Troubling *Kastom*: Women, Violence, and Justice in Vanuatu

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Declaration

This thesis contains no material which has been accepted for the award of any other degree or diploma in any university. To the best of the author's knowledge, it contains no material previously published or written by another person, except where due reference is made in the text.

Heidi Tyedmers

December 2023

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Abstract

In Vanuatu, efforts to expand the role of *kastom* [local knowledge, traditional culture] into key justice and governance spaces within the state are increasingly evident. At the same time, Vanuatu has continued to experience very high rates of violence against women and girls. In her 1987 poem, *Colonised People,* late Ni-Vanuatu poet and national leader Grace Molisa described the violence and oppression that women and girls experience at the hands of the 'Free men of Vanuatu' as a form of colonising violence. Yet these circumstances have persisted over the intervening three decades. Within this enduring context, this thesis asks: How does the upsurge in institutional mobilisations of *kastom*, particularly through the materialisation of 'the power of chiefs', affect women and girls and their experiences of violence in Vanuatu? Its findings illuminate how this trend is not simply about a neutral expansion of regulatory pluralism or decentralisation. Rather, these increasing assertions of normative *kastom* in Vanuatu, particularly as they are deployed in the space of justice by Vanuatu's predominantly male chiefs, ultimately act to compound the violence women and girls experience.

Through the use of theoretical guideposts offered by Judith Butler's conceptualisation of violence, this thesis demonstrates how the increasingly normative and patriarchal aspects of *kastom* that are mobilised in Vanuatu establish epistemic frames that effectively invisiblise – erase, remove from view – the violence women and girls experience. Methodologically, the chapters draw on embedded ethnographic fieldwork, documentary analysis, and formal interviews to corroborate, clarify, and supplement the analysis. Across the chapters, this thesis traces a shift in Vanuatu's early approach to women and gender equality, as well as to chiefs and kastom, and demonstrates how normative *kastom* is also about submission, discipline, and control for many women and girls. The findings illuminate how the kind of invisibilising or epistemic violence inherent in normative articulations of kastom and the power of chiefs in Vanuatu can be observed across various sites in the justice sector, from Vanuatu's domestic violence legislation to community policing and juvenile justice. Each of these sites illustrates that not only have 'chiefs' rights' been privileged over the rights and interests of women and girls who experience violence, but these efforts also have the potential to restrict women's access to justice in situations of violence and mitigate the consequences for violent men.

Ultimately, this thesis demonstrates that k*astom* in these increasingly patriarchal and hegemonic articulations institutionalises and instrumentalises the power of particular men in a

way that allows and enables violence against women and girls – both symbolic and lived. Countering this layered, epistemic violence in the lives of women and girls requires active critique. This thesis employs the approach of ‘troubling’ to borrow from Sara Ahmed, who draws upon Butler’s work. Troubling as an act of critical engagement offers a way to examine and denaturalise these epistemic frames of intelligibility, demonstrating the violence they enact and enable, and allowing other more effective ways to address these crucial issues of violence and justice in the lives of women and girls to emerge.

Table of Contents

Declaration iii

Acknowledgements v

Abstract ix

Preface:
Patriarchal States, *Kastom* 'Alternatives', and Hilda Lini 1

Chapter One
Introduction: The Necessity and the Trouble of 'Troubling *Kastom'* 13
1. Naming *Kastom* as Trouble: Chipping Away at the Old Structures 13

2. Purpose and Research Questions: Single Stories and Ambivalent Possibilities 20

3. Summary of the Argument and Organisation of the Thesis 23

Chapter Two
Context: Reconstituting Formations of Kastom, Audacious Violence, and the Free Men of Vanuatu 30
1. Colonised People and the Free Men of Vanuatu 30

2. Audacious Violence: The Prevalence of Violence Against Women and Girls in Vanuatu 36

3. Reconstituting Formations of Patriarchal *Kastom* and People Who Should Know Better 44

Chapter Three
Theory | Method: Violence, Epistemologies, and Erasures 53
1. Theory | Methodology: Violence, Erasure, and Making the Invisible Known 53

2. Methods: Centring Women's Lives and Voices 66

3. Locating Myself in this Research | Violence, Troubling Relationality, and Intimacy 73

Chapter Four
Transforming the State: Governance, Women, and the Rise of the 'Nakamal Clique' 81
1. Introduction: Becoming More *Kastom* Than *Kastom* 81

2. The Emergence of 'Pure Injustice': The State, *Kastom*, Male Chiefs, and Women 85

3. Debating Vanuatu's Constitution: 'Modernity', 'Tradition', and the 'Indigenous State' 89

4. Taking Women 'Out of the Kitchen' in the Newly Independent State 94

5. 'Wielding Kastom Like a Blunt Hammer': The Rise of Corruption (and a More Hegemonic *Kastom*) in Vanuatu 100

6. One Ring to Rule them All: Silences, Slippages and 'Fixes' in the Pursuit of *Kastom* Governance 108

7. Conclusion: State Transformation, Women, and the Rise of the 'Nakamal Clique' 116

Chapter Five
Man on Top, Woman Down: Women and *Kastom* in Vanuatu 119
1. Introduction: Women, *Kastom*, Inequality 119

2. Women, Power, and the Hydra of *Kastom* 123

3. The Cunning of Complementarity: Canoes and Boat Breakers 128

4. Stepping Beyond Exceptions: The Discourse of 'Women Chiefs' in Vanuatu 135

5. The Malvatumauri, Chiefs, and Women 141

6. Respect, *Kastom*, and Women: Control, Violence, and Erasure 145

7. Conclusion: The Impacts of 'Man on Top, Woman Down' in *Kastom* 153

Chapter Six
Women's Rights and Chiefs' Rights: Untangling Vanuatu's *Family Protection Act* **157**
1. Introduction: Troubling a 'Small Part' of Vanuatu's *Family Protection Act* 157

2. Law, Pluralism, and Power - and the Nature of Compromise 160

3. On Controversy, Opposition, and Vanuatu's Domestic Violence Legislation 163

4. Political and Patriarchal Football: The History of *Vanuatu's Family Protection Act* 170

5. Enter the 'Chiefs' Act': The Peculiarities of *Vanuatu's Family Protection Act* (2008) 176

6. A Unique Legal Construction, Within Vanuatu and the Region 183

7. Conclusion: The 'Rights of Chiefs', Women, and Violence 189

Chapter Seven
Erasing Women: *Kastom* as Justice? 191
1. Introduction: *Kastom's* 'Teeth', Chiefs, Policing, and Bylaws 191

2. Crime, Justice, and Women: Erasing Violence Against Women, and the Violence of Erasure 195

3. Policing Communities/Community Policing: Chiefs, Jack Boots, and Confusion 199

4. Codification, Bylaws, Trousers…Repeat: Shifting Focus, Endlessly the Same Target 209

5. Building a [*Kastom*] House of Cards: Kastom, Young Women, and Juvenile In/Justice 217

6. Conclusion: Erasing Violence, Erasing Women, Erasing Justice 225

Chapter Eight
Discussion and Conclusion: Nothingness, Critique, and the Horizon of Justice **229**
1. Women, *Kastom*, Violence: The Nothingness and Invisibility of Women 229

2. The Necessity for Critique: Epistemic Frames and Violence in this Postcolony 234

3. The Power and the Money: Other Drivers and Challenges of *Kastom*-as-Justice 239

4. Striving for the Impossible World: Radical Equality and Freedom 243

...Powerful
men
can
fool
some
of the women
some
of the time
but not
all
of the women
all
of the time

- Grace Molisa, 'Hilda Lini', *Colonised People*

The men's words were no longer law. The women were no longer silent.

- Frantz Fanon, *A Dying Colonialism*

Feminism becomes writing on the wall;
we were here, we did not get used it.

– Sara Ahmed, 'Refusal, Resignation and Complaint', *Feminist Killjoys*

Preface:
Patriarchal States, *Kastom* 'Alternatives', and Hilda Lini

Flicking through a trove of historical documents from the French colonial archives in Aix-en-Provence I came across an intriguing photo. It featured, among other members of the Vanuaaku Party leadership, a young Hilda Lini. In this image Lini – in her early 20s – sits among the other (all male) members of the Vanuaaku Party executive:

Figure 1: Vanuaaku Party Leaders at June 1977 Tanna Congress

The caption for the photo reads: 'Vanuaaku Pati leaders at June 1977 Tanna Congress: seated: left to right: Hilda Lini, editor *Vanuaaku Viewpoints* (first left), President Walter Lini (centre); Barak Sope, VP secretary-general (fourth); Donald Kalpokas, secretary for education (fifth). Kalkot Mattas, centre standing, giving victory sign.'[1] The remaining five men are unnamed, but not her. She is in the front row, looking straight at camera.

In this photo, Hilda Lini appears to be every inch the young woman that Ni-Vanuatu poet and national leader Grace Mera Molisa describes in the first part of her poem *Hilda Lini*: 'Young, attractive, outgoing, gregarious, vivacious, smart, skilled, competent, articulate, confident, and

[1] "Vanuaaku Pati Six Years of Struggle for Independence," Seli Hoo: A Monthly News Bulletin on Vanuaaku and New Caledonia, Issue No 1, November 1977, 3.

independent'[2]. Beyond her leadership role in the Vanuaaku Party and her editorship of its newsletter, *Vanuaaku Viewpoints*, the young Hilda Lini coordinated the women's wing of the liberation movement and was a prominent youth leader. Though she is the only woman among the mostly male Vanuaaku Party leaders, and one of only a handful of women who are front and centre in the Independence movement, there is a sense of possibility in this moment. Even the shorter length of her skirt seems hopeful. Twenty years later she might have been fined by chiefs for wearing a skirt this length. Later, in the upsurge of a more hegemonic articulation of *kastom*[3] and the 'power of chiefs' in Vanuatu starting in the early 2000s, shorter skirts and trousers on women were viewed by an increasingly powerful male *kastom* lobby as a potential incitement to rape. In this image, though, you have the clear sense that she would not have a bar of that.

Despite being dissuaded from running in Vanuatu's first elections[4], Lini eventually became one of Vanuatu's first two women voted into Parliament in 1987, and the first to hold a Ministerial portfolio. After being replaced as Minister of Justice, Culture and Women's Affairs in 1996 by her brother Walter Lini, however, she left national politics[5]. By this time, levels of corruption were on the rise, and political instability was a serious concern[6]. Soon after her departure from the formal political fray, Lini can be found travelling the 'indigenous rights global circuit'[7] with the leader of the Turaga Kastom Movement and her long-time companion, Chief Viraleo Boborenvanua. In the late 1990s the two co-founded the Tuvanuatu Komiuniti[8], billed as 'a

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[2] Grace Molisa, "Hilda Lini", *Colonised People*. (Port Vila: Black Stone Publications, 1987), 26.
[3] Broadly meaning local knowledge or traditional culture.
[4] In a meeting in Port Vila in November 2017 Lini said that women had not wanted her to contest at the time because she was not married. In an ABC Australia interview broadcast on Sunday 17 February 1980, however, Lini says that 'In the last elections in November, I was supposed to be one of the candidates for the Vanuaaku Party but there was a lot of opposition from the male society in our party…'. ABC International Development, "Finding unity in the independent New Hebrides", 1980, https://www.abc.net.au/abc-international-development/finding-unity-in-the-independent-new-hebrides/13522198.
[5] David Ambrose, "Vanuatu," *The Contemporary Pacific*, 9, no. 2 (Fall 1997): 504.
[6] Daniel Gay, "The emperor's tailor: an assessment of Vanuatu's Comprehensive Reform Program," *Pacific Economic Bulletin*, 19, no. 3 (2004): 22.
[7] Haidy Geismar, *Treasured Possessions: Indigenous Interventions into Cultural and Intellectual Property*. (Durham and London: Duke University Press, 2013), 196.
[8] "Hon Hilda Lini" Pacific Women in Politics, UNDP Suva, https://www.pacwip.org/country-profiles/vanuatu/hon-hilda-lini/.

network of indigenous leaders throughout Vanuatu who wish to preserve their indigenous system of peaceful co-existence, based on collective ownership, shared responsibility, and community accountability.'[9] Over the next two decades Lini would become an enigmatic fixture – and, at least officially, the co-leader – of Viraleo's Turaga Kastom Movement. Turaga's full name, the 'Turaga Development Model for Economic Self Reliance and Human Security Program'[10], conveys its clear aspirations in the realm of governance and state security, as well as the economy.

Some of Turaga's political and economic aspirations are highlighted in the 2002 film, *The Leech and the Earthworm*. The film opens with Chief Viraleo speaking animatedly to camera in a local Vanuatu language [*Raga*]. A large group of mostly elderly men are gathered behind him, and to his right is Hilda Lini. They are all in *kastom* dress. The chief declares in one film segment that in New York City, the home of the United Nations and the global political and economic world order, people live on the streets, hungry, while material possessions like cars and books are kept safely in buildings. The broader argument offered by Viraleo follows a typical Pacific critique of global 'Western' capitalism and state power, which often extends to a wholesale renunciation of 'the West'. In this case, Viraleo says that even in the heartland of global [Western] political power, wealth, democracy, and development, you have people who are unhoused, who are suffering. The '*kastom'* life he and his followers have re-created on Pentecost [an island in Vanuatu where both Viraleo and Lini are from] is held up not only as the corrective but also the opposite of 'Western' excesses and hypocrisy.

Throughout the film, beyond the imagery of 'traditional village life' juxtaposed against the streets of New York City, and Viraleo's critique of 'the West', is another, more subtle performance. In clear contrast to Viraleo who is bold and animated in the film, authoritative,

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[9] "Hilda Lini (Vanuatu)", PeaceWomen Across the Globe, WikiPeaceWomen, https://wikipeacewomen.org/wpworg/en/?page_id=3846.
[10] Geismar, *Treasured Possessions*, 195.

Hilda Lini is the silent companion. Lini's eyes are cast down through most of her appearances in the film, and she remains silent and largely unmoving, even though it is her voice translating Viraleo's words. Lini is undoubtedly the more worldly of the two, and her command of English is also much better, yet in this performance, she is essentially presented as the handmaid to Viraleo's philosophical pronouncements. At the very end of the film, Lini finally looks to camera and speaks while Viraleo stares off into the distance. Even in this segment, we still do not hear from her. Gesturing to Viraleo she delivers *his* last word about the importance of an indigenous way of life. In the face of the broader critique of 'the West' as it is juxtaposed against the virtues of 'traditional Vanuatu village life', this subtle yet unequivocally gendered performance ultimately recedes into the background. Still, one might be left wondering (if one was inclined to consider these kinds of things) what it means to be a woman – even Hilda Lini – in this kind of 'traditional' village context.

Fast forward to 2018, and Hilda Lini and Chief Viraleo are again in the public eye. This time Lini is providing support and expert witness testimony[11] in Viraleo's defence in a court case that garnered local and international media attention. Viraleo is standing trial, charged under Vanuatu's criminal code with intentional assault, threatening to kill, malicious damage, arson, and theft. The case revolves around the harvesting of a relatively small number of sea cucumbers or *beche de mer* by two men from a village not far from Viraleo's in North Pentecost. Viraleo, who has by now fashioned himself a decidedly un-*kastom*-like 'handcrafted timber throne'[12], has decreed that the area where the sea cucumbers were harvested is part of *his kastom* jurisdiction, a proposition which is disputed by the people who actually live in that area[13]. The case involves Viraleo and a group of male followers violently assaulting the two men and threatening them and their families to leave the area by nightfall or risk being shot by

[11] Public Prosecutor v. Leo [2018] VUSC 277; Criminal Case 2745 of 2016 (21 December 2018), 28.
[12] Edward Cavanough, "The chief fighting for an indigenous Vanuatu nation," Al Jazeera, 26 August 2017.
[13] Public Prosecutor v. Leo [2018], 12.

Viraleo with his gun[14]. As more than 15 people – small children, pregnant women, and the elderly[15] – run into the bushes in fear for their lives, Viraleo burns down their houses and all of their belongings[16]. These families would be unhoused and 'forced to live in isolated bush areas and scavenge to survive'[17] after this event – essentially the Vanuatu version of 'living on the streets' – and it would take over a year before their houses would be rebuilt[18].

In the series of trials relating to the case, Viraleo never disputes the charges or denies or apologises for his actions. Instead, he repeatedly asserts his rights under *kastom* to act as he did. To emphasise this point, Viraleo and his acolytes change out of their t-shirts and shorts each day before entering court, donning *kastom* dress as a way of challenging the Court's jurisdiction. According to Viraleo his actions were wholly justifiable as what he refers to as a 'custom eviction'[19]. Hilda Lini, identified as a fellow chief on Viraleo's Vatulanaleo Council of Chiefs, also provides written testimony to support his actions. Their argument is that since a fine of nearly 6,000 pigs, over 240,000 in Turaga's homegrown currency the Livatu (valued by Viraleo at approximately AUD 55,000[20]), and nearly 5 million Vatu (the equivalent of approximately AUD 60,000)[21] had not been paid for the harvesting of the sea cucumbers – an excessive if not outrageous fine by any standards – Viraleo's violent response was justified. Vanuatu's Supreme Court disagreed and found Viraleo guilty on almost all counts. While Viraleo invoked Article 95 of Vanuatu's Constitution to argue that, as a *kastom* judgement, his case was not justiciable in Vanuatu's Courts of Law, the Courts were clear in their response:

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[14] Public Prosecutor v. Leo 2018], 16 and 58.
[15] Cavanough, "The chief fighting for an indigenous Vanuatu nation."
[16] Arson is a particularly pernicious crime in rural Vanuatu as most families would not have insurance, and any accumulated material wealth would typically be stored in the home.
[17] Public Prosecutor v. Leo [2018], 19 and 20.
[18] Public Prosecutor v. Leo [2018], 19 and 20.
[19] Public Prosecutor v. Leo [2018], 22 to 25.
[20] "Livatu" WikiWand, https://www.wikiwand.com/en/Livatu.
[21] The court notes that Hilda Lini's submission said that all three amounts were to be paid, although Viraleo had listed them as alternative forms of payment. The court did not accept Hilda Lini's testimony as it was not seen to be impartial. Lini was identified by the court as 'an ardent Vira Leo supporter, present at most of his Court appearances and responsible for favourable press reporting' about his case. Public Prosecutor v Leo [2018], 28 and 29.

> Article 95 was not ever intended to give greater prominence to customary considerations - just to maintain the status quo. There has been no diminution of significance, neither has customary law taken on added significance, except in one area and that relates to ownership and use of land. Had Parliament wished, customary law in the area of alleged criminal misconduct could also have been devolved to the Chiefs – that has not occurred. There cannot be a clearer message of Parliament's intent than 38 years of silence in the face of many calls for change.[22]

Viraleo was subsequently sentenced to three years and nine months in prison in February 2019. On appeal the Court upheld the original ruling.

There is no doubt that Chief Viraleo is a provocative and controversial figure. An *Al Jazeera* article reported that '…some neighbouring villagers fear the chief's return and are critical of the "slave-like" devotion he demands of others'[23]. A 2012 BBC film called *The Best Piggy Bank,* however, locates Viraleo – ironically for *this* occasion dressed in 'Western'-style smart business attire – as a trailblazer in a 'financial revolution'[24]. When the interviewer asks the former Director of the Vanuatu Cultural Centre, Kirk Huffman, whether Viraleo is '…a champion of tradition' or 'a savvy capitalist'[25], Huffman's oblique response is that Viraleo is '…an innovator with a capitalist tinge', in a kind of exceptional 'Melanesian capitalist' way. Viraleo has amassed wealth in a pig tusk bank which he aspires to run much like a commercial bank, complete with cheque books and his own printed currency. While the Vanuatu Cultural Centre has refused to include Viraleo's 'alternative' in their work on the traditional economy as it is 'not enough like traditional/customary currency'[26], the United Nations Permanent Forum on Indigenous Peoples has recognised Turaga's 'Economic Self-Reliance Model' as an indigenous economic alternative[27]. In her book *Treasured Possessions,* Pacific researcher Haidy Geismar uses the Turaga Kastom Movement as an example of how the national economy often provides a frame for these increasingly hegemonic articulations of *kastom* and

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[22] Public Prosecutor v. Leo [2016]; Criminal Case 2745 of 2016 (28 May 2018), 34 and 35.
[23] Cavanough, "The chief fighting for an indigenous Vanuatu nation."
[24] Vanuatu's Piggy Bank, SBS Dateline, April 3, 2012, https://www.youtube.com/watch?v=IvvNQeor6Ps.
[25] Vanuatu's Piggy Bank, SBS Dateline.
[26] Geismar, *Treasured Possessions,* 197.
[27] United Nations, "Report of the Intergovernmental Preparatory Committee for the Third United Nations Conference on the Least Developed Countries on Its Third Session, 25 April 2001 A/CONF.19/5 https://documents-dds-ny.un.org/doc/UNDOC/GEN/G01/514/25/PDF/G0151425.pdf?OpenElement.

indigeneity in Vanuatu[28]. What Geismar fails to point out is that these spaces have also become key sites for patriarchal power plays and excesses, that are increasingly enforced through violent means.

While Geismar locates Turaga as the 'alternative to the alternative', it is also unclear how 'alternative' Viraleo's movement actually is. Confusion abounds in Vanuatu's whirling admixture of politics, economics, governance, regulation, and patriarchal aspirations for power. In this context, the already fuzzy and shifting lines between 'modern' and 'tradition' blur irrevocably. For example, in the opening address of a filmed meeting of Viraleo's Kastom Movement in 2021 former Independence leader Kalkot Mataskelekele, whose more recent roles include President of Vanuatu, Ombudsman, Solicitor General and Supreme Court Judge, begins by congratulating Viraleo on his release from prison. Viraleo and the Supreme Court's ruling on Article 95 were also a topic at the *Vanuatu National Conference of Kastom Chiefs* held in August 2022. For example, in the first session focusing on 'law and justice' one chief describes Viraleo as 'a chief who is a friend of ours', saying that Viraleo '…got some men to go and beat up some people but when they went to court the court declared that no, you don't have that power'. This chief then urges the other chiefs to '…legalise their power, their *kastom* power, so that they can maintain Vanuatu and move forward with economic development'[29]. While I explore this 2022 meeting as an example of the kind of *kastom*-in-the-service-of-patriarchy that is emerging in Vanuatu in more detail in Chapter Four, these kinds of declarations lead one to wonder whether Viraleo and his despotic – and at times violent – tendencies are the alternative, the vanguard, or both.

To return to Hilda Lini and the photo with which I began this Preface, that moment of possibility in the late 1970s as Vanuatu was emerging as an independent state is troubled in several

[28] Geismar, *Treasured Possessions*, 197.
[29] Vanuatu National Conference of Kastom Chiefs, Day One – Law and Justice, August 14, 2022, https://www.facebook.com/VanuatuNationalArtsFestival/ videos/2964873733645676.

ways by what has transpired over the nearly five decades since it was taken. By 2001 Grace Molisa was reflecting on the 'lost opportunity' at Vanuatu's Independence where men 'claimed the power of the constitutional posts and senior administrative positions' in a way that 'set the scene for the struggle women are now experiencing.'[30] It is perhaps not surprising then, that instead of the photograph I started this chapter with – featuring the young Hilda Lini at the Vanuaaku Party Congress on Tanna – this is the photo that was ultimately featured in Walter Lini's book chronicling Vanuatu's struggle for Independence titled *Beyond Pandemonium*[31]:

Figure 2: Vanuaaku Party Leadership featured in Walter Lini's *Beyond Pandemonium*

This photo was taken at the same time, at the very same place – the men are even dressed in the same clothes – but Hilda Lini has essentially been erased from the scene. In this more popular and widely read depiction of Vanuatu's Independence struggle, Hilda Lini is not featured nor is she listed among the executive members of the party.

These failures of the state that Grace Molisa suggested took root at the time of Independence accelerated in Vanuatu through the late 1990s as men '...used their old-boy-network and the

[30] Grace Molisa quoted in Andonia Piau-Lynch, *Combined Initial, Second and Third Reports on the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/VUT/1-3, September 2004, Article 7.14.
[31] Walter Lini, *Beyond Pandemonium: From the New Hebrides to Vanuatu*. (Wellington: Asia Pacific Books, 1980), 16.

nakamal clique to reinforce the exclusion of women'[32]. While this likely contributed to Hilda Lini's departure from government in the 1990s, the *kastom* alternative she sought to construct with Viraleo ultimately appears even more limiting for women. A prominent Ni-Vanuatu woman I interviewed who had, like Lini, grown up in a small village outside the urban centres in Vanuatu shared her thoughts on Viraleo's Turaga Movement and Hilda Lini's involvement. Straight to the point, she exclaimed, 'You would think they're all slaves, the women!' While she expressed appreciation for Lini and her contributions to Vanuatu more generally, she was critical of the fundamental contradictions in Lini's affiliation with Turaga and with Chief Viraleo Boborenvanua:

> …she stands there and talks about rights, and in that little community, we saw that right at the gate. We went there and they said we had to dress up [in *kastom* dress]. I said 'Sorry Hilda, me, I'm not a *kastom* person. I won't come in with this group. I cannot come in and pretend.' So everyone else went in, and I just stayed in the truck, because of all of that. I could see how they treated women. 'You go over there and cook!' I'm not cooking.

This individual had a distinct critique of how Vanuatu's predominantly male chiefs and men like Viraleo ultimately mobilised *kastom* as a regime of power over women and girls in Vanuatu, in all facets of life. She once told me that a prominent (and arguably relatively 'progressive') political party had informed her that any woman who aspired to stand for politics would need to 'stand behind a [male] chief'[33]. Her reply to them was equally straightforward: 'I'm not going to be standing behind any chief'.

In a speech to a group of women in November 2017, I sat in the audience and listened while Hilda Lini told women to 'leave the negative behind and take a positive step'[34]. Her comment was directed at the myriad ways that Ni-Vanuatu women are held back by men, but particularly

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[32] Grace Mera Molisa, *Women and Good Governance*. (Port Vila: Blackstone Publishing, 2002), 51.

[33] The meaning of this was that any woman who stood for politics would need the endorsement of a chief to run. This was also a recommendation that came out of the Vanuatu National Kastom Chiefs Conference in August 2022. The individual I interviewed was deeply critical of this unspoken requirement that infringed upon her democratic right as a citizen of Vanuatu to stand for public office. Vanuatu's NGO Shadow Report on the Status of Women in Vanuatu also identifies this as a hindrance to women standing for political office in Vanuatu. *NGO Status Report on the Status of Women in Vanuatu*, 23 January 2007, 14.

[34] Personal notes, Post 13th Triennial Conference for Pacific Women, Vanuatu Civil Society Forum on Gender Equality – Past, Present, Future, 30 November 2017, Port Vila, Vanuatu.

at gendered violence. She told the audience that her role as 'one of the highest chiefs in her society' was an example of how she herself had achieved this. I was reminded of Lini's words in a discussion with Ralph Regenvanu, a leading Ni-Vanuatu politician and advocate for *kastom*, several years later in July 2022. Regenvanu had previously encouraged women to 'find their rights in *kastom'* at a meeting I was part of at the national *kastom* meeting house, the Chief's Nakamal in 2013[35]. When I asked Regenvanu what he had meant by that statement several years later, he replied, 'Basically it means *kastom* is constructed and so let's construct it in a way that's positive'. While he also described the situation for women in Vanuatu in the present day as 'terrible' (using a powerful expletive to emphasise just how terrible it actually was), his call for women to find their 'rights in *kastom'* was explained as follows:

> ...I mean it's exactly what chiefs are doing. Chiefs are doing it. So then [women] should do it. Why should chiefs just be the only ones doing it? Creating their own powers.

This proposal for women to 'create their own powers' – just like Viraleo and other [male] chiefs – or 'take a positive step' as Lini had advised, fundamentally misconstrues the nature of *kastom*-endorsed patriarchal domination in Vanuatu, even for prominent women like Hilda Lini. These kinds of declarations also effectively erase the broader societal context. Here the daily machinery of gendered oppression and violence as it is materialised and mediated by a progressively more powerful, and almost unilaterally male, *kastom* lobby, is increasingly operating with the acquiescence and even patronage of the [patriarchal] state. This is not something that the vast majority of women and girls will simply be able to imagine or 'create' their way through.

In fact, the very occasional and very exceptional presence of powerful women like Hilda Lini also complicates matters, particularly in the *kastom* space. As a woman and 'a chief' Lini is often used as the corrective – a simple rejoinder – to the complexities of *kastom* and women

[35] In this meeting, Regenvanu, then as Minister of Lands, introduced Vanuatu's new land laws. These laws had, among other things, taken the power to decide land issues out of the courts and effectively placed them under the authority of chiefs. In this meeting Regenvanu called on the assembled women to 'find their rights in kastom' in order to participate in this new process.

in Vanuatu (along the lines of 'But what about Hilda Lini? She's a *kastom* chief on Pentecost, isn't she?'). As the example of a woman who has 'found' [constructed] her 'rights in *kastom'*, Hilda Lini is the exception that elides the rule. The proliferation of her example conceals the everyday practices of patriarchal domination, its violence, and its gendered exclusions. It also conceals the fact that despite her skilful and commanding navigation – and her own public declarations – Lini is herself still circumscribed by these patriarchal states (*kastom* and national politics). Within the context of Vanuatu, the 'man on top, woman down'-ness that is so ubiquitous in *kastom* and contemporary politics ultimately prevails, even for her. Yet troublingly, while we are able to decry the fact that in more than 40 years, she is one of only six women to have been elected to Vanuatu's Parliament, in the space of *kastom*, despite her almost unequivocal singularity – and some questionable applications of her *kastom*-derived power – she is treated as perpetual possibility.

At the same time, Chief Viraleo and Turaga are often shrugged off as the exception, the 'alternative to the alternative'. Yet much like the state institutions they so vehemently critique, articulations of '*kastom* governance' like Viraleo's are steeped in entanglements with corruption and abuses of power. Viraleo's 'movement' may include some unique features but his predilections and aspirations for being a law unto himself are far more commonplace in the space of *kastom*, particularly as they become increasingly intermeshed with state politics and economic interests. Just like the hegemonic 'Western' political and economic world order he is shadowboxing, and the patriarchal state he and his fellow chiefs seek to usurp, power and personal economic gain appear to be the primary and overriding motivations. In Viraleo's *kastom* 'alternative', as in these other patriarchal states, justice falls to the wayside and practices that exclude, intimidate and exploit[36] litter the landscape. Common across these 'regimes of governance'[37] are their distinctly hegemonic patriarchal characteristics. Despite the

[36] R.W. Connell *Masculinities*, 2nd ed. (Berkeley: University of California Press, 2005), 37.
[37] Rachel Sieder and John-Andrew McNeish, eds., *Gender Justice and Legal Pluralities: Latin American and African Perspectives* (London: Routledge, 2013), 2.

exceptional presence of women like Hilda Lini, *kastom* 'alternatives' like Turaga, much like the *kastom* 'mainstream' in Vanuatu, are predominantly driven by men in pursuit of their own interests. At the same time, the violence women and girls experience in their everyday lives is minimised and erased in and through these efforts.

As this thesis will demonstrate, failures of the state in Vanuatu have led to an accelerating pursuit of '*kastom* alternatives'. These Made in Vanuatu[38] 'alternatives' have proliferated across a number of spaces in Vanuatu, from governance to justice and the economy, particularly over the past two decades. Beyond being marked by a distinct upsurge in discourses around *kastom* in general, these efforts have also revolved around an increasingly strident discourse centring on the 'power of chiefs'. In these so-called *kastom* 'alternatives' even exceptional women like Hilda Lini, despite all of her social capital, raw talent, and skilful navigation, are still implicated in and impacted by these expanding and solidifying patriarchal formations. Her position of perpetual possibility in this space elides the realities of who ultimately holds the power and the distinctly hegemonic characteristics of this upsurge in *kastom* and the 'power of chiefs'. As I explore throughout my thesis, it also elides the multiple ways that violence – largely perpetrated by men – impacts the lives of women and girls in Vanuatu. This analysis traces how these entanglements of the state, *kastom*, and the power of chiefs in Vanuatu converge in violent and problematic ways.

[38] Borrowing from the book *Made in Oceania: Social Movements*, *Cultural Heritage and the State in the Pacific* (2011) that came out of the Pacific Alternatives programme at the University of Bergen.

Chapter One
Introduction: The Necessity and the Trouble of 'Troubling *Kastom'*

1. Naming *Kastom* as Trouble: Chipping Away at the Old Structures

My thesis considers the ways that *kastom* and justice intersect in Vanuatu's pluralising[39] regulatory and governance space, in the context of some of the highest rates of sexual and gender-based violence against women and girls in the world[40]. These are complex issues, and this thesis has been challenging to write. Violence itself is unsettling and difficult. Declarations about the patriarchal nature of *kastom* in Vanuatu and depictions of Vanuatu's chiefs as despotic are also complex. Reflecting on these complexities, I already anticipate the rejoinder, 'But it's not *all* chiefs, is it?' To answer that question from the beginning, it is not *all* chiefs. These kinds of questions do, however, function as distractions from these wider patterns of violence, demonstrating something crucial about the mechanisms of power[41] and the kind of 'trouble' that I both seek to make and address in my thesis.

In the following pages, I use 'trouble', following feminist philosopher Judith Butler, to depict the critical work of disturbing, unsettling, challenging, and problematising things that are naturalised[42]. As feminist scholar Sara Ahmed points out, Butler's work teaches us that '...some things are troubled or viewed as trouble as a way of not troubling other things'[43]. Focusing on overly simplistic paradigms and exceptions – #NotAllChiefs – misses the point. Even more, these kinds of questions act as a cunning distraction from the realities of women and girls' lives in this context, and crucially from the behaviour of men. It distracts us from how

[39] I use 'pluralising' or 'hybridising' in the thesis because while these have always been plural/hybrid spaces, the state has been inserting chiefs and *kastom* on a more regular basis, and in different ways, and the addition of 'ing' points to this ongoing action and process.
[40] Asha Arabi et al, Enabling Women's and Feminist Movements to End Violence Against Women and Girls: Experiences from Vanuatu, UNDP Global Policy Network Brief, November 2022, 1 to 2.
[41] Sara Ahmed, "Being in Trouble in the Company of Judith Butler," *Lambda Nordica* 2, no. 3 (2015): 180.
[42] Chambers and Carver describe Judith Butler's approach as a 'politics of troubling and a troubling of politics'. Samuel Chambers and Terrell Carver, *Judith Butler and Political Theory: Troubling Politics*, (London: Routledge, 2008) 3.
[43] Ahmed, "Being in Trouble," 182.

kastom in the hands of power-seeking men can and does enact harm and contributes to the violence women and girls experience in their lives.

In an effort to address these concerns, my thesis examines the ways that Vanuatu's predominantly male chiefs – much like Chief Viraleo Boborenvanua in the Preface – are increasingly mobilising *kastom* as a regime of power. I am *most* interested in how a convergence of *kastom*, justice and chiefs, particularly as they intersect with state governance and justice institutions and processes, impacts the lives of women and girls in Vanuatu. With support from theoretical guideposts offered by Judith Butler's conceptualisation of violence, I seek to demonstrate in this thesis how the increasingly normative and distinctly patriarchal aspects of *kastom* that are being mobilised in Vanuatu establish epistemic frames or frames of intelligibility[44]. These frames have the effect of invisiblising – erasing, removing from view – the violence women and girls experience. As chiefs [and others] contribute to institutionalising the formations of *kastom* and power that I describe in my thesis in ways that are increasingly unquestioned and naturalised, this violence is compounded. My efforts to 'trouble *kastom'* in the way that I do seeks to focus critical attention on these mechanisms of power and the politics and epistemic frames that enable them, in the hope that we may begin look for other ways to think about, and to do justice in Vanuatu. There is no doubt that examining the topics that I do in this thesis – chiefs, *kastom*, justice, violence, and the lives of women and girls – will remain difficult and unsettling, troubled.

In March 2023, after I had finished making a presentation of my research findings to an academic audience, another facet of this trouble emerged. Given the critical stance I take on some of the ways that *kastom* is being mobilised in Vanuatu as a strategy to oppress women

[44] Emma Ingala, "Judith Butler: From a Normative Violence to an Ethics of Non-Violence," in *The Meanings of Violence: From Critical Theory to Biopolitics*, eds. Gavin Rae and Emma Ingala (London: Routledge, 2019), 198.

and girls, a reasonable question was posed by an audience member. The question had to do with whether women also mobilised *kastom* in ways that empowered them. My first response was to say that of course they do. I noted how some women, especially women from prominent families and specific places could use *kastom* channels, like grade-taking, to position themselves for leadership roles. Motarilavoa Hilda Lini – who centres the narrative in the Preface – is the usual go-to example. Yet even her example, as I outline in the Preface, complicates this view. During my presentation I also shared the example of another woman I know. Unlike Hilda Lini, this woman was not part of a prominent family, hailed from a smaller island, and was married into a different island community situated on the outskirts of Port Vila, Vanuatu's main urban centre. On the verge of being evicted from a home she had laboured for years (and almost singlehandedly) to construct while paying school fees, and as the primary income earner for her husband's extended family[45], she provided a distinctly different response to this question. For her, *kastom* was simply something that men do.

This woman had shared this perspective about *kastom* with me immediately after she and her family had been served with an eviction notice by their community chief, one week before Christmas in 2016. Almost all of her hard-earned wealth was accumulated in her home: the doors and windows she had scrimped to afford, the roof she had painstakingly paid for over several years. The chief who had authorised the eviction had issued similar orders to nearly half of their community, partly as payback to families who were seen as opposing his chiefly bid for power, and partly as a cash grab[46]. Most of the families who were served with eviction orders, including this one, had lived there for multiple generations. In contemplating these circumstances with her that day, I was reminded of what Ralph Regenvanu, then as Vanuatu's Minister of Lands, had said at a meeting held for women a few years before to introduce

[45] This is not an atypical situation. Women's labour and material contributions – from markets, domestic labour, seasonal work – often support their immediate families and their husband's extended family to a far greater extent than men.

[46] One prominent individual suggested to me that this chief planned to lease the land to others for profit.

Vanuatu's new land laws. In relation to the fact that these laws had effectively given the power to resolve land matters solely to [male] chiefs[47], Regenvanu had told women they should 'find their rights in *kastom'* in order to advocate for their interests in this new process. When I asked this woman about which, if any, *kastom* channels might be available to her, however, she just looked at me blankly. When I followed up by asking what *kastom* meant to her, her response was to the point. For her, *kastom* was what men go and talk about: '*Kastom* is what men do'. She just shrugged and offered no further views.

In sitting with some colleagues following my academic presentation in March 2023, it was recommended that I make *that* point – that *kastom* is something men do – very prominently at the beginning of my thesis. The suggestion was well-meaning, and the statement certainly clarifies the blatantly patriarchal overtones of many articulations and mobilisations of *kastom* in Vanuatu today, and the way that women are ultimately positioned in relation to it. Yet I was also troubled by the prospect of doing this. Part of the trouble arises from *kastom's* infinitely multivalent quality. When we say '*kastom'* we could be talking about anything from weaving mats and baskets to harvesting palolo worms from the reef or making *laplap*[48]. This could even include the times when you make the *laplap* (as our family has done) with cured stones borrowed from a Rotuman family on the coast of Canada, using frozen banana leaves purchased from a Filipino grocer. It could also refer to Vanuatu's more than 80 'local' languages (spread across a population of just over 300,000 people and approximately 60 inhabited islands) that fictively demarcate the diverse identities that make up our 'mini-United-Nations'[49]. It may also refer to how people dress (island dresses[50] or grass skirts and mats, with the occasional t-shirt to supplement). Or styles of dance (adorned as snakes, or with

[47] Republic of Vanuatu, *Custom Land Management Act*, No 33 of 2013.
[48] Vanuatu's traditional dish made from grated root crops including yam, taro, manioc, and also banana, and cooked in a ground oven.
[49] This is the way that my father-in-law, Sethy Regenvanu, has described Vanuatu.
[50] The island dress or Mother Hubbard was introduced by missionaries but has now become Vanuatu's '*kastom'* national dress for women.

crafted airplanes as headdresses, or to string band music). Or it could also refer to *kastom* as expressed through song (the songs 'collected' in a *karum nupu* [basket for songs] on Tanna[51], or rap in Ambae language, or even hymn-singing[52]).

Of course, *kastom* in Vanuatu is all of these things. '*Kastom'* also encompasses a range of things people do without consciously labelling it as such: gardening practices, ways of preparing taro and pumpkin tips, a certain oratory style. It includes all the ways of naming, speaking with and creating kin – and even how familiarity *and* distance can be simultaneously conveyed with a simple deployment of 'aunty'. One woman I interviewed described *kastom* as: '...everything in life...to do with life: the physical, and the spiritual and the historical. The seen and the unseen.' *Kastom is* all of these things. In such a remarkably diverse, dynamic, and creative context like Vanuatu *kastom* is, in fact, all of this, and infinitely more. To have started with the statement that '*Kastom* is what men do', would have also erased all of the remarkable and unique ways of being, doing, knowing, and creatively making sense of – and remaking – the world and others in it that people in Vanuatu (including women) engage in as *kastom*. As another Pacific woman I interviewed commented, the Pacific is made up of 'lovely cultures' adding that '...there is so much to be valued and celebrated'. I agree wholeheartedly, and I too value and celebrate many facets of *kastom*. It is also worth pointing out that *kastom* in Vanuatu has expanded to include and embrace me[53], in much the same way that it has expanded to include airplanes, t-shirts, rap music, Christianity, and even King Charles[54].

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[51] Raymond Ammann and Jacob Kapere "Karum nupu: Basket for songs", VKS Productions, Vanuatu Kaljoral Senta, 2005, 30 minutes.

[52] *The Vanuatu National Conference of Kastom Chiefs* in August 2022 forbade women from entering as detailed in Chapter Four, but started and ended each day with a prayer and the collective singing of hymns.

[53] I explain my positionality and relation with Vanuatu in greater detail in Chapter Three.

[54] George Styllis, "Island tribe famous for worship of Prince Philip celebrates King Charles," *The Telegraph*, 6 May 2023, https://www.telegraph.co.uk/royal-family/2023/05/06/tribe-worship-prince-philip-celebrate-king-charles/.

And yet, there are other aspects of how *kastom* is regularly articulated, mobilised, deployed and structured in Vanuatu – privately, publicly, by men and boys and by women as well[55], in homes, communities, *nakamals*, government offices and Parliament – that are deeply gendered and also deeply troubling. The woman who described *kastom* so poetically as the 'seen and the unseen' also replied when I asked her about men and power, '...I say all of that, but totally, it is a male-dominated place...Vanuatu is completely male-dominated and so, you know, the power is with men here'. While this individual felt that *kastom* had the *potential* to include women and men equally, there was absolutely no doubt for her that men in Vanuatu also wield their power, and exercise and justify their domination over women through *kastom*. In fact, it is unequivocal that in key areas of governance – decision-making, land, and leadership – and also in much of everyday life, men in Vanuatu as the so-called masters of tradition[56] *and* modernity[57] wield *kastom*, and the power they derive from *kastom*, as a tool of patriarchal domination. As a result, and in ways that have powerful symbolic *and* deeply material consequences for women and girls in Vanuatu, *kastom* is also deployed as an instrument of oppression and injustice in Vanuatu's 'male-dominated communitarian context'[58].

Despite these realities, in many areas of public discourse, development projects, academic work, and increasingly within the state itself, these other aspects of *kastom*, are often normalised, minimised, or simply erased altogether. In my thesis I argue that the failure to adequately consider, and at times to even acknowledge, these other sides of *kastom* constitutes a form of violence itself. As I demonstrate through the following chapters, the

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[55] Mary Jack Kaviamu, "The long journey: Political acceptance of women," in *Sista, Stanap Strong! A Vanuatu Women's Anthology*, eds. Mikaela Nyman and Rebecca Tobo Olul-Hossen (Wellington: Victoria University of Wellington Press, 2021), 141.

[56] Margaret Rodman, *Masters of Tradition: Consequences of Customary Land Tenure in Longana, Vanuatu* (Vancouver: University of British Columbia Press, 1987).

[57] Siobhan McDonnell, "Urban Land Grabbing by Political Elites: Exploring the Political Economy of Land and the Challenges of Regulation," in *Kastom, property and ideology*, Eds. Siobhan McDonnell, Matthew G. Allen and Colin Filer (Canberra: ANU Press, 2017), 285.

[58] Anna Naupa, "Making the Invisible Seen: Putting Women's Rights on Vanuatu's Land Reform Agenda," in *Kastom, property and ideology*, Eds. Siobhan McDonnell, Matthew G. Allen and Colin Filer (Canberra: ANU Press, 2017), 309.

erasure of these other aspects of *kastom* – or what late Pacific feminist Teresia Teaiwa referred to as '*kastom's* darkest truths'[59] – not only elides deeply gendered and unequal relationships and their symbolic and material impacts, but it also effectively enables other forms of violence to continue. In fact, as discourses like *kastom* are increasingly deployed in key areas like justice and governance, in uncritical ways and without attention to nuance and to power – and crucially without attention to the public and private violence and insecurity that women and girls experience in their daily lives in Vanuatu – the hegemonic aspects of *kastom*-in-the-service-of-patriarchy essentially expand and solidify. Without erasing all that *kastom* is and can be, my thesis addresses itself directly to this space, and to these difficult, troubling – and expanding and solidifying – formations and realities.

Ultimately, I hope that in the midst of all of that is undoubtedly and remarkably meaningful, creative, beautiful, and valuable in *kastom*, this thesis will also open up spaces for dialogue, critical reflection, analysis, and action on some of these other – troubling and materially consequential – realities. As I detail in Chapter Three, I do this partly as a work of critical feminist labour and as a critical social scientist. I also offer this work as an act of solidarity with the many courageous women and girls in Vanuatu who in their own ways – often at great personal risk and cost – have asked hard and uncomfortable questions, have bravely challenged violence and injustice, and have stood up when no one else supported them to tell other stories, their own stories. These are women like Ni-Vanuatu feminist and activist Stephanie Ephraim Lekal who appeals to all of us to be 'braver, louder, bolder'[60] in our striving for justice:

> ...To quietly challenge things, and to stay within our comfort zone will unfortunately not be enough to make a difference. We need to encourage our sisters and brothers to ask more questions, uncomfortable questions, sometimes to people in power...We need to be brave enough to report and to challenge violence that we see or experience...We need to be

[59] This way of describing *kastom* was attributed to Teresia Teaiwa in an interview with Claire Slatter on 13 March 2022.
[60] Stephanie Ephraim Lekal, "#BeBoldForChange Speech", Sista, 9 March 2017, https://www.sista.com.vu/beboldforchange-speech/.

> brave enough to stand up even when no-one else wants to support us.
>
> When we do this, we chip away at the old structures which keeps things the way they are, we weaken it. But it's too big to break down if we only tap it softly. We need to hit it hard, often, and all together. And we need to be ready to rebuild it the way we want it.[61]

Together with many women in Vanuatu and in the Pacific – and in acknowledgement of their significant historic and ongoing labour – I hope to contribute to chipping away at these old (and reconstituting) structures of 'dull male chauvinism'[62]. I do this not only to focus words, space, and critical attention on these difficult and troubling realities – and the many, many moments and instances of violence and injustice they elide, allow, and engender – but also to contribute to opening up pathways and possibilities for rebuilding it 'the way we want'[63].

2. Purpose and Research Questions: Single Stories and Ambivalent Possibilities

In embarking on this thesis I have been concerned with the following research question: How does the upsurge in institutional mobilisations of *kastom*, particularly through the materialisation of 'the power of chiefs', affect women and girls and their experiences of violence in Vanuatu? In pursuing this question, this thesis also addresses the following supporting questions:

1. Where can this expansion of *kastom* and 'the power of chiefs' be observed in Vanuatu?
2. How has the political and historical context in Vanuatu informed this mobilisation?
3. What are the political, regulatory, discursive, and material implications of this expansion of *kastom* and 'the power of chiefs' in Vanuatu, particularly on the lives of women and girls, as well as for the provision of justice?

Throughout the process of seeking answers to these questions, and in sharing some of my own stories and the stories of others along the way, I have often reflected on the stories we tell. I agree with Chimamanda Ngozi Adichie's provocative concerns about what she calls 'the

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[61] Ephraim, "#BeBoldForChange Speech".
[62] Kali Regenvanu, "A letter to Vanuatu: Unkept promises," in *Sista, Stanap Strong! A Vanuatu Women's Anthology*, eds. Mikaela Nyman and Rebecca Tobo Olul-Hossen (Wellington: Victoria University of Wellington Press, 2021), 152.
[63] Ephraim, "#BeBoldForChange Speech".

danger of a single story'[64]. Adichie's wry description of her American roommate's desire to hear her new 'African' roommate play her 'tribal music' – to which Adichie offered up her Mariah Carey tape in response – reminds me of the single stories that are also told about Vanuatu. In these single stories, human rights and even our Constitution are 'modern' and 'Western' and therefore not our own. *Kastom*, as synonymous with 'tradition', is presented as its own single story. These kinds of single stories not only limit what people can do and who they can be, they also erase other stories – and the possibility of new stories. As I expand upon in Chapter Three, these single stories as they become naturalised and fixed, carry out their own kind of violence.

Yet Vanuatu has been plagued with single story narratives: single stories about colonialism[65], single stories about human rights, and single stories about what *kastom* is and should be. I once heard two senior *kastom* advocates – chiefly representatives of the Malvatumauri – describe *kastom* as unchanged since the 1600s and characterised by only a handful of common principles (of which men's 'ownership' of children was offered as one). These kinds of depictions, as they are told over and over by powerful people, risk becoming *the* definitive story.[66] As such, these kinds of single stories become immoveable, all-encompassing, and fixed in time and place in a way that not only silences the telling of other stories, but also precludes the creation of new stories. In answering the questions that have guided my thesis, I have endeavoured to offer stories that disrupt and trouble some of these single narratives about Vanuatu. In particular, this has meant troubling the single, normative [male] story about *kastom* that elides many other stories about how *kastom* is also experienced by many women and girls.

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[64] Chimamanda Ngozi Adichie, "The danger of a single story," TEDGlobal, July 2009, https://www.ted.com/talks/chimamanda_ngozi_adichie_the_danger_of_a_single_story?language=en.
[65] As I describe in Chapter Two and throughout my thesis, there are other stories of colonialism in Vanuatu.
[66] Adichie, "The danger of a single story".

For me Adichie's cautions about the single story speaks to the need to tell many more stories, the critical stories, the joyous ones, the ones shared in whispers, even the uncomfortable ones, so that we can understand each other and our connections, or what Adichie refers to as 'our equal humanity'[67]. Moving beyond the single story also gives us the capacity to think critically about the many ways that we are different and unique, but also the many ways that we are similar. For example, telling more stories and sharing these stories can reveal common issues around structural violence and injustice in a way that sharpens our ability to respond. The single story is dangerous because it allows us to settle into simple binaries of us and not us, tradition and modernity, Vanuatu and 'the West'...tribal music and Mariah Carey. Single stories not only elide many other stories which demonstrate the multiplicity of human experience, but they also limit our ability to engage in more complex and critical conversations, on a more equal footing. My thesis offers the kinds of stories that are not being told often enough *in* Vanuatu and *about* Vanuatu. Through this thesis I endeavour to offer more stories to the mix – crucial, critical, and sometimes difficult stories – in an effort to open up new spaces for thoughtful conversation, analysis, and engagement.

As Adichie rightly points out, the value of telling more stories – and the understanding that there is 'never a single story about any place'[68] – also opens up possibilities. These possibilities are never straightforward, however. In fact, they are also ambivalent and contingent and always open to reconsideration on the basis of a new story. I think this is particularly the case for women and girls in the Pacific. As Teaiwa observed:

> For Pacific Island women across the divide between sovereign nations and decolonizing movements, culture and development provide ambivalent possibilities for liberation and oppression.[69]

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[67] Adichie, "The danger of a single story".
[68] Adichie, "The danger of a single story".
[69] Teresia Teaiwa, "Resisting Writing, Writing Resistance: Women, Culture and Development in the Pacific," in *Women, Culture and Development in the Pacific*, eds. Helen Lansdowne and Michael Dobell (Victoria: University of Victoria Press, 2001), 41.

Creating the space for critical storytelling about culture and development and other complex matters like justice and governance and the violence women and girls experience in their everyday lives allows us to open up these ambivalent possibilities even in the context of our most closely held beliefs. Of course, the stories we tell will never be finished stories and they are never the only ones. I agree with Adichie, however, that '...stories matter. Many stories matter'[70]. I hope that the stories that I share here can also be used to empower women and girls in Vanuatu and beyond to seek out other stories, to listen to other stories, to continue to tell their own stories, and to create space for other stories and other possibilities to become part of our conversations. It is only in this way that we can rebuild it[71] – and rebuild it again – the way we want.

3. Summary of the Argument and Organisation of the Thesis

In this thesis I argue that in key areas of governance – including decision-making, land, and leadership – men are increasingly wielding *kastom*, and the power they derive from *kastom*, as a tool of patriarchal domination. I trace an expansion of *kastom*, particularly vis-à-vis the role of male chiefs, into key justice and governance spaces in Vanuatu over the past two decades. I provide in-depth analysis of these changing dynamics on the ground – and the power dynamics underpinning them – to illuminate how these assertions of *kastom* are both deeply patriarchal and intricately interlinked with violence. As I contend, the rise of these more patriarchal articulations of *kastom*, particularly as they seep into the institutions of the state, directly and negatively impact the lives of women and girls in Vanuatu, as well as the pursuit of justice. Specifically, these articulations of *kastom* and the 'power of chiefs', as they are hidden under the cloak of 'culture' and 'tradition', elide deeply gendered and unequal

[70] Adichie, "The danger of a single story".
[71] Ephraim, "#BeBoldForChange Speech".

relationships and realities. *Kastom* in these articulations institutionalises and instrumentalises the power of particular men in a way that allows and enables violence against women and girls – both symbolic and lived.

Yet despite these realities, in so many areas of public discourse, development projects, academic work, and increasingly within state institutions, these other aspects of *kastom* are actively minimised or ignored. In the pages that follow, I outline how this failure to adequately consider, or at times to even acknowledge, these other aspects of *kastom* constitutes a form of violence itself. As I demonstrate through the following chapters, the erasure of these other aspects of *kastom* not only elides deeply gendered and unequal relationships and their symbolic and material impacts, but it also effectively enables other forms of violence to continue. In fact, as discourses like *kastom* are increasingly deployed in uncritical ways, without attention to nuance and to power – and crucially without attention to the public and private violence and insecurity that women and girls experience in their daily lives in Vanuatu – these aspects of *kastom*-in-the-service-of-patriarchy essentially expand and solidify. Without erasing all that *kastom* is and can be, my thesis addresses itself directly to these difficult, troubling – and expanding and solidifying – formations and realities.

This thesis is organised over eight chapters. As a collection of narratives, the thesis moves from personal and ethnographic observations to more detailed scholarly analysis. At times I also focus in on topics and issues in greater depth. For example my investigation into a small but crucial aspect of Vanuatu's Family Protection Act in Chapter Six demonstrates this kind of focus. At other times, I move through a collection of related issues to demonstrate my argument. I do this in Chapter Seven, for example, when I consider a range of 'sites' from bylaws to community policing where the power of chiefs has become ubiquitous, and justice – particularly the compelling justice needs and interests of women and girls – are noticeably absent. My argument is not set out in chronological order, and I move back and forth between

contemporary issues and historical evidence and analysis throughout each of my chapters. As the literature I engage with is diverse, each of my main analytic chapters (Chapters Four to Seven) are also grounded in their own literature reviews.

My second chapter provides relevant background to the context in Vanuatu, specifically in relation to the issues I address in my thesis. In this chapter I consider the prevalence of physical and sexual violence against women and girls, drawing on research conducted by Vanuatu's Department of Correctional Services, as well as the Vanuatu Women's Centre. This chapter also provides a brief overview of the rise of *kastom* that I trace in my thesis, beginning with my own experiences working at the Vanuatu Cultural Centre starting in the late 1990s. In this chapter, I describe how the trends I observe in Vanuatu are linked to broader setbacks and reversals in the early gains made in relation to women's rights and protections against gender-based violence in other global contexts.[72]

The third chapter of my thesis outlines the theoretical and methodological approach I employ to address the concerns I raise in my thesis. In particular, this chapter explains my use of Judith Butler's conceptualisation of violence to inform and support my analysis. In this chapter I address how my thesis employs what critical socio-legal scholar Sora Han describes as an 'intersectional sensibility'[73]. In Chapter Three I also present an overview of my methods. My thesis relies upon embedded ethnographic fieldwork, documentary analysis and a limited number of formal interviews which were carried out to corroborate, clarify, and supplement my analysis. I conclude this chapter by reflecting on my own positionality and relationship to Vanuatu, and to the issues that I address in this thesis. Given that my research directly

[72] Alisha Haridasani Gupta, "In Her Words: Across the Globe, a 'Serious Backlash Against Women's Rights," *The New York Times*, December 4, 2019, https://www.nytimes.com/2019/12/04/us/domestic-violence-international.html.
[73] Sora Y. Han, "Intersectional Sensibility and the Shudder," in *Feminist Interpretations of Theodor Adorno*, ed. Renee Heberle (University Park: The Pennsylvania State University Press, 2006).

addresses issues of violence against women and girls, I describe how this thesis has demanded a much more intimate engagement with my subject matter. I address this intimacy directly as part of my methodology and my analysis.

In Chapter Four I trace how aspects of the upsurge in *kastom* that I trace in Vanuatu – or what Grace Molisa refers to as 'the nakamal clique'[74] – can be linked to a period of state transition. The chapter begins with an examination of Vanuatu's Constitution and seeks to disrupt some of the simplified notions of what constitutes 'the modern' and 'the indigenous' in this context. I demonstrate how Vanuatu's early, post-Independence pursuit of democracy, equality, and rule of law included clearly articulated commitments to supporting women's equality and addressing violence against women and girls. Through an examination of Vanuatu's National Planning documents starting in the 1980s, I show how this early focus on addressing violence and inequality shifted, replaced by 2002 with an interest in institutionalising a role for chiefs within the state. I trace this rise of the 'nakamal clique' against a backdrop of economic and political turmoil in Vanuatu through the late 1990s, linking this with an increase in more hegemonic articulations of *kastom*. In this chapter I also examine the growing focus on '*kastom* governance' in Vanuatu, which in practice has become shorthand for providing male chiefs with an increasingly regulatory role – and more power – in the state.

Chapter Five traces some of the contours, impacts and effects of patriarchal and normative articulations of *kastom* for women, through the common descriptor of women's place in the *kastom* hierarchy: man on top, woman down. The chapter begins by considering *kastom* as a kind of hydra for women and girls. Here I suggest that the normative [male] view of *kastom* exists beside what has been described as '*kastom's* darkest truths'[75] for women. The chapter

[74] Molisa, *Women and Good Governance*, 51.
[75] Attributed to Teresia Teaiwa in an interview with Claire Slatter on 13 March 2022.

begins by looking at what I call, borrowing from anthropologist Elizabeth Povinelli, the cunning of complementarity. Here I tell three stories of the canoe to illustrate how the notion of gender complementarity ultimately structures women and girls in Vanuatu below men. I also trouble the discourse of 'women chiefs' in this chapter, and demonstrate how, with very few exceptions (Hilda Lini being the main one), women are effectively never chiefs in Vanuatu society. This chapter also includes an examination of how the *Malvatumauri* Council of Chiefs – Vanuatu's national chiefly statutory body – and other chiefly bodies have engaged with women and gender equality particularly over the last two decades. In the final section of this chapter I trouble the notion of *kastom* respect, and specifically its meanings and effects for women.

In Chapter Six, I examine Vanuatu's domestic violence legislation to demonstrate how the rise in the increasingly hegemonic and patriarchal *kastom* that I trace in my thesis has implicated itself within state justice mechanisms and institutions. My analysis focuses on a small – but important – part of Vanuatu's domestic violence legislation that gives a prominent role to chiefs as 'Authorised Persons'. The chapter begins by pointing out that while law is not neutral, neither is *kastom* or configurations of regulatory pluralism. In this chapter, I trace the history of this legislation in Vanuatu, showing that there was not only early recognition within the state of the need for this kind of law, but protection orders were being used in Vanuatu at least 15 years before the Family Protection Act was passed. The chapter describes Vanuatu's inclusion of a role for chiefs in domestic violence legislation as unique, not only within Vanuatu's body of laws, but also in the region. Crucially, I illustrate how this aspect of Vanuatu's domestic violence legislation, instead of focusing on the real and compelling needs of women and girls who experience violence in Vanuatu was primarily included to give 'more power to chiefs'. This gatekeeper role positions chiefs in a way that enables them to limit women's access to the courts when they experience violence and mitigate the consequences for violent men.

In Chapter Seven I consider the role of chiefs as mediators of state justice and security in Vanuatu through three sites: community policing, bylaws, and juvenile justice. My research in each of these sites illustrates again how configurations of regulatory pluralism are not neutral and may have more to do with power than they do with justice or with addressing the violence women and girls experience in Vanuatu. The chapter highlights how in the jostling between kastom-as-justice mediated by chiefs versus state justice, or which hybrid combination of both should be pursued, the lives and experiences of women and girls and the deeply gendered nature of sexual and violent crime in Vanuatu are rarely considered. In this chapter I address this omission as a form of epistemic violence. My analysis in this chapter demonstrates how the pursuit of *kastom* 'alternatives' in the space of justice in Vanuatu – whether through 'community policing', codifying rules of kastom in the form of bylaws, or framed as 'juvenile justice' – have focused in a rather singular way on the power of chiefs. While each of these sites are billed as reasonable concessions to decentralisation, to a recognition of kastom, and to a plural regulatory environment, other crucial aspects are left out. Common to all of these sites is the profound invisibilisation of women and girls and the violence they experience in their everyday lives.

In my final chapter I summarise my argument and show how my thesis has demonstrated that efforts to institutionalise *kastom*-as-justice and appease Vanuatu's male chiefs in their demands for power has effectively compounded the violence women and girls experience. I show how, in practice, the upsurge in *kastom* and the power of chiefs that I trace in my thesis has seeped into the structures and institutions of the state, making the separation between state and *kastom* not simply porous, but also imperceptible. In this concluding chapter I also consider some of the implications of my research. In the final discussion I demonstrate why critical thinking is essential, and also address some of the regulatory implications of *kastom*-as-justice in Vanuatu. I conclude the chapter with reflections on how the epistemic violence wrought by the invisibilisation of the experiences of women and girls, and the multiple and

intersecting impacts of the colonising, patriarchal violence on their lives, must be addressed if the kind of justice – the justice we strive towards without end[76] – is to be realised.

[76] Judith Butler, "Jacques Derrida," *London Review of Books*, 26, no 21 (4 November 2004).

Chapter Two
Context: Reconstituting Formations of Kastom, Audacious Violence, and the Free Men of Vanuatu

1. Colonised People and the Free Men of Vanuatu

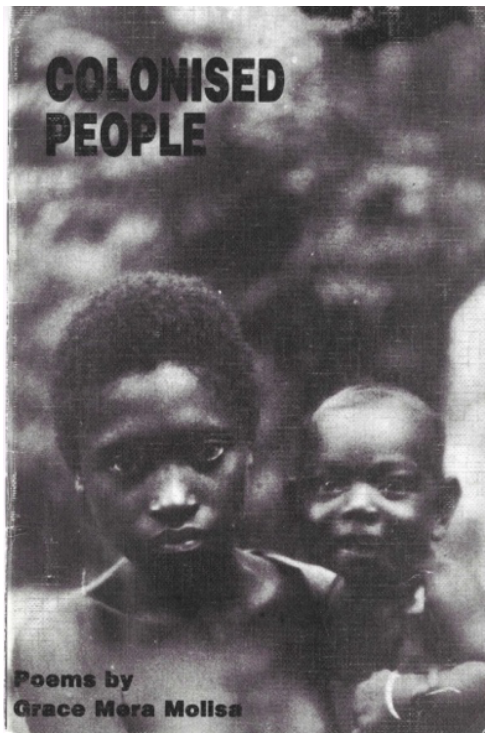

Figure 3: Cover image of Grace Mera Molisa's *Colonised People*

This book published in 1987 by Grace Mera Molisa, and particularly the first poem – also titled *Colonised People* – has grounded me over the past several years as I have written this thesis[77]. It sat on my desk beside my monitor, and I would pick it up from time to time whenever I needed motivation, inspiration – and courage. I never cease to be amazed at Grace Molisa's wisdom, her own spectacular courage, and her ability to speak truth to power. These are all qualities that she amply and profoundly demonstrates even in this single poem. In *Colonised People* Molisa says things that need to be said, but rarely are. She makes the invisible known, felt. This book is subversive and troublemaking from even the first glance. Both the title and the cover of *Colonised People* evoke the colonialism that we

[77] I have graciously been given permission to use this poem in my thesis by Grace Mera Molisa's family.

have collectively come to know and anticipate. However, what we imagine when we first see the book or perhaps find it in a library search is disrupted when we open the cover. Instead, what the book reveals and engages with is another enduring kind of colonialism in Vanuatu that is rarely considered. This is a colonialism whereby, in Molisa's words, 'Vanuatu Womenfolk, half the population, remain colonised by the Free men of Vanuatu'[78].

For several years, I imagined that my thesis would begin with a moment in November 2017 that centred around this very poem. This moment occurred at a meeting in Port Vila that was held as a follow up to the 13th Triennial Conference for Pacific Women that had taken place in Fiji the previous month. Viran Molisa Trief, Grace Molisa's daughter, was one of several women invited to open the meeting. For me, Molisa Trief's presentation that day was profound. She started her talk by sharing stories about her mother – stories which many of us have come to know well. Grace Molisa grew up in a village on an island in Vanuatu called Ambae and she was not formally educated until she was 10[79]. She went on to do many of the 'firsts' for women in Vanuatu: first to receive a university degree, first to publish a book, first high-level political advisor[80]. Molisa Trief also read the words that she had written to eulogise her mom when Molisa passed away unexpectedly in 2002, words that eventually ended up on Molisa's gravestone. Among these were words like warrior, human rights advocate, formidable fighter for women's rights, and feminist.

What was most compelling about Molisa Trief's presentation for me that day, however, was her decision to recite – out of the extensive body of her mom's poetry and other published works – *this* poem, *Colonised People*. Before reading the poem, Molisa Trief told the audience that the poem was

[78] Molisa, *Colonised People*, 9.
[79] Molisa like several of the so-called 'elites' in Vanuatu in this period grew up in a rural village context. Like Molisa, many of Vanuatu's leaders from this period did not begin formal education until they were older.
[80] Molisa, *Colonised People*, 29.

a reminder of '...how we [women] feel, experience, and understand gender inequality in Vanuatu'. Here is the poem she read[81]:

Colonised People
Grace Mera Molisa

Vanuatu
Supports
Movements
for
the Liberation
of
Colonised people

Clear
articulations
of support
for
freedom fighters
in East Timor
West Papua
French Polynesia
and Kanaky

Vanuatu
Womenfolk
half
the population
remain
colonised
by
the Free men
of Vanuatu
Womenfolk
Cook, Sew,
feed, clothe
housekeep
homemake
childbear
healthcare
passively
following
orders
instructions
commands

Women
are treated
as if
having no brain
as if
having no thought
as if
having no feeling
as if
incompetent
and incapable

Man's
colonial
domination
of Woman
is exemplified
in the submissive
subservient
obedience
to Man's rule
and authority
which takes
Woman Vanuatu
for granted
as
a beast of burden.

Nineteen eighty-six
statistics
at Vila Central
show
that Women
are treated
worse
than cats,
dogs and pigs.

When a pig
a domestic
animal

[81] Reproduced here in its entirety with permission from the Molisa family who own the rights to this publication and the publisher, Blackstone Publications in Port Vila, Vanuatu.

is brutalised
there is
a hue and cry
and plenty toktok.

When a Man
husband
lover
boyfriend
betrothed
intended groom
de facto husband
bashes
batters
brutalises
kills
a woman
it is accepted
taken for granted
as the Man's right
therefore
hemi
bisnes
blong
tufala nomo
therefore
it becomes
confirmed
legitimised
entrenched
accepted practice
therefore
Vanuatu women
remain
colonised people.
From 10.01.'86
to 3.6.'86
Seventy-three cases.
a sample reads:—
struck
on the head
lost consciousness.

Six months pregnant
kicked
in the abdomen
punched
on the head
perforated eardrum
scalp lacerations
require suturing
kicked in the chest.

Semi conscious
scalp lacerations
severe haemorrhage
operation performed.
struck with wood
both sides of head
punched
on the mouth and nose
haematoma
deep penetrating wound,
fingers chopped off
epistaxis
orbital
haematoma.
whipped with stirrup
on back and buttocks
punched over truck
ruptured spleen
and (R) Kidney
2 major operations.
Pushed to ground
striking head
against table
haematoma
(L) eye,
ear and cheek
punched
on face and mouth
suturing
facial laceration.
bruising on hands
legs, buttocks,
laceration
back of head.
punched in face
struck
on (R) forearm
kicked abdomen
(R) shoulder
and (R) hip
struck by stone
abrasions
and haematoma
on forehead.
scratches
limbs and back
kicked in axilla
punched
(L) shoulder and arm
bruising on back
fractured ribs

At least
ten women a month
in Port Vila
alone
mostly
bashed
on the head
and kicked
in the abdomen
and thorax
while pregnant
are admitted
because
their battered bodies
require suturing
re-structuring
re-construction
for the next
onslaught
and slaughter
because
Man is BOSS
Man i Kat Raet
therefore
in Vanuatu
IT IS RIGHT
according to
the THINKING
and PRACTICE
of Vanuatu
Leaders
Preachers
Chiefs
Policymakers
custodians
of culture
and refinement
in politics
in church
in custom
according to
the Melanesian
values
of our extended
family system
according to
our Christian
principles
according to
our democracy
Man's freedom
These practices
typify
as well as
exemplify
Man's
attitudes
and covert
colonising
behaviour
towards
Vanuatu women.

Women
are
prevented
from
developing
their
potential
to utilise
their own
brains
exercise
their own
minds
think
their own
thoughts
express
their own
feelings
by
Man's
brute force
which
suppresses
oppresses
exploits
and dictates
Woman's
fearful
submission
to Man's
insensitivity
and Inhumanity
to Ni-Vanuatu
Womankind.

Colonialism
is violence.
Colonialism
violates
the spirit
the mind

the body.
Colonialism
violates
the collective Right
of all Women
Colonialism
violates
individual right
Colonialism
violates
the Human Right
of Women
to Human Dignity.

Vanuatu
preaches
and supports
the Liberation
of Colonised people
Overseas
but at home
is not prepared
to consider
that
women too
are human
women too
are people
women too
have minds
women too
think
women too
have feelings
women too
have a right
to be counted
women too
have a right
to be recognised
women too
have a right
to be respected
women too
have a right
to Human dignity
Women too
have a right
to be Free.

Free to think
Free to express
Free to choose
Free to love
And be loved
as Woman Vanuatu.

This poem, which Molisa Trief read in its entirety with strength, courage, and at times a breaking voice, while wiping away tears in front of a silent audience, was profound in this re-enactment. It is a difficult poem to read. You could hear a pin drop through the pages of graphic, chilling description of the brutality and violence women experience in Vanuatu, in the midst of this kind of deeply gendered, colonising violence.

What was particularly moving and troubling about this poem in Molisa Trief's re-enactment that day was that it also provided a *contemporary* depiction of the lives of women and girls in Vanuatu, even 30 years after it was written. For many of us, the cases Grace Molisa details in this poem are cases we know. We have aunties, sisters, nieces, mothers, daughters, and women friends and colleagues who live these realities. The part of the poem Molisa Trief struggled the most to read were the descriptions of cases of domestic violence involving pregnant women that are contained within the poem. These are not simply historical realities: as recently as 2021, an article in a regional public health journal emphasises the ongoing prevalence of this issue in Vanuatu. In this contemporary article the authors – some of whom are Ni-Vanuatu medical practitioners – point out that the lifetime prevalence of this kind of violence for women in Vanuatu is 'amongst the highest in the world'[82]. One Ni-Vanuatu woman I interviewed put it very simply. Commenting on Molisa's poem, *Colonised People*, she said that in her view the grim situation Grace Molisa described more than 30 years ago had 'only gotten worse'.

2. Audacious Violence: The Prevalence of Violence Against Women and Girls in Vanuatu

This same Ni-Vanuatu woman talked about the violence men perpetrate against women and girls in Vanuatu using the language of audacity. Describing how Vanuatu has a '*long* way to go' in addressing discrimination and violence against women and girls she exclaimed, '...it's the audacity of men in this

[82] Stephanie McKelvie et al. "Intimate partner violence and health outcomes experienced by women who are pregnant: a cross-sectional survey in Sanma Province, Vanuatu," *Lancet Regional Health Western Pacific*, 20 September 2021.

country to think that they can do what they do...thinking I can violate a woman and I can treat her different to how I would treat other men in the community and get away with it.' For her it was about men's behaviour and what she called 'this cultural thing'. This individual went on to talk about the influence of *kastom* on these issues in the following way:

> ...you're brought up and you're told where you're placed based on your gender and what your duties are to your family or in relation to people...that's what *kastom* and culture is to me still, is that women's place is below the men. The men have the voice. The women have to find a sympathetic male voice in order to have advancement within their community...they still sit under men and they will still need to seek out that approval from men to have access to things that would benefit them.

This idea of women's place being below men as a central tenet of *kastom* in practice, and as interlinked with the issues of violence women and girls face in their daily lives, represents a key argument that I explore and elucidate throughout my thesis. I must be clear, however, that in highlighting these issues I am never holding Vanuatu up as any kind of exclusive site for gendered and sexual violence. Violence impacts women across a range of positionalities, in all global contexts. The fact that these issues exist elsewhere, however, does not make it any less of an issue in this context.

In my own time in Vanuatu – which I detail more in this and the next chapter – violence against women and girls was pervasive. Like Afu Billy in her contribution to the book *Reflections on Violence in Melanesia*[83], I was surrounded by women who experienced ongoing and often quite brutal violence from the men in their lives. While I explain my own positionality in greater detail in Chapter Three, I first went to Vanuatu in early 1998, and as a citizen of both Canada and Vanuatu I have remained deeply connected there both personally and professionally. In the late 1990s when I was working at the Vanuatu Cultural Centre I remember going with a small group of my women colleagues to photograph (at her insistent request – she wanted 'evidence') another young colleague's injuries. After slipping through mud up to our ankles, we found her hidden away in her house in one of Port Vila's

[83] Billy says 'It was not unusual to find that only one or two women in gatherings of about 30 to 50 (sometimes more) married women had not experienced beatings from their husbands'. Afu Billy, "Breaking the silence, speaking out truths: domestic violence in Solomon Islands," in *Reflections on Violence in Melanesia*, eds. Sinclair Dinnen and Allison Ley (Wellington: Asia-Pacific Press, 2000), 173.

sprawling settlement communities. When she lifted the cloth she was holding to shield her injury, her face was nearly unrecognisable. My young colleague's experience was the rule, though, and not the exception. Another of my colleagues at the time publicly – and with remarkable nonchalance – declares in a film produced by the Vanuatu Young Peoples' Project in 2002 called '*Wan Naes Wan'* [A Nice One][84] that she wears island dresses and long skirts because otherwise her husband '…will have to hit me.'[85] In my experience, for many of the women and girls I knew, male violence and its impacts and traces were everywhere.

It is worth pointing out that my women colleagues and friends come from across Vanuatu society, they are affiliated with different islands, and they come from a range of educational and socioeconomic backgrounds. The thread that connects all of them is their experience of male violence which often extended throughout their lives and profoundly impacted their children as well[86]. This is a painful sisterhood: nearly one in three women in Vanuatu are sexually abused before the age of fifteen.[87] In 2012 a recently arrived Australian colleague told me that if I knew what he knew, I would never let my daughters outside. He was working in the justice sector and had case after case of assault and sexual violence cross his desk. We all knew what he knew, however, particularly my Ni-Vanuatu women friends and colleagues. My older daughter and I developed the macabre habit of picking up the *Vanuatu Daily Post* every day just to see if we could go even one day without a story about physical or sexual violence perpetrated by men of all ages against women and girls. It rarely happened. Every day, there it was: gruesome tales of toes cut off in front of children[88], and so many cases of rape and incest. The court records alone are almost impossible to read, even with their

[84] "Wan Naes Wan", Vanuatu Young Peoples Project, VKS Productions, 2002
[85] "Wan Naes Wan", Vanuatu Young Peoples Project.
[86] Research conducted by the Vanuatu Women's Centre indicates that the violence against women has very serious impacts on children. Vanuatu Women's Centre, *Vanuatu National Survey on Women's Lives and Family Relationships*, May 2011, 132.
[87] Vanuatu Women's Centre, *National Survey on Women's Lives and Family Relationships*, 17.
[88] Richard M. Nanua, "Jail Term for Man who cut off Wife's Toes," *Vanuatu Daily Post*, September 11, 2019, https://www.dailypost.vu/news/jail-term-for-man-who-cut-off-wife-s-toes/article_a2dbab87-508f-5640-af9c-8a8d292edc20.html.

sanitised depictions. Yet the women I knew bore these realities, and still managed to contribute to the lives of their families and to Vanuatu society every day.

These stories and the conversations around them were not only shared in whispers and hushed tones. As the woman I interviewed so aptly identified, in far too many cases these instances of male violence against women and girls were audacious, with impunity. Information about this kind of violence and its gendered dimensions has, in fact, been publicly available in Vanuatu from even the first decade following Independence. Beyond the brutal depictions of violence against women that Grace Molisa gleaned from the records of Vila Central Hospital in the 1980s and shared in her poem *Colonised People*, many other brave women have raised these concerns. For example, equally compelling statistics made up part of the Family Law Bill report published in 1985[89], a mere five years after Independence. As someone at the coalface of these issues, former Ni-Vanuatu Magistrate Rita Naviti also took the opportunity to highlight these facts of everyday life for women and girls in Vanuatu in various fora. For example, in a paper written in 1994 she wrote, 'In the past, rarely were cases brought to Court for sexual violence. That did not mean that such cases did not exist, however.'[90] Naviti then went on to share a litany of cases, from the gang rape of two young girls by a group of seven young men, sexual abuse by grandfathers, fathers, and uncles of girls as young as five, and the rape of a 73-year-old woman[91]. Like many women from the Pacific, she frames these stories poignantly within the context of her own personal life experience. Naviti also stresses that rather than isolated instances, the examples she shares are drawn from a 'wide range of situations and circumstances' and more importantly, '...demonstrate an attitude towards women which must be changed'[92].

A few decades later, by 2011, there was even more evidence. The first few pages of a research report produced by the Vanuatu Women's Centre titled the *Vanuatu National Survey on Women's Lives and*

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[89] Vanuatu National Council of Women, *Family Law Bill Submission* (Port Vila, 1985), 16 to 18.
[90] Rita Bill Naviti, "Domestic Sexual Abuse Against Women and its Consequences," Year of the Family Conference (Vanuatu, August 1994) 2.
[91] Naviti, "Domestic Sexual Abuse Against Women", 5.
[92] Naviti, "Domestic Sexual Abuse Against Women", 6.

Family Relationships highlight the compelling nature of these issues facing women and girls in their everyday lives in Vanuatu, and the deep and complex relationship that everyday violence has with male power, and with societal beliefs and values:

> This survey opens a door to women's lives: it challenges Vanuatu's view of itself as a happy nation that values and protects family and children. It explodes myths about who suffers from violence, the severity of violence and its impacts, and where it occurs. It reveals an intense web of intimidation, threats, humiliation, controlling behaviour and acts of physical and sexual violence imposed on the women who suffer from violence by their husbands and partners. It shows pervasive patterns of gender inequality in Vanuatu society, including widespread beliefs and attitudes that directly undermine women's human rights; and it shows that violence against women cannot be prevented unless these patterns of unequal power between women and men (gender power relations) are transformed.[93]

Based on a robust and globally endorsed World Health Organisation research protocol, this survey was carried out by skilled Ni-Vanuatu researchers who completed more than 3000 randomly selected household surveys across Vanuatu, and more than 2,300 additional questionnaires with women. Beyond demonstrating the prevalence and normalisation of violence against women and girls across Vanuatu society, this research also exposed the dire state of sexual abuse in our communities, locating the rate of sexual abuse against girls under 15 as 'one of the very highest in the world'[94]. A key finding of the 2011 research was that 'Almost 1 in 3 women (30%) were sexually abused before the age of 15 years, and most of the perpetrators were male family members and boyfriends.'[95] This research also showed that for more than one in four women in Vanuatu their first sexual experience was forced[96].

Research and statistics from the Vanuatu Department of Correctional Services corroborates this view of the overwhelmingly violent and gendered nature of crime in Vanuatu. Under Vanuatu's Penal Code 'Offences against Morality' include the crimes of rape and incest. These are the crimes – rape and incest primarily committed by men and young men against women and girls – that make up the biggest category of offences for which detainees are charged and sentenced in Vanuatu. In recognition of this fact, in January 2022 the *Vanuatu Daily Post* reported on findings from nearly a decade of data

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[93] Vanuatu Women's Centre, *National Survey on Women's Lives and Family Relationships*, 14-15.
[94] Vanuatu Women's Centre, *National Survey on Women's Lives and Family Relationships*, 17.
[95] Vanuatu Women's Centre, *National Survey on Women's Lives and Family Relationships*, 17.
[96] Vanuatu Women's Centre, *National Survey on Women's Lives and Family Relationships*, 17.

collected by Correctional Services under the heading 'Sexual Crimes Top Statistics Over 9 Years'[97]. The graph provided by Correctional Services to accompany the article shows a troublingly persistent picture:

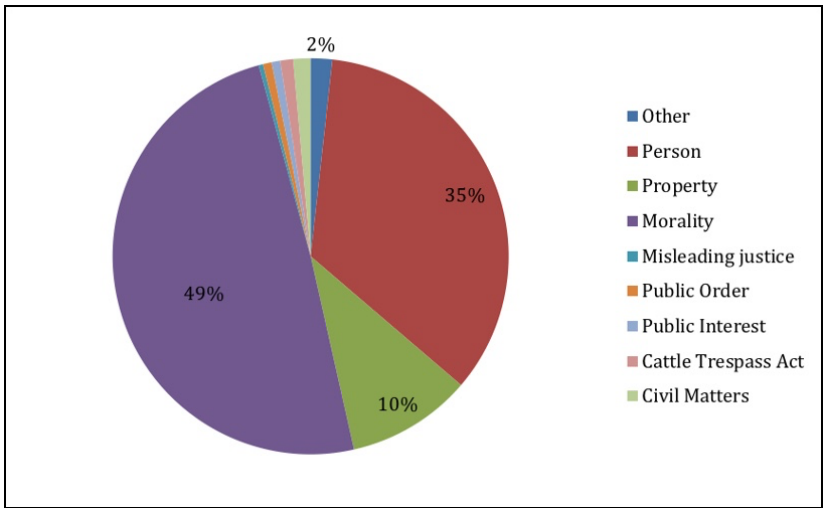

Figure 4: Statistics from Correctional Services covering nine years

In fact, the combination of crimes against morality (rape and incest) and violent crimes against the person (which includes assault and domestic violence) make up 84% of all criminal offences that reached court and resulted in sentencing over the nine-year period under review. Offences like theft and drug charges, while receiving a significant amount of public focus and condemnation, remained relatively low. In fact, drug charges in that same timeframe (from 2012 to 2018) made up only 3% of criminal charges on average[98].

To provide greater clarity on the issues of violence facing women and girls in Vanuatu the Department of Correctional Services also released a report in 2017 specifically profiling sexual offenders. The findings of this report provide further insight into the dire realities facing women and girls in the context

[97] Glenda Willie "Sexual Crimes Top Statistics Over 9 Years," *Vanuatu Daily Post*, 6 January 2022, https://www.dailypost.vu/news/sexual-crimes-top-statistics-over-9-years/article_86ad155a-8c9c-535c-b449-b12eeb047dc4.html?fbclid=IwAR1-JSWAGWDQ874BNedXxBnKR8MV8MPBBSLvHxYUveS4bBcFUAZx5E1P8M8.

[98] While 'marijuana' has induced a kind of moral panic in Vanuatu, garnering significant media and community focus, the public preoccupation with marijuana does not track with reality.

of the highly gendered nature of crime in Vanuatu. The sample of 120 sexual offenders – all of whom were men[99] – offers the following picture:

- 90% of victims knew their offenders and 61% of victims were family or household members.
- 61% of sexual offending occurred rurally in villages.
- 57% of offenders were reported to be in a relationship at the time of their offending.
- 92% of offenders named a religious affiliation. 12% were church leaders.

- Offenders ranged from 11 years old to 72 years old at the time of offending:
    - 41% were 25 years or under
    - 22% were aged between 26 and 35
    - 37% were over the age of 35 years.

- The most common offences were:
    - 56% - Rape - Sexual Intercourse Without Consent
    - 17% - Unlawful Sexual Intercourse – with or without consent (under 15 years of age)
    - 8% - Sexual Intercourse with Child Under Care or Protection
    - 9% - Indecent Assault - Act of indecency with a young person under 13
    - 8% - Incest

- 39% were convicted on a related offence; 9% were repeat sex offenders.
- 88% had no record of drugs or alcohol being contributing factors.
- 55% used physical violence on their victims.

- Victims were all female (apart from one 12-year-old male). Their ages ranged from 3 to 69 years:
    - 52% were 15 years old and younger
    - 31% were between 16 and 20 years old
    - 17% over 20 years old[100]

Beyond debunking several local myths about this kind of crime being an urban phenomenon, or the result of excessive alcohol or drug use, this report noted that there was a clear tendency for 'the victim or another person [to be] blamed for the offending behaviour'[101] in pre-sentencing reports. The report also states that while there is a widely held 'erroneous belief' that these cases involved young people who were simply engaging in consensual sexual activity under the age of consent, it was very clear from the reports that the 'victims were not consenting to sexual contact with the offender'.[102]

While the report recognises that sexual offending is itself a violent act, it elaborated on the 55% of cases where additional violence was used in the perpetration of sexual crimes including: girls and

[99] While the report itself does not identify the sex of the 120 offenders that were analysed, in follow up correspondence with a Correctional Services officer I was told that all of the offenders were men.
[100] Vanuatu Department of Correctional Services*, Offending Against Morality in Vanuatu: Sexual Offenders: A Demographic Profile*, 2017, https://mjcs.gov.vu/images/DOCS/2017_Offending_Against_Morality_in_Vanuatu_FINAL.pdf, 4.
[101] Vanuatu Department of Correctional Services, *Offending Against Morality*, 15.
[102] Vanuatu Department of Correctional Services, *Offending Against Morality*, 18.

women being punched and hit with fists, being hit with rocks, being strangled or suffocated, being cut with knives, being dragged and tied up, and being held down while raped by other offenders. The descriptions in this section echo the gruesome and brutal depictions of violence against women and girls that Grace Molisa wrote so compellingly about in *Colonised People* three decades before. Nine of the offences examined in the Correctional Services report were gang rapes.[103] Offenders included fathers, uncles, grandfathers, husbands, boyfriends, youth group leaders, village chiefs, pastors, and acquaintances.[104] The report concludes by identifying some of the impacts of these crimes on the girls and women who were victimised. This list included having to move, unwanted pregnancies, sexually transmitted infections, physical injuries, inability to concentrate and continue with school, feelings of shame and isolation, depression, inability to work, difficulty with relationships, and inability to conceive children because of injuries sustained during their assault. It also listed 're-victimisation' as an impact when the offender returned to the family home on parole.[105]

The Correctional Services report describes only the crimes that made it to court and resulted in charges. As in most other global contexts, these cases represent a fraction of the actual occurrences of sexual assault and violence perpetrated by men and boys against women and girls[106]. When I asked a Ni-Vanuatu woman I interviewed whether she thought we had significant issues with sexual and physical violence against women and girls in Vanuatu, her response was unequivocal:

> Absolutely. Ya. We do. Every court has callover once a month where whoever's charged turns up in court to plead guilty or not guilty, but your charges are read out. And every single time the charges that are read out are crimes against women and girls. And a lot of them perpetrated by people that they knew.

These 'people that they knew' were, of course, men, and the crimes were sexual and violent crimes. Yet despite the copious statistics and data, years of observations by a variety of stakeholders, and decades of stories from Ni-Vanuatu women themselves, considerations around incorporating *kastom*

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[103] Vanuatu Department of Correctional Services, *Offending Against Morality*, 21.
[104] Vanuatu Department of Correctional Services, *Offending Against Morality*, 22.
[105] Vanuatu Department of Correctional Services, *Offending Against Morality*, 23.
[106] "Vanuatu's Experience: Implementation of Domestic Violence Legislation", Pacific Community, Port Vila 7 September 2021, https://www.spc.int/updates/blog/2021/09/vanuatus-experience-implementation-of-domestic-violence-legislation.

and [male] chiefs as mediators of justice and crime in Vanuatu rarely address or even acknowledge these concerns. As I take up in Chapter Three of my thesis, I address this crucial erasure as a form of epistemic violence.

As I illustrate at many points throughout my thesis, the violence I describe does not end with physical and sexual violence against women and girls. At the same time that efforts to support 'Made in Vanuatu' approaches to regulatory pluralism or 'hybrid justice' increase apace in Vanuatu, other important issues are also subject to erasure. In a telling interview, one researcher I spoke with described the upsurge of *kastom*-as-justice in Vanuatu as also fulfilling a kind of perverse wish:

> ...[but] a wish that we could punish women more somehow, or have a whole other set of ways to punish them. Or you know, that the law wasn't going to stop us from punishing women the way that we want.

These efforts to incorporate *kastom*-as-justice and empower male chiefs not only proceed by ignoring and effectively erasing the often severe sexual and physical violence women and girls experience, but it also goes further. This 'wish' to punish women and girls and punish them more also constructs a kind of vindication for violent men, while at the same time holding women and girls responsible for the violent crimes that are committed against them: rape occurs because of short skirts and exposed thighs; violence is perpetrated to correct a lack of respect by women towards men. As I highlight in my thesis, these kinds of layered and burgeoning patriarchal practices and 'wishes' that are hidden in the folds of *kastom*-as-justice have been left to expand and solidify in Vanuatu with little to no critical commentary or even acknowledgement. It goes without saying that this set of issues and these layered erasures have deeply troubling implications for the lives of women and girls in Vanuatu.

3. Reconstituting Formations of Patriarchal *Kastom* and People Who Should Know Better

My own sense of some of the trouble with *kastom* that I trace in this thesis began more than two decades ago. In the late 1990s and the early 2000s I worked at the Vanuatu Cultural Centre. As a statutory body, the Cultural Centre oversights research and is mandated to 'preserve, promote and

protect[107] *kastom* through its role as Vanuatu's national cultural institution. After having spent several years working in this national institution from 1998 to 2001, I began to observe how an interest in promoting *kastom* had become intricately tied to a growing preoccupation with institutionalising a role for [male] chiefs. Ultimately, this focus on chiefs seemed to eclipse all other interests and considerations. For example, as I discuss in Chapter Seven, this unilateral focus on chiefs and their power had essentially taken over a project that had ostensibly been established to address issues of juvenile justice. Revealingly, the first and most elaborate recommendation that came out of a March 2001 summit to mark the end of this 'juvenile justice' project did not focus on young people at all, but instead focused exclusively on the power of chiefs:

> Parliament must pass an act to empower kastom law and empower chiefs to implement kastom law under the provisions of sections 52 and 95(3) of the Constitution...[108]

This leading recommendation also included as a 'basic principle' the sweeping directive that '...all offences committed by people of any age, from a child to an adult, are to be dealt with by *kastom* courts. [And] Only the chief should decide which cases are referred to the state courts.'[109] Beyond the fact that this recommendation involves a crucial misunderstanding of key provisions of Vanuatu's Constitution and encourages actions that are in fact un-Constitutional, this summit included only 21 young people, most of them young men.

While in the early 2000s I initially believed these efforts would fail to find significant traction in the broader justice and governance institutions of the state, by the late 2000s I was consistently being proven wrong. As I trace in my thesis, over the past two decades chiefs and their 'power' have now expanded into several corners of the state. In fact, in a conversation that took place in July 2022 with Ralph Regenvanu[110], who has championed some of these efforts first as the Director of the Vanuatu Cultural Centre and later as a prominent politician, the extent of this expansion was very clear. When

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[107] Vanuatu Cultural Centre, https://vanuatuculturalcentre.gov.vu/component/users/?view=remind&Itemid=101.
[108] Benedicta Rousseau, ed. *The Report of the Juvenile Justice Project* (Port Vila: Vanuatu Cultural Centre, 2003): 7.
[109] Rousseau ed. *The Report of the Juvenile Justice Project*, 7.
[110] As I describe in Chapter Three, Ralph is also my brother-in-law.

I asked Regenvanu about this kind of politicisation of *kastom* within the state – which is how this empowerment of *kastom* and chiefs is often referred to – this is how the conversation proceeded:

> R: And luckily those spaces are very limited…
> H: Those spaces are very limited, where the politicisation is?
> R: Malvatumauri, Police, Ministry of Justice…
> H: But those are big. That's big. That is the entire justice space.
> R: Ya, and we have people in there who should know better...

While Regenvanu's initial response was to minimise the scope and impacts of this trend – and perhaps his own involvement in some of these efforts as well – it is clear even from our conversation that this has not been the case. In fact, as I demonstrate in my thesis, this politicisation of *kastom* and the power of [male] chiefs has crept into a variety of places, from Vanuatu's approach to 'community policing' to a small but important aspect of Vanuatu's domestic violence legislation. It is also being actively enabled and even championed by a range of people 'who should know better'.

Crucial to this thesis is how the power of *kastom* and [male] chiefs proliferating in Vanuatu effectively invisibilises women and girls and their circumstances, needs and interests, particularly in relation to violence. Invisibilisation in this sense erases and renders invisible whole categories of experience as part of a technique of power and oppression (which may or may not be intentional)[111]. For example, in Chapter Seven I demonstrate how in the 2001 approach to juvenile justice, the compelling justice needs of young women and girls were essentially invisibilised, not only by the interests of male chiefs but also by the project's focus on exonerating young men who 'make trouble'[112] (with no consideration given to the 'trouble' they were making and to whom). As recently as 2021 criminologists Melissa Bull and Nicole George have identified how the scholarship on regulatory pluralism, or what they refer to as the 'hybridity paradigm'[113], has consistently failed to consider women's actual justice needs particularly in relation to gendered violence[114]. I have observed this trend firsthand. In fact, in a space

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[111] Maja Janmyr, "Sudanese Refugees and the 'Syrian Refugee Response in Lebanon: Racialised Hierarchies, Processes of Invisibilisation, and Resistance," *Refugee Survey Quarterly* 41(2022), 136.
[112] This is a common euphemism used in Vanuatu to refer to sexual assault and violence.
[113] Melissa Bull and Nicole George, "Policing and Gender Violence in Vanuatu," *International Journal for Crime, Justice and Social Democracy*, 10, no. 4 (2021): 240.
[114] Bull and George, "Policing and Gender Violence in Vanuatu", 240.

littered with individuals who identify themselves as 'crusaders'[115] and 'evangelists'[116] for *kastom*, issues of gender justice and the violence women and girls experience in their everyday lives in Vanuatu are often relegated to what I refer to as 'the shoulder shrug zone' if they are addressed at all. In the shoulder shrug zone, these issues may be briefly acknowledged and then we just carry on with what we were doing anyway.

Despite early recognition of *kastom's* inseparability from politics[117], and warnings about the gendered effects of codifying *kastom* in the state[118], there has been limited attention given to these concerns over the past two decades[119] as this 'kastomisation'[120] of the state has forged ahead with little to no critical consideration or analysis. Vanuatu's 2013 land laws, which I touch upon briefly throughout my thesis, provide a classic example. This package of legislative and Constitutional changes had been initiated, in part, to address corrupt land deals that were being carried out with increasing intensity by various Ministers of Land in Vanuatu, although they also had other aspirations. In a 2014 article Ralph Regenvanu as a key architect of these changes described them as a first step in strengthening *kastom*, '...so that any dispute can be resolved following the area's *kastom* laws'[121]. While the 2014 land package removed the power of Ministers to interfere in land deals, it also went a step further and removed land decisions from the courts, putting them in the hands of what the legislation refers to as 'customary institutions' – effectively male chiefs. Beyond the fact that chiefs, unlike government officials, function with no regulatory oversight[122], and in many cases are identified by communities themselves as corrupt or at least poorly suited to determine complex land matters[123], it is not clear

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[115] "Regional Leaders Making a Difference," *Pacific Magazine*, 27 April, 2008.
[116] Lissant Bolton, *Unfolding the Moon: Enacting Women's Kastom in Vanuatu* (Honolulu: University of Hawai'i Press, 2003), 152.
[117] See in particular Tonkinson (1982b), Keesing (1982) Larcom (1982), White and Lindstrom (1997).
[118] Margaret Jolly, *Women of the Place: Kastom, Colonialism and Gender in Vanuatu* (London: Routledge, 1997), 258.
[119] A notable exception is Cummings (2005, 2008, 2009, 2013).
[120] Lamont Lindstrom "Chiefs in Vanuatu Today," in *Chiefs Today: Traditional Pacific Leadership and the Postcolonial State*, eds. Geoffrey M. White and Lamont Lindstrom (Stanford: Stanford University Press, 1997), 217.
[121] Patricia Gil, "The Land," *Island Life Magazine*, 4 June 2014.
[122] Beyond the courts and the laws of Vanuatu, *kastom* itself does not include effective controls on abuses of power, nor does it have the administrative and regulatory capacity to oversight complex issues. In the national context, despite attempts to standardise chiefs into village, area, island, and urban councils, these post-Independence constructions have not worked particularly well.
[123] Vanuatu Policing and Justice Support Program, *Conflict Management and Access to Justice in Rural Vanuatu*, 2016, 67 to 105.

how the issues of corruption and misuse of power that ostensibly motivated these changes will be resolved. Crucially for the purposes of my thesis, how women are positioned in relation to these legislative changes was effectively ignored[124].

This failure to consider the gendered dimensions of this one crucial area of 'kastomisation' of the state and the expanding power of [male] chiefs has become a critical, yet increasingly predictable oversight in Vanuatu. As is the case elsewhere in the world[125], land and land ownership are deeply gendered in Vanuatu. Writing nearly 20 years before this land package was brought into law, Grace Molisa herself underscored these very specific gendered concerns when she described land matters as effectively the key to women's oppression in Vanuatu:

> The root cause of the social, economic and political power imbalance between men and women in Melanesia is land. Land ownership. Land use. Land administration. To own land is to be secure. To be someone. To be independent. To have power. To have authority. To have status. Without land the woman is nothing. Without land the woman herself becomes a commodity on the male market. The woman, without land, becomes available to be sold, bought and owned as a movable asset.[126]

Other Ni-Vanuatu women have also highlighted these concerns[127]. Yet, as recently as 2022, the two key architects of Vanuatu's land law package, Ralph Regenvanu and Australian academic Siobhan McDonnell, were framing these changes simply as a productive act of 'decolonization', with no critical attention paid to what these changes would mean for women. Beyond identifying land as 'the mother' early on, their joint article 'Decolonization as practice: returning land to Indigenous control'[128], says nothing about women and their interests, needs and realities in relation to land. It also fails to address

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[124] While meetings were held with women, these seemed tokenistic. Ultimately there are no real protections for women's interests in relation to land in this new legislation.

[125] Tzili Mor, "Why Land is a Feminist Issue," Landesa Field Focus Blog, September 11, 2016, https://www.landesa.org/why-land-is-a-feminist-issue-blog/#:~:text=We%20feminize%20our%20planet%20by,this%20experience%20has%20a%20bias.

[126] Grace Mera Molisa, "Melanesian Women Moving On, Women in Action," Isis International, 1995, No 2. https://feministarchives.isiswomen.org/64-feminist-archives/women-in-action/women-in-action-1995-2/1357-melanesian-women-moving-on.

[127] See in particular Naupa (2017, 2009). Kenneth and Silas describe women as 'slaves' in 'traditional culture' and link their removal from land matters as resulting from several gendered concerns in traditional society. Dorosothy Kenneth and Henlyn Silas "Vanuatu: Traditional Diversity and Modern Uniformity," *Land Rights of Pacific Women* (Suva: Institute of Pacific Studies, 1986) 69.

[128] Siobhan McDonnell and Ralph Regenvanu, "Decolonization as practice: returning land to Indigenous control." *AlterNative*, 18, no. 2 (2022).

what empowering male chiefs with these kinds of legislative and Constitutional changes to determine not only land matters but other community disputes in practice[129] will mean to women's lives.

Beyond invisibilising women and girls and the concerns they face in their daily lives, the upsurge in *kastom* and the power of [male] chiefs that I trace in this thesis has also resulted in crucial regressions in the area of women's rights and gender equality in Vanuatu. One example of this is evident in a thesis completed in 2021 by anthropologist Latham Wood. Much like the earlier crusaders and evangelists for kastom, Wood self-consciously describes his own early engagement as a Peace Corps volunteer in Vanuatu through the mid-2000s in the following way:

> ...like my counterparts, I was taken with the herd of a 'kastom consciousness' — a state that created an obsession and even an addiction to work for kastom causes, without fully understanding the consequences of our actions.[130]

While Wood's thesis focuses critically on other aspects of what he refers to as the rise of 'kastom movements', a process that was driven quite explicitly and single-mindedly by the Vanuatu Cultural Centre through the late 2000s[131], he also highlights a particular shift. Wood says that when he first started to attend community meetings in 2005 on the small island where he lived and worked, women and men in the area were encouraged to attend and participate. Through the rise of what he calls the 'kastom movement', however, by 2015 he observed a shift from '...previously including women, to now explicitly excluding them.'[132] While Wood himself spends very little time on this particular issue, he does say that 'The exclusion of women from the [*kastom*] movement seems to be a move in the wrong direction, and may be a bad sign of things to come.'[133]

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[129] In community-level consultations in rural Vanuatu in 2012 I was told that in preparation for the new land law process, community members had set up 'new' procedures for managing a range of community disputes and issues. In the community I was in that day a group of kastom judges were hearing a case of sexual assault. Before this, this type of dispute would have been sent to the police.

[130] Latham Talbot Wood, "Canoes, Kava, Kastom, and the Politics of Culture on Aneityum" (PhD thesis, University of Oregon, 2021), 31.

[131] Leading up to and emanating from Vanuatu's Year of the Kastom Economy (in 2007 and 2008). This work has been referred to as a 'Trojan Horse' for kastom by Ralph Regenvanu in his conference paper "The 'Pig Bank': A Trojan Horse for Custom", presented at the Annual Meeting of the Association for Social Anthropology in Oceania, San Diego, California, 8 February, 2006.

[132] Wood, "Canoes, Kava, Kastom," 96.

[133] Wood, "Canoes, Kava, Kastom," 131.

Several of these bad things to come, in fact, form the basis of my thesis. At the same time that some of these bad things are becoming increasingly institutionalised in Vanuatu, they also track with troubling global trends. As I demonstrate in the following chapters, the invisibilisation of women and girls and their concerns, experiences, and everyday realities, represents a regression from earlier commitments in Vanuatu. In the global context this same trend has been linked with a rise in populist and nativist ethno-nationalism[134], or what one author refers to as the increasing trend towards 'illiberal democracy'[135]. For several commentators and academics, these global circumstances find their roots in an increasing disenchantment with the modernisation project[136]. Political scientist Niamh Reilly describes this as a global set of issues whereby, 'After the initial optimism prompted by decolonization processes...disillusionment set in...'[137]. Reilly adds that this disenchantment was reinforced as '...governments failed in their obligations to meet the most basic human rights of their populations...'. In Vanuatu, the past several decades have not only seen the quality of education and access to other services decrease, but the economic and political benefits of Independence have become increasingly concentrated in the hands of a very select few who have often wielded these benefits and their power in corrupt and problematic ways. Increasingly in Vanuatu *kastom* is being used as just another tool to mobilise these kinds of illiberal interests.

As several commentators have noted, a crucial aspect of these global trends is the impact they are having on women's rights. For example, a recent *New York Times* article describes how, '...a global surge in right-wing, authoritarian movements has spurred a broad backpedalling on women's rights and, in particular, protections against gender-based violence.'[138] This trend has been traced across the globe from Hungary, Spain and Turkey to Brazil and the United States[139]. In the area of gender-based violence specifically, this trend has ultimately functioned to 'normalize violence and

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[134] Alessia Dona, "What's gender got to do with populism?," *European Journal of Women's Studies*, 27 no. 3 (2020).
[135] Fareed Zakaria, "The Rise of Illiberal Democracy," *Foreign Affairs*, 76 no. 6 (Nov-Dec 1997).
[136] Niamh Reilly, "Fundamentalisms and Women's Human Rights," Gender, Empowerment and Globalisation Research Cluster, Working Paper No. 1 (2009), 7.
[137] Reilly, "Fundamentalisms and Women's Human Rights," page 7 to 8.
[138] Gupta, "In Her Words: Across the Globe, a 'Serious Backlash Against Women's Rights".
[139] Gupta, "In Her Words: Across the Globe, a 'Serious Backlash Against Women's Rights".

harassment...by dismantling legal protections or by hollowing out support systems.'[140] As I demonstrate in my thesis, a similar kind of dismantling and hollowing out of key protections for women and girls – and for human rights, justice, and democracy – can also be observed in Vanuatu, and is gaining ground. In 2018, the United Nations Working Group on the issue of discrimination against women in law and in practice issued an unequivocal statement declaring that:

> ...women's hard-fought achievements now risk being reversed. An unprecedented pushback has been progressing across regions by an alliance of conservative political ideologies and religious fundamentalisms. Retrogressions have been occurring, often in the name of culture, religion and traditions, and threaten the hard-fought progress in achieving women's equality.[141]

This report not only identifies politicisation of culture and rising authoritarianism as a considerable challenge to human rights, but it locates women's human rights as 'a litmus test for the human rights standards of the whole society'[142]. It concludes by locating equality between women and men as 'humanity's struggle'[143].

As I revisit in my Conclusion, Vanuatu has recently declared a kind of return to human rights and rule of law on the global stage in relation to another existential struggle for humanity. In an effort to address the grievous impacts of climate change, Vanuatu courageously led a coalition of well over one hundred nations to seek clarity – and justice – around the legal obligations of states from the world's highest court[144]. To this end, Vanuatu's then Prime Minister Ishmael Kalsakau addressed the United Nations Human Rights Council in early March 2023 declaring that, '...as Vanuatu commits and affirms our faith in fundamental human rights, we are cognisant of the dignity and worth of each person and equal rights for all.'[145] Kalsakau went on to decry the global lack of progress on human rights, pointing out that '...despite a common resolve, a disjointed consideration of rights seems evident.'[146] Yet Vanuatu's own 'disjointed consideration of rights' and clear lack of resolve in the context of women's

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[140] Gupta, "In Her Words: Across the Globe, a 'Serious Backlash Against Women's Rights".
[141] United Nations Human Rights Council, "Report of the Working Group on the issue of discrimination against women in law and in practice," A/HRC/38/46, 14 May 2018, 7.
[142] UN Human Rights Council, "Report of the Working Group" A/HRC/38/46, 5.
[143] UN Human Rights Council, "Report of the Working Group" A/HRC/38/46, 18.
[144] Vanuatu ICJ Initiative, https://www.vanuatuicj.com/home.
[145] Vanuatu Prime Minister Alatoi Ishmael Kalsakau addressing the United Nations Human Rights Council on the ICJ Initiative, 2 March 2023, https://youtu.be/q4gaAVxKYsg.
[146] Kalsakau speech on ICJ Initiative.

rights and gender justice in particular, remains glaringly and painfully evident. As I argue in my conclusion, if Vanuatu indeed seeks to remain, as Kalsakau declared to his international audience, '...firm and resolute to recognise the inherent dignity and equal and inalienable rights of all of us as the foundation of freedom, justice and peace'[147], these rights, respect for principles of international law, and associated legal processes must be protected and extended to women and to other marginalised members of Vanuatu's own communities as well.

[147] Kalsakau speech on ICJ Initiative.

Chapter Three
Theory | Method: Violence, Epistemologies, and Erasures

1. Theory | Methodology: Violence, Erasure, and Making the Invisible Known

Some of the issues that I identify in my thesis, while embedded in the unique social, political, and historical context of Vanuatu, have regional and global resonances. The kind of gendered and sexual violence against women and girls perpetrated by men in Vanuatu is well-documented in regional literature on the Pacific, as well as in the global literature[148]. Despite these realities, as contributors to a 2021 Special Issue of the journal *Violence Against Women* have noted, this broader space of inquiry has been increasingly characterised by a proliferation of empirical and quantitative data, with very little theoretical analysis[149]. This has largely been the case in Vanuatu as well as in the Pacific. This theoretical vacuum has been accompanied by several associated trends that have contributed to the failure to adequately understand and theorise the violence women and girls face at the hands of men:

> ...we have witnessed a deradicalisation of feminism and gender analyses, strategies for engaging men that overemphasise reconstructing masculinity rather than challenging patriarchy, a 'not all men' refrain from so-called 'good men', and a greater acceptance of anti-feminist backlash politics within the mainstream.[150]

In Vanuatu as elsewhere, the use of neutral terminology like 'family violence', a persistent backlash to feminism in the mainstream, and the failure to identify institutionalised patriarchy have served to obfuscate the fact that the vast majority of sexual and physical violence is perpetrated against people who are gendered female, by people who are gendered male. My thesis seeks to address this theoretical absence directly.

As the passage above suggests, several contemporary scholars working in the area of violence against women and girls have located the failure to adequately address and theorise patriarchy as a

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[148] World Health Organization, "Violence against women", 9 March 2021, https://www.who.int/news-room/fact-sheets/detail/violence-against-women.
[149] Walter DeKeseredy, "Guest Editor's Introduction," Violence Against Women, 27, no. 5 (2021) 619.
[150] Bob Pease, *Facing Patriarchy: From a Violent Gender Order to a Culture of Peace*, (London: Zed Books, 2019) 5.

crucial concern[151]. While groundbreaking feminist scholarship through the 1970s addressed patriarchy directly and identified crucial concerns around male power and its intersections with violence against women and girls, this work has largely fallen away[152]. In an effort to revive this more critical feminist focus on patriarchy and its effects, feminist criminologist Walter DeKeseredy, following Dobash and Dobash, offers the following definition of patriarchy:

> ...patriarchy is conceptualized as being made up of two elements. Structurally, the patriarchy is a hierarchical organization of social institutions and social relationships that allows men to maintain positions of power, privilege, and leadership in society. As an ideology, the patriarchy rationalizes itself. This means that it provides ways of creating acceptance of subordination not only by those who benefit from such actions but also by those who are placed in such subordinate positions by society.[153]

In this thesis I draw from this broad conceptualisation of patriarchy as structured through institutions and relationships as well as through ideology, and clearly locate *kastom* in practice in Vanuatu, or what I call normative *kastom*, within this definition. By theorising these various facets and effects of patriarchal *kastom* structures, institutions, and ideology in the context of contemporary Vanuatu, my thesis provides greater insight and nuance to our understanding of violence, and particularly men's violence against women and girls, within the context of Vanuatu.

By bringing patriarchy back into the analysis, my research also addresses a clear theoretical gap. It is telling that in a regional symposium on the use and uptake of Family Protection Orders in the Pacific Region held in 2021, only one presentation – Tonga's – clearly addressed the intersection of patriarchal norms and issues of violence against women and girls[154]. Vanuatu's presentation focused simply on technical matters around how protection orders are executed. Yet aspects of Vanuatu's own *Family Protection Act*, as I elucidate in Chapter Six, provide evidence of an attempt to establish a foothold for patriarchal chiefly interests within this crucial legislation. In Chapter Five I also examine some of the contours of patriarchy in the context of Vanuatu through the common descriptor, man on

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[151] Walter DeKeseredy, "Bringing Feminist Sociological Analyses of Patriarchy Back to the Forefront of the Study of Woman Abuse," *Violence Against Women*, 27, no. 5 (2021) 621.
[152] DeKeseredy "Bringing Feminist Sociological Analyses of Patriarchy Back", 622.
[153] DeKeseredy "Bringing Feminist Sociological Analyses of Patriarchy Back", 623.
[154] 'Ofa-Ki-Levuka Guttenbeil-Likiliki, "Session 4: Patriarchal Norms and FPOs in Tonga" Symposium on Family Protection Orders in the Pacific, Department of Pacific Affairs , 9 December 2021, https://www.youtube.com/watch?v=_FI3zDDWorw&list=PLV6RuTP9szr9n8AsWs-SjFGsOE6syc9YK&index=4.

top, woman down. Throughout my thesis, aspects of a reconstituting patriarchy in Vanuatu that is solidifying and expanding under the guise of normative *kastom* provides an analytic thread through all of my chapters. My hope is that this thesis will contribute to broader global efforts to bring an analysis of patriarchy back into studies of violence against women and girls, while also bolstering nascent regional and local efforts as well. My thesis also contributes directly to developments in Southern criminology by countering narrow empiricism and by providing nuance to the 'specific forms and effects of systemic violence and discrimination'[155] in a context that is unique, complex, and characterised by patterns and trends that are different from those of the global North.

In theorising violence and its erasures in the context of Vanuatu, the work of Judith Butler has contributed immeasurably to shaping and furthering my understanding in significant and profound ways. My use of Butler's work is something that I have arrived at by way of other theoretical exploration, however. For example, in some of my earlier academic work, now more than 20 years ago, I used the concept of justice as a key analytic and theoretical frame to navigate some of the emerging issues I had observed in the context of Vanuatu. After close readings of how several philosophers and political theorists including John Rawls[156], Richard Rorty[157] and Michael Walzer[158] approached issues of justice, I settled on the work of Iris Marion Young and Jacques Derrida. Both Young and Derrida offered strategies or approaches to thinking about issues of justice that were more applicable to the context of Vanuatu, and that also resonated with my own desire to engage in theory that had some practical applicability. In many ways I have sought out these theoretical rudders to help me to make sense of, and even to navigate – personally and professionally – some of the complex issues that I have seen emerging in Vanuatu, and which I address in this thesis.

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[155] Kerry Carrington, Russell Hogg, and Maximo Sozzo, "Southern Criminology," *The British Journal of Criminology*, 56, no. 1 (January 2016) 12.
[156] In particular, *Justice as Fairness, The Law of Peoples,* and *Justice as Fairness: A Restatement*.
[157] In particular, *Human Rights, Rationality, and Sentimentality, Who are We? Truth and Progress*, and *Justice as a Larger Loyalty.*
[158] In particular, *Spheres of Justice, Thick and Thin*.

In *Justice and the Politics of Difference*, Young's insights around the necessity of including an analysis of violence in any theory of justice resonated deeply for me. For Young, 'What makes violence a phenomenon of social injustice, and not merely an individual moral wrong, is its systemic character, its existence as a social practice.'[159] Young also grapples with issues of culture, and the ways that culture can become normative and hegemonic[160], while at the same silencing and effacing the experiences of those who are not part of the dominant group[161]. The work of Jacques Derrida, and particularly his book *Spectres of Marx* and his essay *Force of Law* had an even greater influence on my thinking about justice. In particular, Derrida's understanding of justice as an emancipatory promise[162] and the always yet-to-come[163] – a kind of horizon of possibility that we never achieve but always strive for – has been particularly influential. In *Force of Law* Derrida states unequivocally that 'Deconstruction is justice.'[164] Given how pivotal deconstruction is to Derrida's understanding of justice and given its clear intersections with the work of Judith Butler – as well as to my own theoretical and methodological approach – it is worth some brief elucidation here.

In his recent biography of Jacques Derrida, author Peter Salmon describes the task of deconstruction simply as the process of examining binary oppositions in order to '...problematise them, uncover their fabrication, and analyse the violence that this initiates and sustains'[165]. Derrida elaborates on the relationship between deconstruction and justice in the following way: given the deconstructibility of law, authority, legitimacy, rules (the fact that they are made up, constructed, and therefore open to a process of deconstruction), and the indeconstructibility of justice (as an ideal, the always yet-to-come), doing justice exists in the interval between these two[166]. This call to continuously work to transcend

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[159] Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990) 62.
[160] Young, *Justice and the Politics of Difference*, 59.
[161] Young, *Justice and the Politics of Difference*, 59.
[162] Jacques Derrida, *Spectres of Marx: The State of the Debt, the Work of Mourning and the New International*, 1st edn. (London: Routledge, 2006) 74.
[163] Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority'", Translated by Mary Quaintance, *Cardozo Law Review*, 11 no. 919 (1990) 27.
[164] Derrida, "Force of Law", 15.
[165] Peter Salmon, *An Event, Perhaps: A Biography of Jacques Derrida* (London: Verso, 2021) 6.
[166] Derrida, "Force of Law," 15.

binaries, and 'demystify the realities we create'[167] has directly informed my approach to understanding the phenomenon of patriarchal *kastom* in Vanuatu that I examine in this thesis. As Judith Butler wrote in an essay eulogising Derrida after his death in 2004, Derrida's conceptualisation of justice has profound implications:

> ...as an ideal, [justice] is that towards which we strive, without end. Not to strive for justice because it cannot be fully realised would be as mistaken as believing that one has already arrived at justice and that the only task is to arm oneself adequately to fortify its regime...Derrida kept us alive to the practice of criticism, understanding that social and political transformation was an incessant project...one that required a reading of the rules by means of which a polity constitutes itself through exclusion or effacement.[168]

As Butler points out, thinking about justice in this way leads to questions about who and what is being left out, and the kinds of questions that need to be asked, even '...when established authorities wished that they were not.' As I demonstrate throughout this thesis, these kinds of questions have deep relevance to the context of Vanuatu.

While Derrida's approach to this 'incessant project' of striving for justice has informed my understanding of justice in the context of Vanuatu, it is Judith Butler's work – and particularly her theorisations of violence and nonviolence – that have been even more impactful in informing my theoretical *and* my methodological approach in this thesis. The many levels and instances of gendered violence that settled around me over decades in Vanuatu, and particularly throughout the writing of this thesis were unignorable for me, compelling. These have included the kinds of physical and sexual violence that I detail in Chapter Two, but also other kinds of violence that disturbed, unsettled, and troubled me. This has included the violence of what is not only unsaid or unacknowledged, but also what is erased, or invisibilised, as well as the violence that is itself wrought by these kinds of erasures. It has included colonial violence – the violence of the colonialism we collectively recognise, and the violence of the colonialism that Grace Molisa bravely elucidates and rebukes in her poem *Colonised People*. The colonising violence of physical, structural, and ideological patriarchy in Vanuatu, and the epistemic violence that results in a reckoning of whose experiences

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[167] Patti Lather, *Getting Smart: Feminist Research and Pedagogy within/in the Postmodern* (New York, Routledge, 1991) 13.
[168] Butler, "Jacques Derrida".

and knowledge counts and whose do not, have preoccupied and even haunted me. I could not look away. Finding a way to theorise this violence has seemed to me to be essential to any consideration of the lives of women and girls in Vanuatu.

Rather than drawing on multiple theories of violence I have focused primarily on the work of Judith Butler to inform my theoretical analysis. Butler's work on violence is not only extensive, spanning several decades[169], it is also distinctly relevant to my work. In particular, Butler's understanding of norms as '...fields of power that provide the cultural frameworks in which we are constituted or denied an existence'[170] and the intersections of these norms – and their 'normalisation' – with violence is directly relevant to the issues I explore and address in my thesis. According to feminist philosopher Emma Ingala, while Butler actively avoids definitional clarity in her work, she offers a broad conception of violence whereby:

> Violence is the stabilization or petrification of a particular worldview that is thereafter represented as natural and definitive. Non-violence, on the contrary, is conceived as the interruption or suspension of this stabilization, as an opening to other possible worlds.[171]

This understanding locates the rise of patriarchal *kastom* that I address, and the kind of 'stabilization or petrification' of this particular worldview in Vanuatu as a kind of violence. In Butler's conceptualisation, violence happens at these sites of closure and fixity and is enacted through forces of naturalisation that effectively erase alternatives.

To ground Butler's understanding of violence, my thesis considers violence – physical, normative, epistemic – across a variety of sites and layers. As I elucidate at many points throughout my thesis, this includes the fact that in Vanuatu chiefs are, almost without exception, men, a reality that I explore in detail in Chapter Five. It also includes the fact that chiefs, as collectivities and particularly through their state level representative body, the Malvatumauri – itself an enduringly all-male institution – regularly engage in efforts to stabilise and expand their patriarchal power and reinforce misogyny and

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[169] Ingala, "Judith Butler: From a Normative Violence".
[170] Brad Evans and Sean Michael Wilson, *Portraits of Violence: An Illustrated History of Radical Thinking* (Oxford: New Internationalist, 2016) 113.
[171] Ingala, "Judith Butler: From a Normative Violence" 192.

the man-on-top, woman-down-ness of *kastom* at almost every opportunity. At the same time, chiefs actively minimise the realities of violence against women and girls, often blame women and girls for the violence they experience *and* seek to mitigate the repercussions for men who enact violence against women and girls. Despite these clear articulations of patriarchal violence, these issues are rarely examined and described as such in much of the work on Vanuatu and in the region.

In the justice landscape of Vanuatu, not only are issues of violence against women and girls ignored, minimised, naturalised, or erased, but so is the structural and ideological patriarchy of normative *kastom*. Most academic work that sits under the broad umbrella of regulatory pluralism, for example, fails to consider these issues, thereby creating other erasures. This can happen through what I have come to call the 'shoulder shrug' where the author briefly acknowledges violence against women and girls and/or patriarchal structures within *kastom* (if they are acknowledged at all), and then just carries on with what they were doing anyway. In Ni-Vanuatu governance scholar and politician Gregoire Nimbtik's PhD thesis this erasure is well-demonstrated. Towards the very end of his thesis, Nimbtik acknowledges '...the limitations of *kastom* governance, especially its conservative, patriarchal and hierarchical structures of authority...'[172]. Yet under 'Gender considerations' earlier in the thesis it is clear that Nimbtik has wholly failed to address this set of issues in his own research:

> In most rural areas males dominate and are the decision-makers. Because the present researcher grew up in a rural area, his in-depth understanding of the cultures in Vanuatu helped him to cope with some of the gender related challenges that were likely to emerge during the course of the research. For example, in rural areas the researcher ensured that females who participated in the interviews came with their husbands.[173]

As his 'female' research participants are surveilled and monitored under the gaze of their 'dominant' husbands, he simply identifies the patriarchy and effectively normalises it – a classic shoulder shrug. Interestingly, while in his thesis Nimbtik links Vanuatu's 'customary practice and authority' directly with what he refers to as 'serious problems of official corruption'[174], he not only 'shoulder shrugs' issues of

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[172] Gregoire Nimbtik , "'Worlds in Collision': An inquiry into the sources of corruption within Vanuatu Government and Society" (PhD thesis, RMIT University, 2016), 228.
[173] Nimbtik "'Worlds in Collision'", 68.
[174] Nimbtik "'Worlds in Collision'", vii.

patriarchy away, but his thesis also ultimately advocates for the inclusion of *kastom* governance and the 'nakamal system' within the state.

As I revisit in Chapter Seven and again in my Conclusion, many researchers who are active in Vanuatu will strive to pay attention to the silencing and violent erasure of neo/post/colonialism – the colonialism we all recognise. This is often framed around a binary 'two world'[175] analysis, where 'the West' is contrasted with the local and *kastom*. For example, work arising from an Australian-funded 'kastom governance' project directly addresses their efforts as a '...response to concerns about epistemic violence inherent in the hegemony of Western mediation'[176]. Ironically their own efforts are complicated by their attempt to remedy the dominance of what they label 'Western mediation' by providing training in the use of other so-called 'Western mediation skills and processes'[177]. Unsurprisingly, women are also left largely out of the equation. For example, in another example of the 'shoulder shrug' the authors briefly discuss how '...women are treated disrespectfully in committee meetings which are dominated by men'[178], yet the only antidote offered is to model 'traditional values of respect'[179] in these meetings. This project, as I revisit in Chapter Four continued to offer training mainly to men (male chiefs in particular), and their simplistic remedy of calling for more 'respect' in meetings, as I outline in Chapter Five, can be deeply silencing for women. These efforts to address or counter the hegemony of 'the West' not only set up problematic categories that do not track with local realities, but they contribute to the thickening of patriarchal *kastom* and have arguably institutionalised other layers of epistemic violence.

To bring this back into Butler's theorisation of violence, these kinds of approaches contribute to the invisibilisation of the lives and experiences of women and girls. Ingala describes how in Butler's

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[175] Nimbtik "'Worlds in Collision'", 238.
[176] Polly Walker and Chief Selwyn Garu, "'A few more arrows' Strengthening mediative capacity in Vanuatu," *Mediation in the Asia-Pacific region: Transforming conflicts and building peace* (Routledge, 2009) 104.
[177] Walker and Garu "'A few more arrows' Strengthening mediative capacity in Vanuatu", 94.
[178] Walker and Garu "'A few more arrows' Strengthening mediative capacity in Vanuatu", 104.
[179] Walker and Garu "'A few more arrows' Strengthening mediative capacity in Vanuatu", 104.

approach to violence '...our vulnerability is embedded in power relations and dependent on social regulations and epistemological "frames"'[180]. For Butler, this framing of what is knowable and seen is directly linked to what she calls 'onto-epistemological' violence:

> Frames establish grids of intelligibility (what can be understood, represented, and recognized, and what cannot), administer the field of vision (what can be seen and what remains invisible), and distribute value differentially (which lives are worth protecting or, when it comes to that, mourning, and which are not).[181]

In Vanuatu, *kastom* is increasingly working as this kind of epistemological frame, and is becoming increasingly solidified, fixed – and violent – as it passes off its patriarchal inclinations and structures as natural, part of the essence of Vanuatu, and ahistorical. Through these processes crucial experiences and knowledges are silenced and erased.

The work of feminist philosopher Kristie Dotson has extended understandings of this kind of erasure and the silencing that it enacts and perpetuates through her theorisation of epistemic oppression. For Dotson, silencing occurs through processes of testimonial quieting and testimonial smothering. In the context of Vanuatu, this would include not recognising women's knowledge, experiences, or views as valid knowledge (quieting) or the self-censorship of women who already know they will not be heard, believed, or recognised as knowers (smothering). Even more relevant to my discussion is that for Dotson, these processes of silencing rely on what she calls 'pernicious' or 'unmanaged and unacknowledged ignorance':

> ...ultimately for me epistemic oppression constitutes landscapes where there are pervasive harms that are the result of unmanaged ignorance. I think that unmanaged and unrecognised ignorance harms people. That's what I think. And ultimately there are landscapes where peoples unmanaged and unacknowledged ignorance actually is allowed to cause harm.[182]

Dotson goes on to describe how 'entire populations' can be 'incapable of tracking harms to people', and this incapacity itself perpetuates harm as a result of 'unmanaged and unrecognised ignorance.'[183] While Dotson recognises that some ignorance may not be intentional, there are other cases where,

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[180] Ingala, "Judith Butler: From a Normative Violence," 198.
[181] Ingala, "Judith Butler: From a Normative Violence," 198.
[182] Kristie Dotson, "Episode 009: Kristie Dotson on Ignorance" The Unmute Podcast, October 21, 2015, https://unmutetalk.podbean.com/e/episode-009-kristie-dotson-on-ignorance/.
[183] Kristie Dotson, "Episode 009: Kristie Dotson on Ignorance".

'...we're just completely ignoring it, no matter how relevant it might be to a particular discussion'.[184] For Dotson, and for me in this thesis, this kind of ignorance causes harm.[185]

The methodology that I engage with to support me in doing the theoretical work of addressing this epistemic violence and the epistemic ignorance that perpetuates and sustains it is informed by the practice or method of 'troubling'. Here the work of feminist scholar Sara Ahmed has been particularly helpful. Ahmed's uptake of Butler's work as a call to productively make 'trouble' has directly informed my approach as both a feminist and as a critical social scientist. As such, my work seeks to trouble and disrupt stable categories in order to enable a kind of '...opening to other possible worlds'[186]. For Ahmed, this work of troubling is crucial because:

> ...if a text can give words for something, a difficulty, a violence, an injustice, a dynamic, perhaps something that is coming up, in social life, in institutional life, as trouble; if it can name something that had yet to be named in quite the same way...then people will find it, even if they do not find the language a lead; they will grab hold of it; they will persist with it.[187]

Through this thesis I persist with these issues in a way that I hope others will grab hold of, and that will open up new spaces for critical engagement. As I describe at the beginning of my thesis, Ahmed points out how, '...power is often naturalised through the containment of trouble. In other words, some things are troubled or viewed as trouble as a way of not troubling other things.'[188] To counter this kind of closure, I engage in a practice of troubling and the 'systematic dismantling of petrified ontologies' as a productive exercise[189]. Following Butler and Ahmed, troubling as a methodology provides a way to open up new spaces for critical analysis and possibility.

As both Ahmed and Butler point out, however, this work is full of pitfalls and difficulties. The work of troubling necessitates a kind of continuous process. Like Derrida's justice as horizon[190], the work to

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[184] Kristie Dotson, "Episode 009: Kristie Dotson on Ignorance".
[185] Kristie Dotson, "Episode 009: Kristie Dotson on Ignorance".
[186] Ingala, "Judith Butler: From a Normative Violence," 201.
[187] Ahmed, "Being in Trouble," 180.
[188] Ahmed, "Being in Trouble," 182.
[189] Gavin Rae and Emma Ingala, "Introduction: The Meanings of Violence," *The Meanings of Violence: From Critical Theory to Biopolitics*, eds. Gavin Rae and Emma Ingala (London: Routledge, 2019), 8.
[190] Derrida, *Spectres of Marx*, 74.

address and counter violence through this practice of critical analysis and troubling demands continuous revision[191]. Never being '...willing to agree to this restriction of possibility'[192] involves a complex and at times uncomfortable positionality. In Ahmed's depiction:

> A difficult history is the site of subversion; it is the opening of possibility. And...that possibility is opened up by what we fail to become. Possibility does not always feel good. Getting into trouble can be costly, painful.[193]

This kind of theoretical and methodological analysis also lends itself to a kind of messiness and a sense of excess. Ultimately, this excess is also reflective of many of the realities on the ground in Vanuatu that trouble and defy simplified analysis. In this context, issues from corruption to patriarchy and violence against women and girls are in many ways interrelated. In fact, patriarchal power and issues of political and economic self-interest and corruption are often, as I highlight in my Conclusion, co-constituting across these spaces. While things like budget and finance are used as a simple justification for decentralising justice services, financial excesses and dire deficiencies in healthcare and education remain actively unaddressed. What is 'local' or '*kastom'* is rarely, if ever, presented as a contested set of perspectives. My work seeks to address these analytic shoulder shrugs and erasures by theorising this patriarchal violence through the methodology of troubling.

My research is also foundationally intersectional. While intersectionality resists definitional fixity, sociologist Patricia Hill Collins has described it broadly as a knowledge project that aspires to 'resist the social inequalities within intersecting systems of power'[194]. As critical legal scholar Kimberle Crenshaw sought to do in her early work on intersectionality[195], my work maps the erasure of the experiences and voices of Ni-Vanuatu women and girls and the violence they experience. My approach to the research and my efforts to read across spaces and listen for silences across a variety of materials also reflect what critical socio-legal scholar Sora Han has identified as an 'intersectional

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[191] Ingala, "Judith Butler: From a Normative Violence," 198.
[192] Ahmed, "Being in Trouble," 183.
[193] Ahmed, "Being in Trouble," 184.
[194] Patricia Hill Collins, *Intersectionality as Critical Social Theory* (Durham: Duke University Press, 2019) 96.
[195] Albeit in a very different context. Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review* 43 no. 6 (July 1991).

sensibility'[196]. I have also been guided by the work of Hill Collins in my approach to intersectionality. For example, in her work on intersectionality, epistemology and method Collins describes how '...intersectionality draws upon methodologies as conduits for critical theorizing that can uphold or upend epistemic power.'[197] My work is intersectional in that it centres on the experiences of Ni-Vanuatu women and girls, in a context and in a knowledge space/project – *kastom* – where their voices and experiences have often been erased, invisibilised or relegated to what I call the 'shoulder shrug'. Intersectionality is also bound up with my theoretical focus on epistemic violence and my methodological orientation. According to Hill Collins: 'Naming the silencing strategies of epistemic violence within groups shows how epistemic power works in them'[198].

I have employed various aspects of intersectional methods across my research including paying attention to the following 'guideposts' offered by Hill Collins and her co-author sociologist Sirma Bilge in their 2016 book, *Intersectionality*. These guideposts include being attentive to relationality and interconnections. In particular my approach strives to '...go beyond oppositional thinking' implicit in the either/or binary thinking and instead, attempts 'to forge a complex and interactive understanding of the relationships between history, social organization, and forms of consciousness, both personal and collective'[199]. These guideposts also include active consideration of social context. Even within the context of the Pacific and Melanesia, Vanuatu's social context is unique. Other guideposts advocated by Collins and Bilge include attention to power relations, social inequality, and social justice. My work advocates, following critical criminologists Carrington, DeKeseredy and others, a move from considerations of gender – a more neutral, analytic category – to an examination of power through the analytic of patriarchy[200].

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[196] Han, "Intersectional Sensibility".
[197] Hill Collins, Intersectionality as Critical Social Theory, 123.
[198] Hill Collins, Intersectionality as Critical Social Theory, 146.
[199] Patricia Hill Collins and Sirma Bilge, *Intersectionality* (New York: Polity, 2016) 142.
[200] Hill Collins and Bilge, *Intersectionality*, 146.

In Vanuatu, recognising and addressing the impacts of patriarchy are deeply necessary. Crenshaw recognised this in her formative work, 'Mapping the Margins', where she observed that 'Doing so would help reshape traditional practices so that evidence of racism would not constitute sufficient justification for uncritical rallying around misogynistic politics and patriarchal values.'[201] As Crenshaw points out, neither an anti-racist agenda nor the appeal for the maintenance of 'cultural integrity' justifies the toleration of misogyny. Using intersectionality as an analytic tool also requires being attentive to complexity. As Collins and Bilge advocate:

> Thinking about social inequalities and power relations within an ethos of social justice, and doing so not in abstract generalizations but in their specific contexts, brings complexity. Attending to how intersecting power relations shape identities, social practices, institutional arrangements, and cultural representations and ideologies in ways that are contextualized and historicized introduces a level of complexity into everything.[202]

Throughout my thesis, I have tried to continue to embrace this complexity and at times to simply sit with it. This is reflected in the many diverse facets of my work, as well as my research methodology that has drawn on primary materials and historic documents in an effort to examine – and trouble – 'social practices, institutional arrangements, and cultural representations and ideologies' in more nuanced and complex ways.

In conclusion, my theoretical and methodological approach is focused on troubling the invisibilisation of a range of complex issues and concerns relating to *kastom* and violence against women and girls in Vanuatu. In the Pacific we have typically engaged with these issues through the highly simplified lens of gender (modern, individual rights, "Western") versus culture (traditional, communal interests, "non-Western")[203]. My thesis highlights how this framing is not only unproductive, but it invisibilises complex political and historical phenomena and other crucial concerns. Instead, my thesis aims to move beyond these and other binaries and bring a range of considerations back into the frame. This

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[201] Crenshaw, "Mapping the Margins," 1295.
[202] Hill Collins and Bilge, *Intersectionality*, 147.
[203] For example, I originally came to this thesis project with an interest in trying to untie what Henrietta Moore refers to as 'the intractable Gordian knot of gender and culture' (referencing a comment made by Moore on the back cover of Phillips, A., 2010, *Gender and culture*, Polity, Cambridge). I now believe that we greatly oversimplify these terms and exaggerate their antagonistic relationship, and as I demonstrate throughout this thesis, this framing itself acts as a distraction from other, far more important, considerations.

theoretical approach is directly informed by Judith Butler's understanding of violence. Following Butler, by shifting my focus to material, normative and epistemic violence – effectively what is left out of the frame – my thesis is able to consider the invisibilisation of violence and the violence of invisibilisation across a range of issues, sites and phenomena. By utilising this approach in my examination of what I demonstrate are burgeoning, solidifying – and violent – patriarchal formations in the context of Vanuatu, I offer a unique and increasingly necessary approach to theorising violence against women and girls[204].

2. Methods: Centring Women's Lives and Voices

Given the range of issues that I consider, as well as the nature of these issues as they are embedded in social practices and public commentary, I have employed diverse research methods in my thesis. First, my research consists of in-depth or embedded ethnographic fieldwork. As I reflect upon in the final section of this chapter, I have deep connections to Vanuatu. These connections derive from my extended family and network of friends and colleagues, being a citizen of Vanuatu, having raised children in this context, and having visited and worked in communities across the archipelago over several decades. I draw extensively on this lived experience and this kind of embeddedness in my thesis. One Ni-Vanuatu individual I interviewed described my embedded positionality as a researcher by contrasting it with researchers who come for short periods of fieldwork and then leave, saying:

> We know that they're there to do something for their school, so we just consider them like students. They come to collect some information relating to a piece of work they're doing and then they leave. And that's different from somebody who has stayed a long time, and who really gets to know Vanuatu society and how people live here....I can say that you...are straight 'man-Vanuatu'. You know everything because you put yourself there and you understand and you're passionate about it.

This ability to expand the boundaries of identity to encompass others in networks of belonging says more about the generosity of an expansive Ni-Vanuatu worldview than it does about me in many ways. My connections to Vanuatu, however, are not *only* as a researcher. As such, these other kinds

[204] Responding to a call by DeKeseredy to bring patriarchy back into the frame, and to open up "new avenues of exploration" in addressing gender-based violence. DeKeseredy "*Bringing Feminist Sociological Analyses of Patriarchy Back*", 628.

of ‘embeddedness’ have also created opportunities for insight, and a level of freedom to explore issues more critically, than may be afforded to others.

I also came to Vanuatu with significant training in academic research. When I first arrived in Vanuatu in 1998 I had just left intensive graduate level training in critical anthropological theory and methods at a pivotal time in the discipline. Coming out of York University’s Social Anthropology Department, I had closely and critically read James Clifford, Clifford Gertz, George Marcus, Michael Fisher, Homi Bhabha, Michael Taussig, Johannes Fabian and others who were asking important questions about representation and culture, as well as the practice of anthropology itself. My reading in feminist anthropology was also deep and included Sherry Ortner, Catherine Lutz, Dorinne Kondo, Anna Lowenhaupt Tsing, Aihwa Ong, Lila Abu-Lughod, and Emily Martin to name just a few. Built around close reading, rigorous academic training, and lively debate and discussion this experience meant that I arrived in Vanuatu with a critical awareness of my own positionality, and the complexities of research, knowledge, and representation in the practice of anthropology and field research.

While I was not formally engaged in ethnographic research for my own academic purposes at that time, for the first several years I was in Vanuatu I was based at the country’s leading research institute, the Vanuatu Cultural Centre. My work in those early years was to conduct research into the lives and experiences of young people in Vanuatu and to support others in engaging in the research process. Together with talented Ni-Vanuatu colleagues we not only trained other researchers, but we engaged in our own lively discussions about upcoming research topics and how they could be approached in ways that were ethically and methodologically sound. Working in underserved communities at this time also made me deeply attentive to the complexities of research, and whose voices and experiences are heard and prioritised. Following my time at the Vanuatu Cultural Centre, I worked for nearly a decade as a community-based researcher focusing primarily on complex issues of access to justice and gender-based violence in Vanuatu. I draw from this long term, embedded and in-depth ethnographic experience, and the academic training that informed it, at several points throughout my thesis.

My research also draws upon rigorous and diverse documentary analysis. As with most academic work, I have read the academic literature that focuses on Vanuatu, Melanesia, and Oceania extensively. This has included a close reading of materials written by anthropologists and others, starting from the late 1960s, focusing on *kastom* in Vanuatu and in other Melanesian contexts. As this thesis project also spans a variety of disciplinary boundaries including history, political science, sociology, anthropology, philosophy, and feminist theory, I have also read relevant work from each of these areas. As the literature I engage with is diverse, each of my main analytic chapters (Chapters Four to Seven) are grounded in their own literature reviews.

Given the nature of the issues I examine, this thesis also draws upon a diverse and extensive set of primary research materials. These include historical sources, from national planning documents to government reports. I have also analysed Vanuatu's Constitutional Committee minutes, copies of draft legislation, Parliamentary Hansards, and materials such as Vanuatu's Correctional Services Detainee Surveys which have been available since 2012. In addition, I have examined a range of 'grey literature' that includes political newsletters, newspaper articles, and materials from the colonial archives[205]. In addition, I have transcribed hours of contemporary Talk Back shows and meetings including the *Vanuatu National Conference of Kastom Chiefs* that was held over five days in August 2022. I have also been attentive to public interventions by young feminists that are picked up on social media or in Vanuatu's online feminist Zine *Sista*, but do not always make it into academic publications.

Practically, each of my analytic chapters draws from a range of these sources. For example, in Chapter Four, Transforming the State: Governance, Women, and the Rise of the 'Nakamal Clique' I draw extensively from the transcribed proceedings of the Vanuatu National Conference of Kastom Chiefs held over a one week period in August 2022[206], as well as materials from conferences I have attended, an online radio program, and historic newspaper articles. I also rely on several primary

[205] I would like to acknowledge the generosity of Dr Roy Campbell in this respect, who graciously shared a range of primary sources that he gathered from the French colonial archives in Aix-en-Provence with me.
[206] I transcribed many, many hours of this meeting myself from the videotaped proceedings of each day of the conference.

sources from the 1980s and 1990s in this chapter, as well as reports like the Chiefs Legislation Project Report. This chapter also relies on a very close reading and analysis of Vanuatu's Constitutional Committee minutes and all of Vanuatu's national planning documents from Independence in 1980 until the present day. Several historic government documents, including Parliamentary Hansards also form a key part of this documentary analysis. These materials are contextualised and analysed in this chapter through the use of academic literature on nationalism and culturalism more broadly[207] and its impacts and uptake within Vanuatu and the Pacific specifically[208].

In Chapter Five, Man on Top, Woman Down: Women and *Kastom* in Vanuatu, I again rely on historical documents and primary sources including a report on Vanuatu's first national women's conference in 1978. I also engage in close and critical reading of a range of contemporary sources including a 2018 publication on the *Traditional and Contemporary Customs of the Islands of Vanuatu*. This chapter includes material from a chief's presentation for National Women's Day in 2019, as well as media articles, and several reports written about Vanuatu from the early 2000s. I also use several images in this chapter, public social media posts, as well as poetry and song lyrics to illustrate some of the key dynamics this chapter highlights in relation to concepts like *kastom* respect, violence and the position of women in Vanuatu society. My documentary research in this chapter relies on academic contextualisation and engagement with a range of sources, including authors who have written directly about women and *kastom* in Vanuatu and the Pacific[209], and others who contribute to my theoretical analysis more broadly[210].

In Chapter Six, Women's Rights and Chiefs' Rights: Untangling Vanuatu's *Family Protection Act*, I offer a close reading of several versions of Vanuatu's domestic violence legislation, including the 2001

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[207] This academic analysis focuses on the work of Sumit Sarkar, Haideh Moghissi, Frederik Stjernfelt, and Himani Bannerji.
[208] Here I engage with the work of several Pacific academics and authors including: Stephanie Lawson, Mildred Sope, Grace Molisa, Alain Babadzan, Gregory Rawlings, Howard Van Trease, Marc Tabani, Gregoire Nimbtik, Darrell Tryon, and Miranda Forsyth.
[209] Including the work of Lissant Bolton, Nicolas Thomas, Claire Slatter, Lamont Lindstrom, Martha MacIntyre, Richard Eves, Margaret Jolly, Maggie Cummings, Grace Molisa, Rita Naviti and Bergman Iati.
[210] Specifically in this chapter I rely primarily on the work of Elizabeth Povinelli, Emma Ingala, Judith Butler and Giselle Corradi.

and 2005 draft legislation, and the final 2008 version that was passed in Parliament. I also conduct a systematic examination of Vanuatu's body of laws as well as analysis of domestic violence legislation across the Pacific. In this chapter I draw from Parliamentary Hansards from the 1980s to the 2000s when the *Family Protection Act* was addressed in Parliament, as well as from a key Constitutional Reference. I also use material from an online Symposium held at Australian National University in 2021 on the implementation of Family Protection Orders across the Pacific. As in my other chapters, I frame my discussion of these diverse sources within the academic literature on law and society and regulatory pluralism[211], situating these concerns within the context of academic research in Vanuatu and the Pacific[212], as well as in the context of my broader theoretical argument.

In my final analytic chapter, Chapter Seven: Erasing Women: *Kastom* as Justice? I again draw from a diverse range of sources from conference proceeding to reports, including several authored by the Vanuatu Department of Correctional Services and the Vanuatu Cultural Centre. My analysis in this chapter also draws from my own attendance at a national community policing symposium in 2016 (and materials from this conference), as well as analysis of social media and newspaper articles depicting the practice of "community policing" in Vanuatu. This chapter also includes analysis of a radio program from 2021, as well as analysis of written community bylaws (both historic and contemporary). My analysis in this chapter is framed within my own critical engagement with the work of academic theorists who address gender-based violence, regulatory pluralism and epistemic violence[213], and others who have addressed these issues specifically in the context of Vanuatu and the Pacific[214].

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[211] Particularly in reference to the work of Kitty Calavita, Giselle Corradi, Rachel Seider and John McNeish.
[212] For this analysis I focus on the work of Miranda Forsyth, Michael Morgan, Christine Forster, Merrin Mason, and Ralph Regenvanu.
[213] Here I engage in particular with the work of Mo Hume, Giselle Corradi, Claudia Brunner, Moira Perez, Mike Brogden, Mutuma Ruteere and Marie-Emmanuelle Pommerolle, and Emma Ingala.
[214] Including primarily the work of Nicole George, Melissa Bull, Margaret Jolly, Stephanie Lusby, Lamont Lindstrom, Maggie Cummings, Marc Tabani, Benedicta Rousseau, and Michael Morgan.

In order to corroborate, clarify and supplement the information and the analysis that emerged from this deep ethnographic and documentary analysis, I carried out a targeted number of formal interviews. In all I completed formal interviews with 26 individuals[215] from a variety of backgrounds, from young Ni-Vanuatu women to regional experts. I also carried out follow up interviews with two individuals who offered insights that were particularly relevant to my research questions. In addition to these formal interviews, I carried out several 'off the record' interviews and had conversations with individuals who were keen to contribute thoughts to this thesis project. The formal interviews I conducted were all unstructured and allowed for more of a sharing of information at times. On average the formal interviews I conducted took one and a half hours. I spent more than three hours with a few individuals, all Ni-Vanuatu women, who had a lot to say about *kastom*, politics and their lives. A handful of the interviews I carried out were with regional experts, and some of these, which were more fact-checking conversations, were completed in under an hour.

My research was approved through the Australian National University Research Ethics process[216], and each person interviewed provided their written informed consent. While very few individuals I interviewed asked that their names and identity be kept confidential, given the sensitivity of some of the issues I deal with in this thesis, I have chosen in most cases not to include the names of specific individuals. All of the formal interviews I conducted were recorded (with permission) and subsequently all of the main interviews were transcribed in full. In several cases interviews were conducted in Bislama (in which I am fluent). In these cases I translated these interviews into English. In some cases – particularly in areas and on topics that were more sensitive – I have checked back with individuals around my use of quotes and my analysis of the information they provided to me. Ultimately, however, the analysis is mine, and remains '...open to interpretation, settlement, distillation, and contestation.'[217] The findings of these interviews, including several direct quotations, can be found in

[215] 62% were with Ni-Vanuatu individuals, and another 12% were with people from the Pacific. 58% of the interviews were conducted in person (prior to the COVID pandemic). 35% of the interviews were with Ni-Vanuatu women.
[216] The ethical aspects of this research were approved by the Australian National University Human Research Ethics Committee (Protocol 2018/189).
[217] Lisa Weems, "Unsettling Politics, Locating Ethics: Representations of Reciprocity in Postpositivist inquiry," *Qualitative Inquiry* 12, No. 5 (October 2006) 1008.

each chapter of my thesis, and function to illustrate key points, corroborate my key findings and analysis, and illuminate some of the complex dynamics I address in this thesis.

My analysis is also in dialogue with the published works of Ni-Vanuatu women like Grace Molisa and others, not just as grey literature or to provide poetic interludes, but rather by centring it as Pacific feminist social theory. In fact, as late Pacific feminist scholar Teresia Teaiwa pointed out:

> Pacific Island women's creative writings demonstrate a variation on what Samoan writer Albert Wendt meant when he suggested that our fiction writers were producing better histories than our historians: I would say that the critical analyses of culture and development being produced by Pacific Island women creative writers are as important as those being produced by our academic writers.[218]

Pacific poet and social theorist Selina Tusitala Marsh describes her creative work as a '...political act as [she straddles] the border between theory and creativity.'[219] These kinds of creative works, particularly work that has emanated from the diverse lives and voices of women and girls in Vanuatu, are woven into my analysis at several points in my thesis. In some cases, as with Grace Molisa's poem *Colonised People*, they have also created the rudder and a crucial frame for my analysis. In this respect, my thesis is also in line with sociologist Raewyn Connell's emphasis on recognising concepts and knowledges from parts of the world framed as 'the global South', as what she calls 'southern theory'[220].

Finally, Pacific feminism, while eliciting a sense of controversy and at times even refusal in the region, is directly relevant to my work. While feminism has not had the same uptake in Vanuatu that it has in other Pacific contexts, there are increasing numbers of people in Vanuatu, particularly in the younger generation, who now explicitly identify with feminism. This was expressed in the following way by one Ni-Vanuatu woman I interviewed, who described having many friends who shared these views:

> ...becoming more mature and just learning about the feminist movement and the struggles and how its evolved, I think yes, I can confidently place myself as a feminist now, and just confidently own that space and say yes, I do see that I am a feminist. And I would advocate for all the primary

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[218] Teaiwa, "Resisting Writing, Writing Resistance" 37 to 38.
[219] Selina Tusitala Marsh, "Theory "versus" Pacific Islands Writing: Toward a Tama-ita'I Criticism in the Works of Three Pacific Islands Women Poets," *Inside Out: Literature, Cultural Politics, and Identity in the New Pacific* Eds. Vilsoni Hereniko and Rob Wilson (Washington: Rowman & Littlefield Publishers, 1999) 338.
[220] Raewyn Connell, *Southern Theory: The Global Dynamics of Knowledge in Social Science* (London: Routledge, 2007).

beliefs of a feminist, and that's equal opportunity and non-discrimination on gender.

This individual went on to say, '...what's relevant to me today is just empowering younger girls to know that they've got a voice, and they've got a place and a space, and they should own that and stand in their power and speak up'. Women speaking up, and feminist inquiry and theorising also has a long history in the region dating back to at least the early 1980s[221]. As leading Pacific feminists Claire Slatter and Teresia Teaiwa point out in their 2013 article 'Samting Nating', despite a sense of being 'marginal' to mainstream feminism, feminist work in the region has been intricately intertwined with political and social justice activism[222]. Slatter describes this as an approach that 'unites people working to change the world'[223]. There is, of course, always tension and trouble in this work and in these kinds of alliances, which can themselves be sites of 'epistemological biases and marginalizing practices'[224] – and can also be sites of violence themselves. In 'Samting Nating' Teaiwa describes how these tensions have led her to theorise this as a relationship of 'fluidarity' rather than solidarity. This sense of feminist fluidarity – even in tension – and a sense of creating possibility through the trouble underpins every aspect of my thesis.

3. Locating Myself in this Research | Violence, Troubling Relationality, and Intimacy

My own positionality as a researcher has multiple layers, dimensions, and tensions. As a citizen of both Canada and Vanuatu, I have been connected to Vanuatu for more than 25 years, living and raising a family in Vanuatu for half of this time. The research that I have carried out in this thesis has not only resonated for me as an academic and a researcher, but also as a woman/partner/mother/family member/community member/aunty/friend. Within the context of these associations my identity is inevitably complex. I am marked by multiple privileges (whiteness, mobility, relative socio-economic privilege, a particular education, a persistently critical orientation). With an interdisciplinary

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[221] Vanessa Griffen, Women, Development and Empowerment: A Pacific Feminist Perspective, March 1987, https://nzetc.victoria.ac.nz/tm/scholarly/tei-GriWom2.html.
[222] Teresia Teaiwa and Claire Slatter, "Samting Nating: Pacific Waves at the Margins of Feminist Security Studies," *International Studies Perspectives* 14 (2013), 448.
[223] Teaiwa and Slatter, "Samting Nating," 449.
[224] Teaiwa and Slatter, "Samting Nating," 449.

academic background in ethics, anthropology, critical and feminist theory, Pacific studies, and regulatory theory, I have worked in a variety of activist, academic and community spaces. In Vanuatu, my work has focused primarily on community access to justice and gender-based violence, but I also worked for several years at the community level as part of the Vanuatu Cultural Centre. I draw from all of this experience, and the learning and relationships that characterise them, in this thesis.

These connections, associations and relationships mean that Vanuatu is never a neutral site for me. This is the space where my children's futures are intertwined, and where I am connected by enduring relationships of love, family, and commitment. Like other dichotomies in this project, insider and outsider have regularly shifted and collapsed at different points. My displacement to Canada in March 2020 at the beginning of the global pandemic was deeply unsettling. I struggled to sort out how this swing towards the 'outsider' side of the continuum might alter my analysis, and my feelings about Vanuatu and this work. As anyone in the Pacific diaspora knows, lives of people who are connected to the Pacific are often lived dynamically across a continuum of distance and presence, and I experience myself partly through this lens. In this sense, I feel enduringly connected, even when I am apart. I am also conscious, however, of the kind of romanticised longing that always begins to creep in, and the diminished sense of urgency, in the context of displacement and absence. As someone on my husband's small island of Uripiv once announced when I slipped into the back of church one Sunday morning several years ago, 'Welcome to the white missus who is here with us today, and who is also our aunty'! These ambivalent and simultaneous experiences and articulations of connection, difference and complex relationality have accompanied me through this research.

While this kind of complex positioning is not typical to every research project, it resonates with the critical approach and orientation of my thesis. In her book, *Fictions of Feminist Ethnography*, Kamala Visweswaran in describing her own complex positionality and sense of unsettledness in her research notes, 'Spivak once summarized the deconstructive position as saying an impossible no to a structure

that one critiques, yet inhabits intimately.'[225] Given the inevitability of these structures and their politics, including our own implications within them, my goal has been to navigate these kinds of tensions – albeit uncomfortably and self-consciously – in a more active way. This has required a level of openness to shifts in positioning – my own and others – through the life of the research project, and a capacity to sit with the trouble and discomfort this entails. The 'mobile positioning' and 'passionate detachment'[226] that is necessitated by this more critical and reflexive engagement is something that I have consciously worked to understand and navigate at many points. I began to write this thesis at a time when the upsurge in kastom and a kind of ethno-nationalist populism was cropping up everywhere, and young feminist voices were actively engaging in critical social commentary about their lives. The pendulum swings, however, and at the end of 2023 the world is already a different place.

My research, and my relationship to my research, has also been shaped by the kinds of issues I have worked on in Vanuatu. Issues of violence that I focus on have resonated in deeply personal ways. I have been told that beyond my 'passion' for these issues, my knowledge and experience – a level of intimacy with these issues – as well as my fluid positionality as an 'insider/outsider' were assets. Several scholars and activists who do not have the same connections to Vanuatu told me that I would be able to say things and explore topics and areas that they never could. One researcher I interviewed discussed having to be '...so careful about what one said, and how you said it.' This individual went on to say that in the context of *kastom* in particular, this was a crucial consideration, because '...if you ever want to go back again, you can't be too critical of anything that is labelled *kastom*.'[227] This kind of disciplining of research and researchers has a significant history in Vanuatu[228]. While it was

[225] Kamala Visweswaran, Fictions of Feminist Ethnography (Minneapolis: University of Minnesota Press, 1994), 73.
[226] Visweswaran Fictions of Feminist Ethnography, 73.
[227] This is due to Vanuatu's research approval process for external researchers, which as a citizen and local researcher I was not bound by.
[228] The Vanuatu government instituted a moratorium on cultural research in 1985 that lasted for nine years until 1994. As reported in Lissant Bolton's 'Introduction' to the first volume of research papers that were produced following the lifting of the moratorium in 1994, Kirk Huffman the former Curator of the Cultural Centre said that it had happened because the behaviour of some researchers had annoyed senior government officials, and also to preserve research of Ni-Vanuatu knowledge and practices for Ni-Vanuatu.

perhaps motivated by valid concerns, this reality has also created its own silences and erasures. For many of my Ni-Vanuatu women friends and colleagues my positionality has also been viewed as strategically valuable, allowing me to say things that they are not always able to say themselves. Several of these individuals told me I *had* to do this work. As a result, I have felt deeply privileged and at times also deeply troubled by this sense of responsibility and expectation. These and other aspects of my embeddedness are issues that I navigate and reflect on throughout the thesis.

As I have alluded to above, my family also factor significantly into my research. I bring commentary and reflection about my own children, and about my extended family into my analysis at many points. Given his direct engagement with several of the issues that I address in my academic work, I reflect on the work of my brother-in-law, Ralph Regenvanu – a former Director of the Vanuatu Cultural Centre and now one of Vanuatu's leading politicians – at several points throughout my thesis. Ralph is an extremely decent human being and a talented and skilled political leader. While my analysis is critical at times, these relationships are also characterised by love and genuine appreciation. Similarly, I also engage with my father-in-law[229], Sethy Regenvanu, at many points throughout this thesis. I have often sought wisdom, political insight, and advice from Sethy in everyday life. He is a remarkably and staunchly independent and critical thinker and has actively cultivated a sense of freedom and openness (along with my equally remarkable mother-in-law Dorothy) – that includes a commitment to agree to disagree and hold independent thoughts and pursuits – across our family. While I know that he is sometimes made uncomfortable by some of my lines of inquiry, he has still always encouraged me in this work:

> ...someone has to put it down there. If you don't put it down there, who else is going to do it? Nobody else will feel [as] passionately about it – only you. That's why you should do this – do something about it. That's how I see it. Go ahead!

I have 'gone ahead', and in doing so I am deeply indebted to the loving open-mindedness, and freedom that I have been granted by my remarkable family and friends in Vanuatu.

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[229] Sethy Regenvanu, my father-in-law, was one of Vanuatu's Independence leaders, and played an active role in Vanuatu's post-Independence until the mid-1990s.

This sense of relationality is also fraught, however. Troubled. In *Precarious Lives,* Judith Butler's theorisation of violence is framed within an understanding of the importance of relationality, but '...not simply as a descriptive or historical fact of our formation, but also as an ongoing normative dimension of our social and political lives, one in which we are compelled to take stock of our interdependence.'[230] I continuously take stock of this interdependence, and it has also weighed on me (as it should) at times with a heavy sense of responsibility. How would people, including my closest family members and friends, interpret some of my critique, and even more, how would it make them feel? Would women who confided their own critical perspectives about their lives and society, and who shared intimate stories of violence, be made more vulnerable or read themselves as one-dimensional victims in my account? These are also some of the things that I discussed with some of the women I interviewed. When I went into the Malvatumauri National Council of Chiefs office and engaged in some more political conversation with an officer there, I could not stop thinking about how my performance of waet missus [white Missus] 'insider' might be perceived, and how it might seep back to impact my own prominent and politically engaged family. These kinds of entanglements are difficult, ongoing, and never settled.

As Butler recognises, relationality is about connection and interdependence, but it is also vexed and ambivalent. I carried this fraught sense of ambivalence, trouble, and discomfort through the writing of this research. I agree with Butler when she says that:

> ...relationality is not by itself a good thing, a sign of connectedness, an ethical norm to be posited over and against destruction: rather, relationality is a vexed and ambivalent field in which the question of ethical obligation has to be worked out in light of a persistent and constitutive destructive potential. Whatever "doing the right thing" turns out to be, it depends on passing through the division or struggle that conditions that ethical decision to begin with.[231]

I have often found myself within this 'fraught field of social relationality'[232] that Butler describes. Her understanding that relationality is also defined in part by negativity, conflict, and anger[233] reflects my

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[230] Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004) 27.
[231] Judith Butler, *The Force of Nonviolence: An Ethico-Political Bind* (London: Verso, 2020) 17.
[232] Butler, *Force of Nonviolence*, 16.
[233] Butler, *Force of Nonviolence*, 16.

own experiences. A grievous and almost insurmountable episode of violence[234] in the context of other realities and issues all converged in 2020, ultimately compelling me to leave Vanuatu. In my own grief and pain – and significant trauma and anger – I struggled to sort out if this leaving was more like a temporary separation or an acrimonious divorce from a country I loved, still love. I continue to struggle with the fact that I left, and that I had the privilege to leave. The ethical implications of leaving, and the heartbreak of separation from so many people I love continue to haunt me. I have actively reflected on my positionality and the combination of rage and love – what Butler insightfully calls 'rageful love' – that doing this work in the context of Vanuatu and in the context of all of these relationships has entailed.

Ultimately, in relation to men in Vanuatu who twist the creative possibilities of *kastom* to sit on their '...throne and sip the sweet nectar of power and carelessness'[235] and who strive to reshape their colonial domination of women[236], and in the context of so much violence, rage is a valid response. It is never the final response, however. In the conclusion to her 2009 set of essays *Frames of War*, Butler recognises this tension which also persists as a kind of perpetual ambivalence across my own work. For Butler:

> The claim of non-violence not only requires that the conditions are in place for the claim to be heard and registered (there can be no "claim" without its mode of presentation), but that anger and rage also find a way of articulating that claim in a way that might be registered by others. In this sense, non-violence is not a peaceful state, but a social and political struggle to make rage articulate and effective – the carefully crafted "fuck you."[237]

In the end, through my own efforts in this social and political struggle to make this rage – and grief – articulate and effective, and to respond with a sense of urgency, it is also love that has pulled me through. So many of the people I have loved most in this world are also part of Vanuatu. I have been welcomed into peoples' lives and thoughts, into their trust, and embraced by my amazing family and friends, time and again. Even people who have disagreed with me, or me with them, have graciously created space. This is also one of the many wonders of Vanuatu. So many of the women I love in

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[234] While this instance of violence did not impact me directly it impacted people I love, in my close circle of friends.
[235] Kali Regenvanu, "A letter to Vanuatu: Unkept promises," 152.
[236] Grace Molisa, *Colonised People*, 9
[237] Judith Butler, *Frames of War: When is Life Grievable?* (London: Verso, 2009), 182.

Vanuatu have lifted me up throughout the writing of this thesis, and in their own ways. While my words and thoughts are my own and may not always resonate with their own thoughts and experiences, I hope that they can also find a sense of possibility in what I have written. In the end, it is also love that will pull us all through.

The kind of intimacy necessitated by this vexed relationality and my own [self-conscious and uncomfortable] declarations of rage and love represents both a challenge and a strength of my research and relates directly to my methodological approach. Feminist researcher Mo Hume writes about how 'Researching a subject such as violence requires extraordinary sensitivity from the researcher'[238]. She clarifies that this is not only because of the 'epistemological negotiation' that it necessitates, but because of the 'emotional substance of violence itself'[239]. In order to navigate this complex and intimate terrain, Hume argues that it is crucial that we make our own emotional and subjective reactions to violence explicit in our analysis and our writing.[240] There were many times when I, like Hume, had a visceral reaction to what I heard and read, and also what I observed and experienced all around me. As I came to understand more, and even at times as I was processing my own 'understanding', the violence and my own responses to it made me viscerally uncomfortable. It was like a painful haunting. Occasionally this haunting would also be interrupted by moments of sheer, critical insight, and a raw sense of solidarity that would come from having someone speak exactly the issues that were haunting me, with their own measure of love and rage, insight, and critical brilliance. Many times, it was these experiences that carried me through.

I had this exact experience in July 2022 on a visit to Vanuatu. I had the opportunity to meet up with an amazing Ni-Vanuatu woman – a friend, colleague, and mentor – who embraced me for several minutes, declared to everyone seated around us that she had important things to discuss with me,

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[238] Mo Hume, "Unpicking the threads: Emotion as central to the theory and practice of researching violence," *Women's Studies International Forum*, 30 (2007): 147.
[239] Hume, "Unpicking the threads," 147.
[240] Hume, "Unpicking the threads," 148.

and then proceeded to pour out the most remarkable stories and her own frustrations and insights over several hours. She described her own courageous (and radical, audacious) efforts to stop a series of miscarriages of justice and due process, in the name of *kastom*, by various men in power. She was a warrior and while she suffered under the disciplinary backlash – the violence – of the hegemonic and patriarchal *kastom* that I describe in my thesis, she also had its number. As a result of these moments of critical intimacy, as we worked to hold each other up – and to understand – in the midst of the falling apart[241] we both breathed more easily.

In the same way that I have been attentive to the silences, erasures and invisibilisation of violence in the lives of women and girls I write about in this thesis, I also have tried to avoid invisibilising this kind of intimacy in my own research. As Donna Haraway writes about in her evocative exposition of these kinds of situated knowledges[242], and in keeping with Judith Butler's work as it has informed my theoretical analysis, I have actively tried to get around the problematic dichotomy of objectivity versus constructivism. My research has not only been engaged in striking up 'noninnocent conversations'[243], but I engage in this rageful love and intimate engagement with my research and the lives it intersects with as a kind of noninnocent yet aspirationally, and hopefully transformative, practice[244].

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[241] Butler, *Force of Nonviolence*, 139.
[242] Donna Haraway "Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective," *Feminist Studies* 14 no. 3 (1988).
[243] Haraway "Situated Knowledges," 594.
[244] Haraway "Situated Knowledges," 585.

Chapter Four
Transforming the State: Governance, Women, and the Rise of the 'Nakamal Clique'

1. Introduction: Becoming More *Kastom* Than *Kastom*

In the closing ceremony of a national meeting of '*kastom* chiefs'[245] on 19 August 2022, then Caretaker Prime Minister of Vanuatu, Bob Loughman Weibur, declared to the assembled audience that 'Governments will come and go[246], *kastom* is here forever'[247]. Loughman was providing the closing speech for the Vanuatu National Conference of *Kastom* Chiefs, a week-long meeting for more than 200[248] of Vanuatu's 'highest ranking *kastom* chiefs'[249]. The formal objective of the meeting was to promote the integration of *kastom* governance within formal state governance[250], and the topics were far-reaching. Over five days, sessions were held on diverse topics, including law and justice, climate change, *kastom* governance, food security, and land. While various government representatives took part, the Ministry of Justice and Community Services was a prominent fixture, with both the Minister and the Director-General present at many of the sessions.

In a remarkable display of doublespeak, in his closing remarks then Prime Minister Loughman refers to Article 5, Vanuatu's human rights provisions, as 'giving the right to chiefs'[251] – although he does

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[245] The *Vanuatu National Conference of Kastom Chiefs* took place from 15th to 19th of August 2022 at the Chief's Nakamal in Port Vila.

[246] Loughman's government was actually on its way out. The day before, Vanuatu's new President had controversially moved to dissolve Vanuatu's 12th Legislature halfway through its four-year term in response to a pending Motion of No Confidence in Loughman's leadership. Calling this move 'grossly irresponsible and reckless', Vanuatu's former Leader of the Opposition, Ralph Regenvanu, pegged the cost of the dissolution at nearly USD 3 million, describing how these unbudgeted costs would ultimately come from funds that had been allocated for government service delivery. Given that the justification for devolving state justice services to chiefs and community members is often based on a lack of government funds, these kinds of 'enormous additional expenses' are difficult to reconcile. With very few exceptions, these kinds of excesses also receive very little public scrutiny. Pita Ligaiula, Dissolving Vanuatu Parliament irresponsible: Regenvanu, PINA Pacific News Service, August 23, 2022. https://pina.com.fj/2022/08/23/dissolving-vanuatu-parliament-irresponsible-regenvanu/.

[247] *Vanuatu National Conference of Kastom Chiefs*, Day 6 Closing Ceremony at: https://www.facebook.com/VanuatuNationalArtsFestival/videos/490311902932760.

[248] The *Vanuatu Daily Post* reported that there were '...around 200 chiefs from Vanuatu's six provinces'. Jason Abel, "National Chiefs Conference underway in Port Vila," *Vanuatu Daily Post*, August 17, 2022. The CEO of the Malvatumauri, Jean Pierre Tom said there were 271 chiefs participating in the closing of the meeting: https://www.facebook.com/VanuatuNationalArtsFestival/videos/490311902932760 2:06:30.

[249] *Vanuatu National Conference of Kastom Chiefs*, Day 6 Closing Ceremony.

[250] Abel, "National Chiefs Conference underway".

[251] *Vanuatu National Conference of Kastom Chiefs*, Day 6 Closing Ceremony.

not clarify what right he is referring to. He adds that, '...there is no way any government can deviate from this, what is in the Mama Law'[252]. Vanuatu's national planning document – *Vanuatu 2030 The People's Plan* – is also referenced by several speakers to justify this expanded role for chiefs within the state. Former and current public servants – all of them men, and several of them also introduced as chiefs – promise to change Vanuatu's laws and the Constitution to incorporate chiefs more fully into the state[253]. Throughout the meeting, the 'rights' and the power of chiefs are persistently at the forefront. One chief summarises their collective goal in the final session as '...the power and rights of chiefs [must be] recognised and legalised, and the state must be run with *kastom*'[254].

Women, on the other hand, are absent. In a space filled with middle-aged and elderly men, women are not delegates or moderators. When two women from a project provide a short presentation on the first day, a mat is given by their more junior male colleague to allow for this exception[255]. The backlash to this presentation from the chiefs is so significant, however, that in subsequent sessions there are no women presenters at all. In a session on Health and *Kastom* Medicine, one of Vanuatu's top physicians, Dr Sereana Natuman provides her comments from the lawn outside[256]. Even though she is Acting Director General of Health at the time – and several of her male counterparts have been present in the Chief's Nakamal as presenters and moderators throughout the week – she is seated outside, and her contributions are offered informally. A senior male public servant who presented at the meeting told me that when he and his very experienced female colleague arrived to do their joint presentation, she was told to sit outside the meeting. According to him, they were informed that the meeting '...was only for male chiefs, and women were not to speak or stand in front of them'[257].

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[252] *Vanuatu National Conference of Kastom Chiefs*, Day 6 Closing Ceremony.
[253] Loughman references his Independence speech and the need to 'reset' Vanuatu, which he explains as 'If we need to change some of our laws, that is what we have to do!" to great applause. He says a bit later that if the Constitution needs to be changed, that is what will happen. *Vanuatu National Conference of Kastom Chiefs*, Day 6 Closing Ceremony.
[254] *Vanuatu National Conference of Kastom Chiefs*, Future of Kastom Session https://www.facebook.com/VanuatuNationalArtsFestival/videos/5697263320305625.
[255] Personal communication from one of these women. There is so much backlash from the chiefs about this, that a mat must be given at the end of the session by the President of the Malvatumauri back to the Director General by way of apology. *Vanuatu National Conference of Kastom Chiefs*, Day 1 – Law and Justice.
[256] *Vanuatu National Conference of Kastom Chiefs*, Health and Kastom Medicine Session https://www.facebook.com/VanuatuNationalArtsFestival/videos/374729364845556.
[257] This individual also said that he found this discriminatory and had he known, he would not have accepted the invitation. Personal communication.

Alongside this unequivocal expression of patriarchal *kastom* (and state) authority, the issues that women face in their daily lives in Vanuatu communities were also effaced in the meeting. Not one of the presentations or any of the commentary offered by the various Councils of Chiefs in the session on law and justice mentions Vanuatu's extraordinarily high rates of sexual and domestic violence. In the hours of the meeting that I watched, this topic was raised by a chiefly delegate only once. In ending his contribution to the final session on the 'Future of Kastom in Vanuatu' a chief from Ambae offers a 'humorous' anecdote about 'how many women a chief should marry' being 'a number one priority for the needs of chiefs' as it 'will reduce sexual violence.'[258] It is received with much hilarity. In the session on Law and Justice, former Director General of the Ministry of Justice and Community Services, Mark Bebe, who is also introduced as a chief on Pentecost, proffers that human rights exist in *kastom*. He then proceeds to use the modern kastom edict that women's clothing 'causes' rape as a convoluted example of this:

> When we say to our women, don't you walk around with short pants in front of us, what does this mean? Because our women say these are our rights to walk around with this. In *kastom* they say that prevention is better than cure. You don't do all these things that will attract people's eye and it will make trouble.[259]

While the focus of chiefs on the actual issues of justice in Vanuatu society remains tenuous in these articulations, their quest for power in and through the state is persistent, as are their increasingly misogynist and illiberal predilections and intentions.

Despite references to 'tradition' and assumptions about the unchanging nature of *kastom* in these kinds of collectivist expressions of patriarchal identity, *kastom*, and the state, this was not always the tone of politics or of nationalism in Vanuatu. For example, in the Foreword to a nearly 100-page report from 1995 titled, 'Do Women Have Rights in Human Rights or Not?', then President of Vanuatu Fred Timakata writes:

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[258] What this chief said is: 'I'd like to finish by telling a story that a friend of mine from outside the conference told me. He was from Tanauta [Tanna]. He said, "Chief, I've listened to all of your good discussion, but one thing I haven't heard about is a number one priority for the needs of chiefs: you haven't touched on the topic of how many women a chief should marry!" [Laughter]. Now if you think of that seriously, and he told me this, he said, if you try to address this issue, it will reduce sexual violence!' [Laughter]. *Vanuatu National Conference of Kastom Chiefs*, Future of Kastom Session.

[259] *Vanuatu National Conference of Kastom Chiefs*, Day 1 - Law and Justice.

> …Even before Independence, many of our Leaders recognised Human Rights concerns in Vanuatu.
>
> Since Independence we have achieved a lot of advances, a lot of development, and a lot of achievements in our lives.
>
> We have made significant improvements in the status and conditions of life of Women and Children in the last ten years. There is still a lot of work to do, to ensure that Men and Women can enjoy equal Rights, equal opportunities, and equal treatment under the law.[260]

Before entering politics and eventually becoming President in 1989, Fred Timakata was a founding member of the Malvatumauri, Vanuatu's National Council of Chiefs, and sat as a representative of this body on Vanuatu's Constitutional Committee. He was a 'bloodline' chief on his home island of Emae, but officially resigned from the Malvatumauri and as a chief in 1979 in order to run for politics, so as '...not to confuse people'[261]. Both this kind of public support for equality and women's rights, and efforts to make a clear separation between *kastom*, the state, and politics, seems to have essentially collapsed in Vanuatu by 2022. In many ways, the contemporary space of chiefs, *kastom*, and the state has become even more *kastom* than *kastom*[262]. In these more recent articulations *kastom*, as it is reconstituted and instrumentalised by an increasingly power-hungry male *kastom* lobby, has become even more hegemonic and patriarchal in its intentions and in its actions.

This chapter will trace some of these transformations in Vanuatu's approach to nationalism, *kastom*, chiefs, and women. While the newly independent state in Vanuatu used *kastom* and identity as an anti-colonial and unifying strategy, the state was also established by a range of Ni-Vanuatu freedom fighters and Independence advocates with a strong commitment to equality, democracy, human rights, and rule of law. Changing women's position in society and involving women across all governance spaces was a clear aspiration at the time. As Vanuatu moved through the 1990s, however, abuses of power and corruption were on the rise. Through this time an increasing (and different) invocation of *kastom* began to emerge, often to the diminishment of democracy and human

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[260] Grace Mera Molisa, Convention on the Elimination of All Forms of Discrimination Against Women: Woman ikat raet long human raet o no?, (Port Vila: Blackstone Publications, 1995), 4.

[261] Letter dated 11 October 1979 addressed to Chief W Bongmatur and cced to the Chief Minister, various British and French colonial officers, and the Emae/Makura Council of Chiefs. From the Aix-en-Province Colonial Archives.

[262] This is an expression a close female friend from Vanuatu and I started to use several years back to label these kinds of moments, articulations, and expressions of *kastom* which exceed their limits and expand beyond their boundaries, and become even more patriarchal, more fundamentalist, and more hegemonic.

rights. As a result, the more recent focus is on '*kastom* governance'. While this may resemble other global indigenous governance movements on the surface, in practical terms in Vanuatu this has essentially become shorthand for providing male chiefs with an increasingly regulatory role – and more power – within the already Independent Ni-Vanuatu state. As this thesis demonstrates, this institutionalisation and expansion of the 'rights' of a male chiefly lobby within the state has several direct and negative implications for women and for the delivery of justice in Vanuatu.

In order to trace this transition of the state, this chapter begins by considering competing perspectives about Vanuatu's Constitution, and challenges common assumptions about what constitutes the 'modern', the 'traditional' and the 'indigenous' in this context. It then moves on to highlight the state's earlier approach to women and gender equality in the post-Independence period as a time when the door for women and for gender equality seemed to be at least slightly ajar. The chapter goes on to consider the political and economic turmoil of the late 1990s as interlinked with the rise of more hegemonic – and patriarchal – articulations of *kastom* in Vanuatu. The chapter ends by considering Vanuatu's more recent uptake of '*kastom* governance' and its meanings and implications, particularly for women. As this chapter demonstrates, the institutionalisation of what Grace Molisa once referred to as the 'Nakamal Clique' in Vanuatu – where men jostle and vie for positions of power on the basis of *kastom*[263] – has profound implications for women, as well as for democracy and for Vanuatu's commitments to human rights, equality, and rule of law.

2. The Emergence of 'Pure Injustice': The State, *Kastom*, Male Chiefs, and Women

In the lead up to the 1979 national elections that would set the stage for Independence, the Faturisu Council of Chiefs[264] on the island of Efate issued a statement disallowing women from standing as political candidates on the basis of '*kastom'*. Mildred Sope, an active member of the Independence-

[263] Molisa, *Women and Good Governance*, 51.
[264] Also referred to as the Vaturisu Council of Chiefs.

seeking Vanuaaku Party at the time, addressed this in public commentary that was straight to the point:

> How absurd to think that what the Efate Chiefs decide to be right or wrong in their custom, should be meant to [influence] the welfare of the whole country. Have they just realized what has been happening? Because if they had been following closely the [affairs] of the New Hebrides up till now, they would have realized that women are already in the 'Nasara'. What are they going to do with these women? Are they going to make sure these women are out of the 'Nasara' (i.e. out of jobs)? If so, I would like to know how?
>
> …Politics concerns ways to bring about the good of a country and its citizens. Both men and woman being God's creatures, are equal in his sight – they are also citizens of a country with equal basic rights….We have been fighting against colonial injustices up to now; and we are now ready to rule our own country. The Faturisu Council of Chiefs has decided to create another problem: exclude women from our national decision-making. This, as I see it, is pure injustice…[265]

Despite this intervention and the presence of women in the 'Nasara' even more than 40 years ago, this particular kind of male chiefly rhetoric – this 'pure injustice' mobilised to exclude women from various spaces and positions in Vanuatu society, including in national decision-making – has come to proliferate and even accelerate in Vanuatu. Unfortunately, the critical response to it has become increasingly muted.

This shift to a more uncritical and culturalist articulation of nationalism in Vanuatu over the past two decades has been traced in other global contexts. For example, in an article on culturalism and its association with political ideology more broadly, Danish scholars Jens-Martin Eriksen and Frederik Stjernfelt trace the rise of culturalist ideology across a number of areas in contemporary global politics. Locating the roots of culturalism in particular strands of anthropology they define culturalism in the following way:

> Culturalism is the idea that individuals are determined by their culture, that these cultures form closed, organic wholes, and that the individual is unable to leave his or her own culture but rather can only realise him or herself within it. Culturalism also maintains that cultures have a claim to special rights and protections – even if at the same time they violate individual rights.[266]

These authors point out how culturalism has proliferated on 'both sides of the political spectrum'[267] making it particularly insidious. In the context of Vanuatu this uptake of culturalist politics – under the

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[265] Mildred Sope, "Why Not Women?," Vanuaaku Viewpoints, 9 no. 55, 20 September (1979), 3 and 7.
[266] Jens-Martin Eriksen and Frederik Stjernfelt, "Culturalism: Culture as Political Ideology" *OpenDemocracy* (29 July 2010), https://www.opendemocracy.net/en/culturalism-culture-as-political-ideology/.
[267] Eriksen and Stjernfelt, "Culturalism: Culture as Political Ideology".

guise of *kastom* – has resulted in a situation where even otherwise 'progressive', social justice-leaning actors may uncritically promote a *kastom* agenda, without considering its clearly patriarchal and undemocratic aspirations, overtones, and erasures.

Other scholars have interrogated culturalism within the context of nationalism, tracing a broad shift from the more developmental nationalisms of the 20th century to a rise in cultural nationalisms that are increasingly based in religious, ethnic, or cultural identity. For example, in a special issue of *Third World Quarterly*, historian Sumit Sarkar traces a broad transition in 1980s India from a developmental model of the state characterised by 'significant public sector inputs, a measure of planning and a non-aligned foreign policy'[268], to a period of economic transition marked by structural adjustment and liberalisation[269]. For him this shift coincided with an increasingly aggressive emphasis on cultural identity. While Sarkar cautions against oversimplification and clearly acknowledges that developmental programmes also have cultural dimensions and vice versa[270], this developmental to cultural nationalism shift that he and his fellow authors outline, tracks with a similar transition in Vanuatu. Vanuatu's early approach to nationhood was characterised by a focus on social justice and equality as a way to bridge the broad divisions in Vanuatu society – a more 'developmental' approach. Women as '…citizens of a country with equal basic rights'[271] were part of this equation. Following the economic and political chaos starting in the late 1990s, however, and a subsequent period of structural adjustment, a new era of cultural nationalism began to emerge.

In Vanuatu, as elsewhere, the '…fetishized views of the "nation" and cultural "authenticity"'[272] that characterise cultural nationalism carry with them particular implications for women. In fact, according to sociologist Haideh Moghissi, another contributor to the same issue of *Third World Quarterly*, '...the

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[268] Sumit Sarkar, "Nationalism and poverty: discourses of development and culture in 20th century India" *Third World Quarterly*, 29 no. 3 (2008) 430.
[269] Sarkar, "Nationalism and poverty," 430.
[270] Sarkar, "Nationalism and poverty," 429.
[271] Sope, "Why Not Women?" 3 and 7.
[272] Sarkar, "Nationalism and poverty," page 443.

emergence of cultural nationalism in the neoliberal era has been detrimental to women everywhere.'[273] For Sumit Sarkar, within the highly oversimplified rendering of 'Western' versus 'Third World cultural nationalist'[274], '…notions of civil, democratic, feminist and liberal individual rights' are delegitimised, given their association with 'the West'[275]. In this analytic shift, '…a vague nostalgia that identifies the authentic with the indigenous'[276] emerges and critical focus is directed elsewhere – at 'the West' and at 'modernity' – while the intricacies of history and inequality are removed from view. In the context of Vanuatu, it is increasingly the case that for both local and external actors the only analytic categories that are deployed are modern/Western on one side and traditional/Ni-Vanuatu on the other. Within this binary paradigm, the nuances of history and the daily realities and complexities of other factors such as ethnicity, class and gender are removed from consideration[277].

A handful of Pacific scholars have also taken note of this rising culturalism and have documented some of its contemporary effects in various parts of the region. For example, writing about Melanesia, Alain Babadzan suggests that '…the culturalist ideology of custom seems to have reached the status of "discursive hegemony"'[278], with particular implications for state authority[279]. Political scientist Stephanie Lawson has also critiqued what she refers to as the '...culturalist line which, instead of interrogating the extent to which culture may serve power, invest[s] in a rather uncritical conception of culture that ignores how it may be used to justify certain configurations of power and interest'[280]. While Lawson acknowledges that this culturalism also impacts women[281], her analysis ultimately focuses on what culturalism means for democracy more broadly. As both of these authors point out,

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[273] Haideh Moghissi, "Islamic Cultural Nationalism and Gender Politics in Iran," *Third World Quarterly*, 29 no. 3 (2008) 541.
[274] Sumit Sarkar, "The Decline of the Subaltern in Subaltern Studies," Writing Social History, Sumit Sarkar (Delhi: Oxford University Press, 1997) 92.
[275] Sarkar, "The Decline of the Subaltern," 107.
[276] Sarkar, "The Decline of the Subaltern," 108.
[277] Sarkar, "The Decline of the Subaltern," 92.
[278] Alain Babadzan, "Culturalism, Neo-liberalism and the State: The Rise and Fall of Neotraditionalist Ideologies in the South Pacific," *Public Policy and Ethnicity*, E. Rata et al eds. (London: Palgrave Macmillan, 2007), 56.
[279] Babadzan, "Culturalism, Neo-liberalism and the State," 56.
[280] Stephanie Lawson, *Culture and Context in World Politics* (London: Palgrave Macmillan, 2006) 7.
[281] Lawson, *Culture and Context in World Politics*, 53.

the failure to read articulations of 'culture' and '*kastom*' as more complex ideological and political discourses and processes is a mistake.

The upsurge in '*kastom* governance' and the power of chiefs in Vanuatu necessitates this kind of closer reading. While this trend is often naturalised as simply a 'return to tradition', it has a particularly modern history. Instead of treating '*kastom*' and 'chiefs' as continuous and homogeneous 'social givens'[282], this closer reading pays attention to how these '...national imaginaries, political subjectivities and agencies'[283] that make up this culturalist agenda have emerged through historically contingent processes. As will be traced in this chapter, the early state in Vanuatu was characterised by the pursuit of democracy, equality and the rule of law as articulated in Vanuatu's 'home grown'[284] Constitution. This included clearly articulated commitments to supporting women's equality. The more recent proliferation of *kastom* governance, often with the backing of state actors and institutions – as well as development partners – is often characterised by a single-minded focus on the power of male chiefs to exercise authority, particularly in the justice space. This shift has significant implications for women in Vanuatu and their unique and compelling justice concerns.

3. Debating Vanuatu's Constitution: 'Modernity', 'Tradition', and the 'Indigenous State'

Vanuatu's Constitution has been the site of much commentary and significant armchair conjecture, especially over the last two decades. For example, in April 2001 I was sitting in the audience of a *Governing for the Future: Young People and Vanuatu's Governance Agenda* workshop at the University of the South Pacific in Port Vila, when a group of young to middle-aged Ni-Vanuatu men interjected with the suggestion that Vanuatu should 'get rid of the Constitution'. As a kind of itinerant *kastom* lobby group, several of these individuals had been involved in meetings relating to the

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[282] Himani Bannerji, *The Ideological Condition: Selected Essays on History, Race and Gender* (Leiden: Brill, 2020) 397.
[283] Bannerji, *The Ideological Condition*, 441.
[284] Molisa, *Women and Good Governance*, 21.

Vanuatu Cultural Centre's Juvenile Justice Project several months earlier. While there were likely a variety of reasons for their perspective, disillusionment with Vanuatu politics as usual was no doubt a key factor. In commentary about this meeting political scientist Michael Morgan situates this view in the following way:

> Perceived state weakness, the perception of politicians as opportunistic and self-serving and politics generally as foreign and unduly divisive have intensified claims that the particular brand of democracy extant in Vanuatu does not work because it is culturally alien. In its most extreme form, this argument suggests that Vanuatu should abandon democracy and the Constitution and allow chiefs to govern in 'the kastom way'[285].

As Morgan points out, this approach would be contrary to Vanuatu's human rights obligations, and particularly the rights of women and youth[286]. While Morgan locates this as more of a 'fringe' perspective in 2001, this view has continued to circulate and intensify in Vanuatu over the past 20 years.

Opinions about Vanuatu's foundational nation-making text, or our 'Mama Law', also come from other quarters. Through the years I have found myself in various conversations with people from outside of Vanuatu about the status of our Constitution. In one of these conversations an Australian law lecturer in Port Vila told me they were planning to undertake doctoral research on 'indigenous Constitutions' at a university in New Zealand. According to them, Vanuatu's Constitution was not 'indigenous' as it had, in their words, been constructed by people from 'outside'. In another conversation a uniformed representative of the New Zealand government shared a similar perspective that Vanuatu's Constitution was 'foreign' (a perspective they had reached after having spent very little time in Vanuatu). When I raised the fact that our Constitution had, in fact, been developed by a group of Ni-Vanuatu Independence leaders – my-father-in-law included – this individual simply scoffed. The 'proof' of the Constitution's 'foreignness' was apparently that people 'in the village' would not be able to understand it[287].

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[285] Michael Morgan, "Disentangling juvenile justice and kastom law in Vanuatu: issues arising from the Governing for the Future workshop", *Development Bulletin* 56 (October 2001): 60.

[286] Morgan, "Disentangling juvenile justice," 59 to 60.

[287] In fact, Vanuatu's Constitution is a relatively straightforward document and more accessible in many ways than other Constitutions. It has also been translated into Vanuatu's three national languages, English, French and Bislama. While it may be true that individuals who are functionally illiterate in Vanuatu society would not be able to read the Constitution, this says more about the inadequacy of education in Vanuatu than it does about the Constitution itself. In my own experience, our Constitution in Vanuatu is referenced frequently by a range of citizens, even in village contexts.

When I reached home after this most recent exchange and shared the view that Vanuatu's Constitution was a 'foreign' document written by outsiders and elites with my father-in-law, his response was immediate and incisive. For him, this perspective was simply racist. He wanted to know if this individual thought that Ni-Vanuatu were incapable of writing their own Constitution or choosing their own form of governance? He also pointedly wondered aloud whether this individual had been part of their own country's constitutional development. Several years ago, when I had shared the law lecturer's views about Vanuatu's Constitution not being 'indigenous' his response had been similar. He was troubled (actually, deeply annoyed would be more accurate) that this view was potentially being propagated at the region's law school and he asked me to tell this individual that their perspective was unequivocally wrong. The next day he showed up at our house with a hard copy of Vanuatu's Constitutional Committee minutes and asked me to share them with the lecturer. In his foreword to these minutes my father-in-law refers to Vanuatu's Constitution in the same way that he has often described this founding document to me: as 'the people's constitution'[288].

In fact, Vanuatu's Constitutional Committee was made up of more than 50 Ni-Vanuatu members and their alternates, drawn from various social and political groupings[289]. These individuals laboured over every aspect of Vanuatu's Constitution over several months, starting at the beginning of April 1979. When a draft was completed after much debate, it was taken out to 'every community within the archipelago of Vanuatu'[290] before it was finalised in October 1979. Another member of the Constitutional Committee, Grace Molisa, outlines some of the 'special features' of what she calls Vanuatu's 'short, readable [and] native'[291] Constitution in the following way:

> 1. Home grown.
> 2. We the colonised, turned the tables to insist that constitutional talks be held on Vanuatu soil. Other countries travel to the metropoles to be handed theirs, written, signed, sealed.
> 3. We met, we toured the islands. We consulted widely. We debated long. We agreed every word by consensus.

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[288] Republic of Vanuatu, Constitutional Committee Minutes (1979) 5.
[289] Republic of Vanuatu, Constitutional Committee Minutes, 9.
[290] Republic of Vanuatu, Constitutional Committee Minutes, 5.
[291] Molisa, *Women and Good Governance*, 21.

> 4. We clashed with words and will. Battle areas, battle stations, sticking to our guns. Brains worked overtime. Nerves frayed, muscles tensed, throats dried, talking, arguing, haggling, indoors, outdoors, in chamber, in groups, anywhere. All day, all night, no letting up. Losing, gaining, compromising…[292]

Molisa goes on to say that while the Constitution 'is written in their language…we chewed it worse than chewing-gum. We swallowed, regurgitated, and recycled it.'[293] For the people who actively participated in the development of the rules and principles to govern the independent nation of Vanuatu – most of whom had grown up in a village context themselves – there is no doubt about its status as an 'indigenous' Constitution.

In these reckonings of 'indigenous' and 'non-indigenous', and the highly simplified calculations around what constitutes the 'Western', the 'modern' and the 'traditional', our human rights provisions are often held up as 'foreign' elements. This has often struck me as deeply ironic, given that Vanuatu's struggle for Independence was foundationally a struggle for human rights. The right to self-determination, the right to self-government, the right to equal treatment under the law, and the right to a nationality and a passport[294] were central to Vanuatu's Independence struggle. Our leaders actively mobilised United Nations human rights processes in their quest for Independence and continued to do so as Vanuatu supported other decolonisation efforts. As I revisit in the Conclusion, Vanuatu's recent efforts to respond to the climate crisis have also centred around climate justice as a human rights issue. The Constitutional Committee minutes reflect the broad acceptance of these elements at the time: 'Human Rights and an independent Judiciary' are listed among the most important aspects for members and were identified as uncontroversial[295]. In fact, while aspects relating to chiefs in Vanuatu's Constitution were highly debated and discussed over several sessions, the human rights provisions were not. Vanuatu's 'home grown' Constitution even includes additional equity provisions for women, children, and youth and other 'under-privileged groups'[296]. It is worth noting that nine members and alternates

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[292] Molisa, *Women and Good Governance*, 21.
[293] Molisa, *Women and Good Governance*, 21.
[294] Gregory Rawlings, "Statelessness, Human Rights and Decolonisation: Citizenship in Vanuatu, 1906-80" *The Journal of Pacific History* 47 no. 1 (March 2012) 61.
[295] Republic of Vanuatu, Constitutional Committee Minutes, 13.
[296] *Constitution of the Republic of Vanuatu*, Article 5 (k).

on the Committee were chiefs[297] and all decisions made by the Ni-Vanuatu Constitutional Committee members were reached by consensus.

As detailed by Morgan above, democracy is another aspect of our governance model in Vanuatu that is also held up as an external imposition. When I raised this with a Ni-Vanuatu individual I interviewed who works in the law and justice sector, however, this individual emphatically replied, 'I don't buy any of that'. They proceeded to lay out their reasons as follows:

> … the decision about, how do we set up this nation state for ourselves? We chose to take on the form of a democracy! That was our choice. No external imposition of any of that, thank you very much. That was our choice, and we chose a democracy. We could have well-chosen a dictatorship, a tyrannical state. We didn't! We chose that. And I believe that we chose that, coming from real mindfulness about all of these islands that we were bringing together as part of the one country. With all of the different languages, the different cultures that go with them, and having looked at various models from all over, we decided this is what we want to take on, to serve us the best, in bringing together all of these diverse and different islands and peoples, together in a united country, in a democracy, so that there is a way of handling the power questions. There is a way of handling such diversity in our peoples. There is a way of handling too the urban-rural divide - or I shouldn't say divide - differences. So, I don't have a bar of the external. This is our choice!

This perspective is also clearly supported in the Constitutional Committee minutes. That the new state should have a 'Parliamentary system of Government' is identified as '…the fundamental point on which agreement existed.'[298] In fact, the choice of a democratic system of governance and provisions for human rights appeared to be some of the least controversial elements in the often fractious process of developing Vanuatu's 'home grown' Constitution.

The role for chiefs, on the other hand, was discussed and debated at length over several days in these meetings. After weighing a variety of options, the consensus emerged that the '…role [for chiefs] in the conduct of national affairs should be limited'[299] and that chiefs should play a 'consultative role'[300] only within the state. According to Walter Lini at the time, '…if Chiefs wished to play an active part in politics…they could stand for election to the National Assembly'[301]. The implication was that they

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[297] Republic of Vanuatu, Constitutional Committee Minutes, 9.
[298] Republic of Vanuatu, Constitutional Committee Minutes, 55.
[299] Republic of Vanuatu, Constitutional Committee Minutes, 19.
[300] Republic of Vanuatu, Constitutional Committee Minutes, 77.
[301] Republic of Vanuatu, Constitutional Committee Minutes, 75 to 76.

would stand as individuals not as chiefs, in the same way that Fred Timakata eventually did. In an interview with my father-in-law he shared a similar perspective about the role of chiefs in the state. He said, quite simply, that the Malvatumauri were meant to be a consultative group, and that was all. When I followed up by asking him about the expanding role for chiefs in the state that the Malvatumauri and others seemed to be pursuing, he replied in the following way:

> I think that's an unfortunate development. And I think its recent because there is laxity on the part of the government [and] national institutions that should do what is widely expected of them. And so it becomes an unnecessary necessity on the part of the chiefs who now come and assert their place. There's a vacuum there that's created by the lack of actions of what we should expect of the national institutions. When I hear them say this, my reaction is that…your scope has gone where it should not be…But they've come to the table here because the institutions – Vanuatu institutions, provided by the Constitution, that the Vanuatu government is there to do – these arms of the government, they don't do it. Or they don't care whether it's done or not, or they deliberately do the wrong things. So, in that situation I don't agree with what the chiefs are doing. Basically, if they come up this way, this country's going to be deteriorating into a nation with chaos!

Beyond the chaos, what happens to women through these failures and the 'vacuums' created by political and economic instability within the state, and how women are positioned within this pursuit of an expanding role for male chiefs, with their increasingly hegemonic and patriarchal articulations of *kastom*, is also of deep concern.

4. Taking Women 'Out of the Kitchen' in the Newly Independent State

In 2013 I entered the offices of the Malvatumauri hoping to chat with Roslyn Tor. At that stage Tor was a Research Officer in an Australian-funded program called the *Kastom* Governance Partnership, but she had previously been the Director of Women's Affairs for more than a decade following Independence. After learning who my family was, she became very animated. She proceeded to share a story with me about how my father-in-law, at a time when he was Acting Prime Minister, had encouraged her to take up that senior leadership role for women[302]. Telling me that she had at first turned it down because, '…all of those areas that Women's Affairs are engaged with, I don't know anything about…', she described the rest of their conversation as follows:

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[302] Roslyn Tor became the Director of the unit that had started as the Women's Affairs Unit and later became part of the Department of Culture, Religion, Women's Affairs and Archives. In the mid-1990s the Department of Women's Affairs was established as a government department on its own.

> …he said 'Okay, what in your view are the women doing?' And I said, 'As far as I know the church women's groups are doing sewing and cooking. They make things for the house. Women's Affairs is going out and doing projects on painting and building water tanks, and in all of these areas, these are skills I do not have. And he said, 'And what did you study at university?' And I said, 'Business Administration!'. He replied, 'So what are you waiting for? Go and take the women out of the kitchen and take them in another direction!'

This idea of taking women 'out of the kitchen' and leading them out of the strictures of idealised traditional and missionary womanhood and going 'in another direction' reflected at least the articulated intentions of the newly independent government, if not their actual practice.

In fact, evidence of the state's early commitment to changing the status of women in Vanuatu society can be found in a variety of places including in a report on consultations relating to a proposed 'Family Law Bill', which took place under the leadership of the Vanuatu National Council of Women starting in the early 1980s. This broadly consultative process was described as having reached across 'every group in Vanuatu'[303] using the same 'Democratic process that the government of Vanuatu [had] followed to develop Vanuatu's National Constitution and the National Development Plan'[304]. The introductory section of the report is replete with the language of 'change', and encouragement for Ni-Vanuatu women to embrace the possibilities offered by Vanuatu's Independence and modernity. The key goals included: the creation of 'development policies where men and women are equal participants', 'a more accessible legal system' for women[305], as well as the need to address gender-based violence. Here, bringing women out of the kitchen was clearly located as being in line with the 'Constitutional principles of equality'[306]. Nowhere is there a call for a greater role for *kastom* or chiefs in this report.

While some of the commentary contained in the 1985 Family Law Bill report might be dismissed as the positioned articulations of women's organisations and advocates, a similar tone is evident in other government documents from that period. For example, Vanuatu's first *National Development Plan*

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[303] Vanuatu National Council of Women, Family Law Bill, 1.
[304] Vanuatu National Council of Women, Family Law Bill, 1.
[305] Vanuatu National Council of Women, Family Law Bill, 6 to 7.
[306] Vanuatu National Council of Women, Family Law Bill, 10

(1982 to 1986) contains a section dedicated to 'Women's Affairs' which outlines the state's intention to seek change in women's 'traditional roles', and to support women in engaging more actively at all levels of society, including in national affairs. Specifically, this change is outlined as follows:

> When the Women's Affairs Office was originally established, almost fifteen years ago, it exclusively concerned itself with women in their traditional roles of homemaker and child-bearer, and all efforts were channelled into improving the standard of living of the family. Over the last decade women have sought to emerge from this role to play a more dynamic part in the life of the country...
>
> It is clear that in its present form the Women's Affairs Office cannot contribute substantially to the emerging needs of women and that the substantive content of its work must be changed to appropriately help women as they increasingly participate in domestic, local and national affairs.[307]

The state's intention for women to become active and equal participants at all levels of society is clear in this document. As with the Family Law Bill report, the first *National Development Plan* also highlights several 'social problems' that were holding women back, including violence, and calls for 'badly needed social legislation'[308] to address and remedy these issues.

A mid-term review of the *First National Development Plan* published in December 1984 also includes a chapter dedicated to 'Women in National Development'[309] and provides even more detailed analysis. This document highlights the somewhat remarkable fact that at this time in Vanuatu's history life expectancy for women was lower than for men, '…in contrast to most other countries throughout the world'[310], and locates this as a result of Vanuatu's very high birth rate[311] among other factors. In the section under women's 'Legal Status', Vanuatu's Constitutional commitment to equality of men and women and the legal protection of women's rights is highlighted, along with the critical recognition that 'strongly upheld' *kastom* 'tends to reinforce the traditional role of women in ni-Vanuatu society.'[312] This national planning document also assesses customary land ownership and the nascent Cooperatives movement as problematically male-dominated[313]. As in the report on the Family Law

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[307] National Planning Office, Republic of Vanuatu First National Development Plan 1982-86, Port Vila, 249.
[308] National Planning Office, First National Development Plan, 250.
[309] National Planning and Statistics Office, Republic of Vanuatu The Mid-Term Review of Vanuatu's First National Development Plan, December 1984, 301.
[310] National Planning and Statistics, Mid-Term Review, 303.
[311] National Planning and Statistics, Mid-Term Review, 306
[312] National Planning and Statistics, Mid-Term Review, 311.
[313] National Planning and Statistics, Mid-Term Review, 312.

Bill, equity and equality across Vanuatu society and the importance of women's contributions to the development of Vanuatu as a 'modern nation' are highlighted as key national development goals.

A few years later, the *Second National Development Plan (1987 to 1991)* reiterates the independent state's commitment to changing women's roles in Vanuatu society through the pursuit of substantive equality in similarly clear terms:

> Traditionally ni-Vanuatu women have had responsibilities in the areas of motherhood, cultivation of land, collection and preparation of food and production of household goods. It has been the ni-Vanuatu man who has assumed the leadership role and dominated public life while the women have remained in the background. In DP1 [the first National Development Plan] the objective was to promote a change in the role of women and to work towards their full and equal participation in domestic, local and national affairs. DP2 remains committed to this objective and to facilitating the full and active participation of women in the development process.[314]

As with the earlier plan, the focus on change for women is unequivocal. The *Second National Development Plan* renews the state's commitment to, '…bringing about the active participation of women in village, regional and national affairs'[315], and calls for women to be involved 'at all levels of decision making in Vanuatu'[316]. Even through the late 1980s and increasing political and economic turbulence, getting women 'out of the kitchen' was still clearly part of the state's formal agenda.

By 1992 Vanuatu had released its third *National Development Plan (1992 to 1996)*, this time under the leadership of Vanuatu's first coalition government. Reviewing progress to date, this plan strikes a significantly less optimistic tone. While 'Women in Development' is still listed as one of three cross-cutting issues, the plan concludes that despite the intention to get women out of the kitchen much of the work undertaken with women in the first decade had still problematically focused in 'traditional' areas like sewing, cooking, and childrearing[317]. A list detailing the key 'Problems and Constraints' relating to lack of progress for women includes: under-representation of women in planning and decision making; inadequate budgetary support from government[318]; 'Kastom and Cultural

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[314] National Planning and Statistics Office, Republic of Vanuatu Second National Development Plan 1987-1991, 353.
[315] National Planning and Statistics Office, Second National Development Plan, 354.
[316] National Planning and Statistics Office, Second National Development Plan, 354.
[317] National Planning and Statistics Office, Republic of Vanuatu Third National Development Plan 1992-1996, 60.
[318] Inadequate budget from government has actually been a consistent focus of the Malvatumauri. Interestingly in 2007, the budget allocation for the Malvatumauri from government (consisting at that time of a 22 member, elected, national council of chiefs) was more than the funding for the Department of Women's Affairs. If the population of Vanuatu was approximately

Constraints', further explained as '…leaders are mostly men. [And] The prevailing male attitude is that the place of women is in the home, and that their contribution is secondary'; violence against women; and women's poor health relating to their heavy workload and the burden of high rates of childbirth[319]. While the state's plans to get women 'out of the kitchen' had not been actualised in the first decade, the issues limiting women's advancement in Vanuatu society and the state's ongoing commitment to addressing these issues are still clearly articulated.

A few years later, the discussion in Parliament around Vanuatu's ratification of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) in March 1995 is also revealing, with several Members of Parliament expressing clear support. One Member emphasised, '…the significance of equal rights for men and women'[320] and another regretted that it had taken so long to ratify, stating that 'there might have been fewer cases of violence against women'[321] if it had been done earlier. Walter Lini commented that CEDAW itself was not enough and that legislation supporting women's rights was also needed[322]. While a handful of MPs raised concerns about the potential conflict with *kastom*[323], Sela Molisa directly countered this by saying that '…certain customary and religious practices should be changed, because of their discriminatory nature.'[324] In the end, Vanuatu's Parliament passed the Bill to ratify CEDAW unanimously[325] making Vanuatu the second

225,000 at that time, and if one generously estimated the number of 'kastom chiefs' on the basis of one chief for every 50 people, that would be 4,500 chiefs. The population of women and girls was well over 100,000. While the chiefs, particularly through the mid-2000s have consistently complained about the lack of government funding to chiefs – focusing on the perceived funding for women and women's equality and rights – the figures do not support this.

[319] National Planning and Statistics Office, Third National Development Plan, 60 and 61.

[320] Parliament of the Republic of Vanuatu, Parliamentary Hansard, First Ordinary Session of Parliament (March - April 1995), item 13, page 19.

[321] Parliamentary Hansard, First Ordinary Session of Parliament (March - April 1995), item 15, page 20.

[322] Walter Lini, no longer Prime Minister but still a Member of Parliament, in expressing his support said that even if CEDAW had been ratified earlier, '…there would still have been as much violence against women as there was still no national legislation governing women's rights'. Parliamentary Hansard, First Ordinary Session of Parliament (March - April 1995), item 18, page 20.

[323] Iolu Abbil and Keasipai Song from Tanna, and Jerethy Rasen from Malekula raised similar concerns. While expressing his support, Rasen said that '…women could not have certain rights' (identified as land ownership, becoming a chief and taking rank) in his Malekula kastom. MP Iolu Abbil suggested that there was a '…risk of changing Vanuatu culture altogether' and was in the minority in recommending that CEDAW be adopted by Vanuatu with reservations. Parliamentary Hansard, First Ordinary Session of Parliament (March - April 1995), item 27, page 21.

[324] Parliamentary Hansard, First Ordinary Session of Parliament (March - April 1995), item 23, page 21.

[325] It is not typical for Vanuatu to pass any legislation unanimously, given the fractious nature of politics and the tendency for voting to be clearly split along Government and Opposition sides.

Pacific country to ratify the Convention[326]. To address the concerns about potential conflict between *kastom* and the state's support of women's rights, it was agreed that Vanuatu's first CEDAW report could highlight areas that needed more time 'due to cultural factors'[327]. The state's focus was still on the need for change in women's roles and status, despite the recognition that this change might take more time.

During Vanuatu's participation in the Fourth World Conference on Women in Beijing a few months later, however, a slight shift in the state's commitment to women's rights is discernible. While Vanuatu adopted the *Beijing Platform for Action* at this meeting, the Vanuatu delegation submitted the following explanatory statement:

> The Republic of Vanuatu has come to the Fourth World Conference on Women in Beijing for two purposes: first, to show solidarity with the world community concerning the advancement and rights of women, and second, to learn from other countries about what can be done to improve the situation of women.
>
> In this respect, the delegation of Vanuatu has fully participated in the plenary meetings of the Conference as well as in the Main Committee and the working groups.
>
> The delegation of Vanuatu recognises the spirit of conciliation and compromise that has gone into the finalisation of the Platform for Action. At the same time, the delegation notes that Vanuatu is a small country which has grown out of a strong fundamental traditional past and which now is changing in the midst of modern social, economic and political evolution.
>
> While therefore endorsing the Platform for Action of this important Conference, the Vanuatu delegation wishes to state that its endorsement of the Platform is made with full respect for the constitutional, religious and traditional principles which the sovereign State has inherited and kept for the good government of our nation.[328]

In many ways Vanuatu's statement at Beijing reads as a kind of transitional moment. While still looking 'forward' in a developmental way towards modernity, change, rule of law and equality, the state is also looking 'back' more actively – and in a less rhetorical way – to a foundational past. Soon after this, Vanuatu would be beset by what one person I interviewed referred to as 'extraordinary' levels of corruption. The corruption through the late 1990s and early 2000s in Vanuatu – and the associated

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[326] Vanuatu was the second Pacific country to ratify CEDAW after Samoa. Vanuatu was also the second Pacific country to ratify CEDAW's Optional Protocol in 2007 and remains one of only a handful of Pacific states to have ratified both international mechanisms aimed at protecting women's rights.

[327] Parliamentary Hansard, First Ordinary Session of Parliament (March - April 1995), item 35, page 23.

[328] United Nations, Report of the Fourth World Conference on Women, Beijing (4-15 September 1995) A/CONF.177/20/Rev.1, Chapter V, Article 33, 174. https://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf.

vacuum left by the state as it struggled to deliver services – accelerated this transition. The environment for a more intensive pursuit of *kastom* and 'the power of chiefs' in Vanuatu was effectively set through this transitional moment, with particular consequences for women.

5. 'Wielding *Kastom* Like a Blunt Hammer': The Rise of Corruption (and a More Hegemonic *Kastom*) in Vanuatu

In fact, by continuing to read across Vanuatu's *National Development Plans* (later refocused and retitled as Vanuatu's *Priority and Action Agenda*) a telling story of this state transition emerges. While the first three plans reflected the state's commitment to addressing gender inequality and a commitment to changing women's position in society, there is a discernible shift by the mid-1990s. In fact, following the third *National Development Plan (1992 to 1996)*, there was a period of six years when no national planning document was published at all for Vanuatu. While the Comprehensive Reform Program initiated in 1997 to address the spiralling and deeply intertwined political and economic crises in Vanuatu included a commitment to improving the status of women, by the time a fourth national planning document was produced in 2002, all references to women and gender equality were gone. The focus of this plan is almost exclusively economic, and in stark contrast to the earlier plans, the words 'women' and 'gender' do not appear *even once* in the text. Instead, under a list of 'National Priorities', a role for chiefs has now appeared. The fifth priority commits to 'Enabling greater stakeholder participation in policy formulation by *institutionalising the role of chiefs*…'[329]. While stakeholder participation also included non-governmental organisations and civil society[330], chiefs are listed first. This is the first national planning document that not only outlines a specific 'role for chiefs', but also seeks to 'institutionalise' this role within the state.

[329] Government of Vanuatu, *Priorities and Action Agenda: Supporting and Sustaining Development*, 2002, 3.
[330] Republic of Vanuatu, *Priorities and Action Agenda*, 3.

By 2006 – in what was effectively Vanuatu's fifth national planning document – women have again reappeared. Rather than the pursuit of substantive equality, however, this report warns against the erosion of 'traditional systems and practices that support and protect women and children'[331]. While in the first decade and a half, 'traditional systems' were seen to be holding women back, these 'systems' have by this time been paternalistically reframed into something that is protective of women and children within the context of the patriarchal family (and state). Women are also present in Vanuatu's most recent national plan, *Vanuatu 2030: The People's Plan*, published in 2016, but again, the level of analysis reflected in Vanuatu's first three plans is absent. While '…ending all forms of violence against women and children'[332] is listed as a goal, this is framed within the broader '…need to balance the interface between formal and traditional governance systems'[333]. The 2016 plan also commits to strengthening the role of chiefs in the realm of 'Security, Peace and Justice'[334], a commitment that was actively referenced in the August 2022 *National Conference of Kastom Chiefs*. In the intensifying entanglements of politics, *kastom*, and male chiefs in Vanuatu over the past two decades, the state's commitments to women – when they are articulated at all – appear even more hollow and perfunctory than they might have in even the first decade following Independence.

There are likely many explanations for why this transition occurred, but the failure of state institutions – as my father-in-law suggested – is a significant contributing factor. I arrived in Vanuatu in early 1998, and the political and economic turmoil that had been accelerating since the mid-1990s (and would continue over the next two decades) became evident very quickly. Changes in government could be observed from our vantage point at the Vanuatu Cultural Centre where, as we went about our work, crowds would gather whenever change was afoot under the 'red roof'[335]. A month before I arrived, Port Vila had been rocked by large-scale rioting around accusations that politicians had misused the Vanuatu National Provident Fund (the national pension scheme) for their personal

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[331] Government of Vanuatu, *Priorities and Action Agenda, 2006-2015*, 35.
[332] Government of Vanuatu, *Vanuatu 2030: The People's Plan*, 3. https://www.gov.vu/images/publications/Vanuatu2030-EN-FINAL-sf.pdf.
[333] Government of Vanuatu, *Vanuatu 2030: The People's Plan*, 3.
[334] Government of Vanuatu, *Vanuatu 2030: The People's Plan*, 12.
[335] The 'red roof' is how Vanuatu's Parliament is colloquially referred to.

benefit[336]. While there had been instability and increasing political turbulence over the first decade and a half after Independence, Vanuatu had managed to maintain relatively stable changes in government. By the mid-1990s, however, the state was veering from instability to what could easily be termed political and financial chaos. Over a period of just over 20 years, from the end of 1995 to early 2016, Vanuatu would cycle through 19 changes in Prime Minister, some of whom occupied the role for only a few weeks. One morning in 1998 as I was waiting for a bus, I was offered a ride by a high-level donor who told me that the financial crisis was so acute that the Vanuatu government was only a week or two away from total bankruptcy.

The roots of this turmoil went back several years. Despite the idealism of the first decade, there had been significant jostling for power among male leaders. By the early 1990s Vanuatu's political situation had become deeply unsettled and increasingly fragmented. Fractures and divisions within the ruling Vanuaaku Party itself had led to growing concerns with Walter Lini's leadership. Donald Kalpokas, another Independence era politician, commented to a local newspaper in August 1991 that several of Walter Lini's recent political decisions were 'clearly dictatorial' and that they represented 'a continued attack on fundamental rights guaranteed under the Constitution'[337]. A month before this, Walter Lini's trusted advisor Grace Molisa had raised similar concerns, accusing Lini of nepotism, dictatorship, and totalitarianism. In a powerfully worded 27-page essay addressed to the 'People of Vanuatu' written after her sudden ousting from government in 1991, Molisa states:

> Our forefathers/mothers ['ol Olfala'] decided together that the type of Government that would be alive, that would work, that would exist in Vanuatu would be a Constitutional Parliamentary Democracy.
>
> That means it would
> Follow the Law
> Follow a Dialogical Process ['Tok Tok']
> Follow the People

[336] Patrick Decloitre, "Riot rocks Port Vila," *Pacific Islands Monthly*, 68 no. 3 (March 1, 1998) 8.
[337] Howard Van Trease, *Melanesian Politics: Stael Blong Vanuatu* (Suva: Institute of Pacific Studies, 1995) 111.

> Because it follows the Law we can't treat it like a personal thing of our own, we can't treat it like a Right of ours as a Kastom Chief and just hold onto a Title until we are dead, and the right of that Title then just goes to another Man. The Law has made a process for all of this.[338]

It is undeniable that as Walter Lini's Second Private Secretary, Grace Molisa, like Hilda Lini, had played a significant role in establishing some of the possibilities for gender equality within the state through the first decade. After her ousting from government, and in the context of rising political instability and corruption, these windows of possibility for women were rapidly closing.

By 1995 Vanuatu's political and economic situation had taken a decisive turn for the worse. One individual I interviewed described the corruption as 'extraordinary' through this time, commenting that it had '…just drained money from public services.' In response, Parliament put in place Vanuatu's First Ombudsman in the mid-1990s to address some of these issues. Dubbed the 'Anti-Corruption Ombudsman'[339], Marie Noelle Patterson and her staff were kept busy producing report after report about corruption and abuses of power. While several political leaders became the focus of Ombudsman's reports, the scandals Barak Sope was involved in are both stranger than fiction, and indicative of the kind of gross misconduct and failures in political leadership that were at play at the time. In one instance, more than $US100 million in bank guarantees – twice Vanuatu's annual budget at the time – were signed over by Sope to a corrupt foreign businessman[340]. Another scandal Sope was involved in centred around a conman who called himself the 'Archduke Franz Von-Hapsburg'. This individual was eventually arrested in Fiji in 2010, the subject of an Interpol investigation and reportedly owing more than $1.2 million to 'overseas interests'[341]. The scandal that eventually led to Sope's political downfall, however, revolved around a fabulous (and ultimately fictitious) giant ruby and another international scam artist, Amarendra Nath Ghosh. By the time of his eventual arrest,

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[338] Grace Molisa "Mesej blong Grace Mera Molisa iko long Pipol blong Vanuatu long Namba Ileven Aniverseri blong Indipendens blong Vanuatu", 30 July 1991, 18.
[339] Patrick Decloitre, "Anti-corruption ombudsman under attack from parliament", *Pacific Islands Monthly*, 67 no. 13 (January 1, 1998) 14.
[340] "Conman Sentenced", *Pacific Islands Monthly*, 67 no. 13 (January 1, 1998) 13.
[341] Losalini Rasoqosoqo, "Who is He?," *Fiji Sun*, 4 December 2010.

Ghosh was wanted in several jurisdictions[342]. All of these international con artists had been issued with Vanuatu passports.

Barak Sope had been engaged in these scandals first as Minister of Finance from 1996, and then as Prime Minister from November 1999, until he was removed through a Motion of No Confidence in April 2001. He would be charged a year later with forgery and sentenced to prison for several years. Vanuatu's Constitution and laws, supported through the work of the Ombudsman, were at this time the only mechanisms that had effectively addressed these abuses of power and corruption. It is perhaps not surprising then that Sope once infamously declared in Parliament that the Ombudsman '…could not criticise leaders in Vanuatu, because Melanesian culture did not allow women to criticise men.'[343] It was also Barak Sope, still in his role of Prime Minister in the early 2000s, who initiated a project to '…legalise the roles and functions of the chiefs throughout the country'[344] under the auspices of the Chiefs Legislation Project. While there had been attempts to formalise a more regulatory role for *kastom* and chiefs within the state before this, these earlier efforts were never progressed or seriously entertained within the state[345]. In one of these earlier efforts in 1992, the Malvatumauri themselves acknowledged several clear limitations of *kastom* governance in Vanuatu, including that it was, '…open to abuse. Conflicts of interest may not be acknowledged, unwritten rules may be altered, and decisions may be unfair with no realistic right of appeal'.[346]

Despite these limitations, the Chiefs Legislation Project was spearheaded by Barak Sope in the early 2000s. Conducted under the auspices of Vanuatu's Ministry of Internal Affairs, this project was framed as an effort to realise the commitment to 'Melanesian values' in the Preamble to Vanuatu's

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[342] "Scam artist who gulped knife back in VIP jet," *The Times of India*, August 27, 2007. https://timesofindia.indiatimes.com/india/scam-artist-who-gulped-knife-back-in-vip-jet/articleshow/2316018.cms#.
[343] Decloitre, "Anti-corruption ombudsman," 15.
[344] Selwyn Garu and Jack Yaken, "Chiefs Legislation Project Report," Ministry of Internal Affairs (February to September 2001), 9.
[345] Miranda Forsyth, *Bird that Flies with Two Wings: Kastom and state justice systems in Vanuatu* (Canberra: ANU Press, 2009) 162.
[346] Forsyth, *Bird that Flies with Two Wings*, 256.

Constitution[347]. A report on the project published in 2001 highlights the 'critical status of the nation' in the Introduction and further describes Vanuatu as being '…at the brink of bankruptcy'. The report blames the pursuit of development, '…based on western models, mentalities and ideologies' for this situation. The solution, on the other hand, is located in *kastom*. The author of the report, Chief Selwyn Garu[348] declares in the report that:

> The conviction is that [economic growth and social stability] shall only be possible, if and when the traditional authorities who are chiefs, will be elevated to such positions where by they be involved directly in the decision making affairs of the nation.[349]

To achieve this end, the overall aim of the project was to develop a legislative framework to give chiefs state power to control the movement of people, arrest, detain or release people from prison, and to create bylaws[350]. Rights and freedoms were not only identified as a hindrance to peace and stability in this report, but the root of criminal activity[351], and the report suggests that Vanuatu's Constitutional commitments to human rights should be revisited. At one point the author states that even sentencing measures 'not traditional to the area', including 'Public shaming such as whipping'[352] should also be part of a chief's purview. Unsurprisingly, the report is silent on women except to say that in the chiefly systems of Vanuatu 'women are largely left out'[353]. The report adds that while there are some exceptions, they are so rare that '…the chiefly system is [principally] a man's field.'[354]

While the Chiefs Legislation Project helped to spearhead the development of new legislation focusing on chiefs that was eventually passed in 2006, Parliament chose not to progress aspects of the proposed legislation that sought to establish a more regulatory role for chiefs. Specifically, the powers of chiefs to make bylaws were struck from the 2006 *National Council of Chiefs Act*, and the legislation that was passed focuses primarily on administrative matters[355]. Despite the failure of these efforts to

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[347] Garu and Yaken "Chiefs Legislation Project Report," 5.
[348] Selwyn Garu was the CEO of the Malvatumauri in the mid to late 2000s.
[349] Garu and Yaken "Chiefs Legislation Project Report," 5.
[350] Garu and Yaken "Chiefs Legislation Project Report," 28.
[351] Garu and Yaken "Chiefs Legislation Project Report," 14.
[352] Garu and Yaken "Chiefs Legislation Project Report," 33.
[353] Garu and Yaken "Chiefs Legislation Project Report," 16.
[354] Garu and Yaken "Chiefs Legislation Project Report," 16.
[355] "Vanuatu Chiefs frustrated over amendments to Chiefs Bill," RNZ Pacific, 27 June 2006. https://www.rnz.co.nz/international/pacific-news/162985/vanuatu-chiefs-frustrated-over-amendments-to-chiefs-bill.

create a more regulatory role for chiefs within the state, the period of state crisis that intensified in the mid-1990s marks the beginning of an era in Vanuatu that is characterised by an increasingly obsessive focus on the power of chiefs[356]. The Ni-Vanuatu individual I interviewed who works in the law and justice sector, and who is quoted at length earlier in this chapter, raised clear concerns about this expanding role for chiefs:

> …the Constitution of the Republic of Vanuatu has an article in there establishing the Malvatumauri. So, the Malvatumauri is no kastom institution that's been around forever and a day. It is a creature of the Constitution, and its function is very clear and limited. It's to be consulted on matters to do with *kastom* and tradition. Over the years they have thought, or their visioning is, that the Malvatumauri become something that becomes parallel to the Executive. You know, that arm of government. And there is no place for that. You do that and you immediately undermine the whole of this legislative set up, the legal set up, of this democracy. But for whatever reason – and it's really, for some, become an empire building and a power building exercise to make the Malvatumauri be bigger and bigger, more and more powerful. I see its [heading] towards setting itself up – in terms of the structure, and the hierarchy and the reach, all throughout the country – to be parallel to the Executive. And there is no place for that in our legal set up that I can see. Fine for me to say, but for those individuals in there, with that kind of mindset and visioning, that's how it is. No one's corrected them, no one's challenged them about that kind of thinking. And there they are, off on their pursuits, and wielding *kastom* like a blunt hammer.

Ironically, even the Chief's Legislation Project report had also concluded that functioning within the state represented 'a new territory for the chief'. It also stated that chiefs were often at a loss when dealing with laws that were incomprehensible to them and 'appear to be in total contrast' to their views[357]. Yet it seems that forging ahead with a blunt hammer has continued apace in Vanuatu.

Ralph Regenvanu, a leading Ni-Vanuatu politician and the former Director of the Vanuatu Cultural Centre, also identified several concerns around chiefs in Vanuatu society when I interviewed him. From his perspective, the Malvatumauri did not represent the views of most chiefs across the country, despite their mandate to function as a representative body. When I asked whether he felt that chiefs in Vanuatu and *kastom* were related to each other in a kind of continuous or essential way he said, 'No. No they're not…' He then went on to add:

> …we had a lot of problems in the Cultural Centre with chiefs. Because we were trying to talk about recording traditional knowledge and stuff like that, and chiefs were often interfering with their own agendas. And trying to do stuff that wasn't faithful to what the objective of the research was and trying to record things. So 'chiefs' [as a category] is very problematic.

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[356] Marc Tabani, "Tannese chiefs, state structures, and global connections", *The Contemporary Pacific*, 31 no. 1 (2019): 81.
[357] Garu and Yaken "Chiefs Legislation Project Report," 18.

And yet, Regenvanu himself has been integral in several attempts to 'give more power' to chiefs within the state. As I trace in Chapter Seven, these efforts began to intensify with the Juvenile Justice Project starting in the early 2000s. Early in his tenure as a Member of Parliament Regenvanu also supported plans to create what he called 'state chiefs'[358], using the highly unusual and problematic inclusion of chiefs in Vanuatu's domestic violence legislation as an example. As I explore in detail in Chapter Six this small but significant aspect of Vanuatu's *Family Protection Act* is highly unusual, and also deeply problematic for women. The land laws that Regenvanu drove as Minister of Lands in 2013 have also represented perhaps the most significant expansion of the role of chiefs within the state since Vanuatu's Independence.

As I detail at the beginning of this chapter, the involvement of high-level representatives of the Vanuatu government in advocating for the 'power of chiefs' is often reframed under the rubric of '*kastom* governance'. For example, former Director-General of the Prime Minister's office and Ni-Vanuatu academic Gregoire Nimbtik wrote in a paper on the topic of chiefly authority and *kastom* governance in 2020 that, 'In the constitution, the *kastom jifs* are recognised and mandated to preserve and promote *kastom* governance in all spheres of life.'[359] While this is not, in fact, the role outlined for chiefs in Vanuatu's Constitution, this kind of fetishisation of chiefs has become an intensifying preoccupation. While Nimbtik briefly acknowledges the limitations of *kastom* governance, '…especially its conservative, patriarchal and hierarchical structures of authority…' [360] he still goes on to advocate for an expanded role for chiefs in the state and describes the failure to do so as a 'recurrent governance challenge for Vanuatu'[361]. While the broad concept of customary governance

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[358] Ralph Regenvanu and Haidy Geismar, "Re-imagining the economy in Vanuatu: An interview with Ralph Regenvanu," *Made in Oceania: Social movements, cultural heritage and the state in the Pacific*, Edvard Hviding and Knut M. Rio Eds. (Wantage: Sean Kingston Publishing, 2011) 43 to 44.

[359] Gregoire Nimbtik, "The Struggles of Adoption and Adaptation in the Governance Space of Vanuatu: The Incorporation of Jifly Authority and Kastom Governance into the Legal-Rational System" in *Governance and Societal Adaptation in Fragile States*, J.I. Lahai and H. Ware Eds. (London: Palgrave MacMillan, 2020) 243.

[360] Nimbtik, "The Struggles of Adoption," 264.

[361] Nimbtik, "The Struggles of Adoption," 265.

may have other meanings in other contexts, it is worth exploring what it means in practice in the context of Vanuatu.

6. One Ring to Rule them All: Silences, Slippages and 'Fixes' in the Pursuit of *Kastom* Governance

In July 2022 I dropped by the Malvatumauri and was told about their latest plans: the development of a single national *kastom* bylaw. The Malvatumauri's interest in a more expansive role for chiefs under the auspices of '*kastom* governance' has been percolating across many spaces for several years – and is gaining purchase in several corners of the state. For example, it was evident in a presentation that the Malvatumauri gave at a national symposium on 'community policing' in 2016[362] where the presenter shared the following vision for '*kastom* governance':

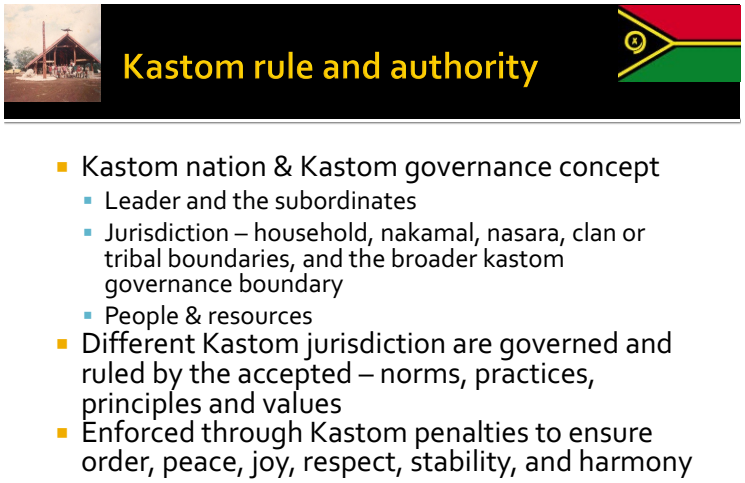

Figure 5: A slide from the Malvatumauri's presentation at a Community Policing Symposium

While the practicalities of this approach remain persistently vague in these articulations, the regulatory role envisioned for chiefs is clear. By 2022 even fundamental details like *kastom* as localised sets of 'norms, practices, principles and values' linked to specific '*kastom* jurisdictions' had fallen away. It seems that while the link with '*kastom'* in this national role for chiefs grows murkier, the Malvatumauri's

[362] Malvatumauri National Council of Chiefs, "National Symposium on community policing presentation", October 2016, National Convention Centre. Vanuatu's unique approach to 'community policing' is addressed in Chapter Seven.

interest in seeking and expanding the *power* of chiefs in and through the state is increasingly clear. Ultimately, this *kastom* governance push aspires to have chiefs acting as police officer, judge, legislator and – as the representative of the Malvatumauri added to this list that July morning – even 'Prime Minister'. When I asked how abuses of power and how separation of powers might work at the community level given this all-encompassing regulatory and governance role for chiefs, it was met with resounding silence.

Vanuatu's 2013 land laws have contributed significantly to this expanding rhetoric of *kastom* governance and the power of chiefs by making land determinations a kind of exception under Vanuatu's Constitution. As such, it has removed these matters from the courts and put them in the hands of what the legislation calls 'customary institutions' – effectively male chiefs. In my interview with the Ni-Vanuatu individual who works in the law and justice sector, I also asked them about changes wrought by this new role for chiefs. Describing it as, 'completely a regression for the country', this individual talked about how these laws had 'effectively curbed, limited, made smaller' the separation of powers and impacted the principles of democracy on which Vanuatu's political system was established:

> …that context that what we've moved to now is something that's completely within the hands of people at the community. That's hugely male dominated, and chiefs feature in such a large part of that. But there aren't any ways of managing the power in there – the self-interest, vested interests…And so, in that context, the people then being able to bring grievances to a court of law, which is a completely independent, impartial decision maker – in theory – that comes to a decision too, following a process…[and] that process that is inbuilt into it that you hear both sides of the story, every party's side of the story, before coming to a decision…cutting out the one place where they could go for justice is a huge regression. That's not good for us. So, we just write it in? Ah! We've just written in tyranny, in the one big space that was so important in our struggle for political independence.

These comments clearly echo my father-in-law's cautions about exceeding the consultative role envisioned for chiefs in the Constitution. In a conversation with Ralph Regenvanu who instituted these changes to Vanuatu's land laws I commented to him that several of our 'fixes' in Vanuatu seemed to be poorly thought through. His instant reply was, 'Anything that fixes [an issue] is a fix.' In this space, however, where 'tyranny' has arguably been embedded in the state architecture and has solidified and expanded an effectively unregulated role for male chiefs, this is clearly not the case.

These ‘fixes’ in Vanuatu have also been the site of many ‘slippages’. For example in 2011, 19 resolutions relating to land were developed through a *National Customary Land Workshop* held by the Malvatumauri Council of Chiefs. The documentation of the meeting states that it was attended by ‘50 chiefs, women and youth’[363]. While this would not be a representative sample of any of these groups, and women and youth likely had limited input, these 19 resolutions eventually became the Malvatumauri ‘*Kastom* Road Map’ and continue to be treated as the articulation of a uniformly agreed and comprehensive *kastom* vision for Vanuatu[364]. Interestingly, in a conversation in 2016, one of the chiefs who had participated in the 2011 land workshop troubled this slippage himself. He told me that what had been agreed to – writing down what people knew about land and land rules in different areas – had turned into a call to, among other things, develop ‘*kastom* bylaws’. This expansion from writing down what people knew about land to the development of a broader set of ‘*kastom* bylaws’ was problematic for him as well, as these were different kinds of things. By July 2022, this process had slipped even further from writing down ‘what we know about land’ in our local *kastom* areas to the construction of one ‘national *kastom* bylaw’. While it is hard to understand how this latest ‘fix’ will assist in determining local land ownership, the Malvatumauri’s interest in expanding the ‘power of chiefs’ through these slippages is abundantly clear.

The institutionalisation of Vanuatu’s new land laws and the sorting out of ‘*kastom* governance’ that they necessitate led to another proposed ‘fix’ that ultimately veered towards the absurd. Giving the power to decide land issues to local *kastom* areas and to chiefs has been complicated by centuries of movement and intermarriage in Vanuatu. One potential ‘fix’ for this was proposed by Vanuatu’s first Land Ombudsman in a meeting I attended in 2017. According to then Land Ombudsman, Emil Mael, his office was planning to seek support from the United Nations to resolve a key challenge to *kastom* governance: the problem of what he called ‘mixed communities’. Telling us that he wished to invoke

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[363] Vanuatu Land Program “National Customary Land Workshop Resolutions” 5-7 September 2011, https://mjcs.gov.vu/images/research_database/Customary_Land_Workshop___Resolutions_English1.pdf.

[364] Jonas Cullwick, “Malvatumauri starts piloting Custom Governance implementation” *Vanuatu Daily Post*, 30 July 2016 http://dailypost.vu/news/malvatumauri-starts-piloting-custom-governance-implementation/article_06246bcb-c803-59ef-8e83-e22d58ae7ef1.html.

international processes around Internally Displaced Persons, his plan was to seek assistance from the United Nations to send people back to their islands (and areas? Villages?) of 'origin'. Setting aside the fact that this would be antithetical to the human rights principals governing these processes (and their intended purpose), and illegal under Vanuatu's Constitution, this was nothing short of an absurd proposition. Practically, the history of movement throughout Vanuatu and beyond its borders over time – which has included significant intermarriage – has resulted in substantially complex identities and affiliations, even at the village level. Those of us sitting around the table in the meeting that day highlighted this complexity. When I asked the Land Ombudsman respectfully where even those of us in that very meeting room would ostensibly go, this was also met with silence. Clearly not every 'fix' is a fix.

While the more obviously politicised spaces of the Malvatumauri and land matters in Vanuatu have been characterised by various slippages around *kastom* governance over the past several years, these have also been evident in other spaces. For example, when the Vanuatu Cultural Centre was first established in 1957 much of its work focused on language documentation and the creation of dictionaries[365]. Under the auspices of the Oral Traditions Project local language speakers were provided with tape recorders, becoming Vanuatu's first fieldworkers[366]. Their work shifted a few years later from generating vernacular language materials for use in schools and on the radio into other areas, '…as the immediately visible items for dictionary entries had been exhausted'[367]. This included documentation of topics such as marriage practices, the use and value of pigs, birth and death practices, gardening, fishing, music, dance, and so on[368]. Starting in the early 2000s, however, the focus shifted again, this time to the documentation of more complicated and contested issues. While this could be interpreted as simply an evolution in practice, documenting language use or even styles

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[365] Darrell Tryon, "Ni-Vanuatu Research and Researchers" *Oceania* 70 no. 1 (September 1999), 10.
[366] A unique cadre of researchers based out of the Vanuatu Cultural Centre.
[367] Tryon, "Ni-Vanuatu Research." 11-12.
[368] Tryon, "Ni-Vanuatu Research." 11-12.

of weaving and gardening is significantly different from documenting more complex (and contested) issues like land ownership and '*kastom* governance'.

Within this context, the risk of capture by elite interests is substantial, as Regenvanu's comments about the interference of chiefs in the work of the Cultural Centre above suggest. Yet by 2013, the Vanuatu Cultural Centre had moved from language documentation and research to an explicit focus on legalising the role of chiefs under the auspices of '*kastom* governance'. In an Australian radio interview, then Director of the Vanuatu Cultural Centre Marcelin Ambong explained the choice of '*kastom* governance' as the topic for the Vanuatu fieldworkers' 2013 workshop in the following way[369]:

> In Vanuatu, even if we have this diversity of culture, but we have one principle of *kastom*, and I always define *kastom* in my definition as all the laws and rules that chiefs can impose in a community – and you know what the definition of culture is and the modern term of it. We have the fieldworker's workshop, and the topic is to define the traditional governing system and the leadership of the chief, we try to rebuild the role of the chiefs, and I think the aim is to conserve or even for legislation that can [exist] for this customary system. As you know, the Malvatumauri, for example, the Malvatumauri have an Act for the establishment of the Council, but the Malvatumauri themselves don't have any legislation to use…[370]

Later in the interview, Ambong talks about his plans to change the format of the workshop in the future so that instead of reporting, the fieldworkers would instead focus on remobilising their previous documentation in order to 'rebuild this traditional governance system'. As such, the work of the fieldworkers by 2013 had shifted from cultural documentation to supporting (and potentially being mobilised to produce) a set of more regulatory processes based in '*kastom*' for the benefit of chiefs.

Development actors have also been intricately involved in this rising discourse of '*kastom* governance' in Vanuatu and its particular nuances, inflections, and omissions. For example, in 2013 I was told by several people that a key development partner had required that both the Vanuatu Cultural Centre's men's and women's fieldworker workshops for that year would focus on '*kastom* governance'. In fact, I was informed that funding had been directly tied to this specific topic, for both men and women. Yet

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[369] Marcellin Ambong is a francophone, who is being interviewed in English, so the grammar is not perfect, although the message is clear. Ambong was the Director of the Vanuatu Cultural Centre from 2007 to 2014 and again in 2015 (his position was terminated, then reinstated, and terminated again a second time).
[370] ABC Radio, "Vanuatu Cultural Centre fieldworkers examine traditional governance," 30 August 2013.

when I picked up some of the women fieldworkers after their meeting one day during that week of meetings they scoffed at this choice of topic. Several of the women in my car – all of whom were long-term fieldworkers and all of whom I knew fairly well – commented that they did not have much to say about '*kastom* governance' as everyone knows that it is the purview of men. Not surprisingly, Australia's *Kastom* Governance Partnership, initiated in 2005, had grappled with similar challenges for several years despite its 'build it and they will come' aspirations around gender equality in the space of *kastom*.

The *Kastom* Governance Partnership was billed as '…distinct in its attempt to challenge the idea of a "fragile state" with the alternative notion of a "hybrid political order"'[371]. Practically it also aspired to build up the administrative capacity of the Malvatumauri. The 'First Principle' listed for this multi-million-dollar and multi-year project was 'respect for *kastom'*, which tellingly was further clarified as 'respect for the role of chiefs'[372]. While gender equality was also listed as a 'cross cutting issue' there were persistent challenges in this area, even after several years of effort. For example a mid-term review from 2012 clearly states that:

> While some attention is given to gender issues and women are represented to a varying extent in storians, there is limited support from the MNCC [Malvatumauri] coordinator for furthering gender issues. There is little encouragement for staff to work closely with key women's organisations or groups. It is recognised that the issue of gender and women's roles in kastom are areas of tension.[373]

Beyond the Malvatumauri's 'resistance to discussing gender issues'[374] the project was also plagued by serious mismanagement. The review stated that there was '...no improvement in the administrative or management capacity of the Malvatumauri' through several years of funding and support[375]. Despite its aspirations, this highly donor-resourced foray into *kastom* governance simply highlighted

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[371] Pamela Thomas, "Mid Term Review of the Vanuatu Kastom Governance Partnership Program" May 18, 2012. Annex C, 37. https://www.dfat.gov.au/sites/default/files/vanuatu-kastom-governance-partnership-program-mtr.pdf

[372] Anna Nolan et al, "Vanuatu Kastom Governance Partnership Phase 3 Annual Report," 15 December 2010, Appendix 2. https://www.dfat.gov.au/sites/default/files/vanuatu-kastom-governance-partnership-phase3-annual-report.pdf.

[373] Thomas, "Mid Term Review of Kastom Governance Partnership," 27.

[374] Nolan et al, "Vanuatu Kastom Governance Partnership Phase 3," 11.

[375] One person commented that '…the Malvatumauri has a driver that doesn't drive, a gardener who doesn't garden and a typist who doesn't type.' Thomas, "Mid Term Review of Kastom Governance Partnership," 13.

persistent lack of traction for women, confusion and mismanagement, and an overriding focus on chiefs and the power of chiefs.

Some of Grace Molisa's own engagements with the topic of governance in the late 1990s included a similarly aspirational tone. In a co-authored paper entitled *Governance in Vanuatu: In Search of the Nakamal Way*, Molisa and Pacific academic Elise Huffer link the rising focus of the 'governance phenomenon' through the 1990s with a 'weakening of the state' combined with a neo-liberal agenda of economic and financial reform[376]. In this paper they conclude that the 'Nakamal Way' – portrayed as a kind of indigenous, dialogical and broadly inclusive approach – should be pursued in order to create a 'Vanuatu "brand" of democracy' and a kind of Made-in-Vanuatu good governance.[377] While challenges arising from both *kastom* and the state are identified – including the inability of the democratic institutions to truly enfranchise women and the misuse of *kastom* by politicians – a kind of romanticised view of *kastom* in relation to gender is proposed in this paper:

> Many politicians have taken on the patriarchal characteristics of the 'west' and 'talk the language of man as though only man existed'. They have become alienated from their own culture and have lost their sense of tradition in which everyone was recognised, where all were remunerated in one way or another, regardless of who they were and where the system provided in a fair manner. As such, matrilineal systems of governance are being deliberately ignored and women's traditional rights have not been translated into the modern political and economic context.

Molisa and Huffer identify the 'casting aside of certain practices', and 'lack of knowledge about the respect traditionally accorded to [women]' as responsible for lowering women's status. In their 'Nakamal Way' of governance, at least in this aspirational variation of *kastom* governance, the idea is that these understandings will be rehabilitated.

As I explore in the next chapter, *kastom* in practice in Vanuatu has left little to no space for this. In fact, in Grace Molisa's final publication – printed posthumously after her death – she also focuses on the issue of governance. While on the first page Molisa links this publication with the paper above, in this publication she takes a decidedly different approach to issues of *kastom*, the state, and

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[376] Elise Huffer and Grace Molisa, "Governance in Vanuatu: In Search of the Nakamal Way", *State, Society and Governance in Melanesia, Discussion Paper*, 99/4, 2.
[377] Huffer and Molisa, "Governance in Vanuatu," 12.

governance in Vanuatu. While Molisa references 'Vanuatu Traditional Society' as a source of information in the concluding section of the book, the final sentence states clearly that, 'Democracy has been introduced to Vanuatu in 1980 and is still seen to be the best form of Government to be evolved for Vanuatu.' There is no 'Nakamal Way' referenced here. Instead, in this publication Molisa refers to the 'nakamal clique' that consolidated male power following Independence:

> Just before independence men jostled and vied for the power positions to become available to Ni-Vanuatu for the first time with independence. Women were forgotten, denied and left out of the system, the process and the positions. Women had no opportunity to be educated and trained for those new roles. Men used their old-boy-network and the nakamal clique to reinforce the exclusion of women. Many times they use custom as an excuse to justify their discriminatory behaviour, practice and injustice.[378]

Earlier in the book Molisa is even more to the point. After several pages of explication of what governance and good governance is – for example, she says that it is about promoting equity and equality; regulatory rather than controlling; accountable, transparent and promoting gender balance[379] – she also lists two fundamental 'Missing Links': the exclusion of women from important decision making bodies; and the rule of law, which Molisa says 'applies only for the full benefit of men'[380].

In relation to women's equality, Molisa states simply that the equality provisions in the Constitution and CEDAW – which she points out Vanuatu ratified 'unanimously without reservation' – are not being applied. Commenting on the relationship between the rule of law and *kastom*, Molisa references Vanuatu's Constitution, stating clearly that where there is disagreement between the two, 'formal or written law shall prevail.' She goes on to clarify, however, that:

> In the case of Vanuatu to 2001, the constitutional provision that the rule of law shall supersede custom law where the two conflict, has not applied. Practice and reality to date is that custom prevails. Custom is presented as an excuse frequently to discriminate against and oppress women.
>
> As a result, custom rules where the Vanuatu Constitution states otherwise and as a result of that attitude and practice the four basic tenets of democracy are not enjoyed by women in Vanuatu, leaving much to be desired in the quality of Vanuatu's democracy and current governance.' [381]

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[378] Molisa, *Women and Good Governance*, 51.
[379] Molisa, *Women and Good Governance*, 13.
[380] Molisa, *Women and Good Governance*, 14.
[381] Molisa, *Women and Good Governance*, 14.

While Molisa does not discount the contributions that the 'best practices of our own traditional governance' might contribute to the modern nation state of Vanuatu, she is very clear that women must be included, that equality and equity must prevail, that grievous violence against women and girls and patriarchal control must be actively addressed across all spaces, and that the laws of the country – not *kastom* – must regulate and govern relations between citizens of Vanuatu[382]. To date, *kastom* governance and its various articulations in Vanuatu have failed in each of these respects.

7. Conclusion: State Transformation, Women, and the Rise of the 'Nakamal Clique'

This chapter has traced how in the lead up to Independence and in the early years of the state Vanuatu's nationalist project was in large part a project of national liberation, aimed at bridging the social, political, and economic divides, and the significant inequality that had characterised the colonial state. Despite the emergence of a single-story narrative about Vanuatu's statehood and Constitution as 'Western' impositions, this chapter demonstrates that Vanuatu's Constitution is, in fact, better understood as 'home grown'[383]. With its clear provisions for the protection of human rights and democratic governance, the Constitution was developed by Ni-Vanuatu through an intensive process of deliberation, heated debate, and compromise[384]. Vanuatu's early pursuit of democracy, equality, and rule of law is also reflected in consecutive national planning documents from the 1980s and early 1990s. These documents include clearly articulated commitments to supporting women's equality and to addressing a range of social problems that disproportionately impact women, including sexual and domestic violence.

While the newly independent state of Vanuatu was established with a clear commitment to these principles, from the second decade following Independence these developmental ideals began to fall away. By the late 1990s gender equality was off the state's formal agenda, and instead,

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[382] Molisa, *Women and Good Governance*, 14.
[383] Molisa, *Women and Good Governance*, 21.
[384] Molisa, *Women and Good Governance*, 21.

institutionalising a role for chiefs within the state had taken its place. The backdrop to this transition were circumstances of spiralling corruption and political and economic mismanagement by a range of state actors and institutions. These circumstances provided the context for the rise of a more hegemonic and culturally based nationalism. In this new context, male chiefs have actively sought power in the vacuums created by the failures in state structures and institutions. While *kastom* governance has recently been billed as a kind of antidote to state failure[385], in practical terms it has become shorthand for providing male chiefs with an increasingly regulatory role within the state. As I explore in later chapters, within Vanuatu's broader justice sector, this push aspires to have chiefs creating, enforcing, and mediating their own rules within their communities in a largely self-regulating way. *Kastom*, reconstituted and instrumentalised this way by the 'nakamal clique' – an increasingly power-hungry and patriarchal male *kastom* lobby – has direct and negative implications for the lives of women and girls, as well as for the delivery of justice in Vanuatu.

These patterns reflect some of the global themes around patriarchy, nationalism and culture raised by political scientist Himani Bannerji in her 2020 book, *The Ideological Condition*. In a chapter titled 'Cultural Nationalism and Woman as the Subject of the Nation' Bannerji situates this rising culturalism within the context of broader global trends. Bannerji argues that over the past few decades we have seen 'massive attempts at unravelling the fabric of social justice woven by the world'[386], describing this as a 'gathering fascism with many faces'[387]. In analysis that evokes Grace Molisa's powerful poem, *Colonised People*, Bannerji points out how nationalist mobilisations of culture '[render] women and other groups marginal with the ruse of tradition which is largely an internalised form of colonial discourse'[388]. In order to understand these trends and their historical trajectories, Bannerji argues for a kind of critical epistemology that is rooted in feminist analysis of patriarchy and of gender[389]. My next chapter, 'Man on Top, Woman Down: Women and *Kastom* in Vanuatu' engages in this more

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[385] Nimbtik, "Worlds in Collision", 238.
[386] Bannerji, *The Ideological Condition*, 514.
[387] Bannerji, *The Ideological Condition*, 514.
[388] Bannerji, *The Ideological Condition*, 526.
[389] Bannerji, *The Ideological Condition*, 516.

detailed, critical analysis of patriarchy and gender. Here I examine how the culturalist and normative articulations of *kastom* as national identity conceal the fact that *kastom* is a much more complex proposition for women and girls, not only framing and dictating their position in Vanuatu society, below men, but silencing and erasing the violence they experience in multiple ways.

Chapter Five
Man on Top, Woman Down: Women and *Kastom* in Vanuatu

1. Introduction: Women, *Kastom*, Inequality

In 2015 I was part of a team doing research in a displaced village on Malekula. While the 'temporary'[390] village was beautiful, so many aspects of the situation were heartbreaking. When I asked the relatively young, dynamic chief questions about women in the community and their role and status, he first looked at me somewhat sheepishly. Then, invoking *kastom*, he pointed to the place in the river where women were expected to bathe. The bathing pool for women was essentially a trickle of water in a muddy, shallow part of the stream. He then pointed upstream to a deeper pool: this was the place for men. A raised eyebrow, a look, and we both knew exactly what he was talking about. Quite literally, man on top, woman down. This language of man on top, woman down is regularly used to describe women's position vis-a-vis men in almost every aspect of life in Vanuatu, figuratively and sometimes quite literally, as this small example illustrates. It is a common shortform for describing women's position in Vanuatu society: below men. Different and not equal.

For me man on top, woman down pervaded many aspects of life in Vanuatu, even within our progressive family. I observed young male members of our extended family being provided with opportunities for community and '*kastom*' recognition that our daughters were never offered, and that established gendered boundaries and difference that were never questioned or even considered. For example, despite many concessions to modernity[391], circumcision for boys in our Uripiv community involves '*kastom* dress' (grass skirts), painted faces, a bow and arrow and the shooting of a crafted 'pigeon'. Young male family members are feasted and celebrated during circumcision-focused rites

[390] In many ways the use of 'temporary' to describe a village in Vanuatu seems to be an oxymoron. *Kastom* implies continuous occupation of a place, of land by a discrete group of people. The circumstances of this village and many others, however, demonstrate that the circumstances of many villages are far more complex than this.

[391] In our family (as with many families in Vanuatu) this included boys who were sequestered for circumcision being allowed to eat pizza and play video games, and stay in concrete house with toilets and beds, as opposed to the use of more 'traditional' housing, food and activities. Many families also support the use of modern surgical instruments and health care practitioners for circumcision. The only unbreakable rule seems to be the prohibition on seeing women.

of passage which publicly declare our family and community's enduring connection to *kastom*, as well as their manhood, their *kastom* identity, their position, and their power. Maleness inscribed a very particular category of meaning.

There was no equivalent process for our daughters who spent their transitional years from childhood to adolescence in Vanuatu. In one such circumcision ceremony one of our daughters was invited to welcome guests with a *salusalu* (flower garland or lei). She adores her grandparents, her family, and her cousin brothers, and so she did it with grace, love, and a smile on her face. In that context, however, her role was receptive, decorative, and not just subsidiary, but an afterthought. Unlike her male cousins, no public *kastom* identity was declared. When I asked if there was an equivalent public and celebratory *kastom* process for our daughters and why no one – the powers that be in the family – had considered them, I was told there probably were, but they had likely been forgotten. Maybe. But what does it mean to be forgotten? Forgettable processes are clearly subsidiary. For all intents and purposes, at least in our family, they do not exist.

While this might have reflected something particular to our family or our community, the implications and meanings of *kastom*, and what *kastom* inscribes and declares for men and women, boys and girls, is regularly marked by difference and inequality in Vanuatu. In a much-quoted speech that a young Grace Molisa (then Mera) delivered to the *First National Conference of Vanuaaku Women* in May and June of 1978, the section focusing on *Women in Traditional Society* begins with the following paragraph:

> The female of the human species in Vanuaaku traditional society is secondary or inferior to men. One gets the impression that the woman is somehow not wholly human. Hence on the birth of a baby girl one often hears the comment, "Oh, if only it was a boy!" suggesting that somehow nature has played a trick on the parents by allowing such a misfortune [to] befall them and the female child of course that it is tolerable but not really satisfactory. In childhood a boy is allowed to assert himself while a girl is taught subservience.[392]

[392] Grace Mera, "The Status of Women in Traditional Society in Church and in Politics," First National Conference of Vanuaaku Women, May 28th to June 3rd 1978, 1.

More than 20 years later we experienced the same exclamations of 'Aw, sorry!' when people first saw that our second child was a daughter and not a son. While Molisa references the influence of a 'plurality of social factors' in Vanuatu in the late 1970s, including the diversity of traditions, and the role of religion, colonialism, and politics in shaping society, she also situates these views about women and girls as enduring perspectives. For her, this reality of *kastom* in Vanuatu had '...instilled in our subconscious the idea that men are good, women are second best, men are strong, women are weak, men are wise, women are dumb, men are aggressive, women are submissive, men are adventurous, women are timid and so on.'[393] Man on top, woman down.

The enduring and subconscious nature of these beliefs reverberated through so many aspects of my life and work in Vanuatu, and particularly in conversations with women and girls, over more than two decades. In 2018, even a family Christmas gift provided yet another stark reminder. While the gift was well-intentioned and was meant to provide all of us in our extended family (who were gifted the same book), and especially our children and their cousins, with a sense of Vanuatu's unique *kastom* identities, read as a mother and aunty of young Ni-Vanuatu women it was also deeply troubling. This book on the *Traditional and Contemporary Customs of the Islands of Vanuatu* includes 76 separate contributions from every corner of Vanuatu offered by various community representatives.

In this collection, each community entry is divided into headings covering *kastom* practices for marking various life transitions, as well as rules around inheritance (and land), and becoming a chief. Only two sections in each entry are specifically devoted to girls and women. The first, titled 'Growing up – girls' follows the section on 'Growing up – boys'. For boys, across community after community, one and often two big family feasts (circumcision and first shave) were held to publicly mark a boy's transition into manhood. For girls, in nearly every entry, the corresponding coming of age marker (first period)

[393] Mera, "The Status of Women in Traditional Society," 2.

was about closure, seclusion, domesticity and pollution[394]. This excerpt from the area of 'South East Malekula' reflects the tone of most entries in this category:

> **Growing up – girls:**
> First period: girl stays in family home and is looked after by mother and aunties. No cooking, no gardening. No feast or custom ceremony.[395]

In the final category simply titled 'Women', there were typically only three entries. In stark contrast to the entries about the *kastom* lives of men, the vast majority of entries under this category 'Women' were about restriction: women do not become chiefs, women do not kill pigs[396]. In 35% of the communities and areas with entries, women were either strictly forbidden from attending meetings in the *nakamal* or *nasara* (the place where formal community decision-making happens) or they could only enter if invited by a chief. In half of the entries, women were either prohibited from speaking altogether or could only speak if invited to do so.

Despite these everyday realities, women and girls are encouraged and expected to celebrate *kastom* in Vanuatu, and more recently even to seek their equality and 'find their rights' in and through *kastom*. This chapter begins by examining *kastom* as a kind of hydra in Vanuatu, where the normative experience of nationalist [male] *kastom* exists beside a more disciplinary experience of *kastom* for women and girls. It will then move on to examine the related concept of complementarity in Vanuatu as it has been mobilised in relation to *kastom*, and the cunning[397] work that complementarity actually

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[394] Mera "The Status of Women in Traditional Society," 1. Mera writes: '…the very nature of womanhood embodies all that is vile and unclean. When a woman menstruates she is banished from the family dwelling to reside in an isolated hut in quarantine. During that period she is not allowed at or near the family's gardens or anywhere the family frequents and members of the family keep away from her and her little prison. It is believed that menstruation causes damage to crops and terrible illness to people, especially males, hence the necessity for the strict monthly quarantine. At the end of menstruation the woman must thoroughly bathe herself as a sign of purification before she can emerge from her seclusion and mingle once more with the untainted folk.'

[395] University of the South Pacific, *Traditional and Contemporary Customs of the Islands of Vanuatu* (Port Vila: USP, 2018) 94.

[396] Killing pigs is a key aspect of grade taking processes in the Northern part of Vanuatu. Higher rank is achieved through the killing of pigs, with the greater number of pigs killed denoting a higher rank.

[397] I use cunning in the sense that anthropologist Elizabeth Povinelli evokes in her book *The Cunning of Recognition*. In the context of Vanuatu a liberal sense of recognition is extended in the call for women to seek, perform and demonstrate their rights in *kastom*. While this appears to open the door to women and greater equality, it effectively shifts the responsibility and focus to women, and then blames them when they fail (which, given multiple circumstances, they are likely to do). In doing this, men (and male leaders in particular) in Vanuatu are also effectively absolved of their responsibility (and guilt). Instead of the (male patriarchal) state taking active responsibility for addressing the grave and ongoing injustices and inequality in women's lives, and for ensuring women's equal rights (and protections) under Vanuatu's Constitution, it becomes women's responsibility to adequately perform and operationalise their proper *kastom* identity – and women's problem, failure (and shame) when they fail to do so.

does to distract from the realities of women and girls' everyday lives. The next section considers the discourse of 'women chiefs' particularly as it is mobilised whenever women's secondary status in *kastom* is raised. The chapter then goes on to consider how various representatives of chiefly bodies, and particularly the Malvatumauri have themselves positioned women in *kastom* over the years. The chapter ends by considering the concept of respect within kastom and how respect, like *kastom*, has multiple meanings for women and girls, many of them disciplinary.

This chapter will demonstrate that the call to recognise complementarity and for women to 'find their rights in *kastom'* also functions as a cunning distraction from other realities of *kastom* for women and girls in Vanuatu. It is cunning because it conceals grave inequalities, violence and injustice against women and girls under a veneer, a false promise, of recognition. In doing so, responsibility is also shifted to women and girls to adequately perform and operationalise their proper *kastom* identity – and it is their problem, failure (and shame) when they inevitably fail in these efforts. The normative, patriarchal articulation of *kastom* as national identity effectively conceals the fact that *kastom* is a much more hydra-headed proposition for many women and girls. Along with its closely allied notion of respect, *kastom* frames and dictates women's position in Vanuatu society: below men. For many women and girls in Vanuatu, beyond the idyll of 'natural' village life and the shiny patina of a unique identity, *kastom* also represents restriction and silencing, and even violence and shame in the context of enduring male privilege and power. In this way *kastom* is also a key site for patriarchal domination – and the violence that sustains and perpetuates it – in Vanuatu. Man on top, woman down.

2. Women, Power, and the Hydra of *Kastom*

In the era leading up to and following Independence, the pursuit of *kastom* was not only a nationalist preoccupation in Vanuatu, but it was also a decidedly gendered endeavour. According to anthropologist Lissant Bolton, until the early 1990s *kastom* in Vanuatu had, 'for all practical purposes, been treated as referring only to things that men do and know, to men's dances, stories, rituals, and

preoccupations.'[398] Writing in a booklet on culture that she produced for the Vanuatu National Council of Women (VNCW) in 1990, Grace Molisa criticised this exclusion of women from *kastom* in the first decade after Independence in the following way:

> In the last ten years it seems that whenever our leaders have talked about culture they have only spoken about men. They suggest that men have rights in custom, culture, and tradition but women do not. Women are nothing. Men are something.
>
> When there are cultural activities at the national level most of the time only men are given the opportunity to take part. The Cultural Centre fieldworkers are all men. This means that a visitor or an ignorant person would be able to think that in Vanuatu culture is only a male thing.[399]

As suggested by Molisa, this exclusion of women from *kastom* activities was noticeable not only at the level of the state, but also within Vanuatu's national *kastom* institution, the Vanuatu Cultural Centre. According to Bolton, this exclusion of women was not only instituted in response to vocal 'opposition' from the male Cultural Centre fieldworkers but had also been reinforced by the group of men who led the organisation through its early years and who Bolton describes as 'content to focus on projects relating to men only.'[400]

To remedy this situation, efforts to show that 'women have kastom too'[401] received increasing attention at the Vanuatu Cultural Centre particularly starting in the early 1990s. This project fit within the Centre's broader project of *kastom* revival. In the case of women's *kastom*, it was not only practices that were being rehabilitated and revived, but also the notion of complementarity: the idea (and ideal) that what women do in *kastom* may be different from men, but their practices and contributions are still equally necessary and valuable. Writing in 1987 Nicolas Thomas suggested that Pacific colonists and missionaries – and later Pacific historians and anthropologists – had been culpable for 'overemphasizing the degree of gender inequality'[402] in the Pacific and that 'a central element of this negative construction was the conflation of difference and particularly segregation with inequality.'[403] While his article focuses primarily on Polynesian societies, this view that gender inequality

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[398] Bolton, *Unfolding the Moon*, xiii.
[399] Bolton, *Unfolding the Moon*, 61.
[400] Bolton, *Unfolding the Moon*, 62.
[401] Bolton, *Unfolding the Moon*, 153.
[402] Nicholas Thomas, "Complementarity and History: Misrecognizing Gender in the Pacific," *Oceania*, 57 no. 4 (June 1987): 261.
[403] Thomas, "Complementarity and History: Misrecognizing Gender," 262.

represented a so-called 'Western' misinterpretation or misrepresentation of *kastom* is also a cornerstone of complementarity.

This view of complementarity and 'different but equal' was particularly prevalent in Vanuatu through this period. For example, in a 2002 article on *Gender and Custom in the South Pacific*, Fijian academic Claire Slatter suggested that: 'The argument that men and women in Pacific Island societies have been "equal but different" and played complementary roles appears to be enjoying a revival, especially among women scholars working on Vanuatu.'[404] One of the scholars Slatter references is Lissant Bolton, who became a key proponent of this view starting from the early 1990s. In a 2005 interview Bolton expressed the complementarian view of 'equal but different' in the following way:

> The whole point of western feminism is that it equates equality with similarity: to be equal you have to be the same. Surely that's a fundamental mistake in this country. You don't have to be the same to be equal. In fact, in tiny societies, people try very hard to create differences because otherwise it is very boring.[405]

While it is unlikely that women in many places in Vanuatu have much time to experience boredom given days and evenings filled with heavy duty gardening, childcare, food preparation and other productive tasks, Bolton's comments clearly reflect this complementarian ideal of different but equal. In her articulation, the image of the downtrodden Melanesian woman is a result not only of colonisation and missionisation, but of 'western feminism' as well.

There is no doubt that patriarchal social structures deriving from Europe that were established through the period of more intensive contact in the 19th century and through the violence wrought by colonisation in the 20th century had deep and enduring impacts in Vanuatu society as elsewhere. A representative of the Vanuatu Cultural Centre who I interviewed shared a somewhat typical perspective within that institution on this topic. This individual suggested that Christianity and colonialism had been the key protagonists in establishing women's role in Vanuatu society, saying:

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[404] Claire Slatter, "Gender and Custom in the South Pacific," Yearbook of New Zealand *Jurisprudence*, Richard A Benton Ed. Vol 13 and 14 (2010, 2011): 73.
[405] Lissant Bolton, "Lissant Bolton on Women in Trade in Vanuatu," *The Vanuatu Independent*, Issue No 107, Sunday 27 November 2005, 18.

> …lots of the reasons [women] are at home today, in my opinion, is attributable to not just the missionaries, but the views of white people at that time. How they treated women. Women didn't have many rights also, so basically that was the mentality imposed on…and it gave more strength to the argument that women's place was in the house. So that's what the white man showed us when they first came here.

This perspective is shared by others who suggest that the current state of man on top, woman down that is evident in Vanuatu society reflects a patriarchal order that was introduced expressly through colonialism and missionisation. This view often includes the perspective that while *kastom* 'before' contact authorised different roles for women than it did for men, these roles were still important to society and complementary.

While the changes wrought by colonialism and missionisation have been profound, and there may be value in this understanding as a way of '…engaging with, interrogating, and remaking custom "from the inside"'[406], there are also important cautions. Critical historian Sumit Sarkar describes this kind of vague nostalgia located in the '...pasts of an ever-receding community, or a present that can consist of fragments alone' as problematic, as it distracts from contemporary realities. According to Sarkar:

> Through [this] enshrinement of sentimentality…manifold, concrete contradictions and problems [become] a kind of dream of childhood...presiding over a home happy and beautiful, by some alchemy, in the midst of all its patriarchy.[407]

Slatter also provides an essential caution. For her, and other Pacific feminists this kind of romanticisation of the past poses significant challenges. In an interview, Slatter shared the perspective that leading Pacific feminist Teresia Teaiwa would comment that she did not romanticise culture 'because she knew its darkest truths'. These darkest truths relate to the power, violence, and disciplinary control that men wielding *kastom* regularly enact in relation to women and girls. Anthropologist Lamont Lindstrom evokes this gendered disciplinary aspect of *kastom* in practice when he points out in his chapter on 'Chiefs in Vanuatu Today' how several of the Malvatumauri's policies '...seem designed particularly to keep women and youth under closer control'.[408]

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[406] Slatter, "Gender and Custom," 73.
[407] Sarkar, "Decline of the Subaltern," 108.
[408] Lindstrom, "Chiefs in Vanuatu Today," 219.

In fact, *kastom's* darkest truths make it a distinctly hydra-headed proposition for many women and girls, as was poignantly highlighted by a young Ni-Vanuatu woman I interviewed. While she talked about pride in her unique identity and appreciation for a village context where she had space to play, she also spoke about another side of *kastom* as she had experienced it as a girl. Talking about the strictures and harms that *kastom* had represented in her childhood, in a village where '*kastom* was very strong', she used the language of hatred. When I asked her why she had framed it this way, she replied:

> When I was small, I grew up in a village where a girl didn't have the right to do anything, and you have to listen to your parents. You had to do everything that your mom did, you had to respect your brother, you had to respect your father. But at that time, as I grew up, I didn't have any voice in the house. And everything for me as a girl, I was just really afraid. I was afraid to say anything because afterwards I would just be blamed for everything. I was afraid to say anything, because I was afraid they would say it was my fault.

She went on to share multiple experiences of sexual abuse that she had been subject to in that village context as a little girl, and not having told anyone because 'I was afraid that they would say it was my fault, because I am a girl.' Invocations of 'rights in *kastom'*, 'different but equal' and romantic pasts fall flat in the context of these darkest truths, in the midst of all this patriarchy.

Despite the hydra-headed nature of *kastom* for women and girls, however, a normative view of *kastom* prevails in Vanuatu. In this normative view, *kastom* is tradition and identity, exemplifying and valuing Vanuatu's unique ways of being in the world. Implicit in this is the idyll of village life, the wisdom of the [male] chief. This is the *kastom* that has flourished in nationalist revival through festivals and ceremony, and from which tiny shards are carved off for external consumption: the documentary film, the ethnography, the tourist spectacle. This is the *kastom* that many anthropologists study (and exalt), and that the Vanuatu Cultural Centre promotes. Where the spectre of man on top, woman down seeps through the patina of this enduring, nostalgic celebratory moment, we are encouraged to look away, to find other reasons. Women are encouraged to rehabilitate their own experiences of *kastom*, to seek and embrace complementarity, and to 'find their rights in *kastom*' (women chiefs!).

While we collectively revel in these normative recitations of *kastom*, situated slightly outside of the camera frame is the fact that *kastom* also functions as a regime of power. For men, as they embody, mobilise, control, fulfil and occupy it, the normative aspects of *kastom* amplify them. Even the most marginal men still derive some of this power in relation to women and girls. For women and girls, *kastom* has other meanings that exist outside and beyond this normative experience. As a regime of power, *kastom* for many women and girls is also about submission, structuring them as passive, voiceless, Other. For younger women, women who are poor or women who are located at a greater distance from prominent families and spaces this aspect is magnified and even multiplied. In this other articulation of *kastom*, women and girls are the objects of male power and authority, and as such, are regularly subjected to *kastom's* darkest truths: discipline, control, and violence. This chapter considers *kastom* as a regime of patriarchal power, and traces some of the everyday experiences of women and girls in the context of this 'other side' of *kastom*.

3. The Cunning of Complementarity: Canoes and Boat Breakers

As described above, the notion of complementary gender roles in *kastom* has been actively promoted in Vanuatu by the Vanuatu Cultural Centre as well as by a number of prominent women including Hilda Lini and even, for a time, Grace Molisa. I observed this firsthand in a session on gender that was organised for the staff of the Vanuatu Cultural Centre in the late 1990s where Molisa – who had been an active member of the Vanuatu Cultural Council from the 1980s – offered the first *toktok*. Stating in her opening address that women are crucial to *kastom*, that difference is not inequality, and as she presented the normative, state-endorsed view of *kastom* as a kind of good-in-itself, Molisa set the tone for the whole workshop. The effect this had on the other women in the room, and particularly the younger women, was palpable. In the rest of the workshop none of the perspectives and stories that I had heard from the young women I worked with, based on their own experiences and observations, were voiced and discussion was muted. A journalist who interviewed Molisa in the late

1980s noted a similar tension, stating that, 'She emphasized women's rights, but rights that should be exercised within traditions that might or might not be oppressive'.[409]

In many ways, Molisa's embracing of complementarity and the related concept of 'women's rights in *kastom'* through this period are troubling, yet also quite understandable. As a strong nationalist Molisa would have embraced the normative, state-endorsed view of *kastom* along with other national leaders of the time. Complementarity would be a necessary adjunct to address the absence of women in this discourse and rehabilitate their contemporary circumstances. A reading of Molisa's much-quoted poem 'Custom'[410] sheds some light on these tensions. She suggests that *kastom* has been 'conveniently recalled to intimidate women' by local (male) actors, but these men – the 'loudest proponents' – are also 'non-conforming advocates' and 'empty vessels', making *kastom*-in-the-present 'a frankenstein corpse'. Within this context, complementarity represents the ideal of a *kastom* future informed by a romantic interpretation of the past where people lived in the 'full presence of traditions'[411] in a kind of continuous, undifferentiated – and different but equal – state.

Complementarity is also cunning, however. This kind of looking-back-for-the-future that is required also creates a distraction and sidesteps the everyday realities and the 'darkest truths' of the present. The other meanings of *kastom* in the present for women – the other heads of the hydra – are also obscured by this process. As we occupy ourselves with the which-chiefs-are-the-'real'-ones debate[412], and peer longingly towards the past, the machinery and structures of power that have been framed around the 'frankenstein corpse' of *kastom* in the present remain largely unchallenged. A contributor to a conference on Pacific feminism hosted in Fiji (and attended by a young Hilda Lini) in 1987 identified the problem with this very issue:

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[409] Scott Malcomson, *Tuturani: A Political Journey in the Pacific Islands* (New York: Poseidon Press,1991) 169.
[410] Grace Mera Molisa, "Custom", *Black Stone: Poems* (Suva: Mana Publications, 1983) 24.
[411] Elizabeth Povinelli, "Settler Modernity and the Quest for an Indigenous Tradition," *Public Culture*, 11 no. 1 (1999): 28.
[412] Sorting out which chiefs are legitimate chiefs has been an enduring and unsettled preoccupation in Vanuatu since before Independence.

> We keep referring back to what our traditions are, but if it is not a reality today, there is no point in talking about that tradition. I am very anxious that we do not over-defend our traditions. What are the present structures that are part of our reality, and what is women's position in these structures? That is important.[413]

The present structures and the violence they enact on women are key. Yet complementarity demands that we look away, that we look elsewhere to a different moment in time that becomes blurrier as it recedes into the future/past.

Three stories of the *niko* or canoe – told side by side – illustrate the cunning aspects of complementarity in relation to women and *kastom* in the present. In the first story, drawing on Ni-Vanuatu academic Bergman Iati's research, 'The canoe symbolizes society'[414] at the same time that it also structures relationships of power[415]. Iati describes various roles in his depiction of the canoe as society – the *iaramara* as the figurehead or captain who stands in the front, the *tupunus* or agricultural magician who stands in the middle, and the *iani* or navigator who stands in the back to direct the canoe and the others on it. The *iani* is described as 'politically the most essential'[416] but also subtle in his public articulations of power. The *iaramara* and the *iani* are both referred to as 'chiefs' on Tanna. All three – the *iaramara*, the *iani*, and the *tupunus* – are always men in this context.

Women, on the other hand, appear a few paragraphs down in Iati's depiction, in a section titled 'Canoe, women and linkages'. This appears almost as an obligatory adjunct given their complete absence from his descriptions of the 'canoe as society' in the first several paragraphs. When women do finally appear they are described in the broader symbolism of the canoe as the *napuka*, the coconut fibre rope (which, not coincidentally, women themselves also weave). Iati describes this *napuka* or rope as 'consubstantial with the women' themselves – of the same essence. In this story, the *napuka* holds the canoe together and represents 'The bond that is woven by the exchange of women between

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[413] Griffen, Women, *Development and Empowerment*, 111.
[414] Bergmans Iati, "The canoe and its symbols in the societies of the southern islands of Vanuatu," *Cultures, Societes et Environments a Vanuatu et Dans Le Pacifique*, Marc Tabani and Antoine Hochet Eds. (VKS Productions / Pacifique Dialogue, 2013) 86.
[415] Iati, "The canoe and its symbols," 86.
[416] Iati, "The canoe and its symbols," 87.

groups'[417]. The implication here is that women are different but equal, or at least equally necessary. In this depiction, however, men are not only on top of the boat, but they are also active, visible, in control of all aspects of community and political life. They are fully human. Women, on the other hand, are not human but coconut fibre rope, holding men up in the canoe through the efforts of their productive labour, and at the same time essentially invisible. In no way are they configured in the relationships of power on top of the boat. Again, quite literally, man on top, woman down.

In the second story of the canoe, a woman from Tanna who I interviewed interestingly chose the example of the *niko* or canoe to illustrate women's position, providing an alternative reading of 'canoe as society'. As a way to illustrate women's position in relation to men in *kastom* in her community, she shared the *lanwis* [local language] name for women in her part of Vanuatu and described how it was linked to everyday practices. In her depiction:

> …a lot of men, especially where I come from, think that if earlier on in the relationship they don't show the woman who is the boss, then they are going to have problems later on. So the sooner they do it, the better. Women should be submitting, and then that will reduce the amount of problems in the relationship. If women can submit to the husband, then you won't have too much hassle. If the man says 'Okay we're doing this and we're doing this', that's easier.
>
> For women on Tanna, the language name…the traditional language that is used for women on Tanna is…how do you say it? Niko is a boat. So 'boat breakers'. They break boats. If you were running in a boat, in the ocean, and everything is calm…the ship is good, and everything is good. But if you let a woman captain the ship, the woman will break the ship. The ship will run into a rock and get stuck or smash into the reef. And the saltwater will come in and then all the people will be floating all around. There won't be harmony, there won't be unity. It's going to be all over the place.
>
> That's something for us from Tanna. And they stand behind that. Which makes them say, when a woman comes inside a family, they have to train her, they make sure that she stays in line with everything, how to do things. They need to beat her, slap her around a bit, to teach her – you could say you teach her – so that she knows that she won't do those things.

In these two stories detailing the symbolism of the canoe as society on Tanna, women are either the *napuka*, the coconut fibre rope: pliant, passive, virtually invisible, and ultimately not fully human. Or they are 'boat breakers', never allowed to captain the canoe for fear of social disunity and collapse and in need of disciplining – slapping around – and submission.

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[417] Iati, "The canoe and its symbols," 89.

The Vanuatu Cultural Centre endorsed view of complementarity also involves the metaphor of the canoe, in a way which clearly reveals the cunning. As the head of the Women's Culture Program, anthropologist Lissant Bolton describes in her book *Unfolding the Moon* how she made regular use of the metaphor that 'the relationship between men and women's kastom could be compared to the canoe and outrigger – the outrigger absolutely necessary, balancing and enabling the canoe'[418]. Earlier in the book Bolton identifies her own efforts through this time as focused on making '*new* things happen', comparing her work to the role of 'Missionaries, government officials, educators, [and] development advisors'[419]. Even more, she says:

> The irony did not elude me: I found myself advocating to my audience some of the very propositions I had planned to investigate. Instead of listening to women to ascertain what they thought about kastom and whether they classified any of their activities in such terms, I found myself telling my audience that they, as women, 'had kastom too' (as well as men) and that the textiles they made and used were kastom and were important. I became an evangelist. I found myself advocating that women reclassify and reevaluate their practices and knowledge with respect to textiles as kastom and that they then act on them as kastom.[420]

In this self-conscious, and even 'evangelical' production of complementarity – women as outrigger – Bolton says that '...the ways in which men's kastom is dependent upon what women do was asserted.'[421] Crucially, at the same time, in these assertions around women's *kastom*, she also says that she was 'extremely careful not to raise issues of power or relative merit', but rather to simply 'assume equality'.

In this third story of the canoe, the Cultural Centre endorsed approach to complementarity is clearly elucidated: power is ignored while equality is asserted. However well-intentioned the motivation may be, this version of the canoe as society is also misleading and dangerous, and self-consciously seems to ignore women's lived experiences. Troublingly, in this articulation 'equality' is also reduced to the lowest common denominator of 'equally necessary'. The limitations of this are obvious: factory workers are equally necessary – if not essential – to production, but no one would depict their relationship with factory bosses and owners as one of equality. Not surprisingly, Bolton herself reveals

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[418] Bolton, *Unfolding the Moon*, 171.
[419] Bolton, *Unfolding the Moon*, 153.
[420] Bolton, *Unfolding the Moon*, 152.
[421] Bolton, *Unfolding the Moon*, 152.

this key issue when she describes the ongoing need to segregate women from men in meetings around women's *kastom* because, '…if you were doing it with men and women there would for certain be a constant tension from certain men about women getting above themselves.'[422] Tellingly, the concern is not about keeping women and men's equal-but-different knowledge and practices separate, but rather about women getting 'above' their place: below men. While the Vanuatu Cultural Centre and their advocates may have chosen to assert equality and ignore power, that does not mean that power is not actively mobilised and present in articulations of *kastom*, even in their own curated spaces and imaginings.

The cunning of complementarity raises its head in other places as well, including for example, in Vanuatu's embrace of the '*kastom* economy'. In 2007 to mark the Year of the *Kastom* Economy, a youth essay prize competition was run by the Vanuatu Cultural Centre ostensibly to promote the complementarity of women's roles and contributions. Revealingly, the winning essay (written by a boy in Year 10) frames women's 'value' in the kastom economy in the following way:

> Imagine a society without women or mothers and only men and children! Would life be easy? Who will look after the children and cook their food? Without mothers, life will be difficult and even without their mats, how could custom marriages and other ceremonies be organised by men? It is women who empower men to be 'big men' and their contributions that also leads to stability in society today.[423]

This young author concludes his essay with the question: 'If there are no women, who will weave the mats and who will tend the pigs, or who is going to prepare the laplap or weed the garden?'. Necessary, but not equal. Some of the young women authors were even more to the point. Identifying several 'challenges', the second prize winner described women as 'overlooked and often not appreciated', as they are occupied with a litany of productive chores while the men 'end up in the nakamals'[424]. Another young woman author who won a 'Highly Commended' put it more simply: 'In Vanuatu nowadays people don't really care about what women do. We usually say men are the head

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[422] Bolton, *Unfolding the Moon*, 152.
[423] Jean Tarisesei, Woman mo Kastom Ekonomi (Port Vila: Vanuatu Cultural Centre, 2007) 9.
[424] Tarisesei, *Woman mo Kastom Ekonomi*, 13.

of the house or a village. It is true but women do everything for them.'[425] Being equally necessary, is clearly not equal.

The case of bride price is even more insidious. In Bergman Iati's complementarian depiction of women as *napuka*, the coconut fibre rope is said to represent 'matrimonial exchanges' where women 'link places and people together'. In this depiction of bride price as linkage, he offers the strange distinction that while women may be 'goods' they are not 'objects'[426]. While this idea of complementarity of the bride price – where women are exchanged to fortify familial connections – is often evoked by *kastom* advocates, some women have other ideas and other experiences. In a poem titled 'Bride Price' published in the booklet, *Who Will Carry the Bag?*, the Ni-Vanuatu author describes her experience in relation to bride price in the following way:

> Bride price makes me feel just like a speed boat
> Or a truck that can be bought.
> It makes my family greedy
> For they just want a higher price.
> It makes my in-laws and my grandparents angry
> When I don't yet have a male baby.
> It makes my husband think that I must always obey him…[427]

Anthropologist Martha Macintyre describes being met by 'cynical stares' from women in Papua New Guinea when she shared a view of '…a marriage ritual as indicative of the complementary (valued) role of women in the past'[428], with one woman exclaiming, 'You anthropologists, I don't trust that sort of talk. It sounds like my father trying to get me married to some man who offered a big bride price.'[429] As Macintyre suggests, the fact that '…men could insist that a woman marry her rapist in order to gain an appropriate bride price'[430] – which is also a practice in Vanuatu – reveals a rather mercenary commitment to the transactional nature of the bride price and women's inequality[431]. Not only are men

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[425] Tarisesei, Woman mo Kastom Ekonomi, 28.
[426] Iati, "The canoe and its symbols," 88 to 89.
[427] Roslyn Tor and Anthea Toka, Gender, Kastom and Domestic Violence: A research on the historical trend, extent and impact of domestic violence in Vanuatu, Department of Women's Affairs (August 2006) 28.
[428] Martha Macintyre, "Taking Care of Culture: Consultancy, Anthropology and Gender Issues" *Social Analysis: The International Journal of Anthropology*, 45 no. 2 (November 2001): 114.
[429] Macintyre, "Taking Care of Culture," 114.
[430] Martha Macintyre "Hear us, women of Papua New Guinea! Melanesian women and human rights," *Human Rights and Gender Politics: Asia-Pacific Perspectives*, Anne-Marie Hilsdon, et al Eds. (London: Routledge, 2000), 165.
[431] Richard Eves, "'Full price, full body': norms, brideprice and intimate partner violence in highlands Papua New Guinea," *Culture, Health & Sexuality*, 21 no. 12 (2019).

not being transacted, as goods, objects or otherwise, bride price is commonly used to moderate or justify violent abuse and control by men over women[432].

In many ways, even when it is mobilised strategically to revive, rehabilitate, resurrect, or reconstitute *kastom*, complementarity has other meanings and impacts. The ideal of women's rights in *kastom* is replete with assumptions: there was a 'time before' that is knowable, in this 'time before' women were different but equal to men, and women and girls in the present are in a position to both possess (or even make up) this knowledge and mobilise it to their advantage. Beyond the limitations of this revisionist and romanticised set of assumptions, this also places the burden – and the shame – on the shoulders of women and girls who fail to execute this impossibility. Cunningly, complementarity also distorts and reduces the meaning of equality. While equality may not require sameness, in complementarity it is reduced to a kind of contentedness with being equally necessary. At the same time, the 'darkest truths' of the everyday lives of women and girls in the present and the man on top, woman down-ness of boat breakers, *napuka* and even outriggers is pushed to the side, out of view.

4. Stepping Beyond Exceptions: The Discourse of 'Women Chiefs' in Vanuatu

As I describe in the Preface, in late November 2017 I attended the opening of Vanuatu's *Civil Society Forum on Gender Equality – Past, Present, Future*. This event was held as a follow up to the *13th Triennial Conference for Pacific Women* that had taken place in Fiji the previous month. Hilda Lini, one of the most successful, prominent, and powerful women in Vanuatu's history (and, as noted previously, the sister of Vanuatu's founding Prime Minister, Walter Lini) provided one of the opening speeches. Describing her own experience of being dissuaded to run for political office in the first government of Vanuatu, Lini told women to 'leave the negative behind' and encouraged them to step

[432] Macintyre, "Hear us, women of Papua New Guinea!," 165.

beyond their oppression and beyond being held back by men. She went on to describe her own position as 'one of the highest-ranking chiefs' and as a 'full person' in her society on Pentecost.

There is no doubt that Hilda Lini is a formidable, impressive, and powerful woman by almost any measure. Personally, I have found her warm, political, inspirational, and simply interesting. Later that day, however, I found myself driving a woman who I knew quite well and her daughter home. Her daughter, incidentally, had come to our house several weeks before with badly cut knees – the result of jumping out of a moving bus on her trip home after school. She had leapt from the bus after becoming increasingly fearful that the male driver and his friend were taking her somewhere secluded to sexually assault her, after having ignored her repeated requests for a stop. This young woman's fears were entirely legitimate. In my own circle of friends and among their daughters I personally know of three similar bus 'incidents'. In 2017, 2018 and 2019 the *Vanuatu Daily Post* reported on three prominent and separate cases involving women leaping from moving buses[433]. One of these women died from her injuries. These were just the incidents that were reported.

That day while I was driving this mother and daughter home to a nearby village, however, the older woman shared a story. She described how she had come across another woman who was running down the street without any shoes earlier that day. We both knew the woman and her husband. The shoeless woman had been woken up in the middle of the night by her husband who had returned from a night of kava and alcohol, demanding that she prepare him a meal. When she did not do this fast enough – the kitchen house was up a hill, and it was late at night – he beat her. The fight picked up again in the early morning, when the woman fled the house without her shoes, and was found running down the road. The woman who I was driving had purchased a new pair of *savat* [flip flops,

[433] Adorina Massing, "Woman Leaps off Bus, *Vanuatu Daily Post*, 2 Aug 2019; Staff Reporter, "Woman Stabs Man" *Vanuatu Daily Post*, 18 May 2017; Richard M. Nanua, "Woman Dies After 'Fall'," *Vanuatu Daily Post* 8 Jan 2018; Yasmine Bjornum, "Time to start policing men's behaviour instead of women", *Sista* (8 March 2017), https://www.sista.com.vu/time-to-start-policing-mens-behaviour-instead-of-women-beboldforchange/.

plastic sandals] that day to deliver to the shoeless woman who had been staying at a relative's house in the village where they both lived.

While we were contemplating this woman's circumstances and shaking our heads at the husband who had otherwise appeared rather meek and reasonable, I shared some of what Hilda Lini had said earlier that day. The notion that women should 'step beyond' their oppression settled around us for a minute or two as we travelled down the road. Then there was a snort and both women said nearly in unison, 'Ya, maybe if you're Hilda Lini!'. Clearly the rallying cries of powerful women do not always track well with the everyday realities of many women and girls in Vanuatu. Grace Molisa had herself actively acknowledged this fact, saying that '…to deny the centrality of gender difference because it is eclipsed by rank can risk denying discrimination of ordinary women in the Pacific, in any country.'[434] Despite this caution, however, whenever *kastom* and gender equality comes up in Vanuatu, women chiefs are regularly invoked, and Hilda Lini is *always* referenced.

A bizarre piece of work carried out by representatives of the New York-based 'Explorer's Club' and led by American 'Explorer' Lew Toulmin in 2016 has only added to the confusion on the topic of 'women chiefs' in Vanuatu. The 'expedition report'[435] is based on 21 interviews and one email exchange. Of these, fewer than half of the individuals who were interviewed actually agreed that there were women chiefs in Vanuatu. Hilda Lini (who also provided a key interview) and a small handful of prominent women (mostly from the same province as Lini, Penama province) were used as examples. Yet most of the men who were interviewed, several chiefs, and several of the women themselves clearly disputed the label of 'women chief' in their interviews. The primary confusion stemmed from the meaning of the *kastom* rank of *notari* for women on Maewo. While the 'explorers' and a few of their interlocutors translated this into 'woman chief', for others this *kastom* rank for women, while

[434] Margaret Jolly, "Beyond the Horizon? Nationalisms, Feminisms, and Globalization in the Pacific," *Ethnohistory* 52 no. 1 (Winter 2005): 150.
[435] Lew Toulmin et al, The Female Chiefs of Vanuatu: Explorers Club Flag #101 Expedition Report, September 2016 http://www.themosttraveled.com/Vanuatu/Flag%20Report%20for%20Female%20Chiefs%20Expedition%20Final.pdf.

important, was not one of broad community leadership and was clearly subsidiary to men. For them, *notari* were simply not chiefs.

Despite the imperialist and exoticising tone of the Explorer's Club investigation – which involved a literal flag planting and a presentation to the Geographical Society of London – this 'expedition' has resulted in numerous publications which have crowded the *kastom*, women and chiefs space. As a result, following in a long lineage of Pacific curiosity collecting, women chiefs in Vanuatu are a thing. What is never asked, however, is what do these women chiefs or even just the rank of *notari* (Maewo) or *motari* (Pentecost) mean for women's everyday lives? It is likely that this role involves leadership of other women, focusing particularly around organising 'women's work'. This would include women's productive, often uncompensated, and largely invisible labour carried out to support often male-led, community processes. This would include gardening and food preparation, and the supply of exchange items, such as weaving mats and feeding pigs. The substantive, actual, day-to-day power for group decision making and leadership, however, is held by men. Ultimately it is still man on top, woman down. When you read the interviews in the Explorer's Club report, this is the picture that emerges very clearly.

An individual I interviewed brought this point home when I asked him what he thought about the idea of 'women finding their rights in *kastom'*. While this idea of women's rights in *kastom* is taken up at other points in my thesis, this individual (who hails from an island that is broadly identified as 'matrilineal') had the following to say:

> …the way things are set up [in *kastom*] is just skewed against women. I mean not just the way the village structure is set up, with the chiefs always being male, but thinking of the way when marriages happen, it's always the girl, the woman, who leaves their family and goes to the male's family. So it's like, even that practice alone gives power to men. And any resources, in land especially [are] usually, not always, but usually transferred through men. On some islands, even on [my island] there is a matrilineal aspect to the way land is distributed, but mostly it's the men who have the bigger say…Saying women should practice their rights in *kastom*, I think it doesn't really solve [this]. How can women have rights that are equal to men, or have the freedom to pursue whatever they want in life? Because there is always that restriction on what women are allowed to do, what they can do. That they are not on a level playing field if they are just pursuing their rights within *kastom*.

When I pressed further and raised the possibility of women chiefs, offering the standard example of Hilda Lini, and also mentioning the 'elusive women chiefs of Maewo', he replied: 'I would accept that as being something useful – worthwhile – if there were a couple of Hilda Lini's around. There is only one Hilda Lini and how many male chiefs across the whole island of Pentecost – and Maewo? There are a couple, a few women who have managed to gain status, a sense of power, but it's not [the same] when you compare it to the kind of power, privilege, that men hold, across society.'

Even Hilda Lini does not provide such a straightforward example of equality, despite her fairly broad recognition as a chief in Vanuatu society. One woman I interviewed wondered why, despite Lini's deep political experience, her talent, and her high standing in the *kastom* of her place, she had not been selected to carry on the political legacy of her famous brother Walter Lini when he died. At that time a brother with much less experience in all of these areas was promoted by the men in her community to take Walter Lini's place in the political arena. In an interview in February 1980, a young Lini herself described being rebuffed as a candidate in the November 1979 elections leading to Independence by 'male opposition' from within her own party:

> In the last elections in November, I was supposed to be one of the candidates for the Vanuaaku party but there was a lot of opposition from the male society in our party. So at the end I had to pull out because I didn't want to keep on fighting the problem. So I decided that I would remain outside the government and maybe organize the women for the next elections.[436]

Lini's commitment to organising women 'for the next elections' continued for decades until she herself began to suffer from ill health only a few years ago. Despite her formidable efforts and the efforts of many others, Lini remains one of only *six* women Members of Parliament in the more than forty years since Vanuatu's Independence in 1980. From 2012 until to October 2022 not a single woman was voted into Parliament[437], giving Vanuatu the inauspicious record of being one of the countries with the poorest political representation of women in the world[438].

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[436] ABC Australia, "Finding unity in the independent New Hebrides".
[437] Elise Howard, "The 2020 Vanuatu Elections: How Did Women Fare?", *Department of Pacific Affairs InBrief*, 2020/11, 1.
[438] Monthly ranking of women in national parliaments, IPU Parline, https://data.ipu.org/women-ranking?month=1&year=2023.

While the persistence of patriarchal structures of exclusion in national politics may appear to be somewhat removed from *kastom*, Mary Jack Kaviamu, a woman candidate in Vanuatu's 2016 and 2020 national elections puts the blame squarely there, stating unequivocally that 'culture is a main contributor to the limitations of woman's influence in politics.'[439] Describing threats of violence and admonitions to stick to looking after children and demonstrate 'respect' for *kastom* by knowing her place, Kaviamu began an article describing her political experiences in 2016 in the following way:

> My journey started in 2008, when I sought the endorsement of community leaders in my home island of Tanna to contest the Vanuatu provincial elections. I didn't get their approval. I was told it is against kastom (custom, traditional culture) for women to be in parliament, and that I wasn't prepared to take up such a challenge. I tried again in 2012, this time paying my candidate fee without the approval of the community chief. When the community leaders learnt of this, they organised a meeting to stop me from contesting.[440]

Work by Pacific academic Claire Slatter supports the view that *kastom* imposes restrictions on women's political leadership, stating that '…custom has often been invoked to deny women political equality'[441]. Slatter provides several examples of these restrictions in Vanuatu, starting as early as the first national elections[442]. Mary Jack Kaviamu's experience demonstrates that in very practical terms women's leadership, chiefly or otherwise, is clearly circumscribed by and through *kastom*.

A brief return to the book quoted in the introduction to this chapter on the *Traditional and Contemporary Customs of the Islands of Vanuatu* is also revealing on the topic of women chiefs. Of the handful of 'customs' listed under 'Women' the most prevalent one is, 'Women cannot become chiefs.' In fact, out of the 74 communities and *kastom* areas covered in the book, only three actually indicated that women could become chiefs. These were all communities on Pentecost. In two of these communities, however, additional explanation was included stating that women chiefs or *motari* could not speak in *nakamals* attended by men and specified that these women chiefs were leaders of women only. Incidentally, for the three entries relating to Maewo, one did not even include a section on women, and another was fairly unequivocal: 'Women do not become custom chiefs or village

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[439] Mary Jack Kaviamu, "The long journey: political acceptance of women" *DevPolicyBlog* (8 March 2016): 3.
[440] Kaviamu "The long journey," 1.
[441] Slatter, "Gender and Custom," 78.
[442] Slatter, "Gender and Custom," 78.

chiefs'[443]. It seems that women chiefs are less elusive than deeply exceptional, and perhaps even an anomaly[444]. In the realm of chiefly leadership, as with national leadership, for all intents and purposes, man on top, woman down.

5. The Malvatumauri, Chiefs, and Women

While the Vanuatu Cultural Centre, as one of Vanuatu's leading cultural institutions, has at times asserted complementarity in relation to women and *kastom*, Vanuatu's other – and ostensibly more authoritative – national *kastom* institution has actively pursued something very different. As the representative body for chiefs in Vanuatu, the Malvatumauri or National Council of Chiefs, along with their subsidiary chiefly bodies, have offered some of the most fervent and public expressions of man on top, woman down in Vanuatu, all justified on the basis of *kastom* (and Christianity). In a cunning power play, the occasion of National Women's Day is often used by this chiefly body as an opportunity to remind women of their place in society, below men. For example, on Vanuatu's 39th National Women's Day held on the 15th of May 2019 then President of the Malvatumauri, Chief Willie Gray Plasua took the occasion to remind women of their role as child bearers and home makers in the following way:

> I want to make a special request to all of you, especially in terms of the decisions that you make inside the home. Make sure that the decisions you make are fair, and that they are in the interest of - and made in a way that benefits - that home, and the generation to come. Lots of young mothers don't show respect for young fathers anymore. They just do what they want, based on their rights. But I want to say, that, that is not *kastom*.[445]

While Plasua's mobilisation of 'respect' in relation to women will be taken up below, his emphasis on women's subservience to men based on *kastom* is an oft-repeated litany.

Chief Plasua's predecessors were regularly even more to the point. While anthropologist Margaret Jolly suggests that then Chairman of the Malvatumauri Chief Noel Mariasua's failure to show for his

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[443] University of the South Pacific, Traditional and Contemporary Customs, 60.
[444] Slatter references the Malvatumauri National Council of Chiefs expressing 'the view that the election of women chiefs in the north of Vanuatu was a "distortion of custom"'. Slatter "Gender and Custom," 79.
[445] Transcribed from a recording of Chief Wilie Gray Plasua's speech (15 May 2019).

scheduled opening address at an August 1994 conference on *Violence and the Family* in Vanuatu was 'perhaps in anticipation of the drubbing of kastom jifs at the conference'[446] – insinuating that women activists and foreigners may be to blame – the story is far more complicated. The following year, again on the occasion of National Women's Day, Mariasua, '…warned women not to take the Convention for the Elimination of all Forms of Discrimination Against Women to start thinking highly of themselves and forgetting their place in society.'[447] The tone of his comments as a representative of Vanuatu's national chiefly body was in significant contrast to the views expressed by Vanuatu's Members of Parliament who had opted to unanimously ratify CEDAW the month before[448]. Chief Mariasua was distinctly in the different and not equal camp, man on top, woman down.

This focus on undermining women's rights and emphasising women's role within *kastom* as centred primarily around duties to their husbands, their families and the domestic space as expressed by Chief Plasua above is also a key and enduring theme. In an interview in 2002 the Chairman of the Malvatumauri at the time, Chief Paul Tahi, provided his own take on women's rights in *kastom*:

> According to Chief Paul Tahi, kastom already provides for women's rights, so there is no need for Western human rights standards. However, when describing women's rights in traditional society, he speaks of women having the right to wash children and keep them clean, and to know which parts of the house are dirty and clean, concluding that women's rights are strong in the home, but not so strong to speak out in society.[449]

Chiefs like Paul Tahi, and his fellow Presidents and Chairmen of the Malvatumauri, play a key role as spokespersons for *kastom* in Vanuatu as they sit at the top of the national hierarchy of chiefs. The fact that they regularly choose this high platform to assert their views about women and *kastom* in a way that is unequivocally different and not equal – below men, and especially below chiefs – is telling.

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[446] Margaret Jolly "Woman Ikat Raet Long Human Raet o No? Women's Rights, Human Rights and Domestic Violence in Vanuatu," *Feminist Review*, 52 (Spring 1996) 181.
[447] Merrin Mason "Domestic Violence in Vanuatu" in *Reflections on Violence in Melanesia*, eds. Sinclair Dinnen and Allison Ley (Wellington: Asia-Pacific Press, 2000) 138.
[448] See Chapter Four for more on Vanuatu's passing of CEDAW and the early state's formal articulations of support for gender equality.
[449] Li Fung "Developing Rights the Melanesian Way: Kastom, Human Rights and Women in Vanuatu" (2002), Unpublished. Used with permission from the author, 13.

Other chiefly representatives have also spoken out fervently against women taking up public leadership roles, even within national institutions. For example, former Malvatumauri President Tom Numake in 2002, 'publicly stated that women of the island of Tanna had no place in either politics or the judiciary'[450]. While he was 'publicly berated' by women who demanded an apology, this perspective did not end with him. In 2004 former President of Vanuatu and then Chair of the Port Vila Town Council of Chiefs, Jean-Marie Leye Lenelgau, stated publicly that it was against *kastom* for women to stand for the position of President[451] in Vanuatu. Ironically Leye himself had earlier spoken out against institutionalising the power of chiefs within the new state in a meeting of the Constitutional Committee in 1979, on the basis that chiefs were 'too political'[452]. As detailed in Chapter Four, Vanuatu's Constitutional Committee – in which Leye was an active and vocal participant – had also agreed that while chiefs should be included somehow, '…their role in the conduct of national affairs should be limited.'[453]

Despite this commitment to a limited role for chiefs, in 2017 when Vanuatu's union-affiliated party, U-Bloc came out publicly with a statement that they would 'support any female candidate that applies for the post of President of Vanuatu'[454] an increasingly familiar outcry from representatives of the Malvatumauri was launched. This time, CEO Jean Pierre Tom presented the Council's views in a typical mix of religious and *kastom* doctrine:

> Throughout the centuries since creation, the captain of the ship beginning with Abraham has always been a man. Moses is a man, Joshua is a man and Jesus is a man…A woman is valuable and it is Vanuatu's duty to value her worth as a special treasure. Now 36 years after Independence, every prime minister is a man and every president of every Island Council of Chiefs is a man. [Now] the leadership command flows throughout the command chain with consistency and if a woman is elected to become the next Head of State, it won't connect with the chiefly structure because she does not belong there. This is the honest opinion of the chiefs.[455]

A similar response had also erupted among chiefs in 2014 when Vanuatu's Public Service Commission had selected – through a fair and transparent process – a highly qualified woman

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[450] Isabelle Donald, Jane Strachan, Hilda Taleo, "Slo Slo: Increasing Women's Representation in Parliament in Vanuatu," *Development Bulletin*, No. 59 (2002): 50.
[451] Tor and Toka , "Gender, Kastom and Domestic Violence," 27.
[452] Republic of Vanuatu, Constitutional Committee Minutes, 3-57.
[453] Republic of Vanuatu, Constitutional Committee Minutes, 2-19.
[454] Len Garae, "Not ready for a female President: Malvatumauri," *Vanuatu Daily Post*, 1 July 2017.
[455] Garae, "Not ready for a female President".

applicant to act as the CEO of the Malvatumauri. While this position is largely administrative, the chiefs again voiced their concern about the possibility of having a woman in this position. In an article titled 'Chiefs question PSC over appointment of lady CEO', a representative of the Malvatumauri, Chief Meameadola stated:

> Chapter 5 of the Constitution gives Malvatumauri the power to preserve custom and traditions and provide advice to the Government on custom and cultural matters and the concern I have as a member is over this right. Part of the functions of the CEO when he takes his post is that he must implement the works as mandated by the Council and one of them is to take part in custom ceremonies and in this case, in so many nasaras in the country, it is simply not possible for a lady CEO to take part in the ceremonies.[456]

While he was disciplining the Public Service Commission for not consulting the chiefs on their selection process, Chief Meameadola also added, 'All members of the PSC are children of nakamals and when they appoint a woman, automatically disrespect is committed'[457]. Even in the administrative functions of the Malvatumauri it seems, man on top, woman down prevails.

Responses to crime in the context of Port Vila have also been used as an opportunity for chiefs to discipline women and remind everyone of women's place, below men. For example, in response to the murder of long-time resident, Justin West, in 2000 by released criminal Paul Wari[458] the island council of chiefs for Efate, the Vaturisu, joined a coalition of groups who delivered a list of 'petitions' to the government. While these had focused on combatting incidents of violent crime, a last-minute addition by the chiefs of an extra point – that had not been seen or agreed by the coalition – illustrates how chiefs seized every opportunity to denounce women's rights:

> Petition 7: We ask the Government to look at and consider their priorities, particularly in supporting chiefs more than women. We have noticed that today the Government is 'lifting up' women too much, and at the same time continues to look down upon the chiefs - who contribute a lot, even though they don't receive any pay for it – in maintaining law and order, especially in the urban centres. We have come to realise that this way that Government looks highly towards and is supporting and concerned with women more than chiefs is not at all in line with our kastom, culture, tradition and Christian beliefs in Vanuatu – the beliefs that we stood up on in order to reach our Independence. We are therefore asking the Government to reduce the authority and the Governments focus on women, because this contradicts our kastom, and contributes a lot to the disrespect that is creating the foundation for all of the trouble in our country.[459]

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[456] Len Garae, "Chiefs question PSC over appointment of lady CEO," *Vanuatu Daily Post*, 3 September 2014.
[457] Garae, "Chiefs question PSC over appointment of lady CEO".
[458] Wari was part of a group of prisoners, 'including people convicted of rape, serious assault, and homicide' who were released from prison on New Year's Eve in 1999. After he was given early release after only four years in 2005, he went on to brutally murder a Chinese woman 2008. Anita Jowit, "Vanuatu," *The Contemporary Pacific*, 13 no. 2 (Fall 2001), 562.
[459] From an article in the *Vanuatu Trading Post*, dated 6 July 2000 [this article pre-dated this newspapers migration to online publishing]. This is reproduced from my own copy of this part of the petition from July 2000.

While the original petition and a protest march had been initiated by the Vanuatu National Association of Non-Governmental Organisations and the Vanuatu National Council of Women, both groups pulled out at the last minute. Grace Molisa, on behalf of the National Council of Women, stated clearly that the chiefs' addition to the petition was 'unlawful, discriminatory and undemocratic.'[460]

A few months before the murder of Justin West, I personally witnessed the very graphic dissatisfaction of chiefs with the government's perceived support for women performed in a public display of displeasure and protest. On this day, chiefs had again taken the occasion of National Women's Day to march down the main street of Port Vila dressed in *kastom* regalia to loudly declare the 'rights of chiefs'. As they filled every corner of downtown Port Vila with their loud voices and their performance of *kastom* authority, no women were to be seen. Clearly women's 'rights in *kastom'* are not part of their collective agenda. Instead, male chiefs and chiefly bodies in Vanuatu have spent a significant amount of time shoring up their power and expressing their disdain for women getting above themselves. These chiefly articulations ultimately serve to reinscribe and formalise *kastom*-in-the-service-of-patriarchy. Given the state's increasing interest in expanding the role of chiefs – and the potentially self-regulating role the Malvatumauri and other chiefly councils seek to exercise – this focus on power, and chiefs on top, woman down is particularly concerning. One of the most potent tools in the chief's toolkit is the notion of '*kastom* respect'.

6. Respect, *Kastom*, and Women: Control, Violence, and Erasure

In Vanuatu respect has particular meanings. According to Lissant Bolton, respect in Vanuatu is intimately tied to a 'preoccupation with rank and status' and in this aspect, it is also 'a defining characteristic of kastom'[461]. Bolton describes this other meaning of respect as a 'firmly indigenous concept', with at least one word meaning respect in every one of Vanuatu's approximately 80 extant

[460] Retrieved from PACNEWS on 12/7/2000.
[461] Bolton, *Unfolding the Moon*, 3 and 4.

languages[462]. Anthropologist Lamont Lindstrom extends this understanding as he points out that in Vanuatu the concept of *kastom* respect also 'evokes appropriate, typically hierarchical relationships'[463]. According to Lindstrom:

> Respect serves as a marker, a canary in the urban coalmine, of the strength and viability of hierarchical relationships that conjoin parents and children, husbands and wives, people and chiefs, and even prisoners and their keepers. Respek talk sustains these inequalities, or at least tries to.[464]

In this way, beyond its other associations with love and relationship, this other aspect of respect in Vanuatu also structures relationships of inequality. In Vanuatu's Constitution, one of the 'fundamental duties' – non-justiciable, but for which public authorities should 'encourage compliance' – is for a child to 'respect his parents'[465]. When it is present, this structuring of society through respect not only evokes a sense of continuity in *kastom*, but it also has a clearly disciplinary function.

For me, the notion of respect in Vanuatu was always familiar, yet also complicated and troubling. I was raised in a family that encouraged the use of 'aunty' and 'uncle' for close family friends as a way of demonstrating respect, relationship, and love. Shaking hands in greeting and making eye contact was important. These early teachings about respect and relationship translated well when I arrived in Vanuatu. I became an aunty to many and loved the sense of familiarity and connection. My young son at four was expected to shake hands with everyone he met when we first arrived. In the first few days he completely refused to proffer his hand in early rebellion, much to my embarrassment. We knew about respect. This sense of familiarity in demonstrating human connection – respect – was one of the many ways that Vanuatu felt like home to me from the moment I descended the steps of the plane and entered the wall of heat and colour that became a central place in our world.

I quickly started to notice, however, that there were other meanings associated with respect and that these were particular to me as a woman. Emulating my female colleagues, I soon started to fold

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[462] Bolton, *Unfolding the Moon*, 4.
[463] Lamont Lindstrom, "Respek and Other Urban Vila Keywords," *Journal de la Societe es Oceanistes*, (2017) 3.
[464] Lamont Lindstrom, *Tanna Times: Islanders in the World* (Honolulu: University of Hawai'I Press, 2020) 138.
[465] Constitution of the Republic of Vanuatu, 2020 Edition, 7 (i).

myself over at the waist if I needed to move across a room, particularly in the presence of senior men. I did not like it, but it quickly became second nature. I also started to wear dresses and skirts, even though much to my horror and immense frustration they would inevitably blow up around my ears in the slightest wind and made it nearly impossible to walk Port Vila's potholed and uneven sidewalks or get in and out of buses and boats without the profound shame and embarrassment of having exposed my legs. I had refused to wear dresses even as a small girl, but it quickly became clear to me that out of 'respect' in Vanuatu, this would be required. I soon started wearing short trousers under my skirts and dresses to mitigate their impracticality, leading my doctor to comment on one occasion, 'Oh, you're such a woman Vanuatu – with your trousers under your skirt!'[466].

Beyond the inconveniences my own concessions to the gendered kinds of behaviours 'respect' required, I started to notice an even more troubling aspect. For example, women's lack of respect was offered regularly as an explanation and justification for sexual and domestic violence. Evoking the view of *kastom* respect as structured by hierarchy, President of the Malvatumauri Chief Paul Tahi offered the following explanation for domestic violence:

> Chief Paul Tahi suggests that violence occurs when women do not respect the hierarchies established by the traditional marriage system and try to position themselves above men; if men and women respect their roles, there should not be any violence.[467]

Note that respecting their roles means knowing their place, below men. This view that 'disrespectful' behaviour from women will result in violence is prevalent across Vanuatu society. Even a presentation on Domestic Violence by a representative of the Vanuatu Police Force in December 2006[468] contained the following as the final slide:

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[466] A key reason women in Vanuatu wear trousers under their skirts and dresses is to provide extra protection against sexual assault.
[467] Fung, "Developing Rights the Melanesian Way," 17.
[468] This slide was provided to me by someone who attended this training session.

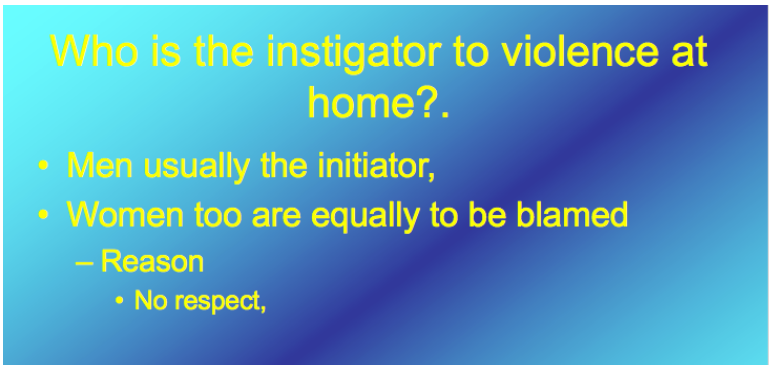

Figure 6: A slide from a police presentation on domestic violence in 2006

'No respect' from a woman could mean talking back to a man, failing to get up at midnight to prepare food when he returns home drunk after a night of kava and/or alcohol, not providing hard won market cash for him to go out in the first place, or even something as simple as leaving the house for too long or asking too many questions. In many ways, man on top, woman down in *kastom* is mediated and enforced through the notion of respect.

As anthropologist Maggie Cummings points out, respect is a 'foundational aspect of gendered discourses of power in Vanuatu'[469]. In her research into the lives of young Ni-Vanuatu women, she concluded that, '…respek is far from neutral, nor just an empty signifier – references to respect almost always (whether tacitly or explicitly) invoke the discourse of kastom, and with it, male authority.'[470] Cummings goes on to clarify that:

> …respect is, above all, a relationship, and a gendered one – women give and show respect to men and male authority; men demand respect, and, in my informants' experiences, rarely give it in return (nor do they acknowledge the labour that women put into negotiating and performing respectfulness).[471]

These interlinkages between *kastom* respect as a tool for enforcing and reinforcing the gender hierarchy and male authority, and the way that respect is often used to justify the violent enforcement of perceived transgressions, is rarely acknowledged.

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[469] Maggie Cummings, "'Looking Good': Women's Dress and the Gendered Cultural Politics of Modernity, Morality, and Embodiment in Vanuatu," (PhD Thesis, York University, January 2009) 150.
[470] Cummings, "'Looking Good': Women's Dress," 155.
[471] Cummings, "'Looking Good': Women's Dress," 155.

'*Kastom* respect' also places limits on what can be talked about in Vanuatu society, particularly issues of domestic violence and sexual assault. Given that rape and other 'crimes against morality' are the most consistent, the most prolific, and the most unequivocally gendered crimes in Vanuatu[472] this respect-based prohibition on discussing these kinds of issues is also deeply troubling. One young Ni-Vanuatu woman I interviewed described her experiences of working at the community level in the following way:

> Going back to *kastom* now…sometimes when I go out and do training in the communities, they say 'Oh, you can't use any of this talk like "sex", "rape", because we have to respect *kastom*. We must not talk about these kinds of things in front of all the men…all the big men, chiefs.'

This individual went on to say that the underlying message to women and girls is that they must respect men, and '…if I have that respect, and I'm being sexually abused by an adult man, I just need to respect him, because he's an adult man, and I'm not supposed to talk. Because if I talk, it will be disrespecting him.' Respect in *kastom* not only dictates how women and girls should behave within the hierarchies structured by respect, but it also ensures that the 'darkest truths' of the lives of women and girls remain hidden and largely unaddressed.

In a moment that was described as an 'Iconic moment in the history of Vanuatu'[473] issues of *kastom*, respect, and violence against women came to the fore in May 2017 when a young woman, Stephanie Ephraim Lekal took the occasion of a Reclaim the Night march held in celebration of National Women's Day to express some of her experiences as a young woman in Vanuatu society. The Reclaim the Night march had been advertised with the following theme: 'Stop rape and all forms of sexual violence. Claim back safer streets at night for women, girls, people living with a disability and vulnerable and marginalised groups to be free from harassment, discrimination, and violence.'[474] Ephraim described choosing her words for her sign on purpose, in a way that was mindful of the theme. She wanted to shake people out of their complacency with the levels of violence against women and girls in Vanuatu society, and signal to other young women that they too could speak out.

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[472] As discussed in Chapter Two.
[473] Yasmine Bjournum of Sista described it this way when commenting on Facebook.
[474] Reclaim the Night – Port Vila, Sista (May 12, 2017). https://www.sista.com.vu/reclaim-the-night-march-national-womens-day-15th-may-2017/.

In the end, she selected statements that would be familiar to most participants in a women's march anywhere in the world:

Figure 7: Stephanie Ephraim Lekal marching with her signs

In calling out Vanuatu's patriarchy in this way, Ephraim had followed her own advice written a few months before for the occasion of International Women's Day under the theme 'Be Bold for Change' and embodied what it means to be '…braver, louder, bolder and to challenge things with more strength'[475].

The signs were explosive. Ephraim's choice to include two swear words on her signs drew the greatest admonitions. In a private conversation with me a year after the march, she shared some of her thoughts about what had transpired. Her perspective is insightful and compelling, and is worth quoting at length:

> At that time it was very sad for me because I had expressed my own experience, how I walk around on the street all day and I feel like a dog, like an animal…or a piece of meat. Where everyone that walks around on the road can scream at me and tell me anything they want. Just to make themselves feel good about themselves. And just the two words that I walked around with were supposed to go against the whole society, when we face violence every day, every day in our own homes, in the street. When every day we go out, men swear at us and say bad things to us, they call out to us on the street and do whatever they want. We just take that as normal. But when I walk around with a banner, it shocks everyone, and they think it goes against everyone, that its bad. That it goes against society.
>
> So when I marched, I don't know, I was really proud. I knew that I was walking around with something...it was massive, because as a woman, I'm holding something and walking around. And it was a message that I wanted to give to other women. To let them know that they too can do something. That they can speak up. That they can stand up against violence. They can make decisions. They can do what they want with their lives. The things that they want to do, they can

[475] Ephraim, "#BeBoldForChange Speech".

> do, especially to do with violence. That night I wanted the voices of women to be heard too. But I know that that message drove people in a different way. Just because that message, those two swear words, really drove them in a way that it came back to me as a young woman, that I'm not allowed to swear like that and walk around with it because I need to respect culture and kastom...

In her public response to the uproar it had caused, Ephraim suggested that people should be more offended by the fact that '…women of Vanuatu can't walk around safely or catch a bus on our own because we are afraid of rape'[476]. She also quoted well-known statistics in Vanuatu that three out of five women suffer abuse by their partners and one in three women are sexually abused before the age of 15. Ephraim was clear that the outrage about the sign had to do with the fact that she was a 'girl' and that 'I didn't have respect for my dad, my uncles, my brothers. I didn't have respect for my religion, for my *kastom*, for my culture.'

Yet despite these other meanings of respect for women and girls in Vanuatu and its unequivocally disciplinary intentions and effects, 'respect' has also become a popular slogan over the past decade particularly – and somewhat ironically – in campaigns aimed at addressing violence. For example, in 2014 UNICEF commissioned local reggae sensation Stan Antas to perform the song 'Respecting One Another' to address violence in schools. The song's message that if you respect me, I'll respect you, troubled me in the context of these other gendered meanings and disciplinary deployments of respect. In the song Antas refers to a 'bad attitude boy' who engages in physical violence like his dad, while the 'bad attitude girl' is always on her mobile phone[477]. The clear differences between these kinds of 'lack of respect', however, are never broached, and 'respect' – in its normative, sanitised version – is offered as the simple antidote. In another example, the 'It takes respect to create a safer Vanuatu' campaign, launched in May 2018 by World Vision Vanuatu, mobilised respect to combat the issue of sexual violence[478]. While the impetus for the program was framed in Vanuatu's grave statistics where one in three girls are sexually assaulted before the age of 15, and with Member of Parliament Ralph Regenvanu identifying sexual abuse as the biggest social problem in Vanuatu at the campaign

[476] Ephraim responded this way in a public Facebook post immediately following the march.
[477] Stan Antas, Respecting One Another. https://soundcloud.com/leftemap-respekt/respecting-one-another-cannon-beats.
[478] World Vision Vanuatu, "Vanuatu launches its 'It takes respect to create a safer Vanuatu' campaign, Wednesday August 29, 2018. https://www.wvi.org/article/vanuatu-launches-its-it-takes-respect-create-safer-vanuatu-campaign.

launch[479], the use of respect as the rejoinder or solution to these issues is replete with problems, particularly for women and girls.

While well-intentioned, these initiatives not only seem to ignore these other meanings of respect in Vanuatu, but they also perform a kind of erasure themselves. Much like the hydra-headed notion of *kastom* for women and girls, and declarations about women chiefs, mobilisations of these kinds of sanitised and normative depictions of respect serve to delink this powerful concept from its other meanings and deployments in Vanuatu – ultimately enacting another kind of violence. Interestingly, while exploring an abandoned, partially constructed resort on the coast of Efate that is often used as a clandestine hangout by young people I came across some graffiti that seemed to address itself directly to these other aspects and meanings of respect. There amongst the rusting rebar, concrete, and rotting wood, I found several expressions of young love – things like 'Linda loves Jack' inside the universal symbol of love, a heart – written on the walls. On another of these walls, however, I also found this, in the same handwriting, in big letters:

Figure 8: The writing on the wall

While I ultimately have no way to confirm who wrote this, from the tone of the other graffiti I imagined a group of young women sitting there, writing their hearts and their truths quietly and boldly, much like Stephanie Ephraim had done with her signs. The backlash to this kind of 'disrespectful' statement

[479] World Vision Vanuatu, "Vanuatu launches its 'It takes respect".

would likely have been equally explosive if this sentiment had been declared in public, particularly by a young woman.

As most women and girls in Vanuatu know, they are also subject to violence on the pretence of 'lack of respect'. This could include being raped for the transgression of wearing trousers, short pants or short skirts, or being beaten for any number of behaviours that are perceived as disrespectful. In fact, violence and sexual violence can – and often does – follow any number of 'transgressions'. In one workshop I helped to convene with participants from different parts of Vanuatu, we were told that as a small girl even laughing loudly or playing boisterously on the path outside your home in the village – and drawing the male gaze – would mark you as transgressive. Appropriate gendered behaviour for women and girls as 'respect' is policed and disciplined through violence and speaks to the complex nature of *kastom* respect in a context like Vanuatu. Within the context of patriarchal *kastom*, respect is also a crucial tool deployed to structure gender inequality, silence discussion of sexual and gender-based violence, and as a justification for gendered violence and backlash when women are seen to be transgressing the often narrow and shifting boundaries of respectful behaviour. Man on top, woman down.

7. Conclusion: The Impacts of 'Man on Top, Woman Down' in *Kastom*

Kastom, along with its allied notion of *kastom* respect, has significant impacts on the lives of women and girls in Vanuatu. Normative *kastom* shapes the status quo and establishes what is 'normal' and proper behaviour. In the enduring context of man on top, woman down in *kastom*, when women and girls move out of place in any way – in their words, their movements, even their laughter, and in their refusals to submit or occupy the subsidiary space – they are subject to censure and to violence. *Kastom* in practice, in the public articulations of male chiefs and chiefly bodies like the Malvatumauri, and through the deployment of terms like '*kastom* respect', declares and reinscribes male discipline and violence – a continuously reconstituting patriarchy – on the bodies and lives of women and girls. Despite declarations of 'complementarity' and the distraction posed by Motarilavoa Hilda Lini and the

illusory women chiefs of Vanuatu, women remain enduringly different and not equal to men in this context. These declarations of complementarity are not simply incorrect; they are also cunning because they act to conceal grave inequalities, violence and injustice against women and girls under a veneer and a false promise of recognition.

Many women are well aware of the hydra-like aspects *kastom* and its multiple effects. In a powerful poem, *A letter to Vanuatu: Unkept promises*, my own daughter Kali Regenvanu locates the idyllic representations of Vanuatu as a 'a bright cover-up, a beautiful lie'[480]. These normative, sanitised articulations of national *kastom* identity have established Vanuatu as one of the happiest places on earth[481]. At the same time, these 'beautiful lies' also establish frames of intelligibility – epistemological frames[482] – that determine what is valued and what is not, what is seen and understood and what is invisible. In the context of Vanuatu, outside of this frame and beyond the idyll of natural and harmonious village life governed by 'tradition' and the wisdom of the chief, *kastom* is a much more hydra-headed prospect for women and girls. For them, *kastom* also represents restriction and silencing, violence, and shame in the context of enduring male privilege, power, and discipline. This failure to *also* understand and recognise *kastom* as a regime of patriarchal power in Vanuatu results in a kind of layered violence. Sitting alongside the grave realities of physical and sexual violence that women and girls experience in their daily lives in the midst of all this patriarchy[483], is another kind of epistemic violence that is wrought by the oppression, silencing, and erasure of these realities.

Yet despite these realities, Vanuatu has uncritically forged ahead over the past two decades in the pursuit of a more regulatory role for chiefs and *kastom* within the state. This has even included, as I trace in my next chapter, giving increasing regulatory power to male chiefs in relation to gendered violence. While in the global context there has been significant attention paid to the limitations of

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[480] Kali Regenvanu, "A letter to Vanuatu: Unkept promises," 153.
[481] Bill Code, "What makes Vanuatu one of the happiest places in the world?" BBC February 10, 2020. https://www.bbc.com/travel/article/20200209-what-makes-vanuatu-one-of-the-happiest-places-in-the-world.
[482] Ingala, "Judith Butler: From a Normative Violence," 198.
[483] Sarkar, "Decline of the Subaltern," 108.

criminal justice responses to domestic violence and calls for more holistic and plural approaches, this example demonstrates that 'configurations of plural regulation' are not necessarily neutral themselves.[484] In the context of Vanuatu, the extension of increasingly state-endorsed regulatory power to chiefs and *kastom* effectively serves to reinscribe, solidify and expand patriarchal institutions and ideologies. The failure to take power into active consideration in these plural regimes of governance effectively results in more violence – epistemic and actual. In the next chapter, 'Women's Rights and Chiefs' Rights: Untangling Vanuatu's *Family Protection Act*,' I demonstrate how the unusual decision to give chiefs a small but powerful role in Vanuatu's domestic violence legislation has not only privileged 'chiefs' rights' over the rights and interests of women who experience often grievous violence, but it also has the potential to restrict women's access to justice in situations of violence and mitigate the consequences for violent men.

[484] Giselle Corradi, "Introduction: Human Rights and Legal Pluralism: Four Research Agendas," *Human Rights Encounter Legal Pluralism: Normative and Empirical Approaches*. Giselle Corradi et al Eds. (Oxford: Hart Publishing, 2017), 9.

Chapter Six
Women's Rights and Chiefs' Rights: Untangling Vanuatu's *Family Protection Act*

1. Introduction: Troubling a 'Small Part' of Vanuatu's *Family Protection Act*

In late January 2018 an opinion piece was published in Vanuatu's *Daily Post* newspaper headlined 'Joined up Thinking and Doing'[485]. Commenting on a ten-year delay in implementing aspects of Vanuatu's *Family Protection Act* (FPA) the author, Tess Newton Cain, questioned why seemingly key parts of this important piece of legislation had taken so long to implement. A few days earlier, Vanuatu's Minister of Justice and Community Services had announced the piloting of two aspects of Vanuatu's FPA, stating that, 'A small part of the Act allowing for the appointment of Authorised Persons and Registered Counsellors has never been implemented in this country, or indeed in other countries in our region that have passed similar laws.'[486] This 'small part' of Vanuatu's domestic violence legislation is the focus of this chapter.

In her commentary on Vanuatu's FPA, Newton Cain wondered why, 'If the use of "authorised persons" was considered so important as to be included in a piece of legislation, [it had] taken so long to get to the point of a trial?'[487]. The simple answer is that many things might be included in legislation – particularly in a context like Vanuatu – which in practice become difficult to implement. Newton Cain also identifies budgetary constraints and the limitations of policing services as potential explanations. A closer consideration of Vanuatu's FPA, however, offers a more complex picture. Looking at who these 'Authorised Persons' are in Vanuatu's FPA, and to whom and why this role was important, raises questions about whether this aspect of the FPA had more to do with the 'rights of chiefs' and

[485] Tess Newton Cain, "Joined up Thinking and Doing," *Vanuatu Daily Post*, Jan 26, 2018. https://www.dailypost.vu/opinion/joined-up-thinking-and-doing/article_b2fff5a9-d117-5c2b-ad0f-2442b336873f.html.
[486] Under Vanuatu's domestic violence legislation 'Authorised Persons' are community level individuals who are authorised to issue temporary protection orders for victims/survivors of domestic violence, and 'Registered Counsellors' are authorised to provide counselling support. Fern Napwatt, "Authorised Persons and Registered Counsellors pilot project launched," *Vanuatu Daily Post*, Jan 23, 2018. https://www.dailypost.vu/news/authorised-persons-and-registered-counsellors-pilot-project-launched/article_8688d2a2-6cfe-5817-946f-34fb15a8a182.html.
[487] Newton Cain, "Joined up Thinking and Doing".

promoting a *kastom* as regulation agenda through the state, than it did with promoting the rights and interests of women and other victims-survivors[488] of male violence within their homes and families.

In the global context, scholarship on the value of legislative responses to domestic violence has been mixed. Feminist criminologists in particular have called for more holistic responses, locating legislative interventions as a 'resource not a solution'[489]. At the same time, Vanuatu's FPA is often treated as a kind of good in itself. Donors and regional organisations, domestic violence advocates, and at times even Vanuatu's legislators themselves[490], have placed significant value in having this kind of law in place. While I will briefly revisit some of the broader debates surrounding the criminalisation of domestic violence in the conclusion to this chapter, it is worth stating that in the context of some of the highest rates of violence against women and girls in the world[491], there is no doubt that the FPA is an important intervention in Vanuatu. By clearly locating domestic violence as 'against the law' it also has significant normative and instrumental value. Vanuatu's FPA was also the first in the Pacific and paved the way for other domestic violence legislation in the region. In fact, since Vanuatu passed the FPA in 2008, fourteen other Pacific jurisdictions have passed their own domestic violence laws.

There are, of course, detractors. An individual who worked closely on the passage of the FPA through the decade of its development identified the 'Tanna block' and a few key politicians as barriers within Parliament. Given how violence cuts across all segments of Vanuatu society, many men would have been made uncomfortable by what this new law could mean for their private lives. As demonstrated in Chapter Five, chiefs and their institutional body the Malvatumauri have also set their sights clearly on women as they contest for greater power and influence in the state. Over the past several decades they have taken every opportunity to publicly remind women of their status: below men. What is

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[488] I have chosen to use victim-survivor to refer individuals who have experienced physical or sexual violence in this context.
[489] Robyn Holder, "Domestic and Family Violence: Criminal Justice Interventions," *Australian Domestic & Family Violence Clearinghouse*, Issues Paper 3 (2001): 8.
[490] As I detail later in this chapter, while the FPA was slow to pass through Parliament, there was in fact significant support for the legislation.
[491] Vanuatu Country Summary, Pacific Partnership to End Violence Against Women and Girls (Pacific Partnership), June 2022. https://asiapacific.unwomen.org/sites/default/files/2022-06/8-Vanuatu-Country-Summary-FINAL-21.06.22.pdf.

interesting and deeply troubling, however, is that some of the greatest detractors have been expressly empowered through this aspect of Vanuatu's FPA.

As this chapter illustrates, the inclusion of a somewhat hidden yet pivotal role for chiefs in Vanuatu's domestic violence legislation undermines its power to further women's rights in situations of violence. While this aspect is rationalised as important to the decentralisation of the Act given Vanuatu's geographic and resourcing realities, idealised as an obligatory nod to *kastom*, or seen as necessary to quell opposition and 'reduce the gaps'[492] between law and *kastom*, it has other clear purposes and impacts. The more critical reading provided here suggests that it is not incidental that this law in particular – a key instrument for the protection of women's rights in the context of male violence – became a prime site for the expansion and institutionalisation of *kastom* in Vanuatu.

The chapter begins by exploring the idea of 'opposition' in relation to the FPA, and the assumption that the inclusion of chiefs was necessary to quell this 'opposition'. The next section traces key moments in the history of Vanuatu's domestic violence legislation from the first decade following Independence, unsettling the view that the FPA and protection orders were a particularly new intervention by 2008. The chapter moves on to provide an overview of the peculiarities of Vanuatu's Act, and the emergence of the FPA as the 'Chiefs' Act'. In the next section the 'unique' aspects of Vanuatu's FPA are examined in the context of other legislation in Vanuatu and in the Pacific, further unsettling the view that including chiefs is simply a 'Made in Oceania'[493] evolution of law. The final part of the chapter considers the implications of including chiefs in Vanuatu's FPA, for women, and for addressing male violence against women and children in their homes and families in Vanuatu.

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[492] Miranda Forsyth, "Beyond Case Law: Kastom and Courts in Vanuatu," *Victoria University of Wellington Law Review*, 35 no. 2 (2004): 9.

[493] Borrowing from the book Made in Oceania: Social Movements, Cultural Heritage and the State in the Pacific (2011) that came out of the Pacific Alternatives programme at the University of Bergen.

This examination of Vanuatu's FPA illustrates how this legislation provides a compelling site for examining how Vanuatu's resurgent interest in mobilising and reinvigorating *kastom* through the state is not simply about 'hybridity' and recognising and accommodating plural approaches to justice. In the case of the FPA, a seemingly minor aspect of an otherwise progressive law was captured and remobilised directly to empower chiefs, ultimately functioning to reinscribe what law and society scholar Rebecca Monson has explained as 'hypermasculinist ideologies'[494]. Here *kastom* operating as regulation has extended and amplified the power and authority of chiefs over women's choices, lives, and bodies, through the very legislation that was meant to protect women from the brutal realities of male violence in their homes and communities in Vanuatu.

2. Law, Pluralism, and Power - and the Nature of Compromise

Recalling a conversation he had with an influential MP in the mid 2000s, a regional human rights advisor interviewed for this research recounted:

> [The MP] advised me during [that time], and he was very strong, he said, 'Listen, even though we know that the chiefs can be a problem, because of *kastom* and the way women are viewed in society and brideprice and all that…but you have to – the chiefs have to be part of it.

For this individual the inclusion of chiefs in Vanuatu's FPA was framed as a 'compromise'. According to another interviewee, a leading Pacific legal scholar, *all* legislation in the Pacific that promotes gender equality is, in fact, the 'result of incredible compromise'. For many women's rights advocates in the Pacific the struggle to address domestic violence has been long and arduous. Institutions such as the nearly all male political apparatus in Vanuatu has itself been a significant barrier. The kinds of compromises that are made, however, why they are being made, for whose benefit and with what impact are crucial considerations. These questions and considerations form the basis of this chapter.

[494] Rebecca Monson, "Hu nao save tok? Women, men and land: negotiating property and authority in Solomon Islands" (PhD Thesis, ANU, 2012) 323.

This idea of law as compromise is not unique to Vanuatu or the Pacific, nor is it unique to domestic violence legislation. As law and society scholarship has demonstrated, policy and legislation are never 'neutral' mechanisms[495]. In fact, law and society scholar Kitty Calavita emphasises in her popular introduction to the topic that not only is law, 'the product of social and political context', it is also 'marked by all the frailties and hubris of humankind.'[496] Feminist scholarship has extended this analysis to demonstrate that beyond the generalised 'frailties and hubris', law can also function as an instrument of systemic patriarchy. In this understanding, assumptions or assertions about neutrality of law are not only naïve but also enact a kind of violence themselves.

In Pacific scholarship the kind of 'compromise' seen in Vanuatu's FPA often finds easy explanation through references to regulatory pluralism. In this sense, the inclusion of chiefs in the legislation could be viewed simply as an expansion of the regulatory toolkit. From this vantage point Vanuatu's FPA appears to offer an example of 'working together' across a plural legal space[497], and as something that was incorporated in order to navigate the 'hybrid' realities of Vanuatu's customary approaches in the context of introduced statutory laws, human rights provisions, and international law. When tensions arise, for some scholars of pluralism the suggestion is to strive for accommodation. For example, according to Sally Engle Merry:

> There are clearly difficult issues presented by legal pluralism, of course, such as local legal systems that violate principles of the national and international system by allowing racial discrimination or by tolerating domestic violence. But the solution is not to ignore local systems. Instead, the legal pluralism framework leads scholars to look for dialogue and intersection.[498]

Whether it is framed as intersection, dialogue, compromise, or integration[499] what this perspective often fails to adequately take into consideration is power. In doing so, this can lead to simplified configurations of 'local systems'. Even the idea of choosing between two options: ignore or accommodate (rather than critically examine, for example) demands further interrogation.

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[495] Archana Parashar, "Teaching Family Law as Feminist Critique of Law," *UNSW Law Journal*, 23 no. 2 (January 2000).
[496] Kitty Calavita, *Invitation to Law and Society: An Introduction to the Study of Real Law*, 2nd Edition (Chicago: University of Chicago Press, 2016), 5.
[497] Fung, "Developing Rights the Melanesian Way," 18.
[498] Sally Engle Merry, "Legal Pluralism in Practice," McGill University Convocation Address (2013) 8.
[499] Forsyth, "Beyond Case Law," 437.

As Giselle Corradi in her introduction to the intersection of human rights and legal pluralism suggests, 'configurations of plural regulation'[500] are also not neutral. In the same volume, Hellum and Katsande extend this understanding by showing how the hidden and invisible power exercised by traditional patriarchal institutions within plural regulatory orders can come to dominate the more visible power of state laws[501]. It is true that regulatory pluralism is a social fact[502], particularly in a post-colonial context like Vanuatu where state law and international conventions comingle in the 'justice ecosystem' alongside a range of religious and customary rules and norms. More gender attentive regulatory pluralism scholarship suggests, however, that the nature of these practices and institutions are not only highly uneven[503], but as 'regimes of governance' they require more detailed, historically informed, and critical analysis[504].

In the constellation of the relatively small group of academics, development practitioners, and local actors who write about domestic violence, *kastom* and human rights in Vanuatu, a failure to fully consider 'power relations and politics'[505] often results in disconnects and absences. For example, in a paper focusing on hybridity, legal pluralism, and the regulation of gender-based violence in Vanuatu and Papua New Guinea, Miranda Forsyth argues that 'legal hybridity can be used by those seeking to effect social transformation through law'[506]. The example of a Magistrate who spends time to educate chiefs on the law[507] is provided to show how various regulatory orders can be 'co-constitutive'. The example Forsyth offers, however, is very different from what is proposed in the FPA: which is to effectively provide chiefs with an autonomous role, far from any realistic oversight, in situations of domestic violence. The complexities and realities of gender-based violence, as well as issues of

[500] Corradi, "Introduction: Human Rights and Legal Pluralism," 9.
[501] Corradi, "Introduction: Human Rights and Legal Pluralism," 9.
[502] Sieder and McNeish, eds., *Gender Justice and Legal Pluralities*, 2.
[503] Sieder and McNeish, eds., Gender Justice and Legal Pluralities, 3.
[504] Sieder and McNeish, eds., *Gender Justice and Legal Pluralities*, 11.
[505] Sieder and McNeish, eds., *Gender Justice and Legal Pluralities*, 14.
[506] Miranda Forsyth, "Using the concept of hybridity to guide social change through legal means," *Third World Thematics: A TWQ Journal*, 2 no. 4 (2017) 482.
[507] Forsyth, "Using the concept of hybridity," 485 to 486.

structural and 'internalised'[508] patriarchy across various regulatory institutions and actors – in this case male chiefs – receives little to no critical attention.

While it may be the case that, 'Hybridity is neither necessarily emancipatory nor necessarily oppressive'[509], the possibility that some 'hybrid' regimes of governance may in fact be oppressive and dangerous, particularly for women, and driven primarily by male political interests and machinations for power, is rarely considered. This chapter strives to look more deeply and carefully into this particular 'regime of governance' and the kind of compromise that resulted in the somewhat hidden but powerful role accorded to chiefs within Vanuatu's domestic violence legislation. While several justifications are provided to explain and rationalise the inclusion of chiefs in the FPA – controversy, geography, hybridity – nowhere are the actual motivations of chiefs or what their unusual presence in Vanuatu's FPA might ultimately mean for women seeking protection and justice in situations of domestic violence actively considered.

3. On Controversy, Opposition, and Vanuatu's Domestic Violence Legislation

The inclusion of chiefs in Vanuatu's FPA is sometimes rationalised by reference to the legislation's 'controversial' nature, with the inclusion of chiefs seen as a kind of 'Pacific patina'[510] or integration strategy. Part of this sense of controversy relates to the kind of backlash that domestic violence legislation might elicit in any context. In Vanuatu, however, this sense of controversy is amplified by another layer of meanings and assumptions that are often ascribed to law in general and women's rights in particular. Here the FPA becomes an instrument of feminist modernity juxtaposed against the backdrop of highly traditionalised Vanuatu society. Consider, for example, how a *Vanuatu Daily Post* article framed the FPA after it passed through Parliament in late June 2008:

> Meanwhile critics of the Family Act say that they fear the ideologies promoted by feminist movements around the world is finding support in Vanuatu. They warned that the fight for equal

[508] Guttenbeil-Likiliki, "Session 4: Patriarchal Norms and FPOs in Tonga".
[509] Forsyth, "Using the concept of hybridity," 489.
[510] Forsyth, "Beyond Case Law," 438.

> rights for women often became a pretext for destroying the so-called traditional family and motherhood as well as promoting sexual dissolution. It is no secret that the new feminism movements in the world want to abolish biological family. Radical feminists like the American Alison Jagger who wrote the book Political Philosophers of Women's liberation said; "Abolishing biological family will also eliminate the need of sexual oppression."[511]

Despite the author's seeming support for 'sexual oppression' and the significant confusion and misrepresentation of Jaggar's and 'feminist' perspectives and positionality, this tale of controversy and opposition – the Goliath of (radical feminist) modernity versus the David of (traditional) Vanuatu society – is often used as a justification for the inclusion of chiefs in Vanuatu's FPA.

A key site of this perceived controversy relates to the FPA's passage through Parliament. Domestic violence legislation was first due to be tabled in Vanuatu's Parliament in 1999 and was again slated for consideration in 2001. In both instances it did not progress. In 1999 the government fell in a Vote of No Confidence[512] jettisoning several laws under consideration. Two years later in the 3rd Extraordinary Session of Parliament in November 2001 the legislation was withdrawn[513]. While the FPA is nowhere to be found in this session of Parliament, what the minutes do reflect is often fractious discussion surrounding at least 21 other new laws or amendments under consideration. While some of this fractiousness – perhaps unsurprisingly – revolves around issues of *kastom*, Christianity, chiefs, and women's rights, the topics and positionalities are far more unsettled than one might assume.

For example, a hotly debated law in this session was the proposed *Land Tribunal Act*. Discussion continued over two days and while it was agreed that chiefs should be involved, the 'which chiefs are real chiefs' debate was also prominent, with one MP declaring that they must not be 'self-appointed or politically appointed chiefs'[514]. Women's status in relation to land ownership and participation in the proposed land tribunals also came up at several points. While one member of Parliament proclaimed, 'that in his constituency, Tanna, women were not allowed to own land and therefore would not be

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[511] Ricky Binihi, "Family Protection law may ban the rod of correction," *Vanuatu Daily Post*, 26 June 2008.
[512] Michael Morgan, "Integrating Reform: Legislative Needs Assessment," *United Nations Development Programme* (March-April 2001) 2.3.2.
[513] Personal communication from a staff member in Vanuatu's Parliament on 25 September 2019.
[514] Parliamentary Hansard, Third Extraordinary Session of Parliament (12 November 1991) Item 17.

allowed to be members of a Land Tribunal', other members actively disputed this. Another senior Tannese MP who supported the inclusion of women, praised it as 'affirmative action' and in keeping with the Constitution. Yet another MP proclaimed that, 'the customary system should not be against the Constitution.'

In the mid-1980s, 15 years before these debates and 20 years before the FPA was eventually read in Parliament (in 2005), the passing of the *Matrimonial Causes Act* had evoked similar 'controversy'. While passing the 'Divorce Act', as it is colloquially referred to, was located as part of the government's 'legislative programme' from their first year in power, Minister Sethy Regenvanu who presented it in Parliament said they had taken the time to consult widely – including with the Vanuatu National Council of Women – before bringing it to Parliament[515]. In Parliament in 1986 several MPs, including then Prime Minister Walter Lini, offered impassioned pleas in support of the legislation:

> …The Hon. Prime Minister quoted the 65 outstanding divorce cases in Vila alone. This Bill would bring social justice and show the country was not hypocritical. Wives had been beaten and even killed. They should not be forced to stay together with their husbands. The House had a duty to show it was strong enough to face up to the nation's real social problems.[516]

At another point in the parliamentary discussion in 1986, Walter Lini framed the need for this legislation – despite any opposition from advocates of *kastom* and Christianity – as responding to an 'overriding need for justice.'[517]

Even with the debate and disagreement in Parliament – and despite any 'controversy' – the *Matrimonial Causes Act* passed in August 1986 with 21 votes in favour[518]. Incidentally, much of the legislation that passed in 1985 and 1986 resulted in votes that were split generally along the same lines, with representatives of government voting 'for' and members of the opposition voting 'against' various pieces of legislation under consideration. Intriguingly, a similarly spirited debate had *also* ensued around the legislation relating to the National Council of Chiefs one year earlier, with several

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[515] Parliamentary Hansard, Second Ordinary Session of Parliament (10 December 1985) Item 135.
[516] Parliamentary Hansard, First Ordinary Session of Parliament (2 June 1986) Item 10.
[517] Parliamentary Hansard, First Ordinary Session of Parliament (29 May 1986) Item 10.
[518] Parliamentary Hansard, First Ordinary Session of Parliament (7 August 1986) Item 41.

Members of Parliament suggesting that the powers of chiefs should be limited, and with concerns raised that chiefs in these roles represented politics more than *kastom*.[519] Even the legislation relating to the National Council of Chiefs passed with only 21 votes in favour.[520]

When the FPA was eventually read in November 2005, the level of 'controversy' was not markedly different from this. There was clear support on the Government side, with several members articulating a need for the proposed legislation. The Deputy Prime Minister commented that, '…Chiefs and Pastors had often failed to resolve problems within a household'[521]. The Minister of Agriculture 'stressed the importance of gender equity'[522] and the necessity of the law 'due to the high number of women who were domestically abused and admitted at the hospitals every week.'[523] The Opposition was clearly focused on performing their opposition to the legislation, but even when the Opposition Whip tried to test the waters with the Government backbenchers, he was told that the Government side was unified, backbenchers and all.

As a result, at the first reading in November 2005, the proposed FPA was approved with 39 votes in favour and 8 abstentions, largely representing the political division of Parliament at the time. At this stage it was referred to an Adhoc Committee for review, with the Committee asked to report back to Parliament in 2006[524]. Unfortunately, their report and the FPA languished in Vanuatu's Parliamentary Committee limbo for another three years. The committee system in Melanesian Parliaments has been critiqued as not only 'ineffective' but as a 'self-serving organ of inefficient and ineffective state apparatuses'[525], with Members of Parliament more focused on their allowances than the issues at hand. As it turns out, the Adhoc Committee of seven members mandated by Vanuatu's Parliament

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[519] Parliamentary Hansard, First Ordinary Session of Parliament (30 May 1985) Item 85.
[520] Parliamentary Hansard, First Ordinary Session of Parliament (5 June 1985) Item 15.
[521] Parliamentary Hansard, Second Extraordinary Session of Parliament (8 November 2005) Item 12.
[522] Parliamentary Hansard, Second Extraordinary Session of Parliament (8 November 2005) Item 13.
[523] Parliamentary Hansard, Second Extraordinary Session of Parliament (8 November 2005) Item 13.
[524] Parliamentary Hansard, Second Extraordinary Session of Parliament (9 November 2005) Item 6.
[525] Michael Morgan, "Cultures of Dominance: Institutional and Cultural Influences on Parliamentary Politics in Melanesia," *State, Society and Governance in Melanesia Discussion Paper* 2005/2, 7.

had failed to carry out their duties[526] citing a 'lack of financial and human resources'[527]. In Parliament, Committee member MP Keasipai Song, '…publicly admitted that he had never attended a Committee meeting due to the failure of the Parliament to purchase tickets for him to attend the meetings.'[528]

While the failures of the Adhoc Committee resulted in significant debate and frustration in Parliament, it was parliamentary process and not the content of the Act that was at issue. A quickly pulled together report from the Adhoc Committee (which had approved each section of the legislation without amendment) was disregarded by Parliament given their dissatisfaction with the lack of process. Instead, they opted to review the FPA in Parliament through a Committee of the Whole. Each section was approved unanimously, without debate or comment. When it went through the Second Reading it was also carried unanimously[529]. The version of the Act that passed in 2008 was completely unchanged from the legislation that had undergone a First Reading in November 2005. There was, in fact, no controversy in Parliament except for the controversy relating to failures of Parliamentary process.

Another area of perceived controversy relates to what happened when the FPA was sent to the President for review and signature in July 2008. While this is typically a perfunctory process, in this case the President did not sign the Act. Instead, he raised a Constitutional Reference on the grounds that the FPA may be inconsistent with provisions in Vanuatu's Constitution. For some regional observers this represented a particular kind of intervention:

> In June 2008, the passing of the law created controversy when President Kalkot Mataskelekele refused to give his assent. He claimed that some sections discriminated against men, were unconstitutional and contrary to 'Melanesian' and Christian principles. The challenge to the law however was couched in technical terms. When he referred the case to the Supreme Court however, the Chief Justice declared that the Act was consistent with the Constitution and the President finally gave his assent to the new law.[530]

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[526] Parliamentary Hansard, Second Extraordinary Session of Parliament (19 June 2008), Item 4.
[527] Parliamentary Hansard, Second Extraordinary Session of Parliament (19 June 2008), Appendix 1, 3.
[528] Parliamentary Hansard, Second Extraordinary Session of Parliament (19 June 2008), Item 16.
[529] Parliamentary Hansard, Second Extraordinary Session of Parliament (19 June 2008), Item 80.
[530] Pacific Regional Rights Resource Team/Fiji Women's Rights Movement, *Changing Laws: A Legislative Lobbying Toolkit for Understanding Law-Making, Parliamentary Procedures and Advocacy for Legislative Change*, (July 2010), 25.

The process of review activated by the President was understandably frustrating for many who had been advocating for the passage of the Act for over a decade. For legal scholars who were observing the development of domestic violence legislation in the region, it was also unprecedented[531]. It would be hard not to assume nefarious intent when the issues are presented this way, but what was this Presidential 'controversy' all about?

The first issue raised for the Court's consideration in the Constitutional Reference related to the legal status of the Preamble to Vanuatu's Constitution which states that Vanuatu is '…founded on traditional Melanesian values, faith in God, and Christian principles'. This is the very part of the Constitution – along with the country's motto 'In God We Stand' – that is invoked in many conservative challenges to human rights provisions in Vanuatu. The specific concern raised in relation to the Preamble was also a key concern of the Vanuatu Christian Council at the time: the potential criminalisation of corporeal punishment of children by parents[532]. This was framed as a freedom of conscience and worship issue, and reflected popular sentiment as illustrated in this excerpt from the *Daily Post* article quoted above which begins:

> Nearly every successful ni-Vanuatu today was subject to discipline, which could mean spanking their bums when they misbehaved when they were young. The tears they cried during those crawling and learning years made them rise to what they are today. But a recent law that was 'bulldozed' in Parliament, the Family Protection Act, will to some certain extent restrict parents from disciplining their children due to the fear that they might be jailed because they could be accused of committing 'domestic violence.' The Act claims to be based on traditional values and on Christian principles but there is no provision in the Act that conforms to the Bible teaching advocating corporeal punishment.[533]

Much of the 'controversy' about this aspect of the FPA, and the focus of the first part of the President's Constitutional Reference, revolved around the perceived right of parents to physically discipline their children. Ironically some of the public comments below the article on the *Daily Post* website raised concerns about the inclusion of chiefs in the FPA, referring to chiefs as puppets of the state, as not representing community views, and as illiterate[534].

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[531] Christine Forster, "Ending Domestic Violence in Pacific Island Countries: The Critical Role of Law," *Asian-Pacific Law & Policy Journal*, 12 no. 2 (2011) 140.
[532] The President of the Republic of Vanuatu v. The Speaker of Parliament Constitutional Case No. 06 (2008), 7.
[533] Binihi, "Family Protection law may ban the rod of correction".
[534] Binihi, "Family Protection law may ban the rod of correction," comments section.

While Chief Justice Vincent Lunabek's ruling on this aspect of the Constitutional Reference raised by the President sidestepped the issue of corporeal punishment, noting that Vanuatu's common law would still allow for 'reasonable' and 'genuine' parental discipline[535], importantly his ruling did not base this in Christian beliefs or in the Constitution's Preamble. Instead, the Chief Justice ruled in this case that '…the Preamble is not an enacting provision of the Constitution', and firmly established its role as a 'symbolic rather than functional'[536] part of Vanuatu's laws. In this respect, the clarification offered through this Constitutional Reference represented a clear 'win' for human rights activism in Vanuatu and established the Preamble's status in law – including its invocation of Christianity and *kastom* – as subsidiary to the human rights provisions.

The President's case also raised a formal concern around aspects of the FPA relating to Authorised Persons, and in particular the potentially 'judicial nature' of this role:

> …the nature of the powers of the authorised person is of a judicial nature. Those powers can only be exercised by Judicial Officers appointed under Article 47. Parliament cannot extend the judicial power to a lay person.[537]

This aspect of the President's Reference expressly raises concerns about appointing 'lay persons' – in this case chiefs and their community designates – as Authorised Persons. The Court resolved this by stating that this part of the Act 'does not confer any function, let alone judicial function, on any person'[538], with the Chief Justice further clarifying in the case of Authorised Persons that:

> No formal or legal training or qualifications are required.
> An authorised person is not entitled to make decisions which are determinative of rights or obligations.
> An authorised person is not entitled to determine any question of law.
> The role of the authorised persons is merely to discharge the limited statutory function of deciding whether to issue a temporary protection order and the terms thereof.[539]

While the legal status of Authorised Persons may have been technically resolved by the Court, why this aspect of the FPA was put in place, for whose benefit, and how this would be interpreted and practically oversighted at the community level was left unresolved. As will become clear below, this

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[535] The President of the Republic of Vanuatu v. The Speaker of Parliament Constitutional Case No. 06 (2008), 21.
[536] The President of the Republic of Vanuatu v. The Speaker of Parliament Constitutional Case No. 06 (2008), 11.
[537] The President of the Republic of Vanuatu v. The Speaker of Parliament Constitutional Case No. 06 (2008), 26.
[538] The President of the Republic of Vanuatu v. The Speaker of Parliament Constitutional Case No. 06 (2008), 26.
[539] The President of the Republic of Vanuatu v. The Speaker of Parliament Constitutional Case No. 06 (2008), 26.

area of concern raised by the President was, in fact, warranted. What is less clear, however, is the nature of the controversy around Vanuatu's FPA. The controversy that did exist was far less settled than one might assume.

4. Political and Patriarchal Football: The History of Vanuatu's *Family Protection Act*

Another way that the inclusion of chiefs in Vanuatu's FPA has been justified is in reference to the apparent newness of protection orders. In this view the FPA is often presented as a kind of radically modern state intervention in the late 2000s, with chiefs positioned as necessary intermediaries to bridge or 'reduce the gap'[540] between this 'modernity' and the community context. This perspective assumes a kind of stark division between several categories: state/community, law/*kastom*, modern/traditional that I interrogate at various points in this thesis, including in my conclusion. Much like the false assumptions about Vanuatu's Constitution that I examine in Chapter Four, this perspective effectively positions Vanuatu communities as ahistorical tabula rasa that are ill-equipped to navigate the kind of modernity that is presented in the form of rights, laws, and protection orders. Beyond the implicitly racist implications of these renderings of 'the modern' and 'the indigenous', it is worth considering the extent to which the FPA and protection orders were actually that 'new' for Vanuatu by 2009.

As I detail in greater depth in Chapter Four, gender equality and family law were a key part of the government's 'legislative programme'[541] in the first five years following Independence, with the Divorce Act seen as only the first step in addressing the 'real social problems' arising from domestic violence[542]. Even the need for a formal mechanism to issue protection orders was actively considered at that time. Evidence for this can be found in the broad consultations that resulted in the Vanuatu

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[540] Forsyth, "Beyond Case Law," 437.
[541] Vanuatu Parliamentary Hansard, Second Ordinary Session of 1985, Tuesday 10 December 1985, Item 135.
[542] Parliamentary Hansard, First Ordinary Session of Parliament (2 June 1986) Item 10.

National Council of Women's report on the 'Family Law Bill' in 1985 which called for, amongst other things, the development of 'separation orders' for cases of domestic violence:

> Where reconciliation of the parties concerned has failed, or where domestic difficulties are such that it would be intolerable for the family unit to continue, Separation Orders should be available on broad grounds as a separate remedy.[543]

The report further clarifies that '…where domestic abuse is involved [Separation Orders] could give some protection to the wife against physical injury.' While these consultations around the Family Law Bill resulted in the passing of divorce legislation – the *Matrimonial Causes Act* detailed above – in 1986, the accompanying domestic violence legislation and formal provisions for protection orders in cases of domestic violence were not progressed at that time[544].

This situation was remedied to some extent by the early 1990s, however, when a Supreme Court judge along with other court officers developed their own mechanism for issuing protection orders. According to this judge in an interview I conducted with him:

> I was sitting as a Supreme Court Judge and it appeared that everywhere I went on circuit…women were being beaten by their husbands or their partners, and the level of violence was very great. And I really got to a point where I thought we had to do something, and the Supreme Court had an inherent power and duty to protect people. We didn't have any legislative basis for it directly, but we did have an obligation to protect individuals. So, with Rita Naviti, who was Registrar in Santo…we worked out an approach whereby women could come [and] could approach the court without any fee. We provided a 24-hour, seven day a week service. We were accessible.

Well before mobile phones, this judge described using the radio to issue protection orders even in remote and rural communities. This approach was enabled by the equality provisions in Vanuatu's Constitution as described by the same judge here:

> I think it's article 5.1.K from memory…which guarantees equality. And part of equality means, I think, equality of protection. That was another of our justifications. We were really a little bit using the 'Ways and Means Act'. That is, there has to be some way, or some means of providing the protection for these women. If it wasn't the inherent jurisdiction of the court, well then, we might be able to justify it under the Constitution, and the equality provisions of the Constitution.

When Merrin Mason, an Australian lawyer who worked with the Vanuatu Women's Centre as their first legal officer arrived in January 1995[545] she subsequently based her own approach for creating

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[543] Vanuatu National Council of Women, Family Law Bill Submission (Port Vila, 1985) 15.
[544] As detailed in Chapter Four, the political and economic context in Vanuatu became increasingly unsettled through the late 1980s and 1990s. While this was not the only reason for the delay in progressing this legislation, it was a contributing factor.
[545] Mason, "Domestic Violence in Vanuatu," 119.

'restraining orders' for women on the process developed above[546]. According to Mason, while they were not yet formalised in law these 'restraining orders' were part of an established procedure by this point, and women increasingly came to know about them.

While this more informal Court-based protection mechanism continued to be available to women over several years, the possibility of a more comprehensive legislative response to domestic violence remained elusive. As detailed in Chapter Four, the upheaval in the Vanuatu government through the mid to late 1990s was extreme, and the ensuing political and economic chaos had effectively brought legislative development to a standstill. When Vanuatu's Comprehensive Reform Program (CRP) was initiated in 1997 it activated a range of economic and political reform measures along with an ambitious program of legislative renewal. The CRP also had a strong focus on gender equality[547] and on the 'Development of policy and legislation on violence against women and children'[548]. As a result, domestic violence legislation including more formal and regularised provisions for protection orders were back on the agenda.

A prominent women's leader described first hearing about the government's renewed commitment to enacting domestic violence legislation at a cocktail party at Vanuatu's Reserve Bank. In her words:

> I remember in 1997 we went to a cocktail party at the Reserve Bank. At that time…Daniel Bangtor was Minister of something to do with finance…but his speech touched upon a Family Protection Act! So, when I heard that, the very next day I called [another woman leader X] and we met. We talked and I said 'Okay, I'm going to ask the Minister for a copy of that Family Protection Act he was talking about'. So, I went up to his office with all of my things and then I brought it to [X] and we looked through it. We decided that there would need to be public awareness about it. But when we looked through it all – it was written in New Zealand, by a representative of New Zealand – and we could see that it was too…too foreign in our view. And a lot of things were just different.

As it turns out, the CRP had ushered in several laws which, given time constraints and the pressure to fill legislative gaps, were borrowed or modelled on those from other countries[549]. To address the

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[546] This was conveyed to me in an interview. In the 18 months Mason worked with the VWC in the mid-1990s she provided legal advice – including 'restraining orders' – to more than 100 women. Mason, "Domestic Violence in Vanuatu," 119.
[547] Christine Bradley, *Final Report: Institutional Strengthening of the Vanuatu National Council of Women*, December 2000, 1.
[548] Christine Bradley, *Inception Report: Institutional Strengthening of the Vanuatu National Council of Women*, June 2000, 1 to 2.
[549] Morgan, "Integrating Reform: Legislative Needs Assessment," 2.3.2.

poor fit of the CRP's proposed domestic violence legislation, legal advocates from the Fiji-based Regional Rights Resource Team[550] were brought in to assist, and the process of enacting stand-alone domestic violence legislation for Vanuatu began again in earnest.

Despite these efforts, by the early 2000s there was still no formal legal mechanism in place to protect women beyond Vanuatu's Penal Code and the provisions for protection orders that had been developed by Vanuatu's Courts in the 1990s. While legislation had been circling around Parliament, changes in government, male politicking and, not incidentally the increasing influence and opposition from chiefs, had quashed any momentum. In recognition of these circumstances, and to address the immediate and pressing needs of women and children at risk of violence, Vanuatu's Chief Justice Vincent Lunabek intervened. Following a July 2001 conference focusing on Women, Children and the Law[551] the Chief Justice's Rules Committee approved Civil Procedure Rules 'to help facilitate access to civil procedure remedies for victims of domestic violence'[552].

While this legal mechanism was only intended as 'an interim measure'[553], it remained in place until the FPA was finally gazetted in 2009. Along with an associated Magistrates Bench Book developed in 2004, the Court Rules provided court officers with clear procedures for issuing what were called 'Domestic Violence Protection Orders'[554]. The rules are straightforward and clearly articulated. They reference 'domestic violence' specifically (rather than the more sanitised and depoliticised 'family violence') and place the power to issue protection orders in the hands of Magistrates. In cases where 'the level of violence or threatened violence is serious'[555] matters could also be elevated to the Supreme Court. All the roles outlined in the Civil Procedure Rules were in accordance with existing duties and were delegated to trained and regulated representatives of the state.

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[550] The Regional Rights Resource Team (and later the Pacific Community) have played a significant role in the development of domestic violence legislative development in the region.
[551] Shirley Randall, "Awareness Raising on Court Rules Relating to Domestic Violence in Vanuatu," 8 March 2003, 11.
[552] Republic of Vanuatu, Civil Procedure Rules, Order 49 of 2002 [CAP 270].
[553] Randall, "Awareness Raising on Court Rules," 11.
[554] Republic of Vanuatu, Civil Procedure Rules, Order 49 of 2002 [CAP 270]; Vanuatu Magistrates Bench Book (July 2004).
[555] Republic of Vanuatu, Civil Procedure Rules, Order 49 of 2002 [CAP 270].

It is worth noting that at no place in either the Civil Procedure Rules or in the sections relating to domestic violence or Domestic Violence Protection Orders in the Magistrates Bench Book are chiefs or *kastom* referenced in any way, nor are chiefs provided with any powers in relation to the rules and processes around domestic violence. In many ways this approach followed the overall tone and intention of the earlier work done in 1985 by the Vanuatu National Council of Women on the proposed Family Law Bill. Following their development, broad consultations were held on the new Court Rules, and domestic violence protection orders were available across many parts of Vanuatu society[556]. While these processes and their application no doubt continued to be uneven, as would be the case in any context, by the time the FPA was gazetted in 2009 protection orders were already a reasonably well-known entity in Vanuatu's communities.

As this brief history of legislative interventions to address domestic violence illustrates, several of the measures that were introduced by the FPA in 2009 were not actually that 'new' for many sectors of Vanuatu society. Significant work to enact this legislation and extensive community consultation had started in the early 1980s. By the time the FPA was passed, protection orders had been available to women through a variety of mechanisms for more than 15 years in Vanuatu. While the broader standalone domestic violence legislation itself was 'new', protection orders themselves – as well as the compelling need for the legislation – were well-established. The only aspect that was new in Vanuatu's 2008 FPA was that chiefs were now situated in a key position of power and authority vis-a-vis women seeking protection orders in situations of violence. It is worth exploring briefly why they were there.

While there are likely several reasons for why chiefs were there, the context of political and economic upheaval in the late 1990s and through the early 2000s had a significant impact. While issues around 'poor fit' provided one explanation for why the FPA did not progress to Parliament in 1997, this could have been resolved rather easily and other factors were also clearly at play. A central issue was the

[556] Randall, "Awareness Raising on Court Rules".

ongoing political turmoil that had stalled the legislation in Parliament in 1999 and again in 2001[557]. Interlaced with this issue of political turmoil, however, another factor had begun to emerge. This other factor was framed by political scientist Michael Morgan in 2001 in the following way:

> Stakeholders are concerned that delays in the consultation process indicate the Executive's reluctance to enact legislation which will offer legal recourse in cases of domestic violence, despite the provisions of the Comprehensive Reform Programme and Vanuatu's commitment to CEDAW. The Bill has been delayed because of the concern of some chiefs that it will augur social disintegration [emphasis added].[558]

Enter the discourse of the opposition of chiefs, and the collusion and influence of patriarchal and power seeking 'regimes of governance' in the evolution of Vanuatu's FPA.

To illustrate this emerging set of issues, Morgan traces a set of contributing circumstances that suggest why the views of chiefs had become so politically important at this moment. Quoting a 1997 Vanuatu Women in Politics report, Morgan highlights how government instability had also 'created a backlash against the inclusion of women in decision-making'[559]. According to Morgan, this dearth of women in government was directly intertwined with the intricacies of male politicking and power seeking in Vanuatu:

> One effect of women's poor representation in Parliament is the relative ease with which male MPs derail legislation, such as the Family Protection Bill (proposed anti-domestic violence legislation). The Family Protection Bill was cleared by the VP/NUP Cabinet for tabling in Parliament in 1999 and again by the VP/NUP Government in 2004, but was delayed by political instability or withdrawn by less-sympathetic regimes such as Barak Sope's Coalition (1999–2001). However, the UMP led Government of Serge Vohor briefly championed the bill, recognising that the VP failed to get it past the council of ministers. Vohor's Government fell in 2004. The Malvatumauri remains opposed to the involvement of women in public decision-making, meaning that often, while paying lip service to gender empowerment, political parties opt to incorporate chiefly representatives into their platforms — almost a mandatory strategy to legitimate electoral support — and marginalise women further. [emphasis added][560]

While the interlinkages between male politicking, political instability, and the emerging influence of chiefs are taken up more actively in other parts of my thesis and again in the conclusion, in relation

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[557] Morgan, "Integrating Reform: Legislative Needs Assessment," 2.3.2.
[558] Morgan, "Integrating Reform: Legislative Needs Assessment," 2.3.2.
[559] Morgan, "Integrating Reform: Legislative Needs Assessment," 2.6.
[560] Michael G. Morgan, "The Origins and Effects of Party Fragmentation in Vanuatu," in *Political Parties in the Pacific Islands*, eds. Luke Hambly and Michael G. Morgan (Canberra: ANU Press, 2008), 138.

to Vanuatu's FPA, it is clear that 'power relations and politics'[561] provide at least one important explanation for why chiefs were brought into Vanuatu's FPA at this time.

5. Enter the 'Chiefs' Act': The Peculiarities of Vanuatu's *Family Protection Act (2008)*

Within this broader context of upheaval, by 2001 the revisions to Vanuatu's proposed domestic violence legislation were underway and the FPA was ready to go to Parliament. Even at that time, glimmers of the 'unique' aspects of the 2008 FPA were already there. For example, strange wording about who could be a 'Registered Counsellor' – which remains in the 2008 version – was present in 2001. In this part of the legislation it states that 'A person who in accordance with the *rules of custom* conducts counselling or mediation in relation to domestic violence may be considered'[562]. What 'counselling in accordance with the rules of custom' means, however, is unclear. This could be counselling women to be more subservient to or 'respectful' of men (as detailed in Chapter Five, this is what many women are essentially told to do when they are beaten by their male partners). Or this counselling might be aimed at reconciliation rather than addressing the actual violence and its impacts for women and children[563].

While this part of the FPA is unique and problematic, the aspects relating to chiefs are far more troubling. While chiefs and references to 'custom' are already visible in the 2001 version, they are still relatively minor. Chiefs are one among several options for who an Authorised Person could be and are positioned towards the end of the list after church leader, community leader and teacher, and just before village health worker[564]. While appointing any of these individuals as Authorised Persons raises several legitimate concerns in practice[565], beyond this one reference, chiefs are not particularly

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[561] Sieder and McNeish, eds., *Gender Justice and Legal Pluralities*, 14.
[562] Republic of Vanuatu, *Bill for the Family Protection Act* (2001) [Draft legislation].
[563] Practically this usually involves an apology from both parties and nothing further is discussed or addressed.
[564] Republic of Vanuatu, *Bill for the Family Protection Act* (2001) [Draft legislation].
[565] These include a range of more serious matters including how community members acting in this role will be kept safe and how temporary protection orders will be monitored and enforced, as well as more practical matters including how rural community members will fund costly expenses (for transport etc.) associated with acting in this role, and how expenses will be reimbursed.

prominent in this version of the legislation. In 2001 the regulatory oversight of these positions is given to state institutions such as the President, the Judicial Service Commission, and the Minister of Justice. The 2001 version also stipulates that the Director of the Department of Women's Affairs and the Director General of the Prime Minister's Department must be consulted in relation to their appointment[566].

Between this 2001 version, and the version that went to Parliament in 2005, however, something transpires: chiefs are now at the top of the list of Authorised Persons, who are identified as:

> (i) …the principal chief of a village; or
> (ii) …an assistant chief of a village, a church leader, a community leader, a teacher, or a village health worker nominated by the principal chief of the relevant village. [emphasis added]

In fact, the only changes between the 2001 version, and the 2005 version of the legislation that was eventually passed in Parliament in 2008 are in the areas relating to chiefs. While members of the Vanuatu Police Force are also listed as potential Authorised Persons (as they had been in 2001), and there is a possibility for anyone who has 'applied in writing to the Minister' to be considered as well[567], the newly prominent role of chiefs in relation to the role of Authorised Persons is indisputable. As well, in the 2005 version the 'President of the National Council of Chiefs' is now listed (first) as someone the Minister must consult with in these appointments[568]. This kind of oversight role for the Malvatumauri is highly unusual in Vanuatu's body of laws.

While the changes that were implemented to incorporate chiefs may appear to be minor and of relatively little consequence, the situation is far more complex. Most women who seek a protection order would be expected to go to an Authorised Person – in this case, the chief or his designate – first before accessing other services. Within Vanuatu's highly uneven justice ecosystem, positioning chiefs as gatekeepers for access to temporary protection orders – by far the first and most common protection order women seek – has a particular effect. For example, at a meeting to discuss some of

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[566] Republic of Vanuatu, *Bill for the Family Protection Act* (2001) [Draft legislation].
[567] This 'loophole' was used in the initial piloting of Authorised Persons.
[568] Republic of Vanuatu, *Bill for the Family Protection Act* (2005) [Draft legislation].

the complexities and challenges with progressing Authorised Persons in 2015 a prominent [male] representative of the Courts, pointed vigorously to the wording of the Act and said, 'Look, it says it there. Just go ahead and make all the chiefs Authorised Persons!'[569]

Even if these peculiarities of Vanuatu's FPA could be seen as reasonable or practical accommodations given Vanuatu's context, understanding how and why they came about raises even more concerns. I interviewed the chief who played the lead role in the community-level consultations around the FPA and Authorised Persons starting in 2003. He described this experience as follows:

> In the Family Protection Act there is a section that talks about chiefs. A section that talks about chiefs, and how they will deal with these issues. How he will deal with them and govern his village. The way he can do that work in his village…When I got involved, they'd just put some thoughts together. They had made a draft. They brought it around and came to see me and said 'We want you to incorporate the work of the chiefs'. How they – when there is a problem with women in the village – how they deal with it. When there is an issue, when there is a court order to separate people [Protection Order] how would chiefs deal with that? So, I went into that to put all of the ideas in there. After that we did the consultation with all the chiefs.

In our interview, this individual went on to describe how he had led extensive consultations with chiefs across urban and rural Vanuatu[570]. I was interested to know what chiefs had thought about the FPA when these consultations were carried out. When I asked him about this, he replied quite simply that the chiefs had liked it. Curious about this response, I asked him why the chiefs had liked the FPA, and this is how he replied:

> Chief: They liked it because it would return all the power to them. Because in order to deal with these issues, he has to talk about it inside his nakamal first and sort it out. The main reason the chiefs liked it was because of power. The power would go back to them. Because they said that in terms of the customs in Vanuatu, we are one community inside the village. When a child is born, when a child is circumcised, whatever happens, including marriage, it's a community thing…When you pay for your wife, it's not just you, it's the community that pays for it…
>
> Me: So, the main message was to tell them that it would give them power in this law?
>
> Chief: Yes. And when they heard that part, they were happy. But I didn't just focus on that. I explained every part of the Protection Bill. I started at the beginning with fights and went right through to when they end up in Court. I explained everything to every chief. But the important thing was before it ended up in the law, you have your own right [as a chief] and you can deal with it, inside of your own village. And that was the thing that made them feel good about it.

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[569] These kinds of declarations are not uncommon in Vanuatu, where chiefs are seen as an easy fix for any number of problems, particularly by powerful men who themselves never have to live with the repercussions of decisions made by chiefs. Ironically one of the biggest advocates for making all chiefs Authorised Persons in this meeting was a young Peace Corps volunteer who took up a lot of the time in the meeting speaking at length about the value of chiefs in Vanuatu society.

[570] Vanuatu's FPA has been described as the most widely consulted legislation in Vanuatu at the time.

Later in our conversation this chief said that the issue he and other chiefs had was that before the FPA was passed into law women could access a protection order through the court or the Vanuatu Women's Centre, and the chief would be 'bypassed'. The problem with this was, in his words, 'When we bypass [chiefs], we take away their power now.' Clearly for many chiefs the focus was on their power to control and manage domestic violence at the village level themselves, not on the women or other victims/survivors of domestic violence.

In the efforts to support the 'rights of chiefs' and return 'all the power' to them, this individual also shared that it was important that chiefs be able to authorise anyone else who filled the role of Authorised Person. There is no doubt that he and his fellow chiefs could see the power of this gatekeeping role at the community level. According to another interviewee who expressed concern about chiefs' involvement in Vanuatu's FPA, chiefs were driven primarily by their interest in upholding the [patriarchal] status quo:

> [We had] a strong hesitation about including people who have a role in the traditional hierarchy [because] if they had wanted to do something about it, they would have without the law. And you know, generally – generally not exclusively – those types of people have a stake in upholding the status quo. So why would they necessarily be supportive of women?

In the end, the interests of chiefs in the FPA far exceeded an interested in fulfilling the non-judicial and 'limited statutory function' outlined in the Act. To the contrary, as it was expressed by this key chiefly architect, it was about power and about stopping women from 'running away' to seek a protection order from the Court. When I asked this chief later in our interview how many chiefs he thought were actually equipped to undertake the more expanded role of judging domestic violence issues that chiefs had clearly envisioned for themselves in the FPA, he said only half. While power was clearly the focus, even this key proponent thought that only half of the chiefs were actually equipped for the task.

These views regarding the real purposes for including chiefs in Vanuatu's FPA were corroborated by another individual I interviewed who was also an active participant in these consultations. In this individual's words, the involvement of chiefs was motivated partly by a fear that 'all of the chiefs were

against the Act', although this person also insightfully added that 'people who are guilty come out with a lot of the opposition.' This individual described the consultations as part of the broader outreach efforts around the Special Court Rules that had been introduced in 2003, which provided an opportunity to discuss the planned legislation as well. When I asked if chiefs seemed to be opposed to the legislation at this time, this individual said, 'No'. They then clarified that this was likely the case because:

> …we did the presentation in a way that at the end of the day, it was about family, and harmony….[and] we told them if they passed this law, it would give some power back to the chiefs, so they could solve these problems in the community.

When I asked if the main reason chiefs provided their support for the proposed legislation was on the basis that it would 'give them back' power, without hesitating this individual said, 'Yes.' They then added that in the consultations chiefs expressed being unhappy with the fact that before the FPA was passed protection orders were 'mostly focused on women, but they didn't think about men too.' Revealingly, this individual said that the proposed FPA legislation at this time was also commonly referred to as the 'Chiefs' Act'[571].

My own personal involvement with this so-called 'Chiefs' Act' began in 2013 when I was seconded by the Department of Women's Affairs to work specifically on Authorised Persons under Vanuatu's FPA. At the time there had been a lot of public discourse around the FPA not being 'implemented' because Authorised Persons and Registered Counsellors had yet to be appointed. While the Department had a strong interest in improving women's access to justice in cases of domestic violence, to her credit the Director at the time, Dorosday Kenneth Watson, also had deep concerns with this part of the Act. How the role of Authorised Persons would position chiefs vis-a-vis women who experience domestic violence at the community level was an overarching concern, but there were also several practical issues[572]. In the very limited and careful piloting that was subsequently designed, we handpicked a

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[571] It seems clear that the efforts in the mid-2000s to involve chiefs more actively in the FPA were directly linked to similar legislative efforts to give more power to chiefs through the *National Council of Chiefs Act* (2006). While giving chiefs additional powers to develop and enforce bylaws at the community level were eventually removed in the actual Chiefs Act, the extra powers given to chiefs in the FPA remained.

[572] For example, the original Act that was gazetted in 2009 included a mechanism for appointing people into both positions but had no mechanism for removing them. While this amendment had been drafted and passed through Parliament in

small number of people[573] in three pilot communities who were actively trained and oversighted to see how – and if – these roles could work.

While the details of this piloting are beyond the scope of this chapter and my thesis, what became abundantly clear were the complexities and the challenges particularly with the role of Authorised Person[574] as it had been configured in Vanuatu's FPA. Several of the people recommended to us for the role turned out to be wholly inappropriate, even after intensive training[575]. The handful selected for careful piloting all required active oversight (and in the initial pilot they continued to have access to 24-hour support[576]), and some of even these handpicked and oversighted few clearly used the position for their own self-interest. One of the people we selected for the role of Authorised Person happened to also be identified as an 'assistant chief' in his community. This could have been for any number of reasons: he was an energetic man-of-the-people, a skilled orator, and a church elder. Perhaps in no small part it was also based on his taking up of the role of Authorised Person in the pilot.

When I asked this individual for his views about the state possibly extending the role of Authorised Person to other chiefs beyond the piloting (as it is still currently outlined in Vanuatu's FPA), despite his clear and sophisticated criticism of colonialism and missionisation and a broad philosophical

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2011, it had never been gazetted. It was finally gazetted in 2015, allowing for the appointment of APs and RCs to proceed in principle.

[573] None of these individuals were selected on the basis of being a chief. Most of them had been recommended by existing organisations and programs working in the area of domestic violence, most had gone through previous training, and all of them were actively assessed in relation to their capacity to fulfill the role in a way that was in keeping with the spirit of the FPA. They continued to be assessed and monitored in the early piloting and received ongoing training and support (which was necessary, but very expensive and ultimately not very sustainable or scalable).

[574] For the role of Registered Counsellor, for the purposes of piloting, only people trained through the Vanuatu Women's Centre as Counsellors and one or two additional individuals who had been rigorously trained through World Vision's Channels of Hope program were selected.

[575] This had been an ongoing issue. For example, earlier efforts to advertise for applicants had resulted in the 'wrong people'. According to the head of the Family Protection Unit at the time and the representatives of Department of Women's Affairs who had been involved in these efforts, it was mostly people who were interested in subverting the intentions of the Act, perpetrators, and people who were interested in accessing political power and authority, and potentially leveraging a salary or payment for this role who applied. The piloting selected a small number of mostly trained individuals. Even representatives of a key women's organisation at the time said that many of their trained community members would not be ready for this kind of role.

[576] This required significant human and financial resourcing and is not scalable.

embrace of *kastom* epistemology and ideals, he said this made him, 'very, very, very afraid'. He said his biggest concern was that chiefs, '…would use it to gain power for themselves. And political power for themselves.' From his perspective, this 'would make things go from bad to worse.' This individual had declared in unequivocal terms on the first day I had met him a few years before our interview that '*kastom* was failing women'. For him, the interest of most chiefs in this role had nothing to do with addressing domestic violence or broader issues of violence or justice in society. Instead, it was based on their own personal and collective interests in power and in amplifying and extending this power through the state.

He clarified this further when I asked him if he thought any chiefs in the large area where he works might be appropriate for the role. He replied that in his view 'only one or two' chiefs could or should do this work in support of domestic violence – and, he added, only with careful oversight. His reasoning was as follows:

> …me for one, I don't want to see every chief have power, because there is too much giaman [lying]. Like I said, the volcano is firing up. Lots of flowers are growing, but these aren't good flowers. They are just seasonal flowers. There are some – the 'real' ones. But I'm afraid of that – too many chiefs! 'Oh, I'm the chief, I'm the chief, I'm the chief!' Everybody is a chief! And a chief without knowledge, a chief without skill, a chief of division.

This same individual described going to a meeting for chiefs organised by Vanuatu's Ministry of Justice and Community Services to mark the first year of piloting of the Authorised Persons, and having other chiefs pull him aside before he could enter:

> X: When we arrived, just before we met, there were some chiefs that grabbed me and they said, 'We're happy about you, but we're not happy about these APs! We're not happy about this program!' So, they were just recognizing me as an Assistant Chief, and were treating me like one of their own. But that's not where I am.
>
> Me: And why weren't they happy?
>
> X: They weren't happy because they think we have more power now. And they're afraid that we'll start putting a lot more men in jail. They think that we're overpowering them. They think we're dominating them.
>
> Me: And they don't want men to go to jail because?
>
> X: Because they'll say, 'That's for the Council [of Chiefs]. We'll sort that out ourselves'…

In these explanations not once were the rights, needs or interests of the victims of domestic violence or even simply improving community access to justice identified as a motivating factor for chiefs.

Rather, the inclusion of this role was viewed as a stepping-stone for furthering chiefs' collective interest in solidifying and expanding their power through the state. For many chiefs the FPA as a kind of 'Chiefs' Act' also assisted them in limiting women's access to court in situations of violence and in mitigating the consequences for violent men.

6. A Unique Legal Construction, Within Vanuatu and the Region

If one could overlook the constant articulation and re-articulation of 'power' that was clearly central to the FPA as the 'Chiefs' Act', it might be possible to assume that this is just how regulatory pluralism must be done in Vanuatu. In this more generous reading, extending a regulatory role to community level actors might be seen simply as an attempt to decentralise services, albeit imperfectly. Just another compromise. The presence of chiefs in Vanuatu's domestic violence legislation is often explained by reference to Vanuatu's geographic and resourcing realities, where many communities are located at a significant distance from shrinking state services. In fact, in a conference focusing on protection orders in domestic violence legislation in the region that was held in late 2021, these issues around access to protection orders were raised in various Pacific jurisdictions. In other jurisdictions, however, a variety of mechanisms have been put in place to address these concerns, from technological options (online or by phone) to on-the-spot police issued safety orders[577].

There is no doubt that in Vanuatu decentralisation is a valid concern. This is demonstrated by the fact that at least 18 other laws also use the mechanism of 'Authorised Person' or 'Authorised Officer' as a strategy to mitigate the complexities of access and geography. In every case where this role has been written into Vanuatu's legislation, however, it is either left unspecified or individuals with specific *technical* expertise are listed. In fact, nowhere are chiefs identified for this role *except* in Vanuatu's FPA. For example, Vanuatu's *Correctional Services Act* provides an interesting point of comparison.

[577] Department of Pacific Affairs, Australian National University, "Symposium on Family Protection Orders in the Pacific Region (December 2021), https://www.youtube.com/playlist?list=PLV6RuTP9szr9n8AsWs-SjFGsOE6syc9YK.

Passed in 2006, this legislation includes a role for 'Authorised Persons' but does not specify who should fill the role. While the original legislation extended the same 'powers and obligations of a correctional officer'[578] to these individuals, a 2019 amendment reverted these powers back to only trained and regulated Correctional Services Officers. In the parliamentary discussion in June 2019 the decision to revoke these powers was based on human rights considerations and to ensure that Vanuatu's international commitments to the rights and fair treatment of prisoners could be fulfilled[579].

Interestingly, the 2006 *Correctional Services Act* also includes an additional role for 'Community Justice Supervisors'. Working under the supervision of a Probation Officer, these individuals oversee detainees who are released on probation or sentenced to 'Community Work and Supervision'. This role has often been framed in terms of *kastom*. For example, a presentation developed with the support of New Zealand Advisors[580] to outline the Community Justice Supervisor role is titled 'Incorporating Kastom into Vanuatu Probation'[581]. Distance and the cost of travel are offered as justifications for this role, as well as the 'respected leadership of the Chief' and 'Community experience of addressing offending through kastom processes'[582]. Even in this instance, however, the Act only specifies that a Community Justice Supervisor must be appointed by the Director, and 'be a person of high standing in the community'[583]. Even in this role where chiefs are sometimes used, the legislation still does not specify that people in this role will be chiefs.

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[578] Republic of Vanuatu, *Correctional Services Act 2006* [No. 10 of 2006].
[579] Parliamentary Hansard, First Ordinary Session of Parliament (12 June 2019) Item 6 and 27.
[580] An advisor I interviewed who had worked in the Correction Services space reflected that this often was based on external advisors' 'ascribing of virtue to ideas like being a chief, like living in a village…that doesn't always line up with people's lived experience.'
[581] "Community Justice Supervisors: Incorporating Kastom into Vanuatu Probation". A powerpoint presentation shared by a New Zealand Correctional Services Advisor with permission from the Vanuatu Department of Correctional Services.
[582] My own experience observing the role of Community Justice Supervisor at the community level has been less rosy. So-called 'Kastom processes' often involve violence, particularly in relation to young people and women who have transgressed social mores. In one community I conducted extensive research as part of a team, a chief acting in the capacity of Community Justice Supervisor reported that all was going well in his oversight of a recently released convicted rapist and showed me the book where the individual on probation would sign in each morning and evening (which appeared to be the only 'oversight' being provided). Other prominent community members complained bitterly that the convicted rapist had returned and immediately started to engage in a coercive sexual relationship with the now teenage girl he had been convicted of raping six years earlier when she was a child. Not surprisingly all of the Community Justice Supervisors featured in the presentation are men. There also seems to be a potentially problematic expansion/overstep of the role in practice when the presentation says that 'Advice on other issues in their community is sought from them because of their community Justice Supervisor role.'
[583] Republic of Vanuatu, *Correctional Services Act 2006* [No. 10 of 2006], 49(2).

While several pieces of legislation in Vanuatu allow for an expansion of regulatory roles as a kind of sensible accommodation given resourcing and geographic challenges, in not one of these cases are chiefs specifically identified for this role. The only exception to this is Vanuatu's FPA[584]. The unique status of Vanuatu's FPA becomes even more troubling when the broader regional context for domestic violence legislation in the Pacific is considered. As in Vanuatu, the work to enact domestic violence legislation elsewhere in the Pacific started several decades ago and intensified over the past 15 years. While Vanuatu was the first independent country in the Pacific to pass 'a comprehensive civil and criminal domestic violence law'[585], fourteen other Pacific jurisdictions now have their own legislation[586]:

Country	**Year**	**Legislation**
Vanuatu	2008	Family Protection Act
Fiji	2009	Domestic Violence Decree
Marshall Islands	2011	Domestic Violence Protection and Prevention Act
Palau	2012	Family Protection Act
Papua New Guinea	2013	Family Protection Act
Tonga	2013	Family Protection Act
Samoa	2013	Family Safety Act
Kosrae State, FSM	2014	Family Protection Act
Solomon Islands	2014	Family Protection Act
Kiribati	2014	Te Rau N Te Mwenga Act (Family Peace Act)
Tuvalu	2014	Family Protection and Domestic Violence Act
Nauru	2017	Domestic Violence and Family Protection Act
Cook Islands	2017	Family Protection and Support Act
Pohnpei State, FSM	2017	Domestic Violence Act

In each of these cases, despite having Vanuatu's FPA as a model and despite being informed by a

[584] Vanuatu's 2013 land laws also give substantial powers to chiefs, but not as Authorised Persons.
[585] Forster, "Ending Domestic Violence," 125.
[586] "Working together to implement domestic violence legislation across the Pacific," October 7, 2019.

similar set of drafting instructions,[587] no other jurisdiction has included provisions for *kastom*/custom or for chiefs in the same way that Vanuatu has.

There is no doubt that elements of a plural regulatory environment and various contextual references are present in all domestic violence legislation across the region. For example, in the Cook Islands a 'traditional leader' is one of several persons who may *apply* for a protection order on behalf of a victim[588]. Kiribati's *Family Peace Act* stipulates that 'In deciding whether to grant a protection order, the court must not take into account any custom that may put the applicant or child or any other member of the household at risk of domestic violence.'[589] In Nauru the legislation directs counsellors in domestic violence situations to consider 'traditions and culture'[590], and 'traditional mediators'[591] are included in Tuvalu's Family Protection Act. Palau's *Family Protection Act* clearly stipulates that, '…resolution of the matter through customary or traditional reconciliation shall not preclude or interfere with the institution of criminal charges and prosecution'[592]. Some legislation in the region goes even further by identifying domestic violence as 'almost always perpetrated by men against women'[593], and references CEDAW[594] specifically.

The only law in the region that perhaps comes closest to Vanuatu's use of chiefs is the Solomon Islands *Family Protection Act*. While the Solomons did not opt to use Authorised Persons despite a clear recommendation in drafting instructions referencing Vanuatu's model[595], they did allow for the use of 'Authorised Justices' in their Act. These individuals are further defined as: (a) a Justice of a

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[587] The Secretariat of the Pacific Community developed packages of legislative drafting instructions for each Pacific jurisdiction titled 'Legal Analysis on Violence Against Women, Country X: Drafting Options for Legislative Reform' to guide legislators in drafting domestic violence legislation. An example of Samoa's is available here: https://hrsd.spc.int/sites/default/files/2021-07/Samoa_28329.pdf.
[588] *Cook Islands Family Protection and Support Act* (2017), Article 97.
[589] *Kiribati Te Rau N Te Mwenga Act* (Family Peace Act) (2014), Article 14(3).
[590] *Nauru Domestic Violence and Family Protection Act* (2017), Article 27(1).
[591] *Tuvalu Family Protection Act* (2014), Article 24(g).
[592] *Palau Family Protection Act* (2012), Article 808
[593] *Kiribati Te Rau N Te Mwenga Act* (Family Peace Act) (2014), Article 3(1)
[594] *Kiribati's Te Rau N Te Mwenga Act* (Family Peace Act) (2014), Article 3(1), and *Cook Islands Family Protection and Support Act* (2017), Article 3, *Nauru's Domestic Violence and Family Protection Act* (2017), Article 3(1). In *Tuvalu's Family Protection Act*, the CEDAW National Coordinator and Committee are given clear roles in relation to the Act. *Tuvalu Family Protection Act* (2014), Part 9.
[595] Secretariat of the Pacific Community, "Solomon Islands Legal Analysis on Violence Against Women: Drafting Options for Legislative Reform" (July 2013), 29.

Local Court; or (b) a prescribed person or a person belonging to a prescribed class of persons'[596]. In the Solomon Islands the Local Courts like Vanuatu's Island Courts were established primarily to adjudicate land issues[597] and justices are laypeople who may also be chiefs. A key difference in the Solomon Islands legislation, however, is that even where chiefs may be functioning as Authorised Justices, they are still under the jurisdiction of the courts. This is not the case in Vanuatu. A regional advisor I interviewed said that the stand-alone and effectively self-regulating role given to chiefs in Vanuatu's legislation was never considered in other Melanesian contexts. In this respect, Vanuatu's FPA is an outlier. The inclusion of this small but powerful role for chiefs in our domestic violence legislation is not only unique across Vanuatu's own body of laws but has not been replicated in any other Pacific jurisdiction.

Part of the explanation for this can be found in Vanuatu's broader interest in empowering chiefs and kastom in and through the state. A chapter in the 2011 book *Made in Oceania* includes a telling interview between Vanuatu politician and former Director of the Vanuatu Cultural Centre Ralph Regenvanu and anthropologist Haidy Geismar. While the chapter focuses on the context and lead up to Vanuatu's 2007 Year of the Traditional Economy – described elsewhere by Regenvanu as a 'Trojan horse for kastom'[598] – the conversation revealingly includes the following reference to Vanuatu's FPA:

> Ralph Regenvanu: ...that's why one of the big pushes here, in the Year of Traditional Economy, was to implement Article 30, Sub-article 2 of the constitution, which says the Malvatumauri National Council of Chiefs should be given the power to endorse any legislation to do with land, kastom or language. The most recent case is the family protection bill, which gives chiefs power to intervene in a household between a man and his wife…[599]

How legislation to address domestic violence could be construed as having to do with areas of 'land, kastom or language' as it was originally intended in the Constitution is a stretch at best. In this interview Regenvanu goes on to use the example of the role accorded to chiefs in Vanuatu's FPA as

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[596] *Solomon Islands Family Protection Act* (2014), Section 9.
[597] Daniel Evans, Michael Goddard and Don Paterson, "The Hybrid Courts of Melanesia: A Comparative Analysis of Village Courts of Papua New Guinea, Island Courts of Vanuatu and Local Courts of Solomon Islands," Justice and Development Working Paper Series 13 (2011), 11
[598] Regenvanu, "The 'Pig Bank': A Trojan Horse for Custom".
[599] Regenvanu and Geismar, "Re-imagining the economy in Vanuatu," 44.

an example of a newly envisioned role of 'State Chief' for Vanuatu, describing these 'State Chiefs' as being given 'power by legislation'[600] within the state.

Beyond the many reasonable questions this potential role of 'State Chiefs' evokes: how will they be regulated and oversighted; how and by whom will they be trained; how will they be paid; how will duplication of roles be navigated; what about the fact that Vanuatu's chiefs are almost exclusively men; there are other pertinent questions. For example, it is well-worth asking why one of the first (and only[601]) times this 'giving of power' to chiefs was enacted in Vanuatu was specifically in the context of Vanuatu's domestic violence legislation. Regenvanu himself has described the relationship between chiefs and women as 'antagonistic'[602] and has further identified women and young people as 'The victims of the chiefs' bid for extra powers…'[603] Given that many issues of domestic violence are still practically mediated outside of the FPA by chiefs at the community level, this 'antagonistic' relationship has no doubt contributed to Vanuatu's enduringly high rates of domestic violence. It is not coincidental that these rates are particularly high in rural areas[604].

Another prominent Ni-Vanuatu woman I interviewed shared a clear critique about this desire to amplify and institutionalise *kastom* and chiefs within the state. In her view this was not a 'good fit' for reasons of equity, and because the same 'rules aren't made available to everyone'. She then proceeded to use violence against women as an illustrative example of this problem:

> …we'll end up with issues that we don't think should go to *kastom*. Issues like domestic violence. [Chiefs] will say yes, but it will just be a cover up. It wouldn't really satisfy…when you listen to women, they would rather have the police, rather than the chief. That actually says something big about what they believe about their lives. Protection of their lives. Security of their lives.

It is not simply that many chiefs are poorly equipped to respond to situations of violence against women or that there is friction between chiefs and women. Being able to 'cover up' these kinds of crimes and prevent women from accessing state protections through the courts is clearly another key

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[600] Regenvanu and Geismar, "Re-imagining the economy in Vanuatu," 43.
[601] Again, with the exception of the 2013 land laws, which effectively removed land decisions from the courts altogether.
[602] Ralph Regenvanu, "The Changing Face of 'Custom' in Vanuatu," *People and Culture in Oceania* 20 (2005): 44.
[603] Regenvanu, "The Changing Face of 'Custom'," 44.
[604] Vanuatu Women's Centre, *National Survey on Women's Lives and Family Relationships*.

reason why some chiefs have been so interested in this role. Rather than addressing the grievous circumstances of violence in the everyday lives of women and girls in Vanuatu and ensuring the 'security of their lives', these chiefly bids for power have focused instead on subverting women's rights and access to justice at a time when they are most vulnerable, and protecting the interests of violent men.

7. Conclusion: The 'Rights of Chiefs', Women, and Violence

Under Vanuatu's FPA, chiefs have been given a leading role, setting them up as community-level gatekeepers for the issuance of temporary protection orders. As the example of this small but powerful role accorded to chiefs in Vanuatu's domestic violence legislation illustrates, law is not neutral, but neither are configurations of regulatory pluralism. The kinds of compromises that are made in any regime of governance, why they are being made, for whose benefit, and with what impact are crucial considerations. For male chiefs in Vanuatu, occupying this part of the FPA represented far more than simply 'discharging a limited statutory function' as envisioned by the Courts. While issues of geography, perceived controversy, and the need to mediate the relative 'newness' of the provisions of this law have been offered as explanations for giving chiefs such a prominent role in relation to Authorised Persons, these concerns were ultimately of little consequence. Instead, as this chapter has demonstrated, the clear reason for the unusual inclusion of chiefs in Vanuatu's domestic violence legislation centred around a fairly unilateral focus by chiefs in solidifying and expanding their power in and through the state.

The example of Vanuatu's FPA shows how the hidden and seemingly invisible power exercised by traditional patriarchal institutions within plural regulatory orders can come to dominate the more visible power of state laws[605] – in this case, even from within the law itself. Beyond their interest in power, for many chiefs having a role in Vanuatu's FPA has also clearly been about redress for violent men.

[605] Corradi, "Introduction: Human Rights and Legal Pluralism," 9.

As Authorised Persons, chiefs are able to act as gatekeepers, enacting their own version of patriarchal 'family harmony', while at the same time rectifying what they perceive to be an excessive focus on the needs and interests of women as victims/survivors of violence in Vanuatu's Courts. In a comprehensive examination of criminal justice interventions in the context of domestic violence, criminologist Robyn Holder describes the criminalisation of domestic violence in the following way:

> Criminalisation seeks to introduce the standards and norms of non-violence in public places, and the means of enforcing and regulating these, into people's more intimate lives. Criminalisation attempts to insert the power and authority of 'the state' between a person prepared to use physical force and/or the threat of it, and the persons over whom such dominion and control is sought...[606]

As Authorised Persons, male chiefs are now in a position to use the power and authority of the state to effectively decriminalise domestic violence, stopping it from ever reaching the courts, and effectively doubling down on women who are victims/survivors of violence to behave in more compliant and 'respectful' ways.

While there are many legitimate critiques of criminal justice interventions in a range of contexts, it would be a grave mistake to understand the inclusion of chiefs in Vanuatu's domestic violence legislation as simply an expansion of the regulatory toolkit. It is also telling that these 'unique' aspects of Vanuatu's domestic violence legislation have not been replicated in any other Pacific jurisdiction where despite similarly plural contexts, imperfections in legal approaches, and their own need for compromise, these other jurisdictions have given priority to the rights and interests of the women and other community members who are the victims/survivors of violence. In the context of Vanuatu, the inclusion of this role for chiefs in Vanuatu's FPA effectively ensures the continuation and expansion of patriarchal interests and patriarchal authority in cases of domestic violence, while also furthering a broader agenda to mobilise *kastom* and empower chiefs in a variety of new regulatory ways within the state. How these efforts to institutionalise *kastom* as justice impact the lives of women and girls in Vanuatu will be the focus of my next chapter, 'Erasing Women: *Kastom* as Justice?'

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[606] Holder, "Domestic and Family Violence: Criminal Justice Interventions," 8.

Chapter Seven
Erasing Women: *Kastom* as Justice?

1. Introduction: *Kastom's* 'Teeth', Chiefs, Policing, and Bylaws

In mid-2016 a colleague and I were waiting to meet with then Minister of Justice and Community Services, Ronald Warsal. A lawyer by profession, Warsal had taken up the portfolio following the February 2016 elections. Before him, the Ministry had been a revolving door. In the preceding five-year period there had been more than ten changes in Minister[607]. Several had significantly less experience in the sector. As the new Minister in April 2016, Warsal had toured the Malvatumauri's headquarters across from the Vanuatu Parliament, as well as the Vanuatu National Council of Women and the Vanuatu Cultural Centre[608]. After expressing surprise at all the 'custom items of incredible value'[609] that he had previously just walked by, Warsal made promises of funding and legislative amendments to give more power to chiefs. Specifically, in addressing the Malvatumauri he vowed to give the legislation regulating chiefs 'more teeth'[610].

This reference to *kastom's* 'teeth' had specific meaning for chiefs, as it had been used ten years before by then Secretary of the Malvatumauri Chief Selwyn Garu in reference to an earlier push to 'give more power' to chiefs through proposed legislation. Expressing his disappointment in Parliament's decision to remove key aspects from the Bill for the *National Council of Chiefs Act* of 2006[611] when it passed through Parliament, this representative of the Malvatumauri had the following to say:

> …Chief Garu explained that the Act which had finally been passed through parliament was like a dog that had had all its teeth removed as all the powers the Malvatumauri had wished to be

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[607] Yoan Simon from December 2010, Ralph Regenvanu from March 2011, Bakoa Kaltonga from June 2011, Thomas Laken, November 2012, Maki Simelum from March 2013, Silas Yatan from May 2013, Jonas James from July 2013, Christophe Emele from February 2014, Alfred Carlot from May 2014, Hosea Nevu from June 2015, Dunstan Hilton from June 2015, Robert Bohn from November 2015, Ronald Warsal from February 2016.

[608] Jonas Cullwick, "Minister of Justice and Community Services visits chiefs, women and museum," *Vanuatu Daily Post* (April 30, 2016) https://www.dailypost.vu/news/minister-of-justice-and-community-services-visits-chiefs-women-and-museum/article_c5358f06-3f2b-512c-a9b1-fc865796d80e.html.

[609] Cullwick, "Minister of Justice and Community Services visits chiefs".

[610] Cullwick, "Minister of Justice and Community Services visits chiefs".

[611] See Chapter Four, which examines the development of this legislation and its passage through Parliament in more detail.

> included had been amended out of it – and yet the dog was still expected to go and hunt pigs (in other words, chiefs are still expected to preserve peace in their communities). The particular powers that he referred to were the powers of area and island councils to make by-laws.[612]

Ultimately, giving *kastom* its 'teeth' comprises an all-encompassing role for chiefs as the key arbiters of *kastom*-as-justice in Vanuatu. In this vision, chiefs function in multiple roles: as community level legislators (making bylaws), police (having oversight of 'community police' or 'polis blong jif' [the chief's police] to enforce bylaws), and judges (in mediating disputes)[613]. Along with the ever-present focus on 'power', this expanded and all-encompassing role for chiefs in the broader space of state justice was being picked up – with significant fervour – in 2016 by Minister Warsal and his colleagues.

What was completely and crucially left out of these considerations was the highly gendered landscape of justice and criminal matters in Vanuatu. While violent and sexual crimes against women and girls perpetrated by men make up on average 80 percent of the crimes that proceed to court and result in sentencing[614], this crucial detail was nowhere to be seen in the government's renewed interest in empowering chiefs. As with the *Family Protection Act*, the power of chiefs was front and centre, while the lives of women and girls, including what these changes would mean to their experiences of justice, was simply not part of the equation. This kind of 'invisibilisation' or erasure of gendered violence, particularly in the context of justice and security, has significant implications. Not only does it fail to acknowledge the violence that is threaded through the everyday lives of women and girls, but it also has potentially broad impacts on policy and the provision of justice services.[615] In Vanuatu the context for the delivery of justice is profoundly gendered yet this crucial consideration rarely factors into these discussions.

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[612] Miranda Forsyth, "Report on the Vanuatu Judiciary Conference 2006: The Relationship Between the Kastom and State Justice Systems," Conference held at USP, Emalus Campus, Port Vila (28-29 August 2006), 6.

[613] In a meeting with a Malvatumauri representative in July 2022, the individual I was speaking with also added 'Prime Minister' to this list, rounding out all aspects of formal state governance, in the person of the chief.

[614] Willie "Sexual Crimes Top Statistics Over 9 Years". Also see Chapter Two.

[615] Mo Hume, "'It's as if you don't know because you don't do anything about it': gender and violence in El Salvador," *Environment & Urbanization* 16 no. 2 (October 2004) 69.

In 2016, the coalition government of Prime Minister Charlot Salwai – of which Minister Warsal was a member – had entered government with a clear focus on engaging more with *kastom* and chiefs. The Minister's overtures were directly in keeping with this mandate. In a trip to Malekula soon after Warsal's visit to the Malvatumauri, a group of high-level chiefs told me that the Minister had also promised them that he would support chiefs in developing community-level bylaws. In this same meeting these chiefs declared that in their view, dealing with a criminal matter with a fine of 'ten pigs and a woman'[616] was a far greater punishment than even five or six years in jail. They expressed a keen interest in reducing prison sentences by having all the 'big issues' sent to them. To illustrate the problem from their perspective, they used the example of a recent 'assault' case. As they recounted it to me, even though a *kastom* process had been carried out and the fine had been 'very big' (they had photographic evidence[617]), the Magistrate had still sentenced the individual to three years in Correctional Services. They felt that he should have been let off after the fine.

In our own meeting with Minister Warsal in 2016, my colleague and I were presenting the findings of access to justice research on Malekula[618] which had been carried out in 2015 on behalf of his Ministry. A key finding of this research was that women and girls had very different experiences of justice in this part of rural Vanuatu. Before we could even begin the presentation, however, the Minister flipped ahead in the report, cast his eyes down one page, and abruptly exclaimed, 'But this is illegal!'. His concern focused on a community bylaw that had been written as recently as 2010 where murder was to be addressed with a fine of VUV 80,000 (approximately AUD $975) and the direction that the perpetrator 'must replace the dead person with a girl'.[619] The Minister was shocked that this kind of 'illegal' practice – exchanging a girl – was part of a contemporary community bylaw. He may have

[616] The reference to 'a woman' is part of the accepted *kastom* process of replacing a loss of life or a major harm against a man and his property with a woman or girl who would be sent to the aggrieved party's community to essentially 'replace' the loss or mend the harm.
[617] The practice of piling up '*kastom'* goods (often including rice and other store-bought items), as a pre-emptive 'fine' and a demonstration of apology that are then photographed in order to provide evidence in court is very common. In practice it has become a way of performing apology and reconciliation through the transaction of material items, often without any discussion or actual reconciliation.
[618] Vanuatu Policing and Justice Support Program, *Conflict Management and Access to Justice*.
[619] Vanuatu Policing and Justice Support Program, *Conflict Management and Access to Justice*, 100.

also been troubled by the fact that the community bylaws he had recently endorsed included not only pig fencing and noise restrictions, but a range of criminal matters from murder to rape. You could almost see the penny drop.

Beyond their public commitment to giving *kastom* more 'teeth' through legislative changes and support for community bylaws, Charlot Salwai's government also pursued other changes in the broader justice space with a renewed sense of commitment and purpose. For example, the concept of 'community policing' was also on the rise. Seen as a necessary adjunct to community bylaws, Vanuatu's approach to community policing, as I will explore later in this chapter, has primarily consisted of male community members policing their own small communities under the oversight of a chief. In April 2016, yet another surprising announcement was made. In a speech to open that year's meeting of the Malvatumauri, the Director of the Cultural Centre announced that ministerial oversight for the Vanuatu Cultural Council[620] would be transferred from Internal Affairs to the Ministry of Justice and Community Services, 'where it rightly belongs'[621]. While it is not clear how this change benefitted the project of documenting, preserving, and promoting language and material culture – which is ostensibly the role of the Vanuatu Cultural Council[622] – the beneficiaries were clear in terms of expanding the regulatory role for chiefs and the pursuit of *kastom*-as-justice within the state. Completely absent from this broad agenda were girls and women, and their everyday experiences in the gendered landscape of Vanuatu's justice ecosystem.

This chapter traces some of the areas within the justice sector in Vanuatu where an expanding regulatory role for *kastom*-as-justice and the power of chiefs is being pursued. It highlights the

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[620] Which has itself, through its tenure, been a highly politicised and complex body. As with several formal appointment processes in Vanuatu, these kinds of positions become valuable assets for political horse trading, as they usually offer sitting allowances.

[621] Len Garae, "Lazare says no place for political interference in custom, culture," *Vanuatu Daily Post* (April 9, 2016) https://www.dailypost.vu/news/lazare-says-no-place-for-political-interference-in-custom-culture/article_c9697beb-f4ab-580a-b6ae-6e766ed1f0f6.html.

[622] Under Vanuatu's National Cultural Research Policy the role of the Vanuatu Cultural Council is to '...define and implement national research policies (including those outlined in this document), to define national research priorities, and to sponsor, regulate and carry out programs of research.' https://www.wipo.int/export/sites/www/tk/en/databases/creative_heritage/docs/vanuatu_policy.pdf.

attendant invisibilisation of the experiences of women and girls, contributing to a wider erasure of gendered violence. The first section considers the gendered context of crime and justice in Vanuatu and locates the erasure of these realities in the *kastom*-as-justice or 'hybridity paradigm'[623] as an example of epistemic violence. In the next section, Vanuatu's unique approach to community policing, particularly as it has been pursued since 2016, is critically examined as an example of this erasure. The next section focuses on community/*kastom* bylaws, and how they have been used to discipline women and minimise and reframe the violence they experience. The final section returns to the early 2000s and the Vanuatu Cultural Centre's Juvenile Justice Project to highlight the profound invisibilisation of gendered violence that underpinned this earlier pursuit of *kastom's* 'teeth'. As with Vanuatu's *Family Protection Act*, this chapter illustrates that just like law, configurations of regulatory pluralism are not neutral[624]. The hidden and invisible power exercised by traditional patriarchal institutions[625] – in this case Vanuatu's all male chiefs – not only come to dominate, but effectively enact their own violent erasures.

2. Crime, Justice, and Women: Erasing Violence Against Women, and the Violence of Erasure

As I detail in Chapter Two, issues of violence against women and girls had been formally recognised as a significant problem in Vanuatu as early as the 1980s. By 2011, when research conducted by the Vanuatu Women's Centre was published, the highly gendered – and violent – landscape of crime in Vanuatu[626], and the deeply unequal power relations between women and men, came into even sharper relief. Further analysis by the Vanuatu Department of Correctional Services corroborated these findings. This research showed that the vast majority of detainees were men who had committed violent and sexual crimes, mostly against women and girls they knew[627]. For Grace Molisa, this gendered violence and the patriarchy that structures and allows it has resulted in a situation

[623] Melissa Bull, Nicole George and Jodie Curth-Bibb, "The virtues of strangers? Policing gender violence in Pacific Island countries", *Policing and Society* (2017) 4.
[624] Corradi, "Introduction: Human Rights and Legal Pluralism," 9.
[625] Corradi, "Introduction: Human Rights and Legal Pluralism," 9.
[626] See Chapter Two for an overview of these issues.
[627] Vanuatu Department of Correctional Services, *Offending Against Morality*.

whereby, 'Vanuatu Womenfolk, half the population, remain colonised by the Free men of Vanuatu'[628]. Yet, despite the evidence and the clarity of these pronouncements, consideration of this kind of colonising violence against women and girls in Vanuatu has been almost completely absent in efforts to bring *kastom* and chiefs more actively into the state justice sector.

For criminologist Melissa Bull and her co-authors what is missing from much of the work advocating for hybrid or plural regulatory orders – or what they refer to as the 'hybridity paradigm'[629] – is consideration of gender-based violence and the potential impacts, silences, and exclusions of these approaches for women and girls. Anthropologist Margaret Jolly raises a similar concern in her review essay of Miranda Forsyth's *A Bird that Flies with Two Wings* when she suggests that the 'image of the future complementarity and parity between kastom and state justice' advocated by Forsyth is challenged by the 'spectre of a kastom which only men can discern and direct'[630], and the associated realities of gendered hierarchies and violence.[631] These kinds of exclusions, including the erasure and invisibilisation of the crucial issues that impact so many aspects of the lives of women and girls, can be understood as a form of epistemic violence. As these authors highlight, in the jostling between *kastom*-as-justice mediated by chiefs versus state justice – or which combination of both would be a better approach – a crucial element is missing: the reality that sexual and violent crimes predominate in Vanuatu. Implicit in this is the fact that the people who are victimised are almost exclusively girls and women, and perpetrators are almost without exception men and young men.

Yet despite these crucial realities, these points are rarely brought into the picture. Instead these realities and their impacts are effectively erased, not only in academia, but also in the public space, in the justice institutions of the state, and in policy[632]. At times this erasure has even been part of a direct – and public – intervention. For example, in July 2019 then Prime Minister Charlot Salwai,

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[628] Molisa, *Colonised People*.
[629] Bull et al "The virtues of strangers?," 4.
[630] Margaret Jolly, "Flying with Two Wings?: Justice and Gender in Vanuatu," *The Asia Pacific Journal of Anthropology*, 12 no. 2 (6 April 2011): 201.
[631] Jolly, "Flying with Two Wings?," 195.
[632] Hume, "'It's as if you don't know," 69.

whose coalition government had committed so fulsomely to giving *kastom* 'more teeth', disciplined the Vanuatu media. In his letter to the President of the Vanuatu Media Association – which was also published on his official website – Prime Minister Salwai writes about his 'disappointment and grave concern over a continuous irresponsible and misleading media reporting'.[633] The focus of the Prime Minister's disappointment and concern is clarified later in the letter when he says:

> It is a pity to see how key media outlets in Vanuatu, such as Daily Post, continue to report issues, stories, and incidents that incite anger, feeling of remorse, and unhealthy stories that does not contribute to peaceful mind, peaceful environment, and happiness of each citizen, visiting friends and tourists.
>
> It is now appearing that what Media in Vanuatu is interested on are issues such as rape, fighting, and issues that create division and fighting feelings…

At the same time that he was promoting giving more state-endorsed power to chiefs in the justice sector, Prime Minister Salwai was also castigating the media for printing reports about the violence predominantly experienced by women and girls.

As I address in Chapter Three, scholars acknowledge the impact of these erasures as a form of violence itself. For example, interdisciplinary scholar, Claudia Brunner, identifies this as a form of epistemic violence, basing her own theorisation of these entanglements of knowledge and power on the work of feminist postcolonial scholar Gayatri Chakravorty Spivak. While Brunner suggests that for a variety of reasons epistemic violence is often treated as an 'academic nonissue'[634], I would argue that epistemic violence within the context of Vanuatu is more accurately conceived as layered and multi-dimensional. Many anthropologists and other academics who focus their research on Vanuatu strive to pay active attention to the silencing and violent erasure of neo/post/colonialism (and for many of them, their own ongoing entanglements with settler colonialism). While they engage in a 'politics of kindness'[635] as they seek to overcome these erasures, privileging the perspective of the 'Other' and embracing *his* difference, enduring and more subtle aspects of 'Othering' remain. Often in this view,

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[633] This letter was published in its entirety on the Prime Minister's Office official website on 1 August 2019. The letter, written on official Office of the Prime Minister letterhead, is addressed to Mr Stevenson Liu, President of the Vanuatu Media Association, and is cced to the President of the Pacific Islands News Association. It includes the title "Re: Complaint over misleading media reporting for public consumption" and is dated 16 July 2019.

[634] Claudia Brunner, "Conceptualizing epistemic violence: an interdisciplinary assemblage for IR," *International Politics Reviews* 9 (2021): 194.

[635] Achille Mbembe, Critique of Black Reason (Durham: Duke University Press, 2017), 74.

the 'Other' and their knowledge now exist as a monolithic, homogeneous, and irreducibly different whole.

Within this frame, which is also taken up by many Ni-Vanuatu elites, the experiences of women and girls, as the 'Other' to the normative Ni-Vanuatu man, worlding his own world[636] and living in the fullness of *kastom* and timeless tradition, are also erased. In the foreground is the young man, wrongfully punished by the 'not-*kastom'* law and 'foreign, Western' penal system. Removed from view, in this kind of layered epistemic violence, are the experiences of the girls and women who have been violated and victimised by these men. This erasure, coupled with *kastom* prohibitions around speaking about sexual and private matters[637] – and admonitions from the highest levels in government to not write about these things – provide additional layers and facets. Some of these erasures may even appear benign. Moira Perez argues that erasure may happen for 'well or ill-intentioned reasons'[638], or may be subverted or hidden by other agendas, which contributes to its powerful effects:

> The strength of epistemic violence lies in its very imperceptibility: it subsists without being detected, either because it is presented in a context affected by other more evident forms of violence, or because it is framed within a 'well-meaning' proposal…'[639]

This kind of 'well-meaning proposal' proliferates in the context of hybrid justice in Vanuatu. Perez elaborates that it is a slow, 'attritional, violence', taking place out of sight and over time, and may not be viewed as violence at all.[640]

Within the Pacific context, Stephanie Lusby has identified how an increasing focus on security in the region also creates another facet of this epistemic violence. Not only are the 'gendered dimensions of violence against women by men… almost invisible in mainstream discussions of securitisation'[641], but the violence between men, as a particular form of gendered violence, is also rarely considered.[642]

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[636] Moira Perez, "Epistemic violence: reflections between the invisible and the ignorable," *El lugar sin limites*, 1 no. 1 (2019) 3.
[637] See Chapter Five and discussion of kastom respect.
[638] Perez, "Epistemic violence: reflections between the invisible," 6.
[639] Perez, "Epistemic violence: reflections between the invisible," 9.
[640] Perez, "Epistemic violence: reflections between the invisible," 2.
[641] Stephanie Lusby, "Securitisation, development and the invisibility of gender," in *Transformations of Gender in Melanesia*, Eds Martha Macintyre and Ceridwen Spark (Canberra: ANU Press, 2017) 24.
[642] Lusby, "Securitisation, development and the invisibility of gender," 24.

Following Merry, Lusby points out how the meanings of violence are informed by social contexts which:

> …allow violence to be interpreted as either legitimate or illegitimate. Thus the broad acceptance of disciplinary violence between men in the name of 'security' undermines attempts to destabilise excuses for male violence against women that rest upon sexist logic of women's need to be disciplined by men, and their morals and bodies policed.[643]

As Lusby points out, in this context, 'narratives of security and discipline are used to legitimate different forms of violence – from violence against criminals to rationalisations of rape.'[644] These layered and multifaceted absences, omissions and erasures – and the attritional nature of this epistemic violence – actively undermines efforts to address the everyday violence impacting women and girls in the context of Vanuatu society.

3. Policing Communities/Community Policing: Chiefs, Jack Boots, and Confusion

These absences and omissions had started to haunt me as I began to hear more and more about 'community policing' through late 2016. By October I was sitting in the audience of a three-day national symposium on 'Advancing Community Policing to Address Crime'[645] growing increasingly perplexed and concerned. One of the first presentations, by the Malvatumauri, included a call to empower '*kastom* authorities' (effectively male chiefs) to apply *kastom* in criminal proceedings[646]. This presentation garnered a standing ovation[647]. Adding to my sense of disequilibrium was our location in the enormous (and enormously expensive) 'National Convention Centre'. This cavernous, modern convention hall perched on the hill overlooking both Vanuatu's Parliament and the Australian High Commission compound had been funded by the Chinese government at a cost of 16 million US dollars

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643 Lusby, "Securitisation, development and the invisibility of gender," 25.
644 Lusby, "Securitisation, development and the invisibility of gender," 38.
645 Jonas Cullwick, "Police holding Symposium on community policing," *Vanuatu Daily Post*, (21 October 2016) https://www.dailypost.vu/news/police-holding-symposium-on-community-policing/article_53e0ef91-ba9d-5ca9-8024-8eea87f3b0e4.html.
646 Presentation by Crimson Bani, "National Symposium on community policing presentation", October 2016, National Convention Centre.
647 The presentation exhibited a confusing intermixing of many things and the audience was also mixed – and mostly men. These kinds of approaches are often supported by police for a variety of reasons (in no small part because it makes their jobs easier). *Kastom* is also often approached by men uncritically, and as a kind of good in itself. Like Minister Warsal and his endorsement of bylaws, attendees may not have appreciated all of the implications of their expressed support.

a few years before. Given the economic justification that is always used in Vanuatu's efforts to 'decentralise' policing and justice services by using 'less expensive' community and '*kastom'* alternatives, this was highly contradictory. I quipped to a colleague that even the cost of the fancy seats would have funded several annual police salaries, a few police trucks and many, many gallons of fuel.

Yet this is how economic decisions in the context of Vanuatu can often work. For example, in the beginning this Convention Centre project – a chequebook diplomacy style project funded by the Chinese government – had been actively critiqued as expensive and unnecessary. Vanuatu had a decent convention centre in the large Warwick Le Lagon hotel complex that was built relatively quickly and at a more reasonable scale. Still, the project went ahead. Somewhat predictably, by 2019 a 'budget shortfall' had forced the government to outsource maintenance of the cavernous and underutilised building to a Chinese company.[648] By that time, it was mainly being used as a giant spaceship-like takeaway food outlet (and occasional wedding venue). While the building found some redemption as it housed Vanuatu's initial vaccination efforts in 2021, 'back rent' forced a change in location to the dilapidated George Pompidou compound where vaccinations carried on 'in muddy tents'[649]. A Letter to the Editor in the *Vanuatu Daily Post* in October 2021 pointedly asked who actually owned the Convention Centre, and why Vanuatu's Ministry of Health had been paying rent of VUV 98,000 (AUD $1,200) per day (and to whom) to use it 'for such a vital health initiative'[650]. These kinds of skewed metrics and financial mysteries abound in Vanuatu, and beg the question, is it actually about the money? (And of course, it is not.)

At the time of this meeting on community policing, however, I was preoccupied with a more immediate, slowly emerging mystery: what was going on with the new government's increasingly vigorous pursuit

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[648] Radio New Zealand, "Maintenance an issue for huge convention centre in Vanuatu," 11 February 2019, https://www.rnz.co.nz/international/pacific-news/382250/maintenance-an-issue-for-huge-convention-centre-in-vanuatu.
[649] Letter to the Editor, "Who owns the Convention Centre?" *Vanuatu Daily Post*, 20 October 2021, https://www.dailypost.vu/opinion/letters_to_editor/who-owns-the-convention-center/article_104091b7-8dfc-5e36-a62b-e6c280ce0424.html.
[650] Letter to the Editor, "Who owns the Convention Centre?"

of ‘community policing’? While at first glance the idea sounded somewhat innocuous and perhaps even reasonable, it became increasingly troubling as layers were peeled back, and clearer intentions emerged. I had started hearing talk of the government’s ‘community policing’ plans earlier that year. For example, in May 2016 I had travelled to the island of Malekula where the provincial centre, Lakatoro, was buzzing. Earlier that day a group of high-level officials, including the Minister of Internal Affairs and several high-ranking police officers (along with their Australian counterparts) had addressed the Provincial Council on this very topic. According to a provincial representative, this new model of ‘community policing’ was promoted as a given, and provincial representatives had already gone back to every corner of Malekula to inform chiefs and communities that they would now effectively be policing themselves.

As we moved from office to office in the small government enclave on top of the hill in Lakatoro, the gist of the presentation that had taken place earlier that morning was shared with us: Vanuatu cannot afford to improve or expand police services in rural areas, including on islands like Malekula, as it is very expensive. MP Andrew Napuat had recently concluded a ‘study tour to Fiji’ where a ‘community policing’ model was being used. As it was ostensibly going very well in Fiji, they were going to use it in Vanuatu. In this model, Vanuatu would set up community members as security and justice authorities in the villages, under the oversight of chiefs. In our meetings that afternoon, even though they were still processing the information they had just received, several switched-on representatives of the law and justice sector in Malekula expressed serious misgivings. One individual with decades of experience and training exclaimed that if the government was going to go ahead with this, they might as well quit on the spot. Another declared that it was always ‘one step forward, 16 steps back’ in Vanuatu, and commented that their already large workload would ‘heap up’ even more as a result.

Disturbingly, even though the high-level delegation had arrived on a boat filled with police officers, one individual informed me in exasperation that they had neglected to take the group of men awaiting transfer from Malekula to the Correctional Services facility in Luganville, Santo with them on the boat when they left, even though the next stop on their tour was Santo. On previous trips to Malekula I had

heard from various individuals about the danger of not having a prison or even a holding cell on the island[651]. This situation meant that individuals who had been found guilty of even serious crimes and sentenced in court were free to move around Malekula as they awaited transfer to Santo. While they waited, sometimes for months, even convicted rapists circulated freely with the women and girls they had victimised (including those who had reported them and testified against them in court). The story of a young woman who had been raped repeatedly over many years by a family member was shared with me as an example of what this problem entailed. This young woman had come to Lakatoro begging to have the conviction reversed and the case dismissed: it was not because she had 'changed her mind', but because she was terrified of what the now convicted family member-rapist would do to her as he was awaiting transfer to prison. These kinds of justice concerns were clearly not on the minds of this high-level delegation. Instead they were so focused on giving chiefs more power and installing *kastom*-as-justice that some of the most compelling justice needs in this space – issues that predominantly and directly impacted the lives of vulnerable women and girls – were effectively erased.

By July 2016, an article in the *Vanuatu Daily Post* featured work being carried out by the Vanuatu Police Force to provide 'awareness to communities on a new concept of community policing'[652]. The presentation carried out by 'senior police officers' was reportedly conducted with 'over 100 chiefs' and advocated the development of 'community police posts' that would be manned[653] by 'community constables', selected by the chiefs. As it was emerging, this Vanuatu-version of 'community policing', was essentially about empowering men at the community level who, with very little training and oversight, would act in the capacity of police officers. The idea as it was being advanced by MP Andrew Napuat who had begun promulgating the idea after his study tour to Fiji (and who, not coincidentally, had also been the CEO of the Malvatumauri prior to entering politics) had evolved

[651] While there had been a prison and holding cell for many years in Lakatoro on Malekula it had fallen into such disrepair it had been too unsafe to use for years.
[652] Glenda Willie, "Police eyes community policing," *Vanuatu Daily Post*, 23 July 2016, https://www.dailypost.vu/news/police-eyes-community-policing/article_bc1d1a0c-a1fa-5a05-90c2-76bddba5ac4d.html.
[653] Community 'police' or 'polis blong jif' [chief's police] in Vanuatu are typically always men.

again by 2018. By this time, Napuat who was now in the position of Minister of Internal Affairs had started to advocate that 'young school dropouts' could also be used for this role of 'community police'[654].

Through this time the Vanuatu government, with the active support of donors, had been encouraging more women into formal policing. They were also actively working to train officers to respond to crimes against women and girls more effectively. The Family Protection Unit set up in 2008, while imperfect, was slowly gaining expertise and public trust. Yet, the 'community policing' model being promoted at the same time – also with active donor support[655] – did not quite fit this image of a more diverse, better-trained, and more gender-balanced and gender-sensitised force. In contrast, this other more unregulated, community-level approach to 'community policing' featured groups of men with significant scope and authority, and minimal training and oversight. Given the highly gendered and violent nature of crime in Vanuatu, and the fact that sexual and physical violence is most often perpetrated by men and boys who are known to the women and girls they assault, this approach seemed ill-considered at best.

As this idea of 'community policing' began to proliferate in Vanuatu, community-level 'security forces' were also emerging. In June 2016, the Vanuatu Police Training College had trained their first private security firm, Lelepa Security Services. Described as the 'chief's police' these were, predictably, all men as this photo of them from the *Vanuatu Daily Post*[656] shows:

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[654] Godwin Ligo, "Gov't Eyes National Security Council," *Vanuatu Daily Post*, 7 September 2018. https://www.dailypost.vu/news/gov-t-eyes-national-security-council/article_8fb2bfdf-2bfc-52ea-839c-3ed6ca5619fc.html.

[655] For example, in a *Vanuatu Daily Post* article dated November 2014 a uniformed New Zealand police officer stands with a chief, as a group of young men are given uniforms (funded by New Zealand), to enable them to start work as 'civil society police'. Harrison Selmen, "Nakere becomes role model for Community Police work", *Vanuatu Daily Post*, 12 November 2014. While the article talks about this group's interest in working as allies with the local Women's Centre, I was later told by both an area administrator and the head of the Vanuatu Police Northern Command – both of whom had been early supporters – that this initiative had been discontinued as the young men had exceeded their brief and were 'doing the wrong things' with their newfound power and authority.

[656] Thompson Marango, "Police strengthens relationship with communities," *Vanuatu Daily Post*, 10 June 2016, https://www.dailypost.vu/news/police-strengthens-relationship-with-communities/article_b26a7837-1ea6-5121-9e5c-f99913c33275.html.

Figure 9: Lelepa Security Services during their training

This certificate program was carried out over a relatively short period of time with training that was largely administrative[657]. Another private security entity that emerged at this time was the Mele-based R.A.V Protection Security Services and Debt Collector Company. On Chief's Day in March 2018 this group was endorsed by the chief of Mele with '…full responsibility in policing and securing the entire Sub-Regional Area of Mele'[658], stretching across the broad land and sea boundaries of Vanuatu's largest village located just outside the capital of Port Vila. A public Facebook post from April 2018 provides an image of this group of jack-booted 'men in blue'. In the description they are referred to as the 'polis blong jif' [chief's police], who are there to 'help the chief to enforce the village bylaws'[659].

Figure 10 – Mele chief's police

[657] It included topics such as: '…personal safety, introduction to private security, industry general duties and responsibilities of a security guard, professional attitude and conduct, lawful responsibilities, record and report incidents, secure crime scene, patrolling, observation skills, emergency procedures, communication skills and customer care.' Specific training on gender or gender-based violence was clearly not a priority area, despite the prevalence of these issues at the community level. Marango, "Police strengthens relationship with communities".

[658] Fern Napwatt, "R.A.V Protection Security services and Debt collector now in operation," *Vanuatu Daily Post*, 25 May 2018, https://www.dailypost.vu/news/r-a-v-protection-security-services-and-debt-collector-now-in-operation/article_669294c9-d3f5-5a22-9088-4e687dbc6d21.html.

[659] Facebook Post, posted by Kastom Ekonomi on the popular Facebook site Yumi Toktok Stret, on April 24, 2018.

While the *Daily Post* article explains that the work of this private security force had previously 'ceased due to illegality of the operations and poor management'[660], residents and businesses were encouraged in 2018 to contribute 'security fees'[661] to the company to support them in their work.

These groups were not simply anomalies. Six years later, in July 2022, I was told by colleagues in Vanuatu that 'community policing' was actively being implemented in several pilot communities – and that some of the local police involved in these efforts were raising quiet concern. While I was assured by representatives of New Zealand aid (who are funding and supporting the pilots) that this involved sending only trained officers out to police posts around the country, it was not clear that this was the case in practice. In a talk back show focusing on these 'Community Safety Police'[662] that aired in late 2021, the National Coordinator of the Crime Prevention Unit, Samson Garae, who at the time was the Vanuatu lead in implementing these efforts, describes the approach as 'community-owned security' and says that they will be giving security 'back to the communities to manage'. He goes on to say that '…this will make it so the work of the police will be easy. When the police go, they can talk to the chief, and the chief can do it and that will be easier than before.' Later in the show a community policing site in the North of Vanuatu is described as a place where the chiefs '...bring all the young people together to do this work' and the police just go to check, 'once or twice', or when the chief determines that they need the police to come. Ultimately, the 2022 version looks very similar to the one being promoted in 2016.

There are several clear issues with this kind of 'hybrid' approach to policing that has been on the rise in Vanuatu. At a basic level, confusion abounds. Back in 2016, my expatriate policing colleagues clearly thought that when their Ni-Vanuatu counterparts were talking about 'community policing' they were talking about the trained, regulated, state police-on-bicycles-working-more-closely-with-

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[660] Napwatt, "R.A.V Protection Security services and Debt collector".
[661] Much like the fines that are used by chiefs as part of their bylaw enforcement at the community level, the security fees would likely be arbitrary, with little oversight of how they are used, and by whom.
[662] Vanuatu Broadcasting and Television Corporation "Talkback – Focus on Community Policing" (with James Toka and Samson Garae), aired on 14 November 2021.

communities model they were familiar with. One high-level policing advisor enthusiastically shared his support for football matches between young men and Vanuatu police as an example of this approach. New Zealand policing advisors clearly relate it to their own national model of 'community policing'[663]. Yet for key advocates in Vanuatu, 'community policing' has other meanings and intentions – and other drivers. As part of the broader push to promote '*kastom* governance' by empowering chiefs, some of these implications are clear. It seemed that for some officers, the idea was also enticing as it made their jobs 'easier'[664]. Improving access to justice for women and girls, or even communities in general did not seem to be a factor. In many cases 'community policing' in Vanuatu ultimately seems to be about empowering men to police themselves and their male relatives, with little to no oversight.

According to sociologist Mike Brogden, a clear problem in the global proliferation of 'community policing' is the failure to recognise and take the local context into consideration[665] – at all levels. Models that work in New Zealand or Australia do not necessarily fit the context of rural Vanuatu, nor are many expatriate advisors well-positioned to discern and navigate local political and social nuances. Lack of community coherence, the potential to increase social divisions, and lack of accountability are only some of the challenges[666]. In the aptly titled 'Democratising Security or Decentralizing Repression?', Mutuma Ruteere and Marie-Emmanuelle Pommerolle suggest that 'Conceptual ambiguity explains how community policing can wear the badge of either a conservative or a liberal police force, and how it can receive different expressions in different national and local contexts.'[667]. In their article, Ruteere and Pommerolle highlight community policing's potential to reproduce undemocratic practices and entrench the status quo. In cases where formal policing is

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[663] New Zealand has a national level community policing model. Vanuatu is not New Zealand, however, nor are our communities like Maori communities in New Zealand. These issues around models from other places not necessarily being a good fit for Vanuatu will be addressed in the Conclusion.

[664] In the Talkback show above Samson Garae, the Coordinator in the Vanuatu Police National Crime Prevention Unit, and the lead for the community policing initiative said: '...this will make it so the work of the police will be easy. When the police go, they can talk to the chief, and the chief can do it and that will be easier than before.'

[665] Mike Brogden, "Commentary: Community Policing: A Panacea from the West," *African Affairs*, 103 no. 413 (2004): 645.

[666] Mike Brogden et al, Community Policing (London: Routledge, 2005) 47 to 48.

[667] Mutuma Ruteere and Marie-Emmanuelle Pommerolle, "Democratizing Security or Decentralizing Repression? The Ambiguities of Community Policing in Kenya," *African Affairs*, 102 (2003): 589.

replaced with private or community initiatives, they point out how, '…the line between vigilantism and community policing becomes tenuous, opening up the possibility of violence and social anarchy'[668]. These are highly relevant cautions in the context of Vanuatu and have directly gendered implications.

According to Pacific researcher Stephanie Lusby informal security and policing arrangements are characterised by the same kind of 'aggressive masculinity' that plagues their formal police colleagues. However, unlike state police these community level 'police' or security groups '…are not privy to the same levels of training, public scrutiny or regulation'[669]. In the November 2021 Talk Back show where community policing in Vanuatu is discussed, one caller decries the 'family business' and 'islandism' at work in the police force and shares the following situation as an example:

> I also have a family member who reported a situation of domestic violence with her husband. This sister made a report, and when the police went to serve the husband of this woman, he didn't end up doing it, because the man was a family member of his. And it made it so that report just went and slept and slept and slept until it was like there was nothing that happened at all. But there was a problem. And the policeman - these kinds of family things - in my opinion it's not really professional, because it doesn't actually deal with the problem that is there.

Another female caller describes her friend, a person with disabilities, being sworn at by a new recruit who was in uniform and driving in an official police vehicle. In response to these legitimate complaints the officers in the panel immediately referred to the Professional Standards Unit[670], and described the elaborate system of training, probation, mentorship, and oversight that should be in place for new police recruits[671]. What is never clarified is what exactly will function as the 'Professional Standards Unit' for chiefs and community safety committees? If a key concern among regulated state police is

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[668] Ruteere and Pommerolle, "Democratizing Security or Decentralizing Repression," 603.
[669] Lusby, "Securitisation, development and the invisibility of gender," 27.
[670] The Professional Standards Unit of the Vanuatu Police Force was established in 1990 but underwent significant strengthening in 2015 and 2016. Prior to this it is unlikely that most community members would have had a clear sense of how to file a complaint against the police. After 2015, there was a clearly advertised process, and a phone number where complaints could be filed.
[671] In fact, one of the officers, James Toka who is the Director of the Criminal Investigation Department says: 'In terms of the new recruits, we are governing all of them within a fence. I'll tell you something, as an example. All of the recruits that finish three to four months training, we should put them inside a boundary. It's like a fence…so we can coach them well, mentor them well, and once we are sure they really know the work of the police well, then we release them, after two years of probation. But because of a lack of facilities and infrastructure, some of them that are still being trained are released back into the community. So mentally, when that one goes back into the community, they take on the characteristics of people in that community again. We haven't had the chance to live with them inside a fence, to mentor them and coach them…'

inadequate training and oversight, what will their direly undertrained and unsupervised community 'counterparts' be doing?

As detailed earlier, this model of community policing that Vanuatu is pursuing had originally been inspired by a Fijian model – the Duavata community policing initiative – that MP Andrew Napuat had encountered on a 'study tour' sometime before 2016. In her examination of this Duavata initiative, criminologist Nicole George demonstrates how despite its purported focus on addressing violence against women – an element never picked up in the Vanuatu iteration – the 'everyday practice of regulatory authority'[672] within these communities actually resulted in the opposite effect:

> The [Fijian Police Force's] hard line authoritarianism, operating in tandem with informal sites of authority, undermines the success of this policing program. On the one hand, local stakeholders have been found to encourage reconciliation between aggrieved family members so that the customary and religious integrity of the marriage and the family remains intact. Accordingly, women are often urged to return to violent conjugal or family environments and deterred from seeking external forms of protection or justice by making complaints known to police officers.[673]

Even the Fijian model with its focus on addressing domestic violence was having the opposite effect. I had also heard this anecdotally from women's groups in Fiji several years before. Unfortunately the efficacy and appropriateness of this approach did not seem to be a concern for MP Andrew Napuat and his colleagues in the context of their rather single-minded focus on empowering *kastom* and chiefs through the mechanism of 'community policing'.

If Napuat and his colleagues had considered the research and the context, and had their goal actually been improving access to justice for Vanuatu's most vulnerable citizens, they would have likely reached other conclusions. In fact, research carried out by Nicole George in collaboration with fellow criminologist Melissa Bull in Vanuatu indicates that when women rely on chiefs to address issues like domestic and sexual violence it is often because they are 'the *only* option available'[674], not out of preference. This was also supported in the research we carried out on behalf of the Ministry of Justice

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[672] Nicole George, "Policing 'conjugal order': gender, hybridity and vernacular security in Fiji," *International Feminist Journal of Politics* 19 (2017): 63.
[673] George, "Policing 'conjugal order'." 66.
[674] Bull et al "The virtues of strangers?," 13.

and Community Services that was presented to Minister Warsal in 2016[675]. For the Ni-Vanuatu women in George and Bull's study, trained and regulated state police were seen to be of greater assistance than were other regulatory authorities, including chiefs. This was the case for a variety of reasons, from the ability of police to '…investigate and solve cases of violence', to their ability to 'enforce the law and protect women's rights'[676]. To date, however, the preferences of women and girls, and the prevalence of gendered violence in Vanuatu's communities have essentially been erased from Vanuatu's pursuit of 'community policing'. This not only acts to entrench the status quo[677], but through these erasures it also compounds the violence women and girls experience in their everyday lives.

4. Codification, Bylaws, Trousers…Repeat: Shifting Focus, Endlessly the Same Target

Community or *kastom* bylaws – much like 'community policing' – have been shrouded in confusion in Vanuatu. They are also intricately tied to Vanuatu's push to give increasing state regulatory power to chiefs. In short, empowering chiefs to implement and enforce what are understood to be rules of *kastom* has necessitated some kind of formalisation and codification of these rules. As this codification also confers a level of legitimacy to chiefs, the establishment of *kastom* policies or bylaws have also been a preoccupation of the Malvatumauri for several years. Even still, I had no intention of discussing bylaws in any substantial way in this thesis. There are several reasons for this. One was that an Australian National University Conference in July 2018[678] had likely covered many aspects of the codification and bylaw issue in greater depth than I could in just a small part of my thesis. While it is not clear what any publications resulting from this conference will cover, at least seven of the papers listed in the program focused on the 'gendered dimensions' of the codification of custom[679]. Within this subset, the sole paper that focuses on Vanuatu raised the salient concern that the 'Sweeping

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[675] Vanuatu Policing and Justice Support Program, Conflict Management and Access to Justice.
[676] Bull and George, "Policing and Gender Violence in Vanuatu," 252.
[677] Ruteere and Pommerolle, "Democratizing Security or Decentralizing Repression," 601.
[678] Codification and Creation of Community and Customary Laws in the South Pacific and Beyond, Australian National University (July 26 to 27, 2018) https://static1.squarespace.com/static/589d13f06a4963b41d629d8f/t/5b57c31003ce64746b70be09/1532478228898/2018+Codification+Conference+Program_incl+Abstracts+and+Bios.pdf.
[679] Primarily in Samoa and Fiji, with only one paper focusing on Vanuatu.

land law reforms' introduced in Vanuatu in 2014 (that were, in fact, developed with substantial input from the paper's own author, anthropologist Siobhan McDonnell[680]) may have troubling 'gendered implications':

> …the process of codification can have the effect of truncating the negotiability of customary systems, thereby further consolidating the power of chiefs as the authors and arbiters of custom. Moving beyond the romanticisation of chiefs and customary institutions, this paper suggests that the codification of customary law may create a rigidity in which the rights of powerful men are recognised, to the exclusion of others.[681]

As touched upon in Chapter Two, Vanuatu's land laws had a kind of 'unleashing the dragon' effect on the *kastom*-as-justice push and represent a key site where substantial power has, in fact, been given to chiefs by the state. This has not only changed where and how land disputes (and, in practice, other kinds of issues as well[682]) are handled – in 'nakamals', with chiefs as the key decision makers – but has also resulted in an intensified push towards codification (including bylaw development[683]), as well as crucial changes to Vanuatu's Constitution.

This expansionist vision for *kastom* and chiefs has many implications for women and girls in Vanuatu – of which McDonnell's intervention in the space of land highlights only one. As Minister Warsal discovered in the story shared in the introduction to this chapter, bylaws may cover vastly different matters from gossip to pig fencing and rape. The penalties that are imposed are also unregulated, irregular, and often quite arbitrary[684]. As the example of using a 'girl as payment' demonstrates, they may also be particularly gendered – and even illegal. Bylaws also regularly minimise serious crimes like rape and domestic violence in the penalties that are stipulated. An illustrative example of this can be found in the Nikoletan Kastom Law from Tanna. This set of bylaws were first written by a group of

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[680] Siobhan McDonnell has described herself as the 'the principal drafter of changes to the Vanuatu Constitution and Vanuatu land laws' in 2013 (for example at: https://theconversation.com/profiles/siobhan-mcdonnell-98788).

[681] Siobhan McDonnell, Australian National University, "Beyond the romanticization of chiefs: considering the gendered implications of the codification of customary land laws in Vanuatu." [From the abstract for the paper shared in the online program].

[682] As I describe in Chapter Two, I was informed in community-level consultations in rural Vanuatu in 2012 that in preparation for the new land law process, community members had set up 'new' procedures for managing a range of community disputes and issues. In the community I was in that day a group of 'kastom judges' were hearing a case of sexual assault. Before this, this kind of dispute would have been sent to the police.

[683] If chiefs are to solve land disputes 'in the nakamal' they need a body of agreed rules around kastom land tenure in their area which in many areas do not exist or where they do exist, they are often highly disputed. These laws have, therefore, driven a renewed push for codification.

[684] Vanuatu Policing and Justice Support Program, *Conflict Management and Access to Justice*, 97 to 102.

chiefs in 1981, published again in 1994, and then reprinted as a 3rd Edition in 2016[685]. Under Article 6, the 'Law Concerning Marriage' it states:

> D: Law concerning fighting by a couple, with no fine attached
> If man beats his wife for not feeding the pigs, gardening, fetching water, and preparing food for kava or she breaks some rule given by the chief, and if the husband beats her, this is all right and there cannot be any fine for this. If the husband beats the wife and she runs away to her parents, the chief and the parents give her a beating for being lazy and not performing her duties, and they send her back to her husband and the chief. There is no fine imposed on the woman for not performing her duties.[686]

Under Article 7L, the fine for a man who has sex with a girl (clarified further as a child who has not reached puberty), is 'one big pig and one big head of kava'[687]. If the girl dies because of this 'sex', 'the man has to give a girl to the family of the dead girl'[688]. Clearly quite a bit is being erased in this articulation of *kastom*-as-justice.

While anthropologist Marc Tabani locates the Nikoletan Tanna Kastom Law project more generally as '…an attempt to codify selected, nondiversified elements of local customs by focusing obsessively on the power of chiefs'[689], 'custom laws' like the one for domestic violence above are also indicative of the blame ascribed to women within many *kastom* processes for the crimes and injustices committed against them. Which brings me to my other reason for not wanting to focus on bylaws in this thesis: Vanuatu's unique 'trouble with trousers'[690]. The trousers debate, or what Lamont Lindstrom calls 'whether or not young women can properly wear pants'[691] likely started as early as March 2001 with the creation of a trousers bylaw by the chiefs from Paama, an island in the North of Vanuatu (the bylaw also extended to Paamese women and girls in town). I was in Vanuatu at the time, and it became a flashpoint for discussion. My Ni-Vanuatu colleagues and I thought it was ridiculous when

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[685] Intriguingly with support from two representatives of the 'Explorers Club', Theresa Menders and Daniel Farber Huang, the same entity that had also been part of the strange 'expedition' to discover women chiefs in Vanuatu detailed in Chapter Four.
[686] Tom Numake, Peter Nimaulul and Adorina D'Arcy, "Niko Le Ten Tanna Island Kastom Law, (Port Vila and Tanna, 1994, Reprinted in 2016) https://www.academia.edu/41196486/Niko_Le_Ten_Tanna_Island_Kastom_Law.
[687] Numake et al "Niko Le Ten Tanna Island Kastom Law".
[688] Numake et al "Niko Le Ten Tanna Island Kastom Law".
[689] Tabani, "Tannese chiefs, state structures," 81.
[690] Maggie Cummings "The Trouble with Trousers: Gossip, Kastom, and Sexual Culture in Vanuatu," In *Making Sense of AIDS: Culture, Sexuality and Power in Melanesia*, Eds. Leslie Butt and Richard Eves, (Hawaii: University of Hawaii Press, 2008).
[691] Lindstrom, "Respek and Other Urban Vila Keywords," 7.

we first heard about it, but like tumbleweed it detached from its point of origin and just kept rolling. Everywhere. As described by anthropologist Maggie Cummings, it was even picked up by fashion magazine *Marie Claire* under the subheading 'Vanuatu: Only Men Wear the Pants'[692]. It had particular local salience as well, however, reinvigorating the Malvatumauri's campaign to have *kastom* codified and incorporated into the formal state justice system.[693] Since then, it has just kept rolling.

Despite my own trousers fatigue more than 20 years on, there is still much to say about the trousers prohibition for women, as it continues to be incorporated into contemporary *kastom* bylaws. Beyond the novelty factor[694], the trousers ban is framed by a broader set of issues around gender, sexual violence and social control in Vanuatu that continues to receive inadequate critical attention. For example, the Minister of Justice and Community Services can declare that he – on behalf of the state – will support chiefs in their efforts to create and formalise 'bylaws', and almost no one bats an eye or seeks clarification about what these bylaws will actually consist of. Similarly, faculty members at the University of the South Pacific Law School in Vanuatu can actively discuss publishing '*kastom* bylaws' on an online database of Pacific law[695] and this process of formalisation and dissemination – and the content of what is being disseminated – receives no critical consideration or scrutiny. As with other categories such as 'village', 'chief' and even '*kastom'* itself, the category 'bylaw' is simply treated as a kind of uniform and neutral category, characterised by its affiliation with the 'local' and with normative *kastom*.

Yet, what is at the heart of the trousers issue in particular is exposed in the following comment made at the time of the original trousers ban by then President of the Malvatumauri Tom Numake (who, not incidentally, was also the chief author of the Nikoletan Kastom Laws excerpted above):

> Vanuatu's national council of chiefs began talks to follow Paama's lead by amending the

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[692] Cummings, "'Looking Good': Women's Dress", 1.
[693] Cummings, "'Looking Good': Women's Dress", 142.
[694] This is always picked up as a kind of 'novelty' in places outside of Vanuatu. In one presentation, academic colleagues in Australia were amazed – and outraged – that this was an issue. The coverage in Marie Claire detailed in Maggie Cummings thesis also speaks to this novelty factor.
[695] For example, academics at the University of the South Pacific discussed putting bylaws on the Pacific Islands Legal Information Institute (PacLii) website.

> constitution to ban native [sic] women from wearing pants. The council's president, Tom Numake, blames women's clothing for the rise in the number of rapes and other acts of violence against them. "It is [the woman's] fault", he says. "You try to attract the boy to come closer and talk to you and [do] something you might not agree to".[696]

As another example of gendered epistemic violence, the trousers issue exposes the underbelly of much of the *kastom*/state justice hybridity paradigm, at least in Vanuatu. There is not only a strong element of social control, power, and a particularly gendered and disciplining tone that is rarely acknowledged in *kastom*-as-justice. The focus on women's bodies, what they wear, and on trousers, also shifts the responsibility to address the physical and sexual violence and coercive control that is at the root of normalised, aggressive masculinity in Vanuatu from policy makers, state justice actors, chiefs, and even men and boys as perpetrators, to women and girls themselves.

As a result – and perhaps not so remarkably – the trousers and bylaws tumbleweed has just kept on rolling. In 2016, around the same time that Vanuatu's Minister of Justice and Community Services was declaring his government's support for bylaws and 'community policing' Vanuatu-style, this issue rolled into town again. This time the head of a Council of Chiefs in the Blacksands community located on the outskirts of Port Vila identified women and girls' dress as the *second* major concern for the chiefs in this large peri-urban settlement community. While he recognised that '…many residents disagree with the bylaw as it goes against the Constitution', he also 'stressed that women and girls are supposed to show respect to their uncles and brothers by wearing conservative clothing.'[697] Crucially, he said that he and his Council had '…identified that most rape cases in the community are due to girls wearing short trousers and showing part of their body.'[698] Here, chiefs were pursuing formal state legal endorsement and backup – in this case, the chief and his council were reportedly 'awaiting a signature from the State Law Office' to endorse this plan[699]. Here again, the focus of chiefs

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[696] Cummings, "'Looking Good': Women's Dress", 1.
[697] Yasmine Bjournum, "Blacksands Chief Council is Drafting Bylaw to Ban Women Wearing Trousers As It's Against 'Custom'," Sista (October 14, 2016). https://www.sista.com.vu/blacksands-chief-council-is-drafting-bylaw-to-ban-women-wearing-trousers-as-its-against-custom/#:~:text=Chief%20Kalibelu%20further%20added%20that,that%20finish%20on%20the%20knee.
[698] Bjournum, "Blacksands Chief Council is Drafting Bylaw".
[699] Bjournum, "Blacksands Chief Council is Drafting Bylaw".

and *kastom*-as-justice was on the choices and bodies of women and girls, ultimately holding them responsible for the violence perpetrated against them.

It is telling that some of the people I interviewed also raised the trousers issue themselves, completely independently. For example, the chief who had led the initiative to provide what was ultimately a gatekeeper role for chiefs in Vanuatu's domestic violence legislation as discussed in Chapter Six raised the 'trousers' issue of his own accord. The conversation is worth quoting at length as it demonstrates key elements of these interconnected issues. When I asked him why the rates of domestic violence and violence against women and girls were so high in Vanuatu (a point he incidentally agreed with), he initially located the key issue as 'urban drift'. When I sought to clarify what he meant by 'urban drift', this is how the conversation continued:

> Chief: Look, for example before, people in the villages over in the islands, you would never see a girl wearing trousers. You would never see that happen. But today they're wearing trousers. Even though some chiefs said 'No, when you're in the village, you are not allowed to wear trousers! You can't wear those things.'
>
> Me: But what is the issue with trousers?
>
> Chief: Well, it's about respect. It says that all women have to wear dresses. That's about respect. But now you can find trousers everywhere. Now that Western civilization has come, lots of young people enjoy this life and think it's better.
>
> Me: But the trousers and the shirt you're wearing, that's 'Western civilization'. Why are trousers on a woman 'Western civilization', but your trousers aren't 'Western civilization'.
>
> Chief: No…well, that's true.
>
> Me: Which one is about respect – because a lot of the time we focus on the bodies of women – and she has to wear a dress. But when a man wears trousers…
>
> Chief: Okay, well men had lots of time to get used to trousers. After wearing nambas [penis sheath], they went to trousers. And in *kastom* it says that trousers are only for men. It's not for women. Women have their own *kastom*, and that's the island dress [Mother Hubbard introduced by missionaries]. It's not just any kind of dress, it's the island dress. The island dress is for all women of Vanuatu.

When I questioned him further, the crux of his issue with women and trousers came out. This point in our conversation revolved around which kinds of changes were problematic, given that men wearing trousers instead of nambas and women wearing Mother Hubbards as opposed to grass skirts both represented 'change'. When I asked if the problem was change itself, or something else, he replied:

> Well, because in a village you have men and women. And the thinking of men all the time – the way that Melanesians think – they say that women shouldn't wear trousers. When a woman wears

> trousers, a man will see the back of her leg or something, and now his thoughts will go bad. And that can make all kinds of problems happen in the village. But when you take this away, there is respect and everything is fine.

In this chief's account, women's dress not only undermines 'respect', but it causes the sexual and physical violence that is perpetrated against them. Women's dress causes rape, so therefore women must be regulated. This, of course, ignores the fact that rates of violence against women are highest in Vanuatu's rural areas, and that most women and girls in these areas would almost never wear trousers (except possibly under a dress or skirt, to be 'respectful' while also allowing themselves to move more freely, and also, crucially, to 'protect themselves').

In an interview with my father-in-law, Sethy Regenvanu, who as I detail in Chapter Four is one of Vanuatu's leaders of Independence and who helped to craft Vanuatu's Constitution, trousers also came up. He became quite agitated and noticeably frustrated when I pointed out that the Malvatumauri had instituted a policy just before Cyclone Pam in 2015 that women could no longer speak at the front of the Chief's Nakamal (Vanuatu's national *kastom* meeting house), nor could they enter wearing trousers. Up until that time, both had been permissible. Locating the trousers issue as simply part of a strategy to assert authority he said:

> …my view is that people who are vocal about that, they use this to assert their own identity, authority. Be they chiefs or whatever. And I think they find ways of making themselves heard or seen to be saying something of importance. To be noticed, or something like that. And often they use things that to me are trivial. To make elements out of them. Chiefs never talked about trousers before. That never came into the equation. And now they talk about trousers! [That's] something else.

Later in our interview he described the efforts to give more power to chiefs as going 'completely outside' of what was originally envisioned for chiefs in Vanuatu's Constitution. I agree that the trousers issue is relatively new[700], and exemplifies a role for chiefs that far exceeds that originally envisioned for them within the state. I do not agree that it is trivial, however, and I also suspect, given its longevity and persistence, that it is not going away anytime soon.

[700] Despite framing the trousers issue in 'tradition' and '*kastom'* women in Vanuatu have, in fact, worn shorts and trousers and even mini skirts including in the period leading up to and following Independence.

In July 2022, I dropped by the Malvatumauri Council of Chiefs Office and met with a representative of that body. I was told that their office was now focused on pursuing the development of one national set of bylaws that would cover every community in Vanuatu. Perhaps not that ironically, the push for bylaws which had ostensibly started as a way for culturally appropriate community rules to be developed for each distinct *kastom* area in Vanuatu[701] had now turned into the pursuit of one national set of bylaws. It was hard to understand what the regulatory difference would be between a 'national *kastom* bylaw' and state law, except, of course, for the contents. When I asked if trousers would be part of this national bylaw as well, I was told that it might. Of course it will. The trousers tumbleweed continues to roll around because it provides both a convenient explanation for the rates of violence against women and girls, and a simple and convenient solution. It places the blame on women and girls, pulls our collective gaze from men's and boy's behaviour, and ultimately exonerates them. In this reformulation, sexual violence exists because women wear trousers. Period. Ironically, there also seemed to be a significant focus on controlling the use of mobile phones at the community-level in the Malvatumauri's new push for a national *kastom* bylaw. Given that this is the only way to contact the police from many of Vanuatu's villages, it is hard not to see a conspiracy.

Conspiracy was also on my mind as I read anthropologist Maggie Cummings' 2009 thesis. On page 142 Cummings writes about how in 2001 the Malvatumauri used the trousers bylaw developed by the Paamese chiefs as the impetus to reinvigorate their own efforts to have *kastom* and chiefs more explicitly incorporated into the state legal system. According to her account of a conversation with Ralph Regenvanu at the time, this move also had specific implications for young women who chose to wear trousers. Regenvanu was not only the Director of the Vanuatu Cultural Centre when this conversation took place, but he was also a key architect of the efforts to expand the power of chiefs and kastom within the state as described elsewhere in this thesis. According to Cummings:

> [The Malvatumauri] even went so far as to re-launch their campaign to have kastom law incorporated into the existing legal system. This would effectively have meant that young women who chose to wear trousers would be committing a jailable offence (Ralph Regenvanu,

[701] Of which there would be many. Currently there are more than 70 distinct language groups in Vanuatu, and great diversity across Vanuatu's more than 60 inhabited islands.

pers.comm., August 27, 2001) [Emphasis mine][702]

Based on this account, not only would women be blamed for the sexual and violent crimes perpetrated against them effectively erasing the real problem of men's aggression and violence from view, but they would also potentially receive *carceral* punishment for these 'transgressions'.

As another site for this expansion of regulatory pluralism in Vanuatu, the codification of *kastom* bylaws enacts a series of crucial erasures. In the hands of Vanuatu's power-seeking male chiefs, bylaws are not only used to discipline women, but they also work to minimise and reframe the violence women and girls experience. It is not surprising that one of the only instances where sexual violence is actually acknowledged by chiefs, is effectively to hold women and girls responsible for the violence they experience. As I trace in the following section, the impetus for this 'return to *kastom'* in the early 2000s had primarily been articulated through the Vanuatu Cultural Centre's Juvenile Justice Project. Here the stated focus was keeping 'young people' [ultimately young men] out of jail, and instead, having their issues handled by chiefs through '*kastom'*. In this articulation of regulatory pluralism, young men who committed rape, would be diverted to the chiefs to 'klinim fes' [clean their faces] and continue with their lives. The young women who wore trousers for a variety of reasons, including as 'protection' against rape, on the other hand, could be sent to jail for this 'offence'.

5. Building a [*Kastom*] House of Cards: *Kastom*, Young Women, and Juvenile In/Justice

While the examples of 'community policing' and bylaws described above have been part of a more recent upsurge in decentralising and devolving aspects of state justice services to communities and chiefs, the roots of these efforts can be found in the late 1990s and early 2000s. While this earlier effort ultimately had several branches, much of the initial focus was concentrated around the Vanuatu Cultural Centre's Juvenile Justice Project. As a member of the affiliated Vanuatu Young People's

[702] Cummings, "'Looking Good': Women's Dress", 142.

Project from 1998 to 2001, I was peripherally involved as this project developed (and had been given a copy of the initial funding proposal as early as 1998). Our project team had originally been tasked with carrying out the research on juvenile justice, but we started to pull away as we learned more about it. We had increasing questions about the project, its assumptions, and its intentions, and the significant gaps that were evident in how it had been conceptualised. As with the push for 'community policing' and the development of 'bylaws', the lives of women and girls and consideration of their experiences of justice as victims/survivors of male violence was ultimately treated as a non-issue in this project. Essentially – and quite predictably – it was erased from view.

In my own notes from the time, I describe the work that was eventually carried out in fairly unambiguous terms: I describe it as '…unethical, shoddy research'. There were reasons for my perspective. While the impetus for the Juvenile Justice Project had ostensibly come from earlier research completed by the Vanuatu Young People's Project, the endorsement from young people to 'solve their problems using *kastom'* had, in reality, been very thin. I participated in carrying out much of the analysis of the earlier research findings in partnership with the staff of the Vanuatu Young Peoples Project and the young people who had carried out the research themselves. I also assisted in drafting the full research report[703]. The original questionnaire in this earlier research asks nothing about the preferences of young people around how conflicts are solved. The closest question which reads, "Do you feel strongly about learning *kastom*? Yes or No"[704], was quite predictably answered in the affirmative by about 80% of the young people who were interviewed[705]. The ambiguity of this question, however, makes it of relatively little value: was this *kastom* language, how to perform *kastom* dance, *kastom* dress, *kastom* stories, or *kastom* as an expression of identity that young people were

[703] The full Bislama version of the report, that was later adapted by Jean Mitchell into a much shorter English language version.
[704] Vanuatu Cultural Centre, *Harem Voes Blong Yangfala Long Vila Taon*, 1999, page 82.
[705] *Kastom* – and liking *kastom* – is a social good in Vanuatu, so it is not surprising that most young people would have simply answered 'Yes' to this very broadly framed question. Perhaps the greatest surprise is that despite this tendency – and the fact that several of the questionnaires were administered by older Cultural Centre fieldworkers – 20 percent of young people who were asked this question still actually said 'No'. Unfortunately these responses were not questioned any further, and many of the young people who did not like or did not want to be more engaged with *kastom* were simply written off as being churchgoers.

apparently interested in learning? It would be hard to know, as no specificity or further information was solicited. It was simply framed as '*kastom'*.

Yet in a box in the section on '*Kastom* and Language' in that original report, the heading declares that *kastom* can also 'help young people to solve their problems in town'[706]. The first sentence in the box goes on to state: 'The research showed that lots of young people would prefer to solve their problems through *kastom*, rather than through the 'white man's court'[707]. This simple half page box essentially created the first layer in this emerging house of cards. By the time the final *Juvenile Justice Report* (with the subheading 'A Resource on Juvenile Justice and Kastom Law in Vanuatu') was published in 2003, the words in this box had been solidified further. This is demonstrated in the following statement:

> In the course of research carried out in Port Vila they found that **many young people**, in particular males who are more often young offenders, stated that they preferred to have their disputes resolved and offences addressed through the utilisation of existing kastom approaches rather than through the state legal system. [Emphasis added][708]

Below this statement the report goes on to say that in the earlier research 'young people' had expressed that 'kastom is of most relevance to them' in the area of 'juvenile justice'[709]. This profound exaggeration of the original 'findings' provided the next several layers to the house of cards, and the project proceeded on this basis. It had now essentially become: 'Young people' prefer 'kastom approaches'. No further information about which young people, why, under what circumstances, and what is even meant by 'kastom approaches' (or 'juvenile justice'[710] for that matter) was offered.

As someone who had worked closely with both urban and rural communities, and with marginalised and underserved young people for a few years by 2001, I was invited by then Director of the Vanuatu

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[706] Vanuatu Cultural Centre, *Harem Voes Blong Yangfala*, 26.
[707] Vanuatu Cultural Centre, *Harem Voes Blong Yangfala*, 26.
[708] Rousseau ed. *The Report of the Juvenile Justice Project*, 1.
[709] Rousseau ed. *The Report of the Juvenile Justice Project*, 1.
[710] Tess Newton Cain, "Young people in conflict with the law in the South Pacific region," *Development Bulletin* no. 56 (October 2001) 26.

Cultural Centre, Ralph Regenvanu, to comment on an early draft of this *Juvenile Justice Report*. My comments to him, provided in written form in August 2001, refer to this specific set of concerns:

> …through the report there are references to 'young people' that need to be qualified i.e. "…in the area of juvenile justice young people felt that…". These all need to be changed to "young people interviewed" or "some young people" at least. And for the record again, the initial [Vanuatu Young Peoples' Project] research did not find that MANY young people wanted *kastom* to solve their problems. In fact, it came mainly out of one focus group with under ten young men. The most you can say is some. Realistically you should say a couple.
>
> Which really just illustrates again why this shouldn't be done as a research report. It's so dangerous. A few answers ([in response to] loaded, biased, uncontextualized [questions] etc), get slid into many answers, get slid into something which is seen as representative of a whole group, and before you know it 7 young men who did steal and were unfortunately beaten by the police are the justification for unleashing a whole framework which will radically affect young peoples' lives (many negatively) if it [is] instituted.

The fact was, in the original Young People's Project research one focus group had been held with seven young men who had been taken into custody by the police (for theft) and were subsequently beaten and mistreated. These particular young men had expressed a preference for '*kastom'* over what they had experienced. Ultimately, this single focus group discussion was the basis for the broad statement that young people prefer *kastom* approaches to justice.

Even the issue of police violence as the basis for a '*kastom* alternative' required significant unpacking. My comments from that time, also shared with Regenvanu in my written feedback from August 2001, highlight some of these complexities:

> I don't think that it would be wrong to say that one of the main impetuses for this project was police violence. The simple (and I would say misguided) assumption was that because police are a part of [state justice, this means that state justice] is the problem, therefore kastom would be better. This is so flawed though…many of the police officers are motivated in their actions vis-a-vis young people because kastom is about disciplining in many ways.
>
> I know that violence is justified in kastom both in the 'teaching of women' and the 'teaching of children'. In fact, most people would say it's okay to hit women and children as long as you are teaching [them]. I imagine that many times the police feel they are doing this (of course this is misguided…). But you have to deal with the violence problem – which is so [much] a part of kastom, and not blame it solely on the court system. Ironically, at least in the [state] system police violence is illegal, which I don't think would necessarily be true in kastom…Chiefs and families also use the police to help to enforce 'kastom law'. So why police are hitting [young people] may find many of its roots in 'kastom'.

Ironically, the *Juvenile Justice Report* itself raises this issue of the interrelationship between policing, *kastom*, chiefs, and the use of violence. In the section on 'Police' the report states that the police who were interviewed said they worked closely with chiefs, often encouraging 'settlement through kastom

rather than the courts'. It also went on to say that chiefs used police 'as a threat', with one chief saying that he sometimes took young people to the police '…specifically to be beaten by the officers as a deterrent to making trouble in the future.'[711] These complexities were never explored further in the report, however, or in how the 'findings' were subsequently framed.

At the Vanuatu Young People's Project, we had direct experience of how punitive and disciplining *kastom* could actually be for young people. A young man we had worked with over several years was found to be causing too much 'trouble' by the chiefs in his community. As a result, one day in a meeting they decreed that he should be beaten to death[712]. When word of this spread, our project staff and another civil society organisation intervened. However, when a key architect of the Juvenile Justice Project was told about this, he simply shrugged and commented that this was probably what would have happened 'before' in *kastom*. Much to our astonishment this individual seemed comfortable with the prospect of a young person being beaten to death. There was also no response to this situation – public or otherwise – from the staff and advisors who were part of the Juvenile Justice Project.

It seemed clear by this time that the '*kastom'* agenda being pursued did not seem to be centred around the welfare of young people at all, or even around condemning the use of violence as punishment. Even though 'police mistreatment' was listed first in the *National Juvenile Justice Summit Recommendations* as the reason young people ostensibly preferred *kastom*, it seemed that even extreme violence condoned in *kastom* or by chiefs was of no concern. Instead, as was the case with the *Family Protection Act* and the push for bylaw creation and community policing, the promotion of *kastom* and the power of chiefs was the primary and overriding objective. While at least one author writing at the time cautioned against the danger of young people being '…subject to a regime [in

[711] Rousseau ed. *The Report of the Juvenile Justice Project*, 18 to 19.
[712] Chiefs are often depicted as peacekeepers but have also been involved in inciting violence, including community violence, in Vanuatu.

kastom] that is more coercive or repressive than if they were dealt with by the police and the courts'[713] the messaging that 'young people prefer kastom' to solve their problems prevailed. These assertions from the *Juvenile Justice Report*, and other 'findings' that I described in my notes as shoddy and unethical, continue to be referenced and used – largely uncritically – as a basis for the pursuit of *kastom* and 'hybrid justice' in Vanuatu, through the empowerment of chiefs.

Beyond these grave omissions, methodological flaws and misrepresentations in the Juvenile Justice Project, another crucial concern that several of us at the Vanuatu Young People's Project had at the time was what this approach would mean for women and girls. We kept asking where the young women were in all of this. Our concerns centred around the lack of effective engagement with women across all aspects of the research process, and the resulting lack of information about how women and girls were impacted by *kastom* and state justice approaches in relation to the issues they experienced in their daily lives. Early in the project we had raised concerns to one of the project's legal advisors at the University of the South Pacific about how the project would differentiate between criminal matters such as rape and sexual assault, and other matters like theft. We also asked specific questions about how the project would address itself to the concerns of the victims/survivors of crime. As detailed in Chapter Two, all of the women I worked with knew, several of them firsthand, about the rates of violence and sexual assault perpetrated against women and girls by men and boys in Vanuatu. In response to our questions, we were told that *of course* the needs and interests of victims/survivors of crime would be considered, and we were summarily sent on our way.

Perhaps unsurprisingly, these concerns were never really addressed in the Juvenile Justice Project research. This erasure of the gendered nature of crime in Vanuatu was even reflected in the way the research itself was carried out. Two middle aged men were hired as project staff, neither of whom had any substantial training or experience in field research. When we highlighted the fact that young women would not feel comfortable speaking openly with these men, a couple of older women

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[713] Newton Cain, "Young people in conflict with the law," 26.

fieldworkers associated with the Vanuatu Cultural Centre were given some questionnaires to complete. Ultimately only a few surveys were completed in this way, and these would not have solicited much useful information in any case. At least one of the women fieldworkers who was recruited was a stern, conservative older woman who was clearly an advocate for *kastom* in her area. In the end, the Juvenile Justice Summit meeting held at the conclusion of the project was made up predominantly of chiefs, and only about five women and ten young people[714]. It is not surprising, then, that it resulted in the proposal that: 'all offences committed by people of any age, from a child to an adult, are to be dealt with by kastom courts. Only the chief should decide which cases are referred to the state courts.'[715] These recommendations were also published in the national newspaper as 'findings' of the project.

Our concerns did not end there. Ultimately, the research itself was also deeply flawed. One of the Vanuatu Young People's Project staff – an exceptionally talented researcher – referred to it in an interview with me in 2022 as simply 'a failure'. The questionnaire was determined to be biased and leading, and full of redundancies. Many respondents found it incomprehensible[716]. Even the official report states that 'some of the questions seemed to be causing confusion to interviewees'[717], resulting in a situation where '…a number of answers given seem irrelevant to the question asked'[718]. The questionnaire was not field tested and a second planned round of research was never carried out[719]. Instead of depicting the views of 'young people' in some representative way as it was subsequently portrayed, it at most engaged with just over 200 young people[720]. More than 30 percent of the interviews were conducted with chiefs and community leaders. Given these significant flaws and issues, I clearly stated in my written feedback in August 2001 that writing or publishing a more

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[714] Rousseau ed. *The Report of the Juvenile Justice Project*, 9.
[715] Rousseau ed. *The Report of the Juvenile Justice Project*, 7.
[716] My notes from the time indicate that even when some of the staff from our project who were talented researchers were engaged in a final effort to complete surveys, they found the survey instruments to be deeply problematic.
[717] Rousseau ed. *The Report of the Juvenile Justice Project*, 3.
[718] Rousseau ed. *The Report of the Juvenile Justice Project*, 3.
[719] Rousseau ed. *The Report of the Juvenile Justice Project*, 3.
[720] At that point in time, given Vanuatu's population, it would have represented less than one percent of the total population of young people in Vanuatu. Ironically, the report also states that several of the young people interviewed came from one urban island community.

conclusive report on the 'findings' would be '…a huge mistake.' At the very least I suggested that there would have to be a very clear section on limitations.

These concerns also went beyond methodological issues. They had to do specifically with the erasure of young women's experiences of justice in how the research had been conceptualised and represented. My comments from August 2001 describe some of these concerns:

> Another limitation was [the] lack of breakdown regarding the gender of respondents – this is absolutely crucial as *kastom* is different for young men and young women, as is the rate and type of criminal activity. This is a massive hole in the research. There was also a far greater number of young men interviewed than young women. You have to include the breakdown of young men and young women in tables, or I would say take the tables out because it is misleading like this – it is easy to assume it represents women and men equally. This is a massive limitation.

While the following sentence was included in the final report: 'Another key finding of the previous research on young people in Port Vila was that young women's experience of traditional systems of justice is different to that of young men'[721] – perhaps in response to some of the concerns we had raised – this issue was never addressed in the body of the report beyond this minor caveat. Ironically the comment about this being a 'key finding' of previous research was also untrue. Ultimately, no one had bothered to find out how 'juvenile justice' considerations intersected with young women's daily lives and experiences. The focus in the research was almost exclusively on young men, and even more on the plan to install *kastom*-as-justice under the oversight of male chiefs in the space of formal justice.

In the recommendations that came out of the Juvenile Justice Summit – which were again published in the *Vanuatu Daily Post* and circulated widely around Vanuatu – another gendered sleight of hand occurred. Recommendation 4 states: 'Women also want to see the empowerment of kastom law…'[722] In reality, there were only a handful of women present at the summit, and even the report itself suggests that the 'format of the meeting' (dominated by chiefs) 'inhibited contributions from young people and women'[723]. Given this reality, and the fact that the research lacked any effective

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[721] Rousseau ed. *The Report of the Juvenile Justice Project*, 3.1
[722] Rousseau ed. *The Report of the Juvenile Justice Project*, 7.
[723] Rousseau ed. *The Report of the Juvenile Justice Project*, 9.

engagement with young women, it is not clear how this conclusion was anything but conjectural. Pacific academic, Michael Morgan, who held a governance workshop for youth soon after the Juvenile Justice Summit offered a significantly more accurate depiction of the situation facing women in the space of *kastom*-as-justice:

> In some Pacific islands societies rape is not considered serious enough to merit referral to the police and is considered something that should be dealt with by the community, without reference to the relevant legislation (Newton Cain 2001:63). It was felt that chiefs trivialise the interests of individual wronged women and give priority to community cohesion and reconciliation. Reconciliation, in this instance, entails the subversion of the human rights of the women involved. Chiefs have proved incapable of protecting young women when men consistently 'make trouble' towards them. There are valid concerns, therefore, that women's rights are curtailed by kastom arbitration. [724]

Morgan goes on to state that despite the inadequacies of the state system, the interests of women and girls would be 'best served' there[725]. He concludes his paper with a caution that 'The danger, that calls for appropriate and effective means of dealing with young offenders will be subsumed within a broader discourse of government reform or yoked to specific interests not directly related to issues of juvenile justice, remains salient.'[726] This caution remains salient across Vanuatu's justice sector today, more than 20 years later, and is particularly salient in relation to the justice concerns of women and girls.

6. Conclusion: Erasing Violence, Erasing Women, Erasing Justice

This chapter examined a series of sites within Vanuatu's justice sector, all of which highlight an expanding regulatory role for *kastom*-as-justice and the power of chiefs in Vanuatu. As with the example of Vanuatu's *Family Protection Act*, these sites illustrate how configurations of regulatory pluralism are not neutral. For example, extending a state-endorsed regulatory role to chiefs and their designates under the guise of 'community policing' has effectively given men the power to police themselves – and discipline women – at the community level. Not only are these men essentially unregulated, untrained, and far from oversight, but as is the case for chiefs under Vanuatu's *Family*

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[724] Morgan, "Disentangling juvenile justice and kastom law," 60.
[725] Morgan, "Disentangling juvenile justice and kastom law," 60.
[726] Morgan, "Disentangling juvenile justice and kastom law," 60.

Protection Act, they effectively act as gatekeepers, controlling which issues and individuals ultimately have access to state processes. The related push to institute '*kastom'* bylaws acts to codify and formalise these processes. While bylaws may appear to offer another kind of neutral mechanism for extending and decentralising regulatory authority, the actual content, purposes, and effects of Vanuatu's *kastom* bylaws are rarely examined. In many instances these bylaws have a particular focus on regulating and disciplining women and girls, at times holding them responsible – and seeking to punish and even criminalise them – for the violence perpetrated against them.

Each of these sites demonstrate how *kastom*-as-justice establishes frames of intelligibility. These epistemological frames[727] determine what is valued and what is not, what is seen and what is invisible. As with 'community policing' and bylaws, within the epistemic framing of the Juvenile Justice Project this *kastom*-based 'solution' appeared to offer a fairly straightforward fix to a compelling set of justice concerns: in this case, the violent treatment of young men by police. In practice, however, this space, much like community policing and *kastom* bylaws, simply became a vehicle for promoting *kastom*-as-justice and the power of chiefs. Not only was violence against young people of seemingly little concern in the *kastom*-based approach to juvenile justice, but the nuances of the actual justice issues facing diverse young people were effaced. While each of these sites are billed as reasonable concessions to decentralisation, to a recognition of *kastom*, and to a plural regulatory environment, other crucial aspects are left out. Common to all three of these sites is the profound invisibilisation of women and girls and the violence they experience in their everyday lives.

The pursuit of '*kastom* alternatives' in the space of justice in Vanuatu – whether through 'community policing', codifying rules of *kastom* in the form of bylaws, or framed as 'juvenile justice' – have focused in a rather singular way on the power of chiefs and of men. These articulations of *kastom*-as-justice institutionalise and instrumentalise the power of particular men in a way that also perpetrates violence through a series of erasures. In this chapter and elsewhere in my thesis I locate this as a form of

[727] Ingala, "The meanings of violence," 198.

epistemic violence. While it may at times be difficult to perceive or even framed within a well-meaning proposal, the violence it enacts is significant. In the midst of all this patriarchy[728], the grievous issues of physical and sexual violence that women and girls in Vanuatu experience at the hands of men – many of them men they know and live with – are removed from the frame. In its place is the stabilisation and petrification of a particular *kastom* worldview[729], rooted in the sedimentation of patriarchal power and mediated by male chiefs: naturalised, definitive, ahistorical, and violent.

[728] Sarkar, "Decline of the Subaltern," 108.
[729] Ingala, "The meanings of violence," 192.

Chapter Eight
Discussion and Conclusion: Nothingness, Critique, and the Horizon of Justice

1. Women, *Kastom*, Violence: The Nothingness and Invisibility of Women

In April 2023, just as I was completing this thesis, I was gifted a copy of *Beneath Paradise* by a good friend in Vanuatu. This volume of poetry was produced by 'Pacific Grassroots Women's Leaders' as a contribution to the 4th United Nations Conference on Women in Beijing in 1995. Billed as a documentation project to share Pacific women's life stories, strengths, achievements, concerns, and struggles[730], the volume includes several poems by Grace Molisa. One of them, the poem titled 'Ni Vanuatu Women', stopped me in my tracks. This poem, laid out in four stanzas, begins by describing the title subject, 'A Ni Vanuatu Woman', as a thing, a machine, an animal, with no feeling, no sense, no thought, and no intellect[731]. It concludes with two simple but profound statements:

> A Ni Vanuatu Woman
> IS NOTHING
>
> A Ni Vanuatu Woman
> Is invisible[732]

In four short stanzas this poem clarifies the central theme that underpins the findings of my thesis. In their nothingness it is not simply that women and girls, and their lives in all their complexity, are not adequately considered. Nor are women simply treated as different from men. Within this metric of nothingness, women do not even warrant consideration as equally human.

In the first stanza, Molisa's description of Ni-Vanuatu women as things, as machines, brought me back to a moment when a state justice representative told me that his own mother in the village where he grew up[733] was treated 'just like a tool' in his family. I had been speaking to this individual on an

[730] Beneath Paradise Documentation Collective, *Beneath Paradise: Volume 1*, 1995, 1.
[731] Grace Mera Molisa, "Ni Vanuatu Women," *Beneath Paradise: Volume 1*, 1995, 57.
[732] Molisa, "Ni Vanuatu Women," 57.
[733] This individual had grown up on the island of Pentecost, the same island where Hilda Lini is a chief.

island in Vanuatu in a shiny new office set up to extend access to state justice services for rural communities. He had shared this description of his mother in an introspective moment after telling me rather sheepishly what he did when women came to see him with cases of domestic violence. He said, 'Lots of them come here, but I send them back to the chiefs.'[734] He did this simply because the chiefs had asked him to, and so that, '...chiefs also feel that they are part of this'. When I asked him about how these cases were resolved after he sent women – most of whom would have travelled for days at great personal risk[735] – to not one, but three levels of chiefs (family, village, and area[736]) before they could access his services, his response was telling:

> I send them to go see the chief...really when I send them to the chiefs, I am not thinking of the law, I am thinking of resolving the situation through kastom and through reconciliation. But a lot, some of the feedback that comes back, when they go and when we check with them, or check their files...they aren't happy with how the chiefs have handled it...[737]

This trained representative of the state in Vanuatu, with responsibility for decentralising access to legal remedies and state justice services to remote rural communities, was not only 'not thinking of the law', but he had not given any thought to women's realities, needs and interests, even in grievous situations of violence. In the interests of men and chiefs, in the name of *kastom*, women were nothing.

Across the preceding chapters I have traced how various aspects of governance and regulation that are deployed in Vanuatu sustain what being 'nothing' means for the lives of women and girls. In the context of the kind of colonising and audacious violence that I describe in Chapter Two, the efforts to institutionalise *kastom*-as-justice and appease Vanuatu's male chiefs in their manoeuvres for power compounds the violence women experience. As such, the answer to my overarching research question is simple. The upsurge in mobilisations of *kastom* and 'the power of chiefs' in Vanuatu affects women and girls and their experiences of violence profoundly, and in several different ways. In

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[734] Vanuatu Law and Justice Partnership/Heidi Tyedmers, "Access to Justice: Pathways to Action for Women Experiencing Family Violence: Case Study Research Report", 30 April 2013, [unpublished report], 41.

[735] Particularly in rural parts of Vanuatu, women will sometimes need to walk for days to access provincial centres and services.

[736] This depiction of different levels of chiefs conveys a sense of organisation that does not actually exist in practice in most of Vanuatu, despite years of effort to organise chiefs by Vanuatu's National Council of Chiefs, the Malvatumauri. It also ignores the fact that many of these women would have already consulted chiefs and others in the village, but likely found no support or resolution when they did this, or they had specifically avoided these options for any number of valid reasons.

[737] Vanuatu Law and Justice Partnership/Heidi Tyedmers, "Access to Justice," 42.

practice, these impacts have seeped into the structures and institutions of the state, making the separation between state and *kastom* not simply porous, but also imperceptible at times. While I summarise my findings and contributions below, what is clear from even the small scenario above is that the power exercised by 'traditional' patriarchal institutions within Vanuatu's pluralising regulatory orders can even come to dominate the more visible institutions of the state[738], from within these institutions themselves. This is the case, even amongst people 'who should know better'[739]. How these concerns are ultimately understood and addressed – if they are addressed at all – will have profound implications for women's experiences of violence and their efforts to seek justice in Vanuatu.

Before outlining the broader implications of my research findings later in this chapter and offering preliminary thoughts about how we might begin to address these issues, I would like to summarise the key findings and the contributions of my research. First, my research has provided in-depth analysis of many of the contours of normative *kastom* and how it enshrines the power of chiefs in Vanuatu. While the processes and phenomena that I examine in my thesis have been treated as neutral enactments of regulatory pluralism, my research reveals a more complex picture. With support from theoretical guideposts offered by Judith Butler's conceptualisation of violence, my research has taken a more critical and historically informed look at what these enactments of regulatory pluralism look like, at their key drivers, and crucially, at what is being left out of the frames of intelligibility[740] they establish. The work to bring what – and whom – is being left out back into the frame represents another key contribution of my thesis. My research findings illuminate that in the 'hybridising' space of justice in Vanuatu, women and girls and the violence they experience are being left out. This is the case, despite the highly gendered nature of crime. Even more, enactments of normative *kastom* and the power of chiefs in the space of justice work to subvert existing protections for women and girls and mitigate the consequences for violent men. In my thesis I identify this as a form of gendered, epistemic violence.

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[738] Corradi, "Introduction: Human Rights and Legal Pluralism," 9.
[739] Quoting Ralph Regenvanu in Chapter Two.
[740] Ingala, "Judith Butler: From a Normative Violence," 198.

My thesis also contributes to a more critical engagement with several truisms in Vanuatu that work to amplify these mobilisations of *kastom* and the power of chiefs, while at the same time concealing the violence they enact. For example, in my research, I illuminate cunning aspects of discourses like 'complementarity' and 'women chiefs' in Vanuatu. I argue that they are cunning because at the same time that they suggest the possibility of equality and recognition for women in *kastom*, they also act to conceal the grave inequalities, violence and injustice women and girls experience – kastom's man on top, woman downness and 'darkest truths'[741] – under a veneer and a false promise of recognition. As I explored in Chapter Four, and address again in a limited way below, these depictions often rely on a binary logic whereby the state is foreign and *kastom*, and chiefs represent a kind of continuous tradition. Beyond the many erasures that these binary depictions enact, this kind of ideological cultural relativism disallows what political philosopher Ato Sekyi-Otu refers to, following Frantz Fanon, as an 'unsuspected possibility'[742]: the autonomy of people in Vanuatu to choose to assimilate things like constitutional democracy and human rights in ways that also make them foundationally 'indigenous' to this context[743]. In the rising discourse of what Grace Molisa referred to as the 'Nakamal Clique' where men jostle and vie for positions of power on the basis of *kastom*[744], these possibilities – and the sliver of possibility offered by Vanuatu's post-Independence pursuits of democracy and equality – fall away.

My thesis has also highlighted the many material impacts and consequences of the rise of normative *kastom* and the power of chiefs in the space of justice in Vanuatu, particularly for women and girls. These impacts include how normative *kastom* structures and obscures the actual discipline, control and violence women and girls experience in their lives through concepts like '*kastom* respect'. Normative *kastom* in practice also enacts a kind of metric of nothingness on women's lives and

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[741] This way of describing kastom was attributed to Teresia Teaiwa in an interview with Claire Slatter on 13 March 2022.
[742] Ato Sekyi-Otu, *Fanon's Dialectic of Experience* (Cambridge: Harvard University Press, 1996) 198.
[743] Sekyi-Otu says that 'Fanon's critical theory is able to envisage an unsuspected possibility: the original appropriation by postcolonial humanity of a legacy which an invasive modernity has bequeathed. It is a vision, then, wise in the ways of the master's Word but unwilling to give those ways the last word.' (198) This understanding clearly informs my father-in-law, Sethy Regenvanu's, perspective that depictions of Vanuatu's Constitution as 'foreign' are implicitly racist.
[744] Molisa, *Women and Good Governance*, 51.

experiences. This renders a range of injustices and violence – from having to jump out of moving buses to avoid rape[745], to the reasons why a young woman might describe what *kastom* means to her using the language of hatred – as not worthy of consideration. My analysis also demonstrates how enactments of regulatory pluralism not only fail to address violence in the lives of women and girls and other marginalised community members, but these failures have other material consequences as well. By effectively setting chiefs up as gatekeepers for access to state justice remedies – whether as arbiters of 'juvenile justice', through the enactment of *kastom* bylaws and 'community policing', or as 'Authorised Persons' under Vanuatu's *Family Protection Act* – this enables male chiefs to authorise their own version of patriarchal community and family harmony. Under the power of Vanuatu's male chiefs, women are punished for wearing trousers to protect themselves from rape[746] and for any manner of not 'showing respect'. The men who engage in disciplinary violence and rape, on the other hand, are let off with a fine and absolved of responsibility, and the cycle of violence continues.

In order to address these concerns, my research has highlighted not only the importance, but also the necessity, of centring the experiences and the voices of women and girls. In Vanuatu, across all regimes of governance, we need to pay more than lip service – or shoulder shrugs – to the violence women and girls experience in their lives. We also need to resist the temptation to naturalise categories like '*kastom'* and 'chiefs', and actively question declarations of 'the power of chiefs' and the underlying motivations for these kinds of statements. Despite many remarkable and wonderful aspects of *kastom* in Vanuatu, *kastom* can and does operate in highly political and repressive ways. In fact, in the hands of Vanuatu's male chiefs in their quest for power, *kastom* is increasingly being wielded, in the words of one of my interlocutors, like a blunt hammer. Accordingly, it should be held up to the same kind of critical scrutiny as other regulatory orders. Without this kind of scrutiny, and as

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[745] Bjournum, "Time to start policing men's behaviour".

[746] Merelyn Tahi in the Vanuatu Young People's Project film Wan Naes Wan says 'Some people say that a man rapes a woman because she is wearing clothes that shows some of her body...I can say that some girls wear trousers to protect themselves from rape because island dresses are easy for a man to remove to rape a woman. But trousers make it harder for a man to rape a woman. We have spoken to many girls and they tell us that they wear trousers because they feel that trousers are strong and can protect them more than wearing dresses or island dresses. When a man rapes a woman it is an act of power and control over that woman.'

discourses like *kastom* are deployed uncritically, and without attention to the violence, patriarchal enactments, and erasures that I highlight in this thesis – these aspects of *kastom*-in-the-service-of-patriarchy will continue to expand. Without erasing all that *kastom* is and can be, my thesis has addressed itself directly to these concerns, and the violence they enact.

In conclusion, my theoretical and methodological approach has focused on troubling the invisibilisation of a range of complex issues and concerns relating to *kastom* and violence against women and girls in Vanuatu. In the Pacific we have typically engaged with these issues through the highly simplified lens of gender (modern, individual rights, "Western") versus culture (traditional, communal interests, "non-Western"). My thesis has demonstrated how this framing is not only unproductive, but it invisibilises complex political and historical phenomena, and crucial concerns. Instead, my thesis has moved beyond binaries to bring a range of considerations back into the frame. This theoretical approach has been directly informed by Judith Butler's understanding of violence. Following Butler, by shifting my focus to material, normative and epistemic violence – effectively what is left out of the frame – my thesis has instead examined the invisibilisation of violence and the violence of invisibilisation across a range of issues, sites and phenomena in Vanuatu. This approach to examining what I have clearly demonstrated are burgeoning, solidifying – and deeply violent – patriarchal formations in the context of Vanuatu, offers a unique and necessary corrective to theorizing *kastom and* violence against women and girls in Vanuatu[747].

2. The Necessity for Critique: Epistemic Frames and Violence in *this* Postcolony

My thesis has focused on how modes of regulation and governance can contribute to and sustain the erasure and invisibilisation of women and girls, their lives, and the violence they experience. As discussed in Chapter Two, the process of invisibilisation entails erasing and rendering invisible whole

[747] In this way my thesis has also responded to a call by DeKeseredy to bring patriarchy back into the frame, and to open up "new avenues of exploration". DeKeseredy "*Bringing Feminist Sociological Analyses of Patriarchy Back*", 628.

categories of women's experiences as a technique of power and oppression[748]. In relation to the formations of *kastom*-in-the-service-of-patriarchy that I describe, I have been concerned with who and what is being left out. In Vanuatu, particularly in the space of justice and governance, I have demonstrated the ways that normative *kastom* establishes frames of intelligibility that invisibilise the lives and experiences of women and girls. This invisibilisation structures women and girls in Vanuatu, and crucially the violence they experience at the hands of Ni-Vanuatu men, as nothing. Across several different sites within Vanuatu's justice ecosystem, I have shown how whenever *kastom* and the power of chiefs is on the agenda, whether in the context of Vanuatu's domestic violence legislation or in relation to decentralising policing services, women and girls and the violence they experience are effectively invisibilised. This nothingness and the invisibility of the lives of women and girls ultimately compounds the violence they experience.

In an effort to address this, my thesis has sought to illuminate and deconstruct these processes of invisibilisation. I have done this through a process of critique, and by actively seeking to bring women and girls, and their experiences back into the frame. As I detail in Chapter Three, feminist philosopher Emma Ingala locates this process of interpretation and critique as central to Judith Butler's approach for countering violence. For Butler, the work of countering violence centres around the necessity for critique and the problematisation, subversion and denaturalisation of normative understandings. Through critique, we destabilise the frames of intelligibility that establish what is visible and valuable and what is not[749]. Interpretation destabilises these frames and provides historical context. Through these processes we can demonstrate how categories of understanding actually work and how they 'configure and order the world'[750] – and in whose interest. This kind of critique and interpretation allows for other configurations and understandings to emerge, and with them the possibility of alternatives. My thesis has demonstrated how denaturalising categories like 'chief' and '*kastom'*,

[748] Janmyr, "Sudanese Refugees and the 'Syrian Refugee Response," 136.
[749] Ingala, "Judith Butler: From a Normative Violence," 198.
[750] Ingala, "Judith Butler: From a Normative Violence," 202.

particularly in the space of justice, allows for a much more nuanced sense of power and politics – and of justice – to emerge.

Throughout this thesis I have examined sites where the stabilisation of naturalised worldviews about kastom and justice in the hands of chiefs can be observed in Vanuatu. These are not the only worldviews at play, however, in the context of Vanuatu. In the broader sphere of justice, influences inspired by developments and insights from other global contexts also come to bear. For example, criminal justice and command-and-control policing models have been subject to legitimate and even compelling critique in other contexts, as various institutions of the criminal justice system, and law itself, have been identified as key contributors to perpetuating patriarchy[751] and racism[752]. In keeping with this trend, criminal justice responses to domestic violence in a variety of contexts are being replaced by more holistic, restorative, and multi-level responses. These trends may be wholly valid and necessary in many other contexts, and they are certainly worthy of consideration in Vanuatu. When they are uncritically applied to a context like Vanuatu, however, they often fail to appreciate the specific dynamics at play. In this context, where a kind of unbridled patriarchy is being reconstituted through articulations of normative *kastom* and the power of chiefs, this becomes problematic. In fact, rather than democratising justice, these efforts essentially function to decentralise repression[753], effectively pushing justice functions out into communities where oversight is minimal and complex, and compounding the violence women and girls experience in their everyday lives.

Orthodoxies within post-colonial scholarship can also contribute their own frames of intelligibility to these circumstances. As such, they also require active critique. In a context like Vanuatu, many foundational aspects of post-colonial paradigms have significant influence, especially in the space of justice. As I have addressed throughout this thesis, these paradigms can emerge as binaries – or

[751] Patricia Smith, "Introduction" in *Feminist Jurisprudence*, Patricia Smith Ed. (New York: Oxford University Press, 1993).
[752] Peter Irons, *White Men's Law: The Roots of Systemic Racism* (Oxford: Oxford University Press, 2022).
[753] Ruteere and Pommerolle, "Democratizing Security or Decentralizing Repression".

what Metis and Cree scholar Emma LaRocque critically refers to as the process of 'charting out'[754] – in which several things come to line up on the side of 'the West': coloniser, modernity, law, capitalism, human rights, Constitutional governance, state, retributive justice, and in Vanuatu even state-level political corruption. Often, on the other side of this binary are things like: colonised, tradition, *kastom*, 'Melanesian socialism', communalism, kastom governance, non-state, restorative justice, and the perceived integrity of local systems, actors and processes. According to LaRocque, not only does this charting out result in 'simplistic, rigid, formulaic, and doctrinaire "solutions" to very complex issues and problems'[755], but in the context of violence against women and girls it often conceals how power operates in ways that can advantage and protect offenders[756].

Consider, for example, how LaRocque points out how a central tenet of this post-colonial binary paradigm, whereby 'the collective' is set up in opposition to 'the individual', falls apart under more critical scrutiny. This is the case, she says, particularly in situations of violence against women where more critical analysis reveals the power play:

> With respect to violence, the argument for community is transparently a case of favouring one individual (offender) over another (victim), elevating the offender's interests to 'collective rights' while reducing the victim's interests to 'individual rights'. It remains a puzzle how offenders, more than victims, have come to represent 'collective rights.' Besides disregarding all contemporary discourse on justice and ethics, the premise that individual rights should be sacrificed for the supposed good of the community has no substantiation. It is as if individuals are not part of the collective good, as if the only way to ensure 'collective' rights is to subvert individual ones, or at least those of certain individuals.[757]

LaRocque's deconstruction of the discourse of collective rights and familial and community harmony in situations of violence against women highlights the illogicality, the inequality, and the violence inherent in these kinds of post-colonial binary frames. Yet this very argument – the highly simplified individual rights versus collective rights distinction – has been central to discussions of human rights in places like Vanuatu[758]. In this context, human rights are often framed by chiefs and others as

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[754] Emma LaRocque, "Re-examining Culturally Appropriate Models in Criminal Justice Applications" in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality and Respect for Difference*, Ed Michael Asch (Vancouver: UBC Press, 1997) 78.
[755] LaRocque, "Re-examining Culturally Appropriate Models," 77.
[756] LaRocque, "Re-examining Culturally Appropriate Models," 80.
[757] LaRocque, "Re-examining Culturally Appropriate Models," 80 to 81.
[758] Genevieve Howse, "Incorporating International Treaty Obligations and Customary Law into Domestic Legislation in a Pluralist Legal Environment. Considering Pacific Public Health Laws as a Case Study," *Revista de Direito Sanitario*, Sao

contradictory to 'all our principles and values in *kastom*'[759], and individual rights and community rights are described as being at odds[760]. Yet, in the pursuit of chiefs rights that has been central to the upsurge in *kastom* in Vanuatu that I trace in my thesis, it is transparently a case of favouring the rights of certain individuals – chiefs, men, offenders – over the rights of women and girls.

Many hybrid and plural regulatory approaches nonetheless rely on this kind of binary logic. In this process of 'charting out' highly simplified and essentialising lists of oppositional traits, value is also ascribed to either side. In this way, not only are people, institutions, things, and issues allocated to one side or the other, but a process – typically a reversal – of moral valuing takes place. To illustrate this point, legal scholar Miranda Forsyth describes plural approaches as marked by '...a change of mindset from seeing non-state orders as disorderly, corrupt, unimportant or potentially subversive'[761], indicating this change in the moral value ascribed to one side of the binary. While recognising value in diverse ways of being and in diverse regulatory approaches is a laudatory and valid undertaking – and may even serve to address other instances of epistemic violence – it also leaves the problematic binary intact and sets up another frame of intelligibility. As a result, depictions like Forsyth's above, as with much of the work in the 'hybridity paradigm'[762], stop crucially short of asking a series of equally valid and necessary questions: What are these other regulatory institutions, actors, and impulses like? Which other stories and issues are being left out? It also distracts us from the possibility that these 'non-state orders' could also be corrupt, disorderly, and subversive.

My thesis has demonstrated that in the case of Vanuatu's chiefs, these 'non-state orders' that are seeking to operate more actively in the space of justice and governance are, in fact, deeply patriarchal. They are also focused on goals that are, in many instances, antithetical to the process of

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Paulo 11 no. 3 (Nov 2010/Feb 2011) 97.

[759] *Vanuatu National Conference of Kastom Chiefs*, Day 1 – Law and Justice.

[760] *Vanuatu National Conference of Kastom Chiefs*, Day 1 – Law and Justice.

[761] Miranda Forsyth, "Legal pluralism: The regulation of traditional medicine in the Cook Islands," in Peter Drahos Ed. *Regulatory Theory: Foundations and Applications* (Canberra: ANU Press, 2017) 234.

[762] Bull et al "The virtues of strangers?," 4.

justice itself. In this way, my thesis demonstrates that 'configurations of plural regulation'[763] require more critical scrutiny. In the context of Vanuatu, the extension of increasingly state-endorsed regulatory power to chiefs and *kastom* is effectively working to solidify and expand patriarchal institutions and ideologies. The failure to take power into active consideration in these plural regimes of governance effectively results in more violence – epistemic and actual. While it may be the case that, 'Hybridity is neither necessarily emancipatory nor necessarily oppressive'[764], the possibility that some 'hybrid' regimes of governance populated by 'nonstate actors' may in fact *be* oppressive and dangerous, particularly for women and girls, is rarely considered. As my thesis has demonstrated, this is a grave mistake. Amidst the significant attention paid to the limitations of criminal justice responses and calls for more holistic and plural approaches, the dynamics that my thesis reveals also deserve more critical and engaged attention.

3. The Power *and* the Money: Other Drivers and Challenges of *Kastom*-as-Justice

There is another crucial element that is rarely taken into consideration in the simplified stories about *kastom*, politics, and power, and the promotion of chiefs as mediators of justice in Vanuatu. This is the way that politics, economics and *kastom* are often deeply intertwined. In fact, corruption and political instability under the 'red roof' of state politics has often been used as a justification for a greater reliance on chiefs. This trend goes back several decades. For example, in a chapter on 'Chiefs in Vanuatu Today', anthropologist Lamont Lindstrom writes about how in the late 1980s political leaders began to 'talk up chiefs'[765]. According to Lindstrom, this was 'clearly linked to an erosion of the government's influence' at the time, in the context of growing political infighting[766]. In writing about his own motivations for publishing an autobiography of his life as a key political actor in Vanuatu, my father-in-law, Sethy Regenvanu writes about this same period in Vanuatu's history in terms of his

[763] Corradi, "Introduction: Human Rights and Legal Pluralism," 9.
[764] Forsyth, "Using the concept of hybridity," 489.
[765] Lindstrom, "Chiefs in Vanuatu Today," 223.
[766] Lindstrom, "Chiefs in Vanuatu Today," 223.

desire to 'expose what I knew about the period that came after...1987 when, in a sense, all we had worked for began to fall apart.'[767] For him, this included exposing what he calls the 'rottenness and corruption' that had taken hold of the leadership and national government, where he describes how 'selfish interests and greed for power and money had taken a strong grip on some leaders, who were intent on resorting to any course of action to achieve their desires'.

As I detail in Chapter Four, this expansion of a role for chiefs within the state has often been justified by reference to these failures of Vanuatu's state institutions and political leadership. This failure of state politics was what led Hilda Lini to seek her own *kastom* alternative in the Tuvanuatu movement with Chief Viraleo Boborenvanu[768] in the late 1990s. This was also clearly the case in the early 2000s in Vanuatu, when an upsurge in normative *kastom* began to accelerate and take hold of institutions of the state in ways that had failed to materialise in the late 1980s. As I detail in Chapter Four, the Chiefs Legislation Project, initiated in 2001, lays the blame for state failure directly on 'western models, mentalities and ideologies'[769]. In this depiction it is the 'Western', 'modern' and by implication 'foreign' state that is the problem, and *kastom* governance in the hands of chiefs is the solution. Here money and politics corrupt, and *kastom* in the hands of Vanuatu's wise and neutral chiefs are the enduring solution to these kinds of challenges of 'modernity'. This typical post-colonial narrative – that also relies on a reversal of the binary – leaves out many crucial considerations.

There is no doubt that the failures of the state and its institutions that had started to accelerate in the late 1980s in Vanuatu, and reached a critical point a decade later, created the opportunity for the expansion of the 'power of chiefs'. There has always been more at play in Vanuatu, however, and like the proverbial chicken and the egg it is impossible to completely extricate these processes from each other. Power and rent seeking chiefs in Vanuatu learned early on that they could curry significant

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[767] Sethy Regenvanu, "Celebrating My Journey: The Value of Autobiography in Recording History," *Political Life Writing in the Pacific: Reflections on Practice*, Jack Corbett and Brij V. Lal Eds. (Canberra: ANU Press, 2015) 114.
[768] Ambrose, "Vanuatu," 504.
[769] Garu and Yaken "Chiefs Legislation Project Report," 5.

favour *and* material benefits from Vanuatu's politicians by 'bringing' whole villages of voters to one candidate or political party or another[770]. In an article detailing the work of the Vanuatu Ombudsman's office through the late 1990s, vote buying and the gathering of electoral registration cards by chiefs is referenced explicitly[771]. In fact, chiefs have always been deeply engaged in politics in Vanuatu, even before Independence[772]. In many ways the greed for power and money of Vanuatu's male political leadership has, for a long time, been co-constitutive with the greed for power and money of Vanuatu's male chiefs. Like two sides of a coin (or two wings of a bird) both of these 'regimes of governance'[773] – the patriarchal state and its highly politicised *kastom* 'alternative' – share hegemonic patriarchal characteristics, as well as a greed for power *and* for money.

As I explain in my Preface through the example of Chief Viraleo Boborenvanua, assertions about *kastom* in Vanuatu exist within a whirling admixture of politics, economics, governance, regulation, and patriarchal aspirations for power. Economic interests and motivations are never very far from chiefs' efforts to assert their power in Vanuatu. In fact, the example of Chief Viraleo was not the only instance where aspirations for the power *and* the money revealed themselves in my research. As I neared the end of an interview with a prominent chief, our discussion took an unexpected turn. Once we had established that my research questions had been answered, this chief proceeded to pull a professional looking business folder out from his bag beside the table. He then went on to show me a surveyor's map of a large tract of coastal land, that also included an outlying island. The photos depicted lush green forest, white sand beaches and blue water – a Pacific paradise. Yet I also knew that this land was in a highly disputed area, and this chief was from another part of Vanuatu. The land

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[770] The way this usually works is that the chiefs and senior men decide who they will vote for, and the women and everyone else who is of voting age are told who they will vote for – sometimes in the case of wives, under threat of violence. Even as late as 2013 I provided a ride in Port Vila to a chief from rural Santo who told me that he had come by ship to inform the leader of one political party that he was 'bringing' his whole village to that party (i.e. They would all be voting for the same candidate).

[771] KJ Crossland, "The Ombudsman Role: Vanuatu's Experiment," *State, Society and Governance in Melanesia Discussion Paper* 00/5 (2000) note 29, 12.

[772] Lindstrom, "Chiefs in Vanuatu Today".

[773] Sieder and McNeish, eds., *Gender Justice and Legal Pluralities*, 2.

that he was showing me, he said, 'belonged' to his wife[774]. As he proceeded to flip through the glossy dossier, with its photos and maps, he asked me if I sometimes 'ate together' with people in Port Vila because he really wanted to sell this piece of land and he was hoping that I could tell 'people' – no doubt he meant expatriates with money – about it. As I politely excused myself, saying that I did not really know those kinds of people, and thanking him for his time, I reflected again on what it means to be a 'chief', and a man, in Vanuatu society.

According to anthropologist Siobhan McDonnell, 'Powerful men acting as masters of modernity manipulate various spheres of power and authority, including the introduced – modern – and *kastom* spheres so they can lease land.'[775] She also says that these masters of modernity 'are overwhelmingly chiefs'. McDonnell's depiction is true to some extent, but these 'masters' operate across a variety of spheres in Vanuatu, not only in relation to land or politics. As well, the hard distinctions between 'politicians' and 'chiefs', 'modernity' and '*kastom'* in McDonnell's analysis are themselves problematic, and fail to show how intertwined these categories actually are. In fact, moving beyond the frames of intelligibility implicit in these post-colonial binaries allows for more critical analysis of these processes and articulations simply as 'regimes of governance'[776]. As regimes of governance, free from the value-laden and ultimately inaccurate labels of '*kastom'* and 'modern', these regimes – and the individuals that control them – are subject to a more sophisticated, historically informed, and critical analysis[777]. This more critical analysis suggests that as a regime of governance, the growing interest of many chiefs in installing themselves in various aspects of Vanuatu's justice system as community police and Authorised Persons under Vanuatu's *Family Protection Act* is about many things – the power and the money, as well as reinscribing, solidifying, and expanding patriarchal institutions and authority. What it does not seem to be about is justice, nor is it about recognising, addressing, or mitigating violence in the lives of women and girls, or other marginalised members of Vanuatu society.

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[774] Even land that is technically 'owned' by women is transacted by men.
[775] Siobhan McDonnell, *My Land, My Life: Dispossession at the Frontier of Desire* (Honolulu: University of Hawaii Press, 2023) 134.
[776] Sieder and McNeish, eds., *Gender Justice and Legal Pluralities*, 2.
[777] Sieder and McNeish, eds., *Gender Justice and Legal Pluralities*, 11.

4. Striving for the Impossible World: Radical Equality and Freedom

The epistemic violence wrought by the invisibilisation of the experiences of women and girls, and the multiple and intersecting impacts of the colonising, patriarchal violence on their lives, must be addressed if the kind of justice – the justice we strive towards without end[778] – is to be pursued. The issues I raise in this thesis must be addressed so that women and girls in Vanuatu can be, to paraphrase Grace Molisa, free to think, free to express, free to choose, free to love, and free to be loved[779]. Not only as Woman Vanuatu, but also simply as human beings. I hope that some of the stories that I have shared in this thesis will empower women and girls in Vanuatu and beyond, to seek out other stories, to listen to other stories, to continue to tell their own stories, and to create space for other stories and other possibilities to become part of our conversations. While this is a crucial first step, it cannot end there. Creating the space for critical storytelling about culture and development and other complex matters, including justice, governance, and the violence in everyday life, opens up ambivalent possibilities for new stories and new understanding, particularly in the context of our most closely held beliefs. As this thesis has demonstrated, this sliver of possibility was there in the first decade following Independence when principles of democracy, social justice, human rights, and substantive equality seemed to be at the forefront of Vanuatu's nation building efforts. Since that time, however, Vanuatu has experienced a slow erosion of this space of possibility in the name of a more hegemonic *kastom* and the power of chiefs.

Interestingly, Vanuatu has recently pronounced a kind of return to some of these early principles on the global stage. On 29 March 2023 Vanuatu was justifiably celebrated in the world media and cheered in the General Assembly Hall of the United Nations for what was described by Vanuatu's then Prime Minister, Alatoi Ishmael Kalsakau, as a 'win for climate justice of epic proportions'[780]. Since 2021 Vanuatu had courageously led a coalition of well over one hundred nations in seeking clarity –

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[778] Butler, "Derrida".
[779] Molisa, "Hilda Lini", 13.
[780] Kalsakau speech on ICJ Initiative.

and justice – around the legal obligations of states in the face of climate change[781] from the world's highest court, the International Court of Justice. On a section of Vanuatu's official website dedicated to this initiative whimsically titled 'Sing', three of Vanuatu's contemporary music stars Vanessa Quai, Stan Antas, and Sheila Wills, perform a song called 'Climate Change at the International Court of Justice'[782] as a way to rally other countries and individuals around this important cause. In the song, climate change is framed as 'a threat to our human rights', and the International Court of Justice, the United Nations and the 'leaders of today' are called upon to 'Protect the rights of the human race'. In one part of the song, Vanuatu reggae sensation Stan Antas reminds leaders that 'Legal obligations must stand, to defend our rights'.

In a powerful video message featured on another part of this website, Ralph Regenvanu, at this time speaking as Vanuatu's Minister of Climate Change, cites more than ten instruments[783] of International Law as providing a clear basis – and obligation – for state action. Regenvanu frames Vanuatu's initiative as an effort to help countries get 'back on track in upholding the rule of international law' and human rights and ensuring coherence with domestic law and policy. In early March 2023 then Prime Minister Kalsakau also addressed the United Nations Human Rights Council in a speech that evoked Walter Lini's, impassioned address to the United Nations General Assembly nearly 40 years before[784]. In his own speech, Kalsakau emphasised the shared values of humanity, and the need to 'reaffirm the promise in the Universal Human Rights Declaration', saying:

> ...And so we celebrate together, our commitment to the Universal Declaration of Human Rights in its 75th year but we must remain vigilant and remind ourselves that much more can be done. Vanuatu remains firm and resolute to recognise the inherent dignity and equal and inalienable rights of all of us as the foundation of freedom, justice and peace. In so doing, as Vanuatu commits and affirms our faith in fundamental human rights, we are cognisant of the dignity and worth of each person and equal rights for all.[785]

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[781] Vanuatu ICJ Initiative, https://www.vanuatuicj.com/home.
[782] "Calling out to you! At the International Court of Justice." https://www.vanuatuicj.com/resolution/sing
[783] Ralph Regenvanu invokes the Charter of the United Nations, Universal Declaration of Human Rights, International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, Convention on the Rights of the Child, UN Convention on the Law of the Sea, Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, Convention on Biological Diversity, the United Nations Convention to Combat Desertification, 'and more'. ICJ Initiative, https://youtu.be/QkvsqmoLLBc.
[784] Walter Lini addressing the UN General Assembly in New York in its 38th Session, on Friday 30 September 1983.
[785] Kalsakau speech on ICJ Initiative.

Kalsakau goes on to decry the global lack of progress on human rights, pointing out that '...despite a common resolve, a disjointed consideration of rights seems evident.'[786] He also declares that the 'Tyranny and excesses of some individuals and states against fellow human beings must not continue to plague our communities.' Vanuatu's impassioned pleas for universal action on strengthening legal and human rights mechanisms for the benefit of humankind was not only unequivocal in each of these instances, but it was also remarkably successful[787].

There is no doubt that climate justice is a critical global issue, and Vanuatu's initiative was courageous, necessary, and righteous in a way that feels – and should be – globally galvanising and compelling. Yet, as the world rallied around this 'historic win' and celebrated its 'underdog David to the world's Goliath'[788] aspects, I could not help but notice several things. In Vanuatu's own justice ecosystem, human rights, international law, and even 'law' itself are increasingly framed as imperialist and neo-colonial, particularly in the context of women's rights and gender justice. When the United States' failed to support Vanuatu's climate resolution on the basis that they prefer 'diplomacy' over judicial process[789], this lack of support was called out by Vanuatu as shameful[790]. Yet within the sphere of justice in Vanuatu itself, this preference for 'diplomacy' is all too familiar. Diplomacy and talking things through are often identified as the hallmarks of kastom reconciliation, and women who experience violence in Vanuatu at the hands of men are often pressured by chiefs, in the name of '*kastom'*, to resolve their issues in this way. As the United Nations Representative from Barbados pointed out in relation to Vanuatu's climate justice resolution, however, diplomacy is often about power rather than the greater good[791]. Much like Vanuatu's male chiefs, when the United States and others

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[786] Kalsakau speech on ICJ Initiative.
[787] The resolution passed in the United Nations General Assembly by consensus and will now be heard at the International Court of Justice.
[788] Kali Regenvanu, "A Letter to Vanuatu: Unkept Promises".
[789] Valerie Volcovici, "UN votes to ask world court to rule on national climate obligations", Reuters March 31, 2023. https://www.reuters.com/business/environment/un-vote-whether-world-court-should-rule-climate-obligations-2023-03-29/.
[790] Regenvanu speech on ICJ initiative.
[791]Representative for Barbados Francois Jackman posted on Twitter on March 29, 2023: 'Often, diplomacy ends up being about power. Today, the #UN General Assembly adopted by consensus #Vanuatu's historic initiative. Today diplomacy was about the greater global good.' https://twitter.com/VanuatuUN/status/1641241698960285696?ref_src=twsrc%5Etfw%7Ctwcamp%5Eembeddedtimeline%7Ctwterm%5Escreen-name%3AVanuatuUN%7Ctwcon%5Es1.

advocate for 'diplomacy' in these situations, they are clearly more interested in holding onto their power and acting in their own self-interest – in the case of the United States, as one of the world's greatest emitters of greenhouse gases[792] – by refusing to be held accountable to agreed norms, standards, and processes.

Similar kinds of 'shameful' power plays are evident at different levels and scales within Vanuatu, however, and are often justified and enabled by uncritical recourse to *kastom*. In Vanuatu, a preference for working things out (as decided by male chiefs and other powerful men) through unregulated and unaccountable 'backroom'-style processes is regularly promoted over recourse to judicial process, equality, and support for human rights. As this thesis has illustrated across several different sites within the space of justice in Vanuatu, this is especially the case when it comes to the rights of women and girls. In fact, in Vanuatu our own 'disjointed consideration of rights'[793] and clear lack of resolve in the context of women's rights and gender justice is evident. The same language of tyranny that was mobilised by Prime Minister Kalsakau as a plague on communities in the absence of human rights and rule of law in the context of global climate change can easily be used to describe the way that men and chiefs wield their power in Vanuatu, particularly in relation to women and other more marginalised members of society.

If Vanuatu indeed seeks to remain '...firm and resolute to recognise the inherent dignity and equal and inalienable rights of all of us as the foundation of freedom, justice and peace', a significant change of focus will be necessary at the domestic level. These rights, respect for principles of international law, and associated equitable and transparent legal processes must also be protected and strengthened within Vanuatu itself, especially for women and other marginalised members of Vanuatu's own communities[794]. In keeping with Derrida's observations about justice as a kind of

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[792] Sara Schonhardt "U.N. seeks rare legal opinion on climate. The U.S. abstained" 30 March 2023. https://www.eenews.net/articles/u-n-seeks-rare-legal-opinion-on-climate-the-u-s-abstained/

[793] Kalsakau speech on ICJ Initiative.

[794] Sekyi-Otu suggests that it would be best 'to take the condition of woman as a mark of the degree to which human beings in a determinate place and time have truly come into their own. Perhaps a propaedeutic to an authentic humanism is to make woman the measure.' Sekyi-Otu, *Fanon's Dialectic of Experience*, 213 to 214.

horizon that we strive towards without end[795], these will never be finished processes or stories, and they are never the only ones. Ultimately, countering violence in this way means cultivating, more than anything, a practice of understanding that approaches *all* lives as valuable, worthy of consideration, and equally grievable through an enduring commitment to forms of radical equality[796].

A crucial starting point for this is to be brave in our efforts to report and challenge the violence that we see. Just like Grace Molisa – and the Ni-Vanuatu women I interviewed and whose works I have quoted do every day – we need to refuse to 'stand behind a chief', we need to refuse to be colonised by anyone[797], and we need to stand up when no one else wants to support us. Sometimes we also need to mobilise our rage and our courage and say a 'carefully crafted "fuck you"'[798] to violence and to patriarchy. As Sara Ahmed points out, 'to document is to refuse to agree to something, to refuse to stay silent about something'[799]. These acts of documentation contained in my thesis, and the politics of refusal they represent are uncomfortable, but they also create spaces of possibility. Ahmed calls this 'the hope of "no"'[800]. In this kind of hopeful refusal, we should be willing to 'inhabit what seems negative as an insistence that worlds can be otherwise'[801]. This work of refusal requires us to collectively exercise our critical faculties and think outside of the frames, to chip away at the old structures, even hitting them hard, as we continue to strive with perseverance, courage, and love, for an impossible world that 'exists beyond the horizon of our present thinking'[802]. It is only in this way that we can rebuild it[803] – and rebuild it again – the way we want.

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[795] Butler, "Derrida".
[796] Butler, *The Force of Nonviolence*, 49.
[797] On a profile of her on the Sista website the description of Stephanie Ephraim reads: 'Stephanie Ephraim is no stranger to resistance. Her very existence as an activist, feminist, photographer, model and founder of [the] Vanuatu Feminist Library has seen people attempt to put her down and shame her into submission. Stephanie refuses to be colonized by anyone – this young woman is free in her independence and dreams for everyone to live in a society where they are accepted and loved as they are.' "Stephanie Ephraim – Sista Gat Style," Sista, August 1, 2018. https://www.sista.com.vu/stephanie-ephraim-sista-gat-style/
[798] Judith Butler, *Frames of War: When is Life Grievable?*, 182.
[799] Sara Ahmed, "Introduction: Sexism – A Problem with a Name," *new formations: a journal of culture/theory/politics*, 86 (2015): 13.
[800] Sara Ahmed, "Refusal, Resignation and Complaint", f*eministkilljoys* (June 28, 2018). https://feministkilljoys.com/2018/06/28/refusal-resignation-and-complaint/.
[801] Ahmed, "Refusal, Resignation and Complaint".
[802] Butler, *Force of Nonviolence*, 51.
[803] Ephraim, "#BeBoldForChange Speech".

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