



PACIFIC JUDICIAL STRENGTHENING INITIATIVE

STRATEGY PAPER

COOK ISLAND INDICATORS: ALIGNMENT, RELEVANCE, SUSTAINABILITY

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**FEDERAL COURT
OF AUSTRALIA**



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List of Acronyms

AR	Annual Report
CII	Cook Island Indicators
CPI	PIC Core Court Performance Indicators
EU	European Union
ICT	Information, Communication Technology
IFCE	International Framework for Court Excellence
NZ MFAT	New Zealand Ministry of Foreign Affairs and Trade
PIC	Pacific Island Country
PJEP	Pacific Judicial Education Programme
PJDP	Pacific Judicial Development Programme
PJSI	Pacific Judicial Strengthening Initiative
PNG	Papua New Guinea
SDG	Sustainable Development Goals
UN	United Nations
UNCAC	UN Convention Against Corruption
UNCEDAW	UN Convention on the Elimination of All Forms of Discrimination against Women
UNCPRD	UN Convention on the Rights of Persons with a Disability
UNCRC	UN Convention on the Rights of the Child
WB	World Bank

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Executive Summary

The purpose of this strategy paper is to review whether there is any need to further integrate the Cook Island Indicators (CII) with other global court or justice performance systems including looking at how to build on the CII and how to promote their relevance beyond the Pacific Judicial Strengthening Initiative (PJSI).

The development of the CII in 2011,¹ together with the ongoing support for reporting against the CII annually, have established solid foundations; shifting attitudes towards key concepts relating to the courts' transparency and public accountability, as well as driving significant behaviour change across the partner courts of the region.

At this time, it is recommended that reporting against the CII be consolidated, rather than expanded. The reasons for this are twofold. First, the five thematic areas covered by the CII provide a sufficient basis for effective public accountability and transparency; and they continue to represent the essential elements of justice as identified by the Chief Justices of the partner courts. Second, there is significant diversity in capacity with respect to data management, effective reporting and accountability across partner courts; very few courts consistently report against *all* 15 CII annually (or regularly through other media) and all the partner courts could significantly improve the quality of their reporting against the CII, building on strengthened data management, and providing better and more accessible analysis of information to the public.

Thus, this paper provides a practical approach that focuses on the consolidation and embedding of performance and accountability gains achieved by the partner courts with the support of PJSI (and formerly PJDP) to date, by strengthening capacity, systems and processes. This is intended to ensure solid substantive, procedural and capacity foundations on which to build any future expansion of the CII, as a regional performance and accountability framework, that is capable of becoming increasingly self-sustained.

If alignment of the CII with global frameworks is considered in the future, consideration of expansion should focus on whether key additional *thematic areas* bear significant relevance for performance, accountability and transparency of the partner courts given their specific regional context.² This must be followed by the development of tailored, measurable indicators that are relevant and appropriate through a robust and participatory process.³ In addition to the 15 CII, it should be noted that seven PIC Core Court Performance Indicators (CPI) have also been developed collaboratively with partner courts and are the focus of support for the management of court efficiency.

¹ Annex A contains the list of 15 Cook Island Indicators

² For example the current CII and therefore Annual Reports that report against all 15 CII cover the following thematic areas: case management, accessibility of courts, complaints handling and feedback, judicial and court staff resources, and transparency which whilst developed with a good understanding of the existing international frameworks is based on the International Framework for Court Excellence (IFCE) which is 'built around collective court ideals such as impartiality, fairness, accountability, transparency and timeliness' (M. O'Brien, April 2018). The European Commission for Efficiency of Justice (CEPEJ) and the EU Justice Scoreboard have their origin in human rights but focus on efficiency and timeliness, quality of the management of judicial work, enforcement and the use of mediation. The Rule of Law Index from the World Justice Project is a quantitative assessment tool designed to provide a detailed picture of the extent to which countries adhere to rule of law in practice and so has a scope beyond the judiciary but includes indicators relevant to courts (those relevant to PICs were well summarised in M. O'Brien's paper of April 2018).

³ Simply lifting indicators from international frameworks risks application of indicators that are either inappropriate, cannot be measured, or in the absence of other information do not provide an accurate representation. See section 6 on the World Bank Doing Business indicators.

In particular, the following recommendations are made:

a. Key Recommendations

1. No additional themes or indicators be added to the CII at this time, for the purpose of aligning the CII with other global frameworks for measuring court performance and trends. The focus should be on consolidation and sustainability.
2. The data management processes for CII and CPI should be and are integrated.⁴ This should be strengthened. However, the two sets of indicators, represented by the CII and the CPI, should not formally become one under the CII for the purpose of *external* reporting and accountability. The CPI have been developed to support *internal* performance monitoring, oversight and management. The CII have been developed primarily to support *external* accountability, transparency and stakeholder engagement.⁵
3. The focus of any future investment in partner courts on efficiency, performance and accountability by MFAT or other interested donors would be best on data management; monitoring and analysing data; increasing age, sex and disability disaggregation of data; building the effective use of data for decision-making and planning; strengthening reporting and communicating; and *thereafter* considering possible thematic expansion of the CII.
4. Annual reporting should be built on over time to empower partner courts to report more broadly about their progress and their contribution, *primarily* against the core 15 (+5)⁶ CII but *increasingly* incorporating other data of relevance to their beneficiaries, users and observers. In addition to increasing transparency, this could streamline the courts' efforts in responding to the increasing demand for reporting placed on courts by a variety of observers. This would provide a direct benefit to those responsible for reporting and may be a motivator for continued annual reporting where it is not yet strongly embedded.
5. Given the current level of collegiality and collaboration between partner courts, it may be possible for the Pacific Island courts, to advocate as a region directly with organisations whose observations and rankings have a significant impact on partner courts and or Pacific Island Countries. The World Bank's (WB) *Doing Business* indicators and rankings are one such example where the indicators are not fit-for-purpose for the Pacific and yet the resultant rankings have a significant impact on potential investors and policy makers.

b. Technical Recommendations

6. Should partner courts wish to strengthen the alignment of the CII and their accountability for court performance to other global measures in the future, it is **not** recommended that any international frameworks be adopted in their entirety. An approach to future alignment with international frameworks should build on the approach taken for development of the CII and might include the following steps:
 - a. Review of global performance frameworks as a comparison for the CII

⁴ The Efficiency, Accountability and ICT Advisers have undertaken two Court Data Management workshops in PNG and Vanuatu where they were able to demonstrate how the internal court reporting is part of a cycle that then provides the data that can be incorporated into external Annual Reporting (as is represented by the diagram on p19 below which was developed for the Auckland Chief Justice meeting).

⁵ Whilst also promoting fundamental information about performance in a wholistic sense that would enable judicial leaders to make more informed decisions about objectives related to the thematic areas

⁶ These refer to the 15 CII developed in 2011 and the additional 5 indicators recommended in the Court Performance Planning and Measurement Strategy Paper in 2018, endorsed by the Chief Justices.

- b. Consideration of whether there are key additional thematic areas of accountability that are relevant to the Pacific or reflect the Pacific's current priorities.
 - c. Agreement on the themes (or further indicators to existing themes) that are to be added to the regional framework represented by the CII
 - d. Development of relevant, appropriate, measurable indicators for new themes through a process that is as participatory and robust as the process used to develop the original 15 CII.
7. Future assistance should support a process of periodic review of the CII and consideration of global performance frameworks which could then facilitate its increasing absorption into an appropriate independent regional mechanism (such as the Pacific Judicial Conference).
8. The partner courts could be supported to develop an aspirational plan for the strengthening of public accountability over time which would allow for the current disparity in capacity and resources (including case management systems) between partner courts. This would include a more expansive view of annual reporting (see section 5) as well as progressive increase in indicators used to measure public accountability, moving from the current 15 CII, adding the five indicators recommended in 2018, increasing disaggregation of data, adding indicators to existing themes, or adding further themes and indicators of accountability (see section 4.1).
9. Should a regional program of support to partner courts continue to be supported by MFAT or other interested donors, there may be an opportunity to revisit the theory of change and program logic. This could focus on strengthening the links between efficiency, performance management, leadership and effective accountability and transparency to develop a more integrated program delivery model. This would strengthen the progress towards and sustainability of outcomes, by supporting those outcomes in a multifaceted and grounded way.

1.0 Purpose

The purpose of this strategy paper is to:

“... further integrate Cook Island Indicators with other global court / justice performance systems. The Strategy Paper will look to build on the Cook Island Indicators and how to promote their relevance beyond PJSI. Specifically, the Strategy Paper will synthesise the:

- *CII and Trend Reports (i.e. how well are Courts responding to meeting these indicators);*
- *cross-over between CII and global court / justice performance systems (such as World Justice Project’s Rule of Law Index; Sustainable Development Goals; Justice for the Poor; IFCE; etc.);*
- *outcomes of the Performance Framework Adviser’s activities under PJSI Phase I; and*
- *Strategies / next steps to promote the integration of CII and related data collection with other global court / justice performance systems.”⁷*

2.0 Background

2.1 PJSI’s Accountability Project

In 2011 there was no judicial and court baseline data that could be applied across the region; no clear understanding about how judicial and court baseline data could be used to improve the administration of justice;⁸ one of fourteen partner courts was regularly producing an annual report (AR) that was publicly available in the year following the reporting period; and no partner courts were reporting publicly on court performance standards and their achievement.⁹ PJSI’S Accountability Adviser, worked closely with partner courts to develop a tailored regional framework of indicators against which partner courts could build their accountability, transparency and dialogue with their stakeholders within the context of existing international frameworks. At the National Coordinators leadership meeting held in the Cook Islands in June 2011, the key court performance areas were considered and a list developed that was then sent to Chief Justices for their review and comment. The 15 indicators selected were then chosen by PJDP judicial counterparts.¹⁰

By 2018, judiciaries in 13 of the 14 PJSI countries produced or contributed to an Annual Report. Nine of the 14 PJSI countries (64%) produced or contributed to an AR in the year immediately following the reporting period and six out of the 14 PJSI countries (43%) make this AR publicly available in the year immediately following the reporting period.¹¹ Smaller partner judiciaries have also maintained their commitment to annual reporting and have increasingly reported since 2011.¹² The result has been significant progress in transparency to the public over the last nine years of PJDP and PJSI support.

⁷ PJSI 2-Year Extension Activity Plan; June 2019-May 2021, Terms of Reference: Global Justice Performance Systems Adviser which is provided in full in Annex B

⁸ PJDP 2011 Court Baseline Report, p12 (Baseline report)

⁹ Baseline Report, p26

¹⁰ PJDP 2012 Trend Report, p5

¹¹ PJSI 2018 Court Trend Report, p8

¹² *ibid*

Perhaps even more important, and not immediately obvious from the quantitative changes highlighted in the PJSI and PJDP trend reports¹³ are the underlying attitudinal shifts that have been seeded and supported by this initiative. The understanding of the need to be accountable to and collaborate with stakeholders has only grown over the nine years. The dialogue over the trajectory of the initiative has shifted from a discussion regarding the justification for public reporting and accountability to a discussion of **how** to effectively and reliably collect the data and thereafter analyse and present the data simply, clearly and accessibly. The trust and collegiality that has been built between the partner courts, their Chief Justices and court staff has allowed a consensus-based shift in attitude that is supportive of accountability and transparency as a principle. This is demonstrable both through the nature of discussion at regional meetings, but also through the changes in behaviour with respect to information management and annual reporting. The importance of accessibility as a key requirement for the effective delivery of justice has become increasingly well understood, supported and championed. Additionally, there has been positive feedback by some courts with respect to the constructive impact of the annual reflection process engendered by the necessity for annual reporting. The transparency regarding aspects of court performance has also contributed to supporting substantive changes. For example, an increasing number of courts have a complaints and feedback process that is publicly available and are also providing increasing transparency regarding the outcomes of complaints.¹⁴ Some partner courts have received positive feedback from other arms of government, including the Ministry of Finance, as well as from civil society organisations.

Despite the significant progress and shifting attitudes, however, some of the five thematic areas continue to be challenging for some partner courts to report on, and only two courts report against all 15 of the CII. There also continue to be opportunities to improve the reliability of data and the quality of its analysis and reporting.

2.2 International Frameworks

Some partner courts have adopted modified versions of the International Framework for Court Excellence (IFCE) Global Measures¹⁵ which extends data collection beyond those of the CII.¹⁶

The *PJSI Court Performance Planning and Measurement Strategy Paper* (April 2018) provides a detailed comparison table of five different models of justice and court performance indicators (being IFCE (Global Measures) combined with CourTools, EU (CEPEJ and EU Justice scoreboard) Rule of Law Index World Justice Project measures and World Bank Doing Business measures¹⁷). That comparison table demonstrates that the thematic areas against which public accountability is generally provided, whilst not identical, fall into common areas most of which are set out in the figure below. The indicators used to measure court performance in these thematic areas may vary and need to be tailored to the particular courts. This means, for example, that whilst the IFCE and other global frameworks may have the same thematic areas as the CII, they may

¹³ PJDP 2012 Court Trend Report, PJDP 2014 Court Trend Report, PJSI Court Trend Report

¹⁴ 2018 Court Trend Report, p35

¹⁵ Republic of Marshall Islands, Palau and Federated States of Micronesia have all adopted modified versions of the International Framework of Court Excellence Global Measures.

¹⁶ Notably the CII were based on thematic areas covered by the IFCE and to that extent are thematically aligned (see figure 1) however there are additional indicators under IFCE for some thematic areas. Palau and the Marshall Islands have been ahead of other partner courts in terms of reporting since the baseline was taken in 2011 and have made individual decisions with FSM as well to report on additional indicators than is required by the CII.

¹⁷ See section 4.5 at p13-15

seek to have courts measure their performance against more indicators (under those specific thematic areas) and sometimes indicators that are not relevant or appropriate for this region.

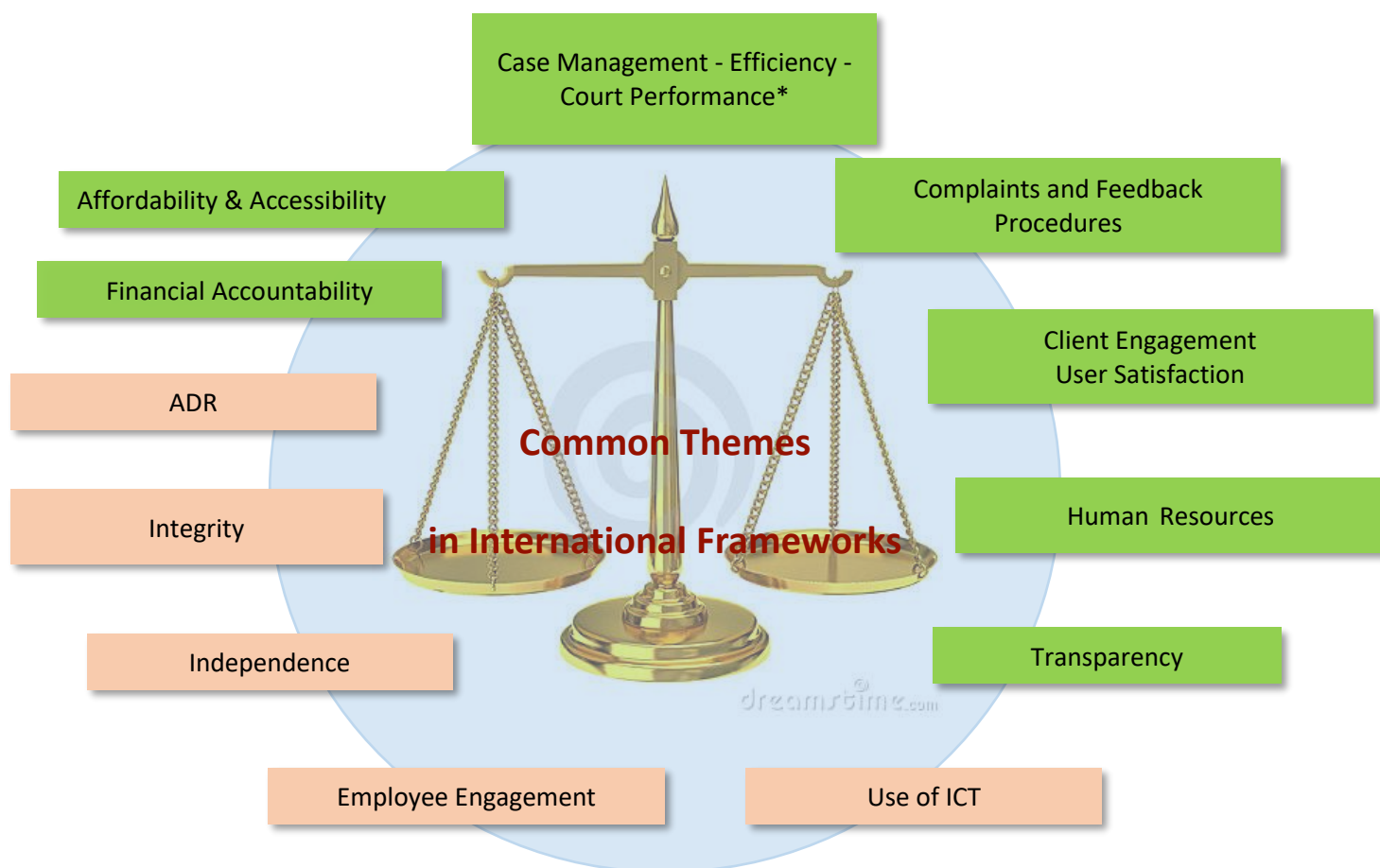


Figure 1: Common Themes in International Frameworks

The CII provide accountability against the thematic areas in **green**

Other international frameworks in addition to the thematic areas in **green** sometimes include the thematic areas shown in **pink** (See comparison table pp13-15 of the Performance Planning and Measurement Strategy Paper (2018)).

*PJSI uses the term 'court performance' with respect to its seven core court performance indicators used to support the monitoring of court efficiency and productivity while the international frameworks generally refer to the whole suite of indicators being court performance indicators and those more aligned with the work of the Efficiency Adviser and ICT Adviser as being case management indicators.

Note: the PJSI annual report toolkit does include reporting on resources and budget available to the court.

It remains the intention of the Chief Justices that the CII represent the essential data that jurisdictions, whether large or small, have the capacity to collect, analyse and present in their ARs. Currently not all courts are capable of reporting reliably and consistently well across all 15 CII. An obligatory expansion of the data sets to be collected and reported against would seem premature at this time. The greater complexity of other international frameworks is likely to

require significant investment of resources and capacity, with the possibility of an increase in data but no increase in the quality or reliability of that data or reporting until capacity is built in the data management, analysis and reporting. Effort would be better targeted in these areas in the immediate term (see also section 4.3 below).

3.0 Alignment

3.1 Development of the Cook Island Indicators

The process used to develop the CII looked at the mission and vision statements of the 14 Pacific Island Countries (PICs, then members of PJDP) to draw out their core elements.¹⁸ These were found to reflect “qualities that are commonly considered to be integral to the judicial function.”¹⁹ The key stakeholders of the partner-courts and the common barriers faced in accessing state justice were considered. Then building on good international practice and an understanding of current and future capacity, the adviser worked collaboratively with the partner courts²⁰ to confirm the key areas or themes of public accountability. This resulted in the five areas currently found in the CII (being case management, accessibility and affordability, feedback and complaints, human resources and transparency). Once those themes were identified and agreed, indicators to measure progress against these five themes were then developed through a collaborative, participatory process to ensure that they were relevant and appropriate and could be measured by all the courts despite their differences. “The Cook Island Indicators were chosen by Chief Justices [of the partner courts] as they represented essential data that jurisdictions, whether large or small, should ideally have the capacity to collect, analyse and present in their annual reports.”²¹

The ultimate aim of the support provided by PJSI with respect to the CII was to “engage with Chief Justices on ways to build the capacity of courts in the Pacific region to publish quality court annual reports that are accessible to the public.”²²

3.2 An Approach to Future Alignment

Whilst it is not recommended that the CII be expanded to align with global measures now, this section outlines an approach for such an expansion of the CII when that becomes appropriate. When partner courts do wish to strengthen the alignment of the CII and their accountability for court performance to other global measures by expanding the CII at some point in the future, it is not recommended that any international framework be adopted in their entirety. Lifting a framework from elsewhere in its entirety will result in ill-fitting indicators of court performance for the Pacific.²³ Instead, it is recommended that partner courts identify the additional themes against which they wish to provide public accountability, and then tailor appropriate indicators or measures to those themes as they did for the CII.

¹⁸ Baseline report, p8

¹⁹ Baseline report, p22

²⁰ Through their National Coordinators and ultimately with the endorsement of the Chief Justices.

²¹ PJSD 2018 Court Trend Report, Foreword

²² Baseline report, p9

²³ For example, use of indicators such as availability of formal alternative dispute resolution mechanisms, availability of specialised courts, number of citizens selected for jury service, ICT systems used by courts, training of judicial officers.

It is recommended that should partner courts wish to expand the CII the following process be followed:

- ◇ Review global performance frameworks as a comparison for the CII²⁴
- ◇ Consider if there are key thematic areas of public accountability that are relevant to the Pacific or reflect the Pacific's current priorities (and consider if there are additional appropriate indicators for existing themes that should be added to deepen accountability against currently existing themes.)
- ◇ Agree on the *themes* that are to be added to the CII as the regional framework
- ◇ Develop relevant, appropriate, measurable *indicators* through a process that is as participatory and robust as the process used to develop the original 15 CII.

Over time the partner courts might be supported to establish a process for regular reflection on international best practice and thinking with respect to court performance frameworks and accountability; to allow for the review of the thematic areas that are currently covered by the CII and what would be appropriate for region. This could be incorporated into program support and ultimately become part of a sustainable ongoing mechanism (see section 8 below).

In addition to ensuring the relevance of both themes and indicators for measuring progress of court performance, a robust collaborative process for their development and adoption has the advantage of supporting a consistent understanding together with greater ownership and sustainability. It has also tended in the past to support consensus-based progress towards increased transparency and accountability over time.

4.0 Cook Island Indicators

4.1 The Current 15 CII

At this time, it is recommended that reporting against the CII be consolidated, rather than expanded. Additional themes or indicators should not be added to the CII at this time, for the purpose of aligning the CII with other global frameworks for measuring court performance.

The reasons for this are twofold. First, the five thematic areas covered by the CII provide a sufficient basis for effective public accountability and transparency; they continue to represent the essential elements of justice as identified by the Chief Justices of the partner courts; and when compared with other global court performance frameworks there are no additional themes that would seem to require immediate incorporation. Second, there is significant diversity in capacity with respect to data management, effective reporting and accountability across partner courts; very few courts consistently report against *all* 15 CII annually (or regularly through other media) and all the partner courts could significantly improve the quality of their

²⁴ This has been done in some detail in the Court Performance Planning and Measurement Strategy Paper (2018). It may include additional themes that other frameworks consider relevant, as well as the indicators that are used to measure progress against certain themes. It may be the case for example, that the partner courts are able to measure additional indicators for themes they have already endorsed or that they are able to provide more complex or detailed data with respect to some existing themes (for example, through the disaggregation of data) in which case if there is consensus that this could or should be achievable for *all* partner courts then these additional indicators could be added.

reporting against the CII, building on strengthened data management, and providing better and more accessible analysis of information to the public.

Given the effort that is required to build capacity in data management, monitoring, analysis and reporting, there is unlikely to be appetite across partner courts to expand on the data that is to be collected at this time.

Instead the focus for the next 4-5 years should be on consolidating and embedding the outcomes achieved with respect to performance and accountability so far, thereby strengthening and deepening the transparency and accountability achieved by partner courts across the region.

In summary this is because:

- ◇ there is already significant alignment with key themes of international accountability for court performance (see figure 1).
- ◇ there is no uniform capacity across all partner courts to report effectively against all 15 CII annually, that is, not all partner courts are reporting publicly against all 15 CII for the year immediately past every year.
- ◇ The thematic areas currently included within the 15 CII, if reported against well, provide effective essential data to support a good level of transparency and accountability to stakeholders and users in the context of the Pacific.
- ◇ Partner courts are currently focusing on strengthening their capacity for data capture, collection, analysis, monitoring and reporting, all of which will support more effective reporting and improve the quality of reports and accountability.
- ◇ Partner courts are currently focusing on strengthening their capacity to capture, analyse and report on key sex, age and disability disaggregated data which are highly pertinent to users, stakeholders, interest groups and observers.
- ◇ Partner courts, with the support of the Efficiency Adviser and ICT Adviser, are focusing on building their capacities to collect, analyse and monitor seven key CPIs (see section 4.2 below) to improve court management systems and actual performance.
- ◇ Partner courts, with the support of the Accountability Adviser, are improving the quality and accessibility of their reporting to the public.
- ◇ There has been limited uptake to date of the additional indicators recommended in the *Court Performance Planning and Measurement Strategy Paper* which is perhaps, indicative of the fact that the current focus is on improving internal capacity (as outlined in the points above) which will eventually support *better* accountability, rather than increasing the current number of indicators, and therefore data that needs to be collected.
- ◇ Those partner courts who are willing and able, may of course, adopt additional thematic areas and indicators individually (as some have done) but it would be premature to formally adopt more indicators for the region as a whole.

Progressive steps which could be taken preparatory to any expansion of the CII are represented by the figure 2 below. See also section 4.3 below for greater detail on each step.



Figure 2: Steps Prior to Expansion of the CII

Partner courts of course have the discretion to expand on those core foundational indicators whenever demand requires and capacity and data permit. Some courts have already started to report against the additional five indicators that were recommended in the *Court Performance Planning and Measurement Strategy Paper* and subsequently approved by the Chief Justices of the partner courts.²⁵ It should not yet be formally included under a CII+ to report against more indicators for the reasons set out in section 4.1 above. This accords with current feedback.²⁶ Nevertheless, the partner courts could be supported to develop an aspirational plan for the strengthening of public accountability over time which could be reviewed periodically (see also section 8 on a mechanism for review).

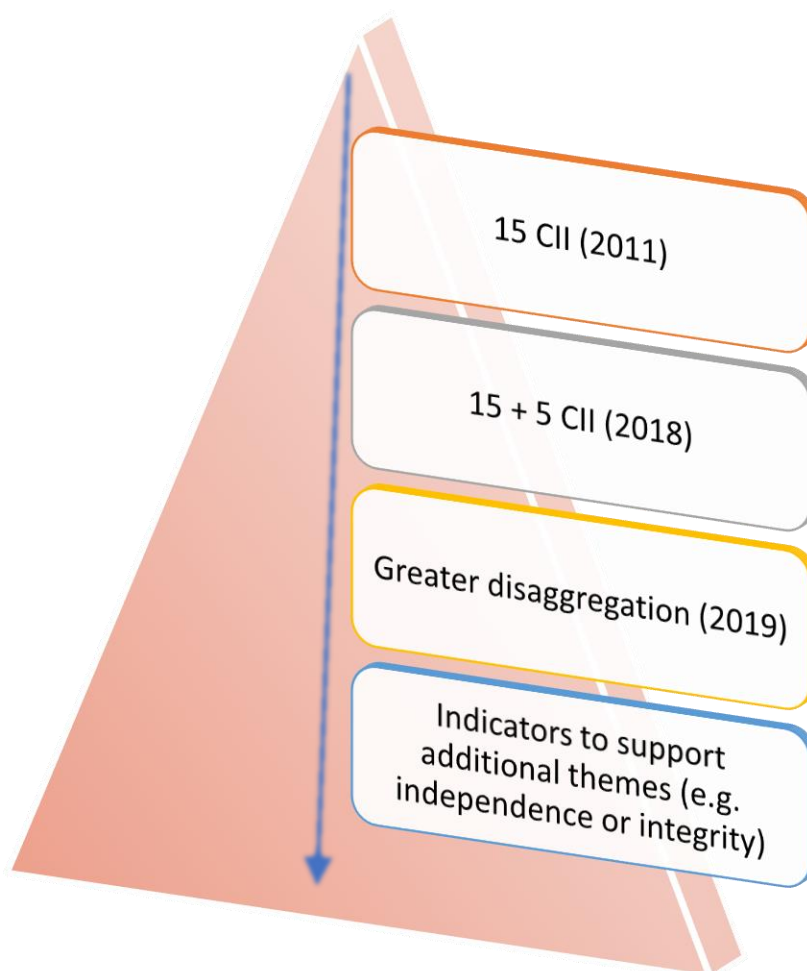


Figure 3: Steps for Expansion of Indicators under the Existing CII

²⁵ For example, Republic of Marshall Islands and Palau.

²⁶ Both by advisers and partner court judges and staff.

4.2 Integration of Court Performance Indicators into the Cook Island Indicators?

In addition to supporting partner courts to provide greater accountability and transparency to their users and stakeholders, PJSI is supporting partner courts to strengthen efficiency and performance. In doing so seven CPIs which facilitate relevant data capture, analysis and monitoring have been developed and agreed²⁷. The seven CPI are as follows:

1. **Clearance Rate (CII)** - used to identify if the court is accumulating excess cases over disposing of cases.
2. **Reserve Judgments** - used to identify number, age and percentage of reserved judgments to assist in producing a targeted approach to reduce reserve judgments.
3. **Age Distribution Pending** - used to identify the age of active cases that are pending in relation to their filing dates to highlight areas of congestion
4. **Pending per case stage** - used to identify to what stage the bulk of cases have progressed, to highlight where delay make be occurring in the processing.
5. **Number disposed per judge** - the number and percentage of disposed cases per judicial officer.
6. **Pending to disposal ratio** - the number resulting from dividing the number pending cases by number of disposed cases. The aim is for less than 1.
7. **Average age to disposal (CII)** - to align with the Cook Island Indicators, an additional indicator was added in November 2019 at the Vanuatu follow-up Data Management Workshop

Notably, two of the seven CPI are consistent with the 15 CII (Clearance Rate and Average Age to Disposal). In addition, under the CII, courts track average duration of case from filing to finalisation (related to CPI 3 above); percentage of appeals; and overturn rate on appeal with respect to the theme of case management.

The CII and the CPI together form part of a planning, monitoring and reporting continuum for courts (represented in the integrated delivery model shown in figure 5 on p 19 below). The data that supports both sets of indicators needs to be managed in the same robust manner. It requires effective data management to ensure the reliability of the data; regular monitoring and review of the data; as well as effective analysis of the data. Some of the data²⁸ needs to be monitored more regularly and frequently to support continuous performance management and some of the data is relatively technical in nature and primarily of value to judicial leaders (for example the pending to disposal ratio). Thus, a *subset* of the entire data arising from the 22 indicators comprising the CII and the CPI, is identified as essential for reporting to the public (that is, the CII). The partner courts, may however at their discretion, provide more detail in their ARs, arising from the additional data collected for the CPIs as well as other sources, should it be useful, relevant and accessible for the public and thus, enhance accountability.

²⁷ At the regional data management workshops held in Papua New Guinea (2018) and Vanuatu (2019). These indicators await formal endorsement by Chief Justices.

²⁸ Being the data relating to the CPIs as a minimum.

Therefore, the processes for data management with respect to the CII and CPI should and are integrated and are supported by PJSI in a more integrated way.²⁹ Nevertheless, the CII and the CPI fulfil different purposes. The CPI have been developed to support *internal* performance monitoring, oversight and management. The CII have been developed primarily to support *external* accountability, transparency and stakeholder engagement.³⁰

The two sets of indicators, represented by the CII and the CPI, should not become one under the CII for the purpose of *external* reporting and accountability. It is practice elsewhere for courts to have their own key performance indicators that do not appear in public reporting and the partner courts should have the discretion to do the same without it being a formal requirement that they be included in the regional framework for accountability.

The continuous gathering of data with respect to the seven CPI does provide fertile information to support accountability and annual reflection on performance which can be shared with users and stakeholders at the discretion of the courts. The CPIs allow for more robust accountability with respect to case management or court performance issues, in particular. The courts may choose to report publicly on aspects of those performance indicators (through the annual report or any other medium) as their capacity and confidence with respect to data management, reliability and reporting increases. As (resource, system and human) capacity increases partner courts can be supported to report on additional data over and above the CII where that would build greater accountability and transparency for the public; strengthen productive engagement with the community, recognise the judiciaries' contributions to national priorities; or attract more resources to the partner courts.³¹

4.3 Current Focus

Support to partner courts over the next 4-5 years should focus on:

1. **Data Management:** which would include strengthening the (ICT) systems for data capture; and supporting changes in practice that would ensure the reliability of data (that is, that the data is correct, consistent and complete at any given point in time). There is significant disparity of court information systems, and some courts are working with Microsoft Excel only to support their information management needs.³²
2. **Monitoring and Analysing data:** which would involve building the capacity of court staff and supporting the concomitant behaviour change to facilitate effective extraction of relevant data from court systems; regular monitoring of data; and regular analysis of the information that the data is providing. Building the skills of court staff and judicial leaders to draft one to two page narratives that sit alongside the tables generated from the 'dashboard' that show how the court is tracking in the last month or quarter or year

²⁹ The Efficiency, Accountability and ICT Advisers have undertaken two Court Data Management workshops in PNG and Vanuatu where they were able to demonstrate how the internal court reporting is part of a cycle that then provides the data that can be incorporated into external Annual Reporting (as is represented by the diagram on p19 below which was developed for the Auckland Chief Justice meeting).

³⁰ whilst also promoting fundamental information about performance in a wholistic sense that would enable judicial leaders to make more informed decisions about objectives related to the thematic areas

³¹ And noting that in some of the smaller jurisdictions – disaggregation does not tell them anything they do not already know and numbers are so small it is difficult to draw significant conclusions from changes.

³² PJSI has held two regional workshops aimed at supporting improved data management through training in the area and support for the development of Data Management Plans. Although successful, these workshops alone do not assure adequate or sustainable improvements in this area fundamental area to quality court administration. There continue to be significant challenges with respect to collection, storage and management of data and information which in turn, deliver questionable and varying levels of accuracy and reliability of data.

and how that performance sits against broader 3-5 year trends is critical. The data can then support decision-making and performance improvement (such as identifying where there is congestion in the court process, or how productivity is changing over time). This step alone presents significant challenges. In addition to inadequate systems in some partner courts, this requires relevant court staff to build skills with respect to information analysis, in the absence of the ability of partner courts to recruit staff with those skills.³³ Some of this capacity to analyse information to support court performance, needs to be built before courts are in a position to respond effectively to an increase in the detail and sophistication of the data (resulting from a significant increase in data sets or disaggregation across the board).

3. **Increasing disaggregation of data:** which would involve increasingly updating systems to capture disaggregated data, focusing on age, sex and disability as the most important priorities for the region. The partner courts are increasingly seeing the value of disaggregated data with respect to strengthening the responsiveness of the courts and assessing trends over time. The relevance of disaggregation was confirmed by partner courts with respect to disability in terms of numbers so that courts can accurately advocate for more accessible court services; with respect to children, both to satisfy demands of external observers but also to determine level of need for hearings appropriate for juveniles; with respect to crimes targeting women in sorcery cases; and with respect to gender-based violence more generally. Additionally, as courts, in countries with legislation targeting reduction of and protection against domestic violence such as the Family Protection Acts, become part of the institutions of state that respond to and seek to reduce gender based, it becomes increasingly important to have visibility of the data related to the number of cases where the victim is a woman or a girl, the number of cases withdrawn or dismissed, the number of cases in which there are custodial sentences etc. and shifts in those numbers over time. In addition, partner-courts are increasingly finding that their own government departments, national non-government organisations (NGOs) and interest groups, international NGOs, the United Nations (UN) and bilateral donors are seeking sex, age and disability disaggregated data from the courts. Often times these requests are responded to individually and manually by checking case files or court records which raises challenges with respect to consistency and is a significant impost on the courts' time, particularly for small jurisdictions. It would be beneficial to move to systems that increasingly capture sex, age and disability disaggregated data which could then be reported on transparently, for example in the AR, and which could minimise duplication of effort for court staff. It would be possible to set some targets for disaggregation of data that reflected the priorities and needs of the region and individual jurisdictions over time.
4. **Data for decision-making** linked to 2 above, the continuous monitoring and analysis of data that is generated in support of the CII and the CPI enables judicial leaders and managers to make more effective contemporaneous evidence-based management decisions with respect to the performance of the courts.³⁴ This can be supported through the efficiency, ITC and leadership and governance aspects of support and directly linked to the cyclical planning to reporting of courts as recommended in Court Performance Planning and Measurement Strategy Paper (2018).

³³ For example, as a result of lack of resources (budget) and lack of available human resources

³⁴ An example might be building the capacity of court staff to generate monthly case management summaries (like the dashboards provided by the ICT Adviser) which can then be used to support targeted case management decisions within the courts.

5. **Reporting and communicating** once data is available and reliable, it is important that information is shared with the public in ways that are accessible and meaningful. This is an area which is being supported by the program through its accountability initiatives, but which should be continued to strengthen and deepen the outcomes already achieved through the CII, and the ARs that are generated using the CII as their core.
6. **Additional themes and indicators or sub-indicators:** once there is reliable data for current indicators³⁵ that is used to support effective management decisions, attract resources and is meaningfully reported on to the public, the partner-courts as a region will be in a strong position to consider additional themes, indicators and sub-indicators that would be relevant to their stakeholders and users and would further strengthen their accountability. Partner courts may then wish to consider further accountability with respect to aspects of their functioning such as independence,³⁶ integrity³⁷ and ICT use, for example.

Arguably therefore, future support should focus in the short to medium term on how data can really value-add in leadership and management, decision-making, reporting and accountability and how it can transform relationships with stakeholders and users building on the progress made against the CII to date.³⁸

5.0 Annual Reports

The data gathered with respect to the CII can be communicated to the public in a variety of ways, including in an AR, on a legal information website (such as PacLII) through a court website, on radio programs, on television programs, through print media, on social media, and on periodic news bulletins. At the moment most partner courts use ARs that reflect on the previous year as the primary source of transparency and accountability to court-users and stakeholders which is supplemented by other means of communication to varying degrees.

Accordingly, the 15 CII are foundational for annual reporting and have been described as such by counterparts responsible for preparation of reports in partner courts. The PJSI court reporting toolkit and template (see: <https://www.fedcourt.gov.au/pjsi/resources/toolkits/Annual-Court-Reporting-Toolkit-AD-Annex-3.pdf> - accessed 27/2/2020) provides clear guidance to partner courts in all aspects of reporting against the CII.

This approach to annual reporting could be built on over time to empower partner courts to report more broadly about their progress and their contribution, *primarily* against the core 15 CII but *increasingly* incorporating other data of relevance to their beneficiaries and users. This, whilst deepening transparency, could also streamline the courts' responses to the increasing

³⁵ Being 15 CII, plus 5 additional CPI, relevant disaggregation, plus 7 CPI.

³⁶ The EU Justice Scoreboard provides a number of indicators for the measurement of independence related to perception of judicial independence, structural independence which need to be tailored to the context of the partner courts given the size and resource constraints.

³⁷ With respect to judicial integrity some partner courts have adopted modifications of the UN Bangalore Principles (2002) which cover independence, impartiality, integrity, propriety, equality, competence and diligence.

³⁸ There is some anecdotal information that the monthly dashboards being provided to partner courts by the ITC adviser are being used as management tools for regular review of timeliness and productivity.

demand for reporting by courts made by a variety of ‘observers’.³⁹ These demands – often similar or the same - can be particularly burdensome for small jurisdictions with limited staff and resources. This would provide a direct benefit to those responsible for reporting and is likely to support the sustainability of annual reporting where it is not yet strongly embedded.

Thus, ARs could progressively report on the judiciary’s implementation of its own strategic plan (which would usually be aligned with national priorities if identified in a national plan); the judiciary’s contribution to national priorities (for example national development plans); the judiciary’s contribution towards achievement of relevant international obligations or the implementation of relevant UN recommendations (for example under UNCRC, UNCEDAW, UNCAC, UNCPRD); the judiciary’s contribution to achievement of the Sustainable Development Goals (for example, particularly 16.3 but many others)⁴⁰; and the judiciary’s position with respect to international frameworks that are deemed relevant.⁴¹

The expanded use of annual reports is represented in the figure below:

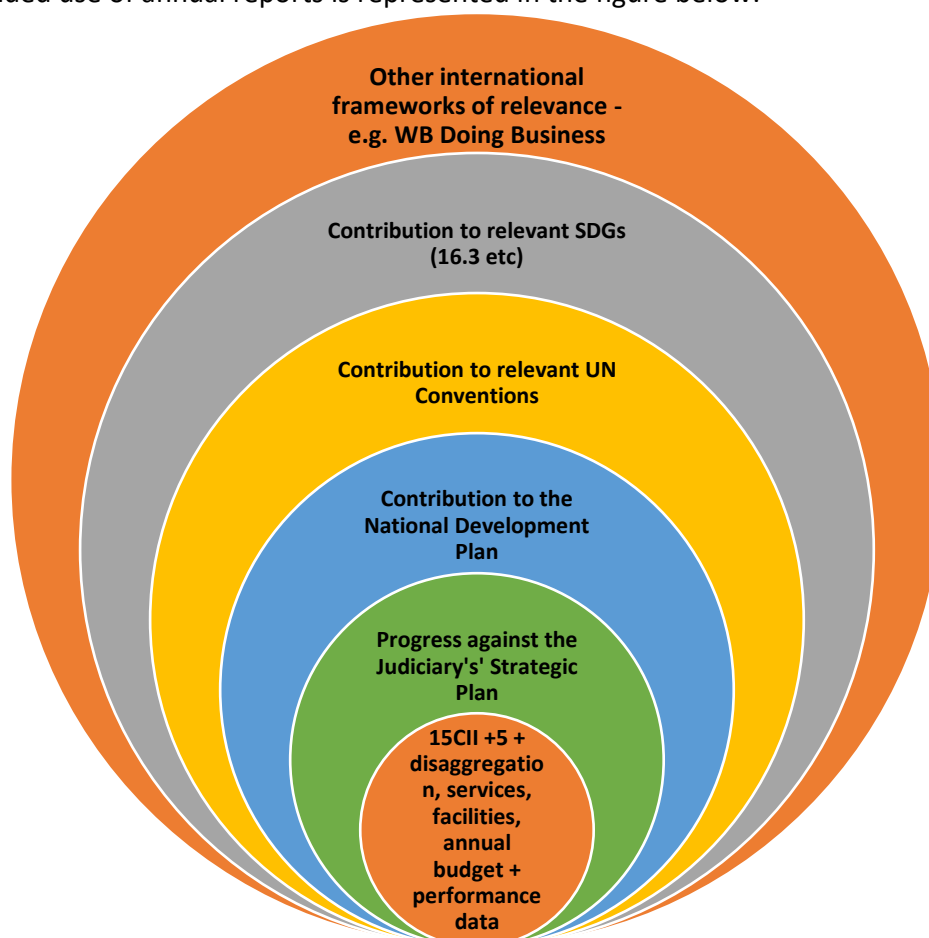


Figure 4: Annual Report Subject Matter

³⁹ The term ‘observers’ is used here to encompass organisations who have an interest in the data of courts such as particularly line agencies within the national government, the UN, the World Bank, international NGOs, national NGOs and interest groups.

⁴⁰ Annual reports could increasingly report on the contribution of partner courts to Sustainable Development Goals (SDGs) particularly where this is directly within the mandate of the courts and this information is not otherwise captured or is captured through a process that duplicates the partner courts annual reporting obligations. SDGs have possibly 37 or so indicators that are relevant for courts and there are different approaches for how partner courts contribution towards achievement of the SDGs might be captured in their reporting – see separate PJSI Strategy Paper in this regard. See <https://www.un.org/sustainabledevelopment/sustainable-development-goals/> for a list of the 17 goals.

⁴¹ For example the World Bank’s Doing Business rankings

6.0 World Bank – Doing Business Rankings – The Challenge of Global Frameworks

The WB's Doing Business rankings provide an example of a framework built on indicators that are not well suited to the context in the Pacific which is explored in more detail in this section.

The challenge of ill-suited indicators, exists with respect to other global performance frameworks thus cautioning against their simple adoption.⁴² Similarly, should partner courts wish to expand the CII in the future (as outlined in section 3.2) indicators from other frameworks under new themes should not be adopted in their entirety and should be considered and tailored for the Pacific. For example, should the partner courts wish to build greater accountability and transparency with respect to **independence**, as a theme, the indicators with respect to structural independence, for example, would need to be specifically tailored to the Pacific context, cognisant of the fact that many jurisdictions would not be in a position to establish and maintain the structural mechanisms envisaged by other global frameworks such as the EU Scoreboard indicators.⁴³

The WB Doing Business reports publish an annual ranking with respect to the ease of doing business in a particular country. These rankings have a significant impact⁴⁴ both on policymakers within those countries but also on potential investors. This global measure, whilst not focused specifically on court performance, does provide an example of the importance of setting appropriate indicators for the measurement of performance for the courts of the region.

Two aspects of the WB Doing Business rankings relate to the performance of courts, being *Enforcing Contracts* and *Resolving Insolvency*. With respect to enforcing contracts the WB considers, “a number of indicators that measure the time and cost for resolving a commercial dispute through a local first-instance court, and the quality of judicial processes index, evaluating whether each economy has adopted a series of good practices that promote quality and efficiency in the court system.” With respect to resolving insolvency the WB considers, “the time, cost and outcome of insolvency proceedings involving domestic legal entities. These variables are used to calculate the recovery rate, which is recorded as cents on the dollar recovered by secured creditors through reorganization, liquidation or debt enforcement (foreclosure or receivership) proceedings.” Some of the quality indicators are measured through the review of a single case file (as a case study).

Some indicators do not *in fact* provide a measure of quality and efficiency of the proceedings and are arguably arbitrary and unachievable for PICs in the short term. For example, some of the indicators related to Quality of Judicial Processes for Enforcing Contracts are listed below:

⁴² As set out in section 3.2 above, the following indicators may not be well suited to the Pacific and appear variously in IFCE, EU, World Justice Project and World Bank Doing Business - formal alternative dispute resolution mechanisms, availability of specialised courts, number of citizens selected for jury service, ICT systems used by courts, training of judicial officers

⁴³ See 2019 EU Justice Scoreboard pp47-56 – indices include authority deciding on disciplinary action against judges, how investigator for disciplinary matters against judges are appointed, membership of councils for the judiciary.

⁴⁴ See: The Power of Ranking: the The Ease of Doing Business Indicator and Global Regulatory Behavior Doshi, R., Kelley J., Simmons B., (2019) - “The proliferation of Global Performance Indicators (GPIs), especially those that rate and rank states against one another, shapes decisions of states, investors, bureaucrats, and voters. This power has not been lost on the World Bank, which has marshalled (sic) the Ease of Doing Business (EDB) index to amass surprising influence over global regulatory policies...”

<i>WB Doing Business Indicator</i>	<i>Concern</i>
<i>Is there a court or division dedicated solely to the hearing of commercial cases?</i>	<i>For many PICs it is not currently and will not in the foreseeable future be viable to have a dedicated division for hearing commercial cases, and yet given size of jurisdiction, this does not necessarily have an impact on the efficiency with which commercial contracts can be enforced.</i>
<i>Are cases randomly assigned to judges?</i>	<i>Where the cases are randomly assigned but are done so manually this does not receive as high a score as a country where this is done electronically.</i>
<i>Can two of the following four reports be generated about the competent court: (i) time to disposition report; (ii) clearance rate report; (iii) age of pending cases report; and (iv) single case progress report?</i>	<i>These reports are dependent on some level of automation and a lack of automation would reduce the score received.</i>
<i>Are there any electronic case management tools in place within the competent court for use by judges?</i>	<i>Partner courts receive a low score if there is no electronic case management available to judges. An electronic case management system is not likely to be available in some jurisdictions for some time and yet this may not have an impact on the quality and efficiency of the enforcing of contracts.</i>
<i>Are there any electronic case management tools in place within the competent court for use by lawyers?</i>	<i>As above</i>
<i>Can the initial complaint be filed electronically through a dedicated platform within the competent court?</i>	<i>As above</i>
<i>Is it possible to carry out service of process electronically for claims filed before the competent court?</i>	<i>As above</i>
<i>Can court fees be paid electronically within the competent court?</i>	<i>As above</i>

It may be that as partner courts are increasingly able to extract reliable court performance and efficiency data from whatever systems they currently have available and are able to report on those indicators so that PIC rankings for the WB Doing Business assessments will improve. Nevertheless, the scores of the court-related indicators will be reduced where there is no electronic case management system. This would seem inappropriate if other indications of quality and efficiency are present.

It may be possible for the Pacific Island courts, representing the region, to advocate directly with the WB with respect to the appropriateness of some of its indicators for the Doing Business rankings for the region given their potential impact – and indeed the partner courts could choose to do likewise for any organisations or observers applying indicators to the courts that are not appropriate, relevant or meaningful for the Pacific, but have an impact on the courts or the country.

7.0 Sustainability

The majority of partner courts are now producing their own annual reports.⁴⁵ Support from the program involves support for effective data collection and management as well as the provision of feedback on draft reports.

Adoption of international frameworks without good process (outlined in 3.2 above) is likely to be burdensome and distracting as it would require significantly expanded data sets. The current focus should be on building the quality and reliability of the current data, before having a significant expansion. Otherwise there is a risk of driving large amounts of poor quality and poorly understood data.

Efforts to strengthen the sustainability of accountability should focus on:

- ◇ Supporting all partner courts to report annually with decreasing external support
- ◇ Supporting all partner courts to communicate publicly against all CII (in the AR or other media)
- ◇ Strengthening the management of data (to ensure consistency and reliability)
- ◇ Strengthening the capacity to analyse court data and present a picture of the court's work that shows sex, age and disability disaggregated data for accused, victims or survivors and applicants in civil cases.
- ◇ Strengthening the capacity to report on the data effectively to the public (i.e. in accessible and meaningful ways)
- ◇ Integration of an annual reflection on court performance data that would be most meaningful and significant for the public
- ◇ Integrating the reporting of partner courts on other contributions to national and international priorities, including those of most relevance to their communities.
- ◇ Demonstrating the positive results of effective reporting

⁴⁵ See 2018 Court Trend Report, although notably the majority of partner courts do not report across all 15 indicators consistently each year.

- ◇ Strengthening the cyclical process from planning to reporting recommended in *Court Performance Planning and Measurement Strategy Paper* (2018)
- ◇ Building an effective ongoing mechanism for review (see section 8). Any mechanism for implementation of changes or additions to the CII should replicate the process used to develop them; ensuring regional consistency, local relevance, capacity and ownership.

8.0 Future Mechanism for Review and Relevance

Future assistance could promote and support a periodic process (perhaps every 2-3 years) and mechanism for review of the CII as against international frameworks, (with a particular emphasis on thematic areas and their relevance to transparency and accountability in the region).

Where it is considered that a further thematic area should be included in the CII, this should be endorsed by the chief justices of the partner courts. Thereafter, the same robust process as for the original CII should be used for the development of any additional indicators.

This process of periodic review should be increasingly integrated into an independent regional mechanism so that it can be maintained and continued.⁴⁶ The ultimate decision regarding the inclusion of new thematic areas and indicators would continue to be endorsed by the chief justices. Opportunity for dialogue, shared experiences and comparative tracking of achievements for accountability and transparency should continue as it has been one important driver of change. However, initiatives supporting data management and efficiency should also facilitate (see section 4) better and more widespread reporting at the end of the year.

The mechanism for debate on proposed changes and their agreement should allow for a working meeting, even if the endorsement process is a more formal one.⁴⁷ The mechanism would need to be one where actual progress and changes can be debated, agreed and endorsed (working meeting).

The Mechanism could be used to:

- ◇ develop an agreed process for the expansion of the core CII
- ◇ review and agree core thematic areas of public accountability periodically
- ◇ review and recommend additional indicators where necessary
- ◇ set targets for incremental increase in disaggregation over time
- ◇ establish aspirational discretionary themes and indicators that PICs could add if they wished (as capacity, resources and systems allow) potentially supported by a program toolkit
- ◇ describe additional data sets that could be provided to satisfy additional national and international reporting commitments and priorities.

⁴⁶ Unclear if those not already wedded to AR would continue without the annual traffic lights etc.

⁴⁷ The PJC may not be an appropriate mechanism as it includes a larger group (including the francophone territories), although a working sub-group could potentially be organised.

9.0 Recalibration

The partner courts of the Pacific⁴⁸ have participated in a regional program of support for some two decades. This has built trust both in the regional program but also trust and collegiality between partner courts. Given the maturity of this regional support to partner courts, any future support from NZ MFAT or other international donors, might take this opportunity to revisit the program logic and theory of change to build a more integrated program around its core elements intended to support the overarching goal of “*more accessible, just, efficient, timely and responsive court services*”.

The intention of that review would be a recalibration of those core elements to integrate initiatives under the program more closely so that those individual initiatives are more cohesive and mutually reinforcing. This would strengthen and perhaps increase the progress towards the intended outcomes.

A more systemic, integrated approach to support partner courts, is unlikely to have been possible in 2011 or before, when relationships and initiatives were more nascent. However, it would seem that there is now an opportunity to consider such recalibration.

The *Court Performance Planning and Measurement Strategy Paper* (April 2018) advanced an approach to court performance planning and measurement founded on, “an integrated system of planning and reporting that is orientated towards achieving outcomes and creating positive impacts. By using planning processes, measures, data, monitoring, analysis and reporting on a regular basis, courts can improve the effectiveness, efficiency and quality of its operations.”⁴⁹

Building on this notion, initiatives supporting Leadership and Governance, Accountability, Accessibility and Performance could more strongly reflect their interrelatedness. This would seek to apply a systemic and more holistic approach to the support of partner courts based on an understanding that no single initiative alone is likely to facilitate significant performance improvements. But, rather, several integrated and strategically applied initiatives that are “seeded” across the system and are well timed and targeted are likely to facilitate greater progress.

The program has been providing support to **Leadership and Governance, Accountability, Accessibility and Performance** (see figure 5 below)⁵⁰. Whilst cognisant of the connections between those initiatives those connections could be strengthened and leveraged to increase support for positive change. For example:

- ◇ The monitoring of data against the CII and the Court Performance Indicators (CPI) together with benchmarks and measures, efficiency reviews and feedback (supported by the Performance and Efficiency projects) could form the court specific evidence-base for tailored support to strategic planning provided under Governance and Leadership projects. The evidence would inform the strategic plans that would then identify the change that would be led and managed locally. This would have an impact on program delivery in terms

⁴⁸ Commencing with PJEP (2000-2004), and continuing with PJDP (2006-2015) and then PJSI (2016-2021)

⁴⁹ Noting that the adjudicative function of the court of the decisions of the court were not within the scope of that papers approach to court performance planning and measurement, see section 2 Background and Context, p1

⁵⁰ This figure minimally modifies a diagram developed collaboratively by the Efficiency Adviser, Accountability Adviser and Performance Framework Expert.

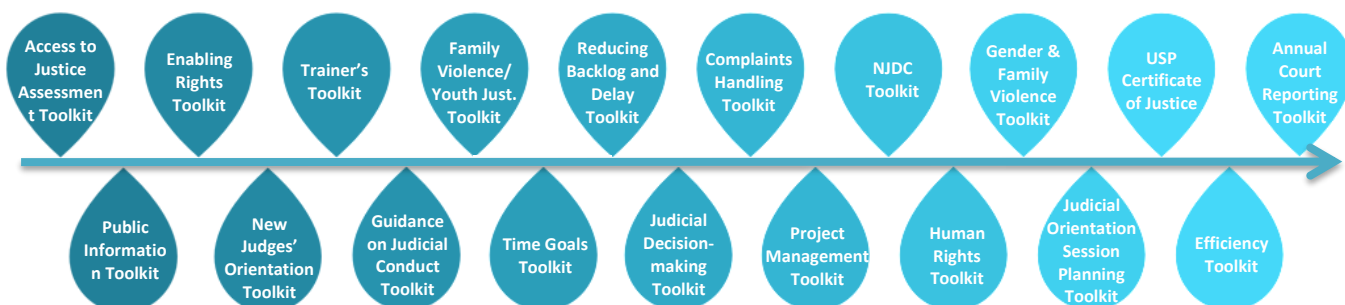
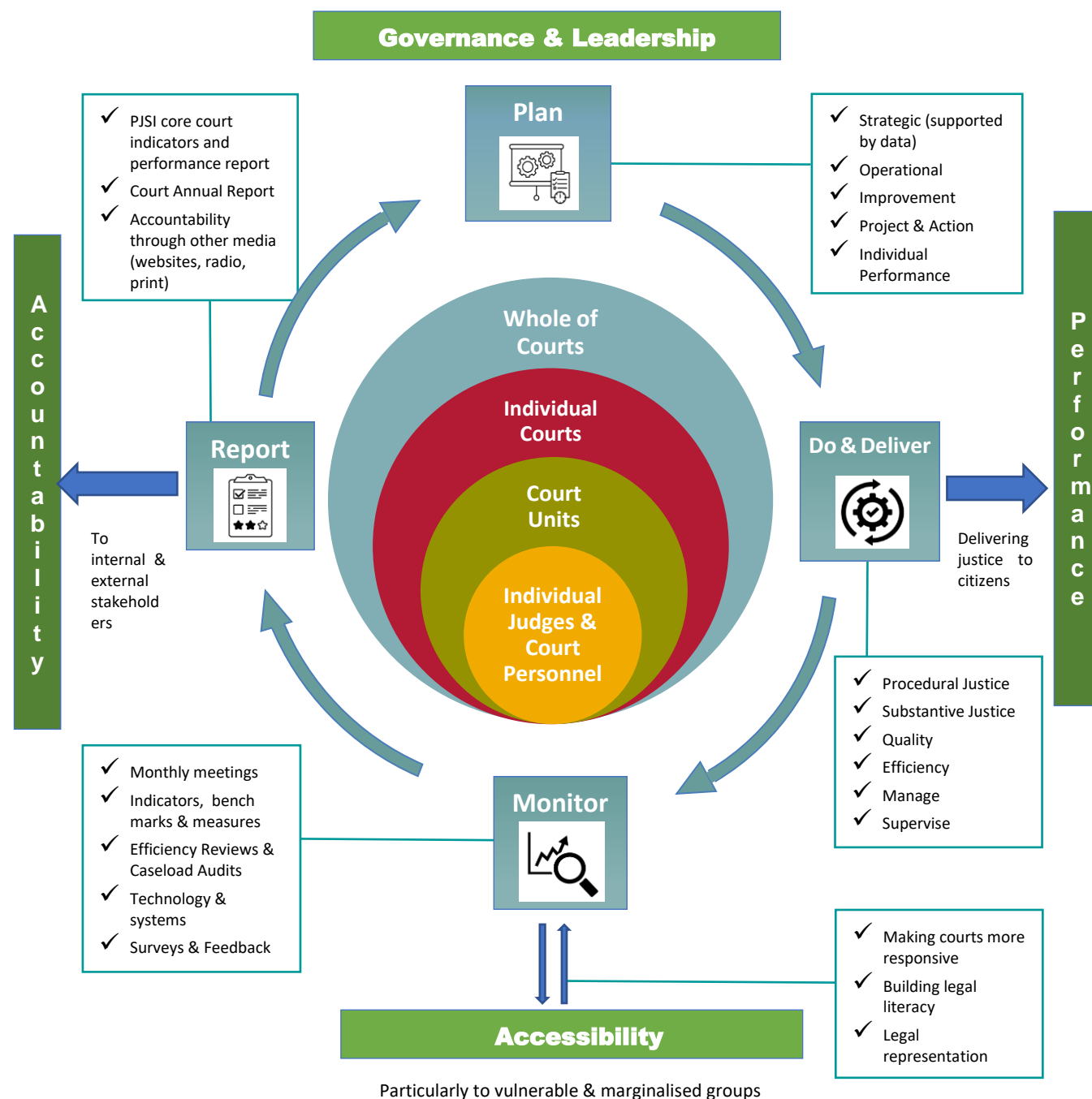
targeting and timing and could potentially allow for support to leadership to be more grounded and applied.

- ◇ The monitoring of data against the CII (including user surveys) and the CPI as well as other benchmarks and measures would identify some accessibility, efficiency and responsiveness opportunities which could inform planning with respect to court responsiveness and strengthening accessibility to vulnerable and marginalised users (Responsiveness projects).
- ◇ Strengthened technology and systems together with improved data management, analysis and monitoring (Efficiency projects) can contribute to the depth and quality of public reporting and accountability through Annual Reporting but also through other media (such as websites, radio and print).
- ◇ In country legal awareness initiatives intended to support accessibility can respond directly to the concerns that arise from a stronger evidence base (though court data, including sex, age and disability disaggregated data) and court users surveys.

In this way, revisiting the program logic in a collaborative, participatory way would provide the opportunity to strengthen the cohesion *between* projects related to regional and national leadership; access to justice; professional development; human rights; efficiency; and accountability, in an effort to facilitate greater progress through mutually reinforcing projects and through the opportunity for more applied capacity development (that would translate theory and toolkits into application based on reliable court specific circumstances and data). The emphasis on greater cohesion between initiatives would mean that the same intended outcomes are supported from a number of different initiatives at the same time or in complementary ways. The intended result would be to allow the program to drive planned outcomes further. A theory of change could be developed and finalised through a participatory process that would allow for clear identification of appropriate interventions and specific barriers etc (an example is provided in Annex C).

This recalibration would have an impact on delivery and synchronicity; would ensure the initiatives of the program resonate and support each other. It may involve some review of the balance or emphasis as between initiatives; it would permit significant development and strengthening of the gains achieved so far through consolidation of investments and would allow for holistic support focused on service delivery (defined to include access to state justice mechanisms).

Figure 5: Delivery Model to support more accessible, just, efficient & responsive justice services



10.0 Recommendations

This section outlines the key recommendations proposed for consideration:

10.1 Key Recommendations

1. No additional themes or indicators be added to the CII at this time, for the purpose of aligning the CII with other global frameworks for measuring court performance and trends.
2. The data management processes for CII and CPI should be and are integrated and are supported by PJSI in an integrated way.⁵¹ This should be strengthened. However, the two sets of indicators, represented by the CII and the CPI, should not formally become one under the CII for the purpose of **external** reporting and accountability.
3. The focus of future investment in partner courts on efficiency, performance and accountability would be best on data management; monitoring and analysing data; increasing data disaggregation; building the effective use of data for decision-making and planning; strengthening reporting and communicating; and *thereafter* considering possible thematic expansion of the CII.
4. Annual reporting should be built on over time to empower partner courts to report more broadly about their progress and their contribution, *primarily* against the core 15 (+5)⁵² CII but *increasingly* incorporating other data of relevance to their beneficiaries, users and observers. In addition to increasing transparency, this could streamline the courts' efforts in responding to the increasing demand for reporting placed on courts by a variety of observers. This would provide a direct benefit to those responsible for reporting and may be a motivator for continued annual reporting where it is not yet strongly embedded.
5. Given the current level of collegiality and collaboration between partner courts, it may be possible for the Pacific Island courts, to advocate as a region directly with the World Bank (WB) with respect to the appropriateness of some of its *Doing Business* indicators and the implication of this on subsequent WB rankings for that country. And in fact, to any other organisations where their rankings or measures are believed to have an impact but where the indicators that used are not appropriate for the Pacific.

10.2 Technical Recommendations

6. Should partner courts wish to strengthen the alignment of the CII and their accountability for court performance to other global measures in the future, it is **not** recommended that any international frameworks be adopted in their entirety. An approach to future alignment with international frameworks should build on the approach taken for development of the CII and might include the following steps:
 - a. Review of global performance frameworks as a comparison for the CII

⁵¹ The Efficiency, Accountability and ICT Advisers have undertaken two Court Data Management workshops in PNG and Vanuatu where they were able to demonstrate how the internal court reporting is part of a cycle that then provides the data that can be incorporated into external Annual Reporting (as is represented by the diagram on p19 below which was developed for the Auckland Chief Justice meeting).

⁵² These refer to the 15 CII developed in 2011 and the additional 5 indicators recommended in the Court Performance Planning and Measurement Strategy Paper in 2018, endorsed by the Chief Justices.

- b. Consideration of whether there are key thematic areas of accountability that are relevant to the Pacific or reflect the Pacific's current priorities.
 - c. Agreement on the themes (or further indicators to existing themes) that are to be added to the regional framework represented by the CII
 - d. Development of relevant, appropriate, measurable indicators for new themes through a process that is as participatory and robust as the process used to develop the original 15 CII.
7. Future assistance should support a process of periodic review of the CII and consideration of global performance frameworks which could then facilitate its increasing absorption into an appropriate independent regional mechanism (such as the Pacific Judicial Conference).
8. The partner courts could be supported to develop an aspirational plan for the strengthening of public accountability over time which would allow for the current disparity in capacity and resources (including case management systems) between partner courts. This would include a more expansive view of annual reporting (see section 5) as well as progressive increase in indicators used to measure public accountability, moving from the current 15 CII, adding the five indicators recommended in 2018, increasing disaggregation of data, adding indicators to existing themes, or adding further themes and indicators of accountability (see section 4.1).
9. Should a regional program of support to partner courts continue, there may be an opportunity to revisit the theory of change and program logic. This could focus on strengthening the links between efficiency, performance management, and effective accountability and transparency to develop a more integrated program delivery model. This would strengthen the progress towards and sustainability of outcomes, by supporting those outcomes in a multifaceted and grounded way.

11.0 Conclusion

The recommendations provide a practical approach that focuses on the significant consolidation and embedding of performance and accountability gains achieved by the partner courts with the support of PJSI (and formerly PJDP) to date. This is intended to ensure solid substantive, procedural and capacity foundations on which to build any future expansion of the CII as a regional performance and accountability framework which it is hoped will become increasingly self-sustained.

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Annex A: List of Cook Island Indicators

Case Management Issues:

1. Case finalisation or clearance rate.
2. Average duration of a case from filing to finalisation.
3. The percentage of appeals.
4. Overturn rate on appeal.

Affordability and Accessibility For Court Clients:

5. Percentage of cases that are granted a court fee waiver.
6. Percentage of cases disposed through a circuit court.
7. Percentage of cases where a party receives legal aid.

Published Procedures for the Handling of Feedback and Complaints:

8. Documented process for receiving and processing a complaint that is publicly available.
9. Percentage of complaints received concerning a judicial officer.
10. Percentage of complaints received concerning a court staff member.

Human Resources:

11. Average number of cases per judicial officer.
12. Average number of cases per member of court staff.

Transparency:

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

Annex B: Terms of Reference

PJSI 2-Year Extension Activity Plan: June 2019-May 2021

Terms of Reference: *Global Justice Performance Systems Adviser*

1. GOAL & OBJECTIVES

The Government of New Zealand is funding the Pacific Judicial Strengthening Initiative (PJSI), which is being implemented by the Federal Court of Australia for a 2-year extension period between June 2019 and May 2021.

The goal of PJSI is to build fairer societies by supporting the courts in 15 participating Pacific Island Countries (PICs) to develop more accessible, just, efficient and responsive justice services. Participating PICs are the Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu. PJSI reports to the Chief Justices of these PICs and to the Pacific Judicial Conference which convenes biennially.

PJSI addresses numerous and diverse needs within participating courts that relate to three major development challenges: (i) expanding access to justice to and through the courts; (ii) building competent provision of substantive justice outcomes; and (iii) increasing efficient delivery of procedural justice services. To address these challenges, PJSI focuses on supporting two long-term objectives:

- a) *Judicial Leadership* → courts being capable of leading and managing change.
- b) *Performance* → court services being accessible, responsive, fair and efficient.

PJSI delivers services to support the courts to attain these objectives using strategies to transfer, build, devolve and localise capacity. These strategies consolidate five thematic areas: judicial leadership, access to justice, professionalisation, substantive justice and procedural justice.

2. ACTIVITY DESCRIPTION

a. Purpose

The purpose of these activities under the PJSI's *Accountability* (Project 13) is to improve public trust and confidence in courts by increased transparency to the public of court performance data, analysis and knowledge.

b. Duration and Location

This short-term assignment requires the Adviser to work up to 20 input-days to fully complete all activities defined in Part f., below. Inputs will need to be undertaken between October 2019-May 2021 remotely across the region. Coordination and collaboration with other PJSI Advisers (in particular the Accountability Adviser and SDG Adviser) will be necessary. The draft strategy paper is to be presented to the 5th Chief Justices' Leadership Forum in Solomon Islands from 23-25 March 2020 (either remotely or face-to-face) for feedback/direction.

c. General Approach

The Adviser should adopt the following approach to completing this assignment:

- a) To transfer, build, devolve and localise capacity in all interactions with counterparts and

mentor counterparts where appropriate in a culturally appropriate and respectful manner.

- b) Produce high quality, concise and accurate documentation, reports, and correspondence as required in a timely fashion and written in plain English.

d. Baseline and Background Resources for the Assignment

PJSI supports its partner courts to annually present information publicly about court performance. To date this has been undertaken against 15 'Cook Island Indicators', as well as selected court management indicators and gender-disaggregated data. To further strengthen courts' performance reporting, PJSI is aiming to develop a strategy to more directly align the Cook Island Indicator framework with other global court justice performance systems, to maximise the relevance and sustainability of these indicators beyond PJSI.

Key PJSI background documentation includes:

- 15 Cook Island Indicators (CII) established in 2011 in the Court Baseline Report.
- 2012 Court Trend Report presents a second year of court performance data against the 15 indicators and compares results against those presented in the Court Baseline Report.
- 2014 Court Trend Report presents a fourth year of court performance data.
- 2018 Court Trend Report presents a seventh year of court performance data.
- Outcomes of the Performance Framework Adviser's activities under PJSI Phase I.

e. Outcomes & Outputs

The outcome of the *Accountability Project* is that PICs can present information publicly about court performance against the CII, and gender disaggregated data. The Project's targets are:

1. By June 2020: 4 PIC annually presenting information publicly about court performance against all the CII, including 2 presenting gender/GFV data. 3 PIC periodically conduct User Perception Surveys; and
2. By June 2021: 7 PICs annually presenting information publicly about court performance against the CII, including 4 presenting gender/GFV data. 4 PICs periodically conduct User Perception Surveys.

The Adviser will deliver the following outputs to contribute to these targets, namely:

1. Drafting of a strategy paper to further integrate Cook Island Indicators with other global court justice performance systems.
2. Presentation of the draft strategy paper (either remotely or face-to-face, TBC) to the 5th Chief Justices' Leadership Forum in Honiara, Solomon Islands from 23-25 March 2020.

f. Inputs & Activities

Prior to mobilisation, the Adviser will be briefed by the PJSI Technical Director and Team Leader. The Adviser will then develop an implementation plan for approval by the Technical Director. The 2-step regional → local capacity-building modality adopted in PJSI Phase I will be complimented by follow-up support to promote uptake of interim results by delivering the following inputs and activities:

- Develop a draft strategy paper to further integrate Cook Island Indicators with other global court / justice performance systems. The Strategy Paper will look to build on the

Cook Island Indicators and how to promote their relevance beyond PJSI. Specifically, the Strategy Paper will synthesise the:

- CII and Trend Reports (i.e. how well are Courts responding to meeting these indicators);
 - cross-over between CII and global court / justice performance systems (such as World Justice Project's Rule of Law Index; Sustainable Development Goals; Justice for the Poor; IFCE; etc.);
 - outcomes of the Performance Framework Adviser's activities under PJSI Phase I; and
 - Strategies / next steps to promote the integration of CII and related data collection with other global court / justice performance systems.
- Presentation (remote or face-to-face, TBC) of the draft strategy paper at the 5th Chief Justices' Leadership Forum in Honiara, Solomon Islands from 23-25 March 2020.
 - Update / finalise the strategy paper to incorporate feedback received on the draft paper.
 - Remote inputs to support PJSI progress / evaluation reporting, as required.
 - Any other activities noted in the implementation plan developed, or necessary to achieve the defined outputs.

All activities and progress within this Project are subject to approval by the region's Chief Justices and the PJSI Executive Committee. The timing of all activities will be discussed and agreed in writing between stakeholders.

g. Reporting

In addition to regular email updates to the Team Leader, the Adviser will supply the following reports in writing (in both MS Word and Acrobat versions) to the Team Leader by a date to be agreed:

- Contributions to all relevant PJSI reports, as required, in particular contributions to the Six-Monthly Progress Report by 1 December, 2020; and PJSI Completion / Evaluation Report: 1 February, 2021.

Annex C: Theory of Change

