Pacific Regional Consultation for Judges and Magistrates on Human Rights, 3rd – 5th June 2013, Brisbane, Australia

"The Judicial Response to Gender Based Violence in the RMI under the Domestic Violence Protection and Prevention Act, 2011"

James H. Plasman
Associate Justice of the High Court
Republic of the Marshall Islands

I. Introduction.

I have been asked to speak on the Judicial Response to Gender Based Violence in the Republic of the Marshall Islands. I understand "gender-based violence" to be violence against women based on women's subordinate status in society. Thus, it includes any act or threat by men or male dominated institutions that inflicts physical, sexual, or psychological harm on a woman or girl because of their gender. Included in gender based violence are domestic violence; sexual abuse, including rape and sexual abuse of children by family members; forced pregnancy; sexual slavery; violence in armed conflict, such as murder and rape; and human trafficking of girls and women for prostitution. I will limit my comments today primarily to domestic violence, and the experience of the judiciary following the passage of the Domestic Violence Protection and Prevention Act (DVPPA) in September 2011. In doing so, I will provide some background information on the Marshall Islands, review the legal framework in the Republic, and discuss the judicial experience under the DVPPA.

II. Background Information of RMI

The Republic of the Marshall Islands is a Pacific Islands country located just north of the equator and about 2300 miles southwest of Hawaii. The Marshall Islands Constitution became

effective in 1979 and the status of the Marshall Islands as a Trust Territory ended in 1986. The population of approximately 55,000 lives on 29 atolls and 5 islands not part of an atoll. While the country consists of about 70 square miles of land, its jurisdiction covers some 750,000 square miles of ocean. The great majority of the population now lives in the capital, Majuro, and Ebeye, an island located in Kwajalein Atoll, where the U.S. maintains the USAKA missile range.

Despite being under successive foreign control by Germany, Japan and the United States, the Marshallese people retain a strong sense of cultural identity. Marshallese continues to be the primary language of the country and custom is recognized and protected in the Constitution, specifically in relation to land tenure. However, as the social and economic context has moved from a subsistence-based rural society to an urban, cash based economy, traditional practices have eroded.

A. Traditional response to domestic violence

Traditionally, domestic violence was regarded as a matter to be dealt with by the extended family. Marshallese land tenure is matrilineal. The general pattern of households was men going to live on their wife's land, although this principle was not rigidly followed. Within the extended family, a woman would be protected by her blood relatives. While modern definitions of domestic violence may differ from traditional ones, the traditional system of protection for women from domestic abuse has broken down. The increased mobility of Marshallese society means the dispersal of the traditional household based upon the extended family. Although individual households may still include multiple generations, the protection offered by a small close-knit, inter-related community has been weakened.

B. Public Attitudes about Domestic Violence

Traditional attitudes toward domestic violence continue to shape public attitudes today. Historically, a certain amount of what we today consider domestic violence was tolerated. In a 2007 survey[1] which examined attitudes about domestic violence, 56% of women surveyed said that violence against women was justified in certain circumstances. The reason most commonly given as an acceptable reason for such violence was neglect of children (51%.) However, almost a quarter (23%) of women respondents thought that burning food was a justification for violence against women. Other reasons addressed by the survey were:

- arguing with her husband or partner (44 percent);
- going out without telling her husband (42 percent):
- refusing to have sex with her husband (25 percent).

Youth to Youth in Health was an early contributor to public education about domestic violence through skits presented for its young target audience. WUTMI (Women United Together Marshall Islands), a non-governmental organization formed to advance women's causes, has been very active in advocating for victims of domestic violence and has conducted a number of programs to change public attitudes toward domestic violence. The efforts of WUTMI were a major factor in the ultimate passage of the DVPPA.

C. Incidence of Domestic Violence in RMI

Like the problem of domestic violence generally, the incidence of domestic violence in the RMI is not fully understood. A 2004 study[2] suggested the incidence of women who had

---

[1] RMI Economic Policy - Planning and Statistics Office, "Demographic and Health Survey 2007."

[2]WUTMI, "Report on WAVE Project" (2004).

suffered some form of domestic violence in their lives was 86%. Interestingly, in light of the perception that alcohol use plays a significant role in domestic violence, that same survey found alcohol was involved in only 52% of domestic violence events.

In contrast to the 2004 findings, in a 2007 survey just over 28% of women participating reported they had suffered physical violence since age 15. A more current study is underway and while it has not been finalized, a preliminary review of the raw data suggests the rate is somewhere between the two.

Whatever the actual incidence of domestic violence in the Marshall Islands, it is clear that only a small fraction is ever reported to the police, and an even smaller fraction is pursued in court either through the criminal or civil process. Of women ages 15-49 who had ever experienced physical or sexual violence and sought help, only 2.9 percent sought help from the police.[3] In 2012, only three criminal cases involving domestic violence were filed in the High Court.

D. The Tipping Point - *RMI v. Makroro*[4]

On August 14, 2010, a horrific act of domestic violence case shook the nation. Around 8 p.m., a fight broke out between an older married couple, both of whom were faculty members at the College of the Marshall Islands. The couple were shouting and swearing at each other. At one point, the wife opened the window and called out to a group of men sitting by the house for them to "come and see this guy, this woman basher." This led to a call to the police by one of the men, an off-duty policeman. A few minutes the disturbance seemed to subside and the off-duty

[3]EPPSO, Marshall Islands Demographic and Health Survey (2007).

[4]High Court Criminal Action No. 2010-022.

policeman cancelled the call to police for assistance.

Shortly thereafter, the fight resumed and one of the men's 4 year old daughter, who had gone into the house looking for a friend, called to her father, screaming there was blood. The men went into the house and found the husband covered in blood. They went into the bed room and found the wife lying face down, not moving and blood everywhere. A final call was made to the police and hospital, but it was too late. The victim was dead, suffering from numerous hacking, stabbing and laceration wounds to her legs, arms, head and torso, with a kitchen knife embedded in her ribs on the left side.

The commission of the crime resulted in a wave of outrage in the community. For instance, a local women's group (WUTMI) organized what the local newspaper described as "a rare display of public protest in Majuro, with women and men - most wearing black WUTMI logoed T-shirts - marching from the College of the Marshall Islands to the High Court."[5]

The defendant did not deny he had killed his wife, but attempted to raise an insanity defense, which the court ultimately denied as having no basis. The court's sentencing remarks reflected the condemnation of the act by the community, specifically noting: "The law does not condone domestic violence. Being drunk and hearing offensive words from one's spouse is no justification, excuse or mitigation for defendant's actions in this case."[6]

Importantly, the response to the crime created interest in and support for a legislative response to domestic violence. Although a domestic violence bill had been previously presented to the parliament (Nitijela), the community response to this savage crime contributed to the final

---

[5]Marshall Islands Journal, Aug. 27, 2010.

[6]*RMI v. Makroro*, Judgment and Sentencing Order, August 23, 2011.

passage of the Domestic Violence Prevention and Protection Act, 2011, which was adopted in September of 2011, despite a measure of continuing opposition.

III. Legal framework

A. Development of the Legal Structure

The laws of the Trust Territory, which were based upon U.S. law, were largely retained after independence in the RMI. There were no specific civil or criminal laws dealing with domestic violence. The criminal code provided for sanctions against assault, aggravated assault, assault with a dangerous weapon an the like, and defined rape as "sexual intercourse with a female, not his wife, by force and against her will." While incest was prohibited, there was no statutory rape provision for females under the age of consent.

Over time, the statutory framework evolved to address domestic and sexual violence more specifically. In 2005, a number of changes to the law were made in this regard. The criminal code was amended to update sexual assault laws.[7] Among the changes were the expansion of the definition of rape to include a broadened definition of sexual penetration and the removal of the exception to rape for forced sex with a marital partner. The new law provided for different degrees of sexual assault. Among other changes, it recognized non-consensual sexual contact without penetration as sexual assault. It criminalized sexual contact with a female under the age of 16 without regard to consent. The new law also provided a victim's testimony was not required to be corroborated and the victim did not need to resist the actor for an offense to occur.

Also in 2005, the Rules of Criminal Procedure were amended to be more protective of

[7]P.L. 2005-31.

child witnesses under the age of 16 by providing for alternative methods of testimony which would reduce the trauma to the child of testifying, such as use of video taped testimony, screening the child from the defendant to avoid direct confrontation, or the use of closed circuit television in the court room.[8] Additionally, the Rules of Evidence were amended to be more protective of victims by limiting admissibility of evidence of victim's sexual history.[9]

In 2011, the Criminal Code underwent a major transformation based upon the Model Penal Code,[10] although the sexual assault provisions were by and large retained. In relation to gender based violence, the new Criminal Code included new provisions criminalizing

[8]Marshall Islands Rules of Criminal Procedure, Rule 26(b).

[9]P.L. 2005-23.

[10]P.L. 2011-59.

harassment[11] and stalking.[12]

B. The Domestic Violence Prevention and Protection Act, 2011.

Following the murder of Emson Makroro by her husband in 2010, there was renewed interest in addressing the problem of domestic violence legislatively. A bill was drafted and circulated for extensive agency comment and community consultation. It was reintroduced in the second legislative session of 2011 and, after a well attended public hearing, was passed in

---

[11]31 MIRC Section 250.4. Harrassment.

A person commits a petty misdemeanor if, with intent to harass, annoy, or alarm another, the person:

(1) repeatedly makes a telephone call, facsimile, or electronic mail transmission without purpose of legitimate communication; or

(2) insults, taunts or challenges another in a manner likely to provoke immediate violent or disorderly response; or

(3) makes repeated communications anonymously or at extremely inconvenient hours; or

(4) subjects another to an offensive and unwanted touching; or

(5) repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome; or

(6) makes a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another.

[12]31 MIRC Section 250.5. Stalking.

A person is guilty of stalking, a misdemeanor, if the person intentionally engages in a course of conduct that places another person in reasonable fear of the death of, or serious bodily injury to, or causes substantial emotional distress to that person or an immediate family member of that person. "Course of conduct" means repeatedly establishing and maintaining visual or physical proximity to another person or repeatedly conveying verbal or written threats or threats implied by conduct directed at or toward another person.

"Immediate family" means a spouse, parent, child, sibling, or any other person who regularly resides in the household.

September 2011.[13]

The Act addresses domestic violence both civilly and criminally. It provides a broad definition of domestic violence, going beyond the common apprehension that domestic violence is present only when there is physical violence. Section 904 of the DVPPA establishes the criminal offense of domestic violence and includes such actions as

(a) assault of a family member;

(b) psychologically abuse or intimidation of a family member;

(c) sexual assault of a family member;

(d) economic abuse of a family member;

(e) restraint of the freedom of movement of a family member;

(f) stalking a family member;

(g) unlawfully behaving in an indecent manner to a family member; and

(h) unlawfully damaging or causing damage to a family member's property.[14]

The Act also broadly defines "family member." For instance, a family member includes members of the extended family and "any other person who is treated by the person as a family member or a member of a same household including by customary adoption."[15] A family member may also be a "partner" which the Act defines as "a person to whom the person is not married by law or custom but with whom the person is living as a couple on a genuine domestic basic, or with whom the person is in a relationship as a couple where one or each of them

---

[13]P.L. 2011-60.

[14]26 MIRC Section 904.

[15]26 MIRC Section 903(m).

provides personal or financial commitment and support or a domestic nature for the material benefit of the other, irrespective of whether or not they are living under the same roof."[16]

The Act authorizes the issuance of a protection order

> . . . if the court is satisfied on the balance of probabilities that:
> (a) the respondent has committed an act of domestic violence against the complainant; or
> (b) the respondent is likely to commit an act of domestic violence against the complainant.[17]

Additionally, the Act provides for a temporary protection order if the judge is satisfied that the complainant or a child in the care of complainant is in danger from an act of domestic violence.[18] A temporary protection order may be granted on an ex parte basis[19] and may be granted even in the absence of the complainant.[20] The Act requires all protection orders to include provisions that "the respondent must be of good behavior towards the complainant and any person named in the order" and that "the respondent must not commit an act of domestic violence."[21]

IV. The Judicial Experience under the DVPPA

Although the DVPPA has been in effect for a year and a half, the courts still have little experience with cases filed under it. There have been no criminal cases filed pursuant to the Act and very few civil cases.

---

[16]26 MIRC Section 903(j).

[17]26 MIRC Section 906(1).

[18]26 MIRC Section 909(1)(a).

[19]26 MIRC Section 913(4).

[20]26 MIRC Section 909(3).

[21]26 MIRC Section 907.

A. *In Re: Adoption of Carmen Jakeo*[22]

The first use of the DVPPA was actually in the context of an adoption case filed some six months after the adoption of the Act. A young single mother put her daughter up for international adoption. The birth certificate showed the father as "not stated." The mother did not disclose the father's name because of a history of physical abuse by the father and his failure to acknowledge the child after the child was born. Once the adoption hearing had been set, the paternal grandfather objected on behalf of his son, who was on an outer island, on the grounds that his son had not consented to the adoption.

Counsel for the proposed adoptive parent filed a motion for a protective order under the DVPPA on behalf of natural mother who had been subjected to continual physical abuse while living with the natural father. In her affidavit in support of the motion for protective order, she described the abuse she had suffered. She stated that she had reported instances of abuse to police, but would then tell the police not to charge the perpetrator.

Counsel for the parties entered into a stipulated protective order. The order provided that the natural father must be of good behavior toward the natural mother and her children, and must not commit an act of domestic violence. Both of these provisions are required by the Act to be included in any protection order. Additionally the order prohibited the respondent from approaching within 200 feet of complainant and from communicating directly with complainant, as well as prohibiting respondent from possessing any weapon or damaging or taking property of complainant.

There were no reported violations of the order and the adoption was subsequently

[22]High Court Civil Action No. 2012-038.

granted, upon a finding that the father had abandoned the child. Because of the flexibility of the Act, it was possible to utilize the protective order in the context of the adoption case relatively seamlessly and provide protection for the natural mother of the child.

B. *Biamond v. Biamond*[23]

The second post Act civil domestic violence case involved an older woman bringing suit against her husband for various acts of domestic violence. Although the case was not brought under the DVPPA, it illustrates some of the problems raised by domestic violence cases. Based upon the complaint, the plaintiff had suffered multiple beatings by her husband in the past, one of which left her unconscious. Some of the beatings were in front of their children, some of the beatings were at the church they attended. The husband threatened to beat her if she ever went back to church, but the victim and her children went to live with the pastor's family. She complained to police, who told her to go to Legal Services, and suit was filed. However, it was not filed under the DVPPA, rather it was filed as a tort for assault, requesting damages. For whatever reason, the complaint was never filed on the defendant. Moving the case forward was complicated by a lack of continuity in counsel, as the lawyer who initially filed the complaint left legal services and the case was juggled internally.

Court rules provide a case should be dismissed by the court after 120 days without service on the defendant, in the absence of good cause. Eight months after the complaint was filed, the court issued an order to show cause why the matter should not be dismissed, in light of the failure to serve defendant and lack of movement with the case. In response, legal services represented

[23]High Court Civil Action No. 2012-126.

they had lost contact with the client; that she had no phone, had left no address, and had not responded to radio announcements requesting her to contact the office. Accordingly, the matter was dismissed.

This case presents some of the problems with which the court is faced in the prosecution of domestic violence cases. While the allegations present evidence of significant and long term domestic violence, the legal response suggests a possible lack of information about the legal options available to the victim, both on the part of the victim and her advocate, as the case was brought as a tort action for damages, rather than under the DVPPA which provides specific authority for protection orders. This was complicated by the change in counsel necessitated by the original attorney leaving legal services.

The loss of contact with the victim by counsel is indicative of another problem. Victims of domestic violence are often reluctant to come forward in the first place. If the legal system does not provide a speedy, effective response to her needs, she may be unable or unwilling to continue the law suit. Over time she may return to an abusive relationship for a number of economic, personal and psychological reasons, and simply abandon the case as hopeless. The DVPPA provides for a temporary restraining order which may issued without notice to the respondent and without the presence of the complainant or respondent. In this manner, some measure of relief may be granted in a short time frame, which may permit the victim and her family to move forward with the action while being protected from continuing violence.

In this case, there is evidence that the complainant may have found a way to change her circumstances. The complaint reveals that she and the children had moved in with the family of the pastor of her church. Perhaps she was able to remain there, was able to separate from her

husband, and the case was abandoned as no longer needed. Perhaps she ultimately returned to her husband. If she were in a safe place living with the pastor's family, it may be that the safety of her and her family was not the primary issue in the filing of the law suit. Again, like many issues relating to domestic violence, we just don't know. This case does, however, suggest the need for the court to insure it has an understanding of the circumstances of the complainant to insure that her needs are being addressed.

While the court is not the appropriate agency to provide advocacy services for those who have experienced domestic violence, the court has submitted a budgetary request for a probation officer which would allow the monitoring of offenders in criminal matters, including domestic violence cases, and provide an additional measure of protection in that manner.

C. *Jorbon v. Isaac*[24]

The first case brought specifically under the DVPPA was filed in October 2012, a year after enactment. The complainant and defendant were married under custom in 1995, and had five children. However, earlier in 2012 the respondent became alcoholic and became physically and verbally abusive. A pattern developed in his behavior, the respondent would get drunk on the weekend, come home, get mad with the children. The complainant would try to stop him, at which point the respondent would physically assault complainant, sometimes requiring hospital care. The children would see and hear the abusive behavior. Complainant estimated this happened 10 times from early 2012 up to the filing of the complaint in October of 2012 Each time, the complainant called national police for assistance and only once did they take the respondent into custody. Other times, the police told her to get a restraining order from her

[24]High Court Civil Action No. 2012-191.

attorney.

The complainant told respondent to move out of her house, but he responded he would leave only if he got a summons and complaint from the court - only then would he believe she really wanted him out of her house and her life.

The week after respondent found out she went to an attorney, things got worse. He got drunk daily, and threatened her with physical abuse. When she complained to the police, they wouldn't come until they got an order from courts. The respondent went to her place of employment and verbally abused her.

The complainant filed suit requesting a separation and a protective order. After consultation with complainant's counsel by the court, an ex parte TPO, as authorized by the Act, was issued and served on respondent. The order provided that respondent shall not commit an act of domestic violence and that he must be of good behavior towards the complainant and their three children. These two provisions are required to be included in any protection order by the Act. Additionally, respondent was prohibited from coming within 100 yards of his wife's residence; and from coming within 100 yards of his wife and children. A hearing was set for 10 days later and the respondent was ordered to appear at the hearing.

At the time set for hearing, the respondent failed to appear. Complainant's counsel was present, but the complainant was also absent. At the request of complainant's counsel, the hearing was continued for two days. By that time respondent contacted an attorney. At the time set for hearing, counsel for both parties appeared, but neither party was present. The matter was continued at the request of both counsel to allow them to consult with their clients. At the time set for the re-scheduled hearing, both counsel appeared, and jointly represented that there was no

need for hearing, that respondent did not contest order, except to request visitation with children. Counsel requested an opportunity to negotiate visitation terms and transfer of respondent's belongings from complainant's household. A status conference was set for the following week to review the terms of the order.

However, the day before the conference, complainant filed a motion for an order to show cause why respondent should not be held in contempt for violation of court's October 22 order. Included in complainant's supporting affidavit were statements that the respondent had continued to reside at complainant's residence since the weekend following the issuance of the TPO, that complainant had gone to the police with the order and had given order to police. When she went a second time and asked police to take the respondent from her home, they did not do anything.

In response to the motion, the court set the matter for hearing the following day and gave notice to the Office of the Attorney General to attend.

At the hearing, testimony was taken from both the complainant and the respondent. The complainant confirmed the facts set out in her affidavit. The respondent acknowledged he had received order, had discussed it with his lawyer and understood it. He admitted he had violated the order by going to house to collect his personal effects and stayed overnight at the house.

The court admonished the respondent, who had, by the time of hearing, left the house and was no longer in violation of the order. The respondent, in response to the admonition of the court, promised specifically to not violate the court's order. The court further informed respondent of possible consequences of further violations, and issued a protective order consistent with provisions of TPO. Additionally, the court ordered that national police and local

government police "shall enforce" the order, with no objection from the assistant attorney general who was present.

No further complaints of violations of the protective order were filed, and two months later, in early 2013, a Notice of Dismissal and Stipulation was filed by both parties that dismissed the case on the grounds that the respondent had moved out of the house.

V. Some Statutory Issues arising under the DVPPA.

A. Conditions for issuance of a temporary protection order.

Section 909 of the DVPPA, Temporary Protection Order, provides as follows:

> (1) A Community, District or High Court may on application made under section 12 grant a temporary protection order if the court is satisfied that:
>
> (a) the complainant or a child in their care and custody is in danger of an act of domestic violence; and
>
> (b) because of distance, time or other circumstances of the case, *it is not practicable to apply to a court*. (emphasis added.)

Subsection (b) seems to suggest that if it IS practicable to apply to a court, the court shall NOT grant a TPO. Clearly this was not the legislative intent. Examination of possible sources of the law suggest that this provision may have been taken from the Vanuatu Family Protection Act[25] where this language is included in the authorization of non-judicial officers to issue temporary protection orders. In such a circumstance, it may make sense to provide that a court is not readily available to hear the application for an order as a condition for a non-judicial officer to grant such application. However, provision for non-judicial officers to issue such orders is not included in the DVPPA, and the language cited is unnecessary surplusage which makes no sense in the overall context of the Act.

---

[25]Vanuatu Family Protection Act, 2008.

B. Conflict with provisions of the Criminal Code.

Section 904 of the DVPPA establishes the criminal offense of domestic violence and includes such things as

(a) assault of a family member;

(b) psychologically abuse or intimidation of a family member;

(c) sexual assault of a family member;

(d) economic abuse of a family member;

(e) restraint of the freedom of movement of a family member;

(f) stalking a family member;

(g) unlawfully behaving in an indecent manner to a family member; and

(h) unlawfully damaging or causing damage to a family member's property.

Sexual assault is defined to be the same as in the Criminal Code.[26] Psychological abuse is defined to include "harassment."[27]

These provisions overlap with provisions in the Criminal Code, which also criminalizes sexual assault, harassment and stalking. Sexual assault in the Criminal Code is addressed as first, second, third or fourth degree sexual assault, or continuous sexual assault of a minor. Each degree of sexual assault carries a different punishment, ranging from 25 years imprisonment and up to a $20,000 fine for first degree sexual assault to one year imprisonment and a maximum fine of $1,000 for fourth degree sexual assault. Sexual assault under the DVPPA, however, is punishable by six months imprisonment and up to a $1,000 fine for the first offense and 2 years

[26]26 MIRC Section 903(m).

[27]26 MIRC Section 903(l).

and up to a $2,000 fine for subsequent offenses. The same penalties are provided for harassment and stalking under that Act.

Under the Criminal Code, however, harassment is punishable as a petty misdemeanor (6 months imprisonment and up to $400 in fine), while stalking is punishable as misdemeanor, which provides for 1 year in jail and a $1,000 maximum fine. While the DVPPA offenses require the additional element of being against a family member, it is unfortunate there is not a better description in the law of how these offenses are to be addressed in light of the overlapping authority in the two statutes. If a defendant is charged and found guilty of first degree sexual assault, is the penalty to be reduced if charged under the DVPPA because it is against a family member? It seems doubtful that was the intent of the legislature.

C. "No drop" policy

Section 924 of the DVPPA, "No-drop policy," provides, in part: "(1) A police officer upon receiving reports of domestic violence cases shall immediately investigate and press charges if appropriate."

As has been described in the cases reported above, the police response to reports of domestic violence is uneven at best. It has been suggested that in some jurisdictions a more aggressive policy has been established, such as a mandatory arrest provision if a police officer has probable cause to believe a domestic violence offense has occurred. In some jurisdictions in the U.S., the legislatures or courts have gone so far as to impose civil liability if the police officer fails to arrest under a mandatory arrest provision.

If a mandatory arrest provision were to be contemplated for the RMI, careful consideration would have to be given to RMI constitutional provisions regarding warrantless

arrests. However, a policy could be fashioned to create a more compelling duty on police to act in domestic violence cases.

The second subsection of Section 924 is more problematic. It provides:

> A prosecutor shall proceed with the case in court, before proceeding however, the prosecutor must:
> (a) believe that an act domestic violence has been committed;
> (b) have sufficient evidence to proceed with the case.

The problem arises from Article VII, Section 3 of the RMI Constitution which gives the Attorney General the responsibility for responsible for instituting, conducting or discontinuing any criminal proceedings. In the exercise of these responsibilities, "the Attorney-General shall not receive any direction from the Cabinet or any other authority or person, but shall act independently."[28] To the extent that this provision of the DVPPA may be seen as interfering with the independence of the Attorney General in the instituting of criminal proceedings, it may be subject to constitutional challenge.

VI. Judicial response to the DVPPA.

The judiciary has responded to the DVPPA in a number of ways.

A. Accessibility.

In light of attitudes in community and difficulties in pursuing actions by victims of domestic violence, court has taken steps to make the legal process more accessible to such parties. One way is the development of a form motion and affidavit for use by counsel, advocates and victims of domestic violence. This form, in both Marshallese and English, appears on the court website at www.rmicourts.org. It has been reviewed by representatives of

[28]RMI Constitution, Article VII, Section 3(4).

WUTMI and legal services. The availability of this form will enhance the accessibility of the courts to affected persons, and will also assist in the education of the interested people in how to assert their rights under the DVPPA. For instance, if this resource had been available to counsel in the *Biamond* case, it may have been pursued differently with a different outcome.

The Civil Procedure Act provides that a person unable to pay filing and other fees may have those fees waived.[29] The court provides a form motion for exemption from payment of fees and costs on its website, providing for expanded accessibility to the courts for indigent parties who may suffer domestic violence.

In addition to the forms provided on the court website, the website also includes the Marshall Islands Revised Code, including the DVPPA. Making the law itself accessible to the public is one way the court may inform members of the public of their rights and duties under the law.

Currently there is no provision of a 24/7 judge on duty to consider protection order applications. However, just as in the case of search/arrest warrants and emergency bail hearings, judges are availably on an ad hoc basis. In the event the demand for protection orders increases, the court will respond accordingly.

B. Data collection.

With the increased focus on domestic violence nationally and internationally, and the adoption of the DVPPA, there has been an increased interest in data relating to domestic violence cases. In response, the court has added fields to its data base of cases indicating the gender and age of defendants and victims in criminal cases. In this way, it is easier to identify cases in which

[29]29 MIRC Section 136.

gender based violence was a factor. Additionally, in the data base for civil cases, a new category of case has been added: "domestic violence." Before the adoption of the DVPPA, there was not an identified class of such cases in the civil caseload. These changes have been made to the High Court data base and are in the process of being implemented in the District Court. Through this response, the court is better able to analyze its cases with reference to domestic violence and to report to the public and other interested parties. This information is included in the Judiciary's 2011 Annual Report and similarly will be in the 2012 report.

C. Involving the Police and Attorney General.

In the *Makroro* murder case, an off-duty police officer canceled his call for police intervention when the domestic disturbance seemed to subside. In the *Carmen Jakeo* adoption case, the natural mother stated she had reported her abusive husband to the police, but later asked charges not be brought. In the *Biamond* case, the complainant stated she had complained to the police, who told her to go to legal services. In the *Jorbon* case, the complainant stated in her affidavit in support of motion to show cause that defendant had violated the TPO by remaining at her residence. When she presented the TPO to the police on two different occasions, asking them to enforce the order, they did nothing. The response of the police to complaints of domestic violence seems to reflect public attitudes that it is a family matter, not one for the police to be involved in, even after the passage of the DVPPA which requires the police to immediately investigate and press charges, if appropriate, upon receiving a report of domestic violence.

In the *Jorbon* case, in response to the apparent failure of the police to act, the court ordered a representative of the Office of the Attorney General to be present at the hearing on complainant's motion for an order to show cause why respondent should not be found in

contempt. At the close of the hearing, the court issued a protection order which mirrored the provisions of the TPO, but added specific direction that the national and local police "shall enforce" the provisions of the order. By including an Assistant Attorney General at the hearing, it was intended that the office would be educated as to the failure of the police to enforce the order. It was hoped that the office would take steps to educate the police of their responsibilities under the Act. Additionally, the Attorney General would be aware of the court's specific direction to the police in the order itself to enforce the provisions of the order, and, in the absence of any objection from the AG, would acknowledge that duty.

It is unknown whether this strategy was effective, but there have been no charges filed against the respondent for violation of the protection order, despite his acknowledgment of such in the presence of the Assistant Attorney General. While there were no further allegations in the case of the police failing to enforce the order, there were similarly no allegations of any violation of the order by the respondent.

D. Educate the public.

The court's comments from the bench can have a educating effect. Prior to the 2005 amendments to the Criminal Code dealing with sexual assault, the court had commented on the inadequacy of the sexual assault laws from the Trust Territory and the need to revise the laws to properly address the offenses. In the *Makroro* case, the court condemned defendant's actions, not only as murder, but also as an act of domestic violence. These comments were picked up by the local newspaper, resulting in public exposure to the comments, especially in light of the notoriety of the case in the Marshall Islands. As noted above, the court's website is a vehicle for public education as well.

E. Educate the parties.

In *Jorbon v. Isaac*, the court engaged the respondent in a dialogue from the bench as part of the show cause hearing. In so doing, the court insured the respondent acknowledged his behavior was not tolerated under the protection order. Further, he pledged that he would not violate the order further. By engaging in this dialogue, the court intended to educate him not only about his duties and responsibilities, but also that the court takes these types of matters seriously and that he needed to take the matter seriously.

F. Educate the judiciary.

The RMI judiciary is committed to the idea that a well informed and educated judiciary is essential for the fair and efficient administration of justice. Canon 6.3 of the RMI Judicial Code of Conduct requires: "A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills, and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities that should be made available, under judicial control, to judges." In furtherance of this, both High Court justices have attended training sessions addressing domestic violence. At the next biennial Community Court Judge Training session in 2014, the DVPPA will be part of the program. In this manner, the judiciary will be aware of its authority and responsibility under the Act, as well as gain an understanding of domestic violence.

VII. Conclusion

As the traditional protections for women against domestic violence have broken down, it has been difficult for the Marshall Islands to transition to a more modern response to domestic violence which is effective. In part this is due to attitudes which are based upon traditional ways

of thinking about domestic violence. Modern attitudes toward domestic violence are reflected in the Domestic Violence Protection and Prevention Act which has been adopted in the Marshall Islands. One of the stated purposes of the Act is "to recognize that domestic violence of any kind is not acceptable in the Republic."[30] While the courts have a role to play in addressing domestic violence, it is primarily one in response to cases that appear before it. Attitudes and knowledge in the community at large, in the police and attorney general's office, and in the general legal community all play a role in the process leading up to the filing of cases in court. Although the Act is underutilized as measured by the incidence of domestic violence in the Republic, efforts by concerned segments of the community and affected governmental agencies can change public attitudes and can move us toward a society which respects and protects all of its members.

[30]31 MIRC Section 902(2).