



**United Nations Office on Drugs and Crime
United Nations Division for the Advancement of Women**

Expert Group Meeting on good practices in legislation on violence against women
United Nations Office at Vienna, Austria
26 to 28 May 2008

**Good Practices in Legislation on Violence against Women:
A Pacific Islands Regional Perspective**

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* The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.

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A. INTRODUCTION

Compared to many other regions of the world, there has been a paucity of legislative reform in the area of violence against women (VAW) in the Pacific Island region.¹ The absence of comprehensive, all encompassing VAW legislation is regrettable, but characteristic of the legal milieu in the Pacific. For the most part reforms have been piecemeal changes to existing criminal and civil legislation, or common law precedents and legal practices, and have provided little but band-aid therapy.

Positive legal changes in the Pacific have arisen by way of litigation with new legal precedents being established in the courts, as a result of the advocacy of feminist and human rights lawyers, rather than through legislative change.² Although this is far from ideal, as precedents can be reversed by superior courts, it is legal activism, and not legislative change, which has borne the greatest success in improving the legal protections that women and girls have.

In 2003 with the introduction of the *Criminal Code (Sexual Offences and Crimes against Children) Act 2002* Papua New Guinea (PNG) changed its sexual assault regime attempting to remove legal discrimination against women in sexual offence law and practice.³

Samoa, Fiji and Vanuatu are considering reforms in the area of domestic violence and NGOs are lobbying for a single dedicated comprehensive legislation. Samoa and Vanuatu have draft Bills currently being consulted. Other countries are toying with the idea of changing their sexual assault and domestic violence laws but so far there have been no substantive changes through legislation.

In Fiji, the innovative *Family Law Act in Fiji (FLA) 2003*, was implemented in the beginning of 2006. This sweeping legislation has attempted to remove systemic discrimination against women in family law, and to provide a civil protection order to women who are victims of violence. However it is too premature to make sound comments on its efficacy. There is some anecdotal evidence however that suggests that the new law might yet fulfill its promise. This will be discussed subsequently.

¹ See Jalal, P I, *Law for Pacific Women A Legal Rights Handbook*, Fiji Women's Rights Movement, 1998 for a comprehensive analysis of the legal status of women in the Pacific Islands region

² ² Jalal, P I & Madraiwiwi, J., (eds) *Pacific Human Rights Law Digest*, Volume 1, 2005 by the Pacific Regional Rights Resource Team (RRRT), Suva, Fiji for a recent analysis of case law.

³ *Translating CEDAW into Law: CEDAW legislative compliance in Nine Pacific Island Countries*, UNIFEM Pacific , 2006 p 266

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For the purposes of this meeting, commentary is confined to most of the fully independent Pacific **Island** countries (PICs),⁴ which have inherited a largely British Westminster system of governance and the British common law system. Some Pacific Island countries are still, wholly or partially, "colonized", or under pacts of "free association" or other arrangements, by either France or the US; or under the protection, or partial jurisdiction, of New Zealand. In those semi-autonomous countries, some of the laws of the metropolitan power prevail. In the French occupied territories, the laws of the metropolitan power wholly prevail. These legal nuances add a further layer of complexity to law reform plans. In this paper, therefore, reference will be made mainly to those PICs which are fully autonomous in passing legislation; and where there is no extra-territorial jurisdiction of the metropolitan power over them.

Women's status in PIC society, and in the justice system, is no different from the rest of Asia or Africa.⁵ In general, how women are treated in the justice system reflects their overall status. If women's status is comparatively low in society then this will be reflected in the justice system, with notable, but rare exceptions. In Melanesia, the customary law system, rather than the formal law system, has the more significant impact on women, particularly rural women. In PNG for example, women in rural areas are commonly tried and punished for "sorcery" (witchcraft) by the village courts.⁶ Changes have been rare, and transformative change even rarer. Only mixed successes can be reported.

This paper acknowledges the multifold manifestations of violence against women as reflected in various UN documents but is confined to commentary on sexual assault (rape), domestic violence and the extent to which family laws provide an adequate response to domestic violence (DV) in the home, in the Pacific Island region. Despite the fact that in comparison to some other regions there has been very little legislative change, this paper will attempt to identify some strengths, weaknesses and commonalities of VAW legislation, highlighting some effective approaches and noting some good practices.

⁴ Fiji, Tonga, Samoa, Cook Islands, Solomon Islands, Nauru, Vanuatu, Papua New Guinea, Kiribati and Tuvalu. The larger grouping recognized by the South Pacific Community includes American Samoa, Cook Islands, FSM, Fiji Islands, French Polynesia, Guam, Kiribati, Marshall Islands, Nauru, New Caledonia, Niue, Northern Mariana Islands (CNMI), Palau, PNG, Pitcairn Islands, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, Wallis & Futuna

⁵ In 1998 I published my 700 page book documenting the treatment of Pacific Island women in the justice system, *Law for Pacific Women: a legal rights handbook*. I have watched closely to monitor changes to their status in the law over the last 10 years.

⁶ Jalal, P I & Madraiwiwi, J., (eds) Pacific Human Rights Law Digest, Volume 2, to be published in 2008 by the Pacific Regional Rights Resource Team (RRRT), Suva, Fiji

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All PIC states that are parties to Convention on the *Elimination of All Forms of Discrimination Against Women* (CEDAW) are required by Article 2(f) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women. So far, most countries in our region are in breach of Article 2(f). As well, states that have signed the *Convention on the Rights of the Child*, have an obligation to protect children against abuse of all kinds.

B. SEXUAL ASSAULT & RAPE

Most attempts to change sexual assault laws through comprehensive dedicated legislation have so far failed e.g. rape law draft legislation⁷ in Fiji has been thwarted for a variety of reasons, including disputes about the substance of the draft law; that it favoured the victim over rights of due process awarded to the accused, and the perception that the draft was too “western”, feminist, radical and clashed with so-called Pacific culture. Added to this, Fiji has experienced 3 military coup de’tats in 20 odd years, thus interrupting the rule of law and the space for legal reform. Other PICs show similar recalcitrance in passing new laws.

Common Features of Sexual Assault Law

Most rape laws in the PICs are based on myths about women’s sexuality, no different to the laws that prevailed in most common law countries, prior to more progressive reforms being introduced. These myths informed legislation and the interpretation of it as well as the legal practices and rules. The PICs inherited the worst element of rape law from the British, most of which remains.

Some salient features of sexual assault laws in most PICs include – defining rape as limited to penile/vagina rape and not including assault with other objects; rape with other objects become “indecent assaults” subject to lesser penalties; not allowing prosecutions for marital rape; defining consent from the view of the offender rather than the survivor; and allowing the survivor’s past consensual sexual experience to be admitted as evidence against her credibility. The admission of the rape survivor’s past sexual history can affect her credibility to the extent that she is not believed, the prosecution does not succeed and the rapist is acquitted. If he is sentenced, her past sexual history may reduce the severity of the sentence. Common to most PICs is also the common law practice

⁷ The campaign for new sexual assault laws by the Fiji Women’s Rights Movement, based on a draft prepared by Ratna Kapur, has been shelved.

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of physical “proof of resistance” which, due to power imbalances further victimizes a victim.

Most PICs still allow the highly discriminatory corroboration warning, a long-standing practice under common law, whereby the Court gave a warning to itself or a jury, that it was dangerous to convict on the independent uncorroborated evidence of the victim. Corroboration was a requirement in sexual offence cases except when the Court was satisfied a complainant was speaking the truth. The corroboration warning, based on a belief that women lied about rape habitually, has been considered to be the worst of all practices.

If sexual assault cases end up in the village or *kustom* or informal courts by default the cases rarely end up in the formal courts with formal criminal charges being laid. This is highly problematic as the Constitutions of most PICs recognize custom laws (which do not generally favour women) and there are uncomfortable tensions between the two systems of law. Specific legislation is required to state that where there are conflicts in the law, formal constitutional equality ought to prevail.

Added to this are customary reconciliation practices of ceremonies of forgiveness in most PICs, (for example *I-bulubulu* (Fiji) or *ifoga* (Samoa)) generally involving the rapists’ and survivor’s families, which the police and courts use to justify the reduction of sentencing of those convicted, or in some cases not allowing charges to be filed at all. It may be of interest to note that these “forgiveness ceremonies” have dramatically changed overtime and now often take place without the victim’s actual permission or participation.

Sexual Assault Law - Changes and Effectiveness of new legislation

Most features remain largely untouched by legislation save for a few changes. PNG has broadened the definition of assault to include rape by other objects through legislative change,⁸ but the narrow definition remains in other PICs. Cook Is, Tonga and Samoa have legislation stating that marital rape is only illegal if the parties are separated, divorced or where “consent has been withdrawn through the process of law”.⁹

In 2003 with the introduction of the *Criminal Code (Sexual Offences and Crimes against Children) Act 2002* PNG changed its sexual assault regime to attempt to remove legal discrimination against women. A number of new offences were

⁸ Section 17, *Criminal Code (Sexual Offences and Crimes Against Children) Act 2002*

⁹ Section 141 (3) of the *Crimes Act 1969* Cook Is; Tonga. *Criminal Offences Act*, Cap 18, s118 (2), and Western Samoa. *Crimes Act*, S46

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introduced extending penetration to all orifices by the penis or any other object. The offences are graded according to the gravity of the harm and integrate the many ways in which women are sexually violated. Harsher sentences were introduced, the marital immunity that had previously prevented husbands from being prosecuted for a charge of rape was removed, and the common law practice of requiring corroboration as evidence was abolished.¹⁰ The new legislation did not remove the admission of the prior sexual history of a victim in order to establish that she consented to the sexual act in question, based on the myth that a victim's previous sexual relationship with either the accused or others makes it more likely she consented. PNG, however, has not legislated against the requirement for proof of resistance by the victim. There has been no formal evaluation of the effectiveness of the new law but anecdotal evidence suggests mixed success.

The discriminatory cautionary corroboration warning is still practiced in Vanuatu, Solomon Islands and other PICs. It has been removed by legislation in PNG, Kiribati and Cook Islands¹¹; and by common law in Tonga¹² and Fiji¹³. In *Balelala v State of Fiji* the Court of Appeal finally declared the corroboration warning a violation of women's rights and unconstitutional. In cases where there has been change, the ratification of CEDAW provided a sound basis for challenging the discriminatory practice in sexual assault cases.

Only Tonga and the Cook Islands (and arguably Fiji) has changed the credibility practice, not allowing the admission of the survivor's past sexual history. However this change has been achieved through landmark court cases and new precedents, not through legislative change.

In PNG an amendment to the criminal code allows victims of sexual and domestic violence to claim compensation from the perpetrator.¹⁴ The claiming of compensation for wrongdoing is a common feature of PNG custom law in general, and is meant to reduce the possibility of "payback" crimes, potentially against the women of the perpetrator's *wantok* or clan.

¹⁰ *Translating CEDAW into Law: CEDAW legislative compliance in Nine Pacific Island Countries*, UNIFEM Pacific , 2006 p 266

¹¹ *Translating CEDAW into Law; CEDAW legislative compliance in 9 Pacific island Countries*, UNIFEM Publication, 2006

¹² *R v Tangi*, 343/1992

¹³ Criminal Appeal No. AAU0003 OF 2004S, 2004; eds. Jalal, PI & Madraiwiwi, J, Pacific Human Rights Law Digest, Vol 1, RRRT, 2005

¹⁴ Criminal Law (Compensation) Act 1991

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In the area of sexual assault law there has been moderate success in the implementation of new legislation, and even new common law practice, but only where the changes have been accompanied, by human rights and gender training of judicial, court, legal and police officials on the innovations. Success has been heightened, where feminist legal NGOs have closely monitored the implementation of the new legislation. However, the new legislation has only achieved some degree of success in the higher level courts, where the courts are located close to the major city centres, and where strong national NGOs are monitoring the courts closely. In the magistrates' courts, rural courts and custom courts there is mixed success in implementation, and is again reliant on the vigilance of local women's groups.

The most success has been achieved in the non-legislative field through landmark cases but such changes are vulnerable to new judges, and changing precedents in the superior courts.

C. DOMESTIC VIOLENCE

Domestic violence, and a lack of legal responses to it, is common and widespread throughout the PICs. In countries like PNG rapes, knife attacks on wives, beating and sexual abuse of girls, and torture and murder of female "sorcerers" or "witches" are among the many forms of violence against women. The threat of rape, sexual assault and other violence is so great that women and girls cannot freely move round their communities, go to school, to the market or to work.¹⁵

Despite efforts by women's NGOs there has been minimal legislative change in the area of domestic violence. No PIC country has yet adopted comprehensive stand alone legislation on domestic violence. Fiji has tried and failed notwithstanding the draft actually reaching the stage of being included in various Parliamentary papers. Again, one reason was that 3 military coup de'tats in 20 odd years interrupted the rule of law and the space for legal reform. Vanuatu is considering the draft comprehensive *Family Protection Bill* which is currently before the Parliamentary Sector Committee, so is at the most advanced stage in terms of comprehensive law reform. The Samoan *Domestic Violence Bill 2006* is still being circulated amongst stakeholders. In other PICs the changes have been piecemeal and largely inadequate.

Common Features of Domestic Violence Law

¹⁵ www.amnestyusa.org 14 May 2008

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Some salient features of domestic violence (DV) law include¹⁶ - prevailing attitudes of state agencies are fundamental in determining the extent to which batterers are prosecuted even where a crime does exist under existing laws; and domestic assault is not recognised as a specific crime except in the Cook Islands, and hence general assault laws are used. Police and court officials are unsympathetic to women whose husbands beat them, and usually do not encourage legal solutions; the victim is responsible for laying and pursuing charges; there is a consistent focus on reconciliation, whatever the circumstances; courts and police accept customary practices of reconciliation such as *i-bulubulu* in lieu of punishment of the offender or to reduce the punishment; and non-molestation orders or protective injunctions are difficult to enforce.

Non-molestation, protective orders or injunctions are generally available through the common law as a rule of practice in most PICs. Thus, there is generally no legislative basis for providing such protection. The courts exercise their discretionary power to make the order sparingly and inconsistently. Only married women, and not *de facto* wives or girlfriends, are entitled to seek the order. When the orders are granted and disobeyed, the police habitually do not enforce the orders through imprisonment, partially because the orders are vague, and also because there is no legislation setting out clear guidelines. Imprisonment requires lengthy and complex contempt of court proceedings, and domestic violence is not high on the police list of priorities. The perpetrator is usually summoned to the police station or court, "reprimanded" and allowed to leave.

A considerable challenge is that in most PICs, courts rarely, if ever, give custodial (prison) sentences that reflect the seriousness of the crime; despite the fact that DV is a recidivist crime. Courts tend to give bind-over orders, which command the offender not to commit another crime for a specified period. If the offender does commit the crime again, he will be punished for the original crime. It is in effect a "keep the peace" order. However, in practice, the courts usually refuse to imprison a "breadwinner" even when a further crime is committed. Courts routinely say that if they imprison a breadwinner there will be no-one to financially support the family. Interestingly, the only time this justification is ever used is in DV cases and not in mainstream criminal cases.

Domestic Violence Law - Changes and the Effectiveness of new legislation

¹⁶ Jalal, P I, *Law for Pacific Women A Legal Rights Handbook*, Fiji Women's Rights Movement, 1998
p.152

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Only the Cook Islands, perhaps reflecting New Zealand influence, has a specific domestic violence offence¹⁷. However this has had little effect on making the legislation more effective, as records show no greater length of sentencing of offenders nor better treatment of the survivor.

PNG has removed the marital immunity in their legislation that had previously prevented husbands from being prosecuted for a charge of rape.¹⁸

There has been some anecdotal evidence to suggest improvements to rates of prosecutions in PICs (Cooks Is, Fiji and Kiribati) where police and prosecution offices have introduced “No Drop” policies of prosecution, regardless of the view of the forgiving wife/partner. However, these are policy decisions, which cannot be enforced by law. The policies require police to follow through with prosecution following incidences of DV, without any discretion being exercised. These policies have been applied inconsistently depending on the commitment of the Police Commissioners. Many women’s NGOs are of opinion that prosecutions and sentencing must be mandatory and secured in legislation.

Vanuatu has introduced protective injunctions or orders through judicial guidelines but not through legislation. The proposed *Family Protection Bill* has comprehensive provisions for protection orders.

In response to intense lobbying efforts by women’s NGOs, the Cook Islands, Solomon Islands, and more recently, Fiji, a legislative basis for obtaining protective orders has been provided. Yet these protective orders have not been in the criminal codes or even mainstream civil codes, they merely have been in changes to family law. In all 3 instances it was considered easier to provide a legislative basis for protection through the “back door”, so to speak, rather than attempt to get changes in criminal and civil codes.¹⁹ These family law provisions will be discussed subsequently.

There have been some haphazard improvements to lengths of sentences for DV offenders, but this is still dependent on individual judicial attitudes. The “breadwinner” philosophy still largely prevails.

¹⁷ Section 214, Crimes Act

¹⁸ *Criminal Code (Sexual Offences and Crimes against Children) Act 2002* PNG

¹⁹ Part XVIIA: *Separation, occupation and non-molestation orders of the Cook Islands Amendment Act; Amendment 13/1992, Affiliation, Separation Act 1971, Solomon Islands; Family Law Act 2003, Fiji section 2002*

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D. FAMILY LAW

The family law in most PICs is archaic and based on outdated colonial legislation. The legislation, common law and legal practices are discriminatory against women and they legitimate violence against women . Rigid concepts of women's roles within the family are the basis for how these laws have been devised. Divorce in most cases cannot be obtained without proving fault (including proof of habitual or persistent cruelty for a specified period over 2-3 years), and women's adultery is often held against them when they seek custody or contact with their children, maintenance and matrimonial property. In much of Melanesia, the payment of *bride price* by the husband's family to the wife's family is used to justify domestic violence, and to secure rights to custody. There are no equal rights to property after divorce through legislation, and distribution is generally based on the principle of financial contribution, thus disentitling the vast majority of Pacific Island women and greatly increasing their own and defendant children's likelihood of living in poverty.

In some instances women's NGO have regarded it as more strategic to lobby for legislative protection against DV in family law rather than criminal law. This was a deliberate action taken by the architects of the *Fiji Family Law Act (FFLA)*.²⁰ The underlying logic is that because the burden of proof in establishing criminal guilt is much more difficult to establish i.e. beyond reasonable doubt, providing a legislative basis for it in the new family legislation, with its lesser "balance of probabilities" burden of proof, courts are more likely to grant the protective injunction.

Family Law on VAW – Changes and Effectiveness of new legislation

The most comprehensive reform legislation affecting women has been in the family law field in Fiji. . The resulting law, the *Fiji Family Law Act 2003 (FFLA)*, which is based on a no-fault principle of divorce, utilises a non-adversarial counselling system and a specialist Family Division of the Court which prioritises children's needs and parental support. It removes all forms of formal legal discrimination against women and grants them rights to enforceable custody and financial support for them and their children. It legitimates and requires recognition and implementation of the major human rights United Nation conventions affecting family law, especially CEDAW and the CRC.²¹ Such human rights conventions are highly contentious in a country in which

²⁰ The writer of this paper, P I Jalal, was Commissioner for Family Law, and prepared the Fiji Law Reform Commission report, *The Fiji Family Law Report 1999: Making a Difference to Families in Fiji, 2000*. This report provided the basis for the new law.

²¹ Section 26 (e)

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human rights are regarded as foreign impositions. From early results it appears that the new Act will substantially reduce the costly use of lawyers and Legal Aid.²²

It will allow women who have been sufferers of domestic violence to divorce their tormentors after one year's separation instead of penalising a woman to a three-year "sentence" of wife beating for her before she can apply for a divorce. Most importantly, section 202, for the first time, provides a legislative basis for the court to grant protective injunctions (restraining orders) for the "personal protection of a party to the marriage". Unfortunately, the legislation is restricted to legally married parties. Section 203 allows the offender to be arrested without a warrant and to be kept in custody for up to 48 hours (and longer if necessary), at which time the offender must be brought before the court.

Section 202's provisions are used "very frequently,"²³ mainly as stand alone actions, rather than ancillary to a substantive action. They are often filed with an application for residence order, where the DV sufferer is requesting that her husband be ordered to leave the marital residence, a remedy also available under the new legislation.

The legislative protection against violence is considered to be more than adequate by some judicial officials.²⁴ It is considered the most effective legislation for protection against DV available in the justice system, and even "better than the criminal law". The orders are supposed to be granted upon application on the same day of the filing of an application, and does not require the services of a lawyer. They may be granted *ex parte* on application by the DV sufferer alone, (without a full hearing with both parties present), and be effective for periods up to 4 weeks, at which time, both the husband and wife are required to appear before court. The applicant, almost inevitably a woman, is allowed to give her evidence orally, a significant departure from mainstream legal procedures which require the filing of highly technical affidavits of written and documentary evidence.

The problems with the new provisions lie not in its legislative framework, but in the inability of enforcement agencies to understand the new legislation, to leave

²² Comments by Justice Mere Pulea of the Fiji High Court, Judicial Conference, Sigatoka, Fiji 4 December 2006

²³ Actual statistics not available. ²³ Interview with Magistrate Makareta Waqavonovono of the Family Magistrates Courts Division, Suva, Fiji, May 2008

²⁴ Interview with Magistrate Makareta Waqavonovono of the Family Magistrates Courts Division, Suva, Fiji, May 2008.

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the unwieldy and inefficient old system of enforcement behind, and in the attitudes of police officers who are supposed to enforce the new legislation. Powers in the legislation are broad and sweeping, but the police and various court officials appear not to understand what is required of them under the new law, despite the clear and simple procedures. The problems are exacerbated in the Magistrates' courts outside Suva where there is no dedicated family law court. The new law has enjoyed moderate success in Suva where there is a full time dedicated Family Court, with 4 dedicated family court magistrates, and effective NGOs which closely monitor the implementation of the new law.²⁵

Magistrates and women's NGOs say that the biggest problems are a lack of training in the new legal regime, and the historic recalcitrance of police and enforcement officials to imprison men for what has always been regarded as culturally acceptable behaviour. However, for the tenacious DV survivor, and the women's NGOs that support them, the new provisions have been innovative and useful.

Initial research, based on a one year study of the new FFLA in operation²⁶, indicates that family law litigation had been reduced by about 90%. Most disputes, (especially those regarding children), at Suva Court, were settled by counselors and conciliators, on average, after 3 sessions with trained counsellors. These results have not been made public, as the officials need to do a more stringent follow-up survey.

The problems with the implementation of the FFLA stem from:²⁷

- Most of the positive results are from Suva, the capital city with the largest population, and the only center with a dedicated family court
- There are insufficient resources to implement the Act properly outside Suva
- Only Suva has a good complement of court counselors to settle disputes without litigation
- The magistrates and lawyers are still caught up in the former "blaming" culture of the old legislation, especially the older lawyers who cannot get their heads around solving problems without fighting, for instance over

²⁵ Fiji Women's Crisis Centre and the Fiji Women's Rights Movement.

²⁶ Fiji Judicial Conference, 4-6 December 2006, Sigatoka, Fiji. Judge Mere Pulea, the Principal Registrar and the Director of Counselling) of the Family Division Court. The author of this paper was part of the analysis.

²⁷ Fiji Judicial Conference, 4-6 December 2006, Sigatoka, Fiji. Judge Mere Pulea, the Principal Registrar and the Director of Counselling) of the Family Division Court

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- children. These are the ones who complain constantly, with nostalgia, for the old law. The new lawyers, however, have embraced the new law and are doing well in it; and
- More training is needed for judicial officers who resist legislative changes that impact on prevailing social attitudes.

The evaluations are not yet publicly available as they form part of the overall longer term evaluation. It was also noted at an evaluation session about the new law with Judges and Magistrates:²⁸

“There were the usual sexist magistrates making comments and suggesting doom and gloom for men under the FLA during the training but in general the mood is one of optimism and relief at the Act’s attempt at justice. Also, there is a greater intolerance to those who make anti-human rights comments which I find really positive. This is a noticeable trend compared to when I first started to attend the annual judicial training many years ago. Again and fortunately for me, I was the only non Judge/magistrate attending the meeting and was allowed absolute unfettered entry to everything, and allowed to intervene even in the sessions that had nothing to do with me or RRRT directly. It is a privilege that I never take for granted.”

Solomon Islands has specific legislation regarding injunctions. The legislation is gender-neutral. The *Amendment 13/92 to The Affiliation, Separation and Maintenance (Amendment) Act, 1992*, was considered at the time to be a radical and progressive piece of legislation that created a lot of controversy.²⁹ Unfortunately the legislation applies only to persons married by law or by custom . It does not include single people and *de facto* spouses.³⁰

Section 17 of the legislation replaces the old, ineffective, long-winded and expensive civil procedure method of enforcement. Section 17B legislates for an injunction against a person who is violent or is threatening violence against the applicant and/or child. The court must be satisfied that the person has been violent or is capable of being violent or has been violent to some other person. The court may order a person to leave the matrimonial home.

²⁸ Comments in an RRRT report by P I Jalal of the Fiji Judicial Conference, 4-6 December 2006, Sigatoka, Fiji. The author of this paper was part of the informal evaluation of the new Act.

²⁹ Jalal, P I, *Law for Pacific Women A Legal Rights Handbook*, Fiji Women's Rights Movement, 1998 p173
³⁰ s.17B(1)

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S.17B(4) of this order can even be made *ex parte* even without service on respondent. The court can also make it a condition that the respondent is not allowed to get another person to harass or threaten the applicant. Section 17C obliges the court to give priority to applications for Non-Molestation Orders. Section 17C says also that although the respondent may be barred from entering the matrimonial home, his legal rights to title of the matrimonial home are not affected. He may be stopped from living in the house but if he owns it he does not lose ownership.

Section 17D gives wider powers of arrest if the Non Molestation Order (s.17B order) has been breached and is likely to be breached again. The police can arrest without warrant if there is reasonable cause of violence or if the abuser has entered the matrimonial home if an order of arrest was attached to the Non Molestation Order. If there is no arrest provision in the Order, the applicant can apply for a warrant with the usual safeguards.

The Public Solicitor (legal aid) of the Solomon Islands has noted a "disturbing trend" of "women seeking injunctions to prevent being assaulted or molested by their husbands" as a result of the legislation. According to the Public Solicitor, urban women are more aware of their rights and are willing to use the law to their advantage. Again, the legislation has enjoyed mixed success. Progressive legislation by itself cannot enforce a commitment to it. Either women do not know of its availability or the police and judicial officials are still unresponsive. Non-molestation orders are poorly enforced. According to Solomon Islands police sources, there had been no training on the new legislation, and there had been only 1 imprisonment arising out of a breach of a non-molestation order under the legislation between 1992 and 1998.³¹ No statistical information has been available since 1998.

In Solomon Islands and throughout the Pacific therefore, the provisions of non-molestation orders have limited usefulness if relatively few people know about it or understand it. Even the common law provisions do not appear to be widely understood. Injunctions work only if the law agency officials are sympathetic and understanding. If a magistrate or policeman thinks that it is not right for women to demand such orders or that it is acceptable for men to beat women, he may not enforce a non-molestation order. The burden of enforcement is placed

³¹ Public Solicitor, Honiara. Discussion with the Police Station staff, Honiara, 1993

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on women, who usually do not have the time, education or money to pay legal, court and lawyer's expenses. Harassment leading to assault is a criminal action, but the remedy provided by family law is a civil one and the penalty is generally civil, rather than criminal. This effectively protects the offender from the criminal process. Despite its current limitations, the issuance of such an order, complete with the power to arrest without a warrant, does reveal to a threatening or violent husband that his behaviour is unacceptable. It is necessary however for the police and magistrates to change their attitudes towards non-molestation orders and to strictly enforce the law. This of course necessitates a change of attitude towards women in general, and requires an understanding of all the issues affecting criminal assault against women in the home. Law enforcement and the enhancement of legislation and policies will only be achieved with substantial determination by government to provide resources to educate agencies and greatly increase awareness of issues surrounding domestic violence and the substantial impact it has on the lives on, in particular, women and children.

DV LAW REFORMS IN THE PIPELINE

Samoa, Vanuatu and Fiji have comprehensive reforms on the DV agenda. A *Domestic Violence Bill* was prepared in July 2006 by parliamentary counsel of the Office of the Attorney General of Samoa and is presently being circulated to government ministries and civil society entities for comment. The Bill is modelled after New Zealand's domestic violence legislation and Fiji's draft domestic violence bill. The Bill proposes to define domestic violence, impose legal duties upon police officers to prevent domestic violence and provide for the District Court of Samoa to make victim protection orders.³²

In Fiji, in 2005, the report of the review of laws relating to domestic violence and a proposed draft legislation was released into parliamentary papers. This provided the women's rights groups with a specific tool to initiate the lobbying process. However, the coup de'tat of December 2006 has led to the standstill of any progress of work in this area. The draft is sweeping and its innovations include - the covering of a variety of intimate relationships and various forms of abuse; for police to have the power to apply for a restraining order and to assist with the collection of personal property. There is also a provision to enable a

³² Wendt, R, Deputy Attorney General, Samoa – Masters research. Unpublished paper, 2006

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police officer to make an application for a restraining order by telephone, in the victim's presence, to a presiding judicial officer.³³

Vanuatu's draft provisions are very similar to that of Fiji and Samoa but also attempts to give some quasi-judicial powers to grant emergency protection injunctions to senior village officials when the courts are out of reach.

F. CONCLUSION

With all innovative legislation that seeks to improve social justice or gender equality by attempting to alter the historic and systemic discrimination and barriers experienced by women in the legal system, its success depends ultimately on political will, the allocation of resources including human resources, and the training of all those who are affected by the new legal order.

The obligation of women's rights activists should not stop with the passing of the legislation. As Asian feminists have noted: "The state is not always neutral and should not be left to be the prime agent of social transformation....each legal or policy victory of the women's movement could often evaporate on the ground as the struggle for implementation and enforcement begins."³⁴

An advantage of small countries is that the systems in the Pacific appear to allow for a slightly faster pace of change if there is the political will and if women's NGOs have the capacity to mobilize and lobby with a strong cohesive voice. The economies of scale, the sophistication of the women's movement, and the funding/technical support received determine this pace of change.

The single most important strategy is for feminist and women's NGOs to mobilize, educate and campaign for new legislation; and thereafter, to closely monitor its implementation.

³³ Kotoisuva, E., Fiji Womens' Crisis Centre, Suva, Fiji, May 2008 in an interview

³⁴ Dhanraj, Misra and Batliwala in *The Future of Women's Rights*, AWID 2004 from *An Analysis of Influencing Fiji's Family Law A Case Study of Legislative Advocacy & Campaigning in Fiji*, by the Pacific Regional Rights Resource Team (RRRT) and the Fiji Women's Rights Movement, 2006 for UNDP, Bangkok