



Reclaiming Historical Legal Material in the Pacific

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Abstract

PacLII has numerous historical collections already published on its website, and plans the addition of many more. Since its inception PacLII has not viewed the collection of 'historical' collections as a separate and distinct enterprise, mainly because it published just whatever it could get its hands on whether it be current or old, and in many cases older materials were easier to get a hold of because they were available in hard copy that could be scanned. Other factors now in consideration are that 'old' laws, such as the Western Pacific legislation which are essentially English law, are still applicable today. The collection of colonial historical legal material has been complicated by the number of Pacific Island countries in the region and the shifting spheres of influence over them between the British, French, Germans, Dutch, Americans, Japan, Australia and New Zealand. On the other hand, there is an acute sense of urgency for the preservation of all historical legal materials in the Pacific largely driven by the Pacific Islands vulnerability to the effects of global warming, as natural disasters increase in both frequency and severity. High humidity and insect infestation are also compelling factors to take into consideration. As part of the process to locate, capture and publish historical legal material, PacLII has used a number of different methods including the auditing of the University of the South Pacific Law Library holdings, other libraries from around the region, websites, and country visits."

1.0 Introduction on PacLII

Greek philosopher Aristotle said that all men by nature, desire knowledge.ⁱ Knowledge begins with acquiring information that is vital in people's everyday lives. Perhaps, had Aristotle lived today in an age of advanced technology and instantaneous communication systems, he may certainly have considered man's expectation of readily accessing knowledge, rather high.

Legal Information Institutes ("LIIs") as the name implies, play a pivotal role in modern societies which are governed by the rule of law. LIIs operate on not-for-profit basis and put wheels on the grand notion that access to public legal information ought to be maximised, on a free-of-charge basis.ⁱⁱ

Given this core feature of LIIs, the issue of resources to drive such a broad and ambitious undertaking becomes significant. It follows therefore, that as a not-for-profit entity, PacLII's resources in a given time period, determines where the priorities lie for the collection, processing and publication of public legal documents that are sourced from the Pacific region.

At its inception in 1999, PacLII began as a small digitisation project established in response to requests by the Faculty of Law at the University of the South Pacific, to make available digitized legislation and case law to law students, particularly those engaged via distance-learning across the Region. Since then, PacLII has built up an impressively large digital collection of public legal documents.

A fully fledged LII since 2003, PacLII has over the years cultivated an expansive vision as reflected in its range of publications online that has been largely sourced from its member PICs. The collection has developed a much clearer and structured form that arguably appears to correlate directly with the developing legal systems in the Pacific Islands countries.

Such was PacLII's commitment to strengthening the rule of law in a free and fair society, that in the initial stages, it published each and every public legal document it was able to source from various agencies. Hence, public legal documents sourced arrived on an ad hoc basis, rather than in a chronological fashion. This was due in no small part to the constraints in both human resources and appropriate technology, faced at various sources in the Region which inhibited their ability to send PacLII legal material in an ordered and systematised manner.ⁱⁱⁱ

It ought to be said that any decent collection of public legal information would not be considered complete without its' genesis. Accordingly, PacLII began to broaden its publications to include older and/or dated public legal documents, notwithstanding that some of these historical legal documents may no longer be applicable or in force under the laws of that particular country.

1.1 What constitutes "historical" public legal document.

Defining the word "historical" was the first step in shaping the parameters within which to discuss this distinctive category of public legal documents. After considerable discussion^{iv}, PacLII settled on defining its historical collection using a two-tier category, namely;

- Colonial History Collections
- Recent History Collections

Colonial History Collections comprise of public legal documents that existed during the colonial era or period of trusteeship but prior to independence that was eventually attained in that Pacific Island country.

Recent History Collections comprise of public legal documents that came into existence at independence and the years thereafter up until the new millennium of the year 2000.

However, there are a number of Pacific Island countries that constitute a category of exception to the two-tier distinction as framed above.

These island countries are namely, American Samoa, Northern Mariana Islands (CNMI), Guam, New Caledonia, Tokelau and the Pitcairn Islands who have retained a dependency status with their colonial or trustee administrations, namely France, United States of America, United Kingdom and New Zealand.^v

Insofar as categorising these countries using the two-tiered framework as set out above, all public legal documents are listed under the first tier, *colonial history collections*, in order to reflect a continuing status of dependency.

There are also a number of Pacific Island countries, although independent States, are characterised by a nuanced dependency status with their former political powers. The Federated States of Micronesia (FSM), Palau, and Marshall Islands are independent constitutional governments that are in free association with the United States. Similarly, Cook Islands and Niue are both independent and self governing, in free association with New Zealand.^{vi}

Historical public legal documents that PacLII obtained from these countries either fall under the first tier (*colonial history collections*) to reflect a period of full dependency; or in the second tier (*recent history collections*), to reflect the country present status of independence and self-governance, however in free association with its former political master.

1.2 Why a historical collection in the first place?

PacLII's focus on collecting historical public legal material arose from a number of factors, namely:

- As PacLII built upon its legal collections over the last decade, it became more and more aware of markedly unfilled gaps in the socio-political timelines of each Pacific Island country. It acknowledged that these gaps were critical if only to provide a better coherence and complete narrative to the vast collection of legal materials that was already available on PacLII.
- Members of the legal profession as well as the judiciary have over a number of meetings, which PacLII had attended, expressed a keen interest in accessing historical legal documents from Pacific island jurisdictions.
- In 2011 and 2014, online user surveys were conducted by both an Independent Review Group and PacLII and the feedback received reflected a wide interest in accessing historical public legal documents via PacLII.
- There was also a growing concern over the vulnerability of collections of historical public legal documents and in particular printed matter. Two examples prominently feature in this regard. First, on 10 May 1992, a fire destroyed the Cook Islands Courthouse as it swept through the old colonial buildings of the government complex. The courthouse was subsequently demolished for safety reasons and it was not until some twelve years later that a new courthouse was opened in the Cook Islands capital of Rarotonga.^{vii} The second example was in Vanuatu.^{viii} On 7 June 2007, a fire razed to the ground the Joint Courthouse, which was a historical colonial building from the condominium era. The fire destroying all documents in the courthouse. Still in Vanuatu, on 25 September 2011, a fire almost destroyed the building of the Luganville courthouse on the island of Santo, which is the largest island in the group. However, court records and office equipment such as computers and chairs were completely destroyed. It was reported that this was not the first occasion that attempts had been made to destroy the Santo courthouse.^{ix}
- On the other hand, many Pacific Island jurisdictions do not have the appropriate resources and technology to preserve ancient printed matter and when exposed to natural elements or insect infestation, disintegrate over a period of time.
- Some historical legal collections were offered to PacLII in 2013. These were namely, bound volumes of historical legislation from 1888 to 1945 for Papua New Guinea, that were provided by the Australian Attorney General's Library; and historical case law from the 1930s that were provided by the PNG's Attorney General's Library.

The aforementioned factors, coupled with a growing appreciation from within PacLII^x to preserve legal history for posterity, provided the impetus to drive this initiative forward in reclaiming historical public legal documents for PacLII publication.

1.3 Immediate challenges faced

In setting priorities, PacLII had to consider the various means by which sourcing of historical documents could be achieved in an optimal and cost-effective manner.

Managing the flow, processes and publication of public legal documents in a region comprising of multiple jurisdictions that are separated by great geographical distances, is no easy feat. PacLII appreciated that the 20 Pacific Island countries in the Region were not on par with each other in development

Moreover, there had been no definitive index or baseline study undertaken in the past on historical legal documents for Pacific Islands collectively. This would have offered PacLII a much-needed guideline against which it could better frame an undertaking of this scale.

Flowing from communications over a period of time with established sources of public legal documents in the Region, PacLII sensed some reluctance from some quarters on what constitutes the word "public" in "historical public legal documents". Reasons behind this general reluctance were not very clear. In response, PacLII strove to emphasise its underlying mission, its foundational principles based on strengthening the rule of law, transparency and good governance, hoping that over time the awareness of the vital role that PacLII plays will break down the barriers in accessing historical public legal documents for publication as well as preservation by virtue of digitisation.

A number of Pacific Island countries including American Samoa have been earmarked for a face-to-face public relations visit early next year by a PacLII delegation, in order to establish communication lines for sourcing primary legal documents including historical material.

The aforementioned paragraphs provide a brief snapshot of the potential obstacles that PacLII needed to consider and accordingly, map out solutions that fit the local context, as it persists pursuing its larger objective of reclaiming all historical public legal documents in Pacific Island jurisdictions, for PacLII publication.

2.0 Current status of historical documents online

A rudimentary survey of PacLII's current collections of primary legal documents will show you that there is a mix of *colonial history collections* and *recent history collections*.

Table 2.0.1 provides an overview of primary legal documents that are currently contained under each Pacific Island country database.^{xi} It also shows the legal document type set out chronologically, i.e. year corresponding to when the document type came into existence. The table shows the division of these documents using the two-tier framework of: *colonial history collections* and *recent history collections*.

Table 2.0.1

| Pacific Island Country & current political status | Legal Document Type | Colonial History Collections (year) | Recent History Collections up to new millennium of 2000 (year) |
|--|---|-------------------------------------|--|
| American Samoa <i>Unincorporated US territory</i> | Case Law (reported judgments) | 1977, 1981, 1988, 1989 | -- |
| Commonwealth of the Northern Mariana Islands (CNMI) <i>Commonwealth of the US</i> | Case Law (unreported judgments) | 1990 to 1992; | -- |
| Cook Islands <i>Self governing in free association with NZ (1965)</i> | Sessional Legislation ^{xii} | 1954 to 1964 | 1965 to 2000 |
| | NZ Legislation | 1901 to 1964 | 1965 to 2000 |
| | UK Legislation | 1837, 1874 | 1967, 1987 |
| | Case Law | -- | 1977 to 2000 |
| | Case Law (reported judgments) | -- | 1976 to 1995 |
| Fiji <i>Independent Republic (1970)</i> | Sessional Legislation | 1874 to 1969 | 1970 to 2000 |
| | UK Legislation | 1837 to 1965 | -- |
| | Western Pacific Legislation | 1884 to 1914 | -- |
| | Case Law Reports (Fiji Law Reports) ^{xiii} | 1876 – 1969 | 1970 to 2000 |
| | Case Law (unreported judgments) | -- | 1972 to 2000 |
| | Case Law (High Court of the Western Pacific) | 1889, 1911, 1966, 1968, 1969 | -- |
| | Case Law (UK Privy Council) | -- | 1979, 1981, 1982, 1984, 1986 |
| | Court Rules | 1964 to 1968 | 1981 to 2000 |
| | Rules Regulating Legal Profession | -- | 1984 |
| Federated States of Micronesia (FSM) <i>Self governing in free association with US</i> | Legislation | -- | 1999 Code |
| | Case Law (FSM Interim Reporter) | 1981 to 1985 | 1986 to 2000 |

| | | | |
|---|---|--------------|--------------------|
| (1986) | Court Rules | -- | 1990 to 2000 |
| | Rules Regulating Legal Profession | 1983 | 1996 |
| | | | |
| Guam Unincorporated US territory | Case Law (reported judgments) | 1996 to 2000 | -- |
| | Court Rules | 1994 to 2000 | -- |
| | | | |
| Kiribati Independent Republic (1979) | Sessional Legislation | 1977 to 1978 | 1979 to 2000 |
| | UK Legislation | 1837 to 1978 | -- |
| | Western Pacific Legislation | 1884 to 1914 | -- |
| | Case Law Reports (Kiribati Law Reports and Gilbert Islands Law Reports) | 1963 – 1979 | -- |
| | Case Law (unreported) | 1963 to 1978 | 1979 to 2000 |
| | | | |
| Marshall Islands Self governing in free association with US (1986) | Sessional Legislation | 1972 to 1983 | 1990 to 2000 |
| | Case Law (Marshall Islands Law Reports) | -- | 1982 to 2007 |
| | Case Law (reported judgments) | -- | 1982 to 2000 |
| | Court Rules | 1983, 1985 | 2005 to 2000 |
| | | | |
| Nauru Independent Republic (1968) | Sessional Legislation | 1911 to 1967 | 1968 to 2000 |
| | UK Legislation | 1837 to 1967 | -- |
| | Australian Legislation | 1899 to 1922 | -- |
| | Case Law Reports | -- | 1969 – 1989 |
| | Case Law (unreported judgments) | -- | 1998 to 2000 |
| | Court Rules | 1948 | 1972 to 1977; 1994 |
| | | | |
| Niue Self governing in free association with NZ (1974) | Sessional Legislation | 1908 to 1972 | 1974 to 2000 |
| | UK Legislation | 1837 | -- |
| | NZ Legislation | 1908 to 1971 | 1974, 1976 |
| | Case Law (unreported judgments) | -- | 1995 to 2000 |
| | Court Rules | 1916, 1969 | -- |

| | | | |
|--|---|------------------|--|
| | | | |
| New Caledonia <i>Overseas territory of France</i> | NIL | -- | -- |
| | | | |
| Palau <i>Self governing in free association with US (1994)</i> | Case Law (reported judgments) | -- | 1994 to 2000 |
| | Court Rules | -- | 1996 to 2000 |
| | Rules Regulating Legal Profession | 1989 | -- |
| | | | |
| Papua New Guinea (PNG) <i>Independent State (1975)</i> | Sessional Legislation | 1917 to 1974 | 1977 to 2000 |
| | Papua Ordinances and Regulations | 1912 to 1940 | -- |
| | Laws of the Territory of Papua & New Guinea (Annotated) | 1949 to 1951 | -- |
| | Laws of the Territory of Papua (Annotated) | 1888 to 1945 | -- |
| | Laws of the Territory of New Guinea (Annotated) | 1921 to 1945 | -- |
| | Territory of New Guinea Reports | 1928 to 1973 | -- |
| | Gazettes | -- | 1975 to 1979; 1983 to 1986; 1988 to 1989 |
| | Case Law Reports (PNG Law Reports) | 1930 to 1974 | 1975 to 2000 |
| | Case Law (unreported judgments) | 1930 to 1974 | 1975 to 2000 |
| | Court Rules | -- | 1983 to 2000 |
| | | | |
| Pitcairn Islands <i>British overseas territory</i> | Case Law | 2004 to 2006 | -- |
| | Legislation | 2008 to 2015 | -- |
| | | | |
| Samoa <i>Independent State (1962)</i> | Sessional Legislation | 1920 to 1961 | 1963 to 2000 |
| | Consolidated Law | -- | 1996 |
| | NZ Legislation | 1920, 1921, 1952 | -- |
| | Case Law Reports (Samoa Law Reports) | 1921 to 1961 | 1962 to 1993 |
| | Case Law | -- | 1980 to 2000 |
| | Court Rules | 1961 | 1965 to 1980 |
| | | | |
| Solomon Islands <i>Independent State (1978)</i> | Sessional Legislation | 1972 to 1977 | 1978 to 2000 |
| | UK Legislation | 1837 to 1959 | -- |
| | Western Pacific Legislation | -- | 1986 to 1995 |
| | British Solomon Islands Protectorate Legislation | 1893 to 1975 | -- |
| | Solomon Islands Western Province Legislation | -- | 1989 to 1995 |

| | | | |
|---|--|--------------|-----------------------------|
| | Case Law Reports (Solomon Islands Law Reports) | -- | 1980 to 1990 |
| | Case Law (High Court of the Western Pacific) | 1889 to 1969 | -- |
| | Case Law (Fiji Court of Appeal) | 1966, 1969 | 1980, 1981 |
| | Case Law (unreported judgments) | -- | 1986 to 2000 |
| | Court Rules | 1964, 1973 | 1983 to 2000 |
| | Rules Regulating Legal Profession | -- | 1996 |
| | | | |
| <i>Tokelau Dependency of New Zealand</i> | Sessional Legislation | 1948 to 2000 | - |
| | NZ Legislation | 1924 to 1994 | -- |
| | UK Legislation | 1837 | -- |
| | Western Pacific Legislation | 1884 to 1914 | -- |
| | | | |
| <i>Tonga Independent Monarchy (1970)</i> | Sessional Legislation | 1837 - 1995 | 1978 to 2000 |
| | UK Legislation | 1837 to 1968 | 1972 to 1995 |
| | Western Pacific Legislation | 1884 to 1914 | -- |
| | Royal Proclamations | 1887, 1972 | 1980 |
| | Case Law (Tonga Law Report) | 1926 to 1958 | 1974 to 2000 |
| | Case Law (unreported judgments) | -- | 1988 to 2000 |
| | Court Rules | -- | 1990 to 2000 |
| | Practice Directions | -- | 1989 to 2000 |
| | | | |
| <i>Tuvalu Independent State (1978)</i> | Sessional Legislation | -- | 1982 to 2000 |
| | UK Legislation | 1837 to 1978 | -- |
| | Western Pacific Legislation | 1884 to 1914 | -- |
| | Case Law (unreported judgments) | -- | 1991 to 2000 |
| | Court Rules | 1964, 1973 | 2000 |
| | | | |
| <i>Vanuatu Independent Republic (1980)</i> | Sessional Legislation | -- | 1980 to 2014 ^{xiv} |
| | New Hebrides Joint Regulations | 1909 to 1973 | -- |
| | UK Legislation | 1837 to 1979 | 1980 to 1984 |
| | Western Pacific Legislation | 1884 to 1914 | -- |
| | Law Reports | 1911 to 1979 | 1980 to 1994 |
| | Case Law (unreported judgments) | 1979 | 1982 to 2000 |

2.1 Reflection on Northwest European Expansion in the Pacific Region

The *colonial history collections* in the table set out above, largely reflect a legacy of Northwest European colonial expansionism in the Pacific region, in the late 19th century to the first half of the 20th century. With the exception of Tonga which remained a monarchy throughout although it did relinquish control over its foreign affairs to Britain; all 19 other Pacific Island countries that PacLII covers, were under some form of European political control and/or UN Trusteeship, prior to independence being attained by the majority of these Pacific Island countries.^{xv}

The collections of historical legal material from this era that spanned almost a century, has been complicated by the number of Pacific Island countries in the region and the shifting spheres of influence over them between the British, French, Germans, Dutch, Americans, Japan, Australia and New Zealand.

Between 1870 and 1895, Britain had annexed Fiji, Cook Islands, Niue, Papua (Southeast New Guinea), Gilbert and Ellice Islands^{xvi}, Solomon Islands.

In 1853, France annexed New Caledonia and in 1906, declared a condominium government with Britain over New Hebrides^{xvii}.

Between 1884 and 1899, Germany proclaimed a protectorate over New Guinea (Northwest New Guinea), Marshall Islands, Micronesian Islands, Nauru and Western Samoa^{xviii}. In 1828, Netherlands had laid claim over West New Guinea^{xix} and later in 1962 handed West New Guinea to Indonesia following negotiations with the United Nations and the United States of America.

In 1899, American Samoa was annexed by the United States of America who subsequently also took control of Japan's colonies in 1945, namely the Federated States of Micronesia, Marshall Islands, Palau and the Northern Mariana Islands.^{xx}

In 1901, Britain transferred control over Cook Islands and Niue to New Zealand; and later in 1925, transferred control over Tokelau as well.

In 1906, Britain transferred control of Papua to Australia and in the outbreak of World War 1 in 1914; Australian forces took over Germany's territories of Nauru and New Guinea. Australia subsequently received in 1921, a League of Nations mandate over these two territories. Furthermore, New Zealand forces took over Western Samoa from Germany in 1914 and thereafter, received a League of Nations mandate over the island in 1921. In a similar manner, Japanese forces took over the Northern Micronesian Islands that were under German control and subsequently received a League of Nations mandate over them in 1921.^{xxi}

In 1949, Southeast New Guinea and Northwest New Guinea merged as Papua New Guinea under Australian oversight.

Today, the majority of Pacific Island countries have gained independence, commencing with Samoa (1962), followed by Cook Islands (1965), then Nauru (1968), Fiji and Tonga (1970), Niue (1974), Papua New Guinea (1975), Solomon Islands and Tuvalu (1978), Kiribati (1979), Vanuatu (1980), followed by Federated States of Micronesia and Marshall Islands (1986) and finally, Palau (1994).^{xxii}

Table 2.1.0 provides a snapshot of the division of political powers and their respective territories in the latter half of the 19th century and over half of the 20th century.

Table 2.1.0

| Former Colonial Powers and Administrators over Trust Territories ^{xxiii} | Pacific Island Countries (PIC) |
|---|---|
| Australia | Nauru ^{xxiv} |
| | Papua New Guinea ^{xxv} |
| France | New Caledonia (currently is still a French Overseas Territory) |
| Great Britain | Fiji |
| | Kiribati (formerly Gilbert Islands) |
| | Pitcairn Islands (currently is still a British Overseas Territory) |
| | Solomon Islands |
| | Tonga (UK representation limited to foreign and external relations) |
| | Tuvalu (formerly Ellice Islands) |
| | Vanuatu (formerly New Hebrides) |
| New Zealand | Cook Islands ^{xxvi} |
| | Niue ^{xxvii} |
| | Samoa (formerly Western Samoa) ^{xxviii} |
| | Tokelau |
| United States of America | American Samoa |
| | Commonwealth of the Northern Marianas |
| | Federated States of Micronesia |
| | Guam |
| | Marshall Islands |
| | Palau |

Key: Brown colour represents Pacific Island countries who have since attained full independence, and includes those in free association with former political masters
Orange colour represents Pacific Island countries who have maintained their dependency status

UNITED STATES OF AMERICA

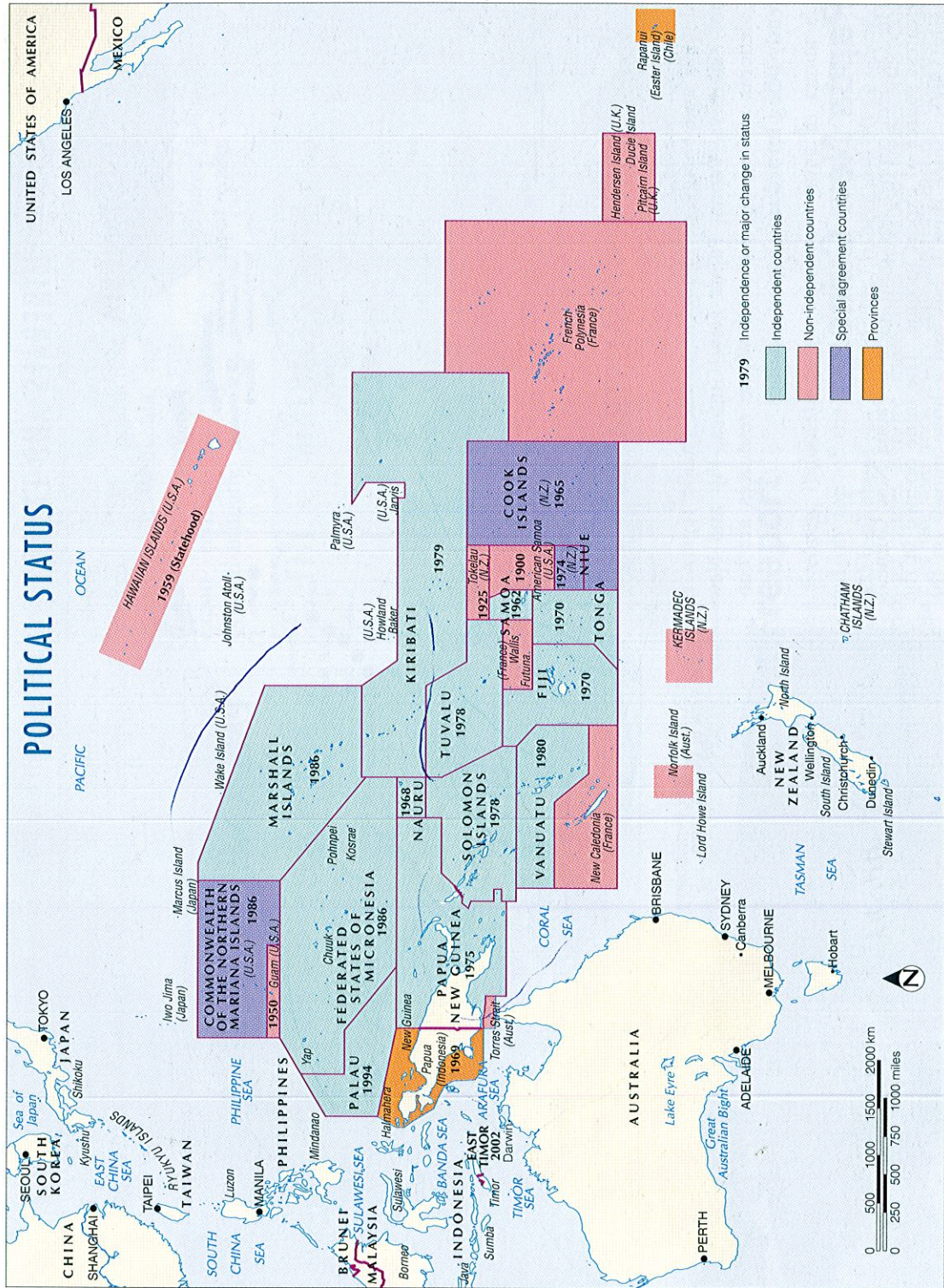


Table 2.1.1 provides a Pacific map illustrating the political status' of Pacific Island countries.^{xxix}

As may be apparent by now, the title of this paper, "*Reclaiming Historical Legal Materials in the Pacific*" necessitated an acknowledgement of the colonial inheritance of Pacific island countries. The historical legal structure of Pacific Island countries as illustrated by legislation and case law in the category of *colonial history collections* has been constructed over a period of time by political powers who had control and administrative oversight over the political, legal and socio-economic life of Pacific peoples.

However, as a caveat, this paper is not about evaluating the Pacific Island nations' colonial legacy manifested in their legal framework, which exists to the present day. Nor is this paper an attempt to make critical comparisons between former and/or present political powers with respect of their legacies bequeathed to the Pacific peoples.

Rather, the brief reflections of European expansion in the Pacific Region is intended to provide clarity and understanding of the current layout of public legal collections on the PacLII website. In addition, it offers some guide for further tracing and collecting additional historical public legal documents that may still out there.

We now turn to discuss the primary legal documents in both tiers of historical collections. For the purpose of clarity, Pacific Island countries are grouped together in accordance with their shared history that corresponds to the political power that controlled and shaped their legal and political processes. In addition, we also discuss PacLII's ongoing efforts to add to these collections and identify some of the challenges encountered.

2.2 Legislation published on PacLII

Nauru, Papua New Guinea (*Australia*)

Nauru country database has legislation covering the period 1837 all the way through to the present year. Earlier this year, PacLII received from the Australian Attorney General's Office a total of 144 Ordinances covering the period 1932 to 1967.

Along with this batch, PacLII also received a total of **1693** pieces for Papua New Guinea. These comprised of Ordinances and Regulations, Annotated Laws of PNG and Territory of New Guinea Reports covering the years from 1917 to 1973. Both batches fall into the category of *colonial history collections*.

In addition, PacLII received PNG Gazettes covering just over a decade, between 1975 to 1989. These were categorised as *recent history collections*.

New Caledonia (*France*)

New Caledonia regrettably does not hold any primary legal material collections as yet. This is due in no small part to resource constraints in conducting a visit to the French territory to ask

permission to publish primary legal documents and establish focal points for ease of communication.

Cook Islands, Fiji, Kiribati, Nauru, Niue, Pitcairn Islands, Solomon Islands, Tokelau, Tonga, Tuvalu (*Great Britain*); and Vanuatu (*jointly by Great Britain and France*)

Earliest legislation applicable in former British Colonies and Protected States in the Pacific comprised of UK Legislation in 1837, although a number of UK legislation continued to remain applicable in a few of these jurisdictions, post-independence.

Tonga, the lone traditional constitutional monarchy in Pacific ceded control of its foreign affairs to the British Government and adopted UK legislation between years 1837 to 1995. UK civil laws continued to be applicable in Tonga until it was revoked over a decade ago by the Tonga Civil Law (Amendment) Act 2003.

The Joint administration of Britain and France (the Condominium) enacted Joint Regulations for the New Hebrides from 1909 to 1979.

In 1877, the Western Pacific High Commission (the "Commission") was established in Fiji to administer British territories in the Pacific. The Commission introduced Western Pacific Legislation between 1884 and 1914 that were applicable to Fiji, Kiribati, Tokelau, Solomon Islands, Tuvalu and Vanuatu. The Commission was later relocated to the Solomon Islands in 1952, where it sat until 1976.^{xxx}

Historical records pertaining to the British colonies and protectorates as well records on Samoa before the country separated into Western and American Samoa in 1900 are included in the Western Pacific High Commission archives.^{xxxi}

One collection of Western Pacific Legislation has been identified in the Emalus Campus Law Library^{xxxii} as a result of the Audit of materials PacLII is conducting. These are for the years 1879 to 1925 and are on the list to be scanned and published.

All these aforementioned collections constitute the *colonial history collections* at PacLII.

The collections of Western Pacific Legislation and related records are archived at the Special Collections, University of Auckland Library in New Zealand.^{xxxiii} We recently obtained an updated Guide to the Western Pacific Archives that provides a helpful description of legal documents and materials available in the Collection and offers a broader scope for researchers interested in the historical development of political and legal structures in Pacific Island countries in the region.^{xxxiv}

PacLII has reason to believe that additional historical legal materials closely linked to the Western Pacific Legislation collections, could be kept in the National Archives of Fiji^{xxxv} as this where the Western Pacific High Commission was first set up in the Pacific. However, this avenue is yet to be fully explored.

Cook Islands, Niue, Samoa, Tokelau (*New Zealand*)

New Zealand enacted governing legislation for its protected territories between 1900 and the turn of the 21st century, with the exception of Tokelau which has applicable NZ laws to date. Legislation for Cook Islands were from 1901 to 2007; Niue from 1908 to 1976); and Samoa between 1920, 1921, and 1952.

American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Federated State of Micronesia, Marshall Islands, Palau (*United States of America*)

Human resources coupled with budgetary constraints, have largely contributed to PacLII not being able to visit the Northern Pacific to explore the possibility of sourcing historical public legal collections from the former US Trust Territories, namely Palau, Marshall Islands and the Federated States of Micronesia.

Similarly, there are evidently no historical public legal collections for American Samoa, the Northern Mariana Islands and Guam who remain US territories todate.

Past experience has shown, at least in the Pacific, that it is very important to conduct face to face visits, at least initially with Pacific Island countries as a public relations exercise to introduce PacLII's mission; address and allay any concerns which may be country-specific; establish links with identified focal points so as to ensure ease of communication lines that is envisaged for the future. It has been shown that these initial visits do go a long way in ensuring the continuing viability of PacLII as a legal information institution.

2.3 Case Law currently published on PacLII

Early case law records on PacLII are comprised of reported court judgments that are organized into codified volumes. Court judgments date from as early as 1875^{xxxvi} and 1889^{xxxvii}. However, there are a range of reported judgments across the region yet to be digitised that will cover both categories of collections.

A rudimentary search on PacLII will show the following information tabulated in *Table 2.3.1* with respect to reported case law.

Table 2.3.1

| Pacific Island Country (PIC) | Periods covered by Case Law |
|-------------------------------|-----------------------------|
| <i>Fiji</i> | 1875 – 2000 |
| <i>Kiribati</i> | 1966 – 1979 |
| <i>Nauru</i> | 1969 – 1989 |
| <i>Papua New Guinea (PNG)</i> | 1930 – 2005 |
| <i>Samoa</i> | 1921 – 1993 |
| <i>Solomon Islands</i> | 1966 to 1969 1980 – 1990 |
| <i>Tonga</i> | 1908 – 2010 |
| <i>Vanuatu</i> | 1889 1980 – 1994 |

All the Pacific Island countries listed have reported case law in both categories of *colonial history collections* and *recent history collections*. Included here is case law from the High Court of the Western Pacific for years: 1889, 1911 and 1966 through to 1969.

3.0 Efforts undertaken to build historical legal collections

- PacLII has cultivated open communication channels with established focal points in the legislative and judicial arms of governments in the majority of Pacific Island jurisdictions. Through these channels, PacLII routinely receive primary legal documents for publication on PacLII.
- Scheduled checks are also conducted on official websites around the Region and any new historical legal additions are noted.
- PacLII has also undertaken face-to-face visits to source public legal documents directly. For example:
 - ❖ In 2013, PacLII received advice that the Commonwealth of Australia Attorney General's Library had spare bound copies of the *Laws of the Territory of Papua 1888-1945*, *Laws of the Territory of New Guinea 1921-1945*, and *Papua Ordinances and Statutory Rules* (1935, 1938, 1939, 1940). These books were sent to the AustLII

offices where a PacLII staff attended to the scanning and editing of some 12,000 pages of legislation using AustLII's scanning tools.

- ❖ In that same year, two PacLII staff travelled to PNG to assist the Department of Justice and Attorney General's library with the scanning of a collection of approximately 981 pre-Independence judgments, dating from 1930. Following publishing protocols when receiving huge batches of legislation or case law, PacLII had to first cross-reference these against what was already published on the website.^{xxxviii} In addition, just last month in October, two PacLII staff travelled to PNG and collected **742** pieces of legislation covering the period 1992 to 2014. Of these, **503** pieces of legislation are categorised as *recent history collections*.
 - ❖ In 2013 and early 2014, PacLII visited Cook Islands and scanned some 380 Court judgments, much of them predating 2000 which have since been published on PacLII.
- In the second half of 2014, PacLII embarked on an extensive project to audit all primary legal materials sitting on the shelves of the USP Law Library^{xxxix}. Over **4000** pieces of legislation covering all jurisdictions in the region have been identified for digitisation and online publication on PacLII. Of these, **2318** documents fall into either of the categories of the history collections as defined in this paper.
 - PacLII also intends to conduct an extensive audit of historical case law held in the USP Law Library once the legislation audit is completed. Recently, PacLII published two law reports that are no longer in circulation, namely the *Gilbert Islands Law Reports* and the *South Pacific Law Reports* which covered case law from 1966 to 1988.

A few examples of some of the prominent historical legal documents uncovered in law library audit are shown below in *Table 3.0.1*

Table 3.0.1

| Pacific Island Country | Historical Legal Document |
|--|--|
| <i>Federated States of Micronesia</i> | <ul style="list-style-type: none"> • Code of the Trust Territory of the Pacific Islands (Third Revision 1970) • Trust Territory Reports 1951 to 1969 |
| <i>Fiji</i> | <ul style="list-style-type: none"> • Fiji Deed of Cession • Fiji (Consolidated) Order in Council 1963 • Fiji (Constitution) Order 1966 |
| <i>Kiribati</i> | <ul style="list-style-type: none"> • Kings Regulations and Ordinances from 1893 |
| <i>Marshall Islands</i> | <ul style="list-style-type: none"> • Treaty of Friendship between Germany and the Marshallese Chiefs, October 1885 • Declaration between Britain and Germany demarcating their respective spheres of influence in the Western Pacific, April 6, 1886 |
| <i>Niue</i> | <ul style="list-style-type: none"> • Laws starting from 1916 |
| <i>Papua New Guinea</i> | <ul style="list-style-type: none"> • Reports to the Council of the League of Nations on the Administration of the Territory of New Guinea |
| <i>Pitcairn Islands</i> | <ul style="list-style-type: none"> • Laws starting from 1952 |
| <i>Samoa</i> | <ul style="list-style-type: none"> • Laws starting from 1952 |
| <i>Tonga</i> | <ul style="list-style-type: none"> • Treaty of Friendship between Great Britain and Tonga, 29 November 1879, 1891, 1900, 1958 and 1969 • Agreement between Great Britain and Tonga, 12 August 1927 • Exchange of Letters, November 1970 • Tonga Act 1970 |
| <i>Vanuatu</i> | <ul style="list-style-type: none"> • Agreement between Britain and France respecting the independence of the New Hebrides, January - February 1878; • Protocol between Great Britain and France respecting the New Hebrides, February 1906 • New Hebrides Order 1911, 1922 and 1975 |

3.1 Technical challenge encountered

With a view to expanding PacLII's historical collections and in particular, the colonial history collections, PacLII purchased an Eye-Book Scanner which is tremendously useful in scanning old, historical books and printed matter without exposing the printed matter to unintended damage.

However, since the Eye-Book Scanner was purchased about a year ago, it has been beset with problems. PacLII has only managed to successfully scan the Papua New Guinea 1986 Consolidation before the scanner broke down and has not been in use since.

Technical support is available in Melbourne, however, the parts had to be shipped from Germany over to Melbourne and recently, technical support have identified yet an additional part to the hardware that is to be shipped from Germany. This is a time-consuming exercise and contributes to the immense delay in the publication of colonial history collections on PacLII website.

4.0 Conclusion

Though striving to house all historical collections in primary legal documents at PacLII could perhaps be viewed as an ambitious venture, particularly in light of the obvious constraints of geography *vis-a-vis* multiple Pacific Island jurisdictions, it is nonetheless a realistic and achievable outcome.

Creating a sense of urgency for preservation via digitization of Pacific legal history for posterity, persistency, maintaining good contacts and communication links with member countries - all these contribute towards achieving PacLII's underlying objective.

Last though not least, a complete historical legal collection online offers a centralised wealth of legal information that is distinct to the Pacific region and more significantly, offers better accessibility to legal professionals, researchers and research projects that are keen on developing Pacific jurisprudence.

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- ⁱⁱ Montreal Declaration on Free Access to Law. (2002). [Accessed in October 2015 at http://www.worldlii.org/worldlii/declaration/montreal_en.html].
- ⁱⁱⁱ Hamilton, L. (2012), *PacLII Quarterly Reports to Donors*, Vanuatu: PacLII, University of the South Pacific.
- ^{iv} Meeting of PacLII Senior Team comprising of Hamilton, L, Freriks, K and Senikuraciri, R. October 2015.
- ^v American Samoa and Guam are unincorporated US territories whilst CNMI is a US Commonwealth territory. Tokelau is a dependency of NZ while Pitcairn Islands is a British overseas territory. New Caledonia is an overseas territory of France.
- ^{vi} *Australian Government – Department of Foreign Affairs and Trade*. (2015). Countries, Economies and Regions. [Accessed in October 2015 at <http://dfat.gov.au/geo/Pages/countries-and-regions.aspx>]
- ^{vii} Henry-Anguna, C. (2015). Email correspondence dated 3 November 2015 that confirmed details of the 1992 courthouse fire. Henry-Anguna is the Court Registrar of the High Court of the Cook Islands, Ministry of Justice, PO Box 111, Avarua, Rarotonga, Cook Islands.
- ^{viii} Willie, R. (2015). *Pacific Islands Report*. 'Vanuatu Pair Sentenced to 6 Years for Arson'. Vanuatu Daily Post, Dec. 14, 2008. [Accessed in October 2015 at <http://archives.pireport.org/archive/2008/december/12-19-09.htm>]
- ^{ix} *Pacific Islands Report*. 'Second Arson Suspected in Vanuatu Courthouse Fire'. Vanuatu Daily Post, Sep. 26, 2011. [Accessed in October 2015 at <http://pidp.eastwestcenter.org/pireport/2011/September/09-27-17.htm>]
- ^x PacLII Director Lenore Hamilton is a professionally qualified historian before becoming a lawyer and has been encouraging in harnessing PacLII efforts to retrieve and reclaim historical legal collections in the Pacific.
- ^{xi} Pacific Islands Legal Information Institute (PacLII). (2015). Pacific Island Country Databases. [Accessed in October 2015 at <http://www.pacii.org.vu>]
- ^{xii} Sessional Legislation includes Subsidiary Legislation.
- ^{xiii} There are approximately 48 volumes altogether of law reports for these periods identified.
- ^{xiv} In both English and French languages.
- ^{xv} Crocombe, R. (2001). Government – Traditional and Colonial Politics. *The South Pacific*. Fiji: The Institute of Pacific Studies of the University of the South Pacific.
- ^{xvi} The two British colonies were created in 1915. Now called Kiribati and Tuvalu, following independence in 1979 and 1978 respectively. Douglas (1994).
- ^{xvii} Now called Vanuatu following independence in 1980. Crocombe (2001)
- ^{xviii} Now called Samoa following Constitutional Amendment in 1997. *Ibid*.
- ^{xix} Later to be called Irian Jaya or West Papua by Indonesia. *Ibid*.
- ^{xx} Crocombe, *op.cit*.
- ^{xxi} *Ibid*.
- ^{xxii} *Ibid*.
- ^{xxiii} Hassall and Saunders (2002), "Asia-Pacific Constitutional Systems", Cambridge University Press, New York, USA.
- ^{xxiv} Nauru – previously under the joint UN Trusteeship of Australia, New Zealand and Great Britain. Crocombe, *op.cit*.
- ^{xxv} Australian control over Papua from 1906 and over New Guinea from 1914. Subsequently, Australia took over both territories under the League of Nations and United Nations mandates, until PNG attained its independence in 1975. *Ibid*.
- ^{xxvi} In 1965, Cook Islands attained self-government in free association with New Zealand. *Ibid*.
- ^{xxvii} Between 1901 and 1974 and thereafter, Niue attained self-government in free association with New Zealand. *Ibid*.
- ^{xxviii} Formerly Western Samoa between 1914 and 1962 before the country attained independence in 1962. Subsequently changed country name to Samoa following Constitutional Amendment in 1997.
- ^{xxix} Quanchi, M. (2003). *Atlas of the Pacific Islands*. Hawaii: The Bess Press. p.9.
- ^{xxx} Innes, S (2015), "Guide to the Western Pacific Archives", Special Collections, University of Auckland Libraries and Learning Services, 25 September. [Accessed in October 2015 at <http://www.library.auckland.ac.nz/about-us/collections/special-collections/general-library/western-pacific-archives>.]
- ^{xxxi} *Ibid*. p.7.

^{xxxii} In Port Vila, Vanuatu.

^{xxxiii} In 2002, following an agreement reached between the UK Foreign and Commonwealth Office and the University of Auckland Library to have all the Western Pacific Collection archived there.

^{xxxiv} Innes, *op. cit.*, 1-11.

^{xxxv} "Colonial Secretary's Office Collections", National Archives of Fiji.

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^{xxxvi} Fiji Law Reports

^{xxxvii} High Court for the Western Pacific

^{xxxviii} Hamilton, L (2014), PacLII Annual Report to Donors, Vanuatu: PacLII, USP.

^{xxxix} The University of the South Pacific, Emalus Campus Law Library, Port Vila, Vanuatu.