Enhancing Capabilities through Legal Empowerment: Freedom for Women from Intimate Partner Violence?

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This is to certify that the content of this thesis is my own work. This thesis has not been submitted for any other degree or purpose.

I certify that the intellectual content of this thesis is the product of my own work, and that all assistance received in preparing this thesis and all sources have been acknowledged.

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Abstract

In no small part due to the international human rights law framework, legislation directly addressing intimate partner violence (referred to in this thesis as Standard IPV Legislation) has been introduced in more than 85% of countries across the globe. Such legislation most often criminalises acts deemed to constitute intimate partner violence (**IPV**) and provides civil remedies in the form of protection orders.

This thesis argues that the implementation of Standard IPV Legislation should be supported by legal empowerment programming, or programming designed to help IPV survivor/victims understand and use the law. Further, it advocates for the design of programming by reference to key principles of capability theory – which emerged from the work of Nobel-award winning development economist Amartya Sen – in aid-dependent postcolonial contexts in which human rights concepts and discourse remain contested. This thesis argues that well-designed programming has the potential to enhance the perceived legitimacy of the law as an appropriate avenue through which to seek protection from violence; ameliorate common barriers to rights-based programming; and take seriously the perspectives, priorities and lived experiences of the IPV survivor/victims at which it is aimed.

In order to examine how a capabilities-informed approach to legal empowerment programming might work in practice, and to evaluate the potential of such an approach, this thesis uses the case study of the development, passage and implementation of the Family Protection Act 2014 (**FPA**) in Solomon Islands. It draws on original qualitative research that demonstrates both the *benefits* of the international human rights law framework for those seeking the reduction of IPV, and the common ideological and practical *barriers* that can arise in response to rights-based approaches to IPV reduction.

Ultimately this thesis employs the capability approach to capitalise on the benefits of the international human rights law discourse and framework while ameliorating barriers that come with it. It draws on insights from both the literature and the Solomon Islands case study to explore how the capability approach can be operationalised to enhance the accessibility and effectiveness of Standard IPV Legislation in aid-dependent postcolonial contexts. It provides a concrete example of a capabilities-informed tool that could be used to do so in practice.

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Contents

List of Acronyms, Instruments and Abbreviations

Table 1 (below) sets out key acronyms/abbreviations used in this thesis, including in relation to key organisations.

Table 2 (below) sets out the key instruments referred to in this thesis.

Table 1: Acronyms/abbreviations and organisations

CLEP	The Commission on the Legal Empowerment of the Poor
DFAT	Australian Government Department of Foreign Affairs and Trade
Family Violence Report	*Solomon Islands Family Health and Safety Study: A Study on Violence Against Women and Children* (2009)
FPA	*Family Protection Act 2014* (Solomon Islands) 2014
Focus Countries	Aid-dependent, postcolonial countries where human rights concepts and frameworks remain contested
GBVAW	Gender based violence against women and girls
IPV	Intimate partner violence
MJLA	Solomon Islands' Ministry of Justice and Legal Affairs
MWCYFA	Solomon Islands' Ministry of Women, Children, Youth and Family Affairs
National Family Violence Study	The research project that informed the development of the Family Violence Report
ODA	Official Development Assistance
PO	FPA Protection Order
PSN	FPA Police Safety Notice
RAMSI	Regional Assistance Mission to Solomon Islands
RRRT	Regional Rights Resource Team
RSIPF	Royal Solomon Islands Police Force
SAFENET	A network of organisations that strengthens referral and coordination of sexual and GBVAW services in Solomon Islands
SAFENET SOPs	SAFENET Standard Operating Procedures
SIG	Solomon Islands Government
SPC	Pacific Community
Special Rapporteur	The Special Rapporteur on violence against women, including its causes and consequences
Standard IPV Legislation	Legislation that specifically addresses IPV, most often criminalising it and providing for civil remedies in the form of protection orders
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNFPA	United Nations Population Fund
UNPSDF	United Nations Pacific Sustainable Development Framework
WHO	World Health Organisation
WRHR Movement	Women's Rights as Human Rights Movement

Table 2: Instruments

1994 Pacific Platform	Pacific Islands Forum Secretariat *Pacific Platform for Action on the Advancement of Women and Gender Equality* (1994)
2004 ASEAN Declaration	Association of Southeast Asian Nations, *Declaration on the Elimination of Violence Against Women in the ASEAN Region,* signed 30 June 2004 (Jakarta, Indonesia)
2005 Pacific Platform	*Revised Pacific Platform for Action on the Advancement of Women and Gender Equality 2005–2015* (Pacific Islands Forum Secretariat, 2005)
2012 PLGED	Pacific Islands Forum Secretariat, *Pacific Leaders' Gender Equality Declaration* (Declaration, 30 August 2012, Rarotonga, Cook Islands)
2018 Pacific Platform	Pacific Community, *Pacific Platform for Action on Gender Equality and Women's Human Rights 2018–2030* (2018)
2010 EVAW Policy	Ministry of Women, Youth and Children's Affairs (Solomon Islands), *National Policy on Eliminating Violence Against Women* (Solomon Islands, 2010)
2013 ASEAN Declaration	Association of Southeast Asian Nations, *Declaration on the Elimination of Violence Against Women and the Elimination of Violence Against Children in ASEAN, signed 7 September 2013* (Brunei Darussalam)
2018 Pacific Platform	Pacific Community, *Pacific Platform for Action on Gender Equality and Women's Human Rights 2018–2030* (2018)
2023 PLGED	Pacific Islands Forum Secretariat, *Revitalised Pacific Leaders Gender Equality Declaration* (2023)
Accra Agenda	*Accra Agenda for Action, UN Doc A/63/539* (22 September 2008), adopted at the Third High-Level Forum on Aid Effectiveness, Accra, 2–4 September 2008
Beijing Declaration	United Nations, *Beijing Declaration and Platform for Action,* UN Doc A/CONF.177/20/Rev.1 (17 October 1995), adopted at the Fourth World Conference on Women, Beijing, 4–15 September 1995
Busan Partnership	*Busan Partnership for Effective Development Co-operation* (Outcome Document, Fourth High Level Forum on Aid Effectiveness, Busan, 29 November – 1 December 2011)
CEDAW	*Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981)
Convention of Belem do Para	Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, opened for signature 9 June 1994, OAS Treaty Series No 68 (entered into force 3 March 1995)
Istanbul Convention	Council of Europe *Convention on Preventing and Combating Violence Against Women and Domestic Violence,* CETS No 210, opened for signature 11 May 2011, entered into force 1 August 2014.
Maputo Protocol	*Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,* opened for signature 11 July 2003, OAU Doc CAB/LEG/66.6 (entered into force 25 November 2005)
Paris Declaration	Organisation for Economic Co-operation and Development, *Paris Declaration on Aid Effectiveness* (2005)
UNDEVAW	United Nations General Assembly, *Declaration on the Elimination of Violence Against Women*, GA Res 48/104, UN GAOR, 48th sess, 85th plen mtg, UN Doc A/RES/48/104 (20 December 1993)
Vienna Declaration	World Conference on Human Rights, *Vienna Declaration and Programme of Action* (Adopted 25 June 1993) UN Doc A/CONF.157/23

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Introduction and methodology

Introduction

> 'Violence against women and girls continues to be the most pervasive and pressing human rights issue in the world…with far-reaching consequences for millions of women and girls in every corner of the globe…But violence against women is not inevitable. The right policies and programmes bring results.'
> UN Secretary-General Antonio Guterres[1]

Gender-based violence against women and girls (**GBVAW**)[2] takes a wide range of forms, from female genital mutilation, trafficking and prostitution, to honour killings, female foeticide and infanticide.[3] By far the most common and pervasive form of GBVAW, however, is intimate partner violence (**IPV**),[4] which is defined for the purposes of this thesis as any act of physical, sexual, psychological or economic abuse by one current or former partner or spouse against another.[5]

The most recent estimates suggest that almost one in three ever-partnered women across the globe has been subjected to physical and/or sexual violence by a current or former intimate partner.[6] While

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[1] *UN Chief: Now Is the Time to Redouble Efforts so We Can Eliminate Violence against Women and Girls* (Directed by United Nations, 24 November 2021) <https://www.youtube.com/watch?v=O96beun1n-8>. Video message for the International Day for the Elimination of Violence against Women and Girls.

[2] A note on terminology: historically, the term 'violence against women' was used in international instruments and documents: see, for example, United Nations Committee on the Elimination of Violence Against Women, *General Recommendation No 12: Violence Against Women* (Eighth Session 1989); United Nations Committee on the Elimination of Violence Against Women, *General Recommendation No 19: Violence Against Women* (Eleventh Session 1992); *Beijing Declaration and Platform for Action 1995*. In 2017 the UN made clear its preference for the term 'gender-based violence against women' due to its greater precision and emphasis on the gendered causes and impacts of the violence: see United Nations Committee on the Elimination of Violence Against Women, *General Recommendation No 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19* (July 2017) II(9).

[3] Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago Press, 2005) 21.

[4] 'Facts and Figures: Ending Violence Against Women', *UN Women* (25 November 2024) <https://www.unwomen.org/en/articles/facts-and-figures/facts-and-figures-ending-violence-against-women>; World Health Organisation, *Violence Against Women Prevalence Estimates, 2018* (2021) viii.

[5] As discussed in chapter one, this definition is in keeping with the current scope of the main international instruments pertaining to IPV. As discussed in chapter three, it also aligns with the statutory definition relevant to the Solomon Islands case study that features in this thesis.

[6] World Health Organisation (n 4) XII. The concept of gender adopted in this thesis is (unfortunately but necessarily) traditional and binary. In other words, 'gender' is considered to be either male or female and aligned with biological sex. There are two key reasons for this, both of which are practical: firstly, international human rights discourse (a key focus of this thesis) has traditionally perceived of gender as binary and this perspective remains deeply entrenched. Secondly, this thesis contains a case study of Solomon Islands, and there are no available data on IPV and transgendered/non-binary people in Solomon Islands. For further discussion on gender, international human rights law and aid discourse see Ekaterina Yahyaoui Krivenko, *Gender and Human Rights: Expanding Concepts* (Edward Elgar Publishing, 2020); Kathryn McNeilly, 'Gendered Violence and International Human Rights: Thinking Non-Discrimination Beyond the Sex Binary' (2014) 22(3) *Feminist Legal Studies* 263; Hilde Ousland Vandeskog et al, 'The (Un)Targeted Gendered Vulnerabilities in Norwegian Development Aid—a Corpus-Assisted Discourse Analysis' (2025) 43(1) *Development Policy Review* e12816.

comprehensive global data are not available on the prevalence of psychological and economic IPV, evidence suggests that the former is the most common type of IPV perpetrated globally[7] and the latter is unquestionably widespread.[8]

The sentiment expressed by UN Secretary-General Guterres – that progress can be made to reduce GBVAW if the right policies and programs are implemented – is a hopeful one. However, it also begs an obvious question: what *are* the right policies and programs? There is no straightforward answer to this question. However, in relation to IPV in particular, there is one path, grounded in the international human rights law framework, that has spread rapidly across the globe.

The international human rights law framework puts an obligation on all countries around the world to take steps to reduce IPV. It also provides a blueprint for state action. In keeping with that blueprint, the majority of countries – more than 85% and counting – have implemented legislation that directly addresses IPV, most often criminalising it and providing civil remedies in the form of protection orders. For ease of reference, such legislation is referred to in this thesis as 'Standard IPV Legislation.'

This thesis does not argue that the implementation of Standard IPV Legislation is an essential component of efforts to reduce IPV in all contexts. Such legislation is most commonly employed as a secondary prevention measure (being a measure that seeks to respond to violence once it has occurred) and it may often be the case that more progress could be made towards the elimination of IPV if the resources channelled towards the development and implementation of Standard IPV Legislation were (re)directed towards primary prevention programs that seek to address the root causes of violence.[9] For better or for worse, however, legislative measures to reduce IPV have become a core component of the approach taken by most countries around the world. Accepting this to be the case, this thesis addresses the question of how legislative effectiveness can be optimised in the short term in different social, cultural and political settings.

This thesis focuses in particular on the implementation of Standard IPV Legislation in aid-dependent, postcolonial countries (**Focus Countries**). In such contexts, the technical and financial resources required to implement Standard IPV Legislation often come largely from high-income Western nations and civil society organisations that conceptualise IPV as a human rights issue and favour rights-based approaches to its reduction. However, in these same contexts human rights concepts and frameworks often remain deeply contested. As a result, tensions arise between the ideas and assumptions

[7] Sarah J White et al, 'Global Prevalence and Mental Health Outcomes of Intimate Partner Violence Among Women: A Systematic Review and Meta-Analysis' (2024) 25(1) *Trauma, Violence & Abuse* 494.
[8] Kathryn Royal and Rosa Wilson-Garwood, *Economic Abuse: A Global Perspective: Findings on the Prevalence and Nature of Economic Abuse and Responses to It* (Surviving Economic Abuse, 2022).
[9] See chapter six for further discussion of primary, secondary and tertiary prevention measures.

underpinning mainstream efforts to reduce IPV and the lived realities and perspectives of IPV survivor/victims on the ground.[10] These tensions can throw up significant barriers to the effective implementation of Standard IPV Legislation.[11]

The challenges associated with implementing donor-funded Standard IPV Legislation in Focus Countries are hardly unique. As discussed in detail in chapter six, these types of legislative interventions are typical of traditional law and development programming and are often used as part of an approach to development referred to as the 'rule of law orthodoxy.' The rule of law orthodoxy – the track record of which is mixed at best – has long come under criticism for, inter alia, failing to adequately account for social and cultural factors that might inhibit the process of law and justice reform. In part to address the perceived shortcomings of the rule of law orthodoxy, advocacy emerged for the development of programming (referred to in the literature as legal empowerment programming) that helps those intended to benefit from the law to shape, understand and use it.[12] This might be through a wide range of activities and initiatives, such as legal education and literacy, the provision of paralegal and legal aid services and advocacy programs.[13]

Advocates of legal empowerment approaches argue that, unlike the rule of law orthodoxy, legal empowerment has the potential to ensure formal laws function coherently and effectively by aligning them with the interests, perspectives, and lived experiences of community members. This thesis interrogates that argument in the context of the implementation of Standard IPV Legislation.

To interrogate the usefulness of legal empowerment programming in the implementation of Standard IPV Legislation, I first consider what such programming must achieve if it is to be effective. I argue that to increase the accessibility of Standard IPV Legislation in Focus Countries, legal empowerment

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[10] There is some debate about whether the term 'survivor', 'victim' or some combination of the two is most appropriate to use to refer to a person who has been the subject of IPV. This thesis uses the term 'survivor/victim.' Leading with 'survivor' is intended to be a gesture of hope that seeks to prioritise agency. Following with 'victim' recognises the reality that those who have been subjected to IPV have been victimised. For further discussion of terminology see for example, Jennifer L Dunn, '"Victims" and "Survivors": Emerging Vocabularies of Motive for "Battered Women Who Stay"' (2005) 75 *Sociological Inquiry*, generally, and Aisha Gill et al, *Violence Against Women: Current Theory and Practice in Domestic Abuse, Sexual Violence and Exploitation* (Jessica Kingsley Publishers, 2012), page 11; and Christine E Murray, Kelly N Graves and Kelly N Graves, *Responding to Family Violence: A Comprehensive, Research-Based Guide for Therapists* (Taylor & Francis Group, 2012), page 16.

[11] It is important to note that there are a number of common barriers to the implementation of Standard IPV Legislation in Focus Countries that are *not* addressed in this thesis. Those include barriers arising from lack of resources and the failure of justice sector officials to carry out their roles appropriately and effectively. This thesis is focused on barriers arising from a misalignment between the law/legislative implementation and the priorities, perspectives and lived experience of IPV survivor/victims.

[12] As to the emergence of the term 'legal empowerment' see Stephen Golub, *Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative* (Carnegie Endowment for International Peace, 2003).

[13] In relation to different types of legal empowerment activities and programs see Laura Goodwin and Vivek Maru, 'What Do We Know about Legal Empowerment? Mapping the Evidence' (2017) 9(1) *Hague Journal on the Rule of Law* 157, 170.

programming must do three key things. Firstly, it must enhance the perceived legitimacy of the legal framework as an appropriate avenue through which to seek protection from violence. Secondly, it must ameliorate common barriers to rights-based approaches to IPV reduction. Finally, it must resolve points of tension between use of legislative frameworks and other valued and valuable social and cultural institutions, practices and beliefs. The raises the question of whether legal empowerment programming can fulfill these criteria and, if so, what conditions or guiding principles will ensure it does so as effectively as possible.

While there is an extensive body of scholarly work looking at legal empowerment, very little of it seeks to identify the conditions under which programming is most effective. The existing literature is primarily comprised of isolated empirical studies or high-level discussions of legal empowerment as an alternative approach to law and development programming.[14] Interestingly, much of the existing literature claims to be inspired by the 20th century work of development economist Amartya Sen and his 'capability approach' to development.[15] This suggests that a capability approach might offer the resources for assessing the conditions for optimal legal empowerment programming, as well as guiding the development of related programs. Yet none of the legal empowerment literature makes more than passing reference to the compatibility of legal empowerment and capability theory. This thesis seeks to fill that gap by exploring how key principles of the capability approach can be employed to ensure that legal empowerment programming achieves the objectives identified above.[16]

There are, no doubt, a variety of ways in which the capability approach could be operationalised in the design of legal empowerment programming to enhance the accessibility and effectiveness of Standard IPV Legislation. Part Three of this thesis contains a comprehensive analysis of the central theoretical

[14] Extensive citations are set out in chapter six. Examples include Benjamin Van Rooij, 'Bringing Justice to the Poor, Bottom-up Legal Development Coordination' (2012) 4 *Hague Journal on the Rule of Law* 286; Dan Banik, 'Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication' (2009) 1(1) *Hague Journal on the Rule of Law* 117; Lorenzo Cotula and Paul Mathieu, *Legal Empowerment in Practice: Using Legal Tools to Secure Land Rights in Africa* (International Institute for Environment and Development and UN Food and Agricultural Organisation, 2008); Hassane Cisse, 'Legal Empowerment of the Poor: Past, Present and Future' [2013] *The World Bank Legal Review Volume 4* 31; Stephen Golub, 'Legal Empowerment's Approaches and Importance' [2013] *Justice Initiatives* 5; Dan Banik, *Rights and Legal Empowerment in Eradicating Poverty* (Taylor & Francis Ltd, 2008).

[15] Sen's 20th century work culminated in Amartya Sen, *Development as Freedom* (Oxford University Press, 1999). Among the more explicit references to the influence of Sen's work on legal empowerment are Stephen Golub's assertion that 'much of legal empowerment reflects Nobel-winning economist Amartya Sen's notion of 'development as freedom'' and the statement of the Commission on the Legal Empowerment of the Poor that 'Sen's agenda of development as freedom is virtually synonymous with the political, social, and economic empowerment of people grounded in human rights.': see Golub, 'Legal Empowerment's Approaches and Importance' (n 14) 6; and Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone: Volume 1* (2008) 18 respectively.

[16] This research for this thesis was guided by five key research questions. Those questions are set out in Annexure 1.

and practical issues to be addressed in efforts to do so. At the conclusion of this thesis I also provide a concrete example of a capability-informed design instrument called the Practitioner's Tool: Capabilities Framework. Throughout the body of this thesis I refer to that instrument simply as the 'Practitioner's Tool.'

The Practitioner's Tool leverages the strengths of both legal empowerment programming and capability theory in an effort to enhance the effectiveness of legally oriented efforts to reduce IPV. It promotes the development of strategy and programming that remain compatible with the international human rights law framework and saleable to rights-favouring donors, while also enhancing local perceptions of the law as an appropriate avenue through which to seek protection from violence. The Practitioner's Tool recognises that using the law to seek protection from violence can affect various aspects of the lives of survivor/victims (including those that are social and economic) both positively and negatively. It therefore seeks to minimise the harm that engagement with the statutory regime may cause in the broader lives of survivor/victims. The Practitioner's Tool takes seriously the perspectives and lived experiences of IPV survivor/victims and brings them to the fore.

In order to examine how a capabilities-informed approach to legal empowerment programming might work in practice, and to evaluate the potential of such an approach, this thesis uses the case study of the development, passage and implementation of the *Family Protection Act 2014* (**FPA**) in Solomon Islands.

There are two main reasons Solomon Islands was chosen as the case study of focus. The first is that it provides a textbook example of a piece of donor-funded Standard IPV Legislation being introduced in a Focus Country. As such, it provides an excellent space for a comprehensive analysis of the key issues in play. The second reason for focusing on Solomon Islands is that it has alarmingly high levels of IPV. As discussed in chapter three, the best evidence suggests that at least 64% of ever-partnered Solomon Islander women have been subjected to physical or sexual violence at the hands of an intimate partner.[17] This figure is more than double the estimated global average.[18]

Solomon Islands itself is a postcolonial nation that remains one of the most aid-dependent in the world.[19] The primary aid donors to Solomon Islands are explicit about their commitment to promoting human rights and gender equality and reducing GBVAW through their international development

[17] Secretariat of the Pacific Community and National Statistics Office, *Solomon Islands Family Health and Safety Study: A Study on Violence against Women and Children* (2009) 3 and 62.
[18] 'Violence against Women', *World Health Organisation* (25 March 2024) <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.
[19] Alex Andre Dayant et al, *Lowy Institute Pacific Aid Map: 2023 Key Findings Report* (Lowy Institute, 2023) 23.

assistance programs.[20] As demonstrated in chapter three, the vast majority of funding for the development, passage and implementation of the FPA has come from international donors (most notably Australia) either directly or through multilateral/civil society organisations. As explored in detail in chapter five, human rights concepts and discourse remain highly contested in Solomon Islands.

Using the FPA and Solomon Islands as a case study allows for a detailed examination of what it can look like on the ground in Focus Countries when the technical and financial resources required to implement Standard IPV Legislation are provided primarily through international aid, such that the ideas and values associated with legislative implementation can be (or can be perceived to be) in conflict with, or contested by, local ideas and values. Through this case study, the value of taking a capabilities-informed approach to the design of legal empowerment strategy and programming can be explored.

This thesis is divided into three substantive parts and a conclusion, which is followed by the Practitioner's Tool. The first two parts of this thesis establish the key problematic associated with the implementation of Standard IPV Legislation, namely that there are different views regarding the international human rights framework on which it is based. The first Part (set out in chapters one to three) draws attention to the key *benefits* of the international human rights law framework for those across the globe pursuing the reduction of IPV and demonstrates that it has provided them with a powerful tool to push for state action towards its elimination. It focuses on the journey to international recognition of IPV as a human rights issue and the consequences of this recognition for states. It also considers the FPA as an example of a piece of Standard IPV Legislation being introduced in a Focus Country largely due to international recognition of IPV as a human rights issue.

The second Part of this thesis (chapters four and five) considers the contrary view, identifying and examining some of the key *challenges* that can arise when the human rights law framework and discourse inform responses to gender justice in Focus Countries generally, and programming to facilitate the implementation of Standard IPV Legislation specifically. It examines ideological barriers arising from perceptions of rights-based programming as a form of cultural imperialism, as well as practical barriers that might arise where programming champions key human rights concepts and principles that do not align with the priorities and lived experiences of individuals and communities in which programming is being implemented. Barriers are first identified through a review of the

[20] See detailed discussion in chapter two in relation to key donors to Solomon Islands and their commitments to human rights, gender equality, and the reduction of GBVAW.

literature, with a focus on voices from the 'Global South.' [21] Key claims made in the literature are then tested in the context of the Solomon Islands case study, where they are found to be borne out – albeit to varying degrees.

The third and final Part of this thesis (contained in chapters six to eight) proposes a way forward that seeks to capitalise on the advantages of the international human rights law framework and exploit the potential of both legal empowerment programming and capability theory. Noting that the introduction of Standard IPV Legislation can be seen as a form of 'law and development' activity, chapter six examines the troubled history of the law and development movement and how advocacy for legal empowerment programming emerged in response to concerns about law and development projects, including the concerns previously identified in Part Two of this thesis. Drawing from this, chapter six considers what legal empowerment programming might offer in terms of facilitating the implementation of Standard IPV Legislation. The analysis contained in this chapter suggests that legal empowerment may provide a promising vehicle to facilitate the implementation of Standard IPV Legislation. However, if it is to do so it must legitimise use of the law as an appropriate avenue through which to seek protection from violence and resolve points of tension between the law on the one hand, and important social and cultural practices, institutions and beliefs on the other. Chapters seven and eight of this thesis explain how and why designing legal empowerment by reference to key principles of the capability approach has the potential to effectively achieve these objectives.

Adopting a capability approach in the design of legal empowerment strategy and programming draws attention to the capabilities of individuals – the (valuable) things they are able to be and do and the lives they are able to lead. Because the approach takes account of human diversity (which results in different people having different opportunities to be and do different things) space is made for the interests, priorities and experiences of those who are commonly vulnerable, voiceless or marginalised. This includes IPV survivor/victims. In the context of the implementation of Standard IPV Legislation in Focus Countries, identifying the interests, priorities and lived experiences of survivor/victims allows

[21] For the purposes of this thesis the terms 'Global South' and 'Global North' are adopted not as terms of art but, drawing on the work of Dados and Connell, as 'a metaphor for underdevelopment…referenc[ing] a…history of colonialism, neo-imperialism, and differential economic and social change through which large inequalities in living standards, life expectancy and access to resources are maintained': Nour Dados and Raewyn Connell, 'The Global South' (2012) 11(1) *Contexts* 12, 13. Broadly speaking, the Global North is used to refer to high-income, aid-giving nations (often former colonisers) and the Global South is used to refer to low- and middle- income, aid-receiving nations (usually former colonies). While not of direct relevance to this thesis, it is worth noting that some argue that the boundaries between the 'North' and 'South' are becoming increasingly blurred and less relevant to matters of international development. See, for example, Rory Horner, 'Towards a New Paradigm of Global Development? Beyond the Limits of International Development' (2023) 44(3) *Progress in Human Geography* 415.

for the resolution of tensions between valued and valuable social and cultural practices and beliefs and use of legislative frameworks for IPV reduction.

In addition to recognising human *diversity*, a capability approach to program design also accounts for human *complexity.* That is, it considers the interconnectedness of the various things (positive and negative) an individual is able to be and do. This allows for the identification and redress of negative consequences in the broader lives of survivor/victims that might flow from using Standard IPV Legislation to obtain protection from violence.

Ultimately this thesis suggests that organisations involved in the implementation of Standard IPV Legislation in Focus Countries should consider developing high-level, capability-informed legal empowerment strategies to support their work.[22] Specific programming (including, for example, education initiatives and paralegal services) should then be designed to ensure the objectives of those strategies can be achieved.

Immediately following the conclusion of this thesis the Practitioner's Tool is presented. The Practitioner's Tool is a design document that provides a concrete example of what it might look like to operationalise the capability approach to inform legal empowerment strategy and programming. The Practitioner's Tool has been designed to help minimise the barriers arising from a misalignment between the ideas and assumptions underpinning mainstream efforts to reduce IPV and the lived realities and perspectives of IPV survivor/victims on the ground. Accordingly, it holds promise for program designers, donors and policy makers interested in the effective implementation of Standard IPV Legislation in aid-dependent countries in which human rights discourse and frameworks remain contested.

[22] Civil society organisations, government departments and service providers are the types of organisations commonly involved in the implementation of Standard IPV Legislation.

Methodology and key informants

Set out below is an overview of the methodology employed in the writing of this thesis. It focuses on the reasons for and process of using qualitative methods in relation to the case study of the implementation of the FPA in Solomon Islands. Discussion addresses the steps that were undertaken in collecting, analysing and reporting qualitative data to optimise rigour and validity. The chapter ends with a positionality statement that acknowledges the potential impact of my own subjectivity on my research and sets out the steps taken to enhance my objectivity.

Interviews with key informants

A primary dataset for this thesis has been obtained from interviews with 'key informants.' 'Key informants' is a term used by Patton in relation to people with great knowledge and/or influence who can shed light on the issue(s) of inquiry.[23] As is outlined below, a purposeful sampling strategy was used to identify 27 key informants with detailed knowledge of the FPA and the broader family violence space in Solomon Islands. Their knowledge stems from experience in advocating for and developing the FPA and/or their deep involvement in its implementation.[24] A list of key informants is set out in tables 1 and 2 (below).

Interviews with key informants were crucial to developing a clear and comprehensive picture of what was happening on the ground in Solomon Islands in the lead up to and passage of the FPA. Such matters are not addressed in any detail in existing literature.[25] Data from interviews also provide insights into how Solomon Islanders understand and perceive matters relating to family violence, human rights, gender equality and the FPA. Again, these insights are crucial to an understanding of what works and what doesn't in programming designed to facilitate the implementation of the FPA but are not examined in existing literature in any detail.[26]

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[23] Michael Quinn Patton, *Qualitative Research and Evaluation Methods* (Sage, Fourth Edition, 2015) 268. Patton also refers to key informants as 'key knowledgables.'

[24] I decided early on that I would not seek to interview IPV survivor/victims directly. There were two main reasons for this: firstly, I knew that obtaining ethics approval to interview members of a vulnerable population of this type would be very difficult. Secondly, I do not currently have the expertise to independently design and undertake interviews with survivor/victims in a way that would ensure the process was a safe and comfortable one for them.

[25] Merriam and Tisdale suggest that a key context in which interviews are important is when we are interested in past events that cannot be replicated: Sharan B Merriam and Elizabeth J Tisdell, *Qualitative Research: A Guide to Design and Implementation* (Jossey-Bass, a Wiley Brand, Fourth edition., 2016) 108.

[26] The second key instance in which Merriam and Tisdell suggest interviewing is necessary to obtain data is where we are interested in peoples' behaviour, feelings or interpretation of the world but cannot otherwise observe them: Ibid.

A purposeful design strategy involving snowball sampling was used to identify the key informants for this study.[27] Initially, five individuals were contacted (either through social media or professional associates) on the basis that their names arose repeatedly in the available literature relating to the design, development and implementation of the FPA and related legal empowerment programming (**Original Contacts**). I conducted informal/unstructured interviews with all of the Original Contacts in mid-March 2023, when I talked to them via zoom for 30 – 90 minutes each.[28] These unstructured interviews were wide-ranging and covered matters such as the development, enactment and implementation of the FPA, programs and organisations helping to implement the FPA, notions of human rights and gender equality in Solomon Islands and the economic, social and cultural factors relevant to family violence in Solomon Islands.

My conversations with the Original Contacts led me to identify a further 11 people that I interviewed informally during a scoping trip I took to Honiara between 28 March and 7 April 2023. Informal interviews with this second group of interviewees were informed by my discussions with the Original Contacts and were semi-structured. A core set of seven questions (set out in Annexure 2) were asked as and where appropriate. I treated these interviews as pilots or 'dry runs' of the interviews I proposed to undertake formally.[29] Throughout the course of these interviews I identified a further 11 key informants to approach for involvement in formal fieldwork.

Between 19 February and 1 March 2024 I undertook formal fieldwork in Honiara, interviewing 17 key informants across 13 interviews.[30] I conducted a further 10 key informant interviews via zoom after my return to Australia. Interviews undertaken for the purposes of formal fieldwork were again semi-structured. The questions guiding those interviews, set out in Annexure 2, were informed by the prior discussions I had held with the Original Contacts and during my 2023 scoping work.

While I took the written interview questions to all interviews and referred to them from time to time, I did not necessarily follow them in order or ask them exactly as written on the page. This encouraged

[27] 'Purposeful sampling' refers to the identification of people for inclusion due to the depth of their knowledge and the information they can provide: see further discussion in ibid. Pages 46 and 52. 'Snowball sampling' is an approach in which well-situated people are asked who else is knowledgeable on the subject of inquiry and the sample grows bigger as more people and cases are engaged: Patton (n 23) 298.

[28] The purpose of an unstructured/informal interview is to learn from interviewees so as to have sufficient knowledge and insight to formulate questions for later interviews: Merriam and Tisdell (n 25) 110.

[29] As to the importance of pilot interviews see, for example, Daniel Turner, 'Qualitative Interview Design: A Practical Guide for Novice Investigators' [2014] *The Qualitative Report* 754; Hanna Kallio et al, 'Systematic Methodological Review: Developing a Framework for a Qualitative Semi-Structured Interview Guide' (2016) 72(12) *Journal of Advanced Nursing* 2954, 8; Merriam and Tisdell (n 25) 117.

[30] On three occasions, and in line with the preferences of key informants, more than one participated in the same interview.

more natural conversational flow, in turn creating an environment of greater trust and disclosure.[31] I also sought to reduce the social distance between myself as interviewer and key informants as interviewees by humanising myself, expressing my sincere gratitude for their time, displaying interest and empathy throughout interviews, and making disclosures of my own where appropriate (for example, in relation to the juggles of motherhood or ongoing aspects of gender division in Australia).[32] Feedback from interviewees suggested I successfully created a safe space for them to express their views.

All interviews undertaken as a part of the fieldwork for this thesis were recorded, transcribed and issue coded before being analysed. Transcription, coding and analysis was all undertaken by me, allowing for greater immersion in the data, and multiple reviews over time.

Sample size and data saturation

As indicated above, 23 formal interviews were undertaken with 27 key informants for the purposes of this thesis. In the context of qualitative inquiry of the likes undertaken for this thesis, there is no magic number of informants that will ensure a study is sufficiently rigorous. Appropriate sample size will be informed by such matters as the purpose of interviews and the nature of the information required.[33] Practical matters such as time and resource availability will also impact on sample size.[34]

While it is true that the appropriate sample size will be different depending on the purpose and scope of research, it is also true that the use of multiple key informants can help to increase validity and rigor. A commonly used guiding principle is that sample size is sufficient at the point at which 'saturation' is reached, meaning that the collection of further data is unnecessary because additional insights and issues are no longer being revealed.[35] A widely cited 2022 review of empirical research sought to identify strategies for assessing saturation and provide guidance as to sample size required to reach saturation.[36] It found that, at least in the context of studies with homogenous populations and focused

[31] Anson Au, 'Thinking about Cross-Cultural Differences in Qualitative Interviewing: Practices for More Responsive and Trusting Encounters' (2019) 24 *Qualitative Report* 58, 62 and 73.
[32] In relation to building trust and ameliorating barriers (including those arising from perceived power disparities) see, for example Au (n 31); and Frederick Anyan, 'The Influence of Power Shifts in Data Collection and Analysis Stages: A Focus on Qualitative Research Interview' [2013] *The Qualitative Report*.
[33] Patton (n 23) 311.
[34] See, for example, ibid; Nirmalya Kumar, Louis W Stern and James C Anderson, 'Conducting Interorganizational Research Using Key Informants' (1993) 36(6) *Academy of Management Journal* 1633, 1637.
[35] Monique Hennink and Bonnie N Kaiser, 'Sample Sizes for Saturation in Qualitative Research: A Systematic Review of Empirical Tests' (2022) 292 *Social Science & Medicine* 114523, 2; Clive Roland Boddy, 'Sample Size for Qualitative Research' (2016) 19(4) *Qualitative Market Research: An International Journal* 426, 427.
[36] Hennink and Kaiser (n 35).

research objectives – of which mine is one – the vast majority of datasets reached saturation between 9 and 17 interviews.[37]

In the context of this thesis, and given my relatively narrow research objectives and resource constraints as a PhD student, I believe that the sample size of 27 was appropriate. This belief is supported by the fact that I took steps to both ensure and confirm data saturation had been reached.

I have outlined above the snowball sampling strategy I used to recruit individual key informants. With each interview I conducted I asked interviewees whether there were any other people they thought I should speak to for my research. By the conclusion of my fieldwork no new names were being brought up, leading me to believe no key individuals had been overlooked. This was the first step taken to ensuring data saturation had been reached.

The second step taken to achieve data saturation was to ensure I interviewed key informants from all the main stakeholders working in the family violence space in Solomon Islands. This included the Ministry of Women, Children, Youth and Family Affairs (**MWCYFA**) and the Ministry of Justice and Legal Affairs (**MJLA**), which are the two ministries responsible for administering the FPA.[38] It also included the Royal Solomon Islands Police Force (**RSIPF**), which has significant responsibilities in relation to the administration of the FPA, and SAFENET, a network of organisations the purpose of which is to strengthen referral and coordination of sexual and gender-based violence services in Solomon Islands.[39] Key informants included people who do or have worked for the key organisations that fund and/or manage most projects facilitating the implementation of the FPA. Those organisations include the Australian Government Department of Foreign Affairs and Trade (**DFAT**), UNWomen, the International Women's Development Agency (**IWDA**), World Vision, Oxfam and Save the Children. Importantly, I also interviewed key informants from the three main organisations working to support survivor/victims of family violence in Solomon Islands. They are the Christian Care Centre (**CCC**), the Family Support Centre (**FSC**) and Sief Ples. Chapter two contains more detail about these organisations.

Taking steps to ensure that the views of all key individuals and organisations working to reduce family violence in Solomon Islands were represented through key informants was important in ensuring data

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[37] Ibid 7.

[38] *Family Protection Act 2014* (Solomon Islands) s11.

[39] Solomon Islands Government Ministry for Women, *Safenet Guidebook 2017: The Safenet Standard Operating Procedures for Referral and Coordination of Sexual and Gender Based Violence Services* (2017) 3. See also Louisa Gibbs, *Report of the Review of the Implementation of the Family Protection Act 2014* (December 2020) 42–43. Established in 2013, SAFENET facilitates the provision of medical treatment and first aid services; mental health services; shelter; welfare; child protection; counselling; legal and paralegal support and police/security to IPV survivors. The vast majority of funding for SAFENET has been provided by international donors through UNWomen Asia and Pacific.

saturation had been reached. A final strategy employed was to use code frequency count and code meaning strategies in the course of data analysis.[40] This involved two steps. The first was to issue code all interview transcripts/notes and determine that, by the final interview, no new codes were being identified. The second step was to review transcripts to ensure that new information/nuance was not being revealed on coded issues by the time the final interviews were conducted.

Key informants, identification and confidentiality

In accordance with the ethics approval for this study,[41] key informants were given the option of being identified in publications relating to my research, not being identified, or leaving it to my discretion as to whether or not to be identified. All but five key informants were happy to be identified at my discretion. Brief details of those informants are set out in **table 1** (below). More detail on the professional histories of those informants appears in Annexure 3.

While the key informants appearing in Table 1 were happy to be identified in this thesis, I have taken the approach (as discussed with informants at the time of interview) of deidentifying them where identifying them is not necessary to provide context and/or where the information relayed is of a more personal or controversial nature.[42] There are two reasons this approach was used: the first was to encourage honesty in responses and the second was to reduce the risk of consequences for informants who reported negatively on matters such as the extent of government commitment to eliminating IPV.[43] In order to report on information provided by key informants on a deidentified basis each of those appearing in table 1 has also been randomly assigned an informant number. Where data provided by them is reported in this thesis on a deidentified basis they are referred to simply as KI1 – KI22.

Table 1: Key Informant List (Identified)

Name	Current position/occupation	Interview details
Vaela Devisi	Director, Women's Development Division, MWYCFA	20 Feb 2024, MWYCFA Office
Judy Basi	Safenet Coordinator, MWYCFA	21 Feb 2024, MWYCFA Office

[40] For a detailed discussion of these and other strategies to assess saturation see Hennink and Kaiser (n 35) Table 3.

[41] University of Sydney Protocol Research Integrity and Ethics Administration Human Research Ethics Committee Protocol 2023/459.

[42] Examples of personal information includes the experiences of key informants who had bride price paid for them. Examples of controversial information includes views expressed about the approach taken by program funders.

[43] The methodology for and decisions in relation to the process of anonymisation were informed by Benjamin Saunders, Jenny Kitzinger and Celia Kitzinger, 'Anonymising Interview Data: Challenges and Compromise in Practice' (2015) 15(5) *Qualitative Research* 616.

Nancy Waegao	Sector Manager, Faith and Development, World Vision Solomon Islands	21 Feb 2024, World Vision office
Apolosi Bose	Team Leader, ASIPJ, Deloitte	22 Feb 2024, ASIPJ office
Ella Wairiu	Gender Program Lead, Oxfam Solomon Islands	23 Feb 2024, Café Bliss Honiara
Anika Kingmele	Independent Consultant	24 Feb 2024, Heritage Park Hotel Honiara
Kyla Venokana	Chief Legal Officer, Legal Policy Unit, MJLA	27 Feb 2024, MJLA office
Jerolie Belabule	Deputy Centre Manager, Seif Ples	27 Feb 2024, Seif Ples office
Lorah Etega	Project Coordinator, Seif Ples	27 Feb 2024, Seif Ples office
Donna Makini	GEDSI Officer, ASIPJ	27 Feb 2024, ASIPJ office
Sister Rosa	Coordinator, Christian Care Centre	28 Feb 2024, Christian Care Centre office
Laura Kwanairara	Lawyer, Family Support Centre	29 Feb 2024, Family Support Centre Office
Aroma Ofasia	Paralegal, Family Support Centre	29 Feb 2024, Family Support Centre Office
Ethel Sigimanu	Independent Consultant	1 Mar 2024, Heritage Park Hotel
Afu Billy	President, National Council of Women	20 Mar 2024, zoom
Kathleen Kohata	Principal Solicitor, Public Solicitors Office Family Protection Unit	20 Mar 2024, zoom
Bronwyn Spencer	Senior Program Manager, IWDA	17 Jul 2024, zoom
Val Stanley	Independent Consultant (UK)	5 September 2024 and 12 September 2024, by zoom
Catherine Nalakia	Correctional Services Solomon Islands Gender Coordinator	16 September 2024, by zoom
Josephine Kama	Independent Consultant (focus on gender)	Answers provided by email on 1 October 2024 due to difficulties with technology
Melanie Teff	Independent Consultant (UK)	2 October 2024, by zoom
Juanita Malatanga	Deputy Commissioner, National Operations, Royal Solomon Islands Police Force	4 October 2024, by zoom

In addition to the key informants listed above, five participants indicated they did not want to be identified in my thesis. Deidentified information about those participants appears in **table 2** (below).

Table 2: Key Informant List (Anonymous)

Pseudonym	Basis on which considered a key informant	Interview date/details
Anon 1	History of involvement with religious organisation providing support and services to family violence survivors	24 February 2024, in person
Anon 2	History of involvement with religious organisation providing support and services to family violence survivors	24 February 2024, in person
Anon 3	History of involvement with religious organisation providing support and services to family violence survivors	24 February 2024, in person
Anon 4	History of work with various funders and NGOs	3 March 2024, via zoom
Anon 5	History of involvement with various international NGOs working in family violence in Solomon Islands and other Pacific nations	28 March 2024, via zoom

The use and validity of qualitative data

As indicated above, this thesis relies heavily on qualitative data derived from interviews with key informants. It also relies on data obtained from a review of policy and project documentation, parliamentary records and my own fieldwork observations.

Patton identifies several key benefits of using qualitative data for research purposes, including that it ensures context is taken into account and light is shed on how things work in practice.[44] Both of these benefits are significant for this thesis given its focus on legal empowerment programming in the context of international development efforts. A failure to pay sufficient attention to context is a commonly cited reason for the failure of law and development endeavours.[45] A lack of understanding of how things work on the ground is a key reason for the gap between theory and practice.

Qualitative research has also been said to be very useful for addressing 'how' questions and for examining and articulating processes.[46] Questions such as how the FPA came into existence and how it is received in the community are central to this thesis, as are the (often informal) processes that took place in order to advocate for it. Collection of qualitative data was essential for this thesis given the lack of existing published data that shed light on these matters.

There are, of course, challenges that arise in the context of qualitative research.[47] One of the most often raised relates to research validity.[48] A key strategy employed to enhance the validity of the findings in this thesis was the triangulation of data, defined by Carter et al as 'use of multiple methods or data sources…to develop a comprehensive understanding of phenomena.'[49] Significant time and effort was dedicated to data coding of interview transcripts, fieldwork observations, policy and project

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[44] Patton (n 23) 6–9.

[45] See, for example, Kevin E. Davis and Michael J. Trebilcock, 'The Relationship between Law and Development: Optimists versus Skeptics' (Pt American Society of Comparative Law) (2008) 56(4) *The American Journal of Comparative Law* 895-946. and Brian Tamanaha, 'The Primacy of Society and the Failures of Law and Development' [209] (2011) 44 *Cornell International Law Journal* 209.

[46] Michael G Pratt, 'For the Lack of a Boilerplate: Tips on Writing up (and Reviewing) Qualitative Research' (2009) 52(5) *Academy of Management Journal* 856, 856.

[47] See, for example, discussions in Md Shidur Rahman, 'The Advantages and Disadvantages of Using Qualitative and Quantitative Approaches and Methods in Language "Testing and Assessment" Research: A Literature Review' (2016) 6(1) *Journal of Education and Learning* 102; Michael Bamberger, Vijayendra Rao and Michael Woolcock, *Using Mixed Methods in Monitoring and Evaluation: Experiences from International Development* (2010); Brigitte S Cypress, 'Rigor or Reliability and Validity in Qualitative Research: Perspectives, Strategies, Reconceptualization, and Recommendations' (2017) 36(4) *Dimensions of Critical Care Nursing* 253.

[48] SB Thomson, 'Qualitative Research: Validity' (2011) 6(1) *Journal of Administration and Governance* 78. Some researchers who associate the concept of validity with scientific truthfulness and accuracy have queried whether it ought to be used in the context of qualitative research at all given the emerging data will necessarily be subjective and contextual. This thesis proceeds on the understanding of 'validity' espoused by Cypress, who suggests 'to validate means to investigate, to question and to theorize, which are all activities to ensure rigor in qualitative inquiry': Cypress (n 47) 257.

[49] Nancy Carter et al, 'The Use of Triangulation in Qualitative Research' (2014) 41 *Oncology Nursing Forum* 545, 545.

documentation and parliamentary records before thematic analyses of these sources were undertaken simultaneously. This allowed for the triangulation of data from a wide variety of sources.

Positionality statement: who cares about the researcher?

It is important to include a positionality statement with my methodology because my personal experiences and perspectives are directly related to the validity of the qualitative research that informs my thesis.[50]

I am a white Australian woman researcher of primarily Irish settler descent. My upbringing was middle-class and devoid of religion, and my family was politically progressive. I grew up in Australia's biggest city and have never been the subject of IPV. During my childhood and teenage years, I was, like almost all Australian women I know, subjected to relatively regular low-level sexual assault (like being flashed at by strangers). I have never been the subject of more significant forms of sexual assault.

Unavoidably, my research and the knowledge it produces are influenced by my life experiences.[51] Claims to complete objectivity in qualitative research, whether by me or others, would be false – no researcher can unshackle themselves from their history sufficiently to be an entirely objective empirical observer.[52] Nonetheless, researcher objectivity can be significantly enhanced, and an important part of the enhancement process lies with acknowledging and grappling with the values and perspectives of the researcher, and their (potential) impact on the knowledge produced by research.[53]

In the process of devising my methodology and undertaking fieldwork for this thesis I took a number of steps to engage with my subjectivity and consciously enhance my objectivity as a researcher. I used various techniques to try and ensure I considered relevant issues from as many perspectives as possible. This included triangulating data (as discussed above) as well as undertaking extensive consultations with people living and/or working in Solomon Islands, with a focus on Solomon Islanders themselves.[54] In addition to the formal interviews undertaken with key informants, I took every opportunity to engage in conversations about relevant issues with everyone I came across during my

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[50] Andrew Gary Darwin Holmes, 'Researcher Positionality - A Consideration of Its Influence and Place in Qualitative Research - A New Researcher Guide' (2020) 8(4) *Shanlax International Journal of Education* 1.

[51] See also James A Banks, 'The Lives and Values of Researchers: Implications for Educating Citizens in a Multicultural Society' (1998) 27(7) *Educational Researcher* 4, 4; Carl Ratner, 'Subjectivity and Objectivity in Qualitative Methodology' (2002) 3(3) *Forum Qualitative Sozialforschung / Forum: Qualitative Social Research*; Deborah Court, *Qualitative Research and Intercultural Understanding: Conducting Qualitative Research in Multicultural Settings* (Routledge, 2017) Chapter 1.

[52] Cf Ratner (n 51). While Ratner makes some interesting and useful points, he seems to suggest that researchers *can*, in fact, be entirely objective. If my interpretation of him is correct, I strongly disagree. While objectivity can be significantly enhanced, subjectivity can never be entirely erased.

[53] For a discussion of enhancing objectivity through value acknowledgment see, for example, Banks (n 51); Court (n 51) chapter 4.

[54] As to the importance of engaging with knowledgeable people see Court (n 51) 31.

time in-country. This included not only those working in the family violence/IPV space, but also others I came across working in cafes, hotels, court registries, parliament, taxis and so on.

I used an iterative process to develop research tools so that they increasingly reflected the interests, priorities and perspectives of those with a deep existing understanding of family violence in Solomon Islands. Questions for interviews were developed and refined over the course of more than 12 months, initially on the basis of data from the literature and subsequently on the basis of feedback and responses from key stakeholders.

I remained aware of engaging in ongoing self- and relational- reflexivity while undertaking my research. I sought to identify and understand my own perspectives and how they influenced my research while at the same time reminding myself that my purpose was to gain insight into the perspectives of research participants.[55]

Reflection on the extent of my own objectivity as a researcher is perhaps particularly important given the cross-cultural nature of my project and the fact that I was undertaking research in a previously unfamiliar country and context. As a result, in many respects I am (rightly) categorised as an 'outsider' researcher.[56] This outsider status presented both challenges and advantages in the context of my research. As an outsider, I needed to dedicate significant time and resources to network building and gaining trust. The level of analysis required to ensure I perceived and understood culturally coded or subtle messaging from key informants was also significant. On the flipside, as an outsider my analysis and examination were relatively free from preconceived ideas and biases.

While in many respects I may be viewed as an outsider-researcher, as Mullings argues 'the 'insider/outsider' binary…is a boundary that is not only highly unstable but also one that ignores the dynamism of positionalities through time and space.'[57] Mullings suggests that momentary spaces can be created in the context of an interview in which interviewer and interviewee positionalities complement each other, creating and enhancing trust and cooperation between them.[58] I found this to be the case in the context of discussion with key informants. For example, all but one key informant were women, and several interviewees indicated (directly or indirectly) a view that our shared gender was an important commonality in the context of discussing family violence.[59] On other occasions

[55] Regarding reflexivity and validity see ibid 33; Ratner (n 51) 3; Patton (n 23) 71–74.
[56] For discussion of insider/outsider research positions in multicultural settings see Court (n 51) 34–36; Beverley Mullings, 'Insider or Outsider, Both or Neither: Some Dilemmas of Interviewing in a Cross-Cultural Setting' (1999) 30(4) *Geoforum* 337.
[57] Mullings (n 56) 340.
[58] Ibid.
[59] KI4, KI7, KI13.

interviewees suggested that our shared interest in reducing family violence, though coming at it from very different experiences and perspectives, led to interesting and fruitful discussions.[60]

Conclusion

This introductory section of my thesis has set out the key issues to be addressed, provided an overview of the arguments to be made, and a roadmap to its parts and chapters. It has also set out a detailed methodology relating to the case study of the implementation of the FPA in Solomon Islands. I turn now to the substantive parts of my thesis, the first of which is dedicated to an examination of the key benefits of the international human rights law framework for those seeking the elimination of IPV.

[60] KI2, KI14, KI18.

PART ONE

Chapter 1: IPV as a human rights issue

> 'Gender-based violence …. [is] incompatible with the dignity and worth of the human person and must be eliminated.' Vienna Declaration and Programme of Action, 25 June 1993[61]

As at 1990, only approximately 2% of countries around the world had legislation that specifically addressed IPV.[62] Today, almost 85% do.[63] Despite the vast diversity of cultures, religions, societies, and systems of political, legal and social control across the globe, the legislation in almost all jurisdictions takes a similar form, criminalising acts deemed to constitute IPV and providing civil remedies in the form of protection orders. A key reason for the relative uniformity of legislation, referred to in this thesis as Standard IPV Legislation, relates to the central role the international human rights framework has played in promoting formal measures to reduce IPV and putting pressure on states to take action to eliminate it.

The focus of this chapter is on the journey to international recognition of IPV as a human rights issue and the consequences of this recognition for states. The remaining two chapters of this Part introduce the case study of the *Family Protection Act 2014* (Solomon Islands) as a textbook example of Standard IPV Legislation being introduced in an aid-dependent, postcolonial nation.

This chapter opens by looking at how IPV, as the most widespread form of GBVAW across the globe, was brought to the world stage and came to be recognised as a fundamental human rights issue at the World Conference of Human Rights in 1993 (**Vienna Conference**). It goes on to examine the proliferation of international human rights instruments that were adopted in the wake of the Vienna Conference, and how those instruments provided a framework for action to reduce IPV at the domestic level. This chapter then considers the obligations placed on states as a result of the international human rights law framework and demonstrates that a rights discourse now underpins the

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[61] *Vienna Declaration and Programme of Action*.

[62] This is based on data collected and presented as a part of the World Bank's Women, Business and the Law project. See: 'Women, Business and the Law Data', *World Bank* (Text/HTML) <https://wbl.worldbank.org/en/wbl-data>. Note that not all legislation addresses all four types of IPV (being physical, sexual, psychological and economic). Economic violence is the least often included in legislation, with only approximately 113 countries explicitly addressing it: Royal and Wilson-Garwood (n 8) 82.

[63] 'Women, Business and the Law Data' (n 62). The countries without IPV legislation are Afghanistan, Cameroon, the Democratic Republic of Congo, the Republic of Congo, Cote d'Ivoire, Equatorial Guinea, Eritrea, Estonia, Guinea, Haiti, the Islamic Republic of Iran, Iraq, Lesotho, Libya, Mali, Mauritania, Myanmar, Niger, Oman, Qatar, the Russian Federation, Somalia, South Sudan, Sudan, the Arab Republic of Syria, Tanzania, Togo, Uzebkistan, West Bank and Gaza, and the Republic of Yemen.

international aid strategies of high-income countries making the biggest contributions to international aid programming to reduce IPV. The chapter concludes by explicitly reiterating some of the key advantages of a human rights-based conception of IPV, demonstrating how this conceptualisation has been leveraged by advocates and activists to press for state action to reduce it.

The scholarly push for women's rights as human rights

IPV came to be recognised as a human rights issue as a part of a broader campaign to have the experiences of women better reflected in human rights law and discourse. The work of feminist academics played an important part in this campaign, which has come to be known as the Women's Rights as Human Rights Movement (**WRHR Movement**).[64]

In the period leading up to the Vienna Conference a stream of literature sought to demonstrate the inadequacy of international law (as it then stood) in dealing with the experiences of women.[65] Writing in support of the WRHR Movement, Charlesworth et al made a strong argument that international law was largely impervious to the voices of women as a result of its organisational and normative structures.[66] Nation-states and international organisations (the primary subjects of international law) had all historically been dominated by men.[67] As a result, areas in which women are far more commonly victimised than men were never at the forefront for those setting the agenda at the level of international law and politics.[68] The lack of consideration of matters that impacted primarily on women was compounded by the traditional distinction between the 'private' and 'public' spheres, with the former (considered primarily the domain of women) being considered beyond public scrutiny and, therefore, beyond the scope of law, including at the international level.[69] These insights led Charlesworth and her colleagues to argue for a redefinition of the boundaries of international law so

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[64] Yakin Erturk, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences: The Due Diligence Standard as a Tool for the Elimination of Violence against Women* (No E/CN.4/2006/61, United Nations Commission on Human Rights, 20 January 2006) paras 56-58.

[65] See, for example, Rebecca J Cook, 'Women's International Human Rights Law: The Way Forward' (1993) 15(2) *Human Rights Quarterly* 230; Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85(4) *The American Journal of International Law* 613; Andrew Byrnes, 'Women, Feminism and International Human Rights Law - Methodological Myopia, Fundamental Flaws or Meaningful Marginalisation? Some Current Issues' (1988) 12 *Australian Year Book of International Law* 205; Charlotte Bunch, 'Women's Rights as Human Rights: Toward a Re-Vision of Human Rights' (1990) 12(4) *Human Rights Quarterly* 486.

[66] Charlesworth, Chinkin and Wright (n 65).

[67] Ibid 625. Writing about human rights in particular, Charlesworth also made the point that rights had been 'defined by criterion of what men fear will happen to them:' Hilary Charlesworth, 'What Are Women's International Human Rights?' in Rebecca J Cook (ed), *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press, 1994) 71; See also Rosa Brooks, 'Feminism and International Law: An Opportunity for Transformation' (2002) 14 *Yale Journal of Law and Feminism* 345.

[68] Charlesworth, Chinkin and Wright (n 65) 625.

[69] Ibid. In relation to the public/private dichotomy and its relevance to the push to have GBVAW considered a human rights issue see also Erturk (n 64) paras 59-63.

as to incorporate the interests of women.[70] The language of 'gender equality' was commonly mobilised in the fight for the recognition of women's rights.[71]

Many scholars saw human rights as a key area of international law in which the interests of women could and should be incorporated, but in which they had been largely neglected up until the 1990s.[72] Writing in 1987, Neuwirth railed against the traditional gender-blind approach to human rights, arguing that it failed to acknowledge the gendered dimensions of many human rights abuses.[73] In 1994 Charlesworth argued that human rights law was built on the silence of women and agitated for the development of a notion of rights in which the interests of women would be taken seriously.[74] In a seminal piece from 1990, Bunch emphasised that many violations of women's human rights are directly related to being female and suggested that they should be explicitly recognised as such.[75] Bunch argued that 'the specific experiences of women must be added to traditional approaches to human rights' in order for women to become more visible and their lives better accounted for at the international level.[76] Like Charlesworth and others, Bunch made the case that traditional approaches to human rights excluded the experiences of women, often on the basis that the abuse of women, 'while regrettable,' was a cultural, private or individual issue and not one that was appropriately seen as a matter for state action.[77] Bunch countered this argument on the basis that the abuse of women, even when at the hands of private individuals, was often condoned or sanctioned by states.[78] Thus, notwithstanding that the nation-state was the main subject of international human rights law and much of the abuse suffered by women was at the hand of private individuals, Bunch argued it was appropriate for the law to talk to some form of state responsibility for it. Increasingly, this was a prevailing view in the academic community.[79]

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[70] Charlesworth, Chinkin and Wright (n 65) 645.
[71] Andrea Cornwall and Althea-Maria Rivas, 'From 'Gender Equality and "Women's Empowerment" to Global Justice: Reclaiming a Transformative Agenda for Gender and Development' (2015) 36(2) *Third World Quarterly* 396, 396.
[72] See, for example, Charlesworth, Chinkin and Wright (n 65); Byrnes (n 65); Jessica Neuwirth, 'Towards a Gender-Based Approach to Human Rights Violations' (1987) 9(3) *Whittier Law Review* 399; Bunch (n 65); Brooks (n 67).
[73] Neuwirth (n 72).
[74] Charlesworth (n 67) 60.
[75] Bunch (n 65).
[76] Ibid 487.
[77] Ibid 488.
[78] Ibid.
[79] See Sheila Dauer, 'Human Rights Responses to Violence Against Women' in Niamh Reilly (ed), *International Human Rights of Women* (Springer Science+Business, 2019) 1, 4; Bunch (n 65); Elisabeth Friedman, 'Women's Human Rights: The Emergence of a Movement' in JS Wolper and Andrea Peters (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (Routledge, 1995).

The (legal) right to live a life free from violence

As the WRHR Movement gained support in the academic community, so too did it begin to gain traction in the international legal community. The adoption of the *Convention on the Elimination of All Forms of Discrimination Against Women* (**CEDAW**) by the United Nations General Assembly (**UNGA**) in 1979 was a significant moment for bringing the rights of women within the purview of human rights law.[80] As noted above, the traditional distinction in international law between the public (male dominated) and private (female dominated) spheres traditionally served to ensure that women's experiences were excluded from the domain of human rights. It is notable, then, that CEDAW rejected the distinction between the public and the private, talking to issues from the right to vote in elections to the right to freely choose a spouse.[81] What CEDAW failed to expressly talk to, however, was GBVAW.[82] This was no oversight. Prior to the adoption of CEDAW by the UNGA, a draft was tabled at a meeting of the UN's Commission on the Status of Women (**UNCSW**) for discussion and negotiation.[83] At that meeting, the Belgian delegation put forward a proposal to include in CEDAW an obligation on state parties to take all appropriate measures to combat 'attacks on the physical integrity of women.'[84] This proposal did not receive support from any other delegation and was subsequently withdrawn.[85] As at the time CEDAW was adopted in 1979, then, GBVAW was being discussed at the international level, but was not viewed as an issue that warranted specific protection under international human rights law.[86]

In 1989 came the first clear indication that things were beginning to change. The CEDAW Committee issued General Recommendation 12, which encouraged state parties to include in their periodic reports information about legislation and other measures to reduce GBVAW as well as data related to

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[80] *Convention on the Elimination of All Forms of Discrimination Against Women* Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981). This chapter includes discussion of both 'hard' or binding instruments of international law as well as 'soft' non-binding instruments. The difference and relationship between the two is discussed in detail in Arnold N Pronto, 'Understanding the Hard/Soft Distinction in International Law' (2015) 48(4) *Vanderbilt Journal of Transnational Law* 941. Importantly, he makes the point that 'soft' law often both 'fills out' hard law (which outlines boundaries and core content) and paves the way for future 'hard' law.

[81] See *Convention on the Elimination of All Forms of Discrimination Against Women* (n 80) Arts 7(a) and 16(b) respectively.

[82] A potential exception to this lies in Art. 6, which specifically refers to the trafficking of women and their exploitation through prostitution.

[83] 'Commission on the Status of Women, 26th Session: Summary Record of the 638th Meeting, Held at the Palais Des Nations, Geneva, on Friday, 17 September 1976'.

[84] Ibid para 40.

[85] Ibid paras 41-49.

[86] Beate Rudolf, 'Freedom from Violence, Full Access to Resources, Equal Participation and Empowerment: The Relevance of CEDAW for the Implementation of the SDGs' in Markus Kaltenborn, Markus Krajewski and Heike Kuhn (eds), *Sustainable Development Goals and Human Rights* (Springer International Publishing, 2020) 73, 81. Rudolf suggests that at the time CEDAW was adopted GBVAW was 'considered a question of social policy, not of human rights.'

its occurrence.[87] In 1992 the CEDAW Committee went further, issuing General Recommendation No 19 which specifically stated that it considered GBVAW to constitute discrimination that inhibited women's ability to enjoy rights and freedoms on a basis equal with men.[88] Therefore, GBVAW impairing or nullifying the enjoyment by women of the rights and freedoms under international law and human rights conventions fell within the ambit of CEDAW Article 1.[89] General Recommendation 19 also explicitly addressed the issue of state responsibility for the conduct of private actors:[90]

> It is emphasised…that discrimination under [CEDAW] is not restricted to action by or on behalf of Governments…. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence…

While the issuance of General Recommendation 19 was significant, confirming that the CEDAW Committee viewed GBVAW as a human rights abuse for which states could be held accountable, activists across the globe were adamant that similar formal recognition be made by the international community more broadly.

In the lead up to the Vienna Conference in 1993, advocacy groups were strategically working to ensure women's rights would be centre stage.[91] Coalitions of transnational women's organisations were

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[87] United Nations Committee on the Elimination of Violence Against Women, 'General Recommendation No 12: Violence Against Women' (n 2). It is worth noting that the UNGA issued two resolutions (the first in 1985 and the second in 1990) that spoke specifically to the issue of domestic violence. However, neither specifically addressed the question of whether domestic violence was considered to constitute a human rights violation: see *Domestic Violence, GA Res 40/36, UN GAOR, 3rd Committee, 40th Session, Supplement No. 53, A/40/881 (29 November 1985)* 215; *Domestic Violence, GA Res 45/114, UN GAOR, 3rd Committee, 45th Session, Supplement No. 49, A/RES/45/114 (14 December 1990)* 209.

[88] United Nations Committee on the Elimination of Violence Against Women, 'General Recommendation No 19: Violence Against Women' (n 2) Arts 1 and 6.

[89] Ibid Art 7. Given this chapter looks at the intersection of international human rights law and endeavours to eliminate violence against women in the 1990s it is unnecessary here to track the evolution of conceptions of gender-based violence at the level of international human rights law since that time. It is worth noting, however, that in 2017 the CEDAW Committee released a third general recommendation relating specifically to gender-based violence against women: see United Nations Committee on the Elimination of Violence Against Women, 'General Recommendation No 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19' (n 2). General recommendation 35 stated that opinion juris and state practice indicated the prohibition of gender-based violence against women had evolved into a principle of customary international law.

[90] United Nations Committee on the Elimination of Violence Against Women, 'General Recommendation No 19: Violence Against Women' (n 2) Art 9.

[91] Friedman (n 79); Charlotte Bunch and Niamh Reilly, *Demanding Accountability: The Global Campaign and Vienna Tribunal for Women's Human Rights* (Center for Women's Global Leadership, Rutgers University ; United Nations Development Fund for Women, 1994) 4–8; UN Secretary-General, *In-Depth Study on All Forms of Violence Against Women* (No A/61/122/Add.1, 6 July 2006) 13–15; Savitri WE Goonesekere, 'The Indivisibility of

lobbying to an unprecedented extent for the recognition of women's rights as human rights.[92] A petition was launched by the International Women's Tribune Centre, the Centre for Women's Global Leadership (**CWGL**), and the International Young Women's Christian Association to have GBVAW recognised at the conference as a human rights violation requiring immediate attention. This petition was ultimately co-sponsored by more than 800 groups worldwide, and garnered more than 300,000 signatories in 123 countries and 20 languages.[93] Women in Africa and Latin America used satellite meetings of women's rights activists to prepare demands with which to lobby the conference, and in February 1993 a global satellite meeting was organised by the CWGL to promote inter-regional coordination.[94] The United Nations Fund for Women (**UNIFEM**) ensured a global campaign team could attend the preparatory meeting for the Vienna Conference, which resulted in recommendations concerning GBVAW (and women's human rights more broadly) being included on the agenda for the conference.[95]

The hard work that had gone in to campaigning for the consideration of GBVAW at the Vienna Conference paid off. The unanimously adopted Vienna Declaration and Programme of Action (**Vienna Declaration**) formally recognised GBVAW as a human rights issue for the first time.[96] The Vienna Declaration emphasised the importance of eliminating GBVAW in both the public and private spheres and called for the appointment of a Special Rapporteur on violence against women, including its causes and consequences (**Special Rapporteur**).[97] Within a year the United Nations Human Rights Commission determined to appoint a Special Rapporteur with a remit to, inter alia, seek, receive and respond to information on GBVAW and recommend ways to eliminate it.[98]

Rights and Substantive Equality for Women' in Niamh Reilly (ed), *International Human Rights of Women* (Springer Nature, 2019).

[92] Amrita Basu, 'Globalisation of the Local/Localisation of the Global: Mapping Transnational Women's Movements' (2000) 1(1) *Meridians* 68, 73–74; For a detailed examination of the transnational campaign against GBVAW see Margaret E Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Cornell University Press, 1998) Chapter 5.

[93] Friedman (n 79) 28.

[94] Ibid 28–30.

[95] Ibid 30. Note that as at the time of the Vienna Conference, UNIFEM was a UN body that provided financial and technical assistance to programs and strategies to foster women's empowerment and gender equality. In 2010, UNIFEM merged with the three other UN bodies dedicated to gender to form UN Women: see UN Women, 'About UN Women', *UN Women – Headquarters* <https://www.unwomen.org/en/about-us/about-un-women>.

[96] *Vienna Declaration and Programme of Action* (n 61).

[97] Ibid Art 38 and 40.

[98] United Nations High Commissioner for Human Rights, *Question of Integrating the Rights of Women into the Human Rights Mechanism of the United Nations and the Elimination of Violence Against Women* (No 1994/95, 4 March 1994) <http://peacewomen.org/sites/default/files/ohchr_intergratingwomenrightshrmechanismsvaw_1994_0.pdf>. This resolution was subsequently endorsed by the UN Economic and Social Council by its decision 1994/254 of 22 July 1994.

The Vienna Declaration also called on the UNGA to adopt the *Declaration on the Elimination of Violence Against Women* (**UNDEVAW**), which had been developed on the recommendation of the UNCSW and finalised in 1992 but remained in draft form as at the time of the Vienna Conference.[99] The UNGA adopted the UNDEVAW just months later.[100]

While the Vienna Declaration marked the first formal recognition of GBVAW as a human rights issue, the UNDEVAW provided the first framework for international and national action to eliminate it. The UNDEVAW expressly affirmed that 'violence against women constitutes a violation of the rights and fundamental freedoms of women' and (as will be discussed below) set out no less than 17 recommended actions for states to eliminate it.[101]

While the path to international recognition may have been long, by the mid-1990s it was clear that GBVAW was firmly on the international human rights agenda and it has been the subject of a plethora of international instruments and conferences since that time.[102] In 1995, the UN held its Fourth World Conference on Women, at which 189 member states unanimously adopted the highly influential *Beijing Declaration and Platform for Action* (**Beijing Declaration**).[103] The Beijing Declaration recognised GBVAW as a key area of concern and one requiring the immediate attention of the international community.[104] It expressly recognised GBVAW as a human rights violation.[105]

In the same year that the Beijing Declaration was adopted, the first regional human rights instrument to address GBVAW was adopted in the form of the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* (**Convention of Belem do Para**).[106] Since the

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[99] Rashida Manjoo, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences Developments over the Last 20 Years* (No A/HRC/26/38, United Nations General Assembly Human Rights Council, 28 May 2014) 4–5.

[100] *Declaration on the Elimination of Violence Against Women* (Proclaimed by General Assembly resolution 48/104 of 20 December 1993); As to NGO pressure on the UN see Elissavet Stamatopoulou, 'Women's Rights and the United Nations' in JS Wolper and Andrea Peters (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (Routledge, 1995) 36, 39.

[101] *Declaration on the Elimination of Violence Against Women* (n 100) Preamble and Art 4.

[102] For detailed analysis of the international and regional frameworks relating IPV legislation see World Bank, *Compendium of International and National Legal Frameworks on Domestic Violence Volume I of V: International Legal Framework* (World Bank, Washington, DC, 1st ed, 2019) <http://hdl.handle.net/10986/31146>.

[103] *Beijing Declaration and Platform for Action* (n 2).

[104] Ibid Strategic Objective D. The Beijing Declaration does not focus solely on human rights. Indeed, 'violence against women' and 'human rights of women' appear in the declaration as two separate strategic goals. Nonetheless, the declaration makes explicit connections between the two and identifies violence against women as both a human rights violation and something that impairs or nullifies women's enjoyment of other human rights. See in particular paragraphs 112 and 224.

[105] Ibid para 112 and 224.

[106] *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women 1995*. The Convention of Belem Do Para defined 'violence against women' as 'any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or private sphere:' Art 1.

adoption of the Convention of Belem do Para, conventions that address GBVAW have been adopted in Africa and Europe, and declarations have been endorsed by the Association of South East Asian Nations and the Pacific Islands Forum.[107] As will be outlined in further detail below, all of these instruments place a heavy emphasis on the role of legislative measures to eliminate GBVAW.

The vast majority of nations across the world now subscribe to one or more of the major human rights instruments that condemn and prohibit GBVAW. CEDAW remains one of the most widely ratified UN conventions, with 189 UN member states/observers being a party to it.[108] This is significant given, while GBVAW is not expressly referred to in CEDAW, at least since the issuance of General Recommendation No 19 (discussed above) the convention has been interpreted to recognise GBVAW as a human rights concern. It remains the only binding instrument at the global level to do so.[109]

Regional level conventions in relation to GBVAW are also heavily subscribed to. The Council of Europe *Convention on Preventing and Combating Violence Against Women and Domestic Violence* (**Istanbul Convention**),[110] has been signed by 45 of 46 members of the Council of Europe and ratified by 39.[111] The Convention of Belem do Para has been ratified and/or acceded to by 33 of 35 member states of the Organisation of American States (with USA and Canada being the outliers).[112] All 55 member states of the African Union have ratified the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (**Maputo Protocol**).[113]

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[107] *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003*; *Convention on Preventing and Combating Violence Against Women and Domestic Violence 2014*; 'Declaration on the Elimination of Violence Against Women in the ASEAN Region, 30 June 2004, Jakarta, Indonesia', *ASEAN Main Portal* (30 June 2004) <https://asean.org/declaration-on-the-elimination-of-violence-against-women-in-the-asean-region-30-june-2004-jakarta-indonesia/>; 'Pacific Leaders Gender Equality Declaration 30 August 2012, Rarotonga, Cook Islands' <https://www.forumsec.org/2012/08/30/plged/>.

[108] UNHROHC, 'UNHROHC Status Ratification Dashboard: CEDAW' <https://indicators.ohchr.org/>. A further two countries (being the United States of America and Palau) have signed but not ratified CEDAW and six (Tonga, Sudan, Somalia, Niue, Iran and the Holy See) have taken no action in relation to it. The only UN convention with more signatories than CEDAW is the *Convention on the Rights of the Child,* which has been ratified by 196 States and signed by 1.

[109] Note that there remains some agitation for an internationally binding treaty that focuses solely and specifically on the issue of violence against women: Rhoda Reddock, 'CEDAW and Violence Against Women: Reflections After 40 Years' (2022) 28(8) *Violence Against Women* 1723, 1723.

[110] Council of Europe *Convention on Preventing and Combating Violence Against Women and Domestic Violence,* CETS No 210, opened for signature 11 May 2011, entered into force 1 August 2014.

[111] Council of Europe Treaty Office, 'Chart of Signatories and Ratifications of Treaty 210', *Council of Europe Treaty Office* <https://www.coe.int/en/web/conventions/full-list>. Note that Turkiye signed and ratified the Istanbul Convention but subsequently denounced it in 2021.

[112] 'Convention of Belem Do Para Ratifications', *Inter-American Commission on Human Rights Organisation of American States* <http://www.cidh.org/basicos/english/Basic14.Conv%20of%20Belem%20Do%20Para%20Ratif.htm>.

[113] *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (n 107) 22.

At the level of ASEAN and the Leaders of the Pacific Islands Forum, all member states have endorsed declarations relating or referring to the elimination of GBVAW. The declarations are in the form of the *Declaration on the Elimination of Violence Against Women in the ASEAN Region* (**2004 ASEAN Declaration**),[114] the *Pacific Leaders Gender Equality Declaration 2012* (**2012 PLGED**),[115] the *Declaration on the Elimination of Violence Against Women and the Elimination of Violence Against Children in ASEAN* (**2013 ASEAN Declaration**)[116] and the *Revitalised Pacific Leaders Gender Equality Declaration 2023* (**2023 PLGED**).[117] While these instruments are not binding, both the 2012 PLGED and the 2013 ASEAN Declaration indicate a commitment on the part of leaders of the regions to implement CEDAW and (in the case of PLGED) to incorporate CEDAW into legislative and statutory reforms and policy initiatives across government.[118] This is particularly significant given 3 of 6 states that have taken no action in relation to signing or ratifying CEDAW (being Niue, Palau and Tonga) are members of the Pacific Leaders Forum and therefore signatories of the PLGED.

The 2012 and 2023 PLGED also explicitly reaffirm the commitment of member countries to the *Revised Pacific Platform for Action on the Advancement of Women and Gender Equality 2005* (**2005 Pacific Platform**) and the *Pacific Platform for Action on Gender Equality and Women's Human Rights 2018-2030* (**2018 Pacific Platform**) respectively.[119] In turn, the 2005 and 2018 instruments recognise women's legal and human rights as one of only four key strategic themes, and ending violence against women as a key priority. They also emphasise the importance of legislative measures in reducing GBVAW.

As at January 2025 only 6 UN member or observer states are not bound by the provisions of CEDAW, the Convention of Belem do Para, the Maputo Protocol and/or the Istanbul Convention.[120] However,

[114] 'Declaration on the Elimination of Violence Against Women in the ASEAN Region, 30 June 2004, Jakarta, Indonesia' (n 107).
[115] 'Pacific Leaders Gender Equality Declaration 30 August 2012, Rarotonga, Cook Islands' (n 107).
[116] *The Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children in ASEAN 2012* 155.
[117] *Revitalised Pacific Leaders Gender Equality Declaration 2023*.
[118] PLGED states that the leaders 'commit with renewed energy to implement the gender equality actions of [CEDAW]' and the 2013 ASEAN Declaration refers (at 4) to 'strengthening the existing national mechanisms….in implementing, monitoring and reporting the implementation of the concluding observations and recommendations of [CEDAW].'
[119] Secretariat of the Pacific Community, *Revised Pacific Platform for Action on Advancement of Women and Gender Equality 2005 - 2015* (2005); Pacific Community, *Pacific Platform for Action on Gender Equality and Women's Human Rights 2018 - 2030* (2018).
[120] Those States are Holy See, Iran, Niue, Tonga, USA and Palau.

even those states have obligations at the international level to reduce IPV. This is because its prohibition is now widely regarded as a principle of customary international law.[121]

GBVAW generally, and IPV specifically, are also addressed in the *Sustainable Development Goals*, a series of 17 goals adopted by UNGA in 2015.[122] Achieving gender equality and empowering all women and girls is set as Goal 5, with eliminating all forms of violence against women in the public and private spheres being a key target.[123] The first of two indicators under that target relates to the proportion of women and girls over 15 ever subjected to physical, sexual or psychological IPV. [124]

The SDGs do not constitute a part of the international human rights law framework as such. Indeed, the relationship between the two has been contentious.[125] For the purposes of this thesis, however, what is most is significant is that (as is demonstrated in the discussion of donor priorities, below) the international development policies of the high-income countries providing the most support towards the reduction of IPV in aid-receiving countries place a heavy emphasis on both the protection of human rights and the advancement of the SDGs, with the two almost invariably being discussed side-by-side. What this means in practice is that initiatives that demonstrate alignment with human rights principles and the SDGs are significantly more likely to attract international funding. Moreover, the steps most

[121] Erturk (n 64) 8; See also United Nations Committee on the Elimination of Violence Against Women, 'General Recommendation No 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19' (n 2) l(2).

[122] See United Nations General Assembly, *Transforming our World: the 2030 Agenda for Sustainable Development*, 70th session, Agenda items 15 and 116, A/RES/70/1 (21 October 2015). Note the SDGs succeeded the Millenium Development Goals, which entailed 8 goals adopted at the United Nations Millenium Summit in 2000. A detailed plan to achieve the MDGs was presented to the UN Secretary General in 2005 in which the promotion of gender equality and empowerment of women was identified as Goal 3. While the MDG action plan included only one express target (to eliminate gender disparity in primary and secondary education by no later than 2015), it recommended that the governments of developing nations adopt broader poverty reduction strategies to, inter alia, focus on women's and girl's right to freedom from violence: Jeffrey Sachs and Earthscan, *Investing in Development :A Practical Plan to Achieve the Millennium Development Goals* (Earthscan, 2005) <https://digitallibrary.un.org/record/564468>.

[123] SDGs Goal 5, Target 5.2. For an overview and critique of the expansion of the MDGs to address GBVAW see Cornwall and Rivas (n 71).

[124] SDGs Goal 5, Target 5.2, Indicator 5.2.1 which reads as follows: 'Proportion of ever-partnered women and girls aged 15 years and older subjected to physical, sexual or psychological violence by a current or former intimate partner in the previous 12 months, by form of violence and by age.'

[125] Philip Alston, 'Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen through the Lens of the Millennium Development Goals' (2005) 27(3) *Human Rights Quarterly* 755; Karen Morrow, 'Chapter 7: Gender and the Sustainable Development Goals' in *Sustainable Development Goals* (Edward Elgar Publishing, 2018) 149; Gillian MacNaughton and Diane F Frey, 'Decent Work, Human Rights and the Sustainable Development Goals' (2016) 47 *Georgetown Journal of International Law* 607. From a human rights perspective, key concerns include whether the setting of goals is reductive (particularly given their full achievement alone will not result comprehensive compliance with international human rights treaties) and whether progress towards the SDGs is likely to be hampered by the fact that (unlike obligations under international human rights law) the goals set out in the SDGs are not binding.

commonly taken towards the achievement of SDG target 5.2 (relating to the elimination of GBVAW) follow the blueprint provided by the international human rights law framework.

IPV as a key form of GBVAW

So far, this chapter has outlined how GBVAW has come to be seen as a human rights issue and demonstrated that GBVAW is the subject of both customary international law and human rights conventions and declarations that the majority of the world has signed up to. Given the focus of this thesis is on IPV in particular it is important to make clear that IPV falls within the category of GBVAW by any accepted definition.

Contemporary understandings of GBVAW include a wide range of conduct from female genital mutilation/circumcision, trafficking and prostitution, forced abortion and sterilisation, to honor killings, female foeticide and infanticide.[126] General Recommendation 19 defines 'violence against women' broadly as 'violence that is directed against a woman because she is a woman or that affects women disproportionately', including acts or threats of acts that inflict physical, mental or sexual harm.[127]

While contemporary conceptions are broad, early initiatives to address GBVAW at the international level focused primarily on violence within the family and the original understanding of 'violence against women' was most concerned with IPV in the form of men's rape, assault and/or murder of their partners.[128] IPV falls squarely within the ambit of General Recommendation 19, UNDEVAW, the Beijing Declaration, the Convention of Belem do Para, the Maputo Protocol, the Istanbul Convention, the 2013 ASEAN De2023 PLGED and UNGA Resolution 71/170 on the Intensification of efforts to prevent and eliminate all forms of violence against women and girls: domestic violence.[129] As noted

[126] Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (n 3) 21.
[127] United Nations Committee on the Elimination of Violence Against Women, 'General Recommendation No 19: Violence Against Women' (n 2) para 6.
[128] UN Secretary-General (n 91) 13; Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (n 3) 21.
[129] United Nations Committee on the Elimination of Violence Against Women, 'General Recommendation No 19: Violence Against Women' (n 2) Para 6, Recs 24(b) and (r); *Declaration on the Elimination of Violence Against Women* (n 100) Arts 1 and 2(a); *Beijing Declaration and Platform for Action* (n 2) Para 113(a); *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* (n 106) Art 1; *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (n 107) Art 1(j); *Convention on Preventing and Combating Violence Against Women and Domestic Violence* (n 107) Art 3(a); *Resolution 71/170 on the Intensification of Efforts to Prevent and Eliminate All Forms of Violence against Women and Girls: Domestic Violence 2017* Preamble 4 and 5; Editors Asia-Pacific Journal On Human Right (ed), 'The Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children in ASEAN' (2013) 14(1–2) *Asia-Pacific Journal On Human Rights and The Law* 155, Preamble; *Revitalised Pacific Leaders Gender Equality Declaration* (n 117) Para 13(r).

above, IPV is also the express focus of SDG indicator 5.2.1, the first of two SDG indicators under the target of eliminating GBVAW.

The Special Rapporteur on violence against women, including its causes and consequences also paid particular attention to IPV from the outset. In her preliminary report released in 1994, Radhika Coomaraswamy (the first to be appointed to the position of Special Rapporteur) referred to the pervasiveness of 'domestic violence,' noting the most prevalent form of it to be IPV.[130] The first *thematic* report of the Special Rapporteur, submitted in 1996, focused specifically on violence in the family, covering IPV in detail and again noting it to be the most common form of domestic violence.[131] This was followed by a further report on domestic violence in 1999.[132]

State obligations in relation to IPV under international human rights law

As outlined above, it is beyond doubt that IPV falls within any accepted definition of GBVAW and the scope of all relevant international human rights instruments both 'hard' and 'soft.'[133] Accordingly, each of those instruments require (in the case of 'hard' law) and recommend (in the case of 'soft') that proactive measures be taken by states to eliminate IPV. The level of detail that appears in the different instruments varies significantly. The most detailed is the Istanbul Convention, which enumerates more than 111 requirements in terms of, inter alia, legislative measures, awareness-raising, education, the training of professionals, and the provision of support services and shelters.[134] On the other end of the spectrum, the Maputo Protocol is scant in detail, talking to broad obligations such as 'enact[ing] and enforc[ing] laws to prohibit all forms of violence against women…whether the violence takes place in public or in private.'[135] What is significant for the purposes of this thesis is that all of the instruments address the same key issues with consistent (though not always identical) provisions.

All of the instruments in question place a heavy emphasis on the role of legislative measures to eliminate IPV, with the majority specifically referring to penal and civil sanctions to redress the wrongs

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[130] Radhika Coomaraswamy, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences: Preliminary Report* (No E/CN.4/1995/42, United Nations Commission on Human Rights, 22 November 1994) paras 105 and 118.

[131] Radhika Coomaraswamy, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences: Violence in the Family* (No E/CN.4/1996/53, United Nations Commission on Human Rights, 5 February 1996) paras 56-65. Note that for the purposes of the report IPV is referred to as 'woman battering', and martial rape is considered a separate issue.

[132] Radhika Coomaraswamy, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences: Violence against Women in the Family* (No E/CN.4/1999/68, United Nations Commission on Human Rights, 10 March 1999).

[133] CEDAW and the regional conventions constitute the main form of binding or 'hard' law at the international level, and the declarations and general recommendations constitute the main source of non-binding, 'soft' law.

[134] *Convention on Preventing and Combating Violence Against Women and Domestic Violence* (n 107) Chapters III-VI.

[135] *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (n 107) Art IV(2)(a).

caused to women who are subject to it.[136] Promoting awareness and observance of the right of women to live a life free of violence and have their human rights respected also features in the majority of instruments.[137] All of the instruments address the need to promote gender equality and/or cultural change to eliminate attitudes that view women as subordinate to men,[138] and many specifically refer to the elimination of cultural and customary practices which legitimise or exacerbate GBVAW.[139] Many call for national plans on the elimination of GBVAW.[140]

As will be demonstrated in chapters two and three, internationally funded programs to reduce IPV in low- and middle-income countries are commonly directed towards programs and initiatives that seek to advance the measures required under relevant human rights instruments.

States also have an obligation of *due diligence* to take steps to eliminate IPV as a result of both express provisions of international conventions and customary international law. [141] Because IPV constitutes a form of GBVAW that can amount to discrimination for the purposes of CEDAW, parties to CEDAW are required to take all appropriate measures to prevent it.[142] This obligation of due diligence requires states to take measures to investigate, prosecute, punish and provide reparations for IPV.[143] This includes taking steps to ensure relevant laws are not only in force but also effective.[144] An express obligation of due diligence to prevent, investigate and punish acts of IPV is also set out in the UNDEVAW, Beijing Declaration, Convention of Belem do Para and the Istanbul Convention.[145]

Debate remains about what exactly is required of states as a result of the obligation of due diligence and the relationship between that duty and the positive obligations on states set out in the various

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[136] See in particular GR 19 24 (b), (r) and (t); UNDEVAW 4(d); Beijing Declaration 124(c) and (d); Convention of Belem do Para 7(c), (f) and (g); Maputo Protocol 2(a), (b) and (e); 2004 ASEAN Declaration 1.4 and 1.6; Istanbul Convention 4(1) and Chapters V and VI; GR 35 29(a) – (c) and 31(a)(ii); and 2013 ASEAN Declaration 1 and 3.

[137] See in particular GR 19 24(t); UNDEVAW 4(3); Beijing Declaration 125(e) and 126(b); Convention of Belem do Para 8(a); Maputo Protocol IV 2(f) and V(a); 2004 ASEAN Declaration 1.6; Istanbul Convention 13 and 17; GR 35 30(b)(ii).

[138] See in particular GR 19 11 and 21; UNDEVAW preamble, 3(b) and 4(j); Beijing Declaration 118, 124(k), 125(j), 129(d), 245(a) and 277(b); Convention of Belem do Para 6(b) and 8(b); Maputo Protocol preamble, II(2), VIII(d) and IV(2)(d); 2004 ASEAN Declaration preamble; Istanbul Convention preamble, 12(1) and 14(1); GR 35 30(a), (b)(i) and (d); 2013 ASEAN Declaration preamble and 3.

[139] See in particular GR19 24(f); UNDEVAW 2(a); Beijing Declaration 113(a), 118 and 124(i); Convention of Belem do Para 7(e); Maputo Protocol IV(2)(d); Istanbul Convention 12(5) and 42(1); GR 35 26(a) and (b) and 29(c); 2013 ASEAN Declaration preamble and 3.

[140] See in particular UNDEVAW 4(e); Beijing Declaration 124(j); and Istanbul Convention 7.

[141] See articles/paragraphs 2(e), 4(c), 124(b), 7(b), 5(2) and 12(2) respectively. As to the status of the obligation of due diligence as a principle of customary international law see *Oxford Public International Law* (online at 13 July 2023) 'Due Diligence' para 4.

[142] *Convention on the Elimination of All Forms of Discrimination Against Women* (n 80) Art 2(e).

[143] United Nations Committee on the Elimination of Violence Against Women, 'General Recommendation No 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19' (n 2) para 2(b).

[144] Ibid para 24.

[145] See articles/paragraphs 4(c), 124(b), 7(b), 5(2) and 12(2) respectively.

instruments.[146] However, there is some case law that is informative. In the landmark 1988 decision of *Velasquez-Rodriguez v Honduras*, the Inter-American Court on Human Rights found that a state could be liable for human rights violations conducted by private individuals where it failed to take its duty of due diligence seriously.[147] While the Velasquez-Rodriguez matter related to disappearances rather than IPV, states have been found by a number of judicial and quasi-judicial international bodies, including the CEDAW Committee, to be in breach of their duty of due diligence as a result of a failure to take adequate steps to investigate and/or prosecute alleged crimes relating to spousal abuse, and/or provide adequate reparations to victim/survivors.[148]

Various annual thematic reports of the Special Rapporteur also provide insight into how the obligation of due diligence has been interpreted and how it has been acted upon by states. In her 1999 report on domestic violence, Coomaraswamy set out a number of matters to be considered in determining whether states were meeting their obligation of due diligence.[149] These included whether CEDAW had been ratified; whether there was a constitutional guarantee of equality for women or prohibition on GBVAW; whether there was national legislation and/or administrative sanctions that provided adequate redress for women victims of violence; whether there were executive policies/plans of action to deal with GBVAW; whether the criminal justice system was sensitive to issues pertaining to GBVAW; whether women victims of violence have support services (including legal services); whether appropriate measures have been taken to raise awareness of GBVAW as a human rights violation and to modify practices that discriminate against women; and whether data/statistics are being collected in a manner that ensures the problem of GBVAW is not invisible.

In 2006, Yakin Erturk (who took over the role of Special Rapporteur in 2003) noted that, by and large, states were seeking to discharge their obligation of due diligence by adopting specific legislation,

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[146] For discussion of the obligation of due diligence and the debates surrounding it see, for example, Vladislava Stoyanova, 'Due Diligence versus Positive Obligations: Critical Reflections on the Council of Europe Convention on Violence against Women' in J Nieme, L Peroni and Vladislava Stoyanova (eds), *International Law and Violence Against Women* (Routledge, 2020); Shazia Qureshi, 'The Emergence/Extention of Due Diligence Standard to Assess the State Response towards Violence against Women/Domestic Violence' (2013) 28(1) *South Asian Studies* 55; Carin Benninger-Budel, 'The History and Development of the Due Diligence Standard in International Law and Its Role in the Protection of Women against Violence' in *Due Diligence and Its Application to Protect Women from Violence* (BRILL, 2008) 47.

[147] *Velásquez Rodríguez v Honduras* (29 July 1988) at 174 and 177; See also discussion in Coomaraswamy, 'Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences: Violence against Women in the Family' (n 132) 8.

[148] Among the most notable cases are *Maria da Penha v Brazil, Case 12051, Report No 54/01, OEA/SerL/V/II111 Doc 20 rev at 704 (2000)* (Inter-American Commission on Human Rights); Committee on the Elimination of, 'Communication No.: 2/2003, and Ms. A. T. v. Hungary' <https://www.un-ilibrary.org/content/books/9789210606820>.

[149] Coomaraswamy, 'Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences: Violence against Women in the Family' (n 132) 8–9.

developing and implementing awareness-raising campaigns and providing training to relevant professional groups.[150] She noted that the majority of legislation adopted by states in relation to IPV provides for both criminal sanctions and civil remedies in the form of expulsion and/or restraining orders (also commonly referred to as protection orders).[151] In other words the majority of legislation adopted is in the form of Standard IPV Legislation.

In 2013, writing on state responsibility for eliminating GBVAW, Rashida Manjoo (the third woman to hold to role of Special Rapporteur) noted that the due diligence standard provided a tool with which states could be held accountable and an assessment framework for evaluating the performance of states in seeking to eliminate GBVAW.[152] She noted that, for due diligence to be satisfied, the framework established by the state must be effective in practice.[153] Manjoo also reiterated the call for states to ensure civil and criminal measures were put in place to hold offenders accountable and ensure victim safety.[154]

As a result of the international human rights framework, states have been under pressure to implement legislative reforms to address IPV. There is significant evidence to suggest that aid-dependent governments commonly feel compelled to ratify and implement international human rights conventions (including CEDAW) due to the (real or perceived) impact this will have on their status as good international citizens and the ongoing flow of aid from high-income nations.[155] As will be further discussed in chapter six, while there has been an increasing emphasis on local ownership of

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[150] Erturk (n 64) 10.
[151] Ibid.
[152] Rashida Manjoo, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences: State Responsibility for Eliminating Violence against Women* (No A/HRC/23/49, United Nations General Assembly Human Rights Council, 14 May 2013) 1.
[153] Ibid.
[154] Ibid 7. Note the terminology used by the OECD is 'violence against women and girls.'
[155] Douglas Hamilton Spence, 'Foreign Aid and Human Rights Treaty Ratification: Moving beyond the Rewards Thesis' (2014) 18(Issues 4-5) *International Journal of Human Rights* 414; Arvind Magesan, 'Human Rights Treaty Ratification of Aid Receiving Countries' (2013) 45 *World Development* 175; Aletta Biersack and Martha Macintyre, 'Introduction: Gender Violence and Human Rights in the Western Pacific' in Aletta Biersack Margaret Jolly and Martha Macintyre (eds), *Gender Violence and Human Rights: Seeking Justice in Fiji, Papua New Guinea and Vanuatu* (ANU Press, 2016) 1, 27; Margaret Jolly, '"When She Cries Oceans": Navigating Gender Violence in the Western Pacific' in Aletta Biersack, Margaret Jolly and Martha Macintyre (eds), *Gender Violence and Human Rights: Seeking Justice in Fiji, Papua New Guinea and Vanuatu* (ANU Press, 2016) 341, 357; DB Subedi, Gordon Nanau and Dip Magar, 'From a "Cultural Logic" to an "Institutional Logic": The Politics of Human Rights in Pacific Island Countries' (2021) 20(5) *Journal of Human Rights* 528, 533; Vijay Naidu, 'Development Assistance Challenges' in M Powles (ed), *Pacific Futures* (ANU Press, 2006) 142, 277. It is important to note, however, that human rights compliance is only one of a number of significant factors that impact on aid flows. It has been suggested that human rights compliance and the maintenance of democracy have been superseded in relevance in the post-2000 period by security interests. See Gordon Crawford and Simonida Kacarska, 'Aid Sanctions and Political Conditionality: Continuity and Change' (2019) 22(1) *Journal of International Relations and Development* 184.

development programs and activities, donor priorities continue to influence policy development in recipient countries, whether directly and indirectly.[156]

Internationally funded projects to eliminate IPV in the 'Global South'

While a lack of comprehensive and consistent data makes it difficult to accurately quantify the contributions made by high-income countries to initiatives aimed at eliminating IPV in low- and middle-income countries across the globe,[157] an analysis of available data and research make two things clear: the first is that the investment is significant - the worldwide elimination of IPV is a clear focus of the international community. The second is that the vast majority of funded programs and initiatives support the domestic implementation of the international human rights law framework.

In 2016 the OECD created a new code for Development Assistance Committee (**DAC**) members to report on official development assistance (**ODA**) directed specifically towards ending GBVAW.[158] In 2021, the OECD released its first report that focused specifically on funds allocated against the new code (**OECD GBVAW Report**).[159] The OECD GBVAW Report indicates that in 2017 DAC members reported committing approximately USD203 million in ODA to initiatives aimed at GBVAW; in 2018 they reported approximately USD600 million, and in 2019 USD439 million was reported.[160]

According to the OECD GBVAW Report, the largest ODA contribution made by a DAC member to initiatives aiming to end GBVAW was the European Union, which reported USD 76 million in 2019.[161] Ending GBVAW falls within one of four thematic programmes of the EU, being its human rights and democracy program.[162] Through its Global Europe tool, the EU also funds programs being run in partner countries to help them to achieve the SDGs, including SDG5.[163]

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[156] See, for example, Malin Hasselskog, 'What Happened to the Focus on the Aid Relationship in the Ownership Discussion?' (2022) 155 *World Development* 105896; Haley J Swedlund and Malte Lierl, 'The Rise and Fall of Budget Support: Ownership, Bargaining and Donor Commitment Problems in Foreign Aid' (2020) 38(S1) *Development Policy Review* O50.

[157] For an analysis of some of the implications of data gaps see Jessica Collins, 'Pacific Aid Map: Big Data Gaps Are Skewing the Story About Women', *The Interpreter* (20 November 2023) <https://www.lowyinstitute.org/the-interpreter/pacific-aid-map-big-data-gaps-are-skewing-story-about-women>.

[158] Matthys Frederik, *Development Finance towards the Elimination of Gender-Based Violence* (OECD, 2021) 3.

[159] Frederik (n 158).

[160] Ibid 8. Note that OECD suggests these figures are likely to be underestimates due to a combination of factors, including that not all members had started reporting against this code by 2019, and financing for GBVAW initiatives may also be reported against other codes (such as those relating to gender equality more broadly).

[161] Ibid.

[162] European Commission, *Thematic Programme on Human Rights and Democracy Multi-Annial Indicative Programming 2021 - 2017* (2020).

[163] 'Funding and Technical Assistance' <https://international-partnerships.ec.europa.eu/funding-and-technical-assistance_en>.

In terms of member *states*, the OECD GBVAW Report indicates that the top donors to GBVAW in 2019 were Canada (USD 71 million), Norway (USD49 million), Sweden (USD39 million), the UK (USD 38 million) and Australia (approximately USD 27 million).[164] A brief overview of official government reports and strategies from each of these jurisdictions demonstrates that the commitment to funding international GBVAW programs is underpinned by a commitment to the international human rights framework and the SDGs. Canada and Norway both have self-proclaimed 'feminist' international assistance policies that are explicitly grounded in the international human rights framework.[165] Both cite SDG 5 as the backdrop for their strategic work in relation to gender equality.[166] Both include the elimination of GBVAW as among their 5 thematic focus areas, and both refer specifically to the elimination of IPV.[167] Until recently, the Government of Sweden also endorsed a 'feminist' development policy that was firmly rooted in human rights and addressed IPV as a specific priority.[168] In October 2022, the newly elected conservative government of Sweden renounced the 'feminist' policy but reaffirmed its commitment to promoting gender equality in its international aid efforts.[169] Its current international development cooperation strategy (covering the years 2022 – 2026) continues to affirm a commitment to advancing SDG 5.[170] Both the UK and Australia also expressly affirm their commitments to advancing SDG5, gender equality, the promotion of women's human rights and the elimination of GBVAW through their international aid funding.[171] Most recently, the new international gender equality strategy of the Australian Government explicitly identifies gender equality as a human right, and ending GBVAW as the first of five strategic priorities.[172] It commits to using the 'levers of

[164] Frederik (n 158) 9.

[165] Global Affairs Canada, *Canada's Feminist International Assistance Policy* (2017); Norwegian Ministry of Foreign Affairs, *Freedom, Empowerment and Opportunities – Action Plan for Women's Rights and Gender Equality in Foreign and Development Policy 2016-2020* (2016).

[166] See, for example, Global Affairs Canada (n 165) ii and 8; Norwegian Ministry of Foreign Affairs (n 165) foreword, 6.

[167] Global Affairs Canada (n 165) 19; Norwegian Ministry of Foreign Affairs (n 165) 23.

[168] Ministry of Foreign Affairs, Government of Sweden, 'Handbook on Sweden's Feminist Public Policy' see in particular pages 6 and 22 <https://fojo.se/wp-content/uploads/2022/03/handbook-swedens-feminist-foreign-policy.pdf>.

[169] AFP, 'Swedish Government Scraps Country's Pioneering "Feminist Foreign Policy"', *The Guardian* (online, 18 October 2022) <https://www.theguardian.com/world/2022/oct/18/swedish-government-scraps-countrys-pioneering-feminist-foreign-policy>. In renouncing the policy, Foreign Minister Tobias Billstrom stated 'gender equality is a fundamental value in Sweden and…for this government. But we are not going to use the expression 'feminist foreign policy' because labels on things have a tendency to cover up the content.'

[170] Ministry of Foreign Affairs, Government of Sweden, *Strategy for Sweden's Global Development Cooperation on Sustainable Economic Development 2022 - 2026* (28 July 2022) 4.

[171] See, for example, Department for International Development, *DFID Strategic Vision for Gender Equality: A Call to Action for Her Potential* (March 2018); 'Australia's International Support for Gender Equality', *Australian Government Department of Foreign Affairs and Trade* <https://www.dfat.gov.au/international-relations/themes/gender-equality/Australias-international-support-for-gender-equality>.

[172] Australian Government Department of Foreign Affairs and Trade, *Australia's International Gender Equality Strategy: For a Safer, More Prosperous Indo-Pacific and World* (2025) 9.

foreign policy' to push for gender equality and to ground that work in international norms and standards.[173]

It is worth noting that there is some tension between the international development assistance strategies of the likes referred to above (which emphasise clear political and policy priorities in the context of aid provision) and the commitments of those same countries to providing development assistance that supports local priorities, ambitions and leadership.[174] That tension will be examined more closely in respect of law and development generally in chapter six, and the Solomon Islands case study in chapter two. So too will the extent and nature of international development funding to eliminate IPV.

Key advantages of a human rights-based conception of IPV

There are clear advantages of conceptualising IPV as a human rights violation for those pursuing its elimination.[175] The point is commonly made that the international human rights framework provides an established and recognised mechanism that lends legitimacy to the political demands of advocates,[176] and a vocabulary that can be utilised to give strength and solidarity to global and transnational movements.[177] As Tracey Banivanua-Mar eloquently suggests, human rights 'form a foundational rock upon which discrete communities of the oppressed the world over can find common ground.'[178] Even within the context of a difficult domestic setting, the rhetoric of rights can be leveraged by those fighting for the interests of the marginalised by appealing to principles with wide international support to bring pressure to bear locally.[179]

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[173] Ibid 13 and 15.

[174] In relation to Australia's commitment to local solutions and leadership, for example, see Australian Department of Foreign Affairs and Trade, *Australia's International Development Policy: For a Peaceful, Stable and Prosperous Indo-Pacific* (August 2023) 3–4, 8, 10–11, 25, 30, 33 and 38–40.

[175] As indicated at the outset of this chapter, this Part is dedicated to considering *advantages* of conceptualising IPV as a human rights issue. Key *challenges* will be examined in Part 2.

[176] See, for example, Friedman (n 79) 19; Margaret A McLaren, 'Decolonising Rights: Transnational Feminism and "Women's Rights as Human Rights"' in Margaret A McLaren (ed), *Decolonising Feminism: Transnational Feminism and Globalisation* (Rowman & Littlefield Publishers, 2017) 83, 86; Charlesworth, Chinkin and Wright (n 65) 638.

[177] See, for example, Erturk (n 64) 14; Bunch and Reilly (n 91) 14; Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (n 3) 1; Charlotte Bunch and Susana Fried, 'Beijing '95: Moving Women's Human Rights from Margin to Center' (1996) 21(1) *Signs* 203–204 <https://www.jstor.org/stable/3175048>; Martha C Nussbaum, 'Women's Progress and Women's Human Rights' (2016) 38(3) *Human Rights Quarterly* 589.

[178] Tracey Banivanua-Mar, 'Focussing on the Margins of Rights: Human Rights through the Lens of Critical Race Theory' (2007) 43 *Just Policy* 55, 55. So as not to mischaracterise the position of Banivanua-Mar it is important to note that while she recognises the strengths of mainstream human rights discourse and movements she is ultimately critical of them, suggesting that 'conceptual power is arguably where the potency of human rights ends.'

[179] Sue Farran, *Human Rights in the South Pacific: Challenges and Changes* (Routledge Cavendish, 2009) 112. See also Biersack and Macintyre (n 155) 9.

Rights discourse has been recognised as offering a focus for international feminism that can translate into action if responses to women's claims are inadequate,[180] as well as a framework for facilitating the realisation of equal protection under the law by states.[181] Yuval-Davis notes that the discourse of rights has enabled women's groups, both local and transnational, to challenge discriminatory customs and legislation around the world.[182]

The rights discourse has also commonly been credited with empowering women, bringing them to recognise themselves as rights-bearers and advocate accordingly. Charlesworth refers to the empowering function of rights discourse as a 'crucial aspect of its value.'[183] Coomaraswamy notes that notions of self-hood can be transformed by the human rights discourse, allowing for the challenge of local systems of deference and interaction.[184] Reflecting on her own experience as a feminist human rights activist in Puerto Rico in the 1990s, Suarez Toro spoke of 'rebuilding…personhood and…gaining…a sense of empowerment' through the process of building a human rights-based movement at the grassroots level.[185]

As discussed above, human rights principles and discourse underpin the international aid strategies of the high-income countries making the biggest contributions to international programming to reduce IPV and the vast majority of countries across the world are bound by the provisions of one or more of the international human rights instruments that place obligations on states to take action to eliminate it. As a result of these two factors, aid-giving and aid-receiving governments alike have an incentive to support initiatives designed to reduce IPV that are rooted in human rights principles and concepts. Rightly or wrongly, such a grounding makes funding more readily available.

Conclusion

This chapter has demonstrated how IPV (as the most common form of GBVAW across the globe) came to be seen as an international human rights issue, and the implications this has had for countries across the globe. It is in no small part because of the international human rights framework (most notably, obligations of states under international conventions) that more than 85% of countries now have legislative frameworks that specifically address IPV.

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[180] Charlesworth (n 67) 61.
[181] McLaren (n 176) 103.
[182] Nira Yuval-Davis, 'Human/Women's Rights and Feminist Transversal Politics' in *Global Feminism* (New York University Press, 2006) 273, 276.
[183] Charlesworth (n 67) 1.
[184] Radhika Coomaraswamy, 'Are Women's Rights Universal? Re-Engaging the Local' (2002) 3(1) *Meridians* 1, 14.
[185] Maria Suarez Toro, 'Popularising Women's Human Rights at the Local Level: A Grassroots Methodology for Setting the International Agenda' in Julie Wolper and Andrea Peters (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (Taylor & Francis Group, 1995) 189, 190–191.

The remainder of this Part introduces the case study that forms a central part of this thesis: the development and implementation of the FPA in Solomon Islands. Chapter two outlines the broad social, historical and political context of Solomon Islands. Chapter three then looks specifically at the occurrence of IPV in Solomon Islands and the FPA itself.

The examination in the two chapters to follow focuses primarily on the FPA as a concrete example of how the international human rights law framework can influence the development of state responses to IPV in Focus Countries. It pays particular attention to the *benefits* of the conceptualisation of IPV as a human rights issue for those on the ground pursuing its elimination. In Part Two of this thesis the Solomon Islands case study will be considered again, this time to examine the key *challenges* associated with such a conceptualisation.

Chapter 2: Solomon Islands context, aid and donor priorities

> 'We the people of Solomon Islands, proud of the wisdom and the worthy customs of our ancestors, mindful of our common and diverse heritage and conscious of our common destiny, do now, under the guiding hand of God, establish the sovereign democratic State of Solomon Islands.' Solomon Islands Independence Constitution[186]

The first chapter in this Part looked at the journey to recognition of IPV as a human rights issue and the consequent obligations placed on countries around the world to take steps to eliminate it. The point was made that these obligations, combined with the tendency of aid-providing countries to favour rights-based approaches to IPV reduction, has pushed many aid-dependent nations towards the implementation of Standard IPV Legislation. The first chapter ended by pointing to some of the key advantages of conceptualising IPV as a human rights issue for advocates and activists pursuing its elimination, and suggested it provides significant leverage to push for state action to reduce IPV.

What the first chapter in this Part did *not* do was provide a picture of what it looks like on the ground in aid-dependent nations when the technical and financial resources required to implement Standard IPV Legislation are provided largely or wholly through international aid. The remainder of this Part is dedicated to building such a picture, through the introduction of the case study of the *Family Protection Act 2014* (Solomon Islands) (**FPA**).

One of the key reasons the FPA has been chosen as the case study for this thesis is because it provides a textbook example of Standard IPV Legislation being implemented in a Focus Country. As such, it makes an excellent site for an examination of the key issues in play. Ultimately, it is through the Solomon Islands case study that this thesis demonstrates the value of taking a capabilities-informed approach to the design and implementation of legal empowerment programming to facilitate the implementation of Standard IPV Legislation. Before that can happen, however, it is important to set the scene by providing an overview of the relevant social, political and cultural context given the significant implications contextual factors have for effective legislative implementation. This chapter provides such an overview.

This chapter opens by providing a brief account of the geography, demography and recent history of Solomon Islands before going on to identify it as one of the most aid-dependent nations in the world. The official development priorities and strategies of the key donors and multilateral organisations supporting the reduction of IPV in Solomon Islands are then examined, and the point made that all

[186] *Constitution 1978* (Solomon Islands) preamble.

place significant emphasis on legislative measures to reduce violence against women, rights-based approaches to development and the promotion of gender equality. This is significant because (as we will see in the next chapter) the vast majority of work being undertaken in Solomon Islands to reduce IPV, at least at the level of the State, is funded largely through donations from aid-giving countries. This chapter ends by introducing the key organisations carrying out work in the family violence space in Solomon Islands.

Brief overview of contemporary Solomon Islands: geography, history, law and economy

Solomon Islands is an archipelago in the southwest Pacific subregion of Melanesia. It is comprised of approximately 997 islands that stretch almost 1,700km between the tip of Papua New Guinea and the northern-most islands of Vanuatu.[187] Six of the islands making up the country are considerably bigger and more densely populated than the others. Those are Choiseul, New Georgia, Santa Isabel, Guadalcanal, Malaita and Makira.

A former British Protectorate, Solomon Islands gained independence in 1978, at which time a government of parliamentary democracy was established.[188] For the purposes of local government, Solomon Islands is divided into 10 administrative areas.[189] Population density varies considerably across administrative areas. The most recent census data suggests that, as at 2019, the most populated administrative area (Malaita) had more than 42 times as many inhabitants as the least populated (Rennell-Bellona). [190] The total population of Solomon Islands in 2019 was approximately 720,956.[191] More than 70% of the population lives in rural areas.[192]

Largely as a result of the colonial history of Solomon Islands, the country has a plural legal system.[193] Between 1892 and 1978 (the period in which it was a British Protectorate) formal law was introduced

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[187] Solomon Islands National Statistics Office and Ministry of Finance and Treasury, *2019 Population and Housing Census National Report (Vol. 1)* (Solomon Islands Government, September 2023) 2.
[188] Ibid.
[189] Guadalcanal Province is one such area. Despite its physical location on the island of Guadalcanal, the capital city of Honiara is another. The remaining 8 administrative areas are made up of the provinces of Choiseul, Western, Isabel, Central, Rennell-Bellona, Malaita, Makira-Ulawa and Temotu.
[190] Solomon Islands National Statistics Office and Ministry of Finance and Treasury (n 187) 10. Malaita has a population of approximately 172,740. Rennell-Bellona's population is estimated to be 4,100.
[191] Ibid 3.
[192] Ibid xxiii.
[193] For the purposes of this chapter, Solomon Islands is regarded as having a plural legal system because of the parallel formal and informal systems of justice and dispute resolution. For a detailed discussion of the history and ubiquity of legal plurality more generally see Brian Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global' [2008] (30) *Sydney Law Review* 375. For a discussion of legal pluralism in Solomon Islands specifically see Martha Manaka and Jennifer Corrin, 'Legal Pluralism and the Public Solicitor's Office of Solomon Islands' (2021) 53(3) *The Journal of Legal Pluralism and Unofficial Law* 397; Jennifer Corrin Care, 'Between a Rock and a Hard Place: Women, Religion and Law in Solomon Islands' in Carolyn Evans and Amanda Whiting (ed), *Mixed Blessings: Laws, Religions, and Women's Rights in the Asia-Pacific Region* (Martinus Nijhoff Publishers, 2006) 101; Jennifer Corrin, 'Constitutionalism and Customary Laws in Solomon Islands' in Guillame

in Solomon Islands for the first time. The laws of England were applicable,[194] and additional legislation could be made by the British High Commissioner for the Western Pacific.[195] In this period of protectionism, customary law was formally recognised only in relation to customary land,[196] although the colonial administration allowed the ongoing use of indigenous customs by customary leaders as a form of social control.[197] This may have been partly a result of the fact that Britain had established the Solomon Islands protectorate somewhat reluctantly, at the urging of Australia who feared regional instability in the event of takeover by another imperial force.[198]

In 1978 Solomon Islands became independent and the Solomon Islands Constitution came into force.[199] Under the Constitution, existing formal law remained in effect[200] and the ongoing authority of customary law was expressly recognised.[201] Significantly for the purposes of this thesis, the Constitution pledged to 'uphold the principles of equality'[202] and incorporated a bill of rights to which all Solomon Islanders are purportedly entitled irrespective of, inter alia, their sex.[203] Enumerated rights include those of life, security of the person and protection of the law.[204] In respect of international treaty law, treaties to which Solomon Islands becomes a party do not become a part of the domestic law unless and until incorporated by domestic legislation.[205] It has long been suggested that balancing

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Tusseau (ed), *Debating Legal Pluralism and Constitutionalism: New Trajectories for Legal Theory in the Global Age* (Springer, 2020) 273.

[194] For detail as to the authorities directing that the law of England apply in Solomon Islands in the period of the protectorate see Corrin, 'Constitutionalism and Customary Laws in Solomon Islands' (n 193) 275. As Corrin suggests therein, English principles of common law and equity were introduced, but only so far as appropriate to the circumstances of the country.

[195] Ibid.

[196] This is because, as a result of Solomon Islands' status as a protectorate rather than a colony, Britain made no claim to land there. Ibid.

[197] Ibid. In relation to the largely 'hands off' approach of the colonial administration see also Sinclair Dinnen, 'The Solomon Islands Intervention and the Instabilities of the Post-Colonial State' (2008) 20(3) *Global Change, Peace & Security* 339, 344; Jennifer Corrin Care, 'Negotiating the Constitutional Conundrum: Balancing Cultural Identity with Principles of Gender Equality in Post-Colonial South Pacific Societies' (2006) 5 *Indigenous Law Journal* 51, 55; Hugh Laracy and Eugénie Laracy, 'Custom, Conjugality and Colonial Rule in the Solomon Islands' (1980) 51(2) *Oceania* 133; Kenneth Brown and Jennifer Corrin Care, 'Conflict in Melanesia: Customary Law and the Rights of Women' (1998) 24(3–4) *Commonwealth Law Bulletin* 1334.

[198] Judith Bennet, *Roots of Conflict in Solomon Islands: Though Much Is Taken, Much Abides: Legacies of Tradition and Colonisation* (Discussion Paper No 2002/5, ANU Research School of Pacific and Asian Studies, 2002) 3.

[199] *Constitution* (n 186). Note the Constitution appears as a schedule to the *Solomon Islands Independence Order 1978* ((UK) SI 1978/783).

[200] *Solomon Islands Independence Order 1978* (n 199) s5.

[201] *Constitution* (n 186) Sch. 3 cl. 2. See also s75.

[202] Ibid preamble.

[203] Ibid Art 3. In relation to protection from discrimination more broadly see also Art 15. For an analysis of the exception to the protections of Art 15 to provide for the application of customary law see Corrin Care (n 193) 113.

[204] *Constitution* (n 186) Art 3(a).

[205] Jennifer Corrin, 'Cultural Relativism vs. Universalism: The South Pacific Reality' in Rainer Arnold (ed), *The Universalism of Human Rights* (Springer, 2012) 103, 107.

the preservation of customary norms and rules with the implementation of international human rights treaties poses a significant challenge for Solomon Islands.[206] So too has attention been drawn to the potential for significant conflict between customary law (informed, as discussed in chapter three, by patriarchal norms) and the guarantees of equality and non-discrimination set out in the Constitution.[207]

Officially, the Solomon Islands Constitution and any Acts of Parliament take precedence over customary law,[208] but in practice customary law remains highly influential and in some (primarily rural) areas it remains the only source of law communities have knowledge of or access to.[209] Nonetheless, data emerging from a 2018 access to justice survey undertaken by the United Nation Development Programme (**UNDP**) indicates a relatively high level of community satisfaction with the national Government justice system.[210] Moreover, it indicates that in the case of IPV specifically, police (a part of the formal justice system) were the preferred first port of call, particularly for women.[211] This claim receives some support in the literature, with various scholars asserting that women suffering from gendered violence in Pacific Islands countries (including Solomon Islands) often view state systems as more effective for securing justice than traditional or informal systems.[212] Of course, whether or not police are the preferred first port of call for women in the event of IPV, their ability to fulfil this preference will be dependent on their ability to access the police. This is problematic for many in

[206] Brown and Corrin Care (n 197) 1335.

[207] See, for example, *Converging Currents: Custom and Human Rights in the Pacific* (No Study Paper 17, Law Commission of New Zealand, 2006) 11; Corrin, 'Constitutionalism and Customary Laws in Solomon Islands' (n 193) 279; Corrin Care (n 193) 116; Casandra Harry and Danielle Watson, '"Staka Woman Tumas": An Examination of Police Perspectives on Gender-Balancing within the Royal Solomon Islands Police Force' [2022] *Women & Criminal Justice* 1, 4; Frederick Isom Rohorua, 'Solomon Islands: Colonisation and the Complexity of Nationhood' (2006) 7(1) *Journal of Maori and Pacific Development* 14.

[208] *Constitution* (n 186). To the extent of inconsistency between customary law and the Constitution and/or Acts of Parliament the latter will prevail.

[209] See, for example, Craig Forrest and Jennifer Corrin, 'Legal Pluralism in the Pacific: Solomon Island's World War II Heritage' (2013) 20 *International Journal of Cultural Property* 1, 2. Jalal suggested that as at 2008 the systems of customary law in Melanesia had a more significant impact on women (especially those in rural areas) than formal law systems: Imrana Jalal, *Good Practices in Legislation on Violence Against Women: A Pacific Islands Regional Perspective* (United Nations, 19 May 2008) 2. The ongoing relevance of informal systems is also demonstrated by the data set out in Solomon Islands Ministry of Justice and Legal Affairs, *Access to Justice Study Solomon Islands* (2020) 1–2.

[210] Solomon Islands Ministry of Justice and Legal Affairs (n 209). As a part of this study a representative population survey was undertaken which indicated that 65% of the population were satisfied with the national government justice system: see pages 1 and 2.

[211] Ibid 2. 46.3% of women that participated in the study said they would go to the police first if they or a family member was subjected to IPV. 20% said they would approach the village chief first. For men, 25.9% indicated they would first approach the police about IPV, and 22.8% said they would go to the village chief.

[212] See, for example, Melissa Bull, Nicole George and Jodie Curth-Bibb, 'The Virtues of Strangers? Policing Gender Violence in Pacific Island Countries' (2019) 29(2) *Policing and Society: An International Journal of Research and Policy* 155, 160; Morgan Brigg, V Boege and J Curth, *Working with Local Strengths: Supporting States and Interveners to Institutionalise the Responsibility to Protect: Final Research Report* (University of Queensland, 2010) as cited in Bull et al (this footnote).

Solomon Islands given the majority of the population lives in rural areas and policing is limited outside of provincial centres.[213]

Research also suggests that the 'shadow of the law' acts as an effective deterrent or disincentive within the community, however remote the possibility of state enforcement of formal law.[214] Key informants reported that, in relation to the FPA specifically, the mere existence of the law does act as a deterrent to (potential) perpetrators.[215] In the context of Solomon Islands, indigenous and introduced forms of governance are deeply intertwined.[216] Indeed, Briggs asserts that introduced or 'Western' and local or 'traditional' governance systems are already fused and intertwined to the point where it is impossible and naïve to talk about separation.'[217]

Religion in Solomon Islands

Solomon Islands is a highly religious and spiritual society, with more than 99% of the population being affiliated with a particular religious denomination.[218] The Church of Melanesia is the most highly subscribed religion (32% of the population), followed by Roman Catholic (19.9%), South Sea Evangelical Church (17.3%), Seventh Day Adventist (11.6%) and United Church (9.3%).[219] The remainder of the religiously-affiliated population belong to one of more than 20 other denominations.[220] The centrality of religion in Solomon Islands society is also reflected by the fact that it is referred to in the preamble to the Solomon Islands Constitution, alongside custom.[221]

The prominence of religion in Solomon Islands is not just official. Churches have also long been considered institutions of great political and social importance.[222] The influence of religious teachings and beliefs are evident in many aspects of day-to-day life in Solomon Islands. Walking down the street in Honiara it will take little time to come across a person with a bag, t-shirt or accessory adorned with religious iconography, prayers or quotes from the Bible. Emails from Solomon Islanders – personal and professional alike – are often signed off with 'have a blessed day.' Faith continues to play a significant

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[213] Matthew Allen et al, *Justice Delivered Locally: Systems, Challenges, and Innovations in the Solomon Islands* (World Bank, August 2013) 2.
[214] Ibid 73–74.
[215] KI Catherine Nalakia; KI Sister Rosa; KI Juanita Malatanga; KI Judy Basi; KI Kyla Venokana; KI Bronwyn Spencer; KI Lorah Kwanairara; KI Anon 5.
[216] Morgan Brigg, 'Wantokism and State Building in Solomon Islands: A Response to Fukuyama' (2009) 24(3) *Pacific Economic Bulletin* 148, 154.
[217] Ibid 159.
[218] Solomon Islands National Statistics Office and Ministry of Finance and Treasury (n 187) 90.
[219] Ibid.
[220] Ibid.
[221] The preamble to the Constitution reads as follows: 'We the people of Solomon Islands, proud of the wisdom and worthy customs of our ancestors, mindful of our common and diverse heritage and conscious of our common destiny, do now, under the guiding hand of God, establish the sovereign democratic State of Solomon Islands.'
[222] Solomon Islands Truth and Reconciliation Commission, *Final Report: Confronting the Truth for a Better Solomon Islands Vol. 1* (February 2012) 32.

role even in the lives of Solomon Islanders who claim themselves not to be religious. All but two key informants spoke spontaneously and proudly of their religious affiliations. The two who suggested that they were 'not really' religious nonetheless indicated they their retained faith in God, prayed daily and went to church from time to time.[223]

Churches and religious leaders have also long played a role in mediating family tensions, including those arising from IPV.[224] As will be discussed in chapter six, the significance of having religious leaders and churches support the FPA as an appropriate avenue through which to seek protection from violence cannot be underestimated. This is true not only because of the influence of the church in Solomon Islands, but also because of its reach. While state officials and institutions might not have a presence in more rural parts of Solomon Islands, the church invariably will.[225]

The 'nation' of Solomon Islands and recurring civil unrest

From the perspective of the international legal and development community, providing a broad sketch of the geography and politics of Solomon Islands and the demography of its people is relatively straightforward. Indeed, in this chapter I attempt to do just that. It is important to explicitly acknowledge, however, that such a sketch will inevitably be an oversimplification. Solomon Islands is a culturally, linguistically and ethnically diverse nation spread across vast and mountainous terrain. The nation itself is a colonial construct.[226] As anthropologist Edward LiPuma points out, the lands now recognised as making up Solomon Islands were in fact brought together because they were those to which the British Empire could lay claim – not because of any 'unique geographic, linguistic or ethnic connection, or because the indigenous peoples expressed a desire to be unified, but for reasons foreign and extrinsic.'[227] Before, during and after the colonial period in what is now known as Solomon Islands, bonds of kinship, shared language, religion and ties to common ancestral land were generally viewed as the basis of identity, community and allegiance and these bonds did not (necessarily) align along the geographic boundaries of the modern State.[228] As a consequence, 'nation-building' (in terms of 'developing a shared sense of identity or community among the groups making up [the] state') in

[223] KI3 and KI14.
[224] KI Nancy Waegao; KI Sister Rosa; KI Vaela Devisi; Secretariat of the Pacific Community and National Statistics Office (n 17) 30, 126 and 135.
[225] KI Nancy Waegao; KI Afu Billy; Mr Matthew Wale 'Hansard: Solomon Islands National Parliament (26 August 2014)' 75.
[226] For an interesting discussion of colonisation and nationhood in Solomon Islands see Rohorua (n 207).
[227] Edward LiPuma, 'History, Identity and Encompassment: Nation-Making in the Solomon Islands' (1997) 4(2) *Identities* 213, 220.
[228] See, for example, Solomon Islands Truth and Reconciliation Commission (n 222) 41; Sinclair Dinnen and Matthew Allen, 'Paradoxes of Postcolonial Police-Building: Solomon Islands' (2013) 23(2) *Policing and Society* 222, 225; LiPuma (n 227).

Solomon Islands has been a fraught task.[229] So too has the related but distinct process of 'state-building,' which is directed towards the development, transformation and strengthening of the institutions, infrastructure and processes required for effective state governance.[230] Difficulties in the latter have been compounded by a lack of clarity about the precise nature of the relationship between the national and provincial councils, leading to contentious relationships between the two.[231] Debate around constitutional reform has long included discussion of whether Solomon Islands should be divided into separate semi-autonomous states,[232] and Malaita (home to approximately 24% of the total population of Solomon Islands)[233] has threatened secession as recently as 2020.[234]

The fragile nature of Solomon Islands is demonstrated by its history of civil unrest and violent conflict. Such unrest and conflict have occurred in Solomon Islands since the pre-colonial era.[235] The level of violence stepped up in 1998, however, with the outbreak of an unprecedented scale of conflict commonly referred to as 'the Tensions.' The conflict began when the Guadalcanal Revolutionary Army (later the Isatabul Freedom movement) violently evicted approximately 35,000 migrants (mostly of Malaitan descent) from Honiara and surrounding areas.[236] While three peace agreements were signed between June 1999 and October 2000[237] all would fail and peace would not be restored until the deployment of the Regional Assistance Mission to Solomon Islands (**RAMSI**) led by Australia at the request of the Solomon Islands' Government in July 2003.[238]

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[229] Sinclair Dinnen, 'A Comment on State-Building in Solomon Islands' (2007) 42(2) *The Journal of Pacific History* 255, 258. See also Solomon Islands Truth and Reconciliation Commission (n 222) 45.
[230] See Dinnen (n 229) 257–258 for a discussion of the distinction between 'nation-building' and 'state-building'.
[231] David Gegeo and Anouk Ride, *Malaita and the Provincial-National Divide in Solomon Islands* (United States Institute of Peace, 15 February 2024). For a discussion of the tense interplay between rural connection and national leadership in Solomon Islands see Stephanie Ketterer Hobbis and Geoffrey Hobbis, 'Leadership in Absentia : Negotiating Distance in Centralized Solomon Islands' (2021) 91(1) *Oceania* 47.
[232] Farran (n 179) 33.
[233] Solomon Islands National Statistics Office and Ministry of Finance and Treasury (n 187) 10.
[234] Edward Cavanough, 'Solomon Islands Province Announces Independence Vote amid China Tensions', *The Guardian* (online, 2 September 2020) <https://www.theguardian.com/world/2020/sep/02/solomon-islands-province-announces-independence-vote-amid-china-tensions>.
[235] Matthew Allen and Sinclair Dinnen, 'The North Down Under: Antinomies of Conflict and Intervention in Solomon Islands' (2010) 10(3) *Conflict, Security & Development* 299, 300.
[236] Ibid 305.
[237] The Honiara Peace Accord was signed in June 1999, the Pantina Peace Agreement was signed in August 1999 and the Townsville Peace Agreement in October 2000.
[238] Allen and Dinnen (n 235) 302. It is important to note that while the coming of RAMSI did bring stability and (relative) peace to Solomon Islands, its presence and engagement in the country has also been controversial. See, for example, Shahar Hameiri, 'The Trouble with RAMSI: Reexamining the Roots of Conflict in Solomon Islands' (2007) 19(2) *The Contemporary Pacific* 409 ('The Trouble with RAMSI'); Clive Moore, 'The End of Regional Assistance Mission to Solomon Islands (2003–17)' (2018) 53(2) *The Journal of Pacific History* 164; Michael Morgan and Abby McLeod, 'Have We Failed Our Neighbour?' (2006) 60(3) *Australian Journal of International Affairs* 412.

The Tensions are often suggested to be the result of many years of uneasy relations between indigenous Guale and indigenous Malaitan who have competed for and over land and employment opportunities.[239] This may well be a part of the story, but it is certainly not all of it. The final report of the Truth and Reconciliation Commission,[240] established to look into the causes and events of the Tensions, suggests that while ethnicity played a significant role in the early days of the conflict, its significance declined over time and ultimately violence was being carried out by and against 'co-ethnics' seeking material benefit and reward (either individually or as a group).[241] Moreover, to the extent that it is accepted that the Tensions were born from the fractious relations between the Guale and Malaitan, the question arises as to what those tensions themselves were born of. A number of key 'root causes' for the Tensions have been identified over the years, including Solomon Islands' colonial history, government mismanagement, a lack of national unity, ongoing economic crises and the weakening of 'traditional' forms of governance and social control.[242] Uneven development, resulting in increasing economic inequality, has certainly contributed to the problem.[243]

While the Tensions are understood to have officially come to an end in 2003, the stressors underlying them have not been resolved and periods of civil unrest and sporadic violent riots have continued to erupt.[244] In 2006, disillusionment with the parliamentary process and the outcome of the national election, along with concerns about government corruption, led to looting and rioting in Honiara.[245] In 2019, following the announcement that Manasseh Sogavare would be the country's new prime

[239] Allen and Dinnen (n 235) 308.
[240] The Commission was established in 2008 pursuant to *The Truth and Reconciliation Commission Act 2008*. Its purpose was to 'promote national unity and reconciliation' by engaging with all stakeholders to look into the Tensions and devise recommendations to prevent further violence in the future: s5.
[241] Solomon Islands Truth and Reconciliation Commission (n 222) 98.
[242] Ibid 58; For detailed discussion of the causes of the Tensions see also Bennet (n 198); Helen Leslie and Selina Boso, 'Gender-Related Violence and the Solomon Islands: The Work of Local Women's Organisations' (2003) 44(3) *Asia Pacific Viewpoint* 325; James Dobbins et al, 'Solomon Islands' in *Europe's Role in Nation-Building: From the Balkans to the Congo* (RAND Corporation, 2008) 173.
[243] Allen and Dinnen (n 235) 308; Solomon Islands Truth and Reconciliation Commission (n 222) 58; Judith Fangalasuu et al, *Herem Kam: Stori Blong Mifala Oleketa Mere: Women's Submission to the Solomon Islands Truth and Reconciliation Commission* (September 2011) 48.
[244] See Julian Droogan and Lise Waldek, 'Continuing Drivers of Violence in Honiara: Making Friends and Influencing People' (2015) 69(3) *Australian Journal of International Affairs* 285 for an analysis of likely catalysts of violence in the post-RAMSI era.
[245] For a detailed discussion of 2006 riots see Tarcisius Tara Kabutaulaka, 'Westminster Meets Solomons in the Honiara Riots' in Sinclair Dinnen and Stewart Firth (eds), *Politics and State Building in Solomon Islands* (ANU Press, 2008) 96; Clive Moore, 'No More Walkabout Long Chinatown: Asian Involvement in the Economic and Political Process' in Sinclair Dinnen and Stewart Firth (eds), *Politics and State Building in Solomon Islands* (ANU Press, 2008) 64.

minister, riots again broke out in Honiara.[246] Further riots followed in 2021, with renewed demands for the resignation of Sogavare.[247]

I have briefly outlined above the history of civil unrest in Solomon Islands. Why was it necessary to do that for the purposes of this thesis? There are two key reasons. Firstly, because the political climate has significant implications for the implementation of legislation in Solomon Islands, including the FPA. Secondly, because it is widely recognised that GBVAW (including IPV) tends to increase in times of conflict.[248] As such, Solomon Islands' recent history of conflict is a relevant consideration in relation to both the high levels of IPV in the nation and legislative strategies for its reduction. Both of these matters will be considered in more detail in chapter three.

Aid in Solomon Islands and priorities of key donors and multilateral organisations

Solomon Islands is classified by the United Nations as a 'least developed country' as a result of its low gross national income per capita, low rating on the Human Assets Index (which measures human capital by reference to health and education indicators)[249] and significant economic/environmental vulnerability.[250] As at 2023, Solomon Islands ranked 156th out of 193 countries on the UNDP's human development index, evidencing relatively low levels of health, education and a low standard of living.[251]

Solomon Islands remains one of the most aid-dependent countries in the world. As at 2023, Solomon Islands was ranked 13th of 134 'developing countries' for its ODA to gross national income ratio, with 16% of its national income coming in the form of aid.[252] Australia is by far the most significant donor to Solomon Islands. Since the withdrawal of RAMSI in 2017, Australia has provided more than AUD$1.1

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[246] Terence Wood, 'The 2019 Elections: Electoral Quality, Political Inequality and the Flames of Frustration in Honiara' (2020) 40(2) *The Journal of Pacific Studies*.

[247] Joseph Daniel Foukona, 'Solomon Islands' (2022) 34(2) *The Contemporary Pacific* 490, 495.

[248] Jocelyn TD Kelly et al, 'Quantifying the Ripple Effects of Civil War: How Armed Conflict Is Associated with More Severe Violence in the Home' (2021) 23 *Health and Human Rights Journal* 75.

[249] For further discussion of the Human Assets Index and its relevance to the classification of 'least developed countries' by the United Nations see United Nations Department of Economic and Social Affairs, 'LDC Identification Criteria & Indicators', *United Nations Department of Economic and Social Affairs* <https://www.un.org/development/desa/dpad/least-developed-country-category/ldc-criteria.html>; Sosso Feindouno and Michael Goujon, 'Human Assets Index: Insights from a Retrospective Series Analysis' (2019) 141(3) *Social Indicators Research* 959.

[250] For more information on the UN's system of classification for least developed countries see 'Least Developed Countries', *United Nations Department of Economic and Social Affairs Economic Analysis* <https://www.un.org/development/desa/dpad/least-developed-country-category.html>. Accessed 17 January 2024. Solomon Islands was originally scheduled to graduate from LDC status in 2024. However, Solomon Islands' Government requested a three year extension due to its lack of preparedness. That requested has been granted: 'Solomon Islands | United Nations in Fiji, Solomon Islands, Tonga, Tuvalu, and Vanuatu' (2024) <https://pacific.un.org/en/about/solomon-islands, https://pacific.un.org/en/about/solomon-islands>. Accessed 22 August 2024.

[251] UNDP, *Human Development Report 2023/2024: Breaking the Gridlock: Reimagining Cooperation in a Polarized World* (2024) 277.

[252] Dayant et al (n 19) 23.

billion to Solomon Islands by way of ODA.[253] Australia provides approximately 65% of Solomon Islands' ODA disbursements. Behind Australia are New Zealand and Japan, who provide approximately 8% and 6% respectively.[254] All three countries are explicit about their commitment to promoting human rights and gender equality through their international development assistance programs.[255] In order to demonstrate the impact of this commitment on efforts to reduce IPV, it is useful to examine the approach of Australia, as Solomon Islands' single biggest bilateral donor.

The Australian Government has prioritised the reduction of violence against women in its international development strategy since at least the mid-2000s.[256] A review of available government and government commissioned literature reveals that Australia's efforts to reduce violence against women internationally are almost invariably linked to the promotion of human rights and gender equality. As mentioned in chapter one, Australia's 2025 International Gender Equality Strategy explicitly identifies gender equality as a human right and includes ending GBVAW in the first of its five strategic priorities for the Indo-Pacific region.[257]

Australia's current focus on gender equality and human rights promotion in efforts to reduce GBVAW is far from new. In a 2005 publication addressing Australia's commitment to providing aid to reduce GBVAW, the government drew on UNDEVAW and stated that the eradication of violence against women will require, inter alia, a long-term commitment to promoting human rights.[258] In outlining its key activities up to that time the Government emphasised the importance of raising awareness on gender equality and human rights, as well as providing related training to diverse groups.[259]

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[253] Australian Government Department of Foreign Affairs and Trade, 'Australia's Development Partnership with Solomon Islands', *Australian Government Department of Foreign Affairs and Trade* <https://www.dfat.gov.au/geo/solomon-islands/development-assistance/development-assistance-in-solomon-islands, https://www.dfat.gov.au/geo/solomon-islands/development-assistance/development-assistance-in-solomon-islands>.

[254] Dayant et al (n 19) 23.

[255] Australian Government Department of Foreign Affairs and Trade, *Australia's International Development Performance and Delivery Framework* (August 2023); New Zealand Ministry of Foreign Affairs and Trade, *Policy Statement: New Zealand's International Cooperation for Effective Sustainable Development* (2019) <https://www.mfat.govt.nz/assets/Aid-Prog-docs/Policy/Policy-Statement-New-Zealands-International-Cooperation-for-Effective-Sustainable-Development-ICESD.pdf>; New Zealand Ministry of Foreign Affairs and Trade, *New Zealand's International Development Principles* (2019); Government of Japan, *Development Cooperation Charter: Japan's Contribution to the Sustainable Development of a Free and Open World* (June 2023).

[256] AusAID, *Australian Aid: Eliminating Violence Against Women* (November 2005) <https://www.dfat.gov.au/sites/default/files/women.pdf>.

[257] Australian Government Department of Foreign Affairs and Trade, 'Australia's International Gender Equality Strategy: For a Safer, More Prosperous Indo-Pacific and World' (n 172) 9.

[258] AusAID, 'Australian Aid: Eliminating Violence Against Women' (n 256) 3.

[259] Ibid 3 and 4.

The efforts of the Australian Government to reduce violence against women in the Pacific region were stepped up in 2007, when a report from the Australian Agency for International Development's Office of Development Effectiveness (**ODE**) suggested that Australia could do more to help reduce violence against women and that doing so would have positive implications for broader development outcomes in the region.[260] The following year, the ODE produced a further report providing recommendations for action by the Australian Government.[261] The Government responded with a commitment to increase efforts and funding to reduce violence against women in the Pacific, stating:

> Violence against women, and the fear of violence, are significant human rights violations. The Australian Government recognises that reducing violence against women is crucial to achieving equality between men and women and delivering good development outcomes.[262]

The Government went on to outline the key actions it would take towards ending violence through its development assistance program, the first of which related to improving women's access to justice, including by the review, implementation and/or monitoring of legislation to address violence.[263] The Government also stated that the promotion of gender equality would be a guiding principle in its work.[264] These commitments have been embedded in successive international gender equality strategies, with the latest retaining ending sexual and gender-based violence as a priority focus, alongside gender responsive peace and security efforts.[265] Additionally, they have been re-stated in Australia's national action plans on Women, Peace and Security, in which reducing sexual and gender-based violence have remained enduring objectives.[266]

The contributions Australia has made to reducing family violence and promoting human rights and gender equality in Solomon Islands specifically have also been ongoing since at least the mid-2000s.[267]

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[260] Australian Government Office of Development Effectiveness, *Violence Against Women in Melanesia and East Timor: A Review of International Lessons* (2007).
[261] Australian Government Office of Development Effectiveness, *Violence Against Women in Melanesia and East Timor: Building on Global and Regional Promising Approaches* (2008).
[262] AusAID, *Stop Violence: Responding to Violence Against Women in Melanesia and East Timor Australia's Response to the ODE Report* (2009) vi.
[263] Ibid viii and 8–9.
[264] Ibid viii and 11.
[265] Australian Government Department of Foreign Affairs and Trade, *Gender Equality and Women's Empowerment Strategy* (February 2016); Australian Government Department of Foreign Affairs and Trade, 'Australia's International Gender Equality Strategy: For a Safer, More Prosperous Indo-Pacific and World' (n 172).
[266] Australian Government Department of Foreign Affairs and Trade, *Australian National Action Plan on Women, Peace and Security 2012-2018* (2012); Australian Government of Foreign Affairs and Trade, *Australian National Action Plan on Women, Peace and Security 2021-2031* (2021).
[267] See, for example, AusAID, *Annual Program Performance Report for Solomon Islands 2007-2008* (September 2008) 12 <https://www.dfat.gov.au/sites/default/files/appr_solomon_07.pdf>; AusAID, *Annual Program Performance Report for Solomon Islands 2008* (September 2009) 12, 14, 29 and 33

The specific involvement of the Australian government in projects relating to the collection of data on family violence and the development, passage and implementation of the FPA will be discussed in the next chapter. However, it is worth noting at this point that the ODE envisioned a role for Australia in helping reduce violence against women in Solomon Islands by 'systematically integrating into all of its programming, strategies to reduce violence against women through human rights and gender-sensitive approaches.'[268] It went on to recommend that Government 'be explicit in supporting gender equality and human rights in policy dialogue [and]…incorporate a human rights and gender perspective in all Australian-funded activities…'[269] In responding to the ODE's recommendations, the Australian Government committed to assisting with the development, passage and implementation of laws prohibiting violence against women in Solomon Islands.[270]

Contributing to the reduction of violence against women remains a key priority of Australia's international development efforts in Solomon Islands,[271] primarily through the Australia Solomon Islands Partnership for Justice and the RSIPF – AFP Policing Partnership Program.[272] Ending violence against women is the first of four key outcomes towards which the Solomon Islands' gender equality

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<https://www.dfat.gov.au/sites/default/files/appr-08-solomon-islands.pdf>; Australian Government Department of Foreign Affairs and Trade, *Solomon Islands Annual Program Performance Report 2011* (June 2012) 3, 7, 14 and 17 <https://www.dfat.gov.au/sites/default/files/appr-solomon-islands-2011.pdf>; Australian Government Department of Foreign Affairs and Trade, *Aid Program Performance Report 2012 - 2013 Solomon Islands* (2013) 4, 7, 9 and 18; Australian Government Department of Foreign Affairs and Trade, *Aid Performance Program Report 2013 - 2014 Solomon Islands* (September 2014) 4, 7, 9 and 18; Australian Department of Foreign Affairs and Trade, *Aid Program Performance Report 2014-2015 Solomon Islands* (November 2015) 10–13; Australian Government Department of Foreign Affairs and Trade, *Aid Program Performance Report 2015-2016 Solomon Islands* (September 2016) 2, 6, 8, 10–11 and 14; Australian Government Department of Foreign Affairs and Trade, *Aid Program Performance Report 2016 - 2017 Solomon Islands* (September 2017) 3, 7 and 10–11; Australian Government Department of Foreign Affairs and Trade, *Aid Program Performance Report 2017 - 2018 Solomon Islands* (September 2018) 3, 6 and 12; Australian Government Department of Foreign Affairs and Trade, *Aid Program Performance Report 2018 - 2019 Solomon Islands* (September 2019) 3, 6–7 and 12; Australian Government Department of Foreign Affairs and Trade, *2019-2020 Solomon Islands Development Program Progress Report* (2020); Australian Government Department of Foreign Affairs and Trade, *2020-2021 Solomon Islands Development Program Progress Report* (2021) 3 and 5; Australian Government Department of Foreign Affairs and Trade, *2021-2022 Solomon Islands Development Program Progress Report* (2022); Australian Government Department of Foreign Affairs and Trade, *2022-2023 Solomon Islands Development Program Progress Report* (2023) 3.

[268] Marica Tabualevu, Maya Cordeiro and Linda Kelly, *Pacific Women Shaping Pacific Development Six-Year Evaluation Report* (February 2020) 142.

[269] Ibid 145.

[270] AusAID, *Solomon Islands Country Report* (2009) 55 <https://www.dfat.gov.au/sites/default/files/ResVAW_SI.pdf>.

[271] Australian Government Department of Foreign Affairs and Trade, 'Gender Equality Plan for Solomon Islands 2020–2022' 5.

[272] Editor's Desk, 'Australia Reaffirms Commitment to Gender Equality and Women's Empowerment in Solomon Islands' (13 March 2025) <https://womensmedia.islesmedia.net/australia-reaffirms-commitment-to-gender-equality-and-womens-empowerment-in-solomon-islands/?fbclid=IwY2xjawJAyXVleHRuA2FlbQIxMQABHT_ZmUZiiI9-JjQuUV_ZVFZnbAuZFmrGpiFXYMfoPUObgu8goUlKHftYXA_aem_SPt2IbxFj-PaqEYgVpG1hg>.

plan for 2020 – 2022 was directed.[273] It is also a key focus of the ongoing regional Pacific Women Lead project, to which the Australian Government has provided a budget of AUD$170 million over 5 years.[274] The Pacific Women project has three overarching program outcomes, two of which relate to the realisation of women's rights and increased effectiveness of gender equality efforts.[275]

As noted in chapter one, there is an evident tension between the Australian Government's stated intention to use the 'levers of foreign policy' to push for gender equality in work grounded in international norms and standards[276] and the emphasis it purports to place on providing development assistance that supports local priorities, ambitions and leadership.[277] In keeping with a broader shift in the international aid landscape towards recipient country 'ownership' of development policy and strategy (discussed in more detail in chapter six), the Australian Government has, since 2008, taken an approach to agenda setting that involves meeting with the governments of recipient countries to set priorities for development assistance collaboratively.[278] The most recent agreement between Australia and Solomon Islands explicitly states that Solomon Islands will own and lead its policies for development.[279] It goes on to identify gender equality and the empowerment of women and girls to be among the 'cross cutting issues' at which the arrangement is aimed.[280] Among only six explicit commitments of the Solomon Islands Government under the arrangement is to 'continue to implement legislation to help reduce family violence, including funding agencies involved in the implementation of the [FPA].'[281] Data from key informants consistently indicated that while the Solomon Islands Government has no objection to the continued implementation of the FPA, it is not a

[273] Australian Government Department of Foreign Affairs and Trade, 'Gender Equality Plan for Solomon Islands 2020–2022' (n 271) 5.
[274] Australian Department of Foreign Affairs and Trade, *Pacific Women Lead - Investment Design* (July 2021) 3.
[275] Ibid. The three outcomes as listed are: 1) Women's leadership promoted 2) Women's rights realised and 3) Pacific regional partners increase the effectiveness of regional gender equality efforts.
[276] Australian Government Department of Foreign Affairs and Trade, 'Australia's International Gender Equality Strategy: For a Safer, More Prosperous Indo-Pacific and World' (n 172) 13 and 15.
[277] In relation to Australia's commitment to local solutions and leadership, for example, see Australian Department of Foreign Affairs and Trade, 'Australia's International Development Policy: For a Peaceful, Stable and Prosperous Indo-Pacific' (n 174) 3–4, 8, 10–11, 25, 30, 33 and 38–40.
[278] Matthew Dornan, 'How New Is the "New" Conditionality? Recipient Perspectives on Aid, Country Ownership and Policy Reform' (2017) 35(S1) *Development Policy Review* O46, 52; *Australia's International Development Performance and Delivery Framework* (2023) 4. The first aid arrangement between Australia and Solomon Islands negotiated in this way was the Australian Government and Solomon Islands Government, *Australia-Solomon Islands Partnership for Development* (27 January 2009).
[279] Australian Government and Solomon Islands Government, *Solomon Islands - Australia Aid Partnership 2017 - 2020* (29 June 2017) Art 1.6(a). Note that while a new aid arrangement has been agreed between Australia and Solomon Islands for the 2025 – 2029 period it is yet to be publicly released.
[280] Ibid Art 2.6.
[281] Ibid 3.2(f). See also Annexure A which includes as a Solomon Islands commitment that funding be allocated to the implementation of the FPA in annual appropriation budgets.

priority or something the Government is willing to fund to any significant degree.[282] This raises questions about whether the aid arrangement between Australia and Solomon Islands genuinely aligns with the priorities of the latter. Given the considerable influence donors enjoy in Solomon Islands, it would hardly be surprising if the 'collaborative' agenda setting between Australia and Solomon Islands was in practice dominated by Australia.[283]

In addition to being provided bilaterally, aid from governments such as that of Australia is also commonly channelled through multilateral organisations.[284] Where channelled through United Nations and its various agencies, funding is dispersed in accordance with UN policies, plans and frameworks which have a strong focus on governance and human rights[285] and invariably emphasise the achievement of the SDGs as well as the promotion of human rights and gender equality. For example, in the context of the Pacific, the planning and implementation of UN development activities for the period 2023 – 2027 is set out in the United Nations Pacific Sustainable Development Framework (**UNPSDF**).[286] The UNPSDF sets out a plan to contribute to the achievement of the SDGs as well as the high-level results UN agencies are seeking to achieve in the region. Among its three key foci are the promotion of gender equality and human rights, including through action to end violence and discrimination against women.[287] The UNPSDF recognises appropriate legislative and policy frameworks as essential, along with changes in social attitudes and behaviour.[288] It envisions the main role of the UN in this space to include advocacy and technical support to develop and implement enabling legislation and normative frameworks, as well as technical support to develop and implement social behaviour change strategies and campaigns to address harmful norms.[289]

The UNPSDF is operationalised in Solomon Islands through country implementation plans. The current plan is for the period 2023 – 2024 (**UN Solomon Islands Plan**).[290] The UN Solomon Islands Plan identifies human rights and 'gender issues' as key priorities, and the reduction of gender-based violence a key challenge.[291] It identifies among the national priorities support for addressing GBVAW

[282] KI4, KI7, KI22, KI19, KI20, KI18, KI13, KI3, KI17, Anonymous Informant 5. Informants indicated that funding allocated to FPA implementation by the Solomon Islands government was limited to such matters as catering for quarterly sector meetings.
[283] Dornan (n 278) O47.
[284] 'Net ODA', *OECD* <https://www.oecd.org/en/data/indicators/net-oda.html>.
[285] *Converging Currents: Custom and Human Rights in the Pacific* (n 207) 17.
[286] United Nations Fiji, Solomon Islands, Tonga, Tuvalu and Vanuatu, *United Nations Pacific Sustainable Development Cooperation Framework 2023-2027* (2023).
[287] Ibid 11.
[288] Ibid 52.
[289] Ibid.
[290] United Nations Fiji, Solomon Islands, Tonga, Tuvalu and Vanuatu, *Solomon Islands Country Implementation Plan 2023-2024* (2023).
[291] Ibid 6.

'including implementing the Family Protection Act.'[292] It goes on to state that the UN, through UNICEF, UN Women, the United Nations Population Fund (**UNFPA**) and IOM, will prioritise work to combat gender-based violence and the strengthening of human rights mechanisms.[293] It also evinces an intention to focus on promoting international human rights standards and rolling out human rights training to government officials.[294] Activities under the UN Solomon Islands Plan are funded primarily through contributions from Australia, New Zealand, Canada, the EU, Korea, Norway, Sweden and the US.[295]

Key networks and players in the family violence space

The work being done on the ground in Solomon Islands to reduce family violence generally and implement the FPA specifically is referred to extensively throughout this thesis. It is useful, then, to provide a brief overview of the broad family violence sector.

A good starting point is SAFENET, a network of governmental and non-governmental organisations that works to strengthen the referral and coordination of services for survivor/victims of IPV and other forms of GBVAW.[296] SAFENET members must abide by the network's standard operating procedures (**SAFENET SOPs**).[297] Set out in the SAFENET SOPs are the violence prevention initiatives in which members will engage.[298] They include influencing changes in socio-cultural norms through awareness raising and behaviour change strategies; working to align formal legal and traditional kastom systems; and advocating for gender sensitive policies and laws that align with international human rights standards.[299]

The Guiding Principle of the SAFENET SOPs is that service providers take a 'survivor centred approach' to their work, meaning that the survivor/victim is placed at the centre of the assistance and referral process.[300] The SAFENET SOPs are rights-focused in that they repeatedly emphasise the importance of ensuring a survivor/victim knows her rights under the law, and services offered to help her to regain

[292] Ibid 22.
[293] Ibid 25.
[294] Ibid 33.
[295] Ibid 39.
[296] Solomon Islands Government Ministry for Women (n 39) 3. As at 2024 the SAFENET membership was as follows: Ministry of Health and Medical Services; RSIPF/Seif Ples; CCC; FSC; Social Welfare Division; MWYCFA; Solomon Islands Planned Parenthood Association; Immigration Division of the Ministry of Commerce, Industry, Labour and Immigration; Honiara City Council; the Office of the Public Prosecution; Homes of Peace and Empowerment; Public Solicitor's Office.
[297] Solomon Islands Government Ministry for Women (n 39).
[298] Ibid 10.
[299] Ibid. As discussed in chapter five, the term 'kastom' refers to a series of beliefs and practices by reference to which the social world of Solomon Islanders is regulated.
[300] Ibid 9 and 13.

control of her life and 'restore her right to self-determination.'[301] SAFENET members agree to implement or support 'prevention and advocacy programs to challenge harmful gender norms and facilitate a broader understanding of gender equality and power relations that respect the rights of women and girls.'[302] SAFENET members also agree to 'publicly condemn violence as a violation of a woman's basic human rights' and to use public advocacy messages agreed by the group.[303]

The SAFENET SOPs also include as the first of 10 competencies on which SAFENET will regularly train its members 'the gender and human rights-based dimensions of violence.'[304] Through adoption of the SAFENET SOPs all members agree to have zero tolerance for GBVAW and (to the extent that it aligns with the perspective of the survivor) to ensure perpetrators are held accountable for their violence under the FPA.[305] This focus of the SAFENET SOPs on IPV as a human rights issue and the promotion of gender equality reflects the dominant approach to IPV reduction that, as discussed in chapter one, emerged at the international level in the early 1990s and continues to dominate today.

SAFENET provides a referral pathway for 8 different services, being medical, mental health, shelter, welfare/child protection, counselling, police and, importantly for this thesis, legal and paralegal information.[306] In practice, this means that if a survivor/victim discloses IPV to one member organisation that member will ensure the survivor/victim is aware of the services offered by other members and able to access them if she so chooses. SAFENET members meet quarterly to provide updates on their work, share data, undertake training and discuss problems or concerns.[307]

SAFENET is not without its problems. For example, all SAFENET members have indicated that the funding they receive is insufficient to meet the demands for their services[308] and issues with consistent and comprehensive data collection and reporting are widely noted.[309] Nonetheless, the strength of the SAFENET network is also widely recognised, with key informant Afu Billy describing it as the 'glue' holding together those working in family violence in Solomon Islands.[310]

[301] Ibid 14.
[302] Ibid 21.
[303] Ibid.
[304] Ibid 20.
[305] Ibid.
[306] Ibid 25.
[307] KI Vaela Devisi; Gibbs (n 39) 43.
[308] Ibid 8.
[309] KI Anika Kingmele; KI Donna Makini.
[310] KI Afu Billy.

Among the members of SAFENET are three key local organisations that work to support survivor/victims of family violence in Solomon Islands. They are the Christian Care Centre, the Family Support Centre and Seif Ples.[311]

The Christian Care Centre, which opened in 2005, is the main provider of short-term accommodation to IPV survivor/victims in Solomon Islands.[312] While the Christian Care Centre is an Anglican institution, its doors are open to IPV survivor/victims of any faith.[313] The Christian Care Centre receives a small amount of financial support from the Anglican church. However, the vast majority of its funding comes from the Australian Government, either directly or through programs managed and implemented by NGOs like the International Women's Development Agency (**IWDA**).[314]

In addition to providing accommodation for IPV survivor/victims, the Christian Care Centre offers pastoral care and counselling (individually and, at times, with the perpetrator of violence), support to women visiting the police or hospital, as well as 'life skills training' courses and materials to increase their financial independence (for example, instruction on how to bake cakes and the ingredients to make and sell them).[315] The Christian Care Centre provides training on relevant laws (including the FPA).[316]

Many of the referrals received by the Christian Care Centre come from the Family Support Centre, which is the only secular NGO working in the family violence space in Solomon Islands. It was established in 1995, initially with funding from the New Zealand Government.[317] The Family Support Centre's work falls into three main categories: counselling services for survivor/victims of family violence, the provision of legal advice and representation to survivor/victims of family violence, and advocacy work in relation to the reduction of GBVAW.[318] The Family Support Centre survives solely on international funding, provided primarily by and/or through the Australian Government, UNWomen and the IWDA.[319]

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[311] Note that Sief Ples is not a member in its own right. Rather, its membership is through the RSIPF, which is the organisation that operates Seif Ples.
[312] The CCC was the brainchild of Sister Lilian Takua Maeva, who pushed for a safe refuge for women. For details see Richard Feinberg, *Autobiography of Sister Lilian Takua Maeva of Anuta, Solomon Islands, the Community of the Sisters of the Church, and the Church of Melanesia* (2000).
[313] Interview with Sister Rosa. Ibid.
[314] Sister Rosa. See also 'Christian Care Centre', *The Anglican Church of Melanesia* (2023) <https://www.acom.org.sb/ccc/>; 'Christian Care Centre | IWDA', *IWDA* (2019) <https://iwda.org.au/christian-care-centre/>.
[315] KI Sister Rosa.
[316] KI Sister Rosa.
[317] Secretariat of the Pacific Community and National Statistics Office (n 17) 32. KI Val Stanley; KI Afu Billy. .
[318] KI Laura Kwanairara; KI Aroma Ofasia.
[319] KI Laura Kwanairara; KI Aroma Ofasia.

Neither the Christian Care Centre nor the Family Support Centre provide crisis services for survivor/victims of IPV. [320] Seif Ples, operated by the RSIPF, was established in 2014 to fill this gap. Seif Ples is open 24 hours a day and provides crisis accommodation, as well as health/medical services and counselling.[321] Seif Ples hosts SAFENET's free, national 24 hour hotline for use by survivor/victims across the country.[322] The establishment of Seif Ples was initially supported by the UK Government.[323] It continues to receive significant funding and support from the Australian Government and Child Fund.[324] Administrative support is provided by the Solomon Islands Ministry of Police.[325]

As indicated above, each of the Family Support Centre, Christian Care Centre and Seif Ples rely heavily on international support. Programs funded by the Australian Government in each of these organisations are generally designed, managed and/or implemented in partnership with international NGOs and multilateral organisations. Key among those organisations is the IWDA.

IWDA has worked closely with both the Family Support Centre and the Christian Care Centre to reduce GBVAW since at least 2016.[326] The projects undertaken include among their goals facilitating access to legal and paralegal services and awareness raising in relation to legal rights.[327] The IWDA is an Australian agency that focuses solely on promoting and protecting women's rights and gender equality in the Asia Pacific.[328]

Two other NGOs undertaking a significant amount of work to reduce IPV in Solomon Islands are Oxfam and World Vision. It is the mission of Oxfam Australia to enhance equality and tackle poverty by 'helping people claim their basic human rights.'[329] In Solomon Islands, a major component of Oxfam's work over the last decade has been through a program entitled 'Makim Famili Blong Iumi Sef' or 'Let's

[320] 'Delivering Rapid, Coordinated Services to Survivors of Violence in the Solomon Islands', *UN Women – Asia-Pacific* (22 October 2024) <https://asiapacific.unwomen.org/en/stories/feature-story/2024/10/delivering-rapid-coordinated-services-to-survivors-of-violence-in-the-solomon-islands>.
[321] KI Lorah Etega; KI Jerolie Belabule.
[322] Solomon Islands Government Ministry for Women (n 39) 8. Information also provided from KI Judy Basi and KI Lorah Etega.
[323] KI Val Stanley; KI Juanita Malatanga.
[324] KI Lorah Etega; KI Jerolie Belabule. See also Coffey International Development, 'Solomon Islands Justice Program Design 2017-2021' 40 and 74.
[325] KI Juanita Malatanga.
[326] Pauline Soaki, Heather Brown and Katie Robinson, *Joint Program Evaluation: Responding to Violence Against Women in Solomon Islands and Responding to Violence Against Women and Girls in Solomon Islands* (International Women's Development Agency, 16 September 2021) 2.
[327] Ibid.
[328] Ibid. See also 'Our Work | IWDA' <https://iwda.org.au/what-we-do/>.
[329] Oxfam Australia, *A Just and Sustainable World Without the Inequalities That Keep People in Poverty: Oxfam Australia 2020-2025 Strategic Framework* (August 2020) 2.

Make our Families Safe' (**Safe Families Project**).[330] The Safe Families Project commenced in 2014.[331] Its overarching aim is a broad one: 'to start the process of changing ingrained social behaviours which see family violence as acceptable.'[332] One part of the project, however, relates directly to awareness raising in rural communities about gender equality, human rights and the FPA.[333] As a part of the Safe Families Project, local Community Engagement Facilitators (**CEF**s) receive three weeks of training from IWDA gender specialists.[334] CEFs then work with target communities to mobilise and raise awareness.[335] They are provided with a 'tool kit' to guide their work which has three stages of learning: the first focusing on gender inequality and violence against women, the second focusing on practicing gender equality (including understanding international conventions, policies and legislation), and the third focusing on developing community action plans to prevent violence.[336]

World Vision also carries out significant work aimed at the reduction of family violence through both the Channels of Hope and Gender Equality projects.[337] Like the other projects outlined above, these projects are funded by the Australian Government.[338] They both draw on Christian teachings and faith to promote gender equality and challenge norms and beliefs that undermine human rights and equality, with the key difference between the two being the groups at which they are aimed.[339] While Channels of Hope is aimed at church leaders and organisations, the Gender Equality Project is aimed at youth and other community groups more broadly.[340]

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[330] For project detail see Australian Department of Foreign Affairs and Trade, *Let's Make Our Families Safe – Mekim Famili Blong Iumi Sef: Design Document for Solomon Islands: Prevention of Family Violence Program* (31 January 2014); Sarah Homan et al, *Transforming Harmful Gender Norms in Solomon Islands: A Study of the Oxfam Safe Families Program - Final Report* (2019).

[331] Australian Department of Foreign Affairs and Trade, 'Let's Make Our Families Safe – Mekim Famili Blong Iumi Sef: Design Document for Solomon Islands: Prevention of Family Violence Program' (n 330) 4.

[332] Ibid.

[333] Oxfam Australia, *Transforming Harmful Gender Norms in Solomon Islands: A Study of the Oxfam Safe Families Program* (2019) 4.

[334] Homan et al (n 330) 37.

[335] Oxfam Australia (n 333) 5.

[336] Oxfam Australia and International Women's Development Agency, 'Safe Families: A Toolkit to Engage Communities to Respond to and Prevent Family Violence in Solomon Islands' 5.

[337] For a discussion of the two projects, their overlaps and differences see Elise James, *Mid-Term Review of World Vision Solomon Islands Gender Programming* (2021); World Vision, *Gender Equality Project Solomon Islands: Phase 1 Final Review (2018 - 2023)* (2023). See also 'Tackling Gender-Based Violence in the Solomon Islands | World Vision Australia' <https://www.worldvision.com.au/global-issues/work-we-do/poverty/tackling-gender-based-violence>; World Vision, *Community Channels of Hope: Project Fact Sheet*; World Vision, *Channels of Hope: Transforming Lives Positively* (2014).

[338] James (n 337) 8.

[339] World Vision, 'Gender Equality Project Solomon Islands: Phase 1 Final Review (2018 - 2023)' (n 337) 4.

[340] Ibid.

Conclusion

This chapter introduced Solomon Islands as the setting for the case study examined in this thesis. It explored the country's social, cultural, and political context, and suggested these factors are relevant to the implementation of the FPA and other legislation because they impact on the way Solomon Islanders perceive and use the law. The chapter also made the point that Solomon Islands' most significant aid partners, including Australia, place a heavy emphasis on the elimination of GBVAW and the promotion of both human rights and gender equality in their international development strategies. While the Australian Government professes a commitment to respecting Solomon Islands' ownership of its development priorities, evidence suggests it retains influence over the country's policy direction, particularly in relation to matters towards which aid funding is directed. Finally, this chapter introduced the key organisations carrying out work to reduce IPV in Solomon Islands. The work of these organisations—frequently guided by human rights and gender equality frameworks, even when faith-based—is discussed extensively through this thesis.

Having set the scene in this chapter, I now turn to look specifically at the development, passage and implementation of the FPA in Solomon Islands.

Chapter 3: Solomon Islands' Family Protection Act

> 'The realisation that gender violence is a human rights issue, and that CEDAW requires states to take steps to end it, has had a positive impact on Melanesian women. It has energised women's groups and given them new tools to work with.' Jean Zorn[341]
>
> 'I am pleased as the Minister of Foreign Affairs that [with the introduction of the Family Protection Bill] we are beginning to meet the requirements as a member of the United Nations of our obligations and the different conventions of the UN [including CEDAW].' Hon. Clay Forau Soalaoi[342]

Chapter two laid the groundwork for the case study on the implementation of the FPA in Solomon Islands by providing an overview of the country's social, cultural and political context, and by introducing the key organisations involved in addressing family violence. This chapter introduces the FPA itself. It also demonstrates the significant impact the international human rights framework had on its development and passage. This is important as it demonstrates why, despite the significant controversies and concerns to be discussed in Part Two of this thesis, the international human rights framework provides a valuable tool for those on the ground in Focus Countries pursuing the elimination of IPV.

This chapter begins by looking at the occurrence of IPV in Solomon Islands. Particular attention is paid to data emerging from the 2009 *Solomon Islands Family Health and Safety Study: A Study on Violence Against Women and Children* (**Family Violence Report**), which revealed a staggering level of IPV within the community. This chapter then turns to look at what happened in the lead up to and aftermath of the publication of the Family Violence Report, which was a key catalyst for the development and passage of the FPA.

The obligations of Solomon Islands under international law and the legal framework for dealing with IPV are then examined. This examination shows that, prior to the passage of the FPA in 2014, Solomon Islands was falling well short of its responsibilities in relation to state action to reduce IPV. The introduction of the FPA brought Solomon Islands considerably closer to compliance. This was no coincidence. The human rights framework had been leveraged in various ways by advocates and activists in Solomon Islands to push for state action to reduce IPV, and the legislation would not have passed (at least not in its current form) without the considerable technical and financial support of

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[341] Jean G Zorn, 'Translating and Internalising International Human Rights Law: The Courts of Melanesia Confront Gendered Violence' in Aletta Biersack, Margaret Jolly and Martha Macintyre (eds), *Gender Violence & Human Rights* (ANU Press, 2016) 229, 230.

[342] Solomon Islands National Government *Parliamentary Debates*, 25 August 2014, page 59 (The Honourable Clay Foray Soalaoi, Minister for Foreign Affairs and External Trade): 'Hansard: Solomon Islands National Parliament (25 August 2014)' 59.

rights-centred organisations and rights-favouring donors such as the Regional Rights Resources Team (**RRRT**)[343] of the Secretariat of the Pacific Community (**SPC**) and the Australian Government.

Ultimately, this chapter provides support for some of the key assertions made in chapter one about the advantages of the international human rights law discourse and framework for those pursuing the elimination of IPV. It demonstrates that the FPA follows the broad blueprint set out under international human rights law; that key advocates and activists working in Solomon Islands were themselves empowered by engagement with human rights ideas and concepts, and that they used Solomon Islands' obligations under international human rights law to press for state action.

IPV in Solomon Islands

While it is clear that IPV is not a new phenomenon in Solomon Islands, historical data on its occurrence are scarce and patchy. A small-scale community survey was undertaken in 1994 (**1994 Community Survey**) which provided the first systematically collected data on rates of IPV in Solomon Islands.[344] 55.4% of female respondents to the survey reported that they had been the subject of some form of domestic violence.[345] This statistic should be treated with caution due to significant survey limitations.[346] However, the survey did provide interesting preliminary data and, moreover, evidence that could be used by those working in the family violence space to push for further action.[347]

While a relatively strong women's movement advocating for, inter alia, the reduction of IPV existed in Solomon Islands around the time of the 1994 Community Survey, its work was significantly disrupted by the onset of the Tensions.[348] Unsurprisingly given the known correlation between increasing conflict

[343] The RRRT was a department of the SPC that provided technical assistance and capacity development services on human rights matters in the Pacific region. In 2020 the RRRT merged with the Social Development Programme of the SPC to form the department now known as the Human Rights and Social Development Department. The vast majority of the work referred to in this thesis was undertaken prior to the merger and is attributed in the literature to the RRRT. It is for that reason I use the organisation's former name in this thesis.

[344] Loretta Poerio, *Domestic Violence in Solomon Islands: Results of a Community Survey* (1995).

[345] Ibid 23.

[346] Limitations on the survey included that only approximately 0.25% of the population were involved in the study and it was only rolled out in Honiara and Guadalcanal province. The survey, while asking women about 'domestic violence' did not define the term, instead asking respondents to identify what they saw to constitute domestic violence from a limited number of behaviours and to report whether they had been the subject of any of those behaviours. Listed behaviours focused primarily on various types of physical abuse or threats thereof. For further discussion see Ibid 47, 23 and Appendix page 2. Estimates regarding the percentage of those involved in the study have been calculated by reference to the populations statistics set out in Solomon Islands Government, *1999 Solomon Islands Population and Housing Census Fact Sheet* (1999) 1.

[347] KI Val Stanley.

[348] Solomon Islands Truth and Reconciliation Commission (n 222) 625; Sue Farran, Tony Crook and Emilie Röell, *Understanding Gender Inequality Actions in the Pacific: Ethnographic Case Studies and Policy Options* (Publications Office of the European Union, 2016) 143.

and increasing IPV,[349] there is some evidence to suggest that rates of IPV increased during this period, although relevant data remain incomplete.[350]

The first (and, to date, only) comprehensive approach to gathering data about the occurrence of IPV at the national level was undertaken in 2007. As will be further discussed below, this task was undertaken with very significant financial and technical support from the international community. Data were gathered as a part of a regional initiative being run by the UNFPA and Solomon Islands' participation in that initiative was funded by the UNFPA and the Australian Government.[351] The SPC was the implementing partner for the project, which sought to gather qualitative and quantitative data in relation to family violence (**National Family Violence Study**).[352]

The National Family Violence Study included a survey, designed to be nationally representative and based on a comprehensive international model developed by the World Health Organisation (**WHO**), that sought feedback from 3.6% of the female population of Solomon Islands between the ages of 15 and 49.[353] There was a very high response rate for the survey, with 97.2% of those invited agreeing to participate.[354] The qualitative components of the study involved in-depth interviews with survivors and perpetrators of violence; interviews with 18 key informants from government, health and civil society; and focus group discussions with men and women of different age groups, as well as health professionals.[355] Women survivors were asked to respond to an extensive list of questions relating to their life, health, financial autonomy, prior and current intimate relationship experience, attitudes towards relationships and violence in relationships, abuse they had suffered in intimate relationships and injuries resulting from that abuse, how they responded to the abuse, as well as its short and long terms impacts.[356]

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[349] Kelly et al (n 248).

[350] Solomon Islands Truth and Reconciliation Commission (n 222) 570; Jennifer JK Rasanthan, *Social Determinants of Health: Country Case: Violence Against Women in Solomon Islands – Translating Research into Policy and Action on the Social Determinants of Health* (World Health Organisation, 2013) 1; Jennifer Corrin, 'Ples Bilong Mere: Law, Gender and Peace-Building in Solomon Islands' (2008) 16 *Feminist Legal Studies* 169, 185–187; Amnesty International, *Solomon Islands: Women Confronting Violence* (November 2004) 13; Manjoo, 'Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences: State Responsibility for Eliminating Violence against Women' (n 152) para 28; Annalise Moser, *Monitoring Peace and Conflict in the Solomon Islands: Gendered Early Warning Report No. 2* (UNIFEM, December 2005) 29, 16.

[351] Rasanthan (n 350) 4–5.

[352] Ibid 5.

[353] Secretariat of the Pacific Community and National Statistics Office (n 17) 41.

[354] Ibid 58.

[355] Ibid 54.

[356] The complete survey can be seen in ibid 179. For detailed background on the study and its implementation see Rasanthan (n 350).

The results of the National Family Violence Study were published in the Family Violence Report in 2009.[357] As is made clear below, the significance of the Family Violence Report as a catalyst for change cannot be underestimated. The Family Violence Report is now dated, and there is a call for the collection of contemporary data.[358] For now, however, the 2009 report remains the most comprehensive source of data in relation to IPV in Solomon Islands and continues to be widely relied upon in domestic and international discussions about GBVAW in the Pacific.[359]

The Family Violence Report paints a clear picture of Solomon Islands as a society in which IPV is rife. Data show that Solomon Islander women are at far greater risk of physical and/or sexual violence by an intimate partner than by any other person.[360] 64% of survey respondents who report ever having been in a relationship also report experiencing sexual and/or physical violence by an intimate partner.[361] This figure is particularly alarming given it is more than double the estimated global average of 30%.[362]

Perhaps equally disturbing as the *rate* of IPV revealed by the Family Violence Report is the *nature* of the violence many survivors report experiencing. 76% of respondents who report being a survivor of physical IPV indicate the violence used against them has been 'severe' (such as punching, kicking and/or having a weapon used against them) rather than 'moderate' (with 'moderate' violence, for the purposes of the survey, including things such as slapping, pushing and/or shoving).[363] 30% of women that report experiencing physical and/or sexual violence said they suffered notable injury as a result

[357] Secretariat of the Pacific Community and National Statistics Office (n 17).
[358] KI Val Stanley; KI Anika Kingmele; KI Ethel Sigimanu; KI Kyla Venokana.
[359] Note there have been four other small-scale studies reported since 2009. See Virginia Chadwick et al, 'Experience and Impact of Gender-Based Violence in Honiara, Solomon Islands: A Cross-Sectional Study Recording Violence over a 12-Month Period' 13(2023) *BMJ Open*; Penny C Farrell et al, 'Hospital Visits Due to Domestic Violence from 1994 to 2011 in the Solomon Islands: A Descriptive Case Series' (2014) 73(9) *Hawai'i Journal of Medicine & Public Health* 276; Mikaela A Ming et al, 'Domestic Violence in the Solomon Islands' (2016) 5(1) *Journal of Family Medicine and Primary Care* 16; Matthew J Breiding et al, 'Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization — National Intimate Partner and Sexual Violence Survey, United States, 2011' (2014) 63(8) *Morbidity and Mortality Weekly Report: Surveillance Summaries* 1. The study conducted by Chadwick and others involved women attending health clinics in Honiara over a 10 day period in 2015. It provides some evidence that rates of IPV remain high. The study found that 47% of the 100 study participants reported experiencing physical or sexual violence in the 12 months prior, most commonly at the hands of their boyfriend or husband.
[360] Secretariat of the Pacific Community and National Statistics Office (n 17) 4 and 82. Of respondents reporting physical and/or sexual abuse at any time from the age of 15, 90% reported being a victim of violence by an intimate partner.
[361] Ibid 3 and 62.
[362] 'Violence against Women' (n 18).
[363] Secretariat of the Pacific Community and National Statistics Office (n 17) 69.

on at least one occasion, with injuries reported ranging from bruises, cuts and bites to internal injuries, broken bones and burns.[364]

The Family Violence Report provided irrefutable evidence that IPV was a considerable problem in Solomon Islands. In the view of Ethel Sigimanu (at that time Permanent Secretary of the MWCYFA), the report's damning findings left the Government with little choice but to take concrete action towards the reduction of IPV.[365]

Solomon Islands' commitments and obligations at the international level

While the detail in relation to key international instruments discussed in chapter one will not be repeated here, it is useful to summarise some of Solomon Islands' primary commitments and obligations at the international level, both prior to and following the passage of the FPA. The former is the appropriate benchmark against which to assess the nation's compliance in the pre-FPA era. The latter demonstrates that the nation's international commitments and obligations in this area continue to grow.

At the time the FPA was passed Solomon Islands had been among the 189 countries at the Fourth World Conference on Women to adopt the Beijing Declaration, and had thereby evinced a commitment to exercise due diligence to prevent, investigate and punish acts of IPV.[366] Solomon Islands had also acceded to CEDAW without reservation on 6 May 2002, and endorsed the 2012 PLGED in which it reaffirmed its commitment to ensuring CEDAW was incorporated into domestic legislative and policy initiatives. There was no question at this time that IPV was considered to fall within the ambit of CEDAW, with the CEDAW Committee having endorsed general recommendations 12 and 19 on violence against women. Solomon Islands was under the obligations of due diligence discussed in chapter one to take all appropriate measures to prevent IPV. As had been noted by Special Rapporteur Erturk in 2006, the majority of states taking action towards the reduction of IPV were seeking to discharge their obligations of due diligence by, inter alia, adopting Standard IPV Legislation.[367]

Since the passage of the FPA the commitments of Solomon Islands at the international level have only increased. The country has repeatedly asserted a commitment to the SDGs (which are embedded in Solomon Islands' *National Development Strategy 2016 – 2035*)[368] including in a voluntary review in

[364] Ibid 6 and 106. In addition to considering the rates and nature of IPV in Solomon Islands, the Family Violence Report also looked at factors contributing to its occurrence. These factors are discussed in further detail in chapter five.
[365] KI Ethel Sigimanu.
[366] Beijing Declaration, para 124(b).
[367] Erturk (n 64) 10.
[368] Solomon Islands Government Ministry of Development, Planning and Aid Coordination, *National Development Strategy 2016 – 2035* (April 2016).

which it pointed to the implementation of the FPA as a key achievement in relation to progress towards SDG 5 – Gender Equality.[369] Solomon Islands also endorsed the 2023 PLGED, again reaffirming its commitment to the full implementation of CEDAW and the 2005 and 2018 Pacific Platforms, which recognise women's legal and human rights as key strategic themes and ending violence against women (including through legislative measures) as a key priority.

Solomon Islands has also taken on obligations in relation to the promotion of gender equality and implementation of the FPA through bilateral agreements. For example, in the aid partnership agreement between Australia and Solomon Islands executed in 2009, addressing gender inequality was one of six priority outcomes.[370] In the subsequent partnership agreement (executed in 2017) the Solomon Islands Government committed to continuing the implementation of legislation to reduce family violence, including the FPA.[371] The FPA was one of only two pieces of legislation explicitly referred to in the agreement.

State action to reduce IPV in Solomon Islands

There is little doubt that, prior to the enactment of the FPA, Solomon Islands was falling well short of its obligations under international law. There was no legislation in place that specifically criminalised IPV, and its occurrence was viewed, by and large, as a private issue to be resolved between families and (in some cases) communities, primarily by way of reconciliation.[372] Customary approaches to IPV included compensating the family of the survivor/victim and reconciliation led by community chiefs and church leaders,[373] and the emphasis was on family reunification rather than accountability or the prevention of further violence.[374] As will be discussed in chapter five, a key purpose of customary reconciliation practices was to restore community harmony, righting the perceived wrong done not just to the survivor/victim of IPV but also to her natal family. This is very different to the FPA, which (as will be demonstrated below) is very much focused on the individual survivor/victim and perpetrator of violence.

The ability of the formal legal system to respond to acts of IPV was extremely limited at the time the Family Violence Report was released. For a person to be prosecuted in relation to *physical* violence

[369] Solomon Islands Government, *Solomon Islands Voluntary National Review* (June 2020) 41. The voluntary national review mechanism involves states reporting on their successes and challenges in relation to the achievement of the SDGs. See 'Voluntary National Reviews | High-Level Political Forum' <https://hlpf.un.org/vnrs>. [Accessed 29 August 20024]
[370] Australian Government and Solomon Islands Government (n 278) 3.2.
[371] Australian Government and Solomon Islands Government (n 279) 3.2(f).
[372] See, for example, Secretariat of the Pacific Community Regional Rights and Resource Team, *Legal Analysis on Violence Against Women: Solomon Islands Drafting Options for Legal Reform* (Secretariat of the Pacific Community, 2013) 1; Tabualevu, Cordeiro and Kelly (n 268) 137.
[373] Secretariat of the Pacific Community and National Statistics Office (n 17) 30.
[374] Ibid 19.

against their partner, their conduct would need to constitute a crime under the general assault laws, at that time set out in the *Penal Code 1963* (Solomon Islands).[375] Marital rape was not a crime in Solomon Islands,[376] and while it was technically possible for a man to be prosecuted under the Penal Code for the rape of an intimate partner to whom he was *not* married, the inadequacy of the definition of rape (which required penile penetration) meant very limited conduct could be prosecuted in any event.[377] Acts of sexual assault not falling within the narrow definition of rape would be prosecuted, if at all, under s141 of the Penal Code, dealing with 'indecent assault.' 'Indecent assault' was not defined for the purposes of the Penal Code. However, research suggests that prosecutions would be unlikely to proceed in the absence of explicit contact with or by sexual parts of the body.[378]

Prosecution of IPV under the Penal Code was problematic for a number of reasons. Firstly, a wide range of conduct generally accepted to constitute IPV (such as psychological and economic abuse) was not captured under it and therefore could not be prosecuted. Secondly, even where prosecution for acts of IPV *did* proceed under the Penal Code they were usually treated as minor incidents and/or were resolved in ways that effectively excluded the survivor/victim. The Penal Code offences capturing IPV (common assault and assault causing actual bodily harm) were categorised as misdemeanours punishable by up to one year imprisonment (for common assault) or five years imprisonment (for assault causing actual bodily harm). In practice, if instances of IPV were prosecuted at all they were almost invariably categorised as common assault, irrespective of any injuries sustained by the survivor.[379] As a result, where sentences were handed down against perpetrators, they arguably failed to reflect the seriousness of the offending conduct. This issue was compounded by the fact that the Magistrates Court had the power to encourage, promote and facilitate reconciliation in some criminal

[375] *Penal Code (Cap 26)* The relevant sections in 2009 were ss244 and 245 which related to common assault and assault causing actual bodily harm.

[376] While rape in the context of marriage was not expressly excluded from the definition of rape set out in s136 of the Penal Code, the common law held that a man could not be guilty of raping his wife and the legislation was interpreted accordingly. In relation to the common law position at that time see *R v Gwagwango & Taedola [1991] SBHC 59* 5.

[377] *Penal Code (Cap 26)* (n 375). The definition of 'rape' in s136 referred to 'unlawful sexual intercourse', and 'sexual intercourse' was defined in S168 as follows: 'Whenever, upon the trial for any offence punishable under this Code, it may be necessary to prove sexual intercourse, it shall not be necessary to prove the completion of the intercourse by the actual emission of seed but the intercourse shall be deemed complete upon proof of penetration only.' While not judicially considered, the reference to 'actual emission of seed' suggests the term was intended to refer only to penile penetration. The Solomon Islands Law Reform Commission also suggested this was the appropriate interpretation in Solomon Islands Law Reform Commission, *Review of the Penal Code and Criminal Procedure Code Second Interim Report Sexual Offences* (June 2013) 53.

[378] Solomon Islands Law Reform Commission (n 377) 83.

[379] Secretariat of the Pacific Community Regional Rights and Resource Team (n 372) 52. For a discussion of the (in)adequacy of the implementation of laws in Solomon Islands in the 1990s see Afu Billy, 'Breaking the Silence, Speaking Out Truths: Domestic Violence in Solomon Islands' in Sinclair Dinnen and Allison Ley (eds), *Reflections on Violence in Melanesia* (Hawkins Press/Asia Pacific Press, 2000) 172.

matters, including in proceedings for assault.[380] If the court approved the terms of a reconciliation (such as the payment of compensation to the survivor) the relevant criminal proceedings would be stayed or terminated.[381] There was no requirement that the court be satisfied the survivor was not at risk of further violence before approving a reconciliation, nor was it necessary for the survivor herself to approve the terms of a reconciliation.[382] These provisions were inadequate in the extreme for survivors of IPV, and were insufficient to meet Solomon Islands' obligations of due diligence to appropriately investigate and punish acts of IPV.[383]

Issues relating to prosecution under the Penal Code meant individual survivors of IPV were provided with little protection or redress under criminal law prior to the enactment of the FPA. At the community level, the absence of legislation clearly and categorically criminalising IPV allowed it to continue to be viewed and treated in wider society as a private issue on which the State took no firm position.

Prior to the passage of the FPA, options were also extremely limited for attaining civil remedies in the form of protection or restraining orders. While such orders were technically available, they were limited to those who were legally married, had to be obtained in a court (an impossibility for many, especially in rural areas) and often went unenforced.[384]

It was against this legislative backdrop that the Family Violence Report recommended the development of an effective legal framework for the protection of women from IPV and other forms of GBVAW. As will be discussed below, the report emphasised the importance of new legislation being comprehensive and seeking to transform social understandings of violence and human rights and made recommendations that were designed to ensure, inter alia, compliance with obligations under international human rights law.

The FPA regime

The FPA is a textbook example of Standard IPV Legislation. Its objectives expressly state that its purposes include to 'implement certain principles underlying [CEDAW]…'[385]

Under the FPA it is an offence to engage in an act of 'domestic violence,'[386] with the term being broadly defined to include physical, sexual, psychological and economic abuse against a person with whom the

[380] *Magistrates Court Act (Solomon Islands)* s35.
[381] Ibid.
[382] Solomon Islands Law Reform Commission (n 377) 95.
[383] Special Rapporteur Erturk expressly pointed to state actors promoting and permitting reconciliation and conflict resolution rather than punishment as a breach of the obligation of due diligence: Erturk (n 64) 13.
[384] AusAID, 'Solomon Islands Country Report' (n 270) 55.
[385] *Family Protection Act* (n 38) s2(1)(e).
[386] Ibid s58.

perpetrator is in a domestic relationship.[387] 'Domestic relationship' is defined in the FPA to include persons who are or have been in an engagement, courtship or customary relationship as well as married spouses.[388] Where a person has been charged with an offence under the FPA, it is not a defence that customary compensation has been paid in relation to the act(s) of violence in question.[389]

Section 63 of the FPA empowers the court to order the offender to pay 'fair and reasonable' compensation to the survivor/victim of IPV. In doing so, the court must take into account the survivor/victim's pain and suffering (both physical and psychological), the value of any property taken from them or destroyed, any loss of earnings they have suffered as a result of the IPV, and expenses incurred by the survivor/victim due to separating from the offender. The financial position of the offender and their ability to pay must also be considered. As will be further discussed in chapter five, the provisions of the FPA relating to compensation (which are highly individualistic, taking only the survivor/victim and perpetrator into account) contrast starkly with the processes resulting in the payment of customary compensation, which are aimed at broader community healing and involve payment not to the survivor/victim herself but to her natal family. As will also be discussed, (mis)understandings that use of the FPA precludes any form of customary reconciliation has resulted in resistance to the use of the FPA as an avenue to obtain protection from violence.

In addition to criminalising acts of IPV and providing for the payment of compensation, the FPA also established a regime under which survivors can seek protection in the form of Police Safety Notices (**PSNs**) and/or Protection Orders (**POs**).[390] PSNs are issued by police officers as immediate, short-term measures where they believe an act of domestic violence has been, or is likely to be, committed.[391] A condition of all PSNs is that the (alleged) perpetrator of violence must not commit domestic violence against the (purported) survivor/victim.[392] Additional conditions might be attached to ensure the survivor's safety (such as conditions preventing the perpetrator from approaching or contacting the survivor).[393] Once a PSN has been issued, the issuing officer must assist the survivor in seeking a PO.[394]

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[387] See definition of domestic violence in s4 and the different types of abuse in s3. Note this broad definition of domestic violence is in keeping with the definition of the CEDAW Committee. General Recommendation 35 expressly states that '[GBV] takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty:' see United Nations Committee on the Elimination of Violence Against Women, 'General Recommendation No 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19' (n 2) 2(14).

[388] *Family Protection Act* (n 38) For the definition of domestic relationship see s5.

[389] Ibid ss58-59.

[390] See Parts 2 and 3 of the FPA in relation to PSNs and POs respectively.

[391] *Family Protection Act* (n 38) s12.

[392] Ibid s15.

[393] Ibid.

[394] Ibid s16.

POs are longer-term measures issued by the Magistrates Court.[395] Like PSNs, they have conditions to ensure the survivor is protected from ongoing violence. While PSNs remain on foot for only 21 days, POs can be in place for up to 5 years.[396] Interim POs can also be obtained that will remain on foot until a final PO is issued, the interim PO is revoked, or the application for a final PO withdrawn.[397] Breaching a PO or PSN is itself a criminal offence, with significant financial penalties and/or up to three years imprisonment.[398]

In addition to criminalising IPV and providing protection for survivors in the forms of PSNs and POs, and in keeping with recommendations of the CEDAW committee in relation to holistic responses to IPV, the FPA also places obligations on police, health care service providers and prosecutors involved in cases of IPV to assist survivors in accessing medical, legal and support services, places of refuge, and assistance in understanding and accessing services under the FPA.[399] The Minister Responsible for Women's Affairs is also under an obligation to work with other relevant stakeholders (including civil society organisations) to establish and support public awareness programs aimed at preventing IPV.[400] As discussed in chapter two, the key stakeholders involved in the implementation of the FPA (including the Christian Care Centre, Family Support Centre, relevant Government departments and the RSIPF) are all members of the SAFENET referral network. Accordingly, their obligations include to challenge harmful gender norms, advocate for the promotion of gender equality and publicly condemn IPV as a human rights violation.

What do we know about the effectiveness of the FPA to date?

As yet there are no comprehensive data in respect of the effectiveness of the FPA regime, which is perhaps unsurprising given its relatively recent introduction and the obstacles thrown up for research and data collection between 2020 and 2023 as a result of COVID 19 related lockdowns and travel restrictions. Nonetheless, some relevant data have been collected that illustrate both the potential of the regime where properly implemented (particularly from the perspective of survivor/victims), and the significant challenges that remain in respect of implementing and enforcing the legislation.

The potential of the system is illustrated by data set out in a report commissioned in April 2019 (three years after the commencement of the FPA) to look at the experiences of those who had used FPA services, including justice and health services.[401] The resultant report (entitled *Women's Experiences*

[395] Orders made under section 29.
[396] *Family Protection Act* (n 38) ss15 and 32.
[397] Ibid s26.
[398] Ibid s59.
[399] Ibid ss46-48.
[400] Ibid s56.
[401] Anouk Ride and Pauline Soaki, *Women's Experiences of Family Violence Services in Solomon Islands* (Australian Aid/Solomon Islands Government, 2019) 5.

of Family Violence Services in Solomon Islands (**FPA Service User Report**)) paints a picture of a system that is far from perfect but nonetheless has the potential to provide positive outcomes for survivor/victims of IPV and to reduce rates of IPV in Solomon Islands.[402]

For the purposes of the FPA Service User Report, interviews were conducted with approximately 10% of all women who had used the FPA system between the time of its commencement and 1 September 2019.[403] 49% of those women indicated they felt satisfied that the FPA services they accessed had improved their safety.[404] While hardly an overwhelmingly positive statistic, a closer look at the data suggests that *where properly implemented* the FPA provides services with which users are generally satisfied, and where survivors of IPV generally obtain relief from violence.

Where visits to service providers resulted in referrals or action, users were generally satisfied. For satisfied service users, violence ceased whether because their partner changed their behaviour following interaction with the system, the survivors separated from their partner, or the partner was taken into custody.[405]

While 49% of users indicated satisfaction with the services they received under the FPA, 51% indicated dissatisfaction. For the majority of dissatisfied users (52%) no action was taken by the services they visited.[406] These women sought assistance under the FPA regime and found the system to be unresponsive. 25% of dissatisfied users indicated that they felt the service staff they interacted with were biased towards the perpetrator of violence against them because of a pre-existing relationship.[407] Again, this is an example of the system not being fairly or properly implemented (at least from the perspective of service users).

Of the services under the FPA, the most commonly utilised to date has been the RSIPF.[408] 107 women reported having visited the police about IPV, with a total of 149 police visits between them.[409] The experience of users of police services was greatly varied.

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[402] Ibid.
[403] Ibid. For the purposes of the study, interviews were conducted with 123 women and 3 men who had used services under the FPA, as well as with 24 province-based staff of service providers. Interviewees who were service users consisted of a representative sample of women from urban and rural areas across five provinces with high rates of family violence: page 5.Interviewees were asked about matters relating to the services they used, the information they were provided by those services, their satisfaction with the services provided/outcomes achieved, and factors influencing their use of services: see page 14.
[404] Ibid 43.
[405] Ibid. 58% of satisfied service users remained with the perpetrator but reported that the violence had ceased, 32% had separated from the perpetrator and in 10% of cases the perpetrator was in prison or custody.
[406] Ibid.
[407] Ibid.
[408] Ibid 6.
[409] Ibid.

As set out above, under the FPA police officers can issue a PSN to provide immediate, short-term protection to survivors of IPV. Findings of the FPA Service User Report in relation to PSNs again evidence the effectiveness of the FPA regime *where properly implemented.* Where survivors visited the police and were issued with a PSN in a timely manner, the majority (70%) were satisfied with the service provided by police and felt safe.[410] Satisfied service users indicated that the issue of the PSN resulted in a change of behaviour by the perpetrator and made them feel safe to resume activities like working, attending the markets, and educating children.[411] The 30% of women who were *not* satisfied or feeling safe after the issue of a PSN reported that this was because the perpetrator did not change their behaviour after it was issued, and the police took no action against the perpetrator as a result of the breach.[412] Query whether outcomes would have been more positive for service users had the police taken the next step of arresting perpetrators for breach of a PSN.

The FPA Service User Report gives some insight into the effectiveness of the FPA for those who discover and utilise it and provides a basis for cautious optimism in relation to the potential of the regime for survivors of IPV. Data presented in a 2020 review of the implementation of the FPA (**FPA Review Report**), however, make clear the limited utilisation of the system to date, and some key issues relating to its accessibility and enforcement.[413] The FPA Review Report suggests that 3,839 matters pertaining to domestic violence were reported to the police in the 2016 – 2019 period.[414] However, only 1,361 PSNs were issued during that time, meaning that only approximately 35% of reports resulted in the issue of a PSN.[415]

Data presented in the FPA Review Report also suggest that, at least at present, PSNs are being used much more widely than POs, despite the fact they were only ever intended to provide short-term protection while POs were being obtained. Between 2016 and 2019, only 119 applications were made for interim POs, of which 104 were granted.[416] Only 13 applications were made for final POs, with all of those being granted.[417] While comprehensive research is yet to be conducted in relation to why so few POs have been applied for to date, there are a number of likely contributing factors.

One high level question beyond the scope of this thesis but worthy of investigation is whether PSNs are in fact a better option than POs for many survivor/victims of IPV in Solomon Islands and, if so,

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[410] Ibid.
[411] Ibid 36. Note that under s59 of the FPA breaching a PSN is an offence punishable by up to 3 years imprisonment and/or a fine of up to 30,000 penalty units.
[412] Ibid.
[413] Gibbs (n 39) 42.
[414] Ibid 29.
[415] Ibid.
[416] Ibid.
[417] Ibid 27.

whether the system itself should be amended so as to enhance the role of PSNs more permanently. The MWCYFA suggests that women survivors reporting IPV overwhelmingly indicate that they want the violence to stop, but that they also want to be able to stay in their relationship.[418] The majority of these women also report that PSNs are effective in interrupting the cycle of violence. As such, it may be that for many IPV survivors, PSNs are viewed as sufficient to achieve their objectives. This would accord with the commentary of the FPA Service User Report, which indicated that women commonly felt that PSNs were preferable to POs in that they could act as a warning to IPV perpetrators and often stop violence without requiring the time and money involved in court cases seeking a PO.[419]

Leaving aside the question of whether the broader role of PSNs and POs ought to be (re)considered, basic issues arise as a result of the (in)accessibility of the Magistrates Court to most Solomon Islanders. The Magistrates Court is the only body empowered to issue final POs, and there are only five permanent Magistrates Courts to serve the 9 provinces of Solomon Islands. All are located in provincial capital cities.[420] Given the vast majority of Solomon Islanders live in rural areas, these courts are accessible to relatively few. While the Magistrates Court does undertake circuit courts in 36 locations across Solomon Islands, their capacity is very limited and scheduled sittings are regularly cancelled or delayed.[421]

The provisions of the FPA allowing for the issue of interim POs (outlined above) were intended to help ameliorate accessibility issues for Solomon Islanders in provincial and rural settings. Interim POs can be issued by justices of the Local Court and others prescribed as 'authorised justices' for the purposes of the FPA (**Authorised Justices**). As such (in theory at least) those living in rural or remote areas who do not have immediate access to the Magistrates Court but *do* have access to an Authorised Justice can obtain protection until the final determination of an application for a PO.

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[418] Department of Pacific Affairs ANU, 'Session 10 – Implementing the Family Protection Act: The Solomon Islands Experience'.

[419] Ride and Soaki (n 401) 7.

[420] These are the Central Magistrates Court (which deals with cases from Guadalcanal, Central, Isabel and Rennell & Bellona), the Malaita District Magistrates Court (for Malaita), the Eastern Inner Magistrates Court (for Makira-Ulawa), the Eastern Outer Magistrates Court (for Temotu) and the Western Magistrates Court (for Western and Choiseul provinces): Solomon Islands National Judiciary, *Solomon Islands National Judiciary Annual Report* (2019 2015) 39–50.

[421] Cancellations and delays occur for a number of reasons, including a lack of funding. For example, in 2021 a shortfall in budget that became apparent in September led to the cancellation of the remainder of court circuit dates for the year, meaning 14 of 36 circuit court locations would not be visited. Ultimately the circuit court sittings went ahead, but only after Australia committed additional funding: Solomon Islands Public Solicitors Office, 'Magistrates' Court Circuits to Go Ahead With Support From Australia' <https://www.solomontimes.com/news/magistrates-court-circuits-to-go-ahead-with-support-from-australia/11167>.

An immediate obstacle with the system for issuing interim POs, however, lay with the fact that the existing Authorised Justices with the power to issue them were the same local court justices (male community leaders almost without exception) who had, through their leadership, demonstrated a high tolerance for domestic violence in the community in the past.[422] It has also been observed that many local court justices brought deeply entrenched gender biases to their roles, inhibiting their ability to effectively support survivors of IPV in navigating the FPA.[423] Finally, the professional experience of local court justices tended to be restricted to resolving land disputes, leaving them ill-equipped to deal with matters pertaining to IPV.[424] As indicated above, the FPA does provide for persons other than local court justices to be prescribed as 'authorised.' Work is being done to implement regulations that will allow appropriate and knowledgeable people to be so prescribed.[425] However, this work has been slow and is yet to be finalised.[426]

Given one pathway to a PO is through the police, a lack of desire and/or ability on the part of police to help survivors obtain a PO might also go partway towards explaining the low number that have been issued to date. As discussed above, PSNs were intended to be a temporary measure, buying survivors of IPV the time to obtain permanent protection in the form of a PO. Under the FPA, a police officer issuing a PSN is required to assist the person for whose benefit it has been issued in making an application for a PO within 21 days.[427] MWCYFA suggests that in practice this is not happening, an assertion supported by the very low number of POs applied for compared to PSNs issued. Whether the failure of police to assist survivors in obtaining POs is a result of a lack of knowledge, skills, interest or a combination of the three, it is another roadblock for women seeking protection. This is particularly problematic given the fact that many women rely heavily on the police to inform them of their options in relation to protection from IPV.

A lack of knowledge and understanding of the FPA regime is not restricted to pathways to obtaining POs. Evidence indicates that there are low levels of knowledge and understanding in the community of the FPA system more broadly. A 2018 survey of 574 rural women living in Guadalcanal and Malaita

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[422] Anouk Ride, *Stretim: Attitudes and Communication about Violence Against Women and Girls in Solomon Islands* (Solomon Islands Ministry of Women, Youth, Children and Family Affairs, 2018) 9.
[423] Secretariat of the Pacific Community, *Solomon Islands Access to Justice Pilot Project: Reflection Report* (Secretariat of the Pacific Community, 2021) 11.
[424] Ibid 6. For a discussion of the limited skill set of Authorised Justices see also Daniel Evans and Anika Kingmele, *A Pilot Project to Increase Women's Access to Justice Guadalcanal and Malaita Provinces Solomon Islands: End of Project Evaluation* (United Nations Trust Fund and SPC Human Rights and Social Development Divisions, 1 February 2021).
[425] KI Kyla Venokana; KI Anika Kingmele; KI Ethel Sigimanu; KI Vaela Devisi.
[426] KI Kyla Venokana.
[427] Section 16.

provinces indicated that only 13% knew about the FPA.[428] Research undertaken in the same year in relation to social attitudes towards violence against women also found awareness of the FPA to be extremely low, with only two of 84 research participants having heard of it.[429] This was particularly surprising given one of five focus groups participating in the project was comprised solely of female survivors of IPV, and another solely of males in prison for violent crimes (including crimes against their families).[430] Lack of knowledge of the FPA, particularly by rural women, has been acknowledged by the Solomon Islands Government, as it has by various organisations working to reduce IPV in Solomon Islands including the UNDP and the SPC. Utilisation of the FPA regime will remain extremely low irrespective of its potential and appeal in the absence of greater community understanding of it.

As will be discussed in detail in Part Two, data collected for the purposes of this thesis point to further barriers to the use of the FPA by IPV survivor/victims. Those barriers arise because of tensions between rights-based discourse and principles that underpin mainstream efforts aimed at FPA implementation and the perspectives and experiences of those on the ground. Alongside challenges related to limited awareness of the FPA and its accessibility, these barriers form the central focus of this thesis. Nonetheless, in the context of a discussion of the effectiveness of the FPA it is important to acknowledge that much more work needs to be done in relation to enforcement of the FPA if it is to be optimally effective.

The influence of human rights and international aid on work to reduce family violence in Solomon Islands

This chapter has pointed to the passage of the FPA as a milestone in state efforts to reduce IPV in Solomon Islands and suggested a primary catalyst for it to have been the implementation of the National Family Violence Study and publication of the Family Violence Report. It is important to note, however, that for many advocates and activists, the campaign to shed light on the problem of IPV began long before that. As is demonstrated below, for many such people the human rights discourse and framework became an important tool.

It is widely acknowledged among those working in the family violence space that a small group of key Solomon Islander women were instrumental in bringing domestic violence into the public realm and pushing for action to eliminate it from the late 1980s/early 1990s. Those women include three of the

[428] The Pacific Community, *Increasing Access to Justice in the Solomon Islands: Baseline and Midline Survey Results* (2019) <https://www.creativedesignpacific.com/spc_hrsd/web/sites/default/files/2021-06/Access%20to%20Justice%20Solomon%20Islands%20project%20infographic_0_0.pdf>.
[429] Ride (n 422) 21.
[430] Ibid 9.

key informants for this thesis, all of whom continue to work in this space today: Afu Billy, Ethel Sigimanu and Anika Kingmele.

Perhaps unsurprisingly given their common interests and the size of the professional community working to reduce IPV in Solomon Islands, Afu, Ethel and Anika have worked together in many capacities over many years and remain close and supportive colleagues. Some of their professional crossovers are evident from the professional histories set out in Annexure 3. For example, all have worked in different capacities with or for the Family Support Centre, Pacific Community and Solomon Islands Government. All have worked both with local organisations and international NGOs. In interviews conducted for the purposes of this thesis all spontaneously commented on the fact that they continue to work towards common goals and reach out to each other for advice and support.

It is clear from interviews with Afu, Ethel and Anika that their engagement with organisations working in human rights, gender justice and family violence has influenced their own understandings of the rights and roles of women and offered them a perspective from which to identify and challenge discriminatory practices and legislation. This is perhaps most strikingly demonstrated by a story told by Afu, herself a survivor of IPV, about the moment in which she realised that violence against women was not inevitable or appropriate. In Afu's telling, she was struck by this realisation when she travelled overseas for the first time, funded by the YWCA, to attend a young women's conference promoting women's rights.[431] Prior to that conference she had accepted that domestic violence was normal and that men had 'the right to beat their wives if they [didn't] conform to whatever the husband's expectations were.'[432] Afu says that a session on violence against women changed her view:[433]

> I remember sitting there and listening to this…woman talking about….violence against women. And I just sat there and listened and it dawned on me that it's not on. And…I knew then that, yeah, it was not right. It was like a piece of the puzzle came into place.

For Afu, this realisation was the start of what has become an ongoing journey to advocate for women's rights in Solomon Islands. Upon her return to Honiara, Afu worked with an Australian Government sponsored volunteer to prepare and distribute a newsletter for the National Council of Women about

[431] Note that Solomon Islands YWCA, established in 1975, is affiliated with the World YWCA, a leading organisation advocating for women's and human rights across the globe: see YWCA of Solomon Islands, *Rise Up! Young Women's Leadership Program: Executive Summary of Evaluation Report 2013* (YWCA Solomon Islands, 2013) 1; 'History - World YWCA' (17 July 2020) <https://www.worldywca.org/about-us/history/>.
[432] *Mere Blong Iumi - Part 4 - Politics* (Directed by RAMSI PAU, 9 November 2012) at approximately 5.36 <https://www.youtube.com/watch?v=tGfSQKzrRMc>.
[433] KI Afu Billy.

IPV.[434] This was perhaps the first time the issue was publicly discussed.[435] Afu reports that at that time 'wife beating' was seen as a normal part of life for most women in Solomon Islands.[436] While the newsletter gained significant attention, the issue itself was not one the public felt warranted action with the vast majority of feedback suggesting that where violence occurred it was appropriate and/or the fault of the survivor/victim.[437] Further, discussion of the issue by the National Council of Women was met with accusations that the organisation was 'an importer of foreign ideas, an organisation run by divorced women and intent on breaking up families…'[438]

Despite initial pushback from the community, the National Council of Women continued to agitate for recognition of IPV as a major concern.[439] This agitation was a key catalyst for the 1994 Community Survey discussed above, which marked the first time data on IPV in Solomon Islands were officially collected (albeit on a small scale).[440] The data from the 1994 Community Survey were subsequently used by those working in the family violence space to push for action, and particularly a more comprehensive approach to data collection. Of great use to advocates was work already being undertaken in the region by the Secretariat of the Pacific Community (**SPC**).

The SPC was established in 1947 by the nations then administering territories in the Pacific (being Australia, France, New Zealand, the Netherlands, the United Kingdom and the United States of America). In 1983 the SPC allowed all Pacific Island Governments to join irrespective of their political status, a move heralded at the time as the 'political maturing of a once white-only club.'[441] Since inception, the SPC has had as its goal the enhancement of the welfare, economic and social rights of the inhabitants of the territories of member states.[442] It remains the most prominent regional organisation working towards the protection of rights and the achievement of the SDGs.[443]

Human rights and violence against women have long been a focus of the work of the SPC.[444] Since at least 1994, when the members of the SPC (including Solomon Islands) endorsed the First Pacific

[434] KI Afu Billy. See also Billy (n 379).
[435] KI Afu Billy.
[436] Billy (n 379) 173.
[437] KI Afu Billy.
[438] Billy (n 379) 174.
[439] Farran (n 179) 185.
[440] Poerio (n 344). KI Val Stanley.
[441] Francisco T Uludong, 'What Now for the New-Look South Pacific Commission?' (1 December 1983) 54(12) *Pacific Islands Monthly* 11. The SPC was originally called the South Pacific Commission but changed its name to the Pacific Commission in 1997.
[442] 'Agreement Establishing the South Pacific Commission [1948] ATS 15' Art IV <https://www.austlii.edu.au/au/other/dfat/treaties/1948/15.html>.
[443] 'About Us | The Pacific Community' (4 February 2022) <https://www.spc.int/about-us>.
[444] SPC is the organisation that endorsed the first, second and third Pacific Platforms. The first Pacific Platform was prepared as the regional contribution to the Beijing Conference in 1995. It identified legal rights, human rights and violence against women as being among 13 key issues for women in the Pacific, with the latter being

Platform,[445] the organisation has had an objective of increasing awareness of violence against women as both a crime and a violation of women's human rights.[446] In 1995 the SPC established the Regional Rights Resource Team (**RRRT**), the mandate of which was to build a culture of human rights in the Pacific and to assist member nations to commit to and observe international human rights standards.[447]

In the mid-2000s the SPC began implementation of a project, funded by the Australian Government and the UNFPA, in relation to the prevalence of family violence in the Pacific region. After consultation between the SPC and Ethel Sigimanu (key informant for this thesis and, at that time, Permanent Secretary of the MWCYFA) it was agreed that Solomon Islands would participate in the project. This led to the implementation of the National Family Violence Study (with SPC as implementing partner and Ethel as National Coordinator) and the publication of the Family Violence Report.[448]

Perhaps unsurprisingly given the mandates of the funders and implementers of the National Family Violence Study, the recommendations set out in its report align closely with key principles of international human rights law and emphasise the importance of protecting women's rights and promoting gender equality. Those recommendations include:

- encouraging advocacy to key stakeholders by linking the study findings to commitments made by government, including because of the accession to CEDAW;[449]
- the promotion of gender equality and 'observance of women's human rights and compliance with international agreements'; [450]
- taking action (as advised by the UN Secretary General) to develop and implement a national action plan to eliminate violence against women; [451] and

explicitly recognised as a human rights issue (see page 30). It also set the strategic objective of increasing awareness of violence against women as both a crime and a violation of women's human rights. It also pushed for all Pacific Islands countries to prioritise the elimination of domestic violence and to introduce legislation aimed at its elimination (page 30).

[445] South Pacific Commission, *Pacific Platform for Action: Rethinking Sustainable Development for Pacific Women Towards the Year 2000.* (South Pacific Commission, May 1994).

[446] Ibid 30.

[447] 'About - SPC Regional Rights Resource Team (RRRT) - Organisations - Pacific Data Hub' <https://pacificdata.org/organization/about/spc-rrrt>.

[448] It is worth noting that the project, known as the Socio-Cultural Research on Gender-Based Violence and Child Abuse in Melanesia and Micronesia in Solomon Islands, was given the 'safe alias' of the Solomon Islands Family Health and Safety Study in order to make it more appealing to the Solomon Islands government and so as to protect respondents and project workers: Rasanthan (n 350) 4.

[449] Secretariat of the Pacific Community and National Statistics Office (n 17) 163.

[450] Ibid.

[451] Ibid 163–164.

- working with the RRRT on the development and implementation of a legal framework to effectively address violence against women.[452]

Participation in the National Family Violence Study had itself been a key step for Solomon Islands towards compliance with CEDAW.[453] Ethel suggests that the Government at that time was largely unfamiliar with its responsibilities under CEDAW, but (in line with the Family Violence Report recommendation) she and her team lobbied the Government to take action towards reducing IPV and advised them on how to do so in order to meet their international obligations. The first step in this direction was the development and endorsement of the *National Policy on Eliminating Violence Against Women (2010)* (**2010 EVAW Policy**).[454] The 2010 EVAW Policy was prepared with technical advice from the RRRT as a result of funding provided by the United Nations Trust Fund in Support of Actions to End Violence Against Women (**UN Trust Fund**).[455] The 2010 EVAW Policy referred extensively to the obligations of Solomon Islands in respect of the domestic implementation of CEDAW and other international instruments to which it was a party.[456] The 2010 EVAW Policy has four guiding principles, including recognition of women's rights and achieving gender equality.[457] Among the key strategic areas for the policy were strengthening legal frameworks, law enforcement and the justice system.[458]

Ethel reports that the commitments set out in the 2010 EVAW Policy made the job of seeking legislative action to reduce IPV much more straightforward. Ethel successfully pushed for Solomon Islands to join the UN Trust Fund funded RRRT project *Changing Laws, Protecting Women*, the purpose of which was to promote legislative change to protect women and girls from family violence.[459] As a part of that project the RRRT prepared a report for the Solomon Islands Government on options for legislative reform, and central to their advice was the importance of ensuring legislative reform measures promoted and protected women's human rights.[460] The RRRT assisted with the drafting of the FPA bill itself, public consultations in relation to the draft bill, and briefings for members of Parliament on the bill up until its passage in 2014.[461] The Australian Government also provided support for the

[452] Secretariat of the Pacific Community and National Statistics Office (n 17).
[453] Ibid 24.
[454] Ministry of Women, Youth and Children Affairs, *National Policy on Eliminating Violence Against Women* (2010).
[455] AusAID, 'Stop Violence: Responding to Violence Against Women in Melanesia and East Timor Australia's Response to the ODE Report' (n 262) 55.
[456] Ministry of Women, Youth and Children Affairs (n 454) vi, vii and 8–10. Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).
[457] Ibid vii.
[458] Ibid 11–12.
[459] KI Ethel Sigimanu and Secretariat of the Pacific Community Regional Rights and Resource Team (n 372) vi.
[460] Secretariat of the Pacific Community Regional Rights and Resource Team (n 372).
[461] Secretariat of the Pacific Community (n 423) 11.

development of the FPA bill, both through the provision of an Elimination of Violence Against Women Policy Officer within the MWYCFA and advice on drafting the aspects of the bill related to policing.[462]

While it is implicit in the above discussion, it is useful to explicitly reiterate how it was that Solomon Islands came to implement the FPA. The issue of IPV had been brought into the public realm through the work of those like Afu Billy and other advocates who pushed for action for the reduction of IPV. The SPC, whose mandate includes to assist member nations to comply with obligations under international human rights law, worked with Ethel and her colleagues to implement the Family Safety Study, which provided both the evidence and recommendations required to push for concrete action towards reducing IPV. From the RRRT's perspective, the logical next step was the development of Standard IPV Legislation for implementation in Solomon Islands. This was both because of the international human rights law framework (the regional implementation of which was a key aim of the RRRT) and because there was existing funding for policy and legislative reform work under the internationally funded Changing Laws, Protecting Women project. For those like Ethel working in the space domestically, pushing forward with legislation seemed like the most sensible option and provided the path of least resistance given the momentum being gained as a result of the SPC's work in the region.[463] For the Government of Solomon Islands this course of action also had numerous important advantages. As an economically weak and politically unstable country, Solomon Islands is under pressure to engage with the international human rights regime and the passage of the FPA took the country significantly closer to CEDAW compliance.[464] It also meant that the vast majority of human, technical and financial resources required to take action towards the reduction of IPV were provided by external donors. This was important. In the account of all key informants who spoke directly to the issue, the Solomon Islands Government recognised the value of implementing Standard IPV Legislation and having other steps taken to reduce IPV. However, it was not their top priority.[465] Nor was it something they were willing or able to fund.

Conclusion

Read together, the three chapters in this Part demonstrate how IPV came to be viewed as a human rights issue, and how such recognition brought significant pressure to bear on states to implement

[462] Australian Government Department of Foreign Affairs and Trade, 'Aid Performance Program Report 2013 - 2014 Solomon Islands' (n 267) 11–12.
[463] KI Ethel Sigimanu.
[464] Subedi, Nanau and Magar (n 155) 529–534; Farran (n 179) 1; Jolly (n 155) 367. That CEDAW compliance was a relevant factor for the government in passing the FPA is evidence by the fact it is referred to in the legislation's objectives and also repeatedly referred to in parliamentary debate at the time of the second reading speech. See, for example, Hon. Commins Mewa (page 49), Mr Matthew Wale (page 50), Mr Clay Soalaoi (page 60), Hon. Stanley Sofu (page 66) and Mr John Manenaiaru (page 70) 'Hansard: Solomon Islands National Parliament (25 August 2014)' (n 1)
[465] KI4, KI7, KI22, KI19, KI20, KI18, KI13, KI3, KI17, Anonymous Informant 5.

legislative frameworks to address IPV. It has been argued that aid-dependent nations, needing to demonstrate their international good standing in order to secure ongoing international aid, come under particular pressure.[466]

This Part has largely focused on the aspects of recognising IPV as a human rights issue that are, at least from the perspective of those pursuing its elimination, positive. Using the implementation of the FPA in Solomon Islands as a practical example, it has been argued that the human rights framework has provided an important tool for advocates and activists pursuing the elimination of IPV, and a broad blueprint for state action.

In Part Two of this thesis (to follow) I consider another perspective. I demonstrate that despite the advantages of a rights-based understanding of IPV, such an understanding also brings with it significant challenges that throw up barriers to the implementation of Standard IPV Legislation like the FPA. This is particularly the case in cultural contexts in which human rights concepts and frameworks remain contested. The first two parts of this thesis establish the central challenge it examines: that differing views on the international human rights framework, as well as the concepts and assumptions underpinning it, problematise the implementation of donor-funded Standard IPV Legislation in Focus Countries.

[466] For discussion of CEDAW and the conditionalities of foreign aid in the Pacific see Jolly (n 155) 365; Aletta Biersack, 'Human Rights Work in Papua New Guinea, Fiji and Vanuatu' in Aletta Biersack, Margaret Jolly and Martha Macintyre (eds), *Gender Violence and Human Rights: Seeking Justice in Fiji, Papua New Guinea and Vanuatu* (ANU Press, 2016) 271; Zorn (n 341); Farran (n 179) 1; ibid.

PART TWO

Chapter 4: Human rights: a faithless friend?

> '[H]uman rights discourse both opens up and shuts down possibilities for liberatory action and social change.' Margaret McLaren[467]

The first Part of this thesis looked at ways in which human rights discourse and frameworks *open up* possibilities for liberatory action in the context of efforts to reduce IPV. It demonstrated how IPV came to be viewed as a human rights concern and the advantages of this conceptualisation for those pursuing its elimination. This Part complicates that picture by demonstrating some of the ways in which human rights discourse also problematises the path to change. It identifies and examines some of the key *challenges* that can arise when the human rights framework and discourse inform programming to facilitate the implementation of Standard IPV Legislation in contexts where human rights concepts remain contested. Identification of these challenges is necessary, I suggest, because they threaten to undermine program effectiveness if they cannot be ameliorated.

The literature reveals long-standing tensions around key claims, concepts and assumptions that underpin the international development policies and programs of aid-giving countries, the official government policies of aid-receiving countries, and mainstream human rights programming. In this chapter I identify four related, and at times overlapping, criticisms that repeatedly appear in critiques of the WRHR Movement. The first is that while proponents of human rights claim them to be universal, in fact they are a product of a particular (Western) culture that privileges the priorities, interests and experiences of some more than others. The second is that human rights discourse and programming directed towards the reduction of GBVAW focuses too heavily on bodily autonomy and fails to adequately consider related economic, social and cultural factors. The third is that the promotion of gender equality, virtually ubiquitous in programming aimed at the reduction of IPV, risks undermining other valuable aspects of (some) women's lives. The final critique discussed in this chapter is that mainstream human rights programming focuses too heavily on individual rights and autonomy, failing to take into account the perspectives and lived realities of those that live in (more) collectivist contexts.[468]

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[467] McLaren (n 176) 84.

[468] For a discussion of the differences between individualism and collectivism see Yuriy Gorodnichenko and Gérard Roland, 'Understanding the Individualism-Collectivism Cleavage and Its Effects: Lessons from Cultural

This chapter is focused largely on theory.[469] In the chapter to follow I consider what these issues might mean in practice by examining them in the context of Solomon Islands. Read together, these chapters demonstrate how tensions in relation to human rights discourse and principles can give rise to ideological and practical barriers that can inhibit the effective implementation of Standard IPV Legislation and related programming. Such barriers need to be ameliorated if programming to reduce IPV is to be effective.

Claims to universalism and the relevance of economic, social and cultural rights

As was discussed in Part One, adopting the language and framework of rights gave a voice to those around the world seeking gender justice for women. It lent legitimacy to their demands and strength to their arguments. Once GBVAW was recognised as a human rights issue it was short work for it to attract global condemnation, and for the 'blueprint' for state action to eliminate it outlined in Part One to emerge. For many around the globe for whom IPV was a concern this was a resounding win. However, characterisation of IPV as a human rights issue also brought with it significant baggage. That baggage continues to throw up barriers to rights-based programming to reduce IPV, particularly in postcolonial contexts.

Those who argue for the strength of the human rights discourse in redressing abuses of women tend to emphasise that, while there is no universal 'women's perspective,' women across the globe have significant commonalities that allow their interests to be brought together under the banner of human rights.[470] Charlesworth, for example, acknowledges the tensions that exist between universal theories of rights and local experiences but argues that 'patriarchy and the devaluing of women, although manifested differently within different societies, are almost universal.'[471] She goes on to assert that

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Psychology' in Masahiko Aoki, Timur Kuran and Gérard Roland (eds), *Institutions and Comparative Economic Development* (Palgrave Macmillan UK, 2012) 213. Gorodnichenko and Roland put the difference succinctly when the say 'Broadly defined, individualism emphasizes personal freedom and achievement…Collectivism in contrast emphasizes the embeddedness of individuals in a larger group.'

[469] While not confined to the work of self-identifying feminist scholars, this chapter does focus on those with a feminist perspective. This is because the urgency of reducing IPV remains a key priority for many feminist academics, activists and NGOs: Julie Ada Tchoukou, 'The Silences of International Human Rights Law: The Need for a UN Treaty on Violence Against Women' (2023) 23(3) *Human Rights Law Review* 1–2. This chapter also pays close attention to voices from the 'Global South.' This is seen as important given the focus of this thesis is on the implementation of human rights-informed legislation in jurisdictions in which human rights concepts remain contested. For reasons that will become clear from the discussion in this chapter, in many jurisdictions in the Global South, particularly those with a history of colonisation, the language of human rights is often met with scepticism or even hostility. As a result, it is here that the barriers discussed in this chapter most often arise.

[470] Charlesworth (n 67); Niamh Reilly, 'Doing Transnational Feminism, Transforming Human Rights: The Emancipatory Possibilities Revisited' (2011) 19(2) *Irish Journal of Sociology* 60; Bunch (n 65); Jill Steans, 'Debating Women's Human Rights as a Universal Feminist Project: Defending Women's Human Rights as a Political Tool' (2007) 33(1) *Review of International Studies* 11 ('Debating Women's Human Rights as a Universal Feminist Project').

[471] Charlesworth (n 67) 62.

'while no monolithic "women's point of view" can be assumed, it is also important to acknowledge commonalities across cultures.'[472] Those commonalities, Charlesworth would argue, allow for the articulation of a unified voice for women, albeit on a limited number of issues, and to a limited degree of specificity.

Charlesworth was writing in 1994, at a time when activists were still grappling with what it meant to recognise women's rights as human rights and thinking about how the human rights framework could best be leveraged in the fight for gender justice. Charlesworth had long been arguing for a reorientation of the boundaries of human rights law to incorporate the perspectives of women (as a socially subjugated group). It is understandable, then, that for her what women had in common was far more important than the points at which their interests and priorities diverged. Charlesworth did acknowledge that factors such as race and nationality brought with them important power differentials, but she did not investigate the potential consequences of those power differentials or consider how they might lead to the alienation of some from the WRHR Movement.

Questions of race, nationality and culture were of greater concern to another group in the lead up to the Vienna Conference where, as was discussed in chapter one, GBVAW was formally recognised as a human rights issue for the first time. While women's groups across the globe were organising to press for the recognition of women's rights as human rights, a group of 34 nations from across the Asia Pacific (referring to themselves simply as the 'Asian States' and, relevantly for this thesis, including Solomon Islands) were meeting to agree a regional agenda for the conference.[473] Their meeting culminated in the adoption of the Bangkok Declaration in April 1993.[474]

While declaring their ongoing commitment to the United Nations and key human rights principles, adoptees of the Bangkok Declaration also made clear their intention to advocate at the Vienna Conference for the 'review [of] all aspects of human rights [to] ensure a just and balanced approach thereto.'[475] Central to the concern of adoptees was that, despite claims to universality, the human rights regime as recognised in international human rights mechanisms and instruments represented the interests and priorities of some nations more than others. Specifically, the interests of the 'West' were seen to be prioritised above the interests of the 'rest.' Reviving a debate that was rampant during

[472] Ibid 63.
[473] Singhvi, 'Report of the Regional Meeting for Asia of the World Conference on Human Rights, Bangkok, 29 March-2 April 1993.' (UN, 1993) I. The 'Asian States' that adopted the declaration were as follows: Bahrain, Bangladesh, Bhutan, Brunei Darussalam, China, Cyprus, Democratic People's Republic of Korea, Fiji, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Kiribati, Kuwait, Lao People's Democratic Republic, Malaysia, Maldives, Mongolia, Myanmar, Nepal, Oman, Pakistan, Papua New Guinea, Philippines, Republic of Korea, Samoa, Singapore, Solomon Islands, Sri Lanka, Syrian Arab Republic, Thailand, United Arab Emirates, Vietnam.
[474] Singhvi (n 473).
[475] Ibid preamable.

the Cold War era,[476] the Bangkok Declaration stressed the importance of viewing economic, social and cultural rights as being interdependent with and indivisible from civil and political rights, and of fostering the promotion of human rights through cooperation and consensus rather than through 'confrontation and the imposition of incompatible values.'[477] The Bangkok Declaration emphasised the importance of respect for national sovereignty.[478] It went on to reiterate the significance of 'national and regional particularities and various historical, cultural and religious backgrounds' to perceptions of and pursuits for human rights.[479]

The Bangkok Declaration was a clear and public demonstration that for many, the human rights regime as it stood was not democratic or universal. While the Bangkok Declaration represented the views of the nations that adopted it, the sentiments underpinning it were also advanced by some feminists pursuing gender justice more specifically. This makes sense, of course, because women are not *just* women: they are beings located in specific social, cultural, political, and spiritual contexts with loyalties, alignments and priorities that are many and varied. The multiple identities of every individual woman (in terms of, for example, her sex, gender, ethnicity, religion and class) will be relevant to the extent to which she perceives human rights to in fact be universal.[480]

For many of those sceptical of rights-based approaches to gender justice, the notion of 'women's rights as human rights' is essentially a construct of Western feminism that privileges the interests, priorities and lived experiences of a relatively narrow demographic: white, Western, middle and upper class, liberal, heterosexual, biological women. I refer to this figure, whose voice dominates mainstream human rights discourse, as 'The Heard Woman.'[481]

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[476] It is well documented that during the Cold War most Western nations emphasised the importance of civil and political rights and Soviet bloc countries, along with many from the developing world, pressed for greater recognition of economic, social and cultural rights. See Mary Robinson, 'Advancing Economic, Social, and Cultural Rights: The Way Forward' (2004) 26(4) *Human Rights Quarterly* 866, 866 ('Advancing Economic, Social, and Cultural Rights'); Arjun Sengupta, 'On the Theory and Practice of the Right to Development' (2002) 24(4) *Human Rights Quarterly* 837.

[477] Singhvi (n 473) preamble and Art 10.

[478] Ibid Art 4 and 5.

[479] Ibid Art 8.

[480] This argument is informed by Kimberle Crenshaw's notion of 'intersectionality.' In a widely cited article from 1989 Crenshaw argued that the various aspects of an individual's social identity (such as race, gender and sexuality) intersect and result in overlapping and compounded issues of discrimination and oppression. Kimberle Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 1(8) *University of Chicago Legal Forum* 139.

[481] While there is invariably significant overlap (white and Western appear on almost every list), different scholars identify a range of different characteristics they see reflected in the dominant human rights discourse. For example, McLaren refers to 'Northern, Western, white, liberal, middle and upper class' women, Grewal refers to 'European' or 'American', white, heterosexual women, and Yuval-Davis refers to the hegemonic voice of the 'white, middle- class, heterosexual, able-bodied women': McLaren (n 176) 90; Inderpal Grewal, 'Women's Rights as Human Rights': Feminist Practices, Global Feminism, and Human Rights Regimes in Transnationality' (1999) 3(3) *Citizenship Studies* 337, 351; Yuval-Davis (n 182) 278.

While a 'unified' voice for women may have been useful in having women's rights recognised as human rights at the international level, the hegemonic perspective of The Heard Woman is also immediately problematic for many, particularly those from non-Western, postcolonial contexts in the Global South.[482] For many such people, claims to the universality of the voice of The Heard Woman obfuscate the fact that human rights concepts emerged from a Western liberal tradition and continue to reflect the perspective and priorities of that tradition.[483] As a result, the WRHR Movement (as with human rights movements more broadly) has been perceived of as having colonial undertones.[484]

In line with a key concern of the Asian States that adopted the Bangkok Declaration, critics of the WRHR Movement have argued that it paid insufficient attention to economic, social and cultural rights and, indeed, the economic, social and cultural realties of many unheard women across the globe.[485] That the elimination of GBVAW was a key issue on which the WRHR Movement focused has been widely noted in the literature.[486] Indeed, GBVAW has been variously described as its 'centrepiece' and 'highlight.'[487] However, it has also been widely suggested that for many of the world's unheard women the more pressing issues relate to economic, social and cultural rights, as well as *structural* violence against women.[488] This is not to suggest that physical violence against women is not a concern to those in the Global South. Even the most strident critics concede that in relation to GBVAW the North/South divide among feminist activists appears to recede.[489] However, a question arises as to whether it is, or

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[482] It has been commonly noted that debate about the utility of human rights to address gender justice has historically tended to split down North/South lines, with the former being stronger advocates for human rights and the latter stronger critics: see, for example, McLaren (n 176) 90.

[483] See, for example, ibid 99; David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton University Press, 2004) 18 <http://ebookcentral.proquest.com/lib/usyd/detail.action?docID=713810>; Ratna Kapur, 'Human Rights in the 21st Century: Take a Walk on the Dark Side' (2006) 28 *Sydney Law Review* 665, 674. It is worth noting some scholars argue that 'human rights ideas and institutions have far more diverse origins than critics claim' : Kathryn Sikkink, *Evidence for Hope: Making Human Rights Work in the 21st Century* (Princeton University Press, 2017) 25. Whether or not this is the case, the idea that the notion of human rights is a Western concept is a dominant one that remains highly influential.

[484] See, for example, Elora Halim Chowdhury, 'Locating Global Feminisms Elsewhere: Braiding US Women of Color and Transnational Feminisms' (2009) 21(1) *Cultural Dynamics* 51, 62; Kapur (n 483) 674; McLaren (n 176) 100; Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (n 3) 9; Kennedy (n 483) 21. In relation to human rights and neo-colonialism more broadly see Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Routledge-Cavendish, 2007). It is worth noting that even those who advocate for the WRHR Movement recognise its potential to legitimise neo-imperialist interventions. See, for example, Reilly (n 470) 65.

[485] McLaren (n 176); Yuval-Davis (n 182); Basu (n 92) 71.

[486] See, for example, Ranjoo Seodu Herr, 'Women's Rights as Human Rights and Cultural Imperialism' (2020) 31(3) *Feminist Formations* 118, 124; McLaren (n 176) 93; Grewal (n 481) 346.

[487] Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (n 3) 2; Reilly (n 470) 73.

[488] As to structural violence see the seminal work of Paul Farmer: Paul Farmer, 'An Anthropology of Structural Violence' (2004) 45(3) *Current Anthropology* 305.

[489] See, for example, Grewal (n 481) 346.

should be, the highest priority for programming in relation to women's rights. Moreover, as Grewal compellingly demonstrates, even the apparent issue-based consensus in relation GBVAW does not necessarily translate to agreement at the level of policy and action as to how it is best dealt with. Grewal argues that GBVAW was brought to the fore because of the power of US (and, presumably, other 'Western') feminisms and was an issue that many from the Global South agreed needed to be redressed. So far so good. But because the dominant (US) discourse focused on GBVAW as an issue of bodily autonomy, it did not draw attention to the socioeconomic aspects of the problem.[490] It focused narrowly on a woman's ability to have power and agency over her body, without taking into account underlying determinants of GBVAW or the factors that might facilitate it. As a result, Grewal suggests, programming to reduce GBVAW that is informed by the dominant discourse may focus too heavily on matters of bodily autonomy. Grewal goes on to argue that in many jurisdictions, strategies to reduce GBVAW that do not take into account the relevance of factors like education and poverty are destined to fail. Responses to GBVAW, she suggests, need to be context specific, addressing the ways in which it manifests in different communities and cultures.[491]

Grewal's argument has significant implications for programming to reduce IPV: where such programming is undertaken in isolation, without sufficient attention being paid to relevant social, cultural and economic factors, even an otherwise effective framework aimed at reducing IPV will be of little help to survivor/victims. I suggest there are two key reasons this is the case. The first is that there are a wide variety of factors that prevent survivor/victims from escaping family violence that are unrelated to the abuse itself (for example, economic constraints). The second is that a woman is much less likely to see use of an avenue to escape violence as an appropriate or viable one if using it is likely to undermine other essential aspects of her identity, such as her social standing in a society that places a high value on the sanctity of marriage. Effective programming to reduce GBVAW, then, will not only seek to protect and promote the bodily autonomy of women. It will recognise both the diversity and complexity of the lives of individual women, and the ways in which the various aspects of their lives intersect.

The scholarly literature makes clear the importance of taking broad economic, social and cultural factors into account in programming to reduce IPV. There is also increasing recognition in the literature as to the indivisibility and interdependence of rights, whether civil, political, economic, social or cultural.[492] Formally, and perhaps in part due to the advocacy of the Asian States through the Bangkok

[490] Ibid.
[491] Ibid.
[492] See, for example, Rosalind Petchesky, 'Human Rights, Reproductive Health and Economic Justice: Why They Are Indivisible' (2000) 8(15) *Reproductive Health Matters* 12; Goonesekere (n 91); Charlotte Bunch and Niamh Reilly, 'Women's Rights as Human Rights: 25 Years On' in Niamh Reilly (ed), *International Human Rights of*

Declaration, recognition of the indivisibility of rights was achieved with the signing of the Vienna Declaration.[493] As a result of the formal recognition of the indivisibility of rights and the widespread acceptance as to the necessity of such recognition, a greater emphasis is being placed on holistic programming to reduce IPV. As we will see, however, too often programming continues to be undertaken in relative silos without sufficient incorporation into work addressing other human rights issues.[494] While this may (as McLaren suggests) be partly a result of financial, structural and organisational limitations,[495] taking socioeconomic matters into account at the program design stage will help to ensure they do not ultimately undermine program effectiveness.

It is not only in the context of the failure to prioritise economic, social and cultural issues that allegations of cultural imperialism have been directed at human rights-based approaches to gender justice. In a compelling article examining the 'dark side' of human rights, Kapur makes a connection between the colonial endeavour (which was famously referred to by Spivak as one of 'white men saving brown women from brown men')[496] and more recent Western interventions, rooted in conceptions of women as victims in need of protection, that purport to protect women's rights.[497] Kapur argues that the assumptions about women's (in)capacity and (lack of) agency that inform such interventions reinforce negative gender and cultural stereotypes.[498] Attention directed towards the practice of veiling demonstrates Kapur's point well.

Veiling has received much scholarly attention, particularly since the start of the 'War on Terror' in the early 2000s.[499] In a compelling piece from 2002 entitled *'Do Muslim Women Really Need Saving?'* Abu-

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Women (Springer, 2019) 21, 10; Reilly (n 470) 64; Charlotte Bunch, 'Transforming Human Rights from a Feminist Perspective' in JS Wolper and Andrea Peters (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (Routledge, 1995) 1. Also gaining increasing recognition are the implications of intersectionality – an important issue, though beyond the scope of this thesis. In relation to human rights, gender and intersectionality, see, for example, Anastasia Vakulenko, 'Gender and International Human Rights Law: The Intersectionality Agenda' in Sarah Joseph and Adam McBeth (eds), *Research Handbook on International Human Rights Law* (Edward Elgar Publishing, 2010) 196.

[493] *Vienna Declaration and Programme of Action* (n 61) Art 5. For a discussion of gender justice for women and the indivisibility of rights see Goonesekere (n 91).

[494] Bunch and Reilly (n 492) 8.

[495] McLaren (n 176) 91.

[496] Gayatri Spivak as cited in, for example, ibid 99; Lila Abu-Lughod, 'Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others' (2002) 104(3) *American Anthropologist* 783, 784; Reilly (n 470) 65.

[497] Kapur (n 483) 679. Kapur is talking in particular about anti-trafficking initiatives, but her argument can be extended to any paternalistic foreign interventions made in the name of 'women's rights.' Note also Cornwell's suggestion that dominant discourses in development (particularly around the implementation of the MDGs) results in the depiction of women as either heroines or victims: Cornwall and Rivas (n 71) 400.

[498] Kapur (n 483) 678.

[499] See, for example, Abu-Lughod (n 496); Vasuki Nesiah, 'The Ground Beneath Her Feet: "Third World" Feminisms' (2003) 4; Jaouad El Habbouch, 'The Burqa-Clad Woman, Terror and the Postcolony: The Kabul Beauty School and the Art of Imperial Friendship and Freedom' (2023) 16(3) *Critical Studies on Terrorism* 560; Mimi Thi

Lughod makes the point that the liberation of Afghan women was often used as a key justification for American intervention in Afghanistan in the wake of September 11.[500] The veil, in turn, was viewed as a symbol of their oppression.[501] Indeed, it has been suggested that the burqa in particular became a 'shorthand for the subjugation of women, a violation of "basic principles of international human rights law."'[502] The problem with this, as Abu-Lughod argues, is that it denies the validity of the *choice* to veil for social, cultural or religious reasons.[503] Abu-Lughod argued that while we may well object to state-enforced veiling, reductive interpretations of it as a sign of inequality and oppression must be rejected.[504]

Veiling is perhaps the most visible example of a cultural practice that has commonly been interpreted in the West as a form of oppression, while many of the women said to be oppressed regard it as a meaningful expression of their identity. However, there are other practices that invite comparison. One such example – the payment of 'bride-price' in Solomon Islands – will be explored in further detail in chapter five, where the implications for programming to implement Standard IPV Legislation will be explored.

The promotion of gender equality and focus on the (liberal) individual

Building on the work of Abu-Lughod in relation to veiling, McLaren goes further to ask whether the pursuit of gender equality itself risks undermining other essential aspects of the identities of (some) unheard women, such as those that are cultural or religious.[505] This is an important question to consider in the context of an examination of internationally funded approaches to reducing IPV. The language of 'gender equality' was central to the work of feminists in getting women's rights on the international agenda in the 1980s and 1990s.[506] Gender equality continues to be widely associated with the human rights discourse,[507] often being characterised as a human right itself, and gender *inequality* is commonly cited as a key underlying determinant of GBVAW.[508] The international

Nguyen, 'The Biopower of Beauty: Humanitarian Imperialisms and Global Feminisms in an Age of Terror' (2011) 36(2) *Signs: Journal of Women in Culture and Society* 359.

[500] Abu-Lughod (n 496) 783.

[501] Ibid 785.

[502] Nguyen (n 499) 365.

[503] Abu-Lughod (n 496) 786.

[504] Ibid.

[505] McLaren (n 176) 99.

[506] Cornwall and Rivas (n 71) 396.

[507] See, for example, Herr (n 486) 123; A Hellum, 'Women's Human Rights and African Customary Laws: Between Universalism and Relativism –Individualism and Communitarianism' (1998) 10 *The European Journal of Development Research* 88.

[508] Liz Wall, *Gender Equality and Violence against Women: What's the Connection?* (Australian Centre for the Study of Sexual Assault, June 2014) 2. UNDEVAW expressly states that GBVAW is 'a manifestation of historically

development strategies of donor countries are also commonly underpinned by assumptions about the connection between gender inequality and IPV. For example, Australia's 2025 GE Strategy (which has recognition of gender equality as a human right as a guiding principle) identifies ending GBVAW as the first of its five strategic priorities.[509] From the perspective of the Australian Government, ending GBVAW is viewed as a key step towards the attainment of gender equality, and the promotion of gender equality a key step towards the elimination of GBVAW.

McLaren warns against the pursuit of 'gender equality' where it risks asserting the superiority of Western values and imposing them in non-Western contexts.[510] Kabeer makes a similar point, linking the pursuit of gender equality to notions of the (liberal) individual around which human rights discourse centres:[511]

> Struggles for gender justice by women's movements have sought to give legal recognition to gender equality at both national and international levels. However, such society-wide goals may have little resonance in the lives of individual men and women in contexts where a culture of individual rights is weak or missing and the stress is on the moral economy of kinship and community.

This quote from Kabeer leads neatly to another area of contention that has seen allegations of Eurocentrism and cultural imperialism levelled at human rights-based approaches to gender justice: the privileging of the individual over the collective.

It has been suggested that, for many unheard women across the globe, the focus on the individual is at odds with their sense of self as being largely relational, particularly to their family and community.[512] A focus on the individual is potentially problematic in such contexts given enhanced individualism is

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unequal power relations between men and women': *Declaration on the Elimination of Violence Against Women* (n 100) preamble, para 7.

[509] Australian Government Department of Foreign Affairs and Trade, 'Australia's International Gender Equality Strategy: For a Safer, More Prosperous Indo-Pacific and World' (n 172) 9.

[510] McLaren (n 176) 99. For an interesting discussion of gender equality and individualism see Lewis S Davis and Claudia R Williamson, 'Does Individualism Promote Gender Equality?' (2019) 123 *World Development* 104627.

[511] Naila Kabeer, 'Empowerment, Citizenship and Gender Justice: A Contribution to Locally Grounded Theories of Change in Women's Lives' (2012) 6(3) *Ethics and Social Welfare* 216, 216. As to the focus on the liberal individual in human rights law more broadly see, for example, ibid; McLaren (n 176) 97 and 107; Herr (n 486) 123.

[512] To see variations on this argument and a number of case studies see, for example, Aihwa Ong, 'Strategic Sisterhood or Sisters in Solidarity? Questions of Communitarianism and Citizenship in Asia' (1996) 4(1) *Indiana Journal of Global Legal Studies* 107; Kabeer (n 511); Herr (n 486).

recognised as being associated with looser family ties.[513] A focus on the individual is also at odds with the lived experience of many unheard women, for whom emphasis is placed on community interests, and the 'rights' and 'duties' of individuals are understood as being closely connected to community wellbeing. In such contexts, the notion of individual rights (and, indeed, gender equality) is a largely abstract one - one that does not take into account how the realisation of rights (or the ambition for their attainment) might be impacted by identity and society.[514] This point is demonstrated by Kabeer in a case study of an Hazara community in Afghanistan.[515]

Kabeer notes that in the community being studied, women are generally expected to prioritise their duty to the family, and men are expected to look after their wives.[516] In an idealised community, the 'virtuous woman' will comply with norms of familial responsibility and accept her husband's right to beat her if those norms are transgressed.[517] 'Virtuous women' can, in exchange, rely on their husbands to provide for them, protect them and represent them in the public domain.[518]

Kabeer goes on to note that the women involved in her study varied considerably in their perceptions of social norms regarding familial responsibility and gender relations, with some accepting existing arrangements as an appropriate part of religion and/or culture, and others asking more fundamental and radical questions.[519] Kabeer points out that the women in her study rarely internalised patriarchal cultural norms to the extent that they failed to question them to some degree. However, they just as rarely rejected the familial roles ascribed to them in their entirety. What they sought to do, Kabeer argues, was *renegotiate* their social roles so as to ensure their contributions were respected and the arbitrary use of violence by men was challenged.[520] This did not entail a wholesale rejection of culture or an embracing of rights discourse.[521]

Critics like Kabeer do not argue that women in collectivist cultures, like the Hazara community referred to above, are (necessarily) unwilling or unable to challenge patriarchal gender norms such as those

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[513] Lewis S Davis and Claudia R Williamson, 'Cultural Roots of Family Ties' (2020) 16(6) *Journal of Institutional Economics* 785.
[514] Kabeer (n 511) 220.
[515] Kabeer (n 511).
[516] Ibid 224.
[517] Ibid 225.
[518] Ibid. It is worth noting that Kabeer also speaks to a misalignment between the ideal and the real. Social and economic conditions often make it difficult for men to provide for their families, and men commonly take their frustrations out on their wives, even if their wives have complied with social norms. Under pressure from a number of directions (tradition, personal values, expectations of family and society, fear of repercussions), women often find themselves compelled to put up with the treatment they receive even though it is not in keeping with the social compact of the idealised community. See discussion from page 77.
[519] Ibid 229.
[520] Ibid.
[521] Ibid 230.

that permit men to discipline their wives through physical violence. Rather, they seek to demonstrate that, in collectivist contexts, it is not always appropriate or effective to mount such challenges using a strategy that explicitly privileges individual rights and promotes gender equality. Herr makes a similar point when she says (in the context of a discussion of the cross-cultural 'translation' of human rights principles):[522]

> [V]ictims undoubtedly seek protection from abusive customs, [but] this does not necessarily mean they embrace human rights language, as it presupposes a particular set of cultural assumptions about the nature of the person, human relations, and the community, which are not easily translatable into different cultural settings.

Like others we have seen above, Herr points to parallels between the colonial endeavour and the pursuit of human-rights based approaches to gender justice. She warns that an emphasis on the individual, however well intentioned, runs the risk of reproducing the cultural imperialism of the colonial era, and in doing so undermining more context specific and diverse approaches to gender justice.[523] Herr uses as an example indigenous women who prioritise demands for a collective right to self-determination for their people over individualist claims to women's rights. They do this, Herr suggests, not because they fail to identify gender-based discrimination or violence women might be subjected to, but because achieving self-determination is the first step towards allowing them to advocate for the elimination of discrimination and violence in a way that aligns with their own cultural framework.[524] For such women, Herr argues, the WRHR Movement represents the 'culturally specific perspective of the liberal West' which is 'incompatible with their communitarian cultural values.'[525] Herr ultimately suggests that we risk replicating the imperialist stance of the colonial era if we do not guard against the displacement of communitarian, context-specific ways of dealing with gender discrimination in favour of 'liberal individualist gender solutions' and the pursuit of gender equality.[526] Spark and others make a similar point in the context of the Pacific Islands specifically when they suggest that conceptions of women as individual rights-bearers have the potential to erase older forms

[522] Herr (n 486) 126.
[523] Ibid 114. This point is also made by Merry: see Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (n 3) 4.
[524] Herr (n 486) 122.
[525] Ibid 133.
[526] Ibid 118 and 136. Herr goes so far as to argues that the non-Western parties to CEDAW are under pressure to adopt the 'individualist conception' of gender equality irrespective of its domestic relevance or resonance: see page 133.

of women's power directly related to collective identities.[527] We will consider this assertion in the context of Solomon Islands in the next chapter.

Conclusion

This chapter has revealed four related, at times overlapping, criticisms repeatedly directed at the WRHR Movement. The first is that while human rights are said by proponents to be universal, in fact they are a culturally specific artefact of the West that gives voice to The Heard Woman while overlooking the priorities, perspectives and lived experiences of many of the world's unheard women. The second criticism identified in this chapter was that mainstream human rights programming tends to focus on women's bodily autonomy while failing to adequately consider other relevant social, economic and cultural factors. The third criticism looked at in this chapter was that the pursuit of gender equality, central to much programming aimed at IPV elimination, has the potential to sideline or undermine valuable aspects of (some) women's lives that are cultural or religious. Finally, the critique was examined that mainstream human rights discourse and programming focuses too heavily on individual rights and autonomy and overlooks the perspectives of women who live in (more) collectivist contexts.

This chapter has also revealed parallels between human rights discourse and the discourses that informed colonisation. We might therefore expect that rights-based programming would be met with scepticism or even hostility in postcolonial Global South contexts where there remains great sensitivity to any perceived forms of cultural imperialism.[528] Such sensitivity can compound the barriers that arise when programming to reduce IPV does not reflect the lived experience of those at whom programming is directed.

The analysis contained in this chapter has been conducted largely on the basis of the literature, with a focus on feminist voices and voices from the 'Global South.' In the next chapter the case study of Solomon Islands is used to consider whether, and to what extent, the human rights critiques and perceived parallels to colonialism identified in this chapter have the potential to undermine programming to facilitate the implementation of Standard IPV Legislation in Focus Countries.

[527] Cerdiwen Spark, John Cox and Jack Corbett, '"Keeping an Eye Out for Women": Implicit Feminism, Political Leadership, and Social Change in the Pacific Islands' (2021) 33(1) *The Contemporary Pacific* 64, 66.
[528] Ong (n 512) 2 and 5.

Chapter 5: Theory in practice? Case study of Solomon Islands

> 'I would wish to ask the Government if it could refine some [provisions of the Family Protection Bill] so that we deal with family matters the way it deserves to be and not the way [CEDAW] wants it to be.' Mr Moffat Fugui (Central Honiara)[529]

In the previous chapter I identified four interrelated criticisms of the WRHR Movement broadly, as well as rights-based approaches to the reduction of GBVAW specifically. In this chapter, I revisit each of those criticisms in turn, this time considering the extent to which they can be seen to hold true in the context of the Solomon Islands case study. I also consider potential implications in relation to programming to facilitate the implementation of the FPA, as a textbook piece of Standard IPV Legislation being implemented in an aid-dependent postcolonial country.

The first key criticism considered in chapter four was that while human rights are purported to be universal they in fact privilege the interests and priorities of The Heard Woman while overlooking those of unheard women across the globe. It was suggested that perceptions that human rights' claims to universalism are false can give rise to ideological barriers to rights-based programming. In the first part of this chapter I look at whether the use of human rights discourse and the pushing of a human rights agenda in Solomon Islands creates barriers arising from sensitivity to (perceived) cultural imperialism and foreign intervention. I conclude that, while such barriers may be slowly diminishing, they do indeed continue to exist and give rise to push-back in the context of efforts to implement the FPA.

The second key criticism identified in chapter four was that the emphasis on the promotion of gender equality in rights-based approaches to gender justice fails to resonate with the experiences and priorities of many unheard women across the globe. In this chapter I consider notions of gender in Solomon Islands and demonstrate that gender essentialism remains a dominant view among both men and women. In other words, the belief remains widespread that biology is the primary determinant of gender, and that males and females are born with distinctly different natures.[530] While gender equality and gender essentialism are not mutually exclusive, neither are they easy companions.[531] The Solomon Islands case study provides evidence to suggest that the explicit pursuit of gender equality in

[529] 'Hansard: Solomon Islands National Parliament (25 August 2014)' (n 342) 88.
[530] *Oxford Reference* (online at 6 March 2025) 'Gender essentialism'.
[531] For an interesting take on the relationship between equality and essentialism see Anna-Karina Hermkens, Roselyne Kenneth and Kylie McKenna, 'Gender Equality Theology and Essentialism: Catholic Responses to Gender-Based Violence and Inequality in Papua New Guinea' (2022) 92(3) *Oceania* 310. Hermkens et al argue for the power of gender equality theology (see further discussion in chapter six) but acknowledge that it reinforces gender essentialism. For an argument against essentialism as the basis for equality see Charlotte Witt, 'Anti-Essentialism in Feminist Theory' (1995) 23(2) *Philosophical Topics* 321.

programming to facilitate the implementation of the Standard IPV Legislation may be counterproductive in contexts in which gender essentialist views remain dominant.

The third critique identified in chapter four was that the focus on individual rights and autonomy in mainstream human rights-discourse and programming fails to align with the values and interests of (many of) those in more collectivist societies. The third part of this chapter examines the (relatively) collectivist nature of society in Solomon Islands and considers whether the framework of the FPA (focused as it is on individual survivor/victims and perpetrators) adequately addresses broader social and cultural understandings of the 'wrongs' done by IPV. I consider customary notions of IPV as a wrong not just against an individual survivor/victim, but also against her extended family. I suggest that if the FPA is understood as being an *alternative* to more traditional methods of resolving IPV, then survivor/victims – choosing between two competing systems – may be reluctant to use it. This is particularly the case if, in using the FPA regime, a survivor/victim is understood to be putting her own interests ahead of those of her family and community. I discuss the possibility of the FPA framework being used *alongside* customary reconciliation practices. I do this not to advocate, necessarily, for a particular course of action. Rather, I look at the practice of paying customary compensation to tease out some of the concrete barriers that can arise when collectivist aspects of a survivor/victim's identity and society are not taken into account from the outset. Ultimately, I use the FPA case study to demonstrate the importance of considering the impact of social collectivism on perceptions of Standard IPV Legislation as an appropriate avenue for seeking the reduction of violence.

The final key criticism identified in chapter four, revisited in the final section of this chapter, is that mainstream rights-based approaches to IPV reduction fail to adequately redress broader social, cultural and economic factors that allow for ongoing violence. Through an analysis of the controversial practice of 'bride-price' payment I demonstrate that the immediate and wholesale disregard of valued local practices can be detrimental to efforts to reduce IPV generally, and to implement the FPA specifically. This suggests that programming is more likely to be effective where it respects and, to the extent possible, preserves valued social and cultural practices. As will be discussed in detail in chapter six, donors and programmers now tend to recognise, at the conceptual level at least, the importance of taking a holistic approach to programming to reduce IPV. They also tend to recognise the importance of focusing on the lived experience of intended program beneficiaries. However, more needs to be done to ensure that, in practice, approaches to IPV reduction take seriously the perspectives and experiences of those at whom programming is aimed.

Contestation of human rights principles and concepts

In chapter four it was suggested that human rights principles and concepts remain contested in many Focus Countries. This can undermine the effectiveness of rights-based programming to implement Standard IPV Legislation for two key reasons. The first is that such programming can be perceived as a form of cultural imperialism, giving rise to ideological barriers. The second is that, in some contexts, the key principles and concepts underpinning programming do not align with the lived experiences, priorities and perspectives of those on the ground. As a result, programming may fail to address the needs and circumstances of those at whom it is aimed.

In this chapter I ask whether human rights principles and concepts are, in fact, contested in Solomon Islands, and, if so, whether and in what ways such contestation might undermine programming to facilitate the implementation of Standard IPV Legislation. Before turning directly to that issue, however, it is useful to reiterate some of the history set out in chapter three.

As previously mentioned, it was the view of Ethel Sigimanu (Permanent Secretary for the MWYCFA during the drafting and passage of the FPA) that the Family Safety Study and subsequent 2010 EVAW Policy left the Solomon Islands' Government with little choice but to work towards the introduction of legislation to reduce family violence.[532] This did not mean, however, that the path to the passage of the FPA was straightforward or uncontroversial. Despite almost immediate in principle agreement to the passage of legislation that would enhance CEDAW compliance and implement various of the recommendations in the Family Violence Report, it took more than four years of concerted effort before the Family Protection Bill (from hereon in referred to as the FPA for ease of reading) came before Parliament. [533] It is evident from a review of the relevant Hansard that when it did, scepticism remained about the potentially 'foreign' nature of the legislation, as well as the motivations for its implementation.[534] Some parliamentarians raised explicit concerns about human rights reflecting foreign influences and being inconsistent with local values. For example, Mr John Moffat Fugui, representative for Central Honiara, argued that the FPA failed to look to custom and culture to try and help reduce IPV. He said 'our problem is that we have always looked to the outside for inspiration without seeking what culture and custom have in store for us first.'[535] Mr Moffatt Fugui recalled having

[532] KI Ethel Sigimanu.
[533] KI Ethel Sigimanu; KI Anika Kingmele; KI Valea Devesi. During this time, a small working group put together by Ethel devoted considerable time and effort both to ensuring the drafting of appropriate legislation and to lobbying in order to ensure the draft legislation would be passed and implemented. Four of the key informants for this thesis (Ethel Sigimanu, Afu Billy, Vaela Devesi and Kathleen Kohata) were members of that working group.
[534] 'Hansard: Solomon Islands National Parliament (21 August 2014)'; 'Hansard: Solomon Islands National Parliament (25 August 2014)' (n 342); 'Hansard: Solomon Islands National Parliament (26 August 2014)' (n 225); 'Hansard: Solomon Islands National Parliament (27 August 2014)'.
[535] 'Hansard: Solomon Islands National Parliament (25 August 2014)' (n 342) 85.

asked a Minister why the FPA was not proceeding 'properly' and suggests he was told 'certain organisations are funding us – that is why we do it.'[536] Mr Moffat Fugui ultimately said he supported the FPA but wanted it amended so as to 'deal with family matters the way it deserves to be and not the way [CEDAW] wants it to be.'[537] Mr Moffat Fugui was not explicit about what amendments would be required in order to achieve this aim but the tension he saw between CEDAW and locally-born approaches to reducing IPV is clear.[538]

Another parliamentarian to express concerns about human rights and rights-based approaches to IPV reduction in Solomon Islands was Mr John Mananiaru of West Are'Are. Mr Mananiaru referred to the 'negative' side of human rights suggesting that it has become increasingly common for people to 'capitalise' on rights, particularly in urban areas.[539] He went on to say:[540]

> Human rights have continued to be introduced to our people and it is something we must understand properly…and at the same time continue to maintain our unique identity. Let us come up with the things that fit our culture, Christian values and moral ethics and throw away those things that do not fit us. I think in that way it will help our country, let us be who we are rather than copying …other countries. We may only take the good things and throw away the bad in order to address our problems inside our homes.

Concerns about the FPA reflecting foreign interests led to significant debate in Parliament, with some parliamentarians feeling compelled to rebut the idea that the bill did not reflect the interests of Solomon Islanders. For example, Mr Matthew Wale (representative of Aoke/Langalanga) said the following:[541]

> Although there has been support by overseas agencies and friends in the process of putting [the Family Protection Bill] together, it is clear that it is not a bill pushed by foreign interest, nor is it a bill to protect foreign interest. No! This bill is about Solomon Islands' interests. This bill is initiated and promoted by Solomon Islanders for Solomon Islanders.

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[536] Ibid 86.
[537] Ibid 88.
[538] I tried to seek out Mr Moffat Fugui to see whether he would agree to be a key informant for this thesis. Unfortunately, he died in 2022. See Benjamin Kang Lim, 'Solomon Islands Ambassador to China Dies', *The Straits Times* (Singapore, online, 23 December 2022) <https://www.straitstimes.com/asia/solomon-islands-ambassador-to-china-dies>.
[539] 'Hansard: Solomon Islands National Parliament (25 August 2014)' (n 342) 70.
[540] Ibid 73.

While Mr Wale explicitly stated his view that the FPA was a domestic bill for domestic interests, the fact that he addressed the matter at all demonstrates that it was a live issue at that time.[542]

The literature and data from interviews with key informants suggest that scepticism about human rights and international instruments extends well beyond Parliament. The hostility by some towards human rights in Pacific Island countries is summed up succinctly by Farran:[543]

> [I]n former colonies, such as Pacific Island states…it could be argued that not only are [human rights] ideas western, but they also represent the thinking of former colonial powers and for political reasons should be rejected.
>
> In other words, not only are statements of rights a legacy of colonial rule, but the continuing advocacy of the universalism of rights and the need for sovereign states to comply with international norms is a form of neo-colonialism whereby the more powerful states impose standards on smaller, weaker states…

It is certainly true that, as was discussed in chapter three, women in Solomon Islands have been seeking to leverage human rights to advance their causes since at least the early 2000s.[544] It is equally true, however, that where individuals or organisations seek to use rights-based discourse and frameworks to advance gender justice their local authenticity is often brought into question. For

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[542] Five other parliamentarians that contributed to the debate on the Family Protection Bill made express references to Solomon Islands' obligations under CEDAW and/or human rights. They were Hon. Commins Mewa (page 49), Mr Matthew Wale (page 50), Mr Clay Soalaoi (page 60), Hon. Stanley Sofu (page 66) and Mr John Manenaiaru (page 70) 'Hansard: Solomon Islands National Parliament (25 August 2014)' (n 342).

[543] Farran (n 179) 106 (citations omitted). For further discussion of the potential divisiveness of human rights see Mercy Masta and Elisabeth Jackson, 'Gender Equality, the Pacific Way', *The Interpreter* (30 July 2024) <https://www.lowyinstitute.org/the-interpreter/gender-equality-pacific-way>; Mercy Masta et al, *Approaches to Engaging Men in Support of Women's Leadership in the Pacific* (La Trobe University, November 2023) 10. Cf Debra McDougall, '"Tired for Nothing"? Women, Chiefs, and the Domestication of Customary Authority in Solomon Islands' in Hyaeweol Choi and Margaret Jolly (eds), *Divine Domesticities* (ANU Press, 2014) 199 who suggests continued exposure to human rights discourse and discussion of gender equality has normalised it in Solomon Islands and, accordingly, there is no longer much resistance to it. Maila Stivens, 'Introduction: Gender Politics and the Reimagining of Human Rights in the Asia-Pacific' in Anne-Marie Hilsdon et al (eds), *Human Rights and Gender Politics: Asia-Pacific Perspectives* (Taylor & Francis Group, 2000) 1, 3.

[544] See, for example, Stivens (n 543) 3; Alice Aruhe'eta Pollard, 'Women's Organizations, Voluntarism, and Self-Financing in Solomon Islands: A Participant Perspective' (2003) 74(1–2) *Oceania* 44, 44 ('Women's Organizations, Voluntarism, and Self-Financing in Solomon Islands'); *Converging Currents: Custom and Human Rights in the Pacific* (n 207); Biersack (n 466); Nicole George, 'Lost in Translation: Gender Violence, Human Rights and Women's Capabilities in Fiji' in Aletta Biersack Margaret Jolly and Martha Macintyre (ed), *Gender Violence and Human Rights: Seeking Justice in Fiji, Papua New Guinea and Vanuatu* (ANU Press, 2016) 81; Margaret Jolly, 'Woman Ikat Raet Humanr o No? Women's Rights, Human Rights and Domestic Violence in Vanuatu' in Anne-Marie Hilsdon et al (eds), *Human Rights and Gender Politics: Asia-Pacific Perspectives* (Routledge, 2000) 124, 131; Martha Macintyre, '"Hear Us, Women of Papua New Guinea!" Melanesian Women and Human Rights' in Anne-Marie Hilsdon et al (eds), *Human Rights and Gender Politics: Asia-Pacific Perspectives* (Taylor & Francis Group, 2000) 147, 149.

example, long-standing women's rights activist Afu Billy (whose work and background are detailed in Annexure 3) acknowledges that she is often perceived by Solomon Islanders to be 'very Westernised' and to get her ideas from international sources.[545] Others have suggested that her 'modern perspective' and use of human rights discourse to promote gender equality has led to her being viewed by some as a 'wayward daughter' or 'black sheep.'[546] In a similar vein, it has been noted that the 'outspoken liberal approach' adopted by the Regional Rights Resource Team has not always been well received in Solomon Islands.[547] As discussed in chapter three, the RRRT is a rights-based organisation that played a pivotal role in the development, passage and implementation of the FPA.

Writing about attempts to combat gender violence and discrimination in Solomon Islands, McDougall cautioned that the pushing of a human rights agenda, particularly by 'outsiders,' could backfire and further problematise the pursuit of gender justice by indigenous women.[548] Jolly makes a similar point (though in respect of neighbouring Vanuatu) when she suggests that when women align with powerful foreigners they risk alienating the local men they need to get on board if change is to happen.[549] The point has also been made that many Solomon Islander women are themselves troubled by the rights discourse and consider it to be in opposition to local tradition and custom.[550]

All of the key informants interviewed for this thesis who spoke directly to the issue indicated that the notion of human rights is generally either unknown in communities in Solomon Islands (particularly those outside of Honiara) or regarded as a 'foreign concept.'[551] Human rights ideas and language tend to be met (at least initially) with apathy, hostility, or something in between.[552] Ella Wairiu of Oxfam said that when human rights are raised the initial reaction of most people in communities is that they are a part of 'Western mythology.' Speaking of the work done by the Ministry of Women Children Youth

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[545] *Mere Blong Iumi - Part 4 - Politics* (n 432) approx 3 minutes. KI Afu Billy.
[546] Pauline Soaki, 'Casting Her Vote: Women's Political Participation in Solomon Islands' in Martha Macintyre and Ceridwen Spark (eds), *Transformations of Gender in Melanesia* (ANU Press, 2017) 95, 105.
[547] Farran (n 179) 257.
[548] McDougall (n 543) 203.
[549] Jolly (n 544) 133.
[550] John Cox, 'Kindy and Grassroots Gender Transformations in Solomon Islands' in Martha Macintyre and Ceridwen Spark (eds), *Transformations of Gender in Melanesia* (ANU Press, 2017) 69, 84.
[551] KI Valea Devesi; KI Catherine Nakalia; KI Sister Rosa; KI Ella Wairiu; KI Anika Kingmele; KI Kyla Venokana; KI Donna Makini; KI Ethel Sigimanu; KI Afu Billy.
[552] The one exception to this is Apolosi Bose. Apolosi worked in Solomon Islands while employed by the RRRT between 2001 and 2007. His view is that at that time, in the immediate wake of the Tensions, there was a lot of talk about human rights, led by the likes of Ethel, and a feeling that promotion and protection of rights would help ensure that the troubles of the Tensions did not happen again. Apolosi did not work in Solomon Islands between 2007 and 2023 and said he notices that the same kind of 'passion' about human rights does not seem apparent today. He indicated he is still trying to find the lay of the land in terms of mainstream conceptions of human rights in Solomon Islands.

and Family Affairs, Director Vaela Devesi said they don't explicitly talk about 'human rights' when educating the community on the FPA unless it is absolutely necessary:[553]

> One of the key things we have learned working with the community is as much as possible don't use [the term] human rights. Because as soon as we say human rights of course you will get one strong male, especially in the villages, who will just go 'oh, that's what is making all our women disobey us.'

In addition to pointing to the fact that human rights notions are viewed as 'foreign' by most Solomon Islanders, a number of key informants also suggested that the term 'human rights' is often received in communities as code for 'women's rights' and that this can lead to concern about disruption of male-female roles and relations.[554] Afu Billy suggested that rights-based discussions can raise concern that 'women are trying to overtake the men' leading them to stop listening to men and to 'become bigheaded.' Kyla Venokana of the Ministry of Justice said that '[W]hen you talk a lot about human rights more people think of it as women's rights and not human rights as a whole.' Key informants repeatedly advised that the naming of the FPA as the *Family* Protection Act was strategic as it allowed them to push back on the idea that the legislation was just for women.[555] It is questionable whether this strategy was effective. Tabe suggests that some men continue to think the FPA is *'*only focused on women and their interests…recognising their rights and empowering them.'[556] She further observes that the perception of the FPA as being only for women leads some (particularly men) to oppose it without further consideration.[557]

Overall, interviews with key informants indicate that 'human rights' continue to be seen as foreign by many in Solomon Islands, and as such leading with rights-based language and notions is unlikely to be effective in seeking to implement the FPA. However, there are two important points to note. Firstly, a number of key informants said that talking about human rights *in a way that resonates* (a matter to be discussed in chapter six) usually results in greater acceptance of rights-based concepts. Secondly, as such discussions happen more often and more widely, there is less resistance in the community to the notion of 'rights.'[558] Both of these factors bode well for the legitimisation of the FPA. As will be

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[553] KI Vaela Devesi.
[554] KI Afu Billy; KI Kyla Venokana.
[555] KI Jerolie Belabule; KI Kyla Venokana; KI Vaela Devesi; KI Ethel Sigimanu.
[556] Tammy Tabe, 'Solomon Islands' in Sue Farran, Tony Crook and Emilie Röell (eds), *Understanding Gender Inequality Actions in the Pacific: Ethnographic Case Studies and Policy Options* (Publications Office of the European Union, 2016) 151.
[557] Ibid 150. KI Anika Kingmele; KI Ella Wairiu; KI Ethel Sigimanu.
[558] These points also receive some support in the literature. See, for example, Jolly (n 155); Michelle Dyer, 'Growing Down Like a Banana: Solomon Islands Village Women Changing Gender Norms' (2017) 18(3) *The Asia Pacific Journal of Anthropology* 193.

discussed in Part Three, the process of legitimisation (which I suggest is important in the implementation of Standard IPV Legislation in Focus Countries) involves looking for and emphasising points of compatibility/complementarity between the law and other dominant social and cultural institutions, beliefs and practices

Gender (in)equality and gender essentialism

That human rights discourse makes false claims to universality was one of the key critiques identified in chapter four. Another was that the explicit promotion of and reliance on the notion of 'gender equality' threatens to undermine important cultural and religious aspects of the lives of (some) unheard women. I explore this concern below in the context of Solomon Islands. This exploration also reveals a tension between the promotion of 'gender equality' and gender essentialist views that see men and women as inherently different. While gender equality and gender essentialism are not mutually exclusive, neither are they easy companions. As such, invoking gender equality may not be a productive approach in programming primarily concerned with the (relatively) short term goal of the effective implementation of Standard IPV Legislation. As discussed in Part One of this thesis, the Solomon Islands Government has made a strong policy commitment to gender equality. Solomon Islands is a signatory to or has endorsed/implemented the Beijing Declaration, the 2005 and 2018 Pacific Platforms, the 2010 EVAW Policy, the 2012 and 2023 PLGED, and the SDGs (through the National Development Strategy 2016 – 2035). All these instruments affirm a commitment to the advancement of gender equality. In addition, the Solomon Islands' Government implemented specific policies on gender equality and women's development in both 2010 and 2016 (**2010 GEWD Policy** and **2016 GEWD Policy** respectively).[559]

There is a strong emphasis in the international development community, including by the Australian Government (Solomon Islands' single largest bilateral donor), on the promotion of gender equality in efforts to reduce IPV.[560] Gender *inequality* is commonly cited as a key underlying determinant of

[559] Youth Ministry for Women Children and Family Affairs, *National Gender Equality and Women's Development Policy 2016 - 2020* (Solomon Islands Government, 2016) vi. Note that the government had endorsed a National Women's Policy in 1998 after 10 years of debate and 6 rejections in Parliament. However, this policy (which sought to put the Beijing Declaration into effect) was never implemented in practice: Hilda Karl, *Statement by The Honourable Hilda Karl MP Minister for Women, Youth & Sports and Head to the Solomon Islands Delegation to the 23rd Special Session of the UNGA on 'Women 2000: Gender Equality, Development and Peace for the 21st Century'* (8 June 2000) 4; Sonali Hedditch and Clare Manuel, *Solomon Islands Gender and Investment Climate Reform Assessment in Partnership with AusAID* (International Finance Corporation, January 2010).

[560] In relation to Australia's approach generally see Australian Government Department of Foreign Affairs and Trade, 'Australia's International Gender Equality Strategy: For a Safer, More Prosperous Indo-Pacific and World' (n 172).

violence against women.[561] In the case of Solomon Islands specifically, the Family Violence Report (a primary catalyst for the FPA) identified gender inequality as 'the underlying cause' of IPV, and IPV as an 'extreme manifestation' of gender inequality.[562] It went on to recommend the promotion of gender equality in efforts to reduce IPV.[563]

Certainly, the notion of 'gender equality' features heavily in much of the work being undertaken in communities to reduce IPV. The entrance to the Family Support Centre, the first port of call for all existing and prospective clients, features a 7-foot-tall bright pink banner that reads as follows:

> We envision a society that upholds and values Gender Equality; where every person is Empowered; to live a life free of violence in a violence-free nation.

The advocacy and outreach work undertaken by the Family Support Centre explicitly promotes gender equality.[564] So too does the community education material used in the Oxfam Safe Families project discussed in chapter two. As a part of that project, Community Engagement Facilitators (or CEFs) are trained to mobilise communities and raise awareness using tools that focus very heavily on understanding gender *inequality* and practicing gender *equality*, including by upholding the principles of international human rights conventions, the FPA and relevant Government policies.[565] As will be discussed in detail in chapter six, World Vision and the Christian Care Centre also work to promote gender equality. However, the approach they take does not tend to focus on human rights and related principles. Rather, it talks about ways in which the concept of 'gender equality' is consistent with the teachings of the bible.

The alignment of human rights, gender equality, and Christian morality raises an important question: what exactly are we talking about when we refer to 'gender equality'? The 2016 GEWD Policy speaks directly to this question, with the foreword to the policy stating the following: [566]

> '[This] policy is premised on the vision that gender equality contributes substantially to improving the wellbeing of women, men, girls and boys – and that the promotion of gender equality must be at the heart of the government's mission. **It is important to understand here that Gender Equality does not mean**

[561] Wall (n 508) 2. UNDEVAW expressly states that GBVAW is 'a manifestation of historically unequal power relations between men and women:' *Declaration on the Elimination of Violence Against Women* (n 100) preamble, para 7.
[562] Secretariat of the Pacific Community and National Statistics Office (n 17) 155 and 163.
[563] Ibid 163.
[564] KI Laura Kwanairara.
[565] Oxfam Australia and International Women's Development Agency (n 336).
[566] Ministry for Women (n 559) vi.

> **that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female**.' (emphasis in original)

This definition accords with mainstream understandings of 'gender equality' in the international community.[567] What is interesting, however, is the emphasis placed on the fact that pursuing gender equality is not the same as denying that there are differences between men and women. Key informants for this thesis consistently reiterated that, for many in the Solomon Islands community, there is a fear that gender equality is only about women and poses a threat to men, and/or that the achievement of gender equality will result in the erasure of difference between the sexes. Such an erasure does not seem to be in accordance with the perspectives or aspirations of many, if not most, in Solomon Islands, where gender essentialist views remain dominant.

Solomon Islands is a country with longstanding gender divisions bringing distinct expectations, obligations and opportunities for men and women.[568] It is clear that the role played by women in society is in many ways a well-regarded and valued one.[569] However, it is also one that has centred around particular social roles: most notably, those of wife, mother and bearer of domestic duties.[570]

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[567] See, for example, Office of the Special Adviser on Gender Issues and the Advancement of Women, 'Gender Mainstreaming: Concepts and Definitions', *UNWomen* <https://www.un.org/womenwatch/osagi/conceptsandefinitions.htm>; Australian Government Department of Foreign Affairs and Trade, 'Australia's International Gender Equality Strategy: For a Safer, More Prosperous Indo-Pacific and World' (n 172) 11; ADB and Australian Aid, *Toolkit for Gender Equality Results and Indicators* (2013).

[568] This is widely reported in the literature, historic and contemporary alike. See, for example, Pollard (n 544); Alice Aruhe'eta Pollard, *Givers of Wisdom, Labourers without Gain: Essays on Women in Solomon Islands* (Institute of Pacific Studies, University of the South Pacific Solomon Islands Centre, 2000); Martha Macintyre, 'Introduction: Flux and Change in Melanesian Gender Relations' in Ceridwen Spark and Martha Macintyre (eds), *Transformations of Gender in Melanesia* (ANU Press, 2017) 1, 1; Leslie and Boso (n 242); Tomoko Honda et al, 'Community Mobilisation in the Framework of Supportive Social Environment to Prevent Family Violence in Solomon Islands' (2022) 152 *World Development* 105799; Equal Rights Trust, Secretariat of the Pacific Community and Regional Rights Resource Team, *Stand Up and Fight: Addressing Discrimination and Inequality in Solomon Islands* (January 2016); Corrin Care (n 193).

[569] Anna-Karina Hermkens, '"Raits Blong Mere"? Framing Human Rights and Gender Relations in Solomon Islands' (2013) 33 *Intersections: Gender and Sexuality in Asia and the Pacific*; Pollard (n 568); Care (n 197) 62; Katharine McKinnon et al, 'Gender Equality and Economic Empowerment in the Solomon Islands and Fiji: A Place-Based Approach' (2016) 23(10) *Gender, Place & Culture* 1376, 1378 ('Gender Equality and Economic Empowerment in the Solomon Islands and Fiji'). The fact that men have been perceived as dominant in Solomon Islands since the pre-colonial era was also asserted by KI Judy Basi.

[570] Solomon Islands Truth and Reconciliation Commission, *Final Report: Confronting the Truth for a Better Solomon Islands Vol. 3* (February 2012) 548; Ruth Maetala, 'Matrilineal Land Tenure Systems in Solomon Islands: The Cases of Guadalcanal, Makira and Isabel Provinces' in Elise Huffer (ed), *Land and Women: The Matrilineal Factor: The Cases of the Republic of the Marshall Islands, Solomon Islands and Vanuatu* (Pacific Islands Forum Sectretariat, 2008) 35, 41; Rashida Manjoo, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Mission to Solomon Islands* (Human Rights Council, 22 February 2013) 3, 3; Harry and Watson (n 207) 4; Soaki (n 546) 100.

Women have also traditionally played a particular part in relation to food production, gardening and agriculture and, in matrilineal communities, land tenure.[571]

Prior to colonisation in 1893, Solomon Islands was a largely conservative and patriarchal society,[572] and it has been well documented that existing conservative and patriarchal ideologies were reinforced by colonial administrations.[573] Corrin Care also suggests that Western influence has diminished the respect formerly afforded to traditional 'women's tasks' such as tending a 'sup-sup' or kitchen garden,[574] a sentiment echoed by Leslie and Boso.[575]

As Soaki demonstrates, there has been a tendency in the literature to characterise the life of the Solomon Islander woman as either romantic and utopic, or as one of endless subjugation and oppression.[576] While neither characterisation is likely to represent the whole truth (at least for the majority of women in Solomon Islands), the common thread in the literature is that women have traditionally been viewed as subordinate to men, and have been socialised to be respectful of, and passive to, them.[577] Men have traditionally been regarded as the protector and head of the family,[578] as well as the appropriate public decision-makers.[579]

Key informants for this thesis indicate that the roles they play in their personal lives are still very much informed by the fact that they are recognised as, and understand themselves to be, women in a male-dominated society. Key Informant 17 expressly suggests that despite the work she and her colleagues do in terms of the promotion of gender equality, they return to homes in which men continue to

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[571] Corrin Care (n 193) 106; Harry and Watson (n 207) 40; Secretariat of the Pacific Community and National Statistics Office (n 17) 43; Maetala (n 570).

[572] Corrin, 'Ples Bilong Mere: Law, Gender and Peace-Building in Solomon Islands' (n 350) 171–172. Corrin notes that even in matrilineal societies within Solomon Islands, the power to make decisions and negotiate with the external community usually lay with men.

[573] See, for example, Soaki, Pauline, 'Casting Her Vote: Women's Political Participation in Solomon Islands' in Macintyre and Spark (n 39) 99–102; and Amnesty International (n 350).

[574] Corrin Care (n 193) 120.

[575] Leslie and Boso (n 242) 328.

[576] Soaki (n 546) 99. See also Jolly (n 544) 138–140; Bronwyn Douglas, 'Christianity, Tradition, and Everyday Modernity: Towards an Anatomy of Women's Groupings in Melanesia' (2003) 74 *Oceania* 6; Christine Dureau, 'Nobody Asked the Mother: Women and Maternity on Simbo, Western Solomon Islands' (1993) 64(1) *Oceania*.

[577] Ibid 99 and 100. See also Pollard (n 38) Chapter 1.

[578] Solomon Islands Truth and Reconciliation Commission (n 570) 544; Fangalasuu et al (n 243) 11; Corrin Care (n 193) 118.

[579] Equal Rights Trust, Secretariat of the Pacific Community and Regional Rights Resource Team (n 568) 31; Solomon Islands Truth and Reconciliation Commission (n 570) 48; Harry and Watson (n 207) 4. Parliamentary debates on the second reading speech of the FPA also indicated the prevailing view of Solomon Islands being male-dominated. See, for example, Mr Matthew Wale (page 50), Mr Danny Philip (page 80) 'Hansard: Solomon Islands National Parliament (25 August 2014)' (n 342); Hon. Commins Mewa (page 52) 'Hansard: Solomon Islands National Parliament (21 August 2014)' (n 534). Cf the comments of Hon. Stanley Sofu, Minister for Public Service, who suggested some parts of Solomon Islands are male-dominated, others female dominated, presumably in reference to the fact that some parts of the country are matrilineal and others patrilineal.

dominate decision making and be perceived of as the head of the household.[580] Key Informant 21 reports that in the Honiara home she shares with her husband and children there is an equal division of domestic labour. However, when they return to her husband's village (where he is a Chief) he stops making any domestic contributions. She takes on all the domestic work in order to fulfill her 'customary duties.' Key Informant 21 is happy with the arrangement, she says, because she entered into it willingly:

> I am happy to do it because I accept it. I accept that role – but to a certain extent. For me to do it – yes. For my husband to force me to do it – no.

The arrangement between Key Informant 21 and her husband attests to the ongoing social expectations, at least in his natal village, of the appropriate domestic roles of husband and wife. It also attests to the fact that women, even highly educated women who actively advocate for women's rights, may be quite willing to embody the 'traditional' role of woman/wife in some circumstances. At least in this instance, a belief in women's rights does not equate to a wholesale rejection of cultural understandings of the appropriate roles and behaviours for men and women.

A review of the Hansard of the parliamentary debate on the second reading of the FPA also indicates a strong sense of gender essentialism in Solomon Islands among those ultimately responsible for the passage of legislation at that time. Gender essentialist sentiments, commonly associated with religion, litter the parliamentary debate.[581] For example, the Hon. Dick Ha'Amori (then Minister of Education and Resource Development) said the following: [582]

> [Men and women] are meant to be doing two different roles. If the Creator meant for us to be the same then he create us the same. We are not the same, meaning that there has to be some complementary arrangement recognised in this union, something that I cannot provide is what the other one can provide, that is why God created a woman and to the woman that is why God created man.

That women and men are complementary but different is a view shared by various key informants for this thesis. Key Informant 22 spoke most explicitly on this point:

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[580] Key Informant 17.

[581] The connection of gender essentialism and religion is hardly surprising given the theory of the complementarity of the sexes, promulgated by the Vatican, under which the (two) sexes are considered to be equal but different. For discussion see Elżbieta Korolczuk, 'The Vatican and the Birth of Anti-Gender Studies' (2016) 6(2) *Religion and Gender* 293; Mary Anne Case, 'The Role of the Popes in the Invention of Complementarity and the Vatican's Anathematization of Gender' (2016) 6(2) *Religion and Gender* 155.

[582] Hon. Dick Ha'Amori (page 48) 'Hansard: Solomon Islands National Parliament (25 August 2014)' (n 342).

> [Women and men] play different, complementary roles – it is only negative when the men are abusing their power to inflict violence on the women. That's when I think it is negative. But in our culture men are protectors. They usually protect us women from violence…and we can see that as a compliment.

Research conducted as recently as 2018 indicates that communities have clear ideas about what constitutes 'good' and 'bad' behaviour for women and men respectively.[583] A 'good woman' is perceived to be, among other things, respectful, passive and obedient (particularly to her husband).[584] Whether or not this conception of ideal womanhood is inherently problematic (and there are data to suggest that many Solomon Islander women themselves take pride in their identity as good homemakers and obedient wives),[585] what is inarguably troubling from the perspective of those seeking to reduce IPV in Solomon Islands is the clear relationship between the transgression of gender norms and the occurrence of GBVAW.[586]

The link between GBVAW and perceived transgression of gender norms has been widely evidenced in research undertaken at various times and in various parts of Solomon Islands. Writing in 2000, Pollard noted that girls in the Waisisi community in Malaita province were taught from an early age to be submissive to the male members of their family, and boys were brought up to believe they had a role in policing their sisters – for example, being able to hit their sisters for failing to obey orders or for transgressing permissible boundaries for females.[587] The Family Violence Report found that 73% of *women* agreed with one or more justifications given for a husband hitting his wife, including in the event that the woman was 'disobedient.'[588] Male focus group participants in the same study indicated that acceptability of violence as a form of discipline for women was one of the key contributing factors to IPV in Solomon Islands, and discipline of their wives was the single most common reason perpetrators in the study gave for their violent behaviour.[589] At least four separate studies between

[583] Oxfam Australia (n 333) 5.
[584] Ibid 15.
[585] See, for example, Pollard (n 568) 4; Oxfam Australia (n 333) 16.
[586] See also discussion in Farran, Crook and Röell (n 348); 'Gendered Violence in a Changing Society: The Case of Urban Papua New Guinea' (1994) 99 *Journal de la Societe des Oceanistes* 187, 194–195; Stephanie Ketterer Hobbis, 'Mobile Phones, Gender-based Violence, and Distrust in State Services: Case Studies from Solomon Islands and Papua New Guinea' (2018) 59(1) *Asia Pacific Viewpoint* 60, 61; Charlotte A Taylor, 'Domestic Violence and Its Prevalence in Small Island Developing States - South Pacific Region' (2016) 1(3) *Pacific Journal of Reproductive Health* 119, 121.
[587] Pollard (n 568) 37.
[588] Secretariat of the Pacific Community and National Statistics Office (n 17) 72. Note that 63% agreed it was justified where a woman was unfaithful, 41% felt it was justified if a woman was disobedient, 27% thought it was justified it a man suspected his wife was being unfaithful, 23% felt it was acceptable if housework was not completed to a husband's satisfaction, and 20% believed it was acceptable for a man to beat his wife if she refused him sex.
[589] Ibid 11 and 155.

2013 and 2020 found that, from the perspective of the community, a key reason for IPV in Solomon Islands is men 'disciplining' their partner/wife, and/or punishing them for failing to embody the appropriate attitudes and behaviours of women.[590] One study also noted that while community members condemn violence against women when asked about it directly, those same community members suggest violence can be justified on the basis of 'discipline' where a woman acts in a way that does not align with accepted gender norms.[591]

I have suggested above that there is a strong policy commitment to gender equality at the national level in Solomon Islands and that donors and civil society organisations working to reduce IPV place a heavy emphasis on its promotion. This is perhaps understandable given the dominant international narratives discussed in chapter one and, moreover, the recognised association between GBVAW and the transgression of social norms that allocate different roles and behaviours to men and women in Solomon Islands. As will be further discussed in chapter six, there is certainly a time and a place for the explicit pursuit of gender equality. This likely includes in IPV reduction programming that has as its primary purpose the shifting of social and cultural norms that facilitate ongoing violence. However, the cultural change at which such programming is aimed is likely to take place over years and decades, if not generations. The evidence set out above suggests that the explicit promotion of gender equality in programming aimed specifically at the implementation of the FPA is likely to be unhelpful at best, counterproductive at worst.

Individualism and collectivism

So far in this chapter I have revisited the perspectives raised in chapter four that human rights make false claims to universalism and that the pursuit of gender equality risks undermining other essential aspects of the identities of (some) unheard women. I now turn to the suggestion that mainstream human rights programming focuses too heavily on the (liberal) individual and fails to adequately reflect the experiences and priorities of those living in (more) collectivist contexts.

The division between Western (individualist) conceptions of subjectivity and Melanesian (collectivist) conceptions should not be overemphasised, including in the context of Solomon Islands.[592] This is

[590] Solomon Islands Ministry of Justice and Legal Affairs (n 209) 41; Oxfam Australia (n 333) 5; Rasanthan (n 350) 1; Honda et al (n 568).

[591] Oxfam Australia (n 333) 17–18. That the transgression of gender norms can trigger incidents of IPV is an important point to bear in mind for those seeking to implement the FPA or other programs aimed at the reduction of family violence. As reiterated by three key informants for this thesis (Ella Wairiu, Jady Basi and Val Stanley) when women seek to assert their rights or (in the words of Judy Basi) 'raise their voice' to their husbands this can be seen as a threat to male authority which can in turn trigger violence. Program implementers must be careful not to inadvertently exacerbate violence in the process of trying to curb it.

[592] See, for example: Brigg (n 216) 150. Simon Harrison, 'Property, Personhood and the Objectification of Culture' in *Fracturing Resemblances: Identity and Mimetic Conflict in Melanesia and the West* (Berghahn Books,

particularly so given the importance of kin networks has been observed to be decreasing in Solomon Islands and the influence of individualism increasing, most notably in urban settings.[593] Nonetheless, it is clear that the country can be classified as a relatively collectivist one in which understandings of individual identity are closely tied to social connections and relationships.[594] The notion of ''dividualism' (brought to the fore in the context of Melanesia by anthropologist Marilyn Strathern)[595] is commonly used to describe a dominant mode of personhood in Solomon Islands.[596] "Dividualism' is helpfully summed up by Dureau as referring to modes of personhood that take 'the properly human person to be constituted out of their relationships with others, coming to be who and what they are through mutual engagement and exchange.'[597] 'Dividuals, then, not only place a great deal of value on their relationships with others, but also see their own identity as being largely constituted in and through those relationships. Accordingly, programming to facilitate the implementation of the FPA should be designed to take account of how its use by (in)'dividual survivor/victims relates to or impacts on their important social relationships. This is rarely done in the context of mainstream programming, which tends to focus on the individual rights of survivor/victims.

If we accept that understandings of personhood in Solomon Islands are deeply entwined with social relationships, the question then becomes: which of these relationships hold the greatest influence? I suggest that efforts to implement the FPA should seek to prioritise and protect those relationships to the extent it is possible to do so while also ensuring the cessation of violence. The reason for this is simple: if survivor/victims are concerned that their important relationships (other than that with their partner) will be damaged by using the FPA to obtain protection from violence they are unlikely to see it as an appropriate or viable option.

Incorporated, 2005) 66; Bronwen Douglas, 'Traditional Individuals? Gendered Negotiations of Identity, Christianity and Citizenship in Vanuatu' (1998) 6 *State, Society and Governance in Melanesia Discussion Paper* 1328.

[593] Ceridwen Spark, '"I Won't Go Hungry If He's Not Around": "Working Class" Urban Melanesian Women's Agency in Intimate Relationships' in Martha Macintyre and Ceridwen Spark (eds), *Transformations of Gender in Melanesia* (ANU Press, 2017) 115, 116.

[594] Brigg (n 216) 151; See also Gordon Leua Nanau, 'Wantoks and Kastom (Solomon Island, Melanesia)' in Alena V Ledeneva (ed), *Global Encyclopaedia of Informality, Volume 1: Towards Understanding of Social and Cultural Complexity* (UCL Press, 2018) 244.

[595] Marilyn Strathern, *The Gender of the Gift: Problems with Women and Problems with Society in Melanesia* (University of California Press, 1998).

[596] See, for example, Christine Dureau, 'Christian In/Dividuals? Christian Personhood on Simbo, Western Solomon Islands' in M Fuchs, A Linchenbach-Fuchs and W Reinhard (eds), *Individualisierung Durch Christliche Mission?* (Harrassowitz, 2015) 666; Michael Spann, '"It's How You Live": Understanding Culturally Embedded Entrepreneurship: An Example From Solomon Islands' (2022) 32(6) *Development in Practice* 781, 783; Harrison (n 592) 67.

[597] Dureau (n 596) 669. Similar sentiments have also been expressed by Farran et al who say 'Pacific people say that they are made up of each other, and that they are not only their own person' and Brigg who characterises Solomon Islanders as being 'bound up' with each other. See Farran, Crook and Röell (n 348) 8; Brigg (n 216) 150.

Prasad and Kausimae provide a succinct overview of the traditional social system in Solomon Islands.[598] They point to a four-tiered hierarchy of social institutions that have been the primary providers of support to those within them. At the highest level is the tribe, which is comprised of the descendants of the first pioneer to have settled and populated a particular piece of land.[599] The next tier, known as the clan, is made up of the descendants of those (men) to whom land was allocated by the first pioneer of the tribe.[600] Beneath the clan is the extended family, comprised of grandparents, parents, children, aunts and uncles, siblings, nieces and nephews.[601] The fourth level, the nuclear family, is where planning for day to day life occurs, but the primary function of the nuclear family is to act as a support to the extended family.[602] Prasad and Kausimae suggest that the extended family plays a role akin to that of formal welfare support systems in more developed countries: they provide physical and financial care to other members in need.[603] Belonging to an extended family group comes with protections (support as and when required) and responsibilities (to provide support to others).

In addition to the hierarchy based on ancestry and lineage outlined by Prasad and Kausimae, the broader notion of *wantok* (or 'one talk') also continues to play an important role in Solomon Islands.[604] Siota, Carnegie and Allen refer to wantok as a 'set of social relations between groups of people who identify with each other.'[605] This identification can be on a wide range of bases, including language, location, culture or social connection.[606] What is significant for the purposes of this thesis is that wantok relationships are considered to be relationships of reciprocity.[607] Indeed, Siota and others suggest that at the broadest level mutual reciprocity is considered the 'social glue' of wantokism.[608]

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[598] Biman Chand Prasad and Paul Kausimae, *Social Policies in Solomon Islands and Vanuatu* (Commonwealth Secretariat and United Nations Institute for Social Development, 2012).
[599] Ibid 12.
[600] Ibid 14.
[601] Ibid.
[602] While it remains the case that the extended family plays a hugely significant role in Solomon Islands, it is worth noting that, particularly in urban settings, there has been increasing emphasis on the nuclear family in recent years: Solomon Islands Truth and Reconciliation Commission (n 222) 549; Maetala (n 570) 43; McDougall (n 543) 200.
[603] Prasad and Kausimae (n 598) 14.
[604] Nanau (n 594); Gordon Leua Nanau, 'The Wantok System as a Socio-Economic and Political Network in Melanesia' (2011) 2 *OMNES: The Journal of Multicultural Society* 31.
[605] Jerry B Siota, Paul J Carnegie and Matthew G Allen, 'Big Men, Wantoks and Donors: A Political Sociology of Public Service Reform in Solomon Islands' 36.
[606] Nanau (n 594) 244; Siota, Carnegie and Allen (n 605) 36.
[607] Nanau (n 594) 244.
[608] Siota, Carnegie and Allen (n 605) 36. When discussed at the national or provincial level, the notion of wantok often brings in connotations of nepotism and corruption. In the words of Nanau 'the further one uses wantok away from the local towards the national, the greater the system changes from being a subsistence and livelihood buffer, to one of exploitation and corruption.' Nanau (n 594) 246. However, for the purposes of this thesis wantokism is considered from the grassroots level.

Wantokism, like family relations, brings with it both entitlements and obligations.[609] It also brings with it *kastom*,[610] a concept defined by Joanna Quinn as *'*a series of beliefs and practices to which Solomon Islanders subscribe and by which their social world is regulated.'[611] For the purposes of this thesis I adopt that definition, with the clarification that different tribes and wantoks in Solomon Islands (may) have different kastoms.[612]

It has been commonly noted that there is a tension between the emphasis placed on the individual by human rights activists and the emphasis placed on the collective by advocates of kastom.[613] This can lead to conflict where advocacy for the rights of the individual is perceived as threatening to, or undermining of, the interests of the group.[614] Possible implications in the context of the implementation of the FPA can be demonstrated through a consideration of the practice of paying customary compensation to resolve situations involving IPV.

As outlined in chapter three, prior to the implementation of the FPA there was no legislation that directly addressed IPV in Solomon Islands and its occurrence was largely viewed as a private issue to be resolved, often at the community level, through reconciliation. This usually included the payment of customary compensation by the family of the perpetrator to the family of the survivor/victim. Serious questions are raised about the extent to which this process adequately protected and/or met the needs of individual survivor/victims. Both the literature and data from key informants suggest that the payment of compensation is considered, from the perspective of kastom, to be a form of social healing and means of mending social relations between families.[615] It is not focused wholly on even primarily on the survivor/victim and can be interpreted as diminishing the seriousness of the violence that has been inflicted upon her.[616]

A review of the relevant Hansard makes clear that there was concern on the part of some politicians about the FPA regime being an alternative to customary methods of resolving IPV because, in their

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[609] Jude Devesi, 'The Solomon Islands Public Service: Organisations, Challenges and Reform' (2018) 40(4) *Asia Pacific Journal of Public Administration* 235, 235.
[610] Nanau (n 594) 244.
[611] Joanna R Quinn, 'Kastom in Dispute Resolution: Transitional Justice and Customary Law in the Solomon Islands' in Renée Jeffery (ed), *Transitional Justice in Practice: Conflict, Justice, and Reconciliation in the Solomon Islands* (Palgrave Macmillan US, 2017) 63, 68.
[612] While this definition of kastom is sufficient for the purposes of this thesis, the concept remains a debated one. For further discussion see, for example, Quinn (n 611); David Akin, 'Ancestral Vigilance and the Corrective Conscience: Kastom as Culture in a Melanesian Society' (2004) 4(3) *Anthropological Theory* 299; Alain Babadzan, 'Commentary: Kastom as Culture?' (2004) 4(3) *Anthropological Theory* 325; David Akin, 'Kastom as Hegemony? A Response to Babadzan' (2005) 5(1) *Anthropological Theory* 75.
[613] *Converging Currents: Custom and Human Rights in the Pacific* (n 207) 23.
[614] Ibid.
[615] Rohorua (n 207) 17; See also Fangalasuu et al (n 243) 20. KI Laura Kwanairara; KI Aroma Ofasia; KI Ethel Sigimanu; KI Valea Devesi; KI Josephine Kama; KI Juanita Malatanga.
[616] *Converging Currents: Custom and Human Rights in the Pacific* (n 207) 165.

view, it did not take into account the wrong being done to the *family* of the survivor/victim. In advocating for an amendment to the bill that would allow the court to make orders that compensation be paid not just to the survivor/victim but also her family, Mr Moffat Fugui said the following:[617]

> You are not only offending against the victim [when you commit an act of IPV] but also members of the family of the victim…[T]his is very, very pertinent. If that compensation can move horizontal to the brother, uncles, parents of the victim it will really help. But if that compensation will be given only to the victim then you will be in trouble.

Similar sentiments were also expressed by Mr Peter Shanel Agoavaka representing Central Guadalcanal (who – ultimately unsuccessfully - argued that the payment of customary compensation should be considered a mitigating factor in sentencing) and Mr Douglas Ete of East Honiara (who suggested that the broader family members had a 'right' to customary compensation in some circumstances).[618]

The debate in Parliament regarding customary compensation suggests a false dichotomy: that in seeking protection from IPV a survivor/victim can *either* use the FPA (focused on the individual survivor/victim) *or* use traditional methods involving reconciliation and compensation (directed towards broader community healing).

It is useful, at this point, to reiterate what the FPA says about the payment of customary compensation. As is evident from the above discussion, a number of politicians voting on the passage of the FPA believed that it prohibited the payment of customary compensation in situations of IPV. This is not the case. The FPA simply mandates that the payment of such compensation is not a defence to offences under the FPA.[619] Under the statutory framework, the court can also make orders upon the sentencing of a perpetrator that compensation be paid to the survivor/victim for personal injury, damage to property or financial loss.[620] Again, this does not preclude the payment of customary compensation, whether to the survivor/victim specifically or her family more broadly.

While we have seen that use of the FPA does not preclude the use of customary reconciliation processes in relation to IPV, there is evidence to indicate that this (mis)perception is relatively common in the community. Laura Kwanairara, lawyer at the Family Support Centre, explicitly stated that the

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[617] 'Hansard: Solomon Islands National Parliament (27 August 2014)' (n 534) 34.
[618] Ibid.
[619] *Family Protection Act* (n 38) ss58(3) and 59(3).
[620] Ibid s63.

payment of compensation 'was not helping' with the implementation of the FPA.[621] She suggested that when customary compensation is paid because IPV has been committed, survivor/victims will often believe that is (or should be) the end of the matter. As such they will be reluctant to make a formal complaint or pursue the matter in accordance with the FPA. However, this is problematic when you consider the fact that customary compensation is not a reliable way of permanently stopping IPV.[622] In the words of Juanita Malatanga (Deputy Commissioner, National Operations, RSIPF) the payment of customary compensation amounts to the 'covering of a wound' and rarely results in the permanent cessation of violence.[623]

A key problem with viewing the FPA as an *alternative* to traditional forms of reconciliation, at least when it comes to the question of compensation, is that the two avenues address different issues. As outlined in chapter three, the FPA allows for orders to be made that a perpetrator pay compensation to the survivor/victim for loss and damage she has suffered. Customary compensation, on the other hand, seeks to remedy the damage perceived to have been done to the natal family of the survivor/victim. Beyond compensation, the aims of the FPA and reconciliation are also different: the FPA is intended to protect survivor/victims from further harm and reconciliation is intended to repair damaged family and community relations.

From the perspective of the survivor/victim, it may be that using either system to the exclusion of the other is inadequate. Some survivor/victims, particularly those who associate strongly with 'dividualism, may find it important that the wrong done to their extended family by the perpetrator be redressed and that relations in the extended family be repaired. Some women may also doubt, however, that violence will stop after reconciliation and want to pursue the protections provided under the FPA. The FPA alone may not be viewed as sufficient even by those women who do *not* personally see the value in the process of reconciliation, or those who feel overlooked in it. If using the FPA regime to the exclusion of traditional dispute resolution processes threatens a survivor/victim's social standing (because it leads to a perception that she is putting herself before her family/community) she may decide that the potential benefit of receiving protection under the law poses too big of a threat to her broader social relations and the support systems it brings with it.

A response to IPV resolution in Solomon Islands that sufficiently recognises the individual and the collective may involve the use of both the FPA regime and traditional reconciliation processes.

[621] KI Laura Kwanairara.
[622] KI Laura Kwanairara; KI Aroma Ofasia; KI Valea Devesi; KI Ethel Sigimanu; KI Juanita Malatanga.
[623] KI Juanita Malatanga.

Concurrent use of the two may reduce pushback on the FPA from the community and/or blowback for survivor/victims who wish to use it.

The example of compensation demonstrates the very real consequences that can arise for survivor/victims in collectivist contexts if their lived experience of collectivity is not taken into account, and taken seriously, in the context of efforts to implement Standard IPV Legislation which is, at its core, inherently individualistic. It also demonstrates the importance of ensuring survivor/victims properly understand the law, and the consequences of deciding to use it to escape violence.

The importance of economic, social and cultural factors

In the section above I discussed the importance of taking collectivist aspects of Solomon Islands society into account in the design and planning of programming to implement the FPA. This goes partway towards redressing the final critique of human rights-based approaches identified in chapter four: that mainstream programming can focus too heavily on bodily autonomy and fail to adequately address other relevant economic, social and cultural factors that might prevent a survivor/victim from using the law to obtain protection from violence. However, in Solomon Islands, as in any given context, there are a wide range of economic, social and cultural factors that need to be identified and addressed. The remainder of this chapter will consider the importance of programming being designed, to the greatest extent possible, to align with and respect valued social and cultural practices and beliefs. It will also consider the potential consequences of failing to do so. I use the example of the payment of 'bride-price' to demonstrate my point.

As discussed below, while the practice of bride-price payment is undoubtedly controversial, it also remains an important part of the social and cultural context that needs to be taken into account in efforts to reduce IPV in Solomon Islands. However, Western human rights discourse lacks nuance in its consideration of the practice, which has been a common target for international human rights advocates seeking the reduction of gender violence in Melanesia.[624] I suggest that distinct parallels can be drawn between calls for the abolition of bride-price and the blanket condemnations of veiling discussed in chapter four.[625] As outlined in that chapter, Abu-Lughod argues that where Western interventionists make such condemnations they undermine women's agency and engage in acts of cultural imperialism. This can lead to ideological barriers to the use of frameworks proposed by the interventionists, including legislative frameworks.

[624] Biersack and Macintyre (n 155) 24 and 35.

[625] In that chapter I outlined the argument of Abu-Lughod that where Western interventionists make blanket condemnations of veiling in the name of 'women's rights' they undermine the agency of women and engage in acts of cultural imperialism.

Put simply, bride-price is the transfer of wealth from a groom's family to a bride's family upon marriage.[626] While not customary in all Solomon Islands communities, bride-price is commonly associated with the provinces of Malaita, Makira, Guadalcanal and Temotu[627] which are collectively home to approximately 74% of the total population of the nation.[628] It has also been suggested that bride-price payment is becoming increasingly common as populations move from rural to urban areas and inter-tribal marriages occur more frequently.[629]

The practice of bride-price invariably arises in discussions regarding IPV in Solomon Islands. It is commonly asserted that the payment of bride-price (in Solomon Islands specifically and Melanesia more broadly) is a driver of IPV that contributes to a culture in which violence is tolerated, or even condoned.[630] There is some evidence to support this assertion.[631] The National Family Violence Study found bride-price to be a 'strong risk factor' for women's experience of IPV, especially if their bride-price has not been paid in full.[632] Smaller scale research by Amnesty International carried out in 2004 also confirmed reports from both men and women that bride-price was a key factor contributing to IPV.[633] Interviews with key informants undertaken for the purposes of this thesis support the suggestion that where bride-price is interpreted as being a man's 'purchase' of his wife (a view discussed in further detail below) it is often used as a justification for IPV as a form of wifely 'discipline.'[634]

The payment of bride-price has been on the receiving end of significant criticism from the international human rights community, with many arguing that it is a harmful cultural practice that perpetuates IPV and exacerbates broader gender inequality.[635] In 2015, Human Rights Watch explicitly recommended

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[626] Eva Brandl and Heidi Colleran, 'Does Bride Price Harm Women? Using Ethnography to Think about Causality' (2024) 6 *Evolutionary Human Sciences* e29, 1 ('Does Bride Price Harm Women?').
[627] Christine Jourdan and Fabienne Labbé, 'Urban Women and the Transformations of Braedpraes in Honiara' (2020) 90(3) *Oceania* 253, 256.
[628] Based on data set out in Solomon Islands National Statistics Office and Ministry of Finance and Treasury (n 187) 10.
[629] KI Anike Kingmele; KI Ethel Sigimanu; KI Afu Billy.
[630] This issue has received extensive attention in the literature. See, for example, Taylor (n 586) 122; Solomon Islands Truth and Reconciliation Commission (n 222) 557 and 559; *Converging Currents: Custom and Human Rights in the Pacific* (n 207) 94; Sue Farran, 'Gender, Equality and Pacific Island Countries with a Particular Focus on Domestic Violence' [2015] *Journal of South Pacific Law* 20; Heather Barr, *Bashed Up: Family Violence in Papua New Guinea* (No 978-1-6231–32910, Human Rights Watch, 2015) 62; Biersack and Macintyre (n 155) 24.
[631] Cf the 1994 Community Survey, which expressly stated that the survey findings did not suggest a connection between 'bride-price' and the occurrence of domestic violence. The author of the study notes, however, this could be a result of a skewed sample: Poerio (n 344) 21.
[632] Secretariat of the Pacific Community and National Statistics Office (n 17) 149. The study found that women were 2.5 times more likely to be subjected to IPV than women who did not have bride-price paid for them.
[633] Amnesty International (n 350) 14.
[634] KI Val Stanley; KI Judy Basi; KI Kyla Venokana; KI Anika Kingmele; KI Anon 4; KI Afu Billy; KI Ethel Sigimanu; KI Catherine Nalakia.
[635] Brandl and Colleran (n 626) 16.

the banning of bride-price on the basis that it is harmful to women.[636] The Family Violence Report linked bride-price, as a cultural practice connected with ongoing IPV, to State obligations under CEDAW. It noted that the Solomon Islands Government had a duty to modify or abolish customs and practices that discriminate against women.[637] This was a point explicitly addressed by the CEDAW Committee, who called on Solomon Islands to 'urgently repeal customary laws that provide for…the payment of bride prices…' in its concluding observations on the nation's combined initial to third periodic reports.[638]

Controversy surrounding the practice of bride-price is not limited to the international community.[639] Nor is concern about it solely connected with the perpetuation of IPV. Questions have been raised about to extent to which it restricts women's autonomy more broadly, traps them in unhappy relationships and families, and ensures they are indebted both to their husband and to their husband's extended family.[640] But these criticisms and concerns do not reflect the whole story. While the harmful aspects of bride-price have received significant attention, a number of potential benefits have also been identified.[641] In an extensive review of the ethnographic literature, Brandl and Colleran suggest that bride-price can improve the social standing of women and secure their access to resources.[642] Henry and Vavora argue it can help to improve women's opportunities for political participation and enhance their visibility.[643] Farran identifies that many men and women in Pacific communities in which bride-price is traditional continue to support its role in establishing and maintaining strong links between tribes and families.[644] Indeed, many commentators point to the fact that this is the true purpose for bride-price: to bring together the extended families of the marrying couple, show respect to the bride's natal family and acknowledge her value.[645] Interpretations of bride-price as the

[636] Barr (n 630) 13, 5 and 64. Note this recommendation was made in the context of Papua New Guinea rather than Solomon Islands, but, as is made clear in the literature, the parallels between bride-price in PNG and neighbouring Solomon Islands are significant.
[637] Secretariat of the Pacific Community and National Statistics Office (n 17) 30.
[638] CEDAW Committee, *Concluding Observations on the Combined Initial to Third Periodic Reports of Solomon Islands* (No CEDAW /C/SLB/CO/1-3, 14 November 2014) 23(b). It is worth noting that even the reference to the 'repeal' of customary laws reveals a divide between the way things are viewed in the formal world of international human rights law and at the domestic level. Customary 'laws' are not repealable in the way that written, formal State laws are.
[639] Rosita Henry and Daniela Vávrová, 'Brideprice and Prejudice: An Audio-Visual Ethnography on Marriage and Modernity in Mt Hagen, Papua New Guinea' (2020) 90(3) *Oceania* 214, 215; Brandl and Colleran (n 626) 5.
[640] Largely because they often contribute to it. Brandl and Colleran (n 626); Jourdan and Labbé (n 627).
[641] See, for example, Jourdan and Labbé (n 627); Henry and Vávrová (n 639); Equality Institute, 'Transforming Harmful Gender Norms in the Solomon Islands: A Study of the Oxfam Safe Families Program' (2019); Brandl and Colleran (n 626).
[642] Brandl and Colleran (n 626) 7.
[643] Henry and Vávrová (n 639) 214.
[644] Farran (n 179) 179.
[645] Jennifer Corrin Care and Kenneth Brown, 'Marit Long Kastom: Marriage in the Solomon Islands' (2004) 18 *International Journal of Law, Policy and the Family* 52, 63–64; Corrin Care (n 193) 119.

'purchase' of a wife, such commentators tend to argue, has emerged relatively recently as marriage exchange is increasingly commodified and monetised.[646]

Disagreement about whether the practice of bride-price contributes to ongoing IPV was evident in parliamentary debate on the introduction of the FPA. Mr Matthew Wale suggested that when a high bride-price has been paid for a woman, her male relatives are likely to feel immense pressure to turn her away if she seeks to return to her natal family to escape violence.[647] For this reason, he suggested that all FPA protection orders include a prohibition on the family of a survivor/victim instructing her to return to a violent husband. This suggestion reveals a fundamental misunderstanding that appears to be informed by a collectivist view. Mr Wale assumes that the FPA addresses the damage done by IPV not just to the survivor but to her broader family. This is not the case. Reflecting the individualist focus of human-rights informed law, protection orders made under the FPA are binding only on the respondent to them.

While Mr Wale's suggestion that a survivor/victim's family should bear obligations under a protection order reflects a fundamental misunderstanding of the nature of such orders—which apply only to respondents— it is nevertheless highly significant to this thesis that he believed the payment of bride-price could undermine the effectiveness of protection orders under the FPA if the conditions he proposed were not included. While Mr Wale was seeking to include provisions in the FPA that would 'stop the abuse of culture as an excuse or justification for violence against women,'[648] other members of Parliament instead argued for a return to a traditional understanding of bride-price:[649]

> The first hurdle is to get every Solomon Islander….to fully understand the significance of bride-price [which]…. establishes the moral value and higher regard that men should have for women….We are buying and selling nothing under a bride-price transaction. On the contrary, bride-price under our worthy custom is the bridegroom's family's obligation to place as exchange things of value…as acknowledgment of forging a new relationship between the bridegroom and the bride's families.

Similar sentiments were expressed by various other members of parliament, with Mr Moffat Fugui suggesting that viewing bride-price as the 'purchase' of a wife is itself a result of negative foreign

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[646] Martha Macintyre, 'Gender Relations and Human Rights in Melanesia' in *The Melanesian World* (Routledge, 2019) 285, 288–289; Karen M Sykes and Christine Jourdan, 'Bridewealth and the Autonomy of Women in Melanesia' (2020) 90(3) *Oceania* 178, 186; Taylor (n 586) 122; Oxfam Australia (n 333) 9.
[647] 'Hansard: Solomon Islands National Parliament (26 August 2014)' (n 225) 124.
[648] 'Hansard: Solomon Islands National Parliament (25 August 2014)' (n 342) 53.
[649] Per Mr Mannessah Sogavare Ibid 28. See also comments of Mr Peter Shanel Agoavaka.

influences. He suggests it reflects a 'modern perspective of marriage that is influenced by market considerations, Western commodification practices and capitalist values…a viewing of marriage from a Western standpoint that says everything is for sale.'[650]

Whether or not one accepts that there are benefits to the practice of bride-price, what is beyond doubt is that many Solomon Islanders, male and female alike, support its continuation.[651] While carrying out interviews with key informants (all advocates for women's rights and all working to reduce family violence) I was somewhat surprised to learn that all those from communities in which bride-price was customary indicated that they supported its continuance, provided it was understood in its traditional sense of being a symbol of the bringing together of two families.[652] Key Informant 14 spoke directly to this point:

> It's about the relationship between the different tribes. So you're not just building a relationship between husband and wife, but you are building a relationship between the tribe…[Bride-price] is very much a part of the culture and it has a lot of value in it. I'm one sort of person who advocates for people to see bride-price for what it really is. It's a good thing.

While key informants generally supported ongoing bride-price, they also expressed concern about commoditisation and inflation. They were in favour of keeping bride-price (or the 'things of value' being provided to the family of the bride) at a low level. Key Informant 11 (whose own family received bride-price upon her marriage) indicated that she had talked openly to her family about wanting to keep the price low so as to ensure she did not feel undue pressure or expectation in her new role as wife. Having successfully negotiated to keep the price at a low level, Key Informant 11 was pleased that the practice was a part of her marriage. She felt it was a nice tradition that helped to bring together her natal family and the family she married into.

The above discussion lends credence to the argument of Hague and others, made in the context of Uganda, that bride-price is not *only* harmful or *only* beneficial.[653] Hague and others demonstrate the practice of bride-price to have benefits and detriments, and to be contested and evolving.[654] The evolving nature of bride-price has also been noted in the context of Solomon Islands, with some

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[650] Ibid 86.
[651] See, for example, *Converging Currents: Custom and Human Rights in the Pacific* (n 207) 97; Jourdan and Labbé (n 627) 3.
[652] KI Laura Kwanairara; KI Aroma Ofasia; KI Anika Kingmele; KI Ethel Sigimanu; KI Afu Billy; KI Anon 4.
[653] Gill Hague, Ravi K Thiara and Atuki Turner, 'Bride-Price and Its Links to Domestic Violence and Poverty in Uganda: A Participatory Action Research Study' (2011) 34(6) *Women's Studies International Forum* 550.
[654] Ibid 554.

commentators demonstrating ways in which women are seeking to transform its meaning to retain advantages and minimise disadvantages.[655]

Given the complexity of views around bride-price, critiques of it that fail to recognise its potential benefits and broader cultural significance risk falling on deaf ears or – worse – being interpreted as cultural arrogance. Where pressure is brought to bear to eliminate the practice altogether it also risks being interpreted as cultural imperialism.[656] I will argue in chapter five that in the context of programming to implement the FPA, strong critiques of bride-price, or any other longstanding and valued cultural practices, distract from the ultimate purpose of enhancing legislative effectiveness. This reasoning can be extended beyond bride-price, and beyond Solomon Islands, which will be discussed in chapter six.

Conclusion

This chapter revisited the interrelated reasons identified in chapter four that rights-based approaches to the reduction of IPV might struggle to gain traction in aid-dependent postcolonial countries. It examined whether perceptions of the false universalism of human rights, an overemphasis on gender equality and individualism, and a failure to account for broader social, cultural, and economic factors might undermine efforts to implement the FPA. The analysis found that each of these issues, in different ways and to varying degrees, can indeed have a detrimental impact. This chapter illustrated relevant dynamics through concrete examples—including the practices of bride-price and customary compensation payments—which demonstrate how such factors can create barriers that prevent a survivor/victim from using the FPA to seek protection from violence.

Having concluded the first two parts of this thesis, the key problematic on which it is focused has been established. In Part One I demonstrated the significant benefits of the international human rights discourse and framework for those in Focus Countries seeking the elimination of IPV. In Part Two, I explored the significant baggage that accompanies human rights approaches, and how tensions between rights-based discourse and principles and the perspectives and experiences of those on the ground can result in ideological and practical barriers that problematise the implementation of Standard IPV Legislation. In the final part of this thesis (to follow) I consider a path forward. I assess the argument that legal empowerment programming, being programming designed to help people

[655] Jourdan and Labbé (n 627); Brandl and Colleran (n 626); Henry and Vávrová (n 639); Pei-yi Guo, 'Marriage-Related Exchanges and the Agency of Women among the Langalanga, Solomon Islands' (2020) 90(3) *Oceania* 273; Henry and Vávrová (n 639).

[656] It is worth noting that, despite the significant influence of the church in Solomon Islands, various attempts by it to ban or cap bride-price over the years have been unsuccessful: Corrin Care (n 193) 110 and 124; Guo (n 655) 287; Jourdan and Labbé (n 627); Care and Brown (n 645) 64; Brandl and Colleran (n 626) 11.

shape, use and understand the law, can provide a promising vehicle to enhance the effectiveness and accessibility of Standard IPV Legislation by addressing some of these tensions between rights-based approaches and local contexts, through framing and communicating human rights concepts in ways that take account of cultural and other factors. I also consider what such programming must achieve if it is to be effective, and the conditions and guiding principles that might optimise its impact.

PART THREE

Chapter 6: Legal empowerment programming as a vehicle to facilitate the implementation of Standard IPV Legislation

> 'In an effort to reimagine how law can fit into development strategies, scholars and practitioners have widened the traditional focus on institutions and government machinery to bring the people themselves into view….' Hassane Cisse[657]

Part One of this thesis looked at the significant advantages of the conceptualisation of IPV as a human rights issue for advocates and activists pushing for state action to reduce it. Part Two looked at some of the ways the human rights framework and discourse can problematise efforts to reduce IPV, particularly in Focus Countries. The third and final part of this thesis (comprised of this chapter and the two that follow) proposes a way forward that seeks to capitalise on the advantages of the international human rights law framework while at the same time ameliorating common barriers to the implementation of Standard IPV Legislation. As has been reiterated several times already, the purpose of this thesis is not to advocate, necessarily, for the implementation of Standard IPV Legislation. Rather, it is to enhance its effectiveness if and when it is implemented.

This chapter assesses the potential of legal empowerment programming (or programming designed to help people and communities shape, understand and use the law) to facilitate the implementation of Standard IPV Legislation. Before doing that, however, it is important to note that such implementation is reflective of a long-standing – and long-criticised – law and development practice. That practice involves the domestic enactment of laws informed largely by concepts and ideas transferred from inter- and trans- national arenas. Such laws are commonly referred to as 'legal transfers,'[658] and are traditionally associated with an approach to law and development known as the 'rule of law

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[657] Cisse (n 14) 31.

[658] There is no universally accepted definition of 'legal transfer.' Gillespie and Nicholson perhaps provide the most succinct definition when they refer to it as 'the globalisation of norms, standards, principles and rules that regulate (shape the behaviour) of the object of the transfer:' John Gillespie and Pip Nicholson, 'Taking the Interpretation of Legal Transfers Seriously: The Challenge for Law and Development' in John Gillespie and Pip Nicholson (eds), *Law and Development and the Global Discourses of Legal Transfers* (Cambridge University Press, 2012) 1. Frankenberg provides a more extensive discussion of the meaning and origin of the term in Gunter Frankenberg, 'Legal Transfer' in Marie-Claire et al (eds) Foblets (ed), *The Oxford Handbook of Law and Anthropology* (Oxford University Press, 2021) 333. Frankenberg uses the concept to refer to the transfer of legal information from and between nations, international organisations and ideologies. See in particular discussion on pages 333 to 334.

orthodoxy.'[659] That legal transfers often result in a gap between the law on the books and the law in practice has been widely noted.[660] This issue will be explored below in relation to Standard IPV Legislation specifically.

This chapter opens by examining key criticisms directed at the rule of law orthodoxy. Relevantly for this thesis, and reflecting some of the concerns identified in the previous Part about rights-based approaches to IPV reduction, they include that it fails to adequately account for social and cultural factors that might inhibit the process of law and justice reform and focuses too heavily on justice *institutions* while failing to address the interests and priorities of justice *seekers*. This chapter goes on to identify two critiques of the broader aid and development sector that emerged alongside growing challenges to the rule of law orthodoxy. The first was that the concept of 'development' had traditionally been overly focused on economic growth and needed to be broadened to encompass social dimensions. The second was that too often aid-donors were setting the development agenda and overlooking the interests and priorities of aid recipients. The criticisms of the rule of law orthodoxy, traditional conceptions of 'development' and power dynamics in aid provision had one key thing in common: they all suggested a need to bring the priorities, perspectives and lived experiences of intended recipients of development programming to the centre of the stage.

This chapter goes on to examine the concept of 'legal empowerment,' which emerged in part as a response to the critiques of the rule of law orthodoxy and dominant models of international aid provision. It identifies potential for legal empowerment in relation to the implementation of Standard IPV Legislation due to the ways in which it seeks to bring the perspectives of justice seekers to the fore, while bringing together the law itself and the community/ies in which it is being implemented. Building on the work of Ana Palacio and the World Bank, I suggest that legal empowerment programming can play a 'stitching' role, helping to narrow the gap between the law in theory and the law in practice as well as between the law and the community in which it will take effect.

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[659] In the earliest days of law and development programming it was common practice to 'transplant' laws from high-income countries to low- and middle-income countries on the assumption that what worked well in one context would work well in another. The futility of such efforts quickly became apparent, however, with transplants often failing to take at all and others being captured by the locally powerful and used for purposes not intended by reformers: see David M Trubek, *The 'Rule of Law' in Development Assistance: Past, Present and Future* (June 2003) 7. As to the shift from 'transplant' to 'transfer' see Frankenberg (n 658) 335. See also Julia Eckert, 'Who Is Afraid of Legal Transfers?' in Gunter Frankenberg (ed), *Order from Transfer: Comparative Constitutional Design and Legal Culture* (Edward Elgar Publishing, 2013) 171.

[660] See, for example, David Trubek and Marc Galanter, 'Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States' [1974] *Wisconsin Law Review* 1062, 1079–1082; Wade Channel, 'Lessons Not Learned About Legal Reform' in Thomas (ed) Carothers (ed), *Promoting the Rule of Law Abroad: In Search of Knowledge* (2010) 137, 138; and Kevin E Davis and Michael J Trebilcock, 'The Relationship between Law and Development: Optimists versus Skeptics' (2008) 56(4) *The American Journal of Comparative Law* 895, 901–902.

This chapter then turns specifically to the question of what role legal empowerment programming can play in facilitating the implementation of Standard IPV Legislation. I suggest that if it is to be effective, programming must do two key things: enhance local perceptions of the legitimacy of Standard IPV Legislation and resolve points of tension between the use of the law to escape violence and other valued and valuable social and cultural institutions, practices and beliefs.

The final section of this chapter returns to the case study of Solomon Islands to demonstrate the importance and process of enhancing perceptions of Standard IPV Legislation at the local level. It leaves the question of how best to identify and resolve points of tensions between the law and social norms for the two chapters that follow (one dedicated to theory the other to practice), where I argue that a capabilities-informed approach to the design of legal empowerment programming can allow for context-specific identification and redress of relevant tensions in a way that brings the perspectives, priorities and experiences of IPV survivor/victims to the fore.

Traditional approaches to law, development and aid provision

Advocacy for legal empowerment emerged from the troubled history of the law and development movements, the modern academic field of which dates back to the 1960s.[661] At that time, support from development agencies working in-field fostered a wave of academic interest in the systematic legal reform projects being undertaken by governments and international institutions.[662] This interest focused on the ways in which the legal system and law reform could support the advancement of states that were considered to be 'underdeveloped.'[663] By the 1970s, however, the first wave of law and development began to dissipate, with the emergence of a stream of scholarship that critiqued the dominant assumptions underpinning it.[664] Among the most significant and compelling criticisms of the first wave of law and development were that it was characterised by an ethnocentric approach that was imperialist and ineffective.[665]

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[661] David Trubek, 'Law and Development: Forty Years after "Scholars in Self-Estrangement"' (5AD) 66 *University of Toronto Law Journal* 1, 303 and 308.

[662] Ibid.

[663] The use of the terms 'developed' and 'underdeveloped' in relation to states is controversial. However, I use the terms in this thesis because they locate my project within the broader field of 'law and development' and because they continue to be terms that are widely known, used and recognised by scholars and practitioners alike. For further discussion of the origins of the concept of 'development' and the critiques that have been directed at it see Rostam Neuwirth, 'Global Law and Sustainable Development: Change and the "Developed-Developing Country" Terminology' (2016) 29(4) *The European Journal of Development Research* 911; Gustavo Esteva, 'Beyond Development' in Kathryn Dix (tran), *Gustavo Esteva: A Critique of Development and Other Essays* (Routledge, 2022) 20.

[664] For a detailed discussion of the critiques of the first wave see Trubek and Galanter (n 660).

[665] See, for example, ibid 304; David Pimental, 'Legal Education as a Rule of Law Strategy: Problems and Opportunities with US Based Programs' (2015) 22 *University of California Davis Journal of International Law and Politics* 41, 42.

While there was little academic interest in law and development between the late 1970s and the early 1990s, interest in the area was renewed (this time under the banner of 'the rule of law') when economists began to emphasise the importance of law in facilitating economic development,[666] and the World Bank began to shift its funding focus away from infrastructure projects towards rule of law building.[667] During the ensuing period, a legally oriented approach to international efforts to enhance economic development began to emerge. This is the approach referred to above that is commonly known as the 'rule of law orthodoxy.'[668]

As a strategy, the rule of law orthodoxy promotes the rule of law as a means of facilitating economic development.[669] This strategy reflects the traditionally dominant understanding that development is a direct consequence of economic growth.[670] Promotion of the rule of law occurs under this strategy through a set of programs and activities that seek to uphold some of the central tenets of the rule of law (such as a government bound by the law and equality before the law) and to strengthen the legal frameworks and institutions that are seen as essential to a rule of law state.[671] Rule of law programming has also been a key focus of international aid efforts in the context of 'fragile' or post-conflict settings, where the importance of strong, stable and democratic state institutions takes on a particular significance.[672]

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[666] Trubek (n 661) 311.

[667] Brian Tamanaha, 'The Primacy of Society and the Failures of Law and Development' (2011) 44 *Cornell International Law Journal* 209, 227 and 235.

[668] Note that Frank Upham has been credited with coining the term 'Rule of Law Orthodoxy' in Thomas Carothers (ed), 'Mythmaking in the Rule-of-Law Orthodoxy' in *Promoting the Rule of Law Abroad: In Search of Knowledge* (Carnegie Endowment for International Peace, 2006) 75; See also Stephen Golub, 'A House Without Foundation' in Thomas Carothers (ed), *Promoting the Rule of Law Abroad: In Search of Knowledge* (Carnegie Endowment for International Peace, 2006) 105, 132; Deval Desai and Michael Woolcock, 'Experimental Justice Reform: Lessons from the World Bank and Beyond' (2015) 11 *Annual Review of Law and Social Science* 155.

[669] Golub, 'Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative' (n 12) 5. This aligns with the understanding (traditionally dominant in the context of development theory) that the development of nations was a direct consequence of economic growth: see Liliana Lizarazo-Rodriguez, 'Mapping Law and Development' (2017) IV *Indon. J. Int'l & Comp. L.* 761, 765. See also Keith Griffin, 'Human Development: Origins, Evolution and Impact' in *Studies in Development Strategy and Systemic Transformation* (Palgrave Macmillan UK, 2000) 53, 53 ('Human Development').

[670] Lizarazo-Rodriguez (n 669) 765. See also Keith Griffin, 'Human Development: Origins, Evolution and Impact' in *Studies in Development Strategy and Systemic Transformation* (Palgrave Macmillan UK, 2000) 53, 53 ('Human Development').

[671] Golub, 'A House Without Foundation' (n 668); Carothers (n 668); Desai and Woolcock (n 668).

[672] Stephen Humphries, *Theatre of the Rule of Law: Transnational Legal Intervention in Theory and Practice* (Cambridge University Press, 2010) chapter 5; Lizarazo-Rodriguez (n 669) 884; Amichai Magen and Zachariah Parcels, 'Chapter 2: Thinking about Areas of Limited Statehood and the Rule of Law' (2021); Selver B Sahin and Evgeniia Shahin, 'Aid-Supported Governance Reforms in Solomon Islands: Piecemeal Progress or Persistent Stalemate?' (2020) 38(3) *Development Policy Review* 366. Consideration of rule of law building in 'fragile' states is particularly relevant given the case study of Solomon Islands set out in this thesis. For many decades, Australia has placed a great emphasis on building the strength and stability of Solomon Islands as a nation-state: see, for

The types of activities undertaken as a part of the rule of law orthodoxy include the training of judges and other legal professionals, the strengthening of the judiciary and the building of bar associations. Significantly for this thesis, the rule of law orthodoxy also commonly incorporates the drafting and implementation of laws and regulations, which (as discussed below) are often in the form of legal transfers.[673]

The rule of law orthodoxy has come under critical scrutiny virtually since its inception.[674] Criticisms repeatedly directed at it include that it relies on mistaken assumptions about the relationship between economic development, legal reform, institutions and the state; that it overemphasises the importance of laws and law making; and that there is a lack of attention paid to social and cultural factors that might encourage or inhibit the process of law and justice reform.[675] Of particular relevance for this thesis, it has also been argued that the rule of law orthodoxy has done little to promote social justice generally, or to progress gender equality specifically.[676]

At the same time the rule of law orthodoxy was starting to come under scrutiny, questions were being raised about the effectiveness of the broader international aid paradigm. Foreign aid had traditionally been provided with conditions attached that sought to shape the behaviour and policy choices of recipient nations.[677] It was becoming increasingly clear that the lacklustre track record of many international aid efforts was at least in part a result of the imbalance of power between donor and recipient states, which resulted in the imposition of donor-set conditions that often failed to align with

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example, Graeme Dobell, 'The "Arc of Instability": The History of an Idea' in Ron Huisken and Meredith Thatcher (eds), *History as Policy* (ANU Press, 2007) 85; Dinnen (n 197).

ADDIN ZOTERO_ITEM CSL_CITATION {"citationID":"b6JuNuP5","properties":{"formattedCitation":"Golub, \\uc0\\u8216{}Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative\\uc0\\u8217{} (n 12) 9.","plainCitation":"Golub, 'Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative' (n 12) 9.","dontUpdate":true,"noteIndex":673},"citationItems":[{"id":784,"uris":["http://zotero.org/users/11175014/items/3VIMY33C"],"itemData":{"id":784,"type":"report","archive":"JSTOR","publisher":"Carnegie Endowment for International Peace","title":"Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative","author":[{"family":"Golub","given":"Stephen"}],"issued":{"date-parts":[["2003"]]}},"locator":"9","label":"page"}],"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"} [673] Golub, 'Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative' (n 12) 9.

[674] Desai and Woolcock (n 668). Desai and Woolcock make the point that, notwithstanding the criticisms, activities typical of the rule of law orthodoxy continue to have pull and attract significant funding from donors and attention from practitioners.

[675] Channel (n 660).

[676] See, for example Celestine Nyamu-Musembi, 'Ruling out Gender Equality? The Post-Cold War Rule of Law Agenda in Sub-Saharan Africa' in *The Politics of Rights* (Routledge, 2007) ('Ruling out Gender Equality?').

[677] Kristina Tschunkert, *Shifting Sands: The Evolving Landscape of Aid Conditionality and Its Effects* (report, The Institute of Development Studies and Partner Organisations, 2024) 2; Patrick Guillaumont, Matthieu Boussichas and Andrea Dsouza, *The Evolution of Aid Conditionality: A Review of the Literature of the Last Twenty Years* (The Expert Group for Aid Studies, September 2023) 4.

the priorities and interests of recipients.[678] In 2005, the *Paris Declaration on Aid Effectiveness* (**Paris Declaration**) was endorsed at the international level, which set five guiding principles for more effective aid that would fundamentally change the way aid was provided.[679] The first of those principles related to ownership and stated that recipient countries should 'exercise effective leadership over their development policies and strategies and co-ordinate development activities.'[680] The principle of ownership (reaffirmed at the international level in 2008 and 2011) ushered in a new era of aid provision in which donors were expected to provide aid in ways that supported the priorities and policies of recipient nations.[681] Concerns that the Paris Declaration did not adequately account for the role played in effective development by non-state actors led to a broadening of the concept of 'ownership' to include participation in policy formulation and agenda setting by, inter alia, civil society organisations.[682]

Changes to mainstream aid delivery methods over the following decade led to aid provision on the basis of what some refer to as 'new conditionality.'[683] In line with 'new conditionality,' at least in principle, donor and recipients agree policy reform agendas and aid is provided when milestones are reached that are in line with existing recipient priorities. Whether these changes in fact reduced donor influence over policy setting in recipient states or simply made that influence less visible, they certainly led to a shift in rhetoric that emphasised the importance of local 'ownership' over the direction and shape of development policy and programming.[684]

I have outlined above that the rule of law orthodoxy was being brought into question at the same time that the aid landscape was shifting to emphasise the importance of local ownership over development priorities and directions. A third important change was also underway, as awareness was increasing in the development community that economic growth does not necessarily translate to better outcomes for people. This led to a push for the conception of 'development' to be expanded to include the social

[678] Tschunkert (n 677) 3–4.
[679] OECD, *Paris Declaration on Aid Effectiveness* (OECD Publishing, 2005). The four remaining principles related to harmonisation, alignment, results and mutual accountability.
[680] Ibid 3.
[681] Matthew Dornan and Jonathan Pryke, 'Foreign Aid to the Pacific: Trends and Developments in the Twenty-First Century' (2017) 4(3) *Asia & the Pacific Policy Studies* 386, 357 ('Foreign Aid to the Pacific'); Daniela Sicurelli, 'Human Rights Conditionality' in *Elgar Encyclopedia of Human Rights* (2022) 449, 451.
[682] Dornan (n 278) 48. This conceptual shift is reflected in the international agreement of the *Accra Agenda for Action* in 2008 and the outcome of the *Busan Partnership for Effective Development Cooperation* in 2011: see OECD, *Accra Agenda for Action* (OECD Publishing, 2008); *Busan Partnership For Effective Development Co-Operation: Fourth High Level Forum on Aid Effectiveness,* (1 December 2011).
[683] Tschunkert (n 677) 7; Dornan (n 278).
[684] Dornan and Pryke (n 681) 315; Hasselskog (n 156).

as well as the economic.[685] Law and development scholars and practitioners were starting to consider how to bring the perspectives of justice *seekers* into view rather than focusing solely on justice *institutions*.[686] It was in this context that economist and development practitioner Stephen Golub published a paper entitled *Beyond the Rule of Law Orthodoxy: the Legal Empowerment Alternative* in which he pointed to the weak track record of the rule of law orthodoxy and suggested that legal empowerment should be considered as a major tool for poverty alleviation in aid-receiving states.[687]

What is legal empowerment?

While the coining of the term 'legal empowerment' is commonly attributed to Golub in his 2003 Beyond the Rule of Law paper, the concept was first explored at length by Golub and McQuay in a 2001 report prepared for the Asian Development Bank.[688] In that report the authors defined legal empowerment as 'the use of law to increase the control that disadvantaged populations have over their lives.'[689] Golub expanded this definition in 2003 to refer not just to the use of the *law* to increase the control disadvantaged populations have over their lives, but also 'legal services and related activities.'[690] This nuance made clear that legal empowerment, for Golub at least, could involve a wide range of legally-oriented services (such as counselling, mediation, litigation, advocacy, legal education

[685] The 1990s is commonly pointed to in the literature as being the period in which conceptions of law and development expanded to include social as well as economic concerns. See, for example, Kerry Rittich, 'The Future of Law and Development: Second-Generation Reforms and the Incorporation of the Social' (2004) 26(1) *Michigan Journal of International Law* 199; Peter Uvin, 'From the Right to Development to the Rights-Based Approach: How "Human Rights" Entered Development' (2007) 17(4–5) *Development in Practice* 597; Celine Tan, 'Beyond the Moments of Law and Development: Critical Reflections on the Contributions and Estrangements of Law and Development Scholarship in a Globalised Economy' (2019) 12(2) *Law and Development Review* 285; Mahbub ul Haq, *Reflections on Human Development* (Oxford University Press, 1995) 24. As to the growing understanding of the relationship between social capital and economic development see Humnath Bhandari and Kumi Yasunobu, 'What Is Social Capital? A Comprehensive Review of the Concept' (2009) 37 *Asian Journal of Social Sciences* 480.

[686] See, for example, Ineke van de Meene and Benjamin van Rooij, *Access to Justice and Legal Empowerment: Making the Poor Central in Legal Development Co-Operation* (Leiden University Press, 2008) 6; Stephen Golub and Kim McQuay, *Law and Policy Reform at the Asian Development Bank* (Asian Development Bank, 2001) 8; Cisse (n 14) 31; Task Force on Justice, *Justice for All* (Center on Interational Cooperation, 2019).

[687] Golub, 'Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative' (n 12) 3, 9–11.

[688] Golub and McQuay (n 686). Reference to Golub coining the term 'legal empowerment' in 2003 can be found in, for example, Rachel M Gisselquist, 'Legal Empowerment and Group-Based Inequality' (2019) 55(3) *The Journal of Development Studies* 333, 37; Goodwin and Maru (n 13) 158.

[689] Golub and McQuay (n 686) 7.

[690] Golub, 'Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative' (n 12) 3. It is notable that this was one of at least three different, but complementary, definitions Golub uses: see also Stephen Golub, 'The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice' (2009) 1(1) *Hague Journal on the Rule of Law* 101, 113; Golub, 'Legal Empowerment's Approaches and Importance' (n 14) 5. This demonstrates that for Golub a universally accepted definition is unnecessary, and it is the purpose and core components of legal empowerment that are important.

and paralegal support) which were often used in conjunction with other endeavours which are not inherently legal in nature (such as livelihood development and microcredit provision).[691]

While receiving little by way of scholarly attention, activities we might now consider to constitute 'legal empowerment' (such as legal education and legal aid provision) had in fact been carried out by many multilateral, bilateral and non-governmental organisations since at least the early 1990s.[692] It wasn't until the establishment of the Commission on the Legal Empowerment of the Poor (**CLEP**) in 2005, however, that the concept of legal empowerment was really brought to the world stage.[693]

CLEP was a high-profile organisation co-chaired by former US Secretary of State Madeleine Albright and Peruvian economist Hernando de Soto.[694] Its purpose was to explore how nations could reduce poverty through reforms that expanded access to legal opportunities for all.[695] CLEP handed down its final report in 2008 (**CLEP Report**), and in that report it adopted a definition of legal empowerment that remains among the most widely known.[696] CLEP defined legal empowerment as 'a process of systematic change through which the poor and excluded become able to use the law, the legal system and legal services to protect and advance their rights as citizens and economic actors.'[697]

Since Golub and McQuay were writing in 2001 the term 'legal empowerment' has been adopted by different scholars, practitioners and organisations for different purposes.[698] Variations in definition

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[691] Golub, 'Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative' (n 12) 25–26.

[692] Ana Palacio, *Legal Empowerment of the Poor: An Action Agenda for the World Bank* (2006) 27.

[693] While the work of CLEP received a lukewarm reception in the development community, it was credited by scholars and practitioners with drawing greater international attention to the potential of legal empowerment and for challenging the rule of law orthodoxy. See, for example, Matthew Stephens, 'The Commission on Legal Empowerment of the Poor: An Opportunity Missed' (2009) 1(01) *Hague Journal on the Rule of Law* 132; Golub, 'The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice' (n 690).

[694] Commission on Legal Empowerment of the Poor (n 15).

[695] Ibid 3.

[696] See, for example, Helen Dancer, 'Power and Rights in the Community: Paralegals as Leaders in Women's Legal Empowerment in Tanzania' (2018) 26(26) *Feminist Legal Studies* 47, 51; Gisselquist (n 688) 334.

[697] Commission on Legal Empowerment of the Poor (n 15) 3. As alluded to in footnote 693 (above), the CLEP Report was viewed by many in the development community as a disappointment. Among the criticisms aimed at it were that it failed to grapple with the key question of how political obstacles to legal empowerment could be surmounted, and that it failed to adequately address the question of implementation or provide useful advice for practitioners and policy makers. For detailed discussion see Golub, 'The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice' (n 690); Stephens (n 693); Banik, 'Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication' (n 14).

[698] See, for example John Bruce et al, *Legal Empowerment of the Poor: From Concepts to Assessment* (USAID, March 2007) 25; Golub, 'The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice' (n 690) 104–105; Cisse (n 14) 31; Pilar Domingo and Tam O'Neil, *The Politics of Legal Empowerment: Legal Mobilisation Strategies and Implications for Development* (Overseas Development Institute UK, June 2014) 4; Goodwin and Maru (n 13) 160; Peter Chapman, 'The Legal Empowerment Movement and Its Implications' (2018) 87 *Fordham Law Review Online* 183, 183.

have led to it being suggested on more than one occasion that the concept requires clarification.[699] I suggest, however, that the concept of legal empowerment has three central components, being the use of *law and/or legal services* for the benefit of individuals and communities that are *poor, vulnerable and/or marginalised* in order to *improve their lives* in (a) particular way(s).[700] These three components provide an important conceptual basis for legal empowerment.

The existing literature on legal empowerment is largely comprised of stand-alone empirical studies or high-level discussions of legal empowerment as an alternative approach to law and development programming. Very little seeks to identify the conditions under which legal empowerment programming is most effective or provide a rigorous theoretical underpinning for it. As will be discussed in detail in the next chapter, however, it is interesting to note that much of the existing literature claims to be inspired by the 20th century work of development economist Amartya Sen and his 'capability approach' to development.[701] This suggests that a capability approach might offer the resources for assessing the conditions for optimal legal empowerment programming, as well as guiding the development of related strategy and programming.

Legal empowerment as a 'bottom up' approach?

As indicated above, critiques of the rule of law orthodoxy that led to advocacy for legal empowerment emphasised the importance of bringing the perspectives of *justice seekers* into law and development endeavours. From the earliest discussions of legal empowerment there has been an emphasis on the importance of the poor/marginalised/disadvantaged involved in legal empowerment programs being partners (rather than beneficiaries) who are involved in setting the agenda and priorities (rather than having this done on their behalf by donor personnel and government officials).[702] In the academic literature, legal empowerment is almost always characterised as a 'bottom-up' approach, and contrasted with the 'top-down' approach of the rule of law orthodoxy.[703] Approaches to legal

[699] See for example, Asian Development Bank, *Legal Empowerment for Women and Disadvantaged Groups: Final Report* (Asian Development Bank, 2009) 9; Cisse (n 14) 31; Bruce et al (n 698) 46; Palacio (n 692) 14.
[700] These three components are identifiable in each of the sources referred to in footnote 698 (above).
[701] Sen's 20th century work culminated in Sen, *Development as Freedom* (n 15). Among the more explicit references to the influence of Sen's work on legal empowerment are Stephen Golub's assertion that 'much of legal empowerment reflects Nobel-winning economist Amartya Sen's notion of 'development as freedom'' and the statement of the Commission on the Legal Empowerment of the Poor that 'Sen's agenda of development as freedom is virtually synonymous with the political, social, and economic empowerment of people grounded in human rights.': see Golub, 'Legal Empowerment's Approaches and Importance' (n 14) 6; and Commission on Legal Empowerment of the Poor (n 15) 18 respectively.
[702] This sentence reflects the 2003 language of Golub: see Golub, 'Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative' (n 12) 3.
[703] By way of example only, see Banik, 'Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication' (n 14) 129; Naresh Singh, 'Fighting Rural Poverty, Inequality and Low Productivity through Legal Empowerment of the Poor' (2009) 36(4) *The Journal of Peasant Studies* 871, 871; Van Rooij (n 14).

empowerment that are not seen as sufficiently led from the bottom come under criticism in the literature. Notably, this was one of the key criticisms directed at CLEP.[704]

CLEP explicitly claims that the approach it promotes is 'bottom-up' in nature. This is the first of five guiding principles the CLEP Report suggests distinguish legal empowerment from other approaches to justice reform in the context of development.[705] However, even a cursory review of the report reveals an ongoing tension between the explicit promotion of a bottom-up approach and the attempt within it to engage those at the top. Chapter three of the CLEP Report is dedicated entirely to a discussion of why legal empowerment is smart politics and good economics and includes such statements as '[b]old leaders that champion legal empowerment…will win support far and wide' and 'what better political legacy to leave than to have made a lasting contribution to the development of one's country, to have given people a real opportunity to better their lives.'[706] Significantly, the report explicitly refers to government as the 'key responsible actor' in the process of legal empowerment.[707] It is difficult to envision how the government could be considered the key actor in a process that was truly and fundamentally driven from the bottom.

Ultimately, the CLEP Report attempts to balance top-down and bottom-up approaches:[708]

> [Legal empowerment] is a bottom-up approach in the sense that it is based in the realities of poverty and exclusion as experienced by the poor, and requires their active participation and buy-in. At the same time, legal empowerment requires political leadership and commitment from the top and alliances with key stakeholders.

While CLEP has come under significant criticism for placing too great of an emphasis on those at the top, even its critics have trouble clearly articulating how a bottom-up approach can work in the context of mainstream development programs.[709] For example, Golub suggests that the CLEP Report focused

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[704] See, for example, Willem Assies, 'Legal Empowerment of the Poor: With a Little Help from Their Friends?' (2009) 36(4) *The Journal of Peasant Studies* 909, 914–916; Golub, 'The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice' (n 690) 110–112; Van Rooij (n 14) 307.

[705] Commission on Legal Empowerment of the Poor (n 15) 77. The other four characteristics that CLEP recognised as distinguishing legal empowerment from traditional approaches were *affordability*, based on *realistic* understandings of lived realities, that were *liberating* and *risk aware*.

[706] Ibid 44 and 46 respectively.

[707] Ibid 10.

[708] Ibid 77.

[709] For critiques of CLEP see Stephens (n 693); Banik, 'Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication' (n 14); Dan Banik, 'The Legal Empowerment of the Poor' in Christopher May and Adam Winchester (eds), *The Rule of Law Handbook* (Edward Elgar Publishing, 2018) 420.

too much attention on persuading national leaders to adopt a legal empowerment agenda and too little on 'pointing to ways in which the poor and their allies can formulate their own agendas, get relevant reforms adopted, and, most crucially, get good laws implemented to their benefit.'[710] However, Golub himself fails to address the question of how such reforms can be adopted and laws implemented *without* buy in and support from the state and state actors.

Ultimately, no matter how heavy the emphasis on bottom-up approaches to legal empowerment, scholars and practitioners across the board seem to accept that legal empowerment is not a *replacement* for more traditional approaches to law and development but rather complementary to them.[711] In practice, top-down and bottom-up approaches are almost always used in tandem.[712] While the (full) title of his 2003 paper (*Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative*) suggests legal empowerment is being promoted as an 'alternative' to the rule of law orthodoxy, in fact Golub has always been advocating for legal empowerment as a *central component* of law and development practice.[713] Golub expressly states that legal empowerment and the rule of law orthodoxy are not mutually exclusive, but points to an imbalance in resources in international development, arguing too much is channelled towards the rule of law orthodoxy and too little towards legal empowerment endeavours.[714] This argument could certainly be made in the context of the FPA in Solomon Islands. As explored in chapter three, significant resources were poured into the development and passage of the FPA. However, as will be discussed below, less attention has been given to programming designed to ensure survivor/victims are able to understand and use it now that it has been implemented.

Consideration of whether, in what ways, and to what extent legal empowerment programming must be 'bottom up' is important in the context of a discussion of the implementation of Standard IPV Legislation. As outlined in Part One, such legislation has become a core part of state efforts to reduce IPV across the globe due in large part to the international human rights law framework and the ideas and assumptions underpinning it. In contexts in which human rights concepts and frameworks remain

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[710] Golub, 'The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice' (n 690) 110.

[711] See, for example, Vivek Maru, 'Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide' (2006) 31 428; Van Rooij (n 14) 286; Palacio (n 692); Golub, 'Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative' (n 12).

[712] International Development Law Organization, *Accessing Justice: Models, Strategies, and Best Practices on Women's Empowerment* (2013) 7 and 8; *Integrating Legal Empowerment of the Poor in UNDP's Work: A Guidance Note* (UNDP, July 2010) 3–4; UNDP, *Legal Empowerment Strategies at Work: Lessons in Inclusion from Country Experiences* (UNDP, 2014) 95, 103.

[713] Golub, 'Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative' (n 12) 6.

[714] Golub suggests that legal empowerment should be the 'sole focus' of some law-oriented development programs and a 'core component' of most others: Ibid 39.

contested, Standard IPV Legislation can be classified as a 'legal transfer' in that it is informed largely by concepts and ideas transferred from inter- and trans- national arenas. As already mentioned, 'legal transfers' have long been a key feature of law and development programming and are often associated with the rule of law orthodoxy. They have also long come under significant criticism, particularly because they frequently lead to laws that exist on paper but are rarely used in practice.

It is clear that in Focus Countries (many of which have plural legal systems) Standard IPV Legislation is not, in any deliberate or direct sense, informed by (domestic) community-identified strategies, priorities and interests. If a 'bottom-up' approach was taken to combatting IPV from the outset, in many jurisdictions the result would unlikely include the implementation of Standard IPV Legislation.

If we accept that a firm focus on the perspectives, priorities and lived experiences of those 'at the bottom' are an important characteristic of legal empowerment approaches, what role do they have to play when it comes to the implementation of Standard IPV Legislation? Do they have a meaningful role to play at all? I suggest that they can play a very important role in enhancing the perceived legitimacy of Standard IPV Legislation, identifying the lived realities and perspectives of those Standard IPV Legislation is intended to benefit and ensuring they are taken into account during contextualised implementation. In doing so, legal empowerment can perform a 'stitching role' that brings together the law and the community. As discussed below, a 'stitching' role for legal empowerment was first articulated by Palacio in her proposed strategic framework for legal empowerment by the World Bank.[715]

In the lead up to the inaugural CLEP meeting in January 2006, and in an attempt to understand the extent to which its work aligned with the CLEP agenda, the World Bank engaged Palacio to provide strategic direction in relation to legal empowerment programming.[716] Among the recommendations made by Palacio was for the World Bank to adopt a strategic framework where legal empowerment played a 'stitching' role between bottom-up and top-down approaches.[717] In the context of the operations of the World Bank, this meant bringing together the supply and demand sides of governance – in other words, bringing together the World Bank's traditionally parallel programs that focused on the strengthening of state institutions on the one hand, and community-driven development on the other.[718] In the context of legal empowerment programming to facilitate the implementation of Standard IPV Legislation, I envision it to mean bringing together the relevant

[715] Palacio (n 692). Regarding the 'stitching' role in particular see pages 10, 24, 34 – 35 and 46.
[716] Ibid 5.
[717] Ibid 10, 24 and 34.
[718] Ibid 10 and 24.

legislative framework and the domestic community/ies in which it is being rolled out. For Palacio and the World Bank, the purpose was to strengthen the relationship between the state and the community in order to improve governance.[719] In the context of this thesis, the purpose is to ensure Standard IPV Legislation is implemented in a way that enhances its perceived legitimacy at the domestic level and ensures it is appropriately adapted to align with the perspectives and lived experiences of those who may need to use it.

A 'stitching' role for legal empowerment in the implementation of Standard IPV Legislation

Before turning to consider the specific role for legal empowerment programming in the implementation of Standard IPV Legislation it is useful to distinguish between two different types of initiatives for IPV elimination. The first are *primary* prevention initiatives, which seek to prevent violence from occurring in the first place.[720] Primary prevention initiatives address underlying drivers of violence at the level of the population and commonly promote cultural change and the shifting of norms that facilitate or condone ongoing violence.[721] To the extent that legislation plays a role in primary prevention initiatives, that role is usually related to the (long term) potential for laws to effect social change and/or shape the behaviour of those who might otherwise become perpetrators.[722] While initiatives aimed at primary prevention are undoubtedly vital in the effort to eliminate IPV, they are also inevitably part of a long game and are unlikely to be of significant assistance to IPV survivor/victims seeking immediate protection and relief.[723]

Primary prevention initiatives can be contrasted with *secondary* prevention initiatives, which are aimed at the early detection of and response to violence, with a view to preventing recurrence.[724] Effective Standard IPV Legislation can play an immediate and significant role in secondary prevention initiatives, and it is such initiatives that are the main focus of this thesis.

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[719] Ibid 24.

[720] A Harvey, C Garcia-Moreno and A Butchart, *Primary Prevention of Intimate Partner Violence and Sexual Violence: Background Paper for WHO Expert Meeting May 2–3, 2007* (World Health Organisation, 2007) 5.

[721] Nancy Perrin et al, 'Social Norms and Beliefs About Gender Based Violence Scale: A Measure for Use with Gender Based Violence Prevention Programs in Low-Resource and Humanitarian Settings' (2019) 13(1) *Conflict and Health* 6, 2.

[722] Harvey, Garcia-Moreno and Butchart (n 720) 7. As to the relationship between law and social change in the context of IPV see Melissa L Breger, 'Reforming by Re-Norming: How the Legal System Has the Potential to Change a Toxic Culture of Domestic Violence' (2017) 44(2) *Journal of Legislation* 170.

[723] Lucy Kirk et al, 'Effectiveness of Secondary and Tertiary Prevention for Violence Against Women in Low and Low-Middle Income Countries: A Systematic Review' (2017) 17(1) *BMC Public Health* 622, 2.

[724] Ibid. While not of direct relevance to this thesis, there is a third type of programming, aimed at *tertiary* prevention, which focuses on long-term care after violence.

Programming aimed at the reduction of IPV may appropriately and effectively incorporate both primary and secondary prevention components, and the dividing line between the two is not always clear. Nonetheless, it is important to bear the distinction between them in mind because, as teased out in the discussion below, it is by no means given that the strategies that prove most effective for the purposes of one will also be the most effective for the purposes of the other.

I have suggested that legal empowerment play a 'stitching' role in secondary prevention programming to facilitate the implementation of Standard IPV Legislation, bringing together the legislative framework and the community/ies in which it is being implemented. But what, exactly, does that mean in practice? I suggest that legal empowerment programming should aim to do two related things:

1) Ensure that Standard IPV Legislation is understood by survivor/victims and, ideally, their broader communities as being a legitimate avenue through which to pursue protection from violence; and
2) To the greatest extent possible, resolve points of tension between use of the statutory framework and other valued and valuable social and cultural institutions, practices/beliefs.

The remainder of this chapter is dedicated to a discussion of point one, above. It suggests that legal empowerment can enhance the legitimacy of Standard IPV Legislation by demonstrating its domestic ownership and emphasising points of compatibility and complementarity with other locally valued discourses, practices and beliefs. Point two (above) will be addressed in the chapters to follow, where I will argue that a capabilities-informed approach can be used to identify and redress relevant tensions in a way that brings the perspectives, priorities and experiences of IPV survivor/victims to the fore.

Enhancing perceptions of Standard IPV Legislation

I discussed in chapter four the sensitivity to perceived cultural imperialism in Focus Countries. I also suggested that in such jurisdictions Standard IPV Legislation may be seen as 'foreign' due to that fact that it is informed by the international human rights law framework and its development and passage is often funded largely or wholly by high-income donor nations and implemented with the assistance of international civil society organisations. The FPA in Solomon Islands provided a concrete example. An analysis of relevant Hansard and interview data demonstrated that objections were raised to the passage of the FPA due to queries about its domestic appropriateness and concerns that it was being implemented primarily to placate foreign interests. There was also (negative) community sentiment aligning the FPA with women's rights and empowerment, giving rise to fears about potential disruption of traditional male/female roles and family relations more broadly. All of these factors resulted in

ideological barriers to the use of the FPA as a means of securing protection from IPV. All contributed to the discrepancy between the law on the books and the law in practice.

Demonstrating that Standard IPV Legislation is domestically owned is, I would suggest, an important first step towards enhancing its perceived legitimacy as an avenue for IPV reduction in any given context. While not denying the alignment of Standard IPV Legislation with international human rights law, in Focus Countries demonstrating local ownership may involve emphasising the ways in which legislation can be seen as having derived from domestic sources and interests. In the context of the FPA in Solomon Islands, for example, this may involve highlighting that the authority of the FPA lies with the 'Mother Law' (or the Solomon Islands Constitution) rather than international conventions. This is an approach used by the advocacy team at the Family Support Centre, which conducts much of the awareness raising on the FPA in Solomon Islands. It is the view of that team that there is value in connecting the FPA with CEDAW and the international human rights regime for the long-term purpose of raising awareness of and support for human rights in Solomon Islands. However, for the immediate purpose of helping people to understand and use the FPA they find it much more effective when asked about its origins to talk about its connection with the Solomon Islands Constitution. Specifically, the Family Support Centre staff point to the fact that the FPA is part of the justice system established by the Constitution. They also make clear that, to the extent that the law seeks to protect rights, it reflects the fundamental rights set out in Chapter Two of the Constitution.

In addition to promoting Standard IPV Legislation as a domestic product, enhancing its legitimacy may require looking for and emphasising points of compatibility/complementarity with other dominant social and cultural institutions, beliefs and practices. For the purposes of the discussion below, I will refer to the process of emphasising such compatibilities/complementarities as the process of legitimisation. I will again locate this discussion within the context of the Solomon Islands case study.

As discussed in chapter two, Solomon Islands has a plural legal system and, while formal law officially takes precedence over customary law, this is not always reflected in practice. Customary law (and custom more broadly) remain extremely influential. This is particularly the case in rural areas where the presence of the State can be very limited. Discussions with key informants and a review of Hansard from the FPA debates makes clear the importance of ensuring the FPA is, to the fullest extent possible, understood to align with custom and customary law. Ella Wairiu of Oxfam put it plainly when she said 'if you ask anyone about law and custom they are going to say custom is higher than law.'[725] Ella was of the view that formal law *is* influential in Solomon Islands and that the existence of the FPA, once

[725] KI Ella Wairiu.

known, is a deterrent for perpetrators of IPV.[726] However, if law and custom come into conflict, it is the latter that is likely to be viewed as the most authoritative. Similar sentiments were echoed by other key informants, who attested to the importance of emphasising that rather than conflicting with culture and custom the FPA provides another avenue for redressing behaviour that is already prohibited under it.[727] Parliamentary debates among those responsible for the passage of the FPA also include numerous references to the fact that IPV is not condoned under proper understandings of custom and that the FPA provides an important signal to the public that it is not permissible under any part of domestic culture.[728]

In the context of Solomon Islands, just as important as emphasising the complementarity of the FPA and custom is pointing to the ways in which the FPA supports work already being done by the church. As outlined in chapter two, Solomon Islands is a highly religious society, with Christian denominations being by far the most common.[729] Churches also play an integral role in the lives of the majority of Solomon Islanders, and the presence and influence of the church extends far beyond that of State institutions. Having churches and other religious organisations (such as the Christian Care Centre) being, and being seen to be, supportive of the FPA will contribute significantly to the perceived legitimacy of the law in the broader community. So too will an understanding in the community that the FPA is not intended as a *replacement* for the Church in family healing, but as an additional tool to help reduce family violence – an objective sought by the Church as well as the State.[730]

It is important to note that there is some tension between the prioritisation by the church of family unity/reconciliation and use of the FPA, which may result in (literal) family separation either as a result of the imprisonment of the perpetrator or conditions of protection orders that require them to stay away from their partner survivor/victim.[731] Sister Rosa of the Christian Care Centre acknowledged that, in a perfect world, the church would like families to stay together. However, she also said that

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[726] This accords with the views of KI Judy Basi, KI Kyla Venokana, KI Donna Makini, KI Sister Rosa, KI Larau Kwanairara, KI Aroma Ofasia, KI Anon 5, KI Anon 4, KI Bronwyn Spencer. See also Ride (n 422) 51.

[727] KI Vaela Devesi; KI Laura Kwanairara; KI Aroma Ofasia; KI Ethel Sigimanu; KI Afu Billy; KI Bronwyn Spencer. Similar sentiments were expressed by the following parliamentarians during debate on the FPA bill: Manaseh Sogavare, Milner Tozaka, Matthew Wale, Gordon Darcy Lilo, John Maneniaru and Derek Sikua: see 'Hansard: Solomon Islands National Parliament (25 August 2014)' (n 342). Note KI Afu Billy also said that some make the counterargument: that perpetrators often point to the fact that custom sees men as the head of household as an indication that it is appropriate for men to discipline their wives with violence if they do not carry out their own domestic duties appropriately.

[728] Mr Milner Tozaka; Mr Matthew Wale: see Ibid.

[729] More than 98% of Solomon Islanders identify themselves as belonging to a Christian denomination. Solomon Islands National Statistics Office and Ministry of Finance and Treasury (n 187) 90.

[730] That the law was intended to help the church was a point made by the following politicians: Manaseh Sogavare, Hon. Stanley Sofu and John Moffat Fugui. KI Bronwyn Spencer; KI Sister Rosa.

[731] KI Bronwyn Spencer; KI Anon 5; KI Sister Rosa; KI Lorah Etega; KI Jerolie Belabule; KI Judy Basi; KI Vaela Devesi.

ultimately the most important thing, from the perspective of the church, is the safety of the survivor/victim. Accordingly, it is common for the Christian Care Centre to assist clients in pursuing protection under the FPA where appropriate, or referring them to the Family Support Centre for assistance to do so. Further, as a member of SAFENET, the Christian Care Centre is bound by its operating procedures.[732] As discussed in chapter two, this means that they must take a 'survivor centred approach' to assisting survivor/victims, including making sure they are aware of their legal rights and are supported to pursue them if that is their preference.[733] Key informants who spoke to the issue all acknowledged that while tensions remain, churches are increasingly supportive of women taking action to ensure their safety, including by pursuing protection under the FPA.[734] Several key informants suggested it was important to emphasise that churches could still play a crucial role in providing pastoral care, including to perpetrators of violence, provided this did not encourage a perpetrator to break the law or breach conditions of a protection order.[735]

A final example from the Solomon Islands case study in relation to enhancing the perceived legitimacy of the FPA relates to community fears that the FPA promotes women's rights and empowerment at the expense of men, and that its use will result in family disruption and/or dissolution.[736] This is particularly significant in Solomon Islands given, as discussed in chapter five, the relatively collectivist nature of society, the prominence of 'dividualist conceptions of subjectivity and the protections and responsibilities that come with being a family member. Data from both key informants and parliamentary Hansard reveal concerns in the community that use of the FPA will result in the breakup of families.[737] Redressing this concern, then, is another way in which the perceived legitimacy of the FPA as an avenue for obtaining protection from violence can be enhanced. Both data from interviews with key informants and a review of the relevant Hansard point to the importance of countering suggestions that families will be torn apart by the FPA with the argument that the FPA is intended to strengthen families by reducing family violence and bringing peace to the home.[738] Of course, and as mentioned above, use of the FPA may in result in the literal separation of families where protections orders are issued or perpetrators are imprisoned following criminal charges. However, data analysed

[732] As detailed in chapter two, SAFENET is a network of governmental and non-governmental organisations that works to strengthen the referral and coordination of services for survivor/victims of IPV.
[733] Solomon Islands Government Ministry for Women (n 39) 13.
[734] KI Bronwyn Spender; KI Anon 5; KI Sister Rosa; KI Judy Basi; KI Vaela Devesi.
[735] KI Sister Rosa; KI Bronwyn Spencer.
[736] Tabe (n 556) 56. KI Nancy Waegao and KI Sister Rosa also suggested this view was common in the community.
[737] KI Val Stanley; KI Ethel Sigimanu; KI Laura Kwanairara; KI Aroma Ofasi; KI Kyla Venokana; KI Anika Kingmele; KI Judy Basi; KI Vaela Devesi. See also the views expressed by the Hon. Dick Amori, Derek Sikua and Matthew Wale 'Hansard: Solomon Islands National Parliament (25 August 2014)' (n 342).
[738] KI Ethel Sigimanu; KI Laura Kwanairara; KI Aroma Ofasi; KI Kyla Venokana. See also parliamentarians Derek Sikua and Matthew Wale Ibid 25.

for the purposes of this thesis suggest there is a strong and persuasive argument to be made that in fact the FPA will ultimately reduce violence which will in turn strengthen families.[739]

So far I have suggested that to be effective legal empowerment programming should enhance the perceived legitimacy of Standard IPV Legislation, including through emphasising both the ways in which it reflects domestic interests and the ways in which it complements other important social and cultural beliefs, institutions and practices. There are a number of common legal empowerment strategies that could be used to convey these messages. They include explicit community legal education and awareness raising campaigns and discussion with survivor/victims when they seek support and assistance from, for example, legal aid or paralegal services. Community legal education (either as a standalone activity or as a part of the broader provision of legal services) is one of the most commonly employed approaches to legal empowerment.[740] This is for good reason. It goes without saying that if people don't know about the law they will not be in a position to use it.

Across Solomon Islands, and particularly in rural areas, knowledge of the FPA remains low.[741] That said, awareness raising on the FPA is carried out, to a greater or lesser extent, by the majority of key players in the family violence space.[742] This includes the Ministry of Women Children Youth and Family Affairs, the Ministry of Justice and Legal Affairs, the Royal Solomon Islands Police Force, the Family Support Centre, the Christian Care Centre, World Vision, Oxfam Solomon Islands and Seif Ples.

An examination of legal education initiatives relating to the FPA reveals no explicit or proactive attempts to legitimise the law. Legal education about the FPA is usually very factual, with information being delivered on its various provisions, sometimes using the legislation itself as the only learning resource.[743] To the extent that legitimisation occurs, it is in response to questions or concerns raised by those on the receiving end of education initiatives. For example, and as referred to above, educators do refute suggestions that the FPA will tear families apart by saying that its purpose is in fact to

[739] KI Kyla Venokana; KI Ethel Sigimanu. See also Hon. Clay Forau Soalaoi; Mr Peter Shanel Agoavaka; Mr Milner Tozak; Hon. Samual Manetoali; Hon. Derek Sikua: 'Hansard: Solomon Islands National Parliament (25 August 2014)' (n 342).
[740] Goodwin and Maru (n 13) 169; Lisa Wintersteiger, *Legal Needs, Legal Capability and the Role of Public Legal Educaiton* (The Foundation for Public Legal Education, 2015) 4; Valerie Mueller et al, 'Exploring Impacts of Community-Based Legal Aid on Intrahousehold Gender Relations in Tanzania' (2019) 25(2) *Feminist Economics* 116, 117.
[741] KI Sister Rosa; KI Donna Makini; KI Nancy Waegao; KI Catherine Nalakia; KI Josephine Kama; KI Apolosi Bose; KI Kyla Venokana; KI Lorah Etega. Gibbs (n 39) 64. See also discussion of low levels of awareness set out in chapter three of this thesis.
[742] KI Laura Kwanairara; KI Aroma Ofasi; KI Vaela Devesi; KI Kyla Venokana; KI Ella Wairiu; KI Judy Basi; KI Donna Makini; KI Sister Rosa; KI Anon 5; KI Anon 4; KI Juanita Malatanga.
[743] KI Kyla Venokana.

strengthen the family unit and bring peace to the home. However, this is usually only reactive and not addressed unless and until raised by community members.[744]

It is useful at this stage to distinguish between the process of *legitimisation* and the process of *vernacularisation* famously conceptualised in the context of international human rights law by legal anthropologist Sally Engle Merry. At first glance, these two processes appear very similar. However, there are some important differences.

Merry's notion of 'vernacularisation' refers to the translation of universal human rights concepts and ideas to local practice and understandings of justice.[745] In her seminal 2005 book entitled *Human Rights and Gender Violence: Translating International Law into Local Justice*, Merry specifically examines vernacularisation in the context of GBVAW.[746] She considers the fundamental tension in human rights practice between the maintenance of/respect for cultural diversity and the promotion of universal rights and gender equality.[747] She goes on to propose that those tensions can be effectively 'bridged' through the processes of appropriation (in terms of the borrowing of programs, interventions and ideas from external contexts) and translation (in terms of adapting those programs, interventions and ideas for local contexts).[748] Merry talks about adopting images, symbols and stories that draw on 'specific local cultural narratives and conceptions' in order to emphasise synergies with human rights ideas and principles.[749]

Merry's ultimate commitment is to the radical possibility of the discourse of human rights. While she talks of 'bridging' the tensions between respect for cultural diversity and the promotion of universal rights, she also argues that the process of translation is largely a matter of aesthetics:[750]

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[744] KI Vaela Devesi; KI Nancy Waegao; KI Kyla Venokana; KI Laura Kwanairara; KI Aroma Ofasi.

[745] Sally Engle Merry and Peggy Levitt, 'The Vernacularization of Women's Human Rights' in Stephen Hopgood, Jack Snyder and Leslie Vinjamuri (eds), *Human Rights Futures* (Cambridge University Press, 1st ed, 2017) 213, 1. Other notable work of Merry on vernacularisation includes Sally Engle Merry, '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, 2005) 134; Sally Engle Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle' (2006) 108(1) *American Anthropologist* 38; Sally Engle Merry, 'Rights Talk and the Experience of Law: Implementing Women's Human Rights to Protection from Violence' (2003) 25(2) *Human Rights Quarterly* 343; Peggy Levitt and Sally Merry, 'Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States' (2009) 9(4) *Global Networks* 441.

[746] Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (n 3).

[747] Ibid. See chapter 4 in particular.

[748] Ibid page 135. See also chapters 5 and 6 more broadly.

[749] Ibid 136.

[750] Ibid 177.

> Transnational programs and ideas are translated into local cultural terms, but this occurs at a relatively superficial level, as a kind of window dressing. The laws and programs acquire local symbolic elaboration, but retain their fundamental grounding in transnational human rights concepts of autonomy, individualism and equality.

For Merry, the emancipatory potential of rights can only be realised if they become a part of local consciousness.[751] As such, a key purpose of effective appropriation and translation is to bring those at the grassroots level to think of their problems in human rights terms, and to see themselves as rights-bearers.[752] This does not mean displacing existing frameworks, such as those emerging from 'culture' and lived experience. Rather, it means adding a new dimension to the ways in which people understand their problems.[753]

In the context of legal empowerment programming to reduce IPV there can of course be great value in rights-based education and the development of a rights-bearing perspective. However, there are good arguments that this should not be a major priority for secondary prevention initiatives that have as a key goal the effective implementation of Standard IPV Legislation. This is particularly the case given (as Merry herself acknowledges) taking on rights can be a fraught process, and asserting them often comes at a cost,[754] including potential alienation from family and community who view rights assertion as a failure to honour social and familial obligations.[755]

The distinction between vernacularisation and legitimisation can again be teased out by considering some of the programming being carried out in Solomon Islands to reduce IPV. As outlined above, the purpose of legitimisation is to emphasise compatibilities/complementarities between the law and dominant social and cultural institutions, practices and beliefs in order to facilitate the use of legislative frameworks in the short-term. It may be that, in the process of engaging with legal empowerment programming aimed at legitimisation, survivor/victims do come to view themselves as rights holders and communities do come to draw on the discourse of rights. But the process of legitimisation does not assume that they will or prioritise that they do. Holding strong to the concepts of autonomy, individualism and gender equality is not essential to the objective of legitimisation, as Merry suggests it is to vernacularisation.

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[751] Ibid 179.
[752] Ibid chapter 6.
[753] Ibid 216.
[754] Ibid.
[755] Ibid.

A common strategy aimed at vernacularisation in Solomon Islands can be seen in the adoption and promotion of gender equality theology (**GET**). GET was originally developed by Reverend Dr Cliff Bird and Reverend Dr Serofosa Carroll for the PNG Church Partnership Program in collaboration with the Uniting Church of Australia, with funding from the Australian Government.[756] It was officially brought to Solomon Islands when the Solomon Islands Christian Association[757] signed a partnership agreement in which it agreed to train members on GET and encourage them to use it in efforts to reduce GBVAW.[758] GET seeks to challenge gender inequality using a faith-based lens.[759]

Bronwyn Spencer was a key person at Uniting World involved in the development of GET alongside Drs Bird and Carroll.[760] In her telling, prior to the development of GET, advocacy for the reduction of IPV in the rural Pacific was often met with theological responses that left room for ongoing violence. Sentiments she often heard included that men are the head of the household to whom women must submit, suffering gives perseverance and perseverance builds character, and God disciplines those he loves.[761] The thinking behind GET, according to Bronwyn, was that countering such beliefs was not going to be achieved through discussions about rights, which, as previously discussed, were generally viewed as being external and imposed. Instead, the narrative needed to be couched in familiar, theological terms. This led to an analysis and reinterpretation of the bible to support gender equality. GET messaging emphasises that everyone is equal in the image of God, and that the abuse of women is an abuse of God's image.[762] GET is founded on 'Ten Pillars of Gender Equality,' which promote biblical messages supporting equality that are intended to be disseminated in the community by faith leaders.[763]

GET is a central component of the work of faith-based organisations like World Vision Solomon Islands. The vast majority of the programs World Vision implements in relation to GBVAW can be characterised as primary prevention measures that use vernacularisation to push for the shifting of norms, cultural

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[756] Hermkens, Kenneth and McKenna (n 531) 312; Marcia Tabualevu, Maya Cordeiro and Linda Kelly, *Pacific Women Shaping Pacific Development Six-Year Evaluation Report* (February 2020) 26.

[757] For information on the Solomon Islands Christian Association see 'Solomon Islands Government and Solomon Islands Ecclesiastical Institutions Strategic Partnership Framework 2021 - 2025' 13–14 <https://solomons.gov.sb/wp-content/uploads/2021/12/Strategic-Partnership-Framework-FINAL-Version-11102021-1.pdf>.

[758] Rev Dr Cliff Bird and Bronwyn Fraser, *Engaging Gender Theology for Gender Equality in a Predominantly Christian Context* (Uniting World) 13.

[759] Tabualevu, Cordeiro and Kelly (n 756) 26. Bird and Fraser (n 758) 11.

[760] KI Bronwyn Spencer.

[761] KI Bronwyn Spencer.

[762] KI Bronwyn Spencer.

[763] Hermkens, Kenneth and McKenna (n 531) 316. The '10 Pillars' can be found in their entirety in Rev Dr Cliff Bird and Rev Dr Seforosa Carroll, *Theology of Gender Equality: In God's Image - Towards Full Humanity and Abundant Life* (PNG Church Partnership Program, 2016).

change and, in turn, the reduction of IPV. World Vision programming does include some awareness raising about the FPA. However, it is usually delivered at the backend of primary prevention programming.[764] This programming does not (in any formal sense) involve attempts at legitimisation. It seeks, in the first instance, to get people on board with gender equality. It then asks them to conceptualise IPV as an unacceptable form of gender *inequality* and provides factual information about the FPA. To some extent, then, receptiveness to information about the FPA is dependent on receptiveness to the broader program messaging, which is part of a longer-term strategy to promote cultural change.

The research undertaken for this thesis did not uncover *any* community-facing secondary prevention programming that focused on the FPA as an avenue for violence reduction.[765] This is despite the significant resources (discussed in Part One) directed towards the development and passage of the FPA. The Solomon Islands case study provides support for Golub's abovementioned assertion that there is an imbalance in resources channelled towards rule of law orthodoxy strategies and too little towards legal empowerment endeavours.

Legal empowerment programming, particularly in the form of legal education (whether provided at the community level or one on one), has the potential to play an important role in the legitimisation of the FPA in Solomon Islands. However, community education on the existence and content of the law is not enough. Programming must also seek to enhance community perceptions of the law as an appropriate and viable avenue for survivor/victims of IPV to seek protection from violence. This could include by increasing the amount of stand-alone education initiatives that have legitimisation as a key aim, rather than including factual information about the FPA at the back end of primary prevention programming aimed at cultural change. It might include nuanced messaging in relation to, for example, the fact that use of the FPA does not preclude the provision of pastoral care by members of the church, thereby suggesting the two to be complementary, rather than alternative, methods for the reduction of violence in the home.

[764] For details of these see discussion in chapter two.

[765] Community-facing programs, which are the ones on which this thesis are focused, are programs that are directed at the individuals and communities intended to benefit from the law. These can be distinguished from projects that aim to train members of the justice system to enhance the enforcement of laws. Training projects for justice officials do occur in Solomon Islands. A notable example is the SPC's Access to Justice project, which aims to enhance the capacity of Authorised Justices, who (as discussed in chapter three) have responsibility for issuing interim protections orders under the FPA. As to the Access to Justice Project see Evans and Kingmele (n 424); Secretariat of the Pacific Community (n 423).

Conclusion

This chapter has identified a role for legal empowerment programming in the implementation of Standard IPV Legislation in Focus Countries. It noted such implementation to be a common – and controversial – feature of traditional law and development initiatives. This chapter went on to argue that the potential of legal empowerment programming in relation to the implementation of Standard IPV Legislation lies with the fact that it emphasises the priorities and perspectives of intended program beneficiaries and can help to align the law with those priorities and perspectives.

The analysis in this chapter suggests that legal empowerment programming has the potential to ameliorate the barriers to rights-based programming identified in Part Two of this thesis. However, there are two key things it must do if it is to be effective. The first, addressed above, is that it must legitimise the law in the eyes of survivor/victims and their broader communities. If the law is not seen as an appropriate and viable option for seeking protection from violence, it is unlikely to be accessed by survivor/victims.

The second thing that legal empowerment programming must do if it is to enhance the effectiveness of Standard IPV Legislation and ameliorate the barriers identified in Part Two is to resolve tensions between use of the statutory framework and valued and valuable social and cultural practices, beliefs and institutions. In the two chapters to follow I suggest that taking a capabilities-informed approach to the design of legal empowerment strategy and programming can ensure the lived realities and perspectives of survivor/victims of IPV are brought into account from the outset and used as a basis on which to identify and resolve tensions that inhibit the use of legislative frameworks for IPV reduction. Chapter seven addresses the theoretical (arguing that the capability approach provides a compelling theoretical basis for legal empowerment programming) and chapter eight the practical (identifying what needs to be done to in fact operationalise the capability approach in legal empowerment programming).

Chapter 7: Legal empowerment and the capabilities approach: foundations for a theoretical framework

> '[I]t is the capabilities approach we need, if we are to describe the damage done by [violence against women] in the most perspicuous way and make the most helpful recommendations for dealing with it.'
> Martha Nussbaum[766]

So far in this thesis I have outlined the key advantages and challenges of the international human rights law framework for those in Focus Countries pursuing the elimination of IPV. I have argued that legal empowerment programming provides a promising vehicle to facilitate the implementation of Standard IPV Legislation. I have suggested that legal empowerment should be designed so as to 'stitch' together law and community in order to ameliorate the barriers to implementation identified in Part Two and minimise the negative impact engagement with the legislative framework has on other valued and valuable aspects of the lives of survivor/victims. I have further suggested that, in order to do this, programming needs to resolve points of tension between the law on the one hand, and important social and cultural practices, institutions and beliefs on the other. The question that then arises is: (how) can legal empowerment programming be designed to achieve this aim? That is the central question to which the final two chapters of this thesis are directed. This chapter is dedicated largely to theoretical analysis. In the chapter to follow I identify what it might mean to operationalise theory in practice.

This chapter begins by examining the theoretical foundations of legal empowerment, highlighting the limited attention they have received in the scholarship to date. Such an examination is important, I suggest, because a strong theoretical basis can offer valuable practical guidance to those involved in the design and implementation of legal empowerment programs. While there are a number of theoretical approaches that could inform such a framework, this chapter argues that the most compelling option – at least in the context of legal empowerment efforts aimed at facilitating the implementation of Standard IPV Legislation – is the capability approach, which originates in the 20th century work of development economist Amartya Sen. The capability approach ultimately suggests the focus of development planning should be on the freedoms people have to be and do the things they have reason to value, and the lives they are actually able to lead.

[766] Martha Nussbaum, 'Women's Bodies: Violence, Security, Capabilities' (2005) 6(2) *Journal of Human Development* 167, 167.

Having suggested the capability approach as a theoretical basis for legal empowerment programming, this chapter goes on to explain key terms and concepts central to capability theory. This includes 'capabilities' (what people are able to be and do), 'functionings' (the achievements that correspond with capabilities) and 'conversion factors' (which facilitate or inhibit the transformation of resources into functionings). Drawing heavily on the work of Ingrid Robeyns, this chapter distinguishes the broad capability *approach* from the many and varied *applications* of it, demonstrating the wide range of uses to which the capability approach is now put.[767]

Finally, this chapter examines what the capability approach offers in the pursuit of gender justice broadly, and in relation to efforts to reduce IPV specifically. It suggests that a key aspect of the appeal of the capability approach lies with the fact that it takes human diversity into account, recognising that different people having different opportunities to be and do different things. By taking human diversity into account, space is made for the interests, priorities and experiences of those who are commonly vulnerable, voiceless or marginalised. This includes survivor/victims of IPV. In the context of the implementation of Standard IPV Legislation in Focus Countries, identifying the interests, priorities and lived experiences of survivor/victims allows for the identification and redress of tensions between valued and valuable social and cultural practices and beliefs and use of legislative frameworks for IPV reduction.

Compelling theoretical underpinnings for legal empowerment programming

There is very little by way of scholarly work that examines the theoretical underpinnings of legal empowerment in any detail. However, a review of the literature points us in the direction of the work of two prominent scholars of development economics - Hernando de Soto and Amartya Sen - whose work is frequently cited.

As mentioned in chapter six, Hernando de Soto was co-chair of CLEP, the high-profile organisation that was established to explore how nations could reduce poverty through reforms that expanded access to legal opportunities for all. While CLEP ultimately moved beyond the approaches and assumptions of de Soto, his ideas were taken as a starting point and the ultimate recommendations of CLEP reflected his work in significant ways.[768] In particular, CLEP's final report has been read as largely aligning with the formalisation agenda outlined in de Soto's 2000 book *The Mystery of Capital*.[769] In that book, de

[767] Robeyns uses the term *capability theory* rather than *capability application* but suggests the latter will be more appropriate in some circumstances: Ingrid Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (Open Book Publishers, 2017) 29.
[768] Golub, 'The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice' (n 690) 103; Assies (n 704); Banik, 'Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication' (n 14). As to CLEP's recommendations see Commission on Legal Empowerment of the Poor (n 15).
[769] Hernando De Soto, *The Mystery of Capital* (Bantam Press, 2000).

Soto addresses the question of why capitalism has succeeded in generating wealth in the West but not in developing and post-Soviet nations. He provides evidence to suggest that those in developing and post-Soviet nations do not, for the most part, lack assets and resources but a system through which to use those assets and resources to generate capital.[770] De Soto ultimately argues that what is missing in developing and post-Soviet nations is formal property systems that are accessible to all and allow assets to be transformed into capital.[771] For those disappointed with the outcomes of CLEP, the fact that it was so closely associated with the work of de Soto (which many suggest reflects the traditional, top-down approach to development) was a key point of contention.[772]

It is important at this stage to remember the three key criticisms of the law, development and aid landscape that emerged in the 1990s and were identified in chapter six. The first was that the rule of law orthodoxy, dominant in traditional law and development programming, failed to adequately account for social and cultural factors that might inhibit law and justice reform and focused too heavily on justice institutions rather than justice seekers. The second was that the concept of 'development' had traditionally focused too heavily on the economic and failed to encompass the social. The third was that too often aid-providers were setting the agenda and overlooking the interests and priorities of aid recipients. The formalisation agenda of de Soto does not satisfactorily redress any of these criticisms. It does not consider in any detail social or cultural factors that might stand in the way of the formalisation agenda. It ultimately seeks to enhance the economic positions of the poor and their ability to engage in capitalist economies, overlooking important social and cultural aspects of their lives. It sets the agenda for development (formalisation) without engaging with intended beneficiaries to determine whether this accords with their priorities and interests.

This leads us to the second key possibility for theoretical underpinnings of legal empowerment: the 'capability approach' founded in the 20th century work of Amartya Sen. As will be discussed in detail below, the capability approach emphasises the real freedoms people have to lead lives they have reason to value. It also leaves room for the consideration of social and cultural factors, leaving economic factors to play a largely instrumental role in development.

Despite frequent claims by legal empowerment advocates that their work is inspired by Sen, there is surprisingly little scholarly exploration of the relationship between capability theory and legal empowerment. The literature often cites Sen's work, with legal empowerment pioneer Stephen Golub

[770] Ibid Chapter 1.
[771] Ibid Chapter 3 in particular.
[772] See, for example, Banik, 'Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication' (n 14); Assies (n 704); Golub, 'The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice' (n 690); Stephens (n 693).

going so far as to say 'much of legal empowerment reflects Nobel-winning economist Amartya Sen's notion of 'development as freedom.''[773] Yet no one writing on legal empowerment has, to the best of my knowledge, made more than passing reference to the compatibility of legal empowerment and capability theory. Perhaps this is because the priorities of legal empowerment advocates tend to lie with exploring the empirical and lessons learned,[774] or making the case for legal empowerment as an alternative to more traditional law and development programming.[775] However, for the purposes of this thesis it is important to articulate a robust theoretical framework for legal empowerment. As is evidenced by the discussion in chapter eight (to follow), the theoretical underpinnings of legal empowerment can be of significant practical assistance to those looking to design and implement programming.

The emergence of the capability approach and proliferation of capability applications

It is useful at this point to introduce the capability approach in more detail. As foreshadowed above, the obvious starting point for this introduction is the work of Amartya Sen.

Among Sen's earliest work on capability enhancement was his 1979 Tanner lecture entitled *Equality of What?* in which he argued (inter alia) that the failure of utilitarian equality, total utility equality and Rawlsian equality to take into account human diversity undermined their sufficiency as bases for a broad theory of equality.[776] Sen argued for a focus on what people are able to be and do (their

[773] Golub, 'Legal Empowerment's Approaches and Importance' (n 14) 10.

[774] Relevant literature is voluminous. By way of example only see: Alison Brown, 'Claiming the Streets: Property Rights and Legal Empowerment in the Urban Informal Economy' (2015) 76 *World Development* 238; Mueller et al (n 740); Cotula and Mathieu (n 14); Catherine Boone, 'Legal Empowerment of the Poor through Property Rights Reform: Tensions, Trade-Offs of Land Registration and Titling in Sub-Saharan Africa' (2019) 55(3) *the Journal of Development Studies* 384; Rogueh Kermanian, Ahmad Maliri Markaz and Hassan Zarei, 'Social Movements of Women's Legal Empowerment in Contemporary Iran' (2020) 3(1) *Political Sociology of Iran* 116; Asiyati Lorraine Chiweza, 'The Challenge of Promoting Legal Empowerment in Developing Countries: Women's Land Ownership and Inheritance Rights in Malawi' in Dan Banik (ed), *Rights and Legal Empowerment in Eradicating Poverty* (Ashgate Publishing Limited, 2008) 201; Rina Agarwala, 'Using Legal Empowerment for Labour Rights in India' (2019) 55(3) *The Journal of Development Studies* 401.

[775] Golub, 'Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative' (n 12); Magdalena Sepúlveda Carmona and Kate Donald, 'Beyond Legal Empowerment: Improving Access to Justice from the Human Rights Perspective' (2015) 19(3) *The International Journal of Human Rights* 242; Maaike De Langden and Maurits Barendrecht, 'Legal Empowerment of the Poor: Innovating Access to Justice' in Jorritt and Gowher Rizvi (eds) de Jong (ed), *The State of Access: Success and Failure of Democracies to Create Equal Opportunities* (Brookings Institution Press, 2008) 250; Domingo and O'Neil (n 698); Vivek Maru, 'Access to Justice and Legal Empowerment: A Review of World Bank Practice'; Benjamin van Rooij, 'Bringing Justice to the Poor, Bottom-up Legal Development Cooperation' (2012) 4(2) *Hague Journal on the Rule of Law* 286; Madeleine and Hernando De Soto Albright, 'Giving the Poor Their Rights: How Legal Empowerment Can Help Break the Cycle of Despair' (16 July 2007) *Time Magazine*.

[776] Amartya Sen, 'Equality of What?' in *The Tanner Lecture on Human Values* (1979) generally and page 202 specifically. Sen provides an overview of each of these concepts. Put simply: utilitarian equality is the idea that a just society should aim to maximise overall happiness/well-being; total utility equality also focuses on happiness/wellbeing but insists that everyone must have the same overall level of it; Rawlsian equality focuses

capabilities) rather than their subjective states of happiness or the primary goods to which they might have access.

In *Equality of What?* Sen's main thesis was that utilitarian and Rawlsian claims were insufficient (both alone and in combination) to provide the basis for a theory of equality.[777] Much of his later work, however, focuses on deepening and clarifying his position in relation to capabilities themselves. In *Development as Freedom*, Sen presents, analyses and defends a capabilities-based approach to development that moves beyond the traditional focus on economic growth and '[places] the perspective of freedom at the center of the stage.'[778] For Sen, this means focusing on the freedom that people have to live the kinds of lives they have reason to value. While wealth and economic growth remain relevant, they are only instrumentally so – wealth is significant in as much as it allows people to access valuable capabilities.[779]

Sen's conception of development in *Development as Freedom* relies on an expansive understanding of 'poverty.' In Sen's view, poverty is best understood not simply as a lack of money or a lowness of income but as the deprivation of basic capabilities ('capability-poverty').[780] In other words, Sen argues that in assessing poverty the focus should be on the (deprivation of) the *real freedoms and opportunities* an individual has to achieve the 'functionings' (or the *beings and doings*) that allow them to live lives they have reason to value. This conception of poverty broadens the informational bases on which poverty is assessed considerably. Sen argues that it allows for a better understanding of individuals' true quality of life and provides the building blocks for an approach to development that focuses not on wealth, resources or subjective satisfaction, but on the *actual lives people are able to live*.

Sen's 20th century work (culminating in *Development as Freedom* in 1999) gave rise to what is commonly referred to as the 'capability approach' to development.[781] Building on the work of Sen, development scholars who endorse the capability approach argue that the focus of development programs and policies should be on enhancing the capabilities of individuals.

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on equality of 'primary social goods,' which include 'rights, liberties and opportunities, income and wealth and the social bases of self-respect.': John Rawls, as cited in Ibid 214.

[777] Sen, 'Equality of What?' (n 776) 220.

[778] Sen, *Development as Freedom* (n 15) 53.

[779] Ibid 14.

[780] Sen, *Development as Freedom* (n 15). For a detailed discussion of capability-poverty see chapter 4.

[781] The approach is also sometimes referred to as the 'capabilities approach' or the 'human development approach.' For a discussion of terminology see Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (The Belknap Press of Harvard University Press, 2011) 17–19.

Today, the literature in relation to the capability approach is highly interdisciplinary, extending well beyond international and economic development. There has been a proliferation of literature seeking to conceptualise, analyse and apply the capabilities approach in diverse areas such as education, children's rights, reproductive health and occupational health and safety.[782] Capability analyses have been undertaken from both domestic and international perspectives and in a wide range of jurisdictions, from Great Britain to Italy, Australia to Morocco, and India to South Africa.[783] The capability approach has been used for a variety of purposes, including evaluating and comparing different states of affairs, recommending courses of action and policy positions, and describing ways of being and living.[784]

While capability scholars are many in number, two have undoubtedly been the most prominent and enduring: Sen himself and philosopher Martha Nussbaum. Indeed, writing in 2011 Nussbaum went so far as to suggest that there are two main 'versions' of the capability approach: Sen's (which is evaluative and positions capability as the appropriate space in which to measure and evaluate quality of life) and her own (which is political in nature and provides a partial theory of basic social justice).[785] Numerous scholars have taken issue with this contention, and it is useful to examine some of their reasons for doing so.[786] Such an examination demonstrates the diversity of ways in which the capability

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[782] See, for example, Melanie Walker and Elaine Unterhalter (eds), *Amartya Sen's Capability Approach and Social Justice in Education* (Palgrave Macmillan US, 2007); Nico Brando, 'Children's Abilities, Freedom, and the Process of Capability-Formation' (2020) 21(3) *Journal of Human Development and Capabilities* 249; Dheeshana S Jayasundara, 'Applicability of Amartya Sen's Human Development Perspectives to the Fields of Reproductive Health and Social Work' (2013) 56(2) *International Social Work* 134; Andrea Bernardi, 'Using the Capability Approach and Organizational Climate to Study Occupational Health and Safety' (2019) 1(2) *Insights into Regional Development* 138.

[783] See, for example, Tania Burchardt and Polly Vizard, '"Operationalizing" the Capability Approach as a Basis for Equality and Human Rights Monitoring in Twenty-first-century Britain' (2011) 12(1) *Journal of Human Development and Capabilities* 91; Antoanneta Potsi et al, 'Childhood and Capability Deprivation in Italy: A Multidimesional and Fuzzy Set Approach' (2016) 50 *Quality and Quantity International Journal of Methodology* 2571; Mandy Yap and Eunice Yu, 'Operationalising the Capability Approach: Developing Culturally Relevant Indicators of Indigenous Wellbeing – an Australian Example' (2016) 44(3) *Oxford Development Studies* 315; Sony Pellissery and Sylvia I Bergh, 'Adapting the Capability Approach to Explain the Effects of Participatory Development Programs: Case Studies from India and Morocco' (2007) 8(2) *Journal of Human Development* 283; Monica McLean and Melanie Walker, 'The Possibilities for University-Based Public-Good Professional Education: A Case-Study from South Africa Based on the "Capability Approach"' (2012) 37(5) *Studies in Higher Education* 585.

[784] Sabina Alkire, 'Using the Capability Approach: Prospective and Evaluative Analyses' in Flavio Comim, Mozaffar Qizilbash and Sabina Alkire (eds), *The Capability Approach* (Cambridge University Press, 1st ed, 2008) 26.

[785] Nussbaum, *Creating Capabilities: The Human Development Approach* (n 781) 19.

[786] See, for example, Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 79–80; Mozaffar Qizilbash, 'On Capability and the Good Life: Theoretical Debates and Their Practical Implications: Philosophy & Public Policy Quarterly' (2013) 31(2) *Philosophy & Public Policy Quarterly* 35, 38; Ingrid Robeyns, 'Capabilitarianism' (2016) 17(3) *Journal of Human Development and Capabilities* 397. Cf Pepi Patrón, 'On Ingrid Robeyns', 'Wellbeing, Freedom and Social Justice'—Framework vs Theories: A Dialogue with Martha Nussbaum' (2019) 20(3) *Journal of Human Development and Capabilities* 351.

approach can be applied and operationalised. Moreover, it makes space for the use to which I put the capability approach in this thesis: as the theoretical foundation for legal empowerment programming to facilitate the implementation of Standard IPV Legislation in aid-dependent post-colonial countries.

For critics like Robeyns and Qizilbash, Nussbaum is misguided when she says there are two main 'versions' of the capability approach.[787] While both acknowledge the significant contributions made by Nussbaum to the development of capability theory,[788] they recognise her primary work in the space as (in the words of the latter) 'one particular application or development of Sen's original formulation of [the capability approach]' rather than as (the/an) other version of it.[789] This is a point explored at length by Robeyns.[790] Robeyns suggests that Sen has attempted to 'carve out the general capability approach'[791] and emphasises that his formulation of it is an 'open-ended and underspecified framework that can be used for multiple purposes.'[792] Robeyns distinguishes this broader framework from the many, varied and often detailed *applications* of the capability approach, of which she sees Nussbaum's to be one.[793]

A discrete project that neatly demonstrates Nussbaum's approach to applying capability theory can be seen in her book *Women and Human Development*.[794] Her purpose in that book is ultimately to provide the 'philosophical underpinnings' for an account of basic constitutional principles that must be

[787] Robeyns, 'Capabilitarianism' (n 786); Qizilbash (n 786) 38.
[788] See, for example, Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 24; Ingrid Robeyns, 'Reply to My Critics' (2019) 20(3) *Journal of Human Development and Capabilities* 368, 371 (in which Robeyns explicitly refers to the work of Nussbaum being 'together with Sen's the most influential work on the capability approach'); and Qizilbash (n 786) 35.
[789] Qizilbash (n 786) 38.
[790] See, for example, Robeyns, 'Capabilitarianism' (n 786) (generally); and Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 29–35.
[791] Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 79. Note that Robeyns acknowledges that Sen has also contributed by developing particular *capability applications* but distinguishes this from his broader work.
[792] Ibid 29. Similar contentions have been made by other prominent capability scholars, including Alkire, Qizilbash, Fukuda-Parr, Hick and Burchardt: see Sabina Alkire, *Valuing Freedoms: Sen's Capability Approach and Poverty Reduction* (Oxford University Press, 2002) 3; Qizilbash (n 786) 37; Sakiko Fukuda-Parr, 'The Human Development Paradigm: Operationalizing Sen's Ideas on Capabilities' (2003) 9(2–3) *Feminist Economics* 301, 302; and Rod Hick and Tania Burchardt, 'Capability Deprivation' in David Brady and Linda M Burton (eds), *The Oxford Handbook of the Social Science of Poverty* (Oxford University Press, 2016) 0, 4 respectively.
[793] Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 30. The assertion that Nussbaum's work is an application of the broader capability approach developed by Sen has itself come under criticism. Patron, for example, suggests it to be a polemical assertion because many other capability scholars have been inspired by the work of both Nussbaum and Sen. Culp argues that it is one version of a tale that is no more or less accurate than the version in which Sen and Nussbaum have developed the two major, but different, versions of the capability approach. See Patrón (n 786) 352; Julian Culp, 'Two Tales of the Capability Approach' (2019) 20(3) *Journal of Human Development and Capabilities* 362, 365.
[794] Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge University Press, 2000).

respected and implemented by governments as a 'bare minimum of what respect for human dignity requires.'[795] Nussbaum advocates for a social goal directed towards getting all citizens above a threshold level of 10 'central capabilities.'[796] A partial theory of justice, Nussbaum makes the case that her list of capabilities provides the basis on which to determine a decent social minimum in a variety of important areas of life.[797]

Nussbaum's project differs greatly from many of the other capability applications that have been proposed. To name but a few: Burchardt and Vizard advocate for a capability-based measurement framework for the monitoring of human rights and equality in Britain.[798] Alkire demonstrates how the capability approach can be operationalised in microeconomic poverty reduction initiatives.[799] The highly influential Human Development reports, developed by economist Mahbub Ul Haq and released annually by the UNDP since 1990, use a capability application as the basis on which to assess and advance the well-being of humans across the globe.[800]

I have suggested above that the capability approach is a broad framework that can be, and has been, specified and applied for a diversity of purposes. Shortly I will turn to consider the question of whether it can be effectively applied to develop legal empowerment programming to help facilitate the implementation of Standard IPV Legislation. First, however, it is useful to consider some of the distinguishing features of the capability approach that make it appealing to such a wide range of scholars and practitioners.[801] In order to do so three concepts central to the capability approach and,

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[795] Ibid 5.

[796] Ibid 6. Nussbaum's list of capabilities (which she emphases as being open to critique and revision) is as follows: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; and control over one's environment: see pages 78 – 80.

[797] Ibid 75.

[798] Burchardt and Vizard, '"Operationalizing" the Capability Approach as a Basis for Equality and Human Rights Monitoring in Twenty-first-century Britain' (n 783).

[799] Alkire, *Valuing Freedoms: Sen's Capability Approach and Poverty Reduction* (n 792).

[800] United Nations Development Programme, 'About HDRO', *Human Development Reports* <https://hdr.undp.org/about-hdro>. For a detailed discussion of the emergence of the human development reports, human development index and the relationship with capability theory see Fukuda-Parr (n 792). Architect of the human development reports, Mahbub Ul Haq, noted that the purpose of the reports as to 'shift the focus of development economics from national income accounting to people centred policies:' ul Haq (n 685).

[801] It is not necessary for the purposes of this thesis to comprehensively identify the essential elements of a 'capability application.' However, this is a task that has been attempted by several prominent scholars. Perhaps most notably, Robeyns presents a modular view of the capability approach in Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767). She specifically sets out in parts 2.6 to 2.8 the various components of a capability application that she suggests are non-optional as well as those she suggests are optional. See also Des Gasper, 'What Is the Capability Approach?: Its Core, Rationale, Partners and Dangers' (2007) 36(3) *The Journal of Socio-Economics* 335.

indeed, any capability application must be understood. Those concepts are *capabilities, functionings* and *conversion factors*.

Capabilities, functionings and conversion factors

As indicated above, the notion of 'capabilities' refers to the real freedoms people have to achieve certain beings and doings, or to do and be certain things.[802] While the literature commonly refers to 'valuable' capabilities, it is important to note that the notion of capabilities itself is value-neutral.[803] There would be relative consensus across the globe about the positive or negative value of many capabilities. Most would agree, for example, that the freedom to live a life free from IPV is a positive capability, the freedom to commit rape a negative one, and the freedom to ride tricycles trivial. Yet there are many other capabilities (Robeyns uses the example of care work) the value of which remains contested, or the value of which will vary depending on the context.[804] Recognising the value-neutral nature of capabilities makes clear an important point: that normative moves are made in the process of determining what capabilities will count and for what purposes. This leads us to an important question: how do we select the capabilities we are going to focus on when we seek to operationalise the capability approach for a given purpose?

The matter of capability selection is one that has received much attention in the literature. In the early 21st century debate arose as to whether it was possible or desirable to draw up a universal list of valuable capabilities, with various scholars, including Nussbaum, pointing to Sen's failure to articulate and endorse such a list as a key weakness in his work that brought into question the extent to which it could be operationalised.[805] While much has been made of the 'debate' between Sen and Nussbaum as to the desirability of a universal list of valuable capabilities, the crux of the disagreement between them can be resolved if we accept the distinction discussed above between the broad and open-ended

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[802] See, for example, Amartya Sen, 'Capability: Reach and Limits' in Enrica Chiappero-Martinetti (ed), *Debating Global Society: Reach and Limits of the Capability Approach* (Fondazione Giangiacomo Feltrinelli, 2009) 15, 17; Martha C Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge University Press, 2000) 5; Morten Fibieger Byskov, Matthias Kramm and Sebastian Östlund, 'Capabilities as Substantive Opportunities and the Robustness of Conversion Factors' in Mitja Sardoč (ed), *Handbook of Equality of Opportunity* (Springer International Publishing, 2023) 1, 1.

[803] Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 41.

[804] Ibid 42–43.

[805] See, for example, Martha Nussbaum, 'Capabilities as Fundamental Entitlements: Sen and Social Justice' (2003) 9(2–3) *Feminist Economics* 33; Frances Stewart, 'Book Review: Women and Human Development: The Capabilities Approach, by Martha Nussbaum' (2001) 13(8) *Journal of International Development* 1191, 13; Robert Sugden, 'Welfare, Resources, and Capabilities: A Review of Inequality Reexamined by Amartya Sen', ed Amartya Sen (1993) 31(4) *Journal of Economic Literature* 1947. As indicated above, Nussbaum herself has long advocated for a list of central capabilities that she sees as necessary for a life of human dignity: Nussbaum, 'Capabilities as Fundamental Entitlements: Sen and Social Justice' 40. To represent Nussbaum accurately it is important to acknowledge that she consistently emphasises that her list is open to revision and critique and deliberately articulated at a relatively abstract level with the task of specification being done in context by those affected.

capability *approach* and particular capability *applications*. Sen himself has made clear that his objection is not to the use of lists in capability *applications* - indeed, he has developed his own capability lists in particular contexts.[806] Rather, Sen argues that relevant capabilities will be purpose-dependent and cannot be determined without that purpose in mind.[807] This precludes the identification of any fixed or universal list of capabilities, but allows for lists of relevant capabilities to be drawn up in the operationalisation of particular capability applications.[808]

The debate about whether one all-purpose list of central capabilities could or should be drawn up appears to have subsided.[809] As Claassen suggests, it is now largely agreed among capabilitarians that such a universal list is unachievable, but that lists of valuable capabilities must be drawn up for particular purposes and in particular contexts if the capability approach is to be operationalised.[810] Where debate continues to arise, however, is in relation to how such lists should be developed. Here, the literature reveals a split between two main camps: those like Nussbaum, who take the position that philosophical/theoretical justice-oriented considerations should inform capability selection, and those like Sen, who maintain that lists of valuable capabilities should be drawn up through a procedure of democratic deliberation.[811] Both of these approaches are considered in more detail below.

Nussbaum's employment of a list of capabilities to propose a partial theory of justice provides perhaps the best-known example of a philosophical approach to capability selection.[812] Nussbaum argues that all citizens must be able to achieve a threshold level of the 10 'central capabilities' to ensure they

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[806] For example, an assessment of the extent of poverty in India: see Jean Drèze and Amartya Sen, *India: Development and Participation* (Oxford University Press, 2002).

[807] Amartya Sen, 'Capabilities, Lists, and Public Reason: Continuing the Conversation' (2004) 10(3) *Feminist Economics* 77, 78. For Sen, the selection and weighting of capabilities must be accompanied by public reasoning and discussion.

[808] Sen's assertion that capabilities must be considered in context for the purposes of selection and weighting can be seen in his earliest work on capability theory. For example, in 1979 he wrote that '[t]he notion of equality of capabilities is a very general one, but any application of it must be rather culture-dependent, especially in the weighting of capabilities.' See Sen, 'Equality of What?' (n 776) 219.

[809] Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 30.

[810] Rutger Claassen, 'Selecting a List: The Capability Approach's Achilles Heel' in Enrica Chiappero-Martinetti, Mozaffar Qizilbash and Siddiqur Osmani (eds), *The Cambridge Handbook of the Capability Approach* (Cambridge University Press, 2020) 188, 191. Claassen uses the term 'basic capabilities,' a term of art in Nussbaum's work. However, Claassen makes clear in footnote 2 that he uses the term to refer to a 'set of socially important/valuable capabilities.'

[811] Ibid; Morten Fibieger Byskov, 'Democracy, Philosophy, and the Selection of Capabilities' (2017) 18(1) *Journal of Human Development and Capabilities* 1. Note that Byskov elsewhere uses the term 'foundational methods' to refer to lists of capabilities drawn from normative value or principles (such as human rights) and 'procedural methods' to refer to methods involved open ended empirical or deliberative procedures: see Morten Fibieger Byskov, 'Methods for the Selection of Capabilities and Functionings' in *The Capability Approach in Practice* (Taylor & Francis Group, 2018) 103.

[812] Nussbaum, *Women and Human Development: The Capabilities Approach* (n 794).

receive the minimum level of respect demanded by human dignity.[813] Nussbaum asserts that her central capabilities were identified on the basis of 'years of cross-cultural discussion'[814] and as a result can be seen as a 'type of overlapping consensus.'[815] Accordingly, Nussbaum does not claim that democratic or participatory processes were employed in the development of her list but does make implicit claims about its impartiality. Nussbaum defends her list from potential allegations of paternalism/imperialism by emphasising that it is highly abstract and can be realised in multiple ways so as to ensure appropriate contextualisation, and that room is left for 'reasonable pluralism' in the process of specification.[816]

Nussbaum thoughtfully and comprehensively defends her list of central capabilities.[817] Nonetheless, it has come under criticism for lacking democratic legitimacy.[818] Moreover, the purported universality of Nussbaum's list has come under criticism, notably from scholars from the Global South, who take exception to Nussbaum seeking to speak on their behalf.[819] It is in light of such criticisms that Stewart characterised Nussbaum's work, as an American philosopher determining central capabilities for other societies, as both paternalistic and colonial.[820] While this criticism was directed at Nussbaum specifically, it is reflective of broader concerns about philosophical approaches to capability selection.[821]

For those concerned about the potential false universalism of philosophical approaches to capability selection there is an obvious appeal to the identification of valuable capabilities using a democratic process that involves public scrutiny and debate.[822] However, purely procedural approaches are not without fault. In particular, they are vulnerable to implicit bias and adaptive preferences, the latter of which refers the idea that people will adjust their preferences and desires in response to their lived

[813] Ibid 5.
[814] Ibid 76.
[815] Ibid. Nussbaum goes on to define what she means by 'overlapping consensus:' 'By overlapping consensus I mean what John Rawls means: that people may sign on to this conception [of truly human functioning] as the freestanding moral core of a political conception, without accepting any particular metaphysical view of the world, any particular comprehensive view, or even any particular view of the person or of human nature.'
[816] Ibid 77.
[817] Ibid 74–78.
[818] Ingrid Robeyns, 'Selecting Capabilities for Quality of Life Measurement' (2005) 74(1) *Social Indicators Research* 191, 201.
[819] See, for example, Nivedita Menon, 'Universalism Without Foundations?' (2002) 31(1) *Economy and Society* 152.
[820] Stewart (n 805) 2.
[821] Byskov, 'Democracy, Philosophy, and the Selection of Capabilities' (n 811); Byskov, Kramm and Östlund (n 802).
[822] These are all concepts held in high esteem by Sen. See also discussion in Robeyns, 'Selecting Capabilities for Quality of Life Measurement' (n 818) 195.

experiences and real opportunities.[823] It is easy to see that where capability selection has been affected by implicit bias or adaptive preferences, the privileging of the capabilities identified as a result of this selection process could result in unjust outcomes. An example provided by Byskov is of direct relevance to this thesis: [824]

> Consider, for example, a society in which husbands routinely beat their wives as a matter of custom. Everyone, male and female, endorses this custom and would on reflection agree that it is a relevant [valuable] capability. It is safe to assume that a democratic decision-making procedure in this society would then yield the conclusion that public policy should regard the capability of men to beat their wives as permissible.[825]

While the literature does show a split between those who favour philosophical approaches and those who favour democratic approaches to capability selection, as Byskov argues this binary distinction is in many ways an oversimplification.[826] In the next chapter I propose a process for selecting capabilities of focus for legal empowerment programming to facilitate the implementation of Standard IPV Legislation. This process is informed by Byskov's argument that consideration be given to how mixed approaches that draw on both the philosophical and democratic can be used to reinforce each other.[827]

If the concept of capabilities is the most fundamental to capability theory, it is closely followed by that of functionings.[828] Robeyns neatly encapsulates the distinction between the two when she says 'capabilities are what people are able to be and do, and functionings point to the corresponding achievements.'[829] To provide an example relevant to the issue of reducing IPV and draw on one of Nussbaum's central capabilities: in order to have the capability of bodily integrity, a person must have

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[823] Byskov, 'Methods for the Selection of Capabilities and Functionings' (n 811) 112. For a detailed discussion of adaptive preferences see Nussbaum, *Women and Human Development: The Capabilities Approach* (n 794) 136–139.

[824] Byskov, 'Democracy, Philosophy, and the Selection of Capabilities' (n 811) 4.

[825] The Solomon Islands case study provides a real-life example. Data suggest that, at least as at 2009, 73% of *women* in Solomon Islands believed a man was justified in beating his wife in some circumstances: Secretariat of the Pacific Community and National Statistics Office (n 17) 3. It would seem, then, that valuable capabilities selected by a democratic process in Solomon Islands at that time would have included a husband's capability of beating his wife.

[826] Byskov, 'Methods for the Selection of Capabilities and Functionings' (n 811).

[827] Byskov, 'Democracy, Philosophy, and the Selection of Capabilities' (n 811) 4.

[828] See, for example, Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 9; Sabina Alkire, 'Why the Capability Approach?' (2005) 6(1) *Journal of Human Development* 115, 118; Qizilbash (n 786) 36; Gasper (n 801) 340.

[829] Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 38.

(inter alia) the real opportunity to live a life free from IPV.[830] The opportunity results in the capability, but not the equivalent functioning. The functioning will only be present when a person takes up the opportunity and *in fact* lives a life free from IPV.

Why the need to distinguish between capabilities and functionings? Is it not ultimately the functioning (what is in fact happening) that is important? This is a question that has been addressed at length in the literature.[831] For the purposes of this thesis, there are at least two good reasons why the notion of capabilities is indispensable. The first is that the capability approach would be vulnerable to allegations of paternalism if the focus was on functionings alone. The second is that taking up a particular opportunity – converting a capability into a functioning – has implications for other opportunities that are open to us.

I argued in chapter four that some of the barriers that arise to human rights programming in Focus Countries arise because of the perception that such programming is paternalistic or a form of cultural imperialism. As such, it is particularly important in this context to be cognisant of the risk of paternalism (both real and perceived) in programming that seeks to facilitate the implementation of Standard IPV Legislation. Avoiding paternalism is one of the key reasons it has been argued that the focus should be on capabilities rather than functionings.[832] When seeking to enhance capabilities, we are seeking to remove barriers people face that limit their opportunity to make choices.[833] If the focus is instead on functionings, it has been argued, people's freedom to choose would be removed and they would be coerced into a particular version of the 'good life' that may or may not accord with their own.[834]

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[830] Nussbaum defines bodily integrity as follows: 'being able to move freely from place to place; having one's bodily boundaries treated as sovereign, i.e. being able to be secure against assault, child sexual abuse, and domestic violence; having opportunities for sexual satisfaction and for choice of matters in reproduction' (emphasis added): Nussbaum, *Women and Human Development: The Capabilities Approach* (n 794) 78.

[831] See, for example, Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 107–112; Rutger Claassen, 'Capability Paternalism' (2014) 30(1) *Economics & Philosophy* 57; Hick and Burchardt (n 792) 79–82; David A Crocker and Ingrid Robeyns, 'Capability and Agency' in Christopher W Morris (ed), *Amartya Sen* (Cambridge University Press, 2009) 60, 70–72.

[832] See, for example, Nussbaum, *Women and Human Development: The Capabilities Approach* (n 794) 51–58; Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 107–109; Hick and Burchardt (n 792) 80. Claassen's discussion of whether or not the promotion of functionings instead of capabilities is sometimes inevitable is interesting – see Claassen, 'Capability Paternalism' (n 831).

[833] Hick and Burchardt (n 792) 80.

[834] Sen commonly uses the example of the functioning of (mal)nourishment to demonstrate this point – see, for example, Sen, *Development as Freedom* (n 15) 75. The functioning of malnourishment may be present both in a person who is forced to starve due to a lack of resources and in a person who chooses to fast as a political statement or protest (think, for example, Mahatma Ghandi). While the same *functioning* is present in both individuals, only the latter has the *capability* of being well nourished: they can *choose* to eat should they wish to do so whereas our first individual cannot. Focusing on ensuring that all people are achieving the functioning of

Some arguments have been put forward as to why paternalism is inevitable or even, in some cases, appropriate. For example, Nussbaum points out that any system of law is 'paternalistic' in the sense that it prevents some people doing things they would like to do by prohibiting particular functionings. In the context of Standard IPV Legislation, for example, this would include prohibiting men from 'disciplining' their wives with physical violence even if those men see such discipline as appropriate. Nussbaum argues that the fact that the law restricts people's freedom in some respects does not provide a compelling argument against the legal system or the rule of law itself.[835] Robeyns goes further, and points to the flawed nature of human beings - beings who commonly make mistakes in the process of decision-making - to suggest that while strong arguments can be made for a focus on capabilities rather than functionings, it does not follow that *only* capability theories that focus on capabilities (opportunities) rather than functionings (achievements) are conceivable or defensible.[836] If we are using a capability application for policy design purposes, Robeyns argues, a form of (modest) paternalism may be justified in order to discourage common (poor) choices.[837]

If we accept that there are limited circumstances in which paternalism might be justifiable, surely (one could argue) a degree of paternalism might be appropriate in order to protect women from IPV – if women do not choose to protect *themselves* from violence should others not step in to ensure their protection?[838] Even if one is inclined to answer this question in the affirmative, the waters are muddied when we step beyond the single capability of bodily integrity (in the case of physical violence) and consider broader *capability sets*, and the (potential) impact the choice to embody one functioning has on other opportunities (or capabilities).[839]

The lives of individuals are multifaceted and complex. This is as true for survivor/victims of IPV as for anybody else. As a result, trying to ameliorate barriers to the use of Standard IPV Legislation requires

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nourishment (for the vast majority, a 'good' functioning) denies our political protester the *freedom* or *opportunity* to protest by fasting.

[835] Nussbaum, *Women and Human Development: The Capabilities Approach* (n 794) 53 (examples are mine).

[836] Robeyns, 'Capabilitarianism' (n 786) 400–401.

[837] Ibid 401.

[838] Relevant here is the widely acknowledged phenomenon, referred to above, of adaptive preferences, 'in which individuals adjust their desires to the way of life they know:' Nussbaum, *Women and Human Development: The Capabilities Approach* (n 794) 136. Adaptive preferences are argued to undermine preference reliability. While it is not necessary to discuss adaptive preferences in detail here, they are a key reason capability theorists suggest that preference-based approaches to wellbeing are inadequate. For discussion of adaptive preferences and the capability approach see, for example, Nussbaum, *Women and Human Development: The Capabilities Approach* (n 802) 136–142; Sen, *Development as Freedom* (n 15) 62 to 63; Pablo Gilabert, 'The Feasibility of Basic Socioeconomic Human Rights: A Conceptual Exploration' (2009) 59(237) *The Philosophical Quarterly* 659, 22. For a detailed discussion of adaptive preferences and women see Serene J Khader, *Adaptive Preferences and Women's Empowerment* (Oxford University Press, 2011).

[839] For a discussion of the notion of capability sets see Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 84 and 91–92.

consideration not just of individual capabilities (the choice of whether or not to live a life free of IPV, for example), but what the impact of using legislative frameworks, or any other approach intended to reduce IPV, will be on other (valuable) capabilities.

Consider the case of 21-year-old Bareth.[840] Bareth is regularly slapped by her husband, Junior, and feels she must have sex with him on demand whether or not she wants to - on the one occasion she tried to refuse he raped her. Bareth would like to leave Junior and could (financially) afford to do so. However, Bareth knows that if she leaves Junior she will no longer be welcome in the church she has belonged to since birth due to institutional beliefs and practices relating to the sanctity of marriage. Bareth would be devastated to have to leave the church – she is strongly devoted to her religious beliefs and most of her social networks arise from her church membership. In this case, Bareth has the *capability* of leaving her husband. She also has the *capability* of remaining a member of her church (and in turn maintaining her religious freedom and existing social networks). However, the corresponding *functionings* are not simultaneously open to her: she cannot *both* leave her husband *and* remain a member of her church. Bareth's decision as to whether to leave Junior is a difficult one, and there will be consequences (both negative and positive) of whichever decision she makes. An emphasis on *capabilities* (rather than functionings) in efforts to reduce IPV respects Bareth's agency in decision making and gives her greater control over her life. Recognising the interconnected nature of Bareth's capabilities – such as bodily autonomy, religious freedom and social affiliation – enables the development of strategies that minimise the potential negative impact of engaging with Standard IPV Legislation on diverse aspects of her life. For these reasons, I argue in chapter eight that a capability approach to legal empowerment programming should prioritise capabilities over functionings and maintain a clear focus on the interrelated nature of (different) capabilities.

While the concepts of capabilities and functionings are arguably the two most central to the capability approach, the notion of conversion factors (defined by Robeyns to be 'the factors which determine the degree to which a person can transform a resource into a functioning') is also highly significant.[841] As stated above, capabilitarians are primarily concerned with (available) ends or outcomes: they are ultimately interested in the lives that individuals are in fact able to lead, should they choose to do so. This is not to say, however, that *means* do not figure heavily in capability theory: from an instrumental perspective, means are essential. Capability theorists recognise that there are a wide range of resources or 'inputs' that can act as means to capability realisation or expansion,[842] from goods,

[840] The character of Bareth is a product of my imagination. That said, her circumstances reflect those of a number of women I came across during my fieldwork in Solomon Islands.
[841] Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 45.
[842] Ibid 81.

services and financial wealth to social capital and institutions, and 'human' resources.[843] Crucially, capability theorists also recognize that there are a diversity of factors that will impact on an individual's ability to convert 'inputs' into functionings.[844] Those factors (referred to in the literature as 'conversion factors') vary from person to person. As a result, two people with access to exactly the same 'inputs' may nonetheless have very different capabilities and capability sets available to them.

Conversion factors are generally recognised as falling into three categories: personal, social and environmental.[845] Personal conversion factors are those which are specific to an individual and relate to their mental and physical characteristics. Personal conversion factors may include, for example, cognitive abilities, metabolism and literacy levels.[846] Social conversion factors are those that arise as a result of the society in which an individual lives.[847] They are determined by the social structures, practices and institutions that impact on the life a person is able to lead. They include social and cultural norms and power relations, societal hierarchies, laws and public policies (or their absence).[848] Finally, environmental conversion factors are those arising from the natural or built environment in which a person lives.[849]

The concepts of capabilities, functionings and conversion factors are three that are fundamental to the capability approach. As discussed below, they are also key characteristics that hold great appeal for those working in the space of gender justice.

Human diversity, gender justice and violence against women

Women's capabilities and gender equality were front of mind for both Sen and Nussbaum when developing their work in the capabilities space.[850] It is hardly surprising, then, that the capability approach has been widely harnessed in the quest to conceptualise, analyse and assess the ways in which quality-of-life issues (can) play out differently for people of different genders.[851]

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[843] As to social institutions constituting 'inputs' for the purposes of capability theory see Crocker and Robeyns (n 831) 68. I use the term 'human resources' here to refer to such matters as physical and cognitive abilities.

[844] See Ingrid Robeyns, 'Sen's Capability Approach and Feminist Concerns' in Flavio Comim, Mozaffar Qizilbash and Sabina Alkire (eds), *The Capability Approach* (Cambridge University Press, 1st ed, 2008) 82, 85 for discussion of the three generally recognised categories of conversion factor (personal, social and environmental) in the context of feminist concerns.

[845] Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 46.

[846] Ibid.

[847] Ibid.

[848] Ibid.

[849] Ibid.

[850] Nussbaum, 'Women's Bodies: Violence, Security, Capabilities' (n 766) 177.

[851] See, for example, Ingrid Robeyns, 'Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities' (2003) 9(2–3) *Feminist Economics* 61; ibid; Douglas A Hicks, 'Gender, Discrimination, and Capability: Insights from Amartya Sen' (2002) 30(1) *Journal of Religious Ethics* 137; Stephan Klasen, 'Measuring Gender

A key reason the capability approach appeals to scholars focused on the protection and advancement of women is because of the close attention it pays to human diversity and the way(s) in which diversity impacts the lives (different) people are able to lead.[852] This holds great promise for feminists, who have long critiqued the androcentrism of traditional theories of development, social justice and wellbeing.[853]

The first main way in which the capability approach takes human diversity into account is through recognition of the plurality of capabilities. As outlined above, anything a person has the freedom to be or do (whether good, bad or trivial) constitutes a capability and lists of valuable capabilities will need to be drawn up in the development of particular capability applications. This leaves much space for the development of applications that focus on beings and doings of particular relevance in the pursuit of gender justice and the reduction of GBVAW.[854]

The second key way in which the capability approach recognises human diversity is through the recognition that the ability to convert 'inputs' into functionings varies from person to person. Put another way, that conversion factors impact differently on different people. For the purposes of capability applications that seek to promote women's protection and advancement it is personal conversion factors (specifically, gender-identity and biological sex) that are of the most fundamental relevance – it is these characteristics that define individuals into the focus group of the application.

Inequality Using the Capability Approach: Issues and Challenges' in Enrica Chiappero-Martinetti, Mozaffar Qizilbash and Siddiqur Osmani (eds), *The Cambridge Handbook of the Capability Approach* (Cambridge University Press, 2020) 437; Vegard Iversen, 'Intra-Household Inequality: A Challenge for the Capability Approach?' (2003) 9(2–3) *Feminist Economics* 93; Lourdes Benería, 'The Crisis of Care, International Migration, and Public Policy' (2008) 14(3) *Feminist Economics* 1.

[852] That the capability approach allows for the consideration and analysis of issues not easily reducible to financial welfare is another of its key advantages from a feminist perspective. See Robeyns, 'Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities' (n 851) 62.

[853] Robeyns, 'Sen's Capability Approach and Feminist Concerns' (n 844) 87–88. It is worth noting that Robeyns acknowledges that, notwithstanding its potential to address feminist concerns, the capability approach could be interpreted and applied in an androcentric way. She cautions feminists to remain vigilant to this possibility: see page 101.

[854] Note that a capability perspective has been applied to violence against women in numerous ways. Agarwal and Panda use a capabilities lens to highlight the importance of considering the incidence of IPV when evaluating developmental progress and suggest such an evaluation should take into account both absolute capability measures and relative capabilities and freedoms (particularly as between a woman and her spouse). Strenio uses a capability-based framework to examine the long-term consequences of IPV, arguing that this provides a more comprehensive picture of the costs of IPV to survivors. Van Raemdonck et al argue that the capabilities approach can be used to evaluate the efficiency of community networks to create capabilities and enhance freedom for IPV survivors. See Bina and Pradeep Panda Agarwal, 'Towards Freedom from Domestic Violence: The Neglected Obvious' (2007) 8(3) *Journal of Human Development* 359; Jacqueline Strenio, 'Time Heals All Wounds? A Capabilities Approach for Analyzing Intimate Partner Violence' (2020) 26(4) *Feminist Economics* 31; Laura Van Raemdonck, Mariam K Seedat and Peter Raeymaeckers, 'Assessing the Capability Approach as an Evaluation Tool for Community Networks on Intimate Partner Violence in Seven Durban Townships in KwaZulu-Natal, South Africa' (2016) XV(3) *Revista de Asistenţă Socială* 5.

However, it is arguably *social* conversion factors that have the most far-reaching consequences and require the most immediate attention. Structural differences in society, social norms and institutions commonly give rise to conversion factors that problematise capability achievement for women more than they do men.[855] Take, for example, the capability of bodily integrity and the incidence of IPV in Solomon Islands. As discussed in chapter three, at least as at 2009, 73% of women in Solomon Islands agreed that there were some circumstances in which a man was justified in beating his wife,[856] reflecting broader social views about gender norms and power relations between the sexes.[857] At the time the data that inform this statistic were collected, marital rape was not a crime in Solomon Islands (marriage was considered ongoing consent to sexual relations by a woman) and IPV was yet to be expressly criminalised.[858] These factors posed significant difficulties for women in achieving and expanding their capability of bodily integrity – they did not have the same implications for men.

While some conversion factors (like biological sex) are relatively fixed, others can be readily changed. This includes many social conversion factors like laws and public policies, and (over time) social norms and practices. In contexts such as Solomon Islands, many social conversion factors continue to act as barriers to capability achievement by women. However (and as will be argued in detail in chapter eight) these conversion factors can be changed so as to in fact facilitate (rather than problematise) capability achievement and expansion. For example, in the 2012 case of *Regina v Gua* the marital exemption to rape was abolished, shifting the law from being a factor that left women vulnerable to a contraction of their capability of bodily integrity to a protective factor in achieving or expanding it.[859] It increased the ability of survivor/victims to convert their bodies (characterised here as a resource available to them) into the capability of bodily integrity.

There is often a complex relationship between different conversion factors. As a result, a change to one (whether positive or negative) can lead to a change in others. Returning to the example of marital rape in Solomon Islands: in *Regina v Gua* the court abolished the 'marital exemption' to rape and said

[855] Of course, the opposite is equally true: men may face conversion difficulties that women do not. For example, in a context where it is agreed that the capability of the full-time parenting of an infant is a valuable one, men may face conversion difficulties as a result of workplace policies that are less generous to fathers than they are to mothers.

[856] Secretariat of the Pacific Community and National Statistics Office (n 17) 3. While the study was designed to be nationally representative, men were not surveyed or interviewed for the purposes of the study. As such, comparable statistics are not available in respect of the views of men on the justifiability of wife-beating.

[857] As to embedded conservative and patriarchal ideologies in Solomon Islands see, for example, Pollard (n 568); Corrin, 'Ples Bilong Mere: Law, Gender and Peace-Building in Solomon Islands' (n 350); Equal Rights Trust, Secretariat of the Pacific Community and Regional Rights Resource Team (n 568).

[858] In relation to the common law position regarding marital rape at that time see *R v Gwagwango & Taedola [1991] SBHC 59* (n 376).

[859] Marital rape was recognised as a crime in Solomon Islands for the first time in the case of *Regina v Gua [2012] SBHC 118; HCSI-CRC 195 of 2011 (8 October 2012)*.

recognising marital rape as a crime was necessary because of the 'changing attitude in Solomon Islands towards the status of women.'[860] In 2016, the *Penal Code* was also amended to make clear that the existence of marriage or a marriage-like relationship does not negate the possibility of rape.[861] That marital rape is a crime in Solomon Islands has subsequently been used in programming aimed at transforming cultural attitudes towards IPV and other forms of GBVAW.[862] Here, we can see a mutually supportive relationship between the social conversion factors of law and social norms in which each pushes the other towards promoting rather than inhibiting women's capability of bodily integrity.

I have argued above that a key appeal of the capabilities approach for those working in the gender justice space is that it takes account of human diversity. This allows for the development of capability applications that focus on capabilities that readily reflect and incorporate the interests and perspectives of women, and counteract conversion factors that have a disproportionately negative impact on women's capability achievement. As will be demonstrated in the next chapter, the same logic can be applied to ensure the interests, perspectives and lived experiences of *unheard women* are taken into account when designing legal empowerment strategy and programming to facilitate the implementation of Standard IPV Legislation. I said in chapter four that the allegation has been made more than once that the conceptualisation of IPV as a human rights issue was the product of Western feminism that privileges the priorities, interests and experiences of The Heard Woman (white, Western, middle and upper class, liberal, heterosexual) at the expense of those of many unheard women across the globe. In chapter eight I suggest that a capabilities-informed approach to IPV reduction has the potential to redress this imbalance.

Conclusion

As Nussbaum asserts in the opening quote of this chapter, the capabilities approach has much to offer in identifying and articulating the damage done by IPV (as the most common form of GBVAW) as well as in making and implementing recommendations for redressing such damage. Much of its promise lies in the space it makes for human diversity, which in turn allows for the identification and prioritisation of the interests and experiences of those who commonly find themselves vulnerable or marginalised. This includes women who are experiencing or at risk of IPV.

This chapter has suggested that capability theory can provide a robust and synergistic theoretical basis for legal empowerment programming to facilitate the implementation of Standard IPV Legislation. It explained key concepts in capability theory that will be central to the development of capability

[860] Ibid at 57 - 58.
[861] *Penal Code (Cap 26)* (n 375) s136F(2).
[862] See, for example, Oxfam's Safe Families project, discussed in chapter two.

applications that seek to operationalise it for this purpose. In the final substantive chapter of this thesis, to follow, I look more closely at practical matters related to the operationalisation of the capability approach in legal empowerment programming.

Chapter 8: Applying theory to practice: a capability application for the design of legal empowerment programming

> 'The capability approach is an open-ended and underspecified framework... It is open-ended because [it] can be developed in a range of different directions, with different purposes, and it is underspecified because additional specifications are needed before [it] can become effective for a particular purpose…'
> Ingrid Robeyns[863]

So far in this Part I have suggested that legal empowerment programming provides a promising vehicle to help facilitate the implementation of Standard IPV Legislation in Focus Countries, provided it can legitimise the use of legislative frameworks to seek protection from violence and resolve points of tension between use of those frameworks and other valued and valuable social and cultural institutions, practices and beliefs. I have suggested that legal empowerment can play an important role in 'stitching' together law and community, and helping to ameliorate the barriers to implementation identified in Part Two. I have also introduced the capability approach and argued that the attention it pays to both human diversity and human complexity holds great promise for the identification of the interests, priorities and lived experiences of IPV survivor/victims. In turn, it holds great promise for the recognition and redress of tensions between those interests, priorities and experiences and the use of Standard IPV Legislation.

This chapter builds on the theoretical foundations laid in chapter seven. It explores what it might mean in practice to adopt a 'capability approach' in the design of legal empowerment strategy and programming to facilitate the implementation of Standard IPV Legislation. This chapter speaks generally of 'capability applications' to facilitate the implementation of Standard IPV Legislation, or 'capability-informed approaches' to doing so.[864] No doubt such applications or approaches could take a range of different forms. Immediately following the conclusion of this thesis, I provide a concrete example of a capability application that can be used to guide the capability-informed design of legal empowerment initiatives. I refer to this application as the Practitioner's Tool.

This chapter opens by demonstrating the compatibility of the capability approach and human rights principles and objectives. This is an essential point to address. In the absence of compatibility between the capability approach and the international human rights regime, applying a capability lens to the

[863] Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 29.
[864] As explained in chapter seven, a capability application is one that operationalises the broad principles of the capability approach for a particular purpose. In this case, the purpose is to guide the design of legal empowerment programming to facilitate the implementation of Standard IPV Legislation.

design of legal empowerment would unlikely assist states with their international human rights law compliance. As outlined in Part One, achieving such compliance is a key reason for the implementation of Standard IPV Legislation in many jurisdictions. If the capability approach and human rights did not neatly align, using a capabilities lens to facilitate the implementation of Standard IPV Legislation might make it difficult for Focus Countries (which are, by definition, aid-dependent) to obtain the funding necessary to undertake facilitative legal empowerment programming.

Having established the high-level compatibility of the capability approach and human rights, this chapter goes on to conceptualise Standard IPV Legislation and legal empowerment programming from a capabilities perspective. It positions them as complementary (positive) conversion factors, favourable to the achievement of valuable capabilities by IPV survivor/victims. It suggests that legal empowerment programming can simultaneously help to counteract negative conversion factors, being those that problematise the achievement of valuable capabilities by IPV survivor/victims.

This chapter goes on to address the matter of capability selection. If a capability application is going to be used effectively in the design of legal empowerment initiatives, appropriate and valuable capabilities on which to focus will need to be selected in each context in which it is being deployed. Drawing on the Solomon Islands case study featured in this thesis, I demonstrate and defend a process for capability selection and outline how that process can be adapted for use in any given context.[865] I argue that through the process of capability selection the priorities, interests and lived experiences of unheard women generally, and IPV survivor/victims specifically, can be brought firmly into view. I suggest that the potential for legal empowerment programming to effectively 'stitch' together law and community will depend in part on the selection of the optimal capabilities for focus.

The final section of this chapter specifically addresses the ways in which applying a capabilities lens to legal empowerment design can help to ameliorate the barriers to programming identified in chapter four, which arose from perceptions that the claims of human rights to universalism are false, an (over)emphasis in programming on gender equality and individualism, and a perceived failure to adequately account for broader social, cultural, and economic factors might undermine efforts to reduce IPV.

[865] This thesis uses the state of Solomon Islands as a case study. However, it may be that the optimal capabilities of focus will vary in different geographical parts of Solomon Islands, or in different sub-communities (such as communities with high levels of disability). The process for capability selection set out in this thesis can be undertaken in a community of any size.

Human rights and capabilities

If a capability application is to enhance the effectiveness of legal empowerment programming to facilitate the implementation of Standard IPV Legislation it is essential that it is compatible with the international human rights law framework and the principles that inform it. As set out in chapter one, all states around the world have obligations under international law to take steps to reduce IPV and a core step the majority of states take in order to fulfill those obligations is to implement Standard IPV Legislation. There is no reason to think this will change any time soon.

There is extensive literature bringing together capabilities and human rights.[866] While it has long been suggested that the relationship between the two remains underexplored,[867] there appears to be broad consensus as to their compatibility. Sen argues that human rights and capabilities are complementary but distinct concepts, and that human rights can be viewed as entitlements to specific capabilities.[868] Nussbaum identifies her capability application as a 'species' of human rights approach[869] and, more broadly, argues that 'capabilities are complementary to and augment…human rights.'[870] Robeyns suggests it is unsurprising that many scholars and practitioners are interested in both the human rights framework and the capability approach given the synergies and overlaps between the two.[871] Vizard and, separately, Fukuda-Parr draw attention to the fact that capabilities and human rights share common commitments and motivations.[872]

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[866] See, for example, Amartya Sen, 'Human Rights and Capabilities' (2005) 6(2) *Journal of Human Development* 151; Caroline Sarojini Hart and Nicolas Brando, 'A Capability Approach to Children's Well-being, Agency and Participatory Rights in Education' (2018) 53 *European Journal of Education* 293; Polly Vizard, 'The Capability Approach and Human Rights' in Enrica Chiappero-Martinetti, Mozaffar Qizilbash and Siddiqur Osmani (eds), *The Cambridge Handbook of the Capability Approach* (Cambridge University Press, 2020) 624; Martha Nussbaum, 'Capabilities, Entitlements, Rights: Supplementation and Critique' (2011) 12(1) *journal of Human Development and Capabilities* 23; Martha Nussbaum, 'Capabilities and Human Rights' (1997) 66(2) *Fordham Law Review* 273; Linda Barclay, 'The Importance of Equal Respect: What the Capabilities Approach Can and Should Learn from Human Rights Law' (2016) 64(2) *Political Studies* 1; Robin West, 'Rights, Capabilities, and the Good Society.' (2001) 69(5) *Fordham Law Review* 1901; Sakiko Fukuda-Parr, 'The Metrics of Human Rights: Complementarities of the Human Development and Capabilities Approach' (2011) 12(1) *Journal of Human Development and Capabilities* 73 ('The Metrics of Human Rights'); Pablo Gilabert, 'The Capability Approach and the Debate Between Humanist and Political Perspectives on Human Rights. A Critical Survey' (2013) 14(4) *Human Rights Review* 299; Katharine Gelber, 'Capabilities and the Law' in Enrica Chiappero-Martinetti, Mozaffar Qizilbash and Siddiqur Osmani (eds), *The Cambridge Handbook of the Capability Approach* (Cambridge University Press, 2020) 643.

[867] Bernard Williams, 'The Standard of Living: Interests and Capabilities' in *The Standard of Living* (Cambridge University Press, 1987) 94, 100; Nussbaum, 'Capabilities and Human Rights' (n 866) 273; Vizard (n 866) 639.

[868] Sen, 'Human Rights and Capabilities' (n 866) 152–155.

[869] Nussbaum, *Creating Capabilities: The Human Development Approach* (n 781) 62.

[870] Martha C Nussbaum, 'Capabilities, Entitlements, Rights: Supplementation and Critique' in Thom Brooks (ed), *Justice and the Capabilities Approach* (Routledge, 2012) 173, 173.

[871] Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 160–161.

[872] Polly Vizard, Sakiko Fukuda-Parr and Diane Elson, 'Introduction: The Capability Approach and Human Rights' (2011) 12(1) *Journal of Human Development and Capabilities* 1, 1; Fukuda-Parr (n 866) 73.

In a review of the literature from 2020, Vizard identifies three key ways in which we see capabilities and human rights being used to inform and extend each other.[873] Firstly, she notes that the capability approach has been harnessed for the purposes of international human rights assessment, evaluation and/or monitoring, with the concept of 'capabilities' forming the informational space in which to determine whether or not human rights are, in fact, realised or realisable.[874] The second common way in which we see human rights and capability theory being brought together, Vizard suggests, is through the use of the notion of 'capability' to inform the development of a normative theory of human rights.[875] Finally, Vizard suggests, various scholars have outlined the different ways in which human rights can help to facilitate capability expansion.[876]

For the purposes of this thesis I am bringing human rights and capabilities together in an effort to optimise the effectiveness of Standard IPV Legislation in Focus Countries. Legal empowerment strategy and programming designed by reference to a capability application should be context-specific and address the common barriers to rights-based programming identified in chapter four. They should also be easily translatable into human rights terms to ensure they remain appealing to funders and programmers working in the space.

Using the language of capabilities to reduce ideological barriers and provide fertile ground for operationalisation

A capabilities application to guide legal empowerment development should ask designers to conceive of legal empowerment strategy and programming from a capabilities perspective and to use and communicate in the language of capabilities rather than rights where appropriate. To be clear, using the language of capabilities in this context does *not* mean using technical terms, like 'capabilities', 'functionings' and 'conversion factors.' Rather, it means focusing on what people are able to be and do, what they are *unable* to be and do, what barriers stand in their way and so forth. This can be contrasted with the language of rights, which, at the most basic level, focuses on what people are entitled to expect and demand.[877]

The language of rights, with its widespread moral appeal, was of great significance in having IPV condemned at the global level and to the development of internationally agreed, high-level strategies for its elimination. However, as discussed in chapter four, the language of rights also brings with it

[873] Vizard (n 866).
[874] Ibid section 31.2.
[875] Ibid section 31.3.
[876] Ibid 31.4.
[877] As reiterated several times already, for the purposes of this thesis human rights are understood in their technical legal sense in terms of rights formally recognised under international human rights law.

significant baggage that can give rise to barriers to rights-based programming, particularly in Focus Countries where sensitivity to perceived cultural imperialism by the West is high. This points to the first of three significant advantages of using the language of capabilities rather than rights when designing legal empowerment programming to facilitate the implementation of IPV legislation: it minimises the potential for programming to be hampered by debates about cultural imperialism.[878] The point has been made numerous times that the language of rights is perceived in some contexts as being a cultural product of the West associated with ongoing Western domination.[879] Unlike the language of rights, the language of capabilities is not strongly associated with a particular cultural tradition.[880] Speaking of what people are able to be and do, rather than their 'rights,' is unlikely to be met with the same level of scepticism.

The second advantage of using the language of capabilities arises from the fact that it is practical, broad and readily lends itself to operationalisation. A suggested above, while the theoretical literature relating to the capability approach can be complex and dense, when seeking to operationalise it the questions to be addressed are ultimately very simple: what (valuable) things are people able to be and do? What (valuable) things are they *unable* to be and do? What stands in the way of them being and doing those things? What might they need in order to be and do those things? As Nussbaum suggests, the language of capabilities is concrete, close to the ground and practical.[881]

The third, and related, key advantage of using the language of capabilities rather than rights in the context of legal empowerment programming relates to its relative expansiveness. For the purposes of this thesis, human rights are considered largely from a technical, legal perspective, in terms of rights formally recognised under international human rights law.[882] Recognition of a right – such as the right to life, or the right to equality and non-discrimination – says nothing about the extent to which those

[878] That the notion and language of rights may be met with suspicion/are commonly perceived as being cultural products of the West has been discussed by various scholars including Nussbaum and Robeyns. See Nussbaum, 'Capabilities, Entitlements, Rights: Supplementation and Critique' (n 870) 180; Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 165 respectively.

[879] See, for example, Nussbaum, 'Capabilities, Entitlements, Rights: Supplementation and Critique' (n 870) 180; Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 165.

[880] Nussbaum, 'Capabilities as Fundamental Entitlements: Sen and Social Justice' (n 805) 39. It is important to note that Nussbaum, among others, denies that the language of rights is, in fact, exclusively linked to Western ideas and ideals but nonetheless acknowledges that this is a common (mis)conception. Using the language of capabilities instead of rights, she suggests, allows us to avoid 'even…the appearance of privileging a Western idea.'

[881] Nussbaum, 'Capabilities, Entitlements, Rights: Supplementation and Critique' (n 870) 179.

[882] There is longstanding debate about whether or not human rights are pre-political. See, for example, Charles R Beitz, *The Idea of Human Rights* (Oxford University Press, Incorporated, 2011); James Griffin, *On Human Rights* (Oxford University Press, 2008). For the purposes of this thesis, rights are considered to be (in the words of Nussbaum) 'artifacts of laws and institutions:' Nussbaum, 'Capabilities, Entitlements, Rights: Supplementation and Critique' (n 870) 174.

things are in fact reasonably attainable on the ground. Discussing capabilities, on the other hand, necessarily involves talking about whether a person has the real opportunity to be and do certain things – like live a healthy life or live life free from discrimination. This allows for the identification of what factors (conversion factors in the language of capabilities) might assist or, conversely, inhibit, a person from being and doing the things that allow them to live a life they have reason to value.

Standard IPV Legislation and legal empowerment programming as positive conversion factors

If we are to use the language and conceptual framework of capabilities when designing and rolling out legal empowerment strategy and programming to implement Standard IPV Legislation it is useful to first envisage both the programming and the legislation from a capabilities perspective.

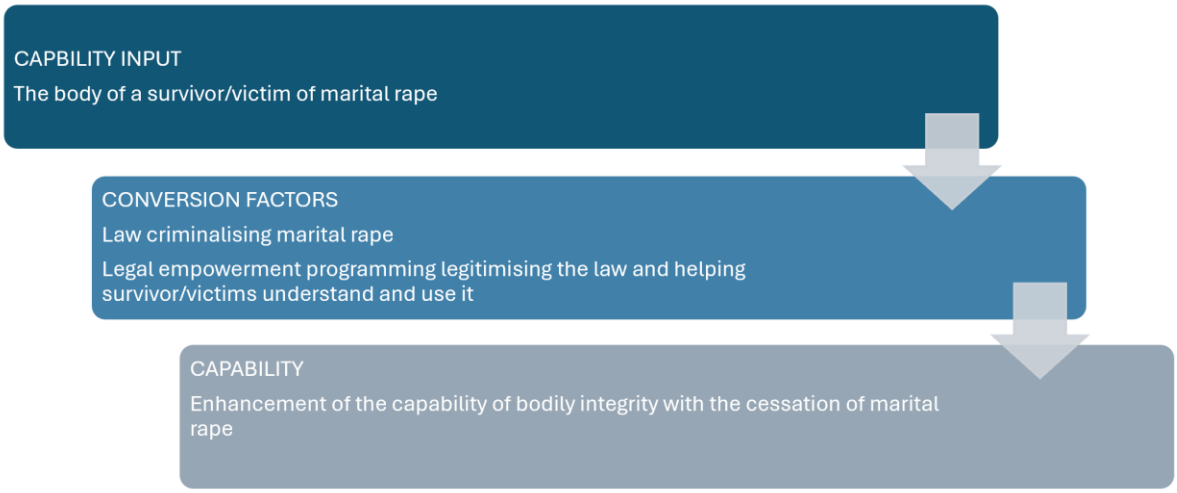
As outlined in chapter seven, the notion of conversion factors is central to the capability approach and is a key way in which it takes human diversity into account. Conversion factors are those that impact on the extent to which a person can transform a resource or capability input into a capability and subsequently (if a person so chooses) into a functioning.[883] Diagrammatically, this generic transformational process can be depicted as follows:

As foreshadowed in the previous chapter, a capability application to guide the design of legal empowerment programming should emphasise capabilities rather than functionings. This emphasis respects an individual survivor/victim's agency and allows her control over decision making. If capabilities rather than functionings are the key focus of a particular capability application, then it is

[883] Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 45. Note that her precise definition is 'the factors which determine the degree to which a person can transform a resource into a functioning.' Elsewhere in the same analysis, however, Robeyns uses the terms input and resource interchangeably.

only the first three components of the above diagram that will be addressed by it. Those components are capability inputs/resources, conversion factors and capabilities.

In chapter seven I explicitly noted that law (along with public policies, social norms and so forth) can be characterised as a social conversion factor. I used the example of the common law in Solomon Islands to illustrate the point. Prior to the legal recognition of marital rape (when marriage was seen as permanent consent on the part of a woman to sexual intercourse with her husband) the law was a conversion factor that made it more difficult for women to achieve the capability of bodily integrity. After the legal recognition and criminalisation of marital rape the law became a conversion factor that enhanced a woman's ability to achieve bodily integrity. However, in order for a survivor/victim to effectively use the law as a positive conversion factor, she must understand and know how to use it. She must also see it as a legitimate option for obtaining relief from violence.[884] This is where legal empowerment programming comes in, acting as another conversion factor that works in tandem with, and complements, the law itself. Again using the example of the capability of bodily integrity and the law criminalising marital rape:[885]



Of course, in this example the law and legal empowerment programming will not be the only conversion factors impacting on the ability of the survivor/victim to achieve the capability of bodily integrity. Moreover, not all conversion factors will be positive. A capability approach to program design should prompt the identification and redress of *negative* conversion factors, or factors that might act as barriers to survivor/victims using Standard IPV Legislation. Take, for example, customary

[884] The exception to this is where the law acts as a deterrent to perpetrators. In this instance it may act as a positive conversion factor whether or not a woman is aware of its existence and/or is able to use it.
[885] This analysis is sufficient to demonstrate my point. However, there are some obvious assumptions at play here, including that the law in question is effective, enforceable and enforced. It also goes without saying that the body of a survivor/victim will not be the only input that assists with the achievement of the capability of bodily integrity.

compensation in Solomon Islands as discussed in chapter five. That chapter demonstrated that resistance to the use of the FPA arose as a result of a (mis)understanding by some that use of the legislative framework precluded the payment of customary compensation and customary reconciliation practices more broadly. This (unfounded) belief acted as a negative conversion factor, discouraging use of the law by survivor/victims, in turn decreasing its effectiveness. In this context, legal empowerment programming might be used to clarify that use of the law and use of customary reconciliation practices are not (necessarily) mutually exclusive.

As outlined above, a capability application for the design of legal empowerment strategy and programming should prompt an assessment of the extent to which Standard IPV Legislation can enhance the valuable capabilities of IPV survivor/victims in a particular context. It should also prompt an assessment of what valuable capabilities might be put at risk when a survivor/victim uses systems established by Standard IPV Legislation to obtain protection from violence. Before such assessments can be carried out, however, the capabilities considered valuable in a given context must first be identified. It is to the matter of capability selection that I now turn.

Selection of core capabilities

In the previous chapter I suggested that the capabilities approach was of significant appeal to those working in the gender justice space in part because of its recognition of the plurality of capabilities leaves space for the development of capability applications that focus on beings and doings of particular relevance in the pursuit of gender justice and the reduction of GBVAW. In what follows I address the question of what capabilities should be of focus for a capability application intended to guide the design of legal empowerment strategy and programming to facilitate the implementation of Standard IPV Legislation. Recognising that the answer to this question may differ from context to context, I propose and defend an adaptable process for capability selection. I use the Solomon Islands case study as an example and compile a list of capabilities I suggest should be of focus for legal empowerment programming in that jurisdiction (**Core Solomon Islands Capabilities**).[886] I then outline how the process can be adapted in order to select capabilities of focus in other settings.

It is useful at this stage to distinguish between 'legal capabilities' (as recently critically analysed by Habbig and Robeyns and, separately, Watkins) and other (non-legal) capabilities that might be

[886] As indicated above, it may be that these capabilities need to be amended/adapted in different parts of Solomon Islands/for different community groups. While not within the scope of this PhD, testing selected capabilities in context would be ideal.

expanded or contracted by engagement with Standard IPV Legislation.[887] While the scope of the concept of 'legal capabilities' remains debated, it broadly refers to the (cap)abilities a person requires in order to deal effectively with legal problems.[888] This might include, for example, the ability to read legal documents as well as the opportunity to access the legal documents that need to be read in order to deal with a particular legal problem. Such capabilities can be distinguished from those that might be unrelated to direct access to the law and legal system but are impacted positively or negatively by engagement with that system. Returning to the story of Bareth and her abusive husband Junior from chapter seven provides an example: while religious freedom is not a capability Bareth requires to access the law, her choice to access it will mean she has to leave her church. As such, use of the law negatively impacts her capability of religious freedom. It is the capabilities that might be expanded or contracted by engagement with Standard IPV Legislation (rather than 'legal capabilities') that are of the most relevance to this thesis.

Ultimately, it is suggested that the capabilities of focus for a capability application intended to facilitate the implementation of Standard IPV Legislation should be those that, in context, add positively to the lives of IPV survivor/victims and:

- Are negatively impacted by IPV; and/or
- Could be achieved or enhanced by the use of Standard IPV Legislation; and/or
- Are at risk of contraction by use of Standard IPV Legislation.

Front of mind in the process of capability selection should be the question of which capabilities are relevant to the amelioration of barriers to rights-based programming (including, where applicable, those initially identified in chapter four and addressed again below).

In order to identify the Core Solomon Islands Capabilities, and taking account of insights from the literature, I developed a six-step process for capability selection. My full methodology (which draws on methodologies developed by Robeyns, Byskov and Vizard)[889] is set out in Annexure 4. In what follows I provide an overview of its six key steps. As indicated below, while it was beyond the scope of

[887] Ann-Katrin Habbig and Ingrid Robeyns, 'Legal Capabilities' (2022) 23(4) *Journal of Human Development and Capabilities* 611; Dawn Watkins, 'Reimagining the Relationship between Legal Capability and the Capabilities Approach' (2021) 5(1) *International Journal of Public Legal Education* 4.
[888] Habbig and Robeyns (n 887); Watkins (n 887) 5.
[889] Robeyns, 'Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities' (n 851); Byskov, 'Methods for the Selection of Capabilities and Functionings' (n 811); Polly Vizard, 'Specifying and Justifying a Basic Capability Set: Should the International Human Rights Framework Be given a More Direct Role?' (2007) 35(3) *Oxford Development Studies* 225.

this PhD thesis, I suggest that where resources permit a seventh step should also be undertaken, which involves community debate and discussion of a proposed capability list.

The first step in selecting the Core Solomon Islands Capabilities was to identify the main capabilities the international human rights law framework seeks to protect or enhance. As has been repeatedly emphasised, the purpose of this thesis is not to argue for or against the implementation of Standard IPV Legislation, but to contribute to the optimisation of its effectiveness as and when it is implemented. As such, it is important to consider the capabilities that are intended to be directly and obviously enhanced or protected by use of Standard IPV Legislation and the international human rights law regime. To identify relevant capabilities I looked at the types of violence addressed by key international instruments: physical, psychological, sexual and economic. I then mapped those types of violence against capabilities by identifying the key capabilities that are put at risk when a survivor/victim is subjected to one or more of the relevant types of IPV. Carrying out step one resulted in the identification of seven capabilities of potential focus: bodily integrity; life; physical health; mental health; self-sufficiency/autonomy/independence; control over material environment; paid work/employment.

Because the first step in capability selection was to translate the types of IPV targeted under international human rights law into capabilities, it did not consider capabilities that might be overlooked in mainstream human rights programming. The second step in the process of capability selection sought to remedy this by mapping capabilities against the concerns and criticisms identified in chapter four that can give rise to barriers to rights-based programming, particularly in Focus Countries. It is through this step that the perspectives and priorities of unheard women begin to emerge. A further five potential capabilities of focus were identified at this stage: religious freedom; cultural freedom; affiliation with family; affiliation with community; being respected and treated with dignity (including in relation to religious and cultural choices).

The third step in the process of selecting the Core Solomon Islands Capabilities was to consider the list of preliminary capabilities (being those identified as a result of steps one and two) in light of the contextual particularities of Solomon Islands. As stated in chapter three, the FPA defines domestic violence (of which IPV is the most common form) to include physical, sexual, psychological and economic violence. As these are the same types of violence at which the international human rights law regime is directed, the preliminary capabilities identified in step one were deemed appropriate in this context.

As demonstrated in the detailed analysis in chapter five, the barriers to rights-based programming identified in chapter four do arise, to greater and lesser extents, in the context of the implementation

of the FPA in Solomon Islands. This supports the inclusion of the capabilities identified in step two in the context of Solomon Islands.

Finally, this third step considered whether there were any additional capabilities that required inclusion in the case of Solomon Islands specifically. Data from fieldwork indicated the importance of ensuring the (cap)ability to look after children and other dependents was incorporated, whether stand-alone or as a component of family and social relations or standard of living. This is because the inability to care for dependents in the absence of financial support from a perpetrator was repeatedly identified as a barrier to taking steps to escape violence, including by using the FPA.

Step four in the process of capability selection was to compare the preliminary list developed after undertaking steps one to three (above) with other defensible and justifiable capability lists. Specifically, the preliminary capabilities were compared with Robeyns' list of capabilities for the conceptualisation and assessment of gender equality in Western societies,[890] Nussbaum's list of ten 'central capabilities,'[891] and Burchardt and Vizard's list of capabilities to monitor human rights implementation in England and Wales.[892] Lists chosen for comparative purposes met three basic criteria: they were developed by prominent and respected capabilitarians; the methodology for their selection was publicly articulated and defended by those capabilitarians; and there is some overlap between the purposes at hand (being the effective implementation of IPV legislation) and the purposes for which the comparative lists were drawn up.[893]

By comparing my preliminary list of capabilities with other capability lists I identified the extent of overlap and, where appropriate, drew on the existing lists to refine the conceptual scope of selected capabilities and/or the terminology used in respect of those capabilities. This comparative process also allowed for consideration of whether any significant capabilities likely to be contracted and/or expanded by engagement with the legislative framework had been overlooked. While this step resulted in the identification of an additional three capabilities (domestic and non-market care, practical reason and legal security), for the reasons discussed in the detailed methodology for capability selection appearing at Annexure 4 it was determined that the relevance of those capabilities could be addressed without including them as stand-alone beings and doings.

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[890] Robeyns, 'Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities' (n 851) 76.
[891] Nussbaum, *Creating Capabilities: The Human Development Approach* (n 781) 33.
[892] Tania Burchardt and Polly Vizard, '"Operationalizing" the Capability Approach as a Basis for Equality and Human Rights Monitoring in Twenty-first-century Britain' (2011) 12(1) 91, 97 with elaboration in Appendix 1; Vizard (n 889).
[893] Each of the lists selected for comparison was developed for evaluation and assessment of gender equality and/or in the pursuit of gender justice and/or for the purpose of human rights implementation and monitoring.

The fifth step in the process of capability selection was to articulate the definitions of those that had been identified as Core Solomon Islands Capabilities and expressly note the ways in which they might be expanded or contracted as a result of IPV and/or engagement with Standard IPV Legislation. This step resulted in the development of **Table 3** (below).

Table 3. Core Solomon Islands Capabilities

Capability	Description	Connection to IPV/engagement with Standard IPV Legislation
Life	Being able to live a life of normal length and not dying prematurely.	Physical IPV can result in the death of a victim. IPV legislation invariably seeks to protect the capability of life by reducing physical violence in intimate relationships.
Bodily integrity and safety	Being secure against personal and domestic violence including physical and sexual assault.	Physical and sexual IPV is a breach of bodily integrity that endangers the victim physically and mentally. Standard IPV Legislation invariably seeks to protect the capability of bodily integrity and safety by reducing physical and sexual violence in intimate relationships.
Physical health	Being able to live life in good physical health.	Physical and sexual IPV in particular can result in physical injury and/or disease. IPV legislation invariably seeks to protect or enhance the capability of physical health by reducing physical and sexual violence in intimate relationships that might result in injury or disease.
Mental health	Being able to live life with good mental health.	Psychological IPV can result in a reduction in the capability of good mental health of IPV survivor/victims. Fear or anxiety arising because of anticipated IPV in any form can also result in a reduction in the capability of good mental health. IPV legislation that includes psychological or mental IPV within its ambit directly seeks to protect the capability of mental health.
Family and social relations	Being able to enjoy fulfilling relationships with family and community, including communities of one's own choosing.	A review of the literature and fieldwork in Solomon Islands suggests that a barrier to using legislative frameworks to escape IPV and enhance capabilities of bodily health and integrity and mental health is concern about impact on family and community relations. Minimising contraction of the capability of family and social relations will help to ameliorate this barrier.
Religious freedom	Being able to live according to a religion of choice, or not live according to religion at all; To have religious choices treated with respect by others.	A review of the literature and fieldwork in Solomon Islands suggests that a barrier to using legislative frameworks to escape IPV and enhance capabilities of bodily health and integrity and mental health is concern about negative implications for religious practice and

		communities. Minimising contraction of the capability of religious freedom will help to ameliorate this barrier.
Cultural freedom	Being able to embody the cultural identity of choice including engaging in cultural practices alone and/or in community with others; To have cultural choices treated with respect by others.	A review of the literature and fieldwork in Solomon Islands demonstrates that a barrier to using legislative frameworks to escape IPV and enhance capabilities of bodily health and integrity and mental health is concern about negative implications on cultural freedom and engagement. Minimising contraction of the capability of cultural freedom will help to ameliorate this barrier.
Standard of living	Being able to achieve and maintain a comfortable standard of living for oneself and dependents, including having physiological needs met (through access to food, water, shelter, warmth and clothing); Being able to live with independence and control over personal spending and living arrangements.	Economic violence can result in victims being unable to achieve a comfortable standard of living due to economic abuse. A review of the literature and fieldwork in Solomon Islands also suggests that a barrier to escaping IPV relates to the lack of independent ability to achieve and maintain a comfortable standard of living, both for the self and for dependents.

The sixth and final step in the process of selecting the Core Solomon Islands Capabilities was to review the preliminary list and assess it for compatibility with the international human rights law framework. Again, the alignment of proposed capabilities of focus and the international human rights law framework is essential if a capability application based on them is to help states to implement legislation in a way that assists them in meeting their obligations under international law. This sixth step involved identifying ways in which the promotion of the Core Solomon Islands Capabilities might come into conflict with international human rights law. As a result of this step, it was noted that there is potential for significant tension between the capabilities of religious and cultural freedom and fundamental human rights principles that support the reduction of IPV. It is well recognised in the literature that cultural and religious justifications have historically contributed to ongoing violence against women.[894] As discussed in chapters three and five, cultural and religious justifications have commonly been used to excuse IPV in the context of Solomon Islands. Instruments of international

[894] By way of example only see Nussbaum, *Women and Human Development: The Capabilities Approach* (n 794) chapter 1 in particular; Sally Engle Merry, *Gender Violence: A Cultural Perspective* (Wiley-Blackwell, 2009); Manjoo, 'Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences Developments over the Last 20 Years' (n 99); Shaina Greiff, *No Justice in Justifications: Violence against Women in the Name of Culture, Religion, and Tradition* (March 2010).

human rights law consistently and explicitly prohibit the justification or defence of acts of GBVAW on religious or cultural grounds.[895]

Ultimately, a capability application to facilitate the implementation of Standard IPV Legislation should prioritise the elimination of IPV over the protection or expansion of other capabilities where efforts aimed at such protection or expansion would result in a conflict with international human rights law. To do otherwise would be to jeopardise the compatibility of programming designed by reference to a capabilities-informed framework and international human rights law. In relation to the Core Solomon Islands Capabilities, for example, the elimination of IPV is prioritised over unfettered cultural or religious freedom.

As previously stated, this thesis focuses primarily on optimising the effectiveness of Standard IPV Legislation in the short term and enhancing its effectiveness as a *secondary* prevention measure. Nonetheless, a capability approach to IPV reduction should prompt consideration of whether legal empowerment programming might support primary prevention initiatives by challenging religious and cultural beliefs that facilitate ongoing violence. In the context of Solomon Islands, for example, this might include inviting communities to interrogate the common belief (discussed in chapter five) that men have a right to discipline their wives through violence.

At this stage, it is worth briefly addressing how the process of capability selection outlined above constitutes a mixed-method approach. Such an approach seeks to mitigate some of the main concerns, discussed in chapter seven, with philosophical/foundational approaches to capability selection on the one hand, and democratic/procedural approaches on the other.

The first step in the process of capability selection (discussed above) draws on the international human rights law framework and the characteristics of Standard IPV Legislation to identify the primary capabilities the international human rights regime seeks to protect or enhance. Here, the selection of capabilities is informed by normative considerations and what Byskov would refer to as a foundational approach based on technical knowledge.[896] When used in isolation, such an approach risks falling foul of the objections from democratic legitimacy and epistemology, both of which are concerned with a

[895] By way of example only see *Convention on Preventing and Combating Violence Against Women and Domestic Violence* (n 107) Arts 12(5) and 42(1); *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* (n 106) Art 8(b); *Beijing Declaration and Platform for Action* (n 2) Paras 118 and 124(k); IWRAW Asia Pacific, *Gender-Based Violence Against Women and International Human Rights Law: Options for Strengthening the International Framework* Arts II(2) and IV(2(d)); United Nations Committee on the Elimination of Violence Against Women, 'General Recommendation No 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19' (n 2) 7, 14, 21, 29(c)(ii) and 34(c).
[896] Byskov, 'Methods for the Selection of Capabilities and Functionings' (n 811) 108.

failure to explicitly or sufficiently take into account the views and priorities of those intended to benefit.[897] The second and third steps of capability selection (outlined above) go some way towards redressing these concerns, by drawing on relevant literature and evidence from the Solomon Islands case study, in turn bringing the perspectives and priorities of unheard women into account. Of course, further progress could be made here. I remain acutely aware that there is no perfect way to select (valuable) capabilities, and in the selection of capabilities for a particular social and cultural context the perspectives of some will undoubtedly be overlooked. While it was not within the scope of this PhD project, I suggest that where resources permit capability selection should involve a seventh step in which the draft capability list compiled as a result of steps one to six (above) is subjected to discussion, debate and potential refinement within relevant communities. Importantly, this should include survivor/victims of IPV. This would provide a further opportunity to ensure the selected capabilities were the most appropriate ones on which to focus in context, and that the perspectives and experiences of those most affected were brought to the fore.[898]

Adapting the process for capability selection in other contexts

I have proposed above a process for capability selection and used the case study of Solomon Islands to demonstrate how this process works in practice. Of course, the Core Solomon Islands Capabilities will not (necessarily) be the optimal ones to prioritise in other settings. Accordingly, I suggest that the process of capability selection be undertaken afresh whenever a capabilities-informed approach is taken to the design of legal empowerment strategy and programming. There are more and less resource intensive ways to do this.

The first option would be to replicate the process outlined above from start to finish. This would allow those responsible for capability selection to make their own determinations about the mapping of both international human rights law and the critiques of it against capabilities. It would also allow them to make their own determinations about which lists to use for comparative purposes.

Whether or not the process for capability selection is replicated in its entirety, it is essential that step three be undertaken anew to ensure selected capabilities are the appropriate ones on which to focus in context. This step will involve examining relevant existing evidence and, where appropriate, collecting new data to determine the key (valuable) capabilities that are likely to be

[897] See Byskov's discussion of the objection from democratic legitimacy and the objection from epistemology: Ibid 109.

[898] As to the importance of public debate and discussion in capability selection see Tania Burchardt and Polly Vizard, '"Operationalizing" the Capability Approach as a Basis for Equality and Human Rights Monitoring in Twenty-first-century Britain' (2011) 12(1) *Journal of Human Development and Capabilities* 91, 95 and; Robeyns, 'Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities' (n 851) 87; Rutger Claassen, 'Making Capability Lists: Philosophy versus Democracy' (2011) 59(3) *Political Studies* 491.

achieved/enhanced and/or contracted as a result of use of the frameworks established by Standard IPV Legislation in a particular jurisdiction.

The amelioration of common barriers to rights-based programming

A key purpose of using a capabilities informed approach to the design of legal empowerment strategy and programming, along with legitimising the law and resolving points of tension between it and valuable social and cultural beliefs, practices and institutions, is to ameliorate the common barriers to rights-based programming identified in chapter four. Those are barriers that can arise as a result of perceptions of the false universalism of human rights, an overemphasis on gender equality and individualism, or a failure to account for broader social, cultural, and economic factors that might undermine efforts to implement Standard IPV Legislation. It is useful to briefly address the relationship between capability selection and barrier amelioration here. Again, this discussion is anchored in the context of the Solomon Islands case study. Not all issues will be relevant in all contexts.

A key claim of critiques of the WRHR Movement, which led to the characterisation of IPV as a human rights issue, was that it made false claims to universalism while in fact privileging the interests, priorities and lived experiences of The (white, Western, middle and upper class, liberal, heterosexual) Heard Woman.[899] A capabilities approach to the implementation of Standard IPV Legislation can redress this criticism by bringing to the fore voices of unheard women broadly and the survivor/victims who might use a particular piece of Standard IPV Legislation specifically. The second and third steps in the process of capability selection outlined above involve the mapping of capabilities against key concerns and criticisms of mainstream human rights discourse identified from a literature review as well as context specific data and evidence. In the case of Solomon Islands, those steps led to the inclusion of four of the eight Core Solomon Islands Capabilities (being family and social relations, religious freedom, cultural freedom and standard of living).

Also identified in chapter four was that the focus on the individual and individual autonomy in mainstream human rights programming often fails to account for the lived realities of many unheard women, particularly those in collectivist contexts.[900] Many such women view themselves in largely relational terms and understand their 'rights' and 'duties' as being closely connected with familial and

[899] See discussion in chapter four.

[900] It is important to note at this stage that the capability approach is ethically individualistic in the sense that individuals are its units of ultimate moral concern. Ethical individualism can be distinguished from ontological individualism, which suggests that (in the words of Alkire) 'all social phenomena can be explained in terms of individuals and their properties.' While the capability approach has been accused of being overly individualistic, such accusations (mis)understand it to be ontologically as well as ethically individualistic. For further discussion see Alkire, 'Using the Capability Approach: Prospective and Evaluative Analyses' (n 784); Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (n 767) 184.

community wellbeing. Where family and social relations is selected as a core capability of focus, consideration needs to be given to how legal empowerment strategy and programming can foster rather than displace valuable social and community institutions and interactions.[901] The ultimate aim is to mitigate negative consequences for the social lives of IPV survivor/victims who engage with frameworks established under Standard IPV Legislation.

It was also noted in chapter four that an overemphasis on the individual, and the pursuit of individualist conceptions such as 'gender equality,' risks alienating both unheard women and the communities in which they live. It also risks undermining other essential aspects of (some) women's identities, perhaps most commonly those that are religious or cultural. Where this is the case, a focus on the capabilities of religious and cultural freedom draws attention to the question of how engagement with Standard IPV Legislation might jeopardise or contract the (cap)ability of IPV survivor/victims to live according to their own choices and preferences in relation to religion and culture, and to have those choices respected by others. As indicated above, where irresolvable conflicts arise between the capabilities of religious and/or cultural freedom and the prohibition of IPV, a capabilities informed application for IPV reduction should prioritise the elimination of IPV and prompt critical engagement with religious and cultural narratives that facilitate ongoing GBVAW.

A capabilities application for the implementation of Standard IPV Legislation should recognise that it is important for women to have the key capabilities such legislation aims to promote and protect, such as life, bodily integrity and safety, physical and mental health. Such an approach should also recognise, however, that these capabilities are not the only ones a person requires to lead a full and valuable life. As a result, it should promote holistic programming that takes a range of economic, social and cultural factors into account.

Finally, chapter four argues that pressing a human rights agenda in Focus Countries can be perceived (rightly or wrongly) as a form of cultural imperialism, in turn giving rise to ideological barriers. Using the language and framework of the capability approach, which is not strongly associated with any particular cultural context, can enhance the perceived legitimacy of Standard IPV Legislation by leaving behind the baggage of human rights. A capability-informed approach to legislative implementation should not rely on notions associated with human rights discourse such as 'gender equality.' Instead, it should ask programmers to enhance the perceived legitimacy of Standard IPV Legislation by looking

[901] An early critique of *Development as Freedom* by Evans argued that it didn't sufficiently account for 'collective capabilities' being capabilities that rely on social interactions. In a convincing rejoinder, Sen disputed the classification of such capabilities as 'collective' suggesting instead that they were appropriately characterised as 'socially dependent individual capabilities:' see Peter Evans, 'Collective Capabilities, Culture, and Amartya Sen's Development as Freedom' (2002) 37(2) *Studies in Comparative International Development* 54; Amartya Sen, 'Response to Commentaries' (2002) 37(2) *Studies in Comparative International Development* 78.

for and emphasising points of compatibility/complementarity with other dominant social and cultural institutions, beliefs and practices

Conclusion

This chapter has pointed to a number of key factors that should be considered in the development of a capability application intended to facilitate the implementation of Standard IPV Legislation in Focus Countries. It has suggested that consideration should be given to using the language of capabilities rather than rights in the development of relevant strategy and programming. It has positioned both the law and legal empowerment programming as positive conversion factors that can work together to enhance the effectiveness and accessibility of Standard IPV Legislation. It has outlined a process for selecting capabilities of focus in a particular context and argued that if legal empowerment strategy and programming are based around such capabilities they have the potential to 'stitch' together law and community and ameliorate common barriers to rights-based programming

Once capabilities of focus have been selected for a capability application intended to facilitate the implementation of Standard IPV Legislation, legal empowerment programming should be designed around those capabilities. Such programming should aim to ensure those capabilities are, to the greatest extent possible, protected and fostered. This will involve considering how relevant capabilities might be impacted (both positively and negatively) by IPV itself, as well as by use of legislative frameworks to obtain protection from IPV.

Having identified capabilities of focus and developed strategies through which legal empowerment programming can protect or enhance those capabilities, attention can turn to the resources needed to support this work. This might include, for example, financial and technical resources, social capital (or the support of those endowed with it), local knowledge and leadership, educational materials and human resources.

This chapter has identified key steps to be taken and matters to be considered if the capability approach is to be operationalised in an application to guide the design of legal empowerment strategy and programming to facilitate the implementation of Standard IPV Legislation. Following the final conclusion of this thesis, I present a concrete example of such an application in the form of the Practitioner's Tool.

Conclusion

In this thesis I have looked at the implementation of Standard IPV Legislation in Focus Countries, which are defined as being aid-dependent, postcolonial nations in which human rights concepts and frameworks remain contested. I have suggested that legal empowerment strategy and programming (or strategy and programming designed to help people shape, understand and use the law) informed by key principles of the capability approach has significant potential to enhance the effectiveness of legislative implementation. I have also proposed a number of key factors that I suggest should be considered in the development of capability applications to provide guidance for the design of such strategy and programming. Immediately following this conclusion, I provide an example of such an application, which I refer to as the Practitioner's Tool.

As outlined in Part One of this thesis, IPV (as the most common form of GBVAW around the world) was recognised by the international community as a human rights issue in the 1990s. As a result, all states around the world are now under an obligation at the international level to take steps to reduce IPV. The recognition of IPV as a human rights issue has clear advantages for those pursuing its elimination, not least of which is the fact that the human rights framework provides an established and recognised mechanism that can be leveraged by advocates to push for state action. It also provides a blueprint for action, which includes as a core component the introduction of Standard IPV Legislation. The discourse of human rights provides a focus for inter- and trans- national advocacy and a language through which discriminatory customs, norms and laws can be challenged.

But that is not the end of the story. As discussed in Part Two of this thesis, the characterisation of IPV as a human rights issue also brings with it significant baggage, particularly in postcolonial settings where sensitivity to any form of cultural imperialism is likely to be high and human rights concepts are often viewed as cultural products of the West. In many Focus Countries, key concepts and principles underpinning the international human rights law framework and discourse also fail to align with the perspectives and lived realities of those on the ground. The focus on the (liberal) individual in mainstream human rights theory and programming is at odds with the relational sense of self that dominates in many Focus Countries. The notion of gender inequality (identified in human rights discourse as a key underlying driver of IPV) does not sit neatly alongside gender essentialist notions that continue to dominate in many Focus Countries.

The tension between recognition of IPV as a human rights issue and the lived realities and perspectives of many of those living in Focus Countries matters because it can result in practical and ideological barriers to rights-based programming to facilitate the implementation of Standard IPV Legislation. In

many Focus Countries, the vast majority of financial and technical support for such legislative implementation comes from high-income Western nations (like Australia, Canada and Sweden) that favour rights-based approaches to the reduction of violence. While the need to contextualise programming is recognised in and by the development community, serious questions remain about the best way to do this.

This thesis used the case study of the development, passage and implementation of the FPA in Solomon Islands to examine how the strengths and weaknesses of the conceptualisation of IPV as a human rights issue might impact the implementation of Standard IPV Legislation in practice.

Australia provided the majority of technical and financial support for the development and implementation of the FPA, either directly or through multilateral or civil society organisations. Evidence suggests that key advocates for state action to reduce IPV in Solomon Islands were heavily influenced by international human rights discourse and that the blueprint for state action provided by the international human rights law framework was closely followed in Solomon Islands, at least in so far as legislative responses to violence are concerned. Interviews with key informants also demonstrate that advocates and activists were themselves empowered by engagement with human rights ideas and concepts, and that they leveraged the commitments of the Solomon Islands Government under international law to push for the development and passage of the FPA.

The Solomon Islands case study supports the arguments identified in Part One of this thesis as to the benefits of the international human rights law regime for those seeking the reduction of IPV. However, the theoretical concerns in relation to human rights-based approaches, identified in chapter four of this thesis, did indeed play out in practice in relation to the introduction of the FPA in Solomon Islands – though in varying ways and to greater and lesser extents.

The first concern identified in chapter four was that while proponents of human rights claim them to be universal, in fact they are a cultural product of the West that privileges the priorities, interests and experiences of The (white, Western, middle and upper class, liberal, heterosexual, biological) Heard Woman and overlooks those of unheard women across the globe. Accordingly, the implementation of donor-funded rights-based approaches to IPV reduction can be perceived as a form of cultural imperialism. The Solomon Islands case study provided many examples of ideological objections to human rights-based approaches to IPV reduction, both from legislators with responsibility for the passage of the FPA and from the community more broadly. The case study therefore allowed for an examination of how such objections can arise, as well as how they might be redressed.

The second concern about rights-based programming identified in chapter four related to the almost ubiquitous promotion of gender equality in efforts to reduce IPV. Data from Hansard and interviews with key informants clearly show that the notion of gender equality continues to have little resonance for many in Solomon Islands, a country in which ideas of gender essentialism remain strong. This suggests that promotion of the concept of 'gender equality' in programming which has as its aim the immediate implementation of the FPA is likely to be of little help. To the extent that programming requires people to be receptive to the idea that IPV is an unacceptable form of gender inequality before they consider whether the FPA is an appropriate avenue to seek protection from violence, it may even be counterproductive.

The third theoretical concern identified in chapter four of this thesis was that mainstream human rights programming focuses too heavily on individual rights and autonomy, and fails to take into account the perspective and experiences of those who live in (more) collectivist contexts. Solomon Islands provides a clear example of a context in which understandings of individual identity are often closely tied to social connections and relationships. This has implications for efforts to facilitate the implementation of the FPA. Evidence from parliamentary Hansard and interviews with key informants suggest that IPV is considered a wrong not just against an individual IPV survivor/victim but against her natal family. This is not addressed by the FPA, which is firmly focused on individual perpetrators and survivor/victims. Evidence suggests that the legitimacy of the FPA as an avenue for seeking protection from violence will be enhanced if it is made clear to the community that it can work alongside other mechanisms that seek to restore social harmony more broadly.

Finally, it was suggested in chapter four that human rights discourse and programming directed at the reduction of GBVAW that focuses too heavily on bodily autonomy and fails to adequately consider related economic, social and cultural factors is likely to be ineffective. Through a discussion of the practices of customary reconciliation and bride-price payment in Solomon Islands (see chapter five) I demonstrated the very real consequences that can arise for survivor/victims when their social, cultural and economic contexts are not taken into account in efforts to implement the FPA. I also demonstrated that these consequences can give rise to barriers to legislative implementation.

Read together, the first two parts of this thesis established the key question it addressed: how practical and ideological barriers to the use of Standard IPV Legislation can be reduced in Focus Countries, in turn enhancing the effectiveness and accessibility of such legislation. Part Three of this thesis proposed a way forward that seeks to ameliorate barriers while at the same time capitalising on the advantages of the international human rights law framework. It argued that community-facing legal empowerment

programming provides a promising vehicle through which to facilitate the implementation of Standard IPV Legislation. However, I argued that if it is to be effective, it needs to do two (related) things:

1) Ensure that Standard IPV Legislation is understood by survivor/victims and their broader communities as being a legitimate avenue through which to pursue protection from violence; and
2) To the greatest extent possible, resolve points of tension between use of the statutory framework and other valued and valuable social and cultural institutions, practices/beliefs.

This thesis went on to consider whether legal empowerment programming can help to ensure these aims are achieved and, if so, what guiding principles will help ensure it does so as effectively as possible. It noted that many legal empowerment scholars claim to be inspired by the work of Amartya Sen, but that the existing literature does not explore the connection between Sen's capability approach and legal empowerment in any detail. The third part of this thesis undertook such an exploration, considering how key principles of the capability approach could be employed in the design of legal empowerment programming.

Ultimately, this thesis argued that the capability approach has significant potential to inform the design of legal empowerment programming to facilitate the implementation of Standard IPV Legislation in Focus Countries and that a key aspect of its appeal lies with the fact that it takes into account both human diversity and human complexity. This allows for the interests, priorities and lived experiences of IPV survivor/victims to be identified in context, and for the resolution of tensions between those priorities and lived experiences and the use of legislative frameworks for IPV reduction. It also allows for the identification and redress of negative consequences in the broader lives of survivor/victims that might flow from using Standard IPV Legislation to obtain protection from violence.

This thesis has argued that the capability approach holds great promise for those responsible for the design of community-facing legal empowerment strategy and programming, as well as donors and policy makers interested in the effective implementation of Standard IPV Legislation in Focus Countries. Capability applications designed for this purpose could take a range of forms. Immediately following this conclusion I provide a concrete example in the Practitioner's Tool.

The Practitioner's Tool reflects the key learnings from this thesis and in that sense is its conclusion. However, it also represents a starting point. Further testing with survivor/victims would strengthen the tool and identify unforeseen consequences of its use. Further research would also be needed to address more complex notions of gender and sexuality. For reasons outlined in its introduction, this thesis has focused specifically on survivor/victims who are biological women in heterosexual

relationships. However, the recognition of the capability approach of human diversity and human complexity suggests its reasoning could extend to the development of applications directed towards other groups, including those whose members identify as lesbian, gay, queer, bisexual or transgender.[902]

This thesis opened with a quote from UN Secretary-General Antonio Guterres, who suggested that the right policies and programs could result in the elimination of gender-based violence against women and girls, of which intimate partner violence is the most widespread form. This thesis makes a modest contribution to that aim, proposing a way in which the effectiveness of the globally dominant approach of introducing Standard IPV Legislation might be enhanced in diverse social, cultural and economic settings.

[902] Further research in relation to the bi- and trans-sexual communities is particularly pressing given the fact that IPV is disproportionately high within them: Susan C Turell, Michael Brown and Molly Herrmann, 'Disproportionately High: An Exploration of Intimate Partner Violence Prevalence Rates for Bisexual People' (2018) 33(1–2) *Sexual and Relationship Therapy* 113; Sarah M Peitzmeier et al, 'Intimate Partner Violence in Transgender Populations: Systematic Review and Meta-Analysis of Prevalence and Correlates' (2020) 110(9) *American Journal of Public Health* e1.

Practitioner's Tool: The Capabilities Framework

This tool is informed by the research and analysis laid out in the substantive chapters of this thesis, but is expressed in a simplified, clear and accessible manner. It is intended to provide those involved in the planning of legal empowerment with an understanding of the broad concepts involved in taking a capabilities-informed approach to program design and delivery. This broad overview can be built on and adapted in different contexts and for different purposes.

Introduction to the Practitioner's Tool

What is the Practitioner's Tool?

The Practitioner's Tool in intended to guide the design of strategy and programming to help IPV survivor/victims understand and use the law to obtain protection from violence. Such strategy and programming is referred to as Legal Empowerment Strategy/Programming.

Effective and enforceable laws can help to make sure IPV survivor/victims receive protection from ongoing violence, and the negative consequences that flow from it. However, the law will do little to contribute to the reduction of IPV if it isn't accessible to survivor/victims. This is where Legal Empowerment Strategy/Programming comes in. By helping people understand and use the law, legal empowerment initiatives can give them the best chance at utilising it effectively.

As discussed below, Legal Empowerment Strategy/Programming can take a wide variety of forms. However, its key purpose will always be to help IPV survivor/victims understand and use the law to obtain protection from violence. This tool is intended specifically for the design of community-facing strategy and programming. It is not intended for use in relation to training justice sector officials on their roles in helping to implement the law.

The Practitioner's Tool promotes the development of Legal Empowerment Strategy/Programming that helps to bring the law and the community together. It seeks to do two main things:

1. Ensure that individual IPV survivor/victims and their broader communities understand the law to be a legitimate avenue through which to seek protection from violence; and
2. Resolve tensions between use of the law to seek protection from violence and valuable social and cultural practices, beliefs and institutions.

This tool is intended primarily for use in relation to the design of strategy and programming to enhance the effectiveness of legislative implementation in the short term. In many contexts the law will not be optimally effective unless and until broader cultural change occurs – change that addresses the

underlying causes of violence. This is of little use, however, to current IPV survivor/victims in need of immediate protection. While there may not always be straightforward or comprehensive answers, using this framework for the development of strategy and programming is intended to enhance the legitimacy and accessibility of legal frameworks given existing economic, social, cultural and political factors.

The Practitioner's Tool is intended to inform the design of programming that remains compatible with the international human rights law regime. This is because all countries around the world have an obligation to take steps to reduce IPV, and implementing laws that prohibit IPV is a key step most countries take in order to meet that obligation.

This tool has been developed with settings in which human rights principles and language remain contested front of mind. This is because research shows that particular barriers tend to arise in such settings. Ideological barriers can arise in response to perceived cultural imperialism. Practical barriers can arise where key concepts and assumptions underpinning rights-based programming do not align with the lived realities of those on the ground.[903] The Practitioner's Tool can help ensure such barriers can be identified, in turn allowing steps to be taken towards their removal. The Practitioner's Tool focuses on the lives IPV survivor/victims are able to live. It recognises that survivor/victims of IPV are not defined by their experience of violence, but that the experience of violence negatively impacts their lives in significant and interconnected ways. It also recognises that choosing to use the law to seek protection from violence can impact the lives of survivor/victims in ways both positive and negative.

The Practitioner's Tool can be used by organisations contributing to the implementation of the law (including NGOs and government departments) to develop comprehensive plans/blueprints for their work. It does this by prompting the identification of potential barriers to legislative implementation, in turn allowing for their redress.

The Practitioner's Tool can also be used in the design of specific types of legal empowerment programming, such as community legal education initiatives or paralegal programs. It can help to inform effective messaging, taking into account the economic, social and cultural particularities of the setting in which programming will be rolled out.

[903] This includes in particular underestimating the extent to which IPV survivor/victims prioritise the wellbeing of their communities (sometimes at the expense of themselves as individuals) and failing to consider broader economic, social and cultural issues that impact on their perception of the law as an appropriate avenue through which to seek protection from violence.

The Practitioner's Tool is intended to be flexible and adaptable rather than rigid or fixed. It is meant to draw attention to the aspects of the lives of survivor/victims that need to be supported or protected in order for them to choose to use the law in an effort to obtain protection from violence. It is also meant to help identify key barriers to legislative implementation, and the resources and strategies that might help to ensure those barriers can be removed.

Strategy and programming developed by reference to the Practitioner's Tool should be considered iterative, in that it provides a starting point to build on in a particular context as more becomes understood about what promotes or inhibits the use of the law to obtain protection from violence.

Why is it considered a 'capabilities' framework?

The theoretical underpinnings of this tool come from capability theory, in which the term 'capability' is used to refer to anything a person can be or do.[904] The sorts of capabilities that might be relevant in the context of IPV reduction include being able to live in good physical and mental health, being able to enjoy fulfilling relationships with family and community, and being able to achieve and maintain a comfortable standard of living.

The Practitioner's Tool prompts the identification of the important capabilities of IPV survivor/victims – the important things they can be and do – that might be negatively impacted by IPV and/or by engaging with the legal framework to obtain *protection* from IPV. If a person is subjected to physical and/or sexual violence, for example, it might stop them being able to live life in good physical health. Identifying physical health as a capability of focus prompts consideration of how Legal Empowerment Strategy/Programming can help to safeguard the capability of physical health and what resources will be required in order to do so. Should medical professionals be involved in program design or delivery? What referral pathways exist for physical and mental health services? How can they be incorporated into legal empowerment programming?

The example of the capability of physical health is an obvious one, and one that is likely to be relevant no matter the setting. However, there are many capabilities (particularly those that might be in tension with use of legal frameworks) that will be far more specific to context and far less obvious. Take, for example, the capability of cultural freedom, being the (cap)ability to engage in cultural practices of choice and to have those cultural practices respected by others. Where tensions arise between dominant cultural practices (such as resolving situations of IPV by way of community reconciliation processes) and the use of legislative frameworks to seek protection from violence it may prevent a survivor/victim from accessing legal support because they are concerned doing so will inhibit their

[904] A foundational text in capability theory is Sen, *Development as Freedom* (n 15).

capability of cultural freedom. Recognising cultural freedom as a capability of focus prompts consideration of what tensions arise between the legal framework and dominant local customs, practices and beliefs and how those tensions might be resolved. Is there a way to foster and respect the capability of cultural freedom while at the same time encouraging access to legislative frameworks? Is it a question of messaging? Is it about engaging particular cultural stakeholders? How might they best be engaged?

It is important to note that there may be instances in which dominant cultural practices and beliefs cannot be reconciled with a prohibition on acts of IPV or the use of legal frameworks to seek protection from violence. This would include, for example, belief systems which suggest men are entitled to 'discipline' their wives with violence. Legal Empowerment Strategy/Programming should not seek to accommodate or align with belief systems that facilitate ongoing violence. While cultural change is not the primary purpose of strategy and programming designed by reference to the Practitioner's Tool, it may nonetheless provide opportunities to critically engage communities in relation to the appropriateness of current discourse and practices.

Barriers to the use of the law that are identified using the Practitioner's Tool will not always be readily or wholly ameliorable by legal empowerment programming. For example, barriers arising from the financial dependence of a survivor/victim on a perpetrator. Nevertheless, the identification of barriers is the first step in an important direction. It allows for a realistic assessment of what legal empowerment programming *can* do, and what other complementary interventions might be required.

The steps of the Practitioner's Tool

Consider whether it would be best, in context, to avoid using the language of gender equality and human rights.

The (related) discourses of human rights and gender equality are commonly invoked in Legal Empowerment Strategy/Programming. This is because IPV is recognised at the international level as a human rights issue, and gender *inequality* is commonly acknowledged as a being a key underlying determinant of IPV. However, in some settings discussions about human rights and gender equality might be off-putting. In others, they might simply fail to resonate with those at whom programming is aimed. If this is, or is likely to be, an issue in the setting in which Legal Empowerment Strategy/Programming is to be deployed, it is suggested that the language of human rights and gender equality be avoided. Instead, it might be useful to use the language of capabilities – to talk about the important things that IPV stops survivor/victims from being and doing. Discussions can extend to how IPV stops families and communities from achieving important things (like social harmony). Discussions

can focus on how using the law can help survivor/victims live safe, happy and fulfilling lives and the positive implications this can have for the broader community.

Consider whether, in context, the law is seen as a legitimate avenue to seek protection from IPV

If the law is not seen as a legitimate avenue to seek protection from violence in the context you are working in, or if its legitimacy is questionable, consider reasons this might be the case. Are there perceptions in the community that the law is being implemented in the interests of external stakeholders (like donors/funders) rather than local people? If so, are there ways in which domestic/community ownership over the law can be demonstrated? For example, is it authorised under a domestic constitution? Were there respected local people or organisations who pushed for it? In what ways does the law help to protect and enhance the local community?

In addition to demonstrating local ownership, the legitimacy of the law might be enhanced if points of compatibility and/or complementarity with other important social and cultural institutions and practices can be emphasised. Are there influential local institutions (churches, sporting groups etc) that would be willing to attest to the legitimacy of the law as a means of resolving violence? Are there important local customs or norms that have the same end goal as the law (being the elimination of IPV)? How might they work together?

Select appropriate capabilities on which to focus

As outlined above, this framework suggests that Legal Empowerment Strategy/Programming focus on the important capabilities that, in a particular setting, might be negatively impacted by IPV and/or use of the law to obtain protection from IPV. While it is likely that there will be significant overlap in the capabilities relevant in different contexts, it cannot be assumed that this will be the case. For example, in some settings the capability of religious freedom (or being able to live according to a religion of choice) might be a really important one on which to focus. This will particularly be the case in settings in which religious adherence is high, tensions arise between use of the legal framework and dominant religious practices, and/or key religious institutions have traditionally played a significant role in addressing cases of family violence. In other contexts in which religious affiliation in the community is lower or less significant, the capability of religious freedom might be viewed as less important.

A six-step process for the selection of contextually specific capabilities is set out in the **table 1** (below). The process can be replicated from start to finish, allowing strategy/program designers complete control over capability selection. Alternatively, practitioners can draw on work already undertaken in relation to steps one and two. However, it is essential that step three be undertaken anew in each

context to ensure the selected capabilities are the appropriate ones on which to focus given social, cultural and economic particularities.

Step	Comments/suggestions
Step 1: Identify the main capabilities the international human rights law framework is seeking to protect or enhance.	This is done by mapping the main sorts of violence addressed by international human rights law (physical, sexual, psychological and economic) against the main capabilities that might be negatively impacted by such violence. This mapping exercise has previously resulted in the identification of the following capabilities: life, bodily integrity, physical health, mental health, and standard of living.
Step 2: Map capabilities against key concerns and criticisms of the international human rights law framework and discourse.	This can be done by reviewing the literature or other available resources critiquing rights-based approaches to IPV reduction. In the past, undertaking this step has resulted in the identification of the following capabilities: religious freedom, cultural freedom, affiliation with family and community, and being respected with dignity (including in relation to religious and cultural choices).
Step 3: Consider the preliminary list of capabilities (being those identified in steps 1 and 2) in light of data relevant to the context in which programming will be rolled out.	This step must be carried out anew in each context in which strategy/programming is going to be deployed. It involves gathering and analysing data and evidence to determine whether the capabilities identified as a result of steps 1 and 2 are relevant in context, and whether any additional capabilities should be included given the particularities of the setting.
Step 4: Compare the preliminary list of capabilities (being those identified in steps 1 - 3) with other (defensible and justifiable) lists of valuable capabilities.	This process can help to refine the scope and/or terminology used in respect of capabilities. Lists chosen for comparison should have been developed by prominent and respected scholars/practitioners and should be relevant in some way to the pursuit of gender justice and/or human rights monitoring and implementation. Suitable lists include Robeyns' list of capabilities for the conceptualisation and assessment of gender equality in Western societies,[905] Nussbaum's list of ten 'central capabilities',[906] and Burchardt and Vizard's list of capabilities to monitor human rights implementation in England and Wales.[907]
Step 5: Finalise list of capabilities and articulate their definitions	By the time this step is undertaken a list of proposed capabilities of focus will have been compiled. At this point it is useful to define those capabilities. For example, the capability of 'bodily integrity and safety' might be defined as 'being secure against all types of personal and domestic violence including physical and sexual assault.'
Step 6: Review capability list for compatibility with international human rights law framework.	Consider whether any of the selected capabilities are likely to come into conflict with international human rights law. For example, if cultural freedom is a key capability, are important local customs likely to condone or facilitate ongoing IPV? If so, be prepared to ensure strategy/programming redresses this.

[905] Robeyns, 'Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities' (n 851) 76.
[906] Nussbaum, *Creating Capabilities: The Human Development Approach* (n 781) 33.
[907] Burchardt and Vizard, '"Operationalizing" the Capability Approach as a Basis for Equality and Human Rights Monitoring in Twenty-first-century Britain' (n 892) 97 with elaboration in Appendix 1; Vizard (n 889).

Plan around selected capabilities

Once the capabilities of focus have been selected, strategy and programming should be designed to ensure they are, to the greatest extent possible, protected and fostered. The particular issues and questions to be addressed in the planning process will depend on the scope and nature of the strategy/programming being developed. However, it may be useful to consider the following questions, and the extent to which they might be relevant in the process of designing Legal Empowerment Strategy/Programming:

1. How, if at all, might this capability be negatively impacted by IPV? How, if at all, might using the legal system help to protect this capability?

   For example: the legal framework may allow for an IPV survivor/victim to obtain a protection order, which can enhance their capability of bodily integrity by removing them from a situation of physical violence.

2. How, if at all, might this capability be negatively impacted by engagement with the legal framework? Are there ways in which programming can help to ameliorate those barriers?

   For example: if a perpetrator on whom a survivor/victim is financially dependent is sent to prison as a result of the legal system it might jeopardise the survivor/victim's capability of being able to obtain a comfortable standard of living. Are there ways in which this problem might be lessened? Could programming be linked with existing economic empowerment initiatives? Could programming help harness existing social structures that provide security?

3. What social factors (such as social norms and policies) might prevent a person from using the law to achieve this capability? Can those social factors be removed or reduced by legal empowerment programming?

   For example: is there a concern that using the legal system might interfere with or undermine customary ways of addressing IPV? Is there a way that the two systems can be used to complement each other? Can legal empowerment programming incorporate both and/or ensure the community is aware that they are not mutually exclusive?

4. What social factors might *help* a person to use the law to achieve this capability? How, if at all, can those factors be harnessed in strategy/programming?

   For example: are education programs necessary for the extended family of survivor/victims to enhance perceptions of the law as a legitimate avenue through which to seek protection from violence and, in turn, protect/enhance the capability of being able to enjoy fulfilling relationships with family?

Once the capabilities to be protected or enhanced through legal empowerment programming are identified, and the means of doing so outlined, attention can turn to the resources needed to support

this work. A broad understanding of 'resources' should be employed here and, in the first instance, a 'wish list' should be created. It might include financial and technical support, social capital (or the support of those endowed with it), local knowledge and leadership, manuals and toolkits, education materials, human resources (in terms of trained paralegals, social workers or translators, for example), technological resources and so forth. Once a comprehensive wish list has been created, determinations can be made about what is feasible.

The selected capabilities should be used as touchstones throughout the process of designing and implementing Legal Empowerment Strategy/Programming.

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Annexure 1: Key research questions

The research for this thesis was guided by five key research questions. Those questions were as follows:

1) (How) Does the introduction of Standard IPV Legislation help states around the world meet their obligations under international human rights law?
2) What are the key advantages and disadvantages of characterising IPV as a human rights issue for those in Focus Countries seeking to reduce or eliminate it?
3) What (if any) key barriers to the implementation of Standard IPV Legislation might arise from the characterisation of IPV as a human rights issue?
4) What, if any, potential does legal empowerment programming have to facilitate the implementation of Standard IPV Legislation and ameliorate identified barriers?
5) What does/might taking a capabilities-informed approach to legal empowerment strategy and programming offer in terms of facilitating the implementation of Standard IPV Legislation in Focus Countries?

Annexure 2: Guides for semi-structured interviews

Interview guide for semi-structured interviews: scoping trip (March/April 2023)

1. What is your history/experience working with family violence/the FPA?
2. What do you think the strengths (if any) and weaknesses (if any) of the FPA are?
3. Do you think the FPA is helping to reduce violence?
4. How do you think the following are understand/received in Solomon Islands:
    a. Human rights
    b. Gender equality
5. What are the key factors that stand in the way of women escaping/reducing violence in the home?
6. What do you think people in communities think of the FPA (if they know about it)?
7. What are the most effective ways of talking about the FPA in the community?

Interview guide for semi-structured interviews: formal fieldwork (February 2024)

1. What is your history/experience working with family violence/the FPA?
    a. If involved in advocacy for the FPA: how/why did support emerge for the FPA? Can you tell me about how it came into being?
    b. If involved in running programs to implement the FPA: what are the nature of the projects you work on?
2. What do you think the strengths and weaknesses of the FPA are?
3. Do you think the FPA is helping to reduce IPV in Solomon Islands?
    a. If yes, in what ways?
    b. If no, why not?
4. How committed do you think the government is to the implementation of the FPA? Its obligations under international law? Reducing family violence?
5. Research suggests most women would approach the police to report being a victim of DV before they would use informal justice systems.[908] Do you think this is true? Why/why not?
6. What role do you think the following groups can or should play in helping to reduce IPV:
    a. Church
    b. State/government

[908] Solomon Islands Ministry of Justice and Legal Affairs (n 209) 2.

    c. Community leaders
    d. Family members
7. What do you think the key barriers are preventing women from leaving violent relationships?
8. What do you think 'human rights' are? Do you think it would be effective to talk to people/communities about women's right not to be subjected to violence?
9. What do you think would be the most effective messaging to reduce IPV?
    a. If not brought up, ask about: messaging re: custom? Religion? Business case?
10. What do you think 'gender equality' is? Do you think people in Solomon Islands want 'gender equality'?
11. What do you think of the civil avenues under the FPA (protection orders)? How desirable are they to victims of IPV? How effective do you think they are?
12. What do you think of the fact that IPV is a crime under the FPA? What does the community think

Annexure 3: Key informant details

This annexure sets out more detailed information about the key informants for this thesis who agreed to be identified.

Name	Current position/occupation	Interview details
Vaela Devisi	Director, Women's Development Division, MWYCFA	Vaela has worked with the MWYCFA since about 2008. She was a part of the working group put together by Ethel Sigimanu in 2010 to ensure the FPA was appropriately drafted and to lobby for its passage and implementation. As current Director of the MWYCFA (one of the two ministries with responsibilities under the FPA) she has been closely involved with the FPA implementation and review process.
Judy Basi	Safenet Coordinator, MWYCFA	Judy spent 26 years working in the Ministry of Health in social welfare. Her main focus was on counselling for survivor/victims of IPV and children who had been subjected to other forms of family violence. In 2021 Judy took on a one-year contract as Cyber Safety Manager for a Plan International project relating to the online safety of women and girls. In 2022 Judy took on the role of Safenet Coordinator with the MWYCFA.
Nancy Waegao	Sector Manager, Faith and Development, World Vision Solomon Islands	Nancy commenced her work with World Vision in 2011, initially as a community facilitator and subsequently as the Sector Portfolio Manager for Gender. As a part of that role she was responsible for the Community Channels of Hope program, the purpose of which is to reduce GBVAW in target communities across Solomon Islands. In 2024 Nancy commenced her current role as Sector Manager, Faith and Development. Her work remains focused on the reduction of GBVAW.
Apolosi Bose	Team Leader, ASIPJ, Deloitte	Apolosi has worked in human rights in the Pacific since the turn of the century. He spent some time working for the RRRT when it was initially established as a project of the UK's Department for International Development, primarily in PNG. He then spent approximately 7 years in Solomon Islands working for the UNDP on CEDAW ratification and CRC reporting. He subsequently spent four years in the UK working for Amnesty International leading research on human rights and gender equality in the Pacific region. Between 2011 and 2013 Apolosi worked as a GBVAW Advisor for the PNG Law and Justice Ministry, before moving to the role of Community Justice Advisor. He has also undertaken work with Cardno International Development.

Ella Wairiu	Gender Program Lead, Oxfam Solomon Islands	Between 2014 and 2017 Ella worked as a Program Administrator for the New Zealand High Commission in Honiara, the International Organisation for Migration and the Ministry of Planning and Aid Coordination. Between 2017 and 2021 Ella worked for Save the Children Australia in Honiara in the roles of Child Trafficking Program Manager, Youth Justice Program Manager and Child Protection Portfolio Manager. Between 2022 and 2025 Ella worked for Oxfam in the Pacific as the Safe Families Program Manager. Ella has recently commenced a role as the Gender Focal Point for the Tina River Hydropower Development Project.
Anika Kingmele	Independent Consultant	Anika commenced her work in the family safety sector in 2003, taking up a role as a Child Protection Officer with UNICEF in Solomon Islands. In this role she contributed to the development of the *Child Protection Act 2010* (Solomon Islands). As a result of this experience she was asked to join the working group for the development of the FPA. Anika has been an independent consultant since 2018. She has or does hold a wide range of positions including Chair of the Family Support Centre Board, President of the Women's Rights Action Movement, Vice President of the Solomon Islands Bar Association and Commissioner to the Solomon Islands Law Reform Commission.
Kyla Venokana	Chief Legal Officer, Legal Policy Unit, MJLA	Kyla has worked with the MJLA since 2014, when the FPA had been passed but not yet implemented. Working on FPA training and awareness raising has been a key part of her role from the outset.
Jerolie Belabule	Deputy Centre Manager, Seif Ples	Jerolie has worked in the family violence space since 2003. She commenced with the Solomon Islands Churches Network as a Project Officer, before becoming a counsellor and facilitator working on GBVAW specifically. While still in this role Jerolie completed a law degree. She now oversees operations and administration at Seif Ples.
Lorah Etega	Project Coordinator, Seif Ples	Lorah has worked with Seif Ples since she began as a receptionist in 2016. While working with the centre she undertook counselling training and began to take on additional responsibilities such as doing intake interviews, providing service referrals and support to clients. Lorah is now employed by ChildFund Australia as the project manager for their Seif Ples project. Her focus is on Seif Ples governance and the expansion of the Safenet Hotline.
Donna Makini	GEDSI Officer, ASIPJ	Donna commenced work as a Project Officer with Solomon Islands Development Trust in 2012 focusing on gender related projects. In 2014 she went to work as a Research and Policy Officer at the Women's Rights Action Movement, focusing in particular on eliminating GBVAW and lobbying for the implementation of CEDAW. Between 2019 and 2023 Donna worked at the Human Rights and Social

		Development division of the SPC, managing the Pacific People Advancing Change program. In 2023 Donna took on the role of GEDSI Officer with ASIPJ.
Sister Rosa	Coordinator, Christian Care Centre	Sister Rosa has been the coordinator of the Christian Care Centre for more than 15 years. She has been deeply involved in Christian Care Centre programming and manages relationships with other organisations working in the family violence space (like the Family Support Centre) and donors.
Laura Kwanairara	Lawyer, Family Support Centre	Laura graduated from a law degree in 2016 and has worked as a lawyer at the Family Support Centre since that time. In 2025 Laura was winner of the Australia Women's Leadership Award for her work on leadership, advocacy and contributions to supporting GBVAW survivor/victims.
Aroma Ofasia	Paralegal, Family Support Centre	Aroma has worked with the Family Support Centre for several years. She also runs gender equality training workshops with various organisations, including the Solomon Islands Basketball Association.
Ethel Sigimanu	Independent Consultant	Ethel was appointed Permanent Secretary of the then Ministry of Women, Youth and Sport in Solomon Islands in 2002. That Ministry was abolished after the Tensions and Ethel was appointed Permanent Secretary of the Ministry of Home Affairs. She then spent a short time as Permanent Secretary of Fisheries before moving to the MWCYFA upon its establishment in 2007. Ethel was the coordinator of the Family Health and Safety Study and had primary responsibility for the development of the FPA. She remained Permanent Secretary of the MWYCFA until 2019, and in that role had oversight of the implementation of the FPA. In addition to her main professional roles, Ethel has served on the board of the RRRT and as Chair of the Board of the Family Support Centre. She has consulted extensively with international donors and NGOs and is currently undertaking a review of the compliance of Solomon Islands with CEDAW.
Afu Lia Billy	President, National Council of Women	Afu has been a high-profile advocate for women's rights in Solomon Islands since the 1970s. She was appointed as a board member of the Solomon Islands YWCA in 1979. She played an integral role in the establishment of the National Council of Women, the Women's Rights Action Movement and the Family Support Centre. Afu has worked for a wide range of local and international organisations including the RRRT (as a human rights paralegal) Save the Children, the UNDP and the Commonwealth Youth Program. She is currently a board member of the Family Support Centre and the Pacific Feminist Fund.
Kathleen Kohata	Principal Solicitor, Public Solicitors Office Family Protection Unit	Kathleen Kohata worked at the Solomon Islands Law Reform Commission, leading the review of the Penal Code and Criminal Procedure Code. She was a part of the working group that led the development of the FPA. In 2013 she started working at the Public Solicitors Office as the Principal Solicitor for the Family Protection Unit.

Bronwyn Spencer	Senior Program Manager, IWDA (Australia)	Bronwyn spent more than 12 years working with Uniting World, primarily on gender related matters in the Pacific. She was involved in the development of Gender Equality Theory. She joined the IWDA in early 2022 and in that role manages Pacific-focused programs.
Val Stanley	Independent Consultant (UK)	Val is a British social worker with a long history working in the space of women's rights and sexual assault advocacy. She first went to Solomon Islands as a government sponsored volunteer in 1997. In that role she helped to establish the Family Support Centre. In 2013 Val commenced work establishing Seif Ples. She also worked with Oxfam on the Standing Together Against Violence Program, and on GBVAW related DFAT projects. Val left Solomon Islands in 2015.
Catherine Nalakia	Correctional Services Solomon Islands Gender Coordinator	Catherine has been with the Correctional Services in Solomon Islands since 1993. She began work as a Correctional Officer working with the women at Rove Prison. In 2008 she transferred to the Police Headquarters where she worked as a Registry Officer. She has held her current role since 2015.
Josephine Kama	Independent Consultant (focus on gender)	Josephine has been working in the gender space in Solomon Islands since 2005, when she worked for the government and helped to develop the first national policy on gender equality and women's development. Josephine has worked extensively with a wide variety of organisations including DFAT, RAMSI and the MWYCFA.
Melanie Teff	Independent Consultant (UK)	Melanie is a humanitarian advocate with a focus on women's rights. She spent two years working as a government sponsored volunteer in Solomon Islands helping to establish the FSC. She was the first lawyer to work with the organisation.
Juanita Malatanga	Deputy Commissioner, National Operations, Royal Solomon Islands Police Force	Juanita has spent the last 34 years working in the RSIPF. She has done extensive work with the Family Violence Unit and was instrumental in the establishment of Seif Ples.

Annexure 4: Methodology for the Selection of the Core Solomon Islands Capabilities[909]

This Annexure sets out the process through which I selected capabilities that I propose be of focus for legal empowerment programming to facilitate the implementation of the FPA in Solomon Islands (**Core Solomon Islands Capabilities**). As discussed in chapter eight, this process can be adapted for use in different contexts. There are eight Core Solomon Islands Capabilities. In the language of capabilities, these have been identified as being 'valuable' because they add positively to the lives of IPV survivor/victims and:

- Are negatively impacted by IPV; and/or
- Could be achieved or enhanced use of the FPA; and/or
- Are at risk of contraction by use of the FPA.

There were two further criteria that the Core Solomon Islands Capabilities, read together, needed to meet:

- Redress of the barriers to rights-based programming identified in chapter four (necessary given a key purpose of the Practitioner's Tool is to contribute to the amelioration of these barriers); and
- Compatibility with the international human rights law framework (given the implementation of the FPA is a key step taken by Solomon Islands to meet its obligations under international human rights law and major donors are rights-focused).

The methodology outlined below was devised to ensure these criteria were met.

6 key steps were undertaken in selecting the Core Solomon Islands Capabilities:

[909] The methodology set out in this appendix was heavily informed by the following sources: Robeyns, 'Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities' (n 851); Byskov, 'Methods for the Selection of Capabilities and Functionings' (n 811); Burchardt and Vizard, '"Operationalizing" the Capability Approach as a Basis for Equality and Human Rights Monitoring in Twenty-first-century Britain' (n 783); Vizard (n 889).

Step 1: identify the main capabilities the international human rights law framework is seeking to protect or enhance.

Step 2: map capabilities against key concerns and criticisms identified in chapter four.

Step 3: consider preliminary list of capabilities (being those identified in steps 1 and 2) in light of data collected in fieldwork in Solomon Islands.

Step 4: compare preliminary list of capabilities (being those identified in steps 1 - 3) with other (defensible and justifiable) lists of valuable capabilities.

Step 5: finalise capability list, articulate definition of selected capabilities and expressly note the connection to IPV/engagement with standard IPV legislation.

Step 6: review capability list for compatibility with international human rights law framework.

Step 1: identify the main capabilities the international human rights law framework seeks to protect or enhance.

Definitions of 'violence' set out in the main international instruments were reviewed, and the following noted:[910]

Instrument	Physical	Sexual	Psychological or mental	Economic
CEDAW Committee General Recommendation No 19: Violence Against Women (1993)	X	X	X	
Declaration on the Elimination of Violence Against Women (1993)	X	X	X	
Beijing Declaration and Platform for Action (1995)	X	X	X	
Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1995)	X	X	X	
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)	X	X	X	X
Council of Europe Convention on Preventing and Combatting Violence Against Women and Domestic Violence (2014)	X	X	X	X

[910] The following instruments do not appear in the table because they do not contain express definitions of violence/violence against women/IPV: *Convention on the Elimination of All Forms of Discrimination Against Women*, *Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children in ASEAN* 2012, *Pacific Leaders Gender Equality Declaration*.

	On the basis of the above analysis it became clear that physical, sexual, psychological and economic abuse are viewed at the international level as the main forms of IPV. A mapping of physical, sexual and psychological IPV against capabilities negatively impacted resulted in the identification of the following capabilities: 1. Bodily integrity 2. Life 3. Physical health 4. Mental health (including being free from the threat of violence) Economic harm was considered separately given resources are viewed as instrumental from a capability perspective. On this basis it was determined that the following capabilities are among those most commonly contracted as a result of economic IPV: 5. Self-sufficiency/autonomy/independence 6. Control over material environment 7. Paid work/employment
Step 2: map capabilities against key concerns and criticisms identified in chapter four.	Barriers identified in chapter four were revisited and relevant capabilities were mapped and incorporated. This is the first step towards taking account of the priorities and perspectives of unheard women. One factor that can give rise to barriers to legal empowerment programming to reduce IPV is an (over)emphasis on bodily integrity without sufficient regard to other relevant economic, social and cultural factors. This is addressed by ensuring the Core Solomon Islands Capabilities, read together, promote holistic program design. Other concerns/criticisms revealed by the literature review were as follows: • Human rights' discourse makes false claims to universalism which belie the fact that the championing of rights reflects a particular cultural perspective. • Human rights' emphasis on the individual is at odds with many women's sense of self as being largely relational, particularly to family and community.

	• The explicit pursuit of 'gender equality' has the potential to undermine other essential aspects of women's lives (especially those that are cultural or religious). The following capabilities not emerging from step 1 were identified as relevant: 1. Religious freedom 2. Cultural freedom 3. Affiliation with family 4. Affiliation with community 5. Being respected and treated with dignity (including in relation to religious and cultural choices)
Step 3: consider preliminary list of capabilities (being those identified in steps 1 and 2) in light of data collected in fieldwork in Solomon Islands.	While the first two steps are generic, the third can only be carried out in the particular social, cultural, political and economic context in which it is proposed that the Practitioner's Tool be used. This step involves considering whether the capabilities identified as a result of steps 1 and 2 are appropriate and necessary ones on which to focus in the given jurisdiction. For the purposes of Solomon Islands, it was determined that they were. In line with the approach at the international level, the FPA defines domestic violence to include physical, sexual, psychological and economic violence, thereby supporting the inclusion of the capabilities identified in step 1. As outlined in chapter five, the barriers to rights-based programming discussed in chapter four do arise, to greater or lesser extents, in Solomon Islands. This supports the inclusion of the capabilities identified in step 2. As a part of this step it is also necessary to consider whether any capabilities not already identified need to be included given the context in which programming is being rolled out. On the basis of data from Solomon Islands case study, it was determined that the ability to look after children and other dependents should be incorporated, whether as a standalone capability or as a component of family and social relations or standard of living.
Step 4: compare preliminary list of capabilities (being	The preliminary list of capabilities (being those identified in steps 1 -3) were compared with other capability lists. Specifically, the preliminary capabilities were compared with Robeyns' list of capabilities for the conceptualisation and assessment of gender equality in Western societies,[911]

[911] Robeyns, 'Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities' (n 851) 76.

those identified in steps 1, 2 and 3) with other (defensible and justifiable) lists of valuable capabilities.	Nussbaum's list of 10 'central capabilities',[912] and Burchardt and Vizard's list of capabilities to monitor human rights implementation in England and Wales.[913] These lists were chosen for comparative purposes because they were developed by respected capabilitarians; the methodology for their selection was publicly articulated and defended by those capabilitarians; and there is some overlap between the purposes for and focus of the Practitioner's Tool and the purposes for which the comparative lists were drawn up. Specifically, the lists chosen for comparative purposes were either developed for evaluation and assessment of gender equality and/or the pursuit of gender justice and/or human rights implementation and monitoring. **Table 1** (below) sets out the capabilities in each list. **Table 2** (below) sets out the comparative analysis of capability lists. **Table 3** (below) sets out additional capabilities identified for consideration during the comparative exercise.

[912] Nussbaum, *Creating Capabilities: The Human Development Approach* (n 781) 33.

[913] Burchardt and Vizard, '"Operationalizing" the Capability Approach as a Basis for Equality and Human Rights Monitoring in Twenty-first-century Britain' (n 892) 97 with elaboration in Appendix 1; Vizard (n 889).

Table 1. Comparison of Capability Lists

Preliminary Core Solomon Island Capabilities	Nussbaum	Robeyns	Burchardt and Vizard
1. Life 2. Bodily integrity 3. Physical health 4. Mental health (including being free from the threat of violence) 5. Self-sufficiency/autonomy/independence 6. Control over material environment 7. Paid work/employment 8. Religious freedom 9. Cultural freedom 10. Affiliation with family 11. Affiliation with community 12. Being respected and treated with dignity (including in relation to religious and cultural choices)	1. Life 2. Bodily health 3. Bodily integrity 4. Senses, imagination and thought 5. Emotions 6. Practical reason 7. Affiliation 8. Other species 9. Play 10. Control over one's environment (political and material)	1. Life and physical health 2. Mental well-being 3. Bodily integrity and safety 4. Social relations 5. Political empowerment 6. Education and knowledge. 7. Domestic and nonmarket care 8. Paid work and other projects 9. Shelter and environment 10. Leisure activities 11. Time-autonomy 12. Respect 13. Religion	1. Life 2. Physical security 3. Health 4. Education and Learning 5. Standard of Living 6. Productive and valued activities 7. Participation, influence and voice 8. Individual, family and social life 9. Identity, expression and social life 10. Legal security

Table 2. Analysis of overlaps between my preliminary list of capabilities and the capabilities identified by Nussbaum, Robeyns and Burchardt & Vizard

Capability from preliminary list	Comparative notes	Reflections on preliminary capability after comparative exercise
Life	Life is included as the first capability on all lists. Its value in relation to doing and being is obvious. Vizard draws on the right to life in Art 6 of the ICCPR, directly linking this capability to the international human rights law framework.	To remain.
Bodily integrity	Nussbaum includes bodily health in her list of central capabilities, defining it as follows: being able to move freely from place to place; to be secure against violence	To use terminology 'bodily integrity and safety' instead of simply 'bodily integrity'. Primary reason

			assault including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice of matters of reproduction.[914] Robeyns includes the capability of bodily integrity and safety and says they are important states of being. She says 'this capability is adversely affected when people experience all sorts of personal violence, such as attacks on the street, domestic violence, rape, sexual assault or stalking'.[915] She notes its gender dimension. Burchardt and Vizard recognise the capability to life in physical security, which includes the capability of living a life free from domestic and sexual violence. They draw on Art 7 of the ICCPR, directly linking it to the international human rights law framework.	for doing so is that 'safety' is likely to be more readily understood in wider contexts. Amendment hopes to make ultimate framework more user-friendly. To contain to protection from personal and domestic violence rather than adopt a more expansive definition (like Nussbaum's). More directly relevant to IPV framework.
		Physical health	Physical health (referred to as bodily health by Nussbaum) is recognised as a valuable capability by all scholars reviewed. Nussbaum includes within her definition adequate nourishment and shelter. Robeyns includes physical health as a part of the same capability as life (life and physical health).	To remain.

[914] Note this is the definition she uses in Nussbaum, *Creating Capabilities: The Human Development Approach* (n 781) 33. In a publication from 2000 she defined it slightly differently 'being able to move freely from place to place; having ones bodily boundaries treated as sovereign, i.e. being able to be secure against assault, including sexual assault, child sexual abuse, and domestic violence; having opportunities for sexual satisfaction and for choice of matters in reproduction': Nussbaum, *Women and Human Development: The Capabilities Approach* (n 794) 78.

[915] Robeyns, 'Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities' (n 851) 78.

			Burchardt and Vizard draw on ICESCR Art 12, directly linking it to the international human rights law framework.	
		Mental health (including being free from the threat of violence)	Robeyns includes the capability of 'mental wellbeing' which she says 'relates mainly to the absence of any negative mental states of being and doings, such as not being able to sleep, worrying or feeling depressed, lonely or restless'.[916] Burchardt and Vizard include mental health in the broader capability of 'health' and draw on ICESCR Art 12, directly linking it to the international human rights law framework. Nussbaum does not include a capability of mental health. However, she does include the avoidance of nonbeneficial pain within her capability of 'senses, imagination and thought' and 'not having one's emotional development blighted by fear and anxiety' within her capability of 'emotions'.	To remain but remove reference to 'including being free from the threat of violence.' Unnecessary extension of capability and while the result of threats of violence might include mental ill-health this will not necessarily be so.
		Self-sufficiency, autonomy, independence	Robeyns includes 'time autonomy' as a capability, but this is intended to address a specific feature of gender inequality that is less relevant to my project, being the unequal division of labour/time/responsibilities for market work, non-market work and leisure. Burchardt and Vizard speak to autonomy, but do not classify it as a capability. Instead, their framework for evaluating human rights compliance requires systematic monitoring of autonomy in individual choices. Burchardt & Vizard also include among their capabilities 'standard of living' which they define to include enjoying adequate and secure standard of living including nutrition, clothing,	Each of these was intended to address harms arising from economic violence and/or ameliorate barriers arising from a failure to take account of broader economic, social and cultural issues into account in programming to facilitate the implementation of standard IPV legislation. On reflection, addressing these concerns with one capability would be ideal for the purposes of simplicity.

[916] Ibid 77.

			housing, warmth, social security, social services and utilities and being cared and supported when necessary. Also defined to include living with independence, dignity and respect, having choice and control over where and how to live and control over personal spending. Burchardt and Vizard connect this capability to ICESCR Arts 9 – 11, thus directly linking to the international human rights law framework.	Paid work/employment, while important to many, may not be considered valuable in some cultural contexts (e.g. – subsistence societies) and the main purpose of paid work for the Practitioner's Tool is the ensure financial autonomy. However, in keeping with broader capability theory, money is viewed as purely instrumental for the purposes of the Practitioner's Tool. Paid work is important in as much as it allows for the attainment of a comfortable standard of living. Burchardt and Vizard's capability of 'standard of living' encapsulates the issues and concerns this capability seeks to address. To amend preliminary list accordingly.
		Control over material environment	Within the capability of 'control over one's environment' Nussbaum specifically refers to the material environment a person lives in. She says the capability involves 'being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having property rights on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers'.	
		Paid work/employment	Burchardt and Vizard include within the capability of 'productive and valued activities' being able to have a decent paid job and choosing a balance between paid and unpaid work. Robeyns includes as a capability 'paid work and other projects' and points to ongoing gendered nature of this capability.	
		Religious freedom	Nussbaum includes within her capability of 'practical reason' protection for the liberty of religious observance. Robeyns incorporates religion as a standalone capability defining it as 'being able to choose to live or not live according to a religion'. Burchardt and Vizard include within the capability of 'being and expressing yourself, and having self-respect' freedom of religion and link it to the international human rights law framework by connecting it with ICCPR Arts 18, 20 and 27.	To remain.

		Cultural freedom	Burchardt and Vizard include 'freedom of cultural identity' and 'being able to engage in cultural practices, in community with other members of your chosen group or groups and across communities' within the capability of identity, expression and social life.	To remain.
		Affiliation with family	One of the capabilities identified by Burchardt and Vizard is the capability to 'enjoy individual, family and social life'. They connect this with ICCPR 17 and 23 as well as ICESCR 10. Nussbaum does not explicitly refer to family but does include as one of her architectonic capabilities (being those that pervade all others) the capability of affiliation, which includes 'being able to live with and toward others…to engage in various forms of social interaction'. Robeyns points out that, while labels differ in the literature, all capability lists she has studied include 'social relations (family/friend/affiliation)'.[917] Robeyns herself includes 'social relations' as a capability which she defines to include 'forming, nurturing and enjoying social relations' and identifies as having two main aspects (social networks and social support).	To reframe as family and social relations and make clear in the definition that social relations includes relations with family and wider community. Decision to draw on Burchardt & Vizard and Robeyns and change terminology to refer to fulfilling family and social relations. Not to use affiliation. Primary motivation is to make terminology as simple and straightforward as possible so as to make it more user-friendly.
		Affiliation with community	As above.	
		Being respected and treated with dignity (including in relation to	Nussbaum includes under the capability of affiliation 'having the bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others'. Robeyns includes within her list the capability of respect, defining it as 'being able to be respected and treated with dignity'. Burchardt and Vizard weave references to respect throughout various capabilities.	Determination made to incorporate the promotion of self-respect and respect from others into the Practitioner's Tool through programming prompts rather than treating it as a stand-alone capability. Respect for religious and cultural choices to be

[917] Ibid 74.

religious and cultural choices)	For example, their capability of identity, expression and social life includes having self-respect and being confident you will be treated with dignity and respect which they link to the international human rights law framework through ICCPR 18-20 and 27 and ICESCR 15.	subsumed in the capabilities of religious and cultural freedom.

Table 3. Consideration of additional capabilities

Capability	Source and notes	Reflections after consideration for inclusion in Practitioner's Tool
Domestic and non-market care	Robeyns includes this as a capability for analysing and evaluating gender equality and defines it to involve 'raising children and taking care of other dependents, especially the elderly.'	Through fieldwork in Solomon Islands it became clear that a significant barrier to IPV survivor/victims seeking to leave IPV was that it would undermine their ability to raise children and/or take care of other dependents. On reflection, it was determined to incorporate this within the capability of 'standard of living' rather than treating it as a stand-alone capability.
Practical reason	Nussbaum includes the capability of practical reason in her list of central capabilities and defines it as 'being able to form a conception of the good and to engage in critical reflection about the planning of one's life (this entails protection for the liberty of conscience and religious observance.). Nussbaum suggests that practical reason plays and architectonic role in that it organises and pervades all other central capabilities – without the capability of practical reasoning a person does not have the opportunity or ability to make choices about what they value or which available functionings they would like to attain.	Practical reason is important in challenging social norms and identifying/making choices about important aspects of one's life. On reflection it was determined that practical reason was not something that should be characterised as a Core Solomon Islands Capability. Rather, the Practitioner's Tool encourages the development of programming that promotes debate and encourages practical reasoning across communities.

	Legal security	Burchardt and Vizard include among their core capabilities 'knowing you will be protected and treated fairly by the law' which includes knowing 'you will be treated with equality and non-discrimination before the law.'	The importance of legal security to the effectiveness of the implementation of Standard IPV Legislation is obvious. While it is essential that all people are afforded legal security, this is not the primary concern of the Practitioner's Tool and is more appropriately dealt with in broader law and justice programming/gender training.

Step 5: finalise capability list, articulate definition of selected capabilities and expressly note the connection to IPV/engagement with standard IPV legislation.
Finalise articulation/description of capabilities and note connection to IPV

Capability	Description	Connection to IPV/engagement with Standard IPV Legislation
Life	Being able to live a life of normal length and not dying prematurely.	Physical IPV can result in the death of a victim. IPV legislation invariably seeks to protect the capability of life by reducing physical violence in intimate relationships.
Bodily integrity and safety	Being secure against personal and domestic violence including physical and sexual assault.	Physical and sexual IPV is a breach of bodily integrity that endangers the victim physically and mentally. Standard IPV Legislation invariably seeks to protect the capability of bodily integrity and safety by reducing physical and sexual violence in intimate relationships.
Physical health	Being able to live life in good physical health.	Physical and sexual IPV in particular can result in physical injury and/or disease. IPV legislation invariably seeks to protect or enhance the capability of physical health by reducing physical and sexual violence in intimate relationships that might result in injury or disease.
Mental health	Being able to live life with good mental health.	Psychological IPV can result in a reduction in the capability of good mental health of IPV survivor/victims. Fear or anxiety arising because of anticipated IPV in any form can also result in a reduction in the capability of good mental health.

			IPV legislation that includes psychological or mental IPV within its ambit directly seeks to protect the capability of mental health.
	Family and social relations	Being able to enjoy fulfilling relationships with family and community, including communities of one's own choosing.	A review of the literature and fieldwork in Solomon Islands suggests that a barrier to using legislative frameworks to escape IPV and enhance capabilities of bodily health and integrity and mental health is concern about impact on family and community relations. Minimising contraction of the capability of family and social relations may help to ameliorate this barrier.
	Religious freedom	Being able to live according to a religion of choice, or not live according to religion at all; To have religious choices treated with respect by others.	A review of the literature and fieldwork in Solomon Islands suggests that a barrier to using legislative frameworks to escape IPV and enhance capabilities of bodily health and integrity and mental health is concern about negative implications for religious practice and communities. Minimising contraction of the capability of religious freedom intended to help ameliorate this barrier.
	Cultural freedom	Being able to embody the cultural identity of choice including engaging in cultural practices alone and/or in community with others; To have cultural choices treated with respect by others.	A review of the literature and fieldwork in Solomon Islands demonstrates that a barrier to using legislative frameworks to escape IPV and enhance capabilities of bodily health and integrity and mental health is concern about negative implications cultural freedom and engagement. Minimising contraction of the capability of cultural freedom intended to help ameliorate this barrier.
	Standard of living	Being able to achieve and maintain a comfortable standard of living for oneself and dependents, including having physiological needs met (through access to food,	Economic violence can result in victims being unable to achieve a comfortable standard of living due to economic abuse. A review of the literature and fieldwork in Solomon Islands also suggests that a

		water, shelter, warmth and clothing); Being able to live with independence and control over personal spending and living arrangements.	barrier to escaping IPV relates to lack of independent ability to achieve and maintain a comfortable standard of living.
Step 6: review capability list for compatibility with international human rights law framework.	The final step was to review the Core Solomon Islands Capabilities for compatibility with the international human rights law framework. This step involved identifying ways in which the promotion of the capabilities may be in conflict with international human rights law. As discussed in detail in chapter eight, there is potential for significant tension between the capabilities of religious and cultural freedom and fundamental human rights principles that support the reduction of IPV. Ultimately, the Practitioner's Tool prioritises the elimination of IPV over unfettered cultural or religious freedom. It does this by emphasising that religious or cultural beliefs or practices that exacerbate, promote, or reinforce justifications for IPV should not be condoned by legal empowerment programming designed by reference to it.		