

Gender, Equality and Pacific Island Countries with particular focus on domestic violence

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Introduction

The aim of this article is to raise awareness and facilitate discourse on the issue of gender equality in Pacific Island Countries. While the focus of this paper is on domestic violence this is part of a much broader topic and clearly when referring to gender and equality, there are many variations not just between countries, but within countries, between rural and urban areas, between those who have access to various resources and those who do not and so on. The Secretary-General of the United Nations, addressing Pacific representatives recently said

I was heartened by last-week's meeting on gender equality and women's empowerment, where leaders agreed to close the gender gap.

There has been progress across the Pacific – but we still have to help women who are threatened by violence. We have to do more to involve women in politics. And we have to make women's rights a reality everywhere.¹

This may suggest that closing the gender gap or achieving gender equality is all about women, but this does not mean that this is just 'women's business'. Although the main focus may be on improving the position of women this cannot be done without involving men and getting their support for whatever changes may be necessary. In almost all countries in the world it is, after all, men who dominate legislative assemblies, determine legal disputes, run government ministries, sit on the executive boards of companies, hold the majority of senior positions in the public services and so on. However much this state of affairs may be criticised as evidence of prolonged gender inequality, it is only by working with society as a whole that positive and sustainable changes can come about.

Although the population of the Pacific region is fairly evenly divided between men and women (see Table One below),² the experiences of men and women are vastly different and some of these differences are attributable to gender. Of course some differences are inevitable and found in all societies, for example: only women can bear children, and most usually – although not always - women are responsible for child-rearing

¹ UN Headquarters, 1 October 2015 addressing the Pacific Islands Forum. Reported in Vanuatu Daily News Digest 6 October 2015.

² Demographics taken from Pacific Island Populations – Estimates and projections on demographic indicators updated September 2013, SPC, Statistics for Development.

especially in the early years of a child's life. Men may be physically stronger than women and so better suited to some tasks than women and the emotional make-up of men and women may be different. Formal gender equality however, aims to eradicate differences between men and women wherever possible, while substantive equality means advancing the equal treatment of all individuals so that they can fulfil their potential regardless of whether they are born a man or a woman. This does not mean that women and men should necessarily be treated the same, indeed there may well be arguments for positive measures to be taken to advance opportunities for women where they have been historically discriminated against, so that in fact women are treated differently from men, but in order to achieve substantive equality – for example by reserving a proportion of parliamentary seats for women. It might also be necessary to distinguish equality between men and women – particularly in the formal sense, and 'gender equity', the latter being focussed more on doing what is fair rather than what is the same.

Table One; men and women in the Pacific

Country	Population 2015 estimate	Men		Women		Life Expectancy	
		Est. last census	Est. last census	Est. last census	Est. last census	Men	Women
Cook Islands	15,300	7,600	7,600	7,600	73.6	79.8	
Fiji	867,000	438,100	421,100	421,100	63.8	67.7	
Federated States of Micronesia	102,800	52,400	50,600	50,600	68.5	72.0	
Kiribati	113,400	53,600	55,200	55,200	58.0	66.3	
Marshall Islands	54,900	27,800	26,400	26,400	67.3	72.6	
Nauru	10,800	5,300	5,200	5,200	57.5	63.2	
Niue	1,500	800	800	800	66.1	72.8	
Palau	17,900	9,400	8,400	8,400	66.3	72.1	
Papua New Guinea	7,744,600	3,863,100	3,535,300	3,535,300	53.7	54.8	
Samoa	187,300	97,000	9-,400	9-,400	72.7	75.6	
Solomon Islands	641,900	311,300	299,500	299,500	66.7	73.7	
Tonga	103,300	52,100	51,200	51,200	68.6	72.7	
Tuvalu	11,300	5,600	5,400	5,400	67.4	71.9	
Vanuatu	277,500	135,200	129,500	129,500	69.6	72.7	

Of course achieving substantive gender equality is not an easy task in any society, and it should not be thought that developed countries in the global North have necessarily achieved this. Culture, society and individual attitudes determine how we regard each other and where those attitudes are reinforced by entrenched institutions, laws, and social, economic and political structures, achieving gender equality is a real challenge, so that changing the law alone is unlikely to change attitudes or stereotyping. The law is however important, because it indicates how the state reacts to issues. If the state permits or facilitates inequalities it is in effect condoning these not condemning them. A first step therefore is formal equality.

At the state level there are international instruments which advocate gender equality, and the commitment of national governments to national and international legal obligations is a demonstration of political will to address gender issues. Almost all Pacific Island Countries are parties to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) although some quite recently, eg Cook Islands and Marshall Islands 2006, Kiribati and Federated States of Micronesia 2004 and Nauru 2011. It should however

be pointed out that with dualist legal systems commitments under international treaties have no effect in domestic law until incorporated into the national law.³ Only Vanuatu has done this.⁴ Consequently although all states which have ratified the convention remain subject to the reporting procedures that accompany international conventions, the provisions therein cannot be argued in court as being part of the domestic of national legal system unless specific provision is made to do so or courts are prepared to take a pro-active stand, which increasingly they seem prepared to do.⁵ Moreover, whether or not international conventions and treaties are formally incorporated into national law this should not be seen as a major obstacle as most Pacific island countries have bills of rights within their written constitutions which include provisions stating that everyone is equal before the law, or prohibiting discrimination on a range of grounds – although not always on the grounds of sex/gender as indicated in Table Two below:

Table Two: International and National Gender Equality law

Pacific island country	CEDAW	Given effect in national law (as required)	Optional Protocol to CEDAW	Constitutional protection against discrimination on the grounds of sex/gender
Cook Islands	11 Aug 2006 (ratification)			All fundamental rights (sex)
Federated States of Micronesia	1 September 2004			Equal protection of the law (sex)
Fiji	28 August 1995 (ratification)			Full equality – discrimination includes inter alia sex, sexual orientation, gender, gender identity and expression
Kiribati	17 March 2004 (ratification)			Freedom from discrimination but <u>not</u> on grounds or sex/gender
Marshall Islands	2 March 2006 (ratification)			Equality under the law and no discrimination on

³ Ratification imposes a legal obligation on states to eliminate ‘discriminatory practices’ against women and girls and incorporate gender equality into law. However, as observed in the *Matangi Tonga* 23 February 2015, discriminatory laws do not have to be changed prior to ratification.

⁴ Convention on the Elimination of All Forms of Discrimination against Women (Ratification) Act No. 3, 1995.

⁵ This is being done, note for example, the PNG case of *State v Markus* [2015] PGNC 86, in which the judge referred with approval to two cases from Fiji, the example of the Philippines and the effect of the Optional Protocol to CEDAW, the UNCRC, and also a growing awareness of domestic violence and related issues through the wide dissemination of the Fiji Women's Crisis Centre monthly newsletter "*Pacific Women against Violence*"; and in Solomon Islands *R v Gua* [2012] SBHC 118 in which CEDAW was relied on to challenge the marital rape exemption. Compare however in Tuvalu *Tepulolo v Pou* [2005] TVHC 1 in which arguments based on CEDAW and UNCRC were less successful.

				grounds (inter alia) of gender
Nauru	23 June 2011 (ratification)			Equal rights regardless (inter alia) of sex
Niue	Extended via New Zealand 10 January 1985			No bill of rights in Niue Constitution
Palau	20 September 2011 (signed not ratified)			No discrimination on the grounds (inter alia) of sex
Papua New Guinea	12 January 1995 (ratification)			Equality of citizens regardless (inter alia) of sex
Samoa	25 September 1992 (ratification)			Equal protection before and under the law, no discrimination on grounds (inter alia) of sex
Solomon Islands	6 May 2002 (ratification)		6 May 2002	No discrimination on grounds (inter alia) of sex
Tonga	See below			Same law for all classes (no reference to sex/gender)
Tuvalu	6 October 1999 (ratification)			Freedom from discrimination but no reference to sex and/or gender
Vanuatu	8 September 1995 (ratification)	CEDAW (Ratification) Act 2006	17 May 2007	Equality of right to all fundamental freedoms without discrimination on grounds (inter alia) of sex

As is evident from the above, all Pacific island countries have either ratified CEDAW or have signed it, except currently Tonga. In March 2015, however, there was great excitement because Tonga indicated that it was now ready to ratify CEDAW.⁶ The announcement was warmly welcomed by UN Women and the Office of the High Commission for Human Rights, Regional Office for the Pacific in Suva, Fiji. Perhaps rather over-optimistically a spokesperson from that office stated: ‘Tonga’s decision to ratify CEDAW is an important step towards ending discrimination against women in the Pacific’.⁷ The UN Secretary-General, Ban Ki-Moon, also greeted this move warmly and issued a statement in which he encouraged ‘the government of Tonga to

⁶ This was adopted by the United Nations General Assembly in December 1979 and came into effect in September 1981. It is one of the most widely ratified treaties after the United Nations Convention on the Rights of the Child. Only seven countries have not acceded to or ratified CEDAW, including the United States of America.

⁷ UN Women Asia and the Pacific ‘UN agencies welcome Tonga’s decision to ratify CEDAW’ 10 March 2015 <asiapacific.unwomen.org> accessed 21/08/2015.

start undertaking concrete steps for the implementing CEDAW'.⁸ This enthusiasm was rather dampened a few months' later when it was reported that the Tongan King and Privy Council were concerned that ratification was unconstitutional.⁹ Indeed the issue appears to have divided Tongans with pro-CEDAW petitions and marches and anti-CEDAW petitions and marches, with women expressing views on both sides.¹⁰ As is not unusual in the Pacific when gender is at issue, there were confused messages. The Catholic Church in Tonga for example, appears to have adopted an anti-CEDAW stance because it is feared that this will lead to the introduction of laws on abortion and same sex marriage,¹¹ with one anti-CEDAW advocate going as far as to say 'When we allow CEDAW, we are allowing Satan to dwell among us'.¹² Others are concerned that ratification will mean changes to Tonga's land laws which operate in favour of men.¹³ It now appears that there may be a referendum on the matter, although that by itself will not resolve the constitutional question which has arisen: namely whether the King or the Minister of Foreign Affairs has the power to sign international treaties? Moreover, as there is no current procedure in place for a national referendum it looks as if progress may take some time.

One of the anti-CEDAW protestors was reported as saying that 'the treaty would affect future generations of Tongans'.¹⁴ One would hope so, as the whole purpose of the treaty is to encourage governments to take steps to eradicate inequalities based solely on the grounds of gender. Looking across the Pacific, however, or even at Tonga's near neighbours – all of whom have acceded to or ratified CEDAW (with Samoa being one of the first countries to do so), it soon becomes evident that while the laws may not themselves discriminate on the grounds of gender,¹⁵ the eradication of difference of opportunity and advantages based on whether one is born

⁸ Statement attributable to the Spokesman for the Secretary-General on Tonga's ratification of CEDAW New York 31 March 2015 <http://www.un.org/sg/statements/index.asp?nid=8476>

⁹ Radio New Zealand 'Tonga's King and Privy Council say "no" to CEDAW' 1 July 2015 <radionz.co.nz> accessed 21/08/2015. See also Pacific Beat 30 June 2015, 'King of Tonga annuls CEDAW' <abc.net.au> accessed 21/08/2015.

¹⁰ See comments by the director of the Women and Children Crisis Centre who also commented that 'the process was a mess' 'Women's advocate: Tonga's CEDAW ratification a disaster' *Radio New Zealand* 16 April 2015.

¹¹ As above. Similar fears were expressed when Fiji introduced its Family Law Act. In fact of the 188 countries that have signed up to CEDAW only a fraction allow same sex marriage. Kalifi Moala 'How CEDAW impacts some Pacific cultures' Pacific Institute of Public Policy 21 April 2015 <pacificpolicy.org> accessed 21/08/2015. It is also the case that the Government of Tonga had indicated at the outset that it would make certain reservations to specific articles in order to preserve male succession to the throne and nobility, to prohibit abortion and same sex marriages (Articles 2, 10(h), 12(1), 14(2)(g) and 16 of CEDAW).

¹² Indra Moala 'CEDAW issue a challenge for democracy in Tonga' 16 July 2015 *Nuku'alofa Times* <nukualofatimes.tbu.to> accessed 21/08/2015.

¹³ TVNZ 'Tension in Tonga as Women's rights divides kingdom', 27 May 2015 <tvnz.co.nz> accessed 21/08/2015.

¹⁴ 'March in Tonga against ratification of CEDAW' 20 May 2015 Radio New Zealand International <radionz.co.nz> accessed 21/08/2015.

¹⁵ Although some clearly do this, for example in the case of rights to citizenship and in Tonga land. See more widely Imrana Jalal *Law for Pacific Women: A Legal rights Handbook* 1998, Fiji Women's Rights Movement, Suva.

male of female has a long way to go in most countries of the region and in most aspects of everyday life.¹⁶ Accession to treaties, which a good first step, is not a guarantee for achieving gender equity. More needs to be done. This paper illustrates the challenge by focussing on one specific area of concern which has been regularly raised as a gender issue in the region: violence against women. In order to do this, this paper first looks at some general gender issues. As will be seen gender inequity is broadly pervasive and it is beyond the scope of this paper to consider all of these aspects in any detail but is important to recognise that violence against women is just one of several areas of concern and that these concerns may be interrelated. This specific concern needs therefore to be located within the broader context of gender issues in the Pacific. It is also an area where a number of Pacific island governments have recently taken action by passing specific non-discriminatory legislation, which, while on the face of it appears to treat men and women equally in situations of domestic violence, may still fail to achieve gender equity. Therefore this paper looks at the measures taken and the challenges which may still need to be overcome.

Overview of gender inequality in the Pacific

The United Nations Development Programme, Human Development Report (Table 4): Gender Equality Index,¹⁷ gives the following information about Pacific island countries.

Table Three: Gender Equality in the Pacific

Country (Human Development Index ranking)	Gender inequality Index rank 2013	Share of seats in Parliament (World Bank % in brackets 2014) ¹⁸	Some secondary education 25+ female 2005-2012	Some secondary education 25+ male 2005-2012
Fiji (88)	-	-	57.5	58.1
Tonga (100)	90	3.6 (4)	87.5	88.3
Samoa (106)	111	4.1(4)	64.3	60.0
Federated States of Micronesia (124)	-	0.1(0)	-	-
Vanuatu (131)	-	0.1(0)	-	-
Kiribati (133)	-	8.7 (9)	-	-
Papua New Guinea (157)	135	2.7 (3)	6.8	14.1
Solomon Islands (157)	-	2.0 (2)	-	-
Marshall Islands	-	3.0 (3)	-	-

¹⁶ A related topic but beyond the scope of this paper is the whole question of what ‘gender’ means and how it is interpreted and understood in the Pacific. See further Sue Farran, ‘Outwith the law in Samoa and Tonga’ in N. Besnier and K. Alexeyeff (eds.) *Gender on the Edge: Transgender, Gay and Other Pacific Islanders* University of Hawai’i Press, 2014, 373-399, and other essays in this collection.

¹⁷ The index is a composite measure reflecting inequality in achievement between women and men in three dimensions: reproductive health, empowerment and the labour market. Full table available at <hdr.undp.org/en/content/table-4-gender-inequality-index>

¹⁸ World Bank Data Proportion of seats held by women in national parliaments (%) <data.worldbank.org/indicators/SG.GEN.PARL.ZS> The Pacific ranks lowest at 15.7% across the globe compared to 41.5% in Nordic countries and 26.5% in the Americas. Women in National Parliaments as of 1 January 2015, Inter-Parliamentary Union <www.ipu.org/wmm-e/classif.htm>. In other words there is still some way to go across the globe in achieving gender equality in representative bodies at national government level. In 2015 the European Commission co-funded the ‘Women in Parliament Summit’, held in Addis Ababa, March 23-25.

Nauru	-	5.3	-	-
Tuvalu	-	6.7 (7)	-	-

Although there is a shortage of data for a number of Pacific island countries – as evidenced by the gaps, clearly in some areas, notably education, gender equity is being improved. However, there is still a long road to travel before Pacific Island women have all their human rights protected, benefit equally from development outcomes, and can fulfil their aspirations. This is not due to discriminatory laws but to a range of other factors which trigger unequal outcomes. For example, female political representation in the Pacific is among the lowest in the world.¹⁹ Although female political participation is relatively low worldwide – only 19.6 percent of the world’s parliamentarians were women in December 2011 – four of the eight countries in the world with no female parliamentarians were located in the Pacific,²⁰ and Pacific Women in Politics reports that as of 1st September 2014 there are only 30 women MPs in the region out of 556 total MPs. There are some breakthroughs though: in Fiji the first female speaker of Parliament has been elected and in Cook Islands there is also a female speaker. Similarly in Papua New Guinea of the three women in Parliament, one is a Governor of a Province and another is a Cabinet Minister, and in Vanuatu municipal elections in the capital saw five (out of seventeen seats) women returned while in the second largest urban area, Luganville, a number of seats were reserved seats for women - although the recent appointment of the mayor has led to charges that ‘the gender equality preached by male politicians in Vanuatu is “lip-service”’.²¹ Also in Vanuatu, in August a new coalition for gender equity in parliament was launched, to try and advance women further than simply standing for parliament or municipal elections.²² In Samoa a constitutional amendment in 2013 provides for 10% of seats in Parliament to be reserved for women,²³ and at the Pacific Forum three women now hold senior roles.²⁴ Efforts were made in Tonga prior to the 2014 election to get more women elected and a record number of women did stand, but none were elected.²⁵

¹⁹ Rwanda leads the global table with 63.8% of seats occupied by women, demonstrating perhaps that development status is not necessarily an indicator of gender equality in Parliament.

²⁰ 148 countries are listed on the Women in National Parliaments list compiled by the Inter-Parliamentary Union. Vanuatu, Tonga, Palau, Federated States of Micronesia, Solomon Islands, Papua New Guinea and Marshall Islands feature in the bottom ten. Nauru is 134, Samoa 131, Tuvalu 129, Kiribati 124. Fiji however ranks 91.

²¹ Bob Makin *Vanuatu Daily News Digest* 24 August 2015, quoting the *Daily Post*.

²² Premilla Hinge ‘Vanuatu women rally to change zero per cent’ *The Independent* 8 August 2015, 3.

²³ This represents five out of the forty-nine seats.

²⁴ Catherine Wilson ‘Pacific Islands inch towards gender equality with female appointments’ *The Guardian* 16 August 2014 <<http://www.theguardian.com/global-development/2014/aug/16/pacific-islands-gender-equality-female-appointments>> accessed 24/08/2015.

²⁵ Kerryn Baker ‘Women’s Under-Representation and Special Measures in the Tongan Parliament’ In Brief 2015/22 Australian National University. New measures will also be in place in Samoa for the 2016 elections with five seats (or 10%) reserved for women. See Also ‘Ofa Guttenuveil-Likiliki ‘Advancing Women’s Representation in Tonga’ Report 4 in *A Woman’s Place is in the House – the house of parliament: research to advance women’s political representation in Forum island countries: a regional study presented in five reports*, 2006 Pacific Islands Forum Secretariat, Suva, 143 <www.forum.sec.org>

This is only one aspect of gender inequality in the region. Other shortcomings have been highlighted in the United Nations Periodic Review Reports on Pacific Island Countries (first cycle 2008-2012; second cycle 2013-2016). Key Recommendations relevant to gender equity that emerged from the first round of the Universal Periodic Review (UPR) identified the following needs:

- To draft and enact legislation on violence against women (VAW) – a point that will be returned to below
- To remove discriminatory provisions in existing legislation and Constitutions
- To increase training for law enforcement agencies and government officials on gender, human rights and VAW
- To ratify CEDAW and incorporate CEDAW into domestic legislation
- To increase women’s participation at all levels of decision making.²⁶

The UPR reports found that in particular women in the Pacific are adversely affected by domestic violence, inequality of economic opportunity, and, especially in urban areas, insecurity of land rights. The girl child is also subject to gender discrimination in terms of access to education, especially secondary education, and in some countries is vulnerable to arranged marriages, sexual and other forms of abuse. In time of crisis or civil unrest, Pacific women (as elsewhere in the world) are increasingly likely to be subject to violence, poverty and homelessness. In Fiji, for example, an NGO shadow report for the country’s CEDAW report noted continuing concern about gender-based violence, and in particular the adverse effect that the 2000 political coup had had on the progress of any state measures to counteract such violence.²⁷ Infant mortality in the region remains high as does maternal death, and disabled and elderly women, especially widows, may be particularly vulnerable to discriminatory treatment.²⁸ Development and changes in the economic structure of Pacific Island countries has also disadvantaged women, ranging from the loss of gardening land for the production of food to the absenteeism of husbands and other male family members engaged in working away from home.²⁹ There is also some evidence to suggest that women are increasingly marginalised in decisions relating to the commercial use of land and other resources,³⁰ and may be excluded or treated unequally in the distribution of benefits.³¹ At the same time increasing use of seasonal contracts for migrant Pacific workers in Australia and New Zealand may trigger a number of problems back home including erratic financial support

²⁶ Secretariat of the Pacific Community and Regional Rights Resources Team, ‘Pacific Island States and the Universal Periodic Review, A toolkit for Pacific Island States to measure progress and compliance against Universal Periodic Review recommendations’, pp 9-10, 2012.

²⁷ NGO Report on the Status of Women in the Republic of the Fiji Islands, 12 January 2002, authored by the Fiji Women’s Rights Movement, Fiji Women’s Crisis Centre and the Ecumenical Centre for Research Education and Advocacy.

²⁸ For example in respect of land rights, rights to remain in occupation of leased land, and any right of support.

²⁹ Access to money has also changed customary practices, for example bride price is calculated in cash, not traditional goods, and polygamy is being practiced by those who formerly would not have done so to demonstrate new wealth – see below.

³⁰ For example in the administration of land trusts in Vanuatu, the management of incorporated land groups in Papua New Guinea and in negotiations with logging companies in Solomon Islands.

³¹ The Vanuatu case of *Noel v Toto* [1995] VUSC 3, is a case in point.

for families, tension leading to domestic violence on the return of workers, and disruption of social structures.³²

There is however, evidence to suggest that while most PICs failed to meet MDGs,³³ not all is doom and gloom. Many women are experiencing better health and access to health care, life expectancy has improved and more girls are getting an education, including going to university. Moreover, where opportunities are made available to them, women are engaging in a variety of entrepreneurial activity in their own right often through accessing micro-finance or forming women's co-operatives.³⁴ Examples of the former can be found in Papua New Guinea where the first Women's Micro Bank was opened in August of 2014 and the National Development Bank has a dedicated women-in-banking section which has products designed for Papua New Guinean owned businesses and SME's; in Vanuatu where VANWOODS micro financing scheme has helped many women run micro businesses to feed themselves and their families; and SPBD (South Pacific Business Development) Microfinance Network in Samoa, Tonga, Fiji and Solomon Islands.³⁵ Examples of the entrepreneur activity which may benefit women include formal and informal co-operative arrangements, for example, in Fiji South Sea Orchids brings together a number of women floriculturists who act as outgrowers supplying flowers to the company for onward sale, and Nature's Way Cooperative Ltd, also in Fiji, does the same for horticulture producers. Women's markets also provide an outlet for small-scale business and in the informal sector women are key players especially in food production and local markets. This is in marked contrast to the non-agricultural sector where the employment of women is less than 48%.³⁶

Post-2015 targets include the elimination of violence against women and girls, early and forced marriages and addressing the equal right of women to own and control assets. If Pacific island governments and societies engage with these targets this will help to address gender inequity,³⁷ because it is widely recognised that throughout the region women face a myriad on institutional obstacles from entrenched stereotype roles in the domestic sphere, lack of title to land, marriage and inheritance laws and practices, limited access to financial

³² See for example comments by Nic Maclellan and Peter Mares 'Labour Mobility in the Pacific: Creating seasonal work programs in Australia' in S. Firth (ed) *Globalisation and Governance in the Pacific Islands* Australian National University Press, 2006, 137, at 144-146.

³³ Catherine Wilson 'Pacific Islands call for new thinking to implement post-2015 Development Goals' Inter Press Service News Agency January 19 2015 <ipsnews.net> accessed 24/08/2015. Only Cook Islands and Niue are on track to achieve all eight MDGs, and it is noted in this report that 'The Pacific islands have made impressive progress in reducing child mortality, however, poverty or hardship, as it is termed in the region, and gender quality remain the biggest performance gaps'.

³⁴ See IFC Advisory Services in East Asia and the Pacific in partnership with AusAID, *Economic Opportunities for Women in the Pacific* 2010 International Finance Corporation <www.ifc.org> accessed 23/08/2015.

³⁵ SPBD <www.spbdmicrofinance.com/> accessed 23/08/2015.

³⁶ See Wilson IPS above.

³⁷ Wilson *ibid.* See as a possible role model the steps taken by Samoa; Pacific Islands Report 'Samoa Highlights it's Gender Equality Progress at UN' 11 March 2015 <<http://pidp.eastwestcenter.org/pireport/2015/March/03-12-14.htm>> accessed 24/08/2015.

lenders and difficulties in litigating or taking action in their own names, and discrimination in employment.³⁸ Some of the obstacles which women face are not solely related to gender, for example the complicated procedures involved in securing business loans or negotiating leases or obtaining trading licences are notionally at least, gender-neutral, but there are a number of facets which contribute to discriminatory practices, for example a reluctance to register women as sole title-holders of leases, to grant loans without the intervention or representation of male relatives/husband and assumptions that women do not speak on their own behalf and are incapable of understanding business matters without male assistance, to list a few.³⁹

The main focus of this paper, however is not on women in business or politics, but is inspired by the following quotation:

A number of Pacific Island countries face particular challenges with respect to promoting women's voice, influence and empowerment – in both the private and public spheres. For example, though gender-based violence remains pervasive in the (East-Asia-Pacific) region, the prevalence of violence against women in the Pacific is among the highest in the world. Data indicate that upward of 60 per cent of adult women have experienced physical or sexual violence during their lifetime, often at the hands of an intimate partner (SPC 2009, SPC 2010, VWC 2011).⁴⁰

Violence against women is, therefore, symptomatic of and integral to the disempowerment of women in the private sphere – especially in the case of domestic violence, and in the public sphere if state agencies do not take steps to address this violence.

Violence against women

*Many Pacific women and girls experience violence in their lives, which include: domestic, sexual, economic, psychological and emotional violence, as well as sexual harassment and sorcery related killing and harmful traditional practices of early childhood marriage and bride price.*⁴¹

³⁸ IFC *Economic Opportunities for Women in the Pacific* 2010, 1 and Wilson above.

³⁹ These factors emerge from the case studies included in the *Economic Opportunities for Women in the Pacific* 2010, report above.

⁴⁰ World Bank East Asia and Pacific Regional Report 'Towards Gender Quality in East Asia and the Pacific: A Companion to the World Development Report 2012, the World Bank, Washington, 2 <www.ipu.org>

⁴¹ Jenta Tau Programme Assistant, Young Women YWCA Solomon Islands, speaking on Pacific women's rights, at a side event to the Universal Periodic Review of the UN, May 24 2011 <<https://womenleadingchange.wordpress.com/2011/05/24/violence-against-women-in-the-pacific/> accessed 24/08/2015. See also *Second Interim Report – Sexual Offences June 2013* of the Solomon Islands Law Reform Commission (SILRC), which noted 'the "alarming level of sexual violence" across the Solomon Islands. They found that most sexual offences committed against women are not reported to the police and the numbers actually prosecuted are smaller still.' *R v Livia* [2014] SBHC 65 para 11.

Throughout the region, violence against women is a serious problem. Indeed international agencies have highlighted the human rights abuses associated with violence – primarily against women and children, in Pacific island states.⁴²

In 2005 a World Health Organization Multi-country Study on Women's Health and Domestic Violence Against Women, found that of the two Pacific countries included in the study – Japan and Samoa, the latter (Samoa) had the highest prevalence rates for gender-based violence. The study went on to comment:

The alarmingly high rates of non-partner physical and/or sexual gender-based violence (62% lifetime prevalence) and partner physical and/or sexual gender-based violence (46.1% lifetime prevalence) in the only (South Pacific) country which has been subjected to a total population study, Samoa, suggests the urgent need to establish reliable data from large-scale prevalence studies in other countries in the Region to see if they too have a 'hidden' epidemic (of domestic violence).⁴³

Research from Fiji also reflected high incidences of domestic violence including violence against pregnant women.⁴⁴ Statistics from the Fiji Women's Crisis Centre indicated that the number of women seeking help due to domestic violence – excluding assault and rape, steadily increased from 8 in 1984, to 572 in 2004, with a total of 7,261 new domestic violence clients being seen at the Centre in the period 1984 to September 2008 and 8,325 repeat clients being seen in the period 1991 to March 2008. These statistics probably represent the tip of the iceberg, as incidents of domestic violence are notoriously under-reported - not only in the Pacific.

Further research indicated that:

in Fiji 80% of women surveyed had at sometime in their life witnessed violence within the home. In 95% of the cases victims were females and perpetrators were male. 41.6% of women who experienced violence reported being hit while pregnant.⁴⁵

and

in Samoa 46% of women interviewed had experienced some form of partner abuse – of which 38% was physical abuse, 19% emotional abuse, 20% sexual abuse.⁴⁶

⁴² The focus on women and children is triggered by two factors: 1. Women and children are most often the victims of domestic violence, 2. International agencies and treaties tend to be focussed on violence against women and children, e.g, UNIFEM, UNICEF, CEDAW and CRC. While this is understandable it often serves to conceal violence against sub-groups such as the elderly, the disabled, those suffering from HIV/AIDS and homosexuals.

⁴³ WHO 2006:5

⁴⁴ Fiji Women's Crisis Centre 1997/8.

⁴⁵ FWCC Research, 2001, p.26.

⁴⁶ Samoa Family Health and Safety Study, Samoa workshop notes (undated)

In 2008 a Task Force from the United Nations included Fiji in a wider project investigating domestic violence.⁴⁷ It found that while there were discrepancies in statistics, domestic violence remained prevalent,⁴⁸ and in 2009 the Head of the Fiji Women's Crisis Centre noted that in Fiji and Papua New Guinea two out of three women reported that they had been victims of domestic violence.⁴⁹

Fiji is not alone. In a discussion paper on 'Violence Against Women in the Pacific' published by the Fiji Women's Crisis Centre which acts as the Secretariat for the Pacific Women's Network Against Violence Against Women, it was reported that

Vanuatu Women's Centre's statistics show that a total of 2,026 new clients and 4,329 repeat clients were attended to from July 1999 to March 2003 ... In Papua New Guinea, the Eastern Highlands Family Voice recorded a total of 833 clients from December 1999 to March 2003. There were a total of 349 domestic violence cases ... The Samoa Family Health and Safety Survey showed that 37.6% of women had been physically abused while 18.6% were emotionally abused.⁵⁰

Concern about domestic violence in Kiribati and the Federated States of Micronesia has also been expressed,⁵¹ and Amnesty International also reported on domestic violence in Papua New Guinea,⁵² noting that violence against women in PNG was pervasive, including violence against the girl child, and that little was being done by the police, courts or other government agencies to prevent, investigate or punish such conduct. Even small countries such as Tuvalu are not exempt from high incidences of domestic violence.⁵³

Domestic violence is only one manifestation of violence against women. Others forms of violence include assault, rape – including marital rape, incest, harassment in public places or in the work place. Often it may be difficult to draw the line around domestic violence and other manifestations of violence especially where people live in extended families or close knit communities. Indeed the very label 'domestic' can create problems because all too often such violence is seen as falling within the private sphere, away from public

⁴⁷ This was the Task Force on violence against women of the Inter-Agency Network on Women and Gender Equality. The project considered 10 countries including Burkina Faso and Rwanda in Africa, Jamaica in the Caribbean, Paraguay and Chile in Central America, Fiji in the Pacific, the Philippines in Asia, Jordan and Yemen in the Middle East, and Kyrgyzstan in Central Asia. The purpose was not only to ascertain levels of domestic violence but also to assist states in taking measures to combat this.

⁴⁸ For example Police statistics indicated that domestic violence made up 13% of reported crimes against the person in 2003-2007, with 457 cases recorded in 2007. The Fiji women's Crisis Centre however received 685 new clients in 2007 < <http://webapps01.un.org/vawdatabase/uploads/Fiji%20-1%20An%20assessment%20of%20vaw%20in%20Fiji%202008>>.pdf p 12

⁴⁹ *Radio International New Zealand* 9 June 2009.

⁵⁰ (Accessed 12/12/08)

⁵¹ US Country Report 2007. In 2009 The Kiribati Government stated that it would be spending 1.7 million aid money on research into domestic violence: Kiribati: Country Report <www.un.org/esa/vawdatabase> . It should be noted that this UN database has singularly little information on Pacific Island States.

⁵² 'PNG: Violence Against Women; Not Inevitable; Never Acceptable!' (ASA 34/002/2006)

⁵³ Tuvalu: Amnesty International Submission to the UN Universal Periodic Review December 2008, p 5.

scrutiny and outside the ambit of the exercise of powers by police or other authorities.⁵⁴ Violence against women can include physical violence, sexual violence, emotional/ psychological violence and economic violence.⁵⁵ The causes of domestic violence, in the Pacific as elsewhere, are varied and may include, as justification by the perpetrator, aspects of the behaviour of the victim – such as nagging, disobedience, arguing, sexual infidelity, using contraception without discussion with the other spouse/partner, chosen associates or lifestyles, intimating that the violence is the victim's fault not that of the abuser. On the part of the abuser causes or indeed excuses may include: drink or drug abuse, lack of self-control, jealousy, financial/employment related problems, incompatible views of role-sharing/assumption, sexual demands, and the inability to communicate calmly or successfully. Placing the blame on the victim and raising various excuses or justifications for violent behaviour also reflect pervasive, but less easily addressed, social attitudes regarding the acceptability of violence in domestic situations or more broadly against women – discussed further below.⁵⁶ The perpetrators are usually men but other people, especially in the extended kinship arrangements of Pacific families, who may be involved include: mothers-in-law, brothers or uncles of a woman and other sexual partners. Types of harm resulting from abuse are varied but may include physical harm, such as broken bones, black eyes, scalds or burns, bruises, bites, knife wounds, forms of sexual assault or death, as well as psychological and emotional harm such as depression, loss of self-respect and self-confidence, loss of appetite or sleep deprivation, fear, anger, suicidal or self-harming tendencies. Violence against women may also damage children who witness such violence or are caught up in it and impact on the victim's ability to care for her family, to go out to work, to socialise or to seek help.

Governments of the region are not unaware of the problems and the issue has been addressed repeatedly in different forms and forums. For instance Fiji in its 2010 National Report to the UN Human Rights Council states:

Commitment by Government at the 4th WAMM Conference in Beijing – 1995, agreed to the adoption and implementation of national legislations to end violence against women and to work actively in ratifying all international agreements that relate to violence against women. Government in its commitment has implemented the Domestic Violence Decree and the establishment of Zero Tolerance Violence Free communities to address this area of concern.⁵⁷

⁵⁴ See for example, the views of Imrana Jalal, *Laws for Pacific Women*, Fiji Women's Rights Movement, Suva, 1998, 134.

⁵⁵ Many countries adopt a narrow definition, For example in Papua New Guinea the Law Reform Commission paper of 1992 defined it as 'physical violence between marriage partners, whether they are married under custom or under the *Marriage Act* or are simply living together as if they are married'. For a more extensive definition see the Family Protection Act 2008 of Vanuatu s 4.

⁵⁶ The extent to which these factors are influenced by development, changes in access to economic resources, new constructions of power-relations in families and society may all be relevant but are beyond the remit of this paper.

⁵⁷ National report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights

Similarly Nauru in its 2011 National Report to the UN Human rights Council observed:

Domestic violence is widespread in Nauru, and is often but not always associated with alcohol abuse. The small size of the island and the closeness of the community have always made it difficult for victims of domestic violence to find assistance and shelter.

Domestic violence is currently treated as ordinary assault under the criminal laws of Nauru.

However, the government is currently undertaking a complete review of the Criminal Code, and proposes to include in the revised Code provisions that deal specifically with domestic violence, and which afford women greater protection from threatened, apprehended and actual domestic violence.

Eliminating domestic violence in Nauru is a national priority.⁵⁸

There are also government supported initiatives, often facilitated by overseas aid funding and technical assistance. For example, in Nauru there is Directorate of Women's Affairs within the Department of Home Affairs, which works with the Nauru Women's National Council and Young Women's Council, and with civic society to focus on violence against women. In 2008, the Nauru police force established a Domestic Violence Unit (DVU) with specially trained officers to deal with domestic violence and to collect data on domestic violence cases. In 2008 the DVU and the Department of Women's Affairs established a Safe-House to provide a refuge for victims of domestic violence. There is also a national multi-stakeholder Domestic Violence Committee mandated to devise community strategies to address domestic violence.

There is also a history of government-instigated enquires dating back several decades. For example, in 1982 the Law Reform Commission in Papua New Guinea was mandated to enquire and report on:

1. the nature and extent of domestic violence as a social problem; and
2. the legal remedies available for complaints of domestic violence; and
3. any changes to the law which may be necessary or desirable to achieve the protection of women from domestic violence; and
4. the steps which should be taken to bring the problem of domestic violence to the public notice.⁵⁹

Council resolution 5/1 A/HRC/WG.6/7/FJI/1 Part 5 elimination of violence against women and children (para 47).

⁵⁸ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 A/HRC/WG.6/10/NRU/1, p 14, (para 47).

⁵⁹ Constitutional and Law Reform Commission of Papua New Guinea 'Final Report on Domestic Violence', Report No 14 1992 <http://www.paclii.org/cgi-bin/disp.pl/pg/LRC/REP_14.htm?query=domestic%20violence> accessed 1 July 2008.

This produced an interim report in 1987 and a final report in 1992. It found that over two-thirds of families were affected by domestic violence, which predominantly took the form of wife-beating, and that the problem was so extensive that it was a matter of public concern and not just a private matter. The final report recommended an approach which combined strengthening the legal framework as well as raising awareness. It saw a role for improved counselling as well as broader education on the adverse effects of domestic violence and the avenues of redress available to victims.⁶⁰

In Samoa, there have similarly been a number of initiatives targeting domestic violence over an extended period of time. In 1993 the NGO *Mapusaga o Alga Inc* was formed and in collaboration with the Ministry of Women's Affairs, which had been established in 1991, published a report in 1996 seeking to correct the various common myths about domestic violence. In 2004 a national plan of action to implement CEDAW was adopted and District Courts adopted a procedural policy of not allowing complaints to be withdrawn on the grounds that the wider public interest needed to be taken into account. Most recently Samoa has introduced specific legislation on domestic violence and redefined the crime of rape to include marital rape.⁶¹

Despite these various reports, governments were slow to act. In 2002, the United Nations Development Fund for Women (UNIFEM) conducted a global assessment on actions to end violence against women to determine what the movement to end violence against women (VAW) had achieved since the Beijing Conference for Women, and to identify gaps in action and impact. As part of that global assessment process, a Pacific regional scan was conducted in 2002. The scan focused on violence against women and girls, actions by government and non-government organizations to eliminate violence against women, and the impact of support from UNIFEM's programmes and projects. The scan concluded that actions to eliminate violence against women in the Pacific had mainly been initiated and sustained by women's organizations and non-government organizations (NGOs) and that government implementation of commitments in international, regional and national plans of action, to eliminate violence against women, *needed to be strengthened*.⁶² The lack of action on the part of governments was lamentable.

Today the role of NGOs such as the Vanuatu Women's Centre and the Fiji Women's Crisis Centre remains crucially important but what has changed since 2002 is a raft of legislation that has been triggered by the UPR process and the work of the Regional Rights Resources Team. Today, in the majority of Pacific island countries there is legislation addressing domestic violence and evidence of encouraging changes to the

⁶⁰ See similarly in 1994 a community survey of Domestic Violence in Solomon Islands undertaken following the identification of domestic violence as a major concern by the National Council of Women in 1988; a report by the Fiji Law Reform Commission in 2005 *Fiji Law Reform Commission: Domestic Violence Review 2005* < <http://www.lawreform.gov.fj/common/Default.aspx?page=domesticRev> > accessed 30 June 2008;

⁶¹ Family Safety Act 2013, Crimes Act 2013.

⁶² UNIFEM <http://pacific.unifem.org/index.php?p=65> accessed 13/12/08, emphasis added.

criminal law to include marital rape. The following table presents a contemporary picture of the law in the region.

Table 4: Legislating against violence

Country	Legislation	Civic Organisations	Government Departments/units
Cook Islands	Family Law Bill is currently with a parliamentary select committee prior to public consultation	<i>Punanga Tauturu</i> (Women's counselling Centre)	Domestic Violence Unit in Police
Federated States of Micronesia		Women's Association Network	
Fiji	Domestic Violence Decree 2009	Fiji Women's Crisis Centre	Ministry of Social Welfare, Women and Poverty Alleviation
Kiribati	Family Peace Act for Domestic Violence 2014 (<i>Te Rau N Te Mweenga Act</i>)	Crisis Centre	Two dedicated police units for DV; establishment of 'SafeNet' multi-sectoral support service for victims of DV; Welfare and Counselling Unit
Marshall Islands	Domestic Violence Prevention and Protection Act 2011	Women United Together	
Nauru		Nauru Women's National Council; Young Women's Council national multi-stakeholder Domestic Violence Committee	Directorate of Women's Affairs within the Department of Home Affairs; Domestic Violence Unit in Police; Safe house
Niue			
Palau	Family Protection Act 2012	Belau Women's Resource Center; <i>Milad'L Dil</i>	
Papua New Guinea		Family and Sexual Violence Action Committee; <i>Meri Toksave</i> (online service); Kup women for Peace; Simbu Women's Centre, Kundiawa; Eastern Highlands Family Voice, Goroka; Leitana Nehan Women's Development Agency; East Sepik Committee Against violence Against Women, Wewak	Sexual Offences Squads in Police
Samoa	Family Safety Act 2013	<i>Mapusaga o Alga Inc</i>	Ministry of Women's Affairs
Solomon Islands	Family Protection Act	National Council of	Family Violence and

	2014	Women	Sexual Offences Unit in Police
Tonga		Women and Children's Crisis Centre <i>Langa Fonua 'a Fafine</i> , National Centre for Women and Children <i>Ma'a Fafine mo e Familii</i>	Women's Affairs, Ministry of Internal Affairs
Tuvalu	Family Protection and Domestic Violence Act 2014 Police Powers and Duties Act 2009		
Vanuatu	Family Protection Act 2008 Civil Procedure Rules 2002	Vanuatu Women's Centre	
Multi-sectoral		Regional Rights Resources Team (RRT) 'Changing Laws Protecting Women Project'; Pacific Women Australia; Pacific Women's Resource Bureau (Noumea) Pacific Prevention of Domestic Violence (NZ)	Australia: Pacific women shaping Pacific Development: The (British) Commonwealth

These laws indicate that national governments are taking domestic violence seriously. Legislation by itself, however, is not a panacea and the implementation and effectiveness of the laws may encounter a number of problems and challenges:

1. There are problems regarding the enforcement and resourcing of such laws. As is evident from Table 4, in a number of countries specialist police units are being established and set up and some countries have adopted 'no drop' policies when DV is reported to them. Donor programmes are also involved in police training.⁶³ However police may be under-resourced and may themselves be viewed with suspicion as perpetrators of violence.⁶⁴ Further, the consequences of criminal process and punishment are not always

⁶³ 2012-2016 Pacific Prevention of Domestic Violence Programme – NZ Aid, NZ Police, PICs Chiefs of Police, and since 2013 Australian Federal Police – Pacific Police Development Programme Regional, to deliver advice, training and operational support on domestic violence to police forces and communities in the Pacific. PPDVP has produced baseline reports on Kiribati, Cook Islands, Tonga and Samoa.

⁶⁴ See for example reports on Papua New Guinea by Amnesty International 2006 pp20-21; RRRRT 2008, p15 Human Rights Watch 2006, pp 14, 17, 20 and 35. See also M. Roguski and V. Kingi 'Pacific Prevention of Domestic Violence Programme, Update of Baseline In-country Review, Samoa Report 2011, Crime and

thought through, for example burdens of proof, the nature and form of evidence, and the impact of punishment.⁶⁵

2. Many incidents of violence will be dealt with outside the criminal or formal process, so they a) will not be reported b) may perpetrate gender inequities depending on the processes and players involved, particularly where handled by village courts or their equivalent, where women may be poorly represented.
3. Legislating for domestic violence by itself is insufficient to address some of the underlying causes or contributory factors. Basic legal reform needs to be implemented encompassing such matters as: the age of marriage, the tests for cruelty for divorce, the rule for corroboration in evidence of certain crimes, the broadening of the law of assault and rape, the extension of liability to a wider class of persons who can be charged with sexual assaults against children such as incest - bearing in mind the extended family, the practice of customary adoption and the practice of boarding children with more distance relatives or even strangers for purposes of education etc.

The law is a reaction to events that have already taken place. While the law may be intended to have a deterrent effect this may not always be achieved. Indeed laws, by themselves, do not prevent domestic violence, nor do they promote gender equity. Other measures are necessary. This is illustrated by the following comment made by the Solomon Island Police Commissioner:

... family violence is a real concern in Solomon Islands and preventing it is a priority for the RSIPF this year. "But what I'm really looking for is to work with communities to prevent these sort of incidents occurring. So it's one thing apprehending the offenders and prosecuting them, that needs to happen where these offenses have occurred. But let's face it, we don't want to be in that situation, we'd much rather work to prevent it occurring. So just reinforcing, family violence is going to be a key priority for police this year and we're going to be urging the community to help us prevent family violence."⁶⁶

Working to prevent domestic violence happening requires some understanding of why it is occurring. There are a number of possibilities. These include:

1. Cultural and religious attitudes impinging on reporting such violence and or pursuing prosecution.

The influence of custom and religion appear to present problems across the region. Shamima Ali, Chair of the Pacific Women's Network Against Violence Against Women, has stated:

Justice Research Centre, Victoria University of Wellington <ppdvp.org.nz>. Similar base-line reports are available for Cook Islands, Tonga, Kiribati and Vanuatu.

⁶⁵ Fines or imprisonment may deprive a family of much needed resources, while occupation or non-habitation orders may make life very difficult for a wife/mother/sister/daughter to remain in her home if it belongs to the offending husband/father/brother.

⁶⁶ 'Solomons Police To Prioritize Preventing Domestic Violence' (HONIARA, Solomon Islands (Solomon Islands Broadcasting Corporation, Jan. 15, 2015).

Violence against women is caused by inequality between women and men, specifically unequal power relations. The imbalance in gender power relations is long-standing, historical and embedded in key social institutions such as the family, the Church, traditional culture and custom, the economy, the law, the education system, the media and the political system. Underlying this systematic and institutionalized gender-based discrimination is a lack of understanding, knowledge and belief in the human rights of all people—which also contributes to an acceptance of violence generally in society as a way of resolving conflict.⁶⁷

Cultural practices relevant to gender violence include: a culture of shame and victim blaming, cultural practices of apology and compensation which marginalise the victim and do not punish the perpetrator. This is illustrated by the following quotes:

- Papua New Guinea ‘A certain amount of domestic violence is accepted as normal in most parts of the country, with bride-price seen as justifying a husband's right to beat his wife in many of Papua New Guinea's diverse societies’ (1992 Papua New Guinea Law Commission Report)
- Fiji: ‘(W)omen themselves appear to be culturally and socially conditioned to believe that violence inflicted upon them was justified under certain circumstances. While 80 per cent of respondents indicated that they would intervene in domestic violence conflicts, this appeared to contradict experiences of victims, where intervention was rare. The use of violence as a form of discipline in the home was still prevalent.’⁶⁸
- Vanuatu: ‘We also have to look into our cultural and traditional practice to address violence against women.’ ... ‘In some Vanuatu cultures, on the day of the wedding, women are told about their roles and that they cannot tell what happens at home outside the house. And they believe that is culture.’⁶⁹
- Solomon Islands: ‘GBV has been largely normalized: 73% of men and 73% of women believe that violence against women is justifiable, especially for infidelity and “disobedience”, as when women do “not live up to the gender roles that society imposes”’.⁷⁰

⁶⁷ Speaking at the opening of a new NGO in Tonga, 3 December 2009.

<<http://www.fijiwomen.com/index.php/press-releases/34-press-releases/175-women-and-children-crisis-centre-in-tonga>> accessed 12 December 2009.

⁶⁸ Fiji Women's Crisis Centre National Research on Domestic Violence and Sexual Assault <http://www.fijiwomen.com/index.php/research> (accessed 12 December 2009).

⁶⁹ Meryl Tahy, Coordinator of the Vanuatu's Women's Centre <http://www.worldbank.org/en/news/feature/2012/11/25/raising-awareness-of-violence-against-women-in-the-pacific-2/8/2014>. See also the report by Torr and Toka (2004) Gender, Kastom and Domestic Violence, Port Vila, CUSO/Department of Women's Affairs, and AusAID Office of Development Effectiveness ‘Vanuatu Country Report’ 2008, which is part of a wider project ‘Stop Violence: Responding to Violence against women in Melanesia and East Timor. www.ausaid.gov.au.

⁷⁰ Jennifer JK Rasanthan and Anjana Bhushan ‘Gender-based violence in Solomon Islands: Translating research into action on the social determinants of health’ World Health Organisation Regional Office for the Western Pacific Draft Background Paper ‘world conference on social Determinants of Health’ 19-21 October 2011 WCDH/BCKGRT/4A/2011 p 1.

- Kiribati: ‘Historically and traditionally, Kiribati society is essentially patrilineal. Gender roles are still quite strictly defined and is often cited as a factor justifying negative notions in the treatment of women. Notwithstanding that in recent years, awareness of women’s human rights issues, in particular the issue of violence against women has gained increasing momentum in both public and private realms, sensitivity around the issue is still a predominant factor which stifles open and frank discussion. The protection of women has been placed on the political agenda. Extensive work is still needed to guarantee adequate legal and judicial frameworks to facilitate this protection.’⁷¹

Other cultural practices which may be relevant include:

- i. Bride-price - primarily in Melanesia, where its use in marriage binds women in a relationship they are unable to leave even if it turns violent, and – to its critics, reduces women to the status of property.⁷²
- ii. Polygamy - in Papua New Guinea, for example where there is a high level of violence against women by their husbands and also between co-wives, polygamy is seen as being one of the main causes of domestic violence.⁷³ Although polygamy has now been made illegal,⁷⁴ polygamous marriages persist.
- iii. The custom of *ifoga* in Samoa,⁷⁵ which is essentially a group activity in the sense that one group apologises for the conduct of one of its members to another offended group. However *ifoga* requires a public act of self-humiliation as well as a gift.⁷⁶ The self-humiliation involves contrition, submission and apology.⁷⁷ The victim, often female, is of secondary importance.

⁷¹ 2010 Report to the UN Council on Human Rights (para 36: Women) National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 A/HRC/WG.6/8/KIR/1, p 8 (para 36 Women).

⁷² See for example comments by Miriam Yawa ‘Gender and Violence’ 2002

www.aic.gov.au/media_library/conferecnes/policewomen3/yawa.pdf accessed 7/10/15; Imrana Jalal, ‘Harmful Practices Against Women in Pacific Island Countries: customary and conventional laws’, Expert paper, EGM/GPLHP/2009/EP.15 3 June 2009, 9-11; and report by UN Special Rapporteur Rashida Manjoo ‘Special Rapporteur on Violence against women finalises country mission to Papua New Guinea’ Port Moresby 26 March 2012, UNHR News www.ohchr.org, accessed 7/10/15.

⁷³ See findings of research in E. Papoutsaki and U. Harris *South Pacific Islands Communication: Regional Perspectives, Local Issues* 2008 Asian Media Information and Communication Centre 225-226

⁷⁴ In 2014 new legislation: The Civil Registration Amendment Act, has banned polygamy from 2015, by only allowing the registration of one marriage. The new law was welcomed ‘as an initial step forward in the battle against high rates of domestic violence, gender inequality and the spread of AIDS’ Catherine Wilson ‘Outlawing Polygamy to Combat Gender Inequalities, domestic Violence in Papua New Guinea’ Inter Press Service (IPS) July 28 2014. The link between polygamy and domestic violence is not limited to the Pacific, see for example in Africa, Gilbert Nakweya ‘Empower women to resist abuse culture, urges study’ 28/05/15 SciDevNet

⁷⁵ See Jalal above 11-15.

⁷⁶ per Justice Fisher in *Iosu v AG* [2014] WSCA 5 para 40. In Samoa *ifoga* is taken into account by the court even in cases of rape of young girls (See *Police v PE* [2013] WSSC 10; *Police v Lauvae* [2011] WSSC 75; *Police v Moatoga* [2012] WSSC 61; *Police v Tuifao* [2012] WSSC 6)

⁷⁷ See further Cluny and La’avasa MacPherson, ‘The Ifoga : The Exchange Value of Social Honour in Samoa’ (2005) 114 *Journal of the Polynesian Society* 109.

- iv. The custom of *bulubulu* in Fiji, whereby an accused may seek forgiveness and reconciliation from the injured party, or the injured party's family, in traditional *iTauki* fashion by offering a '*bulubulu*' or presentation of a whale's tooth to the family of the injured party, that injured party. Where this is done the court may take this into account in mitigation of sentence.⁷⁸ The custom has been raised as a defence in rape cases even where the victim was a young child.⁷⁹
- v. Customary compensation payments which may be seen as mitigating the severity of assaults on women or a culture of apology and reconciliation may prevail.⁸⁰ Recognition of customary compensation payments is found in the courts and in legislation - see for example in Vanuatu the provisions in sections 38-39 in the Penal Code (Amendment) Act 2006.⁸¹

Religion

Christianity has also played its part in both addressing and failing to address violence against women. The leadership of the church in the region is ambivalent about gender equality and about the right of husbands to chastise their wives. Some churches are strong advocates of the need for gender equality (for example the Pacific Council of Churches have drawn up recommendations for eliminating gender-based violence),⁸² others are more reserved. Often church leaders are often torn between condemning violence and advocating obedience and commitment to the institution of marriage regardless of the personal cost. The role of the church in opposing gender equality is forcefully brought out in the case of Tonga's accession to CEDAW referred to above.

Political Unrest

Where social order breaks down there is a higher risk of domestic violence. For example, in Solomon Islands and in Fiji political unrest has been associated with an increase in suspected and reported attacks on women, including rape.⁸³ Despite intervention by the Regional Assistance Mission to Solomon Islands, (RAMSI) violence against women in Solomon Islands does not appear to have abated. In 2009 it was reported that in Solomon Islands 'violence against women continued to rise. Seventy per cent of violence against women was

⁷⁸ See *State v Makutu* [2012] FJHC 1081 but compare *Apenisa Seruitata v The State* [2004] FJHC 20 where the judge refused to take it into account and *Talevakarua v State* [2008] FJHC 322, para 14.

⁷⁹ *State v Vesukula* [2014] FJHC 28, and may even be paid by the victim's mother as an apology for reporting the rape – *Roligalevu v State* [2012] FJHC 1092.

⁸⁰ See in Kiribati for example, Lievore and Fairbairn-Dunlop PPDVP Kiribati Report 2007 34-35

⁸¹ Ref A B Swamy 'Customary reconciliation in sentencing for sexual offences in Vanuatu' (2008) 12(1) *Journal of South Pacific Law* 94; see also J Luluaki 'Family Abuse, dispute settlement and the law in Papua New Guinea' (2005) 4 *Melanesian Law Journal*, both available via Paclii.org.

⁸² See Anglican Alliance 'The church in the Pacific working to eliminate violence against women and girls' 20 March 2013 <anglicanalliance.org> 17/08/14. The Pacific Conference of Churches has established a women's desk and appointed a programme coordinator who was scheduled to begin work in 2014 to target violence against women through member churches – World Council of Churches 10th Assembly 1/11/2013 'Pacific Delegates at WCC remember victims of domestic violence' PINA ,pina.com.fj>

⁸³ For example, a report by Amnesty International in 2004 concerning Solomon Islands highlighted the high number of rapes and incidents of domestic violence ('Solomon Islands: Women Confronting Violence' 43/001/2004).

committed by the woman's partner, one of the highest rates of partner violence in the world, according to preliminary findings of a government-sponsored study carried out by the Secretariat of the Pacific Community, a regional intergovernmental organization.⁸⁴

Lack of economic independence

The extent to which women participate in the formal economy varies from one Pacific country to another. Certainly in some countries while women are active in the informal economy they are notably absent from or in a minority in the formal economy. Women, for example, find it hard to get loans in their own name.⁸⁵ If they are registered as leaseholders in their own name there may be pressure on them to add their husband's name to the title. Similarly even where women control their own income they may find other family members giving their husband money for drink, kava and so on. Where they do participate in the formal economy they may find themselves the victims of resentment or be expected to support the demands of their husband's extended family – for example in providing accommodation and meals, contributions to various events and so on.

Conclusion

Clearly there are areas of progress in achieving women's human rights and implementing steps to achieve gender equity in Pacific island countries. In particular a number of countries have adopted laws to protect women and children in particular against domestic violence and there is a better understanding of the need to integrate a gender perspective across all sectors of development. There are also new initiatives promoting women's political leadership and overall, women's health and access to education are improving; and their contribution to national economies has started to be recognised. Nevertheless, despite a continuing programme of national, regional,⁸⁶ and international initiatives, post the 1995 Beijing Platform,⁸⁷ the achievement of gender equity continues to present challenges. This may be for a number of reasons:

1. From the domestic perspective there is very little research about local understandings of gender,⁸⁸ the gendering of issues such as domestic violence, women as leaders, women as entrepreneurs or in

⁸⁴ Amnesty International Report 2009: Solomon Islands. See similarly the 2009 report on Fiji.

⁸⁵ See for example Sonali Hedditch and Clare Manuel, *Vanuatu: Gender and Investment Climate Reform Assessment*, IFC Advisory Services in East Asia and the Pacific and AusAID, Washington DC, 2010.

⁸⁶ For example The Pacific Islands Forum has published a Revised Pacific Platform for Action on Advancement of Women and Gender Equality 2005 to 2015 and other regional commitments on gender equality include the Pacific Leaders Gender Equality Declaration of 2012.

⁸⁷ Beijing Platform for Action emerged from the fourth world conference on women and urged governments to adopt action plans for equality, development and peace. Details available on the UNWomen website. The platform for action identifies a number of 'women and' areas: Poverty, Education and Training, Health, Violence, Armed Conflict, the Economy, Power and Decision-Making, Institutional Mechanisms for the Advancement of Women, Human Rights, the Media, the Environment and the Girl-child. Different donor programmes have tended to focus on different individual headings.

⁸⁸ See A. P Lynch 'Final Report Vanuatu Country Gender Profile', 2007 p8, who emphasises 'gender is not another word for women' Vanuatu: Country Gender Profile – JICA www.jica.go.jp/english/our_work/thematic_issues/gender.../e07van.pdf

business, in Pacific societies. This deficit is evident in the assumed binary divide between men/women/ male/female, when these categories may be more fluid and complex in Pacific societies.⁸⁹ There is also a related failure to understand the social construction and consequences of gendered roles, and issues about understanding equity/equality in the context of highly structured, largely patrilineal social organisation in which the equilibrium between various parts while not static may be vulnerable to disruption.

2. From the international perspective, although there are devolved gender equity projects operating at single country levels, invariably the island countries of the Pacific are either grouped collectively under Asia-Pacific,⁹⁰ or Pacific – which may include Australia and New Zealand,⁹¹ or Africa, the Caribbean and the Pacific (ACP), or within the larger groupings of small island developing states (SIDS) or Least Developed and Developing Countries (LDCs). One problem with this is that often only one or two countries from the Pacific are considered in any depth.⁹² This has two disadvantages: i) it implies a hegemony across and among Pacific island countries, ii) it obscures the fact that in many Pacific island countries accurate data on the relative positions of men and women is absent.
3. The relationship of custom, especially customary attitudes and practices, as regulatory mechanisms, including the interaction between formal and informal systems needs to be understood and addressed by those seeking to apply or change the law and social values. Advocates and guardians of custom need to be encouraged to consider which customs are beneficial to and which are harmful to women and the girl child, and working with government to consider what steps can be taken to mitigate against possible harms and inequities. While the courts have done this from time to time this process is ad hoc and rarely tied to a holistic gender equity perspective.
4. The narratives of gender equity need to be tackled. This is illustrated by the debate surrounding Tonga and CEDAW. At a number of levels gender equity is seen as being women's business in an environment in which men hold the power and direct the narrative. It needs to be better understood that gender equity is not just about women, but about men and women, girls and boys. Unless and until men are persuaded of the advantages of a more equitable society then the kind of rhetoric that has stymied the progress of CEDAW in Tonga is likely to persist. In conservative societies however,

⁸⁹ See S. Farran 'Outwith the law in Samoa and Tonga' in N. Besnier and K. Alexeyeff (eds.) *Gender on the Edge: Transgender, Gay and Other Pacific Islanders* University of Hawai'i Press, 2014, 373-399 'Pacific Perspectives: Fa'afafine and Fakaleiti in Samoa and Tonga: People Between Worlds' (2010) 31(1) *Liverpool Law Review* 13 < <http://www.springerlink.com/openurl.asp?genre=article&id=doi:10.1007/s10991-010-9070-0>> and references therein.

⁹⁰ See eg World Bank East Asia and Pacific Regional Report 'Towards Gender Quality in East Asia and the Pacific: A Companion to the World Development Report 2012, the World Bank, Washington.

⁹¹ As in the survey of women in National Parliaments compiled by the Inter-parliamentary Union (1/01/2015) which found that there were 15.7% of women in national parliaments in the Pacific region, but this includes Australia and New Zealand..

⁹² See for example a UNESCO Gender Equality initiative looking at women in the media 'Improving gender equality in Asia-Pacific media: A new study by UNESCO, UN Women and IFJ' which only looks at Vanuatu. 28/08/2014 < <http://fr.unesco.org/node/194354>> accessed 24/08/15.

advocacy for change is unlikely to succeed unless those who oppose it can be persuaded that this change is not harmful.

5. An integrated and holistic approach to gender equality needs to be adopted so that strategies can be put in place across all sectors to address discrimination. It is for example of limited value in ensuring more girls go through secondary school if employment practices remain discriminatory. It is all very well reserving a number of seats in municipal or general elections for women but if these women do not reach out to less fortunate/educated/privileged women, then how can they advance gender equity. Similarly while the contribution of women to the informal economy may be recognised the very practical obstacles that prevent them accessing or succeeding in the formal economy need to be considered and addressed through for example, more inclusive banking practices.

There is therefore much to be done still but also cause for pockets of optimism. There are many inspiring female role models in the Pacific and government and non-government organisations are making concerted efforts to move gender up the agenda. There are good examples of initiatives and networks across the region and modern technology facilitates the sharing of these.⁹³ Ideally conversations about gender need to take place at all levels – from primary school onward, and among all people, men, women, chiefs, nobles, commoners and everyone in-between. The importance to eradicating discrimination on the grounds of gender is unlikely to diminish and indeed seems set to be integral to post-2015 goals. Gender is a pervasive and cross-boundary theme in most aid funded programmes and donor interventions, and the international community watches to see developments in the region. As indicated in this paper there are challenges and there are obstacles, but there is also progress and it is to be hoped that looking to the future this continues so that the boys and girls of today will stand as equal citizens of the Pacific tomorrow.

⁹³ For example the recent launch of a telephone hotline in Papua New Guinea for victims of domestic violence, which made people suddenly realise that men as well as women were victims. See S Medhora, 'Papua New Guinea helpline flourishes as country deals with endemic violence' The Guardian 26 September 2015 www.the-guardian.com accessed 16/10/15.