



**MFAT SUPPORT TO
PACIFIC JUSTICE
SECTOR 2010 – 2020
EVALUATION REPORT**

Prepared for New Zealand MFAT

15 April 2021



Clear Horizon

Table of Contents

1	Abstract.....	1
2	Executive Summary.....	2
3	Background	5
4	Evaluation purpose and design	6
	4.1 Evaluation Purpose	6
	4.2 Evaluation Scope	6
	4.3 Evaluation Design.....	6
	4.4 Theory of Change (historical)	7
	4.5 Summary of evaluation data sources	8
	4.6 Limitations.....	9
5	Overarching findings	10
	5.1 KEQ 1: What is the current policy context for justice sector support in the Pacific region? ...	10
	5.2 KEQ 2: What has been achieved through New Zealand support for the Pacific justice sector 2010-2020?	17
	5.3 KEQ 3: What are the key learnings and insights to inform New Zealand’s future justice sector support to the Pacific and what are the implications going forward?	22
6	Evaluation conclusions	29
7	Recommendations.....	30
8	Annexes.....	31
9	Annex A: Activities in scope	32
10	Annex B: Documents reviewed.....	36
11	Annex C: People consulted	38
12	Annex D: Development partner context.....	40
13	Annex E: Deep dive case studies.....	41
	13.1 Deep dive - Cook Islands	41
	13.2 Deep dive - Samoa	44
	13.3 Deep dive - Vanuatu	47

List of Figures

Figure 1: Scope of MFAT Activities 2010-2020	5
Figure 2: Simplified diagram of the historical theory of change.....	8
Figure 3: Possible forward-looking theory of change.....	27

List of Tables

Table 1: Countries represented in the evaluation	9
Table 2: FADTC Approach, evaluation findings of alignment and evidence	12

Acknowledgements and Disclaimer

The members of the evaluation team, Sophie Pinwill, Lyn Keogh and Emily Samuela would like to thank all of the people who were consulted as part of this evaluation. Their time, insights and observations were invaluable. This document has been produced with information supplied to Clear Horizon by MFAT, New Zealand government and implementing agencies and Pacific Island partners, including reports, data and stakeholder contact details. While we make every effort to ensure the accuracy of the information contained in this report, any judgements as to suitability of the information for the client's purposes are the client's responsibility. Clear Horizon extends no warranties and assumes no responsibility as to the suitability of this information or for the consequences of its use.

Acronyms and abbreviations

ADB	Asia Development Bank	MFAT	Ministry of Foreign Affairs and Trade (New Zealand)
ADD	Activity Design Document	MOJ	Ministry of Justice
ACA	Activity Completion Assessment	NZ	New Zealand
AFP	Australian Federal Police	ODA	Overseas Development Assistance
AGD	Attorney General's Department	PCO	Parliamentary Counsel Office (New Zealand)
AMA	Activity Monitoring Assessment	PIC	Pacific Island Country
CJ	Chief Justice	PILON	Pacific Islands Law Officers' Network
CLO	Crown Law Office	PJSI	Pacific Judicial Strengthening Initiative
DFAT	Department of Foreign Affairs and Trade (Australia)	PNG	Papua New Guinea
EOPOs	End of Programme Outcomes	TOC	Theory of Change
EU	European Union	TOT	Train the Trainer
FSM	Federated States of Micronesia	UNDP	United Nations Development Program
JP	Justice of the Peace	UNICEF	United Nations Children's Fund
JPPF	Judicial Pacific Participation Fund	USP	University of the South Pacific
M&E	Monitoring and Evaluation	MOJ	Ministry of Justice

1 Abstract

In February 2020 New Zealand's Ministry of Foreign Affairs and Trade (MFAT) contracted Clear Horizon Consulting to undertake a strategic evaluation of MFAT support to the Pacific justice sector from 2010 to 2020. The primary purpose was to provide an evidence base and insights to inform the future direction and shape of MFAT's overall investment in the Pacific justice sector.

The evaluation found that MFAT support to the Pacific justice sector largely aligned with both New Zealand and Pacific Island policy objectives and many challenges, has been mutually beneficial and there is some evidence of achievement of outcomes. However, the absence of an overarching strategy and results framework has meant it is not possible to fully assess MFAT's strategic contribution to the justice sector in the Pacific over the evaluation period.

The evaluation also found that MFAT support has primarily focused on the formal justice system which is out of reach of the vast majority of Pacific Islanders, especially those from marginalised groups. The opportunity for MFAT to build on its strong relationships with the courts to reach out to the non-formal justice sector could result in a greater impact on access to fair and high quality justice.

2 Executive Summary

New Zealand's support to the justice sector in the Pacific has been directed at helping Pacific Island countries strengthen effective governance through enhancing transparent, accountable and capable structures for justice. Investment in judicial strengthening has been a key component of New Zealand's support for the rule of law and justice in the Pacific.

In February 2020 New Zealand's Ministry of Foreign Affairs and Trade (MFAT) contracted Clear Horizon Consulting to undertake a strategic evaluation of MFAT support to the Pacific justice sector from 2010 to 2020. The primary purpose was to provide an evidence base and insights to inform the future direction and shape of MFAT's overall investment in the Pacific justice sector.

This evaluation will be used by MFAT and its partners to:

- provide an evidence base for justice sector support delivered over the past 10 years
- assess the overall worth of the portfolio for the Pacific Island countries it seeks to support
- identify improvements for New Zealand's justice sector support in the region
- Inform programming decisions for the next phase of justice support to build effective governance and access to justice (funding triennium, commencing July 2021).

The evaluation spoke to 82 stakeholders in 13 Pacific Island countries, New Zealand and Australia.

For much of 2020, the world has experienced the effects of the global COVID-19 pandemic. This has caused major disruptions to planned activities and engagements, including this evaluation. Priorities have necessarily shifted both in the Pacific Island Countries and New Zealand. The future of development assistance needs to take account of current and post-COVID realities.

Key findings

The evaluation found that MFAT support to the justice sector in the Pacific largely aligns with New Zealand and Pacific Island policy objectives for justice sector development. In terms of the formal justice system, MFAT support to courts has been aimed at addressing issues of judicial education and independence, court systems and inadequate legislation, but there are many other, and some new challenges facing access to justice, especially for vulnerable groups. With the vast majority of disputes being handled outside the formal justice system, most evaluation respondents considered that there was a role for New Zealand to expand support to non-state justice delivery to assist in improving access to, and quality of justice. New Zealand has been able to build important and unique relationships with senior judicial officers in the Pacific and could potentially utilize these relationships while continuing to be agile and responsive.

In terms of progress towards the end of programme outcomes (EOPOs) in the theory of change (TOC) for the period, there is some strong evidence of achievement in some areas, and some indications of achievement in other areas, but outcome measurement systems have been inadequate to capture robust evidence. Several of the modalities used have worked well including capacity supplementation, capacity building and legislative drafting. A small number of modalities had mixed results, such as Train the Trainer and face to face training delivery. Overall, however, some stakeholders noted that while most of the activities performed well, the focus of support to the formal courts system has meant that the reach and scope of the investment was narrow, and was unlikely to make a difference for the majority of Pacific Islanders who are not able to access the courts. Furthermore, the evaluation team found that

there was an opportunity to identify and address some management challenges which have made it difficult to tell the story of New Zealand's long-term investment in the Pacific Justice sector. These include developing a strategic vision for support to the sector, improving monitoring and evaluation, coordination and information management.

The evaluation found that New Zealand support to the justice sector is highly regarded by Pacific and development partners. The good relationships established over the past ten years through regional and bilateral programmes provide opportunities to continue to engage with all Pacific Island Countries (PICs) on justice related issues.

The key learnings and insights to inform New Zealand's future justice sector support include:

- New Zealand is in a unique position to provide culturally and technically relevant support to the justice sector in PICs, including support to remote modalities as has occurred during the pandemic
- Stakeholders in the formal justice sector in Pacific courts have good relationships and much respect for New Zealand agencies and support. This respect and the benefits of the relationships are mutual
- A New Zealand regional justice programme could help PICs to share good practices and successful approaches
- If New Zealand wants to assess value for money of the overall portfolio and see more results from investment in the justice sector, the approach would need to be underpinned by a focused sector strategy and robust monitoring and evaluation (M&E)
- If New Zealand wants to see more results in terms of access to justice for marginalized groups, the approach needs to expand to the non-formal sector

Access to Justice

A person's ability to seek and obtain fair and effective responses for the resolution of conflicts, control of abuse of power, and protection of rights, through transparent processes, and affordable and accountable mechanisms (UNDP Access to justice assessments in the Asia Pacific 2012)

The last 10 years of New Zealand's support to the Pacific Justice sector was the primary focus for this evaluation. As such, examination of access to justice across (and within) formal and informal systems was limited, as this was not a primary theme of New Zealand's engagement. Scope limitations thus meant it was not possible for the evaluation to assess in depth the complexities of access to justice in each Pacific Island Country vis-à-vis New Zealand support. Nevertheless, inclusive access to justice within both formal and informal systems emerged clearly in the evaluation as increasingly important for Pacific stakeholders and for New Zealand's development cooperation.

Recommendations

1. MFAT should develop a justice sector strategy and M&E framework to support evidence-based learning, management and reporting

2. The strategy should explore opportunities to expand the scope of support to the non-formal justice sector in the Pacific, in particular focusing on innovation and activities that are demonstrating results

3. The strategy should build on the good relationships that have been established with the formal justice system in the Pacific to reach out to the non-formal justice sector

4. The strategy should continue to support activities that improve court performance and access to the courts, but this needs to be balanced with more holistic support

5. The strategy should prioritise funding in both formal and non-formal justice sector support, depending on the strengths, opportunities and needs of different PICs



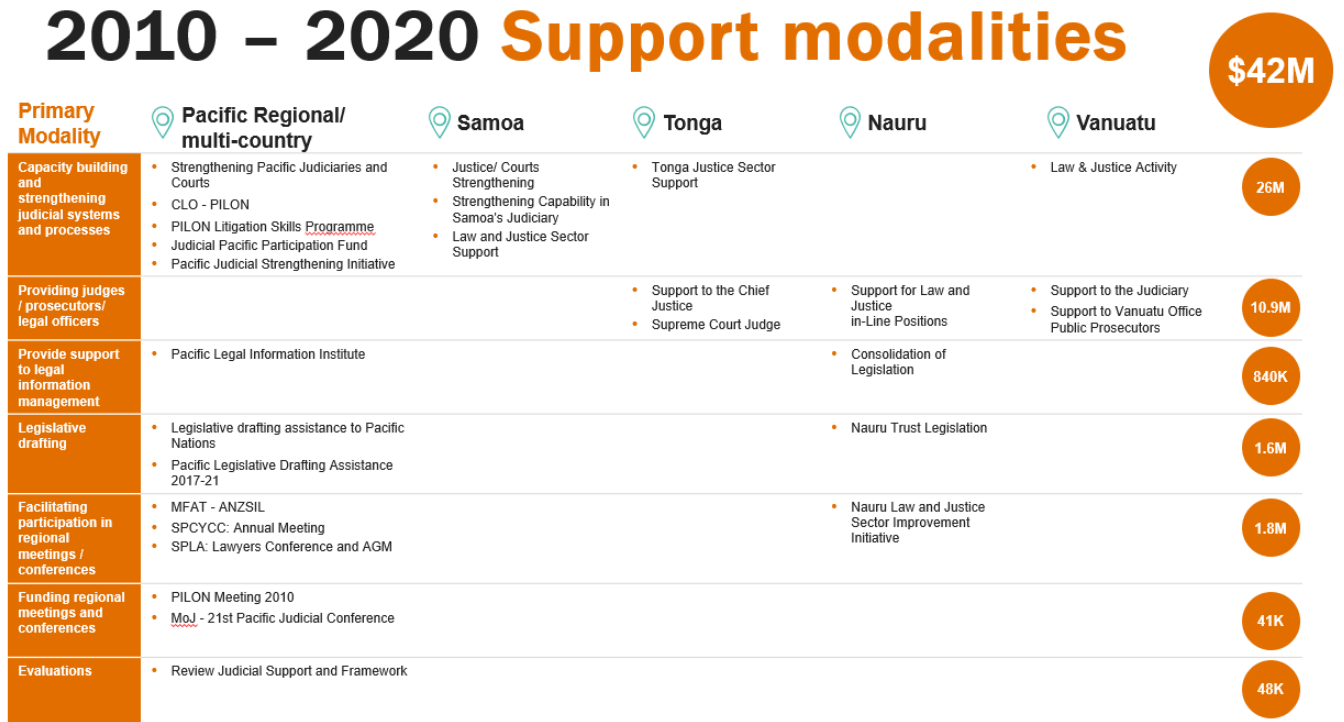
3 Background

New Zealand’s support to the justice sector in the Pacific has been directed at helping Pacific Island countries strengthen effective governance through enhancing transparent, accountable and capable structures for justice. Investment in judicial strengthening has been a key component of New Zealand’s support for the rule of law and justice in the Pacific.

The portfolio over the last 10 years has been made up of several funded activities varying in size and scope, and a mix of bilateral and regional activities. Some activities have focused on specific countries and specified needs, such as funding judges in Vanuatu and Tonga, or legislative drafting in Cook Islands. Other activities focus on a more diverse range of justice sector support and operate across the whole of the Pacific. The largest and longest running activity, the Pacific Judicial Strengthening initiative (PJSI), includes 14 focus areas across 15 Pacific Island countries. Although funded through the Ministry of Foreign Affairs and Trade (MFAT), the support is delivered through the Federal Court of Australia.

A table of bilateral and regional MFAT support over the period is at figure 1 below¹.

Figure 1: Scope of MFAT Activities 2010-2020



In February 2020 MFAT contracted Clear Horizon Consulting to undertake a strategic evaluation of MFAT support to the Pacific justice sector from 2010 to 2020. The primary purpose was to provide an evidence base and insights to inform the future direction and shape of MFAT’s overall investment in the Pacific justice sector. For much of 2020, the world has experienced the effects the global COVID-19 pandemic. This has caused major disruptions to planned activities and engagements, including this evaluation. Priorities have necessarily shifted both in the Pacific Islands Countries and New Zealand. The future of development assistance needs to take account of current and post-COVID realities.

¹ Information supplied by MFAT Governance team

4 Evaluation purpose and design

4.1 Evaluation Purpose

The primary purpose of this evaluation was to provide evidence-based insights to inform the future direction and shape of MFAT's overall investment in the Pacific justice sector. The evaluation explored what has been achieved across the full suite of New Zealand's justice sector portfolio and the overall coherence and strategic direction of that contribution.

Specifically, this evaluation aimed to assess New Zealand's support to date and consider learnings for the next funding triennium. As funding for New Zealand's flagship justice sector activity, PJSI, is coming to an end in June 2021, it was considered timely to examine the Ministry's justice sector support and identify how New Zealand can most effectively support the justice sector and effective governance across the region.

Evaluation findings will inform the overall design of the future programme, considering both the mix and modality of activities.

This evaluation will be used by MFAT and its partners to:

- provide an evidence base for justice sector support delivered over the past 10 years
- assess the overall worth of the portfolio for the Pacific Island countries it seeks to support
- identify improvements for New Zealand's justice sector support in the region
- Inform programming decisions for the next phase of justice support to build effective governance and access to justice (funding triennium, commencing July 2021).

4.2 Evaluation Scope

The scope of this evaluation included activities funded by New Zealand to support the justice sector in the Pacific from 2010 to 2020. A list of relevant activities is included at Annex A (including a summary of their effectiveness). Rather than activity-by-activity assessments, the evaluation focused on strategies, approaches and partnerships that worked well and less well across multiple activities, in order to inform future direction setting.

It is important to note that Police and Corrections Activities were not directly in scope. Activities were not in scope to be evaluated, but Police and Corrections were key stakeholders for consultation on connections between police/corrections engagement and justice support, as well as views on broader access to justice.

4.3 Evaluation Design

This evaluation took a theory-based, culturally responsive approach to ensure that it met the needs of MFAT in terms of understanding effectiveness, relevance and learning. Three key aspects of the design of the evaluation involved surfacing both historical and forward-looking theories of change, which were developed based on a literature review and an online participatory workshop with MFAT. This was then followed by consultations and interviews with key stakeholders in New Zealand and the Pacific. The emerging findings were validated at a participatory online workshop with key Pacific Island stakeholders.

The evaluation focused around the following key evaluation questions:

1. What is the current policy context for justice sector support in the Pacific region? (Relevance)

2. What has been achieved through New Zealand's support for the Pacific Justice Sector 2010-20? (Effectiveness)
3. What are key learnings and insights to inform New Zealand's future justice sector support to the Pacific and what are the implications going forward?

All data was collected against these questions, and then analysed and synthesised using a results chart.

4.4 Theory of Change (historical)

The evaluation team worked with the Governance team to surface historical and forward-looking theories of change. The historical theory of change is based on elements the programme supported during the period 2010-20 and guided what outcomes the evaluation sought to gather evidence of. The following is a narrative of the historical theory of change.

The **broader goals** of MFAT support to the justice sector in the Pacific from 2010 to 2020 have been to contribute to a well performing justice sector, which in turn contributes to confident investors and enhanced prosperity and rights. MFAT support is not expected to be the only contribution to these broader goals as other governments and donors contributed support to the sector over this period.

There are **three long-term (or end of programme) outcomes** anticipated from MFAT's support to the justice sector:

- Capable justice sector personnel deliver fair and timely justice
- Capable Pacific justice leaders lead reform
- Justice facilities are appropriate for the needs

To achieve the first of these outcomes, New Zealand has supported training for justice personnel – both in-country and offshore. This is expected to result in more knowledgeable and skilled justice personnel who then are capable and willing to deliver fair and timely justice. In some instances, New Zealand has needed to provide judges and prosecutors due to shortages of relevant expertise in country. This is designed to ensure that cases are heard in a timely manner and decided fairly and independently. A third pathway to capable justice sector personnel delivering fair and timely justice involves support to legislative drafting, which aims to result in appropriate legislation being enacted.

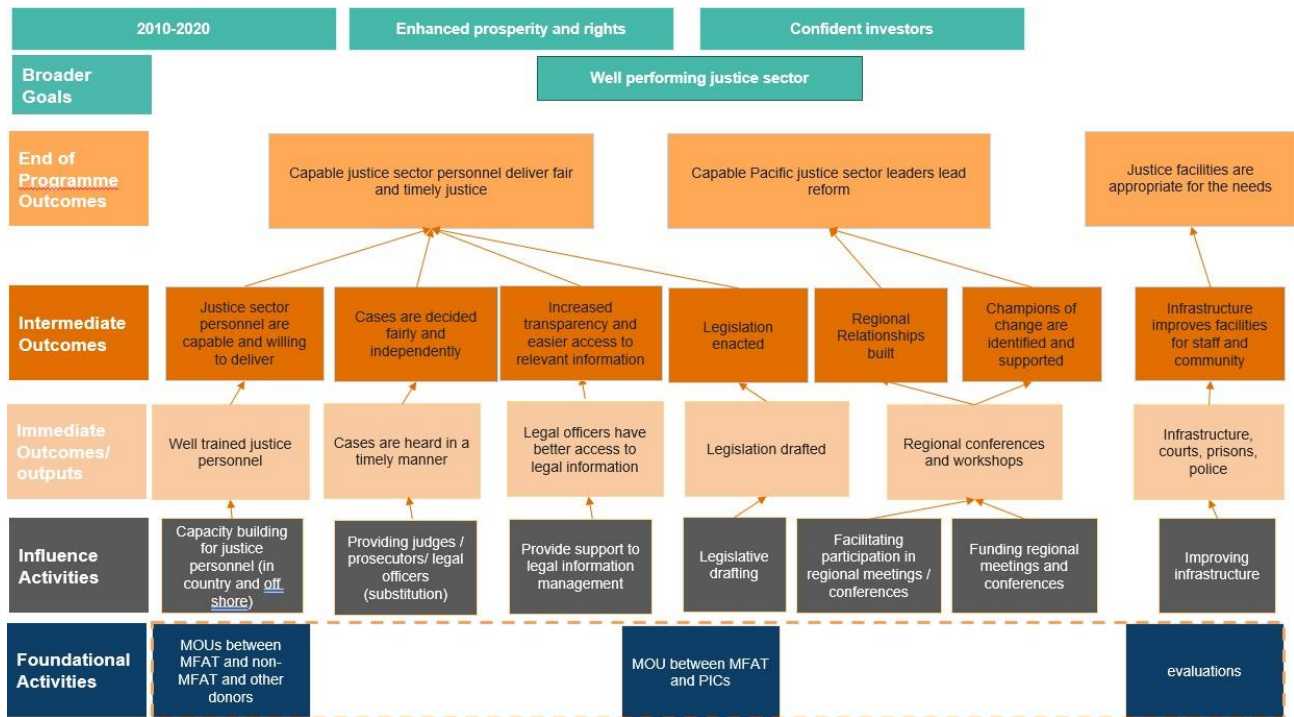
To achieve the second end of programme outcome – Capable Pacific justice leaders lead reform – New Zealand facilitated Chief Justices and court personnel's participation in regional meetings and conferences, as well as funding selected regional forums. Intermediate outcomes expected from this support include close regional relationships and the identification and support of "champions of change". It is intended that these individuals will play influencing roles in their own countries' key justice sector reforms.

To achieve the third end of programme outcome – Justice facilities are appropriate for the needs – New Zealand has funded infrastructure improvements, so that facilities for staff and court users are more appropriate to their needs. Case management infrastructure and systems have also been supported.

The critical assumptions underpinning this theory of change include:

- That focusing on courts, police and correctional services is a key necessary step to improve justice sector wide performance
- That training and capacity building for justice personnel positively impacts on their willingness as well as their capacity to deliver fair justice and provide leadership
- That support of regional events will complement national activities to support reform and that key champions who access these events can mobilise a reform coalition in their own country

Figure 2: Diagram of the historical theory of change.



4.5 Summary of evaluation data sources

The evaluation data collection activities included:

- **Literature review:** 64 documents (see annex B)
- **Phase 1 consultations:** 32 stakeholders based in New Zealand MFAT and other NZ agencies and implementing partners (annex C)
- **Phase 2 consultations:** 50 stakeholders from various government and non-government agencies, academia and training institutions, including people from 13 Pacific Island countries (annex C)
- **Phase 2** also involved a more in-depth exploration of a sample of three Pacific Island countries, selected for maximum diversity of levels and types of MFAT support over the last 10 years. These deep dive case studies are at annex E.
- **Sense making workshop:** 12 Pacific Island stakeholders representing Cook Islands², Fiji, Kiribati, Niue, Palau, PNG, Samoa, Tonga and Vanuatu. Stakeholders came from the judiciary, Justices of the Peace, traditional leaders, court registrars and clerks, MOJ, legal aid, civil society.

The decision to include “deep dive” countries was both a pragmatic and strategic one. The evaluation team wanted to look at a range of levels and types of support provided, and a range of contexts, so the decision about which countries to focus on was made at the end of Phase 1 after careful selection criteria were considered, including pragmatic considerations. Representatives from other countries were invited to consult with the evaluation team as convenient, hence the reach to 13 PICs overall.

² Cook Islands stakeholders joined a follow up workshop due to time differences.

- Cook Islands was chosen as a Realm country which has had extensive legislative drafting support, as well as involvement in the regional court strengthening programmes. There have not been any bilateral justice activities over the last 10 years that were in scope for this evaluation.
- Samoa was chosen mainly because of its positive experiences with support from New Zealand to establish special courts, and the potential for lessons to be shared with other PICs considering expanding their court structures in this way.
- Vanuatu was chosen as a country with a great deal of justice sector support from both New Zealand and Australia and the team were interested in seeing how the sector was changing with this intensive support.

Where relevant, information from the case studies has been incorporated in the findings and recommendations.

Overwhelmingly the response to the evaluation from all stakeholders has been very positive, demonstrating a high level of appreciation for the support provided by MFAT over the 10 year period.

Table 1: Countries represented in the evaluation

COUNTRIES REPRESENTED IN THE EVALUATION			
1. Cook Islands	4. Niue	8. Papua New Guinea (PNG)	11. Tokelau
2. Marshall Islands	5. Fiji	9. Samoa	12. Tonga
3. Federated States of Micronesia (FSM)	6. Palau	10. Solomon Islands	13. Vanuatu
	7. Kiribati		

4.6 Limitations

The COVID-19 pandemic emerged during the very early stages of the evaluation and meant that the whole evaluation needed to be conducted remotely, including the initial theory of change workshop, consultations and interviews, and the final sense making workshop. Despite the benefits of videoconferencing, the inability to engage in person impacted the depth of the engagement in some cases. Some stakeholders were not able to participate due to lack of connectivity. The team were not able to interview many representatives of multilateral and regional agencies. The evaluation team would also have liked to engage with community members but were not able to due to travel restrictions. The pandemic also affected the timing of the evaluation, which was delayed due to competing priorities. The evaluation was separated into two phases to ensure that the necessary revisions to the plan and approach were properly considered and approved given the new circumstances.

Other limitations involved the lack of documentation available for 13 of the 27 regional and bilateral justice sector activities during the ten-year period. This represented approximately ten per cent (NZ 4.6 million), of the overall portfolio spend during the period (NZD 42 million) but comprised 100 per cent of the regional meetings and conferences³. For activities with documentation, many of the Activity Monitoring Assessments noted that there were weaknesses with their results frameworks so robust performance information was lacking. The lack of performance information on the various activities meant that it was not possible to undertake a rigorous value for money assessment. This is discussed in more detail in section 5.2.

³ However, these involved relatively low budgets totalling NZD 111,829.

5 Overarching findings

This section describes the key findings against the three Key Evaluation Questions and sub-questions.

5.1 KEQ 1: What is the current policy context for justice sector support in the Pacific region?

1.1 What are the key justice challenges in Pacific partner countries (past and current)?

1.2 What are other key agencies doing to support justice in the Pacific (including development partners⁴ and wider New Zealand government)?

1.3 How well is MFAT's current portfolio of work responding to Pacific Island countries' and New Zealand's policy priorities?

1.4 What can we learn from other countries' justice sector support activities and approaches?

Summary of findings for KEQ 1.

MFAT support to the justice sector in the Pacific largely aligns with New Zealand and Pacific Island policy objectives for justice sector development. In terms of the formal justice system, MFAT support to courts has been aimed at addressing issues of judicial education and independence, court systems and outdated legislation, but there are many other, and some new challenges facing access to justice, especially for vulnerable groups. With the vast majority of disputes being handled outside of the formal justice system, most evaluation respondents considered that there was a role for New Zealand to expand support to non-state justice bodies to assist in improving access to, and quality of justice. New Zealand justice programmes and support to courts have been able to build important and unique relationships with senior judicial officers in the Pacific and could potentially utilize these relationships while continuing to be agile and responsive.

To answer these question, the evaluation considered the alignment of MFAT justice sector support with 1) New Zealand's high-level policy statements and 2) challenges facing access to justice in the Pacific. Section 5.2 also discusses MFAT management and strategic policy issues.

Policy alignment

Apart from a high level goal of improved governance there seems to have been an absence of a clear New Zealand policy framework for support to the Pacific justice sector, and lack of clarity about what criteria have been used to determine what kinds of activities to support. There are however, several relevant guiding policy documents including New Zealand's International Cooperation for Effective Sustainable Development (ICESD). This policy statement notes that New Zealand will pursue impact through development outcomes that are:

- Effective - that are values driven, partnership focused, dynamic and evidence based;
- Inclusive - that address exclusion and inequality created across all dimensions of social identity; while promoting human rights and equitable participation in the benefits of development.
- Resilient - that promote resilience including to the impacts of climate change, natural disasters and external shocks; and

⁴ Funded through sources other than an MOU with MFAT.

- Sustained - that respond to context and are locally owned⁵.

The high-level **policy context** for MFAT includes four areas of value to New Zealanders of MFAT's work⁶:

1. Kaitiakitanga⁷
2. Security
3. Prosperity
4. Influence

MFAT support to the justice sector in the Pacific over the last 10 years has contributed directly to all these areas. The *Strategic Intentions for 2019-2023* also commits to “Scale(ing) up our governance support in Pacific countries by 2021 targeting transparency and accountability, public sector institutional strengthening, justice, and inclusive governance. ...”, and “Promote(ing) global rules and legal frameworks on issues such as human rights and support (to) the international justice system.”

Principles that guide New Zealand's engagement in the Pacific include⁸

- Understanding
- Friendship
- Mutual Benefit
- Sustainability
- Collective ambition

Interviews and document review showed evidence of MFAT's justice sector engagement aligning with the first three of these principles. Evidence of sustainability was less clear and collective ambition would be clearer if the ambitions of various stakeholders were outlined in a strategy document. Sustainability is mentioned in numerous documents and assessments but is noted to be an ongoing challenge. The key barriers to sustainability in relation to justice sector reform involves the small size of some countries and national budgets which necessitates an ongoing reliance on external professional justice expertise.

The submission by the Ministry of Foreign Affairs and Trade to the Foreign Affairs, Defence and Trade Committee inquiry into New Zealand's aid to the Pacific (August 2019) proposes several approaches. Table 2 outlines the proposed approaches, evaluation findings about the extent of alignment with the approaches, and the evidence upon which this finding is based.

⁵ <https://www.mfat.govt.nz/assets/Aid-Prog-docs/Policy/Policy-Statement-New-Zealands-International-Cooperation-for-Effective-Sustainable-Development-ICESD.pdf>

⁶ “*Strategic Intentions*” 2019-2023

⁷ **Kaitiaki** is a New Zealand Māori term used for the concept of guardianship, for the sky, the sea, and the land.

⁸ <https://www.mfat.govt.nz/assets/Aid-Prog-docs/Policy/Policy-Statement-New-Zealands-International-Cooperation-for-Effective-Sustainable-Development-ICESD.pdf>

Table 2: FADTC Approach, evaluation findings of alignment and evidence

APPROACH		
Country-led rather than sector led lens to be more integrated and coherent	Evaluation findings indicate alignment in relation to bilateral programmes.	NZ bilateral programmes have led country-specific justice sector support over the last ten years in Samoa, Tonga, Nauru and Vanuatu.
Refreshing our approach to human rights and inclusive development	Evaluation findings indicate alignment in relation to partnership programmes (although out of scope for this evaluation).	NZ supports a range of NGOs through its partnership programmes, for example Wan Smolbag in Vanuatu.
Working more closely with other NZ Government and Pacific regional institutions	Evaluation findings indicate good alignment and positive relationships.	NZ and Pacific Island Police and Correctional Services reported good relationships. The regional programme also supported the Centre for Judicial Excellence in PNG and the University of the South Pacific.
Adopting a new and more effective approach to working with non-government organisations	Evaluation findings indicate alignment in relation to partnership programmes (although out of scope for this evaluation).	NZ supports a range of NGOs through its partnership programmes, for example Wan Smolbag in Vanuatu.
Cooperating more closely with other donors in the Pacific	Evaluation findings indicate alignment in relation to bilateral programmes.	DFAT confirmed good cooperation with New Zealand, especially in Vanuatu.
No one size fits all re: modality	Evaluation findings indicate general alignment with a range of modalities supported.	NZ modalities include direct budget support, support to line roles, legislative drafting, technical assistance, capacity building, mentoring and train the trainer – and more recently increased use of online modalities.
ODA must be evidence based, flexible adaptable and responsive to local needs	Evaluation findings indicate alignment with responsiveness to local needs but less alignment with evidence-based decisions due to the absence of strong outcome evidence and challenges with information management.	Feedback from PIC stakeholders confirmed that NZ was considered “agile” and responsive, but some would have liked support with physical infrastructure and material support for court functioning. 13 of 27 activities supported over the last 10 years had no documentation available for the evaluation team.

There is no regional justice sector policy in the Pacific, but priorities for the Pacific Islands Law Officers’ Network (PILON) 2017 Strategic Plan include:

1. Sexual and gender based violence – this has been a focus of NZ support to Pacific police
2. Environmental crime and corruption – Anti-corruption and increased independence and transparency are underpinning principles of all NZ support to the justice sector
3. Cybercrime - this has been a focus of NZ support to Pacific police

Challenges facing access to justice in the Pacific

Access to justice can be defined as: A person's ability to seek and obtain fair and effective responses for the resolution of conflicts, control of abuse of power, and protection of rights, through transparent processes, and affordable and accountable mechanisms (UNDP Access to justice assessments in the Asia Pacific 2012)

Resource allocation

The challenges facing access to justice in the Pacific vary from country to country, but many evaluation stakeholders reported that lack of funding and resources was a major challenge for the state institutions of the justice sector and for access to justice. Lack of funding means that systems and infrastructure that support access to justice are not consistently available. Lack of resources also affects potential court users and prevents economically disadvantaged people from accessing the formal justice sector.

NZ alignment: New Zealand support to salaries of Pacific Island judicial officers, legislative drafting, capacity building and scholarships has been well received.

Equal access to courts for people living with disabilities, women, youth and children

The United Nations Population Fund reports that those particularly vulnerable to abuses of their rights and most marginalised from the formal justice system are youth (34% of PIC populations), the elderly (7% of PIC populations), those with disabilities (17% of PIC populations), those living in rural areas (55% of PIC population), foreign workers, refugees, women including those who fear reprisal from their husbands, and people who are trafficked.

Access to justice is an internationally recognised right accorded to vulnerable groups such as those with disabilities⁹, children¹⁰ and women¹¹.

NZ alignment: Some programming includes access to justice and gender and human rights issues (PJSI) and study tours have been supported by JPPF to family violence courts in New Zealand. The evaluation found however, that the focus of regional support to the formal court system over the 10 year period has been broader than access for vulnerable groups. In Samoa, however, New Zealand support has helped establish specialist courts that aim to increase access to courts for women and youth¹².

Access to courts for people living in rural or remote locations

The remote geographic context and economic challenges mean that vulnerable groups face additional difficulties in accessing the formal justice system, which is usually located in urban areas. In

⁹ Convention on the Rights of Person with Disabilities, Art. 13.1.

¹⁰ Convention on the Rights of the Child, Art. 19.

¹¹ Convention on the Elimination of all Forms of Discrimination against Women, Art. 3.

¹² See further at annex E.

Pacific Island countries, the principal courts – High Court or Supreme Court – are located in the capital and have a registry where documents are filed and a court house to hear cases.¹³ In some Pacific Island countries there are no permanent resident judges such as Niue, Tokelau, Tuvalu, Nauru and Cook Islands. In 2020, COVID-19 made travel for visiting judges impossible. Difficulties with access to the courts caused by remoteness was the second most cited challenge raised by key evaluation informants, after lack of funding and resources. For example, more than 80% of people in Vanuatu are outside of Port Vila¹⁴. Solomon Islands, Palau, Samoa and Cook Islands¹⁵ report the same issue.

Exacerbating this issue of access is **language**, with court hearings being in English, a language rarely spoken outside the Courts. Even if people can get to court, low capacity and legal competence among some lawyers and magistrates leads to an overreliance on competent English speakers, overwork, and delays. **Court filing fees** in some countries are also a deterrent to those wanting to access the formal justice sector, in particular victims of family violence, if they are even aware of this as an option.

NZ alignment: New Zealand provides judges and other justice expertise to several PICs where there is insufficient capacity. Until recently however, the delivery of remote court hearings and capacity building was a rare modality. PJSI has been able to use online modalities to enable courts to reopen/remain open with capacity to conduct remote proceedings and successfully deliver training during 2020. There is an opportunity to explore this further both within PICs, between PICs and between PICs and New Zealand and the evaluation's PIC Sense Making workshop confirmed this as a high priority.

Access to legal aid and legal services

With most legal services confined to urban areas, access to justice remains an issue for those in remote, rural or maritime communities. The Pacific Judicial Strengthening Initiative's Fourth Six Monthly Progress Report (July to Dec 2019) reported "Preliminary findings indicate that despite the critical roles of legal aid in protecting and securing citizens' rights across the Pacific, there is a lack of data and literature about the wide range of legal aid systems/models in operation. While legal aid for victims of family violence is now provided in some states, often by non-government organisation (NGO) providers, capacity remains limited. Further, the Family Protection Laws, which have now been enacted in most PICs, do not include a right to legal assistance".¹⁶ Several key informants noted that the availability of highly qualified lawyers was a serious issue in many Pacific Island countries. Those with experience and skill tend to work in the commercial sector rather than the under-resourced criminal law sector. One issue impacting on the quality of lawyers is that the University of the South Pacific law degree is sometimes the first opportunity for students to study in English, a solution to which would be to make a law degree a second or post graduate course. Unfortunately, as most of the law students are supported by scholarships, these will only support undergraduate study.

NZ alignment: Capacity building for magistrates, courts staff and lawyers has been delivered in New Zealand, regionally and locally, as well as support to scholarships at regional legal education institutions. For example, more than 100 Certificates of Justice and 40 Diplomas of Justice at USP are being supported by New Zealand through PJSI and JPPF¹⁷. These short courses have been considered very useful by most respondents, especially when supported by the Chief Justice, as was notably the case in

¹³ Don Paterson, 'Legal Challenges for Small Jurisdictions in relation to Privacy, Freedom of Information and Access to Justice' (2000) 4 *Journal of South Pacific Law* <http://www.paclii.org/journals/fJSPL/vol04/4.shtml#> ¹⁴ See annex E.

¹⁵ See annex E.

¹⁶ Federal Court of Australia, *Pacific Judicial Strengthening Initiative Fourth Six Monthly Progress Report* (July to Dec 2019)

¹⁷ Interview respondent. The cost of these courses are NZD 2,144 for the CoJ and NZD 1,703 for the DoJ (USP website)

Kiribati. New Zealand has not so far reached into support for legal aid service development, although PJSI has drafted a situation analysis of this area of need.

Justice sector challenges

Violence against women and girls

The prevalence of violence against women and girls in all its forms in most countries in the Pacific is higher than the global average of 35 per cent¹⁸. In Tonga, Samoa, Kiribati, Fiji, and Vanuatu, national research shows the rate of lifetime experience is over 70 per cent and is 64 per cent in Solomon Islands¹⁹. The Pacific Judicial Strengthening Initiative's Annual Report (July 2018 -2019) states, "Patriarchal norms along with the breakdown of matriarchal norms, gender stereotypes, and custom have embedded structural gender discrimination within many Pacific societies. This has eroded avenues for justice, redress, and protection. These barriers allow perpetrators to evade accountability. As a result, women are vulnerable and have little faith in the justice system"²⁰. Much research has been done about violence against women and children in the Pacific but some key evaluation informants noted that in many countries in the Pacific region, current information is not available, nor is current information available about community experiences of crime more generally.

NZ alignment: As noted above, support to the justice sector has been general, and aimed towards court performance rather than thematically focused.

Sustainability and capability of judicial officers

Small populations, politics, and communal culture impacts on judicial independence in some cases and a lack of female judges and magistrates means a gender imbalance exists in these key positions. Many of the PICs have ongoing issues with a shortage of legally qualified judges leading to the need for capacity supplementation or substitution. While accurate data was not available, many Chief Justices of PICs are New Zealand or other country nationals. Complex disputes associated with illegal logging and fishing, have an impact on PIC communities and economies and new crime types require specialist expertise which is not available locally.

NZ alignment: MFAT has supported either judicial salaries or supplied judges in Nauru, Tonga, and Vanuatu during the last 10 years. There has also been specific expertise provided in relation to serious fraud in Vanuatu²¹.

Outdated or problematic legislation and social service systems

Several key evaluation informants noted inadequate or outdated legislation as a key challenge for the sector. Limited availability of legislative drafting expertise means that countries often turn to New Zealand and Australia for this support. Several informants mentioned that governance and leadership skills are lacking in duty bearers, both in government and at the community level. Additionally, lack of mental health and youth services adversely impact these vulnerable groups in terms of access to justice.

¹⁸ World Health Organisation. Violence Against Women – Intimate Partner and Sexual Violence Against Women - Fact Sheet

¹⁹ As quoted in Fiji Women's Crisis Centre (2013). *Somebody's Life, Everyone's Business!* National Research on Women's Health and Life Experiences in Fiji (2010/2011) p. 142.

²⁰ Federal Court of Australia, *Pacific Judicial Strengthening Initiative Annual Report* (July 2018 – 2019)

²¹ See annex E.

NZ alignment: A highlight of New Zealand support has been for legislative drafting, specifically in Cook Islands²² and Niue. There has also been good feedback on the provision of a Psychologist in Samoa²³.

Disconnect between the formal justice system and traditional justice

Several informants noted that a key challenge is the disconnect between the formal justice system and everyday life. Victims of domestic violence in many PICs are far more likely to seek out support from the church than from the state justice institutions. Most disputes are dealt with at the community level by duty bearers such as chiefs using customary law. This can result in practices that may conflict with constitutional rights and many judges interviewed for this evaluation reported having to intervene and overturn decisions made on the basis of customary law. Customary justice practices at the community level are sometimes uneven and inconsistent with little in the way of appeal or oversight mechanisms, and can disadvantage women and children. On the other hand, traditional justice mechanisms are usually the first response to disputes and can often work well in addressing issues without needing to resort to the courts.

NZ alignment: PJSI's February 2020 Courts, Custom and Hybrid Justice Actors Scoping paper describes the complexities, gaps, collisions and duplication between the formal and informal justice systems in the region and makes recommendations to expand the current focus on courts and for more research to determine the best way forward. New Zealand support has not focused on this challenge yet.

Development Partner Context

In some countries donor support to the Justice sector is a crowded space and in others, New Zealand appears to be the only country to support the formal justice sector through providing New Zealand judges and / or capacity building or legislative drafting through the regional programme. New Zealand has spent NZD 42 million in the justice sector over the last 10 years.

New Zealand is considered to hold a unique relationship with the courts – due partly to providing New Zealand judges but also built from programmes such as PJSI and JPPF. This appears to be a niche area that New Zealand should retain as a focus and build on. More information on the development partners context is at Annex D. Unfortunately the evaluation was unable to secure interviews with the full range of development partners contacted.

In terms of how relevant the current MFAT portfolio is to the justice sector's future needs, nearly all stakeholders considered the support to be highly relevant. There were, however, opportunities to extend or adapt the support provided to take account of challenges such as COVID 19 and to build on the important outcomes achieved so far.

²² See further at annex E

²³ See annex E

5.2 KEQ 2: What has been achieved through New Zealand support for the Pacific justice sector 2010-2020?

2.1 To what extent have the end of programme outcomes been achieved?

2.2 What has worked well and less well?

2.3 In relation to New Zealand and Pacific Island Country priorities, how relevant is the current portfolio of support to the justice sector's future needs?

2.4 Are there other opportunities or challenges MFAT should respond to?

2.5 To what extent have the various components of the portfolio delivered 'value for money'?

Summary of findings for KEQ 2.

In terms of progress towards the end of programme outcomes (EOPOs) in the historical theory of change, there is some strong evidence of achievement in some areas, and some indications of achievement in other areas, but overall outcome measurement systems have been inadequate to capture robust evidence. The lack of evidence meant that it was not possible to undertake a rigorous value for money assessment. Several of the modalities used have worked well including capacity supplementation, capacity building and legislative drafting. A small number of modalities had mixed results. Overall, however, while noting that most of the activities performed well, around a quarter of stakeholders interviewed suggested the narrow focus of support to the formal courts system needed to be broadened and was unlikely to make a difference for the majority of Pacific Islanders who are not able to access the courts. The evaluation team found that there was an opportunity to identify and address some management challenges which have made it difficult to tell the story of New Zealand's long-term investment in the Pacific Justice sector. Shortcomings in terms of information management likely due to systems and staff changes and inadequate monitoring and evaluation systems has meant that data on outcomes is absent or incomplete.

To examine what has been achieved, the evaluation team focused on the three EOPOs described in the historical theory of change:

1. Capable justice sector personnel deliver fair and timely justice;
2. Capable Pacific justice sector leaders lead reform; and
3. Justice facilities are appropriate for the needs.

Support that contributes to EOPO 1 has been a major focus of the MFAT justice programme and this includes both capacity supplementation in Tonga, Nauru and Vanuatu (providing judges and other justice sector in-line positions) and capacity building and training for over 5,000 participants including from the judiciary, lawyers and court staff through three regional training programmes²⁴. There is evidence of improvements in case management and a reduction in backlogs in some countries due to New Zealand court administration capacity building support, but clear causal linkages are not possible to determine across the board. The 2018 Court Trend Report from PJSI noted that FSM, Kiribati and Tonga have

²⁴ NB this number reflects participants, not individuals, which would be lower. There is no data available on the number of individuals trained.

seen the most improvement in terms of the number of Cook Island Indicators reported against²⁵ since the 2011 Baseline, which may be related to the high numbers of PJSI training participants from FSM (the highest of all countries at 379 participants) and Kiribati being the third highest number (225). JPPF also supported a high number of Kiribati participants (74) which may also be a factor in the improved reporting. There is no data that can help to link possible improvements in Tonga to either PJSI or JPPF as Tongan participant numbers ranked 8th out of 13 for PJSI and equal 7th for JPPF out of 13. Improvements to legislation are tangible outcomes delivered by New Zealand to Cook Islands and Niue, which contributes to fairer and potentially more timely justice in those two countries. In the Cook Islands New Zealand has developed more than 30 pieces of legislation, many of which have been enacted.²⁶

Support that contributes to EOPO 2 involved funding participation in regional meetings and conferences to build networks and coalitions on various relevant issues facing the Pacific justice sector. Unfortunately, no monitoring data was provided to the evaluation about outcomes of this support to conferences and regional meetings, which was a missed opportunity. However, the evaluation was able to gather strong evidence of New Zealand activities having built strong relationships with Chief Justices in many Pacific Island countries. This was considered by several key stakeholders as unique and strategic. This presents an opportunity to convene discussions among these stakeholders about options, plans and priorities for justice sector reform and put in place systems to measure the effectiveness of these relationships. This would also align significantly with MFAT's ICESD principles, including the principle of collective ambition.

Support that contributes to EOPO 3 has been less of a focus over the last 10 years, although case management and technology infrastructure can be considered to fall under this outcome area and, as noted above, courts in some countries have made significant improvements to their case management systems with New Zealand support.

In terms of the critical assumptions underpinning this theory of change, the evaluation found:

- That focusing on courts, police and correctional services is a key necessary step to improve justice sector wide performance – This assumption held true and was supported by most stakeholders, while noting that there are other necessary steps to achieving access to justice that require reaching further than the formal justice sector.
- That training and capacity building for justice personnel positively impacts on their willingness as well as their capacity to deliver fair justice and provide leadership – This assumption generally held true, although training and capacity building are not the only approaches needed.
- That support of regional events will complement national activities to support reform and that key champions who access these events can mobilise a reform coalition in their own country – There was insufficient data to determine the extent to which this assumption held true.

²⁵ There are 15 Cook Island Indicators relating to Case management information, Appeals, Access, Complaints, Human Resources, and Judicial Transparency. It should be noted that the Court Trend report does not necessarily measure improvements in court performance, eg, reduced duration of cases, but records which countries are reporting on the tracking of which indicators.

²⁶ See annex E.

What has worked well and why

Capacity supplementation – While not sustainable without ongoing support, this modality of support is critical to many PICs which are unable to provide the requisite level of expertise and independence – in some cases, this is unlikely to change in the medium term. The following benefits of capacity supplementation are considered to outweigh these sustainability concerns:

- Strong, mutually beneficial relationships between judicial officers in PICs and New Zealand
- Increased independence of the judiciary and subsequent public confidence in the courts
- Reduced delays in cases and opportunities for capacity building

Mentoring – especially for judges and magistrates. Being able to share experiences is important for people in these positions and one key informant judge reported that sharing experience was more important than learning theory. Mentoring was also considered to be good value for money with many mentors building lasting relationships.

Court administration support – Capacity building and support to improving case management systems has resulted in efficiencies and reduced delays. This is important because significant delays reduce the ability of court users to access justice – “justice delayed is justice denied”²⁷. It was noted by some informants that Pacific Island countries that have improved their court administration could share these experiences with other countries that are still struggling with backlogs or inefficiency.

Study tours – Several informants from different groups noted the value of being able to see what international good practice looks like in countries like New Zealand. This also serves as a motivator for change. However, regional study tours to countries that have had success in implementing reforms could also be useful, for example a study tour to Samoa to observe the specialist courts or to Kiribati to inspect case management reforms.

University of the South Pacific Certificate and Diploma of Justice – This was generally considered a valuable investment, especially when actively supported by the Chief Justices. Currently there are more than 100 court staff who have been supported to undertake the Certificate of Justice and 40 doing the Diploma of Justice by PJSI and JPPF.

Male advocacy programme in Samoa – Through the Family Violence Court an alternative sentencing option involving domestic violence offenders participating in a targeted anti-violence programme has achieved excellent results with only 1% recidivism rate in the first five years among 500 alumni.

Psychologist in Samoa – Stakeholders were initially sceptical about the likely value of this support but the psychologist provided excellent support not only to the Courts but to Correctional Services, probation and parole, and Ministries of Justice and Health in dealing with offenders with a focus on reducing recidivism. Lack of mental health services was noted as a key challenge for the justice sector.

Mixed results

There were mixed results from the following modalities:

Train the trainer (TOT) – Some TOT trainers considered the TOT programme to be highly beneficial and allowed cascade training to be done in local languages. Other stakeholders did not consider it to be as worthwhile as other modalities such as mentoring, with one key informant noting that while it was expected that training would be taken back to home jurisdictions and passed on by trainers, “my

experience is that it hardly ever was”²⁸. Providing ongoing support to trainers to deliver cascade training is often required.

Face to face group training – Many stakeholders considered training and capacity building for groups in country to be good quality, however some informants noted that the pitch of the training was too high or too low for members of a mixed group and there were value for money concerns regarding travel costs. Some stakeholders thought that moving some courses online was a more cost effective and accessible option (although not suitable for all courses).

Focus on support to courts – Some stakeholders noted that the singular focus on the formal court system limits the ability to work on the whole “chain of justice,” and does not impact significantly on access to justice for the majority of people who are unable to reach the court locations, speak English or access legal representation. This means that while the supported activities have generally been well received and rated as generally effective, the reach and scope of these is very limited. In addition, the Pacific Judicial Strengthening Initiative Review Report (2019) found that “PJSI efficiently delivered a raft of activities over 14 jurisdictions, but effectiveness was negatively influenced by a unitary engagement strategy that centralised engagement on Chief Justices”.²⁹ Given that some PICs have experienced a turnover of Chief Justices over the past 10 years, with little done in the way of succession planning, important relationships may be at risk.

Insights into MFAT management of the regional support to the Pacific justice sector over the last 10 years

Agile or ad hoc?

The evaluation has found that New Zealand’s support has been perceived as “agile” and responsive to the needs of Pacific partners, however there was also feedback that the support was rather “ad hoc” and lacking in strategic oversight. One MFAT key informant noted that justice does not have a clear “home” in MFAT as it is only a small part of Governance and some Partnerships activities, with justice activities included in some bilateral programmes and other NZ agencies’ portfolios. Apart from a high level goal of improved governance there seems to have been an absence of “vision” for support to the justice sector, and lack of clarity about what criteria have been used to determine what kinds of activities to support. It was also difficult for the evaluation team to understand how programming recalibration decisions have been made in response to learnings from evaluations or reviews as there was limited data on this.

Challenges in Monitoring and Evaluation

One of the consequences of an absence of strategy is that it has been difficult to consistently capture and report on outcomes in a coherent way. It is difficult to ascertain what MFAT’s various justice sector activities in the region ‘add up to’ or be able to assess its value. Having a strategy and M&E framework would greatly assist MFAT and partners to see, understand and assess the whole picture of support. Added to this lack of overarching M&E are inconsistencies and weaknesses in activity level M&E systems with a major focus being on inputs and low-level outputs rather than outcomes and learning. Engagement with M&E at activity level needs to be driven by activity managers and should ideally involve Pacific partners and other development partners such as NZ Police and Correctional Services.

The evaluation found that when trying to assess activity outcomes or even progress towards outcomes, there was a lack of baseline data or situation assessment against which to measure change. As one

²⁸ A comment from a judicial officer with many years’ experience with New Zealand support

²⁹ McGovern, James et al, Pacific Judicial Strengthening Initiative Review (March 2019)

recent evaluation noted "Effectiveness and impact are negatively affected by an underinvestment in M&E and lack of clarity about courts capacity and the link between the PJSI investment and changes in that capacity"³⁰. Another assessment of a different activity concludes "There is no results framework and therefore no indicators nor targets, progress cannot be measured against intended outcomes. Without a results framework, it is difficult to know whether the Activity has achieved success, as it is unclear what 'success' means and how this is measured."³¹ This comment was also made in relation to a third activity. This theme was identified several years ago: "Poor transparency and monitoring and reporting makes it difficult to assess effectiveness"³², and in 2016 "There is a need to more clearly specify intended outcomes (as opposed to outputs) at country as well as regional level in capacity development programmes and to ensure that baseline data and relevant indicators are in place against which to measure progress and achievements and realistic monitoring and reporting systems set up and resourced."³³ The evaluation team did not see evidence of any management responses to these various observations.

Value for Money

There was no clear means of determining objectively if the dollar value of support provided by NZ to the various components of the portfolio were more or less effective, given the lack of quantitative data and the reliance on stakeholder perceptions data across MFAT's justice sector portfolio. Evaluation stakeholders were asked which of the various component of the portfolio of support had in their view, delivered value for money and which had not. While most stakeholders felt they had insufficient knowledge of the programme to judge, three stakeholders and previous evaluations queried whether there was value for money in delivering support across 14 PICs and recommended focusing on spending more in fewer PICs to get better value for money. Without establishing robust criteria for assessing value for money it is difficult to gauge whether this would be the case. Three stakeholders also recommended there would be better value for money for New Zealand to allocate more to PICs not receiving significant support from Australia, such as PNG and the Solomon Islands. Again, however, if value for money criteria included leveraging, then perhaps support to complement the work of other donors would be desirable.

There was more broadly some confusion about which of the activities were being offered by the PJSI and JPPF. Four of the stakeholders were unsure if the USP Certificate in Justice had been funded through PJSI or JPPF however, all identified this as a high value for money activity, given it provided PIC court staff, not only with a qualification, but also with increased confidence and capacity sustainable over the long term. Two stakeholders considered that additional coordination between PJSI and JPPF would reduce the risk of duplication and as such improve on VFM. Overall, 14 of the key stakeholders (out of 82) responded very positively about VFM of both PJSI and JPPF, particularly in building relationships, widening networks and improving the capacity of the courts.

Two of the key PIC stakeholders considered that there was more value for money from JPPF, based in New Zealand than PJSI based in Australia given the costs of travel, but there was limited data to compare the relative costs. Five of the key stakeholders however considered there was VFM in looking at "best practice" in Australia and outside the Pacific, and that face to face training and mentoring was "worth the expense in terms of building capacity". Three of the PIC stakeholders commented on how the travel restriction imposed by COVID had demonstrated that training and mentoring could be done

³⁰ McGovern et al 11 March, 2019:p.1

³¹ Activity Completion Assessment of the Supreme Court Assessment of the Supreme Court Judges in Tonga (2019)

³² Evaluation of NZ Aid to Vanuatu, Mark McGillivray et al, 9 August 2017: p.1

³³ Quinn, Marion and Clark, Kevin, Review of New Zealand Aid Programme Approach to Judicial Support in the Pacific (draft), March 2016.

more cost effectively by way of Zoom meetings and WhatsApp, particularly when trusting relationships had been established.

Stakeholders in Samoa considered the funding for a psychologist for a short period was a good example of value for money. The psychologist put in place practices and procedures aimed at reducing recidivism, across the justice sector that are still in use, despite the psychologist having vacated the position in 2019.

Coordination

Some stakeholders commented about a lack of coordination and duplication between two of the regional programmes. As noted above, there was some confusion about the difference between PJSI and JPPF, with Pacific stakeholders unable to clearly attribute various support to one or the other. This made it difficult for the evaluation team to consider these two activities separately. There have also been observations about lack of coordination with other development partners, as noted in the draft review of NZAID Approach to Judicial Support in the Pacific: Issues and Lessons: “There is a need for increased harmonisation between different New Zealand Aid Programme Activities in the law and justice sector and with those of other development partners in order to maximise effectiveness and prevent duplication, unnecessary confusion and increased workloads for in-country stakeholders”³⁴. Australia’s DFAT has been increasingly shifting to a Whole of Government approach to the justice sector and most programmes now include joint management mechanisms. While not without its challenges, this approach is considered to be useful as noted by a recent evaluation “Australia should continue to support a joined up policing and justice sector approach, with the hybrid modality and joint management. The benefits of this approach far outweigh the challenges, and have resulted in better outcomes than seen elsewhere”.³⁵ A sector strategy would certainly lay the groundwork for improved coordination and cohesion.

Information management

Improvements in information management may assist with institutional memory and measuring change over time. As already noted, 13 of the 27 activities included in the evaluation’s scope had no documentation available to share with the evaluation team. The team were also unable to access validated data on the number of New Zealand judges that have served in the Pacific or numbers of participants who have been involved in many of the activities. While not as good as outcome data, basic input and output data could be collected systematically and available at short notice – not just for evaluators, but also for public dissemination and to share with Pacific partners (who in turn may need to share this type of information with their own stakeholders). This absence of information is likely due to the fact that the justice portfolio spans across different sections and agencies and there has been a new IT system installed within MFAT during the period. There is an opportunity however to identify the problems of information management and solutions going forward.

5.3 KEQ 3: What are the key learnings and insights to inform New Zealand’s future justice sector support to the Pacific and what are the implications going forward?

3.1 Based on the current context and lessons learnt from the previous 10 years, what are the options for MFAT to consider going forward?

³⁴ *ibid*

³⁵ Nichols et al *Evaluation report of Vanuatu-Australia Policing and Justice Program* 19 December 2019: p. vi.

Summary of findings for KEQ 3.

New Zealand support to the justice sector is highly regarded by Pacific and development partners. Participants of the PIC Sense Making Workshop validated the findings of the evaluation and made suggestions for future support. Key learnings identified by the evaluation regarding future support are that:

- New Zealand is in a unique position to provide culturally and technically relevant support to the justice sector in PICs, including support to remote modalities.
- Stakeholders in the formal justice sector in Pacific courts have good relationships and much respect for New Zealand agencies and support, and this respect and the benefits of the relationships are mutual.
- A New Zealand regional justice programme could help PICs to share good practices and successful approaches between PICs.
- If New Zealand wants to be able to assess value for money and see more results from investment in the justice sector, the approach would need to be underpinned by a well-crafted sector strategy and robust M&E.
- If New Zealand wants to see more results in terms of access to justice for marginalized groups, the approach needs to expand to the non-formal sector.

Key learnings from NZ and other donor support to the justice sector in the past can be summarised as follows:

1. **Lack of learning** – there is a perception among some evaluation stakeholders that evaluations are not acted on nor result in any significant changes to approach, though this was not limited to New Zealand support. There was limited documentary evidence of changes to programming based on past evaluations, with the exception of PJSI's response to some of the recommendations of the 2019 review. Australian aid program informants noted that this was a key problem and that the same program designs were being seen time and time again, with limited adaptation.
2. **Innovation is working** – positive results of community-based violence prevention programmes in Samoa, and small pilots being supported by Australia's DFAT in the community justice space in Vanuatu³⁶ show that these innovative approaches seem to be working well and could be replicated.
3. **One size does not fit all** – tailored and fit for purpose approaches are necessary to account for differences between countries. A tailored approach also helps to identify specific country contexts against which change or reform can be measured or evaluated. There is a need to balance regional networking and training with increased country specific support to see tangible progress in countries.³⁷
4. **People make a difference** – success and failure often depend on the individuals involved. Supporting champions of change seems to make a positive difference. Appropriate awareness and attitudes of people in advisory roles on development programmes is key to successful deployments.

³⁶ See annex E.

³⁷ Quinn, Marion and Clark, Kevin, Review of New Zealand Aid Programme Approach to Judicial Support in the Pacific (draft), March 2016.

- 5. Chain of justice support is critical** – focusing on one part of the justice system will not achieve the desired outcomes. The justice sector is only as strong as its weakest link.

Key learnings to inform future support

New Zealand's unique position

New Zealand shares the indigenous heritage of its Pacific neighbours, has constitutional links to the Cook Islands, Niue and Tokelau, a treaty of friendship with Samoa, and participates actively in regional organisations, including the Pacific Islands Forum. The Pacific nations are sparsely populated and spread over vast geographical distances. Despite this isolation and their different ethnicities, languages and political structures, these nations exhibit significant commonalities of culture, custom and values across the region. "They also face similar economic issues and inherit an historic overlay of Western colonisation, democracy and Christianity. Modern technology and transport is fast shrinking the historic oceanic distances of the Pacific and enabling shared initiatives and strong links to be forged in all areas of life"³⁸ There are a high number of PIC nationals resident in or travelling in New Zealand. It is important to note that based on the latest OECD reporting (2019), New Zealand provides a higher proportion of its total ODA to the Pacific than any other donor, and is the third largest donor in the Pacific in terms of volume. Shared heritage, common geographical and environmental issues, increased travel and migration and significant investment confirms that New Zealand is in a good position to partner with PICs to create positive change in the justice and other sectors.

Building on good relationships

Many stakeholders both from PICs and New Zealand reported on the mutual benefits of learning from each other and stressed the importance of sharing information in a culturally appropriate and respectful way. The Special Courts in Samoa provide a good example of Samoa learning from the Special Courts in New Zealand and adapting these models to tackle the pressing problems of family violence and drug and alcohol related crime. Several stakeholders interviewed commented favourably on the approach taken by NZ counterparts in PICs as one based on "reciprocal learning", especially when there was a longer term engagement. For example New Zealand judges who served as judges in PICs reported that they used their learning in courts back home on return.

Sharing regional good practices

Previous evaluations and several interviewees recommended an overarching strategic plan for a regional justice programme to enable a coordinated response to the priority needs of the justice sectors across the region. Stakeholders could then know what activities had been successful and how and why and what could be learned from other PICs. A regional justice programme of support could also identify gaps in the support needed and improve donor harmonization. An evaluation of the Pacific Judicial Strengthening Initiative Review in 2019 recommended "an independent Pacific Justice Systems Advisory Group which is a multi - stakeholder partnership comprising Pacific Courts and NZ justice Agencies, based on a 10 year financial commitment". Other evaluations recommended that a regional justice programme that pulled Courts, Corrections and Police together for planning purposes would be beneficial, and provide opportunities to measure the success of the justice sector in quantifiable ways, i.e. reduced backlogs, reduced remand time, rates of recidivism, number of children in custody, cases of Family Violence reported, numbers in rehabilitation programmes etc.

Taking a more strategic approach

³⁸ Converging Currents, Custom and Human Rights in the Pacific, Law Commission, Sept. 2006, (Study Paper 17)

If New Zealand wants to be able to assess value for money and see more results from investment in the justice sector, the approach would need to be more strategic. There is an opportunity to use the forward-looking TOC to frame a strategic plan that continues important court-based support but also broadens the reach of MFAT support to improved access to justice for vulnerable groups and people. This would likely involve support to activities involving local community based organisations and NGOs, and support to innovative alternative dispute resolution mechanisms. Each activity's M&E system would be able to contribute to a picture of the "whole" through an overarching Justice sector M&E framework. Governance arrangements would need to be determined including:

1. Which MFAT section leads the sector support and what does that look like
2. Which other sections/agencies are also providing support and the nature of their involvement
3. Which modalities should be used for which activities – for example, direct funding to agencies, contracting to IPs or the implementation of a "Challenge Fund" to allow for innovation and flexibility in funding pilots (or a combination)
4. What should be delivered regionally versus bilaterally
5. Terms of reference for a Steering group including roles, responsibilities, and accountabilities
6. How the steering group engages with each PIC is clarified (eg, is it with a Justice sector committee or with a lead agency)
7. The establishment of criteria for decisions on which activities to support³⁹

Focusing on increasing access to justice for marginalized groups

MFAT's regional justice efforts have focused on the Chief Justices and the higher courts although there has been support to training magistrates and lay magistrates in some countries. Most stakeholders recognize the majority of people in PICs use the lower courts if they use courts at all, and the greatest majority access community justice bodies when seeking justice.

However, offering support to the informal justice system is not a decision to be taken lightly, with one recent study commissioned by MFAT suggesting that moving beyond the formal justice system could be a "step too far"⁴⁰. Discussions of the role of the non-formal sector have been of interest for many years. In 2006 New Zealand's Law Commission published a study exploring the opportunities for convergence of the formal and informal justice systems: "Pacific leaders frequently refer to two significant objectives – maintaining local values and custom and implementing universal, human rights... Both custom and specific human rights are embedded in many Pacific constitutions or statutes, yet the two concepts are often perceived as conflicting. From one perspective, human rights are seen as a threat to custom and the Pacific way of life, while from another perspective custom is seen as a threat to individual freedom and justice...Acknowledgement by courts of the important role of community justice bodies will foster development of a more coherent legal system. At the same time, courts can assist community justice bodies to reach decisions that are compliant with human rights norms."⁴¹

³⁹ The ICESD provides some high level guidance including the intention for the majority of support to focus on countries "most in need" and some consideration for support to transitioning countries.

⁴⁰ NZ Engagement in the Justice Sector in the Pacific, Dr Tess Newton Cain (draft), 2019

⁴¹ Converging Currents, Custom and Human Rights in the Pacific, Law Commission, Sept. 2006, (Study Paper 17)

This opportunity to see the two sides as complementary rather than inherently conflicting is echoed by a justice sector expert in a relevant conference paper: “The current picture about the significance of custom in the region today is clearly complex... The take-home message is that there is lots and lots of mixing and mingling of custom and state law in the region today, but mostly not in the ways envisaged by the founders of the constitutions. [One academic] raised the issue of what to do about chiefs misbehaving and justifying their actions either in the name of custom or merely relying on their positions of power not [to] be taken to account... On reflection, my answer to this is that rather than thinking of this as we are wont to do as an issue of “custom”, a more helpful approach is to characterize the problem more generally as being an instance of arbitrary use of power. Once seen in that light, we are then able to identify what state and non-state mechanism/ factors/ institutions both enable such abuse and can and could constrain it”⁴².

An overarching justice sector strategic plan could play a role in reconciling and supporting the complementarity of the formal and non-formal justice sectors.

Suggested adjustments to the scope of MFAT support

The participants of the PIC Sense Making Workshop validated the emerging findings while noting that each country faced some different, and many similar challenges. Some participants noted that there was no mention of the quality of justice (as opposed to access to justice) and queried what was the definition of justice that the evaluation was using⁴³. Tackling domestic and gender-based violence was considered a priority and support to community-based organisations was suggested as a modality for this support. It was also suggested that good M&E and peer review at the public, private and NGO levels of activities involving justice sector reform was important. Three other areas of priority included a database and court administration support for courts, a focus on lay judges and lower courts as the courts most commonly used, (both of which PJSI has made progress on in some countries) and a focus on the whole “chain of justice”.

Opportunities, in addition to the MFAT support provided so far, that rated very highly for PIC stakeholders included:

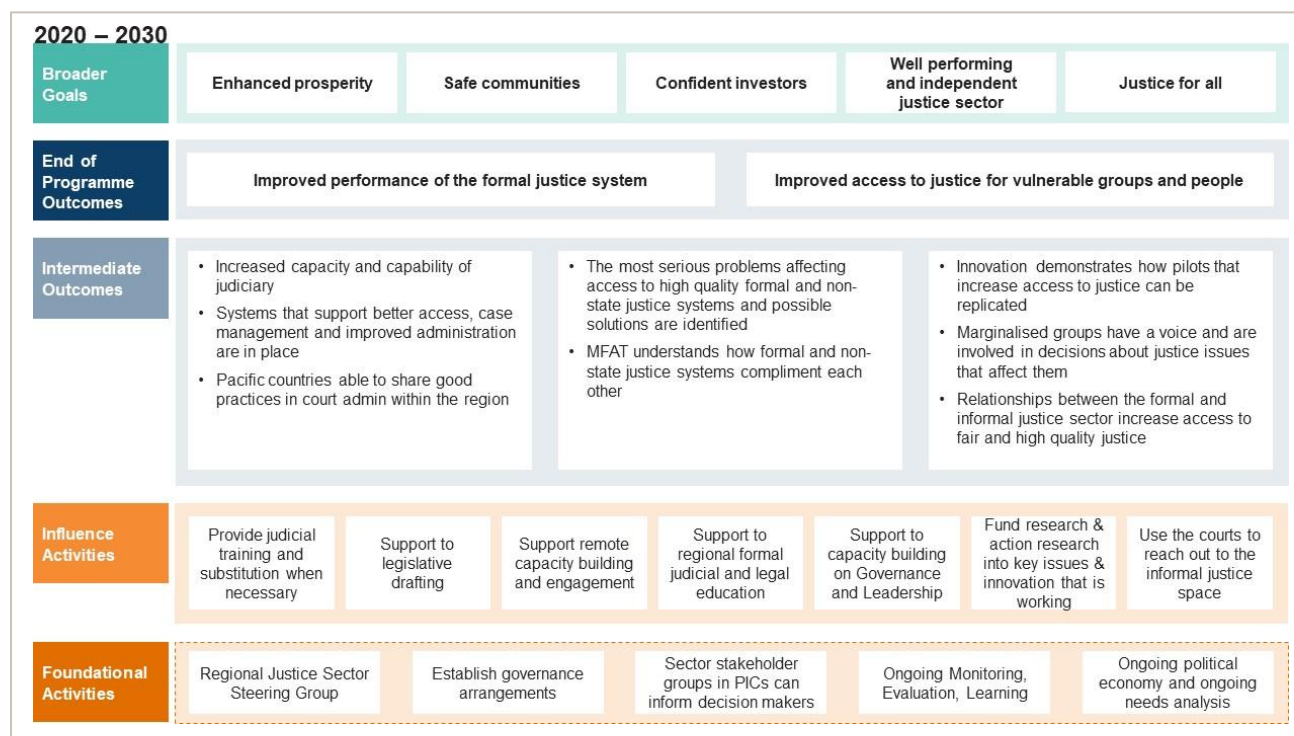
1. Remote capacity building and engagement – especially with restriction on travel related to COVID19
2. Research and action research to build on initiatives that are working – especially learning from other PICs
3. Support to capacity building on governance and leadership – at both government executive and community levels
4. Using the courts to reach out to the informal justice sector – including possible support to capacity building of duty bearers and community-based sentencing or treatment programmes
5. Support to regional legal education – including institutions such as USP or CJE to help address the need for increased availability of legal education.

⁴² Custom Inside and Outside of Constitution in the Pacific Island Countries Today, Miranda Forsyth, First draft of paper presented at the Pacific Constitution Network Conference, 23-25 November 2016, Port Vila, Vanuatu, page 158.

⁴³ The issue of quality has been taken up in this report. In terms of the definition of justice, the evaluation has used a broader definition to include both formal and non-formal justice systems but have not qualified this any further.

Below is a possible forward-looking theory of change, reflecting these suggestions:

Figure 3: Possible forward-looking theory of change.



Possible options and implications for managing the implementation of identified opportunities going forward

- **Support to courts** should continue to focus on court administration (addressing the courts with the biggest backlogs first, or the most in need, in line with the policy intentions of ICESD). Both PJSI and JPPF have helped with court administration with good results, although it is difficult to directly attribute this to MFAT’s support without better M&E systems. Stakeholders also mentioned that good court administration practices can be shared between PICs e.g, good practice examples from Kiribati and Vanuatu could be shared with courts with high backlogs such as Cook Islands⁴⁴.
- **Support to legislative drafting** should continue given the importance of this need, especially to Realm countries, and the fact that the New Zealand Parliamentary Counsel Office is delivering well appreciated support. Good legislation is critical to a well functioning justice system. The support provided by the PCO requires high level drafters who are able to analyse complex issues.
- **Support to the provision of NZ or other PIC judges** – remains critical for now, with stakeholders noting that Māori judges could offer valuable cultural understanding and that more female judges were needed to improve the gender balance. There is also an option for countries like PNG and Fiji to offer judges for secondment in smaller countries. It would be important for seconded judges to include capacity building as well as fulfil their duties as a judge. Where appropriate, they should also carry responsibilities for succession planning.
- **Remote capacity building and engagement** needs vary across PICs. Some require hardware and software, while others only require targeted skills transfer to use existing technologies. PJSI’s success in building court capacity to use IT more effectively was widely acknowledged. The

⁴⁴ For example a study tour was requested to Kiribati from Cook Island stakeholders due to their impressive progress in addressing case backlogs.

stakeholders reported there was a need for this to be continued, particularly given the travel restriction imposed by COVID 19.

- **Using the courts to reach out to the informal justice space** will also look different in each PIC. In Samoa for example, the specialist courts have reached out to community-based sentencing and offender management options. In other PICs, judges could sanction or deliver training and awareness raising among community-based duty bearers.
- **Research and action research to build on initiatives that are working** – This could be delivered through a challenge fund or flexible fund, NGOs or research organizations. It should focus on PICs learning from each other and replicating good practices. These can be shared and showcased in regional annual reflection processes which also serve as an incentive for countries that need more encouragement to progress reforms.
- **Support to capacity building on justice sector governance and leadership** – This could be delivered by PJSI or JPPF or a regional or NZ training institute.
- **Support to regional formal judicial and legal education** – this could be delivered through scholarships or direct support to the institutes.

In terms of the evaluation providing advice on the balance and focus of New Zealand support in future, the team considers that these decisions need to be made in collaboration with PIC partners during a structured strategic planning process. Obviously, some PICs require much more assistance than others, but there is an opportunity for this support to be provided on a peer to peer basis rather than bilaterally with NZ. Another consideration is the level of willingness or readiness of PICs to embrace innovation or accept a possible shift in justice sector support towards the informal sector. Any movement in this direction would need to be demand driven. Finally, an analysis of the range of (formal and non-formal) justice sector stakeholders and the nature of their engagement with possible options will need to be undertaken prior to understanding the extent of future support.

6 Evaluation conclusions

MFAT is approaching a critical decision point on its support to the Pacific justice sector. It is clear that there is generally policy alignment and mutual benefit to both New Zealand and Pacific Island countries in MFAT support to the justice sector, although some major challenges have not been the focus of support. There is evidence of achievement with respect to support for judicial independence and improvements in court performance. Good relationships have been built with the formal justice sector and its leaders. However, there has long been recognition of the fact that much of the delivery of justice is done outside of the formal court system. Most Pacific Island justice sector stakeholders consulted for this evaluation report that there is a good case for New Zealand to expand its support to the non-formal justice sector. The specific nature of this support will vary by country and would need to be informed by an inclusive, co-design process. It would also need to be closely monitored and evaluated, in order to manage risk, and identify and respond to learnings. If results of the investment in access to justice are to be deepened, MFAT support should be framed by a regional justice strategy that can improve ownership, planning, accountability, and responsiveness. It will also be important for MFAT to strengthen the existing management systems to enable more evidence based assessments of activity and portfolio performance and assess value for money.

7 Recommendations

1. MFAT should develop a justice sector strategy and M&E framework to support evidence-based learning, management and reporting.

The strategy would need to be collaboratively developed by MFAT, NZ justice agencies and PICs and have sufficient flexibility to address priority needs as they arise. It should be clearly informed by New Zealand and Pacific Island justice sector policy where it exists, and aim to be able to report directly against relevant policy targets, including value for money criteria. The strategy should outline what the principles, roles and accountabilities are for each partner and include ways of working together. It is recommended that the strategy cover a five to 10 year timeframe, with annual reflections and adjustments.

2. The strategy should explore opportunities to expand the scope of support to the non-formal justice sector in the Pacific, in particular focusing on innovation and activities that are demonstrating results.

In order to increase access to justice for the most marginalised, learning from pilots and innovative projects that are already showing promise in the community justice space and sharing these learnings would benefit all interested PICs. Taking an incremental approach would also help to mitigate some of the risks associated with expanding into lesser known areas.

3. The strategy should build on the good relationships that have been established with the formal justice system in the Pacific to reach out to the non-formal justice sector.

The positive relationships built in the region allow MFAT to identify and support champions who can be relied upon to guide and nurture change in a culturally safe way. This is not only a more sustainable approach but also a practical one considering the realities of a (post) COVID world.

4. The strategy should continue to support activities that improve court performance and access to the courts, but this needs to be balanced with more holistic support.

Recognising that the MFAT regional justice sector budget envelop is limited, for expansion to occur, there will be a need for retraction in some areas. The benefits of articulating a sector strategy include the ability to see the whole picture and then make decisions about what is best to support, where and when.

5. The strategy should prioritise funding in both formal and non-formal justice sector support, depending on the strengths, opportunities and needs of different PICs.

Recognising that one size does not fit all, an evidence-based assessment of the needs, readiness and capacity of each PIC, against agreed criteria, will help to prioritise funding, and assist with longer term plans and shared ambitions.



8 Annexes

9 Annex A: Activities in scope

The table below outlines the MFAT supported activities that were in scope for the evaluation and a summary of their effectiveness.

REGIONAL	SUMMARY COMMENTS ON EFFECTIVENESS ⁴⁵
<p>Pacific Legal Information Institute (2006-2010)</p> <p>Expenditure 2010-2020</p> <p>NZD 385,753</p>	<p>New Zealand no longer supports Paclii but this useful resource remains based at the USP. Access to legal information is important for lawyers and the general public alike in order to keep updated with legislation and case laws. In an initiative by the University of the South Pacific School of Law based in Vanuatu and AustLii, the Paclii website (http://www.paclii.org/) has been maintained as an online database containing legislation, cases and other secondary materials for countries in the region including American Samoa, Cook Islands, Commonwealth of Northern Mariana Islands, Federated States of Micronesia, Fiji, Guam, Kiribati, Marshall Islands, Nauru, Niue, New Caledonia, Palau, Papua New Guinea, Pitcairn Islands, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.</p>
<p>Strengthening Pacific Judiciaries and Courts (2006-2016)</p> <p>Expenditure 2010-2020</p> <p>NZD 10,940,969</p>	<p>Rated as good by MFAT Activity Completion Assessment including:</p> <ul style="list-style-type: none"> • Training 2,534 participants from judiciary and courts (40% women) from 14 Pacific Island countries • 86 certified Pacific Island trainers • Increase in countries producing publicly available court performance reports • positive feedback by 86% of court users⁴⁶.
<p>Pacific Judicial Strengthening Initiative (2014-2020)</p> <p>Expenditure 2010-2020</p> <p>NZD 9,961,510</p>	<p>Good ratings for outputs and short term outcomes, adequate for progress toward medium term outcomes in MFAT assessments. Generally good feedback from a range of stakeholders. Achievements include:</p> <ul style="list-style-type: none"> • 2,475 participants supported (43% women) and 1,530 people engaged in community, access to justice and awareness raising in 15 Pacific Island countries
<p>Judicial Pacific Participation Fund (2014-2019)</p> <p>Expenditure 2010-2020</p> <p>NZD 1,676,784</p>	<p>Consistently good feedback from stakeholders and latest monitoring report which rates progress of activities and short term outcomes as very good, and progress towards medium term outcomes as good. Since 2014 there have been 224 participants attending conferences, study tours, mentoring and training (around 50% women) from 13 countries⁴⁷.</p>
<p>Legislative drafting assistance to Pacific Nations (2012-2017)</p> <p>Expenditure 2010-2020</p> <p>NZD 952,757</p>	<p>Well regarded and evaluated as effective, efficient and sustainable, although self-sufficiency is unlikely in the near future.</p>

⁴⁵ NB. This evaluation is not focusing on evaluating specific activities. This summary is based on available AMA/ACAs and feedback from key informants.

⁴⁶ Number not known.

⁴⁷ Figures do not include 2020 due to COVID cancellations.

<p>Pacific Legislative Drafting Assistance (2017-2022) Expenditure 2010-2020 NZD 534,332</p>	<p>Positive feedback by senior counterparts and good outputs but monitoring and assessment systems could be better and options to increase sustainability. Achievements include 22 individual pieces of draft legislation in 2019, mostly for Cook Islands and Niue, most of which have been enacted.</p>
<p>PILON Litigation Skills Programme (2013-2019) Expenditure 2010-2020 NZD 1,177,584</p>	<p>Overwhelmingly positive feedback from participants and faculty. Progress of activity delivery and short term outcomes have been rated as very good and it is likely this activity will continue due to consistently good feedback and value for money. It was noted that the results framework needs improvement and there is a need for improved information management to capture results.</p>

REGIONAL ACTIVITIES FOR WHICH THERE WAS NO AVAILABLE INFORMATION

<p>Crown Law Office – PILON government lawyers training (2006-2012) Expenditure 2010-2020 NZD 546,801</p>	<p>Training</p>
<p>PILON Meeting 2010 Expenditure 2010-2020 NZD 37,171</p>	<p>Meeting/conference</p>
<p>MFAT – ANZSIL (2012) Expenditure 2010-2020 NZD 16,886</p>	<p>Meeting/conference</p>
<p>SPCYCC: Annual Meeting (2013) Expenditure 2010-2020 NZD 25,260</p>	<p>Meeting/conference</p>
<p>SPLA: Lawyers Conference and AGM (2013-2014) Expenditure 2010-2020 NZD 28,400</p>	<p>Meeting/conference</p>
<p>MoJ - 21st Pacific Judicial Conference (2014) Expenditure 2010-2020 NZD 4,112</p>	<p>Meeting/conference</p>

<p>Review Judicial Support and Framework (2016) Expenditure 2010-2020 NZD 48,000</p>	Evaluation
SAMOA	
<p>Strengthening Capability in Samoa's Judiciary (2018-2019) Expenditure 2010-2020 NZD 82,000</p>	Good feedback from evaluation stakeholders and success story of specialist court outcomes. Samoa is well placed to share its experience with implementing specialist courts.
<p>Justice/ Courts Strengthening (2006-2011) Expenditure 2010-2020 NZD 90,604</p>	No information available.
<p>Law and Justice Sector Support (2010-2011) Expenditure 2010-2020 NZD 118,918</p>	No information available (legislative drafting).
NAURU	
<p>Nauru Law and Justice Sector Improvement Initiative (2013-2015) Expenditure 2010-2020 NZD 1,823,263</p>	Good ratings for outputs and short term outcomes, adequate for progress toward medium term outcomes in interim assessment.
<p>Support for Law and Justice in-Line Positions (2006-2013) Expenditure 2010-2020 NZD 2,772,560</p>	No information available (capacity supplementation)
<p>Consolidation of Legislation Expenditure 2010-2020 NZD 454,488</p>	No information available (legal information management system).
<p>Nauru Trust Legislation (2018) Expenditure 2010-2020 NZD 139,887</p>	No information available (legislative drafting).
TONGA	

<p>Supreme Court Judge (2012-2018)</p> <p>Expenditure 2010-2020</p> <p>NZD 2,635,880</p>	<p>Satisfactory performance although no results framework to determine outcomes. Adequate impact rating for completion assessment.</p>
<p>Tonga Justice Sector Support (2017-2022)</p> <p>Expenditure 2010-2020</p> <p>NZD 1,926,693</p>	<p>Delayed start but very positive feedback from stakeholders.</p>
<p>Support to the Chief Justice (2006-2011)</p> <p>Expenditure 2010-2020</p> <p>NZD 271,072</p>	<p>No information available (capacity supplementation)</p>
<p>VANUATU</p>	
<p>Support to the Judiciary (2006-2021)</p> <p>Expenditure 2010-2020</p> <p>NZD 5,011,249</p>	<p>Good results in terms of reducing case backlogs without compromising quality. Highly regarded.</p>
<p>Support to Vanuatu Office Public Prosecutors (2019-2019)</p> <p>Expenditure 2010-2020</p> <p>NZD 262,000</p>	<p>Progress report indicates good progress but completion may have been delayed by COVID 19.</p>
<p>Law & Justice Activity (2019-2024)</p> <p>Expenditure 2010-2020</p> <p>NZD 95,474</p>	<p>Design stage.</p>

10 Annex B: Documents reviewed

#	NAME OF DOCUMENT AND AUTHOR /DATE / SOURCE
1	Tonga Police Development Programme Evaluation Stacey Tennant and Sandra Bernklau, 2016
2	Pacific Judicial Strengthening Initiative Review Report, James McGovern et al 11 March, 2019
3	Evaluation of NZ Aid to Vanuatu, Mark McGillivray et al, 9 August 2017
4	Pacific Judicial Collaboration, Concept note, May 2019 (Fed Court)
5	Guidelines for New Zealand Judicial Assistance to Pacific Island Countries, no author, 2016
6	Judicial Initiatives Strategic Framework, no author, no date
7	Law and Justice results and lessons from AMAs and ACAs in 2015-2016
8	MFAT Pacific Country Strategies 2017 (INTERNAL DOC)
9	FADTC inquiry into NZ aid to the Pacific, August 2019
10	MFAT strategic intentions – 2019-2023
11	Review of NZAP approach to Judicial support in the Pacific – issues and lessons March 2016 Marion Quinn and Kevin Clark
12	NZ Engagement in the Justice Sector in the Pacific, Dr Tess Newton Cain, 2019? (draft)
13	Samoa Corrections Department, Activity Monitoring Assessment, Catherine McLean and Fellauai Tauai – 3/7/2017
14	Samoa Prisons and Corrections Service Partnership Activity Design Document, New Zealand Corrections Technical Assistance (December 2015)
15	Vanuatu Correctional Services Partnership Monitoring Assessment. Charlie Manawai 30th June 2019
16	Supreme Court Judges Completion Assessment – Tonga, Katrina Ma’U (25th March 2019)
17	Judicial Pacific Participation Fund Activity Monitoring Assessment, Elise Trewick, (20 December 2019)
18	Judicial Pacific Participation Fund Activity Monitoring Assessment, Elise Trewick, (25th June 2019)
19	Pacific Judicial Strengthening Initiative (PJSI) Activity Monitoring Assessment, Elise Trewick, (26 June 2019)
20	Pacific Judicial Strengthening Initiative (PJSI) Activity Monitoring Assessment, Elise Trewick, (31st January 2020)
21	Solomon Islands Policing Support Activity Monitoring Assessment, Courtney Rose, (22 October 2019)
22	Support to Vanuatu Office of Public prosecutions business case, Esther Jens, (10 April 2019)
23	Judicial Pacific Participation Fund business case, Elise Trewick, (20th May 2019)
24	Law and Justice Activity – Police Policy – Vanuatu business case, Esther Jens, (29th October 2019)
25	Cybersecurity Support to Pacific business case, Paul Seaden, (8th July 2019)
26	Strengthening Capability in Samoa’s Judiciary business case, Katie Roche, (15th July 2018)
27	CER N.Z Support to Pacific Island Countries business case, Paul Seaden, (14 June 2019)
28	Support to Vanuatu Public Prosecutors Office business case, Esther Jens, (15th July 2018)
29	Tonga Justice Sector Support business case, Katrina Ma’u, Katherine Biggs, (28th February 2020)
30	M.O.U. MFAT and CERT N.Z., Not dated, not signed Paul Seaden
31	CERT NZ/ Pacific Role Concept note, (25th September 2018)

#	NAME OF DOCUMENT AND AUTHOR /DATE / SOURCE
32	Vanuatu Halls of Justice Rebuild business case
33	PILON Litigation Skills Programme Activity Design Document, No author, Undated
34	Vanuatu, TA in the Policing and Security Sector to strengthen institution policy and systems MOU. MFAT and Independent Police Conduct authority. Unsigned, Not dated
35	Pacific Judicial Strengthening Initiative, Milestone 6, Annual Progress Report (31st July 2018)
36	Pacific Judicial Strengthening Initiative, Annual Report, July 2018 – June 2019
37	Pacific Judicial Strengthening Initiative, Third Six Monthly Progress Report, 31st January 2019
38	Pacific Judiciary Strengthening Initiative, Fourth Six Monthly Progress Report, July to Dec 2019
39	Psychologist Support Concept Note – Samoa, Katie Roche, (October 2018)
40	Activity List, November 2020, Tausala Fruean
41	Pacific Legislative Drafting Programme Progress report, Leigh Talamaivao, (June 2020)
42	Pacific Legislative Drafting Assistance 2017 – 2021, Final AMA, Leonard Chan, (June 2020)
43	Draft PJSI 2 year extension COVID 19 Redesign 2020-21 Federal Courts
44	High-level plan and budget for Judicial Pacific Participation Fund 1 May 2020 to 30 June 2021 (revised as a consequence of the Covid-19 pandemic)
45	Building on Local Strengths AusAID, Marcus Cox et al, ODE December 2012
46	PJSI Initiative Court Trend Report 2018 Cate Sumner Federal Court
47	Judicial Pacific Participation Fund 3rd Quarter Report 1 January – 31 March 2017
48	Judicial Pacific Participation Fund 1st Quarter Report 1 July – 30 September 2016
49	Judicial Pacific Participation Fund 2nd Quarter Report 1 October – 31 December 2016
50	Tonga Justice Sector Support Programme Activity Design Document August 2017
51	Tonga Justice Sector Support Programme (TJSSP) RFP; September 2017
52	Terms of reference for the management of an activity in the Tongan justice sector. Alice Feslier Holmes, 9 April 2018
53	Coffey Re-validation Mission: Tonga Justice Sector Support Programme (TJSSP) March 2019
54	Letter from Tonga MOJ 24th June 2019
55	Independent Review of AusAID support to the Samoan justice sector, Fiona Kotvojs and Pjsaina Leilua Lei Sam 14 October 2015
56	The Mid-term review of the Solomon Islands Justice Programme -Linda Kelly, Daniel Woods, Ali Tuhanuku August 2015
57	Australian Indonesian Partnership for Justice, (Evaluation) Zazie Tolmer 2016
58	Australia Vanuatu Policing and Justice Program Evaluation Report- Paul Nichols, Leigh Toomey and Michelle Besley (Praxis Consultants Pty Ltd), Bertha Pakoasongi (DFAT Post Vanuatu) and Patrick Hagan (AFP) December 2019
59	Pacific Legislative Drafting progress report, Leigh Talamaivao, (1 Jan-30June 2020)
60	Nauru Law and Justice Sector Improvement Activity Monitoring Report, Alicia Kotsapas, 30th June 2015
61	Custom inside and outside of the Constitution in the Pacific Islands today, Miranda Forsyth, November 2016, Port Vila, Vanuatu
62	Support to the Judiciary Vanuatu Activity Monitoring Summary 2018
63	Justice for the Poor Publications, Doug Porter, no date
64	Converging Currents, Custom and Human Rights in the Pacific, New Zealand Law Commission, 2006

11 Annex C: People consulted¹

Phase 1

	NAME	AREA/PROGRAMME		NAME	AREA/PROGRAMME
1	Chris Day	MFAT Regional	16	Maria Reynen-Clayton	Tokelau Desk
2	Tina Pope and Janine Mcintosh	JPPF	17	Sally MacKenzie	Human Rights MFAT
3	Leigh Talamaivao	PLDA	18	Steve Dunn	NZ Police
4	Alex Shahryar-Davies	MFAT Regional	19	Peter Boshier	Ombudsman NZ
5	Claire Shirley	Nauru Desk	20	Enoka Puni	Samoan Judge, in NZ
6	Fakakoloa Kutu	Crown Law Office	21	Sir Ron Young	Chair of NZ Parole Board
7	Kathrine Biggs	Tonga Desk	22	Fiona Macfarlane	PNG Desk
8	Elise Trewick	Kiribati Desk	23	Elaine Jepsen	Samoa Desk
9	Tara D'Sousa	Gender MFAT	24	Bryn Jones	Coffey/Tonga Project
10	Lavea'i Ioane	Tuvalu Desk	25	Kym Grierson and Robert Pa'o	NZ Corrections
11	Gaia Church	Gender and Human Rights MFAT	26	Matthew Allen	Solomon Islands Desk
12	Livingston Armytage and Lorry Metzner	PJSI	27	Sarah Nisbet	Vanuatu L&J Programme Officer
13	Simon Donald	Fiji (and ex-Vanuatu) desk	28	Sarah Short	Cook Islands Desk
14	Mereia Carling	Children and youth wellbeing MFAT	29	Rebecca Stewart	Partnerships MFAT
15	Rick Woodham	MFAT Governance	30	Tausala Fruean	MFAT Governance

Phase 2

	NAME	AREA/PROGRAMME		NAME	AREA/PROGRAMME
1	Judge Ida Malosi	Pacific Judge in NZ	25	Justin Rogers	TL of NZ police Vanuatu
2	Sir David Carruthers	NZ Judge trainer and mentor	26	John Carey	Centre for Judicial Excellence PNG
3	Person 3	Vanuatu	27	Eric Colvin	University of the South Pacific
4	Miranda Forsyth	Academic and customary law expert	28	Prem Narayan	Legal Practitioner Fiji
5	Doug Porter	Pacific Justice expert	29	Manakovi Pahulu	CEO MOJ Tonga

¹ Names of people consulted were included with their permission

	NAME	AREA/PROGRAMME		NAME	AREA/PROGRAMME
6	Salote Kaimacuata	Former Fiji Magistrate	30	Tevita Fukofuka	Chief Registrar Supreme Court Tonga
7	Kendra Drousseau	World Vision Vanuatu	31	Hon Chief Justice Whitten	CJ Tonga
8	Sakuntala Akmeemana	DFAT Australia	32	Justice Leilani Warren	Samoa
9	Josaia Naigulevu	Public Prosecutor Vanuatu	33	Ingrid Kabua	Chief Clerk Marshall Islands
10	Johnny Marango	Director Corrections Vanuatu	34	Justice Daryl Clark	Supreme Court Samoa
11	Rob Macalister	Corrections Vanuatu	35	Justice Vui Nelson	Supreme Court Samoa
12	Justice Leonard Maina	High Court Judge Solomon Islands	36	Judge Talasa Atoa Saaga	Samoa
13	Helen Burrows	Federal Court Australia	37	Virginia Horscroft	Justice Expert – World Bank
14	Allison Sengebau	Clerk of Court, Supreme Court Palau	38	Justice Viran Trief	Vanuatu
15	Hon Chief Justice Craig Coxhead	CJ Niue	39	Mr Teokotai Joseph and Aashqeen Hasan	Ministry of Corrective Services Cook Islands
16	Hon Chief Justice Sir John Muria	CJ Kiribati	40	Ms Fitilagi Faanunu	Family Protection Legal Aid Tonga
17	Hon Chief Justice Carl Ingram	CJ Marshall Islands	41	Cathy McWilliams and DFAT staff member	DFAT Vanuatu
18	Hon Chief Justice Sir Hugh Williams	CJ Cook Islands	42	Laura McIlhenny	DFAT Samoa
19	John Whitta	Justice of the Peace Cook Islands	43	Person 43	Vanuatu
20	Paul Allsworth	President Koutu Nui Cook Islands	44	Moliei Simi Vaai	CEO MOJ Samoa
21	Mani Mate / Charmaine Dolan	Development Coordination Division Cook Islands	45	Jeannette Bolenga	(formerly) Oxfam Vanuatu
22	Rebeka Buchanan	Punanga Tauturu Cook Islands	46	Rawaeita Beniata	Dep People's Lawyer Kiribati
23	Rt Hon Helen Winkelmann	Chief Justice NZ and Tokelau	47	Ian Augerea	PNG Courts
24	Sasae Walters	PILON Coordinator Samoa			

12 Annex D: Development partner context

NZ police and correctional services have had a significant programme in Vanuatu. Support has also been provided to Correctional Services in Samoa, which has recently merged with Police. New Zealand Police have provided support to Solomon Islands, Fiji, PNG, Cook Islands, Tonga and Niue. These activities were not in scope for this evaluation.

Australia's development support to the region is AUD \$1.3 billion, with Papua New Guinea being the largest bilateral program in 2018-19 followed by Solomon Islands, Vanuatu, and Fiji. Australia also has substantial bilateral programs with Samoa, Tonga, Kiribati, Nauru and other Pacific Island countries. However, support to the justice sector is a small component of this program.

The Australian Federal Police has two regional programs: The Pacific Transnational Crime Network and the Pacific Police Development Program which supports a broad range of police development activities throughout the Pacific region. The Pacific Police Development Program Regional component projects are delivered under six interrelated program components: Strategic Partnerships; Leadership and Management; Learning and Development; Corporate Service Reform; Legal Frameworks; and Gender.

The Australian Attorney General's Department (AGD) runs a Pacific Law and Justice Program focusing on legal and policy reform across the Pacific. AGD also works with individual Pacific Island countries to provide strategic technical assistance on legal reform projects. Each year, the department runs training and development programs to help strengthen the policy skills of Pacific law and justice officers. AGD's support to several policy and legal reforms has focused on cybercrime, sexual and gender-based violence, drug law and child abuse and corruption.

In Samoa, United Nations Development Program (UNDP) is scoping a new initiative in the justice sector and the Ministry of Justice is seeking support in finalising the first draft Strategic Law and Justice Plan before submitting it to Cabinet. A new initiative called Rights Empowerment and Cohesion was implemented successfully in Fiji and now includes Tonga. The programme is an initiative of UN Women, UNDP and the Government of Tonga with aims to enhance access to justice for all citizens through the integration of services and remote delivery by service providers. Services include certification of documents, free legal advice and counselling for domestic violence survivors by the Ministry of Justice.

Non-government, multilateral and International Organisations such as World Bank, ADB, EU, UNDP, UN Women, UNICEF, World Vision, Care, Oxfam and local NGOs are working with community groups to improve access to justice for marginalised groups including women, children and youth. New Zealand funds several of these initiatives through its Partnership programme (which were not in the scope of this evaluation).

13 Annex E: Deep dive case studies

The decision to include “deep dive” countries was both a pragmatic and strategic one. The evaluation team wanted to look at a range of levels and types of support provided, and a range of contexts, so the decision about which countries to focus on was made at the end of Phase 1 after careful selection criteria were considered, including pragmatic considerations. Representatives from other countries were invited to consult with the evaluation team as convenient, hence the reach to 13 PICs overall.

Cook Islands was chosen as a Realm country which has had extensive legislative drafting support, as well as involvement in the regional court strengthening programmes. There have not been any bilateral justice activities over the last 10 years that were in scope for this evaluation.

Samoa was chosen mainly because of its positive experiences with support from New Zealand to establish special courts, and the potential for lessons to be shared with other PICs considering expanding their courts in this way.

Vanuatu was chosen as country with a great deal of justice sector support from both New Zealand and Australia and the team were interested in seeing how the sector was changing with this intensive support.

13.1 Deep dive - Cook Islands

The Cook Islands is a self-governing country in free association with New Zealand. It comprises 15 islands with a total land area of only 237 square kilometres spread over two million square kilometres of ocean.

MFAT Achievements

PJDP, PJSI and JPPF

PJSI programmes are rated highly in Cook Islands, and in particular the focus on training Justices of the Peace (JPs), Registrars and court staff which has reportedly led to improved performance and confidence. PJDP support was also foundational to the establishment of the Cook Islands Pasifika style youth court in 2014. In addition to the support provided to enable them to assess needs, design and deliver training, was cited as one of the Cook Islands’ most significant changes – by the most senior resident Justice of the Peace.

PJSI recently conducted training for 20 JPs which was presented by a trainer in Perth online due to COVID 19 related travel restrictions. This very worked well. Its success was largely as a result of the Senior JP in Rarotonga facilitating this training session in the local language. The facilitator had undergone Train the Trainer through PJSI. The 20 JPs found the training to be very effective and had increased their confidence in carrying out their duties. Overall, PJSI and PJDP held 14 activities in Cook Islands. JPPF documents report the delivery of training to 25 participants of from the Cook Islands from 2014 – 2018.

The Certificate in Law provided by USP also highly valued, as it has resulted in increased capacity and confidence and credibility.

Legislative Drafting

Support provided by the Pacific desk senior legislative drafter in the New Zealand Parliamentary Counsel Office was particularly valued and appreciated by the Cook Islands Crown Law Office, and resulted in:

- Immigration Bill (Cook Islands) (now introduced):
- Immigration Regulations (Cook Islands):
- Investment Corporation Amendment Bill (Cook Islands) (enacted in December 2019):
- Ministry of Corrections Legislation Bill (Cook Islands) (enacted in December 2019):
- Agriculture Powers Bill (Cook Islands):
- Te Aponga Uira o Tumu; Te Varo Varo Amendment Bill (Cook Islands) (enacted in December 2019):
- Airport Authority Amendment Bill (Cook Islands) (enacted in December 2019):
- Ports Authority Amendment Bill (Cook Islands) (enacted in December 2019):
- Bank of the Cook Islands Amendment Bill (Cook Islands) (enacted in December 2019):
- Te Tatou Vai Authority Bill (Cook Islands):
- Control of Prices Amendment Bill (Cook Islands) (enacted in December 2019):
- Marine Resources Legislation Bill (Cook Islands) (enacted in December 2019):
- Financial Services Developments Authority Amendment Bill (Cook Islands):
- Leases Approval Tribunal Amendment Bill Act (Cook Islands):
- Infrastructure Amendment Regulations No 2 2019 (Cook Islands):
- Public Health Commencement Order 2019 (Cook Islands):
- Customs Import (Plastic Shopping Bags) Order 2019 (Cook Islands):
- Transport Amendment Bill 2020 (enacted 25 March 2020)
- Police (Validation of Reappointment Bill 2020 (enacted 25 March 2020)
- Customs Legislation Bill 2020 (enacted 4 May 2020)
- Public Expenditure Review Committee and Audit Amendment Bill (enacted 4 May 2020)
- Cook Islands Amendment Bill 2020 (enacted 30 June 2020)
- Personal Property Securities Amendment Bill (enacted 30 June 2020)
- Seabed Minerals Amendment Bill 2020 (enacted 30 June 2020)
- COVID-19 (Cook Islands National Superannuation) Bill 2020 (enacted 30 June 2020)
- COVID-19 (Island Government Elections) Bill 2020 (enacted 30 June 2020)
- Income tax (Standard Deductions for Individuals) Amendment Bill 2020 (enacted 30 June 2020).

The Pacific Desk also provided drafting assistance and peer review in respect of other Bills that were enacted by the Cook Islands Parliament during **2020**:

- COVID-19 Bill 2020 (enacted 25 March 2020)
- Banking Amendment Bill 2020 (enacted 18 June 2020)
- Leases Restrictions Amendment Bill 2020 (enacted 30 June 2020)

- COVID-19 (Economic Response) Bill 2020 (enacted 6 July 2020)⁴⁸

PCO also drafted regulations and other instruments to accompany the above Acts, for example the family law rules and infringement notices. Part of PCO's role includes giving general advice relating to legislation and related legal issues which often requires analysis of complex issues.

Planned NZ support to Cook Islands

There are no business cases proposed for justice sector support to Cook Islands specifically, however there is expected to be continuing support through the Judicial Pacific Participation Fund, the Pacific Judicial Strengthening Initiative and the Pacific Legislative Drafting Activity.

Other donor support to Cook Islands Justice Sector

Through Pacific Women, the Australian Government will spend approximately \$3.9 million over 10 years (2012-2022) on initiatives supporting women's empowerment in the Cook Islands. Its activities include support to improved legal frameworks, law enforcement and women's access to justice. This includes improved coordination of crisis services, improving women's access to protective systems in rural communities, supporting the counselling services provided by Punanga Tauturu Inc. and providing free legal aid to survivors of violence. The activities under the Cook Islands Country Plan aim to increase the capacity of the Gender Development Office to deliver on the Gender Equality and Women's Empowerment Policy 2011- 2016.

Challenges to access to justice in Cook Islands

A core challenge remains building understanding and competence of non-law trained judicial officers (e.g. Justices of the Peace in Cook Islands), who are increasingly required to hear family protection cases, including divorce and maintenance of children. This category of cases is analogous to the New Zealand District Court jurisdiction. In Cook Islands, it is currently the responsibility of 4-5 non-law trained Justices of the Peace. Given that the majority of court users in the Pacific are likely to engage with courts of first instance (e.g. Local Courts or Magistrates' Courts), particularly on issues such as land, family violence and criminal jurisdictions, opportunities exist for the PJSI to pivot its focus toward heightened support to these jurisdictions⁴⁹.

Domestic and sexual violence is a sensitive issue in the Cook Islands. The majority of cases are not brought to court, particularly cases of intimate partner violence. A Family Protection and Support Act

⁴⁸ Programme reports

⁴⁹ PJSI Review, 11 March 2019

was passed in July 2017, providing additional measures to protect families and children from family violence.

The population of Cook Islands is only able to access the Courts on two of the 15 islands. On the other islands there are JPs who fulfil the whole range of Government activities. Courts rarely sit outside Rarotonga. If there is a case of domestic violence or any other serious crime on other islands the JP will remand the offender to Rarotonga. Sittings for criminal and land matters are all heard at Rarotonga or Aitutaki. Small numbers have undergone training in JPs Jurisdiction, and a couple have had training in undefended applications. Since passing of the JPs Act they have jurisdiction in the family arena. There is no resident judge on Cook Islands and the travel restrictions of COVID-19 led to a substantial backlog of cases. In addition to the Chief Justice there are four other High Court judges who do trials and land courts. These are retired judges from NZ who fly in to do fortnightly sessions 5 times a year (travel restrictions permitting). The Chief Justice and other judges communicate with Cook Islands by zoom and skype and phone when not there. More judges are needed.

Opportunities for New Zealand

Legislative Drafting

A scoping study for the consolidation of Cook Islands Legislation was undertaken for the Government of the Cook Islands by Lexus Nexus at the end of 2019. The scoping study provides a solid foundation for the Cook Islands to progress the issue of consolidation, should the Cook Islands Government consider it a priority. The Pacific Desk has also been exploring with the Cook Islands CLO the possibility of a short-term secondment of one of their lawyers to NZ PCO to build Cook Islands legislative drafting capacity.

PJSI and JPPF

Having established good working relationships with the court staff and JPs and having trained trainers, there are now opportunities for both PJSI and JPPF to conduct further training remotely in the Cook Islands at significantly reduced costs.

13.2 Deep dive - Samoa

NZ support to Samoa

Samoa has received bilateral support to the justice sector amounting to NZD 291,522 since 2010 under three capacity building activities:

- Justice/ Courts Strengthening - Strengthening of the Ministry of Justice and Courts Administration (2005-2010) including: Ministry-wide institutional strengthening for policy and planning; courts efficiency improvements; developing a Probation and Parole Service.
- Strengthening Capability in Samoa's Judiciary - This activity provides support to Samoa's specialist courts to improve systems, & risk assessments; and reduce reoffending.
- Law and Justice Sector Support - Technical assistance with drafting legislation and undertaking public consultations for an updated Crimes Ordinance (1961), Criminal Procedure Act (1972), Evidence Ordinance (1961) and a new Sentencing Act.

PJSI and JPPF also provided support under the regional programme.

Achievements

To address the crime rate and Samoa's high incarceration rate, Samoa's judiciary set up specialist courts, the Family Violence and Drug and Alcohol Courts. PJSI and JPPF have provided the Family Violence Courts with support, enabling this court to operate effectively and potentially to serve as a model for other PICs. PJSI trained 104 participants (54 per cent women) from Samoa and delivered ten activities. JPPF trained 11 participants⁵⁰.

Victim support groups, initially focused on women as victims, wanted to address the cause of the offending and started a "male advocacy program." Now the Family Violence Courts can include the Men Against Violence programme as a sentencing alternative. The Men Against Violence programme has approximately 500 men alumni and has achieved remarkable results with only 1% recidivism rate over the first 5 years.

The Psychologist recently funded by MFAT attached to these courts, has put in place policies and procedures that are in use and have been of value not only to the Courts but to Correctional Services, probation and parole, and Ministries of Justice and Health in dealing with offenders with a focus on reducing recidivism.

PILON now based in Samoa, has established Working Groups on priorities determined as Gender Based Violence, Corruption and Cyber Crime, which are meeting regularly and well received.

Planned NZ support to Samoa

The business case (15th July 2018) seeking approval for \$82,000 to strengthen "Samoa judiciary by improving assessment for offenders with serious behaviour issues" was determined to be a low value activity and that there was no additional benefit to do an options analysis and as such were "comfortable with the intent and budget for this one year proposal."

Other donor support to Samoa Justice Sector

Australia is Samoa's largest bilateral aid donor, with New Zealand, China and Japan being the other most significant donors, however Australia's DFAT support does not include the justice sector specifically in its bilateral program.

The Australian Federal Police includes Samoa in its Pacific Police Development Program which is focused on strengthening core policing functions, organisational leadership, management and corporate support within the Samoan Police Service. The Australian Attorney General's Department also includes support to Samoa, specifically relating to legal policy development.

UNDP is currently providing support to a Law and Justice Plan for the years 2020 to 2025, to be considered by Cabinet when finalized.

⁵⁰ Some participants from both PJSI and JPPF may have participated in more than one activity.

Challenges

Crime prevention is considered to be a key challenge in Samoa, particularly gender based violence, and drug and alcohol related crime. The prevalence rate of physical and sexual violence, sexual exploitation and harmful practices in Samoa is much higher than the global average at 76 percent, while the global average is 35 percent⁵¹. The MFAT business case for strengthening "Samoa judiciary by improving assessments and interventions for offenders with serious behavioural issues" in July 2018, reported that 9 out of 10 Samoans are affected by family violence. Crimes related to unlawful fishing by international fishing trawlers are also presenting as a challenge.

Lack of coordination across police, corrections, courts, and relevant Ministries has led to failure in implementing the Law and Justice Strategic Plan developed in 2016. This remains a challenge recognized by a number of those interviewed from the Ministry of Justice and the judiciary.

By international and certainly by Pacific standards, Samoa has a high prison population, both in terms of absolute numbers and as a rate within the total population. The 2015 State of Human Rights Report indicates that prisoners comprise one of the most vulnerable groups in Samoa society. Samoa has a low use of bail for those held in remand and convictions have a high instance of custodial sentences. The MFAT monitoring assessment of Samoa Corrections Department in July 2017 recommended that "Wider judicial reform and the application of sentencing laws (including community sentencing) need to be considered in a strategic manner". This monitoring assessment also recommended "All prisoners should have case management and offender plans which identify requirements around which programmes can be tailored. This is especially important to juvenile offenders and efforts to adequately provide for their rehabilitation and reintegration needs to be prioritised".

Legal aid is available in Samoa but its access is based on the financial capacity of the accused and the degree of seriousness of the offence and is not available in civil proceedings. Representation is available on a pro bono basis but this is not common in Samoa. There are insufficient translators for the needs of the Courts conducted in English, a language not used by most of the court users. There is no centralized justice sector database to inform planning, with no means of monitoring and evaluation and limited capacity to use technology.

Opportunities

The Family Violence Courts and community based organizations supporting these courts have the potential to be used as a model for other PICs. The success that the Men Against Violence programme has seen could potentially be replicated in other countries that face similar issues.

The MoJ is looking for support in finalizing their draft Law and Justice Plan for the years 2020 to 2025, and with the implementation of this plan. The Law and Justice Plan drafted in 2016 was not implemented as it failed to coordinate the activities of all the justice agencies. A new Attorney General and CEO of MoJ are committed to crime prevention as a priority and recognize the need to work in close collaboration with relevant Ministries, accountability agencies, courts, Corrections and Police to ensure coordination.

⁵¹ <https://pacificwomen.org/research/>

⁵² Based on conversations during the design consultation process for the ADD for Samoa Prisons and Corrections Service Partnership (December 2015)

Building on the high standing and credibility of the work of both PJSI and JPPF and the long term relationships with the judiciary in Samoa after 9 and 6 years respectively, both programmes are well positioned to offer training and mentoring remotely in view of COVID 19 travel restrictions.

13.3 Deep dive - Vanuatu

NZ support to Vanuatu

Vanuatu has received bilateral support to the justice sector under three activities:

- Law and Justice Activity - Strengthening Law and Justice, peace and security in Vanuatu through increased institutional capacity and capability in systems of law and justice (2019-2024) in design stage
- Support to the Judiciary - Provision of a New Zealand District Court judge to sit on the Vanuatu Supreme Court and Court of Appeal to adjudicate cases and provide mentoring to local judges (2006-2021)
- Support to the Vanuatu Office of Public Prosecutions - New Zealand Serious Fraud Office (SFO) is providing investigative support to Vanuatu Office of Public Prosecutors (VOPP) over 12 months. SFO will deploy an investigative lawyer and a forensic accountant to assist with criminal investigations and three large cases (2019)

In addition to these activities, significant bilateral support has been undertaken with Police and Corrections in Vanuatu. These activities were not within the scope of this evaluation and therefore are not reflected in this case study.

An evaluation of NZ aid to Vanuatu in 2017⁵³ found that there was a high level of ownership at the strategy level, but low levels of implementation ownership and capacity, leading to a lack of sustainability. The evaluation also found that poor transparency and monitoring and reporting makes it difficult to assess effectiveness. This was a common factor noted across all of the documentation. Other challenges to impact include the breadth of the investment across too many sectors in Vanuatu and a need to streamline investments; gender bias which is a “profoundly disturbing issue” limiting economic development potential; lack of sustainability; and natural disasters. Success factors included partner country involvement in the design of activities which helped to achieve some medium term outcomes in addition to short term outcomes.

An activity monitoring assessment in June 2019 of the Pacific Judicial Strengthening Initiative (PJSI)⁵⁴ noted that the project conducted and planned to continue local visits to remote areas in Vanuatu to discuss gender based violence with local communities because these cases are thought to rarely be brought to the formal judicial system.

Achievements

Support to the Judiciary, including through PJSI and JPPF has had good results in terms of reducing case backlogs in the Vanuatu Supreme court without compromising quality. This is evidenced in part by the proportion of successful appeals remaining consistent. The bilateral funding of a Supreme Court judge may also contribute to the retention of quality, while reducing backlogs. This support has been highly regarded. Court administration in Vanuatu has improved to such an extent that stakeholders interviewed reported that it could serve as a model for other PICs.

⁵³ McGillivray, Mark et al, *Evaluation of NZ Aid to Vanuatu*, 9 August 2017

⁵⁴ Activity Monitoring Assessment of Pacific Judicial Strengthening Initiative, 26 June 2019

PJSI has trained 148 Ni-Vanuatu participants (46 per cent women) and has delivered 15 activities in Vanuatu. JPPF has trained nine participants from Vanuatu since 2014.

Planned NZ support to Vanuatu

One more investment is at the design phase as at early 2020; an infrastructure project to rebuild the Vanuatu Halls of Justice to improve access to justice, including disability access and gender protection rights, and to show support to the Vanuatu Judiciary. The business case also notes that New Zealand is keen to be seen as a reliable and responsive development partner.

It should be noted that New Zealand's approach to partnering in Vanuatu means that support is provided where requested and where needs are identified within the justice sector.

Other donor support to Vanuatu Justice Sector

Australian ODA to Vanuatu in 2019-2020 is estimated at AUD \$66.2 million and Australia is Vanuatu's largest bilateral donor. In the 2018 -2019 Annual Program Performance Report it is noted that "Australia strengthened policing and justice services by supporting training of 187 (50 women) new recruits to the Vanuatu Police Force and over 433 law and justice officials. Australia also funded the Vanuatu Women's Centre to deliver counselling, legal and crisis response services to 6,612 women and children survivors of violence"⁵⁵. Relevant results include:

The average number of days for completion of a criminal matter through the State Prosecutions Department and the Magistrates Court was reduced [exceeded PAF target 3.1]. The average days through the Office of the Public Prosecutor and Supreme Court exceeded the target [PAF target 3.2]⁵⁶. Case management support resulted in the courts and Vanuatu Police Force (VPF) leadership receiving monthly dashboard reports and all involved agencies showing improvements in the collection and analysis of accurate case information.

Women, children and youth in Vanuatu face additional challenges in accessing justice with 80 per cent of the criminal caseload involving family and sexual violence. Australia supported the pilot and evaluation of a community and formal justice cooperation model for domestic violence protection, provided for under the Family Protection Act 2008. In 2018, the pilot enabled 12 community members to be appointed as Authorised Persons (APs) and Registered Counsellors. They issued 79 Temporary Protection Orders which protected 70 women, 9 men and 5 children affected by domestic violence. An evaluation reported that the work of these roles had increased police performance and community security, with strong community support to continue the pilot.

Ongoing support to the Vanuatu Women's Centre played a critical role in supporting women and children's access to justice as well as targeting a reduction in violence against women. The Centre provided counselling and legal services [including] to 971 clients to obtain Family Protection Orders, an increase of 30 per cent from 2017. An additional 2,261 women and children requested information on dealing with violence. The Centre reached women in rural and remote communities through their Committees Against Violence Against Women (CAVAW) network and through trained male advocates who support victims to access justice.

⁵⁵ <https://www.dfat.gov.au/about-us/publications/Pages/vanuatu-aid-program-performance-report-2018-19>

⁵⁶ The average number of days for completion of a criminal matter through the State Prosecutions Department and the Magistrates Court was reduced significantly from 726 in 2017 to 408. The average days (690) through the Office of the Public Prosecutor and Supreme Court increased from the previous year (366) due to the completion of a large number of long pending cases, however, this still exceeded the target of 850.

The Australian Attorney General's Department is supporting Vanuatu with Cybercrime legislation.

Challenges relating to access to justice in Vanuatu

Violence against women and girls

Domestic violence remains a serious concern, with implications at family and community level, and for Vanuatu's economic development. The prevalence rate of physical and sexual violence, sexual exploitation and harmful practices in Vanuatu is much higher than the global average of 35 percent, at 72 percent. The global average for intimate partner physical and/or sexual violence is 30 percent versus Vanuatu at 60 percent⁵⁷. Women with disabilities face up to 10 times more violence than other women⁵⁸. Victim withdrawal of complaints to police (65 per cent) is high due to social pressure. Implementation of the Family Protection Act 2008 remains inadequately enforced and resourced⁵⁹.

A 2010 study found that the police and judicial system failed to deal with domestic violence as a criminal matter even though it is a criminal offence under Vanuatu law. Often, the police viewed domestic violence as something that should be reconciled privately or customarily instead of being pursued in the formal court system.⁶⁰

Equal access to justice for people living with disabilities, women and children

A challenge in Vanuatu that resulted in the Australian-funded Stretem Rod Blong Jastis mo Sefti program (SRBJS) – the Vanuatu Australia Policing and Justice Program is access to justice for people with a disability. This project delivers a *Building Community Partnerships* course to support the skills development of staff from the Police, Justice and Community Services sector.

Access to legal information

Access to legal information is important for lawyers and the general public alike in order to keep updated with legislation and case laws. In an initiative by the University of the South Pacific School of Law based in Vanuatu and AustLii, the PaCLii website (<http://www.paclii.org/>) has been maintained as an online database containing legislation, cases and other secondary materials for countries in the region including American Samoa, Cook Islands, Commonwealth of Northern Mariana Islands, Federated States of Micronesia, Fiji, Guam, Kiribati, Marshall Islands, Nauru, Niue, New Caledonia, Palau, Papua New Guinea, Pitcairn Islands, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu. However, up to date content varies from one country to another. Also, access to legal information in Vanuatu has been made easier with the opening of a new law library in April 2018 as part of the Australian-funded Vanuatu Australia Policing and Justice Support program.

Lack of knowledge of the country's legal system

This is a challenge which has led to the World Justice Project's Vanuatu Chief's Legal Education Pilot Program which creates a legal education programme that equips chiefs with knowledge of state and customary laws, as well as good governance practices to improve the delivery of justice. This is important as 80 percent of Ni-Vanuatu rely on customary justice systems⁶¹.

⁵⁷ <https://pacificwomen.org/research/>

⁵⁸ United Nations Population Fund (2018) "Five things you didn't know about disability and sexual violence"

⁵⁹ <https://www.dfat.gov.au/about-us/publications/Pages/vanuatu-aid-program-performance-report-2018-19>

⁶⁰ Margaret Jolly, 'epilogue some thoughts on restorative justice and gender' in Anita Jowitt and Tess Newton (eds), *A Kind of Meddling* (2010) 271.

⁶¹ <https://worldjusticeproject.org/our-work/programs/vanuatu-chiefs-legal-education-pilot-program#:~:text=The%20Vanuatu%20Chief's%20Legal%20Education,rule%20of%20law%20through%20education.>

Opportunities

World Vision is integrating restorative justice approaches to domestic violence in Vanuatu. There is an opportunity to support replication of successful innovations that are being implemented by World Vision, DFAT and other donors. The Family Violence Courts in Samoa have successfully used a community based programme “Men against Violence” which has had a 1% recidivism rate over the first 5 years. There is potential for these two PICs to learn from each other on innovative ways to tackle domestic violence, by linking up all parts of the “chain of justice”.

Having established very good and long standing working relationships with the judiciary and court staff in Vanuatu both PJSI and JPPF are in good position to offer training, mentoring and support remotely, given the travel restrictions imposed by COVID 19.