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**South Pacific Regional Environment  
Programme**

**Regional Environment Technical  
Assistance (RETA) 5403**

**Strengthening Environmental  
Management Capabilities in  
Pacific Island Developing Countries**

**Future Directions for the Implementation of the  
Reviews of Environmental Law in the Cook Islands,  
the Federated States Of Micronesia,  
the Kingdom Of Tonga, the Republic of the Marshall  
Islands and Solomon Islands**

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## **PART ONE**

### **Main Achievements of the Legal Reviews**

#### **1. Scope of the Report**

This report is in two parts. The first outlines the history, research, writing and production of the RETA Country Legal Reviews. The second part focuses on the actions perceived to be necessary to properly implement the recommendations of the Legal Reviews.

The report suggests that bodies such as the World Conservation Union, the United Nations Environment Programme, the Asian Development Bank, the Global Environment Facility and some of the relevant non-government organisations operating in the Pacific region have roles, or further roles, to play in delivering environmental law services in the Pacific region. The coordinating role of the South Pacific Regional Environment Programme in the provision of these services is seen as crucial, in terms of consistency and cost-effectiveness. Specific actions are identified at the international, regional and national level concerning environmental law reform in general as well as in relation to specific recommendations and suggestions found in the Legal Review reports.

The need for Pacific island countries to pay closer attention to the implementation of international treaties, both global and regional, is also looked at.

The Terms of Reference of this consultancy are found at Appendix One.

#### **2. The RETA Project and the Legal Reviews**

The Legal Reviews form an integral part of a larger project under the Regional Environment Technical Assistance (RETA) umbrella, concerning the development of National Environment Management Strategies. The RETA Legal Reviews cover Cook Islands, the Federated States of Micronesia, the Kingdom of Tonga, the Republic of the Marshall Islands and Solomon Islands. The project began in 1991 with an initial meeting in Noumea at the then headquarters of the South Pacific Regional Environment Programme. At that meeting, the consultants, Mere Pulea, Elizabeth Harding and Ben Boer met with David Sheppard and others and intensively discussed the parameters of the project. A timetable and the main headings of each of the reviews was worked out. Subsequent to this meeting, contractual arrangements were agreed between Dr Françoise Burhenne-Guilmin, the Head of the Environmental Law Centre of the World Conservation in Bonn and SPREP. Contractual arrangements were finalised with the legal consultants shortly thereafter.

#### **3. Funding of the Reviews**

It should also be stated that the funding for the Legal Reviews was uniformly inadequate, both in terms of the number of consultancy days allocated for each of the Reviews, as well as the daily consultancy rate. This was discussed at the time of the initial meeting of consultants in Noumea, but the consultants accepted that at that time there were no further funds available for this project. This matter should be given close consideration in the implementation of future reviews of this nature.

#### **4. Assistance in Completion of the Reviews**

In the light of inadequate funding, as well as the inordinate amount of time required to complete the Reviews, the Legal Consultants were fortunate to have assistance from various quarters. In Solomon Islands, the Kingdom of Tonga and the Cook Islands, Ms Milena Bellini, a French-trained lawyer, gave a great deal of research assistance on a voluntary basis to Ben Boer and Mere Pulea. In the Federated States of Micronesia (FSM), the services of Ms Vivienne Ingram, the Principal Legal Officer of the New South Wales National Parks and Wildlife Service, were arranged by the RETA Team Leader, David Sheppard. Ms Ingram wrote drafts for the review

of Chuuk State in the FSM. Mr John Delany, a New Zealand lawyer with experience as Legal Adviser to Western Province in Solomon Islands, and a Research Associate with the Australian Centre for Environmental Law, drafted material for the State of Yap in the FSM. Mr Delany also provided valuable drafts of several chapters of the Solomon Islands Legal Review. The assistance by these three lawyers was provided at no cost to the RETA Project, but proved invaluable to the success of the Reviews.

## **5. Methodology of the Legal Reviews**

Each of the Legal Reviews followed a slightly different methodology. The basic details were as follows:

- (1) Meeting of Legal Consultants with David Sheppard RETA Team Leader in Noumea, September 1991.
- (2) Attendance by the relevant consultant by the National Environment Management Strategy Seminar.
- (3) Gathering of all relevant legislative materials and other relevant documentation
- (4) Interviews with all relevant government officials, representatives of non-government organisations and others for the purposes of background information
- (5) Close interaction with Dr Bob Thistlethwaite, international consultant to the RETA project, and with each of the respective in-country consultants.
- (6) Intensive analysis of legislative and other materials, research and writing by consultants both in-country and own country to draft the Legal Review.
- (7) Forwarding of drafts to David Sheppard, Ben Boer and to reviewers in-country for comment.
- (8) Incorporation of comments in final drafts.
- (9) Forwarding of final drafts to relevant governments for comment, consideration and, where necessary, endorsement.
- (10) After consideration in-country, forwarding of final drafts to Ben Boer for editing and printing
- (11) Printing of final reports and forwarding to SPREP and to World Conservation Union; April 1993.

## **6. Chief Outcomes of the Reviews**

### **(1) Recommendations and suggestions**

The chief outcomes of the RETA Legal Reviews are the recommendations and suggestions that were made in each of them. These have been detailed in the Consolidated Report of the Legal Reviews being published separately through the Environmental Law Centre of the World Conservation Union.

The common themes of the Legal Reviews are as follows:

- (a) A wide variety of recommendations and suggestions was made for the reform of environmental law in each of the countries, with a strong recommendation in several countries for comprehensive environmental legislation to be enacted.

In a number of areas in each country, the Reviews suggested that further work be undertaken on particular pieces of legislation and certain fields of environmental management, with a view to addressing the problems in greater detail than these Reviews were able to do. These areas are detailed in the Consolidated Report referred to above.

- (c) The Legal Reviews made suggestions in relation to the implementation of the recommendations and suggestions incorporated in each Review. The difficulties of implementation were canvassed to a greater or lesser extent in each Review. A common problem was recognised as being a lack of financial resources for the implementation of the present legislation. The lack of enforcement of existing legislation was also highlighted in a number of instances.
- (d) The implementation of environmental regulation of each country was also perceived to be hampered by the lack of training in the environmental management sections of the relevant departments of each government. This matter is taken up further in the second part of this review.

A brief overview of the Legal Reviews and of the Consolidated Report are included as Appendices Two and Three.

## (2) Fostering of Links

Links between government employees in-country, and between government and non-government bodies were fostered as a result of the RETA Project as a whole, and in particular in relation to the Legal Reviews. The National Environment Management Seminars, and in particular the meetings specifically dealing with environmental legal matters, brought together government employees and members of community groups who had not necessarily worked together before. A particular example of fostering of links was the meeting generated by the Legal Review in the Federated States of Micronesia. This meeting brought together the Attorneys-General or their representatives of the four States and of the National government for the first time ever, to discuss the rationalisation of environmental laws in that country.

## (3) Increasing awareness

The very fact that the Legal Reviews were undertaken contributed a great deal to the awareness of government and non-government bodies for the need for improved environmental legislation and relevant administrative structures across the board.

## (4) Workshop on Strengthening Environmental Legislation in the Pacific Region

This Workshop was separately funded by the Environmental Law and Legal Institutions section of UNEP. However, there was a strong relationship between it and the RETA Project. The fact that the Legal Reviews had been done or were underway in quite a number of other Pacific Island countries, contributed a great deal to the success of the Workshop.

## (5) Solomon Islands Environment Bill

One of the chief recommendations of the Review of Environmental Law in Solomon Islands was the enactment of a comprehensive *Environment Act*. This need had been identified by previous consultants. However, it appears that the *Review* was a catalyst for the request to SPREP and subsequently to the Environmental Law Centre of the World Conservation Union to assist with the drafting of the Solomon Islands *Environment Bill*. It can be noted that the Bill has now been drafted, has been endorsed by the Solomon Islands Cabinet and has been sent to the Parliamentary Draftsman. It is expected to be considered by the Solomon Islands Parliament later in 1993.

## 7. Conclusion to Part One

This series of consultancies was unique in a variety of ways. As far as we are aware, no reviews of environmental law have been done elsewhere in the world in a coordinated fashion and in collaboration with governments, regional organisations and funding bodies such as the Asian Development Bank and the World Conservation Union. The reviews were also unusual in terms of the collaboration between three legal researchers of different backgrounds and experience who had not worked together before. Operating over vast distances and over a relatively long period of time, coordination of the project was at times less than satisfactory, because of pressures of other work and because of communication difficulties in the region. Nevertheless, despite the various difficulties encountered by the consultants, including a number of delays beyond their control, the projects were all completed in a reasonable time span and have been printed in a consistent style and format, in order to be accessible to a wide range of people.

## PART TWO

### Future Actions for the Implementation of the Recommendations and Suggestions made in the Legal Reviews

#### 1. The Development of Sustainability Law

Documents such as the Brundtland Report, *Our Common Future*, as well as *Caring for the Earth* make it clear that the key to sustainability of resource use and the achievement of environmental conservation is through the integration of environmental safeguards and economic decision making. This has become known as "sustainable development". The achievement of sustainability is a complex task, involving a broad range of governmental, community and industry initiatives. These initiatives need to be addressed regionally as well as nationally. To achieve long term economic and environmental viability, some comprehensive institutional and legal changes need to be made. These include the introduction of integrated mechanisms for the generation and implementation of economic and environmental policy, and the enactment of legislation to ensure that policies can be carried out within a consistent and enforceable legal framework. *Agenda 21* recognises the need for sustainable development law to be generated globally.

The term "sustainable development law" in reality refers to environmental legislation which is specifically drafted to incorporate as far as is legislatively possible the principles of sustainable development found in the Brundtland Report and in the Conventions and documents arising out of the Earth Summit of 1992. In the Pacific region, the awareness of the need for sustainability law is growing rapidly, particularly because of the involvement of the Pacific Island countries in the Rio Conference. The Legal Reviews and the Environmental Law Workshop in Apia in November 1992 referred to above, have also contributed to this growth of awareness.

#### 2. The Development of Environmental Legislation

The major task now is to ensure that appropriate national (and provincial or State, as appropriate) legislation is developed, which reflects the needs of each country, and which incorporates the principles of sustainability. Ideally, SPREP should play a major role in ensuring that this legislation is developed. Model legislation, containing the basic provisions, could then be adapted to suit the circumstances of each individual country.

The question of resources of the RETA countries in terms of their capacities to implement the recommendations and suggestions contained in the Legal Reviews must be at the forefront of any programme for the development of environmental legislation. The role of the SPREP Legal Officer, Mr Bernard Moutou, together with other environmental law experts in the region, will be vital in assisting with this legislation.

The ways in which the development of environmental legislation can be promoted are canvassed below.

#### 3. The implementation of International Conventions

A wide range of international environmental Conventions and Agreements are directly relevant to Pacific Island countries, and will require domestic legislation to implement them. Some of these Conventions have been signed and ratified by a number of Pacific Island countries. However, there appears to be a great need for these instruments to be adequately explained in order for countries to be encouraged to accede to them and to implement them properly. This subject was dwelt on to an extent at the Environmental Law workshop in held Apia in November 1992; (see paper by Mr Peter Lawrence in Boer, (ed) *Strengthening Environmental Legislation in the Pacific Region* SPREP 1993) The most relevant instruments for the Pacific are as follows:

*World Heritage Convention 1972*

*Convention on the Conservation of Nature in the South Pacific 1976 (Apia Convention)*

*The United Nations Law of the Sea Convention, 1982*

*Convention for the Protection of the Natural Resources and Environment of the South Pacific 1986 (SPREP Convention)*

*South Pacific Forum Fisheries Convention 1979*

*Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific 1989 (Wellington Convention)*

*Convention on International Trade in Endangered Species of Wild Flora and Fauna 1973 (CITES)*

*Convention on Climate Change 1992*

*Convention on the Conservation on Biological Diversity 1992.*

*Montreal Convention on Ozone Depletion*

In addition, the *Rio Declaration on Environment and Development, Agenda 21* and the *Forest Principles* agreed at the Earth Summit also need to be more particularly focussed and discussed through regional workshops and seminars in terms of their applicability to and implementation in Pacific Island countries.

The interest of the Australian Government in ensuring that the *Conventions on Climate Change and on the Conservation of Biodiversity* might also be briefly mentioned here. The Federal Department of Environment, Sport and Territories (as it now is) was able to make a substantial contribution to the running of the Apia Workshop mentioned above, specifically because the Workshop devoted a vital session to the implementation of the *Climate Change Convention* in the Pacific. It is understood that the Australian Government has already proposed to SPREP a team of be put together to visit a range of Pacific Island countries to promote the implementation of the *Climate Change Convention* and the *Biodiversity Convention*. This possibility should be closely examined.

A particularly urgent task is for the two specific regional South Pacific Conventions to be thoroughly reassessed and updated. These are the *Convention on the Conservation of Nature in the South Pacific (the Apia Convention)* and the *Convention for the Protection of the Natural Resources and Environment of the South Pacific, Noumea 1986 (the SPREP Convention)*. However, it may well be desirable to ensure that more countries move to implement at least the SPREP Convention before it is amended. There may also be a good argument for merging these two *Conventions* into one. The possibility of promoting the accession to and implementation of the Biodiversity Convention, and simply scrapping the Apia Convention might also be considered. These questions would need to be the subject of a substantial consultancy by a lawyer experienced in the drafting of International Conventions. It would entail meetings of the parties, preferably through the Intergovernmental Meetings, as well as a good deal of research work.

It would also be advisable to set up a proper mechanism for the implementation of Conventions in the Pacific region. A specific position of Treaties Implementation Officer could be established at SPREP Headquarters in Apia, to add to the existing position of Legal Officer held by Mr Bernard Moutou. One of the tasks of such an officer would be the writing of guidelines for treaty implementation, as well as drafting model national legislation to assist implementation. This is a project for which funding should be a priority.



#### 4. Role of International Agencies

Given the central importance of environmental law and the implementation of the environmental management strategies, as recognised in recent international environmental documents and Conventions, there is a clear role for a range of international agencies and aid bodies to play in the promotion of environmental legal mechanisms at international, regional and national levels. In the Pacific region the main bodies and arrangements (apart from SPREP) would appear to be as follows:

- \* The Environmental Law and Institutions Programme Activity Centre of the United Nations Environment Programme in Nairobi: the substantial contribution of this Centre in the Pacific through the Apia Workshop on Environmental Law in 1992, demonstrates an excellent commitment to the development of environmental law and associated institutions in the region;
- \* The Asian Development Bank: the ADB's role in the RETA Project has already been of vital importance. Its participation in the implementation of the Legal Reviews is seen to be particularly relevant.
- \* The Environment Section of the World Bank: given the involvement of the World Bank in the Global Environment Facility, among other things, the Environment Section of the Bank should be well placed to provide a range of expertise in environmental and development matters;
- \* The Economic and Social Commission for Asia and the Pacific;
- \* The Environmental Law Centre of the World Conservation Union: the central involvement of the Centre in the RETA Country Legal Reviews, the financing the drafting of the Solomon Islands *Environment Act*, and the Workshop on Environmental Law referred to above, emphasises its desire to remain involved in the region in a very substantial way; the technical resources of the Centre will no doubt be vital to future environmental law initiatives in the region;
- \* Bilateral arrangements with National Governments, particularly Australia, New Zealand, the United States and Canada: Links with European countries which regularly fund environmental initiatives could also be built up; for example, the Sweden, Norway Denmark, Germany and the Netherlands;
- \* International environmental bodies such as The Nature Conservancy, Greenpeace International, the World Wide Fund for Nature: all of these already have programmes running in various parts of the Pacific.
- \* The Environmental Law Institute, Washington DC; Mr Bill Futrell the President of this Institute has expressed a substantial interest in promoting environmental law in the Asian and Pacific Regions. The Institute runs a highly respected Environmental Law Update Conference every year. It would be well-placed to provide lecturers and resources people. One specific initiative which could be taken advantage of is the visit of David Sive, the Australian Centre for Environmental Law in 1994. Mr Sive is regarded as the "parent" of environmental law in the United States.

#### 5. Role of SPREP

The role of the South Pacific Regional Environment Programme in the coordination of environmental law services in the Pacific region is seen as crucial. There is a great need to ensure that overlap of consultancies and other work is avoided as much as possible, so that programmes can be properly targeted, without confusion within countries as to which body is

providing advice. It would therefore be highly desirable for an Environmental Law Office to be created within SPREP, staffed by experienced environmental lawyers able to cover the British-based, French-based and United States-based legal systems operating in the various countries of the Pacific region.

## 6. Training

### (1) Workshops in Environmental Law

The interest generated by the National Environment Management Strategy seminars over the past 2 years, together with the enthusiasm shown at the Apia Workshop *Strengthening Environmental Legislation in the Pacific Region* in November 1992, clearly indicates that a series of regional and in-country workshops on a variety of environmental law subject matters would be welcomed. Such a series of workshops could be organised by the SPREP Legal Officer in collaboration with one or more institutions listed below. Based on the experience of the Apia Workshop in November 1992, funding arrangements would need to be on the basis of some US\$75,000 per Pacific-wide workshop as a minimum. Smaller regional workshops, for example for the former United States Trust territory countries, for the French countries and for the balance of British legal systems in the Pacific, funding for 5 day workshops are estimated to be in the order US\$50,000. The following areas could be canvassed in these Workshops:

#### (a) Environmental Impact Assessment Law

Building on EIA Workshops already conducted by SPREP, Environmental Impact Assessment Law Workshops could specifically focus on the generation of adequate legal mechanisms for the implementation of EIA, drawing on the expertise of a range of countries in the region, in particular Australia and New Zealand. For the former United States Trust Territory countries, resource people could also be drawn from relevant United States agencies. The EIA Programme already underway at SPREP should be closely linked to environmental law initiatives in EIA.

#### (b) Heritage Law Workshops

The need to protect and conserve places and sites which have cultural, religious or social importance together with artifacts and elements of the natural heritage was made clear in the various RETA Legal Reviews. A Workshop in this field would need to include a substantial general introduction on heritage matters, in terms of natural heritage, the built environment, intangible heritage and the protection of traditional artifacts and other objects. Discussions could be focussed on the following:

- \* The need for import and export controls through customs legislation or special cultural materials legislation; this would specifically relate to traditional artifacts not made for sale;
- \* the legal mechanics of setting up registers etc
- \* the legal options for heritage protection of places and sites;

#### (c) Civil Enforcement Workshops

Enforcement of environmental legislation by non-criminal enforcement mechanisms is now becoming more popular in many countries, and would seem to be particularly appropriate in the Pacific region. In order for legislation to adequately enforced by these means, the following subjects should be dealt with in training programmes:

- \* Expert witness training: scientific and legal aspects;
- \* the technical explanation of legislation already in place, and the writing of drafting instructions for new legislation;
- \* the possibility of a Pacific regional Convention on heritage matters

These Workshops could be targetted specifically at environment officers and, where relevant, officers of public sector and private heritage bodies, including museums and cultural centres.

**(d) Pollution Law Workshops**

The problems of water, land, air and noise pollution were well canvassed in the Legal Reviews. It would appear that with the legislation that exists there are major problems of enforcement because of the lack of technical expertise for the gathering of evidence, as well as the fact that some of the legislation is presently unworkable because regulations need to be drafted. Pollution control workshops targetted at environmental officers and others could concentrate on explaining the various legislative and administrative alternatives available for pollution control, and focus on the need for drafting of adequate legislation and regulations.

**(e) Prosecution Workshops**

There would seem to be a great need for training in the area prosecution of environmental offences throughout the Pacific Island region. Prosecution workshops, to be run by experts in environmental prosecution from a number of countries, could be targetted particularly at police officers and environment inspectors (where appointed), as well as officers of the departments of Attorneys-General.

**(f) Environmental Mediation Workshops**

Given the problems of both civil and criminal enforcement of legislation through formal means in Pacific countries, there would appear to be a good deal of need for environmental disputes to be resolved by alternative dispute resolution. There is now a body of expertise in a variety of countries that could be tapped for regional workshops on environmental mediation. Such methods may well be particularly attractive in countries where customary law and practices are still strong.

**7. Training and Workshop Delivery Bodies**

**(1) For Environmental Law Training**

Resource persons and short courses, to be offered on a regional or in any particular country, could be drawn from the following institutions:

- (a) Australian Centre for Environmental Law (the Centre consists of three branches based at the University of Sydney, University of Adelaide and the Australian National University). This Centre, through Ben Boer and John Delany, was involved in running of the Apia Workshop, *Strengthening Environmental Law in the Pacific Region*. Discussions have been held with a number of ACEL members about future initiatives in the Asian and Pacific region. There is a good deal of enthusiasm for the running of future workshops. For example, Justice Paul Stein of the Land and Environment Court plans to be an official visitor to the Centre for part of 1994. He would be keen to be involved in a series of Pacific workshops. His experience in environmental and consumer law, as well as in Aboriginal land matters would make him an excellent resource.

The Centre, through its three branches, also offers full-time and part-time interdisciplinary Masters courses in environmental law, open to both law and non-law graduates.

- (b) Natural Resources Law Programme, University of Wollongong; Professor David Farrier, who heads this Programme, was a co-ordinator with Ben Boer of the Apia Workshop mentioned above. This Programme also offers postgraduate courses in environmental and resources law.
- (c) Environmental Law Centre being established at Faculty of Law, University of Auckland; Mr Tim McBride, Senior Lecturer in Law, in that Faculty was a central resource person in the Apia workshop.
- (d) The Pacific Law Unit at the University of the South Pacific has been able to attract Ms Mere Pulea as a lecturer. Ms Pulea was originally intended to be the coordinator of the Apia Workshop, but was in the event not able to carry out that task. She would be an excellent resource.
- (e) Environmental Law and Institutions Activity Centre, UNEP, Nairobi; Mr Lal Kurukulasuriya, a Programme Officer of this Centre, was a strong participant in the Apia Workshop referred to above.

(2) **For legally-related environment training programmes**

The following bodies could be involved in running a wide variety of courses:

- \* The Australian Centre for Pacific Development and Training (ACPAC);
- \* The Faculty of Science at the University of Sydney, which will be offering a Diploma in Environmental Science from 1994;
- \* Graduate School of the Environment, Macquarie University;
- \* Centres for Environmental Studies, University of Adelaide, James Cook University, Townsville etc.
- \* Centre for Resource and Environmental Studies, Australian National University.

**8. Scholarship scheme for training in Environmental Law**

In order to promote the implementation of environmental legislation in Pacific Island countries, it would be highly desirable to establish a scholarship scheme to allow government employees and members of other relevant organisations, or individuals, to study at postgraduate Diploma or Masters level, in institutions in countries such as Australia, New Zealand, Canada and the United States. For former and present American Trust Territory countries, United States institutions would be the most relevant. For countries which have a British-based legal system, Australia, New Zealand and Canada would be appropriate. For French-based systems, French institutions would be relevant.

It is suggested that the South Pacific Environment Programme, through its Director and Legal Officer, investigate financial sources for such a scholarship scheme from bodies such as the Global Environment Facility of the World Bank, the Asian Development Bank and a range of non-government organisations in particular countries. For example, for former American Trust Territory countries (the Republic of the Marshall and the Federated States of Micronesia) the Environmental Law Institute in Washington could be a source of funding. In addition, bodies such as the Nature Conservancy, the World Wide Fund for Nature, Greenpeace International and related bodies could also be approached for funds for such a scheme. In Australia, an approach to the Australian International Development Assistance Bureau, or directly to the Minister for Foreign Affairs and Trade, as well as to the Department of Environment, Sport and

Territories and the Commonwealth Environment Protection Authority, could be fruitful. Information and advice could be obtained from Dr Rodney Hills, Executive Director of the Australian Centre for Pacific Development and Training, in Sydney New South Wales, Australia.

In order to ensure that funding such a scheme should be in the order of US\$2 million over 5 years to allow some 70 to 80 scholarships for lawyers and non-lawyers to be awarded in Pacific Island countries over that period. The emphasis should be on pursuing a number of funding avenues.

#### 9. Electronic Mail Network

Considerable potential exists for the development of an electronic mail communications network for people working in environmental areas in the Pacific. One Pacific network already established is PAKTOK. That network could be adapted to link up the environmental offices and agencies throughout the Pacific. PAKTOK could be approached for advice on this matter. Once an electronic mail network was set up, it could be linked into PEGASUS, an environment network operating out of Australia and known around the world. The network could also give access to relevant organisations, journals and materials as well as library resources in various countries. Links could also be made to the Environmental Law Alliance Worldwide, which has offices in a wide range of countries (and of which this consultant is currently the Australian president).

A rough costing of such a network for such a network would be:

Computers for (say) 15 countries US\$37,500

In-country training costs US\$20,000

On-line annual telephone costs US\$40,000

Although running costs of such a system would be relatively high, the benefits of linking into all the major electronic networks, including such bodies as the United Nations, would prove to be invaluable in the longer term. This is particularly the case in environmental law, where in the Pacific it is often very difficult to obtain relevant materials.

#### 10. Conclusion to Part Two

It will be obvious from the above that as long as there is a need for the implementation of National Environment Management Strategies (of similar documents), there will be an ongoing need for legal analysis and drafting. Currently, few Pacific countries have adequate home-grown advice in environmental law matters. This is particularly so in the countries covered by this Report. The need for in-country training in the area of environmental law and policy for non-lawyer professionals within government departments cannot be over-emphasised. In addition, training for lawyers, both in-country and in postgraduate programmes elsewhere also appears to be a high priority. The scholarship scheme briefly outlined in this Report would need to be thoroughly researched, costed and targetted. It would also need to be established on a long term basis, preferably in collaboration with an appropriate University in the region.

As the administrative capacities of most Pacific Island countries is relatively limited, it would be desirable to be able to draft environmental legislation which uses similar concepts and mechanisms for implementation (but of course taking into account individual differences between countries). This would promote effective and efficient implementation of environmental management regimes. It would also facilitate the running region-wide environmental law and policy workshops for training over the years to come.

Given the enthusiasm and interest generated by the Regional Environment Technical Assistance Project and its associated Legal Reviews, there are likely to more requests emanating from individual countries to the SPREP for assistance with particular projects. The Legal Reviews

have indicated a wide range of areas in which legislation and associated mechanisms are required. Those recommendations are likely to be used as basis for such requests. Thus a further priority for the adequate implementation of the recommendations found in the Legal Reviews is the establishment of an adequately resourced environmental law office within the South Pacific Regional Environment Programme Headquarters, and the appointment of an additional Legal Officer.

This report has outlined a number of suggestions for the implementation of the Legal Reviews. The expertise, effort and funds required to carry out these suggestions should not be underestimated. It will take a great deal of planning, research, consultation, legislative drafting and institutional strengthening to reach the stage where most Pacific Island countries have a workable and cost-effective environmental law regime in operation.

## Appendix One

### Terms of Reference for this Consultancy

1. To prepare a report on "future directions for the implementation of the RETA Country Legal Reviews". This report will have two parts; the first will outline the main achievements of the RETA Country Legal Reviews. The second part of the report will focus on the actions necessary on the part of SPREP, ADB, RETA countries, the broader donor community, and other relevant bodies, if the legal reviews are to be effectively implemented. Actions will be identified at the national, regional and international level.
2. To submit a draft copy of this Report to the Team Leader/RETA at SPREP by 2 April, 1992.
3. To incorporate review comments and then submit six (6) copies of the final bound report to SPREP, to arrive in Apia by 9 April 1993.

## Appendix Two

### **Brief Overview of the Reviews of Environmental Law under the RETA project**

The Legal Reviews are intended to be consistent with the National Environment Management Strategies being developed for the five countries within the RETA project. The Reviews were prepared by three legal consultants. Ms Mere Pulea, now a lecturer in the Pacific Law Unit at the University of the South Pacific in Vanuatu and a long term adviser to the South Pacific Regional Environment Programme, prepared the Reviews of Cook Islands and the Kingdom of Tonga. Ms Elizabeth Harding, who formerly practised in Solomon Islands and is now Legal Counsel to the Environment Protection Agency of the Republic of the Marshall Islands, prepared the Reviews of the Federated States of Micronesia and the Republic of the Marshall Islands. Ben Boer prepared the Review for Solomon Islands and was responsible for coordinating and editing all five Reviews.

Each of the Reviews attempted to address the main environmental issues in each country in a systematic and consistent way. The substantive areas of water management and quality, pollution, environmental health, nature conservation, cultural heritage conservation, fisheries, agriculture, forestry, mining, energy, and tourism are covered to the extent applicable in each country. Each Review has addressed the administrative and institutional contexts of the administration of the relevant legislation to the extent necessary. Recommendations for each substantive area have been made in relation to the reform and amendment of existing legislation and the enactment, where necessary, of new legislation.



### **Appendix Three**

#### **Brief Overview of the Consolidated Report of the Reviews of Environmental Law**

The Consolidated Report is a summary of the five comprehensive Reviews of the law relating to environmental management in the Cook Islands, the Kingdom of Tonga, the Republic of the Marshall Islands and Solomon Islands.

Although each of the countries reviewed is different one from the other, the Consolidated Report attempts to draw some general conclusions which are applicable to all five jurisdictions.

The approach taken in the Consolidated Report is to deal with each country separately in successive chapters, listing all relevant legislation and a summary of all recommendations for each country at the close of each chapter. It is thereby intended that the reader will gain a quick overview of the situation in each country in relation to environmental law and management without going into unnecessary detail. Readers who wish to gain a more comprehensive understanding of particular areas in each country would be advised to obtain a copy of the full Review for that country.

A generally applicable observation made in the Consolidated Report is that in order to achieve the harmonisation of environmental policy and economic decision making at national and provincial level, there is a need to introduce comprehensive and consistent environmental legislation. The Report argues that to be as modern and up to date as possible, any legislation enacted needs to contain a set of clearly defined principles of sustainable use and conservation of the natural and cultural resources of each country. In addition, the Report argues that is a general need for the departments of government which deal with environmental management in each country to be adequately resourced and staffed with a wider range of qualified people.

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