



**IMPACTS IN THE REGION
AND BEYOND**

www.paclii.org

A well known motto is that “it is better to give a hand up, than a hand out”. In the world of development and aid it enables and builds capacity rather than dependency. The Pacific Islands Legal Information Institute embodies this maxim in that it exists to provide the tools for others to help themselves. Not only does it help lift societies out of poverty but it does so while building self-respect.

PacLII is unique in the Pacific. It aims to represent 20 jurisdictions. Formed in 1995 it became a LII in 2003 and a founding member of the Free Access to Law Movement¹ which recognises access to public legal information is part of the common heritage of humanity and the commitment to providing free and anonymous access to that information promotes justice and the rule of law. A 2012 international conference convened jointly by The Hague Conference and the European Commission reached a consensus that States should agree to a requirement that their main legal materials are available for free access and work is progressing on an International Convention to that effect.²

In the 20 years that it has been in existence it has become a phenomenon, and changed the way that populations access legal information in the Pacific forever. It now hosts in excess of 168,000 documents collected across 246 databases, and is averaging 15 million plus visits per year (that’s over 45,000 per day) It adds to the collection at the rate of 6,000 documents per year. Since record keeping began in 2006 it has increased 9 fold in size. In the first six months of 2015 visits to the website increased by 56% over the same period in 2014.

It is a single repository for legal and law related documents that can be viewed from anywhere and the information is available for free. Users come from all walks of life and geographical areas – academia, legal practice, research, business, development, governments, journalists³, NGOs and international organisations. A study conducted in April 2015⁴ revealed that of the identifiable visitors, PacLII is accessed by 171 Universities world-wide, 35 of which are located in Australia; 87 Government agencies including both the Australian and New Zealand Parliaments, the US military and Department of Homeland Security and a raft of Regional and International Organisations such as SPREP⁵, FFA⁶, OCOS⁷, The World Bank, OECD⁸, UNDP⁹, UNESCO¹⁰ and the UN and

¹ <http://www.paclii.org/other/Montrealdec.html>

² Conference on Access to Foreign Law in Civil and Commercial Matters, Recommendation 8 –“Mindful of the “Guiding Principles to be Considered in Developing a Future Instrument” proposed by the experts group convened by The Hague Conference on Private International Law in October 2008, the conference confirms that States should make available without cost to users legislation and relevant case law online. Such information should be authoritative, up-to-date, and also include access to law previously in force.”Reference from paper “The Meaning of free access to legal information_A twenty year evolution, by G Greenleaf, A Mowbray and P Chung

³ The Vanuatu Press regularly run stories of public interest eg political party challenges to procedures in Parliament and cite the cases published in PacLII

⁴ By the PacLII Director

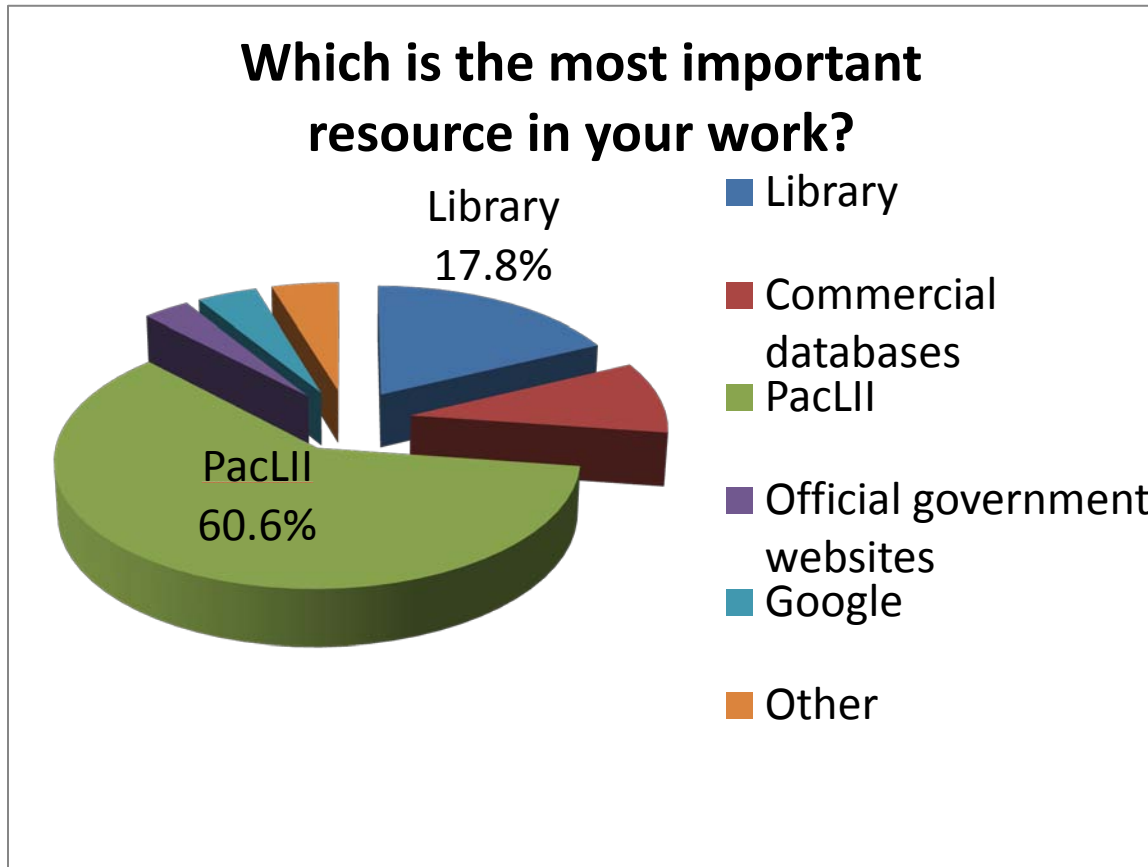
⁵ South Pacific Regional Environment Program

⁶ Forum Fisheries Agency

⁷ Oceanic Customs Organisation Secretariat

also a range of large private law firms and also businesses such as mining, fishing and transportation to name a few.

Consistently PacLII is voted as the number one Legal Resource in the Pacific:



And how do you put a price on the data that PacLII hosts and provides:

“A study for the SAS Institute in 2013 found that, in order to put a value on data, neither the cost of gathering it, nor the market value or the future income from it could be adequately calculated. Only through a form of accounting that included non-economic benefits, and risks, could companies actually explain to their shareholders what their data was really worth. Something is broken in the logic we use to value the most important thing in the modern world.”¹¹

⁸ Organisation for Economic Co-operation and Development

⁹ United Nations Development Programme

¹⁰ United Nations Educational, Scientific and Cultural Organisation

¹¹ The Guardian Newspaper, “The end of capitalism has begun” by Paul Mason – accessed 19th July 2015

The major impacts of PacLII in the Region are that it:

- Supports legal research and education
- Preserves vulnerable collections.
- Encourages a pacific jurisprudence and supports a Pacific identity
- Underpins the development of legal services
- Supports good governance and the Rule of Law
- Supports economic development.
- Contributes to attainment of Sustainable Development Goals
- Provides economy of scale

Supports Legal Research and Education.

“thank you and your staff for the excellent service that you provide. It is true to say that the research capability of all scholars involved in South Pacific research is greatly enhanced by the information available on the Paclii site. The information serves not only to assist academic endeavours, but also to assist with preparation of practical legal advice and with legal reform. The amount of information now available is impressive and where I have requested assistance to obtain additional resources, I have always received a prompt and helpful response.

I do not know what I would do without this service, and hope that I don't ever have to find out!” Senior Pacific Law Academic, University of Queensland

Teachers need to have access to the legislation and judgments of the Pacific in order to be able to teach law, and the students to learn it. Academics and researchers use the basic materials to write articles and studies about the law which in turn analyse, inform and educate.

Much research is done from overseas and travel to each country to research on a particular topic is often neither feasible nor affordable.

The functionality of the website also makes it uniquely supportive.

The main documents on Paclii are published in HTML. This renders them capable of being hyperlinked. That is, the linked document appears in blue and you simply click on it to instantly view that document, rather than come out of one database and go through a series of pages to find the document referred to. HTML pages also open instantaneously – there is no downloading involved. In many Pacific jurisdictions internet speeds are still so slow that it is not possible to download a file before it ‘times out’.

“At work in Port Moresby it [Internet] can be very slow and sometimes go off for weeks. In our regional law offices it is worse” Contributor to 2015 Survey

The HTML files also render them searchable by the SINO search engine developed at AustLII. This search engine allows you to search a single database or multiple databases simultaneously. There are also Boolean search functions. These features are invaluable to researchers saving hours of time. Imagine if you will, someone outside of the Pacific, researching labour and commercial laws across the region; or someone working on climate change needing access to a range of environmental and land related legislation;

or a legal researcher investigating the provisions throughout the region protecting women and girls from gender based violence.

For lawyers especially, the Online Case Citator, **LawCite**¹² is an invaluable tool – it is an automated tool which tells the user how many times a case has been followed and in what other cases, and links to those cases whether they are on PacLII or on another LII.

Through the Pacific Legal Gateway portal on the site are links to a series of other websites that are also useful for legal research.

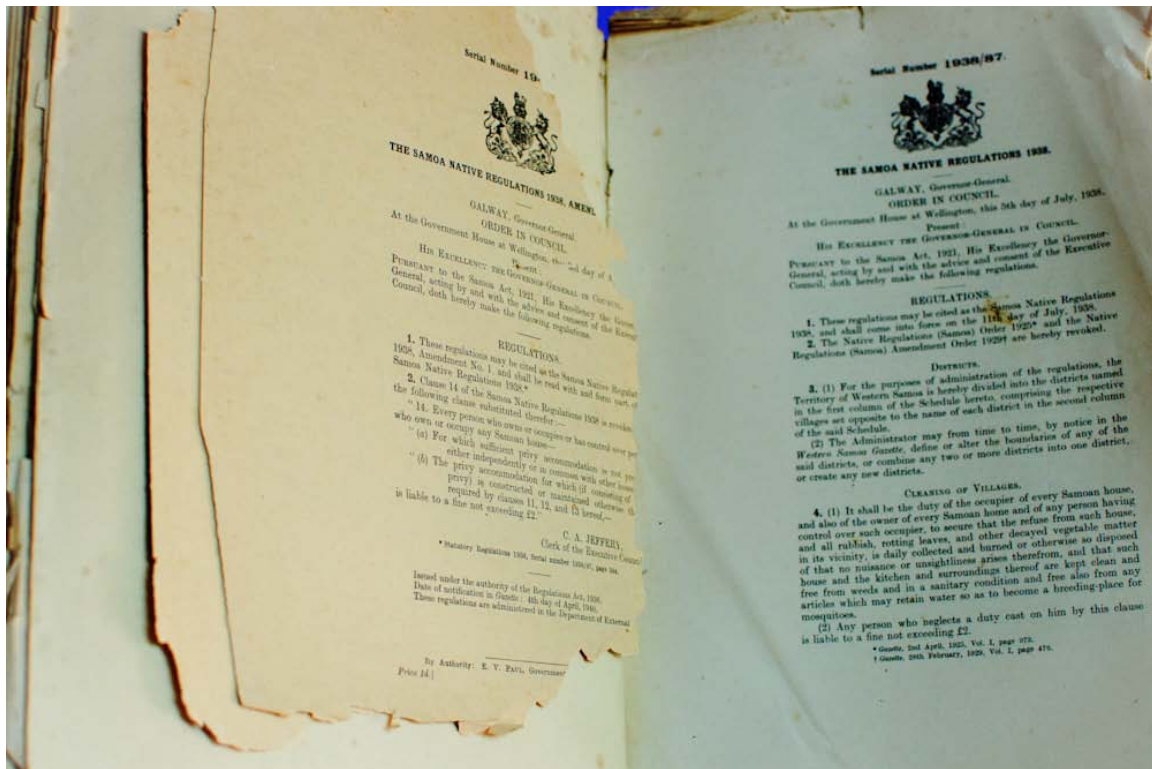
These are features which other websites, traditionally, known as ‘silo’ sites do not have. The information on most country websites, to which links are provided on PacLII, publish their information in PDF; none of it is linked and it is also usually not indexed. So while the material may be ‘published’ they are not useful research tools.

PacLII regularly conducts training in how to use the website to its fullest across beginners, intermediate and advanced levels, not only with law students but legal practitioners, police, NGOs and also business groups eg Insurance company personnel.

In both the 2011 and 2015 User Surveys, PacLII ranked top as the most important resource for research - this includes amongst both online and traditional hard copy collections. In the 2015 Survey users stated that in the past 12 months they had conducted over 75% of their online research on PacLII

¹² Developed by AustLII

Preserves vulnerable collections:



It is the **body** of legal work that constitutes what is law – not just the most recent decisions or legislation.

A significant proportion of legal materials in the jurisdictions covered (pre 2000 especially) are in paper format. Many are old and decaying. They still form part of the legal fabric but are vulnerable to fire, flood, tempest, humidity and insects. Several libraries have already burned down in the region over the last 15 years. PaCLII scans all the materials it receives and in the event of loss can recreate the valued hard copy collection at a jurisdictions request. In Kiribati, when the a volume from the last complete set of the Kiribati Law Reports was lost, PaCLII were able to send that country a complete scanned set to recreate the missing volume.

There are historical documents, such as the Kings and Queens Regulations, from the colonial era which still have legal relevance today especially in land issues and have been requested from us when large scale mineral resource developments are being researched. Additionally the historical legal collections are vital to the evolving jurisprudence of the region.

The electronic collections are also vulnerable. In several jurisdictions, e copies of judgments or of legislation are held on stand-a-lone computers that are not networked nor backed up. If the computer crashes the materials are lost.

Changing software can also undermine a country's own electronic collection. This happened in Fiji in 2013. They were no longer able to access their own electronic records due to changes in software. PaCLII were able to supply back copies of all judgments for the years 2006 to 2011 to enable them to proceed with preparation of a new collection of Fiji Law Reports.



Ira Komaisavai, Legislation Editor for PaCLII, in 2013, presenting disc of Fiji Judgments 2006 -2011 to Judge Chandra of the High Court Fiji

Encourages a Pacific jurisprudence and supports a Pacific identity

Prior to PacLII (and the much more limited Pacific Legal Gateway before it) it was almost impossible to find Pacific law. Whilst PacLII is not perfect, it is impossible to overstate what a difference it has made to researching and using Pacific law. It is now possible to draw on pacific case authorities, which is necessary for genuine local jurisprudence to develop. It is also possible to find out what the statute law is, in most instances.

Contributor to 2015 User Survey

Much of the Pacific receives its legal tradition and mechanisms from its colonial history. Pre-Independence UK laws are still of effect in a significant number of Pacific Jurisdictions. Juxtaposed to that heritage is the place and influence of customary laws, practices and structures.

While the number of judicial personnel and legal practitioners recruited from the Pacific is growing there are still a significant number from antipodean and ex colonial backgrounds who are familiar with Australian, British or New Zealand systems and due to that familiarity are prone to refer to these sources, which may not be entirely apt for the Pacific Islands situation. A growing body of Pacific Island's resources enables and encourages reference to those resources and cross-fertilisation.

Research done as part of a PhD thesis in 2008 concluded that PacLII largely contributed to the increase in citations of **national** decisions by the Pacific courts over the previous ten years (this shows that Pacific courts were looking at and citing decisions courts within their own jurisdictions more frequently) and also the initiation of the use of **regional** decisions by the same courts (courts in other pacific islands jurisdictions) opened the way for the development of a Pacific Islands jurisprudence. The research conclusions were arrived at by examining cases from 2002 to 2007 and noting the increase in incidence of reference to cases from other Pacific jurisdictions, utilising data generated by the PacLII webserver logs.¹³ His research was also able to indicate that only where PacLII was used was it found that national citations increased and that they had increased by 11% over ten years.

PacLII editors as they process judgments for publication are noticing increasing citation of judgments regionally.

¹³ Research conducted by Pierre-Paul Lemyre of LexUM and CanLII

Judges have greater access to a wider variety of legal materials which can broaden their view and enhance their jurisprudential creativity and development.

Academics also have access to the raw materials and through their research can elucidate, formulate and distil a Pacific legal discourse which is directly relevant to the life situation of those living, working and doing business in the Pacific Islands ie a Pacific jurisprudence.

Free access is vital in this process. Access to a wide free and unrestricted pool of legal materials will stimulate scholarly research and debate and encourage and cross fertilise thematic writings and investigations which in turn will stimulate advances in the development of the jurisprudence of the region.

Underpins the development of legal services and quality of delivery

The essence of this is that in order to deliver legal services, legal practitioners must have speedy and accurate access to the laws, and legal interpretation of those laws, applying to the situation with which they are engaged.

They must be able to research the question before them fully in order to provide accurate and reliable advice to their clients. If the maxim holds that “ignorance of the law is no excuse” then logic dictates that it must be easily available to not only legal practitioners but all those of the populace affected by it (that is quite simply all of us). It must not be hidden; obscured; restricted by self appointed gate keepers; nor made out of reach by way of cost; rarity nor complex processes for securing access.

The vast library of PaCLII and the functionality of the site enable them to do this.

“Accessibility to Laws and Legal material is now at my finger-tips. Knowing and understanding these helps me to act properly and legally in my work and life.”

Contributor to 2015 User Survey

The Judiciary report that the quality of judgment writing has improved since publication began on PaCLII. Judgments which were once only practically available to parties in a case are now open to public scrutiny, thereby raising the bar and bringing pressure to write a clear, concise and well researched judgment.

In his paper "Why Write Judgments?" delivered to an Australian Supreme Court Judges' Conference, Sir Frank Kitto notes: "The process of reasoning which has decided the case must itself be exposed to the light of day, so that all concerned may understand what principles and practice of law and logic are guiding the courts, and so that full publicity may be achieved which provides, on the one hand, a powerful protection against any tendency to judicial autocracy and against any erroneous suspicion of judicial wrongdoing and, on the other hand, an effective stimulant to judicial high performance."

It is also reported that with the vast collection of materials on PaCLII it is less easy for less scrupulous practitioners or parties to cases, or students, to ‘invent’ cases to support their arguments. Cases cited as authorities can now be checked.¹⁴

¹⁴ This has been raised as an issue in conversations with Judges and legal practitioners who wish to remain anonymous but also by Hon. Ralph Regenvanu, lawyer and Minister for Justice, Vanuatu in an interview with PaCLII Director in January 2015.

Supports Good Governance, Democracy and the Rule of Law

“The possibility of immediately knowing applicable laws simultaneously constitutes one of the basic tenets of a state governed by the rule of law and is an essential element of legal security. With regards to case law in particular... the accessibility of decisions greatly contributes to the transparency and the openness essential to the sound functioning of the judicial system. In fact, the possibility of identifying who has been judged, by whom, and according to which laws contributes to ensuring the integrity of any judicial institution.” Daniel Poulin, ‘Open Access to Law in Developing Countries’, 2004

These concepts are broad and not subject to accepted definition, though some have tried:

USAID claim that the “Rule of Law is broader than the traditional approaches the focus on operations of the courts and other components of the justice system”¹⁵ They says it comprises 5 elements

- (i) Order and Security – the rule of law cannot flourish where crime is rampant, public order breaks down and citizens fear for their safety
- (ii) Legitimacy – laws are legitimate when they represent societal consensus – this includes both substance and process
- (iii) Checks and balances – under the doctrine of separation of powers each branch of government – executive, legislative and judicial must be transparent and accountable and each is a check on the other.
- (iv) Fairness – equal application of the law; procedural fairness; protection of human rights and access to justice
- (v) Effective application. There must be consistent enforcement and application for all citizens and the judiciary is an important element in this process.

UN Definition of Rule of Law
“The rule of law...refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”

¹⁵ “2010 USAID Guide to Rule of Law Country Analysis” The Rule of Law Strategic Framework” at page 6

The Rule **of** Law is distinct from Rule **by** Law, an authoritarian scenario “where all a state must do is legislate its future intents into the statute books before it acts.”¹⁶

On the issue of checks and balances, in a free access to legal information world, the broader populace take greater responsibility for their own rights and settlements and there each individual has the potential to scrutinise and become a check on the abuse of power, a most important democratic project.

In answer to the question “Why does free access to law matter in a democracy and how does it support the rule of law”, Justice O’Reagan,¹⁷ explains:

“free access both to judgments of courts and legislation are of central importance in modern democracies. The rule of law cannot flourish unless citizens have access to the law. Access and understanding of the law not only enables citizens to arrange their affairs to be compliant with the law, but also enables them to hold legislators and judges to account for bad laws or bad decisions. In turn, legislators and judges need to be aware that their work is scrutinised by members of the public. Law reporting is thus important not only for the reasons of access to law which is crucial in a democracy, but also as a key mechanism for holding judges and legislators accountable.

It is not only legislators and judges, however, whose work should be open to the public. The work of other government agencies should be open as well: such as Human rights Commissions, Parliamentary Ombuds and the work of commissions appointed by the Executive.”

In the context of the developing world FREE access is especially important as many people simply cannot afford to purchase copies of legislation or cases that constitute the laws which govern every aspect of their lives; commercial law reports such as Lexis Nexis are limited in their coverage of the Pacific Islands and prohibitively expensive to even many lawyers.

“If PacLII didn't exist, there would be no free way to access PNG legislation. Our agency cannot afford to subscribe to any commercial legal online services”
Contributor to User Survey 2015

To again quote Justice O’Reagan:

“In my view free access to law enriches democracy, it facilitates and empowers public participation in decision making and is thus a foundation upon which civic participation in a broader democratic society is built... We should never be

¹⁶ Speech by President of Law Society President to Malaysian Bar Council, 29 May 2015

¹⁷ Formerly of the South African Constitutional Court and now Honorary Professor of University of Cape Town and visiting Professor at University of Oxford.

complacent about the rule of law: If the price of liberty, as Learned Hand said, is eternal vigilance. LII's make being vigilant easier. In a world where many leaders are actively dismissive of the rule of law, the role of LII's is crucially important."

Good governance means adherence to principles of transparency and due process to ensure that fairness and predictability hold sway over despotism and abuse of power and process.

"According to the rule of law, the State itself must abide by the laws put forth and actively subject itself to principles of legality. Enacted legislation should conform to higher level standards, and, in particular, to the national constitution. In this context, open access to legal texts provides leverage to those questioning the actions of the State or defending their rights against the State."¹⁸

*Online information on the Pacific Islands is difficult to obtain, and to have a website like this which is reliable (and in English) with the added bonus of being up-to-date is invaluable. It is not just the mere fact that the information is freely available but the high quality of it that I really appreciate. This website has made my work in researching international tax laws easier and is always my starting point whenever I need information on the Pacific jurisdictions. I truly hope this website can be maintained beyond June 2016. Know that you are providing an important service to the public and you are appreciated!
Contributor to 2015 User Survey*

¹⁸ Open Access to Law in Developing Countries – Daniel Poulin 2004

Supports economic development

Adherence to the rule of law in turn contributes to the broader goals of democratic and economic development. The tenets of security (a relatively crime and bribe free society), predictability in terms of rules affecting economic undertakings, including consultative mechanisms when change is envisaged; and the certainty of fair, equitable and timely dispute resolution are all essential ingredients to stimulating both domestic and inward investment and growth. Transparency and ease of accessibility to the rules governing the economic enterprise are key. Businesses need access to rules that govern labour; investment; tax; land; environmental law and others to ensure that their investments are secured and that they are conducting their businesses lawfully. It now forms part of the conventional wisdom of development theory that a functioning legal system and the rule of law are crucial for economic growth. “the successful conduct of trade, investment and business generally is promoted by a body of accessible legal rules governing commercial rights and obligations. No one would choose to do business, perhaps involving large sums of money, in a country where parties’ rights and obligations were vague or undecided”¹⁹

As Santos argues, this idea’s most common expression is the “rule of law” (ROL) - a legal order consisting of predictable, enforceable and efficient rules required for a market economy to flourish²⁰. (Santos, 2006: 253). And it has now, arguably, reached maturity with its inclusion in the new SDGs (see the next section)

The World Bank’s annual Doing business studies are in one sense a way of measuring that predictability. In their words, they look for rules that “*clarify property rights, reduce the cost of resolving disputes, increase the predictability of economic interactions, and for rules that provide contractual partners with core protections against abuse*”. It is also worth noting that in their legal resources section on laws world-wide, that most of those in the Pacific region are linked to the PaCLII website. Interestingly the collection of up to date legislation is also a challenge for that organisation as they post a disclaimer that they are “unable to guarantee that laws are the most recent version”.

It is no surprise therefore that access to legislation, and up to date and accurate legislation is the loudest call from PaCLII Users. Yet while it is still the area of largest challenge to open access as for reasons financial, political, technical and human resource capacity several jurisdictions are reluctant or unable to provide regular updates of their legislation. PaCLII has been focusing on these areas as a priority over the last two years and this has been recognised by users.

¹⁹ Tom Bingham “The Rule of Law”

²⁰ Santos, A. 2006. The World Bank’s uses of the “rule of law” promise in economic development in *The New Law and Economic Development: A Critical Appraisal*, pp. 253-300, David Trubek & Alvaro Santos eds., New York: Cambridge University Press, 2006.

*I note the recent upgrades in Legislation Indexes and Statutory Indexes. Bravo to those who can stream up and online recent updates by the Gazette Office. It keeps us at the legal practice to know what is happening without attending and requesting disclosures from relevant Government authorities.
Contributor to 2015 User Survey*

A final word to Tom Bruce of Cornell in his speech to the UN on the benefits of open access to the SDGs

“But we have found, using strict empirical measures, that economic performance is better in places where information about the laws is fully disseminated”.

Contributes to attainment of Sustainable Development Goals

The Sustainable Development Goals are the successor to the Millennium Development Goals which expire at the end of 2015. They date from the United Nations Conference on Sustainable Development held in Rio de Janeiro in 2012. It has been acknowledged that although much has been achieved many of the MDG targets have not been met. The SDGs are designed to have been more consultative in formulation and more aspirational in nature. They also aim to be more closely designed by and related to the people most closely affected by the issues and who therefore have most to gain by their success.

The UN statement explains:

*“Sustainable development is development that improves the living conditions in the present without compromising the resources of future generations....we need to work together to make sure major changes are made **to transform into a more just and equitable society...**”*

On talking about the maxim “Ignorance of the law is no excuse” Tom Bruce in his presentation to the UN on Open Access to Law and how it serves the sustainable development goals said:

“It is clear that a world in which law is not communicated effectively is one in which policies cannot be implemented effectively or efficiently. Much of the time, many people -- in nations large and small, developed and undeveloped, rich and poor, on every continent -- live in such a world. The well-known American legal scholar Marc Galanter once said that law “usually works not by exercise of force but by information transfer, by communication of what's expected, what forbidden, what allowable, what are the consequences of acting in certain ways.” The fact is that when law is not communicated it simply does not work.....open dissemination of legal information helps to form transnational communities of practice. Governments can learn from other governments about policies and the practical requirements for implementing them, about what has been effective and what has not”

He took the trouble to set out the main benefits and it is worth repeating what he said in full:

“Most of all, publishing legal information freely does much more than simply saying what the law is. Knowing what the law is has incredible value if you are involved in a legal proceeding, of course. But it is also very helpful to think about scenarios in which the legal information consumer is not a lawyer or a party to a dispute, but instead someone who is trying to find out how the law might affect future plans.

Open access to law:

- *provides a showcase for important work of official bodies. Legal publishing is a window into the operation of government, and strong evidence that rights are being protected, policies being implemented, and obligations fulfilled.*
- *advertises economic opportunity to outsiders. Clear communication of law and of the means by which it is enforced helps entrepreneurs, investors, and others assess and manage risk when entering markets.*
- *offsets corruption, which is often the product of information asymmetries that force people to, in effect, buy access to legal information and to the official processes that are prescribed by that information.*
- *defines and communicates a predictable business climate in a way that is important for enterprises of all sizes and shapes. Tax laws and regulations that affect products and services are like a weather report for the business climate. Making that information widely available in a way that reduces the cost of discovering and using it has a beneficial effect on business at all levels. “*

In other words open access and free access to law helps support the free flow of information which is the basis of a more just and equitable society, which will help lift people out of poverty by ensuring maintenance of the rule of law; transparency, accountability and responsibility; consensual policy development; fair laws and sustained economic development.

Provides economy of scale

The PJDP²¹ in its Toolkit for Public Information Projects acknowledges that “it is now widely accepted that the judiciary has a responsibility to provide information to the public”, but in choosing the medium for communication they warn that Internet Websites can be costly to establish and maintain and requires suitable skills for design and ongoing management and updating.

PacLII at its current level of operations costs approximately \$500,000AUD per year to run. It has oft been mooted that each country should establish its own LII. To do this would require technical infrastructure; establishment of an office space and staffing of it. This might be viable in the larger jurisdictions but even there is more exposure to the risks posed by lack of assured funds; costs of operation; and human resources. Also can a small jurisdiction with a small output justify such an investment when the amount of legislation passed or Court decisions handed down in a year is relatively low?.

One jurisdiction attempted the exercise. Samoa. SamLII was set up electronically – it is virtual. All material is still sent to PacLII for upload to PacLII and to the SamLII site. Much has been achieved in streamlining document flow but the transition to an independent LII that would upload its own material and then replicate that material on PacLII has not transpired because it is estimated it would cost Samoa at least \$200,000AUD per year to run. Of the 20 Jurisdictions that PacLII has, at least 10 are very active. If each of those established its own LII then it could cost at least \$2,000,000 per year to run. Each smaller unit is more vulnerable to technical issues and staff turnover.

The technical and editorial skills required to keep PacLII running effectively are not widely available and new personnel require to be trained into the positions. The centralised nature therefore of PacLII provides for a robust, lower risk and more cost effective entity. Additionally by working across so many projects in so many countries PacLII is under constant production because if one sector or project is not progressing for whatever reason, attention can be diverted to others where demand and participation is active.

Many countries publish their cases and their Judicial Reports on PacLII because it is free to do so and they don't have to maintain the website. A range of other judicial related materials can also be published on PacLII such as Practice Directions and Professional Rules of Conduct for Practitioners.

There is also scope to broaden the current range of information under the new website which more closely resembles country websites within a website – yet retains the same

²¹ Pacific Judicial Development Programme, ceases operations after 5 years in 2015.

functionality – to include sections providing downloadable Court forms and information guides for each jurisdiction, for which currently they have no platform and have to be collected in person from the Court.