



COOK ISLANDS PILON 2017 COUNTRY REPORT

1. Major law and justice sector achievements

Successful prosecution of a Member of Parliament for bribery

Passing of significant new legislation, Family Protection and Support Act 2017, Marae Moana Act 2017, Financial Transactions Reporting Act 2017.

2. Significant court decisions

Bishop v Crown [2016] CKCA 6 December 2017 Barker JA, Fisher JA, Patterson JA

Appeal by Bishop against conviction and sentence for bribery offences while he was Minister of Marine Resources in relation to a soft loan from a Chinese fishing company to whom fishing licenses were issued by Bishop. The loan was to purchase a resort in Aitutaki, following failure by Bishop to secure funds with a bank loan. The Court of Appeal upheld the conviction but reduced the sentence from 14 months imprisonment to 6 months imprisonment partly due to the incorrect advice provided to Mr Bishop by his Counsel. A proceeds of crime application is now in progress.

3. Significant legal reform

Family Protection and Support Bill 2017 (**attached**)

Harassment Act 2017 (**attached**)

Marae Moana Act 2017 (**attached**)

Updated legislation for AML/CTF Mutual Evaluation

Member of ILO

Crimes Bill Select Committee (Crimes Bill 2017 **attached**)

4. PILON strategic priorities

(a) Cybercrime

Crimes Bill 2017 which provides a comprehensive criminal code including cybercrime offences and procedure for retaining electronic evidence. There are also new offences using mobile phones, laptops and ipads such as voyeurism and distribution of child

abuse material. The Bill is before Select Committee, public consultations on Rarotonga have been held.

ICT gaps include Police investigation techniques. There is a move towards developing links with a CERT in larger countries. Cook Islands is on all of government electronic systems, there is greater development of electronic government procedures such as payroll, procurement systems and use by State-owned Enterprises of electronic systems. Creating greater risk of cybercrime attacks.

(b) Environmental Crime and Corruption

Commercial fishing offences and breaches of licenses, recent case of Chinese fishing boat fined for illegal fishing.

1. Breach of shark finning regulations (x 3) cases resulting in settlement payments of between \$35,000 and \$100,000.00
2. The B Pacific – unlicensed and unregistered bunkering – settlement of \$200,000.00
3. Essein 108 – unlicensed fishing within CI EEZ - \$186,000 (US\$);
4. Lu Rong Yuan Yu - unlicensed fishing within CI EEZ –\$100,000.00;
5. Sui Yuan Yu - unlicensed fishing within CI EEZ –\$140,000.00

National Environment Service lack of capacity for enforcement of law for pollution of the environment, sand mining, enforcement of standards and Environment Impact Assessment enforcement is a serious concern. There have been no prosecutions by NES.

The Marine Resources Bill is almost complete it will replace the Marine Resources Act 2005 and will provide authority to settle fishing offences claims by structured and transparent settlements.

Settlement of fishing claims against commercial operators must involve the Crown Law Office and be transparent and report all details publicly and to regional institutions.

Protected Disclosures (Whistleblowing) legislation is being discussed.

(c) Sexual and Gender-Based Violence

Family Protection and Support Act 2017 addresses domestic violence, and children in need of care and protection. It comes into force on 1 December 2017 and will provide for police safety orders and protection orders for victims of domestic violence.

The Crimes Bill 2017 provides a comprehensive criminal code for prosecution of offenders for assault and sexual violation crimes.

Significant development through case law has occurred, enabling various protection to be accorded to vulnerable witnesses particularly victims of sexual offending, including the pre-recording of evidence in chief and the use of screens.

Crown v Iosefa CKHC 11 September 2017 Keane J. on use of screen for taking evidence of victim of sexual assault.

Crown v Nubono CKHC 14 July 2017 Doherty J – admission of pre-recorded video evidence of child victim of indecent assault, use of screen and other protections;

Crown v Katuke CKHC 27 April 2017 Williams J – admission of transcript of vulnerable (intellectually impaired) victim’s interview as evidence in chief.

5. Significant issues affecting the law and justice sector, and options to address these issues

Ministry of Justice Review Report 2017

Anti-Corruption Committee issues - Review of Cook Islands compliance with UNCAC Chapters II (Preventative Measures) and V (Asset Recovery). Dozens of hours of work has been required for the self-assessment process despite the assistance from UNODC.

The Ministry of Justice and the Police have serious funding issues which affects their ability to deliver services such as transcripts of hearings, number of Court sessions, investigations of incidents and prosecution of offenders. The law and justice sector has been the least resourced of government departments and has been unable to fully meet its NSDP Goals (**attached**)

6. Significant initiatives/projects involving the member country and its law and justice sector

Cook Islands undertook a review of Tajikistan compliance with UNCAC Parts III and IV.

Mutual Evaluation of FATF Recommendations undertaken in September 2017.

7. Technical legal assistance

Training Undertaken

In May 2017 the Cook Islands Law Society organised two days regulation drafting training delivered by NZPCO attended by Vai Temata and Catherine Evans of Crown Law.

In June 2017 Catherine Evans attended training provided by the UNODC and the Russian Federation Prosecutor General’s office on the use of software Omnibus 3.0.

In July 2017 Cook Islands Law Society held a mediation accreditation training programme in association with Massey University Alternative Dispute Resolution Service, New Zealand Law Society Continuing Legal Education. Catherine Evans and Alison Mills attended from Crown Law.

Crown Council, Alex Herman, successfully applied for the Australian Law Council Litigation Skills programme held in Perth in July 2017.

In June 2017 Alison Mills attended Fisheries prosecution training in Solomon Islands by FFA.

In October 2017 Alison Mills attended the International Bar Association Conference

In May 2017 Alex Herman attended the cybercrime forum in Tonga.

In August 2017 Vai Temata attended the legislative drafter's forum in Tonga and the Solicitor-General attended the Whistleblowing working group meeting in Fiji.



Third from left, Alex Herman, recipient of the Australian Law Council Scholarship to attend Litigation Skills training in Perth, Australia.

Training Needs

Public law advocacy – advice and litigation

Responding for the Crown to costs applications in civil cases

Prosecuting child sex abuse cases

Prosecuting illegal fishing cases.

Applications to forfeit proceeds of crime.

8. Contact information for key law and justice agencies

Agency	Key responsibilities	Contact person and position	Phone number and email
Crown Law Office	Advice, Litigation and Legislation drafting for the Crown	David James, Solicitor-General	+682 29337 david.james@cookislands.gov.ck
Police	Investigation and Enforcement	Maara Tetava Commissioner of Police	+682 22449 maara.tetava@police.gov.ck
Ministry of Justice	Registry and Enforcement	Tingika Elikana Secretary of Justice	+682 29410 tingika.elikana@cookislands.gov.ck
Financial Intelligence Unit	Investigation and Enforcement	Phil Hunkin Head of FIU	+682 29182 phil.hunkin@cifu.gov.ck