

Access to legal assistance

Access to Justice Webinar Series

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Welcome and Introduction

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So what is Access to Justice?

“[t]he ability of people to seek & obtain a remedy through formal or informal institutions of justice, & in conformity with human rights standards.”
(UNDP)

The right to **legal aid** is part of the right to Access to Justice...



The right to access justice has developed over time from **human rights treaties**



- Universal Declaration Human Rights (**UDHR**)
- International Covenant on Civil & Political Rights (**ICCPR**)
- International Covenant on Economic Social & Cultural Rights (**ICESCR**)
- International Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**)
- Convention on the Rights of the Child (**CRC**)
- Convention on the Rights of People with Disabilities (**CRPD**)
 - Goes furthest: right to legal aid; promotion of access to justice for all

Many human rights obligations are also key Constitutional rights

- Right to **equality before the law without discrimination**
- **Equal protection** under the law
- Right to an **effective remedy**, which must be:
“accessible, affordable, timely and effective”
- Right to a **fair and public hearing** by an **independent, impartial tribunal** and **presumption of innocence**
- Right to an **effective defence**



Access to justice has now become a **fundamental right** in itself, needed to:

- Protect and promote all other human rights
- Support democratic governance and rule of law
- Combat social and economic disadvantage
- Make our communities fairer, safer and happier



Unmet legal need:

World Justice Project found there are 5 billion people who:

- Cannot obtain justice for everyday problems
- Are excluded from the opportunity the law provides
- Live in extreme conditions of injustice

The Pacific: hard to quantify, but high rates of unmet need (rural, women, children, disability)

- 98% of women and children who experience violence in Vanuatu do not access the formal justice system.
- People in Fiji have around 100,000 legal problems every year, yet 8/10 people use self-help not courts, and 8/10 legal problems remain unresolved.

Source: Access to justice surveys Fiji, Solomon Islands, Vanuatu.



Why legal aid matters

- Whole justice system assumes parties know the law and can make out their own case
- Better court decisions: less errors and miscarriages of justice
- Less distortion of court role and better use of court time
- Offers people **real choice in justice pathway**: less pressure to use non-state justice process which may not protect human rights
- Legal aid provides one of few bridges connecting state to citizens in some Pacific countries
- Contributes to **social inclusion, social justice, fairness and sustainable development** in Pacific societies



Snapshot: Pacific legal frameworks



- 9/15 Pacific countries: constitutional provisions for legal aid in criminal defence, prioritised
- 3/4 Pacific countries: dedicated legal aid laws or included in other laws
- Approx 1/2 include legal aid eligibility for civil cases, de-prioritised
- Legal aid services: in short supply, overstretched, not meeting demand
- Eligibility: means, 'seriousness' and merit tests
- Best practices: Fiji, only Pacific country with:
 - Constitutional requirement 'adequate resourcing' of legal aid
 - Measures legal aid funding per capita (2017, USD\$2.87 per capita, increased 60% in 2019 to USD\$4.60)

Gender Inequality Impacts

- Most legal aid directed to criminal defence
 - 92% male beneficiaries
- Women disadvantaged re access to legal aid
 - Less available for family protection and family law
- Gender breakdown legal aid lawyers not known
- Growing (still limited) specialised services for family violence, linked to other support services
- Mainly funded by donors
- Some now state funded (e.g., Tonga)




Coverage:

- Concentrated in capitals
 - Most rural people cannot access
- Top ratios of legal aid lawyers per capita:
 - Palau: 1:3,000
 - Nauru 1:5,400
 - Cook Islands: 1:6,000
 - Fiji 1:10,229
- Most use **traditional service model** (lawyer representation in courts)
- Increasing use of paralegals and non-law qualified entry to law
- Limited resources for legal awareness and outreach – case pressures
- Limited grassroots engagement for common local disputes



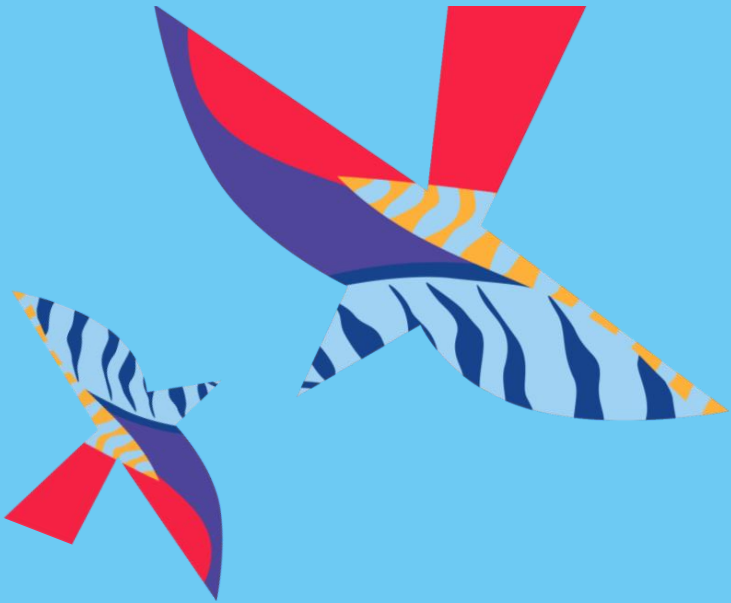
Legal Aid:

5 models in use in the Pacific



- **Public solicitor/defender model**
 - single or multi-state
- **Legal Aid Fund** pays private practitioners for services
- **NGO provided** legal aid services
- **Direct court appointment** of lawyer with/without MOU with law society
- ***Pro bono* schemes** and/or bar associations/student clinics
- **Combination** of above

Public solicitor model



Common model for larger countries

- PNG, Solomon Islands, Fiji
- **Some small** (e.g., Palau)

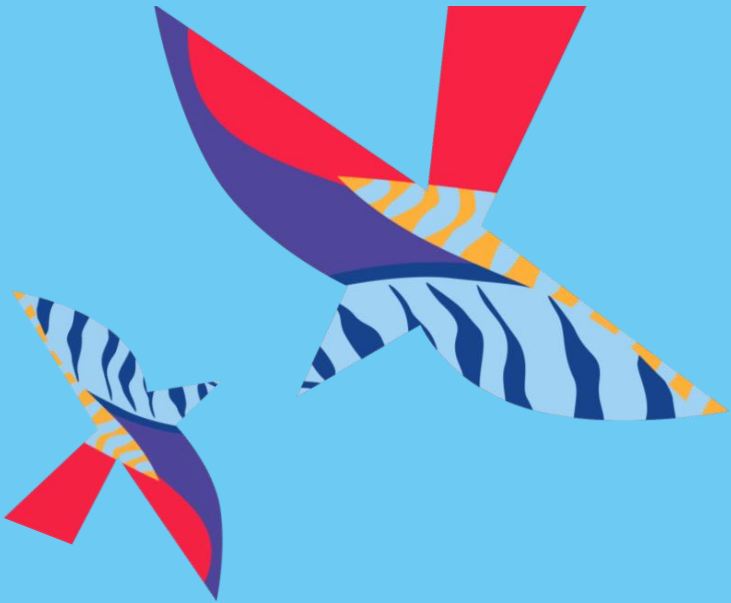
Some have **constitutional independence**

- PNG, Fiji
- Or **legal independence** (Marshall Islands)

Structural Variations:

- For example, Samoa: Community Law Centre reports to MoJ but headed by independent Public Advocate appointed by Head of State, governed by an oversight committee (CEO MoJ, Minister nominee and head of Law Society)

Public solicitor model



Funding:

- Directly from Parliament (PNG, Fiji) or
- From Ministry (e.g., Solomon Islands)

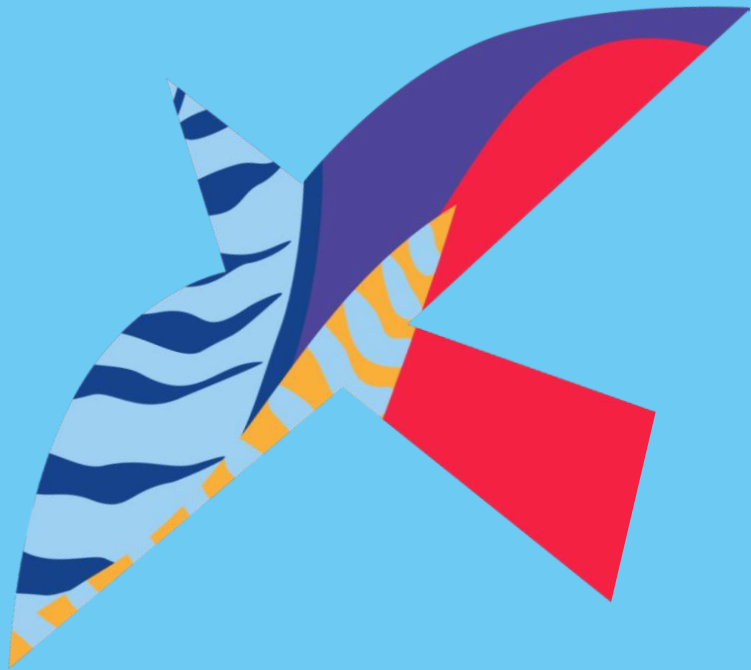
Others **functionally independent but financially dependent**

- I.e., funded via Ministry of Justice (Solomon Islands, Kiribati)

Staff employment status:

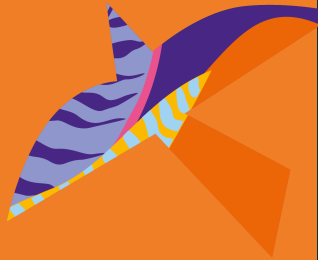
- Civil servants except Commission in Fiji (independent)

Best practice: Fiji Legal Aid Commission



- Services in 16 locations across Fiji
- Telephone hotline or in-person services
- Online information, application process, advice bot
- Duty lawyers: one off assistance at court
- Outreach to prisons, other institutions
- Specialised legal casework teams in criminal, family and civil law
- Private lawyer referral panels
- Legal information services
- Legal education services

Multi-state model best practice: Micronesian Legal Services Corporation



Innovative civil legal aid model established 50 years ago.

Coverage: FSM, Marshall Islands, Palau, Northern Mariana Islands & Guam(US territories)

Cost effective: pooling of resources for small countries

Focus on civil law, de-prioritized in other models

Economy of scale: can offer wider range of services and opportunities for lawyers, PD and advancement/transfer

Relevance: Can focus on common regional issues (such as violence against women, shipping, fishing, resource companies, environmental law, pollution)

Challenges: Majority US funded with national contributions. Need clear funding source

Court direct appointment model



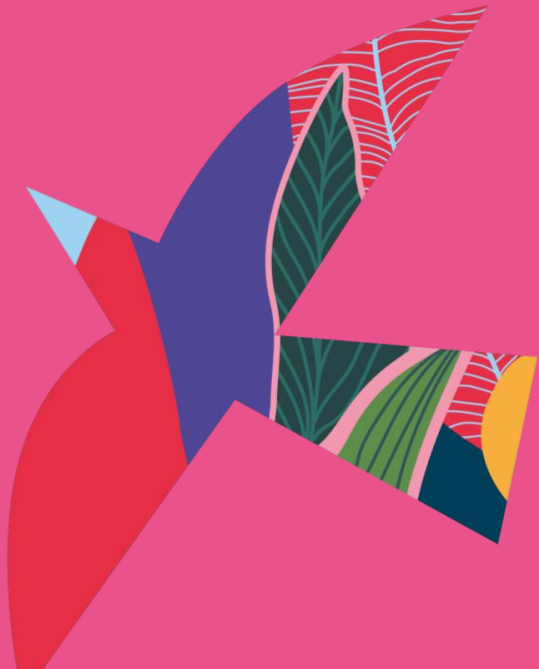
- 'Judicial legal aid': Court appoints lawyers on ad hoc basis, inherent court jurisdiction, where 'interests of justice' require
- Some courts have stipend funds for some payment
- Some legal aid laws empower Chief Justices to make rules for grants of legal aid to the poor (e.g., Fiji Legal Aid Act, CJ can establish committees and require lawyers to serve, advise and litigate for the poor)

NGO model

- **Donors fund NGOs**
- **Often specialised:** family violence (e.g., Fiji, Tonga, Solomon Islands)
- **Strengths:** community based, trauma informed, legal awareness raising, independence
- **Challenges:** sustainability of donor funds
- **Aim for transition to Govt funded** (Tonga)
- **Governance and capacity:** ability to operate at scale? Across wide range of legal needs?
- **Quality assurance challenges**



Best practice: Tonga Family Protection Legal Aid Centre



Strengths

- **Sustainability:** started as MoJ project funded by donors
- MoJ incremental responsibility for funding, fully as of 1/7/2022
- **Effective:** files 46% of family protection applications
- **Accessible:** offices in Tongatapu and new office in Vava'u, reach across several islands, hotline, referral
- **Collaborative:** with Court (data, coordination), other justice actors and NGOs
- **Challenges:** turnover of key staff

Pro bono law society model



Overview

Lawyers **voluntarily/required to help** to annually secure practicing certificate

Law Society/Bar Association runs scheme:

- Manage applications, assess eligibility, allocates lawyers, maintains quality control
- Provide training, mentoring and support to lawyers
- Can include **legal aid clinics and internships** provided by universities to expand capacity and build sustainability: USP

Incentives: Some countries provide tax deductions to lawyers for pro bono work

Benefits

- Low cost and helps community
- Builds capacity and reputation of legal profession: Sensitises lawyers to needs of disadvantaged
- **Law society schemes** (Kiribati) but strong interest other states

Pro bono law society model



Challenges

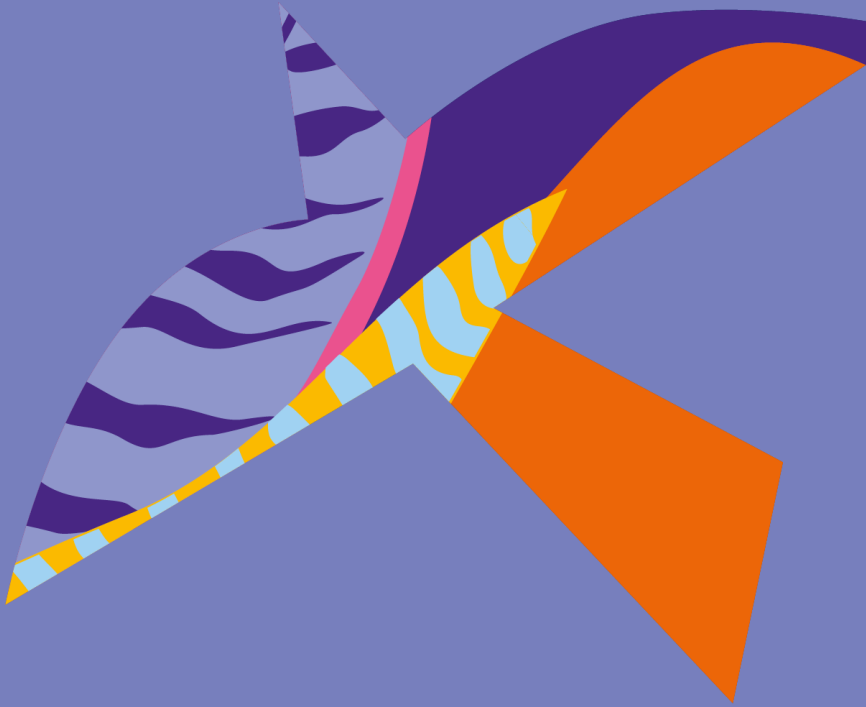
- **Resources:** to sustainably run schemes
- **Lawyers:** lack of, include Govt lawyers?
- **Fear:** pro bono undercuts lawyers' paid work
- **Equity:** sharing of load across the profession
- **Capacity:** Coverage? Scale? Complex cases? Never enough on it own but can help...
- **Governance:** Quality assurance, supervision, support and mentoring for junior lawyers and law students

Mixed models



- **Both salaried lawyers** for bulk of legal aid cases, trials, **supplemented by private lawyer panels to perform any overflow** of legal aid work
- Examples of countries using 'mixed models' (Fiji and Nauru)
- **Strengths:** "Best of both worlds"
- **Challenges:** Private lawyer funded work less effective in getting fastest outcomes and can be more expensive
- Need **capacity to govern and for quality assurance** in both public lawyers and private lawyers schemes

Legal Aid Fund Model



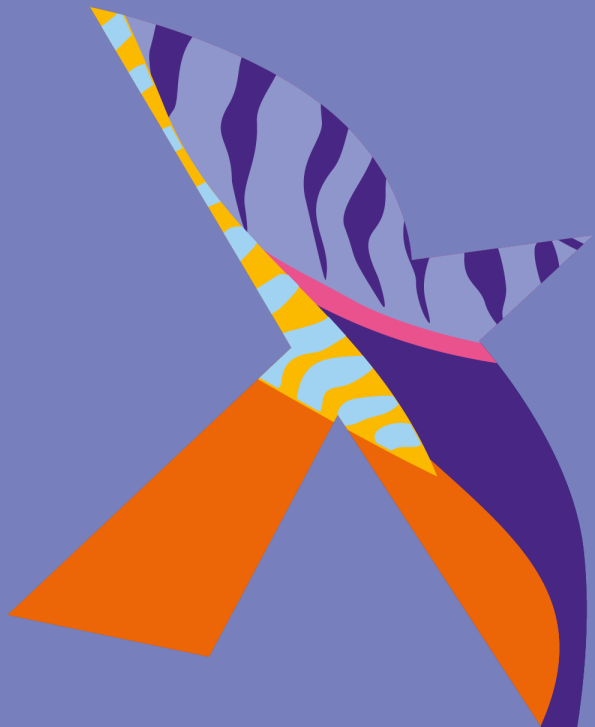
- Government funds, administered by **Courts** (Marshall Islands) or **Ministry of Justice** (Samoa).
- Administers panel or roster of lawyers and assigns cases **fixed cost (cap or max hourly rate) basis**. (Cook Islands and Tuvalu).
- Lawyers apply and are vetted (Fiji and Samoa) or participation **mandatory** all lawyers (Marshall Islands)
- **Benefits: More affordable** than salaried services **for smaller jurisdictions**
- **Challenges: Coverage:** Limited to lawyers' locations (capitals, districts), narrow case only service (no outreach clinics, legal education)
- **Cost “blow out” and competence risks**

Best practice: RMI Court run model Structure



- **Legal basis:** Judiciary Act, CJ can make **rules** regulating admission of attorneys, including pro bono requirements
- **Based on Court Orders:** 2016 and amended Order, 10/6/22
- **RMI judiciary adopted** American Bar Association's Model Rules of Professional Conduct: Rule 6.1
- **All lawyers give** 50+ hours per year pro bono, low fee
- **Legal challenge:** 2013 appeal by attorney dismissed. No further legal challenges since
- **Govt Funding:** first year received \$50k Parliamentary appropriation. Now receives \$15k as rest is self funding

Best practice: RMI Court run model Structure



Amended Legal Aid Order 10 June 2022

- **Accessible:** apply court form on website
- **Court decides application**, hearing or on papers; evidence of means, need (gap) and 'reasonable prospect of success'
- **Court appoints attorney** alphabetical list; evenly share number, types of cases; can skip name where conflict, need for special skills
- **If attorney refuses appointment**, pays \$1500 per year into fund. Failure to pay or act breaches rule 7 Rules Admission to Practice, cannot renew practicing certificate
- **Attorney paid** up to cap based on court approval of time records, receipts, monthly invoice. Max hourly rate \$75: land \$7500, crim \$5000, other \$3000.
- **Party to re-pay** up to 25% of any amounts recovered, as decided by court.

Conclusion on models:

- Need to draw on and coordinate all legal professional resources available
- Cannot wait for Govt to provide fully funded service BUT
- Still include institutional basis from outset for best chance of incremental sustainability
- Find best match of capacity, need and value for money, building institutionalised approaches for sustainability
- No 'one size fits all' but lots of experience in the Pacific



Discussion

- Do you think a court run legal aid fund model could be established and play a useful role in your country?
- What would be needed to make it happen?
- What legal aid model is available in your country?
- What observations do you have about its coverage, capacity and how gaps might be filled?



How courts can support expanded legal aid



How courts can support legal aid:

Courts can do a lot!

- Engage and provide 'in kind' support to law society
- Consider pro bono requirement for renewal legal practice
- Administer legal aid funds, lawyer roster, case allocation (RMI)
- Judge appointments with/without stipend fund
- Advocacy with Governments, donors: support legal aid
- Develop court services: unrepresented person focal points, 'self help' guides, information, volunteer accompaniment schemes



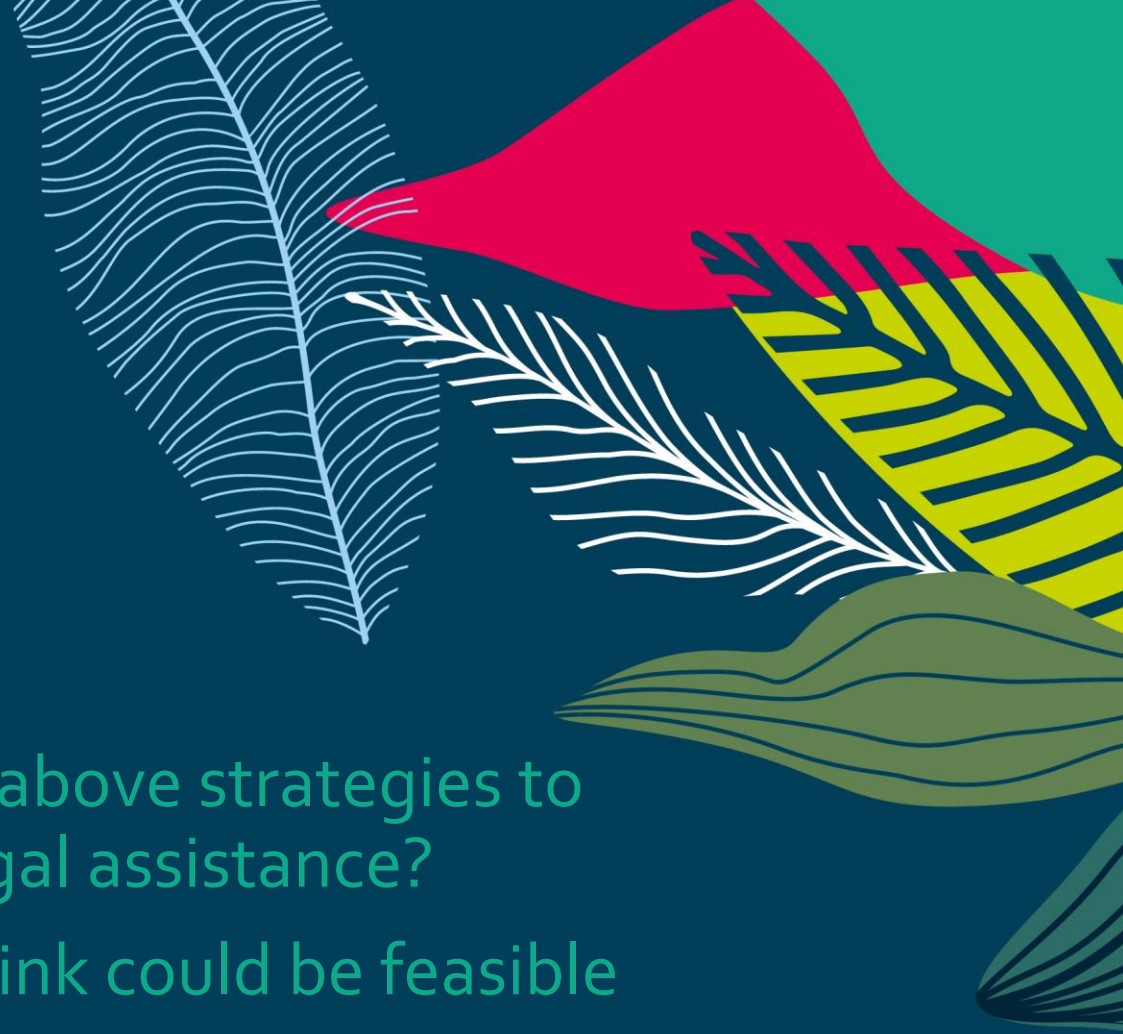
Court support to law society

- Agreement/MOU referral of pro bono cases
- 'In kind' support (i.e., space at court, including in districts, for free advice services, clinics or duty lawyers)
- Support for law society pro bono schemes, continuing professional development
- Joint court/law society community legal education, 'law week' promotions, inclusive approach to reduce costs for law society



Discussion

- Is your court engaged in any of the above strategies to expand support for legal aid and legal assistance?
- What further approaches do you think could be feasible in your country?



Regional support for legal aid?

- Scale is a challenge for many small countries
- Is there a need for further multi-state or regional support to: **build knowledge and have networking + cross-country resource opportunities for Pacific legal aid providers?**

Ideas include:

- Common skill training modules
- Community legal education materials
- Staff exchanges
- Strategies for common challenges
- Follow up from inaugural Legal Aid conference (Fiji 2019) to maintain contacts, momentum, development and exchange between legal aid actors



Discussion

- Is there a place for further multi-state or a regional legal aid support body?
- If so, what does it look like? Where should it sit and who should fund it?



Drawing the threads together

- Key points and ideas from discussions
- Sharing guidelines, tools, and resources developed by courts
- Identifying next steps



Thank you for
attending.

