

Talking the Talk on Island Justice

The island nation of Tuvalu has its own way of resolving disputes, dispensing British common law and traditional justice in equal parts. Claire Layden talks to two Australian lawyers working within this unique system.

» **N**ight holds no fear for the citizens of Funafuti atoll – not when policemen on bicycles patrol the streets, handing out fines to anyone caught without a flashlight.

Funafuti is the capital of Tuvalu, a Polynesian nation of nine islands with a total land area of 26 square kilometres. Since gaining independence from British rule in 1978, Tuvalu is developing its own system of justice by combining the common law system initiated by the British with traditional methods of dispute resolution.

The Office of the People's Lawyer on Funafuti supports this process by providing legal and advocacy services. It was instituted by departing British administrators in recognition that the small island nation would not be able to provide either a private legal sector to which citizens could turn, or the economic growth to enable citizens to afford private legal advice.

Joelle Grover is the current People's Lawyer, supported by AVI through the AusAID-funded Pacific Technical Assistance Mechanism (PACTAM). She has discovered that, in a nation of 11,000 people, there is a high demand for advice and representation on civil, family law and criminal cases for individuals, companies and organisations.

"Since I started in September 2007, I've been processing a backlog of cases that built up during the 10 months since there was last a lawyer in the Office," says Joelle. "I've dealt with criminal defence for misdemeanours like assault, and civil litigation including employment issues, native title land disputes and judicial review applications."

Aside from the Office of the People's Lawyer, the only lawyers operating in Tuvalu are based in the Attorney-General's Office or other government departments. This presents difficulties when cases between two parties proceed to the courts, as the People's Lawyer is the only representative and cannot speak for both parties. On these occasions, a lawyer from the Attorney-General's Office is sometimes called upon to represent one party.

Daniel Gorman is a legal adviser with the Attorney-General's Office, also supported by PACTAM. His role is to draft government bills and subsidiary legislation, train colleagues in legislative drafting, advise on criminal and civil matters and represent the Government in legal proceedings.

Both Daniel and Joelle note that practising law in Tuvalu involves the interplay between common law and the traditional methods of justice that continue to play an important role in community relationships and local government, especially on the outer islands.

"The Laws of Tuvalu Act 1987 sets out the hierarchy of laws in Tuvalu," Daniel explains. "This Act provides that customs in relation to certain matters – including ownership of land, defamation, legitimacy and adoption and the rights of married persons – may be recognised as customary law in relation to civil matters."

Dispute resolution is one area which highlights this complex relationship. Island councils (*kaupule*) have a pivotal





“The procedure is very informal – asking parties what they think of a proposed solution, adjourning to go conduct a family meeting, and then adopting the family’s decision at the next sitting.”

role in governing the island community (*falekaupule*) and determining the obligations of community members.

“The Falekaupule Act 1997 has empowered the traditional island assembly to be the key decision-making body within the local government system,” says Daniel. “The kaupule of each island votes in accordance with the customs of the island.”

Falekaupule have a traditional way of managing disputes, in which the aggrieved parties raise their concerns with community leaders, who then make a decision on what is to be done. Joelle explains that these decisions are made in consultation with the community. “The acceptance of a consensus-based approach means that clients are more readily amenable to engage in mediation processes than a culture without that tradition – such as in Australia, where dispute resolution processes are historically more adversarial.”

The conciliatory processes used by kaupule are also used in the Lands Court in Tarawa, whose members are selected from the community and often have no legal background. “The procedure it adopts is very informal: asking parties what they think of a proposed solution, adjourning for the parties to go conduct a family meeting, and then adopting the family’s decision at the next sitting,” Joelle explains.

This approach even plays a role in criminal matters. It is quite common for a perpetrator of a crime to counteract their actions through

a formal apology, and the affected person or family will let the matter go. As Joelle points out, “This can be a good thing in the case of a minor offence – such as someone who has broken the neighbour’s window while drunk”. Unfortunately, this approach can sometimes mean that perpetrators of more serious crimes such as assault are not prosecuted and victims may feel family pressure to drop the complaint.

There are other occasions where the motives of legislation do not align with Tuvaluan custom. In the case of land rights, the Lands Code allows for women and men to inherit equal proportions, but traditionally sons in Tuvalu receive the larger share. The Tuvalu Bill of Rights does not specifically protect women’s rights and cases where women have challenged unequal distribution of property have often been unsuccessful.

The offices of the People’s Lawyer and the Attorney General are therefore crucial to resolving the challenge of implementing a consistent and fair legal system while maintaining the strengths of Tuvaluan customary practice.

Joelle’s ‘outsider’ status is often an advantage. “Being a foreigner has helped to maintain the neutrality of my role as People’s Lawyer, and in gaining the trust of the community,” she explains.

Daniel believes that both offices must respect custom. “It is important that laws meet the expectations of the community and accord with traditional values and customs,

especially in post-colonial societies where law and customary practice can sometimes diverge,” says Daniel.

“Steps have been taken to accord many customs with the status of customary law in relevant circumstances and to recognise the important function of traditional decision makers – even if this is at times challenging to an Australian common law lawyer.” <

A sea change and much more!

The Pacific Technical Assistance Mechanism (PACTAM) is an AusAID initiative that deploys highly-skilled personnel to assist Pacific governments and agencies to meet their human resource needs.

Deployees receive remuneration at Australian market standards and relocation support. For upcoming assignments visit www.australianvolunteers.com/pactam

Opposite > Crown Counsel Simon Kofe, Acting Attorney-General Saāga Talu and PACTAM Legal Adviser Daniel Gorman at the Attorney General’s Office.

Photo > Courtesy Daniel Gorman

Above > The narrowest point of Funafuti.
Photo > Heidi Arnaudon