



Case Study

An Analysis of Influencing Fiji's Family Law

A Case Study of Legislative Advocacy and Campaigning in Fiji

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Towards Inclusive Governance

Promoting participation of disadvantaged groups in Asia-Pacific

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Acronyms

ADB	Asian Development Bank
AG	Attorney General
APWLD	Asia Pacific Forum on Women, Law and Development
CEDAW	United Nations Convention on the Elimination of all Forms of Discrimination against Women
CRC	United Nations Convention on the Rights of the Child
DFID	UK Department for International Development
FLRC	Fiji Law Reform Commission
FWRM	Fiji Women's Rights Movement
IWRAW	International Women's Rights Action Watch (IWRAW)
MWC	Ministry of Women & Culture
OAG	Office of the Attorney General
RRRT	Pacific Regional Rights Resource Team
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNIFEM	United Nations Development Fund for Women

Summary

The Family Law Act 2003 (Fiji)

The previous family law was outdated, irrelevant, not properly enforced and discriminated against women and children, legally and financially. Why was the Family Law Act 2003 (Fiji) (FLA) eventually passed? What combination of circumstances can lead to human/women's rights policy or legislation?¹ There has to be a fortuitous convergence of circumstances (multiple forces at play simultaneously), some but not all, of which must occur together at any given time:

The rights-holders

- NGOs must themselves be educated about the issues
- Education of all major stakeholders on the need for reform, especially major opinion shapers;
- A credible lobby group and/or civil society that is allowed to function. They have the political space to mobilize and advocate for change. A protected Bill of Rights is an important component of this factor. In Fiji's case, RRRT's partner, the Fiji Women's Rights Movement was the lead NGO supporting the passing of the Act;
- Public mass media campaigns and a responsive media – the media must be educated about the proposed law;
- A strong NGO movement which understands how government and governance functions and knows how to work within the system, both nationally and internationally;
- Working with all political parties to gather support for the proposed legislation. This may involve group seminars or one-to-one meetings.

The duty-bearers

- An existing democracy with guaranteed free speech because this means that citizens are allowed to challenge existing policies, law and practices; a constitution which guarantees equal rights;
- A government that is willing or is required to act within principles of good governance and to work with NGOs;
- An active and strong women's ministry/department working from within government RRRT's Government partners included the Attorney General's Office, the FLRC and the Department of Women;
- A provision which states that human rights conventions must be applied if relevant. Fiji is fortunate to have such a provision in the 1997 Constitution s43(2);
- The ratification of CEDAW and CRC which is a basis of justification for the change. For compliance reasons all domestic law must be consistent with the conventions;
- Reporting on CEDAW and CRC, a requirement of ratification. This provides a strategic opportunity to use the international accountability mechanism to push for domestic change. In Fiji's case the UN CEDAW Committee highlighted the need for the Bill to be passed in its *Concluding Comments* after hearing the NGO Report. This enabled the women's ministry and FWRM to help put the Bill back on the legislative agenda.

The challenges to participation of disadvantaged groups

- Education of groups unfamiliar with the law

¹, P. Imrana Jalal, from a presentation given at the 9th Triennial Conference of Pacific Women, Nadi, Fiji, in August 2004.

- Cultural obstacles to change based on discriminatory stereotypes about women's roles
- Responding to criticism of forces against the change (i.e. the proposed law) with a strategic campaign based on persuasive dialogue and engagement
- Activists in Fiji working at provincial, village and community level providing education on the proposed law and lobbying for support;
- Statewide consultations on the new law are essential for participation, ownership and good governance;
- The right political climate. In the post-conflict situation in Fiji, people become more aware of their rights. The political upheavals brought out many problems to the forefront – for example, the increasing poverty caused by the lack of enforcement of maintenance orders for women and children.

Entry points for groups to influence

- A credible lobbyist/agent of change who may be the “face of change”, who the public and stakeholders relate to. S/he must be knowledgeable, have good people skills and is able to talk to anyone, everyone and relate to them on the issue. The lobbyist must be respected by politicians and public alike. This may be a formally appointed commissioner for law reform or one employed eg by the NGOs, on an informal basis;
- A powerful minister or other Member of Parliament can be an important ally and champion for the change. They may be an opinion shaper or champion within cabinet or parliament who other MPs respect;
- Important strategic partnerships – in this case the partnership existed between government (the Attorney General's Office, Parliamentary Office, Department of Women, Fiji Law Reform Commission) and civil society (FWRM and other NGOs) with RRRT/UNDP providing technical and expert support to both government and NGOs. RRRT brokered and nurtured the extremely important Government and NGO relationship which ultimately led to the passing of the Bill with unanimous support of all parties in Parliament. The latter was an historic and unprecedented event in Fiji's legislative history.

Overview

The Pacific Regional Rights Resource Team (RRRT) provides technical and policy advice, capacity-building and training on human rights at the macro-, meso- and micro-level of government and society. RRRT is the first regional human rights organization in the Pacific Islands. RRRT partners include governments, regional and civil society organizations in the Cook Islands, Fiji, Kiribati, Nauru, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Through regional partnerships RRRT has also worked in Papua New Guinea, the Northern Pacific and French Territories. RRRT is currently a project of UNDP, Pacific.

The Fiji Women's Rights Movement (FWRM) is a local Fijian feminist non-governmental organization (NGO) dedicated to improving the rights of women, focusing on legal reform, policy and technical support. The two coups d'état of 1987 and the political upheavals in 2000 were the impetus for the growth of FWRM into a significant NGO in the broader spectrum of human rights issues. FWRM had grown from being a feminist NGO dedicated mainly to women's issues to an influential human rights organization.

Both FWRM and RRRT organizations adopt an explicit rights based approach connected to the international human rights normative framework.

Women and by extension, their children, the rights-holders in this case study, faced systemic discrimination against them in family law. Fiji family law was previously based on nine pieces of legislation ranging from 1892 to 1973. The main legislation, the *Matrimonial Causes Act*, was based on 1953 British legislation word for word, imposed on Fiji when it was still a colony of Great Britain. The legislation, common law and legal practices were discriminatory against women, legitimated violence against them and were based on rigid concepts of women's roles within the family. For these reasons FWRM had reform of the family law as a priority on its agenda. Through its sterling work a commitment was made in 1996 by the Government to reform the family law.

FWRM was RRRT's national NGO partner organization. RRRT's government partners in this specific family law project were the Office of the Attorney General (OAG), the Fiji Law Reform Commission (FLRC) and the Ministry of Women & Culture (MWC). This case study will document that it is partly through these strategic alliances that women were able to be included in governance processes leading to the successful passing of new law affecting them.

This study documents the process taken by the two organizations, from 1991 to 2003, to achieve the successful passage of the Family Law Act in October 2003. It outlines the strategies used, mitigating factors that enabled change and the lessons learned from the struggle to empower the lives of Fiji women through legislative change. In particular it attempts to record the ways in which the rights-holders were able through the FWRM to influence and shape the final law passed so that it better reflected the needs and aspirations of Fiji women, particularly disadvantaged women.

The resulting law, which is based on a no-fault principle of divorce, utilizes a non-adversarial counseling system and a specialist Family Division of the Court which prioritizes children's needs and parental support. It removes all forms of discrimination against women and grants them rights to enforceable custody and financial support for them and their children. It legitimates and requires recognition and implementation of the major human rights United Nation conventions affecting

family law.² From early results it appears that the new Fiji Family Law Act will substantially reduce the costly use of lawyers and Legal Aid.

² United Nations Convention on the Rights of the Child (CRC) and United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

Analysis of Key Findings

Advocacy in support of the Family Law Act project was successful and in the main demonstrated a positive interaction between various governance institutions and women's groups. This project is a sound example of inclusive governance for disadvantaged women's groups. The purpose of this section focuses on why this initiative was successful in enabling this interaction and if it failed at times, why this occurred.

The capacities of the rights-holders to advocate and mobilize for inclusive governance

Well researched, informed and mandated women's groups with tenacity

It is critical that the group initiating change is regarded by both governance institutions and other women's groups as being experts. The group must also have the political skills to inform and mobilize the community. It must also have the mandate of those whom they purport to represent, in this case disadvantaged women. In this situation, FWRM had spent over 7 years on sponsoring research which culminated in a seminal book, *Law for Pacific Women: a legal rights handbook* written by an FWRM member.³ This research for the book provided the information on which the campaign was based. The research not only outlined circumstances affecting Pacific women, it gave the FWRM member credibility leading to her later appointment as the Family Law Commissioner by the Attorney General. FWRM's initial mobilization as an NGO was partially based on complaints from women about family law. In addition FWRM and its sister (Fiji Women's Crisis Centre) organization's lawyers had represented poor women in court and experienced first hand the discrimination experienced by women. The process of initiating change began in the early 1990's and culminated with the new law being passed in 2003. FWRM's tenacity in sustaining this long project (through three coup d'états and a hostile political climate) is also a critical factor of success.

Education of all major stakeholders on the need for reform, especially major opinion shapers

With technical assistance and funding from The Asia Foundation, the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) and the UK Department for International Development (DFID), FWRM conducted legal literacy workshops throughout Fiji. Carried out mostly in the vernacular, family laws were explained, injustices discussed, case studies documented and the reform process outlined. Once women began to understand their legal rights, FWRM felt justified in mounting a family law reform campaign.

Major opinion-shapers were targeted particularly of the OAG, FLRC and the MWC. This targeted campaign led to the appointment of the FWRM member and RRRT lawyer, who had conducted the research, as the Government appointed Commissioner for Family Law Reform. This provided a rare opportunity in which critical law reform affecting women is led by a feminist human rights expert rather than a conservative lawyer unwilling to push for advanced reform. By this time it had become clear that radical reform was required and not band-aid change.

³ P. Imrana Jalal.

Media skills

Strategic use of the media in the family law campaign and the communication skills of the lobbyists were crucial. Mainly FWRM and the Commissioner used low cost radio talk-back shows, press releases and letters to the editor. Some FWRM members who were journalists were able to help by maximizing the coverage. Regional networks and media coverage offered solidarity and changed public opinion about the Fiji Family Law Bill.

The independent technical expert assisted both government & NGO

The FLRC appointed Commissioner commissioned to lead the family law reform process was not only an acknowledged regional expert in family law, but was also a lawyer with RRRT and an FWRM Board member. This unique strategic positioning enabled RRRT as a donor and technical adviser to play a role in bringing together government and NGOs for access to justice. The Commissioner, through RRRT, was able to broker an important partnership between FWRM, the Attorney General and the FLRC. Having a Family Law Commissioner independent from political or government organizations gave one person the legitimate responsibility to guide the process and promote the cause despite changes in governments and Attorneys General over a period of time.⁴

Sound partnership between women's NGO and expert technical advisors

FWRM has been RRRT's Fiji NGO national partner for some 10 years. RRRT has provided funding, training and capacity-building to FWRM. The partnership was a tried and tested one based on trust and accountability enabling a sound and credible partnership to meet the challenges. FWRM with RRRT technical support vigorously led the legislative campaign, creating unique collaborative links with government, the media and civil society. Results included changes to the law reform methods as well as improved lobbying skills for FWRM and its staff. Documentation of this process has helped organizations review their campaigning techniques and a legislative lobbying resource book is currently being written.

Community consultations state-wide; the process must be a meaningful one

The consultation process must be a meaningful one. The community must understand the law and its impact to be able to make appropriate submissions. In most government consultations experts travel the country and "hear" submissions (without a context being provided) from the public. There are no presentations from the experts prior to the submissions. The public generally do not know what the hearing is really about because of the "distance" between the state and the people and the knowledge gaps. Women's groups however were generally well-informed because of the prior work done by FWRM. In the family law consultations (funded by DFID as the state did not have funds) the Commissioner and the FLRC made presentations about the law, the impact of the law and the reforms proposed. They then received a meaningful response. Some women's groups also sent written submissions after the consultations. In some consultations "votes" were taken to gauge support for a proposed law, particularly controversial proposals such as whether or not the new divorce law should be based on a "no-fault" regime.

Being politically strategic

⁴ The government has since abandoned the practice of appointing Commissioners as the Attorney General felt law reform became too tied to the personality of the Commissioner.

FWRM realized a campaign on 'family issues' rather than 'women's rights' would have a better public appeal. FWRM and RRRT found that in the first part of the campaign, grassroots support and participation were important but in the final stages one or two well trained lobbyists, informed, empowered, ethical and sincere women with good family connections and leadership qualities could maneuver quickly and effectively. Every action was under scrutiny during the legislative lobbying. It was important at meetings to be presentable and use appropriate arguments appealing to political parties. .

FWRM was forced to constantly reaffirm its position and strategy.⁵ Every tactic required soul searching to ensure that equity for women would not be diluted or sacrificed to traditional, religious or racist viewpoints.

Links and donor support

RRRT played a unique bridging role between NGOs, government and the judiciary for the benefit of improved legislative policies and laws. RRRT created a vibrant and supportive network of lawyers and community workers throughout the Pacific by training and exchanging ideas of partners working on similar legal issues in different Pacific countries. For NGOs to implement long-term projects such as this type of legislative lobbying new arrangements were needed. UNDP/RRRT's association with FWRM became a model for governance programmes. The two organizations developed a partnership, with RRRT providing management and technical support to FWRM staff⁶ in exchange for FWRM's implementation of training, projects and services at the national and community level.

Donors provided strong but flexible core funding. FWRM's experience in management and project implementation gave it credibility with donors and in return, donors were flexible in the application of their funds.

The campaign benefited from NGOs' extensive regional and international women's networks. For example, the Asia Pacific Forum on Women, Law and Development (APWLD) and International Women's Rights Action Watch (IWRAP)-Asia Pacific provided technical, financial and logistical support when FWRM presented its CEDAW Alternative Report. This in turn gave FWRM more confidence, knowledge and valuable guidance to FWRM and RRRT on how best to promote their points.⁷

Sustained campaigning and campaigning style

FWRM's campaigning style was to try and engage rather than "lobby against". They were helped in this by RRRT and its constructive dialogue approach. This was particularly important towards the end of the campaign, when the proposed law was being debated in Parliament and was being covered in the media daily with

⁵ Jalal noted the following kinds of questions and answers: "Should the Bill recognize de facto marriages?". (The Constitution says that you cannot discriminate on the grounds of marital status.) "Should a provision to ensure gay people rights to claim custody of their children be included?". "Should FWRM's stance be based on equity for women or more popular notions of family and children's rights?". (Be strategic: don't jeopardize the bill by celebrating the women's issues. The bill provides equity so don't cater to anti-women prejudices by using feminist logic.) "What should be the approach to those with opposite viewpoints and how much fraternizing should there be?". (Politics is the art of negotiating and to negotiate you have to engage with those with opposing values and viewpoints).

⁶ The salaries of two FWRM employees are covered by RRRT.

⁷ In contrast, environment NGOs have been weaker in the region and have had relatively little cross agency civil society support and fertilisation. The South Pacific Regional Environment Programme (SPREP) has provided legal expertise for environment issues but their assistance and support has been on a consultancy basis.

prominent headlines. The powerful Methodist church was opposed to the proposed law and it was critical to counter the opposition with rational and logical responses.

It is also crucial in any law reform campaign to be prepared to accept that the entire process is generally a long one. If the proposed law is one that will change the fundamental nature of family relationships and personal beliefs then the road is even longer. Coalitions, women's groups, donors and technical support should be prepared to accept incremental progress, celebrate minor advancements and not get overwhelmed by the complexity of the process.

The capacity of duty-bearers to increase participation of disadvantaged groups

Political and legal environment must be conducive to engagement between disadvantaged groups and governance institutions

The political and legal environment is crucial to inclusive governance. If the conditions of democracy are not present disadvantaged groups are unable to require accountability from the state because it means that citizens are allowed to challenge existing policies, law and practices. The new 1997 post-coup d'état democratic Constitution had a strong Bill of Rights guaranteeing fundamental rights and freedoms including free speech and equal rights. The new laws on equal rights were particularly important in this regard because it became the legal basis for demanding equal rights for women. It is doubtful whether the 3 relevant governance institutions would have responded to calls for change without the presence of such a provision. FWRM based its legal campaign on equal rights, the ratification of CEDAW (discussed later) and the injustice to women. In these conditions FWRM was able to demonstrate that it had the mandate to act on behalf of poor women.

Partnership between the state and civil society to support inclusive governance

The partnership referred to is that of the OAG, the FLRC and the MWC for Government; and FWRM as lead NGO; and RRRT as technical support to both. It is important to note that although the partnership between RRRT and the AOG and FLRC was a formal one with a formal appointment of a Commissioner and specific terms of reference, the "partnership" between FWRM and the various governance institutions was not a "formal" one at any stage. *It was an implicit recognition of mutual support.* The Government of Fiji was not, at that stage, and is still not ready to formally recognize the added value of working "with" NGOs.

The passing of this law gained the unanimous explicit support of all members of parliament, in both upper and lower houses across party lines. This was an historic and unprecedented event in Fiji's legislative history. The Attorney-General (AG) said in his final closing speech ending the Third Reading of the Bill, "all people's legislation should follow this process, this is law making at its best".⁸ For the first time in Fiji's legislative history the State complied with most if not all of good governance processes of law making which include consultation, participation, compliance with human rights standards and with international ratified UN Conventions

Recognition of expert civil society groups representing women by the state

⁸ Fiji Parliament's Hansard reports, May 2003 cited in P. Imrana Jalal, "A Personal Journey; The Story behind the Family Law Act 2003), The Asia Foundation, mimeo.

Government and the judiciary noted FWRM's staff credentials (lawyers and experienced community development officers). Setting the stage for the campaign, FWRM had built public credibility and specialty knowledge through provision of legal aid counselling and legal literacy workshops. FWRM was considered honest, sincere and professional. It had done its homework and knew when to listen, how to counter arguments and when to stand firm. Donors too appreciated FWRM's management and accountability.

Recognizing & working with the champions of change within governance institutions

Analysis of power relationships is a key principle of political lobbying. Family law advocates from within Parliament and Senate were identified and approached for support. They gave valuable insights into tactics being used to delay or compromise the bill. This information was then shared between the lobbyists and FWRM board members so that appropriate actions could be developed. The AG himself played a critical individual role. Such important trust relationships with key opinion shapers need to be nurtured and supported in any campaign. He enjoyed cordial relationships with FWRM and RRRT and had a long and convivial friendship with the Commissioner who used to be a lawyer in his chambers. Persuasion and friendly dialogues as are critical in such a campaign as accountability under a legal framework.

Different personalities and attitudes played an important part in the lobbying. The three different AGs (during the overall project) had different ideas, for example towards de facto relationships: one wanted it included, another was adamant that it not be included, while another was neutral on the issue but felt a review in ten years should be conducted. Similarly, different executive officers within the MWC and the OAG adopted various approaches to working with civil society and placed different emphasis on the urgency of establishing updated legislation. For example, with the appointment of a progressive female Director of the FLRC during the mid 1990s, it initiated substantial reviews of critical social issues, for example (among other things), of the criminal procedures and the penal code, juvenile justice and family law.

Women's legislators/MPs

Women's training and ability to get elected and appointed to the Fiji Parliament played an important role in providing key support for the proposed law within parties. However not all women parliamentarians supported changes. In 2000 FWRM and the Commissioner met with female members of the House who had formed a women's caucus just before the attempted coup and ensuing crisis. UNIFEM during the 1999 elections had also included the proposed law in its training of new male and female parliamentarians, so members were aware of its significance. Significantly, both parties had indicated passing of new law as part of their 2001 campaign platforms. However after much controversial posturing by politicians, when the vote came, the Family Law Act was passed unanimously.

Ministry of Women and Culture

An active and strong women's ministry/department working from within government can be a considerable advantage. In this case the MWC worked from within to create support for change. It was supportive of RRRT providing the technical expertise and created entry points for engagement by setting up meetings and consistently raising the issues at various meetings within government.

Sometimes a women's figurehead is not the most powerful or even most strategic person to argue for a gender equity law. For example some felt the Ministry responsible for women should have championed the new law. However, at the time of the parliamentary debate the Women's Minister was new to Parliament and an inexperienced politician not as able to speak with authority in the House. The AG as representative of the executive powers of government had more power and influence.

Consistent donor support

In the early 1990s donors reflected the World Bank priority of improved governance which in turn led to initiatives for justice, leadership and poverty alleviation. FWRM strategically requested funds for "community information dissemination and support for legislative change to the Family Law" rather than for "political lobbying" which might have been perceived as too political.

Donor funding to FWRM provided staff as well as administrative core funding essential to long-term commitments for legislative change. Provision of assistance to NGOs to analyse and share their legislative lobbying experience and expertise as well as support for internships with others offering legal advocacy programmes in first and third world countries helped develop solidarity and encouragement when crises arise during the legislative campaign. Knowing that other countries and influential regional leaders were aware of Fiji's debate on family law provided an added incentive to formally recognize the seriousness of the family law debate. Ongoing commitment by donors despite Fiji's political upheavals delayed FWRM's attempts at gaining family law reform. Fortunately their two major donors, Oxfam New Zealand and the ADB, were flexible in applying their funds to FWRM.⁹

Challenges and barriers to participation of disadvantaged groups

Lack of information and technical expertise

Community empowerment is often limited by misunderstanding of laws and reliance on expensive legal interpretation. Legal literacy is an extremely important tool for empowering women. Any information should be written simply using as many culturally appropriate illustrations and case studies as possible. Leaflets translated into vernacular and vernacular radio were also useful tools to reach beyond the urban centres. Legal jargon should not be used as it is difficult to understand and translate

Disadvantaged groups gave FWRM both a formal and informal mandate to act on their behalf as an expert group. Familiarity with women's stories reflecting unjust laws was a powerful stimulant for calls for reform in Fiji and for sympathy for legislative change by the public.

Being willing to negotiate and compromise

NGOs could become more aware of the function and role of the FLRC and other governance institutions. The influence of the AG who speaks for the Prime Minister and the Cabinet is often misunderstood or underestimated. This became clear with

⁹ Both donors maintained their assistance, although the ADB had to delay payments due to their non-recognition of Fiji's self appointed government in 2000 (and this led to suspension of all funding for Fiji, including FWRM). The ADB's flexibility following the newly elected government in 2001 enabled FWRM to carry on its family law work although the ADB funding contract had to be altered from an education campaign on employment reforms since these had been withdrawn from the government agenda.

the issue of *de facto* relationships. The Commissioner's mandate was to reflect community input. Only one community consultation argued for giving full legal recognition to *de facto* relationships. Most consultations and submissions (apart from two women's NGOs) had either not commented or emphatically stated that they did not want *de facto* relationships to be recognized. Even though in early discussion papers the Commissioner had recommended legal recognition of *de facto* relationships, the Commissioner was forced to compromise with the AG and omit legalizing *de facto* partnerships. Hence to achieve the much-needed overhaul of family laws, *de facto* relationships were removed from the final recommendations. Children of *de facto* relationships were protected under the Act by a provision for 'ex nuptial' children. As a compromise the AG recommended that within ten years the family law, and especially the issues relating to *de facto* relationships, be reviewed.

Being prepared to change tactics

Reflection on public opinion spurred revision of tactics. FWRM used surveys to give them feedback on their campaign. In August 2002, after stalling by the Parliamentary Sector Committee, FWRM thought that its approach should change. It decided to conduct a small opinion survey to help gauge public support and reactions to the huge objections from the Church. Two hundred Fijians were interviewed. Through FWRM's informal survey, it discovered many were confused about what the law contained and how it would affect the institution of the family so FWRM altered its media approach to use of the vernacular.

Dealing with religious and cultural bias

The most significant and obvious challenge to the proposed law was culture and custom, pitting culture against human rights; and custom against equality for women. Race, religion, class and sexuality were all used to oppose changes to the family laws. The concept of women's empowerment and gender equality in Fiji were considered, like democracy, "a foreign flower".¹⁰ FLRC, RRRT and FWRM responded to the forces against the change with a strategic campaign based on persuasive dialogue and engagement funded by extra funds provided by flexible donors. This challenge required activists from FWRM and RRRT's extensive network as well as women's NGO groups supporting the campaign to work at provincial, village and community level providing education on the proposed law and lobbying for support. This required both group meetings and one-on-one meetings, the former with potential powerful allies from within state institutions but also from the Christian churches.

Although custom¹¹ law is not as intense in Fiji as it is in other Pacific Islands, family life is governed by traditional attitudes and power structures. No fault divorce as promoted in the Family Law Bill was seen as a threat to Fijian patriarchal practices and religious beliefs. Some indigenous Fijian Christian leaders misinterpreted the consequences of the laws to the Fijian population which the campaign had to address.

Entry points for women to influence decision making

Important strategic partnerships

¹⁰ Adi Finau Tabaukacoro, an indigenous chief and staunch nationalist supporter of indigenous rights, first used this term in a letter to the *Fiji Times* after the 1987 coup.

¹¹ No research is available on the role of the various religions in this debate; however, the Methodist Church submission tried to suggest that the proposed law would allow gay men to marry and gain custody of children, even though there were no such provisions.

This has been repeated throughout this documentation. In this case the partnership existed between government OAG, the Parliamentary Office, MWC, the FLRC and civil society (FWRM and other NGOs) with RRRT/UNDP providing technical and expert support to both government and NGOs. RRRT brokered and nurtured the extremely important Government and NGO relationship which ultimately led to the passing of the Bill with unanimous support of all parties in Parliament. The latter was an historic and unprecedented event in Fiji's legislative history.

Individual champions of change from within governance institutions

The AG was the most critical figure in this campaign and access to him was critical. A powerful minister or other Member of Parliament can be an important ally and champion for the change. They may be an opinion shaper or champion within cabinet or parliament who other MPs respect. Such persons should be identified early in a campaign and such strategic relationships nurtured.

Building strategic coalitions and alliances

Apart from the women-headed teachers' and nurses' unions, the unions have played a minimal role in legislative lobbying for four reform issues affecting women. Only recently have the teachers and nurses unions integrated with women's NGOs on various campaigns yet they have much to offer with their organizing and advocacy strengths. In this campaign other women's NGOs were content to allow FWRM to take the lead role in legislative reform; however, increased reports about successes and concerns would have made them feel more involved in the process. Although community groups had a limited role in the final stages of political lobbying led by FWRM and RRRT, their early involvement was important. Recognizing and utilizing the strengths and contribution of various organizations should be an important strategy. For example NCWs have a number of more conservative regional affiliates which are better placed to approach Provincial Councilors while FWRM's expertise is in legislative reform and legal rights could concentrate on urban lobbying at the national level

The qualities of those identified as leading the change

In this campaign leadership was provided by the Commissioner with the support of all the partners in this campaign, from civil society and from governance institutions. A HRBA approach does not formally recognize the cult of the personality in creating change. However sound leadership is important and those with leadership must be people who are experts in the relevant area. Credibility is critical. S/he must have political skills, have good people skills and is able to talk to anyone, everyone and relate to them on the issue. The leader must be respected by politicians and public alike. This may be a formally appointed Commissioner for Law Reform, or a lobbyist employed by an NGO.

Key Lessons Learned in Applying a HRBA

The directions for answering this section are confusing and have mixed up the HRBA processes for research with the actual HRBA to the project/case study. For example, participation and accountability issues address research methods while non-discrimination, empowerment and rights linkages appear to address the HRBA to the project. The instructions ought to have been clearer and not mixed up the two quite distinct issues.

Key lessons learned in a applying a HRBA to the campaign

Participation & accountability

FWRM, and later RRRT and the FLRC, worked hard during the long build-up over 12 years until the actual final stages of the campaign with women's groups and its partners to ensure women's participation in lawmaking and the formulation of legal policy. This was through public consultations, seminars and workshops in both urban and rural areas. This enabled early access to policies and legislative frameworks for large groups of women. The Fiji Family Law Act has been heralded by the government and civil society alike as being the only properly consulted law in Fiji's legislative history, "representing law making at its best".¹²

However during the parliamentary stages in the final 2 years, fewer women were involved. They were mainly FWRM and RRRT staffers and few knowledgeable supporters. There were several reasons for this:

1. The arguments became more technical and required in-depth political, legal and strategic knowledge;
2. It was impossible from a human, financial and practical resource perspective to involve more women, particularly poor women from rural areas or disadvantaged peri-urban areas;
3. Most women did not have the time to involve themselves more closely with the campaign; and
4. The final stages of the campaign involved smaller, short meetings with politicians and other experts and it was politically impossible to get access to opinion shapers if larger numbers of women were to be involved.

FWRM had to rely on the initial broad mandate and a number of key strategists from within its ranks, from RRRT and the FLRC to take the law to its final stages. Working with the AG and the government political party which had the required numbers became the most pressing issues in the final stages.

FWRM was generally satisfied that it had the mandate of disadvantaged women to act on their behalf but recognized the process deficiencies also. It had no experience with a structured learning or a reflective culture in planning campaigns but its internal network supported by RRRT provided informal e-mail feedback and analysis which enabled continual and immediate strategic planning. Complaints were given to the expert lobbyists but their input was shared with the FWRM Board thus allowing a larger group to reflect on the issues, gain solidarity and determine responses for the next time the issue arose.

¹² Fiji Parliament's Hansard reports, October 2003, Debate on the Family Law Bill. Comments by the Attorney General of Fiji.

NGOs were content to allow FWRM to take the lead role in legislative reform, however increased reports about successes and concerns would have made them feel more involved in the process. Although community groups had a limited role in the final stages of political lobbying led by the FLRC, FWRM and RRRT, their early involvement was important. Recognizing and utilising the strengths and contribution of various organizations should be an important strategy. For example National Council of Women affiliates have a number of more conservative regional affiliates which are better placed to approach Provincial Councils (14 powerful traditional bodies consisting of chiefly representatives) while FWRM's expertise is in legislative reform and legal rights could concentrate on urban lobbying at the national level.

In Fiji's small intimate population news is passed informally through taxi drivers, meetings in the supermarket, in the street or restaurants. Information is exchanged informally (through extended family, community and church networks) and through extensive media coverage. Therefore the time and resources needed to hold formal meetings, develop solidarity on tactics and keep sister organizations advised of detailed developments is time consuming, costly and may not be necessary. Also frank, sensitive, potentially libelous analysis and decisions on legislative lobbying actions with a larger group even by e-mail, would require careful thought and time to present the situation carefully. Thus, FWRM political techniques included the use of a small committed group trusted by campaign affiliates. It may be that advocacy in small island developing countries is of a different nature to techniques and tactics used in larger Asian and African countries, or those more economically developed nations. At the end of the day the campaigners were satisfied that given the nature of the legal campaign there had been reasonable although by no means ideal participation and accountability, at least sufficient that it had changed the situation of women from being passive recipients to rights-holders.

Non-discrimination and empowerment

The family law campaign empowered disadvantaged women and their communities through capacity-building. This occurred during the first 10 years of the campaign through training and mass media education. As stated in earlier sections, the legislation was based on removing discrimination against women in formal legislation, common law, judicial practices and legal practices. CEDAW and s.38 required all forms of discrimination against women to be removed. The main beneficiaries of the new law would be disadvantaged and poor women. Gender and class analysis were both integral to the family law campaign not just an "add on". FWRM, RRRT and the then leadership of the FLRC had firm feminist perspectives and this was clearly reflected in the new law. The views of the most disadvantaged women were critical in determining not only the substance of the new law but also the process of the campaign. Their views and mandate were sought during the first 10 years of the campaign based on consultations and representation.

Feminist leadership was critical to ensure that the perspectives of women, particularly disadvantaged women were included and that gender was integrated into the proposed law. Research by the FLRC Commissioner, 10 years spent representing poor women in court and closely monitoring deficiencies in family law provided critical feminist and human rights analysis. Based on a 2-year state-wide consultation process the FLRC led by the Commissioner produced a report: *Family Law Report 1999: making a difference to families in Fiji*. The Report outlined what was wrong with the law, how it should be reformed and what the communities said about the proposed law reform.

At the grassroots level women felt disconnected to the final lobbying process. They did not feel comfortable doing lobbying and needed training in examining and recognizing their contribution. However some women were encouraged to attend Parliament during debates.. The MPs could see women observers in Parliament carefully taking notes and knew that FWRM was tracking their debate. Earlier strategies during the 2001 elections included a FWRM political survey with results of party positions on women's rights published. Politicians knew that anything said in Parliament would be likely to be communicated by FWRM more widely. NGOs were willing to support but they had their own work and relied on FWRM to indicate when their involvement was needed.

However the same criticism applies as in the previous section – the HRBA approach does not factor in time, money, skills and the practical challenges faced by larger numbers of disadvantaged women being involved in what became a highly technical campaign. The point is that a larger number of women (then before) now have the skills and knowledge to campaign for new laws.

Linkages to human rights standards

Both FWRM and RRRT organizations adopted an explicit rights based approach connected to the international human rights normative framework. The new law explicitly recognizes CEDAW, CRC and the Hague Convention as a guiding ethos and basis of interpretation for courts and the administration of justice. It explicitly encourages the protection and realisation of human rights. The FLRC and the campaigners used human rights conventions as a set of standards and common language during the consultative process, in the family law report and right up until the final stages to argue the justice of the new law. The argument was that the new Constitution at s43(2) required the application of “public international human rights law” standards to all legislation where relevant and that CEDAW required all forms of discrimination against women to be removed. For compliance reasons all domestic law must be consistent with the Constitution and ratified Conventions. The arguments that the international standards were Western imposed, culturally irrelevant and not universal were countered were convincing arguments based on Fiji's Constitution and its membership of the global community.

The December 2001 Fiji reporting to the United Nations CEDAW Committee, a requirement of ratification also presented a strategic opportunity to use the international accountability mechanism to push for domestic change. FWRM (with RRRT technical support) had led the NGO delegation presenting the alternative parallel report in New York and had highlighted how the political crisis in May 2000 had interrupted the law reform process. The CEDAW Committee highlighted the need for the proposed law to be passed in its *Concluding Comments* after hearing the NGO Report. This enabled the women's ministry and FWRM to help put the proposed law back on the legislative agenda.

FWRM and RRRT benefited from the involvement, exposure and guidance to the United Nations convention reporting processes. The alternative reporting function aided the MWC, FWRM and RRRT's legislative lobbying and put further pressure on the government to make changes to the family law legislation. The human rights framework clearly added value as a catalyst for change.

FWRM and RRRT helped community-based groups learn about their country obligations and alternative reporting through United Nations conventions, which in turn inspired one local leader to lobby his local politician. Both FWRM and RRRT

now place greater emphasis on increasing local capacity to claim their rights under human rights standards. Needs more explanation – looks too singular to be of import

Key lessons learned in applying a HRBA to the research

The case study exercise unraveled and captured important historical information through the extensive interviews, review of media reports, production of an accurate timeline and research to compare the process used for the Family Law Act with other pieces of similar legislation in Fiji and Vanuatu.

The study examined the roles of both the claim holders (women and children represented through key lobby groups) and duty bearers (Government of Fiji) by analysing past records, reports and media coverage. In addition, interviews were held with key players to revisit the roles and strategies of groups at the time that the Family Law Act was being publicly debated.

A review of various documents on political legislative lobbying and training to build capacity in this area were identified on the internet. Focusing attention on the important area of legislative lobbying has helped both FWRM and RRRT learn valuable lessons about their lobbying techniques. These skills are now incorporated in ongoing training with other NGOs and community leaders and in a resource training book for legislative lobbying in the Fiji and the Pacific Islands.

After reviewing collected information, primary research with key actors was undertaken. The methodology included semi-structured interviews with key government officials, religious leaders, representatives of women's organizations, advocacy groups and the judiciary. Interviews explored the obstacles faced by both claim holders and duty bearers in the implementation of a more equitable family law for Fiji. Two focus groups, one in a rural setting and another which drew together national NGOs helped identify lessons learned. Unfortunately due to changes in key donor staff, little information could be found to substantiate donor decision making and involvement.

The case study highlighted issues pertaining to policy advice and technical support; capacity development of institutions and individuals; advocacy, communications and public information; promoting and brokering dialogue; and knowledge networking and sharing of good practices used in promoting the new family law. Discussions held in Nadi, Fiji with rural women leaders and Suva with national NGO leaders collected valuable information about lessons learned.

Research for this case study included an analysis of four Fiji pieces of legislation initiated in the mid-1990s (family law, sexual offences, domestic violence and environmental management). Another study was done on Vanuatu and its attempt to pass a Family Protection Act. These studies fostered increased analytical skills by two student interns as well as identified valuable lessons learned about political lobbying in venues other than family law.

Recommendations

More training on campaigning and lobbying skills

Confidence in lobbying requires more training in the analysis of the role of women in the political process, gaining insight into the influencing process and improved communication skills. Future campaigns could be improved by providing additional support for community groups to understand appropriate actions and ways to keep them informed.

Laws affect everyone, yet many do not understand how or why they should contribute and participate in complex legislative change. Building capacity within civil society about law reform is important for community trainers, government officers and non governmental organizations to:

- Increase their awareness about legislative and political processes for law reform;
- Develop and use appropriate training materials to improve lobbying skills targeting legislative processes;
- Help civil society effectively strategize for changes to legislative frameworks; and
- Help to develop a responsible media which understand political processes, gender issues and the importance of law reform.

Simplifying legal terms and skills in the lobbying process

To broaden the impact of legislative lobbying, further training to upgrade women's skills in research, lobbying, alliance building and communication are needed. NGOs need to sharpen their analysis skills and understanding of legislative and political processes. For example learning the law reform process, the political tactics and rules and the power of government departments in the early stages could better inform future NGO lobbying tactics. Legal literacy is an extremely important tool for empowering women. Any article should be written simply using as many culturally appropriate illustrations and case studies as possible. Leaflets translated into vernacular and vernacular radio were also useful tools to reach beyond the urban centres. Legal jargon should not be used as it is difficult to understand and translate

Keeping your partners and constituents informed and involved

Recognizing and valuing all contributions, however small, can lead to greater empowerment of those who feel overwhelmed and confused by legislative and national parliamentary lobbying. For example community women could be encouraged to write letters to their members of parliament, or to working together to speak out through radio programmes which might require having access and use of telephones and finding funds for long distance calls to radio talk-back programmes.

Being prepared to accept backlash from supporters and partners

Political negotiations are always subject to criticism. Even though individual NGOs could and did submit written comments, some were angered that FWRM did not push further on the issue of de facto relationships arguing that FWRM had “sold out” on women. While more consultation with NGOs could have taken place, any collective decisions by NGOs would have had little impact on the conservative government’s exclusion of de facto relationships. When conflict by NGOs over compromises or strategies emerges, it is important for the NGO community to find ways to accommodate each other’s differences

Ongoing monitoring of new law

Enactment of law is not the only step in attaining justice and equity for women. Ongoing research and education are particularly needed in the first decade after implementation of the Family Law Act. For example, the present registration form, only in English, gleans information from clients in an open-ended way that requires a literate knowledgeable person to assist the claimant with their testimonial. Previously a much easier system had the applicant using a questionnaire in vernacular which utilized ticked boxes identifying which category of fault items to be claimed. In the end laws are the framework for services but how the laws are applied must also be monitored and reported on.

The post lobbying phase of reflection (initiated through this case study) was valued by NGOs. Documenting lessons learned from the campaign provide improved understanding of the impact of legislation on women and children, political and parliamentary systems and ways to maximize NGO contributions in law reform. Lessons learned can be applied now to other legislative reform.

Monitoring the use of new procedures and revisions needed for the Family Law Act is essential as there is bound to be areas needing modification. Ongoing participatory research and critical analysis of political processes, legislative frameworks and their need for reform are critical to support UN governance initiatives and in particular to the attainment of the Millennium Development Goals. In particular, research on the relationship between poverty and de facto relations is essential.

NGO drafting of legislation

Preparing draft bills containing equity reforms can be useful to provide a legal framework and raise NGO consciousness but the political lobbying process is the more important tool in getting legislation changed. Both FWRM (for sexual assault) and the Fiji Women’s Crisis Centre (FWCC) (for domestic violence) have provided the government and the OAG with reviews and draft-revised legislation. In the case of the Sustainable Development Bill, changed to the Environment Act, the ADB funded a consultant in the Department of Environment to prepare a bill. The extent to which these measures have sped up the legislative process and the use made of these by government in the drafting of reports and bills is unclear. It appears that the key elements are public scrutiny of such information and related NGO media releases which stimulate government reform process and gain political support. The draft legislation then becomes a tool for NGO submission to law reform consultations.

Counting the cost of outdated laws

Implementation costs for new reforms are not normally utilized in legislative lobbying. Some, including the new Judge of the Family Division, suggested that a careful financial impact analysis should have been conducted prior to acceptance of the law. Others say the overhaul of court practices was long overdue thus cost factors were of lesser significance and costs are always used to argue against pro-women or human rights reform. Courts were inefficient and the costs to establish and maintain a new system would be entirely justified with the improved outcomes from the family court.

Private sector involvement in lobbying for legislative change

Private enterprise (apart from law firms) is often not involved in the legislative change process. Also NGOs do not have a history of partnership with private enterprise so it is not surprising that private funders for the family law lobbying were not approached. However NGOs promoting legislation such as domestic violence and sexual assault, which impacts heavily on workforce productivity, could encourage private sector submissions but might need technical assistance from donors to help gain skills to do this.

Passing laws is not enough

The role of a champion or “commissioner” within government has been sorely lacking with the current Fiji domestic violence law reform, even though community consultation has informed government reports. This highlights the acute need for organizations to continually monitor law reform processes and identify key support person/s within the governing body who will act as a liaison, give information to active NGOs and promote the cause from within.¹³

Flexible donor funding

Core flexible funding is essential to help NGOs in their training and legislative lobbying campaigns. The public exposure and debate during the debate probably contributed to government ensuring that the Act was implemented. However as Asian feminists have noted: “Each legal or policy victory of the women’s movement could often evaporate on the ground as the struggle for implementation and enforcement begins.”¹⁴

Ratu Joni Madraiwiwi, traditional High Chief and Vice President of Fiji at the opening of the Family Court Division stated:

“The Family Law Act was the result of Government and civil society working together closely....It’s a wonderful example of what can be achieved when all parties are able to cooperate for the greater good. While there is necessarily a tension between the State and civil society, because they have different and often competing interests, this can be set aside on occasion for the common meal.”¹⁵

¹³ When the environment bill was being proposed, NGOs were not as well organised and had no individual (or group) to champion or mobilise public opinion and push the bill through Parliament and the legislation was dramatically altered. Currently (2006) the Parliamentary Act has yet to come into force.

¹⁴ Dhanraj, Misra and Batliwala in *The Future of Women’s Rights*, AWID 2004.

¹⁵ Speech at Opening of the Family Law Division on Oct 31, 2005 by Ratu Joni Madraiwiwi, Vice President, Fiji.

Conclusion

In Fiji, women are building on their legislative lobbying experience and mounting campaigns for changes to legislation on domestic violence, sexual offences, employment relations and the charitable trust state framework. FWRM is bringing young women into the movement to carry on the issues and provide “a human shield of activists”¹⁶ who understand the issues, monitor achievements and look to new legislative issues.

¹⁶ Term taken from an interview with Gigi Franciso, South East Regional Coordinator of Development Alternatives with Women for a New Era (DAWN) in *The Future of Women's Rights*, Association for Women's Rights in Development (AWID), 2004.