



South Pacific  
LAWYERS ASSOCIATION

# newSPLAsh

Issue 2 • July-Sep 2011

## A fresh start

the official launch of the  
South Pacific Lawyers' Association

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### Upcoming

LAWASIA Law Management Conference  
When: 9-10 September 2011

Where: HKUST Business School Central,  
Hong Kong Club Building, Hong Kong

Speakers include:

- Mr Gerry Riskin, Edge International
- Mr Paul Malliate, Chairman,  
LAWASIA Law Management Section
- Mr Nick Salmon, White and Case  
(see the website for more information)

## A word from...

### Mr Ross Ray QC interviewed on *Pacific Beat* for Radio Australia

*Mr Ross Ray QC, Chair of the South Pacific Lawyers' Association Executive, recently gave an interview on Pacific Beat for Radio Australia on the launch of the SPLA. He spoke on the formation of the Association and its goals of strengthening the legal profession in the region. The following text is an excerpt from the broadcast.*

RR: It started in 2002 when the International Bar Association (IBA) arranged a meeting of bar leaders from the region in Fiji. The purpose was to discuss common issues that confront lawyers in the region. We're very grateful that the IBA gave that initiative and that they've been supporting the process ever since. It was an important step in just confirming that whether you're from a large or small country, lawyers are confronted by the same sorts of issues. By working with each other, and not reinventing the wheel, we provide strength, better understanding, and ultimately, a much better service to the user community.

The next step that occurred was a visit to Australia in 2007. The Australian

Government was very helpful in arranging AusAID assistance. There was a Pacific Legal Forum that assisted 21 delegates from 11 countries to visit major capital cities to discuss issues with lawyers in Australia. At the end of that, there was a Roundtable, which created two issues: one was to identify key challenges for legal practitioners; and it created the Steering

Committee that subsequently worked and achieved the creation of the South Pacific Lawyers' Association. That ultimately led to [the Launch on 10 July] and the creation of a group that will, we hope, add great strength for the region.

**PB: 13 Pacific countries were party to the Roundtable to discuss regional approaches by the legal profession. Some of them have larger populations than others. PNG and Fiji have larger populations, Kiribati and Tuvalu smaller. Is that dependent on the kinds of issues they're interested in?**

RR: Not really. If you're dealing with a country like Nauru, they have two lawyers, so you don't necessarily have an association to assist those two lawyers. But those two lawyers still need reassurance, they still need access to mentoring if an ethical issue arises, they need access to senior members of the profession. By creating a structure such as this, you enable, even a very small country like that, to access more senior practitioners and assist them in the conduct of what they do. That, in turn, means that the citizens of the society we represent are much better represented and have a degree of reassurance that fundamental issues can be resolved and that lawyers can seek assistance. No matter how experienced you are, you can still find comfort through speaking to more senior people or people who have experienced these sorts of issues.

You're right, PNG is a much bigger country with many more lawyers. That gives rise to different issues. I spoke a moment ago about professional regulation and that's one of the issues that all countries have to



deal with. Professional regulation means, simply, that if lawyers behave badly, that they're held to account. Through providing assistance to the region...that's happened in Papua New Guinea. A very experienced lawyer came from the Victorian Law Institute and looked into their complaints management process, and made recommendations to the Government of PNG. That will introduce a complaints management system that will give the people of PNG much greater confidence that they are being looked after. We recognize the different needs and strengths of different societies. Indeed, one of the things the Steering Committee did was to conduct a survey of the needs of the member law associations. Through the conducting of that survey, we are able to focus on different issues and look at the strengths and weaknesses and compensate for them.

**PB: The rule of law has become an issue in the last decade for a number of countries across the Pacific. Solomon Islands, Bougainville, Fiji, Vanuatu, Tonga have all had issues. What kind of advice could an Australian lawyer give any of those lawyers given that background?**

RR: My first involvement in the region occurred in 1990 when I was part of a Victorian Bar team that went to PNG to run a teacher advocacy workshop. I've had five PNG readers come to Victoria to read with me. I've had a longstanding contact with the region and it's led to me having some understanding of the needs. You're right, there are those different tensions running in the background. What we are not wanting to do is to comment on the type of government or comment as external critics



The newly elected Chair of the SPLA Executive, Mr Ross Ray QC, at the launch of the South Pacific Lawyers' Association.

of any political system. What we do want to do is to offer the lawyers of that region a reassurance — things are very difficult for some of them — a reassurance that, if they want any kind of ethical issue dealt with, if they want further learning on CLE, that we can give them some back-up support. That enables them to have strength and independence. In turn, when the community goes to them, they feel stronger and more capable representing, from time-to-time, the individual who might be under great pressure in relation to an issue where the state has been a little overwhelming. That happens in every country. We have a balance of power and a balance of strengths. In some societies, that balance is temporarily not quite right. That creates great pressure on individuals and individual lawyers. Our goal is to try and balance the power of the state by ensuring adequate representation of those who simply have no voice. We do so in a way that's not so judgmental of the government of the day, even though we may have strong private views. Our goal is to simply ensure that the professionals can do their job. By doing so, we have a strong, independent legal profession, and if you combine that with a strong independent judiciary, it is a system that applies the rule of law and guarantees access to justice.

# Inaugural AGM

## Meet the new SPLA Executive



### Congratulations to the New Executive!

Standing L-R:  
Mr Rodney Kingmele,  
Mr Raymond Schuster.

Sitting L-R:  
Mr Kerenga Kua,  
Mr Ross Ray QC,  
Mr Dorsami Naidu.

Absent:  
Ms Ese Apinelu  
and Mr John Marshall QC.

The inaugural AGM of the South Pacific Lawyers' Association (SPLA) voted in a new Executive on Monday, 11 July 2011.

In total, nine nominations were received for seven positions and it was noted by the President of the Law Society of New Zealand, who was attending on behalf of Mr John Marshall QC, that this in itself demonstrated the enthusiasm and commitment of members to the Association.

Voting was very close and the SPLA is proud to welcome its new Executive.

The SPLA Executive wishes to thank all the members who nominated for the positions and is currently evaluating ways to involve all members in activities of the Association over the coming months.

The Executive will hold office for a period of two years and convene by teleconference every two to three months or more frequently as needed. If you have any agenda items for discussion by the Executive, please contact the Secretariat by emailing [info@southpacificlawyers.org](mailto:info@southpacificlawyers.org).



First female Executive member, Ms Ese Apinelu.



Mr John Marshall QC (above) was unable to attend the SPLA Launch and meetings, and was represented by Mr Jonathan Temm.

### Members of the SPLA Executive:

- Mr Ross Ray QC (Chair), Law Council of Australia
- Mr Dorsami Naidu, Fiji Law Society
- Mr John Marshall QC, Law Society of New Zealand
- Mr Kerenga Kua, Papua New Guinea Law Society
- Mr Raymond Schuster, Samoa Law Society
- Ms Ese Apinelu, Tuvalu lawyers
- Mr Rodney Kingmele, Solomon Islands Bar Association



## ◀ In brief... We the people — Introducing the new SPLA Constitution

The Constitution of the South Pacific Lawyers' Association (SPLA) frames the future development of the SPLA. It enshrines the purpose and objectives of the SPLA and establishes rules for membership, withdrawal, election of office-bearers, the primary responsibility of those in office, the frequency of meetings and other matters necessary to the operation of the SPLA.

The need to develop a Constitution was first identified by the SPLA Steering Committee in December 2008 as a key component for the development of formal governance structures. This would ensure: the accountability of elected representatives; continuity of the SPLA as representatives of member associations come and go; the efficiency of administration; and the provision of a solid foundation for strategic planning.

The Steering Committee formed a Constitution Sub-Committee, comprising three members of the Steering Committee: Mr Kerenga Kua, Mr Rodney Kingmele and Mr Ross Ray QC.

The Sub-Committee presented a Draft Constitution to the Steering Committee at its meeting on 28 May 2009. The Steering Committee endorsed the Draft Constitution at its meeting on 17 September 2009, and the Constitution was then sent to SPLA Constituent Bodies for endorsement and comment.

Almost three years in the making, the SPLA Constitution was unanimously voted in at the Association's inaugural AGM on Monday 11 July, 2011.

The [SPLA Constitution](#) is now available on the SPLA website under the [About Us](#) section.

## ▶ In the spotlight... Australian Bar Association Scholar



Mr Solomon Kalu of the Solomon Islands outside the District Court of West Australia in Perth, where the ABA's Trial Advocacy Course took place on 4-8 July 2011.

As one of two winners of the ABA scholarship, Mr Kalu says he thoroughly enjoyed the program.

## Experiences as a young lawyer in the Pacific

### Discussions at the Pacific Young Lawyers' Forum

*Twelve young lawyers from eleven South Pacific countries led discussions at the Pacific Young Lawyers' Forum, which was facilitated by Mr Jonathan Beaumont and followed the official launch of the South Pacific Lawyers' Association on 10 July 2011.*

*The Forum focused on two key themes: "Being a legal professional" and "pro bono publico". These themes were explored with questions such as "What does it mean to be a professional?"; "What does it mean to engage in society as a member of the legal profession?"; and "What is the role of lawyers in working for the public good and promoting and defending the rule of law?"*

*Prior to the Forum, young lawyers were invited to prepare a paper on their experiences as a young lawyer in their jurisdictions. Ten very informative and valuable papers were submitted, providing the basis of the Forum's program. In the submissions, the lawyers revealed what it was like to be a new lawyer in their jurisdictions. Here are some of their first-hand experiences breaking into the profession...*

"Being a young lawyer in Kiribati is a very fulfilling career. Kiribati law and the legal profession are still developing and it is a pleasure to take part in the development of these things. Due to the relatively small number of lawyers in Kiribati, the law profession in Kiribati is very close. There is a sense of comradeship between all members of the legal profession. There are a few incidents of bullying in court cases, but this is solved by preparation before the court proceedings. Although the six months Professional Diploma in Legal Practice helped a lot, the first few months working as a lawyer was a steep learning process."

*Mr George Mackenzie, State Attorney,  
Office of Attorney-General, Kiribati*

"I had just turned 15 when I overheard my neighbour's conversation. The husband insisted he was innocent, but his wife begged him to plead guilty when he was due in court the next day because they could not afford a lawyer. As clichéd as the story may

sound, it speaks for the majority of people in the Pacific. Legal representation is perceived by most as a luxury rather than a service they are entitled to. I made up my mind then and there that I wanted to make a difference in restoring justice in the Pacific.

Working as a young lawyer in the Pacific has its challenges. The pressure to maintain ethical standards and model conduct is not only limited to working hours, but also extends to the lawyer's personal life. Since admission to the bar, I have not only been transformed into a young lawyer, but also a role model in the country. With this prestigious role, comes great responsibilities and pressure. Putting theory into practice is easier said than done. Lack of expertise and resources at the University of the South Pacific, in a way, limited our learning experience... Our inexperience became an issue when putting classroom theory into practice.

There is a shortage of lawyers in Tonga and a lack of mentoring from senior lawyers in the Pacific. As a result, there is a great amount of work pressure on young lawyers who have been thrown into the deep end of their legal career and are left with little time to enjoy and engage in other social activities.

As young lawyers, we cannot help but feel intimidated when appearing against senior lawyers, when making recommendations to high-ranking police officers or providing legal advice to elders in the community who refuse to be advised by someone half their age. This is when being a young lawyer is challenging in terms of proving oneself.

However, every cloud has a silver lining and although we young lawyers in the Pacific are thrown into the deep end of things at an early stage, we are at the same

time grateful for the exposure and learning experience that comes with it. As a young lawyer in Tonga, climbing the career ladder has so far been rather quick. Due to the lack of lawyers in the Pacific, young lawyers are forced to fill in the gaps of senior posts in the legal fraternity.

It is a great privilege to be able to serve the community and government at a young age. The ability to have authority in your voice when addressing the community has its benefits especially when addressing growing issues involving your peers in the Pacific. This along with other factors is the best part of being a young lawyer.

Good networking with other lawyers is an essential asset that every young lawyer in the Pacific should take advantage of. This is especially so in the Pacific region where, due to our geographic location, we are bound to find that in the course of our work, there will be matters where networking will be greatly needed. Because of advanced technology these days, young lawyers have been able to keep in touch on a frequent basis with colleagues from law school and regional meetings. I believe this is an area in which young lawyers of today have an advantage over their seniors in that they are able to easily communicate and interact with their regional peers at the start of their career."

*Ms Joan Puloka, Assistant Crown Counsel,  
Crown Law Office, Tonga*

"Being a young lawyer in the Solomon Islands is a challenge. However, working with the Public Solicitor's Office (PSO), the transition from being a law student to working as a lawyer is a process one has to be enthusiastic about. When you are a student, your mind concentrates on one to four assignments in two or three months.



**Young Pacific lawyers at the SPLA Launch (L-R):** Ms Bitarana Yeeting (Kiribati), Ms Jennifer Warren (Vanuatu) and Ms Elizabeth Tito Kuautonga (Solomon Islands).

In the workforce it's a continuous rhythm; one has to be prepared to deal with whatever matter that is thrust one's way. In the PSO, everybody does a bit of everything but with the help of legal advisers, both expatriate and local.

On a personal experience level, there is a custom called the *wantok* system that is very common in Solomon Islands, whereby the position as a public servant is used to serve the benefit of relatives, family members and friends. It is a form of corruption that has been imprinted in the minds of the general public. As long as one is a public servant, you have to serve your *wantoks* despite the fact that you have certain codes of conduct to abide by. So it's a conflict between performing to the expected standard and using the Office for the best interest of *wantoks*. To improve this, we need to disseminate information regarding the vision, mission values and who is benefiting from the PSO.

Finally, I think being a lawyer is the most noble job because it teaches me to holistically deal with a case... It challenges me to fight a good fight."

*Ms Elizabeth Tito Kuautonga,  
Senior Legal Officer,  
Public Solicitor's Office, Solomon Islands*

## In depth...

### SPLA Roundtable round-up



**Top (L-R):**  
Mr Togia  
Sioneholo  
(Niue), Mr Laki  
Niu (Tonga)  
and Mr Michael  
Takabwebwe  
(Kiribati).

**Bottom (L-R):**  
Mr Michael  
Takabwebwe  
(Kiribati),  
Ms Filiga  
Niko (Tuvalu),  
Mr Kerenga  
Kua (PNG), and  
Mr Rodney  
Kingmele  
(Solomon  
Islands).

On 11 July, bar leaders from Australia, the Cook Islands, Fiji, Kiribati, New Zealand, Papua New Guinea, Tonga, Samoa, Solomon Islands, Tuvalu and Vanuatu gathered for the South Pacific Lawyers' Association (SPLA) Roundtable at the Law Society of NSW's recently refurbished headquarters in the heart of Sydney's CBD. Topics included women in the law, complaints and discipline handling, continuing legal education (CLE) and young lawyers.

#### Women in the law

This session explored issues relating to women in the law. Strong similarities exist across the region in the percentage of law school graduates who are female (50 to 60 percent). However, in most countries, the high percentage of graduates has not translated to greatly increased numbers of female lawyers, partners, magistrates and judges. Discussion also focused on the role of women in government and other key positions.

In Tuvalu, while no restrictions are placed on practice by female lawyers, cultural barriers exist in that mediation and arbitration are traditionally not seen as women's roles. The Tuvaluan Constitution permits discrimination on the basis of gender and some inequalities are present in relation to family law and property law matters.

In Tonga, while men and women are represented equally in the legal profession, there are no female judges or magistrates. Tonga is traditionally patriarchal, however over the past 30 years positions in Government and the private sector have increasingly been taken by women. In recent times, funding has been received from Australia and New Zealand to promote women's rights. However, restrictions remain in important areas such as land ownership by women.

In the Solomon Islands there have been significant improvements in the situation for women in recent years. Women are well represented in key Government positions with a female Clerk and Deputy Clerk of Parliament as well as many female Ministers and Secretaries. Women lawyers have also always been members of the Bar Association Executive.



It was noted in the Cook Islands (a matriarchal society) women are strongly represented in the profession, on the Law Society Executive and in society more generally.

### Outcomes

- While the overall position for female lawyers in the South Pacific appeared to be generally healthy and improving, the Roundtable noted that a detailed analysis of female participation in the legal profession in member countries was required to determine whether there is a need for affirmative action or further research;
- The Roundtable noted that the SPLA, as a regional body, has a key role in assisting local law associations to advocate for changes to laws which discriminate against women and supporting initiatives to advance the status of women in member countries and that the SPLA should establish a Committee to continue to look into issues for women in the law.

### Complaints and discipline handling

The *Needs Evaluation Survey for South Pacific Lawyer Associations* identified an urgent need for support of law societies and bar associations to efficiently process and investigate complaints against lawyers and where necessary to take disciplinary action. Through the Law Council of Australia in partnership with the SPLA, the Australian Attorney-General's Department has agreed to fund research into the regulation of complaints and discipline procedures in Pacific island countries. The research will, among other things, seek to determine the need for developing model

rules and procedures in the region, the possible content, format and structures of the rules and procedures, and the financial, social, legal and political barriers that may impede the development and implementation of the rules and procedures.

The Roundtable considered these developments and noted that both the Survey report and the proposed research demonstrated a strong move towards more effective regulation of lawyers across the region. The Roundtable noted that it will be necessary to ensure that the need for immediate reforms in many jurisdictions was not deferred by the prospect of developing 'model rules' and that extensive consultation would be needed to develop more effective rules. It was noted that the difficulties experienced by many countries in effectively disciplining lawyers arise for different reasons including: an absence of, or ineffective, rules and procedures; legislation and regulatory frameworks; a lack of adequate resourcing; and the small size of the legal profession.

Mr Raymond Schuster suggested that any reform of conduct rules should be a two-stage process whereby the SPLA first develops models, then allows members to determine whether and how to adopt the models.

### Outcomes

- The Roundtable noted that the SPLA should establish a Committee to progress the development of a model statutory framework for professional conduct which can be adapted (with appropriate amendments) for implementation in each member jurisdiction.

### Continuing Legal Education (CLE)

This session explored the lack of existing structured delivery of CLE throughout the region. Discussion focused on possible regional and local solutions for the delivery of CLE including: live streaming over the web; electronically-recorded CLE; visiting experts presenting at regional hubs (such as Vanuatu, Samoa and Fiji); and delivery of CLE by local lawyers.

The session also addressed whether CLE should be mandatory or voluntary.

The need for smaller member jurisdictions to take responsibility for the delivery of CLE was discussed. It was noted that while it may often be challenging to iden-

tify widespread deficiencies in knowledge and experience within the legal profession, the tendency towards complacency should be discouraged. In a mandatory CLE system, delivery of CLE by senior practitioners could be encouraged by allocating more CLE points for presenting CLE sessions.

### Outcomes

The Roundtable noted that the SPLA should establish a Committee to:

- Identify the technical requirements and geographical constraints involved in delivering CLE electronically to member countries.

### New SPLA Committees

#### Women in the law

- Ms Ese Apinelu (Chair) (Tuvalu) [eapinelu@gov.tv](mailto:eapinelu@gov.tv)
- Mr Laki Niu (Tonga)
- Mr John Marshall QC (New Zealand)
- Ms Barina Waqa (Nauru)

#### Continuing Legal Education

- Mr Raymond Schuster (Chair) (Samoa) [raymond@schusterlaw.ws](mailto:raymond@schusterlaw.ws)
- Mr Bill Bani (Vanuatu)
- Mr Michael Takabwebwe (Kiribati)

#### Complaints and discipline handling

- Mr Ross Ray QC (Chair) (Australia) [rayr@vicbar.com.au](mailto:rayr@vicbar.com.au)
- Mr Kerenga Kua (Papua New Guinea)
- Mr Charles Little (Cook Islands)
- Mr Dorsami Naidu (Fiji)

#### Young lawyers and government lawyers

- Mr Rodney Kingmele (Chair) [rodneyk@sol-law.com.sb](mailto:rodneyk@sol-law.com.sb)
- Mr Bill Bani (Vanuatu)

If you are interested in the work of the above Committees, please email the relevant Committee Chairperson.

- Undertake an audit to determine the availability and level of usage of CLE resources in member countries (including material distributed in March 2011)
- Ensure that each constituent body has administrative structures in place to develop a schedule of CLE events.
- Engage with the Law Council of Australia and the New Zealand Law Society to identify Australian and New Zealand CLE resources which would be most useful to SPLA member associations.
- Explore opportunities to cooperate with the University of the South Pacific in the delivery of web-based CLE.

### Young lawyers

The session on young lawyers sought to continue discussion on the themes raised by young Pacific lawyers at the Pacific Young Lawyers' Forum held on 10 July 2011. A key focus for discussion was the need to provide mentoring programs for young lawyers and training on ethical conduct and practice management. It was noted that this mentoring should be provided by senior members of the local profession and incorporate formal training in key areas of practice.

The possibility of providing a service for young lawyers to confidentially discuss ethical dilemmas arising from their practice was also discussed. The Roundtable noted that a novel way of providing such a service would be to establish a panel or contact list of eminent lawyers from across the region who could be contacted on an ad hoc or referral basis for lawyers to discuss ethical and/or other issues.



**Top (L-R):**  
Mr Dorsami Naidu (Fiji), Mr Bill Bani (Vanuatu) and Mr Raymond Schuster (Samoa).

**Bottom (L-R):**  
Mr Michael Takabwebwe (Kiribati), Ms Filiga Niko (Tuvalu) and Mr Kerenga Kua (Papua New Guinea).

### Outcomes

- The SPLA should establish a Committee to investigate solutions for providing mentoring for young lawyers at a local and regional level.

### Conclusion

The discussions and outcomes of the Roundtable informed the first meeting of the new SPLA Executive, which took place the following day. Executive members discussed the formation of Committees to progress the SPLA's work in each of the areas addressed at the Roundtable.

## **In the spotlight...**

### **Inaugural AGM, Roundtable and first Executive meeting of the South Pacific Lawyers' Association**



#### **SPLA AGM and Roundtable participants**

Standing, L-R: Mr Togia Sioneholo, Mr Laki Niu, Ms Margaret Bryson, Mr Rodney Kingmele, Mr David Naylor, Mr Michael Takabwebwe, Mr Donald Marahare, Mr Raymond Schuster, Mr Isala Isala, Mr Dorsami Naidu, Mr John Tougon, Ms Karuna Gurung, Mr Bill Bani, Mr Joe Forbes, Mr Charles Little.

Sitting, L-R: Mr Kerenga Kua, Ms Filiga Niko, Mr Alexander Ward, Mr Ross Ray QC, Mr Jonathan Temm, Ms Margery Nicoll.

Mr Alexander Ward, Law Council President addressing the AGM and Roundtable participants at the Law Society of NSW.



Mr Raymond Schuster receiving a ballot paper from Mr David Naylor for the Executive election at the SPLA's inaugural AGM.







**First Executive meeting (L-R):**

Mr Dorsami Naidu, Mr Rodney Kingmele, Ms Ese Apinelu, Ms Margery Nicoll, Mr Raymond Schuster, Mr Ross Ray QC (back to camera).



Mr Michael Takabwebwe speaks on behalf of the SPLA members to thank the Law Council President Mr Alexander Ward for the Law Council's support of the Association.

## Justice (or lack of) in the Pacific

### Mr Laki Niu, President, Tonga Law Society

There are many necessary aspects to the attainment of justice in any country, but in the Pacific island nations, there are some issues, other than lack of political and economic independence, that are more glaring.

As a privately practising lawyer in Tonga, I have observed and experienced several difficulties in the pursuit of justice. In my career, I have seen 17 expatriate judges and eight expatriate crown prosecutors come and go between 1973 and 2011. The following is my account of the issues that have been encountered in the judiciary and legal profession of my country.

#### A foreign aid-funded judiciary

Each Pacific island country has its own language and customs and, despite centuries of imposition of European culture, Pacific traditions have survived and even prospered. Their value and depth have now become appreciated and have enriched each country. Although there may be no indigenous words for many imported phenomena, there are no European words for hundreds, if not thousands, of everyday Pacific occurrences.

A Pacific island client, for that reason, is better understood by a Pacific island lawyer, than by a European lawyer. Pacific island lawyers speak the same language and act in accordance with the same customs. They are also better able to understand the grounds for the claim, defence or mitigation of their client.

Furthermore, the civil disputes, or the bulk of them, and the majority of criminal cases are dealt with in the magistrates or lower courts where the adjudicators are Pacific islanders.

As a result, the entire proceedings can be carried out in the same language. There is no need for interpretation or translation, which means there is no need for extra cost or delays (except of course where a foreigner is involved). More importantly, the laws and legislation that govern the disputes and offences are enacted in the indigenous language of the Pacific island countries. They are made by parliaments comprising indigenous people.

Consequently, cases are dealt with more quickly, efficiently and justly. In some Pacific island countries, this is even the case with the proceedings that go before the supreme or higher courts. Those adjudicators are also indigenous people who speak and follow the same language and customs. They deal with disputes and offences with juries comprising the same indigenous people just as quickly, efficiently and justly.

This, indeed, is independence, freedom and justice.

Unfortunately, this has not been achieved in many Pacific island countries, and it is not because of a lack of indigenous lawyers and adjudicators. Rather, these countries lack the knowledge to appreciate that independence and freedom can only be achieved if their people can obtain justice. Had these nations believed so, they would have allocated budgets to pay for indigenous lawyers and adjudicators.

Instead, they use the taxes paid by the people to provide justice for other “press-



ing” needs such as education, health, roads, and so on, with little regard for the need of justice for the people.

At the same time, developed countries with willing lawyers and adjudicators stand ready with funds, which they offer in the form of “aid,” and which Pacific island countries readily accept. These countries, thereby, receive and employ expatriate lawyers for their attorney and solicitor-generals’ offices and also judges for their supreme or higher courts, who are paid for by the donor countries. These Pacific countries are using the funding to bridge financial gaps in their annual budgets.

However, expatriate lawyers and judges often do not speak the language or are unaccustomed to the traditions of their host countries, and no amount of interpretation, translation and explanation can convey the value and meaning of these local mores. Expatriates are often, despite their qualifications and experience, handicapped.

This situation necessitates the translation of documents and verbal interpretation of court proceedings, which are costly and time-consuming. Translation substantially lengthens both the duration and cost of court sittings, and because the donor countries do not usually cover such costs, the recipient countries and clients must pay for them. To contain costs, translators are paid low salaries, and despite their best efforts, translations are rarely sufficiently precise to properly convey the meaning of evidence or the detail of complex submissions. The result is that the expatriate judges do not understand all the evidence or contents of the documents. These adjudicators can only base decisions on what the translators convey to them. Indigenous

lawyers do their best to correct the translation, but it causes interruptions and even arguments over meaning, which another would have to adjudicate. An indigenous judge would be best placed to make determinations on the meaning of evidence, but in many jurisdictions there are none.

These delays cause a lag in the delivery of justice for the litigants. Cases pile up and recipient countries ask for and receive further aid in the form of more lawyers and judges to deal with the back log. This then necessitates more interpretation and translation, which creates more delays and further back log, which is addressed by appointing more expatriate lawyers and judges!

The donor countries are presumably content, however, because they continue to employ more and more lawyers and judges overseas. Meanwhile, the recipient countries are happy because they don’t have to pay for them. Yet, the whole purpose of the aid, i.e to dispense justice to the people of the recipient countries, is lost in the myth that foreign aid is unquestionably beneficial.

In the end, the people do not receive justice because they are being tried by judges who are foreigners to their languages, traditions, environments, social conditions and needs.

It seems donor countries and advisors to recipient governments simply do not understand the complexity of the delivery of justice in a foreign language, or are simply not aware of the problems that their well-intentioned funding is creating. Donor funding could be put to far greater use to provide support on the duties and responsibilities which, as members of their legal profession, should be theirs alone.

### The non-independence of the judiciary

The need for independence among the judiciary is the same in the Pacific countries as it is in developed countries, but whereas the judges of developed (donor) countries hold a secure tenure of office, the expatriate judges, appointed under aid from developed donor countries, do not. They are appointed for limited periods of usually two and sometimes three years. More often than not, the judges wish to renew and extend their terms. The renewal and extension is subject to approval by both the donor government (which provides funding for the judges' salaries) and the recipient government.

The recipient government executive thereby has the right to "control" expatriate judges. If judges, during their term, justly give unfavourable decisions against the government, they may well find that their contract will not be renewed and no reasons will be given as to why. This has actually happened in some Pacific island countries. These governments have not only caused great injustice to those judges, they have also affected the decisions made by other adjudicators in their jurisdiction. In these countries, by virtue of the appointment of untenured judges, the independence of the judiciary and justice is compromised.

The governments of the recipient countries have achieved and perpetuated the control of the judiciary by requesting and receiving aid from developed donor countries. The failure to direct this aid to pay for and employ indigenous government lawyers and judges is a key component in the creation of the difficulties of language and independence pointed out thus far.

### A few solutions

- Recipient countries could insist on using donor funds in a way they believe best reflects their needs.
- Pacific countries could implement policy requiring them to look first to their citizens for judicial appointments and appointments to senior legal roles, training for the most promising candidates, or as a last resort, seek an expatriate appointment with a mandate requiring skills transfer.
- Seek assistance to design and structure an effective legal aid scheme which pays lawyers a basic fee for representing destitute clients and those without the means to enforce their legal rights.

### A lack of legal aid

Many Pacific island countries do not provide legal aid. Often, this is not due to a lack of funds, but a failure of governments to appreciate that a defendant in a criminal case will not have justice in the court unless he or she has legal representation.

These governments argue and maintain: that the police prosecutors and crown prosecutors are doing their jobs properly; that the police are investigating and arresting defendants appropriately and that they do not force confessions out of defendants; that the budget to do all this (as well as the budget for the magistrates and judges) will ensure that those defendants



## Upcoming... “From good to outstanding”: LAWASIA Law Management Conference

will receive justice. They ask: Why should the government pay for private lawyers to prove that the police have done their jobs properly?

Furthermore, they claim that the government has no money and can ill afford to grant legal aid. Consequently, private lawyers in those countries bear the burden of legal aid — one they themselves can ill afford. However, they provide pro bono services because the defendants are either from the villages they come from or are genuinely in need of representation in accordance with their code of ethics that forbids them to refuse legal assistance based on the litigants' paucity.

In the end, the private lawyer defends his client for free or very little, and bears his cost for doing that, with fees paid only by clients who can afford them. The private lawyer is faced with an endless queue of non-paying defendants, and justice cannot be delivered to them all. However, if not private practitioners, who will act for destitute people? Ultimately, it is society that loses.

That is where aid is properly needed. If developed countries genuinely wish to help the Pacific island nations achieve justice for their people, they must provide the funds to the Pacific governments for legal aid to be granted to ensure defendants without the means to pay for legal representation in criminal cases have access to justice.

*Mr Laki Niu graduated with an LLB degree from Auckland University in 1974 and was admitted to the New Zealand Bar in 1975. He became the Assistant Crown Solicitor to the Tongan Government in 1976 and has been practising privately since 1982. He has been elected (annually) as President of the Tonga Law Society, except for the years 1994-96 and 2008.*

LAWASIA's 2011 Law Management Conference in Hong Kong this September aims to provide practical advice on drawing the best out of a firm's lawyers and support staff.

Presenters such as Gerry Riskin, a “professional firm management and marketing guru,” Kris Will and several Executive search professionals will share their knowledge on recruitment, development and retention of talent. An interactive panel discussion will end the two-day program.

Please visit the [LAWASIA Law Management Conference website](#) for more information.



## In the spotlight...

### South Pacific Lawyers' Association officially launches!



L-R: Mr Alexander Ward, Law Council of Australia; Mr Dorsami Naidu, Fiji Law Society; Mr Rodney Kingmele, Solomon Islands Bar Association; Mr Ross Ray QC, SPLA Chair; The Hon Robert McClelland MP, Commonwealth Attorney-General; Mr Kerenga Kua, PNG Law Society; Mr Raymond Schuster, Samoa Law Society.



The Hon Robert McClelland MP, Commonwealth Attorney-General, officially launches the SPLA.



L-R: Mr Alexander Ward, Law Council of Australia; Mr Ross Ray QC, SPLA Chair; Ms Mmasekgoa Masire-Mwamba, Deputy Secretary-General, Commonwealth Secretariat; The Hon Robert McClelland MP, Commonwealth Attorney-General.



Mr Ross Ray QC, SPLA Chair, and Mr Kerenga Kua, PNG Law Society.





L-R: Ms Silivia 'Atiola, Assistant Crown Counsel, Tonga; Ms Joan Puloka, Assistant Crown Counsel, Tonga; Ms Salote Salanoa Wright, Samoa; Ms Rosella Papali'i, Samoa Law Society; Ms Mmasekgoa Masire-Mwamba, Deputy Secretary-General, Commonwealth Secretariat; Ms Sharen Haiharu; Ms Bitarana Yeeting, Office of Attorney-General, Kiribati; Ms Barina Waqa, Nauru Law Society; Ms Jennifer Warren, Solicitor, Vanuatu.



Standing L-R: Ms Filiga Niko, Tuvalu lawyers; Ms Barina Waqa, Nauru Law Society; Mr John Stephen Tougon, Vanuatu Law Society. Sitting L-R: Mr Isala Isala, Tuvalu lawyers; Mr Donald Marahare, Solomon Islands Bar Association; Mr Laki Niu, Tonga Law Society.



Mr Dorsami Naidu, Fiji Law Society and Mr Alexander Ward, Law Council of Australia.



Mr Bill Bani, Vanuatu Law Society, and Mr Charles Little, Cook Islands Law Society.



L-R: Mr Nilkanthsing Jagarnath, Head, Deputy Secretary-General's Office, Commonwealth Secretariat; Mr Jean-Paul Nkounchou Somo Toukam, Cameroon Senior Advisor; Mr Michael Takabwebwe, President, Kiribati Law Society.

## In profile...

### Ms Filiga Taukiei Niko

*As the only female delegate from the South Pacific to attend the inaugural South Pacific Lawyers' Association (SPLA) AGM and Roundtable, Ms Filiga Taukiei Niko of Tuvalu spoke eloquently on behalf of the Attorney-General of Tuvalu, Ms Ese Apinelu. Along with fellow countryman Mr Isala Isala, Ms Niko made valuable contributions to the meetings and the Pacific Young Lawyers' Forum.*

#### **What are the chief responsibilities in your current role(s)?**

My role involves providing legal advice to government departments, prosecuting criminal cases and representing the Government in civil cases. It also involves drafting legislation and subsidiary legislation and contracts. I have also represented Tuvalu in a number of national, regional and international meetings and training.

#### **What professional achievement are you most proud of?**

Being able to receive the trust and confidence of the members of public who have asked me to advise and represent them in Court.

#### **What is great about working in law in Tuvalu?**

It is my beloved country and I know its unique cultures and traditional settings better than anywhere else in the world. It is a relatively small jurisdiction with relatively non-complex systems unlike other bigger jurisdictions. The legal system is comparatively peripheral relative

to respect for traditions and customs, and working toward an improved knowledge and appreciation of the legal system is of great challenge, which makes it worthwhile to work in Tuvalu.

#### **What would you like to see improved in the legal profession in this region?**

To improve the standard and quality of the legal services we provide to the public and Government through CLE, and a stronger and more effective coordination between the legal professionals in the region under the umbrella of the SPLA.

For the legal professionals either in Government or in private practices to work together in promoting and establishing an environment where they can deliver their services at the highest level.

#### **What would you like to achieve in your career in the next year?**

In the next year, I would like to promote and be involved in a pro-bono program for Tuvalu to supplement the work already done in the Office of the People's Lawyer. I would also like to see Tuvaluan lawyers involved in a regular CLE program.

#### **Who or what has been the biggest influence in your legal career?**

My mother who taught me that I can do anything I choose to do if I set my heart on it, and that big things are achieved through faith in God and hard work using the small things I possess.

#### **What has been the most valuable lesson learned in this job?**

I learned in school that **prepare, prepare & prepare** is the key to success. Now in





practice, the most valuable lesson I have learned is to be **prepared, prepared & prepared** in everything.

**What profession other than yours would you like to attempt?**

Landscaping, teaching and missionary work.

**What's the first thing you think of when you wake up in the morning?**

Thank you, Lord, for the brand new day full of challenges and lessons to learn, and is my son Sia up for school or not?

**What qualities do you think a lawyer should have?**

A lawyer should be committed to the study and practice of law, be honest and trustworthy, respectful of others, diligent and hardworking, have patience and should love to learn every day. A lawyer must be a good communicator and be focused on solutions.

**What did you take away from the inaugural SPLA AGM and Roundtable?**

Congratulations to everyone, at last we have the South Pacific Lawyers' Association after years of hard work and determination. I learned that SPLA supports women in the profession and I am eager to see more women from the Pacific islands attend future AGMs and roundtable meetings. I enjoyed the welcoming atmosphere of the two meetings, which enables new lawyers like me to communicate, express our views and [gain] experiences with very experienced practitioners.

**What value do you see coming from the South Pacific Lawyers' Association for you, Tuvalu and the South Pacific region?**

I perceive the SPLA as the body where legal professionals or law societies can raise their concerns and problems, and the SPLA should endeavor to generate ways to address these concerns and problems in the region. More opportunity for developed jurisdictions like Australia and New Zealand to know the needs of smaller jurisdictions like Tuvalu and to assist. Having a representative from Tuvalu in the Executive gives me the confidence that the needs or issues faced by smaller jurisdictions with or without a law society will be voiced in the Executive and that the SPLA can provide a balanced platform for bigger and smaller jurisdictions in the region.

## In the spotlight...

### SPLA Launch — Out and about



**Closing dinner at the Harbourview Hotel.**

The former Steering Committee were acknowledged for their work in leading the Association to the Launch and were presented with certificates by Law Council of Australia Secretary-General Mr Bill Grant.



L-R: Mr Ross Ray QC, Ms Mara Ray, Mr Michael Takabwe, Mr Kerenga Kua.



L-R: Mr Rodney Kingmele, Ms Karuna Gurung, Mr Togia Sione, Mr John Tougon, Mr Donald Marahare.



L-R: Mr Fetuliai Lagaia, Mr Jonathan Temm, Mr Christopher Fakarii, Ms Salote Salanoa, Ms Margaret Bryson.



L-R: Mr Raymond Schuster, Ms Rosella Papali'i, Mr Laki Niu.



L-R: Ms Filiga Niko, Ms Elizabeth Kuautonga, Ms Jennifer Warren and Ms Margery Nicoll.



L-R: Mr Joe Forbes, Mr Charles Little, Ms Violet Brogan, Ms Vanessa Kleinschmidt, Mr Alexander Ward, Mr Dorsami Naidu.

## In the spotlight... From across the region

The Solomon Islands Bar Association recently welcomed representatives from the Law Council of Australia, who visited Honiara to conduct a scoping study into legal profession legislation and regulation in the Solomon Islands, at the invitation of the Solomon Islands Government.



L-R: Mr Rodney Kingmele, President, Solomon Islands Bar Association; Mr Alexander Ward, President, Law Council of Australia; Mr Bill Grant, Secretary-General, Law Council of Australia.



Mr Kingmele and Mr Ward at a function hosted by the Solomon Islands Bar Association.



Law Council  
OF AUSTRALIA



NEW ZEALAND  
LAW SOCIETY

The South Pacific Lawyers' Association was established in 2007 with the support of 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.southpacificlawyers.org](http://www.southpacificlawyers.org) for more information.

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