



UNITED NATIONS  
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**UNU-EHS PUBLICATION SERIES  
POLICY REPORT 2017  
NO.2**

# MIGRATION AND HUMAN RIGHTS IN THE WAKE OF CLIMATE CHANGE

## A policy perspective over the Pacific



**AXA**  
Research Fund

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UNITED NATIONS UNIVERSITY  
Institute for Environment and Human Security (UNU-EHS)

UNU-EHS PUBLICATION SERIES

SEPTEMBER 2017  
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# Table of contents

List of abbreviations and acronyms.....	5
Acknowledgements .....	7
Purpose of the document .....	9
Summary of recommendations .....	11
1. Introduction .....	13
2. Recommendations .....	19
RECOMMENDATION 1.....	19
RECOMMENDATION 2.....	22
RECOMMENDATION 3.....	23
RECOMMENDATION 4 .....	29
RECOMMENDATION 5.....	35
RECOMMENDATION 6.....	41
RECOMMENDATION 7.....	43
References .....	46

## List of figures

Figure 1a: “According to custom, outsiders from different islands are welcome on my island.” .....	16
Figure 1b: “According to custom, outsiders from different islands are welcome on my island.” .....	17

Figure 2: “There should be a system of classification by which migrants are categorized on the basis of the reason for their migration, whether economic, political or due to climate change and environmental disasters. Different protections should be afforded to these categories.” ....21

Figure 3a: “Chiefs/community leaders have more of a say than State Court in resolving disputes” .....24

Figure 3b: “Chiefs/community leaders have more of a say than State Court in resolving disputes” .....25

Figure 4: “Local community leaders should be involved in decision-making to safeguard my interests.” .....27

Figure 5: “People mainly migrate from neighbouring islands for economic reasons (to find a better job, secure a better livelihood etc..)” .....31

Figure 6a: “I think the state government provides me with adequate training and technical support so I know how to make sure my losses are minimal if a disaster strikes.” .....32

Figure 6b: “I think the state government provides me with adequate training and technical support so I know how to make sure my losses are minimal if a disaster strikes.” .....33

Figure 7: “I think the State should protect my right to enjoy a basic standard of life, so that I have enough food, my children can go to school, I have a stable income and I can get treatment if I am sick.” .....36

Figure 8a: “Punishments that are cruel, inhumane and a form of torture are justified; they prevent criminal activity and keep me safe.” .....38

Figure 8b: “Punishments that are cruel, inhumane and a form of torture are justified; they prevent criminal activity and keep me safe.....39

# List of abbreviations and acronyms

<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>IDP</b>	Internally Displaced People
<b>FRDP</b>	Framework for Resilient Development in the Pacific
<b>SIDS</b>	Small Island Developing States
<b>SLR</b>	Sea Level Rise
<b>SPREP</b>	Secretariat of the Pacific Regional Environment Programme



# Acknowledgements

To begin with, I wish to express my gratitude to the people of Fiji and Vanuatu. They not only informed this research by participating in household surveys, group discussions and expert interviews but also through their personal stories. These testimonies were invaluable and I learned a lot from hearing the people's perceptions of climate change. I took every effort to ensure this Policy Report accurately reflects their knowledge and opinions.

The AXA Research Fund deserves special acknowledgement. Without their generous and ongoing support, it would not have been possible to undertake the 'Migration and Human Rights in the Wake of Climate Change' project.

Professor Jakob Rhyner, Vice Rector in Europe and Director of the United Nations University Institute for Environment and Human Security (UNU-EHS), provided valuable support

and expertise throughout the project. I am grateful to the Pacific Islands Forum Secretariat colleagues who hosted and helped me while I was conducting the research in the field, in particular to Mr. Timothy Bryar for his fruitful ideas, valuable comments and inputs, and to Ms. Jodie Nanuman for her tremendous support in Vanuatu.

Special thanks go to Ms. Marta Guasp Teschendorff for her valuable work codifying data and carrying out statistical analysis and research outcomes, and to Ms. Tanvi Mani for her valuable contribution to the desk review and preliminary research.

Finally, I am also grateful to my colleagues at UNU-EHS, in particular Ms. Sabrina Zwick for her administrative support and the UNU-EHS communications team, namely Mr. Etienne Leue, Ms. Janine Kandel, Mr. David Hewitt and Ms. Aileen Orate, for their valuable work in preparing this report for publication.





# Purpose of the document

This policy report highlights the main findings of the research project by UNU-EHS and the AXA Research Fund.

The research explores the connections between the international response to climate change, migration and human rights. Taking the Pacific region as its geographic focus, Fiji and Vanuatu – two of the countries most affected by climate change – serve as case studies to further examine the process of international environmental law implementation in the region. The existence of two legal systems in the Pacific islands – the custom or traditional law originally derived from indigenous communities and the national or state law, introduced by colonial powers – is a potential source of conflicting perspectives that could challenge the implementation of international standards. This report aims to look at these potential discrepancies, identifying gaps and legal risks, and analyzing their impact on human rights, migration and the overall response to climate change.

The findings build on field research conducted in Fiji and Vanuatu, countries chosen due to the similarities of their legal systems. This research comprised a sample of 39 surveys answered by the local populations, as well as semi-structured interviews with representatives of the government and international bodies in the region, legal experts and chief police officers.

In light of the findings, this report formulates seven policy recommendations for both the Pacific island states and the international community to more successfully address climate change and climate-related migration, building on custom and state law from a human rights perspective.



# Summary of recommendations

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1

Develop legal and political frameworks at the state and regional level to cope with climate-related migration in the Pacific region.

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2

Develop, strengthen and promote interstate relations among Pacific states to strengthen governmental collaboration.

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3

Build on legal infrastructure to develop a coherent, harmonized system unique to each island state, and address existing gaps to foster accountability.

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4

Recognize and address the consequences of climate-related migration as a permanent factor in the region with immediate and long-term impacts.

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5

Address the existing discrepancies among custom and state law in line with international human rights standards in order to facilitate the implementation of a human rights-based response to climate change.

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6

Promote full civil participation through a continuous dialogue among state authorities and local communities so as to facilitate a bottom-up approach in which to engage communities in the policymaking process.

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7

Conduct further research and collection of data on human rights and migration in the wake of climate change in the Pacific in order to facilitate informed decision-making and the development of international and national policy on the issue.

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# 1. Introduction

Human migration is expected to be one of the greatest consequences of climate change. Voluntary and forced, short- and long-term, within and across borders to a when it is driven by climate change, migration can take on different forms. This is especially true in the case of the Pacific islands, a region that is already suffering loss and damage from climate change and in which migration – traditionally regarded as a “way of life” – is becoming an urgent need for many people as island environments become less able to support the communities that depend on them. Addressing climate change can no longer be postponed.

The international community has taken important steps to address this. The United Nations Framework Convention on Climate Change (UNFCCC) Paris Agreement on Climate Change, signed by 195 countries at the 2015 United Nations Climate Change Conference, is clear evidence of the existing awareness of the threats posed by global warming. With the strongest references to human rights of any international treaty so far, the Paris Agreement goes a step further in linking the international response to climate change to migration and the need to ensure the protection of people’s rights. Indeed, there is an increasing awareness that all efforts taken to tackle both the direct and indirect consequences of climate change can only be maximized if they are adopted within the context of a comprehensive human rights approach.

In the Pacific, regional leaders have been prominent in voicing concerns about the impact natural hazards and changes in climate are having on their Small Island Developing States (SIDS).<sup>1</sup> Twelve of the 14 Pacific islands Forum member states were among the first countries to submit their ratifications. “We congratulate and commend our member countries for

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<sup>1</sup> <http://www.ipsnews.net/2015/03/pacific-islanders-say-climate-finance-essential-for-paris-agreement/>

their leadership in not only signing but also taking that extra crucial step to ratify the Agreement, helping to ensure it will come into force,” said Kosi Latu, Director-General of the Secretariat of the Pacific Regional Environment Programme (SPREP).<sup>2</sup>

Yet, legal constraints might challenge the implementation of international climate law in the region. The Pacific islands have two existing systems of law: the national or state law, which covers the executive or legislative level, and the traditional, customary law of clans, families or tribes, referred to as the *Kastom* law, governing local community law. Customary law is diverse by nature as each community has its own customs. Both systems enjoy constitutional and judicial recognition, though the extent may differ between individual islands, and together they set the rules by which people are governed.

In this context, migration flows of people seeking refuge from changing climate patterns and increased extreme weather conditions are, as this research demonstrates, challenging some of the core values of custom for both those moving and the receiving communities. The degree to which such custom law is welcoming of migrants can vary among the different Pacific states, as illustrated by the examples of Fiji and Vanuatu (fig. 1a and 1b, p. 16-17).

Given the relevance of customary law, this has a significant impact on how the newcomers are treated.

In addition to migration, other aspects of custom further reflect the traditional values and beliefs of the community: the perception of and respect for human rights of migrants and host community members, the relevance of traditional custom decision-making bodies as opposed to the state system, and the overall awareness of risks posed by climate change as well as the perception of the government’s response to it. Usually, international norms emanate from the legislative or executive level and into the community. As such, implementing

international norms following a typical top-down approach into the domestic law might be challenged by the existence of the second system of law at local level, which serves communities as a solid ground on which to interpret and build their understanding of new norms. Through the filter of *Kastom* law, international efforts might differ significantly in their initial aims and the anticipated results.

In this context, the research project provides several policy recommendations addresses to strengthen national and regional policy dealing with these issues, with the aim of providing solid conditions on the ground with which to successfully accommodate and implement the international response to climate change in a way that custom and the right of local communities, climate related-migration and human rights for all.

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<sup>2</sup> <http://www.sprep.org/climate-change/six-pacific-islands-ratify-the-paris-climate-accord>



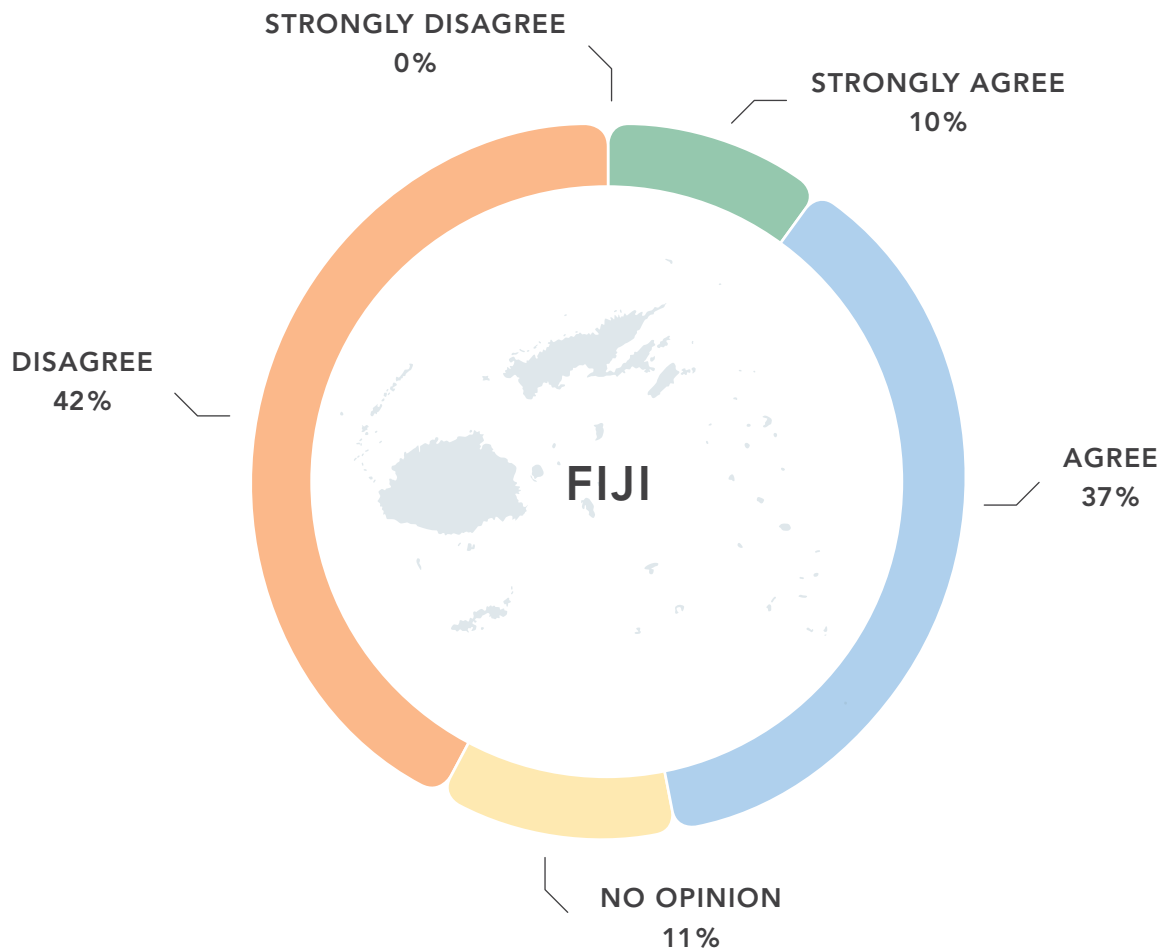


Figure 1a: "According to custom, outsiders from different islands are welcome on my island."

Source: Author's own



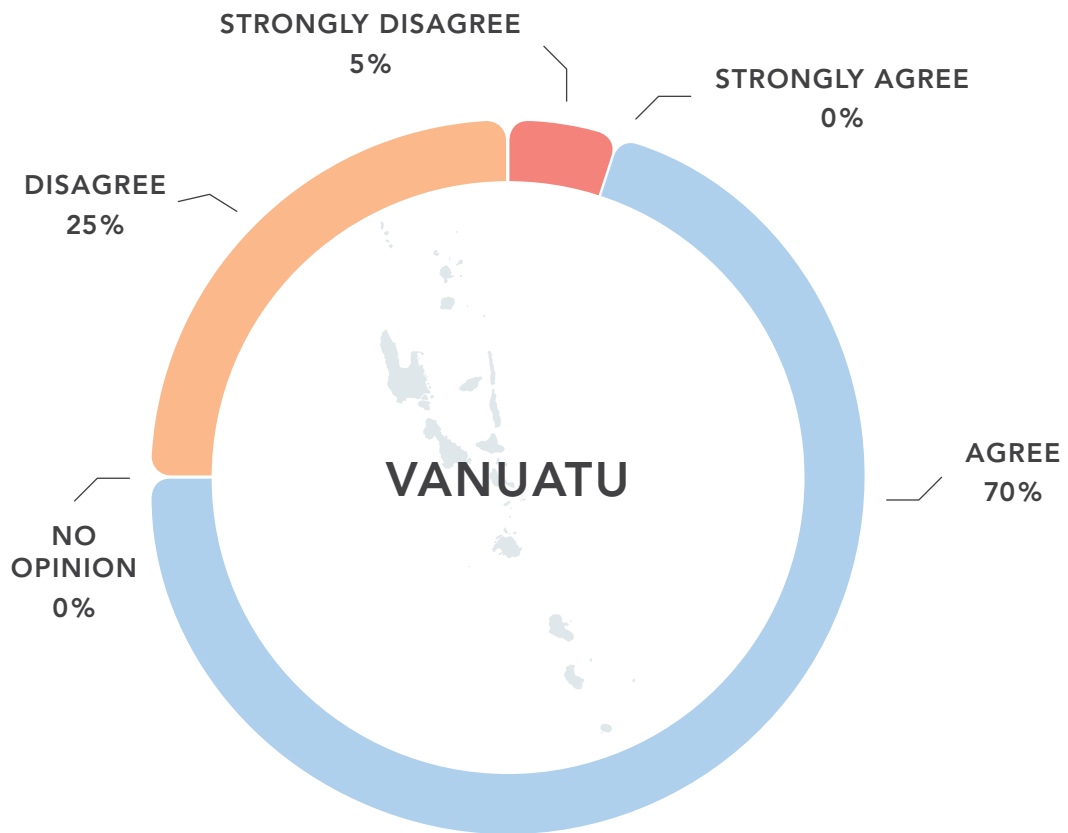


Figure 1b: "According to custom, outsiders from different islands are welcome on my island."

Source: Author's own





## 2. Recommendations

### RECOMMENDATION 1

**Develop a legal and political framework at state and regional level to deal with climate change and human mobility**

“The movement of people in the Pacific due to the effects of climate change is sadly a growing issue that needs our collective attention. The region must come together and work out a strategy for how to best ensure that the rights and wellbeing of our Pacific sisters and brothers who are facing displacement and relocation are protected and nurtured. This must include those who do not want to move.”<sup>3</sup> Dame Meg Taylor, Secretary-General of the Pacific Islands Forum Secretariat, issued this call for a collective strategy at a 2016 regional meeting, which brought together Pacific leaders to discuss priorities under their commitments to international and regional policy frameworks on climate-related migration and displacement.

Building on existing frameworks at the regional and global level, such as the UNFCCC Paris Agreement on Climate Change, the Framework for Resilient Development in the Pacific (FRDP) and the 2030 Agenda for Sustainable Development, Pacific leaders acknowledged their responsibility to advance the protection of their people’s human rights and their access to decent living conditions. Endorsed by Pacific leaders in September 2016, FRDP<sup>4</sup> was developed as a single, integrated regional framework on climate change and disaster risk management, replacing previous separate frameworks and establishing a programmatic

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3 <http://livenews.co.nz/2016/12/08/regional-meeting-eyes-pacific-climate-migration-and-displacement/>

4 <http://www.forumsec.org/resources/uploads/embeds/file/Annex%20-%20Framework%20for%20Resilient%20Development%20in%20the%20Pacific.pdf>

approach which addresses interlinked causes and effects of climate change-related impacts. Indeed, it touches upon the need for an inclusive approach for all stakeholders, including civil society, and upon the relevance of “pre-existing cultural and social beliefs about the roles, functions, responsibilities and social standing of different groups within societies, and resulting practices.”<sup>5</sup> Also the Paris Agreement constituted an important step towards integrating approaches to minimizing and addressing climate-related displacement as it understood the various connections between climate change and human mobility. However, in these policy frameworks there is still a need to recognize and address the existence of strong custom law at the local and community level. There can be no successful resilient development without a comprehensive involvement of local communities, their values, beliefs, and practices – both of those staying and those on the move.

The current lack of an accepted definition for people migrating due to extreme weather conditions does not only represent a major obstacle for the protection of their rights but also further constitutes a gap in the existing legal framework, challenging the implementation of international standards. The case studies carried out for this research exemplified the need for a common definition and understanding of the terminology related to climate change and migration so as to successfully implement initiatives targeting migration in the region. As findings for both islands (presented in fig. 2, p. 21) show, people strongly supported the creation of a classification system by which migrants would be granted different protection depending on the reason for their migrating, be it due to economic and political factors or environmental disasters. Such a lack of a common definition recognizing the vulnerability of climate-related migrants at the legal level, as well as the absence of a common understanding of migrant rights on the ground, might challenge any such measures and implementation efforts at the local level.

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<sup>5</sup> Ibid

At the national level, despite the general awareness of the risks posed by climate change and the expressed willingness of leaders to act, most Pacific countries in the region do not have national policies on climate change and migration. This lack of legal and policy infrastructure further challenges the implementation of international standards, treaties and programmes, as it serves as a vacuum in which national governments cannot be held accountable. For migration to be a safe option for those vulnerable to climate change, countries need to develop national laws integrating voluntary and forced migration and relocation in the broader context of development, disaster risk management and adaptation.

Indeed, migration – gradual or relocation – as adaptation has yet to be embraced as a policy option,<sup>6</sup> providing room for countries to further explore ways in which to foster the positive aspects of displacement. For example, regulating seasonal migration and creating schemes for seasonal work programmes would enable families to cope with changing climate patterns, as well as providing some channels for the development of regular, safe and human rights-based labour conditions. However, given the strong community ties custom upholds, this approach would further require states to develop integration policies with which to promote acceptance of newcomers into the receiving societies. The lack of such policies has so far encouraged those migrating to look for support mainly in social and family networks.<sup>7</sup> Therefore, efforts aimed at integrating migrant communities will need to build on the custom and tradition of both the incoming and hosting societies in order to respect social structures while at the same time enhancing social cohesion and promoting education in the culture of human rights.

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<sup>6</sup> MPI (2014): “Human Rights, climate change, environmental degradation and migration: a new paradigm”.

<sup>7</sup> <https://i.unu.edu/media/gcm.unu.edu/publication/2399/EXTENDIDAS-BAJA-PACIFIC-REPORT.pdf>

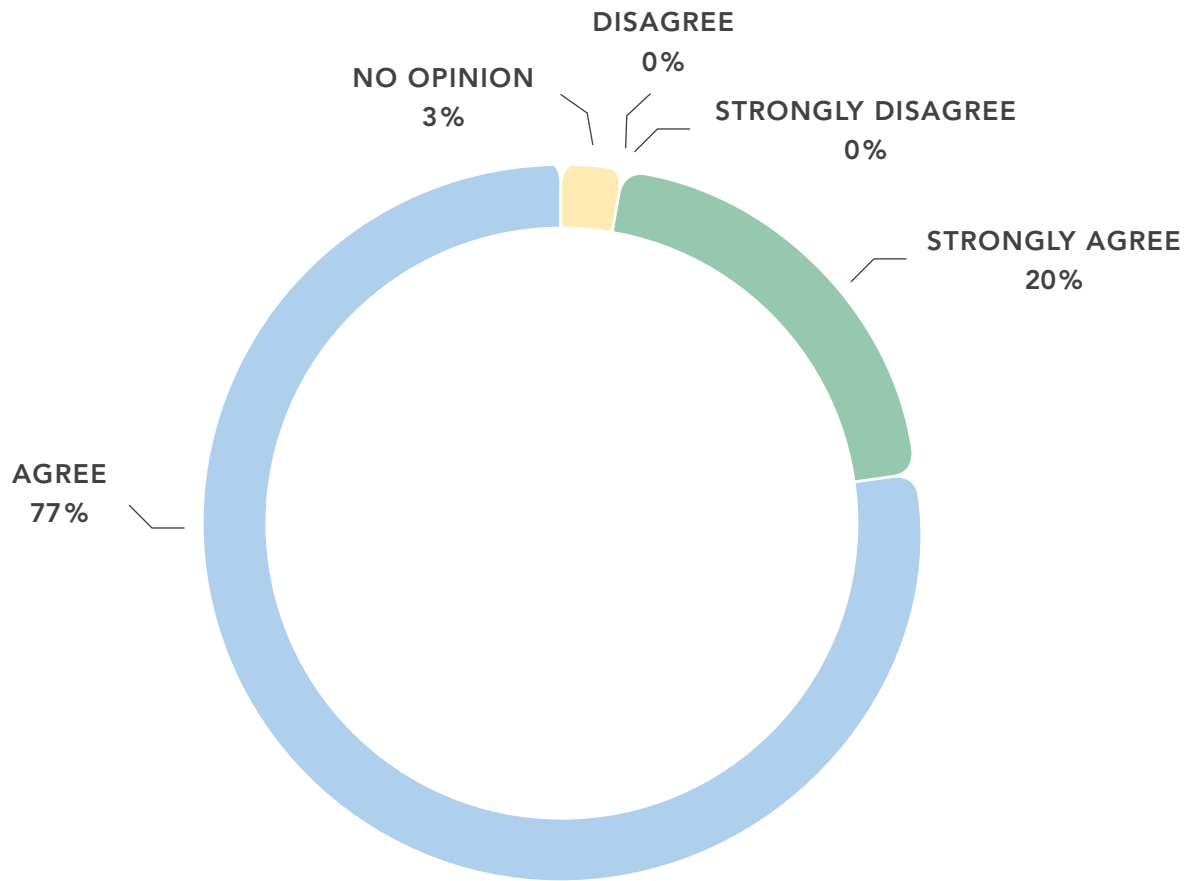


Figure 2: “There should be a system of classification by which migrants are categorized on the basis of the reason for their migration, whether economic, political or due to climate change and environmental disasters. Different protections should be afforded to these categories.”

Source: Author's own

## RECOMMENDATION 2

### Develop, strengthen and promote interstate relations among the Pacific countries

With diverse cultural, socio-economic, and political contexts, yet sharing similarly complex legal systems, Pacific Island states face common challenges and responsibilities with regards to climate change. Acknowledging the region's vulnerability and the expected increase in the challenges posed to the countries' environments, sustainable development, and future survival, as well as awareness of the uniqueness and existing differences among islands, states should work together in advancing joint solutions, wherever possible, for the successful implementation of international law with which to protect their people and advance in the response towards global warming. More dialogue on climate change and migration among Pacific islands is needed.

To this end, cooperation at both the governmental and regional level is crucial, along with existing regional and international initiatives and beyond. In this sense, regional leaders need to continue working on Pacific-tailored approaches to combating climate change and developing disaster preparedness, response and recovery that allows for the protection of human security. For instance, in 2009 the Pacific Plan for Strengthening Regional Cooperation and Integration<sup>8</sup>, designed as a living document formulating the region's strategy for closer cooperation between Pacific countries, was expanded to incorporate two emerging issues: responding to climate change, and improving livelihoods and well-being. In this context, a potential regional framework on human mobility and climate change, integrated into the framework of Pacific Regionalism<sup>9</sup> that builds on customary and state law, would fill in the legal gap at the international level, address the rights of

climate migrants at the regional level, and guide states in addressing this complex issue in a comprehensive manner at the national level.

Besides targeting legal gaps, Pacific Island countries will need to make great efforts to implement the commitments made through regional and international environmental treaties. Benefitting from the existing initiatives led by the Secretariat of the Pacific Regional Environmental Programme (SPREP), the development and strengthening of strong bilateral and multilateral relations would facilitate the exchange of information and expertise and allow countries to gain a mutual understanding of how to successfully incorporate human rights-based adaptive strategies into their national action plans and sectoral planning.

In addition to building regional expertise in the development of adaptation technologies, other potential outcomes from working together with regional and international agencies could be the development of strong meteorological services designed to advance the protection of the life within the Pacific communities. Even though this report suggests that communities are well aware of the risks posed by natural hazards to human life, they are not familiar with the meaning of crop insurance schemes or other types of insurance that would protect their livelihoods in the event of a natural hazard. In this regard, countries should examine the potential of regional climate change insurance arrangements and further coordinate the consolidation and distribution of information on climate change.

Given their shared challenges when addressing climate change and the context of frequently colliding custom and state law, a strong regional cooperation among Pacific states would facilitate the identification of common challenges and the development of joint solutions for the implementation of international treaties in the region. Collaboration and mutual support would foster the commitment to international standards and encourage the development of environment and migration strategies incorporating a human rights approach.

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8 <https://www.adb.org/sites/default/files/linked-documents/robp-pacific-2013-2015-pacific-plan.pdf>

9 The framework for Pacific Regionalism: Pacific Regional Operations Business Plan 2015-2017, <https://www.adb.org/sites/default/files/linked-documents/pacific-robp-2015-2017-sd.pdf>

## RECOMMENDATION 3

### Build on legal infrastructure to develop a coherent harmonized system unique to Pacific countries

The relationship between custom and the state very much defines the governance of everyday life for Pacific people. Custom and state-made law coexist within the state, resulting in a “hybrid” system comprising of courts and a wide range of community justice bodies<sup>10</sup>, in most cases neither interrelated nor linked. For instance, though to a different degree by country, routine disputes are very often resolved at the community level (fig. 3a and 3b, p. 24-25) within a variety of institutions with local autonomy operating entirely according to custom or by a mixture of custom and the standard court process. While in some cases these bodies are state endorsed or established by statute, others operate without any type of state oversight.<sup>11</sup> Indeed, most difficulties in applying the two strands of the legal system mainly arise in practice. In this context, the need to develop a more coherent legal system unique to the Pacific states becomes evident.

The development of a strong and independent jurisprudence unique to each Pacific state needs to be built on a solid understanding of the principles of justice in both custom and state law. Pacific nations have to find ways to better accommodate the two strands of the legal system in order to promote the equitable development of custom and the appreciation of human rights in culturally relevant terms. The government, the legislature, the courts and entire communities will need to work together in finding transformative solutions for the harmonization of custom and human rights norms to which all can relate.

This need is highlighted in the way community members view the legal bodies on their island. In general, they either have no

strong opinion of such institutions or believe that they would not enjoy fair treatment from them in the event of a dispute.

The research also found that only around 30 per cent of respondents on both islands considered it easy to file a case before the State Court, suggesting there are obstacles barring their access to justice. At the same time, more than half of the people questioned in Vanuatu did not seem to have a formed opinion on the ruling of the State Court, whereas in Fiji only 53 per cent of those interviewed reported that they had been treated fairly by the State Court.<sup>12</sup>

These findings highlight the need for greater development of the judiciary, especially in Vanuatu, where custom and the rule of community leaders prevail and access to state mechanisms of justice is not the norm. Thus, raising awareness of the existence of such mechanisms on the one hand and empowering people to be able to access legal rights and services through the relevant key justice institutions on the other, would increase access to legal services and help people better understand, familiarize themselves with and gain confidence in the legal system. Building the required infrastructure to place such mechanisms physically close to communities as well as allowing complaints in the local language would be further means by which to improve access to justice and to recognize and embrace customary ties.

Indeed, a harmonized system of both state and customary law would further serve the prevention of human rights abuses and combat any perceptions of systemic injustice since it would also make punishment consistent. In this regard, the development of effective, accountable and inclusive institutions along with capacity-building measures would certainly increase people’s trust in and access to justice. Initiatives such as the Fiji

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10 <http://www.spc.int/wp-content/uploads/2016/12/Human-right-Pacific.pdf>, p.8.

11 [https://ir.canterbury.ac.nz/bitstream/handle/10092/3372/12610366\\_converging\\_currents.pdf?sequence=1&isAllowed=](https://ir.canterbury.ac.nz/bitstream/handle/10092/3372/12610366_converging_currents.pdf?sequence=1&isAllowed=)

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12 When asked whether the State Court would treat them fairly in case of dispute, 65% people in Vanuatu said they had no opinion, 20% agreed, 15% disagreed. Asked the same question in Fiji, 5% strongly agreed, 53% agreed, 32% disagreed and 10% of respondents expressed no opinion.

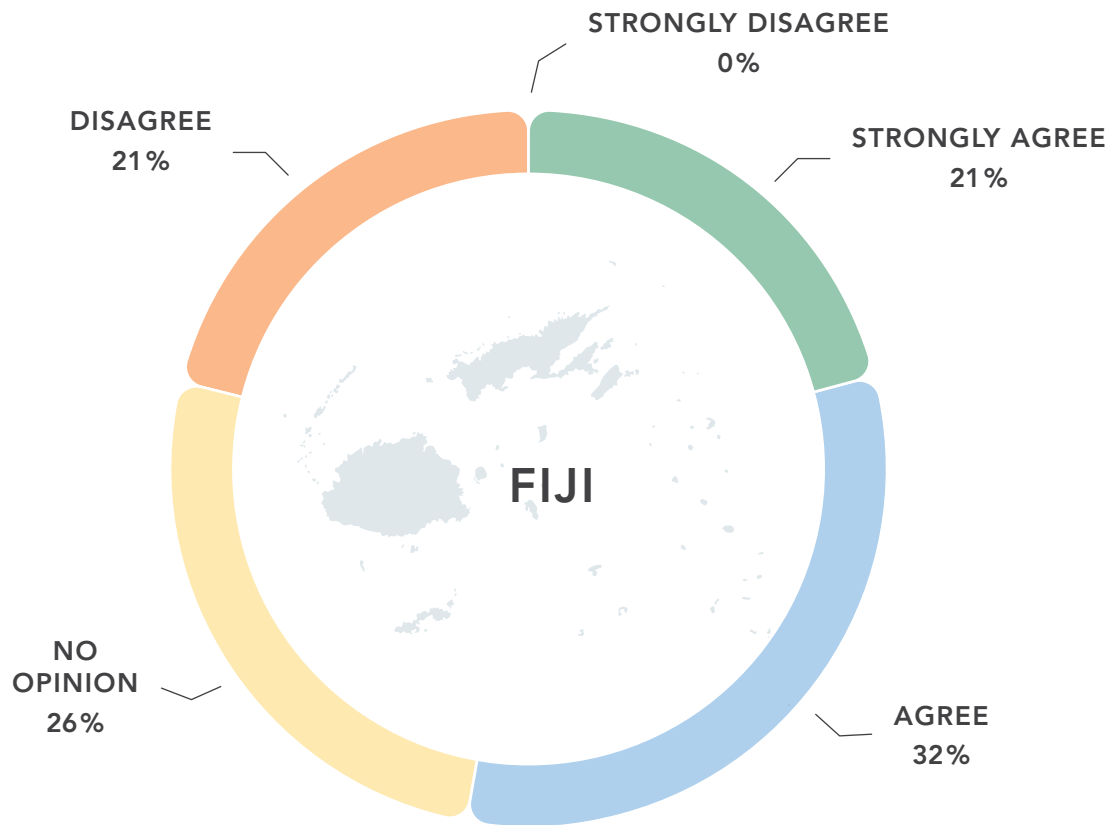


Figure 3a: "Chiefs/community leaders have more of a say than State Court in resolving disputes."

Source: Author's own



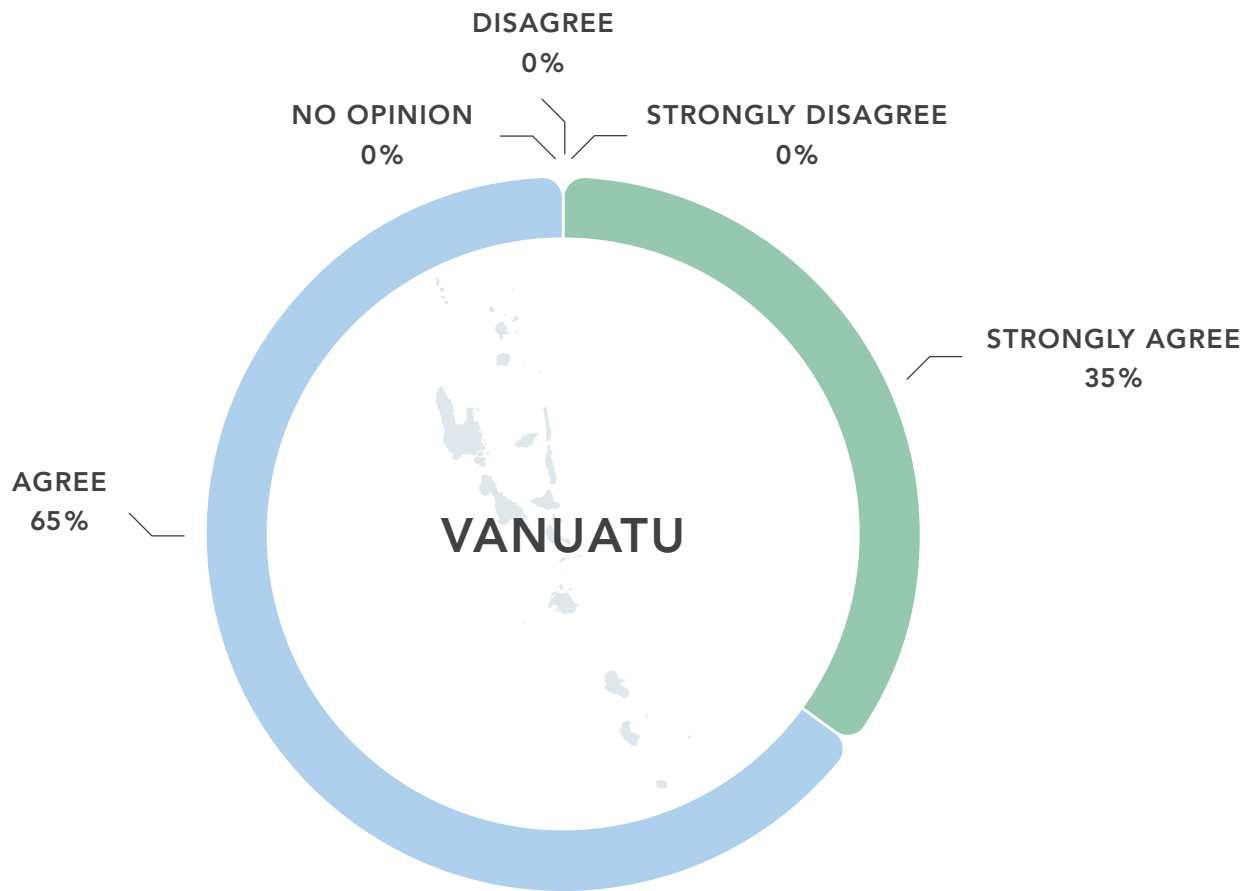


Figure 3b: "Chiefs/community leaders have more of a say than State Court in resolving disputes."

Source: Author's own

Access to Justice Project<sup>13</sup>, which aims at strengthening the Legal Aid Commission, the Judicial Department, and Non-Governmental Organizations' contribution to deliver accompanied access to justice services is a good example of what the road for all Pacific islands should be in the future. Also in Fiji, recognizing the significant role of police in respecting, promoting and protecting the rights of all citizens, human rights became part of the Fiji Police Force's Curriculum in 2015. With the aim of helping to develop a police force that is "accountable, transparent, gender aware and supportive of human rights" in accordance with international human rights standards for policing and in compliance with domestic legislative framework, 35 police force members attended a human rights training workshop in Suva.<sup>14</sup> This was the first of a series of trainings happening across all divisions within the Fiji Police Force.

While increased access to justice is guaranteed, the positive contributions of community justice bodies should be considered when supporting and building on the legal infrastructure in each Pacific country. With the role of community leaders strongly embedded – 90 per cent in Vanuatu and 63 per cent in Fiji said they prefer going to the community leaders rather than the police in the case of a dispute – as well as respected – 60 per cent of the respondents in Vanuatu and 63 per cent in Fiji considered them to be just – community justice bodies are likely to remain a fundamental part of the administration of justice. In fact, as shown in figure 4 (p. 27) this would be the preferred scenario in both countries. In this sense, training and assistance to improve their service delivery as well as their understanding of human rights standards would strengthen their role within the legal system and promote their role in the harmonization of custom law and human rights.

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13 <http://www.pacific.undp.org/content/pacific/en/home/presscenter/pressreleases/2016/10/18/fiji-access-to-justice-project-signed-by-eu-and-undp.html>

14 <http://rrrt.spc.int/news/item/632-fiji-police-officers-trained-to-higher-human-rights-standards-of-policing>

The development of customary law has been largely disregarded in Pacific jurisprudence. Yet, as law is made by the people for the people and only effective if they can relate to the values and principles it encompasses, developing a comprehensive and consistent system to serve the Pacific island states is evidently needed. By building on custom, state law and human rights, this harmonized system would constitute a decisive step towards the protection of rights for all people. Moreover, it would allow accountability and assign clear responsibilities which are, in the event of climate change, more urgent than ever.

#### A LEGAL FRAMEWORK FOR NON-GOVERNMENTAL ORGANIZATIONS

The harmonization of custom and state law might provide evidence of existing legal gaps in Pacific islands systems that further hinder the efficient implementation of international standards. Indeed, if the aim is to build a coherent, comprehensive and unique system for Pacific countries, these gaps need to be addressed. The lack of regulatory policies for NGOs is a case in point.

At the moment, as previous studies show<sup>15</sup> and experts in the region interviewed for the purpose of this research point out, Pacific countries do not count on any protocol or legal framework between NGOs and the relevant state authorities. This creates weak accountability of governments towards their citizens, since no control mechanisms, coordination strategies or clear priorities for robust engagement with NGOs exist. In addition, the resultant lack of communication and information exchange between NGOs and the state could undermine the efficiency of projects and even lead to results that are different

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15 [http://pacific.ohchr.org/docs/HRD\\_Pacific\\_2005.pdf](http://pacific.ohchr.org/docs/HRD_Pacific_2005.pdf)

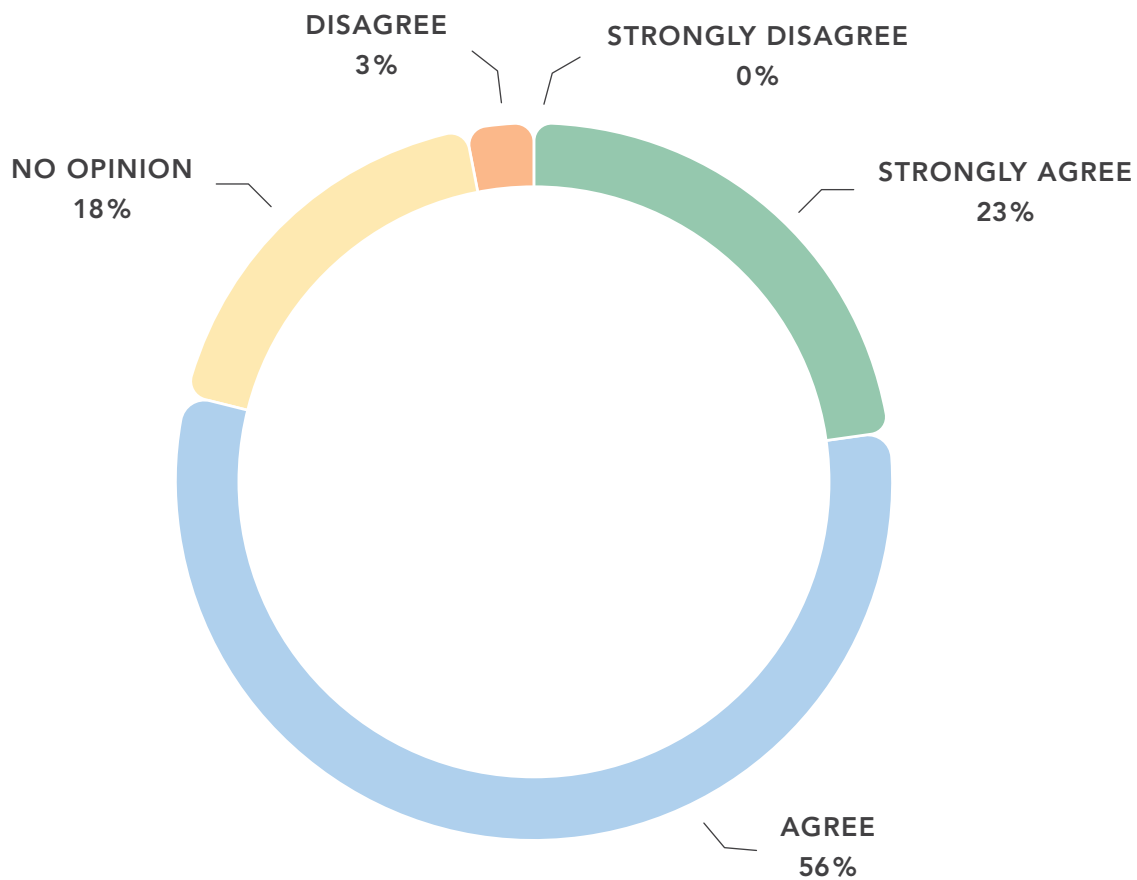


Figure 4: "Local community leaders should be involved in decision-making to safeguard my interests."

Source: Author's own

those expected, potentially also harming local communities by providing contradictory information on, for example, what crops to plant and when.

There is a clear need to develop a framework that would enable the setting out of clear terms and strategies that would allow international agencies to successfully carry out their activities in the region. Additional measures to improve coordination and accountability could involve requiring NGOs carrying out projects in a country to seek authorization or register with the national or local government, while at the same time keeping the process very simple and bureaucracy to a minimum as to not to create barriers or delays. As such, strengthened collaboration with national bodies would lead to better identification of vulnerable communities and improved aid distribution to those most in need. This would provide a solid foundation on which to foster enhanced protection of local communities and enable the implementation of efforts coming from the international level.

## RECOMMENDATION 4

### Recognize and address the consequences of climate change as a permanent issue in the region with immediate and long-term impacts

Climate change is one of the main reasons for Pacific populations to migrate. The vast majority of people reside in coastal areas and rely on natural resources for their livelihoods. Thus a changing climate has a significant impact on their lives. Sea level rise (SLR), ocean acidification and the resulting reef degradation impact on water resources, and the increased intensity of hurricanes and cyclones mean some island environments are becoming less able to support the communities that depend on them. Tropical Cyclone Winston in 2016, described as the strongest tropical cyclone in Fiji's history,<sup>16</sup> and Cyclone Pam in 2015 are just two examples among a vast number of other events. They constitute a threat not only to agriculture and infrastructure but also to human security.<sup>17</sup>

Nevertheless, there is little evidence to suggest that the movement of people in the region can be attributed exclusively to the impacts of climate change. Most of the human mobility in the Pacific, including in Fiji and Vanuatu, is driven by socio-economic factors, with people looking for better opportunities across borders (fig. 5, p. 31). In fact, a 2015 report by the Pacific Islands Forum Secretariat and the United Nations University found that the reasons people have for choosing to migrate were not always the direct consequences of climate change but rather due to a worsening of living standards, often indirectly linked to the impact of natural hazard risk events such as tropical cyclones, flooding and tsunamis.<sup>18</sup> In those cases where climate change is a cause of migration, it is in combination with factors such as the

deterioration of lands, water and infrastructure. Any policy response to the issue of the movement of people in the Pacific, including international treaties addressing global warming, must consider the multiple drivers of mobility and recognize that climate change is not just an environmental issue but one of human security.

Pacific leaders have long been aware of the threat a changing climate poses to their people's livelihoods and took the lead in advocating for addressing climate change at an international level. However, at the local level, as figures 6a and 6b illustrate, preventive measures from the government have so far been limited: communities reported a lack of adequate training and technical support by the state government so they could minimize their losses in the event of disaster. In Vanuatu and, to a lesser extent, in Fiji, this space has been taken over by community leaders, who have been the ones discussing ways to prepare for a natural hazards with community members and informing them of various ways to secure their assets. Within the response to climate change coming from the international community, community leaders have a relevant part to play. Here, they could be granted a stronger role as the contact point between community and state government, inform and educate communities on measures to protect their livelihoods and serve as valuable partners in capacity-building.

Indeed, even though discussions at the local level contribute to creating awareness among people and to the islands' disaster risk management as a whole, this is not always enough. Training of local people and technical assistance need to be well targeted at specific community needs while also being properly coordinated among all the actors involved so as to increase local capacity. Such capacity-building requires a bottom-up approach, a key component also expressed in the Paris Agreement, while actually listening to community needs would not only increase people's readiness to act in case of disaster but further improve local trust in their governments' support.

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16 <https://www.theguardian.com/australia-news/2016/feb/20/cyclone-winston-virgin-australia-and-jetstar-cancel-services-to-and-from-fiji>

17 UN ESCAP (2014): "Climate Change and Migration Issues in the Pacific", p.7.

18 <https://i.unu.edu/media/gcm.unu.edu/publication/2399/EXTENDIDAS-BAJA-PACIFIC-REPORT.pdf>

In the same way, governments need to understand their responsibility to protect their citizens' lives and take an active role in developing a holistic, inclusive and people-centered approach to targeting disaster preparation and response. Cross-cutting themes include a lack of livelihood opportunities and access to resources such as land, rising income disparity and growing poverty.<sup>19</sup> To date, most adaptation projects have focused on existing environmental problems.<sup>20</sup> However, as long-term habitation is threatened, this also involves population displacement. The difficulties of dealing with forced displacement were best summarized by the Kiribati Ministry of Foreign Affairs: "Climate related relocation and forced migration is inevitable for Kiribati and planning is already under way. Aid needs to put some focus on this issue, but is mostly left behind only due to the fact that it is a future need and there are more visible needs here and now."<sup>21</sup>

### THE DEEP PEOPLE-LAND CONNECTION

In the Pacific region (as well as in other parts of the world) land is not only important from an economic point of view as a means of livelihood and source of income, but it also has a fundamental cultural and psychological meaning to islanders. Strongly linked to custom and often inherited from family ancestors, land is close to inalienable. Almost all independent Pacific states recognize this in their constitutions, with up to 90 per cent of land held in customary forms of tenure.<sup>22</sup> As a result, it cannot be bought or sold; individuals do not have the right to do so. In cases where land is exchanged, this is usually

done following a traditional arrangement.<sup>23</sup> From this perspective, forced relocation is extremely problematic. The movement of a complete community to a new land involves breaking the connection between people and land on the one hand, while also requiring land from another community to be made available for resettlement at the place of destination on the other.

As might be expected, the people of Vanuatu and Fiji have emphasized their belief that their governments have no right to take away their land. Indeed, evidence from this research shows that, in case of land expropriation by the government, economic compensation would not be considered valid by community members. More specifically, 70 per cent of people in Vanuatu and 58 per cent in Fiji stated that even if offered financial compensation, they would still not be willing to see outsiders occupy the land of their ancestors. Although people on both islands stated that such compensation would encourage them not to be hostile towards those living on their land, their feelings about the migrants as intruders wouldn't change. Thus, the findings suggest that economic compensation as a means of encouraging integration could be problematic, and that governments need to look for other ways to promote it.

Given the emphasis placed on traditional authority and customary land tenures, any reforms made with the purpose of harmonizing state and custom law need to be built on custom ideas, values and practices. Similarly, when drafting its response to issues relating to climate change and forced migration, the international community needs to acknowledge the deep connections that Pacific islanders have to their land, as well as people's right to a secure living space. If relocation is to happen, it needs to be participatory, with the community actively involved so as to ensure the highest possible levels of social and cultural cohesion between migrants and their host communities while also ensuring the human rights of those being resettled are respected.

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19 <http://www.ilo.org/dyn/migpractice/docs/261/Pacific.pdf>, p.23.

20 <http://www.ilo.org/dyn/migpractice/docs/261/Pacific.pdf>, p.31.

21 <http://www.ipsnews.net/2015/03/pacific-islanders-say-climate-finance-essential-for-paris-agreement/>

22 <http://www.ilo.org/dyn/migpractice/docs/261/Pacific.pdf>

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23 Campbell, J. R. (2010): Climate-induced community relocation in the Pacific: the meaning and importance of land. In *Climate Change and Displacement: Multidisciplinary Perspectives*, J. McAdam, ed. Oxford: Hart.

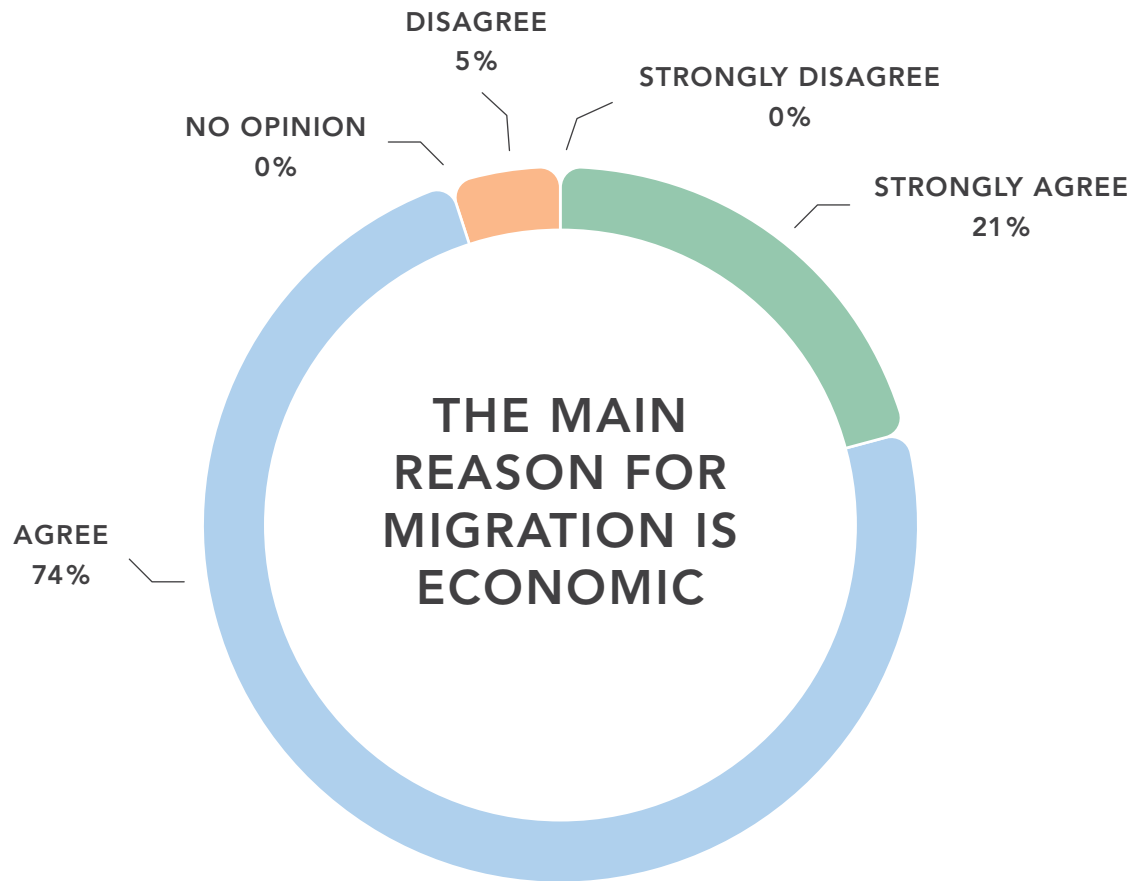


Figure 5: "People mainly migrate from neighbouring islands for economic reasons (to find a better job, secure a better livelihood etc...)."

Source: Author's own

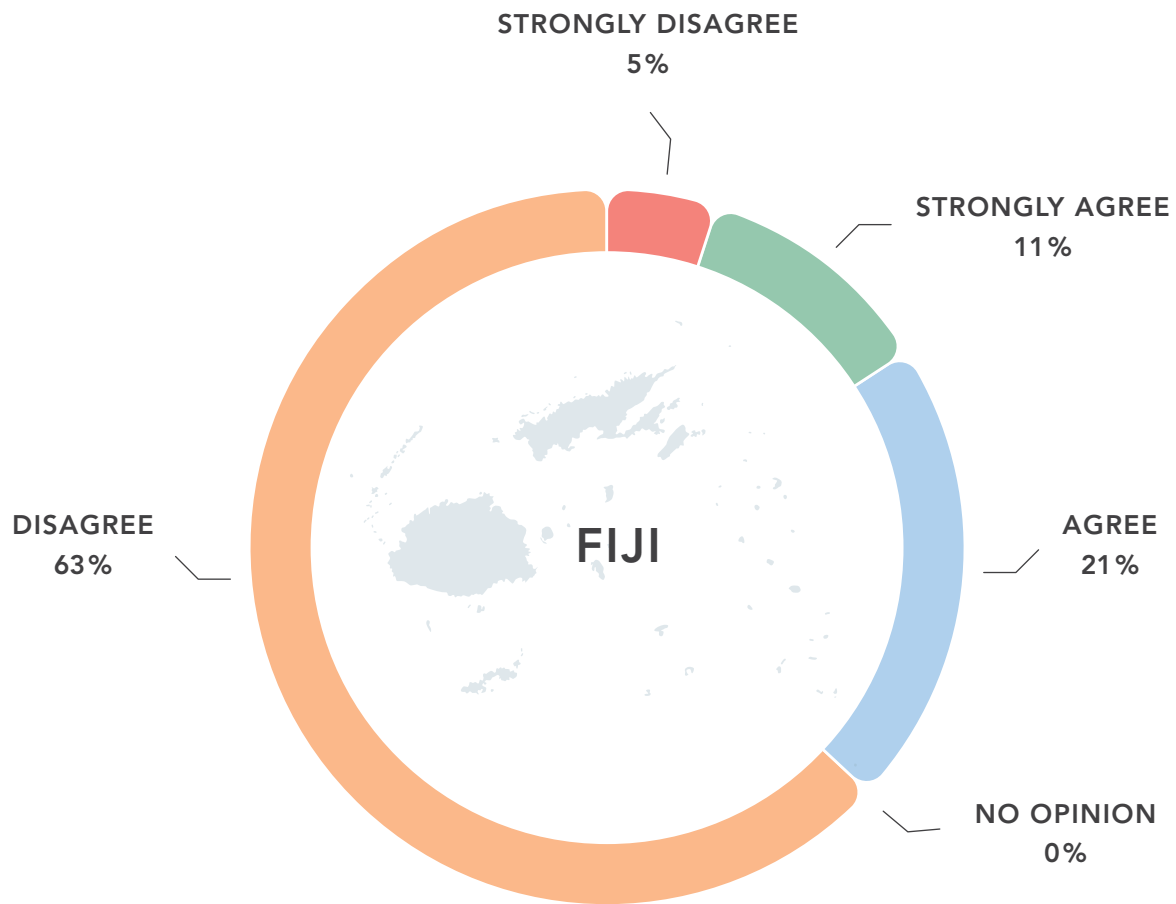


Figure 6a: "I think the state government provides me with adequate training and technical support so I know how to make sure my losses are minimal if a disaster strikes."

Source: Author's own



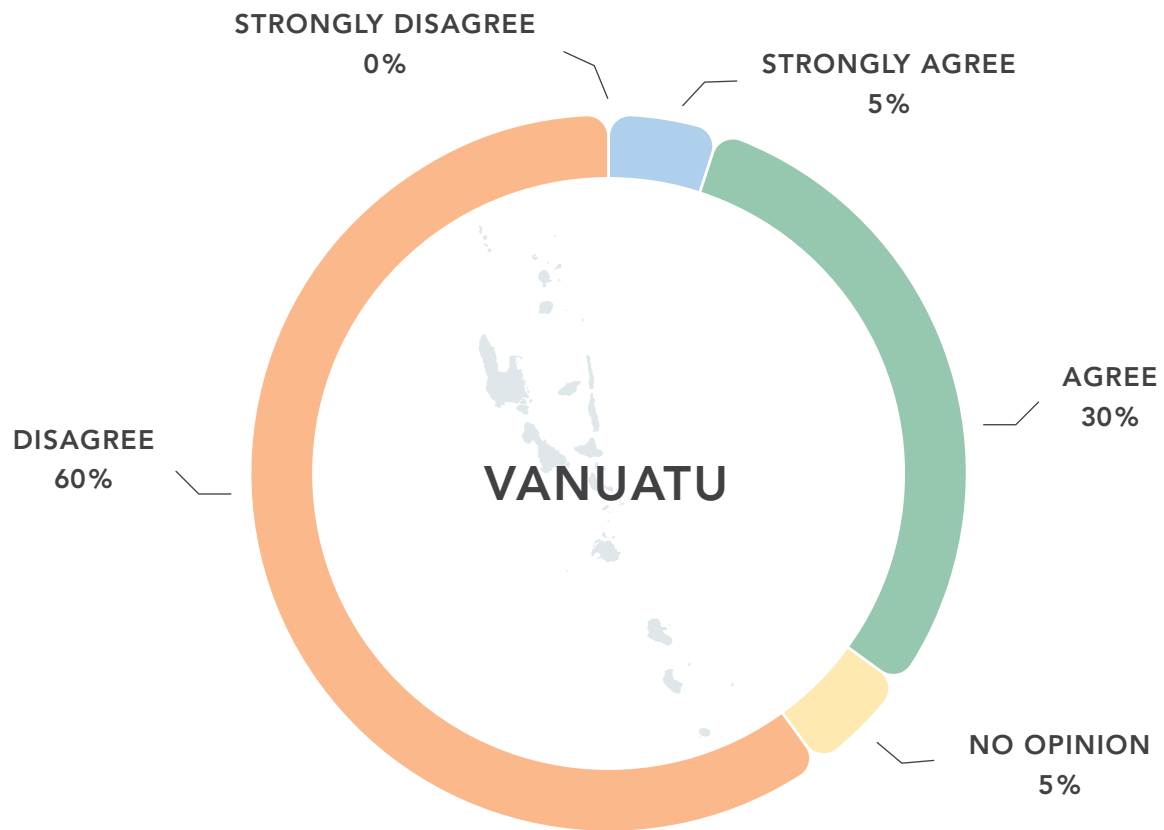


Figure 6b: "I think the state government provides me with adequate training and technical support so I know how to make sure my losses are minimal if a disaster strikes."

Source: Author's own



## SUSTAINABLE AGRICULTURE

Customary law and tradition concerning the environment do not always go hand in hand with sustainability. In fact, they might not always be compatible. As climate patterns and environmental conditions change, people look for new ways to make their livelihoods. In Vanuatu, for example, kava plantations have become one of the country's primary sources of income, with the island now serving as the main exporter to neighbouring countries.<sup>24</sup> While large kava plantations have been identified as a leading cause of deforestation on Vanuatu, little has been done to change the situation given the number of people benefitting economically from this type of farming. As a result, the environment continues to suffer.

In the case of sustainable agriculture, the implementation of the Paris Agreement is essential for the achievement of the

Sustainable Development Goals and provides a roadmap for climate action. In fact, the close alignment of the climate and sustainable development agendas emphasizes the need to consider them as integral components for achieving a low-carbon, climate-resilient future.<sup>25</sup> However, in the Pacific there is a strong risk that custom challenges the whole concept of sustainable agriculture and use of land.

Thus, long-term plans and policies for sustainable development and environmental management need to increase the sustainability of islands while building on the core principles of custom. Adaptation to changing ecosystems will require entire populations to consider sustainability from the ground up and explore ways they can build their livelihoods while respecting nature. Awareness-building in the school environment might help promote these ideas and alleviate the impact local populations are currently having on their surrounding environment.

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24 <http://www.pireport.org/articles/2016/06/20/drought-destroying-vanuatu-kava-plantations>

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25 <http://www.wri.org/blog/2016/09/2-birds-1-stone-achieving-paris-agreement-and-sustainable-development-goals-together>

## RECOMMENDATION 5

### A Human rights-based approach towards customary and state law

Pacific leaders have often referred to two important goals: maintaining local values, traditions and custom, and implementing human rights<sup>26</sup>. These concepts, however, are frequently perceived as being in conflict with each other. Custom provides people in the Pacific with a sense of identity and belonging, as well as with essential governance and dispute-resolution mechanisms<sup>27</sup>. At the same time, human rights provide these nations, especially those in the most vulnerable of situations, with protection and support. And yet, human rights can be seen as a threat to Pacific custom, while custom might be perceived as a threat to individual freedom and universal human rights. Traditional societies and customary groups do not have a culture of individual rights but place the highest value on communal rights. They maintain their social cohesion and structure through a culture of duties, loyalty and contribution to the common good.<sup>28</sup> Although commitment to international rights standards at the national level demonstrate efforts to guarantee human rights are being made by the state, deeply embedded cultural ties may interfere with this and make it hard for these principles to be embraced by local communities.

Evidence from research carried out in Fiji and Vanuatu points to the discrepancies between international commitments by the state and the human rights culture on the ground at the local and community level, suggesting that custom does indeed act as a barrier hindering the top-down implementation of external concepts to people. A lack of knowledge of international standards and norms among community leaders,

who do not apply them in community justice bodies, and limited communication from the state so as to promote these standards (as shown in previous reports<sup>29</sup>) might contribute to the limited human rights culture that has developed. Nevertheless, the findings of the present research do, to some extent, challenge these assumptions by showing that community members are, at least with regards to issues that affect their right to life, aware of the state's obligation to protect their right to a basic standard of life, so that they have enough food, their children have access to school, they have a stable income and can get treatment if they are sick (see fig. 7, p. 36). In the same way, a significant majority also stated that, should such a right not be upheld, they could go to the state court, suggesting a familiarity with their rights and their means of claiming them. This suggests that, rather than a lack of knowledge, communities choose to continue functioning under custom law. The fact that a majority of people questioned in Vanuatu said that a chief who enforces cruel punishments is likely to enjoy the respect of their communities (5 per cent Strongly Agree; 70 per cent Agree; 5 per cent No Opinion; 20 per cent Disagree) further highlights the way in which traditional beliefs may stand in the way of the widespread adoption of human rights.

Thus, if the global response to climate change is to be inclusive of all peoples, it needs to acknowledge the existence of custom alongside human rights and, where possible, incorporate it effectively. There is a clear need to develop a harmonizing framework with which to respect custom yet guarantee the protection of rights of all Pacific people. Along with civil and political rights, cultural rights of the Pacific people need to be recognized and respected. As such, Pacific states need to explore ways in which custom and human rights can be harmonized, e.g. by looking at the underlying values of both, so that within the respect of human rights, custom continues to reflect the values and beliefs of Pacific tradition.

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26 [https://ir.canterbury.ac.nz/bitstream/handle/10092/3372/12610366\\_converging\\_currents.pdf?sequence=1&isAllowed=y](https://ir.canterbury.ac.nz/bitstream/handle/10092/3372/12610366_converging_currents.pdf?sequence=1&isAllowed=y)

27 <https://ir.canterbury.ac.nz/handle/10092/3372>

28 Bennett T. W. (1995): "Human Rights and African Customary Law", Juta & Co Ltd, Cape Town, p.5.

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29 [http://pacific.ohchr.org/docs/NHRI/NHRIs\\_Pathways\\_for\\_Pacific\\_States.pdf](http://pacific.ohchr.org/docs/NHRI/NHRIs_Pathways_for_Pacific_States.pdf)

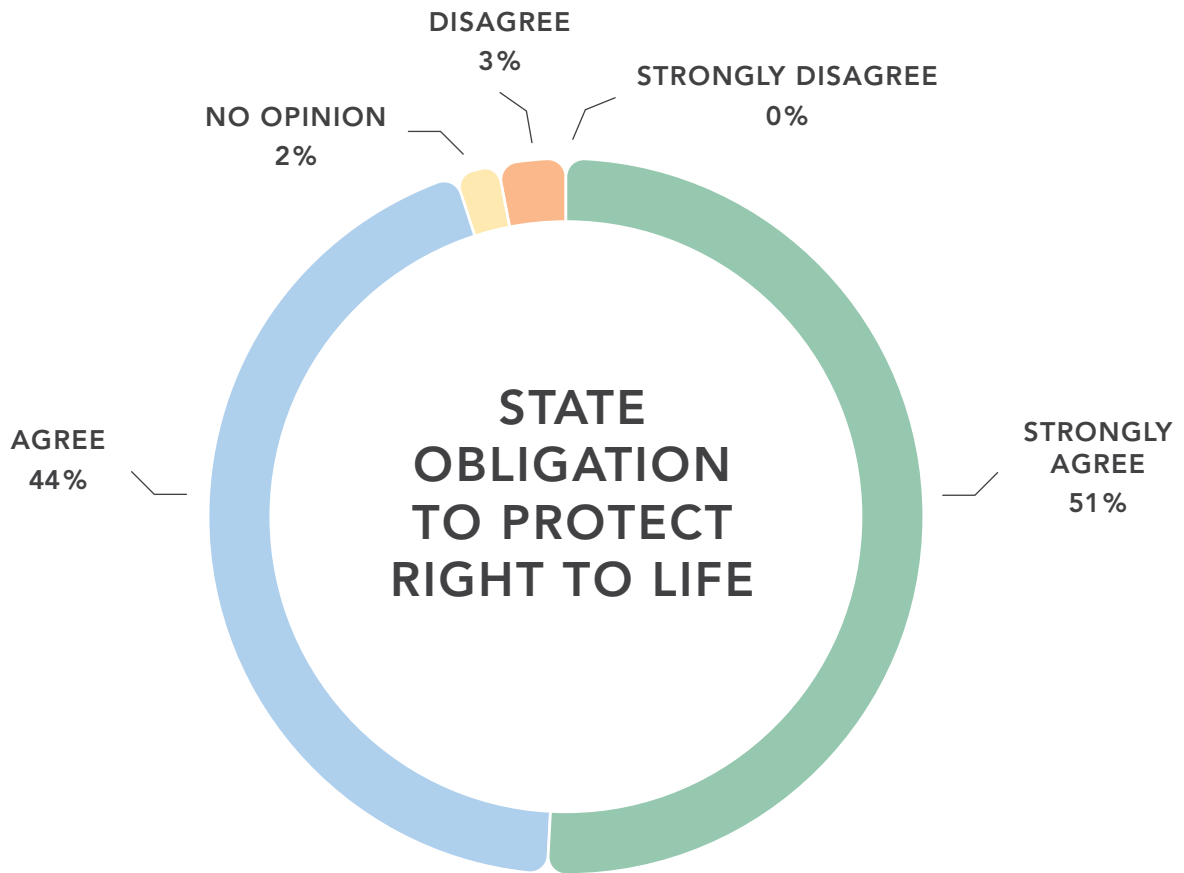


Figure 7: "I think the State should protect my right to enjoy a basic standard of life, so that I have enough food, my children can go to school, I have a stable income and I can get treatment if I am sick."

Source: Author's own

The proposed Pacific Charter on Human Rights could present an ideal opportunity to do so.<sup>30</sup>

Avoiding the cultural reality is not the solution to the problem of parallel systems. States need to recognize their obligation to protect both host communities and migrants, to treat them with dignity and respect, and to guarantee that this happens across their entire territory. International refugee law might not include environmental threats as factors of persecution or conflict,<sup>31</sup> but this does not exempt states from addressing the needs and rights of all the people fleeing from the impact of climate change under their jurisdiction. In the case of SIDS, most of them poor and with limited resources, governments need to understand that, despite their interest in economic growth, sustainable economic growth will not happen without the realization of political, economic, civil and cultural rights. In fact, economic growth and the recognition of rights go hand in hand and might indeed be the only option for Pacific islands.

In this sense, a human rights-based approach to migration in regards to climate change is key. Newly developed policies and frameworks addressing climate-related migration need to align with human rights standards, place migrants at the very centre and carefully consider the special needs of marginalized communities and vulnerable groups. Measures such as including migrants in “relevant national action plans and strategies” could be a significant step forward.<sup>32</sup>

However, it also needs to be stressed that for an efficient human rights-based strategy to climate change, cooperation and engagement of all actors involved is vital at national,

regional and international levels. Initiatives aimed at educating on human rights and capacity-building need to build on a deep understanding of how communities perceive their own individual rights in their daily lives as compared to custom practices. Communities need to be seen as key partners in developing a human-rights approach to migration and climate change and recognized as the ground on which to build a robust response for the near- and long-term future.

### THE CASE OF TORTURE

Vanuatu is a party to five of the nine core human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR)<sup>33</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>34</sup> In comparison, Fiji has not formally ratified the ICCPR. Indeed, even though the Constitution and the Crimes Decree forbid torture and other ill-treatment, extensive immunities such as the Public Order Act Amendment Decree (POAD) authorized the government in Fiji to use whatever force it deemed necessary to enforce public order. In a clear expression of its willingness to break with previous practices of serious human rights violations,<sup>35</sup> Fiji signed the Convention against Torture<sup>36</sup> in March 2016 and created a Human Rights Commission.

Aligning domestic legislation accordingly is a crucial step towards developing a culture of respect for human rights. Nevertheless, any legal commitment to international standards or lack thereof at the national level is not necessarily reflected at the community level. As such, the proportion of people who feel the use of torture by the community leader can be justified

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30 [http://www.hurights.or.jp/archives/other\\_documents/section1/1989/03/draft-pacific-charter-of-human-rights.html](http://www.hurights.or.jp/archives/other_documents/section1/1989/03/draft-pacific-charter-of-human-rights.html)

31 <http://theconversation.com/pacific-countries-advance-regional-policy-towards-migration-and-climate-change-70632>

32 <http://www.ohchr.org/EN/Issues/Migration/Pages/MigrationAndHumanRightsIndex.aspx>

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33 (2011), [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en)

34 (2008), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

35 <https://www.amnesty.org/en/countries/asia-and-the-pacific/fiji/report-fiji/>

36 <https://un.org.au/2016/03/18/un-human-rights-office-welcomes-fijis-ratification-of-anti-torture-treaty/>

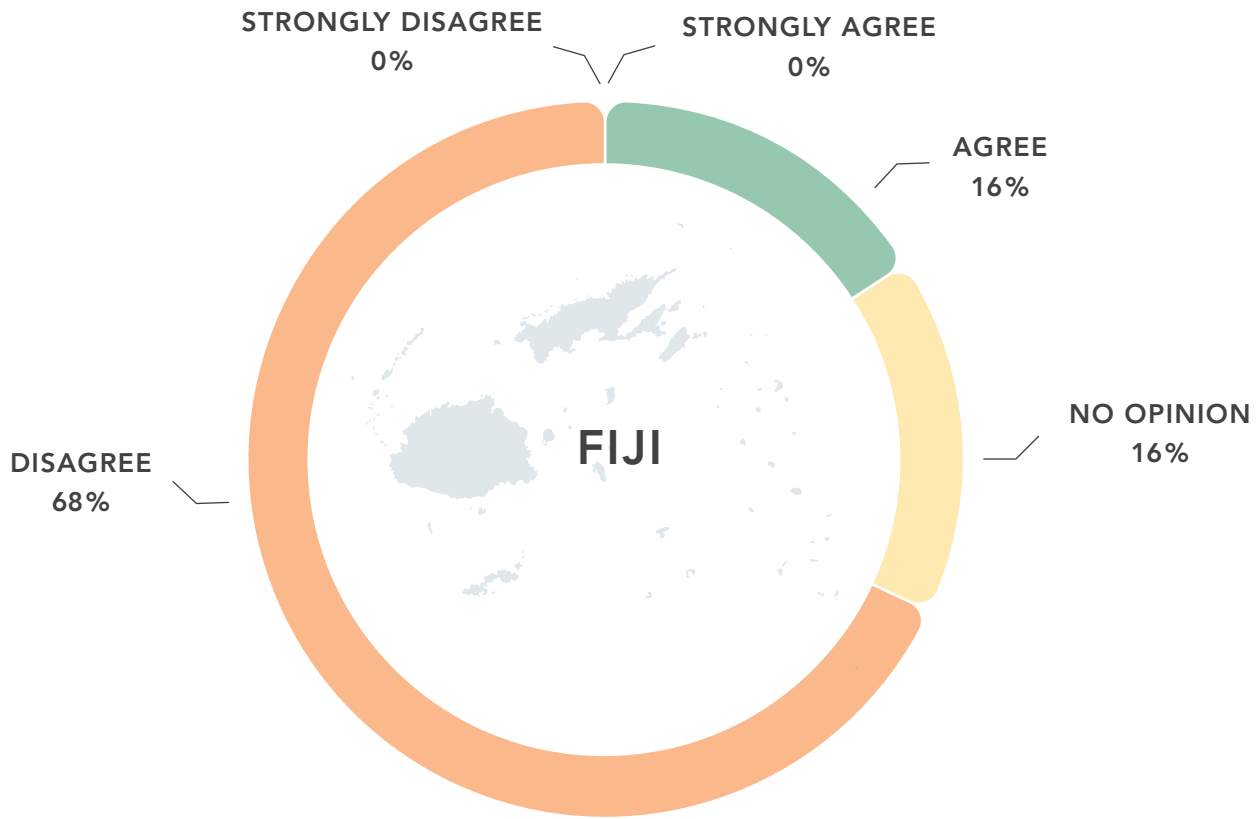


Figure 8a: "Punishments that are cruel, inhumane and a form of torture are justified; they prevent criminal activity and keep me safe."

Source: Author's own

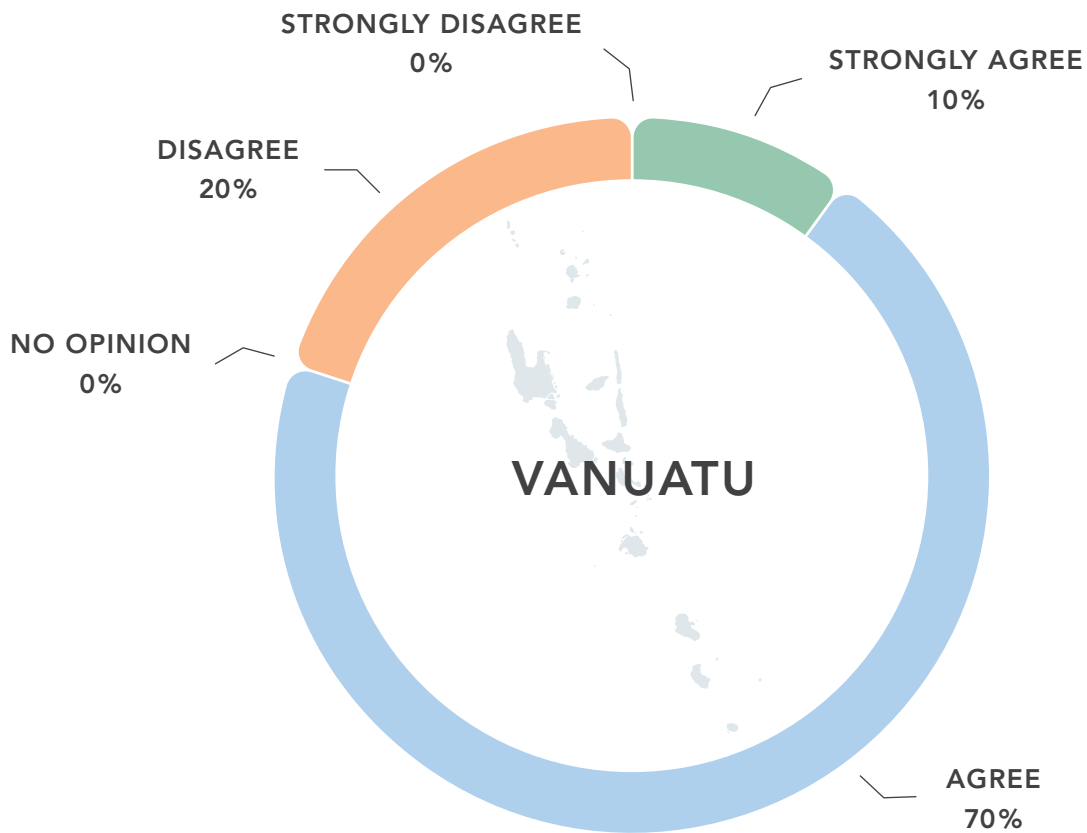


Figure 8b: "Punishments that are cruel, inhumane and a form of torture are justified; they prevent criminal activity and keep me safe."

Source: Author's own

was found to be 80 per cent in Vanuatu, despite the country's efforts to protect human rights. Only 16 per cent of those interviewed in Fiji were supportive of torture, as shown in figure 8a and 8b (p. 8).

These obstacles standing in the way of greater respect for human rights standards, constitute a significant barrier in the regional protection towards the impact of climate change. With limited financial resources of their own, island states often depend on the international community to be able to afford to meet their people's needs. The Paris Agreement, for instance, requires a commitment and respect towards human rights prior to granting access to funds with which to address climate change. Given the enormous vulnerability of the Pacific people to extreme weather conditions already tangible today, this situation not only undermines the overall response to climate change on the ground but leaves entire communities, especially those already on the move, unprotected.



## RECOMMENDATION 6

### Promote full civil participation through a continuous dialogue with local communities

Dialogue among state authorities and local communities might be challenging as the latter are usually spread over different islands, face different realities and needs and have their own custom. Despite this, local communities need to be recognized as crucial partners through which to gain a deeper insight into their individual realities. Indeed, from an early stage, local communities have a key role to play and should “be engaged as key actors in designing plans, activities and solutions that are of relevance to them”.<sup>37</sup>

Promoting full civil participation through periodic consultations on different topics would establish a bottom-up channel, as opposed to the top-down direction in which implementation of international treaties often occurs. It would help Pacific governments on the one hand to give communities the opportunity to voice their concerns and feel engaged and, on the other hand, allow governments to understand first-hand the needs of their people and respond accordingly. With regards to human rights and openness to migration, full civil participation would give governments the ability to better understand the standpoint of each individual community and target its approach accordingly, further allowing them to develop and implement successful integration measures.

The findings of this research suggest that communication between communities and their leaders on the one side and the government on the other need to be developed and improved upon. In both Fiji and Vanuatu, people agreed with the statement that the government take the opinions and views of the community leaders into consideration. This does not mean, however, that they feel their needs are being met. In fact, on both islands, the research found that communities did

not always feel their leaders were capable of supporting them through hardships such as not having enough to eat, employment or medicine. Similarly, people were found to be divided in their belief that their governments are able to solve these problems. In this context, developing appropriate mechanisms for inclusive and periodic stakeholder consultations, including among those in more remote areas, would enable better targeted responses.

Given the cultural and political sensitivity of climate-related migration and its consequences, any consultations would need to be accompanied by outreach efforts that would disseminate all the relevant information to communities, thereby allowing them to make informed decisions. The development of a robust system of communications, including access to the internet and to radio, would help foster this. Such a commitment to ensuring communities have a genuine say in the development of policies that will affect them and their home islands will not only make people feel more engaged with the process, it will also ensure governments and other actors are able to draw on more information on which to base their policy decisions.

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37 <http://www.forumsec.org/resources/uploads/embeds/file/Annex%201%20-%20Framework%20for%20Resilient%20Development%20in%20the%20Pacific.pdf>



## RECOMMENDATION 7

### Conduct further research on human rights and migration in the wake of climate change in the Pacific

Climate change is often referred to as the defining challenge of our time. Indeed, it presents increasingly tough challenges to people in the Pacific region. Already experiencing the adverse effects of changing climate patterns and extreme weather conditions, large numbers of Pacific people, potentially even entire nations, face being displaced from their homes and losing their livelihoods. And yet, despite the efforts made by the international community to tackle the issue, little is known about how efficiently international climate law is actually addressing the complex connections between climate change, migration and human rights.

Building on the findings of this and several related reports, more research needs to be carried out into how the existence of two legal systems, one of them intended to respect and recognize custom as a legal source, might be undermining people's human rights. Customary law is often not only unwritten and thus difficult to cite, but also diffuse and diverse. Despite this, governments need to explore and interiorize the way in which communities understand their own and other people's rights, the discrepancies among the two legal systems and how this affects members of a community. This needs to be the starting point from which to develop a framework that guarantees human security for everybody, especially those losing their land, sources of income or livelihoods.

Indeed, at present the probable local-level effects on Pacific island territories and countries are poorly understood. What is known is that the variable impact on livelihood, land and habitat security across the region and within countries will force people to adapt and move to secure their survival. The tropical cyclone Pam brought devastation to Vanuatu in March 2015 and forced a quarter of its population to flee their homes. The

effects of the cyclone were also felt on other islands, leaving around 166,000 people on 22 islands in need of emergency assistance, including nearly 65,000 internally displaced people (IDP) who required emergency shelter.<sup>38</sup> While nations recover from the loss and damage caused by cyclones and typhoons, they experience food insecurity as they need to find new ways to plant their crops, and new places to fish and adapt to a new livelihood, sometimes in a different place than before.

There needs to be more human rights-based research into the economic, social, cultural, psychological and environmental costs of climate change-related migration for those on the move, as well as for host communities and those who choose to stay in their homeland. This report points to the contradictory feelings community members have towards migrants and their rights. Even though all the people interviewed in Vanuatu strongly agreed with the need to make place on their island for people forced to leave their own homes due to natural hazards, in Fiji as many as 46 per cent of people did not share this view. Both communities did not see it as the responsibility of the state to help migrants as it should focus on its own citizens (95 per cent agree in Vanuatu, 91 per cent in Fiji). They cited a number of socio-economic factors such as competition for jobs and land (33 per cent of total), different cultural practices (37 per cent of total), the inability of migrants to integrate (19 per cent), and competition for natural resources mainly land related (11 per cent) as the main reasons for not making space for people from neighbouring islands. These potential sources of conflict add to the communities' perception of migrants posing a threat to their own culture and way of life, potentially leading to social instability and conflict.

Indeed, climate change is a contributing factor to instability in the region. However, the extent of its multiplying effects, where other interrelated factors and vulnerabilities force populations to migrate are present, remains largely unknown.<sup>39</sup> Thus, as the Pacific suffers severely from losses and damages,

38 Global report on international displacement 2016 – GRID 2016.

39 <https://i.unu.edu/media/gcm.unu.edu/publication/2399/EXTENDIDAS-BAJA-PACIFIC-REPORT.pdf>

island governments should support research at interdisciplinary and cross-disciplinary level so as to understand, address and combat these regional threats. With this in mind, strengthening national capacity to support the collection and dissemination of information, as well as greater analysis of what the root causes are for people choosing to migrate, is essential. Similarly, more work needs to be done to assess the extent of the impact of climate change on migration, and to identify groups most vulnerable to extreme weather conditions.

Along the same lines, field research at the local level would offer a greater understanding of the specific needs of individual communities and help create channels to make assistance reach also those most in need. As mentioned in a previous report on the Pacific by the United Nations University,<sup>40</sup> the collection of data on the scale and patterns of possible climate change-related migration continues to be scarce, making it hard for Pacific governments to address the problem. Collecting household-level information requires a common methodology to evaluate environmental migration in the region. This would need to be developed and agreed on in order to be able to compare data and address the issues from a regional perspective. A joint bottom-up approach would not only help the collection of data but would alleviate the pressing need for knowledge on how adaptation, migration and environmental policy and strategies could be integrated, and encompass both community and national perspectives.

Of special relevance in this context are the most vulnerable communities. For example, the gender implications of climate change-related migration are very much underresearched and thus not well understood. Often, migration data is not disaggregated by gender, impeding further analysis of the gender implications of climate-related migration. This need for additional research becomes especially urgent in the context of rigidly patriarchal societies like those of the Pacific region, where there are generally no laws specifically

outlawing harmful practices against women.<sup>41</sup> Indeed, patriarchy extends from the rules governing domestic relations to land tenure,<sup>42</sup> with many practices indirectly sanctioned as being part of customary law. For instance, a 2009 study found that in Fiji, as a response to perceived racism and ethno-nationalism, young girls were being married off by their parents to men who were overseas nationals in the hope of securing for them a materially good life abroad, without any consideration of the feelings of the girls themselves or whether their lives were being put at risk.<sup>43</sup> In Vanuatu, cases involving the kidnapping and unlawful imprisonment of women highlight what seems to be a persistent problem with the violation of women's rights in the region.<sup>44</sup> It is not clear whether these and other practices are still a recurrent pattern, and more insight into the gendered characteristics of migration and other vulnerable populations within and beyond the Pacific is needed, in order to incorporate this information and a human rights-based strategy into migration and integration policies alike.

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40 <https://i.unu.edu/media/gcm.unu.edu/publication/2399/EXTENDIDAS-BAJA-PACIFIC-REPORT.pdf>

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41 Jalal Imrana (2009): "Harmful practices against women in the Pacific Island countries: customary and conventional laws", United Nations Division for the Advancement of Women, Pacific Regional Rights Resource Team (RRRT/SPC).

42 Ibid.

43 UN ESCAP (2009): "Pacific Perspectives on the Commercial Sexual Exploitation and Sexual Abuse of Children and Youth".

44 Jalal Imrana (2009): "Harmful practices against women in the Pacific Island countries: customary and conventional laws", United Nations Division for the Advancement of Women, Pacific Regional Rights Resource Team (RRRT/SPC).



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# Imprint

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Institute for Environment and Human Security (UNU-EHS)

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Layout: Aileen Orate

Proofreading: Etienne Leue, Janine Kandel

Design of figures: Marta Guasp Teschendorff

Print: DCM Druck Center Meckenheim GmbH

Print run: 300

The views expressed in this publication are those of the author(s).

Publication does not imply endorsement by the  
United Nations University of any of the views expressed.

ISSN: 2075-0498

e-ISSN: 2075-0501

ISBN: 978-3-944535-53-1

e-ISBN: 978-3-944535-54-8

For further information: [www.ehs.unu.edu](http://www.ehs.unu.edu)



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