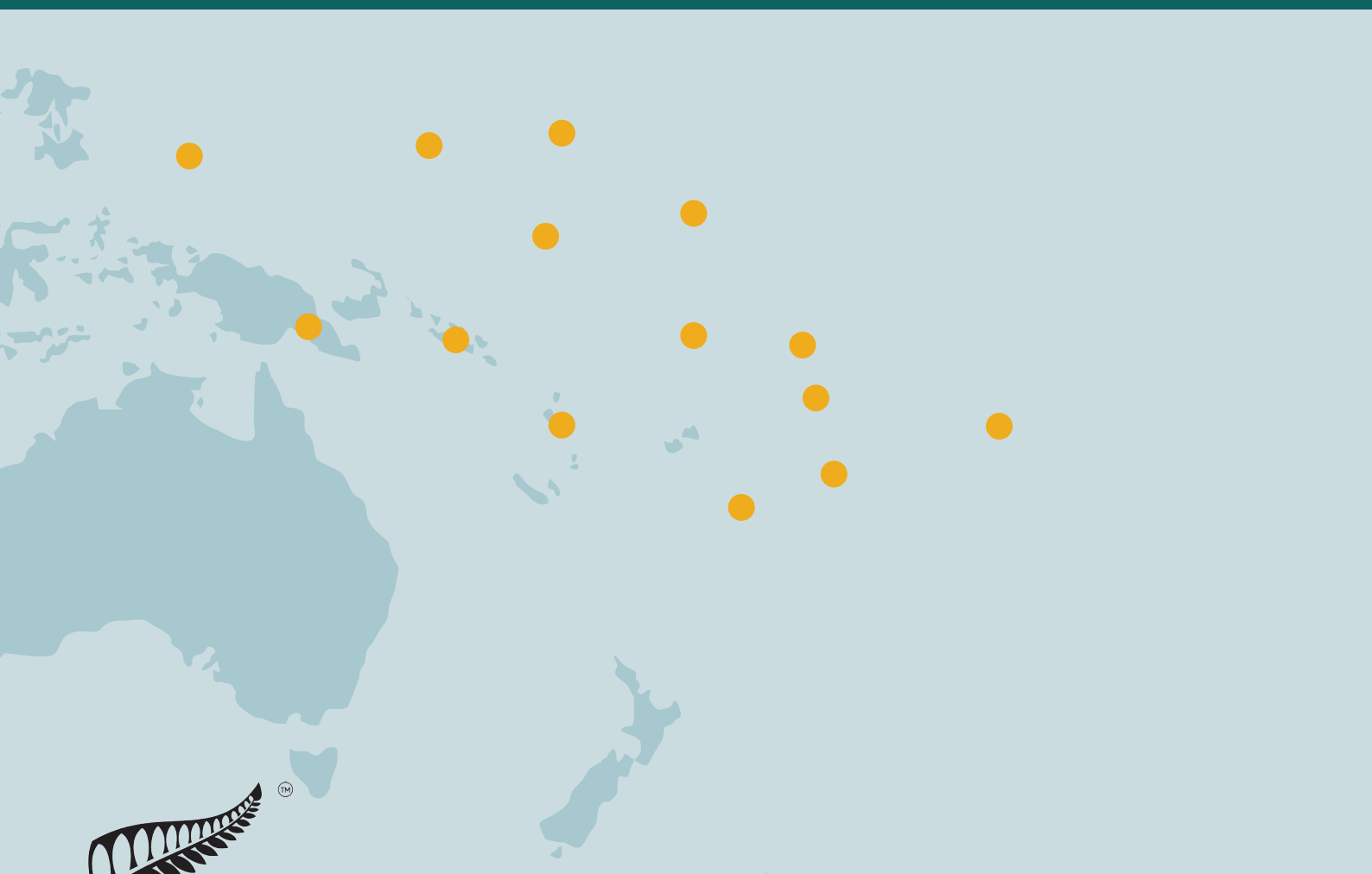




# Gender and Family Violence Toolkit

October 2017





The information in this publication may be reproduced with suitable acknowledgement.

Toolkits are evolving and changes may be made in future versions. For the latest version of the Toolkits refer to the website – <http://www.fedcourt.gov.au/pjsi/resources/toolkits>

Note: While every effort has been made to produce informative and educative tools, the applicability of these may vary depending on country and regional circumstances.

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# PJSI Toolkits

## Introduction

The Pacific Judicial Strengthening Initiative (PJSI) was launched in June 2016 in support of developing more accessible, just, efficient and responsive court services in Pacific Island Countries (PICs). These activities follow on from the Pacific Judicial Development Programme (PJDP) and endeavour to build fairer societies across the Pacific.

## Toolkits

PJSI aims to continue ongoing development of courts in the region beyond the toolkits already launched under PJDP. These toolkits provide support to partner courts to help aid implementation of their development activities at a local level, by providing information and practical guidance. Toolkits produced to date include:

- Access to Justice Assessment Toolkit
- Toolkit for Public Information Projects
- Enabling Rights & Unrepresented Litigants Toolkit
- Judges' Orientation Toolkit
- Trainer's Toolkit: Designing, Delivering and Evaluating Training Programs
- Toolkit for Review of Guidance on Judicial Conduct
- Family Violence/Youth Justice Workshop Toolkit
- Time Goals Toolkit
- Reducing Backlog and Delay Toolkit
- Judicial Decision-making Toolkit
- Toolkit for Building Procedures to Handle Complaints about Judicial Conduct
- Annual Court Reporting Toolkit
- Project Management Toolkit
- National Judicial Development Committee Toolkit
- Human Rights Toolkit
- ***Gender and Family Violence Toolkit***

These toolkits are 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.

In response to evolving priorities of partner courts, the PJSI has expanded its areas of activities to include gender and family rights focused areas. The addition of this new toolkit: **Gender and Family Violence Toolkit** aims to address the responsibility of the Court in the community regarding family violence and in particular physical and sexual violence. This toolkit provides practical suggestions and methods to assist partner courts in assessing how accessible and responsive their court services are and how to improve efforts and track progress through implementing action plans. Beyond practicalities, this toolkit highlights the importance of community awareness, the need for accountability of perpetrators and the importance of appropriate response to victims of violence.

## Use and Support

These toolkits are available online 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)

## Your feedback

We also invite partner courts to provide feedback and suggestions for continual improvement.

### Dr. Livingston Armytage

Technical Director, Pacific Judicial Strengthening Initiative, October 2017

# Table of Contents

<b>Abbreviations</b>	<b>iv</b>
<b>1 Introduction</b>	<b>1</b>
1.1 Violence against women: Why does it matter?	1
1.2 What is the role of the courts in addressing violence against women?	2
1.3 What is the purpose of this toolkit?	4
1.4 Who should use it and how?	5
<b>2 What does a good court response to violence against women look like?</b>	<b>6</b>
2.1 Contributing to harm prevention efforts (primary prevention)	7
2.2 Focussing on the victim	8
2.3 Holding perpetrators accountable	10
2.4 Collaborating with others	11
<b>3 Assessing current practices: What to ask and how to do it</b>	<b>12</b>
3.1 Self-assessment tool	12
<b>4 Continuous improvement: developing a plan</b>	<b>13</b>
4.1 What goes in a plan?	13
4.2 Common areas requiring improvement: Some practical examples of projects (actions/ strategies to support achievement of outcomes)	13
<b>5 Monitoring Improvement</b>	<b>19</b>
5.1 Collecting relevant data	19
5.2 What kind of data is needed and how to collect it	19

# Additional Documentation

## **Annex A: Material from Human Rights Toolkit: Quick reference guide for cases involving women, girls and family/sexual violence** **A-1**

- International Standards: Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) A-1
- Regional Standards A-2
- Domestic Standards A-2
- Step 1: Understanding the Barriers Faced by Victims and Court's Roles to Address Them A-3
- Measures to Make Court Processes Fairer to Women and Child Victims of Family Violence A-4
- Effect of Ratification in Domestic Law A-6

## **Annex B: Quick Reference Guide for Cases Involving Children** **A-7**

- International Standards: Convention on the Rights of the Child (CRoC) A-7
- Why we need to have different justice standards for children? A-7
- Checklist for Judges in Deciding What Law to Apply in Criminal Cases involving Children A-8
- Minimum Standards for Criminal Cases Involving Children A-8
- Measures to Make Court Processes Fairer to Children A-10

## **Annex C: Court Family Violence Self-Assessment Tool** **A-12**

## **Annex D: Court Family Violence Plan Template** **A-16**

## **Annex E: Material from Access to Justice Toolkit: Stakeholder Focus Group Discussions and Access to Justice Surveys** **A-19**

### **3 Stakeholder Focus Group Discussions** **A-19**

- What are Stakeholder Focus Group Discussions? A-19
- Objective of Stakeholder Focus Group Discussions A-19
- How to Identify Issues for Discussion? A-20
- Identifying Appropriate Stakeholders A-20
- Who to Involve – Court Staff A-21
- Preparing the Discussions and Drafting a Questionnaire A-22
- Conducting the Focus Group Discussion A-23
- Documenting Findings A-24

### **4 Access to Justice Surveys** **A-25**

- What is an Access to Justice Survey? A-25
- Approaches to Conducting Access to Justice Surveys A-26
- Planning and Implementing an Access to Justice Survey – Issues for Consideration A-28

## **Annex F: Access to Justice Overview to the Cook Island Indicators** **A-31**

## Abbreviations

<b>ADB</b>	Asian Development Bank
<b>CEDAW</b>	Convention on the Elimination of all Forms of Discrimination Against Women
<b>CJs</b>	Chief Justices
<b>CRoC</b>	Covenant on the Rights of the Child
<b>CSOs</b>	Civil Society Organisations
<b>EPPSO</b>	Economic Policy Planning and Statistics Office
<b>FCA</b>	Federal Court of Australia
<b>FGDs</b>	Focus Group Discussions
<b>FSM</b>	Federated States of Micronesia
<b>GBV</b>	Gender Based Violence
<b>GFV</b>	Gender and Family Violence
<b>HIES</b>	Household Income and Expenditure Survey
<b>HIV</b>	Human Immunodeficiency Virus
<b>ICAAD</b>	International Center for Advocates Against Discrimination
<b>JDLs</b>	Juveniles Deprived of their Liberty
<b>LJF</b>	Law and Justice Foundation
<b>NGOs</b>	Non-government Organisations
<b>NSW</b>	New South Wales
<b>NZ MFAT</b>	New Zealand Ministry of Foreign Affairs and Trade
<b>PACLII</b>	Pacific Islands Legal Information Institute
<b>PIC</b>	Pacific Island Country
<b>PJDP</b>	Pacific Judicial Development Programme
<b>PJSI</b>	Pacific Judicial Strengthening Initiative ('Initiative')
<b>PNG</b>	Papua New Guinea
<b>RAMSIs</b>	Regional Assistance Mission to Solomon Islands
<b>RRRT</b>	Regional Rights Resource Team
<b>SOPs</b>	Standard Operating Procedures
<b>UNDP</b>	United Nations Development Programme
<b>UNFPA</b>	United Nations Population Fund
<b>UNIFEM</b>	United Nations Development Fund for Women
<b>US</b>	United States

# 1 Introduction

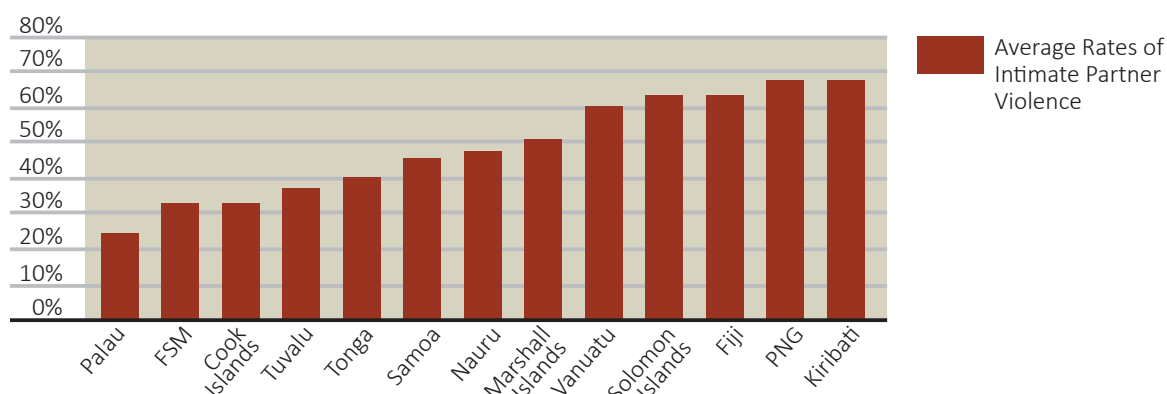
## 1.1 Violence against women: Why does it matter?

Violence against women, both in and outside of the home, is a global problem. Although the most obvious forms of violence against women are physical and sexual violence, violence against women can also involve psychological (such as controlling, humiliating or isolating a woman) or economic (denying access to or control over resources) abuse. Many types of violence against women also affect girls. Throughout the world, the most common form of violence against women is intimate partner violence (coercive acts performed without a woman's consent by a current or former intimate partner), which is usually referred to as family or domestic violence in the Pacific.

Violence against women is both a cause and consequence of gender inequality. It is sometimes referred to as gender-based violence because the acts of violence are committed against women *expressly because they are women*. Acts of gender-based violence and family violence are also committed against men and boys but at far lower rates than violence against women and girls.

Surveys show that in some Pacific Islands' countries women experience more family violence than women in any other part of the world. Globally, nearly one third (30%) of all women who have been in a relationship have experienced physical and/or sexual violence by their intimate partner.<sup>1</sup> The only country in the Pacific with a lower lifetime prevalence rate than the global average is Palau (25%), with all other Pacific Islands countries reporting higher than average rates of intimate partner violence (FSM and Cook Islands report only slightly higher than average rates, being 33% in each country), including Tuvalu (37%), Tonga (40%), Samoa (46%), Nauru (48%), Marshall Islands (51%), Vanuatu (60%), and, Solomon Islands and Fiji (64%). Alarming, PNG and Kiribati have the highest lifetime prevalence rates in the world, with 68% of women in each country having experienced physical or sexual violence by an intimate partner in their lifetime.<sup>2</sup>

**Average Rates of Intimate Partner Violence**



This has many consequences. At a country level, violence against women costs the government money (mainly for legal and health services) and stops women from doing paid-work, which prevents them from contributing to the economy. A recent study undertaken in Fiji, for example, found that domestic violence costs Fiji approximately \$498 million per year.<sup>3</sup> It also stops women from participating in political life, from getting involved in community activities and sends a message to children that it is ok to use violence against their mothers, aunts, grandmothers and sisters. But the consequences are greatest at the family and individual level. Families are torn apart by men's use of violence against women. Women

1 WHO, 2013, Global and regional estimates of violence against women: Prevalence and health effects of intimate partner violence and non-partner sexual violence, available online at: <http://www.who.int/reproductivehealth/publications/violence/9789241564625/en/>

2 UNFPA, kNowVAWdata, 2016 Regional Snapshot. Bangkok, UNFPA

3 Riwal, L., 2016, 'Domestic violence impacts economy', *The Fiji Times Online*, 16 June, available online at: <http://www.fijitimes.com/story.aspx?id=358233>

are physically and emotionally damaged. Sometimes children are physically harmed too, but even when they are not, seeing their father hurt or control their mother destroys their sense of safety, makes them feel upset and models behaviour that they may copy later in their own lives.

Violence against women is a form of discrimination but not all women experience it in the same way. Other forms of discrimination or types of disadvantage can make certain groups of women more likely to experience violence, or make it harder for such women to access services. For example, women with a disability experience higher rates of violence than women without a disability and they find it harder to access support services. Similarly, older women, girls and women living in rural areas face specific challenges when attempting to interact with the formal justice system.

Violence against women is a human rights violation and a crime under many local laws.<sup>4</sup> Under international law, states have clear obligations to address violence against women, including obligations to “exercise due diligence to prevent acts of violence against women; to investigate such acts and prosecute and punish perpetrators; and to provide redress and relief to victims.”<sup>5</sup> Most countries in the Pacific have ratified the *Convention on the Elimination of All forms of Discrimination Against Women* (CEDAW)<sup>6</sup>, and a number of regional standards show that Pacific Islands leaders are committed to acting in accordance with international laws that support women’s human rights. These include the *Denauru Declaration on Human Rights and Good Governance* (2015) and the earlier *Pacific Island Judges Declaration on Gender Equality* (1997). In recent years, many countries have developed or amended legislation to offer better protection to women and children who have experienced family or sexual violence, which makes it clear to people that violence against women is against the law.

Despite increasingly strong local legal frameworks, however, violence against women continues to be viewed as acceptable by many people in the Pacific. Perhaps more than any other crime, violence against women (particularly when enacted in a domestic context) poses a significant tension between customary/traditional values and the law, largely because it is so deeply founded in long-held ideas about the roles of men and women and the behaviours that are expected of them.

Yet we know that societies and their traditions change. Because change is possible, we know that communities can replace values and behaviours that no longer serve them well with values that will help them grow, such as non-acceptance of violence and gender equality. With the authority of the law behind them, judicial officers – be they law-trained or lay – are amongst the most powerful champions of progressive change. You therefore play a pivotal role in shaping attitudes to violence against women in your communities, your countries and the region as a whole.

## 1.2 What is the role of the courts in addressing violence against women?

To stop or lessen violence against women, we need to address it from different angles. First, we need to try to prevent it from occurring in the first place. Second, we need to make sure that when it does happen, we respond to it appropriately. All members of society have a role to play in addressing violence against women, although people working in the justice system have both informal (as members of society) and formal (as judicial officers or court officers) responsibilities, which means they play a powerful role in tackling the problem.

In collaboration with other government agencies, civil society, the church and communities, the court plays an important role in preventing violence against women, in addition to its more obvious role as a responder to violence against women. These two roles are interrelated.

4 For a detailed explanation of human rights, including women’s human rights, please refer to the PJSI Toolkit, *Human Rights in the Practice of Pacific Courts: A Toolkit*, 2017

5 UN, 2012, *Handbook for National Action Plans on Violence Against Women*, pg. 1, available online at: <http://www.un.org/womenwatch/daw/vaw/handbook-for-nap-on-vaw.pdf>

6 With the exception of Tonga and Palau





Some important ways in which the court can contribute to the prevention of violence against women include:

- community awareness raising – public education about the law and the consequences of breaking it, which can be done through community forums and meetings, school visits, radio and television, plays, and written information (e.g. in the newspaper, signs and pamphlets); and
- holding perpetrators accountable – issuing sentences which clearly demonstrate that there are harsh consequences for violence against women, which will deter others from offending (and recommending rehabilitation where appropriate).

As a responder to violence against women, the court has a responsibility to make its services accessible, safe and fair. There are many ways of fulfilling this duty, including by:

- analysing the barriers to court accessibility (which will be different for different groups of people, such as women, rural people, people with a disability) and doing things that remove or minimize those barriers (e.g. awareness raising so that people understand the law and their rights, court fee waivers, increased circuits outside of urban centres);
- assessing the safety (both physical and psychological) of courts and doing things to make them as safe as possible for victims,<sup>7</sup> for example by having secure waiting rooms, security guards, and different ways of providing evidence so that victims don't need to interact with offenders;
- working collaboratively with other service providers (government and non-government) so that victims receive proper information and support; and
- providing refresher judicial reasoning training to judicial officers, which explores the role of bias in decision making, so that judges and magistrates are champions of equality and less inclined to allow gender stereotypes and discriminatory cultural beliefs to negatively impact outcomes for victims.

Collecting data is an important part of both preventing and responding to violence against women, as it allows us to understand what is going on at a given point in time (for example how many victims are using the court system, what kind of sentences offenders are receiving) and to monitor trends, which helps continual improvement efforts. Publicly providing court data on violence against women, through for example, annual court reports, is an effective way of demonstrating not only a commitment to improvement, but also a commitment to public accountability and transparency.

<sup>7</sup> Contemporary good practice refers to victims as victim/survivors because many victim/survivors reject their categorisation as victims. For ease of reading the term victim is used throughout this toolkit, although it should be taken to read victim/survivor in recognition of the strength and resilience shown by women who have suffered from violence.

### 1.3 What is the purpose of this toolkit?

As the majority of Pacific Islands Constitutions prohibit discrimination on the grounds of factors such as race, sex and age, and international human rights treaties emphasise the right of all people to be treated equally, improved court responses to violence against women are integral to broader court efforts to uphold (and hopefully enliven) constitutional equality.

This toolkit is designed to help courts to measurably improve the accessibility and responsiveness of their services to the victims of violence against women, resulting in improved victim satisfaction with court and justice outcomes according to law.

The toolkit will help courts to achieve this goal in four ways:

- 1
  - It outlines good practice in the provision of court services to the victims of violence against women;
- 2
  - It provides courts with a simple method to assess how accessible and responsive they are to the victims of violence against women;
- 3
  - It describes how to develop a violence against women action plan to help courts focus their improvement efforts and demonstrate progress over time;
- 4
  - It suggests a range of practical things that courts can do to make their services more accessible and responsive to the victims of violence against women, for inclusion in their plans.

The usefulness of this toolkit will only be realised if a concerted effort is made to enhance data collection (as outlined in Section 5), as this will enable you to understand what is and isn't working.

While recognising that different forms of violence against women are interrelated, due to the alarming prevalence of domestic/family violence throughout the region, this toolkit focusses primarily upon family violence. More specifically, it focusses upon family violence involving physical and sexual violence, as it is these cases (rather than cases involving only economic or psychological abuse) that are most likely to come before the courts. This does not suggest that other forms of violence against women are of lesser concern, but rather, it is intended to ensure that our efforts are focussed upon the most prevalent form of violence against women in our region. It is, however, anticipated that improvements arising from implementation of this toolkit will benefit women court users more broadly.

Use of the term victim throughout this toolkit is consistent with international good practice in the provision of services, including court services, to the victims of family violence. It does not imply that a case has been decided, nor that a pro-victim bias ought to influence judicial decision making.

When using this toolkit, it will be useful to refer to other PJSI toolkits to gain a more detailed understanding of specific information and processes. Where relevant, these toolkits will be referred to throughout. However, for general purposes, the most relevant toolkits to which you can refer are the: *Family Violence and Youth Justice Project Workshop Toolkit* (2014); *Access to Justice Assessment Toolkit* (2014); *Annual Court Reporting Toolkit* (2014); and the *Human Rights Toolkit* (2017).

## 1.4 Who should use it and how?

To improve the accessibility and responsiveness of your court to the victims of family violence, all court officers must be involved. However, it is suggested that you start the journey towards improvements in this area with a series of meetings and/or small workshops led by the Chief Justice and select senior staff. It is important that all relevant internal stakeholders are involved in these meetings/workshops so that a sense of shared ownership is developed and people with direct responsibility for implementing initiatives can provide a realistic sense of opportunities and challenges.

It may be useful to:

- host an initial meeting with judicial and court officers, explaining the importance of improving services for the victims of family violence, outlining what good practice looks like and explaining the process your court will use to improve its services (this discussion can be guided by sections 1 – 2 of this toolkit);
- allocate a full day for the self-assessment activity (section 3 of this toolkit), circulating the self-assessment tool beforehand so that participants can gather any necessary data before the activity;
- conduct a full day follow-up activity to discuss the findings of the self-assessment and the relevance of suggested initiatives for improvement, as outlined in section 4 of this toolkit; and
- spend a day commencing work on your court's family violence plan so that key stakeholders are able to jointly develop objectives, discuss resource issues and commit to implementation and monitoring.

It is suggested that these activities be conducted within a maximum timeframe of one month so that momentum is not lost and the journey towards improvement can begin as soon as possible.

It is strongly recommended that prior to implementation of this toolkit, judicial and court officers be exposed to contemporary thinking about gender-based violence. Ideally, such exposure would involve training that not only familiarises them with basic concepts about gender equality and violence against women, but more specifically, training which challenges their beliefs about the roles of men and women in society and the dynamics underpinning violence against women. It is important that this training be provided by trainers with a deep understanding of gender inequality and gender-based violence, and a strong personal belief that violence against women is unacceptable. There is a wide network of such trainers across the Pacific, most typically working within non-government organisations such as women's crisis centres.

## 2 What does a good court response to violence against women look like?

A number of important documents help us to understand what a good court response to family violence should look like. These documents range from international human rights treaties through to practical guidance tools.<sup>8</sup> Collectively, such documents provide us with guidance on both the general principles underlying the provision of court services to all users, as well as more specific guidance on the particular needs of court users who have experienced family and other forms of violence against women. The Quick Reference Guide for Cases Involving Women, Girls and Family/Sexual Violence from the PJSI *Human Rights Toolkit* (2017) summarises relevant international, regional and domestic standards, and is reproduced for your convenience at Annex A.

Based upon tested international practices, good court responses to the victims of family violence share a number of characteristics, namely:

- they contribute to harm prevention efforts (primary prevention);
- they are victim-centred, with a specific focus upon accessibility, safety and fairness;
- they hold perpetrators accountable; and
- they are collaborative.

These characteristics are explored below and will form the basis of your self-assessment.



<sup>8</sup> See for example: Universal Declaration on Human Rights, available online at: <http://www.un.org/en/universal-declaration-human-rights/index.html>; International Covenant on Civil and Political Rights, available online at: <http://legal.un.org/avl/ha/iccpr/iccpr.html>; Convention on the Elimination on All Forms of Discrimination Against Women, available online at: <http://www.un.org/womenwatch/daw/cedaw/>; International Framework for Court Excellence, available online at: <http://www.courtexcellence.com/Resources/The-Framework.aspx>; UN Handbook for National Action Plans on Violence Against Women, available online at: <http://www.un.org/womenwatch/daw/vaw/handbook-for-nap-on-vaw.pdf>; Essential Services Package for Women and Girls Subject to Violence: Core Elements and Quality Guidelines, available online at: <http://www.unwomen.org/en/digital-library/publications/2015/12/essential-services-package-for-women-and-girls-subject-to-violence>; UNODC, Strengthening Crime Prevention and Criminal Justice Responses to Violence Against Women, available online at: [https://www.unodc.org/documents/justice-and-prison-reform/Strengthening\\_Crime\\_Prevention\\_and\\_Criminal\\_Justice\\_Responses\\_to\\_Violence\\_against\\_Women.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf)



## 2.1 Contributing to harm prevention efforts (primary prevention)

**While the court is usually a responder to family violence, it can also play an important role in primary prevention.**

Preventing the underlying causes of violence before it happens is known as primary prevention. Given the complex causes of family violence, it is important that primary prevention strategies involve a broad range of stakeholders, not only from government but also from civil society, the churches and the community. Primary prevention strategies aim to challenge the attitudes, practices and behaviours that perpetuate family violence, directly targeting different groups of people.

As influential organisations, courts play an important role in shaping community attitudes and practices relating to family violence. They play a strong *normative role* in declaring the correct way of doing things, in keeping with the values and rules embodied in both local and international law. Because of this role, courts are amongst

the most powerful drivers of social change – because they act with the authority of the law, they can publicly challenge attitudes and behaviours that are inconsistent with gender equality and women’s right to live free from violence. This normative role is played not only when making judgments, but also when engaging with the media and the community more broadly (through for example awareness raising activities undertaken in collaboration with civil society organisations and other government agencies, and court user forums), noting that members of the judiciary need to avoid public perceptions of bias.

Courts can also be positive role models by addressing the attitudes and behaviours towards women of their own staff, ensuring that employment decisions are not made in a discriminatory way and making sure that inclusive language is used both verbally and in writing.



Engaging men and boys in efforts to prevent violence against women is becoming an increasing focus of primary prevention. Globally, men and boys are being encouraged to examine their assumptions about gender roles and masculinity through training and long-term behavioural change programs, which are being implemented in a variety of settings ranging from schools through to sporting clubs.

Engaging men as public “agents of change”, through initiatives such as the Pacific Regional Network Against Violence Against Women, Male Advocacy for Women’s Human Rights, is a powerful means of starting a conversation with the community about gender roles,

gender equality and non-violent ways of being masculine, although it is important to ensure that such programs adopt a women’s rights perspective. Men in powerful positions, such as Chief Justices, judges and magistrates, have a particularly significant role to play in challenging gender stereotypes by publically condemning violence against women, role-modelling positive behaviours (e.g. respect for women, equal treatment of their own staff), by encouraging others to speak out too, and ultimately, through their judgments on cases involving violence against women.

## 2.2 Focussing on the victim

**Best practice responses to violence against women are victim-centred, with a focus upon victim rights and victim empowerment. They are *accessible, safe and fair*.**

Groups of people interact with the legal system in different ways, depending on a variety of factors such as: knowledge of the law and their rights; geographic location; physical ability; economic capacity; and, fear of negative repercussions. As a group, women – as compared to men – are disadvantaged when attempting to engage with the legal system, due to the fact that they have: lower levels of literacy (less knowledge of their rights and find court processes, such as filling out forms, more difficult); less control over material resources and lower levels of participation in the paid workforce (less ability to pay court fees); and, lower levels of mobility and specific safety needs due to the widespread prevalence of violence against them. Yet not all women are the same, with some facing additional burdens (due to factors such as age, socio-economic status and geographic location), when compared to other women. Unless such barriers are addressed, women will continue to have inadequate and unequal access to the legal system.

It is important that courts help victims feel safe throughout the legal process. Victims often hold on to fear as a result of violence against them. Furthermore, women who have experienced family violence frequently fear that their husbands/partners will subject them to further violence because they are angry that legal action has been taken against them or because their partners have attempted to end the abusive relationship. In cases of family violence, “...it is particularly important that the safety of women is prioritized over perceived social or cultural concerns, such as maintenance of marriage or the family unit, and that any children in the care of women escaping violence are similarly protected and supported.”<sup>9</sup>

The courts can help women to feel safe by providing court security, special safe rooms for them to wait in before court and in some cases, different ways of providing evidence (e.g. via video or from behind a screen/curtain) so that they don’t have to encounter the perpetrator in person. It is also important to be aware of the need to promote the victim’s psychological safety, which can be done by ensuring that both judicial and court officers treat the victim with respect, by making sure that the legal process allows her to adequately tell her story and by making sure that victims have access to trained support people, or advocates, who can accompany them through the process and provide independent advice before decisions are made.

If the victim or perpetrator of family violence is a child, they will have very specific needs.

A comprehensive overview of the ways in which to deal with cases involving children is provided in the *Human Rights Toolkit (2017)* and is reproduced for your convenience at Annex B. It is important to recognise that children under the age of 18 are at a different stage of psychological development to adults and thus have different emotional and safety needs when interacting with the formal legal system. This makes them additionally vulnerable but it is still important to enable them to fully participate in the court process. Using age appropriate language and making proceedings as informal as possible will assist children to participate and express their views.



9 UN, 2012, *Handbook for National Action Plans on Violence Against Women*, pg. 44, available online at: <http://www.un.org/womenwatch/daw/vaw/handbook-for-nap-on-vaw.pdf>

In addition to treating victims with respect, courts are obliged to ensure that victims (and perpetrators) receive fair treatment before the law. Fairness can be promoted by understanding the power relations between men and women and the dynamics and consequences of family violence.

For example, it is important to understand that many female victims of family violence:

- do not have an income, or might not be in control of their income;
- might not have safe shelter during court proceedings;
- are primary carers of their children;
- might be subjected to threats and intimidation by their partner's family; and
- may be stigmatised and isolated from their community or faith-based group.

One of the greatest barriers to fairness before the law is *bias*, which is often unconscious (sometimes called implicit bias). All human beings are biased, including judges. Bias is a result of our life experiences and the ways in which we were raised by our families. Members of the judiciary might have been exposed to family violence in their homes as children and as adults they have might have perpetrated it or suffered from it. Bias may also be embedded in prevalent cultural values. It is impossible to get rid of bias but recognising it helps us to ensure that we make fair decisions.



When we allow bias to play a role in our decisions, we are acting in a discriminatory way. That is, we are unjustly treating people differently because of groups that they belong to. For example, we often treat men and women differently, and discriminate against disabled people. In countries where there are strong divisions between different ethnic or religious groups, fair decision making can be compromised by treating people from one group better than those from another group. This contravenes not only international human rights treaties, but also the majority of Pacific Islands Constitutions.

Despite these legal frameworks, however, discrimination against certain groups continues, including against women. Unfortunately, women face discrimination at every step of the legal system. Women who have experienced family violence are often turned away by police, who tell them to resolve it at home, or excuse it on the basis of customary practices that characterise women as their husband's property. Once in court, women often continue to be discriminated against by decision makers who hold biased views on the rights and roles of men and women, who take factors such as "customary reconciliation" into account to mitigate sentences, or who question why women did not take measures to prevent the violence against them, thereby blaming them.

Courts can positively influence how culture is practised by not accepting practices that tolerate violence against women. For example, some communities may think that a husband is entitled to have sex with his wife whenever he wants to. Condemning marital rape and sentencing convicted perpetrators sends a message to the community that women have the right to say no to sex, even with their husbands or partners. It is also important to recognise that cultural practices are sometimes misinterpreted. For instance, reconciliation in most traditional settings was used to heal the rift between communities or families. It did not excuse the wrong that had been committed. Most often in the past individuals were held accountable for their actions despite reconciliation. It is important to remember these dynamics.



When customs are used by perpetrators or their representatives to minimize or tolerate violence against women, the Court can refer to counter arguments that show customary non-acceptance of violence against women, including the fact that the consequences for perpetrators of violence against women were often fatal. So too, while women are often blamed for sexual violence against them because of the way in which they dress, it can be highlighted that traditional dress often involved limited clothing and that this was not used as a justification for raping women.

Courts cannot uphold women's right to equality before the law without tackling the role that bias plays in decision making, including bias arising from customary beliefs and practices that conflict with the law.

## 2.3 Holding perpetrators accountable

**Best practice responses to violence against women are victim-centred, with a focus upon victim rights and victim empowerment. They are *accessible, safe and fair*.**

Most perpetrators of violence against women, particularly family violence, do not face any legal consequences. When they do, as highlighted through a recent analysis of Pacific Islands sentencing decisions undertaken by the *International Center for Advocates Against Discrimination* (ICAAD), the sanctions they receive are generally low and do not reflect the gravity of the crime committed or its impact on the victim.<sup>10</sup> This sends a message to society that violence against women is not taken seriously, or that a number of excuses can be provided for it. Such excuses frequently include customary beliefs or practices that discriminate against women, gender stereotypes and certain myths, for example "rape myths" that hold women accountable for violence against them (e.g. they were drunk, they were wearing a short skirt). These myths not only excuse men's choices to perpetrate violence against women, but they place blame on female victims and make them responsible for the violence they have suffered.

In addition to sanctions that don't reflect the gravity of violence against women, the reparations and remedies that victims receive rarely reflect the seriousness of the crimes committed against them. This makes it difficult for victims to move on and heal, physically, psychologically and economically. In the absence of acknowledgement that suffering has occurred, victims often struggle to overcome emotional distress, making it hard for them to parent, enjoy positive social relationships or participate in the workforce. Furthermore, inadequate financial reparation – for example for costs incurred as part of the court process or medical expenses – places an additional burden upon victims, who have already experienced harm.

Interactions with the formal legal system – including both police and the courts – are often the only point at which men who have been violent towards their partners are held accountable. The Court is often the first place in which perpetrators are directly told that what they have done is wrong and illegal. It is therefore important that messages are communicated clearly and that no blame is attributed to the victim, as this can allow perpetrators to excuse their own behaviour. Perpetrators must be clearly told that the Court takes violence against women seriously and that further abuse will not be tolerated. Where available, rehabilitation is recommended, particularly that which actively seeks to address unacceptable perpetrator beliefs and attitudes (which underpin violence against women).

Good court responses to family violence actively address these common weaknesses in practice (including policies and processes), primarily through judicial education and increased scrutiny of judgments.

<sup>10</sup> ICAAD, 2015, *An Analysis of Judicial Sentencing Practices in Sexual and Gender-Based Violence Cases in the Pacific Island Region*, available online at: <https://icaad.ngo/womens-rights/promote-access-to-justice/combating-vaw-in-pics-reports/an-analysis-of-judicial-sentencing-practices-in-sexual-gender-based-violence-sgbv-cases-in-the-pacific-island-region-pics/>



## 2.4 Collaborating with others

**Good court responses to the victims of family violence are always undertaken in collaboration with others.**

As victims are likely to interact with multiple service providers, as well as non-government organisations, churches and customary authorities, it is important that service providers (such as the courts, police and hospitals) record and readily share information (where appropriate victim consent/authorisation is given), co-operate in the interests of the victim, and collectively treat victims with respect and dignity.

This requires courts to:

- maintain an awareness of services and people that can offer some form of assistance to victims (be it a justice sector agency, a counselling service, a health facility or a safe place);
- keep up to date contact details of relevant services and people so that victims can be quickly referred to them;
- have formal referral processes in place (if necessary) so that responsibilities are clearly understood by all;
- have clear information sharing arrangements, which prioritise victim confidentiality; and
- facilitate dialogue with other agencies, organisations and people so that relationships are developed and collaboration occurs.

Given that many people in the Pacific rely upon customary practices to address family violence (as they are more accessible than the formal legal system), it is important that these non-legal responses also treat victims fairly. This principle is reflected in a number of Pacific Constitutions, which disallow the use of customary law where it conflicts with constitutional rights, such as the right to live free from discrimination.

Some (not all) customary practices are based upon beliefs that support the dominance of men over women, or uphold the right of a man to “discipline” his wife if she doesn’t fulfil certain roles. In such contexts, women are not “equal” participants in processes such as mediation, and the remedies that are offered (such as compensation) rarely benefit them directly.

As custom and tradition change over time, the courts have an important role to play in influencing customary practices and championing changing social values, so that they more closely reflect women’s human rights. This can be done in very practical ways, including by setting guidelines for customary/traditional and non-formal justice practitioners about how to deal with family violence cases.



### 3 Assessing current practices: What to ask and how to do it

In order to increase the accessibility and responsiveness of courts to the victims of family violence, it is important to establish a baseline so that the strengths and weaknesses of current approaches can be understood. This will enable your court to plan for improvement and over time, allow you to measure and share information about your improvements with the public. A simple way of establishing a baseline is outlined below.

#### 3.1 Self-assessment tool

Like other self-assessment tools, such as the Court Excellence Framework, the attached self-assessment tool (Annex C) is intended to provide the basis of a continuous improvement approach. The self-assessment tool is based upon the outline of good court responses to family violence in Section Two of this toolkit.

It will allow you to assess:

- whether you are undertaking harm prevention (primary prevention) activities;
- how victim-centred your approach is, as demonstrated by how accessible your court is, how safe your court is and how fair the outcomes women receive are;
- whether you are holding perpetrators accountable for their wrongs via appropriate sentences and reparations for victims; and
- whether you are collaborating with others.

The self-assessment tool should be completed by a wide range of internal stakeholders so that a comprehensive view of current strengths and weaknesses can be developed. That said, it is important that the tool is used by people who have the knowledge required to provide reasonable responses, rather than personal judgments based on minimal information.

Once completed, the self-assessment tool provides you with a baseline. It will tell you where you are investing time and effort. This information is best combined with information obtained from external stakeholders, as internal and external views often differ. These findings provide a useful starting point from which to plan your journey towards measurably improved accessibility and responsiveness of your services to the victims of family violence.

## 4 Continuous improvement: developing a plan

The famous saying, “failing to plan is planning to fail”, is particularly true when complex changes are being made, or when difficult issues are being tackled. As we have seen, good court responses to violence against women require attention to a wide range of issues. Drawing upon your self-assessment findings, you will have identified areas where your court is doing well and areas where improvement is needed. These findings form the basis of your plan.

It is important to establish a realistic plan “life” so that the plan remains relevant to the work of the court, people stay motivated and initiatives can be fully implemented, resulting in a sense of achievement. It is useful to connect your family violence plan to other relevant plans, be they court plans such as strategic or corporate plans, or broader justice sector or country plans on violence against women (or family violence more specifically), so that you approach family violence in a strategic way and don’t duplicate effort. Given that women’s right to live free from violence is a human rights issue, it would also make sense to connect your family violence plan to your human rights plan, if you have one.<sup>11</sup> Aligning your plan with your budget cycle will help to ensure that realistic resource decisions can be made.

Engage a range of internal stakeholders to participate in the planning process so that you draw upon a wide range of knowledge and expertise, people feel valued and you develop a collective sense of purpose. This will help ensure that people will do the work required to put your plan in to action.

### 4.1 What goes in a plan?

There are many different ways of producing a plan but good plans usually have sections that explain:

- your goal (e.g. your higher purpose/aim);
- specific outcomes you’d like to see (these will be informed by your self-assessment);
- the actions/strategies that you will use to pursue your goals (section 4.2 below provides some practical examples of actions and strategies that may help you to pursue your goals);
- roles and responsibilities nominated to specific personnel;
- timeframes for actions/strategies; and
- how you will measure progress.

A court family violence plan template is attached at Annex D. Your plan will be most useful if all sections of the template are completed. Below are some practical examples of activities (projects) you can do to help achieve different outcomes. These are the types of actions/strategies that you can include in your plan to foster improvements in areas requiring attention, as highlighted through your self-assessment and other data gathering processes.

### 4.2 Common areas requiring improvement: Some practical examples of projects (actions/strategies to support achievement of outcomes)

Drawing upon international good practice in the provision of services for the victims of family violence, the elements of which formed the basis of your self-assessment, there are many things that can be done to improve the accessibility and responsiveness of courts to victims.

Common challenges faced by the victims of family violence across the region include:

- lack of awareness of their rights and legal process;
- difficulty accessing the formal legal system;

<sup>11</sup> The PJSI Toolkit, *Human Rights* (2017) provides guidance on how to produce a court human rights plan.

- difficulty staying involved in the formal legal system due to delays, lack of interim protection from further violence and pressure to withdraw their complaint;
- not feeling safe enough to use the formal legal system; and
- unfair legal outcomes due to judicial bias.

Below are some practical suggestions about the ways in which courts can address these challenges. Implementing just one, or many of these strategies, will contribute to improved accessibility and responsiveness of your services to the victims of family violence.

#### 4.2.1 Undertaking an Access to Justice Assessment

In order to improve the accessibility of courts to the victims of family violence (who are mainly women), it is necessary to understand the challenges victims face when trying to access services. Your self-assessment provides one form of data on access issues but it is important to hear the views of the people who actually use your services. In relation to family violence, this will mainly be women, although it is important to remember that not all women are the same. It is therefore necessary to gather the views of different kinds of women. For example, in addition to consulting with general groups of women, it would be useful to consult with groups of women that we know experience specific challenges such as girls, older women, rural women and women with disabilities.

By gathering information on the views, experiences and needs of court users (particularly women), you will develop an understanding of: what matters women are likely to bring to court and why; women's understanding of the law and the role of court; what makes it difficult for certain groups of women to access the court (e.g. fees, transport, literacy, fear); what other options women are using to address family violence (e.g. mediation, customary resolution); how women view the delivery of court services; and, how women receive and use information on the courts.<sup>12</sup> While the views and experiences of women are particularly relevant (because most victims of family violence are women), it is also important to gather the views and experiences of men. This will allow you to compare and contrast the views and experiences of women and men, so that you can develop an understanding of the different needs of these two groups of people. This knowledge will help you develop a plan to improve the accessibility of courts to the victims of family violence.

The *Access to Justice Assessment Toolkit* (2014) explains how to undertake a comprehensive access to justice assessment, which can be done in many ways, including through:

- stakeholder focus group discussions with different key interest groups; and
- Access to Justice Surveys.

Specific guidance on how to conduct Stakeholder Focus Group Discussions and Access to Justice Surveys is provided in Section 3 & 4 of the *Access to Justice Assessment Toolkit*, (2014).<sup>13</sup> This information is reproduced for your convenience at Annex E.

As relationships between formal legal system personnel and communities are sometimes strained, it may be difficult to generate meaningful discussion in stakeholder focus groups facilitated by judges, magistrates or court staff. In such circumstances, the court can work with civil society organisations who can carry out consultations on their behalf, or engage directly with service providers and non-government organisations who can provide an understanding of victim needs and experiences, rather than seeking information directly from victims. This approach is highly recommended, as civil society organisations dedicated solely to addressing violence against women typically have a deep understanding of the dynamics underlying violence against women and an ability to use this knowledge to interpret consultation findings.

<sup>12</sup> PJSI, 2014, *Access to Justice Assessment Toolkit*, pg. 2.

<sup>13</sup> PJSI, 2014, *Access to Justice Assessment Toolkit*, pgs. 9-20

Once you have a comprehensive understanding of the barriers that women face when seeking to use the courts to pursue family violence matters – and of their experiences once engaged with the system – you can start to plan specific ways of addressing areas that require improvement. So, for example, if your analysis shows that women:

- don't understand their legal rights, you can invest in a public awareness campaign to be undertaken in collaboration with relevant civil society groups;
- lack confidence filling out forms, you can develop administrative processes to help them;
- feel scared attending court, you can invest in physical security measures to make them feel safe, including women's advocates who can accompany victims to court; or
- feel as though the courts don't treat them fairly, you can provide education to staff so that they better understand the causes and consequences of family violence and the ways in which their own bias impacts upon decisions.

These examples illustrate the way in which your assessment should inform your planning. A thorough Access to Justice Assessment provides the foundations upon which you can build. Without undertaking this step properly, it is impossible to develop a comprehensive approach to improving the accessibility and responsiveness of courts to the victims of family violence.

#### 4.2.2 Conducting public awareness raising campaigns

Awareness raising campaigns have proven to be critical to the prevention of violence against women, particularly when they actively challenge underlying attitudes and behaviours.<sup>14</sup> Awareness raising campaigns are a useful way of increasing people's knowledge of laws relating to family violence and of the services that are available to victims. They are also an important avenue for discussions about the differences between legal and customary approaches to family violence, providing an opportunity to emphasise the point that both approaches must uphold women's human rights. Awareness raising campaigns are an important way of improving women's access to justice because in order to use legal processes, women must know what their rights are, what they can do to protect their rights and what kinds of services they can access.

The court can contribute to awareness raising in many different ways. The approach that you take will depend on:

- how much you know about the knowledge, attitudes and needs of various community groups (you should have this information from your Access to Justice Assessment);
- what you know about the way in which people like to receive information (e.g. by watching drama performances, listening to the radio or TV, reading the newspaper etc.); and
- the amount of time and money you have available to dedicate to awareness raising.

Sometimes it is useful to combine your efforts with another agency or group so that you can make your message more powerful. Civil society groups tend to be particularly powerful partners as they often have their "ear to the ground" (they know what people are thinking and feeling) and have high levels of legitimacy. Working with such groups can maximise the delivery of your messages and often saves time because you can contribute to planned or existing campaigns, such as locally organised White Ribbon Day or 16 Days of Activism Against Gender-Based Violence events, rather than organising something yourself.



14 UN, 2012, *Handbook for National Action Plans on Violence Against Women*, pg. 34, available online at: <http://www.un.org/womenwatch/daw/vaw/handbook-for-nap-on-vaw.pdf>



When working collaboratively with civil society, it is recommended that the courts work with established groups, whose work is grounded in a human rights approach to violence against women. These groups are an incredibly valuable resource to the courts as they work with victims and have a solid understanding of the challenges such women face.<sup>15</sup> As a note of caution, it is important that the court be able to recognise groups that do not fully understand the dynamics of family violence and therefore reinforce messages that promote inequality, violence against women and the blaming of victims. This includes any groups that use customary or religious justifications for violence against women.

Before planning your awareness raising campaign, it is important to think about what you are trying to achieve, as this will influence the type of campaign that you should run and how you should measure its impact (see Section 5).

If you are aiming to communicate specific information about the law and legal processes, it might be best to run a campaign that uses both print (as it allows you to record detail) and radio (as many people access it and can be referred to printed material).

If you are aiming to communicate information about the harm that family violence causes, you might consider an image (photos or pictures) based campaign, or if you aim to show the community that the court won't condone family violence, you may launch a campaign using senior court officials who are willing to speak out strongly against family violence in accessible public places.

Below are some examples of different approaches to awareness raising:



**Wan Smolbag Theatre** is a non-government organisation based in Vanuatu. It operates throughout the Pacific with the aim of creating awareness about challenging issues, such as family violence and HIV. The group has produced over 100 travelling plays, a radio serial, over 20 films and a popular TV series. Wan Smolbag is the largest grassroots organisation in the Pacific. Its success is an example of the power of theatre to engage with difficult issues and challenge gender stereotypes. It is accessible and entertaining and does a great job of getting people to think about things differently.



**Public Speeches** are a powerful means of reaching large audiences. Following a recent circuit, one of the CJs spoke publicly at a local market place about the unacceptability of family violence. Having respected and powerful people deliver such messages is a very compelling way of shifting beliefs about the acceptability of family violence. When CJs and judges speak out against family violence, it also sends a strong message that the law will not tolerate it.

Whether running a campaign involving only court officials or working collaboratively with civil society, it is important to remember that the intent of a campaign is to raise awareness of the law as it relates to family violence and send a strong message to society that violence against women is unacceptable. It is therefore important that people who have perpetrated family violence, or who clearly hold views that either excuse family violence or blame women for its occurrence, are not involved in these campaigns.

<sup>15</sup> Examples of strong women's rights organisations that work from a victims centred approach is the Fiji Women's Crisis Centre, the Tonga Women's Centre for Women and Children, the Vanuatu Women's Centre, Women United Together Marshall Islands and Nazareth Centre for Rehabilitation (PNG). Some examples of organisations that are growing to become strong organisations are Samoa Victim Support Group and Kup Women for Peace (PNG).

If they are, your campaign will be undermined and their involvement will perpetuate the beliefs that you are trying to challenge.

### 4.2.3 Enhancing court safety

Governments have a duty to protect people who work in or visit courts. If your self-assessment and Access to Justice Assessment showed a need to increase the safety of your court, there are a number of things that you can do. As with the Access to Justice Assessment process, it is important to clearly identify where your strengths and weaknesses lie before taking action. Court safety, both physical and psychological, can be enhanced by addressing the physical court environment, the way in which you manage people and your court processes.

Your ability to structure your physical court environment may be limited, particularly if your court is a single room building. If you have a larger court you may have options to change the way in which spaces are used to enhance victim safety. Some basic practical suggestions include ensuring that your court has a separate entry and exit, separate waiting area for victims, and if possible, a separate room for victims who want to rest or deal with difficult emotions. Ideally this room would be a welcoming space and be safe for children too.

Large courts often have a range of other physical security measures, such as closed-circuit television, metal detectors and scanners, although these are expensive to purchase and costly to maintain. At a minimum, it is important to undertake basic security checks of all people that enter the court house, to ensure that they are not carrying anything (e.g. guns, knives, other dangerous implements) that may be used to cause harm. Many courts have a visible roaming security presence, often provided by private security contractors, which makes people using the courts feel safer and enables a rapid response if safety concerns arise.

In addition to making changes to the physical court environment, addressing staff (knowledge, attitudes, behaviours) and process issues can also improve victims' safety. For example, it is well known that long waiting times can exacerbate stress (for both victims and offenders), which heightens both physical and psychological safety risks. This can be particularly risky if separate spaces are not provided in which victims and offenders can wait. If separate spaces are not available, at a minimum it may be helpful to stagger arrival times.

Going to court is a stressful process for both victims and offenders. Research shows that the way in which court staff interact with court users has a major impact on their feelings of psychological safety.<sup>16</sup> It is important that court staff are approachable, friendly, and treat people with dignity and respect. This is proven to make court users feel calmer and less nervous about the court process. It could be useful to run a basic training course (even if it is a refresher course) for court staff on respectful communication, including information about the ways in which they can deal with confrontational behaviours respectfully and safely.

Another way that you can promote the psychological safety of court users is by making the process as easy to understand as possible. Basic signs are an easy way of helping people to physically navigate the courts, although the presence of court assistants is also beneficial as it is well known that people don't tend to read signs when they are nervous or traumatised. Anything you can do to demystify the process will promote psychological safety. It is important that the court process is fully explained to victims so they don't feel frightened or overwhelmed. Easy to read pamphlets are one way of doing this and can be shared with other services (such as police, health or non-government support services) so that they can be read before court attendance. This, however, doesn't replace the value of court assistants who can sit down with victims to provide information and human reassurance

16 Sarre, R. & Vernon, A., 2013, "Access to Safe Justice in Australian Courts: Some Reflections upon Intelligence, Design and Process", *International Journal for Crime, Justice and Social Democracy*, 2(2), 133-147.

Many of these suggestions can be implemented easily and are likely to involve only small changes to existing practices. It is important to put yourself in the shoes of victims and imagine what is going through their minds when they interact with the legal system. Small changes such as these can have a big impact on victim experiences of the court process and are likely to measurably improve family violence victims' perceptions about the accessibility and responsiveness of your court.

#### 4.2.4 Training staff to recognise and minimise the impact of bias

It is important that staff who work directly with the victims of family violence understand not only relevant laws, processes and procedures, but also the causes and consequences of family violence. All too often, gender bias and discriminatory attitudes (often justified as custom), shape the ways in which we view the victims of family violence and we blame them for the violence perpetrated against them. Very few family violence perpetrators face legal consequences and when they do, they are often not in proportion with the gravity of the offense.

While many factors influence the rate at which the perpetrators of family violence are prosecuted, there is little doubt that the judiciary (be it law trained or lay) plays a role. Training judges, magistrates and staff about the causes and consequences of family violence is a positive step towards promoting fair outcomes for the victims of family violence. However, it is important that this training, when provided to judges and magistrates, is complemented by unconscious bias training, specifically designed to raise personal awareness of the fact that bias is pervasive and requires management so that fair decisions can be made.

In addition to locally designed and delivered training programs, which many courts find challenging to deliver, a range of non-government organisations – both regional and national – provide training on the causes and consequences of family violence. Regional initiatives such as the Regional Rights Resource Team (RRRT) are a good place to start and it is often useful to conduct general (not specific to the legal role of the courts) training in partnership with others, such as police, so that a shared understanding of the issues is developed at the sector level. If you wish to conduct your own training, the *Family Violence and Youth Justice Project Workshop Toolkit* (2014) will provide you with some useful ideas.

Although training is a useful way of improving people's awareness of key issues, it is important to remember that delivering a training course is not the end goal. Training will enhance knowledge and awareness but it will not automatically result in changed attitudes and behaviours. A judge who undertakes unconscious bias training will not automatically write judgments that are less discriminatory. Many extra steps are required to make that happen. These include holding judges accountable for the fairness of their judgments (which requires regular review of judgments) and holding administrative staff accountable for the ways in which they interact with court users. Some ways that you might measure progress in this (and other) areas are outlined in Chapter 5.





## 5 Monitoring Improvement

It is important that somebody has accountability for implementation of your court's family violence plan. Ideally, that person will have authority and the ability to influence, which makes Chief Justices a good choice. It is often useful to support the Chief Justice with a small committee or governance board (e.g. the family violence committee), which is responsible for overseeing and monitoring plan implementation, including by coordinating the efforts of various people with implementation responsibilities. Some organisations add a level of accountability to their committee by including members from other organisations, civil society or the community, which has the benefit of expanding ownership of the plan and enabling connections to be made with other activities.

### 5.1 Collecting relevant data

Improvement is only possible if you know where you are starting. As highlighted in the 2014 Court Trend Report, Pacific courts have worked hard in recent years to improve the collection and reporting of data, enabling the establishment of realistic and achievable performance standards.<sup>17</sup> It is important that this development informs efforts to improve the accessibility and responsiveness of court services to the victims of family violence, so that an understanding of both current and future dynamics can be developed. Of particular relevance, the increased collection and reporting of gender disaggregated data on both family law and family violence cases is a very positive development in the region. Trends such as these will continue to positively impact on the ability of the courts to improve their practice and be accountable to the public.

### 5.2 What kind of data is needed and how to collect it

**The overarching goal of PJSI gender and family violence activities is to: measurably improve the accessibility and responsiveness of court services to the victims of violence against women, resulting in improved victim satisfaction with court and justice outcomes according to law.**

In order to determine the kind of data that is needed to measure improvements, it is important to break down exactly what it is that you're trying to measure. The practices outlined throughout this toolkit are strategies proven to improve the accessibility and responsiveness of court services to the victims of family violence, and violence against women more broadly. By making these improvements, it is hoped that such victims will be more satisfied with the courts and the outcomes that they receive.

#### 5.2.1 Measuring accessibility

There are many measures of accessibility, some of which are already included in the 15 "Cook Island Indicators."<sup>18</sup> Further guidance on these indicators is attached at Annex F. It is important to ensure that the measures you choose reflect the improvement initiatives that you have outlined in your Family Violence Plans. For example, if you plan to increase fee waivers for family violence cases, a modified version of Cook Islands Indicator 5 might be "percentage of family violence cases that are granted a court fee waiver". Likewise, if you determined that transport and geography are barriers to women's court access and decided to respond to this challenge by increasing the number of family violence cases that are heard through a circuit court, a reasonable measure might be "percentage of family violence cases finalised through circuit courts".

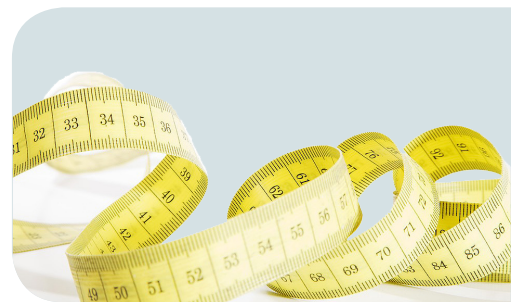
<sup>17</sup> PJSI, 2014 Court Trend Report

<sup>18</sup> PJSI, 2014 Court Trend Report, pg. 12

### 5.2.2 Measuring responsiveness

Responsiveness is a complex concept. It can be taken to refer to the quickness and appropriateness of a response, or to the degree to which court user needs are met. If your Family Violence Plan includes a time standard within which the court aims to complete family violence cases, a good measure of responsiveness is that outlined in Cook Islands Indicator 2, namely “average duration of [family violence] cases”.

Measuring the fairness of victim outcomes requires more effort than the collection of standard court data. One way to do it may be to take the ICAAD sentencing analysis (if undertaken in your country) as a baseline and undertake comparative analysis at one year periods. Lower numbers of sentencing decisions that show evidence of biased decision making, or discriminatory reliance upon customary law practices, would be one measure of improved fairness, as would lower numbers of lenient sentences for the perpetrators of family violence.



### 5.2.3 Victim satisfaction with court services and outcomes

The only way to measure victim satisfaction with court services and outcomes, and their knowledge of the law, is to actively engage with victims who have used your court or with groups that work with victims. This is important not only for measuring the impact of your efforts to improve court responsiveness to the victims of family violence but also to meeting the commitments made under the Regional Justice Performance Framework (2012) to include “a summary of key findings from any court stakeholder/potential court user surveys and dialogues that have taken place in the previous year” in court Annual Reports.<sup>19</sup>

Stakeholder/potential court user forums will provide you with different types of information to court user surveys.

#### 5.2.3.1 Public forums

Public forums are a useful way of engaging large groups of people and are a good way of giving members of the community a chance to be heard. They allow you to collect large amounts of information in a short period of time and are not very costly. Public forums allow a two-way flow of information, thereby serving a dual educational and information gathering purpose.

A useful way of starting a forum is to ask a speaker or facilitator who has a sound understanding of violence against women and the difficulties faced by victims to provide an overview of a key issue (e.g. access to the legal system) and then seek responses from the community. It is important to facilitate the discussion so that all people have an opportunity to express their views and to keep the forum moving. Rules are needed (such as respecting other’s right to talk and keeping comments short) to keep things in order and it is useful to have a series of set questions to generate discussion if things slow down. Make sure to record the discussion (either in writing or on an electronic recording device) so that it can be referred to later and properly analysed.

More detailed guidance on conducting stakeholder forums is provided in the *Access to Justice Assessment Toolkit* (2014).

<sup>19</sup> PJSI, 2014 Court Report, pg. 61

### 5.2.3.2 Court user surveys

Court user surveys consume more time than public forums but they provide more comprehensive information about people's views and experiences. Surveys can be administered either verbally (e.g. somebody stops people leaving the court house, asks them to participate and talks them through a series of questions) or in writing (people can take them away and complete them in their own time). Each approach has its strengths and weakness but they both result in valuable data. Verbal administration is more time consuming but it can help make sure that people understand the questions being asked of them. Written surveys have the advantage of being confidential, so people often provide more honest responses.

There are a range of publicly available court user surveys, which aim to gather information on court user perceptions and experiences but it is useful to develop a survey that suits your local context. A sample survey drawn from the Global Measures of Court Performance document put together in support of the International Framework for Court Excellence can be accessed online at:

[http://www.courtexcellence.com/~media/Microsites/Files/ICCE/Global%20Measures\\_V3\\_11\\_2012.ashx](http://www.courtexcellence.com/~media/Microsites/Files/ICCE/Global%20Measures_V3_11_2012.ashx)



# **Gender and Family Violence Toolkit Additional Documentation**



# Annex A: Material from Human Rights Toolkit: Quick reference guide for cases involving women, girls and family/sexual violence

Please note the following sections 7.1 to 7.5 and annex 8 have been taken directly from the Human Rights Toolkit (2017): <http://www.fedcourt.gov.au/pjsi/resources/toolkits>

## 7.1 International Standards: Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW)

All countries in the Pacific region (except for Tonga and Palau), have ratified CEDAW, which provides a framework for countries to address gender inequality, and discrimination against women. These have emerged as big issues that Pacific societies are grappling with.

### 7.1.1 Key International Standards Involving Discrimination (including violence) Against Women

#### Key Provisions of CEDAW

Article 2 condemns discrimination against women in all forms (political, economic, social, cultural, civil or any other field) and require States to:

- Introduce new laws to protect women from discrimination (Art 2(b));
- Change existing laws that discriminate against women (Art 2(f)(g));
- Ensure legal protection from discrimination for women in court decisions (Art 2c);
- Ensure equality before the law (Art 15);
- Ensure public institutions (including courts) do not discriminate against women (Art 2(d));
- Change social and cultural patterns to address customary and other practices based on sex discrimination or gender stereotypes (Art 5(a)); and
- Provide equality in education (Art 10), health (Art 12), employment (Art. 11), participation in public life (Art 7), nationality (Art 9), marriage, divorce, family relations, right to custody of children, to own marital property (all in Art. 16).

While CEDAW does not explicitly mention violence against women and girls, General Recommendation 19 clarifies that violence against women is a form of discrimination against women and is therefore covered by the Convention sections that ban discrimination against women. 'Violence' includes different forms such as physical, mental, economic or sexual violence as well as threats, or other ways of controlling the lives of others.

#### Declaration on the Elimination of Violence Against Women (1993)

- As with any Declaration, it is not legally binding or enforceable, but does set out national and international standards and a plan of action for combating violence against women; and
- Provides definition of 'violence against women': any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

#### The World Conference on Human Rights (1993)

- Recognised violence against women as a human rights violation; and
- Called for the appointment of a Special Rapporteur on violence against women to follow up and monitor women's rights.

#### The Beijing Platform for Action (1995)

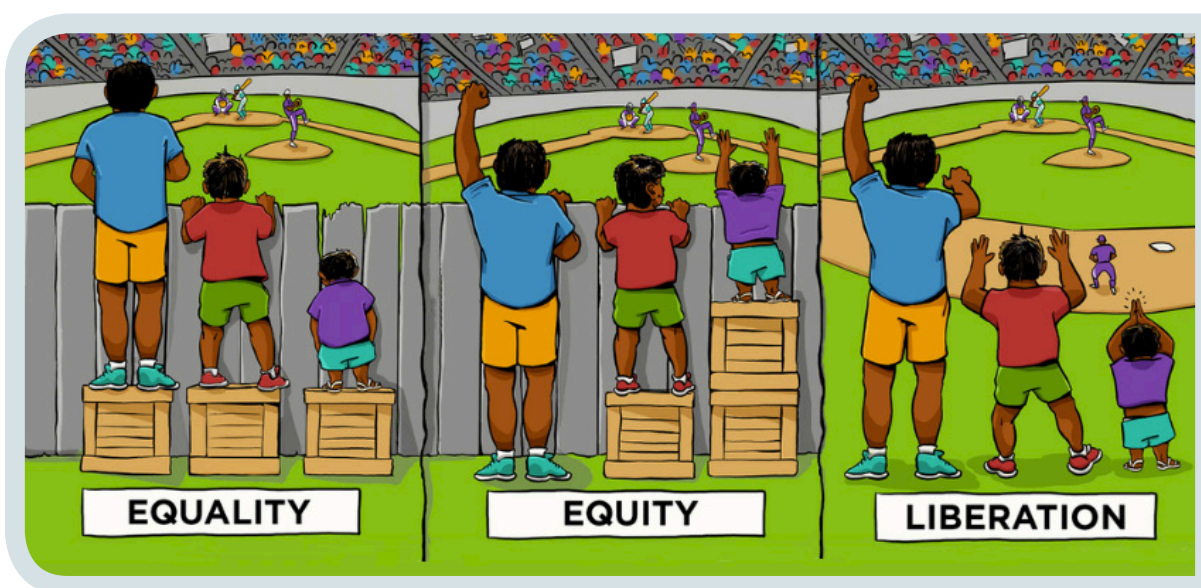
- Identified specific actions Governments must take to prevent and respond to violence against women and girls;
- Identified ending violence as one of twelve key areas for priority action; and
- Used an expanded definition of forms of violence.

### 7.1.2 Formal vs Substantive Equality

**‘Formal equality’:** Means everyone should be treated the same, whatever their circumstances. As shown in the left hand picture, formal equality, (as found in many Pacific constitutions), will not always achieve fair (equitable) outcomes.

**‘Substantive equality’ = Equity:** Takes into account that not everyone starts at the same level and that some groups may need extra help to access rights and opportunities on the same footing as others.

**‘Liberation’:** The third picture shows how the removal of systemic barriers (such as to access justice) helps everyone enjoy their rights and have the same opportunities.



## 7.2 Regional Standards

While there are no binding regional standards, there has been regional attention paid to gender equality and women’s rights.

## 7.3 Domestic Standards

Awareness of the problem of violence against women has increased since national studies showed that some Pacific societies have amongst the highest rates of violence against women in the world. Many Pacific nations have responded with:

### 7.3.1 New Laws

Between 2009 and 2015, nine Pacific countries passed family protection and domestic violence legislation aimed at better protecting women and children from family violence. Many of these have been based on standards established in CEDAW and other international instruments.<sup>20</sup>

<sup>20</sup> Vanuatu Family Protection Act 2009; Fiji Domestic Violence Decree 2009; Marshall Islands Domestic Violence Prevention and Protection Act 2011; Palau Family Protection Act 2012; Samoa Family Safety Act 2013; Kiribati Te Rau n Te Mweenga Act 2013; Tonga Family Protection Act 2013; Solomon Islands Family Protection Act 2014; Kosrae State Family Protection Act 2014.



### 7.3.2 Community-Based Campaigns

Aimed at changing deeply-held values that support attitudes of acceptance and normalisation of violence against women and other family members. These campaign approaches recognise that preventing violence requires coordinated efforts at all levels of society to change dominant community attitudes while also increasing women's status in society.

### 7.3.3 Courts

Decisions of Pacific courts increasingly reflect and reinforce growing community rejection of violence against women and other family members by prioritising principles of equality and non-discrimination, including in cases where these conflict with cultural or customary practices. However, there are signs there is still some way to go. For example, a recent study by International Center for Advocates Against Discrimination (ICAAD)<sup>21</sup> of sentencing decisions in sexual assault and domestic violence cases in seven Pacific countries found that judges continue to give heavy mitigating weight to gender stereotypes, cultural practices (such as customary reconciliation) and other 'contentious factors' to reduce the likelihood and length of custodial sentences in sexual violence and domestic violence cases. This was despite legislation in some countries explicitly prohibiting judges from taking such factors into account. This study shows how values that undermine women's right to equal protection of the law can also be ingrained in judicial thinking, suggesting that this might be an area where specific judicial training and guidance could be helpful.

## 7.4 Step 1: Understanding the Barriers Faced by Victims and Court's Roles to Address Them

Women and children subject to family violence typically face strong social, cultural and economic pressure to 'live with' or try to manage family violence on their own, despite the damage and harm it causes them and their families. When victims do seek help, it is often in desperate situations when the violence has been going on for some time and often already reached very high, even life-threatening levels. Therefore, the quality of response to victims' that do come forward to report violence is very critical.

Family violence is a crime, but is also much more complicated than many other crimes because the people involved often have ongoing relationships of love and affection. Victims often also have relations of economic dependence on perpetrators and lower levels of social and cultural power than them. These factors can make many victims feel very conflicted when they finally seek help from the police. On one hand they know they need protection and that what has been done to them is wrong, but on the other, they may feel fear, shame (especially in cases of sexual violence), and torn about bringing a complaint against someone they may love and need. They also often face strong pressure from other family members, community or religious leaders to try to solve the problem privately and outside of the criminal justice system.

Given all these pressures, it is hardly surprising that many victims who seek protection from the police during a crisis later withdraw their complaints. This is not because victims are undecided or weak, but often because victims lack trust in the system. This is understandable given the variable experiences they can have in their interactions with different law enforcement/justice actors and the lack of reliability and limited range of 'safety net' services and supports for victims.

Many victims lack trust in the system or take a calculated view that the likely economic, social and cultural costs to them of making or continuing with a criminal complaint, outweigh the potential benefits of stopping the violence or their family member being held accountable for his violence.

21 ICAAD 'An Analysis of Judicial Sentencing Practices in Sexual & Gender-Based Violence Cases in the Pacific Island Region', 2015. <http://www.pacii.org/other/general-materials/ICAAD-Analysis-of-Judicial-Sentencing-Practices-in-SGBV-Cases.pdf>.

It is the job of all actors involved in family violence cases to help change this balance and help create a more victim-supportive approach: one that recognises and respects the autonomy and decisions of victims, at the same time as reliably helps them to overcome the barriers that victims usually face when they bring or are part of cases involving family violence.

Police, prosecutors and judges must themselves be wholly convinced of the criminal nature of family violence and the 'rightness' of victims bringing forward their complaints, if they are to provide effective support to victims and be persuasive 'ambassadors' for the justice system. If justice actors themselves think that family violence is excusable, understandable or should be tolerated by victims, (which they often may do, because they have also grown up in communities where these are dominant beliefs), then there is little chance victims will receive proper support and protection. So it is key that court actors support victims of family violence wholeheartedly and take as much pressure off victims as possible by demonstrating behaviours and attitudes supportive of victims.

Family violence cases require that all parts of the justice system work in a coordinated way together: police, prosecution, public solicitor/legal aid providers, courts and corrections. The responses of these bodies must also be closely coordinated with health services, shelters, and social services (both government and non-government), to provide support to victims at all stages of the process. It is crucial that the process also provides appropriate and effective opportunities and encouragement for perpetrators (usually men) to learn how to change their behaviour so that violence in the family does not continue. In addition to assisting in individual cases, courts also have an important role to play in prevention of family violence, by conducting outreach and conveying clear messages to communities that violence within families is no longer acceptable and will be dealt with firmly by the courts.

## 7.5 Measures to Make Court Processes Fairer to Women and Child Victims of Family Violence

Many Pacific countries have already introduced family protection laws that include specialised services and coordinate the roles and responsibilities of relevant actors. Notwithstanding any specific laws, use these suggestions below to start planning actions to make your court more responsive to the needs of women and child victims of family violence (See Gender and Family Violence Toolkit 2017 for more guidance).

### 7.5.1 Prior to Court Trial Processes

Ensure protection orders are readily available 24 hours by telephone through having an on-call judge available at all times.

Where suspects are not detained, consider use of orders that suspects must reside away from the family home until the case is determined, rather than victims and children having to leave their home and support network.

Work with police to develop SOPs for protocols to respond to complaints of family violence including:

- Ensuring that female police also attend crime scenes to take statements from female victims, witnesses and children;
- All police are adequately trained in preserving crime scene evidence;
- SOPs/training have been provided to all police on conducting family violence risk assessments and clear guidance is provided on pro-arrest and detention policies regarding family violence suspects, and prohibiting police from informally resolving complaints of family violence; and
- All victims to receive independent legal advice and support at police stations during initial processing of a complaint and compulsory independent advice/counselling before withdrawing a complaint.

Work with police to prepare a list of advocates able to attend police stations/prosecution offices at short notice to provide advice and support to victims and separate legal representatives for suspects.



Work with prosecution services to ensure SOPs are in place that:

- Provide clear guidance on exercise of prosecutorial discretion not to lay charges;
- Prohibit informal resolution of family/sexual violence complaints;
- Provide time frames within which investigations must be finalised and indictments filed and take all possible steps to reduce delay (e.g. carefully assess whether there is a need for forensic evidence, especially where it will take a long time to procure);
- Ensure adequate interim protection orders are in place for victims and witnesses and that they are enforced including orders for payments of maintenance to victims (from joint assets if necessary);
- Provide guidance on laying appropriate charges in cases of family/sexual violence;
- Allocate women prosecutors (wherever possible) to take statements from victims of family/sexual violence;
- Provide guidance on collecting evidence for cases of criminal damages (in legal systems where this is also the responsibility of the prosecutor and dealt with concurrently with criminal charges) and material needed for victim impact statements for sentencing hearings; and
- Keep victims regularly updated on all case developments and consult them on issues of dropping or reducing charges, and sentencing sought.

Judges to ensure interim victim protection orders and witness protection measures are adequate, in place and oversee their enforcement where necessary.

### 7.5.2 During Trial Process

Use accelerated case management to make sure cases involving family violence are prioritised and heard quickly. Set and enforce standards in SOPs for how quickly they must be heard and finally dealt with.

Ensure court staff confirm in advance the attendance of all those needed for the case to proceed (to avoid adjournments).

Only grant adjournments if they are strictly necessary and take other measures to reduce delay (e.g. if suspect does not appear, issue warrants for their arrest and direct they be presented to the court). Demand high standards of professionalism from prosecutors and defence lawyers. I.e. do not readily grant adjournments if prosecutors or defence lawyers are poorly prepared or organised. Make complaints of unprofessional conduct to professional bodies if necessary.

Ensure sufficient security is in place and that no weapons are brought into the court house.

Wherever possible, ensure courts have separate entrances for victims of family violence and always have separate waiting areas for victims and prosecution witnesses.

Provide child-care, child-friendly space, private place for breast feeding for court parties.

Ensure court reimburses victim/prosecution witness transportation costs and provides food during waiting periods and secure accommodation where victims/witnesses are not local and hearings last several days.

Provide necessary supports to victims/witnesses/suspects suffering from any disabilities (see section below).

Provide training to judges hearing family violence cases including how to use CEDAW/CRoC/ constitutional rights of women and children and any special laws that apply to family violence cases. Also provide training on how judges can support the participation of victims, (including children), in court processes, such as by adopting a more informal manner, providing clear non-judgmental explanations, being sensitive to any fear or trauma of victims by providing encouragement, regular breaks etc. and allowing victims' representatives/support persons to make submissions if they wish.

Consider ordering that court proceedings, especially those involving sexual violence and children, be held in closed court and that the victims and witnesses' names be suppressed.

Ensure that suspects are offered legal representation (to ensure fair trial) but also to discourage suspects from directly cross-examining victims. If the suspect insists on their right to represent themselves, strictly exclude any improper, gender-biased or intimidating lines of questioning directed at victims or prosecution witnesses.

Consider ordering the removal from the court room of any person, (including the suspect if necessary), who fails to observe warnings regarding their conduct, intimidates or threatens the victim or any witnesses, or otherwise obstructs the hearing.

Consider creating a more informal setting for child victims to give their evidence, including the option of giving pre-recorded evidence or giving evidence in the court room but not in direct view of the suspect.

Consider giving the opportunity for the prosecution to present a victim impact statement in any sentencing hearing.

Consider developing and implementing sentencing guidelines for cases of sexual and family violence to ensure sentencing decisions consistently reflect the seriousness of crimes, including aggravating factors (i.e. abuse of trust or power, child victims, victims with disabilities etc.) and do not give weight to inappropriate mitigation factors including gender stereotypes and customary/cultural factors such as reconciliation.

### 7.5.3 After Sentencing Processes

Work with the police and prosecution to ensure complete data sets are collected on all family/sexual violence cases including: charges laid, age/gender of victim and suspect, relationship between victim and suspect, interim measures ordered to protect victim or witness, legal representation of victim and suspect, final verdict, sentence (including aggravating or mitigation factors taken into account), any parole/early release granted, any repeated offending noted.

## A.8 Effect of Ratification in Domestic Law

State constitutions usually clarify whether ratification of a treaty has the effect of automatically incorporating its articles into the country's domestic legal system (as in 'monist' states), or whether domestic legislation is first required before effect can be given to the articles of the treaty (as in 'dualist' states).

All PICs that participate in the PJSI (except for the Marshall Islands) are based on British-style legal systems, which are generally dualist. This means that before the terms of a treaty can be directly applied by courts, they must first be supported by domestic legislation to give them domestic legal effect.

However, the absence of domestic legislation does not mean that courts can simply ignore ratified treaties. Rather, often constitutions require or explicitly allow for the content of treaties to be considered, such as is provided for in the Constitutions of Fiji, Tuvalu, and Papua New Guinea. Yet even if the country has not ratified the convention and there is no explicit constitutional provision, it is still possible for courts to consider human rights treaties, at least to resolve ambiguity or fill a gap in interpreting domestic law. Alternatively, common law precedent or customary international law may require the court to consider or give effect to the standard articulated in the treaty.

## Annex B: Quick Reference Guide for Cases Involving Children

### 6.1 International Standards: Convention on the Rights of the Child (CRoC)

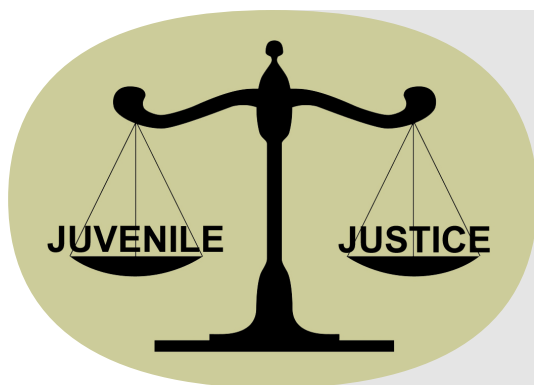
All Pacific countries have ratified the CRoC, which contains key principles and standards for dealing with all kinds of cases involving children. Some of the most important ones are:

**A ‘child’** is defined as any person **under the age of 18 years** (Article 1 CRoC).

**In all actions concerning children**, whether undertaken by public or private social welfare institutions, **courts of law**, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration** (Article 3 CRoC).

What is in the ‘best interests’ of any given child will vary according to the child’s individual situation, including their cultural background. It will also require consideration of who is taking the action, on what basis, for whose benefit and how it affects children generally or particular groups of children. What does not vary across cultures is the requirement that the child’s best interests should be a **primary consideration**, in other words, the child’s interests must be elevated above the ‘rights’ or interests of others, who may include the child’s parents, community, the state, or others.

**‘Right of child to be consulted’**: This principle requires that in any kind of case affecting a child, the views of the child have to be sought and taken into consideration, according to their age and maturity (Article 12 (1)(2) CRoC).



#### Other important justice standards for children:

- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (*‘The Beijing Rules’*);
- The United Nations Guidelines for the Prevention of Juvenile Delinquency (*‘The Riyadh Guidelines’*) and;
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty or *‘The JDLs’*, 1990; and

See also Family Violence & Youth Justice Project Toolkit 2014.

### 6.2 Why we need to have different justice standards for children?

Everyone knows from their own experience that children differ from adults in their physical and psychological development and in their emotional and educational needs. Advances in neuroscience also show that the parts of the brain responsible for decision-making and impulse control are still developing during a person’s teens, even later in boys, which affects their capacities to understand consequences and to exercise judgment.

For these reasons, all legal systems should be based on the idea that children beneath a certain age should not be charged or prosecuted in criminal justice systems. This is known as the ‘age of criminal responsibility’ and is usually found in each country’s penal code.

The CRoC Committee recommends that the ‘age of criminal responsibility’ be set for between 14-16 years old. The global average age of criminal responsibility is 12 and this is considered the minimum acceptable to the UN Committee on the Rights of the Child. Many countries, including in the Pacific, do not currently meet this standard.

Even when children are over the age of criminal responsibility, most Pacific countries have additional requirements that must be met before children aged 10-14 years can be charged and prosecuted. They also often have special sentencing rules to reflect the lower responsibility for crimes by children and try to avoid or minimise imprisonment to give the child the best opportunities for rehabilitation and getting ‘back on track’.

These standards also apply to older adolescents in the 15-17 age group, who are the children most frequently in trouble with the law. International standard say that **all children under 18 years old should only be detained or imprisoned as an absolute ‘last resort’**. If they are imprisoned, it must be for the shortest length of time possible and in facilities separated from adults and that cater to their physical, educational and other special needs as children (CRoC Article 37(b)).

#### Age of Criminal Responsibility

- Solomon Islands: 8 years
- Papua New Guinea: 7 years
- Tonga: 7 years
- Kiribati: 10 years
- Fiji: 10 years
- Most Pacific countries also require evidence a child aged between 10-14 years was ‘capable of knowing they did wrong’.

### 6.3 Checklist for Judges in Deciding What Law to Apply in Criminal Cases involving Children

- Know the exact age of the child at the time of the alleged offence, based on birth certificate or other documents where possible. If none are available, determine age based on statements of parents, other relatives and the child;
- Based on the law, decide if the child can be legally charged or prosecuted: that is, you must be satisfied the child is above the criminal age of responsibility and (typically) if aged between 10-14, make a finding as to whether the particular child is capable of knowing they did wrong;
- Find out if there is a special system of justice for children in your country. If yes, then apply those standards consistently with the CRoC, and Constitutional standards; and
- If no, then strictly apply minimum CRoC standards (see 6.4). Also apply any special Constitutional or other laws. Finally, modify the process as much as you can to make it child-friendly (see 6.5).

### 6.4 Minimum Standards for Criminal Cases Involving Children

Some Pacific countries already have specialist criminal justice processes for children, as recommended by the CRoC. These typically involve having judges with special training, different criminal justice procedures and laws and different penalties with a greater focus on rehabilitation and reintegration of children in the community.

Whether a specialised child justice system exists or not, all courts need to work in close coordination with other key actors across the justice chain in dealing with cases involving children. These include the police, the prosecution, the public solicitor/other legal aid service, government social services/ child welfare authorities, correctional services, as well as probation officers, youth support workers, community and religious leaders, parents, teachers and other important adults in children’s lives.

**Whether or not specialist justice streams exist for children in your country, these are the minimum standards that all courts should always apply in cases involving children.**

### Arrest:

- Both the child and parents or guardian must be informed of charge as soon as possible (CRoC Article 40(2)(b)(ii));
- A child should not be questioned/investigated without a parent/guardian or lawyer being present during the interview (CRoC Article 40(2)(b)(ii)); and
- Police and prosecutors should try to divert children from criminal prosecution where possible (CRoC Article 40(3)(b)).

### Detention:

- Only to be used for any child under age of 18 as an absolute last resort and for the shortest period possible (CRoC Article 37(b));
- All children under 18 years must always be held in separate facilities from adults and be able to maintain contact with their family and be given access to age-appropriate health, recreational, educational and other relevant facilities (CRoC Article 37(c));
- All children in detention should have access to legal assistance to challenge their detention and be brought before a court as soon as possible (CRoC Article 37(d)); and
- Children must never be mistreated, forced to confess, tortured or treated in a cruel or degrading way (CRoC Article 37(a)).

### During Trial:

- Courts should actively take steps to assist children and reduce any stigma children may face due to any aspect of having a case in court;
- All children should have access to legal advice and representation in any kind of case. (CRoC Article 40(2)(b)(ii) & (iii));
- The privacy of children must be specially protected (CRoC Article 40(2)(b)(vii)). Cases involving children should be held in closed court. Court listings, judgments, other public records should not identify children by name (See also Rules 8 and 21 of the *Beijing Rules*); and
- Ensure children fully receive all their 'fair trial' rights such as: to be treated as innocent unless proven guilty (CRoC Article 40(2)(b)(i)); to have a fair hearing before a competent, independent and impartial judge (CRoC Article 40(2)(b)(iii)); to have legal representation, to examine witnesses (CRoC Article 40(2)(b)(iv)); and to appeal the verdict or the sentence (CRoC Article 40(2)(b)(v)).

### Sentencing:

- Sentences must take into account the child's age and aim at promoting social reintegration and the child's constructive role in society.' (CRoC Article 40(1));
- Imprisonment must be used 'only as a measure of last resort and for the shortest appropriate period of time'. (CRoC Article 37(b)). Alternatives to imprisonment should be provided (CRoC Article 40(3)(b)) examples include providing probation, supervision orders, educational/vocational programs;
- No death penalty or life imprisonment without the possibility of release for anyone under the age of 18 at the time of the offence (CRoC Article 37(a));
- Right to appeal sentence (CRoC Article 40 (2)(b)(v));
- As with detention, imprisonment of children must be separate from adults and be able to maintain contact with their family (CRoC Article 37(c)); and
- Criminal records should be cleared when a child turns 18.

## 6.5 Measures to Make Court Processes Fairer to Children

Below are some measures judges and court staff should take to make justice processes more responsive to the needs of children (under 18 years old) who are 'in trouble' with the law. Use these as a guide for completing your own assessment of how 'child-responsive' your court is.

### 6.5.1 Pre-court Processes

Ensure an on-call judge is readily available 24/7 hours by telephone to hear applications regarding whether a child can be detained or not.

Work with the police/prosecution to develop a set of Standard Operating Procedures (SOPs) that cover:

- The investigation of alleged offences by youth/children (under age 18) including the need for a lawyer and parent/guardian to be present during any questioning;
- Instructions to avoid detaining children, except as a last resort;
- Where detention is used as a last resort, instructions that the child be brought before a judge within a strict and short time limit. If this is not done, (for whatever reason), instructions that the child must be immediately released;
- Guidance for diverting cases involving children from the criminal justice system including (at minimum) the options of: on the spot warning; caution; mediation; community conferences; and
- Adopt a different colour court file to alert anyone dealing with the case to the fact that it concerns a child and that child standards must be applied to all aspects of handling the case.

Work with The Public Solicitor to develop a roster of lawyers who can be contacted by the police both during and out of working hours to assist youth/child suspects being interviewed or investigated by the police.

Work with the prosecutor to develop a SOP for cases involving children, including ensuring every charge sheet includes a clear statement highlighting that the charges relate to a youth/child, and providing their date of birth.

### 6.5.2 In Court Processes

Allocate separate court hearing days to deal with cases involving children more efficiently, discreetly and using a more informal layout for court room furniture.

Strict guidelines should be issued that judges can only order pre-trial detention (for any period) of a child for the most serious cases of violent crimes against the person and never for property offences.

Ensure any children being brought from prison to the court are transported separately from adults and held at the court separately from adults and special attention is given to them (to provide information, food/water, access to bathroom etc.).

Use a faster case management system that prioritises cases involving children, especially those in detention.

Set and enforce strict standards for how quickly cases involving children must be heard and finally dealt with by the court. Especially for those in pre-trial detention, strict time limits should be applied which requires children to be released on bail.

Ensure court staff confirm in advance the attendance of all those needed for cases involving children to proceed (to avoid delays and adjournments).

Ensure court sittings for children are held in private court (closed and not open to the public) and that their name is not publicly displayed anywhere (e.g. in court listings) and is removed from any public court report or judgment.



Ensure that every child has a lawyer present at every hearing. They can be appointed by the Public Solicitors Office, another legal aid provider or appointed by the court.

Ensure there is a group of judges in each court who have received special training for handling cases involving children, and make sure one of these judges is appointed to all cases involving children.

Provide judges the opportunity to receive training in 1. International standards relating to juvenile justice, constitutional standards and any special laws that apply to children and 2. how to engage with children, such as by adopting a more informal manner, providing explanations that are clear and age appropriate, encouraging the child's participation in the court process and taking the child's views into account in all the issues before the court.

Encourage judges to always consider referring relevant issues in child cases to a 'Community Conference' comprised of the child, his/her family, the victim, police, lawyer, conference convener and any other interested and relevant party (e.g. customary chiefs/pastor). Ensure that the court considers any recommendations made by the Community Conference in deciding any sentence.

Ensure judges are aware that sentences must take account of the child's age and should focus on rehabilitation more than punishment. Prison should only be used in the most serious cases as a last resort and be for the shortest possible period in a facility separated from adults. Custodial sentence can always be supplemented with other community-based rehabilitation activities.

### 6.5.3 After Appearance in Court

Work with the correction authorities to oversee and ensure that:

- Children in custody (including while in pre-trial detention) are kept separate from adults and have age appropriate health, recreation and education facilities, access to their families etc.; and
- Community-based alternatives to custodial sentences are supported and encouraged.

Work with the police/prosecution to ensure that (at minimum) the following data is collected: the child's exact age at the time of the offence; gender; home island; whether diverted/charged; type of charge; outcome; reoffending rates.

Notwithstanding any other law, ensure that the details relating to a conviction of young offenders be cleaned from their record when they turn eighteen years old.

## Annex C: Court Family Violence Self-Assessment Tool

The Court Family Violence Self-Assessment Tool is designed to help you understand how well you are doing in each of the “good practice” areas outlined in this tool kit, namely: primary prevention; victim focus (access, safety, fairness); perpetrator accountability; and, collaboration.

It uses a simple sliding scale (no, can improve, yes), which will help you determine where your strengths and weaknesses are. Simply tallying the number of no/can improve responses in each section will provide you with an insight into where there is greatest room for improvement. This information, combined with other sources of information such as Access to Justice Assessments (if you haven’t done one it is recommended) and court data, should inform the decisions you make about strategies that will enable improvement. These strategies should be outlined in your Court Family Violence Plan (see Annex D).

It is recommended that the self-assessment tool be completed in the first instance by individuals and that a one day workshop be held to discuss the findings. The more individuals that complete the form, the more you will understand how well you are doing. It is important that people complete the questionnaire as honestly as possible, remembering that the aim of the exercise is to measurably improve the accessibility and responsiveness of your services to the victims of family violence.

Focus Area 1: PRIMARY PREVENTION	No	Can Improve	Yes
<b>Understanding family violence</b>			
Have judicial officers received training on the causes and consequences of family violence?			
Have court officers received training on the causes and consequences of family violence?			
If training has been provided, did it actively challenge the attitudes, practices and behaviours that perpetuate family violence?			
<b>Public engagement</b>			
When engaging with the media, do judicial officers consistently send a message that family violence is against the law?			
Do judicial officers deliver public speeches condemning family violence?			
Does your court do awareness raising about laws relating to family violence?			
Does your court have printed materials about the laws relating to family violence?			



Focus Area 2: VICTIM FOCUS	No	Can Improve	Yes
<b>Access</b>			
Have you undertaken an Access to Justice Assessment?			
Do you have an understanding of the specific needs of different groups of court users (e.g. women, men, girls, boys, older people, disabled people, rural people, etc.)?			
Does your court have a clear policy on court fee waivers for people experiencing financial hardship?			
Does your court display/provide clear information on court fee waivers for people experiencing financial hardship?			
Does your court record the types of cases that court fee waivers are granted for, including the gender of the applicant?			
If your court administers protection orders, can applicants lodge an application orally (by phone or in person), rather than in writing?			
Is there a fee for protection orders?			
Does your court have a procedure to react quickly if a protection order is breached?			
Does your court have an accelerated/prioritised hearing process for GFV cases?			
<b>Safety – physical</b>			
Does your courthouse have a private room that victims can go to in order to rest/relax?			
Does your courthouse use guards for security?			
Do you have a security screening process for all people that enter your courthouse?			
Does your court record security incidents?			
Does your court analyse security incident information so that similar incidents can be prevented?			
Does your courthouse have facilities that enable victims to give evidence via video-link (so that they needn't be confronted by the offender)?			
Can your court put witness protection measures in place?			
Can your court order the perpetrator to live outside the family home (so the victim can stay home) during the pre-trial and trial period?			

<b>Safety – psychological</b>			
Have your judicial officers been trained in client service (so that they know how to treat people respectfully)?			
Have your court officers been trained in client service (so that they know how to treat people respectfully)?			
Does your court provide information (verbally or in writing) to victims/offenders so that they understand the court process?			
Does your courthouse have easy to read signs so that people understand where to go?			
<b>Fairness</b>			
Does your court record gender disaggregated data on filing, finalisation and clearance rates for family violence cases?			
Can your court state the average length of time to determine family violence cases?			
Does your court review family violence case outcomes, with a view to analysing whether or not women are receiving fair outcomes?			
Have judicial officers received training on bias/gender stereotypes and their impact on judicial reasoning?			

<b>Focus Area 3: PERPETRATOR ACCOUNTABILITY</b>	<b>No</b>	<b>Can Improve</b>	<b>Yes</b>
Does your court publish anonymised family violence judgments and sentencing decisions on PACLII?			
Does your court record gender disaggregated data on victims and offenders in family violence cases?			
Does your court record family violence case sentencing outcomes?			
Does your court have sentencing guidelines for family violence cases, which prohibit the application of gender myths and stereotypes?			
Does your court record recidivism statistics?			
Have judicial officers received training on bias/gender stereotypes and their impact on judicial reasoning?			
Does your court review sentencing outcomes to ensure that family violence sentences are not too lenient?			

Focus Area 4: COLLABORATION	No	Can Improve	Yes
Does your court maintain an up to date contact list of key partners (justice, health, non-government organisations)?			
Does your court have a clear referral process for court officers to use (e.g. where to direct clients for information/support)?			
Does your court document referrals (frequency and to whom)?			
Does your court record whether the women who access your court are assisted to do so (e.g. by a women's support service or legal aid)?			
Does your court have information sharing arrangements with key partners?			
Do you meet regularly with key partners to ensure court users receive a coordinated service?			
Where a woman is killed, is there a compulsory critical case review process in place whereby all relevant actors review what happened, what each agency did, and what more could have been done to prevent her death so that all actors across the justice chain can 'learn lessons'?			

## Annex D: Court Family Violence Plan Template

Drawing upon your Court Family Violence Self-Assessment and your Access to Justice Assessment, your Court Family Violence Plan provides a roadmap that will assist you to measurably improve the accessibility and responsiveness of your services to the victims of family violence. It is recommended that your plan span a maximum of three years and that progress be reviewed twice yearly.

It is good to start your plan with an introduction, which tells the reader why you are writing a plan and what you are hoping to achieve. The overarching goal of PJSI gender and family violence activities is to: measurably improve the accessibility and responsiveness of court services to the victims of family violence, resulting in improved victim satisfaction with court and justice outcomes. You may like to borrow this goal for your court's family violence plan.

You can then step through a basic story about the specific outcomes you'd like see, how you will achieve them, who will be responsible for each action and within what time frame. You also need to outline how you will measure progress. While you don't necessarily need to include it in your plan (but many organisations do), it is important to consider the resource (both money and people) requirements of your strategies so that they are realistic and achievable.

After a brief introduction, many organisations choose to display the rest of this information in table form. Below are some templates to help you start planning. A small number of suggested outcomes and actions are included but these are ideas only. You can borrow these ideas but it is important that your plan responds specifically to the needs you have identified and that it makes sense to you.

Focus Area 1: PRIMARY PREVENTION			
Outcome 1: Increase court engagement in primary prevention activities			
Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Example: Conduct a public awareness campaign on family violence via radio.	To educate the public about their rights (to live free from family violence) and the ways in which they can access help.	To be undertaken collaboratively with other government agencies and key civil society organisations.  Key court representative:  Technical assistance:	Campaign conducted  Could undertake a survey of attitudes/ knowledge of rights prior to and following campaign

Focus Area 2: VICTIM FOCUS			
Outcome 1: Improved access to justice for the victims of family violence			
Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Example: Establish a private room for victims to wait with their families before family violence court hearings.	Victims often feel afraid to wait with offenders before court. This would promote their psychological safety.	Key court representative:  Technical assistance:	Room utilised by women (and their families) prior to court.

Outcome 2: Improved safety for family violence victims using the courts			
Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Example: Establish a private room for victims to wait with their families before family violence court hearings.	Victims often feel afraid to wait with offenders before court. This would promote their psychological safety.	Key court representative:  Technical assistance:	Room utilised by women (and their families) prior to court.

Outcome 3: Improved fairness for family violence victims using the courts			
Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Example: Provide unconscious bias training for judges and magistrates.	We all have unconscious bias but it is important that it doesn't impact on judicial decision making.	Key court representative:  Technical assistance:	Number of judges and magistrates who have received unconscious bias training.



Focus Area 3: PERPETRATOR ACCOUNTABILITY			
Outcome 1: Less inappropriately lenient sentences for the perpetrators of family violence			
Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Example: Sentencing guidelines for family violence cases to be developed.	Clear guidelines for sentencing will promote fairness, consistency and sentences that reflect the gravity of crimes committed.	Key court representative:  Technical assistance:	Sentencing guidelines developed  Judges and magistrates utilising sentencing guidelines and report finding them useful (determined by a follow up questionnaire)

Focus Area 4: COLLABORATION			
Outcome 1: Ensure that basic administrative processes/information facilitate collaboration			
Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Example: Update contact lists for key partner agency and non-government service providers.	Good service provision requires collaboration.	Key court representative:  Technical assistance:	List updated

## Annex E: Material from Access to Justice Toolkit: Stakeholder Focus Group Discussions and Access to Justice Surveys

Please note the following sections 3 to 4 have been taken directly from the Access to Justice Assessment Toolkit (2014): <http://www.fedcourt.gov.au/pjsi/resources/toolkits/Access-To-Justice-Toolkit-v2.pdf>

### 3 Stakeholder Focus Group Discussions

Many courts in the Pacific have not yet been involved in any form of Access to Justice Assessment. An appropriate starting point in this instance is to conduct a range of stakeholder focus group discussions with representatives of different interest groups. This will enable courts to commence engagement on the issue and determine the need for on-going or additional assistance.

This section outlines how to plan, implement and use information gathered from these focus group discussions.

#### 3.1 What are Stakeholder Focus Group Discussions?

*“A focus group brings together individuals sharing certain key characteristics to discuss a particular topic. A moderator asks the group a set of questions in a conversational manner that allows them to respond to, and elaborate on, the comments of others. This can result in a deeper, more thoughtful discussion than an interview, as the comments of research participants trigger thoughts and ideas among others.”<sup>22</sup>*

Stakeholder Focus Group Discussions are meetings (ideally held on a routine basis) with people who represent the views of different groups within the community, including vulnerable groups. The meetings are semi-structured. That is they aim to receive feedback on a range of pre-determined issues but also allow enough flexibility to enable participants to raise other issues.

Feedback should be used by the courts to inform planning processes. This can include identifying priority areas that require attention and developing concrete plans to address those areas.

Stakeholder Focus Group Discussions should be undertaken periodically, for example either every year or in the lead up to preparation of strategic plans. This form of dialogue can be used to discuss progress and build public confidence in courts and justice institutions more broadly. If undertaken periodically, these discussions can also inform the annual reporting processes of courts.

It is important to note that the objective of these discussions is to focus on policy issues and not on the results of individual cases.

#### 3.2 Objective of Stakeholder Focus Group Discussions

It is important for courts to obtain feedback periodically from representatives of the community they represent. This feedback should cover both the quality of services they are providing and whether or not there are areas that should be addressed by courts that are currently not being addressed. That is to say, are there people who face challenges accessing justice?

Focus Group Discussions will assist courts in their planning processes and in determining how to best use their resources. It does this by ensuring community input into these processes, helping to target allocation of resources with identified needs.

22 ABA Rule of Law Initiative, “Access to Justice Assessment Tool: A Guide to Analyzing Access to Justice for Civil Society Organizations”, New York, 2012.

### 3.3 How to Identify Issues for Discussion?

Section 2 identified the range of issues that courts could potentially examine in Access to Justice Assessments. It is important that assessments remain focused and prioritise some of these issues. Priorities will vary from country to country. A key first step involves deciding on what issues should become the focus of the assessments.

Courts should seek to limit the number of issues to a maximum of five specific areas of priority.

There are a number of sources of information courts can use to determine what issues to focus on:

- **Internal Consultations:** This can include discussions with judges and registrars. Reviewing annual reports or trends in cases being filed or pending in court should also assist in determining priorities. Although this is a starting point, priorities identified by courts should be cross-checked with other sources;
- **Informal external consultations:** court staff should seek the views of external observers to either confirm priorities identified by courts or provide alternative priorities. This can include other justice sector agencies, civil society organisations or off the record discussions with journalists.
- **Secondary sources:** a range of secondary sources can also be used to cross-check identified priorities. These can include reports from local organisations like human rights commissions or ombudsman. Other examples include the US State Department annual country assessments or reports from development agencies (e.g.: UNDP, UNIFEM) or organisations such as Human Rights Watch.

The box below provides an example of how this was done in Tuvalu.

#### Using initial interviews to define topics to include in an Assessment

The Access to Justice Assessment in Tuvalu started with a series of meetings with stakeholders with an interest in the justice sector. The following categories of people were interviewed:

- i. **Justice Sector Agencies:** courts, People's Lawyer, Attorney General's office, private solicitors;
- ii. **Government:** police, local government representatives, members of parliament and Ministry of Home Affairs; and
- iii. **Civil Society:** umbrella organisation of NGOs, Tuvalu Family Health Association.

These interviews were used to identify the key topics included in the assessment. Based on discussions with these partners a Focus Group Discussion guide was drafted that included sections on: legal knowledge and access to information; access to legal services (in particular court services); and social order and family law issues.

### 3.4 Identifying Appropriate Stakeholders

The stakeholders to invite for discussions will vary from country to country and will depend also on the priority issues identified. The courts should identify between three-five different categories of stakeholders and hold separate focus group discussions for each category of stakeholder.

Potential stakeholders will include the following:

- Representatives from women's interests;
- Representatives from youth interests;
- Customary leaders and/or lay officers from local level courts;
- Religious leaders;
- Representatives from different minority ethnic or religious groups;

- Representatives from rural or remote communities;
- Members of civil society organisations with an interest in justice issues; and
- Representatives from other vulnerable groups such as intellectual or physical disabilities, HIV/AIDS positive or vulnerable employee groups.

For the reasons discussed in the box above, when a particular target group is identified, it is important to speak to actual members of that group and not only people who represent the group.

### Are Representatives really ‘Representative’?

In selecting the interest groups you wish to target it is important to be clear about the type of people you wish to receive information from. Sometimes there will be a significant difference in information obtained between an organisation that represents particular groups and people that come directly from that group.

Two examples:

- In Tuvalu, we wanted to ask youth about their experiences with the law. This was in particular because people had identified alcohol and related social order problems affecting youth as a significant issue. A discussion was organised with the Tuvalu National Youth Council. All the participants were well educated, to quote one of the participants, ‘law-abiding citizens’. They had limited personal experience with courts and as a result were not able to speak on behalf of youth who face difficulties with the law.
- Asking the most marginalized members of a village about their access to legal services is very different to asking a village leader how people in his village access legal services. In some instances the main reason why people do not access legal services is because they are afraid of their village chief. You won’t find this out if you only speak to the village chief and assume they speak on behalf of everyone in the village.

## 3.5 Who to Involve – Court Staff

The Stakeholder Focus Group Discussion process will require human resource from judges and court staff at three levels:

- Leadership:** ownership and leadership from the most senior members of the judiciary is required. This includes commitment from the Chief Justice and other senior members of the management team. In most cases the Chief Justice or another senior judge, should open focus group discussions.
- Implementation:** the court will need to dedicate some staff resources to the stakeholder focus group discussion process. Courts can either facilitate focus group discussions themselves or identify a skilled facilitator. Both have advantages and disadvantages. A facilitator from the court will add increased legitimacy to the process. However, people may feel more comfortable speaking to a trained facilitator, especially if providing constructive criticism of the court. If court staff facilitate the discussions this should be done by senior members of the court registry staff. Irrespective, court registry staff will need to be involved in the design and preparation of the focus group discussions.
- Support:** judicial officers across all levels should be made aware of the process and the objectives of the focus group discussions. It is important to obtain their support for the discussions and also to reassure judicial officers that the purpose is to strengthen service delivery rather than assess the performance of particular judges.

Where possible, judicial officers should not conduct focus group discussions themselves. If judges are involved it will limit the amount of objective feedback from participants on quality of legal services. Participants might also become too focused on individual court cases rather than on broader policy issues. The best practice is for a judge to be present at the opening and introduce the discussion, then leave and allow the participants to continue the discussion with the facilitator.

### 3.6 Preparing the Discussions and Drafting a Questionnaire

The Stakeholder Focus Group Discussion process involves courts hosting three to five detailed discussions with representatives from different interest groups. There are two aspects to this: the substantive content and the logistical arrangements.

#### 3.6.1 Preparing the Substance

Focus Group Discussions are semi-structured discussions. This means that the objective will be to obtain responses across a number of key issues. However, the discussions should be open and should not follow a rigid format.

Prior to the Focus Group Discussions the court will want to draft a broader outline of a questionnaire for the discussions. A draft questionnaire was prepared for the assessment in Tuvalu.

It is best to test the Questionnaire Guide through several 'pilot' discussions. In Tuvalu, the field guide was tested with discussions with Island Court judges and Land Court judges prior to being used for community consultations. On each occasion it was updated and questions were amended or deleted following the tests.

Testing the Questionnaire Guide also provides the facilitator with an opportunity to become familiar with the approach and the questions they will be asking. This is crucial to ensure the facilitator is comfortable with implementing the Guide.

#### 3.6.2 Preparing the Logistics

A Focus Group Discussion should be held for each Stakeholder Group identified. Ideally, this would bring together representatives from more than one organisation.

The ideal number of participants for each focus group discussion is between five to ten people. Any more than ten people and the session will become difficult to facilitate. It will also limit the opportunity for everyone to participate.

Invitations to participants should be sent in advance. The invitation should include some explanation of the objective of the discussion, providing participants with time beforehand to consider the issues and prepare for the meeting.

As Focus Group Discussions will generally last approximately two to three hours, they should be held in a location that is comfortable and convenient to the participants. The location should encourage open discussion. In many instances, the court will have facilities that can be used for the discussion. In some countries, where budgets exist, it will be more appropriate to hire seminar or workshop facilities.

The actual resource costs involved in hosting the focus group discussions will vary depending on the jurisdiction. It may be possible to minimize costs by using court facilities. Costs involved could include:

- Hire of seminar/workshop facilities to host focus group discussions;
- Travel or per diem costs for participants involved in the discussions, although this is not generally recommended as it creates an incentive for groups to participate; and
- In some instances it may be useful to recruit a consultant to assist in the facilitation of the focus group discussions.



### Compensating Participants?

Should participants be paid? Providing payments to participants has two negative aspects. First, it affects objectiveness. They are more likely to provide answers the facilitator is after because they are receiving remuneration. Second, it can lead to expectations that programmes should only operate if they are associated with payments. This reduces community commitment to the results.

On the other hand, there is a need to acknowledge that people are taking time out of their busy schedules to participate. In some countries in the region, it has also become common practise to provide allowances for participation.

This issue arose in the course of organising Focus Group Discussions (FGDs) in Tuvalu. For meetings with Island Court and Land Court judges it was agreed that they would be reimbursed equivalent to their sitting fees. For FGDs with community groups a contribution was made to the community group organisation. Another preferred approach is to provide an allocation for lunch and a transport allowance if required. This can be done in recognition of their participation in the meeting.

## 3.7 Conducting the Focus Group Discussion

The agenda should include the following aspects:

- i. An opening by either the Chief Justice or a senior judge explaining the purpose of the Focus Group Discussions;
- ii. An introductory session that allows participants to introduce themselves and make preliminary opening comments;
- iii. Facilitated questioning across the key priority areas identified by the Court;
- iv. An opportunity for participants to raise issues that may not have been covered; and
- v. Closing remarks including summary on how information will be used.

At least two court staff will be required to participate through the whole Focus Group Discussion: a facilitator and a note-taker. Focus Group Discussions will ideally be no shorter than one hour and no longer than three hours. In Tuvalu, two hours was allocated for each Focus Group Discussion.

It is important to try and encourage all participants to share their opinions throughout the session. The facilitator plays an important role in providing everyone with an opportunity to contribute equally.

It is important also to ensure that the discussion does not become focused on individual cases. It is fine to use cases as an example of particular issues. However, the Focus Group Discussions cannot review case decisions or assess performance on particular cases. It is important to emphasize this at the beginning of the session and to remind participants if too much time is spent discussing individual cases.

### Tips for Conducting Successful Focus Group Discussions

There are a number of useful tricks to facilitating Focus Group Discussions. Facilitators should:

- i. Be well prepared and familiar with the questionnaire. This encourages a more free flowing conversation;
- ii. Encourage an open conversation. This includes ensuring a comfortable setting and also opening the discussion in a way that encourages informality and a relaxed atmosphere;
- iii. View the questionnaire as a tool that is not set in stone. Flexibility is required, allowing the conversation to take its course; and
- iv. At the same time, the facilitator needs to balance a listening role with a guiding role. If a few people are dominating the conversation or too much time is spent on certain issues the facilitator needs to take control of the discussion and guide it forward.

It can be useful to set guidelines at the beginning of the conversation. In Tuvalu the following guidelines were introduced to participants:

- i. The FGD aimed to receive feedback on different issues, NOT to discuss the merits of individual cases;
- ii. Everyone was encouraged to participate and have an equal say;
- iii. The information would be treated in confidence. Notes were taken but names would not be used in reports; and
- iv. There were no right or wrong answers. Everyone's views are equally important and should be respected.

Finally, the process of conducting a Focus Group Discussion can also be a useful exercise for educating the public about the work of the judiciary. Experience from Tuvalu, as shown in the box below, highlighted that people are keen to obtain more information on the court system and used the focus group discussions to raise their own questions.

### Two-Way Sharing of Information in Tuvalu

In February 2013, a Focus Group Discussion was held with community members from a village at the northern end of Funafuti. Thirteen people turned up to the discussion, held in the church.

As the facilitator worked his way through the questions, the participants were keen to ask a few themselves. A lady wanted to know how a case involving reckless driving causing death did not go to court and was asking if it was now possible to negotiate resolutions to these cases. A man asked for an explanation of the difference between the Island Court and the Land Court. Another woman had a few questions to ask about the adoption process.

The difficulty comes in trying to balance these general questions with specific advice about particular cases. At the close of the discussion, one of the participants used the opportunity to seek advice on a land case, involving payment of rent for the land the church was on.

## 3.8 Documenting Findings

Detailed notes should be made for each of the Focus Group Discussions. Notes should preferably be typed and saved accordingly so they can be referred to again in the future.

At the completion of all of the Focus Group Discussions, it will be necessary to compare the findings from each discussion. Courts should document these in the form of a summary report that can be circulated for comment within the court. Some courts may also feel comfortable sharing this summary with the groups who participated in the Stakeholder Focus Group Discussion.

## 4 Access to Justice Surveys

This section will describe the benefits of Access to Justice surveys and provide some introductory comments on planning and conducting Access to Justice surveys. The section covers the following areas:

- What is an Access to Justice survey?
- What Approaches exist to conducting surveys
- Planning and Implementing an Access to Justice survey

The section will use several examples of surveys that have been conducted in the region to guide this discussion.

### 4.1 What is an Access to Justice Survey?

An Access to Justice survey collects information from a broad range of respondents to assist justice sector agencies plan and deliver their services based on actual need.

The most rigorous (and expensive) type of survey is a randomly selected, representative sample of the population based on a mathematical formula. The information obtained can then be viewed as being representative of the population. Other survey approaches randomly select respondents from the population or target groups. These approaches also provide important information, often at a much cheaper cost.

As opposed to Focus Group Discussions, a survey is generally quantitative in nature. Information that is collected is in response to fixed questions. In most cases, respondents will need to choose responses from a number of possible options. This allows the responses to be compiled and provides an overall picture. If the survey is broad enough it also allows for responses to be compared between different groups of people. This can be particularly important because it highlights areas where people may be missing out on justice services.

### Strengths and Weaknesses of Access to Justice Surveys

Access to Justice surveys are not recommended for all countries in the Pacific. The list below identifies some benefits and weaknesses of using a survey-type approach.	
Benefits	Weaknesses
<ul style="list-style-type: none"> <li>• Greater ability to capture views of broad section of population, including marginalised groups;</li> </ul>	<ul style="list-style-type: none"> <li>• Is expensive and time consuming to implement;</li> </ul>
<ul style="list-style-type: none"> <li>• Allows for analysis between groups or types of users;</li> </ul>	<ul style="list-style-type: none"> <li>• Requires specialized expertise and detailed attention in designing tools;</li> </ul>
<ul style="list-style-type: none"> <li>• More empirically rigorous – provides more reliable data;</li> </ul>	<ul style="list-style-type: none"> <li>• Doesn't explain <i>why</i> particular findings occur, only documents that they do occur;</li> </ul>
<ul style="list-style-type: none"> <li>• Can allow for cross-reference to broader data sources; and</li> </ul>	<ul style="list-style-type: none"> <li>• Interpretation of results subject to bias; and</li> </ul>
<ul style="list-style-type: none"> <li>• Provides data on a broad range of issues.</li> </ul>	<ul style="list-style-type: none"> <li>• To be representative in small populations requires a large sample, in proportion to population size.</li> </ul>

## 4.2 Approaches to Conducting Access to Justice Surveys

There are a broad range of options available for conducting Access to Justice surveys. This toolkit outlines three categories of approaches that have been taken and includes examples for each category.

More detailed information about the different tools available, along with links to examples mentioned below, are provided in the Annex.

### 4.2.1 Inclusion of Justice Issues in Broader Social/Economic Surveys

There are a number of examples, including examples in the region, where access to justice issues have been covered in broader social or economic surveys. Governments, often with the support of donors, conduct household surveys to measure progress on economic and/or social indicators. Over the last decade, the surveys are increasingly including sections that cover dispute resolution, access to legal services or related issues. The box below provides three examples:

#### Three Examples of Justice Issues Covered by Broader Surveys:

##### i. Papua New Guinea's Household Income & Expenditure Survey (HIES), 2009

In 2009, PNG's National Statistical Office conducted a nation-wide HIES Survey, with support from the World Bank. This survey is statistically representative of the population. The substantive part of the survey covered 10 sections including: income and expenditure, access to health and education and housing. One section was focused on dispute resolution. The section asked respondents to identify (against a list) actual disputes experienced in the past 12 months, who was involved in the dispute and its impact. Respondents were asked more detailed questions on the most serious dispute they had experienced. This included: who they asked for advice (and why), how they sought to resolve the dispute, the cost of resolution and their satisfaction with the resolution process.

##### ii. People's Survey in Solomon Islands, 2011

Introduced under RAMSI's engagement in Solomon Islands, the People's Survey is an annual stocktake of progress across a range of issues. The 2011 survey gathered people's perceptions on a range of economic, public service delivery, governance and law and justice issues. Of the nine substantive sections in 2011, two focused specifically on justice issues: Section D (Safety) and Section I (Resolution of Disputes). Topics include perceptions of justice sector actors; causes of conflict; frequency of disputes; dispute resolution processes; and costs of resolving disputes. The survey uses both quantitative and qualitative tools. It gathers data primarily on perceptions rather than actual experience (with the exception of several questions on disputes in Section I). The survey is driven by RAMSI and it is unclear to what extent Justice Sector agencies use the results.

##### iii. Demographic & Health Survey, Marshall Islands, 2007

The Republic of Marshall Islands was one of four countries to conduct comprehensive demographic and health surveys in the Pacific in 2007. The surveys were supported by ADB. In the Marshall Islands the Government's Economic Policy, Planning & Statistics Office (EPPSO) implemented the survey. The survey was quantitative with a sample representative of the

As the examples above indicate, one of the challenges with sections included in broader surveys is that it reduces ownership. On justice issues, for example, courts would be less involved in the design of the survey and, as a result, less interested in the results. All of the surveys above are of this is that courts, and other justice sector agencies, are less involved in the design and less committed to implementing the findings.

### 4.2.2 Justice Sector-Wide Surveys

A number of countries undertake Access to Justice surveys at a sector-wide level. The surveys frequently cover a broad range of topics with the results of interest to the judiciary, other justice sector agencies, civil society and the legal profession more broadly. These forms of surveys are becoming increasingly common.

In the United States, the United Kingdom and Australia, sector-wide Access to Justice assessments are normally carried out by civil society organisations. The results are presented as recommendations to courts and other justice sector agencies. The box below describes the recently launched “Legal Need in Australia” survey conducted by the New South Wales Law and Justice Foundation (LJF).

#### **Legal Australia-Wide Survey: Legal Need in Australia, 2012**

In 2012, the NSW LJF published its report on legal needs in Australia. The report draws on telephone interviews with over 20,000 respondents. Results are representative for each state. Respondents were asked about their experiences relating to 129 different types of legal problems across 12 broad categories. In addition, information on the characteristics of legal problems and demographic information was collected. The demographic information allows the report to make findings specific to the needs of particular groups. Those with the most significant needs were: people with a disability, indigenous people, the unemployed, single parents, people living in disadvantaged housing and people living primarily on government payments.

The reports main key finding was the important link between legal problems and non-legal needs. This led to recommendations to increase distribution of legal information through non-legal service providers (e.g. health, welfare, housing) and to ensure legal service providers can better advise clients about other non-legal services available, including through stronger coordination between legal agencies and other human service providers.

There are numerous examples of justice-sector wide surveys conducted in developing countries, including a wide range of Access to Justice surveys. Most of these surveys are conducted for donor agencies and the findings are generally used to design donor programs. A UNDP review of 23 Access to Justice assessments that it has supported in the Asia-Pacific region, documents examples of some of these surveys. To date, none of these assessments have been conducted in countries in the Pacific.

### 4.2.3 Surveys focusing on Specific Issues

The final approach is to conduct surveys focusing on specific issues. There are numerous examples of this type of approach, including several from the Pacific. The Pacific surveys have been implemented by other justice sector agencies. Examples include the series of “Community Crime Victimization Surveys” conducted by the police in urban centres in PNG and discussed in the box below.

#### **Lae Urban Community Crime Victimisation Survey, 2010**

The PNG Government’s Law and Justice Sector Secretariat conducted a survey on community perceptions of crime and the level, extent and type of crime in the urban centre of Lae in 2010. This included data on community views about justice sector agencies. 382 respondents were selected using the 2000 Census and previous surveys to ensure different urban areas and age-brackets were covered. Survey results showed an increase in crime across most of the categories covered.

This was the third time the survey was done in Lae. Surveys are also used in Kokopo and National Capital District. This allows the Government to compare results over time and to allocate resources to each of the areas and design strategies to target specific types of crime based on identified need.



There are very few examples of courts using targeted surveys to support their activities in the Pacific. A very small pilot was developed and tested under PJDP in the Marshall Islands in 2011. The box below describes that experience.

### **Piloting an Access to Justice Survey in the Marshall Islands**

As part of research conducted under Phase 1 of PJDP a small survey was designed and tested in Majuro, Marshall Islands. The survey was divided into three sections: (i) demographic information; (ii) legal knowledge and access to information; and (iii) experience of actual disputes. The survey questions were designed following interviews with a number of stakeholders and incorporated requests from the judiciary to examine issues relating to land disputes. The survey was implemented primarily by a clerk of the court in Marshallese with assistance from the adviser. Respondents were selected randomly from three geographic locations in Majuro representing different socio-economic characteristics.

Several interesting findings arose from the survey. Over 60% of households who responded had no formal right to land they lived on. They were living on land at the invitation of the formal landowners and if they experienced disputes would have limited ability to bring their dispute to court. This confirmed other research on socio-economic issues in urban areas of the Marshall Islands. The main type of disputes experienced by respondents were, equally, fighting, land, domestic violence and debt problems and a number of these disputes remained unresolved or the respondents did not follow up on complaints. Respondents identified information on family issues (e.g. adoption, divorce) as being their primary need followed by land and crime. Community leaders and the radio were identified as the most effective means of distributing information.

## **4.3 Planning and Implementing an Access to Justice Survey – Issues for Consideration**

Implementing an Access to Justice survey can be a complex undertaking. In most cases it will involve significant effort and, depending on the method adopted, financial commitment. For this reason, it is crucial upfront to determine the aim of the survey. All other aspects of preparing and conducting a survey will be influenced by the aim. This section will outline some of the issues involved in planning and implementing an Access to Justice survey.

### **4.3.1 Defining the Purpose of an Access to Justice Society**

Access to Justice surveys can address a number of purposes for courts. For example, they can provide courts with an overall picture of service delivery and issues faced by people in accessing courts. Partnering with other justice sector agencies, they can identify key access to justice issues more broadly. They can also focus on specific issues or groups of people and assist courts in developing relevant policies to address those issues.

Initial Access to Justice surveys are generally undertaken at a sector-wide level. This allows courts to obtain an overall picture of how people view the justice system and justice needs. It also ensures that areas are not overlooked purely because questions were not asked in relation to those areas. In countries where donors support these surveys, donors also prefer overall surveys because these can be used to assist in identifying areas of support for donor programs.

Courts may wish to focus surveys on specific issues or groups of people. This approach is generally undertaken either where there are specific, identifiable issues that need to be addressed or there are donors or civil society organisations with a specific focus willing to support the court's work.

Where courts undertake Stakeholder Focus Group Discussions as a first step this will assist in both determining if they need to undertake broader Access to Justice surveys and identifying the focus of those surveys.

#### 4.3.2 Defining the Survey Method

Defining the survey method will often depend on two main factors. First, the purpose of the survey will determine what type of survey needs to be implemented. Second, the budget available will also affect the approach that is taken.

Surveys that are representative of the population at large or specific geographic or socio-economic groups will provide the most accurate data and be most influential. However, implementing these surveys requires specific technical expertise. These types of surveys are also generally expensive and there are limited organisations in the Pacific with experience in undertaking these types of surveys.

Courts may wish to start with more targeted or less statistically valid surveys that provide a snapshot of the population without being definitive.

#### 4.3.3 Resourcing and Access to Justice Survey

As has been noted above, implementing Access to Justice surveys, depending on the approach taken, can be expensive exercises. Courts will rarely have the technical capacity in-house to undertake the surveys and as a result will need to seek assistance from external parties.

A starting point for seeking information on surveys may be to contact government departments that frequently undertake surveys (e.g. departments responsible for statistics or research) or university faculties with experience in this area.

As has been noted above, it may be possible to 'piggy back' on surveys that are already planned on other issues. This means, that modules on access to justice would then be added to survey questionnaires that cover a broader range of issues. This approach can be effective for a number of reasons. It means that costs can be shared between a number of parties. It also means that the court can draw on the technical expertise of other actors in developing and implementing surveys. It does however, limit ownership of the court in conducting the surveys and means that the court is dependent on other actors for timing and content.

For countries with significant donor activity, it may be possible to engage donors to support implementation of surveys. Donors are progressively seeking to develop and monitor programs based on a more reliable evidence base. Quantifiable analysis in the form of survey results can provide this evidence base and as a result donors may be interested in supporting these kinds of research. Donors already support access to justice surveys in the Solomon Islands (through the People's Survey) and in Papua New Guinea (where a dispute resolution section exists in a World Bank supported Households Income and Expenditure Survey).

#### 4.3.4 Drafting a Survey Questionnaire

It is important to emphasise several key issues when designing a survey.

**First**, surveys must be developed to respond to the local context. This means both asking questions in a culturally appropriate manner and ensuring the substance is applicable to the local context. Generally the starting point for developing surveys is to look at other examples. There are benefits in ensuring consistency across countries because it means results can be compared. However, this must be balanced with ensuring appropriateness in the local context. For this reason surveys must be field tested prior to implementation.

## Examples of Access to Justice Surveys

Full copies of the following survey questionnaires are provided in the Annex:

- i. **Marshall Islands Judiciary ‘pilot’ survey PJDP:** this survey questionnaire was designed specifically for the High Court of the Republic of the Marshall Islands in relation to the PJDP Customary Dispute Resolution Research.
- ii. **People’s Survey, the Solomon Islands:** this survey provides an example of access to justice and dispute resolution questions inserted into a broader governance survey questionnaire.
- iii. **Household Income and Expenditure Survey, PNG:** this survey provides an example of dispute resolution sections inserted into a broader socio-economic survey questionnaire.
- iv. **Legal Knowledge, Attitudes and Perceptions Survey, Open Society Justice Initiative:** this survey is a civil society designed survey for measuring access to justice from a community perspective.

**Second**, it is a constant balancing act between wanting to gather as much information as possible and ensuring that the surveys are easy to administer. Larger scale quantitative surveys can take as long as two to three hours to administer. This places a significant burden on respondents. Except where modules are included in broader surveys, it is good practise to ensure surveys can be completed in between 30-60 minutes by respondents.

**Third**, people rarely enjoy talking about justice issues. If you are talking to strangers about justice issues they often link this to problems. For this reason, it is crucial that surveys are clearly explained to respondents, that information is kept confidential and that surveys are administered in a comfortable and private environment. It can also help to commence the survey with less confronting questions prior to discussing issues like actual disputes experienced.

**Fourth**, it is useful to ensure that accurate socio-demographic data is collected. This allows you to compare data across categories of people when analysing results and identifying trends for specific or vulnerable groups. A good practice is to examine the background questions in other social or economic surveys conducted in your country.

## Annex F: Access to Justice Overview to the Cook Island Indicators



### Sex and juvenile disaggregated data

For Sexual and Gender Based Violence cases, present data on cases filed and finalised, for the last five years if available, by:

- In criminal matters (i) sex of offender (ii) sex of survivor/victim;
- In juvenile matters involving children under 18 years (i) a child is a perpetrator and (ii) a child is a victim/survivor in a criminal matter;
- In family violence matters the number of Family Protection Orders where the applicant/ survivor/victim is a woman, child or man;
- The average final sentence in violence cases in which the survivor/ victim is a woman or child (The ICAAD Track GBV research will present this information for sexual assault, murder/manslaughter and domestic violence cases).

In family law matters, present data on cases filed and finalised, for the last five years if available, by (i) sex of applicant (ii) sex of respondent.



### Cook Island Indicator 5

Disaggregate cases filed by:

- Number of female applicants that are granted a court fee waiver in their civil cases; and
- Number of male applicants that are granted a court fee waiver in their civil cases.



### Cook Island Indicator 6

Disaggregate cases filed by:

- Number and percentage of criminal cases disposed through a Circuit Court;
- Number and percentage of family cases disposed through a Circuit Court;
- Number and percentage of other civil cases disposed through a Circuit Court; and
- Disaggregate family and other civil cases disposed through a Circuit Court by the sex of the applicant party.



### Cook Island Indicator 7

Disaggregate cases filed by:

- Number and percentage of criminal cases where the defendant receives legal aid;
- Number and percentage of family cases where the applicant party receives legal aid;
- Number and percentage of other civil cases where the applicant party receives legal aid; and
- Number and percentage of women who receive legal aid to assist them to bring their family law or civil cases.



### Cook Island Indicator 8

In addition to a general selection on client complaint and feedback mechanisms related to court staff and judicial officers, include:

- Results of client satisfaction surveys and actions the court has taken in response; and
- Consider targeted court user surveys focussing on a part of the courts work where there are a significant number of applicants or victims/survivors who are women, children or people living with a disability.



### Cook Island Indicator 13

Court produces or contributes to an Annual Report that is publicly available in the following year.

Present last five years of information on Court Annual Reports and how they are published.

2011 on PacLII	2012 on PacLII	2013 on PacLII	2014 on PacLII	2015 published but not on PacLII



### Cook Island Indicator 14

Information on court services that is publicly available, including information on how to bring:

- Family Law Cases; and
- Family Protection Orders/ Restraining Orders.

How is this information published: on PacLII, on noticeboards, on court websites?





### Cook Island Indicator 15

Court publishes judgments on the Internet (through PacLII or their own website).

Include information on the publication on PacLII or a court website (from the last reporting years) on:

- The number and percentage of criminal cases finalised in 2016 that were published on PacLII or a court website;
- The number and percentage of family cases finalised in 2016 that were published on PacLII or a court website; and
- The number and percentage of civil cases finalised in 2016 that were published on PacLII or a court website.

In the Magistrates Court:

- The number and percentage of criminal cases finalised in 2016 that were published on PacLII or a court website;
- The number and percentage of family cases finalised in 2016 that were published on PacLII or a court website; and
- The number and percentage of civil cases finalised in 2016 that were published on PacLII or a court website.



### Disability Inclusive Courts

Present disaggregated data on the number of clients who needed assistance:

- To locate, enter and navigate court proceedings within the court-room;
- To read a document;
- To hear what is being said in court; and
- To understand what is happening in the court hearing as well as what preparation may be required before the hearing day.

Consider including a narrative on the ways that the court engaged with CSOs working with people living with a disability to identify how to make the services of the court more disability-inclusive.



### Collaborating with Others

A narrative of the specific services provided by courts for women and girls who are survivors of violence, as well as those services that are undertaken in collaboration with Government agencies and/or Civil Society Organisations.

This narrative can also highlight multi-sectoral working meetings that the court leadership has arranged on family law and violence against women and children issues with key government agencies and CSOs to seek feedback on how the current procedures are working and barriers faced by women, children and other vulnerable groups in accessing the courts for their cases.

Toolkits are evolving and changes may be made in future versions. For the latest version of the Toolkits refer to the website <http://www.fedcourt.gov.au/pjsi/resources/toolkits>

Note: While every effort has been made to produce informative and educative tools, the applicability of these may vary depending on country and regional circumstances.



# Gender and Family Violence Toolkit

PJSI Toolkits are available on: <http://www.fedcourt.gov.au/pjsi/resources/toolkits>

