

## **PJSI GUIDANCE**

### **PROMOTING ACCESS TO JUSTICE THROUGH COMMUNITY CONSULTATIONS**

The Pacific Judicial Strengthening Initiative (PJSI) is pleased to provide a guidance note to assist courts to promote access to justice through community consultations. This guidance consolidates the experiences and distils lessons learned by courts across the region to promote access to justice through community consultations over recent years.<sup>1</sup>

#### **Purpose**

The purpose of this guidance note is to assist law courts across the Pacific region to conduct and use community consultations to promote access to justice and improve the quality of judicial service delivery.

This guidance note explains why courts should and how courts can conduct community consultations. It addresses the need to find the right balance between the imperative to preserve judicial independence with the competing needs for community engagement and collaboration with other justice sector actors. It frames these consultations within the broader process of planning for continuous improvement, and the value of adopting a people-centred approach. Finally, it outlines and describes a range of useful public information, community education and outreach activities that have been developed by the courts across the region to promote access to justice.

#### **Using this Guidance**

This guidance is designed for judicial officers and court administrators as an informal resource for use in and by the courts of the Pacific to assist ongoing efforts to promote access to justice through community consultations.

Courts may wish to use this guidance as drafted, or to adapt it to suit local conditions in your jurisdiction and country. Each jurisdiction is different. You may consider that some aspect of local culture or traditions should be specifically mentioned. We also recommend that the guidance and any associated materials relating to promoting access to justice through community consultations is written in words that are readily understood in your country and is translated into local language/s.

We recommend that this guidance should be read and used within the broader context of the courts public relations endeavours to promote access to justice.

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<sup>1</sup> Output 4 of Project 4 of PJSI's COVID-19 Redesign 2020 specifies: (d)evelop a Court Guidance on '*Promoting Access to Justice through Community Consultations*' for all courts across the region, which consolidates the experiences and distils lessons learned in 'enabling rights' visits to PICs. These visits included Kiribati in 2014 & 2019, FSM in 2017, RMI in 2018, Cook Islands in 2018, and Vanuatu in 2019 among other related activities.

## 1. WHY CONDUCT COMMUNITY CONSULTATIONS?

Community consultations are important, valuable and useful for the courts for 3 main reasons that relate to the courts performing their role to administer justice and improving the quality of the services they deliver.

### 1.1 CONSTITUTIONAL ROLE AND RESPONSIBILITIES OF THE COURTS

The first rationale for community consultations relates to the responsibility of the courts to administer justice. This rationale is concerned with the courts performing their role under the constitution.

The constitution is the supreme law of each country. It embeds the 'separation of powers' doctrine which divides the powers and responsibilities of government into 3 arms: (1) *executive*, (2) *legislature* and (3) *judiciary*. Under the constitution, courts are mandated to administer justice. The main functions of the courts are to protect the constitution, administer the law, resolve disputes and review the administrative decisions of government. Justice is dependent on - but separate and additional to - law. At its essence, justice is concerned with fairness. Fairness describes the equality of distribution and the treatment of legal rights in any given situation. In this way, the courts may be seen as guardians of the norms and values of each country as enshrined in its constitution.

On a day-to-day basis, the courts administer justice by applying the law to specific cases or disputes that are brought before them. These disputes may be criminal or civil. The courts determine the application of the laws to the particular situation. In doing so, they resolve disputes between government, people and businesses. They protect the rights of the citizen and, where needed, they protect the citizen against the abuse of government power. Ultimately, the courts exist to protect the liberties and to enforce the rights of the people. They also protect the citizen from unlawful intrusion by government. Without the courts, there is no justice (excluding custom) in the state.

The courts can only discharge their constitutional mandate when the community they serve understand their mandate and role to administer justice. Hence to perform their constitutional role, the courts must be proactive in consulting the community to ensure this understanding.

### 1.2 PROMOTING ACCESS TO JUSTICE

Second, in order for the courts to perform their role and responsibilities, it is essential that the people can understand this role so that they can access and exercise their legal rights when needed.

Unfortunately, our consultations with communities have found that many - if not most - people across the Pacific region do not clearly understand the role of the courts or how they work. Moreover, they are often uncertain, shy and unconfident to exercise their legal rights. Consequently, a large proportion of the population is unlikely to approach the court for help - however needy - without some support from the court.

Our courts operate in what is called the 'adversarial' model of justice. This means that the parties to any dispute are responsible for claiming and defending their dispute in court, and the magistrate/judge make the decision based on their representations. Where however one of the parties does not know or understand how to exercise their legal rights, this process can become uneven and impair the quality of justice. For the adversarial process to operate fairly, it is essential that both parties understand and can use the process.

Hence, it is in the interests of justice that the courts exercise the responsibility to ensure that citizens can understand and use their rights to a fair hearing. This responsibility requires courts taking active steps to ensure that people can and do understand the role and functions of the courts, so that they are able to

exercise their legal rights as/when needed. As the constitutional guardians of justice, the courts have the responsibility to ensure that citizens can exercise their lawful rights to a fair hearing.

Courts that exclude or disable citizens from accessing justice fail to perform their role, and risk losing the trust and respect of the community. To ensure that citizens can exercise their legal rights, the courts should be proactive in informing and educating the community on the court's role and how people may use the courts to exercise their rights.

### **1.3 MECHANISM FOR CONTINUOUS IMPROVEMENT OF COURT SERVICES**

The third rationale for community consultations relates to improving the quality of the justice services that courts deliver. This rationale is concerned with the courts being accountable to the communities they serve by providing court users with an opportunity or mechanism to provide feedback on their satisfaction with those services, and how they can be improved.

Courts, among other progressive organisations around the world, are committed to continuous improvement. Continuous improvement presumes that these organisations will do the best they can but simultaneously recognises that mistakes and shortcomings are unavoidable. The distinctive notion of continuous improvement is in ensuring the organisation learns from these mistakes, so they are avoided in future.

Community consultations provide a precious mechanism for the courts to consult their users - and equally importantly, their non-users - to ascertain whether they are doing a good job and, if not, how they can improve.

Some judges may be uncomfortable with the notion that courts provide 'services to users', who may also be described as 'clients' or 'customers.' This is because it seems to suggest that the courts are like other suppliers of services, for example, lawyers or shopkeepers who are paid for professional or commercial services. Courts are of course not like lawyers who are hired for a professional fee, nor are they like retailers who are paid to supply commercial goods. Courts are fundamentally unique in performing a constitutional role to provide a public good, that is, to administer justice for the state and community. Seeing the courts as the provider of justice services is however useful in positioning the courts as being seen to be in a relationship of accountability to both the state and the community to whom they are mandated to serve. Ultimately, the courts must be accountable for the quality of these services.

Hence community consultations provide the courts with a valuable mechanism to both explain their role in order to ensure that the courts can be used by the needy when they are needed, and also to provide accountability by enabling and addressing feedback on its services.

## **2. DOCTRINE OF JUDICIAL INDEPENDENCE**

Creating opportunities for court users to provide feedback on their services does however raise unique challenges for the courts. The courts are unlike other service providers in terms of their relations with their users, clients or customers. Unlike other service providers, the courts are required to be independent, not only from the other branches of government, but even from the parties who may appear before them. Independence is vital to ensure impartiality, the appearance of impartiality, and thereby public trust in the courts and the administration of justice.

The importance of preserving and consolidating judicial independence cannot be over-stressed, as seen in the Bangalore Principles of Judicial Conduct, 2002, which enshrine 6 core principles that embody the international norms of judicial good practice. These principles or norms are independence, impartiality,

integrity, propriety, equality and competence. These are mutually interdependent and may overlap. Significantly, the principle for independence is foremost: -

*Value 1:*  
**INDEPENDENCE**

*Principle:*

*Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.*

Independence is required to protect and guarantee the integrity of the courts to administer justice according to law, without interference or improper influence from government, the parties or other powerful interests. Without this guarantee, public trust and confidence in the courts would be eroded, and the role of the courts would be perverted from protector to oppressor.

The principle of independence requires the courts to ensure that they are in fact independent and equally *seen to be* independent. This requires that courts to be extremely careful in operating at an appropriate distance separated from government, court users and the community. It is for this reason that it is inappropriate for the courts to market their services as other service providers might. Unlike professional or commercial service providers, judges generally do not socialise much or mingle in public in order to protect the appearance of independence of the courts.

Traditionally, the imperative to preserve the independence of the judiciary and protecting the neutrality of the courts from improper influence has led the courts to a withdrawal from public contract. This withdrawal was seen as being legitimate and necessary to insulate the judiciary. Over recent years, however, this 'insulation' has on occasion been publicly criticised as becoming 'isolation' and has provoked complaints that the courts are 'out of touch' with the needs of the community. These complaints have most commonly been driven by public perceptions that judges are non-representative of the community and patriarchal (usually men) who fail to properly understand and adequately protect the needs of women, minorities and the powerless poor. Courts are often criticised for being too remote. These are of course serious complaints - even if misconceived - because they erode trust.

There are now mounting concerns that the protection of independence has been at the expense of the courts failing to adequately enable to rights of the poor, the vulnerable, the marginalised and the weak - that is, to address the needs of the most needy in society.

Understandably, the courts have found it difficult to find the right balance between independence and engagement. But increasingly, they are recognising the importance of doing so, in part recognising that engagement may strengthen public perceptions of independence. It is within this context of the imperative to preserve judicial independence, that community consultations provide a valuable strategy and mechanisms for the courts to reach out and engage in a transparent two-way dialogue with the community which could otherwise not happen.

In order for the courts to exercise their mandate to administer justice, they must enable the rights of claim-makers. But to do so, they must first ascertain what needs are going unmet. Getting an answer to the question: *What needs are going unmet?* requires the courts to more actively engage with the community.

### 3. PLANNING FOR IMPROVEMENT

Over the past decade, courts across the region have increasingly engaged in organisational planning to improve the quality of their services. The agendas and priorities of each plan has of course varied from country to country, and from court to court. Usually, however, these plans start with an assessment of what is going well and what needs improvement. This process is variously called a 'needs assessment', 'situation analysis' or 'court user survey'. Whatever their name, these assessments are usually based largely on inputs from community consultations among other sources.

Community consultations provide local stakeholders with the opportunity to provide feedback on their satisfaction with court services. They may identify any number of challenges and opportunities for the courts to redress. Once identified, it is necessary for the courts to set its priorities on where to start. Across the region, these challenges often relate to barriers to accessing the courts - whether physical, geographic, financial, informational or cultural; lack of knowledge and understanding of how the courts work, and how people can use them. Delay and cost are other common problems.

These consultations also usually reveal that many in the community neither know or understand the role and functions of the courts or how to access and use their services. Unsurprisingly these people are *non*-users of the courts. Community consultations can not only inform and educate these non-users on the role of the courts and their legal rights, but also contribute to enabling them to use court services, thus transforming and restructuring community relationships.

Hence planning consultations is usually directed towards reaching two goals: (a) to inform the community on the role and services of the courts for *non*-users, and (b) to initiate a dialogue seeking feedback on *users*' satisfaction with court services. Courts should focus on attaining these goals within the broader context of assessing, planning, developing and addressing their various improvements in an integrated organisational strategic manner.

As a result of conducting community consultations, it is likely that the courts will identify and prioritise a range of improvement activities, which may be inter-connected and overlap. For example, the court may decide to introduce a public information strategy that provides community-level education through visits, presentations and brochures with related education-raising activities in schools or on public radio, etc. Similarly, initiatives to obtain feedback from court-users might include a range of measures such as court user surveys after hearings, bench-bar liaison meetings and public open days, etc.

### 4. CONDUCTING COMMUNITY CONSULTATIONS: PEOPLE-CENTRED OUTREACH

Over the past decade, courts across the region have revitalised their approach to the organisation of their business and their relationship with the community, sometimes radically. They have experienced that community consultations can play a valuable role in introducing a people-centred outreach - where the court proactively goes out to the people, rather than waiting for the people to come into the court.

Judicial 'outreach' is a term used to describe those activities undertaken by the courts to engage with the community. These activities provide a communication process and relationship in building public understanding and trust in the work of the courts by external engagement and providing public information.

Given the constraints of judicial independence, this people-centred approach offers the courts some significant advantages including: -

- displaying court's commitments to quality, transparency and accountability
- addressing the needs and convenience of communities rather than government
- humanising the court, which is otherwise impersonal, strange and potentially threatening
- empowering rather than intimidating or bewildering ordinary people
- providing an informal mechanism to obtain feedback to redress problems.

## **5. COLLABORATION WITH JUSTICE SECTOR ACTORS**

As we have now seen, the courts can conduct transparent public consultations with the community that provide information and education on the role and function of the courts, as well as feedback on users' satisfaction with their services, among other things.

These outreach activities are enhanced by the courts collaborating with other justice sector actors - notably the Ministry of Justice (however named), the prosecution, police, bar, legal aid and any relevant community-based organisations specialising for example in human rights or domestic violence.

Early inquiries are likely to reveal to the courts that the community has a spectrum of informational needs about various aspects of the justice system, and how it operates, that may be better addressed in a shared and coordinated approach rather than separately by respective agencies. For this reason, it may be useful to plan and organise a community public activity of, say, 2 hours at the end of a circuit court sitting, when all representatives of the bench, prosecution, police and bar are gathered together. In this activity, a representative from each agency can then present a description of their respective roles in the justice process and contribute to forming a panel discussion to answer questions on matters of community interest or concern.

## **6. SOME PRACTICAL CONSIDERATIONS**

When planning and conducting community consultations, there are a range of practical considerations to be considered and addressed. These include ensuring that adequate and appropriate preparations are made to contact and brief local stakeholders, to explain the purpose and process of the consultations, arrange a convenient place to meet, and schedule these consultations at a convenient time to suit local stakeholders. Care should also be taken to respect cultural and customary practices, for example, it may be normal practice to provide travel allowances and refreshments for participants. Additionally, there may be a need to provide an interpreter.

## **7. RULE AGAINST DISCUSSING SPECIFIC CASES**

In any such community consultations, it is essential that everyone understands that discussions must remain general, rather than focus on any specific case. The reason for this is that justice requires court decisions to be made in open court hearing before the parties based on the application of law to the facts, the rules of evidence and procedure. Should a party be unhappy with either the process or outcome of that hearing, then they may have rights to review and/or redress by appeal to a superior court, or by lodging a formal complaint to the court.

Participants in community consultations must understand, therefore, that in the interests of justice it is neither appropriate nor proper to discuss aspects of any specific case with judicial officers outside the safeguards of these processes.

## **8. COMMUNITY CONSULTATION - PUBLIC INFORMATION, EDUCATION AND OUTREACH ACTIVITIES**

Over recent years, PJSI has supported the work of many courts across the region to promote access to justice through community outreach, engagement and consultation. These courts have included Kiribati, Federated States of Micronesia, Republic of Marshall Islands, Cook Islands, Papua New Guinea and Vanuatu among others. The situation in each country is - and will remain - unique. It follows that the public information, education and outreach initiatives of each court have been crafted to address local needs and conditions. Each is different. As a result, the courts have introduced and are continuing to develop a wide variety of measures and tools for community consultations and engagement. These initiatives are ongoing.

This guidance outlines a range of these initiatives that have been and continue to be developed over recent years for the possible consideration and adaptation of other courts: -

	Activities	Description
1.	Community outreach, roadshows, public awareness	<p>Representatives of the court visit local communities and conduct meetings, focus group discussions, and other engagement activities to open a dialogue to explain the role and function of the courts, raise awareness on peoples' rights, how courts can help needy community members, and to receive feedback on court services. Some courts regularly conduct a travelling 'roadshow' to communities.</p> <p>FSM, Vanuatu and Kiribati have each conducted various community outreach and awareness-raising programs in remote communities and on outer islands.</p>
2.	Public information, community education	<p>Courts develop information packages in multiple media to inform and educate the public on the role and function of the courts, the rights of citizens, and how they can exercise their rights in court: -</p> <ul style="list-style-type: none"> <li>• pamphlets in local language</li> <li>• posters <b>with graphics</b></li> <li>• radio talks and interviews</li> <li>• <b>video.</b></li> </ul>
3.	Pamphlets	<p>Pamphlets can be very useful in providing brief descriptions of the role and services of the courts in particular jurisdictions or matters - for example, crime, land disputes, domestic violence. They should be written in local language and preferably include graphics. They are generally simple and cheap to produce in-house.</p> <p>Kiribati has recently produced more than a dozen brochures on various functions of the courts which were distributed at its 'open day'. It is also planning to produce pamphlets for specific needy or vulnerable groups (rather than topics) such as women, youth and old people.</p> <p>Vanuatu is in the process of printing 24 pamphlets on many aspects of court proceedings.</p>
4.	"Know Your Rights" Guidance	<p>This brochure (see: Annex 3B) was piloted in Kiribati and adapted in FSM, RMI and the Cook Islands. It provides essential basic information on the role of the courts; and it also explains people's fundamental legal rights, particularly in criminal proceedings, and also civil disputes. It should be printed in local language and distributed to district and local authorities in remote communities.</p> <p>Some courts, like Kiribati, have circulated a general guidance; while others, like Vanuatu, are producing separate guidance notes for criminal and civil proceedings among others.</p>
5.	Posters	<p>Posters are very useful in displaying brief messages of public importance relating to the role and services of the courts in</p>

	Activities	Description
		particular jurisdictions or matters - for example, crime, land disputes, domestic violence and any special Covid-19 procedures - in local language and preferably with graphics. They can be easily displayed on court, government, school and community notice boards. If displayed outside, they should be behind glass or laminated to preserve condition.
6.	Radio show, interviews	Over the years, some courts including RMI and Kiribati have regularly conducted talk shows on public radio of about 30 minutes duration on a monthly basis. The advantage is these programs has been that they are generally popular, usually have wide community reach, and are low cost for the court to produce. It is recommended that thought be given to preparing a script of discussions in advance - in terms of topics, questions and answers, to keep the conversations on track.
7.	Video	While videos take more effort and resources to produce, they have a long 'shelf life' and can be used often. Recently, a video has been produced for public broadcast explaining the role of the courts and the Centre for Judicial Excellence in PNG.
8.	Needs questionnaires, exit surveys	Some courts conduct exit surveys of court users, such as Federated States of Micronesia, Palau, and Republic of Marshall Islands. The courts of Kiribati are considering questionnaires for the public to raise questions about the courts, law and justice that they can address.
9.	Circuit court meetings	Some courts conduct public meetings after court circuit sittings in remote communities periodically. These sessions should coordinate with and include the other justice sector actors - prosecution/police, defenders and bar - to give presentations on their role and form a panel discussion for questions. Their advantages are that they are quite simple to organise, usually at no cost.  Vanuatu currently plans to develop a grass-roots approach for the Courts' engagement with the community by undertaking consultation in conjunction with court circuits.
10.	Court registry training	Some courts conduct training on public relations, customer service, inquiries, referrals to other service providers. While this training is internal for court staff, it focuses externally on engagement with the public and community.  In recent years, Palau, Papua New Guinea and Kiribati have conducted service training for their registry staff.
11.	Court technology, data management upgrades	A number of courts are upgrading their information communication technologies (ICT) relating to public information and community relations as part of their broader strategic planning and data management systems.  These courts include implementing electronic case tracking systems in RMI, FSM, and Nauru; and excel-based case



	Activities	Description
		tracking system in Tuvalu and Niue.
12.	Website public information page(s)	<p>Some courts that have websites, or share use of a website, have introduced dedicated public information pages to explain the role and functions of the court in brief simple language. These are separate and additional to pages for legal practitioners.</p> <p>For example, RMI has recently upgraded its website to include a new 'Public Information' page for interested citizens.</p> <p>Kiribati and Nauru are also reviewing/updating their websites, and creating a community relations database to track, manage and monitor its engagement activities as part of its ongoing access to justice strategy and managerial operating system.</p>
13.	Cultural activities	<p>Some courts have found cultural activities are a locally compelling way to communicate interesting messages on law and justice. In Kiribati, for example, officers of the court recently conducted a song composition competition for school students which was well received. They are also planning a drama activity for the schools. Puppet shows have been successful in schools over the years.</p>
14.	School curriculum	<p>Discussions with the secondary school curriculum committee have been initiated in some countries to consider introducing education on the justice system, role and function of the courts, and legal rights as part of secondary school social studies courses. The reach and depth of this initiative is potentially very substantial. Materials may be extracted from the University of the South Pacific's new <i>Certificate of Justice</i> which has been recently developed in collaboration with PJSI. School awareness sessions are also undertaken in Palau by judges/court officers.</p>
15.	'Open day'	<p>Some jurisdictions conduct 'open days' for the public either alone or with other justice sector actors with posters, pamphlets, presentations, and Q&amp;A sessions. Kiribati has done this very successfully several times in conjunction with the Ministry of Justice. FSM also has a 'National Law Day'. This year they had a remote/Zoom debate by high school teams from all four states.</p>
16.	Press releases	<p>Some courts regularly issue press releases to the media relating to community consultations and on related matters of broader public interest as/when required - for example, FSM, Palau, RMI, PNG and Kiribati.</p>
17.	Annual reports	<p>Some courts distribute their annual reports not only to parliament but also distribute the reports or key extracts more broadly on their court's (or PacLII's) website, to the media and district/local councils.</p>

## 9. ADDITIONAL RESOURCES: TOOLKITS AND TOOLS

The Pacific Judicial Strengthening Initiative (PJSI) has published a wide collection of 19 toolkits for the ongoing development of courts in the region. These toolkits aim to support partner courts to implement their development activities at the local level by providing information and practical guidance on what to do. They may be downloaded at: - <http://www.fedcourt.gov.au/pjsi/resources/toolkits>

More specifically, 3 toolkits relating to promoting access to justice through community consultations are linked below for your reference and use: -

- [Access to Justice Assessment Toolkit](#)
- [Enabling Rights and Unrepresented Litigants Toolkit](#)
- [Public Information Toolkit](#)

These toolkits were designed to support change by promoting the local use, management, ownership and sustainability of judicial development in PICs across the region. By developing and making available these resources, PJSI aims to build local capacity to enable partner courts to address local needs and reduce reliance on external donor and adviser support.

These toolkits are available on-line for the use of partner courts. We hope that partner courts will use these toolkits as/when required. Should you need any additional assistance, please contact us at: [pjsi@fedcourt.gov.au](mailto:pjsi@fedcourt.gov.au).

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