PACIFIC JUDICIAL STRENGTHENING INITIATIVE

SITUATION ANALYSIS OF PACIFIC LEGAL AID SYSTEMS

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Paper by: Dr Carolyn Graydon

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FEDERAL COURT OF AUSTRALIA

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Purpose of this Review

This review documents and analyses legal aid models in use throughout the Pacific region. It identifies some best practices already in place and generates ideas for how gaps in legal aid coverage could be most cost effectively and efficiently addressed at national and regional levels. Taking into consideration countries' sizes and other variables, it identifies how capacities could be built to create sustainable legal aid initiatives and makes recommendations for key areas of focus going forwards, including areas where PJSI investments could have the greatest impact.

Background and Context

Without access to legal information, advice and representation, Pacific citizens are unable to enjoy their right to access justice; a prerequisite to enabling them to enforce their right to equal protection of the law. The importance of these deeper functions of legal aid services has been recognised globally as a key underpinning and facilitator of sustainable development and a necessary component for upholding the rule of law. The function of Pacific legal systems is predicated on an assumption that parties are equipped with legal knowledge and assistance to exercise their rights through legal processes. Without it, legal processes risk being unfair to individuals and become distorted at a systemic level, just as a table does not function without one of its four legs. Legal aid services also provide precious legal awareness and information in information-starved Pacific environments. This awareness is necessary so people can exercise informed choices about how to most effectively and peacefully resolve their disputes and secure their legal entitlements and rights. This, in turn, contributes to social inclusion, social justice and fairness in Pacific societies.

This review examines two major challenges in legal aid service provision. The first is how to increase the resources available for legal aid. This involves generating a strong evidence base and using it to persuade governments, policy makers and donors that Pacific countries cannot afford not to fund legal aid services. There is a need to make visible how legal aid saves the state huge longer term economic and social costs relating to running prisons, dealing with the social consequences of unchecked family violence, mental health problems, homelessness, and helping people and communities to find solutions to disputes to deter them from taking the law into their own hands.

The second issue dealt with in this review is examination of how all available resources can be best harnessed, coordinated and directed to maximise the level of coverage and impact of available legal aid resources. This involves an analysis of the different models and actors needed to provide legal assistance gauged at different levels and matched to the kind of remedy needed depending on the nature of the dispute. The discussion in this review incorporates 'lessons learned' in other regions for how coverage can be further expanded through appropriate matching of legal assistance to need. This includes models for triaging legal needs at a grassroots level and directing these, as appropriate, to either community-based dispute resolution mechanisms, at relatively low cost, contrary to escalating matters which require the assistance of lawyers (such as those that involve vulnerable people and fundamental rights) to ensure that state protection of rights are provided, which will necessarily involve a greater investment and higher costs.

Main Findings

This review found that more than half (9 out of 15) of the Pacific countries surveyed have Constitutional provisions protecting the right of impecunious criminal defendants to legal aid. Three quarters of countries surveyed have either dedicated legal aid laws establishing legal aid services, or have other provision for legal aid in their national laws. Despite these relatively well developed legal frameworks for legal aid, legal aid services are in short supply and in most countries, are overstretched and not able to come close to meeting demand.

Legal aid services are concentrated in capitals and struggle to provide national coverage, especially in larger countries. Large portions of Pacific populations have limited or no access to legal aid. Women are disproportionately disadvantaged in relation to their access to legal aid. While around half the region's legal aid laws include legal aid eligibility for civil as well as criminal law matters, in practice the vast majority of legal aid assistance is directed to criminal defence, where more than 90% of beneficiaries are male. This leaves little legal aid is 'left over' to assist in family protection and family law matters where women applicants dominate and where their fundamental rights are also often at stake.

This review that very few legal aid services are able to afford the 'indulgence' of preventative work, such as community legal information and awareness outreach. The pressure to respond to the immediate demands for assistance make it very difficult for legal aid services to 'ring-fence' resources for proactive activities.

Examples of innovative legal aid services also abound in the Pacific. The specialised civil law services of the Micronesian Legal Services Corporation which serves multiple small pacific states, provides a model worthy of further expansion or replication. The work of the Fiji Legal Aid Commission with its 'one hour rule' procedure, and focused effort to provide grass roots services, manage conflicts between parties in family violence matters and robust baseline study of access to justice patterns and preferences, are all 'best practice' examples. The efforts to create a sustainable family protection legal service in Tonga by transitioning from a Government project with external donor support into regular state funded support while maintaining operational independence, is another model worthy of further expansion and replication.

What is really missing from the many diverse legal aid models across the region is grassroots engagement, connection and outreach capacity and responsiveness to common kinds of local disputes. Most legal aid services utilise a traditional service model that relies almost exclusively on lawyer representation which operates predominantly in courts and capitals. There are currently no established examples of where community paralegal services have been imbedded within national legal aid providers to 'direct the traffic' of disputes from the grass-roots level to the appropriate process and service provider. In addition, many tasks currently performed by lawyers within legal aid services could be undertaken by skilled-up paralegals under the supervision of lawyers.

Another area where available resources are under-utilised is in relation to pro bono schemes managed by lawyer associations. There is significant untapped capacity across the Pacific to provide pro bono assistance providing that schemes are supported, structured to ensure an equitable distribution of work and that assigned cases are appropriately sized and matched according to lawyers' practice areas.

Recommendations

Increase prioritisation and resourcing for legal aid by persuading governments, policy makers and donors of its value through evidence-based approaches

Recommendations:

- Advocate strongly with key donors the importance of legal aid and the need for its support, especially to achieve the SDGs and reap the benefits of increased community access to justice.
- Highlight the legal aid 'spend' in every major justice program across the Pacific and highlight any disparity with the support being provided to other parts of the 'justice chain' which could create distortions in function unless they are all able to perform their particular functions to a similar level.

Address need for stronger evidence-based approach to legal aid provision

Recommendations:

- Establish a pool fund or provide technical assistance to jurisdictions to enable them to conduct national 'access to justice' surveys. On an interim basis, countries yet to undertake baseline surveys should study the general trends emerging from other Pacific and global countries' studies, assess how applicable these likely are to their local environment and start using this wider knowledge for legal aid service planning and budgeting.
- Commission an economic costing expert to develop a predictive modelling approach to 'putting some figures' on the economic costs of providing/not providing access to justice across the region.

Increase agility and responsiveness of legal aid provision to community demand for justice

Recommendations:

- Successfully demonstrate the need and cost effectiveness of allocating additional resources for access to justice, and use additional resources to prioritise the areas in which community justice needs are both frequent and impactful including by:
    - Addressing the imbalance in funding for criminal versus civil legal assistance and expanding access to help with concerning family protection, family law, land law and disputes with neighbours or other areas of demonstrated unmet need
    - Creating community-level services to increase legal awareness and knowledge and to guide and link people to appropriate dispute resolution mechanisms, including state justice. (see below for further recommendations on this point)

Focus on providing better outreach and coverage

Recommendations:

- Create a regional legal aid 'top up' fund to provide grants dedicated to developing sustainable and innovative low cost outreach services such (radio shows, telephone

advice, SMS information, user-friendly websites, social media, fact sheets, self- help packs, videoed legal information sessions or other innovative low cost legal information or assistance services.)

- Encourage legal aid providers to earmark or (better), offer incentives (such as by adding a certain percentage of their budget) to develop outreach and legal information and assistance services with a focus on those that provide the greatest reach for the lowest cost.
- Assess the viability of developing at a regional level templates/generic key legal information materials that can be readily customised to local contexts to reduce the burden on individual legal aid providers and create ways of sharing resources to provide a more efficient way of developing materials without each country having to 'reinvent the wheel'.

Diversify legal actor types and integrate with other services

Recommendations:

- Pilot community paralegal programs within legal aid services in places without legal aid branches or reach, ensuring that community paralegals are well trained and provided with adequate ongoing support
- Expand the use of paralegals working within legal aid offices and consider how they can be most effectively trained and assigned to work with lawyers.
- In jurisdictions lacking lawyers, consider providing multiple entry points to the legal profession or tiers within the profession such as through 'pleader' programs, enabling entry to the legal profession based on legal experience and completion of exams, rather than law degrees.
- Develop integrated service models, where paralegals are embedded within other services in both urban and rural areas, such as health services, women's crisis/family violence services or other services that exist in remote communities.

Strengthen capacity and sustainability of existing legal aid providers

Recommendations:

- Urgently establish legal aid services in countries that have none for criminal defence
- Assess how to make the best use of available resources in each context: lawyers (including through national legal aid providers liaising and coordinating activities with the Law Society/Bar Association), law graduates, law students, and paralegals and identify existing sources of legal aid and fill in the gaps through cooperation agreements rather than duplication.
- Carefully select legal aid models suited to the individual context. This review has shown how even small jurisdictions have successfully managed to provide good legal aid coverage for both criminal and civil legal aid, including through strategic deployment of 'mixed models' or those that involve a mix of private lawyers (either paid or pro bono) and

NGO legal aid providers to help expand coverage, flexibility and deal with situations where the national provider is 'conflicted out' of acting for one of the parties.

- Make better use of pro bono assistance from private lawyers: compulsory annual registration points schemes. Investigate the feasibility of introducing an annual 'points system' for lawyers to satisfy in order to renew their practicing certificates annually. Some points can be earned for undertaking Continuing Professional Development activities, and others earned by undertaking a certain quota of pro bono work (either number of cases or hours of work).Set up pro bono awards and media reporting to incentivise performance of pro bono work. Explore feasibility of building networks with law firms willing to undertake pro bono work.
- Support more clinics and internship programs but ensure they be for a minimum of 6 months (to enable the legal aid provider to 'get value' out of them).
- Strengthen the independence of legal aid services including to manage their human resources outside of public service structures and to engage directly with donors or other potential sources of support without threat to their existing budgetary allocations.
- Where national legal aid providers are civil servants, ensure that the lawyers are paid at minimum on parity with other Government lawyers (especially in jurisdictions where legal aid lawyers require higher qualifications), and increase increments beyond annual increments for middle to more senior legal aid lawyers, commensurate with the increase in their responsibilities for complex case and supervision of junior lawyers and other staff.
- Recognise and celebrate legal aid providers to reflect the high value of their work and their contributions to improving the fairness of their societies. Address the poor pay of legal aid lawyers compared to other lawyers, high caseloads and limited logistical support.
- Prioritise legal aid service providers' wellbeing and ensure that workloads are managed and supports provided to prevent burn out as an explicit part of the work environment.

Build knowledge, networking and cross- country resource opportunities for legal aid providers

Recommendation:

- Seek inputs from legal aid providers regarding establishing a regional legal aid resource network to support exchange of best practices, resources and knowledge, facilitate building of relationships and support collaboration and provide a forum for progressing collective thinking and action on key common issues confronting services in the Region.

Develop regional capacities to support national or multi-national legal aid services

Recommendations:

- Develop regional legal aid grants fund for:
    - pilots/experiments with innovative low cost legal information and advisory outreach or remotely delivered services
    - producing key knowledge products such as national access to justice surveys and costings of providing/not providing access to justice.

- Develop some generic/template/ standardised materials and tools for legal information which can be readily customised to national legal environments

In March 2020 these recommendations were endorsed by the Chief Justices' Forum as the main areas to be further explored in a consultative regional workshop with national lawyer association actors. This workshop, followed by a final workshop with Chief Justices, were conducted in March 2021 endorsing the key issues identified and proposed solutions to these, as per the results set out in Annex F.

1.0 Introduction

While the 15 Pacific nations included in this review[1] demonstrate enormous diversity including in their population sizes, ethnic and linguistic diversity, different economic, social, and legal environments, unique histories and journeys of nationhood, they all face similar kinds of challenges in providing legal aid services. These relate namely to a lack of resources however other common challenges include limited justice sector capacities, the 'thin spread' of services across vast and often isolated geographic areas, gender inequality and rapid social and economic changes in Pacific societies which have generated new demands for dispute resolution.

Despite their critical roles in providing access to justice and contributing to the rule of law, there is a dearth of knowledge about the operation of legal aid systems across the Pacific. Tellingly, major global studies on legal aid systems do not cover any Pacific countries[2] and a literature review conducted for this study revealed a paucity of even basic descriptions, let alone data or analysis of legal aid systems across the Pacific. While this modest review does not claim to be capable of filling this large knowledge gap, it provides a starting point by describing legal aid models currently in place across the 15 countries participating in the PJSI. It is planned that gaps in this information can continue to be filled in the coming months through the further information gathering and consultative processes planned before a further iteration of this review is released.

One obvious conclusion reached in this review is that legal aid services in most Pacific countries are heaving under the weight of massive demands with insufficient resources to meet even the most pressing aspects of the 'known' demand for legal aid. Meanwhile, the scale of the 'unknown' demand for legal aid remains masked by the widespread lack of community awareness of how to resolve common types of disputes, which currently have no channel or pathway to resolution within state justice systems. In the absence of baseline 'access to justice' surveying,[3] the size of the 'legal aid gap' cannot be known with any certainty, beyond the knowledge that in many Pacific countries it is both large and largely unmet.

Two main issues emerged from this review and are considered in some detail. The first is the lack of resources for legal aid. How can the legal aid pie be enlarged? How can those holding the purse strings be persuaded that improved upfront spending on legal aid services saves the state and its people huge amounts of money, pain and suffering by enabling disputes to be efficiently and effectively dealt with early on. For example, unrepresented criminal defendants are more likely than those represented to be subject to lengthy pre-trial detention and then wrongly convicted and imprisoned, needlessly costing the state tens of thousands of dollars per year to incarcerate them. How can these 'savings' be evidenced to force a rethink of the need to prioritise legal aid? This review investigates this issue and offers some ideas for consideration as to how the value and

[1] The Cook Islands, Nauru, Niue, Tokelau, Tuvalu, Vanuatu, Federated States of Micronesia, Palau, Tonga, Solomon Islands, Fiji, Papua New Guinea, Kiribati, Samoa and the Marshall Islands.
[2] The Global Study on Legal Aid, UNDP & UNODC, 2016, including 49 Country Profiles, did not include a single Pacific country.
[3] A survey was conducted in 2018 in Fiji, by Hiil 'Justice Needs and Satisfaction in Fiji, 2018'. Some key findings were that almost half of the inhabitants of Fiji had to deal with one or more serious legal problems in the previous 4 years, amounting to roughly 100,000 legal problems every year, of which 80,000 remain unresolved; Eight out of 10 people who take some form of action rely on self-actions; vulnerable groups are more likely to remain silent about their legal needs and problems; roughly one in ten of all respondents who sought legal information and advice had received it from the Legal Aid Commission, showing that the Commission has already achieved excellent coverage; See also a 'Mapping of Justice Sector Service Provision in the Solomon Islands' was conducted in 2018, which highlighted the lack of supply of justice services across most of the country, however this survey did not attempt to quantify the demand. See UNDP, 'A Mapping of Justice Sector Service Provision in the Solomon Islands' November 2018.

cost savings of legal aid services can be made more visible and evidenced so that informed budgetary decisions can be made in the public interest.

The second main question relates to how each precious legal aid dollar can be most effectively spent. Traditional 'siloed' legal aid systems, involving lawyers providing legal advice and representation are very expensive. What are the most cost efficient and effective lawyer-based legal aid models that might best meet the needs of diverse Pacific jurisdictions? For example, might greater use of qualified paralegals working under lawyer supervision enable better use of available lawyer time and thus help stretch legal aid services further?

More broadly, in light of the global recognition of the necessity of 'access to justice' upon which many other aspects of sustainable development depend, how can all available legal resources in each Pacific jurisdiction, including pro bono contributions by the practising bar, be best coordinated and 'knitted together' to provide a net or web of coordinated 'triaged' services that start at the most grassroots-level possible, offering the widest breadth, highest relevance and accessibility to communities, while ensuring mechanisms for escalation of cases requiring lawyer assistance and court adjudication in order to provide robust state protection of rights?

Answering this question requires looking well beyond traditional lawyer-based models and tapping into legal empowerment models that often include deployment of community-based paralegals who can (and it is argued, should) be formally linked to national legal aid providers. Such community paralegals needs to be very well trained to help people navigate the best pathway to solve their legal issue. By appropriately 'triaging' or 'directing the traffic' of legal issues arising in communities either to local dispute resolution mechanisms or directly referring them for legal aid assistance from a lawyer, legal aid can become more accessible and responsive to local legal aid demands. It can also become more targeted by providing a mechanism for escalating relevant cases to the state justice arena involving vulnerable people whose basic rights may be at stake, ensuring they are not 'buried' in local justice mechanisms and that vulnerable groups receive state protection of their rights, as they are constitutionally entitled.

The review offers some initial observations and conclusions for further discussion and thought regarding both key issues and puts forward some suggestions and preliminary recommendations regarding the kind of support that would be best effective in addressing these. However, as noted above, this review will evolve as it progresses through several further phases of discussion and consultation. The first phase will be consideration of recommendations by Chief Justices at the 2020 Chief Justices' Forum. Inputs from the Forum will then be fed into a regional consultation workshop with national legal aid representatives later in the year. Further data and insights from this workshop will then be compiled into a revised review document elaborating further on recommended models of support. This may then lead to development of pilot activities or approaches supported by Chief Justices in the next iteration of the PJSI program.

1.1 Objectives and Methodology of Study

The main objectives of this study are to:

- Gather and share descriptions and analysis of existing legal aid models in use throughout the region.

- Provide some preliminary insights into Pacific legal aid systems' capacity and coverage of the demand for legal aid services in the Pacific region
- Identify best practices that could be shared between Pacific states and tailored to build on or improve existing systems based on states' individual needs and demand for legal aid, as well as their capacities and resources.
- Generate ideas for how gaps in legal aid coverage could be most cost effectively and efficiently addressed at the country and regional level, and how capacities could be built to create sustainable legal aid initiatives.
- Identify possible contributions that future iterations of the PSJI program could make to strengthening legal aid capacities through piloting legal aid approaches

The methodology adopted for this study included:

- A desk-based literature review of:
    - International standards relating to legal aid and global 'best practice' models;
    - National laws of 15 Pacific states including their constitutional provisions and laws relating to legal aid services;
    - Review of articles and reports relating to legal aid services in the Pacific;
- Development of a detailed interview guideline document;
- Conduct of one-on-one interviews with leaders or managers of legal aid services in as many PJSI participating countries as possible;[4]
- Compilation of country data into single document; (see Annex B: Summary of Pacific Legal Aid Systems by Country Population Categories).
- Analysis of results and write up of first iteration draft report;
- Consultation process comprised of inputs and feedback received from PJSI staff, from Chief Justices (through group discussion at the PJSI Chief Justices Forum in March 2020) and a regional workshop of national legal aid actors to be conducted in Palau in October 2020.
- Compilation of feedback and finalisation of second iteration of the report and further recommendations for consideration of the Chief Justices, followed by development of legal aid pilot projects or areas of focus for next phase of PJSI programming.

1.2 Why Legal Aid Matters: International Frameworks and Legal Aid as a Human Right

While legal aid is un-controversially a 'public good',[5] this review argues that it needs to be framed and regarded more as a basic necessity, especially in common law systems, where courts' investigative roles are limited and reliance is placed on parties being capable of advancing their cases to the bench for adjudication. Equality before the law is a basic precept of most Pacific countries' constitutions. Yet it is devoid of meaning if the vast bulk of people in the region have no means of accessing the mechanisms for securing or enforcing their basic human rights. For example, in indictable criminal matters it is impossible to conduct a fair trial without an effective defence, not only throughout the court hearing stages, but right from the moment of arrest.

[4] Interviews were conducted with legal aid actors from Palau, FSM, Marshall Islands, Solomon Islands, PNG, Tonga, Kiribati and Nauru.

[5] See Annex A: Summary of Arguments: Why Legal Aid Matters.

Similarly, many civil law matters, especially those relating to protection from family violence and family law, also relate to basic human rights and commonly involve vulnerable parties whose rights will be violated in the absence of legal assistance. In most Pacific countries, legal aid systems play wider critical roles as a rare source of legal information, providing community awareness of the law and its processes, and directly linking people to the justice institutions responsible for protecting their rights and resolving disputes. Legal aid services are one of few bridges connecting the state to its citizens and for this reason are in themselves incredibly precious contributors to the rule of law and democratic governance.

Several important global studies on 'access to justice' in the past decade have highlighted the wider contribution that increased access to justice makes to sustainable development and the rule of law,[6] most recently concluding that in total 5.1 billion people worldwide- two thirds of the global population- lack meaningful access to justice[7] and that these inequalities also have a major retarding impact on national economies.[8] The report concluded that justice systems are both a reflection of structural inequalities and a contributor to these inequalities. Women and children find it hardest to access justice.[9]

In addition to the importance of access to justice as a pillar of sustainable development, a further vantage point for assessing the importance of access to legal aid is as a recognised basic human right and norm in international human rights law. The right to legal aid within the international legal framework has developed in a piecemeal fashion over time and been recognised mostly in the context of the right to free legal assistance for impecunious criminal defendants in connection with the right to defence and the right to a fair trial.[10]

However, in the past two decades there has been greater recognition of a right to legal aid in civil matters, especially in relation to protection from family violence and access to family law remedies such as divorce, child custody, maintenance or civil cases relating to gender discrimination, all of which often go to the heart of basic human rights. It is important to consider

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[6] In 2009, the U.N. Commission on Legal Empowerment of the Poor undertook a major global study which estimated that 4 billion people globally live outside the protection of the law and that the failure to establish accessible, effective, sustainable and credible legal aid schemes causes powerlessness, alienation and anger which can result in civil strife and even insurrection by disaffected communities. United Nations *Commission on Legal Empowerment of the Poor Report,* https://www.un.org/ruleoflaw/blog/document/making-the-law-work-for-everyone-vol-1-report-of-the-commission-on-legal-empowerment-of-the-poor/

[7] This report was followed by the appointment of a 'Taskforce on Justice', comprised of distinguished justice leaders and experts, 'Justice for All: The Task Force on Justice, Final Report and 'Highlights and Policy Recommendations. The Taskforce further found that at least 253 million people live in extreme conditions of injustice such as modern slavery, statelessness or conflict; 1.5 billion people cannot resolve their justice problems and are either victims of crimes or have serious civil or administrative problems they cannot resolve; and 4.5 billion people are excluded from the opportunities the law provides including lack of legal identity or documentation, which prevent them from accessing services and economic opportunities, or lack protection of the law.

[8] Ibid, 19. At a global level, conflict costs the world around $2,000 per person each year, while countries may lose up to a fifth of their GDP when levels of non-conflict violence are very high. Just three types of impact resulting from justice problems – lost income, damaged health, and the cost of seeking redress – cost OECD countries between 0.5 and 3 percent of their annual GDP. Everyday justice problems cost more than 2 percent of GDP in the majority of low income countries for which we have data.

[9] One billion children are victims of violence. Half of all women believe it is pointless to report a case of sexual harassment to the police. Poor people, people with disabilities, and people from minority ethnic communities are among the vulnerable groups that find it hardest to access justice. Their experience of injustice increases the likelihood that they will continue to be left behind. Ibid.

[10] Embedded most fundamentally in in Article 14(3) (d) of the International Covenant on Civil and Political Rights (ICCPR), which recognises the right: To be tried in his presence, and to defence himself in person or through legal assistance of his own choosing; to be informed, if he does not have assistance, of this right*; and to have legal assistance assigned to him in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it*. (Emphasis added)

the gender dimensions and impacts of how scarce legal aid resources are invested and distributed across criminal and civil areas of law, which may have a differential impact on men and women. Providing legal aid only or predominantly for criminal defence may result in the vast majority of scarce legal aid resource being invested in protecting the rights of men, at the expense of protecting the rights of women and children, having a disproportionate negative and discriminatory effect upon women and children's ability to access justice and enjoy equality before the law.[11]

2.0 Models of Legal Aid in the Pacific Region[12]

2.1 Key Facts

- 9 out of 15 countries[13] surveyed have Constitutional provisions entrenching and protecting the right of impecunious criminal defendants to legal representation.
- 12 out of 15 countries[14] have some provision for legal aid in their national laws.
- Nine countries have specialised or dedicated legal aid laws (for Public Defender/Public Solicitor/Legal Aid services etc.) and 3 have provisions for appointment of legal counsel in impecunious defendants integrated into their criminal procedure codes.
- Eight countries' legal aid laws provide for both criminal and civil legal aid[15] and three provide only for criminal defence[16] (however two of these[17] have good civil law legal aid coverage provided on a non-statutory basis by the Micronesian Legal Services Corporation MLSC). In practice, a very high percentage of legal aid is allocated to criminal defence. (e.g. in PNG where only
- Despite relatively well developed legal frameworks for legal aid (as per above), most legal aid services are unable to come close to having capacity to meet the community demand for their service. Four countries are estimated to have 'high' (greater than 50%) levels of legal aid coverage of the known demand for legal aid, five have 'medium' coverage (20-50%) and six have 'low coverage (less than 20%).
- Fiji likely has the highest per capital government spending on legal aid in the region. Its budget for August 2016 – July 2017 was $5 million FJD, or approximately $6 FJD per capita (approximately $2.87 USD),[18] which compares favourably to many developed countries. [19]

[11] For example, (and this pattern would likely be further exacerbated in other jurisdictions, if data were available), the majority of the recipients of assistance from the Fiji Legal Aid Commission are men. From 2012-2016, the Legal Aid Commission has assisted twice as many men as women due to the fact that the majority of accused in criminal cases are men. Hiil 'Justice Needs and Satisfaction in Fiji, 2018' , p14.

[12] See also Annex B 'Summary of Pacific Legal Aid Systems by Population Categories'.

[13] Nauru, Palau, Marshall Islands, FSM, Samoa, Vanuatu, Solomon Islands, Fiji and Papua New Guinea.

[14] Nauru, Tuvalu, Palau, Marshall Islands, Cook Islands, Kiribati, FSM, Samoa, Vanuatu, Solomon Islands, Fiji and Papua New Guinea. The three who do not are Tokelau, Nieu and Tonga.

[15] Tuvalu, Marshall Islands, Kiribati, Vanuatu, Solomon Islands, Fiji , Papua New Guinea and Samoa (although in January 2019 amendments to Samoa's law were proposed to remove eligibility for civil legal aid due to the budget being insufficient to cover both criminal and civil legal aid.

[16] Cook Islands, FSM and Palau.

[17] Palau and FSM.

[18] Hiil 'Justice Needs and Satisfaction in Fiji, 2018'p15.

[19] For instance, according to the latest available figures from 2013, Japan allocated $1.98 USD, Lithuania allocated $0.174 USD, South Africa allocated $1.87 USD and Spain allocated $3.16 USD per capita. See UNODC and UNDP, 'Global Study on Legal Aid: Global report' (2016).

It is around 80% of the Department of Public Prosecutions budget.[20] Note, comparison of legal aid to prosecution budget can be a useful measure of 'equality of arms' if limited to the budget for criminal defence.[21]

- The ratio of legal aid lawyers per capita is difficult to calculate but based on available information from lowest to highest, Palau: 1:3,000; Nauru 1:5400; Cook Islands: 1:6,000; Fiji 1:10,229; Solomon Islands 1:23,000; Tonga: 1:35,000; Kiribati: 1:39,000; PNG: 1:73,167.
- A large majority of legal aid services are centralised and provided mainly from the capital/main population island of most Pacific states. Fiji appears to have the best 'out of capital' coverage, with 15 district offices across the country, where around 60% of legal staff and 48% of non-legal staff are posted. PNG has 7 district legal aid offices, (although the % of lawyers posted to these is unknown). In the Solomon Islands, legal aid is more centralised with 79% of lawyers posted in the capital, who conduct irregular circuit visits to other districts.

2.2 Legal Aid Providers and Service Delivery Models

2.2.1 Common Typologies of Legal Aid Systems

The UNDP Global study on legal aid services identified four common 'typologies' of legal aid systems based on which actors are the providers.

1. Public defender institutions or other public institutions such as a Legal Aid Board.
2. Private practitioners take charge of providing legal aid services, through panel appointments, *pro bono* schemes and/or bar associations
3. Combination of both public and private institutions
4. Civil society providers work alongside public and/or private providers.

In terms of global trends, nearly half of the countries reviewed in the UNDP study use a combination of public and private actors for the provision of legal aid, who are supervised and managed by a single legal aid authority. Public institutions are the more prevalent actor in criminal law cases and private institutions, NGOs, pro bono schemes or bar associations are the prevalent actor for civil law matters. This is not surprising given the international legal framework emphasises the right of criminal defence, and this is then reflected in many countries constitutions and national laws. In many countries, civil society actors provide legal aid, either funded by the State (e.g. through contract delivery systems) or through private donors (national or international). If there is no right to legal aid in civil cases, often civil society actors fill the gap funded by private and international donors and deliver the bulk of civil legal aid services. [22] While the main provider of legal aid services in high-income countries is a State-funded legal aid entity (57%), in Least Developed Countries (LDCs), CSOs funded by private and international donors deliver the bulk of legal aid services (45%).

[20] Fiji Legal Aid Commission *Functional Review* (2016) (unpublished) 9-10. Also Director's full speech at the Universal Periodic Review noting that since establishment of Constitution in 2013, the budget of the Fiji Legal Aid Commission has increased by 60%. https://www.facebook.com/legalaidfiji/videos/2508104469259222/.

[21] E.g. The budget for the Public Solicitor in the Solomon Islands is roughly the same as for the Prosecution Service however the PSO budget must be spread over non-criminal cases too, which are about half of the cases, plus the DPP only act in around half of the criminal matters. So in effect, the PSO is funded to approximately one quarter of DPP pro rata. This not an 'equivalence of arms' even in the criminal jurisdiction.

[22] Global Study on Legal Aid, UNDP, 2016, p 82-84.

These global trends are consistent with the trends in the Pacific, although not in relation to this last point, as the Pacific has more state funded legal aid institutions than LCDs globally. The dominant model in the Pacific is for public defender or other institutions as the primary providers of legal aid, however there are examples of all four typologies across the Pacific (as seen in the Attachment B overview of different systems in PICS). A brief description of these and the perceived pros and cons of each in Pacific environments, are summarised below.

2.2.2 State funded Public defender/institutional models

The most common legal aid delivery model for criminal defence identified in this study is through stated funded Public Solicitor/Public Defender/People's Lawyer models. Typically, the legal aid entity assesses individual applications and makes grants of legal aid to eligible applicants, and then salaried in-house employee lawyers, mostly commonly employed as public servants, directly deliver legal aid services.

In addition to 'case by case' grants of legal aid for criminal matters, some jurisdictions, such as Fiji have employed 'duty lawyers' stationed at courts who provide one-off assistance to unrepresented litigants on the day of their court hearing. The legal assistance provided is usually legal advice and representation for relatively straightforward matters such as pleas, adjournments, bail hearings etc. Public solicitor models can provide a wider range of regular community legal services, such as regular outreach or 'on call' services to prisons,[23] police stations,[24] duty court services,[25] community legal education material, 'roadshow community legal awareness sessions,[26] legal factsheets, mobile legal advice clinics, telephone and online advice services, as well as law reform and legal advocacy activities.

2.2.3 Legal Aid Funds, Private Lawyer Panels, Pro bono Schemes and NGO provided services

Some legal aid services, especially small states which cannot afford a dedicated legal aid service, deliver legal aid services through the operation of a legal aid fund. In some instances legal aid funds are administered by the Courts (as in the Marshall Islands) and in other cases by the Ministry of Justice (as in Samoa). The governing entity administers a panel or roster of private lawyers, receives and assesses applications for legal aid and then assigns cases to private lawyers on a fixed cost basis. (For example the Cook Islands and Tuvalu).

In some jurisdictions (such as Fiji and Samoa) lawyers must apply to be included in these panels and be vetted for their experience and skill. In other jurisdictions, such as the Marshall Islands, participation in the scheme is compulsory for all lawyers who are required to accept legal aid cases on a roster basis. The governing rules provide limited exceptions for lawyers to opt out (through payment of an annual fee into the fund or in individual cases where there is a conflict).

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[23] As the Public Solicitor does in the Solomon Islands.

[24] As the Fijian Legal Aid Commission does, within one hour under their ''First Hour' procedure to reduce the risk of forced confessions, detention, mistreatment... It began in November 2016 as a 6-month project but has been extended, with the Legal Aid Commission having attended to over 1,200 persons in the two police stations in Suva where the 'first hour' initiative has been piloted and has been credited with changing the approach taken by police to more actively collect evidence and investigate prior to making arrests. See Fijian LAC's Director's speech to the Universal Period Review https://www.facebook.com/legalaidfiji/videos/2508104469259222/. See also Hiil 'Justice Needs and Satisfaction in Fiji, 2018' , p110.

[25] The Fiji Legal Aid Commission provides duty services in 16 district courts. And between 2016-17 provided legal representation to 2122 people and legal advice to 19,984 people through this service. See Fiji Country Report Pacific Islands Law Officers Network 2017.

[26] See for example a 'roadshow' awareness activity implemented by the Fijian Legal id Commission and funded by UNDP. https://www.pacific.undp.org/content/pacific/en/home/presscenter/articles/2019/legal-aid-commission-comes-closer-to-the-people.html.

In Legal Aid Fund schemes, lawyers are most commonly remunerated on the basis of fixed/lump sum/capped fees, usually on a reduced-fee basis. Several states have highly developed fee scales, (such as the Marshall Islands and Tuvalu whose cost scales may be helpful resources for other states considering similar approaches). Lawyers providing services under these schemes are usually required to provide detailed itemised invoices of the work done and receipts for reimbursement of disbursements/expenses such as for filing fees, expert reports, translations, copying, local transportation or other allowable expenses.

As is further discussed below, no jurisdictions reviewed have organized, 'scaled up' pro bono schemes supported by Bar Associations or Law Societies, although are some historical examples of these in the Pacific and there is strong interest by professional associations to set up schemes for performing more pro bono work, if they were supported to do so. NGO-provided legal aid in the Pacific is mainly specialised in nature and targets particular groups and matters, such as family violence matters, cases involving children, and to a lesser extent, people with disabilities, mainly in civil law matters.

2.2.4 Mixed Models

Some states utilise a 'mixed model' of both salaried employed lawyers to deal with the bulk of legal aid cases supplemented by private lawyer panels to perform any overflow of legal aid work at fixed rates, either capped by matter type or by number of hours at a maximum hourly rate. Examples of countries using 'mixed models' include Fiji and Nauru.

2.3 Observations on the Pros and Cons of Each Model

2.3.1 *Public solicitor/defender models* are generally considered the best model for countries that need to operate legal aid systems at scale. They are generally considered to provide better outcomes for clients and better value for money than other models. Lawyers who perform only legal aid work have the opportunity to become more specialised and experienced in criminal law or other legal problems common experienced by poorer members of the community. They can also develop relationships with the prosecution and other justice actors they regularly encounter to help achieve swift and positive outcomes for their clients. Being salaried, there is no incentive for in-house legal aid lawyers to string matters out to maximise their fee. Furthermore, having a salaried-lawyer structure means there is low risk of legal aid costs 'blowing out' unexpectedly. Public solicitor models can also provide a much wider range of services including duty lawyer services, prison/police station/hospital regular visitation services, telephone/online/mobile clinic advice services, and critically, community legal awareness raising, education and remote location outreach services. They can also contribute to law reform and legal advocacy processes and be an effective voice for the rights of disadvantaged community members.

Depending on their structure, disadvantages of some public solicitor models can be a lack of political, functional or operational independence from the Government. Lack of political and functional independence may result in 'unpopular' defendants, such as those facing trial for murder, child sex or drug offences, or offences related to politicised events, not receiving the legal aid they are entitled to. Many public solicitor offices where staff are public servants, complain that public service conditions prevent them from offering

competitive salaries, rewarding merit and effectively holding staff accountable or managing performance.

2.3.2 *Legal Aid Funds* are a good mechanism for very small jurisdictions which may not have the scale of demand to warrant a full-blown in-house legal aid service. Legal Aid Funds are good ways of sharing legal aid funding across the whole legal profession in jurisdictions where paid legal work is limited. They can also be a good way of getting the entire legal profession's buy-in to contribute to social justice for disadvantaged community members. They can also provide maximum flexibility for providing legal aid in locations without a legal aid branch presence but where private lawyers are present. (i.e. Rather than having to set up an expensive legal aid office or branch, it may be possible in some locations to simply pay the private lawyers who are already present). A further major advantage is that engaging private lawyers provides the flexibility to deal with cases where there are conflicts between the parties, and therefore one provider cannot assistance both parties.

Their disadvantages are that paying private lawyers per case, is generally a more expensive approach than having salaried legal aid lawyers. For example, the Legal Aid Commission of South Africa found that their Judicare system of paying private lawyers for legal aid work cost one third more than the cost of running the same matter through an in-house legal aid lawyer service (and double the cost of running the same matter using 'candidate attorneys' or who are required to do an apprenticeship before qualifying.[27] This has recently been raised as a concern by the Fijian Government.[28] Also, the lower than market fee scale provided to private lawyers may result in only less experienced lawyers accepting legal aid work (unless participation is compulsory) and monitoring the quality of work performed can be difficult and time consuming.

A further issues is that under private lawyer schemes only individual legal aid casework is performed, rather than the wider range of services that dedicated legal aid bodies can offer, such as duty lawyer services, clinics, community legal education, law reform etc. Some jurisdictions have found legal aid fund models to result in high costs and inefficiency as sometimes lawyers do try to 'string out' cases to maximize their fees. This can also often result in protracted disputes between practitioners and the body administering the legal aid fund about the payment of fees and reimbursement of expenses and high administration costs. Preventing corruption and power struggles over who will control the legal aid fund, is also a factor to be weighed especially in environments more susceptible to corruption.

2.3.3 *Mixed models* may provide 'the best of both worlds' to enable a balance to be struck between the efficiency, expertise and wider scope of services/activities that can be performed by an in-house lawyer service, with the maximum flexibility offered by contracting private lawyers to cover case 'overflow' or cases in locations where regular legal aid assets are not present.

The author has not been able to find any studies examining the pros and cons, quality, outcomes or cost efficiencies of in-house versus private panel based legal aid services in

[27] And who have been found by judicial officers to have defended cases just as well as qualified lawyers, when they are well trained. See Professor David McQuid-Mason, 'Affordable Legal Services in South Africa-with particular reference to one-stop-shop justice centres and paralegals', University of Kwazulu-Natal, Durban, South Africa. https://anggara.files.wordpress.com/2011/12/myanmar-affordable-legal-services-in-south-africa-david-compatibility-mode.pdf.

[28] 'Legal Aid Commission work outsourcing, not working say AG', The Fiji Times, 7 September 2019. article

the Pacific. A recent study comparing in-house versus panel-provided legal aid in NSW (Australia) for all criminal cases between 2012-2016 found that the type of legal representation provided does substantially affect the progression of proceedings.[29] The study found that cases assigned to private lawyers were finalised at a later stage in criminal proceedings, more likely in a Higher Court and were more likely to enter a late guilty plea. The report concluded that this may be for several reasons, one, because publicly funded private lawyers may prolong proceedings to increase their financial return. Two, because in-house lawyers are able to build more cooperative relationships with prosecutors. Or three, because private lawyers performing legal aid work in NSW are less skilled and/or experienced than in-house lawyers due to the less than competitive fee structure offered. In essence the study found that in-house legal aid lawyers provided more efficient and better outcomes for their clients, for similar reasons as those suggested above. [30]

2.4 Legal Aid Providers in Criminal Cases

In all countries reviewed, eligibility for legal aid for both criminal and civil cases is based on financial hardship or an inability to afford private legal services. This is often quite difficult for legal aid organisations to assess and to administer. Incomes may be seasonal, casual or sporadic and obligations to support extended family, complex. Assets, such as land are often hard to assess and cannot be converted to cash. Documentation of incomes and assets is often not available or difficult to get. For these reasons, implementing a documented means test can become a major administrative burden for legal aid organisations. Consequently, most legal aid services take a 'light' approach to means testing, and basically assume that applicants cannot afford private legal assistance unless they are obviously wealthy.[31]

Several legal aid laws also include provision for legal aid bodies to require payment of a financial contribution by the legal aid recipient to the degree they are assessed as being able to. For example Fiji, Solomon Islands and PNG, which has a specific law regulating contributions. In the Marshall Islands, all those receiving legal aid services paid for by the legal aid fund must (under the rules) pay for legal aid unless they have been granted a full or partial fee waiver by the Court. The author was not able to find any information concerning how much these contributions amount to or the degree to which they offset the cost of legal aid services in different Pacific states.

There is also variation in eligibility criteria for grants of criminal legal aid. Most jurisdictions provide eligibility for legal representation in all criminal matters. In PNG, legal aid in criminal matters is available for bail applications and for all juvenile defendants but otherwise is limited to those charged with indictable offences punishable by more than two years imprisonment. In some relatively well resourced jurisdictions such as Palau, the Public Defenders are able to 'cover the field' and provide representation in all criminal matters, including summary matters.

Most legal aid systems also have some kind of 'merit' test, commonly interpreted as meaning 'a reasonable prospects of success in the matter for which legal assistance is sought', as is the merit

[29]Evarn J. Ooi, Suzanne Poynton and Don Weatherburn, The Impact of Private versus Public Legal Representation on Criminal Proceedings, NSW Bureau of Crime Statistics and Research, Crime and Justice Bulletin, No 221, January 2019.
[30] However it should be noted that the Legal Aid Commissioner contested the validity of the study's methodology.
[31] In Fiji, The Legal Aid Commission provides legal aid to the vast majority of those applying for it. For instance, in 2016, only 2% (247 out of 12,573) of applicants did not meet eligibility criteria (either based on merit or on a means test)'Justice Needs and Satisfaction in Fiji, 2018' p14.

test for the Fijian Commission.[32] Most legal aid bodies have more flexible or lower threshold eligibility criteria for juveniles and prisoners. See Annex C 'Best Practices for further innovative approaches being taken in the protecting rights of suspects including Fiji's *'One Hour Procedure'* and technology-based resources such as the '*Know your Rights' App.*

2.5 Legal Aid Providers and Mechanisms for Civil Law Cases

As is the case at a global level, the legal framework for civil legal aid in the Pacific is significantly weaker than for criminal legal aid. This is reflected in the priorities of the state funded legal aid bodies, which, even where civil matters are eligible for legal aid in theory, often support civil legal aid only if there are 'left over' resources or to a much lower degree. Some jurisdictions (such as in Fiji, and the Solomon Islands) do clearly 'ring fence' resources for civil law cases, however these resources are still significantly less than those earmarked for criminal law matters. This reduced availability of civil legal aid through the mainstream legal aid bodies has resulted in more diversity and arguable more dynamic approaches to fulfilling the need for legal aid in civil matters through other kinds of mechanisms. However despite the strength that diversity and innovation bring, the major issue remains a lack of resources to achieve meaningful coverage.

One particular area of growth relates to legal assistance for victims of family violence. Most jurisdictions across the Pacific have already passed specialised laws addressing family violence. Unfortunately none of the laws examined contain a right for victims to be assigned legal aid. However, the existence of these new laws and protection order mechanisms, has created the momentum for new resources to be made available, mainly from donors, for legal aid to assist victims of violence. See Annex C 'Best Practices' for examples of how specialised services for family protection have been established in several countries, including Tonga, Solomon Islands and Fiji.

Another innovative approach to providing civil legal aid in the Pacific efficiently is by providing services in several jurisdictions to create scale and expertise. See Annex C 'Best Practices' for a description of how *The Micronesian Legal Services Corporation (MLSC),* operates, being the most innovative, ambitious and successful civil legal aid model in the region, established 50 years ago.

3.0 Independence of Legal Aid Services

The level of independence of state funded legal aid bodies can be assessed against several criteria, including their political, structural and functional independence, as well as the degree to which they are allocated specific budget lines, and have autonomy over their budgets and the employment conditions of their staff. Political and financial independence of legal aid services can be important especially where such service bring cases on behalf of individuals against state actors, or even the Ministry or judicial authority administering the legal aid service itself. For example, legal aid services need to be free to bring actions on behalf of individuals against the state, such as allegations of excessive use of force, mistreatment or torture by police, neglect of duty by various authorities, or cases of arbitrary pre-trial detention against the judicial branch of the state. To avoid situations of potential or actual conflict of interest, the independence of legal aid services should be maximised.

[32] Legal Aid Act, s 7-9.

PNG and Fiji have fully independent legal aid services established under their National Constitutions and receive their budgets directly from Parliament (and not via any Ministry or other institution). In addition to structural and functional independence, the Fiji Legal Aid Commission also has complete autonomy over the employment conditions of its staff, who are contracted by the Commission and are not public servants. While the Solomon Islands Public Solicitor is established as an independent office under the national Constitution, it structurally sits within the Ministry of Justice, the budget comes via the Ministry allocation and its staff are public servants. The People's Lawyer in Kiribati was part of the judiciary until 2014 when it was made an independent government body and has independent management of its budget, however reports to the Ministry of Justice and its staff are public servants.

A further variation is the Community Law Centre in Samoa, which reports to the Ministry of Justice but is headed by an independent Public Advocate appointed by the Head of State but is governed by an oversight committee comprised of the CEO of the Ministry, a nominee of Minister and the head of Law Society. The Public Advocate is authorised to issue guidelines regarding the employment conditions of staff (or they default to public service conditions if no guidelines are issued).

The law establishing the Legal Aid Office in the Marshall Islands emphasizes its functional independence unequivocally stating that *'In the execution of its legal duties and responsibilities set out in Section 805 of this Act, neither the Chief Legal Aid Officer nor his staff shall receive any direction from the Cabinet, the Chief Secretary or any other authority or person. The Legal Aid Office shall be independent'.* Other legal aid services are more clearly under government control, such as the Public Legal Defender in Nauru.

4.0 Coverage of Legal Aid Services

The biggest challenge or gap in universal legal aid coverage is provision of legal aid services outside of urban areas and is due to the lack of lawyers available in non-urban areas. [33] Many Pacific states face acute challenges in covering non-urban areas, especially as they are often on separate islands and access is made even more difficult due to very high local air and sea transportation costs. In the absence of baseline data in most PICS regarding the community demand for legal aid, this review attempted to provide an anecdotal 'guestimate' of the degree to which legal aid services are able to meet the known demand for services based on the responses of those legal aid providers interviewed, any data available, ratio of legal aid lawyer per capita and the number of branches/distribution of legal aid resources across the country. It then categorised each country's legal aid system according to high (greater than 50% estimated coverage), medium (estimated 20-50% of estimated coverage) and low (estimated less than 20% of estimated coverage). On this (admittedly flawed) modelling, six countries were categorised as providing low coverage, five as 'medium' and four as providing 'high' coverage. This spread of coverage capacities again demonstrates the diversity of systems and issues with legal aid services across the region.

In terms of general trends, those better funded legal aid services, such as in Fiji, have been able to address coverage issues by establishing many outpost branches (the Fiji LAC has 15 district offices), which can then reach deeper into more remote areas. In smaller PICS where the vast majority of the population live on one island, coverage of services does not present such a

[33] Global Study on Legal Aid, UNDP, p 97.

challenging issue and especially in small countries with US Ties (which are generally better resourced legal aid environments) most clients are able to access face to face legal aid services without difficulty.

A giant country like PNG struggles with legal aid coverage for multiple reasons. The PNG Public Solicitor Office has a very low ratio of legal aid lawyers per capita, has only seven district legal aid offices (equipped with lawyers), supplemented by ten 'legal aid desks' staffed by paralegals to cover a massive population and geographic area often covering very difficult terrain and with limited resources for local transportation. The Solomon Islands also has massive issues with coverage, as does the entire justice system,[34] with just three small branch offices outside of the capital, and most legal aid lawyers being based in the capital but participating in scheduled court circuits one or twice a year.

The whole issue of coverage of legal aid services demands a creative re think of how these difficult issues can be best addressed. Further investment in provision of remote services using telephone, internet based models, is certainly a need. The review found that while some legal aid entities provided remote means of delivering legal assistance through telephone advice 'hotlines', online legal assistance request or advice services, generally, there is little investment in remote service provision models across the Pacific. This is often due to legal aid services struggling to meet the 'face to face' existing demand for services and not having the 'bandwidth' to expand even remotely-provided services within their existing resources.

A further strategy is to build on the paralegal experience of the PNG or other PICS that have been developing paralegal-based outreach services. This is discussed in further detail later in this report. Given the very limited current investment in legal awareness raising and basic information provision to non-urban communities across much of the Pacific region, there are strong arguments for addressing this need through lower cost access to justice initiatives through community paralegal programs linked through referral processes to state and NGO provided legal aid services.

5.0 Resourcing Legal Aid Services

5.1 Global Standards and Trends

Guideline 12 of the *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* require that:

> States should, where appropriate, make adequate and specific budget provisions for legal aid services that are commensurate with their needs, including by providing dedicated and sustainable funding mechanisms for the national legal aid system.

[34] UNDP, 'A Mapping of Justice Sector Service Provision in the Solomon Islands', November 2018. file:///C:/Users/marti/Downloads/UNDP%2520and%2520SOI%2520Gov%2520Mapping%2520Survey%2520Report.pdf The majority of provinces have no direct access to justice services. There is a significant variation between the services provided in each province, when they are provided, and not all services extend to all communities within each province. Justice services could and should be expanded to more provinces and communities within provinces. Moreover, there are no specialized facilities for victims or witnesses of sexual or other GBV anywhere in the country. There is a need to expand the scope of services provided: e.g., to legal information and aid with respect to land, family law or resource extraction-related issues

In practice, there is huge variation in funding for legal aid services globally. The highest per capita legal aid funding per capita is reportedly provided in the Netherlands at US34.16 per capita, with the lowest reported being Nepal at US$0.01 per capita. As expected, developed countries generally spend more per capita on legal aid than least developed countries (LCDs), however this is not always the case, especially in countries where there is no centrally administered legal aid.[35]

Many states do not record or measure their funding for legal aid per capita at all. Those with centrally administered legal aid services are much more likely to do so, than those reliant on private or civil society providers. Legal aid entities which are structurally independent from the Government are more likely to have separate budget allocations within the justice budgetary system, than legal aid services falling within ministries of justice or other state departments.[36]

Most Pacific state funded legal aid organisations interviewed as part of this review emphasised that the levels of resources provided for their services was grossly inadequate to meet the demand for services expected of them. This was especially the case for PNG, which has not only the lowest ratio of legal aid lawyers per capita (1: 73,167) but is also shouldering some of the highest caseloads in indictable criminal matters and complex criminal trials.[37] The Solomon Islands also has limited coverage outside of the capital (as does the entire court system) and also struggles to meet the costs of even the sparse scheduled court circuit sittings.[38]

State funds are typically very limited in the Pacific region. However it is also true that most Pacific states do not prioritise or fund legal aid services anywhere close to the degree that they likely need to. This may be because the need for legal aid differs from other basic public services (such as health and education) in that it is not so obvious. However lack of government funding may also be because legal aid is about holding the powerful to account and it would therefore come as no surprise that the powerful may be reluctant to pay for it, or at least to a level where it can be effective.

As mentioned earlier, the best resourced legal aid services amongst the Pacific nations included in this review, were Fiji and Palau (and possibly FSM and the Marshall Islands). Palau had the highest ratio of legal aid lawyers per capita, benefiting from both a well-established state-funded Public Defenders Office for criminal law matters, and good coverage of civil legal matters through the largely US funded Micronesian Legal Services Corporation.

Fiji is the only country to have a constitutional provision directing the Government to adequately resource the Legal Aid Commission.[39] This is a hugely beneficial provision as it provides some guarantees for the adequate financing of the Legal Aid Commission irrespective of the political priorities of any particular Government and recognises the importance function of legal aid for protection of citizens' constitutional rights and not an 'optional extra'. Similar provisions should be considered for any Pacific states undergoing review of their Constitutions.

Fiji is also the only country found in this review which earmarks and measures legal aid funding per capita. As noted earlier, the budget for the Fijian Legal Aid Commission for August 2016 – July

[35] For example, Japan spend a surprisingly low US$1.98 per capital on legal aid. Ibid, p93.
[36] Ibid.
[37] Need data
[38] The PSO's lack of capacity to meet the demand for legal assistance from victims of family violence was a key submission made by the Family Support Centre to the Universal Periodic Review in 2016. See file:///C:/Users/marti/Downloads/FSC_UPR24_SLB_E_Main.pdf.
[39] See s118(9) of the Fiji Constitution which requires 'Parliament to ensure that adequate funding and resources are made available to the Commission, to enable it to independently and effectively exercise its powers and perform its functions and duties'.

2017 was $5 million FJD, or approximately $6 FJD per capita (approximately $2.87 USD). Some Pacific states also advocate for the legal aid budget to be 'on par' with the prosecution service budget, as a financial expression of 'the equality of arms' principle. However it is important that if using such benchmarks that legal aid services do not 'sell themselves short' by just a global comparison between budgets appointed to prosecution and legal aid services, without taking into account other relevant considerations, such as whether the legal aid budget also has to stretch to a greater range of criminal cases than the prosecution acts in, and also has to cover all civil legal aid cases.

In any event, it is important for legal aid services to have a strategy for advocating for its need to be adequately funded. Such advocacy points could include:

- The need for strengthened legal frameworks requiring that legal aid services be adequately funded by the state
- The need for adoption of a method for calculating the state legal aid spend 'per capita', as a way of establishing a baseline and then using this to push incrementally for a per capita funding target to be met.
- Note, that having a per capital calculation also enables comparison between states, and this can also help to motivate states which can be shown to be 'left behind' compared to its peer states.
- Invoking a *relevant* comparison between the funding provided to the prosecution service compared to legal aid and highlighting any disparity as a breach of the 'equality of arms' principle.
- Case studies that highlight the human costs of the lack of legal aid for citizens, especially the impact on vulnerable social groups, can also be a powerful way of helping government members better understand the true story that lies behind the figures.

5.2 Donor Funding

Compared to other regions of the world, donor engagement in supporting legal aid services in the Pacific, seems quite minimal.[40] Most funds from traditional justice sector sources go almost entirely to state institutions: the police, the courts and prosecutors. Only a small fraction is reserved for direct legal support to citizens. Very few public solicitor/defender offices reported having received targeted support under bilateral or UN justice programs, despite many of these programs taking a 'support the justice chain' approach. There are some exceptions,[41] however the support provided to legal aid services is typically often for shorter term projects for particular activities and rarely for core funding to help support regular operational costs or to expand access to services. [42]

[40] For example, a review of the JSS4D program design document for the 2016-2019 $100m bilateral justice project between Australia and PNG, revealed no indicative support activities targeting the Public Solicitor Office. The recently launched three year Tonga Justice Sector Support Program (TJSSP) between Tonga and NZ for NZ$3.3m does not include support to develop a legal aid service, despite this being a critical human rights issue, there being no legal aid service in Tonga, (except for DV victims), even for capital offences.

[41] For example the 'Fiji Access to Justice Project' support to the Fijian Legal Aid Commission funded by the European Union (EU) and implemented by the United Nations Development Programme (UNDP) and the DFAT funded Solomon Islands Justice Program 2017-2021 which includes some components involving the PSO.

[42] For example the 'Fiji Access to Justice Project' support to the Fijian Legal Aid Commission funded by the European Union (EU) and implemented by the United Nations Development Programme (UNDP

It is difficult to understand why donors in the region seem slow to respond to the global agenda and the new urgency attached to making progress on access to justice as an integral aspect of working towards, and achieving the SDGs. Notably, on the day the SDGs were announced, most of them were accompanied by major financial commitments, but on access to justice, no pledges were made.[43]

> 'This is a universal quandary. Around the world, there is nominal acceptance of the idea that the law should be accessible to everyone, but very little money is put to that purpose'.[44]

Some donors have made long term funding commitments to particular NGOs, especially in relation to family violence issues, and has supported them to expand from counselling, casework and advocacy services to all providing legal aid services. A further notable exception in the Pacific is the US, which has provided stable core civil legal aid funding not only to US territories (such as Guam, Marian Islands and Western Samoa) but also through various funding arrangements, to other territories with US links, such as FSM, Palau and the Marshall Islands. The main funding mechanism for civil legal aid is the Legal Services Corporation, a non-profit corporation established in 1974 in the US which receives annual federal appropriations from the US Congress and funds 133 non-profit civil legal aid entities, [45] including the Micronesian Legal Services Corporation, which then shares the funding across the four states where it operates.

Donor funding for wider community legal empowerment approaches has been limited, especially when compared to both the demand and the proportion of donor funds invested in state justice institutions. While donors have supported community based justice programming, such as through 'Justice for the Poor' programs in PNG, Vanuatu and the Solomon Islands,[46] these pilots have typically not been followed through with the levels of resources required to achieve 'at scale' activities[47] and nor have important aspects of their functions, such as the referral pathways or linkages to state provided legal aid services, been properly supported. This is where the largest 'piece of work' is yet to be done. In order for it to be 'done' there first needs to be a more thorough review and assessment of the grassroots community justice programs conducted so far across the region, with a view to assessing their experiences, identifying best practices, seeing how they could be scaled up, linked to state justice institutions and legal aid services, including accountability and quality control aspects, which is one of the key reasons these models have been held back.

A further issue to arise in this review was that of the support architecture funding mechanisms between donors and state legal aid providers. Some legal aid services that sit within government departments reported facing structural impediments to directly seeking donor support, as they

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[43] Vivek Maru, CEO of Namati 'Only the Law Can Stop Trump', Foreign Policy, March 2017 available at https://foreignpolicy.com/2017/03/09/only-the-law-can-restrain-trump-legal-aid-barefoot-lawyers/.

[44] Ibid.

[45] In 2018 amounting to US$425m. See https://www.lsc.gov/ for further information.

[46] See https://www.worldbank.org/en/topic/governance/brief/justice-for-the-poor#007 or the

[47] There are also examples of small scale funding for legal empowerment approaches identified during this review including:

- Support to the Family Support Centre in the Solomon Islands for community based volunteer committees in 4 provinces.
- Support to the Women's Crisis Centre in Fiji for community outreach and empowerment
- Support to the Kiribati Women and Children Support Centre, providing counselling and advocacy services to women and child victims of family violence.
- The successful piloting of the PJSI Enabling Rights Toolkit in Kiribati courts in 2015 inspired a major court outreach project to the outer islands to 'roll out' awareness raising focused on assisting unrepresented litigants and providing community access to justice. The project continued throughout 2015/16 and was heralded a major success.

lack autonomy over their resource base and do not have a way for funds to be directly provided to the legal aid service, as opposed to paid to the relevant ministry. Legal aid services become reliant on being included in receiving 'bits' of support built into larger UN or bilateral justice projects, rather than a focused, dedicated approach to mapping needs and then being support to meet these as effectively as possible. A further impediment to donor support for legal aid entities is the level of administrative and reporting requirements, and the lack of coordination of these between donors, creating a major burden for the entity needing support. Servicing donor requirements can become very time consuming and may only be worth the time investment for substantial grants of assistance. Some actors also reported concern that if donors provided them with funds, then the state would most likely reduce their funding by the same amount and allocate it elsewhere, reducing longer term sustainability of legal aid services.

Some NGOs are able to secure funding from donors for legal aid services for specific groups, such as victims of family violence, or people with disabilities. As mentioned earlier, those organisations that started as NGOs do still attract donor funds even after they have received government funding for projects, but may lose their NGO status as they become more intertwined with national justice structures, and ironically, this can hold them back from attracting funding as they are no longer eligible for civil society funds, for example, from major donors such as the EU. In some instances, donors may seek to 'claim' that they are the primary donor associated with the service, especially when they have seeded and supported the early years of a service and discourage or prevent the NGO from seeking and securing additional resources from other sources.

To address the lack of donor funding being provided for legal aid or legal empowerment services, it may be advisable to develop some key advocacy strategies with donors. These could include:

- Advocate strongly with key donors the importance of legal aid and the need for its support, especially to achieve the SDGs and reap the benefits of increased community access to justice.
- Highlight the legal aid 'spend' in every major justice program across the Pacific and highlight any disparity with the support being provided to other parts of the 'justice chain' which could create distortions in function unless they are all able to perform their particular functions to a similar level.
- Encourage donors to agree on reporting templates, indicators and requirements etc. to make it easier for those managing donor grants to acquit the requirements.
- Persuade relevant ministries of the potential benefits of allowing legal aid entities to directly engage with donors to discuss their needs and identify programs of support, as well as funding mechanisms to ensure that funding earmarked for legal aid services that exist within wider ministries or entities do pass on the additional funding, and do not cut or reduce state funding in response.

5.3 Resources Secured Through Partnerships

While not providing funding as such, partnerships with foreign community legal centres, professional associations, law schools, and cooperation with access to justice initiatives (such as the PJSI), have also proven to be an important source of resources for many legal aid services.

Examples include the Victorian Bar providing multi-year advocacy training for Vanuatu Public Solicitors, trial skills classes provided in American Samoa for Palau, FSM and other public defenders, internship or exchange programs between Solomon Island public solicitors and North Australia Aboriginal Justice Agency (NAAJA). 'Twinning' programs such as the Pacific Legal Policy Twinning Program offered by Australia where senior Pacific lawyers spend two months in the AG Department in Australia. Human rights training for Tongan lawyers (Government, NGO and private) by the PJSI.

Professional development opportunities through conferences such as the Pacific Lawyers Association in New Zealand, and the recent inaugural Pacific Legal Aid Regional Conference hosted by the Fiji Legal Aid Commission. Some legal aid services such as the Solomon Islands Public Solicitor have benefited from large injections of capacity building support to national public solicitors such as provided during the Regional Assistance Mission to the Solomon Islands (RAMSI mission).[48] They also have long standing arrangements with Australian Volunteers International (AVI) to receive annual or bi annual placements of volunteer Australian lawyers which had positively boosted their internal legal capacities, but have unfortunately been decreased from four lawyer placements to one.

All interlocutors interviewed highlighted the importance of having, and generating more, networking and learning opportunities: to hear more about how other Pacific legal aid systems addressed common challenges and to provide a chance to build staff capacities through professional development programs, internships and exchanges.

5.4 Own Income Generating Activities: Contributions from legal aid beneficiaries and costs awarded by courts in successful civil litigation matters

As noted earlier, many Pacific legal aid systems can require financial contributions from legal aid beneficiaries. While a person may not be able to afford full private law rates, they may still be assessed as able to make some contribution to the cost of their legal representation.

It is not known to what degree this is currently off-setting costs of providing legal aid services, but from the interviews conducted, the amounts recouped as contributions are currently very limited. This kind of scheme likely involves a significant investment to administer effectively as it requires careful means testing, billing and then following up with enforcement processes if people do not pay and may not be worth the outlay and effort. Nonetheless, with more robust means testing and proper collection systems in place, it may be possible for legal aid bodies to recoup more of their costs through contributions.

In some countries (e.g. United Kingdom, where legal aid funding was radically cut by 80% in 2012)[49], some not for profit legal aid entities and even some private firms were able to adapt their business models and fund their legal aid assistance by splitting organisationally into a fee charging entity (i.e. salaried lawyers providing legal assistance to clients who can afford to pay) with the profits then being pumped back into the 'legal aid' entity to cross-subsidise the legal cases of those who cannot afford to pay. This model involves a lot of hard work and commitment by the legal practitioners running 'cross-subsidising' private legal practices.

Alternatively, some legal aid entities that perform civil litigation functions, may be awarded costs by the court in cases where they win. The proceeds from these costs orders can also contribute to

[48] Regional Assistance Mission to the Solomon Islands.
[49] The Guardian Weekly, 27 December 2018. https://www.theguardian.com/law/2018/dec/26/revealed-legal-aid-cuts-forcing-parents-to-give-up-fight-for-children.

operational costs of the legal aid centres. This does not involve taking a 'cut' of the client's compensation, but rather the client is asked to authorise from the outset as a precondition for legal assistance that should the other party be ordered to pay the legal costs of the cases, that they be paid directly to the legal aid entity.

6.0 Building a Culture of Pro Bono in the Legal Profession and with Law Students

6.1 Pro bono/reduced fee services from lawyers

From the review and interviews conducted, it appears that at present there are limited organised pro bono legal aid schemes in any Pacific countries. While many private lawyers do perform pro bono work, much of this is assistance is in the form of legal advice for their extended network of family and friends, rather than being legal assistance targeting the most disadvantaged. A significant number of lawyers also perform reduced fee work, including for complex matters, which undoubtedly does contribute to access to justice. Several Law Societies' executive members often 'step up' and run pro bono matters themselves. Similarly in Kiribati, members of the executive of the Law Society often individually pick up pro bono matters, especially family law matters involving vulnerable women and all members of the Society are asked to do one pro bono case per month.

In several jurisdictions, judges will often assign cases on a pro bono basis from the bench, often if the lawyer happens to be in the court room waiting for their case to come on when an unrepresented litigant is before the judge. Again, there is no doubt to indicate how frequently this occurs, however, anecdotally, some judges are known to do this quite frequently, and so lawyers try to stay out of their court rooms or lines of vision!

There is untapped potential for organized pro bono schemes to be developed through Law Society/Bar Associations. This is addressed in more detail in a separate study,[50] however one model that has proven successful elsewhere has been to introduce an annual 'points system' for lawyers to satisfy in order to renew their practicing certificates annually. Some points can be earned for undertaking Continuing Professional Development activities, and others earned by undertaking a certain quota of pro bono work (either number of cases or hours of work).

Such schemes do require some resources to administer, however once set up, they can operate quite efficiently and make a substantial contribution to achieving the dual objectives of improving the professional knowledge and standards of the profession by requiring them to undertake compulsory CPD activities (such as in trust account, professional ethics and practice management), while also enabling the profession to make a contribution to social justice by undertaking pro bono work.

There is evidence that many national bar associations across the region see the value and willingness of their members to commit to a 'points-based' pro bono system[51] whereby lawyers are also required to complete a number of 'pro bono points' in order to renew their practising certificates. This support is based on certain conditions being in place, including that:

[50] See '*Situation Analysis of Pacific Lawyer Associations',* PJSI February 2020, p27.
[51] Ibid. See also 'Needs Evaluation Survey for South Pacific Lawyer Associations, SPLA, 2011.

- Pro bono schemes are coordinated with national legal aid providers or courts
- Associations have the administrative and quality control capacity to run them responsibly
- They be properly 'scoped' and 'messaged' to ensure they are not seen as a substitute for properly funded legal aid systems.
- Eligibility criteria is targeted to only those with no way of raising funds to pay for legal assistance to prevent such schemes from reducing paid work opportunities for the profession, especially junior lawyers.

The success of such schemes typically depend on achieving the 'buy in' of current and future law society members. It is necessary to think longer term about how to imbue a pro bono friendly culture in the profession, starting with opportunities for law students to make pro bono contributions through professional practice or legal clinic subjects while they are undertaking their law degrees. Once students are exposed to the legal problems faced by disadvantaged members of the community, and 'get a taste' for using their legal skills to assist them, this will hopefully create new generations of lawyers who enter the profession with a clear understanding of their duty to use their privileged position in society to 'give back' and contribute to greater community access to justice.

To win the confidence of current Law Society members, first it is necessary to ensure that the burden of pro bono work is fairly distributed across the profession and transparently administered. Only relatively straightforward legal matters are usually suitable for pro bono assignment. It is not reasonable to burden a private practitioner with a lengthy criminal trial or an intergenerational land dispute matter which may drag on for decades. However simple criminal or family law cases could be assigned and enable the lawyer points towards their re-registration. Alternatively, the Law Society could run its own community legal clinics (during the day or the evening) and lawyers could volunteer during clinic hours to provide legal advice and limited assistance, as another way to earn their pro bono points. Law students could also shadow or participate in these clinics as paralegals.

A further way to create incentives for lawyers to undertake more pro bono work is to ensure that they receive public recognition and credit when they perform pro bono work. Ensuring the media covers stories of lawyers providing assistance, and the Law Society gives out pro bono excellence awards at the annual Bar Dinner or other prestigious social or professional events, might be further ways to incentivise both voluntary and compulsory pro bono contributions from the legal profession.

There is a precedent for an organized reduced-fee legal aid scheme which used to be run by the PNG Law Society. The Society had a referral arrangement in place with the Public Solicitor's Office so that eligible 'over flow' cases could be assigned on a pro bono basis to members of the PNG Law Society. The Law Society Secretariat would receive the applications, and a panel was assigned to decide on eligibility, then a private lawyer from a 'pool' was assigned to the case and paid at a reduced fee rate by the Law Society. The scheme was funded from quarterly interest accrued on trust accounts maintained by lawyers and invested by the Law Society through.

Both civil and criminal cases were eligible under the scheme, many of them family law cases, breaches of contract, motor vehicle injury claims and dependency claims. The scheme excluded certain case types including adultery and enticement cases, land disputes, taxation claims, conveyancing, wills and testaments, defamation actions, election petitions and traffic offences. It is unclear what factors contributed to this scheme ending. However this scheme certainly stands as an important example of a Law Society showing strong commitment to the profession making a substantial contribution to social justice.

It seems that to a lesser degree, a similar but 'looser' arrangement is also in place in Samoa where members of the Executive of the Society will often step up and run pro bono matters themselves. Similarly in Kiribati, members of the executive of the Law Society also often individually pick up pro bono matters, especially family law matters involving vulnerable women.

6.2 Building a network of supportive law firms

Aside from targeting lawyers' professional organisations to perform more pro bono work, in many countries legal aid services form partnerships with supportive law firms (either local or foreign) willing to be referred pro bono cases that the legal aid service cannot assist with, or for more complex or big cases (such as some civil litigation cases) to 'team up' with the private firm and run big matters together.

This kind of arrangement can assist legal aid services to expand their horizons and run some strategic litigation cases with private law firms assisting with some of the 'leg work' (such as assisting with discovery, printing documents, assisting with transcripts, and reviewing and advising on evidence etc.). This kind of arrangement can often work out as a 'win/win' because sometimes law firms don't necessarily want to be 'on the record' as acting in a case, but may be willing for the legal aid organization to be the instructor but still provide the 'muscle' of the law firm in assisting with time consuming tasks. Aside from providing greater access to justice for clients, this is also a good way for legal aid lawyers to develop their knowledge and capacities in new areas of the law.

While these kinds of partnerships with law firms may not be possible in all PICs, it very likely would be possible in several PICS, especially larger states where there are many large established law firms, both local and international. Of course, law firms still need to satisfy themselves that their involvement in such legal matters will not raise conflicts of interest for them.

6.3 Student clinics supported by universities

As noted above, student clinics and internships can be another way of providing some further free legal assistance, while also shaping the values of future lawyers as contributors to social justice. In some countries student clinics and volunteers perform a wide range of roles and are well integrated into legal aid services as a key resource to undertake drafting and research for lawyers, but also contribute to substantive outreach roles such as conducting prison visits, interviewing prisoners, contributing to community legal awareness and outreach activities, assisting at legal aid help desks, drafting applications for bail or appeal.[52]

There are several precedents for student clinics across the region. In Vanuatu (where the University of the South Pacific law campus is based), the Community Law Information Centre (CLIC) is a student clinic which opens 4 mornings a week offering a 'drop in' legal advisory service

[52] Madhurima Dhanuka, '*Leaving No One Behind' Access to Justice and Legal Aid Strategies in India*, Prison Reforms Programme, Commonwealth Human Rights Initiative, New Delhi, ILAC.

during semester times. The Clinic is staffed by final year law students who work under the supervision of a qualified lawyer. The student can subject credit for undertaking the law clinic course. The Clinic does not provide legal representation in courts but does assist clients to prepare for taking their own cases to court and also produces and distributes legal literacy material.

Similarly, the University of PNG Law School has had an ongoing collaboration with the Law Society to provide the Legal Education Aid Program (LEAP) program. Final year law students spend their summer break representing defendants in district courts in the Provinces where no public solicitor/legal aid is available. The Law Society provides mentors and advice to the students, and assists them with costs for their logistics including phone credits and funds for photocopying and transportation.

Law students or graduates are frequently given internship places at legal aid services. This can also provide a good entry point for graduates to prove their worth and increase their chances of being offered a paid position in the service. This is a common career path, for example, in the Solomon Islands several graduates from the Professional Diploma in Legal Practice (PDLP), a six month offered by the USP, have completed internships with the Public Solicitor Office and then gone on to be hired as junior lawyers. A similar pattern has occurred with a legal intern now employed as a legal officer at the Family Protection Legal Aid Centre in Tonga. The Solomon Islands PSO also has a program with Bond University (QLD Australia) so that final year law students engage in a "Pacific immersion' program where they learn some basic pidgin and then work alongside paralegals in the PSO for a two week period. Funded through Colombo Plan.

While these kinds of programs can contribute to the workforce available to support legal aid work, it is important to also bear in mind that there is a significant cost of induction and supervision, which needs to be built into the program. Many interlocutors interviewed for this study emphasised the importance of internships being for a long enough period in order for the intern to reach a point of being able to meaningfully contribute to the work of the Centre. Internship periods of less than six months may actually add to the work burden of the legal aid entity, due to the investment required for on-boarding, inducting, training and for ongoing supervision of the students/interns.

6.4 Other sources of funding: Court/Government fees, donations/sponsorship

In some parts of the world state legal aid services are funded (at least in part) by all court filing or application fees paid to the court (or some other government services which involve a charge being levied), being directed to support the state legal aid service.

In some countries, non-government funded legal aid services have been able to raise significant amounts of money themselves to cover their salaries and operational costs through seeking donations and sponsorship from private individuals, philanthropic trusts and corporate sponsorship. For example, several NGO legal aid services in Australia are funded purely through donations from individuals, philanthropic trusts and corporations and have been able to regularly raise annual budgets that run into millions of dollars.

Such fundraising is usually done through a range of tools, the most common ones being an appeal put out by the organization asking for financial support, usually accompanied by de-identified case studies demonstrating how legal aid services can transform people's lives. This kind of material can motivate people and organisations to give donations, either 'one off' or even better, regular monthly or quarterly donations. These appeals are usually organized through direct mail outs, emails or links on websites to enable people or organisations to 'sign up' to regular donations to legal aid services, which can even be automatically deducted from credit card each month to reduce administration costs for the legal aid organisation.

Aside from such appeals, funding raising can be done through telethons, regular collection tins in shops or other locations, musicians offering to play concerts without a fee and ticket sales, movie nights, raffles, merchandise, billboard through sponsoring individuals to complete a challenge (such as a sporting event). Sometimes corporate or other donors can be persuaded to 'match' other contributions secured (for example for every $2 privately raised, the donor provides $1), as a way of both incentivizing own fundraising and leveraging high returns.

Such fundraising does involve a lot of hard work and may not provide the return to warrant the expenditure of effort, especially in Pacific country where there may not be the same opportunities to seek such support as fewer people have capacity to donate and there may not be a philanthropic culture amongst corporate businesses. However some direct fund raising may still be possible, and so these ideas have still been included in case they are useful.

In some instances, corporate businesses have agreed to contribute a proportion of their product sales (for example 10c from every sale) is set aside and given as a donation to legal aid, as the company's preferred charity. For example in Palestine, the main telco provided a set donation to legal aid proportionate to their sales/new contracts. It may be worth NGOs or other legal aid services, such as student clinics to seek corporate sponsorship or 'in kind' assistance for particular components, such as a free rent or venue for providing outreach services, free photocopying of posters or pamphlets, sponsorship of the costs of a lawyer to supervise a student legal clinic, transport outlay or costs for outreach services (for example, hiring or buying a van/bus which can be used as a mobile legal education centre or other resources necessary for a mobile clinic, such as folding chairs, laptops or other necessary items.

6.5 Sectoral funding of legal aid services

Another resourcing suggestion put forward by a grassroots legal empowerment NGO innovator, Namati,[53] is for wherever possible, funding for legal aid being built into the budgets of other sectors. For example, that the cost for legal aid (paralegal programs) be built into health programs, 'where health care agencies see that when patients are better able to exercise their rights, investments in care are more likely to succeed. We estimate that paralegals focused on health care accountability could serve the entire country for less than 1 percent of the annual health budget.' A further example, may be for projects that focus on housing or other social or economic developments areas, such as building livelihoods, that there also be funds integrated for legal empowerment approaches to make such projects more effective. A further example provided comes from Sierra Leone whee Namati was able to persuade the government that the mining and agricultural sectors should bear some of the cost for providing legal support to communities to ensure they were not exploited in negotiations over use of their land. Sierra Leone's land policy was amended to require that mining and agriculture companies contribute to a pooled fund to pay for legal aid for land dependent communities.

[53] See https://namati.org/who-we-are/.

Such approaches could be considered in some Pacific states, especially those where many donors are engaged in large projects in other sectors, (such as education, health, food security, livelihoods etc.) or in countries where governments could be persuaded to compel mining, agriculture or other resource companies contribute to the costs of protecting the environment and livelihood/land rights of affected communities.

7.0 Staffing of Legal Aid Services

The main challenges to emerge regarding staffing legal aid offices concerned poor pay and work conditions. Most services complained that legal aid lawyers are generally paid very poorly compared to private lawyers and also often paid poorly compared to other government lawyers, such as those working in the AG's department.[54] Many legal aid lawyers are highly skilled and driven people who are committed to contributing to social justice. However this should not be a reason to pay them less, and deters many talented lawyers from joining legal aid services. Unequal pay between public lawyers creates a hierarchy that makes it much more difficult for legal aid services to attract lawyers, and even more critically, to retain their experienced lawyers. Unlike lawyers in other government jobs, legal aid lawyers often face high work flow pressures, heavy caseloads, demanding court appearance schedules, taxing local travel and distressed and traumatised clients. Often they are working in very cramped and substandard office environments with little IT support. Given the difficulty of their roles and environment, legal aid lawyers should be paid more, not less, than other government lawyers, or working in specialised legal aid services where the Directors have made it a key priority to push for salary parity with other Government lawyers, otherwise staffing the service becomes unsustainable.

Legal Aid administrators in larger jurisdictions say they typically do not have difficulty attracting junior lawyers to their legal aid services. Often junior lawyers are attracted to legal aid services as they are a great environment for young lawyers to learn quickly and to gain legal practice and court experience intensively. However the bigger challenge for larger jurisdictions is then retaining more experienced lawyers.

As legal aid lawyers gain more experience, they also quickly gain more responsibility, including for supervising and supporting more junior lawyers and dealing with heavier and more complex caseloads. Often the annual civil service salary increments only involve very minor increases in salary, which often bear no relationship to the much larger increases in responsibility that mid-level and more senior lawyers shoulder.

As they face larger financial responsibilities to their families, some lawyers can no longer afford to practice legal aid law. Others become 'burnt out' by the demanding workloads and environment; others leave to work in private practice or in other more 'cushy' government lawyer jobs or leave because they do not want to be posted outside of the capital. Legal aid administrators try to retain good senior lawyers by offering them management experience, more autonomy and responsibility to develop new programs or activities, or professional development opportunities that may arise to attend conferences or workshops in the region. These strategies are used to compensate for less flexible employment conditions to help provide incentives to retain senior lawyers.

[54] Often legal aid lawyers start at a much lower 'rung' of the public service salary scale compared to lawyers working within the AG Department.

In some small jurisdictions, there are very few lawyers available and many are attracted to higher paying roles in private practice. This leaves some legal aid services with no choice but to engage lawyers from countries where wages may be even lower, but who are willing to move to small jurisdictions. One restriction that several jurisdictions that use US laws face is the requirement that foreign lawyers sit the local bar exam after four years. Few posted foreign lawyers are willing to undertake the extensive and intensive study that this demands. They therefore leave before they have reached the four year mark. The constant 'churn' of lawyers coming and going, with new lawyers taking around a year to really get 'up to speed' creates major spikes for the other lawyers, which can contribute to burn out and poor work-life balance. Changing the 'four year' rule would require amendment of the local legal practitioners' acts.

Previously in Kiribati three or four students were granted NZ funded government scholarships each year to study law at USP on the condition that they return to the country and work as a government lawyer for a fixed period of four years. This was a way of attracting lawyers to the legal aid service. However recently the Government has taken law off the list of prioritised areas for scholarships. At present the People's Lawyer's Office is funded for six lawyers, but is only able to fill three positions as they have been unable to attract even junior qualified lawyers to fill them. This difficulty in attracting lawyers to the People's Lawyer's Office is further worsened by the higher qualifications required of legal aid lawyers to meet court admissions standards, compared to other government lawyers who do not appear in courts and therefore only need to hold a law degree.

Low starting salaries, higher qualifications and low annual increments are not the only issues. Public service conditions in the Pacific are generally not very responsive or dynamic. Legal aid administrators often find it difficult to find ways to reward merit, and also to address poor performance. Holding poorly performing staff to account or dismissing non-performing staff is very difficult and can become very time consuming for managers. Given the heavy work load of legal aid organisations, there is no room to absorb and 'carry' non-performers. All legal aid resources are precious and need to provide the expected 'return'. Giving legal administrators more resources to pay people better and more flexibility to manage performance and determine the human resourcing arrangements for legal aid staff would likely greatly assist services. At present, some legal aid organisations are significantly held back by these issues, and also by unaccountable cultures within the public service.

See also *Annex D: Paralegals in Legal Aid Services and Legal Empowerment Models* for a discussion regarding approaches to using paralegals to improve the efficiency, reach and relevance of legal aid systems. This annex discusses paralegals in two senses, one as non-lawyers performing legal and administrative tasks within legal aid services under the supervision of a qualified lawyer, as well as 'community paralegals', who provide legal information and help community members navigate their justice needs and options as part of a community legal empowerment approach.

8.0 Innovative and 'Best Practice' Approaches to Improving Legal Aid Services in the Region

See Annex C 'Best Practices' for a compilation of all the 'best practices' identified across Pacific legal aid systems in the course of this review, grouped into the following themed categories:

- Legal Frameworks, Independence and Eligibility for Legal Aid Services
- Sustainability and Resourcing
- Service Delivery Models: Using available resources and collaborations to make legal aid more accessible and affordable
- Community Legal Education and Outreach Services
- Services to Address Particular Needs
- Collaborations
- Regional Initiatives

The sheer number and range of innovative approaches across the region is testament to the commitment and adaptability of those people driving legal aid services in each jurisdiction.

9.0 Analysis and Recommendations

9.1 Increase understanding of Government/policy makers/justice actors/donors' of the wider importance of legal aid as the main provider of access to justice in the Pacific so that legal aid is prioritised and properly resourced

There is a need to move beyond narrow understandings of legal aid as performing only a narrow and specific role, usually of legal defence in criminal law matters, as part of an interdependent 'justice chain' involving several state justice actors. While providing criminal defence is an essential aspect of ensuring a fair trial and protecting the rights of citizens, it is only one part of the legal aid story.

This is because work done both regionally and globally over the past two decades has revealed the importance of legal aid as the main 'deliverer' of access to justice services. And access to justice is now understood to provide an essential foundation for advancing many government and global goals (including the Sustainable Development Goals)[55] for preventing conflict, eradicating poverty and gender inequality and building social inclusion. In many locations across the Pacific, legal aid is one of few tangible services bridging communities, individuals and the state. Access to justice (via legal aid) therefore also boosts the legitimacy of the state in its relations with communities and individuals. It is a direct expression of state commitment to helping its citizens to peacefully resolve problems. It is necessary for the health and development of our societies.

Once a deepened understanding of the critical functions of legal aid in providing access to justice is established, then it becomes less difficult for Governments, justice sectors and donors to accept that legal aid service development needs to be prioritised and properly resourced. This does not simply mean replicating existing models on a larger scale, but rather finding the best ways to deliver existing services while finding new responsive, cost efficient, grassroots approaches to

[55] Aimed at achieving peaceful and inclusive societies.

better meet the critical unmet needs for access to justice. The legal aid resource 'pie' undoubtedly needs to be enlarged but it also needs to be spent in a smarter way that is more responsive to community need if legal aid is to provide the sustainable development dividend expected of it.

One influential tool for addressing the understandable 'we can't afford it' response, may be to do some costing of the counterfactual: to make visible the economic and social cost of not investing in access to justice, and to show that providing responsive access to justice at the community level is by far the most cost effective approach. (See recommendation 2 regarding building an evidence-base, for further information).

Recommendations

- Conduct a symposium/webinar seminar for governments, policy makers and justice actors across the Pacific sharing key findings from global studies on the critical role of access to justice to sustainable development including 'visioning' for what cost effective models of legal aid 'look like' (see below for recommendations regarding building an evidence base).
- Advocate strongly with key donors the importance of legal aid and the need for its support, especially to achieve the SDGs and reap the benefits of increased community access to justice.
- Highlight the legal aid 'spend' in every major justice program across the Pacific and highlight any disparity with the support being provided to other parts of the 'justice chain' which could create distortions in function unless they are all able to perform their particular functions to a similar level.
- Explore the feasibility of building funding for legal aid services (including community paralegal services) into other sectoral projects (such as health, education, environment, housing, livelihoods etc.) and advocate for legal aid provision as compulsory part of government agreements with mining and other resource companies.
- Encourage donors to agree on reporting templates, indicators and requirements etc. to make it easier for those managing donor grants to acquit the requirements.
- Persuade relevant ministries of the potential benefits of allowing legal aid entities to directly engage with donors to discuss their needs and identify programs of support, as well as funding mechanisms to ensure that funding earmarked for legal aid services that exist within wider ministries or entities do pass on the additional funding, and do not cut or reduce state funding in response.

9.2 Address need for stronger evidence-based approach to legal aid provision

Few Pacific jurisdictions have conducted national 'access to justice' surveys to provide a 'bottom-up' rather than 'top-down' assessment of unmet community demand for legal empowerment and legal assistance with justiciable matters. It is only through conducting such studies that we can gain a clear picture of issues and needs across different groups such as levels of legal awareness, patterns of help seeking behaviour, most common types of issues that cannot be resolved locally and public perceptions of justice processes and actors, all with special attention focused on the needs of vulnerable, disadvantaged or marginalized groups. Without evidence-based information

about the needs, it is impossible to accurately identify the main gaps or to plan and implement services that will meet needs and allocate resources to the most relevant areas.

An absence of country-specific surveys is not an excuse to do nothing. It is important for legal aid actors to be aware of the key findings to emerge from the surveys that have been completed, especially those in the Pacific but also worldwide.

Analysis of the 'access to justice' surveys conducted across the world over the past two decades highlights that while there are differences, 'patterns of problem experience are remarkably similar across the world'[56] with the most common problems being disputes concerning neighbours, family matters, housing and land, employment, social safety net assistance, access to public services, consumer issues, and debt/money.[57] The second common finding is that justiciable problems are not randomly distributed across populations but rather disproportionally affect disadvantaged groups, and can create and exacerbate disadvantage.[58] The reasons for this are also similar: 'that disadvantaged people can draw on few resources and have less capability to avoid or mitigate problems', and that 'the experience of problems increases the likelihood of further problems being experienced.'[59] This knowledge needs to start being applied across the Pacific now.

However, it is not enough to identify a problem to be addressed (that is, unmet legal need). It is also necessary to assess the extent to which providing legal assistance would make a difference. This can be done by comparing the ex-post outcomes from assistance with what would have happened in its absence (the 'counterfactual'). As noted above, economic modelling of these different outcomes can not only help persuade governments and policy makers of the economic rationality of investing in access to justice, but also ensuring that the 'spend' is directed to the areas where the great difference in outcomes can be achieved.

Economic predicative modelling of the costs of providing/not providing legal assistance are not easy to devise, however it is worth persisting with aspects that may be measurable, such as: the costs to individuals and the community that can arise from unresolved or escalated legal problems and the costs to the community from the inefficiencies caused by self-represented people using the legal system, especially the courts.

At a communal level unresolved legal problems can cause major civil disturbance, breakdown of law and order and social marginalisation of disadvantaged groups. At an individual level they can cause family violence, relationship breakdown, mental illness, and substance abuse, loss of employment, financial distress and homelessness. These outcomes do lead to substantial costs to individuals, governments and the wider community — costs which may be avoided in some cases by providing legal assistance For example, not providing legal assistance for civil matters can be a false economy where the costs of unresolved problems are shifted to other areas of government spending such as policing, health care, housing and child protection. Even when budgets are tight, additional outlays on legal assistance can be justified when they reduce outlays in other areas of government spending by a similar or greater amount.[60]

[56] 'Legal Needs Surveys and Access to Justice', OECD, Open Society Foundation, May 2019. Available at OECD Legal Need Surveys and Access to Justice p11.
[57] Ibid.
[58] Ibid.
[59] Ibid.
[60] See Measuring the Benefits of Legal Assistance Services' p1049-1052. Appendix K in Access to Justice Arrangements: Productivity Commission Inquiry Report", Australian Productivity Commission, 2014.

Recommendations:

- Establish a pool fund or provide technical assistance to jurisdictions to enable them to conduct national 'access to justice' surveys. Findings from the survey should guide an experimental approach to working out what models work best in different contexts.
- On an interim basis, countries yet to undertake baseline surveys should study the general trends emerging from other Pacific and global countries' studies, assess how applicable these likely are to their local environment and start using this wider knowledge for legal aid service planning and budgeting. While the PJSI Chief Justices Forum in March 2020 and the Regional workshop of legal aid providers in October 2020 will provide initial forums for sharing this knowledge, the conversation needs to be cast wider to include governments, policy makers, and donors (as per recommendation 1).
- Commission an economic costing expert to develop a predictive modelling approach to 'putting some figures' on the economic costs of providing/not providing access to justice across the region.

9.3 Increase agility and responsiveness of legal aid provision to community demand for justice

To increase their reach and impact, legal aid systems should prioritise the areas in which community justice needs are both frequent and impactful. According to the available 'access to justice' surveying, most of the community demands for access to justice relate to civil law cases concerning family protection, family law, land law and disputes with neighbours.

Yet at present the vast majority of legal aid resources in the Pacific (estimated to be higher than 80%) are tied up in traditional criminal defence services. Given that most legal aid laws in the region focus on criminal defence, and given the critical importance of criminal defence to fair trial and human rights, this strong emphasis is hardly surprising. However it does have several implications.

First, it means that there is limited resourcing of civil areas of law.[61] This has, in turn, created a major 'disconnect' between community demand for access to justice and the resourcing of the legal assistance supplied.

Second, it has created major gender bias as it has meant that most legal aid in the region is going to defend the human rights of men/male juveniles and that very little is 'left over' to defend the human rights of women, who most often seek to secure their human rights through civil family protection and family law cases.

Third, there is very little resourcing of dispute resolution at a local level and even less which is connected to state justice options, should local resolution fail. While there have been 'legal empowerment' approaches piloted across the region, they have not been well linked to state justice options to 'step in' should local approaches be incapable of protecting rights of vulnerable people or where they simply fail to solve disputes. There needs to be resources put into 'directing the traffic' of dispute types at a grassroots level to guide people towards the appropriate resolution mechanism, and to navigate them through a graduated system linked to state justice where key rights are in jeopardy or where disputes escalate or cannot be resolved locally.

[61] Exceptions to this includes countries where the MLSC operates and Fiji.

Recommendations

- Successfully demonstrate the need and cost effectiveness of allocating additional resources for access to justice, rather than re-allocating existing resources allocated to criminal defence.
- Use additional resources to prioritise the areas in which community justice needs are both frequent and impactful including by:
    - Addressing the imbalance in funding for criminal versus civil legal assistance and expanding access to help with concerning family protection, family law, land law and disputes with neighbours or other areas of demonstrated unmet need
    - Creating community-level services to increase legal awareness and knowledge and to guide and link people to appropriate dispute resolution mechanisms, including state justice. (see below for further recommendations on this point)

9.4 Focus on providing better outreach and coverage

The available evidence indicates that legal awareness and literacy across the region is very low. Legal information and assistance services are concentrated in the major population centres and rural and remote communities face major barriers to gaining access to these. People need better access to legal information, legal advice and formal and informal dispute prevention and resolution services. Legal aid services should continue experimenting with diverse channels for the delivery of legal information and advice.

Everyone in the justice sector, especially in legal aid services, is very aware of these unmet needs. They are also generally aware of the many relatively inexpensive ways that legal aid providers could achieve better outreach and coverage of their services. Some of these are already in use in highly developed legal aid services, such as in Fiji, however most legal aid providers really struggle to 'ring fence' any resources to develop community legal education materials and to disseminate these or new outreach models of assistance, even though they know that this is a critical unmet need and would reach many more people than a casework approach. However they are swamped with the day to day pressure of people banging on their doors for help with individual cases and are unable to put this knowledge into action. They have no 'slack' for experimentation or innovation of their service models as they are constantly slammed with case work.

Providing earmarked resources for experimentation with outreach-focused service delivery models and with community awareness raising is the only way to help support legal aid providers to innovate and develop service models that will reach more people.

Some services can be provided remotely and therefore at relatively low cost. These will never be a substitute for 'face to face' legal assistance, but certainly could have a major role to play in increasing geographic coverage of legal information and legal advice.

Community radio is a very under-utilised resource by legal aid providers for disseminating legal awareness and legal information. Ideally, every legal aid service in the Pacific should be involved in regular community radio segments or shows addressing common legal issues and where to get help. These can take different formats, thematic information shows, talk back shows, 'call-in'

shows, radio drama shows. These costs next to nothing and can readily achieve high coverage of the entire country.

While telephone 'hotlines' have become almost a standard service in family violence service provision, there seemed almost no investment in telephone legal advice services more generally. This seems to be a significant oversight given that most people across the Pacific now have access to telephones, if not their own, then at least via someone they know.

Telephone advice services (for larger countries, call centres and smaller countries a dedicated phone line) could be provided immediately and would require little more than some internal reallocations of resources to create a roster of lawyers to answer the calls and some posters, pamphlets and radio announcements advertising the new service. Telephone advice services need not necessarily be provided 24/7, although some on-call rostering for out of hours services (through the advice line diverting to the phone of the rostered legal aid lawyer) would be enormously beneficial and could open the way for people arrested to obtain access to legal advice and others in situations of crisis.

Creating SMS information services is another low tech way to achieve high levels of outreach and coverage across the Pacific. SMS messaging has been used very successfully in other sectors, providing advice to farmers regarding agriculture tips, or health advice or warnings. There is no reason why a similar approach could not be taken with SMS messaging of basic legal tips about common legal issues and contact details for where to get further help. In short, establishing telephone advice and SMS information services would be the single easiest way of greatly expanding access to legal assistance across the Pacific.

More and more people across the Pacific now have access to the internet. Yet few legal aid providers are taking advantage of this by providing access to their services or online legal information through their websites. Legal fact sheets or 'self-help packs' addressing common legal issues can be hugely helpful. The Fijian Legal Aid Commission has some really helpful resources publicly available online addressing common family law issues such as adoption, maintenance, divorce, custody etc.[62] While these obviously take some lawyer-time to develop, that time is nothing compared to the time taken to address such queries for every individual across the country seeking access to the same basic legal information. Access to information about legal aid services (telephone advice services, email referral or application form) can also easily be provided online.

Web chats and 'chatbots' are a 'next step up' from telephone and email based advice services. These may well be useful in the future, but it is recommended that legal aid providers focus on the 'lower hanging fruit' of establishing telephone advice and SMS information services, and websites that have useful information about the most common legal problems, as a starting point.

Social media campaigns around common legal issues is another low cost way of increasing access to legal information and awareness. Several legal aid providers have Facebook pages sharing events and developments but few use them as a further opportunity to provide or signpost how to find legal information and assistance for members of the public.

Interactive 'apps' that provide 'decision-tree' style navigation to legal information is another relatively low cost way in which legal aid providers could reach more people. As noted above, an

[62] See https://legalaidfiji.com.fj/Publications/Family-Law-Pamphlets.

'app' providing arrestees with information about why they should ask for legal advice from a lawyer before giving a caution interview, has proven to provide a good solution to the problem of many people not being able to meaningfully exercise their right to a lawyer when arrested.

Generic versions or templates of many of these resources (such as posters, pamphlets advertising legal aid services, fact sheets about common areas of law etc.) could readily be developed at a regional level, which may make it easier for national legal aid providers to then customise to their local circumstances and languages.

Mobile legal clinics and in-person community legal information sessions are generally preferred by communities but are obviously a lot more expensive to cover transportation, accommodation and other expenses of participants. Several legal aid providers had previously participated in 'roadshow' events which they felt were very valuable ways of each institutional actor explaining their role, and answering questions. These also provided a rare opportunity for justice actors to work together and create better relationships between justice institutions, which is also valuable in itself.

However, it is often not time or cost effective to continuously run in-person outreach clinics, information sessions or 'roadshows' or to reach all locations. However, where they are run, they should be videoed so that these videos can then be uploaded onto websites and social media sites, so that anyone with internet access in the country can also benefit from these. In remote communities, it may be possible to arrange for public screenings of these recorded legal information sessions, and then arrange for a 'live' Q&A session with a lawyer connected by telephone, as a way of cost effectively extending the reach of such resources.

Recommendations

- Encourage legal aid providers to earmark or (better), offer incentives (such as by adding a certain percentage of their budget) to develop outreach and legal information and assistance services with a focus on those that provide the greatest reach for the lowest cost.
- Create a regional legal aid 'top up' fund to provide grants dedicated to developing sustainable and innovative low cost outreach services such (radio shows, telephone advice, SMS information, user-friendly websites, social media, fact sheets, self- help packs, videoed legal information sessions or other innovative low cost legal information or assistance services.)
- Assess the viability of developing at a regional level templates/generic key legal information materials that can be readily customised to local contexts to reduce the burden on individual legal aid providers and create ways of sharing resources to provide a more efficient way of developing materials without each country having to 'reinvent the wheel'.

9.5 Diversify legal actor types and integrate with other services

Lawyers are currently the main category of legal aid actors across the Pacific. They are also the most expensive. A more detailed 'unpacking' of all aspects of their current roles would likely reveal that they currently perform a lot of tasks which do not require the specialised knowledge

and skills of a lawyer and which could be performed by others. Matching the tasks to the level of 'expert' required for that task, could create more capacity for legal aid services to provide better coverage and help more people. Thinking by way of analogy to how health services are structured, may assist in thinking through how to get 'better value' from the legal skills of the lawyers.

In models of universal health care, we readily recognise that we need different types of health providers starting at the local grassroots with primary health care providers. They do not need to be brain surgeons to perform their functions. They need to be within and trusted by their communities, capable of identifying different kinds of health issues, have some idea of their seriousness and consequences, be able to respond to emergency first aid to preserve life and how to get that person to the expert medical help they need in the timeframe needed for more detailed diagnosis and treatment.

Applying this model to access to justice, we need people positioned within and trusted by their communities to provide basic legal information and appropriate guidance to people regarding their options for resolving their legal problem, who can then refer and get people 'linked in' to the services they need, or to help them resolve their problem at the local level and if this fails, help escalating resolution through the state justice system. The global evidence 'is in' that well trained and supported community paralegals working within appropriate accountability frameworks, can have a hugely positive impact in increasing community access to justice, especially when they are positioned within national legal aid services.

Recommendations

- Pilot community paralegal programs within legal aid services in places without legal aid branches or reach. Ensure that community paralegals are well trained and provided with adequate ongoing support by using global 'best practice' resources. Ensure that accountability frameworks are clear and well established to build trust both with communities and with legal aid providers and to ensure that community paralegals cannot 'go rogue'. Develop a robust M&E framework for such pilots to capture and measure their impact, both on communities, legal aid providers and other justice actors so that there is an evidence base established for 'scaling up' successful approaches.
- Expand the use of paralegals working within legal aid offices and consider how they can be most effectively trained and assigned to work with lawyers. Many major law practices have experimented with finding structures most effective and efficient for providing legal assistance at cost and scale. Some have found that a ratio of 1 lawyer working with four or five paralegals, provides the most effective and efficient use of legal resources. They have also found that these 'pods' of paralegals working with a lawyer, are best 'line managed' by professional non-lawyer managers, again relieving the lawyer of the wider HR/supervisory work obligations (however allowing them to provide their input on performance), thus enabling them to remain focused on complex legal issues, finalising (not drafting) legal advice, court appearance work etc.
- In jurisdictions lacking lawyers, consider providing multiple entry points to the legal profession or tiers within the profession. Several jurisdictions which suffer from a shortage of law-degree qualified lawyers have established 'pleader' programs, enabling

entry to the legal profession based on legal experience and completion of exams, rather than law degrees. These are not only expanding the pool of available lawyers, but also creating a more diverse legal profession enabling people with less advantaged backgrounds to enter the profession. Having more lawyers with lived experience of social disadvantage may increase the accessibility and relevance of legal aid services provided.

- Develop integrated service models, where paralegals are embedded within other services in both urban and rural areas, such as health services, women's crisis/family violence services or other services that exist in remote communities. Providing they are services that are trusted in the community, the presence of community paralegals can provide a very effective 'wrap-around' service model to address needs holistically and ensure reliable referral pathways for people to find the help they need to resolve legal aspects of their problems.

9.6 Strengthen capacity and sustainability of existing legal aid providers

Many additional recommendations regarding existing legal aid services can be found throughout this report, but include areas such as:

- Urgently establish legal aid services in countries that have none for criminal defence
- Assess how to make the best use of available resources in each context: lawyers (including through national legal aid providers liaising and coordinating activities with the Law Society/Bar Association), law graduates, law students, and paralegals and identify existing sources of legal aid and fill in the gaps through cooperation agreements rather than duplication.
- Carefully select legal aid models suited to the individual context. This review has shown how even small jurisdictions have successfully managed to provide good legal aid coverage for both criminal and civil legal aid, including through strategic deployment of 'mixed models' or those that involve a mix of private lawyers (either paid or pro bono) and NGO legal aid providers to help expand coverage, flexibility and deal with situations where the national provider is 'conflicted out' of acting for one of the parties.
- Make better use of pro bono assistance from private lawyers: compulsory annual registration points schemes. Investigate the feasibility of introducing an annual 'points system' for lawyers to satisfy in order to renew their practicing certificates annually. Some points can be earned for undertaking Continuing Professional Development activities, and others earned by undertaking a certain quota of pro bono work (either number of cases or hours of work).Set up pro bono awards and media reporting to incentivise performance of pro bono work. Explore feasibility of building networks with law firms willing to undertake pro bono work.
- Support more clinics and internship programs but ensure they be for a minimum of 6 months (to enable the legal aid provider to 'get value' out of them).
- Strengthen the independence of legal aid services including to manage their human resources outside of public service structures and to engage directly with donors or other potential sources of support without threat to their existing budgetary allocations.

- Where national legal aid providers are civil servants, ensure that the lawyers are paid at minimum on parity with other Government lawyers (especially in jurisdictions where legal aid lawyers require higher qualifications), and increase increments beyond annual increments for middle to more senior legal aid lawyers, commensurate with the increase in their responsibilities for complex case and supervision of junior lawyers and other staff.
- Recognise and celebrate legal aid providers to reflect the high value of their work and their contributions to improving the fairness of their societies. This review confirmed that legal aid services across the Pacific are packed with inspiring hard working people dedicated to social justice who are achieving an enormous amount with the limited resources that they have. These 'unsung heroes' typically are poorly paid compared to other lawyers, have high caseloads and limited logistical support.
- Prioritise legal aid service providers' wellbeing and ensure that workloads are managed and supports provided to prevent burn out as an explicit part of the work environment. All of the factors mentioned above can create a stressful operating environment for legal aid lawyers, further compounded by the overall lack of recognition for the difficulty and value of the services they provide. The sector cannot afford to lose experienced legal aid lawyers to 'burn out', yet this remains a high risk.

9.7 Build knowledge, networking and cross- country resource opportunities for legal aid providers

A further point highlighted in preparing this review is that there is very little documented knowledge about legal aid systems in the Pacific, as most remains in the heads of the handful of extremely busy individuals across the Pacific who are administering and implementing legal aid services. Conducting this basic 'high level' review required major original research in order to provide even basic descriptions of the different legal aid models in existence across the Pacific and some insight into their operations.

More knowledge of how Pacific legal aid systems operate and sharing of this knowledge between countries enables identification of best practices, successful models or approaches or lessons to avoid, which could be hugely helpful. Until the inaugural Legal Aid conference in Fiji in September 2019 there were very limited opportunities for these kinds of exchanges to occur. The Legal Aid conference was an important first step and fulfilled an unmet need to bring legal aid providers together to establish personal contact and learn from each other, while also collectively considering future areas of development. Having provided parties a valuable opportunity to meet face to face in Fiji, the challenge is now to keep those contacts between people and the momentum going in order to support continued thinking, development and exchange at a regional level between legal aid actors.

Many participants interviewed for this review showed a very keen interest in knowing what other countries' legal aid models and best practices were and hoped that these could be shared and discussed. There may be value in establishing a regional legal aid resource group which could continue to play a convening role of the now established network of legal aid actors and to provide structure and facilitate communication and resource sharing between the different regional legal aid actors. Such a regional legal aid hub or network could help to progress important conversations about how to increase the capacity, coverage, resources, diversity and

responsiveness of individual legal aid services across the region, and to progress collective thinking and action on key common issues confronting legal aid providers in the Region. The PJSI Regional Workshop planned for October 2020 will be a precious opportunity to explore directly with legal aid providers their views about the value of creating a regional resource hub to provide ongoing support and opportunities for exchange and learning between legal aid providers to help them develop their individual services and progress collective thinking and action on key common issues confronting legal aid and access to justice in the Region.

Recommendation:

- Seek inputs from legal aid providers regarding establishing a regional legal aid resource network to support exchange of best practices, resources and knowledge, facilitate building of relationships and support collaboration and provide a forum for progressing collective thinking and action on key common issues confronting services in the Region.

9.8 Develop regional capacities to support national or multi-national legal aid services

- Develop regional legal aid grants fund for:
    - Pilots/experiments with innovative low cost legal information and advisory outreach or remotely delivered services
    - Producing key knowledge products such as national access to justice surveys and costings of providing/not providing access to justice.
- Develop some generic/template/ standardised materials and tools for legal information which can be readily customised to national legal environments
- Conduct regional-level advocacy with governments and donors to increase the size of the legal aid 'pie'
- Provide support to networking, learning and resource exchanging opportunities for legal aid providers across the Region.
- Benchmark aspects of legal aid services, such as per capital spend, proportion of legal aid budget to go into outreach activities or services for rural or remote communities
- Provide support to match/develop partnerships between legal aid providers in country and overseas (Australia/NZ legal aid collaborations with Pacific partners exchange programs etc.)
- Develop or expand cross-jurisdictional legal aid services, such as the MLSB, to increase the 'economy of scale' and the viability of legal aid services in small Pacific states and provide platforms for tackling common regional-level issues.

10.0 Next Steps and Draft Recommendations for Consideration at 2020 Chief Justices' Forum

As noted from the outset, this is an initial draft document aimed at stimulating discussion with Chief Justices and actors from national legal aid providers by providing a current situation 'snapshot' of the most pressing gaps in legal aid services across the region and offering some preliminary views about how these might be most cost effectively and addressed. The first phase of consultation will be consideration of this draft report and recommendations by Chief Justices at the 2020 Chief Justices' Forum. PSJI seeks the endorsement by the Forum of the following initial recommendations:

1. The Chief Justices' Forum requests that MFAT become more invested in researching, developing and supporting legal aid systems across the Pacific region

2. The Chief Justices' Forum endorses the following priority areas for further research, support and development of Pacific legal aid services:

- Expand resources available to legal aid by advocacy to governments, policy makers and donors based on development of evidence base to demonstrate the sustainable development gains and economic savings generated by additional investment in legal aid services in the region
- Focus on how best use can be made of existing legal resources in each context to expand the reach of legal aid services through coordination of legal aid between providers and national Law Society/Bar Associations, law graduates, law students, and paralegals.
- Advocate for and support jurisdictions lacking legal aid for criminal defence to urgently establish legal aid for criminal matters where suspect faces imprisonment
- Advocate for and support jurisdictions to identify how they can provide equal access to legal aid for civil cases relating to family violence and family law remedies
- Advocate for greater independence for national legal aid providers including autonomy over human resource arrangements and minimum salary parity with other government lawyers.
- Develop legal aid grants fund for pilots/experiments focused on:
    - Innovative low cost legal information and advisory outreach or remotely delivered services
    - Establishing community-based paralegal model integrated into national legal aid provision and their expanded use of paralegals in their regular operations
    - Establishing organised pro bono schemes with law societies/bar associations and student clinics
- Investigate viability of providing regional-level support on legal aid to:
    - Develop generic/template/ standardised materials and tools for legal information which can be readily customised to national legal environments

- Expand or link cross-jurisdictional legal aid services, such as the MLSB, to support legal aid service provision for small Pacific states
- Support exchange of best practices, resources and knowledge, networking, learning and exchange opportunities for legal aid providers across the Region

3. The Chief Justices' Forum recommends that these identified areas be the focus of consultations with national legal aid service actors at a regional workshop in October 2020.

4. The Chief Justices' Forum requests MFAT to commence investigating options for the availability of resources needed to support these areas of activity.

Annex A: The Case for Legal Aid; Global Studies; and Legal Aid as a Human Right

1. Why Legal Aid Matters

Without access to legal information, advice and representation, citizens are unable to enjoy their right to equal protection of the law. Many more criminal defendants around the Pacific would be at higher risk of having their rights violated when they interact with the criminal justice system, including through arbitrary pre-trial detention, torture, coerced convictions and wrongful convictions. Many more women and children would be unable to secure protection from family violence and unable to access basic human rights provided for via family law remedies such as divorce, child custody and maintenance. Many poor and marginalized community members would not be able to obtain help to enforce their labour, property or inheritance rights. Many more unresolved disputes would fester and spill over into conflict and violence between individuals and communities. Many more rights violations would remain unaddressed, further entrenching lack of protection from violence and social/economic disadvantages already experienced by less powerful individuals and groups within Pacific societies, often women, children, ethnic and religious minorities, people in remote locations and people with disabilities.

Thus, beyond enhancing the function and fairness of criminal and civil justice processes for individuals, ensuring that all citizens and communities have access to legal information, advice and assistance enables people to exercise informed choices about how to most effectively and peacefully resolve their disputes and secure their legal entitlements and rights. This, in turn, contributes to social inclusion, social justice and fairness in Pacific societies.

It is important to recognise that in the plural legal environments of the Pacific, while some disputes are resolved through courts, state justice remains inaccessible or provides remedies less relevant to people's daily lives. The vast majority of disputes are dealt with through non-state, local, customary or religious-based dispute resolution mechanisms or alternatively, are not dealt with by any justice mechanism as for many, there is no justice mechanism that meets their needs. It is therefore especially vital to strengthen practical capabilities to resolve disputes, disagreements and rights violations in a justice and fair manner through whichever justice mechanisms are accessible, available and relevant to the needs of people, including the most disadvantaged members of communities. Legal aid services, and more broadly, community legal empowerment approaches, can play key roles in building bridges between different justice mechanisms and developing capacities within all of these mechanisms as a means of safeguarding fair and meaningful access to justice, especially for vulnerable groups in society.

2. Key Knowledge Drawn From Global Studies: Access to Justice as a Necessary Foundation for Sustainable Development

Several important global studies on 'access to justice' in the past decade have highlighted the wider contribution that increased access to justice makes to sustainable development and the rule of law. In 2009, the U.N. Commission on Legal Empowerment of the Poor undertook a major global study[63] which estimated that 4 billion people globally live outside the protection of

[63] United Nations *Commission on Legal Empowerment of the Poor Report,* https://www.un.org/ruleoflaw/blog/document/making-the-law-work-for-everyone-vol-1-report-of-the-commission-on-legal-empowerment-of-the-poor/

the law and that the failure to establish accessible, effective, sustainable and credible legal aid schemes causes powerlessness, alienation and anger which can result in civil strife and even insurrection by disaffected communities.

This report was followed by the appointment of a 'Taskforce on Justice', comprised of distinguished justice leaders and experts, who reported in 2019[64] a distinct global 'justice gap'- concluding that in total 5.1 billion people worldwide- two thirds of the global population- lack meaningful access to justice. The Taskforce further found that at least 253 million people live in extreme conditions of injustice such as modern slavery, statelessness or conflict; 1.5 billion people cannot resolve their justice problems and are either victims of crimes or have serious civil or administrative problems they cannot resolve; and 4.5 billion people are excluded from the opportunities the law provides including lack of legal identity or documentation, which prevent them from accessing services and economic opportunities, or lack protection of the law.[65] These inequalities also have a major retarding impact on national economies.[66]

The report concluded that justice systems are both a reflection of structural inequalities and a contributor to these inequalities. Women and children find it hardest to access justice. One billion children are victims of violence. Half of all women believe it is pointless to report a case of sexual harassment to the police. Poor people, people with disabilities, and people from minority ethnic communities are among the vulnerable groups that find it hardest to access justice. Their experience of injustice increases the likelihood that they will continue to be left behind.[67]

These alarming findings and 'call to action' has been heard. The importance of access to justice has been recognised and incorporated into the UN 2030 Agenda for Sustainable Development Goals (SDGs), primarily through SDG 16.3, which promises to ensure equal access to justice for all by 2030; *'to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institution at all levels*.' Notably, this goal also has a direct impact on several other crucial goals, such as Goal 1 on Poverty, Goal 5 to advance gender equality and empower all women and girls, Goal 8 on Productive Employment and Decent Work, and Goal 10 on Reducing Inequalities.

Global analysis of the impacts and wider costs of not providing 'justice to all' requires a major rethinking of how justice 'is done'. The Taskforce on Justice made three key recommendations regarding forward looking approaches: that justice must be placed at the heart of sustainable development efforts; that people and their need must be placed at the centre of justice systems; and that there is a dire need for a shift from 'justice for the few' to 'justice for all'.

Justice reforms have often focused on institutions, such as courts, that are often distant from people and fail to serve their needs. Although traditional methods of delivering justice—through formal or customary courts, police, and lawyers—are critical to ensuring peaceful and stable societies, they are not enough. In addition to being able to 'access' the justice system, people

[64] 'Justice for All: The Task Force on Justice, Final Report and 'Highlights and Policy Recommendations.
[65] Ibid, p18.
[66] Ibid, 19. At a global level, conflict costs the world around $2,000 per person each year, while countries may lose up to a fifth of their GDP when levels of non-conflict violence are very high. Just three types of impact resulting from justice problems – lost income, damaged health, and the cost of seeking redress – cost OECD countries between 0.5 and 3 percent of their annual GDP. Everyday justice problems cost more than 2 percent of GDP in the majority of low income countries for which we have data.
[67] Ibid.

must also be able to understand the law and legal processes, so that they can make informed choices about how to resolve their dispute or realise their rights.

This essentially means that legal empowerment is intrinsically linked to legal aid, which is about placing more power in the hands of the people, giving them agency to exercise their rights and pursue remedies in areas affected by law and policies. The Task Force proposed a similar approach, putting people at the centre of justice systems, starting with those who are already furthest 'behind'. Gaining a deeper understanding of people's justice needs through robust baseline 'access to justice' surveying, is an essential step to ensuring that solutions are designed to respond to identified needs and delivered by justice systems that are open, inclusive, and which do not work in silos, but rather, in collaboration with other sectors such as health, housing education and employment.

Importantly, the Taskforce also assessed the implications of financing access to justice for all and found it quite attainable for many, even low-income, countries. It found that in low-income countries, it would cost just $20 per year to provide each person with access to basic justice services, (significantly cheaper than the costs of universal basic education and essential health services, which cost $41 and $76 per person per year, respectively) and $64 per year to provide universal justice services in middle-income countries and $190 in high-income countries.[68] The report recommends that some existing justice sector resources be redirected towards lower-cost approaches with potential to deliver justice at scale, with legal empowerment and non-formal approaches relatively affordable in all countries.[69] These approaches and recommendations for access to justice reforms needed at the global level are considered, where appropriate, in this discussion of legal aid mechanisms in the Pacific region.

3. Legal Aid as a Human Right

In addition to the importance of access to justice as a pillar of sustainable development, a further vantage point for assessing the importance of access to legal aid is as a recognised basic human right and norm in international human rights law.

The right to legal aid within the international legal framework has developed in a piecemeal fashion over time. The right to legal aid, has been recognised mostly in the context of the right to free legal assistance for criminal defendants who are unable to afford a lawyer, and in connection with the right to defence and the right to a fair trial, embedded most fundamentally in in Article 14(3) (d) of the International Covenant on Civil and Political Rights (ICCPR), which recognises the right:

> To be tried in his presence, and to defence himself in person or through legal assistance of his own choosing; to be informed, if he does not have assistance, of this right*; and to have legal assistance assigned to him in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it*. (Emphasis added)

Many Pacific constitutions contain almost identical provisions to Article 14(3)(d) of the ICCPR, thereby creating binding and enforceable legal obligations upon states (including upon the

[68] Ibid, p20.
[69] Ibid.

judicial branch of states) to ensure that effective criminal defence is available to impecunious defendants.

At the international level, the importance of legal aid has been specifically recognized by the Member States of the United Nations and legal aid is recognised as a key human right in many other international instruments also.[70] Most recently, The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013) provides the most comprehensive guidance regarding the scope of state obligations to provide legal aid. Principles 1 and 2 position the basic purpose and obligations of states to provide legal aid services.

> *Principle 1. Right to legal aid*
>
> 14. Recognizing that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process, States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution.
>
> *Principle 2. Responsibilities of the State*
>
> 15. States should consider the provision of legal aid their duty and responsibility. To that end, they should consider, where appropriate, enacting specific legislation and regulations and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. States should allocate the necessary human and financial resources to the legal aid system.

The Guidelines further recognise that legal aid should be provided to victims of crimes and witnesses (Principles 4, 5) and certain groups including women (Guideline 9), children (Principle 11, Guideline 10), people with disabilities, refugees and internally displaced persons and other groups with special needs are entitled to additional protection or are more vulnerable when involved with the criminal justice system, (Principle 10).

Relevantly for the Pacific, Principle 10 also states that '*States should also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and to persons who are members of economically and socially disadvantaged groups.'*

Summary of Key International Standards Regarding Legal Aid

- Article 14(3)(d) of the *International Covenant on Civil and Political Rights* (ICCPR), which recognises the right:

  'To be tried in his presence, and to defence himself in person or through legal assistance of his own choosing; to be informed, if he does not have assistance, of this right; and to have legal assistance assigned to him in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.' (Emphasis added)

- The *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (2013) provide the most comprehensive guidance regarding the scope of state

[70] See Annex A for a list of international instruments and guidelines which provide for legal aid, including as a human right.

obligations to provide legal aid. Principles 1 and 2 position the basic obligations of states to provide legal aid services.

- *Principle 1. Right to legal aid*

  14. Recognizing that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process, States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution.

- *Principle 2. Responsibilities of the State*

  15. States should consider the provision of legal aid their duty and responsibility. To that end, they should consider, where appropriate, enacting specific legislation and regulations and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. States should allocate the necessary human and financial resources to the legal aid system.

- The Guidelines further recognise that legal aid should be provided to victims of crimes and witnesses (Principles 4, 5) and certain groups including women (Guideline 9), children (Principle 11, Guideline 10), people with disabilities, refugees and internally displaced persons and other groups with special needs are entitled to additional protection or are more vulnerable when involved with the criminal justice system, (Principle 10).
- Relevantly for the Pacific, Principle 10 also states that '*States should also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and to persons who are members of economically and socially disadvantaged groups.'*
- *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, (Principle 11) which states that a detained person shall have the right to defend himself or herself or to be assisted by counsel as prescribed by law
- The *Basic Principles on the Role of Lawyers* (Principles 3, 6) which state that any persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services
- There are also regional instruments, such as the *European Convention on Human Rights* (Article 6, Right to a Fair Trial, also extends to some civil law matters), the EU Charter of Human Rights (Articles 47 and 48(2)) and as adjudicated in cases before the European Court of the Human Rights of Human Rights.[71]

[71] Article 6 § 1 does not imply that the State must provide free legal aid for every dispute relating to a "civil right" (Airey v. Ireland, § 26). There is a clear distinction between Article 6 § 3 (c) – which guarantees the right to free legal aid in criminal proceedings subject to certain conditions – and Article 6 § 1, which makes no reference to legal aid (Essaadi v. France, § 30). The question whether or not Article 6 requires the provision of legal representation to an individual litigant will depend upon the specific circumstances of the case (ibid.; Steel and Morris v. the United Kingdom, § 61; McVicar v. the United Kingdom, § 48). What has to be ascertained is whether, in the light of all the circumstances, the lack of legal aid would deprive the applicant of a fair hearing (ibid., § 51).

- The right to legal aid for children is recognised in the *Convention on the Rights of the Child* (Article 40), which stipulates that children accused of committing an offence have the right to legal or other appropriate assistance and (Article 37) which specifies that children who have been arrested and detained have the right to promptly access legal assistance.
- *UN Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules"*: Rules 7, 13, 15) clarify that children have both the right to counsel and the right to apply for free legal aid and the *UN Standard Minimum Rules for the Treatment of Prisoners* (Rule 93) provide that a child who has not yet been tried be permitted to apply for free legal aid where this is available.

Annex B: Summary of Pacific Legal Aid Systems by Country Population Categories

Population	State and Pop.	Legal Framework			Matter Type (eligibility and coverage)		# legal aid lawyers (L) # non-lawyers (NL) Ratio legal aid lawyers per capita	Summary/typology of model
		Constitutional provision	Legal aid law	Legal aid integrated	Criminal	Civil		
Micro States <3000	Tokelau 1340	X	X	X	X Low	X Low	0	N/A
	Niue 1620	X	X	X	✓ Med	✓ Med	0	Ad-hoc pro bono by NZ lawyers during court sitting weeks
Very small states 3000 – 20,000	Nauru 10,800	✓	X	✓ (not clear if valid)	✓ Low	X Low	2L ? NL Per capita: 1:5400	State provided criminal defence up to $3000 per case, can be a private lawyer or Public Legal Defender (within Ministry) Int./ NGO civil legal aid for refugees/asylum seekers
	Tuvalu 11,700	X	✓	X	✓ Med	✓ Med	1L ? NL Per capita: 1:11700	State provided with set fee scale and waiver possible, independent People's Lawyer
	Cook Islands 18,000	X	✓	X	✓ Low	✓ Only family violence Low	3L (NGO) + panel case Per capita: 1:6000	Legal Aid Committee decides grants to roster of private lawyers at fixed fee rates NGO funded by State via donors to provide legal aid to GBV victims
	Palau 18,000	✓	X	✓	✓ High	✓ High	Total 6 3 crim (PD) 3 civil (MLSC) 1:3000	Criminal defence largely covered by Public Defender (within MOJ) Civil matters largely covered by Micronesian Legal Services Corporation (not-for-profit with US and some Gov't funding)

Population	State and Pop.	Legal Framework			Matter Type (eligibility and coverage)		# legal aid lawyers (L) # non-lawyers (NL) Ratio legal aid lawyers per capita	Summary/typology of model
		Constitutional provision	Legal aid law	Legal aid integrated	Criminal	Civil		
Small states 20,000 – 60,000	Marshall Islands 59,000	✓	✓	X	✓ High	✓ High		Independent Legal Aid Office (under Chief Legal Aid Officer) for civil and criminal law matters MLSC covers civil matters Legal Aid Fund administered by the Court via compulsory roster of lawyers
Medium states 60,000 – 500,000	Tonga 105,000	X	X	X	X Low	✓ Only family violence Low	3 L (NGO) 0 PD Per capita: 1:35,000	Family Protection Legal Aid Centre mixed state and donor funding for family protection and some family law matters No legal aid available for criminal defence beyond ad hoc pro bono Previous one-off 'court fund' provided by donors to fund certain appeals
	FSM	✓	X	✓	✓ High	✓ High		Office of Public Defender along with 'pleaders' cover criminal law matters Micronesian Legal Services Corporation (not for profit with US and some Gov't funding) covers civil matters
	Kiribati 118,000	X	✓	X	✓ Med	✓ Med	3L 4 NL Per capita: 1:39,000	Office of the People's Lawyer (independent Gov't body) covers criminal, civil (family, land, other civil) cases.

Population	State and Pop.	Legal Framework			Matter Type (eligibility and coverage)		# legal aid lawyers (L) # non-lawyers (NL) Ratio legal aid lawyers per capita	Summary/typology of model
		Constitutional provision	Legal aid law	Legal aid integrated	Criminal	Civil		
Medium states 60,000 – 500,000	Samoa 197,000	✓	✓	X	✓ Med	✓ Med		Ministry of Justice provides legal aid via legal aid fund for private lawyers at fixed fee rates Community Law Centre (within Ministry of Justice and Courts Administration) headed by the Public Advocate, provides criminal and civil legal aid by salaried and volunteer lawyers. Budget $200,000 tala (approx. AUS$110,000)
	Vanuatu 300,000	✓	✓	X	✓ Med	✓ Med	9L. All in cap. ? NL Per capita: 1:33,000	Public Solicitor provides criminal defence and civil legal aid with no limitations on mandate. Can levy contribution from legal aid recipient. CLIC (Community Legal Information Centre) USP final year law student clinic providing legal advice and awareness (not representation)
Large States 500,000 – 1 million	Solomon Islands 670,000	✓	✓	X	✓ Low	✓ Low	29L, 24 crim, 5 civil. 23 in cap, 6 in districts. ?NL Per capita: 1:23,000	Public Solicitor Office provides criminal and civil legal aid. Independence protected under Constitution but institutionally within Ministry of Justice NGOs provide legal assistance for family violence cases Family Support Centre provides legal aid (advice, assistance and

Population	State and Pop.	Legal Framework			Matter Type (eligibility and coverage)		# legal aid lawyers (L) # non-lawyers (NL) Ratio legal aid lawyers per capita	Summary/typology of model
		Constitutional provision	Legal aid law	Legal aid integrated	Criminal	Civil		
								representation) to victims of family violence and GBV. Also provides 24/7 telephone counselling hotline, mobile and in-person counselling, advocacy, awareness raising and volunteer committees in districts.
Large States 500,000 – 1 million	Fiji 890,000	✓	✓	X	✓ High	✓ High	209 employees, at least 87L 89NL Suva: 32 L, 37 NL Rest in 15 district offices Per capita: 1:10,229	Government funded independent Legal Aid Commission Provides legal aid in civil and criminal matters via salaried lawyers, duty lawyers or private practitioner panels. Provides legal education and awareness raising.
Very large States >1 million	PNG 8.78 million	✓	✓	X	✓ Low	✓ Low	120 L ? NL Has HQ Port Moresby and 7 district offices in Lae, Goroka, Mt Hagen, Rabaul, Wabag, Kimbe and Madang. Per capita: 1:73,167	Public solicitor office: Independent (since 2006) government funded institution 100 lawyers but still limited coverage of demand Focus on serious crimes, but also provide assistance for less serious criminal matters, civil, family, human rights and compensation law. PNG Law Society: some ad hoc pro bono work but previously had organised scheme

Population	State and Pop.	Legal Framework			Matter Type (eligibility and coverage)		# legal aid lawyers (L) # non-lawyers (NL) Ratio legal aid lawyers per capita	Summary/typology of model
		Constitutional provision	Legal aid law	Legal aid integrated	Criminal	Civil		
								University of PNG: LEAP program for final year law students.

**Estimated coverage of legal aid demand: High >50%, Medium: 20-50%, Low: <20%*

MICRO STATES

TOKELAU (POP. APPROX. 1340)

No legal aid institutions or laws providing for rights to legal aid.

NIUE (POP. APPROX. 1620)

Institution	*Description*
Niue High Court Niue High Court Annual Report 2013-2014	There is no specific legal aid program in Niue however there are a number of volunteers from the legal profession in Christchurch who assist litigants in the Niue courts during the two weeks each year when judges hear cases in Niue.

Legislation/Regulation/Code	*Description*
Nil	

VERY SMALL STATES

NAURU (POP. APPROX. 10,800)

Institution	*Description*
Public Legal Defender	• Within Department of Justice and Border Control • Staffing: 2 lawyers,

	• Provided for in criminal matters under Criminal Procedure Amendment Act 2018 but not clear if applied in practice or whether Amendment Act provisions are applicable. • Purpose is to provide legal aid, advice and assistance to people who have been charged with a criminal offence or need aid for proceedings under another Act, or when requested by the Supreme or District Courts • Can engage private legal representative if PLD does not have capacity. Limit of $3000 for legal aid per case, however this limit has been found by courts to be unconstitutional. • 'Legal Aid Policy' in existence. Department of Justice and Border Control Annual Report 2015 2016
The Nauru Network	• Pro bono legal assistance only for asylum seekers/refugees held on Nauru. Provided by Justice Connect in Australia.

Legislation/Regulation/Code	*Description*
Nauru Constitution	Article 5 (2.) A person who is arrested or detained shall be informed promptly of the reasons for the arrest or detention and shall be permitted to consult in the place in which he is detained a legal representative of his own choice. Article 10 section 3(e) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice or to have a legal representative assigned to him in a case where the interests of justice so require and without payment by him in any such case if he does not, in the opinion of the court, have sufficient means to pay the costs incurred S 10 of the Legal Practitioner's Act allows for the recognition of non-lawyer 'pleaders' able to represent clients in the district courts and some limited rights in the Supreme court.
Criminal Procedure Amendment Act (2018)	S 50 A-C establishing office of the Public Legal Defender and its purposes. However these provisions were declared void in Republic of Nauru v Batsiua (2018) based on Court finding that the financial limit placed on legal aid fees available was inconsistent with the rights to an effective legal defence as provided for under the Constitution.

TUVALU (POP. APPROX. 11,700)

Institution	*Description*
People's Lawyer	• Covers criminal and civil matters without limitation In a wide variety of practice areas – criminal, civil, family, land disputes, conveyancing, commercial matters, parliamentary business • Can advise both parties to a matter in order to reach settlement • Staffing: 1 lawyer, other staff not known.

Legislation/Regulation/Code	*Description*
Tuvalu Constitution	• S 22(3)(d)(e) provides right to a legal defence but self-funded.
People's Lawyer Act (1988)	• Law provides for appointment of a People's Lawyer by the Governor General • Law states functions are independent from the Government. • People's Lawyer decides on grants of legal aid which can cover criminal defence, litigation of any kind (including against the Government) and legal advice including giving opinions, drafting, conveyancing, compensation claims prior to litigation, commercial matters, divorces, separations and family matters. Also can give legal advice regarding 'business of Parliament' or raised by members of Parliament. • Person refused legal aid by the People's Lawyer can seek a direction from the High Court providing consent given by Senior Magistrate who needs to be satisfied application for review is not frivolous and is in the public interest. • People's Lawyer required to act in accordance with due regard to Tuvaluan practice, customs and traditions • Person granted legal aid is still charged fees for legal aid unless a waiver is provided on the basis of financial hardship. Tuvalu citizen rates, Tuvalu org (double individual rate), and non-Tuvalu individual, (triple rate) and for non-Tuvalu entity, five times regular individual scheduled rate. • Fixed fee scale provided for in separate Regulation.
People's Lawyer (Fees) Regulations (2012)	• Very detailed and useful schedule of fees commenced 2013. Could be a model for other small countries.

COOK ISLANDS (POP. APPROX. 18,000)

Institution	*Description*
Punanga Tauturu Inc.	• Established in 1994 to provide human rights education and legal literacy, empowerment for GBV victims to make informed choices and offers women's counselling telephone advice service. • Partnership with Gender and Development Office of the Ministry of Internal Affairs –MoU January 2018 to provide legal aid for domestic violence survivors on Cook Islands funded by Aus Gov through Pacific Women Program • Includes initial legal advice and representation. Covers legal advice, maintenance order applications, custody and protection and is focused on an early intervention strategy, to prevent and better target of legal assistance for women and their children. Survivors of domestic violence will be assisted to understand their rights and options at their earliest possible opportunity. • Staffing: Has three lawyers specialising in family protection/family • Cook Islands is a matriarchal society and women are strongly represented including in the legal profession and Law Society Executive.

Legislation/Regulation/Code	*Description*
Cook Islands Constitution	• S65(c)(ii) prohibits acts which interfere with 'right, wherever practicable to retain and instruct a barrister or solicitor without delay' but no explicit right to free legal assistance;
Legal Aid Act 2004	• Legal aid available but limited to criminal proceedings in High Court, Court of Appeal, Privy Council, parole hearings and 'other proceedings as may be prescribed'. Aside from assistance provided by Punanga Tauturu Inc, (above), it appears there is no civil legal aid available. • Establishes Legal Aid Committee, comprised of Secretary of Justice, Director of Management of the Ministry and the Registrar of the High Court, any two of whom shall constitute a quorum. • Committee must maintain register of legal aid approved lawyers, decide on applications for legal aid and appoint lawyers according to the roster. • Committee can determine maximum grant by amount, hours, and period within which grant provided. As of 2012/13, the fund was limited to $40,000 and 12 applications were filed. Of these, 10 were approved and 2 declined. • Contributions to cost of legal aid can be ordered by committee against legal aid recipient. • Lawyers can claim for disbursements and detailed bill of time spent on matter. • Not clear if this institution is currently functioning (need to confirm)

	• Staffing: no employed staff as cases assigned to private lawyers.

PALAU (POP. APPROX. 18,000)

Institution	*Description*
Micronesian Legal Services Corporation	• Multi-jurisdictional non-profit: Provides legal aid in civil law matters (no criminal law) across Micronesia, including Palau, Marshall Islands, FSM • Has been established for 45 years. • Staffing: 3 lawyers,(foreign) 3 paralegals and 'court counsellors' (national). Difficult to attract local lawyers due to better salary opportunities in private practice or as government lawyers. • No female lawyer at present but did have previously who focused on trafficking matters (still continuing). Limited role in family protection cases as courts deal with these orders directly but often assist victims with related family law issues. Strong customary position of women as women choose the chiefs and women form majority of associate judges. • Services uses local paralegals and 'court counsellors' to assist lawyers • Receives funding from US Legal Services Corporation grant from US Congress and some from Palau Government, as well as grants and donations • **Main challenges/needs** • Needs 2 more attorneys so could do more advocacy for law reform and systemic change through the courts. • Need reform of laws requiring foreign lawyers to complete local bar exam after 4 years. • Need better salaries to attract local lawyers and make service more sustainable as lawyer turnover creates risk of burn out for other lawyers. • Need better computers
Office of the Public Defender	• PDO is part of the Ministry of Justice and shares an office with the AG's office • PDO budget regular part of Government budget, provides good support. • Staffing: Comprised of Chief and Assistant Public Defender, third lawyer, and an investigator, paralegal and administrative assistant. • Receives referrals from the Court, and 'walk ins. Penal summons includes details of the PDO and PDO receives a courtesy copy of all charges filed in Palau. • PDO is able to cover most criminal cases in Palau due to experience of team, but overloaded.

	• Not major issues with access to justice as most population on main island so no major demand for telephone or internet provided services • Uses a means and merits test to determine eligibility • Able to meet well over 80% of civil legal aid demand. Focus on family law and keeping people in their houses. • Occasionally refers other party to Public Defenders Office when there is a conflict. • **Challenges faced:** • Difficult to retain foreign lawyers longer than 4 years when required to sit local bar exam. Reform of this requirement would assist retention. Lower salaries than in US make it difficult to attract experienced US lawyers, but are able to attract experienced lawyers from the region • Laws relating to role of paralegals very restrictive • **Key priorities:** • Increase to 6 lawyers to cover caseload demand • Increase budget for appeals by providing right to free transcription of trial. • More CLE for the attorneys and staff. • Need for further criminal law training for some judges

Legislation/Regulation/Code	*Description*
Palau Constitution	Article IV Section 7 At all times the accused shall have the rights to counsel. If the accused is unable to afford counsel he shall be assigned counsel by the government. No separate law regulating legal aid services. No specific right to civil legal aid. Micronesian Legal Services Corporation arisen from US tradition of support for civil legal aid.
Palau National Code Annotated (PNCA)	• S 402 of the Palau National Code Annotated (PNCA) 'The Office of the Public Defender shall represent indigent individuals in all criminal matters. Where representation of a particular individual would constitute a conflict of interest under the Rules of Professional Responsibility or violate an individual's constitutional or statutory rights, the individual shall be represented by an attorney appointed by the Supreme Court.
Further information regarding Micronesian Legal Services Corporation	• MLSC) is a non-profit corporation established in 1970 to provide low income persons in Micronesia with free legal assistance in civil matters. • Service area covers islands scattered through an area that is approximately three thousand miles from east to west and one thousand miles from north to south, which is larger than the continental United States geographic area!

	• MLSC is governed by a nine member board of directors and has offices in four countries: the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, and the U.S. Commonwealth of the Northern Mariana Islands. • Two third of the MLSC budget comes from the US. • Operates like a 'federation' of national centres. Has single set of priorities but also some local autonomy. Set up in recognition that many legal issues are regional, some countries too small to establish own ciivl legal aid services, people in Micronesia travel a lot within Micronesia and outside. This can result in particular legal issues. One third of Micronesia living outside of Micronesia. • National offices are working together on behalf of a single client. This gives great advantage because can do much better than referral between different entities. Being able to go beyond national borders on common issues serve clients on a regional area. •

SMALL STATES

MARSHALL ISLANDS (POP. APPROX. 59,000)

Institution	*Description*
Micronesian Legal Services Corporation	• Services Micronesia, including Palau, Marshall Islands • Civil law focus, no criminal law •
Legal Aid Office	See legislation section below.

Legislation/Regulation/Code	*Description*
Marshall Islands Constitution	• Article II section 14 of the Constitution recognises right to free assistance to access the courts. •
Republic of the Marshall	• Covers establishment, duties, personnel • Mandate to provide legal services to any Marshallese citizen including legal advice, drafting docs etc, also to represent persons accused of crimes as ordered by the court, and special emphasis to assist children under 18 and their parents in civil or criminal matters affecting children.

Islands Legal Aid Office Act 1984	• Law emphasises full independence of the Legal Aid Office
2016 Legal Aid Fund Order	• Parliament provided budget for a Legal Aid Fund and the Supreme and High Courts of the Marshall Islands made an order for the use of the Fund. • Applicant must be legal resident of Marshall Islands and must be able to confirm not able to receive legal aid from Legal Aid Office for Micronesian Legal Services Corporation. • High Court decides on grant of legal aid and assigns cases to any qualified practitioner who is obliged to take the case unless they pay an annual fee into the legal aid fund or are conflicted out. The Court appoints cases by working through alphabetical list of practitioners and must evenly distribute cases across the list but can skip over names if needed to ensure sufficiently experienced counsel is appointed. • Refusal to accept appointment by lawyer constitutes a violation of Rule 7 of the Rules for Admission to and for the Practice of Law in the Republic • Counsel must keep detailed itemised bill of costs for assistance provided according to an hourly rate and a total capped amount per case type. Court can also order to cover disbursements for local travel, • Very interesting model that may be of interest to other small states or do not have legal aid systems as yet.

MEDIUM STATES

TONGA (POP. APPROX. 105,000)

Institution	*Description*
Family Protection Legal Aid Centre	• Established as a Ministry of Justice project and then received seeding funding and support from the the Regional Rights Resource Team (RRRT-donors Australia and Sweden (operational budget) • Now receiving funding for salaries by Tonga Ministry of Justice while RRRT continues to support operational budget for next three years with planned transition to full Government funding. • 1 principal and 2 legal officers and 3 family protection advocates as paralegals who are first point of contact with centre, take clients through consultation process and consult with lawyers re referral, eligibility assessments, draft applications for protection orders, affidavits, and raising public awareness • Assisting victims of family violence with protection orders and ancillary family law issues. • Difficult to attract lawyers to the Centre as private practice pays a lot better and even other Government lawyers (AG lawyers) are better paid and have less demanding work. Public services Commission has just

	agreed to match AG lawyer salary for Centre so salary parity can be achieved. Hoping to establish an internship program with the AG's Department for exchange of lawyers. • Hoping to build capacity to spend more time in outer islands providing legal awareness and assistance. Hoping to be able to have two lawyers based in Vava'u. • **Other Key Challenges and Needs** • Large caseloads and not enough staff resulting in high burnout risk. • Physical office is very small and not soundproof. Not fit for purpose. • Difficulty attracting and retaining staff, especially more senior staff as conditions are not competitive. • Status as 'government supported' prevents them from securing support from diverse/other donors and sense of competition to 'own' their work by donors. • Needs to be able to do more family law work and legal advocacy on law reform etc to complement family protection focus • Offers mentoring and coaching to staff but time is limited by the caseload and would like more support with developing professional skills and capacity of staff. • Receive USP interns but only for one month and this is not enough time for them to become useful to the Centre. Internships should be longer, ideally 6 months. • Developing partnerships with NZ Community legal centres and University of Auckland MALOSI project (MALOSI Project or the Movement for Action and Law to Overcome Social Injustice. Aimed at motivating Pacific New Zealand secondary school students to study law, and informing them of their rights. • Law Society does some pro bono work but would support an organised system where pro bono is shared across the profession but needs proper support with disbursement/expenses, and ensuring quality. • Supportive of greater use of paralegals but need to ensure proper supervision of their boundaries.
No public defender system	Some ad hoc pro bono assistance provided by local lawyers One-off 'court fund' provided by donors in 2012 to support particular appeals, following departure of British Supreme Court Judge, Justice Shuster

Legislation/Regulation/Code	*Description*
Nil	Constitution of Tonga does not provide right to self-defence, legal defence or to have a lawyer, whether privately paid for or free.

FEDERATED STATES OF MICRONESIA (POP. APPROX. 114,000)

Institution	*Description*
Micronesian Legal Services Corporation (Pohnpei Office)	• Services Micronesia, including FSM, Palau, Marshall Islands and Northern Mariana Islands • MLSC is governed by a nine member board of directors • Civil law focus, no criminal law • Semi-governmental (Receives US and FSM funding, as well as grants and donations) • Has office in Pohnpei, FSM with service provided in person, by phone, fax or email and fact sheets on website. • Provides lgal assistance with family law, property law, wills, probate, employee rights, debt relief, and social security.
Office of the Public Defender	Low rate of legal aid provided in cases: Between 2015-2018, only 4.8% of cases filed in the Supreme Court received legal aid. See Annual Report FSM Supreme Court 2018
State Trial Counsellors	College of Micronesia offers a Trial Counselor's program. To qualify, counsellor needs min 4 years' experience representing clients in and out of court as an advocate or working under supervision of attorney or working as a court officer or through private self-study intends to practice law. Pohnpei Supreme Court decides if trial counsellor meets the 'demonstrated legal ability' standards required by rules. Can be admitted to practice law if passes State bar exam.

Legislation/Regulation/Code	*Description*
Constitution FSM	• Constitution secures to criminal defendant, at a minimum, the right to receive reasonable notice of the charges against the defendant, right to examine any witnesses against the defendant, and the right to offer testimony **and be represented by counsel.** *In re Iriarte (II)*, 1 FSM Intrm. 255, 260 (Pon. 1983)

KIRIBATI (POP. APPROX. 118,000)

Institution	*Description*
Office of the People's Lawyer (Legal Aid)	• Areas: Criminal law, family law, land law, civil law • Mission: to provide free, accessible, quality and timely legal aid to the disadvantaged people of Kiribati. • Services: Legal advice and representation, community legal education, statutory declarations, mediation, home visits, law reform

	• Until 2014, was a branch of the judiciary. Now is an independent government body reporting to the Ministry of Justice. • Independent management of budget. • Currently has three lawyers (one woman, two men) and four paralegals (2 womwn and 2 men). Previously had 6 lawyers. Did not lose funding but could not retain lawyers due to conditions, (salary, People's Lawyers paid much less than other Government lawyers, also requires higher qualifications for admission than for government lawyers) and much heavier workload than other lawyers. • Also very few lawyers in Kiribati to attract. • One lawyer located Christmas Island, rest in South Tarawa • Provides legal aid in all areas: criminal, civil, family and land. Assists with family violence, child custody, divorce, maintenance, child protection, personal injury, workers compensation, employment law, contract, 50% of the work load is land cases. Also provides community legal education. • Paralegals working particularly hard when court is on circuit. Often working day and night and don't receive allowances/compensation for this. • Professionalising paralegals by sending them to USP Certificate in Justice. • Working on developing mediation skills of the team to avoid litigation. Have attended accredited mediation program in Fiji (some lawyers and paralegals)
The Kiribati Women and Children Support Centre	• The Kiribati Women and Children Support Centre is a new centre (opened in January 2018, funded by DFAT) based in Bairiki, South Tarawa providing counselling and advocacy services to women and child victims of family violence. • The Centre Coordinator is a lawyer by background and in some instances provides legal assistance to women/children who urgently require protection orders. • The Centre currently sees 1-2 women/families per day, a very high volume of cases, which has continued to increase since March, when they had a sudden increase in demand (likely through wider word of mouth). The Centre also does regular monitoring of domestic violence cases reported at police stations

Legislation/Regulation/Code	*Description*
Kiribati Constitution	• Does not provide a right to free legal aid. Section 10 of the Constitution only provides right to defend self, or to engage lawyer of own choice but at own expense.

Public Legal Services Act 2018	• Could not locate full document • Establish Office of People's Lawyer as independent gov body

SAMOA (POP. APPROX. 197,000)

Institution	*Description*
Ministry of Justice legal aid	•
Community Law Centre	• Established under Samoa Law and Justice Sector, in partnership with A-G Office, Ministry of Justice and Law & Justice Secretariat • Falls under Ministry of Justice and Courts Administration. • Has oversight committee including CEO of Ministry, nominee of Minister and head of Law Society. Head of org is Public Advocate, (appointed by Head of State) who grants legal aid to eligible persons • Office comprised of Public Advocacy and assistance Public Advocacy, legal officers, office manager and other employees. • Public advocate can appoint volunteer lawyers and they can then 'earn' allocation of paid legal aid work by the Centre • Public Advocate can issue guidelines re employment of staff under the Act, (so not bound by public service conditions but public service rules default if no guidelines issued. • Coordinates pro bono from private lawyers and students • Income tested • From establishment in 2015 had a civil and criminal practice, however Jan 2019 amendments proposed removal of civil practice area to focus only on criminal cases. It is unclear whether this passed.

Legislation/Regulation/Code	*Description*
Community Law Centre Act 2015	• Establishes Community Law Centre • Sets out functions, means test, administration, finance • Legal aid available for civil and criminal cases but not available for adoption cases, civil cases for or against the Government, nor for land and titles cases.

Samoan Constitution	Article 9 (4)(c) Right to a Fair Trial 'To defend himself in person or through legal assistance of his own choosing and, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;'

VANUATU (POP APPROX. 300,000)

Institution	*Description*
Public Solicitors Office	• Staffing: 9 Vanuatu lawyers (2015) and an Australian adviser. • Office in Port Vila and no other offices around the country. Article
Community Law Information Centre (CLIC)	• Located at the University of the South Pacific in Vanuatu • Open 4 mornings a week offering a 'drop in' service during semester times. • Staffed by final year law students taking the law clinic course, • Does not provide legal representation, but can assist clients to take their own cases to court. • It also produces legal literacy material.

Legislation/Regulation/Code	*Description*
Vanuatu Constitution	S2 (a) provides: everyone charged with an offence shall have a fair hearing, within a reasonable time, by an independent and impartial court and be afforded a lawyer if it is a serious offence; The role of the Public Solicitor is provided for in section 56: "Parliament shall provide for the office of the Public Solicitor, appointed by the President of the Republic on the advice of the Judicial Service Commission, whose function shall be to provide legal assistance to needy persons."
Public Solicitor Act	• The role of the Public Solicitor is to provide legal assistance to needy persons or any person when directed by the Supreme Court • Establishes office, functions, costs

LARGE STATES

SOLOMON ISLANDS (POP APPROX. 670,000)

Institution	*Description*
Public Solicitors Office	• Provision of legal representation and legal assistance for criminal matters and (separately) any other legal matters, as directed by the High Court • Sits within the Ministry of Justice but Constitution provides that 'the public solicitor should not be subject to the direction or control of any other person or authority'. Has functional independence. • However not institutional independence as still dependent on MOJ to 'bid' for PSO budget, which requires PSO to be on very good terms with MOJ, also PSO completes with DPP (also in MOJ) for funding. This positioning within MOJ can compromise independence of functions. • PSO employees are public servants and Public Solicitor not able to discipline/determine conditions except by rigid public service rules. • Has 29 lawyers comprised of Public Solicitor, Deputy Public Solicitor, Chief Legal Officer, 6 Principal legal officers and 21 senior Legal Officers (junior lawyers). 17 lawyers in Honiara, 6 in other provinces, (2 in each of Gizo (Western Province), 2 in Auki (Malaita Province), Kira Kira (Makira-Ulawa Province), 2 in Lata (Temotu province but no lawyers applying). 2 full time lawyers doing only civil work (non family), 3 full time lawyers doing family protection and family work. (in a dedicated Family Protection Unit). Also a Landowners Legal Support Unit, • 1 Australian legal advisor (previously had 4) • The PSO provides legal aid, advice, and assistance to any national charged with a criminal offence that could result in loss of civil liberties and other persons whose income does not exceed a specified amount (SBD 35,000/year). • Heads of the criminal and civil divisions are not specifically designated in law – and most files handled relate to criminal cases. • In Honiara, there is a dedicated Family Protection Unit (FPU) that handles cases related to family law and the FPA, as well as a Landowners Legal Support Unit (LLSU) that responds to land issues; including, environmental, logging, and mining issues. • The PSO has 17 lawyers on staff with an additional two on study leave. It has offices in Honiara, Gizo, Auki, and Kirakira, with at least one lawyer in each provincial office and support staff in Gizo and Auki. The office in Gizo covers all of Western Province, as well as Choiseul (C1: on circuit) as required. Auki office covers Malaita, as well as other centres on an ad hoc basis. Kirakira covers Makira and "the Inner Eastern Circuit". An office is

	expected to be opened in Isabel (P1) and a lawyer may be temporarily assigned to Lata, subject to identification of office space (P2). Lata has been without a lawyer since 2014. In January 2018, according to JIMS data, the Gizo office had 174 active files for serious criminal offences and 103 for minor ones – and, as such, it has no capacity to take on civil cases. Auki had 74 files for serious crime, 46 for minor crime, 31 family, and 91 other, as well as circuit cases. Kirakira had a total of 91 cases, criminal and civil, and 200 relating to the circuit courts; including land disputes related to logging operations. Honiara had 70 files. 80% of the PSO caseload is criminal files and, as such, they do not have resources to take on many civil cases. Although relatively few PSO clients are women, some civil cases are initiated by female clients and legal information and support is provided to women generally, and female victims in particular, often through police and various civil society referral networks. PSO conducted extensive community awareness campaigns from 2013-15, particularly on land rights by the LLSU, until funding ran out. PSO was in the process of developing a new communications strategy for 2018 at the time of research.(source UNDP, 'A Mapping of Justice Sector Service Provision in the Solomon Islands', November 2018. file:///C:/Users/marti/Downloads/UNDP%2520and%2520SOI%2520Gov%2520Mapping%2520Survey%2520Report.pdf • • Easy to attract junior lawyers but difficult to attract and retain senior lawyers due to poor salary and conditions. Little differentiation in salary scale between junior and senior lawyers, yet major leap up in responsibility. • Those to leave often to take up Magistrate/other promotions or to private practice. • Tries to offer professional development opportunities to retain talent (internships, exchanges, conferences etc) • Provides for Public solicitor to make a 'reasonable charge' for services where considers able to make a contribution to the cost • **Key priorities/needs** • Resource legal aid services properly • Create an independent Commission to address political conflict of interest and to enable more flexible, responsive management and funding arrangements • Speed up court cases especially for those in pre trial detention and other bottle necks that waste the time of the court and of the public solicitors and which create injustice, such as protracted pre trial detention where there is insufficient evidence to support a trial.

	• Create a fund for legal aid cases to be represented by private lawyers with relevant experience where PSO has a conflict (acting for both parties) •
Family Support Centre	• Established in 1995. Funded by government, DFAT via OXFAM, IWDA and DFID (UK) • Currently has 10 staff, 1 branch also in Auki, counselling branch, and 5 volunteer committees in 4 provinces: in Western Province (x2), Geeso, Malaita, and Central Province, and Naro trained in counselling, paralegal skills and psychological first aid. • Service provides 24/7 telephone hotline, face to face and mobile counselling, • Legal representation (starting with advice in 2012 and reaching representation in 2014) and support and advocacy/ policy reform. • Legal cases are mostly civil: family protection, maintenance, divorce, child custody cases. • Member of Safenet integrated referral network which includes Safe Place refuge, police, health etc and provides community outreach and advocacy in schools, communities, for youth, also have a drama group starting an 18 week radio audio drama depicting processes under family protection law.
Other GBV justice related services	• Non-governmental organizations and projects that provide justice services - or justice-related services for victim/survivors of sexual or other GBV, such as health care, psychological or economic support or safe alternative accommodation – aside from the Family Support Centre include Seif Pleis, Vois Blo Mere, World Vision's 'Community Channels of Hope' programme, Oxfam's 'Safe Families' project, the World Bank's 'Community Governance & Grievance Management' project, the Essential Services Package, SPC's 'Access to Justice' project, Save the Children's 'Children & Youth in Conflict with the Law' project, the Anglican and Catholic churches, including the Christian Care Centre (CCC), and SAFENET.
Community Governance & Grievance Management Project (World Bank)	•

Legislation/Regulation/Code	*Description*

Solomon Islands Constitution	PSO is established under s 92 of the Constitution. It covers requirements for the appointment of the office of Public Solicitor, functions (provision of legal for criminal matters and as directed by the High Court), and its independence. S92(4) states that the functions of the Public Solicitor are to provide legal aid, advice and assistance to persons in need in such circumstances and subject to such conditions as may be prescribed by Parliament, and in particular - *(a)* to provide legal aid, advice and assistance to any person in need who has been charged with a criminal offence; and *(b)* to provide legal aid, advice and assistance to any person when directed to do so by the High Court. However legal aid need not be free, according to Article 10(2)(d) which states that a person has a right to defend themselves or by a legal representative of his own choice at his own expense.
Public Solicitors Act 1989	• Covers criminal defence and civil law matters (family, land, other civil). • Application made to Public Solicitor who decides on grants • Law sets out grounds for refusal, reviewable by ? • Contributions to costs of legal aid can be requested from beneficiaries with means • Law has legal aid application form and consent attached as a regulation. Could be helpful for other jurisdictions.

FIJI (POP. APPROX. 890,000)

Institution	*Description*
Legal Aid Commission	• The Fiji Legal aid Commission is recognised as the best funded and equipped legal aid institution in the Pacific region. The Fiji Government has made a clear commitment, as per the Constitution, to provide legal aid to its citizens by allocating a considerable budget to legal aid, approximately US$3 per person. LAC also receives funding from UNDP/EU under a legal aid project 2016-2020 for US$9.2 million. Services: Legal Aid Commission provides free advice and representation to people who cannot afford a private lawyer covering: • Criminal defence, family law, other civil law with respect to probate, letters of admin, wills, powers of attorney, etc. • Juvenile representation • Community awareness programs • Free document attestation/witnessing • Raised possibility of MoU with Fiji Disabled People's Federation - article

	• Outsources some work to private practitioners to address conflicts, however there is critique from A-G Dept re high costs - article • Introduced 'First Hour' procedure. As mentioned above, this procedure was adopted by institutions including the Judicial Department, Office of the Director of Public Prosecution, Fiji Police Force, Legal Aid Commission and Human Rights and Anti-Discrimination Commission to ensure the Legal Aid Commission will provide legal assistance within the first hour of a person being arrested. It began in November 2016 as a 6-month project but has been extended, with the Legal Aid Commission having attended to over 1,200 persons in the two police stations in Suva where the 'first hour' initiative has been piloted
Fiji Women's Crisis Centre	• NGO established in 1984 and supported by mix of government funds (project not core funding) and donor funds (Australia, Canada, UK and UN) • Provides legal advice (but not legal representation), crisis counselling (24/7 telephone service, in-person and mobile counselling, and referral to court, police, legal aid commission, hospitals and other agencies for victims/survivors of domestic violence, sexual assault, child abuse and sexual harassment. • Provides awareness raising and community education on violence against women as a human rights violation through an extensive education program for communities, schools, and training for government agencies like the Department of Social Welfare, Police and the Military • Male advocacy programs to address violence against women. • Chairs the NGOCHR (NGOS Committee to Human Rights), network for non-government organisations engaged in different aspects of human rights education, advocacy and project work. • Founded the Pacific Women's Network Against Violence Against Women, continues to act as its secretariat and organises its four-yearly regional conferences.
Private Firms	• Law firm Munro Leys offers some pro bono legal assistance and employs a Public Issues Lawyer to co-ordinate the firm's pro bono work and its research and support for non-government organisations in the areas of public policy, human rights, good governance, rule of law, public interest litigation and family law issues.

Legislation/Regulation/Code	*Description*
Legal Aid Act 1996	• Establishes incorporated Legal Aid Commission headed by Solicitor General and other Commissioners, being Registrar, experienced solicitors and non-solicitors. • Commission grants legal aid to impoverished persons (unable to reasonably afford legal services) and its decisions are subject to review by internal review committee.

	• Staffing: As of 31 December 2016, the Legal Aid Commission was staffed by 176 employees, of which 87 were lawyers and 89 were corporate staff. However, the Legal Aid Commission's new organisational structure foresaw a total of 209 employees to be recruited by 31 July 2018. Staff are spread in 15 district offices Nadi, Ba, Korovou, Lebasa Lautoka Nabouwalu Nausori Navua Rakiraki Savusavu Sigatoka Taveuni Tavua, Nasinu, Levuka • Legal aid can be provided by salaried Commission lawyer, private practitioner (part of panel maintained by Commission), duty lawyers or as legal education. • Legal aid can be free or subject to contribution. Eligibility criteria in guidelines concerning means and merit. • Provides free legal assistance to those people who are impoverished and unable to afford a private Lawyer. • Assistance includes, free advice, free representation in court and other forms of assistance and covers family & criminal law related matters and civil law • Duty solicitor scheme, juvenile Representation and community awareness programs • Free Attestation and witnessing of documents services
Constitution of Fiji (2013)	s 13(1)(c) and (d) – right of persons arrested or detained to have private legal services or the service of legal practitioner under scheme by Legal Aid Commission s 14(d) right of persons charged to have private legal services or the service of legal practitioner under scheme by Legal Aid Commission s 15(10) – state must provide legal aid through Legal Aid Commission to those who cannot afford it, if it would otherwise be unjust s 118 – key provision recognising LAC and setting out authority and processes including independence, authority to appoint, remove and discipline all staff (including administrative staff) in the Commission, terms, conditions and salaries of employees, control of its own budget and finances passed by the Parliament s118(9) Requires 'Parliament to ensure that adequate funding and resources are made available to the Commission, to enable it to independently and effectively exercise its powers and perform its functions and duties'

VERY LARGE STATE

PAPUA NEW GUINEA (POP. APPROX. 8.78 MILLION)

Institution	*Description*
Public Solicitors Office	• Established in 1958, the Public Solicitor is independent from any direction or control from any person or authority, as provided by Section 176 (5) of the Constitution. The Supreme Court Reference No. 1 of 1978 reinforces this proposition of law and also declared the Public Solicitor's Office as "an institution for the people of Papua New Guinea". The Public Solicitor's Office is indeed the biggest public legal firm in Papua New Guinea. It became functionally independent in 2006, when it was functionally separated from the Department of Justice and Attorney-General and gained further independence in 2009 when it attained full financial autonomy from the Ministry of Justice. • The Public Solicitor is appointed by the Judicial & Legal Services Commission ("JLSC"). The JLSC can also remove the Public Solicitor for misbehaviour, misconduct (leadership code) or for physical or mental infirmity. • Pursuant to Section 177 (2) of the Constitution, "the functions of the Public Solicitor are to provide legal aid, advice and assistance for persons in need of help by him, and in particular- (a) to provide legal assistance to a person in need of help by him who has been charged with an offence punishable by imprisonment for more than two years; and (b) notwithstanding the provisions of Section 176(5) (estab lishment of offices) he shall provide legal aid, advice and assistance to any person when directed to do so by the Supreme Court or the National Court; and (c) in his discretion in any matter, whether of a criminal or civil nature provided that such assistance shall be- (i) limited to advice and preparation of documents in any proceedings in respect of which an Act of the Parliament prohibits legal representation of any party to the proceedings; and (ii) granted in accordance with an order of priorities relative to the resources of the Public Solicitor laid down by an Act of the Parliament." • In addition to the statutory responsibilities, the Public Solicitor must use its best endeavour and limited resources (funding and capacity) "to provide legal advice and assistance to impecunious persons in all fields of laws." The Public Solicitor provides legal representation to almost all accused persons charged with an "indictable offence" in Papua New Guinea. The indictable offences are serious criminal cases that come before the Grade Five Courts, the National Courts and by way of appeal/review to the Supreme Court of Justice. The Public Solicitor also provides a wide range of legal assistance to civil matters as described above. In addition, and further to that the Public Solicitor provides legal aid to juveniles who come in conflict with the law. • Focus on serious crimes, but also provide assistance for less serious criminal matters, civil, family, human rights and compensation law

	• Staffing: In 2018 announced expansion to service from 82 to 100 lawyers, expanding services to include land disputes. • Head office is in Port Moresby and also has 7 district offices in Lae, Goroka, Mt Hagen, Rabaul, Wabag, Kimbe and Madang. It planned to establish 'legal aid desks' staffed by paralegals in Manus Island, Alotau, Kerema, Wewak, Popondetta (2009), Vanimo (2009), Kainantu (2009), Mendi (2009) Daru (2010) and Kavieng (2010) • Resources from PSO on PacLII – up to 2011.(see PSO Corporate Plan 2009-2011)
PNG Law Society	• Law Society previously provided legal aid scheme commenced in 2012 but no longer an organised scheme. Details of previous scheme below: • Where PSO not able to assist, then PSO refer to the Law Society. Law Society Secretariat take applications for legal aid and then a panel decides on grants of aid. • Private lawyer from the 'pool' then assigned to the case and is paid to provide legal representation by the Law Society. • Scheme is funded from interest accrued on trust accounts maintained by lawyers. Mandatory for the banks to forward the interest each quarter. • Civil and criminal cases are eligible, many of them being family law cases, breaches of contract, motor vehicle injury claims and dependency claims. Case types excluded include: adultery and enticement cases, land disputes, taxation claims, conveyancing, wills and testaments, defamation actions, election petitions and traffic offences.
University of PNG Law School with Law Society	• Legal Education Aid Program (LEAP) collaboration between Law Society and University of PNG Law School where final year law students spend their sumer break representing defendants in district courts in the Provinces where there was no public solicitor/legal aid available. • Is not a regular program. Law Society provides ad hoc assistance but is interested to re-vamp and formalise support especially for student logistics (phone credits and funds for photocopying and transportation)

Legislation/Regulation/Code	*Description*
Constitution	• s 37(3)(e) – establishes representation for person charged with criminal offence by the Public Solicitor if entitled to legal aid • s 42(2)(b) – as above, but for person detained • s 156(1)(c) – establishes Public Solicitor as Law Officer of PNG • Subdivision G – establishes Office of the Public Solicitor, process for appointment, independence, functions, costs, eligibility tests

Public Solicitor Charges Act 1976	• Regulating authority of the Public Solicitor to charge contribution from beneficiary for legal aid services.

Annex C: Paralegals in Legal Aid Services and Legal Empowerment Models

In this Annex paralegals are discussed in two senses. First, as non-lawyers usually employed within legal aid services who perform a range of legal and administrative tasks under the supervision of a qualified lawyer. Paralegals in the second sense, hereon described as 'community paralegals', and are based in communities to provide legal information and help community members navigate their justice needs and options as part of a community legal empowerment approach. Each is discussed below.

1. International Standards Relating to Paralegals

The essential roles of paralegals in making legal aid services both more affordable and accessible, is well recognised and also well covered in the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. The Guidelines encourage states to, in consultation with civil society and justice agencies and professional associations, introduce measures:

> (a) To develop, where appropriate, a nationwide scheme of paralegal services with standardized training curricula and accreditation schemes, including appropriate screening and vetting;
>
> (b) To ensure that quality standards for paralegal services are set and that paralegals receive adequate training and operate under the supervision of qualified lawyers;
>
> (c) To ensure the availability of monitoring and evaluation mechanisms to guarantee the quality of the services provided by paralegals;
>
> (d) To promote, in consultation with civil society and justice agencies, the development of a code of conduct that is binding for all paralegals working in the criminal justice system;
>
> (e) To specify the types of legal services that can be provided by paralegals and the types of services that must be provided exclusively by lawyers, unless such determination is within the competence of the courts or bar associations;
>
> (f) To ensure access for accredited paralegals who are assigned to provide legal aid to police stations and prisons, facilities of detention or pre-trial detention centres, and so forth;
>
> (g) To allow, in accordance with national law and regulations, court accredited and duly trained paralegals to participate in court proceedings and advise the accused when there are no lawyers available to do so.

2. In-house Paralegals

A significant number of legal aid organisations interviewed in this review reported employing paralegals within their services to perform a wide range of legal and administrative tasks, supporting the work of legal aid lawyers. They reported that paralegals made an important contribution to the efficiency and cost- effectiveness of legal aid organisations, as they free lawyers up to focus on tasks that require legal qualifications, and thus enable legal aid services to be spread further to help more people. This is especially the case in jurisdictions where lawyers are in short supply, or where budgets can only stretch to employing a very limited number of lawyers.

The types of responsibilities given to paralegals varies significantly across jurisdictions. Aside from administrative and secretarial- related tasks, paralegals often conduct initial appointments with clients to obtain initial information, provide basic legal information, staff legal telephone advice lines under the supervision of qualified lawyers, conduct referrals, and prepare draft statements and court documents. Some have become highly skilled and proficient in these roles and have significantly higher levels of skills than junior lawyers joining the legal aid service. In the small US-influenced legal systems in the Pacific, regulation of attorneys and paralegals is more stringent, limiting the types of tasks that lawyers are able to delegate to paralegals. In these jurisdictions paralegals perform more administrative and secretarial style functions. This places a greater burden on attorneys to maintain all substantive client contact and drafting functions, which then limits the caseloads they can absorb.

Paralegals typically start their positions 'learning through doing' but after some time are likely to go on to achieve formal qualifications. Across the Pacific a range of accreditation or admissions procedures are opening up for people with experience in justice services, but without undergraduate law degrees. Such programs include the 'pleader' programs established, for example, in FSM, Nauru where experience for a set period, combined with special training and a court-based 'sign off' on 'demonstrated legal ability standards', as an alternative pathway to practicing law. Paralegal positions can therefore provide an important entry point to the legal profession in jurisdictions that lack qualified lawyers and can also provide opportunities for people from less advantaged backgrounds to enter the legal profession.[72]

Paralegal programs linked to legal aid services in South Africa are particularly developed and well established. Paralegals not only give legal advice and assistance but also conduct legal literacy and awareness training. There are also specialised paralegal advice offices such as the Black Sash Paralegal Advice Office Network, which has provided 'at scale' paralegal advice and assistance to poor South Africans for 70 years across all 9 provinces;[73] the Community Law and Rural Development Centre, where rural communities elect a paralegal committee, who receive training and then provide legal advice and assistance to their community; the Association for Rural Development, to address land distribution injustices from the apartheid era[74] and the Treatment Action Campaign,[75] which are all run by paralegals. [76]

South Africa's community legal awareness programs are also particularly developed. 'Street Law South Africa' was established I 1986 to train university students to teach children, prisoners and communities about the law, using manuals covering a wide range of everyday legal topics. Street Law also trains police and health officials on how to deal with cases against women and

[72] These programs were first established as an effective cost saving approach in South Africa with their 'candidate attorney' program, requiring a person to undergo an apprenticeship with a private law firm, legal aid, law clinic or public interest law firm, attend a practical training course approved by the law society, and pass an attorney's exam. This scheme was shown to provide affordable legal aid services to the poor, and provide opportunity for people from less advantaged backgrounds to enter the legal profession.

[73] And has produced the very helpful Paralegal Manual 2016 available at http://paralegaladvice.org.za/wp-content/uploads/2016/05/PLM-2015-Complete-Book-for-Print.pdf.

[74] By offering legal assistance and advice on issues such as access to land, farm road, clean water, identity documents for vulnerable groups and legal literacy and awareness training.

[75] Which advocated for the provision of antiretroviral treatment for HIV positive mothers and their babies, lobbied pharmaceutical companies to provide the drugs cheaper and eventually brought legal action against the Government to force it to make the drug available in all hospitals and clinics.

[76] See Professor David McQuid-Mason, 'Affordable Legal Services in South Africa-with particular reference to one-stop-shop justice centres and paralegals', University of Kwazulu-Natal, Durban, South Africa, https://anggara.files.wordpress.com/2011/12/myanmar-affordable-legal-services-in-south-africa-david-compatibility-mode.pdf.

children. Black Slash uses workshops, radio programmes, publications, paralegal training guides and newsletters to communicate legal issues to communities, reaching over 86 million people with its radio programmes.[77]

3. Community Paralegal Models

Community paralegal models vary widely across the world but many have some common aims and characteristics. The rationale underlying these models is that there are large tracts of the population who are unable to meaningfully access state justice systems and typically have very low levels of legal awareness and literacy. As explained by CEO of Namati:

> Courts are slow, and lawyers are expensive. We know that it takes many layers of actors to deliver health care — not just doctors, but nurses, midwives, and community health workers. The same is true of justice. Well-trained, well-equipped "community paralegals" — sometimes known as barefoot lawyers — can show detainees how to file their own bail petitions or help farmers understand the terms proposed by a palm oil company that wants part of their land.[78]

Community paralegal models usually engage people from the local community (who are not lawyers but who are trained and equipped) to help people to navigate their basic justice needs. Sometimes they are elected[79] They are trained to have a good grasp of state law so that they can provide some basic information regarding what kind of process and outcomes a person may face in using state justice systems.[80] They are also trained to recognise the kinds of matters that can only be dealt with through referral/reporting to police or legal aid services, versus those that can be dealt with through local dispute resolution processes. They act as the 'first port of call' for community justice queries and channel community justice needs through referral processes and where appropriate, support resolution of disputes through local justice mechanisms (such as customary, village, church based justice dispute resolution processes).

Community paralegal functions may include providing basic legal information, helping community members to identify and make informed decisions about their legal options, mediating or resolving minor disputes, reporting major issues to police, and providing referral to Government, non-Government legal and non-legal services. Community paralegals also have knowledge of non-state or local justice systems, including customary law systems or community based systems of dispute resolution and can support people in access these justice mechanisms also, or in some models, engage parties directly in mediation.

While the profile of paralegals recruited into such models vary, they are often selected on the basis of being trusted members of the community (with a reputation for being fair and unbiased) and having a sufficient level of education necessary for them to be effective in the

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[77] Ibid. Back in 2008, and likely, even more now.

[78] Vivek Maru, CEO of Namati 'Only the Law Can Stop Trump', Foreign Policy, March 2017 available at https://foreignpolicy.com/2017/03/09/only-the-law-can-restrain-trump-legal-aid-barefoot-lawyers/.

[79] As is the case with the South African Community Law and Rural Development Centre, model, where rural communities elect a paralegal committee, who receive training and then return to their community to provide legal advice and assistance and community legal education. These Centres provide assistance in customary law disputes, pensions, labour, family, housing, maintenance and HIV/AIDS related matters. The paralegals are backed up by pro bono lawyers, Legal id South Africa and law clinics.

[80] Without highly technical legal knowledge or the standing to appear as a practitioner in court. However over time, paralegals can certainly reach a high level of technical expertise in areas they commonly work in and in some jurisdictions, including in the Pacific a wider range of non-lawyers are gradually being recognised as having standing to provide legal representation in court, for example the 'pleaders' model in FSM and Nauru).

role. Often a concerted effort is made to recruit paralegals of diverse backgrounds that reflect community composition (including women, youth, people with disabilities or minorities) as a strategy to increase access to those parts of the community who typically face the greatest barriers in accessing justice, or where there is a need to target particular groups to address specific social problems (such as alcohol or drug use amongst youths, or issues of exploitation by resource companies against landowners).

Given the massive challenges for many Pacific states to provide coverage of state justice services to all parts of their populations within strongly pluralistic legal environments, it is not surprising that there are several precedents for community empowerment paralegal models to address community conflict in remote locations across the Pacific region. However none of these have yet resulted in adapted models that operate both at scale, and which are relevantly linked into state justice systems including legal aid providers.

One well known project was Justice for the Poor (J4P), which began more than ten years ago as an experimental program aimed at promoting legitimate and equitable systems to manage conflict arising from development. The J4P approach was to take a detailed engagement with the local context as its starting point to supporting local justice and governance reform processes, facilitating knowledge sharing and improving understanding of and approaches to pro-poor justice reform efforts.[81] Several J4P programs were implemented across the Pacific including in the Solomon Islands, PNG and Vanuatu, as summarized below.

Solomon Islands

Commencing in 2014, baseline research for the *Community Governance and Grievance Management Program* baseline research was undertaken in 5 of the 9 provinces finding that communities felt deeply disconnected from the state, and that petty crime and local disputes had eroded social stability. "Our research found two main things. One: there were a huge amount of social order issues going on following the civil conflict, and traditional solutions, along with the police, simply weren't coping. And two: people were feeling very little connection to the state because there was little government presence."[82]

Pilots were established in villages across Rennell Bellona and Makira. Communities elected their own representatives to act as Community Officers/Peace Wardens employed by the Provinces to resolve disputes, direct serious cases to authorities, and to channel community members to available services through referral. The project focused on issues of using drugs and alcohol, cases of family violence and bridging communication between the provincial government and the people. In 2018 the program was expanded to Malaita and Central Province. The project is supported by the World Bank and financed by a US$3.08 million grant from the government of Australia.[83]

Papua New Guinea

J4P in Papua New Guinea commenced and has focused issues of how resources are allocated and shared at the local level. Current activities focus on evaluating benefit sharing arrangements

[81] This approach was based on an appreciation that justice sector reform efforts are often launched without sufficient understanding of the dynamics of the pre-existing decision making and dispute resolution processes they attempt to alter; thus the program

[82] World Bank New Feature 2018 see https://www.worldbank.org/en/news/feature/2018/10/15/isolation-and-opportunity-strengthening-justice-in-remote-solomon-islands.

[83] World Bank, October 2018, Isolation and Opportunity; Strengthening Justice in Remote Solomon Islands.

secured through the Community Mine Continuation Agreements (CMCAs) for the Ok Tedi Mine in Western Province PNG. The process of negotiation for these agreements was consciously inclusive and includes provisions for improving women's outcomes from mining both through participation and benefits.

Between 2014-2016, the World Bank conducted work focused on the theme of urban safety and security, with a dual focus on dispute resolution and conflict-mediation mechanisms at the community level and on the experiences of women and others vulnerable to family and sexual violence. The research focused on local dispute resolution mechanisms in urban areas (Lae and Port Moresby) including Village Courts, mediators, local leaders, and especially groups of individuals widely known as committees [*komitis*], all of which involve complex relationships with government administrations, the police, and other justice agencies. The research confirmed how dynamic and changeable local *komitis* are and their sometimes positive and other times negative impacts on different kinds of disputes and categories of victim/actor. The research highlights the importance of any models that seek to mediate state and informal justice need to, at minimum, 'do no harm' and to identify ways to stop the police and families from referring cases back to *komitis*, and ways to penalize *komitis*, mediators, and rogue police officers involved in circumscribing FSV survivors' access to state justice processes.[84]

Vanuatu

In Vanuatu, J4P has also focused on ways to improve regulations and promote advisory services to help level the playing field for individuals and communities to engage in negotiations around land and natural resource developments. In 2013, the World Bank also conducted research on the operation of the Island Courts,[85] noting the important role they play in resolving disputes especially in remote areas, but are held back by lack of resources, clarity around the boundaries of their role and their hybrid use of state and *kastom* law, and need to strengthen their links with other parts of the justice system.[86]

A further community based legal support program was implemented in Vanuatu, Solomon Islands, Fiji and Papua New Guinea, through the establishment of Advocacy and Legal Advice Centres (ALACs) based in Transparency International offices helped citizens channel grievances into state accountability systems. An ALAC help desk was still in place in 2019 in PNG. The focus of the ALACs was to assist victims of corruption to take up their cases. ALAC faced considerable challenges in the Pacific. The ALAC in Honiara struggled to achieve traction in other locations across the country and the ALAC in PNG was perceived to be lacking impact.[87]

[84] World Bank, 2018, Learning about Leadership, Regulation and Security and World Bank 2016 "Come and See the System in Place"; Mediation Capabilities in Papua New Guinea's Urban Settlements.
[85] World Bank 2013, Hybrid Justice in Vanuatu:
[86] Ibid, p40.
[87] Papua New Guinea: Of all complaints/cases submitted from the beginning of the ALAC project in PNG, only 4% of all complaints/cases have resulted in a (partially) successful outcome, according to ALAC's own statistics. Furthermore, for 95% of all cases/complaints the current status is unknown. Since client feedback forms are hardly used by ALAC, limited information exists about how its clients value its services. However, various interviewees have confirmed that ALAC runs a considerable reputational risk by not being able to meet clients' expectations. As one interviewee summarized it "ALAC lacks teeth, it cannot bite". Solomon Islands: "Because of the slowness of responses from government officials regarding complaints referred to them, clients often become frustrated that their complaints are not progressing as quickly as they would like. Final Evaluation TI Asia Pacific Regional Program, 2014 https://www.transparency.org/files/content/ouraccountability/2014_Deveworks_TIAPFinalReport_EN.pdf

4. Feasibility of Community Paralegal Programs from the perspective of legal aid providers

One of the 'lessons learned' from community paralegal models previously piloted in the Pacific, is the need for care in finding the right 'institutional home' for paralegal programs. In other global contexts, such 'homes' have included state or non-state legal aid providers, community based organizations, NGOs, bar associations, trade unions, legal clinics in university programs or a clinical legal aid program based in a university.[88] There are several benefits of incorporating community paralegal programs into existing community based organisations such as well-developed local networks and knowledge of community needs, possible knowledge or expertise in legal issues, ability to share administrative and other costs and established relationships with donors which may help with sustainability.

Paralegal programs can also be very effectively placed within government or non-government funded legal aid providers. Such placement is very strategic, especially in the Pacific where one of the shortcomings of previous paralegal pilot programs has been the lack of structured relationships with legal aid or other government services. Such an arrangement enables community paralegals to act as an 'extended arm' of the legal aid provider to provide deeper reach into communities and community justice processes. This positioning can really assist in not only having local presence to help communities navigate across diverse justice pathways, but also to tangibly contribute to bridging the gap between the state justice system and the community, to bring more community justice needs into the formal justice system.

Most legal aid providers interviewed, especially in large PICs, were very concerned about their inability to achieve geographic coverage of services. They recognised the importance of community outreach, liaison and presence but highlighted that they struggle with their existing workloads and lack resources to do more, such as being present in remote areas.

Some legal aid providers (and courts) shared how they had previously conducted large scale community awareness programs[89] but most were currently restrained by sources to conducting ad hoc community awareness events, or short term 'roadshow' programs with other justice actors as a one off series conducted in several locations. They lamented their inability to invest further in regular community legal education and awareness raising activities, especially in rural and remote areas, but also in urban areas where legal literacy levels generally also still remain low.

Most legal aid providers were keen to find ways to have 'people on the ground' in remote areas who could provide referrals and act as intermediaries between legal aid branches and clients, however were concerned about the accountability aspects of having a network of community paralegals working in remote areas. The main concerns were that community paralegals would be difficult to properly supervise, unless they were based from a local legal aid branch; they may not be properly trained, and may 'do harm' by overstepping or misunderstanding the boundaries of their roles. Particular areas of concern included the risk of them inaccurately identifying matters suitable for local resolution, versus those in need of reporting or referral to police or legal aid providers, or providing inaccurate legal advice. Another concern was that community paralegals may seek to charge 'top up' fees for their services (on top of their salaries) or allow local dynamics and *wantok* bias to interfere with their decision making.

[88] *Community-based Paralegals: A Practitioner's Guide,* Open Society Justice Initiative, 2010, p22.
[89] Such as the Kiribati Court and the Fiji Legal Aid Commission.

These are genuine concerns, as 'a little bit of knowledge can be a dangerous thing' and these 'red lines' regarding role boundaries can be difficult to articulate and can also be dependent on a large number of variables in the local justice environment and the position of the parties in any particular case. However there are also clear precedents demonstrating how these risks can be managed. There is now strong global experience in how to establish, manage and run accountable community paralegal legal programs, including remotely, which could provide Pacific actors keen to establish paralegal programs with very practical and clear assistance in establishing clear boundaries for paralegals' work.

There are a range of options that can help address these concerns. Community paralegals (employed as public solicitor staff) can be co-located with another service trusted by the community which is operating in the area, such as a health clinic, a local government office or an NGO office.[90] Community paralegals can still regularly participate in meetings with supervisors by telephone or skype, supplemented by in person supervisory visits (ideally every 4-6 weeks or as frequently as possible), plus through occasional spot checks, written reports and refresher trainings and group meetings. These arrangements can be put into place to ensure that paralegals' work is closely supervised and linked in to the priorities and work of the legal aid provider. A further means of achieving accountability to both legal aid provider employers and local communities is through establishing local advisory group, comprised of NGO and community representatives, which can also provide support and monitoring functions to remotely posted community paralegals, and provide a contact point for feedback from service users.

The fact that there are risks to manage (especially when they can be managed) is not in itself an argument not to proceed with a remote community paralegals, especially where they may be the only cost effective option in remote communities for the foreseeable future. Just as paramedics play essential roles in providing emergency essential service in the locations where people need immediate help and then bring them to specialist medical services (doctors and hospitals) for treatment, so too can community paralegals provide similar linkage to national legal aid providers and the justice system as a whole. Just as few would argue that the risk of paramedics overstepping their role outweighs the benefit of having them, so too should the role of community paralegals be seen as essential and necessary. The key is to ensure that they are properly trained, supported and managed.

With these three pillars in place, community paralegals can make a massive positive contribution to access to justice, not only by being 'better than nothing' but also providing the kind of justice service that communities actually want. The available evidence from access to justice surveys in the Pacific show that people want help finding non-adversarial ways of resolving their problems at the local level where possible as well as fluidity and assistance to move between local and state justice where local solutions are not at option.[91] Community paralegals, with the range of roles they can play to identify matters suitable for local resolution versus those that are not, and then providing assistance with either local resolution or reporting/referral to state justice processes, and there are already many examples of this

[90] While the police are usually the justice institution with the widest reach and coverage, they would likely not be a suitable place for a community paralegal to be based (as proximity to the police may deter some from accessing the service) however being based reasonable close to police would be good for facilitating attendance to assist people arrested and held at police stations, or for conducting regular visits to police cells.

[91] See Hiil 'Justice Needs and Satisfaction in Fiji, 2018' p?

globally.[92] These experiences have shown that community paralegal programs do help to re-ground state justice institutions to community justice needs. The improved 'flow' of demand and supply of justice services through incorporating community paralegals within national legal aid bodies greatly assists communities to feel less estranged from the state and builds trust and confidence in the relevance of the state to community dispute resolution. It has also in some places galvanised a shift in state use of resources, once the wider community justice demands are felt more keenly by state justice institutions.

Many community paralegal models have sought and won recognition within national legal aid systems. Paralegal models have been incorporated into several countries' national laws. In Kenya the Legal Aid Act (2016) recognises paralegals, including community paralegals, so long as they are supervised by an advocate or an accredited legal aid organization. The Act establishes a national Legal Aid Service responsible, among other things, for coordinating, monitoring, and evaluating paralegals. The governing board for the Service includes a reserved seat for a representative elected by a joint forum of civil society legal aid providers.[93] The 2012 Sierra Leone Legal Aid Law establishes an independent Legal Aid Board and authorises the Board to accredit legal aid providers, including civil society organizations and paralegals. The law calls for a paralegal in every chiefdom of the country. The 2011 Indonesia Law on Legal Assistance also recognizes community paralegals. The law does not set up a separate board; rather, it mandates the Ministry of Law and Human Rights to directly accredit legal aid providers.[94]

While in South Africa, the laws recognising community paralegals have stalled due to the opposition of the private bar,[95] paralegals, nonetheless, remain an integral part of the South Legal Aid South Africa (LASA)'s 'Justice Centre' model. LASA is an independent state-funded legal aid service which relies on a large network of 'one-stop-shop' Justice Centres and satellite offices to deliver legal aid in large population centres as well as rural location. LASA employs public defenders, who take on cases in the regional and high courts, as well as 'candidate attorneys' (qualified to practise law by apprenticeship and examination) who act in the district courts, and paralegals who typically screen clients and open files for those eligible for legal aid. In smaller towns or rural areas the LASA satellite offices are staffed by a public defender, candidate attorneys and paralegals, who are supervised from the closest Justice Centre. Where towns or villages are too small to justify a satellite office, LASA has cooperation agreements with local lawyers or paralegal advice offices or other NGOs. Thus there is a range of mechanisms to address community justice needs at different levels, which are designed to be cost effective by matching the 'level' or complexity of the legal case with the provider type, so that the most complex cases get dealt with by the more expensive providers (the lawyers), while routine legal issues are dealt with by cheaper providers, either apprenticed lawyers or paralegals.

A similar logic underpins the model adopted by the Fijian Legal Aid Commission, which has recently trained 40 paralegals to provide greater access to the Commission's services,[96] as well as the PNG 'legal aid desks' which have existed for some years, and are staffed by paralegals in

[92] See Vivek Maru and Varun Gauri, '*Community Paralegals and the Pursuit of Justice*', Cambridge University Press, 2018. This book provides a fantastic description and analysis of community paralegal programing in six countries, Philippines, South Africa, Indonesia, Kenya, Sierra Leone and Liberia.
[93] Ibid, p 19-20.
[94] Ibid, Ibid.
[95] It is not uncommon for bar councils to mistakenly perceive efforts to recognise paralegal models for the poor as a threat to their sources of work. However paralegal programs for the poor mainly serve people who could not afford private legal services anyway, and The key is to highlight how increasing access to justice through increased use of paralegalism, increases the 'size of the pie' or demand for legal assistance as a whole, which also benefits private legal practitioners.
[96] See https://www.pressreader.com/fiji/fiji-sun/20190913/281784220790818.

locations where a full branch cannot be provided or justified. It seems that the global success of community paralegalism is gradually taking root in the Pacific. This kind of graduated model would likely be a good fit for many other Pacific countries, which currently take an 'all or nothing' approach by having only lawyer-based legal aid services, leaving them in desperate need of options that provide more flexibility and diversity of provider types in order to address major coverage deficits, while preventing costs from 'blowing out'.

Given that the SDGs provide a new impetus for states to invest in access to justice initiatives as a 'building block' or foundation for the achievement of other SDGS, it seems a good time to seek a major injection of support from donors to start adding paralegal provided services to the standard legal aid menu on offer in the Pacific.

It is also important to note that increase access to justice also likely entails an increase in the volume of matters coming before state courts. Increasing the efficiency of court listing, hearing and disposal of matters is therefore an essential concomitant need. If the community demand for justice is stimulated but the overall legal aid and court system has no capacity to meet any additional demand then this could in fact 'do harm' by raising community expectations which could not be met, resulting in less trust and confidence in justice institutions and indeed, the state. This is a genuine concern.

Annex D: Innovative & 'Best Practice' Approaches to Improving Legal Aid Services in the Region

Evidence-Based Approaches to Legal Aid Provision

- Baseline 'Access to Justice' survey conducted in Fiji and pilot survey in Marshall Islands.(ref PJSI Access to Justice Toolkit p18) and commitment to evidence-based approach to designing legal aid service based on community needs.
- Development of legal aid provider strategic plan incorporating aspects of UN Principles and Guidelines on Access to Legal Aid In Criminal Justice Systems(2013) (Fiji Legal Aid Commission)

Legal Frameworks, Independence and Eligibility for Legal Aid Services

- Well-developed and established legal frameworks for legal aid in the region
- Constitutional provisions entrenching and protecting the right of impecunious criminal defendants to legal representation present in 9 out of 15 countries surveyed (Nauru, Palau, Marshall Islands, FSM, Samoa, Vanuatu, Solomon Islands, Fiji and Papua New Guinea)
- Provision for legal aid in national laws in 12 out of 15 countries (Nauru, Tuvalu, Palau, Marshall Islands, Cook Islands, Kiribati, FSM, Samoa, Vanuatu, Solomon Islands, Fiji and Papua New Guinea)
- Specialised legal aid laws in 9 countries (Cook Islands, Tuvalu, Marshall Islands, Kiribati, Vanuatu, Solomon Islands, Fiji, Papua New Guinea and Samoa).
- Eight countries' legal aid laws provide for both criminal and civil legal aid, which helps to balance access to legal aid for women and not just men. (Tuvalu, Marshall Islands, Kiribati, Vanuatu, Solomon Islands, Fiji, Papua New Guinea and Samoa)
- Appointment of independent legal aid body/head either in the Constitution (Fiji, Solomon Islands, PNG) or under a national law (Tuvalu, Marshall Islands, Samoa)
- Fully independent Legal Aid Commission in Fiji with direct budget line from Parliament, and control over staff salaries and conditions, (enabling more responsive recruitment processes, merit-based promotion and development of a strong work ethic)

Sustainability and Resourcing

- Entrenched right to legal aid in constitutions and national laws. (as per above)
- Constitutional requirement that Legal Aid Commission of Fiji be adequately funded.
- Per capita funding calculated and monitored (Fiji)
- Top 4 ratios of legal aid lawyers per capital in the Region: Palau: 1:3,000; Nauru 1:5400; Cook Islands: 1:6,000; Fiji 1:10,229
- NGO Family Protection legal aid service made sustainable by transition from Ministry of Justice project, to receiving external funding alongside government funding, starting with coverage of salaries followed by coverage of operational budget. (Tonga)
- Financial contributions from beneficiaries provided for in several countries' legal frameworks providing the potential to make legal aid more sustainable.

- Advocacy to ensure that legal aid lawyers in NGO are paid on par with government lawyer: for sustainability. (Tonga)
- Advocacy for lawyers in national legal aid services to be paid on par with AG and other government lawyer: for sustainability. (several countries)

Service Delivery Models: Using available resources and collaborations to make legal aid more accessible and affordable

- Multi-jurisdictional civil legal aid service (Micronesian Legal Services Corporation) creating an economy of scale that makes a civil legal aid service possible in 4 small jurisdictions (which would otherwise struggle to provide 'stand-alone' services), freeing national offices from 'back end' administrative burdens and creating capacity to work on common regional themes/issues
- Ministry of Justice established as a project a pilot legal aid centre for victims of family violence in Tonga, (The Family Protection Legal Aid Centre), which received support from the Regional Rights Resource Team (RRRT with donor support from Australia and Sweden.
- Pro bono lawyer scheme in Kiribati where the Law Society asks lawyers to assist in one pro bono matter per month.
- Collaboration with foreign pro bono lawyers (New Zealand lawyers attending during court sitting weeks in Niue, Australian lawyers providing assisting to refugees in Nauru).
- One-two year paid internships, part of regular budget, offered to law students in FSM. Each state has 2 paid internship positions, which is a good way to recruit new lawyers, although difficult to attract interns in field office posts.
- Ensuring strong proportion of legal aid resources are outside of the capital. Fiji appears to have the best 'out of capital' coverage, with 15 district offices across the country, where around 60% of legal staff and 48% of non-legal staff are posted.
- USP student legal clinic (Community Law Information Centre) to increase access to justice in Vanuatu.
- USP internships programs (e.g. collaboration with Family Violence Legal Aid Centre Tonga)
- Expansion of legal aid services to 15 branch offices in Fiji and recruitment of 40 paralegals to support access to justice work.
- Legal Education Aid Program (LEAP) collaboration between PNG Law Society and University of PNG Law School for final year PNG law students to provide legal aid to defendants in district courts where no legal aid services exist.
- Organised pro bono scheme run by PNG Law Society and pro bono work performed by Executives of other Law Societies/Bar Associations (e.g. Samoa, Tonga).
- Legal aid services being built into existing NGOs providing 'wrap-around' or holistic integrated services: for example Family Support Centre in Solomon Islands, Fiji Women's Crisis Centre and Kiribati Women and Children Support Centre
- Development of non-degree qualified lawyer programs, such as the 'pleader' or 'counsellor' programs in Nauru, Tonga, Niue and FSM to provide accessible entry point to the legal profession for people with practical experience in justice including those from less advantaged backgrounds.
- Legal aid desks staffed by paralegals in PNG in locations where full branch office cannot be provided

- Development of paralegal training program in Fiji
- Use of paralegals in national and NGO provided legal aid systems (many countries). Example of substantive roles: Family Protection Legal Aid Centre Tonga has 3 family protection advocates working as paralegals: first point of contact with centre, take clients through consultation process, consult with lawyers re referral, assess eligibility, assist with drafting of applications for protection orders, affidavits, seeing clients and raising public awareness)
- Community officers (Community Governance & Grievance Management Project) providing community paralegal services in Solomon Islands linked with the Public Solicitor Office. (Solomon Islands)
- Family Support Centre (Solomon Islands) local volunteer committees in 5 provinces trained in counselling, paralegal skills and psychological first aid.
- Two year donor funded 'access to justice' outreach project (Kiribati outer islands). Consultations and provision of information about the justice system and available assistance.
- Legal aid fund used in Marshall Islands based on compulsory lawyer roster to share legal aid burden and opportunity across the profession in a small jurisdiction, complemented by state public defender service and MLSC to create high legal aid coverage.
- Using 'mixed model' to provide the flexibility to address conflicts (Fiji, through its 'brief out scheme') or having another legal aid service or capacity to appoint private lawyers to refer conflicted cases to (Palau, FSM, Marshall Islands)

Community Legal Education and Outreach Services

- Duty court services (LAC Fiji)
- Rostered and regular visits to prisons and police cells (Public Solicitor Office Solomon Islands, LAC Fiji and likely other countries)
- Social media and digital legal advice services (LAC Fiji)
- Intermittent 'roadshow' tours to communities with other justice providers to provide legal information about the justice system, the roles of different actors, where to get help. (several countries including PNG, Fiji, Solomon Islands, Kiribati)
- Touring theatre and film company addressing socio-legal themes such as family violence, drug use etc. (Wan Smolbag, Vanuatu)
- Legal aid telephone or online query/chat lines (Micronesian Legal Services Corporation, Fiji LAC,)
- Mobile legal clinics (LAC Fiji)
- Legal Fact Sheets/FAQs etc. (LAC Fiji)
- Basic legal aid service information pamphlets (most countries)
- Use of paralegals to conduct community legal awareness activities and outreach (Kiribati, Fiji, Tonga)
- 'Law Week' national court open days with presence of all justice actors providing information, mock hearings, etc. (Solomon Islands)

Services to Address Particular Needs

- 'One Hour Procedure': providing legal assistance to arrestees at police stations with one hour (LAC Fiji)

- Specialised Family Protection services in NGOs (Solomon Islands, Fiji,) and within national legal aid providers (Public Solicitor Solomon Islands)
- 24 hour telephone advice and counselling 'hotlines' or other services (Fiji Women's Crisis Centre, Family support Centre (Solomon Islands), Vanuatu Women's Centre)
- Specialised legal aid unit for cases involving children (both criminal and civil) and no eligibility requirements for juvenile offenders (Fiji Legal Aid Commission)

Collaborations

- PNG Law society and PNG Law School (LEAP)
- Vanuatu Public Solicitor and the Victorian Bar providing multi-year advocacy training
- Public Solicitor Solomon Islands and Bond University, student immersion program
- Trial skills classes provided in American Samoa for Palau, FSM and other public defenders
- Exchange programs between Solomon Island public solicitors and North Australia Aboriginal Justice Agency (NAAJA).
- Pacific Legal Policy Twinning Program offered by Australia where senior Pacific lawyers spend two months in the AG Department in Australia
- Australia Volunteers International (AVI), Australian Volunteers Program (AVP)
- USP internship programs with various legal aid providers including in Tonga

Regional Initiatives

The diversity and geographic spread of Pacific countries can present challenges to regional-level support initiatives. However there are already several programs or bodies that operate to provide support ad build capacity at a regional level, which have some involvement in legal aid and legal empowerment approaches. Aside from 'whole region' approaches, several are broken into sub regional initiatives or more simply, multi or bi lateral country approaches.

- Micronesian Legal Services Corporation
- Inaugural Pacific Legal Aid Regional Conference hosted by the Fiji Legal Aid Commission (September 2019)
- Pacific Women's Network Against Violence Against Women
- South Pacific Lawyers Association
- Fiji Women's Crisis Centre collaboration with several family violence crisis centres across the region
- Pacific Judicial Strengthening Initiative (PJSI)
- The Centre for Asia-Pacific Pro Bono (CAPPB), matches requests for pro bono legal assistance with Australian lawyers.
- University South Pacific (USP): Offers a range of vocational and other law related programs
- Regional Rights Resource Team (RRRT) within South Pacific Community (SPC)

Innovative Approaches in Criminal Matters: Protecting Rights of Suspects

1. Protecting the rights of people arrested prior to caution interviews: The 'One Hour Procedure'

Several legal aid providers highlighted the common problem that when the police read to people arrested their rights, including their right to consult with a lawyer, many people, especially vulnerable suspects, say they do not want to consult with a lawyer before being questioned. This is often because many people associate needing a lawyer with 'having something to hide' and they think they have nothing to fear and no need for a longer as long as they tell the truth.

In 2016, the Fijian Legal Aid Commission commenced a six month pilot of the 'First Hour Procedure' whereby the aim is that a legal aid lawyer attends the police station and at no cost and briefs the suspect on their rights within the first hour of his or her arrest (which has been found to be the time when suspects are most vulnerable to unfair or unlawful treatment).[97] The procedure does not rely on the suspect requesting a lawyer, but rather is a briefing prior to the suspect being asked if they would like a lawyer, so that they can make an informed choice to exercise this right (or not).

The aim of the rapid 'on call' lawyer service is to reduce the risk of forced confessions, detention, and mistreatment in police custody. Setting up the program involved the Commission working in partnership with the Fijian police to coordinate and implement the mechanism. From 1 November 2016 to 30 April 2018, the Commission assisted 2135 people at the two participating police stations in Suva, including males, females and juveniles. This had risen to more than 3000 people assisted by March 2019.[98]

The service is offered 24 hours 7 days per week by legal aid lawyers who are on a roster. When a suspect is arrested the police call a dedicated phone line to the Commission and the lawyer on duty is dispatched to attend the police station within one hour. In the period of evaluation, the legal aid lawyers attended within 1 hour in 100% of cases.

The 'One Hour Procedure' was also combined with a project to digitally record all police interviews of suspects during caution interviews.[99] The combination of both of these initiatives have has been credited with changing the approach taken by police to more actively collect evidence and investigate complaints prior to making arrests, and also safeguarding against coerced confessions and reducing the number of appeals against the fairness/lawfulness of police processes in court.

The 'One Hour Procedure' seems to have been a huge success. However it is also very resource intensive, and for that reason may be difficult to roll out 'at scale' and in remotely located police stations where legal aid lawyers are not close by.

2. *Developing technology based resources: The 'Know your rights App'*

An alternative 'technology-based approach to solving this problem (of suspects not making informed choices about exercising their right to speak to a lawyer prior to police questioning), was developed by a British legal aid lawyer, Dr Vicky Kemp. She designed a prototype 'App' (with assistance from computer scientists at the University of Nottingham) for arrested suspects

[97] https://fijisun.com.fj/2018/05/27/analysis-2135-persons-helped-through-first-hour-procedure/.
[98] https://www.fbcnews.com.fj/news/court/legal-aid-assists-more-than-3000-in-first-hour-procedure/.
[99] https://fijisun.com.fj/2016/10/20/police-begin-first-hour-procedure-digital-recording-workshop/.

to be loaded onto a tablet made available to every suspect at every police station prior to them being asked if they would like to exercise their right to see a lawyer.[100]

The App was designed with the needs of children and youth in mind, but was also adapted to other demographics too. The App uses videos, graphics and animation to explain the rights upon arrest. The App also includes comprehension assessments and further tools where 'red flags' emerge that the person has not understood. The content of the App was based on the research findings for why suspects did not exercise their right to speak to a lawyer prior to being questioned under caution by police. The App includes a simply decision tree to help suspects to decide whether to request legal advice. The App is also complemented by a written pamphlet that basically provides the same information, which police are obliged to provide to suspects in case the tablet or App is not working.

A similar approach may well be feasible and relevant to many Pacific countries and may provide a relatively low cost way of effectively briefing suspects on their rights so that they can exercise informed decisions when police ask them if they would like to speak to a lawyer. It would not help with the further issue, of how would the person access a lawyer if they do decide to exercise this right. Ideally, a lawyer would be physically present with the arrested person throughout the interview, as would be possibly through the 'First Hour Procedure'. However where that is not cost effective or feasible, having a tablet at every police station connected to the internet, could also provide the means for legal advice to be provided to the person in the remote location by a rostered lawyer in the capital via skype. Again, while this may not be an option in all PICS or all locations within PICS it could possibly be a useful tool in some locations. Many Pacific constitutions and criminal procedural codes contain very similar provisions regarding the rights of people who are arrested. It would be quite feasible to develop a generic 'App' for the Pacific which could then be adapted to local legal environments and languages.

Innovative Approaches in Civil Matters: Specialised Family Violence Services and Multiple Jurisdiction Model

1. Legal Assistance for Family Violence Matters

One particular area of growth relates to legal assistance for victims of family violence. Most jurisdictions across the Pacific have already passed specialised laws addressing family violence. Unfortunately none of the laws examined contain a right for victims to be assigned legal aid. However, the existence of these new laws and protection order mechanisms, has created the momentum for new resources to be made available, mainly from donors, for legal aid to assist victims of violence. See Annex C 'Best Practices' for examples of how specialised services for family protection have been established in several countries, including Tonga, Solomon Islands and Fiji.

For example, the Tongan Ministry of Justice established as a project a legal aid centre for victims of family violence, which then received support from the Regional Rights Resource Team (RRRT), with donor support from Australia and Sweden. The Family Protection Legal Aid Centre is able to provide holistic legal and counselling services to victims of family violence including court representation, through the assistance of three lawyers and three paralegals. The Centre has become increasingly sustainable by the Ministry of Justice assuming the salary costs while donors continue to support operational costs, with a view to the state assuming all costs for the

[100] See Dr Vicky Kemp 'Self-help: Digital Legal Rights for Suspects', International Legal Aid Group Conference, Johannesburg, South Africa – June 2017.

Centre within the coming three years. So what started out as a legal aid NGO has now secured sustainable state funding and structurally sits within the Ministry of Justice, but has still been able to maintain a high level of functional autonomy. The Tongan Family Protection Legal Aid Centre offers an evolutionary model that may be of interest to other Pacific countries. Shifting from being a Government project, to donor funded and now increasingly, Government funded, certainly helps to increase sustainability. However this change in status from government to non-government and back to government may also prevent centres from being eligible to apply for civil society donor grants, thus their growth and development may be stunted.[101]

Women's rights NGOs in other Pacific countries have also received greater state and donor support for family violence legal aid services. For example, the Family Support Centre (FSC) in the Solomon Islands originally provided counselling, advocacy, community awareness raising and education and other non-legal support services, but in 2014 were able to 'add on' a legal representation service for victims of family violence. The Centre receives funding from a range of sources including from IWDA (Australia), Oxfam, New Zealand, UN Women and some state project funding. However, despite this positive development, the demand for legal representation for victims of family violence far outstrips the combined capacities of FSC (which has just one lawyer) and the Public Solicitor, which has just two lawyers, to assist with both family protection and family law cases for the entire country. The Fijian Women's Crisis Centre NGO is supported by a range of foreign donors as well as some project-based funding from the Fijian Government and provides legal advice (but not representation.) through counsellor advocates who can represent the interests of victims in police stations, through legal aid and court proceedings, as well as in accessing other services.[102]

Some state-funded legal aid bodies provide legal assistance to victims of family violence, (for example, the Public Solicitor in Solomon Islands has two dedicated lawyers working on family protection/family law matters), however one of the common issues such services face is conflicts that arise when the same entity is also called upon to represent the defendant. The Fijian Legal Aid Commission's 'brief out' scheme is a way of dealing with this, so that the 'first in time' to approach the Commission is represented by an in-house lawyer, and the second party is appointed a private lawyer paid for by the Commission. Alternatively, in areas where there are no private lawyers, the Commission will act for both parties on a 'Chinese walls' basis (i.e. client information protected by firewalls and lawyers must work completely separately) where the 'interests of justice' demand. The Commission has been able to make considerable inroads to meeting women's needs for legal representation, providing legal representation in 43% of all intervention orders sought by female applicants and 36% of women have sought legal advice from the Commission since 2016.l[103]

2. Multiple Jurisdiction Approaches: The Micronesian Legal Services Corporation (MLSC)

The most innovative, ambitious and successful civil legal aid model in the region is provided by the Micronesian Legal Services Corporation (MLSC). The MLSC, a non-profit corporation, was

[101] And ironically, victims of family violence are currently the only people in Tonga able to access legal aid, due to the absence of any other legal aid services including for criminal defence.

[102] Hiil 'Justice Needs and Satisfaction in Fiji, 2018' ,p 108. Note, the Legal Aid Commission argues that NGO should not provide legal advice themselves, but should refer people to the Legal Aid Commission. See https://www.pressreader.com/fiji/the-fiji-times/20191005/282299616911675.

[103] See Fijian LAC's Director's speech to the Universal Period Review https://www.facebook.com/legalaidfiji/videos/2508104469259222/. See also Hiil 'Justice Needs and Satisfaction in Fiji, 2018' , p14. Stating that More than 6,000 women initiated family law or domestic violence restraining order applications in the Fiji courts in 2016. One in three of these women were represented by the Legal Aid Commission."

established in 1970, 49 years ago, indicating its long term sustainable track record and accumulated organizational and technical expertise. It is governed by a board of nine directors and has 55 staff who provide civil legal aid services across four small counties, being the Federated States of Micronesia, the Marshall Islands, the Northern Mariana Islands (a US territory), Palau and with plans to open a new office in Guam (US territory). The MLSC HQ is based in Palau. The US funds two thirds of its budget, with separate funding streams available for US territories but still also supporting civil legal aid for non-US territories which still have significant historical US links. Remaining funds are made up by contributions from the governments of the 4 countries, as well as support from grants and donations.

The MLSC works exclusively in providing civil legal aid, including in family protection, family law, land and property law, inheritance, labour law, contractual disputes, including negligence cases against Government and corporate actors working with the four different legal frameworks. MLSC is guided by a single set of priorities and then each of the four country offices tailor and adapt these to make their services relevant to local populations within these agreed parameters.

The MLSC provides 'back end' support for small services in the form of a secure and sustainable funding source, administrative and organizational support, technical assistance including template tools and resources that can be adapted for us in developing legal practices and legal awareness raising tools and materials. For example, MLSC provides support to develop videos, digital and online resources that can be cost effective ways of reaching a large portion of nationals. It is committed to expanding the use of technologies to increase access to its services and legal information. For example, in one remote area it established a 'skype booth' so that people could come and receive legal advice through online chats.

The MLSC has evolved a structure capable of addressing the needs of the highly mobile populations of the area, who are frequently moving between the four countries, or need assistance when they move back and forth between the Pacific and the US under compacts of free association with the US. A single client can be readily internally referred between country offices, providing a holistic integrated service. Having a single entity helps to improve the effectiveness of legal actions and advocacy for nationals of all 4 countries when they are in the US.

Increasingly, the MLSC sees itself as an actor well- placed to work on common regional issues. It is working to resource a series of new regional positions to support national offices in tackling common regional themes, such as family and gender based violence, trafficking and migration, natural disaster law, and environmental degradation and interference with livelihoods caused by resource countries. These technical experts are helping to build legal capacities in national offices in these areas, and can also directly support legal work and litigation as needed. With proper scoping, planning and support, the MLSC may be open to expanding. The MLSC offers a relevant and adaptive collaborative model for making civil legal aid in small countries that do not have the benefit of scale, to provide cost effective and efficient services.

Annex E: Extracted Recommendations

1. Increase understanding of Government/policy makers/justice actors/donors' of the wider importance of legal aid as the main provider of access to justice in the Pacific so that legal aid is prioritised and properly resourced

- Conduct a symposium/webinar seminar for governments, policy makers and justice actors across the Pacific sharing key findings from global studies on the critical role of access to justice to sustainable development including 'visioning' for what cost effective models of legal aid 'look like' (see below for recommendations regarding building an evidence base).
- Advocate strongly with key donors the importance of legal aid and the need for its support, especially to achieve the SDGs and reap the benefits of increased community access to justice.
- Highlight the legal aid 'spend' in every major justice program across the Pacific and highlight any disparity with the support being provided to other parts of the 'justice chain' which could create distortions in function unless they are all able to perform their particular functions to a similar level.
- Explore the feasibility of building funding for legal aid services (including community paralegal services) into other sectoral projects (such as health, education, environment, housing, livelihoods etc.) and advocate for legal aid provision as compulsory part of government agreements with mining and other resource companies.
- Encourage donors to agree on reporting templates, indicators and requirements etc. to make it easier for those managing donor grants to acquit the requirements.
- Persuade relevant ministries of the potential benefits of allowing legal aid entities to directly engage with donors to discuss their needs and identify programs of support, as well as funding mechanisms to ensure that funding earmarked for legal aid services that exist within wider ministries or entities do pass on the additional funding, and do not cut or reduce state funding in response.

2. Address Need for Stronger Evidence-Based Approach to Legal Aid Provision

- Establish a pool fund or provide technical assistance to jurisdictions to enable them to conduct national 'access to justice' surveys. Findings from the survey should guide an experimental approach to working out what models work best in different contexts.
- On an interim basis, countries yet to undertake baseline surveys should study the general trends emerging from other Pacific and global countries' studies, assess how applicable these likely are to their local environment and start using this wider knowledge for legal aid service planning and budgeting. While the PJSI Chief Justices Forum in March 2020 and the Regional workshop of legal aid providers in October 2020 will provide initial forums for sharing this knowledge, the conversation needs to be cast wider to include governments, policy makers, and donors (as per recommendation 1).
- Commission an economic costing expert to develop a predictive modelling approach to 'putting some figures' on the economic costs of providing/not providing access to justice across the region.

3. Increase agility and responsiveness of legal aid provision to community demand for justice

- Successfully demonstrate the need and cost effectiveness of allocating additional resources for access to justice, rather than re-allocating existing resources allocated to criminal defence.
- Use additional resources to prioritise the areas in which community justice needs are both frequent and impactful including by:
    - Addressing the imbalance in funding for criminal versus civil legal assistance and expanding access to help with concerning family protection, family law, land law and disputes with neighbours or other areas of demonstrated unmet need
    - Creating community-level services to increase legal awareness and knowledge and to guide and link people to appropriate dispute resolution mechanisms, including state justice. (see below for further recommendations on this point)

4. Focus on providing better outreach and coverage

- Require legal aid providers to start earmarking or (better), offer incentives by adding a certain percentage of their budget for developing outreach and legal information and assistance services with a focus on those that provide the greatest reach for the lowest cost.
- Create a regional legal aid 'top up' fund to provide grants dedicated to developing sustainable and innovative low cost outreach services such (radio shows, telephone advice, SMS information, user-friendly websites, social media, fact sheets, self- help packs, videoed legal information sessions or other innovative low cost legal information or assistance services.)
- Assess the viability of developing at a regional level templates/generic key legal information materials that can be readily customised to local contexts to reduce the burden on individual legal aid providers and create ways of sharing resources to provide a more efficient way of developing materials without each country having to 'reinvent the wheel'.

5. Involve more diverse legal actor types and greater integration with other services

- Pilot community paralegal programs within legal aid services in places without legal aid branches or reach. Ensure that community paralegals are well trained and provided with adequate ongoing support by using global 'best practice' resources. Ensure that accountability frameworks are clear and well established to build trust both with communities and with legal aid providers and to ensure that community paralegals cannot 'go rogue'. Develop a robust M&E framework for such pilots to capture and measure their impact, both on communities, legal aid providers and other justice actors so that there is an evidence base established for 'scaling up' successful approaches.
- Expand the use of paralegals working within legal aid offices and consider how they can be most effectively trained and assigned to work with lawyers. Many major law practices have experimented with finding structures most effective and efficient for providing legal assistance at cost and scale. Some have found that a ratio of 1 lawyer working with four or five paralegals, provides the most effective and efficient use of legal resources. They have also found that these 'pods' of paralegals working with a lawyer, are best 'line managed' by professional non-lawyer managers, again relieving the lawyer of the wider HR/supervisory work obligations (however allowing them to provide their input on performance), thus enabling them to remain focused on complex legal issues, finalising (not drafting) legal advice, court appearance work etc.

- In jurisdictions lacking lawyers, consider providing multiple entry points to the legal profession or tiers within the profession. Several jurisdictions which suffer from a shortage of law-degree qualified lawyers have established 'pleader' programs, enabling entry to the legal profession based on legal experience and completion of exams, rather than law degrees. These are not only expanding the pool of available lawyers, but also creating a more diverse legal profession enabling people with less advantaged backgrounds to enter the profession. Having more lawyers with lived experience of social disadvantage may increase the accessibility and relevance of legal aid services provided.
- Develop integrated service models, where paralegals are embedded within other services in both urban and rural areas, such as health services, women's crisis/family violence services or other services that exist in remote communities. Providing they are services that are trusted in the community, the presence of community paralegals can provide a very effective 'wrap-around' service model to address needs holistically and ensure reliable referral pathways for people to find the help they need to resolve legal aspects of their problems.

6. Strengthen capacity and sustainability of existing legal aid providers

- Urgently establish legal aid services in countries that have none for criminal defence
- Always make the best use of available resources in each context: lawyers (including through national legal aid providers liaising with the Law Society/Bar Association), law graduates, law students, and paralegals and identify existing sources of legal aid and fill in the gaps through cooperation agreements rather than duplication.
- Carefully select legal aid models suited to the individual context. This review has shown how even small jurisdictions have successfully managed to provide good legal aid coverage for both criminal and civil legal aid, including through strategic deployment of 'mixed models' or those that involve a mix of private lawyers (either paid or pro bono) and NGO legal aid providers to help expand coverage, flexibility and deal with situations where the national provider is 'conflicted out' of acting for one of the parties.
- Make better use of pro bono assistance from private lawyers: compulsory annual registration points schemes. Investigate the feasibility of introducing an annual 'points system' for lawyers to satisfy in order to renew their practicing certificates annually. Some points can be earned for undertaking Continuing Professional Development activities, and others earned by undertaking a certain quota of pro bono work (either number of cases or hours of work).Set up pro bono awards and media reporting to incentivise performance of pro bono work. Explore feasibility of building networks with law firms willing to undertake pro bono work.
- Support more clinics and internship programs but ensure they be for a minimum of 6 months (to enable the legal aid provider to 'get value' out of them).
- Strengthen the independence of legal aid services including to manage their human resources outside of public service structures and to engage directly with donors or other potential sources of support without threat to their existing budgetary allocations.
- Where national legal aid providers are civil servants, ensure that the lawyers are paid at minimum on parity with other Government lawyers (especially in jurisdictions where legal aid lawyers require higher qualifications), and increase increments beyond annual increments for middle to more senior legal aid lawyers, commensurate with the increase in their responsibilities for complex case and supervision of junior lawyers and other staff.

- Recognise and celebrate legal aid providers to reflect the high value of their work and their contributions to improving the fairness of their societies. This review confirmed that legal aid services across the Pacific are packed with inspiring hard working people dedicated to social justice who are achieving an enormous amount with the limited resources that they have. These 'unsung heroes' typically are poorly paid compared to other lawyers, have high caseloads and limited logistical support.
- Prioritise legal aid service providers' wellbeing and ensure that workloads are managed and supports provided to prevent burn out as an explicit part of the work environment. All of the factors mentioned above can create a stressful operating environment for legal aid lawyers, further compounded by the overall lack of recognition for the difficulty and value of the services they provide. The sector cannot afford to lose experienced legal aid lawyers to 'burn out', yet this remains a high risk.

7. Build knowledge, networking and cross-country resource opportunities for legal aid providers

- Seek inputs from legal aid providers regarding establishing a regional legal aid resource network to support exchange of best practices, resources and knowledge, facilitate building of relationships and support collaboration and provide a forum for progressing collective thinking and action on key common issues confronting services in the Region.

8. Develop regional capacities to support national or multi-national legal aid services

- Develop regional legal aid grants fund for:
    - pilots/experiments with innovative low cost legal information and advisory outreach or remotely delivered services
    - producing key knowledge products such as national access to justice surveys and costings of providing/not providing access to justice.
- Develop some generic/template/ standardised materials and tools for legal information which can be readily customised to national legal environments
- Conduct regional-level advocacy with governments and donors to increase the size of the legal aid 'pie'
- Provide support to networking, learning and resource exchanging opportunities for legal aid providers across the Region.
- Benchmark aspects of legal aid services, such as per capital spend, proportion of legal aid budget to go into outreach activities or services for rural or remote communities
- Provide support to match/develop partnerships between legal aid providers in country and overseas (Australia/NZ legal aid collaborations with Pacific partners exchange programs etc.)
- Develop or expand cross-jurisdictional legal aid services, such as the MLSB, to increase the 'economy of scale' and the viability of legal aid services in small Pacific states and provide platforms for tackling common regional-level issues.

Annex F: Endorsed Key Issues and Solutions as Verified in Consultation Workshops, March 2021

1. Legal Aid Providers Forum:

On 16 March 2021 a Legal Aid Providers Forum was convened involving 51 participants from seven countries, being a mix of senior staff from Pacific legal aid services and senior court representatives. The forum was designed to verify key findings of the *Situation Analysis of Pacific Legal Aid Systems* research and to bring key actors together to discuss key challenges and pose solutions to these.

Legal aid providers present at the forum reflected the diversity of legal aid typologies captured in the *Situation Analysis* including those working within public defender dedicated services; legal aid fund models, which pay private practitioners; NGO/project models; and pro bono models. There was significant sharing of how the different models operate in practice, with particular interest taken in the innovative cross-country model of the Micronesian Legal Services Corporation (MLSC)) and the Family Violence Legal Aid Centre in Tonga. The latter was of particular interest given its evolution from having been established as a project of the Ministry of Justice, received external funding from donors, and is now working towards being sustainably funded by the Ministry. Participants shared their experiences of Legal Aid Fund models, highlighting examples of the difficulties of budgeting/pacing use of the fund, noting that funds for the scheme had already been exhausted less than half way through the year, and in other instances noting that the Court's Legal Aid Fund had been highly successful and become sustainable due to the contributions of lawyers, resulting in reduced dependence on government funding.

Participants confirmed the accuracy of the overall picture of legal aid services found by the research, including features such as:

- The concentration of legal aid services in capitals and major regional centres, leaving many remote areas and portions of Pacific populations without any access to legal aid. Solomon Islands shared the result of their 2018 access to justice survey indicating that only 1% of the population has access to legal aid. Further evidence of inability to meet demand was noted from a similar access to justice study in Fiji, despite it having a relatively well-resourced legal aid commission.
- The heavy weighting of legal aid towards criminal defence matters in most jurisdictions, leaving very limited resources for civil law matters, having major implications for gender equality in accessing legal aid, and for capacity to assist in common community level civil disputes, essential to maintaining social cohesion and stability. Several countries confirmed that nearly all legal aid funds go to male criminal defendants. Countries in Micronesia highlighted that through the Micronesian Legal Services Corporation, the only dedicated civil legal aid service in the region, women were able to receive their share of legal aid support with approximately 60% of MSLC legal aid clients being female.

- Participants highlighted the particular professional and ethical challenges arising where a legal aid service is unable to act for both parties to a dispute, due to conflicts, resulting in the need for multiple legal aid actors to ensure both parties in civil cases can be legally represented.
- Participants also highlighted the importance of legal aid services being independent from the Government. This may be provided for in law but also needs to be reflected in earmarked funding arrangements to prevent blockages or distortions of legal aid funding in allocations provided via Government departments.
- Participants also highlighted the high transportation costs in many countries which makes it prohibitively expensive to travel to more remote locations where they also do not have resources to establish a permanent presence there.
- Participants also highlighted the lack of resources they have to provide community outreach and legal education, consistent with the findings of the research. Sometimes community legal education sessions are combined with circuit visits to remote locations but these also generate an additional problem that the legal aid services do not have capacity to meet the additional demand these activities generate. There was concern expressed that this may raise unrealistic expectations of the help available and potentially prove to be counterproductive in undermining community confidence in the justice system.
- There was also a very valuable conversation around the adaptations services had made to deal with COVID-19 risks and the need to capture and use on an ongoing basis some of these approaches, which can help increase access to justice on an ongoing basis. Some participants highlighted that as they were unable to see clients in-person, they had been providing much more telephone, social media and email services, and that while clients preferred in-person contact, people had proven they could adjust, and this opens potential to assist more people through using these modalities. Other services, shared that to adjust to COVID-19 risks, the courts had changed their rules to accept filing of applications for family violence orders by email and that such approaches may help the legal aid service to extend its services to outer islands. Other countries highlighted that they had tried to provide remote services but were hampered by lack of mobile phones for messaging, and managing calls, as the landline system was insufficient for this way of working, highlighting the need for appropriate hardware technologies to be provided to enable more flexible service models. They also highlighted that they have provided people arrested at police stations with telephone advice regarding their rights.

- The **five major areas of concern identified by legal aid providers were verified** by participants. These being:

    1. **Lack of resources available** to Legal Aid Providers, need for independence,
    2. **How to be effectively spend each precious legal aid dollar including** capacity to cover grassroots, escalated, cost effective system drawing on all available legal resources.
    3. **Need to increase pro bono capacities in each country**

4. **How to ensure responsiveness to common community issues (i.e. resources for civil law cases)** needed also to ensure gender equity
5. **Need for regional level support:** to provide common resources, share knowledge, and develop evidence base to increase sustainable resources for legal aid in each country

Participants discussed proposed strategies for addressing each of these challenges which can be summarised into the following points per each of the five major issues:

Issue 1: Lack of resources available, worsened by more public funds and support now diverted to address CVID-19 health preparedness measures. One centre director highlighted that she spends around 95% of her time trying to secure funding and the need for family violence strategies to integrate proper support for legal assistance.

Proposed Solutions:

- Persuade Parliaments/Governments and donors to fund legal aid via a range of arguments including that: money saved through prevention of social discord/disorder; importance of legal aid to achieve sustainable development; and benefits of increased community access to justice to stimulate economies and protect human rights.
- To achieve above, there is a need for a strong evidence base for each country, both quantitative and qualitative including: data, economic modelling of counterfactual scenarios/savings, case studies and public feedback, emphasising both the expectations of communities to be assisted with legal problems and the constitutional and normative need to protect basic human rights.
- Benchmarking of legal aid spend per capita to pressure low spending states through comparison and to aim advocacy towards achieving incremental targets. (Fiji as an example)
- Identification of other additional funding sources to be directed to legal aid including: excess public revenue funds; interest payable on public investments or on trust fund accounts run by lawyers; allocation of a proportion of court fees; lawyer contributions to Legal Aid Funds for not accepting pro bono cases; beneficiary contributions from those able to make some contribution towards the costs of their legal representation (but remain unable to afford regular market private rates).

Issue 2. How can each precious legal aid dollar be most effectively spent? What are the most cost efficient and effective **legal aid models** that might best meet the needs of diverse Pacific jurisdictions?

Proposed Solutions

- Need for all Pacific countries to have a legal aid model best suited to its individual needs. Some countries lack any legal aid service at present, even despite constitutional provisions guaranteeing fair trial and the right to an effective legal defence.

- Need for systems of escalation from the grassroots of communities; capacity to direct cases to local or state justice adjudication to provide better coverage lf legal assistance AND direction of cases to appropriate venues/appropriate to the level/type of dispute and expertise needed for it.
- Need to diversity actors within legal aid systems: Need to vastly scale up role of paralegals in models (including those based in communities) and to provide more administrative support to get better value from more expensive lawyer roles. One country shared that its paralegal program, supported by UNDP, was proving to be very valuable, with paralegals working under lawyer supervision. Others also shared their experiences of using paralegals including details of a "pleaders" program where non-law qualified experienced paralegals are able to appear before courts and represent clients. A further country also shared it has a non-degree qualified lawyer program through a Trial Counselor Program provided at the College of Micronesia, taught by local attorneys. And yet another shared the important role of paralegals in taking instructions in the family violence legal aid service.
- Need to make legal aid providers' workforces more flexible, salaries competitive and to invest in wellbeing/burn out prevention and professional development/promotion opportunities, to keep senior legal aid lawyers/services sustainable.

Issue 3. Current pro bono support is directed mainly to lawyers' families and networks, not to those most in need. Need to maximise and coordinate pro bono inputs without creating too great burden for lawyers, while maintaining quality and oversight of pro bono services.

Proposed Solutions

- **Lawyer associations run organised schemes**, for legal aid overflow or stand-alone services, which could be focused on individual case work or provide services via clinics linked to universities/law students. Representatives from one country spoke in favour of an MOU between the Public Solicitor and the Bar Association to agree on a pro bono referral pathway.
- **Court administered schemes** involving provision of state funds or lawyer funds (in lieu of accepting pro bono court referrals) administered by the court. Lawyers are all including in a mandatory roster, and then allocated pro bono cases by the court and paid based on capped amount/fixed hourly fee and presentation of invoice. There was strong interest in this approach in both this, and the Chief Justices, forums.

Issue 4. How to ensure responsiveness to common community issues (i.e. resources for civil law cases) needed to ensure gender equity, issues around family violence, family law (alimony and child support), pollution, activities of resource companies that interfere with livelihoods/land, local land/neighbourhood conflicts, inheritance and contractual disputes. Several participants also raised the problem of opposition by lawyer associations to legal aid provision in civil cases due to concerns this undercuts opportunities for paid work, especially for junior lawyers.

Proposed Solutions

- Ring fence a % of legal aid resources for civil law cases
- Work to establish dedicated civil law services (possibly multi-country like the MLSC)
- Increase capacity to legal aid bodies to support mediation of disputes. Possible reform via court rules requiring **mediation of civil disputes prior to court adjudication,** but not for cases involving family violence/other disputes involving major power disparities between the parties. One country shared that they are prioritising mediation capacity building as part of their strategy to increase access to legal aid.
- Ensure legal aid eligibility criteria has clear means test to prevent undercutting opportunities for paid work for private practitioners, or gain their support by including them in funded legal aid work. (i.e. through a Legal Aid Fund approach, at least in part.)

Issue 5. Need for regional network to **build evidence base for each country, common resources and partnerships across the region including** Funding proposals/strategies, specialized legal aid skill training modules for paralegals and lawyers, community legal education materials, staff exchange programs.

Proposed Solutions

1. Establish a Pacific Legal Aid Network building on the momentum of the inaugural regional legal aid conference in Fiji in 2019 supported by UNDP. Countries highlighted that there is a Pacific Prosecutors Association and there should also be one for legal aid. Others strongly endorsed this position, also recommending development of a clear TOR and consideration of using terminology "Access to Justice" to make advocacy efforts more persuasive, rather than using "legal aid".
2. Seek donor support for developing specific elements of a coordinated network, possibly supported by UNDP. UNDP offered to share the declaration from the Legal Aid conference and to support ongoing regional support.

Towards the end of the session, representatives from MFAT and UNDP Access to Justice Project Manager provided their perspectives. The MFAT representative emphasised that priority should be placed on persuading individual governments to adequately resource legal aid services, but agreed that some regional provided technical support could assist countries in developing the strongest possible evidence base for their advocacy. Concern was expressed that regional approaches more generally may shift focus away from assisting remote communities, which is the key need. Emphasis was placed on the need for local solutions and highlighted that donors cannot bankroll activities which have no pathway to sustainable support but that they can provide pilot or seed funding to help services demonstrate innovative or successful approaches, which would then need secure government support to roll out at scale.

The relevance of the UNDP supported regional legal aid conference held in Fiji in 2019 was highlighted, including the declaration from that conference, which included a commitment to meet every two years. UNDP expressed strong support for regional cooperation including to develop a methodology which could be shared with all countries, as to how to create a compelling evidence base including by demonstrating the economic growth generated by each legal aid dollar committed, as has been done in Canada.

This session generated a very rich discussion and excellent participation. It achieved its multiple objectives of verifying key findings and recommendations in the research; sharing knowledge of different legal aid models in operation, identifying clear priorities and strategies as put forward by legal aid providers, and engaging two key donors/implementers in the discussions regarding ongoing support needs and momentum for forward-focused action.

The recommendations put forward in the *Situation Analysis* were validated as providing a useful roadmap for developing further strategies and programs of action and activities relating to the development and strengthening of legal aid systems across the Pacific.

The forum provided new momentum and clarity regarding priorities, needs, possible reforms and sources of support. Further discussions with key donors and implementers (DFAT, MFAT, EU and UNDP) regarding prioritisation of particular areas of support for legal aid services would be a sensible next step. While large scale donor support for services seems unlikely at present, a strategic and incremental approach seems very feasible. Specific pilot projects could be identified for donors to be invited to invest in. Some have already indicated possible interest in providing support to help countries develop a strong evidence basis for advocating for greater government support.

The *Situation Analysis* provides a strong knowledge base for all participating jurisdictions to use in their own planning, including by offering a pooling of knowledge and a wider range of models and experience gained in comparable countries. In addition, participants were able to meet each other and now have established contacts with relevant actors in each participating country so they can share further information and initiatives as they unfold.

The Courts' leaderships have been brought squarely into the conversation and indicated their availability and support to participate in efforts to strengthen the legal aid services in their jurisdictions. They stand as powerful allies ready to support legal aid systems with initiative and energy to progress their development.

Conclusion

The results of the forums highlight a high level of consensus to emerge from the *Situation Analysis*, alongside the direct inputs from legal aid service providers and from Chief Justices and other senior court actors, generating clear agendas for action.

This work has generated the necessary knowledge basis through the mapping of services; identified relevant stakeholders, (and achieved their buy in to work collaboratively) and also brought some of the key potential supporters (MFAT and UNDP) into the loop, having now directly heard from relevant actors the needs, and participated in some of the discussions. In addition, Court leaders have had further opportunity to share and reflect on the important access to justice work of courts, and their role in supporting the advocacy needs of legal aid services in their

jurisdictions. Linking all of these elements together, legal aid providers now have access to increased knowledge and networking potential, alongside senior court allies, with some budding interest and potential greater alignment with the priorities of donors and implementers.