Pacific Islands Law Officers’ Network Cybercrime Workshop, 23–25 May 2017, Nuku’alofa, Kingdom of Tonga

Senior officials from 13 Pacific Island countries gathered together in Nuku’alofa to discuss their countries’ police and prosecutorial responses to cybercrime and more broadly, electronic evidence. The Attorney General’s Office of the Kingdom of Tonga hosted the Workshop with funding from the Australian Government and the Council of Europe Global Action Against Cybercrime (GLACY+) Project.

Many Pacific Island countries face a threefold challenge when it comes to dealing with cybercrime and electronic evidence: (a) putting in place a comprehensive legislative framework in line with international standards, (b) improving capacity within the criminal justice sector to effectively investigate, prosecute and adjudicate cases involving electronic evidence, and (c) engaging in effective international cooperation.

In 2015, PILON identified cybercrime as one of the main priority areas for the Pacific region. PILON subsequently formed a Cybercrime Working Group, whose objective is to strengthen the regional response to cybercrime with an emphasis on the development and implementation of best practice legislation in line with the Council of Europe Convention on Cybercrime (commonly known as the Budapest Convention).

The Kingdom of Tonga is the Chair of the PILON Cybercrime Working Group and has recently become the first Pacific Island country to accede to the Budapest Convention, having received assistance from the Council of Europe on law reform and law enforcement capacity building and support from the Australian Attorney-General’s Department. The objective of the Workshop was to provide participants with a greater understanding of how to acquire and handle electronic evidence to ensure effective investigation and prosecution of a range of crimes, including cybercrime. This extended to discussions on international police-to-police cooperation and formal mutual legal assistance.
The theme of the Workshop was ‘the Pacific response to cybercrime: effective tools and good practice’. The Workshop was aimed at police investigators, prosecutors, and relevant information communications technology (ICT) policy makers. The Pacific island countries which participated were Fiji, the Cook Islands, the Federated States of Micronesia, Kiribati, Nauru, Niue, Papua New Guinea, the Marshall Islands, Samoa, the Solomon Islands, Tuvalu, Vanuatu and Tonga, together with Australia and New Zealand.

Facilitators included representatives from the Australian Attorney-General’s Department, the Australian Federal Police, the Australian Office of the Commonwealth Director of Public Prosecutions, New Zealand Police, Fiji Police, the United States Department of Justice, INTERPOL, the Council of Europe and the Attorney General’s Office of the Kingdom of Tonga.

PILON Executive Committee meeting, 15-16 June 2017, Samoa

On 15 and 16 June 2017, the Samoan Office of the Attorney General hosted a meeting of the PILON Executive Committee. In attendance were senior law officials from the Federated States of Micronesia, Nauru, New Zealand, the Republic of the Marshall Islands, the Solomon Islands and Australia.

“PILON provides a valuable way for Samoan government lawyers to share knowledge and experiences with our other Pacific colleagues, and I have been very pleased to have had some of those Pacific colleagues in Apia with us this week,” said Samoan Attorney General, Lemalu Hermann Retzlaff.

PILON is a unique forum for senior law officers from across the Pacific to progress shared law and justice issues. The 2016-18 PILON Strategic Plan focuses on progressing regional responses to cybercrime, sexual and gender-based violence and environmental crime and corruption.

The Executive Committee considered PILON's progress in these key areas, as well as broader governance matters and preparations for the network’s Annual Meeting to be hosted by the Republic of the Marshall Islands in October 2017.

The current Chairman of the PILON Executive Committee, the Federated States of Micronesia’s Secretary of Justice, the Honourable Joses Gallen, expressed his sincere gratitude on behalf of the PILON membership to the Samoan Government for not only hosting the Executive Committee, but also providing the hosting arrangements for the PILON Secretariat.

Samoa has hosted the PILON Secretariat through the Office of the Attorney-General since 2014, with funding from Australia and New Zealand.
Congratulations to the 2017 Pacific Legal Policy Champions

by Brianna Heseltine, Australian Attorney-General's Department

L-R 2017 Policy Champions – Losaline Teo (Tuvalu), ‘Elisiva ‘Akau’ola (Tonga), Josephine James (Federated States of Micronesia), Stella Duburiya (Nauru), Theodora Matalavea (Samoa), Tewia Tawiita (Kiribati) and Meaold Viliamu (Samoa)

The Australian Attorney-General’s Department (AGD) congratulates this year’s seven Policy Champions on the successful completion of the 2017 Pacific Legal Policy Champions Program. Delivered by the AGD International Legal Assistance team (ILA) over two weeks in Canberra, the Program aims to take its participants to the next level in legal policy development in a challenging, fun and highly collaborative setting.

Two essential elements of the Program are its emphasis on promoting a shared understanding of the contexts within which policy problems exist, and the importance of agencies and countries working together to tailor and implement the most effective responses.

Officers from the Federated States of Micronesia, Kiribati, Nauru, Samoa, Tonga and Tuvalu teamed up with AGD officers and experts from across Canberra to analyse complex policy problems. After mastering the content, the trainees became the trainers, presenting the course back to a fresh audience of AGD and Australian Federal Police graduates with their own flair.

Expert sessions

This year’s schedule included expert sessions on public service leadership, indigenous law and justice programs, cybercrime, illegal fishing, combatting corruption, and family law and domestic violence. The participants identified these sessions to reflect their countries’ policy priorities. For the first time, the Australian Government Solicitor also delivered a module to sharpen analytical reasoning and legal writing.

What did the Champions think of the training?

Ultimately, the proof of any program’s effectiveness lies in what the participants have to say. A seasoned officer from the Nauru Department of Justice, Ms Stella Duburiya said the Champions Program offered valuable additions to her policy development repertoire.
Stella Duburiya from Nauru leading discussion on the OUTCOME model

“This training has equipped me with essential tools for effective policy development. I am encouraged to find innovative ways, combining what I already know and this new knowledge, to strengthen the policy development process,” Ms Duburiya said.

At the end of the program, our colleagues returned to their home countries to champion policy development skills through their agencies and networks. Aside from raising awareness about the Program, the Policy Champions will go on to deliver formal policy training to government agencies with their newly honed communication and analysis skills.

For more information about the Policy Champions Program, please contact Dr Marie Wynter at marie.wynter@ag.gov.au or +61 2 6141 2742.

For more information on AGD’s work with Pacific nations on regional law and justice issues, please visit the International Legal Assistance page on the AGD website.

Understanding and Applying Key Concepts for Policy Development

by Glenys Andrew, Fiji Office of the Solicitor-General

In March this year, legal officers at the Office of the Solicitor-General in Suva, Fiji, participated in a training course on policy development, delivered by Ms Glenys Andrews of the Fiji Office of the Solicitor-General.

The training was based on the Legal Policy Development Course developed by the Australian Attorney-General’s Department in 2013 and facilitated by its International Legal Assistance Branch, which has trained over 200 public officials from Pacific Island countries. Ms Andrews learnt to deliver the Legal Policy Development Course as part of her participation in the 2016 Pacific Legal Policy Twinning Program.

During the two-day training course, the participants were introduced to the concept of public policy, what public policy is in relation to their everyday work, the role of ministers and public servants and finally, specific requirements for developing policy.

These specific requirements are framed into seven policy steps—‘OUTCOME’:

1. Obtain information about the problem;
2. Uncover and understand stakeholders;
3. Think ahead and plan;
4. Create options;
5. Outreach to stakeholders;
6. Make it happen;
7. Evaluate and monitor.

Legal officers at the Office of the Solicitor-General in Suva, Fiji during a training session

The training focussed on providing a preliminary understanding to public policy and the importance of developing good policy to address a problem or obtain a specific objective.
With the 7 policy steps, participants brainstormed on the problem scenario given in order to explore, discuss and put forward their ideas to present a policy proposal.

A number of tools were also introduced during the training to help participants achieve expected outcomes at each step. For instance, to find out more about a problem at the initial stages of developing any policy, a ‘problem tree’ can be used to identify and distinguish root causes, contributing factors and indications or symptoms of an issue or problem.

Group exercises were also part of the training to promote team work as well as encourage an interactive and informative forum through which participants could share their experiences and knowledge. The role play on presenting policy options proved to be a popular exercise amongst the participants who also got to exercise their acting skills.

The course also provided other useful tools such as communication plans and action plans which can be used to help organise and structure the development of any policy process when a policy is approved and implemented or put into practice whilst working within given resources or an allocated budget. The training also emphasised identification of any risks within the policy development process, and looked at ways in which these risks can be mitigated or prevented.

Ms Andrews says that the policy training has benefited her in a number of ways and has provided a better understanding of key components of policy development and its application to the work she does.

Ms Andrews explains that the course focuses on core tools and emphasises the need for foundational understanding and application before undertaking any project. It will not only benefit public officers and governments, but contributes to general up-skilling on policy advice and decision-making.

I thoroughly enjoyed the training and highly recommend anyone especially those in the civil service to take on such an opportunity to learn about good policy development.
of six young lawyers from the Ministry of Justice and Legal Affairs, one administrative officer from the Ministry of Police, National Security and Correctional Services, and an intern law student from the University of the South Pacific.

Godfrey Male facilitating Legal Policy Development training to participants on 8-9 May 2017

The two-day training was based on a course developed by AGD to help public servants develop sound public policies for the consideration of their ministers. The course focuses on defining the term ‘policy’ in the context of policy development and summarises the policy development process using seven key policy steps.

The problem or issue of misuse of public funds in the Solomon Islands was used for practical exercises throughout the entire two-day course. The group exercises were most useful in demonstrating the participants’ understanding of what they were taught during the workshop.

Participants presenting their group’s activities during the two-day training.

The highlight of the workshop was the role play, in which participants imagined that they were presenting their policy options to the decision makers, the Cabinet, which comprised of key Ministers and the Prime Minister. The participants pretended to present a written submission on their options regarding the issue of the misuse of public funds in the Solomon Islands. This was the most interactive activity and everyone enjoyed it. In the end, the outcome of the decision makers reflected how well the policy paper had been developed using the seven policy development steps and other policy development tools.

Imaginary Scenario - Participants presenting their Policy Options to the decision makers

The participants highly commended the course, saying they “really liked the training because it has improved their understanding and knowledge of the legal policy process”, and added that the principles and lessons they have learned would assist them to “carry out critical analysis of policy in their work.”

The participants also highlighted that the training has really helped them have more insight into legal policy development process and policy development in general. They also stated that they have learned a lot from the course, especially “from the exercises and activities.”

The participants appreciated being given the opportunity to experience AGD’s Pacific Legal Policy Development Course and would like to see more of the training conducted in the Solomon Islands as it would build Solomon Islanders’ capacity in the area of policy development.

During his placement with AGD, Godfrey worked on a policy project that examined public order offences contained in the Solomon Islands Penal Code, such as careless driving, endangering property with fire, common nuisance, and criminal trespass.

Criminal trespass in particular was considered in detail. This has been a complicated area to consider as it raises a number of complex issues.
For example, it overlaps with other offences, in particular, burglary. It also raises difficulties on the definition of property and communal ownership of property.

During the process of researching and analysing Godfrey has learnt and realised that there are a wide range of issues that need to be considered in relation to criminal trespass. In addition, Godfrey also learnt that, when comparing the offence with the same named offence in other countries; other countries require the element of intention to enter onto land as is the case in the Solomon Islands but do not require an intention to commit another offence while on the land. Godfrey has progressed this policy project by using the policy development knowledge and skills he had learnt from his participation in the 2016 AGD Twinning Program.

Opportunities: 2017 AGD Twinning Program

Are you interested in a placement with the Australian Attorney-General’s Department?

Applications for the AGD Pacific Legal Policy Twinning Program are now open and close on Monday, 17 July 2017.

AGD encourages senior policy-makers in Pacific Island countries to apply for the chance to partner with ILA staff over two months in Canberra between October and December 2017 to build legal policy advice and legislation skills, and to work on a crime or policing project that is a priority for your agency.

Selection is through a competitive process. The successful applicants will undertake a two month placement in AGD to work on a current priority legal policy or law reform project with a crime or policing focus, improve their legal policy development skills, and become effective role models and advocates for good policy practices at home and in the region.

Applicants not selected for this program may be considered for AGD’s next Pacific Legal Policy Champions Program.

Enquiries about the Program and the application process more generally should be directed to Jennifer Hyatt on +61 2 6141 3076 or jennifer.hyatt@ag.gov.au and cc’ed to Pacific@ag.gov.au.

For more information, including the Application Form, visit the Pacific Legal Policy Twinning Program page on the AGD website: www.ag.gov.au.

Godfrey Male attending the prestigious Pacific Legal Policy Twinning Program in Canberra from 24 October to 16 December 2016, with other Pacific Island participants and Australian Attorney-General’s Department officers.
The Office of the Special Prosecutor announces the sentencing of Defendant Kangichi Uchau, Criminal Case No. 16-125. Defendant Uchau was found guilty of two criminal violations of the Palau Code of Ethics after a trial on 23 and 24 February 2017.

Defendant Uchau was formerly the Governor of Peleliu State. While he was Governor, Defendant Uchau used his authority to issue cheques made out to himself from the Peleliu State Treasury on two separate occasions. These cheques were payments made related to Peleliu State events for which Defendant Uchau used his own business to provide catering. The value of these cheques totalled over $10,000.

Defendant Uchau’s self-dealing conduct violated the conflict of interest principles of Palau’s Code of Ethics. The Code of Ethics is Palau’s law which mandates that all public employees and officials in Palau perform their government duties and responsibilities ethically, including state government employees and officials.

On March 6, 2017, Associate Justice Kathleen M. Salii of the Supreme Court of the Republic of Palau sentenced Defendant Uchau to pay fines in the amount of $10,800, along with other fees. Defendant Uchau was also sentenced to serve one year of probation.

The Office of the Special Prosecutor thanks the Office of the Public Auditor for their assistance and cooperation over the course of this investigation and trial. This criminal conduct was initially uncovered by an audit performed by the Office of the Public Auditor on the Peleliu State Government. For more information concerning the facts and circumstances of the case, please refer to the case file at the Clerk of Courts at the Judiciary Building in Koror.

The Office of the Special Prosecutor (OSP) announces the sentencing of defendant Eudora “Didil” Lucio in Criminal Case No. 16-167. After a plea hearing before the Honorable Presiding Justice Ngiraikelau on 21 April 2017, in the Supreme Court of the Republic of Palau, Defendant Lucio plead guilty to one count of Money Laundering, two counts of Theft of Government Property in the First Degree, two counts of Use of a Computer in the Commission of a Separate Crime, one count of Misconduct in Public Office, and seven counts of Tampering with a Government Record.

In brief sum, at the 21 April 2017, hearing Defendant Lucio admitted by way of a plea agreement to having embezzled over $60,000 from the Republic of Palau while employed in her official capacity collecting the departure tax and green fee from departing passengers at Palau International Airport. Defendant Lucio further admitted that she was able to accomplish this theft by manipulating Bureau of Custom’s flight-specific computer reports which ultimately undervalued the valid amount actually collected, and which Defendant Lucio then took the non-reported cash for her own personal gain. Defendant Lucio also admitted that she subsequently engaged in activities which tended to conceal the origins of the stolen monies in an effort to avoid detection of her crimes.

For this conduct, the Presiding Justice Ngiraikelau sentenced Defendant Lucio to the terms and conditions of the plea agreement as follows:

- For the crime of Money Laundering, Defendant was sentenced to one (1) year imprisonment.
- For the two counts of Theft of Government Property in the First Degree, Defendant was sentenced for each count to a term of ten (10) years of probation, during the first one (1) year of which Defendant shall serve a term of imprisonment.
• For the two counts of Use of Computer in the Commission of a Separate Crime, Defendant was sentenced for each count to ten (10) years of probation, during the first one (1) year of which Defendant shall serve a term of imprisonment.

• For Misconduct in Public Office, Defendant was sentenced to a term of ten (10) years of probation, during the first one (1) year of which Defendant shall serve a term of imprisonment.

• For the seven counts of Tampering with a Government Record, Defendant was sentenced to one (1) year imprisonment for each count.

In addition, pursuant to the conditions of the plea agreement, Defendant Lucio was ordered by the Court to pay a total of $65,000 in fines to the Republic of Palau.

Steven M. Killelea commends the Bureau of Customs and Border Protection for bringing this case to the OSP’s attention and thanks the Customs Investigation Unit, the PAN Fund office, the Ministry of Justice, as well as the Ministry of State for their respective contributions to the investigation and prosecution of Defendant Lucio.

Ultimately, the OSP is pleased that the defendant took responsibility for her actions and believes the punishment fits the crime under the circumstances presented. In addition, Special Prosecutor Killelea takes this opportunity to recognize Assistant Special Prosecutor Timothy Zintak and investigators HaqueBlesam and Dolyn Tell for their hard work and careful investigation into this matter which in the end allowed for a swift and appropriate resolution.

For additional information regarding the facts and circumstances of this case, please refer to the Clerk of Courts, Criminal Case. No. 16-167.

On 12 August 2016, Police Officer Kamesak Demek, a former member of the Belau Drug Enforcement Task Force, was arraigned on criminal charges of Tampering with Evidence, Government Obstruction, Misconduct in Public Office, and Unlawful Possession of Methamphetamine. The Court set bail in the amount of $20,000 cash.

For information regarding the alleged facts of the case, please refer to the attached Information and Probable Cause Affidavit and/or inquire with the Clerk of Courts, Criminal Case. No. 16-105. All defendants are presumed innocent unless and until proven guilty.

Sex offenders’ register launch
by Samantha Milford

On 14 June 2017, the Samoa Law Reform Commission (SLRC) will officially launch its Sex Offenders’ Register (SOR) Final Report in conjunction with some of its other completed projects.

The SOR project began in February 2013 when the SLRC received a reference from the Attorney General to assess whether it is appropriate in the context of Samoa to establish a SOR and if such a register would help in the deterrence of sexual re-offending.

The SLRC completed a Discussion Paper in April 2013 after which followed a series of public consultations designed to gauge the public’s views on this project. A Final Report was completed in May 2015 which also included a draft SOR Bill to reflect its recommendations.

The SOR Bill has been finalized by the Attorney-General’s Office and is scheduled to be tabled at the next Parliamentary sitting. The establishment of a SOR in Samoa would be a monumental development in the legal landscape of not only Samoa, but the Pacific as a whole. The New Zealand Child Sex Offender Register was launched in October 2016, more than a year after the SLRC completed its SOR Final Report. Therefore, not only is the SOR project another area in which Samoa is pioneering law reform in the Pacific, it more importantly illustrates Samoa’s firm commitment and dedication to protecting its children and most vulnerable.
Catching up with RMI’s Deputy Attorney-General Johnathen Kawakami

by Dr Marie Wynter, Australian Attorney-General’s Department

I was recently lucky enough to catch up with Deputy Attorney-General of RMI and AGD Policy Champion Johnathen Kawakami at the PILON Cybercrime Workshop in Tonga. He told me that RMI had recently passed legislation to address Human Trafficking. We thought we’d share this with our readers.

Hi Johnathen, what is your role in the RMI Justice Department?

Currently I am the Deputy Attorney General for the RMI Attorney General’s Office and I’ve been in this post for about a year. My role as Deputy Attorney General is general and it mainly focuses on providing assistance to the Attorney General in various areas like legal advice to the Government either relating to the Constitution or other areas of law. I also assist the Criminal and Civil Divisions of the Office either prosecuting or providing legal advice or research. I also provide legal assistance to various Government Ministries in the areas of Health, Education, Public Service or Finance. As Deputy Attorney General, I also provide little assistance to drafting legislation for our Senators or Ministers.

Human Trafficking is a major policy issue and challenge for RMI. Why is this?

The RMI Government upholds its citizens’ Constitutional rights and ensures that no person becomes a victim of human trafficking. It is a policy issue for RMI because many Marshallese would travel away and live in other countries like the U.S. Generally, Marshallese are entitled to work, study and live visa free in the U.S. which then Marshallese become expose to other cultures and ways of life. RMI wants to ensure that people understand their rights when leaving the country. They want to ensure that people are aware of the signs of human trafficking. RMI has not yet had a criminal prosecution of human trafficking. However, we have had investigations on trafficking and there is still a continuance of those investigations.

How long did it take you to develop the Human Trafficking legislation and how did you go about it?

The time spent on developing standalone legislation on human trafficking was mainly on researching from other Pacific Jurisdictions on their laws on human trafficking as well as other countries like the United States. The United Nations Office on Drugs and Crime (UNODC) model legislation on trafficking in persons served as a guideline to the RMI law on human trafficking. Basically, going through the policy development process should be time invested to ensure effective results. Once the research was completed, drafting legislation did not take much time. The Office began researching and drafting the legislation late in 2016 and the law passed Nitijela (Parliament) in early April of this year, 2017.

The development process included tools learning from the Policy Champions course that I undertook with the Australian Attorney-General’s Department. The development stages included, understanding and gathering information about the problem of trafficking in persons this included criminal investigations on possible sex crimes conducted in certain hidden locations in the Capital City.

The next step was identifying the stakeholders and their interest in the subject matter. A lot of this particular step included discussions with the Cabinet to address the issue of trafficking in persons and understanding the root cause of such problems. Cabinet created a National Taskforce on Human Trafficking (NTHT) as the starting point to address the problem of human trafficking focusing on the areas of prevention, protection, prosecution and partnership.
The next step was planning. The NTHT implemented a National Strategic Plan that encompasses specific activities and strategic goals on combating trafficking in persons. The RMI Government then proclaimed July 30th of every year as the RMI Anti-Human Trafficking Day. On this day students, families and government come together and educate and raise the public awareness on human trafficking. Creating options was the next step and mainly included debate and discussions on best methods to address the issue of human trafficking. These discussions included whether there was a need to have standalone legislation or whether simply amending the Criminal Code and raising the penalties charged for the crimes of trafficking would suffice. The Government chose to enact a standalone law.

Apart from the law, the NTHT is also working on implementing standard operating procedures and guidelines for law enforcement as well as victim identification guide to help with the investigation.

The last few steps included outreach, implementing the plans and options and evaluating. At this stage the Office continues to evaluate the effectiveness of the new law on trafficking.

**Now that the legislation has passed, what is next?**

There is some technical work that needs to be finalized for law enforcement in particular. Currently, the NTHT is finalizing its standard operating procedures for victim assistance. This will help investigators and prosecutors carry out their roles and especially provide the victim assistance needed to ensure the protection and avoidance of trauma suffered by any person. Also, the legislation makes available basic benefits such as medical, accommodation, counselling etc to persons who have suffered from trafficking. These certain benefits need to be in place to ensure that victims are protected. Investigators will need to continue their investigation on any trafficking in suspicious persons.

**Have you had any Human Trafficking prosecutions yet, or are any in the pipeline?**

There haven’t been any cases filed since the new Prohibition Against Trafficking in Persons Act 2017 was passed. However, the Office is working with law enforcement as well as foreign assistance, mainly from the United States, on any cases that might involve human trafficking.

**You were in the first intake of the AGD Policy Champions course in 2015. Can you tell us a bit about how you found the training? Have you kept in touch with friends you made across the Pacific?**

The training provided me the tools needed to draft good policies for my Government. So far after attending this training, I was able to complete the Prohibition Against Trafficking in Persons Act. Most of the time when we’re given instructions to draft new pieces of legislation on any particular issue, the drafting instructions are not specific and the issues are not well researched enough to begin identifying and addressing whatever the issue is. Using the skills learned from this training allows one to fully research step by step on the issues before indicating what best options are available to address those issues.

Perhaps one of the important parts I found of the training was meeting other law enforcers from around the Pacific. Creating a network obviously allows one to maximize their efforts in addressing issues like human trafficking. Most of the wonderful people I’ve spent my training course with are always available for assistance and I’ve been in touch with some after this training.
In March this year, the PILON Coordinator attended the Regional Stakeholder Engagement Meeting which was held at the Grand Pacific Hotel in Suva, Fiji and hosted by the Australian Federal Police International Operations Pacific Police Development Program–Regional (PPDP-R) This meeting was an opportunity for the PPDR to discuss their current programs to identify opportunities for collaboration in the region; de-conflict where there is a duplication of program activities; share knowledge, program activities and approaches; and provide input into their PPDP-R Regional Calendar.

The International Operations purpose is to:

- contribute to Australia’s national security interests by providing policing stability and development, peacekeeping and capacity development that supports enhanced international rule of law in developing and post-conflict nations; To deliver initiatives on behalf of the Australian Government aimed at improving regional and international security and governance;
- maintain a deployable capability for missions, standing tactical and specialist policing rapid deployment and crisis response; and to
- deliver community policing to Australian external territories.

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