



REPORT TO MACARTHUR FOUNDATION | MARCH 2007 – 30 APRIL 2010

Legal Capacity-Building for Conservation in the Pacific

REPORT TO MACARTHUR FOUNDATION | MARCH 2007 – 30 APRIL 2010

Legal Capacity-Building for Conservation in the Pacific



GRANT NO: 07-88294-000-GSS

ENVIRONMENTAL DEFENDER'S OFFICE, SYDNEY, AUSTRALIA

Introduction

The Environmental Defender's Office (NSW) is a community legal centre specialising in public interest environmental law. Working in a multi-disciplinary way to promote the public interest and improve environmental outcomes through the informed use of the law, the EDO provides legal advice and representation in public interest environmental law matters, takes an active role in law reform and policy development, provides technical and scientific advice and carries out community programs on environmental law.

The EDO is a non-government, non-partisan, not-for-profit organisation. The EDO does not campaign or lobby, and as such has built a strong reputation for the quality and independence of our work. The EDO has been operating since 1985 and is acknowledged as a crucial element in the functioning of environmental law in Australia.

Since 1991, the EDO has worked with lawyers, community and government organisations in the Pacific to build local capacity to use the law to promote environmental protection and

conservation in the region. The objectives of the EDO's international engagement are:

- To enhance the capacity of local communities, individuals and organisations to achieve environmental conservation and sustainable development outcomes through legal mechanisms;
- To raise the profile of environmental law at national and regional levels;
- To promote the values of public participation and good governance and to empower the community to achieve better outcomes through the informed use of the law;
- To build partnerships and networks for information-sharing and collaboration to maximize the effectiveness of capacity-building work in the region;
- To increase access to justice by working with diverse groups within the community, particularly women, disadvantaged and marginalised groups;
- To increase understanding in Australia of the environmental and development law issues facing other countries in the region, and to develop support for and avenues for engagement



in the EDO's capacity-building activities among the Australian community.

Since 1999, the EDO's international engagement has been funded by the John D. and Catherine T. MacArthur foundation. This report covers activities undertaken under the fourth MacArthur Foundation grant, *Legal Capacity Building for Conservation in the Pacific*, between March 2007 and April 2010.

Overview

The EDO's engagement in the Pacific is based on our recognition of the immense significance of Pacific ecosystems at both local and global levels, and a corresponding concern at the increasing threats to those ecosystems. Terrestrial, coastal and marine environments play crucial social, economic and environmental roles at local and national levels in the Pacific, and are acknowledged globally for their high degree of ecosystem and species diversity and extraordinary level of endemism. However, the capacity of these ecosystems is increasingly being tested. Deforestation, over-fishing, rapid population growth and climate change pose serious challenges for the future of the region.

While the environmental challenges facing the Pacific region are the result of many complex issues, weak regulation and governance play key roles. In an effort to address these issues, the EDO seeks to empower local lawyers, customary landowners and civil society to more fully and effectively make use of the law to meet the environmental challenges that the region faces. Building capacity in environmental law is an ongoing priority for lawyers and others working to conserve

biodiversity in their countries. The recent formation of environmental law organisations in both Fiji and the Solomon Islands are testament to the priority placed on the development and strengthening of the legal framework for biodiversity conservation by lawyers in the Pacific.

Building on our experience over the past twenty years in the Pacific, this grant expanded both the reach and the scope of capacity-building activities. The EDO continued to work closely with lawyers in Papua New Guinea, and also developed new partnerships with organisations in Fiji, the Solomon Islands, Samoa, Vanuatu, Tonga, Kiribati and Tuvalu. Importantly, the EDO more actively sought to foster relationships between organisations within the region, helping Pacific lawyers and environmental organisations to develop links with others working on similar issues across the region.

Recognising that many environmental achievements have been and can be made outside the courtroom, this grant also expanded the EDO's capacity-building work to encompass the full range of EDO expertise. EDO activities under this grant thus covered four areas, namely:

- Legal advice and litigation support



- Multi-disciplinary support
- Training and lawyer exchanges
- Volunteer placements

Much has been achieved under this grant. Partner organisations have won major victories in litigation, with immediate and direct benefits for biodiversity conservation, and have played an increasing role in the development of policy at both national and international levels. Individual and organisational capacity has been strengthened, promising longer term benefits for biodiversity conservation. Partner organisations have expanded both in size and in the scope of activities undertaken and new partner organisations have been established. Staff from more established partner organisations have been key contributors to the formation of new organisations,

and relationships between lawyers in different organisations and, increasingly, different countries have been developed. This strengthening of individual as well as organisational capacity in the region is a key objective of the EDO's work, and a key indicator of its success.

The EDO and our partners in the Pacific are extremely grateful to the MacArthur Foundation for its generosity in making this grant. It has enabled the EDO to respond to a wide range of requests for assistance from a wide range of organisations across the Pacific region. This assistance is highly valued by local lawyers, who remind us regularly that the EDO provides a unique resource which assists them greatly in their efforts to achieve conservation outcomes in the Pacific.



Legal advice and litigation support

Enhancing the capacity of lawyers to undertake litigation in the area of public interest environmental law has long been the focus of the EDO's work in the Pacific. Support for litigation and the provision of legal advice has been identified by the EDO and our partners as a key area of need which is not being serviced by any other group in the region.

Public interest environmental lawyers face serious challenges: industry and governments typically have much greater resources to hire large legal teams, obtain expert evidence and build political support for their activities. Such challenges are pertinent in the Pacific, and in many cases are exacerbated by corruption, delays and poor judicial training.

Despite working in very difficult conditions and often at great personal risk, the EDO's partner organisations have achieved successes during this grant. For example, the Eco-Forestry Forum in PNG had a high profile win in 2009, obtaining an injunction restraining the Office of Climate Change and the Department of Lands from taking any further steps to issue rights for carbon

trading over the forests of Kamula Doso in Western province.

To support lawyers in the Pacific, EDO solicitors provided regular advice by email and telephone from Sydney. This included research and advice on precedents, reviewing draft documents and obtaining pro bono and reduced fee advice from barristers and other experts in Australia. EDO solicitors also travelled to PNG and the Solomon Islands to assist lawyers managing cases and during hearings in court, and discussed current matters with Pacific lawyers during their visits to Australia for training at the EDO office.

The EDO provided assistance on over twenty matters under this grant. These covered a wide range of areas, including:

- Forestry,
- Marine law and rights to the sea bed,
- Damages for trespass,
- Development approval and environmental impact assessment,
- Legal professional privilege,
- Constitutional law,
- Genetically modified organisms, and
- Contract law.



The EDO also provided general support to assist advice and litigation activities in the Pacific. This included collecting and distributing legal texts and other materials to lawyers in PNG and the Solomon Islands, providing assistance on information technology and communication systems and assisting Pacific lawyers to participate in and obtain assistance from international networks such as the Environmental Law Alliance Worldwide (E-Law).

Recognising the importance of personal relationships in capacity-building, the EDO established a 'buddy' system with lawyers at CELCOR in PNG to enhance communication. Solicitors at CELCOR were paired with solicitors at the EDO, who then maintain regular contact to facilitate closer working relationships. The buddy system also includes policy lawyers from the two organisations.

The majority of the EDO's legal advice and litigation support activities were provided to lawyers working in PNG, where there are two public interest environmental law centres as well as lawyers working in other environmental NGOs. The establishment of new organisations during this grant, particularly the Landowners Advocacy and Legal Support Unit at the Solomon Islands Public

Solicitors Office, the Vanuatu Advocacy and Legal Advice Centre and environmental law associations in Fiji and the Solomon Islands, provided opportunities to broaden this work and the EDO envisages that this will continue in the future.

Environmental Law Centre

In addition to capacity-building work by the EDO, this grant provided funding for salaries to enable lawyers at ELC to provide legal advice and to undertake casework, policy and law reform activities. ELC has a high profile in the PNG community, and performs an important leadership role in the development of public interest environmental law in Papua New Guinea.

During this grant, ELC has been running a number of forestry matters, including actions seeking damages for illegal logging, challenging the validity of timber permits and acquisition of land for logging purposes, seeking judicial review of the grant of forestry permits, seeking to enforce an undertaking for damages and challenging the constitutional validity of amendments to the *Forestry Act 1991*.

ELC lawyers also undertook regular legal patrols to provide access to justice for communities in remote areas.

Multi-disciplinary support

Drawing on the full range of the EDO's expertise, *Legal Capacity Building for Conservation in the Pacific* encompassed capacity-building work in policy, education, science and governance. Taking a multi-disciplinary approach focused on early engagement has proved very effective in achieving conservation outcomes in Australia, and partner organisations in the Pacific have been eager to pursue a similar approach.

Policy

Many groups in the Pacific have recently identified policy work as a key priority, so support in this area has been particularly sought after. EDO policy lawyers provided support partner organisations seeking to participate in policy development processes, responding to policy and law reform initiatives by local and national governments as well as developments in international law. The EDO also provided support for proactive work by Pacific organisations seeking to create momentum for law reform to improve legal frameworks for conservation.

EDO policy activities under this grant included desktop

support from Sydney, reviewing documents, undertaking research and facilitating pro bono support from external experts. The EDO also provided support on the ground, contributing expert advice during local, national and regional workshops as well as to providing advice and support to Pacific delegates participating in UN meetings.

The majority of the EDO's policy support dealt with climate change law, as partner organisations have identified this as a key priority. Avoided deforestation (REDD), adaptation and public participation were key issues for the Pacific during this grant. The EDO also provided policy assistance on legal issues related to forestry, deep sea bed mining, coastal management, biodiversity, human rights and anti-corruption.

Education

Legal education is another area in which Pacific organisations are increasingly active. The EDO provided support to lawyers and environmental organisations seeking to inform local communities about laws that affect them, their rights and opportunities for participation in legal processes to achieve positive environmental outcomes.

Building on the *PNG Environmental Law Toolkit* which the EDO



produced with ELC in 2006, the EDO worked on several publications during this grant. The EDO prepared a scoping report at the request of the IUCN, *South Pacific Regional Environmental Law Capacity Building Project*, which was published in 2008 and provides a comprehensive overview of environmental law issues and institutions in the region. The EDO is working with the Pacific Concerns Resource Centre in Fiji to update their publication, *The Green Maze: A Guide to Environmental Advocacy in the Pacific*, a practical handbook explaining the various legal systems operating in the Pacific and how individuals and NGOs can participate to improve environmental outcomes. The EDO is also working with a number of groups in PNG and the Solomon Islands to develop a publication on Reducing Emissions from Deforestation and Degradation (REDD), which is tailored to landowners in the Pacific and will assist local lawyers providing advice to communities considering carbon trading.

The EDO also provided materials and other support for local organisations delivering workshops in several countries, and provided assistance in country at workshops for landowners in the Solomon Islands.

Scientific assistance

The EDO continued to provide scientific and technical advice to support work being undertaken in the Pacific. This drew on the EDO's two in house scientists, as well as our Expert Register of over 120 scientific and technical experts who provide pro bono and reduced fee advice to support public interest environmental law matters.

Scientific and technical advice during this grant focused on water pollution, valuation of forests and marine damage.

Governance/ management

The EDO has provided assistance to support partners in governance and administration matters, particularly in PNG and the Solomon Islands. Activities in this area under this grant ranged from assistance with strategic planning to IT and communications support.

Training and lawyer exchanges

Opportunities to build knowledge about legal developments and legal skills in the Pacific are limited, particularly in respect of environmental law. Responding to requests from partner organisations, the EDO thus conducted an active program of workshops in the Pacific and visits for Pacific lawyers to Australia under this grant.

The EDO conducted fourteen training events in the Pacific under this grant, ranging from short seminars to week long workshops. Training covered a wide range of legal topics including climate change, forestry, environmental impact assessment, coastal management, enforcement and compliance and freedom of information. The EDO also conducted training to develop general skills for Pacific lawyers, including case management, evidence and engaging experts. The EDO delivered several of these events in partnership with local and regional organisations, including the Secretariat for the Pacific Regional Environment Programme (SPREP) and the International Union for Conservation of Nature (IUCN) Regional Office for Oceania.

The EDO hosted lawyers in Australia for six lawyer exchanges under this grant. Building on the EDO's capacity-building work over the past twenty years, first hand observation of EDO lawyers by Pacific lawyers has been identified as an excellent method of litigation training. Lawyer exchanges were thus conducted when litigation matters were scheduled to be in court, enabling visiting Pacific lawyers to familiarise themselves with the file and attendant paperwork, attend meetings with the client and barristers, and be present in the court room to follow the proceedings. Pacific lawyers attended hearings in the New South Wales Land and Environment Court and the Court of Appeal during this grant.

Lawyer exchanges also provided opportunities for visiting lawyers to meet with judges, barristers, government staff and others practising in areas relevant to environmental law, and to attend formal training. Visiting lawyers attended courses on advocacy at the Australian Advocacy Institute in Melbourne and on the policy process at the Institute of Public Administration Australia (IPAA) in Sydney. The Australian National University, Canberra, also generously provided two scholarships for lawyers from PNG and the Solomon Islands



to attend an intensive course on environmental litigation.

Wherever possible, training and lawyer exchanges were structured to bring together lawyers from different organisations and different countries. Strong intra-Pacific networks will be essential for the long term sustainability of environmental law in the region, and the EDO sees developing these as a critical element of our capacity-building work. Participants have indicated that EDO workshops have helped them directly to build networks with different organisations and in different countries, as well as indirectly providing encouragement for them to develop and expand such networks in the future.

The EDO also undertook a substantial amount of preparation under this grant for a lawyer exchange to coincide the EDO's national conference and 25 year anniversary in May 2010. This will bring together eighteen lawyers from seven Pacific countries – PNG, the Solomon Islands, Fiji, Samoa, Vanuatu, Kiribati and Tuvalu – for three days of training, meetings with judges and commissioners at the Land and Environment Court, and to attend our two day conference and meet with environmental lawyers from across Australia. The EDO has been working with the delegates to develop a program of training tailored to their needs.



Volunteer placements

The EDO travels regularly to the Pacific, with an average of five visits a year to the region during this grant. These visits are invaluable to provide assistance on the ground, enhance the EDO's understanding of environmental challenges in the region, strengthen relationships with partner organisations and seek feedback on our work. However, the limits of funding under this grant mean that these can only be short visits.

To supplement our work on the ground in the Pacific, the EDO has been working under this grant with a series of programs funded by Australia's International Development Agency, AusAID. The EDO partners with AusAID programs to create funded placements for lawyers, scientists and others to undertake environmental law work in the region for up to two years.¹

The EDO facilitated the placement of the following volunteers in the Pacific under this grant:

- Environmental lawyer with the Ministry for Natural Resources

and Development, Samoa, (Ms Justine Conaty)

- Environmental lawyer with CELCOR in PNG (Ms Elizabeth Caldwell)
- Environmental lawyer with the Landowners' Advocacy and Legal Support Unit at the PSO in the Solomon Islands (Ms Elaine Johnson)
- Climate Change awareness officer with Live and Learn Environmental Education, Solomon Islands (Ms Daisy Gardner)
- Climate Change awareness officer with Live and Learn Environmental Education, Vanuatu (Ms Emma Peppler)
- Climate Change policy officer, Department of Environment, Fiji (Mr Richard Howarth)
- Climate Change policy officer, Department of Environment, Tonga (Ms Tracey White)
- International Climate Change policy officer, Department of Environment, Tonga (Ms Sarah Burrows)
- Climate Change policy officer, Ministry of Environment, Conservation and Meteorology, Solomon Islands (Ms Jenny Reisz)
- Climate Change and Women Officer, Honiara City Council,

¹ Australian Youth Ambassadors for Development (AYAD), Volunteers for International Development Australia (VIDA) and Australian Volunteers International (AVI). More information about AusAID's volunteer programs is available at www.ayad.com.au, www.vidavolunteers.com.au, www.australianvolunteers.com and www.lawyersbeyondborders.com.



Solomon Islands (Ms Lauren Banning)

- Climate Change Youth Support Officer, Solomon Islands Red Cross (Ms Stephanie Smith)
- Climate Change Policy Officer, Ministry of Environment, Conservation and Meteorology, Solomon Islands (Ms Kellie Raab)
- Environmental Impact Assessment officer, Department of Environment, Fiji (Ms Larissa Brisbane)
- Legal Adviser, Ministry of Lands, Environment and Agricultural Development, Kiribati (Ms Cara Thomson).²

²The EDO also facilitated the placement of volunteers in Mongolia, Cambodia, Vietnam, China and Bangladesh.

People

Staff

EDO staff who worked on the project were:

- Amelia Thorpe,
International Programs Director
- Jeff Smith,
Director
- Kirsty Ruddock,
Principal Solicitor
- Sue Higginson,
Senior Solicitor
- Ian Ratcliff,
Senior Solicitor
- BJ Kim,
Solicitor
- Felicity Millner,
Solicitor
- Melissa Jolley,
Solicitor
- Elaine Johnson,
Solicitor
- Gillian Duggin,
Policy Officer
- Meredith MacDonald,
Operations Manager
- Kristy Graham,
Scientific Officer
- Tom Holden,
Scientific Director
- Emma Pollard,
Intern
- Andrew Burke,
Programs Director
- Heidi Evans,
Education Assistant
- Lesley Harris,
Operations Manager
- Nicola Rivers,
Policy Director, EDO Victoria

Lovisa Nellesvad, Luke Noonan, Marguerite Pettit, Chris Taylor and Elise Trask supported this work as volunteer interns.

International Advisory Committee

Strategic guidance for the EDO's engagement with Pacific communities is provided by a committee comprising senior advocates, scholars and members of local, regional and international organisations active in environmental protection in the region. Committee members provide advice in their personal capacity and do not represent organisations, countries or other interest groups.

Members of the International Advisory Committee are:

- Emeritus Professor Ben Boer,
University of Sydney
- Ms Effrey Dademo,
Act Now! Papua New Guinea
- Mr Taholo Kami,
IUCN Regional Office for
Oceania

- Mr Kosimili Latu,
Secretariat for the Pacific
Regional Environment
Programme
- Ms Sarah Tsiamalili,
European Union Papua New
Guinea

Partner organisations

Papua New Guinea:

- Environmental Law Centre
(ELC) (primary project partner)
- Centre for Environmental
Law and Community Rights
(CELCOR)
- Eco-Forestry Forum (EFF)
- Act Now! PNG

Solomon Islands:

- Public Solicitor's Office (PSO)
- Solomon Islands Environmental
Law Association (SIELA)

Fiji:

- Fiji Environmental Law
Association
- Department of Environment

Vanuatu:

- Vanuatu Advocacy and Legal
Advice Centre

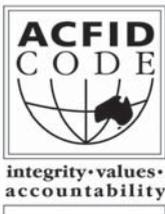
Samoa:

- Ministry for Natural Resources
and Environment

Regional organisations:

- Pacific Concerns Resource
Centre (PCRC)
- Foundation for Peoples of the
South Pacific (FSPI)
- International Union for
Conservation of Nature (IUCN)
Regional Office for Oceania
- Secretariat for the Pacific
Regional Environment
Programme (SPREP)
- Live and Learn Environmental
Education (LLEE)
- University of the South Pacific

The EDO also collaborated with a number of Australian organisations working in the region, including the Pacific Calling Partnership and the Australian Youth Climate Coalition.



The EDO is a signatory to the Australia Council for International Development (ACFID) Code of Conduct, representing our active commitment to conducting our international activities with integrity and accountability.



Environmental Defender's Office (NSW)
Level 1, 89 York St, Sydney NSW 2000
Tel: +612 9262 6989 Fax: +612 9262 6998
Email: international@edo.org.au

www.edo.org.au