

## Human rights of women and girls and the role of the law

- 2.1 Domestic and international laws are used to articulate and protect the rights and responsibilities of citizens, including women and girls. This chapter outlines the legal situation for women and girls in the Indo-Pacific region, as presented in evidence to the inquiry.
- 2.2 The chapter examines:
- what is meant by ‘human rights’ generally, and the human rights of women and girls more specifically;
  - international treaties and agreements that relate to women’s human rights;
  - domestic laws relating to women and girls, and to gender-based violence, in the region;
  - the enforcement of those laws, including access to justice and the role of law enforcement professionals; and
  - what works for improving the situation for women and girls in relation to the law and justice.

### Human rights

- 2.3 Human rights are the articulation of a belief that all human beings have inherent value and worth and that ‘[e]veryone has the right to life, liberty and security of person,’ free from abuse and oppression.<sup>1</sup> They set out

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1 United Nations (UN), Universal Declaration of Human Rights, <[somethingincommon.humanrights.gov.au/get-informed/introduction-human-rights#What are Human Rights](http://somethingincommon.humanrights.gov.au/get-informed/introduction-human-rights#What%20are%20Human%20Rights)> and the UN Universal Declaration of Human Rights<[www.ohchr.org/EN/UDHR/Document](http://www.ohchr.org/EN/UDHR/Document)> viewed 10 August 2015.

standards for the fair interaction of people with each other, with society, and with governments.<sup>2</sup> According to the United Nations (UN), human rights have the following qualities:

- Human rights are inherent: human rights do not have to be given to us by a government to exist. They are our birthright and belong to us simply because we exist as human beings.
- Human rights are inalienable: human rights cannot be given away or taken away.
- Human rights are universal: human rights belong to everyone, irrespective of their sex, race, colour, religion, national or social origin or other status.<sup>3</sup>

- 2.4 The UN has enshrined many human rights in international human rights instruments, notably the Universal Declaration of Human Rights (UDHR), adopted in 1948. Its Preamble states that the ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’.<sup>4</sup>
- 2.5 The UDHR provides a framework for promoting an end to practices that interfere with people’s full enjoyment of their rights, such as slavery or arbitrary imprisonment. The UN and many human rights bodies within countries continue to use the UDHR as a tool to draw attention to ongoing abuses of human rights around the world.<sup>5</sup>
- 2.6 The struggle to achieve universal human rights continues for women and girls. The Australian Human Rights Commission states that gender inequality stems from long-standing traditions, inequitable social structures, adherence to stereotypes, and attitudes about the roles and capabilities of women.<sup>6</sup>

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2 Australian Human Rights Commission, ‘An Introduction to Human Rights’ <[somethingincommon.humanrights.gov.au/get-informed/introduction-human-rights#What are Human Rights](http://somethingincommon.humanrights.gov.au/get-informed/introduction-human-rights#What%20are%20Human%20Rights)> viewed 10 August 2015.

3 Australian Human Rights Commission, Fact Sheet, *Women’s Human Rights: UN Convention on the Elimination of All Forms of Discrimination against Women: CEDAW*, 2008, p. 1, <[www.humanrights.gov.au/sites/default/files/content/sex\\_discrimination/publication/CEDAW/CEDAW\\_complete.pdf](http://www.humanrights.gov.au/sites/default/files/content/sex_discrimination/publication/CEDAW/CEDAW_complete.pdf)> viewed 14 July 2015.

4 UN, Universal Declaration of Human Rights <[www.un.org/en/documents/udhr/](http://www.un.org/en/documents/udhr/)> viewed 14 July 2015.

5 UN, ‘Human Rights’ <[www.un.org/en/sections/priorities/human-rights/index.html](http://www.un.org/en/sections/priorities/human-rights/index.html)> viewed 14 July 2015.

6 Australian Human Rights Commission, *Women’s Human Rights: United Nations Convention on the Elimination of All Forms of Discrimination against Women: CEDAW*, 2008, p. 1, viewed 14 July 2015.

## International treaties and agreements

- 2.7 The UN *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) is the key international human rights document that seeks to ensure the enforcement of the human rights of women on an equal basis with men. CEDAW is the only comprehensive treaty dedicated to women. CEDAW came into force on 3 September 1981, and had 99 signatories and 189 member states as at April 2015. Australia ratified CEDAW in 1983.<sup>7</sup> Australia has two reservations to CEDAW, which relate to women in the armed forces and the provision of paid maternity leave.
- 2.8 Key elements of the Convention are summarised below:
- State parties are required to eliminate discrimination against women, including by enshrining equality in national laws and by abolishing laws, customs or practices that discriminate against women (Article 2);
  - Parties must take appropriate measures to advance women, in order to guarantee 'the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men' (Article 3);
  - Parties must work to eliminate stereotypes and prejudice against women, including by modifying 'social and cultural patterns' (Article 5);
  - Parties must suppress the trafficking of women (Article 6);
  - Women must be permitted to hold public office and participate in political activities (Article 7);
  - Women's rights to nationality are to be equal with men (Article 9);
  - Educational and study opportunities are to be equal with men (Article 10);
  - Parties must grant various employment rights to women; including equal pay, social security access, unfair dismissal protections, maternity leave, child care and a limit on duties during pregnancy (Article 11);
  - Parties must provide access to health care and family planning (Article 12);
  - Women's legal capacity must be equal with men in contract, property and legal procedure (Article 15); and

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7 CEDAW, Chapter IV, Human Rights, UN Treaty Collection database <[treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)> viewed 15 October 2015.

- Marriage, children and family decisions must be made between men and women on an equal basis. In addition, the law should set a minimum age of marriage (Article 16).<sup>8</sup>
- 2.9 An Optional Protocol, concluded in 1999, provides a procedure for communications and complaints to the CEDAW Committee by individuals or groups. The CEDAW Optional Protocol, which entered into force on 21 December 2000, has 80 signatories and 106 member states as at October 2015. Australia ratified the Optional Protocol to CEDAW in 2008.<sup>9</sup>
- 2.10 CEDAW defines the scope of discrimination against women:
- For the purposes of the present Convention, the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>10</sup>
- 2.11 Following on from CEDAW, the Fourth World Conference on Women Beijing Declaration (the Beijing Declaration), in 1995, adopted the Beijing Platform for Action (BPA). The BPA sets out that equality between the sexes is an essential aspect of achieving human rights, and that all countries have a responsibility to prioritise action in this area.<sup>11</sup>
- 2.12 A number of other agreements commit governments to uphold the rights of women and provide political and legal protections for women. These include:
- *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime* (2000);
  - *The UN Security Council Resolution 1325* (2000) on Women, Peace and Security, which ‘reaffirms the important role of women in the prevention and resolution of conflicts, peace negotiations, peace-

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8 UN Women, CEDAW full text in six parts <[www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16](http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16)> viewed 15 October 2015.

9 Optional Protocol to CEDAW, Chapter IV, Human Rights, UN Treaty Collection database, viewed October 2015.

10 UN Women, CEDAW, Part I, Article 1, viewed 15 October 2015.

11 DFAT, *Submission 27*, p. 12.

building, peacekeeping, humanitarian response and in post-conflict reconstruction’;<sup>12</sup>

- *The Declaration on the Elimination of Violence against Women (1993);*
- *The Declaration on the Protection of Women and Children in Emergencies and Armed Conflicts (1974);*
- *The Declaration on the Elimination of Discrimination against Women (1967), which was a precursor to CEDAW;*<sup>13</sup>
- *The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962);*
- *The Convention against Discrimination in Education (1960);*
- *The Discrimination (Employment and Occupation) Convention (1958);*
- *The Convention on the Nationality of Married Women (1957);*
- *The Convention on the Political Rights of Women (1953);*
- *The Equal Remuneration Convention (1951);*
- *The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949).*

2.13 Other treaties and agreements with general application also have relevance to women and girls:

- *The International Covenant on Civil and Political Rights and Optional Protocol (1966);*
- *The International Covenant on Economic, Social and Cultural Rights (1966);*
- *The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);*
- *The Convention on the Rights of the Child (1989) and Optional Protocols (2000);*
- *The Rome Statute of the International Criminal Court (ICC) (1998), which ‘sets out the crimes falling within the jurisdiction of the ICC, the rules of procedure and the mechanisms for States to cooperate with the ICC’;*<sup>14</sup> and

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12 UN Women, ‘Landmark Resolution on Women, Peace and Security’ <[www.un.org/womenwatch/osagi/wps/](http://www.un.org/womenwatch/osagi/wps/)> viewed 14 July 2015.

13 UN Women, CEDAW: ‘Short History of CEDAW Convention’ <[www.un.org/womenwatch/daw/cedaw/history.htm](http://www.un.org/womenwatch/daw/cedaw/history.htm)> viewed 14 July 2015.

14 International Criminal Court, ‘What is the Rome Statute?’ <[www.icc-cpi.int/en\\_menus/icc/about%20the%20court/frequently%20asked%20questions/Pages/3.aspx](http://www.icc-cpi.int/en_menus/icc/about%20the%20court/frequently%20asked%20questions/Pages/3.aspx)> viewed 14 July 2015.

- The, *Fourth Geneva Convention* (1949) which ‘affords protection to civilians [during military conflicts], including in occupied territory’.<sup>15</sup>

## Millennium Development Goals and Sustainable Development Goals

2.14 The Millennium Development Goals (MDGs) have formed an important context for efforts to promote the human rights of women and girls since 1990. MGD 3, to ‘Promote Gender Equality and Empower Women’, was designed to:

Eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015.<sup>16</sup>

According to the UN, this goal has been met in terms of girls’ participation in primary education, but not at other levels of education or leadership.<sup>17</sup>

2.15 MGD 5, to ‘Improve Maternal Health’, set the objective to:

a) Reduce by three quarters, between 1990 and 2015, the maternal mortality ratio; and b) Achieve, by 2015, universal access to reproductive health.<sup>18</sup>

2.16 Some progress has been made in achieving the MDG targets. The UN *Millennium Development Goals Report 2015* advised that, since 1990, the global maternal mortality ratio has declined by 45 per cent worldwide, with most of the reduction occurring since 2000. Further, more than 71 per cent of births were assisted by skilled health personnel globally in 2014, an increase from 59 per cent in 1990.<sup>19</sup> However, the UN states that the maternal mortality ratio in developing regions is still 14 times higher than in the developed regions, and only half of pregnant women in these areas are receiving the minimum of four antenatal care visits.<sup>20</sup>

2.17 As the MGDs approached the end of their intended lifecycle, the UN launched a new process to develop a set of Sustainable Development

15 *Convention (IV) relative to the Protection of Civilian Persons in Time of War*, Geneva, 12 August 1949, cited in United States Council on Foreign Relations, ‘Geneva Conventions’ <[www.cfr.org/human-rights/geneva-conventions/p8778](http://www.cfr.org/human-rights/geneva-conventions/p8778)> viewed 14 July 2015.

16 UN, ‘Goal 3, Promote Gender Equality and Empower Women’, Target 3.A, UN *Millennium Development Goals Report 2015*, p. 28, <[www.un.org/millenniumgoals/2015\\_MDG\\_Report/pdf/MDG%202015%20rev%20\(July%201\).pdf](http://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf)> viewed 15 October 2015.

17 UN, ‘Goal 3, Promote Gender Equality and Empower Women’, UN *Millennium Development Goals Report 2015*, pp. 29, 31, viewed 15 October 2015.

18 UN, ‘Goal 5, Improve Maternal Health’, Target 5.A, UN *Millennium Development Goals Report 2015*, p. 38, viewed 15 October 2015.

19 UN, ‘Goal 5, Improve Maternal Health’, UN *Millennium Development Goals Report 2015*, p. 8, viewed 15 October 2015.

20 UN, ‘Goal 5, Improve Maternal Health’, UN *Millennium Development Goals Report 2015*, p. 9, viewed 15 October 2015.

Goals (SDGs) which will build upon the MDGs and integrate with a post 2015 development agenda.<sup>21</sup>

- 2.18 The UN General Assembly finalised the SDGs in time to be adopted by the Heads of State and Government during the UN General Assembly Summit on 25–27 September 2015, where they were formally adopted.<sup>22</sup>
- 2.19 DFAT, and many other witnesses to the inquiry, lobbied for the inclusion of gender equality as a standalone goal in the SDGs.<sup>23</sup>
- 2.20 The Sustainable Development Goals include a standalone gender equality goal. Goal 5 aims to: ‘Achieve gender equality and empower all women and girls’.<sup>24</sup>

## Domestic laws

- 2.21 The CEDAW, the Beijing Convention, and other agreements provide an international framework through which the domestic laws and practices of countries in relation to women and girls can be assessed.
- 2.22 The World Bank’s research on the legal status of women around the world has demonstrated a significant reduction in the number of discriminatory laws worldwide from 1960 to 2010.<sup>25</sup> According to the World Bank:

More countries than ever guarantee women and men equal rights under the law in such areas as property ownership, inheritance, and marriage. In all, 136 countries now have explicit guarantees for the equality of all citizens and non-discrimination between men and women in their constitutions.<sup>26</sup>

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21 UN, ‘Sustainable Development Goals’, *Sustainable Development Knowledge Platform*, <[sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals](http://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals)> viewed 7 May 2015.

22 UN, ‘General Assembly Embarks on Historic Task of Finalizing the Post-2015 Agenda’, *Sustainable Development Knowledge Platform* <[sustainabledevelopment.un.org/?](http://sustainabledevelopment.un.org/?)> viewed 15 October 2015.

23 Ms Sally Moyle, Acting Assistant Secretary and Principal Gender Specialist, Human Rights and Gender Equality Branch, DFAT, *Committee Hansard*, Canberra, 15 May 2015, p. 8.

24 UN Sustainable Development Knowledge Platform, ‘Transforming our World: the 2030 Agenda for Sustainable Development’ <[sustainabledevelopment.un.org/post2015/transformingourworld](http://sustainabledevelopment.un.org/post2015/transformingourworld)> viewed 24 September 2015.

25 Witnesses to the inquiry, including Dr Susan Harris Rimmer, referred to World Bank data as a key source of data on women and the law. Reference: World Bank, ‘Women’s Legal Rights Over 50 Years: Progress, Stagnation or Regression?’, *Policy Research Working Paper 6616*, 2013.

26 World Bank, *World Development Report 2012: Gender Equality and Development*, 2012, p. 2, <[openknowledge.worldbank.org/bitstream/handle/10986/4391/9780821388105\\_overview.pdf?sequence=6](http://openknowledge.worldbank.org/bitstream/handle/10986/4391/9780821388105_overview.pdf?sequence=6)> viewed 15 October 2015.

- 2.23 Dr Jeni Klugman, a fellow at the Harvard Kennedy School's Women and Public Policy Program and former Director of Gender and Development at the World Bank Group, summarised research that indicated significant legal discrimination continues across many of 143 economies surveyed. Dr Klugman pointed out that of those economies studied:
- ... 128 have one legal difference in how men and women are treated in terms of economic opportunities; 56 countries have at least five barriers; and 28 countries have more than 10 such barriers. These barriers have been documented and include, for example, restricting women's ability to obtain an ID card, to own property, to build credit or to even get a job without their husband's permission.<sup>27</sup>
- 2.24 Dr Klugman went on to explain that all countries in South Asia have at least five laws that constrain women's rights, and those in East Asia and the Pacific have on average six, with some countries having more than 10 legal constraints imposed on women.<sup>28</sup>
- 2.25 These countries also often lack laws that protect women and girls. Dr Klugman provided the example of PNG, where 'there is no general anti-discrimination provision in the constitution [and] there are no laws mandating non-discrimination in hiring or pay'.<sup>29</sup>
- 2.26 Dr Klugman and other witnesses to the inquiry also highlighted the problem of enforcement. For instance, although laws protecting women from intimate partner violence do exist in most countries in the region, enforcement is often lacking or insufficient.<sup>30</sup>
- 2.27 Ms Yasmeen Hassan, the global director of Equality Now, suggests that the adoption of treaties and legislation has not translated universally into equality in the lived experience of women and girls:
- Since Beijing, countries have revoked sex discriminatory laws and adopted legislation against various forms of violence against women, including harmful traditional practices. International law on gender equality has developed significantly – all due to the global women's rights movement. Going forward, the focus must be on the implementation of such laws, so we can make equality a reality.<sup>31</sup>

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27 Dr Jeni Klugman, Private capacity, *Committee Hansard*, Canberra, 6 May 2015, p. 1.

28 Dr Klugman, *Committee Hansard*, Canberra, 6 May 2015, p. 1.

29 Dr Klugman, *Committee Hansard*, Canberra, 6 May 2015, p. 1.

30 For examples, see Oxfam Australia, *Submission 13*, pp. 2–3; and Secretariat of the Pacific Community (SPC), *Submission 24*, p. 3.

31 Ms Yasmeen Hassan, quoted in Natricia Duncan, 'Women's Rights: What Have We Achieved in the Last 20 years?', *The Guardian*, 8 March 2014 < [www.theguardian.com/global-](http://www.theguardian.com/global-)

- 2.28 The Committee heard evidence from numerous witnesses who echoed this view, including Dame Carol Kidu DBE, who said of PNG:
- ... we do have to make legislative reform and there has been good progress made in that area, but implementing the legislative reform will take a lot longer. Laws do not change reality but they do set benchmarks ...<sup>32</sup>
- 2.29 Legislative reform, however, can be a first step in changing the reality for women and girls. Ms Julie McKay, Executive Director of the Australian National Committee for UN Women, explained the three steps involved in making change:
- The first is around ensuring we have the laws in place. The second is about how the policies we need to implement ... are rolled out and implemented. The third is probably the hardest one: attitudinal change.<sup>33</sup>
- 2.30 A number of countries have repealed discriminatory laws over recent decades. In fact, the World Bank found that over half of the worldwide legal restrictions on women's rights have been repealed between 1960 and 2010.<sup>34</sup> Many of these changes were made within five years of the countries' ratification of CEDAW (the World Bank refers to this as the 'CEDAW effect').<sup>35</sup> However, many discriminatory laws still exist, with the largest number in the Middle East and North Africa.<sup>36</sup>
- 2.31 While most discriminatory laws exist in countries outside the region covered by this inquiry, there are examples within the region too. For instance, laws limiting rights of inheritance for married women in Nepal,<sup>37</sup> and laws limiting the rights of married women in Malaysia to choose

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development-professionals-network/2014/mar/08/womens-rights-what-have-we-achieved-in-the-last-20-years> viewed 22 June 2015.

32 Dame Carol Kidu, Private capacity, *Committee Hansard*, Canberra, 3 February 2015, p. 6.

33 Ms Julie McKay, Executive Director, Australian National Committee for UN Women, *Committee Hansard*, Canberra, 24 June 2014, p. 2.

34 World Bank, *Women, Business and the Law 2014: Removing Restrictions to Enhance Gender Equality*, p. 11 <[wbl.worldbank.org/~media/FPDKM/WBL/Documents/Reports/2014/Women-Business-and-the-Law-2014-FullReport.pdf](http://wbl.worldbank.org/~media/FPDKM/WBL/Documents/Reports/2014/Women-Business-and-the-Law-2014-FullReport.pdf)> viewed 16 October 2015.

35 World Bank, 'Women's Legal Rights Over 50 Years: Progress, Stagnation or Regression?', *Policy Research Working Paper 6616*, 2013, p. 3. <[www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/09/23/000158349\\_20130923083314/Rendered/PDF/WPS6616.pdf](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/09/23/000158349_20130923083314/Rendered/PDF/WPS6616.pdf)> viewed 16 October 2015.

36 World Bank, *Women, Business and the Law 2014: Removing Restrictions to Enhance Gender Equality*, 2014, p. 8.

37 Dr Susan Harris Rimmer, *Exhibit 28: J Klugman et al, Voice and Agency: Empowering Women and Girls For Shared Prosperity*, World Bank Group, 2014, p. 29.

where they live.<sup>38</sup> Also, while most countries in the region have specific laws against domestic violence, Pakistan does not.<sup>39</sup>

- 2.32 Numerous countries in the region still have legislation that restricts women's family planning and prevents access to safe abortions.<sup>40</sup> In fact, the Institute of Sexual-Reproductive Health and Rights (ISRHR) Consortium claims that restrictive abortion laws are in place in 85 per cent of countries in the Indo-Pacific region.<sup>41</sup>
- 2.33 Laws restricting the rights of minority women – or failing to protect them – are also a concern. For instance, legal discrimination persists against lesbian, gay, bisexual and transgender women and girls in the region, and 'it is illegal for LGBT people to engage in consensual sex in 77 countries in the world, including nearly half of the countries in Oceania and Asia'.<sup>42</sup>
- 2.34 While there is still work to be done in securing legal equality for women and girls, most countries in the region have achieved significant legal reform in recent decades. However, in many regions cultural change has not kept pace with legislative change; for instance, in relation to family violence:
- In many countries, cultural norms do not treat family violence as a crime, but as a normal part of family life, and those tasked with law enforcement are oftentimes reluctant to act in what is seen as a private matter.<sup>43</sup>
- 2.35 UN Women is currently undertaking a process of analysing national laws in the region to see how well they comply with CEDAW.<sup>44</sup>

## Current legislative frameworks

### The Pacific region

- 2.36 A significant proportion of evidence received by the inquiry referred to the Pacific region.
- 2.37 The UN Pacific Gender Group noted that most Pacific Island Countries and Territories (PICTs) are former colonies. It advised:

38 Dr S Harris Rimmer, *Exhibit 28*: 2014, p. 30.

39 World Bank, *Women, Business and the Law 2014: Removing Restrictions to Enhance Gender Equality*, [2014], p. 25, viewed October 2015.

40 Marie Stopes International, *Submission 40*, p. 6.

41 International Sexual and Reproductive Health and Rights Consortium (ISRHR Consortium), *Submission 52*, p. 3.

42 GLASS Research Unit, Monash University, *Submission 7*, p. 4.

43 ChildFund Australia, *Submission 2*, pp. 1–2.

44 UN Women, *Supplementary Submission 10.1*, p. 2.

In most PICTs [the] formal legal system is based on that of the PICTs former colonial powers. However while countries like the United Kingdom have updated and amended many of their laws to abolish discrimination, PICTs have in general been very slow to update their legislation.<sup>45</sup>

2.38 While progress has been slow in the PICTs, many have now passed legislation to criminalise domestic violence and have introduced protection orders for victims of violence. Relevant legislation includes:

- The Vanuatu *Family Protection Act 2008*
- The Republic of Marshall Islands *Domestic Violence Protection and Prevention Act 2011*
- The Samoa *Family Safety Act, 2013*
- The Palau *Family Protection Act 2012*
- The Tonga *Family Protection Act 2013*
- The Kiribati *Te Rau N Te Mwenga Act 2014 (Family Peace Act for Domestic Violence)*.<sup>46</sup>

2.39 Dr Klugman also advised that: 'Fiji introduced a decree in 2009 that criminalises domestic violence, which has been defined to include emotional abuse'.<sup>47</sup>

2.40 While the adoption of these laws has been a positive development, UN Women pointed out that the new laws have been mainly limited to providing protection orders for victims, and they impose relatively lenient sentences for domestic violence offences compared to other violent crimes.<sup>48</sup>

2.41 Despite introducing legislation on family safety, Tonga and Palau have yet to ratify CEDAW.<sup>49</sup>

2.42 DFAT expressed broad concerns about the legal systems and human rights protections in Pacific Island countries:

Pacific Island countries have ineffective oversight by legislatures and poor record of ratification of international human rights instruments, resulting in limited implementation of international standards into domestic law, and largely absent legal frameworks and institutionalised mechanisms (such as national human rights

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45 UN Pacific Gender Group, *Submission 49*, p. 4.

46 Cited in UN Pacific Gender Group, *Submission 49*, p. 4, and see Pacific Islands Legal information Institute data base at <[www.paclii.org/](http://www.paclii.org/)> viewed 16 October 2015.

47 Dr Jeni Klugman, *Committee Hansard*, Canberra, 6 May 2015, p. 2.

48 UN Women, *Submission 10*, p. 6.

49 Pacific Islands Forum Secretariat, *Submission 17*, p. 4.

institutions) for human rights protection. Corruption continues to be a major challenge, while oversight and regulatory institutions, such as the Offices of Ombudsman and Auditor General, are often poorly resourced.<sup>50</sup>

2.43 The Secretariat of the Pacific Community (SPC) explained that, in relation to sexual violence, PNG, the Republic of Marshall Islands, the Solomon Islands, the Federated States of Micronesia, Kiribati and the Cook Islands have all 'amended their criminal laws to remove some of the discriminatory features of the law and practice in sexual offence cases'. The Secretariat further suggested that '[w]here countries have not revised their legislation, gender-based violence is not recognised as a specific crime'.<sup>51</sup>

2.44 National and international bodies are now building upon steps already taken to ensure countries have the necessary legal frameworks in place to provide protection of women's human rights. As part of their project to analyse national laws for compliance with CEDAW, UN Women are working with domestic bodies in Fiji. The submission explained:

In collaboration with government and civil society partners UN Women Fiji MCO [Multi-Country Office] has begun analysing domestic law to assess how well it complies with international CEDAW standards and domestic practice both from a legal standpoint and in practice, and what relevant socio-cultural and legislative steps can be taken to ensure that it does.<sup>52</sup>

2.45 The UN Pacific Gender Group submitted that PNG still has a long way to go to achieve legislative equality for women and girls. It pointed to the 2012 visit of the United Nations Special Rapporteur on Violence Against Women, its Causes and Consequences (the Special Rapporteur), highlighting the Special Rapporteur's recommendations for PNG. These included:

- suggested constitutional amendments to explicitly define and prohibit sex discrimination;
- changes to the Family Protection Bill and action to enact the Bill;
- legislation to prohibit and penalise sexual harassment;
- repeal of the Sorcery Act of 1971 and punishment for crimes committed against those accused of sorcery; and

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50 DFAT, *Submission 27*, p. 17.

51 Secretariat of the Pacific Community (SPC), *Submission 24*, p. 23.

52 UN Women, *Submission 10*, p. 7.

- review of, and amendments to, the process within the Supreme and National Courts, to ensure that cases of violence against women are given priority and are resolved swiftly by the courts.<sup>53</sup>
- 2.46 The Special Rapporteur also visited the Solomon Islands and proposed the introduction of laws to protect women and girls, including ‘as a matter of priority the enactment of a specific law on violence against women’.<sup>54</sup>
- 2.47 The high level of sexual violence is a known problem in the Solomon Islands. However, despite legal reforms, the law of the Solomon Islands only currently recognises an assault as ‘rape’ in the case of proven penile penetration of the vagina, and does not criminalise rape within marriage, or recognise the possibility of rape against boys and men.<sup>55</sup>
- 2.48 To challenge the limitations of these laws, the Special Rapporteur proposed a number of reforms, including:
- criminalising all forms of sexual violence, including marital rape;
  - eliminating the classification of sexual violence as a ‘crime against morality’;
  - establishing minimum sentences for offenders;
  - changing the Islanders’ *Marriages Act 1945* to establish the age of 18 as the legal minimum marriage age; and
  - allowing for protection orders for unmarried women who are victims of violence.<sup>56</sup>
- 2.49 The ability for women to serve in positions of leadership within their communities is important for the realisation of women’s human rights through legal protections. Dr Klugman quoted evidence showing that the ‘removal of discriminatory legislation in countries is correlated with the ratification of CEDAW but also the share of women in parliament’.<sup>57</sup> The role of women in legislatures is further explored in chapter seven.

## East Asia

- 2.50 Comparing the legal situation for women and girls in the countries of the world from 1960 to 2010, the World Bank found that countries in the East

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53 UN Pacific Gender Group, *Submission 49*, p. 3.

54 UN Pacific Gender Group, *Submission 49*, p. 3. See also DFAT, *Submission 27*, p. 36.

55 Solomon Islands Law Reform Commission, *Review of the Penal Code and Criminal Procedure Code, Second Interim Report: Sexual Offences*, June 2013, p. 51.

56 UN Pacific Gender Group, *Submission 49*, p. 3.

57 Dr Klugman, *Committee Hansard*, Canberra, 6 May 2015, p. 3.

Asia region have halved the number of legal restrictions and discriminatory laws in that time.<sup>58</sup>

- 2.51 The inquiry did not receive any specific submissions in relation to Japan, and very few submissions discussed women's rights in China. However, World Bank data around the legal status of women in Japan indicates that there are few formal restrictions on women under the law and 65 per cent of women are in the workforce. However, restrictions may impact the ability of women to work in certain industries in the same ways as men, such as in mining, and the law does not formally mandate equal pay for equal work. Also, according to the World Bank, there are no laws to prohibit harassment.<sup>59</sup>
- 2.52 World Bank data also indicates that there are few formal legal inequalities for women in China. However, some restrictions exist on the types of work women can do, and there is no formal law to mandate equal pay for equal work.<sup>60</sup>
- 2.53 Despite progress in many countries, evidence to the inquiry revealed that legal restrictions still impact the human rights of women and girls in the East Asia region. For instance, Amnesty International expressed the following concerns about laws in Indonesia:
- Women face discriminatory laws about their appearance and behaviour: laws based on an extreme interpretation of sharia law which is carried out by vigilante groups, as well as the police ... Marriage and health are also very different for women. The legal age for a woman to marry in Indonesia is 16, whereas for men it is 19, and young marriages abound, especially in slum and rural areas.<sup>61</sup>
- 2.54 The World Bank commented on progress in Indonesia, citing the 1974 marriage law, which replaced the 1874 *Dutch Civil Code*, granting married women the ability to open individual bank accounts and other rights.<sup>62</sup> However, the World Bank also revealed that Indonesia has discriminatory laws in relation to inheritance of property for female and male children.<sup>63</sup>

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58 World Bank, *Women, Business and the Law 2014: Removing Restrictions to Enhance Gender Equality*, p. 2.

59 World Bank, *Women Business and the Law*, data search tool – Economy Data: Japan (data from 2013), <wbl.worldbank.org/data/exploreeconomies/japan/2013> viewed 15 July 2015.

60 World Bank, *Women Business and the Law*, data search tool – Economy Data: China (data from 2013), viewed 15 July 2015.

61 Amnesty International Group, University of Western Australia, *Submission 58*, p. 7.

62 World Bank, *Women, Business and the Law 2014: Removing Restrictions to Enhance Gender Equality*, [2014], p. 11.

63 World Bank, *Women Business and the Law*, data search tool – Economy Data: Indonesia <wbl.worldbank.org/data/exploreeconomies/indonesia/2015> viewed 30 June 2015.

2.55 An additional concern in Indonesia is the failure to recognise many children and relationships under the law. Ms Leisha Lister, Executive Adviser to the Family Court of Australia, provided the following testimony to the Committee:

Our most recent work, a collaborative piece of research in Indonesia, estimates that there are 50 million children without birth certificates in Indonesia. The reason many of these children do not have birth certificates or legal identity documents is that in Indonesia, in order to have the name of both parents on the birth certificate, it requires a legal marriage certificate; and in order to get a legal marriage certificate, you need to register the marriage. That requires money.<sup>64</sup>

2.56 When children are not legally recognised by the state, it is often impossible to send them to school. Problems also arise in the areas of child custody and inheritance.<sup>65</sup>

2.57 DFAT explained that the Department is working to help poor Indonesians obtain legal identity documents, as part of the Australia Indonesia Partnership for Justice, a \$50 million program running from 2009 to 2015.<sup>66</sup>

2.58 Importantly, the Indonesian government is also working to address this situation. Academic Cate Sumner wrote:

Indonesia has announced ambitious targets in its National Development Plan, released in 2015, recognizing the provision of legal identity as the first among five basic services for the poor.<sup>67</sup>

2.59 World Bank data demonstrates that many countries lack laws to help women remain in the workforce after child-bearing. For example, in Cambodia there is no legally mandated right to maternity leave, and in Cambodia, Vietnam and the Philippines there are no laws against asking women questions about their intention to have children in job interviews, and no legal requirement to provide part time or flexible work to mothers.<sup>68</sup>

2.60 Witnesses also expressed concerns regarding the inability of women in Cambodia to access justice through the court system, and a problem with

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64 Ms Leisha Lister, Executive Adviser to the Family Court of Australia, *Committee Hansard*, Canberra, 6 May 2015, p. 24.

65 Ms Lister, Family Court of Australia, *Committee Hansard*, Canberra, 6 May 2015, p. 24.

66 DFAT, *Submission 27.3*, p. 16.

67 C Sumner, 'Indonesia's Missing Millions: Erasing Discrimination in Birth Certification in Indonesia', *Centre for Global Development Policy Paper 064*, June 2015, p. 3, <[www.cgdev.org/](http://www.cgdev.org/)> viewed 18 September 2015.

68 World Bank, *Women Business and the Law*, data search tool – Economy Data, East Asia and the Pacific – Cambodia, Vietnam and the Philippines, viewed 30 June 2015.

the ‘number of young women serving long sentences in prison where they also bring up their children’, exposing the women and children to long term disadvantage.<sup>69</sup>

- 2.61 The inquiry received a submission from the Secretary of State for the Promotion of Equality from the Democratic Republic of Timor-Leste. The submission listed a number of recent positive changes to laws in Timor-Leste, including those dealing with violence (the Law Against Domestic Violence [Law N° 7/2010], the Penal Code [Law N° 19/2009], and the Law on Protection of Witnesses [Law No. 2/2009]) and those dealing with the question of women’s economic rights (the Civil Code [Law No 10/2011]).<sup>70</sup>
- 2.62 The *Law Against Domestic Violence* in Timor-Leste recognises, for the first time, that family violence is a public issue and can be reported by any witness.<sup>71</sup>
- 2.63 Despite the progress represented by these new and amended laws, there remain inconsistencies or inadequacies in the law. In the submission from the Democratic Republic of Timor-Leste, the Secretary of State for the Promotion of Equality revealed that ‘committing acts of domestic violence that lead to death of the victim carries a much lighter sentence than committing homicide’. The submission also highlighted ongoing resourcing concerns – specifically lack of judges and court capacity, and lack of access to legal assistance – that are preventing women and children from enjoying their human rights and accessing justice in cases of violence.<sup>72</sup>
- 2.64 The Democratic Republic of Timor-Leste’s submission also explained that changes to the way the law deals with family violence have meant that more cases are now being prosecuted in court, but that the courts are overstretched. The Secretary of State advised:

... the Law Against Domestic Violence (LADV) brought significant improvements in conviction rates, as previously many had been charged under Art. 145 of the Penal Code relating to ‘simple offences against physical integrity’ (a semi-public crime with a maximum of 3 years prison sentence), rather than the Article 154 relating to ‘mistreatment of a spouse’ (a public crime with a maximum of 6 years prison sentence).<sup>73</sup>

69 Children’s Rights International, *Submission 87*, p. 5.

70 Secretary of State for the Promotion of Equality (SEPI), Democratic Republic of Timor-Leste *Submission 45*, p. 1.

71 SEPI, Democratic Republic of Timor-Leste, *Submission 45*, p. 1.

72 SEPI, Democratic Republic of Timor-Leste, *Submission 45*, p. 1.

73 SEPI, Democratic Republic of Timor-Leste, *Submission 45*, p. 1.

- 2.65 According to the Secretary, the Government of Timor-Leste has allocated around \$7 million to implement the *Law Against Domestic Violence* over the three years from 2012–2014, through:
- Prevention through awareness raising, education, political and economic empowerment;
  - Services to address the needs of victims that are easily accessible and confidential and supported by trained professionals;
  - Justice through a judicial system that effectively protects victims and investigates, prosecutes and punishes perpetrators of GBV [gender-based violence] and domestic violence crimes; and
  - Coordination and monitoring that will ensure effective implementation of the NAP [National Action Plan]-GBV.<sup>74</sup>
- 2.66 The inquiry also received significant evidence regarding the legal situation for women and girls in Burma. The Australian Women Leaders Delegation, led by Ms Janelle Saffin (a former MP), visited Myanmar from 9 to 16 December 2012. At that time, the delegation observed:
- Obvious weakness of law and justice sector, with no transparency regarding government law making and no cogent legal and judicial framework, even for economic development. The Government have been slow to repeal laws that seriously impede political reform. There is no Law Reform Commission, no Ombudsman, no Parliamentary Counsel and no legal and judicial reform plan.<sup>75</sup>
- 2.67 However, the delegation also noted the creation of an integrated *Myanmar National Strategic Plan for the Advancement of Women 2012 – 2021*, which aimed ‘to create enabling systems, structures and practices – at all levels – for the advancement of women, gender equality, and the realization of women’s rights in Myanmar’.<sup>76</sup>
- 2.68 The Government of Vietnam took the opportunity to submit evidence to the inquiry in a letter delivered through its Embassy in Australia. His Excellency Mr Pham Binh Minh, Deputy Prime Minister and Minister for Foreign Affairs of the Socialist Republic of Viet Nam, submitted that the government had made significant improvements to laws regarding women and girls:

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74 SEPI, Democratic Republic of Timor-Leste, *Submission 45*, p. 1.

75 ANU Gender Institute, *Exhibit 14: ‘Australian Women Leaders’ Delegation to Myanmar, Common Report, 9–16 December 2012’*, p. 4.

76 ANU Gender Institute, *Exhibit 14: 2012*, p. 6.

Specifically, Viet Nam has promulgated legal documents spelling out the principles of gender equality and non-discrimination in accordance with the 2006 *Law on Gender Equality* and CEDAW Convention. We have adopted the National Strategy on Gender Equality for 2011–2020 and to National Program on Gender Equality for 2011–2015 with a view to raising awareness, reducing the gender gap and increasing the status of women.<sup>77</sup>

- 2.69 His Excellency revealed that Vietnam has increased mandated maternity leave provisions from four months to six months.<sup>78</sup> In addition, Vietnam was the first country in Asia and the second in the world to accede to the Convention on the Rights of the Child, and, according to the Vietnamese Deputy Prime Minister/Foreign Minister, is working positively to ensure better legal protection of children.<sup>79</sup>

### South and West Asia

- 2.70 The World Bank identified South Asia as another area where legal change for women's rights has been slow. Some countries, such as Nepal, have achieved reforms:

Reformers in South Asia include Nepal, which in 2002 reformed its General Code to allow, among other things, unmarried daughters under 35 to inherit property. But the reform did not cover married daughters regardless of their age.<sup>80</sup>

- 2.71 However, some countries, including Pakistan and Bangladesh, retain laws that limit women's rights, for example, in relation to inheritance and the industries a woman can work in. Many also lack laws that guarantee women equal pay for equal work.<sup>81</sup>
- 2.72 Evidence received on women's legal rights in India was somewhat limited. However, World Bank data for India indicates that there are few formal restrictions on women under the law. However, restrictions impact the ability of women to work in certain industries in the same ways as men, such as in mining or factories, and the law does not mandate equal pay for equal work.<sup>82</sup>

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77 Embassy of the Socialist Republic of Viet Nam, *Submission 78*, p. 5.

78 Socialist Republic of Viet Nam, *Submission 78*, p. 5.

79 Socialist Republic of Viet Nam, *Submission 78*, p. 5.

80 World Bank, *Women, Business and the Law 2014: Removing Restrictions to Enhance Gender Equality*, p. 12, viewed October 2015.

81 World Bank, *Women Business and the Law*, data search tool, Economy data: Pakistan and Bangladesh, viewed July 2015.

82 World Bank, 'India: Getting a Job', *Women Business and the Law* data search tool—Economy data: India (data from 2013), viewed 15 July 2015.

- 2.73 India's *Protection of Women from Domestic Violence Act 2005* provides legal protection for women from intimate partner violence and the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013* provides protection in the workplace.<sup>83</sup>
- 2.74 Despite these formal legal protections, evidence received by the Committee indicated ongoing concerns in India in relation to women accessing justice for domestic violence, sexual assault and 'honour killings'. Dr Swati Parashar from the Women, Peace and Security Academic Collective (WPSAC) at Monash University stated that:
- Entrenched patriarchal norms have prevented a meaningful engagement with barriers and impediments to enhancing the human rights of women and girls in India. More women are coming out to report violence against them, despite opposition from their families but the law enforcement is extremely weak in providing them assistance and redress. In fact, women's rights groups have long demanded police reforms, which could address the apathy of the police through more gender sensitive training and by holding them accountable to the constitutional provisions.<sup>84</sup>
- 2.75 Ms Fiona McRobie, from the Amnesty International Group at the University of Western Australia (UWA), submitted evidence on sexual violence and the criminal code in India. A major point of contention is India's failure to criminalise marital rape. Ms McRobie advised:
- India is a state party to CEDAW, and yet the Indian Penal Code retains an exemption for rape under the circumstance of the two parties being legally married.<sup>85</sup>
- 2.76 Ms McRobie further explained that in a recent ruling regarding a claim of forced marriage and accusations of marital rape, Judge Virendah Bhat declared that 'forcible sexual intercourse between a husband and wife is "not rape" and, as such, no-one can be held culpable for such an act'.<sup>86</sup>
- 2.77 Dr Parashar discussed the 'Verma Commission' report that arose from a well-publicised pack rape, saying the report 'demanded that marital rape and rape by the armed forces be recognised and homosexuality

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83 World Bank Group, 'India: Protecting Women from Violence', *Women Business and the Law* data search tool – Economy data: India (data from 2013), viewed 15 July 2015.

84 Dr Swati Parashar in Women, Peace and Security Academic Collective (WPSAC), Monash University, *Submission 15*, p. 10.

85 Fiona McRobie in Amnesty International Group, University of Western Australia (UWA), *Submission 58*, p. 10.

86 Fiona McRobie, *Submission 58*, p. 11.

decriminalised'.<sup>87</sup> However, as noted by Ms McRobie, '[w]hile some of the recommendations from this report were incorporated into the Indian Penal Code, the exemption for marital rape remains'.<sup>88</sup>

- 2.78 Adolescent marriages are also common in India, despite a law declaring the minimum age of marriage for females is 18 years old. The Catholic Women's League of Australia presented evidence from UNICEF:

UNICEF's *State of the World's Children 2013*, rates countries according to the percentage who were married before the age of 18 years. India has the highest number of child brides, 47 per cent of 20 to 24 year olds were child brides – 210 million women.<sup>89</sup>

- 2.79 The DFAT submission to the inquiry cited legislative restrictions on women's economic activity as a continuing problem in South and West Asia:

Laws restricting women's economic activity (for instance, their ability to access credit or own property) are also prevalent in South and West Asia. The World Bank's report on *Women, Business and the Law* (2014) found that all five countries surveyed in South and West Asia had legal restrictions in place that negatively affected women's ability to conduct business, and thus lowered their contribution to economic growth.<sup>90</sup>

- 2.80 The inquiry received varied evidence on the situation for women and girls in Sri Lanka. The Australian Tamil Congress expressed strong concerns that Sri Lanka has 'gone backwards' in terms of women's rights. The Congress cited the World Economic Forum's *2013 Global Gender Gap Report*, which focusses on women's status in areas such as economic participation, educational attainment, and political empowerment. This report found that Sri Lanka had ranked 13th out of 115 countries in 2006 but had slipped to 55th out of 136 countries in 2013.<sup>91</sup>

- 2.81 The Sri Lankan Government, through the Sri Lankan High Commissioner in Australia, argued that much work is being done to promote women's rights. The High Commissioner pointed to various supports for women, including education and training for former combatants and legal aid for widows and single women.<sup>92</sup>

87 Dr S Parashar in WPSAC, *Submission 15*, p. 11.

88 Fiona McRobie, *Submission 58*, p. 11; the Verma Commission is further discussed in chapter three.

89 Catholic Women's League Australia, *Submission 81*, p. 3.

90 DFAT, *Submission 27*, p. 20.

91 Australian Tamil Congress, *Submission 8*, p. 1; for the World Economic Forum report see <[www3.weforum.org/docs/WEF\\_GenderGap\\_Report\\_2013.pdf](http://www3.weforum.org/docs/WEF_GenderGap_Report_2013.pdf)> viewed 15 July 2015.

92 The High Commission of the Democratic Socialist Republic of Sri Lanka, *Submission 79*, p. 6.

2.82 The High Commissioner also highlighted amended laws that criminalise rape in marriage. However, these laws only apply where the wife is separated from her husband, or in the case of accompanying physical violence. The High Commissioner wrote:

In terms of Section 363, a man is said to commit 'rape' who has sexual intercourse with a woman without her consent even where such woman is his wife and she is judicially separated from the man. Although the act of sexual intercourse without consent of the wife is by itself not a crime under the existing law, where such an act involves violence to such a degree that the violence amounts to a crime, the act of violence is punishable under the Penal Code.<sup>93</sup>

2.83 The inquiry received significant evidence about the situation for women in Afghanistan and a public hearing was held in May 2014 largely focussed on that country.

2.84 Witnesses at the hearing stated that Afghanistan has made significant progress in recent years, having ratified CEDAW in 2003, and having seen the number of children, especially girls, attending school significantly increase since 2001, and hundreds of women entering public life.<sup>94</sup>

2.85 However, questions were asked about the *Law on Elimination of Violence Against Women*, which was 'decreed into law through an Executive Order by the former Afghan President Hamid Karzai' in 2009.<sup>95</sup> Ms Zulaikha Rafiq, Director of the Afghan Women Educational Centre, explained that the law has not actually been passed by the parliament yet, leaving it vulnerable to reversal. However, Ms Rafiq was hopeful the law will be passed in the near future, and plans for its implementation are well underway.<sup>96</sup>

2.86 Colonel Najibullah Samsour of the Afghan National Police responded to questions about the law and the National Action Plan for Afghanistan. Colonel Samsour identified Afghanistan's conservatism and recent history of conflict and violence as barriers to the implementation of these laws, saying:

... Afghanistan is a conservative society with past decades of conflict and war. So it needs time for the existence of these rules and laws to be realised and understood by the people and by

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93 The High Commission of the Democratic Socialist Republic of Sri Lanka, *Submission 79*, p. 5.

94 Ms Zulaikha Rafiq, Director, Afghan Women Educational Centre, *Committee Hansard*, Canberra, 13 May 2014, pp. 1-2.

95 Ms Fawzai Koofi, 'Where Afghan law fails women', *Aljazeera News*, 2 January 2015, <[www.aljazeera.com/indepth/opinion/2015/01/where-afghan-law-fails-women-2015119256183362.html](http://www.aljazeera.com/indepth/opinion/2015/01/where-afghan-law-fails-women-2015119256183362.html)> viewed 18 September 2015.

96 Ms Rafiq, Afghan Women Educational Centre, *Committee Hansard*, Canberra, 13 May 2014, p. 4.

everyone in the country in order for them to obey the law and for the promotion of rule of law in the country.<sup>97</sup>

- 2.87 Ms Rafiq explained that she believed '[t]he question of women's rights has made strides, and people have changed quite a bit', adding that '[w]e are preparing women at the grassroots levels'.<sup>98</sup> However, Ms Rafiq also expressed concern that women activists in Afghanistan are at risk from regressive forces who seek to wind back the reforms:

The women in Afghanistan are taking huge risks. All of us are always potential targets over there, but we feel confident because we feel as if any attempt on us would raise a huge hue and cry.<sup>99</sup>

- 2.88 The impacts of Sharia Law on women's rights were raised by a number of witnesses to the inquiry. Professor Margaret Alston, Head of Gender, Leadership and Social Sustainability at the GLASS Research Unit, Monash University stated that 'sharia law in a lot of cases has been misapplied. It is being applied to reduce women's rights and possibilities'. She further claimed that:

Sharia law is about living rightly, as it were, but it has been inadequately applied to disempower women – particularly focused on women's bodies as the source of honour.<sup>100</sup>

- 2.89 In its submission, the Islamic Republic of Afghanistan, Ministry of Foreign Affairs, thanked the Australian Government for its support in promoting human rights in Afghanistan, saying:

Currently the government of Afghanistan is in a better situation in the area of civil and political rights, and appreciates your cooperation in the areas of implementation and prevailing economic and social rights in Afghanistan.<sup>101</sup>

## African East Coast

- 2.90 This region had the highest rate of discriminatory laws in 1960, according to the World Bank, but over half of those discriminatory laws and provisions had been removed by 2010.<sup>102</sup> Laws constraining women's

97 Colonel Najibullah Samsour, Afghan National Police, translated by Mr Mohammad Sharif, Policy and Advocacy Office, Oxfam Australia in Afghanistan, *Committee Hansard*, Canberra, 13 May 2014, p. 2.

98 Ms Rafiq, Afghan Women Educational Centre, *Committee Hansard*, Canberra, 13 May 2014, p. 3.

99 Ms Rafiq, Afghan Women Educational Centre, *Committee Hansard*, Canberra, 13 May 2014, p. 3.

100 Professor Margaret Alston, Gender, Leadership and Social Sustainability (GLASS) Research Unit, Monash University, *Committee Hansard*, Melbourne, 3 November 2014, pp. 28–31.

101 Islamic Republic of Afghanistan, Ministry of Foreign Affairs Minister's Office, *Submission 75*, p. 1.

102 World Bank, 'Women's Legal Rights Over 50 Years: Progress, Stagnation or Regression?',

rights were often a legacy of the way in which these countries' legal systems were developed:

Hybrid systems, which are a mix of common law and civil law systems, often come out with the highest share of constraints in these indicators. This can be partly explained by the fact that the majority of 'hybrid' countries covered were located in Southern Africa. Their history has been marked by the rigid discriminatory aspects of apartheid rule which dominated the region until the mid-1990s. They tend both to recognize customary law and exempt it from non-discrimination, while also recognizing many of the head of household laws that limit women's legal capacity.<sup>103</sup>

2.91 Despite progress, discriminatory laws persist in many countries on the African East Coast. DFAT stated that:

In Sub-Saharan Africa, women generally face significant barriers to economic empowerment. Restrictive and discriminatory legislation remains on the books in most countries in the region. In Mozambique, for instance, married women cannot sign contracts without their husbands' consent and husbands are considered to be the sole administrators of any joint property acquired during marriage. Such legislation not only denies women equal rights but limits women's economic opportunities and thus stifles economic growth.<sup>104</sup>

2.92 The World Bank explained that land ownership laws that discriminate against women further entrench the economic inequality between women and men, particularly in societies where small-scale agriculture is a primary source of income for women.<sup>105</sup>

2.93 Inheritance laws in the region also generally favour the male child, leaving women and girls further disadvantaged.<sup>106</sup>

2.94 Most countries in the region ratified CEDAW in the 1980s or 1990s.<sup>107</sup>

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*Policy Research Working Paper 6616*, 2013, p. 2, viewed 15 October 2015.

103 World Bank, *Women's Legal Rights Over 50 Years: Progress, Stagnation or Regression*, 2013, p. 6, viewed 15 October 2015.

104 DFAT, *Submission 27*, p. 21.

105 World Bank, *World Development Report 2012: Gender Equality and Development*, p. 27, viewed 15 October 2015.

106 World Bank, 'Women's Legal Rights Over 50 Years: Progress, Stagnation or Regression?', *Policy Research Working Paper 6616*, 2013, p. 9, viewed 15 October 2015.

107 UN Treaty Collection, 'CEDAW Status', <[treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)> viewed 29 June 2015.

## Enforcement of laws and the role of social norms and customary law

- 2.95 Despite the remaining legal constraints, significant progress has been made worldwide since 1960 in repealing laws that discriminate against women, and promoting laws that protect women and girls from violence and discrimination. However, submissions to this inquiry argued that even where laws are in place, the consequences for breaking them are often inadequate or non-existent.<sup>108</sup>
- 2.96 The World Bank expressed concerns that, despite progress in legislative reform, mechanisms to enforce these new laws are lacking:
- Greater capacity of the institutions that apply the laws, more accountability in the justice system to promote predictable outcomes in line with the law, and procedures to promote women's access to justice and women's representation in judicial institutions are critical on the supply side. Also important are mechanisms for the implementation of laws.<sup>109</sup>
- 2.97 Evidence received by the Committee indicated that when it comes to violence against women, law enforcement is inadequate in many countries.<sup>110</sup> Witnesses were concerned that violence is going unpunished in many countries, despite laws against it. The Asia Foundation cited Bangladesh as an example.<sup>111</sup>
- 2.98 Witnesses from Afghanistan acknowledged that, despite the law mandating that a girl must be 18 to be married, child marriages are common and no one is prosecuted.<sup>112</sup>
- 2.99 UN Women were concerned about the lack of capacity to enforce laws in countries in the Pacific:
- The legislative amendments that have been achieved in the Pacific often lack the requisite policies and mechanisms that are necessary for enforcement, and to enable women to actually exercise their rights. The implementation of new or amended legislation is hampered by the lack of:
- Sufficient, or indeed any, budget allocation for implementation;
  - Enforcement strategies including training of law enforcement officials;

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108 See for instance: UN Pacific Gender Group, *Submission 49*, p. 4; ChildFund Australia, *Submission 2*, p. 2.

109 World Bank, *World Development Report 2012: Gender Equality and Development*, p. 31, viewed 15 October 2015.

110 ISRHR Consortium, *Submission 52*, p. 4.

111 Asia Foundation, *Submission 57*, p. 4.

112 Ms Rafiq, Afghan Women Educational Centre, *Committee Hansard*, Canberra, 13 May 2014, p. 3.

- Civic education; and
- Monitoring strategies.<sup>113</sup>

2.100 Dame Carol Kidu explained that in PNG:

... there has been a lot of progress made in protecting women, in the revision of the criminal code, in strengthening the laws on rape and sexual abuse and in the Family Protection Act. But it is very hard to get the implementation ready.<sup>114</sup>

2.101 This view was echoed by the SPC which clarified that, in many parts of the Pacific, '[r]ather than insisting on effective punishment as deterrent, emphasis continues to be placed on reconciliation'. The Secretariat elaborated that the 'challenges ahead now lie in ensuring that newly enacted legislation is resourced, implemented and monitored'.<sup>115</sup>

2.102 Dr Priya Chattier, a Pacific Research Fellow at the Australian National University, explained that in Fiji:

... legislation does not translate into real life because, at the end of the day, many of the men are taking their right as the head of the household and are taking their customary right to bring about violence.<sup>116</sup>

2.103 The gap between legislative reform and cultural change was a concern to many witnesses to the inquiry. Dr Anke Hoeffler and Mr James Fearon found that:

... when legal norms run counter to social norms, legislative reform often appears to have a limited effect on changing attitudes and practices) ... The deeper underlying question is therefore how social norms can be changed.<sup>117</sup>

2.104 Amnesty International provided the example of Dalit women in India, who can be subject to violence despite laws designed to prevent it:

Despite the existence of constitutional safeguards and special laws, Dalits face multiple levels of discrimination and violence.

Amnesty International has reported that members of dominant castes are known to use sexual violence against Dalit women and

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113 UN Women, *Submission 10*, p. 7.

114 Dame Carol Kidu, *Committee Hansard*, Canberra, 3 February 2015, p. 2.

115 SPC, *Submission 24*, p. 23.

116 Dr Priya Chattier, Pacific Research Fellow (Melanesia Program), Australian National University (ANU), *Committee Hansard*, Canberra, 18 September 2014, p. 3.

117 Dr Anke Hoeffler, *Exhibit 47: J Fearon and A Hoeffler, 'Conflict and Violence Assessment Paper: Benefits and Costs of the Conflict and Violence Targets for the Post-2015 Development Agenda'*, Copenhagen Consensus Center, *Post-2015 Consensus Working Paper*, 2014, p. 35.

girls as a political tool for punishment, humiliation and assertion of power.<sup>118</sup>

- 2.105 Complicating the legal landscape in many countries in the region are customary laws, which 'are often used to reduce women's access to legal redress in a number of situations'.<sup>119</sup> UN Women reported that:

Many countries in the region function under a dual legal system: the formal justice system based on written law and the informal justice system based on customary practice. Although in some countries the constitution outlines that the formal legal system prevails over customary law, the enforcement of these clauses are weak.<sup>120</sup>

- 2.106 Reliance on customary law often reinforces traditional approaches to the status and roles of women. UN Women further advised:

Application of customary law tends to be interpreted by traditional leaders and is often linked to attitudes rooted in traditional notions of equality that enforce gender stereotypes. In most PICTs the informal justice system is easier to access (and in many cases is the only option) for women compared to the formal legal system.<sup>121</sup>

- 2.107 Customary regimes often heavily advantage the husband in domestic cases, such as in the Solomon Islands, where:

Women that did seek support for child custody cases ... were fighting against the traditional practice where the husband's family has sole custody of the children, which may be linked [to] the culture of bride price of customary land ownership.<sup>122</sup>

- 2.108 Customary or community courts can, however, in some circumstances, provide a useful alternative for women seeking justice or redress in domestic disputes. Mr Stephen Howell from Slavery Links Australia, provided the example of the Nari Adalats in India, who are:

... women sitting on customary courts in India, the so-called adalats. They are not necessarily running what we would call human rights, but they are drawing attention to the issue of what happens in families where a divorce or a separation happens. Where is a woman going to get the resources to continue to

118 Amnesty International Australia, *Submission 74*, p. 7.

119 Ms Joanna Hayter, CEO, International Women's Development Agency (IWDA), *Committee Hansard*, Melbourne, 3 November 2014, p. 27.

120 UN Women, *Submission 10*, p. 1.

121 UN Women, *Submission 10*, p. 6.

122 UN Pacific Gender Group, *Submission 49*, p. 5.

support herself and her children after a divorce in countries where often the divorce laws leave her destitute?<sup>123</sup>

2.109 DFAT pointed to Indonesia as an example of where customary courts work alongside a formal court system:

It is estimated that only ten per cent of domestic violence cases end up in court. Most cases are solved through informal means under village officials who can disregard legislation.<sup>124</sup>

2.110 The legal system in Indonesia is also split, with religious and secular courts. Ms Lister described that the 'majority of civil cases in Indonesia ... more than 80 per cent, are dealt with in the religious courts', thus Australia works predominantly with these courts. Ms Lister also explained that 76 per cent of civil cases in these courts relate to family law, with 95 per cent of those cases brought by women.<sup>125</sup>

### Access to justice

2.111 Witnesses argued that access to courts and legal representation are key barriers for women and girls in accessing justice.

2.112 The Hon. Diana Bryant, Chief Justice of the Family Court of Australia, provided details about some of the work Australian courts were doing to assist courts in Indonesia. This work involved helping Indonesian courts and NGOs to survey court users to see how to make courts more accessible. The survey revealed that people could not afford to come to court or to pay court fees, particularly women. After court fees were dropped there was a 'huge uptake' in the number of people able to access justice through the court system.<sup>126</sup> Chief Justice Bryant argued that this kind of program could be repeated in Pacific countries, and could have a big impact on the ability of women to access justice.<sup>127</sup>

2.113 When a proportion of society condones violence and discrimination against women, it can be very difficult for women who are victims of crime to access justice.<sup>128</sup> The SPC expressed deep concern about the inability of women to gain redress in parts of the Pacific:

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123 Mr Stephen Roscoe Howell, Founding Director, Slavery Links Australia, *Committee Hansard*, Canberra, 7 May 2015, p. 3.

124 DFAT, *Submission 27*, p. 24.

125 Ms Lister, Family Court of Australia, *Committee Hansard*, Canberra, 6 May 2015, p. 31.

126 The Hon. Diana Bryant, Chief Justice, Family Court of Australia, *Committee Hansard*, Canberra, 6 May 2015, p. 23.

127 Chief Justice Bryant, Family Court of Australia, *Committee Hansard*, Canberra, 6 May 2015, p. 23.

128 See: Asia Foundation, *Submission 57*, p. 3.

Women's access to justice remains very limited, particularly to formal justice systems. Women who experience violence need impartial and fair treatment by all protection and justice actors, who take violence very seriously and act immediately to protect the woman and her family.<sup>129</sup>

2.114 Even when women do file complaints related to violence perpetrated against them, they often face a traumatic process to be heard, or face pressure from their family or community to drop the case.<sup>130</sup>

2.115 Assistant Commissioner Mandy Newton, the National Manager of the International Deployment Group of the Australian Federal Police (AFP), provided this example from Timor-Leste:

We have seen in Timor-Leste, where there has been an increasing number of charges against people for sexual assault, women have not been able to go back into their local communities because they are almost disowned by the community.<sup>131</sup>

2.116 The Secretary of State for the Promotion of Equality also echoed the view that women in Timor-Leste may not be able to access justice, despite the introduction of new laws:

Enactments of the *Penal Code* (2009) and the *Law Against Domestic Violence* (2010) have been significant milestones, but this legislation has only been in effect a short time and more efforts are needed to effectively implement the law through the National Action Plan on Gender Based Violence. Barriers to accessing justice, especially for women, include the limited outreach of police, the low number and long distances to courts, coexistence of customary and formal justice systems, language and literacy (both legal and general literacy) and insufficient resources translating into long delays in the legal process.<sup>132</sup>

2.117 Witnesses reported specific pressure in Afghanistan to remain silent about abuse, highlighting the role of the international community in ensuring laws translate into real action on women's rights. Ms Rafiq said:

There are a lot of good, rational laws in place, but the implementation part is what we are pushing to make sure of, and

129 SPC, *Submission 24*, p. 24.

130 See for example: UN Pacific Gender Group, *Submission 49*, p. 5, and Asia Foundation, *Submission 57*, p. 3.

131 Assistant Commissioner Mandy Newton, National Manager, International Deployment Group, Australian Federal Police (AFP), *Committee Hansard*, Canberra, 18 September 2014, p. 278.

132 Secretary of State for the Promotion of Equality, Democratic Republic of Timor-Leste *Submission 45*, p. 3.

that is why I stress the necessity for the international community to remain engaged. If the armed forces move out, I can understand, but if there is no stake in Afghanistan from Australia or from any other important countries which Afghanistan needs as allies then these things will just remain on paper; they will never translate into actions.<sup>133</sup>

2.118 Where women do progress a case, lack of access to legal representation is an additional barrier. The UN Pacific Gender Group explained that recent research indicated that only 17 per cent of women in the Solomon Islands live in areas where legal aid is accessible.<sup>134</sup>

2.119 The same study also found that women did not feel they had any support after orders were issued in domestic cases:

In addition, women that have received support from the [Public Solicitors Office] PSO and were able to attain court orders for child custody, restraining orders or maintenance [reported that] the enforcement of these court orders are not monitored. Women clients that were interviewed indicated that while they were grateful for the PSO services they felt left alone with no support after the issuing of the orders.<sup>135</sup>

2.120 The AFP, which works across the Pacific, was acutely aware of the need for policing responses to be coordinated with the provision of other legal services, including adequately resourced representation for victims. Assistant Commissioner Newtown stated:

There is no point in just having policing, if you do not have a good court system and do not invest in that, and do not invest in lawyers and solicitors and the ability for them to move around a country. Then there is the accessibility to the community to be able to get those basic services.<sup>136</sup>

## Sentencing

2.121 The Asia Foundation cited a United Nations study on men and violence in the Asia Pacific region, which showed that the vast majority of men who perpetrated rape did not experience any legal consequences.<sup>137</sup> The problem is similar for other forms of violence against women. Also, for the

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133 Ms Rafiq, Afghan Women Educational Centre, *Committee Hansard*, Canberra, 13 May 2014, p. 3.

134 UN Pacific Gender Group, *Submission 49*, p. 5.

135 UN Pacific Gender Group, *Submission 49*, p. 5.

136 Assistant Commissioner Newton, AFP, *Committee Hansard*, Canberra, 18 September 2014, p. 28.

137 Asia Foundation, *Submission 57*, p. 3.

- small number of cases that do get to court, sentences are generally low compared with other types of crime.
- 2.122 In the Solomon Islands, for instance, the UN Pacific Gender Group explained that once offenders are convicted of crimes of violence against women, 'the sentencing is often inadequately low'.<sup>138</sup>
- 2.123 The maximum penalty for rape in the Solomon Islands is twenty years, however, the Solomon Islands Law Reform Commission found in 2010 that the highest sentence actually imposed for rape was eight years and the lowest was one year and eight months.<sup>139</sup>
- 2.124 The study also found that sentences for child sexual abuse were even lower. For instance, the highest sentence imposed for 'defilement' of a girl aged less than 13 years was five years and the lowest sentence imposed was nine months.<sup>140</sup>
- 2.125 In addition, while the maximum penalty for rape is life imprisonment, without proof of penile penetration of the vagina (for instance in the case of penetration with an object), crimes can only be prosecuted as 'indecent assault', with a maximum penalty of five years. The Solomon Islands Law Reform Commission argued that the five-year maximum penalty 'does not give sentencing courts adequate discretion to impose sentences that reflect the seriousness of the offending'.<sup>141</sup>
- 2.126 Many Pacific countries also have inadequate sentences for severe family violence. The UN Pacific Gender group cited 'discussions with the Public Prosecutors in Vanuatu', which they say suggested that lawyers in that country are reluctant to prosecute under the Family Protection Act, 'since the sentencing provided in the law is too low, which leads to 'outside of the court' negotiation or utilisation of the national criminal code'.<sup>142</sup>
- 2.127 In addition to the issue of inadequate sentencing is the problem of sentencing that is inappropriate for the context. In some countries, the threat of severe criminal punishment can deter women from making claims against their husbands for fear that the husband might be put in jail and no longer able to support the household.
- 2.128 Chief Justice Bryant and Ms Lister raised this issue in relation to PNG. Ms Lister explained that authorities 'have to give women another pathway to

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138 UN Pacific Gender Group, *Submission 49*, p. 6.

139 UN Pacific Gender Group, *Submission 49*, p. 6.

140 UN Pacific Gender Group, *Submission 49*, p. 6.

141 Solomon Islands Law Reform Commission, *Review of the Penal Code and Criminal Procedure Code, Second Interim Report: Sexual Offences*, June 2013, p. 54.

142 UN Pacific Gender Group, *Submission 49*, p. 5.

deal with those issues without the criminal law aspect'.<sup>143</sup> She noted that alternative punishments through family courts can sometimes provide a more effective way of ensuring offenders are punished, and without further exposing women and children to vulnerability and poverty.<sup>144</sup>

## Police and security services

- 2.129 Police and other authorities are charged with ensuring laws are enforced, court orders are upheld, and all people, including women and children, are safe. Police forces must thus be competent, trustworthy and 'female-friendly' or women and girls will not be able to access justice and protection from harms.
- 2.130 Mrs Joanna Lindner Pradela, Head of Policy, Aid and Development Effectiveness, Australian Council for International Development (ACFID) emphasised that: '[h]aving gender-sensitive policing, including women policing units and places where women can go to access female police forces, is critical'.<sup>145</sup>
- 2.131 The numbers of women experiencing physical or sexual violence at the hands of an intimate partner are high in many countries, but only a small proportion of victims report this violence to the authorities. The UN Pacific Gender Group reported that recent studies (2009) in the Solomon Islands had found that 64 per cent of women aged 15–49 had experienced such violence, but only 17.9 per cent sought help from any formal service (law enforcement, health services, legal services or women's organisations). Only 5.1 per cent of these victims sought help from the police.<sup>146</sup>
- 2.132 Witnesses identified numerous reasons why women may not seek assistance from authorities, including a distrust of the police due to corruption, suspected incompetence or complicity in abuse of women. Dr Hoefler and Mr Fearon revealed that:

... in many low-income countries, police corruption, abuse, and simple poor performance appear to be a large part of the problem of societal violence. For example, using data from the latest Afrobarometer round, we find that in the 20 [African] countries surveyed, the average percentage who responded that they trusted the police 'not at all' was 21 per cent, with another 23 per cent

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143 Ms Lister, Family Court of Australia, *Committee Hansard*, Canberra, 6 May 2015, p. 29.

144 Ms Lister, Family Court of Australia, *Committee Hansard*, Canberra, 6 May 2015, p. 29.

145 Mrs Joanna Lindner Pradela, Head of Policy, Aid and Development Effectiveness, Australian Council for International Development (ACFID), *Committee Hansard*, 18 September 2014, p. 18.

146 UN Pacific Gender Group, *Submission 49*, p. 5.

saying they trusted the police only 'a little.' On average 15 per cent in each country said that 'all' police were corrupt; 27 per cent on average said that 'most of them' were corrupt.<sup>147</sup>

- 2.133 The authors also provided data for the United States and Canada, which presents a stark contrast:

For the U.S. and Canada, the percentages saying that they trusted the police 'not at all' were 6.9 and 5.2 per cent respectively, while the question about police involvement in crime was not even asked.<sup>148</sup>

- 2.134 A dysfunctional police force is a major stumbling block for gender equality, social harmony and successful development in many parts of the Indo-Pacific region. The AFP expressed concerns that:

Without the ability to report crime to police in good faith, women and girls will continue to be reluctant to come forward for fear of retribution and rejection, offenders will not be held to account and the underpinning cultural and social attitudes will not change.

Even where prosecutions are possible, poor investigative processes coupled with a lack of community support services allows abuse to continue unchecked.<sup>149</sup>

- 2.135 The AFP further submitted that many countries in the region lack sufficient representation of women in their policing and justice sectors, adding:

Until women are equally represented within the law and justice sector and have equal access to justice through representative police services and fair and transparent legal systems, they will face continued discrimination.<sup>150</sup>

- 2.136 The AFP told the Committee that they are supporting programs in-country, especially in PNG and the Solomon Islands, to increase the numbers of female police, and improve the capacity of the police force in relation to gender issues. With help and advice from the AFP, PNG has increased female participation in its police force from 5.4 per cent in 2003 to approximately 10 per cent in 2012. Tonga has also shown improvement with the 2013 intake comprising nine females and 11 males.<sup>151</sup>

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147 Dr A Hoeffler, *Exhibit 47*: 2014, pp. 35–36.

148 Dr A Hoeffler, *Exhibit 47*: 2014, pp. 35–36.

149 AFP, *Submission 31*, p. 2.

150 AFP, *Submission 31*, p. 3.

151 AFP, *Submission 31*, pp. 5–6.

- 2.137 To help build capacity among police in these countries, the AFP also provides pre-deployment training on 'women, peace and security issues' to staff being deployed to these regions.<sup>152</sup>
- 2.138 Despite the widespread concerns about police corruption and violence in a number of countries in the Indo-Pacific region, and notwithstanding work such as that being done by the AFP, Dr Hoeffler and Mr Fearon argued that donor countries are not investing significantly in this area:
- Virtually zero aid flows to programs intended to improve police competence and integrity...<sup>153</sup>

### Case study: Police women in Afghanistan

- 2.139 In Afghanistan, evidence suggests there are high levels of police crime and corruption. Oxfam Australia pointed to research from within the country, saying:
- ... the Afghanistan Independent Human Rights Commission found that many honour killings and sexual assaults against women have been committed by the police themselves.<sup>154</sup>
- 2.140 Women who suffer violence in Afghanistan have multiple barriers to accessing justice and assistance. One of these is that 'social norms prevent most Afghan women from approaching male police officers'.<sup>155</sup> Oxfam submitted that:
- ... while there is strong evidence that Afghan women feel more comfortable reporting crimes to policewomen, women currently make up less than one percent of the Afghan National Police.
- ...
- Although female police are vital for Afghan women to be able to report crimes and access desperately needed justice, few Afghan women will ever encounter one.<sup>156</sup>
- 2.141 Many countries struggle to recruit female police officers. However, Afghanistan's percentage of female police officers (less than one per cent) is particularly low by world standards, with many other countries having around 20 per cent of their police force made up of women. Even most other developing nations have higher levels, for instance Nigeria has around 12.4 per cent (2011) and India has around 5.17 per cent (2010).<sup>157</sup>

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152 AFP, *Submission 31*, p. 5.

153 Dr A Hoeffler, *Exhibit 47: 2014*, p. 2.

154 Oxfam Australia, *Exhibit 6: Women and the Afghan Police*, [2013], p. 3.

155 Oxfam Australia, *Exhibit 6*: [2013], p. 3.

156 Oxfam Australia, *Submission 13*, p. 10.

157 Oxfam Australia, *Exhibit 6*: [2013], p. 20.

2.142 One contributing factor to the low numbers is a perception that being a police officer in Afghanistan is unsafe. In 2008 the country's highest ranking policewoman Lieutenant Colonel Malalai Kakar was shot dead by the Taliban in Kandahar, and other police women have also been targeted.<sup>158</sup> Such events are a further disincentive for women to join the police force.

2.143 Oxfam acknowledged that there has been significant improvement in the numbers of women in the Afghan Police Force over the last decade. Oxfam has also applauded the introduction of quotas for women officials, while acknowledging that these quotas are not being successfully filled.<sup>159</sup> Even with these efforts, the number of female officials is still worryingly low:

The Government has launched several initiatives to recruit women into the ANP [Afghanistan National Police], resulting in a gradual rise in their numbers. In 2005, the ANP employed just 180 women out of 53 400 personnel. In July 2013, 1551 policewomen were serving out of 157 000.<sup>160</sup>

2.144 Oxfam submitted that Afghan policewomen face challenges including 'a lack of promotion prospects, sexual harassment, a lack of support from senior male police, and opposition from community members'.<sup>161</sup> It proposed:

Reforms should include developing clear recruitment policies and specific job descriptions, reserving more positions (including senior roles) for women, and identifying more departments and units where they can work – including in FRUs [Family Response Units], recruitment, intelligence, the Passport Department, Criminal Investigation Division and Counter Narcotics.<sup>162</sup>

2.145 Colonel Samsour, who works to support female police, reported on attempts to improve the situation:

Recently, many women police have been sent out of the country for professional courses. Some of the good high-ranked women officers got promoted. Just recently, one of them was appointed as

158 Oxfam Australia, *Exhibit 6*: [2013], p. 44.

159 Oxfam Australia reports that 3 249 positions have been reserved exclusively for women, including 821 police officers, 787 Non-Commissioned Officers (NCOs), 1 370 patrol officers, 101 administrative personnel, and 170 contractors. As of mid-2013, women occupied less than half of the reserved roles. Oxfam Australia, *Exhibit 6*: [2013], p. 16.

160 Oxfam Australia, *Exhibit 6*: [2013], p. 3.

161 Oxfam Australia, *Submission 13*, p. 10.

162 Oxfam Australia, *Exhibit 6*: [2013], p. 9.

the chief of police of one of the districts in Kabul city, which has not been done in the past.

...

There is also a plan within the next two months for a provincial women commander to be appointed for one of the provinces – maybe Bamiyan or some other places – which is also something good.<sup>163</sup>

- 2.146 The Colonel also identified an ongoing role for Australia in providing assistance to Afghanistan to help strengthen these efforts:

If the support of Australian troops is not there right now, we are of course still looking for the long-term support of Australia. That can really help us in terms of training police and community policing and in other sectors. They can really help us to promote those areas.<sup>164</sup>

## What is working for change?

- 2.147 Witnesses to the inquiry provided a number of examples of programs and initiatives that had worked – or are working – to increase legislative protections, strengthen access to justice, and promote the human rights of women and girls.

- 2.148 Marie Stopes International stated that:

Recent decades have seen strong progress towards improving sexual and reproductive health and rights. In the last 20 years for example, 17 countries have reduced restrictive legislation on reproductive health services ...<sup>165</sup>

- 2.149 Referring to the recent adoption in the Philippines of the *Responsible Parenthood and Reproductive Health Act*, Marie Stopes International suggested that it 'represents a growing recognition in the region for both the right to and benefits of expanded access to reproductive health services'.<sup>166</sup>

- 2.150 Also in the field of reproductive rights, the ISRHR Consortium discussed the introduction of liberalised abortion legislation in Nepal, Cambodia

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163 Colonel Samsour, Afghan National Police, *Committee Hansard*, Canberra, 13 May 2014, p. 6.

164 Colonel Samsour, Afghan National Police, *Committee Hansard*, Canberra, 13 May 2014, p. 6.

165 Marie Stopes International, *Submission 40*, p. 7.

166 Marie Stopes International, *Submission 40*, p. 6.

and South Africa; a move that has led to increased access to safe abortion services and a large fall in abortion related deaths.<sup>167</sup>

2.151 Sexual assault law is another area that has seen significant change. In some PICTs, changes to laws regarding sexual offences have recently been achieved. In 2013 the Samoan Parliament passed legislation that increased the maximum sentence for most sexual offences, and overtly criminalised marital rape. Samoa's *Family Safety Act 2013* also introduced protection orders and legislated for specific responsibilities for police officers who receive a report on domestic violence.<sup>168</sup> Samoa also established a Family Violence Court.<sup>169</sup>

2.152 Further work is being done to promote additional reforms to outdated laws in the PICTs, for instance the UN Women's 'Advancing Gender Justice in the Pacific Programme' is analysing domestic laws in several PICTs to assess how well they comply with international CEDAW standards. The program is being conducted in conjunction with government and civil bodies, and:

... has been designed based on nationally identified priorities that acknowledge and highlight the complexity in changing social norms, values and cultural practices around human rights, access to justice and women's political participation.<sup>170</sup>

2.153 Evidence to this inquiry demonstrates that changing legislation alone has not resolved social problems, such as the abuse and exploitation of women and children. However, legislative reform can have a positive impact if it is backed up by services, training and awareness raising activities. For instance, the Asia Foundation highlighted the 2008 Cambodian *Law on Suppression of Human Trafficking and Sexual Exploitation*, describing it as:

... a watershed for the sector, as was the creation of an Interministerial body, the National Committee to Lead the Suppression of Human Trafficking, Smuggling, Labor and Sexual Exploitation of Women and Children. The Foundation's approach to combating human trafficking in Cambodia is guided by an integrated strategy of strengthening prevention, protection, and prosecution efforts.<sup>171</sup>

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167 For instance, a 91 per cent fall in abortion related deaths in South Africa. ISRHR Consortium, *Submission 52*, p. 5.

168 DFAT, *Submission 27*, p. 36.

169 UN Pacific Gender Group, *Submission 49*, p. 6.

170 UN Pacific Gender Group, *Submission 49*, p. 11.

171 Asia Foundation, *Submission 57*, pp. 4-5.

- 2.154 Oxfam Australia's submission reported on their work around preventing violence in India:

The Program Promoting Violence-Free Lives for Women from Poor and Marginalized Communities in India holds regular community meetings and awareness raising initiatives with women and men on the legal rights of women and causes and consequences of violence against women and girls.<sup>172</sup>

- 2.155 This program has a specific focus on working with the state to ensure the enforcement of laws, and lobby for 'better support services'.<sup>173</sup> As part of the Oxfam program:

18 support centres have been set up across 4 states in collaboration with the police department as models for providing all-encompassing support services to women survivors of violence, reaching 39 053 women during the program.<sup>174</sup>

- 2.156 Legislative reforms that are accompanied by increased resourcing and capacity building strategies have led to positive change in some areas. The World Bank pointed to the Indonesian program, PEKKA Women's Legal Empowerment, as an example. PEKKA 'trains village paralegals, with a focus on domestic violence and family law'.<sup>175</sup>

- 2.157 Ms Lister suggested PEKKA is an example of best practice engagement in the legal arena, revealing that the Family Court of Australia has worked with PEKKA 'for the past nine or 10 years'. Ms Lister explained that, with the support of Australian aid:

... we have been able to establish paralegals. These women actually go out into the communities, the poorest of the poor in the most rural and regional areas, to support women to bring these cases to court. So they provide them with education and information and then assist them with writing the applications and filling in the forms. They then take that away and file them in court for them.<sup>176</sup>

- 2.158 Ms Lister added that the partnership has created free legal aid support services in the courts to assist those without representation at the time of their appearance. She reported:

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172 Oxfam Australia, *Supplementary Submission 13.1*, p. 8.

173 Oxfam Australia, *Supplementary Submission 13.1*, p. 9.

174 Oxfam Australia, *Supplementary Submission 13.1*, p. 8.

175 World Bank, *World Development Report 2012: Gender Equality and Development*, p. 32, viewed 26 October 2015.

176 Ms Lister, Family Court of Australia, *Committee Hansard*, Canberra, 6 May 2015, p. 27.

In Indonesia now there are 189 legal aid posts in the general courts. They are dealing with non-Muslim marriage and also different types of civil law cases ... In the most recent years it has provided support to over 100 000 Indonesians, the majority of whom are women.<sup>177</sup>

- 2.159 Chief Justice Bryant also commended the work being done in Indonesia that has increased access to the courts for the poor, advising:

... the Supreme Court funded the religious courts to quite a considerable degree to actually overcome these problems ... So they provided for fee waivers and they provided funds for circuit courts ... They now have a one-stop shop for these things, and I have actually visited outside Jakarta and seen this working. It is amazingly impressive.<sup>178</sup>

- 2.160 Ms Lister highlighted that the success of the approach in Indonesia is that the programs focus on what the people need and want; an approach that she felt would work well in the Pacific:

It is not just about focusing on the criminal law responses to family violence; it is also about looking at family law support ... What we do know is that women often want to use the family courts to protect themselves, their children and their assets. But there are great barriers to bringing those cases to court – cost; access to legal information and support; and sometimes actual physical access to the court. We know that there is a lot of support of policing efforts, community based organisations and NGOs, but there has not been much work with the family courts in these countries and looking at the barriers that women and children face in accessing family law responses. We think that is key in the Pacific, as it was in Indonesia.<sup>179</sup>

- 2.161 Another area where Australian Government and NGO programs are having an impact is the area of children's rights. In its submission, ChildFund mentioned a number of programs it operates in the Indo-Pacific region to promote children's rights within domestic legal systems. This example is from PNG:

ChildFund's ANCP [Australian NGO Co-operation Program] funded projects have also contributed to the realisation of children's rights by promoting the Lukautim Pikinini Act with

177 Ms Lister, Family Court of Australia, *Committee Hansard*, Canberra, 6 May 2015, p. 27.

178 Chief Justice Bryant, Family Court of Australia, *Committee Hansard*, Canberra, 6 May 2015, p. 23.

179 Ms Lister, Family Court of Australia, *Committee Hansard*, Canberra, 6 May 2015, p. 24.

local officials, and duty bearers in Papua New Guinea. This enshrines the Convention on the Rights of the Child into domestic law and localises its implementation. These ANCP funded projects actively promote the Act and use it as a strategic framework to work within.<sup>180</sup>

- 2.162 Former Chief Justice of the Family Court of Australia, and the Chair of Children's Rights International (CRI), Alistair Nicholson AO, RFD, QC, presented evidence to the inquiry regarding the work of CRI in relation to children in Cambodia and Vietnam. CRI works closely with the Cambodian Ministry of Justice and judiciary, and with relevant departments in Vietnam, including the Supreme People's Court 'to help them improve systems of child protection and child justice'.<sup>181</sup>
- 2.163 Through engaging closely with countries, and exposing legislators and judiciary to Australian approaches in the field of child justice, CRI seeks 'to train judges, prosecutors, police and prison officials in child friendly practices'. The ultimate goal is to support the establishment of a dedicated Children's Court in both countries.<sup>182</sup>
- 2.164 While explaining that the work continues, the former Chief Justice revealed progress has been made in both countries, for example:
- the Cambodian Ministry of Justice has introduced a Juvenile Case Management Book to all Courts;
  - high-ranking delegates from the Cambodian legal system participated in the 2013 World Congress on Family Law and Human Rights held in Sydney, and others participated in working groups around case tracking; and
  - the National Assembly of Vietnam has now passed legislation setting up Family and Children's Courts.<sup>183</sup>
- 2.165 A number of commentators captured what is required to secure meaningful social change alongside legal reform. The UN Gender Group surmised that:

Effective legislative remedies require a deep understanding of the root cause of violence against women and girls and a collaborative approach among law enforcement, judicial, social service, health care systems, as well as non-governmental organizations and civil

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180 ChildFund Australia, *Submission 2*, p. 7.

181 Statement of the Honourable Alastair Nicholson AO RFD QC, Chair Children's Rights International, *Submission 87*, p. 1.

182 Children's Rights International, *Submission 87*, pp. 1-2.

183 Children's Rights International, *Submission 87*, pp. 3-4.

society organizations focused on women's rights and victim services.<sup>184</sup>

- 2.166 The SPC asserted that legislative change must be accompanied by deep and meaningful stakeholder engagement. It provided the example of the Tonga Family Protection Bill, noting that:
- Lobbying for the bill's passage involved perseverance and understanding the working relationships between the different ministries and the different CSOs; creating champions in the cabinet and the legislative assembly; achieving government buy-in through a cabinet decision, establishing strong relationships with the attorney-general's office and the head of police, engaging key NGOs, and nurturing relationships with development partners.<sup>185</sup>
- 2.167 Professor Margaret Jolly of the ANU's School of Culture, History and Language at the College of Asia and the Pacific, contended that men must be engaged in reforms that promote women's emancipation, to promote ownership and avert backlashes against any laws passed.<sup>186</sup> Ms Jacky Sutton, Australian National Committee for UN Women, advised of UN Women's activities in the Pacific to 'educate both law enforcement officials and parliamentarians of international rights and obligations and also of the legislation that is in place – that is, domestic legislation – to protect women and girls against violence'.<sup>187</sup>
- 2.168 DFAT reported that it had provided technical assistance to China to support the drafting of China's national domestic violence legislation and establish domestic violence protection orders in courts in six provinces. The Department explained that this work was supplemented by training and professional development opportunities to improve 'the capacity of over 700 female mediators and jurors within the Chinese justice system'.<sup>188</sup>

## Committee comment

- 2.169 While the Committee acknowledges the progress made in relation to laws affecting women and girls in the Indo-Pacific in the last five decades, the

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184 UN Pacific Gender Group, *Submission 49*, p. 6.

185 SPC, *Submission 24*, p. 27.

186 Professor Margaret Jolly, Professor/ARC Laureate Fellow, School of Culture, History and Language, College of Asia and the Pacific, ANU, *Committee Hansard*, Canberra, 18 September 2014, p. 5.

187 Ms Jacky Sutton, Australian National Committee for UN Women, *Committee Hansard*, Canberra, 18 September 2014, p. 31.

188 DFAT, *Submission 27*, p. 49.

Committee also notes that there remain laws in place, or an absence of laws, in a number of countries, that limit the ability of women and girls to fully enjoy their human rights.

- 2.170 The Committee is encouraged to see local agencies and organisations, such as the Solomon Islands Law Reform Commission, leading discussions on these issues within countries in the region. These bodies are best placed to lead the discussion and spearhead the push for legislative reform in-country.
- 2.171 The Committee recognises that inadequate enforcement of laws is a problem in many areas of the Indo-Pacific, especially in relation to violence against women and girls, and sexual assault.
- 2.172 Programs that aim to build capacity among law enforcement, the judiciary and the legal profession to ensure the effective enforcement of laws against violence and discrimination to meet the specific needs of women and girls are to be commended. Supporting these programs must be a priority for the Australian Government alongside efforts to encourage and support law reform.
- 2.173 The Committee in particular acknowledges progress made in Afghanistan in relation to promoting the rights of women and girls. However, there is further to go, and the Committee encourages the Australian Government to continue to direct funding and resources towards assisting Afghanistan to make further improvements to laws and social practices impacting women and girls.
- 2.174 The Committee acknowledges the work of Australian authorities, including the Department of Foreign Affairs and Trade, Australian Federal Police and Attorney-General's Department, and Australian courts, in building the capacity and capabilities of police, law enforcement, and the courts and judiciary, to respond to the needs of women and girls in the Indo-Pacific.
- 2.175 The Committee supports the continued work of Australia's diplomats, and the Australian aid program, in encouraging processes of legal reform in countries where discriminatory laws remain, or protective laws are absent.

## Recommendations

### Recommendation 1

The Committee recommends that Australia's diplomatic efforts continue to encourage legislative change to enhance the situation for women and girls, and to build the capacity of legal entities to enforce laws and ensure access to justice for women and girls. Specific areas that should be addressed include building a well-developed understanding of the needs of women and girls in:

- policing and law enforcement;
- courts and legal aid; and
- legal advice and advocacy services for women and girls.

### Recommendation 2

The Committee recommends that the Australian Government prioritise aid investment in relevant local women's legal aid organisations, advocacy bodies and law reform commissions in the Indo-Pacific region where laws that disadvantage women and girls are in place.

### Recommendation 3

The Committee recommends that the Australian Government encourage the Australian Courts to expand their investment in the work of making the registration of marriages and births more accessible in Indonesia; and expand its efforts to pursue similar work where it can facilitate reform in other countries in the Indo-Pacific region.

**Recommendation 4**

**The Committee recommends that the Australian Government:**

- **encourage the Afghan Parliament to enact and enforce the Law on Elimination of Violence against Women; and**
- **provide diplomatic, technical and administrative support for the implementation of the law.**

**Recommendation 5**

**The Committee recommends that the Australian Government:**

- **expand its support efforts for increasing the number of women recruits into police forces in the Pacific Island countries, including Papua New Guinea and Solomon Islands;**
- **help increase and retain the number of female recruits to the Afghan police force, law enforcement roles and public services, while supporting efforts to provide sufficient protection for these recruits; and**
- **increase support for improved professional standards for law enforcement professionals, prosecutors and judicial officers, including gender sensitivity training throughout the region.**

