South Pacific
LAWYERS ASSOCIATION

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Land and Environment Issue

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When: 6–15 September 2012

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- **IPBA Conference, Seoul**
- **BABSEA CLE 1st Pro Bono Conference, Laos**

A word from…

Christine Trenorden, Environmental Law Programme Coordinator IUCN Oceania Regional Office

In general, 80–90% of the land in the countries of the Pacific region is in customary ownership. Customary law continues to operate alongside statutory law in many areas, for many people continue to live a traditional or semi-traditional lifestyle, outside of urban areas. However, for various reasons, customary law has been eroded, or has not kept pace with community and environmental changes. Most, if not all, countries have legislation for the management and protection of the environment and natural resources, even if aspects of the legislation are not necessarily culturally appropriate. Statutory law was imposed on customary law.

The significance of land and the range of current challenges was summarized eloquently by Dr Eric Kwa, of Papua New Guinea, in the following:

> *An important maxim in the South Pacific is: "land is life, without land there is no life". Indigenous people of the South Pacific guard their land fearlessly against their enemies. This maxim is being challenged by a new enemy – climate change. Unlike in the past where indigenous people knew who their enemies were and devised strategic plans to counter the enemy, climate change is an unknown enemy which will destroy their land, reefs, waters, forests and their livelihoods. Indigenous people are confronted with a new threat which they cannot understand nor explain but can feel the effect of this new threat. [Dr Eric Kwa, 2008]*

Proposed new environmental law association

The International Union for Conservation of Nature and Natural Resources (IUCN) is supporting the formation of a multi-disciplinary environmental law association by in-country interested lawyers in Pacific Island countries. The aim is to:

- raise awareness of relevant environmental and natural resource laws and regional and international agreements;
- educate lawyers and anyone who is interested; and
- build capacity in the staff of government agencies and in provincial government offices who are responsible for implementing and enforcing environmental laws.

Increasing numbers of citizens of Pacific Island countries graduate from the law schools of the University of the South Pacific, the University of Papua New Guinea, and from Australian and New Zealand law schools. But very few, if any, practise in environmental law.

Some environmental organizations employ lawyers, such as the Landowners Advocacy and Legal Support Unit (LALSU) a unit of the Public Solicitor's Office in Solomon Islands; the Centre for Environmental Law and Community Rights [CELCOR] and the Environmental Law Centre [ELC] in Papua New Guinea. These non-government organisations focus on raising awareness among landowners and challenging decisions in the courts, particularly in relation to mining and forestry.

It is likely that once an environmental law association is fully established, its expertise

and the focused interest of its members will lead the association to want to comment and make submissions on proposed legislation (principal and subsidiary), to further the interests of democracy and assist the executive with its collective specialist knowledge. In time the government of a country might seek out the expertise of the environmental law association to assist in strengthening governance of the environment and natural resources, appropriate to the country.

Christine Trenorden with Taholo Kami, RD IUCN ORO (top left).

The Asian Development Bank project Strengthening Coastal and Marine Resources Management in the Coral Triangle of the Pacific aims to support the development of more effective management of coastal and marine resources and to foster resilience in a period of increasing threats from human induced and climate change impacts in the Papua New Guinea, Solomon Islands, Timor Leste, Fiji and Vanuatu (the project countries).

The IUCN has the project role of supporting the development of legal capability in the project countries, by strengthening environmental law through building public and private sector environmental law capacity, and supporting the strengthening of legal governance through development of environmental law associations.

FELA as a model

The IUCN proposes to engage interested lawyers in the private legal sector to work collectively through an incorporated association, in cooperation and even collaboration with government. Skills will be developed and capacity enhanced; enabling improved approaches to law and policy implementation in the interests of meeting the challenges of climate change and human induced changes.

The model for this approach is the Environmental Law Association of Fiji (FELA), established with the encouragement of, and assistance from, the then newly established Oceania Office of IUCN, in 2008. FELA has a board and an executive committee comprising lawyers and non-lawyers. With external funding, FELA now employs a fulltime Fijian lawyer and coordinator and an administrative assistant. FELA engages in the following activities:

- regular approved CLE training for lawyers;
- capacity building training for compliance officers and local government officers on the provisions of the *Environment Management Act (Fiji) 2005*;
- assists government with:
  - the preparation of drafting instructions;
  - environmental law expertise (government committees and conferences); and
- assists environmental NGOs with their understanding of the law and to raise community awareness and understanding of environmental laws, in Fijian language.

It is evident that there is both government and community respect for FELA's knowledge and contribution to the understanding of environmental and natural resource laws.

Advantages of the FELA model

The advantage of the model is that after assistance with initial setup, 'train the trainer'

exercises and perhaps to find funding for a coordinator/lawyer, the association is indigenous. It can assist in finding solutions that are culturally appropriate, and can incorporate customary law into governance models, as well as providing culturally appropriate training and education. The multidisciplinary aspect is beneficial and necessary in the area of environmental and natural resource law. Lawyers need to understand the science underpinning global and regional agreements, upon which most of the national laws are based, as well as the state of the environment in their own country, and the options for nature-based solutions to problems caused by a degraded environment.

Kiji Vukikomoala, FELA Coordinator

Environmental threats

The threats to the land, reefs, waters, forests and livelihoods are not only from climate change. The desire for economic development has resulted in priority being given to development (not necessarily of the sustainable variety) over protection of the natural environment, despite the warnings and science-based evidence.

Inappropriate development together with weak management of natural resource systems has resulted in damage to and destruction of ecosystems, land and water pollution with consequent damage to natural resources and livelihoods. High rates of population growth have also had consequential impacts on natural resources.

Weak management of natural resources in Pacific countries is the result of insufficient budgetary resources devoted to environmental oversight, limited numbers of qualified agency staff, who are under resourced, often lack skills and of whom too much is expected. In addition there is often a lack of continuity, as competent staff are in demand either to fill more senior positions or undertake postgraduate studies overseas.

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Participants at FELA local government workshop

Former Executive of SPLA is PNG Minister for Justice and Attorney-General

by Mr Brian Jemejeme

The President of the Papua New Guinea Law Society (PNGLS), Kerenga Kua, has been declared the Member for the Sinasina – Yongumugl electorate in Chimbu Province, in PNG's recent and 9th general election. Mr Kua unseated sitting MP and Speaker of the national Parliament Jeffery Nape.

The Prime Minister, the Hon Peter O'Neill appointed Mr Kua as the Minister for Justice and Attorney General on 10 August 2012. The people of Mr Kua from Sinasina-Yongumugl electorate will be bracing for the dawn of new era with Mr Kua at the helm.

Mr Kua is a lawyer by profession; first admitted to practice in 1986. He served on the Council of the Law Society for 20 years – for 10 as a Council member and 10 as President. He resigned as President on 3 August 2012. Mr Kua has also represented the PNG Law Society on the executive of the South Pacific Law Association (SPLA) since its inception.

Other lawyers who were elected to Parliament, three of whom have been given Ministries, are Mr Davis Steven (Member for the electorate of Esa'ala and Minister for Civil Aviation), Mr Rimbink Pato (Member for the electorate of Wapenamanda and Minister for Foreign Affairs) and Mr William Duma (Member for the electorate of Mount Hagen and Minister for Petroleum and Energy).

Mr Kelly Naru and Mr Allan Marat were also elected, but are without portfolios.

In brief…

Inaugural SPLA Conference postponed until 2013

The South Pacific Lawyers' Conference will now be held in 2013 in Vanuatu.

The Conference Organising Committee did not take the decision to postpone the Conference lightly. While the Committee was satisfied that the program and speakers would be excellent, it held reservations as to the limited time available to promote the Conference, liaise with sponsors and seek support for attendees. Overall, the decision was taken with a view to attracting as many participants as possible to ensure the success of the Conference.

The Organising Committee will continue to meet on a monthly basis to discuss the details of the Conference. It is currently proposed that, subject to favourable court vacation periods, the Conference will be held in early October 2013 in Port Vila.

The SPLA Secretariat apologises for any inconvenience caused and will settle new dates for the Conference as soon as it can.

Scholarship applications now open to attend IPBA Conference

Lawyers from the Pacific Islands are encouraged to apply for the Inter-Pacific Bar Association's Scholarship Program to attend the 23rd Annual Meeting and Conference in Seoul, Korea. Applications close 31 October 2012.

A copy of the IPBA Scholarship Program application form is available online.

More information on www.ipba.org

INTER-PACIFIC BAR ASSOCIATION

Justice denied ... or at least inexplicably delayed

by Robert (Bob) Cartledge, Peregian Springs Family Law, Queensland

On 22 October 2007 the Malekula Island Court Presiding Magistrate, Edwin Macreveth handed down judgment in the case of *Haitong v Tavulai Community [2007] VUIC 3*. The case had been on foot for 13 years. The Court ordered that:

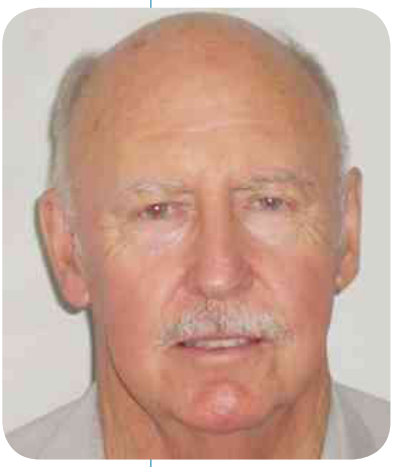
1. Mary Momo Kululuk [sic Kulukul] and family be the custom owner of the land of Lehili commencing from Ndasok to Nahosali housing Lehili school as claimed.
2. The ownership of the remaining land area excluding Kelai land is declared in favour of the original claimant Alick Frank.
3. The claimed boundary limit by Vauleli community is accepted. The boundary mark separating Vauleli and Kelai rests at the creek.
4. The claim of Tavulai community is refused.

For Mary Momo Kulukul (a descendant of the Vareng Veat family) there had finally been justice and she thanked God that she and her family could now, as the custom owners of the land of Lehili on the Island of Paama, return to their land, from which they had been effectively alienated for more than 100 years.

Unbeknown to Mary however, there lay ahead years of battling with the Vanuatu Government – a battle which continues, despite an appeal against the Magistrate's decision being dismissed by the Supreme Court in 2009 for want of prosecution.

Background

Readers of this article are urged to read the Island Court judgment which succinctly summarises what had been a long and complex matter that included tales of a captured alien dwarf, stories of tribal wars, murder, claims that the whole population of Lehili (of which Mary is a descendent) was wiped out by the Tavulai warriors, the application of the Vanuatu Constitution and how it provides that the rule of custom shall form the basis of ownership and use of land in Vanuatu, and the fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex, and the impact of Vanuatu's ratification of the Convention on the Elimination on Discrimination Against Women.



Whilst the facts surrounding the driving of the custom owners of Lehili from their land remain (to some extent at least) shrouded in mystery, the evidence accepted by the Court was that there had been tribal wars involving villagers from Lehili and nearby Tavulai. The people of Lehili were driven from their land and fled to nearby villages for safety. The Lehili land was occupied in part for many years by the people of Tavulai. Part of it was sold off to early traders (and, as official records show) the Presbyterian Church, and part of it was incorporated into an area renamed 'Magosome' – in Paamese dialect apparently meaning, 'the land we took' or something similar. The Court dismissed the claim that the whole population of Lehili had been wiped out by Tavulai warriors, found that Mary Momo Kulukul was a descendant of the Vareng Veat family, the custom owners of the land of Lehili, and that 'no party has challenged his [Vareng Veat] family tree and place of origin.'

The decision of the Island Court that the land must be returned to the custom owners, was founded on Article 73 of the 1980 Constitution. The Court noted that this Article stipulates that all land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants and that this implies that all land including those alienated lands, even those acquired by other means of payment or [other] reasons must return to the custom owners. It further found that it could not either be accepted by custom practice that any land conquered through a fight will continue to remain in the victor's hand – finding that:

> *This is a selfish idea and it cannot find favour in this modern world with laws upholding principles of natural justice, fairness and equality.*

The Court considered the issue of a woman making a claim for land. It noted that

> *Mary has brothers who are heirs to the land. It is acceptable for a woman to claim land on behalf of the whole family but not on an individual basis.*

It added that

> *Vanuatu has ratified the Convention on the Elimination on Discrimination Against Women by the Ratification Act of Parliament No. 3 of 1995, … [which] requires that every signatories to it must take all necessary steps to condemn and wipe away all forms of discrimination against females. This Court cannot allow custom to discriminate against women.*

The Court noted further that Article 5(1) of the Constitution stipulates

> *all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex.*

Land disputes have been a way of life in Vanuatu for time immemorial. Prior to the presence of Europeans there were disputes between the indigenous population (the ni-Vanuatu), escalating towards the end of the 19th century with disputes between ni-Vanuatu and Europeans. The level of violence eventually caused Britain and France, who had being vying to dominate the region, to reach a compromise, and in 1887 to establish a Joint Naval Commission to police the islands and deal with land disputes. With the establishment of the Condominium Government in 1906, the British and French Governments jointly administered the 'New Hebrides' (as Vanuatu was then known) through until independence in 1980. A Joint Court was established with jurisdiction to deal with land matters. Land registration procedures were later formalised but this contributed to the alienation of the ni-Vanuatu from their land in the longer term. There followed a move towards independence, and the rise of an independence movement led by Jimmy Steven who is best remembered as the rebel leader who led a secessionist revolt in 1980. Steven declared the island of Espiritu Santo independent of Vanuatu and appointed himself President. Later, at the request of the new Government led by Walter Lini, Papua New Guinea forces entered and restored order on the island of Espiritu Santo.

Remote and small, Paama Island was not spared in the grab for land ownership and, as mentioned above, the area of Lehili and surrounding areas were acquired and registered by various European settlers, traders and the Presbyterian Church (which established its first mission in the New Hebrides in 1868)[1].

The French School complex at Lehili is a legacy of the French presence on Paama. The school was built prior to independence in about 1961, and by all accounts was a modern school with running water and flush toilets. In its heyday it was apparently attended by over 200 students, many of them boarders from other areas on Paama and nearby Ambrym and Epi Islands. After Independence a health clinic/dispensary was established adjacent to the school, providing very basic health care and assisting local mothers with birthing. The location of the

clinic was no doubt influenced by a number of factors, including that there is access to Lehili through the reef, which runs down the Western side of Paama Island onto a sandy beach; and a belief that some of Lehili was apparently 'unclaimed'. Within the Lands Department there is a letter written by D K Wilkins, British District Agent on 12 May 1964, which states:

> *... Tafoule and Napoule, have for many years claimed the right to the land inside original claim No. 271, bordering on claim 104 and extending considerably beyond the eastern boundary of claim 271. This disputed land originally belonged to the people of Lehili village all of whom died many years ago.*

Vanuatu does not have a system of customary land registration and in December 1996, almost two years after Land Case 04 of 1994 had commenced in the Island Court, the Lands Department (either ignorant of, or in spite of those proceedings) signed an 'Agreement to Lease' the disputed land on which the school stood with two villagers from nearby Tavulai Village – neither of whom purported to be the custom owners or were claimants in the matter before the Island Court. Official records show that upon signing the Agreement, they received a sum of money constituting both rental back-payments and an annual lease payment.

Section 24(3) of the Education Regulations 2005 states:

> *If a school that existed before this Regulation comes into force does not have a lease for the land on which it is situated or has only an agreement to lease, the Education Authority responsible for the school must enter into a lease during the next 5 years.*[2]

Aware that the Department of Education had been making lease payments pursuant to the 'Agreement to Lease', Mary caused copies of the Island Court judgment to be delivered to the Departments of Education (and Health), requesting they stop any lease payments and prepare formal leases.

Numerous letters were forwarded on Mary's behalf to both departments, as well as the Lands Department (which has responsibility for registering leases) and the State Law Office, which eventually acknowledged that it was effectively the legal representative of the prospective leasee departments and whose task it was to work with custom owner to prepare leases between the custom owners and the Department of Health and Education who have facilities on custom land. Notwithstanding the volume of correspondence and meetings with all four departments and the passage of almost five years since the Island Court judgment was delivered, lease payments continue to be authorised by senior officers in the Education and Health departments and made to persons other than the true custom owners, while the State Law Office continues to delay matters by entertaining claims by an unsuccessful counter claimant, Mr Paul Vurevur.

Mr Vurevur's claims were fully tested in the Malekula Island Court and in its decision of 22 October 2007 it stated (in respect of Vurevur)

> *Given the circumstances of his case, and in application of the custom practices and the law, he has no standing in this claim for land ownership.*

Mr Vurevur's appeal in the Supreme Court against the Island Court decision was dismissed through want of prosecution and costs were awarded against him.

When appearing before the Island Court, Mr Vurevur did so as the 'representative of the Tavulai community' (a position he had maintained from 1994 to 2007), but more recently he changed his position from being the representative of the Tavulai community, to now assert that the Paama Council of Chiefs (known as Tamaso) had determined that he (Vurevur) 'is the rightful owner of Magosome land area.'

The idyllic waterfront setting of the Lehili School – photo taken 2009

Even if this was so, it would not only fly in the face of the decision of the Island Court but also the decision in the case of *Valele Family v Touru [2002] VUCA 3*, in which the Court of Appeal of Vanuatu stated:

> *it is clear from the Constitution and from the Island Courts Act that unless everyone who at any time claims an interest in the land is prepared to accept a settlement, the only bodies that have lawful jurisdiction and power to make a determination that binds everyone are the Courts, in the first instance the local Island Court, and if there is an appeal, the Supreme Court.*[3]

This new claim was however sufficient to cause the Director of Lands to issue a statement initially supporting Mr Vurevur's claim, that was, until he reviewed the matter and read the Island Court decision, causing him to retract his statement and write directly to the Departments of Education and Health urging them to deal only with the true custom owners – Mary Momo Kulukul and family.

A precondition to registration of a lease is to survey the area of land to be leased. Whilst the Department of Lands website stated that its survey team can conduct surveys to assist custom owners, efforts by Mary to gain such assistance resulted in the Land Planning and Management Committee informing Mary that her application for a lease had been recommended for deferral and she was advised to consult with the Education Department to enter into the Lease Proper. The Committee noted that that there needed to be a site inspection by the Survey Department and Planning section officers. Despite being advised that the date and details of inspection would be discussed and her efforts to press for this to occur, the inspection has never happened.

In August 2009, to frustrate Mary's efforts to have the land surveyed, Mr Vurevur, with the assistance of the Office of the Public Solicitor (which had previously acted for Mary), made an ex-parte application to the Magistrates Court and was granted a temporary order restraining Mary, her family and various others from entering Lehili land. That application was successfully challenged however, the Order being set aside and a costs order was made against Mr Vurevur.

In the absence of co-operation by the State Law Office to discuss leasing arrangements (and their unwillingness or inability to produce a model lease), the State Law Office was informed that consideration was being given to commencing proceedings to evict the Departments of Education and Health from Lehili. A proactive Director-General of Health travelled to Lehili to inspect his department's clinic/dispensary, met with Mary on-site, and in a report dated 10 February 2011, recommended that the area occupied by the clinic/dispensary be surveyed, a lease drawn up, and the annual rental determined.

Mr Vurevur then alleged that there was a misunderstanding concerning boundaries – this time soliciting the support of the Ministry of Justice and Social Welfare. Unlike many Island Court judgments, the boundary of Lehili was very clearly defined in the Island Court judgment by reference to a series of custom landmarks. In the words of the Court:

> *Its boundary is generally described to be bounded by the land of Tavulai on the north from Ndasok west of the island. It runs eastwards to a nambakura tree and up the hill to the fence of Tevali village. It follows that fence to the other*

village of Tevaliaut in line with a banian tree named as Holaivek. From there it joints up to a small man made drainage creek connecting onto another creek which runs down to a natora tree on the western side. It then extends from there ending at an oak tree and marked by a red stone at the shoreline.

These landmarks are recognised and have been accepted by all of the custom chiefs whose boundaries adjoin Lehili, including the Chief of Tavulai. These chiefs collectively acknowledged the boundaries in writing in June 2011. The only question which remains in relation to boundaries, is precisely where *within the Lehili boundary*, the school and clinic are located. Hence the need for a survey.

Current position

As of July 2012, steps to have the areas occupied by the Departments of Education and Health surveyed and leases drawn up have not progressed and Mary is now left with few options short of proceeding to Court with a view to evicting the recalcitrant departments – or at the very least compelling their legal advisers to explain to the Court why this should not happen. Other questions include: why has the Education Department not complied with its statutory obligations? And why has the State Law Office continued to entertain claims by an individual whose claims have been tested in the Island Court and whose appeal was dismissed by the Supreme Court for want of prosecution.

Superficial enquiries on the Island of Efate failed to reveal any instances where leases have been entered into with custom owners and despite repeated requests, the State Law Office has been unwilling or unable to ever produce a 'model' lease.

Whilst questions abound concerning the conduct and motives of government officials, an alternative and plausible theory has emerged. Perhaps there has been political intervention, with the government fearful that entering into a lease proper with Mary

Quick Facts

- Lehili is situated on the South West coast of the small Vanuatu island of Paama and can be easily identified on Google Earth.
- The land in dispute is situated on the south western part of the island of Paama which is situated in the central part of the group of islands that make up Vanuatu.
- Mary Momo Kulukul and her family have been acknowledged as the custom owners of the land of Lehili on the Island of Paama. Paama is a small island in the Malampa Province, Vanuatu.
- As of July 2012, steps to have the areas occupied by the Departments of Education and Health surveyed and leases drawn up have not progressed
- Mary is entitled to payments made by the Departments of Education (and Health) for the lease of the land.

Momo Kulukul and her family would run contrary to custom, where land ownership rights are by and large vested in men. This could be akin to 'opening Pandora's Box', by paving the way for hundreds of claims by custom owners, on whose custom land many of the more than 500 schools and many health clinics, dispensaries and aid posts across Vanuatu are located, to make claims against the government, not only for rent, but for compensation and damages.

There may be further avenues to pursue, such as to draw matters of concern to the attention of the Ombudsman who has the power to enquire into any conduct on the part of any government agency.[4] The Auditor-General may also be approached. They are responsible for assessing whether expenditure has been validly and correctly authorized; that revenue, expenses, assets and liabilities have been properly recorded and accounted for; that all public money is accounted for; and that all expenditure has been properly authorized.[5]

Conclusion

Vanuatu is a young, developing nation, and, as will be apparent from the judgment of the Island Court is this case, is firmly committed to the rule of law, the upholding of the fundamental rights and freedoms of its citizens enshrined in its Constitution, and honouring its obligations under international law and those conventions to which it is a signatory. That being said, one cannot help but wonder why justice for Mary Momo Kulukul and her family has been inexplicably and inordinately delayed; and why persons in positions of trust and responsibility have failed to respect the judgment of the Court and to take all reasonable steps to see the law and the judgment of the Court complied with.

R B (Bob) Cartledge is a former member of the USP School of Law and was Manager of the USP Community Legal Centre, Emalus Campus, Port Vila, Vanuatu 2009–12. He was admitted to practice in Vanuatu in 2009 and Fiji in 2011 where he was responsible for establishing the USP Community Law Centre in February 2011. He has returned to practice law in Australia, where he has his own firm. The views and comments expressed herein are those of the author and he gratefully acknowledges the consent and contribution of Mary Momo Kulukul to the article.

Endnotes:

1. Presbyterian Church Research Centre of Aotearoa, New Zealand. 'The Story of The New Hebrides Mission 1868 to 1965'
2. *Education Regulations [Cap 272] 2005 s.24(3)*
3. *Valele Family v Touru [2002] VUCA 3; Civil Appeal Case 01 of 2002* **(26 April 2002)**
4. *Ombudsman Act [Cap 252] 1999*
5. *Expenditure Review and Audit Act [Cap 241] 1998*

Gender-responsive budgeting reaches towards MDG–3

Some Pacific Island Countries (PICs) are unlikely to achieve the third Millennium Development Goal of promoting agender equality and empowering women by 2015 as they haven't aligned their national legislation with the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women. So said the United Nations Programme Director for the Pacific, Elzira Sagynbaeva, when delivering opening remarks to the Gender Responsive Budgeting Workshop-in Nadi, Fiji, on 12 June 2012.

Rural women and girls are often among the most disadvantaged groups of population in all Pacific countries, but other vulnerable groups include women disadvantaged by their geographic isolation, ethnic status, age, and HIV status.

"Pacific Island Countries acknowledge the disadvantaged situation of women and girls as all of them have adopted the Beijing Platform for Action, the Beijing Declaration and the Pacific Platform for Action," she said.

"Most of the PICs ratified CEDAW and other key human rights conventions. Some countries ratified CEDAW 15 – 20 years ago like PNG (95), Fiji (95), and Samoa (92). However, in all countries there is a long way to go to ensure alignment of national legislation in support of the CEDAW", she noted.

Ms Sagynbaeva welcomed the commitment of some Ministries of Planning and Finance, and non-government organisations, to adopt gender responsive budgeting (GRB) to improve the lives of women, men, boys and girls in PICs. GRB is about mainstreaming gender awareness in all the policies and budgets of government agencies. It involves assessing the impact of government budgets on different social groups: women, men, needs of young people and old; rural and urban, rich and poor.

In depth…

Climate Change and Tuvalu

by Mr Dennis Wilson, Barrister, Sydney

Tuvalu is the fourth smallest country in the world. It is thought likely to be the first Island State to be submerged by rising sea levels as a consequence of climate change contributed to by the excessive emission of anthropogenic greenhouse gases (GHG) into the atmosphere. It is an isolated archipelago in the cultural area of Polynesia, east of New Guinea and north, north east of New Zealand. It comprises six atolls and three reef islands, with an elevation above sea level ranging from zero to about 4.6 metres with an average of a little over 2 metres. Tuvalu has a population of about 11 600 people in about 1 570 households. The total land area is 25.63 km2 with a total coastline of 24km. It is culturally rich and diverse.

Tuvalu's independent position in international climate change negotiations has generated strong support and public sympathy. Its small size and isolation does not bespeak a lack of influence. But its efforts have been unsuccessful. Inevitability has now overtaken risk. Tuvalu will be uninhabitable, at least, within 50 years or so because of the consequences of climate change.

At first blush it verges on the absurd to think that a country such as Tuvalu might litigate in an international forum in respect of its terrible circumstances. If anything is clear, however, it is that those circumstances are not of Tuvalu's making. It cannot be suggested that Tuvalu lacks good faith and it cannot be suggested that Tuvalu is a contributor to its predicament. At the same time, Tuvalu might pose itself the questions: what is there to lose by pursuing legal remedies? Who to sue, the causes of action, questions of causation, where to sue, and appropriate remedies are some only of the difficult questions, capable however of answers encouraging to Tuvalu's way forward.

The politics of action must also be an important consideration for Tuvalu. The foreign relations of Tuvalu are extensive and sophisticated. If Tuvalu takes the view that it does not bite the hand that feeds it, its appropriate course is a political one.

A consequence of Tuvalu's independence is its poor economy and its economic outlook. Tuvalu's main economic activities are subsistence food production and harvesting, commercial fishing, tourism, copra, stamps and coins.[1] It derives revenue from leasing its ".tv" internet suffix. An element of Tuvalu's future economic security and wealth is its seabed mineral deposits. Potentially it is a major economic resource for Tuvalu (and for other island States in the Pacific with EEZs). It earns income from tuna fishing licences, and moneys in the Tuvalu Trust Fund set up in 1987 with grants from Australia, New Zealand and the United Kingdom. Tuvalu also receives development aid from Taiwan, Japan and the European Union. New Zealand's aid program in 2010–11 was $NZ3.5m. Australia's aid includes money for education and overseas scholarships. In 2009 the Australian Agency for International Development and the UN Development Program funded an aid management and co-ordination project in Tuvalu. Tuvalu depends on foreign aid significantly. Tuvalu imports most of its food and is now at the stage where its water

Aerial photo of the erosion affecting Funafuti

supply (exclusively rainwater) has to be supplemented by importation.

Tuvalu's economic outlook is bleak, but it can only be seen as secondary to the issue of its continued existence.

International law has recognized four indicia for the purpose of existence as a State: a permanent population, a defined territory, a government and a capacity to enter into relations with other States.[2] Recognition by other States, or its absence, constitutes a factual element that weighs heavily in the assessment of whether the necessary elements of Statehood are present.

Tuvalu meets all of the indicia of an independent state now, both factually and legally. But what if that changed? International laws have never been tested with respect to the extinction of a country because of its physical disappearance. International law does contemplate the formal dissolution of a State with the emergence of successor countries, absorption by another country and merger with another country, but not a country's extinction.[3] The progression from diminishing habitable areas to an inhospitable environment owing, in part, to increased storm surge and tidal activity, a lack of fresh water, the submergence of a significant part of the land mass, the migration of the inhabitants of the country to other countries, and total submergence will, on present evidence, happen within a short time-frame.

The possibility of legal action against a State is by no means new. It is interesting to consider the possibility however, in the context of a specific example, such as, exports of coal from countries with developed economies. Australia's coal exports to consumer nations, such as Japan, Korea and China might be an obvious example.

Coal as a contributor to global greenhouse gas (GHG) is well documented. The contribution by Australia, Japan, Korea and China to global GHG emissions and climate change is known. The domestic use of coal by Australia and its resultant contribution to anthropogenic greenhouse gas is perhaps internationally not so significant as to suggest that it might meet actionable minimum

criteria, particularly in respect of causation issues. But, is it a different story if the export of coal from Australia and its industrial application in Japan, Korea and China is included?

It is in that context that the search for a primary duty by, for example, Australia is made. That can be considered by reference to the provisions of the United Nations Framework Convention on Climate Change (UNFCCC),[4] the United Nations Convention on the Law of the Sea (UNCLOS)[5] and the duty to prevent trans-boundary harm derived from customary law. It can be argued that industrialised countries, such as Australia, are committed to a common objective of stabilising greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous GHG interference with the climate system and the marine environment. Further, by reference to the principle of 'no harm', it can be argued that countries are to exercise jurisdiction over their own territories in a manner that ensures no environmental harm in a trans-boundary or global environmental context. That would arguably call up a positive obligation by the exporting country to regulate its coal exports so that its international obligations are met. A failure to do so may translate into a breach of its international obligations. The regulation may be that exports are prohibited except to countries with appropriate GHG emission control mechanisms.

The International Court of Justice (ICJ) would be the appropriate forum for Tuvalu. If it has not made declarations submitting to the jurisdiction of the ICJ to date it might consider doing so. Australia has so submitted, but with qualifications which would be interpreted such as to require Tuvalu to have accepted the jurisdiction of the ICJ more than 12 months prior to filing an application bringing a dispute before the Court.

The continued export from a country, such as Australia, of its coal resources to countries which do not have adequate or any regulation of its use to prevent excessive emission of GHG's contributing to Tuvalu's predicament may therefore be a breach of the exporting countries' international obligations.

Erosion of Tuvalu

Endnotes:

1. United Nations, Economic and Social Commission for Asia and the Pacific, State of the Environment in Asia and the Pacific 2005 <http://www.unescap.org/esd/environment/soe/2005/mainpub/documents/Part4_08.pdf> 23 July 2012, 240 Table 8.1.
2. See for example: Montevideo Convention on the Rights and Duties of States, opened for signature at the International Conference of American States in Montevideo, Uruguay on December 26, 1933 (entered into force on December 26, 1934) Art 1; JG Stoutenburg, "When Do States Disappear? Thresholds of Effective Statehood and the Continued Recognition of 'Deterritorialized' Island States", Columbia University Threatened Island Nations Conference (2011).<http://www.law.columbia.edu/null/download?&exclusive=filemgr.download&file_id=5833>, at 23 July 2012.
3. MCR Craven, 'The Problem of State Succession and the Identity of States under International Law' (1998) 9 European Jnl of International Law 142 at 145.
4. UN Doc FCCC/CP/1997/7/Add.1, Dec. 10, 1997; 37 ILM 22 (1998).
5. 13 UST 2312; 450 UNTS 11.

In depth…

New Solomon Islands Protected area legislation

by Mr Adam Beeson, Australian Volunteer, Landowner Advocacy and Legal Support Unit, Public Solicitor's Office, Solomon Islands

On 10 February 2012, national legislation that enables the Minister of Environment to declare an area of land or sea as a protected area (PA) came into force in Solomon Islands. The Landowners' Advocacy and Legal Support Unit (LALSU) of the Public Solicitor's Office has already this year been approached by more than eight landowner groups interested in creating a PA under the new legislation.

The *Protected Areas Act 2010* has been welcomed by many landowners as they now have a mechanism, subject to Ministerial approval, to protect their land from logging. Logging is prohibited in PAs and their buffer zones (up to 1km) under the regulations. Until now even a consensus among a landowning group not to log was of little use. This was due to the combined effects of a lack of regulation from the central government, the failure to comply with the law by provincial governments, and the unscrupulous behaviour of domestic and international logging companies. This, in combination with a few greedy or gullible members, or purported members, of a landowning group, is often all that is required to facilitate logging in the absence of organised community opposition.

Other types of resource extraction are also limited in PAs. There is a complete ban on mining in PAs under the regulations. This restriction will become increasingly important as mining becomes more prevalent in Solomon Islands. In marine protected areas, it is unlawful to do trawling by dragging wire or nets. It is also unlawful to discharge waste into the area. Other restrictions, such as taking fish and removing live coral, are forbidden unless they are permitted by the management committee for the PA. The Act also provides for the regulation of access to genetic resources.

There will be challenges in ensuring that the conservation aspirations of landowners is realised. The Ministry of Environment, for example, will need to be adequately resourced to receive and process applications and to ensure that the legal process has been correctly followed. Landowners will also need to be able to access legal and financial resources to ensure they can prepare applications and enforce the rules that apply in their PA.

An area can be declared a PA by the Minister after (s)he has received a recommendation from the Director of Environment and Conservation that the environmental significance of the area warrants protection, and a range of statutory preconditions have been satisfied. Notwithstanding a positive recommendation, prior to making a declaration the Minister must be satisfied that:

- the area is suitable for protection;
- the boundaries of the area are adequately defined;
- the landowners and other people with interests in the land have given consent to the declaration; and
- a management plan is in place.

Approximately 87% of the Solomon Islands is customary land. In most cases, there are no written records that the Minister of Environment can rely on to establish who the customary landowners are. The legislation requires an application for a PA to be accompanied by the minutes of a meeting of the landowner group containing a resolution to create the PA.

After the landowners have resolved to apply for the declaration, consultation must also take place between them and any neighbouring landowners. Minutes of this consultation must also be provided with the application, together with a signed map confirming the boundaries of the proposed protected area.

Inside the Solomon Islands House of Parliament

A management committee will be appointed for each PA by the Protected Area Advisory Committee established under the Act. Members of the management committee must live in the area or already be managing the area. The legislation also allows groups that manage 'informal' PAs already in place in Solomon Islands to be recognised as management committees for the purposes of the Act.

The recognition of existing management groups is a sensible and useful provision in the new legislation. It will save time and resources, and empower communities by acknowledging the conservation and management work that they are already doing. When an existing management group is recognised as a management committee, it will become a body corporate and therefore it can open bank accounts, employ staff and own property. Unfortunately however, the legislation is not as clear as it could be on the mechanism for recognising an existing management group. This will no doubt evolve in practice but the legislation would be improved if this was clarified. The management committee is required to develop a management plan for the PA and to submit that to the Advisory Committee for approval.

The Regulations make it an offence to disturb in any way a PA unless explicitly permitted in the management plan. Therefore, the management plan is critical as it can authorise activities in the PA that the regulations would otherwise forbid – activities such as hunting, lighting fires and agriculture. The management plan can also be used to divide the PA into zones, so that different restrictions/permissions apply in different parts of the area.

The legislation enables landowners to enforce the rules that apply in PAs. Under the regulations, management committees can appoint members of the local community as rangers. Rangers can require a person to stop unlawful activities in PA. 'Inspectors' have the power to issue infringement notices in addition to coercive powers. Inspectors are appointed by the Minister but can be appointed from the ranks of rangers. Therefore, if a community member is appointed as both a ranger and an inspector, he or she will be able to issue infringement notices to people who breach the rules. The lack of Ministry and police resources and the difficulties with transport make this a practical response to the challenge of ensuring that PAs are managed and used sustainably.

The Protected Areas Act and its regulations respond to Solomon Islands' obligations under the Convention on Biological Diversity (CBD), and were developed with assistance from the Global Environment Fund and the Coral Triangle Initiative. It promises much to communities who want to conserve their natural and cultural heritage. It is now up to the current Minister of Environment to ensure the legislation is implemented so that important areas of Solomon Islands can become statutory PAs.

In depth…

'Ownership of foreshore, reefs and seabed in Solomon Islands

by Professor Jennifer Corrin[1]

Throughout Oceania, land is a fundamental part of traditional culture and heritage. It is subject to a sacred trust that recognises the guardianship of departed ancestors, and requires that the land be preserved for future generations. The value of land cannot be captured in monetary terms only. However, customary title is being modified by both legislation and, in some cases, by judicial re-interpretations of customary title in common law terms.

The Solomon Islands Law Reform Commission (the Commission) is reviewing the complex customary law, common law and statutory legal issues concerning who owns and has rights to manage and use tidal lands in Solomon Islands. The Commission's report is expected to be released in the near future. This brief article flags some of the issues behind the review.

The Constitution

In Solomon Islands, as in Samoa and other countries in the region, the Constitution restricts 'ownership' of customary land to indigenous citizens, and alienation is forbidden or restricted. Customary land may not be transferred or leased to a non-Solomon Islander unless that person is married to a Solomon Islander or inherits the land and is entitled to an interest under customary law. A 'Solomon Islander' is defined as a person born in Solomon Islands who has two grand-parents who were members of a group, tribe or line indigenous to Solomon Islands. The Constitution also states that, in making provision for the application of laws (including customary laws), Parliament has a duty to 'have particular regard to the customs, values and aspirations of the people of Solomon Islands' and to 'the application of customary laws'.

Land titles legislation and customary title

The *Land and Titles Act (the Act)* consolidates the law on land tenure, acquisition and registration. It deals with both customary and alienated land. Although alienated land is required under the Act to be registered under a Torrens-type system of title, the Act provides for customary land to be dealt with in accordance with customary law. The only dealings with customary land that are authorised are compulsory acquisitions for public purposes or leases to the Commissioner of Lands or a Provincial Assembly. It is not clear whether licences allowing non-islanders to use the land are permitted, but in practice, licences are often granted.

The Act does not expressly state who owns the land below high water mark. This has given rise to problems as members of the customary community almost invariably regard the foreshore, reefs and seabed as part of customary land, whereas the common law presumes that the area below high water mark belongs to the Crown. The situation is complicated by the fact that, as with other types of 'ownership' of customary land, 'ownership' of foreshore and reefs may be multi-layered, with a number of interests co-existing at the same time.

Recent case-law

Unfortunately, decisions of the Solomon Islands High Court considering customary title are in conflict. In *Allardyce v Laore [1990] SILR 174* Ward CJ held that the issue was governed by the common law. This meant that 'land covered by water' did not include the seabed and that therefore the seabed could not be part of native customary land. However, he did recognize that 'some

customary rights can exist over the sea and such customary rights can supplant the common law position'.

The more recent case of *Combined Fera Group v The Attorney General* (Unreported, High Court, Solomon Islands, Palmer J, 19 November 1997), available via <www.paclii.org> [1997] SBHC 55, seems to be the decision that is regarded as the better view. In that decision, Palmer J took a more liberal approach. His Lordship traced the evolution of the definition of 'land' through the Lands and Titles legislation. He reasoned that land covered by water was now capable of including the seabed, and could vest in the Commissioner of Lands as public land. His Lordship considered that this raised a strong presumption in favour of the view that the seabed could also become part of customary land. The court held that the 'cut off' date for establishing a claim of current customary usage was 1 January 1969, when the current Land and Titles Act came into effect. If land which formed part of the seabed was customary land as at that date, then it could not have vested in the Commissioner of Lands.

The *Combined Fera Group v The Attorney General* decision was followed by the Magistrates Court in a land acquisition matter. In *Tafisi v Attorney-General* (Unreported Magistrates Court, Solomon Islands, Maina J, 2 July 2009), it was held that land below the high water mark could be subject to a permanent communal right of use as evidenced by customary practices and continuous use or occupation. More recently, in the Solomon Islands High Court decision of *Laugana v Attorney General [2011] SBHC 76* the *Combined Fera Group The Attorney General* decision was relied on as authority for restraining a company from interfering with the use of the sea area connected with the business activities being carried out on the land of another company, which had acquired that land from customary owners.

The conflicting High Court authorities were one of the catalysts for the reference in 2009 to the Solomon Islands Law Reform Commission (SILRC), a statutory body that reviews laws and makes recommendations to the Government for law reform. The Commission considered:

- the current legal position regarding ownership and control of beaches, shores and land below high water mark and low water mark;
- the true position of ownership of beaches, shores and land below high water mark and low water mark;
- rights of use of beaches, shores and land below high water mark and low water mark in custom;
- the pros and cons pertaining to the current legal position; and
- changes to the law to reflect the true aspirations of the people of Solomon Islands.

In October 2009, the SILRC released a consultation paper for the review. The report on customary and statutory property rights and interests in land below high and law water mark is in draft form and expected to be released in 2012.

The SILRC's consultation paper on property rights and interests in near-shore and offshore areas noted the status of land in selected countries of the region are outlined in the table below.[2]

Conclusion

The Constitution emphasises the importance of custom in relation to land and this is given practical application by the *Land and Titles Act*. However, whilst the Act has provided some protection against the alienation of customary land, the legislative arrangements are far from satisfactory. The regime is unclear and the resulting uncertainties have given rise to a culture of disputing land 'ownership' and boundaries.

The draft of a new Constitution is under consideration in Solomon Islands (the Bill). This bolsters protection of customary land. For example, it provides for social, spiritual, cultural and environmental impact studies before any development is carried out and

that free and informed consent of customary owners is required, as well as providing a right to a 'just and fair return' for any use of their resources. It also limits the government's right to acquire customary land other than by way of a leasehold or similar. However, the Bill does not overcome the lack of a shared vision for customary land, which still appears to be a real stumbling block for Solomon Islands. Piecemeal reforms attempting to address problems individually are at best a compromise and at worst a misguided exacerbation of the problem. As customary land lies at the heart of the operation of the Solomon Islands' cultural system, until the tensions between pluralism and the increasing demands of the changing Pacific are addressed, that heart will continue to be stressed by conflict and disillusionment.

Endnotes:

1. Director of the Centre for International, Public and Comparative Law and Professor in the TC Beirne School of Law, The University of Queensland. An earlier, more detailed version of this paper appeared in 2011: J Corrin 'Customary land in Solomon Islands: A victim of legal pluralism' (2011) 12 *Revue Juridique Polynesienne*, 277–305.
2. The Solomon Islands Law Reform Commission, *The Land Below High Water Mark And Low Water Mark Consultation Paper* (2009), <http://www.paclii.org/gateway/LRC/SILRC/Docs/Foreshore%20Consultation%20Paper.pdf>, 24 July 2012, 22.

SILRC's consultation paper on property rights and interests in near-shore and offshore areas

Country	*Status of land*	*Legislation and Case Law*
Vanuatu	Customary land. Any development of the foreshores requires written consent from the Minister of Town and Country Planning.	*Constitution*, Articles 73 and 74. *Foreshore Development Act* [Cap 90] s 2. *Browne v Bastien* [2002] VUSC 2; www.paclii.org.
Papua New Guinea	All land belongs to the State except for customary land; and any estates, rights or interests in force under any law.	*Land Act* 1996 s 4.
Fiji	Crown ownership subject to private rights that can be proved.	*Crown Land Act* s 2. *Tokyo Corporation v Mago Island Estate Ltd* [1992] FJHC 76; http://www.paclii.org.
Kiribati	Crown ownership subject to private rights that can be proved.	*Foreshore and Land Reclamation Ordinance* s 3.
Tuvalu	Crown ownership subject to private rights that can be proved.	*Foreshore and Land Reclamation Ordinance* s 3.
Samoa	Crown ownership.	*Constitution Article* 104(1).
New Zealand	Crown ownership subject to customary rights of use that must be recognized by the Maori Land Court or High Court.	*Foreshore and Seabed Act* 2004 s 13.

In profile…

Karuna Gurung interviews LAWASIA's President, Ms Malathi Das

Q: Can you tell me about the focus of LAWASIA?

LAWASIA's focus, as the association of peak legal bodies, judges, lawyers and legal academics in the Asia Pacific, is primarily on the regional legal landscape and the issues that are of particular importance to its legal communities.

We place a particular emphasis on rule of law and human rights issues with a desire to be of practical assistance in capacity-building for developing bars, recognising that legal professionals, regardless of jurisdiction, have much to learn from one another and support each other.

While individual membership is of essential importance, the organisational membership of the bar associations and law societies from around 30 countries in the region ensures that LAWASIA policy and initiatives are informed by a broad range of nationally relevant views.

Q: What are some of the common issues faced by lawyers in the region?

Despite the diversity of the Asia-Pacific region, many of the fundamental issues faced by lawyers are shared in common. Professional concerns such as disciplinary issues, access to legal education and professional development, ethics, independence of the profession, cross-border admission rights and efficient management of law practices, as well broader access to justice issues, are all matters of common interest to the legal associations in the region.

Lawyers face some universal issues, such as whether they can practise law, represent their clients effectively within an equitable, transparent and accountable justice system, earn a living and develop their law practices as feasible and profitable businesses, while still maintaining a viable work/life balance.

Ms Malathi Das was elected as the first female president of LAWASIA.

There are particularly difficult issues faced in countries where adherence to the rule of law, the observance of human rights, and independence of the profession and the judicial system are not (or not yet) accepted as a norm. The region throws up many examples of where lawyers and their professional bodies are at the forefront in encouraging governments to establish regimes that deliver on these fundamental principles. Finding the courage to do so under adverse circumstances is often assisted by an understanding that there is collegial support from elsewhere.

An admirable hallmark of the regional profession has always been the willingness of colleagues in one country to sensitively support their counterparts who are operating under such constraints in another.

Q: What are some of the challenges with representing such a diverse region?

LAWASIA is mindful that practices, procedures and resource levels in one country or organisation are not necessarily acceptable and applicable to all others. It aims to be tolerant of differences, but to structure polices and work program to deliver the best outcome all round. Practical challenges related to differing languages,

cultures and economic circumstances are a constant consideration, and responses must be flexible. LAWASIA meetings are always friendly and inclusive because of the sense of ownership and belonging that its members feel. But LAWASIA does not compromise when speaking out against injustice.

LAWASIA recognises the extent to which many lawyers in the region are limited by cost factors in their ability to participate in regional interaction, with all the benefits that can bring. LAWASIA arranges educational and networking meetings in developing jurisdictions, through a tiered system of membership and event registration pricing. In this context, I gratefully acknowledge the valued role played by more developed LAWASIA member countries in the region in supporting such initiatives.

Q: What do you think the legal profession in the Asia-Pacific can offer to the region and the globe?

This is the Asian century and the legal profession needs to adapt quickly to this particularly in relation to countries like China, Vietnam and others.

The world at large is clearly interested in 'Doing Business in Asia' and the ability of legal professionals to exhibit universally high standards of practice, including an understanding of the need to balance commercial and social interests fairly, will always deliver wide and lasting benefit back into the region.

In circumstances where the rule of law may be under challenge, an Asia Pacific culture that recognises that the legal profession has a wider responsibility as members of civil society not only assists stability in home jurisdictions, but also sets an example for others. A current example can be found in the newly-created Republic of Nepal where the Nepal Bar Association continues to play a leading role in the country's constitutional evolution.

Parallels can be found in the Pacific, especially in recent times in Papua New Guinea where political uncertainty saw the development of a crisis in the rule of law and constitutionalism. The response of the local profession is, and will be of particular consequence in how this will eventually play out, and the supporting voice of regional colleagues in calling for adherence to the concept of rule of law, underpinned by an independent judiciary, emphasises this importance.

Q: What major challenges do you see for the legal profession in the Asia-Pacific region? And how can these be overcome?

As always, the relationship between the legal profession and governments that have different priorities and values will continue to provide a major challenge.

In more concrete terms, the Asia Pacific profession now faces competition in the delivery of legal services as legal markets open up to European and American interests. Where some jurisdictions have welcomed this as mutually beneficial, others continue to maintain protection for the local profession to an extent that may be seen as hindering commercial development and delaying the inevitable tide.

Other challenges can include heavy workloads, while for some; the ability to earn a sufficient living from legal practice is a problem. How good gender balance can be arrived at in legal practice and bar leadership is also an issue in the region.

A lack of resources for professional bodies' professional disciplinary and education function is a significant problem, particularly in smaller jurisdictions such as in the Pacific.

Q: LAWASIA's significant achievements include its Human Rights Committee and Secretariat's contribution to the development of human rights mechanisms. Where do you believe LAWASIA's most important work on human rights and the rule of law is being carried out?

LAWASIA has amongst its constitutional objectives, a requirement to promote the administration of justice, the protection of

human rights and the maintenance of the rule of law within the Region and this is elemental to all aspects of its work program.

Over recent times, its Executive Committee, through the President, has assumed the responsibility of releasing public statements and undertaking other similar activity in reaction to situations in the region that impact on the observance of human rights and rule of law. Feedback has indicated over and over again the efficacy of such activity and the profile it brings with it.

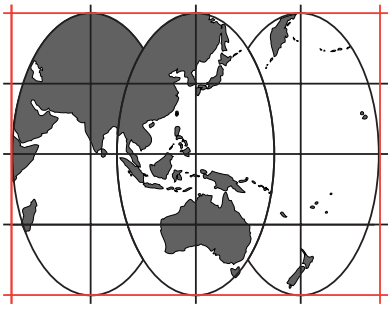
Not only does it indicate to breaching regimes that the international legal community is watching, it often supports the stance of the local profession and gives an opportunity to national jurisdictions to endorse a strong statement of principle where circumstances may otherwise prevent comment. We hope that it also offers guidance and encouragement to national jurisdictions that may wish to make their own comment, which in itself, acts to increase the efficacy of LAWASIA's activity in this respect.

Of primary and lasting importance is LAWASIA's desire to work collegially and from a position of understanding with jurisdictions that are still developing the will and the capability to operate under a rule of law.

Q: Where else in the region should LAWASIA and the international community generally seek to focus more attention?

There is a strong need to provide help and support to countries that are in post-conflict situations or are emerging from repressive regimes. The international community needs to provide assistance to Burma as it commences on a path towards democracy for example. Ongoing support and attention is also needed for jurisdictions that have outgrown the "post-conflict" label but remain diminished in capacity. Countries like Timor Leste, Nepal and Fiji whose legal professions have been considerably affected by political disruption spring to mind and there are others.

It is also incumbent on the international community to identify and give attention to those countries that are at risk, in order to do what it can to prevent situations of conflict and repression from developing.



LAWASIA

THE LAW ASSOCIATION FOR ASIA AND THE PACIFIC

25th LAWASIA CONFERENCE

18–21 November 2012

Bali Indonesia

Conference Theme:
Moving Forward

Karuna Gurung is currently on maternity leave and is happy to announce the arrival of their new baby boy, Snow Ratna Bajracharya.

In the spotlight…

New pro bono initiative to provide greater access to justice in the Asia-Pacific

The Commonwealth Attorney-General, the Hon. Nicola Roxon MP and Secretary-General of the Law Council of Australia, Professor Sally Walker, launched the Centre for Asia-Pacific Pro Bono (CAPPB) on 16 July 2012, a new initiative established to support international pro bono legal work in the Asia-Pacific region.

Attorney-General Nicola Roxon encouraged Australian lawyers to get more involved in pro-bono work both domestically and overseas.

"Pro bono work is critical in ensuring access to justice and I encourage the legal profession to undertake this important work," Ms Roxon said.

❶Ms Noor Blumer, President of the ACT Law Society; Ms Raelene Webb, President of the Northern Territory Bar Association; Ms Fiona McLeod, Victorian Bar and Mr Daniel O'Gorman, Queensland Bar Association.

❷Ms Anne Cregan, Ashurst Australia; Fiona McLeod, Victorian Bar; the Hon. Nicola Roxon MP, Attorney-General of Australia; Ms Claire Donse and Mr Daniel Creasey, DLA Piper.

❸The Hon. Nicola Roxon MP, Attorney-General of Australia and Professor (Emeritus) Sally Walker, Secretary-General , Law Council of Australia.

❹ The Hon. Nicola Roxon MP, Attorney-General of Australia.

In the spotlight…
Pacific Judicial Development Programme extended to 2013

The New Zealand Ministry of Foreign Affairs and Trade (MFAT) has extended its funding for the Pacific Judicial Development Programme (PJDP) to 30 June 2013.

The goal of the PJDP, which is implemented by the Federal Court of Australia, is to strengthen governance and the rule of law by supporting PICs to enhance the independence and professional competence of judicial officers and court officers, and the processes and systems that they use.

The 14 Pacific Island Countries (PICs) participating in the PJDP are the Cook Islands, Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

The eleven projects within the PJDP extension period are:

1. Access to Justice (formerly Customary Dispute Resolution)

This component promotes access to the formal justice sector and improves the integration of traditional dispute resolution practices. It will pilot a toolkit for the development of access to justice plans.

2. Family Violence and Youth Justice Project (new activity under extension period)

This is a new project designed to respond to needs identified by regional stakeholders for judicial and court officers. It will develop and pilot a training toolkit with the aim of improving knowledge, skills and attitudes relating to family violence and youth justice issues, law, and contemporary practice and procedure.

3. Codes of Judicial Conduct Project

This project aims to strengthen governance mechanisms in courts, and the piloting of a regional judicial conduct toolkit. The regional toolkit aims to build the capacity of PICs to draft, revise and/or reinforce Codes of Judicial Conduct.

4. Analytical Appraisal of Regional Judicial Development (formerly Institutionalisation of PJDP Project)

This desk-based appraisal will be used to develop ongoing and future regional judicial development initiatives.

5. Regional Governance and Leadership Development Project

This project will facilitate governance and leadership in judicial development through the interaction of chief justices, national coordinators, national judicial development committees and the regional training team.

6. Responsive Funding Mechanism

The responsive funding mechanism will support the design and management of locally tailored and managed activities that respond to courts' priority needs and which promote PJDP's development objectives.

7. National Judicial Development Committee (NJDC) Re-enlivenment Project

The aim of this project is to provide options for the re-establishment or re-invigoration of

national judicial development committees as a key mechanism for locally managed judicial development. The project will develop a concept paper for presentation to the PJDP's regional leadership.

8. Judicial Administration Project

A regional strategy for supporting judicial administration and a time-standards toolkit will be developed, based on earlier judicial administration diagnostic activities.

9. Performance Monitoring and Evaluation Project (formerly Judicial Monitoring and Evaluation Project)

The aim of this project is to build the capacity of PICs to increase transparency and accountability through the collection, analysis, reporting on and use of court performance data that takes community justice needs into account. Based on the performance monitoring framework developed, additional baseline data will be collected and analysed from across the region, and an annual reporting toolkit will also be piloted.

10. Consolidation of Regional Training Capacity Project (formerly Regional Training Team Project)

Induction and advanced training-of-trainers workshops will be held to develop local capacity to develop and deliver in-country and regional training.

11. Core Judicial Development Project

Orientation and decision-making training will be offered to lay judicial and court officers.

Raising the profile of Locally Managed Marine Areas in the Pacific

The National Trust of Fiji Islands has sponsored a motion at the IUCN World Conservation Congress (WCC) that urges States and government agencies to promote the development of Locally Managed Marine Areas (LMMAs) and other effective area-based conservation measures.

LMMAs are areas of near shore waters and associated coastal and marine resources that are managed by locally resident coastal communities and land-owning groups, often in partnership with conservation agencies or project donors.

In 2010 in its Strategic Plan for Biodiversity 2011–2020, the Convention on Biological Diversity (CBD) set a global target for marine protected areas and other effective area-based conservation measures at 10%.

The World Conservation Congress is held every four years. It aims to improve how the natural and cultural environment is managed. Motions are debated at the IUCN Members' Assembly, a 'global environmental parliament' of governments and NGOs. This year the Congress will be held at Jeju in the Republic of Korea, 6–15 September.

Co-sponsors of the LMMA motion include the Hawaii Conservation Alliance; the Te Ipukarea Society (Cook Islands); The Nature Conservancy; University of the South Pacific; Tonga Community Development Trust; and the Comité para la Defensa y Desarrollo de la Flora y Fauna del Golfo de, Fonseca(Honduras).

For more information and registration see: http://www.iucnworldconservationcongress.org/get_involved/congress_registration/

Also coming up

24–25 September 2012, Innovation, Development, Creativity and Access to Knowledge in Pacific Island Countries, Australian National University, Canberra. The conference will discuss intellectual property law (IP), international economic law, traditional knowledge and protection of genetic resources, anthropology, cultural heritage and policy, and development studies. For more information and registration see http://www.ippacificislands.org.

BABSEA CLE 1st Pro Bono Conference

Bridges Across Borders Southeast Asia Community Legal Education Initiative (BABSEA CLE) is an international access to justice, legal education organization, that focuses on ethically oriented legal capacity development and community empowerment.

BABSEA CLE, in cooperation with the National University of Laos will be hosting the 1st Southeast Asia Pro Bono Conference on 28 and 29 September 2012 in Vientiane, Laos. The conference will strengthen the ability of the legal profession to lead and actively participate in pro bono initiatives in the Southeast Asia region.

For details email: probono@babseacle.org.

PILON 31st Annual Meeting – Kokopo, Papua New Guinea

29–31 October 2012

For more information please contact tracey.white@pilonsec.org or fax to +685 22 1867.

LAWASIA Conferences

LAWASIA warmly invites the interest of SPLA members in its Asia-Pacific-based events. Each event assembles expert

speakers and delegates from around the region, providing networking and educational opportunities in a collegial and stimulating environment.

The 25th LAWASIA Conference, hosted by PERADI, the Indonesian Bar Association, will be held in Bali from 18-21 November 2012.

Expressions of interest are welcome through lawasia@lawasia.asn.au.

The 4th LAWASIA Legal Professional Indemnity Insurance and Risk Management Conference (with Law Society of Hong Kong) has been postponed until September 2013 (was originally planned for September 2012).

IPBA 2013 Conference

The 23rd IPBA Annual Conference will be held in Seoul from 17–20 April 2013.

Seoul is one of the most dynamic cities in the world. It has been the capital of Korea for hundreds of years and yet it continues to evolve as one of the largest metropolitan cities in Asia. This vibrant city will provide the backdrop for a conference themed "Dynamic Asia - New Opportunities & Challenges for Law & Business." In recent decades the Asia Pacific region has experienced rapid growth giving rise to unparalleled opportunities and challenges. Over the four days of the conference, delegates will enjoy informative and in-depth discussions of current legal and business developments in Asia while expanding their professional networks in the special atmosphere of collegiality for which the IPBA is justly celebrated.

Early Bird Registration: If you Register before 20 November 2012 you can save up to $USD200.

Visit www.ipba2013seoul.org

Law Council OF AUSTRALIA

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The South Pacifc Lawyers' Association was established in 2007 by the International Bar Association in partnership with the Law Council of Australia and the New Zealand Law Society. The South Pacific Lawyers' Association exists to assist developing law societies and bar associations in the South Pacific and to promote the interests of the legal profession in the South Pacific. Please visit **www.southpacificbas.org** for more information. *newSPLAsh* is produced on behalf of the South Pacific Lawyers' Association by the Law Council of Australia. This issue was complied by Hanna Jaireth, Karuna Gurung, Giesel Manalo and Nicole Eveston. For all enquiries, or to submit articles to future issues of *newSPLAsh*, please contact Nicole Eveston, phone +61 2 6246 3751 or email **nicole.eveston@lawcouncil.asn.au**