Welcome

Thank you firstly to those who provided feedback on the inaugural issue of Talanoa. Your contributions and advice are greatly appreciated. The PILON Secretariat is pleased to introduce the second issue of the PILON newsletter and hopes that it continues to facilitate discussion of key regional law and justice issues and initiatives. We are grateful to PILON Observer Members PacLII and the Secretariat of the Regional Environment Program (SPREP) for their contributions to Issue 2.

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From the Archives: Official Photo from 6th PILOM Meeting in 1987, held in Rarotonga, Cook Islands. This is part of the records being compiled by the PILON Secretariat from libraries and personal archives. Further details p6.
Cybercrime has been recognized as an increasing threat to the Pacific region. Its prevalence is predicted to increase, due to increasing accessibility to the internet and the pace with which technology is evolving which allows it to quickly outpace regulation. At the same time, there are a number of international and, more recently, regionally focused initiatives in response to this issue, including several focused on development of legal frameworks in PILON member countries.

The increasing threat posed by cybercrime and the fundamental need for appropriate legislation in response are, therefore, matters which would be familiar to PILON members. This article is intended to provide an overview and update of the various initiatives taking place in the Pacific, and the corresponding technical assistance and resources available to PILON members to develop legislation and policy responses to address cybercrime and cybersecurity. Current developments in several member jurisdictions will also be highlighted.

Introduction

Cybercrime describes a range of circumstances in which technology is involved in the commission of crime and includes:

- attacks against computer data and systems which may disrupt power supplies or other critical infrastructure;
- offences committed using computers, such as fraud, and
- traditional offences which now involve electronic evidence, such as emails, Short Message Service (SMS) or electronic money transfers.

The borderless nature of cybercrime means it can occur anywhere there is access to the internet. Offenders do not need to be present at the same time or location as the victim. This makes international cooperation, investigative assistance, and common substantive and procedural legislative provisions particularly important.

International Framework and Approaches

Council of Europe Convention on Cybercrime ("Budapest Convention")

The Council of Europe (CoE) is a regional organisation that represents 47 European States. The CoE’s Convention on Cybercrime, also known as the Budapest Convention, was developed between 1997 and 2001. It is the only binding international instrument on this issue and is intended to serve as a guideline for any country developing comprehensive national legislation against Cybercrime and as a framework for international cooperation. The Budapest Convention is open to non-members of the Council of Europe, if they have received an invitation from the Council to accede to the convention.

The convention contains provisions on substantive criminal law, procedural law and international cooperation. It covers crimes committed via the internet and other computer networks, particularly infringements of copyright, computer-related fraud, child pornography and violations of network security. It also contains a series of powers and procedures such as the search of computer networks and interception.

Commonwealth Secretariat and Model Law

A Commonwealth Model Law on Computer and Computer Related Crime, prepared through an expert group convened by the Commonwealth Secretariat, was adopted in 2002. The model law

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2 United Nations Office on Drugs and Crime, above n 1
3 For more information, see http://www.coe.int/what-we-do/rule-of-law/cybercrime.
shares the same framework as the Budapest Convention. Tonga’s Computer Crimes Act 2003 is a Pacific example of legislation based on the Commonwealth model law.

At the 2011 Commonwealth Law Minister Meeting (CLMM), the Commonwealth Secretariat was tasked with forming a multi disciplinary expert working group to review the practical implications of cybercrime in the Commonwealth and identify the most effective means of international cooperation and enforcement, taking into account, amongst others, the Budapest Convention, without duplicating the work of other international bodies. The working group was tasked also to collaborate with other international and regional bodies to identify best practice, educational material and training programmes for investigators, prosecutors and judicial officers. The working group, titled the Commonwealth Internet Governance Forum (CIGF), met in February 2012 to agree to a roadmap for the Commonwealth Secretariat response to cybercrime. Tonga and Australia are members of this working group which is mandated to report back to the Senior Officials of Commonwealth Law Ministers Meeting in 2013 ahead of the 2014 CLMM.

**United Nations Office on Drugs and Crime**

While prevention and control of computer related crime has been considered by various organs of the United Nations (UN) over several years, currently the UN has not adopted a comprehensive legal framework on combating cybercrime that member states can implement. At the 12th UN Crime Congress, member states recommended the UN Office on Drugs and Crimes (UNDOC) provide global capacity building on cybercrime where requested by the member countries. In addition, UNDOC is conducting a comprehensive study on the problem of, and responses to cybercrime, as requested by UN General Assembly resolution 65/230. The aim of the study is to present a comprehensive global picture of the problem of cybercrime and responses to it by member states, the international community and the private sector have been invited to participate. The study will then examine options for strengthening existing, and proposing new, national and international legal or other responses to cybercrime.

**International Telecommunications Union (ITU)**

ITU is the United Nations specialized agency for information and communication technologies. The ITU is administering a specific project focusing on cybercrime legislation in the Pacific (discussed below), however also works generally to assist countries in understanding the legal aspects of cybersecurity in order to move towards harmonizing legal frameworks, and has general legislative resources and material. In 2009, the ITU released the publication *Understanding Cybercrime: A Guide for Developing Countries*. The Guide aims to help developing countries better understand the national and international implications of growing cyber-threats, assess the requirements of existing national regional and international instruments, and assist countries in establishing a sound legal foundation.

**Regional Initiatives**

**Pacific ICT Ministers**

In June 2010, a meeting of Ministers responsible for Information and Communication Technology (ICT) from Pacific Island countries was held in Tonga, convened by the Secretariat of the Pacific Community (SPC). At the meeting, the Pacific ICT Ministers endorsed the Framework for Action on ICT for Development in the Pacific. One of the key priorities of the Framework is to strengthen legislative frameworks of Pacific Island countries, in support of ICT development. The Framework establishes a target for 14 Pacific Island countries to have cybercrime legislation in place by 2015. Ministers also directed their officials to work with SPC, the Council of Europe and the International

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Telecommunication Union (ITU) and development partners to develop appropriate policy, legislative and regulatory frameworks and strategies to combat cyber crime and promote Internet safety and security, including child online protection.

In response to the Tonga Declaration made by the Pacific ICT Ministers at the meeting, the Pacific Cybercrime Legislation Workshop was held in Nuku’alofa, Tonga in April 2011 and attended by PILO Members. The Australian Government Attorney-General’s Department (AGD), the Council of Europe and SPC co-hosted the workshop, which focused on supporting Pacific island nations to strengthen cybercrime legislation in their respective countries. In noting the significant impact of cybercrime in the Pacific region, workshop delegates agreed to consider the Council of Europe Convention on Cybercrime as providing a guideline for cybercrime legislation in line with international standards. Delegates also agreed on the need to strengthen, and where possible, harmonise domestic legislation; and a list of offences which this legislation should seek to include.7

**Capacity Building and ICT Policy, Regulatory and Legislative Frameworks Support for Pacific Island Countries (ICB4PAC)**

The ITU run ICB4PAC project seeks to foster socio-economic development through the use of ICT, by facilitating the establishment of enabling and sustainable policy, regulatory, legislative and strategic frameworks to accelerate ICT development in the Pacific region.8 This project includes drafting model legislation for the Pacific. The ICB4PAC Draft Skeleton Legislation for Electronic Crimes was developed through a series of workshops attended by project countries, and has recently been completed and released. This legislation is in line with the Council of Europe Convention on Cybercrime, and based on the Commonwealth model law on computers and computer related crime, various UN Resolutions, and the Caribbean (HIPCAR) cybercrime legislative text. The legislation is now waiting for endorsement from Pacific Leaders.

In addition, a report on the status of cybercrime legislation in the Pacific conducted by the ICB4PAC Project has been recently released. The report - titled *Assessment Report: The present situation of cybercrime legislation in the Pacific Island countries* (“ITU Assessment Report”) - provides a detailed consideration of cybercrime projects being conducted around the region and details existing cybercrime legislation in Pacific countries to identify gaps.

The ITU also offers assistance to member countries in drafting cybercrime related legislation and policies. Consultants are available to conduct a comparable analysis between the ICB4PAC draft legislation and the local relevant legislation to identify gaps. Assistance in drafting legislation to fill these gaps is available, as is representation at public consultations on both the draft legislation and broader ICT policy.

**Other**

The Secretariat for the Pacific Community (SPC) efforts are focused on capacity building and technical assistance to the region’s policy-makers and legislators through the Pacific ICT Outreach (PICTO) Programme. This programme is a collaboration between SPC and the Commonwealth Secretariat, and a key part is the delivery of the European Union-funded project: *ICT Access for the Poor: Improving access to ICT by informing and engaging Pacific ACP legislators*. This project has developed a portal which contains Pacific (and other developing countries) ICT policies and legislation, best practices, model legislation, case studies, and contact details of members of network of Pacific Policy makers and legislators.9

The Pacific Islands Chiefs of Police (PICP) Cyber Safety Pasifika is an example of a regional initiative directed at raising awareness of cybercrime and cybersecurity. Cyber Safety Pasifika aims to highlight the risks associated with ICT. It is an

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8 For more information see: http://www.itu.int/ITU-D/projects/ITU_EC_ACP/icb4pis/

initiative designed to help children, young people and adults to use technology in a responsible manner.\textsuperscript{10} Cyber Safety Pasifika has a team of ten trainers based in five Pacific Island countries that conduct training and deliver presentations to their communities, raising awareness of cyber safety and issues associated with ICT, particularly social networking.

**Domestic Responses**

The ITU Assessment Report finds that, generally, Pacific Island States are underprepared for cybercrime and cybersecurity threats. However, efforts are being made to address this, with examples of recent developments in member countries detailed below.

One of the first to act to minimise the impact of cybercrime, in 2003 Tonga enacted the *Computer Crimes Act*. Since this legislation came into force, two cases have been prosecuted, one for an offence of interference with data in a telecommunications company (adding phone credit to friends and family), which was successful before a jury; and one for illegal access of a protected computer of an electricity company (entering main server after termination of employment), which was withdrawn due to evidentiary issues. Following these cases, Tonga has recognised gaps exist in this legislation due to the pace with which technology and cybercrime are evolving. For example, it is there are currently no provisions criminalising computer-related fraud and forgery, identity-related crime or SPAM. A review of the legislation is anticipated with detailed consideration of accession to the Council of Europe Convention.

The Cook Islands has set up a cyber-security working group to look at developing the Cook Island National Cybercrime Policy, as well as Cybercrime Legislation. Public consultations are due to commence in mid-July.

Samoa has drafted cybercrime offences as part of its review of its Crimes Act. Legislation is also being drafted in Papua New Guinea, Republic of the Marshall Islands and the Solomon Islands. A cybercrime legislation working committee has been established by the Solomon Islands Government; and with the assistance of the SPC Pacific ICT Outreach Programme, work on the development of National ICT Policy and Cybercrime legislation has commenced.

Niue is currently developing its first national ICT policy with assistance from the SPC Pacific ICT Outreach Programme and has drafted cybercrime legislation. After establishing a Cyber Security Unit in 2005, in 2009 Fiji amended its crimes decree to include computer offences. Australia has continued work towards ratification of the Council of Europe Convention and introduced the Cybercrime Legislation Amendment Bill 2011 in August 2011. The Bill is currently being considered by parliament.

The table below shows the current status of cybercrime legislation in PILON member countries noting that no member country current has legislation that covers all areas providing for accession to the Council of Europe Convention.

\begin{table}[h]
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\begin{tabular}{|l|c|c|c|}
\hline
Country & Standalone & Part of other legislation & Spam Legislation \\
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Australia & & & ✓ \\
Cook Islands & & & ✓ \\
Fiji & ✓ & & \\
FSM & & & \\
Kiribati & ✔ & & \\
Nauru & & & \\
New Zealand & ✔ & ✔ & \\
Niue & & & \\
Palau & & & \\
Pitcairn Is & & & \\
PNG & ✔ & & \\
RMI & & & \\
Samoa & ✔ & & \\
Solomon Islands & ✔ & & \\
Tonga & ✔ & & \\
Tuvalu & & & \\
Vanuatu & ✔ & & \\
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\end{table}

\footnote{For more information see: \url{http://www.cybersafetypasifika.org/site/}.}
Further information on technical legal assistance available to PILON members is available through the Technical Legal Assistance database on the PILON website, [www.pilonsec.org](http://www.pilonsec.org).

**Contacts**

**ICB4PAC Project**  
International Telecommunications Union  
(Fiji)  
P: +679 323 1969  
[http://www.itu.int/](http://www.itu.int/)

**Cybersafety Pasifika**  
Pacific Islands Chiefs of Police  
(Wellington, New Zealand)  
P: +64 (0) 4 470 7346  
F: +64 (0) 4 470 7103  
E: picp@police.govt.nz  
[http://www.cybersafetypasifika.org/site/](http://www.cybersafetypasifika.org/site/)

**PICTO Programme**  
Economic Development Division  
Secretariat of the South Pacific  
Private Mail Bag  
Suva, Fiji  
P: +679 337 0733  
F: +679 337 0021  
[http://www.spc.int/edd/](http://www.spc.int/edd/)

**Commonwealth Secretariat**  
Justice Section  
Legal & Constitutional Affairs Division  
Commonwealth Secretariat  
(London, UK)  
T: +44 (0) 20 7747 6421  

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**30 Years of PILON**

The PILON Secretariat has been assembling information from libraries and personal archives to build a history of PILON and its activities. Documents compiled as part of this process include papers presented at and reports from annual meetings stretching as far back as the first few meetings held in the early 1980s.

The first Pacific Islands Law Officer’s Meeting (PILOM) was convened in Port Vila, Vanuatu in 1981. The Cook Islands, Fiji, Kiribati, Tonga, Vanuatu, Samoa, the Commonwealth Secretariat and the University of the South Pacific attended and discussed topics including legal training and education; legislative drafting; contracts and negotiations; law reporting; local customs and imported laws; a regional or Pacific Court of Appeal; law societies; recognition of legal qualifications; harmonisation of laws; and international and regional agencies.

The second PILOM was hosted by the Samoan Attorney General, Mr Tuiloma Neromi Slade. Australia, Nauru and PNG attended for the first time and members considered ways to improve legal publications and information sharing around the region.

Country Reports were introduced in Suva, Fiji in 1983. This was the largest gathering to date. Tuvalu attended for the first time as well as a number of new observers. The meeting looked primarily at issues of legal training and how this could be approached regionally.

Since then senior law officers from the Pacific Region have meet annually (excluding 1985) and discussed a broad range of topics.

PILOM has come a long way since the first meeting in Vanuatu but the core objectives of collaboration and building relationships between legal officers around the region to address law and justice issues remains.

The Secretariat would be pleased to share documents obtained or further information in this regard with readers, on request.
Held in Auckland on 19-23 March 2012, the pilot PILON Advanced Litigation Skills Workshop was attended by seventeen lawyers from the Pacific region. The Cook Islands, Federated States of Micronesia, Kiribati, Marshall Islands, Palau, Papua New Guinea, Samoa, Solomon Islands, Tuvalu and Vanuatu were all represented. The programme was delivered by the New Zealand Crown Law Office (CLO), with the assistance of the New Zealand Law Society, Ministry of Foreign Affairs and Trade and New Zealand Aid Programme.

The NZ CLO reports that overall, the advanced programme was a huge success. The Programme Director and faculty members were all highly impressed with the efforts and capability of the Pacific government lawyers to achieve and complete the advanced level programme. The development of skills for those participants who had attended the 2008 / 2010 basic level programme was identified as a particular highlight.

The case scenario used related to the grounding and attempted salvage of a super oil tanker, with associated environmental damage from a major oil spill, and was very well received. It was considered the case was a topic of interest and relevance to Pacific lawyers; and also complex, with technical engineering matters and the use of actual expert witnesses during the programme.

Following the success of the pilot advanced level programme, the NZ CLO looks forward to opening discussions again with the funding agency regarding ongoing support for further Basic and Advanced level programmes over the coming years.

**Regional PILON Appointments**

**TONGA:** The Kingdom of Tonga has appointed Mr Neil Adsett as its new Attorney General. Mr Adsett’s appointment was effective as of 16 January 2012 and he will serve a four year term. Mr Adsett, an Australian barrister and solicitor, has over 30 years’ experience and has recently been involved in Tonga’s constitutional and electoral reforms.

**COOK ISLANDS:** Crown Law welcomed Ms Kim Saunders back to the Cook Islands to take up the role of Solicitor General. Ms Saunders was sworn on Friday 16 March in front of her Crown Law colleagues, senior police officers, acting Prime Minister and Attorney General Teina Bishop, and former solicitor general Tingika Elikana.

(Source - Cook Island News) Solicitor General Kim Saunders (centre, front) & Acting PM and AG Teina Bishop (centre, back) with Crown Law staff.
PacLII Search Tips

Sorting your results

With Kym Freriks
Project Officer – Training & Legal Informatics
PacLII

Did you know you can sort your search results on PacLII?

In the last PILON newsletter, we looked at how to use the advanced search form on PacLII. From these searches, PacLII will provide a list of documents published on the website that meet the criteria of your search.

It is important to note that the documents in these results may or may not be relevant and it the user’s responsibility to select those documents that relate to their particular research topic. Here are some useful tools available on PacLII to assist in sorting and reviewing your search results.

Options to sort your results:

By Relevance is the default option which lists your search results by a relevance weighting using a complex mathematical algorithm. Simply, those documents that contain the search words in the title are listed first followed by those documents that contain the greater number of appearances of the search words and where they are located in the document.

By Date will list the search results with the most recent document published on PacLII first. This is helpful if you wish to find the most recent decisions about a particular topic.

By Database is a very useful sorting option, especially if you search across a number of Pacific jurisdictions. By Database will group your results by each of the databases on PacLII. To further categorise your results, click on the 'Collapse Listing' link that will appear above the listing of databases and to go back to the previous categorisation, click on 'Expand Listing'.

By Title will list the results in alphabetical order by the title of the documents.

[Context] – When you open a document from a search result, use the small green arrows that surround your search term to move to the previous or next places where your search term is located. To remove the green arrows, select [No Context] from the menu at the top.

The Samoa Legal Information Institute (SamLII) recently launched its website: www.samlii.org
For details of the launch and SamLII project, see the PILON website article here.
Can you describe the role of SPREP in the Pacific Region?

Pacific island people depend on their natural environment for their sustenance and livelihoods. These vital resources and ecosystems are under ever-increasing pressure as our islands strive to address their economic aspirations and meet the needs of their growing populations. SPREP has been charged by its 25 member governments and administrations of the Pacific region with the protection and sustainable development of the region's environment.

What are SPREP’s and the legal team’s priorities for 2012?

SPREP’s activities are guided by its Strategic Action Plan 2011-2015. The Plan was developed through extensive consultation with Members, Secretariat staff and partner organisations including donors. The Plan establishes four strategic priorities:

- Climate Change;
- Biodiversity and Ecosystem Management;
- Waste Management and Pollution Control; and
- Environmental Monitoring and Governance.

SPREP’s legal work is cross-cutting and so assists with all four of these strategic priorities (as well as Corporate, which is the fifth pillar). Environmental treaties or Multilateral Environment Agreements (MEA’s) will continue to be a priority. Advice is offered right from the start of the treaty process with training in negotiations skills, followed by the procedure for ratification or accession then followed by implementation.

Implementation is the where most of the work lies and involves policy setting, legislative drafting and assistance with compliance and enforcement. SPREP also conducts a lot of project work involving dispersal of funds for country activities so contracts and other agreements form a large part of the legal workload.

Every year SPREP designates a theme to focus on. In 2012 SPREP is running a Clean Pacific Campaign to improve management of waste and pollution in our region. This Campaign will make a major contribution to healthy wetlands and to a clean environment.

The big international environmental event this year is the Rio+20 conference. Yes, it’s already 20 years since the meeting in Rio de Janeiro where the global community took a historic stand to battle critical environmental problems facing the planet. The Pacific region will be represented and SPREP will be providing support. A feature of the conference will be a parallel meeting: the World Congress on Justice, Governance and Law for Environmental Sustainability in which judges and various senior members of the legal profession will be exploring the role of the legal sector in the global environmental agenda. The outcomes of the Congress is likely to be of relevance to PILON as they will no doubt seek more active interaction between the legal and environmental sectors in the years ahead.
NEW ZEALAND:

Takamore v Clarke [2011] NZCA 587

The New Zealand Court of Appeal was asked to consider the interaction between Tūhoe’s customary law and the common law on the burial of bodies. The majority held that customary law applies in New Zealand so long as it has existed since time immemorial, has continued without interruption, is reasonable, is certain in its terms, and has not been extinguished by statute.11

Mr Takamore, a Māori man of Tūhoe descent, died in 2007 in Christchurch, where he lived with his partner, Ms Clarke, and children. Mr Takamore was originally from the Bay of Plenty, where his extended whānau resides, but had been living in Christchurch for the last 20 years.

Ms Clarke was the executrix of Mr Takamore’s will and she planned to bury Mr Takamore in Christchurch. However, Mr Takamore’s body was taken from Christchurch by members of his whānau (from Tūhoe) and buried in the urupā (burial ground) at his whānau marae in the Bay of Plenty.

Justice Glazebrook and Justice Wild held that the Tūhoe burial custom could not be recognised by the common law because the custom did not meet the criterion of reasonableness. This was because the custom authorises the use of force through the ability to take the body without agreement. They held that resorting to the use of physical force to settle private disputes is repugnant to a “root” principle of the legal system, the rule of law.

Justice Glazebrook and Justice Wild concluded that, where possible, the Tūhoe custom should be integrated into the common law relating to burials. They held that, the executor should facilitate a culturally appropriate process of discussion and negotiation among the whānau members as to the place of burial. However, where a consensus on the burial cannot be reached, the common law position will prevail and the executor makes the final decision.

Justice Chambers, in a separate judgment, held that the Tūhoe burial custom could not apply to the disposal of Mr Takamore’s body because Mr Takamore did not consider himself bound by Tūhoe custom. Justices Glazebrook and Wild were not convinced, on the evidence, that Mr Takamore had rejected Tūhoe culture.

PALAU:

Republic of Palau v FANG Shui Chen aka FANG Shoel Shen; Hung Sheng-An Co.; Kuniyoshi Fishing Co.; FN Sheng Chi Huei Civil Case No. 11-268 (2012)

Pursuant to settlement made in the Supreme Court of Palau in February the operators of a Taiwanese fishing vessel were fined $US65,000 and the vessel and its captain banned from fishing in Palauan waters for one year for illegal shark fishing in Palau’s Exclusive Economic Zone (EEZ). The vessel was caught in a joint patrolling operation between the Palau Government and Greenpeace to enforce fishing regulations.

All commercial shark fishing is banned within Palau’s waters, after the entire EEZ was declared a shark sanctuary in 2009. In early December 2011, a joint enforcement exercise was being conducted by...
Palauan government authorities and Greenpeace Australia Pacific when the Taiwanese vessel was detected carrying out shark finning activities.

The Republic of Palau made three civil claims based on violations of the Palau National Code against the captain and the associated companies, namely the charterer and the entity managing operations of the vessel. The incidents giving rise to the claims were, in summary: catching and removing the fins of the sharks; and failing to maintain an automatic location communicator (ALC) – a component of vessel monitoring systems (VMS) – in proper working order on board the vessel while in Palau’s EEZ.

In addition, criminal charges were laid against the captain of the vessel in relation to the shark fishing for committing a Prohibited Act of Foreign Fishing also in violation of the Palau National Code, 27 PNC§181(a).

The claims were settled. The terms of the settlement agreement between the Republic of Palau and the Defendants required payment of the US$65 000 fine and prevents the captain of the vessel from fishing in Palau’s territorial waters for a period of one year. The Attorney-General of Palau and the defendants signed the agreement which, upon the payment of the fine, would be a full and complete settlement and release of all liability.

**TONGA:**

*R v Lirong Liu Appeal No. AC 12 of 2011*

Two Chinese women from poor families met the Defendant, Liu, in China and were persuaded to come to Tonga to work as waitresses in her bar restaurant. When they arrived in Tonga they were told there was no immediate work for them in the bar restaurant. The judge accepted the complainants evidence that, as a result of the lack of work in the bar restaurant, they were forced to work as prostitutes and if they refused were beaten by the Defendant.

Liu held the women’s passports and refused to allow them to leave the house. After a period of time the women had earned enough money to pay the Defendant to get their passports returned and moved away from the house.

After a trial by judge alone, Liu was convicted of four counts of trafficking a person contrary to section 24 of the *Transnational Crimes Act 2005*, one count of keeping a brothel contrary to section 80 of the *Criminal Offences Act*, and two counts of trading in prostitution contrary to section 81 of the *Criminal Offences Act*. Liu was sentenced to ten years imprisonment on each of the four counts of trafficking, six months imprisonment in respect of the count of keeping a brothel and five years imprisonment on each of the two counts of trading in prostitution. All sentences are to be served concurrently.

Liu appeal her conviction and sentence. The Appeal Court dismissed the appeal against conviction. The appeal against the sentence was successful. The Court considered that the sentence was appropriate given similar UK cases and the maximum penalty for the offence of 25 years imprisonment. However, they considered that Liu’s age (42 years) and the fact that she was a first time offender warranted suspending part of the sentence. Accordingly they ordered that the ten year head sentence would still stand but that the final three years may be suspended. The Court also expressed some concern over the detail in which the Judge considered international studies on trafficking in his judgement.