



# WOMEN, GENDER AND DEVELOPMENT IN THE PACIFIC: KEY ISSUES

## Women, Legal Issues and Human Rights

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## **Introduction: Women, legal issues and human rights**

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The papers in this section consider the practical application of international and national legislation in addressing gender and human rights, and in supporting greater equity in political decision making, as well as the problems of violence against women and the application of the law.

Several themes emerge from the nine papers presented. These are: the lack of common knowledge of basic human rights and the poor understanding of the law as it pertains to rights and equality at all levels of society; and the lack of political will to empower women beyond statements of policy and legislation. These papers make it clear that human rights for women and men will remain a concept only while discriminatory legislation remains in place or legislation can be interpreted or implemented in ways which are discriminatory. Papers from the Pacific and New Zealand provide examples of the need to enact legislation which does not discriminate against women or men in its content, interpretation or implementation.

Jennifer Corrin Care, Tess Newton and Sue Farran, all of the School of Law, University of the South Pacific, provide insights into the differential impact of criminal law on men and women, the contradictions between customary and constitutional law regarding women's rights, access to land, nationality and leadership and the differences between the law on paper and in practice. In Pacific Island countries legislation is often over 100 years old with little reform while perceptions of morality and male and female roles have changed considerably. These laws have a very negative impact on women, most particularly those that relate to rape, violence and sexual abuse. Rectifying the legal imbalances must go beyond changing the worlds of the law and include re-examining basic concepts as well as recruitment policies, training programs and work practices.

For Pacific Islanders living in New Zealand, the relationship between gender and governance is strongly influenced by ethnicity, language, cultural values and different interpretations of the law. Susan Wurtzburg of Lincoln University reviews changes to the countries where there are minority or migrant groups, to ensure that the laws, particularly those regarding women, are well publicized through a variety of appropriate media and in appropriate languages. Her paper provides a case study of the problems faced by Pacific Island women seeking justice in a situation that is predominantly white, male, educated and middle class.

These papers point strongly to the need for development assistance organisations to ensure that consideration be given to providing a climate in which women and men are aware of the law and their rights in terms of democratic processes and are protected from bias resulting from legislation and its implementation.

### **Women in Timor-Leste**

Several papers in this section deal with the status and role of women in Timor-Leste — Rosa de Sousa points out that while there was widespread awareness of the brutality of the Indonesian military towards men, there was very little information about the sexual abuse, rape, torture and murder of women and young girls. With independence, violence against women has continued and domestic violence is common, but hidden, as family pride and status are involved, the society is still patriarchal and there is inadequate legislation to protect women victims. The NGO Fokupers fights for women's rights and provides support to women who have experienced violence.

It is extremely difficult for East Timorese women to access or obtain justice in cases where their human rights have been abused. Maria Agnes Bere noted the cases of violence against women filed with the police and then monitored women-related cases before the Dili District court. In 2003, 361 cases involving violence against women were filed. Most never reached the courts and those that did were delayed or postponed. In the few cases where a judgment was handed down the sentences did not reflect the severity of the case, judges did not apply international standards in their decisions, were insensitive towards gender issues and lacked knowledge of the rights of minors.

### **Human rights approach to sustainable development**

The importance of a human rights approach to sustainable development and poverty reduction is discussed by Savage and Sampson. They maintain that education and empowerment of women, linked to environmental protection and income generation activities, provide catalysts for improved reproductive health and lowered fertility which in turn has positive environmental outcomes. The importance of women's roles and empowerment in poverty reduction and environmental sustainability policies and programs are supported by Ravuvu and Tabunakawai and by a series of short case studies provided by Seniloli, Taylor and Fulivai. Kalvogas provides an example of how gender concerns can be incorporated into program planning and management and points to the importance of NGOs practicing what they preach with regard to gender equality.

Newton, T, 2000. 'The differential impact of the criminal law on males and females in Pacific Island jurisdictions', *Development Bulletin*, no. 51, pp. 13-17.

## **The differential impact of the criminal law on males and females in Pacific Island jurisdictions**

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### **Introduction**

Among the independent island states of the South Pacific region, a codified approach to criminal law and procedure is favoured. In each jurisdiction, two significant pieces of legislation are the primary sources of law relating to criminal law and procedure. The first takes the form of a crimes act or penal code.<sup>1</sup> This sets out the principal offences in the jurisdiction and the penalties that apply to such offences. It also includes statements of principles relating to issues of criminal capacity, causation, defences, and so on. The second occurs in the form of a criminal procedure code (in some jurisdictions, the nomenclature may differ; for example, in Tonga, the relevant legislation is the Police Act (Cap 35)). These pieces of legislation contain the rules regarding police powers of arrest and detention, bail, and other matters of criminal procedure.

Many of these codes were imposed during the colonial period.<sup>2</sup> They have subsequently been continued in force after each of these countries achieved independence (see further Corrin Care et al. 1999). Essentially, therefore, the backbone of the penal legislation of these countries is a body of law which is over 100 years old and which has been reformed very little in that time. As we know, perceptions of morality and the relative status of women and men have undergone vast transformations in the intervening period. It would seem to be undeniable, therefore, that the criminal laws of the South Pacific region, by virtue of their age if nothing else, are problematic in the way in which they affect women rather than men.

Here, I seek to identify examples of how the construction of the criminal laws in this region has differential impacts on males and females. This exposition can be conducted at two distinct, if interrelated, levels. The first is the textual/philosophical level, which examines how the way in which the law is written encapsulates a gendered conceptualisation of the law or gives rise to the possibility of different treatment. The second is at the more practical level, which considers whether the way in which the law is enforced and administered creates problems for females that may not be faced by males. An obvious and significant area to examine is that of sexual offences and this will form a large part of the discussion. However, there is also some consideration of issues of law and procedure that arise in relation to prostitution and 'domestic violence'.

### **What the law says ... and what this means**

The area of sexual offences is one that provides numerous examples of the language of the criminal law operating in a gendered way, which is often (although not always) disadvantageous to females. It is important to remember that the legal provisions that continue to apply in the region are ones that, until relatively recently, were in force in Western jurisdictions such as Australia and the United Kingdom. There are a number of areas where penal legislation is conceptualised and written in a gendered way: rape and prostitution laws are salient examples.

## Rape

Rape is treated as a serious offence in the South Pacific region. In many of the countries, it is listed as an 'offence against morality', and in most it is an indictable offence. However, unlike in other common law jurisdictions (for example, the United Kingdom and Australia), the law relating to the crime of rape is gender-specific in nature. It is defined in terms of a crime that is committed by a man against a woman. For example, in Cook Islands, rape is defined in s.141 of the Crimes Act 1969 in the following terms: '(1) Rape is the act of a male person having sexual intercourse with a woman or girl – (a) Without her consent ...' Similar provisions exist in the criminal legislation of other jurisdictions within the region.

This issue has been the subject of consideration by the Fiji Law Reform Commission (FLRC 1999). Its report on sexual offences states that its proposed reforms to this area of the criminal law are guided by the principles encapsulated in the 1997 Constitution of Fiji Islands and by the obligations arising under two international conventions to which Fiji Islands is a signatory: the United Nations Convention on the Rights of the Child (ratified by Fiji in 1992) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, ratified by Fiji in 1995). The report comments in relation to rape:

There seems no logical reason today for a gender confining approach to rape. Whether inside or outside a prison environment, there are instances which come to light of rape committed on males. What needs to be focused on is the need to prohibit the act of rape, the gravest sexual offence next to a sexual murder. The law presently would appear to allow for a woman to commit rape on a woman but only by aiding a man to commit the act of rape, the penile penetration of the victim. There seems no reason why women also should not be charged with rape of another woman, even when acting alone (FLRC 1999:15).

Thus, the FLRC has recommended that the offence of rape be formulated in gender-neutral terms in line with the law as it now stands elsewhere, such as in the United Kingdom (s.1 of the Sexual Offences Act 1956 as amended by s.142 of the Criminal Justice and Public Order Act 1994), in Australia (for example, s.611 of the Crimes Act 1900 of New South Wales) and in New Zealand (s.128 of the Crimes Act 1961).

In addition, the FLRC has recommended that the definition of rape be extended to cover penetration of bodily orifices other than the vagina. Again, this is a legal development that has already been enacted in other jurisdictions. However, within the region, the definition continues to be limited to penile penetration of the vagina. A further recommendation is that rape should be deemed to include non-penile acts. The report refers to the Fiji Islands case of *Mavui Melinioba v. R.*<sup>3</sup> In this case, the victim was raped and subsequently the accused penetrated her vagina with a piece of wood. If the victim had suffered only the non-penile penetration, it would not have been possible to charge the perpetrator with rape. It has long been argued that violation with non-penile objects can be at least as traumatic as penile penetration. This has been recognised by the FLRC (1999:16): 'It is recommended that it should be possible to charge rape for such an act and not leave the prosecution with difficulties over proof of the requisite intent for charging another offence such as act [*sic*] with intent to cause grievous bodily harm'. This type of approach has been taken in other jurisdictions. However, in the South Pacific region, a limited definition of rape still prevails. Non-penile penetrations would constitute aggravated assaults but not rape.

The issue of consent or, rather, lack of consent in relation to the law of rape is one that raises many concerns. The laws of the countries of the South Pacific region identify

rape as sexual intercourse that takes place without the consent of the (female) victim. However, the legislation does not provide any definition of consent or its absence and it has been left to the courts to attempt to make such determinations. This has led in some cases to judicial statements that operate to the disadvantage of victims of rape.

The FLRC report notes a concern over the way in which the courts of the region have defined the lack of consent as something more than a distinction between a person saying 'yes' and a person saying 'no'. It cites the case of *R. v. Alfred Saolo and others*,<sup>4</sup> in which the court looked to the level of resistance of the complainant in order to determine whether there was a lack of consent. The report is critical of this sort of judicial approach:

The 'resistance requirement' fails to take into account cultural and social conditions of victims particularly in the Pacific. In many situations, it is easy for the rapist to overpower a child or woman. To expect a female victim, or a child to resist a physically powerful attacker is unrealistic. She may be too frightened to resist and she may have pretended to go along with his violent overtures and to look for a means of escape later. Sometimes too much emphasis is placed on resistance and shouting for help. A court may need to place in a proper perspective such criticisms made by defence counsel. Unfortunately, there is sometimes insufficient appreciation of this factor and the result is that where there is little evidence of resistance or none at all the matter may weigh against the complainant (FLRC 1999:18).

On this basis, the FLRC has recommended that a statutory definition of consent be formulated and it refers to s.38 of the Crimes Act 1958 (Victoria) as a useful model.

## **Prostitution**

As elsewhere, it is not a criminal offence in any of the jurisdictions of the South Pacific region for a person (whether male or female) to have sexual intercourse for payment. However, the law creates several offences which effectively criminalise the means by which sex workers facilitate their activities. Again, it is often the case that such offences are listed in the penal codes as 'offences against morality'. An example is s.168 of the Penal Code of Fiji (Cap 17): 'Loitering or soliciting for the purposes of prostitution'. According to subsections (1) and (2), '(1) Any common prostitute who loiters or solicits in any public place shall be guilty of an offence; (2) Any person who, in any public place, solicits for immoral purposes shall be guilty of an offence'.

It is significant that this provision appears to be framed in gender-neutral terms, although the term 'common prostitute' is not defined in the legislation. This is not the case in legislation that applies elsewhere in the region; often, the law is based on prostitution being a female occupation. So, for example, s.58K of the Crimes Act 1961 of Samoa, which is concerned with brothel-keeping, interprets brothel as 'any house, room, set of rooms, or place of any kind whatever used for the purposes of prostitution, *whether by one woman or more*' (emphasis added). Similarly, s.162 of the Crimes Act 1969 of Cook Islands, which creates the offence of 'procuring sexual intercourse', is written in such a way as to criminalise the procuring of females for sex but not the procuring of males.

The law relating to prostitution was also a focus of concern for the FLRC and this part of its report has recently sparked controversy in the Fiji Islands' media. In line with trends elsewhere, the FLRC has taken the view that it is impossible to eradicate prostitution as a social phenomenon. Rather than using the blunt instrument of the criminal law to attempt the impossible, it is more socially beneficial to regulate it in order to promote public health and to protect vulnerable members of society, particularly children. The FLRC has recommended that prostitution and associated offences, such as living on the

earnings of prostitution, be decriminalised. The report notes that the policing of prostitution or 'commercial sex work' is problematic and ineffective:

The CSW [commercial sex worker] would be arrested, spend the night in the cell and upon going to Court, magistrates themselves often took a sympathetic line with CSWs and exercised their discretion to release them or order acquittal. The view of one of the policemen was that 'these females are really doing no harm to anybody compared to those who break and enter, who really give trouble and we have to be on the look out or it will be a waste of time to go after these girls' (FLRC 1999:74).

The FLRC has recommended that commercial sex work be decriminalised and instead be subject to a system of regulation and licensing to prevent the industry becoming a vehicle for public nuisance (such as persistent loitering and soliciting in residential areas) or criminal activity (such as 'old men being tricked out of their wallets and no services provided' (FLRC 1999:79)). It is interesting, in light of the recent controversy over this issue, to note that in a poll conducted in 1997 by the *Fiji Times*, referred to in the FLRC report, the majority of respondents (68 per cent) were opposed to the idea of legalising prostitution.

This aspect of the report has provoked a great deal of criticism from church leaders in Fiji. The president of the Methodist Church was reported in the *Fiji Sun* (16 January 2000) as saying, 'It [prostitution] is wrong according to our scriptures and ideology. Our scriptures say that we must have family life but prostitution does not support family life. This is one of the problems that the Western society is bringing in'. Similar views have been expressed by spokespeople for the Salvation Army, the then India Sanmarga Ikya Sangam Hindu organisation and the Fiji Muslim League. On the other hand, the vice-president of the Sanatam Dharam Pratindhi Sabha has argued that prostitution should be legalised in the interests of 'night traders'. The commissioner who authored the FLRC report, Justice Anthony Gates, has responded to critics by calling on the churches to lead the community in demonstrating 'compassion' towards those involved in commercial sex work. Justice Gates has called for an in-depth study of community attitudes on issues associated with prostitution. He has maintained his position that prostitution as a social phenomenon cannot be eliminated, whether through the operation of the criminal justice system or any other means.

### **How the system works ... or doesn't**

In many countries of the South Pacific region, it is a concern that women are disadvantaged by the operation of the criminal justice system. It continues to be the case that they are more likely to be involved with the system in the role of victim than of accused. This is particularly so in relation to sexual offences, but it is also true of 'domestic violence' which is endemic throughout the region.

One of the most significant problems faced by women who are victims of 'domestic violence' is getting the police to treat what has happened as something requiring their attention and action. The policing of 'domestic violence' is one area in which the policing organisations of the region are glaringly deficient. Although the current criminal legislation of the countries of the South Pacific region is sufficient to encompass domestic assaults, police officers still fail to deal adequately with the problem. Furthermore, they receive little or no specific training to equip them with the necessary skills and strategies. They may handle reports informally, either by talking to the parties concerned or by referring the matter to be dealt with by a chief or other community elder, including church ministers. It is questionable whether such an approach is fully appropriate, for two reasons. One is that the police forces of the region tend to have very

few women officers. For example, in Marshall Islands in 1998, 4 per cent of police officers were women. Tonga has probably one of the largest proportions (18 per cent in 1998). The other reason is that patriarchal structures that prevail in the traditional societies of the region and the churches may not necessarily be conducive to women taking the criminal justice route for dealing with domestic assaults if this is what they choose to do (Jowitt 2000).

Elsewhere in the criminal justice system, different attitudes may prevail. In Vanuatu, the Public Prosecutor's Office (currently headed by a woman) has a policy that, once a complaint of 'domestic violence' has been received in the office, the case will not be dropped even if the complainant requests that it should be. This is because the Public Prosecutor feels that often women are forced or coerced to reconcile in custom with their partners and that has led to women becoming victims of homicide at the hands of persons against whom previous complaints had first been made and then withdrawn. However, in the absence of initial support from the police, it will remain the case that many incidents of 'domestic violence' will not reach the Public Prosecutor. The legislation in several of the countries (for example, Fiji Islands, Vanuatu) includes provisions that seek to promote customary reconciliation (for example, Fiji Islands' Criminal Procedure Code (Cap 21) s.163). However, where these provisions exist, they do not make any reference to offences that would qualify for settlement by way of reconciliation in terms of the nature of the offences and/or the sentences they attract but which should be excluded from the ambit of such provisions by virtue of their social significance. Incidents of 'domestic violence' are very clearly in such a category.

### **The reform question**

Generally, in the region, law reform issues are not accorded a very high priority. Many of the countries do not have a dedicated law reform body or, if such a body exists, it produces very little. A notable exception is the Fiji Law Reform Commission. The most likely reason for the lack of this type of activity is limited resources. Across the region, several aspects of the public sector, including legal services, survive only because of the injection of significant amounts of aid, notably from Australia and New Zealand.

However, there are examples of reform initiatives aimed at equalising the position of women and men in many areas of law and social policy, including criminal law and justice. Reference has already been made to some of the proposals put forward by the FLRC. In December 1999, a Samoan lawyer called for the country's rape laws to be reformed so that women who are raped by their husbands are able to file charges against them. As the law currently stands in Samoa (as well as in several other Pacific Island states), the offence of rape can only be committed against a person 'to whom he (the offender) is not married'. The FLRC advocates a similar reform in its report. In Vanuatu in 1999, the Family Protection Bill was prepared by the State Law Office after extensive consultation with women's groups, chiefs and other community leaders and representatives. One of its principal aims is to provide mechanisms for women to protect themselves and their children from abuse and violence in the home. This draft legislation has yet to be considered by the parliament.

As can be seen from the recent public controversy in Fiji, proposals for reforming the laws on prostitution have the potential to be extremely problematic. Attempts to introduce similar reforms in other Pacific Island countries are likely to generate similar controversies. Churches and other religious groups are extremely influential in the region. Also, in the realm of sexual offences, a combination of religious teaching and customary taboos can often lead to communities denying that such issues are relevant



to them. All of these factors indicate that the process of reform in this area of law is likely to be long and fraught with many difficulties. However, in light of the increased participation of these countries in trans-global activities, including the ratification of international treaties and directives such as CEDAW, it seems undeniable that law reform must be undertaken sooner rather than later.

## **Conclusion**

As can be seen from this brief consideration, the criminal justice arena is another locus in which the structure, enforcement and application of the law can operate differentially depending on gender. It is not surprising, given the longstanding dominance of law making, teaching, enforcing and interpreting by males, that this differential impact is disadvantageous to women more often than it is to men. This is true in the countries of the South Pacific region, just as it was previously and often continues to be in other parts of the world. What is evident from the dual approach that has been taken here is that attempts to rectify this imbalance must go beyond simply changing the words that the law uses in order to replace gender-specific terms, such as 'wife', with those that are considered more gender-neutral, such as 'spouse'. Indeed, this type of linguistic reform has already been undertaken in Solomon Islands. But this is a first step which, while being significant in symbolic terms, is unlikely to be meaningful otherwise. Beyond this, law reformers need to examine conceptualisations of the relative positions of women and men that are promulgated in penal legislation, policing and prosecutorial decisions, court procedures and judicial determinations. And, at the practical level, those responsible for the enforcement and application of the criminal law need to look to recruitment policies, training programmes and work practices to identify and then address issues of bias, prejudice and discrimination, whether on the basis of gender or some other characteristic.

## **Notes**

1. For example, Penal Code of Fiji Islands (Cap 17); Crimes Act 1969 of Cook Islands.
2. An exception is the Penal Code of Vanuatu (Cap 135) which was enacted by Vanuatu in 1981, following independence in 1980.
3. Unreported, High Court of Fiji, Criminal Appellate Jurisdiction, No. 38 of 1982.
4. Unreported, Supreme Court of Western Samoa, 1978.

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## **Gender discrimination: A review of legislation in Vanuatu**

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### **Introduction**

A review of the legislation of Vanuatu was undertaken at the Emalus Campus of the University of the South Pacific, in Port Vila, over a period of three weeks in December 1999. The initiative for the review came from the Office of the Ombudsman and was undertaken as part of a Good Governance Project of VANWIP (Vanuatu Women in Politics, a branch of the Vanuatu National Council of Women). The review was commissioned as part of a wider programme focusing on governance and accountability in Vanuatu, sponsored by the United Nations. It was undertaken by two Ni-Vanuatu law graduates of the University of the South Pacific, Betty Zinner-Toa and Velma Wano, under the author's supervision.

The purpose of the review was to identify legislation which contained provisions which were either directly or indirectly gender discriminatory, so that future recommendations could be made to propose changes or reforms to legislation.

At the outset it was recognised that such a review would not necessarily identify all forms of gender discrimination in the laws of Vanuatu, or in the application of such laws. This is partly because legislation reflects only part of the total legal picture, and also because law on paper and law in practice can be two very different things. It was also recognised that redrafting legislation, while a positive move, would be unlikely to remedy gender discrimination because such discrimination stems from something more than the way laws are drafted. The findings endorse this view. The review was, therefore, seen as a very small, although important, step in dealing with gender discrimination.

### **The review**

The Constitution of the Republic of Vanuatu provides for equal treatment under the law and for entitlement to the fundamental freedoms set out under the Constitution without discrimination on the grounds of, among other things, sex (s.5(1)). The Constitution also provides that no laws which make provision for the 'special benefit, welfare, protection or advancement of females, child and young persons, members of under-privileged groups or inhabitants of less developed areas' (s.5(1)k) shall be deemed to be inconsistent with equal treatment.

All legislation in force on 23 November 1999 was reviewed to see if it complied with the principles of equal treatment, and if it appeared not to, why this was so. The main areas in which discrimination on the basis of gender was found to exist were: marriage and the family; citizenship and nationality; employment and labour; and sexual offences.

### **Marriage and family**

Legislation found to be discriminatory under this heading included the Control of Marriage Act (CAP 45); the Maintenance of Children Act (CAP 46); the Maintenance of Family Act (CAP 42); and the Matrimonial Causes Act (CAP 192).

The law of marriage establishes different ages for males and females, the latter being 16 years and the former, 18 years – which is the age of majority. In a society where family involvement in marriage is still common, this means that at present females are of marriageable age before they reach the age of majority. Their legal incapacity to contract seems to be ignored for the purposes of marriage.

Moreover, where a person wishes to be married according to custom, the choice appears to be that of the man, who must fulfil the premarital requirements. This provision in the Marriage Act (CAP 60) may be misleading in as much as customary marriages are likely to involve both families, if not wider kin groups. It should also be noted that many customs relating to marriage are not controlled by legislation and that discriminatory practices would not emerge from a review of this sort.

Where a marriage is entered into, under the Matrimonial Causes Act, it may be declared voidable if the wife was, at the time of the marriage, pregnant by someone other than the (husband) petitioner. This provision only affects women. Provided the husband was unaware of the pregnancy at the time of the marriage and provided he refrains from sexual intercourse with his wife once the discovery is made, a decree of nullity may be granted. In a society where premarital sex is not unusual, this provision seems to take a one-sided view of sexual fidelity. It should also be pointed out that DNA testing or other scientific methods of establishing paternity are not available in Vanuatu.

The grounds for terminating a marriage are equal as far as desertion or continuous absence is concerned, but only a wife may petition for divorce on the grounds of her husband's conviction for rape or other unnatural offences. Unnatural sexual acts of women are not considered.

Differential sexual mores are also apparent in the provisions of the Maintenance of Children Act, where a claim for maintenance for children will not be available if there is evidence 'that during the normal period of conception the mother was of a notorious loose behaviour' (s.4(a)). Not only does this punish the children of women labelled in this way but, also, the lack of any reference to loose male behaviour means that only the behaviour of women is sanctioned.

While most societies make provision for establishing legitimacy for succession to title, particularly to land, certain rights and titles also pass matrilineally. Customary adoption of children is also recognised. Nevertheless, the current state of legislation suggests a patriarchal structure in which paternity is all-important.

This emphasis on the ascendancy of males can be a disadvantage, especially when viewed against some of the material changes taking place in Vanuatu. For example, under the Maintenance of Family Act, only men have to pay maintenance for their children or alimony to their spouse, although a mother may be fined or imprisoned for deserting her children. There is, therefore, no indication that the financial responsibilities of the joint household or upbringing of children should be shared, or that the parent who is earning – who may in some cases be the mother rather than the father – should pay. Actual care is clearly the responsibility of the mother, even if she is not earning or receiving maintenance. Traditionally, this might not cause problems, but these days children do not just require food from the gardens but also school fees, books and clothes. Women may be better able to find paid employment, even if it is relatively unskilled. Moreover, more women are receiving education and are therefore able to move into paid employment. The current legislation does not reflect these changes or accommodate the possibility of considering the earnings of both partners to a marriage.

## **Citizenship and nationality**

Discrimination in the operation of the laws relating to citizenship was the subject of a public report published in May 1999 by the Office of the Ombudsman.

Under the Citizenship Act, rights to citizenship are determined according to gender and marital status. A woman married to a Ni-Vanuatu man is entitled to apply for Vanuatu citizenship. The converse does not apply, so the only way a man who is not a citizen can become one is after fulfilling a residency requirement of ten years. Adopted children who are not citizens similarly can derive their citizen rights from the male adopter.

Where a male applicant becomes a citizen by naturalisation, his wife or any children are automatically entitled to citizenship, although the wife must indicate in writing that she wishes to do so. A woman who becomes a citizen through naturalisation does not confer a similar automatic right on her husband and children. On the other hand, a woman who gives up her Ni-Vanuatu citizenship on marriage to a citizen of another country may regain that citizenship on the breakdown of her marriage.

In a region where movement between different Pacific countries is a regular feature – for example, for education or employment – citizenship rights are important. They confer a number of benefits denied to non-citizens. Discrimination in the conferral of citizenship necessarily means discrimination in other indirect ways.

## **Employment and labour**

Under the Employment Act (CAP 112), there are provisions which discriminate against women by prohibiting them from employment in certain sectors or at night. These provisions are no doubt intended for the better protection of women and, as such, may fall within the permitted exceptions to the equal treatment principles of the Constitution. However, such provisions can also have a negative impact on the employability of women and the employment opportunities open to them. These provisions are also contrary to Article 11.1(c) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) – to which Vanuatu is a signatory – which states that women should have ‘a free choice of profession and employment’ (11.1(c)).

The other area in which discriminatory measures apply to women in employment is with regard to maternity leave. Inevitably, maternity leave is discriminatory in as much as it can only apply to women. However, under the provisions for annual leave in s.29(1) of the Employment Act, maternity leave is listed along with absence due to accident or illness as being a period counting towards continuous employment for annual leave entitlement purposes. Moreover, maternity is also listed under sick leave under s.36 which prohibits an employer from permitting a woman to work six weeks prior to or six weeks after her confinement. While the analogy with sick leave is itself open to debate, the further problem is that a woman on sick/maternity leave is only entitled to be paid less than half of the remuneration she would have been entitled to had she not been absent. This is despite the fact that her absence on the grounds of pregnancy is counted as being continuous employment. Logically, her maternity leave should be on full pay. There is no indication that men who are absent from work for sickness reasons are only paid less than half pay. There are also no provisions regarding job security, so that a woman who breaks off employment to have a baby may well find that she has no job to come back to.

One positive aspect of the employment legislation is that it does allow women to nurse a child for half-an-hour twice a day during her working hours, and such time can be counted as working hours.

Where an employee is accompanied to his place of employment by his family, if he is repatriated or dies while working away from his homeland, he and his family will be repatriated (s.59). The expression 'family' is specified as meaning the wife and dependent minor children of the employee. There is no provision for the repatriation of the minor children and/or spouse of a female employee in similar circumstances.

### **Sexual offences**

The law relating to sexual offences in Vanuatu is still firmly based on heterosexual intercourse, in which the victim is generally female and the perpetrator, male. The definition of rape, for example, is still gender specific and focuses on the lack of consent of the woman and penetration by the man. Failure to prove either will result in acquittal.

There is, however, clearly a perceived need to protect women from sexual violence. The law against abduction mentions only females (s.92), as does the law against intercourse with a girl under care or protection (s.96) and the law against unlawful sexual intercourse which refers only to under-age girls.

### **Conclusion**

The areas in which discrimination was found to exist are not dissimilar to those that have been highlighted, and in many cases addressed, in other legal systems. Most of the examples of discrimination found in the legislation were against women, although not all. Some of this could be quite easily changed by minor drafting amendments, or by cross-reference to the Interpretation Act which provides that 'words and expressions importing the masculine gender shall include the feminine and vice versa' (s.3(2)).

However, as might have been anticipated, gender discrimination is particularly apparent in those areas of the law which deal with the family, personal status, and sexual behaviour. These are complex and controversial areas which are not easy to reform. There is, moreover, the exception – allowed by the Constitution – that protective or special benefit laws affecting women are not contrary to the equal treatment principle.

While both the Constitution of Vanuatu and its commitments under international treaties such as the CEDAW reflect acceptance of policies of non-discrimination, particularly against women, how this is to be brought about creates difficult challenges for a society where introduced ideals and values exist alongside and compete with traditional ones.

The findings of the review (which are public but unpublished) have been submitted to a workshop to be attended by delegates drawn from many different sectors. Recommendations, with various drafting suggestions, will then be put before Parliament for reforming the law. What these recommendations will be remains to be seen. Certainly, it can be anticipated that there will be those who are opposed to change, especially if those changes go to the very heart of social structures, traditional gender based roles, and long-held views on the acceptable behaviour of men and women.

## **Customary law and women's rights in Solomon Islands**

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### **Background**

Solomon Islands is made up of several hundred islands, spread out over a sea area of approximately 1,340,000 square kilometres.<sup>1</sup> The social structure of the country is extremely complex. Culture and social organisation vary from island to island, and even from village to village. The official languages are English and Pidgin, but there are also about 65 vernacular languages and dialects.<sup>2</sup>

Solomon Islands became independent in 1978 (having been a British Protectorate since 1893), with a constitution brought into force by the British Privy Council.<sup>3</sup> This constitution incorporates international human rights (Chapter II), and also promotes local values by giving formal recognition to customary law. This law had continued to operate in traditional parts of society throughout the 'colonial' period.<sup>4</sup> Little attention appears to have been paid to the fact that human rights (particularly women's rights) and customary law embrace very different ideals. Customary law is based on male domination (see Brown and Corrin Care 1998), and even in those parts of the Solomon Islands where title to land descends through matrilineal lines, land disputes are generally litigated by men.<sup>5</sup> Human rights, on the other hand, are founded on principles of equality. The constitution is thus a vehicle for two competing notions. Like many other small Pacific Island countries, Solomon Islands faces the challenge of reconciling the two.

There is some guidance in the constitution as to the relative weight to be given to its provisions and to customary law generally. Section 2 declares the constitution to be the supreme law. More particularly, schedule 3 states that customary law will not apply if it is inconsistent with the constitution. On the other hand, the anti-discrimination section in Chapter II provides a number of exceptions to the right of protection, including those relating directly and indirectly to customary law. Further, inconsistency is often a matter of opinion. As in other countries, doubtful cases must be decided by the courts, taking into account the context not only of the constitution but also of Solomon Islands generally.

### **Constitutional provisions**

#### **Anti-discrimination**

The Constitution of Solomon Islands incorporates a bill of rights, based on the United Nations' Universal Declaration of Human Rights 1948 and the European Communities' European Convention for the Protection of Human Rights and Fundamental Freedoms made in 1953. The preamble pledges to 'uphold the principles of equality'. This is given substantive force in s.15, which provides:

- (1) Subject to the provisions of subsections (5), (6), and (9) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.
- (2) Subject to the provisions of subsections (7), (8), and (9) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority...

- (4) In this section, the expression 'discriminatory' means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another description.

The width of protection in s.15 is also restricted by s.15(5), which contains seven paragraphs exempting certain categories of laws from the discrimination provisions. Section 15(5)(f) permits positive discrimination by stating that s.15(1) shall not apply to laws for the advancement of the more disadvantaged members of society. Paragraph (g) follows on from this by allowing special laws to be made for disadvantaged groups, whether advantageous or not, provided they are justifiable in a democratic society. Paragraph (a) exempts tax and revenue laws; paragraph (b) exempts laws relating to non-citizens; paragraph (c) exempts personal laws, such as laws relating to marriage, divorce, custody and inheritance; and paragraph (e) exempts land laws. Paragraph (d) provides that nothing in any law shall be held to be discriminatory to the extent that it makes provision for the 'application of customary law'. This restriction is open to different interpretations, which are discussed further below.

### **Customary law**

The recognition of customary law as a source of law within the formal system shows respect for customary law at national level. This aim is reflected in the preamble, which commences by stressing pride in the 'worthy customs' of Solomon Islands people. Recognition is also an attempt to integrate customary law into the formal system. Section 75 states:

- (1) Parliament shall make provision for the application of laws, including customary laws.
- (2) In making provision under this section, Parliament shall have particular regard to the customs, values and aspirations of the people of Solomon Islands.

Schedule 3 gives more detail regarding the effect of customary law in para. 3, which provides:

- (1) Subject to this paragraph, customary law shall have effect as part of the law of Solomon Islands.
- (2) The preceding subparagraph shall not apply in respect of any customary law that is, and to the extent that it is, inconsistent with this Constitution or an Act of Parliament.

Paragraph 3(2) of schedule 3 makes it clear that customary law is not to be applied if it is inconsistent with the constitution or a statute. This is also the implication from s.2, which provides: 'This Constitution is the supreme law of Solomon Islands and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void.' Accordingly, a customary law that is inconsistent with constitutionally protected human rights will be void, unless within one of the stated exceptions, for example those in s.15(5).

Paragraph 3 goes on to empower parliament to take the matter further:

- (3) An Act of Parliament may: –
  - (a) provide for the proof and pleading of customary law for any purpose;
  - (b) regulate the manner in which or the purposes for which customary law may be recognised; and

(c) provide for the resolution of conflicts of customary law.

Unfortunately, parliament has not exercised its powers under paragraph (3)(c). Progress with regard to sub-paragraphs (a) and (b) has not fared much better. Although the Solomon Islands Minister for Justice circulated the first draft of the Customs Recognition Bill for comment in 1993, no further action was taken on it until 1995 when a second draft was issued. The 1995 bill has still not been enacted.

### **Case law**

In the case of *The Minister for Provincial Government v Guadalcanal Provincial Assembly*,<sup>6</sup> the Court of Appeal of Solomon Islands was called on to consider whether the Provincial Government Act 1996 was unconstitutional. This Act repealed the Provincial Government Act 1981, under which Provincial Assembly members were elected democratically. Under the 1996 Act, members were indirectly elected by Area Assemblies which consisted of 50 per cent elected members and 50 per cent non-elected chiefs and elders. As only males could be 'traditional chiefs', half of the members of an Area Assembly had to be male. This effectively denied females equal opportunity. While the point does not appear to have been pleaded or argued, the court considered its implications. It concluded that, as s.114(2)(b) mandated parliament to 'consider the role of traditional chiefs in the provinces', it had been recognised that 'traditional chiefs' should play a role in government at provincial level. The discrimination that would remain until the role of 'traditional chiefs' under the constitution was re-evaluated had, according to the court, been accepted in the constitution itself. Goldsborough JA stated:

Parliament has made provision for provincial government. It was required to do so [under s.114]. It has considered, as required, the role of traditional chiefs. Indeed it has decided to enhance their role, as compared to the repealed legislation. In this regard it is clear that women at present may be disadvantaged, given that traditional chiefs are male. This I conclude cannot be said to offend against the constitution. It is a required consideration by the same constitution.

Unfortunately, their Lordships failed to consider the power conferred by s.114 in the context of the right to protection from discrimination contained in s.15. Of course, even if they had done so, there is still the stumbling block of s.15(5)(d). As stated above, this exempts laws providing 'for the application of customary law' from the protection given by s.15(1). However, the potential width of this exemption is limited when it is read in the context of s.75(1), which directs parliament to 'make provision for the application of laws, including customary laws'. The question then arises: is subsection (5)(d) designed to exempt all customary laws from the protection of s.15(1), or only those laws that govern the application of customary law, such as the Customs Recognition Bill 1995? The second interpretation appears more likely, particularly in light of the pledge in the preamble to support equality. If this is correct, the exemption is aimed at protecting laws specifying how, when and to whom customary law should apply, which might otherwise be unconstitutional because they only apply to certain parts of the community. On this interpretation, the Provincial Government Act 1996 should not have been upheld, as it is not such a law.

A similar question arose for consideration in *Tanavulu & Tanavulu v Tanavulu and SINPF*.<sup>7</sup> There, the court had to consider customary inheritance for the purpose of the Solomon Islands National Provident Fund Act. That Act provides that, if a member of the fund dies without nominating a beneficiary for their accumulated funds, distribution is to be in accordance with the custom of the member, 'to the children, spouse and other persons' entitled in custom (s.33(c)). No provision is made as to how this custom is



established. In this particular case, the deceased had nominated his brother and nephew as beneficiaries when he joined the fund. As provided by s.32 of the Act, that nomination became void when he married the following year. After he died, his father applied for and was paid the amount held in the fund on the basis of custom in Babatana, South Choiseul. Of the \$11,079 paid to him, the father deposited \$4,000 in an interest-bearing deposit account in the name of the deceased's son. He used \$3,000 to meet funeral expenses and paid \$2,000 each to the deceased's brother and nephew. Seventy-nine dollars was used for his own purposes. The deceased's widow challenged this distribution, seeking a declaration in the High Court that she and her infant child were each entitled to a third share of the money. The evidence in the case showed that inheritance in the deceased's tribe was patrilineal and that the deceased's father was entitled to distribute the estate to relatives. According to customary law, the deceased's father had the discretion to pay some amount of the inheritance to the widow, but in some circumstances, for example as where she had left the father's house, he was entitled to leave her out of the distribution altogether.

Most of the argument concentrated on the proper interpretation of s.33(c). However, it was also argued for the widow that customary law that was discriminatory was unconstitutional. At first instance, the judge found that the word 'law' in s.15(1) did not include customary law. His basis for this finding was that the section was referring to a law to be made in the future and customary law was not such a law. Rather, it was 'evolving or was already pertaining at the time of the adoption of the Constitution'. This interpretation puts customary law outside the protection of s.15 for all purposes. However, it is open to question. While the word 'shall' may generally be used to denote indefinite future time, it is used by legislative drafters to denote an obligation (see Thornton 1987:90). In a negative phrase such as 'no law shall', it means 'a law must not ...'. His Lordship went on to say that discriminatory customary law would not be protected by the section in any event, because he considered that ss.15(5)(c) and 15(5)(d) excused discriminatory law in a case such as this.

Section 15(5)(c) exempts law, inter alia, 'with respect to devolution of property on death'. Arguably the distribution of funds under the National Provident Fund Act would not be covered by this, as the Act takes entitlements from the fund out of a deceased's estate for testamentary purposes. The contrary interpretation of s.15(5)(d) has already been discussed above.

The Court of Appeal upheld the first instance decision and limited their consideration of the conflict between customary law and protection from discrimination to the following words:

The Constitution (s.15(5) and cl. 3 of Schedule 3) recognises the importance of customary law to citizens of the Solomon Islands. The former provision recognises that the application of customary law may have certain discriminatory consequences. The learned trial judge was correct in holding that the Act was not unconstitutional because s.36(c) discriminated against the widow.

The practical effect of both these decisions was to perpetuate discrimination founded on customary law and practice.

## **Conclusion**

There are insufficient decisions involving resolution of conflict between customary law and anti-discrimination provisions to make any accurate predictions for the future.<sup>8</sup> However, it is apparent that the values encapsulated in s.15(1) to (4) are often diametrically opposed to the values underlying customary law in Solomon Islands. The

failure of the Solomon Islands Constitution to address this conflict may be attributed an assumption by the British drafters that international human rights norms are universal. This approach fails to take into account the fact that traditional Solomon Islands societies are founded on community values and duties, rather than on individual rights.

The decisions discussed above support the view that judges trained in the common law tradition continue to interpret human rights provisions narrowly.<sup>9</sup> This approach appears to coincide with contemporary attitudes within the Pacific.<sup>10</sup> It may also assist in preserving the bill of rights in Solomon Islands, in the sense that insistence on immediate recognition of unconditional equality might be actively resisted on the basis that it threatens the very foundations of customary society. A gradual approach to the introduction of change from within the boundaries of that society may have a greater chance of long-term success.

There is no doubt that successful resolution of the conflict between customary law and human rights in Solomon Islands requires recognition and understanding of the different cultural perspectives in which they operate. The debate on human rights is finally being expanded outside its former geographical and philosophical boundaries (see, for example, Tomas and Haruru 1999). This may provide an opportunity for human rights to be redefined in a South Pacific context. At the same time, legal education within the region has expanded to include undergraduate and postgraduate study of customary law.<sup>11</sup> Armed with this knowledge and without preconceived notions of the superiority of Western law, the next generation of South Pacific lawyers may be better equipped to grapple with the conflict between customary law and human rights.

## Notes

1. The present population is about 328,723 (1991 Government Census). Of these, about 93.4 per cent are Melanesian, 4 per cent Polynesian, 1.4 per cent Micronesian, 0.7 per cent European and 0.2 per cent Chinese.
2. Acknowledgement is due to Prof. J. Lynch and Dr R. Early of the Pacific Language Unit, University of the South Pacific (USP), who supplied this information.
3. Solomon Islands Independence Order 1978.
4. Customary law was encouraged during the Protectorate era as a means of social control; for example, Native Courts Ordinance 1942 (Solomon Islands).
5. See, for example, *Maerua v Kahanatarau* [1983] SILR 95. The same applies in other Melanesian countries; for example, 'Submission by the Fiji women's rights movement and the crisis centre', *Report of the Commission of Inquiry on the Courts, Fiji Islands*, which states that 'tradition, culture and custom in the main is defined by men, not women – therefore there is a conflict about whose custom is being applied' (1984:172).
6. Unreported, High Court, Solomon Islands, CAC 3/97, 23 April 1997, at p. 26.
7. Unreported, High Court, Solomon Islands, civ cas 185/1995, 12 January 1998.
8. For an example of conflict between customary law and the right to life enshrined in s.4 of the constitution, see *Loumia v DPP* [1985/6] SILR 158.
9. See also *Remisio Pusi v James Leni and Others*, unreported, High Court, Solomon Islands, cc 218/1995, 14 February 1997, where customary law was upheld in the face of a challenge on the basis of infringement of the right to freedom of movement and various other rights.
10. In a recent informal survey of final-year law students at USP, only 6 out of 33 students considered that women's human rights should override customary law. About 40 per cent of those students were women.

11. The School of Law at USP offers an LLB and postgraduate degrees, which include courses on customary law.

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## **The Domestic Violence Act, gender, and ethnicity: Pacific Island peoples in Christchurch, New Zealand**

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My research investigates ethnicity and gender relationships for selected Pacific Island nations and how these are altered within the New Zealand context (Wurtzburg 1997a, in preparation). This paper examines how gender and ethnic origin affect access to and implementation of the 1995 Domestic Violence Act in Christchurch.

### **Methodology**

The research considered here is based largely on two sets of taped interviews. One set comprised 36 people of non-Pacific Island origin living in Christchurch, who work or have worked for the police, social service agencies, the courts, or legal services. In order to understand how the 1995 Act functions in practice in Christchurch, it was both appropriate and necessary to ask those who work in such areas. Information obtained from interviewing them is compared with the views both of women seeking protection from violence and of members of the Pacific Island communities.

The second set of interviews involved individual meetings with 30 Pacific Islanders living in Christchurch, Auckland and Apia (Samoa). The 21 women and 9 men self-identified as: Samoan, New Zealand-born Samoan, Australian-born Samoan, Cook Islander, New Zealand-born Cook Islander, Niuean, Fijian, Fijian-Indian, Tongan, New Zealand-born Tuvaluan, and I-Kiribati. While often people acknowledge a multi-ethnic background, interestingly no one defined themselves as belonging to more than one Pacific Island group, although there was some incorporation of New Zealand identity by those born in the country. In discussions about ethnicity, the perceptions of New Zealanders of European origin concerning visibly different minority people living in their midst were often mentioned, for example: 'When we do things wrong, we're Samoans. But when we do the good things, we're all New Zealanders' (Samoan woman).

Informants mentioned the range of languages and social customs present in New Zealand, despite the general categorisation among New Zealanders of European origin of these various groups as simply 'Pacific Islanders', for example: 'We all get lumped together as Pacific Islanders, but we all have different cultures ... and we don't even understand each other's language' (Samoan woman).

Issues of language, culture and gender were matters of concern to those interviewed. Their words are offered here in the historically attested anthropological tradition of giving voice to others (Behar 1996:26). The materials presented are those that relate specifically to selected portions of the Domestic Violence Act.

### **The Domestic Violence Act 1995**

New Zealand law relating to family violence is mostly based on the new Domestic Violence Act, which came into force on 1 July 1996. The date of the implementation of this Act was well publicised, although, unfortunately, the specific details of the legal changes – and there were many – were less well understood by both the general public and those working in the courts, the police and other social service agencies (Wurtzburg 1997b). Therefore, the first few months of the new Act were chaotic and confusing both

to the majority of legal insiders and to members of the public. This confusion rendered the law inaccessible to some women, especially recent migrants. For example, a woman lawyer interviewed ten months after the initiation of the new Act stated that 'it does not seem that our women clients out there know ... about this law'. Selected legal changes with regard to the Act are discussed below.

The stated purpose of the Act is to decrease domestic violence by '(a) recognising that domestic violence, in all its forms, is unacceptable behaviour; and (b) ensuring that, where domestic violence occurs, there is effective legal protection for its victims' (s. 5(1)). At times this aim is supported, and at other times undermined, by the interpretation of issues relating to gender and culture:

Fijian and Samoan [men at domestic incidents] that I have attended recently [in Christchurch] ... don't accept that they can't beat their wives. (police, man)

Because he's [father] the chief in the family ... we have to do what he say ... She [mother] knows what is going on in the house [beating of adult children], but she can't do nothing because my father is the chief, and she has to listen to him, and like obey him. (Samoan woman)

It's very hard for them [Samoan men] to hit the women here [in New Zealand]. And that's why a lot of woman that come here to New Zealand, they so happy. They feel like they free ... They know that once a man give hiding to them, they just go straight to the police. (Samoan woman)

In some situations, the Samoan women here feel completely empowered by the New Zealand way of life. Women are independent. They have their own incomes. (lawyer, woman)

The Domestic Violence Act states that court access should be 'as speedy, inexpensive, and simple as is consistent with justice' (s.5(2)(b)). The influence of gender and culture also plays a role in terms of this access:

The judges are white ... Protestant male [with] ... middle-upper class type backgrounds ... There are a number of cultural issues that ... create a barrier in terms of access to justice. (lawyer, woman)

### **Identity and the church**

Religion was a frequent topic of discussion in my interviews with members of the Pacific Island communities. The various churches often serve to provide some sense of identity to a group of people who may be from very different island backgrounds:

Here in New Zealand, your village is actually your church ... If you ... meet another Samoan, you work out where they're from through the church. (New Zealand-born Samoan woman)

From my own experience in Wellington, I know people rely on the church minister. To compensate for the absence of the other networks that they would normally have. (New Zealand-born Samoan woman; interview in Samoa)

The reliance upon church and minister can have negative consequences for a Pacific Island woman dealing with domestic violence under New Zealand law. She may not be made fully aware of the legal options available to her and she may be unable to make her own decision because of culturally prescribed influences:

Samoan women ... are pressurised by the church, by their husband, by the whole community, by all their relatives ... to reconcile [with their husband/partner]. (lawyer, woman)

Sometimes [Samoan women] come in [to court] with ... a minister... and there seems to be ... pressure on them to withdraw the charges ... You know, shameful and so on. (court worker, woman)

### **Shame and respect**

With regard to shame, women seem to bear the greater proportion of social and family blame when a male partner is violent:

There's always that little remark [by women in cases of domestic violence] ... 'It's my fault ... I'm the one to be blamed'. (Niuean woman)

My father [in Samoa] found out what happened [that I left my physically abusive husband and went to a women's refuge] ... and my father said, 'Shame on you. You put the family down. You put the name of the family down' ... Even though they know it's not my fault, it's a big shame for the family. (Samoan woman)

What we find with Polynesian families is that ... they shut down on us. Because ... it's very shameful ... Very rarely do we get a member of a Polynesian family calling the police to say they've had a major domestic. (police, man)

The above statement makes greater sense when Samoan attitudes to marriage are considered:

When you are married, you are married to the whole family. You are not married as an individual to another individual ... If I will be beaten, if I will be verbally abused, that will be on my ... *aiga*, my family too. (Samoan woman)

The issue of respect for elders may also play a role in women's interactions with the courts:

If you ... talk back to your parents ... that's seen as being cheeky or disrespectful. It's *Palagi* [European] influence. (New Zealand-born Samoan woman)

### **Language barriers**

Court access can also be affected by linguistic ability (Aiomanu 1996). Many older Pacific Island people or more recent immigrants to New Zealand may have limited skills in spoken or written English. They may also be ashamed of their inability in English and may not admit to needing assistance: 'My father, even though he's been here a long time, he doesn't speak English that well' (New Zealand-born Samoan woman). Language can affect women's abilities to contact the police or, once contacted, to explain the nature of the problem:

[In situations of limited English comprehension, police will use an] interpreter or family member, yeah, usually a child or someone like that if they've got a reasonable grasp of the English language. Also the parents at times. (police, man)

You can sort of get around it [lack of English ability]. Because I suppose you can make a fist and [say] 'Has he hit you?' Yes and no. (police, man)

[A refuge worker] brought her [Samoan woman] in [to the women's refuge] sort of in the middle of the night. And she had spent several hours in the police station waiting for an interpreter [who was a man] and then another couple of hours writing up her statement. (social service, woman)

### **Definitions of 'violence' and 'domestic relationship'**

Violence is defined in the Domestic Violence Act as '(a) physical abuse, (b) sexual abuse, [and] (c) psychological abuse, including, but not limited to, – (i) intimidation, (ii) harassment, (iii) damage to property, [and] (iv) threats of physical abuse, sexual abuse,

or psychological abuse' (s. 3). However, the actual definition of violence utilised by police at the scene may vary dramatically from that prescribed by law:

It's no offence to fight in your own home. You've just got to be able to distinguish ... what a fight is and what an assault is ... A fight is two people assaulting each other equally. So it can be your interpretation of did someone get hurt. (police, man)

Say someone ... may have thrown a few plates or thrown something through a glass door ... Everyone argues. That's just part of a relationship. It's when things either have a history or he's ... caused some real damage to the person ... If the assault is of a minor nature, say a push or a shove, then we're probably unlikely to make an arrest. (police, man)

Section 4 of the Act expanded the definition of 'domestic relationship' to include partners, family members, those sharing a household, and individuals having 'a close personal relationship with the other person'. The previous legislation had only considered married or de facto partners of different sexes to be in a domestic relationship. This was a significant change in the law which was variously interpreted by informants: 'Everything is a domestic these days ... It's so broad now that it's a pain in the butt' (police, man).

### **Protection orders and contact**

Under the new Act, the protected person is given the right to determine whether or not to live with or have any contact with the respondent [the perpetrator of the violence] (s. 20). This legal right may not be enforced adequately if police do not understand, or minimise, its purpose:

They [women] now have the authority to switch on and switch off in terms of allowing the person to remain in the house or to leave. And there's one judge that said 'it's a bit like flicking a light switch on and off'. (police, man)

Once a woman has been granted a protection order, she has a piece of paper which acknowledges her right to safety. However, her physical safety may depend on her ability both to phone the police and then inform them if there are violations of the order. For various reasons, it may be difficult for her to do this. Ideally, if she is able to do so, the police will then arrest the perpetrator and he will be charged; however, the reality is often slightly different:

If ... people are going to get Protection Orders they really need a telephone [which many Pacific Island people do not possess] ... My experience of a number of Pacific Island women is that they, unless they are living in a community where there are other Pacific Islanders, they don't know their neighbours ... So they're actually very isolated. The orders really don't serve them very well. (court worker, woman)

Instead of living in your extended family in the village, you're suddenly living [isolated] in a flat in Hoon Hay. (New Zealand-born Samoan woman; interview in Samoa)

The women ... don't want to make complaints if they're Pacific Islanders, but that's generally right across the board with domestics. (police, man)

One particular client [rang] ... She said, 'I phoned the police all morning and they haven't come. And he has broken so many windows ... because I won't let him in. The kids are all hiding under the bed' ... So ... I phoned them [police], and ... eventually they did take him away, but released him within six hours. (lawyer, woman)

They've [perpetrators of assaults] just been wham, bam, straight to jail .... That will have opened their eyes a fair bit. I've certainly had some good feedback from the victims over that. (police, man)

Males were getting locked up purely on a gender basis ... I sort of require there to be either injuries or a situation where the male has ... detain[ed] her in some way and then perhaps physically abuse[d] her. (police, man)

And then women's refuge sort-of jumping on the band wagon and saying 'oh, you should lock everyone up'... So we just go there and cover our own bums by separating them for the night and sending one of them to a friend's house, or whatever. (police, man)

### **Power relations and pressing charges**

In the period after arrests, women may be pressured to withdraw charges or they themselves may honestly wish charges to be removed. This behaviour is often a symptom of the long-term abuse and their general lack of power and control over their own lives, but it may not be understood in these terms by those who have the power to withdraw charges:

I had enough with this ... kicking and hitting ... I rang the police ... They asked me if I wanted to press charges against my father. But I never wanted to. (Samoan woman)

I have a suspicion that a lot of applications to withdraw are made on cultural grounds ... especially those situations where the male is perhaps dominant ... and the woman is ... coerced into advancing grounds for not wanting to proceed ... As a general rule, I don't make allowance for culture in my decisions whether to continue a prosecution or withdraw. It's either was there an assault or wasn't there an assault. (police, man)

I would say ... that probably the majority of Samoan people have refused to give evidence and have withdrawn and want their partner home for whatever reason. (court worker, woman)

Lack of understanding of the reasons for withdrawals of either protection orders or charges under the Crimes Act 1961 can influence police in ways which negatively impact upon other women or other members of that ethnic group:

To be honest we're wasting our time in a lot of domestic violence cases ... They call us when they get beaten, but then they don't want to go the whole hog and make the decision for themselves ... Why do we bother with some people? (police, man)

### **Conclusion**

The statements cited here, relevant to the Domestic Violence Act, provide insights into how gender and ethnicity influence access to and implementation of the law in Christchurch. Based on this analysis it seems that women are disadvantaged more than men, and Pacific Island women are doubly disadvantaged. It is also apparent that Pacific Islanders' views of family responsibility, domestic violence and the law often differ from the views of New Zealanders of European origin and the legal statutes. Briefly, the following generalisations can be suggested:

- Pacific Island informants emphasised responsibility towards the family and the broader social grouping, which contrasts strongly with the more individual-oriented New Zealand society, expressed in laws stressing personal responsibility and individual marriage contracts.
- Oceanic respondents paid much attention to the topic of language. Lack of proficiency in spoken or written English has tremendous ramifications for people living in New Zealand and negotiating with English-speaking agency representatives, such as police, court staff and others.
- The connection between religious affiliation and ethnicity was considered significant by many Pacific Island informants. Generally, these links are not



adequately understood by agencies dealing with domestic violence in Christchurch, which contributes additional levels of tension to stressful situations.

- Respect and shame were both topics which generated much discussion by Pacific Island participants. Typically, these concepts were comprehended in very different terms from those prevalent in mainstream New Zealand. They may have disadvantageous outcomes for Pacific Islanders negotiating complex legalities. For example, an individual may state in court that they do understand something when in fact they do not, and this may result in miscarriage of justice.

In conclusion, broader understanding of the different worldviews among members of the Pacific Island communities, members of the legal profession, and service agencies is needed. It would assist in the administration of greater justice with regard to domestic violence policy in Christchurch if both this understanding and educational information concerning the gendered nature of domestic violence spread throughout the community.

### **Acknowledgement**

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## **Women of Timor-Leste: Seeking freedom in a free nation**

*Rosa de Sousa, Fokupers, Dili*

The Indonesian military occupied East Timor for 24 years, during which time they had strong control over people's ability to speak out about their situation. Timorese women suffered from various kinds of violence. A lot of people talked about human rights and the brutality of the military towards Timorese people especially toward men, but there was little information regarding women's suffering. At that time, there was no women's organisation or NGO that paid attention to the situation of women. In 1997, about 15 men and women tried to break the silence by establishing a new NGO called Fokupers (Communication Forum for East Timor Women).

Fokupers has assisted 467 women victims of violence such as sexual abuse, rape and interrogations, as well as widows and mothers who had lost their children as a result of the Indonesian military occupation. Fokupers conducted individual and group counselling and provided economic support during the emergency period. Up until now Timor-Leste people, especially those who had lost their children and husbands, are still waiting for justice.

### **Fokupers and domestic and sexual violence**

The Indonesian occupation is over now, but Timor-Leste women continue to face violence. The patriarchal system still dominates the society. Where tradition and customary law favour men over women, this means that men own property, men inherit and men make all the important decisions. As a much higher percentage of women are illiterate, they become subordinated and economically dependent on men. The consequences are that Timor-Leste women are victims of violence that very often occurs inside their own homes, and are victims of decisions made both in the home and by the state.

One step forward is that women have started to break the silence of domestic violence and are now ready to go to the police station or an NGO to report it. In 2003 there were 179 domestic violence cases and 42 sexual violence cases (rape and sexual harassment) reported to the Dili District Police. But 104 cases against the accused were dropped on the women's initiative. In 2004 there were 246 domestic violence cases and 45 cases of sexual violence (rape, attempted rape, sexual assault and sexual harassment) (see Bere paper).

During 2003 Fokupers assisted 35 domestic violence and 25 sexual violence cases. In 2004 Fokupers dealt with 30 cases of domestic violence and 24 of sexual violence and up until May 2005, they have assisted with 16 domestic violence and 12 sexual violence cases. These numbers are just the tip of the iceberg. We must not think that domestic violence didn't exist during Indonesia's occupation, as it has existed in Timor-Leste for a long time, but was largely hidden from public view or discussion.

### **Why domestic violence is hidden from public view**

The reasons women give for domestic violence being hidden include:

- family pride and status;
- the mentality of patriarchal system is ingrained;

- lack of information;
- not enough security in the government system;
- women are economically dependent;
- domestic violence is regarded as a private matter;
- no law yet that protects women as victims;
- lack of support from other institutions; and
- people/family will blame the women.

All of these factors contribute to strengthening the cycle of violence and lead to a growing number of women and children living in fear and injustice.

### **Support that Fokupers offers to Timor-Leste women**

Fokupers recognises that women alone cannot answer and solve the problems. That is the reason why its motto is *give a hand together to end violence*. This is the spirit with which we work to realise our vision of a world with gender equality and justice between men and women. Our mission is to promote women's rights and strengthen the socio-economic capacity of Timor-Leste women, through assistance/accompaniment, policy, advocacy and community organising.

In cases of helping female victims of violence, Fokupers Accompaniment Division offers support through counselling, shelter, therapy, legal advice and preparing victims for court. Fokupers recognises that it is not enough to help women deal with violence, but that we should offer a hand to address the root causes of such violence.

Fokupers advocacy includes activities such as public discussions, on television and face to face, preparation of publications and articles in the print media, workshops and group discussions with women and with men, training, including with police and with public servants, and advocacy on legislation with members of parliament and others.

### **Community organising**

Working for women and children not only requires knowledge, but also our hearts and our love. And it's also not really enough to work by ourselves. For that reason Fokupers is looking for partners who want to support us giving a hand to help develop and improve the social and living conditions in Timor-Leste, especially for women, and to cut the cycle of violence by supporting Fokupers' activities with warmth and partnership.

## **Women and justice in Timor-Leste**

*Maria Agnes Bere, Judicial System Monitoring Programme, Timor-Leste*

### **Introduction**

Women in Timor-Leste in particular face a vast number of obstacles when trying to access and obtain justice. This paper offers an overview of several recent Judicial System Monitoring Programme (JSMP) reports into Timorese women and justice.

### **Problems and obstacles**

Findings from JSMP's March 2004 report *Women in the Formal Justice Sector* were based on a two-month period of observation, in late 2003, when the JSMP 'monitored the progress of all women-related cases before Dili District Court' (JSMP 2004:4). During that time, the majority of cases relating to women were either delayed or postponed. The report's main findings included:

- more than half (55 per cent) of all criminal hearings scheduled during the monitoring period were women-related cases. Most of these (78 per cent) related to sexual violence;
- the average time taken to process women-related cases before the Dili District Court during this monitoring period was 274 days;
- the vast majority (41 of 49) hearings of cases involving women scheduled or observed by JSMP were postponed. Only six per cent of all scheduled hearings in cases involving women related to the presentation of evidence;
- very little progress was achieved in cases involving women. Only 16 per cent of all of women-related cases actually proceeded to trial. In almost all cases that went to trial, no significant progress was achieved towards reaching a final decision;
- during the observation period, the court issued no final decisions in cases involving women;
- while a number of complaints of domestic violence were lodged during the period of observation, not one domestic violence case was scheduled for hearing; and
- during an interview with JSMP one Dili District Court judge demonstrated gender bias. Attitudes such as this are clearly detrimental to women whose cases need to be handled effectively and sensitively.

From the total number of cases observed, the main reasons for delays and postponements of hearings were that several or all of the court actors required to be present did not attend these hearings. These absences included failing to attend the court on the date set for the relevant hearing or arriving on time at the court but departing without waiting for the arrival of the other required parties who were running late, resulting in postponement.

Based on the problems identified above, JSMP in April 2004 established a Women's Justice Unit (WJU) in response to strong support shown to the JSMP report and other requests for information about women in the formal justice sector. The WJU continues to monitor cases and decisions involving women in each of the District Courts of Timor-

Leste, with the aim of creating transparency in relation to the treatment of women in the formal justice sector.

Based on observations made by the WJU some progress has been made by the courts in the processing of cases involving violence against women. This statement is based on the fact that almost every day there is a hearing of a matter concerning violence against women, particularly rape, and these hearings have culminated in the issuance of final decisions. Postponements continue to occur, however, usually due to the absence of the victim or the defendant.

### **Violence against women: The statistics**

There is a large gap between the number of cases of violence against women that are filed with the police and the number that reach the courts. It should also be pointed out that acts of violence against women are seldom reported to police (JSMP 2005a:4).

In 2003, 361 cases involving violence against women were filed by the national police force (PNTL). In the first eight months of 2004, the national Vulnerable Person's Unit (VPU) recorded 300 cases of violence against women. These cases were separated into the categories of attempted rape, domestic violence, rape, sexual assault and sexual harassment. It is unclear what type of crimes are defined as sexual harassment.

Court records give an indication of the percentage of all cases that appeared before each court in Timor-Leste that involved sexual violence. These are given below. The records do not make it clear whether crimes involving domestic violence are included in these cases.

- |                          |      |
|--------------------------|------|
| • Dili District Court    | 23 % |
| • Oecusse District Court | 13 % |
| • Suai District Court    | 13 % |
| • Baucau District Court  | 28 % |

Unfortunately police statistics are not available as a percentage so comparative analysis is difficult. However, JSMP monitoring has shed light on the vast number of cases that do not reach the courts. It is worth reiterating that 361 cases of sexual and domestic violence were reported to the police in 2003; but in the ten months from April 2004 to February 2005 in which JSMP monitored court cases involving women victims, only eight decisions regarding crimes of this type were handed down.

The JSMP (2005a:13) identified the following reasons for this disparity:

- victims and their families withdrew their cases due primarily to economic dependency and also because of threats made by husbands;
- police and prosecutors sent victims of domestic violence back to their family to settle their case;
- police and prosecutors tried to conduct mediation to reconcile two parties;
- prosecutors transferred cases to police and ordered further investigation (with investigations remaining incomplete);
- lack of communication and transportation, prevented the processing of cases;
- lack of evidence; and
- ongoing problems with court administration and court management.

However, there is some indication of positive change. JSMP monitoring indicates almost half of the trials being heard in the district courts of Timor-Leste in mid 2005 involve cases of violence against women.

## Judgement

Eleven decisions were issued by the district courts from June 2004 to March 2005 in cases involving women. The issuing of decisions by the courts in cases of violence against women and girls is a positive step forward for the justice sector in Timor-Leste. The fact that these cases reached a final decision is an improvement in the level of justice East Timorese women can expect.

Nevertheless, the decisions handed down by judges in cases of violence against women show that there are a number of ongoing deficiencies (JSMP 2005b:25):

- sentences for crimes of violence against women were too short and did not reflect the severity of the crimes committed;
- judges did not apply international standards in their decisions, as they are required to under the constitution;
- judges did not apply an appropriate level of reasoning in cases involving sexual assault; and
- judges were insensitive towards gender issues or lacked knowledge about the rights of minors.

## The police and traditional justice

JSMP also conducted interviews with village heads and sub-village heads for a report into police treatment of women in Timor-Leste. These community leaders said while they were aware of the criminal nature of domestic violence and sexual assault, because the formal justice process is so slow that they generally chose to settle such cases through customary or traditional mechanisms.

This report also investigated allegations of gender discrimination against women by the PNTL. Part of this report's focus included investigation into the notion that 'police do not consider cases of domestic violence or sexual assault seriously; that police officers themselves are involved in cases of violence against women; and that sexual harassment of female police officers is occurring within the PNTL' (JSMP 2005c:5).

The report found many police officers do not consider domestic violence a crime worth putting through the formal justice process. Minor cases (where there is no bleeding or obvious physical injury) are usually referred back to the families or village officials to be dealt with through the traditional justice process. Even when the PNTL arrest the suspect, they use a 72 hour pre-hearing detention limit to give the victim time to ask to withdraw the case from the formal justice process.

The report also found few PNTL, government officials, or women's groups see this as a problem. Nor did any of the interviewees complain that PNTL were not investigating these cases properly. However, JSMP also found, 'given the cultural constraints a victim has to overcome before she reports domestic violence to the police this state of affairs is not acceptable' (2005c:15).

Interviewees offered a number of reasons for preferring *adat* (traditional law) to the formal justice system to deal with cases of domestic violence:

- traditional law is the law they respect;
- the formal justice process takes too long;
- victims think the formal justice system is a waste of time and gives more support to the suspect;
- *adat* is more effective and efficient; and,
- the court, to date almost always Dili District Court, is too far away.

Only one of the 38 people interviewed said they thought the formal justice system was better than the traditional justice system. This is 'because with *adat* the suspect can do the crime again' and '*adat* does not ask the victim her opinion on the decision' (op. cit.).

### **Conclusion**

Under the terms of Timor-Leste's Constitution, and its obligations under a number of international treaties, women are guaranteed equality before and equal protection from the law. An essential first step to this is to ensure women are treated fairly by the police when they report a criminal act. Following this, they also require a fair judicial process. It is hoped that the JSMP's reports will help raise awareness and as a consequence improve women's access to justice in Timor-Leste.

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## **Local justice systems in Timor-Leste: Washed up, or watch this space?**

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### **Formal justice: From marred beginnings to a modern mess**

The aftermath of the 1999 Popular Consultation and resulting vote for independence by the people of Timor-Leste provided a unique opportunity for the development of a legal system tailored to the needs of the East Timorese population. The United Nations was empowered to provide interim administration prior to independence and to create key institutions, and embarked upon the process of developing a Western model of law. This process was commenced and continued based on limited consultation with East Timorese representatives and with little awareness of indigenous systems of dispute resolution (see Marshall paper, this issue). During the UN administration lasting from December 1999 until May 2002, little to no consideration was given to whether aspects of local justice systems which had serviced East Timorese communities for thousands of years, survived both Portuguese and Indonesian occupations and filled the legal vacuum between the departure of the Indonesian occupiers and the arrival of the UN could possibly be integrated with the nascent formal system to craft a legal system specifically for the social, cultural and historical context of Timor-Leste (Hohe 2003).

Members of the East Timorese Constituent Assembly, elected in August 2001 to write Timor-Leste's Constitution, decided to retain the UN established system of law and declined to give substantive formal recognition, in Section 2, to local justice systems beyond symbolic respect for traditional practices 'that are not contrary to the Constitution and to any legislation dealing specifically with customary law' (RDTL 2002). This was contrary to views expressed in a grassroots consultation process on the content of the Constitution, indicating that communities wanted local systems of justice to acquire substantive formal recognition and usage. As the transitional period came to an end, it became evident that the UN and the Ministry of Justice had in many ways failed to create a sustainable judiciary and legal system for Timor-Leste leaving the government in the unenviable position of attempting to build upon a fundamentally flawed system. A number of independent reports thoroughly dissected and documented key deficiencies in the legal institution and capacity building efforts of the transitional administration, many of which flowed from the lack of a coherent or comprehensive strategy. The continuing dysfunction of the formal legal system in Timor-Leste today can be explained by a range of factors whose genesis can be traced to the transitional period including a lack of planning and resources, inexperienced and poorly trained law enforcement, judicial and administrative personnel, confusion around the applicable law, the absence of critical legal institutions provided for under the Constitution, long delays in the recruitment of international judges and inadequate monitoring and enforcement of professional standards for court actors (King's College London 2003; Strohmeyer 2001a, 2001b).

More recent government efforts to 'undo' aspects of the transitional system have created further havoc in the already beleaguered system. Government language policy in the legal sector has further stretched already inadequate interpreting and translating services and is undermining the impact of training provided to court actors (JSMP 2004). The introduction of an evaluation system of court actors which all national court actors



failed (JSMP 2005b, 2005d), has had the effect of removing all the probationary national judges, prosecutors and public defenders from performing judicial and court functions for the next two years and further exacerbated the problem of the non-functioning of district courts. In short, things are likely to get worse before they, hopefully, get better. While still in its infancy, the formal legal system has so far proven unable to cope with even the relatively small number of cases before it. District courts in Oecussi, Baucau and Suai have virtually collapsed before they ever became fully functioning (JSMP 2005e), resulting in a highly centralised system where most administration of justice is conducted from the capital, leaving justice even less accessible to the vast majority of the rural based population. The important opportunity and challenge to win the confidence of the civilian population after decades of foreign rule and abuse by legal institutions, has essentially been squandered.

### **Inherent limitations of formal justice**

Even if the formal system was functional, accessible, cheap to use and provided timely justice, it would remain marginal or be considered a mere adjunct to the core justice needs of the East Timorese population, as in some crucial aspects it remains irrelevant to some aspects of local culture and expectations of justice. One example which came up in a number of instances in rural areas during recent field research was the concept of imprisonment as punishment. Where the majority of the population is involved in backbreaking subsistence agricultural work, the notion of being provided with free accommodation and three meals a day with no work requirement, albeit with the loss of liberty and separation from community, is sometimes considered a privilege, not punishment. This perspective is magnified where a spousal violence perpetrator is incarcerated which often has the effect of removing all means of support for the victim and dependent children, a plight considered a far worse punishment than imprisonment. Another key cultural expectation of justice which is not met by the formal justice system is the need for reconciliation between the parties for the matter to be considered properly closed. Again, this came up continuously in recent field research where local justice leaders and victims alike expressed the view that reporting one's husband to the police for spousal violence was akin to filing for a divorce as it left little prospect of reconciliation between the parties and again left the woman and her dependents at risk of abandonment, again perverting the point of punishing the perpetrator. Many of the weaknesses of the formal justice sector are unlikely to diminish in the foreseeable future, not least the strict financial constraints of the East Timorese government which renders unaffordable a legal system capable of penetrating deep into Timor-Leste's rural heart. One virtually unavoidable conclusion is that alternative dispute resolution processes of some form are indispensable and will remain a core feature of the East Timorese legal system, whether formally acknowledged and recognised or not.

### **Timor-Leste's local justice systems**

Local justice systems currently fill the legal void left by the teetering formal justice system. The literature emphasises the diversity and highly localised nature of these processes, hence no unified 'traditional legal system' exists in Timor-Leste but rather a collection of local practices (Mearns 2001; Hohe and Nixon 2003). However, there are a number of core traits or common values which enable more generalized characterisation. Common features of local justice systems include their predominantly oral practice and transmission and their use of similar procedures involving each of the parties providing their version of events, and a process of mediation or arbitration where

community leaders decide or mediate who is at fault and then oversee an agreement. Punishments most commonly consist of the payment of compensation but can include other sanctions such as oral or written undertakings to not re-offend, community work, public shaming or other restitution. Where agreement between the parties is reached, it is generally sealed by symbolic acts of reconciliation which includes drinking or eating together. The effectiveness or binding, compelling nature of the agreements depends upon the moral authority of the decision makers and the social pressure generated by the public nature of the proceedings occurring within small communities. Where agreement is not reached, either party can generally appeal to a higher local authority to reconvene the case (Mearns 2001, 2002; Hohe and Nixon 2003).

Another aspect of local justice systems which appears to be relevant to differing extents, is the notion that when a community member breaches a community or social norm they are also deemed to have trespassed upon the ancestral social order resulting in an imbalance within the overall cosmic system which must be replaced by the perpetrator through payment of compensation to, and reconciliation with, the victim/s. Failure to replace the lost value can result in punitive acts by the ancestors, such as the loss of crops or the death of a family member (Hohe and Nixon 2003; Hohe 2003). With the exception of murder and other serious physical assaults against the person (which may or may not include rape depending upon the circumstances), most see a role for the formal justice system only where local efforts have been exhausted and failed to produce an acceptable resolution. Those who bypass local justice mechanisms may in fact be penalised by local authorities for doing so.

### **People pulling power or a lack of alternatives?**

Despite state legitimacy being withheld, local justice systems remain very popular, undoubtedly bolstered by the shortcomings of the formal justice system, but also due to being considered inherently valuable to grassroots communities. Features commonly cited in support of their popularity include their accessibility, affordability, immediacy, legitimacy and effectiveness within grassroots communities, use of local languages, understandability to the parties, promotion of strong family relationships, compensation based sanctions and their efficiency in bringing closure to disputes and promoting reconciliation between parties who live in small, close-knit communities. One recent study found that local justice mechanisms enjoy strong public confidence with more than 90 per cent of respondents believing that local justice mechanisms can be trusted as fair (Asia Foundation 2004). It is clear that the cases reaching the formal justice system represent only a tiny fraction of those occurring and that even out of those, a sizeable proportion are withdrawn from the formal system (JSMP 2005a), and referred back to local justice mechanisms by police, prosecutors and, in some instances, by courts, before being finally determined (JSMP 2005c). Ad hoc practices have developed outside of any law or regulation, hinging solely upon the judgements of individual bearers of authority. Another variation on this pattern is the increasing incidence of police and prosecutors diverting cases from the formal justice process and mediating matters themselves outside of the law, often in cases involving crimes against women or other vulnerable groups (Swaine 2003) (see Bere paper).

### **Local justice or injustice systems?**

Local justice systems also present a number of key weaknesses which include the lack of safeguards against violations of human rights, inconsistency and lack of certainty of decision making, vulnerability to partiality and corruption of local decision makers, lack of

intellectual rigour in investigating claims and apportioning fault, absence of basic fair trial standards, limited enforceability of decisions through force of social conformity and the lack of fairness and accessibility concerning particular classes of persons including women, ethnic and religious minorities, poorer, less influential and new members of communities (JSMP 2002; Ranheim 2005; Mearns 2001, 2002). In light of the continuing failings of the formal justice system, there has been increased interest in examining possible models of accommodation of both justice systems, however in the rush to embrace local justice mechanisms as an answer to the formal justice systems' woes, its advocates can tend to gloss over some of the more troubling human rights issues faced especially by vulnerable groups, such as domestic violence victims. It is salient to recall that just as critical theorists have identified that modern law often privileges the needs and interests of dominant groups, custom based local justice systems may reflect an equally or more problematic alternative system for entrenching powerful social groupings at the expense of more vulnerable members of the society. In the process of enforcing social norms, local justice systems may further ensconce underlying values and practices which render vulnerable groups susceptible to violations of their rights (Sheleff 2000).

### **The need for, and challenge of, reform**

Given the very significant challenges that may be faced by vulnerable groups seeking justice from local justice mechanisms, do they, or rather should they, have a role? An approach which is both pragmatic and normative may assist in answering this question. Pragmatic in recognising that indigenous justice systems offer an affordable and accessible forum of first resort and are likely to remain an essential part of the justice matrix in Timor-Leste for the foreseeable future, whether they are officially smiled upon or not. For many in Timor-Leste, especially vulnerable groups, formal legal enforcement is frequently an option only in theory. The lack of real alternatives means that indigenous justice systems should become a focus for reform and adaptation if they are currently incapable of delivering justice to vulnerable groups such as women (Nyamu-Musembi 2000).

Any approach should also recognise normative dimensions by acknowledging that any reform agenda should be focused at the grassroots level because people primarily draw norms to regulate their interpersonal relationships, including within families, from their immediate cultural setting (Sheleff 2000). The two legal systems are already highly interdependent but only through the improvised and unregulated decisions made by individuals. A more considered government-led process is essential to bridge the current gap between theory and practice, without which the prospects of the rule of law being firmly established in Timor-Leste continue to corrode. The lack of clarity regarding the legal system/s continues to create confusion amongst the populace, encourages 'forum shopping' between the two systems, and creates a risk of double jeopardy. Perhaps most importantly, failure to resolve this tension results in widespread abuses of human rights potentially putting Timor-Leste in breach of numerous constitutional and international treaty obligations which require the provision of adequate protection to its citizens against arbitrary exercises of power. While debate and research concerning local justice systems continues among non government organisations and individuals, Timor-Leste's government has so far rejected all overtures to give serious consideration to formalising a role for local justice systems; hence reform in this area remains a challenge consigned to the future. Lack of current government engagement on this issue does not alter the assessment that despite the great difficulties and challenge of doing

so, reform of indigenous justice systems should be a central part of any strategy aimed at strengthening the functioning and capacity of the justice system in Timor-Leste.

### **Transforming local justice to strengthen human rights practice**

So what kinds of transformative processes could be contemplated to strengthen human rights practice in local justice systems? Such processes will be legitimate and most effective if they are internal to the cultures they operate within, for example by utilising a 'cultural transformation' (An-Na'im 1994, 2002) approach which recognises that culture is dynamic, responds to social change and undergoes transformation over time. The example of Timor-Leste clearly demonstrates the limitations of relying on formal state-based human rights safeguards where already substantial formal legal safeguards exist but have only muted or superficial effect because the state is new, weak, poor and has limited reach. A deeper consensus throughout the various communities of Timor-Leste needs to be secured to ensure durable human rights protection. Especially government, but also human rights advocates should not overlook the importance of engaging custodians of culture and communities in ongoing relationships rather than focusing solely on state apparatus as the primary vehicle for social change. A process of long term cultural transformation could provide new opportunities to creatively expand the field of human rights practice and is likely to produce more durable and sustained results as the change accomplished will have been achieved from within indigenous East Timorese cultures (An-Na'im 2002).

With appropriate state nurturing, a long-term process of cultural transformation could be undertaken to reform local justice systems so that they are better capable of protecting human rights and becoming a recognised partner in Timor-Leste's justice system. One factor rendering local justice systems in Timor-Leste conducive to cultural transformation is the post-conflict reconstruction phase which provides an environment supportive of change and renewal, and an opportunity to revitalise and rethink indigenous justice mechanisms. This could be done in light of the new reality, which involves not only the demise of foreign occupation of Timor-Leste, but also an overall 'shake-up' of who does what and how, making it an ideal time to make similar demands upon indigenous justice mechanisms and urge that some practices be open to question and reformulation given contemporary circumstances. The years of neglect in the development of indigenous law in Timor-Leste, caused by it operating under the harsh conditions especially of Indonesian occupation, may have sharpened the need for more rapid change or development hence providing an additional opening for creative, selective revival and reform of areas where criticism is persuasive and pertinent, such as the areas of human rights and gender equality (Sheleff 2000).

In addition, local justice systems are already undergoing their own 'velvet' revolution with the introduction of democratic elections for local leaders, including compulsory female representation. Early readings of the first local election results indicate strong community support for this process, hence providing additional evidence that the national mood is conducive to fundamental changes to the core of community life. This assertion is further supported by the election of a substantial percentage of newcomers to the positions of hamlet and village chiefs, and that the outgoing chiefs have peacefully relinquished their power and accepted the legitimacy of the newly elected leaders. This process marks a radical departure from the usual selection processes for local leadership which for the main was based on a mix of hereditary rights and selection by senior male community members.

### **Ready, set, stop: Waiting for the green light**

Preliminary results of recent field research indicates that local justice leaders are surprisingly open to engagement in debate and training around human rights issues in the local justice domain. They crave the opportunity to talk to each other and to engage with the government on how they can best fulfil their roles. Early indications are that many view positively suggestions that local justice mechanisms could over time be reformed to mitigate human rights concerns. There was also support for an approach of identifying human rights values already entrenched in East Timorese culture as the basis for running education campaigns concerning sensitive human rights issues such as domestic violence. Some accommodation between formal state law and the 'living law' of Timor-Leste is inevitable. Protecting the rights of vulnerable groups is a key concern in the furthering of this debate. The path to reforming local justice mechanisms so that they are better capable of protecting human rights is long and difficult yet essential and would provide the best chance of creating long-term sustainable human rights protection within a legal framework which reflects the unique East Timorese cultures. The key missing element of the equation is the political will to get the ball rolling.

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## **Gender and conservation: A WWF Solomon Islands' perspective**

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In 2001, the World Wide Fund for Nature Solomon Islands (WWF SI) developed a gender strategy based on its experiences over the last ten years working with rural communities to implement community based conservation plans and strategies. Based on this experience, WWF believe that conservation goals will only be achieved if they are directly referenced to socio-economic realities, and that gender analysis, training and gender based strategies should be core considerations of any resource management plan and implementation strategy.

### **Solomon Islands context**

Culturally, Solomon Islands is a male dominated society, a fact widely acknowledged throughout the community. It is very difficult for women to find and take advantage of opportunities – be it education, income generation, career, or political voice.

Most economic development has favoured men, not necessarily to the benefit of women. Women have little access to income generating schemes in the rural areas, although it has been demonstrated many times that enterprises managed by women have a greater chance of success and that the benefits flow more widely into the communities.

Most education and employment opportunities are given to men. Even when a woman is more competent and qualified for a position, the following kinds of questions are raised: Will her husband allow her to tour? Will family expectations and duties get in the way of her work? Will she be too outspoken? Very often, to avoid the perceived risks, the job is given to a male.

Many NGOs, including WWF SI, have worked to address the situation, but this has generally been ad hoc and reactive. During the early years of WWF SI's work the staff and management introduced some informal strategies to address equity issues, but although there was a lot of goodwill, little progress was made. At the start of 2001, in preparation for the next phase of operations, a formal gender equity policy was developed and incorporated into all sectors of the organisation and all aspects of its work.

### **WWF SI rationale and goal**

The management, staff, colleagues and community partners of any organisation often have different perceptions of equity and some believe that there are inherent differences in the abilities of men and women which make it unrealistic to have the same expectations of all staff. A belief among management and partners that female staff are incapable of attaining high levels of work performance can result in a self fulfilling prophesy of failure or low achievement. As this view has been discredited attitudes about gender differences, stereotyping and labelling need to be recognised and re-examined.

Management and staff need to develop a shared vision before they can determine their roles and responsibilities in supporting equitable work practices for all – both within the organisation and with the community partners. Successful reform will also require creating a supportive climate for implementation; giving staff and management time for ongoing effective professional development as they incorporate gender equity into their work practices, in engaging communities and developing guidelines for effective collaborative planning and setting goals.

The overall goal of WWF's programme in Solomon Islands is to support Solomon Islanders to conserve and manage sustainably their natural inheritance for present and future generations. The underlying purpose of the programme is to improve sustainable livelihoods through good management of natural resources. The overall goal will be pursued through three key objectives:

- to influence key stakeholders to incorporate the principles of sustainable management and use of natural resources into their policies and planning;
- to raise and maintain the quality of life in rural areas through sustainable management and use of natural resources; and
- to disseminate information on the environment and sustainable practices of natural resource management and to build the capacity of conservation managers.

### **Gender equity within WWF SI**

WWF SI recognises that the goal and objectives will only be achieved through a workforce comprising individuals of diverse ages, gender, cultural backgrounds and values. Therefore equal opportunity for all persons is an integral part of the philosophy of the organisation. WWF SI accepts that particular circumstances sometimes prevent some groups in society from competing equally. As an employer and as an organisation that works with all sectors of the Solomon Islands' community, it is committed to removing from its structure any source of direct or indirect discrimination based on factors not related to work or performance. In this regard, the organisation has a particular focus on empowering women. WWF SI also accepts that, by recognising diversity as a potential asset, it will be better placed to create a culture where all staff have equal opportunity for advancement and where every employee is respected as an individual. A broad range of policies, procedures and programs is being implemented to promote equality of opportunity and the value of human diversity throughout the WWF SI community. The achievement of gender equity among staff is therefore a major objective of the organisation.

### **Gender equity and community partners**

WWF SI's conservation work is primarily centred on communities – including men, women and youth. Resource management planning and activities ensure that women and youth, who are often marginalised, can participate fully and share in the benefits. As the wider society generally favours men, WWF SI has sought to put some balance into the situation by giving priority to projects that enhance opportunities for women in the rural sector. Records of fieldwork show that the support for income generating projects to date has largely been directed to women's projects and that the benefits in employment and income from these projects flow deep into the communities.

As natural resources in Solomon Islands come under increasing pressure the impact of gender based use and management of resources is becoming clearer. Women in rural



communities in Solomon Islands play a central role in providing the families' nutrition, health and income needs through fishing, collecting, gathering and indigenous agriculture, collecting water and firewood, supplementing Western medicine with traditional *kastom* remedies harvested from forest and marine ecosystems, and converting natural resources to products for sale in local and global markets. WWF SI believes that by supporting women as key stewards of the environment, not only will the organisation's conservation and biodiversity goals be met, but Solomon Islands' communities will enjoy social and economic well being founded in a well managed environment.

### **Gender strategy**

The Gender Equity Plan that is currently being implemented by WWF SI is based on an understanding that in some areas different provisions will be necessary to deal with the different capabilities, knowledge and attitudes that male and female staff bring to work activities, within both WWF SI and partner organisations. It aims to encourage and support female and male staff and partners to participate in a wide range of experiences which broadens their view of what is acceptably feminine or masculine and enables them to take an active role in both the paid work force and in the wider society. The strategy builds on action which is already under way, outlines new priorities and strategies for future action, and outlines actions which are mainstream professional responsibilities for all staff at all levels. It is based on the need for ongoing capacity building and professional development.

An analysis of gender equity practices in WWF SI and elsewhere has resulted in the incorporation of the following elements into the conceptual framework:

- *Accountability*  
From a management point of view, accountability tends to revolve around finance and reporting processes. In a mature equity culture, accountability for equity issues would not be singled out for attention. However, unless responsibilities for gender equity are accompanied by accountability, only the committed few will fully carry out those responsibilities; and program outcomes will be constrained. In order to overcome this difficulty, a wider framework for gender equity responsibilities across the organisation has been put in place to promote stronger forms of accountability, particularly for staff with management responsibilities. It is essential that staff in management and/or with supervisory roles accept responsibility for gender equity policies and practices within their sections/units.
- *Networking and education*  
The absence of an effective internal gender equity communication network can result in two undesirable consequences. Firstly, inequities due to lack of knowledge about opportunities can flourish and secondly, the effectiveness of the system in drawing the organisation's attention to such inequities is diminished. Networking within the organisation is being enhanced with the aim of furthering staff understanding of and commitment to gender policy, principles and practice. This includes organisation-wide information capture; the establishment of communications mechanisms to ensure that the organisation is aware of, and responsive to, the needs of its staff; and the inclusion of female staff representation in the senior decision making body. A system of regular reporting to senior management from field staff and project teams will also act as a networking activity; this will facilitate goal setting.

- *Reporting and evaluation*  
While there are no gender equity absolutes, comparison with similar organisations is a strong mechanism to lift performance. Benefits arise from sharing data, policy and practices. The adoption of this principle has and will involve monitoring policy and best practice at other leading NGOs within Solomon Islands and overseas, analysing and reporting on comparative data. Gathering information on policy and practice elsewhere is likely to assist in identifying successful ways of increasing the number of women on staff at all levels, enhancing the career prospects of women, and identifying opportunities to support gender equity within our community partners.
- *Organisational values*  
By focusing on and examining its organisational values, WWF SI will have the opportunity to identify possible improvements. It is only by addressing organisational values that the core business of WWF SI will be seen from an equity perspective. It is envisaged that policy, procedures and training programs will be developed, implemented on an integrated basis and evaluated to promote workplace attitudes towards gender equity. Under this heading the Gender Equity Plan outlines the following priorities:
  - changing organisation and management practice;
  - improving staff practice;
  - improving the career paths and opportunities for female staff;
  - eliminating sex-based harassment; and
  - giving priority to projects that enhance opportunities for women in the rural sector.

### **Who benefits?**

Staff benefit by working in a fair environment which is free from discrimination and harassment and by having equal access to jobs, training and other developmental opportunities. Management benefits by more cooperative workplace relations and reduced workplace conflict, increased employee job satisfaction and morale, and increased productivity. The organisation benefits by being a more productive workplace, having improved organisational efficiency through the establishment of a better and more diverse and responsive staff and improved quality of work.

Community partners benefit by a workplace which is fair and free of discrimination and harassment, is better able to meet its organisational goals, and provides services which are responsive to the needs of the diverse Solomon Islands community.

### **Conclusion**

It is WWF SI's belief, based on experience, that the way in which women/girls and men/boys respond to conservation and resource management issues is strongly influenced by gender. Understanding the socially or culturally defined constraints on, or freedom of access to, the use of natural resources can support the realisation of conservation goals through appropriate planning and implementation strategies. By establishing systems of participatory and equitable decision making and supporting the sectors of the community that have an interest in using natural resources wisely, the conservation and sustainable livelihood initiatives have a greater chance of success.

In the future, WWF SI will continue its program of community based activities paying particular attention to the participation of women. In the past, WWF SI has deliberately chosen to support women's projects. This practice will continue. However, by incorporating gender equity into organisational policy rather than as a kind of informal

affirmative action the organisation expects its village community work to be more inclusive. WWF SI expects to be a model of best practice in gender equity issues in Solomon Islands. The organisation hopes that other NGOs and community based groups follow its lead. WWF SI plans to share its experience with other organisations through collaboration on projects, workshops, information sharing and look and learn exchanges.

Seniloli, M et al, 2002. 'Gender issues in environmental sustainability and poverty reduction in the community: social and community issues', *Development Bulletin*, no. 58, pp. 96-98.

## **Gender issues in environmental sustainability and poverty reduction in the community: social and community issues**

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### **Introduction**

One of the most important lessons we have learned is that the consideration and inclusion of gender issues in environmental management and poverty reduction activities is crucial if development programs are to be relevant and sustainable. This paper explores some Pacific island experiences.

Gender issues vary between Pacific island countries according to geographic locations, level of economic development, social and cultural norms and values, population, migration and emigration, religion, media, legal institutions, level of education, political climate, and environments (UNIFEM, 1998). Different land ownership patterns, employment opportunities, economic policies and economic resources (agricultural, forest and fisheries resources) influence the roles of men and women in Pacific island countries. Short-term export of male and female labour, migration of Pacific islanders overseas, and rural to urban migration have all had an impact on the roles of men and women. Religious beliefs and the images of men and women projected by the media can either reinforce or weaken gender biases and gender stereotyping in Pacific island countries.

Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and constitutional and legal provisions have affected men in different ways across the Pacific. The level and quality of education for boys and girls creates gender differences as do the gender stereotypes in the curriculum. Commitment of Pacific island countries to the advancement of women, including the provision of resources to promote affirmative action, and the provision of mechanisms to facilitate active and full participation of women in the development process, are major factors influencing gender relations.

### **Environment through the gender lens**

Men and women in the Pacific perceive their environmental surroundings according to their gender roles in their respective community or country. Gender roles have been classified by UNIFEM (1995) in the following way:

- *reproductive roles* are tasks related to the production and socialisation of human beings within the family setting;
- *family care roles* are the nurturing of children and looking after the elderly members of the family;
- *productive roles* are income generating activities, paid work, subsistence agriculture or food growing for household use (food security);
- *community roles* are the social roles of men and women in community efforts for example, church, traditional obligations, parents meetings, women's groups;

- *decision-making/political roles* are the social and leadership/membership roles of men and women in larger public organisations.

Resource mapping undertaken by Pacific island communities reflect how differently men and women perceive their environment. These perceptions are closely linked to their roles in their own communities as the following examples show.

### **Fiji Islands, Ekubu Village, Vatulele**

A resource map (Ecowoman, 1999) drawn by the married and young men of the village showed the traditional village structure and the importance of religion. The chief's house, his clan's houses, guide of the chief's house, chief's fishermen's house were highlighted in bright red ink. They also highlighted the sacred areas of the chiefly burial ground, and two old sites from which the clans were founded. Also drawn in red ink is the home of the church minister depicting his importance in the community. The map includes the airport, roads, church, school, health centre and post office. Agricultural activities include the cultivation of *masi* (for mat weaving), yams, coconuts as well as cattle farming. Marine resource use is confined mainly to fishing and transportation. Fishing methods in the map include spearfishing, line fishing and net fishing. The fish species caught are listed. Their map showed two types of boat, the smaller one that was used mainly for fishing and the boat with a hood that is the mode of transport to the mainland. The inclusion of a pond in the map highlighted its significance to the men as a landmark of their village. A bore hole is also shown as is the bush and grassland area that is used for grazing. They even named the tree species that grow in their bushland. Men of Ekubu village cultivate land for agricultural purposes, utilise their forest and marine resources and are involved in traditional leadership and religious roles. These are clearly shown on their map.

The women's maps on the other hand highlighted water sources, village boundaries, airport and resort locations. The women indicated three types of agricultural activities, that of *masi* cultivation, subsistence farming and coconut planting. *Masi* cultivation is shown concentrated inland on the eastern side of the island, sheltered by the cliff. Subsistence farming is concentrated on the east coast while coconut plantations are predominant in the windiest parts of the island. Water sources were indicated by green circles. *Masi* features significantly in the map indicating its importance as a cash crop for the women. Livestock were shown fenced as free ranging animals damage planted crops. The women showed the shop in their map and mangrove growing areas.

The women's map depicted the roles of women in tourism, transportation, agricultural activity, cash cropping (handicraft), health, and their concern for basic needs like water. There was no reporting of marine resource use in their map, indicating clearly that their role does not include fishing. It showed that the way the women of Ekubu village perceive their environment is closely linked to the division of labour.

It is useful to note that roles of men and women differ even within the same province depending on whether the village or community is coastal or in the highlands.

### **Gender roles in Palau Islands, Angaur State**

Division of labour in the Angaur community is clearly defined (South Pacific Commission, 1995). Men's roles are confined to fishing activities and they have a close relationship to the sea and its resources. They can illustrate the types of fish, types of baits and the fishing methods that are appropriate to catch the desired fish species.

Women on the other hand are involved in in-shore coastal fishing and agriculture. They cut trees to make way for their vegetable and root crops gardens. They dig, cultivate the soil and plant seeds and seedlings. Angaur has poor saline soil so the women have learned to make compost manure that provides the medium for crops to grow. They take intricate care of their vegetable gardens visiting and making note of germination time to harvesting time of crops. They are also aware of pests, diseases and signs of nutritional disorder in the crops. Monkeys are a major pest on the island and women scare them by placing scarecrows in their plantations. Rats are another pest. Women mix grated coconut with leaves of a leguminous tree (*glyricidia*) to make a poisonous rat bait. To improve soil fertility women plant nitrogen-fixing trees. These trees are multi-purpose and can be used as firewood, insecticide, windbreaks and green manure. For iron deficiency problem in crops women mix rusted pieces of iron in water and spray the mixture on crops. Women know the seasons for crab and the species of crabs that are available for consumption.

### **Gender roles in Tonga Islands, Vava'u**

Men in Tonga are traditionally responsible for farming and off-farm work to provide for food and income (Secretariat for the Pacific Community, 2000). Women's traditional roles include household and community activities, child-care, cooking, handicrafts, in-shore fishing and small-scale vegetable farming mainly for subsistence purposes.

Services and resources to assist commercial agricultural production have usually favoured men. Most agricultural officers are males who are more comfortable in dealing with male farmers. Men find it easier to access credit as they usually have land as security while women, who seldom own land, have to get a male relative to endorse a loan application.

Commercial farming of vanilla in Vava'u has resulted in the redefinition of women's and family roles in farming. Women now are seasonally employed in the vanilla production process: pollination of the flowers; curing vanilla beans; and sale of green peas in local markets.

### **Project case studies**

Development projects that have been implemented without considering gender are seldom as successful as they could have been as the following case studies show.

*Tuvalu Islands, Trochus Shell Rehabilitation Project:* The Fisheries Department of Tuvalu initiated a project to rehabilitate the trochus shell population (Nimo, 2002). The department conducted meetings with the leaders concerned and trained some men to distribute the new seedling shells once offloaded by the helicopters. In addition, men were employed as watchmen to prevent people from harvesting the shells. Men participated in meetings, distribution of shells, planting of shells, monitoring and evaluation of the project. Women were not consulted at any stage of the project.

When the fisheries officer made his third evaluation trip he observed that the trochus shell population was greatly depleted. After discussion with the leaders, trained men and watchmen, it was found that the women had unknowingly harvested the shells for home consumption. They had not been informed of the project. It was also learned that some of the 'trained' men were harvesting and selling the shells.

*Kiribati, Seaweed Project:* Seaweed farming is a recent development and has become the second major earning activity in Kiribati (Tekinati, 1998). About 85 per cent of seaweed farmers are women who play a major role in planting and maintaining the seaweed farms. The Atoll Seaweed Company assists farmers by providing planting

materials such as ropes, raffia and seedlings, on credit. Once the farmers have established their farms and the seaweed has been harvested the loan amount is deducted. In most cases men market the dried products since they are too heavy for women to bring to the market place, thus men receive the income. However, on two islands, the company has provided a handcart and bicycle which farmers can borrow when taking their harvest to market. This has been very useful for women as it enables them to be involved in marketing and receiving benefits from their activity.

Two major constraints have been encountered in the seaweed project even though the importance of women's participation at all stages was recognised. These constraints are:

- women's involvement in seaweed farming was affected by their traditional commitment to the community. A good example is when the *maneaba* or meeting place needs new thatches, women are expected to collect pandanus leaves, make thatches and prepare food for the men until the *maneaba* is completed. This often takes one to two months and during that period seaweed farms are neglected causing a significant reduction in seaweed production;
- women have limited access to financial support as their loan applications are seldom successful. Most women are not in paid employment and do not have land as security for their loans.

*Solomon Islands, logging forests:* Fifty percent of the Solomon Island's economy is derived from the export of logs (Kari, 1998). Rural communities own these forests. Forestry, however, has brought problems rather than improvements in living standards. Village women see the disappearance of their forests but have no idea where the money from logging is going. The impact of logging is particularly devastating in densely populated areas where it has contributed to soil degradation and decline in soil fertility, thus affecting food production.

The impact on women is considerable. Women make their gardens in the forest, where they also harvest vines and tree plants, to feed their family. Due to large scale logging operations women have been forced to move further and further into the hills and mountains, where their cultivated gardens can be destroyed by roaming wild pigs. Food, herbal medicine and fuel are now either harder to collect or no longer available.

The impact on men has been a reduction in animals to hunt as most animals and birds move away from traditional breeding grounds to safer environments (Sanday, 1994). Men also lost access to building materials and wood for crafts.

## Conclusions

Gender roles need to be acknowledged and respected by development agencies involved in environmental programs as lack of knowledge or consideration for gender issues can discourage or inhibit development efforts if not handled wisely. Development programs need to capitalise on the different ways in which men and women utilise their natural resources.

The lessons learned in the Pacific are:

- women and men are part of their environment;
- women and men's perception of their environment is a reflection of their gender division of labour;
- gender roles can change with economic development;
- women need to be included at all stages of the development projects: identification, planning, implementation, monitoring and evaluation;

- gender issues need to be identified by conducting an environmental impact assessment and social impact assessment before and after project implementation;
- the effect of a development project on the multiple roles of men and women must be considered to avoid overburdening them;
- women's striving for economic development is inhibited by their not owning land;
- natural resources are sources of livelihood for community members who needed to be consulted about any development efforts that target their resources; and
- cultural values must be considered in development programs because they influence the roles of men and women.

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