

PALAU COUNTRY REPORT

PILON MEETING, PORT VILA VANUATU DECEMBER 5 – 9, 2008

The Office of the Attorney General of the Republic of Palau has the honor of providing this brief synopsis of notable events which have occurred in the past year in Palau with respect to legal matters.

Background.

The Office of the Attorney General currently has five Assistant Attorneys General in addition to the Attorney General. It has a staff of two investigators and two administrative assistants. This office is in charge of criminal prosecutions, civil litigation, matters relating to treaties and their implementation, some drafting of legislation and regulations, contract drafting and review, and rendering opinions and legal advice to the President and his Ministers.

Prosecutions.

We prosecuted a major human trafficking case in 2006, which involved trafficking women to Palau for prostitution. There were fifteen victims from the Phillipines and China. The key defendants, one from China and one from Taiwan, were convicted after trial and received sentences of 20 years imprisonment plus fines. Last month, the Appeals court reversed the convictions on the grounds that the trial court did not ensure that a translator was present for each and every day of the one month trial. The court noted that the defendant was not indigent and that therefore it was not the court's duty to locate and pay for a translator. However, the appeals court held that regardless of who was responsible for obtaining and compensating the translator, the judge should not have allowed the trial to proceed in the absence of the translator.

Constitutional Amendments.

Palau held a constitutional convention at which twenty-two proposals to amend the Palau Constitution were recommended. These proposals were placed on the ballot in the general election held in November 2008. Twenty-one of the proposed amendments were adopted by the voters in the general election. Some of these amendments will have a dramatic impact on the legal landscape in Palau.

For example, there will be a right to a trial by jury for any offense that carries a possible prison sentence of twelve years or more. It is anticipated that it will be extremely difficult to impanel an impartial jury due to the small population of Palau and the clan system. There is some speculation that criminal convictions will be very difficult to achieve.

There also is an amendment which authorizes the creation of a separate appellate court. Currently the Supreme Court consists of four judges. Currently, all of the judges handle cases at both the trial level and the appellate level. If a case is appealed, the appeal is decided by the three judges who did not preside over the trial. The amendment would end this process and a separate set of appeals judges, who would not be involved in any trials, would decide appeals. In other words, a true appellate court would be created.

Illegal Fishing.

Palau continues its struggle against unlawful fishing activities. With only one patrol boat, and very little money for fuel, it seems to be a losing battle. When violators are apprehended, the fishing vessels are normally small and of little value. The crew has little or no money to use for payment of fines, and there is little motivation for the vessel owner, who usually is not on the vessel, to come forward with funds. Additionally, the cost of repatriating the crew will frequently exceed any sum that can be obtained by forfeiture and sale of the vessel.

Palau has had better luck with prosecutions of licensed vessels. In those instances, the fishing companies who sponsor the vessels can be held responsible for any fines imposed. These companies are present in Palau and are therefore more easily held accountable.