



**Pacific Islands Law Officers' Network 31st Annual Meeting
Outcomes Report
29 – 31 October 2012, Kokopo, Papua New Guinea**

The Chair, Secretary of the Papua New Guinea Department of Justice and Attorney General, Dr Lawrence Kalinoe, convened the 31st Pacific Islands Law Officers' Network (PILON) Annual Meeting from 29 – 31 October 2012, with the theme '*Challenges and Strategies to Support Democratic Governance and the Rule of Law*'.

PILON member countries represented at the meeting included Australia, the Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Papua New Guinea, Pitcairn Islands, the Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Apologies were received from the Cook Islands and Palau.

Gratitude was expressed for financial support from Australia, which provided funding to facilitate the attendance of nine delegates from Pacific Island countries.

The following observer members also attended: International Committee of the Red Cross (ICRC); Pacific Islands Forum Secretariat (PIFS); and the University of the South Pacific (USP). Representatives from the Asia Pacific Group on Money Laundering (APG/ML), the South Pacific Lawyers' Association (SPLA), AusAID, the New Zealand Parliamentary Counsel Office, the Oceania Customs Organisation and the Australian High Commission (Port Moresby) also observed the meeting.

This report summarises the outcomes of discussions at the meeting. It is the official record of meeting resolutions and a summary of key discussions. Documents relating to the meeting are available on PILON's website at www.pilonsec.org or otherwise from the Secretariat.

The meeting commenced with a welcome ceremony featuring the Vunairoto Mix Choir. Reverend Henry Toliumang (United Church) led a devotional prayer.

A. Outgoing PILON Chair's address

Ms Madeleine Laracy, Crown Counsel, New Zealand Crown Law Office commenced the meeting with an official address to PILON members on behalf of New Zealand, as the outgoing chair. Ms Laracy welcomed the opportunity to formally thank the Government of PNG and the Department of Justice and Attorney General (DJAG) for hosting the 31st Annual Meeting and the warm welcome provided to delegates. The outgoing Chair explained that Michael Heron had recently been appointed as Solicitor General of New Zealand, and could not be present at the meeting because of other pressing domestic issues.

On behalf of the Executive Committee, the outgoing Chair thanked Members and observers for their ongoing support of PILON, and welcomed those in attendance. The outgoing Chair referred to the meeting agenda and the significance of the issues presented for consideration, and commended the meeting hosts on their choice of such an important and relevant theme for the meeting. The outgoing Chair referred also to Members' ability to contribute a practical perspective to meeting discussions as a valuable benefit of the network. In addition, the outgoing Chair highlighted two major issues fundamental to the future of the network, which required focussed discussion at the meeting. Firstly, the required consideration of issues of structure and funding, following on from Members' agreement in this regard at the 2011 Annual Meeting; and secondly, the proposed Strategic Plan for PILON.

The outgoing Chair thanked Tracey White, the PILON Secretariat Coordinator, for her excellent work in this role and in preparing for the Annual Meeting, and Executive Committee members for their ongoing support.

B. Incoming PILON Chair's address

The Chair, Dr Lawrence Kalinoe, Secretary of the PNG Department of Justice and Attorney General, provided an opening address, welcoming members to PNG. Dr Kalinoe thanked Ms Laracy for her comments and New Zealand for their hosting of the 2011 PILON Meeting. The Chair expressed his gratitude for the opportunity to host the 31st Annual Meeting, and pride in welcoming delegates to PNG.

The Chair noted the valuable role that PILON plays in providing a forum for senior Pacific law offices to discuss new initiatives, and progress key regional law and justice issues. He commented that the theme of the conference was particularly pertinent for PNG, having recently been through a difficult political period, which had reinforced the importance of the rule of law. He also stressed the vital role that Government lawyers play in upholding the rule of law and combatting corruption.

C. Opening address

The Hon Kerenga Kua LLB OL MP, Minister for Justice & Attorney General of Papua New Guinea, provided the official opening address to PILON members and welcomed delegates to Kokopo on behalf of the PNG Government. The Minister noted the importance of forums such as PILON to promote international collaboration (including on transnational crime) given the impact of globalisation.

Minister Kua also stressed the importance of the meeting's theme for PNG, given recent political turmoil and instability, which had negatively impacted on the rule of law and democratic governance. He highlighted that accountability was an essential part of democratic governance, reinforced through elections, transparent and lawful Government operations and the oversight of independent institutions such as the judiciary, the media and ombudsmen. He noted that the rule of law required not just an independent judiciary, but also everyone being equally subject to the law and obeying it (including the executive). He highlighted the challenges that corruption poses for PNG in upholding the rule of law. Finally, he emphasised the essential role that Government lawyers play in upholding and strengthening the rule of law, and the need to ensure that Government law offices are well resourced and operate effectively.

D. Presentations: Challenges and Strategies to Enhance Democratic Governance & the Rule of Law

(i) *Session One: Democratic governance and the rule of law*

A presentation was provided by Professor Paul Rishworth, Professor of Law, Auckland University, and Attorney General of Pitcairn Islands.

The presentation highlighted the relevance of the rule of law to ordinary people's everyday lives, and discussed the different theories of the content of the rule of law, and its purpose. Professor Rishworth suggested that, at least in most Pacific countries, it was clear that the rule of law incorporated adherence to fundamental human rights, since these are generally incorporated into countries' Constitutions. He noted that maintaining social harmony is an important purpose of the rule of law, and in the Pacific, traditional custom is often infused into the formal legal system.

In relation to Government lawyers, Professor Rishworth noted that the rule of law involves making value judgments, not just applying formal legality. He expressed the view that conscience underlies integrity, and that it is essential for Government lawyers to apply their consciences in resisting pressure to be complicit in Government action that does not comply with the rule of law.

Members discussed the content of the rule of law and some of the potential challenges that can arise in clashes between traditional cultural norms of behaviour and the rule of law.

(ii) *Session Two: Current and emerging challenges to democratic governance and the rule of law*

A presentation was provided by Professor John Nonggor, constitutional lawyer and private practitioner in Papua New Guinea.

Professor Nonggor expressed the view that the biggest challenges that PNG faced to the rule of law and democratic governance are corruption, adherence to due process and the threat of political and personal convenience becoming the driving force for action. He discussed the recent political events in PNG in this context. He stressed the vital role of democracy in enabling citizens to express their free will and choice, although noting that PNG had some way to go to ensure that such free will is truly able to be exercised during the election process. Professor Nonggor also highlighted how

corruption undermines citizens' confidence in the State, and that the cost of corruption is borne by ordinary citizens through the Government's reduced ability to provide services such as education. He expressed the view that lawyers should not allow themselves to be driven by short term political agendas that potentially undermine the rule of law and democratic governance.

Members discussed the political instability that had taken place in PNG in recent times in this context, noting that, in the end, the disputes had been resolved through Parliament, the courts and the elections, with civil unrest successfully avoided. Members also discussed the importance of government lawyers giving sound legal advice to governments.

(iii) *Session Three: The role of government lawyers in enhancing democratic governance and the rule of law*

A presentation was provided by the Hon. Maurice Sheehan CMG, former Judge, PNG National Court.

The presentation stressed the importance of not just having a sound legal system in place, but those laws being effectively implemented and accepted and adhered to by the population, including the executive. Mr Sheehan stated that he sees government lawyers as the guardians and trustees of the rule of law, responsible for ensuring that laws work and are adhered to, in order to serve the people of the country as intended.

He stressed that a failure to ensure compliance with laws and procedures leads to corruption and undermines people's confidence in the rule of law, so that respect for its institutions diminishes and ordinary people are less likely to obey the law themselves. Government lawyers' professional and ethical duties mean that they have a responsibility to prevent such abuses, particularly in relation to legal processes such as litigation in which they are involved themselves. All Government lawyers have a personal responsibility to ensure that the rule of law is upheld.

Members discussed the vital need to ensure that Government lawyers maintain the highest standards of ethical behaviour and tackle inappropriate conduct and corruption when they encounter it, in order to assist in upholding the rule of law.

(iv) *Session Four: Leadership and good governance*

A presentation was provided by Mr John Toguata CBE, QPM, Development Practitioner (Anti-Corruption), PNG-Australia Law & Justice Partnership.

The presentation noted that, despite the solid foundation for effective leadership and good governance provided for in PNG's Constitution, PNG has generally experienced poor and weak leadership and bad governance since independence, leading to a serious decline in the Government's ability to provide basic goods and services to its people. Mr Toguata expressed the view that elections have been corrupted through the buying of votes, the bureaucracy has been politicised by the "wontok" system, public service ethical standards have not been enforced and public officials are more interested in furthering their personal ambitions than serving the people.

Mr Toguata stated that abuse of power by public officials and leaders and corruption at all levels is a serious issue, resulting from a prevailing attitude of non-compliance with ethics, rules and laws – in other words, disregard for the rule of law. Mr Toguata regards this as a very serious threat to any meaningful development of PNG, stressing the need for better resourcing of law and justice agencies. However, he was optimistic about the prospects for tackling these issues, with strong donor support, through new initiatives such as PNG's National Anti-Corruption Strategy.

Members discussed the importance of independent integrity institutions in tackling corruption, such as the media, the courts and ombudsmen.

(v) *Session Five: Practical anti-corruption strategies to support the rule of law & good governance*

Presentations were provided by:

- Ms Sisilia Eteuati (Asia/Pacific Group on Money Laundering);
- Mr Neil Adsett (Attorney General, Tonga);
- Mr Molean Kilepak (PNG DJAG); and
- Mr Roger Wilkins AO (Secretary, Australian Attorney-General's Department).

Ms Eteuati discussed how the effective implementation of anti-money laundering standards can help countries to tackle corruption and maintain the confidence of citizens in systems of government. Corruption is reported as the most common predicate offence for money laundering in Pacific countries. An effective anti-money laundering regime (involving financial and other relevant institutions reporting to FIUs, FIUs analysing and disseminating reports to law enforcement agencies, and law enforcement agencies working with prosecutors to prosecute money laundering and recover the proceeds of crime) shines light on what financial transactions are taking place. This provides indispensable intelligence to law enforcement agencies, to allow early proceeds of crime action, so that proceeds of crime can be frozen before assets are dissipated, and international cooperation taken to recover assets. This removes the profit motive for committing corruption and other financial crimes.

Ms Eteuati urged Pacific countries to focus on the effective implementation of anti-money laundering and proceeds of crime laws, by having policy directives ensuring that police pursue proceeds of crime and follow financial flows, ensuring that there are adequate budgets for relevant law enforcement and prosecution agencies, and working to a national strategic action plan to coordinate anti-money laundering efforts. She emphasised that Pacific countries had existing legislative tools to fight corruption and encouraged them to use them.

Mr Adsett explained a new initiative that Tonga was taking to assist in providing better support and oversight of integrity and accountability agencies, through the Good Governance Commission Bill, which is currently before Parliament. He expressed the view that international organisations and large Western countries' often have unrealistic expectations of what small island States can achieve regarding the implementation of international obligations, given their small populations and very limited government resources. His talk also suggested that there could be common regional

programmes to help smaller countries to meet their obligations and better organise their good governance institutions.

Mr Kilepak provided an overview of PNG's mutual evaluation review process of its implementation of Chapters 3 and 4 of the United Nations Convention Against Corruption (UNCAC). He indicated that completion of the compliance checklist had been an intensive process, and suggested that Governments need to ensure that sufficient resources are devoted to this, and that there is strong inter-agency coordination in the planning and taking part in the review.

Mr Wilkins reiterated the suggestions that Mr Kilepak had made regarding the UNCAC review process, and indicated that the mutual evaluation had proven to be a useful health check for Australia's anti-corruption system (regarding effectiveness as well as the legal frameworks), but that it should be regarded as only one of the means for a country to strengthen its anti-corruption system.

Members expressed some concerns about the resource-intensiveness of the UNCAC review process for small States.

(vi) *Panel discussion on challenges and strategies to enhance democratic governance and the rule of law in the Pacific*

Mr Timothy Ai (Deputy Public Prosecutor, PNG Office of the Public Prosecutor) chaired a panel discussion on the theme of the meeting, with panel members being Professor Paul Rishworth, the Hon. Maurice Sheehan, Dr John Nonggor, Ms Sisilia Eteuati and Mr Roger Wilkins.

Panel members discussed the role of government lawyers in upholding the rule of law, whether the rule of law and democratic governance are inevitably linked, how to build a stronger culture of obedience to the law in countries with a weak rule of law, effective means for ensuring Parliamentary oversight of the Executive, and the arguments in favour of small Pacific Island countries devoting limited resources to engage in international efforts to fight transnational and organised crime.

E. *Discussion of communiqué*

Members discussed the conclusion of a communiqué to reflect the agreements reached at this meeting. A copy of the communiqué is provided at **Attachment A**.

F. *Member country reports*

Member countries provided reports on key law and justice activities and initiatives during 2012.

Members agreed:

1. to note the Country Reports presented by PILON member countries, and

2. that, where consent has been given, for Country Reports to be uploaded to the PILON website.

Members took the opportunity to each record their gratitude to the Government of PNG and the Department of Justice and Attorney General for hosting the 31st PILON Meeting.

G. *PILON Secretariat Report – 2012*

The Secretariat presented a summary of its activities in 2012 and the work which has been performed under the 2012 Work Plan. A written report was also provided to delegates providing additional detail on the activities of the Secretariat, and identifying a number of items for further attention and/or action by members. A copy of the report will be placed on the PILON website following the meeting.

The Secretariat thanked delegates for travelling to attend the meeting in PNG and for their ongoing support of PILON, and the PILON Executive Committee for their assistance and support. Members thanked Ms Tracey White for her excellent work with the Secretariat over the past 12 months, including in organising this meeting.

The Secretariat also raised for discussion the updated paper provided to Members regarding regional harmonisation of extradition standards. Members discussed the extent to which the issue of extradition should be given priority in PILON.

At the conclusion of the presentation, PILON members agreed to:

1. note the report given by the PILON Secretariat on its activities in 2012, and in particular:
 - (a) the written report prepared by the PILON Secretariat that will be uploaded to the PILON website;
 - (b) the database of technical legal assistance programs and initiatives available to PILON member countries and record of model legislation maintained by the Secretariat, and agree that PILON member countries and observers will keep the Secretariat informed of programs to be included in the database;
 - (c) that PILON was represented at a number of forum, meetings, conferences and working groups during the course of 2012 and the Secretariat will continue to represent PILON at such events, when appropriate, or arrange for PILON to be represented by other means;
 - (d) the continuing support and assistance provided by the Samoan Office of the Attorney General and Australian Attorney-General's Department to the Secretariat office;
 - (e) note the paper, 'Update on the harmonisation of extradition standards and procedures in the Pacific – 2012', that was provided to Members for consideration out of session; and
 - (f) note that Australia will work with the PILON Secretariat to coordinate with the Asia/Pacific Group on Money Laundering assistance to interested countries to improve their extradition regimes.

H. *PILON Structure and Funding*

The PILON Secretariat provided an overview of the meeting paper prepared in relation to PILON's future funding and structure, outlining the work of the Executive Committee and Secretariat to progress the commitments made by Members at the 30th PILON Meeting. Member countries discussed the issues concerning funding and legal structure, and the proposal put forward in the paper by Australia.

Members agreed to the proposal put forward by Australia, as follows:

1. the incorporation of the PILON Secretariat not be pursued; and the current arrangements for the hosting of the Secretariat by the Samoan Office of the Attorney General be retained;
2. On this basis, subject to confirmation of New Zealand funding from the New Zealand Government, Australia and New Zealand will fund their membership contributions as agreed at the 2011 PILON meeting; and
3. Australia will fund the membership contributions allocated to all other PILON Member countries.

Members therefore agreed to task the PILON Executive Committee and Secretariat to:

- (a) work with Australia and New Zealand to finalise arrangements for financial contributions to the 2014 budget for the PILON Secretariat; and
- (b) report back to the 32nd Annual Meeting on the issue of long term funding arrangements for the Secretariat.

J. *PILON Strategic Plan*

The PILON Secretariat led discussion of the draft Strategic Plan based on the discussion paper included with meeting material.

Members agreed:

- (a) To endorse the draft Strategic Plan for PILON, with the amendments to be made to the Plan, as set out in item 2 below.
- (b) To endorse the legal policy agenda proposed by the Strategic Plan, consisting of the following issues:
 - corruption and proceeds of crime (to be led by Papua New Guinea, with the assistance of Samoa, Australia, Vanuatu and Nauru)
 - illegal fishing (to be led by Nauru, with the assistance of Federated States of Micronesia, Republic of the Marshall Islands and New Zealand), and
 - sexual and gender based violence (to be led by Tonga, with the assistance of Samoa, Australia and Vanuatu).
- (c) To task the Secretariat to circulate to Members an amended draft Strategic Plan by the end of November 2012, coordinate any comments received, and produce the final Strategic Plan before the end of 2012.

K. *Reports and updates on regional initiatives and issues*

The following updates and reports were provided:

- Legislative Drafting:
 - Pacific Legislative Drafters' Technical Forum, provided by Ms Lorraine Kershaw of the Pacific Islands Forum Secretariat and Mr Richard Wallace of New Zealand Parliamentary Counsel Office, and
 - development assistance in legislative drafting, provided by Katy Le Roy, Parliamentary Counsel, Nauru
- Pacific Prosecutors' Association, provided by the PILON Secretariat;
- PILON Litigation Skills Program, provided by Ms Madeline Laracy of the New Zealand Crown Law Office.

Members agreed:

1. Pacific Legislative Drafters' Technical Forum
 - (a) to note the report regarding the third meeting of the Pacific Legislative Drafters' Technical Forum;
 - (b) to note the *Regional Action Plan for sustainable legislative drafting capacity building in Forum Island Countries* ("Regional Action Plan") developed by participants at the meeting, and agree to support national and regional efforts to implement the strategies outlined in the Regional Action Plan;
 - (c) that the PILON Secretariat should continue to provide support to Pacific Legislative Drafters' Forum, as defined in the Regional Action Plan, and report back to PILON Members at the 32nd Annual Meeting in this regard; and
 - (d) that legislative drafting issues will be a standing item on the agenda for future PILON Annual Meetings.
2. Development assistance in legislative drafting:

To note:

 - (a) the presentation on dealing with development assistance in legislative drafting;
 - (b) the concerns of members in relation to some forms of development assistance in legislative drafting being counter-productive; and
 - (c) that the rule of law requires that the law be prospective, lawfully made, publicly accessible, clear and coherent; and that achievement of these objectives requires wider recognition in the region and among development assistance partners that legislative drafting should be undertaken by professional specialist legislative drafters.
3. Pacific Prosecutors' Association:
 - (a) to note the report regarding the fourth Annual Conference of the Pacific Prosecutors Association and the outcomes; and

- (b) that the PILON Secretariat should continue to provide secretariat support to the Pacific Prosecutors Association, and report back to PILON Members at the 32nd Annual Meeting in this regard.

4. PILON Litigation Skills Programme

To note New Zealand's discussion on the outcomes from the 2012 PILON Advanced Litigation Skills Program and agree to:

- (a) express strong support for the PILON Litigation Skills Program (LSP) as an important and effective component of continuing legal education for government law officers in the Pacific;
- (b) thank the New Zealand Crown Law Office (CLO) and New Zealand Ministry of Foreign Affairs and Trade/ New Zealand Aid Programme for the support of LSP and encouraged them to continue to provide such training over the short to medium term;
- (c) task the Secretariat to liaise with the New Zealand CLO and explore collaboration opportunities, and keep PILON members updated regarding future proposed Litigation Skills Programmes.

L. *Arrangements for the 2013 PILON Annual Meeting*

Members agreed to Tonga hosting the 2013 PILON meeting, from Tuesday 5 November to Wednesday 6 November 2013.

M. *Reports from PILON Observer Members and meeting observers*

Presentations were provided by:

- Ms Lorraine Kershaw of the Pacific Islands Forum Secretariat
- Ms Monica Silverwood of the International Committee of the Red Cross
- Professor Eric Colvin, University of the South Pacific (PACLI)
- Sir Kina Bona of South Pacific Lawyers' Association, and
- Mr Meiapo Fa'asau of the Oceania Customs Organisation.

A written report was also provided to members by Ms Hannah Lily of SPC/SOPAC Deep Sea Minerals Project.

Members agreed to note the presentations and reports made by PILON Observer members and meeting observers.

N. *PILON Work Plan for 2012*

Members discussed next year's PILON Work Plan. The 2013 Work Plan is at Attachment B.

P. *Draft outcomes report – discussion and finalisation*

Members discussed and settled the draft outcomes report.

Q. *Other business and closing*

Executive Committee

Under the PILON Charter, the Executive Committee is comprised of the Chair, the incoming Chair, and at least two other PILON member country representatives. It was agreed by members that the Executive Committee would be comprised of Papua New Guinea, Tonga, Australia, Nauru, New Zealand and Samoa.

Expression of appreciation

Members expressed their thanks to:

- the Papua New Guinea Department of Justice and Attorney General for hosting the meeting
- Dr Lawrence Kalinoe for chairing the meeting
- the East New Britain Governor the Hon. Eremas ToBaing MP, and the East New Britain Provincial Administration for their hospitality, and
- Ms Tracey White of the PILON Secretariat for her work in organising the meeting.

Members also thanked the meeting's events other sponsors, the Oceania Football Confederation and the Lamana Group of Hotels.

