Welcome

A key focus of the Pacific Islands Law Officer’s Network (PILON) is to provide a forum for communication and cooperation between members. The PILON Secretariat is pleased to introduce the inaugural issue of the PILON newsletter as an important addition to this information-sharing and communication network, aimed at facilitating discussion of key regional law and justice issues and providing a further connection for PILON with regional organisations and initiatives. In this way, it is hoped that the newsletter will reflect the focus on communication and the exchange of ideas which are central to the concept of ‘Talanoa’, the name chosen for the newsletter.

Content ideas, articles, suggestions and feedback are always welcomed by the Secretariat. We are grateful to PILON Observer Members PacLII and the International Committee of the Red Cross for their contributions to the first Issue. If you would also like to contribute to the discussion please contact us. Welcome to the first issue of Talanoa!

30<sup>th</sup> PILON Annual Meeting – December 2011

The 30<sup>th</sup> PILON Annual Meeting was held at the University of Auckland in early December 2011. Representatives from PILON Member countries, Observer Members and other regional organizations met to discuss law and justice issues centering on the theme “Legal Challenges and Strategies to Enhance Pacific Sustainable Economic Development”.

In this issue:
- Search tips from PacLII
- Focus Issue: Regulation - Environmental Crime
- Spotlight on: ICRC
- Case Notes: Solomon Is, Samoa, Cook Is & Nauru
The meeting considered presentations from New Zealand private sector and government representatives relating to the theme of the meeting including climate change, commercialisation of State assets, drafting of commercial and investment legislation, approaches to legal and governance structures for fisheries development proposals and fisheries management issues.

Members were also given the opportunity to report on their activities in 2011 and priorities for the new year.

Presentations from Observer Members and meeting observers included discussion of the SPC/SOPAC Deep Sea Minerals Project, and PIFS’ scoping study into possible regional approaches to supporting judicial and legislative drafting services in Forum Island countries.

Member Countries also discussed issues relevant to the future of the PILON Secretariat and resolved to establish the Secretariat as an independent legal entity. This is a positive step in cementing the future of PILON and increasing its profile. The Secretariat will continue to progress structure and funding arrangements as part of its work plan for 2012.

An application for PILON membership by the Pitcairn Islands was considered by Members. The Pitcairn Islands faces similar law and justice issues to those experienced in other small island jurisdictions in the Pacific. The application for membership was unanimously approved and the Pitcairn Islands was warmly welcomed to PILON by Members.

Members extended their thanks to New Zealand for hosting the 30th Annual Meeting and now look forward to Papua New Guinea hosting the 31st PILON Meeting, which will be held in Rabaul on 8 - 12 October 2012.

Further information including the outcomes report, presentation and Secretariat work plan for 2012 can be found on the PILON website, www.pilonsec.org.

In conjunction with the PILON Annual Meeting, the Legal Research Foundation hosted a one-day conference on South Pacific Constitutions and the Rule of Law. The Conference included consideration of Regional Courts, religious freedom, election related issues, and a discussion involving New Zealand based judges serving around the Pacific region.

Both meetings were hailed as a success and provided useful discussion on current issues and opportunities to build relationships with our Pacific neighbours. Thank you to all those who participated.
**PacLII Search Tips**

**Defining your Search**

*Do you get pages and pages of results when you try and do a search on PacLII? Are you frustrated that the search results aren’t what you wanted?*

Use the PacLII Full Search Form (or Advanced Search). The link is located under the main search box on the PacLII homepage. Here you can limit your results to cases (or legislation) or even limit to cases of a particular jurisdiction.

You will need to change the search type (that's the box next to the word 'Find') to 'this Boolean query'. To do this, click on the arrow pointing down.

**What does Boolean mean?**

A Boolean search allows you to combine words and phrases using the words (known as Boolean operators) AND, OR, NOT and NEAR to make your search more accurate. The term Boolean is named after the mathematician George Boole.

Select the PacLII Database(s) to search: Do you want to search everything on PacLII? If so, leave 'PacLII: All Databases' as the selected option.

If you only want to search cases, click on 'PacLII: All Case Law Databases'. For legislation only select 'PacLII: All Legislation Databases'. Use the scroll down bar in the box to select a particular jurisdiction. Don’t forget, you can select more than one option by holding down the Ctrl key for each selection.

When typing in your search query, you need to use specific keywords that will appear WITHIN the document (i.e. broad subject headings will not work). The table below provides a description of the PacLII Boolean operators.

<table>
<thead>
<tr>
<th>Operator</th>
<th>Meaning</th>
<th>Example</th>
</tr>
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<tbody>
<tr>
<td>AND</td>
<td>Returns all documents that contain both the first term and the second term.</td>
<td>land AND custom</td>
</tr>
<tr>
<td>OR</td>
<td>Returns all documents that contain either the first term or the second term or both.</td>
<td>murder OR manslaughter</td>
</tr>
<tr>
<td>&quot; PHRASE &quot;</td>
<td>Enclose the phrase that you are looking for in quotes. Returns all documents that contain your search terms directly next to each other in a phrase.</td>
<td>“customary land”</td>
</tr>
<tr>
<td>NOT</td>
<td>Finds documents that contain the first word, but do not contain the second.</td>
<td>transparency NOT money</td>
</tr>
<tr>
<td>NEAR</td>
<td>Returns all documents where the first term appears within 50 words of the second term.</td>
<td>customary NEAR land</td>
</tr>
<tr>
<td>w/n</td>
<td>Returns all documents where the first term appears within n words of the second term, where n is a number you specify.</td>
<td>customary W/5 land</td>
</tr>
<tr>
<td>*</td>
<td>An asterisk * matches any string.</td>
<td>negligen* Finds negligent, negligence, negligently ..</td>
</tr>
<tr>
<td>TITLE(...)</td>
<td>Finds documents where the search term located in the bracket is in the document title</td>
<td>title(health OR medical)</td>
</tr>
<tr>
<td>()</td>
<td>Use parentheses if search includes two types of connectors.</td>
<td>defam* near (radio OR television OR media)</td>
</tr>
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*The Pacific Islands Legal Information Institute (PacLII) provides free access to Pacific Islands legal materials via its website: [http://www.paclii.org](http://www.paclii.org).*
The mission of the ICRC

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening international humanitarian law (IHL) and universal humanitarian principles.

ICRC in the Pacific

The ICRC Regional Delegation in the Pacific is based in Suva, Fiji with a Mission in Port Moresby, Papua New Guinea and an Office in Sydney, Australia. The main focus of the Pacific delegation is to support Pacific Islands Red Cross National Societies in their endeavours as first responders to emergencies in their own country. It also provides emergency non-food relief assistance to communities and health structures affected by armed violence (most recently in Papua New Guinea), visits detainees (in Fiji and Solomon Islands in connection with past unrest in those countries, and also Papua New Guinea). The promotion of IHL and other humanitarian issues with governments, security forces, academic circles, the media and civil society is also an important part of the ICRC's work in the region.

The ICRC in the Pacific is small in comparison to other ICRC operations, but carries out the same main activities: protection and assistance, and IHL promotion and cooperation with the International Red Cross and Red Crescent Movement. The ICRC staff in Fiji, Papua New Guinea and Australia includes protection, communication, cooperation, legal, health, support specialists, and general management. The Regional Legal Adviser covers the 16 Pacific countries from Sydney, Australia.

How the ICRC can assist PILON members

The ICRC can work with PILON members seeking to advance international humanitarian law domestically in a number of ways. ICRC can assist with ratification or accession to IHL treaties, as well as domestic implementation of that law. This includes working with government officials to draft law, or modify the many model laws available to the particular legislative context of the country, as well as preparing explanatory memoranda and cabinet papers. ICRC can also run workshops or seminars for government on specific legal issues or treaties, and on IHL more generally to develop a stronger understanding of IHL and the importance of its ratification in the Pacific.

Annual detention visit to correctional facilities in Fiji; Lautoka Prison, Lautoka. ICRC delegate interviews inmates. © ICRC.

Upcoming regional event

ICRC is hosting, together with the Swiss and Australian governments, a Pacific regional roundtable on private military and security companies (PMSCs) and the Montreux Document which sets out the IHL applicable to those companies operating in an armed conflict, and also collates good practice for the domestic regulation of PMSCs. The roundtable will take place in Canberra in May and bring together Pacific states with an interest or concern in PMSCs, and experts and academics working in this field.
Addressing Environmental Crime & Corruption: ‘Best Practice’ in Environmental Regulation

This article is a summary of a paper prepared by the PILON Secretariat for the 30th PILON Meeting. A full version of the paper is available on the PILON website.¹

Environmental crime is a key consideration of regulation with respect to environmental and resource management, as it poses a serious impediment to sustainable management and conservation outcomes the focus of this regulation. Where environmental crime has a transnational element – involving movement of goods across boundaries or a trans-boundary impact – it is widely recognised as triggering associated crimes such as corruption and money-laundering. The consequences of transnational environmental crime (TEC) extend beyond environmental impacts, and include serious economic consequences for developing countries through loss of resources and significant amounts of taxes and excises through corruption and regulatory fraud.²

There are three areas of TEC offences of greatest relevance generally to Pacific island countries: illegal, unregulated and unreported (IUU) fishing; illegal logging and trade in timber; and illegal trade in (protected) flora and fauna. Regulation of the resources affected by these offences also demonstrates vulnerability to the impacts of and links to corruption. For example, the highly visible illegal timber trade relies on the involvement and corruption of a range of officials along the entire chain of custody – customs, police, local politicians and transport authorities – to exist;³ while corruption impacts are noted as significant in three areas in Pacific Island fisheries: licensing, access agreements and monitoring and inspection.⁴

The significant impact of corruption and environmental crime in the Pacific, in particular as an impediment to economic growth, was noted by PILON Members at the 29th PILON Meeting in December 2010. The links between environmental crime and corruption were considered by Members following presentations based upon a February 2010 conference convened by the Australian Attorney-General’s Department (AGD) and the University of Wollongong (UoW), entitled Following the Proceeds of Environmental Crime: Fish, Forests and Filthy Lucre. As an outcome of this discussion, the PILON Secretariat was tasked by Members at the 2010 Meeting to report back on best practices on regulation with respect to environmental and resource management.⁵

Through a review of relevant literature and exploration of the key themes which emerged from the AGD / UoW conference, the PILON Secretariat has identified ‘best practice’ measures in the form of recommendations consistently highlighted as ways in which existing legal frameworks and enforcement approaches can be built upon and utilised. The measures identified by the Secretariat focus on the enforcement component of

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⁴ Martin Tsamenyi and Quentin Hanich, Addressing Corruption in Pacific Island fisheries: a report prepared for the IUCN Profish Law Enforcement, Corruption and Fisheries Project (2008) 9
⁵ Pacific Islands Law Officers’ Network Annual Meeting Outcomes Report (Brisbane, Australia; 8 – 10 December 2010) 4
environmental regulation. Not only is this aspect obviously of most relevance PILON members, but is also of fundamental importance for effective regulation. Insufficient monitoring and enforcement is the most common explanation for non-compliance with environmental and resource management laws.6

The ‘best practice’ recommendations identified fall within three general categories. Firstly, the adequacy and effectiveness of penalties for environmental crime is an issue consistently highlighted as requiring review. In addition to often outdated and trivial penalties in national legislation, commentators describe a trend for environmental offences to be treated leniently when prosecuted, through imposition of penalties often at a fraction of the maximum prescribed.7 Given the potentially high profit margins associated with environmental crime, inadequate monetary fines may be readily absorbed by offenders as operating costs rather than a serious deterrent to market entry. As a starting point for reform, legislation proscribing environmental offences should therefore be reviewed, with a focus on consistent penalty provisions that reflect the social and economic harm caused by environmental crime.8

Greater use of alternative sentencing options - directed at both punishment and providing an environmental benefit or addressing environmental harm – is also advocated. ‘Alternative orders’ may be combined with or used instead of a more traditional punitive sanction, and allow the court to create a penalty often better suited to the offence. The variety of potential orders discussed by commentators includes restoration or remediation orders; payment of investigation costs, expenses and / or compensation; monetary benefits penalty order; and directions to publicise the offence.9 By way of example, the potential impact for a company of an order to publicise information about an illegal logging conviction should be considered in light of increasingly aware and critical major consumer markets, and recent introduction of government initiatives in consumer countries targeting the end-point of the illegal timber trade.10 An ‘innovative’ condition attached to a conviction for fisheries violations in a 2009 Guam case required a vessel owner to participate in a marine research programme, by deploying drifter data buoys in remote areas on fishing trips.11

Secondly, given the strong links and enabling relationship between environmental crime and corruption, fraud and money laundering, these associated activities must be addressed. A ‘best practice’ recommendation is therefore for anti-money laundering (AML) and asset forfeiture laws to be integrated into environmental crime enforcement. Law enforcement based on environmental legislative provisions has tended to focus on lower-level operators – such as the crew on illegal fishing vessels, or local villagers who provide labour for wildlife smuggling or illegal logging activities - instead of higher-level and transnational organisers who facilitate and profit from the crime – such as the owners of illegal fishing vessels, or ‘timber barons’ who control the illegal logging industry. Anti-money laundering tools give law enforcement agencies the capacity to trace the money trail of a serious crime, find the higher order criminals and therefore address these related illicit

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7 See for example: Pio Manoa, Judicial Responses to Illegal Fishing Prosecutions in Fiji (2006) 10 Journal of South Pacific Law
8ICCD, AGD, above n 6, 3
9Samantha Bricknell, Environmental Crime in Australia (AIC Reports Research and Public Policy Series no. 109, Australian Institute of Criminology (2010)) 21
10E.g: 2008 US Lacey Act Amendment, NZ (& other) Government public procurement policies to guarantee legality & sustainability of imported timber: discussed in Bricknell, above n 9, 96.
11Pio E. Manoa, Legal Initiatives for Combating Illegal, Unreported and Unregulated Fishing Activity in the Pacific Islands Region (Paper presented at the 28th PILON Annual Meeting, Apia, Samoa, 12 -16 December 2009) 6
Non-conviction based asset forfeiture has also been identified as a critical component of an AML regime and of particular deterrent value for environmental offences. In most Pacific jurisdictions, legislation required to confiscate instruments used in or profits derived from offending requires a conviction for a predicate offence. Non-conviction based asset forfeiture means that court proceedings to confiscate illegal proceeds are conducted separately (possibly while the investigation and prosecution are in process), and do not require a criminal conviction. Assets that can be connected with the criminal activity are identified, seized and restrained by court order, to ensure that they are available to be transferred to the state if and when the defendant is convicted.

Finally, interagency cooperation, coordination and information sharing is crucial on a regional and domestic level. Resource challenges, the trans-boundary nature of the offences and impacts, and associated crimes triggered (corruption, fraud and money laundering) means that national law enforcement and legal agencies cannot operate in isolation to effectively address environmental crime. In light of the current lack of links between product laundering and money laundering, practical inter-agency links, and links to the private sector, it was suggested as an outcome of the 2010 AGD / UoW conference that Pacific law officers may consider encouraging cooperation between environmental regulators and agencies responsible for law enforcement, anti-money laundering and tainted asset recovery. Strategies identified to promote inter-agency cooperation included involving environmental regulators on AML committees, or forming a working group including financial intelligence units, environmental regulators, police, customs and anti-corruption agencies, with input from local NGOs. Interagency cooperation – in intelligence sharing, monitoring and enforcement - has been described as ensuring reciprocity of support, improved capacity for joint investigations and the production of appropriate sanction for wrongdoing.

On a regional level, the current progress towards establishment of a multilateral subsidiary agreement under the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region is an important example of such cross-border cooperation between law enforcement agencies. Mutual legal assistance and extradition arrangements are also important measures to facilitate intelligence sharing and, where necessary, prosecution. Lastly, it has been suggested that regional collaboration to address TEC should extend to policy and legal frameworks – for example, harmonisation of relevant frameworks between countries, in particular penalty provisions and definitions of offences.

In late 2011, a Taiwanese fishing vessel was detected illegal shark fishing in Palau’s EEZ through a joint patrolling operation between the Palau Government & Greenpeace. Proceedings were commenced in the Supreme Court of Palau. Settlement reached in February 2012 fined the vessel operators US$65000 and bans the captain of the vessel from fishing in Palauan waters for one year. Source: http://www.greenpeace.org/australia/en/news/oceans/Greenpeace-and-Palau-bust-pirates-in-Palau-shark-sanctuary/
**COOK ISLANDS:**
*皇冠 v 伊冯娜·夸特 [2011] CKHC 20*

The defendant pleaded guilty to one charge of theft as a servant involving a total of $30,000, taken over a period of 18 months from her employer. The charge carries a maximum period of imprisonment of five years under subsections 242(1a) and 249(b3) of the *Crimes Act*. The defendant was fined $30,000 as repatriation and sentenced to one year imprisonment.

The defendant began her prison sentence on the date of sentencing, 8 April 2011. At that time she had just given birth and her child was 10 days old. The prison sentence was appealed on the basis that the baby required her care including being breastfed. After serving 20 days in custody, she was released on bail pending the outcome of her appeal.

The Court of Appeal allowed the defendant’s appeal in part. They took into account new medical evidence and the Cook Islands’ obligations under the United Nations Convention on the Rights of the Child. The Court considered the right of a child to be nurtured by its mother in the first few months of its life and the fact that Cook Island’s prisons do not have facilities to allow mother and baby to be incarcerated together nor any legislative provisions for special parole, early release, or expedited pardon on those grounds.

The Court of Appeal decided that the case should be remitted to the High Court for re-sentencing after the expiration of four months to allow the mother time to breastfeed the baby at home for the first six months of its life in accordance with medical advice and obligations under the international convention. The Court said that this was an exceptional case and that the decision should not be used as a precedent, each case should turn on its own particular circumstances.

The matter came back before the High Court in December 2011. The defendant was sentenced to three months imprisonment, in addition to the 20 days already served and ordered to pay the balance of the $30,000 repatriation.

**SAMOA:**
*警察 v 菲波 [2011] WSSC 123 (25 July 2011)*

In this matter, two defendants were charged with the offence of official corruption. Official corruption is the offence of accepting money or any other valuable consideration in return for doing something in their official capacity. The two defendants were employed at the Ministry of Finance and accepted money or bribes from a third party in return for speedily processing cheques or payments in a way that breached regulations and policies and allowed that third party to receive payments for fraudulent invoices.

In sentencing the court noted that the “...actions of the defendants have affected the trust given by the general public especially in relation to finance and the handling of public funds...” The defendants were sentenced to three years imprisonment; however they have sought to appeal their sentences.

The significance of this prosecution for Samoa was highlighted by the fact that only one other occasion when a public servant has been prosecuted for this offence was known to the sentencing judge.
SOLOMON ISLANDS:
*Auga v Folotalu – Civil Case No.308 of 2010*

This matter was in relation to the national election that was held in the Solomon Islands in August 2010. The ballot box and contents of one polling station were burnt by a crowd of people before the votes could be counted.

The Petitioner submitted that the election should be set aside because the real outcome of the election could not be determined due to the burning of the ballot box and the votes it held.

Section 66(2) of the *National Parliament Electoral Provisions Act* provides that where evidence in an election petition shows that corrupt, illegal practices, illegal payments, employments or hiring in relation to the election for the purposes of promoting or procuring the election by any person, and those acts affected the result, that person’s election shall be invalid and they shall be disqualified from being a member of Parliament. Section 9 states that no election shall be invalid because of non-compliance with the Act, where it appears that the election was conducted according to the principals of the Act and the alleged non-compliance does not affect the result of the election.

It was held by the Court that an offence of destroying a ballot box was committed but there was no proof that the illegal act was carried out for the purposes of promoting or procuring any particular candidate. Further, the Court accepted that if all of the votes burned were in favour of the petitioner, he still would have had less votes that the candidate who won and therefore it did not affect the results of the election.

NAURU:
*Forfeiture Order under the Proceeds of Crime Act 2004 (May 2011)*

The first application for a forfeiture order under Nauru’s *Proceeds of Crime Act 2004* was made in May 2011. The application was successful, and a forfeiture order obtained by the Secretary for Justice and Border Control for tainted property, namely 3 Honda motorcycles purchased with money fraudulently obtained by the defendant.

The defendant, a former employee of the government’s Finance Department, was earlier sentenced in April 2011 in relation to her conviction on 51 counts of obtaining money ($AUD122,000) by false pretences in contravention of section 427 of the *Criminal Code 1899*.

In hearing the application under the *Proceeds of Crime Act*, the Court determined that the defendant had been convicted of a serious crime and that the property identified was tainted property in relation to the offences. The order vested the property in the Republic and provided for the property to be seized by the Nauru Police Force or any person nominated by the Secretary for Justice and Border Control.