will have ‘added powers for adjudicating on village laws passed by village councils (*fono*), as well as on customary land and chief titles’.²¹² Currently, about 81% of Samoa’s land is under customary ownership, administered by the *matai*, who are the holders of chiefly titles and play a

key role in regulating social life.²¹³ Criticism for these amendments arose for fear that a parallel legal system could remove constitu-tional protections and open the possibility for village councils of chiefs to act despoti-cally.²¹⁴ However, because of modernisation and globalisation, there exists no longer consensus about Samoan custom. Tradi-tional authority, such as authority owned by high chiefs, are mostly shared as landown-ing families can no longer agree on a single candidate, which renders the codification of custom a political agenda.²¹⁵ As it stands,²¹⁶ the Constitution mentions custom, stating that customary land in Samoa, which is land held in accordance with Samoan custom and usage and with the law relating to Samoan custom and usage, cannot be sold,²¹⁷ and that a *Matai* title, which is linked to a custom-ary decision-making system, shall be held in accordance with Samoan custom and usage and with the law relating to Samoan custom and usage.²¹⁸ In 2021, Samoa drew direct links between values, culture, and human rights,

[o]ur long term vision is for an im-proved quality of life for all Samoans. This is underpinned by our Chris-tian values and our unique Samoan culture and traditions (*fa’asamoa*). The *fa’asamoa* is a unique way of life that ensures we take collective re-sponsibility for each other, our ‘aiga or families,’ our villages and country guided by the *matai* system. Human rights are underpinned by core val-ues of respect, dignity, equality and security for everyone and likewise the *fa’asamoa* holds core values that guide social interaction such as re-spect, dignity, love, protection, and service, which mutually reinforce human rights. Ensuring the com-plementarity of our *fa’asamoa* and

Christian values with human rights, is vital to our efforts for the promotion, respect of, protection and fulfillment of all human rights and fundamental freedoms in Samoa.²¹⁹

However, as certain traditional practices may impede on the realisation of the human rights of women, the Working Group on the issue of discrimination against women in law and in practice noted ‘the State must guarantee the freedom of women not to participate in traditions, customs and practices that infringe upon their human dignity and rights, to critique existing cul-tural norms and traditional practices and to create new cultural meanings and norms of behaviour’.²²⁰

The Preamble of the Constitution of the **Solomon Islands** states that

We the people of Solomon Islands, proud of the wisdom and the worthy customs of our ancestors, mindful of our common and diverse heritage and conscious of our common des-tiny (...) establish the sovereign dem-ocratic State of Solomon Islands (...) [agreeing and pledging that] (...) we shall cherish and promote the differ-ent cultural traditions within Solo-mon Islands.²²¹

The Constitution even provides that an ap-plication for citizenship requires a declara-tion of allegiance to Solomon Islands and of respect for the culture, the language and the way of life of Solomon Islands.²²²

In 2020, the Government announced plans to amend the Constitution to recognise the protection of Indigenous peoples’ own-ership over their traditional lands.²²³ For now, the Moli Ward Chiefs Council has the power to establish marine protected areas within which modern methods of fishing are pro-hibited.²²⁴ Furthermore, under the penalty

of fine, every person in Moli Ward must respect cultural norms, values, beliefs and tradition (which includes rules concerning the dressing of women), pass them onto the next generation, not divulge them, and not try to introduce cultural or traditional norms and values from other provinces or countries inside Moli Ward.²²⁵

Tonga is the only constitutional monarchy in the Pacific. The Constitution of Tonga in-cludes a ‘Declaration of Rights’ focussed on civil and political rights.²²⁶ Tonga’s Consti-tution of 1875 (with Amendments through 2013) references ‘cultural traditions of the Kingdom’ in relation to freedom of the press and the enactment of laws con-sidered necessary to be passed in their interest.²²⁷ With the latest Constitution Amendment in 2020, the Supreme Court will have to take into account Tonga’s tra-ditional culture when it takes decisions.²²⁸ Although Tongan culture has already been considered in legal processes in the past, it has not been codified before.²²⁹ In 2017, Tonga reported that although it has yet to ratify the ICESCR, ‘the principles of ICESCR are incorporated in the Tongan laws, which includes laws to the right to adequate health care, right to education, and the right to a decent home, food, shelter, the right to fair wages and equal remuneration for equal value and right to take part in cul-tural life’.²³⁰

Although the Constitution of **Tuvalu** does not expressly refer to cultural human rights, it names Tuvaluan custom and tra-dition as one of its three pillars, alongside Christian principles and the Rule of Law.²³¹ Further, the Constitution lists among its principles that

the stability of Tuvaluan society and the happiness and welfare of the people of Tuvalu, both present and future, depend very largely on the

maintenance of Tuvaluan values, culture and tradition, including the vitality and the sense of identity of island communities and attitudes of co-operation, self-help and unity within and amongst those communities (...) [and t]he life and laws of Tuvalu should therefore be based on respect for human dignity, and on the acceptance of Tuvaluan values and culture, and on respect for them.²³²

Section 29 of the Constitution deals with the protection of Tuvaluan values, which includes clauses related to the right to worship and the right to freedom of expression, and the necessity to restrict the exercise of rights if their exercise may be divisive, unsettling or offensive to the people, or may otherwise directly threatening Tuvaluan values or culture. Further, in Part II, the Bill of Rights, the Constitution states that the protection and development of Tuvaluan values and culture is a matter of public and national interest.²³³ It also refers to the freedom of belief, of expression, and association.

In addition, during the visit of the Special Rapporteur in the field of cultural rights in 2019, Tuvalu recognised its commitments under the UDHR, and the Office of the Ombudsman had plans to carry out a national enquiry on cultural values and human rights, in order to 'highlight the areas where cultural values and practices already reinforce and promote human rights and the areas where cultural practices need adjustments so as to comply with human rights'.²³⁴

Lastly, in its Preamble, the Constitution of **Vanuatu** states that the people of Vanuatu cherish their ethnic, linguistic, and cultural diversity. It also states that it is a fundamental duty of each parent to give their children a 'true understanding (...) of the

culture and customs of the people of Vanuatu.²³⁵ The Constitution also establishes the Malvatumauri Council of Chiefs, a body which must be consulted in 'all matters relating to land, custom and tradition and may make recommendations for the preservation and promotion of ni-Vanuatu culture and languages'.²³⁶ It also states that all land in Vanuatu belongs to Indigenous custom owners and their descendants.²³⁷

In 2018, Vanuatu reported 'considerable progress and achieved significant milestones in the protection and promotion of human rights that takes into consideration Vanuatu's culture and Christian faith'. However, it also cited 'numerous challenges to implementing various human rights commitments including understanding the content of the human rights treaties'.²³⁸

2.2 Safeguarding ICH in Cultural Heritage Laws and Policies

Cultural Heritage Laws and Policies at the International Level

The ICH Convention is the key treaty for the safeguarding of ICH. It counts 180 States Parties, including all Focus States.²³⁹ The ICH Convention was born from a realisation that the earlier approach in UNESCO conventions which initially only focussed on tangible heritage could not sufficiently cover cultural heritage in all its complex and changeable meanings, and its intrinsic connections with living cultures.²⁴⁰ These aspects were captured in the innovative category of ICH, the visibility and significance of which is ensured through inscriptions of elements of ICH on:

- the Representative List of the Intangible Cultural Heritage of Humanity
- the List of Intangible Cultural Heritage

in Need of Urgent Safeguarding, and

- the Register of Good Safeguarding Practices.

Among the Focus States, Samoa, Tonga, and Vanuatu have each inscribed one element. In 2019, **Samoa** registered the 'le Samoa, fine mat and its cultural value' on the Representative List.²⁴¹



Figure 2: Picture of Samoans weaving the 'le Samoa. © Ministry of Education, Sports and Culture, Samoa, 2018, available at <https://ich.unesco.org/en/RL/ie-samoa-fine-mat-and-its-cultural-value-01499>.

The practice involves weaving a special mat from strips of sea-soaked pandanus leaves, the production of which can take between several months and several years. However, according to UNESCO,

the 'le Samoa is more than a cultural product involving exceptional skill; its true value lies in its use as an object of exchange in traditional ceremonies and rituals that reaffirm kinship ties and strengthen community wellbeing. The 'le Samoa is displayed and exchanged at festive celebrations or on important gatherings such as weddings and funerals, and its exchange contributes profoundly to the maintenance of the social structure.



Figure 3: Picture of 'le Samoa. © Ministry of Women, Community, and Social Development, Samoa, 2018, available at <https://ich.unesco.org/en/RL/ie-samoa-fine-mat-and-its-cultural-value-01499>.

Although the practice is not included on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding, the UNESCO website flags loss of knowledge as a threat factor for the practice.²⁴²

In 2008, **Tonga** inscribed 'Lakalaka, dances and sung speeches of Tonga' on the Representative List. Often considered Tonga's national dance, Lakalaka, which means 'to step briskly or carefully', is 'a blend of choreography, oratory, and vocal and instrumental polyphony (...) practised by communities throughout the islands'.²⁴³



Figure 4: Lakalaka performance. © Adrienne Kaeppler/UNESCO, available at <https://ich.unesco.org/en/RL/lakalaka-dances-and-sung-speeches-of-tonga-00072>.

In preparing its Periodic Report, Tonga sought wide participation, including NGOs, communities, and individuals such as 'custodians'.²⁴⁴ However, it does not appear that representatives from the Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change and Communications (MEIDECC) were involved. Nevertheless, its Periodic Report highlighted the need to protect 'natural spaces and places of memory' because they encompass ICH elements, such as 'the traditional management and preservation of the environment and natural resources'.²⁴⁵



Figure 5. Lakalaka performance by children.
© Adrienne Kaeppler/UNESCO, available at <https://ich.unesco.org/en/RL/lakalaka-dances-and-sung-speeches-of-tonga-00072>.

Vanuatu also inscribed one element on the Representative List in 2008, namely the Vanuatu sand drawings.²⁴⁶ More than just an Indigenous artistic expression, the drawing, which is produced directly on the ground in sand, volcanic ash, or clay, occurs in a wide range of ritual, contemplative and communicative contexts.



Figure 6. Sand drawing in process.
© Vanuatu National Cultural Council, available at <https://ich.unesco.org/en/RL/vanuatu-sand-drawings-00073>.

According to UNESCO,

this rich and dynamic graphic tradition has developed as a means of communication among the members of some 80 different language groups inhabiting the central and northern islands of Vanuatu. The drawings also function as mnemonic devices to record and transmit rituals, mythological lore and a wealth of oral information about local histories, cosmologies, kinship systems, song cycles, farming techniques, architectural and craft design, and choreographic patterns. Most sand drawings possess several functions and layers of meaning: they can be "read" as artistic works, repositories of information, illustration for stories, signatures, or simply messages and objects of contemplation. Sand drawings are not merely "pictures", but refer to a combination of knowledge, songs, and stories with sacred or profane meanings. A master sand drawer must therefore possess not only a strong knowledge of graphic

patterns but also a deep understanding of their significance. In addition, sand drawers should have the ability to interpret the drawings for spectators.



Figure 7. Sand drawing in process.
© Vanuatu National Cultural Council, available at <https://ich.unesco.org/en/RL/vanuatu-sand-drawings-00073>.

Given the frequent showcasing of the practice for tourists and other avenues for commercialisation emphasise the aesthetic interest of the drawings, their inscription seeks to also highlight the need to preserve the drawings' deeper symbolic significance and original social function.

The other Focus States, namely Fiji, Kiribati, Papua New Guinea, Solomon Islands, and Tuvalu, have not yet inscribed ICH elements on the Representative List or any other ICH-related lists. This may be due to relatively recent ratification and the inscription process which can take several years, including the preparation of a tentative list and nomination file. Of course, there are many more elements of ICH that require safeguarding within the Focus States which have not been inscribed on the Representative List and which may be particularly relevant to build the resilience of communities to climate change and/or disasters.

For example, traditional knowledge regarding building techniques have proven to be intrinsic to resilience to cyclones in the case of Vanuatu. The Post-Disaster Needs Assessment (PDNA) conducted after the passage of the Cyclone Pam revealed that traditional nakamal buildings had resisted better than modern buildings. They have thus an important role to play in reducing the risks of disasters.²⁴⁷ Another example is the ban of driftnets while fishing in Verata, Tailevu (Fiji), imposed by the owners of the customary fishing area and extended by the chief and the people of Verata.²⁴⁸ Customary fishing areas are regulated by traditional owners of fishing grounds.²⁴⁹ After having observed the deteriorating status of their fisheries, the owners decided to impose this ban, eventually leading to fish returning to the fishing grounds.²⁵⁰ While the people of Berata consider rendering the ban a permanent management arrangement, this decision making process based on traditions has proved more successful than otherwise planned fishery projects around Fiji.²⁵¹

Beyond the possibility to inscribe ICH elements on the various lists managed by UNESCO, State Parties to the ICH Convention commit to

- identify the ICH present in their territories by drawing up and maintaining inventories of ICH;
- safeguard it, including through adopting laws and policies, and establishing institutions to safeguard intangible cultural heritage;
- and raise awareness among the public about the recognition, respect and enhancement of intangible cultural heritage.²⁵²

Article 11 of the ICH Convention requires State parties to take the necessary measures to ensure the safeguarding of the

intangible cultural heritage present in their territory, which includes measures addressing the possible effects of climate change and disasters.²⁵³ Additionally, the Operational Directives to the ICH Convention encourage the State parties to acknowledge the links between ICH and peace, social cohesion, and the prevention and resolution of disputes,²⁵⁴ as well as those between ICH and disaster and climate change risk reduction, recovery, mitigation, and adaptation. The latter can be achieved through adopting measures to fully integrate communities, groups and individuals who are bearers of the knowledge concerning the earth and the climate into systems and programmes of DRR, disaster recovery, and climate change adaptation and mitigation, among others.²⁵⁵ The Operational Directives to the ICH Convention also provide for an accelerated procedure for nominating an element to the List of Intangible Cultural Heritage in Need of Urgent Safeguarding.²⁵⁶ However, although the text of the Directives are very ambitious, the practice does not match the elements listed in the Directives, as pointed out by Lixinski.²⁵⁷ All four elements are in Asia, and focus on the ‘idea of how certain cultural practices and certain storytelling practices help people better cope with the effect of disaster rather than themselves being a king of mitigation or an adaptation strategy’.²⁵⁸ Part of the problem of this ‘mismatch’ are the limitations of the Representative List and the Urgent Safeguarding List, as they do not discuss ‘the safeguarding process itself, which is where mitigation and adaptation processes would happen’.²⁵⁹ Thus, the efforts must be geared towards the inventory of safeguarding practices, if the mismatch of theory and practice is to be resolved.²⁶⁰

Adopted by the General Assembly of States Parties in 2020, the Operational principles and modalities for safeguarding intangible cultural heritage in emergencies provide guidance to State Parties to the ICH Convention and other relevant stakeholders on how best to safeguard and mobilise ICH in various types of emergency contexts, including ‘disasters caused by natural and human-induced hazards’.²⁶¹ They highlight that those situations threaten ‘the transmission and viability of intangible cultural heritage, which provide a foundation for the identity and well-being of communities, groups and individuals’, as well as the duality of ICH in those situations, i.e. as being possibly directly at risk and a tool for ‘communities to prepare for, respond to and recover from emergencies’. Communities are at the heart of the Operational principles and, therefore, are given a primary role in identifying ICH in ‘all phases of emergency’, including ‘how they might draw on it as a resource for enhancing their resilience, facilitating recovery and re-establishing trust and peaceful coexistence within and between communities’.²⁶² The duality of ICH must, therefore, be integrated in all phases of an emergency: preparedness, response, and recovery. The Operational principles also acknowledge the important role of those involved in emergency management, ‘including disaster preparedness and relief specialists, humanitarian actors, non-governmental organizations and armed forces’, which calls for raising their awareness and capacity with regard to the safeguarding of ICH.²⁶³

Resources and financial support for safeguarding intangible cultural heritage affected by climate change related events may also be sought from the various emergency-related funds, including the UNESCO Heritage Emergency Fund and the

the Emergency International Assistance Mechanism of the 2003 Convention’s Intangible Cultural Heritage Fund.²⁶⁴ Tonga benefited from international assistance from the Intangible Cultural Heritage Fund for a project on ‘Community based inventory and transmission of intangible cultural heritage in the Island of Tongatapu’, which was implemented by its Culture & Heritage Division of the Ministry of Tourism. Initiated in 2013 with the launch of the National Cultural Policy, the Cultural Mapping Framework sought to establish a national register of both tangible and intangible cultural heritage. The project was focussed on awareness-raising and capacity-building of communities, as well as on the training of researchers to assist the inventorying. The Fund allowed the implementation of this project by the Culture Division of the Ministry of Tourism of Tonga, with the Tonga Culture Centre hosting the information collected through the project. The National Taskforce established for this project included various governmental representatives, including from the Ministry of Education, the Ministry of Tourism, and the Attorney General’s Office, but none from the Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change and Communications (MEIDECC).

Cultural Heritage Laws and Policies at the Domestic Level

To guide cultural policy at the domestic level, the Pacific Regional Culture Strategy 2022-2032 adopted a set of national objectives and indicators.²⁶⁵ The Strategy specifically recognises the increasing role of culture in development, providing policy direction for States to strengthen their culture sector, while emphasising the need

to focus on climate action.²⁶⁶ The Strategy adopts a theory of change, according to which

[i]f financial and human resources are invested in the preservation and safeguarding of Pacific heritage, culture, and arts, then culture would be better integrated as an enabler and driver of sustainable development, and cultural brokers and communities would be better supported.²⁶⁷

The Strategy also highlights ‘cultural well-being’ as ‘an enabler for the survival, livelihood, resilience and dignity of our people’, including climate resilience.²⁶⁸ With regard to traditional knowledge, the Strategy points to the connection between culture and the environment, adding that traditional ecological knowledge ‘is a source of resilience in the face of extreme weather patterns and provides unique insights into sustainable practices that inform contextual approaches to conservation’. While the Strategy highlights the danger that disasters pose to culture, it also points to its role in DRM noting that traditional knowledge and traditional ecological knowledge

offer sustainable cultural approaches and practices that can help with mitigation such as the use of eco-indicators as a means by which to predict and prepare for natural disasters as well as the means by which to manage recovery efforts.²⁶⁹

By setting national objectives and indicators, the Strategy seeks to guide States, especially those which lack a domestic cultural policy and/or legislation safeguarding cultural heritage. While cultural heritage is recognised as a possible tool ‘to harness cultural power in highlighting key messages around, for example, climate change’,²⁷⁰ the

objectives and indicators included in the Strategy are not directly linked to management plans for climate action or disaster response.

In **Fiji**, national cultural heritage legislation focusses on the protection of tangible cultural heritage, such as the Preservation of Objects of Archaeological and Palaeontological Interest Act which dates back to 1940,²⁷¹ or the Heritage Bill 2021 which is meant to give effect to the World Heritage Convention.²⁷² Although the Heritage Bill focuses on tangible cultural heritage, it also seeks to establish a Fiji Heritage Council, which includes many government representatives including the Director responsible for environment,²⁷³ and two individuals representing 'organisations dealing with the protection and management of the natural environment' as well as two individuals representing 'organisations dealing with the protection and management of the cultural environment'.²⁷⁴ The Heritage Bill also includes principles to guide the Council, including 'taking into consideration vulnerable ecosystems and best practices suited to Fiji', ensuring 'the participation of all parties, in particular local communities and land owning units, in the governance and management of Fiji's heritage' and the 'promotion of an informed consultative process that considers the interests, needs and values of all interested and affected parties'.²⁷⁵ Although the Heritage Council would focus on the implementation of the World Heritage Convention and, thus, on tangible heritage, it would also include the values of interested parties, which may include elements of ICH. Its participative and inclusive approach, as well as its sensitivity to environmental vulnerabilities and local practices, may serve as a model for a Council that would be concerned with ICH; it is, however, unfortunate that this Bill

does not foresee the implementation of the ICH Convention within the functions of the Heritage Council.²⁷⁶

The Fijian government has also been conducting a nationwide cultural mapping to be able to transcribe, file, and compile an accurate record of traditional knowledge and traditional cultural expressions to be entered into an official, though confidential registry (in the Fijian language).²⁷⁷ The mapping process was undertaken upon the realisation that the ICH Convention would not sufficiently address certain issues, including ownership, benefit sharing, and compensation.²⁷⁸ The cultural mapping programme, which builds a national inventory of Indigenous Fijian traditional knowledge and cultural expressions, was initiated in 2004 through the Institute of Fijian Language and Culture (now iTaukei Institute of Language and Culture).²⁷⁹ Aimed at safeguarding ICH and strengthening its transmission, when endangered ICH is identified, revitalisation is conducted when there is only one or two surviving practitioners in a village.²⁸⁰ However, the cultural mapping field officers do not ask any specific question regarding climate change and disaster resilience.²⁸¹

In terms of policy, a National Culture Policy has been drafted but has not yet been adopted.²⁸² The Strategic Plan of the Ministry of Education, Heritage and Arts for the period 2019-2023 includes references to ICH but no references to climate change or disaster.²⁸³ Although it does not note the role of heritage in relation to climate resilience directly, it does mention the potential of heritage for 'employment creation and income generation' and the 'mainstreaming of culture in educational curriculum'.²⁸⁴ Within the Ministry, the Department of Heritage & Arts (previously the Department of Culture & Heritage), established

in 2000, is responsible for policy and legislative responses to safeguard cultural heritage, including intangible heritage. The Department has engaged with communities before and, since 2019, engaged with stakeholders regarding the nation-wide consultations held for the development of a National Cultural Policy.²⁸⁵ In 2020, the Department held a workshop specifically on the ICH Convention with Rotuma Chiefs and government representatives from the Ministry of Health and the Ministry of Fisheries and Bio Security.²⁸⁶

It is also worth noting that, according to the iTaukei Trust Fund Act (2004), the Fund is meant to provide

- (b) funding for the undertaking, promotion and sponsoring of programmes in iTaukei and Rotuman languages, culture and the study of ethno-geography and ethno-history;
- (c) to provide funding to help develop the management, leadership and entrepreneurial skills of iTaukei and Rotumans;
- (d) to sponsor research into languages, art and culture of iTaukei and Rotumans and the better understanding and preservation of their heritage.²⁸⁷

In **Kiribati**, there is no law protecting cultural heritage besides the Phoenix Island Protected Areas Regulations of 2008, which are concerned with the protection and management of the country's only World Heritage site, one of the world's largest Marine Protected Area (MPA).²⁸⁸ However, while Kiribati has not yet finalised its national cultural policy, its Ministry of Internal Affairs and its Culture and Museum Division have been working on a draft policy.

A project to map endangered cultural heritage took place in Kiribati to collect qualitative and quantitative information on intangible and tangible cultural heritage, because it is threatened 'by new influences from within and outside of Kiribati'.²⁸⁹ While climate change and disasters were not expressly mentioned, the *Nnabakana* site was said to be particularly vulnerable to sea-level rise, with many of the stone warriors having been washed away by tidal forces.²⁹⁰ The mapping process served to raise the awareness of I-Kiribati about the importance of safeguarding endangered cultural heritage, which was lacking, and to train communities in **endangered cultural heritage mapping (ECHM)**, so that such mapping can continue.

Since the mapping process in 2011 there have been workshops organised by UNESCO to disseminate information about ICH and the operation and practical meaning of the ICH Convention.²⁹¹ During a workshop held in 2018, the year the country ratified the ICH Convention, natural disasters and climate change were specifically highlighted as threats to the safeguarding of ICH in the country. It was also highlighted that the object of safeguarding was not only 'traditional cultural expressions, but also the communities that are the custodians of these heritage'.²⁹²

In **Papua New Guinea**, the National Cultural Property (Preservation) Act 1965 is aimed at the protection of tangible heritage.²⁹³ However, the Act references the connection between tangible objects and traditional cultural life, for example, by defining 'national cultural property' as

any property, movable or immovable, of particular importance to the cultural heritage of the country, and in particular (but without

limiting the generality of the foregoing) includ[ing]:

(a) any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of any of the peoples of the country, past or present.²⁹⁴

Thus, although the focus of the Act is on tangible cultural heritage, it may indirectly also protect intangible elements. This is in particular the case with regard to the belief of some tribal communities according to which an object can ever be truly separated from the person who created it.²⁹⁵ Such a belief gives an additional, intangible, dimension to physical objects. Similarly, the National Museum and Art Gallery Act 1992, through the protection of the material aspects of Papua New Guinea society, also protects the spiritual values they embody.²⁹⁶ Furthermore, the Act is also applicable to certain cultural centres and to a variety of 'specimen' including contemporary arts and crafts, hinting at intangible practices.²⁹⁷

Interestingly, the Broadcasting Corporation Act 1973 mentions its role towards cultural diversity and 'traditional cultural heritage' as the Corporation shall

(a) ensure that the services that it provides, when considered as a whole, reflect the drive for national unity and at the same time give adequate expression to the culture, characteristics, affairs, opinions and needs of the people of the various parts of the country and in particular of rural areas; and

(b) do all in its power to preserve and stimulate pride in the indigenous and traditional cultural heritage of Papua New Guinea.²⁹⁸

The National Cultural Commission Act 1994 has a similar wide scope as it applies to all forms of culture, including in particular 'traditional cultures'.²⁹⁹ The Commission performs the cultural functions of the former National Cultural Committee and in this connection it is expected

(a) to assist and facilitate, preserve, protect, develop and promote the traditional cultures of the indigenous peoples of Papua New Guinea; and

(b) to encourage the development, promotion and protection of the contemporary cultures of Papua New Guinea; and

(c) to facilitate the marketing of selected and approved aspects of the cultures of Papua New Guinea.³⁰⁰

The Commission's functions have for example been implemented through a cultural mapping project, which has been ongoing since 2009.³⁰¹ In addition, the Commission must coordinate 'with related Government and Non-Government Agencies on cultural matters'.³⁰² Given the broad wording of the obligation, it includes coordination with agencies which may implement measures addressing climate change, such as the Department of Provincial and Local-Level Government Affairs or the Conservation and Environment Protection. Furthermore, the Commission was also tasked with establishing subsidiary institutions, including a National Performing Arts Troupe, a National Film Institute, and an Institute of Papua New Guinea Studies, which all play a role in the safeguarding of ICH of Papua New Guinea.³⁰³

In June 2022, the Commission launched the National Cultural Policy 2022 to 2032, the first ever 10-year National Cultural Policy adopted in Papua New Guinea since its independence.³⁰⁴ The Policy firmly anchored

ICH within its major commitments, including

1. Sharing and inspiring cultural celebrations with local, indigenous communities;

2. Recognizing and encouraging cultural traditions, and reviving dying aspects of tangible and intangible cultures;

3. Promoting Papua New Guinea through culture and arts so that our cultures and traditions are shared and celebrated locally, regionally, and internationally;

4. Growing the national economy through culture and arts in the cultural and creative industries;

5. Preserving, protecting, safeguarding, and transmitting Papua New Guinea's cultural heritage to future generations;

6. Fostering our cultural development in order to serve the nation's identity and quality of life, by ensuring that cultural resources are utilized for national development in job creation, income generation and poverty eradication; and

7. Ensuring that state agencies, instrumentalities, systems, and processes are conducive to the development of culture.³⁰⁵

The first commitment foresees the outcome of 'a reliable regulatory framework and strategy that protects, safeguards, and transmits the tangible and intangible aspects of culture, which is strengthened and developed'.³⁰⁶ This implies, for example, working 'with cultural institutions and relevant stakeholders, Provincial Governments, Local-Level

Governments, custodians, and owners to ensure that cultural properties are protected by laws, policies, and program interventions',³⁰⁷ as well as updating relevant laws. The Policy also calls to 'draft a Bill on Traditional Knowledge and Expressions of Culture, along with the development of a policy framework'.³⁰⁸ While the Policy acknowledges the link between the environment and culture, in particular traditional knowledge, it does not specifically mention the role of ICH in relation to climate change.

In **Samoa**, several pieces of legislation cover tangible forms of cultural heritage, such as the Samoan Antiquities Ordinance 1954, which provides for the protection from unauthorised exportation of Samoan antiquities defined as Samoan relics and articles manufactured with ancient Samoan tools and according to Samoa customs and methods.³⁰⁹

When discussing the establishment and the operation of a National Heritage Board (Heritage Authority) following a review and consultations, the Samoa Law Reform Commission has recommended that definitions of ICH and tangible heritage should not be separated, and that heritage should be defined as 'places, objects and practices of cultural significance or other special value to the present community and future generations', with a community-based approach in determining its significance.³¹⁰ Heritage forming part of a customary land, which is most of the land in Samoa, is defined and governed at the village level by customary law and the Village Fono Act 1990.³¹¹

While Samoa does not have a body charged with the protection of cultural heritage, the Culture Division within the Ministry of Education, Sports and Culture is mandated to 'to nurture, promote, revive and preserve Samoan tangible and intangible heritage,

language, artistic creativity, cultural values and practices'.³¹² Additionally, in 2012, a National Committee for Intangible Cultural Heritage to support Samoa's alignment with the ICH Convention was created.³¹³ It proposes nominations for a National Register of Intangible Cultural Heritage.

In terms of the applicable policies, the National Culture Framework (NCF) for 2018-2028 published in 2019 includes a definition of ICH and refers to the need to integrate its safeguarding into national planning.³¹⁴ The NCF also explains the meaning of culture in the life and language of Samoans by stating that

[t]he word "culture" in the Samoan language is an all-encompassing term not limited to a distinct definition. When referred to as "aganuu", culture is the overarching traditional form of Samoan culture, encompassing shared norms and values and collectively defining Samoan identity. It is the sum of things that all Samoans have established to live and govern their lives by. Culture is also defined as "agaifanua" or the social rules and mores particular to a village, kinship or district and usually governed by the power of the village council. Culture can also be referred to as "faiā" which defines kinship and the relationships between people, families and villages to themselves and each other, as well as to their titles and their lands. Generally, culture is understood as the "fa'aSamoa" or the entirety of Sāmoa's unique way of life which encompasses all these definitions.³¹⁵

The NCF acknowledges climate change as a specific threat and constraint to Samoa's living culture, cultural preservation and development, which needs to be

addressed.³¹⁶ The document lists the providing of a national framework to guide the preservation, promotion, and enhancement of cultural heritage, the arts, creative industries and culture development, both traditional and modern among its key objectives, however, it does not refer to the risks of climate change-induced dangers more specifically.³¹⁷

Similarly, the National Heritage Policy 2018-2028 recognises that climate change and disasters are two of the main challenges to the protection of heritage, however, it also foresees an active role for heritage in relation to climate change, such as with strengthening resilience.³¹⁸

The **Solomon Islands** do not have national legislation protecting traditional knowledge or tangible heritage.³¹⁹ The only relevant piece of legislation is the Protected Areas Act 2010, which is focussed on biodiversity conservation, however, it does include provisions for the protection of sites of cultural importance.

Overall, the culture sector has not been valued and has been historically underprioritised. Therefore, in 2010, the Solomon Islands embarked on a three-phase process towards the adoption of a policy, which started with a cultural mapping exercise that provided an overview of culture and cultural resources in six provinces.³²⁰ Elaborated in 2012, the framework policy envisioned for the 'potential of the culture sector and the rich cultural diversity of [the] Solomon Islands' to be 'valued and fully appreciated'.³²¹ It recognised the potential of culture for development, and affirmed traditional knowledge and other forms of ICH as a source of pride for Solomon Islanders.³²² The framework policy also highlighted the need to research and document traditional knowledge, and to transmit it through the establishment of specific

kalsa or *kastom* schools, due to the heightened risk of loss of knowledge due to oral tradition.³²³

While ICH is very present in the framework policy, the link between culture and climate change is not explored. However, 'climate change, sea level rise, natural disasters and development' have all been noted as a threat to ICH in the region during a UNESCO workshop on the implementation of the ICH Convention held in Honiara in 2019.³²⁴ The workshop noted the need for an implementation framework for the policy.³²⁵

In **Tonga**, current legislation concerned with cultural heritage, such as the Preservation of Objects of Archaeological Interest Act (2007), is not directly relevant for the safeguarding of ICH from the effects of climate change.

To implement the safeguarding of the *Lakalaka* which was inscribed on the Representative List, the Tonga Traditions Committee implemented a project with the assistance of UNESCO. UNESCO also provided capacity-building workshops on ICH safeguarding to officials within the Culture Division of the Ministry of Tourism, which in turn hosted a workshop for community-based ICH inventorying methods based on free, prior and informed consent, in partnership with the International Training Center for Intangible Cultural Heritage in the Asia-Pacific Region. The ICH Fund also supported the Cultural Mapping Framework 2020.

Beyond its engagement and cooperation with UNESCO, Tonga has made further specific efforts to safeguard ICH. The country hosted, for example, the sub-regional ICH workshop in Nuku'alofa in 2008 and the Kava Kuo Heka Festival in 2010 to celebrate Tonga's cultural diversity. It also established a new position for ICH at the Culture and Youth Division in 2011 and a Working

Committee on Culture at the Ministry of Education, Women Affairs and Culture in 2012, with a view to promote the use of ICH in education and with books on traditional knowledge subsequently disseminated in high schools across the nation in 2015, as well as launching a national cultural policy in 2013.³²⁶ Following the launch of the national cultural policy, Tonga is in the process of drafting cultural legislation.

In **Tuvalu**, there are no laws pertaining directly to the safeguarding of cultural heritage. In order to implement its obligations under the ICH Convention, the country has engaged in capacity-building workshops and a participatory inventory-making exercise to implement it.³²⁷ The National Cultural Council Act 1991 (amended in 2008) was meant to establish a Tuvalu Cultural Council to 'develop, plan and preserve culture of Tuvalu'. The law was not implemented as 'policy-makers did not appreciate the importance of culture as a development platform'.³²⁸ Tuvalu also enacted the *Falekaupule* Act in 1997. With *Falekaupule* meaning 'the gray hairs of the land' in Tuvaluan, the Act is concerned with the traditional assembly of elders in each of the islands of Tuvalu composed in accordance with the *Aganu* (traditional customs) of each island (executive power is vested in the elected body, the *Kaupule*, with an elected president at the head). It reflects the strong tradition of consultative decision-making in Tuvalu. One of the functions of the *Falekaupule* is 'to promote and regulate the development of an arts and crafts industry' and 'to protect and preserve the traditional culture of the *Falekaupule* area, and by bye-laws to prohibit or control the removal from it of any antique artefact'.³²⁹ As it appears that there is little common understanding of what these subsections mean in practice,³³⁰ experts have

recommended streamlining them within the national development process.³³¹

In 2018, Tuvalu adopted its first national culture policy, also developed on the basis of cultural mapping exercises.³³² The National Culture Policy Strategic Plan provides for the identification, safeguarding and transmission of ICH as its first objective. In the context of climate change, the Plan views ICH as both a passive and active resource. For example, it treats the identification and safeguarding of ICH elements that are under threats and impacted by climate change as a safeguarding priority,³³³ and requires the development of DRR and climate change adaptation strategies for cultural heritage and institutions.³³⁴ The Plan also underscores the importance of protecting ICH as an asset in fighting climate change, highlighting the ‘need to protect Tuvaluan communities and their heritage through public awareness-raising designed to demonstrate the significant contribution that Tuvaluan culture has on sustainable development and resilience’,³³⁵ and that ICH will help Tuvaluan communities to address the various challenges of sustainable development, including climate change and disasters.³³⁶ Importantly, it notes the need for intersectoral cooperation, such as to ‘enhance inter-ministerial cooperation to mainstream the key role of culture in addressing the various challenges of sustainable development, including climate change and natural disasters’.³³⁷

Nevertheless, the former UN Special Rapporteur Karima Bennouna observed a lack of resources during a visit to Tuvalu in 2019, with the Department of Culture consisting of one person. She also noted the dearth of laws relating to cultural heritage. Finally, she noted that ‘responsibility for mainstreaming and ensuring a human rights approach in the implementation of the development

agenda remains unclear’ and that the cultural sector was receiving the least amount of investment among those featured in the sustainable development strategy.³³⁸

In **Vanuatu**, cultural laws focus on tangible heritage, such as the Preservation of Sites and Artefacts Act 1965, which establishes a classification regime for sites of historical, archaeological, ethnological or artistic significance. Vanuatu also has a National Cultural Council as per the Vanuatu National Cultural Council Act 2010, which is a six-member body entrusted with the preservation, protection, and development of the cultural heritage of Vanuatu.³³⁹

The country’s highest policy framework, Vanuatu 2030 notes that development is much more than just acquiring material wealth for the country: its strength is its cultural heritage, including ‘oral traditions, languages, performing arts, social practices, rituals, festive events, traditional knowledge, and deep connections with its ancestors, land and place, as well as the skills to be productive with its natural resources.’³⁴⁰ The Framework, thus, places ‘vibrant cultural identity’ as its first society goal. With regard to enhancing resilience and adaptive capacity to climate change, the policy notes that Vanuatu will continue to draw on its history of resilience and risk reduction that stems from its ‘traditional knowledge and practices, particularly in relation to food production and preservation’.³⁴¹

As mentioned, none of the Focus States has enacted a piece of legislation specifically aimed at the safeguarding of ICH. While elements of ICH are indirectly protected in laws adopted for the protection of material heritage, certain elements of ICH have also been protected under intellectual property (IP) law in the Pacific and the Focus States, as explained in the following section.

2.3 Safeguarding ICH in IP-based Protection

In addition to the safeguarding of ICH from a human rights and cultural heritage perspective, some forms of ICH, such as traditional knowledge (often referred to as TK) and traditional cultural expressions, may benefit from protection under the IP regime.³⁴² It is a regime that seeks to protect intellectual creations, including designs and artworks, against unauthorised use, such as misappropriation by third parties. Its aim is the protection of the commercial value of intellectual creations, rather than their heritage value, whether cultural, social, or spiritual. Therefore, the scope of the protection afforded to some elements of ICH through intellectual property mechanisms (such as copyright, patents, or trademarks) is both different and limited compared to the protection enshrined in the ICH Convention. In addition, such mechanisms may not be suitable to adequately protect traditional knowledge. According to Waelde and Sali, the Western concept of copyright is not best suited to protect traditional knowledge as it involves ‘embodied skills and knowledge of communities’.³⁴³ As explained by Sali, IP protects the expression of an idea rather than the idea itself, it protects rights of known individuals, it is of limited duration and can be sold or assigned to other people, it is more concerned with protecting copyrighted works from being used or copied by third persons rather than their preservation *per se*, and requires disclosure of information in order to receive protection, which may be problematic for traditional knowledge holders. Indeed, traditional knowledge and traditional cultural expressions are communally owned by communities and are an essential part of cultural identity; they include both the knowledge and

expressions of that knowledge, which is passed down from generation to generation and thus in need of long-term protection. Furthermore, as copyright is based on a commercial value rationale, it also requires the existence and operation of enforcement agencies, which may not always be readily available in the South Pacific context. Waelde also observed that even the term ‘misappropriation’ may evoke associations with property rights and, thus, invite a limited view of the complexities involved in creating and protecting traditional knowledge. While the use of the term may serve to legitimise an IP-focussed approach with its assumptions and concepts such as the public domain, shoehorning embodied skills and knowledge into a Western property concept may be at odds with perceptions at the community level.

Although IP may not be ideally suited to protect traditional knowledge and does not seek to address climate change or related events such as loss of land, cultural resources, or resettlement, it is nevertheless relevant to the extent it may provide means for communities to better adapt to climate change, and to maintain control over their livelihoods and cultural identity. Largely traditional economies such as Vanuatu are a great source of resilience in crises and threatened by the loss of traditional knowledge.³⁴⁴ As noted by the **Secretariat of the Pacific Community (SPC)**, an increased global competition for new products and services facilitated by the processes of globalisation has brought about what they refer to as ‘widespread appropriation of the cultural and social identity of Pacific Island peoples’.³⁴⁵ In that sense, IP-based protection may indirectly contribute to strengthening resilience and maintaining peace and security even though its focus is not directly on climate resilience,

but on preventing illicit commercialisation. It is also the area of ICH protection in which Pacific States have been particularly active.

International and Regional IP Laws and Policies

At present, there is no multilateral IP instrument that protects traditional knowledge. The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted in 2005 and to which Samoa is a State Party, seeks to promote and protect the creative economy, rather than traditional knowledge and traditional cultural expressions directly. Noting that cultural diversity is 'indispensable for peace and security at the local, national and international levels', this Convention recognises 'the importance of traditional knowledge as a source of intangible and material wealth, and in particular the knowledge systems of indigenous peoples, and its positive contribution to sustainable development, as well as the need for its adequate protection and promotion'.³⁴⁶ The Convention aims to shape the design of national policies and measures as well as national legislation concerned with cultural expressions, so it can have an indirect impact on the safeguarding of traditional knowledge and its potential role in addressing climate change because its promotion may not only generate better safeguarding measures and financial resources for ICH but also support its transmission and dissemination.

Among the IP specific international treaties, it is worth noting the Berne Convention for the Protection of Literary and Artistic Works 1971, as all focus SIDS (bar Papua New Guinea) have ratified it. It is also worth noting the Paris Convention for the Protection of Industrial Property 1967 which has been ratified by Kiribati, Papua New Guinea, Samoa, and Tonga. However,

neither of these Conventions is particularly well-suited for the protection of traditional knowledge and the interests of local communities.³⁴⁷ Calls for the establishment of an international regime to protect traditional knowledge were made as early as 1995. The **UN Development Programme (UNDP)** Regional Consultation on Indigenous Peoples' Knowledge and Intellectual Property Rights (held in April 1995) produced a Final Statement from the UNDP Consultation on Indigenous Peoples' Knowledge and Intellectual Property Rights (Suva Declaration). The latter stipulates that

[t]he declarants committed themselves to raising public awareness of the dangers of expropriation of indigenous knowledge and resources; the encouragement of chiefs, elders and community leaders to play a leadership role in the protection of indigenous peoples' knowledge and resources; and to incorporate the concerns of indigenous peoples to protect their knowledge and resources in legislation by including 'Prior Informed Consent or No Informed Consent' (PICNIC) procedures and exclude the patenting of life forms.³⁴⁸

At present, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the **World Intellectual Property Organization (WIPO)** is working on a set of instruments to specifically protect (rather than safeguard) traditional knowledge³⁴⁹ and traditional cultural expressions,³⁵⁰ terms which generally correspond to elements of ICH.³⁵¹ According to its Draft Articles for the protection of traditional knowledge and traditional cultural expressions, traditional knowledge refers to:

knowledge originating from indigenous [peoples], local communities and/or [other beneficiaries] that may be dynamic and evolving and is the result of intellectual activity, experiences, spiritual means, or insights in or from a traditional context, which may be connected to land and environment, including know-how, skills, innovations, practices, teaching, or learning.³⁵²

Traditional cultural expressions refer to:

any forms in which traditional culture practices and knowledge are expressed, [appear or are manifested] [the result of intellectual activity, experiences, or insights] by indigenous [peoples], local communities and/or [other beneficiaries] in or from a traditional context, and may be dynamic and evolving and comprise verbal forms, musical forms, expressions by movement, tangible or intangible forms of expression, or combinations thereof.³⁵³

Given that progress on the adoption of those instruments at the international level has been slow since the project's establishment in 2001, it has been a catalyst for regional developments.³⁵⁴ In 1999, after a UNESCO-led 'Symposium on the Protection of Traditional Knowledge and Expressions of Indigenous Cultures in the Pacific Islands', a declaration was adopted which recommended technical assistance and support of 'a homogeneous system of legal protection, identification, conservation and control of exploitation, of indigenous culture' in the Pacific.³⁵⁵ The Pacific Island States also took advantage of two projects of technical assistance made available to them by the EU for 20 years on the basis of the Cotonou Agreement:

(1) 'Technical Assistance to the Pacific Regional Action Plan for Traditional Knowledge Development': for the provision of technical assistance for the establishment of national systems of protection for Traditional Knowledge in six of the member States of the Pacific Islands Forum (PIF),³⁵⁶ namely Cook Islands, Fiji, Kiribati, Palau, Papua New Guinea and Vanuatu;

(2) Project for the technical assistance to study the 'Feasibility of a Reciprocal Recognition and Enforcement Mechanism' for Traditional Knowledge and Traditional Cultural Expressions between Fiji, Papua New Guinea, Solomon Islands; the so-called Melanesian Spearhead Group (MSG) countries.³⁵⁷

As a result of these two projects, national mapping of traditional knowledge and traditional cultural expressions has been conducted in the Focus States and draft intellectual property laws and policies have been formulated for Fiji, Papua New Guinea, and the Solomon Islands (as well as the Cook Islands & Palau), and a collaboration treaty has been drafted for the Melanesian Spearhead Group (MSG) Member States.³⁵⁸

The Melanesian Spearhead Group Framework Treaty on the Protection of Traditional Knowledge and Expressions of Culture (MSG Treaty) was adopted in 2011.³⁵⁹ It has been signed by Fiji, Papua New Guinea, the Solomon Islands, and Vanuatu, but not yet been ratified by any State so far and is, therefore, not in force. The MSG Treaty provides a framework to protect traditional knowledge holders and owners against infringements of their rights as recognised by the Treaty. The Treaty also seeks to

ensure stronger, closer cooperation and understanding among members of the Group in relation to traditional knowledge and expressions of culture, with the view to promote sustainable development and to contribute to the improvement of livelihoods. The framework combines some of the Principles of the MSG's 2002 Model Law for the Protection of Traditional Knowledge and Expressions of Culture (TKEC) (Model Law) with the access and benefit-sharing (ABS) principles of the Convention on Biological Diversity.³⁶⁰ While owners and holders of traditional knowledge and expressions of culture are the primary beneficiaries of the protection, the MSG Treaty also recognises the benefit for the society at large from the promotion of innovation, creativity, and the transfer of technology.³⁶¹

Before the adoption of the MSG Treaty, due to increasing exploitation and not culturally appropriate commercialisation of traditional knowledge and expressions of culture, and in the absence of a multilateral treaty for the region, two Model Laws were developed,

- The 2002 Model Law on Traditional Biological Knowledge, Innovation and Practices (TBKIP), developed in consultation with the **South Pacific Regional Environmental Programme (SPREP)** (so far no State is known to have adopted it), and
- The 2002 Model Law for the Protection of Traditional Knowledge and Expressions of Culture (TKEC), sometimes referred to as a regional framework, was developed by the SPC, UNESCO Pacific Regional Office and Pacific Island Forum Secretariat (PIFS – which replaced SPC as the lead agency for the development of the Model Law) and territories and the Council of Pacific Arts, and adopted

by the Forum Trade Ministers in 2003 [“The Model Law”].³⁶²

The Model Law for TKEC is a *sui generis* system of protection which provides a broader scope of protection than IP systems, although it is based on copyright principles and thus applicable to certain kinds of traditional knowledge and not others (such as those linked to biological resources). It foresees two categories of rights,

- traditional cultural rights (rights to use, perform, reproduce, broadcast, etc., which are inalienable and in force in perpetuity – para 7 of the Model Law), and
- moral rights, which include the right to attribution, against false attribution and protection against derogatory treatment of traditional knowledge and expressions of culture .

The protection does not require prior registration, which makes the Model Law for TKEC more amenable to the protection of traditional knowledge compared to the requirement of disclosure typical for conventional IP law.³⁶³ The approach in creating the Model Law also precluded the establishment of a tailored regulatory structure for the protection of traditional knowledge and expressions of culture.

As a nod to a ‘South Pacific rationale of protection’, the rights to intangible assets have been fashioned as perpetual, and in that sense are more similar to rights to tangible property. The Model Law rejects the limited duration of rights and there is no public domain ‘afterlife’ as in other IP systems.³⁶⁴ Subject to free, prior and informed consent, as well as benefit-sharing principles, the Model Law for TKEC allows for the commercialisation of traditional knowledge

and expressions of culture through contracts with the custom owners or with the Cultural Authority (a body administering and enforcing the law). However, intellectual property rights (where applicable) take precedence over traditional cultural rights set forth by the Model Law, a provision which may be problematic to apply in practice.³⁶⁵

The Model Law for TKEC provides a definition of traditional knowledge and traditional cultural expressions and a catalogue of offences³⁶⁶ as well as remedies including injunctions, damages for unauthorised use, public admission/announcement, and public apology. Moreover, it provides for establishing a Cultural Authority tasked with identifying traditional owners, offering advice, registering free, prior and informed consent agreements (required for non-customary use of traditional knowledge and traditional cultural expressions such as commercialisation), and compliance monitoring. The Model Law treats infringements against secret-sacred knowledge more seriously.³⁶⁷

Upon request, the SPC and Pacific Islands Forum Secretariat assist members wishing to adopt and enact national legislation based on the Model Law for TKEC. Guidelines prepared in 2006 by the SPC,³⁶⁸ and a Traditional Knowledge Implementation Action Plan (Action Plan),³⁶⁹ developed with technical assistance from the EU, are also available for countries willing to develop legislation based on the Model Law. The first role of the Action Plan is to provide technical assistance to countries in developing policy and draft legislation based on the Model Law. After that, the emphasis is to shift toward developing a regional system of traditional knowledge protection. Promoting a ‘bottom-up approach’, the Action Plan foresees the development

of national and regional systems of protection while work is continuing on the development of international instruments.³⁷⁰ The Model Law complements the Pacific regional cultural strategy, aimed at providing policy guidance for States to develop their cultural sector and promote their cultures.³⁷¹

Of the Focus States that have adopted the Model Law for TKEC³⁷², namely Fiji, Kiribati, Papua New Guinea, and Vanuatu, Vanuatu only has so far enacted legislation based on it. On the other hand, current IP legislation may not be amenable to the protection of traditional knowledge and traditional cultural expressions because of the mismatch between the principles of copyright-based models of protection and the needs of traditional owners in relation to their ‘living’ traditional knowledge and traditional cultural expressions.³⁷³ Yet, these models persist due to existing laws (generally inherited from the colonial past), the influence of national or international organisations which underscore IP laws’ potential for attracting investment and promoting development, or other process-related difficulties. This mismatch poses a particular risk in those jurisdictions, such as the Solomon Islands or Kiribati, where the copyright legislation in force does not afford any special treatment to traditional knowledge and traditional cultural expressions. This renders the need for adopting a *sui generis* approach in the Pacific, as partly embodied by the Model Law, even more urgent.

In addition to the Model Law for TKEC, a grassroots initiative led to the drafting of another Model Law on the ‘Protection of Traditional Knowledge and Expressions of Culture Act’ (2001). Prepared by an NGO called Genetic Resources Action International, this Model Law expands the system created under the Model Law for TKEC by

including dealings with natural resources and genetic materials. The purpose of this initiative was to help to ensure that genetic resources are not removed from their environment without the informed consent of the traditional owners.³⁷⁴

Domestic IP Laws and Policies

As already noted in relation to cultural heritage law in section 2.2, although many nations across the Pacific region have a need to safeguard ICH practices, their legislation has long reflected the Western (tangible) views of heritage and a slow reversal of this trend is only recent. However, the Focus States also have a sophisticated customary legal system in which traditional knowledge is deeply embedded and which, together with relevant institutions, is central to the traditional knowledge itself.³⁷⁵ A lack or insufficiency of national laws does not mean that traditional knowledge is not protected in any way. On the contrary, given that the reach of the state is often limited, enforcement frequently occurs at 'a non-state level through customary institutions, churches, nongovernmental organizations, and civil society'.³⁷⁶ Traditional local governance structures are quite strong in the Pacific Islands. As noted by Price, 'many Solomon Islanders (including those in government) believe that customary landowners have complete rights to their land and resources, and [that] the State has no authority to decide how they are used',³⁷⁷ which has implications for the ICH tied to these sites. These rights connect to a traditional South Pacific view that tangible and intangible heritage is interconnected, a view that 'Western' legal systems have only recently sought to embrace. Given this interconnectedness, tangible and intangible heritage merit protection in an equal measure, which resulted in what

Forsyth calls a 'South Pacific rationale for intellectual property' as manifested before the region's colonisation, and which has since lost some of its power as globalisation affected the size of communities and the strength of intra-community ties.³⁷⁸ As explained by Forsyth,

[t]raditional intellectual property protection in the region was different from western intellectual property protection in that it was not based on the premise of a limited time span nor public disclosure. Thus, traditionally in the region, no meaningful distinction was drawn between tangible and intangible property. Rather, just as a community owned an area of land, they owned the right to certain intangible property such as dances, songs and knowledge about the medicinal uses of plants.³⁷⁹

Customary law has some residual power for settling disputes. It is sometimes relied on (in part) by state courts, for example, in the *Matter of the Nagol Jump* decided by the Supreme Court of Vanuatu, and some aspects of it may be included in legislation.³⁸⁰ Therefore, heritage protection mechanisms may equally be based on hybrid solutions.³⁸¹

In **Fiji**, the Ministry of iTaukei Affairs has been working on a Traditional Knowledge and Expression of Culture (TKEC) Bill (with WIPO's assistance), a law specifically tailored to cover traditional knowledge.³⁸² This follows on the cultural mapping initiated in 2004,³⁸³ which was initiated to fill the gaps left not only by the ICH Convention but also by the Model Law for TKCE, which does also not address key issues such as the identification of ownership (who the custodians are), benefit sharing and compensation surrounding traditional knowledge and traditional cultural expressions.³⁸⁴

Commentators agree that Fiji needs a stronger protection of traditional knowledge at the national level, and that it is important to take into account customary law in the reform process.³⁸⁵ For instance, the customary value system of *vanua* plays a very strong role in the protection of traditional knowledge.³⁸⁶ Having ratified the ILO 169 Convention concerning Indigenous and Tribal Peoples in Independent Countries (as the only State among the Focus States), Fiji is not only well-advised but also required to take into account customary law when designing new laws and applying (any) laws to the peoples concerned.³⁸⁷ Fiji is working towards implementing the Model Law – the Traditional Knowledge and Cultural Expression Bill 2016 (not available to the public) is currently being scrutinised by the Office of the Solicitor General.³⁸⁸

Other relevant legislation include Fiji's Copyright Act 1999,³⁸⁹ which covers expressions of folklore, but, as it follows the Western IP model, is not well-suited for safeguarding Fijian ICH.³⁹⁰ For instance, the Copyright Act does not safeguard expressions of Fijian culture such as the traditional indigenous *Meke* dance, ownership of which is vested in the whole community.³⁹¹ The Patents Act 1879 and 2021 are also not well suited as the traditional knowledge would need to be novel, which inherently it is not, as per. The trademark system would require that traditional knowledge is transformed into a symbol, word, phrase, or design first, before becoming a registrable trademark.³⁹² During the review that preceded the adoption of the Trademarks Act 2021 (to replace the Trademarks Act 1933), it was recommended that an advisory committee be set up to review certain applications, in particular when those applications touch on traditional knowledge; such an advisory committee should include

a fair representation of members of the communities.³⁹³

Kiribati is currently working towards the implementation of the Model Law for TKCE. Similarly to other jurisdictions, its Copyright Act 2018, Registration of UK Patents Act 1924 (as amended 1977), and Registration of UK Trade Marks Ordinance 2019, are not well-suited to safeguard ICH.³⁹⁴

Papua New Guinea is also working towards implementing the Model Law for TKCE.³⁹⁵ Other relevant legislation includes the Copyright and Neighbouring Rights Act 2000,³⁹⁶ which deals with protection of expressions of folklore, with the Western concepts having been modified slightly to allow for local conditions.³⁹⁷ The country's Trademarks Act 1978 and Patents and Industrial Designs Act 2000, but neither includes provisions for traditional knowledge or traditional cultural expressions.

In **Samoa**, the Law Reform Commission has reviewed existing legislation,³⁹⁸ including intellectual property laws (Copyright Act 1998, Patents Act 1972, Trademarks Act 1972, and Industrial Designs Act 1972) to examine their appropriateness for protecting Samoa's traditional knowledge and expressions of culture, and make recommendations for improvement.³⁹⁹ The review, which involved public consultations, found that new regulation was overdue and recommended the adoption of the Model Law for TKCE or the SPREP Model Law for the Protection of Traditional Ecological Knowledge, before eventually establishing a new *sui generis* law for the protection of Samoa's traditional knowledge.⁴⁰⁰ Among the legislation currently in force, the Samoa Copyright Act 1998 (amended 2011)⁴⁰¹ includes a section on the protection of expressions of folklore,⁴⁰² and the Intellectual Property Act 2011 includes several provisions which relate to

traditional knowledge holders (regarding applications for patents and plant breeders rights).⁴⁰³

In the **Solomon Islands**, none of the existing legislation mentions traditional knowledge or traditional cultural expressions, including the Copyright Act 1987 (revised 1996), the Registration of UK Patents Act 1924 (revised 1992), and the Registration of United Kingdom Trademarks 1939 (revised 1978).⁴⁰⁴ The Culture Division has also been working on a Traditional Knowledge and Expression of Culture Bill.⁴⁰⁵

In **Tonga**, the Copyright Act 1985 (revised 2020) is similarly not well-suited to safeguard traditional knowledge. So far the country has not taken any significant steps towards the implementation of the Model Law for TKCE or another *sui generis* law.

In **Tuvalu**, likewise, the Copyright Act 1917 (revised 2008), the Registration of UK Patent Act 1924 (revised 2008), and the Registration of UK Trademarks Act 1939 (revised 2008) are also not well-suited to safeguard traditional knowledge.⁴⁰⁶ Again, the country has taken no significant steps to date towards the implementation of the Model Law for TKCE or another *sui generis* law.

In **Vanuatu**, the Copyright and Related Rights Act 2000 consolidated in 2018⁴⁰⁷ provides for indigenous knowledge, defined as any knowledge

- (a) that is created, acquired or inspired for traditional economic, spiritual, ritual, narrative, decorative or recreational purposes; and
- (b) whose nature or use of which has been transmitted from generation to generation; and
- (c) that is regarded as pertaining to a particular indigenous person or people in Vanuatu.⁴⁰⁸

The Act also includes a part devoted to the protection of expressions of indigenous culture (with offences and civil remedies), defined as

any way in which indigenous knowledge may appear or be manifested, and includes:

- (a) all material objects; and
- (b) names, stories, histories and songs in oral narratives; and
- (c) dances, ceremonies and ritual performances or practices; and
- (d) the delineated forms, parts and details of designs and visual compositions; and
- (e) specialised and technical knowledge and the skills required to implement that knowledge, including knowledge and skills about biological resources, biological resource use and systems of classification.⁴⁰⁹

Thus, the copyright legislation in Vanuatu, which formed part of a package of legislation (including the Designs Act 2003 and the Patents Act 2003),⁴¹⁰ introduced as prerequisite to membership with the WTO,⁴¹¹ adopted an approach that was better suited to local needs.⁴¹²

In addition, Vanuatu is the only jurisdiction among the Focus States which has enacted legislation based on the Model Law for TKCE, namely the Protection of Traditional Knowledge and Expressions of Culture Act (Act No. 21 of 2019), which provides detailed protection, regulation and management of traditional knowledge and expressions of culture in Vanuatu.⁴¹³ In accordance with the Act,

traditional knowledge includes any knowledge that generally:

(a) is or has been created, acquired or inspired for traditional economic, spiritual, ritual, narrative, decorative or recreational purposes; and

(b) is or has been transmitted from generation to generation; and

(c) is regarded as pertaining to a particular traditional group, clan or community of people; and

(d) is collectively or individually originated and held.⁴¹⁴

The scope of protection for traditional cultural rights under section 4 of the Act states that traditional owners have exclusive rights with respect to traditional knowledge, in respect of sacred expressions of culture, and in respect of all expressions of culture other than secret or sacred traditional expressions of culture. The Act also established the Traditional Knowledge and Expressions of Culture Authority the functions of which include to consult with relevant authorities on the grant of any bio-prospecting licences under the Environmental Protection and Conservation Act relating to traditional knowledge,⁴¹⁵ and to consider and determine applications that involve elements of traditional knowledge and expressions of culture.⁴¹⁶

The Act adds several provisions not included in the Model Law, for example, as it foresees the creation of a Fund to promote and develop traditional knowledge and traditional cultural expressions, to develop creativity and innovation, to implement the protection regime, to raise public awareness, for research etc, and provides for border control and export licenses. Its definition of traditional knowledge encompasses knowledge related to biological and genetic resources; this is missing from the

Model Law which is primarily interested in artistic expressions of culture. Some criticism has been raised with regard to the process behind its adoption, as consultation with communities came as an afterthought, which may jeopardise its applicability in some areas.⁴¹⁷ Nevertheless, the implementation of the Model Law and its inclusion of additional provisions, such as for the creation of a Fund or of a wider understanding of traditional knowledge, are key initiatives taken by Vanuatu for the safeguard of ICH.

Concluding Remarks Part 2

In terms of **human rights law**, the access to, and enjoyment of, cultural heritage, including ICH, has been recognised as an element of the human right to participate in cultural life and, thus, as an element of cultural identity and cultural survival. While climate change is a threat to the realisation of cultural rights, their implementation may support climate adaptation and resilience. Although they have been enshrined as a binding obligation under treaty law, it is often not possible to allege a violation of the right to participate in cultural life before a treaty body or a supra-national human rights court. Nevertheless, cultural rights have often been enforced through the application of other human rights.⁴¹⁸ For example, this has been the case of the right to life, which is understood as including the right to enjoy a life with dignity, free from environmental degradation.⁴¹⁹ The safeguarding of the traditional ways of life of the bearers of ICH and their capacity to transmit traditions and pass down knowledge (the 'living' heritage) is key to the safeguarding of ICH itself.⁴²⁰ The right to respect for private and family life has also been used to enforce the right to live in accordance with one's tradition.⁴²¹

In the South Pacific Islands, domestic legislation is similar to those in other regions of the world and, generally, focusses on civil and political rights, with only few economic and social rights enshrined at the constitutional level. In a region which lacks a regional human rights court, increased participation in the protocol to the ICESCR would demonstrate more support for the UN Treaty Bodies in general. Given the recent decision of the Human Rights Committee with regard to the *Torres Strait Islanders* Petition, Pacific Island countries may in turn benefit from stronger support for the UN Treaty Bodies. Increased participation in human rights treaties may also support adjustments where cultural practices at the domestic may not comply with human rights. However, some barriers to the realisation of human rights cannot be solved simply by further engagement with the treaties and their monitoring bodies, as climate change, natural disasters, and scarcity of resources have been specifically highlighted as presenting concrete hurdles to the full realisation of human rights in some of the Focus States, such as Kiribati.

Notwithstanding the few ratifications of the ICESCR and the lack of cultural rights in domestic legislation, some of the Focus States highlight their unique cultures within their respective constitution and mention cultural rights in policy documents. For example, the first Displacement Guidelines, adopted by Fiji, refer to cultural rights, going beyond the rights mentioned in the Bill of Rights of the Constitution. The Guidelines also encourage stakeholders to consider the cultural impact of relocation due to climate change.

Regarding **cultural heritage law**, all Focus States have ratified the ICH Convention, the key treaty for the safeguarding of ICH. Samoa, Vanuatu, and Tonga, have already

inscribed traditional practice. In Samoa, a National Committee for Intangible Cultural Heritage was even established to support the State's alignment with the ICH Convention. However, none of the Focus States has enacted legislation aimed at the safeguarding of ICH at the domestic level. While some of the Focus States do not have any legislation directly concerned with heritage, others have laws to protect certain material heritage, be it objects or sites. However, legislation aimed at the preservation of material heritage may also safeguard the ICH elements attached thereto. This is, for example, the case of Papua New Guinea's National Museum and Art Gallery Act 1992 which through the protection of the material aspects of Papua New Guinea society may also safeguard the spiritual values they embody.

At the institutional level, some of the Focus States lack sufficient resources within government while others have an established dedicated department of heritage or culture. For example, in Fiji, the Department of Heritage & Arts has clear responsibilities regarding the safeguard of cultural heritage, including intangible heritage. The Department has even held a workshop with district Chiefs specifically on the ICH Convention. Further, the Samoa Law Reform Commission has advocated a community-based approach and recommended, when considering the establishment of a National Heritage Board, to define ICH and tangible heritage in a combined manner. The Commission also suggested to define heritage as 'places, objects and practices of cultural significance or other special value to the present community and future generations', calling for a community-based approach in determining its significance.

Some of the Focus States, have a national cultural council or commission. In Papua

New Guinea, the National Cultural Commission, which is tasked with safeguarding traditional cultures, must do so in coordination 'with related Government and Non-Government Agencies on cultural matters', thus including those directly engaged in climate action. In Fiji, representatives of several different government departments are directly embedded in the composition of the Heritage Council, including the Director responsible for environment. The Council's participative and inclusive approach, as well as its sensitivity to environmental vulnerabilities and local practices, could serve as a model, notwithstanding that the implementation of the ICH Convention is not included within its functions.

At the policy level, the region has adopted a cultural strategy for the period 2022-2032, with a set of national objectives and indicators to guide States, especially those which lack a domestic cultural policy and/or legislation safeguarding cultural heritage. While the Strategy highlights the danger that disasters pose to culture, it also points to its role in DRM. Unfortunately, although cultural heritage is recognised as a possible tool 'to harness cultural power in highlighting key messages around, for example, climate change',⁴²² none of its objectives or indicators are directly linked to management plans for climate action or disaster response.

At the domestic level, the national development policy of Vanuatu considers development in cultural rather than economic terms, highlighting that cultural heritage is the strength of the country. Several Focus States conducted heritage mapping processes, such as Kiribati, where the process not only raised the awareness of I-Kiribati about the importance of safeguarding endangered cultural heritage, but also served

to train communities in ECHM to ensure the sustainability of the process in the future. In Fiji, the cultural mapping programme served not only to identify ICH and endangered ICH but also revitalised such ICH when its transmission was at risk, i.e., when the number of practitioners was down to one or two individuals.

Notably, several Focus States including the Solomon Islands and Tuvalu adopted a national cultural policy after a mapping process. The adoption of a cultural policy can kick-start the drafting of cultural legislation. Further, some of the national cultural policies have made the link between ICH and climate change expressly. In the Solomon Islands, the threat to ICH is highlighted in the policy, along with possible means to address its loss, such as research and documentation of traditional knowledge and transmission through the establishment of specific *kalsa* or *kastom* schools. The need for intersectoral cooperation to 'mainstream the key role of culture in addressing the various challenges [...] including climate change and natural disasters' has been specifically highlighted in Tuvalu's national cultural policy.

The link between culture and climate change is, however, not always made in national cultural policies. For example, while Papua New Guinea's National Cultural Policy firmly anchors ICH within its major commitments and acknowledges the link between the environment and traditional knowledge, the Policy does not specifically mention the role of ICH in relation to climate change. In other policies, such as in Samoa, although climate change and disasters are recognised as one of the main challenges to the protection of heritage, no active role is foreseen for heritage in relation to climate change, such as with strengthening resilience.

Finally, **IP frameworks** are generally not suited to safeguard ICH. While copyright legislation may be adapted to apply specifically to traditional knowledge and traditional cultural expressions, as adopted in Vanuatu, it remains insufficient to safeguard ICH. In addition, most of these laws were devised before traditional knowledge and traditional cultural expressions were considered a potentially valuable commodity.⁴²³ There seems to be agreement on this issue among the Pacific States as well: in a reply to the WIPO Survey on Existing Forms of Intellectual Property Protection for Traditional Knowledge, Papua New Guinea, Samoa, the Solomon Islands, Tonga, and Tuvalu agreed that IP laws are unable to protect traditional knowledge.⁴²⁴

The regional Model Law for TKCE has so far not been implemented in many jurisdictions. Among the Focus States, only Vanuatu has implemented the Model Law at the domestic level, creating a Traditional Knowledge and Expressions of Culture Authority. Interestingly, Vanuatu has also filled some of the gaps left by the Model Law, such as by including traditional knowledge relating to biological and genetic resources and by establishing a Fund to action measures of safeguard and promotion. This shows that the Model Law can serve as a strong basis for increased safeguarding of ICH at the domestic level. However, States implementing the Model Law should involve communities every step of the way, in order to ensure that the law eventually enacted will be applicable with regard to all ICH, in every contexts.

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- 164 See fn 42, para 8.14.
- 165 *ibid*, para 8.13.
- 166 See this Report under 1.2. Climate Displacement with ICH and Human Rights Implications for South Pacific Islanders.
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- 180 1989 Indigenous and Tribal Peoples Convention (ILO 169), art 2.
- 181 *ibid*, Art 6(1) (a) and (b).
- 182 *ibid*, art 16.
- 183 UNGA, 'United Nations Declaration on the Rights of Indigenous Peoples', UN Doc A/RES/61/295, 13 September 2007.
- 184 Human Rights Council, 'Report of the Special Rapporteur on the rights of indigenous peoples', UN Doc A/HRC/36/46, 1 November 2017, para 50.
- 185 See fn 183, art 31.
- 186 International Law Association, Rights of Indigenous Peoples Committee, Sofia Conference Report (2012), pp. 2, 3; Article 1 of ILO

169 has a similar understanding as it states that (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

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- 194 Act no. 21 of 2019, available at <https://www.parliament.gov.fj/wp-content/uploads/2019/07/Act-21-Climate-Relocation-of-Communities-Trust-Fund.pdf>; See Lyons K, 'How to Move a Country: Fiji's Radical Plan to Escape Rising Sea Levels' *The Guardian*, 8 November 2022, available at <https://www.theguardian.com/environment/2022/nov/08/how-to-move-a-country-fiji-radical-plan-escape-rising-sea-climate-crisis>; See for further information in this Report under 4.3. National Climate Change Legislation and DRM Laws and Policies at fn 690 and following.
- 195 See fn 193, p. 12.
- 196 *ibid*, p. 14.
- 197 *ibid*, p. 15.
- 198 *ibid*, p. 14.
- 199 *ibid*, p. 16.
- 200 *ibid*, pp. 17, 18.
- 201 Constitution of Kiribati (1979, as amended 2013, 2016 and 2018), preamble rec. 4.
- 202 See Sipiriano Nemani, 'Capacity Building Workshop on the Implementation of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (ICH) in Kiribati (2018)', available at <https://ich.unesco.org/doc/src/44470-EN.pdf>, para 17.
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- 209 *ibid*, sec 53(5) d and f.
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- 211 Constitution Amendment Bill 2020 Samoa, clause 1.6.
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- 325 *ibid.*, p. 6
- 326 Tonga, Periodic Report on the implementation of the Convention and on the status of elements inscribed on the Representative List of the intangible cultural heritage of humanity, submitted on 15 December 2017, examined by the Committee in 2018; For the background on the national cultural policy, see Seu'ula Johansson Fua, Tu'ilokamana Tuita, Siosua Lotaki Kanongata'a, and Koliniasi Fuko, 'Cultural Mapping, Planning and Policy: Tonga', Secretariat of the Pacific Community on behalf of the Ministry of Education, Women's Affairs and Culture, Government of Tonga, 2011, available at https://www.spc.int/DigitalLibrary/Doc/HDP/Culture/51152_Cultural_mapping_planning_and_policy_Tonga.pdf.
- 327 See fn 20, paras 42-43.
- 328 Alamai Sioni and Bikenibeu Paeniu, 'Tuvalu Cultural Mapping, Planning and Policy Report', SPC 2012, available at https://spccfpstore1.blob.core.windows.net/digitalibrary-docs/files/6f/6f178c7a7b949828abafba9bb8fcd0b.pdf?sv=2015-12-11&sr=b&sig=YwhiQE08TCKHFsv83mOGP1WSh08vyRvUbjN9V532H1%3D&se=2022-10-17T05%3A27%3A56Z&sp=r&rsc=public%2C%20max-age%3D864000%2C%20max-stale%3D864000&rsc=application%2Fpdf&rscd=inline%3B%20filename%3D%22Tuvalu_Cultural_Mapping_Planning_and_Policy_Report.pdf%22, p. 2.
- 329 Falekaupule Act (1997, revised 2008), sec 12 subsections c and d.
- 330 See fn 328, p. 2.
- 331 *ibid.*, p. 3.
- 332 Tuvalu National Culture Policy Strategic Plan 2018-2024, 2018, available at <http://extwprlegs1.fao.org/docs/pdf/tuv193525.pdf>.
- 333 *ibid.*, p. 11.
- 334 *ibid.*, p. 13.
- 335 *ibid.*, p. 6.
- 336 *ibid.*, p. 11.
- 337 *ibid.*, p. 17.
- 338 See fn 32, paras 19 and 25.
- 339 Vanuatu National Cultural Council Act, Chapter 186, 6(2)(e) of the Laws of the Republic of Vanuatu.
- 340 Vanuatu 2030, available at <https://d1bf23g64f8xve.cloudfront.net/sites/default/files/downloads/policy-database/Vanuatu%202030%20The%20People%27s%20Plan%20-%20National%20Sustainable%20Development%20Plan%202016-2030.PDF>, p. 3.
- 341 *ibid.*, p. 6.
- 342 While UNESCO and WIPO worked together for the adoption of 'Model provisions for national laws on the protection of expressions of folklore against illicit exploitation and other prejudicial actions' in 1982, they have since dealt with ICH from vastly different perspectives.
- 343 Small States Conference organized by BIICL, ISMS and Wilmer Hale. The panel discussion can be accessed at https://www.youtube.com/watch?v=Xq-LY6j6qSo&ab_channel=WilmerCutlerPickeringHaleandDorrLLP-InternationalArbitrationLibrary.
- 344 Ralph Regenvanu, 'The traditional economy as a source of resilience in Vanuatu', in Tim Anderson and Gary Lee (eds.), *In Defence of Melanesian Customary Land* (Sydney: AID/WATCH 2007), pp. 30-34.
- 345 Preface by Dr Jimmie Rodgers (Director-General of the Secretariat of the Pacific Community), in SPC Guidelines for developing national legislation for the protection of traditional knowledge and expressions of culture based on the Pacific Model Law 2002, available at <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/spc/spc001en.pdf>, p. vii.
- 346 UNESCO Cultural Diversity Convention, preamble rec. 4, 8, 9, and para 6.
- 347 For example, while the Berne Convention was amended to introduce protection for folklore at the domestic level (Article 15(4)), it has been a difficult amendment to implement.
- 348 UNDP Consultation on Indigenous Peoples' Knowledge and Intellectual Property Rights (Suva Declaration), available at <https://web.archive.org/web/20041012001444/http://users.ox.ac.uk:80/~wgtrr/suva.htm>.
- 349 Most recent iteration The Protection of Traditional Knowledge Draft Articles (2019), available at https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_40/wipo_grtkf_ic_40_18.pdf; On the difference between protection and safeguarding, see, for example, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Thirty-Eighth Session, Geneva, December 10 to 14, 2018, WIPO/GRTKF/IC/38/7 Annex I, para 23.
- 350 *ibid.*
- 351 The shift of focus from mostly elitist, material views of culture into intangible and dynamic elements (beliefs, language, knowledge, customs, and traditions) ways of life and vernacular heritage necessarily entails transcending the State-centric paradigms of culture and deferring to the communities themselves for the identification of expressions of culture considered worthy of protection (which in turn emphasises the importance of their inclusion and participation). The evolution of the content of cultural rights is quite clear from the case-law of the IACTHR which has engaged with the protection of indigenous heritage; See *Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment of 27 June 2012, IACTHR (Ser. C), No. 245 (2012), and *Saramaka People v. Suriname*, Judgment of 28 November 2007 (Preliminary Objections, Merits, Reparations, and Costs), IACTHR (Ser. C), No. 172; See also Kristin Hausler, 'Cultural Rights in the Inter-American Human Rights System', in Andrzej Jakubowski (ed), *Cultural Rights as Collective Rights: An International Law Perspective* (Brill 2016).
- 352 Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, The Protection of Traditional Knowledge: Draft Articles Rev. 2, 22 March 2019, available at WIPO/GRTKF/IC/40/4, https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_40/wipo_grtkf_ic_40_4.pdf, art 1.
- 353 *ibid.* (citations omitted).
- 354 The African Regional Intellectual Property Organization (ARIPO) adopted a Protocol on the Protection of Traditional Knowledge and Expressions of Folklore at a diplomatic conference on 9-10 August 2010 in Swakopmund, Namibia, available at <https://www.aripo.org/wp-content/uploads/2019/06/Swakopmund-Protocol-on-the-Protection-of-Traditional-Knowledge-and-Expressions-of-Folklore-2019.pdf> (as amended 2019); The Protocol is meant to 'protect creations derived from the exploitation of traditional knowledge in ARIPO member states against misappropriation and illicit use through bio-piracy', as well as intended to prevent the 'grant of patents in respect of inventions based on pirated traditional knowledge (...) and to promote wider commercial use and recognition of that knowledge by the holders, while ensuring that collective custodianship and ownership are not undermined by the introduction of new regimes of private intellectual property rights'.
- 355 Declaration on the Protection of Traditional Knowledge and Expressions of Indigenous Cultures in the Pacific Islands, Australian Indigenous Law Reporter, Vol. 4, No. 3, 1999, pp. 143-188, p. 143.
- 356 16 independent and self-governing States are members of the Pacific Islands Forum (PIF): Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu; The PIF is a treaty-based international organisation which possesses legal personality in each member country. Its aims are to stimulate economic

- growth, provide policy advice on political governance and security for the region, and stronger integration and cooperation across the region.
- 357 Melanesian Spearhead Group comprises the Fiji Islands, Papua New Guinea, the Solomon Islands, and the Republic of Vanuatu.
- 358 The Melanesian Spearhead Group treaty can be extended to other Pacific States.
- 359 It is partly based on the WIPO ICG group (17th session) and the Swakopmund Protocol, as well as national laws. For current information on ratification, see <https://msgsec.info/treaties/>.
- 360 As updated by the Bonn guidelines on access to genetic resources and fair and equitable sharing of benefits arising out of their utilisation.
- 361 Michael Blakeney, 'Protecting traditional knowledge and expressions of culture in the Pacific', *Queen Mary Journal of Intellectual Property*, Vol. 1, No. 1, April 2011, pp. 80–89, p. 83.
- 362 The Model Law and the Explanatory Memorandum are available at <https://www.wipo.int/edocs/lexdocs/laws/en/spc/spc002en.pdf>.
- 363 This is because the value of traditional knowledge may be decreased if it is disclosed, see the intervention of Purcell Sali at the Small States Conference (2021), fn 343.
- 364 Miranda Forsyth, 'Intellectual Property in the South Pacific: Friend or Foe?', *Journal of South Pacific Law*, 2003, Vol. 7.
- 365 *ibid*.
- 366 Latest drafts of the WIPO Intergovernmental Committee for traditional knowledge and traditional cultural expressions are available at https://www.wipo.int/tk/en/igc/draft_provisions.html, see para 4; According to Purcell Sali, these offences are treated more seriously than in the WIPO-IGC approved model.
- 367 *ibid*, para 28.
- 368 See for more information <https://www.wipo.int/edocs/lexdocs/laws/en/spc/spc001en.pdf>.
- 369 See for more information <https://www.sprep.org/attachments/VirLib/Global/traditional-knowledge-action-plan.pdf>.
- 370 *ibid*, para 8. However, its recommendation of drafting legislation before conducting consultation has been the object of criticism, see Erika J. Techera, 'Safeguarding cultural heritage: Law and policy in Fiji', *Journal of Cultural Heritage*, 2011, Vol. 12, pp. 329–334, p. 332.
- 371 Secretariat of the Pacific Community and Council of Pacific Art and Culture, *Regional Culture Strategy: Investing in Pacific cultures 2010–2020*, 2012, available at https://spccfpstore1.blob.core.windows.net/digitalibrary-docs/files/f3/f339b9db95ca2122f0bbd47fb76d89f0.pdf?sv=2015-12-11&sr=b&sig=Wu%2BoxzyPaaCCGQ65U1XVSokY0%2FVDFkpRAYZoQOu%2Bi8%3D&se=2022-09-19T05%3A56%3A23Z&sp=r&rsc=public%2C%20max-age%3D864000%2C%20max-stale%3D86400&rsct=application%2Fpdf&rscd=inline%3B%20filename%3D%2252165_Regional_culture_strategy.pdf%22.
- 372 Only some and slightly dated information about their progress is available, as of 2015, the Fiji TK Law draft was being vetted by the AG office (since April 2014); the TK Policy was completed and was before Cabinet for consideration; In Kiribati, the policy document had been completed and was with the Cultural Ministry (no indication was found if it has progressed to cabinet); in Papua New Guinea, both the TK Bill and the Policy had been completed and were before Cabinet for consideration, see presentation by H.E. Ambassador Mere Falemaka, Permanent Representative to the Permanent Delegation of the Pacific Islands Forum to the World Trade Organization and the United Nations in Geneva, at the WIPO Seminar on Intellectual Property & Genetic Resources, Traditional Knowledge & Traditional Cultural Expression: Regional, National And Local Experiences, 2015, available at https://www.wipo.int/edocs/mdocs/tk/en/wipo_ipk_ge_15/wipo_ipk_ge_15_presentation_mere_falamaka.pdf.
- 373 Equally, a similar mismatch may be observed when analysing the suitability of geographic indications and denominations of origin for protecting traditional knowledge even though they may prima facie appear to be more amenable to protecting traditional knowledge due to the recognition of collective nature of traditional knowledge, its link to land and the indefinite length of protection, see Susy Frankel, 'The mismatch of geographical indications and innovative traditional knowledge', *Prometheus*, 2011, Vol. 23, No. 3, pp. 253–267.
- 374 See fn 364.
- 375 For example, the village *fono* (Village Chief) system in Samoa, the *kastom* system in Vanuatu, and the *maneaba* in Kiribati. Examples given by Miranda Forsyth, *The traditional knowledge movement in the Pacific Island countries: the challenge of localism*, fn 6.
- 376 Miranda Forsyth, 'How Can Traditional Knowledge Best Be Regulated? Comparing a Proprietary Rights Approach with a Regulatory Toolbox Approach', *The Contemporary Pacific*, 2013, Vol. 25, No. 1, pp. 1–31, p. 2.
- 377 Stephanie Clair Price, *World Heritage Conservation in the Pacific* (Palgrave 2018), p. 282.
- 378 See fn 364.
- 379 *ibid*.
- 380 Miranda Forsyth, 'Is There Horizontal or Vertical Enforcement of Constitution Rights in Vanuatu? *Family Kalontano v Duruaki Council of Chiefs*', *Journal of South Pacific Law*, 2009, Vol. 9, Issue 2.
- 381 Erika J. Techera, 'Safeguarding cultural heritage: Law and policy in Fiji', *Journal of Cultural Heritage*, 2011, Vol. 12, pp. 329–334, p. 332.
- 382 However, this draft has yet to be tabled for reading in Parliament, written questionnaire answers from Siosinamele Lui, fn 281; according to Lui, 'TK & TCE IP based protection and climate change/disaster resilience has not been fully explored'.
- 383 For more information about the cultural mapping, see <https://www.itaukeiaffairs.gov.fj/index.php/divisions/tilc/cultural-mapping-programme>.
- 384 Guido Carlo Pigliasco, 'The Innovation of Tradition: (Participant) Observations on Cultural Heritage Lawmaking in Fiji', *Anthropology News*, January 2014.
- 385 See fn 381, p. 331.
- 386 Pigliasco defines the *vanua* as 'a complex domain encompassing chiefs, their people, land and tradition', see fn 384.
- 387 See fn 381, p. 332.
- 388 Interview with Adi Meretui Ratunabuabua (Blue Shield Pasifika), on 26 June 2022, conducted as part of this project.
- 389 See [under https://wipolex.wipo.int/en/legislation/details/1542](https://wipolex.wipo.int/en/legislation/details/1542).
- 390 See fn 381, p. 331.
- 391 Salvin S. Nand, 'Protecting and Revitalizing Traditional Knowledge and Expressions of Culture: For an Equitable Future in Fiji', available at https://www.wto.org/english/tratop_e/trips_e/colloquium_papers_e/2011/chapter_4_2011_e.pdf, p. 56.
- 392 *ibid*, pp. 57, 58.; Techera observes that while the future legislation on TK will include a register of dances, it still risks being too close to the Western model to be suitable to the Fijian context, see fn 381, p. 331.
- 393 Clause 12 (1)(c) of the new Trade Marks Act which prohibits the registration of a trademark that in the opinion of the Commissioner may offend a significant section of the community, see Standing Committee on Justice, Law and Human Rights, Report on the Review of the Trademarks Bill 2020 (Bill No. 45 of 2020), p. 28, available at <https://www.parliament.gov.fj/wp-content/uploads/2021/08/SJLHR-Report-on-the-Review-of-the-Trademarks-Bill-2020.pdf>.
- 394 Note that Kiribati, Tuvalu, and the Solomon Islands have all adopted UK laws in terms of trademark and patent protection, with registration in the UK.
- 395 See fn 18.
- 396 See under <https://wipolex.wipo.int/en/legislation/details/3427>.
- 397 *ibid*, section V; see also Art 2, 4.1.b and 4.3.
- 398 Samoa Law Reform Commission Protection of Samoa's Traditional Knowledge and Expression of Culture (IP 08/10), June 2010, available at <https://www.samoalawreform.gov.ws/wp-content/uploads/2014/08/The-Protection-of-Samoas-Traditional-Knowledge-Expressions-of-Culture-Issues-Paper.pdf>.
- 399 Earlier laws adopted in 1972 (the Industrial Designs Act, the Patents Act, and the Trade Marks Act) were repealed.
- 400 Samoa Law Reform Commission, Protection of Samoa's Traditional Knowledge: Final Report 2014 (2015).
- 401 See WIPO's websites at <https://wipolex.wipo.int/en/legislation/details/13393>.
- 402 Samoa Copyright Act (1998, amended 2011), Part 4.
- 403 See WIPO's websites at <https://wipolex.wipo.int/en/legislation/details/13492>.
- 404 A new Copyright and Related Rights Bill is being prepared, see David B. Lidimani, *Solomon Islands: Cultural Mapping (Report)*, 2012, p. 15.
- 405 *ibid*.
- 406 See Pacific Islands Legal Information's websites at http://www.pacii.org/tv/legis/consol_act_2008/ca133/.

- 407 See WTO's website at https://www.wto.org/english/thewto_e/acc_e/vut_e/wtaccvut14_leg_28.pdf.
- 408 Copyright and Related Rights Act No. 42 of 2000, consolidated edition 2018.
- 409 *ibid*, Part 1.
- 410 Designs Act 2003, see <https://wipolex.wipo.int/en/legislation/details/10728>; Patents Act 2003, see <https://wipolex.wipo.int/en/legislation/details/10727>.
- 411 For more information, see <https://www.mondaq.com/australia/intellectual-property/127868/new-copyright-laws-commence-in-vanuatu>.
- 412 *ibid*, Part 7.
- 413 The Protection of Traditional Knowledge and Expressions of Culture Act 2019.
- 414 Republic of Vanuatu, Protection of Traditional Knowledge and Expressions of Culture Act no. 21 of 2019, sec. 1.
- 415 Environmental Protection and Conservation Act 2002 (amended in 2011), available at <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/vu/vu021en.pdf>.
- 416 The Protection of Traditional Knowledge and Expressions of Culture Act 2019, section 14.
- 417 According to Sali, consultations should have been conducted sooner, see his intervention at the Small States Conference (BIICL, ISMS & WilmerHale 2021); see also Techera fn 381, p. 331.
- 418 See for example European Court of Human Rights Research Division, 'Cultural rights in the case-law of the European Court of Human Rights', January 2011, updated 2017; see also fn 351, pp. 222-251.
- 419 Human Rights Committee, 'General Comment No 36 Article 6: right to life', UN Doc CCPR/C/GC/36, 2019, paras 26 and 62.
- 420 Note that transmission is often dependent on elders, who may be more vulnerable to human rights violations and in need of increased protection.
- 421 See, for example, *Chapman v. The United Kingdom* (Application no. 27238/95), Judgment 18 January 2001, para 73.
- 422 *ibid*, p. 31.
- 423 See fn 391, p. 56.
- 424 September 2001.

The Safeguarding of ICH in Environmental Laws and Policies

The third Part of this Report analyses the safeguarding of ICH in environmental laws and policies at the international, regional, and domestic level, where applicable. It sets out 'ICH during the Emergence of Environmental Law' (3.1.), before analysing the safeguard of ICH in the context of

'Biological Diversity and Nature Conservation' (3.2.), 'Ocean Conservation and Fishing' (3.3.), 'Land Management' (3.4.), and 'Pollution and Waste' (3.5.) at the international, regional, and national level of the Focus States.

As South Pacific Islanders cultural traditions and practices are intrinsically linked to the natural environment,⁴²⁵ it is of particular importance to protect the environment both for biological and cultural survival. For example, wetlands do not only support South Pacific communities in terms of food provision, better water quality, and prevention of erosion and flood damages, but they are also essential for the continuation of local artistic practices such as the making of dyed barkcloth known as *tapa*.⁴²⁶ This technique, involving beating the pre-soaked inner bark of certain trees with mallets to make a textile, which is then dyed with special pigments and used for household textiles and clothing (including ceremonial dress), is approximately 1500 years old.⁴²⁷ Moreover, the designation of protected areas and cultural traditions in the South Pacific Islands are closely intertwined.⁴²⁸ For example, dugongs, who are revered as tribal totems and can be linked to practices of storytelling and legends in parts of the Solomon Islands, and seagrass which serves as their food, were part of a conservation project in the Solomon Islands integrating associated art, songs, stories, and dances in communication.⁴²⁹ In addition to these environmental and cultural effects from the protection of biodiversity and management of natural areas, there are protected areas, natural museums and laboratories with educational and research possibilities through which young generations can get to know their cultural histories and learn processes of change.⁴³⁰

While not all relevant international, regional, and national law and policy frameworks protecting the environment include provisions directly protecting ICH, they may still do so indirectly by protecting the species, plants, or areas ICH may be associated with, or is depending on. For example,

fish have a very important role in South Pacific cultures, as it is referenced in many proverbs and constitutes a link between the South Pacific Islanders more generally.⁴³¹ In Samoa, fish occupies a prominent place in mythologies and stories, and is linked to communal practices, such as giving gifts of fish as an important element of social bonding (some fish species can only be gifted, never sold for monetary gain).⁴³²

3.1 ICH during the Emergence of Environmental Law

Before the 1960s, there were only a few isolated initiatives to establish an environmental legal regime at the international level, as global concern and awareness around the environment was only limited.⁴³³ However, in 1972, the first international document recognising the protection of the environment, the Stockholm Declaration, was adopted at the UN Conference on the Human Environment.⁴³⁴ Although only Fiji was a participant at this conference out of the Focus States, and although the Stockholm Declaration itself does not explicitly refer to culture, the Declaration is of particular importance because it laid the foundation for numerous subsequent frameworks with reference to culture.⁴³⁵ Moreover, as the Stockholm Declaration includes 26 principles for the sound management of the environment, it can be seen as indirectly protecting ICH which is closely connected to the environment. For example, Principle 2 states that '[t]he natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations'.⁴³⁶ In Fiji, an over 2,000 years old welcome tradition called the

Yaqona or Kava ceremony involves drinking Kava, which is made from the root and stems from the *Yaqona* or Kava plant (*piper methysticum*).⁴³⁷ The presentations and drinking of Kava 'signifies highest respect and deepest reverence for the Chief, for his or her people and the land ("vanua") from whence they hail'.⁴³⁸ However, being a natural resource and part of natural ecosystems, the continued viability of the Kava plant is put at risk by the rapidly changing climate, as the growth of this plant is 'highly sensitive to soil composition, temperature and humidity'.⁴³⁹ Thus, if the natural resource and ecosystem is not safeguarded, the Kava ceremony may no longer be practiced, and especially future generations might not be able to participate in this tradition which has been taken place for centuries.

Following the 20th anniversary of the Stockholm Declaration, the UN Conference on Environment and Development took place in Brazil in 1992, which was attended by representatives of Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tuvalu, and Vanuatu.⁴⁴⁰ Bringing together political leaders, scientists, diplomats, NGOs, and representatives of the media from 179 countries, the 'Earth Summit' resulted in several achievements, such as the adoption of Agenda 21 and the Rio Declaration with its 27 universal principles.⁴⁴¹ Agenda 21 is a non-binding, comprehensive plan of action to be taken at the global, national, and local level in every area in which humans impact on the environment to achieve sustainable development.⁴⁴² ICH plays an important role throughout the Agenda, as traditional knowledge and experiences of communities are *inter alia* enshrined when it comes to a community-driven approach to sustainability (3.7., and 3.12.), the integration of traditional knowledge into national

health systems (6.5.), or the use of local and/or indigenous knowledge of trees and forests for sustainable forest management (11.14.).⁴⁴³ An explicit reference to ICH can also be found in the Rio Declaration on Environment and Development, which reaffirms the Stockholm Declaration and builds upon it at the same time.⁴⁴⁴ In concrete, Principle 22 states that

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.⁴⁴⁵

The World Summit on Sustainable Development, which took place in Johannesburg in 2002, strongly reaffirmed the commitments to the 'Rio Principles' as well as the full implementation of Agenda 21 and the Programme for Further Implementation of Agenda 21.⁴⁴⁶

Another 10 years later, the Declaration on 'The Future We Want' was adopted at the 2012 UN Conference on Sustainable Development, which was also endorsed by the UNGA and includes broad sustainability objectives such as a green economy.⁴⁴⁷ Regarding ICH, the Declaration affirms

that green economy policies in the context of sustainable development and poverty eradication should:

(j) Enhance the welfare of indigenous peoples and their communities, other local and traditional communities and ethnic minorities, recognizing and supporting their identity, culture and interests, and

avoid endangering their cultural heritage, practices and traditional knowledge, preserving and respecting non-market approaches that contribute to the eradication of poverty.⁴⁴⁸

Regarding economic development and ICH, the Declaration states that '[w]e also recognize the importance of traditional sustainable agricultural practices, including traditional seed supply systems, including for many indigenous peoples and local communities'.⁴⁴⁹ The importance of access to fisheries is also mentioned as

[w]e commit to observe the need to ensure access to fisheries and the importance of access to markets, by subsistence, small-scale and artisanal fisherfolk and women fish workers, as well as indigenous peoples and their communities, particularly in developing countries, especially small island developing States.⁴⁵⁰

Moreover, the Declaration also recognises that

traditional knowledge, innovations and practices of indigenous peoples and local communities make an important contribution to the conservation and sustainable use of biodiversity, and their wider application can support social well-being and sustainable livelihoods. We further recognize that indigenous peoples and local communities are often the most directly dependent on biodiversity and ecosystems and thus are often the most immediately affected by their loss and degradation.⁴⁵¹

Therefore, the importance of safeguarding traditional knowledge, as well as the cultural heritage of local communities more generally, has long been deemed as vital

in international instruments aimed at the protection of the environment. In addition to the above instruments which were of a non-binding nature, States – with the adoption of binding treaties such as the Convention on Biological Diversity – also became required to incorporate the safeguarding of ICH in environmental management and development initiatives, .

3.2 Biological Diversity and Nature Conservation

An important part of a healthy environment is biological diversity and nature conservation. This has also been recognised at the international level during the 'Earth Summit' in 1992, which did not only adopt Agenda 21 and the Rio Declaration,⁴⁵² but also the UN Convention on Biological Diversity (CBD).⁴⁵³ This Convention, ratified by all Focus States, aims to advance sustainable development by engaging with the issue of conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources. The CBD requires its States Parties to 'respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities', and to, as far as possible and as appropriate, 'protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements'.⁴⁵⁴ In addition to the CBD, the Nagoya Protocol to the CBD on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, which was ratified by Fiji, Kiribati, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu, includes references to traditional knowledge.⁴⁵⁵ The Protocol's

Preamble recalls the above-mentioned Article 8(j) of the CBD, but also notes

the interrelationship between genetic resources and traditional knowledge, their inseparable nature for indigenous and local communities, the importance of the traditional knowledge for the conservation of biological diversity and the sustainable use of its components, and for the sustainable livelihoods of these communities,

[recognises] the diversity of circumstances in which traditional knowledge associated with genetic resources is held or owned by indigenous and local communities,

[being mindful] that it is the right of indigenous and local communities to identify the rightful holders of their traditional knowledge associated with genetic resources, within their communities,

Further recognizing the unique circumstances where traditional knowledge associated with genetic resources is held in countries, which may be oral, documented or in other forms, reflecting a rich cultural heritage relevant for conservation and sustainable use of biological diversity.⁴⁵⁶

While the implementation of the CBD and the Nagoya Protocol is guided by the decisions, recommendations, and advice of the Conference of the Parties, other processes include *inter alia* the national reporting and the development and implementation of action plans and frameworks.⁴⁵⁷ The Strategic Plan for Biodiversity 2011-2020 and its Aichi Biodiversity Targets are the current overarching framework for action with governments working on a post-2020

global biodiversity framework that will guide future actions.⁴⁵⁸ Recommendations adopted by the open-ended Working Group on the post-2020 global biodiversity framework include several references to traditional knowledge, ensuring that the respect for traditional knowledge of Indigenous peoples and local communities is reflected when it comes to access and benefit-sharing from the use of genetic resources.⁴⁵⁹ These developments show that the safeguard of ICH, and in particular of traditional knowledge, plays an increasingly important role in future frameworks relating to the environment.

Looking at the conservation and sustainable use of wetlands, the Convention on Wetlands (Ramsar Convention), ratified by Fiji, Kiribati, Papua New Guinea, Samoa, and Vanuatu, recognises in its Preamble that 'wetlands constitute a resource of great economic, cultural, scientific, and recreational value, the loss of which would be irreparable'.⁴⁶⁰ Moreover, and especially important regarding ICH and the close connection to ecosystems, the Preamble of the Ramsar Convention also recognises 'the interdependence of Man and his environment'.⁴⁶¹ The Contracting Parties, which implement the Ramsar Convention, met in November 2022 (COP14) and discussed *inter alia* the draft resolution on the new Programme on Communication, Capacity Building, Education, Participation, and Awareness (CEPA), which was first adopted in 2015 to ensure strategic and targeted communication when it comes to countering the alarming loss of wetlands and promoting their vital role for humanity.⁴⁶² According to the Conference Report, Zambia supported the draft which added references to local communities, and Canada underlined the importance of further discussions on wording related to Indigenous Peoples and local communities.⁴⁶³

In the context of the protection of plants, the International Plant Protection Convention (IPPC), ratified by Fiji, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu, aims to protect the world's plant resources from the spread and introduction of pests, and to promote safe trade.⁴⁶⁴ Even though it does not include an explicit reference to the safeguard of ICH, this Report has already set out above the importance and role of plants when it comes to Pacific Islanders' ICH.⁴⁶⁵

The International Treaty on Plant Genetic Resources for Food and Agriculture was ratified by Fiji, Kiribati, Papua New Guinea, Samoa, Tonga, and Tuvalu. The Treaty recognises the contribution of farmers to the diversity of crops, and aims at establishing a global system to provide access to plant genetic materials, and ensuring that recipients share benefits with the originating countries.⁴⁶⁶ Regarding farmers' rights, the Treaty states that

9.1 [t]he Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world.

(...)

9.2 (...) each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including:

protection of traditional knowledge relevant to plant genetic resources for food and agriculture.⁴⁶⁷

Moreover, in the context of conservation, exploration, collection, characterisation, evaluation, and documentation of plant genetic resources, the Treaty states that Contracting Parties shall

c) [p]romote or support, as appropriate, farmers and local communities' efforts to manage and conserve on-farm their plant genetic resources for food and agriculture;

d) [p]romote in situ conservation of wild crop relatives and wild plants for food production, including in protected areas, by supporting, inter alia, the efforts of indigenous and local communities.⁴⁶⁸

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was ratified by Fiji, Papua New Guinea, Samoa, the Solomon Island, Tonga, and Vanuatu, and aims to ensure that international trade in specimens of wild animals and plants does not threaten the survival of the species.⁴⁶⁹ Although void of any explicit references to the safeguard of ICH, the Preamble of the Convention states that the Contracting States

recogni[se] that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come;

[are c]onscious of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view.⁴⁷⁰

Lastly, the Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention), which was ratified by Fiji and Samoa, provides a global platform for the conservation and sustainable use

of terrestrial, aquatic, and avian migratory animals and their habitats.⁴⁷¹ CMS does also not include an explicit reference to ICH, however, its Preamble states that the Contracting Parties

recogni[se] that wild animals in their innumerable forms are an irreplaceable part of the earth's natural system which must be conserved for the good of mankind;

[are] aware that each generation of man holds the resources of the earth for future generations and has an obligation to ensure that this legacy is conserved and, where utilized, is used wisely;

[are] conscious of the ever-growing value of wild animals from environmental, ecological, genetic, scientific, aesthetic, recreational, cultural, educational, social and economic points of view.⁴⁷²

While all of these frameworks regarding biological diversity and conservation were established at the international level, there have also been developments at the regional, Pacific level. The SPREP is charged with protecting and managing the environment and natural resources of the Pacific.⁴⁷³ SPREP has 21 Pacific Island member countries, including all Focus States, and pursues various regional goals such as strengthening resilience to climate change, and healthy and resilient island and ocean ecosystems.⁴⁷⁴ One of the key regional strategy documents for environmental conservation of SPREP is the Pacific Islands Framework for Nature Conservation and Protected Areas 2021-2025, which was endorsed in 2021 and replaced the previous SPREP Framework for Nature Conservation 2014-2020.⁴⁷⁵ The Framework's main

motivation is the protection and preservation of the natural and cultural heritage of the Pacific Islands. Its specific goals include that the Pacific peoples should lead 'activities for the conservation and sustainable use of natural resources and the preservation of cultural heritage for the benefit of present and future generations'.⁴⁷⁶ The Framework entails eight principles, which can be seen as a 'code of conduct' for implementation of conservation programmes.⁴⁷⁷ Principles 1, 2, 6 and 8 are particularly important for the role of ICH. According to Principle 1, implementation of conservation in the Pacific is to be *inter alia* based on the principles of recognition, respect, and support of community rights 'including traditional rights over natural resources, and indigenous intellectual property relating to natural resources and cultural knowledge'.⁴⁷⁸ According to Principle 2, which covers conservation from Pacific perspectives, 'natural environments are central to the cultures, identities, livelihoods, and development opportunities of Pacific communities'. Therefore, nature conservation 'must align with the values, priorities, and aspirations of these communities' and will *inter alia* include respect, recognition, and support for 'Pacific approaches to conservation based on sustainable resource use, cultural heritage and expressions, and traditional, indigenous, and local knowledge'.⁴⁷⁹ Principle 6, which covers coordination and collaboration references the 'urgent need for coordinated actions across the Pacific region to address both contemporary environmental crises, and emerging threats to Pacific environments, communities, and economies'.⁴⁸⁰ Lastly, according to Principle 8, '[i]mplementing nature conservation (...) supports the resilience and wellbeing of Pacific communities in the face of sudden or long-term disruption', and is to involve [p]romoting

innovative, community-based, and culturally grounded natural solutions, drawing on appropriate learning networks and the best available knowledge.

Supporting communities to implement conservation activities by applying approaches and principles of ecosystem-based management and adaptation to their local context.

Safeguarding traditional, indigenous and local knowledge, and supporting communities to utilise this knowledge for resilience and adaptation.⁴⁸¹

Looking at the domestic level, the Focus States have either environmental frameworks and policies regarding biological diversity and conservation in place which entail both direct and indirect references to ICH, or only frameworks and policies with indirect references.

Starting with environmental legislation in **Fiji**, the Environment Management Act 2005 states, for example, that '[a] person performing a function under this Act relating to the use of natural resources must have regard to (...) traditional owners or guardians of resources (...) [or] the maintenance and enhancement of the heritage values of building and sites'.⁴⁸² Moreover, a proposal for the construction of a traditional or customary structure does not require an Environmental Impact Assessment (EIA).⁴⁸³ This is potentially relevant for adaptability and resilience, as traditional, customary structures embodying traditional building skills such as the Fijian *bure*,⁴⁸⁴ the Samoan *fale*,⁴⁸⁵ and Vanuatu's *nakamals*⁴⁸⁶ often protect better and pose less risk to humans during adverse weather conditions such as cyclones than Western-inspired buildings.

Fiji's National Research Council Act 2017 includes a provision regarding the protection of culture when it comes to the obligations

of researchers.⁴⁸⁷ According to Article 16, which covers the '[p]rotection of the environment, natural resources and heritage in research',

[a] researcher must exercise all due diligence and take reasonable steps to ensure that the research does not harm the environment, and must not carry out any research that can adversely affect the environment or any natural heritage or resource.⁴⁸⁸

Moreover, there are two frameworks relating to international conventions mentioned above, namely the CBD and CITES. Firstly, the National Biodiversity Strategy and Action Plan (NBSAP) 2020–2025 was born in connection with Fiji's obligations to the CBD, and the Plan is a national document outlining national strategies and actions that will contribute to the halt of biodiversity loss and is recognised by Fiji's National Environment Council.⁴⁸⁹ In their forewords to the NBSAP, the Fiji Minister for Waterways and Environment affirmed that climate change resilience of communities is impacted by the way natural resources and biodiversity is managed, adding that Fiji cannot allow any cracks in its resilience, and the Permanent Secretary stated that biodiversity is an inseparable part of Fijian culture and identity.⁴⁹⁰ In general, climate change is recognised as one of the primary threats to biodiversity and livelihoods. The policy therefore insists on coordination between strategies adopted in these sectors.⁴⁹¹ Overall, the NBSAP puts into place a strategy and action plan to conserve and sustainably use Fiji's terrestrial, freshwater, and marine biodiversity, and to maintain the ecological processes and functioning of the ecological systems which are the foundation of national and local development and of immense global significance.⁴⁹² The Plan is underpinned by principles such as

ecosystem-based adaptation and eco-disaster risk reduction, 'the principle or approach which is the use of biodiversity and ecosystem services as part of an overall adaptation strategy to help people adapt to the adverse effects of climate change'.⁴⁹³ As per the NBSAP, this ecosystem-based approach is not only recognised as an important DRR strategy, but also expected to contribute to heritage conservation and the preservation of local identities, among others.⁴⁹⁴ The NBSAP also involves six focus areas, strategies and actions, one of which refers to the need to '[i]ntegrate traditional ecological knowledge, innovations and good practices of Fijian communities into conservation and sustainable use of biodiversity'.⁴⁹⁵ This objective is planned to be achieved by *inter alia*

[i]mprov[ing] the collection and documentation of traditional knowledge, cultural values and best practices relating to biodiversity and make readily available to support biodiversity conservation such as village level biodiversity and heritage registers.

Support[ing] tangible and non-tangible mapping of cultural knowledge and practices as defined by UNESCO.

Integrat[ing] traditional knowledge and practices in school curriculum to promote traditional values and practices for the protection and wise use of natural resources.⁴⁹⁶

Secondly, implementing the CITES, the Fiji Endangered and Protected Species Act 2002 does not explicitly refer to ICH as such, however, the Endangered and Protected Species Regulations 2003 allow to obtain a CITES exception certificate to export a limited amount of *Physeter catodon* (Sperm whale) tooth (*tabua*) 'for traditional or cultural purposes only'.⁴⁹⁷

The 1993 National Environmental Strategy (predating the adoption of the ICH Convention and much of the legislation on natural areas and historic sites) appears to be dated on heritage issues.⁴⁹⁸

Continuing with environmental legislation in **Kiribati**, the Environment (Amendment) Act 2007 to the Environment Act 1999 states that all decision-making under the Act must respect Kiribati's culture and traditions, and 'consider, where appropriate, the retention and use of the traditional knowledge, innovations and practices of the people of Kiribati relevant to the conservation and sustainable use of the biological diversity of Kiribati'.⁴⁹⁹ Moreover, conduct that would otherwise be considered as an offence of harming coral reefs, mangroves, or seagrass beds, is not punishable under the Act if the conduct is a traditional practice in Kiribati.⁵⁰⁰ Additionally, the Environment (Amendment) Act 2007 added the protection, conservation, and promotion of heritage into the scope of the Environment Act 1999.

Regarding policy frameworks in Kiribati, the vision statement of the Kiribati Integrated Environment Policy 2013 (KIEP) is that 'the people of Kiribati continue to enjoy a safe and healthy environment that is resilient to the impacts of global climate change and supports livelihoods, human health, and sustainable development'.⁵⁰¹ In general, KIEP is a key strategic document which sets out long term planning and action to respond to priority environmental issues including climate change, taking stock of what Kiribati has achieved since the 'Earth Summit'.⁵⁰² Regarding its implementation, the Policy provides for Indigenous knowledge and practices that were developed by the I-Kiribati people and can contribute positively to the sustainable use and effective management of natural resources to

be integrated.⁵⁰³ In the policy area of biodiversity conservation, the strategic goals relevant to traditional knowledge include (1) identification, revival, and integration of appropriate customary rights into biodiversity conservation and management, (2) identification, revival, and integration of traditional knowledge systems and practices that support biodiversity conservation, management and sustainable utilisation at all levels of society, and (3) identification and support for initiatives that promote traditional preparation skills requiring the continuous planting of Kiribati food crops and trees that are declining.⁵⁰⁴

The Kiribati National Biodiversity Strategies and Action Plan (NBSAP) 2016-2020 contributes to the KIEP and its vision, and serves as a means to meet Kiribati's obligations under the CBD.⁵⁰⁵ Regarding ICH, the NBSAP refers to the '[s]ocio-cultural impacts of biodiversity loss including deriving people from accessing their resources that are vital for sustainable livelihood, social well-being, cultural practice, and traditional way of living'.⁵⁰⁶ The Plan also mentions the loss and erosion of traditional knowledge stemming from the degradation of ecosystems.⁵⁰⁷ Moreover, the Guiding Principle 4 on 'Respect for traditional knowledge, practices and skills' states that

I-Kiribati people have valuable indigenous knowledge and practice that can contribute to the sustainable use and effective management of their natural resources and the environment. The traditions and practices are important elements of their culture and heritage that forms their national identity.⁵⁰⁸

The NBSAP also includes a section on traditional knowledge and practices when laying out the action plan in detail, how it

is threatened by biodiversity threats, which national targets and actions exist, what the outputs are, which agency is responsible for the various actions, and what the costs are.⁵⁰⁹

Looking at **Papua New Guinea**, environmental laws do not address the issues analysed in this Report at any particular depth. However, whilst the Environment Act 2000 does not refer to ICH, it states that the preservation of Papua New Guinea's traditional social structures, and the maintenance of sources of clean water and subsistence food sources are matters of national importance as they enable those Papua New Guineans who depend upon them to maintain their traditional lifestyles.⁵¹⁰

The Motu Koita Act establishes the Motu Koita Assembly, that is, the government of Indigenous landowners. The Act names 'the maintenance and strengthening of traditional knowledge and practices of the Motu Koita people that promote sustainable development and the capacity of Motu Koita people and Motu Koita communities' among the principles relevant to achieving the Act's objectives, including the protection and strengthening of the identity of the Motu Koita people.⁵¹¹ Among other duties, the Assembly issues access licences for the development of natural resources or customary land, and when considering such applications, it gives 'paramount consideration to the protection and conservation of the cultural values and customary knowledge and the ecological integrity of the environment of the Motu Koita people'.⁵¹²

Moving on to policies, the Papua New Guinea Policy on Protected Areas establishes a network of protected areas, built and maintained with the free, prior, and informed consent of customary landowners and communities, as a cornerstone of an 'integrated approach to conserve nature

and provide resilience to climate change on both land and sea'.⁵¹³ The Policy recognises 'the importance of improved understanding of Traditional Ecological Knowledge and sustainable cultural uses and practices and the incorporation of this knowledge into Protected Area planning and management'.⁵¹⁴

Lastly, the Papua New Guinea National Biodiversity Strategic Action Plan (PNG NBSAP) 2019-2024 proceeds the PNG NBSAP 2007, which was born in connection with its obligations to the CBD.⁵¹⁵ Regarding ICH, the document reaffirms that

biodiversity is vital to sustaining life, and offers us a unique basis protecting our equally diverse culture and languages that give us the edge in declaring ours as truly, a country of diversity (...) Biodiversity plays a vital role in sustaining our livelihoods, our languages and our culture. We depend on our biodiversity to sustain our daily livelihoods. The diverse languages and cultures set us apart from the rest of the world. Our unique traditional songs and dances and the traditional head-dress and costumes that we wear, epitomises the uniqueness of our culture and tradition and above all, this uniqueness is a manifestation of biodiversity as its best.⁵¹⁶

Moreover, regarding traditional ecological knowledge, the PNG NBSAP states that

any project simply needs to consider traditional ecological knowledge as a necessity rather than a luxury when implementing conservation activities on customary land among PNG's rural communities. In the face of ongoing loss of traditional knowledge in younger generations, there is the ever growing need to preserve

and promote traditional ecological knowledge.⁵¹⁷

In general, enhancing the capacity on traditional ecological knowledge is the 'National Target 18' of the PNG NBSAP, and various others targets also include traditional knowledge and practices when it comes, for example, to development planning or sharing information.⁵¹⁸

Continuing with **Samoa**, environmental laws such as the Lands, Surveys and Environment Act (LSEA) 1989, which includes provisions for the conservation and protection of the environment, do not refer to any obligations concerning ICH.⁵¹⁹ The Act merely states that the competent Minister may ensure that all important issues relating to the natural and socio-cultural environment, including the traditional social and cultural use of the environment from which the Samoan way of life has developed, have been addressed before agreeing to earmark funds for any project.⁵²⁰

By contrast, consideration of the effects of a development on cultural and natural heritage is framed as an obligation in the Planning and Urban Management Act 2004, which includes provisions for planning the use, development, sustainable management, and protection of land in Samoa.⁵²¹ According to this Act, heritage is also the subject of stakeholder consultation and informational duties in relation to the preparation of a sustainable development plan of the planning area.⁵²²

Samoa's National Biodiversity Strategy and Action Plan (NBSAP) 2015-2020 builds on the NBSAP 2001, which was born in connection with its obligations to the CBD.⁵²³ Regarding ICH, Target 18 of the NBSAP strategic goals and targets states that:

[b]y 2020, the traditional knowledge, innovations and practices of

indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are fully protected by national legislation and relevant international obligations, and fully integrated and reflected in national and sector plans and budgetary processes.⁵²⁴

Actions to achieve Target 18 are *inter alia* facilitating the enactment of the Environment and Management Conservation Bill 2013 and conducting an assessment of traditional knowledge, practices, and innovations relating to Samoa's native biodiversity.⁵²⁵ Moreover, traditional knowledge and practices are mentioned more generally throughout the NBSAP, for example the use of traditional healing methods when it comes to the vital role of forests, or the feature of marine fauna in the cultural folklores and oral traditions of Samoa.⁵²⁶

Lastly, the National Environment Sector Plan (NESP) (2017-2021) provides the blueprint for sustainable management and development of natural resources, and the protection and conservation of the environment, while at the same time pursuing the environmental sector's overarching goal of 'enhanced environmental sustainability and climate and disaster resilience'.⁵²⁷ Regarding ICH, it includes, for example, initiatives aiming to strengthen biological terrestrial diversity by education on, and awareness of, relevant traditional knowledge.⁵²⁸

The **Solomon Islands** has both environmental laws and policies with (in)direct references to ICH. Firstly, the Protected Areas Act 2010, which focusses on biodiversity, includes an indirect protection of ICH. In concrete, the Act allows to declare any area as a protected area of biological diversity if it possesses significant genetic, cultural,

geological or biological resources. Biological resources can hereby be understood as 'genetic resources, traditional knowledge, organisms or parts thereof, populations of species, any other biotic component of ecosystems with actual or potential use or value for humanity'.⁵²⁹ Secondly, according to the Protected Areas Regulations 2012, 'any protected area which is established to protect and or sustain (...) an important landscape or seascape created by the interaction (through traditional practices) between humans and nature over time' may be classified as a natural monument.⁵³⁰ The protection of such landscapes or seascapes may in many cases indirectly protect the associated, intangible cultural values and the traditional practices referenced in the Regulations, similar the cultural landscapes protected by the World Heritage Convention. Tangible objects such as cultural objects, monuments of biodiversity and cultural significance, as well as cultural artefacts or sacred objects within protected areas, are additionally protected from destruction, defacement, and removal.⁵³¹ The Regulations also state that management plans of a protected area are to cover the application of relevant traditional management practices, and that, '*kastomary* owners and local communities affected by or having an interest in the protected area' as well as 'chiefs and other traditional leaders living within vicinity' should be consulted in their preparation, as far as possible.⁵³²

Lastly, the National Biodiversity Strategic Action Plan (NBSAP) 2016-2020 includes 14 priority areas and 15 targets providing the Solomon Islands' government with a strategic framework to sustainably manage and utilise the country's biodiversity.⁵³³ The Plan is a subsequent production to the NBSAP 2010-2015, which was born to meet

the obligations under the CBD. It refers to the Solomon Islands' biodiversity as its 'natural heritage and cultural identity', and *inter alia* discusses the importance of protecting and promoting traditional knowledge as it relates to biodiversity and sustainable land use practices in several instances, including through awareness rising, documenting traditional usage of plant and animal species, and traditional farming methods.⁵³⁴ The documentation of traditional knowledge and related management systems and their potential of integration into modern agricultural systems in the context of the traditional Temotu agriculture system can, for example, be found in the NBSAP 2016-2020.⁵³⁵ According to the NBSAP text, the 'document shall be reviewed after 2020 or as and when considered necessary by the Minister of [the Ministry of Environment, Climate Change and Disaster Management and Meteorology] MECDM'.⁵³⁶ At the time of writing this Report, no review has been announced.

Continuing with environmental laws in **Tonga**, the Environment Mangement Act 2010 is a comprehensive Act fostering the protection of the environment.⁵³⁷ While the Act does not include any explicit reference to ICH, it defines environment as

includ[ing] all natural and physical resources, the ecology, people and culture of the Kingdom, and the social and economic relationships that exist between these elements.⁵³⁸

Thus, although void of direct references, Tongan culture is included every time the Act refers to the environment.

Tonga's National Biodiversity Strategy and Action Plan (NBSAP) was born in connection with its obligations to the CBD, and includes strategies and specific actions to achieve the CBD's objectives by targeting

threats to biodiversity and constraints to effective implementation.⁵³⁹ Regarding ICH, the NBSAP states that

[b]iodiversity is also important to Tonga's cultural heritage. There is a wealth of traditional ecological knowledge, practices and innovations that is relevant and applicable to modern Tonga. They form an integral part of Tongan culture and identity as a people. These should be documented, and for practices and innovations with practical and environmentally friendly applications, promoted for wider use.⁵⁴⁰

Moreover, the Guiding Principle 7 on 'Traditional knowledge, practices and innovation' ensures that

Tongan traditional knowledge, innovations and sustainable practices which are important for the protection and conservation of biodiversity, should be fully recognized, preserved and maintained.⁵⁴¹

Lastly, traditional ecological knowledge and its fully protection from unlawful exploitation as well as its documentation and usage with benefits equitable distributed and shares is one of the strategic goals of the NBSAP.⁵⁴² The document also includes strategies and actions such as identification and documentation of traditional knowledge to reach this goal.⁵⁴³ More generally, traditional medicines, traditional building materials, traditional agroforestry, and traditional farming practices are examples of ICH mentioned throughout the part on 'Strategies and Action Plans'.⁵⁴⁴

In **Tuvalu**, environmental laws such as the Environmental Protection Act 2008 mention that the Department of Environment shall formulate, apply, and enforce policies and programmes for the

'recognition, protection and application of traditional knowledge, innovations and practices in relation to the management, protection and utilisation of Tuvalu's biological diversity'.⁵⁴⁵

The policy mission of the Integrated Environment and Natural Resources Policy 2021-2023 is 'to enable systematic action in protecting life-supporting systems, biodiversity and cultural heritage that builds resilience and reduces environmental degradation in a developing Tuvalu'.⁵⁴⁶ The policy notes that one of the main, though indirect drivers of loss of biodiversity and ecosystem services (BES) is 'loss of knowledge, particularly indigenous knowledge', and the lack of capacity to bridge traditional and scientific knowledge, and discusses the modalities for building synergies between the two.⁵⁴⁷ As an example of such synergy, the policy refers to the 'improvement of early warning, preparedness, and adaptation to climate and environmental change and extreme weather and tidal events'.⁵⁴⁸ Besides the conservation and protection of traditional ecological knowledge and development as well as documentation of traditional conservation methods playing a role in the protection and conservation of the biodiversity of Tuvalu, the Policy also refers to the documentation of traditional knowledge such as navigation skills, weather prediction, conservation, and past coping practices linked to stewardship roles and environment protection as an element of 'provid[ing] an enabling environment free from discrimination and having access to information', which is also an objective of the policy.⁵⁴⁹ The Policy also refers to the need to 'promote and strengthen the use of local knowledge in forecasting disaster'.⁵⁵⁰

To meet its obligations under the CBD, Tuvalu put the National Biodiversity Strategy and Action Plan (TNBSAP) in place.⁵⁵¹

The Plan recognises that '[b]iodiversity like many other dynamics of sustainable development at large are an integral part and parcel of Tuvalu's traditional and cultural practices'.⁵⁵² The TNBSAP lays out in more detail how biological diversity is an integral element of Tuvalu's traditional lifestyles and cultural practices by giving examples of conservation measures from some islands.⁵⁵³ For instance, the lagoon surrounding the main settlement of Fagua was declared a conservation area, which resulted in the increase in numbers and of variety of fish.⁵⁵⁴ The harvest of coconut crabs is also regulated by closing certain islets for a period of six months and over, alternating closed and open islets.⁵⁵⁵ In general, traditional knowledge, cultural practices and Indigenous property rights also form one of the eight thematic areas which constitute the heart of the TNBSAP.⁵⁵⁶

Finally, looking at environmental laws of **Vanuatu**, the Environmental Management and Conservation Act 2003 discusses the treatment of traditional knowledge in the context of applications for bioprospecting permits, which involve the signing of legally binding contracts with custom landowners, or owners of traditional knowledge, stipulating rights of acquisition of such traditional knowledge.⁵⁵⁷

Considering Vanuatu's environmental policies, one of the guiding principles of the Vanuatu National Environment Policy and Implementation Plan (NEPIP) 2016-2030 is the protection of indigenous knowledge and practices linked to sustainable resource management.⁵⁵⁸ In that vein, two policy objectives concern traditional knowledge: (1) '[s]upport local conservation and protection of endangered, threatened or endemic species and ecosystems, including through traditional knowledge and practices', and (2) 'promote traditional

knowledge and practices related to biodiversity conservation'.⁵⁵⁹ According to the implementation plan of the NEPIP, the first policy objective should be reached by *inter alia* 'creat[ing] awareness materials about biodiversity and conservation (...) [and developing a] Memorandum of Understanding (MoU) with Customs and BV [Biossecurity Vanuatu]'.⁵⁶⁰ The second policy objective includes several activities such as

survey[s] to establish baseline of current understanding, [s]cientific validation of traditional knowledge/practices (...), [r]egister sites, [d]evelop teaching materials about traditional knowledge and biodiversity, [d]evelop awareness materials including DEPC [Department of Environmental Protection and Conservation] website.⁵⁶¹

As well as all other Focus States, Vanuatu has developed and endorsed a National Biodiversity Strategy and Action Plan (NBSAP) to meet the obligations under the CBD, with the latest NBSAP covering the timeframe 2018-2030.⁵⁶² Several principles underpinning the strategy relate to ICH, such as community participation and ownership (Principle 1), stating that '[c]ommunity property rights include traditional rights over natural resources, indigenous intellectual property relating to natural resources and cultural knowledge'.⁵⁶³ Considering the implementation plans of the NBSAP, the promotion of traditional fishing methods and ways of establishing tabu areas are one of the activities mentioned in the context of marine ecosystems conservation.⁵⁶⁴ In general, the implementation plans include several references to traditional knowledge, practices and innovations.

3.3 Ocean Conservation and Fishing

Oceans make up 71% of the planet and provide essential services to human beings, ranging from mitigating weather extremes, generating oxygen, storing carbon dioxide, to producing food.⁵⁶⁵ Thus, to protect oceans and their ecosystems from environmental threats, several frameworks targeting ocean conservation and fishing exist at the international level.

Starting with the UN Convention on the Law of the Sea (UNCLOS), which establishes a framework to regulate all ocean space, its uses and resources, was ratified by all 8 Focus States.⁵⁶⁶ Among several provisions, UNCLOS provides for the protection and preservation of the marine environment.⁵⁶⁷ Regarding ICH, the Convention includes a direct reference to traditional fishing rights in the context of archipelagic States, with Article 51 (1) stating that

(...) an archipelagic State shall respect existing agreements with other States and shall recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring States in certain areas falling within archipelagic waters.⁵⁶⁸

UNCLOS also contains provisions for the establishment of the International Tribunal for the Law of the Sea (ITLOS), an independent judicial body with jurisdiction over disputes concerning the interpretation or application of the Convention, and over all other matters specifically provided for in other agreements which confer jurisdiction to ITLOS.⁵⁶⁹ In December 2022, the Commission of Small Island States on Climate Change and International Law, which is an international organisation with Antigua, Barbuda, and Tuvalu as the original signatories, and others such as Vanuatu

as accession States, requested an Advisory Opinion from ITLOS regarding legal questions concerning climate change.⁵⁷⁰ In particular, the Commission asks ITLOS about the specific obligations of State Parties to the UNCLOS including under Part XII

(a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere?

(b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?⁵⁷¹

While the request does not explicitly refer to ICH, the Advisory Opinion once issued will have indirect implications for ICH as it concerns States' climate change obligations relating to the marine environment, on which ICH is highly dependent in some of the Focus States.

The UN Fish Stocks Agreement, which relates to the conservation and management of straddling and highly migratory fish stocks, implements the provisions of UNCLOS pertaining to them, and was also signed by all Focus States.⁵⁷² While being interpreted and applied in the context of, and in a manner consistent with, UNCLOS, the UN Fish Stocks Agreement also includes a reference to fishing which indirectly safeguards ICH. According to Article 24, which includes the 'Recognition of the special requirements of developing States',

States shall take into account the special requirements of developing States, in particular

(a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;

(b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States (...).⁵⁷³

Looking more broadly at oceans, the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention) protects the marine environment from human activities by promoting the effective control of marine pollution and by preventing pollution of the sea by dumping of wastes and other matter.⁵⁷⁴ Out of the Focus States, the Convention was signed by Kiribati, Papua New Guinea, Solomon Islands, Tonga, and Vanuatu. Regarding ICH, the Convention does not make any direct references, however, it 'recogni[s]es that the marine environment and the living organisms which it supports are of vital importance to humanity'.⁵⁷⁵ Moreover, it names '[p]ossible effects on marine life, fish and shellfish culture, fish stocks and fisheries, seaweed harvesting and culture' as a general consideration and condition for establishing criteria governing the issue of permits for the dumping of matter at sea, which bears upon ICH relating to marine life.⁵⁷⁶

A call for action 'Our Ocean, Our Future' to prevent the degradation of oceans and the undermining of coastal communities' livelihoods has been made at the UN Conference to Support the Implementation of Sustainable Development Goal 14 and the 2030 Agenda, co-hosted by Sweden and

Fiji in 2017.⁵⁷⁷ In this call, the importance of the inclusion of local communities or Indigenous people and their traditional knowledge in the implementation of Goal 14 was underlined, by, for example, stating that traditional knowledge systems should form the basis for assessments on the state of the ocean to understand the health and role of the oceans and the stressors on its ecosystems.⁵⁷⁸ Moreover, the call urged to collect and share traditional knowledge to *inter alia* increase the knowledge of the ocean.⁵⁷⁹

Looking at environmental laws and policies at the regional level in the context of ocean conservation and fishing, the Convention for the Protection of Natural Resources and Environment of the South Pacific Region 1986 (also known as SPREP Convention or Noumea Convention) is a multilateral umbrella agreement representing the legal framework of the Action Plan for managing the Natural Resources and Environment of the South Pacific adopted in 1982.⁵⁸⁰ Fiji, Papua New Guinea, Samoa, and the Solomon Islands have ratified the Convention, while Tuvalu has only signed it. Constituting an agreement for the protection, management, and development of the marine and coastal environment of the South Pacific Region, the Preamble of the Convention states that the Parties

[take] into account the traditions and cultures of the Pacific people as expressed in accepted customs and practices;

[are] *conscious* of their responsibility to preserve their natural heritage for the benefit and enjoyment of present and future generations.⁵⁸¹

In addition to the Convention, the Protocol Concerning Co-operation in Combating Pollution Emergencies in the South

Pacific Region was ratified in 1990 as part of the legal framework for the protection of natural resources and environment.⁵⁸² Aiming at enhancing cooperation among the Parties to protect the region from threats and effects of pollution incidents, the Protocol refers under 'related interests' *inter alia* to 'the cultural value of the area concerned and the exercise of traditional customary rights therein'.⁵⁸³ However, two new protocols will supersede the Emergency Protocol once they come in force.⁵⁸⁴ The Protocol on oil pollution preparedness, response and cooperation on the Pacific region still defines related interests in the same way.⁵⁸⁵

Lastly, highlighting some environmental laws and policies in the context of ocean conservation and fishing at the domestic level, **Fiji's** Strategic Plan 2020-2024, issued by the Ministry of Waterways and Environment, provides the blueprint for identification and better management of environment and waterways risks.⁵⁸⁶ The Plan acknowledges that overcoming environmental risks and threats will *inter alia* promote economic, ecological, and socio-cultural values of ecosystems and biodiversity, as well as sustainable development.⁵⁸⁷

In **Papua New Guinea**, the Fisheries Management Act 1998 does not make any direct reference to the safeguard of ICH, however, it states that that access agreements and any linked licenses require a recognition of, and agreement to, respect and comply with the customs, traditions, and customary rights of the indigenous inhabitants.⁵⁸⁸

Samoa adopted an Ocean Strategy 2020-2030 - Integrated Management for a Healthy and Abundant Future of Samoa's Ocean, which directly recognises in its Introduction that

[t]he ocean is the source of life. It has sustained Samoa and its people for generations and remains critical to the economy, culture and wellbeing of the nation. Samoa's ancestors were master ocean navigators thousands of years ago, establishing a profound and enduring connection with the sea. This deep bond remains central to the nation's culture and traditions, which are rooted in respect for and reliance on its ocean.⁵⁸⁹

In general, culture and traditional knowledge are mentioned at various points throughout the Ocean Strategy. The cultural significance of, for example, turtles, is also explained, namely that turtles are also known as 'I'a Sa or sacred fish and that their consumption is restricted to high chiefs and priests during special occasions.⁵⁹⁰ Moreover, turtles are often included in myths, folklores, songs of pasts and legends.⁵⁹¹

Looking at **Tuvalu**, under the Seabed Minerals Act 2014, seabed mineral activities require an environmental impact assessment (EIA), which *inter alia* describes relevant cultural and historic resources, and socio-economic and socio-cultural issues more generally, including onshore direct or indirect impacts, and the anticipated effects on the livelihoods and lifestyles of the population of Tuvalu.⁵⁹² The relevant authority will not endorse seabed mineral activities which are likely to cause an irreparable harm to any community, cultural practice, or industry in Tuvalu.⁵⁹³

3.4 Land Management

Looking at land management in the context of forests and the prevention of desertification, there exist environmental frameworks at the international and domestic level which include an (in)direct reference to ICH.

Starting with forests, the 1992 'Earth Summit' adopted the Declaration on the Principles relating to Forests, which includes a series of guidelines for the most sustainable management of forests.⁵⁹⁴ The document makes several references to ICH, starting with the Preamble according to which

[f]orestry issues and opportunities should be examined in a holistic and balanced manner within the overall context of environment and development, taking into consideration the multiple functions and uses of forests, including traditional uses.⁵⁹⁵

Moreover, one of the Declaration's principles states that

[f]orest resources and forest lands should be sustainably managed to meet the social, economic, ecological, cultural and spiritual needs of present and future generations. These needs are for forest products and services, such as wood and wood products, water, food, fodder, medicine, fuel, shelter, employment, recreation, habitats for wildlife, landscape diversity, carbon sinks and reservoirs, and for other forest products.⁵⁹⁶

The Declaration also mentions that governments should provide and promote opportunities for the participation of local communities and Indigenous people in the development, planning, and implementation of national forest policies.⁵⁹⁷ Regarding national forest policies, the Declaration states that these policies

should recognize and duly support the identity, culture and rights of indigenous people, their communities and other communities and forest dwellers. Appropriate conditions should be promoted for these groups

to enable them to have an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organization, as well as adequate levels of livelihood and well-being, through, *inter alia*, those land tenure arrangements which serve as incentives for the sustainable management of forests.⁵⁹⁸

Further, the document explicitly mentions that national policies and legislation aimed at conservation, sustainable development and management of forests should include the protection of 'cultural, spiritual, historical, religious and other unique and valued forests of national importance'.⁵⁹⁹ Lastly, Indigenous capacity and local knowledge regarding the conservation and sustainable development of forests should be recognised, recorded, respected, developed, and included, and benefits arising from using this knowledge should be equitably shared with the people.⁶⁰⁰

As Fiji and Papua New Guinea are timber producer countries, they ratified the International Tropical Timber Agreement for the promotion of the expansion and diversification of international trade in tropical timber from sustainably managed and legally harvested forests, and of the sustainable management of timber producing forests.⁶⁰¹ Regarding ICH, the Agreement recognises the importance of collaboration among all relevant parties including Indigenous and local communities.⁶⁰² Moreover, it notes that 'enhancing the capacity of forest-dependent indigenous and local communities, including those who are forest owners and managers, can contribute to achieving the objectives of this Agreement'.⁶⁰³ The role of forest-dependent Indigenous and local communities in achieving sustainable forest management should also be recognised by the Agreement's signatories.⁶⁰⁴

Not only at the international, but also at the domestic level, both **Fiji** and **Papua New Guinea** have adopted, or are planning to adopt, environmental frameworks regarding forests. In Fiji, the REDD-Plus Policy offers an opportunity to conserve Fiji's forests and to benefit from environmental services from standing forests.⁶⁰⁵ In its Preamble, the Policy states that the Fijian government recognises

that the vast majority of Fiji's forests are owned by Fiji's indigenous people and therefore the knowledge and rights of indigenous peoples shall be guaranteed, as defined under the Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention for the Safeguarding of the Intangible Cultural Heritage (UNCSICH), and other international instruments on rights of indigenous people.⁶⁰⁶

Moreover, the REDD-Plus Policy's implementation programme includes the protection of 'indigenous forest areas of high cultural, biological diversity and ecosystem service value'.⁶⁰⁷ Lastly, all REDD-Plus initiatives and projects in Fiji ensure the protection of and respect for the rights and knowledge of Indigenous peoples, as well as their full and effective participation.⁶⁰⁸

In Papua New Guinea, the Department of Environment and Conservation has reportedly been working on a new National Biodiversity Conservation Policy for Forests.⁶⁰⁹ Moreover, at COP26 in Glasgow in 2021, the Center for International Forest Research and World Agroforestry (CIFOR-ICRAF), and its private sector facing entity, Resilient Landscapes, as well as the Governor of Pro Province and the Prime Minister of Papua New Guinea signed an agreement for a Euro 195 million nature-based solutions development project in the Managalas

Plateau.⁶¹⁰ According to CIFOR-ICRAF, the project is 'an ideal proof of application for protection of habitat and ecosystems and remunerative community stewardship of forests'.⁶¹¹

Looking, secondly, at desertification, on Fiji's main island, Viti Levu, people living in two drought-prone sugarcane areas have a history of facing water shortages as they rely on collected rainwater, springs or shallow swells.⁶¹² However, hydrogeological surveys mapped new sources of underground water, which might provide more reliable water supplies as groundwater from deeper sources is less impacted by droughts and cyclones.⁶¹³ Nevertheless, Pacific Islands face in general major soil erosion and sedimentation, which is increased by the steep land topography on most islands in addition to highly erosive rainfall.⁶¹⁴ As highlighted during the Desertification and Drought Day 2021, '[t]he effects are destructive, including land degradation and decreased productivity, sediment disposition in rivers with a subsequent increase in flooding, and damage to coastal ecosystems by transported sediment'.⁶¹⁵ It is, therefore, unsurprising, that all Focus States are parties to the UN Convention to Combat Desertification (UNCCD), which aims to combat desertification and to mitigate the effects of drought in countries experiencing serious desertification and/or droughts.⁶¹⁶ Regarding ICH, traditional knowledge is mentioned throughout the Convention text. For example, regarding scientific and technical cooperation, the UNCCD states that Parties agree to 'exchange information on local and traditional knowledge, ensuring adequate protection for it and providing appropriate return from the benefits derived from it, on an equitable basis and on mutually agreed terms, to the local populations

concerned'.⁶¹⁷ The protection, integration, enhancement, and validation of traditional and local knowledge is also mentioned in relation to research and development.⁶¹⁸

3.5 Pollution and Waste Management

Lastly, when it comes to pollution and waste management, especially regional frameworks and initiatives take ICH into consideration.

The Cleaner Pacific 2025 – Pacific Regional Waste and Pollution Management Strategy 2016-2025 was developed with all 21 SPREP member countries, including the Focus States, and offers a comprehensive blueprint to help improve the management of waste and pollution.⁶¹⁹ The Strategy includes a section on the socio-economic context, in which it refers to traditional culture and societies and how Pacific Islanders are highly dependent on healthy ecosystems.⁶²⁰

Making major strides towards the realisation of the Cleaner Pacific 2025 Strategy, 14 nations, including the Focus States, launched the ISLANDS Pacific initiative in 2022 to avoid the release of 28,000 tonnes of marine litter, to reduce the burden of persistent organic pollutants (POPs) and mercury in island communities, and to safely dispose of 720 tonnes of contaminated material.⁶²¹ Moreover, Samoa will be the location for a remaking and repairing workshop for electronic household goods, as the piloting of innovative solutions across the region is one of the ISLANDS Pacific initiative.⁶²²

Concluding Remarks Part 3

Overall, looking at different environmental laws and policies in the Focus States, all of them have laws and policies (in)directly safeguarding ICH. Regarding biological diversity and nature conservation, international, regional, and national frameworks exist with references to ICH. For example, at the international level, the CBD was ratified by all Focus States, and especially the Working Group's effort to ensure respect for traditional knowledge of Indigenous peoples and local communities in the post-2020 global biodiversity framework underlines the importance of the safeguard of ICH in an environmental context. At the regional level, the Pacific Islands Framework for Nature Conservation and Protected Areas 2021-2025 includes several principles which are particularly important for the role of ICH, contributing to its safeguard both in a direct and indirect way. Lastly, at the domestic level, all Focus States have laws and policies with ICH references in place. For example, the Environment (Amendment) Act 2007 in Kiribati considers the retention and use of traditional knowledge relevant to the conservation and sustainable use of its biological diversity. While this reference does not only contribute to a sustainable environment, it also safeguards the ICH established by Indigenous and local communities in the past. Contrary to Kiribati, environmental laws in Papua New Guinea do not address the issues analysed in this Report at any particular depth.

As for biological diversity and nature conservation, environmental laws and policies at the international, regional, and domestic level make (in)direct references to ICH in the context of ocean conservation and fishing. Especially at the international level, the request for an Advisory Opinion from ITLOS on State Parties' climate change

obligations relating to the marine environment has indirect implications for ICH, as it is highly dependent on healthy oceans and fish stocks. At the regional level, the participation of the Focus States in frameworks such as the Convention for the Protection of Natural Resources and Environment of the South Pacific Region is rather low, with only half of the eight Focus States being Parties to the Convention. At the national level, the Ocean Strategy 2020-2030 – Integrated Management for a Healthy and Abundant Future of Samoa's Ocean is an example of connecting ocean conservation with the safeguard of ICH. Especially in Samoa, the connection with the sea is central to the nation's culture and traditions.

As for the other areas, environmental laws and policies at the international and domestic level make (in)direct references to ICH in the context of forests and the prevention of desertification (land management). Already at the 1992 'Earth Summit', the important role of ICH was recognised in the Declaration on the Principles relating to Forests. As Fiji and Papua New Guinea are timber producer countries, both countries have, or are working on, frameworks regarding forests. Especially the already existing framework in Fiji, the REDD-Plus Policy, protects forests of high cultural value. Regarding the prevention of desertification, the UNCCD, which aims to combat desertification and mitigate the effects of drought in countries experiencing serious desertification and/or droughts, was signed by all Focus States, and includes references to traditional knowledge.

Lastly, regarding pollution and waste, especially regional policies and initiatives contribute to the safeguard of ICH. The Cleaner Pacific 2025 – Pacific Regional Waste and Pollution Management Strategy 2016-2025 makes a direct reference to traditional

culture and societies and how Pacific Islanders are highly dependent on healthy ecosystems.

In general, when looking at the various environmental laws and policies at the international, regional, and national level, environmental policies tend to have more direct, further reaching references to the importance and safeguarding of ICH than environmental laws.

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The Safeguarding of ICH in Climate Change Legislation, as well as DRR and DRM Laws and Policies

Part 4 of this Report examines the safeguard of ICH under climate change legislation, as well as DRR and DRM laws and policies. Climate change legislation, or climate legislation, can hereby be understood as 'the laws and policies that govern action on climate change by setting its legal basis'.⁶²³

Starting with examining 'International and Regional Climate Change Legislation' (4.1.), this Part then looks at 'International and Regional DRR and DRM Laws and Policies' (4.2.). The last section of this Part sets out 'National Climate Change Legislations and DRR and DRM Laws and Policies' (4.3.).

As has already been laid out in 'Part 1. The Role of ICH in the Climate Emergency', the ICH of South Pacific Islanders is under tremendous threat because of ever increasing climate change impacts. To safeguard ICH, and to use it to mitigate and adapt to climate change impacts, climate change legislation, as well as DRR and DRM frameworks must entail inclusive ICH approaches. For example, the traditionally employed coping strategies, skills, and knowledge of South Pacific Islanders in response to disasters and environmental challenge, including climate change-related events, are increasingly valued for their potential to strengthen adaptive capacities. Research in three Focus States, namely Fiji, Samoa, and Vanuatu, has shown that traditional coping skills and strategies are important for communities. Although they might not always have been integrated in DRR frameworks in the past,⁶²⁴ there is a growing tendency to incorporate traditional methods for the improvement of disaster preparedness and response.⁶²⁵ Disaster preparedness and coping strategies drawing on traditional methods may include, for example, shoreline reinforcement and protection, communication warning systems managed by traditional leaders, disaster response, introduction of less common, or reintroduction of forgotten foods from traditional diets, and practicing traditional ways of preserving and preparing food to withstand potential power outages. In the Torba province of Vanuatu, for example, traditional ways of preparing meals on the basis of cassava (*manioc*) are transmitted to the younger generation as an element of disaster preparedness, as cassava roots may remain buried for up to 36 months, and, therefore, help achieving food security in the event other foods are not available.⁶²⁶ However,

while most of the traditional disaster preparedness and coping strategies align with principles underlying non-traditional strategies, such as the respect for persons and emergency assistance provided to the most vulnerable persons,⁶²⁷ some traditional coping strategies may conflict with these principles. For example, in the aftermath of a tsunami that hit Samoa in 2009, some responders prioritised removing dead bodies over helping the injured due to cultural considerations.⁶²⁸ Looking at the incorporation of ICH in disaster response, Fiji implemented new guidelines in the National Building Code after having suffered destructions by tropical cyclones in the past, which has strengthened Fiji's capacity to improve the design and construction of houses and schools to prepare for climate and disaster risk in the future.⁶²⁹ As stated by Meretui Ratunabuabua in the interview conducted for this Report, the inclusion of traditional house building is an example of how ICH can play a role in relation to DRR.⁶³⁰ Not only are the houses more resilient, they are also built with local materials already available. While the wetlands, from which materials are taken to build the roofs of the traditional house structure, have mainly been used as pasture for cows in recent years, the inclusion of this ICH practice in DRR enables the revival of traditional practices which have moved into the background.⁶³¹ The new guidelines were finalised together with traditional institutions representing Indigenous communities, leading to, for example, the inclusion of taking the cultural situation or local cultural expectations into consideration when it comes to school buildings.⁶³²

Considering the outcome of strategies, an empirical analysis of community-based climate change adaptation and DRR initiatives in Fiji and Samoa has identified

culture as a pivotal factor in the success of such initiatives. More specifically, '[t]he case studies which made an explicit effort to align their activities to culture within the local context (...) were accepted more readily by the local community, and are thus more likely to be sustainable in the long term'.⁶³³ As one study revealed, more than one participant in stakeholder interviews confirmed that there are 'incredible issues surrounding social and cultural context that must be taken into account, otherwise interventions are not successful or sustainable'.⁶³⁴ In Samoa, this has involved accommodating the traditional rules of giving consent to projects on behalf of a community.⁶³⁵

4.1 International and Regional Climate Change Legislation

The international legal climate change regime is based on the UNFCCC, the Kyoto Protocol, and the Paris Agreement. The UNFCCC, which was adopted in 1992 and to which all Focus States are a party, establishes a comprehensive framework for the intergovernmental effort to meet the challenge posed by climate change.⁶³⁶ While the Convention lays down the fundamental principles of the international legal climate change regime, it only includes very general obligations, and as a Framework Convention, it needs supplementary instruments with specified commitments.⁶³⁷ For this reason, the Kyoto Protocol was adopted in 1997, which includes stronger and more detailed reduction targets to implement the objective of the UNFCCC of limiting global warming by reducing GHG concentrations in the atmosphere.⁶³⁸ As the Kyoto Protocol did not enter into force until 2005, the first commitment period did not start before 2008 and only ended in 2012.⁶³⁹ The second

commitment period was agreed to in 2012, also known as the Doha Amendment to the Kyoto Protocol, however, it did not enter into force before 31 December 2020, which was the same date as the end of the second commitment period.⁶⁴⁰ Thus, rather than an amendment to the Kyoto Protocol, the Paris Agreement was adopted in 2015 as a separate instrument under the UNFCCC.⁶⁴¹ To the present day, the Paris Agreement is the main legal international instrument governing climate change, ratified by 194 out of 198 Parties to the UNFCCC, including all Focus States.

Regarding ICH, the UNFCCC does not include any direct references. However, the Preamble recognises the increasing global temperature which 'may adversely affect natural ecosystems and humankind'.⁶⁴² Moreover, the Convention recognises the particular vulnerability of low-lying and other small island countries to climate change.⁶⁴³ The Kyoto Protocol neither includes direct nor indirect references to ICH. It is only the Paris Agreement which includes a direct reference, correlating with the fact that the Paris Agreement was the first climate change treaty refers to human rights, albeit without imposing any obligations. In concrete, the Preamble of the Paris Agreement expressly acknowledges that

Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples,⁶⁴⁴ local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.⁶⁴⁵

Moreover, the Paris Agreement Preamble also notes

the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of "climate justice", when taking action to address climate change.⁶⁴⁶

Lastly, Article 7 of the Paris Agreement, which sets out the elements and dimensions of adaptation, states that

Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.⁶⁴⁷

Despite these references in the Paris Agreement, the failure to address Indigenous rights in the operative part of the Agreement rather than in the Preamble, and to incorporate the integration of traditional and Indigenous knowledge as an obligation rather than an exhortation, was met with disappointment by Indigenous peoples and the Special Rapporteur working on their rights.⁶⁴⁸

However, while the Paris Agreement is a climate change treaty which does not entail human rights obligations, the former Special Rapporteur in the field of cultural rights, Karima Bennouna, stated that

[w]hile it is the sovereign decision of every State to become or remain a party to a treaty, subject to the rules of treaty law, when a State remains outside or withdraws from essential environmental accords such as the Paris Agreement, or fails to implement them, given the ongoing documented human rights impact of climate change, it is acting knowingly in a manner that harms the human rights and cultures of all and is failing to respect its obligation to cooperate internationally. This should be understood as irreconcilable with the principles of the Charter of the United Nations, including Articles 55 and 56. A failure to fulfil international climate change commitments is a violation of the State's obligations to protect human rights, including cultural rights.⁶⁴⁹

Thus, more broadly, considering the well-known impacts of climate change on human rights, including cultural rights, inobservance of, or lack of participation in, the Paris Agreement may be viewed as violation of the obligation of international cooperation rooted in the UN Charter and Article 2(1) of the ICESCR.

Furthermore, in 2021, the Local Communities and Indigenous Peoples Platform was launched within the UNFCCC, affirming their key role in finding climate solutions.⁶⁵⁰ The Platform seeks to promote information-sharing and good practice exchange 'for addressing climate change in a holistic way', to build capacity for engagement, and to bring together diverse expertise for implementing climate change policies and action.⁶⁵¹ The role of local communities and Indigenous peoples has also been highlighted in other non-legal areas of the international climate change regime, such

as the IPCC. Since its establishment in 1988, the IPCC has prepared the most comprehensive scientific reviews about climate change worldwide, including social and economic impacts of climate change, and potential response strategies and recommendations. The IPCC report on 'Impacts, Adaptation and Vulnerability 2022' recognises that the loss of ecosystems and their services pose long-term and cascading impacts on especially local communities and Indigenous People directly depending on ecosystems to meet their basic needs.⁶⁵² Moreover, the IPCC Report also recognises the value of diverse forms of knowledge including Indigenous knowledge and local knowledge in understanding and evaluating climate adaptation processes and actions to reduce risks from human-induced climate change. For example, regarding adaptation for natural forests, the IPCC Report notes that '[c]ooperation, and inclusive decision making, with local communities and Indigenous Peoples, as well as recognition of inherent rights of Indigenous Peoples, is integral to successful forest adaptation in many areas'.⁶⁵³ At the same time, the IPCC Report states that maladaptation, which includes '[a]daptation planning and implementation that do not consider adverse outcomes for different groups', especially affects marginalised and vulnerable groups such as Indigenous peoples.⁶⁵⁴ According to the IPCC Report, '[i]nclusive planning initiatives informed by cultural values, Indigenous knowledge, and scientific knowledge can help prevent maladaptation'.⁶⁵⁵ Traditional knowledge and the role of Indigenous and local communities is also mentioned throughout enabling climate resilient development, climate resilient development for natural and human systems, and achieving climate resilient development.⁶⁵⁶ Overall, the IPCC Report confirms points which have already been set

out in Part 1 and 2 of this Report, while also recognising the importance of traditional knowledge in the climate crisis.

Lastly, looking at culture and climate change at the international level, UNESCO has recently set up a Reflection Group on Culture and Climate Change building on its overall Strategy for Climate Action 2018-2021. In April 2022, the UNESCO-sponsored project 'Capacity building for safeguarding intangible cultural heritage in emergencies in Small Island Developing States (SIDS) in the Pacific and the Caribbean' was launched, with particular focus on the climate change-related challenges to 5 SIDS, namely the Bahamas, Belize, Tonga, Fiji, and Vanuatu.⁶⁵⁷ The 3-year long project from 2022 until 2025 is meant to provide support for communities so that they can mobilise their living heritage to prepare for, respond to, and recover from disasters, and to build a shared understanding of the importance of safeguarding ICH in emergencies, particularly its integration into strategies for DRR. The project-launching workshop has *inter alia* sought to familiarise ICH actors and officers from National Disaster Management Offices (NDMO) from the five SIDS with the UNESCO 'Operational principles and modalities for safeguarding intangible cultural heritage in emergencies'.⁶⁵⁸

At the regional level, SPREP endorsed the Pacific Islands Framework for Action on Climate Change (PIFACC) 2006-2015, which was first published in 2005 and revised with a second edition in 2011.⁶⁵⁹ With the vision of 'Pacific island people, their livelihoods and the environment resilient to the risk and impacts of climate change', the PIFACC includes six inter-linked themes, namely implementing tangible, on-ground adaptation measures, governance and decision-making, improving understanding

of climate change, education, training and awareness, mitigation of global GHG emissions, and partnerships and cooperation.⁶⁶⁰ In the first and fourth theme, for example, the establishment of in-country traditional knowledge narrative databases are named as examples/measures to enhance the resilience to the adverse effects of climate change.⁶⁶¹ The Pacific Climate Change Roundtable (PCCR), of which the SPREP is the secretariat and convenes regular meetings, is the primary monitoring, evaluation, and coordination mechanism for the PIFACC.⁶⁶² In 2016, PIFACC was replaced by the Framework for Resilient Development in the Pacific (FRDP), which covers not only climate change, but also DRR and DRM measures.⁶⁶³

Lastly, projects such as Pacific Ecosystem-based Adaptation to Climate Change (PEBACC) have been implemented at the regional level.⁶⁶⁴ PEBACC operated from 2015 to September 2020 in Fiji, Vanuatu, and Solomon Islands, and trialled a systematic approach to identifying and prioritising ecosystem-based adaptation (EbA) in the context of climate change and non-climate change threats.⁶⁶⁵ In the section 'What Worked', the synthesis report of the project sets out that the studies on proposed EbA were built on community knowledge and provided the foundation for decision making.⁶⁶⁶ Moreover, learning and knowledge have been paramount throughout the project, as has meaningful community engagement.⁶⁶⁷

4.2 International and Regional DRR and DRM Laws and Policies

International efforts to increase resilience to disasters and implement DRR initiatives include the Sendai Framework for Disaster Risk Reduction 2015–2030, which

succeeded the Hyogo Framework for Action 2005–2015.⁶⁶⁸ The Framework was the first major agreement of the post-2015 development agenda, and provides UN Member States, including all Focus States, with concrete recommendations to protect development gains from the risk of disaster.⁶⁶⁹ The Sendai Framework works hand in hand with other agreements such as the Paris Agreement or the UN SDGs.⁶⁷⁰ More precisely, the Sendai Framework seeks to substantially reduce existing and future disaster risks to lives, livelihoods, the environment and culture, etc., until 2030.⁶⁷¹ Among its guiding principles, the Framework recognises the need to integrate traditional, Indigenous and local knowledge and practices into DRR, as a complement to scientific knowledge. It also acknowledges the need for the participation of stakeholders such as Indigenous peoples, who 'through their experience and traditional knowledge, provide an important contribution to the development and implementation of plans and mechanisms, including for early warning'.⁶⁷² In addition, the Sendai Framework recognises the need to protect cultural heritage as one of the means of strengthening resilience.⁶⁷³

Further, it is equally important to note the work of UNESCO in terms of standard-setting relevant to the protection of ICH in disasters and the effects of climate change.⁶⁷⁴ As already noted in Part 2 of the Report, the Operational principles for safeguarding intangible cultural heritage in emergencies offer guidance to State Parties and other relevant national or international stakeholders on how to best ensure that ICH is most effectively engaged and safeguarded in the context of various types of emergencies.⁶⁷⁵ They reflect the dual role of ICH in emergencies which, on the one hand, is particularly vulnerable to disasters, and

on the other, can be a useful resource to 'prepare for, respond to and recover from' them. Moreover, as set out in Part 2 of this Report, UNESCO has produced a report on Safeguarding Indigenous Architecture in Vanuatu following the Tropical Cyclone Pam in 2015, which discusses how *nakamals*, Indigenous architecture built according to the traditional knowledge and skills of the Indigenous communities of Vanuatu, have provided shelter during the cyclone. The UNESCO Report also highlights their cultural meanings and social functions, using testimonies of the members of the communities.⁶⁷⁶

Insofar as regional developments are concerned, the Pacific Island Forum (PIF) has been working on the development of a single integrated regional framework on climate change and DRM since 2012 to replace earlier individual, regional frameworks such as the above mentioned PIFACC, which was due to expire in 2015.⁶⁷⁷ In 2016, the Framework for Resilient Development in the Pacific (FRDP) 2017–2030 was endorsed, providing voluntary guidance to stakeholder groups in the Pacific region on how to enhance resilience to climate change and disasters in a manner aligned with sustainable development.⁶⁷⁸ Among the key principles for the implementation of the FRDP is the objective to build on, and to help reinforce, the cultural and traditional resilience and knowledge of communities, who should be engaged as key actors in designing plans, activities, and solutions that are of relevance to them.⁶⁷⁹ Additionally, the FRDP recommends that national and subnational governments, as well as administrations take action to

improve understanding and applications of successful strategies to increase resilience by documenting traditional, contemporary and

scientific knowledge, and lessons learned, to develop and utilise appropriate awareness, communication, education and information materials for communities, media, schools, training providers and universities.⁶⁸⁰

Relevant to actions by civil society and communities, the FRDP encourages a spiritually, theologically, and culturally inclusive approach to underpin personal and community participation in strengthening risk management, disaster preparedness, response, and recovery.⁶⁸¹ For the FRDP's effective implementation, PIF Leaders established the Pacific Resilience Partnership (PRP) in 2016, which brings together 'the climate change and disaster risk management communities of practice, along with other partners (for example, government representatives from ministries of finance and planning, relevant sectors and private sector and civil society stakeholders)'.⁶⁸²

In general, there are several bodies for the discussion of resilience development in the region in the context of climate change and DRR, including the PCCR, the Pacific Humanitarian Partnership, the Pacific Platform for Disaster Risk Management, and the Pacific Meteorological Council. One of the sessions at the Joint PCCR and Pacific Platform for Disaster Risk Management Meeting in 2017 was devoted to building resilience through the use of traditional knowledge, culture, and the arts, discussing *inter alia* the early warning system in the framework of SPREP Climate and Ocean Services Programme in the Pacific project (COSPPac) piloted in Samoa, Vanuatu, Solomon Islands, Niue, and Tonga.⁶⁸³

Overall, both at the international and regional level, ICH is incorporated in DRR and DRM frameworks. These frameworks might not always be completely separated from climate change measures, but rather

apply to all three areas. In general, the protection of ICH is often recognised as a means to strengthen resilience in DRR and DRM frameworks, confirming what has been set out under 4.1. International and Regional Climate Change Legislation and under Part 1. The Role of ICH in the Climate Emergency.

4.3 National Climate Change Legislation and DRR and DRM Laws and Policies

After having considered international and regional climate change legislation as well as DRR and DRM laws and policies, this section focusses on the national level of the Focus States. As has already become visible at the regional level, there does not always exist a separation between climate change and DRR and DRM frameworks. Thus, the following national examination covers frameworks for all three disciplines, either in a separated or combined form.

Starting with **Fiji** and climate change legislation, the Climate Change Act 2021 requires recognition of 'indigenous people or the iTaukei and the Rotumans from the island of Rotuma, their respective ownership of iTaukei lands and Rotuman lands, and their unique cultures, customs, traditions and languages'.⁶⁸⁴ Similarly, the National Climate Change Policy (NCCP) 2018-2030 requires for human rights and cultural issues to be considered, and its development and implementation must be guided by 'the traditional knowledge of all Fijians relating to climate change adaptation and mitigation'.⁶⁸⁵ One of the objectives of the NCCP, which is built on the principles of respect for human rights and inclusiveness, aims for adaptation initiatives which are 'culturally relevant, sensitive and appropriate and

maintain and enhance the elements of existing social structures that inform social cohesiveness'.⁶⁸⁶ Especially at the local level, the NCCP plans to engage non-state actors to support processes which enable greater self-organisation at district and community level.⁶⁸⁷

In terms of other climate change-relevant policies, the Fiji Low Emissions Development Strategy (LEDS) 2018-2050, submitted by to the UNFCCC Secretariat in 2019, foresees to lower maritime transport emissions through a revitalisation of traditional sailing culture, including the revival of traditional knowledge associated with the use of small canoes and *camakau* (traditional watercraft), to reduce the reliance on fossil fuel outboard motors.⁶⁸⁸ The LEDS is to be implemented jointly through the Ministry of Culture and the Ministry of Education, and is considered a 'living document', enabling regular updates to ensure validity, transparency, and accuracy over time.⁶⁸⁹

Regarding climate relocation and displacement, Fiji has legislation establishing a Trust Fund for the relocation of communities affected by climate change, and Planned Relocation Guidelines as well as Displacement Guidelines.⁶⁹⁰ In addition to what has already been mentioned in Part 2 of the Report, while the Climate Relocation of Communities Trust Fund Act 2019 does not directly address cultural rights or heritage, one of the purposes of this Fund is to disburse monies for 'activities or initiatives which seek to ensure that relocated communities are provided the necessary infrastructure to guarantee an adequate standard of living and the rights and freedoms provided under the Constitution of the Republic of Fiji'.⁶⁹¹ The Constitution of the Republic of Fiji guarantees, for example, environmental rights, such

as '[e]very person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures'.⁶⁹² Closely intertwined with the established monies in the Trust Fund is the section in the Climate Change Act 2021 on the relocation of at-risk communities. The section ensures that the to-be-relocated communities are involved in the process from an early stage onwards, and that the Minister responsible for climate change may use these monies for such measures.⁶⁹³ However, as in the Climate Relocation of Communities Trust Fund Act 2019, the section in the Climate Change Act 2021 does not include an explicit reference to any form of culture, including ICH.⁶⁹⁴

Looking at DRM frameworks in Fiji, the National Disaster Management Council, which was established under the National Disaster Management Act 1998, includes several members directly related to Indigenous and local communities, such as the permanent secretary responsible for iTaukei affairs and the permanent secretary for women.⁶⁹⁵ Both permanent secretaries are also member of the preparedness committee,⁶⁹⁶ and the permanent secretary responsible for iTaukei affairs is in addition a member of the emergency committee,⁶⁹⁷ and the mitigation and prevention committee.⁶⁹⁸

Fiji's National Disaster Risk Reduction Policy (NDRR) 2018-2030, which is aligned with the Sendai Framework for Disaster Risk Reduction 2015-2030, does not discuss institutional coordination aside from indicating the administrative responsibility of the Ministry of Education, Heritage and Arts for schools, including their evacuation, and for national park facilities.⁶⁹⁹ Looking at the NDRR Policy more closely, it follows

a two-fold approach to cultural heritage, seeing its role as both active (asset in DRR) and passive (object of protection). On the one hand, it observes that

[h]umankind has lived with disasters from the beginning of time, and our ancestors developed wisdom that enabled them to cope with disasters and survive. It is crucial to take advantage of the traditional wisdom, customs and cultural knowledge that exist in communities, which can constitute valid lessons on non-structural measures.⁷⁰⁰

In this spirit, the Policy underscores the importance of traditional coping mechanisms including traditional architecture, giving the example of the capacity of the traditional *bure* buildings to withstand cyclones and earthquakes as a success story in DRR and disaster mitigation.⁷⁰¹ On the other hand, the Policy refers to protecting 'environmental, cultural and heritage assets' as one of the aims of disaster risk governance,⁷⁰² and recognises the need to '[s]trengthen historical, traditional, cultural and heritage's [sic] buildings to make them resilient against earthquakes, cyclones, floods and landslides',⁷⁰³ and to include impacts on cultural heritage in the post-disaster needs assessment.⁷⁰⁴ It is not clear whether the latter also includes ICH. However, the Policy links coping capacity *inter alia* with cultural factors,⁷⁰⁵ and underscores the importance of community governance as a critical requirement for sustainable resilient development in Fiji.⁷⁰⁶ The Policy also links ICH to resilience, for example, by mentioning the contribution of traditional agroforestry and integrated farming practices, traditional knowledge of various medicines and cures from locally available sources as well as traditional building practices (*bure* houses).⁷⁰⁷

While not mentioned in these frameworks, Fijians have a traditional early warning system for cyclones. According to Tikoitoga,

traditional knowledge has a place in DRR, it fits perfectly well when you look at the DRM cycle (...) To give you an example, in Fiji, we have a traditional early warning system for cyclones. Our elders would go out into the farm and notice certain abnormalities and they will come back and (...) just tell stories and share what they've seen. So when they see breadfruits, like three or four breadfruits on one branch, to them, that's a sign of cyclone. And if a hornet's nest is found near the ground, our elders... usually men would return and say that there is an impending cyclone.⁷⁰⁸

They add that one branch or a hornet's nest near the ground when it comes to land indicators, or manta rays jumping when it comes to marine indicators.⁷⁰⁹ In comparison to non-traditional warning systems for cyclones, which only alert a few days prior to the disaster, traditional signs such as land indicators warn Fijians around two months prior.⁷¹⁰ ICH could, therefore, 'actually assist, or it could complement the scientific knowledge that is already in place', especially to avoid late warnings on islands caused by poor network connectivity.⁷¹¹

Considering climate change legislation and DRR and DRM frameworks in **Kiribati**, the Disaster Risk Management and Climate Change Act 2019 states that responders involved in both climate change and DRM response must *inter alia* respect the culture of Kiribati.⁷¹² Moreover, regarding ICH and its role in improving resilience to future disasters and climate change, the Act refers to constructing and using *te buia* houses, which are traditional

raised floor constructions built using traditional methods in line with sustainable development.⁷¹³

In terms of climate change adaptation strategies in the past, Kiribati adopted a National Adaptation Programme of Action (NAPA) in 2007, which was submitted to the UNFCCC in the same year.⁷¹⁴ The NAPA was prepared after a broad public consultation which included NGOs, the private sector, registered religious groups, an association of elderly men (in accordance with Indigenous customs), representatives of women groups, youth representatives, and local government representatives. Another initiative was the Kiribati Adaptation Programme (KAP), which aimed to reduce Kiribati's vulnerability to climate change and sea level rise, and consisted of three phases running from 2003 to 2016.⁷¹⁵ More recently, Kiribati submitted a Joint Implementation Plan for Climate Change and Disaster Risk Management (KJIP) 2019-2028 to the UNFCCC.⁷¹⁶ The KJIP serves as an 'implementation tool for climate change and disaster risk management-related policies, in strengthening our resilience effort to the adverse effect of climate change and disaster risks, and to safeguard our unique cultural heritage'.⁷¹⁷ The vision of the 9-year KJIP is that 'I-Kiribati unique culture, heritage and identity are upheld and safeguarded through enhanced resilience and sustainable development'.⁷¹⁸ To achieve this vision, the KJIP proposes 12 strategies, of which each includes one or more key actions, sub-actions, outcomes and performance indicators.⁷¹⁹ For example, strategy 11 of the KJIP focusses on '[m]aintaining the existing sovereignty and unique identity and cultural heritage of Kiribati', and the key national adaptation priorities from climate change policy are

11.1 The rights of Kiribati over its existing EEZ [Exclusive Economic Zone] and the resources within it are protected forever for the people of Kiribati.

11.2 The cultural heritage of Kiribati are protected, preserved and promoted.⁷²⁰

Strategy 12, which focusses on enhancing resilience through strategic partnerships also includes Indigenous and local communities and their locally driven resilience programmes.⁷²¹ The KJIP Secretariat facilitates the coordination, implementation, monitoring and evaluation of the KJIP through the Kiribati National Expert Group (KNEG), which consists of representatives of several ministries, including the Ministry of Internal Affairs which is *inter alia* responsible for cultural affairs and museum, the private sector, NGOs and Faith Based Organisations (FBOs).⁷²²

Lastly, the Draft Strategic Roadmap for Emergency Management in Kiribati (SREM) 2020-2024, which is proposed to be a part of Kiribati's Climate Change Policy, Disaster Risk Management and Climate Change Act 2019 and its Regulation as well as other cross-cutting sector and strategies policies such as the KJIP, , and which is a result of consultations between several experts bodies such as the KNEG, includes four key result areas and 20 activities to enhance preparedness, interoperability and improve coordination of key national agencies as well as links to non-state actors and allied agencies.⁷²³ Its vision is that

Kiribati Emergency Management agencies operate in an inclusive and integrated environment that strengthens interoperability and builds resilience towards all emergencies and all levels respecting local norms and cultures.⁷²⁴

According to the document, it is recommended that KNEG will be responsible for leading and steering the implementation of the SREM, which means that the Ministry of Internal Affairs would also be involved in the implementation of this Strategy.⁷²⁵ The draft was planned to be finalised and presented to Secretaries for agreement in December 2018, and to the Kiribati Government for Cabinet approval in June 2020.⁷²⁶

Continuing with climate change legislation and DRR and DRM laws and policies in **Papua New Guinea**, the Climate Change (Management) Act 2015 as such does not include any information on the role of ICH or of the cultural sector.⁷²⁷ However, the UN Paris Agreement (Implementation) Act 2016 reiterates the Agreement's statement that adaptation action should be guided by, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.⁷²⁸

The National Climate Compatible Development Management Policy's mission is 'to build a climate resilient and carbon neutral pathway for climate compatible development in Papua New Guinea'.⁷²⁹ Enabling its implementation, the Policy includes several principles, including equal participation at 'various levels, including men, women, youth, vulnerable or minority groups and respect the rights of resource owners', and cultural sensitivity, recognising, respecting, and upholding 'existing customary values, authorities, institutions, and processes'.⁷³⁰ Regarding adaptive governance, the Policy includes traditional knowledge in data management to evaluate, report, and enhance implementation and future measures.⁷³¹ More generally, the Policy recognises culture as being threatened by stating

that ‘especially in rural areas, (...) our rich cultural, biological and environmental resources are under threat as never before’. This threat is underlined by the Policy which notes that forests are an integral part of Papua New Guinea’s heritage and culture worth preserving, given that more than 800 recognised language groups and ethnic communities have unique relationships with the forest and natural environment.⁷³² Moreover, the Policy also states that coastal flooding and sea level rise lead to salinisation and flooding which damage fragile communities and cultures, making the coast uninhabitable.⁷³³

With the help of the UNDP, Papua New Guinea’s government is working on a National Adaptation Plan (NAP).⁷³⁴ The project started in August 2020 and was planned to end in August 2022.⁷³⁵ Regarding ICH and the NAP, local and international scholars have argued in favour of including Indigenous peoples as stakeholders in the process, to inform national and local adaptation policies with traditional knowledge for increased resilience.⁷³⁶

Regarding DRR, Papua New Guinea launched its broadly-consulted National Disaster Risk Reduction Framework (NDRRF) 2017-2030 in 2019, which reveals a dual approach to cultural heritage in DRR, namely passive and active.⁷³⁷ When discussing the roles and responsibilities of different stakeholders in DRR, the NDRRF observes that through their traditional knowledge, Indigenous peoples contribute to the development and implementation of plans for mechanisms such as early warning.⁷³⁸ The NDRRF identifies several priorities for action, including understanding disaster risk and investing in DRR for resilience. As a matter of understanding disaster risk, the NDRRF refers *inter alia* to the need to

ensure the use of relevant traditional, indigenous and local knowledge in disaster risk assessment and the development and implementation of policies, strategies, plans and programmes of specific sectors, with a cross-sectoral approach, tailored to localities and to the context.⁷³⁹

As a matter of DRR for resilience, the NDRRF acknowledges the importance of public and private investment in disaster risk prevention and reduction to enhance ‘the economic, social, health and cultural resilience of persons, communities, countries and their assets, as well as the environment’.⁷⁴⁰ As one of the ways to achieve this, the NDRRF refers to the need to channel investments through DRR measures in critical facilities, including ‘developing and enhancing traditional building practices, retrofitting and rebuilding’.⁷⁴¹ In general, the NDRRF mentions several times the impact of disasters on cultural heritage, by, for example, referring to the need to evaluate impacts on cultural heritage as a matter of understanding disaster risk,⁷⁴² and to protect and ‘support the protection of cultural institutions and other sites of historical, cultural heritage and religious interest’ as a matter of enhancing resilience.⁷⁴³ However, since the adoption of the NDRRF, a lack of political and bureaucratic commitment appears to have stalled progress, at least no action plan and no monitoring and evaluation framework has been adopted to date.⁷⁴⁴

In **Samoa**, there exist both climate change legislation and DRR and DRM laws and policies. The Samoa Climate Change Policy 2020-2030, under its objective of improved data and information management on climate change for informed decision-making to build resilience to climate change, refers to the need to document and use

traditional knowledge alongside scientific investigation.⁷⁴⁵ The Policy includes the Ministry of Education, Sports and Culture among the stakeholders relevant to its implementation.⁷⁴⁶

The National Adaptation Programme of Action (NAPA) established in 2005 notes that climate change poses a risk to the cultural and heritage values of the *fa’a Samoa* (the Samoan way of life), *inter alia* through its impacts on the environment and natural resources biodiversity.⁷⁴⁷ The values constituting the *fa’a Samoa* seem to have even had an impact on the process for the preparation of the NAPA. These values include, for example, the principle that all important decisions must be reached by consensus, and as stated by the NAPA, such an approach guarantees cohesion and social harmony within the Samoan society.⁷⁴⁸

Looking at DRR and DRM laws and policies, the Disaster and Emergency Management Act 2007 names the Ministry of Education, Sports and Culture among the response agencies for the purposes of the Act.⁷⁴⁹ According to the abovementioned NESP,⁷⁵⁰ the Ministry of Education, Sports and Culture ‘is responsible for setting the [educational] curriculum and therefore plays a crucial role in integrating teaching and learning materials relating to environmental sustainability, climate change and disaster risk management at all levels’.⁷⁵¹

The Samoa National Action Plan for Disaster Risk Management (NAP for DRM) 2017-2021 names among its guiding principles

empowering communities to address their risks through the development of capacity and knowledge (traditional and scientific) and through the provision of support for local involvement in developing and implementing risk reduction and disaster management strategies.⁷⁵²

However, the NAP for DRM does not define any concrete details or responsibilities in this regard.

The Meteorology, Geoscience and Ozone Services Act 2021 establishes the Meteorology, Geoscience and Ozone Services Division, whose tasks involve analysing and providing scientific data and information for the purposes of disaster management among others.⁷⁵³ The Division is *inter alia* required to

promote the understanding, recognition and where appropriate, the use of verified traditional knowledge and practices, related to meteorological, geo-science, and ozone related services, through the atmospheric, oceanic and earth observation of indicators occurring in nature, or through consultation with the community and by other means.⁷⁵⁴

In general, the sector of cultural affairs is mentioned in the Meteorology, Geoscience and Ozone Services Act 2021 in the context of providing meteorological services including data, information, and warnings, and in the context of providing astronomical and geo-scientific related data, information, and analysis relating to, for example, earthquakes, tsunamis, landslides, and volcanic warnings.⁷⁵⁵ The improvement of quality and accuracy of weather services, climate information, and data as an element of climate change and DRM is also one of the long term outcomes of the NESP, which includes the documentation of traditional knowledge on climate predictions in its strategies.⁷⁵⁶

As already mentioned above at the beginning of Part 4.3.2. The Safeguarding of ICH in Climate Change Legislation and Disaster Risk Reduction (DRR) and Disaster Risk Management (DRM) Laws and Policies

and Policy Frameworks, some traditional coping strategies may conflict with the principles enshrined in the respective DRR and DRM frameworks.⁷⁵⁷ Looking at the example of the tsunami that hit Samoa in 2009 in more depth, some responders prioritised removing dead bodies over helping the injured because it was a culturally acceptable way to pay respect to the dead.⁷⁵⁸ When it comes to disaster, and the injured are not prioritised, treatment will most likely be delayed, which in turn could result in deterioration of their health status and chances of survival.⁷⁵⁹ However, as noted by Fletcher and others, not enough information about the incident and the impact of some harmful traditional and cultural practices is available, 'and in many cases, these practices may not be seen as being harmful in their culture'.⁷⁶⁰ It is, therefore, recommended to engage with local communities to determine attitudes to certain practices, and to undertake further studies.⁷⁶¹ In general, training courses for SIDS on DRM and cultural heritage or Asia-Pacific regional workshops on ICH and natural disasters have been organised in the past, and similar training courses and workshops could be organised at the local level in the future.⁷⁶²

As far as the **Solomon Islands** are concerned, there exist no climate change laws.⁷⁶³ However, when it comes to climate change policy, the National Climate Change Policy 2012-2017 among its guiding principles refers to an important role of science and traditional knowledge in the planning and implementation of the Policy.⁷⁶⁴ Moreover, the Policy refers to culture and rights of Indigenous communities which shall be respected throughout the planning and implementation of climate change mitigation and adaptation as well as DRR programmes and activities.⁷⁶⁵ The Policy also states that

[t]raditional knowledge developed and refined over the years has been a feature of Solomon Islanders resilience and coping capacity but is now eroding due to increasing reliance on modern technology and practices. Reviving and promoting traditional coping strategies and technologies is an essential part of adaptation.⁷⁶⁶

The laws relevant to DRR, in particular the National Disaster Council Act 1996, do not include any information relating to the role of ICH or the cultural sector.⁷⁶⁷ According to scholars, however, the government of the Solomon Islands is increasingly aware of the importance of traditional knowledge for DRR and DRM, and of taking steps to adopt traditional approaches for DRR and DRM.⁷⁶⁸ Nevertheless, challenges in the implementation of most DRM and climate change policies remain, and include slow tempo, lack of coordination, and unclear competences of government agencies.⁷⁶⁹

Regarding policies, the National Disaster Management Plan (N-DM Plan) 2018 is based on the National Disaster Council Act 1989, and is a planning and implementation document for preparing and managing disaster events and supporting resilience.⁷⁷⁰ According to the N-DM Plan, a representative of the Ministry of Culture and Tourism is a co-opted member of the National Disaster Council, who has roles on committees such as the National Disaster Operations Committee, the Recovery Co-ordination Committee, and the proposed Climate and Risk Resilience Committee, and may attend NDC meetings.⁷⁷¹ Moreover, the institutional framework of the N-DM Plan foresees the involvement of Ward and Village Disaster Risk Committees with local community groups and NGOs.⁷⁷²

The National Development Strategy (NDS) 2016-2035 includes the objective of 'resilient and environmentally sustainable development with effective disaster risk management response and recovery'.⁷⁷³ One of the objective's medium term strategy is to improve 'disaster and climate risk management including prevention, risk reduction, preparedness, response and recovery as well as adaptation as part of resilient development'.⁷⁷⁴

Lastly, the Solomon Islands Planned Relocation Guidelines, which were handed over to the government in August 2022, outline institutional arrangements as well as the steps to follow before, during, and after relocation.⁷⁷⁵ While they follow a 'consultative, evidence-based and gender-mainstreamed approach', atolls and artificial islands are priority locations for communities in the relocation process.⁷⁷⁶

One part of the relevant climate change legislation in **Tonga** is the abovementioned Environment Management Act 2010, which does not only establish the Ministry of Environment and Climate Change, but also includes objectives regarding climate change, namely

- (b) promote meaningful public involvement in relation to issues of environment management, including climate change;
- (...)
- (g) facilitate implementation of measures to increase the resilience of the Kingdom and its environment to climate change.⁷⁷⁷

According to the Act, the Ministry is responsible to *inter alia* prepare climate change plans and policies, and to ensure that laws relating to climate change adaptation and mitigation are reviewed, implemented, and

enforced.⁷⁷⁸ Cultural heritage, including ICH, is not directly mentioned in the Environment Management Act 2010.⁷⁷⁹

In addition to this Act, the Tonga Climate Change Policy aims to make Tonga climate-resilient by 2035 and to enhance mitigation efforts.⁷⁸⁰ The Policy is guided by ten principles, of which the first principle states that

[a] resilient Tonga requires an approach that brings together traditional knowledge and values with 21st century knowledge and technology in order to address the realities of climate change.⁷⁸¹

Moreover, principle 4 sets out an integrated approach to adaptation, mitigation, and DRR, while principle 10 states that '[p]olicy formulation, planning and action will be based on scientifically and technically sound data and information, while at the same time recognising the value of traditional knowledge'.⁷⁸² The Policy's implementation will be achieved by the revised Joint National Action Plan on Climate Change and Disaster Risk Management (JNAP 2).⁷⁸³ The JNAP 2 lays out a strategic approach with six objectives to implement the Climate Change Policy.⁷⁸⁴ Various ministries and local partners are involved in the implementation of the JNAP 2.⁷⁸⁵

Tonga has also been working on a Long-Term Low Emissions Development Strategy (LT-LEDS) 2021-2050, which has been developed on the basis of 'culturally relevant and participatory processes, blended with robust technical analysis'.⁷⁸⁶ The process and workshops leading up to the LT-LEDS drew on *Talanga*, an 'interactive dialogue or interactive talking with a purpose between two individuals or groups or communities', weaving 'together principles of traditional culture and knowledge, family, community

and religion, autonomy and independence'.⁷⁸⁷ Traditional knowledge (namely valuing Tongan traditional culture and knowledge) and culture (namely valuing family, community, and religion) are included as principles, macro-trends, and elements which informed the LT-LEDS process.⁷⁸⁸ Throughout the strategy, culture is a core element of principles guiding the envisaged action points.⁷⁸⁹ The above-mentioned JNAP 2 management structure will oversee the implementation of the LT-LEDS.⁷⁹⁰

Considering DRM law, the Emergency Management Act 2007 is the primary DRM legislation in Tonga, and provides for the organisation, functioning, powers and responsibilities of emergency management committees and other bodies responsible for DRM.⁷⁹¹ However, it does not include any references to ICH.

Lastly, the Tonga Strategic Development Framework (TSDF) 2015-2025 includes seven national outcomes, one of which focusses on 'a more inclusive, sustainable and effective land administration, environment management, and resilience to climate and risk'.⁷⁹²

Moving on to **Tuvalu**, the Climate Change Resilience Act 2019 *inter alia* promotes public awareness and involvement in climate change issues and the preservation of *Tu, Iloga mo Faifaiga* (identity and culture, including traditional local customs and usages) linked to the environment.⁷⁹³

The Tuvalu Climate Change Policy 2012-2021, entitled *Te Kaniva* after a traditional method of navigation using stars and weather patterns, was adopted after a nationwide consultation. It includes the vision 'to protect Tuvalu's status as a nation and its cultural identity and to build its capacity to ensure a safe, resilient and prosperous future'.⁷⁹⁴ According to the Policy, the

respective island governance and leadership (*Kaupule*) will be involved in planning and implementation relevant to the Policy.⁷⁹⁵ The Policy approaches ICH from a two-fold perspective, active and passive. Among the principles guiding the implementation of the Policy, there is on the one hand 'respect for, and preservation of, the values, culture and traditions of Tuvalu', and on the other hand, 'a multidisciplinary and no-regrets approach to guiding adaptation decision-making, based on consultation, traditional knowledge, a scientific evidence base, policy monitoring and evaluation as well as regular reviews'.⁷⁹⁶

The National Strategic Action Plan (NSAP) for Climate Change and Disaster Risk Management 2012-2016 articulates the same vision as *Te Kaniva*, and refers to the need to 'analyse, compile and document traditional knowledge related to climate change and disaster risk management and make available to all communities within Tuvalu' as a matter of strengthening adaptation.⁷⁹⁷ The NSAP also discusses the need to prepare a climate change migration and resettlement plan for each island in consultation with possible host nations, if appropriate, and in consideration of Tuvalu's most vulnerable communities and of maintaining Tuvalu's identity and the integrity of its traditions and customs.⁷⁹⁸

Regarding DRM laws and policies, both the National Disaster Risk Management Act 2008 and the Tuvalu Strategic Roadmap for Emergency Engagement 2021-2023 do not refer to culture, heritage, or the cultural sector.⁷⁹⁹

Lastly, the already above-mentioned National Biodiversity Strategy and Action Plan (TNBSAP) includes climate change and DRM as a theme.⁸⁰⁰ Included in this theme is the objective to '[d]evelop contingency plans to ensure biodiversity, culture and traditions

of Tuvalu are preserved and protected in time of extreme events of climate change and natural disasters'.⁸⁰¹ Actions to achieve this objective are *inter alia* the contribution to a dialogue and planning for adaptation and mitigation purposes in case of relocations, as well as the collection, research, documentation, recording and storage of traditional knowledge on impacts of climate change on biodiversity.⁸⁰²

In **Vanuatu**, the relevant laws make little to no space for ICH and potential cooperation with the cultural sector. The Meteorology, Geological Hazards and Climate Change Act 2017, which establishes the National Advisory Board on Climate Change and Disaster Risk Reduction, does not foresee a mandatory participation of a representative of the cultural sector on the Board. The Director of the Vanuatu Cultural Centre may, however, be invited to a Board meeting as a potential observer.⁸⁰³ The National Disaster Management Act 2000 makes no reference to ICH or culture.⁸⁰⁴

Although there is some discussion whether incorporating ICH into national policies and frameworks is the right approach, notably, whether it does not undermine traditional mechanisms for coping with change, Vanuatu has adopted solutions which envision a role for ICH and bottom-up approaches which lead to an engagement of communities.⁸⁰⁵ The Vanuatu Climate Change and Disaster Risk Reduction Policy 2016-2030 considers ICH from the perspective of an asset in climate change adaptation and DRR, often underscoring that the approaches draw on local values and traditional knowledge and practices, and have a community (bottom-up) focus, with an emphasis on participation.⁸⁰⁶ According to the Policy:

People in Vanuatu have long-held traditional practices to deal with

temperature and rainfall variability, cyclones and geological hazards. These have started to be systematically documented and incorporated into planning processes, and further work is urgently required. Stakeholders at provincial and community levels place high importance on respecting, recording and sharing traditional knowledge, including traditional early warning and coping mechanisms.⁸⁰⁷

The Policy notes that such traditional knowledge contributes to community resilience, which must be built on, promoted, and empowered through climate change and DRR initiatives.⁸⁰⁸ The Policy foresees building on, sharing existing traditional knowledge, and expanding its use by

- collecting, recording and incorporating traditional knowledge into planning, while ensuring appropriate cultural protocols are respected;
- making traditional knowledge accessible to decision-makers, while considering intellectual property rights, through databases and training;
- including traditional knowledge in formal and informal school curricula; and
- building on existing traditional knowledge strategies already captured on the NAB portal and by the Vanuatu Cultural Centre.⁸⁰⁹

Moreover, the Policy envisions the identification of risks through strengthening 'existing capacity at national, provincial and area council levels, drawing on the country's rich heritage, traditional knowledge and the lessons learnt from the broad range of initiatives regarding climate change and disaster risk reduction'.⁸¹⁰ The

Policy further emphasises that ‘successful climate change adaptation and disaster risk reduction actions in Vanuatu require co-implementation that is inclusive and builds on both indigenous and externally derived knowledge’.⁸¹¹ The Policy also underscores coordination,⁸¹² and it expects all stakeholders, including communities and traditional chiefs at the village level,⁸¹³ along with village, area, and island councils, to take part in the implementation of the Policy. However, representatives of the cultural sector are not included.

The National Sustainable Development Plan (People’s Plan) 2016-2030, which identifies climate change and DRR as key priorities, is founded on Vanuatu’s culture, traditional knowledge, and Christian principles.⁸¹⁴ The Plan expresses Vanuatu’s intention to continue to draw on its rich history of resilience and risk reduction stemming from their traditional knowledge and practices.⁸¹⁵ Further, the Plan has a community focus, envisioning ‘[a] vibrant cultural identity underpinning a peaceful, just and inclusive society’, involving a version of development based on its cultural heritage and community bonds and an enhanced resilience and adaptive capacity to climate change and natural disasters, and drawing on Vanuatu’s ‘rich history of resilience and risk reduction stemming from [its] traditional knowledge and practices, particularly in relation to food production and preservation’.⁸¹⁶

However, although the integration of ICH in these policies exists, and although the Department of National Disaster has been promoting traditional knowledge and its use and benefits during disasters, it has not always been used in practice.⁸¹⁷ While communities are aware of the relevance of ICH in this context, they may sometimes choose to rely on aid coming from the government

or from other countries when it is available instead.⁸¹⁸ Thus, the preservation of traditional disaster response methods can be challenged by non-traditional support and supplies.⁸¹⁹ At the same time, culture is still a ‘first responder’ as ICH dictates which measures can be taken when disaster strikes, for example, ‘cut down trees, what you may or may not eat – all of this is determined by culture, you do not have to wait for some external, someone outside to come and tell you. It is your traditional knowledge, you know what to do’.⁸²⁰

Lastly, Vanuatu adopted a National Policy on Climate Change and Disaster-Induced Displacement in 2018.⁸²¹ The Policy includes guiding principles on respect for custom, culture, and community, and the protection of traditional knowledge relating to land, ecology, agriculture, music, and culture.⁸²² To protect the cultural identity and spiritual resources of communities, Strategic Area 11 covers traditional knowledge, culture, and documentation.⁸²³ Among others, the facilitation of ‘community-led plans to ensure connections to ancestors and relatives buried in original locations are sustained’ is one of the actions of Strategic Area 11.⁸²⁴ The key government implementing agencies of Strategic Area 11 are the Vanuatu Cultural Center, Vanuatu Meteorology and Geo-hazards Department, Ministry of Youth and Sports, Department of Environmental Protection and Conservation, Ministry of Land and Natural Resources, Department of Civil Registry, and Ministry of Health.⁸²⁵ The Policy also identifies potential additional partners, such as the Festival of Pacific Arts, IOM, or WIPO, among others.⁸²⁶

Concluding Remarks Part 4

There exist climate change legislation and DRR and DRM laws and policies at the international, regional, and national level which incorporate ICH to some extent, ranging from minor references to extensive incorporation. Considering international and regional climate change legislation, the international legal climate change regime comprised of the UNFCCC, the Kyoto Protocol, and the Paris Agreement, barely includes references to ICH. However, in non-legal areas of the international climate change regime, the IPCC has included several important references to ICH in its reports on climate change. The Panel does not only recognise the importance of culture for Indigenous people and local communities, but also its role in the climate crisis when it comes to adaptation and resilience. At the regional level, traditional knowledge and cultural identity plays a role in climate change frameworks and projects in the past. Current frameworks do not distinguish between climate change legislation and DRR and DRM laws and policies, but cover all three areas.

Considering DRR and DRM legal and policy frameworks at the international and regional level, the Sendai Framework recognises the need to integrate traditional, Indigenous, and local knowledge and practices into DRR. The Framework also recognises the need to protect cultural heritage as one of the means of strengthening resilience. The Framework for Resilient Development in the Pacific (FRDP) 2017-2030, which replaced previous regional frameworks including those on climate change, includes several remarks regarding ICH, encouraging a culturally inclusive approach to DRM, disaster preparedness, response, and recovery.

Turning to the Focus States, there exist climate change legislation and DRR and DRM laws and policies which incorporate ICH to some extent, ranging from minor references to extensive incorporation. For example, the Joint Implementation Plan for Climate Change and Disaster Risk Management (KJIP) of Kiribati includes one of the most clear references to heritage, by stating that the KJIP serves as a tool to safeguard their unique cultural heritage and by making its vision that their unique culture is upheld and safeguarded through enhanced resilience and sustainable development.⁸²⁷ The National Adaptation Programme of Action (NAPA) of Samoa also includes clear references to the *fa’a Samoa*. In contrast, even though Papua New Guinea has some frameworks with references to ICH, the country lacks the political will to implement the relevant frameworks. Some laws and policies, such as in Fiji and Tuvalu, even cover possible climate displacement. Especially the National Biodiversity Strategy and Action Plan (TNBSAP) of Tuvalu includes the contribution to a dialogue and planning for adaptation and mitigation purposes in case of relocations, and the collection, research, documentation, recording and storage of traditional knowledge on impacts of climate change on biodiversity. Even though climate change legislation and DRR and DRM laws and policies in all Focus States recognise the importance of ICH, its vulnerability in the climate crisis, and its potential for adaptation and DRR and DRM measures, there exist no explicit or strong enough references regarding the involvement of relevant stakeholders from planning to responding processes, for example, the respective Ministry responsible for culture, culture representatives, heritage and museum professionals, or community leaders with cultural knowledge. However, in Kiribati, the Ministry of Internal Affairs

which is *inter alia* responsible for cultural affairs and museums, is part of the KNEG, which in turn is responsible for the implementation of the KJIP. Moreover, the National Disaster Management Plan (N-DM Plan) 2018 of the Solomon Islands includes a representative of the Ministry of Culture and Tourism as a co-opted member of the National Disaster Council, who has roles on committees such as the National Disaster Operations Committee, the Recovery Co-ordination Committee, and the proposed Climate and Risk Resilience Committee, and may attend NDC meetings. Moreover, the institutional framework of the N-DM Plan foresees the involvement of Ward and Village Disaster Risk Committees with local community groups and NGOs. Lastly, in Vanuatu, the Vanuatu Cultural Centre is one of the key agencies responsible for the implementation of the National Policy on Climate Change and Disaster-Induced Displacement, and the Director of the Vanuatu Cultural Centre may be invited to the Board meeting of the National Advisory Board on Climate Change and Disaster Risk Reduction.

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- 633 See fn 624, p. 31.
- 634 *ibid.*, p. 40.
- 635 *ibid.*, p. 42.
- 636 See fn 25.

- 637 According to Alexandre Kiss, a framework treaty or convention can be defined as a 'treaty instrument which lays down the principles which should serve as the basis for cooperation between States Parties in a given field, while leaving it to them to define by separate agreements, the modalities and the details of the cooperation, providing, where appropriate, one or more institutions suitable for this purpose', Alexandre Kiss, 'Les traités-cadre: une technique juridique caractéristique du droit international de l'environnement', *Annuaire Français de Droit International*, 1993, Vol. 39, p. 792; See Article 17 of the UNFCCC which provides for the adoption of protocols with more specific obligations.
- 638 Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 148 (Kyoto Protocol).
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- 700 *ibid*, p. 54 para 186.
- 701 *ibid*, p. 18 and p. 54 para 188.
- 702 *ibid*, p. 33 para 109.
- 703 *ibid*, p. 79 line 106.
- 704 *ibid*, p. 78 line 100.
- 705 *ibid*, pp. 84, 86.
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- 719 *ibid*, p. 68.
- 720 *ibid*, p. 75.
- 721 *ibid*, p. 76.
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- 725 *ibid*, p. 22.
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- 729 National Climate Compatible Development Management Policy, 4 August 2014, available at https://www.pacificclimatechange.net/sites/default/files/documents/National_Climate_Change_Policy1.pdf, p. 8.
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- 739 *ibid*, p. 23 para 19(i).
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- 799 National Disaster Risk Management Act 2008 amended 2021; Tuvalu Strategic Roadmap for Emergency Engagement 2021-2023, available at <https://www.spc.int/resource-centre/publications/tuvalu-strategic-roadmap-for-emergency-management-2021-2023>.
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Key Findings, Good Practice, Recommendations and Way Forward

Part 5 summarises the key findings of the Report including identified gaps and good practice in the Focus States. It first sets out 'Key Findings' (5.1.), continues with a section on 'Good Practice' (5.2.), before concluding with 'Recommendations and Way Forward' (5.3.).

5.1 Key Findings

Part 1 of this Report examined the role of ICH in the climate emergency. It laid out that ICH is part of the identity of South Pacific Islanders, crucial for the existence of communities, and the cultural diversity of the South Pacific region. Because of the adverse impacts of climate change, ICH faces particularly high threats to such an extent that it might be lost due to the disappearance of the ecosystems or even whole islands on which ICH depends, which means that safeguarding ICH is more crucial than ever before. While the main aim is to safeguard ICH in the climate emergency, it can also contribute to inclusive mitigation and adaptation measures, and eventually to resilience.

However, even though mitigation and adaptation measures are in place, climate change impacts are increasing, which leads to several implications for South Pacific Islanders. Firstly, due to rising sea levels, internal and cross-border climate displacement is a real risk to both human rights and ICH of South Pacific Islanders. Secondly, several human rights are impacted by climate change, leaving Pacific Islanders unable to *inter alia* enjoy their right to culture. Thus, approaching climate change and ICH also from a human rights lens ensures more comprehensive protection of South Pacific Islanders' rights and safeguard of ICH, while fostering the rule of law and international peace and stability at the same time. Lastly, ICH can contribute to achieve sustainable development, which is essential for a fairer, greener world for everyone, including SIDS and the Focus States.

While Part 1 identified these key findings for the role of ICH in the climate emergency, it also demonstrated that there still exists

a major gap when it comes to the protection of Pacific Islanders' rights and ICH in cross-border displacement processes. As Pacific Islanders face real risks of having to leave their Ancestral lands behind and relocate to other States, it is important that the international community works on inclusive and protective solutions, with a focus on the safeguarding of the ICH of South Pacific Islanders.

Part 2 of this Report examined the safeguard of ICH in human rights, cultural heritage, and IP law and policies. Regarding human rights law, the access to, and enjoyment of, cultural heritage, including ICH, has been recognised as an element of the human right to participate in cultural life at the international level, and, thus, as an element of cultural identity and cultural survival. Although their protection has been enshrined as a binding obligation under treaty law, it is often not possible to allege a violation of the right to participate in cultural life before a treaty body or a supra-national human rights court as not all States have become a party to the relevant treaty and, even if they have, they may not have accepted the jurisdiction of the relevant judicial or quasi-judicial supra-national mechanism. However, although cultural rights are generally not directly enforceable before a court, they have often been enforced through the application of other human rights, such as the right to life or the right to respect for private and family life. At the domestic level in the Pacific, legislation is similar to those in other regions of the world and, generally, focusses on civil and political rights, with only few economic and social rights enshrined at the constitutional level.

In terms of cultural heritage law, all Focus States have ratified the ICH Convention, and Samoa, Vanuatu, and Tonga, have

each already inscribed one element on its Representative List. With regard to legislation, the Focus States do not have specific legislation that safeguards ICH. They have generally inherited legislation that adopted a traditional Western conceptualisation of heritage focussed on material heritage. While those laws may indirectly safeguard the ICH attached to material heritage such as specific protected sites, they do not specifically provide for safeguarding measures. Similarly, domestic legislation providing IP protection, such as copyright laws, is for the reasons outlined above generally not well suited for the safeguard of ICH. However, as proven by Vanuatu, it is possible to adapt those laws to specifically extend to traditional knowledge and traditional cultural expressions. Vanuatu is also the only Focus State which has so far implemented the regional Model Law for TKCE, adding provisions to further expand its impact on ICH safeguarding, such as with the establishment of a Fund or an extensive definition of traditional knowledge.

At the institutional level, not all Focus States have an established department with sufficient resources to effectively safeguard ICH within their territories. However, many of them have a national cultural council or commission, some of which are also tasked to coordinate cultural matters with other governmental and non-governmental bodies, including those directly engaged in climate action. At the policy level, while a cultural strategy for the period 2022-2032 has been adopted at the regional level, not all Focus States have adopted a domestic cultural policy and those that have adopted a policy do not always link heritage with climate action. Furthermore, the domestic cultural policies that do establish a link between the environment and ICH do not necessarily refer to its possible role in

addressing climate change. This may be in part due to the fact that the regional cultural policy, while recognising heritage as a possible tool 'to harness cultural power in highlighting key messages around, for example, climate change', does not provide any objective or indicator directly linked to management plans for climate action or disaster response.

While not all Focus States have adopted a national cultural policy, several of them have adopted such a policy after a cultural mapping process. Cultural mapping processes have served to raise awareness about the importance of safeguarding endangered cultural heritage, and to train communities in endangered cultural heritage mapping to ensure the sustainability of the process in the future, and to revitalise it when its transmission was at risk. In turn, the adoption of a cultural policy can kick-start the drafting of cultural legislation.

Part 2 identified these key findings for the safeguard of ICH under human rights, cultural heritage, and IP laws, and laid out existing gaps in all three areas. Regarding international human rights law, the ratification of the ICCPR, ICESCR, and the ILO 169 Convention, as well as increased participation in the OP-ICCPR and OP-ICESCR would demonstrate support for international human rights frameworks including UN Treaty Bodies, which have a role to play in the matter, as was highlighted by the recent decision taken by the Human Rights Committee in relation to Torres Strait Islanders. At the domestic level, similar to many jurisdictions around the world, cultural rights are generally not expressly enshrined in domestic laws, and heritage laws tend to focus on the protection of material heritage rather than the safeguard of ICH. And while IP laws are generally not well-suited to safeguard ICH, the regional Model

Law has so far not been implemented in most of the Focus States, despite its potential in strengthening the safeguard of ICH.

Adoption of cultural policies that clearly link ICH with climate action and provide for coordination and information-sharing between heritage stakeholders, communities and relevant government representatives, including both in cultural and climate affairs, would ensure that the potential of ICH in addressing climate change is fully harnessed. So far only few domestic cultural policies establish a link between ICH and climate action. Finally, it is also worth noting that so far none of the Focus States has inscribed a good safeguarding practice on the Register established by the ICH Convention despite the fact that many of them have conducted extensive cultural mapping processes that have led to new policies and legislation as well as increased safeguard and revitalisation of ICH in certain contexts.

Part 3 of this Report analysed the safeguard of ICH in environmental laws and policies. It laid out that, overall, ICH is mentioned in environmental laws and policies. Having examined laws and policies in the areas of ICH during the emergence of environmental law, biological diversity and nature conservation, ocean conservation and fishing, land management, and pollution and waste at the international, regional, and domestic level, it becomes apparent that policies tend to make more direct references to ICH than laws. However, the Environment (Amendment) Act 2007 in Kiribati, for example, considers the retention and use of traditional knowledge relevant to the conservation and sustainable use of its biological diversity, which does not only contribute to a sustainable environment, but also safeguards the ICH which has been established by Indigenous and local communities in the past.

In general, there are only few direct references to the safeguard of ICH in environmental laws and policies; rather it is the indirect references to ICH which bring culture into environmental frameworks. For example at the regional level, the Pacific Islands Framework for Nature Conservation and Protected Areas 2021-2025 includes several principles which are particularly important for the role of ICH, contributing to its safeguard both in a direct and indirect way. While the Focus States have many frameworks in place which deal with biological diversity and nature conservation, other areas, such as pollution and waste, lack extensive frameworks, or ICH does not play a role in existing laws and policies. Yet, the Cleaner Pacific 2025 – Pacific Regional Waste and Pollution Management Strategy 2016-2025 includes an important direct reference to traditional culture and societies and how Pacific Islanders are highly dependent on healthy ecosystems.

Thus, while Part 3 identified these key findings, it laid out some existing gaps at the same time. In general, adopting laws and policies at the international, regional, and domestic level with clear and direct references to the safeguard of ICH, including obligations to protect ICH, and the inclusion of affected communities as well as of the cultural sector in decisions that may affect ICH and culture more generally, would ensure an inclusive safeguard of ICH in environmental law.

Part 4 of this Report examined the safeguard of ICH in climate change legislation, as well as DRR and DRM laws and policies. It laid out, similar to Part 3 of the Report, that ICH is mentioned in those instruments. Having analysed international, regional, and domestic climate change legislation, as well as international, regional and domestic DRR and DRM laws and policies,

it becomes apparent that as for environmental law and policies, it is the climate change and DRR and DRM policies which include more direct references to ICH than laws. In comparison to environmental laws and policies, climate change legislation and DRR and DRM laws and policies seem to include ICH to a greater extent, as the climate change threat to cultural heritage is widely recognised in this field.

However, especially the international legal climate change regime comprised of the UNFCCC, the Kyoto Protocol, and the Paris Agreement is relatively weak when it comes to safeguarding ICH. Nevertheless, non-legal instruments such as the IPCC reports include extensive (in)direct references to ICH, setting out its vulnerability in the climate crisis, and the importance to safeguard it for cultural identity, and to use it for adaptation and resilience measures, which confirms what has been stated in Part 1 of the Report.

Regarding DRR and DRM frameworks, the protection of ICH is often recognised as a means to strengthen resilience, confirming what has been set out under 4.1. International and Regional Climate Change Legislation and under Part 1. The Role of ICH in the Climate Emergency. For example at the regional level, the Sendai Framework recognises the need to protect cultural heritage as one of the means to strengthen resilience, while also stating that traditional, Indigenous, and local knowledge and practices should be integrated into DRR. Moreover, the Framework for Resilient Development in the Pacific (FRDP) 2017-2030 encourages a culturally inclusive approach to DRM, disaster preparedness, response, and recovery.

While Part 4 identified these key findings, it also pointed out some existing gaps. As set out, the Paris Agreement fails to include

cultural rights in its operative part and to incorporate the integration of traditional and Indigenous knowledge as an obligation. Based on this Report's findings that culture is pivotal for Pacific Islanders and communities around the world, future legal climate change agreements at the global level should integrate the two facets of cultural heritage in a more direct way, i.e., including both its active and passive components in relation to climate change. At the domestic level, even though the importance of ICH and its role in the context of climate change, DRR, and DRM measures is recognised, there exists room for improvement to include ICH in adaptation measures, to recognise ICH as a means to strengthen climate resilience, especially when included in adaptation measures, to ensure the participation of communities in all decisions that may affect their ICH, and to mention the impact on ICH in post-disaster needs assessment. Moreover, there exist insufficient laws and policies, such as those adopted in Fiji, the Solomon Islands, and Vanuatu, regarding potential climate displacement which ensure ICH is sufficiently safeguarded. However, especially when it comes to the Fiji Climate Relocation Trust Fund, the Act establishing the Fund could directly address cultural rights or ICH. Lastly, there is a lack of explicit or strong enough references regarding the involvement of relevant stakeholders from planning to responding processes, for example, the respective Ministry responsible for culture, culture representatives, heritage professionals such as museum staff or community leaders with cultural knowledge. However, the cultural sector should be systematically consulted in relation to the development of climate-related strategies, and its strong role should be explicitly included in climate change, DRR and DRM laws and policies. Finally, the

coordination between different sectors to integrate ICH in climate change and disaster response should be emphasised.

5.2 Good Practice

The examination of domestic laws and policies in Part 2, 3, and 4 of the Report identified a range of good practices in the laws and policies of the Focus States. The following paragraphs highlight some of the good practices from all three parts.

Starting with Part 2 of the Report, the following good practices regarding domestic human rights, cultural, and IP law were identified:

- Some of the Focus States highlight their unique cultures within their respective Constitution, and mention cultural rights in policy documents. Fiji, for example, adopted the first Displacement Guidelines, which refer to cultural rights and go beyond the rights mentioned in the Bill of Rights of the Constitution. The Guidelines also encourage stakeholders to consider the cultural impact of relocation due to climate change.
- Vanuatu implemented the regional Model Law for TKCE, which has added some provisions to strengthen its implementation such as with regard to the establishment of a Fund or the expansion of the definition of traditional knowledge.
- Some national cultural policies establish a link between ICH and climate change expressly. In the Solomon Islands, the threat to ICH is highlighted, along with possible means to address its loss, such as research and documentation of traditional knowledge and transmission through education. More in general, the

national development policy of Vanuatu considers development in cultural terms, rather than economic terms, noting that cultural heritage is the strength of the country.

- Some relevant governmental departments have clear responsibilities with regard to the ICH Convention. In Samoa, a National Committee for Intangible Cultural Heritage was established to support the State's alignment with the ICH Convention. In Fiji, the Department of Heritage & Arts held a workshop with district Chiefs on the ICH Convention.
- Many of the Focus States have conducted cultural mapping processes, such as Kiribati, where the process has highlighted the importance of safeguarding endangered cultural heritage and served to train communities in heritage mapping to ensure the sustainability of the process in the future. In Fiji, the cultural mapping programme served not only to identify ICH but also to identify endangered ICH and revitalising it when its transmission was at risk, i.e., when only one or two practitioners were left.
- Some of the Focus States clearly provide for intersectoral cooperation. In Tuvalu, the domestic cultural policy notes the need for cooperation to 'mainstream the key role of culture in addressing [...] climate change and natural disasters'. Cooperation is also embedded in the work of certain national cultural bodies. In Papua New Guinea, the National Cultural Commission, which is tasked with safeguarding traditional cultures, must coordinate 'with related Government and Non-Government Agencies on cultural matters', thus including those directly engaged in climate action. In

Fiji, representatives of several different government departments are directly embedded in the composition of the Heritage Council.

- A community-based approach has been advocated by certain Focus States, including the Samoa Law Reform Commission, which recommended such an approach to define ICH and determine its significance.

In Part 3 of the Report, the following good practices regarding domestic environmental laws and policies were identified:

- In Fiji, the National Biodiversity Strategy and Action Plan (NBSAP) 2020-2025 includes the integration of traditional ecological knowledge, innovations, and good practices into the conservation and sustainable use of biodiversity.
- In Kiribati, the Integrated Environment Policy (KIEP) 2013 requires for Indigenous knowledge and practices that can positively contribute to the sustainable use and effective management of natural resources to be included.
- In Papua New Guinea, the Policy on Protected Areas establishes a network of protected areas, built, and maintained with the free, prior, and informed consent of customary landowners and communities, as a cornerstone of an 'integrated approach to conserve nature and provide resilience to climate change on both land and sea'.
- In Samoa, considerations of effects of a development on cultural and natural heritage is framed as an obligation in the Planning and Urban Management Act 2004.
- In the Solomon Islands, the Protected Areas Act 2010 states that '*kastomary* owners and local communities affected

by or having an interest in the protected area' as well as 'chiefs and other traditional leaders living within vicinity' should be consulted in the preparation of management plans of protected areas.

- In Tonga, the National Biodiversity Strategy and Action Plan (NBSAP) explicitly recognises the importance of biodiversity to Tonga's cultural heritage, as well as the use and promotion of traditional knowledge.
- In Tuvalu, the Integrated Environment and Natural Resources Policy 2021-2023 refers to the documentation of traditional knowledge such as navigation skills, weather prediction, conservation, and past coping practices linked to stewardship roles and environmental protection as an element of providing an environment free from discrimination and having access to information.
- In Vanuatu, the National Biodiversity Strategy and Action Plan (NBSAP) mentions the promotion of traditional fishing methods and ways of establishing tabu areas as one of the activities in the context of marine ecosystems conservation.

Lastly, in Part 4 of the Report, the following good practices regarding domestic climate change legislation, DRR and DRM laws and policies were identified:

- Fiji has legislation which establishes the Climate Trust Fund for relocation purposes, the Planned Relocation Guidelines, and the Displacement Guidelines.
- The Ministry for Internal Affairs would be involved in the implementation of the Draft Strategic Roadmap for Emergency Management (SREM) 2020-2024 in Kiribati.

- In Papua New Guinea, the National Compatible Development Management Policy includes traditional knowledge in data management to evaluate, report, and enhance implementation and future measures when it comes to adaptive governance.
- In Samoa, values constituting the *fa'a Samoa* seem to have had an impact on the preparation of the National Adaptation Programme of Action (NAPA).
- In the Solomon Islands, the National Disaster Management Plan (N-DM Plan) 2018 foresees that a representative of the Ministry of Culture and Tourism is a co-opted member of the National Disaster Council, and that the Ward and Village Disaster Risk Committees is involved in local community groups and NGOs.
- In Tonga, the Climate Change Policy's first Guiding Principle states that an approach is required which brings together traditional knowledge and values with 21st century knowledge and technology.
- In Tuvalu, the Climate Change Resilience Act 2019 *inter alia* promotes public awareness and involvement in climate change issues and the preservation of *Tu, Iloga mo Faifaiga* (identity and culture, including traditional local customs, and usages) linked to the environment. Moreover, the National Strategic Action Plan (NSAP) for Climate Change and Disaster Risk Management 2012-2016 articulates the same vision as *Te Kaniva*, and refers to the need to 'analyse, compile and document traditional knowledge related to climate change and disaster risk management and make it available to all communities within Tuvalu' as a matter of strengthening adaptation.

- Vanuatu has adopted solutions such as the Climate Change and Disaster Risk Reduction Policy 2016-2030, including a role for ICH and bottom-up approaches, which lead to an engagement of communities. Moreover, the National Policy on Climate Change and Disaster-Induced Displacement mentions the Vanuatu Cultural Centre as one of the key agencies responsible for the implementation of the policy.

5.3 Recommendations and Way Forward

As this Report shows, South Pacific Islanders are at the forefront of the impacts of climate change and have already had to adapt to and mitigate them, even though their ability to do so is limited. Given the South Pacific Islanders leading position in the struggle with climate change, there are many lessons to be learnt from their efforts and drawn to other contexts. Some South Pacific Island countries, such as Kiribati and Tuvalu, have 'examples where ICH has been factored into DRR and climate change policies'.⁸²⁸ Those efforts could be further strengthened, including through the support of other jurisdictions and stakeholders. As voiced by Lui, 'ICH is the key to mitigating and adapting to climate change for most Pacific communities'.⁸²⁹

Drawing from the key findings and good practices mentioned above, and from the interviews conducted as part of this project, this Report, thus, ends on the following recommendations for further strengthening the safeguarding of ICH and its potential role in climate resilience:

- Further raising awareness of the importance of ICH for South Pacific Islanders' identity and the cultural diversity of the South Pacific region, but also of ICH in

the climate emergency, within communities and beyond community levels, up to a domestic, regional, and international level, and including all stakeholders involved in climate action such as those working in climate change departments.⁸³⁰ Research, studies, and concrete action are needed to document, with consent, community measures used to mitigate and to adapt to climate change. This traditional knowledge needs to be appreciated and shared, including from elders to younger generations.⁸³¹

- If ICH practices have been replaced by modern systems in the majority of the population, (for example, technology such as radios are used instead of traditional weather warning systems), on-site programmes are needed to reinforce, elevate, and boost that kind of heritage. ‘Using ICH [would] be very beneficial for everyone (...) [because] not everyone will have access to [even simple] technology like the radio’, for example South Pacific Islanders in more remote areas.⁸³²
- Similar measures should be taken when it comes to DRR and DRM in the context of food security. Regarding DRR, it is essential to understand that given climate change impacts ‘in the coastal areas, where there is saltwater intrusion, the food security is low’.⁸³³ Thus, adaptation measures are needed to ensure food security for Pacific Islanders living in coastal communities. At the same time, regarding DRM, it is essential to ensure or reintroduce domestic food because some of the humanitarian operations in the past have been destabilising inherent cultural practices by introducing modern food never before consumed in the area, which adversely impacts the resilience of the people, and their local food security.⁸³⁴

- ICH should be mainstreamed and better safeguarded in laws and policies, including those pertaining to climate change, DRR and DRM. When it comes to amending legislation, regardless of whether human rights, cultural heritage, IP, environmental, climate change, DRR or DRM laws and policies, it needs to be taken into consideration that, for example, in Fiji, colonisation still influences law making in such a way that

our colonial legacy testifies to the fact that a lot of our legislations are embedded in British laws and provisions set by the British during Fiji’s colonial era. Fiji’s laws thereafter even after independence continue to lean towards this statute system making it difficult for our people to recognize, appreciate, and develop legal protection that is appropriate, local, Indigenous focused, community oriented, and respond to the REAL needs of our people, and does not develop legal protection for Indigenous culture.⁸³⁵

- In particular, climate change legislation, DRR and DRM laws and policies, and internal and cross-border relocation frameworks need to focus on ICH, its safeguard, and its role in climate change mitigation, adaptation, and resilience. Climate action can benefit from ICH, and it is important to integrate it to a greater extent in currently existing and forthcoming legislation.⁸³⁶
- Support programmes and funds must aid decision making and implementation of the mainstreaming of ICH into climate action, DRR, and DRM.⁸³⁷
- To guarantee an ideal match between theory and practice of the inclusion of ICH in climate action, more and

better communication and coordination is needed between various stakeholders to synergise ICH and climate change, DRR, and DRM measures, including in local languages at community level.⁸³⁸ Moving forward, it is essential to ‘not work in silos, but in collaboration’.⁸³⁹ Research conducted by academics on the topic should also be deposited within the relevant Ministries so that it can be used to develop action plans.⁸⁴⁰ The recommendation focussing on collaboration between various stakeholders is particularly important in general, but also regarding internal and cross-border displacement, as McAdam notes it’s often about who have been the experts or consultants brought into work on these things because often the focus is on people with a migration or displacement background for whom such [cultural] issues are not necessarily front and centre. So, at times, they might be missed by accident, as opposed to deliberately excluded.⁸⁴¹

To enable in depth cooperation and the inclusion of communities by, for example, collecting, documenting, and integrating all ICH into the relevant sectors, dedicated staff and resourcing is needed, which means that the role of ICH in the climate crisis needs to be better emphasised.⁸⁴²

To enable the realisation of these recommendations in a timely manner, a shift in societal and sectoral thinking around the world is essential, as

[w]e often take ICH for granted; it is a common assumption that ICH will just “take care of itself”, people will continue practicing it and it will keep having a very beneficial effect on holding the community together and

letting it thrive as a community. But if we keep taking it for granted, at one point, it will just disappear, especially if the frameworks we have in place offer a disincentive for ICH.⁸⁴³

Thus, to safeguard the ICH of South Pacific Islanders and to adopt inclusive climate action, the way forward should focus on exchanges with the Focus States and the implementation of these recommendations. Firstly, due to the physical distance between the research consortium of this Report and the selected South Pacific Island States and the time difference and technical connection issues, it was not possible to interview stakeholders from all SIDS and a broader variety of relevant sectors.⁸⁴⁴ Field work, including the organisation of domestic and regional workshops with a variety of participants and the conduct of in-person interviews could not only complement the findings of this Report but also shed light on the importance of this topic. Secondly, as the research consortium is conscious of their position as outsiders, and mindful of the ‘ongoing colonial legacy of Pacific Island peoples and countries being written about as (passive) objects, and Pacific histories being framed in reference to the interests of European, Asian or American powers crossing, exploiting and colonising the region in the pursuit of their own economic and imperial projects’,⁸⁴⁵ this project and potential follow-up projects’ aim is to draw attention to gaps that can only be filled by Pacific voices. Thus, continuing to work on the safeguarding of ICH in the climate crisis in the Focus States together with South Pacific Islanders would give this project the chance to enter into a second stage, focussed on the implementation of recommendations, led by local voices and supported by the research consortium.

Finally, while this Report focusses on safeguarding the ICH of South Pacific Islanders, lessons should be drawn from this context to other regions of the world, including with regard to its findings and good practice, especially the role of ICH in climate change mitigation, adaptation, and resilience. A comparative research project could further elaborate the extent to which ICH has been incorporated in climate change laws and policies in other States, in particular in communities with strong ICH ties.

References

- 828 Written questionnaire answers from Siosinamele Lui, fn 281.
- 829 *ibid.*
- 830 Interview with Adi Meretui Ratunabuabua, fn 388.
- 831 Interview with a cultural expert from Fiji on 30th of June and 1st of August 2022, conducted as part of this project, as well as written questionnaire answers from Siosinamele Lui, fn 281, who mentions the need to include not only the young but also elders in climate action.
- 832 Interview with Eleala Avantele, fn 711; Interview with Professor Lucas Lixinski, fn 257.
- 833 Interview with Wonesai Sithole, fn 5.
- 834 *ibid.*
- 835 Interview with a cultural expert from Fiji, fn 831.
- 836 Interview with Adi Meretui Ratunabuabua, fn 388.
- 837 Written questionnaire answers from Siosinamele Lui, fn 281.
- 838 *ibid.*; see also written questionnaire answers from David M Tufi, fn 776.
- 839 Interview with Melaia Tikoitoga, fn 61.
- 840 Written questionnaire answers from Siosinamele Lui, fn 281.
- 841 Interview with Professor Jane McAdam, fn 93.
- 842 Written questionnaire answers from Siosinamele Lui, fn 281.
- 843 See Interview with Professor Lucas Lixinski, fn 257.
- 844 Please note that interviews were not conducted with stakeholders from Kiribati and Tonga.
- 845 Lucas Lixinski, Jane McAdam and Patricia Tupou, 'Ocean Cultures, the Anthropocene and International Law: Cultural Heritage and Mobility Law as Imaginative Gateways', *Melbourne Journal of International Law*, 2022, Vol. 23, pp. 1-22, p. 4.

Annex

International and Regional Laws and Policies (Human Rights, Culture, IP, Environment, Climate Change, DRR, and DRM) including Available Dates¹

Laws and Policies	Fiji	Kiribati	Papua New Guinea	Samoa	Solomon Islands	Tonga	Tuvalu	Vanuatu
International Human Rights Laws and Policies								
Universal Declaration on Human Rights (UDHR)								
International Covenant on Civil and Political Rights (ICCPR)	Accession 16 August 2018	/	Accession 21 July 2008	Accession 15 February 2008	/	/	/	Signature 29 November 2007; Ratification 21 November 2008
First Optional Protocol	/	/	/	/	/	/	/	/
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Accession 16 August 2018	/	Accession 21 July 2008	/	Succession 17 March 1982	/	/	/

Laws and Policies	Fiji	Kiribati	Papua New Guinea	Samoa	Solomon Islands	Tonga	Tuvalu	Vanuatu
Optional Protocol	/	/	/	/	Signature 24 September 2009	/	/	/
1989 Indigenous and Tribal Peoples Convention (ILO 169)	Ratification 3 March 1998	/	/	/	/	/	/	/
UN Declaration on the Rights of Indigenous Peoples								
Cultural Heritage Laws and Policies								
International Level								
ICH Convention	Ratification 19 January 2019; Date of Effect 17 April 2019	Ratification 2 January 2018; Date of Effect 2 April 2018	Ratification 12 September 2008; Date of Effect 12 December 2008	Ratification 13 November 2013; Date of Effect 13 February 2014	Ratification 11 May 2018; Date of Effect 11 August 2018	Acceptance 26 January 2010; Date of Effect 26 April 2010	Acceptance 12 May 2017; Date of Effect 12 August 2017	Ratification 22 September 2010; 22 December 2010
Registered Listings on the Representative List of Intangible Cultural Heritage of Humanity				2019, 'Ile Samoa, fine mat and its cultural value'		2008, 'Lakalaka, dances and sung speeches of Tonga'		2008, Vanuatu sand drawings

Laws and Policies	Fiji	Kiribati	Papua New Guinea	Samoa	Solomon Islands	Tonga	Tuvalu	Vanuatu
Operational Principles and Modalities for Safeguarding Intangible Cultural Heritage in Emergencies (Adopted 2020 by the General Assembly of States Parties)								
Regional Level								
Pacific Regional Cultural Strategy 2022–2032 (Endorsed April 2022 by the Council of Pacific Arts and Culture)								
IP Laws and Policies								
International Level								
UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions	/	/	/	Ratification 23 October 2015	/	/	/	/

Laws and Policies	Fiji	Kiribati	Papua New Guinea	Samoa	Solomon Islands	Tonga	Tuvalu	Vanuatu
Berne Convention for the Protection of Literary and Artistic Works	Declaration of Continued Application 1 December 1971; Entry into Force 10 October 1970	Accession 2 October 2017; Entry into Force 2 January 2018	/	Accession 21 April 2006; Entry into force 21 July 2006	Accession 4 April 2019; Entry into force 4 July 2019	Accession 14 March 2001; Entry into force 14 June 2001	Accession 2 March 2017; Entry into force 2 June 2017	Accession 27 September 2012; Entry into force 27 December 2012
Paris Convention for the Protection of Industrial Property	/	Accession 5 November 2021; Entry into force 5 February 2022	Accession: 15 March 1999; Entry into force 15 June 1999	Accession 21 June 2013; Entry into force 21 September 2013	/	Accession 14 March 2001; Entry into force 14 June 2001	/	/
The Protection of Traditional Knowledge: Draft Articles (Work in progress)								
Regional Level								
Declaration on the Protection of Traditional Knowledge and Expressions of Indigenous Cultures in the Pacific Islands	Adoption February 1999	Adoption February 1999	Adoption February 1999	Adoption February 1999	Adoption February 1999	Adoption February 1999	/	Adoption February 1999

Laws and Policies	Fiji	Kiribati	Papua New Guinea	Samoa	Solomon Islands	Tonga	Tuvalu	Vanuatu
Melanesian Spearhead Group Framework Treaty on the Protection of Traditional Knowledge and Expressions of Culture (MSG Treaty)	Signature 2 September 2011	/	Signature 2 September 2011	/	Signature 2 September 2011	/	/	Signature 2 September 2011
Model Law on Traditional Biological Knowledge, Innovation and Practices (TBKIP) (no adoption yet)								
Model Law for the Protection of Traditional Knowledge and Expressions of Culture (TKEC)				/	/	/	/	
Guidelines for developing national legislation for the protection of traditional knowledge and expressions of culture based on Pacific Model Law 2002								

Laws and Policies	Fiji	Kiribati	Papua New Guinea	Samoa	Solomon Islands	Tonga	Tuvalu	Vanuatu
Traditional Knowledge Implementation Action Plan								
Protection of Traditional Knowledge and Expressions of Culture Act								
Environmental Law and Policies								
International Level								
UN Convention on Biological Diversity	Signature 9 October 1992; Ratification 25 February 1993	Accession 18 August 1994	Signature 13 June 1992; Ratification 16 March 1993	Signature 12 June 1992; Ratification 9 February 1994	Signature 13 June 1992; Ratification 3 October 1995	Accession 19 May 1998	Signature 8 June 1992; Ratification 20 December 2002	Signature 9 June 1992; Ratification 25 March 1993
Nagoya Protocol	Accession 24 October 2012	Accession 4 June 2021	/	Accession 20 May 2014	Accession 24 October 2019	Accession 3 October 2019	Accession 28 August 2018	Signature 18 November 2011; Ratification 1 July 2014
Convention on Wetlands (Ramsar Convention)	Entry into force 11 August 2006	Entry into force 3 August 2013	Entry into force 16 July 1993	Entry into force 6 February 2005	/	/	/	Entry into force 4 November 2019

Laws and Policies	Fiji	Kiribati	Papua New Guinea	Samoa	Solomon Islands	Tonga	Tuvalu	Vanuatu
International Plant Protection Convention (IPPC)	Adherence 10 August 2005	/	Adherence 1 June 1976	Adherence 2 March 2005	Adherence 18 October 1978	Adherence 23 November 2005	Adherence 15 December 2006	Adherence 2 August 2007
International Treaty on Plant Genetic Resources for Food and Agriculture	Accession 9 August 2008	Accession 13 December 2005	Accession 5 February 2015	Accession 9 March 2006	/	Accession 16 December 2014	Accession 7 March 2016	/
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	Accession 30 September 1997	/	Accession 12 December 1975	Accession 9 November 2004	Accession 26 March 2007	Accession 22 July 2016	/	Accession 17 July 1989
Convention on the Conservation of Migratory Species of Wild Animals (CMS)	Party 1 April 2013	/	/	Party 1 November 2005	/	/	/	/
UN Convention on the Law of the Sea (UNCLOS)	Signature and Ratification 10 December 1982	Accession 24 February 2003	Signature 10 December 1982; Ratification 14 January 1997	Signature 28 September 1984; Ratification 14 August 1995	Signature 10 December 1982; Ratification 23 June 1997	Accession 2 August 1995	Signature 10 December 1982; Ratification 9 December 2002	Signature 10 December 1982; Ratification 10 August 1999

Laws and Policies	Fiji	Kiribati	Papua New Guinea	Samoa	Solomon Islands	Tonga	Tuvalu	Vanuatu
UN Fish Stocks Agreement	Signature 4 December 1995; Ratification 12 December 1996	Accession 15 September 2005	Signature 4 December 1995; Ratification 4 June 1999	Signature 4 December 1995; Ratification 25 October 1996	Accession 13 February 1997	Signature 4 December 1995; Ratification 31 July 1996	Accession 2 February 2009	Signature 23 July 1996; Ratification 15 March 2008
Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention)	/	Succession 12 July 1979	Accession 10 April 1980	/	Succession 7 July 1978	Accession 8 December 1995	/	Accession 22 October 1992
International Tropical Timber Agreement	Signature and Ratification 23 April 2010	/	Signature and Ratification 16 December 2010	/	/	/	/	/
UN Convention to Combat Desertification (UNCCD)	Accession 26 August 1998	Accession 8 September 1998	Accession 6 December 2000	Accession 21 August 1998	Accession 16 April 1999	Accession 25 September 1998	Accession 14 September 1998	Accession 10 August 1999
Stockholm Declaration	Adoption 1972	/	/	/	/	/	/	/
Agenda 21 and Rio Declaration	Adoption 1992	Adoption 1992	Adoption 1992	Adoption 1992	Adoption 1992	/	Adoption 1992	Adoption 1992

Laws and Policies	Fiji	Kiribati	Papua New Guinea	Samoa	Solomon Islands	Tonga	Tuvalu	Vanuatu
Declaration on the Principles relating to Forests	Adoption 1992	Adoption 1992	Adoption 1992	Adoption 1992	Adoption 1992	/	Adoption 1992	Adoption 1992
The Future We Want								
Our Ocean Our Future								
Regional Level								
SPREP Pacific Island Framework for Nature Conservation and Protected Areas 2021–2025	Publication 2021	Publication 2021	Publication 2021	Publication 2021	Publication 2021	Publication 2021	Publication 2021	Publication 2021
Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (SPREP Convention or Noumea Convention)	Accession 18 September 1989	/	Signature 3 November 1987; Ratification 15 September 1989	Signature 25 November 1986; Ratification 23 July 1990	Accession 10 August 1989	/	Signature 14 August 1987	/
Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region	"	/	"	"	"	/	/	/

Laws and Policies	Fiji	Kiribati	Papua New Guinea	Samoa	Solomon Islands	Tonga	Tuvalu	Vanuatu
Cleaner Pacific 2025 – Pacific Regional Waste and Pollution Management Strategy 2016–2025	Publication 2015	Publication 2015	Publication 2015	Publication 2015	Publication 2015	Publication 2015	Publication 2015	Publication 2015
Climate Change, DRR and DRM Law and Policies								
International Level								
UN Framework Convention on Climate Change (UNFCCC)	Signature 9 October 1992; Ratification 25 February 1993	Signature 13 June 1992; Ratification 7 February 1995	Signature 13 June 1992; Ratification 16 March 1993	Signature 12 June 1992; Ratification 29 November 1994	Signature 13 June 1992; Ratification 28 December 1994	Accession 20 July 1998	Signature 8 June 1992; Ratification 26 October 1993	Signature 9 June 1992; Ratification 25 March 1993
Kyoto Protocol	Signature and Ratification 17 September 1998	Ratification 7 September 2000	Signature 2 March 1999; Ratification 28 March 2002	Signature 19 March 1998; Ratification 27 November 2000	Signature 29 September 1998; Ratification 13 March 2003	Ratification 14 January 2008	Signature and Ratification 16 November 1998	Ratification 17 July 2001
Doha Amendment to the Kyoto Protocol	Acceptance 19 September 2017	Acceptance 11 February 2016	/	Acceptance 18 September 2015	Acceptance 5 September 2014	Acceptance 22 October 2018	Acceptance 4 December 2014	Acceptance 15 March 2018

Laws and Policies	Fiji	Kiribati	Papua New Guinea	Samoa	Solomon Islands	Tonga	Tuvalu	Vanuatu
Paris Agreement	Signature and Ratification 22 April 2016	Signature 22 April 2016; Ratification 21 September 2016	Signature 22 April 2016; Ratification 21 September 2016	Signature and Ratification 22 April 2016	Signature 22 April 2016; Ratification 21 September 2016	Signature 22 April 2016; Ratification 21 September 2016	Signature and Ratification 22 April 2016	Signature 22 April 2016; Ratification 21 September 2016
Sendai Framework for Disaster Risk Reduction 2015–2030								
Regional Level								
Pacific Islands Framework for Action on Climate Change 2006–2015 (Second Edition)	Publication 2011	Publication 2011	Publication 2011	Publication 2011	Publication 2011	Publication 2011	Publication 2011	Publication 2011
Framework for Resilient Development in the Pacific (FRDP) 2017–2030	Publication 2016	Publication 2016	Publication 2016	Publication 2016	Publication 2016	Publication 2016	Publication 2016	Publication 2016

1 Please note that it is specified in each cell which available date is listed. If a row does not refer to a date, (1) the respective framework was adopted by the UNGA, of which all eight Focus States are parties; however, the Resolutions are not binding, and a ratification date does, therefore, not exist; the date of the respective UNGA Resolution can be found in the relevant footnote in the Report; (2) the respective framework was adopted by a General Assembly or Council all Focus States are Parties to.

Domestic Laws and Policies (Human Rights, Culture, IP, Environment, Climate Change, DRR, and DRM) including Available Dates²

	Law / Policy	Date
Fiji	Human Rights Laws and Policies	
	Constitution of the Republic of Fiji	Signature 2013; Entry into force 7 September 2013
	Cultural Heritage Laws and Policies	
	Preservation of Objects of Archaeological and Palaeontological Interest Act	Commencement 28 February 1940; Amendments up to 2020
	Heritage Bill	Bill No. 2 of 2021
	Traditional Knowledge and Expression of Culture Bill	Work in progress
	Strategic Plan 2019–2023	Publication 2019
	iTaukei Trust Fund Act	Commencement 4 November 2004; Amendments up to 2012
	IP Laws and Policies	
	Copyright Act	Commencement 1 January 2000; Amendments up to 2019
	Patents Act	Commencement 25 January 1879; Amendments up to 2012; New Act 2021 (not yet commenced)
	Trademarks Act	Commencement 25 July 1933; Amendments up to 2016; New Act 2021 (not yet commenced)
	Environmental Laws and Policies	
	Environment Management Act	Commencement 1 January 2008; Amendments up to 2021
	National Research Council Act	Commencement 3 May 2017
	National Biodiversity Strategy and Action Plan (NBSAP) 2020–2025	Publication February 2020
	Endangered and Protected Species Regulations	Commencement 7 November 2003; Amendments up to 2010
	National Environment Strategy	Publication 1993; New draft could not be located

	Law / Policy	Date
	Strategic Plan 2020–2024 by the Ministry of Waterways and Environment	Publication 2019
	REDD-Plus Policy	Publication 2011
	Climate Change, DRR and DRM Laws and Policies	
	Climate Change Act	Commencement 24 September 2021
	National Climate Change Policy (NCCP) 2018–2030	Publication 2019
	Low Emissions Development Strategy (LEDS) 2018–2050	Publication 2019
	Climate Relocation of Communities Trust Fund Act	Commencement 1 August 2019
	Planned Relocation Guidelines. A framework to undertake climate change related relocations	Publication 2018
	Displacement Guidelines in the context of Climate Change and Disasters	Publication 2019
	National Disaster Management Act	Commencement 16 June 1998, Amendments up to 2018
	National Disaster Risk Reduction Policy (NDRR) 2018–2030	Publication 2019
	Kiribati	Human Rights Laws and Policies
Constitution of Kiribati		Implementation 26 June 1979; Amendments up to 2018
Cultural Heritage Laws and Policies		
Phoenix Island Protected Areas Regulations		Signature 7 February 2008; Publication 14 February 2008
IP Laws and Policies		
Copyright Act		Implementation 21 August 2018
Registration of UK Patents Act		Commencement 14 July 1924; Amendments up to 1977
Registration of UK Trademarks Ordinance	Entry into force 22 August 1939; New Act 2019	

	Law / Policy	Date
	Environmental Laws and Policies	
	Environment Act	No. 9 of 1999
	Environment (Amendment) Act	Signature 4 September 2007
	Kiribati Integrated Environment Policy 2013	Publication June 2013
	National Biodiversity Strategy and Action Plan (NBSAP) 2016–2020	Publication January 2016
	Climate Change, DRR and DRM Laws and Policies	
	Disaster Risk Management and Climate Change Act	Adoption 30 July 2019
	National Adaptation Program of Action (NAPA)	Publication 2007
	Kiribati Adaptation Program (KAP) 2003–2016	Publication 2003
	Joint Implementation Plan for Climate Change and Disaster Risk Management (KJIP) 2019–2028	Publications 2014 and 2019
	Draft Strategic Roadmap for Emergency Management (SREM) 2020–2024	Presented for Cabinet approval in June 2020
Papua New Guinea	Human Rights Laws and Policies	
	Constitution of the Independent State of Papua New Guinea	Adoption 15 August 1975
	Cultural Heritage Laws and Policies	
	National Cultural Property (Preservation) Act	1965; Amendments up to 2006
	National Museum and Art Gallery Act	No. 9 of 1992
	Broadcasting Corporation Act	1973
	National Cultural Commission Act	No. 24 of 1994
	National Cultural Policy 2022 to 2032	Publication June 2022
	IP Laws and Policies	
	Copyright and Neighbouring Rights Act	Enacted 1 July 2000; Entry into force 1 July 2002

	Law / Policy	Date
	Trademarks Act	1978; Amended in 1980
	Patents and Industrial Designs Act	Issued 20 May 2002; Entry into force 1 July 2002
	Environmental Laws and Policies	
	Environment Act	No. 64 of 2000
	Motu Koita Act	Adoption 3 July 2007
	Papua New Guinea Policy on Protected Areas	Publication 2014
	National Biodiversity Strategic Action Plan (PNG NBSAP) 2019–2024	Publication 2020
	Fisheries Management Act	No. 48 of 1998
	National Biodiversity Conservation Policy for Forests	Work in progress
	Climate Change, DRR and DRM Laws and Policies	
	Climate Change (Management) Act	Adoption 20 November 2015
	United Nations Paris Agreement (Implementation) Act	Adoption 16 August 2016
	National Climate Compatible Development Management Policy	Publication 4 August 2014
	National Adaptation Plan	Work in progress
	National Disaster Risk Reduction Framework (NDRRF) 2017–2030	Publication 2019
Samoa	Human Rights Laws and Policies	
	Constitution of the Independent State of Samoa	Entry into force 1 January 1962; Amendments up to 2020
	Cultural Heritage Laws and Policies	
	Samoa Antiquities Ordinance	Commencement 23 September 1954
	National Culture Framework (NFC) 2018–2028	Publication 2019
	National Heritage Policy 2018–2028	Publication 2019

	Law / Policy	Date
	IP Laws and Policies	
	Copyright Act	Enacted 16 July 1998; Amendments up to 2011
	Patents Act	Commencement 19 December 1972
	Trademarks Act	Commencement 19 December 1972
	Industrial Designs Act	Commencement 19 December 1972
	Intellectual Property Act	Act No. 9 of 2011; Entry into force 1 October 2012
	Environmental Laws and Policies	
	Lands, Surveys and Environment Act (LSEA)	No. 33 of 1989
	Planning and Urban Management Act	2004; Amendments up to 2007
	National Biodiversity Strategy and Action Plan (NBSAP) 2015–2020	Publication January 2015
	National Environment Sector Plan (NESP) 2017–2021	Publication 2017
	Ocean Strategy 2020–2030 – Integrated Management for a Healthy and Abundant Future of Samoa’s Ocean	Publication 2020
	Climate Change, DRR and DRM Laws and Policies	
	Climate Change Policy 2020–2030	Publication 2020
	National Adaptation Programme of Action (NAPA)	Publication 2005
	Disaster and Emergency Management Act	Adoption 16 February 2007
	National Action Plan for Disaster Risk Management (NAP for DRM) 2017–2021	Publication 2020
	Meteorology, Geoscience and Ozone Services Act	No. 7 of 2021

	Law / Policy	Date
Solomon Islands	Human Rights Laws and Policies	
	Constitution of the Solomon Islands	Entry into force 7 July 1978; Amendments up to 2014
	Principal Government Act no. 1998, Moli Ward Chiefs Council Ordinance	2010
	Cultural Heritage Laws and Policies	
	Solomon Islands Nasinol Policy Framework blong KALSA	Publication 2012
	IP Laws and Policies	
	Traditional Knowledge and Expression of Culture Bill	Work in progress
	Copyright Act	1978; Amendments up to 1996
	Registration of UK Patents Act	Adoption 4 July 1992; Entry into force 4 July 1924; Amendments up to 1992
	Registration of UK Trademarks	Adoption and Entry into force 20 June 1939; Amendments up to 1978
	Environmental Law and Policies	
	Protected Areas Act	No. 4 of 2010
	Protected Areas Regulation	No. 12 of 2012
	National Biodiversity Strategic Action Plan (NBSAP) 2016–2020	Publication 2015
	National Biodiversity Strategic Action Plan (NBSAP) 2010–2015	Publication 2009
	Climate Change, DRR and DRM Laws and Policies	
	National Climate Change Policy 2012–2017	Publication June 2012
	National Disaster Council Act	No. 18 of 1989
	National Disaster Management Plan (N-DM Plan) 2018	Publication 2018
	National Development Strategy (NDS) 2016–2035	Publication April 2016
Planned Relocation Guidelines	Handed over to the government in 2022	

	Law / Policy	Date
Tonga	Human Rights Laws and Policies	
	Constitution of Tonga	Entry into force 4 November 1875; Amendments up to 2020
	Cultural Heritage Law and Policies	
	Preservation of Objects of Archaeological Interest Act	Commencement 31 March 1970; Amendments up to 2016
	Natural Cultural Policy	Publication 2013
	IP Laws and Policies	
	Copyright Act	No. 20 of 15 October 1985; Amendments up to 2020
	Environmental Laws and Policies	
	Environment Management Act	Adoption 27 August 2010
	National Biodiversity Strategy and Action Plan (NBSAP)	Publication June 2006
	Climate Change, DRR and DRM Laws and Policies	
	Climate Change Policy. A Resilient Tonga by 2035	Publication 2016
	Joint National Action Plan on Climate Change and Disaster Risk Management (JNAP 2) 2018–2028	Publication May 2018
	Long-Term Low Emissions Development Strategy (LT-LEDS) 2021–2050	Publication 2021
	Emergency Management Act	No. 14 of 13 September 2007
	Tonga Strategic Development Framework (TSDF) 2015–2025	Publication May 2015
Tuvalu	Human Rights Laws and Policies	
	Constitution of Tuvalu	Adoption 1 October 1978; Amendments up to 2008
	Cultural Heritage Laws and Policies	
	National Cultural Council Act	Commencement 30 December 1991; Amendments up to 2008
Falekaupule Act	Commencement 1 January 1999; Amendments up to 2008	

	Law / Policy	Date	
	National Culture Policy Strategic Plan 2018 – 2024	Publication August 2018	
	IP Laws and Policies		
	Copyright Act	Commencement 13 June 1917; Amendments up to 2008	
	Registration of UK Patent Act	1924; Amendments up to 2008	
	Registration of UK Trademarks Act	1938; Amendments up to 2008	
	Environmental Laws and Policies		
	Environmental Protection Act	Adoption 18 August 2008	
	Integrated Environment and Natural Resources Policy 2021–2023	Publication 2020	
	National Biodiversity Strategy and Action Plan (TNBSAP) 2012–2016	Publication January 2012	
	Seabed Minerals Act	No. 14 of 2014	
	Climate Change Laws and Policies		
	Climate Change Resilience Act	No. 9 of 2019	
	Climate Change Policy (Te Kaniva) 2012–2021	Publication 2011	
	National Strategic Action Plan (NSAP) for Climate Change and Disaster Risk Management 2012–2016	Publication 2012	
	National Disaster Risk Management Act	2008; Amendments up to 2021	
	Strategic Roadmap for Emergency Engagement 2021–2023	Publication 2021	
	Vanuatu	Human Rights Laws and Policies	
		Constitution of Vanuatu	Entry into force 30 July 1980; Amendments up to 2013
		Cultural Heritage Laws and Policies	
		Preservation of Sites and Artefacts Act	2 July 1965
National Cultural Council Act		Commencement 1 April 1988; Amendments up to 2010	
Vanuatu 2030 The People's Plan	Publication 2016		

Law / Policy	Date
IP Laws and Policies	
Copyright and Related Rights Act	Assent 29 December 2000; Commencement 8 February 2011
Designs Act	Assent 21 July 2003; Commencement 8 February 2011
Patents Act	Assent 21 July 2003; Commencement 8 February 2001
Protection of Traditional Knowledge and Expressions of Culture Act	Assent 23 December 2019; Commencement 15 January 2020
Environmental Laws and Policies	
Environmental Management and Conservation Act	Adoption 10 March 2003
National Environment Policy and Implementation Plan (NEPIP) 2016–2030	Publication 2015
National Biodiversity and Strategy and Action Plan (NBSAP) 2018–2030	Publication January 2018
Climate Change Laws and Policies	
Meteorology, Geological Hazards and Climate Change Act	Assent 26 January 2017; Commencement 1 February 2017
National Disaster Management Act	No. 31 of August 2000
Vanuatu Climate Change and Disaster Risk Reduction Policy 2016–2030	Publication 2015
National Sustainable Development Plan (People’s Plan) 2016–2030	Publication 2016
National Policy on Climate Change and Disaster-Induced Displacement	Publication 2018

2 Please note that it is specified in each cell which available date is listed; Some of the laws and policies are mentioned in several parts of the Report, however, the table only mentions them once in the section in which they are cited the first time.

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Eva is a German lawyer with several years of work experience in private practice. Starting her legal career in intellectual property rights, she has since specialised in international estate matters and Australian migration and citizenship law. Her education includes a (civil law) Master’s degree in German law from the University of Konstanz and a (common law) Master’s degree in intellectual property rights from the University of Aberdeen. Her Master thesis was concerned with compulsory pharmaceutical licences under the TRIPS Agreement for which she *inter alia* researched at the University of Cape Town. Prior to joining the Foundation, Eva was engaged as Research Officer with the Austrian Embassy in Canberra, covering Australia, New Zealand and 11 Pacific Island States.

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