

A HUMAN RIGHTS CHARTER FOR THE PACIFIC

Petra Butler*

Every time in the past couple of months when I mentioned that one of my current research projects was the drafting of a Human Rights Charter for the Pacific people around me sighed and rolled their eyes. What are you doing that for? That is a waste of time, you can bin it straight away ... has been the reaction.

Two obvious questions spring from that reaction: First, why is everybody so negative, so unenthusiastic? And secondly, why have I not given up on the project?

In the past there have been a number of attempts to agree on and implement a Human Rights Charter for the Pacific, most notably the Law Association for Asia and the Pacific's (LAWASIA) attempt in 1989.¹ These attempts have failed.

The Pacific region is one of only two regions in the world which does not have a regional human rights framework (Asia being the other one). When discussing such a Charter the Pacific region in question can be described as encompassing three distinct cultural and linguistic groups of islands: *Polynesia* which stretches across the Pacific from New Zealand to the Easter Islands and north to Hawaii;² *Melanesia* which curves down from New

* Senior Lecturer, Faculty of Law, Victoria University of Wellington.

1 Law Association for Asia and the Pacific (LAWASIA) Human Rights Committee *Draft Pacific Charter of Human Rights and Explanatory Memoranda* (Kensington, NSW, 1989).

2 Map of the South Pacific Islands and Micronesia. www.mapsouthpacific.com (last accessed 27 October 2005). Polynesia includes: French Polynesia, Pitcairn, Easter Island, the Cook Islands, Niue, Tonga, American Samoa, Samoa, Tokelau, Tuvalu, and Wallis and Futuna.

Guinea to the Solomon Islands, Vanuatu, New Caledonia and Fiji. Lastly, *Micronesia*, which lies between Hawaii and the Philippines consisting of thousands of small islands which make up the Marshall, Caroline, Mariana, and Gilbert groups.³ The region's States are far apart from each other and often only accessible by long boat trips. A multitude of cultures, traditions and languages exist within the Pacific region. Only 0.1 percent of the world's population lives in the Pacific region, but the region contains one-third of the world's languages.⁴

The question arises whether it is not time for a Pacific Human Rights Charter. Over 15 years have passed since the 1989 LAWASIA Charter. So is the perceived main reason for the lack of success of the LAWASIA Charter – namely the lack of buy-in at Government level – still a valid concern and one which again could prevent the implementation of a Charter? The main reason for the lack of buy-in was identified as the fear of the Pacific States – that their cultural identity would be in jeopardy should a Human Rights Charter for the Pacific come into force.⁵ In the last 15 years things have changed in the Pacific region. The establishment of the Fiji Human Rights Commission in 1997, the unrest in the Solomon Islands and the subsequent peace and reconciliation movement, and also the ever-increasing judgments referring to human rights by the courts of the Pacific are only some examples to show that political buy-in for a Pacific Human Rights Charter might be easier to

3 Map of the South Pacific Islands and Micronesia. www.mapsouthpacific.com (last accessed 27 October 2005). These geographical island groups are divided into the following States: Republic of the Marshall Islands, the Federated States of Micronesia, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Republic of Kiribati, and Nauru. It needs to be noted that this is a geographic description of the South Pacific. This paper does not give a definite answer which States should be members to a Pacific Human Rights Charter since some of the Island States are politically “associated” with France, the US or New Zealand.

4 J Corrin Care “Cultures in Conflict: The Role of the Common Law in the South Pacific” (6) 2002 *Journal of South Pacific Law*, footnote 2, <http://law.vanuatu.usp.ac.fj> (last accessed 27 October 2005).

5 A H Angelo “Lo Bilong Yumi Yet” (1992) 22 *VUWLR* 33, 46, 47.

achieve than 15 years ago. Furthermore, a regional human rights instrument can foster cultural identity rather than jeopardise it.

This paper will first explore what the benefits of a Pacific Human Rights Charter are and then the background and reactions to the 1989 LAWASIA Charter. In Parts III and IV the paper will then briefly outline the International Bill of Rights and the Draft Convention on the Rights of Indigenous Peoples and other regional human rights treaties, especially the Banjul Charter. Part V sheds some light on the relationship between a Pacific Human Rights Charter and the International Bill of Rights by examining some national Pacific case law on the intersection between customary law and fundamental rights. Finally, the paper will explore the main issues surrounding the drafting of a Pacific Human Rights Charter.

I Is There a Need for a Charter?

Generally speaking one does not pick the Pacific as an example of a region suffering from gross human rights violations. There has been an upheaval and criticism in regard to freedom of speech in Tonga,⁶ the coups in Fiji,⁷ and the unrest in the Solomon Islands.⁸ These show that human rights concerns exist in the region, but in comparison with other regions in the world the Pacific has quite a good human rights record. Problems, however, exist regarding a host of important and complex human rights problems. Examples include:

- the self-determination of peoples
- the rights of indigenous peoples
- the rights of cultural minorities – often immigrants from elsewhere in the region
- the status of women

6 See as overview personal account of S' Akilisi Pohiva "Media, justice in Tonga" (2002) 8 *Pacific Journalism Review* 96 et seq.

7 See for background: J Davies "On the Source of Inter-Ethnic Conflict in Fiji". www.maorinews.com/karere/fiji/ (last accessed 27 October 2005).

8 See for background: Parliament of Australia "Behind the Solomons Crisis: A Problem of Development" Research Note no 2, 2003-4. www.aph.gov.au (last accessed 27 October 2005).

- the rights of children and youths, particularly with regard to education and jobs
- the rights of the elderly
- the right to participate in decisions affecting one's vital interests
- corruption
- limitations on freedom of expression.

However, their relatively good record might be one of the reasons for the Pacific Nations to play a greater role in the world in so far as human rights are concerned by developing a Human Rights Charter. After all, the European Convention on Human Rights was inspired not by concerns about poor human rights standards in post-World War II Europe, but rather to act as a beacon of freedom and liberty for those living in non-democratic societies.

Moreover, most Pacific Island nations do have a written Constitution which contains a Bill of Rights. In this respect ex-British colonies and protectorates followed the British pattern of decolonisation. That is, each nascent State began life with an entrenched written constitution, part of which contained fundamental rights and freedoms essentially based on the European Convention on Human Rights.

But might there be a need for a Pacific Charter to implement international human rights treaties (so to speak through the back door?). Here we need some statistics: basically all Pacific Island States have signed up to the Convention on the Rights of the Child (1990) ("UNCROC"). The Convention Against All Forms of Discrimination against Women (1976) ("CEDAW") is another popular Convention (although only New Zealand, Australia and the Solomon Islands have signed the Optional Protocol). After that, however, it looks rather bleak. Hardly any of the Pacific Island States apart from Australia and New Zealand have signed either the International Covenant on Civil and Political Rights (1966) ("ICCPR"), the International Covenant on Economic, Social and Cultural Rights (1966) ("ICESCR"), or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") (1984). However, the Bills of Rights in almost all of the Constitutions are compatible with the ICCPR. So, on the other hand one could argue that there is no need anymore for a Pacific Charter since the rights are individually protected in the various Constitutions. Interestingly,

some Constitutions enshrine rights not known of in the ICCPR like the right to a safe environment in the Tuvaluan Constitution.

II The LAWASIA Human Rights Charter for the Pacific 1989

A General

The LAWASIA Charter in 1989 followed the example of the International Commission of Jurists starting a process which led to the African Charter of Human and Peoples' Rights (the Banjul Charter which will be discussed later). The Human Rights Committee of LAWASISA conducted a conference in Fiji on the question of a Pacific Charter 20 years ago.⁹ I might add that in the same year the White Paper on the New Zealand Bill of Rights Act was released. After the conference in Fiji, a drafting committee was established comprising three eminent lawyers with research and practical experience in the Pacific. The committee: produced a report which raised the issues to be considered in relation to the establishment of a regional human rights body; developed a model treaty, based on the Banjul Charter, which set out civil, political, economic, social, cultural and peoples' rights; and suggested a body to not only supervise compliance with those rights, but also to assist governments with human rights issues in general and in meeting their obligations under regional and international human rights treaties in particular.

That report was then sent around the Pacific for comments and was considered in detail by a working party in 1986. Furthermore, LAWASIA held a seminar in Manila in late 1987 entitled *Human Rights Today and Tomorrow: National Human Rights Commissions and Other Organs* which was attended by delegates from 12 Pacific countries.

So it looked like LAWASIA had done everything right – it went public with the project from the start, employed experts and sent the draft for consultation. Why did nothing happen? In 1992 Victoria University *Law Review* devoted a special issue to Human Rights in the Pacific. In this issue Tony Angelo observed that Pacific communities perceived human rights as a very powerful sword in the hand of the person wielding it, and further that

9 LAWASIA Human Rights Committee, *Draft Pacific Charter of Human Rights and Explanatory Memoranda* (Kensington, NSW, 1989) 1.

attitudes to human rights are very often dictated by political self-interest.¹⁰ But not only that (as Angelo pointed out as well), the LAWASIA Charter contained an enforcement mechanism which was a substantial barrier (resource as well as economic wise).¹¹

B Content of Charter

So what was the content of the 1989 Charter? The Charter contained a rights catalogue similar to the ones set out in the ICCPR, but also often in more extensive language and provisions that were often drawn from the Pacific Island States' Constitutions. For example art 5 stated:

All individuals shall have the right to the respect of the dignity inherent in all human beings and to recognition as persons before the law. All forms of exploitation and degradation of humans, particularly slavery, slave trade, torture, and cruel, inhuman or degrading punishment and treatment, shall be prohibited.

The reference to human dignity in the same form is missing in the New Zealand Bill of Rights Act 1990.

It also contained a property clause,¹² the right to a safe environment¹³ and, most importantly, socio-economic rights like the right to work, the right to health, the right to education and special protection for family, women and children, and the aged and disabled.¹⁴

Rights in regard to self-determination and the disposition of their own resources were also included as were a couple of articles on "duties" of the individual, such as duties towards family, society and communities and the duty to respect other individuals without discrimination.¹⁵

10 A H Angelo "Lo Bilong Yumi Yet" (1992) 22 *VUWLR* 33, 37.

11 *Ibid*, at 33, 42.

12 Draft Pacific Charter of Human Rights (1989) art 14.

13 *Ibid*, art 24.

14 *Ibid*, arts 18, 18A, 18B.

15 *Ibid*, arts 20, 21, 27, 28, 29.

And lastly the Charter opted for a Human Rights Commission which would head a complaints process.¹⁶

To evaluate the 1989 Charter, let us take a step back and have a look at some basic legal instruments and lessons from national Constitutional Courts.

III International Bill of Rights versus Draft Convention

The International Bill of Rights comprises the Universal Declaration of Human Rights (1948) (“UDHR”), the ICCPR (1966), and the ICESCR (1966). Modern constitutions generally have incorporated at least parts of this international bill of rights, especially the ICCPR.¹⁷ The International Bill of Rights is the accepted human rights framework and States will be measured against it.¹⁸ This framework focuses on the need to protect the human individual from the abuse of the group or collective, most often in the form of wider society. However, does the International Bill of Rights not acknowledge cultural diversity and collective rights? Article 27 of the ICCPR refers to the right of the individual, in community with others, to enjoy their culture, use their language and practice their religion. However, the right to self-determination which is part of the International Bill of Rights has been recognised primarily in relation to the right of colonised people collectively to determine their own political future or as a right that existed in respect of people within a territory occupied by another but foreign power. However, it has not been seen as a right of internal self-determination for indigenous peoples.¹⁹

The Draft Declaration on the Rights of Indigenous Peoples proclaims in its article 1 that indigenous peoples enjoy all the rights set out in the International Bill of Rights. This clear adherence to the International Bill of

16 Ibid, arts 30 et seq.

17 See, for example, the Canadian Charter (1982), the South African Constitution (1996) and the Constitution of Fiji (1997).

18 P Hunt and M Bedggood “The International Law Dimension of Human Rights in New Zealand” in G Huscroft and P Rishworth, *Rights and Freedoms* (Brookers, Wellington, 1995) 37, 44.

19 UN Human Rights Committee, *General Comment 23* (1994): article 27: The Rights of Minorities (A/49/40 vol I (1994)) 107 paras 1, 2, 3.1.

Rights must mean that all the other rights in the Draft Declaration have to be seen in the light of the International Bill of Rights and are therefore limited by it. However, it also means that customs and cultural practices can be observed as long as they do not unjustifiably infringe International Bill of Rights rights. Since the ICCPR itself acknowledges the right to practice one's culture it must surely recognise that the citizens of a State and the inhabitants of a region have the same rights as a whole. An indication is the Human Rights Committee's communication in *Kitok v Sweden*.²⁰ The Committee considered a situation where the Sami authorities, acting under national legislation conferring these powers on them, had felt it necessary to restrict the number of reindeer herders in order to maintain the viability of the reindeer herding lifestyle and thereby secure the preservation and well-being of the Sami minority. The Committee decided that a restriction on an individual member of a minority must be shown to have a reasonable and objective justification and to be necessary for the continued viability and welfare of the minority as a whole (therefore no violation of article 27).²¹

IV Regional Human Rights Treaties

In the Americas there is a Human Rights Charter and an Inter-American Court of Human Rights. The Inter-American Human Rights Charter lacks any special mention of the recognition of customs or culture (neither does the European Convention on Human Rights).

20 Communication No 197/1985, CCPR/C/33/D/197/1985 (1988).

21 In contrast, in *Lovelace v Canada* (Communication No 24/1977, CCPR/C/OP/1 (1984)), the Committee ruled that there was a breach of art 27. This case involved a complaint by an Indian woman to the Human Rights Committee against her loss of status as an Indian through marrying a non-Indian man, whereas Indian men who married non-Indian women did not lose their status. Interestingly, the Committee chose not to decide the case in relation to Canada's obligations under the non-discrimination article of the Covenant. Instead it considered the complaint in relation to the alleged denial of Lovelace's right to her culture under art 27. The Committee observed that not every interference is necessarily a breach of this right. However, it considered that any statutory restrictions interfering with it must have both a reasonable and objective justification and be consistent with other provisions of the Covenant.

The later African Human Rights Charter (1981), the Banjul Charter, is of great interest on this aspect, however. The Charter has been hailed as one of the most modern and forward-looking human rights instruments.²² It weaves a tapestry which includes the three generation of rights: civil and political rights, economic, social and cultural rights, and group and peoples' rights. Its most controversial provisions impose duties on individual members of African societies. The Charter links the concepts of human rights, peoples' rights, and duties on individuals. The African Charter takes the view that individual rights cannot make sense in a social and political vacuum, unless they are coupled with duties on individuals. It seeks to balance the rights of the individual with those of the community and political society through the imposition of duties: duties that individuals owe to other individuals, to the community, and the State, on the one hand, and duties that the State bears to its subjects, on the other (article 27 – duties to family and society; article 28 – duty to respect fellow beings). The duty to family has especially been used to argue that the Charter was not adequately protective of rights and could be used to abuse women's rights, since that provision have been thought to condone and support repressive and retrogressive structures and practices of social and political ordering. However, a progressive and liberal construction of the Charter seems to leave no room for the discriminatory treatment of women. The reference in the Charter to traditional values enhances the dignity and the importance of the female as the central link in the reproductive chain. In many societies across pre-colonial Africa, women were highly valued as equals in the process of the regeneration of life.²³

The Charter's veneration of African culture has also been construed as reinforcing gender oppression. The charge is that the Charter sees itself as the saviour of an African culture that is permanent, static and unchanging.

22 M Mutua *The African Human Rights System – A Critical Evaluation* 5, <http://hdr.undp.org> (last accessed 27 October 2005); Kofi O Teng Kufuor *Human Rights in Africa: Interpreting and Understanding the Organisation of African Unity's Grand Bay Declaration and Plan of Action* 5, www.uel.ac.uk (last accessed 27 October 2005); see overview of criticism of the Charter in M Mutua "The Banjul Charter and The African Cultural Fingerprint: An Evaluation of the Language of Duties" (1995) 35 *Va J Int'l L* 339, 341, 344.

23 M Mutua "The African Human Rights System – A Critical Evaluation", above 9, 10.

Viewed this way, the Charter would freeze in time and protect from reform, radical change, or repudiation of those cultural norms, practices and institutions which are harmful to women or society in general. However, taken in its totality as a human rights document, the Charter does not support such a reading. The Charter does guarantee, for example, unambiguously and without equivocation, the equal rights of women in its gender and equality provision.

The real problem with the Banjul Charter lies in its claw-back clauses (“except for reasons and conditions previously laid down by law”, “subject to law and order”, “within the law”, “abides by the law”) and the lack of a general derogation clause which States when and under what conditions rights can be derogated from. These clauses permit African States to restrict basic human rights to the maximum extent allowed by domestic law. This is especially significant because most domestic laws in Africa date from the colonial period and therefore are significantly repressive and draconian.

V Lessons from National Constitutional Courts

The reconciliation between “western” human rights instruments in the form of Constitutions based on the International Bill of Rights and customary law can be seen in a number of judgments, especially of the Australian, US and South African courts. For example, in *Santa Clara Pueblo v Martinez* the US Supreme Court upheld the practice that the children of female members of the Indian tribe married to a non-Indian were excluded from membership to the tribe. The Court recognised that Indian tribes remain quasi-sovereign nations which, by government structure, culture and source of sovereignty, are in many ways foreign to constitutional institutions.²⁴ On the other hand the Australian High Court in *Gerhardy v Brown* held it to be discriminatory that only aboriginal people could be Pitjantjara and so entitled to free access to the land whereas non-Pitjantjara (including non-Pitjantjara aboriginal people) were entitled to access only if other conditions were satisfied.²⁵

Langa DCJ in the South African Constitutional Court, in a decision from the end of last year, held that at the level of constitutional validity, the question

24 *Santa Clara Pueblo v Marti* (1978) 436 US 49 esp paras 12, 13.

25 *Gerhardy v Brown* (1985) 159 CLR 70.

in this case is not whether a rule or provision of customary law offers similar remedies to the Intestate Succession Act. The issue was whether such rules or provisions were consistent with the South African Constitution (1996).²⁶ However, he further emphasised that “It should however not be inferred ... that customary law can never change and that it cannot be amended or adjusted by legislation. In the first place customary law is subject to the Constitution. Adjustments and development to bring its provisions in line with the Constitution or to accord with the “spirit, purport and objects of the Bill of Rights are mandated”.²⁷ The valuable aspects of customary law more than justify its protection by the Constitution. It bears repeating, however, that as with all law, the constitutional validity of rules and principles of customary law depend on their consistency with the Constitution and the Bill of Rights.”²⁸ The South African Constitution recognises customary law in its sections 30 and 31 which entrench respect for cultural diversity. Further section 39(2) of the 1996 Constitution specifically requires taking account of the interpretation of customary law to promote the spirit, purpose and objects of the Bill of Rights.

VI Conclusion

Having taken the step back and had a look at the treaties and the decisions of the South African, Australian and US Courts it will be seen that, the 1989 Charter was a very modern, innovative document. Its only fault seemed to be that it had been initiated by LAWASIA (a group of lawyers) rather than being a grass roots initiative. So why then have another go at it now?

The answer is because things have moved in the last 15 years. First, the Pacific Islands have developed (for better or worse) and are comparatively “richer” than 15 years ago. With a certain standard of living comes the awareness of rights. There have been more upheavals: the clashes in the Solomon Islands, the democracy debate in Tonga, and the coups in Fiji. All these incidents have made more people in this region aware of human rights issues. Another milestone was New Zealand’s Bill of Rights Act 1990. At a political level there are numerous human rights initiatives around the Pacific

²⁶ *Bhe v Khayelitsh Magistrate* (CCT 49/03) 15 October 2004, paras 1-19.

²⁷ *Ibid*, para 44.

²⁸ *Ibid*, paras 45, 46.

now, for example, in 2000 the *Biketawa Declaration* which was adopted by Pacific Islands Forum Leaders included a statement holding.²⁹

Belief in the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief and in the individual's inalienable right to participate by means of free and democratic political process in framing the society in which he or she lives.

Through this declaration the Leaders have acknowledged that the protection and promotion of human rights is clearly critical to successful societies. Last year in Auckland the Leaders built on earlier statements agreeing to encourage the development of national human rights machinery.³⁰

Then last year a Pacific Islands Human Rights Consultation was held in Fiji with over 80 participants from non-governmental organisations, government observers, national institutions, and international and regional organisations attending. In that consultation it was recommended (interestingly) that discussions about traditional and customary rights in relation to human rights be narrowed as far as possible to specific issues and be determined on their merits.³¹

Last, but not least, the New Zealand Law Commission has started a research project on customary rights and human rights focussing on the Pacific³² and the issue is lively debated in academic circles.³³

29 *Biketawa Declaration*. www.forumsec.org.fj/news/2000/October06.htm (last accessed 27 October 2005).

30 *Auckland Declaration* (6 April 2004). www.dfat.gov.au/geo/spacific/regional_orgs/spf_leaders_declaration.html (last accessed 27 October 2005).

31 Pacific Islands Human Rights Consultation, *Concluding Statement and Recommendations* (Suva, 3 June 2004) para 29.

32 See for the terms of reference about that project: www.lawcom.govt.nz (last accessed 27 October 2005).

33 See, for example, L Tamata "Application of Human Rights Conventions in the Pacific Island Courts" [2000] *JSP* 5, 7 (working paper); J Corrin Care "Conflict between Customary Law and Human Rights in the South Pacific" (12th Commonwealth Law Conference, Kuala Lumpur, September 1999),

In regard to customary rights – what has the response been in the Pacific Islands to claims involving customary law or the incorporation of international human rights law?

Last year the Samoan Supreme Court had to decide about a banishment.³⁴ Banishment is a customary procedure which allows the village council to banish people from the village. In the particular case the family had to leave the village within a couple of hours trying to take as much of their possessions with them (the rest had to be left behind). The grounds for banishment were unsubstantiated. The decision by the village council was made without what a Westerner would consider a fair trial. The plaintiff claimed an infringement of his right to freedom of movement and his right to a fair trial both guaranteed by the Samoan Constitution. The Supreme Court held that the Village Fono Act 1990 (which authorises punishment for village misconduct in accordance with the custom and usage of the village) did not confer on the village council legal authority to order banishment from the village since to do so would be tantamount to winding back the clock of progress. With evolution of time the accompanying developments brought about amongst other things changes in lifestyle, perception and attitudes. Banishment from the village may now be viewed as not only preventive but also punitive. And furthermore the Court held citing Marsack CJ in *Mose v Masame et al* (1930-1939) WSLR 140, 142 "... the courts cannot lend their approval to any custom, however ancient, which denies to an accused person a right freely available to the lowliest member of a civilised Christian community. I must not be understood as saying that Samoan custom will not be recognised. The court realises that custom and law can exist side by side and the court will not interfere with any custom which is just and in the best interests of the community." The Court also had regard to the Convention on the Rights of the Child since young children were affected by the banishment.³⁵

In Melanesia the payment of a price for the bride to ensure custody of children to the father has been over-ruled through the innovative use of

www.mlj.com.my/articles/JenniferCorrin-Care.htm (last accessed 27 October 2005).

34 *Leituala v Mauga* [2004] WSSC 9.

35 *Ibid*, 9 "punitive damages".

UNCROC to secure the protection of children in family law.³⁶ The Solomon Island High Court put the interest of the children before customs in a custody case.³⁷

The High Court of Tuvalu, in a judgment at the beginning of this year in a child custody case regarding also the custody of the father, refused to engage in a discussion or application of CEDAW or UNCROC (both of which Tuvalu has ratified). This was because no laws had been passed to implement their provisions, although prior to that, the court may take cognisance of their terms as an aid to the determination of the true construction of a provision of our law where there is any difficulty in interpretation.³⁸

The Supreme Court of Vanuatu in *Public Prosecutor v Kota and Others* held that the Chiefs could not force a woman to return to her husband (she had claimed freedom of movement). The Court held that the Chiefs must realise that any laws they wished to exercise in customs were subject to the individual's fundamental rights and their freedom of movement as guaranteed by the Constitution.³⁹

The case law examples from around the Pacific show that human rights have not been ignored but, on the contrary, have been an important consideration in the decision-making process. Sometimes the decisions have been against the traditions of today.⁴⁰ For example, in a region where male dominance has prevailed and is jealously guarded CEDAW was nonetheless ratified by most States. Courts have tried to rule against the discrimination against women. However, the decisions also display an awareness of the importance of customary rights and procedures.

A Pacific Human Rights Charter could build on the developments so far. It would have the advantage of being able to make special provision for culture

36 L. Tamata "Application of Human Rights Conventions in the Pacific Island Courts" [2000] *JSPL* 5, 7 (working paper).

37 *Sukutanona v Houanihou* Civil Appeal Case No 7 (9 Dec 1981) (HC).

38 *Tepulolo v Pou* [2005] *TVHC* 1.

39 *Public Prosecutor v Kota and Others* [1993] *VUSC* 8.

40 Some Pacific Island societies had been matriarchal societies before they had been colonised and Christianised.

and custom to be taken into account. The 1989 LAWASIA draft Charter is a good starting point for further discussion. The European Court of Human Rights' jurisprudence on margin of appreciation might be a helpful guidance to find a balance between preserving the unique culture and customs of each Pacific Island State and a Pacific Human Rights Charter. All in all, the debate on a Pacific Human Rights Charter should continue, and the time might be ripe to unite human rights efforts of each individual Pacific Island State and for them to learn and to help each other.

