

Access To Pacific Legal Materials¹

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BACKGROUND

The islands of the Pacific conjure up for many of us images of white sand beaches, swaying coconut palms and crystal clear lagoons. Small villages in forest clearings where water is drawn from a well and where men and women spend most of their days working in the gardens or fishing. Where the passing of the day is not measured by the hands on a clock and where one's identity and place in the community is not determined by one's job.

The surprising truth is that despite the bombardment of images to the contrary on the world's media arising from the recent events in Fiji and the Solomon Islands, many of these idyllic images still hold true.

The islands and people of the Pacific Islands can be divided into three distinct groupings: Polynesia, Melanesia and Micronesia. Melanesia includes Papua New Guinea, the Solomon Islands, New Caledonia and Vanuatu. Fiji is considered part of Melanesia because of its location. However, its culture is much more like that of Polynesia. The Melanesian islands lie south of the equator. Micronesia means 'tiny islands'. These islands lie north of Melanesia and most of them also lie north of the equator. More than 2000 islands make up Melanesia. Most of them are low-lying coral islands. Micronesia includes Guam, the Caroline Islands, the Mariana Islands, the Marshall Islands, the Gilbert Islands and the single island of Nauru. Polynesia means 'many islands'. It occupies the largest area in the South Pacific and includes the Cook Islands, Kiribati, Niue, Samoa, Tokelau, Tonga and Tuvalu.

¹ This is an edited version of a paper that was presented at the 3rd symposium of the Australian Law Librarians' Group, *Law Librarians' Symposium 2000*, Sydney, July 19-21

SOURCES OF LAW

Before addressing the issue of access it is necessary to consider the *sources* of law for the region because the two issues are inextricably linked. An understanding of the recent colonial and post-independence history of the islands is essential in identifying, accessing and understanding the relevant laws as they apply in each of the countries of the Pacific – in particular, which laws of England, New Zealand, Australia, France and the United States of America (USA) still have application in the Pacific.

By the late 1800s Britain, France, Germany, Spain and the USA were all competing for control of islands in the Pacific. After Spain's defeat in the Spanish-American War of 1898, Germany and the USA took over the Spanish possessions in Micronesia. By the early 1900s Germany also held parts of Nauru, New Guinea and Samoa, and the USA controlled Hawaii and the rest of Samoa. France controlled New Caledonia and French Polynesia and shared control of the New Hebrides (now Vanuatu) with Britain. Britain held Fiji, Papua, Tonga, the southern Solomons, and the Gilbert and Ellice Islands (now Tuvalu). After Germany's defeat in World War I (1914-18), Japan received control of the German possessions in Micronesia, New Zealand took over German Samoa, and Australia received control of northeastern New Guinea. Through all these changes of rule, the Pacific islanders themselves had little or no voice in the government.

After World War II (1939-45) the United Nations (UN) decided that four areas in the Pacific should be governed as trust territories until they were ready for independence. New Zealand administered Western Samoa until 1962 when it gained independence. Australia, Britain and New Zealand governed Nauru as a trust territory until 1968 when it too became independent. The Trust Territory of New Guinea was governed by Australia until 1973. It then became part of the self-governing territory of Papua New Guinea (PNG). PNG gained full independence in 1975. The USA administered the Trust Territories of the Pacific Islands encompassing the islands of Micronesia, with the exception of Nauru. Other islands to have gained independence include Niue (1974), Fiji and Tonga (1970), southern Solomon Islands and Tuvalu (1978). The Marshall Islands and the

Federated States of Micronesia became independent nations in free association with the USA, as did Palau, in 1994. Gilbert Islands became the independent nation of Kiribati (1979) and the New Hebrides gained independence as Vanuatu (1980).

Many of the Pacific islands and island groups are still working towards independence. In 1965 the Cook Islands, a territory of New Zealand, gained a form of self-government. It controls its own internal affairs while New Zealand continues to handle external affairs as requested.

To make provision for independence or full internal self-government in all countries of the region a written constitution was enacted for each one and was recognized as the supreme law. However, at the time of independence none of the countries of the University of the South Pacific region actually rejected existing laws outright. Law that was saved included:

- legislation in force in England (and in some cases its former colonies of Australia and New Zealand) at a particular date, often referred to as 'the date of application,'
- common law and equity, and
- 'colonial' legislation (made by the legislature of the country before independence)

It is of course critical to know precisely which 'saved' laws continue in force today. *Introduction to South Pacific Law* is an excellent starting point.² The University of the South Pacific (USP) aims to provide access via the USP School of Law Web site to an authoritative commentary on the sources of law, including the application of laws, for each of the member countries of the USP. The Cook Islands, Kiribati, Samoa and Vanuatu are now available on the Web site with the remainder to be added during the second half of this year.³

² Corrin Care, J., Newton, I. & Paterson, D. 1999, *Introduction to South Pacific Law*, Cavendish, London

³ <http://www.vanuatu.usp.ac.fj>

In addition to the various sources of law indicated above, there is an increasing tendency to incorporate notions of customary law. Legislation is in place currently in Samoa, Solomon Islands, Vanuatu, Nauru, Kiribati and Tuvalu that customary law be part of the law applied by all courts. Furthermore all countries, with the exception only of Tonga, have express provisions for customs or customary law to be used as the basis for determining rights to customary land. For example, the Custom Policy of the Malvatumauri (the National Council of Custom Chiefs of the Republic of Vanuatu) consists of forty articles stating customary law as it applies in Vanuatu.⁴ These articles cover issues as diverse as land ownership, murder and theft, ceremonies and cultural activities. Much of what constitutes customary law is not recorded in a written form but is passed on orally by the Chiefs.⁵

To summarise, all countries in the region have several different kinds of laws deriving from several different sources:

- a written constitution (stated to be the supreme law),
- written legislation enacted by the legislature of the country either during the period of dependency, or since independence or self-governance, and subsidiary legislation authorized by that legislation,
- written legislation enacted by the legislature of the former colonial power and applied to, or adopted by, the dependent country, and subsidiary legislation authorized by that legislation,
- written and unwritten rules of custom and customary law, and
- unwritten rules of common law and equity.

ACCESS TO PACIFIC LEGAL MATERIALS

Notwithstanding the complexities of the materials themselves, what has made accessing the legal materials of the Pacific islands such an ongoing challenge has been the difficulties in physically getting hold of them. The infrastructure that is taken for granted in Australia and New Zealand is still being developed in the Pacific. Outside the capitals and larger towns there is still limited access to

⁴ Malvatumauri 1983, *Kastom polisi blong Malvatumauri*, Malvatumauri, Port Vila

⁵ 'Sources of law in the South Pacific', 1997, *Journal of South Pacific Studies*, vol. 21.

electricity and reticulated water. Transportation and telecommunications are expensive and unreliable. Even in the main centres funds and resources for maintaining and making available collections of legal materials are often limited.

Success in gaining access to both legislative materials and judgments from the courts can depend on identifying and building relationships with key people. This process can take time. It is not uncommon for emails, letters and faxes to go unanswered, or alternatively to get a positive response over the telephone only to find that a month later the requested materials have still not arrived. It is important when communicating with Pacific colleagues to take notice of the importance placed on courtesy and politeness. One should not assume that a request for materials is necessarily a straightforward matter. Even the best intentions in the world can be scuttled by something as simple as a broken photocopier, fax machine or computer.

The first concerted attempt that I am aware of to improve access to legal materials of the Pacific was made by Jacqui Elliott during the mid 1980s. At the time, she was Law Librarian at the University of Papua New Guinea (UPNG). Many of the points that Jacqui made in 1985 highlighting the practical difficulties in acquiring materials still applied when I joined the USP in 1998.⁶ Alas, the hard work that Jacqui put in to establish a significant collection of resources at UPNG and making that collection available to the region has faltered in recent years.

Jacqui was also responsible for the compilation of the invaluable *Pacific Law Bibliography* first published in 1988. My understanding is that a new edition, to be published by Pacific NiuMedia, is in preparation.⁷

The information landscape has changed dramatically in the past ten years and the emergence of the Internet has hastened the arrival of a number of new players to carry on Jacqui Elliott's dream. Before examining in detail what the USP is doing

⁶ Elliott, J. D. 1985, 'Development of a Pacific Legal Information Network (PALIN) at the University of Papua New Guinea', paper presented to 1st Asian-Pacific Special and Law Librarians' Conference, Melbourne, 5 September.

⁷ Elliott, J. D. 1990, *Pacific Law Bibliography*, 2nd edn, Pacific Law Press, Hobart

to improve access to Pacific legal materials, I will briefly mention other important points of contact:

- the Pacific Manuscripts Bureau at the Australian National University (ANU) has an important collection of archival materials – <http://rspas.anu.edu.au/pambu/>
- the Pacific Collection at the Manoa Library at the University of Hawaii has an impressive collection of Pacific materials including an outstanding archive of the Trust Territories of the Pacific Islands – <http://www2.hawaii.edu/~speccoll/pacificabout.html>
- NiuMedia Pacific is a company that provides access to electronic and paper versions of primary legal materials of PNG (mainly Acts, Regulations and judgments of Magistrates and Superior Courts). It is currently developing plans to expand its publishing operations to cover other Pacific Island States – <http://www.niumedial.com.au/index.htm>
- Monash University's Pacific Law Resource Unit hosts a site detailing Australian holdings of Pacific law materials – <http://www.lib.monash.edu.au/law/pacificlaw/pacla.htm>
- Waikato University Law Library has compiled a list of Pacific Islands legal materials held in major New Zealand law libraries – <http://www2.waikato.ac.nz/lawlib/site/pl/pac.html>
- AustLII has a cooperative agreement with USP to provide access to selected judgments from the USP site – <http://www.austlii.edu.au/databases.html>

The USP School of Law Pacific law materials Internet project

The USP School of Law, located at Emalus Campus in Port Vila, Vanuatu, draws its students from the Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, the Marshall Islands, Nauru, Niue, Samoa, the Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu. For these students to acquire a complete understanding of the law as applied in their own countries it is essential that we are able to provide access to the legislation and case law from those jurisdictions. Moreover, as a distance education provider, it is equally important that we are able to provide access to those resources throughout the USP region.

The USP School of Law Web site is a work-in-progress and is growing rapidly.⁸ It is viewed not only as a resource for staff and students but as an important collection of materials that will continue to be made available to the judiciary and legal sector throughout the Pacific. The aims of the project are:

- to acquire unreported decisions from all member countries of the USP and to provide access to the full text of those decisions via the Internet,
- to acquire and maintain a comprehensive collection of published law reports from the member countries of the USP,
- to acquire and maintain a comprehensive collection of legislation from the member countries of the USP,
- to publish full holding details of our collections of legislation and law reports on our Web site including scanning in full the indices to published Pacific law reports and published legislation consolidations,
- to provide access to the full text of all constitutions currently in force in the USP region,
- to provide access to the full text of selected pieces of legislation from the Pacific, and
- to provide access via the Web site to an authoritative commentary on the sources of law, including the application of laws, for each of the member countries of the USP.

Copies of Pacific legal materials are available via the Emalus libraries document delivery service. Requests for material can be sent to the Law Librarian at Murgatroyd_p@vanuatu.usp.ac.fj

In addition to the judicial and legislative materials we also publish the electronic journal *Journal of South Pacific Law*.⁹ Another integral part of our Web site is a list of recommended Internet links to sites of interest to the Pacific region.¹⁰

USP uses a satellite network to provide 24 hour, free access to the Internet to USP Centres in all member countries of the USP. The School of Law Web site is a

⁸ http://www.vanuatu.usp.ac.fj/paclawmat/paclawmat_main.html

⁹ http://www.vanuatu.usp.ac.fj/journal_splaw/journal_main.html

¹⁰ http://www.vanuatu.usp.ac.fj/lawlinks/lawlinks_main.html

collaborative effort with development being driven by an enthusiastic committee comprising the Dean of Law, the Web site manager, the Law Librarian, members of the law faculty and the IT manager. Future plans include publication of consolidated legislation for a number of countries and the development and marketing of CD-ROMs of selected Pacific law materials.

The extent to which we can fulfill our aims is very much reliant upon the cooperation and support of Attorneys-General, Chief Justices, High Court Registrars and Government Printers around the region in making available the raw materials. At a meeting of the Pacific Islands Legal Officers Meeting (PILOM) in October 1998 support was given to USP's plan and this ongoing support is critical to our success.

Similarly, we are very much reliant on continued funding of the project. Funding to this point has been provided by one-off grants through USP's Planning and Development Office in Suva. The uncertainty and irregularity of such grants has contributed to the sporadic nature of the growth of resources on the site. Currently USP does not have funding to support a regular cycle of collecting trips although it is acknowledged that this would assist us immeasurably. What is needed is a commitment of ongoing support to the project. However, it must be acknowledged that currently we are living in uncertain times in the Pacific

We welcome feedback on our Web site and look forward to building further relationships with colleagues throughout the region

OTHER SELECTED INTERNET SITES

Asia Pacific Centre for Human Rights and the Prevention of Ethnic Conflict.

This Centre was founded in 1996 to promote the teaching and research of human rights in the Asia-Pacific region. It also seeks to provide online access to Asian and Pacific human rights documents and resources

<http://wwwlaw.murdoch.edu.au/apchr>

FFA Fisheries legislation

Fisheries legislation from around the Pacific region in full text. Available in Acrobat pdf. Part of the Forum Fisheries Agency Web site.

http://www.ffa.int/frame_index7.html

Guam Justice Network

A gateway to justice related government agencies and departments in Guam, including the Superior Court, as well as other useful and interesting justice related materials

<http://www.justice.gov.gu>

Human Rights in Asia and the Pacific

Human rights reports prepared by the US State Department for the countries of East Asia and the Pacific.

http://www.state.gov/www/global/human_rights/1999_hrp_report/99hrp_eap.html

Micronesian Law Centre

A Web site operated by a legal practitioner in the Marshall Islands, Ron Moroni. The site includes selected legislation and judgments from Micronesia.

<http://www.islandtribune.com/LawFrames.html>

The Papua New Guinea Legal Information Network – PNG Inlaw

Provides up to date access to PNG legislation, judgments and other legal materials. <http://www.niumedia.com.au/pnginlaw>

State, Society and Governance in Melanesia

Access to full text discussion and working papers on governance issues in Melanesia. <http://rspas.anu.edu.au/melanesia>