

PACIFIC JUDICIAL CONFERENCE 2014

Domestic Violence

Tuesday 11 March, 10.30 AM

Judge Peter Boshier



Overview of this session



- What is the position of Pacific countries statutory approach to dealing with domestic violence?
- What has been the training and what is the intended further training within this phase of PJDP?
- What are Police forces in the Pacific doing about domestic violence?
- In Samoa, how is the specialised Family

Family Violence in the Pacific



Prevalence of family violence against women in selected Pacific countries

Country	Prevalence rate %	Source
Kiribati	68	Kiribati Family Health & Support Study on Violence against Women and Children 2010
PNG	67	UNESCAP: Economic Social Survey of Asia and the Pacific 2007
Solomon Is.	64	Solomon Island Family Health and Safety Study – a study on Violence against Women and Children 2009
Samoa	47	WHO Multi country study on Women's Health and Reproductive Violence 2000-2002

Making a difference



samoabserver



ENOUGH: Lemalu Sina Retzlaff a few days after she was attacked by her former partner, Muliaga Brian Lima in public.

Domestic violence is not a Samoan issue, it is a universal issue.

So says Lemalu Sina Retzlaff, after taking out a protection order against a former partner, Muliagatele Brian Lima, who assaulted her – in public during the weekend.

A former Manu Samoa, Muliagatele was arrested on Friday, Assistant Commissioner Fauono Talalelei confirmed yesterday.

“He will be remanded at large until his case is mentioned in Court on 13 January 2014,” he said. Fauono said Muliagatele has been charged with causing actual bodily harm and being armed with a dangerous weapon. Police have obtained his travel documents. He has also been ordered not to approach or have contact with Lemalu.

During an interview with the Samoa Observer yesterday, Lemalu said from her experience, it didn't matter whether you were rich or poor, educated or not, if you lived in Apua or within the rural areas within the village council setting, women everywhere are being affected by it.



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PRESS RELEASE

Two women tragically murdered by their husbands in Tarawa, Kiribati

In the first month of 2014, two women were tragically murdered by their respective husbands. While the police are still working through the cases, both perpetrators are likely facing jail sentences. These two murders bring the total to five murdered women in Kiribati in the past two years.

The first murder of a pregnant mother in her thirties took place in Bonriki, Tarawa on the 8th of January at 10 o'clock in the morning. According to police reports, the victim died after sustaining severe head injuries from being beaten with a stick by her husband, leaving three children behind.

The second murder took place on Monday the 13th of January in Betio. The victim, a 40-year-old woman, died after suffering lethal knife injuries. According to police reports, the husband was not drunk at the time of the incident – a common risk factor in cases of violence against women.

Both perpetrators are currently in custody awaiting court proceedings. They may serve mandatory life sentences of 10 years. In Kiribati, gender based violence is endemic. According to the Kiribati Family Health and Support Survey (2009), as many as 68% of ever partnered women (aged 15-49) have experienced sexual and/or physical violence from a partner. The majority of the violence that these women suffered was severe.



Workshops conducted so far

Palau Workshop, July 2012



Vanuatu Workshop, February 2013



Tonga Workshop, September 2013



Samoa Workshop, October 2013



Cook Islands Workshop, February 20



Outcomes



“[Most useful experience was] the benefit of being in the same room with legal minds of the judiciary and other ministries and organisations to bounce ideas and gain better understanding of other perspectives.”

Feedback from workshop surveys



Family Protection Act 2008

Commencement: 2 March 2009

REPUBLIC OF VANUATU

THE FAMILY PROTECTION ACT NO. 28 OF 2008

Arrangement of Sections

PART 1 – PRELIMINARY MATTERS

1. Purpose
2. Interpretation
3. Meaning of family member
4. Meaning of domestic violence
5. Meaning of spouse
6. Meaning of property
7. Declaration of authorised persons
8. Registered counsellors
9. Registers

PART 2 – DOMESTIC VIOLENCE OFFENCE

10. Domestic violence offence

PART 3 – FAMILY PROTECTION ORDERS

Division 1 – Power of court to make protection orders

11. Court may make protection order
12. Conditions of a protection order
13. Conditions relating to individual protection and harmonious family relationships
14. Conditions relating to weapons
15. Conditions relating to property
16. Conditions relation to counselling and/or mediation

Division 2 – Temporary protection orders

17. Authorised person may make temporary protection order
18. Court may make temporary protection order
19. Further hearing by court
20. Temporary protection orders – evidence and matters to consider

Vanuatu: Family Protection Act 2008



- Wide definition of domestic violence.
- Appointment of authorised officers who can make orders (for instance outer islands).
- Court can make protection orders including temporary orders
- Domestic violence is a stand alone, specific offence (see s 10).
- Duties and expectations on Police are spelt out.
- Liberal and broad compensation provisions¹⁴

2013

Family Safety

No. 8

SAMOA

Arrangement of Provisions

PART I PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Act to bind the Government

PART II PROTECTION ORDERS

4. Application for protection order
5. Interim protection orders
6. Protection orders where respondent does not appear on due date
7. Protection orders where respondent appears on due date
8. Court procedures for protection of complainant
9. Protection Orders available to the Court
10. Court's power to impose conditions on protection order
11. Breach of protection order
12. Variation or setting aside of protection order
13. Seizure of arms and dangerous weapons

14. Attendance of proceedings and prohibition of publication of certain information

PART III DUTIES OF POLICE OFFICERS

15. Duty to assist and inform complainant of rights
16. Duty to Prosecute

PART IV MISCELLANEOUS

17. Sentencing
18. Offences and Penalties
19. Evidence and Procedure
20. Police Officers to assist Registrar
21. Application for Restraining Orders under the Divorce and Matrimonial Causes Ordinance 1961
22. Forms
23. Fees
24. Protection from liability
25. Regulations
26. Consequential Amendments

Samoa: Family Safety Act 2013



- Provides for interim protection orders and protection orders.
- Strong and prescriptive provisions where order breached.
- In sentencing, if there is domestic violence, that is an aggravating factor.
- Clear and prescriptive duties on Police.



16. Duty to Prosecute-(1) Subject to subsection (2), where a report of domestic violence involves any form of physical or sexual abuse, and provided that there is sufficient evidence for doing so, every Police Officer handling the matter shall:

(a) ensure and undertake to do all things necessary in order that a charge or information is laid with the Court in order to commence prosecution of the matter in Court; and

(b) not endeavour to withdraw a charge or information laid under paragraph (a).



16. Duty to Prosecute -(3) Failure by a Police Officer to comply with an obligation imposed in terms of this Act constitutes misconduct for the purposes of the Police Service Act 2009.



FAMILY PROTECTION BILL 2013

Arrangement of Sections

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Tonga: Family Protection Act 2013



- Possibly the most comprehensive of all of the Pacific Legislation.
- The court has the ability to make emergency, temporary or (on notice) protection orders.
- Contains a whole part of the Act on prevention and sets up family protection advisory counsel and trust fund.
- Provides for Police safety orders.
- Creates special duties on health practitioners and social service providers.
- Prescribes a special offence of domestic violence.



Draft of 19/04/2013

No. of 2013.

FAMILY PROTECTION BILL 2013

ARRANGEMENT OF CLAUSES.

PART I. - PRELIMINARY.

1. Compliance with constitutional requirements.
2. Interpretation.
3. Objectives of the Act.
4. Underlying principles.

PART II. - DOMESTIC VIOLENCE OFFENCE.

5. Meaning of domestic violence.
6. Domestic violence offence.

PART III. - FAMILY PROTECTION ORDERS.

Division 1. - Applications.

7. Application for a family protection order.

Division 2. - Conditions.

8. Conditions relating to good behavior.
9. Conditions relating to individual protection.
10. Conditions relating to property.
11. Conditions relating to counseling and mediation.

Division 3. - Interim Protection Orders.

12. Court may make interim protection order.
13. Form of an interim protection order.
14. Commencement and duration of interim protection orders.
15. Evidence.

Papua New Guinea: Family Protection Act 2013



- A short and succinct Act.
- Sets up the specific offence of domestic violence.
- Permits the court to make protection orders including interim orders.

Drafted by: [insert name]
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[Hon A Member]

[Placeholder for Crest]

Family Law Bill 2014

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The Solomon Islands



FAMILY PROTECTION BILL 2013

(NO. OF 2013)

A

BILL

Entitled

**AN ACT TO PROTECT FAMILIES FROM DOMESTIC VIOLENCE AND TO PROMOTE THE SAFETY, HEALTH AND WELLBEING OF VICTIMS OF DOMESTIC VIOLENCE
BY PROVIDING FOR THE ISSUANCE OF PROTECTION ORDERS AND POLICE SAFETY NOTICES, TO CREATE OFFENCES AND INCREASED PENALTIES FOR CERTAIN ACTS OF DOMESTIC VIOLENCE, TO MAKE CONSEQUENTIAL AMENDMENTS TO THE MAGISTRATES' COURTS ACT (CAP. 20) AND FOR CONNECTED OR INCIDENTAL MATTERS**

ENACTED by the National Parliament of the Solomon Islands.

Overview of family violence developments



Country	Status
Vanuatu	Family Safety Act passed 2008, commenced 2009.
Samoa	Family Safety Act commenced June 2013.
Tonga	Bill passed and commences 1 July 2014.
Papua New Guinea	Bill passed September 2013.
Solomon Islands	Bill presently before Parliament but at an advanced stage.
Kiribati	Bill presently before Parliament (stage reached).
Cook Islands	Bill being drafted and consulted upon – not yet before Parliament.

Conclusion



- Family Violence features prominently in the present PJDP activities
- The proposed outputs are intensive and exciting
- More and more Pacific countries are bringing in Family Violence legislation
- There is a move towards Police Safety Orders
- Most legislation is now more comprehensive than New Zealand position

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