



Guaranteeing Women's Legal and Human Rights in the Pacific Islands

Recommendations from the 12th Triennial Conference of Pacific Women and Fifth Pacific Women's Ministerial Meeting

(Rarotonga, Cook Islands, 20–25 October 2013)

From 20 to 24 October 2013, more than 200 people met in Rarotonga, Cook Islands, to discuss how commitments towards gender equality in the region have progressed. The overall aim of the conference was to bring together government ministers and senior decision makers, development partners, research institutions and civil society organisations to review and develop strategies for accelerating progress in the achievement of gender equality and women's human rights in our region. This is in line with *The Revised Pacific Platform for Action on Advancement of Women and Gender Equality 2005 to 2015* and other regional commitments on gender equality, including most recently the *Pacific Leaders Gender Equality Declaration* of 2012.

12th Triennial Conference of Pacific Women

With the theme of 'Celebrating our Progress, Shaping our World' the 12th Triennial Conference of Pacific Women was the biggest on record. The conference was convened by the Secretariat of the Pacific Community (SPC) and hosted by the Government of Cook Islands. It included representatives of 21 SPC member countries and territories. There are areas of progress in achieving women's human rights and gender equality in Pacific Island countries and territories (PICTs). More and more countries have adopted laws to protect women and children against domestic violence; there is a better understanding of the need to integrate a gender perspective across all sectors of development; there are new initiatives promoting women's political leadership; overall, women's health and women's access to education are improving; and women's contribution to national economies has started to be recognised. However, there is still a long road to travel before Pacific Island women have all their human rights protected, benefit equally from development outcomes, and can fulfil their aspirations.

The Conference made a number of recommendations regarding the priority areas to progress gender equality in the region, notably in the sector of education.

This brief presents the regional overview on women's legal and human rights and the recommendations made by the Conference in its outcomes document.

Women's legal and human rights

2013 Regional Overview

KEY GENDER EQUALITY ISSUES IN THE REGION

During the 11th Triennial Conference, it was noted that there is a need for ongoing assistance in the ratification, reporting and implementation of CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), as well as in developing CEDAW-compliant legislation. The outcomes also specifically noted 'the lack of legislative measures, policies and plans for the elimination of violence against women and girls.' High rates of violence against women (VAW) were identified, along with a need to ensure that national policies and plans are developed and adequately resourced in order to address violence against women. Additionally, it was highlighted that the Pacific region has the lowest level of representation of women in national legislatures. Conference recommended the need to implement temporary special measures and affirmative action in electoral quotas to address this.

After the 11th Triennial Conference, Pacific Island Forum Leaders adopted the *Pacific Leaders' Gender Equality Declaration 2012*. This reaffirms the Leaders' commitment to gender responsive policies and programmes targeting violence against women, embracing women's participation in all levels of decision-making, promoting gender responsive legislation, and overall aiming to improve equality and outcomes for women. To fulfil the Leaders' commitment, it was recognised that investments in capacity building and the development and resourcing of policies, programmes, implementation and accountability mechanisms, are critical to galvanising progress towards gender equality.

This paper discusses the progress that has been made in these areas since the 11th Triennial Conference, including challenges in achieving these outcomes, and recommendations for the future.

UPDATE ON NEW AND ONGOING INITIATIVES

CEDAW

The importance of CEDAW ratification, reporting, implementation and the development of CEDAW-compliant legislation was identified in the 11th Triennial Conference. The use of CEDAW as a catalyst for change has contributed to the passing of legislation in the area of family law, domestic violence and employment relations. As at July September 2013, all Pacific Island countries and territories (PICTs) except Tonga, have either signed or ratified CEDAW. PICTs that are party to the convention have submitted initial and periodic reports, with Kiribati, Federated States of Micronesia (FSM) and Republic of Marshall Islands (RMI) having put in place national consultation processes to enable the State to complete and submit national reports. However, implementation of CEDAW at the national level remains a challenge, particularly in progressing States' obligations under Article 2, to 'embody the principle of the equality of men and women in their national constitutions or other appropriate legislation' and to adopt appropriate legislative and other measures 'prohibiting all discrimination against women'. CEDAW must also be considered in parallel with other human rights conventions, such as the *Convention on the Rights of Persons with Disabilities* (CRPD),¹ in order to ensure that the intersectional discrimination faced by women with disabilities is addressed.



1 UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106* <<http://www.refworld.org/docid/45f973632.html>> at 30 September 2013.

Violence against women

VAW is a significant long-term threat to the economic, social and cultural well-being and security of PICTs. It has multiple human rights ramifications, resulting in not only trauma to women, families and communities, but also engendering productivity losses through resultant health issues, inability to advance in education or training, and loss of employment. States and civil society have utilised the Universal Periodic Review (UPR) system to highlight human rights issues; concerns regarding gender, in particular violence against women, were highlighted as significant.² Women with disabilities are particularly affected by VAW – they experience higher levels of both physical and sexual violence compared to other women.³

The *Leaders' Gender Equality Declaration 2012* was a re-commitment to progressively implement a package of essential services for women and girls who are survivors of violence. Leaders also re-committed to enact and implement legislation regarding sexual and gender-based violence to protect women from violence, while imposing appropriate penalties for perpetrators of violence.

Recent national studies have improved the level of knowledge in the Pacific of the prevalence, causes and consequences of violence against women, particularly domestic violence (DV). Country studies, using the World Health Organization (WHO) methodology, have been completed in Samoa, Solomon Islands, Vanuatu, Tonga, Fiji and Kiribati. These have been completed under the auspices of the United Nations Population Fund's Violence Against Women Project, implemented by the Secretariat of the Pacific Community (SPC) and supported by AusAID. An important feature of the WHO methodology is a global comparison of prevalence and other VAW indicators. Studies in an additional five countries – Cook Islands, FSM, RMI, Nauru and Palau – are to be completed. At the end of 2014 there will be comparable national prevalence data for 11 PICTs.

Thus far, reports indicate alarming rates of violence against women. They show very high levels of severe physical and sexual violence experienced by women in intimate relationships. For example, in 2011 it was found that 51 per cent of women surveyed in Vanuatu had experienced physical violence, 44 per cent had experienced sexual violence and 60 per cent had experienced physical and/or sexual violence.⁴ In 2010/2011 in Fiji it was found that 64 per cent of women reported having experienced physical violence, sexual violence, or both by a male partner or husband.⁵ Despite high rates of violence in the Pacific, access to support services and protection through the justice system for survivors of violence and their families is low.⁶ This remains a consistent challenge for the Pacific region and at present, only four countries, Fiji, Kiribati, Samoa and Solomon Islands, have specific VAW policies and plans.

The Forum Reference Group to Address Sexual and Gender-based Violence was formed in 2009 to raise awareness and invigorate the commitment of Forum Leaders to eradicate sexual and gender-based violence and ensure that all individuals have equal protection under the law and equal access to justice. In early 2013, the Reference Group began the first phase of a major project to identify the economic costs of violence against women. This was in response to growing recognition worldwide that violence against women has economic implications, either through direct medical and healthcare costs or loss of productivity. After the first phase of the project, which resulted in an assessment of the economic cost of violence against women in Kiribati and Solomon Islands, plans to support similar assessments in other PICTs are under discussion. These studies will not only provide advocacy support for accelerated efforts in preventing and eliminating violence against women, but will also inform overall planning and targeted policy responses at a national level.

2 Secretariat of the Pacific Community Pacific, *Island States and the Universal Periodic Review* (2012) <<http://www.rrrt.org/publications-media/item/69>> at 09 September 2013.

3 Pacific Islands Forum Secretariat, *2013 Pacific Regional MDG Tracking Report* (Pacific Islands Forum Secretariat, Fiji, 2013).

4 Vanuatu Women's Centre and Vanuatu National Statistics Office, *Vanuatu National Survey on Women's Lives and Family Relationships* (2011) <<http://www.ausaid.gov.au/countries/pacific/vanuatu/Documents/womens-centre-survey-womens-lives.pdf>> at 11 September 2013.

5 Fiji, Presentation of Initial findings of the Fiji Women's Crisis Centre (FWCC) study, *National Research on Women's Health and Life Experiences in Fiji (2010/2011) – a survey exploring the prevalence, incidence and attitudes to intimate partners violence in Fiji* (Fiji Women's Crisis Centre), 2011.

6 AusAID, *Annual Review of Development Effectiveness 2008* (2009) <http://www.ode.ausaid.gov.au/publications/pdf/arde_report-2008.pdf> at 11 September 2013.

VAW legislation

There have been some important changes in the region since the 11th Triennial Conference. Examples of recent changes and new legislation addressing the issue in the region include:

FSM: Specific DV Offence created under *Pohnpei Family Violence Bill 2012* and *Kosrae Domestic Violence Bill 2012*.

Fiji: Passed *Domestic Violence Decree 2011*. VAW part of the National Women's Plan of Action (2010–2019).

Kiribati: Draft *Family Peace Bill* currently undergoing national consultations. Developed *National approach to eliminating sexual and gender-based violence – Policy and Strategic Action Plan (2011–2021)*.

RMI: Passed *Domestic Violence Prevention and Prohibition Act 2011*.

Samoa: Protection orders available under the *Family Safety Act 2013*; DV referred to in *Crimes Act 2013*, which also provides a wide definition of 'rape' and rape within marriage. VAW is covered under policy objectives in the *National Policy for Women of Samoa 2010–2015* and the *National Policy for Children in Samoa 2010–2015*.

Solomon Islands: Draft *Family Protection Bill*, issued in 2013, provides for DV offence. The *Child and Family Welfare Bill* is pending cabinet ratification. The High Court confirmed that the common law marital exemption does not apply for the offence of rape in Solomon Islands in the case of *Regina v Gua*.⁷

Tonga: Passed the *Family Protection Bill 2013*.

Tuvalu: Draft *Family Protection and Domestic Violence Bill 2011*, which is currently undergoing national level consultations.

Papua New Guinea (PNG): The Draft *Family Protection Bill 2013* was recently endorsed by cabinet for introduction into parliament.

Vanuatu: Developing the National Gender and Women's Empowerment Policy 2013–2023. The *Vanuatu Family Protection Act 2008* was enacted in 2009 and is being implemented by the Department of Women's Affairs.

In addition, crimes that are committed under the label of 'sorcery' are increasingly being recognised as having gender-based elements. The PNG parliament repealed the Sorcery Act in May this year due to the challenges in proving 'sorcery'. Women's rights activists have lobbied to remove 'sorcery' as a crime and to prosecute crimes committed under the label of sorcery under normal criminal code provisions, including rape, torture, sexual assault and kidnapping.

Progress has been made since the 11th Triennial Conference, but the development and implementation of gender-sensitive legislation, national policies and action plans remains a challenge. The absence of comprehensive legislation that addresses all forms of VAW is noted and further reform is required to ensure adequate redress for women in situations of violence. The link between domestic violence legislation and updated family law legislation is but one example. This approach does not address systemic discrimination against women.⁸ Data on VAW are readily available but are not well used in developing policies, or in

7 [2012] SBHC 118; HCSI-CRC 195 of 2011 (8 October 2012).

8 P I Jalal, *Good Practices in Legislation on Violence against Women: A Pacific Islands Regional Perspective* (2008) <http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20_P%20Imrana%20Jalal_.pdf> at 10 September 2013.

supporting legislative reform and programme development. A human rights and evidence-based approach is critical for this purpose.

Coordination mechanisms such as national committees and sub-committees have faced significant challenges in addressing the needs of women and families. The SAFENET referral mechanisms developed to address sexual and gender-based violence prevention and response requires significant strengthening in the form of human resource capacity and funding. In general, budget allocations have not increased to meet the rising demands for capacities and services, nor has there been a significant increase in the resourcing and functions of national women's machineries within government.

Additionally, where countries have not revised their legislation, gender-based violence is not recognized as a specific crime. Rather than insisting on effective punishment as deterrence, emphasis continues to be placed on reconciliation. The challenges ahead are in ensuring that newly enacted legislation is resourced, implemented and monitored.

Women in decision making

A key issue highlighted in both regional and international commitments is the need to address barriers to women's political participation. Equality of women and men in the realm of political life is recognised as a human right in international frameworks. For example, CEDAW Article 7, says that State parties should take all appropriate measures to eliminate discrimination against women in the political and public life of a country. In the Pacific region, gender balance in legislatures is uneven and generally slower to alter than in other parts of the world.⁹ According to the *2013 Pacific Regional MDG Tracking Report*,¹⁰ in Federated States of Micronesia, Palau and Vanuatu, women currently do not hold any seats in parliament. Additionally, FSM is one of three countries worldwide to never have elected a woman to national office.¹¹ Male-dominated parliaments tend not to pass legislation promoting gender equality, nor do they provide adequate resources for policies for women's empowerment.

Most PICTs, including Samoa and Solomon Islands, use majority electoral systems, such as 'first past the post', which generally favour men.¹² In early 2012, the Government of Samoa proposed to increase the number of women in parliament by creating a temporary special measure (TSM) through a constitutional amendment. The bill became law in June 2013, introducing a minimum quota of five women, or ten per cent, in the Samoan parliament. This indicates that the policy of allocating seats to women in parliament is slowly gaining momentum.

Vanuatu uses the single non-transferable vote system, which research shows may be more proportional in outcome, leading to more women being elected. Yet since independence in 1980, only five women have been elected as members of Vanuatu's parliament. Despite the record number of 17 women who ran in Vanuatu's 2012 national elections, none succeeded in winning a seat. Volatile political party structures and the lack of voluntary quotas for women within these structures contribute to an environment that is not enabling for women candidates. There has, however, been progress at the municipal level, with the recent passing of the amendment to Vanuatu's Municipality Act, making it mandatory to reserve thirty to thirty-four per cent of seats for women in municipal councils. The Department of Women's Affairs recently began a comprehensive study of the 2012 elections, which highlights the specific challenges faced by women in getting elected. The results will inform the promotion of TSM measures in Vanuatu.

9 United Nations Development Programme, *Women's Representation in Local Government in Asia Pacific- Status Report 2010* (2010) <<http://www.undp.mn/publications/WomenInLocalGovernmentStatusReport2010.pdf>> accessed 10 September 2013.

10 Pacific Islands Forum Secretariat, *2013 Pacific Regional MDG Tracking Report* (Pacific Islands Forum Secretariat, Fiji, 2013).

11 Ibid.

12 J Fraenkel, *The Impact of Electoral Systems on Women's Representation in Pacific Parliaments: A Report Conducted for the Pacific Islands Forum Secretariat by the Pacific Institute of Advanced Studies in Development & Governance (PIAS-DG)* (2007) <http://www.forumsec.org.fj/resources/uploads/attachments/documents/REPORT_2_A_Woman_s_Place_is_in_the_House_-_the_House_of_Parliament-51.pdf> accessed 10 September 2013.

Since Solomon Islands became independent, only two women have been elected to the national parliament, and at the provincial level, just over a dozen women have been elected members of the provincial assembly. The Ministry of Women, Youth, Children and Family Affairs (MWYCFA) has pushed for the development of TSM reform as stemming from government policy, rather than from a women's initiative. A TSM Legislative Taskforce was established in 2011 by the Government of Solomon Islands to pursue TSM legislative and policy options, including re-visiting a 2009 TSM proposition. The taskforce reports to the Ministry for Women, Youth, Children and Family Affairs and the Prime Minister's Office. It engaged a researcher to identify appropriate measures that would be most relevant for Solomon Islands. The researcher identified three such options:

- ❖ enactment of the *Political Party Integrity Bill*, outlining the support women candidates would receive and options that would encourage parties to support them;
- ❖ change the electoral system, which has been recommended by the Political Integrity and Stability Project; and
- ❖ provide civic education on TSM for reserving seats for women in parliament.

The taskforce and the MWYCFA have endorsed all the recommendations and are beginning the process of civic education and consultation with the general population on the mechanics of appropriate measures and TSM, within the context of the options highlighted by the research.

The taskforce conducted the first civic education and planning consultation in Honiara in September 2013 and plans to repeat this in the other nine provinces of Solomon Islands.

In addition to appropriate measures to promote gender-responsive governance through increased women's political participation and representation, actions must also reflect realities. There is a need to recognise that women are not a homogenous group, whilst ensuring that all women, regardless of socio-economic origin or ethnic background, have opportunities to contribute to their political representation.

Recommendations from the 12th Triennial Conference of

Pacific Women

1. The conference acknowledged the need for support for the ongoing ratification, reporting and domestication of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW)¹³ in legislation, policy and practice, including, where appropriate, constitutional reform.

WOMEN'S LEGAL AND HUMAN RIGHTS

Progress made in women's legal and human rights since the 11th Conference was presented. There has been slow progress in enforcing gender-responsive legislation for CEDAW commitments; legislative measures, policies and plans for the elimination of violence against women and girls; adequate resourcing for policies and laws that address gender equality; and implementing temporary special measures and affirmative action to rectify the region's low level of representation of women in national legislatures. CEDAW reporting also remains a challenge.

13 UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13 <<http://www.refworld.org/docid/3ae6b3970.html>> at 11 September 2013.

The conference:

2. Called for governments to consider social protection measures for vulnerable women, including but not limited to women with disabilities, older women, women living with HIV/AIDS/STIs, young women, girls, heads of households, widows, divorced women, migrant workers and caregivers.
3. Recognising the high prevalence rates of violence against women, young women and girls, including those with disabilities, and the impact of gambling, drug and substance abuse on increasing violence, the conference called for urgent and increased investment in policies, programmes, research and legislative reforms that provide services and support, including access to rights and justice.
4. Commended the regional advocacy work conducted by the Pacific Islands Forum Reference Group to Address Sexual and Gender Based Violence (SGBV), supported their proposal to conduct national studies on the economic impacts of SGBV, and requested dissemination of the findings to all PICTs on completion.
5. Called for PICTs and development partners to support research regarding social and economic impacts of all forms of violence against women/SGBV, including sorcery-related violence.
6. Acknowledged the importance of creating temporary special measures (TSMs) and appropriate strategies to increase political and public participation and representation for women – including young women, indigenous women and those with disabilities – at all levels of government, including traditional systems,
7. Acknowledged the need to ensure that discrimination faced by women, young women, and girls with disabilities and their particular vulnerability to SGBV and poverty be recognised in line with CEDAW and the *Convention on the Rights of Persons with Disabilities* (CRPD), and supported evidence-based studies by PICTs (with the support of development partners) to improve knowledge and data on women with disabilities for improved policy and programming.
8. Called for the elimination of SGBV and violence against women, young women and girls, including those with disabilities, and those in rural and remote locations, and for this:
 - a) to be included in national development strategies, plans and public financing mechanisms; and
 - b) to be adequately resourced through clearly identifiable budget allocations, expenditure and human resources.
9. Supported access to justice for survivors of violence by the adoption of national legislation, effective legal assistance, and just and effective remedies, which involve both the formal and the non-formal (or traditional) justice systems to be addressed through the development and coordinated implementation of effective multi-sectoral national policies, strategies and programmes that include measures for prevention, protection and support services, and monitoring and evaluation.
10. Supported the engagement of adolescents and youth as strategic groups for ending the cycle of violence through the implementation of educational programmes, based on gender equality and human rights.
11. Called for the post-2015 development agenda to adopt a transformative stand-alone goal to achieve gender equality, women's rights and women's empowerment, structured around several target areas: freedom from violence, gender equality in capabilities and resources, gender equality in decision-making power, and a voice in public and private institutions.
12. Called for sexual and reproductive health and rights (SRHR) to be guaranteed, ensuring that women, young women, and girls, including those with disabilities, receive comprehensive and confidential SRHR services that respect their human rights throughout their life cycle.

13. Called for legislative reform to eliminate discriminatory laws and harmful practices that criminalise or impede access to abortion, emergency contraception and HIV/AIDS services, and instead create survivor-centred approaches for people with a history of sexual abuse.
14. Called for accountability from representatives at regional and international levels, including reporting back from CROP working groups to PICTs and reporting back on progress made since the last Triennial.

Recommendations from the Fifth Pacific Women's Ministerial Meeting

At the Fifth Pacific Women's Ministerial Meeting held in Rarotonga, Cook Islands, following the 12th Triennial Conference, from 24–25 of October 2013, the Ministers;

- ❖ noted the ongoing need for capacity building on gender at all levels, taking into account local knowledge and experience. They also noted the need for information on gender equality and women's rights to be made available to all women and men, including those in remote and rural areas.
- ❖ recognised the high prevalence rates of violence against women, young women and girls, including those with disabilities, and the impact of gambling, drug and substance abuse on increasing violence and on sexual reproductive health and rights, and called for urgent and increased investment in policies, programmes, research and legislative reforms that provide services and support, including access to rights and justice.

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