

The Added Value Of The Human Rights Based Framework To Development NGOs: A View From The Pacific Islands

**KEYNOTE ADDRESS, AUSTRALIAN COUNCIL FOR INTERNATIONAL DEVELOPMENT:
WOMEN AND CHILDREN AS THE FOUNDATION OF DEVELOPMENT**

29-30 October, 2009 Canberra, Australia

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“Human rights empower us as members of the human family to participate as equals in the process of decision-making irrespective of who or what we are. Development seeks to make these circumstances more inclusive by extending them to the entire community.”

Ratu Joni Madraiwiwi, former Vice President, Republic of the Fiji Islands

A. INTRODUCTION

Bula, Namaste, Aslaalalekum, Talofa, Maloleilei, Meuri, Kiora, Kiorana.....G'day.

I acknowledge the traditional owners of this land upon which I stand, in particular to the Ngunnawal tribe and bring respectful greetings from the people of Fiji to you.

I would like to thank ACFID for inviting me to this annual Council meeting. I have thoroughly enjoyed the presentations and especially the debates following them. One of the advantages of being a keynote speaker is that you can comment on all the things you wanted to say earlier but could not because of time running out.

I have been asked by ACFID to speak about the added value of the human rights based approach (HRBA) to development, based on the experience of our organisation, the Pacific Regional Rights Resource Team (RRRT) which is a Fiji based human rights capacity building organisation working in about 15 Pacific Island Countries and Territories (PICTs). RRRT works with both Pacific Governments and NGOs attempting to assist both integrate a HRBA in whatever field they are engaged.

RRRT's current 4 year project cycle focuses on the following areas: violence against women, reporting on and implementing all elements of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), HIV, climate change, disability and trafficking; and the setting up of a regional mechanism, with gender equality and human rights integrated into all as a core goal. RRRT has been the recipient of the international

UNICEF Maurice Pate Award for its cutting edge work with women and girls in the Pacific Islands.

This is exciting work and depends primarily on attempting to negotiate and persuade the integration of human rights through training, technical support and policy advice, but occasionally ends up in litigation. For example, we are currently assisting PNG lawyers in the first litigation under the new HAMP Act involving a woman who has lost everything, including becoming a victim of domestic violence by her husband, losing her children and becoming a social outcast as a result of a HIV counsellor telling another person that the woman had sought testing and counselling. The test was negative, but that is neither here nor there, because the results of the breach of privacy were the same. We do not ourselves engage in any direct advocacy work (unless requested by Government) but we build the capacity of local citizens to do so. I stress here that although you might consider this an individualised approach to the solution, it is necessary to create a precedent for a serious shift in behavioural change in the counselling system to ensure the protection and privacy of people living with HIV.

I want to declare at the outset that my personal value system is that of a HRBA but viewed through a feminist lens (or the more palatable, gender lens). For me this captures what is best about human rights and gender equality.

The issue of human rights was first brought home to me when I was about 8 years old. My father's ancestors are Pathans from the North West Frontier Province of Pakistan. They are Pashtun speaking Pathans. You would be hard pressed to find tribal peoples more oppressive of women's rights in Asia. My mother's ancestors are North Indian Brahmins who converted to Catholicism when they came to Fiji. We are all loosely classified as Indo-Fijians. It was an interesting love (meaning not arranged) marriage. My parents told me that I must not laugh too loudly, I must speak always deferentially to my elders and male relatives, never argue or answer back, that I was not allowed to go to school dances and parties, that I was not allowed to wear anything above the knees and that if I was a good respectful nice Indian girl I would be married to a nice Indian boy from a rich family (preferably one who was fair and had sharp features). If you met my large, rugby mad indigenous Fiji husband, you would know how successful they were. This was my first lesson in gender equality and human rights.

My second lesson in human rights a few years later was when my parents took we 5 children to New Zealand for a holiday and to visit family who had migrated when we still all in primary school. Fiji was still a British colony. We became independent quite late in 1970. When we

were driving through the streets my 8 year old sister said in awed tones, “Look ama (mother) in this country they have white people to collect rubbish”.

B. WHAT IS THE HRBA?

Sarah has said much of what I would have said about what a HRBA is so I shan’t dwell too much on that today, except to endorse the definition in Rights in Sight. However, I will try to make some more explicit links between human rights and development and try to show what I believe distinguishes a development project (with human rights as the end goal) and a HRBA approach development project with human rights as both the means and as an end.

I would start off by stating that that every development project you engage in has the realisation of human rights as the end goal. Based on ACFID’s research, it appears that several of those interviewed have human rights as a vision or mission for their organisation. Almost every development goal is also a goal of human rights treaties. This is particularly so in the International Covenant on Economic Social and Cultural Rights (ICESCR). ICESCR is specifically and directly connected to development goals as it requires legal accountability for adequate standards of health, housing, shelter and education, as well as clear links to water and food security in Article 11. Article 11 is worth taking a close look at.

RATIFICATION OF INTERNATIONAL HUMAN RIGHTS TREATIES: ADDED VALUE FOR THE PACIFIC REGION¹

Millennium Development Goal (MDG)	Pacific Plan Strategic Objective (SO)	Key Related Human Rights
MDG 1: Eradicate extreme poverty and hunger	SO 4: Reduced poverty; SO 12: Improved transparency, accountability, equity and efficiency in the management and use of resources	Universal Declaration of Human Rights, article 25(1); ICCPR article 2 ; ICESCR article 1
MDG 2: Achieve	SO 7: Improved education and	Universal Declaration of Human Rights, article 25(1);

¹ Jalal, P. Imrana. 2006. *Ratification of International Human Rights Treaties: Added Value For The Pacific Region*. Paper prepared for the Office of the High Commissioner for Human Rights (OHCHR). Longer version available on <http://www.rrrt.org> as *Pacific Culture and Human Rights: the added value of ratifying human rights treaties for Pacific Island Countries*

universal primary education	training; SO 12: Improved transparency, accountability, equity and efficiency in the management and use of resources	Human Rights article 25(1); ICESCR articles 13 and 14; ICCPR article 2; CRC article 28(1)(a); CEDAW article 10; CERD article 5(e)(v)
MDG 3: Promote gender equality and empower women	SO 8: Improved gender equality; SO 12: Improved transparency, accountability, equity and efficiency in the management and use of resources	Universal Declaration of Human Rights article 2; CEDAW; ICESCR article 3; ICCPR article 2; CRC article 2
MDG 4: Reduce child mortality	SO 6: Improved health; SO 12: Improved transparency, accountability, equity and efficiency in the management and use of resources	Universal Declaration of Human Rights article 25; CRC articles 6, 24(2)(a); ICESCR article 12(2)(a); ICCPR article 2
MDG 5: Improve maternal health	SO 6: Improved health; SO 12: Improved transparency, accountability, equity and efficiency in the management and use of resources	Universal Declaration of Human Rights article 25; CEDAW articles 10(h), 11(f), 12, 14(b); ICESCR article 12; ICCPR article 2; CRC article 24(2)(d); CERD article 5(e)(iv)
MDG 6: Combat HIV/AIDS, malaria and other diseases	SO 6: Improved health; SO 12: Improved transparency, accountability, equity and efficiency in the management and use of resources	Universal Declaration of Human Rights article 25; ICESCR article 12, CRC article 24; CEDAW article 12; CERD article 5(e)(iv)
MDG 7: Ensure environmental sustainability	SO 12: Improved transparency, accountability, equity and efficiency in the management and use of resources	Universal Declaration of Human Rights article 25(1); ICESCR articles 11(1) and 12; ICCPR article 2; CEDAW article 14(2)(h); CRC article 24; CERD article 5(e)(iii)
MDG 8: Develop a	SO 14: Increased national ownership	Charter articles 1(3), 55 and 56; Universal Declaration of

global partnership for development	and commitment to regional approaches, plans, policies and programmes; SO 12: Improved transparency, accountability, equity and efficiency in the management and use of resources	56; Universal Declaration of Human Rights articles 22 and 28; ICESCR articles 2(1), 11(1) , 15(4), 22 and 23; ICCPR article 2; CRC articles 4, 24(4) and 28(3)
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In many cases development goals are also explicitly constitutional rights. Especially in the Constitutions of the newly emerging democracies, like South Africa which secures enforceable rights to shelter, education and health. In other cases they are implicit in the right to life, such as in India, where the right to life has been used to secure group rights to resettlement and shelter. However, you may not be a HRBA development based project because, although these goals are an end, you do not use (explicitly or otherwise) the tools of such an approach.

Development work and benefits are constantly undermined, by corruption, lack of good governance, gender inequality, social and legal structures that deny access of the marginalised to the benefits of development and so on. The HRBA to development ensures that these obstacles are challenged so that the benefits of development accrue to all and are sustainable in the long run.

The development objectives contained in the *Pacific Plan* for instance are also goals of human rights treaties, but unlike human rights treaties, do not have legal accountability measures. Thus, human rights treaties have the advantage of imposing a legal obligation for compliance. Ratification of these instruments therefore provides a further opportunity for the success of the plan at national levels.

A HRBA is different to other traditional approaches to delivering aid and development (such as needs-based or welfare models) because it views poverty as a result of disempowerment and exclusion. Therefore, aid beneficiaries are not objects of charity but rights-holder that have a *right* to health, food, education etc.²

² From Rights in Sight. ACFID Council, 2009.

Based on RRRT's work I have tried to explain in 15 simple programming principles what a HRBA is (apart from simple PANEL definition Participation, Accountability, Non-discrimination, Empowerment, Rule of law etc):³

1. Changes the situation of the beneficiary or group from passive aid recipients to rights-holders. The State is the main duty bearer with duties for which it can be held accountable but it is not the only one. It demands accountability of development agencies/State/ TNCs/INGOs/ IFIs etc.
2. Enables development cooperation to contribute to the development of the capacities of duty bearers to meet their obligations and/or of rights holders to claim their rights.
3. Encourages the protection and realisation of human rights.
4. Uses human rights conventions as a set of standards and common language including CEDAW/CRC
5. Operates on the principle of non-discrimination. Many marginalised groups can be considered together.
6. Adds a legal focus to development.
7. Enables access to policies and legislative frameworks.
8. Encourages adherence to the rule of law.
9. Facilitates participation and accountability.
10. Empowers communities through capacity building.
11. Focuses on how development outcomes are brought about.
12. Scrutinises poverty through a human rights lens and encourages a more structural approach to poverty alleviation. As described by Rights in Sights it exposes systemic and structural discrimination
13. Lays a base of mutual trust and cooperation to achieve viable and sustainable outcomes.
14. Integrates gender as an integral part not an "add on".
15. Adds value as a catalyst.

These principles are explicitly part of a HRBA, with practical strategies. Some of you probably adopt many of these principles as part of good development practice. These are time consuming and laborious but ultimately better ensures the sustainability of projects. In

³ Jalal, P. Imrana. 2006. *Ratification of International Human Rights Treaties: Added Value For The Pacific Region*. Paper prepared for the Office of the High Commissioner for Human Rights (OHCHR). Longer version available on <http://www.rrrt.org> as *Pacific Culture and Human Rights: the added value of ratifying human rights treaties for Pacific Island Countries*.

considering whether one's project is adopting a HRBA it is of course not essential that all the elements of a HRBA are present, or that they even need to embrace the full gamut of human rights, but that there is a starting point of embracing a HRBA and then evolving from there, to a progressive adoption of a HRBA. The Baptist Church project raised yesterday is illustrative, as it has evolved from a mainstream development project to one adopting child's rights strategies and requiring the authorities to take more direct financial responsibility.

Starting out with something as important, or even as simple, as involving women and girls in the consultation stage of project design is the start of the HRBA. Most of you probably do this already and if you don't you should not be receiving any AusAid funds!!!

A Human Rights Based development project is one which adopts the human rights framework, in terms of:

- **Process;**
- **Substance;**
- **Outcomes; and,**
- **its Code of Conduct, which reflects HRBA principles.**

Human rights are a vision, a set of tools, the means and end and the mechanism of evaluation.

C. HOW DOES THE HRBA ADD VALUE TO DEVELOPMENT WORK?

The World Bank study, *Voices of the Poor*,⁴ clearly demonstrates that the denial of rights is inherent in poverty and that poverty cannot be addressed without the realisation of human rights. The UNDP *Human Development Report 2000* states that, "a decent standard of living, adequate nutrition, health care, education and decent work and protection against calamities are not just development goals – they are also human rights".⁵ Once the notion of rights is introduced into policy making, the logic behind poverty reduction is that the poor no longer only have needs but that they also have rights and therefore legal obligations on the part of

⁴ Narayan, D., et al, *Voices of the Poor: Volume 1: Can Anyone Hear Us?* (New York: World Bank, 2000)

⁵ UNDP (2000), p.8

others to fulfil them. The reduction of poverty then becomes more than charity or a moral obligation – it becomes a legal obligation and a policy objective.

The language of rights is transformative and empowering particularly to those at the bottom end of the economic and social ladder. Human rights empower the disadvantaged and thereby allow them to actively participate in their own development and liberation from poverty. We are increasing development impact for the poor by adopting a HRBA.

Not using the HRBA is a lost opportunity for the ‘Big Bang’ - the maximum impact for your project - and the maximum possibility that the development sought is sustainable in terms of your goals. It is not adding value to your programmes if you and your local partners, don't for example use the human rights standards in local laws or international treaties that your target countries have ratified so that those countries can meet their own enforceable commitments. For example, maternal health or reproductive health projects have close ties to Article 12 of CEDAW, the right to women's health. Almost every country in the world, but 8, have ratified CEDAW. It is the second most ratified treaty after the Convention on the Rights of the Child. State Parties countries are held accountable, every four years before a body of experts who hold a constructive dialogue with the State about its obligations under CEDAW. The States have to come back in another 4 years and demonstrate with statistics and data an improvement on women's health. The MDGs do not offer a legal accountability mechanism to its development goals and therein lies one of its major weakness.

A distinguishing feature of the HRBA is requiring Governments and State agencies to take account of their OWN responsibilities. The traditional development approach allows Governments to distance themselves from the needs of their citizens because it relies on goodwill.

HIV projects which integrate a HRBA illustrate well the advantages. If you implement the standard health public health approach without protecting the rights of people living with HIV the project is likely to fail.

If you build a school but do not secure the sustainable right of girls to attend that school from the village, provincial or national authorities, the project will fail. The HRBA means asking the vital questions. Would you build a school for girls in parts of Africa if you know there is a likelihood that after you leave the girls will be pulled out? Would you build more madrasas in Indonesia or Pakistan knowing that the vast majority of them exclude women and that the version of Islam that is taught in them are the most hostile to girls/women? These are some of the compelling questions that are necessary in a HRBA.

Another advantage of the HRBA is its use of the international human rights system. You may consider this as being too remote from your projects, both in terms of ideology and geography. But you might be amazed at how groups, especially women's groups, are using the system of realise rights. Go onto the UN DAW's website www.un.org/womenwatch/daw/ and see the ways women's NGOs all around the globe are holding their countries accountable for development. One example of this is the use of the CEDAW system to get discriminatory family law legislation passed in Fiji. This is at the national level. But also at the micro level of the community, women in Vanuatu have used CEDAW and human rights arguments to negotiate speaking rights at the *nakamal*. The *nakamal* is the all powerful village council where all decisions about crops to be grown and distribution of resources are made.

Ratification and reporting under the human rights system allows Governments, NGOs and citizens to regularly take stock of the level of human rights observance in their country, measured against universal standards, and to consider how it can be improved. A constructive dialogue with reporting states ensures that further suggestions for reform will be elicited and tried and tested policies and legislative frameworks as well as donor support will be made available. This reporting process, if undertaken in good faith, inevitably leads to improvements in human rights, and therefore development goals, within a country.

Ratification also adds a legal focus to development. Regional declarations lack mechanisms for accountability, enforceability and measurement of progress. Ratification and reporting ensures accountability to an international body that monitors progress in implementation over time. This commits Governments to making the necessary legal, policy and institutional reforms.

Human rights protection aligns with fundamental development goals such as poverty reduction, improved health and education standards, improved gender equality, protection of cultural values, and improved transparency and accountability in governance.

Many of these challenges are being addressed in such development plans as *The Pacific Plan*, the MDGs and national development plans which focus on improving development and reducing poverty. However, the success of regional or national development plans is dependent on real mechanisms that ensure their enforceability and require a level of accountability. Failure to include these types of provisions significantly weakens the probability of such plans succeeding and certainly undermines their intentions. Thus the

ratification of treaties is not an obstacle to economic growth and development, but critical to it.

The human rights framework adds value to the agenda of development. It draws attention to the accountability of Governments to respect, protect and fulfill the human rights of all people. It offers a tradition of legal tools and institutions (both of structure and substance) namely the law, the judiciary and the process of litigation as a means to secure human development. It offers to the development process the idea that others have duties to facilitate and enhance development.⁶

Most of the prominent features of the human rights normative framework contribute to the empowerment of the poor and disadvantaged because they are based on accountability, the principle of universality, non-discrimination and equality, the principle of participatory decision making processes and the interdependence of human rights. An important salient feature of the human rights framework is that responsibility for the marginalised becomes a universal obligation. This means that while a State bears the primary responsibility for realising human rights within its borders, donors, development agencies and other States are also committed to contribute to human rights and therefore to development priorities. This has significant implications for the conduct of international affairs, especially the flow of international aid to PICTs from rich countries and development agencies, and for efforts to establish adequate systems of multilateral trade, investment and finance that are conducive to poverty reduction".⁷

It is no longer true that a HRBA is only successful with civil and political rights and less so with economic, social and cultural rights (ESC rights). There is a growing body of assertion of ESC rights through ICESCR as well through accountability system of treaty body reporting and in the last decade a growing body of domestic case law - for example, TAC v South Africa on the right to health, Grootboom v South Africa on the rights of children to housing/shelter, other examples from COHRE (Centre on Housing Rights and Evictions), and many more examples in India, Argentina and the Ogoni case in Nigeria.

D. RRRT AND THE HRBA

A goal of training is to integrate a HRBA to development. RRRT uses a multi-layered approach most effective in generating change. Focusing interventions at three levels

⁶ UNDP (2000), p.2

⁷ Idem, pp.9-11

creates opportunities for change to be initiated by decision makers, whilst accommodating initiatives from the community. In this way RRRT has not only assisted in empowering disadvantaged groups about their rights, but has also sensitised decision makers and delivery agents to use human rights conventions and principles in their work, thus ensuring a comprehensive, society-wide approach to advancing human rights and good governance.

There is not time to provide you many examples of our approaches and the difference in outcomes so I will choose a few only. A critical strategy for us is the training of development workers in human rights. The work that RRRT does are rights based interventions at 3 levels:

1. to create the response to the demand for legislative and policy change at the macro structural level;
2. to advocate for policy and practical change at the meso implementation level; and,
3. to assist in lobbying, advocacy and designing campaigns at the micro level for the community to demand accountability and access to goods, services and delivery from policy makers.

Capacity building a localised community paralegal/human rights defender is very important to us... the idea of our work is to ensure that they are able to use human rights based intervention to improve their access to development. It is very important to note that we advocate human rights for the sake of human rights only, it is both an end and a means...but to achieve development goals.

During the life of our project (1996-2009) we have trained over 300 community workers all over the Pacific. We called them community paralegals (CP) to avoid the use of the language of human rights initially. Our network of CPs are located far and wide in both urban and rural areas with an emphasis on the rural - in Ysabel, Makira, Malaita, the remote Temotu islands... and in every province in Solomon Islands. In Vanuatu they are in Efate, Santo, the remote Banks & Torres islands, Tanna, Pentecost and in all the main islands and provinces.

What is significant about the training is that CPs learn not just to use human rights to make gains in the law or in civil and political rights (which is perhaps the traditional use of human rights) but to assert economic, social and cultural (ESC) rights and to gain access to goods, services and delivery. In very real ways they use human rights to help those who are poor and/or marginalized in their communities. Sometimes the changes are at a micro community

level and sometimes the changes are at a structural macro level. A CP/human rights defender does not just defend civil and political rights but the rights to development contained in the ICESCR.

Some of the diverse changes that have been brought about by them (working with partners at agency and macro levels) include:

- Mobilizing against a strict discriminatory dress code for women in Vanuatu
- Helping poor women gain custody of their children, enforce maintenance payments and in getting domestic violence orders in several PICTs
- Mobilizing against the dumping of toxic wastes by a Taiwanese company in Makira province in Solomon Islands
- Negotiating speaking rights for women at the local village decision making bodies in Guadalcanal in Solomon Islands and in the nakamal in Vanuatu
- Establishing a new kindergarten in Malaita, Solomon Islands after many years of waiting for the State to do so
- Mobilising against a village decree which sought to deny women rights to access land in Malekula in Vanuatu
- Abolishing corporal punishment in schools in the Cook Islands and establishing an Anti- Corporal Punishment policy in schools in compliance with the Child Rights Convention.
- Helping obtain the provision of cement toilets to 28 households in Tebero village, Abaigang in Kiribati.
- Mobilising against attempts to expose the privacy of individuals living with HIV/Aids in Tuvalu
- Increasing access to justice by helping women file cases for unfair distribution of family lands in Tuvalu
- Using knowledge of governance processes in an outer island in Vanuatu to mobilise a (the CPs) village to begin its own education centre instead of relying on the State, when the State had not been responsive to demands for access to education. The community has since established a Community Training Centre, a Community and Secondary School (years 7 and 8). The next plan is to establish school for Years 9 to 14.

Take for example the HRBA principle - ***Scrutinises poverty through a human rights lens and encourages a more structural approach to poverty alleviation***

The RRRT training manual includes a module on poverty and development and the link with human rights. The module teaches all levels of partners that poverty alleviation cannot be sustainable unless there is an inbuilt rights perspective in which the poor have rights and entitlements which must be met by the duty bearers. Its basic tenet is that the needs of the poor need to be met not because of the benevolence of the State or charitable exercises of discretion but rather because it is the obligation and duty of the State. RRRT encourages political engagement of necessity and discourages band-aid therapy that will not ultimately bring about structural change. This is explicitly a rights-based approach to poverty alleviation and has resulted in some interesting community level impact.

A poor ni-Vanuatu student was dismissed for not being able to pay school fees. In ordering the re-instatement of the student the magistrate referred to the Convention on the Rights of the Child and cited a child's right to education as a fundamental right of the child. The magistrate was able to quote the relevant human rights provision as a result of training. The Vanuatu human rights community worker (trained by us) then worked with the local headmaster of the Malekula Island School to draft a school policy against the dismissal of students for non-payment of school fees.

At the macro level the module addresses the responsibility of decision makers to deliver justice, and the right of the poor and marginalised to services and goods. The review of RRRT in late 2004 by Danish evaluators states that: "At the level of community paralegal training we may trace the attention to poverty alleviation and sustainable development, which has resulted in training modules on MDGs and poverty reduction at community level."

E. SOME CHALLENGES OF THE HRBA TO DEVELOPMENT

The HRBA has the most potential for conflict because it encourages people to take a position against the violators, pits people against each other. It is the most difficult of all development models for example in the area of women's rights, or the campaign against harmful practices such as genital mutilation in Africa. Some specific challenges of the HRBA model:

- It may force change in the value system of the social/cultural group you are working with. This is problematic because it challenges the status quo. There will be resistance. Here we need to work for incremental evolutionary change.

- The vast majority of Pacific Islanders regard human rights as promoting individual rights over collective or group rights. For islanders the group should take precedence over the individual. This alienates island communities for whom their culture provides identity, solace, nourishment and hope in a world that is changing rapidly and is overwhelming and bewildering. The aggressive traditional and or blaming approach of many human rights organizations internationally and locally does not work in the Pacific. We have found that out the hard way. The comments made by Dame Carol Kidu – do not teach human rights as a Western construct are important. All traditional societies had their rights and responsibilities. We need to contextualise our human rights teaching. Human rights needs to be put into the collective framework.
- A proportion of your donor funding may come from conservative elements perhaps from traditional Christian Church groups who may be wary of human rights. Our experience of this is that if you break human rights down to the sum of its parts, and take each right step by step and ask what the objection to the right is, you will only come asunder in some of the rights which are actually not yet universally recognised human rights, for example, abortion and sexual orientation are common objections. But rarely will church groups object to the majority of rights. Of course in doing this exercise, its always useful to start off with the right to freedom of religion!! Some 30 (maybe even 20) years ago Australian Churches objected to gender equality, most would balk at stating something like this publicly now.
- A participant said yesterday that one problem of the HRBA was the “imposition of the Western human rights system” and raised the issue in the context of Vietnam. The Constitution of Vietnam has an innovative Bill of Rights with gender equality and ESC rights guaranteed (reflecting its socialist history). And Vietnam ratified CEDAW and has reported on it a few times. It is not a question of whether the Government of Vietnam did this willingly or not but that the women of Vietnam made their Government ratify CEDAW. That is a tenet of representative Government. Vietnamese women are proud human rights actors. No Government anywhere is going to willingly ratify, report and implement a human rights treaty, look at the rogue state of the USA’s record in this regard. Would the men in Western history have embraced gender equality if they have not been forced to by the women’s movement? They fought it every inch of the way and they are still fighting full substantive gender equality in Australia today. It is not imposing outside standards if the HRBA is about requiring Governments to meet their own human rights obligation, that they themselves have committed to.... whether domestic or international.

- Another accusation against the HRBA is that it is too legally focused. But enforceability usually comes after dialogue and compromise. The threat of legal accountability works in many developing countries assuming of course they are democracies based on the rule of law. We only need one legal precedent, sometimes. The HRBA does not necessarily rely on litigation. Rights can be achieved with the reminder of litigation or a reminder to the duty bearers of the rights of claimant.
- The notion that the human rights system is individualised and not about collective rights is a strategy used by those opposed to the human rights framework. In fact for many rights the protection of the human rights system only accrues if you can prove membership of a group. Collective rights can be enforced through the actions of one individual. It does not mean that the benefits that accrue from that action, apply only to that person. At least four of the core human rights treaties are dedicated to protecting the rights of vulnerable groups or minorities under threat. The international human rights system has also allowed indigenous peoples to obtain other benefits which accrue to them as members of that group. In *Lovelace v. Canada*,⁸ Sandra Lovelace submitted a case to the UN Human Rights Committee which administers the ICCPR under the Optional Protocol to the ICCPR. Lovelace was born and registered a Maliseet in Canada, but she lost her rights and native status under Canada's *Indian Act* after she married a non-native. She argued that the Act was discriminatory on the basis of sex and violated the ICCPR protocol. The UN Human Rights Committee stated that Canada was in violation of article 27 of the Covenant because Lovelace's right to access to her native culture and language (as a member of a minority) in a community with other members of her group had been blocked by the loss of her right to live on her reserve. It is clear that the current legislation and proposed future legislation can *together* ensure a balanced system that will protect indigenous rights.

The way forward is already outlined in Rights in Sight and was eloquently explained by Sarah yesterday. I will not repeat them here, but endorse and recommend them. One thing I have learnt about ACFID from reading Rights in Sight, and from talking with you during these

⁸ United Nations Human Rights Committee, 'Views of the Human Rights Committee under Article 5(4) of the Optional Protocol to the International Covenant on Civil and Political Rights in the matter of Lovelace v. Canada - Concerning Communication No. R.6/24' [1982] 1, *Canadian Native Law Reporter* 1 <www1.umn.edu/humanrts/undocs/session36/6-24.htm>

last 3 days is that ACFID is an open minded learning organisation. Human rights is in your hearts, which is where it first needs to be, regardless of whether is it stated or not.

Malo o pito, Fafetai, Meitakimata, Koraba, Tank u tumas, Tank u tru, Vinakwa, Dhanyavad, Shukria, Thanks mate.