

# Changing LAWS

## A Legislative Lobbying Toolkit

For Understanding  
Law-Making,  
Parliamentary Procedures  
and Advocacy for  
Legislative Change



Fiji Women's  
Rights Movement  
(FWRM)

JULY 2010



Pacific Regional Rights  
Resource Team (RRRT)  
of the Secretariat of the  
Pacific Community (SPC)

## PREFACE

This Toolkit is a collaborative project between the Fiji Women’s Rights Movement (FWRM) and the Pacific Regional Rights Resource Team (RRRT) of the Secretariat of the Pacific Community (SPC).

FWRM is a multi-ethnic and multicultural non-governmental organisation committed to removing discrimination against women through institutional reforms and additional changes. FWRM works towards the elimination of all forms of discrimination against women, promoting the equality of women, and supporting democracy and human rights in all areas of life in Fiji and the Pacific Island region.

The RRRT is a programme under the Secretariat of the Pacific Communities (SPC) Social Resources Division. RRRT provides training and technical advice in human rights advocacy, law and education tailored specifically to the Pacific region.

RRRT is committed to promoting human rights, improving legal literacy and building capacity in the Pacific region to address poverty and social inequities, and to obtain increased access to justice for people, particularly the poor, vulnerable and marginalised.

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ISBN 978-982-9072-04-7

This publication was produced with the support of Australian Agency for International Development (AusAID) and UNDP Towards Inclusive Governance: Promoting the Participation of Disadvantaged Groups in Asia-Pacific - Lessons Learned Project.

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## ACRONYMS AND ABBREVIATIONS

|        |   |        |   |
|--------|---|--------|---|
| AVI    | Australian Volunteers International   | MDG    | Millennium Development Goals                            |
| AYAD   | Australian Youth Ambassadors for Development                                | NCW    | National Council of Women                               |
| AusAID | Australian Agency for International Development                             | NFIP   | Nuclear Free and Independent Pacific Movement           |
| CCF    | Citizen's Constitutional Forum  | NGO    | Non Government Organisation                             |
| CEDAW  | Convention for the Elimination of all forms of Discrimination Against Women | PCRC   | Pacific Concerns Resource Centre                        |
| CRC    | Convention on the Rights of the Child                                       | PIC    | Pacific Island Country                                  |
| CRP    | Comprehensive Reform Program  | PRNGO  | Pacific Regional Non -Governmental Organisations        |
| CSO    | Civil Society Organization  | PSA    | Public Service Announcement                             |
| FLA    | Family Law Act  | RRRT   | Pacific Regional Rights Resource Team (est. 1995)       |
| FLB    | Family Law Bill   | SPC    | Secretariat of the Pacific Community                    |
| FLRC   | Fiji Law Reform Commission  | UDHR   | Universal Declaration of Human Rights                   |
| FPB    | Family Protection Bill (now the Family Protection Act 2008)                 | UNDP   | United National Development Programme                   |
| GCC    | Great Council of Chiefs   | UNICEF | United Nations Children's Fund                          |
| ICCPR  | International Covenant on Civil and Political Rights                        | UNIFEM | United Nations Development Fund for Women               |
| ICESCR | International Covenant on Economic, Social and Cultural Rights              | VAW    | Violence Against Women                                  |
| JPSC   | Joint Parliamentary Select Committees                                       | VIDA   | Volunteering for International Development Australia    |
| FWCC   | Fiji Women's Crisis Centre  | VRDTCA | Vanuatu Rural Development Training Centre's Association |
| FWRM   | Fiji Women's Rights Movement (formed 1986)                                  | VSO    | Volunteer Services International                        |
| ICESCR | International Covenant on Economic Social and Cultural Rights               | WILASI | Women's Law Association of the Solomon Islands          |
| LRTO   | Legal Rights Training Officer   | WUTMI  | Women United Together Marshall Islands                  |
| LRC    | Solomon Island Law Reform Commission  | WCFWCR | Women's Coalition for Women's Citizenship Rights        |
| MP     | Member of Parliament  | YWCA   | Young Women's Christian Association                     |

## BACKGROUND AND ACKNOWLEDGEMENTS

This project arose out of the United Nations global 'Lessons Learned Project' in which the FWRM and the Pacific RRRT jointly examined the application of human rights based approach to legislative reform using the Fiji Family Law Act.<sup>1</sup> As a result of examining how civil society mobilised to reform the law in this case, it was thought that this experience needed to be shared more widely through the development of a 'toolkit' which would assist both civil society as well as government partners in how legislative reform takes place and how to play a role in it.

FWRM and RRRT would like to extend their sincere thanks to the following individuals for their contributions to this toolkit:

- Diane Goodwillie for having the initial idea for the toolkit and for her first drafts and content
- Ruth Lechte, Tiriseyani Naulivou, Lily Vuyiasawa for getting the history, interviewing and recording the oral history of the Family Law Act 2003 (Fiji)
- Charmaine Rodrigues of United National Development Programme (UNDP) Pacific Centre for writing and contributing a sizeable portion towards this publication
- Maryann Vine, Australian Volunteers International (AVI) with RRRT for her contributions to writing and editing
- Editorial teams at FWRM and RRRT including Hannah Harborow, and Claire Cronin for putting it all together

Vinaka Vakalevu,

Virisila Buadromo and Sandra Bernklau

<sup>1</sup> See case study in UNDP Regional Centre in Bangkok (2007) 'Towards Inclusive Governance: Promoting the Participation of Disadvantaged Groups in Asia-Pacific', <[http://regionalcetrebangkok.undp.or.th/practices/governance/documents/Towards\\_Inclusive\\_Governance-200805.pdf](http://regionalcetrebangkok.undp.or.th/practices/governance/documents/Towards_Inclusive_Governance-200805.pdf)> p.66, as on 21 August 2009

## INTRODUCTION

Laws affect everyone, yet many people do not understand how, why or when they should participate in the processes surrounding legislative change. Understanding politics and how legislation is made is the first step towards reforming the law to benefit all members of the community. Lobbying for legislative reform requires negotiation and advocacy skills as well as knowledge about who the key players are and how to go about putting forward your argument for change.

This lobbying toolkit is designed to assist all of those who wish to lobby for legislative change - this means anyone who sees the need for new laws to be made, for existing laws to be amended, or to prevent potentially harmful or discriminatory laws from being enacted. Through lobbying we can improve the rules which govern our society and the environment we live in. This toolkit is designed to be a useful resource not only for those spearheading legislative change, but also for those who wish to play a close supporting role. For this reason the toolkit uses the broad term 'lobbyist', and this may mean you, in whatever role you see yourself. Law reform requires a stable government, political will and forums in which the public can speak openly about what changes are needed. The freedom of the press is also of fundamental importance as the media is a key vehicle for community debate about why and how legislation might need to change.

There is sometimes a mistaken belief that only lawyers, politicians and governments can influence changes in legislation. Although these people are necessary to the reform process, the general public, the media and dedicated civil society organisations (CSOs) can also play an extremely important role.

The toolkit is designed to encourage you to proactively engage in legislative lobbying and assist you in developing strategies in lobbying for legislative change including the building of networks and the use of a variety of lobbying methods.

This toolkit will provide you with reference materials for legislative lobbying, and by showing what others have learnt through their own lobbying efforts, will build your capacity for engaging in the law reform process.

The toolkit looks across a range of sectors that may require legislative reform, from environmental protection to housing; from health to discrimination - all areas that impact citizens in their day-to-day lives. The toolkit can

be used by CSOs and the civil service to respond to calls by disaffected groups as well as to proactively address the wider problems affecting people in the Pacific such as poverty, homelessness and discrimination.

As well as targeting CSOs, the toolkit is also designed to offer interested civil servants insights into how they can better serve the public by engaging in productive dialogue with civil society. Politics has been described as "the art of compromise" and making changes to the legislative landscape will often require some form of compromise on all sides of a debate.

Taking into account the unique context of the Pacific Islands, the toolkit considers the way in which governments function; how laws are made, why and how they may need to be changed, the key players in the legal arena, concepts of good governance, accountability and democracy and the main steps involved in strategising for legislative change.

This publication upholds the democratic core values of inclusiveness, equality and human rights and is based on the premise that the 'rule of law' in a country is the norm and that parliament and other democratic institutions are functioning.

## FOREWORD

Advocating and lobbying for legislative change is not for the faint hearted. Energy, drive, commitment and tenacity are prerequisites. The legislative landscape in the Pacific Islands is highly problematic. Most Pacific Islanders find that negotiating the legislative terrain is very challenging, especially because most Governments do not normally involve citizens in law-making processes and legislative changes are on the whole, driven from the top-down. This perspective is changing as Pacific Islanders become more aware of their human rights, and their duty to involve themselves in governance. There are only a few examples of civil society groups from the Pacific being involved in law making, but when they have done so, the laws that have been passed as a result of that involvement, have been significantly better laws, especially from a gender equality and human rights perspective.

I have been involved in several law-making initiatives in the Pacific region, some which resulted in sound legislation being passed, some which are still in the pipeline and others which came to naught.

This Toolkit documents some Pacific Island initiatives at involving citizens in law making.

One of the most challenging and rewarding tasks in my life has been to, with others, lobby and advocate for the passing of the historic Family Law Act 2003. That journey began in the early 90s with the promotion of the initial idea with the Non Government Organization (NGO) that I had co-founded in 1986, the Fiji Women's Rights Movement, and culminated in October 2003 with the passing of the legislation. During that time I was twice appointed Commissioner for Family Law Reform by different governments, to the Fiji Law Reform Commission (FLRC), to navigate the often turbulent waters of law reform in Fiji. As I look back on my life, as I approach my half-a-century, without a doubt, it was a journey worth taking. To have, in some small way, made the lives of Fiji women and children a little better, hopefully a little more dignified, by removing at least the formalised, legislative, systemic discrimination against Fiji women, gives me enormous pleasure and satisfaction, as I contemplate my fifties.

This Legislative Lobbying Toolkit is an important milestone in the Pacific Islands. It documents the involvement of Pacific Island citizens, especially human rights NGOs, in lawmaking. Many of the examples it draws upon are of legislation that has been driven from the ground upwards

by members of civil society. Some examples such as the Family Law Act in Fiji and the Family Protection Act in Vanuatu show participatory governance at its best, giving it real meaning by illustrating the democratic process and the participation of citizens in lawmaking. The Toolkit documents case studies from across the Pacific and suggests ways that Pacific Islanders might become involved in lobbying for legislative change.

The Toolkit aims to explain the role of the law in the lives of Pacific islanders and why it is so important for them to participate in the processes of lawmaking. It brings home the point that the law must belong to us, all of us, so that we have a vested interest in preserving the rule of law and further investing in it. The rule of law is the foundation of democracy and human rights. Without it, we sail in even more turbulent waters. Without it, there is chaos and an uncertain future.

The Toolkit also aims to explain in simple language the complexities of the law-making process. It documents the intricacy of the legislative framework, the key actors involved in the law making process and how legislation is drafted, debated and passed into law. The Toolkit then makes practical suggestions as to how citizens can become involved in this process through lobbying and advocating for legislative change. Always, it draws upon Pacific Island experiences, both successes and failures. Much is to be learnt from both.

As this Toolkit has been written for people in the Pacific Islands, it is important to take into account the unique context of the Pacific and how this will impact upon your lobbying efforts. Experience has shown that lobbying for legislative change can be a long and complex process which often requires a long and sustained effort. In the Pacific, changes to legislation tend to occur slowly and can be held back by influences such as changing or unstable governments and limited resources.

If you are a government policy maker, an NGO or CSO activist, a legislator, a member of a Law Reform Commission or unit, or a Pacific island citizen wanting to change laws, I hope you will find this Toolkit very useful.

**P. Imrana Jalal**

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February 2010



## HOW TO USE THIS TOOLKIT

As we have designed this toolkit for a wide audience some of you may already be familiar with some of the steps and information it contains. If you feel confident about your knowledge in particular areas then feel free to skip these sections. The toolkit is designed as a manual that you should be able to pick up at any time and read those sections that may be useful to you or where you wish to improve your knowledge.

# politics

## A GAME OF WORDS

A gamble a risk  
Say the right words  
Strike the right chord  
Choose a sweet melody  
And it will ring in the House for years

A good talker makes a good politician  
Well versed in making promises  
A clear memory to forget  
Crocodile skin to take criticism  
Strong stomach to stomach anything  
From beer to strong punches  
And glassy unseeing eyes  
To overlook us

*Written by Jully Makini (Solomon Islands)*

# People and the Law

# CHAPTER ONE



## WHY HAVE LAWS?

Laws are codes that regulate people's behaviour in order for us to live in and form a society. How we live and act is based on a mutual understanding that the people we live amongst follow certain customs, traditions and rules which guide our interaction with all levels of society.

In the Pacific, many of these laws are embedded in our traditions and customs: our relationships with our families, our land and our neighbours have traditionally all been guided by customary laws based on principles of mutual respect and obligation. When the Pacific Islands were colonised, another layer of more formal law was added to our social frameworks.

Laws affect everything we do – from getting married to buying a house, from getting a job, to how we inherit land. Of course, we are not usually aware of how the law has affected our behaviour; we begin learning these rules

from early childhood and are not always encouraged to question them. Usually we are not even aware of how laws are impacting us.

To look at an example, when we do something as simple as buy an item from the supermarket, numerous laws are involved in this transaction such as the law of contract; the company registration of the supermarket; the licensing for the sale of the goods; the taxes we pay on our items; the duty of care the trader has towards us as a consumer and so on.

Laws are important in order to protect us and to lay down a set of rules which allow us, as a society, to live secure, free and fulfilled lives. Laws should function to protect us and the people around us. They should ensure that we have a legal obligation to treat others respectfully in a way that upholds their dignity, and a corresponding right to be treated that way ourselves.



## WHY CHANGE LAWS?



Laws should reflect the values of the society that created them and should respond to changing values within that society. For example, in a society that values the equality of women with men, it may be necessary to have laws which protect women and men's equal right to own land or to have an education. As societies' values change, laws may also need to be changed to reflect those changing values.

When decolonisation first occurred and many Pacific Island governments became independent, a number of them were active in changing laws which were seen as unfair or discriminatory. Some laws were seen to

undermine the basic principles of respect and dignity for all people, while others were seen to unfairly give power to certain groups of people, such as husbands over wives, male heirs over female heirs, urban based people over rural-dwellers or land owners over non-landowners.

The concept of legislative lobbying recognises that sometimes the people who decide the laws of our society need to be reminded that laws need to be revised and reviewed to ensure that they are fair, appropriate and that they establish a social framework which respects and promotes the fundamental human rights of all members of society.



## WHO SHOULD LOBBY FOR LAW REFORM?

Individuals, members of civil society, the government and the media all have critical roles to play in the process of law reform.

### Civil Society

Civil society is composed of social organisations and institutions that keep a check on the actions of the government and provide a voice for the people. The term 'civil society' covers a broad range of entities including registered charities, development and advocacy organisations, community groups, faith-based organisations, trade unions, professional organisations, women's organisations, social movements, self-help groups and sports clubs. Because these entities are separate from the state they are often referred to as NGOs (non-governmental organisations).

Throughout the world, CSOs play a key role in supporting and promoting a wide range of social concerns ranging from religious and sports activities to human rights, sustainable development, poverty reduction and good governance. Historically, CSOs in the Pacific have focused on helping to improve service delivery and providing charitable services and educational programs for the community. However, as the previous section explained, laws govern all

aspects of our societies. If CSO services are not linked to developments in government policies and law reform these activities may only provide temporary relief. There will be no substantial improvements in society.

Civil society can play a key role in assisting policy-makers to better understand and address community needs. Because CSOs often work at the grassroots level, they are well-placed to inform government about the every-day realities of people's lives. This is not to say that members of the public shouldn't also be empowered to speak directly with government and their elected members of parliament. However, civil society can sometimes provide a unified voice for the people in order to put greater pressure on the government to affect change.

CSOs can also support the development of better laws through offering specialist assistance and advice to governments in their areas of interest. For example, many Pacific women's organisations have a wealth of expertise – both through their own local work and through their international networks and contacts – which can be drawn on to supplement the work of (often under-resourced) women's ministries.



Over the last decade a number of Pacific CSOs have started to pursue legislative reform as a key activity. For example, the authors of this toolkit –FWRM and RRRT– were active in lobbying for the reform of the Fiji Family Law Act. The Fiji Women's Crisis Centre (FWCC) was strongly involved in developing the content of the Domestic Violence Bill and with the police 'no drop' policy inclusion into their operations manual.<sup>2</sup> Likewise, FemLINK and many national media councils have been active in lobbying government on issues around freedom of the media, freedom of expression and freedom of information.

### CASE STUDY: No Drop Policy Fiji

The Fiji Police has a "No Drop Policy" in relation to incidents of domestic violence. This policy requires a mandatory path of action for police officers to pursue the case to court in matters of domestic and family violence, without the capacity for individual officers to close the matter.

The policy was introduced by the then Police Commissioner in 1995. The policy was a response by the Commissioner after intense awareness and lobbying by the Fiji Women's Crisis Centre (FWCC).

The FWCC used the global "16 Days of Activism" to highlight the problem of police officers encouraging reconciliation when women reported domestic violence. This campaign included "Reclaim the Night" march as well as slogans such as "Real Men Don't Hit Women". Key elements such as documenting experiences of women, community level awareness and the strategic use of the media, as well as meetings with the senior management of the Police led to the development of the policy. The Commissioner of Police highlighted the policy as best practise to police officers from around the region attending the 2nd Regional Meeting on Violence Against Women (VAW).

Legislative lobbying is a useful tool that Pacific CSOs could consider utilising in the push for more effective development for Pacific peoples. Democracy and equitable development rely on the participation of all people, not just those with formal political power.

<sup>2</sup> The 'No Drop' policy refers to a mandatory path of action for police officers to pursue when involved in matters of domestic and family violence, without capacity for individual officers to close the matter.

### EXPLANATION: What is Legislative Lobbying?

Legislative lobbying is acting individually or as part of a group, to influence changes in the law. From a human rights perspective, legislative lobbying is about ensuring that human rights, participation and accountability are central to the legislative framework and is often carried out with the aim of improving the socio-economic situation of the community as a whole, or a particular section of the community.

Lobbying can be directed towards the enactment of new laws where the current legal protection of a particular group or interest is insufficient; for a change in an existing law or set of laws; or for the removal of current laws that are perceived to be harmful to the protection of human rights or detrimental to social justice.

### Good Governance

Throughout the Pacific, the terms 'good governance' and 'participatory development' have become commonplace. Pacific governments, donor countries and CSOs have all stated their commitment to these long term objectives.

### EXPLANATION: What Does Good Governance Mean?

#### The Core Characteristics of Good Governance<sup>3</sup>

The United Nations emphasizes reform through human development and political institution reform. According to the UN, good governance has eight characteristics. Good governance is:

- Consensus Oriented
- Participatory
- following the Rule of Law
- Effective and Efficient
- Accountable
- Transparent
- Responsive
- Equitable and Inclusive



This focus on good governance by governments, development organisations, donors and civil society is a relatively recent phenomenon. For many decades, development actors focused on a 'needs-based' approach to development which targeted resources towards providing services directly to the poor and marginalised. Over time though, it was found that this approach was not creating benefits that lasted long-term.

As people started to focus more on ensuring efforts to reduce poverty were sustainable, people started to look beyond the micro (grassroots) level, and started examining the macro (policy) level. As the famous parable states: *'Feed a person a fish and they eat for a day; teach a person to fish and they will eat for a lifetime.'* This move reflects a general shift from a 'needs-based' approach to a 'rights-based' approach to development.

## Civil Servants

Often civil servants are the first people to become aware of how a law may be adversely affecting the lives of the public. Civil servants are also often ideally placed to advise their Ministers how laws could be amended or to suggest new laws in order to respond to the evolving needs of the public. In a democratic society civil servants are not only there to serve their government but more importantly, they are also there as 'servants' of the public.

It is imperative that civil servants always keep in mind the public interest and keep their Ministers informed of this through briefings, communiqués and so on. Briefings suggesting changes to legislation should be supported with evidence of the need for change and including interviews and communications with the public and relevant groups.

# Understanding Who Makes Laws and How They Are Made

# CHAPTER TWO

<sup>3</sup> UNDP (2002) Deepening Democracy in a Fragmented World, Global Human Development Report, p.51



Each country has unique governance frameworks and institutions responsible for making and enforcing laws. Most Pacific Island countries' frameworks are based either on the British Westminster model or the French/American presidential model of government. A few Pacific Island countries utilise a mixture of both types.

This chapter will explain the structure of Pacific governments and how the structure of a government is important for the law-making process. It will also show how governance structures differ slightly in the Westminster and presidential models mentioned above. It will explain the different types of law (also known as 'sources' of law): from constitutional law to legislation which is enacted by parliament, to international treaties. All types of law are important for the protection of human rights and provide opportunities for legislative lobbying. Finally, the chapter will explain the law-making process itself and introduce some of the key government personalities who should be considered primary lobbying targets.

All of this is essential background knowledge before you begin to plan your legislative lobbying strategy.

## THE STRUCTURE OF GOVERNMENTS

### The Three Arms

Most Pacific Island governments are divided into three main sections, or 'arms' as they are commonly known. These are:

1. The executive
2. The legislature
3. The judiciary

Each arm has a limited amount of power which is kept in check by the other arms. This is commonly referred to as the 'separation of powers' and is designed to prevent any one arm of government from being strong enough to abuse its powers with impunity. In the Westminster system of government, the executive arm (the Prime Minister and his or her Cabinet) actually *sits inside* the legislative arm (Parliament). For example, the Prime Minister in Fiji, the Solomon Islands, Papua New Guinea, Tuvalu and Vanuatu are all elected Members of Parliament (MPs) who *sit inside* Parliament. In the US presidential system however, the executive and the legislature are separate arms as illustrated on the right.

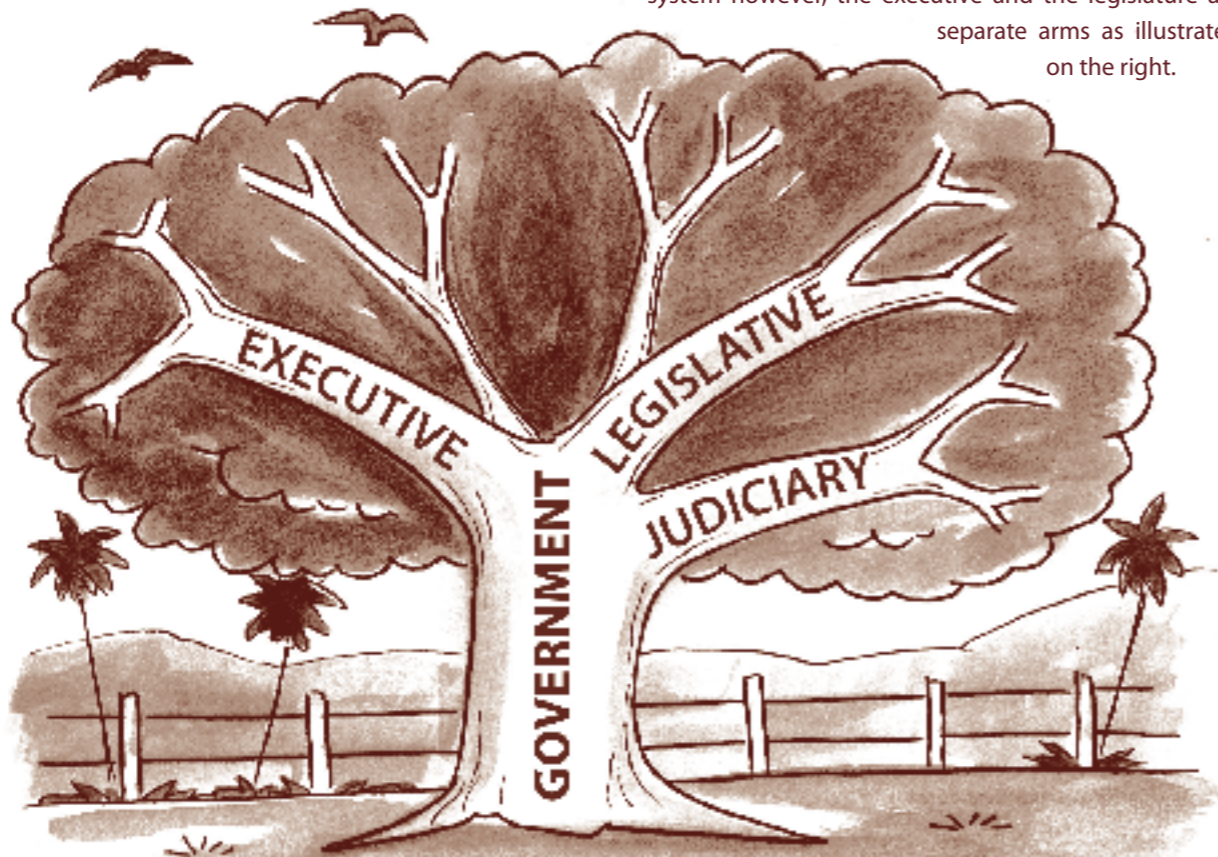
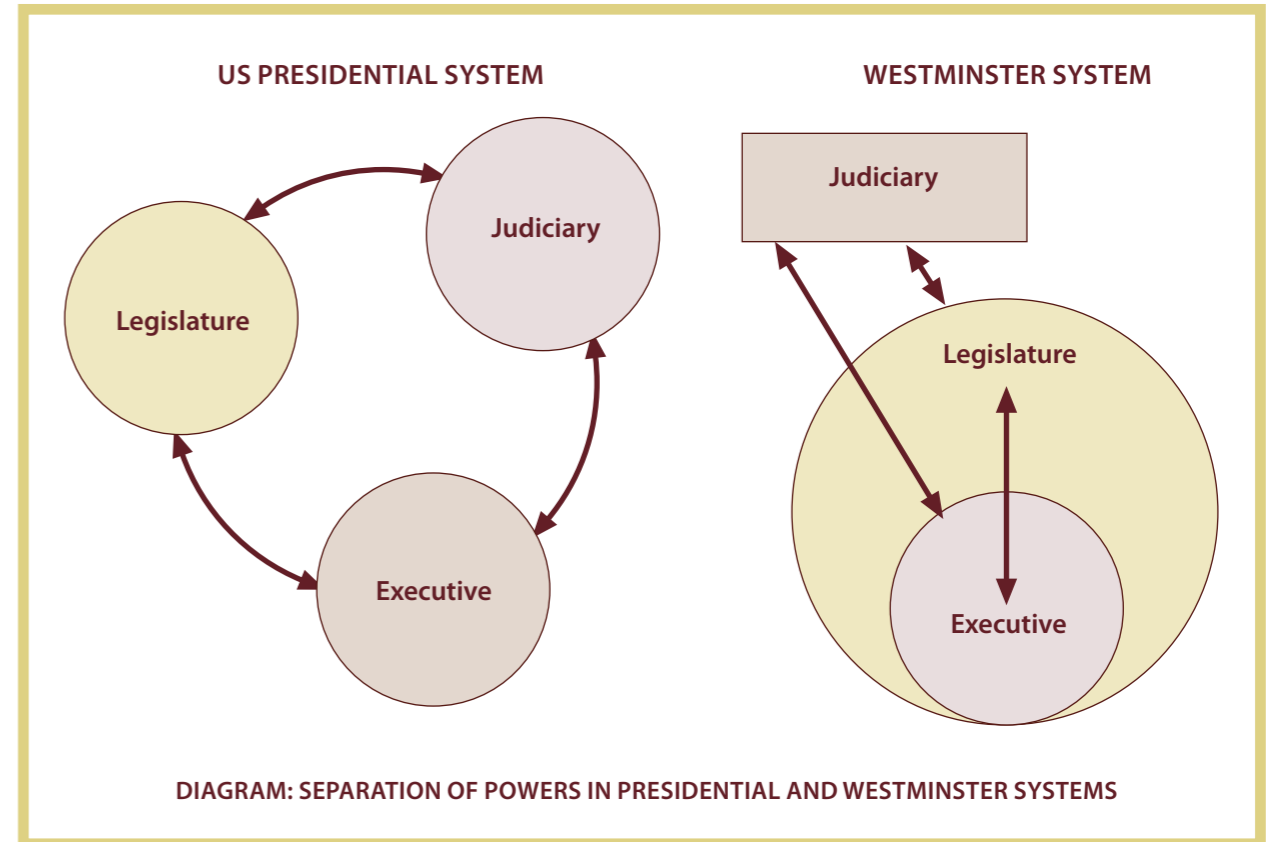


TABLE 1: THE LEGAL FUNCTIONS OF THE THREE ARMS OF GOVERNMENT

| ARM         | WHO?  | LEGAL FUNCTION  |
|-------------|---|---|
| Executive   | President, Governor, Prime Minister and/or Cabinet, the civil service | Implements laws   |
| Legislature | Congress, Parliament, Legislative Assembly                            | Makes laws  |
| Judiciary   | The Courts  | Interprets laws and ensures they do not conflict with the national Constitution or other accepted legal norms |



### The Executive

In the Pacific the executive arm of government usually includes the Head of State who mainly performs ceremonial functions (for example the Queen), the Head of Government (the elected leader of the country, usually known as the Prime Minister), a Cabinet of Ministers, and the bureaucracy which provides administrative support to the executive.

Although most executive governments and Cabinet Ministers represent the single leading political party which was voted into power in elections, in some cases where no single party was able to win a majority of seats the executive can be made up of a coalition of political parties. Accordingly, Cabinet may also be comprised of Ministers representing different political parties. We usually refer to the executive as 'the Government'.

### The Role of the Executive

- To propose or draft new laws or revise existing ones. To administer laws
- To develop the national budget (which is then approved by the legislature). To administer the approved national budget
- To develop national policies and programmes, and guide the bureaucracy to implement them
- To negotiate and sign international treaties, agreements and contracts
- To protect national security, including deciding when to participate in wars

4 Based on information from the Commonwealth Parliamentary Association Directory of Parliaments and Legislatures <<http://directory.cpahq.org/directory/default.aspx>> as on 27 July 2009



# Key Players within the Executive

## The Head of the Executive (Head of the Government)

In Pacific Island countries with a Presidential-style system of government, for example Palau and the Federated States of Micronesia, the **head of the executive** is the President who sits separately from and outside of the legislature (which is known as Congress).

In Pacific Island countries which use the Westminster system of government (including most former Commonwealth countries), there is usually a **head of Government** (the Prime Minister or President) as well as a **head of state** such as the Queen who mainly performs ceremonial functions.

The **Parliamentary or Legislative Counsel** is the executive's chief legal draftsman who converts Cabinet's legal recommendations into draft legislation. If the legislature has a team of legal draftspersons, there will usually be a **First Parliamentary Counsel** who heads the team.

## Cabinet

The head of the executive is supported by a group of Ministers known as the **Cabinet**. In Westminster systems the Cabinet is made up of the 'inner circle' of Ministers appointed from the elected members of the legislature. In the US-Presidential style systems of Palau and Federated States of Micronesia (FSM), Cabinet consists of Secretaries appointed by the President and endorsed by Congress.

Cabinet is the executive's discussion and decision-making forum and this is where many decisions are made about the enactment of new laws. The Ministers who make up the Cabinet each have responsibility for a related Ministry and its associated departments and agencies. For example, the Minister for Health is responsible for the Ministry or Department of Health. Each Minister is responsible for providing high level advice about their area of expertise to the Head of Government and the rest of Cabinet in order to inform budgeting and policy making.

Ministers are also responsible for responding to questions in parliament relating to their portfolio of issues and the activities of the Ministries for which they are responsible. The day-to-day administrative operations of each Ministry are managed by a Permanent Secretary or Departmental Head.

Cabinet is usually supported by staff within the bureaucracy. In some Pacific countries, there is a **Permanent Secretary for Cabinet**, while in others the **Secretary to the Prime Minister** may perform this role.

*For tips on how to lobby Cabinet see p.57 in Chapter 3*

The **Attorney General** is the chief legal adviser to the executive and is usually a member of the Cabinet. In the Pacific this position is not necessarily an elected member of the legislature. She or he may be a professional civil servant who is a lawyer. **Solicitor General** generally performs the role of deputy/adviser to the Attorney General.

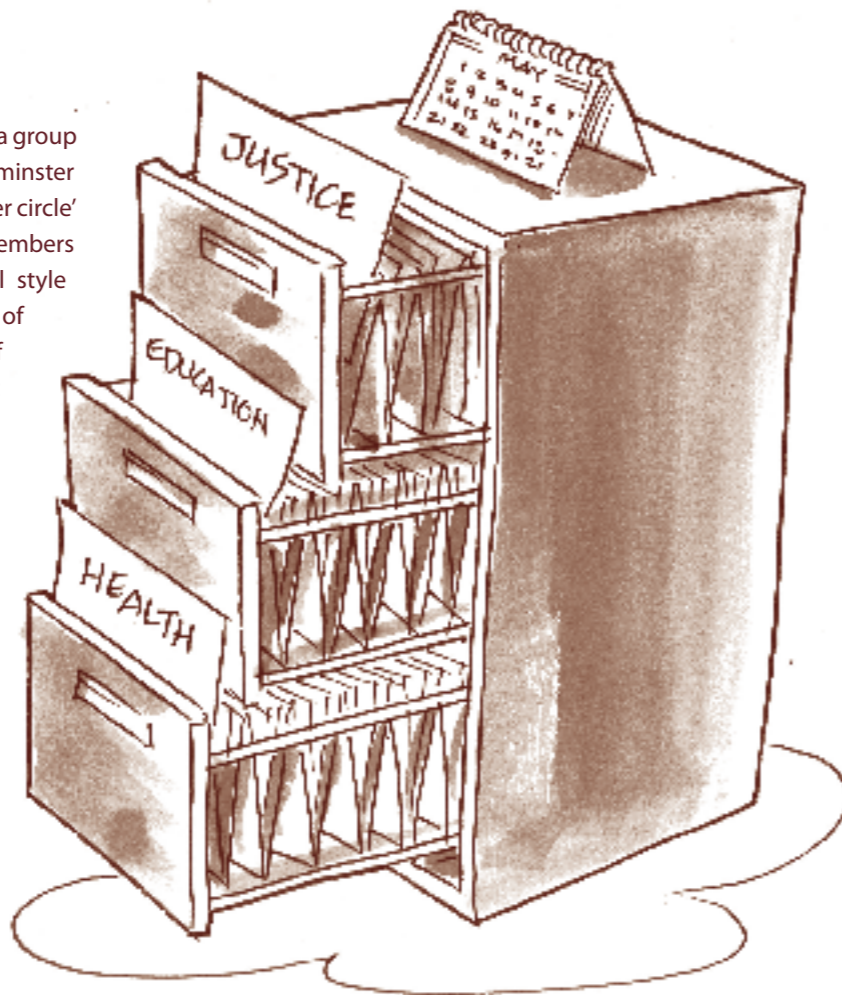


TABLE 2: MEMBERS OF THE EXECUTIVE IN THE PACIFIC ISLANDS

| COUNTRY                               | Members of the Executive in the Pacific Islands   |
|---------------------------------------|---|
| <b>Cook Islands</b>                   | HEAD OF STATE: The Queen of England, represented by the Queen's Representative to the Cook Islands.<br>HEAD OF GOVERNMENT: Prime Minister appointed by Queen's Representative, once PM can demonstrate he/she has support of majority of MPs in Parliament<br>CABINET: Appointed by Queen's Representative on advice of PM from amongst elected members of Parliament                                   |
| <b>Federated States of Micronesia</b> | HEAD OF STATE AND HEAD OF GOVERNMENT: President elected directly by the people – not a member of Congress<br>CABINET: Appointed by President and approved by Congress   |
| <b>Fiji</b>                           | HEAD OF STATE: President appointed by the Great Council of Chiefs<br>HEAD OF GOVERNMENT: Prime Minister appointed by President, once PM can demonstrate he/she has support of majority of MPs in House of Representatives<br>CABINET: Appointed by President on advice of PM from amongst elected members of Parliament   |
| <b>Kiribati</b>                       | HEAD OF STATE AND HEAD OF GOVERNMENT: President elected directly by the people from amongst 4 candidates nominated from amongst elected members of Parliament<br>CABINET: Appointed by President from amongst elected members of Parliament   |
| <b>Marshall Islands</b>               | HEAD OF STATE AND HEAD OF GOVERNMENT: President elected by Members of Parliament<br>CABINET: Appointed by President from amongst elected members of Parliament  |
| <b>Nauru</b>                          | HEAD OF STATE AND HEAD OF GOVERNMENT: President elected by Members of Parliament<br>CABINET: Appointed by President from amongst elected members of Parliament  |
| <b>Niue</b>                           | HEAD OF STATE: The Queen of England, represented by the Governor General of New Zealand<br>HEAD OF GOVERNMENT: Premier elected by Members of Parliament<br>CABINET: Appointed by Premier from amongst elected members of Parliament   |
| <b>Palau</b>                          | HEAD OF STATE AND HEAD OF GOVERNMENT: President elected directly by the people – not a member of Congress<br>CABINET: Appointed by President and approved by Congress   |
| <b>Papua New Guinea</b>               | HEAD OF STATE: The Queen of England, represented by the Governor General who is elected by Parliament<br>HEAD OF GOVERNMENT: Prime Minister appointed by Governor General, once PM can demonstrate he/she has support of majority of MPs in Parliament<br>CABINET: Known as the National Executive Council and appointed by Governor General on advice of PM from amongst elected members of Parliament |
| <b>Samoa</b>                          | HEAD OF STATE: The "O le Ao o le Malo" who is selected by Parliament, usually from amongst the four Tama-a-Aiga "royal" paramount chiefs<br>HEAD OF GOVERNMENT: Prime Minister appointed by Head of State on the recommendation of Parliament<br>CABINET: Appointed by the PM from amongst elected members of Parliament  |
| <b>Solomon Islands</b>                | HEAD OF STATE: The Queen of England, represented by the Governor General who is elected by Parliament<br>HEAD OF GOVERNMENT: Prime Minister appointed by Governor General, once PM can demonstrate he/she has support of majority of MPs in Parliament<br>CABINET: Appointed by Governor General on advice of PM from amongst elected members of Parliament   |
| <b>Tonga</b>                          | HEAD OF STATE: The King of Tonga<br>HEAD OF GOVERNMENT: Prime Minister appointed by the King, from amongst elected MPs or nobles<br>CABINET: Known as the Privy Council, it is presided over by the King and comprises 16 members (including the PM and Governors of Ha'apai and Vava'u)  |
| <b>Tuvalu</b>                         | HEAD OF STATE: The Queen of England, represented by the Governor General who is appointed on the advice of the Prime Minister<br>HEAD OF GOVERNMENT: Prime Minister elected by Members of Parliament<br>CABINET: Appointed by Governor General on advice of PM from amongst elected members of Parliament   |
| <b>Vanuatu</b>                        | HEAD OF STATE: President elected by an electoral college comprising the Members of Parliament and the presidents of the six provincial governments<br>HEAD OF GOVERNMENT: Prime minister elected by Members of Parliament.<br>CABINET: Known as the Council of Ministers and appointed by the PM  |

4 Based on information from the Commonwealth Parliamentary Association Directory of Parliaments and Legislatures <<http://directory.cpahq.org/default.aspx>> as on 27th July 2009.

## The Bureaucracy (Government Ministries and Departments)

The bureaucracy, also known as the civil service, is the collection of ministries and departments responsible for administering laws and policies. The bureaucracy plays a key role in law reform as it is also responsible for approving ministerial suggestions for law reform before they are considered by Cabinet.

*For tips on how to lobby the bureaucracy see p.58 in Chapter 3.*

## The Legislature

Although different Pacific Island countries refer to the legislature by different names, this arm of government is most commonly known as 'Parliament', 'Congress' or the 'Legislative Assembly'. The legislature's main role is to make and amend laws and provide oversight to the executive.

TABLE 3: LEGISLATURE IN THE PACIFIC

| Country          | Name of Legislature                        | Houses  |
|------------------|--|---|
| Cook Islands     | Parliament                                 | One house<br>House of Ariki comprises up to 15 hereditary chiefs who can advise on land and indigenous issues but have no legislative powers      |
| FSM              | Congress                                   | One house   |
| Fiji             | Parliament                                 | Lower house: House of Representatives<br>Upper house: Senate (appointed members)<br>Great Council of Chiefs can consider laws on customary issues |
| Kiribati         | Parliament or <i>Maneaba ni Maungatabu</i> | One house   |
| Marshall Islands | Parliament or Nitijela                     | One house<br>Council of Iroji is comprised of unelected traditional leaders who can consider laws on customary issues                             |
| Nauru            | Parliament                                 | One house   |
| Niue             | Legislative Assembly                       | One house   |
| Palau            | Congress                                   | Lower House: House of Representatives<br>Upper House: Senate  |
| Papua New Guinea | Parliament                                 | One house   |
| Samoa            | Parliament or Fono                         | One house<br>Legislative Assembly   |
| Solomon Islands  | Parliament                                 | One house   |
| Tonga            | Parliament or Legislative Assembly         | One house   |
| Tuvalu           | Parliament                                 | One house   |
| Vanuatu          | Parliament                                 | One house<br>National Council of Chiefs may be consulted on any Bill before Parliament  |

## The Role of the Legislature

The legislature's main roles are to make laws and provide oversight to the executive. In practice, members of the legislature perform a number of functions including:

- Debating issues of national importance and new laws and policies
- Using Parliamentary Question Time to ask Government Ministers questions relating to their areas of expertise
- Enacting legislation and reviewing regulations
- Approving national budgets and reviewing the Government's expenditure
- Ensuring that the interests of the constituency are promoted inside and outside parliament
- Participating in committees which promote public accountability and facilitating public hearings

## Key Players within the Legislature

### The Presiding Officer (Head of the Legislature)

The head of the legislature is the **Presiding Officer** but in most Pacific countries this person is known as the **Speaker of Parliament**. In some countries however, particularly those with Presidential systems, the Presiding Officer may be called the **President of the Senate** (different from the President of the country).

The Presiding Officer is responsible for making and enforcing the rules of procedure (the processes by which decisions are made in parliament), overseeing debate and managing the general business of the legislature. The Presiding Officer is usually from the same political party as the Government but has a duty to act impartially towards all members of the legislature. In some countries, such as Fiji and the Solomon Islands, the Presiding Officer is a completely independent person elected by parliament.

### CASE STUDY: Vanuatu No Confidence Votes

Members of the legislature can make a **vote of no confidence** against the executive Government to indicate they no longer support them and want to replace them.

Vanuatu for example has historically suffered frequent votes of no confidence against its elected Governments. For instance, between elections in September 2008 and December 2008, the Opposition put forward four votes of no confidence against Edward Natapei's Government, none of which were successful. Lobbying for legislative reform is more difficult in an environment where the legislature does not have confidence in the executive, as resources and attention become focused on deciding the competency of the Government, rather than the development of new legislation and policy.

### Members of Parliament

Members of Parliament (MPs) are elected by the community in order to represent its interests and should be willing to listen to your views and share them with the rest of the legislature. MPs represent geographical areas or 'constituencies' and can either belong to a particular political party or be independent.

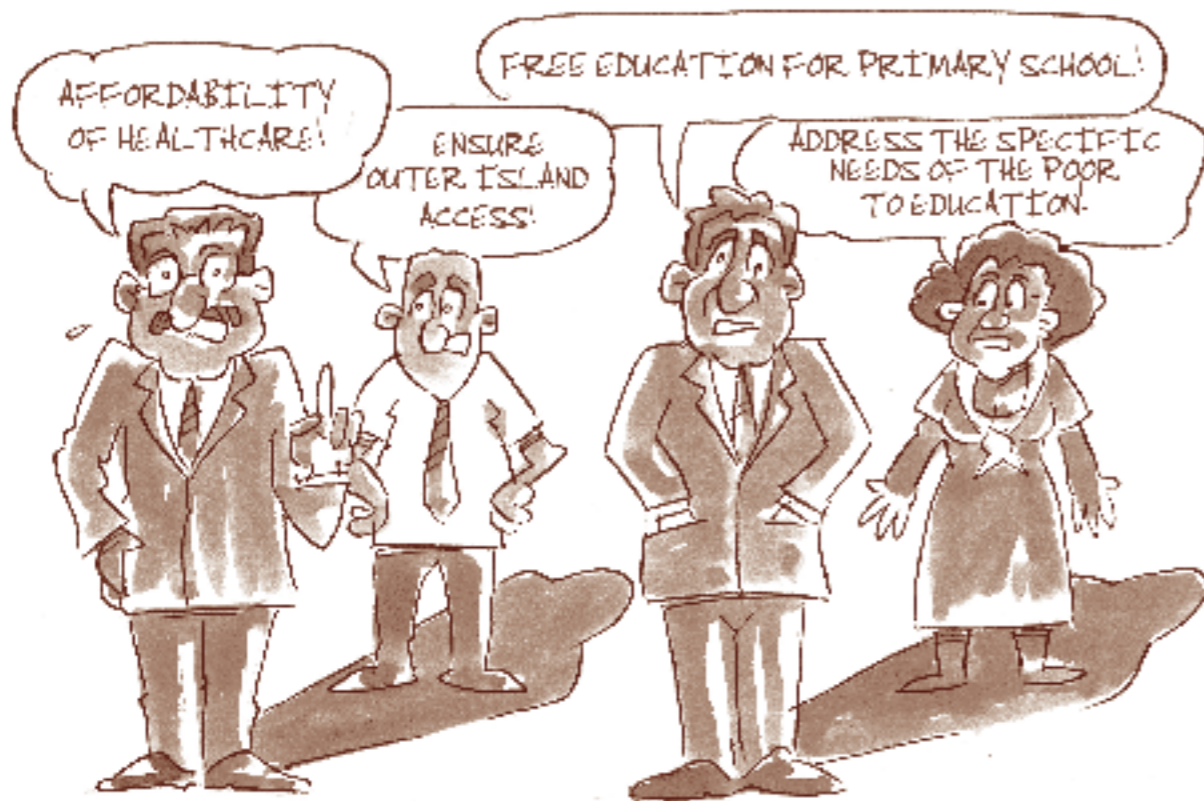
In Westminster style legislatures in the Pacific, there is often an **Official Opposition** made up of MPs from a minority party or coalition of parties that were not elected into Government. The Opposition is led by the **Leader of the Opposition**. **Shadow Ministers** may sometimes be identified who 'shadow' the portfolio of Government Ministers, and act as spokespersons for the Opposition in matters relating to their particular area of responsibility. The Opposition provides constructive criticism to the Government on issues of policy and law.

### Parliamentary Secretariat

A **Parliamentary Secretariat** headed by the **Clerk of Parliament** provides administrative support to the legislature. The Clerk and Secretariat provide a range of services to Members of Parliament including daily transcripts of proceedings, library services, research, and briefings on key issues, committee support and constituency liaison support. It is important for CSOs to ensure that their views get reflected in such briefings so that MPs are given a complete picture of the issues under discussion.

*For tips on how to lobby the legislature see p.62 in Chapter 3*





## The Judiciary

The judicial arm consists of the judges of the various courts of the country and their staff. One of the common features of all Pacific court systems is that they are set up in a hierarchy, whereby cases are started at one level of the courts and appeals then proceed to higher levels until

they reach the highest court of the land whose decision will be final. Many people perceive the judiciary to be the most independent and non-political of the three arms of government.

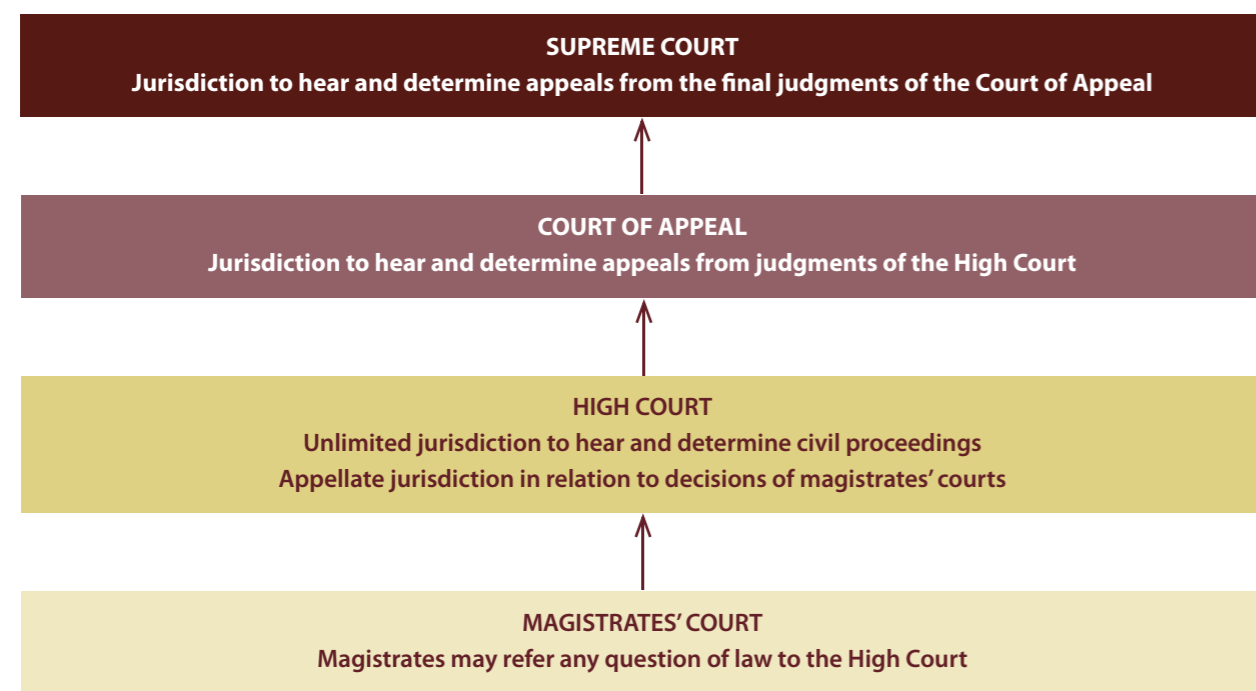


DIAGRAM: THE COURT SYSTEM OF FIJI<sup>5</sup>

<sup>5</sup> Based on Paclii (2001) Fiji Courts System Information <<http://www.paclii.org/fj/courts.html>> accessed 06 July 2009

## The Role of the Judiciary

The judicial arm of government is primarily responsible for interpreting the law. This means that the functions of the judiciary include:

- Interpreting the articles of the Constitution
- Assessing whether legislation is in accordance with the Constitution and striking down legislation which is inconsistent with the Constitution
- Interpreting the meaning of ambiguous laws. This can result in the setting of a 'precedent' which helps guide others in applying the law in future
- Applying the law, in particular in civil and criminal cases

Most Pacific Island countries are **constitutional democracies**. This means that a constitution is referred to as a country's central legal guidance point. One of the main functions of the courts is to assess whether policies and activities of the government or private sector are in accordance with the Constitution, including the constitutional Bill of Rights.

## EXPLANATION: The Constitutional Bill of Rights

The constitutions of nearly all Pacific Island countries include a 'Bill of Rights' which set out the rights and freedom of the people of that country. When lobbying it is important to be aware of which rights and freedoms are protected under your country's Bill of Rights as this can be a key argument for the amendment and introduction of appeal of a law. You may however wish to lobby for the amendment of your Constitution to include a given right or freedom which is not currently protected. At the time of writing for example, Nauru is undergoing a Constitutional review process and members of the public have been invited to participate in discussions about whether the rights protected in their Constitution should be expanded.

*For tips on sensitising the judiciary see p.63 in Chapter 3*

## CASE STUDY: Vanuatu's Judiciary and the Family Protection Act

Vanuatu's judiciary played a key role in the enactment of the country's Family Protection Act. In June 2008, the passing of the law created controversy when President Kalkot Mataskelekele refused to give his assent. He claimed that some sections discriminated against men, were unconstitutional and contrary to "Melanesian" and Christian principles. The challenge to the law however was couched in technical terms. When he referred the case to the Supreme Court however, the Chief Justice declared that the Act was consistent with the Constitution and the President finally gave his assent to the new law.

## Traditional Pacific Governments

Before the Pacific was colonised, it had its own forms of social and political organisation that evolved within the distinct and varied cultures which comprise Oceania. These ranged from the elaborate and hierarchical structures of Polynesia and parts of Micronesia in the east and north respectively, to the more achievement-oriented societies of Melanesia in the west. Whatever the differences, the objective in all societies was to maintain social order and control as well as ensure survival through the distribution of resources and security from its enemies. Colonisation altered these systems considerably and the focus became the nation state. What was traditional was largely used to reinforce the emerging national entity. At the same time, there were tensions between the certainties of custom and tradition and the changes which followed in the wake of colonisation such as education, urbanisation and industrialisation.

The strength of traditional governance was the certainty and stability it represented. Everyone had an ascribed role and function and performed it although there was flexibility in some communities to move from one category to another as in the big man societies of Melanesia. Prowess in warfare or combat could also allow mobility in Polynesia and parts of Micronesia. But this assumption held so long as Oceania functioned unaffected by intrusions from beyond its boundaries. The early European explorers, Christian missionaries and the colonial powers altered that equation forever. And the lack of flexibility of some of those systems, among other reasons, was to be a disadvantage in dealing with the assertiveness of newcomers to the Pacific as in Australia, New Zealand, Tahiti and Hawaii.

In the contemporary situation, traditional governance coexists with the state, provincial and local governments. Its relationship and influence depends on the strength and vibrancy of tradition and culture. Samoa and Vanuatu represent two different yet similar contrasts. The former is based on an intricate network of family connections that link to ever-wider groupings with chiefly titles. At its centre is the family and the village “fono” or council which regulates life in the villages. It has extensive powers which have more recently come into conflict with human rights principles such as banishment of particular persons or the prohibition against a particular religious grouping.

In Vanuatu, the villages are more egalitarian and less stratified, but control by village chiefs and elders continue to be significant. Irrespective of whether it is a matrilineal or patrilineal society, men tend to dominate decision making. The chiefs and elders from throughout the country elect representatives to the House of Chiefs which exercises authority over custom and tradition.

In Fiji, which is at the crossroads of Melanesia and Polynesia, the British colonial rulers introduced a system of indirect rule through the chiefs. This was abolished in 1967, three years before independence. Although life in the villages and the rural areas still is communal in nature and respectful of traditional values, it is no longer regulated and the vibrancy of the village depends in large part on the quality of its leadership.

Traditional governance by definition is conservative as a general rule. Pacific cultures are communal in nature

irrespective of their location or grouping. The preservation of social cohesion and kinship ties were placed at a premium. Individual identity and self expression were tolerated so long as it did not adversely affect the good of the whole. Decisions were taken by consensus although this meant in practice that the most senior among chiefs and elders usually held sway. In some cases, leaders with strong personalities were able to impose their will. Emerging interest groups such as the educated, women, youth and people with disabilities, among others face significant resistance in seeking to be part of the process of decision making. Because authority and power is justified in terms of custom and precedent. How this can be overcome remains a challenge in all of Oceania. It is particularly pressing in Papua New Guinea where the level of violence against women whether justified in terms of witchcraft and sorcery or in their value as a commodity is distressing. However, confrontation is counterproductive and triggers an extreme reaction. The solution lies within these structures in engagement, dialogue and education. Notwithstanding, the pressures of globalisation and modernisation, traditional governance structures continue to exist because Pacific peoples still find meaning in them. They are part of what gives them their identity and affirms their existence as small communities in the largest expanse of ocean on the earth.

## The Legislative Framework – Sources of Law

### The Constitution

A country's Constitution is the highest law of the land which sets out the important elements of its governance framework – as such it is sometimes referred to as ‘the supreme law of the land’. As the foundational legal document, any other enacted laws must not conflict with its provisions. Any laws which are found to be inconsistent with the Constitution can be declared to be void or of no legal effect.

Most Pacific Island constitutions contain a Bill of Rights which protects many of the basic human rights enshrined in international human rights declarations and treaties such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (collectively known as the International Bill of Rights). Laws which contradict the protection of human rights listed in the constitutional Bill of Rights can also be struck down.

The process by which constitutions are made is different to the process by which ordinary laws are made. Whereas ordinary laws can usually be enacted or amended when the majority of the legislature votes in favour, amending constitutions usually requires:

- Substantial public consultation
- Input from experts
- The creation of a Constitutional Convention
- A special majority vote from the legislature (whereby two-thirds of members vote in favour, rather than just a majority)
- Endorsement at a referendum of voters

### CASE STUDY: Challenging Discriminatory Laws In the Absence Of Constitutional Protection in Kiribati

A network of women called the Kiribati Women's Activists Network (K-WAN) is perusing legislative reform in the absence of constitutional protection. During 2008 they attempted to challenge two discriminatory laws, one which excludes widows from the definition of ‘beneficiary’ in certain legislation, making them ineligible to receive their husband's pensions; and secondly, land codes which discriminate against widows who are not provided specifically for in their husbands' wills. The biggest legal challenge they face is that the Kiribati's Bill of Rights in the Constitution does not include sex/gender discrimination as a prohibited ground of discrimination, thus allowing discrimination against women. If the Constitutional definition included sex or gender they could challenge a number of discriminatory laws and practices on the grounds that they are unconstitutional.<sup>8</sup>

### CASE STUDY: Lobbying Against Unconstitutional Laws in Vanuatu

In 2005, the traditional *Malvatumauri* (House of Chiefs), supported by Church leaders, attempted to pass a new ‘custom law’, a dress code restricting the right of ni-Vanuatu women to wear trousers, shorts, pants or jeans. Chief Morrison Dick Makau said, ‘We've made it so that girls wearing trousers when they walk along the road will be fined. And the punishment is that they must kill one pig.’<sup>6</sup> The Vanuatu Women's Centre challenged the code with a media campaign saying it was unconstitutional and against their right to equality. The dress code was withdrawn, but is still enforced intermittently and informally.<sup>7</sup>

Source: Vanuatu Women's Centre, 2005 from Jalal 2009 (APDHR paper)

6 Makau, Chief Morrison Dick, 2005

7 Vanuatu Women's Centre as told to the writer, Vila, 2005

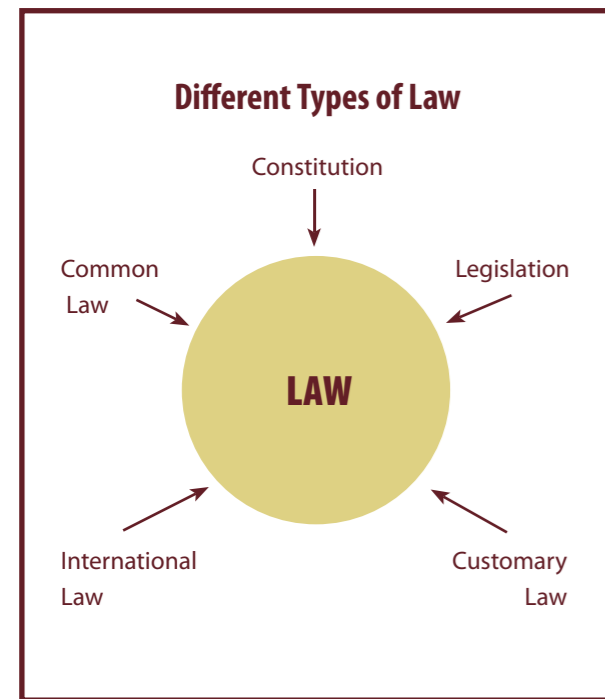
8 APDHR Paper, Jalal, 2009



## Legislation

Legislation is the term used to cover the range of legal instruments produced by the legislature. Legislation is a broad term and can be used to refer to **Acts of Parliament** (also known as statutes) or **subsidiary legislation**, such as **regulations** and **rules**.

In federal countries, such as Papua New Guinea, the Federated States of Micronesia and Solomon Islands, the powers to make new legislation are split between the national parliament and the state or provincial parliaments.



## Customary law

Customary laws also known as 'indigenous' laws are the laws that existed before the introduction of written law in the Pacific. Customary law governs many issues of traditional importance such as dispute resolution, inheritance, land ownership and the protection of traditional knowledge. They are usually based on principles of mutual respect and obligation between community members and have historically been interpreted and enforced by the chiefs.

While many Pacific Island countries continue to recognise the importance of customary law, nowadays it is applied in accordance with a country's Constitution. If customary law is inconsistent with the Constitution, for example it contradicts the Bill of Rights, it can be legally questioned.

## TIP! Customary Law

Customary law is important in the Pacific Islands. Customary or indigenous laws pre-date written laws, sometimes by many years. However, the Constitution is the primary and most important law of the country. If customary law conflicts with the Constitution, especially the Constitutional Bill of Rights then it can be questioned by the courts.

Interpreting customary law can sometimes be difficult. While respect for traditional practices is important, customary law should uphold basic principles of human dignity and respect. *All* laws should reflect the evolving values of a society and this principle applies equally to customary laws. Sometimes clashes can arise between customary and parliamentary laws. For example, the Fijian traditional system of apology (*bulubulu*) which is intended to cement clan solidarity is sometimes used to ask a victim's family for forgiveness for what an offender has done to the victim. Criminal laws passed by the legislature should require the offender to be prosecuted and punished. However, as a compromise, it may be that traditional systems are used to complement but not reduce a formal sentence.

## Common law or 'Case Law'

The phrase 'common law' refers to decisions that have been made by judges when they have interpreted legislation in court or addressed a legal problem in the absence of clear legislation. This is also known as 'common law', 'precedent', or 'case law'. Common law refers to the process of developing precedents, whereby one judge interprets a question of law, and other judges rely on that interpretation to guide them in subsequent cases.

Judges who sit in higher courts can overturn precedents made by judges who sit in lower courts.

*For tips on strategies to change common law through 'strategic litigation' see p.63 in Chapter 3*

## International law

Increasingly, Pacific Island courts are using international law to help them to interpret domestic laws. Specifically United Nations conventions, treaties and agreements, as well as regional agreements between countries, are being relied upon by judges in their decisions.

International human rights law is a particularly important area of international law. The **International Bill of Rights** consists of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) which protects human rights such as the right to vote and the right to freedom of expression, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which protects rights such as the right to food and the right to education. International human rights law is considered by many to be customary

– deriving from the widely accepted principles of equality and human dignity. Because of this human rights law can be applied in domestic settings even when a State has not ratified a particular human rights treaty.

*For tips on lobbying using international mechanisms see p.64 in Chapter 3*

Papua New Guinea,<sup>9</sup> Tuvalu<sup>10</sup> and Fiji<sup>11</sup> have provisions within their Constitutions that allow domestic courts to look to international and regional laws when interpreting domestic law. In some countries the courts have gone so far as to draw on treaties and conventions that have not been ratified by the State.<sup>12</sup>

## Applying Non-Ratified Human Rights Treaties in The Domestic Courts

### Kirisome & Ors v Attorney General and Commissioner Office (Samoa 2002)

In 2002 the Supreme Court of Samoa used the European Convention on Human Rights (ECHR) to decide whether a man's right to equality before the law had been violated. M, a 57 year old police officer, argued that the termination of his service with the police force on the basis of age was unfair and discriminatory. M was dismissed on the grounds that he had reached the retirement age of 55 and his dismissal would provide opportunities for younger officers in the force to progress in their careers. The Court referred to Article 14 of the ECHR which states that unequal treatment must be carried out for a legitimate aim and the means used to achieve this aim must be proportionate. The Court ruled that in the case of M the means were disproportionate to the objective. Other older officers in worse health had not been dismissed from their jobs and therefore he had been treated unfairly.

### R v Vola (Tonga 2005)

In 2005 the Supreme Court of Tonga applied the International Convention on Civil and Political rights even though Tonga had not ratified this treaty. The Court had to decide on the punishment for a man convicted of murdering another by hitting him repeatedly with an iron bar – a life sentence or the death penalty. Article 6(1) of the ICCPR states that 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life', the Court ruled the death penalty to be too arbitrary a punishment for the crime and gave a life sentence.<sup>13</sup>

9 Constitution of Papua New Guinea, Article 39(3), [http://www.paclii.org/pg/legis/consol\\_act/cotisopng534/](http://www.paclii.org/pg/legis/consol_act/cotisopng534/)

10 Constitution of Tuvalu, Article 15(5), [http://www.paclii.org/tv/legis/consol\\_act/cot277/](http://www.paclii.org/tv/legis/consol_act/cot277/)

11 Constitution of Fiji, Article 43(2), [http://www.paclii.org/fj/legis/num\\_act/ca1997268/](http://www.paclii.org/fj/legis/num_act/ca1997268/)

12 In *Wagner v Radke* (Samoa 1997) the Courts applied the principles of the Hague Convention in a Child Abduction matter even though Samoa was not a signatory and party to the Convention

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TABLE 4. PACIFIC ISLAND TABLE OF TREATY RATIFICATION

|                                | ICESCR           | ICCPR            | CERD             | CEDAW                       | CAT              | CRC       | CRMW | CRPD             |
|--------------------------------|------------------|------------------|------------------|-----------------------------|------------------|-----------|------|------------------|
| Cook Islands                   | 28-Dec-78 via NZ | 28-Dec-78 via NZ | 22-Nov-72 via NZ | 1-Oct-85 via NZ & 11-Aug-06 | 10-Dec-89 via NZ | 6-Jun-97  |      | 25-Sep-08 via NZ |
| Fiji                           |                  |                  | 11-Jan-73        | 28-Aug-95                   |                  | 13-Aug-93 |      | 2-Jun-10         |
| Kiribati                       |                  |                  |                  | 17-Mar-04                   |                  | 11-Dec-95 |      |                  |
| Marshall Islands               |                  |                  |                  | 2-Mar-06                    |                  | 4-Oct-93  |      |                  |
| Federated States of Micronesia |                  |                  |                  | 1-Sep-04                    |                  | 5-May-93  |      |                  |
| Nauru                          |                  | S:12-Nov-01      | S:12-Nov-01      |                             | S:12-Nov-01      | 27-Jul-94 |      |                  |
| Niue                           | 28-Dec-78 via NZ | 28-Dec-78 via NZ | 22-Nov-72 via NZ | 1-Oct-85 via NZ             | 10-Dec-89 via NZ | 20-Dec-95 |      | 25-Sep-08 via NZ |
| Palau                          |                  |                  |                  |                             |                  | 4-Aug-95  |      |                  |
| Papua New Guinea               | 21-Jul-08        | 21-Jul-08        | 27-Jan-82        | 12-Jan-95                   |                  | 2-Mar-93  |      |                  |
| Samoa                          |                  | 15-Feb-08        |                  | 25-Sep-92                   |                  | 29-Nov-94 |      |                  |
| Solomon Islands                | 17-Mar-82        |                  | 17-Mar-82        | 6-May-02                    |                  | 10-Apr-95 |      | S:23-Sep-08      |
| Tonga                          |                  |                  | 16-Feb-72        |                             |                  | 6-Nov-95  |      | S:15-Nov-07      |
| Tuvalu                         |                  |                  |                  | 6-Oct-99                    |                  | 22-Sep-95 |      |                  |
| Vanuatu                        |                  | 21-Nov-08        |                  | 8-Sep-95                    |                  | 7-Jul-93  |      | S:17-May-07      |

KEY:

|        |   |
|--------|---|
|        | Indicates the date of adherence: ratification, accession or succession                          |
|        | Indicates the date of signature   |
|        | Ratified or signed by New Zealand on behalf of the territory.                                   |
| ICESCR | International Covenant on Economic, Social and Cultural Rights                                  |
| ICCPR  | International Covenant on Civil and Political Rights  |
| CERD   | Convention on the Elimination of All Forms of Racial Discrimination                             |
| CEDAW  | Convention on the Elimination of All Forms of Discrimination Against Women                      |
| CAT    | Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment        |
| CRC    | Convention on the Rights of the Child   |
| CRMW   | Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families |
| CRPD   | Convention on the Rights of Persons with Disabilities   |

CASE STUDY: Kiribati's Discriminatory Rape 'Corroboration' Rule

A prosecution lawyer from Kiribati attempted to apply non-ratified international human rights law in the domestic courts. She tried but failed to convince the court that the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) should be used to prohibit the gender discriminatory 'corroboration rule' in rape cases which requires a rape complainant's evidence to be corroborated independently by both witnesses and medical evidence of the rape. This rule is based on an assumption that women lie about sexual matters; and that they need to show physical evidence of proof of resistance. In 2003, RRRT and civil society partners successfully lobbied for the passing of the Evidence Amendment Act 2003 which included a provision making the corroboration warning unlawful.<sup>14</sup>

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HOW LAWS ARE MADE

To engage in legislative lobbying it is important to first understand the process of how laws are actually made. The executive and the legislature both play important roles in making laws and a successful lobbying strategy should target both of these branches of government. The judiciary, as we have seen, also play an important role in developing 'precedent' or common law, and it is possible to help to shape the body of common law through a process called 'strategic litigation' which we will talk about in Chapter 3. With regards to roles and responsibilities in the law making process, the main thing to remember is that the executive is usually responsible for drafting a proposed law (known as a 'Bill') and the legislature is usually responsible for reviewing, amending and/or approving the law.

TIP! Lobby The Executive and The Legislature

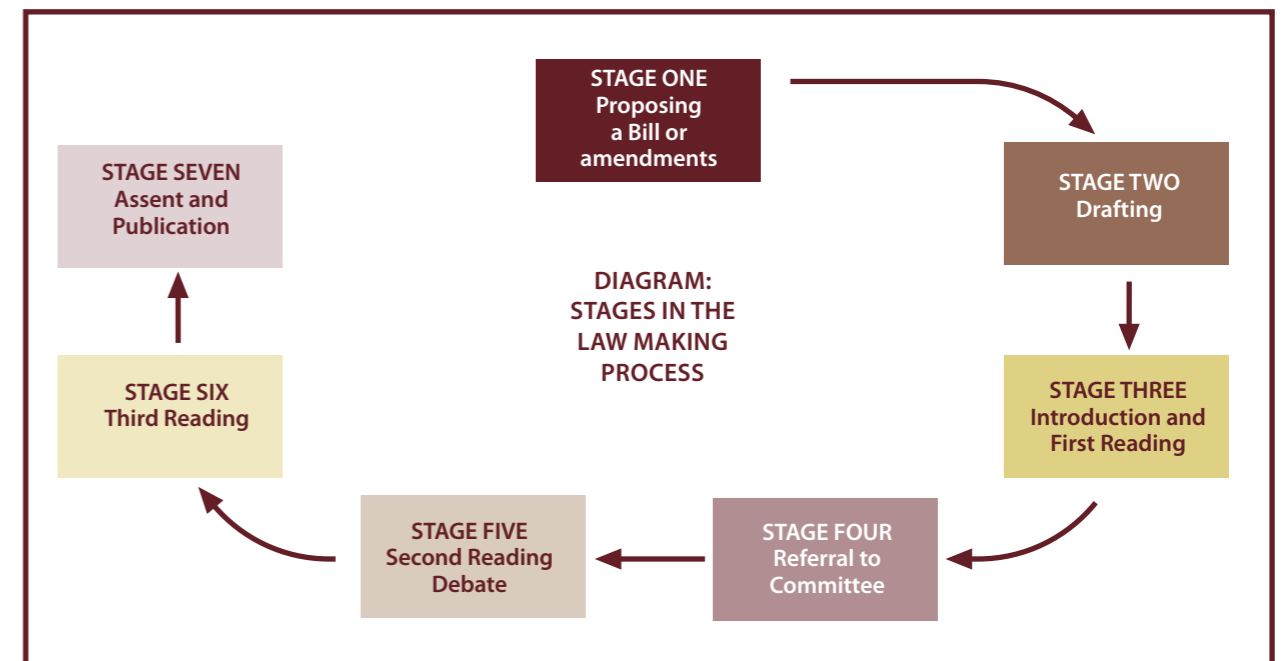
It is important when lobbying to ensure that you target both the executive and the legislature as both arms of government have important roles to play in law making. The executive (usually known as 'the Government') is responsible for developing new legislation. The legislature (often known as 'Parliament') is responsible for approving bills and reviewing or amending existing laws.

This section describes the law making process in Westminster-style systems (slightly different from the American Presidential-style system) highlighting key differences between the systems where they are important for lobbying.

Stage One

Proposing a 'Bill' or amendments to legislation

A Bill is a proposed new law that has not yet been enacted. Most Bills are proposed and drafted by the executive. Usually a Minister or Ministry will propose a **Government Bill** that is relevant to their area of responsibility. For example, the Labour Minister might propose a Bill to criminalise sexual harassment in the workplace or the Justice Minister may propose a Bill to bring in new punishments for domestic violence and rape. Sometimes the **Attorney General's or the Solicitor General's Office** may take the responsibility for drafting a Bill or amending a law.





## THINK ABOUT: Who is Taking the Lead on Your Law?

When lobbying for legislative change, it is important to be aware of who in government is responsible for what. In particular, you should know which individual or office is taking the lead on amending an existing law or developing the law that you are interested in.

If a proposed law or amendment is particularly important, complex or controversial, the Government may request the **Law Reform Commission** if one exists, to consider it in more detail. Law Reform Commissions often call for submissions from the public giving NGOs a unique opportunity to propose amendments to the law, even to suggest the drafting of specific provisions. However only very few countries in the Pacific have proper Law Reform Commissions and in most, legal drafting is carried out by the Attorney General's Office.

The Law Reform Commission will develop an **Issues Paper** or **Discussion Paper** complete with their recommendations for consideration by Cabinet. This is the opportunity for Cabinet to debate the merits of the proposed law or amendment. If Cabinet approves, they will sign off the paper and a general framework for the amendments will be suggested.

In some cases a commissioner may be appointed to lead the law reform process. This is what happened in Fiji with the Family Law reform process.

## Stage Two Amending or Drafting a Law

At this point, the Attorney General, Solicitor General or Parliamentary Counsel will be given the task of drafting the Bill or proposed amendments. The drafters must ensure that the Bill is consistent with existing legislation and is suitably framed for its purposes. Of course in some cases, it will be desirable for a new Bill or amendment to override existing legislation. In these cases, other laws may need to be amended to make sure that they are brought into line with the provisions of the new law, or the existing law may need to be revoked.

Once a Bill is completed it is sent to the First Parliamentary Counsel and then to Cabinet for approval. Following approval from Cabinet, the Bill is ready to be tabled in Parliament.

## Public Consultations

Historically, most Pacific Island governments have tended not to consult the public when they have developed new laws: most laws have simply been drafted by the executive, endorsed by Cabinet and then tabled in Parliament. However in many countries public participation is an important step in developing a law. Sometimes Ministries will undertake public consultations before drafting even begins in order to get advice from experts, CSOs, and other interested people on how best to structure the law. Draft Bills are also sometimes circulated for public comment before they are finalised and considered by Cabinet. Public consultation is a key element of 'good governance' policies which stress the need for people to participate in their own governance.

## Private Members' Bills

Private Members' Bills (PM Bills) can be very useful tools for legislative lobbyists. PM Bills are proposed by non-executive members of the legislature. This means that all MPs are able to propose new laws – they do not need to be an influential member of Cabinet with access to Ministry staff and acknowledged expertise in a given area. PM Bills are a very important entry-point for CSOs engaged in legislative reform.

In the Pacific, one of the main obstacles to putting forward PM Bills is that non-executive members of the legislature do not have ready access to government lawyers or legislative drafters. Nonetheless, this restriction can also be a positive for lobbyists as it means that organisations with the willingness and expertise can assist with drafting bills. In many countries outside the Pacific, CSOs have used PM Bills to promote their own issues. For example, in the UK a number of Freedom of Information (FOI) Bills were developed by the Campaign for FOI and passed as PM Bills, before an omnibus FOI Act was passed in 2000.

PM Bills are sometimes used by legislatures to deal with so-called 'conscience issues' like the death penalty and euthanasia. For example, in Australia a federal MP introduced a PM Bill to overturn a law which allowed for euthanasia. Electorates and civil society can pressure their MPs to put forward a PM Bill on social issues or issues of local importance.

## Stage Three

### Introduction and First Reading

When a Bill is ready to be tabled in Parliament, the Clerk of Parliament will list it on the **notice paper** or agenda. The Clerk will introduce the Bill to the legislature and then a sponsoring Minister or Private Member will provide a signed copy to the Clerk with an explanatory memorandum explaining the reasons for the Bill and outlining its provisions. This is called the **Introduction**. The Clerk will then read out the long title of the Bill. This is known as its **First Reading**. Copies of the Bill and explanatory memorandum are then given to all Members of Parliament and are also made available to the public. Some parliaments also require a Second Reading. During the First or Second Reading, the responsible Minister or Private Member will explain the purpose of the Bill, its general principles and scope.

At the end of this stage, Members will cast a vote to decide whether the Bill should go any further.

### EXPLANATION: Conscience Votes

A conscience vote, sometimes referred to as a free vote, is where members of the legislature vote on issues according to their personal beliefs – or how their conscience dictates, as opposed to voting according to their political party's official take on an issue. Conscience votes may be used for particularly controversial pieces of legislation, for example concerning religion, ethics, or human rights.

After the Reading stage, a future date is set for discussions about the Bill to continue. This pause is intended to give MPs time to study the Bill and to provide an opportunity for public discussion.

Unfortunately, some governments will move on immediately to the Third Reading of the Bill, without providing time for enough debate within the legislature, circulation of the Bill amongst the public or detailed consideration by a committee (stage four).

## How Much Time is Too Much? Or Too Little?

When Parliament is debating a potential Bill timing is important. On the one hand, it is better that they take their time to thoroughly debate the issues involved, the legal ramifications, and to properly consult the public and experts for their views. On the other hand, taking a long time over a Bill can be a way of stalling its progress through the legislature. Politicians who are opposed to the Bill may use this as a tactic to not get it passed.

It is important to strike a balance between giving the Bill enough time for it to be considered thoroughly and taking so much time that the Bill is never enacted, or is enacted at a point where it is no longer timely or relevant.

## Stage Four

### Referral to Committee (optional)

A Bill may be referred to a committee known as a **Standing** or **Select Committee**. This is especially likely if it is complex, controversial, or of particular national interest. The committee might already exist or it may be set up specifically for the purpose of reviewing the Bill. This review process usually strengthens the Bill and gives it greater legitimacy by taking on board the views of the public. In the Pacific, most committees will hold some form of public hearing, as well as calling for written submissions from the public and civil society to enable them to voice their views. Submissions can usually be made in writing or orally.

The Committee will hear the views of both government officials and the public and analyse the Bill in detail before making their recommendations to the legislature. The recommendations are finalised in a Committee Report - members of the Committee who disagree with the findings can submit their own minority report.



## Stage Five Second Reading Debate

The **Second Reading Debate** is one of the most important stages and it is now when the Bill is debated in Parliament. This is the opportunity for Members of Parliament who support the Bill to defend it, for those who oppose the Bill to voice their concerns, for amendments to be proposed, and for the principles and finer details of the Bill to be openly discussed.

If the Bill is particularly complex or important it may be referred to the so-called **Committee of the Whole** which means that it will be considered in detail, clause by clause, by the entire legislature.

At the end of the Second Reading Debate, the legislature will vote on the Bill, either clause by clause or in its entirety.

## Stage Six Third Reading

The **Third Reading** is the final stage the Bill will pass through in the legislature (unless the legislature has a second chamber such as a **Senate** or **Legislative Assembly** in which case it is passed to this chamber for its consideration). The Third Reading is often completed on the same day as the completion of the Second Reading. The Bill is read a final time, minimal discussion ensues and a final vote is taken.

In a legislature which has two chambers, such as in Fiji and Palau, both who have a Senate, a Bill is transmitted to the second chamber for consideration once it completes its Third Reading. If the second chamber has the power to amend the Bill, and any amendments are passed, the Bill will then need to be resubmitted to the first chamber and the additional amendments considered by them.

### EXPLANATION: The 'Second Chamber'

Sometimes a legislature is divided up into two 'chambers' as is the case in Fiji and Palau. In these circumstances, legislation will go onto the second chamber for consideration after the first chamber. The role of the second chamber is usually to review and scrutinise Bills rather than initiate them and to suggest textual amendments.

## Stage Seven Assent and Publication

**Assent** is the stage when a Bill officially becomes law. In some Pacific Island countries, the head of the legislature – the Presiding Officer – will 'certify' the Bill and it will automatically become law. In other countries, a Bill must receive the assent of the Head of State in order to become law, usually requiring his or her signature or seal to be placed on the final copy of the Bill. Usually, copies of the law are then often printed and made available at the government printers. Although the Head of State usually gives automatic approval to Bills that he or she receives they can also forward them to others for consideration if they feel it necessary. For example, recently the President of Vanuatu referred a Bill to the High Court in order to ascertain if it complied with the Constitution.<sup>15</sup>

Some Bills include a set time when the law will come into force. This is called a **commencement provision** and is often drafted to read 'This Act comes into force on X date' or 'This Act comes into force on the date of gazetta!'. If a date of enforcement is not included, the Attorney General will decide the date and a notice of this date is put in the official government journal or '**Gazette**'. Unfortunately, in some Pacific Islands countries, even after Bills have passed through the legislature, governments have failed to gazette them. This means that they have never officially come into force.

# Legislative Lobbying

# CHAPTER THREE

<sup>15</sup> In July 2008 the Family Protection Act was referred to the Vanuatu High Court by the President for a decision on whether the Act accorded with the Constitution.



It is important for everyone to have a say in ensuring that the laws of their society are fair and appropriate. As this toolkit has been written for people who want to lobby for legislative change in the Pacific Islands it is important to take into account the unique context of the Pacific and how this will impact upon your lobbying efforts. Experience has shown that lobbying for legislative change can be a long and complex process which often requires a long and sustained effort. In the Pacific changes to legislation tend to occur slowly and can be held back by influences such as changing or unstable governments and limited resources.

This section sets out some of the key issues you may want to consider when undertaking lobbying and some strategies and techniques you may wish to consider using. It aims to provide the lobbyist with some essential tools and methods that will assist with lobbying for the amendment of existing legislation or the introduction of new legislation.

The smallness of Pacific countries are a mixed blessing – on the one hand, the close ties of kinship, friendship, Church and community often mean that you know those who are in positions of influence, and may even be related! It can also mean that you may feel more isolated if you are seen to be questioning, or querying current

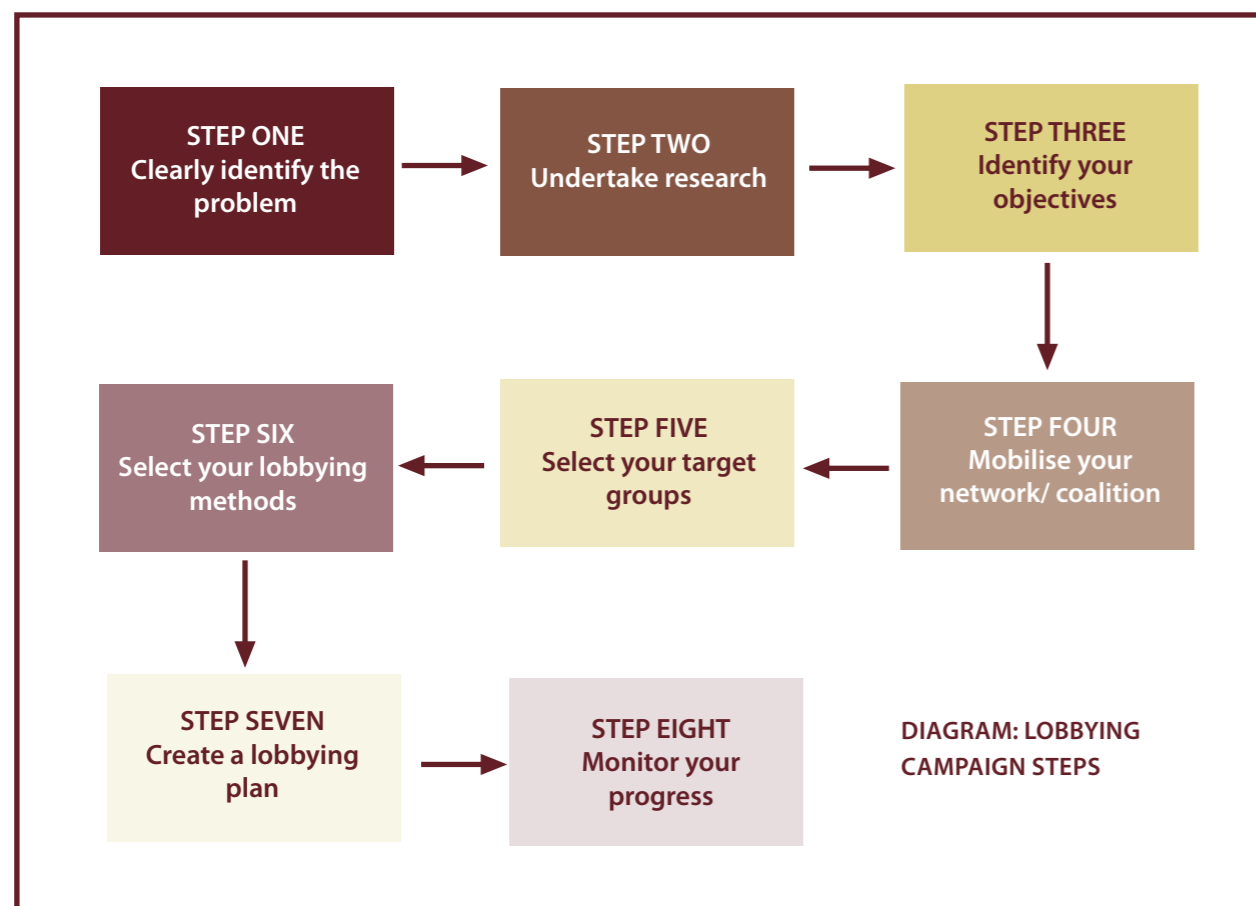
laws and policies. People may feel that you are criticising and may take this personally.

Because of this you will need to decide when lobbying is appropriate, whether it will achieve your aims, and what methods will best work in your particular situation. Sometimes lobbying might not be the most appropriate action to take to achieve your objectives especially if you have very limited resources. This section will help you to identify when lobbying around legislative reform might be appropriate to your cause and give you a number of strategies for designing a successful lobbying campaign which is tailored to fit your unique circumstances.

## Steps to undertaking a lobbying campaign

There are a number of steps involved in undertaking a lobbying campaign, as illustrated in the flow Diagram.

- Early steps involve collecting information in order to clearly understand the problem at hand and identify lobbying objectives that will respond adequately to the problem.
- You must then move on to selecting the people that are going to be central to your campaign – from those



who will become part of your lobbying group or coalition to people in government who you will direct your lobbying towards. It is important to target your lobbying towards individuals who are in a position of power to make legislative changes or to influence those who do.

- Before you begin your lobbying you will also need to look at the whole range of lobbying methods that are available and identify which are the most appropriate for your campaign. Lobbying methods can range from meeting individual parliamentarians in person, to coordinating letter writing campaigns, to marches on the street, to providing detailed legislative guidance for law makers. You will need to choose the methods that are the most appropriate for you in your particular circumstances.
- When you have decided all of the above, you will need to create a lobbying plan that sets out your objectives, lobbying targets, selected methods, timeframe and the roles and responsibilities of the members of your coalition.

As you begin your campaign, it is also important to monitor your progress towards reaching your objectives. If you find that you are not reaching your goals or are

not meeting your deadlines, you may need to reassess your methods and how realistic and achievable your objectives are. The sections below look at each stage of the lobbying process in turn and provide you with useful guidance and tips in planning and carrying out your campaign.

## Identifying the Problem

You will need to start your lobbying with a problem analysis to get a clear understanding of the problem, and what legislative change might be needed to counter that problem. It is important to take proper time to actually analyse the problem you are dealing with in detail so that you can get a better sense of what you want to see changed. Although it is often easy to have a general sense of what is wrong with something, it might not be so easy to work out the finer details of the problem and what exact steps need to be taken in order to address it. Working with legislation can be a complicated, multi-tiered process. It is worth remembering that not all problems have a legal or legislative solution. Some can be better addressed through policy change or training.



When undertaking problem analysis, you should begin by asking yourself the following questions:

- What exactly is the issue you are interested in? What is 'wrong'?
- Who is being harmed? Who or what is causing the harm – i.e. is it the responsibility of the Government to fix the problem or someone else's responsibility?
- Does the problem require a change in a policy, law, practice or something else?
- If the problem involves a legal issue, do any relevant laws already exist? What are the exact provisions that are relevant? Are they helpful or harmful to your issue?
- What is the problem with the current law? Do the provisions provide adequate protection or clarity? Do they violate rights or contradict the constitutional Bill of Rights? Do they contradict international human rights standards?
- Is the existing law incorrectly drafted? If so, how? Be specific about the changes needed. Do you need amendments, a new law or repeal of an old law?
- Is the existing law not being properly enforced or even enforced at all? If not, why?
- Does an appropriate law exist at all?
- Who will benefit from changes to the law? Who may be threatened by your proposed changes to the law and may become a potential opponent to your lobbying?
- What other stakeholders will need to be involved, including national and local government agencies, MPs, industry groups, other CSOs, church, peer groups, informal groups and so on?

## Research and Analysis

It will usually be necessary for you to conduct some research to ensure that you have all the background information you need and to fully answer the questions set out above. Accurate, up to date information should form the backbone of your campaign and your initial problem analysis may highlight gaps in your knowledge. You need to gather facts and hard data in order to be able to properly plan a campaign that will have an impact on law-makers. When you know your topic thoroughly, it will be much easier to convince legislators that they should follow your advice and bring about the changes that you are lobbying for.

**TIP!**

## Freedom of Information Laws can Help

In the Pacific today, only the Cook Islands has passed a freedom of information (FOI) law, which enables the public to access information from government bodies. FOI laws can be really useful tools for lobbyists because they protect the public's right to ask the Government for information. The Government must then disclose this information except if disclosing it could cause significant harm to a legitimate interest, such as national security.

Interestingly, a number of Pacific CSOs have engaged in lobbying around the enactment of FOI legislation. In Fiji for example, the Citizens Constitutional Forum has been lobbying the Government to pass an FOI law since 2004, and went so far as to draft a Model FOI Bill for their consideration. Likewise, in Vanuatu, both Transparency International Vanuatu and the Media Association of Vanuatu have been working to develop a civil society draft Bill that they can then use to lobby Government to pass a law.

You don't necessarily need to spend a lot of time and money to undertake research. Information about your chosen topic may already be available in the form of reports and articles - and simply doing some desk-based internet research will suffice. For other topics, you may have to conduct some more in-depth research to be clear on all your key facts.

## Qualitative and Quantitative Information

You should aim to gather a mixture of **qualitative** and **quantitative** information to help you to define your lobbying goals. Qualitative information refers to information that cannot easily be measured such as people's experiences around and opinions of a given issue. Qualitative information such as personal testimonies and case studies is extremely important when lobbying around human rights issues. Being able to demonstrate the personal impacts of legislation can be a key tool in convincing others of the need for change. Personal stories are especially useful to gather more support from the general public – people are more likely to support an issue if they can see the personal benefits of change.

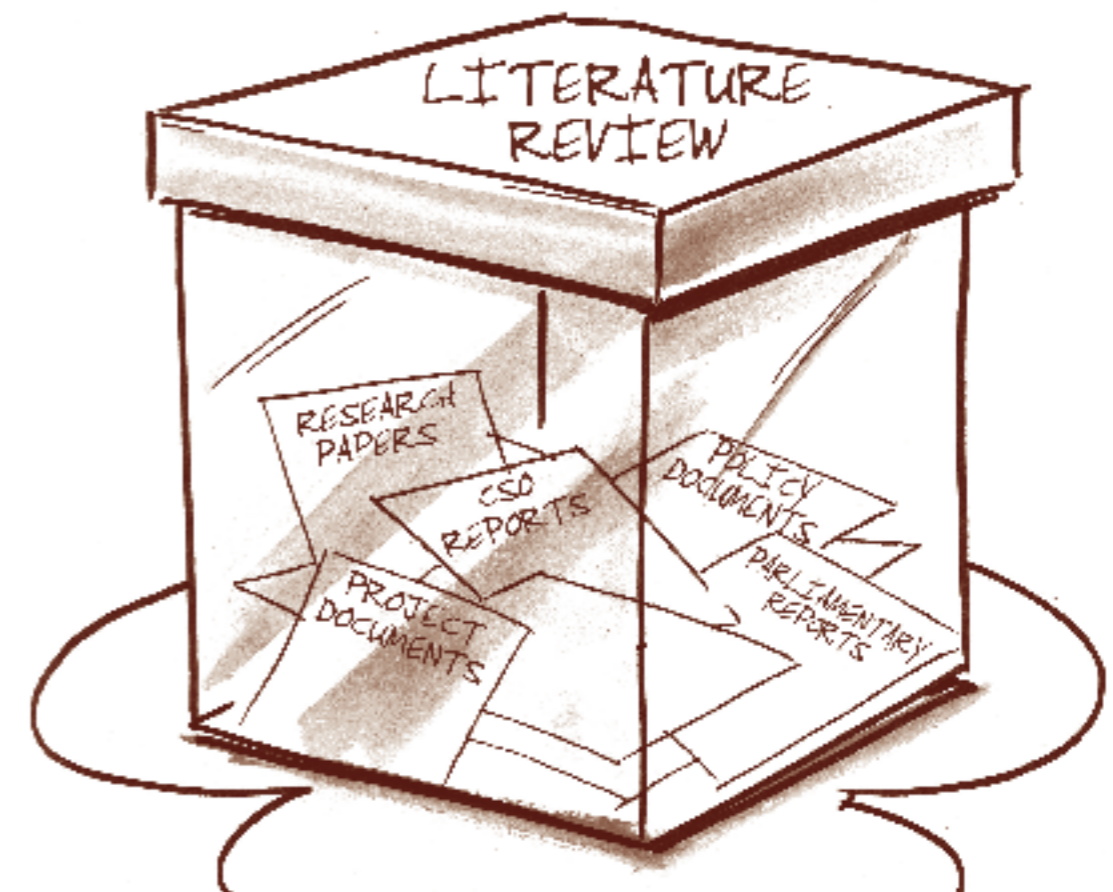
Quantitative information on the other hand refers to measurable data like statistics. For example, documenting a mother's experiences of her child being refused important medication is an example of gathering qualitative information. However, statistics around how many children under ten who received, or were denied access to that particular medication during a given time period would be an example of quantitative information.

## Desk-Based Research

Desk-based research should usually be your starting point because it is less resource intensive than gathering your own hard data from scratch. Often, the information you need to form the basis of your campaign will be contained in reports, journals and on websites - there is no point in doubling up on research that has already been done by others. At this stage, it might be useful to conduct a **literature review** of all the relevant research that has been carried out and published on your chosen subject. Published literature could come in the form of research papers published by governments, CSOs or academics, Law Reform Commission reports, government policy documents, parliamentary reports, project documents, relevant published case law, etc. Information such as

this can be found by conducting internet searches, in university, government and local libraries, and often in the libraries of like-minded organisations that work on your issue.

It is also important to conduct a review of all the existing laws that are relevant to your issue – this is known as a **legislation review**. For example, if you were lobbying for a freedom of information law, you should find out about provisions already contained in other legislation that protect people's rights to access certain types of information. Some environmental laws for example protect people's right to access information about materials or processes that may be harmful to the environment. It would also be important to gather together all the relevant provisions from laws which *restrict* people's right to access information – so secrecy laws and information security provisions would also be relevant. Remember not only to look at legislation, but also your country's Constitution including the Bill of Rights. Also look at subsidiary legislation such as regulations, as well as decisions of judges in relevant cases – known as 'case law.' You should also be aware of which international human rights treaties your country has ratified (see chart on p.30).





- In order to access this information you may need to consult people in government – often the Attorney General or Law Reform Commission will be able to help
- You should find out if there is a comprehensive database of enacted legislation that you can consult. Unfortunately, it is often the case in the Pacific Islands that such a database may not exist or will only cover recently enacted legislation
- Alternatively, you may find many of the relevant laws listed online on Paclii at [www.paclii.org](http://www.paclii.org). Paclii is a free database of statutes and judgements collected from South Pacific Island countries

Conducting a legislation review is the only way to gain an accurate picture of the current legislative landscape. Only with this can you know what needs to change and how any new laws or provisions will be affected by existing laws or provisions.

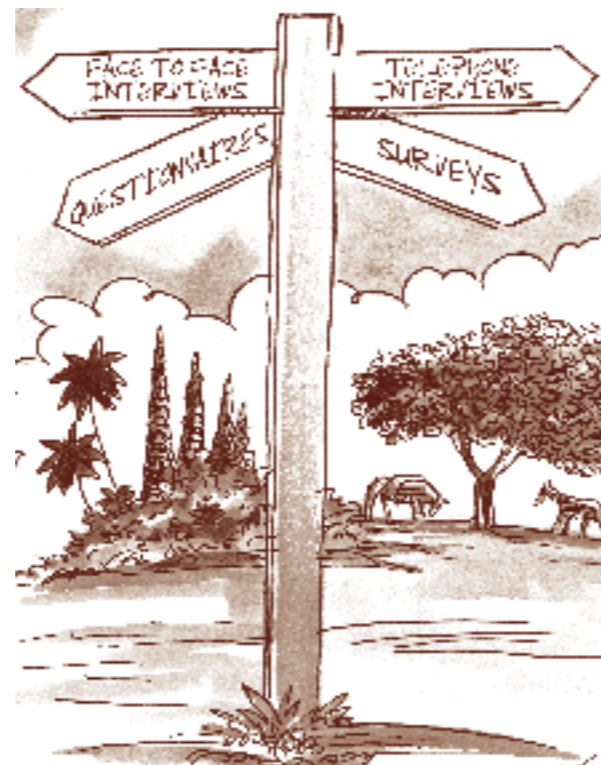
## Field Research

It may also be necessary for you to carry out some field research to get a complete picture of the extent of the issue at hand. Field research can take the form of surveys, questionnaires, interviews conducted face to face or over the telephone, and discussion or focus groups where people's opinions are gathered.

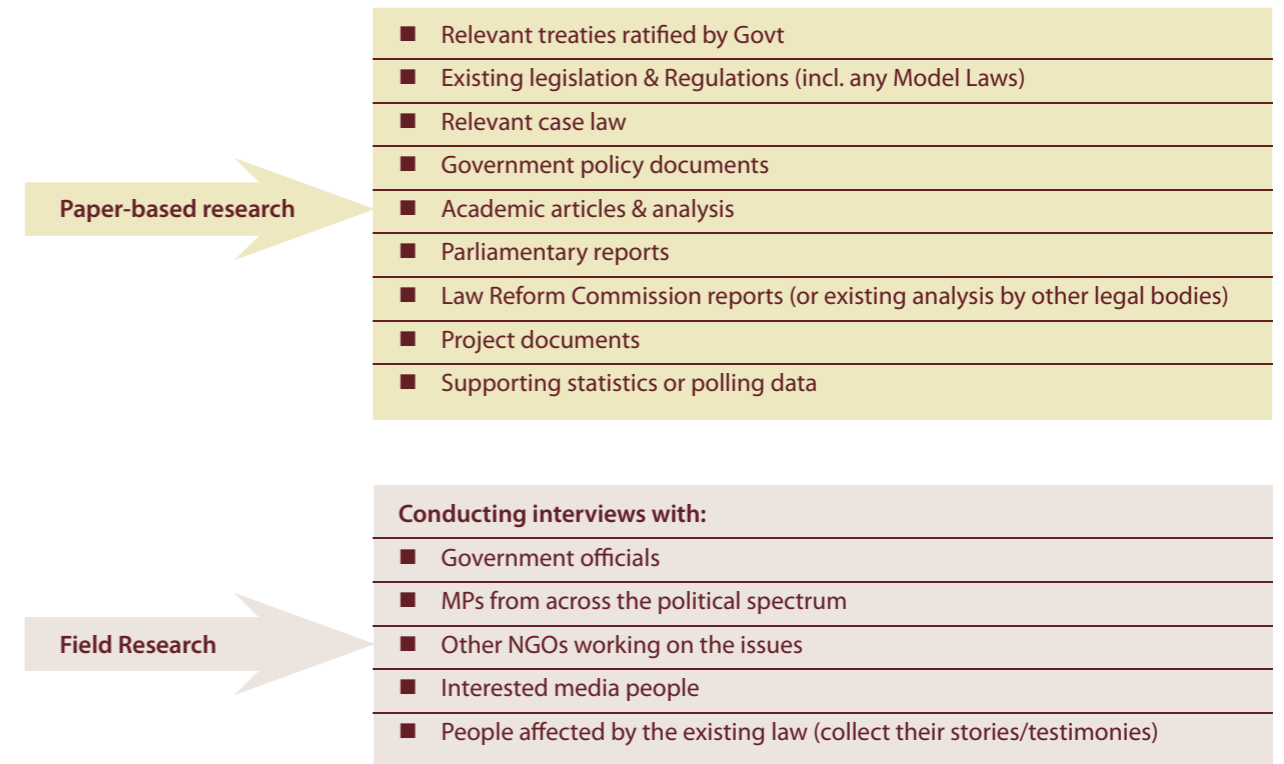
Make sure that you thoughtfully select people to interview, ensuring you talk to people from a number of different social groups. As well as talking to the community, you should also gather information from people in government who have experience of implementing laws. You should interview politicians from across the political spectrum, Ministers, Members of Parliament, interested media representatives and CSOs that are, or have previously worked on your issue.

As field research can be costly and time consuming, you should carefully weigh up the costs and benefits involved. Sometimes the benefits gained from gathering your own data can outweigh the extra time and money you will have to put aside for these activities. However, sometimes you may feel that the issue is just too pressing to justify taking extra time to conduct field based research, or you simply may not have the funds to carry out a full analysis. If lack of funding is the main issue, it may be possible to apply to a donor for funding for your research project.

Remember that the more research you carry out, the better informed your lobbying strategy will be. However, it is also important to know when you have carried out enough research and should move on to designing your lobbying strategy and starting your campaign.



## DIAGRAM: PAPER-BASED AND FIELD RESEARCH



## TIPS! Conducting Research

### Students

- Many CSOs engaged in lobbying have students or interns conduct research for them and the University of South Pacific is an excellent resource in this context<sup>16</sup>

### Volunteers

- You could apply for a volunteer from overseas to work with your organisation to support a particular campaign. Volunteers often bring a set of high level skills such as legislative drafting, research or lobbying expertise and can be very useful in helping you reach your campaign objectives. Some organisations that provide skilled volunteers to Pacific organisations include VSO (Volunteer Services International), AYAD (Australian Youth Ambassadors for Development), AVI (Australian Volunteers International) and VIDA (Volunteering for International Development Australia)

### Expert Networks and Regional Organisations

You can draw on expertise from national or regional CSOs and NGOs. Pre-established networks and civil society coalitions can provide an excellent source of advice and support, including research services. Don't be afraid of contacting donors and development partners to assist you as well. Regional programmes such as RRRT, United Nations agencies, such as UNDP, United Nations Development Fund for Women (UNIFEM) and United Nations Children's Fund (UNICEF) and regional inter-governmental organisations like the Secretariat of the Pacific Community and the Pacific Islands Forum Secretariat have a wealth of information and resources available to them, and they usually very willing to share it with local organisations.

<sup>16</sup> See the website for the University of the South Pacific <<http://www.usp.ac.fj/>>



## Research Bias

Research bias can occur when our assumptions about the topic that we are researching can influence the data that we collect or the way in which we analyse that data. It is important when conducting research and analysing the data we have gathered, that we are aware of the influence of research bias and ensure that we try to take steps so that it doesn't give us an inaccurate assessment of the extent of the problem.

Research bias can also affect the way in which we design consultations, interviews or questionnaires and also the way in which people respond to them. For example, if you are researching the prevalence of domestic violence in homes, your assumption that women are the main victims of domestic violence and men are the main perpetrators, may cause you to primarily interview female partners in heterosexual relationships about their experiences of domestic violence. Your research would then fail to document evidence of domestic violence committed by women against men in heterosexual relationships or against either partner in homosexual relationships.

People's responses to questionnaires or interviews can also be affected by bias. In particular, people often

respond to questioning in the way that they think they are expected to respond – in other words, people guess what the interviewer's assumptions are and give them the answer they think is expected. This can bias the results and give you a false impression of the complexities of a situation. People's answers may also be influenced by their anxieties over how they will be judged if they give an honest answer – this is particularly true when you are dealing with sensitive issues such as domestic violence, sexuality and crime. For example, if you are interviewing people about illegal or taboo activities people may not be frank with you for fear of repercussions or social stigma.

To overcome research bias, it is important to consider a broad range of views and gather information from a varied range of sources including ones which may contradict your own. You need to be aware not only of opinions in favour of your ideas, but also to identify who may disagree with you and why.

## Research Ethics

When carrying out any research, it is important that you do so in a way that is ethical, socially and environmentally responsible and does not violate the rights of any of the individuals who are taking part in your research activities.

It is important to be transparent and open about your methods and aims at all times.

Anyone who participates in your research activities should be fully briefed on the reason for your research and any risks which may be involved in their taking part. Their involvement in the research should be dependent upon their informed consent to take part.

Lobbying around law reform can be mistakenly viewed by some governments as 'political' and 'trouble making', especially when government officials do not yet fully understand your arguments for law reform. When participants are involved in research that could be potentially viewed as politically controversial, it is important that you protect their privacy by respecting their confidentiality.

## Conducting Analysis

Once you have conducted your research, you will need to analyse the data that you have collected. Through this process you will make sense of the information available and its implications for your lobbying objectives and strategy. Analysing information means testing your original idea of the problem against the facts that you have gathered. It may be that the information you have gathered completely disproves or confirms your original understanding of the problem. Alternatively, it is more likely that the information will refine your understanding of the problem and demonstrate that the situation is more complex than you originally thought. Analysis may take the form of writing a detailed analytical report

looking at the trends in the information that you have gathered and the implication of those trends for legal reform. If you have been working with quantitative data you will probably need to enter your findings into a database and extract statistics that can also be used as evidence in your report.

Again, it is important to note your own biases in analysing the data. Analysis is not manipulating the data you have gathered in order to prove your theory. Rather, you should try to be as objective as possible and come to an accurate understanding of the matter in hand. Having a balanced and well informed analysis of the issue will go a great way towards adding legitimacy to your campaign.

## Social Analysis

Social analysis involves considering the implications of the social and political environment in which people live, and how this affects their livelihood, rights and access to services. Social analysis is important when considering human rights because it aims to bridge the gap between the policy/politics and people's everyday lives and experiences. Conducting social analysis will help you to design your lobbying objectives so that they respond appropriately to any political or social challenges.

## Cultural Analysis

Cultural analysis involves considering the way in which your society's cultures impact upon the issue that you are researching. Cultural analysis is particularly important in the Pacific Islands as traditional cultures and governance

### TIPS! Dealing with Research Bias

#### Be aware

- Be aware of your own research biases and how your presumptions may have an effect on the way you design your research, gather and analyse data. This is an important step in ensuring that they do not undermine the validity of your research

#### Do not ask leading questions

- Make sure that when you interview people or design questionnaires, that the questions you use are not based on unstated assumption. For example, 'Why do you think that women are the primary victims of domestic violence?' is a much less open question than 'What role do you think gender plays in domestic violence?'

#### Expect to have your theories challenged

- Expect to come across evidence that challenges the validity of your theory – do not dismiss it. Instead, use this evidence to refine your knowledge of the subject and to build more sophisticated arguments in support of your cause

#### Gather information from a broad range of sources

- Ensure that you collect evidence from as broad a range of sources as possible. Although it is important to collect information about and from the people who are directly affected by the legislation, it is also important to understand different points of view from the wider community. Alternatively, this research may uncover ingrained prejudices that may exist against your primary group and may help you better understand what legislative and other changes should be made to overcome these prejudices

#### Do not generalise

- Do not assume that all people from an identified social group have the same opinions or experiences of the issue that you are researching. Again, allow your research to challenge and refine your views – do not simply gather information which supports your theory

## Social Analysis

When conducting a social analysis of your research you should consider the following questions:

#### The political environment:

- Does your country have a stable, democratically elected Government?
- Is your country in a state of political or economic transition?
- Is your country undergoing or preparing for national or local elections?
- Does your country historically suffer from coups, votes of no confidence?
- Is corruption a problem in your government?
- Has your country historically experienced or currently experiencing conflict?

- Are all members of your society enabled to participate in government decision making? Is there an active civil society?

#### Social Inequalities:

- Are there groups of people who have historically been, or are currently being discriminated against?
- Are there groups of people who are poor or very poor? What factors contribute to their poverty?
- Do particular groups of people have difficulty accessing, or are they denied access to basic services such as healthcare, education, food and clean drinking water?
- Are there ethnic or social minorities in your country? Does their status as a minority affect their access to the above?



play such a large role in everyday lives. It is important for you to consider how cultural nuances have shaped the data that you have collected, and to take these into account when deciding upon your lobbying objectives. For example, have women traditionally worked in the home while men have worked in the public sphere? If you are lobbying for greater female representation in parliament for example then you will need to look at the cultural traditions and needs of your society and take them into account. Remember that cultures are fluid and constantly evolving. Just because a practice has been traditionally carried out, does not necessary mean that it still suits the needs and wishes of modern citizens. Always be aware and sensitive of cultural sensitivities.

## Economic Analysis

One area where lobbyists sometimes fail to conduct sufficient research is in finding out the potential financial costs of enacting and implementing a new law, and well as the costs of not enacting a new law. On the one hand, a law can be expensive to implement and it is important that your government allocates enough funding to enable the law to be put to effective use. It is likely that finances may be used as a counter-argument to your campaign, so it is important that you are aware of the potential costs when you are questioned about them. On the other hand, the cost of not exacting a law will often be significantly greater. For example, in the campaign for Fiji's Family Law Act, it was demonstrated that violence against women placed a huge financial burden on the Fijian economy. In the long run, the passing of the law would save the government significant amounts of money.

All change comes at a cost however the long term strategic goal of social transformation can benefit society and be cost effective in the long term.

## IDENTIFYING CAMPAIGN OBJECTIVES

Once you have thoroughly researched your issue and undertaken a thoughtful problem analysis, you need to clearly identify the objectives of your lobbying campaign. What exactly do you want to achieve? Too often campaigns are launched without a clear idea of what the campaign is hoping to achieve. Be clear on:

- What your key issue is
- What laws you want to change and what you believe the effect of changing the laws will be
- What your bottom line is – what will you absolutely not compromise on

This is the stage in which it is very important to stay focused and realistic. Keep your goals manageable and achievable. It may be unrealistic to expect that your campaign will end global warming, completely eradicate violence against women and children, or end nuclear disarmament – but you can work towards those larger goals through smaller legislative changes. For example, if your ultimate goal is to put an end to domestic violence, you may want to narrow that very large objective down to smaller, more concrete and achievable goals. An example of which might be getting your police force to agree to a 'no drop' policy for victims of domestic violence meaning that all reported incidents of domestic violence will be thoroughly investigated by the police.

## Financial Costs of Not Enacting Legislation

According to the Fiji Women's Crisis Centre...

*'There are substantial human resource costs associated with women being unable to participate fully in society, development and nation-building. Violence against women and children also incurs significant direct, indirect and opportunity costs to government, families and the community. The Governor of the Reserve Bank of Fiji estimates that direct and indirect costs in Fiji amount to around \$300 million per year, which is equivalent to 7% of Gross Domestic Product. For example, the Government incurs health care costs, costs incurred in court, law enforcement costs, welfare payments and jail costs. In addition, families suffer loss of earnings, legal and medical costs. Employers have loss of productivity and loss of output when women are absent due to violence.'*<sup>17</sup>

17 Fiji Women's Crisis Centre Violence Against Women in the Pacific Discussion Papers. <<http://www.fijiwomen.com/index.php/discussion-papers/37-discussion-papers/69-violence-against-women-in-the-pacific>> accessed March 2010

**TIP!**

## Long And Short Term Objectives

Objectives can either be **long term** or **short term**. For example, if your overall objective is to end domestic violence, your long and short term objectives may be as follows:

### Long term objective:

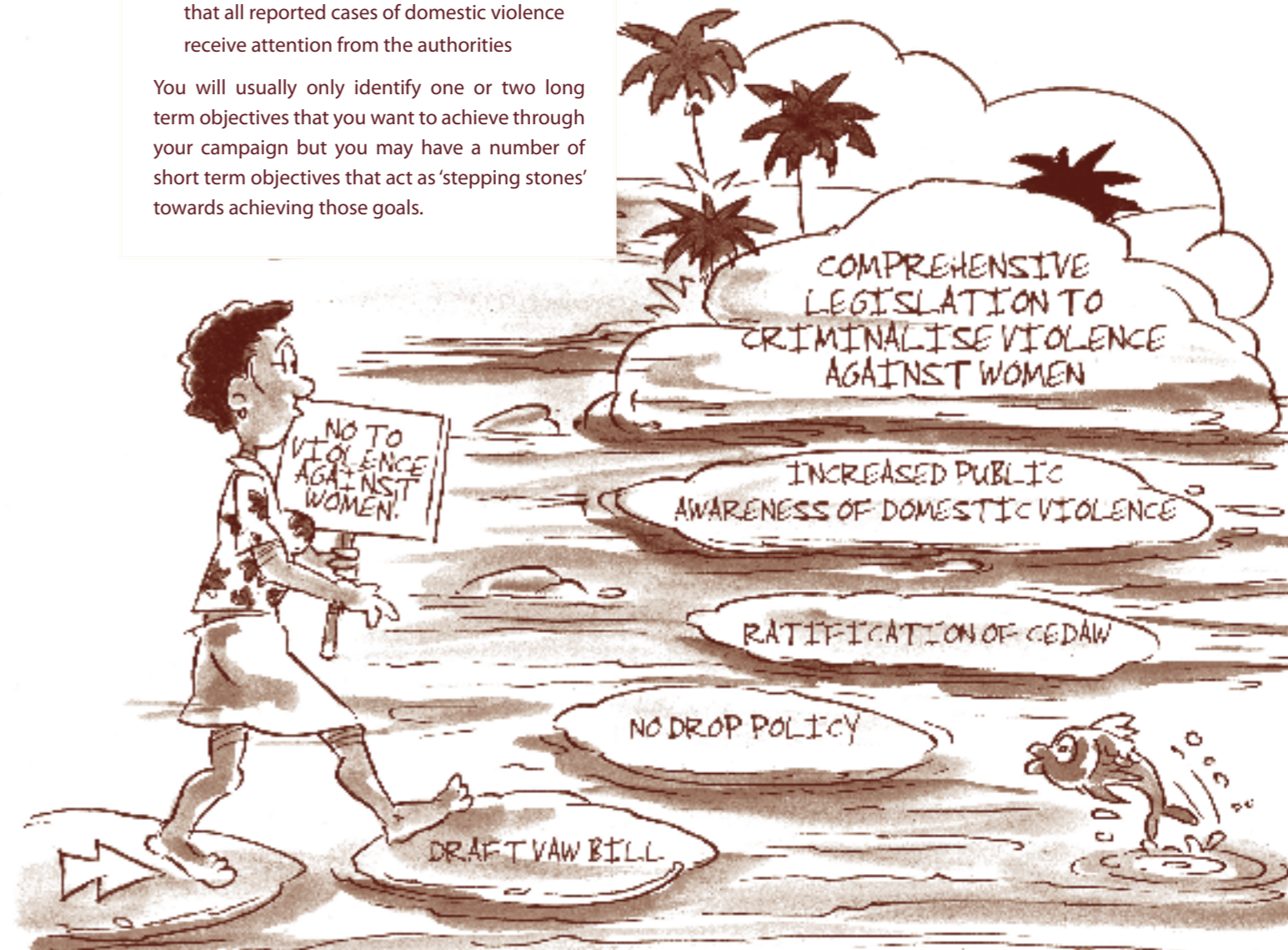
- Comprehensive legislation to criminalise domestic violence and protect the victims of domestic violence

### Short term objectives:

- Increased public awareness of current legislation that protects against domestic violence and the need for more comprehensive legislation
- Working towards a 'no drop' policy to ensure that all reported cases of domestic violence receive attention from the authorities

You will usually only identify one or two long term objectives that you want to achieve through your campaign but you may have a number of short term objectives that act as 'stepping stones' towards achieving those goals.

You should think carefully about precisely which laws should be amended and what exact legal provisions would help with the achievement of your campaign's short and long term objectives. For example, you should ask yourself if the ratification of an international human rights treaty would be a good first step towards the achievement of your long term objective. If you lobbied your government to ratify CEDAW (the Convention on the Elimination of All Forms of Discrimination Against Women) could this eventually lead to the enactment of comprehensive legislation protecting women against domestic violence? Do you think that your Constitutional Bill of Rights falls short of international human rights standards? Should you lobby to amend your constitutional rights before you lobby for new legislation?





## CHANGING LAWS: At What Level Does the Law Need to be Changed?

- Does your country's Constitution need to be amended? Are there human rights which are protected in the International Bill of Rights but are not currently protected in your constitutional Bill of Rights? Does this have a negative impact on people's lives in your country?
- Should your Government ratify an international human rights convention as a first step? For example, if you are lobbying for equal working rights for people with a disability, you might want to begin your campaign by lobbying for your government to ratify the UN Convention on the Rights of Persons with Disabilities. When

governments ratify international human rights conventions they have an obligation to ensure that their existing laws and policies are brought up to date with the provisions of that convention

- Are you going to try to change your country's body of case law? Will you engage in strategic litigation around a particular case to establish a precedent for a particular human rights end?
- Are you going to lobby for an entirely new law to be enacted or could you achieve your objective by lobbying for amendments in existing legislation?

Your research and problem analysis should have provided you with a picture of what exactly needs to change in the legislative landscape. Your objectives need not be set in stone however. As you begin your lobbying campaign and continue to learn in more depth about the issues at hand, you may feel that it is necessary to amend your objectives or reprioritise them. However, this is a decision that should be taken by everyone involved in your lobbying group or coalition otherwise it may be possible that the group will split into two or more lobbying groups with

different objectives. Lobbying is usually more successful when people are lobbying together for the same set of objectives.

When setting your objectives it is important to decide what your **non-negotiables** are; that is, the objectives that you are absolutely unwilling to compromise on, either with new members who may join your lobbying group at a later date, or when negotiating outcomes with members of the government.



## BE SMART!

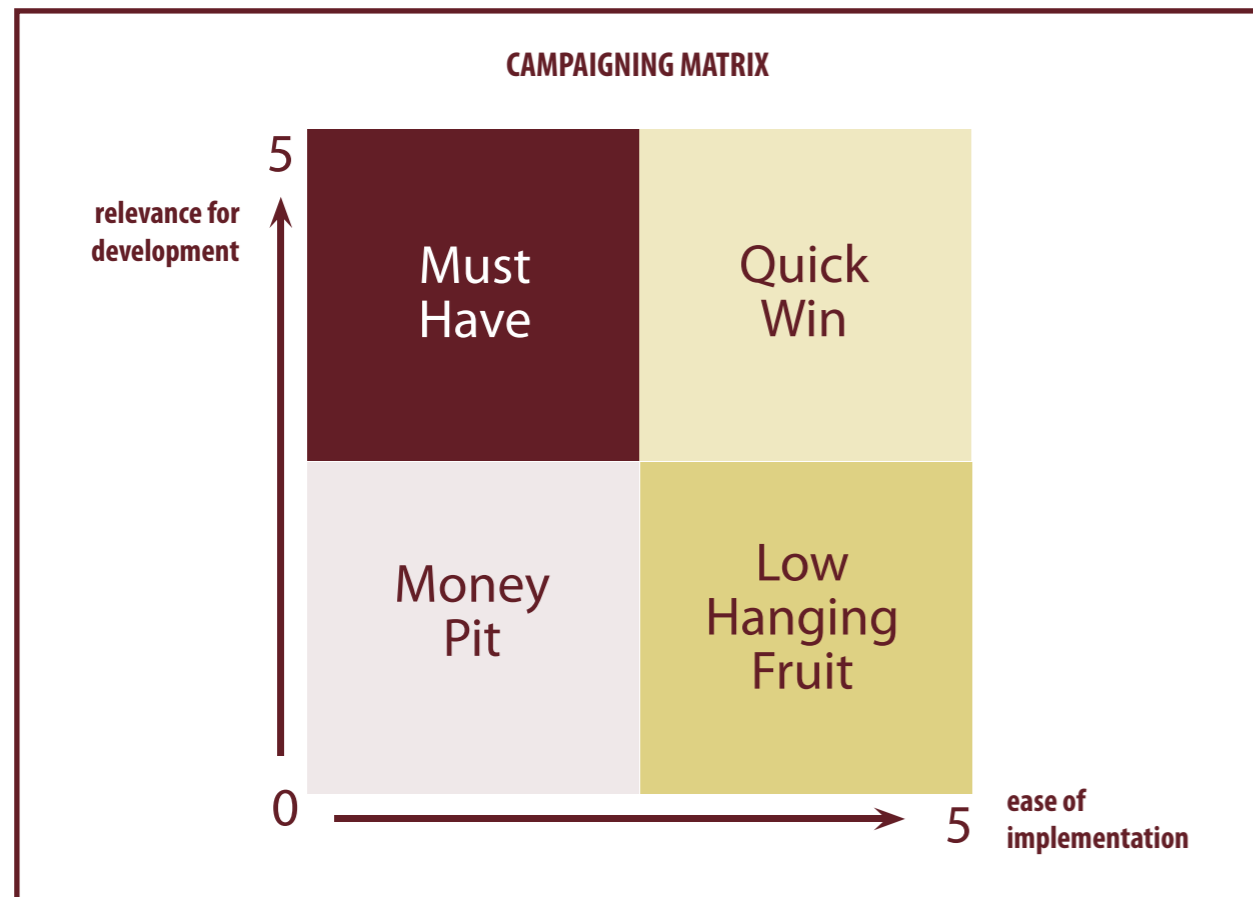
A SMART analysis is a useful tool in helping you plan your campaign objectives. For each of your proposed objectives you should ask yourself: is this objective specific? Is it measurable, achievable, realistic and likely to occur within a given timeframe?

|          |   |
|----------|---|
| <b>S</b> | <p><b>SPECIFIC</b></p> <p>Your objectives should be clearly defined and precise. This is to ensure that your efforts are focused and achievable and to provide clarity to members of your coalition.</p>  |
| <b>M</b> | <p><b>MEASURABLE</b></p> <p>Both your objective itself and your progress towards achieving it should be measurable. Usually, a number of short term small measurements can be built into achieving your objective – such as the competition of a draft Bill, the Bill reaching the first and second reading in Parliament stage, and so on.</p>   |
| <b>A</b> | <p><b>ACHIEVABLE</b></p> <p>With the resources that are available to you, how achievable is your objective? If you set yourself objectives that are far beyond your capabilities to reach then it is unlikely that you will commit to them for long. Setting and meeting a number of smaller, more achievable objectives however means that you can continue to move the goalposts further away using your new knowledge and experience to push your campaign in the right direction.</p> |
| <b>R</b> | <p><b>REALISTIC</b></p> <p>Realistic does not mean easy, but rather, doable. Being a realist doesn't mean that you shouldn't aim high and believe in the cause that you are lobbying for, even if it seems you are fighting an uphill battle. However, if it is highly improbable that you will achieve an objective then it is worth asking yourself if there are other, more realistic objectives that your campaign could focus on in the short term.</p>                              |
| <b>T</b> | <p><b>TIME BOUND</b></p> <p>Ensure that your objectives are time bound. Set a start and finish date for achieving each of the objectives you have identified, and ensure that the dates you set are realistic and achievable. Deadlines will give structure to your campaign and give you a clear target to work towards.</p>   |

A campaigning matrix can be a useful exercise to help you prioritise your objectives and work out how achievable they are. Although some objectives may seem very important to the overall success of your campaign, they might be very difficult to achieve. On the other hand, some objectives may be more realistic and achievable than others but they might not be as essential for the success of your campaign. A campaigning matrix

helps you to rank each of your objectives according to how crucial and relevant it is, and also according to how easy it is to achieve. Objectives then fall into one of four categories helping you to decide which should be seen as short term 'quick hits', which should be prioritised as long-term objectives and which you should focus on only if additional resources become available.





- **Money pit:** these objectives are difficult to achieve and not that relevant for your overall campaign objectives. These should be avoided
- **Low hanging fruit:** these objectives may be easy to achieve but they have marginal benefit to your campaign. These objectives may be better seen as short-term goals to build or feed into a campaign. They should not be prioritised over more important objectives
- **Quick win:** 'quick wins' are relatively easy to achieve and are also meaningful in terms of your overall campaign objectives. These are the most desirable and should be treated as priority objectives in your campaign
- **Must have:** these are difficult to achieve but essential to the success of your campaign. Achieving these objectives will usually require long term effort and investment. Although it is important to prioritise 'must have' objectives, they must also be balanced against your organisation or coalition's capacity to carry them out.<sup>18</sup>

### Position Paper

When you have decided upon your objectives, ideally you should capture them in a written document known as a **position paper**. A position paper can be used as a reference point as you continue your campaign and if you decide to run your campaign as part of a coalition, it will help to ensure that there is no confusion between partners as to what you hope to achieve. Your campaign members could formally sign the position paper as a symbol of your joint commitment to the campaign.

The position paper should be a public document that anyone who is interested in your campaign can request – it is different to a lobbying plan which is primarily an internal document for lobbyists to plot lobbying activities against timeframes and set out roles and responsibilities. The position paper should provide a *clear, precise, and persuasive* summary of the background behind your campaign, your informed arguments for legislative change and the exact changes you are lobbying for. You may want your position paper to include a discussion of possible negotiating options, including identifying the outcomes that you will and will NOT compromise on.

<sup>18</sup> Thanks to Oxfam New Zealand <http://www.oxfam.org.nz/index.asp>

### TIPS! Writing a Position Paper

The campaign position paper is arguably one of the most important documents of your campaign. It is a public statement of the reasons behind your campaign (backed up by your research) and the reforms you are lobbying for.

Your position paper should contain the following essential elements:

**1. Campaign Name.**

Think of a catchy name for your campaign that will catch the public's attention. In a short, snappy manner, your campaign name should make clear what it is that you are lobbying for and be memorable. Other, very successful campaigns have had meaningful titles that have captured the public's imagination such as: 'Make Poverty History', 'Drop the Debt', 'Control Arms', and the Fiji Women's Rights Movement 'Kill Bill' Campaign.

**2. A Summary of the Problem**

Summarise the findings of your research presenting a clear and easily understandable argument for change. Be sure to include real-life evidence of the problem including statistics and case studies that people can empathise with. If your evidence suggests that the situation may continue to deteriorate then include an informed prediction of how the problem may evolve if no changes are made, again backed up by evidence.

**3. What You Are Lobbying For**

This may sound obvious but it is very important that your position paper gives a clear summary of the objectives that you are lobbying for. You have already outlined the need for legislative change in the summary of the problem, now you must say precisely what changes need to be made in order to address the problem. Also talk about how these specific legislative changes will address the problem that you have described.

**5. Names of Members of Coalition**

The names of each of the organisation or bodies that form your lobbying group or coalition should be provided, along with contact details and instructions for finding out more information, such as web sites and telephone numbers.

## NETWORKING AND BUILDING COALITIONS

### Building and Managing a Network or Coalition

**W**hen lobbyists come together to push for a particular change in legislation or policy, their collective impact is often bigger than if each lobbyist (whether this be an individual or an organisation) works separately. Both globally and throughout the Pacific, it is very common for lobbying campaigns to be led by networks or coalitions of like-minded individuals and organisations. Some coalitions and networks are established for the sole purpose of supporting a particular

campaign (such as the Coalition to Stop the Use of Child Soldiers), and some may pre-exist the campaign and decide to lobby around a certain piece of legislation that is relevant to their broader objectives.

Coalitions can be run as long-term, formal organisations. For example, the Pacific Concerns Resource Centre is a regional coalition of CSOs working together on a Nuclear Free and Independent Pacific Movement. The movement is comprised of 120 affiliate organisations from 33 countries in the Asia-Pacific region.



## CASE STUDY: The Nuclear Free And Independent Pacific Movement

The Pacific Concerns Resource Centre (PCRC) heads the Nuclear Free and Independent Pacific Movement (NFIP). The NFIP Movement was formed in 1975 when the first Nuclear Free and Independent Conference was held in Suva, Fiji. The Movement brings together 120 affiliate organisations from 33 countries across the Asia-Pacific region. The membership base is comprised of activists, disarmament groups, indigenous peoples groups, pro-independence groups, women's organizations, churches, unions and students.

The NFIP was responsible for spearheading an Anti-Nuke campaign calling for a ban on nuclear testing in the Pacific region. The 1975 Conference included a proposal for a Nuclear Free Pacific Zone in the form of Treaty. Amongst the resolutions adopted at the meeting were the following sentiments; *"...nuclear weapons constitute the gravest danger to mankind and... putting a stop to the nuclear arms race and securing the destruction of all existing nuclear weapons is an objective of the most urgency" and " a ban on all testing of all nuclear weapons, devices and nuclear weapon delivery systems; removal of all test facilities; a ban on all nuclear weapons, including the transportation of them; a ban on all command and control facilities linked with nuclear weapons; provisions for verification and enforcement; and a timetable for expansion of the zone to cover all the Pacific and all forms of warfare."*

Of particular concern to the Movement were the nuclear tests being conducted on the Bikini and Entewak atolls in the Marshall Islands, and on the Kiritimati and Muroroa atolls in French Polynesia.

As a result of sustained pressure from the NFIP, the proposed treaty received formal support and recognition by the Pacific Forum Leaders in 1981. On 6 August 1985, the Forum Leaders met in the Cook Islands and approved the adoption of the Nuclear Free Pacific Zone treaty which is known as the *Rarotonga Treaty*.

In the Pacific, coalitions form at both regional and national level. Regional non-governmental organisations are known as 'PRNGOs' (Pacific Regional Non- Governmental Organisations) and have a membership base of smaller NGOs across the Pacific. Many PRNGOs undertake advocacy campaigns by harnessing the resources and expertise of their national member organisations.

At the national level, lead CSOs sometimes coordinate campaigns, for example, the Fiji Women's Rights Movement coordinated a successful campaign advocating constitutional changes to guarantee equal citizenship rights for women in Fiji.<sup>19</sup> Still other coalitions have formed to channel the common interests of members. The Fiji NGO Coalition on Human Rights for example, comprises 15 local and regional organisations committed to the promotion of human rights. The Coalition was launched on Human Rights Day in 1997 by the Fiji Women's Crisis Centre.

Networks and coalitions that bring together groups and individuals with different experiences and expertise can be invaluable when lobbying for legislative change. Coalitions can ensure that lobbying campaigns are well-informed and representative of a diverse range of voices and sections of society. At a more practical level, networks offer a chance to bring people with specific expertise onto the campaign such as legal experts from the local law society, media experts from the national media council or expert groups such as unions and women's organisations. It is also important to bring churches and faith-based groups into your coalition as they are an essential feature of Pacific life representing a broad cross section of society. They have the ability to get messages out widely across the community and many have strong relationships with government.

Your coalition may also benefit from bringing onboard international organisations that have global expertise in the issue that you are lobbying around. International CSOs and inter-governmental bodies are often better resourced than smaller or local organisations and may have greater access to interns or volunteers who would be willing to offer their time to support the campaign.

There are also advantages to be gained from including government agencies in your coalition. This strengthens the ties between civil society and the government and provides an opportunity for all like-minded players to work together towards a common cause. It also means that you can identify 'champions' within the government agency who might be willing to be a government spokesperson for the campaign and bring the issue to the attention of other government agencies and people with decision-making power such as Ministers and Members of Parliament.

## CASE STUDY: Discriminatory Sexual Assault Legislation in the Solomon Islands

Building partnerships between civil society and key government bodies can be an important strategy when lobbying for changes in the law. In this way, lobbyists can maximise the sphere of influence and draw on varied expertise and experience. In the Solomon Islands, a successful partnership between the Ministry of Women, the Solomon Island Law Reform Commission (LRC), the Women's Law Association of the Solomon Islands (WILASI), MPs, NGOs, and regional programmes RRRT as well as UN agencies such as UNIFEM, eventually led to the enactment of the Evidence Act 2009. This new law removed some discriminatory practices in the way that evidence was collected from alleged sexual assault victims. Solomon Islands judges and lawyers received gender and human rights training as well as technical assistance and legal advice from RRRT and went on to lobby successfully for the introduction of new legislation.

The Evidence Act 2009 removed three practices that discriminated against women. Firstly, it removed the common law practise known as the 'corroboration rule'. This meant that the court would remind ('warn') itself that it should not convict a defendant on the basis of uncorroborated evidence provided by the victim. This practise is based on a belief that women often lie about being raped or sexually assaulted. Although the rule had been applied to male and female victims in theory, under criminal law rape and other offences, they were defined as crimes committed against women. Following RRRT training, the Law Reform Commission examined the origin of the rule and found that it reflected norms in England from around 1944. They made a submission to the Evidence Bill Committee arguing that there was a need for new, up-to-date legislation drafted to fit the unique circumstances of the Solomon Islands.

The second discriminatory practice was judging the credibility of a victim's evidence on the basis of their past sexual history. This meant that the accused's lawyers could ask irrelevant and humiliating questions of the victim in court. The Evidence Act 2009 now states that 'no evidence can be given and no question can be put to a witness relating

directly or indirectly to the sexual experience of the complainant with any person other than the accused, except with the permission of the court.'

The third discriminatory practice was that of questioning the reliability of evidence that has been reported some time after the event was alleged to have taken place. There are a number of perfectly valid reasons why victims of sexual assault may not report what has happened to them immediately including fear of humiliation or not being believed, dependence (financial or emotional) on the person who committed the attack, or fear of retaliation.

Despite these positive changes, there is still room for improvement in the wording of the Evidence Act which still allows courts to an element of discretion in applying the above principles, even though it says that they 'need not' apply them. This demonstrates how lobbying for legislative change for the protection of human rights can be a long process with small victories along the way. It is hoped that the enactment of the Evidence Act will pave the way for even more progressive legislation that will make it illegal for courts to extract evidence from victims of sexual violence in a way that is unfair or discriminatory.

The Solomon Islands has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and therefore has an international obligation to ensure that its laws and policies do not discriminate negatively against women. The Ministry of Women, UNIFEM, and women's NGOs in Solomon Islands have been vigilant in reminding the government of these commitments.

Source: SPC/RRRT 2009

19 See case study in Chapter 5



## CASE STUDY: Lobbying To Prevent Legislative Change

Legislative lobbying is not always concerned with lobbying for the enactment of new legislation or the amendment of existing legislation. In some circumstances, lobbying is aimed towards preventing the enactment of legislation which could be potentially harmful to the interests of the community as a whole or certain groups of people.

### Land Bill 84 (Marshall Islands)<sup>20</sup>

Some coalitions have had success in preventing the enactment of potentially harmful legislation. For example in the Marshall Islands, a group called Women United Together Marshall Islands (WUTMI) led a successful campaign against the enactment of a law which would have restricted women's right to own land. Bill 84 was introduced by two Senators who wanted to define the customary law term 'alap' meaning [land] lineage head, to only include men. WUTMI used methods such as airing radio talk shows with female chiefs and holding public hearings to discuss the implications of the Bill, which was eventually dropped.

### The 'Kill Bill' Campaign (Fiji)<sup>21</sup>

The 'Kill Bill' campaign was led by Fiji's NGO Coalition on Human Rights. The Coalition of 14 local NGOs managed to successfully lobby the Government to back down on its plan of enacting the *Reconciliation Tolerance and Unity (RTU)* Bill. If passed the law would have established a Commission that would grant amnesty (freedom from punishment and prison) to those who committed gross violations of human rights during the period 19 May 2000 to 15 March

2001. In the Bill, this period was called "the period of political and civil unrest."

Over a six month period, the Kill Bill campaign highlighted how the law would result in violation of national and international human rights standards and commitments made by the Fiji Government. The Coalition made a submission to the appointed parliamentary sub-committee calling for the Bill to be redrafted to ensure it complied with democratic and human rights norms. Individual members of the Coalition also made submissions asking the Government to set aside a reasonable period of time to consult the public about their opinions on the Bill to ensure that it reflected the views of the community.

The Coalition initiated public debate by using the mainstream to broadcast vernacular talk back shows, post advertisements and publish press releases in newspapers. It also held road-side protests in Suva, a silent protest outside Parliament during the presentation of the Bill and the sale of "Kill Bill" t-shirts to members of the public who supported the campaign.

As a result of these actions the Great Council of Chiefs (GCC) invited the Coalition to make a historic presentation before its members. The communiqué of that meeting strongly encouraged the Government to take on board civil society concerns. The Government removed the Bill from its legislative agenda, stating that it will be brought back in a new form following the 2006 elections.

Because Coalitions bring together a range of different stakeholders with different (and sometimes competing) mandates and ideas it is important that they are carefully managed, and one or two organisations may be elected to be the coalition's secretariat. When bringing together a coalition or network you should consider the following questions:

- Which groups or individuals will lead the campaign?
- How will decisions be made and who will be involved in the decision making process?
- How can disagreements be identified and dealt with?
- What role will each group in the coalition play? Who will be responsible for doing what?

- How much reporting back is needed within the group? What process will be used to share information?
- How much time and money can the coalition raise – from its members and/or from others? How will it be managed?
- What mechanisms can be used to keep the campaign flexible and focused?

It is essential to be clear about who within your coalition will be responsible for managing and implementing your various campaign activities, and within what time frame. Coalition members should be allocated activities to carry out within their own sphere of influence in order to capitalise on their strengths. This builds a sense of ownership and also promotes more effective follow-up.

<sup>20</sup> Land and Women: The Matrilineal Factor. The Cases of the Republic of the Marshall Islands, Solomon Islands and Vanuatu, Pacific Islands Forum Secretariat, p.19

<sup>21</sup> Case Study provided by Virisila Buadromo - Fiji Women's Rights Movement

Where a lead organisation is designated to implement a particular activity, ensure that it has a clear mandate from other coalition members to take that lead role and has sufficient autonomy to deal with issues, while still reporting back to members as necessary. Decision-making processes also need to be clear. For example, it is important to identify who can authorise spending of money or issuing press statements.

Where possible, bring in groups from all political persuasions, because it may be that some members will have better access to certain policy-makers or will be able to get the voice better heard in key fora. For example, during the Fiji Family Law Act campaign, the Fiji National Council of Women was a key partner. Although the Council had different objectives from some of the women's rights activists involved in the campaign, the National Council of Women brought the concerns of many Fijian women to the forefront and had good links with the government, particularly in rural areas.

The key benefits to be gained from ensuring your coalition has a wide support base are:

- Ensuring different perspectives are reflected in the objectives of the campaign making it more likely that the government will listen to your concerns
- Bringing people with different views together to agree on certain key lobbying points and what points they are willing to 'sacrifice' for the greater good of the campaign
- Bringing in resources, links to policy makers and greater access to influential persons in government, the Church and other key institutions

It is important to agree on objectives that everyone in the coalition is happy with. When new partners join the campaign with different levels of knowledge and expertise, it may sometimes be necessary to revise your campaign objectives to accommodate this.

## CASE STUDY: Solomon Islands Watchdog on Environment Rights

A community paralegal (CP) who worked for the Premier of Makira Province attended legal literacy training. She was aware of correspondence between the Premier and the Taiwanese government about an arrangement for Taiwan to export toxic waste (Humus Soil) to be dumped in Makira Province in return for a substantial amount of money for the Provincial Government. During the training workshop she realized the implications for the people of Makira if the toxic waste was to be dumped.

She searched for all the documents she had filed regarding the plans and also got other important documents from a provincial member of the Assembly. The documents showed that provincial members had signed contracts and agreements with Taiwan on behalf of the province. The CP acted quickly and together with the President of the Makira Provincial Council of Women, read everything she could on the issue to educate herself on the subject of toxic waste and its harmful effects. They then held a meeting with the police, the heads of the provincial departments, the chairperson of the Provincial Civil Society, the principal of the major secondary school in the province, environment NGOs and community leaders.

During the meeting the lobbyists explained the situation to those who attended. The meeting resulted in the following activities:

- A peaceful demonstration was conducted in Kira Kira. School children, teachers, women, men and visitors all participated
- A press release was written and distributed to the media. This alerted the people of the Solomon Islands to the issue and generated further media discussion and debate
- A government conservation officer alerted international organisations that poured in information in support for the campaign
- Makira women in Honiara held public forums to discuss the issue
- The Solomon Islands Representative for the United Nations Development Programme (UNDP) fed information regarding the toxic waste to the head of UNDP. The UN's Waigani Convention prevents the carriage of toxic waste through PIC territories. The UNDP Representative was able to convince the Solomon Island Prime Minister to withdraw his consent for the agreement with the Taiwanese company

Although this is not an example of lobbying for legislative change, the story still provides useful examples of lobbying strategies that can be drawn on for any type of campaign, including those to amend or bring in new laws.



## Managing Conflict

While working in a coalition can have clear benefits, at the same time, it is important to recognise that working with partners can sometimes be challenging. Lobbyists often have competing mandates, interests and may even have to compete with each other for funding. This can sometimes put a strain on relationships. If managed carefully, differing viewpoints and approaches can benefit the campaign by ensuring that the best of a range of ideas can be implemented. If left unchecked however, conflicts can sometimes cause real problems or even 'splits' in campaign coalitions which may undermine the strength of the campaign itself. When conflict emerges, it is important for members of the coalition to find ways to accommodate each other's differences.

It is important that the coalition allows individuals to take credit for their work. People appreciate and are strengthened by positive feedback. Conversely, when people only ever hear negative feedback or criticism they can become demoralised and even angry. Develop feedback channels that promote constructive dialogue and a problem-solving approach. While constructive criticism can be useful to ensure that your campaign is constantly improved through feedback, be careful that critical analysis does not just become pure criticism.

It is worth recognising that in reality, there will be some issues on which some members of your coalition may simply be unable to agree. The issues that one organisation may be willing to compromise on may be a deal-breaker for another. If you can find common ground, that is positive. If you cannot, then you need to consider whether your coalition can be flexible enough to accommodate different views. Good leadership and effective communication channels will usually help in such situations.

## Identifying the Key Players

Once your coalition is established and you have agreed on your objectives you will need to identify who you want to lobby. Taking into account the background information provided in Chapter 2, think about which government players have the power and influence to bring about the legislative reforms that you want. You should consider who to lobby in two of the three arms of government – the executive and the legislature. It is not possible to lobby within the judiciary.

## Think about:

- « Whose opinion is sought, listened to or considered particularly important in all three arms of government?
- « Who are the key players at different levels (local, district, provincial/island, national, regional, international and religious or cultural)?
- « Who may be sympathetic to your cause because their interests closely reflect your own? Who has assisted lobbyists to get an issue on the government's agenda in the past?
- « Who has the power and authority to make or prevent legislative change? What are the limitations of the persons who can make or prevent legislative change?
- « Who makes the ultimate decision about whether an issue is addressed or ignored?

As well as people within government you should also consider lobbying:

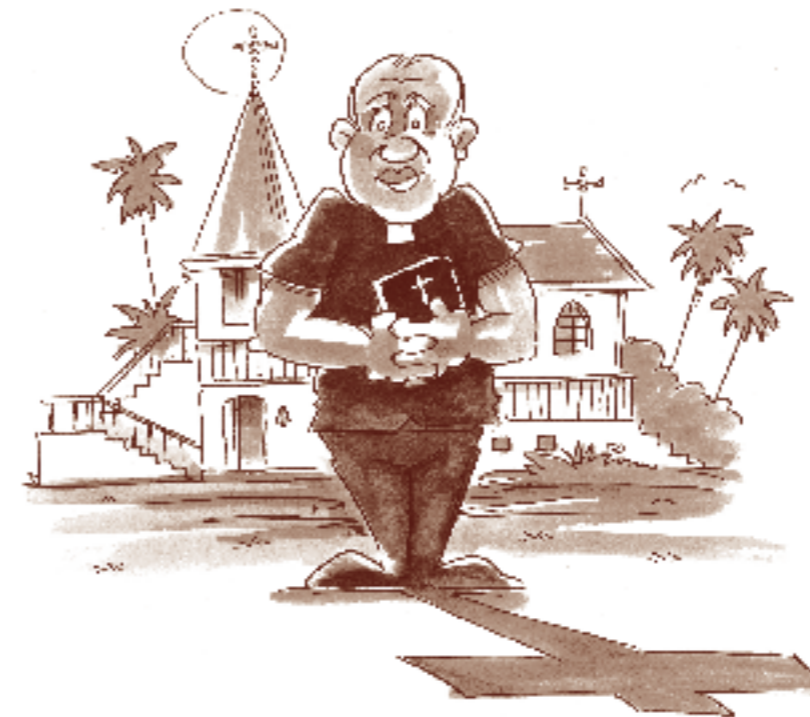


**Champions or persons of influence who are able to exert pressure on formal decision makers. These people are often watched by the media, have influential friends, or are able to take the opportunity to raise public opinion on issues and are well positioned to pressure for change**

## TIPS! Making a Coalition Work<sup>22</sup>

- Partners need to state clearly what they have in common and where they are different
- Allow the structure and style of the coalition to evolve and not be set in stone
- Partners should be diverse but committed to the goals and strategies of the campaign
- Build on manageable short term goals and objectives which may lead to other more encompassing objectives
- Keep in touch with other organisations with similar goals who may wish to work outside the coalition structure
- Use a small dedicated group of leaders who focus on the cause rather than their own organisation or self promotion
- Maintain strong ties between the coalition group and major collaborating organisations
- Share an equal responsibility for a set of clearly defined tasks. Expect reports on these and quickly deal with the situation if the tasks are not implemented
- Create safe spaces to discuss issues and take time to resolve internal conflicts

22 Adapted from the Advocacy Institute, Oxfam USA < <http://www.advocacyinstitute.org/> >



**Formal leaders, for example, who are employed or elected or who hold religious or chiefly positions**



**Informal leaders who may have power because of their wealth, their community involvement, close relations with chiefs or leaders, or are popular figures**



## ACTIVITY!

The following chart is a useful tool to help you to work out whom to prioritise in your lobbying. Write the names of your potential lobbying targets in the boxes according to how much sympathy you believe them to have for your cause.<sup>23</sup>

|                     | Very Important Formal Decision Makers | Very Important Informal Decision Makers | Very Important Champions, Pressure Point or Influencers |
|---------------------|---------------------------------------|---|---|
| Strong Supporters   |                                       |   |   |
| Moderate Supporters |                                       |   |   |
| Fence Sitters       |                                       |   |   |
| Moderate Opponents  |                                       |   |   |
| Strong Opponents    |                                       |   |   |

## Lobbying the Executive

If you want to change the law, then it is without doubt that you will need to lobby the executive arm of the government (the 'Government'). As illustrated in Chapter 2, more often than not it is the Government that initiates law reform. The Government is made up of a number of components, from Cabinet members to civil servants with specific interest in your area. You should consider each in turn.

### Cabinet

In most Pacific countries, it is members of the Cabinet who hold the most power to initiate legislative reform and because of this they are a very important lobbying target. Cabinet will often have to endorse any proposed legal amendment before it is forwarded to Parliament. Once you have endorsement from Cabinet, it will be a lot easier for you to gain support from the entire Government as well as the legislature.

If your Government is a coalition of a number of different political parties, Cabinet may be comprised of Ministers from political parties with different agendas to promote. In these situations you should identify Ministers associated with parties that might be sympathetic to your issue. Once on side, they may then be able to help you influence other Cabinet ministers whose viewpoints may be different.

You should also identify who within the bureaucracy is responsible for providing administrative support to the Cabinet and try to meet with them to brief them on your issues. This might be the Permanent Secretary for Cabinet or it could be the Secretary to the Prime Minister. It is always good to have allies in influential positions within the Government framework.

Cabinet meetings are usually held once a week, fortnight or monthly, depending on the availability of Ministers. If possible, time your meetings with Ministers to directly precede Cabinet meetings so that the issues you have briefed them on will be fresh in their minds.

## Individual Ministers

Individual Ministers have the power to influence change both because of their vote in Cabinet and because of their position as head of a Ministry. When planning to lobby Cabinet, you should consider the skills, capacity and influence of each member and devote your time and energy to those you think will have the most

impact in meetings. A powerful minister can be an important ally and champion for change. Ministers also have the capacity to push reforms within their Ministries. Sometimes legal reforms can get stalled because of lack of support from the bureaucracy. A minister who is committed to your issues can be essential in removing hurdles put up by resistant officials.

## TIPS! Lobbying Cabinet Ministers

- Cabinet is responsible for endorsing proposals for new laws or legislative amendments. As such, you should try to get Cabinet on your side as soon as possible
- Identify individual Ministers who may be sympathetic to your cause. Where there is a coalition government in power, conduct some research around the political sympathies of the various parties. Do any of the parties have human rights or social justice agenda? Are any of them committed to promoting the rights of women, children or other vulnerable groups? If you're unsure, you can read member parties' manifestos
- Cabinet Ministers provide expert advice on their subject area to the head of Government and take the lead on making important policy and budget decisions about the work of their Ministries. Ensure that any Cabinet Minister whose portfolio is related to your area of concern is fully briefed on the changes that you would like to see. If you are lobbying around health reforms, ensure that you obtain the support of the Minister for Health; if you are lobbying for ratification of international human rights treaties, ensure that you have the support of the Minister for Foreign Affairs, and so on
- Identify the person responsible for providing administrative and bureaucratic support to Cabinet and try to secure their support for your lobbying efforts
- If at all possible, try to obtain the support of the Prime Minister. Find out about his or her political interests and tailor your lobbying so that it is relevant to the areas they are interested in. Speak to the Prime Minister's secretary and try to get a meeting with him or her. Alternatively, you could ask a sympathetic Minister to try to arrange a meeting with the Prime Minister for you

## CASE STUDY: Female Parliamentarians Lobby for Enactment of Fiji's Family Law Act

In the case of Fiji's progressive Family Law Act 2003, which removed historic and systemic discrimination against women, the overwhelming majority of female representatives in Parliament not only championed and supported the proposed law during parliamentary debate on the bill, but lobbied within their parties for the new law to be passed across party lines. They worked closely with the Fiji Law Reform Commission, the Pacific Regional Rights Resource Team and the Fiji Women's Rights Movement to bring about the passing of the bill into law. In the informal coalition, women members of parliament mobilised along gender lines, and significantly, also across racial lines, in racially polarised Fiji. This coalition between women politicians was not only unprecedented in Fiji's legislative history, but created a positive side-effect by building alliances on the basis of gender, rather than on party lines and racial identity. Only one indigenous Fijian female MP, a high chief, refused to mobilise around the new law or to co-operate with women campaigning for it.<sup>24</sup>

<sup>23</sup> This section has utilised materials from the website of Oxfam's Advocacy Institute, Washington DC and the book: Cohen, D. et al (2001) Advocacy for Social Justice - A Global Action and Reflection Guide

<sup>24</sup> RRR's Human Rights Adviser Imrana Jalal was Family Law Commissioner campaigning and lobbying for the new law during 2003



## CASE STUDY: Lobbying for Citizenship Rights in Tuvalu

As part of their CEDAW advocacy in 2006 to late 2007, the Legal Rights Training Officer (LRTO) and partners advocated for the support for dual citizenship to be allowed. Before a change to the citizenship laws of Tuvalu, any person who desires Tuvaluan citizenship is required to give up other citizenships. Some of them are women who married to Tuvalu men and though they want to gain Tuvaluan citizenship, they would also like to maintain their other citizenship. In addition, the cost for obtaining Tuvaluan citizenship is too much. LRTO and partners advocated for that during outer island CEDAW consultations and various trainings done with different sectors of communities. The new citizenship law is titled Citizenship (Amendment) Act 2007, Act 7 of 2007. People who will benefit from this macro level change in legislation are the people who want to maintain their other nationalities in addition to Tuvaluan nationality.

### The Bureaucracy

(Government Ministries and Departments)

The bureaucracy plays a key role in law reform and the implementation of legislation. The bureaucracy is responsible for approving Ministerial Submissions on law reforms before they are even considered by Cabinet. In practice without the bureaucracy's support a law reform initiative is unlikely to reach Cabinet. If officials within the bureaucracy are opposed to your issue they could have the power to slow down or block your progress and therefore it is important to get their support at an early stage.

The office of the Attorney General and the Government Legislative Drafting Unit should also be considered key targets for lobbying within the bureaucracy. Both offices play important roles in the development of Government legislation. You should bring them in on your proposals for legislative change as early as possible in your campaign. If they are sympathetic to your ideas, then you may even want to work alongside them when you are developing legislative proposals or draft laws.

### TIPS! Lobbying the Bureaucracy

- The Office of the Attorney General and the Legislative Drafting Unit play important roles in the development of Government legislation. If at all possible, you should try to get them to support your push for legal reform and to work with you on the drafting of legislative provisions
- The Parliamentary Counsel, alternatively known as the Legislative Counsel, is the person responsible for turning Cabinet's legal recommendations into draft legislation. They are legal experts who should be made aware of your concerns regarding any proposed legislation. If you successfully lobby for the introduction of a new law, the Parliamentary Counsel will undoubtedly play a role in deciding the wording and structure of the law
- If you meet with senior officials, make sure to leave briefing papers with them and other materials that they can draw on if they are requested to brief their Minister

### Lobbying the Legislature

Historically, campaigns in the Pacific have tended to be directed at the executive with particular attention paid to lobbying Ministers. However it is also important to lobby individuals from across the whole of the legislature. The legislature has the power to vote for or against new laws, to amend legal provisions and to influence the development of laws as they progress through the first and second reading process.

If your Government has an official Opposition, you should lobby the Shadow Ministers whose portfolios are relevant to your issue. They will in turn be in a position to influence others in their political party. Although Opposition and independent MPs may not have the same resources available to them they are sometimes able to exert considerable influence. In the Pacific where votes of 'no confidence' are not uncommon, you should bear in mind that these individuals may become future Government Ministers if the Government is replaced. In countries with small legislatures or coalition Governments, independent Members of Parliament can sometimes swing a vote for or against particular legislation.

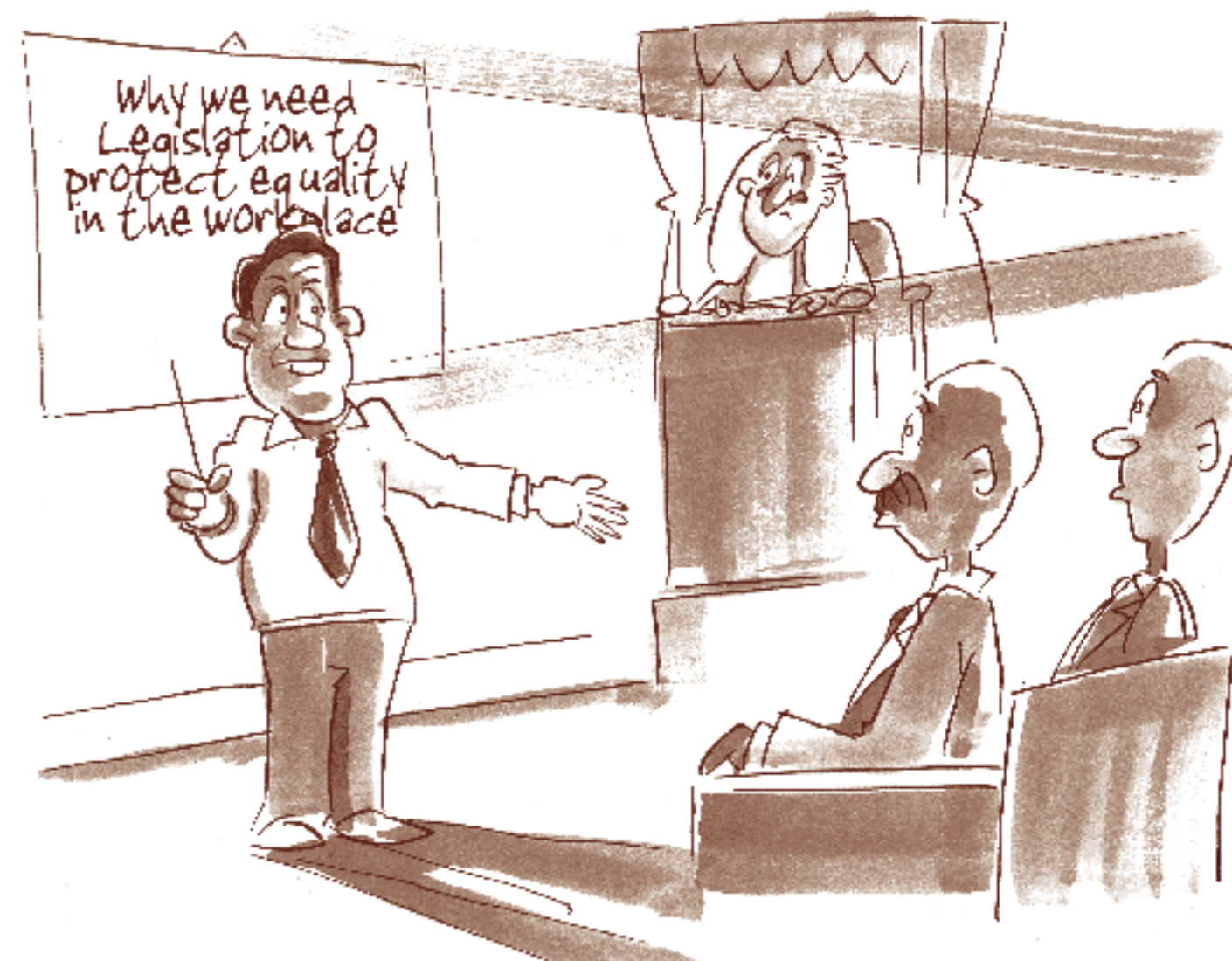
Developing working relationships with MPs can be useful in helping you to navigate the internal politics of the legislature. A helpful MP can help you understand who has power and influence, what their key interests are and what kind of arguments might persuade them to support your cause. Sympathetic MPs may also assist you by lobbying their colleagues, hosting a meeting of MPs at which you can speak or encouraging the Parliamentary Secretariat to work with you to provide briefings for MPs.

You may also wish to consider lobbying the Parliamentary Secretariat which provides administrative support to the legislature. The Secretariat has real power to influence the opinions of the legislature on current issues through the briefings and research papers they provide it with daily. It is important for lobbyists to ensure that their views are reflected in these briefings so that MPs are given a complete picture of the issues under discussion. In particular, you should ensure that the Clerk of Parliament is lobbied and briefed about your area of concern.

The Speaker of Parliament or 'Presiding Officer' is the head of the legislature and a key person to have on your side. If at all possible, arrange to meet with the Speaker to discuss your issues. As the Speaker must act independently and not favour the views of any one political party his or her opinion is hugely respected within the legislature.

### Utilising Parliamentary Question Time

One of the most overlooked opportunities for raising issues inside the legislature is Question Time. Every legislature in the Pacific has a specific time allocated during legislative sessions for MPs to ask questions of the Government. Any MP can ask a question. Questions can be posed with or without notice, submitted in writing or asked orally during a session. When a question is asked during Question Time, it must be answered. The Government can defer their answer if they need to consult the bureaucracy for more information, but nonetheless, an answer must be provided.





Questions can be useful in getting information out of Government. For example, you may want to know when your Government is planning to ratify a particular human rights treaty, or what it plans to do to address an issue such as domestic violence. Questions can be a useful way to draw attention to your issue. Where you are keen to encourage the Government to add your issue to their legislative agenda, a well-timed question, coupled with a media campaign, can be very effective in bringing your issue to public attention, and thereby pressuring the Government into taking action.

Where you have identified MPs who are sympathetic to your cause, you should ask them whether they would be willing to ask a question about your issue during Question Time. You can offer to formulate the question for them, if this would be easier for them. Questions should be clear and to the point. The MP is permitted to ask the Parliamentary Secretariat for advice about whether the question has been appropriately worded. You should consider developing a Press Release jointly with your question. This will ensure that the question is not lost amongst the parliamentary business of the

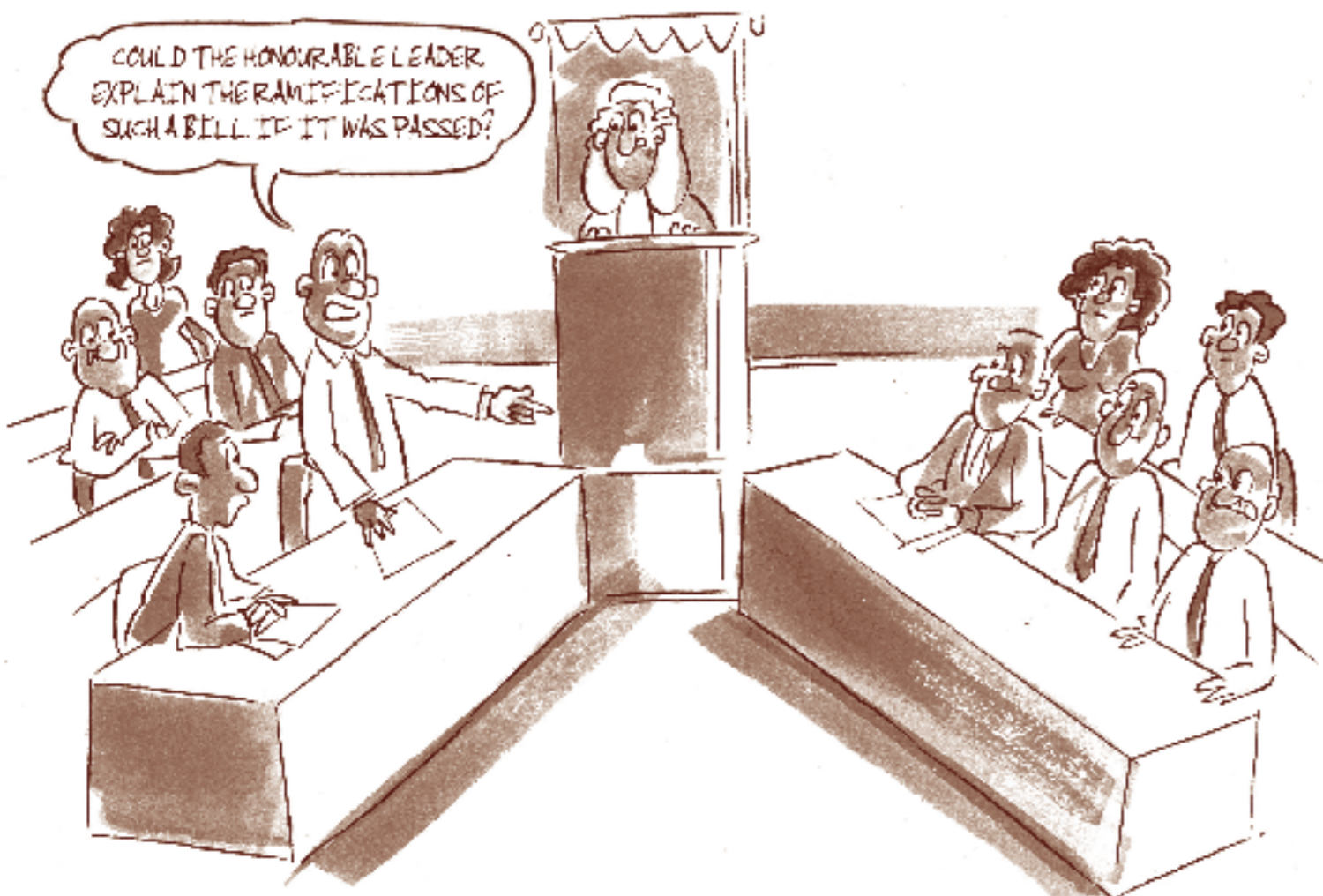
day. It will also raise the profile of the MP who asked the question, which may be another argument you can use to encourage them to help you.

### Engaging with Parliamentary Committees

As discussed in Chapter Two, after a Bill has been tabled in the legislature, it is sometimes referred to a parliamentary committee known as a Standing, or Select Committee. Many committees hold a public meeting to enable members of the public to share their thoughts and make submissions on the Bill. This provides an excellent opportunity to influence Parliament and therefore encouraging the referral of a Bill to a committee could be part of your overall lobbying strategy.

Bills that are developed in wide consultation of the public are far more likely to reflect the views, values and rights of the entire community and stand the test of time.

When a Bill has been referred to a committee, you should consider making a written submission with your recommendations for change. By making sure that all information you give is clear, well researched and accurate,



you will have a better chance of having an MP or another key actor using and acting upon that information. If the Bill is being considered in detail at this stage, you might also want to provide comments on specific provisions of the Bill which are of key importance.

A committee will usually have a Chairperson, who may be from the Government or from the Opposition. A committee should usually be supported by staff from the Parliamentary Secretariat and will sometimes also be able to draw on departmental officials (i.e. senior civil servants) as advisers. All of these people are key targets for legislative lobbying.

Unfortunately it is sometimes the case that referring a Bill to a committee can significantly slow down its progress. If you believe that a parliamentary committee is being used by the legislature as a means of stalling the progress of a Bill, you should consider using the media to draw attention to the delay tactics. Make sure that committee members know the public cares and are watching the progress of the Bill.

### Private Member's Bills

Asking an MP to back a private members bill can be a means of getting your issue on parliament's legislative

agenda. Firstly, you will need to find a member of the legislature who is willing to take up your issue and table a Bill for you. You will then need to support the member to develop a Bill. If you have already developed a Model Bill this could be used.<sup>25</sup>

### Tracking the progress of a Bill

It is important that you are vigilant in tracking the progress of a Bill in which you are interested throughout Parliament. You need to know the key dates for debates on the Bill, so you can not only target the correct MPs, but also make sure the media or key players and opinion shapers are primed to report on, or further discuss your issue. If your country does not have a functioning independent media, you should try to ensure that key civil society organisations are fully briefed to report on your issue. Try to be present in the legislature each time your Bill is raised or when a committee is making a report.

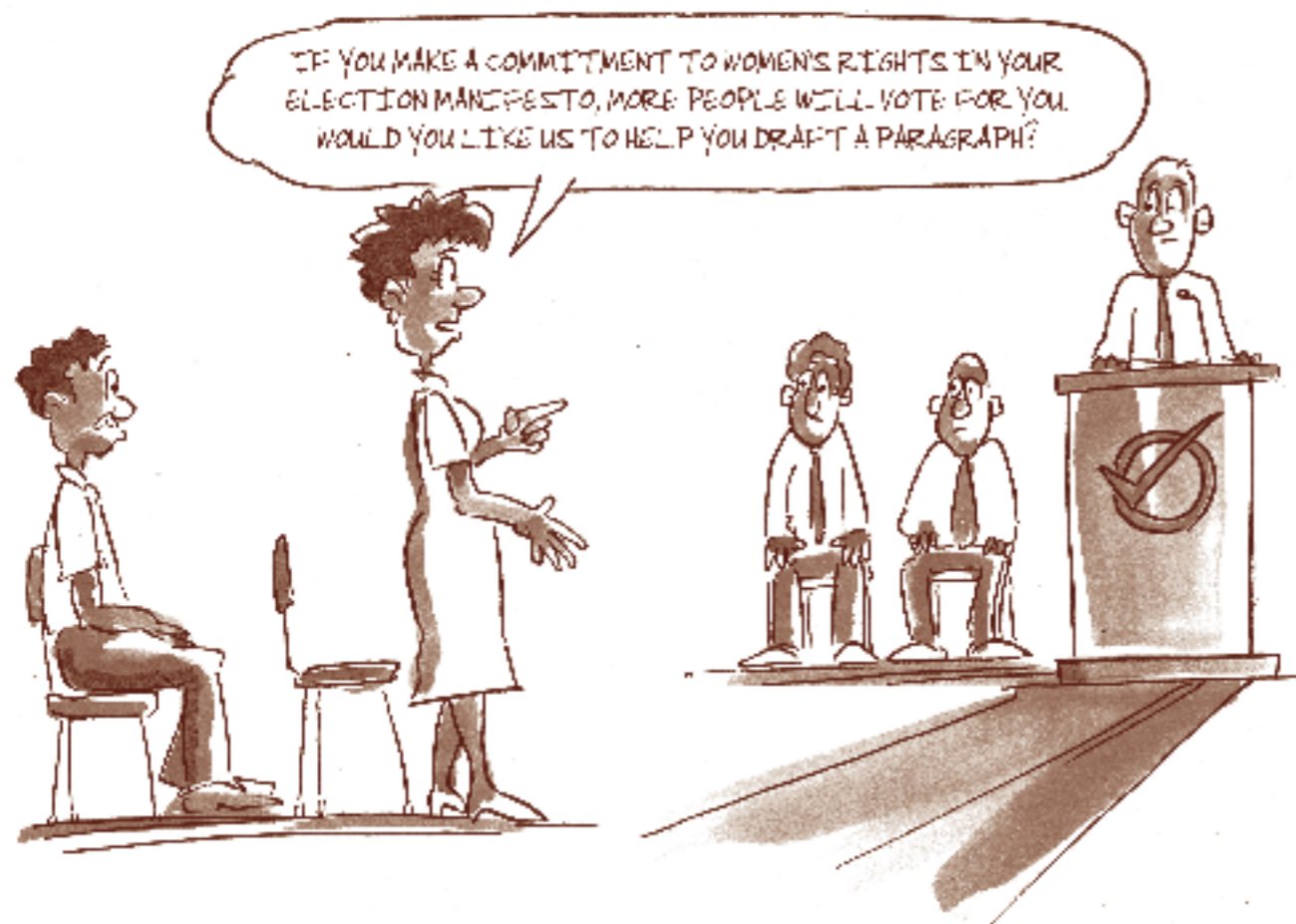
If you are unsure of when a bill is ready to go to Parliament for consideration, you should check Parliament's notice paper. The notice paper usually lists Bills that are about to go to Parliament.

<sup>25</sup> For more information on preparing draft legislation see p.73.



## TIPS! Lobbying the Legislature

- MPs should be considered to be key lobbying targets. If your Government has an official Opposition, ensure that you are lobbying the Shadow Ministers whose portfolios are relevant to your issue. Remember that Opposition and independent MPs have the potential to be future Government leaders
- Parliamentary Question Time can be a useful way of getting your issue both on the legislature's and the Government's agenda. Ask a sympathetic MP to put a question about your issue to a Government Minister during Question Time. You could offer to formulate the question on their behalf if appropriate
- The Speaker of Parliament (Presiding Officer) is the head of the legislature and a key person to lobby. Try to arrange a meeting with the Speaker or his or her secretary in order to fully brief them of what you are lobbying for
- Consider asking an MP to back a Private Member's Bill. If you have sufficient legal expertise within your coalition you could offer to draft the Bill for them, or use a previously drafted model bill
- Once a Bill is being progressed through the reading stages in Parliament, be sure to keep track of key dates that you can influence the shape of the law. It is important to keep a lobbying diary as the stage a Bill is at will affect who you should lobby and what lobbying strategies you should use. Check the Parliamentary Notice Paper to keep track of important dates and developments
- Parliamentary committees are an excellent way to get a more thorough public consultation on the shape of a proposed Bill. Make use of them by attending and speaking at any public meetings held to discuss the Bill, preparing written submissions and even suggesting revised wording of relevant provisions



## Lobbying Political Parties

Another group of potential lobbying targets to consider are political parties. All political parties go to elections with some form of policy statement and have election manifestos. Read these documents and ask yourself, have any of them made clear commitments to:

- Human rights?
- Equality?
- Women or children's issues?
- Good governance?
- Social justice?

You should direct your advocacy towards key office-holders such as the President or Secretary of the party. If you have sympathies with the principles of the party, you may even want to consider becoming a member. Through your membership you can try to influence its direction and policies. Even if you are not a member you can still encourage the membership to prioritise your issues. If the party is in the process of preparing a policy statement or election manifesto it is a good idea to try to get them to include a commitment to your issue in the document.

## Sensitising the Judiciary

Members of the judiciary are also important people to consider when planning your campaign. Judges in the various courts of the country and their staff are responsible for interpreting laws and should be fully aware of the human rights concerns of the public. As such, it is important to hold meetings and training sessions with the judiciary in order to sensitise them to the importance of your campaign issues.

Another way of interacting with the judiciary is through a legal process known as strategic litigation.

## Strategic Litigation

Strategic litigation can be a useful way to change the legal landscape to support the cause of human rights. Strategic litigation is a way of building on the judiciary's body of case law so that it is more supportive of human rights. Lawyers pursue a particular, usually rights-driven outcome for a case in the courts in order that the outcome will become case law and influence the interpretation of other, similar cases in the future (precedent).

If the judgement in a particular case recognises a human right, or violation of a human right, this will have a similar legal effect as the passage of legislation which protects that right. The judgement of a court, particularly a higher

court, will stand as the law of the land, unless and until the legislature passes a law to override the court's decision.

In practice, strategic litigation is most often pursued in constitutional cases. This is useful because every Pacific Island country's constitution includes a Bill of Rights. As legislative lobbying is often carried out around issues that relate to human rights, the Bill of Rights can often provide a strong foundation for strategic litigation in the courts. Where your country has ratified international treaties and agreements, they too may be used as a foundation for litigation in domestic courts.

Strategic litigation can also be used as an effective tactic once legislation is passed, to ensure that a new law is being properly implemented and applied. For example, where the Government is slow in dedicating resources to implementation, litigation may be pursued to press the Government to fulfil its obligations. Where the Government is seen to be misinterpreting the law, litigation in the courts can be very useful as a way of providing the executive and the bureaucracy with clear guidance on the meaning and content of the law.

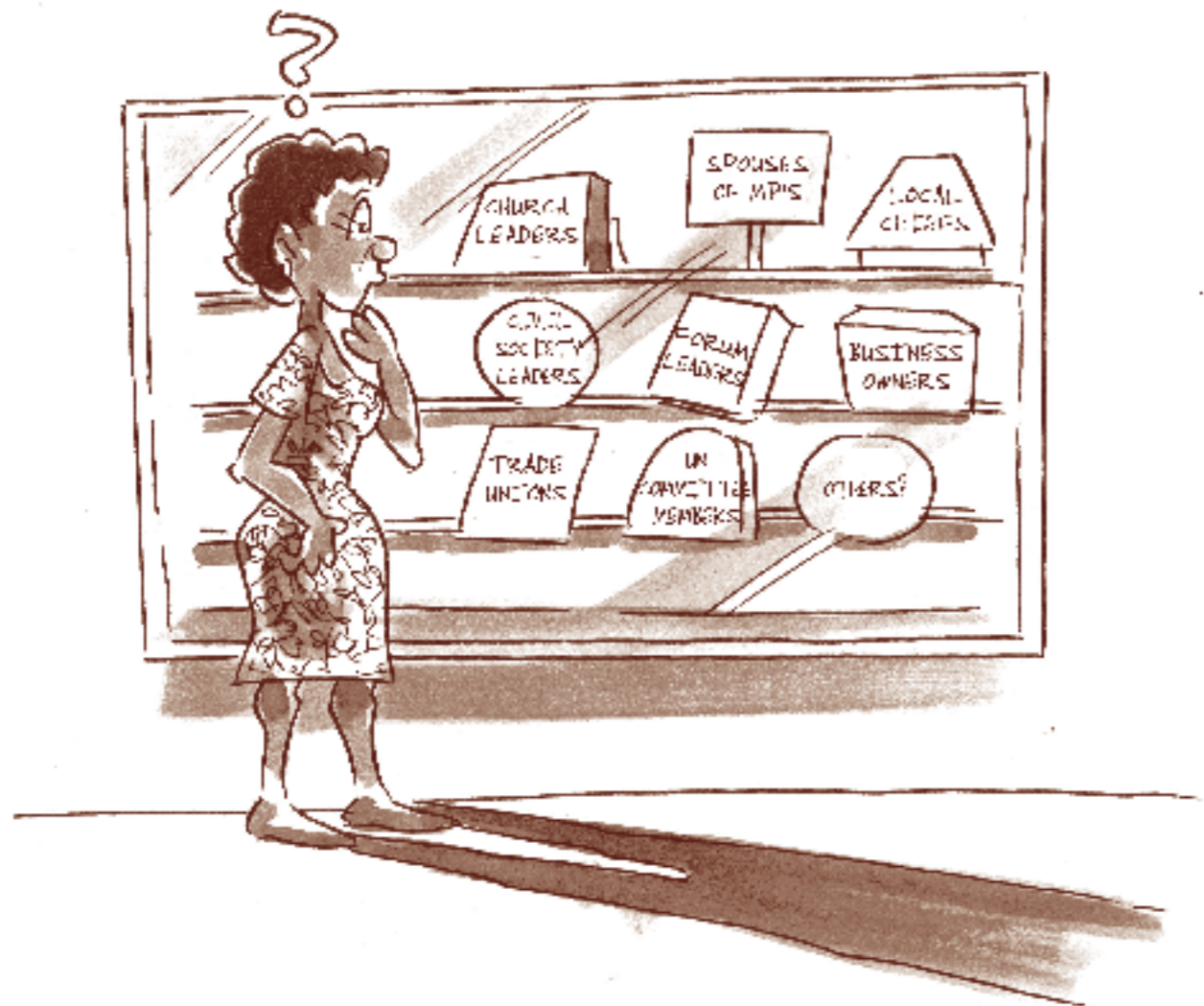
While strategic litigation can be a useful means of promoting legislative reform, it also has its challenges:

- Strategic litigation can take considerable time and money, particularly in the higher courts. However, if you can access free legal advice, this will substantially reduce your costs
- It can be difficult for non-lawyers to identify opportunities for strategic litigation. However, if you have lawyers as members of your lobbying coalition, they can be an excellent resource to draw on when working out your litigation strategy
- If you lose your case, you run the risk of getting an unhelpful interpretation of the law. This can be particularly likely in areas of the law which are considered particularly controversial, for example, sexuality rights, and if your case is being heard by a conservative court

## Traditional Lobbying Targets

In the Pacific, it is important to recognise that there are a range of bodies outside the Government which also have significant power and influence over decisions about legislation and policy. You should be alert to identify such campaign targets as legislative lobbying is often most effective when it is multi-pronged and brings in stakeholders from across the community.





In the Pacific, there are some common stakeholders from outside central government who should be considered for inclusion in any campaign, namely:

- **Local Government Bodies:** Most Pacific Island countries have bodies operating at the local government level, which are very influential because of their close and regular contact with the public. It is important that these bodies are tapped for their ideas and inputs, and also used as a potential point of dissemination for information on your issues. Consider for example, that in Tuvalu, all proposed legislation is to be circulated to the local Falekaupule for consideration and feedback before it is finally voted upon in the national legislature
- **Churches:** In all Pacific countries, the churches and other religious bodies have considerable influence in shaping the views of the voting public and decision-makers alike. The church often plays a special role particularly in relation to issues such as women and children's rights, and more lobbyists are bringing them on board as key partners

## International and Regional Lobbying Targets

The countries of the Pacific are all members of the United Nations as well as numerous regional inter-governmental bodies. Increasingly, Pacific Governments are engaging with international and regional bodies to promote domestic issues. At the same time, international and regional bodies are themselves using their influence to encourage Governments to meet agreed minimum human rights standards. Recognising the growing authority of these bodies, civil society organisations should be alert for opportunities to use them as a means to bring about changes in domestic law.

## Lobbying via United Nations Mechanisms and Bodies

As the table on p.30 shows, every Pacific Island country has ratified at least one of the major international human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) or the Convention on the Elimination of All Forms of

Discrimination Against Women (CEDAW). Additionally, every Pacific constitution includes a Bill of Rights, which reflects many of those enshrined in international law. Bearing these points in mind, international forums can be useful lobbying targets to identify as part of your campaign strategy.

All of the seven major international human rights treaties are supported by a treaty body, comprised of a committee of independent experts that monitor implementation of the treaty. These are:

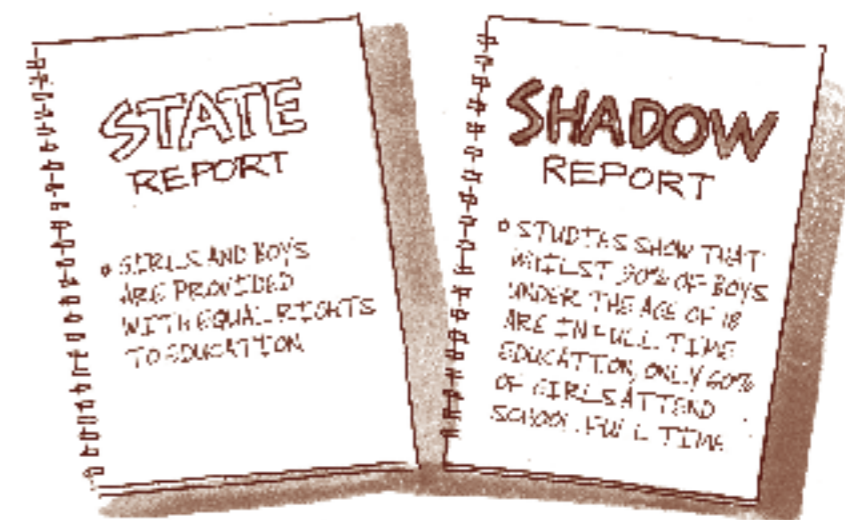
- The Human Rights Committee (CCPR) monitors implementation of the International Covenant on Civil and Political Rights (1966) and its optional protocols
- The Committee on Economic, Social and Cultural Rights (CESCR) monitors implementation of the International Covenant on Economic, Social and Cultural Rights (1966)
- The Committee on the Elimination of Racial Discrimination (CERD) monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- The Committee on the Elimination of Discrimination Against Women (CEDAW) monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (1979)
- The Committee Against Torture (CAT) monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
- The Committee on the Rights of the Child (CRC) monitors implementation of the Convention on the Rights of the Child (1989) and its optional protocols

- The Committee on Migrant Workers (CMW) monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

When a Government ratifies a human rights treaty, it is required to regularly report back to the relevant human rights committee on the steps that it has taken to implement its provisions and incorporate them into domestic law. The committee will then consider the report and then make recommendations for improvements. If your Government has ratified a treaty, these reporting processes provide a very good opportunity for you to lobby. You can lobby for the inclusion of issues into the national report prepared by the Government, or you could consider preparing a 'shadow report', which assesses how well the government are fulfilling their human rights obligations and includes recommendations for legislative change.

The country report and any shadow reports are usually considered by the committee in a committee hearing, to which your government will usually send an official delegation. **Some delegations include members of civil society which is a great opportunity to have your views listened to.** Alternatively, accredited NGOs can request to speak at the committee hearings. After written and oral submissions, the committee produces specific Concluding Observations, which highlight progress as well as areas for improvement. You should be active in lobbying for the Concluding Observations to include a reference to the legislative reform your campaign is focused on. It is important that any relevant Concluding Observations are publicised nationally.

FOR THE ATTENTION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD.





## The United Nations Economic and Social Council

More generally, the United Nations Economic and Social Council (ECOSOC), and its subsidiary bodies provide another set of targets for international lobbying in support of national issues. ECOSOC was established under the United Nations Charter as the principal body to coordinate the economic, social, and related work of the 14 UN specialised agencies. ECOSOC serves as the central forum for discussing international economic and social issues, and for formulating policy recommendations on these issues for Member States. Key subsidiary commissions of ECOSOC to bear in mind as lobbying targets are:

- The Commission on the Status of Women (CSW)
- The Commission on Population and Development
- The Commission for Social Development
- The Commission on Sustainable Development
- The Economic and Social Commission for Asia and the Pacific (ESCAP)

To effectively engage with ECOSOC and its committees, NGOs need to be registered as having 'consultative status'. You can apply for consultative status on the ECOSOC website.<sup>26</sup> Accreditation means that you can attend commission meetings - excellent opportunities to lobby the UN as well as your country delegation.

## The Universal Periodic Review (UPR)

The Universal Periodic Review (UPR) is a human rights mechanism established in March 2006 to complement the work of the treaty reporting mechanisms. The UPR is a means of assessing states' overall human rights records. The Human Rights Council is the body responsible for overseeing the review process.<sup>27</sup>

Under the UPR, the human rights situation in each UN Member State is reviewed every four years. The review is conducted by the UPR Working Group which considers three information sources when analysing the human

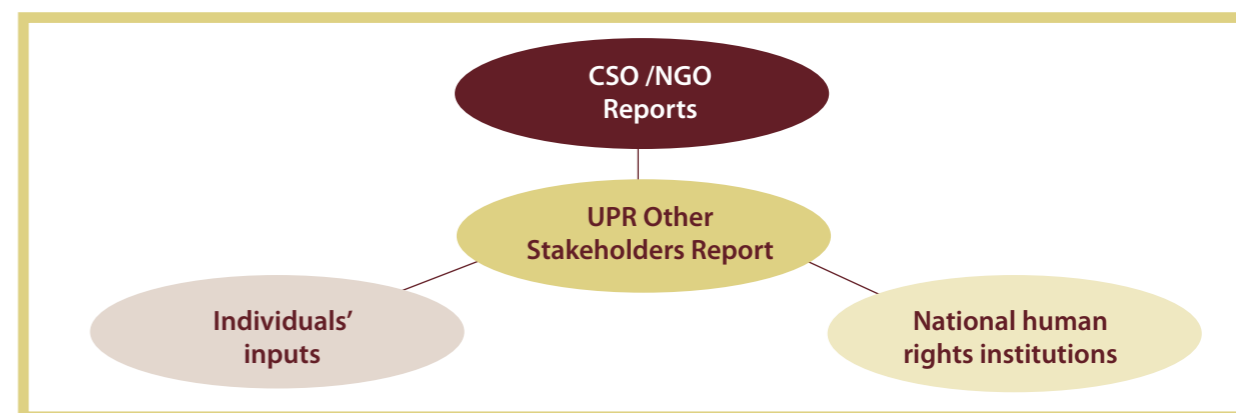
rights situation in a given country. Firstly, the Working Group considers a national report provided by the Government. Secondly, the Group looks at information provided in the reports of independent human rights experts, the treaty bodies listed above and other UN bodies on the country. The third source of information is known as the 'other stakeholders report' and is perhaps the most important information source for lobbyists to be aware of. The other stakeholders report is a summary of information received from civil society, NGOs, national human rights institutions and individuals. This report can provide a useful critique of the national report, especially in circumstances where the government might want to play down controversial policies or practices. As part of your lobbying, CSOs should consider it a priority to contribute to the other stakeholders report when their country is under review. This allows the international community to get a realistic picture of what the human rights situation is in your country and the issues that are important to citizens.

Another way for lobbyists to use the UPR system to voice their concerns is to lobby for the inclusion of key issues in the national Government-led report. Ideally, the Government should prepare the report only after consulting widely with the public and asking for submissions on human rights issues of concern. If this is the case, you can participate in the consultation process and prepare a submission to your Government.

Tonga, Tuvalu, Vanuatu, Fiji and Kiribati have been reviewed under the UPR process.

## Regional Forums

The Pacific is notable for its wide range of inter-governmental institutions, together referred to as Council of Regional Organisations of the Pacific or CROP agencies.<sup>28</sup> The Pacific Islands Forum is the region's premier political and economic policy organisation, and as such, should be seen as a key lobbying target. Forum Leaders meet annually to develop collective responses to regional issues. The Forum comprises 16 Pacific island countries, namely Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Republic of the Marshall Islands, Nauru, New Zealand, Niue,



Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga Tuvalu and Vanuatu. New Caledonia and French Polynesia were granted Associate Membership in 2006. Current Forum Observers include Tokelau (2005), Wallis and Futuna (2006), the Commonwealth (2006) and the Asia Development Bank (2006), with Timor Leste as Special Observer (2002).

In April 2004, at an Informal Leaders Retreat in Auckland, Pacific Leaders adopted a vision statement for the Pacific region. In furtherance of their vision, leaders agreed to the "development of a Pacific Plan to create stronger and deeper links between the sovereign countries of the region and to identify the sectors where the region could gain the most from sharing resource of governance and aligning policies". The resulting Pacific Plan was endorsed by Pacific Leaders in October 2005. The plan identified four supporting pillars, namely economic growth, sustainable development, good governance, and security. Notable,

the Preamble to the plan recognised that "leaders believe the Pacific region can, should and will be a region of peace, harmony, security and economic prosperity, so that all of its people can lead free and worthwhile lives... We seek a Pacific region that is respected for the quality of its governance, the sustainable management of its resources, the full observance of democratic values and for its defence and promotion of human rights..."

Pacific Plan initiatives are implemented by CROP agencies and donors at the regional level, and by forum member governments at the national level. Progress on the plan's implementation is coordinated by the Forum Secretariat. The Pacific Plan provides an excellent framework for a range of legislative lobbying initiatives, and the supporting regional meetings and coordinating bodies provide useful entry-points for CSOs who wish to use the influence of regionalism to promote priority issues domestically.

## Promoting issues regionally through the Forum Secretariat

The Pacific Islands Forum Secretariat (PIFS) is responsible for overseeing implementation of the Pacific Plan, through its Pacific Plan Action Committee. All CROP agencies have responsibilities for moving forward the priorities identified in the Plan however. As such, depending on your area of interest you will need to identify which CROP is responsible for your subject area and consider who within the organisation should be targeted by your campaign. Notably though, CROP agencies are staffed by international civil servants, who are ultimately responsible to Forum member states. As such, it remains crucial to lobby member governments as well.

Notably, PIFS is responsible for organising a range of Ministerial Meetings for the region annually. These meetings can be important advocacy targets. For example, the regional NGO FemLink has carefully targeted the Forum Regional Security Committee over a number of years to recognise the importance of UN resolution 1325 (which relates to women and conflict). Their advocacy was instrumental in achieving a more structured engagement between PIFS and CSOs, in terms of setting the agenda and priorities of FRSC and the recognition of sexual and gender-based violence as a security concern by Leader's at the 40th Pacific Island Forum.

The Forum has a range of consultative mechanisms to engage with CSOs from accreditation of regional non state actors to attend Pacific Island Forum meetings to discussing regional security issues with civil society to inform the Forum Regional Security Committee. A set of guidelines and policy for CSO accreditation can be obtained from the Forum.

<sup>26</sup> NGO Branch, United Nations Department of Economic and Social Affairs ><http://esango.un.org/paperless/Web?page=static&content=apply>> as on 1 January 2010

<sup>27</sup> OHCHR (2008) 'Fact Sheet: Human Rights Council - Universal Periodic Review', <<http://www.ohchr.org/EN/HRBodies/UPR/Documents/UPRFactSheetFinal.pdf>> as on 10 June 2009

<sup>28</sup> CROP is the acronym for the Council of Regional Organisations of the Pacific, which is the governing body for all of the Pacific inter-governmental organisations. See <<http://www.spc.int/piocan/crop/spocc.htm>>

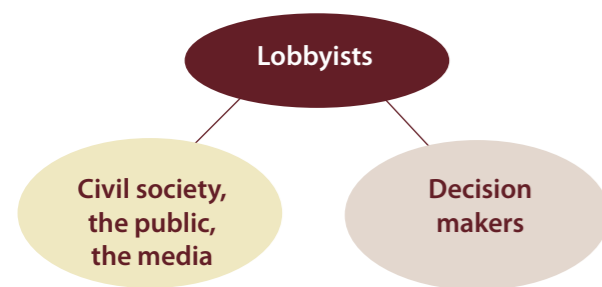


## LOBBYING METHODS

Once you have decided who your lobbying targets are, you will need to select the lobbying methods that are appropriate for your circumstances. This section will provide you with a 'toolbox' of lobbying methods that you can dip into according to your lobbying objectives and targets. Some lobbying methods are more appropriate at certain stages of the lobbying process. For example, writing letters to MPs may be more appropriate at the early stages of a campaign when it is important to spread awareness of the need for change amongst people in key positions of influence. Making a detailed written submission on your issue with advice on legislative change may be more appropriate in response to a public consultation on the law.

There are a number of methods that you can employ for your lobbying and the most successful campaigns will generally use a mixture of these methods, depending on the outcomes that they are trying to achieve.

Generally, lobbying strategies should be directed at trying to influence the opinions of two main groups of people: decisions makers such as politicians, MPs and civil servants, and those who can generate additional pressure on these decision makers such as other civil society groups, the media and the public at large.



A variety of lobbying methods should be utilised in order to generate as much support for your campaign, both from the public and from government, as possible. This section will show you how to use these methods and which circumstances they may be appropriate for.

### Letter writing

Letter writing is most often used as a way of directly influencing the opinions of decision makers. Letter writing can be appropriate when you want to personally communicate with people in positions of influence but do not have the opportunity to arrange a face-to-face

meeting with them. Alternatively, letter writing can be a more 'formal' way of communicating your ideas than a one to one meeting, and can also be used when you want to influence the opinion of multiple people at the same time. Writing a letter could be a one-off event or it could take the form of a 'letter writing campaign' in which members of your coalition and supporters of your cause write numerous letters in order to increase the pressure on your lobbying targets.

Letter writing campaigns can be an extremely useful way of keeping an issue alive in a decision maker's mind, and to convince them that you have popular support. Imagine the difference in your reaction to receiving one reminder to pay an overdue bill and receiving a hundred reminders – which would you be more likely to sit up and take notice of? Ideally, individuals should make their letters as personal as possible, stating their own argument in support of the legislative changes in their own words. Alternatively, some organisations and coalitions create template letters which are made downloadable from their website.

Letter writing could also be used at the start of your campaign to bring your lobbying target's attention to your cause and to ask for a face-to-face meeting in which you can explain the changes that you want to see in greater detail.

### TIPS! Letter Writing

- Make sure that you use the correct contact details and address the person you are writing to by their proper title
- Wherever possible, the letter should be typed and have a return name, address and telephone number on it
- Be brief and focused in the way that you explain your concerns
- Be specific about exactly what legislative change you want to see
- Be aware of all the facts. Check all the facts in your letter and ensure that they are correct and can be backed up with evidence
- Try to focus on the positive changes that can be made and the benefits of making these changes – people tend to ignore letters that are overly negative which do not offer constructive ideas for change <sup>29</sup>

## Face-to-Face Meetings

If it is at all possible for you to arrange to meet directly with your lobbying target then this can be a more personal way of communicating your concerns. Face-to-face meetings are appropriate when you want to influence decision makers directly and feel comfortable talking to them on a one-on-one basis about your issue. In smaller Pacific Island countries it may be easier for you to arrange a meeting with an influential person as it may be that you know them or have contacts who can arrange the meeting for you. If you are having difficulty arranging a face-to-face meeting, try writing to, or phoning the secretary of the person and ask them to arrange a meeting for you. Alternatively, you could try teaming up with a well known CSO with good government contacts and arrange the meeting through them. Often a senior executive from a well known regional or international CSO will have greater luck in getting a meeting with a government official, especially if they have been provided advice on similar issues in the past.

## Public Meetings, Debates & Rallies

Public meetings and debates can be a way of giving all members of the community, no matter what their status, a chance to share their views. It can be a way of generating new ideas to take your campaign forward, recruiting new lobbyists to your coalition and gaining new insights into the way that people are actually affected by the legislation that you are trying to change. Public meetings and debates can also be a key way to lobby - if possible, invite your government lobbying targets so that they can hear people's views and stories first hand.

Although rallies and public marches are not commonly held in the Pacific, they can be a very useful way of gaining publicity for the issue you are lobbying around. Because a large gathering of people is such a visual phenomenon, a march or rally draws a lot of public, and often media attention to your campaign. As such it targets both the public at large and influential decision makers.

A point where many people go wrong when organising a march or rally, is not making it absolutely clear to onlookers what people are marching or rallying for. It is very important that people get the message clearly: carry eye-catching placards with you clearly summarising the issue that you are lobbying for and take spare ones for others to carry. Include a speech explaining your cause as part of your march, and if possible invite an influential person to present the speech to the people taking part.

At all times, it is important to ensure that your rally or march is conducted peacefully and with respect to those people who are not taking part.

### TIPS! Face-to-Face Meetings

#### In the meeting:

- Be on time or a little early
- Have some printed background reading such as a policy brief or factsheet with extra copies to give out. If you have developed model legislation, provide a copy to the person you are meeting and offer to go through any provisions they may wish to query or clarify
- Hand out a business card or information about how you can be reached after the meeting
- Stick to your agenda. You are likely to only get a 15 minute meeting
- Be prepared with facts and case studies. Tell the person you are meeting what support there is in the community for your issue and what other actions your group has taken or intend to take
- Tailor your arguments to the interests of the person you are speaking to

#### After the meeting:

- Write down a record of the meeting as soon as you finish and brief other coalition members
- Send a written thank-you and a report of your meeting to the person you met with
- Make sure that any promised follow-up action is noted and acted on as a priority. In terms of building trust with lobbying targets, it is important that you make every effort to keep any promises made during face-to-face meetings

## Preparing Written Submissions

A number of opportunities may come up for you to make a written submission to your government explaining in detail the changes that you would like to see in existing legislation or the new legislation that you would like to see enacted.

The most likely opportunity that may arise for you to make a written submission will be if when a bill has been referred to a parliamentary committee for consideration. Submissions are usually made either to the committee itself or to the chairpersons of the committee, in response

<sup>29</sup> Based on 'When writing to a political representative' in Civicus, Campaigning Toolkit for CSOs Engaged to the Millennium Development Goals, <[http://www.whiteband.org/resources/campaign-tools/mdg-campaigning-toolkit/mdg\\_campaigning\\_toolkit\\_eng.pdf](http://www.whiteband.org/resources/campaign-tools/mdg-campaigning-toolkit/mdg_campaigning_toolkit_eng.pdf)> p.95



to a public consultation in which the committee will call for inputs from the public. The committee will then consider the submissions that it receives before formulating recommendations that are presented to the legislature as a whole in the form of a report.

Your submission must be knowledgeable and accurate – check all facts and ensure they are correct. Do not make your submission too long as it is unlikely to be read. If you do have a lot of suggestions to make, ensure that you include a summary at the beginning of the submission providing a brief overview of the changes that you would like to see made and the reasons why. Structure your submission clearly in distinct numbered sections so that the committee may refer back to the sections that are relevant to the part of the bill they are considering at any given time.

If this is the stage where the bill is being considered in detail, you might want to include comments on specific provisions or even provide a detailed ‘critical analysis’ of the proposed law.

Another opportunity to make a written submission is when a law is being considered by a law reform commission as their processes usually include a public consultation. Again, be focused and specific about the changes that you want to see made to the law. It may be useful to provide alternative wording for the specific provisions that you would like to see amended, or even to provide an entirely new revised draft of the law.

## Leaflets & Factsheets

Leaflets and factsheets are a good way to summarise the changes that you are campaigning for and your arguments in support of those changes. Leaflets and factsheets can be handed over to lobbying targets during face-to-face meetings to keep the issue fresh in

their minds, inserted in newspapers, put up as posters or sent to supporters to help them to influence others to support the campaign.

When creating a leaflet or factsheet you should keep your language simple and easy to understand – make sure that you stick to the main points of your argument and be clear about what changes you want to see made. Explain briefly how the shortfalls in the current legislation are affecting everyday people and what steps those people can do to support your cause.

## Petitions

Petitions are useful if you want to generate, and demonstrate popular support for the changes you are lobbying for. The aim of a petition generally, is to get as many individuals as possible to say, with their signatures, that they support your cause and agree with the written statement that will be written at the opening of your petition.

Petitions can demonstrate how broad and varied the support-base for your cause is by including signatures from people from a variety of communities of social groups and can complement your other lobbying strategies such as letter writing and face-to-face meetings.

Your petition should begin with a clear statement describing the exact changes you are petitioning for, as well as the name and contact details of the person, organisation or coalition leading the petition (if you are an organisation or coalition you may want to include your logo), and details of where to find out more information such as a website. The people who sign your petition should be provided space to write their name, contact details, their signature and to provide any further comments that they would like to.

### TIPS! Steps to Preparing a Petition

#### 1. Decide what exactly you wish to petition for.

This sounds obvious but you can be strategic in the things you petition for. It could be that there are a number of smaller, more immediately achievable changes that you could petition for as a step-by-step means to reaching your end goal. For example, would you like your petition to ask for the immediate enactment of a piece of legislation? Or would it make more sense at this stage to petition for a wider public consultation on the proposed law so that everyone could have their say? It is important to work out what is achievable and appropriate at the time, and what kind of request your target is likely to act upon, should you demonstrate enough public support. If at all possible, it might be wise to consult the politician or public servant you are targeting and ask them what changes could conceivably occur if there was enough public support.

#### 2. Decide who you are going to petition – identify your target.

At this stage, you have probably identified the key players that you will target in your campaign and know who the people are that are most likely to be able to influence change. You should petition the person, or people with the most power to influence the particular change you are asking for. Quite often, petitions will be aimed quite high, for example the head of the local or provincial authority or even the Prime Minister. At the same time, you can also make other key people aware of your petition so that they might also put added pressure on your primary target.

#### 3. Work out who you want to sign your petition and if you need to aim for a certain number of signatures.

Are you aiming for a certain number of signatures on your petition? Is it important who signs the petition? Are there some signatures that would be particularly useful? For example, if you are petitioning for the rights of rural farmers in a particular province, it is extremely important that the petition includes the signatures of the farmers and others who live in the province. It is also good to demonstrate a broad support base through including signatures from young people and old, men and women and individuals from a diverse range of ethnic and cultural groups.

#### 4. Decide on a time frame – does the petition need to be submitted by a given date?

Are there any important dates or deadlines that need to be borne in mind? Refer back to your lobbying diary to ensure that your petition corresponds to significant dates on the parliamentary calendar. This is particularly important if you are petitioning around a Bill that is being considered by Parliament.

#### 5. Decide on the format of the petition.

Whether you choose to prepare a paper-based petition or an electronic petition that can be circulated and submitted on a website or by email, it is important that the petition begins with a clear, concise statement detailing the action that you are lobbying for, the reasons for this, who you are lobbying, and the contact details of the person or organisation leading the petition. If you have more information about your campaign available on a website then you should also include a web address. Signatories should be provided with space to write their names, contact details, signatures and any supporting statement that they wish to add.

#### 6. Circulate your petition.

There are numerous ways that you can circulate your petition and collect signatures. Examples include:

- Physically taking the petition around your community and asking for signatures. This gives you a chance to actually explain the importance of your cause on a one-to-one basis. You could knock on people’s doors or present the petition at community and church meetings. Alternatively, you could post the petition on a notice board in your local health centre or school
- Presenting your petition at a stall at an event is a good way to gather signatures and raise awareness. You should also have leaflets or factsheets to give away
- Posting the petition on a website or circulating it through an email list. This is particularly useful if you have an electronic network of contacts that are likely to support your cause. This is a good way of gathering overseas support. If possible use this method alongside those listed above as it will increase your signature base

#### 7. Submit your petition.

The way in which you handover your petition can really influence its impact. This could be an ideal opportunity to generate media awareness around your issue. For example, you could hold a march or rally culminating in the handover of the petition to a prominent individual. You could submit the petition on a day from the international calendar. For example, a petition campaigning for women’s rights could be handed over on International Women’s Day or a petition lobbying your government to ratify the United Nations Convention Against Corruption could be submitted on International Anti Corruption Day.



## Policy Briefs

The purpose of a policy brief is to outline the rationale behind your wish to see a piece of legislation or policy amended. It should set out the clear arguments behind your cause and should be backed up by hard, factual evidence of the need for change. Your policy brief should contain the following elements:<sup>30</sup>

- 1. Abstract.** An abstract or summary providing an overview of the problem and your campaign.
- 2. Research summary.** A summary of the research you have carried out and the evidence that you have gathered indicating that there is a problem with current policy and legislation.
- 3. Propose and answer a few 'big' questions such as:**
  - Who are the people who are the most affected by the current legislation?
  - Is anyone affected positively by the current legislation?
  - Why does the current situation go against human rights or ethical standards or norms?
  - How is the issue likely to progress if it is not addressed immediately?
  - How much will change (and alternatively maintaining the status quo) cost the country economically and politically?
  - Is there any international pressure for the situation to change?
- 4. Alternatives.** Your proposal for change in brief bullet points.

A policy brief can be a useful document to have with you when you go to meetings with people in government. It is good to have some copies with you at all times so that you can hand them out to people who are interested in your campaign and want to understand some of the background information and research behind your cause.

## PRODUCING LEGISLATIVE OUTPUTS

Producing legislative outputs can be a very effective lobbying strategy. Governments and legislatures are busy institutions. They have multiple demands on their time and often have limited capacity to take extra work. Even where governments or legislatures actually agree to commit to legislative reform, often they simply do not have the personnel or expertise to prioritise the work. If you want to increase the chances that your legislative lobbying will have an impact on your

campaign targets, it is useful to consider undertaking some of the supporting legislative work yourself.

Ideally, a member of your campaign coalition will have legal expertise which you can draw on. If not, you may want to consider approaching a local law firm to see whether they would consider helping you with your analysis for free (called "pro bono" work by lawyers).

## Analysing Existing Government Bills

If you are lobbying for legislative change you will need to undertake a proper legal analysis of any legislation that you want to have amended or repealed. The primary target for your legal analysis will be policy-makers including government ministers, parliamentarians across the political spectrum, and senior government officials who often have influence in the policy-making process. At a more operational level, legislative drafters should also be kept in mind. While your primary targets will usually have relatively good capacity to understand a technical legal analysis, nonetheless, you should take care to write in plain English and to make your analysis as clear and simple as possible. Do not assume that policy-makers will already be familiar with the legislation.

Usually, legislative analyses are written as a narrative, with paragraphs explaining each of the issues in turn. However, to make things as easy as possible for the reader, you should consider using bullet points or numbering which can be easily cross referenced within the text of the document and you should format the document for easy readability. You should also consider including proposed draft wording for any new provisions or amendments you are suggesting. The trick is to make it as easy as possible for your lobbying targets to make the changes you want.

### CASE STUDY: Pacific CEDAW Legislative Compliance Indicators

In 2007, UNIFEM and the UNDP Pacific Centre produced a set of Legislative Compliance Indicators for the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). The 113 Indicators were designed to enable national stakeholders to review their domestic legislation to assess whether their laws were in compliance with CEDAW. Using the Indicators as a benchmark, the legislation of ten Pacific Island countries has been reviewed to assess whether it is in line with CEDAW. Lobbyists and legislators can use the country reviews as a starting point for identifying gaps and weaknesses in their own legislation.

## Developing Model Legislation

If you are proposing a major overhaul of an existing Bill or if you are lobbying for the enactment of an entirely new Bill, you may want to consider developing a 'Model Bill' which can be used as the basis for discussions with policy-makers. A Model Bill allows you to put forward your ideal version of the Bill that you want enacted. It can be a very useful tool, in terms of setting a high benchmark for achievement, which can then be used as a negotiating starting point with policy-makers.

Developing a Model Bill can be quite a resource-intensive process. You need to make sure to set aside enough time and energy to commit to a proper drafting process. In that context, remembering that civil society always encourages Government to develop legislation in a participatory way, it is important that a model

civil society Bill is developed through an open and consultative process. To ensure that the process does not become unwieldy, you should consider identifying one or two people to spearhead the drafting process.

If you are working as part of a coalition, once the draft of a Bill is ready you should circulate it to all coalition members for comment. Ideally though, you could upload it on a public website and call for comments from the broader community. Depending on how far your lobbying has already progressed with members of government and the legislature, you may also want to consider sharing the draft Bill with key government or legislative contacts. This can be a strategic way of slowly building up ownership of the process amongst key stakeholders inside government or the legislatures whose support will be needed to get the Bill enacted.

### Pacific Islands Forum Secretariat Model Bills

The acute shortage of legal drafters in the 14 Forum Island Countries and the significant legal drafting work required to enable these countries to meet legal requirements under regional and international conventions prompted the establishment of a Legal Drafting Unit within the Forum Secretariat. Formally established in October 2006, the unit employs a full time Legal Drafting Officer. The legal drafting unit is mandated to:

- (i) Draft security related legislation as required under the Honiara<sup>31</sup> and Nasonini<sup>32</sup> Declarations
- (ii) Provide legislative drafting assistance in relation to national legislative agendas  
Render legislative drafting assistance to the 14 Forum Island countries in response to the Pacific Plan and any other relevant forum
- (iii) Work with development partners to facilitate sustainable capacity building for legal drafters

To facilitate enactment of certain prioritised laws by Pacific Island countries, the Forum has taken the approach of developing a model law where doing so is mandated by a relevant Forum meeting. The Regional Model Law on Counter Terrorism and Transnational Organised Crime and the recently completed Regional Model Law on Customs are cases in point. Substantial time, research (including consultations with relevant regional/national stakeholders who will be responsible for implementing the law once it comes into force) and effort is invested in determining the soundness of the proposed legislative provision. Model Laws are meant to serve as a guide and can be adapted by a national government in one of two forms:

- (i) In a wholesale manner (a new Bill)
- (ii) Through selective adaptation ('gap filling' Bill. This is usually the case when there is already a law governing a particular subject matter).

The process of adaptation of the relevant model law is done in close consultation with the national Attorney-General's Chambers and in some cases with the relevant Ministry who may have administrative responsibility for the Bill. On-site country visits is a useful way to gain access to relevant laws and liaise with relevant stakeholders when developing these model laws.

<sup>31</sup> The 1992 Declaration on Law Enforcement Cooperation covers three areas: Mutual Assistance in Criminal Matters, Proceeds of Crime and Extradition

<sup>32</sup> The 2002 Declaration on Regional Security requires enactment of legislation on these areas: anti-money laundering, drug trafficking, terrorism, terrorist financing, people smuggling and people trafficking

<sup>30</sup> <http://www.sanpad.org.za/portal/docs/policy/Writing%20a%20Policy%20Brief%20SANPAD%20seminar.pdf>



## Drafting a Private Member's Bill

In both the Westminster and Presidential legislative systems that exist in the Pacific, it is possible for non-Executive members of the legislature to table a Bill for consideration. Ordinarily, the government will be responsible for drafting a Bill and it will then be brought to the legislature by the relevant Minister. However, in all of our Pacific legislatures, there still exists the possibility for any member of the legislature – whether or not they are a member of the Government – to develop and table a Bill. As mentioned in Stage 2 of How Laws are Made, p.p35-36, such a Bill is referred to as a 'Private Member's Bill' because it is brought by the member in their private capacity, not as a member of government.

Private Member's Bills can be effective in getting an issue on to the legislative agenda, but they are also quite a demanding option to pursue. Firstly, you will need to find a member of the legislature who is willing to take up your issue and table a Bill for you. You will then need to support the member to develop a Bill, which can be resource-intensive because non-government members do not usually have access to legislative drafting resources. If you have already developed a Model Bill, that Bill could be utilised by the member. It will be important to become familiar with the parliamentary rules or Standing Orders that govern the tabling of a Private Member's Bill so that you can advise the member on what they need to do to get the Bill onto the parliamentary agenda. Notably, rules can sometimes be manipulated to block the tabling of a Private Member's Bill, so you should be alert for this possibility and try to minimize that risk by making sure your member follows proper processes.

Both before and after the Private Member's Bill is tabled, it is important that you work with the sponsoring Member to encourage other members to support the passage of the Bill. As with any other Bill, you will need a majority of votes to get the Bill passed. Notably though, even if the Bill does not get passed, simply tabling a Bill can sometimes be a useful lobbying tactic as it can be used to draw the attention of political parties, the media and the public to your issue. It is often the first step on a longer journey towards development of a Bill that is endorsed by the government.

## CREATING A LOBBYING PLAN

**A**t this stage, you will have your information, your group of supporters, your specific goals and you will also have identified your methods for lobbying. It is essential now to put together a plan that will guide you and your group. As well as ensuring that everyone in your group clearly understands the objectives and activities of your lobbying strategy, a lobbying plan will help to:

- Ensure that even if the individuals or organisations which make up your lobbying group change over time, you will still have a solid point of reference to continue your lobbying
- Help to keep you focused and on track – campaigns can be easily side tracked by other issues
- Highlight areas where additional resources may be needed; both human and financial which you may need to fundraise for or recruit
- Ensure that human resources are used effectively, clarify peoples' roles and commitments and prevent duplication; ensure that everyone knows who is doing what within the campaign
- Ensure that your progress can be monitored against your originally-stated objectives

## TIPS! The Key Elements of a Lobbying Plan

A lobbying plan should contain the following elements:

### 1. Summary/overview

An executive summary of the problem, who is being affected, analysis and research that has been done, and what you and your coalition want to see changed in the law.

### 2. Objectives of the campaign

Clear and realistic objectives stating exactly what you want to achieve. If you have a number of objectives you may want to list them in order of priority. It is important that all members of your coalition agree on the campaign objectives.

### 3. Campaign targets

A list of the people that you want to target in your campaign. Ensure that you have analysed who the main decisions makers are, and the extent of their influence.

### 4. Lobbying methods

Identify which lobbying methods you have selected to lobby which targets. You should use a variety of methods and be flexible in your approach if your methods are not working.

### 5. Roles and responsibilities

Identify who will be responsible for which action in your campaign. This is important so that there will be no confusion which could eventually lead to conflict within the campaign. Designate responsibilities according to the expertise that is available in your network or coalition but ensure that you take a flexible and consultative approach – people should be able to choose how they contribute to the campaign.

### 6. Communications (media) strategy

Write down how you intend to work with the media on your campaign; which media representatives, newspapers, radio stations, etc. will you talk to and how do you intend to get your message to reach as wide an audience as possible. Will you hold media events or press conferences? Will you time your media activities to coincide with key dates on the calendar?

### 7. Timeline

You should ensure that you set yourself realistic deadlines for carrying out your lobbying activities. Lobbying should be tailored to the political calendar and you should make sure that you capitalise on the publicity of important dates and events.

### 8. Monitoring plan

How will you evaluate how successful your lobbying is? Will your monitoring be ongoing or will you stop to take stock of your successes and failures at given intervals? Will you amend your lobbying plan accordingly if you find that particular lobbying methods are not as successful as you hoped they would be?

### 9. Budget (if appropriate)

If any of your planned lobbying strategy will cost money, you should include an estimated budget in your lobbying plan, including where you plan to source the money for given activities from.



## MONITORING YOUR PROGRESS

It is essential to continue to review the impact of your lobbying and refine your strategy accordingly. Ideally, you should continually assess what is working and what is not; what is being achieved and what still needs to be done. Regular coalition meetings should be held to provide feedback to all stakeholders. They also provide an opportunity to reflect and refine your strategy. Factors and players change over time, often resulting in new or different opportunities and approaches for engagement. Changes in decision-makers may require a change of strategies. Do not let your campaign become static or stagnant – actively search out new ideas and entry-points. This may require you to re-allocate financial or personnel resources.

When monitoring your progress towards achieving your objectives you should ask yourself the following questions:

- Are you reaching your short-term objectives in a timely manner or has anything slowed your campaign down?
- If not, what influences have slowed your progress? Internal influences can include divisions or arguments within your coalition, sickness of key lobbyists or lack of resources. External influences can be politically

driven, for example, government being reluctant to take your issue on board, or the replacement of your government through a coup or vote of no confidence

- Are any of your lobbying methods not being as effective as you thought they might be? If so, why not and how can you amend your lobbying plan so that it is more effective?
- Do you need to stop and conduct further research until your coalition is more knowledgeable about the issues you are lobbying for (this should be avoided if sufficient research is carried out prior to the beginning of your campaign)
- Do you need to apply to a donor for funds to conduct more thorough research or to support your lobbying efforts? Do you need to rewrite your lobbying plan to allow yourselves more time?

Whatever your analysis of your progress, it is important to keep a flexible attitude towards your lobbying plan and to amend your lobbying activities to correspond changes in your coalition and the political landscape of your country. Always remember to fully consult with members of your coalition before any decisions are made to amend your lobbying plan.



# Working with the Media

# CHAPTER FOUR



The media should be considered one of your most important partners in your lobbying efforts. Not only do the media have the skill and resources to broadcast your message widely across the community, but they also have a unique ability to influence public opinion about a given issue. This is true not only for the general public but also for politicians and civil servants whose views are often informed by the stories that they read in the newspapers and hear on the radio.

When designing your communications strategy it is important to tailor the medium you choose to the audience you are hoping to influence. While the newspapers can be an excellent way to influence people living in urban centres, if it is people in rural and outer islands communities that you are trying to reach, you should also make use of community radio. Where possible, you should translate your messages into local languages and dialects to ensure that you reach as wide an audience as possible.

This section looks at the most important things to bear in mind when working with the media and the key steps involved in designing a communications strategy to assist with getting the message of your legislative lobbying out into the public domain. The main points to remember when designing your communications strategy are:

1. Know your key message
2. Know your media
3. Choose your media appropriately
4. Ensure you have a well thought-out plan, and
5. Be sure to monitor media coverage of your issue

## Know Your Key Messages

It is important that you decide which key messages you want the media to highlight. Ensure that the messages you want to get across are clear, precise, and easy to understand. Explain exactly what you want to change about the law and why; explain the background situation and who is receiving a bad deal as a result of a law or through not having the legal protection of the law that you are trying to see enacted. Try to explain your issue to the public in a way that they will understand.

When talking to journalists it is important to bear in mind that they often have to 'sell' the stories that they prepare to their editors before they can be published. How well the story sells will determine where the stories get placed. Journalists are usually required to explain how the story they have covered will relate to 'the person on the street' so try to include some human interest in your statements – relate the issue to a particular school, family, group of women, etc. who have been affected.

## Focus Group

Testing your communications on small focus groups can be a good way to ascertain whether the messages you have chosen to highlight will have the impact you intend.

## Calls to Action

Good media campaigns call the public to take action in support of your cause. Ensure you include a list of steps that the public can take to support your campaign.

## Publishing Personal Support from Politicians

If there is a politician who supports your cause, you should publicise this. This not only gives credibility to your message, but it also places pressure on that politician to research and be clear about the issues so that they can be ready to reply to questions from the public.

## Know Your Media

Once you've determined what your key messages will be, you should decide which media organisations and individual journalists will be the most likely to assist you with getting your message out to the public.

From historical media coverage of your specific issue, determine which media organisations are likely to be sympathetic to your cause and which journalists may go the extra mile to report on your issues. It may be helpful to make a list of all available media outlets according to type (radio, newspaper, newsletter, TV) and include details such as position, phone/e-mail and the type of issues they have covered in the past. Consider the following key points to when relating to the media.

## Develop Good Relationships with Media People

When you contact media representatives be clear about what you want to say. Make sure you call your contacts at a convenient time of the day and if they are busy, offer to call them back at a specified time. For daily newspapers, for example, calling at 4pm is generally not a good time (unless, of course, it's important breaking news) because by then the major stories of the day have already been selected and are being debated in editorial meetings.

## Offer to Brief and Provide Training to the Media

Often, sympathetic media do not necessarily have all the information they need to properly advocate for or write about your issues. Offer to facilitate media awareness workshops at the beginning of the campaign.

TIP!

## Media Awareness Workshops

1. Try to encourage key media personalities to attend your workshop. Talk show hosts, editors and journalists should be lobbied and briefed.
2. Be available to facilitate the workshop outside working hours if necessary. This will ensure that more people are able to attend.
3. Journalists don't like to be taken away from stories. When inviting them to cover a workshop, provide them with some facilities that would allow them to write their stories and send them off immediately.

## Choose Your Media

Once you have identified your key messages, the audience you intend them for, and the appropriate media organisations and journalists to work with, the next step is choosing an appropriate medium, or mix of media, to get your message across. Choosing relevant, effective and appropriate media will save you time and money.

Choose a medium that is actually used by the audience you are targeting. For example, it is not usually appropriate to use the internet to get your message across to people living in rural areas. Radio spots are more relevant in this case because they have the widest urban and rural reach. The section below 'Designing a Communications Strategy', talks about some of the benefits of various media and which audiences they are designed to reach.

# DESIGNING YOUR COMMUNICATIONS STRATEGY

Keeping all of the above in mind, you should design a communications strategy which most effectively reaches your target audience and which most effectively relays the message you want to put across.<sup>33</sup> Your communications strategy should consider the potential pros and cons of using the following forms of media to relay your message, and which medium is best suited to reach which section of your target audience.

## Radio

The radio is perfect if you want to influence a very large or widely spread out audience and have limited funds to do so. The radio is useful for reaching people who are unable to read, and has the benefit of being able to repeat your message many times throughout the day.

Talk back shows can be a particularly useful way of engaging the public and capturing the public's attention around the issue you are lobbying for. Politicians sometimes listen to and phone in to talk back shows so make sure that you or your colleagues are able to make use of such opportunities and are fully briefed on your issue. It is also wise to arrange for others to listen and contribute to some of these shows, especially those conducted in the vernacular.

The following page are some examples of the types of radio programmes to use to get the message to as many people as possible:

## Newspapers

The newspaper is often the first medium that springs to mind when you think of designing a communications strategy. Some of the benefits of using the newspapers are that they are generally free to publish in, have a broad readership, and are often read by people in positions of influence. Nowadays most stories that are published in the newspapers are also published on the internet, broadening your readership even further and giving you access to an international readership.

When preparing to write an article for publication in a newspaper, it is important that you familiarise yourself with the kinds of stories your chosen paper tends to publish and if it takes a particular political line. Papers with a more liberal stance are much more likely to publish stories regarding human rights and social justice issues. However, this might mean that they are not read or taken seriously by a conservative readership. If possible, and whilst remaining true to your campaign objectives, it is important to publish your message in as broad a range of newspapers as possible.

33 Extracted from 'Creating an effective communication project in the Pacific region'; SPC, 2008



| TYPES OF RADIO PROGRAMME | PURPOSE   |
|--------------------------|---|
| News                     | To inform people about your campaign/cause. To invite radio journalists to cover an event such as a workshop. If you invite an important official to speak at the event, the radio staff can use part of the speech in that day's news programmes.  |
| Current Affairs Shows    | Sometimes the most important national, regional and local issues are discussed in a special news show called "Current Affairs". Talk to the radio programme manager, and ask if you can help organise a current affairs show on your issue.   |
| Spots, Jingles and PSAs  | A PSA (Public Service Announcement) is a message presented by a non-profit or government agency. These are very important for keeping your messages in the public eye. Develop short spots, PSAs and jingles (brief songs with messages) to promote your messages, and ask the radio programme manager to play them as often as possible throughout the day. You may not have to pay for airtime if you use PSAs. |
| Talk Back Shows          | Talk back shows are used to discuss important issues with input from members of the public. During the show you will give a brief overview of your issue and then listeners will be invited to call in with questions and comments.   |
| Dramas                   | Popular dramas (soap operas) can have story lines which are related to your campaign/cause. If your local radio station has a drama show, ask the producer and scriptwriter to include messages which promote and/or advocate for your campaign/cause. If you have a bigger budget you could even produce your own drama for broadcast on the radio.  |

It is equally important to get your message on as many radio programmes as possible, as it is to get them on appropriate radio programme. This is especially important to remember if you have specific messages designed for specific target audiences (or age groups). Below are some examples of the types of radio programmes to use if you want to target messages to a specific group of people.

| TYPES OF RADIO PROGRAMMES: TARGET AUDIENCE | PURPOSE  |
|--|--|
| Youth Forums: Young People                 | This type of programme discusses problems that affect adolescents and young people. Speak to the show's producer and ask if you can arrange a show on how your campaign/cause affects them. Focus on a few important points. Ask people who are accepted as positive role models by local youth to participate. Such people could include well-known youth, youth leaders, singers and athletes. You should also be present to make sure questions are answered correctly. |
| Music Shows: Young People                  | This type of show plays the latest local, regional and international music, and is usually directed at young people. You can air PSAs aimed at youth on this type of show.   |
| Women's Programmes: Women                  | This is a programme about women's issues. It is best to have a woman talking on this programme. Again, ask the producer if you can arrange shows that talk about how your campaign/cause may affect women. It is important that the person you appoint to speak on this show can relate to the type of women who listen in on the show.  |
| Sports Programmes: Men                     | There are two types of sports programmes: live broadcasts of a game or popular sport, and sports information programmes where the presenter gives an overview of sports and a preview of sports events for the coming week. This type of programme is best for reaching men. Use spots, jingles and PSAs throughout sports programmes.   |

## TIPS! Writing a Newspaper Article

There are two ways to write a news article.

1. You can give information to a newspaper reporter and let them write the article. Some newspapers will only print articles written by their own staff so you should talk to the editor or chief of staff of a newspaper to find out which they would prefer.
2. You can write the article yourself and give it to the newspaper to print.

If you choose option one, you need to ensure that the key messages and points you decided on when designing your communications strategy are emphasised when you brief the media representative. You may also want to give them a media fact sheet or information kit. These can include statistics, benefits to changes in legislation and other concrete/take-home information related to your campaign/cause which can/should relate to and back up your key message.

If you chose option two, here are some tips to help you prepare your article.

- Use your key messages as the basis for your article and if there is space, illustrate your messages by highlighting their relevance to

everyday life. For example, if your message is to let women know how a particular legislative change will affect them, you might want to focus the article on real-life stories of women in other countries close to yours, where campaigns similar to yours have helped change the lives of women and in turn positively impacted on whole communities and countries

- **Begin the article with an important fact, story, example, or quote** – something that will grab the reader's attention and make them want to keep reading
- **Quotes from members of the target group** can support your message. Quotes from leaders in the field give articles credibility and help make an article more readable.
- **Include facts and statistics, but do not use too many numbers.** Choose the strongest and most powerful facts to help you make a point
- **End the article with a forceful message.** It is good to leave the reader with a strong message or lasting thought. Ask yourself, "If my reader only remembers one or two things from my story, what do I want them to remember most?"

## Television

Television has a wider reach than the newspapers but is also the most expensive form of media. If you do choose to use TV as part of your communications strategy, make sure to bear the following points in mind.

### Try to Get On the Evening TV News

This is the most watched program. In order to do this you need to make sure that your event/issue is extremely newsworthy.

### Give Quotable Quotes

Remember that most TV news items are only about three minutes long. The reporter needs to be able to tell the story in that time so will depend on the person being interviewed to accurately and succinctly say what the issue is and why it is important.

### Choose Your Spokespeople Well

It is important that the people who front your campaign on TV have a good rapport with the camera. It is often

advisable to seek the advice of your media friends when deciding on the most suitable people to appear on camera. If necessary, give the representatives of your campaign communication skills training and develop speaking notes before the media part of the campaign begins.

### Get to Know the TV Personalities

Being acquainted with TV programme producers or presenters will make it easier to pitch ideas to them.

## Information Kits

Information kits can be one of your most important tools in a communications strategy. Regardless of which medium you hope to target, an information kit will be used by everybody. Have information kits ready for distribution at the start and at every significant stage of the campaign, especially if there are changes during the campaign process.

Information kits generally contain the following (in order of importance):



1. A press release containing your key messages.
2. Speeches or statements on the issue.
3. Background information about the campaign.
4. A one-page description of your organisation or a list of all the NGOs involved in the campaign along with their contacts so the public realizes it is supported by a group of NGOs, not just one organisation. This must be branded similarly all throughout your press releases.
5. Copies of public testimonies relating to the issue including quotes or comments by experts.
6. A fact sheet is always useful but not necessary. Alternatively, a question and answer sheet should be available if journalists have questions after they have left the press conference. This same answer sheet can be used to train your own spokespeople.
7. A background piece on your spokesperson or people.
8. A photo with a caption, if appropriate.

9. A Letter to the Editor, if necessary.
10. Selected articles, press clippings, or copies of entire magazines or newsletters that contain information about your issue.
11. Charts, graphs, line drawings, visuals or photographs.

### Monitor Media Coverage

It is important to continue to monitor media coverage of your issue. This will enable you to put right any misinformation that has been put out in the public domain, and also to measure the impact of your communications strategy. Respond to misleading or false media stories swiftly but with courtesy and develop strategies for damage control. Ensure that you and your coalition are consistent with your message and try to keep your take on the issues at hand in public view. A sustained and varied media campaign of newspaper articles, radio programmes, press releases and letters to the editor reminds people of the key issues.

### TIPS! Writing a Press Release

The purpose of a press release is to bring attention to your issue or event and sometimes to give a position statement on that issue. Press releases can be used to:

- Proactively get across information about the issue you are lobbying for
- Respond to an opponent's criticism or misleading information
- Respond to something that just happened, such as devaluation of currency or announcement of water cuts, etc.

#### Points to Remember

1. Start with the most interesting bit of information. Your first paragraph should be explained in a way that is interesting and grabs people's attention. Put the most important information near the top and the less important information down towards the bottom. If there is not enough space, the editor will generally cut from the bottom of the story.
2. The first paragraph should answer "The Five Ws" Who? What? When? Where? and Why? Who and What are usually the most important pieces of information in terms of interest to the audience. When, Where and Why are important details if an event is being organized.

3. Write in short sentences and paragraphs. Remember the KISS rule: 'keep it short and simple'. Your media release should be only one page in length.
4. Use everyday language and large headings. Ensure your information is accurate.
5. Direct quotes add interest for the reader. Use a quote(s) from an appropriate person, but be sure to get permission from them if you do this.
6. Timing is everything – press releases should be timed to remind the public about issues relating to your campaign. A press statement should be released by mid-day and preferably earlier in the morning. That way, it is more likely to be used and there is time for journalists to develop it into a major story. Saturdays, Sundays and Mondays are the best days to publish as more people buy the papers on these days. On Tuesdays there is less happening and less competition for page space. If your release is advertising an event, send the release the day before, at least.
7. Always put a contact-phone number, fax or email address at which you can be contacted later that day.

# Pacific Legislative Reform Case Studies

# CHAPTER FIVE



## The Campaign for Gender Equality in Family Law

### Introduction

In October 2003 Fiji's Family Law Act 2003 was passed. FWRM and RRRT were both involved in lobbying for the new law.

The law heralded a new era for Fiji families and for women and children in particular. It removed systemic discrimination against women, created a level playing field in the family, put children at the focus of decision-making, and strived to make parents adequately care for their children.

### Before 2003

Prior to the enactment of the new law, family lawyers in Fiji had to argue their clients' cases using legislation and case law that dated from 1893 to 1953. The main legislation, the *Matrimonial Causes Act*, was based on 1953 British legislation word-for-word, imposed on Fiji when it was still a colony of Great Britain. The legislation was inappropriate for Fiji Islanders then and it was even less appropriate in the 1990s. Fiji's legislation, common law and legal practices were discriminatory against women, legitimated violence against women and were based on rigid concepts of women's roles within the family. They worsened conflict and children were the ultimate victims of these archaic laws and practices.

The Asia Foundation provided funding for a researcher, advocate, human rights lawyer and member of FWRM, Imrana Jalal in her and FWRM's quest to change the law. The research was published in a book entitled *Law for Pacific Women: a Legal Rights Handbook*. The information from the study was also used to mount a public education campaign on the family law.

FWRM published articles and leaflets, did radio shows and talk backs, public lectures, seminars and workshops educating the community on aspects of the current family law and the changes necessary. FWRM also held discussions with various Ministers,

MPs and powerful opinion-shapers in society. The Ministry of Women worked with the NGOs to generate support for change from inside government.

### The Campaign for the Act

In response to public outcry, the Fiji Law Reform Commission (FLRC) agreed in 1996 to a formal reference on changing the family law, appointing Imrana Jalal as Commissioner for Family Law. RRRT supported the project by providing technical support and funding FWRM's legal literacy work. In 1999 after a series of public consultations, the FLRC and Imrana produced a report titled *The Family Report 1999: Making a Difference to Families in Fiji*. A draft law was produced based on this report. The draft law was ready in May 2000 when the Fiji Labour Party was in power but did not reach the formal stage because of the coup d'état of 2000.

Another round of lobbying for the Bill began in 2002 following the re-establishment of democracy. This coincided with the return of the women's delegation from reporting on Fiji's implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to the Committee of Experts. The concluding comments of the CEDAW Committee recommended that the state pass the new family law bill. NGOs mobilised around this recommendation lobbying the Attorney General to put the Bill back on the legislative agenda. The Ministry of Women were also keen to get the Bill back on the legislative agenda. The draft law was an excellent example of successful collaboration between the Ministries of Government, the Fiji Law Reform Commission and civil society working together for similar goals.

However, there was considerable opposition to the draft law from some Christian Churches, particularly the Methodist Church. Objections to the law included:

- There had been inadequate public consultation on the content of the law
- It was too "white" and Western
- Human rights are against Pacific culture
- The Bible states that women are followers of men. The Bill would upset God's natural order by granting women equality and thereby encouraging them to leave their husbands
- It would elevate women to a higher status than men
- The draft law was anti-Christian and anti-indigenous Fijian
- Only adultery was a valid ground for divorce in the Bible, violence was not
- It gave children rights over their parents which was against Fijian tradition
- It was against the chiefly system because illegitimate children would have rights to be traditional chiefs
- It would allow same sex marriages and legally recognise de facto relationships (not correct)

Nevertheless, in October 2003 Fiji's Parliament passed the Bill into law. The Family Law Act 2003 became effective in November 2005. All sides of both Houses of Parliament unanimously supported the Bill – an event unprecedented in Fiji's legislative history.

The law set up a new division of the court for resolving family disputes through counselling and conciliation. It also removed all forms of discrimination against women, granting them an enforceable right to custody and financial support for them and their children. It removed fault-based divorce and called for recognition and implementation of the major UN human rights conventions affecting the family. These include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),

the Convention on the Rights of the Child (CRC) and the Convention on Civil Aspects of International Child Abduction (Hague Convention on Child Abduction).

The law allows women who are victims of domestic violence to divorce their husbands after one year's separation rather than three and for the first time in Fiji's history divorced women have a right to apply for a share of matrimonial property. The Act also gives men some rights that they never had before (such as equal rights to claim custody of their children), and places children at the centre of financial and custodial decision-making.

### Conclusion

The enactment of the *Fiji Family Law Act* took over 13 years from the beginning of the campaign to the passing of the Act. Changing legislation is often a long term process. It is important for lobbyists to have great tenacity, political and people skills, and a commitment to building partnerships between civil society and government. Although achieving legislative change can take a long time, favourable circumstances and the right combination of political and economic opportunities and skills can help to speed the process. The passing of this Act is a good example of the benefits of strategic partnerships in legislative lobbying.

When considering lobbying for legislative change, it is important to consider the economic costs of not passing legislation in the longer term, and to demonstrate the link between legislative change and the achievement of core development goals. This can be a powerful argument for legislative change and was used in getting the *Family Law Act* passed in Fiji. Politicians and government officials often resist change for gender justice on the basis that new laws may be too costly to implement. Demonstrating that not passing new legislation will cost the economy is a good incentive to put before the state.

<sup>34</sup> Presentation to The Asia Foundation, Imrana Jalal, "Support for Legislative Change in Fiji Islands: The Fiji Family Law Act 2003; The Campaign for gender equality in family law 2005



## Campaign for Equal Citizenship Rights in Fiji

### Introduction

In 1996, the Women's Coalition for Women's Citizenship Rights (WCFWCR) (led by the Fiji Women's Rights Movement) conducted a campaign for changes to Fiji's Constitution in order to guarantee equal citizenship rights for women. The campaign capped thirty years of work and signalled increased legal and gender policy literacy in Fiji. The campaign built on earlier lobbying efforts to encourage ratification of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and, following ratification, to remove the government's discriminatory reservations to CEDAW which denied equal citizenship rights to women. The WCFWCR represented a broad cross-section of women's interests, political affiliations and ethnicities and worked to bring political attention to the need for change.

WCFWCR sought to highlight discrimination in Fiji's constitutional provisions regarding citizenship for foreign spouses and their children. The coalition enlisted key women's groups and used current day issues to highlight the inequities in the Constitution's citizenship provision, and place pressure on politicians and the press to begin to talk openly about these issues.

The Constitution was discriminatory against women in two ways:

1. It granted citizenship rights to a child born overseas only if the child's father is a citizen of Fiji, thereby denying citizenship rights to children born overseas to Fiji citizen mothers who are married to foreign men.
2. It granted the right to enter and reside, and to become a citizen of Fiji by registration, to the foreign wives of citizen men living in Fiji, while denying the same right to the foreign husbands of citizen women living in Fiji.

The campaign occurred between May and August 1996 in the midst of a comprehensive Constitutional Review.

The campaign used a variety of methods to lobby for change including writing newspaper advertisements, facilitating radio talkback and information programmes and lobbying key Members of Parliament. An initial public information meeting was held at the Fiji Club and a play was performed by the group Women's Action for Change using real-life case studies to document the damage to women's lives.

In September 1996, the Report of the *Fiji Constitution Review Commission* (Reeves, 1996) recommended that "...new constitutional and statutory provisions [regarding citizenship] ... should be consistent with international human rights principles" [with particular reference to the CEDAW and that the Review Commission] "...consider[s] that all foreign spouses of Fiji citizens, husbands as well as wives, should be treated on an equal basis". Further, the Commission recommended that, if either parent of a child born outside of Fiji is or was a Fiji citizen, the child should be entitled to Fiji citizenship by registration. All of these recommendations were subsequently adopted in the 1997 Constitution.

### Lessons Learned from the Campaign

The WCFWCR experience highlighted the following lessons for campaign-driven lobbying:

1. **Building on Previous Experience:** The earlier efforts of campaigners such as the Young Women's Christian Association (YWCA) had planted seeds of understanding about the issues. Previous successes (for example the ratification of CEDAW) had stirred up interest which could be used as a starting point for new campaigns. Despite their diverse mandates, coalition members were already familiar with

the central issue of citizenship rights and women's concerns and were comfortable working with each other. Cohesion of purpose, congeniality, and group effectiveness was built from a history of networking, particularly in the closely related campaign to achieve ratification of the CEDAW. The coalition built on existing strengths.

2. **Achieving Broad Organisational Collaboration:** Agreement on campaign objectives and support for the cause was achieved from a wide variety of organisations. Sympathetic individuals from a variety of ethnic backgrounds and women with leadership experience in NGOs, unions, and political parties strengthened the coalition's ability to lobby and involve other organisations and politicians even if they did not formally participate in the campaign.
3. **Strategic Choice of Objectives:** An early decision to limit the focus to only one issue increased the chances of success. The singular focus of the campaign meant that there were few disagreements between the coalition members. The narrowly defined and easily understood objective of changing the law regarding citizenship rights was instrumental in preventing ideological differences among the member organisations from undermining joint action for the common goal. The objective was narrow enough that all members could clearly understand and agree to it, while extraneous issues were kept out of the agenda. This kept the Coalition focused and united during the short period of its activities.
4. **The Political Climate:** The campaign focused on issues that were currently being debated and used these to direct the general interest towards its agenda. The coalition was able to take advantage of the momentum for constitutional change that was generated by the Constitutional Review process, the post-coup climate of political reconciliation, and the recent ratification of CEDAW. In this way, effectiveness of a coalition depends to a large extent on opportunities in the external environment and on sensitive timing.
5. **Good Communication:** Coalitions take work and good communication is essential, especially keeping all members informed at each stage

of the campaign. In this case, providing clear mandates to coalition members meant effective use of time, interest and skills. Delegating activities for members to carry out within their own sphere of influence built a sense of involvement.

6. **Use of the Media:** Personal stories and cases studies, for example highlighting the effect of the law on individuals, created a groundswell of interest which was augmented by full-page newspaper advertisements, articles, radio talk shows and TV coverage.
7. **Recording and Monitoring Achievements and Processes:** The step-by-step processes of any campaign should be carefully recorded, filed and summarised for later reflection and learning and for use in other campaigns.
8. **Credibility of the Lead Organisation:** The credibility of FWRM as the Secretariat to the Coalition was recognised by all members. As a result there were no serious controversies or disagreements over management decisions, styles, or strategies. The main reasons for the FWRM's credibility were:
  - An open and democratic management style. For example, through holding open meetings to decide on FWRM policy issues and activities and encouraging the participation of all staff, volunteers and members in decision making and implementation of projects
  - The demonstrated effectiveness as the Secretariat in a previous and similar Coalition (for CEDAW)
9. **Adequate Resources:** Resources available to the campaign were modest but sufficient, and made quickly available, partly due to the funders' overall programme focus on legal literacy, and also to members' willingness to devote their own resources to their lobbying efforts. In general, lack of physical resources should not be a barrier to forming a coalition or mounting an effective campaign, as the essential resources are personal commitment, enthusiasm, and energy, which the coalition itself can channel effectively throughout the extensive networks that the members themselves provide.

35 Fiji ratified the CEDAW with two 'reservations', one of which was applied to Article 9, concerning citizenship rights. Removal of the reservations was an objective of the FWRM. This was achieved officially in April 1999, following promulgation of the 1997 Constitution

36 See Annex 1 for a list and brief description of the Coalition member organisations

37 Interestingly, the 1970 and 1990 Constitutions guaranteed citizenship rights to a child born overseas who has at least one grandparent of either sex who is or was a citizen of Fiji, or if the child is born to an unmarried citizen of either sex



## A New Law for Vanuatu – The Family Protection Act 2008

This case study documents demonstrates how legislative lobbying efforts led to the enactment of Family Protection Order Bill on 18th June 2008.

The Republic of Vanuatu had made a number of international commitments to protect the human rights of its citizens. Vanuatu was formally admitted as a full member of the United Nations in 1981; through this membership it adopted the ideals and principles enshrined in the United Nations Charter and the Universal Declaration of Human Rights (1948) which reaffirms that *“all human beings are born free and equal in dignity and rights”*. In 1992 and 1995 respectively the Government of Vanuatu ratified the UN Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to mark their legal commitment towards the advancement of women’s and children’s rights.

In implementing these conventions Vanuatu has a legal obligation to respect, protect, promote and fulfil the fundamental rights guaranteed under the treaties. Vanuatu also participated in the 1995 UN World Conference in Beijing where states committed themselves to tougher legislative and other measures to combat domestic violence.

Family based violence, commonly known as ‘domestic violence’ is a serious violation of human rights. Reports had highlighted the increasing levels of domestic violence in Vanuatu and the lack of legal mechanisms to prevent and protect victims of family-based violence.

Two years after Vanuatu’s ratification of CEDAW and the World Conference in Beijing, the Government of Vanuatu began to work towards the creation of legislation to criminalise domestic violence. In late 1997/early 1998 a draft Domestic Protection Bill was prepared and forwarded to key stakeholders and regional partners for comments. The Bill was aimed at promoting harmonious family relationships and preventing domestic violence.

In 1999 SPC/RRRT provided a commentary on the Bill to the Government of Vanuatu. The team went through the Bill section by section to ensure the provisions were human rights compliant, and prepared a more simplified version. One of RRRT’s key

recommendations was to change the title of the law from “domestic violence” to “family protection bill” bearing in mind the nature of Pacific communities and the value placed on Pacific families. Other recommendations included:-

- Widening the scope of the definition of a child to include “adopted children”
- Definition of domestic violence to be widened and include:
  - a) destruction of property and
  - b) psychological and mental abuse
- Domestic violence to be made a criminal offence with strict penalties and mandatory enforcement by magistrates
- Domestic violence orders being accessible to de facto couples
- Changing discretionary powers of the police to mandatory powers as consistent with the “no drop policy requirement”
- Applying appropriate criteria in the selection of counsellors
- Including measures to ensure the capacity for the granting of urgent Protection Orders

These recommendations were sent to the Department for Women’s Affairs and the state law office. All recommendations were incorporated in the 17th July 2001 revised draft Family Protection Act of 2001.

Apart from working with the Department for Women’s Affairs who were leading this process, RRRT encouraged the involvement of local CSOs to further strengthen advocacy from the grass roots level.

RRRT’s lobbying efforts included a number of initiatives to raise public awareness of family violence. This included a 2-day consultation with the National Council of Women (the largest women’s network in Vanuatu) on the RRRT Domestic Violence Background paper and the draft Bill. From August 2002- May 2003, RRRT facilitated a series of workshops with the RRRT trained Department for Women representatives, the Shefa Women’s Chief’s Group and Shefa Chiefs Taskforce. Provincial level roundtable discussions were held with chiefs from Tafea, Malampa, Sanma, Luganville, Penama, Torba and the Malfatuma Council of Chiefs. One of the key recommendations to emerge from these

discussions was greater recognition of the role of chiefs in dealing with domestic violence within village settings and that the definition of ‘Authorised Persons’ in the Bill should specifically focus on the chief. In 2001 RRRT facilitated the VRDTCA based Community Paralegal Programme which partly focused on gender and domestic violence. Multiple actions by government, NGOs and RRRT led towards more consultation and informed dialogue around the controversial Bill.

International processes were used to elevate the profile of the Bill at international fora. In 2002 RRRT provided training and technical support to the Government of Vanuatu in the preparation of its initial, second and third CEDAW State report. Similar technical support was provided to CSOs in 2006 which resulted in the submission of a shadow report in 2007. Both reports emphasised increasing levels of domestic violence and the absence of legislative protection. One of the key recommendations emanating from the concluding comments was the need for stronger commitment and progressive steps towards the enactment of the Family Protection Bill. Although the CEDAW reporting was a separate process, it played an important role in increasing global interest and government commitment to enacting family violence protection legislation.

Unfortunately Vanuatu’s volatile political landscape saw frequent changes of government during the period of lobbying which meant that no government demonstrated substantive support for the Bill. While some of the short-lived governments showed political commitment to the Bill, it was not until 2005 that it was presented in Parliament. The Bill was passed in the first reading but the government called for wider national consultation given the cultural sensitivities around land and women’s rights in Vanuatu.

On 19th September 2006 RRRT submitted its second analysis of the Bill. RRRT supported this version of the Bill as it was consistent with CEDAW and the CRC. However a number of important recommendations were made which included the translation of the Bill into vernacular, a stronger monitoring system for temporary protection orders and allocation of government resources for implementation of the law and community education.

One major outcome of the 2005 parliamentary sitting was the setting up of a Parliamentary ad hoc Committee with four members of Parliament from the government and three from the Opposition. The ad hoc Committee was tasked with conducting national consultations and to prepare and present

a report during the second reading in Parliament. The ad hoc Committee found the language of the Bill was too complex. Following a request from the Department for Women’s Affairs, RRRT conducted a 3-day consultation in December 2006, with MPs and the members of the ad hoc Committee. Some of the contentious issues raised by the parliamentarians were:-

- Custom and Church should provide early intervention support and the Courts should be the last resort
- Customary Retribution and Punishment should be encouraged. One participant suggested that if someone dies as a result of domestic violence then custom should play an important role in addressing this *“Under custom I will have to give you someone to replace the dead person”*
- Claims that the Bill favoured women and gave them more rights than men which is against ni-Vanuatu culture *“Under custom I will maintain my customary rights, under law I will have to give these rights up”*

These comments provided an avenue for Parliamentarians to deconstruct the Bill and further debate a wide range of issues relating to customary land ownership, women’s rights and the disciplining of children. RRRT’s training influenced the content of the ad hoc Committee’s report and enabled the Ham Lini government to assess their current commitment towards legislative change and gain ownership over the Family Protection Order Bill 2005.

On 18th June 2008 the government reflected on ad hoc Committee’s report and unanimously passed the Family Protection Act. Key parliamentary champions for the law were: the Hon. Edward Natapei, the Hon Ho Sela Molissa, Mr Bakoa Kaltongga and Minister for Justice & Women’s Affairs the Hon Joshua Tafura Kalsakau – many of whom received mentoring and training from RRRT.

The collaborated efforts of government, NGOs and regional organisations and programmes, such as RRRT, led to the unanimous passing of the much debated Family Protection Act 2008. Legislative and policy change can play a powerful transformative role in improving the lives of Pacific communities. This Act is pragmatic in its approach to preventing domestic violence in all levels of society in Vanuatu and ensures effective legal protection for survivors of domestic violence. It is crucial however, that legislation is translated into action. To further this aim RRRT is committed to engage with the Government of Vanuatu and key women’s CSOs.



## TIMELINE: Lobbying around the Vanuatu Family Protection Act 2008

- 1992 Vanuatu ratified CRC
- 1995 Vanuatu Ratified CEDAW
- 1997 Bill drafted (State CEDAW Report pg 29 ) its purpose was to preserve & promote harmonious relationships, prevent domestic violence in all levels of society in Vanuatu, ensure effective legal protection for victims of domestic violence and provide for the punishment of any or all persons who commit acts of domestic violence
- 1998 Family Protection Order Bill Completed. The Bill consists primarily of three sections – protection of a victim of domestic violence, prosecution of the perpetrator, and compensation for the victim
- 1998 Consultation with Department of Women's Affairs, State law Office, Court, National Council of Women and some CSOs
- 24th September 1999 The Committee on the Rights of the Child considered Vanuatu's CRC report. The lack of data, appropriate measures, mechanisms and resources to prevent and combat domestic violence, including child sexual abuse, were matters of grave concern to the committee. In the light of article 19, the committee recommended that Vanuatu undertake studies on domestic violence, ill-treatment and abuse including sexual abuse, to understand the scope and nature of these practices, adopt adequate measures and policies, and contribute to changing attitudes. The committee also recommended that cases of domestic violence and ill-treatment and abuse of children, including sexual abuse within the family, be properly investigated within a child-friendly judicial procedure and sanctions applied to perpetrators
- July 1999 RRRT's first analysis of the Bill. RRRT prepared a demystified version and made suggestions for changes to the proposed law to ensure consistency with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other human rights standards
- 1999 RRRT prepared a Domestic Violence Background paper
- March 1999 RRRT facilitated a 2-day workshop on the new Domestic Protection Bill for the Vanuatu National Council of Women which included Island Council Presidents from the outlying islands
- 1999 Bill failed to be tabled in Parliament; The Sope-led Government deferred the tabling of the Bill because some chiefs felt that they had not been consulted
- Comprehensive Reform Program (CRP), 1997 prioritises violence as a gender benchmark and one of the activities under the CRP matrix is the passing of essential legislation to deal with this issue
- 17th July 2001 Revised draft Family Protection Act (recommendations made by RRRT in 1999 were incorporated in the draft bill)
- 2001 Bill failed to be tabled in Parliament under the leadership of the Prime Minister Natapei. Again it was argued that the chiefs had not been consulted adequately

- 2002 Department for Women produced a policy document on violence against women
- 2002 Vanuatu Women's Centre meeting with officials from the State Law Office. As there was support for the Bill in principle, consideration was given to removing specific sections that are considered 'difficult' and causing opposition to the Bill
- 2002 RRRT provides training and technical support to the Government of Vanuatu in the preparation of its first CEDAW report. RRRT assists Vanuatu Women's Affairs Department to develop a plan for managing the reporting process
- February 2003 Introduction of Court Rules relating to Domestic Violence (DV Court Order), an interim instrument for providing support and protection to victims of domestic violence
- August 2002 – May 2003 AUSAID and NZAID Funded Workshops by Department for Women with Shefa Women's Chief's Group and Shefa Chiefs Taskforce. Workshop for chiefs from Tafea, Malampa, Sanma, Luganville, Penama, Torba and in June 2003 with the Malfatumaauri Council of Chiefs
- 2003 Prime Minister Hon Edward Natape, also Minister for Foreign Affairs, committed to present the Bill to Parliament before end of 2003
- 2005 Bill presented in Parliament for first reading. An ad hoc committee was formed, comprising four members of Parliament from government and three from the opposition
- 14 Sep 2006 RRRT provided 2nd human rights analysis of the FPB
- Dec 2006 The Department for Women requested RRRT Training for 32 MPs and FPB ad hoc committee members on the Bill
- 2007 the ad hoc committee was expected to develop and compile documentation on the consultation work however, this was not accomplished due to financial difficulties in carrying out the task effectively
- May 2007 CSOs presented the CEDAW Shadow report to the UN that highlighted the fact that Protection Orders have very poor execution and that police officers were not effective in enforcing orders. RRRT provided technical support and research materials used in the shadow report
- 18 June 2008 Family Protection Order Bill passed in Parliament, and referred to the President for his ascension. President Kalkot Mataskelekele contended the Act to be unconstitutional and contrary to Christian principles, and for the first time in Vanuatu's history referred the Act to the High Court for constitutional validity
- November 2008 Chief Justice Vincent Lunabek declared that the sections of the Act objected to by the President were consistent with the Vanuatu Constitution
- The President immediately assented to the Family Protection Act, thus giving Vanuatu's women and children stronger protection from family violence



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