VERSÃO ORIGNAL

INCORPORATING INTERNATIONAL TREATY OBLIGATIONS AND CUSTOMARY LAW INTO DOMESTIC LEGISLATION IN A PLURALIST LEGAL ENVIRONMENT. CONSIDERING PACIFIC PUBLIC HEALTH LAWS AS A CASE ESTUDY

Genevieve Howse(*)

ABSTRACT

Most Pacific Island countries which are members of the Pacific Islands Forum,(1) have a history as British colonies or protectorates. This delivers a legacy of transplanted British style public health laws from the first half of the twentieth century, which are out of date and in need of review and reform Pacific Island countries also have a rich tradition of customary laws and methods of social organisation predating their colonial experience(2) Added to this pluralist legal environment, all Pacific countries have ratified some international human rights treaties or treaties creating obligations at international law in relation to health.

Keywords

Public health law, model public health law, customary law in public health, Pacific law, incorporating human rights principles in public health law

In a project to create a model public health law for the consideration of Pacific Island countries contemplating review of their public health laws, how might such countries bring together their own rich traditions of customary law and incorporate human rights obligations? Whether these come via entrenchment in constitutions of the various countries, via ratification of human rights treaties by various countries or whether some obligations arise as a

(*) Lawyer; researcher at La Trobe University, Australia.

(1) Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu, see http://www.forumsec.org.fj/pages.cfm/about-us/member-countries/ Accessed 15 November 2010

(2) FORSYTH, Miranda. *A Bird that Flies with Two Wings – Kastom and State Justice Systems in Vanuatu*, ANU E Press, 2009.

result of international customary law? What are the issues which arise in considering applicable law for incorporation into a model public health law in a pluralist legal environment in which various legal obligations can be inconsistent with each other and uncertain in their application in the unique environment of the Pacific.

INTRODUCTION

In the Pacific region, work is presently being finalized on the creation of a model public health law for the consideration of all Pacific Island countries which are members of the Pacific Islands Forum. It concentrates, in particular, on Vanuatu, Papua New Guinea (PNG), the Solomon Islands and Fiji[3]. This model law is being developed in module form accompanied by policy questions for consideration and preconditions for implementation to assist countries in assessing its usefulness.[4] It may be used in whole or in part at the convenience of countries considering review and amendment of their public health laws.

In a pluralist legal environment, how does a country manage improvement of its present British style public health law into something better suited to the unique environment of the Pacific while complying with international treaty obligations about human rights, and in particular the right to health, and ensuring sensitivity to customary law? The result must be an easily understood, easy to use law which will be a constructive tool to assist a Pacific nation government to implement policy to prevent disease and improve the health of the population.

Legal pluralism has been defined as:

> *One [system] in which law and legal institutions are not all subsumable within one 'system', but have their sources in the self regulatory activities which may support, complement, ignore or frustrate one another, so that the 'law' which is actually effective on the 'ground floor' of society is the result.*[5]

In legally pluralist environments, the western style transplanted laws and the international legal obligations are poorly understood and sometimes not known at all to people living in rural areas in Pacific countries.

---

(3) HOWSE, G. A Model Public Health Law for the Pacific, Programme Methods. *Public Health*, v. 123, n. 3, Mar. 2009.
(4) Id. Ibid.
(5) FORSYTH, Miranda. op. cit.

"The law — it's often a new or foreign concept. When you are talking things in the law like in the village setting, they take it as something people outside dreamed about and they want us to follow and all that. (EHO4)."[6]

In conducting research in a case study in Mangaliliu Village, half an hour's drive from Port Vila, the capital city in Vanuatu, a researcher noted that:"Most people talked to had no clear idea of what public health was about and no one knew that there were laws in relation to public health."[7]

This paper forms one of a series of papers on the development of a model public health law for the Pacific[8] In this paper, I consider some of the confusing array of laws and legal obligations, whether local, "home-grown", "transplanted" domestic or international, which must be considered by Pacific Island countries in the review and amendment of their public health laws. I also raise some of the difficulties encountered in working through a bewildering series of unrelated and sometimes inconsistent legal obligations. Endeavouring address them in a manner which aims to build a useful, workable and accessible public health law operating to assist government in the promotion of health and the prevention of disease. I conclude by nominating opportunities, in the development of a model public health law for the Pacific, for the inclusion of human rights protections consistent with constitutional and treaty obligations and approaches grounded in local customary laws.

The work to identify opportunities in the use of customary laws makes extensive use of work commissioned from scholars in the University of the

---

(6) Quote from environmental health officer in interview conducted for research on the Model Public Health Law for the Pacific project

7) JOWITT, Foukona; Tom'Tavala. *Model Public Health Law for the Pacific Project – Customary Law and Public Health,* Unpublished Paper by Scholars from the University of the South Pacific for the Model Public Health Law for the Pacific Project. At the time of writing, there were plans to submit the paper for publication along with a series of papers on the project. *Journal of South Pacific Law,* p. 21, 2011.

(8) 1. Paper on the rationale and methodology for the project research; (HOWSE, G. op. cit.) ; 2. Paper on constitutional and treaty obligations re human rights and public health law for the 14 Pacific Island Forum countries; 3. Paper analysing and comparing elements of present Pacific public health laws; 4. Paper reporting on a study of how those public health laws are being used by officers working with them every day; 5. Paper on possible uses of customary law in a model public health law for the Pacific; 6. Paper on what might be included in a series of legislative options for the consideration of Pacific nations. It's not so much a model law as a series of legislative "modules" from which countries may pick and choose as they see fit together with descriptions of preconditions for introducing and implementing each module; 7. Paper on complexities of incorporating international treaty obligations, 'transplanted' western style public health laws and local customary law into a new model public health law which is better suited to the unique environment of the Pacific; 8. Paper on opportunities for regional approaches to public health law where these might be deemed useful; and 9. Guide to the review and amendment of public health legislation in the Pacific incorporating the model law in module form together with policy questions to consider and preconditions necessary for implementation of each module. The first eight papers are research papers intended for publication. They are presently being finalised and will be presented for peer review and possible publication in a dedicated edition of the *Journal of South Pacific Law* in December 2011 with all papers except paper No 7 which is this paper. Paper No 9 will be a separate publication in a form designed for public servants in Ministries of Health.

South Pacific as part of a series of papers developed for the Model Public Health Law for the Pacific Project[9]. These opportunities in the application of treaty obligations and customary approaches might have broader application in reviews and amendments of public health laws in many regions.

I. HUMAN RIGHTS TREATIES

In the aftermath of World War II, emerging revelations of the horrors of war and the treatment of civilians, often by their own governments, shocked and galvanized the international community into action. Cooperating in an effort to prevent any further occurrence of such atrocities, the international community worked to codify fundamental human rights in a form that could be accepted by all as universal. This effort culminated in the 1948 adoption by the UN General Assembly, of the *Universal Declaration of Human Rights (UDHR).* These rights have been further articulated in subsequent conventions. In 1966, the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) were adopted by the General Assembly.

What are the legal obligations to implement the UDHR and the ICESCR in the Pacific and how do these obligations affect development of a Pacific model public health law?

1. The Universal Declaration of Human Rights

In its preamble, the UDHR is proclaimed as a common standard of achieve-ment for all peoples and all nations. It declares that every individual and every organ of society shall strive by teach-ing and education to promote respect for the rights and freedoms in the Declaration. Change is to take place using progres-sive measures, both national and international, to secure universal and effective recognition and observance of the rights[10].

---

(9) JOWITT, Foukona; Tom'Taval. op. cit. unpublished Paper by Scholars from the University of the South Pacific for the Model Public Health Law for the Pacific Project

(10) See United Nations, UNDHR, Questions and Answers. <http://www.udhr.org/history/question.htm#_Toc397930429>. Acessed 18 Octobre 2010. While the record shows that most of those who adopted the UDHR did not imagine it to be a legally binding document, the legal impact of the Universal Declaration has been much greater than perhaps any of its framers had imagined. Today, direct reference to the UDHR is made in the constitutions of many nations that realized their independence after the document was adopted. Prime ministers, presidents, legislators, judges, lawyers, legal scholars, human rights activists and ordinary people throughout the world have accepted the Universal Declaration as an essential legal code. Dozens of legally binding international treaties are based on the principles set forth in the UDHR, and the document has been cited as justification for numerous United Nations actions, including acts of the Security Council.

Originally the Universal Declaration was conceived as a statement of objectives to be pursued by Governments. It is not a treaty and therefore not part of binding international law. The relevant UN Fact Sheet describes it as being: of high moral force, representing as it does, the first internationally agreed definition of the rights of all people, adopted in the shadow of a period of massive violations of the rights there described."[11]

It is a powerful mechanism for the application of moral and diplomatic pressure on states that violate the Declaration's principles. It is argued that because States have constantly invoked the Declaration over more than 50 years, it has become binding as a part of customary international law. However, the Pacific is one example of a region where an argument might be made that the claim of constant invocation of the UDHR is doubtful. There are many countries in the region where the existence of the rule of law, or its consistent acceptance throughout a country is uncertain. Domestic acceptance of the UDHR via constant invocation is less likely:

> *in current circumstances of what we could call "emergent globalism", it is premature to presume that such notions as "constitutionalism" and "respect for the rule of law" have spread undistorted through all societies or even through all legal systems — or that these notions, having spread, have retained a singular meaning, purpose, or emphasis.*[12]

While legal scholars debate the transition of the Universal Declaration into customary law[13], many Pacific constitutions have specifically adopted some of its rights creating a clear legal obligation for their application in those countries. The constitutions of Kiribati, Nauru, Solomon Islands and Tuvalu all contain statements of fundamental rights and freedoms that were influenced by the European convention for the protection of Human Rights and Fundamental Freedoms.

The Solomon Islands is currently considering a draft Constitutional Bill to replace the present constitution. It contains a charter guaranteeing 12 rights[14] based on rights developed in Europe, as expressed in the UDHR. One Pacific based commentator notes that:

---

(11) OFFICE of the UN High Commissioner for Human Rights, An introduction to the core human rights treaties and the treaty bodies, Fact Sheet No 30 <http://www.ohchr.org/Documents/Publications/FactSheet30en.pdf>. Acessed 27 Octobre 2010.

(12) Hassall, G. *Constancy and Change; A Perspective on Constitutional Reform "the Pacific Way*", Conference Paper at Fourteenth Annual Public Law Weekend, Centre for International and Public Law, Australian National University, Canberra, 12-13 November 2009. p. 2.

(13)TRINDADE, Antônio Augusto Cançado. *Introduction to the Universal Declaration of Human Rights.* <http://untreaty.un.org/cod/avl/ha/udhr/udhr.html>. Accessed 17 November 2010.

(14) These include the right to life, liberty, security, protection of the law and privacy, freedom of conscience, expression, assembly and association, see CORRIN, Jennifer. Breaking the Mould: *Constitutional Review in the Solomon Islands. Revue Juridique Polynesienne*, n. 13, 2007.

> *these rights are transplants from the West and reflect values that are fundamentally different from those underpinning the traditional legal system. For example, human rights provisions emphasize individual rights and freedoms and equality; wheras customary law emphasizes community values, status and duties.*(15)

It is further suggested that provisions in human rights treaties reflect the concerns of countries in the West. Priorities in developing countries may be very different when, for example, the infant mortality rate is high and the literacy and GDP low(16). A local scholar opines that there is little evidence that the Rights Chapter in the Solomon Islands Constitution Bill has been negotiated from the starting point of a local agenda or that attention has been given to the particular circumstances of the Solomon Islands(17).

The constitution of Papua New Guinea contains both fundamental rights and qualified rights. Fundamental rights include the right to life, freedom from inhuman treatment and protection of the Law(18). Qualified rights include liberty of the person, freedom from forced labor and from arbitrary search and entry, freedom of conscience thought and expression, freedom of religion. Freedom of assembly and employment and the right to vote and stand for office and some other freedoms(19). The restrictions on qualified rights may be in the public interest in specified areas including public health.

The rights in these constitutions have proved difficult to interpret, understand and to apply.(20)(21)(22)(23).

2. The International Covenant on Economic, Social and Cultural Rights

It is the ICESCR which specifically articulates the right to the highest attainable standard of physical and mental health(24). This makes it a very

---

(15) CORRIN, Jennifer. op. cit., p. 147.
(16) Id., loc. cit.
(17) Id. Ibid., p. 157.
(18) *Constitution of the Independent State of Papuan New Guinea*, Sections 35, 36 and 37.
(19) *Constitution of the Independent State of Papuan New Guinea*, Sections 42 to 56.
(20) FORSYTH, Miranda. p. cit.
(21) CORRIN, Jennifer. op. cit.
(22) HASSALL, G. op. cit.
(23) JOWITT, Anita. The Future of Law in the South Pacific. *Journal of South Pacific Law*, v. 12, n. 1, 2008 <http://www.paclii.org/journals/fJSPL/vol12no1/pdf/jowitt.pdf> Accessed 19 November 2010.
(24) The article lists some of the steps to be taken by States parties such as: the reduction of stillbirths and infant mortality; ensuring the healthy development of children; improving environmental and industrial hygiene; the prevention, treatment and control of diseases; and access to medical care for all. See WHO. *Health and human rights, the international covenant on economic, social and cultural rights.* <http://www.who.int/hhr/Economic_social_cultural.pdf> Accessed 2 November 2010

important treaty for consideration in development of public health law. This covenant[25] is legally binding, unlike the UDHR. The Covenant applies the principle of progressive realization. A State party undertakes to take steps, ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in [the Covenant]"[26].

The principle of progressive realization acknowledges the constraints States parties may face due to the limits of available resources. However, it also imposes an immediate obligation to take deliberate, concrete and targeted steps towards the full realization of the rights of the Covenant.

States parties who have ratified the Covenant have an obligation at international law to give it domestic effect[27]. How this is done is up to individual states parties[28]. Like all international covenants, the treaty respects national sovereignty and does not impose absolute legal obligations. It is not "self-executing"; it requires that domestic laws be passed to implement its provisions. The articles of the Convention do not form part of the domestic

---

(25) A convention (sometimes called a covenant) is a binding treaty, coming into force upon ratification by a certain number of States. Article 26 of the *Vienna Convention on the Law of Treaties* provides that: 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith'. A declaration is not legally binding but carries moral weight because it is adopted by the international community. AUSTRALIAN HUMAN RIGTS COMMISSION <http://www.hreoc.gov.au/education/hr_explained/5_international.html>. Acessed 27 Octobre 2010.

(26) IESCR Article 2(1). WHO, *Health and Human Rights, the International Covenant on Economic, Social and Cultural Rights* <http://www.who.int/hhr/Economic_social_cultural.pdf> Acessed 2 November 2010.

(27) These rules are the result of long practice among the States, which have accepted them as binding norms in their mutual relations. Therefore, they are regarded as international customary law. Since there was a general desire to codify these customary rules, two international conventions were negotiated. The 1969 *Vienna Convention on the Law of Treaties* ("1969 Vienna Convention"), which entered into force on 27 January 1980, contains rules for treaties concluded between States. In order to speak of a "treaty" in the generic sense, an instrument has to meet various criteria. First of all, it has to be a binding instrument, which means that the contracting parties intended to create legal rights and duties. Secondly, the instrument must be concluded by states or international organisations with treaty-making power. Thirdly, it has to be governed by international law. Finally the engagement has to be in writing. The generic term "convention" … is synonymous with the generic term "treaty". Ratification defines the international act whereby a State indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act … The institution of ratification grants States the necessary timeframe to seek the required approval for the treaty on the domestic level, and to enact the necessary legislation to give domestic effect to that treaty. [Arts.2 (1) (b), 14 (1) and 16, *Vienna Convention on the Law of Treaties* 1969] . [Arts.2 (1) (b), 14 (1) and 16, *Vienna Convention on the Law of Treaties* 1969]. UN, *United Nations Treaty Reference Guide*n <http://untreaty.un.org/English/guide.asp> Accessed 18 November 2008

(28) The Convention uses language in relation to states parties obligations such as "to the maximum of it's available resources". Obviously the decision about what measures are appropriate and what resources are available belongs to states parties. UN Committees, in reviewing *Country Reports* submitted pursuant to Convention obligations, may make comment on the measures taken by states parties and may make suggestions and general recommendations, but these are not binding.

(29) One example is section 117 *Constitution of the Independent State of Papua New Guinea*

law of most states parties unless they are passed under a constitutional law[29] or an Act of Parliament. If no such law is passed, the Covenant has no direct domestic effect[30].

In 2000, the Committee on Economic, Social and Cultural Rights released General Comment 14 which was intended to elaborate on the breadth and interpretation of Article 12.

> *According to this General Comment, the right to health encompasses "a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment." The General Comment specifies that availability, accessibility (including non-discrimination, physical accessibility, affordability and information accessibility), acceptability and quality are all inherent to the right to health. In addition to their own citizens, states parties to the Convention also have an international obligation to respect the right to health of citizens of other countries.*[31]

In the Pacific Region, it is material that among the fourteen countries that comprise the South Pacific Forum, only two are signatories to the ICESCR, being the Solomon Islands from 1982 and PNG from 2008. Therefore, most countries in the Pacific do not have international legal obligations in relation to the right to health arising from this Convention. For these countries, there is no legal obligation to pursue this right further through their constitutions or their public health laws, although there is no impediment to adopting the principles in law or policy should the countries choose to do so.

The Solomon Islands and PNG, which have ratified the ICESCR, do have an obligation to realize, through gradual means, the highest attainable standard of physical and mental health. They should have regard to general comment 14 as of great significance in its interpretation of that right, but it does not amount to a legally binding obligation[32].

---

(30) However, it may possibly be used to interpret laws of states parties in Commonwealth countries where doubt exists as to their meaning. There are precedents for courts in other Commonwealth countries using UN conventions to interpret domestic laws in such situations. See KIRBY, J. *The First Ten Years of the Bangalore Principles on the Domestic Application of International Laws.* Disponível em: <http://www.hcourt.gov.au/speeches/kirbyj/kirbyj_bang11.htm>. Accessed 4 February 2009.

(31) COMMITTEE on Economic, Social and Cultural Rights. *Global Governance watch*. Disponível em: <http://www.globalgovernancewatch.org/resources/general-comment-no-14—the-right-to-the-highest-attainable-standard-of-health>. Accessed 3 November 2010.

(32) SUN, Shiyan. The Understanding and Interpretation of the ICCPR in the context of China's Possible Ratification. *Chinese Journal of International Law*, v. 9, n. 3, p. 17-42, Sept. 2010.

II. INCORPORATING TREATY OBLIGATIONS INTO DOMESTIC LAW IN THE PACIFIC

In the Pacific, there are significant legal obligations entrenched in some relatively recent constitutions, possibly obligations via operation of international customary law and obligations for PNG and the Solomon Islands via operation of the IESCR. How should countries approach compliance with obligations to implement treaties ratified and applicable in their country?

Implementation of human rights obligations can prove difficult in developing countries with pluralist legal traditions where ideas about human rights are new and not necessarily consistent with traditional approaches to social organisation. One scholar described the attempts of NGO's and government officials to incorporate indigenous social institutions such as kinship systems and transnational models such as women's shelters and human rights ideas such as safety from violence in this manner: "The result is a bricolage of elements in constantly shifting relation to one other made up of elements that do not necessarily fit together smoothly."(33)

There are limitations on international conventions that oblige countries to comply with treaties intended for uniform application across every country in the world willing to undertake formal ratification.

> *it is of course impossible to understand the complexities of the operation of a particular custom when a committee is dealing with eight different countries in two weeks. One cannot expect Committee members to spend a month reading the anthropological literature and two weeks interviewing Fijians in order to determine the meaning of a custom.*(34)

In October 2008, an editorial in *the National* (PNG) newspaper, about the implementation of CEDAW, elegantly summed up the dilemma thus:

> *Reaching an acceptable globally binding approach to often starkly differing domestic situations, poses huge problems for the global body. How do we transpose the global approach to women's rights and place in differencing societies into the local PNG context? Is it appropriate that we should try to do so, or are we blindly trudging towards a dead end?*(35)

---

(33) MERRY, Sally Engle Legal Transplants and Cultural translation: Making Human Rights in the Vernacular. In: *Human Rights and Gender Violence – Translating International Law into Local Justice*, University of Chicago Press, 2006. p. 35.
(34) MERRY, Sally Engle quoted. In: GOODALE; MERRY (Eds), *The Practice of Human Rights – Tracking Law Between the Global and the Local*, Cambridge University Press, 2007. p. 2.
(35) *The National*, PNG, editorial *"Still the Weaker Sex",* 10 October 2008

The sentiments expressed by the Pacific commentators show the strength of feeling about the dangers of thoughtless application of imported solutions to local problems. Careful consideration of the "fit" between the requirements of an international treaty and the Pacific environment into which it must be implemented is a vital first step in successful implementation of international treaty obligations.

It is important for advocates of human rights based approaches to consider the particular context of a sovereign nation before suggesting law reform to implement such rights. The nuances of culture and custom are not easily understood by those unfamiliar with the history, culture, customs and methods of social organisation in any particular country.

> *The major actors in human rights advocacy at the national level are typically educated transnational elites who are part of the same transnational world as those who serve as experts and government representatives in UN meetings. ....Even for countries with a British colonial legal legacy, human rights are far less salient than national rights at the grass roots.*(36)

As a sovereign nation, each state party may meet such obligations its own way, reflecting its own particular economic, social, geographic, cultural and political environments. Opinions may also vary on what constitutes compliance. The articles in international treaties are broadly drafted. It is open to countries to implement policies in some areas which exceed the requirements of these treaties. In other areas, the achievement of "steps" may be to recognize the need for action to realise progress toward implementation, but to also recognize that the policy and reform agenda in each country may take considerable time to reach a point where full compliance is politically, economically or culturally possible. Proposed reforms must also be practicable and sustainable. As countries differ, the manner of compliance will also differ.

The message from the PNG Constitutional Committee and from foreign and Pacific scholars is consistent. Laws are not in themselves effective just because they are passed, particularly those laws arising from documents developed by transnational bodies far away from the Pacific. In countries such as Pacific Island countries, which have methods of civic organisation much older and more resonant with the people than imported western style legal systems, particularly outside urban areas, great care must be taken to introduce reforms that are "packaged to fit" within the ideas and stories that give shape to modern village life. The meaning of "progressive realisation" could be usefully interpreted to include consideration of context and culture. It is also important to note Article 1 of the ICESCR which states that: "All peoples have the right of self-determination. By virtue of that right they freely

---

(36) MERRY, Sally Engle Legal Transplants and Cultural translation: Making Human Rights in the Vernacular, cit., p. 135.

determine their political status and freely pursue their economic, social and cultural development.

This right supports an approach to progressive realisation which is influenced by culture and context.

The mixing of human rights ideas with local means of community organisation and customary law may create a discourse about lawmaking and rights which draws away from the acceptance of texts which contain rigid rules about the application of rights in all countries.

> *the alleged universality of human rights, when confronted with the contingency of their application in contexts informed by alternative normative frameworks, initiates a process of cycling, which reinforms and destabilizes the alleged universality of human rights as a monolithic discourse.*(37)

The Pacific is a region in which pluralist legal orders or a multiplicity of forms of law might be found in virtually every country in the region(38). As one commentator put it: The existence of normative legal systems operating independently, or semi independently from the State, such as the Kastom system in Vanuatu, is an empirical reality for almost every decolonized country in the world.(39)

In a recent paper in the *Journal of South Pacific Law*, a Pacific commentator observed that for people in the Pacific who live far from capital cities, the idea of formal law and civic organisation becomes less meaningful or relevant.

> *In the countries of the USP region the Western concept of law is not so pervasive. It affects the day to day lives of many people in very limited ways (if at all). This is, in part, because state institutions are usually more limited in scope. Geographical considerations combined with resource considerations means that many parts of state legal systems are concentrated in urban areas, and simply do not have a presence in "the outer islands" or rural areas. Further, for the majority of the populations in the [*University of the South Pacific*] member countries, there is a dual system of living, with the traditional system being more familiar and often more effective. But, even if there were no constraints on the scope of state laws and institutions, they may simply not be particularly relevant in providing order and mediating disputes in areas where customary law and customary authority is operating.*(40)

---

(37) WASTELL, Sari, Being Swazi, Being Human: Custom, Constitutionalism and Human Rights in an African Polity. In: GOODALE; MERRY (Eds). *The Practice of Human Rights; Tracking Law between the Global and the Local*, Cambridge University Press, 2007.
(38) FORSYTH, Miranda. op. cit., p. 36.
(39) Id. Ibid., p. 29.
(40) JOWITT, Anita. op. cit.

In Papua New Guinea, the National Goals and Directive Principles are set out in the Constitution. The fifth goal is to achieve development primarily through the use of Papua New Guinean forms of social, political and economic organisation. The people accordingly call for:

> *a fundamental re-orientation of our attitudes and the institutions of government, commerce, education and religion towards Papua New Guinean forms of participation, consultation, and consensus, and a continuous renewal of the responsiveness of these institutions to the needs and attitudes of the People.*(41)

While the National Goals and Directive Principles are not justiciable(42), it is the duty of all governmental bodies to apply and give effect to them as far as lies within their respective powers(43).

This principle is then given effect in the Constitution as a goal of using "Papua New Guinean" ways to approach social organisation. Other Constitutions such as Vanuatu, the Solomon Islands and Fiji protect customary approaches to laws and social organisation. These Constitutional provisions create a legal obligation to acknowledge the sovereignty of nations and the right of nations to approach social organisation in ways appropriate to its own culture. This applies to implementation of treaty obligations into domestic law.

As one Pacific commentator opined:

> *State law is often talked about as being foreign. ... The explicit questioning of state law means that the fiction of legality is constantly being exposed. Legal order only works if people generally believe in law and consciously or, more often, unconsciously, agree to follow it. When this belief in law and (unconscious) agreement to be bound by it are lacking then the fragility of the legal order is bared. The fragility of the legal and state order is also challenged by the immense rapidity of change in the [University of the South Pacific] member countries, and the desire to "develop", without clear consensus on what development can or should do.*(44)

How might a Ministry of Health find a way through the confusing array of legal tradition and obligation? How might it create a law which both meets international legal obligations, where these really exist and is true to its own pluralist legal environment? This might be an environment in which customary law is often the only law recognized and understood by populations which

---

(41) *Constitution of the Independent State of Papua New Guinea*, *National Goals and Directive Principles, 5(1).*
(42) *Constitution of the Independent State of Papua New Guinea*, section 25 (1)
(43) *Constitution*, section 25 (2)
(44) JOWITT, Anita. op. cit., p. 2

largely dwell in traditional village settings outside big cities and which have low education levels and low literacy.

This paper does not suggest that the incorporation of human rights principles into Pacific public health legislation is not important. However, it does strongly argue that considerable thought must go into review and amendment of any legislation to incorporate human rights treaties. This begins with consideration of the country context and the customary approaches to law and social organisation pertaining there.

Without thought about application and implementation, incorporating human rights principles in UN treaties into domestic laws can constitute one more unworkable alien transplant in a region which has endured many. Laws which are seen as unfamiliar and unable to be understood in local frameworks of ideas cannot succeed, whether they are enshrined in constitutions or not. The Solomon Islands constitution bill shows that incorporation of human rights principles into local domestic law is difficult and often gives rise to considerable legal doubt about its interpretation and application(45).

III. PARIS DECLARATION ON AID EFFECTIVENESS

Some of these goals preclude donors forcing an agenda of human rights reform on a reluctant recipient country. This is consistent with suggestions put forward in this paper to begin legislative reform incorporating transnational treaty obligations with consideration of culture and context. Alignment with national priorities and national systems would be considered part of such consideration. Suggestions are also made in this paper about including compliance with the Paris Declaration in a Model Public Health Law for the Pacific.

1. Customary law

When countries consider their obligations to apply human rights treaties in domestic health laws, those with pluralist legal traditions such as Pacific Island countries must also consider the role and application of local customary law. Caution must be exercised in considering and discussing custom and customary law in the Pacific. The USP scholars sounded a cautionary note in their paper on customary law and health:

(45) CORRIN, Jennifer. op. cit.

> *Law reformers must be cautious of overgeneralising about custom in a region with such diversity of cultures and customs. The Pacific region is very diverse. Within the region there are many different cultures, each with their own customary law traditions. Modern legal governance systems also vary, as do economies and human development. This then is the challenge for legislative reform — each Pacific country is unique, and a "one size fits all" solution is not going to be appropriate.*(46)

2. What do the Constitutions of Pacific countries say about customary law?

Although Pacific regional public health laws are largely imported from British laws of the early twentieth century, strong internal influences of custom or "kastom" have created legislative and constitutional arrangements unique to Pacific countries and which have some relevance to the interpretation of public health laws. It is relevant that some countries in the region have taken steps in their laws to preserve their own ways of social organisation and these principles are often enshrined in constitutions.

In Vanuatu, the National Council of Chiefs is recognized in the Constitution, and has a general competence to discuss all matters relating to custom and tradition and may make recommendations for the preservation and promotion of ni-Vanuatu culture and languages(47). The Council may be consulted on any question, particularly any question relating to tradition and custom, in connection with any bill before Parliament(48). Anecdotal evidence gathered during informal discussions with ni Vanuatu suggest that the Constitutional powers granted to the National Council of chiefs are not greatly used.

In the Fiji Islands *Constitution Amendment Act* 1997, the Bose Levu Vakaturaga (otherwise known as the Great Council of Chiefs) established under the *Fijian Affairs Act* continues in existence and its membership, functions, operations and procedures are as prescribed from time to time by or under that Act and functions conferred on it under the *Constitution*. Further, the Parliament must make provision for the application of customary laws and for dispute resolution in accordance with traditional Fijian processes. In doing so, the Parliament must have regard to the customs, traditions, usages, values and aspirations of the Fijian and Rotuman people(49). It should be noted the Fiji

---

(46) JOWITT, Foukona; Tom'Tavala. op. cit., p. 2.
(47) Constitution, Section 30(1)
(48) Constitution, Section 30(2)
(49) The Fiji Islands *Constitution Amendment Act* 1997, Section 186 (1) and (2)

Constitution is presently abrogated by President Josepha Iloilo from 10 April 2009[50][51]. No new Constitution has yet been drafted to replace it.

In the Solomon Islands, a new draft constitution bill is currently under consideration. It includes considerable efforts to utilize both customary law approaches and human rights protections. In describing its content and the content of its predecessor, one scholar commented that: The vast divide between the introduced system of law and governance on the one hand and traditional authority and practices on the other was finally acknowledged.[52]

While the Constitution is the supreme law of Vanuatu[53], customary laws have effect as part of the law of Vanuatu. This is similar in PNG and the Solomon Islands. The Constitution makes provision for the continuation of operation of the British and French laws in force or applied in Vanuatu immediately before the day of Independence[54]. They apply to the extent that they are not expressly revoked or incompatible with the independent status of Vanuatu and wherever possible taking due account of custom. The Constitution expressly states that customary law continues to have effect as part of the law of the Republic of Vanuatu[55]. In Tonga, the Constitution does not mention customary law or grant it any particular status. The *Government Act* makes provision for any district officer to make regulations for the governing of his village plantations and other necessary matters relating to the people of his village[56].

In Papua New Guinea, the National Goals and Directive Principles specifically mention the importance of "Papua New Guinean ways"[57]. They include a call for "Traditional villages and communities to remain as viable units on Papua New Guinean society, and for active steps to be taken to improve their cultural, social, economic and ethical quality". The *Constitution* also specifically states that the laws of PNG include the underlying law[58]. The *Constitution* enables Parliament to declare the underlying law of PNG and provide for its development. This has been done via the *Customs Recognition Act* 2000 (PNG).

---

(50) MARCOVIC, N. *A timeline of the 2009 political crisis in Fiji and key regional reactions* Foreign Affairs, Defence and Security Section <http://www.aph.gov.au/library/pubs/bn/fads/Fiji.htm#_Toc236559891> Acessed 5 August 2010.

(51) In April 2009 the "interim government" of Fiji abrogated the constitution, dismissed the judiciary, and commenced ruling by decree. A constitutional exercise is to begin in September 2012 on the basis of recommendations adopted in the National Council for Building a Better Fiji's charter of 2008. Although the authorities have set out a road map for general elections in September 2014 following abolition of race-based constituencies and establishment of a common roll, there is no widespread confidence about the certainty of the timeframe. See Hassall, Op Cit, Page 13

(52) CORRIN, Jennifer. op. cit., p. 144.

(53) Constitution, Section 2

(54) Constitution, Section 95(1)

(55) Constitution, Section 95(3)

(56) *Government Act* (Tonga) Section 26, Village Regulations

(57) *Constitution of the Independent State of Papua New Guinea,* National Goals and Directive Principles

(58) *Constitution of the Independent State of Papua New Guinea*, Section 9

'Custom' is defined in the Constitution as meaning "the customs and usages of the indigenous inhabitants of the country existing in relation to the matter in question at the time when and the place in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial". This effectively says that custom is the local custom in relation to the matter under consideration, irrespective of whether the custom may be relatively new or very old(59).

In the words of Vanuatu's Chief Justice; Vincent Lunabeck:

> *We have the Constitution and the Constitution is the basic law, the fundamental law of course. The Constitution provides for justice system to be administered by the tradition. The Constitution provides also that custom shall be part of the laws of the republic. So we have that duopoly legal system as to whether the written law conflicts with the traditional system. First of all before the conflict believe that there are room, big room [sic] for the two systems to coexist. The general observation of Vanuatu is simply that on a number of islands there are no police, so the question is who or which institution maintains peace and order in lieu and place of the police? The chiefs — the answer is the chiefs.*(60)

In Papua New Guinea, one Village "Lapun" or Elder in Pere Village on Manus Island said "*We know about the Constitution, but we just put it under the table and use our traditional ways*"(61).

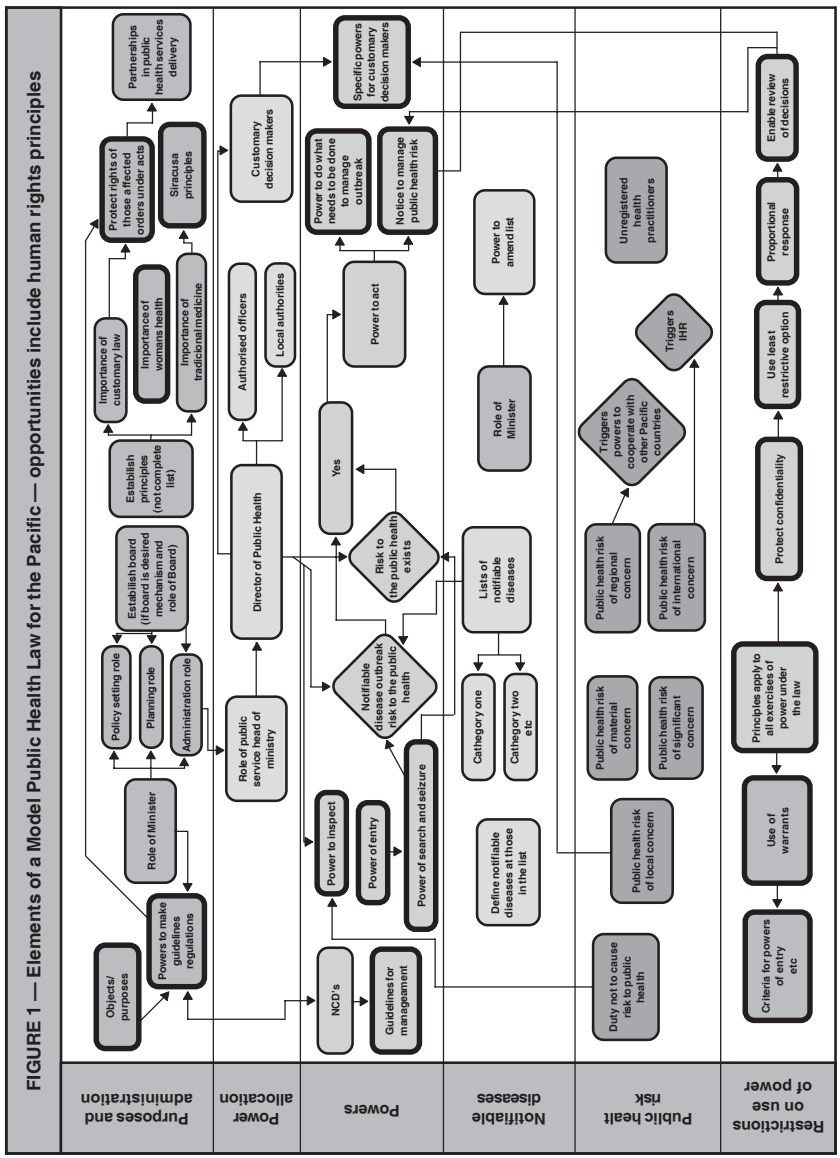
These inclusions of customary law in Pacific Island constitutions shows the desire of Pacific parliaments to promote customary law as well as human rights(62).

The model public health law for the Pacific is still being finalised, but this paper includes some of the ideas for modules in the form of a diagram. This makes it possible to illustrate some opportunities for the incorporation of both customary approaches and human rights protections into the model law.

---

(59) *Constitution of the Independent State of Papua New Guinea*, Schedule 1
(60) Comment made on "Time to Talk" program on Justice, Law and Order in the Pacific broadcast on Radio Australia 2008 <http://www.radioaustralia.net.au/pdf/timetotalk/timetotalk_9.pdf> Accessed 14 May 2009
(61) Village Courts Secretariat PNG, unpublished report on *Custom, Women and Village Courts Project*, 2009.
(62) CORRIN, Jennifer. op. cit., p. 144.

FIGURE 1 — Shows some areas within a model public health law for the Pacific suggested as opportunities for the use of the implementation of human rights within the model law.



It will be noted that the opportunities are identified in three of the five modules of the current model public health law for the Pacific. These are Purposes and Administration; Powers and Restrictions on use of powers.

This paper does not provide an extensive description of the modules of the model public health law, as this is the subject of a related paper(63), so the following description covers only the identified opportunities for the application and implementation of human rights obligations within the model law.

IV. PURPOSES AND ADMINISTRATION — PRINCIPLES

Some modern public health laws establish principles by which the legislation should be operationalised, interpreted and administered(64). This is also a part of a public health law which might refer to the role the legislation will play in the country achieving compliance with various international treaty obligations(65).

1. The principle of women's access to health care

Some modes of health care delivery do not prove sufficiently accessible for women and need to be improved with this principle in mind. Inclusion of this principle is also consistent with CEDAW obligations. Two of the articles in CEDAW relate directly to health; articles 12 and 14(66), and the truly alarming figures on maternal mortality in PNG in particular, a specific mention in the principles which govern the implementation of the act is appropriate(67).

2. Specific principles

These are provided to guide the use of provisions which limit people's freedom of movement or actions to protect the public health:

---

(63) One of a series of papers still being developed as part of the Model Public Health Law for the Pacific Project

(64) *South Australian Public Health Bill*, Op Cit

(65) All Pacific countries are WHO members which obliges them to implement the International health Regulations.

(66) Article 12 relates to the elimination of discrimination against women in the field of health care, ensuring access to health care services, including those related to family planning pregnancy, confinement and the post-natal period, and granting free services where necessary, as well as adequate nutrition during pregnancy and lactation. Article 14 makes particular reference to the rights of rural women in access to health care. See CONVENTION on the Elimination of All forms of Discrimination Against Women <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#> Acessed 19 November 2010.

(67) WHO, Meeting on the Situation of Maternal Health and Newborn Health in the Pacific, April 2009. See <http://www.wpro.who.int/internet/resources.ashx/RPH/Nadi+meeting+report+nov09.pdf>. Accessed 19 November 2010

• a person who may be the subject of an order to limit actions or freedoms is entitled to expect to have his or her privacy respected and to have the benefit of patient confidentiality; and

• to be afforded appropriate care and treatment, and to have his or her dignity respected, without any discrimination other than that reasonably necessary to protect public health; and

• insofar as is reasonably practicable and appropriate, to be given a reasonable opportunity to participate in decision-making processes that relate to the person on an individual basis, and to be given reasons for any decisions made on such a basis; and

• to be subject to restrictions (if any) that are proportionate to any risks presented to others (taking into account the nature of the disease or medical condition, the person's state of health, the person's behaviour or proposed or threatened behaviours, and any other relevant factor).

3. Partnership principle

Organisations entering partnerships with the government for delivery of health services shall implement programs in compliance with the Paris Declaration on Aid Effectiveness

V. POWERS TO MAKE GUIDELINES/REGULATIONS

There is a general power in the Model law to make guidelines about the implementation of the principles. This is an opportunity for the Government to flesh out some of the principles which act to protect human rights. Guidelines are not binding, but can be a useful mechanism to show those affected how the government views implementation of the principles. A court would also be likely to have regard to them in its interpretation of their breadth and content.

In general, this paper does not venture into the content of guidelines, but given the importance of compliance with compliance with the Paris Declaration on Aid Effectiveness and the proliferation of partnerships for health service delivery in the Pacific region[68], it does contain some suggested content for guidelines on partnerships for the delivery of health services.

---

(68) Matheson, Howse et al, *Papua New Guinea, Health Partnerships – Final Report*, WHO 2009 see <http://www.wpro.who.int/NR/rdonlyres/C58D94C0-0117-43C7-8359-963DFAFA90B8/0/PNGHealthPartnershipsFinalReport.pdf>. Accessed 20 November 2010

1. Suggested guidelines for partnerships in health service delivery

Faith based organization and and various NGO's have a long history of contracting with government to deliver health services in the Pacific. Extractive industries, mining companies, agricultural ventures and other NGO's have more recently entered the field, in particular in Papua New Guinea, and the type and number of public private arrangements for health service delivery is expanding considerably. Ministries of health are recognizing the need to take a coherent policy approach to partnering with non government organizations to deliver health services.

There are many benefits to the entry of non government players into the field of health service delivery. In general, ministries of health wish to continue to encourage their participation, but to do so within a coherent policy framework.

This policy framework will recognise that:

• The Ministry of Health has an overarching policy and planning role.

• All arrangements for partnerships between government and non government entities for health service delivery must recognise this role and comply with any government directions arising from it.

• All arrangements must be consistent any National Health Plan.

• Any proposal for public private partnership for delivery of health services must be considered against existing statutory responsibilities of government agencies and existing health plans and be fitted into those arrangements, i.e. arrangements should be made so there is no duplication of service and wastage of resources or "deskilling" of government provided health services.

• It is the role of the Ministry of Health to ensure equity of access and equity of the quality of health service delivery across PNG. It must have regard to this important principle in deciding where and when to allow public private partnerships in health service delivery.

• The particular health needs of women and children must be considered in any public private partnership arrangement.

• Any public private partnerships must work with or strengthen the existing health system as set out in current legislation and policy. The system must not be inadvertently weakened or undermined by allowing arrangements to bypass or circumvent it.

2. Powers

It is important that officers within the Ministry of Health have strong powers to enable them to take swift action to manage an outbreak of communicable disease of a risk to the public health. Such powers are a feature of public health legislation. Restrictions on the exercise of such rights are important to protect the human rights of those who are subject to orders and actions taken under the powers.

2.1. Powers of entry, powers to inspect and powers of search and seizure

Limits should be placed on the exercise of these powers in a manner which protects human rights. Limits would include the need to be satisfied that there is a basis for the inspection, that it takes place at a reasonable time, that the those affected are informed of the nature of the inspection and informed of any rights they may have including a right of appeal.

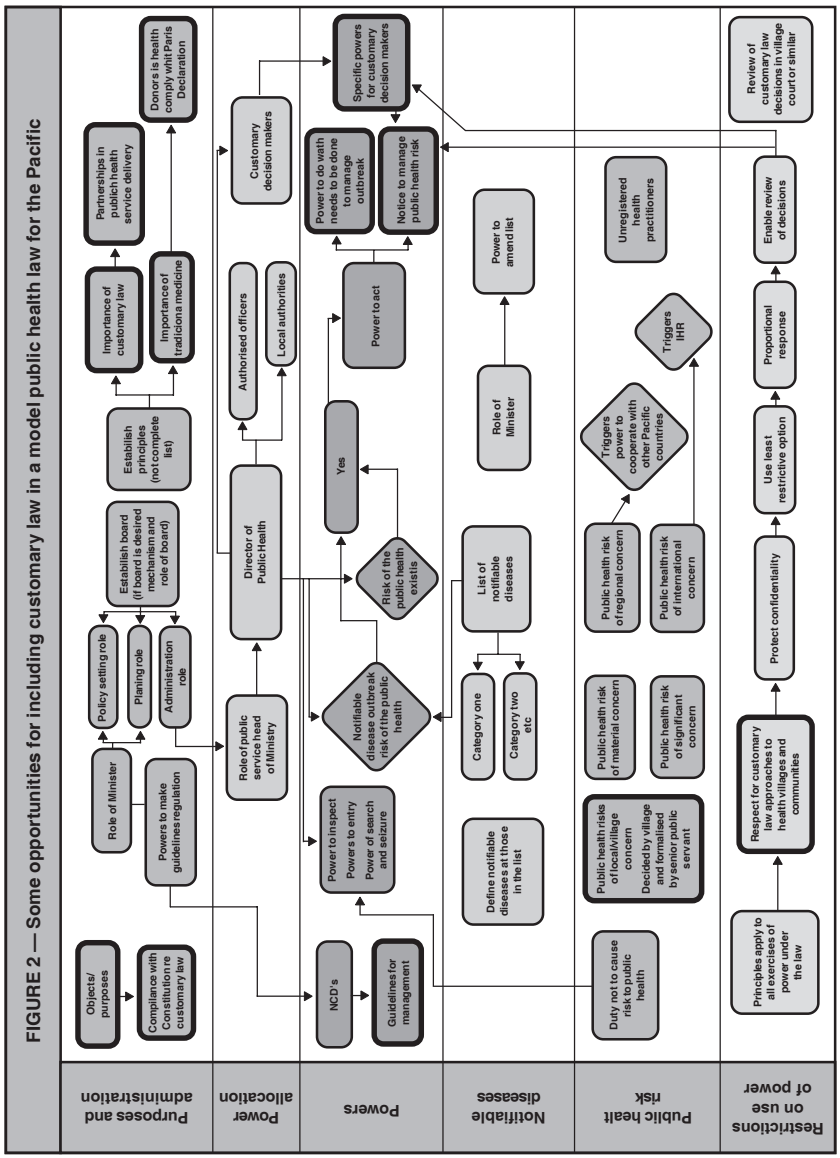
2.2. Power to take various actions to manage an outbreak of communicable disease

The principles set out above in “general principles” apply to powers to manage an outbreak of communicable disease.

2.3. Power to take various actions to manage a risk to the public health

Limits should be placed on the exercise of these powers in a manner which protects human rights. Limits would include the need to be satisfied that there is a basis for the action, that it is proportional and the least restrictive option, that those affected are informed of the nature of the action taken and informed of any rights they may have including a right of appeal.

FIGURE 2 — Shows the areas within a model public health law for the Pacific considered to be opportunities for the use of the application of customary approaches to the promotion of health and the protection of the health the population.



It will be noted that the opportunities are identified in four of the five modules of the current model public health law for the Pacific. These are Purposes and Administration; Powers, Public health Risk and Restrictions on use of powers.

VI. PURPOSES AND ADMINISTRATION

1. Compliance with Constitution re customary law

This would simply be a statement in the objects section that one of the objects of the Act is to comply with constitutional requirements for the use of customary law and is applied in a health context.

1.2. Principle of importance of customary approaches and law in health of the people

This principle would be drafted to specifically require consideration of customary approaches to law in the interpretation of the Act. Naturally, it would be consistent with Constitutional provisions which usually adopt customary law subject to consistency with Constitutional laws and often others laws.

1.3. Principle of importance of customary medicine

Recognition of the importance of customary medicine is important in a region where people predominantly live in rural areas and often lack access to basic health assistance and facilities. Sometimes access to the traditional medicine practitioner is the only option.

1.4. Principles applying to partnerships in health service delivery

This has been addressed above. However, in addition to the points made above, such partnerships might include partnerships with villages or small localised communities, which should be recognised and supported in the model law.

2. Powers

2.1. Powers for customary leaders

As part of a series of papers developed for the Model Public Health Law for the Pacific Project, a comprehensive paper commissioned from scholars

in customary law from the University of the South Pacific entitled *"Model Public health Law for the Pacific Project-Customary law and Public Health*" was completed in late 2009. This Paper examines the interface between customary law and public health law using descriptions of the law and cases studies in three countries, Vanuatu, PNG and the Solomon Islands. This paper draws on the work of the USP scholars and is particularly influenced by its conclusions.

In the Customary law paper, a number of useful examples were found in Pacific laws, of areas where State public health and custom can interact on a formal level. This provides the Model Public Health Law for the Pacific Project with models for consideration for inclusion in a model public health law for the Pacific. These examples are: Vanuatu *Water Management Act 2002*(69), Vanuatu's *Health Committees Act* [Cap 296], Samoa's *Fisheries Act 1988, The PNG Local-level Governments Administration Act 1997,* Samoa's *Village Fono Act 1990* and the PNG Custom and Women in Village Courts project 2010.

This paper will not repeat the descriptions and explanations of the USP Customary law and health paper, but will concentrate on a blend of suggested approaches from laws and mechanisms identified in that paper and the PNG Custom, Women and Village Courts pilot project in Manus Island in PNG(70).

VII. SUGGESTED APPROACH

Ability for declarations of custom to be made about health matters affecting the village. This may happen after consultation with the public health outreach worker and can be enforced under local law. The Declarations may be made jointly by a ward president (or similar local-level government role) together with the Governor when both are satisfied that a consultation has taken place with the affected village.

Local laws may be specific rules about matters of local hygiene, location and use of shred toileting facilities, shared drinking water etc, and may give effect to the broader declaration of custom which covers the importance of the village as a meeting place, sharing of food, mutual caring and respect etc. Local laws may be made together with a declaration of custom or without one if deemed appropriate. When a declaration of custom is made, it may be enforced in local village/island courts. Local laws are enforceable under the relevant local government law.

---

(69) See V. PHILIP, Hirsch, 'Case Study of Vanuatu', South East Asia Geography Conference Panel: Water Governance in Context <http://www.mekong.es.usyd.edu.au/events/past/GeogConference2004/vanuatu_casestudy.pdf> Acessed 5 September 2009.
(70) VILLAGE Courts Secretariat, *Custom, Women and Village Courts, Pilot Project Manus Island*, Phases One and Two, Unpublished report, 2009.

CONCLUSION

A model public health law for the Pacific is a risky undertaking. Developed in module form with policy questions and advice on preconditions for implementation, it is intended to be a starting point for countries which often struggle to obtain resources for reform of laws which are decades out of date and which are markedly out of step with current Government policies in Pacific nations for the promotion of health and the prevention of disease in the twenty first century.

In a pluralist legal environment, reformers of public health laws must consider a bewildering array of laws and legal obligations arising from ratified treaties, customary international law, domestic "transplanted" western style laws and a rich and varied tradition of customary laws and modes of social organisation. Laws which resonate with the people affected by them are the most likely to work. It is difficult and untidy to create mechanisms which try to reshape international principles to make them more accessible and resonant with people in traditional village settings. It creates a plethora of arrangements which might look odd to the international observer, but which are more familiar and workable to traditional village societies, than a long convention of articles in an alien style of language. Law makers must challenge orthodoxies and be willing to see neat principles blur and shift if our work is to find its way from the offices of New York and Geneva and make itself useful in the remote island villages of the Pacific.

BIBLIOGRAPHY

AusAID, *FAQ on Paris Declaration on Aid Effectiveness.* Disponível em: <http://www.ausaid.gov.au/ode/pdf/faq_paris.pdf>. Acesso em: 19 nov. 2010.

AUSTRALIAN Human Rights Commission. *Human Rights Explained*. Disponível em: <http://www.humanrights.gov.au/education/hr_explained/index.html>. Acesso em: 19 nov. 2010.

AUSTRALIAN HUMAN RIGTS COMMISSION. Disponível em: <http://www.hreoc.gov.au/education/hr_explained/5_international.html>. Acesso em: 27 out. 2010.

COMMITTEE on Economic, Social and Cultural Rights. *Global Governance watch*. Disponível em: <http://www.globalgovernancewatch.org/resources/general-comment-no-14—the-right-to-the-highest-attainable-standard-of-health>. Acesso em: 03 nov. 2010.

CONSTITUTION Amendment Act 1997 (Fiji Islands).

CONSTITUTION of the Independent State of Papua New Guinea.

CONSTITUTION of the Republic of Vanuatu 1978.

CONSTITUTIONAL Planning Committee, Constitutional Planning Committee Report, 1974. Disponível em: <http://www.paclii.org/pg/CPCReport/Cap2.htm>. Acesso em: 19 jan. 2009.

CONVENTION on the Elimination of All forms of Discrimination Against Women. Disponível em: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#>. Acesso em: 19 nov. 2010.

COOK Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu. Disponível em: <http://www.forumsec.org.fj/pages.cfm/about-us/member-countries>. Acesso em: 16 nov. 2010.

CORRIN, Jennifer. Breaking the Mould: *Constitutional Review in the Solomon Islands. Revue Juridique Polynesienne*, n. 13, 2007.

FORSYTH, Miranda. *A Bird that Flies with Two Wings – Kastom and State Justice Systems in Vanuatu*, ANU E Press, 2009.

Government Act (Tonga)

HASSALL, G. *Constancy and Change; A Perspective on Constitutional Reform "the Pacific Way"*, Conference Paper at Fourteenth Annual Public Law Weekend, Centre for International and Public Law, Australian National University, Canberra, 12-13 November 2009.

HOWSE, G. A Model Public Health Law for the Pacific, Programme Methods. *Public Health*, v. 123, n. 3, Mar. 2009.

IESCR Article 2(1). See See WHO, *Health and Human Rights, the International Covenant on Economic, Social and Cultural Rights.* Disponível em: <http://www.who.int/hhr/Economic_social_cultural.pdf>. Acesso em: 02 nov. 2010.

ILHAS Cook, Estados Federados da Micronésia, Fiji, Kiribati, Nauru, Niuê, Papua Nova-Guiné, República das Ilhas Marshall, Samoa, Ilhas Salomão, Tonga, Tuvalu, Vanuatu. Disponível em: <http://www.forumsec.org.fj/pages.cfm/about-us/member-countries/>. Acesso em: 15 nov. 2010.

JOWITT, Anita. The Future of Law in the South Pacific. *Journal of South Pacific Law*, v. 12, n. 1, 2008. Disponível em: <http://www.paclii.org/journals/fJSPL/vol12no1/pdf/jowitt.pdf>. Acesso em: 19 Nov. 2010.

JOWITT, Foukona; Tom'Tavala. *Model Public Health Law for the Pacific Project – Customary Law and Public Health,* Unpublished Paper by Scholars from the University of the South Pacific for the Model Public Health Law for the Pacific Project. At the time of writing, there were plans to submit the paper for publication along with a series of papers on the project. *Journal of South Pacific Law*, 2011.

KIRBY, J. *The First Ten Years of the Bangalore Principles on the Domestic Application of International Laws.* Disponível em: <http://www.hcourt.gov.au/speeches/kirbyj/kirbyj_bang11.htm>. Acesso em: 04 fev. 2009.

Local-level Government Administration Act (PNG)

MARCOVIC, N. *A timeline of the 2009 political crisis in Fiji and key regional reactions* Foreign Affairs, Defence and Security Section. Disponível em: <http://www.aph.gov.au/library/pubs/bn/fads/Fiji.htm#_Toc236559891>. Acesso em: 05 ago. 2010.

MATHESON, Howse et al, *Papua New Guinea, Health Partnerships – Final Report*, WHO 2009. Disponível em: <http://www.wpro.who.int/NR/rdonlyres/C58D94C0-0117-43C7-8359-963DFAFA90B8/0/PNGHealthPartnershipsFinalReport.pdf> Acesso em: 20 nov. 2010.

MEDIUM Term Development Strategy 2005 to 2010 PNG. Disponível em: <http://www.aciar.gov.au/publication/EXT02>. Acesso em: 19 nov. 2010.

MERRY, Sally Engle quoted. In: GOODALE; MERRY (Eds). *The Practice of Human Rights – Tracking Law Between the Global and the Local*, Cambridge University Press, 2007.

MERRY, Sally Engle. Legal Transplants and Cultural translation: Making Human Rights in the Vernacular. In: *Human Rights and Gender Violence – Translating International Law into Local Justice*, University of Chicago Press, 2006.

OFFICE of the UN High Commissioner for Human Rights, An introduction to the core human rights treaties and the treaty bodies, Fact Sheet No 30. Disponível em: <http://www.ohchr.org/Documents/Publications/FactSheet30en.pdf>. Acesso em: 27 out. 2010.

PACIFIC Islands Legal Information Institute. Disponível em: <www.paclii.org>. Acesso em: 16 nov. 2010.

PARIS Declaration on Aid Effectiveness and the ACCRA Agenda for Action. Disponível em: <http://www.oecd.org/dataoecd/11/41/34428351.pdf>. Acesso em: 26 out. 2010. with list of participating countries and organisations at Appendix B.

PHILIP, Hirsch, 'Case Study of Vanuatu', South East Asia Geography Conference Panel: Water Governance in Context. Disponível em: <http://www.mekong.es.usyd.edu.au/events/past/GeogConference2004/vanuatu_casestudy.pdf>. Acesso em: 05 set. 2009.

Shiyan SUN. The Understanding and Interpretation of the ICCPR in the context of China's Possible Ratification. *Chinese Journal of International Law*, v. 9, n. 3, p. 17-42, Sept. 2010.

SOUTH AUSTRALIAN Public Health Bill. Disponível em: <http://www.health.sa.gov.au/pehs/PublicHealthBill-09/publichealthbilldraft-peh-sahealth-2009.pdf>. At the time of writing the Bill was before the South Australian Parliament.

THE NATIONAL, PNG, editorial *"Still the Weaker Sex",* 10 Oct. 2008.

"TIME TO TALK" program on Justice, Law and Order in the Pacific broadcast on Radio Australia 2008, see. Disponível em: <http://www.radioaustralia.net.au/pdf/timetotalk/timetotalk_9.pdf>. Acesso em: 14 Maio 2009.

TRINDADE, **Antônio Augusto Cançado.** *Introduction to the Universal Declaration of Human Rights*. Disponível em: <http://untreaty.un.org/cod/avl/ha/udhr/udhr.html>. Acesso em: 17 nov. 2010.

TURNER and May, Policy making in Papua new Guinea, a conference paper present ted to a Workshop run by the State Society in Melanesia project, Feb. 2002. Disponível em: <http://rspas.anu.edu.au/papers/melanesia/conference_papers/2002/PNGPolicyMakingMAYTURNEROverviewRTF.rtf>. Acesso em: 13 out. 2008.

UN, *United Nations Treaty Reference Guide*. Disponível em: <http://untreaty.un.org/English/guide.asp>. Acesso em: 18 nov. 2008.

UNITED NATIONS, UNDHR, Questions and Answers. Dispoível em: <http://www.udhr.org/history/question.htm#_Toc397930429>. Acesso em: 18 out. 2010.

VILLAGE Courts Secretariat, *Custom, Women and Village Courts, Pilot Project Manus Island*, Phases One and Two, Unpublished report, 2009.

WASTELL, Sari, Being Swazi, Being Human: Custom, Constitutionalism and Human Rights in an African Polity. In: GOODALE; MERRY (Eds). *The Practice of Human Rights; Tracking Law between the Global and the Local*, Cambridge University Press, 2007.

WHO Press Release, Broad Support needed to fight rising non communicable diseases, *Sixtieth Session of the Regional Committee for the Western Pacific, 21–25 September 2009, Hong Kong (China)*

WHO. *Health and human rights, the international covenant on economic, social and cultural rights.* Disponível em: <http://www.who.int/hhr/Economic_social_cultural.pdf>. Acesso em: 02 nov. 2010.

WHO. Meeting on the Situation of Maternal Health and Newborn Health in the Pacific, Apr. 2009. Disponível em: <http://www.wpro.who.int/internet/resources.ashx/RPH/Nadi+meeting+report+nov09.pdf>. Acesso em: 19 nov. 2010.