



UN SDGs and equality of opportunity - a legal response

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Descriptor:

Of the 17 UN sustainable development goals moving toward 2030, arguably 9 rely upon greater equality of opportunity. The session will focus upon goal 10 (reducing inequalities) and goal 16 (peace, justice and strong institutions) by critically examining the place, effectiveness and future of Equal Opportunity Commissions across the Commonwealth – in the context of these two SDGs. The session will look at the importance of these institutions in the political and cultural life of jurisdictions, and the importance of the profession understanding their capacity to effect the rights of clients.

Panel

Chair: Bernard Oundo, President Uganda Law Society
 Panellists: Ian McDougall - Executive Vice President and General Counsel LexisNexis
 David Denniston - CLA Council Member (PNG)
 Vikramjit Banerjee - Additional Solicitor General, India

Context re: PNG & the South Pacific

Could an Equal Opportunity Commission (EOC) play a role in PNG and other South Pacific countries with respect to achieving equal opportunity (SDG 10) and peace, justice and strong institutions (SDG 16).

UNSDGs - Summary

The UN Sustainable Development Goals (UNSDG) are 17 interlinked objectives designed to serve as a “shared blueprint for peace and prosperity for people and the planet now and into the future” with an aim to achieve them by 2030 to end poverty, ensure prosperity and protect the planet.

SDG 10 - Reduced Inequalities – concerns reducing inequality within and among countries, focusing on income, age, sex, disability, race, ethnicity, origin, religion, economics, or other status within a country.

SDG 16 - Peace, Justice & Strong Institutions – concerns promoting peaceful and inclusive societies for sustainable development, provide access to justice for all and building effective, accountable and inclusive institutions at all levels.

Equality gaps between rich and poor nations

Despite significant efforts to close the gap across countries escape poverty, inequality persists and large disparities remain, particularly with respect to least developed countries, landlocked developing countries and the small islands developing states, with respect to access to health and education and other essential services.

Equal Opportunity Commissions

Equal Opportunity Commissions (EOC) - generally have a mandate to work towards the elimination of discrimination and the promotion of equality and good relations between persons of different status.

EOCs exist across the Commonwealth but not in PNG and the South Pacific, other than Fiji's Human Rights and Anti-Discrimination Commission which hasn't worked well as I will explain later.

EOC role's vary but generally include:

- Conducting independent reviews and investigations, and providing resolutions for, human rights complaints such as discrimination, sexual harassment, or victimization.
- Implementing and enforcing government policy.
- Conducting human rights awareness and training.
- Consulting on culture change projects for organizations and businesses.
- Advise government on legislative and policy reforms relating to equal opportunity.
- Promote equality of opportunities across gender, persons with disabilities and other minorities.

Principles for functioning EOCs and Human Rights Commissions

The International Council of Human Rights¹ and the Paris Principles on National Human Rights Institutions set out what makes National Human Rights Institutions effective. I have chosen those matters for which PNG and the South Pacific would most struggle to achieve:

- Public legitimacy.
- Accessible.
- Open organisational culture.
- Integrity and quality of their members.
- Diverse membership and staff.
- Consult with civil society.
- All-encompassing jurisdiction.
- Power to monitor compliance with their recommendations.
- Adequate budgetary resources.
- Infrastructure that allows them to carry out their functions.
- Effective international links.
- Handle complaints speedily and effectively.
- Be independent of the government and not be subject to financial control which might affect independence.

In the PNG and South Pacific context I would add the following issues/barriers:

- Availability of skills and relevant education.
- No nepotism or wantokism in appointments
- Government commitment to acknowledge outcomes.
- Low institutional capacity and co-operation.
- Weak and often non-transparent administrative decision-making process, little or no policy guidance around decision making, and generally a lack of subordinate regulations and laws that have often not been amended or consolidated for 10 to 30 years or more.

¹Ibid.

Human rights laws in PNG under the Constitution

Basic Rights

- Right to freedom.
- Right to life.
- Freedom from inhuman treatment.
- Protection of the law.

Qualified Rights

- Freedom from forced labour.
- Freedom from arbitrary search and entry.
- Freedom of conscience, thought and religion.
- Freedom of expression.
- Freedom of assembly and association.
- Freedom of employment.
- Right to privacy.

Equality of citizens

- Citizens have the same rights, privileges, obligations and duties irrespective of race, tribe, place of origin, political opinion, colour, creed, religion or sex.

Statutory Human Rights in PNG

- Lukautim Pikinini Act 2015 - provides for the rights of a child.
- Bail Act 1977 - provides for the right to protection of the law.
- Employment Act 1978 - prohibits discrimination against females and young persons in employment.

PNG & international human rights treaties

PNG has ratified but has not yet enacted all these into local laws:

- International Covenant on Civil and Political Rights (ICCPR).
- International Covenant on Economic, Social and Cultural Rights (ICESCR).
- International Convention for the Elimination of All Forms of Racial Discrimination (CERD).
- Convention on the Rights of the Child (CRC).
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
- Convention on the Rights of Persons with Disabilities (CRPD).

Human rights laws in PNG and the South Pacific and weak institutional and governance capacity

Despite their constitutions being rich in human rights protections, and having some statutes that provide for human rights, in PNG and the South Pacific people rarely benefit from many basic human rights such as access to education, health, water, economic opportunity, a clean environment and access to justice.

Like other jurisdictions, constitutional rights are restricted in the national interest if it is reasonably justifiable in a democratic society. But unlike many other Commonwealth jurisdictions, these restrictions are not balanced or interpreted by separate human rights laws, government consideration of human rights, or EOCs etc.

Laws generally favour economic development, although given most major projects in PNG occur on customary land, mining, gas, oil, forestry, energy and carbon laws provide for landowner benefits and national content, even though these benefits are highly contested and significantly delayed due to weak government institutions and landowner internal governance.

Not all rights in PNG and the South Pacific are considered equal

More than 95% of the PNG population identifies as Christian, with many blending their Christian faith with traditional indigenous religious and other practices. PNG has over 800 tribal / language groups where English can be the third language, if at all. Other countries in the South Pacific have similar diversity.

PNG and most South Pacific countries are organized around clans, traditional culture, parts of Christianity, and are generally conservative.

PNG and South Pacific barriers to equality include:

- Child marriage
- Child labour
- Child and woman trafficking for labour and marriage
- Polygamy
- Violence against woman and children
- Sorcery and sorcery related violence – even though sorcery is outlawed in PNG
- Arbitrary killings - with many never brought to justice
- Arbitrary arrest and detention
- Police brutality
- Prison overcrowding and inability to care for prisoners
- Pressure on media to report only positive country news
- Election violence, no, or missing electoral roles, and inability to vote
- Corruption and little transparency in government
- Village courts imposing tougher sentences on woman
- Inaccessibility of buildings and public infrastructure for the disabled
- Strong societal stigma attached to HIV/AIDS infection
- Consensual same-sex sexual relations and acts of “gross indecency” between men are illegal

These matters cannot all be addressed at their source by an EOC and they require a strengthening of laws, community education and police resourcing. Customary beliefs and practices are also widespread and deep, but are also manipulated.

Where is help coming from

Human rights organisations, foreign governments and law enforcement agencies lack the resources to monitor human rights violations and enforce human rights in PNG. Non-PNG government organisations in PNG have international development programs which undertake education and awareness around equality and protection of human rights, and prevention where possible, and include the:

- Tribal Foundation PNG
- Women's Peace and Humanitarian Fund (UN)
- Save the Children
- Amnesty International
- PNG Red Cross Society & ICRC
- Government of Australia, NZ, UK, EU and others.
- Many others.

The judiciary is one of the few shining lights in PNG. The constitution provides for an independent judiciary, the rule of law, the protection of the law, and the government generally respects judicial independence and impartiality.

PNG & South Pacific alternatives to an EOC

- Human Rights Scrutiny Act - like Australia which established a Parliamentary Joint Committee on Human Rights and requires all new Bills and instruments to be accompanied by a statement that assesses the legislation's compatibility with human rights which is known as a statement of compatibility, see: <https://www.ag.gov.au/publications/legal-briefing/br100>
- Human Rights Act - this could codify, centralise and consolidate equal opportunity laws

Fiji's Human Rights Commission – over the last 16 years it basically become a mouthpiece for the executive. It attacked opposition parties and only spoke in line with government's policies. Legitimate complaints about human rights abuses by the military and police were dismissed or simply ignored.

The new government has already said that it would rebuild it and make it independent and effective.

Re: gay rights, the former PM erased any pretence of tolerance, recognition and respect by saying on many occasions that they should all leave Fiji and move to Iceland – unaware of the connection!

There is a brighter future for recognition and enforcement of gay rights under our new government.

Conclusion

It is unlikely that an Equal Opportunity Commission would play a successful role in PNG and many other South Pacific countries with respect to achieving equal opportunity (SDG 10) and peace, justice and strong institutions (SDG 16).

Many current institutions in PNG and the South Pacific struggle to operate effectively for many reasons including resources, skills, technology, ability to reach the population and political interference and maladministration. Adding an EOC type body to this list will likely give it the same fate.

A South Pacific regional EOC may be a pathway forward.

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² Paper written with the support of Eunice Wangu & Melenie Gavara-Nanu from LLLS Lawyers, PNG.