The Pacific Islands Forum Secretariat (PIFS) wishes to thank the PILON Secretariat and the New Zealand Crown Law Office for the invitation to attend the 30th Annual Meeting of PILON. PIFS also wishes to place on record its appreciation for the arrangements for the meeting.

2. PIFS welcomes the opportunity to present a report on its activities that are of relevance to PILON. The report consists of the following sections:

   A. Regional cooperation in the legal sector
   B. Human rights and sexual and gender based violence
   C. Security, law enforcement and conflict prevention
   D. Trade and intellectual property
   E. Regional treaties

A. REGIONAL COOPERATION IN THE LEGAL SECTOR

Pacific Plan initiative – scoping study into possible regional approaches to supporting judicial and legislative drafting services in Forum Island countries

3. As PILON Members would be aware, PIFS is currently undertaking a scoping study into possible regional approaches to supporting judicial and legislative drafting services in Forum Island countries. This project seeks to advance Initiative 12.9 of the Pacific Plan, by which Leaders of the Pacific Islands Forum requested that the Forum:

   ‘Deepen regional cooperation between key actors in the legal sector in the region, including senior government law officers, legislative drafters and judges. Explore the possibilities for regional support, including through pooling of resources and regional integration, in legal institutions and mechanisms providing legislative services, and in the area of judiciaries, courts and tribunals.’

4. A report of the scoping study is close to finalisation and will shortly be submitted to Forum Members for their consideration and further direction.

5. In the interim, PIFS has prepared an overview of the key issues raised in the consultations for the scoping study (see Attachment A).
6. PIFS acknowledges those PILON members who participated in the in-country consultations, as well as those who responded to the study’s questionnaires. PIFS encourages the continuing participation of PILON members in the project so as to ensure the development of practical and effective recommendations to improving judicial and legislative drafting services in Forum Island countries.

**Register of appellate judges**

7. PIFS maintains a Regional Register of Appellate Judges. This is circulated to Forum Members and is updated annually, based on the information provided by Members as to judges (both sitting and retired) and other senior lawyers who are eligible and available to sit on the superior and appellate courts of Forum Members. The Register will be circulated to Members in early 2012 for updating.

**Legislative drafting assistance**

8. PIFS continues to provide legislative drafting assistance to Forum Members as required by regional mandates, such as the Honiara and Nasonini Declarations and/or domestic priorities. In 2011, legislative drafting assistance was provided to the Cook Islands, Nauru, Niue, Republic of Marshall Islands, Tuvalu and Vanuatu on matters ranging from amendments to counter terrorism and transnational organised crime legislation to climate change adaptation legislative measures such as Niue’s revised Water Bill. As part of its partnership with SPC/RRRT, PIFS also peer reviewed anti-domestic violence legislation currently being developed for Tuvalu

**Facilitation and support of regional legal training**

9. In November 2011, PIFS hosted in conjunction with the Secretariat of the Pacific Community Regional Rights Resource Team (SPC/RRRT) a regional human rights training workshop for lawyers and magistrates. Over twenty-five lawyers and a senior judge, representing the majority of Forum Member countries, participated in the four day workshop. The training covered a range of issues including discussions about the international system for the promotion and protection of human rights, as well as strategies to litigate human rights concerns at a national level. Specific attention was given to sexual and gender based violence and the human rights implications of climate change.

10. During 2011, PIFS continued to provide technical and financial support to the University of the South Pacific’s Professional Diploma in Legislative Drafting. PIFS’ scholarships supported 10 students to undertake the diploma this year. A total of 33 students undertook the PDLD course in 2011.

11. PIFS welcomes suggestions from Members as to training needs on priority regional legal issues and will work with Members and regional and international organisations to facilitate provision of relevant training.
B. HUMAN RIGHTS AND SEXUAL AND GENDER BASED VIOLENCE

12. In 2011, PIFS continued to provide assistance in conjunction with other regional organisations to Forum Island countries in relation to human rights matters. This work progresses Initiative 12.5 of the Pacific Plan which encourages Forum Members to ‘where appropriate, ratify and implement international and regional human rights conventions, covenants and agreements; and support for reporting and other requirements.’

**Assistance to Members with the UN Universal Periodic Review**

13. In partnership with SPC/RRRT and the UN Office of the High Commissioner for Human Rights (UNOHCHR), PIFS has provided assistance to Forum Island countries with their participation in the UN Universal Periodic Review (UPR) process. This assistance has included: convening national workshops to prepare government reports to the UN Human Rights Council; commenting on draft reports to ensure they meet UN reporting criteria; sourcing funding to assist Members to send government delegations to the UPR sessions in Geneva; and providing support to delegations in their appearances before the Human Rights Council.

14. From the perspective of PIFS, Forum Island countries’ participation in the UPR process has raised the profile of human rights within governments, and generated a better understanding of international rights standards and their relevance to national priorities for social, economic and governance reforms. Prior to the establishment of the UPR process, the participation of Forum Islands countries in international human rights reporting and monitoring mechanisms tended to be quite low. The participation of all Members in the UPR represents a significant advance in the development of the Pacific region’s commitment to international human rights standards, and was expressly acknowledged by Leaders at their 2011 meeting held in September in Auckland.

15. The next UPR reporting cycle commences in 2012, and the Forum Members scheduled to appear in the first session are Tonga, Tuvalu and Vanuatu. PIFS and regional partners will continue to provide assistance to Forum Island countries.

**Ratification and implementation assistance**

16. PIFS works with various Forum Island countries to progress ratification and implementation of international human rights conventions, including Cook Islands’ ratification and implementation of the Convention on the Rights of Peoples with Disabilities (CRPD), and Palau’s current process of considering ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

17. Assistance has also been provided to Members in their preparation of reports under international human rights conventions, for example Cook Islands’ report under the CRPD, and Kiribati’s report under the Convention on the Rights of the Child.

**Consultations on a regional human rights mechanism**

18. In partnership with the SPC/RRRT, PIFS convened a regional consultation to consider possible options for establishing a Pacific regional human rights mechanism, held in Suva, Fiji from 28 –30 November 2011.
19. The consultation was attended by members of parliament and officials of Forum Island countries, as well as representatives of civil society organizations. The consultation involved: i) the provision of information on existing and different national and regional human rights mechanisms; ii) an analysis of the merits of developing both national and regional human rights mechanisms; and iii) an exchange of views regarding a possible pathway for the establishment of a regional human rights mechanism for the Pacific. The consultations represent an initial step in advancing recommendations by the Forum Regional Security Committee (FRSC) that PIFS and SPC/RRRT initiate research and discussions about the potential for establishing a Pacific regional human rights mechanism.

**Pacific Human Rights Law Digest**

20. In November 2011, PIFS and SPC/RRRT jointly published the Third Volume of the *Pacific Human Rights Law Digest*. The Digest continues the practice of the previous two volumes in publishing summaries of leading cases from Pacific jurisdictions that illustrate important developments in the judicial application of human rights standards. The Third Volume also includes a section focusing on family law and domestic violence.

**Sexual and Gender Based Violence**

21. In 2011, the Forum Reference Group to Address Sexual and Gender Based Violence undertook two in-country consultations, in Tonga and Solomon Islands. The Reference Group was established in 2010 to assist PIFS and Forum Members to progress work on promoting awareness about the seriousness of sexual and gender based violence in the Pacific region, as mandated by Leaders in 2009.

22. The Forum Reference Group includes senior representatives from regional and international organisations, civil society and Member countries. The in-country consultations in Tonga and Solomon Islands involved discussions with a wide variety of stakeholders, both government and non-government, and provided an opportunity to learn about initiatives being undertaken in those countries to address the problems of sexual and gender based violence, and to identify areas where more attention is required.

23. PIFS anticipates that the Forum Reference Group will conduct further in-country consultations in 2012, following the undertaking by Leaders at their 2011 meeting to consider inviting the Group to their respective countries.

24. Sexual Offences Model Provisions have been developed by PIFS, in consultation with Members, to facilitate legislative reform in relation to sexual offences:

C. SECURITY, LAW ENFORCEMENT AND CONFLICT PREVENTION

Transnational crime

25. PIFS annually publishes the Pacific Transnational Crime Assessment (PTCA). The PTCA is developed at the annual pre-FRSC Law Enforcement meeting for regional law enforcement and legal organisations. This meeting includes PILON, the Oceania Customs Organisation, Pacific Islands Chief of Police, Pacific Islands Directors Conference, SPC and the Forum Fisheries Agency.

26. The 2011 PTCA indicated that transnational crime continues to be a human and economic security threat in the Pacific, and that combating transnational crime remains a high priority for law enforcement agencies. The 2011 PTCA also highlighted the issues of Legislation, Data Collection, Drug Trafficking, Criminal Deportees, Money Laundering, Organised Crime, People Smuggling and Human Trafficking, Commercial Fraud, Firearms Trafficking, Wildlife Enforcement, Cybercrime and the need to address emerging and significant issues in these areas.

27. Participants at the 2011 Pre-FRSC Law Enforcement meeting identified organised crime, commercial fraud, and law enforcement data collection and information sharing as priority areas for special consideration by Forum Members and regional law enforcement and legal organisations in 2011–12.

Small Arms and Light Weapons

28. At their 2009 meeting, Leaders noted with extreme concern the availability throughout the Pacific of guns and small arms and light weapons (SALW), both legal and illegal. Leaders also endorsed activities relating to the control of SALW, and the implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UN PoA). The UN PoA, agreed at a UN Conference in July 2001, is the primary international instrument relating to the control of SALW.

29. The UN PoA strongly encourages UN Members to submit an annual national report, which is a voluntary self assessment process that allows Members to evaluate their implementation of the UN PoA. PIFS notes that to date only six Members have provided national reports. With the Second Review Conference for the UN PoA taking place in 2012, this year’s meeting of the FRSC encouraged Members to implement the UN PoA and to complete and submit UN PoA National Implementation Reports in advance of the 2012 Conference.

30. PIFS is available to provide support to Members for the completion of these reports. Government legal advisers are encouraged to contribute to the preparation of their countries’ reports, given that these reports will require identification of relevant legislation and assessment of their consistency with the UN PoA.

Proposed Arms Trade Treaty

31. A related but separate initiative to the UN PoA is the current UN process for developing an Arms Trade Treaty (ATT). The general objective of the proposed ATT is to
strengthen international mechanisms for deterring and preventing illicit trafficking and proliferation of arms, including small arms and light weapons. At the 2011 meeting of the Pacific Islands Forum, Leaders welcomed progress by the Preparatory Committee to the UN Conference responsible for negotiating an ATT, and also expressed support for the development of a common Forum position on an ATT so as to ensure a strong and proactive voice in ATT negotiations.

32. To support Forum Island countries in their participation in the ATT negotiations, PIFS will be convening a workshop in early 2012, in cooperation with Oxfam Australia, to promote deeper understanding of the ATT and facilitate the development of a regional common position on the ATT.

33. Noting that implementation of the proposed ATT will most likely require legislative change (particularly in relation to customs and weapons control legislation), government legal advisers are encouraged to liaise with their ministries of foreign affairs on this matter.

Juvenile justice issues

34. In 2011, PIFS and the UN Development Programme (UNDP) jointly published a report titled *Urban Youth in the Pacific: Increasing Resilience and Reducing Risk for Involvement in Crime and Violence*. The report was produced in response to a concern raised by the FSRC about the involvement of a small but increasing number of urban youth in crime and violence.

35. In summary, the report: (i) identifies factors that increase or decrease the probability of youth involvement in crime and violence; (ii) presents an analysis of youth criminality, violence and conflict dynamics; (iii) explores the gender dimensions of youth crime and violence; (iv) analyzes selected current policies and activities tackling youth crime and violence; and (v) makes recommendations to tackle the issue aimed at governments and other stakeholders. A copy of the report is available at:


36. The report contains *Key Guiding Principles* for preventing Pacific youth involvement in crime and violence – these principles were endorsed by Leaders at their 2011 meeting in Auckland. One of these principles is to ‘Improve justice sector responses to youth crime and ensure that responses include rehabilitation’. This principle responds to the report’s observations that many jurisdictions do not have sufficient data on juvenile offenders, nor adequate or appropriate legislation and policies for dealing with juveniles in the criminal justice system. PIFS has applied for funding from the Australian Federal Police to assist Members improve justice sector responses to youth crime. Subject to funding, PIFS will initiate this work with a regional meeting, in early 2012, for government and non-government stakeholders to identify key priorities and strategies in the field of juvenile justice.

D. TRADE AND INTELLECTUAL PROPERTY ACTIVITIES

Trade agreements and negotiations

37. Forum Members are currently progressing several different regional trade-related agreements and negotiations that PIFS is facilitating, including:
- the Pacific Island Countries Trade Agreement (PICTA) between the Forum Island countries;
- the Pacific Agreement for Closer Economic Relations (PACER) Plus as a comprehensive framework for trade and economic cooperation between Australia, New Zealand, and the Forum Island countries; and

38. At their meeting in Auckland in September 2011, Pacific ACP Leaders noted the updates on PICTA implementation, as well as the progress on the broadening of PICTA to include Trade in Services and Temporary Movement of Natural Persons. They agreed that those Forum Island countries yet to announce their readiness to trade under PICTA do so with urgency in support of increased regional trade among Forum Island countries, preferably before the end of 2011.

39. Leaders also agreed that the Forum Island countries organise necessary consultations, followed by domestic approvals of PICTA Trade in Services text and associated Schedules of Commitments with the objective of concluding the PICTA Trade in Services negotiations and finalising arrangements for Leaders’ consideration at their meeting in 2012. Furthermore, Leaders acknowledged the mutual benefits derived from effective labour mobility schemes, highlighting the contribution they make to peoples’ livelihoods and private enterprise in sending and receiving countries.

40. With regard to PACER Plus negotiations, Leaders agreed that PACER Plus must respect and respond to the differences between the Forum Island countries and among Forum Members. Leaders agreed that a ‘building block’ approach to PACER could be undertaken, so that PACER Plus is broadened and deepened over time, with an initial focus on the priority issues identified by Ministers, while giving Forum Island countries adequate time to undertake national consultations on priority issues.

41. On the EPA negotiations, Leaders reaffirmed that the region will continue negotiations on a comprehensive EPA as a single region. Leaders endorsed the Revised EPA Roadmap, establishing the EPA negotiations as top priority for the region in 2012.

42. In view of the above, PIFS encourages government legal advisers to:

- assist relevant departments and ministries that are implementing the Leaders’ decision to ensure that Forum Island countries announce their readiness to trade under PICTA; and
- support national level consultations that are currently being undertaken in the context of PICTA trade in services and labour mobility, PACER plus and EPA negotiations.

**Intellectual property and protection of traditional knowledge**

43. In 2011, PIFS’ activities in relation to intellectual property (IP) and traditional knowledge have focused on:

---

1 ACP refers to the African, Caribbean and Pacific.
- finalization and implementation of the Regional Trademarks Application System (RTMAS); and
- implementation of the Traditional Knowledge Action Plan.

44. The establishment of a Regional Trademarks Application System was endorsed by Forum Trade Ministers in 2009, with Members agreeing that Papua New Guinea will host the Regional Examination Body. Since that time, work has been undertaken by regional IP Heads to develop an MOU for the establishment of the Regional Examination Body. This will be submitted to the next meeting of Forum Trade Ministers.

45. PIFS is currently working with the Papua New Guinea Intellectual Property Office (which will host the regional body), Australia, New Zealand and the World Intellectual Property Office (WIPO) in formulating technical assistance activities for the implementation of the RTMAS.

46. PIFS also continues to work with WIPO, SPC and the South Pacific Regional Environmental Programme to assist Forum Island countries develop legislation and policies which provide protection against exploitation and inappropriate commercialisation of Pacific traditional knowledge, expressions of culture and traditional biological resources. At this stage, the governments of Cook Islands, Fiji, Kiribati and Papua New Guinea have endorsed national traditional knowledge policies. Cook Islands, Kiribati and Vanuatu are currently drafting legislation, while Fiji, Palau and Papua New Guinea have bills that are under cabinet or parliamentary consideration.

47. The development of legislation and policies represents phase 1 of the Traditional Knowledge Implementation Action Plan, which was developed in 2009 to guide the provision of technical assistance to those Forum Members seeking to promote greater protection of traditional knowledge in their countries. Phase 2 of the Plan identifies a range of activities directed to supporting appropriate commercialisation of traditional knowledge, as well as developing regional arrangements for reciprocal recognition and enforcement of traditional knowledge rights. PIFS is currently working with the above-mentioned partners in developing assistance for these activities.

48. PIFS encourages PILON members to contact PIFS should technical assistance be required in terms of the legal issues arising in relation to the above-mentioned activities.
E. REGIONAL TREATIES

49. The Secretary-General of PIFS is the depositary for nine regional treaties. A list of these treaties is available at:

http://www.forumsec.org/pages.cfm/documents/treaties/

50. PIFS encourages Members to review any outstanding treaty actions. In particular, PIFS notes that:

(i) Pacific Island Countries Trade Agreement (PICTA)

Amendments circulated in December 2006 are yet to enter into force, pending acceptance by three Parties. Kiribati, Papua New Guinea and Tonga are encouraged to ratify these (non-controversial) amendments as soon as possible.

(ii) Pacific Islands Civil Aviation Safety and Security Treaty (PICASST)

Two sets of amendments have been negotiated since PICASST entered into force on 11 June 2005:

(a) the amending Protocol of 2005. This Protocol entered into force on 20 June 2006 for those Members which had lodged instruments of acceptance of the protocol. The amendments are also in force for those Members which acceded to the Treaty after 20 June 2006; and

(b) amendments of 2009. These amendments are yet to enter into force. In accordance with Article 13(3) of the Treaty, the amendments will enter into force thirty days following notification by the Party which provides a two thirds majority acceptance of the amendments, i.e. the sixth Party to provide such notice. At this stage, two Members have submitted instruments of acceptance to the Forum Secretariat.

(iii) Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (Noumea Convention)

Amended and additional Protocols on pollution and on hazardous substances, which were agreed in September 2006, are not yet in force, pending acceptance/ratification by all Parties.

51. PIFS is available to provide assistance to Members with these treaty actions (for example, by providing background briefing for relevant cabinet submissions, preparing a model instrument of ratification etc).

52. PIFS notes that the 2005 Agreement Establishing the Pacific Islands Forum has yet to enter into force. The Agreement was adopted by Forum Leaders in October 2005, but requires ratification by all Members before it enters into force. Members which have not yet ratified the Agreement are encouraged to submit instruments of ratification with the Depositary, the Government of Fiji, and also notify PIFS of this. PIFS is available to provide assistance with model instruments of ratification and background briefings.
CONCLUSION

53. PIFS’ report reflects the increasing range of issues with legal implications that PIFS has been asked to monitor or respond to. As legal advisers to government, PILON Members play an important role in contributing to national efforts to advance policies and initiatives agreed to by Members of the Pacific Islands Forum.

Lorraine Kershaw
International Legal Adviser
Pacific Islands Forum Secretariat
1 December 2011
PIFS’ Scoping study into possible regional approaches to supporting judicial and legislative drafting services in Forum Island countries

Update to PILON

Purpose

To inform the 2011 meeting of the Pacific Islands Law Officers’ Network of the progress of the Pacific Plan initiative to deepen regional cooperation and regional support in the legal sector of member countries.

Background

2. The Pacific Plan as endorsed by Leaders in 2005 referred to judicial and court issues directly in two places. Initiative 12.1 mandated “the regional consolidation of commitments to key institutions”, listing a number of national public accountability institutions including departments of the Attorney-General, and also made reference to judicial training and education. Initiative 12.3 on enhancing governance mechanisms referred to “the harmonisation of traditional and modern values and structures”, and in this context mentioned strengthening of traditional courts. While a number of other initiatives mentioned actions relevant to the legal sector, notably harmonisation of legislation at a regional level in several areas, there was no specific immediate initiative focusing on legal sector strengthening or exploring regionalism in legal services or infrastructure. Consideration of deeper regional integration in law – including the possibility of regional courts – was mentioned in the Plan but reserved for further consideration in the longer term.

3. As implementation of the Pacific Plan commenced, it became apparent that the legal implications of the Plan were significant, and the resources at both national and regional levels to address them – and often to address other national priorities – were insufficient. In 2007, the Pacific Plan Action Committee recognised that there was a need for an increased emphasis on regional legal infrastructure, including judicial and court services, in the Pacific Plan, and approved the creation of a new initiative 12.9 under the Governance pillar of the Plan. Initiative 12.9 proposes that the Forum might:

“Deepen regional cooperation between key actors in the legal sector in the region, including senior government law officers, legislative drafters and judges. Explore the possibilities for regional support, including through pooling of resources and regional integration, in legal institutions and mechanisms providing legislative services, and in the area of judiciaries, courts and tribunals”.

4. This initiative was endorsed by Forum Leaders at their annual meeting in Tonga in October 2007. The initial activities mandated under the new initiative were the conduct of scoping studies into judiciaries and legislative services.

Process for the scoping study

5. Terms of reference for a scoping study to explore possible regional approaches to supporting judiciaries and legislative drafting services in Forum Island countries were circulated for members’ input in October 2010. The Secretariat subsequently sought...
expressions of interest for a consultancy to assist in the consultations and preparation of a report, and a team of 3 Fiji-based consultants was engaged in February 2011.

6. The consultation phase for the scoping study has now been concluded. The consultation process comprised:

   (i) in-country consultations in six Member countries – Tonga, Solomon Islands, Papua New Guinea, Kiribati, Palau and Samoa;

   (ii) a request for information and views from other members via a questionnaire process; and

   (iii) consultations with development partners (e.g. Australia, New Zealand, European Union) and international and regional organisations, including the Secretariat of the Pacific Community (SPC), the South Pacific Environment Programme (SPREP), the United Nations Development Programme (UNDP) and the Commonwealth Secretariat.

7. A report of the scoping study is close to finalisation and will shortly be submitted to members for their consideration and further direction. The following discussion provides an overview of key issues raised in the consultations.

Issues

8. In general, the consultations have demonstrated that, notwithstanding a variety of existing forms of bilateral and regional assistance to the judiciaries and legislative drafting offices of Forum Islands countries, a majority of the countries which participated in the consultations indicated that their jurisdictions face a range of challenges in providing and maintaining high-quality judicial and legislative drafting services.

Judicial services

9. The Terms of Reference for the scoping study’s consideration of judicial services required an assessment of the level of demand for judges to fulfill national needs, the present arrangements utilized by members for the selection and engagement of judges, the adequacy of these arrangements, and members’ preferred approaches, suggestions and recommendations for the effective and sustainable provision of judicial services for their national courts. The Terms of Reference also required consideration of the viability of regional approaches to assist in ensuring the provision and maintenance of sustainable high-quality judicial services in Member countries. While the focus of this examination has been on the availability, or not, of qualified judges in Forum Island countries, other factors which impact on the effective operation of courts has also been considered, such as the availability of judicial education, and the resourcing of court registries.

10. In line with the Terms of Reference, the consultations focused on the judicial resources available to superior level courts (often titled High or Supreme Court) and appellate courts, rather than magistrates level courts, customary land courts and island or village courts. That said, it became clear during the consultations that magistrates courts appear to be the courts which are most affected by insufficient access to appropriately qualified magistrates.

11. The majority of countries which participated in the consultations indicated difficulties with attracting appropriately qualified people to serve as judges. Notwithstanding the general
prestige which these positions carry within the community generally, the Chief Justices and heads of Ministries of Justice who were consulted consistently advised that many appropriately qualified people would earn significantly more in their current positions as barristers or legal advisers in the private sector, than as a judge. Another significant disincentive was the protocol requiring judges to avoid situations which might give rise to a reasonable suspicion of favouritism or partiality – which in the context of small communities, can have significant impacts on a person’s ability to lead a ‘normal’ life. Both of these factors are regularly cited as disincentives for lawyers to become judges in many jurisdictions, and are not specific to the circumstances of lawyers in Forum Island countries. Nevertheless, these factors are accentuated in Forum island jurisdictions as are their impact on the resourcing of the courts.

12. The countries which participated in the consultations indicated that they sourced judges through a range of means. In order to engage national judges, the general practice was for the Chief Justice to invite suitable senior members of the legal profession to apply to be a judge, although in some jurisdictions there was, or had been, a practice of advertising judicial positions. Where national lawyers were not available to fill judicial positions, members seek additional judicial resources through arrangements with other countries, such as Australia and New Zealand, as well as the Commonwealth Secretariat and, on occasion, by reference to the Pacific Islands Forum Secretariat Register of Appellate Judges.

13. Reliance on expatriate judges was most common in the appellate, or highest, courts of the countries which participated in the consultations. These judges tended to come from Australia, New Zealand and the United Kingdom. It was generally considered that the presence of such judges on the appellate courts of Forum Island countries played an important role in developing those courts’ jurisprudence and standing. Expatriate judges also represented an assurance of independence from litigants, which was particularly important in the smaller jurisdictions. That said, Chief Justices, heads of Ministries of Justice and other legal professionals noted the high costs of these arrangements, as well as their often ad hoc nature, and occasional concerns that expatriate judges were not sufficiently aware of customary issues or local circumstances which arose in some appellate matters, particularly those relating to customary land. The consultations revealed a strong interest amongst stakeholders in encouraging greater use of judges of Forum Island countries on the appellate courts of other Forum Island countries, particularly given the commonalities in legal systems, and awareness of similar social and cultural issues. It was also noted, however, that limited judicial resources meant that most superior courts would be reluctant to release their judges to sit on the appellate courts of other Forum Island countries.

14. The consultations canvassed members’ views about the long-standing matter of a regional court of appeal, and a broad range of views emerged. The interest in such a mechanism appeared to be strongest amongst Smaller Island States, with recent histories of difficulty in attracting appropriately qualified judicial officers to sit on their superior and appellate courts. There was also a recognition that the concept of a regional court has a number of manifestations according to its primary role. For example, the Caribbean Court of Justice (CCJ) is an example of a regional court whose primary role is to hear disputes regarding the interpretation and application of the Treaty of Chaguaramas, which established the Caribbean Community (CC). Members can also elect for the CCJ to exercise appellate jurisdiction from their national courts (this option has only been elected by two CC members). Another model is the Eastern Caribbean Supreme Court which serves as a travelling court of appeal for the CC’s Smaller Islands States. In the context of Forum members, the fundamental issue under consideration is whether there is a suitable regional model for addressing the continuing
concern of Forum Island countries about a lack of ready and economical access to suitably qualified appellate court judges.

**Legislative drafting services**

15. The Terms of Reference for the scoping study’s consideration of legislative drafting services required an assessment of the level of demand for legislative drafters to fulfill national needs, the present arrangements utilised by members for the selection and engagement of legislative drafters, the adequacy of these arrangements, and members’ preferred approaches, suggestions and recommendations for the effective and sustainable provision of drafting services for their jurisdictions. The Terms of Reference also required consideration of the viability of regional approaches to assist in ensuring the provision and maintenance of sustainable high-quality drafting services in Member countries.

16. The role of legislative drafters is often an under-appreciated role in the process of pursuing national reform agendas. Legislative drafters are effectively a ‘translator’, translating policy objectives into a legally effective form. Larger jurisdictions often have sufficient human resources in their public services to enable specialisation in the separate but related processes of public policy development and legislative drafting. However, the reality for legislative drafters in most Forum Island countries is an expectation that, in preparing draft legislation, they also undertake a significant role in articulating and developing the public policy proposals which the legislation serves to implement.

17. Consultations with Attorneys-General, heads of Ministries of Justice, Parliamentary Counsel, members of Law Reform Commissions and other stakeholders indicated that the availability of sufficiently qualified personnel to develop legislative policy and draft legislation is a continuing challenge for them in pursuing national reform agendas and implementing international legal obligations.

18. The under-representation of suitably qualified legislative drafters in members’ government legal offices means that members are often reliant on the provision of external legislative drafting services. There are a broad range of providers in this area, including the Pacific Islands Forum Secretariat, the Pacific Unit of the Australian Attorney-General’s Department, the Commonwealth Secretariat, regional organisations (such as the Secretariat of the Pacific Community Maritime Law Project and the South Pacific Regional Environment Programme) and international organisations (such as the UN Office of Drugs and Crime). In general, these organisations provide legislative drafting services without requiring financial contribution from members. Members also indicated that they regularly contracted private lawyers and consultants to undertake specific legislative drafting projects. Members indicated a broad range of experience in terms of satisfaction with the quality of legislative product obtained from these external providers.

19. In addition to the provision of legislative drafting services, there are a range of mechanisms for developing lawyers’ legislative drafting skills, for example, specialised training programmes offered by the University of the South Pacific and secondments to parliamentary counsel offices in Australia and New Zealand.

20. The commonly expressed concern about inadequate access to appropriate legislative drafting services appears at first glance to be inconsistent with the fact of a broad range of drafting services and training opportunities in the region. However, this view is also
consistent with commonly expressed observations about a lack of clear regional coordination in relation to law and justice issues. It should be noted that this concern is being addressed through the recent establishment of the Secretariat for the Pacific Islands Law Officers’ Network (PILON), which will assist in realising PILON’s purposes which include facilitating dialogue and cooperation between member countries on regional approaches to law and justice issues. The PILON Secretariat also maintains close communication with the Pacific Islands Forum Secretariat.

21. The consultations revealed not only a concern to improve the legislative drafting skills of government lawyers, but also a concern to improve the policy development skills of public servants more generally. Stakeholders indicated that legislative drafters, both internal and external, were often expected to go beyond their remit of providing legislative drafting advice, and research and develop the policy in the first place, without sufficient guidance from policy officers. The consultations also regularly revealed a concern that resources were focused primarily on the drafting of a law, with insufficient attention and resources directed to the follow-up necessary once a law had been passed, for example, training of public officials and the community to ensure awareness and understanding of the new law.

Consideration of the report’s recommendations

22. Once the report of the scoping study is finalised, the report will be provided to Forum Members for their review and consideration of its recommendations for possible regional approaches to supporting judiciaries and legislative drafting services. PILON will provide an important network through which to circulate the report and seek feedback on the proposed recommendations. Noting that the consultations for the study focused on six Member countries, it is envisaged that consultation on the report will involve specific consultations with the remaining members, particularly Smaller Island States such as Tuvalu, Niue and Cook Islands which did not participate in the initial consultations.

23. For further information, please do not hesitate to contact Lorraine Kershaw, International Legal Adviser, PIFS: email: lorrainek@forumsec.org.fj; ph: +679 331 2600.