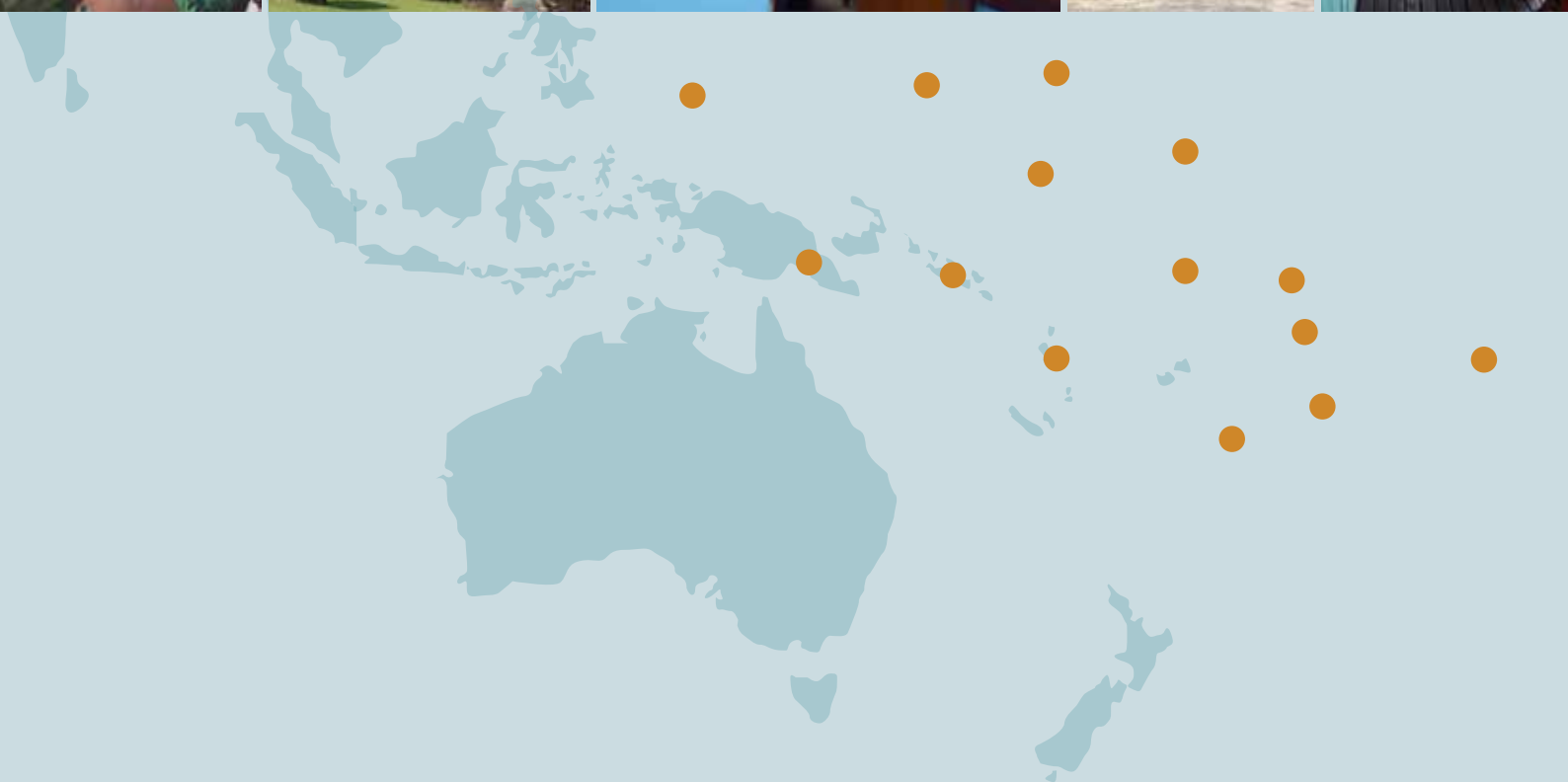




# Pacific Judicial Development Programme: **2011 Court Baseline Report**

MAY 2012





The information in this publication may be reproduced with suitable acknowledgement.  
2012

**Enquiries**

Federal Court of Australia  
Locked Bag A6000, Sydney NSW 1235

**Tel** +61 2 9230 8253

**Fax** +61 2 9223 1906

**Web** <http://www.paccli.org/pjdp/>



# Pacific Judicial Development Programme: **2011 Court Baseline Report**

MAY 2012



The Pacific Judicial Development Programme  
is a Regional Programme of Assistance  
Supported by New Zealand Ministry of  
Foreign Affairs and Trade

## Baseline Report Contributors

**Research Coordinator and Author** Cate Sumner, Judicial Monitoring and Evaluation Adviser

In-Country Performance Monitoring Reports supported by:

PJDP Jurisdiction	Chief Justice	National Coordinator
Cook Islands	Chief Justice Tom Weston	Ms Tangi Taoro
FSM	Chief Justice Martin Yinug	Mr Kapilly Capelle
Kiribati	Chief Justice John Baptist Muria	Chief Registrar Tetiro Semilota Mate
Marshall Islands	Chief Justice Carl Ingram	Ms Ingrid Kabua
Nauru	Chief Justice Geoffrey M Eames	Resident Magistrate Peter Arthur Law
Niue	Chief Justice Patrick Savage	Mr Darren Tohovaka
Palau	Chief Justice Arthur Ngiraklsong	Jelga Emiwo
PNG	Chief Justice Sir Salamo Injia	Deputy Chief Justice Gibbs Salika Deputy Chief Magistrate Iova Geita
Samoa	Chief Justice Patu Sapolu	Justice Clarence Viu Nelson
Solomon Islands	Chief Justice Sir Albert Palmer	Mr Leonard Maina
Tokelau	Chief Justice Dame Sian Elias	Ms Lise Dannies Hope Suveinakama
Tonga	Chief Justice Michael Dishington Scott	Chief Registrar Manakovi Pahulu
Tuvalu	Chief Justice Gordon Ward	Mr Afele Kitiona
Vanuatu	Chief Justice Vincent Lunabek	Mr Edwin Ambuse Macreveth

This Report was prepared in collaboration with Bethany Charlton and Simon O'Connor who worked as Research Interns at the Federal Court of Australia (FCA).

The PJDP Team Leader, Programme Manager, other Advisers and the management team at the FCA have all generously assisted in the development of this document.

The PJDP is a regional programme of assistance supported by the New Zealand Ministry for Foreign Affairs and Trade and implemented by the FCA.

# Contents

<b>Abbreviations</b>	<b>5</b>
<b>Mission and Vision Statements of the PJDP Partner Courts</b>	<b>6</b>
<b>Introductory Remarks</b>	<b>8</b>
<b>Executive Summary</b>	<b>12</b>
<b>1</b> Goal of the Pacific Judicial Development Programme	19
<b>2</b> Methodology for the Court Baseline Report	20
<b>3</b> A Snapshot of Selected Development Indicators	27
<b>4</b> Overview of Baseline for Court Performance Indicators	31
Indicator 1 Case Management–Clearance Rate	32
Indicator 2 Case Management–Average Duration of a Case	34
Indicator 3 Case Management–The Percentage of Appeals	36
Indicator 4 Case Management–Overturn Rate on Appeal	36
Indicator 5 Accessibility of Courts–Court Fee Waiver	38
Indicator 6 Accessibility of Courts–Circuit Courts	40
Indicator 7 Accessibility of Courts–Legal Aid	42
Indicator 8 Complaint Handling and Feedback	44
Indicator 9 Complaint Handling and Feedback - Judicial Officers	46
Indicator 10 Complaint Handling and Feedback - Court Staff	48
Indicator 11 Judicial Resources	50
Indicator 12 Court Staff Resources	52
Indicator 13 Transparency–Annual Report	54
Indicator 14 Transparency–Court Services Information	56
Indicator 15 Transparency–Publication of Judgments	58
<b>5</b> Client focused Courts–Three Case Studies	60
A Marshall Islands	60
B PNG National Court	62
C Palau	64
<b>6</b> Juvenile Disaggregated Data and Indicators	68
<b>7</b> Gender Disaggregated Data and Indicators	71
<b>8</b> Key Findings and Recommendations	73
<b>9</b> Regional Justice Performance Framework	81
<b>References</b>	<b>83</b>



# Abbreviations

ADR	Alternative Dispute Resolution
AusAID	Australian Agency for International Development
BNPL	Basic Needs Poverty Line
DCECMS	District Court Electronic Case Management System
FCA	Federal Court of Australia
FSM	Federated States of Micronesia
HIES	Household Income and Expenditure Survey
IFCE	International Framework for Court Excellence
JME	Judicial Monitoring and Evaluation
LJSS	Law and Justice Sector Secretariat
MLSC	Micronesian Legal Service Commission
NZAID	New Zealand Agency International Development
PacLII	Pacific Island Legal Information Institute
PIC	Pacific Island Country
PJDP	Pacific Judicial Development Programme
RMI	Republic of the Marshall Islands
UNICEF	United Nations Children's Fund



# Mission and Vision Statements of the PJDP Partner Courts

## Cook Islands

**Mission Statement:** To provide a safer, more just society for all Cook Islanders through the promotion of law enforcement and equitable access to justice.

**Vision Statement:** Building a fairer and safer Cook Islands.

---

## Republic of the Marshall Islands<sup>1</sup>

**Mission Statement:** The mission of the Courts of the Marshall Islands is to fairly and efficiently resolve disputes properly brought before them, discharging their judicial duties and responsibilities in accordance with the Constitution, laws, and customs of this unique island nation.

**Vision Statement:** The Courts of the Marshall Islands will be independent, impartial, well-managed, and respected, providing justice to all who come before them.

---

## Nauru

**Mission Statement:** To have a just and peaceful society, where an independent, impartial Judiciary delivers justice effectively and efficiently and supported by ethical legal professionals.

**Vision Statement:** Deliver Justice that is fair, visible, tangible and accessible to all.

---

## Palau

**Mission Statement:** The Judiciary's purpose is to preserve and enhance the rule of law by providing a just, efficient and accessible mechanism for resolving disputes. The Judiciary will interpret and apply the law, as modified by custom and tradition, consistently, impartially, and independently to protect the rights and liberties guaranteed by the laws and Constitution of the Republic of Palau.

**Vision Statement:** The courts of the Republic of Palau will provide justice for all while maintaining the highest standards of performance, professionalism, and ethics. Recognizing the inherent dignity of every person who participates in the justice system, the Judiciary will treat each participant with respect and will strive to make the process understandable, affordable, and efficient. Through the thoughtful, impartial, and well-reasoned resolution of disputes, the Judiciary will enhance public trust and confidence in this independent branch of government.

---

<sup>1</sup> Website of the RMI Judiciary <http://www.rmicourts.org/> visited on 20 January 2012.





## Papua New Guinea

**Mission Statement:** The Mission of the Papua New Guinea National Judicial System is to administer law and justice to all people in Papua New Guinea in a just and fair manner, effectively and efficiently in accordance with world best practice.<sup>2</sup>

**Vision Statement:** An efficient and effective judicial system delivering justice in a timely manner.<sup>3</sup>

## Samoa<sup>4</sup>

**Mission Statement:** To promote, provide and protect access to justice for a safe and stable Samoa.

**Vision Statement:** Justice for a safe Samoa.

## Tokelau

**Law and Justice Key Objectives<sup>5</sup>** To enhance community safety. To improve access to justice. To institute principles of good governance and enhance integrity in the institutions of law and justice. To improve information and human resource management in the law and justice sector. To improve national border management.

## Kingdom of Tonga

**Mission Statement:** To provide, promote, support and protect an independent judiciary.

**Vision Statement:** To be an excellent and renowned provider of justice services.

## Vanuatu

**Vision Statement:** A judiciary that is independent, effective, efficient and worthy of public trust and confidence, and a legal profession that provides quality, ethical, accessible and cost-effective legal service to our people and is willing and able to answer to public service.

- 2 Website of the RMI Judiciary <http://www.rmjcourts.org/> visited on 20 January 2012. Website of the Papua New Guinea Judicial Education Committee: <http://www.pngjudiciary.gov.pg/jecpng/#objectives>, visited 27 January 2012.
- 3 Silovo R, and L. Raka. 2006. *Judiciary services: National and Supreme Courts, Corporate Plan 2006-2010*. Papua New Guinea Judicial Education Committee, pp. 8.
- 4 Leung Wai, M. C. 2008. *Samoa law and justice sector plan 2008-2012*. Law and Justice Steering Committee, Samoa. <http://www.educatingjudges.com/Hyperlinks/LawJusticeSectorPlan2008-2012.pdf>
- 5 Tokelau National Strategic Plan 2010-2015

# Introductory Remarks

This baseline report on judicial monitoring and evaluation was presented to Chief Justices of the 14 jurisdictions participating in the Pacific Judicial Development Programme (PJDP) for their review, consideration and discussion at the Leadership Workshop held in March 2012 in Samoa.

It is the first time that such a report has been prepared under the PJDP, in either its first or second phases. It also appears to be the first time that such a regional baseline report has been prepared on judicial monitoring and evaluation in the Pacific. Following the discussions at the leadership workshop in Samoa and any corrections or additions that were received, the baseline report was finalised in May 2012 and distributed to PJDP counterparts.

The opening pages of this report set out the mission and vision statements that can be found in annual reports or other public documents for nine of the 14 PJDP countries. Courts across the 14 Pacific countries participating in PJDP articulate their role or mission in different ways yet several core or unifying elements emerge:

- access for all citizens to the courts in order to resolve disputes harmoniously,
- fair and efficient criminal justice processes that uphold the human rights of both defendants and victims of crime,
- equal treatment of those who appear before the courts,
- the promotion and protection of Constitutional guarantees concerning fundamental rights and freedoms.

The role of the courts means that there are many different parties or stakeholders that have an interest in how the courts perform including the following:

- the judiciary,
- court staff/frontline Registry personnel,
- defendants in criminal cases,
- victims of crime,
- parties bringing civil cases before the courts,
- women,
- children and youth,
- police,
- public defenders/legal aid organisations,
- prosecution services,
- members of Parliament,
- members of the executive government,
- indigenous/tribal groups,
- minority groups,
- people living with disabilities.

A prerequisite for courts to monitor and evaluate their performance in a meaningful sense is a dialogue or feedback mechanism with the different stakeholders that engage with the courts as well as with representatives of groups that face barriers in accessing the formal justice system. Courts are focussed, often exclusively, on handling those cases that are filed in court registries. However this report looks at a number of barriers that may prevent a significant proportion of individuals from accessing the formal justice system in the first place.

Judicial monitoring and evaluation efforts tend to be controversial whether they occur on a national or regional basis. The controversy is often focused on the comparative nature of traditional monitoring and evaluation systems and whether this can be effectively applied to a judicial workload. Differences in data collection systems as well as the way in which different types of cases are handled may mean that a comparative monitoring and evaluation framework for court jurisdictions within a country or region is rendered meaningless. It is therefore important to state at the outset that this baseline report has the following quite modest aims:

- 1 present an overview of what information on the work of courts in the 14 PJDP countries is currently accessible to the public through Annual Reports and court websites where available;
- 2 document approaches in two of the 14 PJDP jurisdictions where courts have sought to obtain the views of court clients on the services that they provide;
- 3 highlight access to justice challenges raised by judges and court staff across the 14 PJDP jurisdictions and the importance of building the capacity of the selected PIC courts to analyse the justice needs within their country to better understand what matters to actual and potential court users in the delivery of quality court services through the use of client and court stakeholder surveys and dialogues; and
- 4 engage with Chief Justices on ways to build the capacity of courts in the Pacific region to publish quality court annual reports that are accessible to the public.

## Highlighting Barriers to Accessing the Courts

Discussions with Chief Justices and National Coordinators from the 14 PJDP countries have highlighted a number of barriers for justice seekers who attempt to access the courts. The following nine issues are listed in the order of frequency that they were raised:

- Limited legal assistance/ Public's lack of information on the legal and court system/ Inability of potential justice seekers to retain legal counsel.
- The cost of filing a court case.
- Geographic challenges: many atolls without a courthouse, limited telephone services.
- The backlog or delay in hearing cases.
- Cost and difficulty of transportation to court.
- Close-knit society/ Frequency of conflicts of interest in the hearing of cases.
- Difficulty for court clients to know when their cases are listed.
- Not enough women attorneys and judges
- Lack of resources to assist litigants with an intellectual disability.

## Innovative Approaches to Delivering Justice

In compiling the baseline report, some innovative approaches to delivering justice have emerged from the experience of the PJDP countries. Some of these are set out below:

### PNG

**Increasing access to the Magistrates Courts for clients who cannot afford a lawyer and have a limited understanding of legal and court processes.** The Chief Magistrate approved a programme of assistance whereby registry clerks assist in drafting complaints and summons forms for court clients who cannot afford to hire a lawyer. In 2010, in the 56 courts where the District Court Electronic Case Management System (DCECMS) is used, assistance in drafting court documents was provided in 36% of the 31,331 cases filed.

### PNG

**Providing information to court clients in non-legal language.** The PNG Magisterial Services upgraded their website in December 2011. The website includes a page entitled: “How to go to court” in which a number of questions about bringing a civil matter to court are answered in non-legal language. The website provides a wealth of statistical information about the Magisterial Services and also includes information about court fees, PDF and Word versions of court documents as well as court sitting schedules including listings of the cases to be heard on particular days.

### Tokelau

**Increasing access to the formal justice system for people facing financial disadvantage.** In Tokelau there are no court fees and there is a Law Commissioner who hears cases on each of the three islands. Both court fees and high costs of transportation to a court can be a barrier for people in accessing the justice system. The Tokelau Courts have removed these barriers.

### Republic of the Marshall Islands

**Setting high standards for judicial transparency.** The Republic of the Marshall Islands produces an annual report on the judiciary within one year after the reporting period and publishes the annual report on its website. (The website of the RMI Judiciary was developed under phase 1 of PJDP).

### Republic of the Marshall Islands

**The presentation of data disaggregated for children/juvenile cases.** The RMI judiciary annual report presents information on the number of juvenile cases each year. The RMI judiciary also records through its case management system the percentage of juveniles who receive legal aid in their cases (100% of juveniles in 2010).

## Changes Initiated During June 2011–May 2012

In Palau, the process of collecting data for this baseline report on whether the courts granted fee waivers revealed that a court fee waiver process existed at the appellate level in the Supreme Court but not at the trial level of the Supreme Court nor Court of Common Pleas. In order to correct this anomaly, a Supreme Court Order was signed into effect in December 2011 amending the Civil Procedure Rules to include a fee waiver. A Party can now file an action with an affidavit showing his/her inability to pay fees (A proforma Declaration In Support Of Request For Exemption From Payment of Fees can be found on the Palau judiciary website). This demonstrates the value of agreeing upon a set of court performance indicators and working with each of the PJDP countries to report against these indicators. In the case of Palau an access to justice barrier was identified and remedied within a period of three months.

In Tokelau, the National Coordinator worked with law clerks and law commissioners to develop a new quarterly reporting format that would provide more detailed court performance data. As a result the Tokelau judiciary can now provide court performance data on: (i) clearance rates, (ii) average duration of a case, (iii) numbers of civil and criminal cases with the data disaggregated by gender and the age of the applicant in a civil matter or defendant in a criminal matter.

In some jurisdictions, such as Tuvalu and Kiribati, there are no annual reports. However in both Tuvalu and Kiribati, the National Coordinators' meeting in the Cook Islands resulted in both of these jurisdictions deciding to begin a process of documenting the work of their courts through an annual report. In Kiribati, the Chief Justice presented an overview of the courts' work in 2011 at the opening of the Legal Year of the High Court of Kiribati on 30 January 2012.

In Palau, the Chief Justice agreed to publish Supreme Court appellate judgements online through the website of the Palau judiciary and the Pacific Legal Information Institute (PacLII).

In the Republic of the Marshall Islands, the Chief Justice of the High Court included in the 2011 Annual Report information on the 15 Cook Island indicators including, clearance rates, average duration of a case and number of complaints.

PacLII agreed to publish the Annual Reports from the 14 PJDP jurisdictions.

PJDP would like to thank the Chief Justices and National Coordinators for their support in undertaking this initial baseline report. This report has been prepared with the assistance of the many Pacific and other parties referred to on page 2.



# Executive Summary

## PJDP goal

Strengthened governance and rule of law in Pacific Island Countries through enhanced access to justice and professional judicial officers who act independently according to legal principles.

At the outset of PJDP it was determined that:

- 1 No judicial and court baseline data exists that can be applied across the region.
- 2 There is no clear understanding about how judicial and court baseline data can be used to improve the administration of justice across the region.
- 3 There is an unquantified number of marginalised/disadvantaged prospective court users facing a range of barriers in accessing the courts.

## 18 Month Target set by PJDP

- 1 The majority of PICs have judicial and court baseline data against which changes can be measured, and
- 2 a Regional Justice Performance Framework with Chief Justices that identifies a number of justice performance indicators that courts will work to achieve with capacity building support from PJDP.

At the National coordinators leadership meeting held in the Cook Islands in June 2011, the key court performance areas were considered and a list developed that was then sent to Chief Justices for their review and comment. The 15 court performance indicators cover:

- 1 **Case management issues. PJDP judicial counterparts selected the following four indicators:**
  - Case finalisation or clearance rate.
  - Average duration of a case from filing to finalisation.
  - The percentage of appeals.
  - Overturn rate on appeal.
- 2 **Affordability and Accessibility for court clients.**
  - Percentage of cases that are granted a court fee waiver.
  - Percentage of cases disposed through a circuit court.
  - Percentage of cases where a party receives legal aid
- 3 **Published procedures for the handling of feedback and complaints.**
  - Documented process for receiving and processing a complaint that is publicly available.
  - Percentage of complaints received concerning a judicial officer.
  - Percentage of complaints received concerning a court staff member.
- 4 **Human Resources.**
  - Average number of cases per judicial officer.
  - Average number of cases per member of court staff.



**5. Transparency.**

- Court produces or contributes to an Annual Report that is publicly available.
- Information on court services is publicly available.
- Court publishes judgments on the Internet (own website or on PacLII)








































































































































The PJDP Courts ability to report on these 15 indicators is summarised in the following two tables:

**Table A** Percentage of the 14 PJDP countries that currently report on the indicator

Indicator	Percentage of the 14 PJDP countries that currently report on the indicator
<b>1</b> Clearance rate	64% (9 of 14)
<b>2</b> Average duration of a case from filing to finalisation	14% (2 of 14)
<b>3</b> The percentage of appeals	57% (8 of 14)
<b>4</b> Overturn rate on appeal	21% (3 of 14)
<b>5</b> Percentage of cases that are granted a court fee waiver	21% (3 of 14)
<b>6</b> Percentage of cases disposed through a circuit court	50% (7 of 14)
<b>7</b> Percentage of cases where a party receives legal aid	14% (2 of 14)
<b>8</b> Documented process for receiving and processing a complaint that is publicly available	21% (3 of 14)
<b>9</b> Percentage of complaints received concerning a judicial officer	21% (3 of 14)
<b>10</b> Percentage of complaints received concerning a court staff member	14% (2 of 14)
<b>11</b> Average number of cases per judicial officer	57% (8 of 14)
<b>12</b> Average number of cases per member of court staff	43% (6 of 14)
<b>13</b> Court produces or contributes to an Annual Report that is publicly available in the following year	7% (1 of 14)
<b>14</b> Information on court services is publicly available	29% (4 of 14)
<b>15</b> Court publishes judgments on the Internet (court website or the Pacific Legal Information Institute)	93% (13 of 14)



**Table B** Percentage of the 14 PJDP countries that currently report on the indicator

Court Performance Indicators	Cook Islands	FSM	Kiribati	Marshall Islands	Nauru (Magistrates)	Nauru (SC)	Niue	Palau (COCOP)	PNG
Clearance rate									
Average case duration									
% of appeals									
Overturn rate on appeal									
% of cases granted court fee waiver.									
% of cases disposed in a circuit court									
% of cases legal aid									
Publicly accessible process for complaints									
% of complaints received concerning a judicial officer									
% of complaints received concerning court staff									
Average number of cases per judicial officer									
Average number of cases per court staff									
Court produces/ contributes to a publicly available Annual Report									
Publicly available Information on court services									
Court publishes judgments on the internet									

















































































































Publicly Available



Not Publicly Available



Judgements online but not for previous year/  
Have court fee waiver provisions or conduct circuit courts but do not collect data on the percentage of cases in which a fee waiver is granted/ conducted through a circuit court/  
Produces an annual report for the previous year but it not clear how the public can access it.

	Samoa	Solomon Islands (Magistrates)	Solomon Islands (High Court)	Tokelau	Tonga (Supreme Court)	Tonga (Magistrates Court)	Tuvalu	Vanuatu
Clearance rate								
Average case duration								
% of appeals								
Overturn rate on appeal								
% of cases granted court fee waiver.								
% of cases disposed in a circuit court				NA*				
% of cases legal aid								
Publicly accessible process for complaints								
% of complaints received concerning a judicial officer								
% of complaints received concerning court staff								
Average number of cases per judicial officer								
Average number of cases per court staff								
Court produces/ contributes to a publicly available Annual Report								
Publicly available Information on court services								
Court publishes judgments on the internet								



Publicly Available



Not Publicly Available



Judgements online but not for previous year/ Have court fee waiver provisions or conduct circuit courts but do not collect data on the percentage of cases in which a fee waiver is granted/ conducted through a circuit court/ Produces an annual report for the previous year but it not clear how the public can access it.



NA\* Not Applicable in Tokelau as the area is so small as to not require circuit courts.



The 15 indicators selected were chosen by PJDP judicial counterparts as they represented essential data that jurisdictions, whether large or small, should ideally have the capacity to collect, analyse and present in their annual reports. For several of these indicators, jurisdictions that were able to capture data disaggregated by the gender of court clients or their age (juvenile/non-juvenile clients) were requested to present this additional level of information. However, as will be seen in Chapter 4, most courts do not capture gender and age disaggregated data or do not present this information in their annual reports<sup>6</sup>. Over time, the PJDP judicial counterparts may wish to extend this list of indicators in line with the ability of more courts to collect, analyse and report on court performance data in more complex ways. However, the initial 15 indicators contained in this baseline report will allow courts and external court stakeholders in the Pacific region to observe whether the capacity of courts to collect, analyse and report on court performance data is strengthened over the implementation period for PJDP and beyond. The 26 Key Findings and 24 Recommendations from the Baseline Report are set out in Part 8 of this Report.

The collection and reporting of data related to key court performance indicators and the regular review of external court stakeholder perceptions of Court service through surveys or court stakeholder dialogues is an important first step for all courts. Once court performance data has been collected and evaluated, it is then possible for courts to set meaningful national performance standards for their court. These performance standards may relate to timeliness in the disposal of different types of cases, quality of service experienced by clients through the court registry, or quality of judgements. Without first understanding how a court is performing, through the collection and analysis of performance data for a number of years, it is unlikely that a court will set a realistic and achievable performance standard. The process of setting national performance standards, in consultation with judges and court staff, is important as it establishes the level of service that the court aims to deliver and that the public can expect from the court.

Courts that display high levels of judicial transparency and a commitment to improving the delivery of their court services present annual and trend court performance data in their annual reports as well as a statement on whether the court has met their performance standards or targets for the year. No PJDP court presents their court performance standards and data on whether these have been achieved in their Annual Report.

<sup>6</sup> The judiciary of the Republic of the Marshall Islands is an exception as it presents data on juvenile cases in its annual report available on its website: [www.rmccourts.org](http://www.rmccourts.org)

## Ownership, Results, Trust and Accountability

**Table C** Baseline Summary of Court Performance Reporting

Indicator of Court Performance	2011 Baseline	Work Undertaken by Judiciaries at a National Level
Able to report on the 15 PJDP court performance indicators.	The majority of PJDP courts are unable to report on the 15 court performance indicators.  There is only one indicator (publication of judgments) that 13 of the 14 courts can report on.	Chief Justice, judges and court staff to work collaboratively on the collection, analysis and reporting of court performance data.
PJDP Courts produce or contribute to an Annual Report that is publicly available in the following year.	1 of 14 PJDP countries produces or contributes to an Annual Report that is publicly available in the following year.	Court submits to Parliament an Annual Report for the previous year.
PJDP courts present their court performance standards and data on whether these have been achieved in their Annual Report.	0 of 14 PJDP countries present their court performance standards and data on whether these have been achieved in their Annual Report.	Chief Justice, judges and court staff to work collaboratively to set realistic and appropriate court performance standards based upon the court performance data collected against the 15 PJDP indicators.
Courts regularly analyse the justice needs within their country to better understand what matters to actual and potential court users in the delivery of quality court services through the use of client and court stakeholder surveys and dialogues.	2 of the 14 PJDP countries (14%) undertook court user surveys during 2011.	Periodically undertake court user and potential court user surveys and dialogues and summarise the findings for publication on the Court's website and/ or in the Court's annual report.

### Ownership, Results, Trust and Accountability

These four principles underpin many of the international and regional statements on judicial integrity and independence. Annual reports represent the vehicle through which courts take **ownership** of the work they have completed during the year and present to the public their annual **results** against key performance indicators. In doing so they win the **trust** of the public and are **accountable** to the citizens they serve.

## Regional Justice Performance Framework

The Chief Justices at their leadership meeting in Apia, Samoa in March 2012 endorsed the recommendations contained in the draft Regional Justice Performance Framework and Interim Baseline Report dated March 2012. More specifically, under the endorsed Regional Justice Performance Framework:

*The Chief Justices of the countries participating in the Pacific Judicial Development Programme agree to progressively build the capacity of their judicial and court staff colleagues so as to publish court Annual Reports:*

- I. on national and Pacific regional websites,*
- II. within one year of the end of the reporting period,*
- III. that include:*
  - a. court performance data and results against the 15 indicators and Recommendations presented in the PJDP Baseline Report,*
  - b. court performance standards for each level of court and annual results against those standards,*
  - c. a summary of the key findings from any court stakeholder/potential court user surveys and dialogues that have taken place in the previous year,*
  - d. financial statements, including Court budget execution statements.*

# 1 Goal of the Pacific Judicial Development Program

## **PJDP goal**

Strengthened governance and rule of law in Pacific Island Countries through enhanced access to justice and professional judicial officers who act independently according to legal principles.

At the outset of PJDP it was determined that:

- 1 No judicial and court baseline data exists that can be applied across the region.
- 2 There is no clear understanding about how judicial and court baseline data can be used to improve the administration of justice across the region.
- 3 There is an unquantified number of marginalised/disadvantaged prospective court users facing a range of barriers in accessing the courts.

## **18 Month Target set by PJDP**

- 1 The majority of PICs have judicial and court baseline data against which changes can be measured, and
- 2 a Regional Justice Performance Framework with Chief Justices that identifies a number of justice performance indicators that courts will work to achieve with capacity building support from PJDP.

The Judicial Monitoring and Evaluation (JME) activity within PJDP has worked with PJDP jurisdictions since June 2011 to develop a methodology for the collection of baseline data. Chapter 2 of this report explores the baseline report methodology developed with the PJDP countries. Chapter 3 provides a snapshot of selected development indicators across the PJDP jurisdictions to better understand the scope of the problem of disadvantaged potential court users. Chapter 4 presents an overview of the December 2011 Baseline data against the Court Performance Indicators. Chapter 5 presents three examples of national courts that have introduced ways of either providing more information to court stakeholders on the work of the courts or processes to better understand the views of court users on the level of service provided by courts. Chapter 6 considers the issue of juvenile disaggregated data and indicators and chapter 7 considers gender disaggregated data and indicators for the 14 PJDP countries. Chapter 8 presents the Key Findings and Recommendations from the Baseline Report. Chapter 9 outlines the Regional Justice Performance Framework endorsed by Chief Justices at their regional leadership workshops in March 2012.

## 2

# Methodology for the Court Baseline Report

## 4 Court Administration

- 4.3 *The judiciary should endeavour to utilise information and communication technologies with a view to strengthening the transparency, integrity and efficiency of justice.*
- 4.4 *In exercising its responsibility to promote the quality of justice, the judiciary should, through case audits, surveys of court users and other stakeholders, discussion with court-user committees and other means, endeavour to review public satisfaction with the delivery of justice and identify systemic weaknesses in the judicial process with a view to remedying them.*
- 4.5 *The judiciary should regularly address court users' complaints, and publish an annual report of its activities, including any difficulties encountered and measures taken to improve the functioning of the justice system.*

## 5 Access to Justice

- 5.1 *Access to justice is of fundamental importance to the rule of law. The judiciary should, within the limits of its powers, adopt procedures to facilitate and promote such access.*

### 2010 Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct

Judges, court administrators and other stakeholders interacting with courts can monitor and evaluate<sup>7</sup> court performance at a number of levels including at the level of:

- an individual court,
- all courts within a state, province or sub-national region,
- all courts within a country,
- courts in a region.

The aim of the PJDP JME activity is to support and develop the monitoring and evaluation capacity of judiciaries across 14 PICs in the Pacific region. Having considered the baseline court performance data collected through this activity and presented in the following chapters, the next step will be for Chief Justices to reflect upon how a regional justice performance framework for the Pacific may support the monitoring and evaluation work already under way by national courts.

At the National Coordinators leadership meeting held in the Cook Islands in June 2011, the key court performance areas were considered and a list developed that was then sent to Chief Justices for their review and comment. 14 indicators of court performance were outlined during these exchanges and a further 15th indicator added following the Leadership Workshops of Chief Justices and National Coordinators held in Vanuatu in October 2011.

<sup>7</sup> "Monitoring" is the routine collection of information on the implementation and performance of an organisation through record-keeping, reporting and observation, to inform management decisions. "Evaluation" is the periodic review of the effectiveness, efficiency and results of the work of an organisation. (Adapted from AusAID Office of Development Effectiveness Law & Justice Evaluation.)



## The Cook Island Indicators

The 15 court performance indicators cover:

1. **Case management issues.** PJDP judicial counterparts selected the following four indicators:
  - Case finalisation or clearance rate.
  - Average duration of a case from filing to finalisation.
  - The percentage of appeals.
  - Overturn rate on appeal.
2. **Affordability and Accessibility for court clients.** PJDP judicial counterparts selected the following three indicators:
  - Percentage of cases that are granted a court fee waiver.
  - Percentage of cases disposed through a circuit court.
  - Percentage of cases where a party receives legal aid
3. **Published procedures for the handling of feedback and complaints.** PJDP judicial counterparts selected the following three indicators:
  - Documented process for receiving and processing a complaint that is publicly available.
  - Percentage of complaints received concerning a judicial officer .
  - Percentage of complaints received concerning a court staff member.
4. **Human Resources.** PJDP judicial counterparts selected the following two indicators:
  - Average number of cases per judicial officer.
  - Average number of cases per member of court staff.
5. **Transparency.** PJDP judicial counterparts selected the following three indicators:
  - Court produces or contributes to an Annual Report that is publicly available.
  - Information on court services is publicly available.
  - Court publishes judgments on the Internet (own website or on the Pacific Legal Information Institute website)

The 15 indicators selected were chosen by PJDP judicial counterparts as they represented essential data that jurisdictions, whether large or small, should ideally have the capacity to collect, analyse and present in their annual reports. For several of these indicators, jurisdictions that were able to capture data disaggregated by the gender of court clients or their age (juvenile/non-juvenile clients) were requested to present this additional level of information. However, as will be seen in Chapter 4, most courts do not capture gender and age disaggregated data or do not present this information in their annual reports<sup>8</sup>. Over time, the PJDP judicial counterparts may wish to extend this list of indicators in line with the ability of more courts to collect, analyse and report on court performance data in more complex ways. However, the initial 15 indicators contained in this baseline report will allow courts and external court stakeholders in the Pacific region to observe whether the capacity of courts to collect, analyse and report on court performance data is strengthened over the implementation period for PJDP and beyond.

<sup>8</sup> The judiciary of the Republic of the Marshall Islands is an exception as it presents data on juvenile cases in its annual report available on its website: [www.rmicourts.org](http://www.rmicourts.org)

The Courts' own statements of their goal/mission/vision set out in the opening pages of this Baseline Report reflect the qualities that are commonly considered to be integral to the judicial function. The 15 indicators present an overview of court performance against these core or essential characteristics of the judicial function. These are summarised in the following table drawing on three statements that relate to principles of judicial conduct and court excellence:

**Table 2.1** Court Performance Indicators and Principles of Judicial Conduct

	International Framework for Court Excellence	Bangalore Principles of Judicial Conduct (and the Implementation Measures)	Suva Statement on the Principles of Judicial Independence and Access to Justice
Equality before the law	✓	✓	✓
Fairness	✓	✓	✓
Impartiality	✓	✓	✓
Independence of decision-making	✓	✓	✓
Competence	✓	✓	
Integrity	✓	✓	
Transparency	✓	✓	
Accessible and affordable justice	✓	✓	✓
Timeliness	✓	✓	
Certainty	✓		

## Collecting and analysing court performance data

Once the 15 indicators were selected by the PJDP court counterparts, two main methodologies were used to collect and analyse court performance data:

1. PJDP courts collecting data on the 15 Cook Island indicators and working with the JME advisor to clarify any issues related to the data, and
2. Palau, PNG and Tokelau, as PJDP jurisdictions that had requested capacity building support in relation to judicial monitoring and evaluation, working with the JME Adviser on the design and/ or analysis of court performance data obtained through external stakeholder dialogues or court user surveys.

Table 2.2 following illustrates how the two methodologies for collecting and analysing court performance data are able to provide an overview against the court performance indicators identified by the courts themselves.

**Table 2.2** Methodologies for collecting and analysing court performance data

	Data Collection on 15 Cook Island indicators	External stakeholder discussions and surveys (conducted in Palau and PNG during 2011)
Equality before the law	✓ (Indicators 5 to 7)	✓
Fairness	✓	
Impartiality	✓	
Independence of decision-making	✓	
Competence	✓ (Indicators 3 to 4)	
Integrity	✓	
Transparency	✓ (Indicators 13 to 15)	✓
Accessible and affordable justice	✓ (Indicators 5 to 7)	✓
Timeliness	✓ (Indicators 1 to 2)	✓
Certainty	✓ (Indicators 3 to 4)	✓

The timeline for the development of the first baseline report for the PJDP partner countries is set out below.

**Table 2.3** Timeline for baseline report

Date	Action
June/July 2011	15 Cook Island Indicators developed in consultation with Chief Justices and National Coordinators.
August 2011–January 2012	JME Adviser works with PIC counterparts on collection and analysis of data for the 15 indicators.
August	First visit to Papua New Guinea - JME dialogue
September	Visit to Palau - JME dialogue
October	Discuss with Chief Justices and National Coordinators the Baseline report methodology at the leadership workshops in Vanuatu.
December	Second visit to Papua New Guinea - JME dialogue
February	Submit Draft Baseline Report to Chief Justices and National Coordinators for their Feedback
March	Discuss Draft baseline report with Chief Justices and National Coordinators at the leadership workshops in Apia
April/May 2012	Revise and finalise baseline report and regional justice performance framework.

# Why do courts conduct court user satisfaction surveys?

*Excellent courts systematically evaluate the perceptions and needs of court users. The information will be used to improve the quality and processes provided by the courts.*

*Excellent court organisations systematically measure the level of public trust and confidence in the judiciary and court staff and compare the results with the public trust in other organisations.*

*Other measures of strong leadership include the ‘openness’ of the organisation and accountability. This means that courts regularly publish their performance results and provide information on the level of quality to the public.*

**(2008) International Framework for Court Excellence, pp13 and 14.**

It is increasingly common for courts to conduct client satisfaction surveys so that they better understand the perceptions of court clients on the level of service provided to them and the areas that clients would like to see improved. The 2008 International Framework for Court Excellence identifies seven areas of court excellence set out in Figure 2.1 below. Court stakeholder surveys allow a court to evaluate the Results dimension of the international framework e.g.: client needs and satisfaction/affordable and accessible court services/public trust and confidence.

**Figure 2.1** 2008 International Framework for Court Excellence seven areas of court excellence



A court user satisfaction survey provides a benchmark against which to measure future performance. It is therefore important that a court adopt a consistent approach to the methodology used in the court stakeholder surveys so that the findings from the surveys can be compared over a period of time.

When courts take the initiative and conduct court user/court stakeholder surveys this has a number of benefits for the court:

- 1 The court demonstrates to the public that it is interested in the views of (i) court clients on their perception of the actual level of service provided to them and the ways that court clients consider that these services could be improved, as well as, (ii) NGOs or other court stakeholders that represent individuals that are currently unable to access the services provided by the courts. The court presents itself as outward-looking and open to feedback, contrary to more common views of courts as being out of touch with the realities of life for most people in their country and the difficulties that they face in addressing the legal problems that they confront.
- 2 Experience from courts that conduct court user surveys suggests that court clients have a more positive view of the services provided by courts than the general public. In many countries public opinion of the court system is shaped by media coverage of a relatively small number of high profile cases. This can result in the public having a misinformed and often negative image of the courts and the judicial system as a whole. Therefore, when the court publishes the findings from its client survey it is able to present a more positive picture of the workings of the court than that presented in other media.
- 3 As will be seen in chapter 5 of this report, the courts that have undertaken client surveys have received valuable suggestions from clients on ways that their services might be improved. In most cases these suggestions have been implemented by the courts.

Chapter 5 of this report explores in more detail the experience of two courts in undertaking court stakeholder surveys. The courts used the survey methodology to obtain information on the perceptions of court clients:

- bringing all types of cases to all levels of courts (Republic of Palau);
- involved in the mediation of a case before the National Court of PNG (the mediation track in the National Court of PNG formally commenced in 2010).

It is therefore clear that courts can tailor a stakeholder survey to the particular needs of their court. This may result in a broad-based survey of all court users as was the case in Palau, or a Court may decide that it wishes to review a recent reform/new process in their court and obtain client feedback on the perceptions of court users in relation to that particular service, e.g. mediation or protection order cases in PNG.

The collection and reporting of data related to key court performance indicators and the regular review of external court stakeholder perceptions of Court service through surveys or court stakeholder dialogues is an important first step for all courts. Once court performance data have been collected and evaluated it is then possible for courts to set meaningful national performance standards for their court. These performance standards may relate to timeliness in the disposal of different types of cases, quality of service experienced by clients through the court registry, or quality of judgements. Without first understanding how a court is performing, through the collection and analysis of performance data for a number of years, it is unlikely that a court will set a realistic and achievable performance standard. The process of setting national performance standards, in consultation with judges and court staff, is important as it establishes the level of service that the court aims to deliver and that the public can expect from the court.

Courts that display high levels of judicial transparency and a commitment to improving the delivery of their court services present annual and trend court performance data in their annual reports as well as a statement on whether the court has met their performance standards or targets for the year.

**Key finding** No PJDP court presents their court performance standards and data on whether these have been achieved in their Annual Report.

**Recommendation** PJDP provide assistance to build the capacity of the selected PIC courts to collect and analyse court performance data against the 15 indicators presented in this baseline report. This court performance data will ideally be disaggregated by the gender and age of court clients.

**Recommendation** PJDP provide assistance to build the capacity of the selected PIC courts to analyse the justice needs within their country to better understand what matters to actual and potential court users in the delivery of quality court services through the use of client and court stakeholder surveys and dialogues.

## 3

## A Snapshot of Selected Development Indicators

An overview of development indicators across the PJDP jurisdictions is presented at this point in order to better understand the accessibility and affordability elements within the Cook Islands indicators.

The following points are important for a more complete understanding of the court performance data that will be reviewed in the next chapter:

- 1 The population across the 14 PJDP jurisdictions varies from approximately 1300 in Niue and Tokelau to over 6 million in Papua New Guinea. The second largest population is that of the Solomon Islands at over half a million people. The population of PNG is 4600 times that of the smallest jurisdictions within the PJDP. This huge variation in the sizes of the jurisdictions within PJDP has implications for the complexity of the data gathering task when applied to court users.
- 2 On average, 26% of the population in the PJDP PICs has an income that falls below the basic needs poverty line for their country.
- 3 The cost of a civil case as a percentage of the weekly basic needs poverty line varies from 0% in Tokelau where there are no court fees to 735% in Vanuatu.

These development indicators for the Pacific highlight how, for a significant proportion of the population in each of the PJDP PICs, it is important that there is a process:

- to waive court fees in civil cases for those facing financial hardship and that this process is clearly presented to all court users;
- for court users facing financial hardship to access the courts more easily through circuit courts as the cost of transportation to the court from their village is reduced.

**Key finding** On average, 26% of the population in the PJDP PICs has an income that falls below the basic needs poverty line for their country.

**Key finding** The cost of a civil case as a percentage of the weekly basic needs poverty line varies from 0% in Tokelau where there are no court fees for civil cases to 735% in Vanuatu.

**Recommendation** PJDP provide assistance to build the capacity of courts in the region to report on the type of barriers individuals can face in accessing the courts and the strategies developed by courts to assist individuals to overcome these barriers.



**Table 3.1** Pacific Island Country Profiles

Country	Population (July 2011) <sup>9</sup>	GDP per capita (\$US) 2009 <sup>10</sup>	GNI per capita PPP (\$US) 2010 <sup>11</sup>	GNI per capita (\$US) 2009 <sup>12</sup>	GNI per capita (\$US) 2008 <sup>13</sup>	HDI Rank 2011	Population living under the International Poverty Line (%) <sup>14</sup>	Gender Development Index (rank)
Cook Islands	11,800	15,646	–	15,813	15,813	–	–	–
Federated States of Micronesia	106,836	2,497	3,266	2,220	2,307	116	31.2% (2000)	–
Kiribati	100,743	1,479 (2010)	3,715	1,890	1,442	122	38% (1996)	–
Marshall Islands	67,182	2,736 <sup>15</sup>	–	3,060	3,377	–	20% (1999)	–
Nauru	9,322	5,632	–	–	3,432	–	–	–
Niue	1,311	10,277	–	–	15,813 <sup>16</sup>	–	–	–
Palau	20,956	8,807	–	8,940	9,055	49	–	53
Papua New Guinea	6,900,000	1,488 (2010)	2,227	1,180	988	153	37% (2002)	124
Samoa	193,161	2,780 (2010)	4,126	2,840	2,911	99	5.5% (2002)	72
Solomon Islands	571,890	1,340 (2010)	2,172	910	1,288	142	–	–
Tokelau	1,384	\$1000	–	–	–	–	–	–
Tonga	105,916	3,518 (2010)	4,038	3,260	2,930	90	24% (2004)	–
Tuvalu	10,544	3,213 <sup>16</sup>	–	2,620	3,213	–	17.2% (1994)	–
Vanuatu	224,564	2,896 (2010)	–	–	2,257	125	26% (1998)	–

<sup>9</sup> Population data taken from Population Reference Bureau. *2011 World Population Data Sheet: The world at 7 billion*. Available at [www.prb.org](http://www.prb.org)

<sup>10</sup> Data taken from Department of Foreign Affairs and Trade. 2011. *Country Profiles*. The Australian Government. Available at: <http://www.dfat.gov.au/geo/index.html>

<sup>11</sup> Data from UNDP. 2010. *Human development report 2010: The real wealth of nations: Pathways to human development*. New York: UNDP.

<sup>12</sup> Data taken from The World Bank Group. 2011. *GNI per capita, Atlas Method (current \$US)*. The World Bank. Available at: <http://data.worldbank.org/indicator/NY.GNP.PCAP.CD>.

<sup>13</sup> Data taken from UN Data. 2011. *Country Profiles*. UN Statistics Division. Available at: <http://data.un.org/Default.aspx>.

<sup>14</sup> Data taken from Asian Development Bank. 2011. *Statistical Database System Online*. Available at: <https://sdb.sadb.org/sdbs/index.jsp>.

<sup>15</sup> Data not available through DFAT. GDP per capita found from UN Data.

<sup>16</sup> Niue is included in the statistics for Cook Islands.

**GDP** **Gross Domestic Product** is the monetary value of all finished goods and services within a state over a specified period, usually one year. It is calculated by the sum of all private consumption in a state's economy, all government spending, all business expenditure on capital and the state's net exports, calculated as total exports less total imports. GDP per capita is calculated by dividing GDP by the mid-year population.

**GNI** **Gross National Income** is the monetary value of production by a state's citizens or companies regardless of whether production occurred within the state. It is calculated by the sum of all production by resident citizens and businesses, or GDP, plus product taxes and the net receipts of primary income a state receives from other countries. GNI per capita is calculated by dividing GNI by the mid-year population.

**HDI** **The Human Development Index** aggregates indicators for life expectancy, education and income to create a single index that summarises the average development of a country. A country is compared to a standard maximum and minimum value for each of these three indicators to reveal where a country stands in relation to worldwide development. HDIs can be adjusted to take into consideration internal demographic and socio-economic variations as well as country-specific priorities. All countries assessed by the HDI are then ordered to give an HDI rank. The HDI is published annually by the UNDP.

**GDI** **The Gender Development Index** measures the level of equality between men and women. It applies the same indicators as the HDI but imposes proportionate penalties when there are disparities between men and women. The GDI does not measure inequality but is the HDI adjusted for gender disparities. All countries assessed by the GDI are then ordered to produce a GDI rank. The GDI is published annually by the UNDP.

**BNPL** **Basic Needs Poverty Line** identifies the national average income required per week, month or year to ensure a household or individual's basic needs are covered. The BNPL is calculated by the UNDP Pacific Centre under its Poverty and Social Impact Assessment Initiatives and is derived from each country's most recent Household Income and Expenditure Survey (HIES). It considers the proportion of income allocated for food and non-food expenditures such as housing, transport, school fees, medical expenses and clothing. The average actual level of non-food expenditure for households in the lowest three deciles is taken as the basis for the non-food factor and likewise for the food factor. The BNPL is the sum of these two monetary values. The advantage of the BNPL is that it can be adjusted to consider geographic or demographic specific costs, such as different expenses for urban and rural households. The difficulty with compiling BNPLs for all Pacific countries is the result of two factors:

- a Not every country has executed a Household Income and Expenditure Survey to provide the UNDP with the necessary data. Furthermore, some countries that have completed the HIES are 5-10 years out of date.
- b The UNDP Pacific Centre is understaffed while addressing multiple regional priorities, and thus has been unable to process and analyse all available surveys.

The Cook Islands, the Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Tokelau, Tonga, Tuvalu and Vanuatu have all completed a HIES. Yet only those presented in the table have been aggregated by the UNDP Pacific Centre.

**Table 3.2** Basic Needs Poverty Line

Country	Basic Needs Poverty Line (BNPL) <sup>17</sup>		Percentage of Population Under the BNPL <sup>18</sup>		Court Costs	
	Weekly Adult per capita BNPL	Weekly BNPL per Household in the Lowest 3 Deciles	Population	Household	Civil Case Cost	Civil Case Cost as percentage of Weekly Adult BNPL
Cook Islands						
Federated States of Micronesia <sup>19</sup>	US\$23	US\$193	29.9%	22.4%		
Kiribati <sup>20</sup>	AU\$16	AU\$112	21.8%	17%		
Marshall Islands					\$25 <sup>21</sup>	
Nauru						
Niue						
Palau <sup>22</sup>	\$58	\$244	24.9%	18.4%	\$50.00 <sup>23</sup>	86.13%
Papua New Guinea			54% <sup>24</sup>		K50.00 <sup>25</sup>	
Samoa <sup>26</sup>	SAT53	SAT493	26.9%	20.1%	SAT36.60 <sup>27</sup>	68.3%
Solomon Islands <sup>28</sup>	SBD47	SBD265	22.7%	18.8%		
Tokelau					No fee/ \$0	0%
Tonga <sup>29</sup>	T\$49	T\$337	22.5%			
Tuvalu			19.7%		AU\$6.00 <sup>30</sup>	
Vanuatu <sup>31</sup>	VT 1088	VT 5005	15.9%	12.9%	VT8,000 <sup>32</sup>	735%

<sup>17</sup> The BNPL is calculated from the Food Poverty Line (the food expenditure and consumption patterns of the lowest three decile households) and the non-Food basic needs expenditures (calculated through household income and expenditure surveys).

<sup>18</sup> Percentage of population with weekly expenditure under the BNPL.

<sup>19</sup> Abbott, D. and Nimea, F. 2008. *Federated States of Micronesia: Analysis of the 2005 household income and expenditure survey*. UNDP Pacific Centre and Government of the Federated States of Micronesia, Office of S.B.O.C, Division of Statistics: Suva, Fiji.

<sup>20</sup> Abbott, D. and H. N. Teewe. 2010. *Kiribati: Analysis of the 2006 household income and expenditure survey*. UNDP Pacific Centre and Kiribati National Statistics Office: Suva, Fiji.

<sup>21</sup> Filing fees in the High Court vary - \$25 is the most common filing fee. <http://rmicourts.org/>

<sup>22</sup> Abbott, D. and E. Sadang. 2008. *Palau: Analysis of the 2006 household income and expenditure survey*. UNDP Pacific Centre and Palau Office of Planning and Statistics: Suva, Fiji.

<sup>23</sup> Registry. 2010. *Judicial Fee Schedule (as of 10/04/2010)*. Palau Government. <<http://www.palau.gov.net/judiciary/JudicialFees.pdf>>

<sup>24</sup> World Bank. 2004. *Papua New Guinea: Poverty Assessment*.

<sup>25</sup> Supreme Court Registry. 2011. *Supreme and National Court of Papua New Guinea: Fees*. Government of Papua New Guinea. <<http://www.pngjudiciary.gov.pg/www/html/59-fees.asp>>

<sup>26</sup> Abbott, D. and S. R. Muagututia. 2010. *Samoa: Analysis of the 2008 household income and expenditure survey*. UNDP Pacific Centre and Samoa Bureau of Statistics: Suva, Fiji.

<sup>27</sup> Samoa Supreme Court (Fees and Costs) Rules 1971 Schedule 1.

<sup>28</sup> Abbott, D. 2008. *Solomon Islands: Analysis of the 2005/06 household income and expenditure survey*. UNDP Pacific Centre and Solomon Islands National Statistics Office: Suva, Fiji.

<sup>29</sup> Ministry of Finance and Planning. 2010. *2nd National Millennium Development Goals Report: Tonga*. Government of Tonga: Nuku'alofa.

<sup>30</sup> Tuvalu Magistrates' Courts (Fees in Civil Cases) Rules 2008 (Revised Edition Cap.7.36.1)

<sup>31</sup> Vanuatu National Statistics Office. *HIES 2006 Report on the Estimation of the Basic Needs Poverty Line and the Incidence and Characteristics of Poverty in Vanuatu*.

<sup>32</sup> Republic of Vanuatu Courts Act (Cap.122): Civil Procedures Rules No. 49 of 2002, Schedule 1.

## 4 Overview of Baseline for Court Performance Indicators

The information presented in this Baseline Report is based on the most recent court Annual Report or other public documents. For some jurisdictions, this has been supplemented by additional information presented by PJDP courts:

	<b>Annual Report Referred to in the Baseline Report (hardcopy or e-copy on file)</b>	<b>Court website</b>	<b>Annual Report on website, if YES what is the latest year.</b>
Cook Islands	2007-2008	NO	NO
Federated States of Micronesia	No annual report	YES <a href="http://www.fsmlaw.org/fsm/index.htm">http://www.fsmlaw.org/fsm/index.htm</a>	NO
Kiribati	Address by Chief Justices at opening of 2012 Court Year (2011 data)	NO	NO
Marshall Islands	2010	YES <a href="http://rmicourts.org/">http://rmicourts.org/</a>	YES–2010 (Court and PacLII website)
Nauru	2009-2010	YES (but parts are still under construction) <a href="http://ronlaw.gov.nr/nauru_lpms/">http://ronlaw.gov.nr/nauru_lpms/</a>	YES–2009-2010 (PacLII website)
Niue	2010	NO	YES–2009-2010 (PacLII website)
Palau	2010	YES <a href="http://www.palau.gov.net/judiciary/">http://www.palau.gov.net/judiciary/</a>	NO
PNG Supreme Court	2004-2007 for National & Supreme Courts	YES <a href="http://www.pngjudiciary.gov.pg">http://www.pngjudiciary.gov.pg</a>	NO
PNG Magistrates Court	1982	YES <a href="http://www.magisterialservices.gov.pg/">http://www.magisterialservices.gov.pg/</a>	NO
Samoa	2008-2009	NO	NO
Solomon Islands	2009	NO	YES–2009 (PacLII website)
Tokelau	2010	NO	NO
Tonga	2010	YES <a href="http://www.pmo.gov.to/people/tongan-judiciary-system">http://www.pmo.gov.to/people/tongan-judiciary-system</a>	NO
Tuvalu	No Annual Report	NO	NO
Vanuatu	2010	NO	YES–2009 (PacLII website)

## Indicator 1 Case Management–Clearance Rate

**Clearance Rate:** The result against this indicator is obtained by dividing cases finalised by cases filed.

**Key finding** 9 of 14 PJDP countries (64%) are able to present data in a form that will permit a clearance rate to be calculated for one or more level of court jurisdiction.

**Recommendation** Courts present data in their annual report on the number of cases filed and the number of cases finalised in the previous court reporting cycle. This will allow judges and court staff to track clearance rates for different types of cases being heard at different levels in the national courts.

**Recommendation** Court staff members that are responsible for tracking the number of cases filed and the number of cases finalised using Word or Excel documents would benefit from training on the use of filters and other techniques so as to more easily extract case management data from these documents.

There are a number of reasons why 36% of PJDP courts are unable to present data in a form that will permit a clearance rate to be calculated: (i) some courts do not present annual reports each year and many of these annual reports do not include data on the number of cases filed and the number of cases finalised in a particular year, (ii) some courts collect data on the number of cases filed in a given year (e.g. 2010) and the number of cases from that given year (e.g. 2010) that are finalised. However, this approach does not provide data on the total number of cases that are finalised for the year, including those cases from previous years, and therefore it is not possible to calculate an overall clearance rate.

As a result of this PJDP activity both Tuvalu and Tokelau courts have changed the way that they collect data and since the end of 2011 are both now able to compile clearance rates for their courts.

A clearance rate of 100 per cent or higher indicates that a Court is able to keep up with its new work and prevent an increase in its backlog of pending cases.

**Table 4.1** Clearance Rates

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
Data unavailable	Data unavailable	Magistrates Court 22% High Court 32%	Supreme Court 225% (2010) High Court 103% (2010) District Court 87% (2010)	Supreme Court 14% (2010/2011) Magistrates Court 81% (2010/2011)	Data unavailable	Court of Common Pleas 86% (2010)
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
Supreme Court 53% (2007) civil and criminal cases National 12% (2007) civil cases only Magistrates Court 68% (2010) This data is obtained using the 57 Magistrates Court with an electronic case management system as a sample.)	Data unavailable	High Court 30.92% (2009)	Data unavailable	Supreme Court 70% (2010) Magistrates Court 84% (2010)	Magistrates Court 67%	Supreme Court 82% (2010) Magistrates Court 80% (2010) Island Court 76% (2010)

## Indicator 2 Case Management–Average Duration of a Case

**Average Duration of a Case:** The result against this indicator is obtained by totalling the days for each case from the date the case is filed to the date it is finalised and then dividing this by the number of cases finalised.

**Key finding** Only two PJDP countries (14%) (Republic of the Marshall Islands and the Republic of Palau) are able to collect data on the average duration of a case in their court.

**Recommendation** Courts present data in their annual report on the average duration of different types of cases (e.g. civil, criminal, small claims, juvenile cases etc) finalised in the previous court reporting cycle.

**Key finding** None of the court annual reports from PJDP countries referred to a time standard for the hearing of different types of cases.

**Recommendation** That courts include in their annual report the time standard within which they aim to complete different types of cases and provide data on the percentage of cases that have been completed within the time standard set by the court. [Note: A time standard may stipulate that a certain percentage of cases are to be finalised within a certain time period.]

Different types of cases vary in their level of complexity which means that the time taken to finalise them will also vary. Courts therefore often set different time standards for different types of cases. A time standard may also stipulate that a certain percentage of cases will be finalised within the time standard, e.g. 100% of criminal matters finalised within three months.

The courts in both the Republic of the Marshall Islands and the Republic of Palau have used Excel spreadsheets and Access databases to calculate the average duration of a case.

Many of the PJDP courts mention in their court mission and vision statements that they aspire to the efficient resolution of disputes in their country. It is not possible for courts to determine whether cases are being resolved efficiently if they are unable to collect and analyse data on the average duration of the cases that come before the courts. As can be seen from the two courts that are able to collect data on the duration of the case, these cases are disaggregated based upon the types of cases (e.g. civil, criminal, small claims, juvenile cases etc).

In the case of the Republic of Palau, the judiciary has a time standard for the completion of different types of cases at different levels of the court system. By collecting data on the average duration of a case, the Palau judiciary is able to ascertain if their courts are complying with the time standards that they have set themselves.



**Table 4.2** Average Duration of a Case

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
Data unavailable	Data unavailable	Data unavailable	<b>Supreme Court</b> Data unavailable <b>High Court</b> Average of 174 days for 2009 cases. <b>District Court</b> Data unavailable	<b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	Data unavailable	<b>Court of Common Pleas:</b> Civil 62 days Criminal 72 days Small claims 55 days
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
<b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	Data unavailable	<b>High Court</b> Data unavailable	Data unavailable	<b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	Data unavailable	<b>Supreme Court</b> Data unavailable <b>Appeal Court</b> Data Unavailable <b>Island Court</b> Data unavailable

### Indicator 3 Case Management – The Percentage of Appeals

**The percentage of appeals:** The result against this indicator is obtained by dividing the number of cases appealed by the number of case applications.

**Key finding** Eight of the 14 PJDP countries (57%) are able to collect data on the number of cases appealed as a percentage of the number of cases filed in a particular year for one or more level of court jurisdiction.

**Recommendation** PJDP countries present data in their annual report on the number of cases from each level of court that are appealed each year. This indicator provides courts with estimates from year to year of the percentage of trial level cases that will be referred to appeal courts. This allows courts to estimate the level of human and financial resources to deal adequately with appeals from the trial caseload.

It is considered important for courts to monitor overall appeal trends to identify:

- (i) what resources will be required to handle the appeal cases in an efficient manner,
- (ii) what percentage of cases are being referred to appeal courts, and/or
- (iii) whether judgements from particular judges are being referred to appeal courts at a higher rate than the national level.

### Indicator 4 Case Management - Overturn Rate on Appeal

**Overturn rate on appeal:** The result against this indicator is obtained by dividing the number of appeal cases in which the lower court decision is overturned by the total number of appeals.

**Key finding** Three of 14 PJDP countries (21%) (Republic of the Marshall Islands, the Republic of Palau and Tuvalu) are able to collect data on the percentage of appeal cases in which the lower court decision is overturned by the appellate court.

**Recommendation** All appeal cases should be published online through PacLII or national court websites in order to be able to report on the overturn rate on appeal.

It is important to track the overturn rate on appeal to establish if certain types of cases are overturned on appeal at a higher rate than the national average.

**Table 4.3** The percentage of appeals

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
Data unavailable	Data unavailable	Data unavailable	High Court 1% (2010) District Court 0%	Supreme Court Data unavailable Magistrates Court Data unavailable	0.43%	Court of Common Pleas 0%
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
Supreme Court 6% (2007)	Data unavailable	High Court 2%	Data unavailable	Supreme Court 4% (2010) Magistrates Court 0.002% (2010)	0.005%	Supreme Court 7%
Magistrates Court Data unavailable						Appeal Court Data Unavailable Island Court Data unavailable

**Table 4.4** Overturn rate on appeal

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
Data unavailable	Data unavailable	Data unavailable	High Court 0%. Data collected but no appeals in 2010 District Court 0%. Data collected but no appeals in 2010	Supreme Court Data unavailable Magistrates Court Data unavailable	Data unavailable	Court of Common Pleas 0% (2010) Data collected but no appeals in 2010
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
Supreme Court Data not presented in 2007 Magistrates Court Data not recorded	Data unavailable	Data unavailable	Data unavailable	Supreme Court Data unavailable Magistrates Court Data unavailable	100%	Supreme Court Statistics not recorded Appeal Court Data Unavailable Island Court Data unavailable

## Indicator 5 Accessibility of Courts–Court Fee Waiver

**Percentage of cases that are granted a court fee waiver:** The result against this indicator is obtained by dividing the number of cases that are granted a court fee waiver by the total number of cases filed.

**Key finding** Only three of the 14 PJDP countries (21%) could present data on the percentage of cases that were granted a court fee waiver. In these three countries, Tokelau has no court fees for any of its cases and Palau (Court of Common Pleas) and Tuvalu (Magistrates courts) identified that there was no process to waive court fees. In all other courts, it is unclear from publicly accessible reports whether there is (i) a court fee waiver process or (ii) data are collected on the number of cases in which the court fee is waived.

**Recommendation** With approximately one quarter of the population in the PJDP PICs having an income that falls below the basic needs poverty line in that country, Courts should provide clear documentation for all court users on the process for waiving a court fee in civil cases. Courts should also include in the Annual Report data on the number of cases in which fees are waived.

In Palau, the process of collecting data for this baseline report on whether the courts granted fee waivers revealed that a court fee waiver process existed at the appellate level in the Supreme Court but not at the trial level of the Supreme Court nor Court of Common Pleas. In order to correct this anomaly, a Supreme Court Order was signed in December 2011 amending the Civil Procedure Rules to include a fee waiver. A Party can now file an action with an affidavit showing his/her inability to pay fees (A proforma 'Declaration In Support Of Request For Exemption From Payment of Fees' can be found on the Palau judiciary website). This demonstrates the value of agreeing upon a set of court performance indicators and working with each of the PJDP countries to report against these indicators. In the case of Palau an access to justice barrier was identified and remedied within a period of three months.

In PNG, the Magistrates Courts' waive the court fee for all protection order matters. In 2010 there were 1350 protection order cases brought before the Magistrates Courts in which the court filing fee was waived.

**Table 4.5** Percentage of cases that are granted a court fee waiver

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
Data unavailable	Data unavailable	Data unavailable	Data unavailable	Supreme Court Data unavailable Magistrates Court Data unavailable	Data unavailable	Court of Common Pleas 0% (2010)
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
Supreme Court Data unavailable Magistrates Court Data unavailable	Data unavailable	Appeal Court Data unavailable Supreme Court Data unavailable Magistrates Court Data unavailable	100%	Supreme Court Data unavailable Magistrates Court Data unavailable	Magistrates Court 0% (2010)	Data unavailable

## Indicator 6 Accessibility of Courts–Circuit Courts

**Percentage of cases disposed through a circuit court:** The result against this indicator is obtained by dividing the number of cases finalised through a circuit court by the total number of cases filed.

**Key finding** Seven of 14 PJDP courts (50%) are able to provide data on the percentage of cases heard through a circuit court. In four countries no circuit courts are held. In the remaining three PJDP countries (Republic of the Marshall Islands, Tonga and Tuvalu) the percentage of cases handled through circuit courts was reported.

**Recommendation** With approximately one quarter of the population in the PJDP PICs having an income that falls below the basic needs poverty line in that country, Courts should provide clear information for all court users on the process for registering and hearing cases through circuit courts. Courts should also include in the Annual Report data on the number of cases heard through a circuit court.

A circuit Court is where judges and court staff travel from an urban courthouse to more remote areas to register and hear cases. In those PJDP countries where it is difficult or costly to travel to national or provincial capitals, the provision of circuit courts increases the possibility that women, the poor and those living in remote areas will be able to access the formal court system for their legal disputes.

Travelling from remote areas to urban courthouses often imposes financial, cultural, physical and sometimes psychological barriers for individuals to access the formal justice system. Financial barriers can include the transportation cost of travelling from a remote area to an urban centre for the number of times required to register a case, have it heard and receive a court judgement in the matter as well as the income foregone from the time taken for this travel. Physical barriers include inhospitable terrain, uncertain or irregular boat transportation as well as security problems in certain areas en route to the court. Cultural and/or psychological barriers often prevent women and children from travelling from their village to an urban centre to register and have a case heard in a formal court.

In 9 of the 14 PJDP countries information was provided on whether circuit courts are conducted. In four of these PJDP countries no circuit courts are conducted and in two countries circuit courts are conducted but data is not collected on the percentage of cases that are heard at the circuit Court. In the remaining three PJDP countries (Republic of the Marshall Islands, Tonga and Tuvalu) the percentage of cases handled through circuit courts was reported.

**Table 4.6** Percentage of cases disposed through a circuit court

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
Data unavailable	Data unavailable	Data unavailable	7%	0% (No circuit courts)	Data unavailable	0% (No circuit courts)
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
Circuit courts held but data on the percentage of cases heard through a circuit court unavailable	Data unavailable	0% (No circuit courts)	Circuit Courts not required as Law Commissioners hear cases on the 3 islands (less than 25 km <sup>2</sup> for the three islands).	0.03% of all Magistrates Court cases were heard on circuits by the Tongatapu court to 'Eua and Ha'api.	0.002% (2010)	Circuit courts held but data on the percentage of cases heard through a circuit court unavailable

In countries where a significant proportion of the population live in remote areas, it is important for courts to collect data on the demand for circuit courts so that it may present a financial argument for appropriate resources to deliver court services to its population through circuit courts to remote areas.

In the Republic of the Marshall Islands, a High Court judge travels from Majuro Island to Ebeye Island to hear High Court cases every two months. The Ebeye High Court cases can either be filed at the District Court in Ebeye Island or the court client can file the case on Majuro Island. The District Courts also conduct circuit courts.

In Tonga, the Tongatapu Magistrates Court conducted a monthly circuit court to 'Eua and a bi-monthly circuit to Ha'apai during 2010 and the Supreme Court conducted two circuit courts to Vava'u during 2010.



## Indicator 7 Accessibility of Courts–Legal Aid

**Percentage of cases where a party receives legal aid:** The result against this indicator is obtained by dividing the number of cases where a party receives legal aid by the total number of cases received.

**Key finding** Only two PJDP countries (14%) (Republic of the Marshall Islands and Tokelau) are able to collect data on the percentage of cases in which a party receives legal aid.

**Recommendation** With approximately one quarter of the population in the PJDP PICs having an income that falls below the basic needs poverty line in that country, PJDP courts should collect information at the time the case is filed on whether a party will receive legal aid. This is particularly important in criminal matters as many PJDP jurisdictions require that a defendant be represented by a lawyer in serious criminal matters or where the defendant is a juvenile.

In the Republic of the Marshall Islands, the High Court records the cases in which a party receives legal aid to bring the case. As the case management system in the Republic of the Marshall Islands collects data disaggregated by whether a defendant in a criminal case is an adult or a juvenile, the High Court is also able to record the percentage of juvenile and adult criminal defendants that receive legal aid (100% of juvenile cases in 2010).

In the Republic of the Marshall Islands there are two legal aid providers: the public defender's office and the Micronesian legal services commission (MLSC). Both of these agencies will provide legal assistance to applicants and respondents in civil cases as well as defendants in criminal cases.

In Tokelau there are no providers of legal aid and so all parties must represent themselves.

In Papua New Guinea, the Law and Justice Sector Secretariat (LJSS) annual performance report for 2010 states that the Public Solicitor in PNG approved the provision of legal aid in 1186 civil cases and 245 criminal cases in 2010. As the data are not presented for each level of court it is not possible to state the percentage of cases where a party receives legal aid for PNG. As approximately 70,000 cases are filed in the National and Supreme Court as well as the Magistrates Courts across PNG, parties would receive legal aid in less than 2% of cases. Acknowledging that most court users have a limited understanding of court processes, the Chief Magistrate approved a programme of assistance whereby registry clerks assist in drafting complaints and summons forms for court clients who cannot afford to hire a lawyer. In 2010, in the 56 courts where the DCECMS case management system is used, assistance in drafting court documents was provided in 36% of the 31,331 cases filed in 2010.<sup>33</sup>

In Palau the data on legal aid are collected by the public defender's office and the Micronesian Legal Services Commission. In Palau, the public defender's office recently decided that it would not provide legal assistance in civil cases. This has meant that the MLSC is the only agency providing legal aid in civil cases in Palau and can only provide assistance to one party. Both the MLSC and the judiciary consider that this leaves the other party/parties that are unrepresented in civil matters in a disadvantaged position.

<sup>33</sup> PNG Magisterial services 2010 performance report pages 15 to 16, summary assistance provided in 11,410 of 31,331 cases filed in the 56 courts using DCECMS to present data.

**Table 4.7** Percentage of cases where a party receives legal aid

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
Data unavailable	Data unavailable	Data unavailable	<b>High Court</b> 59% (2010) In 84% of criminal cases and 100% of juvenile criminal cases the defendant received legal aid. (2010)	<b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	Data unavailable	Data unavailable
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
<b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	<b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	<b>Appeal Court</b> Data unavailable <b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	0% of parties receive legal aid. Parties represent themselves.	<b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	Data unavailable	Data unavailable

## Indicator 8 Complaint Handling and Feedback

**Documented process for receiving and processing a complaint that is publicly available:**  
To show results against this indicator a documented process for receiving and processing a complaint should be accessible to the public.

**Key finding** Only three PJDP countries (21%) (Kiribati, Republic of the Marshall Islands and the Republic of Palau) have a documented process of receiving and processing a complaint. For the Republic of the Marshall Islands and the Republic of Palau the Judicial Code of Conduct is available on the courts' websites.

**Recommendation** PJDP countries that have developed a judicial code of conduct or have another process for receiving complaints related to judicial service should make these complaint handling processes publicly available on their websites, the PacLII website and the court noticeboard. PJDP Courts should also include in their Annual reports a section on any complaints and feedback received and how the court has responded.

In Kiribati, a complaint procedure was incorporated in the new judicial code of conduct supported through Phase 2 of the PJDP.

**Table 4.8** Documented process for receiving and processing a complaint that is publicly available

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
Data unavailable	Data unavailable	Complaints Handling Process included in the new Judicial Code of Conduct.	Accountability section in the RMI Code of Judicial Conduct applies to all courts.	<b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	A Complaints Handling Ombudsman Backed Service was implemented in February 2010 and applies to court staff but not judicial officers.	The Republic of Palau Code of Judicial Conduct 2011 was promulgated by the Palau Supreme Court March 1, 2011, and amended March 9, 2011 and is available on the Palau Judiciary website. Part 7 of the Code deals with complaints against judges.
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
<b>Supreme and Magistrates Court:</b>  There is not a policy for receiving and processing a complaint that is publicly available.	Data unavailable	<b>High Court</b> Data unavailable	Data unavailable	<b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	The court does not have such a policy for receiving and processing complaints	<b>Supreme Court</b> No document exists <b>Appeal Court</b> Data Unavailable <b>Island Court</b> Data unavailable

## Indicator 9 Complaint Handling and Feedback– Judicial Officers

**Percentage of complaints received concerning a judicial officer:** The result against this indicator is obtained by dividing the number of complaints received concerning a judicial officer by the total number of cases filed.

**Key finding** Only three PJDP countries (21%) (Republic of the Marshall Islands, Republic of Palau and Vanuatu) presented information on the percentage of complaints received concerning a judicial officer. In all of these countries, complaints related to a judicial officer were 1% or less of the number of cases filed.

**Recommendation** In court annual reports, a section should refer the public to the judicial complaints procedure and include data on the number of judicial complaints received in that year and how they were dealt with. Trend data over a five-year period in relation to this indicator will allow the public to observe whether judicial complaints are rising or falling. This section of the annual report can also educate the public that if a party is dissatisfied with the outcome of any judicial decision this can only be dealt with through the appeals process.

Complaints in relation to judicial conduct most often relate to either (i) delay in the delivery of a reserved judgement (this occurs when the judicial officer does not render their judgment immediately at end of the trial or hearing but reserves their judgment for delivery at a later date) and (ii) judicial conduct that occurs during the hearing of a case.

Including a section in the annual report on judicial conduct and the number of complaints received against judges sends a message to the public that the court takes its complaint handling process seriously and will be transparent about the number of complaints received. It also allows the court to provide information on how the complaints are handled, the nature of the complaints and how the court aims to reduce the scope for complaints of this nature in future.

**Table 4.9** Percentage of complaints received concerning a judicial officer

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
Data unavailable	Data unavailable	Data unavailable	<b>Supreme Court</b> 0 <b>High Court</b> 1% <b>District Court</b> 0	<b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	Data unavailable	<b>Court of Common Pleas</b> 0%
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
<b>Supreme Court</b> Data not presented in 2007 <b>Magistrates Court</b> Data not presented for 2010	Data unavailable	<b>High Court</b> Data unavailable	Data unavailable	<b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	The court does not have such a policy for receiving and processing complaints concerning a judicial officer	<b>Supreme Court</b> 0.18% <b>Appeal Court</b> Data Unavailable <b>Island Court</b> Data unavailable

## Indicator 10 Complaint Handling and Feedback–Court Staff

**Percentage of complaints received concerning a court staff member:** The result against this indicator is obtained by dividing the number of complaints received concerning a court staff member by the total number of cases filed.

**Key finding** Only two PJDP countries (14%) (Republic of the Marshall Islands and Vanuatu) presented information on the percentage of complaints received concerning a court staff member. In both of these countries, complaints related to a court staff member were 1% or less of the number of cases filed.

**Recommendation** In court annual reports, a section should refer the public to the complaints procedure for members of court staff and include data on the number of complaints related to court staff received in that year and how they were dealt with. Trend data over a five-year period in relation to this indicator will allow the public to observe whether the number of court staff complaints is rising or falling.

Including a section in the annual report on the number of complaints received related to court staff members demonstrates that the court is prepared to be transparent in relation to its complaint handling procedures. A proportion of court staff complaints will relate to dissatisfaction with the outcome of the case or a misunderstanding in relation to court or legal procedures. However, a proportion of complaints will highlight shortcomings in court administrative procedures and suggest areas for improvement in the delivery of court services. The annual report could also report those areas where the court has made improvements or changes over the past year in relation to information received through client feedback and complaints processes.



**Table 4.10** Percentage of complaints received concerning a court staff member

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
Data unavailable	Data unavailable	Data unavailable	<b>Supreme Court</b> 0% <b>High Court</b> 0% <b>District Court</b> 0%	<b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	Data unavailable	<b>Court of Common Pleas</b> Data unavailable
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
<b>Supreme Court</b> Data not presented in 2007 <b>Magistrates Court</b> Data not presented for 2010	Data unavailable	<b>High Court</b> Data unavailable	Data unavailable	<b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	The court does not have such a policy for receiving and processing complaints concerning a court staff member	<b>Supreme Court</b> 1% <b>Appeal Court</b> Data Unavailable <b>Island Court</b> Data unavailable

## Indicator 11 Judicial Resources

**Average number of cases per judicial officer:** The result against this indicator is obtained by dividing the total number of cases received by the number of judicial officers.

**Key finding** Eight of the 14 PJDP countries (57%) have one or more court that is able to present data on the average number of cases for each judicial officer presiding in that court.

**Recommendation** PJDP courts should include information in their annual reports on both the number of cases filed and the number of judicial officers that were hearing cases in a particular year. Ideally, trend data over a five-year period will be presented in relation to the ratio of cases to judicial officers. These data are relevant to other performance indicators such as clearance rates (indicator 1), average duration of cases (indicator 2) and percentage of complaints against judicial officers (indicator 9).

Tonga had one of the highest ratios of cases to judicial officers amongst the PJDP countries. The two justices in the Supreme Court of Tonga heard on average 333 cases each in 2010 and 2199 cases were filed in the Magistrates Courts for each of the seven magistrates hearing cases in 2010.

The average number of cases per judicial officer is set out in table 4.11. (The average number of cases per judicial officer reflects the number of judicial officers that were serving in the year of the case data presented. In most cases this is prior to 2011.) The number, gender and law background of judicial officers in the PJDP partner countries in the baseline year of 2011 is set out in table 4.11a.

**Table 4.11** Average number of cases per judicial officer

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
Data unavailable	Data unavailable	High Court Data Unavailable	Supreme Court 5.3 (2010)	Supreme Court Data unavailable	Data unavailable	Court of Common Pleas 1973 (2010)
		Magistrates Court 23 (2011)	High Court 159.5 (2010) District Court 585.3 (2010)	Magistrates Court Data unavailable		
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
Supreme Court 135 (2007)	Data unavailable	Appeal Court Data unavailable	68 (2010)	Supreme Court 333 (2010)	Magistrates Court 386 (2010)	Supreme Court 111 (2010)
Magistrates Court 719 (2010)		Supreme Court Data unavailable		Magistrates Court 2199 (2010)		Appeal Court Data Unavailable
		Magistrates Court Data unavailable				Island Court Data unavailable

**Table 4.11a** Number, Gender and Law Background of Judicial Officers

Court	Male Judicial officers (number of lay judicial officers in brackets)*	Female Judicial officers (number of lay judicial officers in brackets)*	Total number of judicial officers (number of lay judicial officers in brackets)*
<b>Cook Islands</b>			<b>18</b>
Appellate	3		3
High Court	10 (6)	5 (4)	15 (10)
<b>Kiribati</b>			<b>142</b>
Court of Appeal			
High Court	1	1	2
Magistrates	?	?	140 (140)
<b>Marshall Islands</b>			<b>9</b>
Supreme Court (Appellate)	1	0	1
High Court	2	0	2
District Court	3 (3)	0	3 (3)
Traditional Rights Court	2 (2)	1 (1)	3 (3)
<b>Niue</b>			<b>14</b>
Court of Appeal	4	0	4
High Court	6 (2)	(4)	10 (6)
<b>Palau</b>			<b>9</b>
Supreme (Trial and Appellate)	1	3	4
Land Court	3 (2)	1	4
Court of Common Pleas	0	1	1
<b>PNG</b>			<b>112</b>
Supreme	20	3	23
National Court	24	4	24
Magistrates/District Courts	73	15	88
<b>Tokelau</b>			<b>3</b>
Law Commissioners	(3)	0	(3)
<b>Tonga</b>			<b>12</b>
Court of Appeal	4	0	4
Supreme	2	0	2
Magistrates Courts	6 (5)	0	6 (5)
<b>Tuvalu</b>			<b>5</b>
Appellate	3	0	3
High	1	0	1
Magistrates	1	0	1
<b>Vanuatu</b>			<b>20</b>
Court of Appeal	7	0	7
Supreme Court	5	0	5
Magistrates Court	4	4	8

\* Lay judicial officer refers to a judicial officer without a formal legal qualification.

## Indicator 12 Court Staff Resources

**Average number of cases per member of court staff:** The result against this indicator is obtained by dividing the total number of cases received by the number of court staff.

**Key finding** Six of the PJDP countries (43%) have one or more court that is able to present data on the average number of cases for each court staff/ registry staff member involved in the processing of cases from the date of filing to finalisation.

**Recommendation** PJDP courts should include information in their annual reports on both the number of cases filed and the number of court registry staff that are involved in the processing of cases from the date of filing to finalisation in a particular year. Ideally, trend data over a five-year period will be presented in relation to the ratio of cases to registry staff. These data are relevant to other performance indicators such as clearance rates (indicator 1), average duration of cases (indicator 2) and percentage of complaints against court staff members (indicator 10).

Tonga had one of the highest ratios of cases to court registry staff amongst the PJDP countries with a ratio of 1709 cases filed in 2010 to each of the 9 court staff members in the Magistrates Court involved in the processing of cases from the date of filing to finalisation.

**Table 4.12** Average number of cases per court staff member

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
Data unavailable	Data unavailable	Data unavailable	Supreme Court 1.6 High Court 31.9 District Court 175.6	Supreme Court Data unavailable Magistrates Court Data unavailable	Data unavailable	Court of Common Pleas 152 (2010)
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
Supreme Court Data unavailable Magistrates Court 175 (2010)	Data unavailable	Appeal Court Data unavailable Supreme Court Data unavailable Magistrates Court Data unavailable	68 (2010)	Supreme Court 111 (2010) Magistrates Court 1709 (2010)	193 (2010)	Supreme Court Data Unavailable Appeal Court Data Unavailable Island Court Data unavailable

## Indicator 13 Transparency–Annual Report

**Court produces or contributes to an Annual Report that is publicly available in the following year:** This indicator is demonstrated through the publication of an annual report in the year immediately following the year that is the subject of the annual report.

**Key finding** The Republic of the Marshall Islands is the only judiciary of the 14 PJDP countries that produces its annual report in the year immediately following the reporting period and publishes it on the Judiciary's web site. In May 2012, the annual reports of five PJDP partner courts were made available on PacLII implementing the Regional Justice Performance Framework agreed to by Chief Justices.

**Key finding** Three of the 14 PJDP countries (Kiribati, Tokelau and Tuvalu) did not produce an annual report on the work of the courts but are now planning to compile one with data for 2011.

**Recommendation** PJDP work with PJDP judiciaries to assist with the publication of quality annual reports that provide court performance information to a range of national and international court stakeholders. These annual reports should be published on the PJDP/ PacLII website as well as the court's own website where these exist.

Some of the matters that may be addressed in an annual report are:

### Overview of the Court

- About the Court
- Outcome and program
- Strategic initiatives
- Outlook for the coming year
- Regional cooperation
- Court service locations
- Judicial and Court Staff Resources

### Report on Court Performance

- Outcomes and outputs in case management
- Mediation outcomes
- Historic performance against Key Performance Indicators/ Trend data
- Client feedback and complaints management

### Appeals

### Significant and noteworthy judgments

### Management and Accountability

- Management of human resources
- Financial management
- Assets management
- Financial Statements

**Table 4.13** Court produces or contributes to an Annual Report that is publicly available for the previous year

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
Online No  Hardcopy Yes (2008)	Online No  Hardcopy No	Online No  Hardcopy Chief Justice of Kiribati presents a speech containing court performance data at the start of the Legal Year. It is not clear how the public who do not attend this event would otherwise access this information.	Online Yes (2010)  Hardcopy Yes (2010)	Online Yes (2009-2010)  Hardcopy Yes (2009-2010)	Online Yes (2009-2010)  Hardcopy Yes (2009-2010)	Online No  Hardcopy Yes (2010 Performance Report to Parliament) but the public has to request the document as it is not referred to on the Palau judiciary website or noticeboard.
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
<b>Supreme Court</b>  Online No  Hardcopy Yes (2007)	Online No  Hardcopy Yes (2009)	Online Yes (2009)  Hardcopy Yes (2009)	Online No  Hardcopy No	Online No  Hardcopy Yes (2010)	Online No  Hardcopy No	Online Yes (2009)  Hardcopy Yes (2010)
<b>Magistrates Court</b> Online No  Hardcopy Yes (1982)						



Annual report is publicly available for the previous year.



Produces an annual report for the previous year but in 2011 it is not clear how the public can access it.



Does not produce an annual report for the previous year.

Annual Reports are a way to present to the Executive Government, Parliamentary representatives as well as a broad range of court stakeholders (i) court performance data, (ii) court performance standards and annual results against those standards and (iii) financial statements. Trend data in annual reports over a five year period allows courts to show how court performance may be linked to the adequate provision of resources.



## Indicator 14 Transparency–Court Services Information

### Information on court services that is publicly available.

**Key finding** 3 of the 14 PJDP countries present information on court services on their websites. In addition, Tuvalu presents information on the courts through radio services from time to time.

**Recommendation** With approximately one quarter of the population in the PJDP PICs having an income that falls below the basic needs poverty line in that country, and with the majority of court clients appearing in court without legal representation, it is important for Courts to consider how best to convey information on court services to potential court users. The Internet is an effective way of presenting information to a range of court stakeholders who may assist disadvantaged groups to access the courts. However, direct engagement with potential court users through posters in health clinics and government offices, radio bulletins or other means is also important as a way of informing potential clients of how they may access the courts for their legal issues.

The PNG Magisterial Services upgraded their website in December 2011. The website includes a page entitled: “How to go to court” in which a number of questions about bringing a civil matter to court are answered in non-legal language. The website provides a wealth of statistical information about the Magisterial Services and also includes information about court fees, PDF and Word versions of court documents, as well as court sitting schedules including listings of the cases to be heard on particular days.

The Republic of the Marshall Islands Judiciary’s web site was designed and developed under a grant from the Pacific Judicial Development Program, with funding from AusAID and NZAID. The website contains a number of resources, including descriptions of the courts, rules of admission and practice, court rules, Supreme Court and selected lower court cases, the Constitution, statutes, and selected regulations, customary law resources, and annual reports.

In Palau, the judiciary’s website was relaunched in January 2012. The new website features a searchable calendar of upcoming trials and hearings, Court forms including some information on how to complete them, a link to PacLII for information on published judgements from the appellate division of the Supreme Court, as well as a section on frequently asked questions.

**Table 4.14** Information on court services that is publicly available

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
Data unavailable	Data unavailable	Data unavailable	Information on the RMI courts is available on the website: <a href="http://www.rmicourts.org">www.rmicourts.org</a>	<b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	Data unavailable	Information on the Palau courts is available on the website: <a href="http://www.palausupremecourt.net/">http://www.palausupremecourt.net/</a>
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
<b>Supreme Court and National Court</b> Limited information on the website: <a href="http://www.pngjudiciary.gov.pg">http://www.pngjudiciary.gov.pg</a> <b>Magistrates Court</b> Yes, at <a href="http://www.magisterialservices.gov.pg">www.magisterialservices.gov.pg</a>	Data unavailable	<b>Appeal Court</b> Data unavailable <b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	Data unavailable	<b>Supreme Court</b> Data unavailable <b>Magistrates Court</b> Data unavailable	The Tuvalu National Coordinator has contributed to the provision of information on court services that is publicly available by appearing on radio in Tuvalu.	<b>Supreme Court</b> No information exists <b>Appeal Court</b> Data Unavailable <b>Island Court</b> Data unavailable

## Indicator 15 Transparency–Publication of Judgments

**Court publishes judgments on the Internet (through PacLII or their own website).**

**Key finding** 13 of the 14 PJDP countries (93%) publish judgments on the Internet using the Pacific Legal Information Institute (PacLII) website with 9 of the 14 countries (64%) publishing judgements online in the previous year.

**Key finding** 7 of the 14 PJDP countries (50%) published decisions from the magistrates or district courts as well as the appeal courts. The Marshall Islands and Vanuatu also publish decisions of their Traditional Rights Court and Island Courts on the PacLII website.

**Recommendation** PJDP to encourage the publication of judgements from all levels of court on PacLII or national websites to increase understanding in the Pacific region and beyond of the work of Pacific courts.

**Recommendation** Chief Justices, at their Leadership workshop held from 18-20 October, 2011 - Port Vila, Vanuatu, noted in their concluding resolutions from that meeting that the maintenance of PacLII is essential to the integrity of the judicial systems in the Pacific. To that end, the Chief Justices urge that the PacLII Foundation be funded on an ongoing basis as proposed by the independent review of PacLII.

**Table 4.15** Court publishes judgements on the internet (through PacLii or their own website)

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
PacLII: December 2011 Court of Appeal & High Court Decisions	PacLII: April 2010 Supreme Court and State Court Decisions	PacLII: July 2011 Court of Appeal and High Court decisions	Court Website: 2011 PacLII: March 2009 Supreme Court, selected High Court and Traditional Rights Court decisions	PacLII: October 2010 Supreme Court and District Court decisions	PacLII: October 2010 High Court decisions	Court Website: 2010 PacLII: January 2012 Supreme Court decisions
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
PacLII: January 2012 Supreme Court, National Court and District court decisions	PacLII: January 2012 Court of Appeal, Supreme Court and District court decisions	PacLII: January 2012 Court of Appeal, High Court and Magistrates court decisions	No judgements published.	PacLII: July 2010 Court of Appeal, Supreme Court and Land Court decisions	PacLII: July 2011 Court of Appeal and High Court decisions	PacLII: January 2012 Court of Appeal, Supreme Court, Magistrates Court and Island court decisions

	Judgments online for the previous year
	Judgments online but not for the previous year
	No judgments online

## 5

## Client focused Courts – Three Case Studies

### A Republic of the Marshall Islands

### B PNG National Court

### C Republic of Palau

This section explores three examples of national courts that have introduced ways of either providing more information to court stakeholders on the work of the courts or processes to better understand the views of court users on the level of service provided by courts. The first case study focuses on how the Republic of the Marshall Islands judiciary has been able and willing to report each year on the work that it does in a highly transparent manner. The second and third case studies document how two PJDP courts have undertaken surveys of court clients to evaluate their level of satisfaction with the services provided by the courts.

Two of the jurisdictions (Palau and PNG) designed their own survey questionnaire, invited court clients to provide feedback on the quality of service provided by the court and, in PNG, have been able to document the impact of court services on the resolution or otherwise of the dispute. Both of these surveys were designed and implemented by the courts independently and within existing court budgets with PJDP assisting in the presentation and analysis of key survey findings. In Palau, the Chief Justice worked with another justice in the Supreme Court on the implementation of the client survey. In Papua New Guinea, the justice of the Supreme Court that chairs the alternative dispute resolution committee initiated the client survey of mediation services in the National Court of PNG. These two examples illustrate how client feedback can (i) provide positive feedback on the benefits of services provided by courts and (ii) provide critical feedback on ways to strengthen their services.

### Case Study A

## Annual Reports of the Republic of the Marshall Islands

In compiling this first baseline report on judicial monitoring and evaluation for PJDP, the initiatives introduced by the judiciary of the Republic of the Marshall Islands were particularly interesting as they included:

- The ability to collect and analyse court performance data on 14 of the 15 indicators chosen by PJDP jurisdictions,
- Publication of an annual report on the Republic of the Marshall Islands judiciary website in the year immediately following the reporting period,
- The RMI judiciary annual report presented information on the number of juvenile cases each year. The RMI judiciary also recorded through its case management system the percentage of juveniles who receive legal aid in their cases ( 100% in 2010).

High Court Chief Justice Carl B. Ingram discussed by phone some of his thoughts on the process of judicial reform that he commenced 10 years ago upon his appointment to the position of Chief Justice.

Chief Justice Ingram was in private practice in the Marshall Islands for many years before becoming a member of the judiciary. As a result, he says that he was already aware of some deficiencies in the judiciary when he became Chief Justice of the High Court. When asked what factors he considered as being important to the introduction of the changes made since he became Chief Justice in 2003, he mentioned the following:

- 1 **As Chief Justice of the High Court he is resident in the Marshall Islands and the administrative head of jurisdiction.** Chief Justice Ingram is a United States citizen but has resided in the Marshall Islands for more than 30 years. This not only means that he has a long-standing understanding of the country but as a resident Chief Justice is able to focus on introducing long-term judicial administration improvements as well as managing the day-to-day business of case-flow and judgments.
- 2 **Appointment to the position of Chief Justice for a 10 year term allows time to develop and manage long-term institutional change.**
- 3 **The appointment of younger court staff who are computer literate.** Over the first three years of his term, Chief Justice Ingram appointed a younger generation to the court staff who, he says, could diligently upgrade the reports of previous years. These new staff were responsible for reviewing and cleaning court databases. While the Marshall Islands judiciary is moving towards Access databases, the Chief Justice emphasised that for smaller jurisdictions a lot could be accomplished through the use of Excel.
- 4 **The process of developing a strategic plan and code of conduct with fellow judges and court staff.** The Chief Justice commented on how the process of involving all members of the court in the planning and discussions that led to the strategic plan was critical to understanding what needed to be changed and how. Chief Justice Ingram stressed that what his court had done was not “rocket science” and “not inventing anything new”. “We looked around and saw what other jurisdictions were doing and adapted it so that it would work in a very small island jurisdiction. We didn’t take the Cadillac version but the Ford Fairlane version.” The Chief Justice commented that the strategic plan was helpful as a reference point that could be returned to from time to time to review whether progress has been made in its implementation.
- 5 **Share ideas and experience with like-minded Pacific jurisdictions.** Chief Justice Ingram mentioned that the Marshall Islands and Palau interacted and shared ideas on many judicial administration issues such as case management systems, the judicial code of conduct and the strategic plan. The Marshall Islands was aware of the client survey that had been undertaken by the judiciary of Palau in 2011 and was looking at how to best implement this in the context of the Marshall Islands.

## Case Study B

### ADR Track in the National Court of PNG

Survey of Lawyers and Clients on the Quality and Impact of Mediation Services Conducted in the National Court of PNG during May-December 2011

#### Background

On 30 March 2010, the judges of the National Court agreed to Rules of the Court for the (i) regulation of Alternative Dispute Resolution (ADR), (ii) establishment of a system of accreditation, standards and code of conduct for mediators and providers of other forms of ADR, (iii) proper conduct of mediation and other forms of ADR, (iv) promotion of the integrity and respect for a system of court annexed ADR and (v) to give effect to the Constitutional assertion to resolve disputes peacefully through consensus.

On 24 January 2011, a Court List of Approved Mediators was created listing mediators and details of their qualifications.

There are currently two ways that cases are dealt with through an ADR process:

- (i) a formal decision to have a case mediated is made by a judge and an order for mediation is issued by the court. During 2011, 20 cases have been referred to mediation. This has resulted in 10 cases being resolved through mediation, 9 cases being referred back to the National Court for final hearing with 1 case pending.
- (ii) during a court proceeding a judge advises parties that they can attempt to settle the matter through discussion outside the courtroom [judicial case settlement/JDR]. During 2011, approximately 300 cases have been settled in this way.

#### Overview of ADR Evaluation Methodology

In May 2011, the National Court of PNG commenced an evaluation process to obtain information from parties and lawyers involved in cases referred to mediation. An evaluation form was developed and all parties and lawyers complete the form upon the conclusion of their mediation.

The findings presented in this report are based on 23 evaluation forms that have been completed by the parties and lawyers involved in the mediation cases and received by 15 December 2011. The Pacific Judicial Development Programme worked in collaboration with the National Court of PNG to upload all questionnaires onto the survey monkey website ([www.surveymonkey.com](http://www.surveymonkey.com)).

The evaluation process allows the National Court of PNG to obtain information on:

- 1 Client and lawyer perceptions of the quality of services provided by the mediators involved in mediation cases.
- 2 Client and lawyer satisfaction with the mediation process.
- 3 The process by which parties come to mediate their dispute.
- 4 The percentage of civil cases of the National Court referred to mediation in 2011.
- 5 The percentage of those civil cases referred to mediation that are settled through mediation in 2011.
- 6 The time and money clients and lawyers estimate are saved through having a dispute resolved through mediation.

- 7 The types of disputes that are being mediated through the ADR Track of the National Court of PNG and the results of the mediation in these different types of cases.
- 8 Suggestions from parties and lawyers on how the mediation process might be improved.

### Key Findings and Conclusions from the Client Survey

#### **1 Parties and lawyers are very satisfied with the ADR processes in the National Court PNG.**

91% of survey respondents stated that if they were involved in another dispute they would refer the matter to mediation. 96% of survey respondents said that they would recommend mediation to a colleague/ friend, as a good way to settle a dispute.

#### **2 ADR processes in the National Court of PNG are effective in resolving issues in dispute between parties.**

71% of survey respondents stated that they resolved all of the issues in dispute while 19% of survey respondents stated that they had resolved none of the issues in dispute. 10% of survey respondents stated that they had resolved some of the matters in dispute.

#### **3 Parties and lawyers evaluate the mediators involved in the ADR processes as highly effective in identifying issues in dispute and developing options for settlement.**

87% of survey respondents thought that the Mediator assisted in identifying the real issues in dispute between parties. 91% of survey respondents thought that the mediator assisted them to understand the other party's views. While 87% of survey respondents thought that the mediator gave them opportunities to develop options for settlement.

#### **4 Resolution of disputes through the ADR track of the National Court of PNG delivers savings in both costs and time for parties.**

Parties and lawyers surveyed estimated that settling the case through ADR had resulted in an average estimated saving per party of 80,000 Kina (USD 39,000) and a trial hearing that would have lasted on average three days in court.

#### **5 A majority of parties and lawyers stated that using the ADR processes in the National Court of PNG had increased their trust and confidence in the court system.**

60% of survey respondents stated that the mediation process for their matter had increased their trust and confidence in the court system. For the remaining 40% of survey respondents, their level of trust and confidence in the court system remained the same.

#### **6 In 50% of cases the mediation resolved the issues in dispute and the case was successfully diverted from a hearing in the National court with the possibility that it would then be the subject of an appeal to the Supreme Court.**



## Case Study C

### Findings from Palau Judiciary Access and Fairness Survey

The Supreme Court of the Republic of Palau implemented an access and fairness survey over two weeks in February and March 2011.

The inspiration for undertaking the access and fairness survey came from one of the three associate justices of the Supreme Court attending an Asia-Pacific meeting on the International Framework for Court Excellence (IFCE) in Singapore in 2010. The Associate Justice was responsible for working with court staff on the implementation of the survey.

The survey used was developed by the Supreme Court of Palau and based upon questions used in the IFCE self-assessment questionnaire and a number of surveys from other courts around the world. The survey questionnaire has eleven questions related to access to the court and four questions related to issues of fairness.

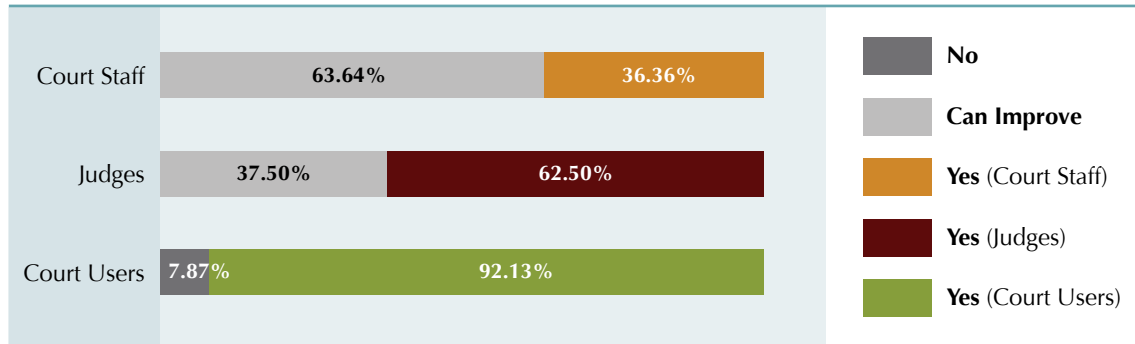
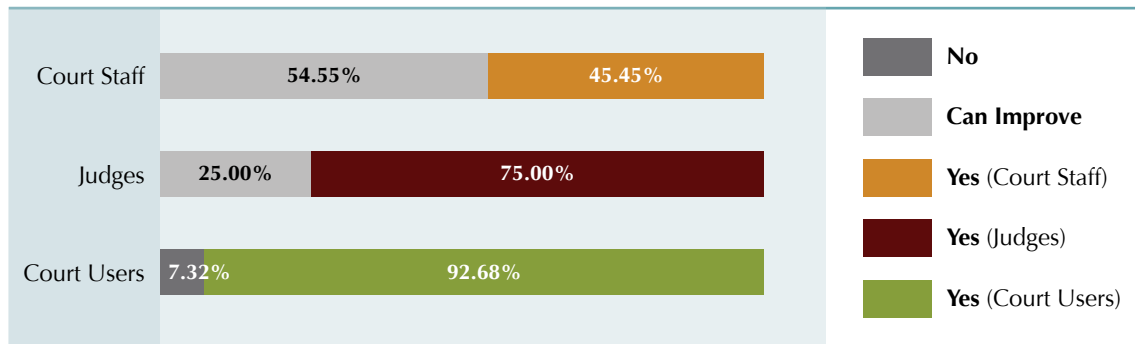
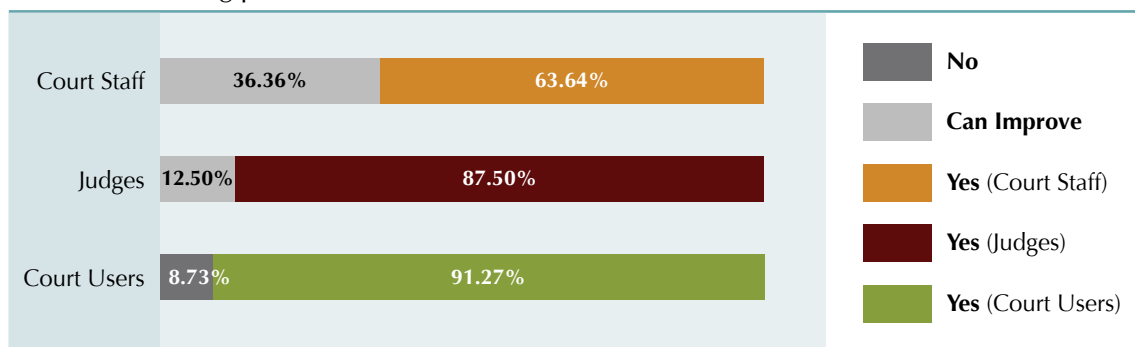
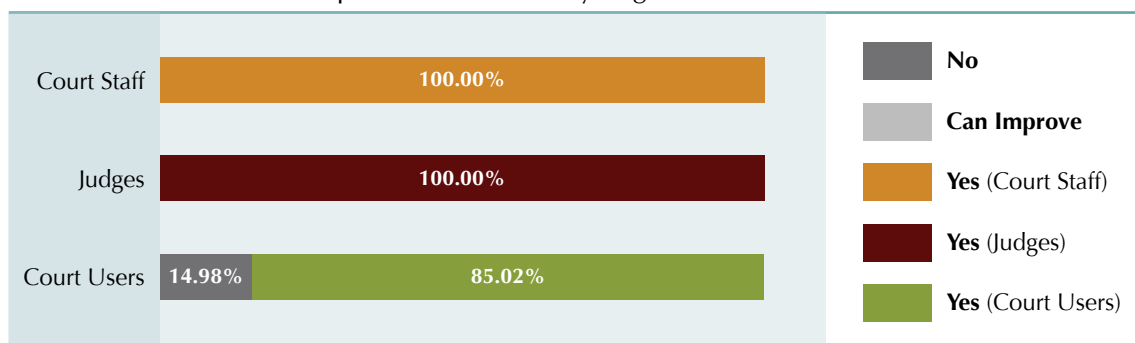
The Palau judiciary undertook this survey without consultants or trainers but by thinking through each step of the survey process. Court staff met with the Supreme Court judge coordinating the survey and, using a checklist approach, discussed how to approach people who were visiting the court during the two-week period that the survey was undertaken. Court staff asked people whether they would be prepared to complete the survey, answered any questions they may have and received the completed questionnaire from them when they had finished.

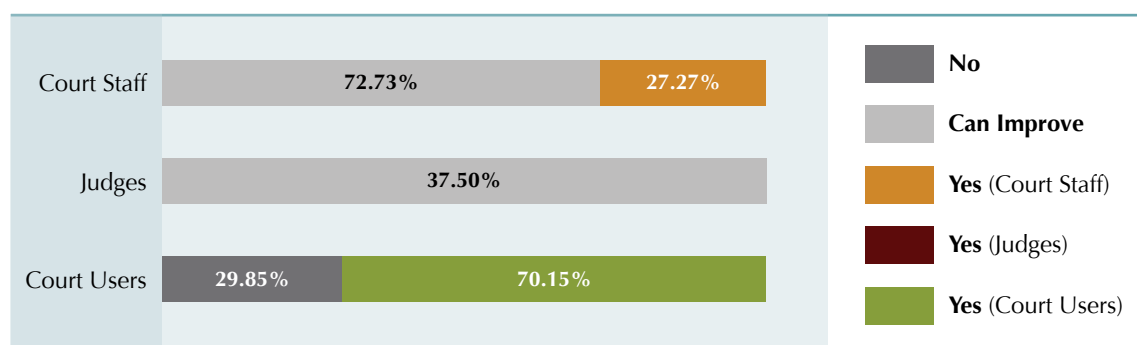
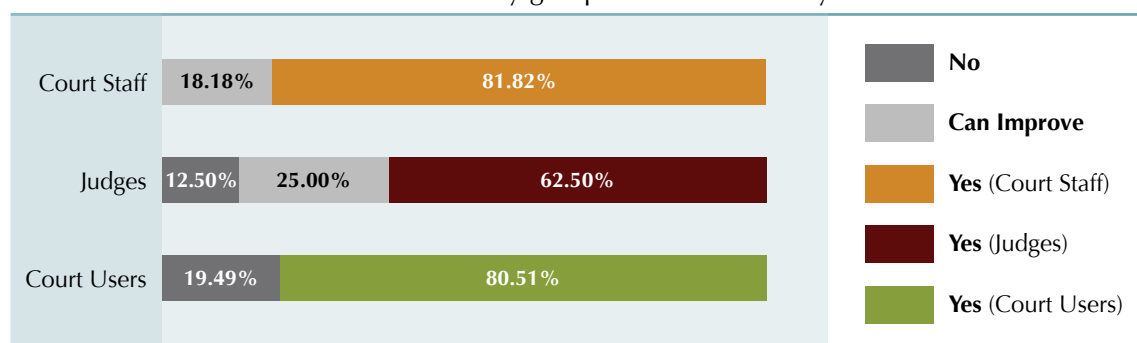
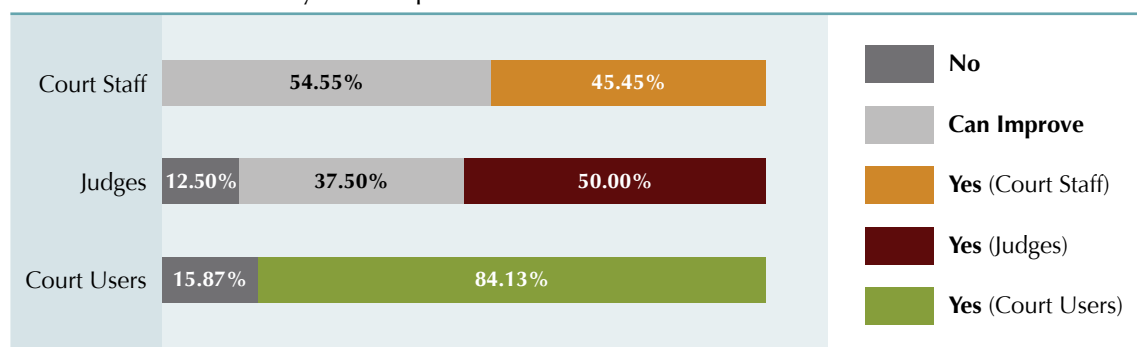
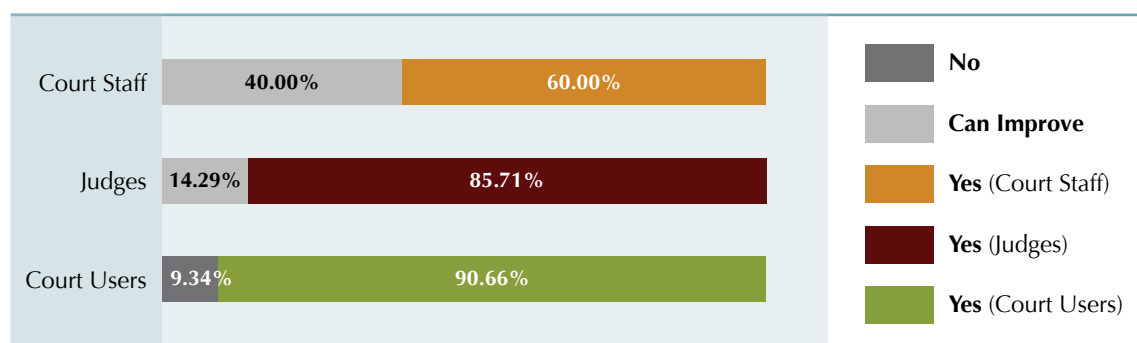
The Clerk of Courts then reviewed the survey questionnaires and entered the data into Excel format. 269 people who attended the Supreme Court in its two locations in Koror (229 surveys) and Melekeok (40 surveys) completed the survey over the two-week survey implementation period in February/March. This represents over 1% of Palau's population.

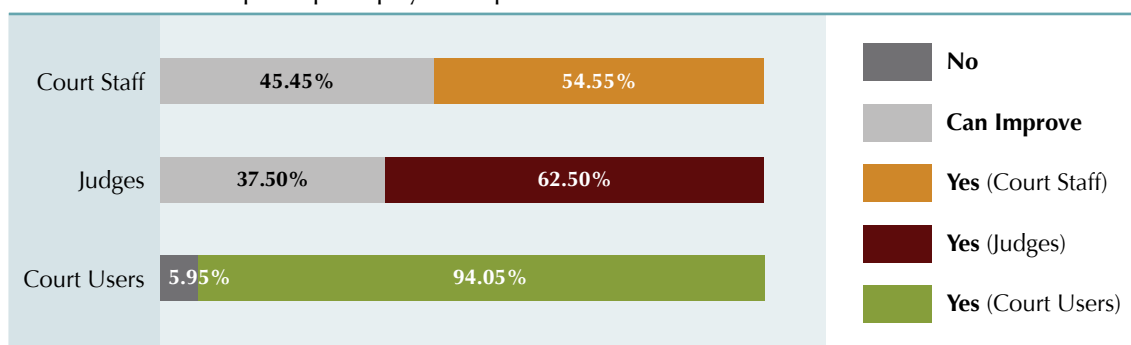
In general, the Supreme Court received overwhelmingly positive responses from court users. However, there are a few areas where clients have suggested improvements. In many of these areas the court has already taken steps to implement the suggestions made.

The Palau judiciary based its client survey undertaken in February/ March 2011 on questions used in the International Framework for Court Excellence (IFCE) self-assessment questionnaire and then subsequently asked its judges and court staff to complete the IFCE self-assessment questionnaire in July/August 2011. It is therefore possible to compare the responses of court clients, judges and court staff to the same survey questions.

It is interesting to observe in the results set out below that the court users in Palau have a higher opinion of the level of service provided by the courts than the judges and court staff who indicate that they wish to improve the services currently offered. The views of the court staff and the judges in Palau are quite similar in relation to the level of service provided by the court. This would tend to indicate that there is a regular dialogue between judges and court staff on how to provide the best services possible to the public and what the next steps of the court will be to achieve this.

**Table 5.1** We listen to court users and treat them with respect**Table 5.2** People are able to get their business with the court done in a reasonable time**Table 5.3** We make it easy for people to find the relevant courtroom in which a hearing is taking place**Table 5.4** Our hours of operation make it easy to get their business done

**Table 5.5** Our website is useful to users**Table 5.6** We treat members of minority groups the same as everyone else**Table 5.7** We can demonstrate that people leaving court understand the court programs and services they have experienced.**Table 5.8** Court users feel safe in our courtrooms.

**Table 5.9** We respond promptly to requests for information from court users.

On the basis of the access and fairness survey, the Supreme Court of Palau has already addressed the following issues:

- The Clerk of Courts/ Registry Office is now open during lunchtime.
- A new court website was launched in December with a range of court forms and information.
- The probation office was moved and is now always staffed
- Disabled parking provided

The issues that were highlighted by the survey that the Palau judiciary is now working on are as follows:

- Client service training
- Better signage at the court house
- Disabled access to the Court of Common Pleas/ Clerk of Courts Office

## Conclusion

The Palau Judiciary celebrated its 30th anniversary in mid-October and another survey of court users was undertaken at that time. 2011 will therefore mark the commencement of a process of reviewing public satisfaction with the delivery of justice through court surveys undertaken by the Palau judiciary. It is hoped that the Palau judiciary will publish key findings from the court user surveys on the Palau judiciary website and in the Annual Report.

## 6 Juvenile Disaggregated Data and Indicators

The United Nations Children's Fund (UNICEF) has published baseline reports for Kiribati, Solomon Islands and Vanuatu in 2009. Baseline reports for Samoa, Federated States of Micronesia, Republic of the Marshall Islands and Palau are currently being prepared. When this work is completed, half of the PJDP countries will have benefited from a specialist baseline report that presents juvenile disaggregated data and indicators.

The 14 Pacific Island countries<sup>34</sup> that UNICEF's Pacific programme works with are home to about 2 million people of which just over 900,000 are children below 18 years of age. Some 400,000 of these children live in the five countries – Kiribati, Vanuatu, Solomon Islands, Tuvalu and Samoa – classified by the United Nations as least developed countries.

The baseline reports that have been completed by UNICEF follow a similar format for each of the three PJDP countries. The reports include performance indicators for the courts in relation to juvenile justice matters. Table 6.1 highlights 11 key indicators related to juvenile justice in which courts play a role either directly or through ensuring that judges do not act in a way that contravenes the Convention on the Rights of the Child and other relevant juvenile justice statements. (The number in the left-hand column of this table refers to the indicator number in the UNICEF baseline reports.)

**Key finding** In the three countries where UNICEF has completed its baseline report, none of them have an information management mechanism across the sector including a case file management system to reduce delays and ensure efficient flow of cases through all stages of the justice system from arrest to adjudication, including a mechanism to flag and expedite all cases involving children. The Republic of the Marshall Islands is the only PJDP country to include juvenile justice data in its Annual Report.

**Recommendation** In coordination with the UNICEF Pacific Regional Office, PJDP work with courts to build their capacity to collect and present in Annual Reports disaggregated data on children's cases, including the outcome of the case and the type of sentence that may be imposed.

<sup>34</sup> UNICEF does not include PNG but does include Fiji in the 14 countries referred to on its Pacific website: <http://www.unicef.org/pacificislands/overview.html> There is a separate UNICEF programme in PNG.

**Table 6.1** UNICEF Juvenile justice indicators

	UNICEF baseline report reference	UNICEF Indicator	Kiribati Islands	Solomon Islands	Vanuatu
1	7(1)(c)	In any actions taken, the best interests of the child will be the primary consideration.	No	No	No
2	9(2)	The minimum age of criminal responsibility has been established which is at least 12 years of age.	Partly	Yes	No
3*	9(11)	Children are guaranteed the right to legal representation at all stages of the proceedings. [Judicial practice rule or other policy directive in place requiring that children be legally represented in court.]	Yes	Yes	Yes
4	9(15)	The law gives police, prosecutors and judges a broad discretion to resolve child cases through diversion and these diversionary procedures are specified where appropriate (e.g. mediation, community conferencing).	Yes	Partly	No
5	9(19)	All children's cases are heard by a specialized court (or a specialized judge) separately from adult cases.	No	Yes	No
6	9(20)	All cases involving children under 18 are required to take place in closed court.	No	Yes	No
7	9(31)	Deprivation of liberty is imposed only as a measure of last resort, against children who commit serious crimes of violence or persist in committing other serious offences.	Yes	Yes	Yes
8	9(37)	Children are separated from adults in all places of detention, including police custody, pre-trial detention centres and prisons.	Partly	Yes	Yes
9	9(42)	Disciplinary procedures within detention centres are strictly regulated and the following are specifically prohibited: corporal punishment, solitary confinement, placement in a dark cell, Any other punishment that may compromise the physical or mental health of the child concerned.	No	Yes	Yes
10**	9(50)	All children in conflict with the law have access to effective complaints procedures concerning all aspects of their treatment.	No	Partly	No
11***	9(53)	Systematic recording and reporting of disaggregated data relating to children's cases. [Including the outcome of the case and any sentence that may be imposed.] Want to observe an increase in the number of cases diverted and children given alternative sentencing.	No	Partly	No

\* **PJDP Indicator 7:** Percentage of cases where a party receives legal aid will capture trend data against this UNICEF indicator.

\*\* **PJDP Indicator 8:** Documented process for receiving and processing a complaint that is publicly available will capture trend data against this UNICEF indicator.

\*\*\* **PJDP Indicators 1 & 2:** Clearance rates and average duration of a case the children's cases will capture trend data against this UNICEF indicator. An additional indicator that relates to disposition of children's cases will be required in order to capture data on the percentage of cases diverted from the formal justice system and children given alternative/non-custodial sentences.

The UNICEF baseline reports also develop a checklist for compliance against three components for the whole of the justice system as seen in Table 6.2:

**Table 6.2** UNICEF baseline reports: checklist for compliance

	Core component	Not compliant	Part compliant	Fully compliant
1	A mechanism (such as an inter-agency working group) exists for collaborative planning, implementing and monitoring by all justice sector agencies (police, prosecutors, lawyers, judges, and prison officials) and with social welfare agencies.		X (Kiribati, Solomon Islands)	X (Vanuatu)
2	There is a clearly articulated structure for roles, responsibilities and accountabilities within individual justice agencies and across the system.	X (Kiribati, Solomon Islands, Vanuatu)		
3	There is an information management mechanism across the sector including a case file management system to reduce delays and ensure efficient flow of cases through all stages of the justice system from arrest to adjudication, including a mechanism to flag and expedite all cases involving children.	X (Kiribati, Solomon Islands, Vanuatu)		

# 7 Gender Disaggregated Data and Indicators

**Key finding** No Annual Report for any of the 14 PJDP countries presents Gender Disaggregated Data for any type of case. Gender Disaggregated Data are particularly relevant for greater understanding of family law and family violence cases.

**Recommendation** There is a global movement to End Violence against Women and Girls that has been endorsed by governments across the Pacific. Annual Reports of courts should include data on the number of domestic violence cases and protection order applications commenced by women each year, an average duration for the finalisation of these cases and an indication of whether the case is resolved in favour of the applicant party for the protection order.

**Key finding** 10 of 14 of PJDP countries (71%) are able to provide data on the gender of their judges and magistrates. Of the ten countries with this gender-disaggregated data, the Republic of Palau is the only country where there is a significant majority of female judicial officers. Vanuatu has an equal number of male and female magistrates.

**Recommendation** Annual Reports of Courts list the judicial officers that have been working with the Court during the year so that data on women's participation as judicial officers in Pacific countries can be collected.



The Magistrates Courts of PNG and Vanuatu have publicly available data<sup>35</sup> on the number of domestic violence protection orders that are issued each year but do not currently provide information on the gender of the applicant party.

Table 7.1 below sets out the gender distribution of judges and magistrates in the PJDP countries in 2011.

**Table 7.1** 2011 Gender Distribution of Judges and Magistrates in the PJDP Countries

Country	Number of Male Judges/ Magistrates	Percentage of Male Judges/ Magistrates	Number of Female Judges/ Magistrates	Percentage of Female Judges/ Magistrates
Cook Islands	High: 13	72%	High: 5	28%
FSM	Not available	Not available	Not available	Not available
Kiribati	Not available	Not available	Not available	Not available
Marshall Islands	District: 3 High: 2	District: 100% High: 100%	District: 0 High: 0	District: 0% High: 0%
Nauru	Magistrates: not available Supreme: 1	Magistrates: not available Supreme: 100%	Magistrates: not available Supreme: 0	Magistrates: not available Supreme: 0%
Niue	Court of Appeal: 4 High Court 6	100% 60%	Court of Appeal: 0 High Court 4	0% 40%
Palau	Supreme Court: 1 Land: 3 COCOP: 0	Supreme Court: 25% Land: 75% COCOP: 0%	Supreme Court: 3 Land: 1 COCOP: 1	Supreme Court: 75% Land: 25% COCOP: 100%
PNG	National: 20 Supreme: 24 Magistrates: 73	National: 87% Supreme: 86% Magistrates: 83%	National: 3 Supreme: 4 Magistrates: 15	National: 13% Supreme: 14% Magistrates: 17%
Samoa	Not available	Not available	Not available	Not available
Solomon Islands	Not available	Not available	Not available	Not available
Tokelau	3	100%	0	0%
Tonga	Court of Appeal: 4 Supreme: 2 Magistrates: 6	Court of Appeal: 100% Supreme: 100% Magistrates: 100%	Court of Appeal: 0 Supreme: 0 Magistrates: 0	Court of Appeal: 0% Supreme: 0% Magistrates: 0%
Tuvalu	High Court: 1 Magistrates Courts: 1	100% 100%	0 0 0%	0%
Vanuatu	Supreme: 5 Magistrates: 4	Supreme: 100% Magistrates: 50%	Supreme: 0 Magistrates: 4	Supreme: 0% Magistrates: 50%

<sup>35</sup> 2010 Annual Report for Vanuatu and 2010 data on protection order cases in PNG can be found in the 2010 Performance Report issued by the PNG LJSS.

## 8

# Key Findings and Recommendations

26 Key Findings and 24 Recommendations from the Baseline Report are set out below:

## General Findings and Recommendations

Key finding	Recommendation
<b>Socio-Economic Indicators of Disadvantage and Potential Barriers in Accessing the Courts</b>	
<p><b>Key finding 1</b> On average, 26% of the population in the PJDP PICs has an income that falls below the basic needs poverty line for their country.</p> <p><b>Key finding 2</b> The cost of a civil case as a percentage of the weekly basic needs poverty line varies from 0% in Tokelau where there are no court fees for civil cases to 735% in Vanuatu.</p>	<p><b>Recommendation 1</b> PJDP provide assistance to build the capacity of courts in the region to report on the type of barriers individuals can face in accessing the courts and the strategies developed by courts to assist individuals to overcome these barriers.</p>
<b>Data Collection Methodology</b>	
<p><b>Key finding 3</b> No PJDP court presents their court performance standards and data on whether these have been achieved in their Annual Report.</p> <p><b>Key finding 4</b> Only 1 of the 15 court performance indicators has most of the 14 PJDP countries able to meet the performance standard. (Indicator 15: Court publishes judgments on the Internet through PacLII.)</p> <p><b>Key finding 5</b> In 2011, 2 of the 14 PJDP countries (14%) undertook surveys to better understand the views of court users on the delivery of services.</p>	<p><b>Recommendation 2</b> PJDP provide assistance to build the capacity of the selected PIC courts to collect and analyse court performance data against the 15 indicators presented in this baseline report.</p> <p><b>Recommendation 3</b> PJDP provide assistance to build the capacity of the selected PIC courts to analyse the justice needs within their country to better understand what matters to actual and potential court users in the delivery of quality court services through the use of client and court stakeholder surveys and dialogues.</p>
<b>Juvenile Disaggregated Data and Indicators</b>	
<p><b>Key finding 6</b> In the three countries where UNICEF has completed its baseline report, none of them have an information management mechanism across the sector including a case file management system to reduce delays and ensure efficient flow of cases through all stages of the justice system from arrest to adjudication, including a mechanism to flag and expedite all cases involving children. The Republic of the Marshall Islands is the only PJDP country to include juvenile justice data in its Annual Report.</p>	<p><b>Recommendation 4</b> In coordination with the UNICEF Pacific Regional Office, PJDP work with courts to build their capacity to collect and present in Annual Reports disaggregated data on children's cases, including the outcome of the case and the type of sentence that may be imposed.</p>

Key finding	Recommendation
<b>Gender Disaggregated Data and Indicators</b>	
<p><b>Key finding 7</b> No Annual Report for any of the 14 PJDP countries presents Gender Disaggregated Data for any type of case. Gender Disaggregated Data is particularly relevant for greater understanding of family law and family violence cases.</p>	<p><b>Recommendation 5</b> There is a global movement to End Violence against Women and Girls that has been endorsed by Governments across the Pacific. Annual Reports of courts should include data on the number of domestic violence cases and protection order applications commenced by women each year, an average duration for the finalisation of these cases and an indication of whether the case is resolved in favour of the applicant party for the protection order.</p>
<p><b>Key finding 8</b> 10 of 14 PJDP countries (71%) are able to provide data on the gender of their judges and magistrates. Of the ten countries with this gender-disaggregated data, the Republic of Palau is the only country where there is a significant majority of female judicial officers. Vanuatu has an equal number of male and female magistrates.</p>	<p><b>Recommendation 6</b> Annual Reports of Courts list the judicial officers that have been working with the Court during the year so that data on women's participation as judicial officers in Pacific countries can be collected.</p>

## Court Performance Key Findings and Recommendations

Key finding	Recommendation
<p><b>Indicator 1: Case Management</b></p> <p>Clearance Rate: The result against this indicator is obtained by dividing cases finalised by cases filed.</p>	
<p><b>Key finding 9</b> 9 of 14 PJDP countries (64%) are able to present data in a form that will permit a clearance rate to be calculated for one or more level of court jurisdiction.</p>	<p><b>Recommendation 7</b> Courts present data in their annual report on the number of cases filed and the number of cases finalised in the previous court reporting cycle. This will allow judges and court staff to track clearance rates for different types of cases being heard at different levels in the national courts.</p> <p><b>Recommendation 8</b> Court staff members that are responsible for tracking the number of cases filed and the number of cases finalised using Word or Excel documents would benefit from training on the use of filters and other techniques so as to more easily extract case management data from these documents.</p>

Key finding	Recommendation
<b>Indicator 2: Case Management</b> Average Duration of a Case: The result against this indicator is obtained by totalling the days for each case from the date the case is filed to the date it is finalised and then dividing this by the number of cases finalised.	
<p><b>Key finding 10</b> Only two PJDP countries (14%) (Republic of the Marshall Islands and the Republic of Palau) are able to collect data on the average duration of a case in their court.</p> <p><b>Key finding 11</b> None of the court annual reports from PJDP countries referred to a time standard for the hearing of different types of cases.</p>	<p><b>Recommendation 9</b> Courts present data in their annual report on the average duration of different types of cases (e.g. civil, criminal, small claims, juvenile cases etc) finalised in the previous court reporting cycle.</p> <p><b>Recommendation 10</b> That courts include in their annual report the time standard within which they aim to complete different types of cases and provide data on the percentage of cases that have been completed within the time standard set by the court. [Note: A time standard may stipulate that a certain percentage of cases are to be finalised within a certain time period.]</p>
<b>Indicator 3: Case Management</b> The percentage of appeals: The result against this indicator is obtained by dividing the number of cases appealed by the number of case applications.	
<p><b>Key finding 12</b> Eight of the 14 PJDP countries (57%) are able to collect data on the number of cases appealed as a percentage of the number of cases filed in a particular year for one or more level of court jurisdiction.</p>	<p><b>Recommendation 11</b> PJDP countries present data in their annual report on the number of cases from each level of court that are appealed each year. This indicator provides courts with estimates from year to year of the percentage of trial level cases that will be referred to appeal courts. This allows courts to estimate the level of human and financial resources to deal adequately with appeals from the trial caseload.</p>
<b>Indicator 4: Case Management</b> Overturn rate on appeal: The result against this indicator is obtained by dividing the number of appeal cases in which the lower court decision is overturned by the total number of appeals.	
<p><b>Key finding 13</b> Three of 14 PJDP countries (21%) (Republic of the Marshall Islands, the Republic of Palau and Tuvalu) are able to collect data on the percentage of appeal cases in which the lower court decision is overturned by the appellate court.</p>	<p><b>Recommendation 12</b> All appeal cases should be published online through PacLII or national court websites in order to be able to report on the overturn rate on appeal.</p>

Key finding	Recommendation
<p><b>Indicator 5: Accessibility of Courts</b></p> <p>Percentage of cases that are granted a court fee waiver: The result against this indicator is obtained by dividing the number of cases that are granted a court fee waiver by the total number of cases filed.</p>	
<p><b>Key finding 14</b> Only three of the 14 PJDP countries (21%) could present data on the percentage of cases that were granted a court fee waiver. In these three countries, Tokelau has no court fees for any of its cases and Palau (Court of Common Pleas) and Tuvalu (Magistrates courts) identified that there was no process to waive court fees. In all other courts, it is unclear from publicly accessible reports whether there is (i) a court fee waiver process or (ii) data are collected on the number of cases in which the court fee is waived.</p>	<p><b>Recommendation 13</b> With approximately one quarter of the population in the PJDP PICs having an income that falls below the basic needs poverty line in that country, Courts should provide clear documentation for all court users on the process for waiving a court fee in civil cases. Courts should also include in the Annual Report data on the number of cases in which fees are waived.</p>
<p><b>Indicator 6: Accessibility of Courts</b></p> <p>Percentage of cases finalised through a circuit court: The result against this indicator is obtained by dividing the number of cases finalised through a circuit court by the total number of cases filed.</p>	
<p><b>Key finding 15</b> Seven of 14 PJDP courts (50%) are able to provide data on the percentage of cases heard through a circuit court. In four of these six countries no circuit courts are held. In the remaining three PJDP countries (Republic of the Marshall Islands, Tonga and Tuvalu) the percentage of cases handled through circuit courts was reported.</p>	<p><b>Recommendation 14</b> With approximately one quarter of the population in the PJDP PICs having an income that falls below the basic needs poverty line in that country, Courts should provide clear information for all court users on the process for registering and hearing cases through circuit courts. Courts should also include in the Annual Report data on the number of cases heard through a circuit court.</p>
<p><b>Indicator 7: Accessibility of Courts</b></p> <p>Percentage of cases where a party receives legal aid: The result against this indicator is obtained by dividing the number of cases where a party receives legal aid by the total number of cases filed.</p>	
<p><b>Key finding 16</b> Only two PJDP countries (14%) (Republic of the Marshall Islands and Tokelau) are able to collect data on the percentage of cases in which a party receives legal aid.</p>	<p><b>Recommendation 15</b> With approximately one quarter of the population in the PJDP PICs having an income that falls below the basic needs poverty line in that country, PJDP courts should collect information at the time the case is filed on whether a party will receive legal aid. This is particularly important in criminal matters as many PJDP jurisdictions require that a defendant be represented by a lawyer in serious criminal matters or where the defendant is a juvenile.</p>

## Key finding

## Recommendation

**Indicator 8: Complaint Handling and Feedback**

Documented process for receiving and processing a complaint that is publicly available: To show results against this indicator a documented process for receiving and processing a complaint should be accessible to the public.

**Key finding 17** Only three PJDP countries (21%) (Kiribati, Republic of the Marshall Islands and the Republic of Palau) have a documented process of receiving and processing a complaint. For the Republic of the Marshall Islands and the Republic of Palau the Judicial Code of Conduct is available on the courts' websites.

**Recommendation 16** PJDP countries that have developed a judicial code of conduct or have another process for receiving complaints related to judicial service should make these complaint handling processes publicly available on their websites, the PacLII website and the court noticeboard. PJDP Courts should also include in their Annual reports a section on any complaints and feedback received and how the court has responded.

**Indicator 9: Complaint Handling and Feedback**

Percentage of complaints received concerning a judicial officer: The result against this indicator is obtained by dividing the number of complaints filed concerning a judicial officer by the total number of cases filed.

**Key finding 18** Only three PJDP countries (21%) (Republic of the Marshall Islands, Republic of Palau and Vanuatu) presented information on the percentage of complaints received concerning a judicial officer. In all of these countries, complaints related to a judicial officer were 1% or less of the number of cases filed.

**Recommendation 17** In court annual reports, a section should refer the public to the judicial complaints procedure and include data on the number of judicial complaints received in that year and how they were dealt with. Trend data over a five-year period in relation to this indicator will allow the public to observe whether judicial complaints are rising or falling. This section of the annual report can also educate the public that if a party is dissatisfied with the outcome of any judicial decision this can only be dealt with through the appeals process.

**Indicator 10: Complaint Handling and Feedback**

Percentage of complaints received concerning a court staff member: The result against this indicator is obtained by dividing the number of complaints received concerning a court staff member by the total number of cases filed.

**Key finding 19** Only two PJDP countries (14%) (Republic of the Marshall Islands and Vanuatu) presented information on the percentage of complaints received concerning a court staff member. In both of these countries, complaints related to a court staff member were 1% or less of the number of cases filed.

**Recommendation 18** In court annual reports, a section should refer the public to the complaints procedure for members of court staff and include data on the number of complaints related to court staff received in that year and how they were dealt with. Trend data over a five-year period in relation to this indicator will allow the public to observe whether the number of court staff complaints is rising or falling.



Key finding	Recommendation
<b>Indicator 11: Judicial Resources</b> Average number of cases per judicial officer: The result against this indicator is obtained by dividing the total number of cases received by the number of judicial officers.	
<b>Key finding 20</b> Eight of the 14 PJDP countries (57%) have one or more court that is able to present data on the average number of cases for each judicial officer presiding in that court.	<b>Recommendation 19</b> PJDP courts should include information in their annual reports on both the number of cases filed and the number of judicial officers that were hearing cases in a particular year. Ideally, trend data over a five-year period will be presented in relation to the ratio of cases to judicial officers. These data are relevant to other performance indicators such as clearance rates (indicator 1), average duration of cases (indicator 2) and percentage of complaints against judicial officers (indicator 9).
<b>Indicator 12: Court Staff Resources</b> Average number of cases per court staff: The result against this indicator is obtained by dividing the total number of cases received by the number of court staff.	
<b>Key finding 21</b> Six of the PJDP countries (43%) have one or more court that is able to present data on the average number of cases for each court staff/registry staff member involved in the processing of cases from the date of filing to finalisation.	<b>Recommendation 20</b> PJDP courts should include information in their annual reports on both the number of cases filed and the number of court registry staff that are involved in the processing of cases from the date of filing to finalisation in a particular year. Ideally, trend data over a five-year period will be presented in relation to the ratio of cases to registry staff. These data are relevant to other performance indicators such as clearance rates (indicator 1), average duration of cases (indicator 2) and percentage of complaints against court staff members (indicator 10).
<b>Indicator 13: Transparency</b> Court produces or contributes to an Annual Report that is publicly available in the following year: This indicator is demonstrated through the publication of an annual report in the year immediately following the year that is the subject of the annual report.	
<b>Key finding 22</b> The Republic of the Marshall Islands is the only judiciary of the 14 PJDP countries that produces its annual report in the year immediately following the reporting period and publishes it on the Judiciary's web site. In May 2012, the annual reports of five PJDP partner courts were made available on PacLII implementing the Regional Justice Performance Framework agreed to by Chief Justices.	<b>Recommendation 21</b> PJDP work with PJDP judiciaries to assist with the publication of quality annual reports that provide court performance information to a range of national and international court stakeholders. These annual reports should be published on the PJDP/ PacLII website as well as the court's own website where these exist.

Key finding	Recommendation
<p><b>Indicator 13: Transparency</b></p> <p>Court produces or contributes to an Annual Report that is publicly available in the following year: This indicator is demonstrated through the publication of an annual report in the year immediately following the year that is the subject of the annual report.</p>	
<p><b>Key finding 23</b> Three of the 14 PJDP countries (Kiribati, Tokelau and Tuvalu) did not produce an annual report on the work of the courts but are now planning to compile one with data for 2011.</p>	
<p><b>Indicator 14: Transparency</b></p> <p>Information on court services that is publicly available.</p>	
<p><b>Key finding 24</b> 3 of the 14 PJDP countries present information on court services on their websites. In addition, Tuvalu presents information on the courts through radio services from time to time.</p>	<p><b>Recommendation 22</b> With approximately one quarter of the population in the PJDP PICs having an income that falls below the basic needs poverty line in that country, and with the majority of court clients appearing in court without legal representation, it is important for Courts to consider how best to convey information on court services to potential court users. The Internet is an effective way of presenting information to a range of court stakeholders who may assist disadvantaged groups to access the courts. However, direct engagement with potential court users through posters in health clinics and government offices, radio bulletins or other means is also important as a way of informing potential clients of how they may access the courts for their legal issues.</p>
<p><b>Indicator 15: Transparency</b></p> <p>Court publishes judgments on the Internet (through PacLII or their own website).</p>	
<p><b>Key finding 25</b> 13 of the 14 PJDP countries (93%) publish judgments on the Internet using the Pacific Legal Information Institute (PacLII) website with 9 of the 14 countries (64%) publishing judgements online in the previous year.</p> <p><b>Key finding 26</b> Seven of the 14 PJDP countries (50%) published decisions from the magistrates or district courts as well as the appeal courts. The Marshall Islands and Vanuatu also publish decisions of their Traditional Rights Court and Island Courts on the PacLII website.</p>	<p><b>Recommendation 23</b> PJDP to encourage the publication of judgements from all levels of court on PacLII or national websites to increase understanding in the Pacific region and beyond of the work of Pacific courts.</p> <p><b>Recommendation 24</b> Chief Justices, at their Leadership workshop held from 18-20 October, 2011- Port Vila, Vanuatu, noted in their concluding resolutions from that meeting that the maintenance of PacLII is essential to the integrity of the judicial systems in the Pacific. To that end, the Chief Justices urge that the PacLII Foundation be funded on an ongoing basis as proposed by the independent review of PacLII.</p>



A summary of the percentage of the 14 PJDP countries that currently report on the 15 indicators is presented in Table 8.1.

**Table 8.1** Percentage of the 14 PJDP countries that currently report on the indicator

Indicator		Percentage of the 14 PJDP countries that currently report on the indicator
1	Clearance rate	64% (9 of 14)
2	Average duration of a case from filing to finalisation	14% (2 of 14)
3	The percentage of appeals	57% (8 of 14)
4	Overturn rate on appeal	21% (3 of 14)
5	Percentage of cases that are granted a court fee waiver	21% (3 of 14)
6	Percentage of cases disposed through a circuit court	50% (7 of 14)
7	Percentage of cases where a party receives legal aid	14% (2 of 14)
8	Documented process for receiving and processing a complaint that is publicly available	21% (3 of 14)
9	Percentage of complaints received concerning a judicial officer	21% (3 of 14)
10	Percentage of complaints received concerning a court staff member	14% (2 of 14)
11	Average number of cases per judicial officer	57% (8 of 14)
12	Average number of cases per member of court staff	43% (6 of 14)
13	Court produces or contributes to an Annual Report that is publicly available in the following year	7% (1 of 14)
14	Information on court services is publicly available	29% (4 of 14)
15	Court publishes judgments on the Internet (court website or the Pacific Legal Information Institute)	93% (13 of 14)
Ability to Report on 15 performance indicators (Average for the 15 indicators)		34%

## 9

# Regional Justice Performance Framework

## Ownership, Results, Trust and Accountability

These four principles underpin many of the international and regional statements on judicial integrity and independence. They also feature in the Fourth High-Level Forum on Aid Effectiveness that took place in Busan, South Korea in December 2011:

- **Ownership of development priorities by developing countries.** Partnerships for development can only succeed if they are led by developing countries, implementing approaches that are tailored to country-specific situations and needs.
- **Focus on results.** Our investments and efforts must have a lasting impact on eradicating poverty and reducing inequality, on sustainable development, and on enhancing developing countries capacities, aligned with the priorities and policies set out by the developing countries themselves.
- **Inclusive development partnerships.** Openness, trust, and mutual respect and learning lie at the core of effective partnerships in support of development goals, recognising the different and complementary roles of all actors.
- **Transparency and accountability to each other.** Mutual accountability and accountability to the intended beneficiaries of our co-operation, as well as to our respective citizens, organisations, constituents and shareholders, is critical to delivering results. Transparent practices form the basis for enhanced accountability.<sup>36</sup>

Annual reports represent the vehicle through which courts take **ownership** of the work they have completed during the year and present to the public their annual **results** against key performance indicators. In doing so they win the **trust** of the public and are **accountable** to the citizens they serve.



<sup>36</sup> Fourth high-level forum on aid effectiveness, Busan, Republic of Korea 1 December 2011 at [www.busanhl4.org](http://www.busanhl4.org)

**Table 9.1** Baseline Summary of Court Performance Reporting

Indicator of Court Performance	2011 Baseline	Work Undertaken by Judiciaries at a National Level
Able to report on the 15 PJDP court performance indicators.	The majority of PJDP courts are unable to report on the 15 court performance indicators.  There is only one indicator (publication of judgments) that 13 of the 14 courts can report on.	Chief Justice, judges and court staff to work collaboratively on the collection, analysis and reporting of court performance data.
PJDP Courts produces or contributes to an Annual Report that is publicly available in the following year.	1 of 14 PJDP countries produces or contributes to an Annual Report that is publicly available in the following year.	Court submits to Parliament an Annual Report for the previous year.
PJDP courts present their court performance standards and data on whether these have been achieved in their Annual Report.	0 of 14 PJDP countries present their court performance standards and data on whether these have been achieved in their Annual Report.	Chief Justice, judges and court staff to work collaboratively to set realistic and appropriate court performance standards based upon the court performance data collected against the 15 PJDP indicators.
Courts regularly analyse the justice needs within their country to better understand what matters to actual and potential court users in the delivery of quality court services through the use of client and court stakeholder surveys and dialogues.	2 of the 14 PJDP countries (14%) undertook court user surveys during 2011.	Periodically undertake court user and potential court user surveys and dialogues and summarise the findings for publication on the Courts website and/or in the Court's annual report.

The Chief Justices at their leadership meeting in Apia, Samoa in March 2012 endorsed the recommendations contained in the draft Regional Justice Performance Framework and Interim Baseline Report dated March 2012. More specifically, under the endorsed Regional Justice Performance Framework:

*The Chief Justices of the countries participating in the Pacific Judicial Development Programme agree to progressively build the capacity of their judicial and court staff colleagues so as to publish court Annual Reports:*

- I. on national and Pacific regional websites,*
- II. within one year of the end of the reporting period,*
- III. that include:*
  - a. court performance data and results against the 15 indicators and Recommendations presented in the PJDP Baseline Report,*
  - b. court performance standards for each level of court and annual results against those standards,*
  - c. a summary of the key findings from any court stakeholder/potential court user surveys and dialogues that have taken place in the previous year,*
  - d. financial statements, including Court budget execution statements.*

# References

## PJDP Country Court Annual Reports

	<b>Annual Report Referred to in the Baseline Report (hardcopy or e-copy on file)</b>	<b>Court website</b>	<b>Annual Report on website, if YES what is the latest year.</b>
Cook Islands	2007-2008	NO	NO
Federated States of Micronesia	No annual report	YES <a href="http://www.fsmlaw.org/fsm/index.htm">http://www.fsmlaw.org/fsm/index.htm</a>	NO
Kiribati	Address by Chief Justices at opening of 2012 Court Year (2011 data)	NO	NO
Marshall Islands	2010	YES <a href="http://rmicourts.org/">http://rmicourts.org/</a>	YES–2010 (Court and PacLII website)
Nauru	2009-2010	YES (but parts are still under construction) <a href="http://ronlaw.gov.nr/nauru_lpms/">http://ronlaw.gov.nr/nauru_lpms/</a>	YES–2009-2010 (PacLII website)
Niue	2010	NO	YES–2009-2010 (PacLII website)
Palau	2010	YES <a href="http://www.palau.gov.net/judiciary/">http://www.palau.gov.net/judiciary/</a>	NO
PNG Supreme Court	2004-2007 for National & Supreme Courts	YES <a href="http://www.pngjudiciary.gov.pg">http://www.pngjudiciary.gov.pg</a>	NO
PNG Magistrates Court	1982	YES <a href="http://www.magisterialservices.gov.pg/">http://www.magisterialservices.gov.pg/</a>	NO
Samoa	2008-2009	NO	NO
Solomon Islands	2009	NO	YES–2009 (PacLII website)
Tokelau	2010	NO	NO
Tonga	2010	YES <a href="http://www.pmo.gov.to/people/tongan-judiciary-system">http://www.pmo.gov.to/people/tongan-judiciary-system</a>	NO
Tuvalu	No Annual Report	NO	NO
Vanuatu	2010	NO	YES–2009 (PacLII website)

- Abbott, D. (2008), *Solomon Islands: Analysis of the 2005/06 household income and expenditure survey*. UNDP Pacific Centre and Solomon Islands National Statistics Office: Suva, Fiji.
- Abbott, D. and S. R. Muagututia, (2010), *Samoa: Analysis of the 2008 household income and expenditure survey*. UNDP Pacific Centre and Samoa Bureau of Statistics: Suva, Fiji.
- Abbott, D. and F. Nimea, (2008), *Federated States of Micronesia: Analysis of the 2005 household income and expenditure survey*. UNDP Pacific Centre and Government of the Federated States of Micronesia, Office of S.B.O.C, Division of Statistics: Suva, Fiji.
- Abbott, D. and E. Sadang, (2008), *Palau: Analysis of the 2006 household income and expenditure survey*. UNDP Pacific Centre and Palau Office of Planning and Statistics: Suva, Fiji.
- Abbott, D. and H. N. Teewe, (2010), *Kiribati: Analysis of the 2006 household income and expenditure survey*. UNDP Pacific Centre and Kiribati National Statistics Office: Suva, Fiji.
- Asian Development Bank, (2011), *Statistical Database System Online*. Available at <https://sdbas.adb.org/sdbas/index.jsp>. Accessed October 2011.
- AusAID, (2010), *Australia's Framework for Law and Justice Engagement with the Pacific*.
- AusAID, (2011), *Office of Development Effectiveness: Discussion Paper (August 2011): Emerging Findings from the ODE Law and Justice Evaluation* By Marcus Cox, Emele Duituturaga and Eric Scheye
- Department of Foreign Affairs and Trade, (2011), *Country Profiles*, The Federal Government of Australia. Available at <http://www.dfat.gov.au/geo/index.html>. Accessed October 2011.
- Fourth high-level forum on aid effectiveness, Busan, Republic of Korea 1 December 2011 at [www.busanhl4.org](http://www.busanhl4.org)
- Ministry of Finance and Planning. (2010). *2nd National Millennium Development Goals Report: Tonga*. Government of Tonga: Nuku'alofa.
- Population Reference Bureau, (2011), *2011 World Population Data Sheet: The World at 7 Billion*. Available at [www.prb.org](http://www.prb.org). Accessed February 2012.
- Papua New Guinea. Law and Justice Sector Secretariat (LJSS) Annual Performance Report for 2010
- Registry, (2010), *Judicial Fee Schedule (as of 10/04/2010)*. Palau Government. Available at <http://www.palagov.net/judiciary/JudicialFees.pdf>. Accessed November 2011.
- Robertson, K, (2011), *HIES 2010 Poverty Analysis*. MCA (Vanuatu). Republic of Vanuatu Courts Act (Cap.122): Civil Procedures Rules No. 49 of 2002, Schedule 1.
- Supreme Court Registry (PNG), (2011), *Supreme and National Court of Papua New Guinea: Fees*. Government of Papua New Guinea. Available at <http://www.pngjudiciary.gov.pg/www/html/59-fees.asp>. Accessed November 2011.
- UN Data, (2011), *Country Profiles*, UN Statistics Division. Available at <http://data.un.org/Default.aspx>. Accessed October 2011.
- UNDP, (2010). *Human Development Report 2010: The real wealth of nations: Pathways to human development*. New York: UNDP, UN.
- UNICEF, (2009) *Child Protection Baseline Research Report: Kiribati*
- UNICEF, (2009) *Child Protection Baseline Research Report: Solomon Islands*
- UNICEF, (2009) *Child Protection Baseline Research Report: Vanuatu*
- Vanuatu National Statistics Office. *HIES 2006 Report on the Estimation of the Basic Needs Poverty Line and the Incidence and Characteristics of Poverty in Vanuatu*.
- The World Bank Group, (2011), *GNI per capita, Atlas Method (current \$US)*, The World Bank. Available at <http://data.worldbank.org/indicator/NY.GNP.PCAP.CD>. Accessed October 2011.
- The World Bank Group, (2010), *Papua New Guinea: Poverty Assessment*. The World Bank.





# Pacific Judicial Development Programme: **2011 Court Baseline Report**

PJDP is implemented by the Federal Court of Australia with funding support from  
New Zealand Ministry of Foreign Affairs and Trade

