



PILON Secretariat

Pacific Islands Law Officers' Network Annual Meeting Outcomes Report 11 – 12 November 2014, Kiribati

The Chair, the Attorney General of Kiribati, Titabu Tabane convened the 33rd Pacific Islands Law Officers' Network (PILON) annual meeting in Tarawa from 11 - 12 November 2014, with the theme of *"Combating Environmental Crimes in the Pacific: Issues and Best Practices"*.

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

The following observer members also attended: the Pacific Islands Forum Secretariat; Pacific Legal Information Institute (PaLI); International Committee of the Red Cross (ICRC); University of the South Pacific (USP); and the Secretariat of the Pacific Community's Regional Rights Resource Team (RRRT). Representatives from the South Pacific Lawyers' Association (SPLA), the New Zealand Parliamentary Counsel Office, Pacific Islands Chiefs of Police (PICP) Secretariat, the International Federation of the Red Cross and Red Crescent Societies (IFRC) 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 an opening prayer and the handover of the PILON Chair.

A. Opening Ceremony

The Honourable Teima Onorio, Vice President of Kiribati provided the official opening address to PILON members on behalf of the Government of Kiribati. Ms Onorio welcomed member country delegates and representatives of regional and international organisations who support PILON member countries, and thanked them for their efforts in travelling to Kiribati.

Ms Onorio noted that the last time Kiribati hosted the annual meeting in 2007, history was made in that the delegates resolved to change the name of the Pacific Islands Law Officers' Meeting to its current name, PILON with its focus on networking.

The Vice President asserted that the Pacific region is no longer socially or economically isolated and cannot allow important decisions in the international arena to be made only by other larger countries. Ms Onorio suggested addressing the multiple dimensions of environmental crime and its implications for development at the national and regional levels through: acknowledging the seriousness of environmental crime and the importance of law enforcement in effective environmental governance; coordinating regional approaches to addressing environmental crime; providing more resources for national and regional environment agencies that investigate and prosecute these crimes; assisting small and least developed island States to train their law enforcement officials and provide them with better technology; awareness for consumers that they might be buying illegal products; and, moving from moral commitments to imposing stricter and broader environmental protection laws.

The Vice President concluded by wishing the delegates a fruitful meeting and a happy stay in Kiribati.

B. Outgoing PILON Chair's address

Mr 'Aminiasi Kefu, Acting Attorney General and Director of Public Prosecutions, commenced the meeting with an official address to PILON members on behalf of Tonga, as the outgoing Chair. Mr Kefu started by thanking the Kiribati Government and Office of the Attorney General for the warm welcome and outstanding hospitality, which had been shown to delegates since their arrival.

On behalf of the Executive Committee, the outgoing Chair thanked Members for their support of PILON. The outgoing Chair highlighted that it had been a busy year for PILON and another important year for the development of the network.

Mr Kefu acknowledged the theme for this year's meeting and expressed hope that the discussions and resulting outcomes were productive. There was acknowledgement that as public law officers, PILON members are committed to making the world a better place today as well as for future generations.

The outgoing Chair thanked the Secretariat for their work throughout the year advancing PILON's strategic objectives and representing it at international and regional forums. Thanks were also expressed to staff of the Tongan Attorney General's Office for their support in carrying out duties as directed by the Chair.

Mr Kefu ended by wishing the best of luck in his role to incoming Chair, Mr Titabu Tabane and also wished delegates luck with the meeting.

C. Incoming PILON Chair's address

Mr Titabu Tabane, Attorney General, Office of the Attorney General of Kiribati assumed the Chairmanship of the meeting and expressed thanks to the Vice President for setting the tone for discussions. Mr Tabane provided an opening address to PILON Members and welcomed delegates to Tarawa.

Mr Tabane acknowledged the contribution of Mr 'Aminiasi Kefu in chairing PILON for the past year, and the guidance provided to the Executive Committee and the Secretariat. The Chair expressed his thanks to Mr Kefu, Tonga and to the Tongan Attorney General's Office for the work carried out during the past year.

Mr Titabu expressed thanks to the Secretariat for their hard work and dedication over the past year as well as for their future support in the coming year.

D. Session One - Presentations

- **Combating Environmental Crime in the Pacific: Trends and Best Practices** - Lorraine Kershaw, International Legal Adviser, Pacific Island Forum Secretariat (PIFS)

The presentation sought to set the scene for the theme of the meeting by providing a high-level overview of the different types of activity that constitute 'environmental crime', the global impact of environmental crime and the political recognition within the Pacific of threats posed by environmental crime. The presentation highlighted the nature of the threats presented by two of the most serious and prevalent types of environmental crime in the Pacific region – being illegal trade in wildlife (or biodiversity crime) and natural resources-related crime (such as illegal logging/mining/fishing) – drawing on assessments prepared by the Forum Secretariat in collaboration with regional law enforcement organisations, and by the UN Office of Drug and Crime.

Acknowledging the need for multi-dimensional responses to environmental crime, the presentation observed that legislative frameworks for environmental crime were commonly regarded as insufficient and could be strengthened and harmonized (in particular penalties) to provide greater deterrence. Further, environmental crime laws needed to be appropriately connected and consistent with other relevant criminal laws, such as proceeds of crime and seizure of assets legislation and as extradition and mutual assistance schemes.

- **Climate Change – Legal Dimensions:** Mr Andrew Teem, Senior Policy Adviser, National Policy Unit, Office of Te Beretitenti, Kiribati

A presentation was provided by Mr Andrew Teem on the legal dimensions of climate change in Kiribati.

Mr Teem discussed the science behind the impact of climate change on Kiribati. He also highlighted the climate change international legal framework, the United Nations Framework Convention on Climate Change. The presentation considered the impact on a State's resources and people's cultural rights as a result of climate change, including when the land itself is no longer available.

Acknowledging that climate change and its impacts are not currently legally actionable, Mr Teem encouraged lawyers to still consider what can be done to address climate change impacts on countries and people.

Discussion following the presentation canvassed several issues including:

- the impacts of loss of physical territory (caused by climate change) on the legal status of a State. It was observed that the international law implications of deterritorialisation was the subject of academic research and analysis which could further inform Members' understanding of the issue; the ways in which government lawyers could play a role in climate issues, for example i.e. contributing legal analysis and drafting on national positions in international climate change negotiations, such as the UN Framework Convention on Climate Change ; and providing legal advice to governments when they enter into financing agreements for climate change projects.

At the conclusion of the discussions, members noted:

- The potential assistance to Pacific Island Countries from the 2020 Climate Change Support Agreements was discussed. It was agreed that PILON members should investigate how they might best benefit from these agreements and NZ offered to provide technical assistance in this area regarding intended nationally determined contributions. The PILON Secretariat will circulate further information on these proposed agreements and contact details for relevant NZ officials who may be able to assist.

E. Session Two - Illegal Fishing Panel

- ***Combating Fisheries Crime using the Vessel Monitoring System (VMS): Evidential Issues and Examples of Successful Prosecutions from NZ:*** Morgan Dunn, Senior Solicitor, Ministry for Primary Industries, New Zealand

Morgan Dunn, Senior Solicitor in the Prosecutions Team of the Ministry for Primary Industries, New Zealand, spoke about "Combating Fisheries Crime Using the Vessel Monitoring System (VMS): Evidential Issues and Examples of Successful Prosecutions in New Zealand". The presentation looked at how MPI gets VMS evidence into Court in order to successfully prosecute individuals and fishing companies for illegal fishing. Morgan explained why prosecutions using VMS evidence are heavily reliant on the investigative work of

fisheries analysts in bringing the VMS information together with other forms of circumstantial evidence. Two significant case examples were discussed. In one example VMS data was used along with other evidence to prove serious misreporting offending; the Judge took a global starting point of NZ\$1 million in fines against number of individuals and companies. In another example the master of an orange roughy fishing vessel was sentenced to an 18 month term of imprisonment for falsely declaring where he had been fishing. Morgan concluded that the VMS and supporting legislation has proven itself to be a good deterrent against illegal fishing activity in New Zealand's EEZ and to provide reliable supporting evidence of such offending".

- ***Kiribati' Practice of Regulating Illegal Unregulated and Unreported (IUU) Fishing:*** Rurua Iteraera, Fisheries Legal Officer, Attorney General's Office

A presentation was provided by the AG's fisheries legal officer, Ms Rurua Iteraera on the domestic practise of regulating IUU fishing in Kiribati.

The presentation highlighted the international fisheries legal framework as well as the Kiribati legal framework relating to fisheries. It was noted that whilst cooperating with the Forum Fisheries Agency on monitoring, control and surveillance, Kiribati is not currently a party to the Niue Treaty. Ms Iteraera discussed the draft Fisheries Bill and its new provisions incorporating the option of extra territorial application; the *Lacey Act* type provisions to enable the prosecution of vessels and operators who have contravened the laws of another State; and, the change to absolute liability which means it is not necessary to prove intention when prosecuting a case.

Ms Iteraera discussed the challenges remaining for Kiribati in addressing IUU fishing, including the Kiribati National Development Plan dealing with the limited domestic capacity to maximise benefits of fisheries and marine resources through sustainable development; the need for a national VMS and the effective surveillance of the Kiribati EEZ by the police patrol boat or aerial surveillance.

- ***Member discussion: How might member countries make best use of VMS data to combat illegal fishing?***

The highlights of member discussion on VMS data and illegal fishing were as follows:

- the importance of this tool for catching and prosecuting offenders;
- the various defences used by illegal fishing vessels to circumvent VMS evidence i.e. the Automatic Location Communicators (ALC) wasn't functioning etc;
- imposition of license conditions on vessels exercising rights of navigation and transit passage;
- failure of all countries to sign up to the Niue Treaty Subsidiary Agreement (NTSA) due to the significant information provision requirements

- availability of experts to prosecute illegal fishing vessels including expertise around admissibility or Pacific advisors to assist with large cases arising in small jurisdictions.

At the conclusion of discussions, members noted the following:

- the importance of information sharing, especially in light of VMS and its usefulness;
- that a list of available experts in the area of IUU prosecutions be developed and disseminated to members

F. Sessions Three - Five: Country Reports

Member countries provided reports on key law and justice activities and initiatives during 2014. This included reporting on PILON's strategic objectives as well issues relating to the meeting theme. Members asked reporting countries questions.

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 Kiribati and the Office of the Attorney General for hosting the 33rd PILON Meeting.

G. Session Six: PILON Strategic Plan:

(i) 2014 Strategic Plan Report

The Secretariat provided a report on implementation of the Strategic Plan. The report outlined specific activities undertaken in relation to the strategic priorities as well as general feedback, from the Secretariat's perspective, on the operation of the Plan in its second year and effectiveness in fulfilling outlined objectives.

A discussion paper was prepared and circulated by the Secretariat for members' consideration and endorsement for a one year extension to the PILON 2012 – 2014 Strategic Plan.

The issue was raised by the Secretariat and discussed by the members as to the Secretariat becoming a coordination point for technical legal assistance ('TLA') for the members. To be a TLA coordination point would mean that the Secretariat would seek and provide various forms of TLA from the various TLA providers for the members' use such as the roles provided by the Pacific Islands Chiefs of Police (PICP); Pacific Immigration Directors Conference (PIDC); and the Asia Pacific Group on Money Laundering (APG/ML).

It was agreed by the members that the Secretariat would maintain and keep up to date a database of available TLA and in circumstances where the PILON Executive or one of its

Working Groups sought TLA, and then the Secretariat may then assist in seeking / facilitating / coordinating that request for assistance.

(ii) Strategic Plan Working Groups reporting:

(a) Illegal Fishing

The Chair of the Illegal Fishing WG, Mr Lionel Aingimea presented the WG's report on activities throughout the year to the members. At the beginning of the year, there was a call for more members for the WG which resulted in Tuvalu and Cook Islands joining. Contact was made with FFA on types of assistance provided to PILON members; an illegal fishing questionnaire was circulated to members and a number of questionnaires have been received. The WG seeks responses from remaining countries. The WG also advised that it would seek to progress the practical assistance through information sharing about prosecutions identified in the illegal fishing panel discussion.

A recommendation was put to members by the WG for Dr Manoni of the FFA to be retained in an advisory capacity. This could just be to (a) either provide some guidance in relation to the WG questionnaire, when this is released; or (b) perhaps beyond this, remain as an 'advisory' member of the Working Group – i.e. to provide input into discussions in relation to proposed focus / proposed resource etc. – with no expectation that he would be required to actually undertake any of the work the WG proposes or agrees to (that is for the Secretariat and members).

(b) Corruption and Proceeds of Crime

The Chair of this WG Dr Lawrence Kalinoe presented the paper on the work carried out by this WG. This included the development and finalization of three documents which will be made available on the PILON website at a later date.

(c) Sexual and Gender Based Violence

The Chair of this WG Mr 'Aminiasi Kefu presented the paper on the work carried out by this WG. The WG's work focused on implementation challenges of SGBV legislation and it included an SGBV questionnaire circulated to members and a WG meeting held in August 2014.

At the conclusion of the presentations, Members resolved to:

- (i) Endorse the one year extension of the Strategic Plan;
- (ii) Endorse the Secretariat to continue to collect and update information on available technical legal assistance and publish this on a regular basis; as well as in circumstances where PILON or its working groups may be seeking legal assistance for PILON specific activities, then the Secretariat would assist in seeking out and coordinating such assistance.
- (iii) Endorse the continuation of the work of the Working Groups for 2015;

- (iv) Illegal Fishing:
 - (a) note with appreciation the report provided on behalf of the PILON Strategic Plan Working Group on illegal fishing;
 - (b) note that the Cook Islands and Tuvalu have joined the Working Group;
 - (c) note that Dr Filimon Manoni, Legal Advisor, Forum Fisheries Agency, will be kept on in an advisory capacity for the WG; and
 - (d) for countries who have to submit to the Secretariat outstanding questionnaires to do so before the end of 2014.
- (v) Corruption & Proceeds of Crime:
 - (a) note with appreciation the report provided on behalf of the PILON Strategic Plan Working Group on corruption and proceeds of crime;
 - (b) note the *Recovering the Proceeds of Corruption in the Pacific* typologies project being co-led by Papua New Guinea and Tonga, as a joint Asia Pacific Group on Money Laundering (APGML) and PILON Working Group project is to be carried over to 2015 for finalisation;
 - (c) note the Working Group's draft *Guide to Legislative International Best Practice for Anti-Corruption Agencies*, has been finalised and made available on the PILON website; and
 - (d) note the *Effective Asset Management Guide* prepared by Australia was endorsed by the Working Group and will be made available on the PILON website. This Guide may also form the basis of further capacity building activities facilitated by the Working Group in 2015.
- (vi) Sexual and Gender Based Violence:
 - (a) note with appreciation the report provided on the activities of the PILON Strategic Plan Working Group on sexual and gender based violence (SGBV);
 - (b) note the draft report prepared by the WG developed from the questionnaire circulated earlier in the year to members, as well as from the WG meeting held in August, which is currently undergoing editing process and for PILON members' eyes only;
 - (c) note that the report will be sent to members as well as all participants in the WG meeting for comment, prior to finalisation and publication on the PILON website; and
 - (d) note that members are requested to submit any comments on the report to the WG Chair or the PILON Secretariat by 31 January 2015.

H. Session Seven: PILON Secretariat Report

The Secretariat presented a summary of its activities in 2014 and the work which has been performed under the 2014 Work Plan. The report provided additional details on the activities of the Secretariat and a copy of the report will be placed on the PILON website following the meeting.

At the conclusion of the presentation, PILON members noted the report given by the PILON Secretariat on its activities in 2014 and agreed that the Secretariat should:

- (a) upload the written report prepared by the PILON Secretariat to the PILON website;
- (b) maintain the database of technical legal assistance programs and initiatives available to to PILON member countries and support PILON members and observers to keep the Secretariat informed of programs to be included in the database;
- (c) maintain a record of model legislation
- (d) continue to represent PILON at relevant fora, meetings, conferences and working groups and provide reports of these meetings and conferences to the Executive Committee; and

PILON members and the Secretariat further noted the continuing support and assistance provided by the Samoan Office of the Attorney General and Australian Attorney-General's Department to the Secretariat office.

J. Session Eight: Update and discussion – regional issues and initiatives:

(i) Legislative Drafting

Ms Nola Faasau of the Pacific Islands Forum Secretariat reported on legislative drafting initiatives that had taken place in 2014.

The Pacific Islands Forum Secretariat convened the Pacific Legislative Drafters' Technical Forum in Suva from 9 – 11 April 2014. The meeting provided an opportunity for government lawyers to share experiences and developments in the delivery of legislative drafting services. Participants emphasised the importance of: continuing regular meetings of the Drafters' Forum; increasing opportunities for technical training and mentoring; and raising awareness of the importance of legislative development and drafting. The Drafters' Forum also included an interactive training component on legal policy development, delivered by the Australian Attorney-General's Department. The training addressed an issue raised by government lawyers at the 2012 meeting of the Drafters' Forum, being the need to improve the availability and quality of underlying policy for legislative proposals.

The Samoa Office of the Attorney-General has offered to host the next meeting of the Drafters' Forum in Apia in September, 2015. The Pacific Islands Forum Secretariat will assist Samoa with relevant arrangements.

Another initiative was the regional advanced legislative drafting course that took place in Auckland, New Zealand from 23 – 27 June 2014. Convened by the Commonwealth Secretariat and supported by the NZ Parliamentary Counsel Office, the course was facilitated by Professor St John Bates and attended by legal officers from 10 Pacific Island Countries. Participants appreciated the course as an opportunity to deepen their understanding of critical implications (e.g. constitutional, parliamentary, policy, interpretation, and international) to modernising or drafting new legislation while sharpening their drafting skills through written exercises involving preparation of legislative advice and drafts in response to various practical policy issues.

Richard Wallace of the New Zealand Parliamentary Counsel Office supported Ms Faasau's presentation and informed Members of a guide available through New Zealand PCO for PILON members on the drafting of private Members' Bills.

(ii) PILON Litigation Skills Program

New Zealand provided an update in relation to the PILON Litigation Skills Programme conducted by the New Zealand Crown Law Office. An overview of the Programme, including past trainings conducted, an update regarding progress with the current funding application to the New Zealand Ministry of Foreign Affairs and Trade (MFAT), and information in relation to timing of any future programmes was provided. New Zealand Crown Law reported that a Memorandum of Understanding between NZ Crown Law and NZ MFAT was soon to be finalised

K. Session Nine: Report – Forensic Law Review

A report was provided by the Pacific Islands Chiefs of Police and the Australian Attorney General's Department on the regional forensic law review.

The Executive Director of the Secretariat of the Pacific Islands Chiefs of Police (PICP) advised that PICP is seeking PILON's assistance to help address current gaps in Pacific forensic laws. The Australian Attorney-General's Department (AGD) presented the findings and recommendations of a 2014 regional review of forensics legislation, and provided copies of the review to PILON members. The review reveals that, in many Pacific island countries, outdated police powers in legislation are making it harder than it should be for Pacific law enforcement agencies to conduct modern forensic investigations and have that evidence admitted in court. This is a barrier to effective law enforcement, including the enforcement of laws to combat PILON strategic priorities, such as sexual and gender based violence and corruption. PICP has asked the Australian AGD to develop model forensic provisions. PILON members were asked to support the development of these model provisions. The Australian AGD will provide further information to PILON and PPA members on how they can be involved in this process in 2015. PILON members will be asked to consider and endorse the model provisions at next year's meeting.

L. Session Ten: Report – Pacific Prosecutors Conference

A report was provided by the Chair of the recently convened Pacific Prosecutors' Association Conference. The theme of the PPA meeting, which was held from 5 – 7 November in Nadi, Fiji was '*Prosecutions in Remote Areas*'. Two balancing factors eventuated from discussions at this meeting. These were: remote areas prosecutions build community confidence in the law by facilitating community involvement. However, considerable resources are required to carry out prosecutions in remote areas and these are often unavailable i.e. courtrooms, computers, holding cells. In her presentation the Chair also raised certain challenges faced by prosecutors with respect to the adequacy of some police investigations and files.

It was decided that the next PPA meeting would be held in Tonga in July 2015 and members were encouraged to diarise this date and plan for this meeting by including costs in their office budgets.

M. Session Eleven: Report – PILON Observer Members & Meeting Observers

Presentations on their Organisations' current and general workstreams were provided by:

- Mr David Naylor, South Pacific Lawyers' Association
- Ms Daiana Buresova, SPC Regional Rights Resource Team
- Ms Lorraine Kershaw, Pacific Islands Forum Secretariat
- Ms Netta Goussac, International Committee of the Red Cross
- Ms Resina Senikuraciri, Pacific Legal Information Institute

Members resolved to note the presentations and reports made by PILON Observer members and Meeting Observers.

N. Session Twelve: Report – Model Law for the Arms Trade Treaty

Mr Matthew Andrews of the NZ Crown Law Office presented the booklet prepared by NZMFAT to the members and referred members to Rosalind Dawson of MFAT-NZ should they have questions about the Model Law.

O. Session Thirteen: Application for PILON membership – Observer member – SPLA and IFRC

Applications by the South Pacific Lawyers Association as well as the International Federation of Red Cross and Red Crescent Societies to become observer members of PILON were considered by members.

Members unanimously approved the SPLA and IFRC applications to become PILON Observer Members. The Chair expressed a warm welcome to the new Observer Members on behalf of PILON.

P. PILON Work Plan for 2015 and Draft Outcomes Report

Members agreed to discuss and settle the 2015 PILON Work Plan and Meeting Outcomes Report out of session, by email. This report is the final Outcomes Report considered and settled by Members.

The 2015 Work Plan is at Attachment A.

Q. Arrangements for 2015 PILON Annual Meeting

A nomination was received from the Solomon Islands at last year's meeting to host the 2015 PILON Annual Meeting and this was confirmed at the 2014 meeting.

R. 2015 PILON 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 the Chair (Kiribati), incoming Chair (Solomon Islands), Samoa, Australia, New Zealand and Nauru.

S. Other business and closing

The meeting was officially closed by the Attorney General, Titabu Tabane who expressed thanks to members for attending the meeting as well as for the opportunity to host and Chair.

A vote of thanks was provided on behalf of Members by Papua New Guinea. The meeting expressed their appreciation to:

- the Kiribati Attorney General's Office for hosting the meeting and the hospitality shown to delegates over the course of the meeting;
- Mr Titabu Tabane, Attorney General of Kiribati, for chairing the meeting;
- Australia for financial support to the meeting; and,
- the PILON Secretariat for their assistance in organising the meeting.