

SOLOMON ISLANDS

COUNTRY REPORT



36TH PACIFIC ISLANDS LAW OFFICERS NETWORK (PILON) ANNUAL MEETING

Majuro, Marshall Islands 18 – 20 October 2017

1. Major Law and Justice Sector Achievements

(i) Appointment of the first female Chief Magistrate

History in the Magistracy

The first female Chief Magistrate was sworn in last September. It was a historical first in the country. She is Emma Garo of Guadalcanal. The Solomon Islands Broadcasting Corporation reported the Hon Chief Justice Sir Albert Palmer who said, "Ms Garo is a pioneer for women and girls in the country and an example of how determination can lead to success."

Justice Palmer said her appointment naturally improves gender balance in the judiciary and it shows "that the bench is not merely a man's job but that women can equally perform and participate in the administration of justice from the bench and not merely from the bar as well."

(ii) Provincial Court Houses Refurbished

In Western Province, the Gizo Court house was recently refurbished and was opened on 21 June 2017. This provides for the administration of law and justice and its access in the Western Province. This was a welcomed prospect within the Justice sector as shown by the Minister of Justice and Legal Affairs' visit to the newly refurbished courthouse.

(iii) The New Justice Precinct (2 story building)

In the capital, Honiara, the Central Tender Board approved of the winning bidder (China Engineering Consultancy Company) to build the Justice Precinct that will accommodate the Office of the Public Solicitor, the Office of the Director of Public Prosecutions and the Attorney General Chambers.

2. Significant court decisions

(i) Privy Council decision on *Bade v R*

The SI Court of Appeal is the final appellate court.

(ii) Central Magistrates' Court

R v MARAU [2017] CMC-CRC No. 255 of 2017. (*Sentencing*)

In this case the accused was charged for presence of alcohol in person's blood contrary to section 43A of the *Road Transport Act*. This is a new species of a traffic offence created by the recent legislation for alcohol testing called the *Police and Transport Legislation (Amendment) (Alcohol Testing) Act 2016*. The legislation was created to reduce the death and serious injury resulting from vehicle accidents where alcohol has been a major contributing factor.

The accused was a Member of Parliament when the offence was committed. He pleaded guilty and was sentenced to pay a fine of \$5,000 to the Central Magistrate's Court Registry Office before or by 12th of April 2017. In default, 6 months imprisonment. However, he was not disqualified from driving as he fell within the special reasons category under section 29(1) of the *Road Transport Act*.

It is in the public's interest that leaders of the country also adhere and are held accountable under the laws of the Solomon Islands. The recent amendment to the *Road Transport Act* provides redress or action in tackling the increasing number of road accidents in Honiara. This is done through the breathalysers used by police to check the driver's alcohol content.

Regina v Do Van Vi and Others CRC 185 of 2017.

This case involves three Vietnamese Nationals who plead guilty to four offences pertaining to the Fisheries Management Act 2015. The three accused along with their crews on board three blue boats were found to be illegally fishing within the waters of Solomon Islands at the Indispensable Reef 50 Kilometres south of Rennell Island, Renbel Province earlier this year. Their arrest was made possible by Royal Solomon Islands Police Force (RSIPF) and Forum Fisheries Agency. They pleaded guilty to all four counts. The seriousness of these offences is reflected by the fact that the species being targeted are known to be very vulnerable to overfishing, especially BDM and giant clam. They were sentenced to 4 years imprisonment, taking into account the totality principle in sentencing.

The significance of this case is well stated by CJ Palmer [3];

*That "the manner and way these offences have been committed referred to as illegal, unreported and unregulated (IUU) offences by you is a new phenomenon to the region and is causing much concern, in terms of the theft of its valuable sea resources and wealth. This is a relatively new way of intruding into the territorial seas and coastal waters by relatively small foreign vessels to fish for inshore species, with a focus on high value product"*¹.

Court of Appeal

(i) Tii v Regina [2017] SBCA 6; SICOA-CRAC 14 of 2016 (5 May 2017)

This case involves an appeal against sentence

Approach to sentencing

¹R v Do Van Vi and Others CRC 185 of 2017

A sentence should be crafted to attain the goals of punishment, deterrence and rehabilitation.

21. The starting point should be consideration of the facts of the offence and of the appropriate range of penalty for the offence constituted by those facts. Then any aggravating circumstances should be identified.
22. The sentencing judge's attention should then turn to facts relating to the offender – his antecedents (including personal circumstances and criminal history, if any) and mitigating factors such as youth, remorse, or plea of guilty (including the circumstances in which the plea was entered). Intoxication may be an explanation for an offender's conduct, but not an excuse for it: in other words, it should not be treated as a mitigating factor.
23. Rehabilitation and reintegration into the community are particularly important in the case of young offenders. It is in the public interest as well as in the interest of the offender that a young offender become a law abiding and contributing member of his community.
24. In determining an appeal against a sentence imposed on a juvenile for murder in *Fo'oka v Regina* [2014] SBCA 10, the Court of Appeal (constituted by Goldsbrough P and Williams and Ward JJA) said –

The common feature which appears repeatedly in the previous sentences brought to our attention is the concern shown by the court for the rehabilitation and reintegration of the juvenile into the community. The sentence of any young person convicted of a grave crime such as murder must be imprisonment or detention but, even if the incarceration is for some years, he will still be relatively young on his release. The courts have tended to allow his release into the community as soon as possible in order to encourage effective rehabilitation and reintegration. This has been achieved by combining the order under 16 (j) with one under 16 (d). The younger the offender, the higher the proportion of the sentence which has been ordered to be spent in the care of another person.

3. Significant legal reform

Recently the country has undergone the 2016 Anti-Corruption Bill aimed to set up an independent commission against corruption with powers of prosecution not accorded to the country's Ombudsman and Leadership Code Commission. The latest report from the Prime Minister of Solomon Islands Hon. Manasseh Sogavare said that the 2016 Anti-Corruption Bill will be tabled in 2018 with a revised version. Prime Minister Hon. Manasseh Sogavare said the withdrawal of the Bill was necessary to improve and strengthen the proposed legislation in accordance with recommendations made by a committee².

At present, there are three Bills before Parliament.

²<http://www.pireport.org/articles/2017/08/30/solomons-pm-says-revised-anti-corruption-bill-will-be-tabled-2018>

The Constitutional (Amendment) (Dual Citizenship) Bill that seeks to remove the Constitutional prohibition on dual citizenship. This will facilitate the return and reintegration of Solomon Islander citizens by birth or ancestry who lost their citizenship by reason of marriage, forced labour or naturalisation in another nation. It will also allow naturalised Solomon Islands citizens to regain or retain their birth nationality. The policy to allow citizenship of more than one country is an exponentially growing trend in the 21st century. It provides social, economic, family and employment and study opportunities by providing ease of movement between country of origin and country of residence for eligible persons.

Secondly, Prescription of Ministers (Amendment) Bill is to increase the number of Ministers from 23 to 24. This amendment will facilitate the creation of a Ministry to administer the *Solomon Islands Tertiary Education and Skills Authority Act 2017*. Responsibility for this Act rests with the Ministry of Education and Human Resource Development.

Thirdly, the Legal Professions Bill would regulate legal practice in Solomon Islands, to facilitate the fair and efficient administration of justice and to provide for the protection of consumers of legal services and the public generally.

Other Bills to be deliberated by Parliament include the:

- Strata Titles Bill: encourages higher density development in appropriate locations.
- Whistle Blowers Bill 2016 that provides protection for informers and witnesses. It was not withdrawn except for the 2016 Anti-Corruption Bill.
- Ombudsman Act 2017.
- Supplementary Appropriation Bill 2017.

4. PILON strategic priorities

(a) Cybercrime

Cybercrime is a real threat to the citizens and foreigners living in Solomon Islands. As the country interchanges from type writing to Computers and networks, these changes emanates real risks. In other countries, Cyber Crime Laws exists and can be used as weapon to combat cybercrime.

Currently there is no legislation for cybercrime in Solomon Islands, the country has only recently approved the National Information Communication and Technology (ICT) Policy, and this has enabled us to advance towards legislating relevant laws against cybercrime. Drafting is now underway for the new proposed cybercrime legislation. The country is looking into adopting the Budapest Convention on cybercrime as a guideline for drafting its own cybercrime legislation. Unfortunately, Solomon Islands has not signed nor ratified the Convention of Budapest Convention.

The Office of the Director of Public Prosecutions can only prosecute cybercrime offenders based on what is available in the Country's Penal Code.

One of the observations relating to cybercrime is the recent incident, in which a Solomon Island national was arrested at Brisbane airport earlier this year for child grooming offences. He was arrested and charged under the Australian legislation on procuring a child under 16 years of age for sex online³. This issue spells out that there is a great need for Solomon Islands to have a legislation in place.

The key challenges in relation to cybercrime in the Solomon Islands would be that 1) there is no legislation to combat cybercrime within the country, 2) Lack of technical legal drafting skills for drafting cybercrime legislation, 3) lack of prosecutorial skills in prosecuting cybercrimes. Finally, there is the great risk and threat of cybercrime where a high percentage of illiterate people who don't understand the consequence of the cyber world are using it daily.

(b) Environmental Crime

Environmental law is a recent development in the areas of law. This provides an avenue to deal with crimes related to the environment. The environmental crime itself encompasses a huge number of crimes that relates to the environment. . There are various laws in Solomon Islands that relates to environmental crime:

- i. Environmental Act
- ii. Mining Act
- iii. Forestry Act
- iv. Fisheries Act
- v. Wildlife Protection and Management (Amendment) Act 2017

One of the recent significant court decisions regarding fisheries crime, is the issue with the blue boats. Police and Fisheries Officers have arrested three Vietnamese 'blue boats' (Fishing boats) for alleged illegal fishing within Solomon Islands waters earlier this year 2017. It was found to be illegally fishing at the Indispensable Reef 50 Kilometres south of Rennell Island, Renbel Province. The arrest was made possible by Royal Solomon Islands Police Force (RSIPF) and Forum Fisheries Agency. The three Vietnamese captains who pleaded guilty to a raft of poaching charges in Solomon Islands have been fined \$1.4 million in default four years imprisonment for illegal fishing. All the 40 crew members and 3 captains have been deported to Vietnam. It was stated that boats will be destroyed in an environmentally and

³<http://www.couriermail.com.au/news/queensland/crime-and-justice/child-grooming-charges-follow-brisbane-airport-arrest/news-story/0d40313624c2b92f721b52be91172b8e>

ecologically friendly manner in line with environmental and international laws Solomon Islands has signed to observe⁴.

However, the country has recently uplifted a ban on bech deh mer. The Ministry of Fisheries and Marine Resources has lifted the ban placed on the bech-de-mer fishery following a cabinet decision to have it lifted. The ban was lifted after the current fisheries (Amendment) Regulation 13A 2009 was suspended early in the month of September⁵. During this open period, it will enable persons or communities who wish to catch, harvest, or process for sale of any sea cucumber (bech-de-mer) species can do so.

Solomon Island becomes the first Parties to the Nauru Agreement (PNA) member to implement E-monitoring on its locally registered Longline Fishing vessels. The E-monitoring Units comprised of cameras and recording hard drives⁶. Data collected will be analysed later when the vessels call into port for transshipment. These devices will monitor fishing vessels for any illegal activities carried out secretly.

In 2014 the Solomon Islands police, prosecutors and several Government Ministries recently created a new high level taskforce to prosecute crimes committed by Companies engaged in Logging, mining and other extractive industries⁷. This taskforce consists of RSIPF, LALSU, DPP, Ministry of Environment and others. It sets out guidelines on what investigators should do when a case is reported. The manual was launched last year in 2016.

(c) Corruption

The Anti-corruption Bill 2016 establishes the Solomon Islands Anti-corruption Commission. Amongst other powers, this commission will have investigative and prosecutorial powers and is only executed with the consent of the DPP. It also deals with Bribery offences.

Whistle Blowers Protection Bill 2016 aims to protect informants who report or give information to Police. Anyone reported will be protected in terms of your job, from being sued.

(d) Sexual and Gender-Based Violence

In the case of *R v T*, the accused was charged with Rape and Indecent Assault. The accused was the stepfather of the victim and on occasions where the spouse left the country, the accused indecently assaulted and raped the stepdaughter.

Diplomatic Immunity

⁴<http://www.fisheries.gov.sb/weblog/2017/03/27/police-arrest-3-vietnamese-blue-boats/>

⁵<http://www.fisheries.gov.sb/weblog/2017/09/20/bdm-ban-lifted/>

⁶<http://www.fisheries.gov.sb/weblog/2017/08/24/solomon-leads-pna-em-implementation/>

⁷<http://www.solomontimes.com/news/new-taskforce-established-to-prosecute-illegal-companies/8152>

The spouse's contract expressed that "where appropriate" the 'diplomat' is entitled to privileges and immunities under the Diplomatic Privileges and Immunities Act 1978.

Issues

1. Whether the accused is protected from criminal jurisdiction under the diplomatic privileges and immunities proviso of the organisation staff regulation Schedule 5, through his wife who is a diplomatic agent to the organisation?
2. Whether the immunity can be waived?
3. What is the consequence of instituting criminal proceedings preceding a waiver of immunity?

Law

1. Agreement Concerning the Status, Privileges and Immunities of the organisation in Solomon Islands (The Agreement at Schedule 5 of the organisation Staff Regulation).

Article – 1 Interpretation

"Vienna Convention" means Vienna Convention on Diplomatic Relations as defined in and given effect to by the Act, except that "the mission" shall be read as a reference to the Organisation, "member of the mission" as officers of the Organisation and **"the sending State" as the ... Committee established by the Convention, or the home State of the officer concerned, as appropriate.**

Article – 7 Privileges and Immunities of other Staff

2. Members of the family of an officer of the Agency other than the Director or the Deputy Director, **forming part of his household**, shall have the like privileges and immunities as are accorded the members of the family of a member of the **administrative and technical staff** of a mission under the Vienna Convention.

Article 3 – Privileges and Immunities of the Agency

The Agency shall have the following privileges and immunities:

(a) Immunity from suit have the following privileges and immunities:

- vi. To the extent that the Director General has waived the immunity;
- vii. In respect of a counter-claim directly connected with a suit initiated by the Agency;
and
- viii. In respect of civil action for personal injury arising from an accident involving a motor vehicle owned or operated by the Agency;

2. The Vienna Convention which forms part of the Diplomatic Privileges and Immunities Act 1978 (Solomon Is). Section 3 provides for articles 1, 22 to 24 inclusive, and 27 to 40 inclusive shall have force of law in Solomon Islands.

Article 29 states a person of a diplomatic agent shall be inviolable and is not liable to any form of arrest or detention. Article 37 states that members of the staff and their family members if not nationals or permanent residents, will enjoy the privileges and immunities specified in Articles 29 to 35. Article 31 states that a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State.

Waiver of Immunity

Article 32 states that the immunity enjoyed under Article 37 may be waived by the sending State. Waiver must always be express.

Application

Issue one:

The accused is the legal spouse of the 'diplomat' and is a dependent along with the children, constituting her family member and household. They are accorded the privileges and immunities under Schedule 5 of the Agreement Concerning the Status, Privileges and Immunities of the organisation in Solomon Islands attached to the organisation Staff Regulation. These privileges are as set out in the Diplomatic Privileges and Immunities Act 1978 (DPI Act), Article 37 read with Article 31.

Article 31 of the DPI Act affords immunity from criminal jurisdiction unfettered. It affords immunity from civil and administrative jurisdiction with exceptions. In this instance, the former is the issue for challenge in the stay application.

Issue two:

Article 32 of the DPI Act reads "*The immunity from jurisdiction of diplomatic agency and of persons enjoying immunity under article 37 may be waived by the sending State*". In the present case, the organisation Staff regulation at Schedule 5 designates the Sending State as the organisation or the Home State. Apart from the Organisation is the Home State. The accused is legally married to the 'diplomat,' a national of a pacific island country. The spouse is contracted with the organisation, so that the person's privileges cover the family including the accused. Logically the sending state for the accused who would waive the immunity would be the organisation or the state.

Issue three:

The accused was arrested, charged and bailed. Article 29 provides for the personal inviolability of a diplomat "*...the Principle of Personal inviolability of the person of a diplomatic*

representative...the scope of personal inviolability became absolute, regardless of the severity of concerned offences”⁸

In essence, the accused should not have been arrested and charged in the first instance. Diplomatic immunity is procedural and hence a waiver of immunity should have preceded any instituting of criminal proceeding.

Present Position of the Case

When the Office of the Director of Public Prosecutions is satisfied that a person under diplomatic immunity cannot be charged for any criminal offence – it sought the assistance of the Ministry of Foreign Affairs and International Trade to conduct diplomatic dialogue with the organisation and the sending state to obtain a waiver. The DPP simultaneously withdrew the charge against the accused by a discharge to allow for the process with the Foreign Affairs. The Magistrate instead acquitted the accused on the basis that the matter was a long standing matter with much delay.

A petition was filed by the DPP against the decision of the Learned Magistrate and a hearing of the appeal is pending at the High Court.

Recent developments in the month of September 2017 were that the Foreign Affairs has confirmed to the DPP that the Organisation is the correct institution to consider a waiver.

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

- Access to justice in rural areas remained a challenge due to limited infrastructure.
- Capacity development was hamstrung by the very high proportion of professional vacancies and problems with retaining qualified and experienced personnel.
- Not enough skilled and experienced legal practitioners within the Government pool to deal with very complex issues arising in the country.
 - Specialty areas/Technical expertise

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

⁸Vark, Rene: “Personal Inviolability and Diplomatic Immunity in Respect of Serious Crimes”http://www.juridicainternational.eu/public/pdf/ji_2003_1_110.pdf

Solomon Islands Justice Program proposed design - July 2017 to June 2021⁹. This is an initiative from the Australian Government following the exit of the Regional Assistance Mission to Solomon Islands (RAMSI). A key strategic objective in Australia's Aid Investment Plan for Solomon Islands (2015 – 2019) would be to support stability. Also having the Solomon Islands Economic and Public Sector Governance Program and the Australian Federal Police's bilateral Police Development Program to succeed RAMSI. They will have structures set in place to ensure coordination and collaboration, and will work towards a common goal.

The Program also works towards SIG's overall vision for the justice sector, *Communities in Solomon Islands have greater access to a credible justice system that supports the rule of law.*

7. Technical Legal Assistance

Within the Justice Sector, human resource needs continue to pose a challenge in terms of experience. Too often young lawyers are forced to take up higher positions or to do complex cases. The need for technical assistance persists.

Sector wide, the main emphasis on training needs populate around management, procurement, prosecution of illegal fishing, and court work (judgement writing), including legislative drafting.

The support by DFAT through the SIJP is appreciated, equally so for FFA

1. Placement in Darwin at the ODPP NT and Legal Aid Offices (4-6 weeks)

Lawyers from PSO and ODPP, 27 February to 8 April 2017.

2. ADVOCACY Training facilitated by the VICBAR, 22-25 May, 2017

Attended by lawyers from ODPP and PSO

2. Legal Reasoning Training

Facilitated by AGD and attended by Lawyers from LRC, PSO and ODPP

3. Placement at AGD, Canberra

4. Regional Prosecutor and MCS Advisors Training, Honiara, 26 – 28 June 2017

8. Contact information for key law and justice agencies

⁹Solomon Islands Justice Program Design Document, Coffey International Development and Whitelum Group, 2017.

[Including but not limited to: Ministry of Justice, Crown Law Office, Courts, Law Reform Commission, People’s Lawyer, Office of Parliamentary Counsel, etc.]

	Agency	Key responsibilities	Contact person and position	Phone number and email
1	Office of the Director of Public Prosecutions	To institute and undertake criminal proceedings against any person before any court.	Mr Ronald Bei Talasasa, Director	28426
2	Public Solicitor’s Office	Provides legal aid, advice and assistance to persons in need such circumstances and subject to such conditions as may be prescribed by Parliament.	Mr Douglas Hou, Public Solicitor	22348
3	Attorney General Chambers	Principal legal adviser to the Government.	Mr James Apaniai, Attorney General	28395
4	Law Reform Commission	Responsible for drafting of new legislation or amendments of existing legislation.	Mr Frank Paulsen, Chairman	38773
5	Registrar Generals Office	High Court	Mrs Vaelaty Silas	23706