PACIFIC JUDICIAL DEVELOPMENT PROGRAMME

PJDP Phase 2:
INSTITUTIONALISATION OF PJDP PROJECT

Institutionalisation of PJDP and related themes: A second cut on the issues

Dr. Linn Hammergren

February, 2012

ABSTRACT-This paper revisits the four "institutionalisation" themes – regional vs. national focus; governance, management, and administration; funding; and possible regional linkages. It focuses on institutionalization (sustainability) of both PJDP (as a donor-funded technical assistance programme) and of a post-programme regional forum. Beginning with a review of the objectives of judicial programmes in general and regional programmes in particular, it argues that a regional programme has special contributions to make to forwarding judicial improvement within member countries, and that it is time for PJDP to place more emphasis here. This shift (important for sustainability in both senses) involves more emphasis on the development of replicable pilots and tools, capacity building (e.g. of national training programmes) as opposed to conducting activities directly, and creation of a regional forum for discussing common challenges, alternative solutions, and if necessary, lobbying donors for addressing them (most probably through national assistance). The recommended changes also have implications for current PJDP governance and management – rethinking of the role and organization of the PEC, redefining that of the NCs, and the need for a full-time director to focus on strategic issues.

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

TABLE OF CONTENTS

Abbreviations and Acronyms ii

Executive Summary 1

Introduction 8
- Preliminary questions 8
- What are the logical objectives for a judicial programme? 9
- Well functioning courts, an end in themselves or a means to an end? 9
- Why a regional programme? 14
- Conclusions on two additional issues 16

Option One: Regional versus National Programmes 18
- Regional programmes: maximizing the benefits 18
- PJDP's regional focus to date 18
- Time for a redefinition of objectives 19
- The National Dimension 20
- Shifting the Focus from what the Donors can provide to what we need to do 21
- Conclusions on the Regional options 22

Option Two: Management, Administration and Governance 23
- Governance Body: the PEC and Beyond 23
- Management: the National Coordinators 25
- Programme Management and Administration: Other issues 28
- Conclusions on governance, management and administration 31

Option Three: Funding alternatives 31
- Conclusions on Funding 33

Option Four: Possible Linkages with Other Regional Institutions 34
- Conclusions on Regional Linkages 35

Conclusions 36

References 37

ABBREVIATIONS AND ACRONYMS

AusAID	-	Australian Agency for International Development
CDR	-	Customary Dispute Resolution
CEJA	-	Centre for Judicial Studies of the Americas
CJ	-	Chief Justice
CMS	-	Case Management System
LANUD	-	Latin American Institute for Crime Prevention and Treatment of the Delinquent
IT	-	Information Technology
MFAT	-	Ministry of Foreign Affairs and Trade
NC	-	National Coordinator
ODE	-	Office of Development Effectiveness
PACLII	-	Pacific Islands Legal Information Institute
PEC	-	Programme Executive Committee
PIC	-	Pacific Island Country
PJDP	-	Pacific Judicial Development Programme
PJEP	-	Pacific Judicial Education Programme
USAID	-	United States Agency for International Development

EXECUTIVE SUMMARY

INTRODUCTION

This is the second of two papers on PJDP "institutionalisation." "Institutionalisation," a term used by the donor, is best understood as "sustainability" or permanence over time, and can refer to the programme itself or to the impacts it seeks to achieve on court performance. Here is it used in both senses, but the principal focus is on the programme's survival, as this is the direction discussions with participants, management and the donor seemed to take.[1] Neither paper evaluated the programme's past achievements in advancing judicial reform in the region. The author believes them to be significant, but that this also raises the issue of whether there is more a regional programme could do, and if so, whether it should be reoriented and restructured to this end. In line with the donor's requests, four areas and options within each were considered: strength of regional or national focus; governance, management and administration; funding; and potential linkages with other regional programmes and institutions.

PRELIMINARY QUESTIONS

Two additional issues merit attention as a prelude to the following discussion: the logical objectives of any justice programme and how a regional focus might enhance their attainment.

On the first point, the argument is simply that justice reforms should aim first and foremost at improving user services. While these results may contribute to advancing other societal goals (e.g. poverty reduction, economic growth), programme success should be measured in terms of service improvements. Typically, the most direct means of improving court or "justice sector" performance is through national (bi-lateral), not regional programmes. Donors and participants have other reasons for supporting regional approaches. Those they hold in common include complementarity with bi-lateral or national programmes, information exchange among participants, development of tools and replicable pilot programmes,[2] and broader discussions of within region commonalities and differences as regards challenges and remedies. A regional programme can enhance national programmes and make them more effective, but only a very large regional effort can presume to replace them.

OPTION AREA ONE: REGIONAL VERSUS NATIONAL FOCUS

During the October 2011 meetings, PEC members, the PIC Chief Justices, and the National Coordinators (NCs) reviewed the options from the earlier institutionalization paper. They expressed clear preferences for keeping a regional focus, but also wanted some national elements retained – especially the responsive fund to support small local projects. How they believed the balance should be struck was not clarified; this does pose issues for a programme with limited funding and for already short-staffed judiciaries. To date, PJEP and PJDP have stressed regional rationales of more interest to one or the other party– economies of scale for the donor and access to trainings and small project funding for the participants. In a third stage, with efforts to lay the base now, there should be a shift to the shared benefits inasmuch as 1) the regional programme has successfully built interest in certain types of reform, but 2) its ability to produce direct impacts on national performance, even in training and especially in new areas, is limited by its small

[1] The first sense is also vital – a "sustainable programme" without sustainable impacts is of questionable value. However, the main text discussion on objectives and strategies and "Option Area 4" cover aspects of impact sustainability.
[2] As further elaborated in the main text, a tool is a procedure for conducting a useful activity (e.g. a court audit or a needs assessment) which of itself does not produce a service improvement. A pilot programme, which may incorporate one or more tools, is a more complex model aimed at improving some aspect of court or other institutional performance.

resource base. To maximize its further impact, on its own and as a complement to coexisting reforms, it is instead recommended that the programme do more of the following:

- Development of pilot activities for wider application, most probably with bi-lateral or national funds. For smaller countries without a bi-lateral, regional support is a possibility, but will require more funding
- Development of local capacity to carry out certain activities. The most obvious area is training, but other pilot activities might also focus on the how-to (replicable methodologies) rather than the full delivery of the product to a few countries.
- Development of a few common tools. Some of these (survey instruments in the indicators and CDR activities) are already being developed. Others might include software for tracking performance, packages of performance statistics and indicators, and techniques for improved use of human and financial resources as well as for preparing and defending budgetary requests.
- Use of joint meetings to discuss common problems and potential solutions. The programme has successfully encouraged interest in the four new themes, but needs to move beyond simple interest to active engagement by the participants in these or other areas.
- Consider tying regional fund to roll-out of pilots and tools, thereby integrating the national and regional aspects and ensuring that regional products are utilized.

In the longer run the programme might encourage participants to develop their own list of problems and objectives, rather than reacting to ideas introduced by programme management. To this end, it could introduce more training in project design, preparation and implementation (taking care that course participants are those who will use these skills); assessment methodologies; and skills in dialoguing with national governments and other donors. Unlike the series of options posed in the next sections, the author has here offered a single argument about the recommended future (albeit with some internal choices) for the group's consideration. It is her impression that it will be increasingly difficult to justify a regional programme simply on the basis of the provision of activities courts might like to have. This was a good means of drawing courts into the regional forum, but is now less interesting to donors.

OPTION AREA TWO: MANAGEMENT, ADMINISTRATION AND GOVERNANCE

Participants in the October meetings reached no decisions on the options for this area presented in the first paper. However, the discussion did indicate some concern about overall governance and the role of the NCs. Participants had no complaints about overall administration and management except for the usual and inevitable problems with travel.

Governance - the PEC and beyond: Based less on the discussions than on the author's interviews and observations, two problems with the PEC were identified: its tendency to serve more as a forum for reviewing management proposals than as a source of new initiatives, and its less than fully representative nature. They are addressed together as they both involve the PEC's composition and how this impedes its ability to act otherwise.

With only five members, three representing the Chief Justices (and presumably other law-qualified judges) and one each for lay judicial officers and administrative staff, representation of actors in 14 different courts is challenging, and nearly impossible as regards the hundreds or thousands of lay officers and staff. Members, and especially the Chief Justices, might make greater effort to canvas those they represent more thoroughly, but the experience in the October meetings of Chief Justices (attended by 9 of them) suggests it could be more effective to eliminate the PEC and substitute periodic meetings with the latter. This would also avoid a problem noted by the PEC members – their inability to commit other courts to their decisions. Other options presented for discussion by the group include:

- Keep the PEC but with a rotating membership – perhaps changing at least two Chief Justices every year.
- What should be done with the other two representatives is less clear and probably requires other arrangements as discussed below
- Hold smaller annual meetings of Chief Justices at the sub-regional level, alternating them with a biennial meeting of all
- Hold smaller annual meetings of Chief Justices at the sub-regional level, and let each sub-regional group send one representative to an annual "PEC" meeting.

As noted, representation of the interests of lay officers and staff poses a much more difficult challenge. Partial solutions might include sub-regional meetings for representatives from each PIC and an annual meeting of sub-regional representatives; within country meetings the results of which could be carried by the respective CJs to the latter's meetings, and in country meetings with no effort to take the results to the regional level.

Management – the National Coordinators: The NC position was part of the initial PJEP design. While activities were largely limited to training, the NCs were useful both as a point of contact between the courts and programme management and to facilitate the logistics of the regional and national courses. However, from the start it was envisioned that they would represent a larger National Judicial Education (later, Development) Committee, something which failed to evolve. Over time, the NCs have come to have a larger role in deliberations on all activities, not just training, thus generating a series of potential problems:

- Complaints by a few Chief Justices that their NCs did not inform them adequately (or at all) about upcoming meetings and other programme events.
- A sense (which seemed to accompany these complaints) that the NCs were receiving a disproportionate share of training and travel opportunities
- A failure on the part of some NCs (not mentioned in the meetings, but observed by the author in the in-country interviews) to spread information about the programme to other court members.
- Disagreements (aired during the March 2011 meetings) as to how communications among the PEC, all Chief Justices, and the NCs should be channelled, and a larger issue (not fully captured in this debate) as to how the NCs' collective deliberations and decisions are shaping/should shape programme development..
- Complaints from the NCs that the amount of work they put into the programme is unappreciated

To be fair, not all NCs operate in the same fashion, some do much better in carrying messages back to their courts and organizing discussions there, and some Chief Justices may prefer giving them more control and/or limiting their information dissemination role. However, it does seem time to revisit the NCs' roles and responsibilities, and to make some preliminary modifications to both. It is recommended this be initiated in the March meetings and some preliminary decisions taken on the basis of the following:

- For all three groups, but in particular the CJs, a thorough discussion of the issues outlined above and their impacts on the programme
- Explicit addition of the following to the NC's responsibilities: communication of all programme on-going and proposed activities to the respective CJs; elaboration with each CJ (and ideally with a larger group of judges, magistrates and court staff) of feedback; and development and presentation of court-endorsed proposals for future programme activities (including, but not limited to those for the responsive fund)

- Introduction of more specific policies on the selection of participants for out-of-country training. Some recent changes are a good first step, but more could be done. So long as NCs continue to meet periodically, they should not be candidates, except in exceptional circumstances. Exceptions might include an NC's agreement to hold his/her own courses back home or for those NCs who are on their way to certification, completion of those courses. Otherwise, training should be extended to others and not limited to the NCs.
- Programme management' efforts not to use the NCs as stand-ins for the CJs or their courts, which they usually are not, and a clearer definition of the purposes and products of periodic NC meetings so that all parties understand both and utilize the results adequately.

In the design of proposals for a third-phase programme, participants might want to consider some more radical alternatives, based in part on experience with the modifications listed above and including: 1) designation of NCs as purely local actors, 2) their continued supra-national role but via less frequent regional or sub-regional meetings, 3) keeping the NCs as is, but officially making them a PEC secretariat (with a formal advisory role); or 4) their substitution by smaller working groups designated by their courts to work on specific types of activities. In this last option, smaller out-of-country meetings might continue, but communication within the group and between members and the respective advisors could also occur virtually.

Programme management and administration – other issues: the option introduced in the first paper, of moving these functions to a regional location, is still worth considering but only for a third phase and one of sufficient length to make it practical. An additional observation regards the need, in a third phase, for a full or three-quarter-time programme director. In coordination with the programme manager (currently at 80 percent time which may or may not remain sufficient) this person would handle the more substantive elements of programme communication, oversee strategic development, monitor contracted advisors and encourage coordination and synergies among them, and develop closer ties with other donors, and, if courts do not object, with national governments. Part of his/her duties would include drafting a column for the newsletter on such topics as emerging regional issues and new trends outside the region and soliciting and reviewing contributions from advisors and individual PICs (and, if they are created, substantive working groups). Complex programmes (and PJDP certainly qualifies there) require both a director and a manager. The latter oversees all administrative, financial, and logistical matters; the director is the "face of the programme" to the outside and internal world and is responsible for the strategic and substantive aspects of over-all programme development.

OPTION AREA THREE: FUNDING ALTERNATIVES

No suggestions were forthcoming from the October meetings on this topic. The author has found little indication that funding for the programme will be available from any but the two principal donors in the region – AusAID and MFAT – individually or in collaboration. Funding levels may need to be increased for a third stage unless significant cuts can be made in some activities to compensate for another full or nearly full-time position (the director). Some cuts have been suggested here, and in the March meetings might be discussed by participants, especially for a third phase programme– for example, fewer regional and national courses, except for those intended as pilots; fewer NC meetings, possible substitution of the PEC by annual Chief Justice meetings and so on. In short, the issue has in some sense been turned on its head – not how to find alternative funding sources, but how to reorient the programme to ensure it remains attractive to the two most likely donors (and over time, perhaps to others). In considering reallocation of funds, participants should take into account the donors' increasing emphasis on results – as improvements in services or in a capacity to produce them.

One important recommendation, directed not at the PICs but at the donor(s), is that a third-phase programme not be funded in the stop-and-go fashion that has characterized the PJEP/PJDP series. If funders want an exit strategy (in case the programme fails) it would be more practical to plan a trajectory of a

reasonable length (5 years) but set specific conditions or benchmarks for its continuation over that period. These should be adequately discussed with participants as the meeting of the conditions will hinge in large part on them.

These comments are made on the assumption that any past expectation that the regional programme would fund a large series of national projects and products is no longer held. The costs, even for training needs alone, are simply prohibitive. Instead, the emphasis should be on **1) development of pilots and tools whose replication would be funded for the most part by other sources (bi-laterals and national governments);**[3] **2) development of capacity to carry out key performance enhancement functions (e.g. training); and 3) exchange of information and discussion of common models, objectives and potential solutions.** Use of virtual meetings and internet discussions would hold down some current costs, and thus allow a wider range of discussions, tools, and models to be the new focus.

OPTION AREA FOUR – POSSIBLE LINKAGES WITH OTHER REGIONAL INSTITUTIONS

The focus in this option area has also shifted from the discussion in the prior paper for two reasons. First, no good candidates were found (although there are some still worth exploring), none would provide funding, and certainly before June 2013, there is little time to do much here. **Second, the real issue may be less where to place phase 2 or an eventual phase 3 than how to ensure the sustainability (institutionalisation) and funding of a regional forum after the programme ends.** Here there are several possibilities. While they look far ahead, they would be worth initial discussion now, along with the entire proposal behind them.

- A small, donor-funded forum secretariat could be appended to one of the candidate institutions already suggested –the Pacific Judicial Conference, the Pacific Forum Secretariat or perhaps one of the law schools. Temporary bi-lateral implementation bodies are not recommended as they are slated for eventual disappearance.
- Countries could finance the costs with their own contributions. However, even in a richer region (Latin America) this has not proved practical. In the South Pacific, reliance on member contributions is likely to be still less feasible.
- Suggestions from another advisor about the promotion of national judicial associations might be combined with that of a regional forum. If the national or a regional association could be sponsored by donors, a foundation, or an Australian or New Zealand counterpart that might make accessible sufficient funding for a small staff, and the publication of a virtual journal. Since the costs are low, an international foundation might be a very good bet, and even if its offer is not forever, five to ten years might not be unreasonable.

In reviewing these suggestions or revisiting those made in the earlier paper (i.e. as regards a regional home for PJDP), PIC members might want to consider the impact of such partnerships on their own objectives. Another judicial association, for example, might not emphasize the developmental focus of the present or any future programme.

CONCLUSIONS

As with the initial paper, the purpose here is to lay out issues for consideration by the groups in the next PIC meetings, this time in Samoa in March 2012, by the actual and potential donors, and by programme management. The issues and suggestions are forward looking and are not intended as a criticism of actions to date – which given the many inevitable and a few seemingly unnecessary obstacles faced are really quite significant. Some suggestions are presented for immediate decisions; others could be introduced now to

[3] However, locations for pilot development might privilege countries without bi-laterals.

initiate reflection on how a third phase programme might be organized. These are summarized at the end of this section.

It has also been argued that, in part because of achievements to date, a third phase programme should redefine its objectives and thus the means for advancing them. The author believes a regional programme will continue to be important in the South Pacific because of the unusual set of obstacles confronting judiciaries there. However, its importance hinges on identifying and emphasizing the unique contributions it can make to improving justice in the region, rather than conflating it with what bi-lateral and national efforts can more logically do. Thus, the former emphasis on economies of scale (the donors) and alternative (sometimes unique) access to funding for country initiatives will have to be deprioritized in favour of a focus on regional concerns, models, and development plans. The question posed to all participants is whether this purpose is sufficiently important to them to merit their backing. The author cannot make that decision for them.

RECAPITULATION OF RECOMMENDED DISCUSSIONS/DECISIONS

- OPTION AREA ONE: REGIONAL VERSUS NATIONAL FOCUS

  1. **For immediate consideration:** balance participants want to strike in the remainder of PJDP phase 2 between national projects, continuation of national and regional trainings, and other regional activities (as discussed above),
     Recommendation: cut back on some training in favour of more regional activities (tools, pilots, strategy); consider lining responsive fund to tool and model roll-out.

  2. **For longer term discussion:** balance participants desire in a third phase proposal taking into consideration donors' declining interest in programmes without specific, user-focused results.
     Recommendation: design and justify a third phase proposal on the basis of regional tools, pilots, capacity building and strategy development, all aimed at improving services to traditional and non-traditional users. Access (to courts or via ADR/CDR) should be a major theme.

- OPTION AREA TWO: GOVERNANCE, MANAGEMENT, AND ADMINISTRATION

  1. **For immediate consideration:** clarification of NC's role, starting with suggestions made above; possibly some modification of the PEC composition to allow renovation of membership; policies on selection of candidates for training.
     Recommendation: clarify NC role to emphasize programme dissemination to and inclusion of more members of each judiciary; adopt policies to broaden participation in training and to link participants to their likely use of training content.

  2. **For longer term consideration (for a third phase proposal):** further modifications to NC role or possible substitution with working groups; use of periodic CJ meetings in place of PEC; evaluation of proposed addition of a programme director as well as a manager.
     Recommendation: consider substituting CJ meetings for PEC, addition of a director, and creation of substantive working groups. NC's remain as local activity coordinators, possibly with compensation (by courts) for extra work.

- OPTION AREA THREE: FUNDING

  1. **For immediate consideration:** given the limited number of potential donors and their shifting priorities, the issue has to some extent been turned on its head—not where to seek funding, but

rather whether participants want to consider immediate changes in direction, strategy, and activities to make the programme more attractive to the two logical sources of funds.
Recommendation: whatever balance is struck, emphasize the impact on improving user services preferably by identifying concrete problems common to all or several PICs and explaining how activities will contribute to its resolution.

2. **For longer term reflection:** the same question but with the potential for larger changes and more time to consider them.
   Recommendation: begin with discussion of problems to be addressed or weaknesses to be improved. Exclude activities that cannot be justified on this basis.

- OPTION AREA FOUR: LINKAGES WITH OTHER REGIONAL INSTITUTIONS

1. **For immediate consideration:** Is there an interest in exploring regional partners? If so, how will this be done?
   Recommendation: if there is an interest, decide how to explore it with eyes toward a third phase proposal – not for adoption during phase 2.

2. **For longer term consideration:** how do participants envision a post-PJDP PIC forum? Do they want to explore the potential for its creation, and if so, how?
   Recommendation: if there is an interest, consider how preparatory work could be incorporated in a third stage proposal and how alternatives beyond those suggested here might be identified and pursued.

INSTITUTIONALISATION OF PJDP AND RELATED ISSUES: A SECOND CUT ON THE THEMES

INTRODUCTION

This is the second of two papers on PJDP "institutionalisation." As noted in the first version, "institutionalisation," a term used by the donor, is probably best understood as "sustainability" or permanence over time, and can refer either to the programme itself or to the impacts it seeks to achieve on court activities in the Pacific region. The present version will use the term in both senses, but will focus principally on the programme's survival, as this is the direction discussions with participants, management and the donor seemed to take. Of course, no programme can be expected to last forever, but since programme survival is linked to impacts and their sustainability, **the underlying issue can be rephrased as how to ensure the programme lasts long enough to produce sustainable improvements, how it can be structured or restructured to maximize these effects, and what can be done to ensure that post-programme developments continue to encourage support to further reform.**

Not asked of the author, and not considered here, is whether the programme merits these efforts. However, implicit in the following discussion is the argument that the programme's future worth, and thus the justification for its maintenance, would be greatly enhanced by a process of reorientation and reorganization. This process would build on what it has already achieved while adapting to new challenges and the changing environment (including shifting donor priorities) in which it operates. Neither paper presumed to evaluate progress to date although the author would note that it has been significant, especially taking into account the several obstacles faced. Nonetheless, programmes are terminated not only because they fail, but also because they have achieved their aims. In the belief that the second statement more adequately summarizes PJDP's current situation, the real issue is whether continuation of a regional effort might serve additional objectives, and if so, how this is best done.

The first paper discussed four areas for possible redesign as identified by the donor and management – regional or national focus; governance, management and administration; funding; and potential linkages with other regional programmes and institutions. It also presented a series of options under each. In the October 2011 meetings for the Chief Justices, Programme Executive Committee (PEC), and National Coordinators (NCs) participants considered the options in each area and took a few decisions. Aside from a general desire to have the programme continue, most probably into a third phase, the principal point of consensus was to have a regional focus, albeit with some opportunities for financing national projects. In the three other option areas, there was no clear consensus within or among the three groups, although there did seem to be a sense that the role of the National Coordinators might be revisited and an implicit desire among the Chief Justices for more voice in how the programme was run. Starting with these inputs, this second paper thus looks to describe in more detail how future activities might be organized, using as well some observations made during the October meetings and impressions formed by the four other advisors during the course of their work.[4]

PRELIMINARY QUESTIONS

PJDP (and the earlier PJEP) was introduced as a regional programme to enhance the performance of judicial systems in 14 Pacific Island Countries (PICs). Over time its objectives and activities have varied, although the amounts invested by the contributing donors (now only New Zealand's Ministry of Foreign

[4] Conversations and email exchanges were held with the other four before, during, and after the October meetings. If they are not cited extensively here, it is only because the author does not want to make them responsible for her interpretation of their written and verbal comments.

Affairs and Trade or MFAT) have remained relatively stable. Funding levels constitute a major constraint on programme objectives and activities. While on a per capita basis they might compare favourably to many bi-lateral programmes,5 the need to cover so many countries and the costs of travel within and among them pose limits on what the programme can propose to achieve.

PJDP now co-exists alongside a number of other national (bi-lateral) and regional donor projects as well as the participating nations' own reform and modernization efforts. Over time, this fact has raised the issue of its place in this larger panoply of activities and of how its value added can be assured. Simultaneously donor concerns about the purposes and efficacy of judicial reform assistance – not only in the Pacific region, but universally – have increased the attention to these issues, if not always in the most productive fashion. These sets of concerns gave rise to the current exercise, but also, as discussed in the first paper, suggest the need for answers to other, possibly more basic questions. Thus before returning to the four issues posed to the author, two additional questions will be addressed. They refer to what can logically be expected from a judicial programme and what a regional effort may add to its attainment, especially in the presence of other, related national and regional projects.

WHAT ARE THE LOGICAL OBJECTIVES FOR A JUDICIAL PROGRAMME?

The issue of programme objectives is essential to the entire discussion, both as regards the selection of options and also as regards participation by the key actors – beneficiary countries and donors. It was touched on in the first paper, but as a consequence of subsequent discussions with donor representatives, other advisors, and PIC participants, it seems to merit revisiting. On the one hand, donors in particular have been increasingly cautioned that their objectives for any particular programme or project are often overly ambitious when measured against the resources they propose to introduce, their own timeframes (inevitably relatively short), and the inherent difficulties of altering complex systems of behaviour. On the other, participating countries and/or organizations, lacking a broader perspective on what has been accomplished elsewhere, often suffer from their own lack of realism. While they should be more familiar with the obstacles to change, they may overlook them on the assumption that an injection of donor funding and technical know-how can work miracles in improving court (or other institutional) performance, especially when donors assure them that it will. Country participants do tend to be more realistic than donors about a focus on institutional as opposed to wider system change. This is partly because it is institutional change that most concerns them and partly because they are less pressured than donors to "justify" such change on the basis of its impact on larger societal goals. While the author has stressed the need to recognize such broadly based justifications, this section also explains their limits as a means of designing programmes and evaluating their success.

WELL FUNCTIONING COURTS, AN END IN THEMSELVES OR A MEANS TO AN END?

In the simplest terms, judiciaries (courts) perform a series of important public services -- the resolution of disputes, the determination of rule-violation and the imposition of sanctions on rule violators, and by means of these two functions, the strengthening of the normative framework shaping the behaviour of public and private actors. They share these functions with other "formal" (state) and less formal (traditional, religious, communal) agencies and mechanisms, but in more modern societies are generally accorded the last (or

[5] Excluding Papua New Guinea which has its own well-financed bi-lateral assistance, the combined population of the other 13 countries is less than 1.5 million inhabitants. Bi-lateral programmes operating in countries of this size or somewhat larger (up to 8 million inhabitants) often spend less annually than the AUS $1.9 million PJDP currently expends. For a small country (2-5 million inhabitants) it is not unusual for a grant funded programme to be limited to the equivalent of AUS $5 million over a five year period. Loans are another matter, but they frequently finance infrastructure and equipment, something neither PJDP nor PJEP have done. Even there the comparison often holds – e.g. the World Bank five-year US$5 million loan programme in Croatia (population 4.6 million) or even its $33 million loan to Guatemala (population 14 million) expended over an 8 year period.

most authoritative) word on the matters at hand. Most of the alternative mechanisms are more limited in their reach – either in terms of the issues they naturally handle (e.g. administrative agencies with the power to regulate specific types of behaviour) or the populations that recognize their authority (e.g. communal dispute resolution, modern ADR, which depends on the parties' willingness to participate, religious courts). No known society relies only on formal court systems to resolve all disputes, sanction all violations, or strengthen all norms. However, more complex, "modern" societies increasingly use the judiciary literally as a "court of last resort," to resolve matters the alternative means cannot address effectively. This role becomes more important as societal change erodes the authority of traditional mechanisms and types of conflicts emerge the latter were never designed to resolve.

Dispute resolution and the detection and sanctioning of rule violation are essential functions in their own right, as is the downstream effect of strengthening the normative framework (thereby encouraging public and private actors to recognize and comply with the rules). Where these functions are not carried out adequately, disputes can escalate into broader conflicts, people "take the law into their own hands," economic and social transactions cannot flow freely, and individuals must hedge their bets in a number of costly ways (e.g. hiring of private security, restriction of business and even social exchanges to known parties, self-financing of basic services the state will not predictably provide). The importance of these functions is largely independent of the types of rules used to resolve disputes or the norms that are being enforced. This is what is often called the "thin rule of law model" which simply emphasizes the need for effective rules to shape social transactions (Peerenboom, 2005). A "thick rule of law model" incorporates preferred rules (usually, but not always, the international human rights standards), adding to the notion of rule enforcement the identity of the rules themselves. The thick versus thin model argument is less relevant for the Pacific countries which for the most part have adopted the "Western" ("universal") standards. However, it may at some point become salient, especially as contact between formal and less formal mechanisms becomes more frequent, as citizens become aware they have a choice as to where to air disputes (forum shopping), and as efforts are made to build linkages among the various systems.

The courts' role in the advancement of broader societal goals: Well-functioning judiciaries and other dispute resolution mechanisms contribute to the achievement of any number of additional societal objectives – economic growth, poverty reduction, crime control, realization of specific sets of rights, and so on. However, and this is the critical point to be made here, all of these objectives require far more complex programmes for their advancement. Courts which function ineffectively or inefficiently can impede the achievements of these more complex efforts, but they cannot replace them. This is certainly true of economic growth and poverty reduction where substantial investments are required in a number of areas – infrastructure, financial services, special incentives to encourage new enterprises, and social services to level the playing field. A court system that does not resolve disputes over contract enforcement or equitable access to "guaranteed" services and rights certainly can undercut the impacts of these programmes, but by itself, it will not do much to augment growth or improve the situation of the poor. Hence, tying the evaluation of a court reform programme to increases in the growth rate or poverty reduction is an exercise in frustration – because there are so many other determining factors.

Even in the case of crime reduction, the courts' impact while important is only part of the solution. Here other elements of the criminal justice system – police, prosecutors, prisons, and preventive social programmes – are arguably still more critical. If the courts do not do their job well – do not judge cases fairly and quickly – the other efforts can be partially or completely undermined, but the courts are one of the last links in the criminal justice chain. If those that come before them are not reformed, there is little a "well-functioning" judiciary can do.[6] Finally, we can take the case of gender violence, an issue of great interest to

[6] This has been amply demonstrated by the recent criminal justice reforms in Latin America where for some reason both national reformers and donors seemed to focus first on the courts, probably because of the fascination with the transition to oral hearings. Latin American courts still need improvement, but what they have achieved is of little use in the face of an unreformed and corrupt police force or a wholly inefficient prosecutorial service (Hammergren, 2007, especially pp. 27-54).

the donors and reputedly of enormous importance in the South Pacific. The courts' role here is to adjudicate cases brought before them, but an effective programme to curb gender violence depends on public education, new laws, effective investigation and prosecution, rehabilitative programmes for offenders, and assistance to victims. None of these elements depend logically on the judiciary although a judiciary that does not adjudicate these cases fairly can undermine their impacts.

For some reason donors have found it necessary to justify judicial programmes on the basis of their contributions to these additional, downstream societal objectives, even to the extent of evaluating their performance on the basis of advances in the latter. As should be apparent from the above discussion there are some important reservations as regards this approach. First, all of these programmes (even those most related to "justice" as for example, combating gender violence or crime in general) require complex interventions, and the courts' role, if critical, is hardly sufficient for the results to be realized. Second, this approach really discounts the importance of a good dispute-resolution, violation sanctioning, and rule enforcement system for its own sake. To do so is rather like assuming that other such critical governance functions and characteristics – transparency, rule making, consultation and participation, internal control – can only be judged on the basis of the achievement of other societal goals. One could indeed argue that any or all of these characteristics and functions are not inherently critical to societal well-being, but it is generally assumed that this is not the case, and thus that a good governance system incorporates them all. Similarly, dispute resolution and rule enforcement and strengthening can be regarded as values in their own right and thus as necessary and sufficient objectives for any judicial reform programme. Therefore a judicial programme's success should and can be measured against its ability to improve court performance with the impacts on other downstream goals assumed until someone proves that they do not exist. Much the same argument can be applied to an internal control system or efforts to increase popular participation in policy making, and their impact on overall governance performance and thus societal well-being.

A more logical approach to setting judicial programme goals and evaluating success: Practically what this means is that the objectives and thus the success of a judicial improvement programme should be couched in terms of the performance of the three basic functions and that its urgency should likewise be measured against how well they are already performed. A further criterion, especially important for areas like the South Pacific, refers to access – how much of the population receives, indirectly or directly, the benefits of this performance. Assessment questions for the formal system refer to characteristics like the following:

- Are disputes being resolved?
- Are they being resolved in accordance with the existing rules and standards, and in a consistent fashion for all comers?
- Are they being resolved rapidly?
- Are the resolutions being respected/enforced?
- As a consequence of all the above, are disputes of a specific type becoming less common (because the outcomes of dispute resolution are already known)? This hypothesized effect of a good dispute resolution system will take time to realize, and over the short run may seem to be running in the opposite direction. The initial result is in fact likely to be more cases brought forward as citizens take advantage of the opportunity to do so.

Similar questions should apply to rule violation – although since we are only dealing with the courts (and not the upstream elements of the criminal justice chain), they will refer only to the adjudication of alleged violations and not to their detection, investigation, and prosecution. The courts only adjudicate what they receive. They are usually not responsible for detecting and prosecuting alleged crimes.[7]

[7] There are exceptions, but they are infrequent and not worth further mention here.

A further issue for the PJDP partner countries is the assumption that most citizens do not use the courts, but rather utilize traditional mechanisms. In this case, two additional questions follow: for those who use the formal mechanisms, how important are the negative results, and for those who don't, are the alternative mechanisms satisfactory. The answers might lead to a series of different reform recommendations, focusing on either the formal or informal mechanisms or some combination of the two. However, the objectives of any reform would remain the same: improving the quality and timeliness of dispute resolution and rule enforcement. This observation raises another issue – the responsibility of the formal courts for "improving" customary systems. This topic is being explored by another advisor, albeit more in the sense of potential than prescription. Given short-staffing and limited budgets, asking the PICs' judiciaries to take a more active role might simply be unrealistic. (See discussion in McGovern, 2011, p. 3) To some extent they have already advanced through the introduction of hybrid courts, but this is already taxing their resources. In some countries in Africa, Southeast Asia, and Latin America, dealings with customary systems are handled by the executive, and the courts at most review decisions from alternative mechanisms that are directed to them on appeal. In the expectation that the other advisor will generate more specific recommendations little more will be said on this topic except to note that if PJDP wants to take it on, the resource implications could be substantial.

The benefits of effective dispute resolution and rule-violation sanctioning are to a large extent assumed. The programmes based on these assumptions (just like those advancing transparency, participation, and internal controls in the broader governance environment) generally take them at face value, holding that where disputes are not resolved and violations are not detected and sanctioned the consequences for society are negative. The programmes cannot further test the assumptions anymore than they can test the broader benefits of economic growth, poverty reduction, or a reduction of gender violence, all of which are also assumed to have intrinsic value.8 Those tests, should they be considered necessary, must be done by others. The real issue for court improvement programmes – the urgency of the reform – rather lies in three inter-related issues: 1) how far does current performance deviate from some assumed acceptable standard; 2) how much of (and who among) the population suffers the negative consequences; and 3) how severe the negative effects are.

As regards identifying deviations, two methods can be used: comparisons with international standards and surveys of local populations.9 International standards at present offer only a range of usual outcomes and only for formal systems. Determining what is acceptable or ideal is difficult since so much depends on local organization, the types of conflicts encountered, and the complexity of procedural rules. Still, the range does suggest a sort of norm – cases taking over a year to resolve should be in a minority and only exceptionally should they take more than 3 years. Quality and consistency of judgments still lack international standards and methods for applying them, but there are means, within a single nation, of determining whether like cases are decided in a similar fashion and assessing conformity with other legal requirements. One can also statistically assess conformity with certain legal standards or the likelihood of biased judgments (for example in gender violence cases). In this regard it bears noting that while "quality" is usually viewed as more subjective, hard data (court statistics) can be useful in assessing it, for example in identifying patterns of bias in case dispositions.

Local surveys as to perceptions of court performance or that of alternative systems, and actual experience are another way of assessing the shortcomings of the existing system.10 Perceptions, even those based on

[8] Economists have, however, attempted to link all other goals to economic growth, even to the extent of tracking the economic impact of a reduction in homicides or gender violence. For anyone but an economist this may seem unnecessary, not because there is an obvious connection, but because these are self-evident goals.
[9] There is a third, increasingly popular method – use of assessments by expert panels – but the experts presumably rely on their own sense of international standards.
[10] Both Cate Sumner and Matt Zurstrassen have emphasized such tools in their own advisory work.

real experience, are by nature subjective, but where they are negative there are evidently problems – either in a lack of public understanding of or conformity with official norms or in real performance. Either explanation constitutes a problem – the difference lies in the suggested solution. Where public expectations are out of sync with what is possible (e.g. a demand that all cases be decided "immediately") or based on misperceptions of real occurrences, solutions may involve more public education. Where the public accurately perceives real occurrences, then solutions must attempt to improve the latter.

In any event, where a comparison with international standards or public surveys indicate inadequate performance a project is justified – the amount of the required investment depends on further investigation as to the source of the problem. It also depends on the second and third factors – the identity and number of citizens affected and the extent of the damages they suffer. This issue was raised in the initial paper – the question of the overall importance of system shortcomings – how many people were affected? What were the consequences of the shortcomings and so on? It bears mentioning that the answers to these additional questions can radically alter the conclusions from the first set. It was reported during field interviews, for example, that land cases in many countries take what appears to be an inordinate amount of time. However, some observers contended that this did not represent a serious problem inasmuch as the parties got as much satisfaction from the process as they did from the final outcome. The author has no way to verify this contention, but it does suggest the need to delve into the consequences of an apparent deviation from the norm. If little harm is done, then perhaps nothing needs to be fixed.

Thus, while any situation can be improved, not all pose the same urgency for reform. Where many users are affected by a flaw, a reform may become more urgent; where few are affected, its urgency needs to be weighed against other uses of resources. Of course, a real assessment would have to dig deeper into details. Who is affected and with what consequences for their own well-being and that of the broader society? If those affected are potential investors or a highly vulnerable, marginalized group, even if few in number, a more targeted reform may be in order. Even if times to or fairness of dispositions are on a whole acceptable, this may not be the situation for certain cases seen as more critical to other societal goals – maintaining the peace or advancing gender rights, for example. Moreover, there are additional performance characteristics beyond "fairness" and speed that may come into play – respect for natural justice (elsewhere called "due process rights"), for example. A society, and not just the judges, needs to decide what values it wants realized, and while a court improvement programme must necessarily focus on court performance, the aspects of that performance requiring change depend on broader societal objectives and the other, non-judicial values being pursued. This again does not mean that the programme's success will hinge on the achievement of those broader values (e.g. gender equality, economic growth) but rather on improvements in the courts' specific contributions to their realization. If those improvements are made and the larger goals are not achieved (no increases in economic growth, no reduction in crime rates), it may be because the hypothesized linkages to court performance were incorrectly assessed, but it is more likely because the other elements of the larger programme were not implemented.

From this discussion, we can draw two conclusions about the logical goals for a court improvement project:

- They should be linked to positive changes in court performance that matter to real and potential court users. In terms used by a recent ODE evaluation of the AusAID programmes (Cox, Duituturaga, and Scheye, 2011) but equally relevant here, this might be called a problem oriented approach, although contrary to its recommendations, the present author believes capacity building is an important part of this methodology – agreeing only that capacity building should be aimed at resolving real problems, and not simply done in the abstract.[11]
- They should be chosen for their presumed impact on broader societal goals, but should not be evaluated in terms of changes in the latter. This is only because most of those changes require a

[11] The author thanks Cate Sumner for calling her attention to this report and for further ideas on specific problems that might be addressed.

broader complement of interventions outside the sector, and where these do not occur, the courts' impact will not be sufficient alone. However, where they do occur, a poorly performing judiciary can likewise undermine their effects.

WHY A REGIONAL PROGRAMME?

This question was not directly asked or explicitly answered during the work for the first paper, but it seems necessary to raise it now. First, while a regional programme aims at producing the kinds of changes outlined above, its ability to do so is less direct than that of a national programme. Thus, just as it makes little sense to evaluate a court reform on the basis of changes in the rate of economic growth or levels of crime, a regional programme cannot be expected to affect national judicial performance as quickly as a bi-lateral project. Second, to the extent they recognize this, the two sets of participants -- the actual or potential funders, and the participating countries – have other reasons for using a regional approach. The reasons for each may be (and in fact are) different, but it is important that they at least coincide in a series of activities that will satisfy both. It should also be admitted that both parties may have reasons for wanting a regional approach beyond those related to the programme purpose – that of encouraging national reforms. However, while recognizing that these other reasons may be very influential, they will not be treated here because they are so far removed from meeting the programme's official objectives.

For Donors: Donors' reasons for supporting a regional programme are multiple. First, it can be a means of taking advantages of economies of scale, when the same or similar activities can be provided to a series of national beneficiaries at considerably less cost than it would take to work with each individually. The constraints here are those posed by different circumstances and needs, but presuming a few commonalities can be found (as appeared to be the case with initial training needs under PJEP in particular) they can become the focus of the work. However, the potential economies of scale are inherently limited which means that over time the other reasons should become more important.

A second reason involves the use of regional programmes to complement purely bi-lateral efforts. Neither PJEP nor PJDP has specifically aimed at this effect, and we have insufficient information to ascertain whether it has occurred to any extent. It would certainly be worth exploring whether complementarity has been realized as well as determining how it might be augmented.

A third is the potential for sponsoring the development of tools and pilot programmes which, if successful, could be introduced in the other participating countries. PJDP's work with ethics codes and court administration are two good examples. While bi-lateral programmes can also work with tools and pilots, the opportunities for replication elsewhere are reduced, and a single-nation focus also affects the chances for broader discussion of the pros and cons of the approaches. This is also a part of complementarity, but sufficiently important to merit separate mention.

Tools and pilots in development programmes

Both are important, but the difference between them is sometimes unclear. There are two distinguishing characteristics: tools are generally less complex (have fewer parts) than pilots and more importantly, tools are not intended to improve outcomes directly but rather to assist or be part of activities (including pilots) that do. Thus a user survey, a needs or sector assessment, a court audit, a focus group or participatory planning technique, or a self-assessment mechanism like the Court Excellence Framework are all tools. In contrast, the process already developed by a PJDP advisor for creating and disseminating an ethics code can be thought of as a pilot (with the intended effect of improving certain aspects of court performance). The proposed activity to develop an improved registry model is also a pilot, which not incidentally may use several tools (an audit, surveys, a mechanism for weighting cases and so on). There are also obviously numerous project activities that constitute neither one – largely because they are not designed for broader adoption, something which is a characteristic of both a tool and a pilot, or because even if intended for this purpose, they are clearly more complex than tools but lack the explicit performance improvement goals (and thus means for testing efficacy) that should accompany a pilot.

A fourth reason is to reach countries without a bi-lateral, giving them the benefit of ideas and experience developed in others. In the case of PJDP roughly half the countries included currently have or soon will have bi-lateral programmes, but some of the others are too small to expect such an effort and so can reap benefits from a regional programme (including access to small grants) they otherwise would not enjoy.

Finally, if structured to this end, a regional programme can be a means for donors to obtain more information on needs, innovative practices, and new trends in the region, both to improve their on-going work in other projects and to help develop new ones.

For Participants: Participants reasons for supporting regional (as opposed to purely national programmes) also vary, especially depending on the country's access to bi-lateral funds. A country with a bi-lateral programme seemingly might have less interest in a regional effort, but even for these participants, PJEP and PJDP remain important. For those without bi-lateral programmes they have of course been a vital means of financing training and other projects. For both categories of participants, some additional advantages are as follows:

- First, programs may finance activities a bi-lateral project does not contemplate. In this sense, complementarity also functions for participants in bi-lateral programmes. This includes the opportunity to take part in certain collective activities (e.g. types of training) and to secure funds for small projects not included in a bi-lateral.
- Second, a regional programme gives participants a chance to share experiences and select activities for their own, regional, or bi-lateral financing that appear to have worked elsewhere. It may also give them a chance to see the downside of activities promoted by donors that have been applied less successfully in other countries.
- Third, regional programmes provide a forum for collective consideration of common problems and endorsement of types of reforms donors may not be considering. They also of course provide a means for endorsing continuation of regional efforts once they have been started.
- Fourth, as many bi-laterals are sectoral rather than limited to the judiciary, a regional judicial programme is preferred by many PIC court leaders because it does not include or force them to cooperate with other institutions. This seems to be a particular Pacific Island prejudice, although it

can be found, if to a lesser degree elsewhere.12 However, it certainly has a downside when, as discussed above, the broader impact of court improvements in fact hinges on this kind of cooperation.

As this last comment suggests, not all reasons for donor or country endorsement of regional programmes are entirely positive. Donors may mistakenly see them as a way of promoting changes on the cheap – discounting the amount of further funding and effort that may have to go into ensuring that a popular idea is translated into real change – or of imposing a one-size-fits-all model where it is not appropriate. The "Johnny Appleseed" approach to promoting reform – scattering seeds (ideas) about in the hopes some will generate orchards (a full-fledged reform) – really requires follow-up (and thus probably input from other funding sources). Otherwise adoption of new ideas may be at best superficial and at worst counterproductive.[13] Moreover, as discussed in more detail below, the reliance on multiple meetings in interesting places may become an end in itself for some participants. It may discourage them from spreading the word about the programme so as to maintain their own hold on the travel opportunities. Even when the number of participants in such events is necessarily limited, the purpose should be not only to encourage discussion among attendees but also for them to take the ideas back to their courts and to continue the debates there. There are ways to counteract these less positive trends, and some will be discussed in later sections.

CONCLUSIONS ON THE TWO ADDITIONAL ISSUES

The two discussions are interrelated inasmuch as they both focus on using national or regional programmes to improve court services in ways that benefit the broader population. There are advantages to working only with judiciaries, especially in a regional context, but these advantages can be negated when the process tends to focus courts only on the "judicial problems" rather than on those experienced by the user (including what is caused by other sector actors), when donors do not consider the need for effective follow-up, or when participation is limited to a small group with little incentive (or ability) to take new ideas and discussions to more judicial actors, other political and governmental agencies, and ordinary citizens back home.

PJDP and PJEP before it have been important in promoting the idea of judicial reform within the region, starting with training for judges and lay judicial officers and most recently introducing a series of new issues – ethics, court administration, use of indicators to track change, and the linkages between customary dispute resolution (CDR) and the formal court system. The regional programme, however, is now at a crossroads, and not only because of the uncertainty of further funding. The real issues have to do with identifying aims beyond what it has already achieved and how it can maximize the potential advantages of a regional forum for both donors and participants while working to combat some of the possible negative effects. Funding will only continue if donors (the current one or others) see an advantage to this, or for that matter, any investment in improving court performance. This means that despite or perhaps due to their past experience, they will need to be (re)convinced that the reforms are important, that a regional programme is an effective way of advancing them, and that regional participants are committed to their realization. It is

[12] In Latin America for example, the criminal justice reforms have suffered from donors' preference for working with the judiciary (less potentially dangerous to their reputations, and in some cases, for example, the World Bank, encouraged by their own internal rules). Latin American courts have not attempted to counter this oversight, and as they often have more political clout than the police, defense or prosecution, have used it to obtain resources that might have been more productively invested elsewhere. Donors like USAID that have participated in these programmes for decades have yet to find an effective means for increasing inter-institutional cooperation although they now recognize the costs of its absence.
[13] The aforementioned Latin American criminal justice reforms are again a good example. Adoption of a presumably more "accusatorial" system is often heavily influenced by past practices, to the extent that oral hearings are now described as the "verbalization" of written documents (so that parties may in fact limit their oral statements to readings of what they have already written).

not, as was stressed in the first paper, simply a question of participants wanting funding – their role is instead to help convince donors that the funding will pay off in real, positive changes.

As suggested here and in the prior paper, to do this participating countries and courts will have to acknowledge the donors' concern that court reform serve some purpose beyond simply "making the courts work better" in the abstract. That is to say that they will have to understand and use the donors' arguments about impacts on broader societal goals. However, the donors will also have to be realistic as regards these claims – understanding that while poorly functioning courts can indeed be an impediment to broader developmental objectives, better functioning systems are not going to advance them on their own. It is probably for this reason that the ODE overview paper emphasizes "problem resolution" rather than capacity building in the abstract. To resolve problems, capacity must be augmented, but two further points are worth making here.

First, and in agreement with the ODE authors as well as several others who have criticized "top-down" reforms (those conducted directly with the courts and other sector organizations),14 improved capacity should be linked to the resolution of specific performance problems. Training is a good example. Better trained judges may indeed make better decisions, but it would be well to point out and focus on areas where poor decisions, owing to inadequate preparation, are causing significant problems. Growing donor scepticism about the value of training, especially but not exclusively in the justice sector, can in large part be blamed on a tendency to train participants in what they want to learn (or teach) rather than in areas where insufficient knowledge or skills are causing visible performance problems.

Second, better judicial performance even in areas prioritized in national development plans will rarely be sufficient to advance those goals. That said, court performance will affect these goals and having courts make better decisions more quickly is a value in itself – an improvement in a basic public service which can be further improved by expanding accessibility to more citizens. This offers a number of benefits to citizens in need of having disputes resolved and desiring more juridical security (a clearer understanding of the rules that will be enforced and that public and private actors will follow). It also, not incidentally, should improve faith in government and in the prevailing political system. However, these are diffuse benefits, and where donors and governments are pursuing more specific developmental goals, the courts' contribution will necessarily require the realization of other programmes and interventions. Similarly, it bears mentioning, a single judicial intervention, like training, also requires complementary work within the courts to ensure its impact there. A second reason for the perceived lack of impact of training is that many programmes assume it will cause behavioural change on its own – this is rarely a good bet.

Finally, while regional programmes can promote these changes by providing some of the types of assistance more characteristic of bi-laterals, their greatest potential contribution lies in other areas and changes over time. They can first, as appears to have happened with PJEP and PJDP, create an interest in reform and in certain reform activities and introduce participants to the idea of reform planning. However, once this is achieved, their later contributions lie in helping to develop solutions to common problems, fomenting exchanges of information and experience, and possibly creating regional models. Over the longer run, their success might indeed be measured against real improvements at the national level, but for the life of a typical regional programme, it is best assessed against the impetus for reform they generate and participating countries' willingness to create and adopt new ideas and approaches.

I will return to these issues in the following discussion of the four "option areas." As with the initial paper this type of background has been necessary to flesh out the arguments offered below.

[14] These criticisms are increasingly common among donors and those writing for them and have provoked cut-backs in funding to these programs, the only major exceptions being those in "conflict afflicted countries." While the ODE paper could be considered part of this critique it does have the merit, and for this reason is cited here, of making some constructive suggestions as to how "top-down" reforms can work better.

OPTION ONE: REGIONAL VERSUS NATIONAL PROGRAMMES

Options introduced in the October 2011 paper were as follows:

- Option 1 – focus on national impacts (including those resulting from the new activities), privileging countries lacking alternative sources of funding
- Option 2 – focus on national impacts, working in sub-regional groupings which at least in theory would cut costs and allow more activities to be delivered at the country level
- Option 3 – focus on regional impacts by combining an emphasis on strengthening regional discussions of problems and models, capacity development in strategic planning, and the use of pilot activities financed through the programme and through bi-lateral projects.
- Option 4 – return to an emphasis on training, but spend the remaining time developing training capacity within the national judiciaries rather than on the delivery of courses.
- This is the option area where the participants in the October meetings expressed the clearest preferences – for continuation of a regional programme, but with some flexibility to allow financing of smaller national projects. How they wished to strike a balance was not clear, but it was obvious that the new "responsive fund" offering limited financial support for small national activities was not something the participants wished to sacrifice. There are some evident trade-offs here, largely due to financial limitations. More money for national efforts logically means less for regional activities, and much the same is true of the time and effort expended by participating courts in each type of endeavour.

REGIONAL PROGRAMMES: MAXIMIZING THE BENEFITS

A primary reason for the lengthy discussion of "why a regional programme" was to lay out the potential benefits for each of the two principal parties. To some extent these benefits overlap – complementarity, a chance to exchange and learn from others' experience, development of tools and pilot projects, and the opportunity to focus on common problems and possible solutions. There were also some differences – the donors' interest in economies of scale while hardly running counter to participant interests is not of great concern to the latter except insofar as it provides access to activities they might not otherwise receive. Some of the advantages to the participants – a forum for reviewing negative experiences (including with activities favoured by donors) or for collective lobbying for certain types of assistance – are likewise not necessarily contrary to donor interests although they are clearly not among their priorities. In short there is a good deal of common ground as regards the benefits for both donors and participants engaged in a regional programme, and the few differences do not constitute obvious clashes of interest. Nonetheless, it would be a good strategy for both groups to focus on the shared benefits, making room for, but not prioritizing those that are held only by one side.

PJDP'S REGIONAL FOCUS TO DATE

It is the consultant's impression that the PJEP/PJDP sequence has not done enough with these shared benefits, and that where it has, this has been experimental, sometimes not very intentional, and on the whole is fairly incipient. Both parties have instead tended to focus on the "uncommon" or unilateral benefits – for the donors, the economies of scale and for the participants, access to activities they could not or had not thought of funding on their own. This has been a good and probably necessary start, but it is now arguably time to change the emphasis.

Participants still seem to favour training activities, but it appears these may have reached their logical end. In addition to simply improving participants' skills and knowledge base, the initial trainings, under PJEP and PJDP, were important in raising awareness as to the importance of training in national reforms. They also

served a number of other purposes – fomenting exchanges among the region's different judiciaries, developing a series of pilot courses, building some local training capacity, and introducing a number of new ideas and themes. The model may be exhausted, however, because of the inherent limitations on reaching a significant portion of the region's judges and especially lay judicial offers and administrative staff. Now that training's importance has been recognized, the new need is to find more economical means to provide it to all judicial personnel within each country. The regional programme, even with several times its current funding, can simply not expect to provide the training with its own resources. Other solutions are needed.

The fact that this theme has not been explicitly introduced suggests one shortcoming of both programmes – their failure to move beyond what the donors can provide to what the countries need and how those needs can be met, with or without donor participation. The recent introduction of four new themes – CDR, ethics, court administration, and indicators -- and hiring of advisors to explore them are a move in the right direction. However, while participants have to a greater or lesser extent been enthusiastic about these new topics, they have hardly replaced provision of training as their first priority and it remains unclear as to how this enthusiasm will be channelled into programme activities or for that matter, beyond the programme.

Intentionally or not, the programme has provided both the donor(s) and the participants with a better understanding of the problems the latter confront (and the donors face in attempting to help them). The author is convinced a good part of this was intentional, but also believes a greater emphasis should now be placed on fomenting discussions among the participants as to how they see themselves developing and as to what the donors' role can be, realistically, in assisting them. Despite the differences among countries (in wealth, cultural tradition, logistical constraints, levels of judicial development, and access to alternative sources of funding) a regional programme can still realize its greatest value in promoting collective discussion of common problems and exploring the potential for their resolution. This is hard work for both the donors and the participants, and clearly less immediately gratifying than managing and attending meetings and courses. However, in the absence of significantly larger budgets (say ten times the current size) and probably even in their presence, the principal value of a regional programme lies here – not in what it substantively provides to participants but rather in the discussion of shared challenges and the development of potentially common remedies.

The author has no wish to criticize the programme for not having done this yet, but only to suggest that its past achievements cannot obviate the need for this change in direction. What it has already done is important and has advanced overall progress in introducing reforms throughout the region, but to continue its positive impact, it now needs to set new goals.

TIME FOR A REDEFINITION OF OBJECTIVES

As suggested above, the programme at present and especially if it proceeds to a third phase, needs to reorient its objectives – focusing less on the direct provision of services, where its reach is necessarily limited, and more on the following:

- Development of pilot activities for wider application, most probably with bi-lateral or national funds. For smaller countries without a bi-lateral, regional financing may be a possibility, but will arguably require more funding
- Development of local capacity to carry out certain activities. The most obvious area is training inasmuch as there is no way the regional programme can provide all that is needed. However, some of the other pilot activities might also focus on this – in their second stage, emphasizing the how-to rather than the full delivery of the product. To the extent they can create a methodology for developing a product (e.g. an ethics code) or set the stage for further advances (e.g. an improved registry that can be used to develop a case management system or a proto case tracking system

that allow courts to monitor performance and identify problem areas) this would be more practical than simply taking projects to a few countries.

- Development of a few common tools. Not contemplated yet, but certainly essential, would be the development of software for recording case events (a simple automated registry and case management system). Some judiciaries already have a fairly sophisticated version and others (the smallest ones) can probably continue to survive on Excel sheets, but for those in between the two extremes, a simply software would be extremely useful in identifying performance weaknesses and monitoring remedies. Other tools, some already being developed by advisors, include various survey instruments (for court users, for all those interested in dispute resolution, and so on), a court administration manual,15 means for tracking of human resources, and for improved budgeting.
- Use of joint meetings to discuss common problems and potential solutions. The programme really needs to place more emphasis here. So far it has successfully encouraged interest in the four new themes, but it needs to move beyond simple interest to active engagement by the participants in these or other challenges. The greatest success would be indicated by the participants developing their own list of problems and development objectives, rather than reacting to those introduced by programme management. This goal will take time, but it is one of the principal outcomes of a real regional forum.

Programmes develop by stages and PJDP/PJEP is no exception. Thus the recommendations as to changes in orientation should not be taken as a criticism of past performance, but rather as a recognition that no programme can retain the same objectives and methodologies forever. Building on its past successes, the programme' sustainability requires moving to new definitions of its purpose and how it will achieve it. What was once a programme to provide basic services to a number of PIC judiciaries and in the process encourage them to develop certain common outlooks, must now move beyond these accomplishments and take up the next stage. The author does not believe this is best done by defining the PICs' problems for them (that was the past), but rather by encouraging them to do their own analysis and in the process to identify means (not all from donors) for financing what they need.

The programme can still provide assistance, especially in presenting solutions that have been successful elsewhere, in helping to refine analytic techniques, and in advancing piloted solutions to problems the PICs identify. Funding, at least at the current levels, will be essential to achieve these goals. However, unless donors are willing to increase funding levels several fold and, not incidentally, run the risk of conflict or overlap with bi-lateral efforts, the regional programme should remain as a generator of ideas, a tester of solutions, and a forum for PICs to engage with each other in exploring how they believe they should develop their judicial and dispute resolution systems.

THE NATIONAL DIMENSION

As noted, while the parties to the October 2011 meetings endorsed the continuation of a regional focus, they were reluctant to end the potential for financing of national activities, especially through the responsive fund. Presumably some of the pilot activities conducted by other advisors would also respond to this desire. It is not entirely clear what participants meant by a continued regional focus, and it is likely that a part of this simply means shared regional activities – especially courses and meetings. As should be evident already, the author believes this definition does not maximize the regional potential and rather remains at a preliminary (and largely donor driven) stage. So long as a programme, whether regional or national, focuses only on what the donors will provide its regional or national ownership is in question. This may present one factor in favour of the responsive fund – at least it finances country and not donor initiatives. The issue

[15] A suggestion offered by the court administration advisor.

instead is how important these initiatives are for improving service delivery in the specific country or as something that may help other regional partners.

The last question can at least be addressed, possibly along with the first, by being a bit more hardnosed about the criteria for funding national projects. At the very least, those proposing projects for regional funding should be required to explain their larger significance – both in terms of improving their own user services and in providing models for other countries in resolving common problems. If one wishes to be still stricter, another requirement might be that they be connected to a national judicial development plan and include indicators for evaluating their impact on the overall quality of court services. Ironically, the second condition will be harder to meet than the first since it requires 1) the existence of such a plan and 2) the presence of performance indicators. However, requiring either or both is not a bad idea although over the short run the criteria may have to be somewhat softened.

The insistence on a national component is in fact a little distressing as it indicates a lack of faith in the regional endeavour – fine to participate in events financed regionally, but not where we want to put our efforts as regards our own improvements. Over time one would hope that at least those with access to other funding would stop seeing the regional programme as the alternative banker and rather put stock in its other functions – complementarity with national efforts, a forum for exchanging experiences and a place to explore common problems and potential solutions (including the odd regionally financed pilot programme). For this to happen, programme management will have to take a more pro-active role in kicking it off. Eventually these functions should depend more on the participants, but over the short term, their emergence depends on programme management's ability to encourage them. As discussed in a later section, this also may require changes in the overall orientation of the management team.

SHIFTING THE FOCUS FROM WHAT THE DONORS CAN PROVIDE TO WHAT WE NEED TO DO

The regional programme has been successful in eliciting a certain amount of partner ownership, but it has also created a considerable amount of donor dependency. Over the shorter run, while most countries lacked other funding, this was not a problem, but a successful regional programme, perhaps even more than a bi-lateral one, requires participants' active ownership. Otherwise, it can quickly reduce itself to just another source of donor largesse. It also requires the ability to talk not just to donors, but also to national governments, since they in the end will be the principal source of funding for future reforms.

To this end, the programme might add to its repertoire of activities a greater focus on a number of other functions:

- Project design, preparation, and implementation. Even given the short-staffing of the typical PIC judiciary, it would be useful to train some members in these skills (McGovern, 2011, p.4). This is one area where group training might still be useful but care should be taken to ensure those who attend will use these skills.
- Techniques for expanding dialogue with national governments and with other agencies in the justice sector. This may face resistance on the part of some PIC judiciaries to cooperating with any other branch of government, but this needs to be done. Reform in a vacuum is of limited value, and moreover, over time improvement programmes will require both funding from national governments and the collaboration of other agencies. This does not mean other institutions should join the programme, but rather that the programme might focus on how their contributions and problems affect its purpose.
- Techniques for analyzing justice needs within each country so that programmes may be tailored to what citizens actually require. User and potential user assessments are vital here and two advisors (working on indicators and on CDR) are already developing instruments.

- Means for expanding dialogue with potential donors to widen their interest in what the PICs have identified as their needs and those of the users of their services. Absent other input, donors tend to focus on what they consider critical. Their perceptions may not, however, coincide with those of the affected countries, and their proposed solutions may also be out of sync.

Donor dependency is never a good idea, first because donors' willingness to provide assistance is notoriously fickle and second because donors may not be the best judges of what is needed in any given country -- in part because their appreciations are often highly influenced by constituencies back home promoting one single-dimensional interest or another regardless of their relevance for the specific case.[16] Donors can be most useful in providing alternative solutions to problems once identified and sometimes in assessing the significance of shortcomings, but where countries can do their own assessments and provide realistic proposals for solutions, they are much better off. Their suggestions may not be immediately incorporated, but this at least gives them a voice at the table, and the ability to protest if what is offered is not appropriate.

There is a further reason for promoting these additional, more truly regional themes, and it extends beyond the immediate interest in making the programme more effective. If the "programme" as a forum for regional discussions is to survive, and that seems like a positive idea, then it would make great sense to begin changing its orientation to a focus on discussion of regional problems and not just how donor funding will be used. Promoting this idea may be the author's own bit of magical thinking, but especially in the South Pacific, where countries are so small and their resources are so scarce, these common limitations suggest the need for an exploration of common, and possibly collective, solutions. If in a further stage, not immediately, the programme could evolve into this type of organization, it would not only be a good solution for the PICs but also an important model for other regions.

CONCLUSIONS ON THE REGIONAL OPTIONS

A series of issues have been raised for consideration by the three groups of actors – PIC participants, donors, and management. The principal argument advanced is that a regional programme is not simply an alternative to bi-lateral assistance, but rather has a unique set of objectives and methods for achieving them. In the initial PJEP/PJDP exercise, it was probably less important to make this distinction, and in fact there was some reasonable expectation that the regional programme would provide types of assistance more logically done through bi-laterals, in part because they did not exist, in part because several countries could probably not expect to have one. Unfortunately, it is now quite apparent that even a much larger regional programme is unlikely to be able to continue in this line, even as regards its first target of action -- training.

As opposed to the three remaining options, where a series of real choices are introduced, the purpose of the discussion here it to focus debate on a single issue: **whether all participants (not just the PICs) consider the unique regional contributions sufficiently important to warrant a third stage programme in which there would be less emphasis on delivering the goods and more on development of models, tools, and plans and in which the PICs' role in determining paths for their future development would be prioritized.** This can be expressed in the option format as follows:

[16] If all the single dimensional interests that have been linked, often well intentionally, to justice programmes were to be financed, funding would have to increase tenfold. Many of them simply do not make much sense in every context. It begs serious questioning why, for example, the 35,000 Roma who live in Colombia (population 46 million) should receive special attention, but because protection of the Roma is a high priority theme (largely because it is an issue in Europe) it has become one for many donors worldwide. The South Pacific seems to have been spared this issue, but there are certainly other one-dimensional interests reflected in donor assistance there.

- Option 1: continue with the present balance of activities (largely national and regional trainings, a modest amount for national projects via the responsive fund, and financing of the development of some tools and pilots for broader application) until the end of phase 2, and use much the same formula for a phase 3 proposal
- Option 2: continue with the present balance through June 2013, but if a third phase is contemplated (with or without another year extension to phase 2), shift to a focus on regional activities (pilots, tools, training capacity building, and development of strategic planning models) substantially reducing the amounts that would be allocated to direct training and the responsive fund. If a responsive fund is kept, criteria should included an emphasis on projects of broader applicability.

Discussions of the two options should begin in the March 2012 meetings, but the one-year extension of phase 2 allows some time for the parties to reach any decision. Either option will require developing a justification for potential donors based on how it will improve performance and why the improvements pursued are important, not only to the courts but also to those who use or might use their services.

Determination of the national or regional needs and aims does not, it bears noting, guarantee financing, and it will be important for country participants to take into account the limitations on resources available from donors or from their own national governments. In part because of these financial constraints, a regional programme seems simultaneously more important and more difficult to realize in the Pacific region. It is more difficult because it will be tempting for those with access to bi-lateral funds to opt out, and more important because even for them, and certainly for the others, the inherent challenges will require more creativity than elsewhere. As one participant in the October meetings noted, "we have adopted a model that is inherently limited in its application." The author is in no position to say whether this is accurate or not, but the statement does reflect the special difficulties of the challenges faced by the region. The question posed to them, and to the others, is thus whether they believe a regional programme can make a unique contribution in developing solutions.

OPTION TWO: MANAGEMENT, ADMINISTRATION AND GOVERNANCE

The October 2011 paper offered a set of recommendations for the consideration of meeting participants. The implicit options were "no change" or adoption of one or more of the following:

- Governance – reorganization of the governance structure to ensure both better representation of all participating countries and a clearer definition of NC responsibilities.
- Management –reach agreement on new impact targets in a form 1) compatible with the programme timeframe and 2) acceptable to both the donor(s) and participating countries. The agreement should include both a set of targets (and thus activities) and a strategy and timeline for advancing them.
- Administration – leave as is if the programme will only last another 12 or 24 months. If a follow-on programme is contemplated, effect a gradual transfer of the MSC/MU to a regional location.

Although the recommendations were discussed in the October meetings, no decisions were reached. However, certain issues began to emerge without any specific suggestions as to how they might be handled. They largely involved overall programme governance and the role of the PEC in particular, and the situation and performance of the National Coordinators.

GOVERNANCE BODY: THE PEC AND BEYOND

The PEC was introduced to overcome the obvious difficulties of holding periodic meetings of all Chief Justices. Its members were intended to represent not only the Chief Justices as a whole (three

representatives also presumably representing other law-qualified judges), but also lay judicial officers and administrative staff (one each). As the PEC currently (and possibly previously) functions, the essential problems are two:

- It seems to operate more as an endorser or veto-er of suggestions forwarded by programme management. It does not seem to take a more active role in suggesting lines of work, possibly because, as one member said, it "does not have the ability to commit other courts to whatever it decides."[17]
- Its representative nature seems questionable. The two members representing all magistrates and all judicial staff simply cannot presume to reflect the views of the hundreds or thousands of individuals involved. However, even in the case of the Chief Justices, it is not clear that those sitting on the PEC are sufficiently in contact with the others so as to be able to forward their preferences, demands, and needs.

There are thus two issues: how to get a more dynamic PEC or other governance body, and how to ensure it is more effective in representing the views of members of 14 different judiciaries. On the second issue, there is the further problem of the three types of judicial actors involved.

As regards the Chief Justices, the ultimate representatives of each judiciary, the October meetings while not attended by all suggest one option – eliminate the PEC and simply hold annual meetings for Chief Justices. Among the nine Chief Justices who did attend, there was a very lively discussion. If a similar level of attendance can be fomented in future meetings, this may be a better means to tap into their needs and perceptions than using the three members representing them on the PEC. Given that for whatever reason, the current programme is only renewed from year to year, anything less than annual meetings would be impractical. However, with a longer guaranteed duration, meetings could be held for example every 18 months.

This is not the only option and others include:

- Keep the PEC but with a rotating membership – perhaps changing at least two Chief Justices every year. What should be done with the representatives of the other groups is less clear and probably requires other arrangements as discussed below
- Hold smaller annual meetings of Chief Justices at the sub-regional level, alternating them with a biennial meeting of all, or hold both biennially, but in different years.
- Hold smaller annual meetings of Chief Justices at the sub-regional level, and let each sub-regional group send one representative to an annual "PEC" meeting.

Although it has been suggested by reviewers of the present paper that these three alternatives might lead to a loss of "corporate memory" or a fragmentation of focus and responsibility, these admitted risks could be mitigated by 1) ensuring that the Chief Justices sitting on the PEC (first option) adequately transmit decisions and discussions to the others and 2) that programme management steps up the communication on these same issues.

The solutions for the lay judicial officers and administrative staff representatives are far more difficult. There are simply too many individuals in each category and their situations vary so much from country to country that it is hard to envision how their interests can be represented on a regional basis. An admittedly more complex arrangement might include one of the following:

[17] However see McGovern (2011, p.4) on the need for more initiatives from the participants, rather than from advisors.

- Sub-regional meetings for each group with representatives chosen from within each country, and then an annual meeting of sub-regional representatives
- Organization of in-country meetings with the respective Chief Justice carrying their messages to the annual or biennial meeting of Chief Justices.
- PJDP's support of annual in-country meetings of each group with no effort to move the messages up to a regional forum.

Despite the importance of these two groups for maintaining judicial functions, their representation within the programme remains a problem for which a preferable solution is still unclear. In any event, project governance as a whole clearly needs better participation by Chief Justices, and possibly the removal of the PEC in favour of one of the alternatives suggested above. Their October 2011 meetings were a good demonstration that the Chief Justices in their majority (only 5 of the 14 did not appear or send delegates) are interested in the programme, have their own ideas as to how it should evolve, and would like to have more voice in the matter. When PJDP/PJEP only did training this was arguably less necessary but as it moves into other areas, greater Chief Justice involvement will clearly be a plus. The PEC's leaders do not, by their own admission, feel comfortable taking decisions for others, and the national coordinators, as discussed below, are not authorized to do so.

MANAGEMENT: THE NATIONAL COORDINATORS

Other management issues are included in the next section, on overall programme management and administration. However, to the extent the National Coordinators are a part of the management design, and because they represent specific problems, they are discussed separately here.

The initial design of the PJEP included National Coordinators (NCs), but as part of a larger national organization. This organization incorporated a National Judicial Education Committee to whom the coordinator would report and which s/he would represent in regional meetings. PJDP adopted the concept, but renamed the entities National Judicial Development Committees. Under either title, the committees have only survived (possibly been created) in a few countries, and as the programme has intentionally moved beyond judicial education, their role is also less clear. However, the National Coordinator position (along with that of the nearly non-existent committees) has been maintained without any further formal development under the PJDP.

While training remained the programme's principal activity, the coordinators were essential in notifying their courts of the up-coming programmes, helping select candidates, and ensuring the latter, once selected, provided necessary information to the management team that would arrange their travel. In the case of events held in their own countries, they also assisted with logistical support. Presumably they did none of this on their own, but rather as representatives of their respective courts (and where they existed, the committees). Thus they were simply intermediaries connecting their courts to the management team and facilitating the holding of national and regional events. With the creation of the responsive fund some NCs have also been charged with developing proposals and even overseeing their implementation once funded. How the NCs are selected by their own courts, by what criteria, and who they consequently are seem to vary considerably as do the closeness of their relationship with their Chief Justices and the latter's oversight of and expectations as to what they will do.

Of all the PIC representatives, the NCs meet most frequently, have the closest contact with programme management, and thus have the most thorough knowledge of programme activities. Since these individuals often have the least complicated schedules (rarely having to cancel at the last moment because of events back home), this has been convenient for programme management which has consequently tended to use them as a sounding board for new activities. To some extent this has led to a certain amount of mission

creep for the NCs who may be making decisions for the programme without adequate communication to or from their Chief Justices and other judicial actors. Since they can be depended on to respond to long-distance communication (by phone or internet) they have also become the principal conduit for at-distance messaging. In short, in the absence of the larger formal structures envisioned by the PJEP design, they have come to be the principal (and most dependable) channels for communication between the programme and the courts. This has led to a series of problems some of which were discussed by the Chief Justices in the October meetings.

- Complaints by a few Chief Justices that their NCs did not inform them adequately (or at all) about upcoming meetings and other programme events.
- A sense (which seemed to accompany these complaints) that the NCs were monopolizing travel opportunities, nominating themselves for most of them
- A failure on the part of some NCs (not mentioned in the meetings, but observed by the author in the course of prior in-country interviews) to spread information about the programme to other court members.
- Disagreements (aired during the March meetings) as to how communications among the PEC, all Chief Justices, and the NCs should be channelled. The issue here was whether the NCs should communicate directly with the PEC or do so in consultation with the National Judicial Development Committees (where they exist) and through their CJs.

To be fair, not all NCs operate in the same fashion, and some do much better in channelling information between the programme and the CJs as well as involving many members of their home courts in these discussions. There are a few who have in fact been extremely active in organizing events for other judges, lay magistrates and court staff, based on what they have learned through the programme. Also, any shortcomings are not always the failure of the NCs. Lack of attention to the programme by Chief Justices (especially those not in residence) may be the latter's choice, not the NCs' preference. The closeness of the relationship between the NC and the respective CJ is a two-way street, and one determined more by the CJ than by the NC. Finally, the NCs' role in disseminating information about the programme to other judicial actors hinges in large part on what the CJs will permit. Where NCs feel constrained in what is permitted, they could indeed make an effort to convince the CJ, but their positions, personalities, and even their relationship with the CJ may not lend itself to this approach.

There is nonetheless a problem. While understanding its origins could help in developing solutions, the point here is not to attribute blame but rather to improve the present situation. This should be commenced immediately (e.g. as part of the March 2012 meetings and possibly followed up by a working committee chosen at that time18), without waiting for word on a third programme, although over time, the immediate remedy could be further refined or completely altered. The focus in the March 2011 meetings on channels of communication strikes the author as a false path. The issue is not who talks to whom, but rather how the NCs, or in their absence some other actors, could be used to maximize, by numbers affected and by amount of information, the dissemination of programme contents to the Chief Justices and in fact all judicial actors. The NC role was not designed for this purpose, but ensuring the programme's activities have a broad impact now requires that it be realized.

These issues should be addressed and some quick fixes defined and implemented in the March 2012 meetings. With only a one-year extension in the works (to end June 2013) it would be inadvisable to introduce radical changes, (extending even to eliminating the NC position), but based on a review of the issues already raised (in October 2011 and before), the following could be done in the March meetings:

[18] It is to be hoped that the Chief Justices and the PEC can reach some immediate decisions, but if they wish, a working group could be formed to develop the details, probably operating virtually.

- First for all three groups, but directed in particular at the CJs (whose meeting conveniently occurs before that of the PEC), a thorough discussion of the issues outlined above and an exploration of their impacts on the programme
- Second, a proposal for the immediate addition to the description of the NCs role (or for elements that exist, a stronger emphasis), the following functions: communication of all programme on-going and proposed activities to the respective CJs; elaboration with each CJ (and ideally with a larger group of judges, magistrates and court staff) of feedback on this communication; and presentation of any specific proposals they may have for future programme activities (not including proposals for the responsive fund)
- Third, to ensure NCs do not monopolize training opportunities, introduction of more specific policies on who will receive out-of-country training and how they will be selected, including the NC's responsibility, in collaboration with their CJs, for disseminating information on up-coming training.[19] As a general policy, and so long as NCs continue to meet periodically, they should not be candidates for training, except in exceptional circumstances. It does little good to train the same individual over and over again when others do not have this opportunity. The exceptional circumstances might include an NC's agreement to hold his/her own courses back home or for those NCs who are on their way to certification, completion of those courses. Otherwise, training should be extended to others and not limited to the NCs.
- A bit more discipline on the part of programme management in not using the NCs as stand-ins for the CJs or their courts, which they usually are not, and instead using, perhaps less frequent NC meetings to discuss programme logistics and develop information programmes for back-home dissemination.[20]

The purpose of these proposals, which should be discussed and decided in the March 2012 meetings, is to reverse some on-going negative trends, admittedly not evident in all cases, which have overall tended to make the NCs the owners of the programme and its activities. The author says this realizing it will be controversial and perhaps even offend some NCs, but these observations are not hers alone and in fact have been made and/or endorsed by others. In the slightly over a year more of programme life as of March 2012, adoption of all or most of these proposals should: 1) have an immediate impact on who participates in trainings; 2) allow (or force) a greater involvement by the Chief Justices in programme development; and 3) broaden knowledge of the programme, its activities, and its discussions to more members of each judiciary.

If there is a third stage programme, the entire National Coordinator role will require rethinking. Given the Chief Justices' many other responsibilities and overall short-staffing in most of the respective judiciaries, there clearly is a need for a local point of contact for the programme, the NC or some similar actor. However, beyond that statement, some of the following more radical alterations might be considered.

- The NC becomes a local coordinator, responsible for receiving communications, ensuring they are discussed with and responded to where necessary by the court (and the CJ) but is not used for regional meetings to discuss programme advances. Absent the travel opportunity, NCs should either be chosen because this is a logical part of their existing jobs or receive some other form of compensation. Given existing travel opportunities, the author does not take seriously current complaints by some NCs that they already deserve compensation, but if travel is limited or

[19] Programme management has already introduced more explicit criteria for participation in the TOT programme. This is an important first step that should be extended to all training. To facilitate this, a list of all trainees, their positions, and reasons for inclusions in each course could be developed and circulated among the 14 judiciaries.

[20] As Jennifer Ehmann stressed to the author in several communications, the NCs serve a vital role in handling much of the programme's administrative burden for which the Chief Justices do not have time. Were they to be eliminated, that role would have to be played by someone else.

eliminated, then their courts should consider compensating them for these additional responsibilities.

- The NCs continue to have regional or sub-regional meetings to handle programme logistical matters, but their participation will also be guided by and serve to transmit their judiciaries' national development plan against which programme activities are evaluated.21 Unless this power is explicitly delegated by each CJ, the NCs would not be able to "vote" on programme activities, but rather would discuss and exchange information on their courts' sense of where things ought to go.
- NCs would only operate locally and at a sub-regional level for these discussions, with all-PIC meetings pulling in the Chief Justices instead.
- NCs may be substituted by a series of court-appointed members who would participate in working groups on specific topics (e.g. court administration, indicators, etc.). These groups could be regional or sub-regional and would meet both physically and virtually. Participation would hinge on a court's engagement in a relevant project and on the member's responsibility for the latter. Advisors to the groups would also operate both virtually and by physical visits to projects or participation in occasional group meetings.

A regional programme does require something like the National Coordinators to perform the functions listed above, but these individuals should not become "the programme." In other regional programmes, such coordinators often function only at the national level, and if sent to regional meetings or trainings this is by virtue of whatever other hat they wear. Especially today, with the advantage of fairly good internet connections among the courts, the need for them to meet physically to carry out their basic role is very much reduced. Physical meetings of various types were important as the programme began, but their urgency is now debatable. However, as mentioned, if the NCs' travel wings are clipped, then they should have some sort of compensation from their courts for the work they will do, and be selected and retained for their ability to do it. Both programme management and the Chief Justices have been too willing to pass them a larger baton for reasons of convenience, but this has not been in the programme's best interests as it evolves. If not immediately, then as part of the design of any follow-on programme, both groups of actors might put more effort into direct communication with each other, and leave to the NCs the logistics and follow-up.

PROGRAMME MANAGEMENT AND ADMINISTRATION: OTHER ISSUES

To start it is worth mentioning that there were no complaints about programme management or administration forthcoming from the general meetings or from any of the interviews conducted by the author. The only exceptions involved some problems with travel, but these were minor and probably inevitable given transportation difficulties in the region. Thus the following comments are based on the author's own observations and past experience with other justice programmes elsewhere. They are for the most part directed at changes that might accompany a third phase programme as they would be difficult to effect within the anticipated life of the current one.

The first paper focused on the location of the programme management team, recommending that if the programme continues for another phase, it be shifted to a Pacific Island country. The author still believes this is a good idea, but will not spend more time here on its elaboration. Obviously, once Fiji exited (or was removed from) the programme, this idea became more problematic for the simple reasons that no other country offers its advantages as a within-region transportation hub. Still there are some good second best alternatives and they should be explored, as should the use of more regional consultants within the management team. Both suggestions are ownership issues, and while largely symbolic, symbolism has its

[21] This was apparently anticipated in the initial PJEP design, but never came to fruition. For this reason, it may not be a likely option now either. Where the national committees exist, they appear to be most active in helping select participants for training activities.

importance.[22] So long as a programme is located in Australia or New Zealand and staffed largely by citizens of those countries (or from farther afield), it will appear to be more a creature of the donors than of the regional peoples. Admittedly, placement within the region may run the risk of favouritism in appointments, but so long as the process is open and transparent, these should be easily combated. It also bears emphasizing that change of location makes little sense if the programme continues to be funded on a year-to-year basis. This modality is not recommended for several reasons, and one of them is the impracticality of setting up new offices when their continued existence is highly unpredictable.

Rather than continuing on the location theme, the current discussion focuses on another issue – strategic development and oversight and communication on these issues. The programme has an excellent system for communications on logistical matters, handled by the programme manager and his staff and relying largely on the National Coordinators. So long as its main focus was planning and conducting training, this was sufficient. However, as the programme moves into new areas, these other issues need to be addressed and thus someone must take responsibility for handling them. While most of what follows is intended for a third phase programme, it may be relevant to the final year or years of PJDP Phase 2, especially as regards preparation of a third stage proposal and of efforts to lay the base for its implementation. Some suggestions as to how these needs could be addressed are also added below.

Much of the discussion below revolves around communication, but this is communication of a different sort than what has been done (and very well) up till now. With only a part-time management team, programme communication has of necessity focused on logistics, using the National Coordinators as the principal point of contact in the partner countries. This may explain a certain amount of "mission creep" in the NC's work. Communication now should include substantive dialogue on problems, remedies, new trends, and advisor activities. This was the principal reason for suggesting in the first paper, that a third phase programme have a full or nearly-full time substantive director, among whose responsibilities, getting the word out, coordinating with and overseeing work of contractors, and eliciting input from the member countries would be key. The "Team Leader" (and education advisor) handles some of this, but his quarter-time status understandably limits how much he can do. Thus, either he or someone else should be hired at a level of effort allowing him/her to devote significantly more time to directing the strategic elements of the programme, monitoring and coordinating the various activities, identifying opportunities for cooperation with other donor programmes, and promoting more sustained communication among all participants on these themes, sometimes by email or phone, but also with periodic visits. A full-time director will raise programme costs, especially since this person would not do the current manager's work. Some of the suggestions made above would allow cuts in other areas (e.g. a lesser number of or perhaps no regional meetings for NCs). However, the programme manager and other members of the management team will have to continue at their current or possibly higher levels of effort, depending on the direction any future programme takes.

The responsibilities of the programme director should take several forms. While some of this is occurring already, the recommendation is that more be done, more systematically, and as a principal part of this person's work:

- More regular e-mail and phone communication with Chief Justices, National Coordinators, and any others involved in programme implementation within the PIC's. The purpose here is 1) to keep the programme within their range of vision; 2) elicit suggestions for or reactions to activities; and 3) discuss problems they may be facing or changes they are considering which might be worth introducing as themes for meetings, newsletters, or visits. According to programme management, communication with NCs is constant, but it appears to focus largely on training activities.
- Periodic visits to each of the PIC's to talk with Chief Justices and other judicial actors in situ. National coordinators could assist in arranging these meetings which could also be coordinated with

[22] Although higher or lower costs should not be the decisional criteria, especially as regards a new location they ought to be assessed.

programme activities scheduled in each country – but should not be conflated with the latter. That is to say the meetings, even if organized during the same visit, should be held separately, and not assumed to have occurred as part of the activity.

- Collaboration with the programme manager on production of the programme newsletter, with responsibilities for eliciting and reviewing contributions from individual PIC's and contracted advisors[23] as well as drafting his/her own column. While it might require more funding, efforts should be made to widen the distribution of the newsletter to those not directly involved in the programme, including NGOs, members of other branches of government, and other donors and to follow up with further communication and visits.
- Identification of, coordination with, and development of communication programmes for other donors active in the area. Especially if the regional programme is to complement their actions, it is important that communication flow freely in both directions. It apparently does not now. As the author noted earlier, her interviews with other donors often revealed they knew very little about PJDP and wanted to know more. Likewise, the programme needs better information on their activities so as to avoid duplicating them and to allow it to make use of resources they might make available.
- Identification of alternative funding sources for certain activities (and eventually for the programme itself). The director might also help individual PIC's identify sources for activities not financed under PJDP.
- Identification and development of new areas for programme activities
- More active supervision of and coordination with other contracted consultants, including efforts to foment conversations among them. Again the current Team Leader has done some of this, but his quarter-time status has constrained his efforts. Supervision does not mean interference or direction, but it does mean tracking what they are doing and promoting an on-going, multi-party conversation.[24] This is especially necessary because the advisors are often working/situated in different places and thus don't have the opportunity to interact a typical national programme would allow. This type of coordination will continue to be necessary even with a shift to regional advisors.
- Presentations to or meetings with other government actors in each PIC. This is offered as a suggestion only as it may not be welcomed by some Chief Justices, but it is a normal role for directors in justice programmes elsewhere and so merits consideration.

This lengthy list of activities should make it clear why this position merits a full-time appointee. It would be extremely difficult to carry out on a part-time basis (or at least less than three-quarter time). However, any programme requires that these functions be performed and they are still more important for one spanning so many countries and such a territorially large region and with tendencies to adding areas of action. One sign of the programme's success would be an eventual adoption of some of these responsibilities by programme participants themselves, but for this to happen, management must take the lead. The workload is so large that it might in fact be difficult for an advisor in a substantive area to take on these tasks as well. Ideally, the programme director is a Jack or Jill of all trades, knowing enough about each area and how they fit together to facilitate coordination and strategic orientation, but not necessarily knowing enough about any one to serve as the principal advisor there. In fact, significant expertise in one area can be a disadvantage as it may encourage an over-emphasis there.

[23] This is a suggestion made by one of the advisors, Matt Zurstrassen, to whom credit is due for this idea
[24] This is no reflection on the professional qualities of the present or any future advisors or their ability to operate independently. However, even highly qualified and very independent professionals can start down the wrong track, and moreover the programme would benefit from someone's following what they are doing so as to identify possibly synergies, redundancies, and areas where additional work would be useful. Also, this kind of communication and oversight would enhance coordination with other programmes.

For the remainder of PJDP phase 2, the contract of the current Team Leader might be expanded to allow him to take on more of these tasks. This would be especially desirable if a third phase programme will be designed and proposed. If his time is limited, or for some reason he is unavailable for what is needed, a second-best alternative would be to hire a short-term advisor to help with the planning, coordination of inputs, and dialogue with donors managing programmes to which PJDP "3" might be a complement.

CONCLUSIONS ON GOVERNANCE, MANAGEMENT AND ADMINISTRATION

For a third phase programme many details of these three elements will require rethinking. The initial design dates back to PJEP, and even there was never fully implemented (e.g. the failure to create or maintain national committees). In its current and even its original version it arguably no longer serves the programme's purposes well. There are a few suggested changes that might be reviewed in the March meetings and if accepted, initiated already:

- Giving a greater role to the Chief Justices in setting the course for the rest of the current programme and either eliminating or changing the composition of the PEC
- Reviewing and revising National Coordinators' responsibilities to ensure they are facilitating communication between their judiciaries and the programme, adequately disseminating information on the programme to their judiciaries back home; and broadening the potential for more participation in training in particular
- Fomenting more communication among the parties and between the programme and other interested actors, including other donors, within the limits imposed by a part-time management team.

Changes which cannot be made now can be discussed as a prelude to a potential third phase. Some of the suggestions forwarded will be very controversial, and should elicit a lively debate. Again they are not intended as a criticism of past practices, but simply as an argument that past practices never serve forever and that there is always room for future improvements. It is hoped they will be received in that light.

OPTION THREE: FUNDING ALTERNATIVES

Rather than options, the October paper focused on limitations – only two active donors in the region, with the "options" for a continuing regional programme thus being:

- Continue with MFAT
- Shift to AusAID
- Work out some collaboration between the two (as had been done before).

The fieldwork did not turn up other donors, bilateral or multilateral, who might be interested in a multi-dimensional programme covering so many countries. The others active in the region have historical or strategic interests in only a few countries (e. g. France, the United States), are limited to a few functional areas (the World Bank with small grant programmes in ADR and CDR/access), have withdrawn from justice in the Pacific (the ADB) or simply have few funds (the UNDP). While representatives of foundations were not interviewed, most of them devote their support to very specific areas – for example, the Open Society Justice Initiative (pre-trial detention, environmental law, and international tribunals); Hewlett Packard (legal education), or the Microsoft Foundation (automation). Donors still "doing justice" are also moving toward more targeted assistance (e.g. gender rights) and a "bottom up approach" (working with civil society and local communities on access issues). Over time the situation may change, but in the short run this seems highly unlikely.

Thus, the recommendations then and now are to focus on the two most active donors – MFAT and AusAID – both as regards emphasizing direct benefits from a regional programme and its contribution to any other regional and bi-lateral projects they are supporting. Donor enthusiasm for regional programmes depends on the utility they think they will get from them, and thus even maintaining current funding levels hinges on all parties making a case for those benefits. As noted in an earlier section, it would be well for proponents of a third stage to study and understand donor concerns, since donors in the end provide the funding. Where they believe the donors are ignoring some important areas, their strategy should be to demonstrate how these fit into the definition of activities worth financing.

Before proceeding the author will add one comment she wanted to make in the prior paper, but didn't, and is tempted to make more strongly now, but won't. This is simply that it makes no sense to fund a programme, and especially one promoting institutional development, on a year-to-year basis. This makes planning nearly impossible as one has to decide whether to go for whatever can be accomplished over the short run, or take ones chances on having more time to achieve something more important. It is understood that there are special circumstances explaining, but hardly justifying the stop-and-go development of the PJEP/PJDP sequence, but under these conditions it is a miracle the programme was able to achieve as much as it did. To the extent such incremental funding is explained by donors' uncertainty as to whether the programme will work, there are better ways to hedge their bets. The most obvious is to set a reasonable project lifetime and funding, but establish checkpoints with benchmarks to determine whether the rest of the funding will be provided. Management might be given reasonable time limits to comply with the benchmarks, and if they do not, the programme would be terminated. However, if they can meet the conditions more quickly they would get the extra funding as soon as they do. Although this short discussion is aimed at the donors, PIC participants might push the process ahead by developing their own recommendations as to candidate benchmarks, and this is obviously an area where a director charged with strategic development would also focus attention. In any event, setting of benchmarks should involve the participants so that they know and agree to the conditions.

In line with some of the discussions above, the rest of this section turns the implicit question on its head – not how to identify alternatives sources of funding, but rather how to develop proposals that will attract any funder. It starts with a few observations and suggestions:

- Current levels of programme funding are probably adequate for a minimal regional programme, but could be reallocated to allow a different and arguably more productive mix of activities and objectives.
- Some suggestions representing higher expenditures (e.g. the addition of a full-time programme director) might be partly compensated by cut-backs in others (e.g. fewer National Coordinator meetings, possibly a replacement of the PEC by periodic meetings of all Chief Justices). However, for maximum efficacy, a regional programme will require some increase over current funding levels. Justifying this investment requires that participants be more explicit about the greater direct and indirect benefits to citizens.
- The current training model (i.e. regional courses in which members of all PICs participate) has reached its logical conclusion. Most training will now have to be done in country (which will still be expensive) and the programme's emphasis should shift more decisively to building training capacity there. Development of training modules (including on-line versions)[25] should continue, but this might be done less expensively – for example, developed through in-country training or and then presented for region-wide replication.
- The activities currently conducted by the international advisors should be aimed at developing tools and pilots for replication in individual countries. Effective replication will still require some technical

[25] As suggested by J. Ehmann

assistance, and thus more funding, but in some cases (e.g. user and potential user surveys) this need not be extensive. In others (court administrative tools, software applications and statistical packages) costs may be higher, depending on the sophistication of what is designed.

- More use could be made of virtual meetings and internet discussions, linking advisors to those working in specific areas. This could reduce the need for advisors' physical presence, limiting it to the development of new pilot programmes or to the resolution of specific problems. It also would obviously cut back on the need for some regional meetings.
- Replication efforts might also be coordinated with bi-lateral programmes, but this should be done up front – that is to say, programme management needs to be aware of what bi-laterals are already doing before launching into the development of its own tools.

These comments are made on the assumption that programme financing, if available for a third phase, will not be substantially more generous than it already is, and that donor willingness to finance this extension will necessarily hinge on a proposal that makes economic sense – visible and feasible impacts for the moneys invested. A 30 percent increase (to AUS $2.5 million a year) would be desirable, but will have to be justified in terms of greater impacts. To continue at its current level or with the suggested increase, the programme will have to emphasize its coordination with bi-lateral and related regional efforts, relying on them to either replicate what it develops or to provide technical assistance it will not itself fund. One obvious category for the latter is gender violence and related themes. PJDP already has a pretty good track record at including women among its participants and at adding gender components to its training activities, but given the presence of other donor-funded programmes in these areas, it makes little sense for it to stake out a more formal component here. It should instead attempt to use their resources in its own activities and would be ill-advised to hire its own gender advisor when it could certainly borrow one as needed from the others. Similarly if another programme has already developed a simple registry or case management software that could be used by other judiciaries, there would be no point in having PJDP do the same – it simply needs to verify whether this is the case.

CONCLUSIONS ON FUNDING

At present it appears that "alternatives for programme funding" are fairly limited – either to New Zealand, Australia, or the two combined as they are the most active donors in the region, the only ones still expanding their "multi-dimensional" justice programmes, and those most likely to benefit from what a regional programme can add to their efforts (complementarity). This was already argued in the first option paper and nothing has since caused the author to revise her opinion. The difference in this paper is the insistence that PJDP members, if they want another phase of the programme, come to terms with donor priorities – especially as regards impacts on service improvement. For a regional programme, the impacts will be indirect, but there are clearly certain activities where the connections are easier to demonstrate and which thus merit greater emphasis.

As regards funding there is something else the regional programme could do and which was briefly mentioned under the discussion of management responsibilities. The programme director could also help individual countries identify additional sources of funding for their own efforts and especially for the replication of assistance tools developed under PJDP. Added to this is a potential role in lobbying national governments for more funding for this purpose, since in the end they should be responsible for future developments, beyond the seeds planted with the help of the donors.

OPTION FOUR: POSSIBLE LINKAGES WITH OTHER REGIONAL INSTITUTIONS

The options provided on location in the October 2011 paper were as follows:

- Leave as is – recommended if the programme will end soon
- Create a separate regional headquarters – not recommended even if the programme continues through a third phase because of costs and lack of post-programme sustainability
- Place the programme within an existing regional institution – recommended only if a follow-up program is implemented.

As discussed in the first option paper, there were some volunteers for this role encompassed in the third alternative (both the Pacific Forum Secretariat and a few countries through their law schools or temporary offices set up to manage their bi-lateral programmes). Individual advisors also suggested strengthening of linkages to the Pacific Judicial Conference (some linkages already exist), but it is not clear that this would serve any purpose given that the membership is broader and the meetings only held biennially. The only advantage might be the availability of funding, through whoever finances the Conference's meetings, to allow the PJDP to piggyback on them. It also merits mention that some candidates (e.g. the National Judicial College of Australia and the Institute of Judicial Studies in Wellington, New Zealand) seemed to exclude themselves for lack of funding among other reasons. The New South Wales Judicial Commission showed an interest in collaboration with some activities (especially development of IT) but not the broader role. The argument against any of the latter suggestions is that the location is hardly within the PIC region, and thus adds to the donor, not the partner sense of ownership.

There was little discussion of and no decisions on these options in the October meetings. Since the author had no opportunity to do further fieldwork, she has no further variations on these themes or additional suggestions. Nonetheless, they might merit revisiting in the March meetings. Rather than repeat the discussion from the earlier paper, a still different theme will be introduced, as in the case of some of the other option areas. This is solely the product of the author's own reflections on the theme and does not benefit from suggestions from PIC participants or from other advisors. This is not to say that they might not have contributed, but only that the topic was not raised with them.

This discussion starts with the argument that one of the purposes of a regional programme should/could be to create a permanent forum (virtual or physical) for PIC members to exchange views on their problems and experiences, and so to develop a set of shared policies and models for their future development. This is not going to happen unless the programme consciously promotes these exchanges (see above discussions, especially in the section on management), but if it does, there is still the issue of how these exchanges can be maintained post-programme. **This is thus not a question of PJDP "sustainability" but rather of that of some of its impacts.** The longer the programme exists, the greater the chances of the exchanges continuing, but it would be foolish to trust simply in habits formed over a few years to be sufficient. In an increasingly virtual world, having a physical home or secretariat might seem less important, but physical organization still counts – as anyone who has participated in an email chat that eventually lost steam can easily attest. **The issue then becomes not one of where to place the programme while it continues but rather how to prepare the "regional forum" for post-programme survival.**

What is needed is arguably not large – a small group to manage and encourage email exchanges, produce a publication, which can also be distributed virtually, and seek funding for occasional meetings. This is more than a website and webmaster, but considerably less than it takes to run PJDP. The group could be physically located anywhere, and its financing could well be independent of the physical or organizational location. Its core staff – at least a director (possibly not full time) and a secretary – would have to be paid, but much of the input could be invited and voluntary.

There are several possibilities here, and since the author has not fully explored any of them, they are simply presented as suggestions for consideration by the interested parties – donors, PICs, and programme management. Funding is also discussed because it will be required, not for the programme but for this highly desirable off shoot to continue after the programme ends.

- A small, donor-funded forum secretariat could be appended to one of the candidates already suggested – either the Pacific Judicial Conference or the Pacific Forum Secretariat or perhaps to one of the law schools. Temporary bi-lateral implementation bodies are not recommended as they are slated for eventual disappearance. At a minimum this would require a website and a webmaster, but somewhat more substantial staffing and funding is recommended.
- Countries could finance the costs with their own contributions. However, even in a richer region (Latin America) this has not proved practical. When the first Latin American regional institute, ILANUD, sought to survive on the basis of contributions from regional beneficiaries, it discovered even the wealthy would not provide funding. Its successor, CEJA, has not even tried, relying, like ILANUD on contributions from the country where it sits (and thus offering to the latter the privilege of providing most staff) and from taking on donor projects. In a region like the South Pacific, reliance on member contributions is likely to be still less feasible.
- Suggestions from another advisor (Kerin Pillans) about the promotion of national judicial associations might be combined with that of a regional forum. If the national or a regional association could be sponsored by donors or by an Australian or New Zealand counterpart that might make accessible sufficient funding for a small staff, and the publication of a virtual journal. The author was reminded of this on receiving a copy of the American Judicature Society's journal; despite being neither a lawyer nor a judge, she belongs to the society (which doesn't restrict membership) and her dues help support its existence. Whether there are other sources of funding remains to be seen, but over time this is an excellent model.
- Programme management might also explore the availability of funding from various foundations – the Microsoft, Gates, and the Hewlett Packard Foundations are US possibilities, but there should be other such foundations within the region. Funding from such sources is rarely permanent and they are not likely candidates to finance PJDP, but they might be willing to finance this smaller forum for five or even ten years after which alternatives would have to be found – possibly including, by that time, member contributions.

In short, placement with another institutional home is most important as an option for **post-programme activities.** For the development of PJDP in its current form (financing a number of donor-funded assistance activities of various types) it offers fewer advantages -- housing and possibly a few other services, although probably not funding. Should a third stage programme move into the region, it might ease the transition to the post-programme organization discussed here although that is not necessarily the case. However, whatever is decided over the shorter run, a third phase programme in particular should contemplate early on the options for what follows (once PJDP ends) and possibly take some steps in that direction, regardless of where it itself is housed. Finally, taking a lesson from the PACLII experience, any linkage to another institution should not preclude the new forum's ability to raise and receive its own funding, and this also applies to an earlier decision (under a PJDP 3) to seek a similar regional partnership.

CONCLUSIONS ON REGIONAL LINKAGES

There is little more to be said here, and still less requiring immediate decisions. Participants might start looking ahead to post-programme developments, whether they see these coming in one or several years. Much of this discussion hinges on their answers to the questions posed in the prior sections. If the participants accept, as the author has argued, that a regional programme has value as a forum for

discussing common problems and developing models and solutions, then it makes sense to begin looking ahead to how this function can extend beyond the PJDP cycle. If they do not, then they might want to consider the discussion from the prior paper as to temporary linkages with other regional institutions, as a possible home for a third stage, but not for anything beyond. In any event, there is ample time for any of these variations to be considered, and most of the up-coming discussions might be better aimed elsewhere – at what is most urgently needed now.

CONCLUSIONS

As with the initial paper, the purpose of the current one is to lay out issues for consideration by the groups meeting, this time in Samoa in March 2012, by the actual and potential donors, and by programme management. Neither paper presumed to evaluate programme achievements to date. It bears repeating, however, that the author is convinced that they have been significant. The documents instead aimed at suggesting changes that might be made to improve performance over the time remaining in the current programme and as part of proposals for a third phase. Both sets of suggestions should be discussed in the March 2012 meetings, but decisions are only required on those to be enacted immediately as a means of improving the current programme's likely achievements and possibly setting a better base (and justification) for another phase. The others will require more time and more careful considerations of their effects, in light of what is also recommended – a restatement of programme aims for any follow-on effort.

This restatement is largely needed because of the PJEP/PJDP sequence's successful achievement of its implicit and explicit aims -- sensitizing the region's judiciaries to the importance of judicial education for a variety of judicial actors, providing some of the needed training, and developing models and capacity for future development, with or without the programme; creating a forum for regional judiciaries to discuss their common and unique challenges and problems; exposing them to activities beyond training that would improve their performance and especially their service delivery; and calling attention to a variety of access issues and the need to consider the potential for both state and traditional mechanisms to address them. The remaining question is whether there is more a regional programme could do, especially but not solely because of likely funding limitations. If the regional programme ever contemplated its ability to "fix justice" in the region (and there is little indication that it did), it is increasingly clear that this is beyond the possible. Further improvements will require financial and technical support from a variety of sources – most notably other donor bi-lateral (and some related regional) efforts and the countries' own treasuries. However, a regional programme could usefully complement this process, by engaging affected courts in discussions of what is needed, possible, and desirable; by providing models for possible replication; and by encouraging direct exchanges among them. Reorienting the regional programme to serve these purposes will take additional effort from all those involved, and the immediate pay-offs may be less than those forthcoming from negotiating a bi-lateral. Thus the final, and principal issue under debate is whether the countries and donors are interested in placing some of their efforts and resources here. That is their decision to make.

REFERENCES

Note: the following only lists references cited in this text. A longer list of references used for the first paper and certainly important for the current one is provided in the former. Forthcoming, viewed in draft.

Cox, Marcus, Emele Duituturaga, and Eric Scheye. 2011. *Discussion Paper: Emerging Findings from the ODE Law and Justice Evaluation*. AusAID, Office of Development Effectiveness.

Hammergren, Linn. 2007*. Envisioning Reform: Improving Judicial Performance in Latin America*. University Park: Penn State.

McGovern, James, 2011, "Monitoring and Technical Advisor Report to the Programme Executive Committee of the Pacific Judicial Development Programme," June 22.

Peerenboom, Randolph. 2005. "Human Rights and Rule of Law: What's the Relationship?" *Georgetown Journal of International Law*, 36:3: 809-945.