



# PACIFIC JUDICIAL DEVELOPMENT PROGRAMME

## PJDP Phase 2: 'Lessons Learned' Report

5 October 2012.

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



### *Abbreviations*

CJ	-	Chief Justice
CoJC	-	Codes of Judicial Conduct
CDR	-	Customary Dispute Resolution
DM	-	Decision-Making
FVYJ	-	Family Violence and Youth Justice
IPJDP	-	Institutionalising the Pacific Judicial Development Programme
JAP	-	Judicial Administration Project
JAD	-	Judicial Administration Diagnostic
JCOOT	-	Judicial and Court Officer Orientation
JDMT	-	Judicial Decision-Making Training
JM&E	-	Judicial Monitoring and Evaluation
J4P	-	Justice for the Poor (World Bank)
M&E	-	Monitoring and Evaluation
MFAT	-	New Zealand Ministry of Foreign Affairs and Trade
MSC	-	Managing Services Contractor - Federal Court of Australia
MTA	-	Monitoring and Technical Adviser
NC	-	National Coordinators
NJDC	-	National Judicial Development Committee
NJWG	-	National Coordinators Working Group
ODA	-	Official Development Assistance
PEC	-	Programme Executive Committee
PIC	-	Pacific Island Country
PJC	-	Pacific Judicial Conference
PJDP	-	Pacific Judicial Development Programme ('Programme')
PJEP	-	Pacific Judicial Education Programme
PME	-	Performance Monitoring and Evaluation
RTT	-	Regional Training Team
SGBV	-	Sexual and Gender-based Violence
TA	-	Technical Advisor
ToT	-	Training-of-Trainers



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## Pacific Judicial Development Programme PJDP PHASE 2: 'LESSONS LEARNED' REPORT

### EXECUTIVE SUMMARY

The Managing Service Contractor (MSC) of PJDP has been tasked to provide a desk-based analysis of PJDP's experience in promoting the sustainability of judicial development in the Pacific region.

This analysis seeks to capture and consolidate the MSC's own implementation experience and is in the nature of an internal 'lessons learned' assessment of this phase. It has particular regard to (a) the effectiveness of the Programme's theory of change; (b) stakeholders' needs; (c) alternative implementation options; and (d) the capacity of local PIC project management mechanisms, as required in the terms of reference which are annexed to this report.

The MSC has adopted a 'continuous learning' approach to evaluating lessons in two ways. These are in continuously making refinements to aspects of the Programme as needed during the course of the current phase (formative self-evaluation); and in offering lessons in the form of recommendations for the purpose of informing future thinking in approaching completion of this phase (summative self-evaluation). This report now concentrates on the latter form of self-evaluation and learning.

Of fundamental significance, the MSC offers two major thematic lessons from this experience. First, there is an overarching need for PJDP to refine its continuing relevance as a regional assistance process. This can be done in many ways which are outlined below and in this assessment. In particular, the **Programme should adopt a tighter focus to address specific problems that will improve the courts' capacity, systems and procedures to deliver services that contribute improvements to the wellbeing of citizens and communities they serve locally and across the region.**

Second, and of equal significance, there is the need to create the opportunities and incentives to enable and support stakeholders to more actively lead their own judicial development locally and regionally. The experience of the MSC simultaneously indicates that while there is consistent evidence of emerging capacity to manage judicial development, there also remain substantial needs for ongoing capacity-building support across the region. Specific regard must be made to actively developing an appropriate process to **hasten the devolution and transfer of programme management responsibilities and functions wherever feasible** in order to offset the perverse effects of further embedding dependence on donors for judicial development.

Finding the right balance between helping and hindering sustaining judicial development is now key.

### Lessons

The MSC offers stakeholders the following lessons from the implementation experience of this phase, to:-

#### a Theory of change

1. review PJDP's theory of change, or purpose, to adopt a more problem-focused approach to address specific needs and provide support directed to promote the delivery of justice services which visibly improve the wellbeing of communities and citizens across the region.

#### b Needs

2. sharpen PJDP's focus on addressing beneficiaries' needs by using **action-research** to both identify problems and develop solutions.



3. specify, and if necessary rank, PJDP's **beneficiaries** with a view to focusing the Programme's support for both the courts and the communities they serve.
4. align available resources to address **medium-longer term needs** in an incentive-driven rolling 5-year programme cycle.
5. address fewer **priorities** (ie thematic pillars) in order to avoid being spread too thinly, and/or commit a more appropriate level of funding to enable broader more integrated assistance.

**c Implementation options**

6. further articulate under the direction of chief justices PJDP's 'regional' approach to ensuring **relevance** through the appropriate delivery of services to PICs.
7. introduce more nuanced approaches to promoting **sustainability** noting the diversity of capabilities across the region.
8. explore **delivering** services to PIC sub-groupings based on shared needs, noting that there is no compelling evidence to justify input-delivery on the basis of geographic sub-regions.
9. reposition **training** from the general context of promoting judicial competence as an end-goal in itself, to being targeted towards contributing solutions to specific problems affecting people.
10. **allocate resources** equitably between PICs across the region.
11. balance the provision of **in-country and remote** (include web-based and electronic) support.
12. align and extend the use of the **Responsive Fund** to address overarching local and programme objectives.
13. extend **judicial networking and partnerships** within and beyond the region.
14. build local and regional capabilities to **monitor and evaluate** development results.

**d Capacity and management mechanisms**

15. further **institutionalise** judicial development structures and mechanisms to sustain gains made and avoid entrenching dependence on donor support.
16. review **governance** mechanisms by surveying participating chief justices on PJDP's constitution, structure, mandate and representation.
17. explore options and approaches to stimulate and enable more **proactive leadership** and engagement.
18. further **devolve** programme management to local actors on an activity-by-activity basis with ongoing support and monitoring; including exploring options to **relocate** the programme office in the region.
19. integrate the local **roles of the NJDCs, RTT and NCs**; introduce competitive appointment, incentives and periodic performance review; and provide ongoing capacity-building.

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# Pacific Judicial Development Programme

## PJDP PHASE 2: 'LESSONS LEARNED' REPORT

### INTRODUCTION

The Managing Service Contractor (MSC) of PJDP has been tasked to provide a desk-based analytical appraisal of PJDP's experience since 1 July 2010 in promoting the sustainability of ongoing judicial development in the Pacific region.

This analysis seeks to capture and consolidate the MSC's own implementation experience and is in the nature of an internal 'lessons learned' assessment of this phase.

The terms of reference specify that particular regard be given to the effectiveness of the Programme's theory of change; stakeholders' needs; alternative implementation options; and the capacity of local PIC project management mechanisms – as annexed to the end of this report.<sup>1</sup>

### Purpose and methodology

The purpose of this report is to provide a critically reflective managerial appraisal, or meta self-evaluation, of the current PJDP experience for the purpose of stimulating the ongoing consideration of stakeholders.

The analysis of 'lessons learned' from the experiences of the current phase of PJDP has been prepared using a participatory methodology which has included consulting members of the National Coordinators Working Group (NCWG) and members of the MSC's management and advisory teams.

This report builds on a range of earlier periodic reports prepared by the MSC for the purpose of documenting experience. During this phase, the MSC has employed various means to collect and analyse experience. These have included ongoing review of technical outcomes and reports by the Team Leader and International Programmes Manager; soliciting feedback through a mid-term stakeholder review; independent feedback and appraisal surveys; and ongoing counterpart / stakeholder feedback as part of regional leadership activities. Additionally, the MSC's activity-related monitoring has included a range of pre-/post-training knowledge improvement assessments; immediate post-training quality and satisfaction assessments; intermediate post-activity assessments with partner court leadership, supervisors, and participants (distributed +3 months after the completion of training) to assess impact or performance improvements; and adviser led semi-independent assessment of RTT members.

This report does not repeat all of the contents of these earlier reports. Instead, it provides (a) a succinct summary of the major operational achievements of this phase. It then provides (b) a thematic assessment of significant issues - be they successes, challenges or opportunities - which in the learning of the MSC have emerged from this experience.

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<sup>1</sup> As per *Resolutions 6* and *7* of the Fourth PJDP Phase 2 PEC Meeting (1-3 April, 2012 - Apia, Samoa).



## ACHIEVEMENTS

In order to contextualise the ensuing discussion of learning, this summary frames and condenses the MSC's earlier periodic reports to outline the major achievements of this phase:

1. *Re-engagement and restoring momentum* - regained the confidence of the region's judicial leaders following the Programme hiatus along with high levels of active engagement, cooperation and ownership among senior stakeholders.
2. *Judicial partnership* - created a strong working partnership between courts of the Pacific with the New Zealand and Australian judiciaries building and sharing expertise.
3. *Judicial direction and leadership* - supported fora for regional leadership and dialogue on judicial development at the level of chief justices, and devised a feasible pathway for the ongoing sustainability, institutionalisation and funding of regional judicial development.
4. *Judicial transparency* - created the means to monitor and report on judicial performance, promoting transparency and accountability; building public trust and confidence; and enabling the region's courts to track progress.
5. *Judicial integrity and accountability* - implemented the commitment of judicial leaders to improving standards by introducing codes of conduct.
6. *Access to justice* - developed an approach to integrate community justice needs into formal court reform planning to foster coherence, consistency and a greater opportunity for just outcomes for disputants.
7. *Judicial administration* - introduced an agreed approach to support national court / registry plans to improve judicial administration in PICs across the region.
8. *Regional/local trainers* - consolidated earlier training to accredit and mobilise the Regional Training Team (RTT) capable of assessing needs, designing and delivering training in all PICs.
9. *Core training products* - developed and piloted core training courseware, including judicial orientation, Pacific-focused Training-of-Trainers, and decision-making, among other activities.
10. *Capacity-building* - strengthened the capability to assess, plan, design, present, manage, monitor and evaluate programmes to develop judicial capacity in each PIC and across the region.

## ISSUES, OPPORTUNITIES AND CHALLENGES

The following discussion presents a thematic assessment of significant issues, opportunities, challenges and sometimes questions which have emerged as 'lessons learned' by the MSC from the experience of this phase. Analysis of these 'lessons' is structured under four headings provided by the terms of reference. These headings relate to theory of change, needs, implementation options and local capacity.

- a. **Effectiveness of the current Programme's strategic concept, theory of change and development trajectory, vision, guiding design principles, programmatic governance structures, capacity-building strategies, and activities**

Many of the lessons to be learned from the current phase of PJDP are framed by the programmatic architecture which links the Programme's goal with stakeholders' needs and the means by which these needs will be addressed. This architecture is now called the 'theory of change', though in the past it has often been described in the Programme's 'logical framework' and even its 'development logic'. Whatever the development phraseology, any analysis of lessons should start with an appraisal of what PJDP said it was going to do, that is, its purpose.



## 1. Theory of change

As articulated in the Extension Plan, the *theory of change* for this phase has consolidated and built on planning notions which have variously asserted over the years that providing technical assistance to improve the competence of judicial and court officers and the efficiency of the administrative systems they use, will in due course lead to improved judicial performance and service delivery and, thereby, enhanced access to justice. This theory underlies and defines the relationship between the PJDP's objectives, activities and outcomes, as articulated in the annexed Results Framework.

Hence the PJDP's theory of change may be described as the notion that "institutional strengthening, through the development of management skills, and the increased availability of quality resources (in the form of technical assistance delivered regionally through capacity-building, leadership fora, toolkits and pilot projects, together with finance assistance delivered locally) will better equip PICs to solve judicial development problems themselves, leading to improved service delivery and thereby law and justice outcomes" at the regional, national and local levels.<sup>2</sup> Within this broad statement are nestled, as the PJDP's history indicates; a number of sub-theories of change, including: (a) strengthening judicial governance regionally will stimulate improved judicial leadership and lead into better court service delivery for beneficiaries within each PIC; and (b) providing technical assistance at the regional level will strengthen the competence of judicial institutions through support in developing systems and procedures, thereby allowing them to improved court service delivery and improved access to justice for beneficiaries in each PIC. The Extension Plan applies this theory of change to consolidate the delivery of activities which will produce outcomes that contribute to building regional and local capacity to improve beneficiaries' access to reliably consistent, competent and efficient justice.

Historically, the Programme started as a training facility and it continues to rely to a diminishing extent on that modality as a vehicle for change. Training is also the mechanism that seems to be preferred by stakeholders, either because they believe training is the way to improve performance, they are now used to it, or because they like it. For a Programme of this size that may still be the best choice – as the need for training judicial and court officers across the region will be perennial - although it is clear that there are many issues beyond improving juridical knowledge, skills and attitudes that need to be addressed in order to promote equity, good governance and the rule of law.

From the outset of Phase 2, it is of foundational importance to highlight that the MSC considered that the resumption of service-delivery after an inopportune hiatus mid-phase was an overarching imperative. This hiatus had created a gap of 18-months prior mobilisation of the Federal Court of Australia as MSC. As a result, following Programme Executive Committee (PEC) endorsement, the MSC focused on maximising the restoration of continuity by accepting the PJDP's existing theory of change, programmatic goal, and activity component structure. While the MSC defends this approach in the context of the very truncated 18-month implementation period originally provided, this hiatus required it to suspend any detailed reappraisal of the theory of change which it inherited from the start.

It is now altogether timely to reinterrogate PJDP's theory of change, goal and component structure to realign them with current needs and priorities. This does not imply that they are necessarily wrong, but it does emphasise that intervening events have precluded that occurring since the last review of the Programme's structure in 2008.

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<sup>2</sup> As outlined in PJDP's Extension Plan: 2012-3.



*Lesson:*

Review PJDP's theory of change, or purpose, to adopt a more problem-focused approach to address specific needs and provide support directed to promote the delivery of justice services which improve the wellbeing of communities and citizens across the region.<sup>3</sup>

As outlined above, the PJEP's theory of change historically focused on training, but the PJDP has expressly moved beyond training to adopt a more holistic approach which includes governance and administration. But, is this the problem, or just part of the problem, which this kind of programme can address? The latter is a perfectly defensible answer.

Historically, PJDP's strategy has always started with addressing a set of impediments to providing better service (initially framing the central problem to be addressed as a lack of training) identified by the PICs, and then to gradually move toward a focus on other issues (such as governance and administration) which were so far beyond counterpart's direct vision that they were never even mentioned. Building this strategy has been an iterative, participatory process. Depending on the results of the current foray into these specific, additional areas, the PJDP may now: (a) take them forward for all; (b) focus their further development on a subset of countries, or (c) discard them in favour of other areas identified through the same process.

To justify the inclusion in future, of additional problems to be addressed, it will be necessary to identify the gaps, and the improvements (in services to citizens) that filling them will produce. In doing so, training judges should not then be seen as an objective in itself; training judges is a means to produce certain visible and if possible, measurable improvements in outputs. What are these outputs? How will we know if they are being achieved? PJDP has traditionally proceeded from the foundation that better trained judges (or court officers or lay magistrates) would automatically make unspecified things better. We now know that is rarely true and thus that at the very least a more considered and defined change theory should be required.

Hence it is timely at this stage for the PJDP to review its theory of change to refocus more explicitly on those specified problems that stakeholders agree judicial development is intended to solve. The recent shift to prioritising capacity building (individual and institutional), while adopted by the Programme, may arguably need a strategy and objectives of its own. Is it capacity for the regional group as a whole (as a group that can direct and focus its own discussions), capacity in developing national strategies and projects, or capacity in areas like training? The MSC has substantially raised the use of action-based research during this phase. As a development methodology, this research approach has aimed at developing solutions for problems which are identified, as has been initiated for example with customary dispute resolution (CDR) during this phase. Similar to the World Bank's *Justice for the Poor* (J4P) methodology, the CDR project may be seen as hypothesising that problems beyond gaps in knowledge impede better performance (defined as providing more, better quality services to more citizens within a reasonable timeframe). As discussed later in this report, the research undertaken by the PJDP, therefore, can be seen as providing the means to both identify problems and to examine and test whether improvements can be made to provide solutions. In the experience of this phase, action-research has performed an important new means of refining PJDP's theory of change by defining and sensitising courts to the problem, possibly as reliance on a faulty CDR system which is also insufficiently integrated with the formal courts, as well as developing approaches to dealing with that problem.

*Lesson:*

To sharpen PJDP's focus on addressing beneficiaries' needs by using **action-research** to both identify problems and develop solutions.

<sup>3</sup> Note: The numbering of 'lessons' has been ordered to provide a logical order to the list of lessons in the executive summary, and may on occasion be out of sequence with detailed discussion in the body of the report, which in turn is structured to address issues as framed by the terms of reference.



## 2. Programme vision and goal

As already noted, the overall approach to this phase has been to build on and refine the existing development strategy, having regard to the short duration of this extension period. The existing Programme *goal* is: "strengthened governance and rule of law in PICs through enhanced access to justice and professional judicial officers who act independently according to legal principles." Its *purpose* is to "support PICs to enhance the professional competence of judicial officers and court officers, and the processes and systems that they use". The *vision* is to "consolidate and extend the delivery of the highest quality practical judicial training and court development services, while significantly enhancing the institutionalisation, localisation and sustainability of those services for stakeholders across the region."<sup>4</sup>

We consider that it is now timely to reinterrogate these formulations in terms of their appropriateness, relevance and feasibility, not only to ensure they accurately and adequately respond to prevailing needs across participating PICs, but also in light of the mounting chorus of disappointment in the global literature which questions what may be described as the lofty aspirations of promoting the rule of law.<sup>5</sup>

During this phase, PJDP has continued to address a vision of bringing regional leaders and other sector representatives together for common activities and discussions. This has considerably advanced members' identification with the region and their recognition of common challenges in a variety of justice areas. It has also firmly established a commitment to ongoing judicial development and training across the region.

Noting the diversity of PICs participating in the PJDP, it is however unlikely that one model or solution will fit all. For this reason, it has been the experience during this phase that the underlying programme vision should hinge on the use of regional exchanges and forums to develop ideas more likely to fit than those invented only by outsiders.

## 3. Change management – towards a more thematic problem-focused approach

In terms of its change management approach, the PJDP has over the years evolved its theory of change in three major steps. These steps have been from: (i) an initial approach which centred on training first law-trained and lay judicial officers and court staff; to (ii) an intermediate approach which continued training and began integrating organisational capacity-building; to (iii) the current approach which is a more holistic approach to improving the access to and delivery of justice-related services. Reflecting on experience to this point indicates that this evolution is a dynamic and ongoing process which recognises the value of ongoing refinement.

What this means as a 'lesson' in terms of the PJDP's continuing trajectory is that it is timely to interrogate how to refine the approach to enhancing the relevance of support for the ultimate beneficiaries – that is, the inhabitants of PICs and the users and possibly more importantly the potential users of judicial services across the region.

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<sup>4</sup> As outlined in PJDP's Extension Plan: 2012-3.

<sup>5</sup> UN's *Millennium Development Goals*; also: Armytage, L 2012, *Reforming Justice: a Journey to Fairness in Asia*, Cambridge University Press; Carothers, T 2006, *Promoting the Rule of Law Abroad: In Search of Knowledge*, Carnegie Endowment For International Peace, Washington D.C.; Golub, S 2006, 'House Without Foundation', in Carothers, T (ed), *Promoting the Rule of Law Abroad*, Carnegie Endowment for International Peace, Washington D.C., pp. 105-136; Hammergren, L 2007, *Envisioning Reform: Improving judicial performance in Latin America*, Pennsylvania State University Press, University Park, Pennsylvania; Jensen, E & Heller T (eds) 2003, *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*, Stanford University Press, California.



Official development assistance (ODA) has increasingly acknowledged the many challenges of improving effectiveness, notably in the *Paris Declaration on Aid Effectiveness* 2005 and more recently the “donors’ round-table” in Busan in late 2012<sup>6</sup>. Within this emerging acknowledgment, it is our learning that PJDP should persevere further in focusing on supporting services which make a visible difference to improving the quality of life of ordinary people.

To do this, our experience indicates that PJDP should adopt a more problem-focused thematic approach to activity-selection. Specifically, for example, it is timely to consider extending the PJDP’s initiative on family violence and youth justice (FVYJ) during this phase to improve awareness and responsiveness to the endemic and indeed severe dimensions of the problem of domestic and sexual violence across the region.<sup>7</sup> There are of course other problem-focused thematic approaches which PJDP has started to address, for example: barriers to access to justice; congestion and delay, judicial and court administration; judicial integrity and codes of conduct; transparency and accountability; and so on. Whatever the societal problem, access to courts which are well governed and a judiciary supported by appropriate and efficient systems are prerequisites to the judiciary responding well to those problems.

Hence the PJDP would refine its existing approach to training as a change management approach to target improving responses to specific problems.

*Lesson:*

Reposition **training** from the general context of promoting judicial competence as an end-goal in itself, to being targeted towards contributing solutions to specific problems affecting people.

#### 4. Who are the beneficiaries?

The MSC has often encountered a tension between whether judges or court staff are the primary beneficiaries of PJDP during this phase and within that, which level of the judiciary ought to be the primary beneficiary. Depending on whom was contacted, competing views abound: judges, particularly those serving on apex court benches invested in weightier responsibilities, warrant support; while the effectiveness of the court service as a whole is vulnerable to its weakest or most needy link, usually judicial officers serving on courts of first instance and court staff who are more often than not lay actors. Usually, the clients of the court – the community and citizens - are left out of consideration as beneficiaries altogether.

This observation raises fundamental and unresolved tensions which are embedded in the PJDP’s purpose. These tensions are complex and multi-faceted. They persist as between formal/informal systems, judges, court staff and court users. To leave the resolution of these tensions to the MSC may be expedient, but it is neither principled nor good development policy. The PJDP has a conflicted unresolved approach to addressing these competing interests which would benefit from further consideration.

*Lesson:*

Specify, and if necessary rank, PJDP’s **beneficiaries** with a view to focusing the Programme’s support for the courts and the communities they serve.

#### 5. Lack of focus on community

A foundational characteristic of both the PJEP/PJDP has always been its focus on the courts. This is what the World Bank describes as ‘investing in the supply-side’ or the ‘top-down’ approach. This approach started

<sup>6</sup> <http://www.oecd.org/development/aideffectiveness/34428351.pdf>

<sup>7</sup> See: World Bank’s *World Development Report on Gender Equity* 2012, Pacific Regional Report.



with the training of judges, which then broadened to include institutional capacity-building of courts as the key agent of the state to administer justice.

While it is the MSCs unwavering experience that the courts are an essential recipient of support, there is also a very compelling case to improve the balance of development assistance to what the Bank describes as the 'demand side' being the users of dispute resolution and/or justice-related services, that is the community and citizens.

During the course of this phase, the MSC has found it difficult to justify the overwhelming preoccupation of support on the courts without greater engagement with and integration of the community, which has long been highlighted in the literature.<sup>8</sup> At the same time, it is recognised that the PJDP does not operate in (total) isolation. There are other development actors focusing more intensely on 'community' aspects in justice, whether RRRT, the World Bank's Justice for the Poor (J4P) projects or UN-projects. These initiatives may on occasion be in a better position to provide a community focus.

It is however a stark reality of the MSCs experience working across the region that most of the inhabitants of the Pacific live traditional lives existing in the customary domain. This is estimated by one major donor to be in the order of some 85%.<sup>9</sup> This experience has caused the MSC to query the adequacy and appropriateness of the PJDP's court-centric architecture. For this reason, steps have been taken to broaden this engagement approach in order to refocus on access and to improve its relevance for ordinary people. This broadening approach is evidenced in particular by launching the Customary Dispute Resolution (CDR) project, which in due course has evolved into the Access to Justice Project, and also the Judicial Monitoring and Evaluation (JM&E) project with regard to promoting greater transparency and accountability. The courts across the region are now becoming much more outward-looking in terms of focusing on improving access to justice. Despite this initiative, it has remained difficult with available time and resources to structurally reconfigure the PJDP into a more balanced 'bottom-up' modality. The limited relevance of the PJDP for ordinary people therefore remains a fundamentally legitimate critique. Any broadening of focus will require a review and likely increase of budget and timeframe.

## 6. Aligning realistic goals to available budget and opportunity

Another major lesson relates to the challenges imposed by the short and fragmentary delivery modalities of this phase. On the one hand, the expectations of the donor, stakeholders and beneficiaries require available resources to address a range of needs spanning from the most short-term to long-term development needs. But on the other hand, the planning horizon and available resources are mismatched and circumscribe the feasibility of doing so effectively through the limited opportunities provided.

In the MSCs view, there is an imperative to address long-term development needs when contemplating the scope and nature of needs for support across this region which is characterised by its smallness, dispersion, diversity and economic fragility. However, the 18-month implementation period was always unusually short in light of the Programme's goals. It is all the more unfortunate that for unavoidable bureaucratic reasons this misalignment was then exacerbated by a fragmentary extension of an even shorter 12-month period. As the result, the opportunities to address the Programme's goal have been limited and unrealistically ambitious from the outset.

<sup>8</sup> See, for example: Trubek, D. and Galanter, M. 1974, 'Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States', *Wisconsin Law Review*, 4: 1062-102.

<sup>9</sup> See, for example: <[www.unicef.org/tdad/unicefradpacificindonesiatimor09.doc](http://www.unicef.org/tdad/unicefradpacificindonesiatimor09.doc)> ; also: AusAID, 2009. *About Papua New Guinea*. Available from: [http://www.ausaid.gov.au/country/png/png\\_intro.cfm](http://www.ausaid.gov.au/country/png/png_intro.cfm).



This misalignment has required the MSC to focus on intensely short-term deliverables which may or may not be supported by further assistance in due course. It has created tensions among stakeholders in relation to the relevance, credibility and feasibility of the PJDP's delivery strategy which have been largely insoluble during this phase. In effect, the PJDP has been tasked to grapple with addressing long-term development needs but on a short-term basis. This has required the MSC to manage stakeholders' discrepant expectations within the available timeframe and budget which have not been altogether reconcilable.

*Lesson:*

Align available resources to address **medium-longer term needs** in an incentive-driven rolling 5-year programme cycle.

## 7. Expectations and demand for services

As a part of the misalignment of addressing long-term development needs with only short-term support timeframes, the demand for services and the quantum of available funding has on occasion resulted in a number of activities being stretched too thinly during the current phase. While this was expedient in terms of restoring momentum to PJDP after the hiatus, there is the accompanying need to recognise the limited developmental effectiveness of this as a medium- to long-term approach. An example is found in the available wherewithal for only single decision-making or induction training workshops being fundable each year across the region; there were sufficient funds to conduct workshops for law-trained and lay participants on alternate years only. Another challenging arena of engagement is to initiate assistance in judicial administration, or performance monitoring, which is strategically important and much needed, but knowing that there are insufficient resources available to satisfy the expectations for ongoing support which have then been raised.

*Lesson:*

Address fewer **priorities** (ie thematic pillars) in order to avoid being spread too thinly, and/or commit a more appropriate level of funding to enable broader more integrated assistance.

## 8. Sustainability as an end-goal – need for more nuanced development vision

Another lesson from this experience relates to donors' expectations for sustainability. In the past, these expectations have generally implied the formulation of institutional capacity-building strategies that have predicated attaining an end-goal of sustainability and an 'exit strategy' in the short- to medium-term future. The MSCs experience of capacity-building during this phase has however usually qualified - and sometimes altogether repudiated - the appropriateness of sustainability being the end-goal.

It is the MSCs learning from working with stakeholders in this region that there is a need for a more nuanced development vision which: (a) envisages the developmental legitimacy of an alternative longer-term support approach, such as institutional partnering; and (b) is based on an engagement strategy that treats PICs as being different rather than 'one-size-fits-all' in terms of both capability and sustainability. It is another stark reality of working in this region that some smaller PICs are so short of resources either in terms of skilled personnel, number of available personnel, or funding, that they will possibly *always* be needy of support. If this reality is permitted to be acknowledged openly, what this means for the PJDP is that the appropriateness of sustainability being a short-term end-goal may be feasible only in larger more developed PICs.

Moreover, from the evidence of the MSCs and preceding experience, one of the strengths of the PJEP/PJDP journey is its resilience. One of the greatest strengths of the PJDP is its longevity which has done much to consolidate regional identity and a relatively robust regional network. This strength should be recognised and



built on as the basis for an alternative but equally legitimate approach to long-term engagement rather than disregarded by aiming at sustainability, that is, disengagement.

*Lesson:*

Introduce more nuanced approaches to promoting **sustainability** noting the diversity of capabilities across the region.

## 9. Delivery modalities

In the same vein, it has been endemically challenging to deliver services that are useful and relevant across a region as large and diverse as the Pacific. In the past, the MSC has addressed this challenge by focusing on generic rather than jurisdiction-specific issues, notably in the orientation and decision-making trainings. But, while many projects (such as the Access to Justice, Codes of Judicial Conduct, Judicial Administration, and Performance Monitoring and Evaluation Projects) have been localised at least in part, an unavoidable price to be paid in this aggregated approach is the limited opportunity for highly-tailored jurisdiction-specific training. At a programmatic level, the MSC has supplemented regional activities by extending PICs' use of the Responsive Fund, which enables jurisdiction-specific support. But more could be done in future, for example, through the adoption of this more nuanced overarching approach which recognises that bigger and small PICs have different resources, needs and capabilities, and that there is room to explore development strategies on more than a regional or localised basis.

## 10. Sub-regional modalities

More still needs to be done in localising the relevance of the PJDP's activities. During this phase the MSC has experimented with sub-regional delivery, predicated on the assumption of some affinities between certain PICs rather than the region as a whole. Sub-regional activities were conducted, for example, during the needs assessment process by reference to Melanesia, Polynesia and Micronesia. Any learning from this experience was however limited in terms of discerning an absence of any compelling needs-based or cultural rationale for extending this experiment. Moreover, the actual experience of the MSC has indicated that the financial savings from sub-regional delivery are modest at best.

*Lesson:*

Explore **delivering** services to PIC sub-groupings based on shared needs, noting that there is no compelling evidence to justify input delivery on the basis of geographic sub-regions.

## 11. Evidence of results

The need to demonstrate results in ODA has clearly been acknowledged as a universal challenge in the *Paris Declaration of Aid Effectiveness, 2005*. Unsurprisingly, this has also been a challenge for the PJEP/PJDP over the years. Historically, results have been elusive and attribution difficult. It has always been easier for the Programme to monitor the satisfactory delivery of outputs in the form of training and technical assistance activities on time and within budget, at best.

Over the current period, the MSC has addressed this core challenge of making a real difference to ordinary people and started to build the capability to gather visible evidence to that effect. We have done this in three key steps: by introducing and adapting the *International Framework of Court Excellence* to the region, by collecting baseline measures, and by instituting an ongoing process of annual court reporting<sup>10</sup>. Building this capability is a substantial achievement in global development terms. But this must be acknowledged as remaining an entirely donor-dependent initiative which lacks any local sustainability at this formative stage.

<sup>10</sup> <http://www.courtexcellence.com/pdf/IFCE-Framework-v12.pdf>



On any reflection, this valuable work remains incomplete. What remains to be done is for PICs to introduce systematic governance processes to monitor and evaluate the contribution of the PJDP to improving judicial performance across the region. At this time, this is an important but fragile capability. The evidence of development experience around the world indicates that building this capacity will require considerable ongoing support.

*Lesson:*

Build local and regional capabilities to **monitor and evaluate** development results.

**b. Stakeholders' identified needs and their critique of options for the institutionalisation of ongoing judicial development and support in the region.**

**12. Training needs assessment**

The needs assessment undertaken at the start of this phase was the first step to re-engage stakeholders and resume service delivery as a priority. It was participatory, expedited, and fit for purpose under the circumstances of resuming services after the earlier inopportune hiatus. Given the MSCs growing appreciation of the PJDP's operating environment and of the many needs for support, it is now timely to review beneficiaries' needs within the expanding vision of the PJDP's evolving role outlined earlier: that is, adopting a more holistic, community-centred and problem-focused assessment perspective.

Aside from training, what most participants identify as needs (judging by their use of the Responsive Fund and other discussions) are largely material gaps that the Programme cannot hope to fill, although the latter are often small things (e.g. improving the condition of filing rooms in Kiribati, as an example). The Programme has enhanced PICs' collective lobbying ability vis-à-vis donors, but probably needs to strengthen the members' capacity to make these arguments in terms of real service improvements. It may be said that Pacific jurisdictions have discovered their strength of numbers, but mainly only insofar as "getting a bit more". To date, the Programme has offered PICs the opportunity to define their own needs, notably through the Responsive Fund mechanism. But in future, it should aim at aligning the statement of those needs in terms of improved services. PIC courts should be supported to refocus on addressing systemic needs and to link ongoing funding support to producing systemic improvements for all citizens, as discussed further below.

**13. Regional vs bilateral setting – service mix**

Throughout the course of this phase, the MSC has been conscious of the effects of the issue of 'regionality' which has determined the manner in which the PJDP provides services to address stakeholders' needs. Finding the right balance between regional and bilateral focus is a key programmatic issue which determines the mix of activities and how they are allocated at the regional and local levels.

The PJEP was originally established, at least in part, to overcome the economic challenge that many PICs are too small to justify bilateral assistance to their respective courts. The regional rationale to aggregate support was developed from this premise. During the current phase, the MSC has interrogated the continuing utility of this premise by launching the institutionalisation project under the endorsement of the PEC. The purpose of this project was to analyse the appropriateness of the regional rationale to aggregate support for essentially economic reasons, and to explore ways of improving development effectiveness. As the main outcome of this project, the PEC endorsed a refinement in the PJDP's regional approach with the view to emphasise: (i) supporting regional judicial leadership; (ii) implementing regional pilot projects; (iii) strengthening capacity to manage the local delivery of training; (iv) enabling PIC-specific priorities to be addressed through the Responsive Fund; and (v) developing tools or toolkits which may be regional in focus



but tailored to the needs and operating environments of each PIC. This refinement in regional strategy is both subtle but profound in sharpening and rationalising PJDP's development approach.

To implement this refinement of strategy, much depends on PJDP's definition of 'regionality'. This *may* mean: regional networking only; local implementation managed at the regional level (a regional facility approach); focusing on those PICs in the region that 'can't fend for themselves'; or some combination of these or other approaches. There will always remain some inherent tension between providing value to the region while addressing appropriately local needs. Setting the balance is ultimately a policy-based decision which requires further leadership from the PEC.

*Lesson:*

Further articulation of PJDP's 'regional' approach to ensuring **relevance** through appropriate delivery of services to PICs is required from chief justices.

#### 14. **Relevance - meshing regional activities with local agendas**

On occasions the MSC's interactions with stakeholders has confronted the perception that the PJDP, as a regional programme, operates in a 'parallel universe' to the reality of priorities on the ground in each PIC. This does not suggest that the PJDP's activities do not meet local priorities or go unappreciated - to the contrary. Indeed, it is the MSC's experience that the PJDP has often served a catalytic role in spurring judicial development through its activities across the region. But, equally, there are times when it has seemed that stakeholders see the PJDP as being an 'add-on' to the real day-to-day court business- that is, it is seen as 'nice to have' but somehow peripheral.

The challenge of meshing regional and local agendas is substantial. But it lies at the heart of ongoing developmental relevance. This has been recognised from the inception of the PJEP. Despite this, it is our experience that seeking to position the PJDP's support by promoting the existence of local development plans has usually been beyond the agency of an external donor. Addressing this challenge has impelled the current initiative to re-enliven the NJDCs, as an incubator of agency in leading local reform agendas.

#### 15. **Allocation criteria**

During this phase, the MSC has developed criteria for the selection, prioritising and locating of activities which stakeholders have endorsed. These criteria are:

- *apex importance*: including sustainability; results / impact / change; and effectiveness;
- *significant importance*: including usefulness; relevance; cost-effective use of resources; fairness feasibility and efficiency; and ownership.

During this phase, the MSC has found that the 'fairness' criteria has been of most concern in practice to ensure the mix and allocation of activities evenly between PICs. There is little doubt that different criteria could be used with different outcomes. But, of considerable importance, the MSC has leaned to ensure avoiding smaller PICs feeling dwarfed by the larger ones, many of whom already have bilateral assistance (eg. PNG, Solomon Islands, Samoa, Vanuatu).

*Lesson:*

**Allocate resources equitably between PICs across the region.**



## 16. Remote v local delivery

Another lesson following examination of the MSCs experience is the need to balance in-region and remote delivery of services. Standardising the use of remote support might be less expensive, but it is not straightforward, having regard to the diverse situations of PICs, varying considerations of localisation, capability and sustainability and the culturally-driven preference for face-to-face dealings. To date, it has been difficult to rely on PacLII as a means of disseminating material owing to its own ongoing transitional issues, which it is to be hoped have now resolved. As a result, the MSC has upgraded its own website to disseminate PJDP Phase 2 records. Those difficulties aside, the MSC has endeavoured to provide services in a manner which positions stakeholders rather than advisers as being the key actors. But it would be naive for stakeholders to assume and expect that anything will invariably happen without the catalytic effect of the MSC mobilising advisers and conducting activities. While the MSC is now piloting 'tool kits' for this purpose, it remains premature to evaluate any lessons from this ongoing experience.

*Lesson:*

Balance the provision of **in-country and remote** (include web-based and electronic) support.

## 17. Communications and presence

During this phase, the MSC has refined, enhanced and simplified its approach to communication across the region. Email has proved indispensable. Beyond that, newsletters have been regularly published. It may however be argued that the MSC's communications may have overburdened counterparts who have often been non-responsive, requiring even more follow-ups. For this reason, the MSC remains convinced that there is an indispensable and visible benefit in PJDP fielding advisers in-person to PICs. Substantial communication difficulties persist across the region, as recently experienced in the breakdown of all email access at the RTT workshop in Alotau, PNG. The MSC continues to explore alternative means to structure the delivery modalities that are less dependent on the transient nature of visits, for example, blogs and inter-active web space, but with very limited success in terms of stakeholder participation to date.

## 18. Research-driven methodology

During this phase, the PJDP has premised its responses to several identified needs on a deliberately research-driven approach to programme development, as already discussed. As already discussed, the PJDP has invested much more heavily in field-based research than ever before. This investment is reflected in the research-driven approach to promoting access to justice and to case management, in particular. This approach has had an impact on the allocation of resources to service delivery. While research is not an end-goal in itself, given the dearth of reliable data that characterises the justice sector of this region, this it is justified to learn more and understand better the needs and challenges of PJDP's beneficiaries in order to justify proposed activities on defensible grounds.

## 19. Institutionalisation

During this phase, the PJDP has invested considerable financial and intellectual resources to address the challenge of sustaining judicial development across the region. This investment was notably made in the recruitment of a US-specialist acknowledged as one of world's foremost political scientists in law and development, in leading the institutionalisation advisory project. This project has lead to a subtle but profound realignment in approach to regional development, as already discussed.

This investment reflects the MSC's view that this issue is of foremost significance, given the uncertainty of ongoing donor sponsorship and the fragmented history of support over the years. The continuing investment



by the MSC in supporting the PJDP has then been extended – at the MSC’s own cost – with two visits of high-level delegations lead by Chief Justice Sapolu as chair of PEC and Justice Bennett as chair of the International Development Committee of the Federal Court of Australia. The delegations have involved consultations with Chief Justice Elias and Foreign Minister the Hon McCully of New Zealand in Wellington, and Rob Tranter First-Assistant Director General, Pacific Region, AusAID in Canberra. At the time of writing it is unclear what the outcome of these efforts will be, though it is pleasing to note that reception has been positive in-principle and is encouraging.

*Lesson:*

Further **institutionalise** judicial development structures and mechanisms to sustain gains made and avoid entrenching dependence on donor support.

20. **From donor-driven to donor supported - localising responsibilities**

At the programmatic level, the MSC has addressed the challenge of promoting sustainability through devolving and localising responsibility in a number of ways. These initiatives have aimed at reengineering PJDP from a ‘donor-driven’ to a ‘donor-supported’ process. They have included mobilising the Regional Training Team (RTT), establishment of the National Coordinators Working Group (NCWG), and the re-enlivenment of the National Judicial Development Committees (NJDCs), which is yet to be considered by the PEC and enabling a broad suite of local activities under the Responsive Fund. Collectively, these initiatives are intended to create opportunities for local counterparts to progress judicial development both locally and regionally. Given local capacity constraints, including the variable capacities of National Coordinators (NC’s) to manage in-country activities in each PIC, as detailed below in this report, more time is however required to complete this transition.

21. **Leadership and participation: responsive or pro-active?**

It is reasonably likely that regionally-coordinated judicial development across the region will change, if not stop, should donor support be discontinued on 30 June 2013. While it is undoubtedly clear that there is an enduring ‘demand’ for judicial development, this demand is for the most part essentially responsive. In the MSC’s experience, stakeholders respond to, rather than drive, the MSC’s work. This work is enabled by the donor (MFAT). Hence the donor’s MSC is usually the dynamic agent in catalyzing stakeholder participation in judicial development across the region. What this means is there is an immediate imperative for stakeholders at all levels to generate more proactive leadership and become the key agents in judicial development if it is to become sustainable.

If this crucial observation is accepted as being realistic, then two questions of development policy arise:

- a) is this responsive process optimal in terms of what is feasible (that is, sustainability is not appropriate as a goal), or sub-optimal in terms of embedding dependence and being counter-sustainable?; and
- b) what are the optimal programmatic implications that should be addressed for reconfiguring the donors’ processes to enable judicial development?

*Lesson:*

Explore options and approaches to stimulate and enable more **proactive leadership** and engagement.



c. **Alternative implementation options, including the value, use and extent of the Responsive Fund Mechanism as a vehicle for regional support.**

The Responsive Fund (RF) has been popular because it offers each PIC opportunities to tailor and implement activities which they believe will enhance local performance. As already discussed, most of these activities have historically been training, but over time other uses for the RF are emerging.

During this phase, the RF has proven to be a critical enabler of local reform among PICs. The diverse range of approved activities responded to locally rooted challenges, the response to which could not be regionalised or otherwise addressed by a regional development project. Furthermore, the results and resources from each activity have been shared with all PICs extending the benefit exponentially and providing the platform for other PICs to implement related activities without the need to 'start from scratch'.

The RF has also promoted understanding of the importance of strategic planning. Judicial development/strategic plans and/or National Judicial Development Committees do not exist in all PICs and/or are not always actively used/engaged. In these instances, broad consultation to assess need was often weak with NCs usually reliant on direction from the Chief Justice or making decisions themselves. This pervasive lack of local capacity has had a direct bearing on the overarching challenge of sustainability.

As a result of working through the conceptualisation, application, design, delivery and evaluation processes, NCs and other counterparts involved in RF applications/activities are now more aware of what is involved in managing development projects. The capacity of all NCs has improved in this regard albeit in varying degrees. There does however remain a significant gap between the basic competence required to manage donor funded projects and the current capacity of most NCs, in the MSC's assessment. This is evinced by the amount of support required from the MSC and the pervasive difficulties most NCs continue to experience in providing comprehensive and accurate reports and acquittal documentation. If the capacity of local counterparts with responsibility for managing projects is further strengthened, not only will this enable more efficient and effective management of local activities - engendering donor confidence, it will also increase local ownership of activities, reduce the need for external assistance and dependence on such support as well as rationalise administrative and other management costs. Additional support and capacity-building is required before detailed consideration should be given to the possibility of reconfiguring development support into what some donors describe as a 'facilities modality'.

Like regional training, the RF is an incentive for participation by individual PICs, but when the incentive overpowers the larger objectives it begins to detract from attaining these strategic objectives. As a performance enhancer, the RF's value is not necessarily clear. There is also a danger that if expanded much more, it will simply become a vehicle for addressing individual wish lists. This tendency could be addressed through by the following additional measures that have been tried, not always successfully, elsewhere:

- funding could be conditioned on its placement within an overall development plan that is premised on a defensible assessment of needs and makes clear what each judiciary seeks to improve and how the specific project contributes to that goal;
- it could be linked to the pilot projects – funding for the adoption of something they had developed; and
- it could be linked as the MTA suggested, to courses on project and programme development – meaning that its value added to the entire programme is less the specific thing funded, that the development of a capacity to plan.

*Lesson:*

Align and extend the use of the **Responsive Fund** to address overarching local and programme objectives.



d. **The capacity of local PIC project management mechanisms - including existing leadership processes and procedures and innovation of the National Coordinators' Working Group**

22. **Programme governance**

The current governance structure has arguably operated successfully to meet the Programme's immediate goals of creating regional discussions and a regional learning process. But, equally arguably, this structure has foundational defects, is too complex and its parts have not all been successfully implemented.

The institutionalisation report, which was endorsed by the PEC in April 2012, found that there is a lack of any participatory democracy in the PJDP governance structure. The existing governance structure and process does not ensure that the Chief Justices of the region are actively represented on PEC, beyond one chief justice from each sub-region sitting on PEC. Nor is there any process for communication, representation, participation, membership or the appointment/rotation of chair. Yet the effectiveness of the PEC is linked to the clarity of its mandate and the extent of its representation. Now shrouded in history, it is not altogether clear from whence the PEC's mandate vested. Its ostensible authority derives from the Pacific Judicial Conference (PJC). But the PJC is an occasional mechanism which is itself without any corporeal identity or constitutional form. After more than a decade and half since establishment, it must be observed that these are foundational defects in the constitution of both PEC and thereby the PJDP which should be rectified.

These defects are readily amenable to rectification in the hands of the Chief Justices of participating PICs. In the event of renewed funding, it is now timely to propose that the next meetings of Chief Justices and the PEC consider and address these issues through a survey of Chief Justices which relates in particular to (i) the constitution and representation of PEC's governance structure and processes, and (ii) the nature and scope of PJDP's programmatic mandate.

*Lesson:*

Review **governance** mechanisms by surveying participating chief justices on PJDP's constitution, structure, mandate and representation.

23. **Roles of National Coordinators and Regional Training Team**

In any assessment of either the governance or project management of PJDP, the role of the National Coordinators (NCs) is crucial. The key purpose of this role is to enable Chief Justices of each PIC to devolve of functional responsibilities of participating in the PJDP to a designated local officer on a day-to-day basis. This devolution has both governance and operational implications. In terms of governance, there is the need to ensure that the NCs act with the authority and the confidence of their Chief Justice. While this generally operates well, this has not invariably been the case. Some relationships work better than others. Chief Justices are also more or less actively involved, depending in part on residency. As one Chief Justice observed in response to the survey on National Judicial Development Committees (NJDCs), much depends in practice on how well these two get on together. As earlier discussed, the capacity of NCs to manage in-country activities also remains variable across the region. This lack of local capacity in turn inhibits sustainability. We anticipate that dependence on this variable role will persist as a part of the current process to re-enliven NJDCs, which will require an ongoing need to redefine and clarify its nature and scope.

There is a danger, realised in some countries, of 'programme capture' by some individuals. These individuals are the ones who go to all the meetings, most of the trainings, and who may even block the participation of others. One of the legacies of the PJEP/PJDP over the years has probably been entrenching



some individuals in comfortable sinecures which become self-perpetuating. It is however acknowledged that in some of the smaller PICs this may be unavoidable, having few to choose from.

The MSC acknowledges that the PJDP's regional modality is vulnerable to this risk. While this capture may have been unavoidable, it is an operating cost that can to some extent be managed by increasingly demanding feedback, creative input reports etc. The MSC has worked to manage this risk with the current focus on re-enlivening the NJDCs, building local capacity in the Advanced RTT training, and conducting pilot projects at the local level.

Ultimately, there may be few options available to Chief Justices. It is likely that the NC role will remain critical to the ongoing effectiveness of the PJDP warranting commensurate levels of support, monitoring and oversight. As participants agreed at the recent Advanced RTT ToT, consideration for enabling NCs to perform their roles through provision of ongoing capacity-building, facilities, equipment and incentives as a part of their 'day-job' is required. The effectiveness, transparency and accountability of this role can also be enhanced through the introduction of more participatory processes of competitive appointment, rotation, and periodic performance review by the Chief Justice.

Similarly, the MSC has actively mobilised the Regional Training Team (RTT) for the first time during this phase with the explicit intention of devolving the delivery of training (and other functions) to local actors. This has worked well. RRT members have responded very positively to this opportunity. For example, RTT members assisted in the first judicial orientation course in 2011 and this year some will join the core faculty of trainers. This devolution is being extended across all services as much as possible. That said, it has been suggested that certified trainers should remain active by conducting a minimum number of trainings or any capacity building activity and report to their Chief Justice or NJDC in order to maintain their certification. Those who become inactive could then be replaced by new members to the RTT; in this way, the RTT would regenerate and provide opportunities for new members to become certified through the ToT course.

In short, the Programme, having successfully involved a regional group in its activities, now needs to find ways to expand that process within each country. Otherwise its impact will be inherently limited, rather ironically to the regional level alone.

*Lesson:*

Integrate the local **roles** of the NJDCs, RTT and NCs; introduce competitive appointment, incentives and periodic performance review; and provide ongoing capacity-building.

#### 24. National Coordinators Working Group

During the course of this phase, the MSC created the National Coordinators Working Group (NCWG) with the view to strengthening the representation and participation of NCs in both programme governance and management. While NCs have participated actively, this it has not yet been an unqualified success. The MSC has had to prime all activities of the NCWG, for example, in participating at NC workshops or in soliciting contributions to this report. On reflection, the ongoing nature of any role for the NCWG is probably best framed in the context of a programmatic review of the PJDP's governance structure, discussed separately in this paper. Perhaps the lesson is that NCWG is overly optimistic as a mechanism for devolving regional coordination. The reality of how this experiment has played out might seem to militate against further devolution of judicial development to PICs at this stage.



## 25. MSC: Federal Court of Australia

A singular advantage of the judicial status of the Federal Court of Australia (FCA) as MSC has been unparalleled levels of engagement with the judicial leadership across the region. That said, the FCA has during the course of this phase needed to adapt its systems and procedures on an iterative basis to operate effectively as the MSC.

The FCA has during the three decades since it was established, fostered relations with and provided development support to courts across the Pacific and beyond. These relations have been sustained on the basis of mutual trust and respect combined with its organisational expertise and demonstrable capacity to administer justice competently, impartially and independently. The FCA's in-house international programmes unit has harnessed the Court's internal technical expertise and applied it, alongside external expertise, to successfully manage a plethora of international judicial reform projects. As a not-for-profit public agency, counterparts and donors are assured that the Court's interests are founded on a commitment to the public interest, promoting good governance and the rule of law. As a consequence, the FCA may be seen by stakeholders to be an authentic and credible provider of judicial development services which has led to unparalleled levels of engagement with the judicial leadership across the region.

As a public sector entity, the MSC does however acknowledge that aspects of its corporate processes were designed to ensure accountability to the Australian public and government rather than to manage international projects. This has necessitated some re-engineering of financial, procurement and administrative systems to the extent possible while continuing to meet the FCA's own Commonwealth obligations. These requirements sometimes conflict, resulting on occasion in inefficiency in relation to financial management and/or contracting of external consultants. Over the past three years, the FCA has implemented processes of quality assurance and organisational learning to adapt its operating systems and procedures to ensure that they are fit for purpose; and it remains committed to managing upcoming opportunities and risks effectively in future.

*Lesson:*

Extend **judicial networking and partnerships** within and beyond the region.

## 26. Strengthening programme management capacity: independence or dependence?

The MSC shares the concern of many stakeholders at the pressing need to strengthen the programme management capacity of local actors. Over the past decade and half, there has been a steady increase in capacity at many levels. But it is ironic, though not necessarily unexpected, that these years of support have embedded some behaviours and outlooks of dependence which have inhibited the conversion of capacity into independence.

During this phase, the MSC has confronted this fundamental challenge by extending the Training-of-Trainers (ToT) for the Regional Training Team (RTT) focusing on building localised capability in relation to core programmatic functions: training needs assessment, curriculum and session design, service delivery, project management, and monitoring and evaluation (M&E). The MSC has also refocused the entire ToT project towards a capacity-building rather than accreditation approach. At the time of writing, the new advanced-level ToT is currently piloting the design of local-level induction training by members of the RTT. This emerging capacity is nascent and remains fragile. Measures of ongoing support are now required to displace outlooks of dependence by bolstering confidence to take over the reins of programme management.



## 27. In-region project office

A further issue for consideration relates to the establishment of any permanent programme office and its location. While there is a general consensus among stakeholders that an in-region base is in the interests of sustainable development and service delivery, this hinges on affirmation of the assertion that sustainability is feasible, financially as much as operationally, as discussed earlier. Again, these are issues which have been considered in the institutionalisation project, and do not need to be repeated here, other than to observe that two significant events have subsequently occurred. First, the PNG courts have established a Centre of Judicial Excellence which has expressed regional aspirations; and, secondly, diplomatic relations have been tentatively restored to Fiji, the site of USP's main campus.

Some years ago, the PJEP was housed in USP. At that time, its management and governance was roundly criticised, sufficient to discontinue that relationship. While it is attractive that PJDP be located in the region, this experience emphasises the need to ensure adequate capacity and robust governance structures are in place. The MSC's current experience with NCs outlined above indicates that the former is not yet there. With continuing devolution to PICs of various responsibilities and moving to a donor-supported, not donor-driven programme, clarifying the role of an in-Pacific MSC will remain critical.

*Lesson:*

Further **devolve** programme management to local actors on an activity-by-activity basis with ongoing support and monitoring; including exploring options to **relocate** the programme office in the region.

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## ANNEX - TERMS OF REFERENCE

The Managing Service Contractor (MSC) of PJDP has been tasked to provide a desk-based analytical appraisal of PJDP's experience in promoting the sustainability of ongoing judicial development in the Pacific region.

This analysis seeks to capture and consolidate the implementation experience and 'lessons learned' during this phase for the purpose of informing future thinking about judicial development in, with and for the Pacific region. Specifically, this report appraises the programme's development experience since 1 July 2010, with specific regard to:

- a) The effectiveness of the current Programme's strategic concept, theory of change and development trajectory, vision, guiding design principles, programmatic governance structures, capacity-building strategies, and activities;
- b) Stakeholders' identified needs and their critique of options for the institutionalisation of ongoing judicial development and support in the region.
- c) Alternative implementation options, including the value, use and extent of the Responsive Fund Mechanism as a vehicle for regional support.
- d) The capacity of local PIC project management mechanisms - including existing leadership processes and procedures and innovation of the National Coordinators' Working Group.<sup>11</sup>

In order to avoid any actual or possible conflicts of interest issues, MFAT has required that the content of this report will be in the nature of an internal lessons learned report; it is **not** a concept note/design for any future phase, and must not cover which donor government (if any) may support judicial development in the future (if any).

The completed, edited, and proofed report is to be submitted to the Programmes Manager by **5 October 2012**, for submission to MFAT and PEC. Any feedback received from MFAT and PEC must then be incorporated and a final report submitted within the timeframe to be agreed with MFAT.

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<sup>11</sup> As per *Resolutions 6* and *7* of the Fourth PJDP Phase 2 PEC Meeting (1-3 April, 2012 - Apia, Samoa).