

Fleur Ramsay – a powerful and persuasive Pasifika voice in climate litigation

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Fleur Ramsay is the Head of Litigation and Climate Lead for the Pasifika Program at the Environmental Defenders Office (EDO). She is an expert in environmental law and Indigenous rights and customary law.

As a Samoan Australian, Fleur's work is close to her heart. She spearheaded the creation of the EDO's Pasifika-led program, where she presently works alongside colleagues Freda Talao (Managing Lawyer), Dr Bal Kama (Special Counsel), Watna Mori (Senior Solicitor) and Rohan Nanthakumar (Senior Solicitor).

Fleur is passionate about the Pacific and its role in the front lines of climate change. She knows too well the alarming concoction of environmental issues plaguing the region including destructive extractive industries, logging, and rising sea levels.

Fleur reflects, *'The Pacific is an important region but often overlooked and considered small, and, in the context of climate change, expendable. But the Pacific Ocean (Moana Nui or Wansolwara) covers one third of the world and is home to a third of the world's languages. It is immensely culturally rich. It boasts a huge amount of biodiversity.'*

The Pasifika Program works by partnering with, and supporting, local environmental lawyers and has close working relationships with the PNG-based CELCOR (Centre for Environmental Law and Community Rights) and FELA (Fiji Environmental Law Association). It currently focuses much of its work in PNG and Fiji. Previously, the program has worked in Vanuatu and the Solomon Islands and has advised the government of Tuvalu.

Fleur is also the co-founder of Pasifika International Lawyers. It is a network of Pacific lawyers in climate change and international law aiming to create pathways and opportunities for Pacific lawyers to become climate change or international

lawyers. This is a cohort that is currently underrepresented in these fields, despite the Pacific being one of the most vulnerable regions to climate change, and despite the immense moral leadership of Pacific leaders in climate and other environmental law issues at an international level. For example, the expert panel for the Commission of Small Island States for the International Law of the Sea Tribunal does not have any Pacific Islander experts.

One of the things that excites Fleur is practising and advancing customary law. She sees customary law as a source of environmental law. She says, *'There is a richness in the Pacific legal systems in that there is this living local law and the formal legal systems recognise it as a source of law. It is a hybrid customary law and State/common law approach. Many Pacific countries' constitutions recognise customary law and may, as in the case of PNG, place customary law as a higher source of law than the common law. She adds, 'You can't be imperial in your approach to law in the Pacific.'*

Fleur has sought to change the tendency for Australian and New Zealand lawyers engaged in so called 'capacity development' to simply transport Western environmental laws to the Pacific. She observes, *'For example, in terms of rivers, although common law riparian rights are part of the*

legal fabric in many parts of the Pacific, given the reception of common law via colonisation, this should not be the starting point. Local communities may actually own that river via their customary law, or it might be an ancestral being, but these matters are not written down and, thus, environmental lawyers without a decolonial approach might miss these important issues and simply impose a colonial derived law on a more complex system'. She further reflects, 'There is a spiritual and cultural dimension as well as a physical dimension to rivers that common law is not apt to address because it is founded on a resource/private property paradigm and is alien to local communities and their laws.'

Tackling the challenge of working out how two legal systems co-exist is part of Fleur's responsibility. She is developing a methodology for working with customary law in the Pacific. She notes that customary law in the Pacific is as rich and diverse as the region itself. Thus, developing a method to help environmental lawyers ask the right questions and how to work with communities is essential. *'Locals are the legal experts in these circumstances, so the role of the environmental lawyer is as much to be a good translator,'* she says. Fleur wants to ensure that the way law is practised in the Pacific is appropriate to the particular community that she is working with.

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For example, this means that appropriate consideration needs to be given to the way that a case is framed and how arguments are made. Fleur is also creating a practice note on developing climate litigation in the Pacific, emphasising the importance of a relational and not transactional approach as well as non-economic loss and damage.

One Pasifika Program matter involves working with CELCOR and Sepik River communities to protect the Sepik River, a pristine river in PNG, against a planned gold and copper mine. The Sepik region is one of the world's most cultural and biodiverse regions. The project proposes a tailings dam which is around 2.5 times the size of Sydney Harbour and will be located on a tributary of the Sepik River. The proposed site is located in a seismically active region and there are real issues about whether the PNG state can maintain the proposed dam after the miner leaves.

The Sepik communities rely on the river for their cultural, spiritual, and physical sustenance and still drink from the river. The river is where they eat. It sustains all life. About 78,000 people living along the river went through a self-determination exercise saying that the Sepik River is their River God – the Supreme Sukundimi – and must be defended from the risks of the proposed mine. Plainly, if the environmental health of the river is compromised, it will potentially cause a significant loss of life and ecological destruction. Fleur and her team and CELCOR have been thinking through legal strategies to protect the river as an ancestral being. *‘How customary law should interact with the State legal systems is complex but also provides an opportunity for the development of unique environmental laws that are driven by local communities, their culture and their law,’* she says.

Fleur's work is dynamic and important. Just in the last few weeks, she has worked on settling a complaint process submission to the Organisation for Economic Co-operation and Development (OECD), supporting an application for judicial review in relation to

deep sea tailings disposal in PNG, drafting submissions to the Special Rapporteur on climate change, negotiating potential legal support to Pacific states for the ICJ Advisory Opinion on climate change, developing Pacific climate litigation and writing a book chapter on decolonising climate displacement in the Pacific.

Her efforts are widely and increasingly recognised. In September 2023, Fleur will be bestowed with a Matai (Chief) title by her family in her mother's village of Saleaula in Samoa. In 2020, Fleur was awarded the Churchill Trust Fellowship which she undertook from January to April this year. During it, she visited Victoria University in British Columbia and met with the Dean of the Law School who drove the creation of an Indigenous Law Juris Doctor program. Fleur is inspired to develop a customary law and Indigenous rights legal clinic at an Australian university, graduates of which can support legal work in the Pacific or with Indigenous peoples.

Fleur has many families, including Samoan and white families (her Samoan mother and white father separated before she was born and she spent her early years living with another family, which she describes as mixed; white, Pacific islander and Maori descent). Fleur is the first lawyer in her many families and the first to be tertiary educated. She went to a State high school in Queensland where she was told she would not achieve anything. But at age 14, Fleur had a eureka moment. She watched a movie about Chief Joseph (In-mut-too-yah-lat-lat), a leader of the Wallowa band of the Nez Percé Tribe. Chief Joseph and his followers were run down by the US Army trying to escape to Canada. *‘After watching this movie, I was emotionally wrecked, but I had a definite call to be a lawyer,’* Fleur recalls. She further reflects, *‘It helped me develop a strong sense of right and wrong and an understanding about the violence and injustice of colonial history and racism, something that was missing from her high school education in the late ‘80s and early ‘90s’.* Then on, Fleur remembers teaching herself how to study and being persistent with her goal to become a lawyer. Fleur also attributes her personal experiences of racism as being a major influence on the career path she has chosen.

Fleur studied law at Macquarie University. The law degree challenged her to think about law from an interdisciplinary and critical perspective. Despite her passion for the environment, she did not directly study environmental law. She considered its units of study somewhat disconnected from a person's relationship with the environment. Instead, she focussed on studying

Indigenous issues in the law, which formed her entrée into environmental law.

Following university, Fleur went on to be an associate at the Federal Court of Australia for her Honour Justice Branson and a researcher to his Honour Justice Allsop, both of whom went on to become major career mentors of Fleur. She then worked as a lawyer in the Environmental Project Group at Allens. Fleur was called to the Bar in 2010 and practised at Tenth Floor Chambers. In 2016, she left the Bar to accept a position as a visiting attorney in the International Law Group at *EarthJustice* in the United States of America. It was at about this time that Fleur recognised that climate change is a major issue to which she wanted to dedicate her professional efforts. In that role, Fleur developed her expertise in international Indigenous rights and human rights and their connection to environmental law.

Fleur reads scores of histories on the development of the law, gaining a deep understanding of the law and the social processes which can influence legal change. She also reads Indigenous writing, traditional stories and theory, which she sees as philosophy and offering alternative ways to conceive of self, being, environment, governance, law and community. Nowadays, she uses the term *‘climate dispossession’* rather than *‘climate displacement’* because she views climate change as a dispossession process, similar to colonisation, as it separates Indigenous people from their lands. Fleur identifies as adopting a decolonial approach to her practice as an environmental lawyer and describes climate change as a socio-political process driven largely by wealthier countries.

Fleur disabuses the notion that we are all responsible for climate change. In the case of the Pacific, its contribution to climate change is negligible. By contrast, she adds, reputable scientific data reveals major climate change contributors. Relatedly, science is rapidly developing methods to attribute environmental events to climate change and to those major carbon contributors.

Fleur identifies a major challenge of working in environmental law is the lack of an adequate legal framework. Without such a framework, environmental lawyers, particularly those working with Indigenous peoples, have to be creative and innovative as well as technically good *‘black letter’* lawyers. Another persistent and concerning challenge is the speed at which a response is required to try to mitigate environmental harm coupled with the alarming enormity of environmental issues and the multi-dimensional vulnerability of the Pacific

region, for example, geographic, financial and economic vulnerabilities.

Compounding these real challenges is the scarcity of legal resources, especially in the Pacific. A Fijian partner whom Fleur works with describes environmental lawyers in the region as ‘*endangered species*’. Fleur argues that more resources need to be put into supporting the few lawyers that are there, as well as pathways and opportunities to attract more Pacific lawyers. She sees this as a justice and equity issue. To help address this, Fleur is in the process of advocating for big law firms to create an equity scholarship program and for funders to support the development of a regional Pacific-led public environmental law organisation or a wider global Indigenous-led organisation, at the scale of EarthJustice or Client Earth. She considers it is essential for self-determination but also believes, given the innovation that Pacific lawyers (or Indigenous lawyers) bring to environmental lawyering, that such an organisation will be a significant agent of effective change. Her Churchill fellowship investigates Indigenous-led environmental programs and lawyering and what this kind of larger Indigenous-led organisation could look like.

Environmental lawyers working in countries such as PNG face many day-to-day challenges. For example, many residents

live remotely, so obtaining instructions from a client or a community might involve trekking or canoeing, often for hours, to a community. There are potentially serious security and health issues in the region, such as malaria. Similarly, there is a diversity of dialects and languages. Fleur is in awe of CELCOR lawyers, who provide this essential environmental law service to communities in PNG. Another challenge is obtaining documents. Fleur and her colleagues worked on a freedom of information case under the PNG Constitution. Despite the constitutional right of access, the court rejected the constitutional argument, but this is now on appeal.

For Fleur, working in this area is not so much of a motivation but a true calling. She says, *‘The point is, I can’t not do the work. It is too important. My work involves supporting local communities to defend their environment and culture against extractive processes and climate colonisation. I like that I get to use my skills, experience and knowledge for these communities and our sea of islands. It is also personal for me. My ancestral home is part of this rich region.’*

Fleur is deeply concerned by the climate racism faced by the Pacific and believes the Pacific is being sacrificed by wealthier states, including Australia. There, *‘the right to survive’*, as she describes it, (which is no more than a 1.5C temperature rise) is not

infrequently treated as a mere discussion point by much of the rest of the world and with calls by the fossil fuel industry to exceed this redline.

Fleur predicts that climate change litigation will increase dramatically over the coming years. She states, *‘It has already exponentially grown in the last two years. Human rights cases are likely to offer the most potential for a successful outcome. An emerging issue, for the Pacific and other Indigenous peoples, will be how non-economic loss is valued in climate change litigation. For example, the damage arising from various connections to land, including spiritual, social, cultural, and physical, and how these heads of damage might be quantified.’*

In a recent talk Fleur delivered to a Diverse Women in Law event on Australian Human Rights Commission careers, Fleur concluded, *‘Australia has its foot on the accelerator, extracting and burning its way to our collective demise. I will end with the words of the Barbados PM, Mia Mottley, at COP26: ‘Code Red, Code Red, Code Red. There is no Planet B. Human rights are meaningless on a dead planet.’...’*

Fleur is an inspiration.

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