Human Rights in the Digital Age:
State of Play across Commonwealth Pacific Countries

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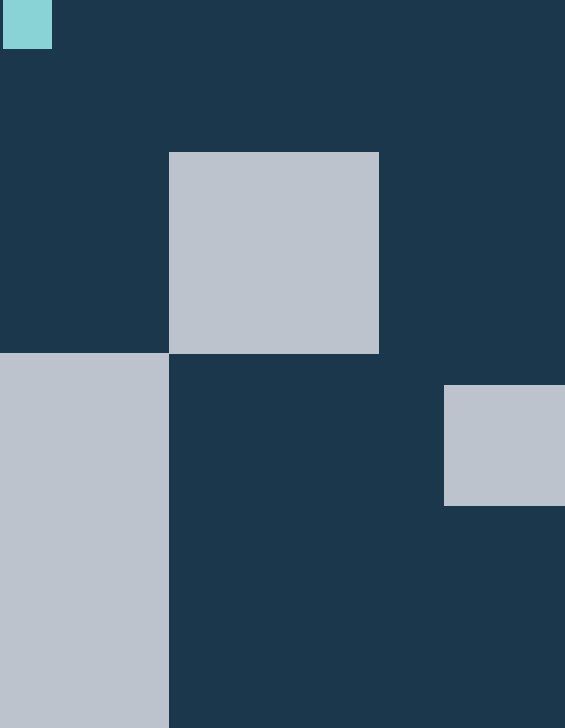# Acknowledgments

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Executive summary

Commonwealth Pacific Island countries are generally committed to the protection of human rights, with constitutional protections broadly in line with international human rights law and standards. Notably, international commitments in a number of countries are relatively recent, with Papua New Guinea, Samoa and Vanuatu ratifying the ICCPR in 2008, and Fiji in 2018. According to Freedom House, all countries in the region are classified as either 'Free' or 'Partly Free'.

The **relationship between human rights and digital technologies is a relatively novel concept** for local actors, and discussions around it are nascent and often superseded by other policy concerns, such as climate change.

To a large extent, this can be explained by the fact that **affordable access to ICTs remains a key challenge** across the region. While internet penetration rates vary from country to country (from 11% in Papua New Guinea to 57% in Nauru)[1], they are still relatively low, and **improving connectivity is a key digital policy priority**, often accompanied by ambitious country-level targets and supported by investments from international donors. So far, due to the geography of the region and a lack of technical infrastructure, ensuring access to ICTs has been difficult and expensive, although where connectivity is available, Pacific citizens are actively using social media and messaging apps. Efforts to increase connectivity will likely lead to greater discourse on digital policy and its impact upon the enjoyment and exercise of human rights online. Furthermore, it is likely that pre-existing human rights issues facing local communities will be amplified in the digital environment.

Mirroring trends in other regions of the world, greater connectivity and digital uptake in countries in the Pacific have been followed by a **proliferation of associated legal and policy frameworks**, and measures to address challenges brought about by digital transformation.

Apart from the aforementioned access-related policies, cybersecurity and cybercrime are two policy areas getting increased attention among policymakers, manifested, in particular, by an increase in the number of **laws and policies** aimed at **curbing criminal activity online**. From a human rights perspective, this can be a double-edged sword: while strong cybersecurity and cybercrime frameworks, properly enforced, can be enablers of human rights, they can also undermine them if criminal offences are overly broad, investigatory powers too sweeping, or adequate safeguards are absent. Among Commonwealth Pacific Island countries, there is great divergence in these frameworks. While some closely align with international best practice, such as the Budapest Convention, others have led to the creation of inappropriate criminalisation of online speech for solely political or moral reasons. The fact that the issue has risen on the policy agenda is generally positive but ensuring that the emerging frameworks are rights-respecting will require continued and conscious effort and support.

The need for rights-respecting cybersecurity frameworks is compounded by an obvious legislative gap in the region – the **absence of data protection frameworks**. Countries across the region generally lack comprehensive data protection frameworks and this is a major gap in guaranteeing citizens' right to privacy.

Across the region, implementation of new laws and policies has been hindered by **structural challenges**, including the lack of appropriate enforcement mechanisms, limited capacity and resources.

A worrying trend in the region is an **increase in the number and type of restrictions on online platforms**, including the blocking of popular social media websites such as Facebook (as well as threats to block) and providing greater powers for courts to order the removal of legal online content. Combined with the broad speech-based offences included under certain pieces of cybercrime legislation, the overall environment is one where risks to freedom of expression are increasing.

When it comes to civic space, governments and policymakers in Commonwealth Pacific Island countries are demonstrating an **increased openness to stakeholder engagement in the development of legal and policy frameworks** related to digital technology. Across the region, the civil society landscape is very active, and groups are starting to comment on issues related to human rights online. There is however still a limited capacity among civil society organisations to engage in the development of digital legal and policy frameworks.

Recommendations

Based on these findings, the following recommendations are offered for consideration when developing and rolling out efforts to strengthen human rights in the digital age and civic engagement in the region:

1. Support efforts to ensure that responses to challenges posed by internet and digital technologies –including legal and policy frameworks and other related measures– are human rights-respecting and developed through open, inclusive and transparent approaches.
2. Foster and facilitate Pacific regional dialogue(s) aimed at discussing and defining the scope and a shared taxonomy for what human rights in the digital age means to the governments and peoples of the Pacific, informed by international human rights standards.
3. Identify, empower, and resource key stakeholders within Commonwealth Pacific Island countries to monitor the state of human rights online in the region, and assess current data sources and collection protocols to inform the design and delivery of initiatives in the region.
4. Leverage existing forums and/or platforms for discussion and information sharing between governments on policy issues about human rights in the digital age, sharing of good practices, engagement with the private sector, and opportunities for regional cooperation, among others.
5. Ensure the planning and roll out of internet infrastructure in Commonwealth Pacific Island countries takes into consideration key accessibility issues and digital divides.
6. Explore innovative financing mechanisms to increase the scale and sustainability of human rights in the digital age capacity development programmes and interventions across Commonwealth Pacific Island countries.
7. Ensure that robust monitoring, evaluation and learning frameworks are built into any human rights in the digital age capacity development programmes and interventions implemented in the region.
8. Identify, empower, and resource relevant stakeholders in the criminal justice system in Commonwealth Pacific Island countries to ensure there is capacity for authorities including law enforcement and the judiciary to undertake relevant functions consistent with international human rights standards.
9. Identify, empower, and resource relevant stakeholders to promote cybersecurity culture and skills in the Pacific through awareness raising of issues regarding human rights in the digital age and Pacific specific impacts / challenges.
10. Identify, empower, and resource Pacific Island nation Education Ministries and other relevant stakeholders to incorporate human rights in the digital age education initiatives and curriculum throughout the education system.

Introduction

The rise and evolution of the internet and digital technologies has brought about new opportunities and challenges for communities around the world to exercise and enjoy their human rights – including freedom of expression, freedom of assembly, and the right to privacy. However, while it is now widely accepted that the same rights that people have offline must also be protected online, building a rights-respecting digital environment is not a given.

As the socio-economic environment continues to evolve, communities around the world struggle to adapt to the new reality and address challenges brought about by the increased reliance on digital technologies and the internet. The 2020 COVID-19 crisis has only accelerated digital transformation, and further exacerbated these challenges.

This report, commissioned by the UK Foreign, Commonwealth & Development Office, examines the state of human rights in the context of the digital age in nine Commonwealth Pacific Island countries[2] and seeks to provide recommendations for future capacity building efforts in the region.

To assess the state of play, the report explores the regional context and provides a critical assessment of measures that have the greatest impact on human rights in the digital age, be it positive or negative. These include the legal and policy frameworks and mechanisms relevant for their implementation, as well as measures and actions independent from any legal frameworks, that may have an impact on human rights. To complement this analysis, the report provides an assessment of civic space in the region, examining the extent to which civil society and individuals are able to play a role in the political, economic and social life around them.

Based on these assessments, the report offers a set of recommendations to help inform future capacity building efforts in the region. While aimed primarily at potential funders, the report and its recommendations are aimed at any local or international practitioners interested in harnessing the opportunities brought about by digital technologies and building a more inclusive and rights-respecting digital environment.

Methodology

Research question, definitions, assumptions

This report examines the state of human rights and civic space in the context of the digital age in nine Commonwealth Pacific Island countries: Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu (= dependent variable).

'Human rights in the digital age' are defined as the extent to which individuals are able to exercise and enjoy their human rights as they are impacted by the internet and other digital technologies. This extends to the full range of internationally recognised human rights as contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

To assess the extent to which individuals are able to exercise and enjoy their rights, the report relies on a set of measures (= independent variables) that are seen to have the greatest impact on human rights in the digital age, be it positive or negative. These include (1) legal and policy frameworks, (2) any structures or mechanisms relevant for their implementation, as well as (3) measures and actions that may be independent from the respective legal frameworks, both state and non-state, that may have an impact on human rights. In addition, the report examines (4) Commonwealth Pacific Island countries' engagement in relevant international forums.

The specific legal and policy measures which are considered to have the greatest impact on human rights in the digital age include:
- Legal and policy measures which enable access (including affordability) to the internet and digital technologies, and levels of access and digital literacy.
- The legal and policy frameworks on data protection and privacy, and its enforcement (including through an effective data protection authority);
- The legal and policy frameworks on cybersecurity and cybercrime;
- The legal and policy frameworks on surveillance and other investigatory powers which use the internet and digital technology, or monitor such use;
- The legal and policy frameworks which regulate online platforms, including intermediary liability and the types of content which are prohibited.

'Civic space' is defined as the extent to which civil society and individuals are able to play a role in the political, economic and social life around them. While seen as a dependent variable in its own right, the nature of civic space has a strong positive correlation with human rights and is also considered here as an input measure for our human rights assessment. To assess the state of civic space in a country, the report takes into account structural and behavioural measures, in addition to the civil society landscape itself, its strength and vibrancy.

This research relies on a number of core assumptions:
- Human rights offline = online;
- Ability to exercise one's rights is impacted by both structure and agency;
- Laws and policies correlate with human rights – rights-respecting laws and policies lead to greater enjoyment of human rights;
- Civic space correlates with the development of laws and policies – open, inclusive and transparent policy processes lead to more rights-respecting laws and policies;
- Development and use of digital technologies shape the development of laws and policies, and vice versa.

Data collection and analysis

The Pacific region includes a diverse and vibrant range of countries and cultures. Researchers that participated in this project have prior experience working in the region and consideration was made of this diverse range of cultures and their respective communication practices in the design and implementation of the research methodology.

The research for this report relied on a combination of primary and secondary data sources collected through desk-based research, responses to an online survey questionnaire distributed among stakeholders from the region, and a focus group discussion facilitated by researchers using a semi-structured interview guide with a select group of experts.

A combination of purposive and convenience sampling was utilised in the selection of participants from both the online survey questionnaire and focus group discussion. Participants were selected based on their availability during the data collection period and their expected ability to represent key knowledge and experience of the current state of human rights and civic space in the context of the digital age in one or more of the nine Pacific Island countries of the Commonwealth.

The online survey questionnaire was distributed to 38 participants, with twelve participants providing feedback. Of the participants that provided feedback, 41.6% (5) were female, and represented a range of stakeholder groups including: government agencies (50%, 6), non-government organisations (16.6%, 2) and research institutions (33.3%, 4). Participants came from six Pacific Island countries including: Fiji (33.3%, 4), Kiribati (8.3%, 1)[3], Papua New Guinea (8.3%, 1), Tonga (8.3%, 1), Tuvalu (8.3%, 1) and Vanuatu (8.3%, 1). Five participants joined the focus group discussion, and 40% (2) of them were female. The group included representatives from various stakeholder groups including government agencies (20%, 1), law enforcement (20%, 1), non-government organisations (40%, 2) and research consultants (20%, 1). Participants came from three Pacific Island countries including: Fiji (40%, 2), Tuvalu (20%, 1) and Vanuatu (20%, 1)[4].

To analyse the data collected, researchers used qualitative data analysis techniques, including content analysis, descriptive analysis and inferential analysis. Initial findings were validated through a focus group discussion.

Methodology constraints and mitigation

A key constraint in this process was data availability, owing to the lack of any pre-existing comprehensive datasets that track relevant policy and legal developments in the region and their human rights impact. This was further exacerbated by the COVID-19 Global Pandemic, limiting access to participants in the region, and restricting primary data collection to virtual data collection techniques. To account for constraints relating to the reliability and validity of data and its findings, research relied on data triangulation: where possible, secondary data sources were corroborated by primary data sources, and quantitative data was corroborated by qualitative research and vice versa. In addition, the focus group discussion was designed specifically to test the validity of research findings.

Regional context

Country	Total Population[5]	Internet Penetration Rate[6]	Freedom in the World Score[7]	CIVICUS Monitor Rating[8]
FIJI	889,950	50%	60/100 - Partly Free	Obstructed
KIRIBATI	117,610	15%	93/100 - Free	Open
NAURU	12,580	57%	77/100 - Free	Obstructed
PAPUA NEW GUINEA	8,776,110	11%	62/100 - Partly Free	Obstructed
SAMOA	197,100	34%	81/100 - Free	Open
SOLOMON ISLANDS	669,820	12%	79/100 - Free	Open
TONGA	104,490	41%	79/100 - Free	Narrowed
TUVALU	11,650	49%	93/100 - Free	Open
VANUATU	299,880	26%	82/100 - Free	Narrowed

Commonwealth Pacific Island countries are spread across the three Pacific subregions: Melanesia (Fiji, Papua New Guinea, Solomon Islands and Vanuatu), Micronesia (Kiribati and Nauru) and Polynesia (Tuvalu, Tonga and Samoa). Whilst there is some variation in population size across these countries[9], Commonwealth Pacific Islands tend to have relatively small populations, making them close-knit communities.

Given the geographical remoteness of the region, and governments swiftly imposing border closures, Pacific Islands have so far avoided a large-scale outbreak of COVID-19.[10] However, the Islands have not been spared the economic fallout of the pandemic. With economies that are heavily reliant on foreign tourism, travel restrictions have had a huge effect on the region. Other risk factors arising from the pandemic include declining public health, due to trade restrictions limiting access to nutritious foods,[11] and the spread of false and harmful information online[12].

Whilst the political landscape in the Pacific is varied, Commonwealth Pacific countries tend to hold regular democratic elections and the outcomes are usually respected[13]. Corruption remains a risk in the region, however governments are taking steps to mitigate the risk, including the establishment of independent commissions, such the Fiji Independent Commission Against Corruption (FICAC) and the Solomon Islands Independent Commission Against Corruption (SIICAC).[14]

According to the Freedom in the World country reports for 2020, human rights are broadly upheld in Commonwealth Pacific Island countries; and human rights protections are outlined in the Constitutions of all nine countries studied as part of this report. Instances of police violence have still been reported[15] and some forms of discrimination persist, most notably the criminalisation of same-sex sexual activity and gender bias[16]. Violence against women and girls is also a concern[17] and there are a number of civil society organisations and government initiatives working to combat this issue[18]. Recent events have further exacerbated gender-based violence, with a reported rise in domestic violence cases since the start of the COVID-19 pandemic[19] and instances of sexual assault taking place at evacuation centres in the aftermath of Cyclone Yasa[20].

It is important to note that the Pacific Islands are acutely vulnerable to the effects of climate change and this impacts policy priorities in the region. In Kiribati, coastal communities have been deeply impacted by rising sea-levels, with the government implementing a 'migration with dignity' policy as part of a nationwide relocation strategy.[21] Tuvalu faces a similar battle, but the government is focusing its efforts on adapting to changing weather patterns, rather than migration[22]. Recently, extreme weather conditions have further devastated parts of the region. In December 2020, Cyclone Yasa swept through the South Pacific, with high winds leading to broken power lines, flooding and landslides in Fiji. Many homes and crops were destroyed, and thousands of people displaced to evacuation centres across the country[23].

In terms of international representation, Fiji recently became the first Pacific Island nation to win the presidency of the UN Human Rights Council with Nazhat Shameen Khan, Permanent Representative of Fiji, being elected as president. This is a major advancement for the region in terms of international representation and engagement. The Pacific is also at the forefront of developing national mechanisms for implementation, reporting and follow-ups (NMIRF's) which support states in applying international human rights standards to their local context[24]. In July 2020, the Pacific Principles of Practice were published, providing a guide to establishing effective NMIRF's on human rights and development commitments.[25] The principles reflect lessons learnt from the Pacific Regional NMIRF Dialogue held in 2019 and so far, Fiji, Kiribati, Papua New Guinea, Samoa and Vanuatu have all signed up to them.

There are also a number of regional governance forums and advocacy networks operating across Commonwealth Pacific Island countries. These groups bring together governments and other organisations to share information, collaborate and contribute to policy development. Given the geographical remoteness of the region and the relative size of Pacific Island countries, regional cooperation plays an important role in addressing common concerns and representing the perspective of the Islands at the global level. Notable regional organisations / networks include:

- The **Pacific Islands Forum (PIF)** is an influential policy organisation that brings together Pacific Islands nations, fostering cooperation between governments and collaboration with international organisations. PIF represents its member countries at regional and international forums, such as Council for Regional Organisations in the Pacific (CROP) and the United Nations. It has also played a role in highlighting human rights concerns[26]. Until recently, all nine Commonwealth Pacific Island countries were members of PIF. In February 2021 several Micronesian members of PIF, including Kiribati and Nauru, left the organisation citing a lack of inclusivity.[27] This followed the appointment of former Cook Islands PM, Henry Puna, as the new secretary-general, rather than a candidate from the Micronesia sub-region.[28] The loss of an entire regional sub-group is significant for the PIF and it remains to be seen how this will impact regional relations and cooperation going forwards.

- The **Pacific Community (SPC)** is a scientific and technical organisation that contributes to the development goals of its member nations in the Pacific. The SPC, jointly with the UN Human Rights office, has put together a report on the impact of government responses to COVID-19[29]. Whilst the report is not publicly available yet, it reportedly analyses how measures, such as declaring a national state of emergency, can potentially impact human rights, in particular the right to education and employment. All nine Commonwealth Pacific Island countries are members of the SPC. SPC also has a human rights programme, the Regional Rights Resource Team (RRRT), which provides research and policy services, technical assistance and capacity building support to SPC member states and civil society.

- The **Pacific Freedom Forum (PFF)** is a regional media organisation that monitors threats to journalism and press freedom. PFF has frequently commented on digital policy issues in the region, including the lack of consultation around Samoa's 2018 revival of the criminal libel law[30] and the blocking of journalists from entering Kiribati to report on the MV Butiraoi ferry disaster in 2018[31].

- The **Pacific Cyber Security Operation Network (PaCSON)** is a cybersecurity network consisting of cyber and technical experts from eligible countries in the Pacific region - individuals from all nine Commonwealth Pacific Island countries are eligible to join. PaCSON coordinates activities to benefit regional cybersecurity incident response capabilities through promoting collaboration and information-sharing.

- The **Asia Pacific Network Information Centre (APNIC)** is the Regional Internet Registry (RIR), for the Asia Pacific region. As one of the world's five RIRs, and part of the Number Resource Organization (NRO), APNIC provides registration services and numbers resource allocation to support the global operation of the internet. APNIC also provides a forum for internet policy development and supports its members in the region to develop technical skills.

- **Pacific Islands Association of Non-governmental Organisations (PIANGO)** is a regional network of NGO coordinating bodies that works to build the capacity of civil society organisations, facilitate and support coalitions and strengthen the impact of NGO efforts in the region. PIANGO works directly with national NGO umbrella organisations in each of its member countries, known as National Liaison Units (NLUs).

- The **Asia Pacific Cybersecurity Engagement Network (APCEN)** is a multistakeholder information-sharing network aimed at addressing cybersecurity challenges in the region. It brings together like-minded organisations to share information and facilitate engagements in relevant cybersecurity processes.

- The **Pacific Islands Law Officers' Network (PILON)** is a network of senior legal practitioners that work to improve justice, safety and the rule of law. This is achieved by sharing expertise, strengthening regional collaboration and building the capacity to advance law on key priority issues. From 2019 - 2021, cybercrime was identified as one of PILON's 3 strategic priorities, along with gender-based violence and corruption.

Human rights online: Regional trends and findings

Legal and regulatory environment

The Commonwealth Pacific Island countries have relatively strong commitments to human rights through the ratification of international treaties such as the International Covenant on Civil and Political Rights (ICCPR), and through constitutional protections on human rights such as freedom of expression and privacy. Some of those international commitments are relatively recent, with Papua New Guinea, Samoa and Vanuatu all ratifying the ICCPR in 2008, and Fiji in 2018. Tonga acceded to the Budapest Convention in 2017 and other countries, such as Fiji and Vanuatu, have expressed an intention to accede as well.[32]

There are, however, notable exceptions as certain countries lack international commitments or have limited protections for human rights at the national level. For example, Kiribati, the Solomon Islands, Tonga and Tuvalu are not yet signatories or parties to the ICCPR. Moreover, while all countries protect freedom of expression at the national level, the Constitution of Samoa does not contain a specific provision on the right to privacy.

Access to the internet and digital technologies, digital literacy

Access to ICTs, including access to the internet, varies across Commonwealth Pacific Island countries[33] and **increasing connectivity is a key digital policy priority**. Due to the geography of the region and a lack of technical infrastructure, ensuring access to ICTs has been difficult and expensive[34], although where connectivity is available, Pacific citizens are actively using social media and messaging apps.[35] Projects such as the World Bank's work on Pacific regional connectivity and the Coral Sea Cable System (CS2)[36] are improving infrastructure and access to digital technologies, and this increased connectivity will likely lead to greater discourse on digital policy and its impact upon the enjoyment and exercise of human rights online. This is already evident in the dialogue around online safety and the need to protect vulnerable groups from abuse following the implementation of CS2.[37]

Many Commonwealth Pacific Island countries have developed and implemented policies which address internet access and the use of digital technologies more broadly. Nearly every country in the region has either published or is currently developing a national policy on ICTs. These policies often include specific objectives on infrastructure, reflecting a desire to invest more in robust digital infrastructure and connectivity, despite varying levels of economic development.

National ICT policies in the region address the private and public sector and set out specific objectives on providing equal or affordable access to ICTs. In doing so, they generally recognise both the economic and social benefits that are possible through increased access to digital technologies. For example, Kiribati's National ICT Policy 2019 includes government commitments to develop digital infrastructure and bridge the digital divide. It also contains specific references to providing universal, affordable and reliable access to ICTs, protecting children, and supporting education.

Data protection and privacy

Countries across the region generally **lack comprehensive data protection frameworks**, a major gap in guaranteeing the right to privacy online. Some countries do have limited protections in certain legislative provisions. For example, Fiji's Information Act 2018 provides individuals a right to petition for the deletion of false or misleading personal information online. In other countries, data protection provisions are often only binding on certain specific actors

such as telecommunications service providers. But even where protections are enshrined in law, these still fall short of international standards and best practice.

Some countries have recently acknowledged the need to develop more comprehensive data protection frameworks. Papua New Guinea's Government Digital Transformation Bill 2021 contains a number of provisions on data governance and the government is currently seeking input on laws and policies to protect personal, commercial, and government data. But drafts of specific data protection laws have yet to emerge across the region.

Cybersecurity and cybercrime

In recent years, Commonwealth Pacific Island countries have taken steps to address cybersecurity. All, except for Nauru and the Solomon Islands,[38] have undertaken a Cybersecurity Capacity Maturity Model (CMM) assessment.[39] These reviews are multistakeholder processes and entail an analysis of the current legal and policy frameworks on topics such as: IT security, privacy, human rights online, data protection, child protection, consumer protection, intellectual property and cybercrime. CMMs are a useful source of information to assess national cyber capacity and used to inform the development of national cybersecurity programs.[40] The Global Forum for Cyber Expertise (GFCE) has also appointed its first regional Pacific Liaison, Cherie Lagakali, to lead on a scoping assessment study to inform the creation of a new GFCE Pacific Hub, which will further support cyber capacity building in the region.

Efforts to develop laws and policies on cybersecurity and cybercrime vary greatly across the region, however, with some having comprehensive frameworks, and others little or no regulations or policies. Despite these differences, there is a **clear trend of governments seeking to tackle cybersecurity and cybercrime through specific legislation** as the threat of cybercrime and cyber-attacks becomes more widespread.

Tonga could be considered a regional leader when it comes to cybercrime as it modified its Computer Crimes Act in 2016 to align with standards set out in the Budapest Convention, to which it then acceded in 2017. Other countries across the region, including Fiji, Kiribati, and Tuvalu, have either recently passed cybercrime legislation, or are developing cybercrime legislation that seek to align with the Budapest Convention - often with international assistance from the Council of Europe, Australia, and other governments.

Few countries in the region have an official cybersecurity strategy or policy, but there are notable exceptions including Samoa and Vanuatu. The Samoa National Cybersecurity Strategy 2016-2021 includes a number of references to fundamental rights and international standards, and Vanuatu's 2013 National Cybersecurity Policy contains a similar objective of strengthening the legal framework with regard to protecting fundamental rights. A number of countries have professed a desire to develop their laws and policies as they relate to cybersecurity. Kiribati and the Solomon Islands are reportedly in the process of drafting National Cybersecurity Strategies, and Papua New Guinea is actively working on a National Cyber Security Policy and had a public consultation in early 2021.

Surveillance and other investigatory powers which use the internet and digital technology, or monitor such use

Most of the Commonwealth Pacific countries have developed legal frameworks relating to surveillance and the monitoring of online communications or the digital environment more broadly. Relevant provisions are found across a variety of regulations, including laws on communications and cybercrime, which set out the powers of the authorities and requirements

of service providers. It is difficult to assess how these frameworks are utilised in practice, but they often contain safeguards that seek to protect individuals' rights to privacy and freedom of expression online.

In Tonga, for example, the Computer Crimes Act requires that a magistrate approve a warrant for the collection or recording of any data through technical means. In Papua New Guinea, the Cybercrime Code Act 2016 requires the police to obtain a court order before demanding that a service provider produce data or assist in the collection or monitoring of electronic communications or data. But not all laws and policies on the monitoring and collection of digital communications align with international standards or best practice. In some countries, specific provisions found within communications regulations may be interpreted as empowering authorities to demand the decryption of encrypted communications by service providers.

Regulation of online platforms, including intermediary liability and the types of content which are prohibited

The **regulation of online platforms has increased** across the region in recent years. This trend is evidenced by the introduction of new laws or proposals relating to online safety, and the increased focus on online content and intermediary liability provisions. For example, Fiji's Online Safety Act 2018 criminalises certain forms of adverse online behaviour, including causing harm by posting an electronic communication or the posting of an intimate visual recording. Other countries in the region have laws containing similar prohibitions on harassment, or provisions on the dissemination of false information.

Many of these laws have been criticised by civil society organisations, international bodies, and other states because of their vagueness and lack of sufficient protections or safeguards for freedom of expression. A number of countries in the region, such as Kiribati, are currently in the process of reforming their legislation, particularly through new or updated cybercrime laws, to mitigate the risks that these provisions and obligations pose to freedom of expression online.

Structures or mechanisms relevant for implementation

The Commonwealth Pacific Island countries do not have one common approach to government structures and mechanisms that implement digital policy. In some countries, particularly those that are more economically developed or have more experience working on these issues, government structures and mechanisms are more effective in coordinating and implementing policy. These countries may have specific bodies devoted to one issue area, such as Fiji's newly created Online Safety Commission, which is responsible for educating the public about online safety and investigating complaints relating to online abuse. However, government departments and structures across the region have struggled to overcome challenges which limit their ability to successfully implement policy, including political instability, overlapping mandates, and insufficient resources and capacity.

Other relevant measures and actions

The Commonwealth Pacific Island countries have been placing greater attention to cybersecurity, cybercrime and online safety in recent years, and have implemented a number of measures to address the emerging challenges. The extent to which freedom of expression online is respected varies among these countries however, with some governments taking measures or actions which constitute illegitimate restrictions of this right. These measures, including temporary bans on Facebook in Nauru and Papua New Guinea, or threats to ban the platform by

Samoa, Tonga and the Solomon Islands, have been criticised as a means of silencing legitimate dissent. There are also more specific instances of governments in the region using criminal offences, including those introduced in recent years, to target critics or journalists.

International engagement / voting records on relevant issues

The Commonwealth Pacific countries have varying levels of engagement with the international community, including those which are particularly active and others that engage through existing regional initiatives such as the Pacific Islands Forum, or in more limited instances. However, Fiji can be seen as a regional leader in terms of its international engagement and was recently elected to the presidency of the UN Human Rights Council. The country is also actively engaged in the First Committee Open-ended Working Group on ICTs, is a member of ITU-IMPACT, works with an EU–ITU initiative in the Pacific Islands, participates in Asia–Pacific CERT forums, and has a history of working with the World Bank and Asian Development Bank.

In addition, Commonwealth Pacific Island countries have been engaging in UN discussions at the Open-Ended Working Group on developments in the field of information and telecommunications in the context of international security (OEWG). Representatives from Fiji, Tuvalu and Vanuatu delivered statements, on behalf of the Pacific Islands Forum, at OEWG sessions in 2020.

Civic space

In most Commonwealth Pacific Island countries, the civil society landscape is open with few restrictions on the registration and formation of NGOs. For the most part, civil society organisations are able to operate freely with limited interference from the government[41]. Whilst freedom of expression and assembly are generally upheld, there have been instances where these rights have been limited in practice[42].

Government openness to stakeholder engagement

There is a trend of increased openness from governments and policymakers to stakeholder input. This extends to digital policy and governments across the region have sought feedback on the development of legal and policy frameworks via public consultations and workshops. In Kiribati, the Ministry of Information, Communication, Travel and Tourism Development (MICTTD) held stakeholder workshops on the development of a National Cybersecurity Strategy in 2018.[43] There was also strong evidence of multi-stakeholder engagement on Tonga's Computer Crimes Bill 2019.[44]Similarly, the government in Vanuatu held a nationwide public discussion on the development of a new national cybersecurity strategy.[45] In allowing drafts to be public, digital policy processes in the region are becoming more transparent. There is also a greater use of online public consultations as a method for gathering input, allowing all interested parties, including those unable to engage in-person, an opportunity to provide feedback.[46]

In addition to processes being more open, there is some evidence of governments undertaking initiatives to increase inclusivity and to build stakeholder awareness and capacity to engage in digital policy processes. In February 2021, Tonga's National Computer Emergency Response Team (CERT Tonga), implemented a week-long awareness program on cyber threats and mitigation strategies for government actors, the private sector, Tonga police, schoolteachers and youth groups [47] A three-day ICT Workshop is also reportedly taking place in Papua New

Guinea to introduce stakeholders to the themes for the new ICT Policy and seek feedback. This demonstrates a positive step for governments identifying and engaging with relevant stakeholders and promoting a culture of cybersecurity awareness.

Civil society coordination and capacity

Civic engagement across Commonwealth Pacific Island countries tends to focus on traditional advocacy areas where international funding is readily available, such as health, women's rights, education and the environment / conservation efforts. Given the largely Christian population of the Pacific Island countries, faith-based organisations play a dominant role in civic life, undertaking advocacy work on issues such as public health, gender equality and human rights[48]. Digital policy is fairly new to actors in the region and there is a limited capacity to engage in the development of legal and policy frameworks regarding digital policy. Despite this, some civil society organisations have started to work on these issues and the current digital policy priorities appear to be accessibility and online safety (particularly for women and children)[49]. NGOs have also taken an active role in the COVID-19 response, addressing the spread of misinformation and raising awareness on the reported increase in gender-based violence online[50].

Civil society organisations in Commonwealth Pacific Island countries are well coordinated and an umbrella group for NGOs is operational in all countries[51] - see Annex 1 for an overview of key civil society organisations. Through these umbrella groups, civil society organisations are able to address and amplify common concerns, including on digital policy[52]. For example, in Fiji, the NGO Coalition on Human Rights provided joint written input on the Online Safety Act.[53] Similarly, Samoa's Development Service Exchange (DSE) released a statement critical of the government plans to ban Facebook.[54]

Recommendations

Looking forward, Commonwealth Pacific Island countries have the opportunity to build upon the existing foundation outlined in this report to further strengthen human rights in the digital age and civic engagement in the region. The following set of recommendations are offered for consideration in support of the formulation of future capacity development initiatives in the region.
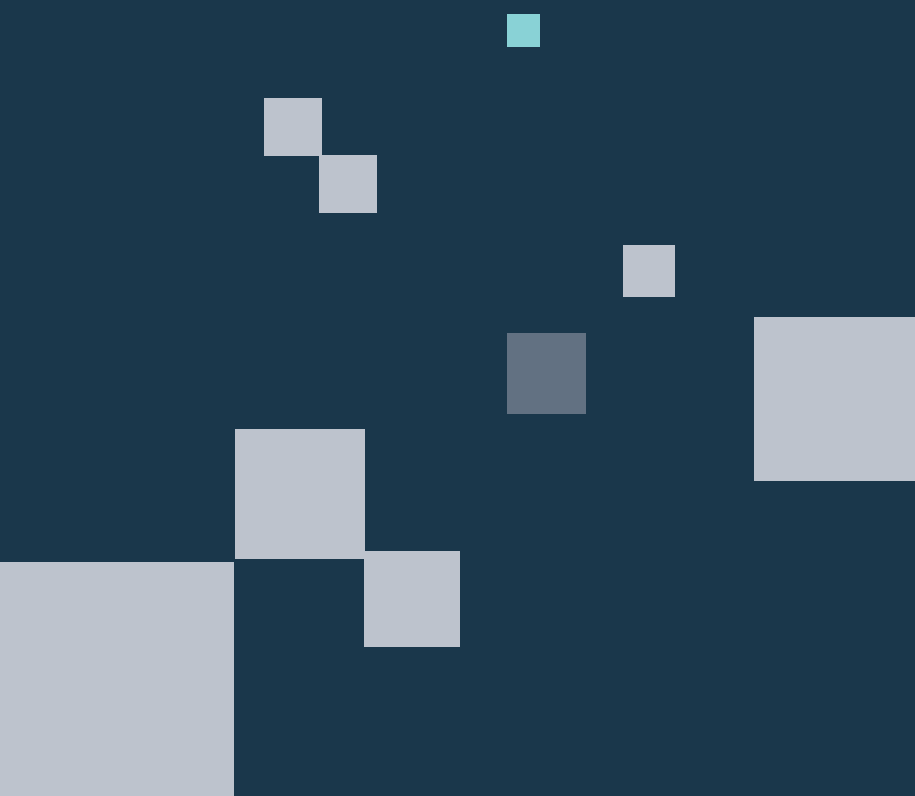
1. Support efforts to ensure that responses to challenges posed by internet and digital technologies –including legal and policy frameworks and other related measures– are human rights-respecting and developed through open, inclusive and transparent approaches. As part of this process nations could:
   a. Identify relevant stakeholders across government, private sector, technical community, civil society and academia, to engage in the development of legal and policy frameworks.
   b. Develop holistic policymaking roadmaps that build in modalities for sustained stakeholder engagement and consultation.
   c. Identify, empower, and resource relevant government stakeholders within Commonwealth Pacific Island countries to review current legislation related to human rights in the digital age in order to identify gaps, opportunities and priorities for revision. Such a review should consider legislation covering areas such as cybersecurity and cybercrime; data protection and privacy; regulation of online platforms; surveillance and investigatory powers.
   d. Promote the development and implementation of comprehensive national cybersecurity strategies.
   e. Ensure that proposed legal and policy frameworks are aligned with international human rights law and other relevant international standards.
2. Foster and facilitate Pacific regional dialogue(s) aimed at discussing and defining the scope and a shared taxonomy for what human rights in the digital age means to the governments and peoples of the Pacific, informed by international human rights standards.
3. Identify, empower, and resource key stakeholders within Commonwealth Pacific Island countries to monitor the state of human rights online in the region, and assess current data sources and collection protocols to inform the design and delivery of initiatives in the region.
4. Leverage existing forums and/or platforms for discussion and information sharing between governments on policy issues about human rights in the digital age, sharing of good practices, engagement with the private sector, and opportunities for regional cooperation, among others.
5. Ensure the planning and roll out of internet infrastructure in Commonwealth Pacific Island countries takes into consideration key accessibility issues and digital divides, including:
   a. Access to electricity as a pre-condition for connectivity,
   b. Access to the internet for both urban and rural and remote locations including outer island communities.
   c. Affordability of internet access;
   d. Reliability of internet access.
6. Explore innovative financing mechanisms to increase the scale and sustainability of human rights in the digital age capacity development programmes and interventions across Commonwealth Pacific Island countries.
7. Ensure that robust monitoring, evaluation and learning frameworks are built into any human rights in the digital age capacity development programmes and interventions implemented in the region.
8. Identify, empower, and resource relevant stakeholders in the criminal justice system in Commonwealth Pacific Island countries to ensure there is capacity for authorities

including law enforcement and the judiciary to undertake relevant functions consistent with international human rights standards.

9. Identify, empower, and resource relevant stakeholders to promote cybersecurity culture and skills in the Pacific through awareness raising of issues regarding human rights in the digital age and Pacific specific impacts / challenges. Such initiatives should be differentiated and targeted to specific audience groups including but not limited to academia, civil society, policymakers, private sector and technical community.

10. Identify, empower, and resource Pacific Island nation Education Ministries and other relevant stakeholders to incorporate human rights in the digital age education initiatives and curriculum throughout the education system.

    a. Such initiatives should consider and be targeted for the different education stages within each nation such as primary schools, secondary schools, trade colleges, universities, professional training organisations, and workforce development programmes.

    b. Such initiatives should consider the various stakeholders involved with each education stage e.g., for primary school consider students, teachers, parents and other important community actors

Annex 1
Overview of key civil society organisations

Fiji	• Fiji Women's Rights Movement (FWRM) is a civil society organisation committed to fighting discrimination against women and promoting the principles of feminism, democracy, good governance, multiculturalism and human rights. FWRM is the Secretariat of the NGO Coalition on Human Rights, and regularly provides written submissions, including on digital policy issues. Most recently, FWRM published a submission on the proposed cybercrime bill 2020 outlining privacy and security concerns relating to the collection of electronic evidence.[55] • Fiji Council for Social Services is an umbrella group of NGOs and is a member of the Pacific Island Association of Non-governmental Organisations (PIANGO). • The Citizens Constitutional Forum (CCF) is an advocacy and education organisation focusing on Fiji's constitution, democracy, human rights and multiculturalism. • Fiji Women's Crisis Centre is focused on more traditional advocacy work but also provided input on the Online Safety Act.[56] • Fiji Disabled People's Federation • Fiji Red Cross Society • Rainbow Pride Foundation • Reproductive and Family Health Association of Fiji
Kiribati	• The Kiribati Association of Non-Governmental Organisations (KANGO) is a collective of over 40 civil society group members that work to empower and amplify civil society engagement in policy through capacity building, accountable, transparent and responsible governance (ATR) and promoting human rights. KANGO, along with other groups, provided input for the Universal Periodic Review stressing the need for digital accessibility for people with disabilities.[57] KANGO is a member of the Pacific Island Association of Non-governmental Organisations (PIANGO). • Boutokaan Inaomataia ao Mauriia Binabinaine Association (BIMBA) • Kiribati Family Health Association • Kiribati Red Cross Society • Kiribati Women and Children Support Centre
Nauru	• Nauru Island Association of NGOs (NIANGO) is an umbrella group of NGOs and is a member of the Pacific Island Association of Non-governmental Organisations (PIANGO). • Nauru Disabled People's Association (NDPA)
Papua New Guinea	• PNG Civil Society Organisation Forum - PNG CSOF is an umbrella group of NGOs and is a member of the Pacific Island Association of Non-governmental Organisations

	(PIANGO). • Transparency International PNG (TI PNG) acts on behalf of civil society organisations in the National Action Plan steering committee. • Act Now! • Femili Papua New Guinea • Papua New Guinea Red Cross • Voice for Change
Samoa	• Samoa Umbrella for Non-Governmental Organisations (SUNGO) is an umbrella group of NGOs and is a member of the Pacific Island Association of Non-governmental Organisations (PIANGO). Members of SUNGO are involved in the implementation of Samoa's Strategic Plan 2016-2021. • Nuanua O Le Alofa • Samoa Fa'afafine Association • Samoa Red Cross Society • Samoa Victim Support Group
Solomon Islands	• Development Service Exchange (DSE) is a national umbrella group with 65 members and coordinates civil society engagement in the Solomon Islands. DSE is a member of the Pacific Island Association of Non-governmental Organisations (PIANGO). • The Media Association of Solomon Islands (MASI) represents media outlets in the Solomon Islands. • Transparency Solomon Islands (TSI) is the local Chapter of international organisation Transparency International. The Chapter voiced concerns regarding freedom of expression following the government's plans to ban Facebook. • Coalition of Education Solomon Islands (COESI) • People with Disability Solomon Islands • Solomon Islands Family Support Centre • Solomon Islands Indigenous People's Human Rights Advocacy Association (SIPHRAA) • Solomon Islands Red Cross Society • Women's Rights Action Movement of the Solomon Islands
Tonga	• Civil Society Forum of Tonga (CSFT) aims to coordinate the collective needs of civil society organisations in Tonga, through capacity and consensus building. CSFT coordinated a joint submission to the UPR process for Tonga in 2018 and is collaborating with the government and private sector to monitor the implementation of the Tonga Strategic Development Framework. CSFT is a member of the Pacific Island Association of Non-governmental Organisations (PIANGO). • Talitha Project • Tonga Family Health Association • Tonga Leitis' Association

	● Tonga Mental Health and Disabilities Association ● Tonga National Centre for Women and Children (TNCWC) ● Tonga Red Cross Society ● Tonga Women and Children Crisis Centre (WCCC)
Tuvalu	● Tuvalu Association of Non-Profit Organisations (TANGO) is a nonprofit member organisation that supports the sustainable development of NGOs in Tuvalu. TANGO is a member of the Pacific Island Association of Non-governmental Organisations (PIANGO). ● Fusi Alofa Association ● Get Safe Online ● Tuvalu Family Health Association (TUFHA) ● Tuvalu Red Cross
Vanuatu	● Vanuatu Association of NGOs (VANGO) is an umbrella group of NGOs and is a member of the Pacific Island Association of Non-governmental Organisations (PIANGO). ● Disability Promotion and Advocacy Association ● Vanuatu Family Health Association ● Vanuatu Human Rights Coalition ● Vanuatu National Council of Women ● Vanuatu Red Cross Society ● Vanuatu Women's Health Centre ● Vanuatu Young Persons Project ● Wan Smolbag

End notes

[1] According to GSMA's report on 'The State of Mobile Internet Connectivity 2020', most countries in the region have mobile internet adoption rates of less than 30%, with the exception of Fiji and Nauru where more than 60% of the population uses mobile internet. GSMA Intelligence, *The State of Mobile Internet Connectivity 2020* (GSMA Association, 2020), 43.

[2] Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.

[3] The additional three participants were from Australia and provided feedback across the region more broadly and on Commonwealth Pacific Island countries.

[4] The additional participant was from Australia and provided feedback across the region more broadly and on Commonwealth Pacific Island countries.

[5] This is based on the most recent data for 2019, "Population, Total" The World Bank Open Data, accessed 15 March 2021 https://data.worldbank.org/indicator/SP.POP.TOTL.

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[7] *Freedom in the World* 2020 report methodology available at: https://freedomhouse.org/sites/default/files/2021-02/Freedom_in_the_World_2020_Methodology.pdf

[8] The CIVICUS Monitoring tool provides close to real-time data on the state of civil society and civic freedoms in 196 countries - further information on the tool and rating system is available at: https://monitor.civicus.org/Ratings/.

[9] Ranging from 8 million inhabitants in Papua New Guinea, the most populated Commonwealth Pacific Island country, to just 11-12,000 people in Tuvalu, "Population, Total" The World Bank Open Data

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[13] This is according to Freedom House's *Freedom in the World* country reports for 2020, available at: https://freedomhouse.org/countries/freedom-world/scores

[14] Papua New Guinea has also recently voted to establish an independent commission on corruption. Rachel Nicolson, Emily Turnbull, Jessye Freeman, Casey Temple "Papua New Guinea votes to establish an Independent Commission Against Corruption" Allens, November 27, 2020 https://www.allens.com.au/insights-news/insights/2020/11/papua-new-guinea-votes-to-establish-an-independent-commission-against-corruption/

[15] Kelvin Anthony and Ben Dougherty, "Investigations into police and prison violence blocked by Fiji authorities, whistleblowers say" Guardian, August 30, 2020

https://www.theguardian.com/world/2020/aug/31/investigations-into-police-and-prison-violence-blocked-by-fiji-authorities-whistleblowers

[16] *Freedom in the World* country reports for 2020, available at:
https://freedomhouse.org/countries/freedom-world/scores

[17] "Ending Violence Against Women and Girls", UN Women, accessed 15 March 2021
https://asiapacific.unwomen.org/en/countries/fiji/ending-violence-against-women

[18] For a list of civil society organisations in the region, including those working to combat gender-based violence, see Annex 1. "Pacific Partnership to End Violence Against Women and Girls," UN Women, accessed 15 March 2021,
https://asiapacific.unwomen.org/en/countries/fiji/ending-violence-against-women/pacific-partnership; Nanise Neimila, "Gender-Based Violence 'A Global Pandemic;" The Fijian Government, October 16, 2020 https://www.fiji.gov.fj/Media-Centre/News/Feature-Stories/Gender-Based-Violence-%E2%80%98A-Global-Pandemic%E2%80%99; "Parliament leading the way in ending gender-based violence in Papua New Guinea," UNICEF Press Release, accessed 15 March 2021 https://www.unicef.org/png/press-releases/parliament-leading-way-ending-gender-based-violence-papua-new-guinea

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[32] The Fijian government has expressed an intention to accede to the Budapest Convention, which can be seen here https://www.coe.int/en/web/cybercrime/-/glacy-advisory-mission-on-cybercrime-legislation-in-fiji. Vanuatu expressed its intention to accede to the Budapest Convention in its National Security Strategy, which can be seen here https://www.gov.vu/images/publications/Vanuatu_National_Security_Strategy.pdf

[33] Internet penetration rates vary across the region from 57% in Nauru to around 11% in Papua New Guinea. "Percentage of the population using the internet," ITU ICT-Eye ICT Data Portal, https://www.itu.int/net4/ITU-D/icteye/#/topics/2001.

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environment for civil society, including by removing legal and policy measures that unwarrantedly limit the right to association". In March 2020, the Fijian government rejected this recommendation. "Fiji: Government rejects review of restrictive laws used to target journalists, activists and its critics," CIVICUS, March 13, 2020 https://www.civicus.org/index.php/media-resources/news/united-nations/geneva/4340-fiji-sedition-laws-used-to-target-journalists-activists-and-government-critics

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[43] "Kiribati National Cybersecurity Strategy," Ministry of Information, Communications, Transport and Tourism Development, November 15, 2018 https://www.micttd.gov.ki/news/kiribati-national-cybersecurity-strategy.

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Similarly, in Papua New Guinea the Government Digital Transformation Bill and the National Cybersecurity Policy are currently going through an open consultation process, with drafts available to view online. "Government Digital Transformation Bill 2021," Department for Information and Communications Technology, accessed 15 March 2021 https://ict.gov.pg/index.php/draft-ps-digital-transformation-bill-2021; "National Cyber Security Policy," Department for Information and Communications Technology, accessed 15 March 2021, https://ict.gov.pg/index.php/cyber-security-policy.

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[50] The Asia Foundation, "The Pacific COVID-19 Infodemic", 2020 pg. 21

[51] These umbrella groups are supported by the Pacific Islands Association of Non-governmental Organisations (PIANGO), a regional network of NGO coordinating bodies.

[52] In Fiji, civil society organisations banded together to produce a joint submission to the UN Universal Periodic Review process, available at: https://www.civicus.org/documents/CIVICUSJointUPRFijiSubmisson.pdf.

[53] "Towards a Fiji that respects and protects human rights: NGOCHR Online Safety Bill (2018) Submission," available at: http://www.fwrm.org.fj/images/resources/NGOCHR-Online-Safety-Bill-Submission.pdf.

[54] "Facebook Ban is an Attack on Human Rights: Civil Society," Solomon Times, February 27, 2020 https://www.solomontimes.com/news/facebook-ban-is-an-attack-on-human-rights-civil-society/10456

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