

Islands in Time: The Pacific Islands Legal Information Institute (PACLII)

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[1] Serving Cook Islands, Fiji Islands, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu

Introduction

[2] Picture this - a brilliant blue sky, soft white sand, palm trees waving lazily in the breeze, the azure waters of a coral lagoon.

Sounds good?

[3] What about men with guns taking hostages in a Parliament building or sweaty fraudsters in bad suits lugging about brown paper bags full of cash?

Not so good?

[4] The international media, especially in recent times, has paradoxically often portrayed the Pacific in one of these two ways - either as "island paradise" where nothing much happens or as a hotbed of money laundering, political corruption and regular military coups.

[5] Not surprisingly, neither of these portrayals provides a complete picture of life in "Paradise".

Trouble in Paradise?

[6] Consider another image of the Pacific - a less "sexy" image perhaps but a more complete one. And a necessary one, in order to understand what the Pacific Islands Legal Information Institute is, what it is trying to achieve and why it is so different to the other LII's. Different it certainly is and its differences arise directly out of the context in which law is practised in our "developing" region.

The Man in His Canoe [2]

[7] At a personal level, it is true that for some Pacific islanders, particularly in Fiji and Solomon Islands, there have been frightening times in recent years and, in Solomons, that situation has had a truly devastating effect.

[8] But life for most people is still largely unmarked by these problems, revolving around the timeless concerns of subsistence agriculture, the family, the village and the Church - women tend their gardens of taro and kumara, children clamber up mango trees in search of an after-school treat, men fish from their outriggers for the evening meal and the "big men" gather in the Church hall to discuss matters of moment.

Government

[9] In the political sphere, each of the 12 University countries, except Tonga(which is a kingdom), has been trying, since Independence, to run democratic, constitutional states and, on the whole, perhaps surprisingly, they have been doing so very successfully.

[10] Like many post-colonial states, they started out with problems - the national boundaries don't generally fit with traditional political, ethnic or cultural boundaries; the political institutions adopted at Independence were foreign to both their experience under their colonial rulers as well as to their own traditional practices [3]; and, finally, the legal mix they were left with incorporates local laws, pre-Independence English law, French law, US based law and customary law. Quite a tangle.

[11] Yet, despite all this, the Westminster and presidential democratic systems that were adopted have remained intact - even in post-coup Fiji. General elections are held and governments have been accepting defeat and leaving the government benches in a peaceful, democratic succession which has been the norm, for example Samoa has seen 39 years of independence[4].

[12] Fiji and Solomon Islands are exceptions but here are some recent words of Sir John Muria, Chief Justice of Solomon Islands, who clearly considers that all is not lost[5]:

"By and large, we in this part of the world have so much to thank God for. We continue to enjoy relative peace and calmness despite incidents of disruption and instability that are creeping into our societies. These incidents must not be ignored by both domestic as well as international authorities, The Courts must be vigilant in their role as interpreters of the law and protectors of the people's rights."

[13] In addition, the remarkable thing about the Fijian coups, as with many other Pacific problems in recent years, is that ultimately the Constitutional crises they gave rise to have been processed and dealt with by the Courts and by Parliament. The legal and parliamentary systems are surviving these challenges.

[14] To quote Sir John Muria CJ, once more [6]:

"In newly emerging nations with written Constitutions, disputes as to the interpretation and implementation of a constitutional provision are not uncommon. Here in Vanuatu as well as in other countries in the region, there had been numerous constitutional challenges brought before the Courts in the last twenty years.

A number of factors had given rise to the various constitutional challenges, notably, the infancy of the country and its Judiciary. Unlike many other countries with written Constitutions and which have had a long period of judicial development, establishing firm precedents on constitutional issues arising in their jurisdictions, countries in this region have only just begun this journey. There will be many more years to come before we can fully realise the impact of our Constitution. As it is, for the moment, constitutional challenges are part of our growing up and maturing. I consider this to be a healthy process."

[15] The truly surprising thing, if you compare reality to the press coverage, is not that we have one country in our region that has been devastated by civil unrest, but that, in a newly post-colonial "developing" region there is only one.

The Legal Sector

[16] In my 9 years in the Pacific I can say that, while the pace of life in the Pacific is slower, the judges, the legal officers and lawyers I work with are hardworking people, (although they do like their kava!) who are doing their best to uphold the rule of law in difficult conditions that arise out of being in post-colonial states in a "developing" region. Practical difficulties include the following:

- * The Pacific states are young democracies, and still sorting through the impact of colonialism and the impact of the Constitutions they adopted at independence - clearly this can make for stressful times.

- * Basic services, like electricity and water supply, can be erratic. I can assure you it's a nightmare trying to focus on the legal issues while wearing a wig and gown in 35° heat and 90% humidity and the fans go off! Certainly it can make tasks like word processing, photocopying and internet use problematic.

Many of the basic things taken for granted in the developed world, like an adequate supply of stationery, IT support for your PC or telecommunications infrastructure are not necessarily readily available, if at all;

- * There are few computers, even in Court Registries or for Parliamentary draftsmen, and where they do exist they are unlikely to be networked. Most Registrars sit in their offices surrounded by tottering piles of yellowing paper. This is changing but the process is slow.

It is unlikely, overall, that courts and attorneys-general will have access to email or the internet (although that is changing) and it is highly unlikely that they will have access to an adequate law library;

- * Legal resource materials are very scarce. Legal publishing is lagging way behind, where it exists at all - Law Reports and Statutory Consolidations are by and large well out of date. Unpublished material is extremely difficult to obtain - I know, I've tried!

- * The numbers of practitioners and judicial officers are very few in comparison to the need. Many law graduates head off to places like Australia and New Zealand to practise, where they can earn a decent living in well equipped surroundings, and still have enough left over to send home to the village. Who could blame them?

[17] So, it is worth considering the alternative image of the "peaceful Pacific" and the perseverance, commitment and optimism of Pacific islanders that goes into maintaining that peace the next time you see a sensational Pacific headline.

[18] It is within this challenging context that the University of the South Pacific (USP) School of Law, located at Emalus Campus in Port Vila, Vanuatu has set out to provide access to Pacific laws to its stakeholder countries - Cook Islands, Fiji Islands, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

[19] In 1994 USP established its School of Law to serve the legal education needs of the region. Before this, Pacific island students were obliged to receive their legal education in countries like Australia, New Zealand and France, which had varying degrees of relevance to their own home environments and, in particular, virtually none at all to the thorny issue of the integration of Pacific customary laws with received law.

[20] Today we have about 250 students enrolled full time in our LLB and another 100 or so studying law by extension in their home countries.

[21] The urgent need for access to Pacific laws for the School of Law rapidly became apparent not long after it was established, because we too began encountering many of the same difficulties faced by the justice sector in the region described above, in addition to 3 more:

Diversity: The School is required to teach the laws of all 12 of our member countries who vary widely as to both culture and laws;

Geography: The 12 countries, and therefore our students, are spread over huge distances with unreliable postal services, making "distance education" a very practical challenge;

Aid: The School operates in a developing region, suffering a chronic lack of resources and funding in both the justice and education sectors. It is therefore dependent on aid donors, who have their own agendas, for funding; and

Primary Law Materials: The biggest practical problem facing the teachers of law at USP is the absence of a reliable, regular and up to date supply of primary resource material - essentially judgments and legislation.

[22] The School needed a solution to all these problems and we were hopeful that, if that solution could help us, then perhaps it might be of equal benefit to the judiciary and other practitioners in the region.

[23] And so the School of Law website was born.

THE INTERNET LAW REPORTING PROJECT AT USP LAW SCHOOL -
www.vanuatu.usp.ac.fj

[24] [Searching Tip - if you can't remember the URL simply type the words pacific law into google]

[25] We decided on the internet as the most cost effective solution which would reach the widest number of users across the greatest distances. Immediately we hit 2 obstacles:

1. Funding: We spent 4 long years in the wilderness searching for consistent funding to ensure that the

project would survive. Despite what appeared to be the necessity of the project to the School, and the obvious appeal to the wider legal community in the South Pacific, the negotiations with aid donors usually ended in expressions of approbation and goodwill but no award of funding. The project was too large or donors were not convinced that quality law reporting for the South Pacific had much to do with good governance or their other funding requirements.

We worked long and hard to turn these perceptions around.

2. Obtaining the documents: We had difficulty in convincing courts and practitioners in the region that delivery of materials by way of the Internet was viable, or useful or even desirable. Computer literacy and internet use throughout the Pacific region was not considerable in 1998. However the School was committed to the idea that this was about to change. For one thing, the graduates from the School who would be entering into legal practice over the ensuing years would all be trained in, and accustomed to, computer and Internet based legal research. Apart from that, the South Pacific region has been undergoing changes generated by globalisation so that the increasing use of computers and computer resources was a development which could reasonably be anticipated.

[26] Overall however, it seemed that we first had to create the website and only then would we receive the support we needed. For 3 years we survived on small yearly grants from the University.

[27] Then in 2000 the School received a 3 year grant from the New Zealand Government's funding agency NZODA and a smaller grant from the Australian government fund AusAID, to sustain and develop the project:

1. to develop better networks with court offices and relevant government agencies in Pacific countries to ensure the regular inflow of materials, both judgements and legislation; and
2. to develop further the existing database system in order to provide for better indexing and citation of materials, improved search functions and the like.

[28] Happily, our growth has increased rapidly as our funding has kicked in and computerisation has begun, very slowly, to take hold around the region. Increasingly we have been able to obtain recent judgments, and even some legislation, in electronic format[7]. The Judges and Attorneys-General are beginning to come around and with the advent of PacLII the growth and development of the project is, we hope, assured.

Pacific Islands Legal Information Institute - www.paclii.org

[29] In 2000 we entered into partnership with AustLII who have provided us with the

means to turn our modest databases into the Pacific Islands Legal Information Institute, known as PacLII. PacLII was launched as a demonstration site in July 2001 in Port Vila at the Australasian Law Teachers Association Conference and we hope to have it up and running as a live site very shortly.

[30] PacLII will house all of the Pacific Law Materials previously available on the School of Law website[8], although now, with improved technology and more powerful search engines our users will have much better access than we have previously been able to provide. In the first instance the documents will be housed at AustLII with a mirror site in Port Vila to provide fast access to the region. In time, as the technical skills available to us in Vanuatu increase, the site will migrate to the PacLII offices in Vanuatu, although a mirror site will be retained by AustLII.

Content

[31] The collection of primary documents currently contains over 4,400 primary source documents from 14 jurisdictions - just over 1,100,000 kbs of data. We have recently completed loading the full text of the Laws of Vanuatu (1988) in pdf format and are currently working on loading the full text of the Consolidated Laws of Fiji (1985). We have added the indices to all available law reporters of the Pacific as well as all legislation consolidations and we are working on compiling indexes of all legislation passed subsequent to those consolidations.

[32] We have adopted the same structure and platform as that used by AustLII, Linux, so that PacLII will be a fully integrated component of the WorldLII network that encompasses Australia, the UK, Canada, and Hong Kong. We have also adopted the Medium Neutral Citation system and have made a commitment to including parallel and alternative citations wherever possible, particularly where these will be more recognisable in the short term, and therefore more useful, in the originating jurisdictions. Many thanks to AustLII for their invaluable assistance[9].

[33] There are, however, considerable differences between PacLII and the other Legal Information Institutes that arise out of the nature of our region.

The Paperless Office - Just a Dream for PacLII?

[34] The most immediate difference is that the documents we receive are almost all available only in paper format, as a result of the lack of computerisation in the Pacific. Even where that is changing, the process of change is very slow. Certainly all of the "back sets" of material i.e. any documents created before computerisation, seem at this stage unlikely to ever be available in any kind of electronic form although that may change as the benefits of maintaining electronic documents begin to be felt.

[35] In order to publish paper documents on the website they need to be scanned, formatted and proofed before loading. It is said that "genius is 5% inspiration and 95% perspiration" and the same holds true for building a content-rich legal database in the Pacific - this process of converting paper documents to electronic form is labour intensive indeed and excruciatingly slow. It is for this reason that we are using the pdf format to scan in legislation at the moment, as a response to the needs of our core user group, staff and students of USP, - simply to make the documents accessible until such time as we are able to convert them into html.

[36] For such labour intensive work we needed more help than we could afford, even with the generosity of aid donors. So we have drafted in the School's law students to help out and this makes the PacLII office a very lively and busy place with a very distinctive and vibrant cultural mix.

[37] As a result of the very slow process of scanning, formatting and proofing, our databases are relatively very small, nevertheless they provide a unique and very significant resource base already. We consider PacLII to be very much a "work in progress".

A Question of Priorities

[38] Another major distinguishing feature of PacLII is that we are engaged in a race against time in many instances. Because the documents we are attempting to locate and publish are paper documents they are vulnerable to the damaging effects of heat and humidity, both being almost constant features of life in the Pacific where air conditioning of libraries is a rarity. In the case of USP Law Library, the most comprehensive law library in the region, the rough and tumble of constant use adds to the problem. Moreover often there will be only a very limited number copies (sometimes only one) and no possibility of reprinting. There is a very real prospect that some documents may well be lost altogether.

[39] Added to this is the fact that our top priority is still to publish first the materials needed to teach the School of Law's students. All of these issues provide an edge of urgency to the work of PacLII.

Support to the Region

[40] Something that we hope will eventually make PacLII a very different entity involves our almost unique status in the region as a supplier of legal material on the internet and as a repository of certain skills and knowledge.

[41] It has become apparent that we cannot realistically continue with the mammoth task of scanning in all of the output of the 12 countries of the region, if that output is going to continue only in paper form. We need to support the computerisation of the region's Registries and to support and encourage training of staff - training not just in internet research but also in basic skills such as the use of email and style sheets.

[42] For example we are currently trying to develop a judicial training project to give the judges of the region, who generally do all their own research, the confidence to attempt internet legal research themselves, where computers and internet access are available. This is a particularly important initiative because most judges do not have access to adequate traditional law libraries and don't have associates to assist them. In conjunction with this project we are working with the University to allow those judges without computer or internet access, access to the University's intranet via its Centres, which are located throughout the Pacific.

[43] These aspects of our project are very much in their infancy but have certainly attracted the commitment of PacLII staff.

Wea Nao Lanwidge Blong Mifala [10]

[44] PacLII is committed in principle to publishing documents in their original language.

[45] So far we have some Vanuatu legislation in the French language and some Vanuatu judgments in Bislama - the local pidgin. The Samoan Land and Titles Court publishes its judgments almost exclusively in Samoan but to date we have loaded very few as they are all in paper form and largely do not operate as precedents. However we are hopeful that these databases will grow in time.

[46] While the language of the other Courts is, for the most part, English and the official

language of USP is English, it has to be considered that to provide true access to laws for Pacific islanders it would be helpful to have at least major decisions and statutes published in local languages.

[47] Consider this however, that there are at least 15 major languages in the region and hundreds of others. Further we could not provide official translations so, again, this aspect of PacLII is a long term goal and the initiative for may well have to come from the Courts and Parliaments themselves.

Where to from here?

[48] There is an enormous amount to do. Just keep that figure in mind - we are attempting to publish electronically, from paper documents, the entire legal out put of 12 countries! So the task of collecting the primary materials is certainly ongoing and for most jurisdictions we still don't have the networks properly established to enable consistent and timely delivery of documents, although we are certainly working on it.

[49] So, for me personally, that means I have to go island hopping for the next 2 years - back to that vision of the white sandy beaches and those coconut palms - it's a tough life but, well, somebody has to do it!

Contacting PacLII

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[2] Thanks for the image go to "Providing access to Pacific law - a work in progress: 'From little things big things grow'" by Peter Murgatroyd, Emalus Campus librarian, Vanuatu. murgatroyd_p@vanuatu.usp.ac.fj

[3] Coups and Crises in the Pacific by Greg Fry, Director of Graduate Studies in International Affairs in the Research School of Pacific and Asian Studies at the Australian National University (ANU)

[4] Coups and Crises in the Pacific by Greg Fry, Director of Graduate Studies in International Affairs in the Research School of Pacific and Asian Studies at the Australian National University (ANU)

[5] THE ROLE OF THE COURTS AND LEGAL PROFESSION IN CONSTITUTIONAL AND POLITICAL DISPUTES IN THE PACIFIC ISLANDS NATIONS. *Address by the Honourable Sir John Muria at the Graduation Celebration, University of the South Pacific, Emalus Campus, Port Vila, Vanuatu - 4 December 2001*

[6] THE ROLE OF THE COURTS AND LEGAL PROFESSION IN CONSTITUTIONAL AND

POLITICAL DISPUTES IN THE PACIFIC ISLANDS NATIONS. *Address by the Honourable Sir John Muria at the Graduation Celebration, University of the South Pacific, Emalus Campus, Port Vila, Vanuatu - 4 December 2001*

[7] Our thanks go, in particular, to the Chief Justice of Vanuatu, Vincent Lunabek, the new Chief Justice of Fiji Islands, Daniel Fatiaki The Honourable Justice Michael Scott of the Fijian High Court and the Chief Justice of Samoa Patu Falefatu Maka Sapolu for their vision and support.

[8] As a footnote to these developments we are presently also in discussions with stakeholders in Papua New Guinea regarding bringing PNG's laws into PacLII.

[9] And in particular our thanks go to Graham Greenleaf, Andrew Mowbray and Philip Chung who have, with endless patience, brought the project this far.

[10] Translation from Solomon Islands' Pidgin "SO WHERE IS MY LANGUAGE?" For more information on Pacific languages please try the University of the South Pacific's Pacific Languages Unit at http://www.vanuatu.usp.ac.fj/paclangunit/paclang_main.htm

