

**PACIFIC ISLANDS LAW OFFICERS' MEETING
(PILOM) REVIEW**

**Prepared by the Pacific Islands Forum Secretariat
in consultation with the PILOM Review Team**

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CONTENTS

I.	Introduction	1
II.	Law and Justice Challenges in Forum Island Countries	3
III.	The Existing Regional Approach to Law and Justice	
	IIIA. Regional Institutions	6
	a. The Pacific Islands Forum	6
	b. The Regional Specialised Law Enforcement Agencies	7
	c. The Pacific Islands Law Officers' Meeting	8
	d. The Pacific Judicial Conference	9
	e. Other Regional Organisations	9
	IIIB. Regional Initiatives	10
	f. The Pacific Plan	10
	g. Regional Assistance in Criminal Matters	12
	h. Other legal initiatives of donors/partners	14
IV.	The Role of Law Officers: Recommendations for PILOM	15
	a. PILOM and the Regional Security/Law and Order agenda	15
	b. The broader regional legal agenda and PILOM's role	17
	- The PILOM Secretariat	19
	c. Setting the Agenda itself: who and how?	21
	Summary of Recommendations	23
	Annex 1: PILOM Review Team	25
	Annex 2: PILOM Secretariat Terms of Reference	26
	Annex 3: PILOM Secretariat Indicative Budget	27

I. INTRODUCTION

At the 24th Pacific Islands Law Officers' Meeting (PILOM) held in Port Vila, Vanuatu in September 2005, the (then) Attorney-General of Samoa submitted a paper entitled "Mending the Nets". The paper outlined the significant challenges facing law officers in the Pacific region and noted that PILOM had historically acted as a valuable opportunity to share these, but that "the relationship between the region's law officers.. is not currently sustained beyond the annual PILOM meeting". The Attorney-General observed the cooperation occurring between Ministers or senior officials of the Forum in other sectors, including those in the law enforcement field such as the Pacific Islands Chiefs of Police, and observed that while "PILOM considers its own issues, there is no form of regional coordination... and thus the pressure points which are raised in the annual meetings are lost once aired and in doing so a valuable opportunity to seek or provide some early intervention on festering law related issues in the region is also lost."

2. The paper proposed that a review should be conducted to:

- (1) Determine the current state of regional cooperation and exchange in the area of law and order: good governance; legal resources; legislative reform and drafting; mutual cooperation and law enforcement issues.
- (2) Assess the roles of PILOM and [Pacific Islands] Chiefs of Police and whether the matters raised during their annual meetings are communicated in any way to the Forum Secretariat or the Forum meeting of Leaders and whether these bodies encourage and facilitate regional exchange and communication.
- (3) Propose a formal means of communicating the broader issues raised by law officers into some further consideration by the Secretariat and possibly the creation of an early alert process to encourage the early consideration of regional security issues.
- (4) Recommend the options available to the Forum Secretariat and its member countries to improve communication and the availability of mutual assistance and support for law officers.

3. Following some discussion of the Attorney-General's paper, the 24th PILOM agreed:

That PILOM requests the Forum Secretariat to coordinate a review of the existing regional approach to law and justice and the role of Law Officers in contributing to the priority areas identified in the region... [A] Review Team will prepare a report and recommendations to be submitted to the [25th] PILOM

4. It was agreed that the review would draw upon the terms of reference proposed in the Attorney-General's paper, although the scope was slightly altered by PILOM's decision to review "law and justice", as opposed to "law and order".

5. To undertake this task, PILOM appointed a Review Team consisting of representatives from Fiji, Samoa, Tuvalu, USP Law School, and the Pacific Islands Chiefs of Police (PICP). Upon a change of Attorney-General in mid-2006, Tuvalu

withdrew from the Review Team, and Kiribati accepted an invitation to join the team in its place. Further, in late 2006 the Attorney-General of Samoa resigned from her position but was asked to continue to work with the Review Team as an *ex officio* member. A list of team members is attached as Annex 1.

6. The Review Team completed most of its work by email, between December 2005 and January 2007. A first draft of the report was prepared in this manner and circulated to all PILOM members and observers in July 2006 inviting their initial comments. Responses were received from Australia and the Secretariat of the Pacific Community (SPC). One face-to-face meeting (with some members participating by teleconference) was held in Suva on 20 October 2006 to discuss the draft along with the comments received. Following that meeting, the final draft was prepared by the Secretariat in further email consultation with the Review Team.
7. The report of the Review Team is divided into four sections. Section II elaborates briefly on the key common and shared public law challenges faced by Forum Island Countries¹. Section III outlines the shape of the existing regional approaches to law and justice issues, outlining both the relevant institutional arrangements in place at the regional level, and some regional initiatives being undertaken to address specific issues and areas of work. Section IV presents ideas from the Review Team about the role of law officers in regional law and justice cooperation, and consequent recommendations for PILOM.

¹ Forum Island Countries is the Pacific Islands Forum's terminology for its member countries excluding Australia and New Zealand: that is, the Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, Niue, Palau, Papua New Guinea, the Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. These countries (along with Australia and New Zealand) also make up the nominal membership of PILOM.

II. LAW AND JUSTICE CHALLENGES IN FORUM ISLAND COUNTRIES

8. This review reflects a long-held recognition in the region that Pacific Island Countries face many common challenges in the law and justice field. Despite many years of regional discussion and development assistance, these remain difficult to overcome. Among the major challenges are:
- Maintenance of the highest legal, ethical and professional standards;
 - Limited access to legal training in the legal arena;
 - Lack of judges/poorly resourced court systems;
 - Lack of legal drafting resources;
 - Increased pressure of international obligations particularly in the areas of security, technology, environment, and trade;
 - the interaction between Eurocentric legal traditions and indigenous forms of decision making and clan based justice;
 - Land issues;
 - Constitutional and electoral issues.
9. Pacific lawyers operate in a uniquely challenging environment. Those working in government, in particular, are usually required to cover a wide range of responsibilities with very limited resources. This can make it difficult to maintain and enhance their skills in an ever-evolving field like law, with little time and limited access to facilities and communications to facilitate professional development. There are some excellent efforts in place to address these challenges, such as the work of the Pacific Legal Information Institute (PACLII) and professional development opportunities provided by the University of the South Pacific (USP). But the time and workload burdens remain significant and perhaps inevitably so, given the uniquely small size of sovereign Pacific island jurisdictions.
10. Another sensitive but serious issue is the need to maintain flawless ethical and professional standards in environments where the principles of good governance can sit uneasily with political, social and cultural realities. While the public lawyers of the Pacific are overwhelmingly people of dedication and propriety, it can be a particular challenge in the small and tightly-knit societies of the Pacific to exercise their functions without regard to the competing pressures of family and community roles and expectations. More adequate resourcing of legal and justice systems will help, but greater resource-sharing at a sub-regional or regional level may also be a way of mitigating such factors.
11. Meanwhile the workload grows and grows. While the economic effects of globalisation are clearly recognised and debated in the Pacific region as elsewhere, the impacts on the legal sector are no less significant. The relatively recent and

accelerated opening up of Pacific states to the world has brought with it a raft of international obligations in areas covering economics, trade, human rights, security and more. Most new treaties require new or amended legislation, increasing the already high demand on limited legal drafting resources². The impetus toward development through external trade via regional and international trade agreements has imposed particularly significant legislative and regulatory requirements on already stretched small island governments. Beyond ratification and legislative implementation of various treaties, international regimes in areas such as counter-terrorism; maritime security and human rights also have ongoing reporting requirements which put an onerous burden on the small bureaucracies of island states. Developments in technology, while holding enormous positive potential for the regional and global connection of isolated island countries, at the same time give rise to new opportunities for both commerce and crime, and create the need for new and more complex legal regulation.

12. In today's world, Pacific island countries have limited choice about whether and when to adopt and implement international obligations. In the trade and security fields, for example, failure to adopt the latest global standards can have very real impacts in the form of restricted market access, physical access (to ports or airfields), or other specific sanctions. Even in more discretionary fields such as human rights or the environment, domestic and international political pressure to meet global standards is high, not to mention that adopting such standards is often genuinely in the interests of Pacific countries. The problem is having the human resources and capacity to keep up in an increasingly crowded world of international law which is hard enough for any state to adequately manage, and especially so for small Pacific island countries.
13. Court systems in the Pacific are under similar pressure, under-resourced and facing growing difficulty handling the number and diversity of cases before them. Where larger countries with greater resources increasingly move to specialised courts and tribunals to deal with specific and increasingly complex areas of law, small jurisdictions do not have this luxury and indeed, sometimes lack the judicial and related capacity to adequately run the standard court system as it is. This is an area where regional cooperation is already taking place, albeit in something of an ad hoc way, through the secondment of expatriate judges in several jurisdictions and sharing of judicial resources between some small states. There is arguably a need to consider a more systematic regional (or sub-regional) approach to the management of courts and tribunals - generally and/or in specialised areas.
14. In addition to the many institutional challenges facing the public legal systems in the region, there are particular thematic issues which stand out as common challenges for Pacific island jurisdictions. Possibly the most significant of these is the difficult interaction between legal traditions and institutions inherited or adopted from European systems, and indigenous forms of decision making and justice. Some Pacific jurisdictions have established customary courts or arbitration mechanisms

² Legislative drafting has been identified as a particularly problematic area for Pacific island countries, with exponentially increasing workloads up against the lack of resources to allow for the effective development and retention of specialist drafters. These issues were raised at the 24th PILOM in 2005, articulated at a workshop of Pacific legislative drafters sponsored by the Australian government in Canberra in July 2006; and discussed in more detail at a "Pacific working group on Legislative Drafting" convened by the Commonwealth Secretariat in Auckland in November 2006. That Working Group developed a draft Action Plan for addressing these issues, which may be discussed at the 25th PILOM.

which operate alongside the formal justice system, with varying records of success. For most, finding a harmony and consistency between the indigenous and imported in both the legal institutions and the laws themselves, remains a significant challenge. Some of the key legal issues common to many Pacific jurisdictions are directly related to this, including the tension between customary and "western" legal approaches to land tenure, the continuing search for appropriate constitutional frameworks for Pacific nations, manifested in a high rate of constitutional challenge and change, and related challenges to electoral systems and processes when imported arrangements interact imperfectly with Pacific circumstances.

15. This picture of challenge and change, smallness, and commonality within diversity, clearly underlines the point that enhanced communication and cooperation between government law offices in the Pacific has a great deal to offer. It is evident that a significant shared agenda exists, to which stronger regional cooperation through a vibrant, effective PILOM can contribute much.

III. THE EXISTING REGIONAL APPROACH TO LAW AND JUSTICE

IIIA. REGIONAL INSTITUTIONS

a. The Pacific Islands Forum

16. The Pacific Islands Forum is the region's premier intergovernmental organisation. The Forum was founded in August 1971 and now comprises 16 independent and self-governing states in the Pacific³. The annual meeting of Forum Leaders is the Forum's pre-eminent decision-making body. The Forum's administrative arm is the Pacific Islands Forum Secretariat, which is chiefly responsible for ensuring the implementation of decisions made by Forum Leaders, other Forum Ministerial meetings and key Forum bodies. The work of the Secretariat is governed by the Forum Officials' Committee (FOC), which approves the Secretariat's budget and work program, and also makes recommendations to Forum Leaders on substantive policy issues.
17. The early years of the Forum were characterised by a particular focus on trade and economic issues, but over the three-plus decades of its existence the Forum's reach has expanded. In 2004, Forum Leaders articulated the current four goals or "pillars" of the Forum: economic growth, sustainable development, good governance and security.
18. While legal issues arise in connection with all four pillars, and legal sector cooperation is central to both good governance and security, to date most of the Forum's engagement with the legal sector has been in relation to regional security and "law and order" issues. This is beginning to change: an increased focus on good governance, along with the inauguration of the Pacific Plan (see below), increasingly provides a mandate for stronger attention to legal issues and institutions across the board.
19. In the area of regional security, the key Forum mechanism for discussion and decision-making is the annual Forum Regional Security Committee (FRSC) meeting. The FRSC is a meeting of senior officials which focuses on legal and law enforcement issues in the context of enhancing regional security, and provides an opportunity for Forum member countries, as well as regional law enforcement agencies (see below) to articulate and discuss their priorities. FRSC delegations are mostly (though not always) led by officials from Departments/Ministries of Foreign Affairs, and consist of personnel from other line Ministries - as well as law enforcement agencies (particularly police, customs and immigration). Sometimes (but not always) delegations include representatives from justice ministries or state law/Attorney-General's/Crown Counsel's offices.
20. Outcomes and recommendations from the FRSC each year are forwarded to the FOC and, if necessary, to Forum Leaders for approval. In this way the regional security priorities articulated by the meeting, and proposed activities to implement them, are incorporated into the regional agenda and the work program of the Forum.

³ The Forum also engages with one other country and three non-independent territories in the region through their holding either associate member or observer status in the Forum.

21. The Forum does not presently hold any regular ministerial-level meeting of security or law Ministers, although this idea was raised at the 2006 FRSC, and is further discussed at Section IV below.

b. The Regional Specialised Law Enforcement Agencies

22. In the 1992 *Honiara Declaration on Law Enforcement Cooperation*, Forum Leaders mandated greater cooperation among member countries and particularly their law enforcement organisations, to better combat transnational crime in the region. In the Declaration (which was drafted with significant PILOM input), Forum Leaders considered that:

The threats to the stability of regional law enforcement were complex and sophisticated, and the potential impact of transnational crime was a matter for increasing concern to regional states and enforcement agencies. The Forum agreed that there was a need for a more comprehensive, integrated and collaborative approach to counter these threats... law enforcement cooperation should therefore remain an important focus for the region.

23. The Honiara Declaration has been addressed in part through the development of three specialised regional organisations, which feed their perspectives through the Forum Secretariat's Law Enforcement Unit (LEU) to provide a collective view of regional law enforcement issues to the FRSC and through it, to the FOC and the Leaders. The organisations are:

- Pacific Islands Chiefs of Police (PICP); [formerly the South Pacific Chiefs of Police Conference (SPCPC)]
- Oceania Customs Organisation (OCO); and
- Pacific Immigration Directors' Conference (PIDC).

24. The organisations cooperate multilaterally on regional law enforcement issues, while also working bilaterally on certain issues and on their own organisations aims and objectives, which may not be solely law enforcement related⁴.

25. The regional organisations work with the Forum LEU to prepare an annual joint report on future trends in transnational and organised crime in the region, which is tabled and considered by the FRSC. This paper is consolidated at a "pre FRSC" meeting held in advance of the full FRSC meeting. Each of the organisations also presents a report to the FRSC on its own activities, which may not form part of the overall paper. The regional specialised law enforcement organisations' inputs then form part of the overall recommendations of the FRSC, which are forwarded as appropriate to the FOC and to Forum Leaders.

⁴ For example OCO has a focus on Trade Facilitation; PIDC on Pacific Region Immigration Identity Protection; and PICP on Common Standards for Equipment and Resources.

26. Examples of concrete initiatives from the groups in recent years include the development of a joint proposal on Border Management Issues, which the FRSC considered and approved, leading to the establishment of a specific working group on border issues. The groups have also worked together to develop a proposal approved by FRSC in 2006, which will address difficulties in gathering and maintaining information on criminal activity from all Forum members.

c. The Pacific Islands Law Officers' Meeting (PILOM)

27. The Pacific Islands Law Officers' Meeting (PILOM) is an annual meeting of senior government law officers from Pacific countries, most often Attorneys-General, Solicitors-General and senior Crown Counsel. Traditionally, PILOM is attended by all Forum member countries. The location of each annual meeting is whichever country offers to host at the previous meeting, with the hosting country Chairing the meeting and providing secretariat services to it⁵.

28. The agenda for PILOM is determined by the host each year, but mainly consists of presentation of a "country report" by each PILOM member, detailing significant legal developments and issues within that country during the preceding year, followed by questions and discussion. In addition, some hosts have identified a particular theme for the meeting that year and invited guest speakers to address it. Finally, PILOM hosts regularly receive requests from organisations such as NGOs to address the meeting on particular issues; while this is at the host's discretion such requests are usually granted.

29. During the 1990s, in addition to the annual PILOM itself, PILOM convened a law and order subcommittee, which worked in cooperation with partners and experts to develop model legislation on Honiara Declaration issues. For the last several years the subcommittee has not operated and PILOM has not been in the practice of establishing active subcommittees or working groups.

30. Prior to 2006 PILOM did not have a functioning Secretariat, though the proposal to establish a Secretariat had arisen in the past. PILOM 2005 agreed to establish a Secretariat within the University of the South Pacific (USP) with the agreement of the Head of USP Law School, and work commenced in 2006 to establish the Secretariat, using existing USP resources.

31. PILOM has traditionally operated with a relative lack of formality. There are no written rules or guidelines regarding the aims and objectives of the meeting, membership, determination of the annual agenda, or other issues. As a result, attendance at PILOM can vary in number and status, inconsistent decisions are sometimes made from year to year, and at times concerns have been expressed about a lack of clarity within PILOM, as to its role and objectives, and a lack of ability to generate and follow up on substantive decisions.

⁵ PILOM Report to FRSC 2005, tabled by Mrs Alisi Taumoepeau, Solicitor-General of Tonga.

32. On the other hand there has been a view expressed by PILOM members from time to time that they do not wish to formalise the gathering or create a more specific work program for PILOM. Rather, they believe it more appropriate for PILOM to remain "a forum for candid and honest exchanges between officials in the front line without fear of reprisal or unauthorised publication"⁶, but one which does not place demands beyond that on PILOM members.

d. The Pacific Judicial Conference⁷

33. The Pacific Judicial Conference (PJC), formerly known as the South Pacific Judicial Conference, is an initiative of the Chief Justices of the Pacific region. The Conference takes place biennially, but the PJC has no formal structure or permanent secretariat. The participating member countries are American Samoa, Australia, Cook Islands, Federated States of Micronesia, Fiji islands, French Polynesia, Guam, Hawaii, Kiribati, Marshall Islands, Nauru, New Caledonia, New Zealand, Niue, Northern Marianas, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tuvalu, Tonga and Vanuatu. The PJC last met in July 2005 in Port Vila.

34. Like PILOM, the PJC is a stand-alone entity. In fact it does not have any interaction with the Forum or formal relationship to the policy-making processes in the region. The PJC did work with a number of development partners (ADB, AusAID, NZAID, DFID and UNDP) on the development and implementation of a Pacific Judicial Training Project from 1999-2004.

e. Other Regional Organisations

35. To complete the picture of relevant regional organisations, it should be noted that other regional intergovernmental organisations also undertake legal work in their specific areas of expertise. The Secretariat of the Pacific Community (SPC) has a dedicated unit working on Maritime legal issues within its Regional Maritime Program. The Secretariat of the Pacific Regional Environment Program (SPREP) works on regional cooperation in the field of international environmental law, while the Pacific Islands Forum Fisheries Agency (FFA) contributes legal expertise in the area of fisheries. The University of the South Pacific's School of Law of course engages in legal issues at a regional level in a range of ways.

36. There are some other specialised legal or quasi-legal regional organisations in the Pacific. There is an informal coordination mechanism in place for Ombudsman's offices in the Pacific region, the Pacific Islands Ombudsman Forum (PIOF), which operates under the umbrella of the more formalised Asia-Pacific Ombudsman Region. An initial meeting of Pacific Prosecutors (DPPs) in Malaysia in 2005 took a first step toward the establishment of a regional coordinating body for prosecutors, but no information is

⁶ Mending the Nets, p2.

⁷ Information from <http://www.pacjc.com/>, from The Independent, April 5 2004, at <http://WWW.news.vu/en/news/judicial/vanuatu-to-host-the-16th-.shtml> and from ADB technical assistance project document for the Pacific Judicial Training Project, TAR: TRA33274, December 1999.

available about progress to date with this initiative. There are in addition broader international mechanisms (such as Commonwealth senior law officers' and Law Ministers' meetings), in which government law officers in the Pacific participate. A slightly different type of body has recently been inaugurated in the region with the establishment by SPC of the Pacific International Maritime Lawyers' Association (PIMLA). PIMLA is open to maritime lawyers and professionals in the region, and is designed as a specialist body for building contacts, sharing information and offering support to Pacific island countries on maritime legal issues.

37. These are only some of the most directly relevant of the regional coordination mechanisms which group public sector legal personnel and/or focus on issues of relevance to them; Various organisations exist in a range of other specialised fields of interest to government lawyers including trade, information technology, anti-corruption and human rights. These may offer entry points for Pacific law offices seeking regional consultation or advice on those particular issues from time to time.

IIIB. REGIONAL INITIATIVES

f. The Pacific Plan

38. In October 2005, Pacific Islands Forum Leaders endorsed the Pacific Plan for strengthening Regional Cooperation and Integration. The Plan aims to create stronger and deeper links among Pacific Island Countries, and to identify where the region can gain the most by sharing resources, adopting joint or harmonised governance measures and aligning policies.⁸
39. The regional initiatives identified in the Pacific Plan are grouped under the Forum's four pillars of Economic Growth, Sustainable Development, Good Governance and Security. They are also divided according to priority into three categories - matters capable of immediate implementation, matters which might be agreed in principle but which require more development, and a third category of initiatives which need further analysis and consideration before they can be supported. Very many of the Plan's proposals will require national legislative measures (particularly harmonisation of laws) and/or regional legal arrangements to realise; a few focus specifically on legal structures and institutions themselves.
40. There are twenty-odd immediate priorities in the Plan. Some which specifically relate to the law and justice sector are:
- Regional support to consolidate commitments to key institutions such as audit and ombudsman's offices, leadership codes, anti-corruption institutions and departments of Attorneys'-General; including through judicial training and education;

⁸ For more information, the Pacific Plan itself and related documents, see www.pacificplan.org

- Enhancing the harmonisation of traditional and modern structures and values including strengthening of traditional courts, and development of models for land ownership, tenure and use;
 - Pursuit of the Pacific strategy for legal development and law enforcement to enhance regional security and combat transnational crime (the Pacific Regional Security Technical Cooperation Strategy);
 - The upgrading and extension of country and regional statistical information systems and databases across all sectors, including judicial information and technology services;
 - Support for the ratification of international and regional conventions and agreements in priority areas such as human rights, security and anti-corruption, and for meeting obligations undertaken in doing so.
41. Inclusion of these initiatives in the Plan is designed to concentrate the efforts of the Forum Secretariat, its member governments and their development partners on their achievement from 2006-2008. Articulation in the Plan also aims to encourage consideration of whether and when existing activities might require a shift in focus towards a more regional approach, or changes to current resourcing, if gains are to be made in the next three years.
42. There are a number of more bold initiatives raised for further analysis and consideration in the Plan, many of which impact directly or indirectly on law offices' work, including:
- Expanding judicial training and education through PILOM, the Pacific Judicial Conference, national law societies and the USP law school;
 - Creating a register of judges and public prosecutors to serve on appellate or trial courts in different countries;
 - Harmonising court structures, names, jurisdictions and procedures;
 - Creating a regional final court of appeal;
 - Creating a regional judicial mechanism for extra-constitutional crises;
 - Creating a Pacific human rights charter under a regional human rights commissioner;
 - Creating a code of conduct for transnational corporations;
 - Creating a regional competition commission;
 - Creating a regional Intellectual Property Rights (IPR) strategy;
 - Creating a regional regulatory reform blueprint;
 - Developing regional media standards & regulations.

The Plan requires the Forum Secretariat to analyse these "category three" initiatives further over the medium term, in consultation with members and stakeholders, to present more considered recommendations about their value and feasibility.

43. These lists demonstrate that at least some of the key challenges identified in Section I above have been recognised at a regional level in the Pacific Plan. The Plan should provide a greater political mandate and access to resources for addressing these issues. However, developing and implementing specific activities to achieve the Pacific Plan" initiatives remains a significant challenge and will require the input and support of government lawyers in Forum member countries.
44. Moreover, it can be seen that the Pacific Plan does not presently encompass (or perfectly match) the range of regional legal sector priorities identified by PILOM members in recent years and articulated in this Review. For example, the lack of resources for review and drafting of legislation in the region, though a clearly stated and urgent priority identified by PILOM members⁹, and one potentially open to regional solutions, is not specifically recognised in the Plan. There is undoubtedly scope for additional specialist input from Forum member governments' expert legal advisers to ensure the Plan well reflects their needs and priorities. The high profile the Plan has taken on as a fundamental blueprint for regional development provides an unprecedented opportunity for government lawyers to use the Plan as a vehicle for garnering high-level support and resources towards the achievement of their shared goals.
45. The Pacific Plan remains open to such input. Forum Leaders and the Secretariat acknowledge that the consultation process undertaken to develop the Plan, while extensive, was incomplete. It has been strongly stressed that the Plan is and should be a "living document" and it is subject to a process of annual review. In that sense, the effective consolidation and provision of advice from the government lawyers of the region on the most pressing priorities and the best ways forward, is crucial to ensuring an appropriate and achievable set of legal sector initiatives in the Plan. PILOM could be a vehicle for the articulation and communication of this crucial information.

g. Regional Assistance in Criminal Matters

46. Cooperation in criminal matters has been the subject of a good deal of attention and activity in the region for over a decade. Much of this work has occurred under the aegis of the Forum, in implementation of the Honiara Declaration, the 2002 *Nasonini Declaration on regional security and terrorism*, and now the security pillar of the Pacific Plan.
47. A key activity has been the development and implementation of regional model legislation in specific areas prioritised in the Honiara and Nasonini Declarations. Model laws have been drafted on extradition, mutual legal assistance, proceeds of crime, transnational organised crime, terrorism, weapons, drugs, and sexual offences. The Forum Secretariat has been asked by the regional law enforcement agencies, through the FRSC, to develop a regional model law on electronic crime, and will

⁹ See above note 2.

commence work on this soon. In 2006 the FRSC agreed that a working group be convened to review, develop and update regional Customs legislation. As noted above, in the 1990s PILOM played a key role with the Secretariat and other partners in the development of the model laws, through its law and order subcommittee. In more recent years, the subcommittee no longer exists, and engagement by law offices in this work has dropped away.

48. Meanwhile take-up of the model legislation by member countries has generally been disappointing; notwithstanding that in-country drafting and implementation assistance has been offered for several years. In this case there is at minimum a communication problem, and perhaps more seriously, a "disconnect" between Forum Leaders' and FRSC's articulation of regional priorities, and the real action priorities at the national level. That issue needs to be frankly discussed and addressed within member countries as well as regionally, and PILOM members' input would add much value to such an analysis.
49. Other donors and organisations are also working in the region to assist Forum Island Countries with the legal aspects of transnational crime. These include:
 - Legislative drafting assistance offered bilaterally by Australia, New Zealand, and the Commonwealth Secretariat, in specific but often overlapping areas of terrorism and transnational crime (one example is Australia's assistance to PNG to draft and enact its suite of Extradition, Mutual Assistance and Proceeds legislation in 2005);
 - Two major new regional programs on anti-money laundering and countering the financing of terrorism: Australia's Anti Money Laundering Assistance Team (AMLAT) and the US-funded Pacific Anti-Money laundering Program (PALP) operated through the Forum Secretariat, in addition to assistance and coordination facilitated by the IMP and the Asia-Pacific Group on Money Laundering;
 - New Zealand's project assisting Forum Island Countries to meet their counter-terrorism reporting obligations to the UN;
 - Legislative and other assistance offered by the UN (particularly CTED and UNODC) on various issues including terrorism, drugs, mutual assistance and proceeds of crime.
50. Sometimes there is good coordination between the programs of the regional organisations, partners and donors. In other cases the activities overlap with and even duplicate each other. While the Forum Secretariat seeks to operate as a "hub" for coordination and cooperation to avoid such duplication, its success to date has been mixed. The Forum Secretariat has not always coordinated effectively, but it also does not and can not control the decisions of other donors and organisations when their commitment to coordination is limited. There is a need for much better coordination within the region, particularly if regional Governments support the goal of harmonisation of legal frameworks to ensure the most efficient cooperation in legal criminal matters. Substantive discussion of regional legal initiatives and expert views from PILOM to FRSC and directly to other donors, could assist both in effective coordination of initiatives and in keeping donors and partners informed so they can

better respond to recipients' needs and priorities.

h. Other Legal Initiatives of Donors/Partners

51. Beyond the sphere of transnational crime, there are many bilateral and regional activities going on in the Pacific in law and justice. The Forum Secretariat's attempts to assemble comprehensive data on donor activity under the auspices of the Pacific Plan have demonstrated that it is all but impossible to provide a complete and accurate picture of what is taking place, but some key initiatives of direct relevance known to the Review Team are:
- Australia's Attorney-General's Department has launched a Pacific Legal Knowledge Program, which provides short-course training opportunities to government lawyers from Pacific island countries in specific competencies. Courses provided to date have covered international criminal cooperation and legislative drafting.
 - The Crown Law Office of New Zealand undertakes an annual litigation skills training course, coordinated through PILOM. Anecdotal feedback from PILOM members indicates that this course is highly regarded.
 - The Government of Australia: (AusAID, AFP and AGD) has bilateral law and justice Projects taking place in a number of countries in the Pacific.
 - A new five-year Judicial Development Program funded by AusAID and NZAID is commencing in 2007. This will build on the previous Judicial Training Program operated in cooperation with PJC from 1999-2004.
52. More specialised legal assistance is provided by a range of actors in specific areas. Examples include legal assistance from the WTO, EU, Commonwealth and Forum Secretariats to negotiate and implement regional and international trade agreements, assistance from CROP organisations to develop legislation on environmental issues, maritime issues and traditional knowledge, and assistance from UN and other bodies for the ratification and legislative implementation of international human rights laws.

IV. THE ROLE OF LAW OFFICERS: RECOMMENDATIONS FOR PILOM

53. This Review takes as a starting point that regional cooperation between law officers should be enhanced by working primarily through PILOM, as the extant and long-standing forum for this purpose, rather than individually or through a completely new mechanism. The Review further takes as recognised that PILOM members believe PILOM could and should be more active and effective than it is at present.

54. As noted in paragraph 32 above, there may be some divergence of view among PILOM members about this. Nevertheless, the discussion at PILOM 2005 which led to the decision to commission this Review indicated PILOM's desire to at least reconsider these issues. To once again quote the Attorney-General of Samoa in *Mending the Nets*:

Too often, countries 'reinvent the wheel' over and over again rather than benefiting from the same work having been completed in a neighbouring island state. It is time that all these benefits were available to PILOM members collectively and individually, and time also that PILOM extends its reach beyond our very constructive annual meetings to a year round contribution to law and order in the region.

55. The Review Team agrees. We would like to see a PILOM that:

- is active and dynamic;
- supports law officers in their work through enhanced communication, information sharing and practical cooperation at a regional level;
- determines its own agenda and priorities;
- articulates strategies to pursue them;
- initiates processes and mechanisms capable of following them through; and
- contributes a clear and constructive perspective from senior law officers on regional legal issues to inform and guide the work of donors, partners and regional organisations.

56. The Review Team has identified three broad "levels" at which PILOM's engagement and role in regional legal cooperation can be enhanced. These, and their implications for PILOM, are considered below in turn.

a. Level 1: PILOM and the regional security/law and order agenda

57. As set out above, there is already an active group of bodies (the regional law enforcement agencies) and coordination mechanisms between them (the FRSC and related Forum processes), for the determination and implementation of regional security/law and order priorities.

58. There is a general recognition that the regional security work does have a significant "gap", however, with a strong focus on and input from law enforcement but much less engagement from the legal side. In 1992 the Honiara Declaration "appreciated the key role played by PILOM in coordinating regional concerns, and the growing cooperation

between PILOM and the Forum Secretariat", but in recent years that coordination and cooperation has not remained strong. The regional law enforcement organisations, through FRSC and elsewhere, have consistently indicated their support for a stronger PILOM role in their joint activities. Despite the absence of specific PILOM representation at FRSC 2006, PILOM was raised and the FRSC expressed its keen desire to see PILOM more effectively engaged in regional cooperation on security issues. The FRSC recorded its strong support for this Review and for the establishment of the PILOM Secretariat.

59. It is suggested that at a minimum PILOM should attend the annual FRSC meeting to provide input into FRSC discussions from the legal/law officers' perspective, and to table a report on PILOM's activities and any recommendations PILOM has for the Forum through FRSC on law and order issues. PILOM is in fact invited to FRSC every year and there is a space on the agenda for it to table a report, but PILOM representation at FRSC has been patchy in recent years. This task has until now fallen to the immediate past host (Chair) of PILOM, which for some countries has been difficult to manage. The establishment of a PILOM Secretariat may be of value in assisting the PILOM Chair with preparation of the PILOM report to FRSC and engagement with the Forum more generally.
60. More specifically, there is scope for PILOM to play a larger role in engaging in regional working groups and initiatives established by FRSC. For example, the Informal Working Group on Border Management Issues established by FRSC in 2005 has indicated that it would welcome -in fact, strongly encourage - PILOM representation in the group. A working group is shortly to be set up to consider policy and model legislation on electronic crime, and would greatly benefit from PILOM representation. PILOM's more consistent engagement in the FRSC would enable it to be aware of the regional law and order work taking place, and to participate from the outset in the development and implementation of new regional security priorities and initiatives.

Recommendations:

1. *That PILOM makes a commitment to participate in, and table a report at, the Forum's Annual Regional Security Committee Meeting, with the support of the PILOM Secretariat as required. The PILOM representative/s to each FRSC meeting should report back to the next annual PILOM meeting for information and appropriate action on FRSC issues.*
2. *That PILOM nominates a representative to participate in the Forum's Informal Working Group on Border Management Issues.*
3. *That PILOM nominates a representative to participate in the Forum's Working Group on Electronic Crime.*

b. Level 2: The broader regional legal agenda, and PILOM's role

61. Mending the Nets articulates well, and this Review affirms, that beyond the security/law and order area, there is a broad array of other challenges shared by Attorney-General's, Crown Counsel's or State Law Offices in Pacific countries - from court resourcing to legal drafting to land to customary law to human rights to trade - and that at present PILOM does not work as well as it could as a mechanism for regional exchange and communication on this range of issues. Many are identified as regional priorities in the Pacific Plan and elsewhere, and some are already the subject of mechanisms for regional consideration and cooperation in which PILOM is not presently involved. The question arises as to how PILOM can better engage in the implementation of these priorities and processes.
62. The Review Team believes that this requires a re-consideration of the nature of PILOM itself. At present the annual PILOM .mostly consists of the presentation of country reports. Although common and shared issues often arise from these, PILOM is not well structured to allow for focused discussion of the issues arising, nor for follow-up decisions and action. An issues-based and action-oriented PILOM agenda, based on priorities identified by PILOM itself, with country reports used as supporting information resources rather than the actual focus of the meeting, would better facilitate PILOM's desire to substantively address regional legal priorities.¹⁰
63. The full range of challenges facing law offices is no doubt too large to be covered in a three-day meeting each year. But through prioritisation by PILOM itself, and through a preparatory process undertaken by the host country and the PILOM Secretariat in consultation with members each year, a manageable, relevant and action-oriented agenda could be developed to guide the Meeting. Actions agreed on the issues discussed could be delegated to subcommittees or working groups as necessary, which report back to the following meeting. For some issues, it may be a matter of PILOM agreeing on recommendations to the Forum or other partners to guide their work on a particular legal issue. Standing agenda items would be followed up from meeting to meeting as required. The agenda would be primarily thematic, with tabling and discussion of country reports in a shorter session directed towards contributing perspectives to the issues under discussion as well as identifying potential new priorities for PILOM arising from common themes emerging from the country reports.
64. Implicit in this is the need to ensure PILOM's agenda remains focused on its self-identified priorities. In the past, in addition to country reports, PILOM is often requested by external groups such as NGOs to make presentations on particular issues of interest to them. While these presentations can be informative and valuable, they contribute to a further weakening of the focus of PILOM, and eat into the time available for PILOM to

¹⁰ In this context it is worth noting that when consulted on the 2006 PILOM agenda, one member (PNG) suggested that instead of focusing on country reports, the meeting might discuss pertinent legal issues affecting or having implications for the region, such as reciprocal enforcement of judgements, matrimonial orders, transnational crimes, e-laws, counter-terrorism, legal migration (e.g. movement of professionals within the region), mutual assistance requests, extradition, and freedom of information.

consider its own priorities. It is suggested that the PILOM Host and Secretariat should carefully consider such external requests against the need for a focused meeting, particularly where a number of requests are received. PILOM may wish to further consider alternative options for such groups to provide their messages to the meeting, such as inviting them to circulate written materials, or to arrange a side presentation on the margins of the main meeting.

65. In support of its new active posture, each annual PILOM would produce an outcomes document setting out the decisions made, actions agreed upon and any recommendations for Forum bodies or other partners and organisations. This would guide PILOM members and clarify its role and ongoing work program from year to year. It would also ensure that perspectives from PILOM on key issues could be fed into the consideration of regional decision-making bodies such as the Forum's FRSC, Pacific Plan Taskforce, Forum Officials' Committee or even Forum Leaders as appropriate.
66. A more substantive structure for PILOM will absolutely make the Meeting more valuable for members. To make it work, members need to be willing and able to take action on PILOM decisions between meetings. This may mean participating in working groups or subcommittees established by PILOM on particular issues, or being prepared to represent PILOM on existing regional groups or committees already working on others. It may require active participation in electronic discussions, or providing feedback on inter-sessional papers on PILOM matters, as well as commenting on the agenda and pertinent issues in the lead up to each annual meeting.
67. Given the very real concerns raised in this Review and elsewhere about the large workloads and competing demands on the time and energy of law officers in Forum Island Countries, finding people and time for these tasks will continue to be a challenge. A dedicated and adequately resourced Secretariat can help immensely (see below), but there is no escaping the reality that PILOM members need to make decisions about where some time and effort put into regional cooperation and action is likely to lead to larger savings in time and resources for their office and their country - such as the production of model legislation which can be used by the country, improved ability to tap into shared information and resources, and ensuring access to appropriate regional cooperation and assistance. If better regional information sharing, coordination and cooperation on any given issue is a means to easing the burden and increasing the effectiveness of PILOM members' work at the national level, it will reward the investment of time and resources.

Recommendations:

4. *That PILOM agrees to move to a meeting structure that focuses on identifying and discussing key issues arising for law officers in the region, and agreeing on appropriate actions to address them. That PILOM retains the tradition of tabling country reports but devotes less meeting time to their presentation.*
5. *That the 25th PILOM identifies one or two key regional legal issues as thematic priorities for focus at the 26th PILOM. The 25th PILOM may wish to task the Secretariat with facilitating the preparation of brief discussion papers on these by a*

working group of members, or a suitable expert, to support a substantive discussion at the next PILOM.

6. *That the host of the 26th PILOM works with the PILOM Secretariat on the development of an issues-based agenda focusing on these priorities, and consults with PILOM members prior to the meeting on the agenda.*
7. *That PILOM produces an outcomes document at each meeting, commencing with the 25th PILOM recording the agreed actions of the Meeting and directing any recommendations to other bodies as appropriate.*

The PILOM Secretariat

68. If PILOM is to develop into an active and issues-based organisation, there is little doubt that an appropriately resourced Secretariat will be necessary to support it. This has been recognised in the past, and the 24th PILOM in 2005 reaffirmed that establishment of a Secretariat was necessary, agreeing upon the Terms of Reference attached as Annex 2. While real commitment from members is necessary, the Secretariat will need to play a proactive role in developing and sustaining the "new" PILOM.
69. In the broadest terms, the PILOM Secretariat should set up mechanisms for information-sharing, consultation and communication among PILOM members between annual meetings, including through the establishment and maintenance of a PILOM web site and email contact network. The Secretariat should be a "home" for the corporate memory (contacts lists, documents, papers etc) of PILOM. The Secretariat should provide substantive as well as administrative support to the host country in preparing for and running PILOM each year, particularly assistance with formulating and consulting on the agenda, arranging speakers, distribution of papers and so on, and drafting of meeting notes and outcomes at the meeting itself.¹¹ In addition, the Secretariat would be responsible for facilitation, administrative support and record keeping for meetings of any working groups or subcommittees established by PILOM, as well as assisting the Chair where necessary with other duties such as reporting to FRSC.
70. In 2005, PILOM welcomed USP's offer to undertake the Secretariat role. The limited progress made in 2006 with the Secretariat, however, has perhaps indicated that this role is more challenging than USP had anticipated.¹² Recognising this, the Review Team revisited the Secretariat question and identified three options for the placement of the Secretariat:

¹¹ As a first step, a key task for the Secretariat in 2007 could be to analyse *Mending the Nets*, this review, recent PILOM members' country reports and any other relevant documents, to identify common issues raised by PILOM members, and use this to develop a draft agenda of substantive issues and activities for PILOM's consideration, for consultation with members at the next PILOM meeting.

¹² The Review Team recognises that the 2006 restructure of USP had implications for the early start-up of the Secretariat, and would welcome a perspective from USP regarding its willingness and capacity to undertake the Secretariat role within the new structure.

- a. retention of the Secretariat with USP, to be housed within the Law School either on the Suva or Port Vila campus, with dedicated resources to increase its effectiveness;
- b. housing the PILOM Secretariat with the Pacific Islands Forum, Secretariat;
- c. location within a member country's law office. In considering this, the Review Team felt that locating the Secretariat within a Forum Island Country's law office may not be feasible, as the limited resources and competing priorities in these offices created a high risk of diversion of PILOM Secretariat staff into national priorities. Based on this logic, the location proposed was either the New Zealand Office of Crown Counsel, or the Australian Attorney-General's Department.

As the Review Team was not unanimous in its support for one of these options, it recommends that PILOM discuss this issue and, agree upon the ideal placement for the Secretariat, in consultation with the bodies in question.

71. Wherever the Secretariat is based, it is the view of the Review Team that it will need dedicated resourcing. The list of tasks envisaged in the Terms of Reference and arising from this Review is substantive, particularly in the early stage of development of PILOM and the Secretariat. As experience has shown, and as PICP noted, even with the best will in the world, this is not a realistic expectation "on top of people's day jobs".¹³
72. An indicative budget for the costs that may be involved for a dedicated Secretariat is attached as Annex 3. Obviously more definite costs will depend on the final location and structure of the Secretariat. Donors including Australia and New Zealand have indicated informally their willingness to consider a well-formed request for support in this regard, but work will need to be undertaken by the Secretariat host (perhaps in consultation with the PILOM Chair and/or a working group) to finalise a budget and seek and secure donor support.
73. The Review team canvassed a number of ideas for resourcing the Secretariat over the longer term, including the possibility of periodic secondments of an officer from a member country - either for, say, 12 months at a time, or alternatively, for the three or so months leading up to each annual meeting. These ideas are worthy of further consideration once the basic Secretariat is up and running effectively. In addition, PILOM may wish to discuss (now or in the longer term) the desirability of instituting a system of member contributions toward the running of the Secretariat.
74. The Review Team understands that Australia has also developed a paper on options for the PILOM Secretariat, which will be tabled separately and provide further analysis for PILOM's consideration.

¹³ PICP notes to Review Team in email of 21 July 2006.

Recommendations:

8. That PILOM agrees upon the best location for its Secretariat, and formally requests the nominated body to confirm its commitment to housing the Secretariat.
9. That PILOM endorses in-principle the resource needs of a Secretariat equipped to support the "new" PILOM as proposed at Annex 3 (or as otherwise agreed), and nominates a working group inclusive of the host body to finalise a budget and seek donor funding accordingly in 2007, with the aim of ensuring that the Secretariat is appropriately staffed and resourced prior to the 26th PILOM.

c. Level 3: Setting the agenda itself -who and how?

75. A more active PILOM does not necessarily imply involvement in the political processes of policymaking and priority-setting. As outlined above, regional priorities in legal and related fields have been articulated by Forum Leaders through the Pacific Plan and other regional statements and documents. PILOM can enhance its role in facilitating law officers' regional engagement within the existing policy framework.
76. At the same time, it is undoubtedly true that as key government officials at the "coal-face" of a large number of national issues, law offices have something valuable to contribute to agenda and priority-setting at the regional level. As noted above, the Pacific Plan may not accurately or fully reflect the key needs and opportunities for regional legal cooperation and integration in the Pacific. Should there be a regional Ombudsman and anti-corruption institution? A regional final court of appeal? Should there instead (or in addition) be a regional law reform commission and/or legal drafting institution? Are there other, more important priorities? Are the governments of the region, and their regional organisations, spending their money and energy in the right places? The perspectives and concerns of government lawyers are arguably not being heard when Leaders and Ministers of the region meet to determine and refine the regional agenda.
77. There are understandable limits, however, on PILOM members' willingness and ability to address such questions and make recommendations to Forum Leaders on them. Not only are PILOM members "mere" officials; most are constitutional office-holders and as such, many feel strongly about maintaining a deliberate arms' length from the political and policy processes of government. Nevertheless the legal perspective is crucial and needs to be heard.
78. Providing PILOM recommendations to relevant Forum and/or other bodies through its annual outcomes document, as proposed above, will provide policymakers with senior law officers' views on an ongoing basis, to the extent that PILOM members are collectively comfortable in expressing them. At the same time, it seems to the Review Team that the current period of major regional initiative and change calls for some Ministerial consideration of key legal issues. In the longer term, there may be value in considering a regional legal meeting at Ministerial level. This would arguably have advantages for both the Forum and PILOM (and by extension their members) by articulating a more focused mandate for regional legal work.

79. While proposing a Ministerial meeting is probably too ambitious while PILOM and its Secretariat are going through their own significant (re)construction, once the PILOM reform is complete and both PILOM and its Secretariat are operating at their full potential this could be approached. The Review Team envisages this would not be realistic prior to 2008.
80. Should a Ministerial meeting be supported in-principle, it could be pursued through (PILOM recommending it to) the Forum, as an initiative of PILOM itself, or as a cooperative venture between the two. Whatever model was adopted, the arrangements and agenda would naturally require more detailed consideration, and close consultation between PILOM and the Forum Secretariat.

Recommendation:

10. *That PILOM gives consideration to the value of proposing a Pacific Law Ministers' Meeting in 2008 or after, and if it is supported, agree to keep this under review and give further consideration to the optimum timing for such a meeting at the 26th PILOM.*

SUMMARY OF RECOMMENDATIONS

Recommendations about PILOM reform

1. That PILOM makes a commitment to participate in, and table a report at, the Forum's annual Regional Security Committee Meeting, with the support of the PILOM Secretariat as required. The PILOM representative/s to each FRSC meeting should report back to the next annual PILOM meeting for information and appropriate action on FRSC issues.
4. That PILOM agrees to move to a meeting structure that focuses on identifying and discussing key issues arising for law officers in the region, and agreeing on appropriate actions to address them. That PILOM retains the tradition of tabling country reports but devotes less meeting time to their presentation.
5. That the 25th PILOM identifies one or two key regional legal issues as thematic priorities for focus at the 26th PILOM. The 25th PILOM may wish to task the Secretariat with facilitating the preparation of brief discussion papers on these by a working group of members, or a suitable expert, to support a substantive discussion at the next PILOM.
6. That the host of the 26th PILOM works with the PILOM Secretariat on the development of an issues-based agenda focusing on these priorities, and consults with PILOM members prior to the meeting on the agenda.
7. That PILOM produces an outcomes document at each meeting, commencing with the 25th PILOM, recording the agreed actions of the Meeting and directing any recommendations to other bodies as appropriate.
10. That PILOM gives consideration to the value of proposing a Pacific Law Ministers' Meeting in 2008 or after, and if it is supported, agree to keep this under (review and give further consideration to the optimum timing for such a meeting at the 26th PILOM.

Recommendations about the PILOM Secretariat

8. That PILOM agrees upon the best location for its Secretariat, and formally requests the nominated body to confirm its commitment to housing the Secretariat.
9. That PILOM endorses in-principle the resource needs of a Secretariat equipped to support the "new" PILOM as proposed at Annex 3 (or as otherwise agreed), and nominates a working group inclusive of the host body to finalise a budget and seek donor funding accordingly in 2007, with the aim of ensuring that the Secretariat is appropriately staffed and resourced prior to the 26th PILOM.

Recommendations about Specific Issues

2. That PILOM nominates a representative to participate in the Forum's Informal Working Group on Border Management Issues.
3. That PILOM nominates a representative to participate in the Forum's Working Group on Electronic Crime.

PILOM REVIEW TEAM

Mr Nainendra Nand
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Ms Brenda Heather-Latu to December 2006, then *ex officio* member
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PACIFIC ISLANDS CHIEFS OF POLICE SECRETARIAT

Ms Shennia Spillane
Legal Adviser
PACIFIC ISLANDS FORUM SECRETARIAT

TERMS OF REFERENCE PILOM SECRETARIAT

[As agreed by the 24th PILOM Port Vila, September 2005]

1. Provide general secretarial services and support to PILOM, the PILOM Chair and host authorities;
2. Assist hosting countries in the organisation of the annual meeting of PILOM;
3. Establish and maintain a PILOM website;
4. Establish an information and communication network and provide operational support for it, so as to enable information sharing and discussion between the members of PILOM, and with its associates;
5. Maintain the records of PILOM including minutes of its annual meeting and records of correspondence, and make these accessible to members as required;
6. Facilitate the implementation of all PILOM resolutions;
7. Report to the PILOM annual meeting on the work carried out by the Secretariat in the past year;
8. Undertake such other acts as PILOM may direct from time to time; and
9. Seek independent funding support for all of the above.

INDICATIVE BUDGET FOR PILOM SECRETARIAT

Year 1

This budget is intended to provide a rough guide for consideration only, and is based on estimated costs if the person were to be based at (although not integrated with) the Pacific Islands Forum Secretariat in Suva.

Costs (in Fiji Dollars (FJD))

STAFF

Coordinator, PILOM Secretariat	60,000
Admin Assistant, PILOM Secretariat	22,000
Recruitment costs	20,000
Total	102,000

OFFICE COSTS

Subsidised rent of office space	6,500
Purchase of equipment and stationery	20,000
Telephone, internet, publishing	10,000
Total	36,500

TRAVEL COSTS

airfare/accommodation/per diem

2 staff to annual PILOM meeting	10,000
Coordinator to attend FRSC meeting	5,000
Coordinator one visit to host country	5,000
Total	20,000

<u>INDICATIVE TOTAL</u>	<u>158,500</u>
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