

Ending Domestic Violence in Pacific Island Countries: The Critical Role of Law

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I. INTRODUCTION

Domestic violence is pervasive, widespread,¹ and a serious national issue in Pacific countries.² As international obligations to address violence against women gain visibility and currency in the region, Pacific leaders have begun to call for measures, legal and non-legal, in response.³

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¹ DENISE LIEVORE & PEGGY FAIRBAIRN-DUNLOP, PACIFIC PREVENTION OF DOMESTIC VIOLENCE PROGRAM: KIRIBATI REPORT (2007), available at <http://webapps01.un.org/vawdatabase/uploads/Kiribati%20-%20PPDVP-Kiribati-Final-Report-14-June-2007.pdf>.

² Press Release, Secretariat of the Pacific Community, Kiribati Challenges Pacific Island Countries to Address Violence Against Women (Dec. 20, 2009), http://lists.spc.int/pipermail/press-releases_lists.spc.int/2009-December/000273.html. See also PNG's PM Laments Violence Against Women, SYDNEY MORNING HERALD, Nov. 16, 2007, available at <http://www.smh.com.au/news/World/PNGs-PM-laments-violence-against-women/2007/11/16/1194766956317.html>. In 2007, Prime Minister Michael Somare told the PNG parliament that "violence against women has become a cancer in Papua New Guinea society." *Id.*

³ The Hon. Aloysius Amwano, M.P of the Parliament of Nauru, during the Pacific Parliamentary Assembly on Population and Development in 2009, stated that Nauru must adopt a "zero tolerance attitude towards violence against women and

Indeed, at the recent 40th Pacific Forum, the Forum leaders “acknowledged the prevalence of gender-based violence in the Pacific and the risk that it poses to human security” and collectively committed to the “eradication of gender-based violence.”⁴ It is timely therefore to identify and assess which strategies are appropriate to the culture and context of the Pacific in order to work towards reducing and ultimately ending domestic violence in Pacific Island Countries (“PICs”). While a variety of policy and educative measures have already been implemented in many PICs, including the establishment of police and judicial training, education programs, crisis centers, and government task forces, this article suggests that the role of law in the prevention of domestic violence is still underutilized in the region. This article examines the legislative frameworks of 14 PICs (the Cook Islands, Federated States of Micronesia, the Marshall Islands, Fiji, Kiribati, Nauru, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tokalau, Tuvalu, and Vanuatu) and assesses their capacity to respond to domestic violence. Of these countries, four (Samoa, Fiji, the Solomon Islands, and the Cook Islands)

children. We must legislate for gender equality and protection.” Press Release, Aloysius Amwano, Statement of Nauru Parliamentarian on Domestic Violence (Nov. 17, 2009), available at <http://pacific.scoop.co.nz/2009/11/statement-of-nauru-parliamentarian-on-vaw/>. In 2008, the Prime Minister of the Solomon Islands, Derek Sikua, publicly condemned violence against women and pledged the government’s full support to eliminate violence against women. The United Nations (“UN”) Secretary-General’s Database on Violence Against Women, Public Condemnation of Violence Against Women by the Prime Minister, Members of Parliament, and Permanent Secretaries, Government of Solomon Islands (2008), available at <http://webapps01.un.org/vawdatabase/searchDetail.action?measureId=24723&baseHREF=country&baseHREFId=1193>. Also in 2008, 10 Members of Parliament and Permanent Secretaries of Pacific island countries publicly signed the UNIFEM’s ‘Say NO to Violence’ Pledge. *Id.* Additionally, his Excellency, President Anote Tong of Kiribati, made a national commitment to address violence against women on December 4, 2008 at a State function for Members of Parliament and high level government officials and church officials. Gov’t of Kiribati, *National Commitment to Address Violence Against Women, President Anote Tong* (2008), THE UN SECRETARY-GENERAL’S DATABASE ON VIOLENCE AGAINST WOMEN, <http://webapps01.un.org/vawdatabase/searchDetail.action?measureId=26423&baseHREF=country&baseHREFId=717>. In addition, on November 25, 2009, President Mori of the Federated States of Micronesia (“FSM”) signed a proclamation urging all residents of the FSM, both citizens and non-citizens alike, to observe and raise the social awareness of this issue and to prevent the proliferation of violence against women. Press Release, Federated States of Micronesia Public Information Office, International Domestic Violence Prevention Day in FSM (Nov. 24, 2009), available at http://www.fsmpio.fm/RELEASES/2009/november/11_27_09.html.

⁴ Press Release, Pacific Islands Forum Secretariat, Final Communique of 40th Pacific Islands Forum, Cairns (Aug. 5-6 2009), available at <http://www.forumsec.org.fj/pages.cfm/newsroom/press-statements/2009/final-communique-of-40th-pacific-islands-forum-cairns.html> [hereinafter Pacific Islands Forum Secretariat].

have domestic violence legislation, albeit minimal. The rest, other than Vanuatu, have no targeted domestic violence legislation. Vanuatu, which introduced a comprehensive civil and criminal domestic violence law in 2008, is examined separately for its potential to provide a good practice example for the region.

This article considers the potential of a strong legal framework, criminal and civil, to contribute to ending domestic violence in Pacific Island countries. The benefits of strengthening domestic violence legislative frameworks in the region include: (i) reducing the use of traditional approaches as the primary response to domestic violence, such as reconciliation and forgiveness ceremonies; (ii) providing a formal law alternative for victims of domestic violence; (iii) challenging the use of culture and custom to justify family violence against women and children through the setting of acceptable standards of conduct within family relations; (iv) enabling PICs to meet international obligations; and finally (v) providing a legal standard to support and solidify the implementation of a range of policy measures and initiatives already introduced in the region. Although an appropriate and acceptable legal framework can take the form of a single comprehensive domestic violence law or amendments to existing criminal and civil law frameworks, it is important that reform measures are both criminal and civil.

Part II considers the incidence and impact of domestic violence in PICs; Part III overviews the legislative frameworks currently existing in PICs; Part IV analyzes the potential benefits of enacting domestic violence legislation in the region; Part V considers the example of Vanuatu; and Part VI, the conclusion, recommends a broad legislative strengthening program, both civil and criminal, in the Pacific.

II. DOMESTIC VIOLENCE IN PACIFIC ISLAND COUNTRIES: INCIDENCE AND IMPACT

Domestic violence, defined as past or present physical, sexual, psychological, or economic violence between former or current intimate partners, adult household members, or a parent and children,⁵ is globally recognized as an endemic, pervasive, and widespread phenomenon.⁶ Determining the true extent of domestic violence is difficult because throughout the world (including in the Pacific region),⁷ most domestic

⁵ See Lena W. Hedin, *Physical and Sexual Abuse Against Women and Children*, 12 CURRENT OPINION IN OBSTETRICS & GYNECOLOGY 349 (2000); Kelsey Hegarty et al., *Domestic Violence in Australia: Definition, Prevalence and Nature of Presentation in Clinical Practice*, 173 MED. J. AUSTRALIA 363 (2000).

⁶ In 48 population-based surveys from around the world, 10-69% of women reported being physically assaulted by an intimate male partner at some point in their lives. WORLD HEALTH ORGANIZATION, WORLD REPORT ON VIOLENCE AND HEALTH 89 (2002), *available at* http://whqlibdoc.who.int/publications/2002/9241545615_chap4_eng.pdf

⁷ UN Division for the Advancement of Women [DAW] & UNICEF, *Violence*

violence is not reported to authorities.⁸ Indeed Pacific leaders at the recent 40th Pacific Forum acknowledged that gender-based violence is “pervasive across the Pacific, and as it is still considered a sensitive issue in most Pacific cultures, its prevalence often goes underreported.”⁹ Despite the limited research conducted to date, statistics and reports that are available uniformly confirm that domestic violence is widespread throughout the Pacific. In Samoa, a World Health Organization (“WHO”) survey found that 46% of women aged 15 to 49 years had experienced violence, sexual and physical, perpetrated by their partners, and 35% of women who first had sex under the age of 15 said it was forced.¹⁰ In both Fiji and Samoa, research has indicated that violence between spouses, by parents against children, and between other family members is widely tolerated and condoned.¹¹ In Papua New Guinea (“PNG”), domestic violence rates are a staggering 67%.¹² In Kiribati and the Solomon Islands, family health and safety studies found rates of physical, sexual, and psychological violence against women to be “amongst the highest in the world.”¹³ In the Solomon Islands alone, 64% of women interviewed in a survey conducted by the Ministry of Women and Children Affairs in 2008 stated they had experienced domestic violence at one time in their lives.¹⁴ In Vanuatu, evidence from the Vila Central Hospital suggests an

Against the Girl Child in the Pacific Islands Region, at 9, U.N. Doc. EGM/DVGC/2006/EP.14 (2006), available at <http://www.un.org/womenwatch/daw/egm/elim-disc-viol-girlchild/ExpertPapers/EP.14%20%20Ali.pdf> (prepared by Shamima Ali) [hereinafter *Violence Against the Girl Child in the Pacific Islands Region*].

⁸ E-Brief, Parliament of Australia, *Measuring Domestic Violence and Sexual Assault Against Women: A Review of the Literature and Statistics* (Dec. 12, 2006), <http://www.aph.gov.au/library/intguide/SP/ViolenceAgainstWomen.htm>.

⁹ Pacific Islands Forum Secretariat, *supra* note 4.

¹⁰ WORLD HEALTH ORGANIZATION, *MULTI-COUNTRY STUDY ON HEALTH AND DOMESTIC VIOLENCE AGAINST WOMEN* 27 (2005).

¹¹ UNITED NATIONS POPULATION FUNDS [UNFPA], *SAMOA FAMILY HEALTH AND SAFETY STUDY* 16 (2005). *See also* SAVE THE CHILDREN (FIJI), *THE PHYSICAL AND MENTAL PUNISHMENT OF CHILDREN IN FIJI: A RESEARCH REPORT* 8 (2006); Penny Martin, *Implementing Women's and Children's Rights: The Case of Domestic Violence in Samoa*, 27 *ALT. L.J.* 227, 230 (2002).

¹² PAPUA NEW GUINEA LAW REFORM COMM'N, *FINAL REPORT ON DOMESTIC VIOLENCE* (Report No. 14, 1992).

¹³ AMNESTY INTERNATIONAL, *SOLOMON ISLANDS WOMEN CONFRONTING VIOLENCE* 1 (2004), available at <http://www.amnesty.org/en/library/info/ASA43/001/2004/en>; AUSAID, *VIOLENCE AGAINST WOMEN IN MELANESIA AND EAST TIMOR: A REVIEW OF INTERNATIONAL LESSONS* 5 (2007), available at http://www.ode.usaid.gov.au/publications/pdf/VAW_review.pdf.

¹⁴ *Solomons' domestic violence increasing* (Radio Australia broadcast Jan. 19,

89% rise in domestic violence cases treated in the hospital between 2000 and 2003.¹⁵ In Tonga, more than 230 cases of domestic violence, sexual violence, and child abuse were referred to the Women and Children's Crisis Centre in 2010.¹⁶

Government reports to the various treaty body reporting committees have also acknowledged the extent of domestic violence in the region. The Tuvalu government in their initial and second periodic report to the Committee on the *Convention on the Elimination of All Forms of Discrimination against Women 1979* ("CEDAW Committee"), a body of 23 independent experts responsible for overseeing the effective implementation of the Convention,¹⁷ in 2009 stated that domestic violence is common and that physical abuse of women and children is "visible but not reported."¹⁸ The Vanuatu government stated in their report to the CEDAW Committee in 2005 that domestic violence was "receiving much public recognition as a problem."¹⁹ The Cook Islands government also noted in their report to the CEDAW Committee in 2007 that "domestic violence is a problem in the Cook Islands."²⁰

Domestic violence has devastating effects on women, children, their extended families, and their communities.²¹ Typical injuries victims

2009), *available at* <http://www.radioaustralia.net.au/pacbeat/stories/200901/s2469076.htm>.

¹⁵ See UN CEDAW, *Combined Initial, Second and Third Periodic Reports of States Parties: Vanuatu*, para. 12.51, U.N. Doc. CEDAW/C/VUT/1-3 (2005), *available at* <http://www.unhcr.org/refworld/docid/4537783a0.html> [hereinafter *Vanuatu Periodic Reports*].

¹⁶ See Women and Children Crisis Centre, <http://www.wccc.tbu.to/products/latest-data-on-violence-in-tonga/> (last visited Apr. 14, 2011). See also 'ATU 'O HAKAUTAPU EMBERSON-BAIN, ASIAN DEVELOPMENT BANK, WOMEN IN TONGA (1998), *available at* http://www.adb.org/Documents/Books/Country_Briefing_Papers/Women_in_Tonga/women_ton.pdf.

¹⁷ Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter *CEDAW*].

¹⁸ UN CEDAW, *Combined Initial and Second and Periodic Reports of States Parties: Tuvalu*, at 28, U.N. Doc. CEDAW/C/TUV/2 (2009), *available at* <http://www.unhcr.org/refworld/docid/492688142.html>.

¹⁹ Vanuatu Periodic Reports, *supra* note 15, at para. 54.

²⁰ UN CEDAW, *Initial Report of States' Parties: Cook Islands*, para. 12.41, U.N. Doc. CEDAW/C/COK/1 (2006), *available at* <http://www.unhcr.org/refworld/docid/47441eac2.html>.

²¹ Leticia Avila-Burgos et al., *Factors Associated with Severity of Intimate Partner Abuse in Mexico: Results of the First National Survey of Violence Against Women*, 100 CAN. J. PUB. HEALTH 436 (2009); Gwenneth L. Roberts et al., *The Impact of Domestic Violence on Women's Mental Health*, 22 AUSTL. & N.Z. J. PUB. HEALTH 796 (1998); Jill Astbury et al., *The Impact of Domestic Violence on Individuals*, 173 MED. J. AUSTL. 427 (2000); UNICEF, BEHIND CLOSED DOORS: THE IMPACT OF DOMESTIC

suffer from include low self-confidence, increased risk of depression and suicide, poor general physical health, and a range of physical injuries with both short-term and long-term chronic effects.²² Additionally, anxiety and fear can lead victims to make a range of detrimental changes to their lifestyle, such as forgoing educational and employment opportunities, detaching from public life, and failing to make their own decisions.²³ Children can also be profoundly affected by witnessing violence. There is a growing body of research documenting its major effects on a child's psychological, physical, educational, and social wellbeing.²⁴ There are also substantial, direct and indirect, human resource costs associated with domestic violence. First, these costs (often born by the government) include the need to provide a range of facilities, resources, and services to victims, such as crisis services, accommodation services, legal services, income support, and medical services.²⁵ Second, the cost of procedures relating to the offenders (costs associated with the police forces, prosecutors, courts, and prisons) are considerable.²⁶ Third, flow-on costs are incurred when a woman leaves a violent relationship, such as replacing damaged or lost household items and replacing school uniforms and equipment when children change schools.²⁷ Finally, there is the income lost or forgone because of the impact of violence on women's workforce participation, which impacts not only the victim, but also society as a whole since those skills are lost to the workforce.²⁸

III. DOMESTIC VIOLENCE LEGISLATION IN PACIFIC ISLAND COUNTRIES

There is a rapid and growing trend worldwide to enact domestic violence legislation as part of a comprehensive strategy to end domestic

VIOLENCE ON CHILDREN (2006), available at <http://www.unicef.org/protection/files/BehindClosedDoors.pdf>.

²² Gayle Brewer et al., *Domestic Violence: The Psychosocial Impact and Perceived Health Problems*, 2 J. AGGRESSION, CONFLICT & PEACE RES. 12, 13 (2010).

²³ Victoria Banyard et al., *The Impact of Interpersonal Violence in Adulthood on Women's Job Satisfaction and Productivity: The Mediating Roles of Mental and Physical Health*, 1 PSYCHOL. VIOLENCE 16, 24-25 (2011).

²⁴ John W. Fantuzzo & Wanda K. Mohr, *Prevalence and Effects of Child Exposure to Domestic Violence*, 9 FUTURE CHILD. 21, 26-28 (1999); Joy D. Osofsky, *The Impact of Violence on Children*, 9 FUTURE CHILD. 33, 34-38 (1999).

²⁵ WORLD HEALTH ORGANIZATION, ECONOMIC DIMENSIONS OF INTERPERSONAL VIOLENCE 4 (2004) [hereinafter ECONOMIC DIMENSIONS OF INTERPERSONAL VIOLENCE].

²⁶ Ko Ling Chan & Esther Yin-Nei Cho, *A Review of Cost Measures for the Economic Impact of Domestic Violence*, 11 TRAUMA, VIOLENCE & ABUSE 129, 139 (2010).

²⁷ See *id.* at 138.

²⁸ See ECONOMIC DIMENSIONS OF INTERPERSONAL VIOLENCE, *supra* note 25.

violence.²⁹ Domestic violence legislation can take the approach of a single comprehensive law that incorporates both criminal offences and civil law protection orders, or an alternate approach keeps these aspects separate and instead makes the relevant reforms to both the criminal law and the civil law. Targeted domestic violence criminal offences operate to facilitate the prosecution and punishment of offenders.³⁰ In contrast, a system of protection orders in the civil law focuses on the protection of persons “exposed or potentially exposed to violence in a domestic setting”³¹ through the prohibition of the offender from any further acts of domestic violence and/or enabling victims to remain in the family home to the exclusion of the offender.³² The PICs considered in this article have minimal domestic violence laws, with the exception of Vanuatu, which enacted a comprehensive criminal and civil domestic violence law in 2008. This reflects the fact that the legislative frameworks of the region largely remain in their original form in all areas of law based on the written legal systems of the major colonizing powers (France, Britain, and the United States).³³ As a result, most legislative frameworks reflect arcane values that are not indicative of a dynamic system of contemporary modern day law or (arguably) those of the local and indigenous people.³⁴ The following section overviews the laws in four PICs—Fiji, Samoa, the Solomon Islands, and the Cook Islands—that contain limited domestic

²⁹ Crimes (Domestic and Personal Violence) Act of 2007 (NSW, Australia); Domestic and Family Violence Act of 2007 (NT, Australia); Domestic and Family Violence Protection Act of 1989 (Queensland, Australia); Domestic Violence Act of 2007 (Sierra Leone); Domestic Violence and Protection Orders Act of 2001 (ACT); Domestic Violence Act 1995 (NZ); Domestic Violence Act of 2005 (India); Domestic Violence Act of 2007 (Ghana); Domestic Violence Act of 1998 (South Africa); Domestic Violence Act of 1994 (Malaysia); Domestic Violence Intervention Act of 2001 (Nova Scotia, Canada); Domestic Violence Protection Act of 2000 (Ontario, Canada); Domestic Violence Stalking, Prevention, Protection and Compensation Act 1998 (Manitoba); Family Violence Act 2004 (Tasmania, Australia); Family (Protection Against Domestic Violence) Act of 2002 (Montserrat); Family Protection Act of 2008 (Vanuatu); Protection Against Violence Act of 1997 (Austria); Protection Against Family Violence Act of 1999 (Alberta, Canada).

³⁰ Carolyn Hoyle & Andrew Sanders, *Police Response to Domestic Violence*, 40 BRIT. J. CRIMINOLOGY 14, 19 (2000).

³¹ Heather Douglas & Lee Godden, *The Decriminalisation of Domestic Violence: Examining the Interaction Between the Criminal Law and Domestic Violence*, 27 CRIM. L.J. 32, 33 (2003).

³² Sally F. Goldfarb, *Re-conceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship*, 29 CARDOZO L. REV. 1487, 1504 (2007).

³³ Jennifer Corrin Care, *Colonial Legacies? A Study of Received and Adopted Legislation Applying in the University of South Pacific Region*, 21 J. PAC. STUD. 33, 35-46 (1997).

³⁴ See *id.* at 33.

violence legislation. Vanuatu is considered separately in Part VI.

A. *Domestic Violence Offences in the Criminal Law*

The Cook Islands, Samoa, and Fiji contain in their criminal laws some limited domestic violence offences. In the Cook Islands, there is a single offence of an assault of a male upon a female with a penalty not exceeding two years imprisonment. This offence applies only to physical violence.³⁵ In Samoa, a divorced husband commits a criminal offence if he (a) enters the land or house of his former wife, (b) threatens to commit a trespass, or (c) watches her at her place of work or residence or waylays her in a public place.³⁶ The penalty is a fine or imprisonment not exceeding three months.³⁷ This offence is limited to an ex-husband and, in contrast to the Cook Islands, does not include physical violence. In Fiji, the Domestic Violence Decree, which came into force in February 2010, created a new domestic violence offense defined as “any act of violence committed in a family situation, including those committed in a de facto relationship and any violence committed against children.”³⁸ These three PICs and most other PICs have general assault offences that can (theoretically) be used to prosecute domestic violence offenders if there is physical violence; however, they are rarely utilized in the region for domestic violence.³⁹

B. *Protection Orders in the Civil Law*

Protection orders are a civil remedy typically issued by a court or the police to prevent a person from making contact, harming, or harassing another person. Occupation orders, also a civil order typically issued by a court or the police, regulate who can live in a family home and place restrictions on another person preventing them from entering a home or its surrounding areas.⁴⁰ The Cook Islands, Fiji, and the Solomon Islands provide for the granting of protection orders⁴¹ in situations of domestic violence. All three also provide for the granting of occupation orders.

The Cook Islands provides for both occupation orders and non-

³⁵ Crimes Act of 1969, § 214(a) (Cook Islands).

³⁶ Divorce and Matrimonial Causes Ordinance of 1961, § 20 (Samoa).

³⁷ *Id.*

³⁸ Domestic Violence Decree of 2009 (Fiji).

³⁹ MARIANNE HESTER ET AL., MAKING AN IMPACT: CHILDREN AND DOMESTIC VIOLENCE 83 (1999).

⁴⁰ TK Logan et al., *Protective Orders: Questions and Conundrums*, 67 TRAUMA, VIOLENCE & ABUSE 175, 178 (2006).

⁴¹ In the Cook Islands protection orders are termed non-molestation orders, in Fiji they are termed restraining orders, while in the Solomon Islands the legislation simply refers to orders.

molestation orders. An occupation order is available if “necessary for the protection of the husband or wife” or “in the best interests of a child of the marriage”⁴² and non-molestation orders are available if the court “is satisfied the making of the order is necessary for the protection of the applicant or any child in the custody of the applicant.”⁴³ Occupation orders are available only for married persons while non-molestation orders are available to married persons, those in de facto relationships, and to “any person.”⁴⁴ As part of extensive family law reform in 2003, Fiji introduced restraining orders to protect children. A restraining order prevents an offender from entering the place of residence, education, or employment of a child, a parent, or a person with a parenting order in relation to a child.⁴⁵ More recently, Fiji has extended the scope of protection orders to include adult victims, and protection orders can now be applied for regardless of whether the husband or partner is charged with a criminal offence.⁴⁶ Additionally, a police officer who identifies a domestic violence situation must apply for a restraining order in the court.⁴⁷ Although same sex couples are excluded from the Decree, other de facto relationships are included as well as family members, caregivers, and persons who live in the same residence or residential facility.⁴⁸ The Solomon Islands provides for the grant of an order prohibiting an offender from using or threatening violence against a spouse or child of the marriage⁴⁹ and an order to require an offender to leave the matrimonial home and to prohibit her or him from re-entering the home.⁵⁰ These orders are available only if the protected person or a child of the family is in danger of being physically injured by the offender and are limited to those in married relationships.⁵¹

In all three countries, the law was either adopted directly from a colonizing or former colonizing country without reference to local context. The Cook Islands law was adopted directly from New Zealand, and the Solomon Islands provisions were adopted from English law.⁵² In Fiji,

⁴² Cook Islands Amendment Act of 1994, § 523G.

⁴³ Cook Islands Amendment Act of 1994, § 523I(1).

⁴⁴ Cook Islands Amendment Act of 1994, §§ 523G, 523I(1), 523J, 523K.

⁴⁵ Family Law Act of 2003, § 118 (Fiji).

⁴⁶ Domestic Violence Decree of 2009, § 23 (Fiji).

⁴⁷ *Id.* § 14.

⁴⁸ *Id.* § 2.

⁴⁹ Affiliation, Separation and Maintenance Act [Cap 1] of 1974, § 22(2) (Solomon Islands).

⁵⁰ *Id.* § 22(3).

⁵¹ *Id.* § 22(1).

⁵² See Care, *supra* note 33, at 36, 40.

although the Family Law Act was recently enacted in 2003, it is in large part a replica of the Australian Family Law Act 1975, which is over three decades old and does not by itself comprehensively address domestic violence. The recent Decree, however, does seek to fill some of the gaps of the Fiji Family Law Act.⁵³

IV. THE RATIONALE FOR INTRODUCING DOMESTIC VIOLENCE LEGISLATION IN PACIFIC ISLAND COUNTRIES

A. *Importance of a Formal Law Response to Domestic Violence*

Introducing domestic violence legislation into PICs is important for a range of reasons. First, consistently throughout Pacific communities, domestic violence (if it is dealt with at all) is dealt with by the village or informal courts in accordance with local customs and traditional practices.⁵⁴ While women and men across the Pacific find strength in traditions, customs, and beliefs,⁵⁵ traditional courts are often presided over by male chiefs or traditional elders who operate with social legitimacy. Many women have expressed dissatisfaction with the approaches taken in this system, which they feel do not address their personal suffering nor guarantee protection.⁵⁶ In particular, traditional reconciliation and forgiveness ceremonies are often employed in instances of domestic violence.⁵⁷ The use of such practices is problematic for a range of reasons. First, this approach means that either there is no criminal prosecution, finding of guilt, and assignment of appropriate punishment, or alternately, forgiveness is used to lessen the punishment of the offender. It also means

⁵³ It does this by extending the availability of protection orders and occupation orders to adult victims of domestic violence and placing a range of duties on police officers to investigate domestic violence, assist victims, and apply for protection orders. It also broadens the conditions of protection orders and provides for compensation orders for victims. See Domestic Violence Decree of 2009, §§ 12-15, 19, 27, 39 (Fiji). See also *Nazhat Shameem*, FIJI SUN ONLINE, Nov. 6, 2009, http://www.fijisun.com.fj/main_page/view.asp?id=29132.

⁵⁴ See UN DAW, *Harmful Practices against Women in Pacific Island Countries: Customary and Conventional Laws*, at 7, U.N. Doc. EGM/GPLHP/2009/EP.15 (2009), available at http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Expert%20Paper%20E_GMGPLHP%20Imrana%20Jalal_.pdf (prepared by Imrana Jalal) [hereinafter *Harmful Practices against Women in PICs*].

⁵⁵ UNITED NATIONS DEVELOPMENT PROGRAMME, ASIA-PACIFIC HUMAN DEVELOPMENT REPORT: POWER, VOICE AND RIGHTS: A TURNING POINT FOR GENDER EQUALITY IN ASIA AND THE PACIFIC 115 (2010), available at <http://hdr.undp.org/fr/rapports/regional/asiepacifique/RHDR-2010-AsiaPacific.pdf> [hereinafter ASIA-PACIFIC HUMAN DEVELOPMENT REPORT].

⁵⁶ See *Harmful Practices against Women in PICs*, *supra* note 54, at 7.

⁵⁷ Nick Goodenough, *Reconciliation and the Criminal Process in the Solomon Islands*, 10 J. S. PAC. 1, 7 (2006).

protections will not be put in place to prevent any further violence. Second, the use of a reconciliation ceremony rather than the formal law may result in the acts of violence being deemed acceptable under traditional or religious practices.⁵⁸ Third, the practice of forgiveness generally involves the offender and victim's family or community and often takes place without the victim's permission or participation.⁵⁹ As such, the process often prioritises the maintenance of peace between community groups and their (male) leaders over women's wellbeing. Indeed, the goal of traditional justice is always community and family harmony and reconciliation rather than the recognition of individual rights.⁶⁰ Therefore, a chief will rarely fault only one side of a dispute and is unlikely to support the separation of the couple.⁶¹ Finally, the associated practice of a "grace solution," which involves exchanging goods on both sides of the dispute, such as woven mats, livestock, cash and other produce may, conversely, create a deterrent for addressing violence against women.⁶² Although the presence of a robust formal law framework cannot of itself halt the use of reconciliation and other custom law responses to domestic violence, it provides an alternative avenue for victims that may over time engender a change in community practices.

Second, it could be argued that the strength of customary and traditional practices in the Pacific region diminishes the usefulness of a formal law response to domestic violence⁶³ and that, if victims of domestic violence are unlikely to use the formal law system, then there is little value

⁵⁸ See *Harmful Practices against Women in PICs*, *supra* note 54, at 6.

⁵⁹ See UN Office on Drugs and Crimes & UN DAW, *Good Practices in Legislation on Violence Against Women: A Pacific Islands Regional Perspective*, at 4, U.N. Doc. EGM/GPLVAW/2008/EP.07 (May 19, 2008) (prepared by P. Imrana Jalal), available at http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20P%20Imrana%20Jalal_.pdf [hereinafter *Good Practices in Legislation on Violence Against Women*].

⁶⁰ See Nilda Rimote, *A Question of Culture: Cultural Approval of Violence Against Women in the Pacific-Asian Community and the Cultural Defence*, 43 STAN. L. REV. 1311, 1320 (1991).

⁶¹ *Id.*

⁶² See AUSAID, Vanuatu Country Supplement, in *VIOLENCE AGAINST WOMEN IN MELANESIA AND EAST TIMOR: BUILDING ON REGIONAL AND GLOBAL PROMISING APPROACHES* 178 (2008), available at http://www.ode.usaid.gov.au/publications/pdf/vaw_cs_vanuatu.pdf [hereinafter *Vanuatu Country Supplement*].

⁶³ See Penny Martin, *Implementing Women's Rights and Children's Rights: The Case of Domestic Violence in Samoa*, 27 ALT. L.J. 227, 229 (2002) (discussing the limitations of legislation and noting that in Samoa law enforcement outside of Apia is limited because of the combined effects of "geography, police numbers, and the power of the *fono*").

in strengthening it. However, it can also be argued that the strength of tradition and customary practices in the Pacific region and its retention of views about women and their role in contemporary Pacific society make formal law reform initiatives critical.⁶⁴ Even if disputes continue to be primarily settled in customary ways, the symbolic impact of the formal law system should not be discounted or underestimated. Although the prevailing ‘legal culture’ (people’s ideas, attitudes, values and expectations with regard to law) is important to the success of law reform initiatives,⁶⁵ a targeted domestic violence law, civil or criminal or both, makes a strong and visible public statement of the seriousness with which the State views domestic violence. The presence of a targeted domestic violence law brings the issue of domestic violence to the forefront and acknowledges its structural dimensions, rather than viewing it as an “addition” to other societal crimes. Such a law can lead to changes in socio-cultural norms including accepted traditional practices, thereby building a general ethos against domestic violence.⁶⁶ In some Pacific communities, prevailing social beliefs about family relations include the view that men have a right or obligation to punish and discipline female family members in order to maintain order at home and in society at large,⁶⁷ that domestic relationships are legitimately hierarchical; and that God made men and women ‘essentially’ different and that these differences contribute to different familial roles, rights, and duties, which are crucial to the cohesion and stability of the family.⁶⁸

The argument against formal law reform in light of traditional practices is not unique to the Pacific region. In relation to domestic violence, resistance to law reform rarely manifests as an open defence of violence against women, but rather as an argument that it may disrupt social stability or the need for adherence to religion or tradition. However, other regions have accepted the argument that a persuasive distinction must be made between culture and tradition on the one hand, and violence against women on the other, in order to challenge tacit tolerance for domestic violence in the guise of tradition or culture.⁶⁹ This has led to the

⁶⁴ See *Harmful Practices against Women in PICs*, *supra* note 54, at 2.

⁶⁵ Lawrence Friedman, *Is there a Modern Legal Culture*, 7 *RATIO JURIS* 117, 130 (1994).

⁶⁶ Victor Tadros, *The Distinctiveness of Domestic Violence: A Freedom Based Account*, 65 *LA. L. REV.* 989 (2005).

⁶⁷ For example, when the Fiji legislative assembly was faced with the third reading of the Family Law Bill, one objector voiced that violence was not a valid ground for divorce. *Violence against women and ICTs in the Pacific Islands region: An overview*, ADOC 2.0 (Dec. 12, 2009, 11:27 AM), <http://www.apecdoc.org/post/10/5722>.

⁶⁸ DEPARTMENT OF WOMEN’S AFFAIRS, *TRENDS, EXTENT AND IMPACT OF DOMESTIC VIOLENCE IN VANUATU* 38-39 (2005).

⁶⁹ Lisa Hajjir, *Religion, State Power and Domestic Violence in Muslim Societies*,

enactment of domestic violence legislation in Africa, Asia, and Arab, nations where religion and customary practices strongly influence the implementation of law.⁷⁰ Proponents in these regions have successfully argued that old statutes need to be modified to conform to international commitments and to respond to demands from citizens.⁷¹

Finally, a number of international human rights instruments ratified by PICs require State parties to take effective measures to prevent and eradicate domestic violence. For example, the United Nations Convention on the Rights of the Child (“CRC”), which came into force on September 2, 1990, has been ratified by all PICs considered in this article.⁷² Article 19 of the Convention obligates State parties to “take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child.”⁷³ All PICs, except Tonga, Nauru and Palau, are parties to CEDAW, the first international treaty to comprehensively address equality and non-discrimination in all areas of women’s lives. No specific article on gender-based violence was included in CEDAW; however, the gravity and pervasiveness of domestic violence was recognized by the CEDAW Committee in General Recommendation 19 on violence against women in 1992.⁷⁴ The CEDAW Committee states in General Recommendation 19:

Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships, women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. . . . The effect of such violence on the physical and mental integrity of women is to deprive them [of] the equal enjoyment, exercise and knowledge of

14 L. & SOC. INQUIRY 15 (2004).

⁷⁰ See Domestic-Violence Victim Protection Act B.E. 2550 of 2007 (Thailand); Protection of Women from Domestic Violence Act of 2005 (India); Protection from Domestic Violence Act of 2008 (Jordan).

⁷¹ See ASIA-PACIFIC HUMAN DEVELOPMENT REPORT, *supra* note 55, at 118.

⁷² Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/49 (Nov. 20, 1989).

⁷³ *Id.* art. 19.

⁷⁴ CEDAW, *General Recommendation No. 19*, U.N. Doc. A/47/38 (Feb. 1, 1992).

human rights and fundamental freedoms.⁷⁵

Finally, the United Nations Convention on the Rights of Persons with Disabilities (“CRPD”)⁷⁶ came into force in May 2008, although ratified to date by only two PICs, Vanuatu in October 2008 and the Cook Islands in May 2009. CRPD provides a comprehensive framework of the obligations of State parties to prevent domestic violence against persons with disabilities. Obligations include introducing “measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse,”⁷⁷ and “effective legislation and policies, including women and child focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.”⁷⁸ The introduction of strong civil and criminal law domestic violence frameworks would enable PICs to meet their de jure obligations under these three treaties.

B. *Importance of a Robust Civil and Criminal Law Framework*

Criminal and civil law both have an important role in a comprehensive strategy to end domestic violence.⁷⁹ However, legislative responses to domestic violence worldwide, despite a movement towards strengthening criminal codes in the 1980s,⁸⁰ have primarily been in the civil law.⁸¹ The rationale for the contemporary focus on the civil law is grounded in a perception that the criminal law is unable to effectively respond to domestic violence.⁸² Research has supported the criticism of criminal law’s ability to end domestic violence. Worldwide, prosecutions for domestic violence offences under the criminal law are often hard to obtain.⁸³ Douglas noted in a study on the process of the criminal justice

⁷⁵ *Id.* ¶ 23.

⁷⁶ Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, U.N. Doc. A/61/611 (May 3, 2008)

⁷⁷ *See id.* art. 16.

⁷⁸ *Id.*

⁷⁹ Douglas & Godden, *supra* note 31.

⁸⁰ Ruth Colker, *Marriage Mimicry: The Law of Domestic Violence*, 47 WM. & MARY L. REV. 1841, 1852 (2006).

⁸¹ Tamara L. Kuennen, *No-Drop Protection Orders: Exploring the Bounds of Judicial Intervention in the Lives of Domestic Violence Victims*, 16 UCLA WOMEN’S L.J. 39, 44 (2007).

⁸² *See* Douglas & Godden, *supra* note 31, at 34.

⁸³ Joel H. Garner & Christopher D. Maxwell, *Prosecution and Conviction Rates for Intimate Partner Violence*, 34 CRIM. JUST. REV. 44, 45 (2009); Lauren Bennett et al., *Systemic Obstacles to the Criminal Prosecution of a Battering Partner: A Victim*

system that it is “violent,” “devastating,” and a rough tool that creates “distress, disadvantages and disillusionment for women” and as such overrides “any hope or protection and safety gained.”⁸⁴ Moreover, criminal prosecution does not allow for more conciliatory options, leading to divisive outcomes within families and communities.⁸⁵ Additionally, some argue that it gives the state control over women’s decision-making, thereby undermining their agency.⁸⁶

Despite the criticisms of the criminal justice system outlined above, there are strong substantive and symbolic reasons for (i) recognizing domestic violence as a crime and (ii) recognizing it in its specificity and incorporating targeted criminal offences into legislation, rather than subsuming domestic violence within general assault offences. The symbolic effects of incorporating targeted domestic violence offences can be summarized as follows. The application of criminal law to domestic violence (arrest, prosecution, and conviction) carries the clear condemnation of society for the conduct of the abuse. It is a clear public statement that “domestic violence is a crime, is wrong, and should be punished,” which undermines the ability of offenders and others to argue that what happens in the home is private and counteracts the social message that violence in a domestic setting is not as “serious” as violence between strangers.⁸⁷

The substantive benefits of incorporating targeted domestic violence offences, rather than relying on general assault offences for the prosecution of offenders, can be summarized as follows. General assault offences are ill-equipped to address the complexity and specificity of domestic violence and do not, therefore, provide a legal framework that can effectively respond to domestic violence. Domestic violence is distinct from stranger violence because of the context in which it occurs (the private sphere) and because of the relationship between offenders and victims (familial or intimate). It manifests in many forms, including physical violence, sexual abuse, property damage, emotional and psychological abuse, intimidation, harassment, stalking, economic deprivation, or threats of any of the above. General assault offences, however, can typically only be invoked if there has been physical violence, and therefore their effectiveness is limited. Additionally, domestic violence is rarely a ‘one off’ incident; instead, it typically occurs

Perspective, 14 J. INTERPERSONAL VIOLENCE 761, 766 (1999).

⁸⁴ Heather Douglas, *The Criminal Law's Response to Domestic Violence: What's Going On?*, 30 SYDNEY L. REV. 439, 442 (2008).

⁸⁵ *See id.* at 442.

⁸⁶ Donna Corker, *Race Poverty and the Crime-Centred Response to Domestic Violence*, 10 VIOLENCE AGAINST WOMEN 1331, 1332, 1348 (2004).

⁸⁷ *See Douglas & Godden, supra* note 31, at 33.

within a continuum of violence and in a context of “complex and continuing emotional, financial and legal ties between the parties and complex power dynamics.”⁸⁸ Consequently, a general assault offence that conceptualizes an assault as a single event does not have the capacity to respond effectively to a series of assaults that form a pattern of abuse.

Although worldwide domestic violence offences provisions have not always led to a significant number of convictions, this phenomenon is attributed to law enforcement officers who discourage women from reporting cases and high dismissal rates of cases by police and prosecutors.⁸⁹ Indeed, in PICs, police and court officials have been historically unsympathetic to victims of domestic violence. They have often discouraged legal solutions and focused on reconciling the parties.⁹⁰ As discussed more fully in the next section, specialized police units and training programs for police and prosecutors have been instituted across the Pacific to counter such attitudes. The absence of targeted domestic violence offences in the region, however, weakens the capacity of such programs to successfully facilitate the prosecution of offenders. Successful criminal prosecution has the capacity to prevent individual men from reoffending and creates the possibility of immediate legal intervention and sanctions. Additionally, evidence suggests that even if only a small number of matters reach the courts, criminalization does provide some protection to women.⁹¹

C. *Legislation as a Tool to Strengthen Policy Initiatives*

Across the Pacific region a range of policy, educative, and other initiatives have been introduced as high rates of domestic violence have gained visibility. First, programs to train and educate institutional actors (such as the police and the judiciary) in the issues relating to domestic violence have been established in some PICs.⁹² Second, in some PICs,

⁸⁸ See Douglas, *supra* note 83, at 442.

⁸⁹ *Good Practices in Legislation on Violence against Women*, *supra* note 59, at 8.

⁹⁰ See *Harmful Practices against Women in PICs*, *supra* note 54, at 6.

⁹¹ Ruth Lewis, *Making Justice Work: Effective Legal Interventions for Domestic Violence*, 44 BRIT. J. CRIMINOLOGY 204, 205, 221 (2004).

⁹² The Pacific Prevention of Domestic Violence Programme is a joint initiative of NZAID, NZ Police, and the Pacific Islands Chiefs of Police organisation. NZ Police members deliver advice, training and operational support on domestic violence to the police forces and communities in the participating countries of the Cook Islands, Samoa, Tonga and Kiribati. The Programme additionally, at a regional level, involves all Pacific countries in a range of training, networking, and information sharing activities aimed at building the capacity of Police services across the region to prevent and respond effectively to domestic violence, to develop effective regional partnerships and networking, and to promote the prevention of domestic violence as a priority issue in the Pacific. See PACIFIC PREVENTION OF DOMESTIC VIOLENCE PROGRAMME,

specialized units have been created in police forces to facilitate more appropriate responses to domestic violence.⁹³ In PNG, specialized Sexual Offences Units and Victim Support Desks have been established to focus on improving the police response to family violence and strengthening networks and referral protocols. In Vanuatu, a Family Protection Unit has been created in the police force.⁹⁴ Third, some PICs have established specialized government departments or taskforces entrusted with the task of addressing and strategizing for the prevention of domestic violence. For example, in the Solomon Islands, the Prime Ministerial Taskforce to Look into Special Actions for Women is entrusted with the reduction and elimination of gender-based violence as one of four central strategies to improve gender equality.⁹⁵ Finally, a variety of services to support victims of domestic violence have been established throughout PICs. Some are community-based or run by religious organizations, and many are supported in part by state funding or overseas aid. Support services offered to victims through these organizations include counselling services; anger management services; information about using the legal system, police procedures, and medical examinations; and support and assistance while going through medical and police procedures and the court system.⁹⁶

<http://www.ppdvp.org.nz/> (last visited Mar. 11, 2011). See also Press Release, Pacific Men Learn to Advocate for Women's Rights (Mar. 23, 2010), available at <http://lyris.spc.int/read/messages?id=68794>.

⁹³ Morgan Lee Woolley, *Marital Rape: A Unique Blend of Domestic Violence and Non-Marital Rape Issues*, 18 HASTINGS WOMEN'S L.J. 269, 273 (2007); Andrea Vesa, *International and Regional Standards for Protecting Victims of Domestic Violence*, 12 AM. U.J. GENDER SOC. POL'Y & L. 309, 317 (2004).

⁹⁴ However, this unit focuses primarily on sexual assault. Vanuatu Country Supplement, *supra* note 62, at 174. Other examples include a police force in the Solomon Islands where a number of specialized Domestic Violence Units that specifically address cases of domestic violence, child abuse, and other family-related issues have been established. In Kiribati, the Family Affairs and Sexual Offences Unit has been established to manage cases of domestic violence, rape, abuse, and other sexual offences within the police force.

⁹⁵ AUSAID, Solomon Islands Country Report, in STOP VIOLENCE: RESPONDING TO VIOLENCE AGAINST WOMEN IN MELANESIA AND EAST TIMOR 51, 56 (2009), http://www.usaid.gov/publications/pdf/ResVAW_SI.pdf [hereinafter Solomon Islands Country Report].

⁹⁶ Examples include the following: The Fiji Women's Crisis Centre provides crisis counselling and legal, medical, and other practical support services for women and children who are victims of violence in Fiji. Fiji Women's Crisis Centre, <http://www.fijiwomen.com/> (last visited Apr. 14, 2011). The Vanuatu Women's Centre likewise provides support, care, and counseling for victims of domestic violence and abuse. See AUSAID, Vanuatu Country Report, in STOP VIOLENCE: RESPONDING TO VIOLENCE AGAINST WOMEN IN MELANESIA AND EAST TIMOR 89, 97 (2009), http://www.usaid.gov/publications/pdf/ResVAW_vanuatu.pdf. In the Solomon Islands, the Family Support Centre provides counselling and legal referral to women and

Such initiatives are an important aspect of strategies to end domestic violence. However, the absence of a strong legal framework weakens those initiatives' credibility and capacity to change and modify accepted practices of behaviour in the Pacific.⁹⁷ A robust legal framework can support policy and education initiatives by providing a formal and public statement of what behaviours amount to domestic violence and reinforcing their unacceptability in contemporary Pacific society.

V. THE FAMILY PROTECTION ACT: A TARGETED DOMESTIC VIOLENCE LAW IN VANUATU

In the Pacific region, only Vanuatu has a targeted and comprehensive civil and criminal domestic violence law.⁹⁸ The Act, which took effect in 2008, took eight years to enact because of “fierce and long” opposition from some Christian churches and traditional chiefs who maintained that the law contradicts ni-Vanuatu custom and both Christian and Melanesian values.⁹⁹ The law was eventually enacted following an unprecedented court case in which the Office of the President challenged the draft law on constitutional grounds,¹⁰⁰ and while the Attorney General succeeded in defending the court challenge, the provisions of the final enactment reflect the climate of compromise at the time. However, the Act is an important development in the region for several reasons: (i) it offers a comprehensive and targeted civil and criminal law response to

children who have experienced sexual abuse and domestic violence. *See* Solomon Islands Country Report, *supra* note 94, at 58. In PNG, People Against Child Exploitation and a series of provincial Family and Sexual Violence Action Committees provide services to enable child victims to recover from domestic violence and reintegrate into the community. *See* AUSAID, Papua New Guinea Country Report, *in* STOP VIOLENCE: RESPONDING TO VIOLENCE AGAINST WOMEN IN MELANESIA AND EAST TIMOR 31, 39 (2009), http://www.ausaid.gov.au/publications/pdf/ResVAW_PNG.pdf. In Nauru, the Ministry of Women's Affairs has established a safe house and procedures to support victims of domestic violence and their families. Nauru's Directorate of Women's Affairs, Ministry of Home Affairs, *Republic of Nauru's Response to the United Nations Questionnaire on the Implementation of the Beijing Platform for Action and the Outcome of the Twenty-Third Special Session of the General Assembly*, August 2009, http://www.unescap.org/ESID/GAD/Issues/Beijing+15/Responds_to_Questionnaire/Nauru.pdf. In the Cook Islands, there is the Cook Islands Women's Counselling Centre, known as Punanga Tauturu. Cook Islands Womens [sic] Counselling Centre Punanga Tauturu Incorporated, http://www.hotpeachpages.net/auspac/RegionalNetwork/Cook_islands.htm (last visited Apr. 14, 2011).

⁹⁷ *See Violence Against the Girl Child in the Pacific Islands Region*, *supra* note 7, at 6.

⁹⁸ Family Protection Act of 2008 (Vanuatu).

⁹⁹ *Harmful Practices against Women in PICs*, *supra* note 54, at 7.

¹⁰⁰ *President of Vanuatu v. Speaker of Parliament*, VUSC 77, Constitutional Case No. 6 of 2008, 22 Nov. 2008.

domestic violence in accord with a worldwide trend to develop similar legislation; (ii) it was specifically drafted with the Vanuatu cultural context in mind, and provides some excellent examples for the region of features that (unlike the colonial legislation that dominates the rest of the region) respond to the geographical and cultural context of Vanuatu as discussed below; and (iii) the enactment of the legislation (although opposed by some) illustrates that despite the strength of traditional practices in Vanuatu, a formal law response to domestic violence was considered to be appropriate and valuable by a significant number of community members.

The Family Protection Act is both civil and criminal. It creates a criminal offence for committing an act of domestic violence and also provides for the grant of a range of protection orders including temporary orders and occupation orders.¹⁰¹ The significant features of the Act and, in particular, the ways in which the Act has responded to the geographical and cultural context of Vanuatu are as follows. First, the Act defines domestic violence broadly (although it excludes economic abuse)¹⁰² to include physical, psychological, and sexual abuse, stalking, damaging property, and threats of any of the above.¹⁰³ Contrast this with the general assault offences that dominate in the region, which require or imply that only physical violence can amount to an offence. The inclusion of a comprehensive definition of domestic violence such as that adopted by Vanuatu is important to counter a perception in the region that domestic violence manifests only as physical violence and even then is regarded as socially acceptable in many contexts. Second, the Act includes *de facto* relationships (although not same-sex)¹⁰⁴ and extends protection to a variety of family relationships including a person “treated by the person as family,”¹⁰⁵ acknowledging the broad meanings of family which are common in Vanuatu and throughout the region. In the Pacific region the close ties between extended family members and within communities and the existence of customs such as the *tamariki angai* in the Cook Islands (the sharing and “feeding” of children among families)¹⁰⁶ means it is critical that those protected include a broader range of domestic relationships than merely spousal. The Act does not however include other non-familial domestic relationships where there are power imbalances and in which domestic violence can occur, such as in a nursing or caregiving relationship or where unrelated persons are living in the same household. It is important that the range of persons protected by the

¹⁰¹ Family Protection Act of 2008, § 4 (Vanuatu).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* § 5.

¹⁰⁵ *Id.* § 3.

¹⁰⁶ RON G. CROCOMBE, LAND TENURE IN THE COOK ISLANDS 99 (1964).

legislation includes anyone who experiences or is at risk of experiencing domestic violence.

Third, the Act provides for the grant of a temporary protection order of the type typically incorporated into contemporary family law to address situations of immediate danger.¹⁰⁷ In PICs, where many communities in rural areas or on outer islands are not serviced by courts and access to courts is extremely limited (or non-existent), it is critical that such orders are available and easily accessible. The Act authorizes a temporary protection order to be issued by an “authorised person” as well as a court. Persons who can be authorised under the Act include a principal chief, an assistant chief, a church leader, a community leader, a teacher, a village health worker, a police officer at the rank of inspector or above, and anyone else who has applied.¹⁰⁸ While some categories of persons such as chiefs, church leaders, and community leaders have the potential to perpetuate traditional hierarchies that have not protected victims in the past, each person seeking authorisation must undergo training, have knowledge of the Act, and have an understanding of the social and cultural environment within which domestic violence takes place before authorisation.¹⁰⁹ It remains to be seen whether system provides sufficient checks and balances to overcome the failures of local and custom courts in dealing with domestic violence. The Act also provides that an application for a protection order can be made orally, by phone, radio, in writing by fax, telex, or email,¹¹⁰ and a temporary order can be made by an authorised person at “any time of the day or night.”¹¹¹ Many Pacific communities do not have reliable means of communication, so it is essential to address such difficulties.

Fourth, all protection orders granted under the Act contain a comprehensive range of mandatory conditions including prohibiting the offender from approaching or contacting the victim at home, work, or anywhere else.¹¹² The court can also order the offender to vacate the home.¹¹³ Another approach would be to incorporate a presumption by the courts that the interests of the protected persons and their children would be best served by remaining in their home. Research suggests that it is safer and in the best interest of children to remain in their own home and

¹⁰⁷ Family Protection Act of 2008, §17 (Vanuatu). In some jurisdictions a temporary protection order is called an emergency protection order.

¹⁰⁸ Family Protection Act of 2008, § 7 (Vanuatu).

¹⁰⁹ *Id.* § 7(2).

¹¹⁰ *Id.* § 27.

¹¹¹ *Id.* § 17(3).

¹¹² *Id.* §§ 12-13 .

¹¹³ *Id.* § 15.

area, without the need to change schools.¹¹⁴ Additional protections might include enabling the party that is excluded from the home to access their personal effects in order to take up residence elsewhere. In practice, orders allowing a respondent to return to the premises from which they are excluded to collect their belongings may need to be tightly controlled in order to ensure that protected persons are not put at risk of further intimidation or any other forms of violence. Equally, if an occupation order enables a protected person and/or any children to remain in the home, it may be necessary to prevent the excluded party from removing necessary items from the premises (e.g., taking all the food or furniture etc., from the home). However, in many Pacific communities the offender and victim live with extended family, often the offender's family, and it may be difficult for the victim if the offender is excluded from the home. In such circumstances another approach would be to exclude the offender from entering certain parts of the house.

Fifth, like the Fiji Decree, which has been criticized for its emphasis on "family reconciliation," which might prevent women from escaping a dangerous situation,¹¹⁵ the Vanuatu Act enables the court to order either or both parties to attend counselling, mediation, or both. This is a problematic inclusion given the well-founded criticism of mediation in disputes involving domestic violence.¹¹⁶ However, in small communities, victims may have little choice but to have contact with their abuser, and therefore some forms of mediation in limited circumstances (e.g., to work out how best to accommodate a child victim of domestic violence) may be necessary.

Finally, under the Act the penalty for the criminal offence of domestic violence is a term of imprisonment not exceeding five years or a fine not exceeding 100,000 Vatu or both.¹¹⁷ The penalty for a breach of a protection order is a term of imprisonment not exceeding two years or a fine not exceeding 50,000 Vatu or both.¹¹⁸ These are serious penalties recognizing the seriousness of the offences. However, imprisonment and fines may be problematic in the small subsistence communities common

¹¹⁴ ROBYN EDWARDS, *STAYING HOME LEAVING VIOLENCE: PROMOTING CHOICES FOR WOMEN LEAVING ABUSIVE PARTNERS* 36 (2004), available at <http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/SHLV.pdf>.

¹¹⁵ *Domestic Violence Decree Angers Fijian Women* (Radio Australia Broadcast Sept. 8, 2009), <http://www.radioaustralia.net.au/pacbeat/stories/200909/s2679237.htm>.

¹¹⁶ Donna Guion, *Domestic Violence and Mediation*, 15 TEX. WESLEYAN L. REV. 545 (2009); Raquel Aldana & Leticia M. Saucedo, *The Illusion of Transformative Conflict Resolution: Mediating Domestic Violence in Nicaragua*, 55 BUFF. L. REV. 1261 (2008); Megan G. Thompson, *Mandatory Mediation and Domestic Violence: Reformulating the Good-Faith Standard*, 86 OR. L. REV. 599 (2007).

¹¹⁷ Family Protection Act of 2008, § 10(1) (Vanuatu).

¹¹⁸ *Id.* § 21.

throughout the Pacific. Fines may reduce the financial support available to the victim and children, while imprisonment may prevent the offender from participating in paid employment or working on the land. A more effective model of punishment might be the establishment of compulsory rehabilitative programs, community work, and reparation. Additionally, the ability to pay in the form of produce, such as taro, fish, and vegetables, or livestock, such as pigs, goats, and cows, may also be beneficial.

VI. CONCLUSION

This article has considered the potential of a strong criminal and civil legal framework to contribute to ending domestic violence in Pacific Island countries and concluded that such a framework has a significant role to play. Targeted domestic violence criminal offences and a good practice system of civil protection orders can enable the prosecution of offenders and provide victims with effective and accessible remedies through the civil law. Other benefits of a formal legal framework include reducing the use of traditional approaches as the primary response to domestic violence, such as reconciliation and forgiveness ceremonies; providing a formal law alternative for victims of domestic violence; challenging the use of culture and custom to justify family violence against women and children through the setting of acceptable standards of conduct within family relations; enabling PICs to meet international obligations; and finally, providing a legal standard to support and solidify the implementation of a range of policy measures and initiatives already introduced in the region. Law can mark an acceptable standard of conduct within family relations, thereby providing a powerful normative statement in a region where culture and custom are often drawn on to justify family violence against women and children.