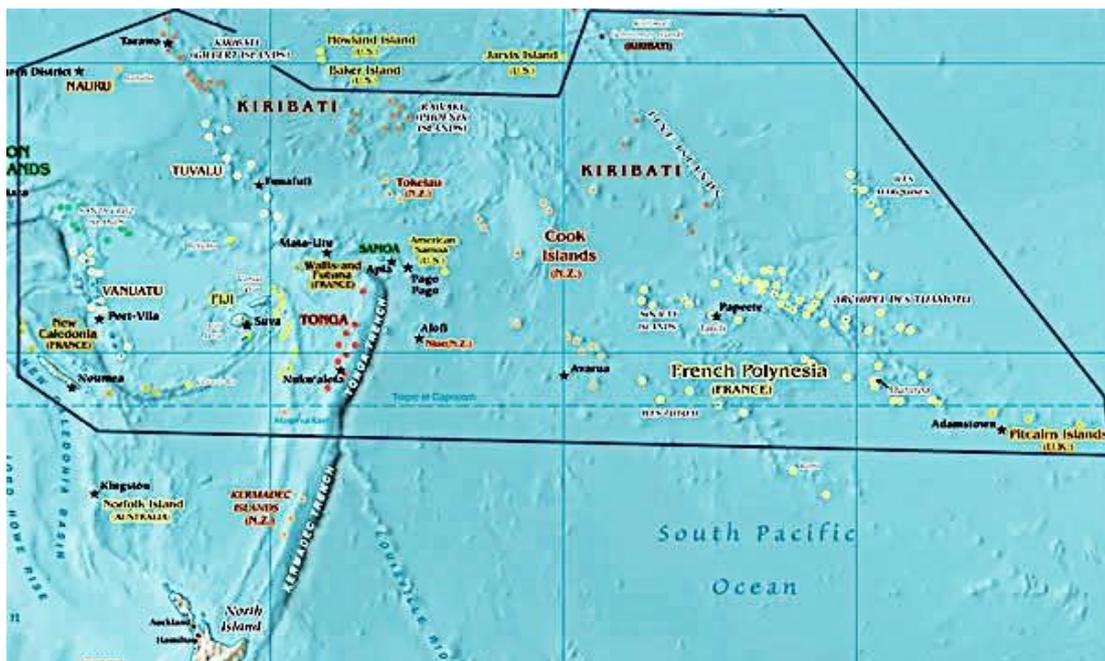




COUNTRY REPORT FOR PILON 2012

Brief description of Pitcairn Islands

Pitcairn Islands comprise the islands of Pitcairn, Henderson, Ducie and Oeno. Only Pitcairn Island is inhabited. It is about 3 km long by 1.5 km wide. Henderson Island is a UNESCO World Heritage Site, an important breeding ground for seabirds. The Pitcairn group is east of the Gambier Islands, these being the eastern-most archipelago of French Polynesia.



Pitcairn Island was discovered in 1767 by Captain Carteret on *HMS Swallow*. It was by then uninhabited although there is evidence of its having been occupied at an earlier time. Subsequently Pitcairn became famous as the island to which English sailor Fletcher Christian and eight of his fellow mutineers fled in 1790 after the mutiny on the British ship *HMS Bounty*. Christian and his associates took with them six Tahitian men, 11 Tahitian women and one baby, running the *Bounty* aground at what is now Pitcairn's Bounty Bay, and subsequently burning and sinking her.

The inhabitants were eventually discovered in 1808 by a US whaling vessel. By then all but one of the *Bounty* mutineers were dead. But there was a thriving community comprising the children of the mutineers and their Tahitian companions, under the

benign leadership of sole surviving mutineer John Adams. His name lives on as the name of Pitcairn's settlement, Adamstown.

In 1856 the Pitcairn population had grown to an unsustainable level and all were relocated to Norfolk Island. Pitcairn lay empty for a while. Over the next five years a number of Pitcairners made their way back to Pitcairn, and the Island has been continually populated since then. There is, therefore, an historic connection with Norfolk Island with its own population of Pitcairn descendants.

Pitcairn was regarded as a British Colony from early times. A key date was 1838 when a constitution was devised with help from a visiting naval officer. In due course Pitcairn became a British settlement under the British Settlements Act 1887, then administered from Fiji. Since Fiji's independence from the United Kingdom in 1970 Pitcairn has been the responsibility of a Governor residing in New Zealand (the convention being that Pitcairn's Governorship goes with the office of British High Commissioner to New Zealand).

There are now around 48 Pitcairn Islanders residing on Pitcairn, together with a number of others (including a contracted school teacher, doctor, a police constable seconded from New Zealand to be a Pitcairn police officer, a community worker, the Governor's representative, and their spouses).

Constitutional Structure

Pitcairn is a United Kingdom Overseas Territory. It is the only such territory in the Pacific, and is very much the smallest. The other United Kingdom territories are in the Caribbean (*Anguilla, Cayman Island, Montserrat, Turks and Caicos Islands, Virgin Islands*), Atlantic (*Bermuda, Falkland Islands, and St Helena, Tristan da Cunha and Ascension*), the Mediterranean (*Gibraltar*), the Indian Ocean (*British Indian Ocean Territory*), and the Antarctic (*British Antarctic Territory*).

Pitcairn's current constitution dates from February 2010. It was set in place by the Pitcairn Constitution Order 2010 (UK SI 244/2010). The Constitution establishes the offices of Governor and Attorney-General, and provides for Pitcairn courts and the appointment of judges and judicial officers, and a civil service. The Constitution contains, in Part 1, a set of fundamental rights based on the European Convention on Human Rights.

The Governor has executive authority. Legislative authority also resides in the Governor, who may make laws (called "Ordinances") after consulting the elected Island Council. The Governor is not required to act on the Council's advice although members of the Council may communicate with a UK Secretary of State if the Governor acts contrary to Council's views. That has not occurred to date.

Pitcairn law comprises (1) ordinances made by the Governor, (2) the statutes and common law of England from time to time (the former insofar as they are of "general application" and when "local circumstances" of the Territory permit), together with (3) United Kingdom statutes and statutory instruments that are enacted to have effect on and for Pitcairn.

Pitcairn Courts

The Pitcairn Court structure is as follows:

Judicial Committee of the Privy Council
Pitcairn Court of Appeal
Supreme Court of Pitcairn
Magistrates Court (including an Island Magistrate)

The judges of the Court of Appeal and Supreme Court have so far been appointed from the New Zealand judiciary. To date the convention has been that the Pitcairn Supreme Court judges are appointed from the New Zealand District Court bench, while the Court of Appeal comprises retired superior court judges. The Pitcairn Magistrates are currently Auckland barristers. The Pitcairn judiciary serves as and when required.

The necessity for an “off-Island” judiciary comes about because the population of Pitcairn Island is small, and none are legally trained. One Pitcairner holds the office of Island Magistrate, with a limited jurisdiction.

Pitcairn criminal trials may be heard by a Pitcairn court sitting in New Zealand

Pursuant to a treaty between New Zealand and the United Kingdom made in 2002, it is possible for Pitcairn criminal trials to be heard in New Zealand, with the consent of the New Zealand Minister of Justice. Such consent was given in relation to a series of criminal trials that were heard over the period 2004 to 2007. Some of these trials were held on the Island, with pre-trial hearings and post-trial appeals being heard in New Zealand (that is, by Pitcairn courts sitting in New Zealand).

Pitcairn and the New Zealand connection

The Pitcairn Governor resides in Wellington. There is an Auckland-based Pitcairn Island Office, housed in the United Kingdom Consulate, with a small staff that attends to Pitcairn administration, supplies and logistics. The Deputy Governor of Pitcairn resides in Auckland and works out of the Consulate in Auckland. A quarterly shipping service under contract with the Governor serves the Island, leaving from Tauranga in New Zealand. Passengers wishing to go to Pitcairn, from anywhere in the world, may travel to Mangareva in the Gambier Islands where, by arrangement, the supply ship can transport them to and from Pitcairn. The voyage is 30 hours from Mangareva. On each of its quarterly voyages to Pitcairn the supply ship undertakes two return trips between Mangareva and Pitcairn to ferry passengers.

As a United Kingdom territory, Pitcairn has no formal association with New Zealand. That its administration is conducted from New Zealand arises from geographical convenience and the fact that for much of Pitcairn’s existence the Island has had contact with New Zealand (and to a lesser extent Australia) by virtue of shipping links. Pitcairn was and remains within easy reach of ships travelling from New Zealand to the Panama canal. As such, Pitcairn enjoyed frequent and regular shipping contacts throughout the 20th century and was, for that reason, rather less isolated than one might imagine. Ironically, the demise of passenger liners in the age of air travel,

and the rise of large container vessels that do not detour to Pitcairn meant that such ship visits have all but ceased. There is now, however, a cruise ship season during which 8 to 10 ships from French Polynesia and Easter Island visit, typically staying for a few hours enabling passengers to spend time on the Island. It is also visited by tourists (travelling on the supply ship), yachts, and scientific expeditions.

The office of Attorney-General

The Attorney-General is appointed pursuant to the Constitution either for a term of years or until any prescribed retirement age. The Attorney-General has authority under the Constitution to initiate criminal proceedings, and to take over such proceedings initiated by any other person.

A Pitcairn ordinance establishes the office of Pitcairn Public Prosecutor. In practice decisions on criminal matters are delegated by the Attorney-General to the PPP.

The Attorney-General provides legal advice to the Governor and to the Pitcairn Islands Government (a term used more broadly to denote the office of the Governor in partnership with the Island Council).

Law drafting

The Attorney-General drafts Pitcairn ordinances on instructions from the Governor's office. The Attorney-General is also responsible for annual revisions of Pitcairn law. Pitcairn law is available on paclii and also on the official website <http://www.government.pn/Laws/index.html>

Legal assistance on Pitcairn

There are no lawyers on Pitcairn. A Public Defender was appointed in 2004 and continues in office. The Defender is an Auckland barrister who is available to persons charged with criminal offences on Pitcairn and who is paid at the rates available to legally aided criminal defendants under the relevant Pitcairn ordinance.

A number of New Zealand lawyers were admitted to the Pitcairn bar for the purposes of providing representation and advice to the accused in the criminal trials held between 2005 and 2007.

Under an initiative of the Commonwealth Foundation, a team of human rights advisers has visited Pitcairn twice and members of that team have also offered comments and advice to the Island Council on the Constitution and on proposed ordinances, which the Council is then able to feed into the consultation process.

Developments during 2012

The new Constitution "beds in"

The new Constitution celebrated its 2nd birthday in March 2012 (it came into force on 4 March 2010).

The Constitution contains a set of human rights and other provisions relating to Pitcairn institutions. The Island and Governor are now operating under the new Constitution. For example, in 2011 the Local Government Ordinance was amended so as to remove the ability of the Governor to appoint one member to the Island Council. This was in recognition of the fact that the Constitution required the Council to be an elected body.

New Ordinances

In 2012 the following new Ordinances have been made by the Governor after consultation:

Ombudsman Ordinance

This creates the office of Ombudsman, an office foreshadowed by s 59 of the Constitution. No appointment to the office has yet been made; consultation with the Island Council as to the appointment is continuing.

Freedom of Information Ordinance

This ordinance creates legal rights to obtain information from the Governor and Government of Pitcairn.

Marriage (Dissolution of Marriage) Amendment Ordinance

This introduced into Pitcairn law an explicit power to grant a dissolution of a marriage. Previously there had been no such explicit power, and the power to dissolve a marriage rested on United Kingdom law (and the argument that such law was “generally applicable”).

International law

As a United Kingdom Overseas Territory the international relations and obligations of Pitcairn are a matter for the United Kingdom. When the United Kingdom enters into treaties and agreements, provisions may be made for implementation of these in relation to Pitcairn when necessary. Consequent amendment of Pitcairn law may be needed.

In 2012 a number of United Kingdom statutory instruments were made having effect in various United Kingdom Overseas Territories, in order to implement obligations of the United Kingdom under United Nations or European Union sanctions. These are:

The Sudan and South Sudan (Restrictive Measures) (Overseas Territories) Order 2012 No. 361

The Iran (Restrictive Measures) (Overseas Territories) Order 2012 No. 1756

The Al-Qaida (United Nations Measures) (Overseas Territories) Order 2012 No. 1757

The Afghanistan (United Nations Measures) (Overseas Territories) Order 2012 No. 1758

The Syria (Restrictive Measures) (Overseas Territories) Order 2012 No. 1755

A current criminal prosecution

In 2011 criminal charges were laid against a Pitcairn resident for offences contrary to United Kingdom law and Pitcairn law. In 2012 a “constitutional challenge” to this prosecution was brought by the accused. It was heard by the Pitcairn Supreme Court (Justice Lovell-Smith) over a 3 week period in May/June 2012. On 11 October 2012 the challenges were dismissed in an 80 page judgment available at <http://www.government.pn/Laws/index.html>

The grounds advanced by way of challenge fell into three categories: challenges to the validity of the Pitcairn legal system and constitution (2) challenges to the particular proceedings being brought (e.g. as to whether the charges could be brought in a court located in New Zealand) and (3) procedural challenges arising from the facts of the case (as to search and seizure and related matters). An appeal is expected.

New judge appointed

In September 2012 Justice Judith Potter was appointed a judge of the Pitcairn Court of Appeal. The other three judges of the Court of Appeal are Sir Bruce Robertson, who is President; Sir David Baragwanath; and Justice McGechan. All are retired New Zealand judges.

The future for Pitcairn

The Pitcairn population is aging and has been declining for many years. Pitcairn’s future is bound up with attempts to attract resettlement of the Pitcairn diaspora as well as new migrants. This has involved development of infrastructure (such as the landing at Bounty Bay) and potential employment opportunities.

Pitcairners are mainly self-employed (fishing, bee-keeping, horticulture, arts and crafts, tourism) or hold (part-time) government positions. Pitcairn costs are met by UK budgetary aid, amounting in 2010-2011 to UKP 2,447,000.

The United Kingdom’s White Paper *The Overseas Territories: Security, Success and Sustainability* (June 2012) reaffirmed the United Kingdom’s commitment to all its territories including Pitcairn. Current development initiatives for the Island are an alternate harbour landing on the other side of the Island (to make landings easier and safer for tourists and Islanders in all weathers) and a solar/wind hybrid energy project.

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