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ARTICLE

New Zealand's Pacific Legacy: The Impact of Foreign Judges in the Region

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This article considers the underexplored phenomenon of New Zealand lawyers acting as judges in South Pacific Island nations. It considers the reasons why this practice has become so widespread in the region, the advantages and disadvantages for host countries in recruiting foreign judges from New Zealand, and how current practices create cultural, fiscal, and practical risks for all involved. The article argues that while New Zealand is not bound under international law to address these issues, reforms are required from a moral and professional perspective, whilst also being in the New Zealand law community's interests. Finally, several potential reforms are proposed which aim to balance the need for change, and the sovereign rights of all countries involved.

I Introduction

An underexplored phenomenon within the New Zealand legal system is the practice of lawyers sitting as judges on South Pacific Island benches. Little thought is given to the way this practice functions, its problems, and how it can be improved despite the fact that it defines our legal relationship with the region. If New Zealand wishes to embrace its identity as a Pacific country, there is no single more important legal practice that should be examined.

This article seeks to explore the current status quo whereby New Zealand nationals sit on Pacific Island courts as foreign judges. It will first assess the phenomenon and explain why the system is used today and how it functions. It will then canvas the issues with the

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current system, focusing on the cultural and economic dynamics of foreign judges. Finally, it will examine why New Zealand has an obligation to act, what that obligation constitutes, and how we may meet it.

II What is the Current System?

Judges from one jurisdiction ruling on cases in another is not unusual. New Zealand had such a relationship with the Privy Council until 2003. However, this phenomenon is nowhere more pronounced than in the Pacific, where foreign judges comprise between 26 and 100 per cent of nations' judiciaries across the region.[1] New Zealand alone currently has 31 current and former judges holding a total of 50 judicial warrants across the Pacific, with seven acting as the heads of Pacific benches.[2]

Given the prevalence of this phenomenon, this section will explain why and how New Zealand judges rule on cases in South Pacific Island nations. It will begin by focusing on their perceived utility to Pacific nations and then consider the legal and practical systems used to appoint them.

A *Why use foreign judges?*

Anna Dziedzic argues that across the planet, states tend to utilise foreign judges in their judiciary for four broad reasons: an insufficient number of local judges, a desire to build capacity within the local profession, a desire to enhance the reputation of the local jurisdiction and a need for impartial professionals.[3] Each of these rationales is currently present to a degree in the Pacific, albeit in ways that are shaped by the region's geography. For example, foreign judges' independence is usually required in the Pacific because communities are so small that finding impartial local officials is difficult.[4]

We should approach any analysis bearing in mind these benefits. Foreign judges can help train domestic lawyers, enhance a country's legitimacy, and help small communities. If Pacific nations find these benefits worthwhile, we must focus on reform rather than abolition. Moreover, any attempt to act as "saviours" of "lex Pasifika" should be tempered by a humble and careful attitude.

B *The process for recruiting foreign judges*

When examining the legal mechanisms by which New Zealand lawyers can be appointed to Pacific courts, what is most noteworthy is how little difference there is from the process of appointing local judges. There are many ways judges are appointed across the Pacific, but a common trend is the use of Judicial Services Commissions.[5]

The processes such commissions use differs across nations, but in each instance, a set of guidelines or conditions will be used to determine selections. However, only Kiribati and

1 Anna Dziedzic *Foreign Judges in the Pacific* (Hart Publishing, Oxford, 2021) at 24.
2 Email from the Office of the Chief Justice to Sam Meyerhoff regarding "Request for Information Regarding New Zealand Judges in the Pacific" (27 October 2022).
3 Dziedzic, above n 1, at 7.
4 Gregory Dale "Appealing to Whom? Australia's 'Appellate Jurisdiction' over Nauru" (2008) 56 ICLQ 641 at 643.
5 For example, Fiji, Kiribati, Samoa, Vanuatu, Solomon Islands, Tonga, and Papua New Guinea all appoint at least some judges through such a process.

Vanuatu have formal tools that allow the assessment of foreign judges using different factors in their High Court Judges (Salaries and Allowances) Act 2017 (Kiribati)[6] and Judicial Services and Courts Act 2000 (Vanuatu),[7] respectively. In all other countries, the legal process for appointing foreign and local judges is identical.

The legal process for appointing foreign judges tends to be the same as local judges, but the eligibility criteria for a foreigner to qualify for consideration do somewhat differ. Nevertheless, these differences are negligible, and for the purposes of this article, it is sufficient to note that most New Zealand lawyers will be eligible to sit as judges in most Pacific Island nations, with former judges eligible to sit in all.[8] This is supported by anecdotal evidence from New Zealand legal professionals who stress the ease with which a New Zealand lawyer can qualify to practice as a foreign lawyer or judge.[9]

From a legal perspective, therefore, there are few substantive differences between the process for appointing foreign and local judges in the Pacific. However, in practice, the systems used to recruit foreign judges are defined by informality. When recruiting from overseas, many nations struggle to assess candidates' suitability properly. Therefore, senior members of Judicial Services Commissions, such as the local Chief Justice or Attorney-General, tend to rely on personal relationships with foreign practitioners for recommendations of candidates.[10] This is often done by informally selecting one foreign practitioner to serve as an adviser in the legal field within their home country.[11]

While there have been attempts to move towards a system whereby positions are advertised more publicly around the Pacific on a centralised list of foreign judges willing to work abroad,[12] these methods have seen limited success.[13] Other formal programmes of inter-governmental cooperation, such as those existing between the New Zealand District Court and the Vanuatu Supreme Court, are very rare.[14]

As it stands, the current system remains defined by informal connections, and most Pacific nations simply work around this by, for example, appointing foreign judges on short tenures to allow for easier assessment of their performance and suitability.[15] Other issues, such as pay, are also dealt with on a somewhat ad hoc basis due to prevailing informality, a fact whose consequences will be discussed below.

C *Conclusions*

In some circumstances, foreign judges are a logical and effective way of resolving issues inherent in the region, and many New Zealanders working in overseas courts describe receiving nations as viewing the phenomenon positively.[16] However, the system radically

6 High Court Judges (Salaries and Allowances) Act 2017 (Kiribati), s 4.
7 Judicial Services and Courts Act 2000 (Vanuatu), s 33(3).
8 Dziedzic, above n 1, at 55.
9 Interview with Marc Corlett, King's Counsel at Britomart Chambers (Sam Meyerhoff, 28 August 2022).
10 Dziedzic, above n 1, at 15
11 Interview with Robert Fisher, former High Court Judge (Sam Meyerhoff, 11 October 2022).
12 Dziedzic, above n 1, at 51–52.
13 Anthony Mason "Sharing expertise with the developing world" (2001) 26 Alt LJ 7 at 7.
14 Judiciary of the Republic of Vanutatu "Supreme Court" <https://courts.gov.vu>.
15 Carl B Ingram "The Length and Terms of Judges in the Pacific and Its Impact on Judicial Independence" in Angelo, Amoit, Sage (eds) *Land Law and Judicial Governance in the South Pacific: Comparative Studies* (New Zealand Association for Comparative Law, Wellington, 2011) 375 at 376.
16 Interview with Marc Corlett, above n 9.

differs from what New Zealanders experience domestically, with informal personal connections being very significant.

III Why is the Current System Problematic?

A *The cultural divide*

One of the most obvious concerns many have with the current system is the cultural divide between foreign judges and the communities they sit in. The concern is that foreign judges either will not understand the policy arguments and cultural dynamics at play in their decisions or will lean too heavily on their own culture's law at the expense of their host country.

This issue is particularly prevalent in courts that deal with constitutional questions or matters of public importance. Multiple lawyers who have served on Pacific benches as foreigners have publicly discussed the added complications this divide can create in cases with constitutional or political importance. They describe the current system as invidious in how it creates a task for foreign judges which is "impossible to achieve correctly".[17]

It is clear then that this problem is worth closer analysis. The following sections will seek to outline how the divide works in practice via a case study and how the failure to address it head-on has enabled unacceptable risks and the spread of a dangerous philosophy.

(1) A case study of the risks inherent in the cultural divide

An example of the risks engendered by the cultural divide, even in the most dedicated and well-intentioned judges, is the *FAST Inc v Malielegaoi* contempt of court case in Samoa.[18] There, the incoming Government brought a contempt of court case against the former Prime Minister and several associates for undermining public faith in the judiciary presided over by New Zealanders Robert Fisher and Raynor Asher JJ.

Before the hearing, however, both parties signed a "harmony agreement" which guaranteed that the defendants apologise for their actions and, in return, that the plaintiffs would drop the case.[19] Fisher and Asher JJ had to decide whether to allow the proceedings to continue, weighing the risk of political unrest should the case continue, with the lasting damage to the rule of law if it was abandoned.

The justices decided that the case should continue despite the wishes of the parties but that they would impose no penalty.[20] This proved a satisfactory solution and avoided further political unrest, but it still stands that two Palagi lawyers were making an incredibly high-stakes decision for a country whose culture they were foreign to. Discussing the case, Fisher J (speaking extrajudicially) described how he and Asher J used cultural evidence and counsel to guide themselves but did not dispute my characterisation of the ruling in the interview as a "roll of the dice".[21] Instead, Fisher J discussed the need to fund cultural training for expatriate judges to reduce the chance that any future judges in such situations might make a bad ruling due to a lack of social literacy.

17 Dziedzic, above n 1, at 103–104.
18 *Fa'atuatua i Le Atua ua tasi (FAST) Inc v Malielegaoi* [2022] WSSC 7.
19 At [21].
20 At [118].
21 Interview with Robert Fisher, above n 11.

(2) The dangerous current responses to the cultural divide

The problem with the cultural divide is not simply that it puts New Zealand lawyers in a position of having to make important decisions with incomplete information but also that the tools foreign judges have used to try and bridge this gap can make matters worse.

Foreign judges have historically taken different approaches to the cultural divide implicit in their work. Some follow Fisher and Asher JJ's methodology, but another philosophy is that the way to overcome any challenges is to treat law as divorced from culture, thereby removing any issue.[22] This philosophy is dangerous in that it strips any legal significance from the cultural values of a country, making it harder to form consistent policy arguments.

Tonga has seen the impacts of jurisprudence such as this first-hand. In *Attorney-General v Namoa*, Ward CJ, an English-trained lawyer, explicitly rejected the suggestion that foreign judges needed any assistance in interpreting statutes within a local context, stating that if a law "is such that it is necessary to be Tongan to understand its true meaning, I would venture to suggest it is poorly worded".[23]

The next Tongan Chief Justice, Scottish lawyer Robin Webster, developed this view. In *Taione v Tonga,* his Honour went even further, saying that since the 1875 Tongan Constitution was based upon Western formatting, "Tongan culture is not a relevant factor" in interpreting it.[24] Building upon the *Namoa* reasoning, his Honour argued that not only was Tongan culture irrelevant to the constitution, but constitutional freedoms "*have* to be understood in a Western sense and not in the Tongan sense".[25]

(3) Conclusions on the cultural divide

We can see in these examples that not only is the cultural divide dangerous in and of itself, but attempts by Western judges to mitigate it can be actively harmful. The current system is premised upon judges with uncertain qualifications, making decisions with uncertain consequences, all with the risk of undermining cultural values. While individual judges may navigate through all these decisions appropriately, the number of potential points of disaster is unacceptable. More support is needed to reduce these risks at every stage of the judicial pipeline.

B *The economics of law*

Another dynamic at play in this area is the economics of law. Lawyers tend to speak of justice exclusively in terms of values and reasoning, but law is also a business with individuals who require a salary. Therefore, an important problem facing South Pacific Island nations is how much they can or should pay foreign judges.

Broadly speaking, nations have taken two different approaches, one where foreign judges are paid the same as their local counterparts and another where foreign judges are paid the same as they would be in their country of origin.[26] Those who take the first approach are much less competitive in the market and find it harder to attract foreign

22 Natalie Baird "Judges as Cultural Outsiders: Exploring the Expatriate Model of Judging in the Pacific" (2013) 19 Canta LR 80 at 86.

23 *Attorney-General v Namoa* [2000] TOSC 13, [2000] Tonga LR 59 at 66.

24 *Taione v Tonga* [2004] TOSC 47, [2005] Tonga LR 67 at 105.

25 At 105 (emphasis added).

26 Dziedzic, above n 1, at 64.

judges, but those of the second view have difficulties funding enough foreign judges on these higher salaries.[27] These issues even led the Chief Justice of the Solomon Islands in 2015 to advocate for an increased focus on domestic judges, primarily because the justice system struggled to afford foreigners.[28]

While it would be tempting to say that this reality is beneficial by encouraging Pacific nations to train their own nationals rather than competing against each other on the open market, such a view ignores the financial pressures pushing in the other direction and necessitating the use of foreign judges. Fisher J argued that, in his experience, Pacific Island nations feel obligated to utilise foreign lawyers as potential foreign investors believe foreign judges ensure a more stable and legitimate environment in which to do business.[29] This dynamic of using foreign judges to bolster a country's reputation and legitimacy, which Fisher J describes anecdotally, aligns with the academic research of those like Dziedzic into why countries rely on foreign jurists.[30]

This means that foreign judges are being seen as part of the cost required to participate in the global market. Until private actors modernise their view of Pacific economies, there will remain some pressure to utilise New Zealand judges overseas, meaning that the current reality of countries competing to offer the best salaries will continue. This results in a disproportionate barrier to entering the world economy for Pacific nations and an unnecessary drain upon their judicial system's finances not felt by other countries.

IV What Can Be Done?

A *Why legal obligations are no solution*

Before discussing what can be done, it is important to outline why New Zealand's legal obligations towards Pacific states will not be a solution to these issues. Rather, the relevant obligations in this space are non-legal.

The interaction between different governments across national borders defies any single national jurisdiction, meaning that public international law would govern any obligation in this area. However, such obligations could not be enforced even if they existed.

Per the International Law Commission's Draft Articles on State Responsibility (DASR), states are only responsible for international acts which can be attributed to them.[31] This means that any state wishing to hold New Zealand accountable for the actions of its lawyers sitting on foreign judicial benches would need to prove that said judges were acting as agents or organs of the New Zealand Government.[32]

Foreign judges in the Pacific cannot be organs of the New Zealand Government as organs must derive their powers from the domestic law of the country to whom their acts

27 At 64.

28 ABC News "Chief magistrate says foreigners not the answer to magistrate shortage in Solomon Islands" (21 Oct 2013) <www.abc.net.au>.

29 Interview with Robert Fisher, above n 11.

30 Dziedzic, above n 1, at 7.

31 *Report of the International Law Commission on the work of its fifty-third session (23 April–1 June and 2 July–10 August 2001)* UN Doc A/56/10 (2001) at 34.

32 As authority for this proposition see *Questions relating to settlers of German origin in the territory ceded by Germany to Poland (Advisory Opinion)* (1923) PCIJ (Series B) No 6.

are attributed, not the constitution of the country they are sitting in per art 4.2 of the DASR. Therefore, legal obligations will only manifest if the judges are agents of New Zealand. However, this is also not the case. Agents must be instructed, directed, or controlled by the state per art 8, and there is no evidence that New Zealand has influenced the rulings of its nationals sitting abroad.

The final way foreign judges' actions could be attributable to New Zealand under art 8 of the DASR is if the Government adopted and endorsed the acts after they happened. However, there is no evidence that the New Zealand Government has endorsed or associated itself explicitly with the actions of its foreign judges, conclusively closing the possibility of attribution.

While one could argue that the rare official programs designed to facilitate New Zealand judges working in the Pacific, such as the secondment program between the District Court and Vanuatu's Supreme Court, constitute some form of control or adoption, New Zealand still cannot owe any legal obligations in this field. This is because even if the acts were attributable, there was an identifiable legal obligation and said obligation had been breached, New Zealand could still rely on the defence of consent to preclude any wrongfulness.

Under art 20 of the DASR, if another state consents to a breach of international law, that precludes any consequences. In all situations where New Zealanders sit on Pacific benches, it is at the request and appointment of the foreign governments, meaning that any obligation breaches could not be enforced.

The foregoing analysis represents rather elementary international law, but it is worth stressing to understand the stakes of this issue. There is no external force driving change in this area. If we want to make the current system safer and more equitable, the change must come from within the New Zealand legal community. It is vital that we have a more full and frank discussion within our profession about who we want to be in the Pacific. The lack of international accountability may provide an excuse to ignore the situation's urgency, but it also provides an opportunity for us to be flexible and chart our own course tied to our identity.

B *Why should we act?*

However, if New Zealand is not legally obligated to act in this area, it is necessary to establish why we should view ourselves as subject to any moral or professional duty.

There is a self-evident moral argument in favour of New Zealand's involvement. The South Pacific Island nations who are feeling the impacts of this system are New Zealand's allies and neighbours. These are nations in which many New Zealanders have friends and family, and with Pasifika representation in our legal profession rising,[33] our industry's ties to the Pacific have never been stronger.

Secondly, there is a self-interest argument. The cultural divide between New Zealand judges and Pacific cultures also applies to our lawyers working in these nations. However, while foreign judges are personally insulated from the consequences of any miscalculation, lawyers are not. New Zealander Marc Corlett KC worked on *Natural Waters of Viti Ltd v Yaqara Pastoral Company Ltd* in Fiji and, in his closing argument, alleged that

33 Geoff Adlam "Diversity in the New Zealand legal profession: At a glance" (2019) 932 LawTalk 61 at 63–64.

the Fijian Government was becoming overly involved in private dealings.[34] This policy argument which would have been typical in New Zealand almost resulted in him being charged with contempt of court,[35] a reaction driven by Fiji's fraught history of government overreach. The cultural divide hurts not just host countries but also New Zealand, by subjecting our lawyers to unnecessary risks.

Despite these moral and self-interest-based arguments for New Zealand's involvement, there are two main counter-arguments against New Zealand's action, one grounded in sovereignty and one in commonality. For the sake of completeness, it is important that these be addressed as well.

In terms of sovereignty, it is easy to argue that the appointment of foreign judges is a process governed by the domestic law of the relevant Pacific Island states. To influence this process would be patronising at best and an outright infringement of sovereignty at worst. It is vital that we do not abuse our position as a developed Western state to influence the judges who sit on the benches of our allies.

However, this argument is predicated on the idea that any solution must limit states' options. If we instead focus on solutions which increase states' options, this concern diminishes. Provided that no solution we enact stops states from continuing to appoint and interact with New Zealand judges as they have previously, it is hard to see how sovereignty will be infringed.

Even if the foregoing analysis is incorrect and any action we take will represent New Zealand interfering with Pacific states, such a scenario would not necessarily be inconsistent with sovereignty. A core expression of sovereignty is the free choice of a state to limit its actions.[36] If a state continues to work with New Zealand judges even after our actions somehow limit them, that would simply represent said states choosing to limit themselves through their own sovereignty. Provided states remain free to choose to work with or ignore New Zealand judges, any impact upon sovereignty would be minimal.

With regards to commonality, one could argue that New Zealand is simply one of many nations whose nationals work as judges in the Pacific, and we have no specific obligation to act when compared to others. However, New Zealand's colonial background gives us a moral obligation to act regardless of other nations. One reason foreign judges became so widespread in the Pacific is that early Palagi settlers would not trust their disputes to be adjudicated by indigenous people.[37] If New Zealand wants to decolonise itself, it should also take responsibility for the fact that the current judicial problems facing the Pacific are part of the same legacy.

Additionally, though other countries like Australia share the same colonial obligations, New Zealand judges make up a disproportionately large proportion of foreign Pacific judges compared to our size. If one excludes Papua New Guinea, which has a naturally close tie to Australia given their proximity, New Zealand's legal community, although much smaller than Australia's, makes up the largest percentage of nationals sitting on Pacific courts.[38]

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34 *Natural Waters of Viti Ltd v Yaqara Pastoral Company Ltd* HC Suva Civil Action No HBC 204, 20 October 2017.

35 Interview with Marc Corlett, above n 9. Note that no mention of the comment was kept in the Court's record of the case. Per Corlett, the parties agreed to strike the comments from the record.

36 As authority for this proposition see *SS "Wimbeldon" (Britain v Germany) (Judgment)* (1923) PCIJ (Series A) No 1.

37 Dziedzic, above n 1, at 11.

38 At 27.

Therefore, New Zealand has a moral reason to act due to its colonial past, a logical reason due to its disproportionate impact on the problem, and a self-interested reason to help our lawyers. Given that action can be taken without infringing on Pacific states' sovereignty, we must involve ourselves in the process of improving the status quo.

C *What should we do?*

Having established that New Zealand possesses no legal obligation to act in this field but is nonetheless subject to a moral and professional duty, we must now canvas potential ways to improve the current system. The following section will analyse the advantages and disadvantages of three potential actions we as a New Zealand legal community could take, specifically focusing on governmental bodies such as the Courts and statutory bodies such as the New Zealand Law Society (NZLS). The solutions proposed are increased community engagement, formalised recruitment and certification programmes. The analysis will be, by necessity, limited in specifics as each solution would likely have to be implemented after engagement with every relevant nation in the Pacific.

(1) Mandating community engagement

As discussed above, one of the primary reasons Pacific nations see foreign judges as useful is that their presence can build up capacity and expertise within their own legal industry by training and educating local practitioners. Scholars support this analysis with Natalie Baird arguing that "expatriate judges have a unique opportunity in working alongside local judges to enrich judgment writing, judicial method and judge craft skills".[39] The first potential solution, therefore, is to issue guidelines that encourage foreign judges to actively engage with their host legal communities.

Not only would this help build capacity so that Pacific nations could better rely on local judges, should they wish, but it will also help New Zealand lawyers better understand the culture they are working in. One of the driving causes of the cultural divide discussed above is the phenomenon of "fly-in, fly-out" judges who spend little time in a country outside of a courtroom and thus gain little understanding of cultural dynamics or values despite returning to the country numerous times.[40] Mandating or encouraging New Zealand lawyers serving overseas to engage with their communities through training seminars, community work, or similar activities would work towards fixing two problems at once, improving both foreign and local professionals simultaneously.

This proposal is hardly radical. Some lawyers serving as judges or advocates see it as a moral obligation and have already voluntarily engaged in this kind of behaviour.[41] Likewise, the Pacific Justice Sector Programme, a group run on behalf of the Chief Justice's office, seeks to provide opportunities for development programmes and mentoring across the Pacific.[42] A more detailed set of guidelines or expectations imposed on foreign judges, with greater publicity and engagement, would simply be building upon what the industry is already moving towards.

Whether these guidelines would be enforced in any way is an open question. Pacific nations may well have valid concerns about New Zealand being able to control any

39 Baird, above n 22, at 82.
40 Dziedzic, above n 1, at 203.
41 Interview with Marc Corlett, above n 9.
42 Pacific Justice Sector Programme "About" <https://pjsp.govt.nz>.

behaviour of its nationals when working as foreign judges for fear of perceived influence. However, the mere issuing of guidelines would likely impact behaviour and negotiations with individual countries may reveal ways to ensure these recommendations carry more weight on a jurisdiction-by-jurisdiction basis.

(2) Centralised recruitment

Another alternative is to resolve the issues with recruitment by creating a list of New Zealand lawyers willing to serve as foreign judges for Pacific nations to utilise. If an industry body such as the NZLS was to create an updated list that could be provided to Pacific nations upon request, this could mitigate several issues plaguing the current system.

First, such a list might go some way towards reducing the market-style economy of foreign judges by requiring New Zealand lawyers wishing to add their names to the list to provide an indication of expected pay in advance. This may reduce any competition amongst Pacific nations by eliminating the need to compete in an ad hoc fashion when the necessity arises. Secondly, a managed list would provide a more objective assessment of each candidate than would be gathered from informal connections. Finally, a list could offer this without taking options away from Pacific states by still letting them choose to utilise the traditional informal method, should they so wish.

While this proposal is, in theory, without much downside, provided it is optional, there would need to be more negotiation with our Pacific allies to determine whether it would have any use. As discussed above, attempts to formalise the recruitment process in the past have failed, mainly due to a lack of appetite from Pacific states. It is entirely possible that Pacific states prefer an informal system, and this should be respected. Pacific states may also have concerns that such a list would be subject to New Zealand interference, given that it would need to be actively monitored and edited by the NZLS.

While this solution has potential, it is important that before any steps are taken to implement it, extensive consultation occurs between New Zealand legal bodies and their Pacific counterparts. It is arrogant to assume that this assistance will necessarily be welcomed and foolish to assume that the failures of past projects can be used to infer the views of every Pacific Island nation today.

(3) Certification programmes

A third solution would be to provide for a programme whereby New Zealand lawyers could become certified as having studied Pacific Island nations' legal system and customs, as part of an NZLS-endorsed continued professional development course, for example. This would fit well alongside the broader trend we see within the NZLS and the Council of Legal Education, both of which are in the process of conducting reviews that, among other matters, aim to make the education and continued professional development of lawyers less Eurocentric.[43] It would also offer a more objective way for Pacific nations to assess candidates while increasing the competence of any judges appointed.

However, while such a training and accreditation programme would fit alongside the New Zealand legal industry's priorities and bridge the cultural divide, there are major concerns. This would be the most direct involvement of a New Zealand statutory body in

43 New Zealand Law Society *The Regulation of Lawyers and Legal Services in Aotearoa New Zealand: Independent Review* (Discussion document, June 2022); and Professional Examinations in Law (Tikanga Māori Requirements) Amendment Regulations 2022.

the foreign judging system, actively training and endorsing specific candidates over others. Likewise, such a system could have a chilling effect. Potential judges may be well-suited to the work but unwilling to engage in the programme, and therefore less likely to work overseas. There is, therefore, a risk that such a solution would be seen as unacceptable foreign interference and likely to increase the scarcity of willing judges.

Again, this solution should only be implemented after consultation with Pacific nations and ideally alongside other measures to normalise the idea of legal careers within the Pacific to reduce any chilling effect. Such additional measures could include more Pacific education at law schools or cross-pollination between New Zealand's legal community and the Pacific's in the form of accepting more international Pacific students into New Zealand universities. However, such additional measures are ultimately sociological and better suited for research beyond this article.

(4) Conclusions on potential solutions

While there are numerous options for reform, all will need to be discussed at length with individual nations to create a suitable path forward. It will take time, but fortunately, there are signs that work has started. The Chief Justice has stated that work is being conducted in this area.[44] If true, we as a profession must support this and push the government to prioritise such developments so that we can see change sooner rather than later. It is the least we can do.

V Conclusion

The current system of New Zealand judges working in the Pacific is unacceptable. While it has its advantages, it places Pacific nations at an economic disadvantage and often leads to untrained outsiders handling or completely disregarding culturally sensitive matters. While we have no legal obligation to help, it is in the interests of New Zealanders working overseas and in line with our moral duty to decolonise the region to act. Finding solutions acceptable to all parties will be incredibly difficult, but if we, as a country, want to embrace our identity as a Pacific Island nation, we need to engage with lex Pasifika. That can only happen if reforms are made to the foreign judging system.

44 Email from the Office of the Chief Justice, above n 2.