

# Justice Needs and Satisfaction in **Fiji**



Empowered lives.  
Resilient nations.



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Resilient nations.*



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# Executive summary

In order to assess access to justice in Fiji in 2018, we interviewed 4,910 respondents from all four divisions of Fiji. We spoke to randomly selected men and women from diverse backgrounds. Hiil's has used the methodology behind the Justice Needs and Satisfaction study in more than 20 countries around the world. This approach for measuring justice needs has been accepted as a valid source of data by the international community in the framework of measuring the justice gap and Sustainable Development Goal 16.3 Along with the survey research, we spoke to more than 60 stakeholders from the justice sector and conducted 20 focus groups with citizens and representatives of civil society organisations working in the justice sector.

Almost half of the people in Fiji – 47% – have to deal with one or more serious legal problems every 4 years. This implies that every year approximately 100,000 individuals encounter a problem and need access to mechanisms that lead to fair resolutions. This finding corresponds with a widespread perception within the formal and informal justice sector in Fiji that the demand for justice is overwhelming.

The most common legal problems in the daily lives of the people of Fiji are neighbourhood disputes, crimes, land disputes, domestic violence and family problems. These are serious legal problems. Sixty percent of the users of justice say that a legal problem affected their life severely or to a significant extent. The legal problems that the people of Fiji encounter are not trivial and have significant impact. It should be noted that problems such as domestic violence, corruption and some instances of crimes and family disputes are likely under-reported in the survey. Vulnerable groups such as young women and LGBTI are unlikely to share about their legal problems.

People from urban areas report fewer legal problems. In rural settings people encounter different types of legal problems and, most importantly, use different mechanisms for dispute resolution. Access to justice in remote areas is more difficult.

Two-thirds of the respondents who encountered problems sought some sort of legal advice. On average they receive such advice from two sources. Most often people seek legal advice from non-professionals such as relatives and friends. People look for information and advice for the problems that have most serious impact

on their lives. This is normal behavior but also indicates how less serious but more common problems can go unnoticed.

Of the available institutional sources of legal advice, the users of justice most often seek advice from police and the Legal Aid Commission. The coverage of the legal aid system in Fiji is quite remarkable. One in 10 people with a legal problem received some sort of advice from the Legal Aid Commission. Compared with other countries this is a remarkably high level of coverage.

Access to legal information is challenging for young, women, persons with disabilities, people with lower levels of formal education, rural population. This is important because the data shows that people who actively pursue legal advice and legal information are significantly more likely to explore dispute resolution strategies that can bring fair resolutions to their problems.

Sixty-seven percent of the Fijians who encounter a legal problem take action to resolve it. In absolute terms this means that every year around 67,000 users of justice actively pursue dispute resolution. Another 33,000, however, do not undertake steps to solve their problems. The most often cited reasons for such passive behavior are related to the fact that the problem was simply abandoned (37%), lack of belief that the problem can be resolved in a beneficial manner (34%), and not knowing what to do (17%). Barriers to justice are both cognitive and objective. Of the respondents who experience problems and do not pursue dispute resolution many people do not respond to their legal problems because they do not believe that anything can be done. In addition, people from remote communities face significant challenges with access to justice.

People first try to resolve the problem themselves – usually through contacting the other party. If this does not work, they proceed with engaging someone from their social networks as a neutral decision maker. If this also fails, formal institutions are used to resolve the problem. On average the justice journeys take two steps, while fifteen percent use all three steps to resolve their legal problems.

Less than 10% of the legal problems that Fijians experience in their daily lives are referred to courts of law. This means that 90% of the problems which are

justiciable are either directed to resolution outside of courtrooms or are abandoned without action. This represents a significant number of legal problems.

Traditional justice plays an important role, particularly in remote communities. Traditional justice in Fiji is an asset for access to justice at community level. However, there are challenges with the delivery of traditional justice and with the interaction with formal justice. The shuttling of problems between the two systems leaves an impression of arbitrariness. Particularly problematic is the situation with crimes in smaller communities. There is a view that traditional justice should deal with less serious problems.

It should be noted that traditional justice is in a dynamic state. The traditional reconciliation process of *Bulubulu* is losing its ground and social effect. Community authorities such as *Turaga ni koro* (Village Head) are overburdened and are not compensated adequately for their services. There are views that nowadays traditional justice involves less dialogue compared to its historical roots. An inherent bias against minorities and community outsiders is a challenge for traditional justice.

Compared to social networks and communal mechanisms, formal justice institutions are less frequently used. However, their users are more satisfied with the quality of their processes. The people who use formal justice mechanisms think that they are given more voice, more respect and dignity, as well as more clarity about the dispute resolution process. In particular, they value the ability to express views and feelings in a justice process and the confidence that their voices will be heard is higher in the processes of the formal institutions.

Slightly more than half of all legal problems in Fiji remain unresolved. Only one in three is seen as completely resolved. People believe that richer people are more likely to receive justice than poorer individuals.

In this report, we focused our attention on two distinct categories of legal problems – domestic violence and land disputes. Both problems occur frequently and require accessible and effective justice journeys.

Thirteen percent of all respondents who encountered legal problems say that they had to deal with domestic violence in the last four years. For women, the percentage is higher – 19%. Fear and social stigma are considerable barriers for women who suffer from domestic violence. As noted above, this is most likely resulting in the under-reporting of cases of domestic violence in the survey. In the section dedicated to domestic violence we present ample evidence from qualitative interviews that illustrates the severity of the problem.

Although mostly women experience domestic violence, there are also men who are victimised. For them there are even fewer resources available. Very few men seek support for domestic violence. Most often the other party is a spouse or a relative.

Being a young woman and living in a rural area are factors of vulnerability. Relatives and friends are the two most commonly consulted sources of information and advice. Almost one in ten victims of domestic violence sought legal advice from the Legal Aid Commission lawyers.

Two-thirds of the victims of domestic violence took action to resolve this particular legal problem. Going to the police, contacting the other party, involving a relative or going to Magistrates' courts are the most frequently used strategies. As with legal advice, community mechanisms are used less often than the formal justice mechanisms by victims of domestic violence. There are indications that victims are being 'pushed' to reconcile informally with the perpetrator.

One-third of the victims of domestic violence do not take active steps towards resolution. Such passive behavior is most typical for women from rural areas. Most often, victims say that they remain passive and do nothing because they do not believe in their own abilities to resolve the problem in a fair manner. Shame and social stigma are barriers as well. The uneasy transition from formal to informal institutions is another barrier.

The most frequently used strategy to respond to domestic violence is to contact the other party. Police is the most commonly used formal institution in cases of domestic violence. Of all the justice providers victims of domestic violence see the police as the most useful path to justice.

Informal justice mechanisms are seen by domestic violence victims as fairer and more user-friendly in terms of process; than the formal institutions. The institutions are more likely to resolve the problem; self-action is the least expensive strategy.

Resolutions based on self-action are perceived as being of lower quality compared to formal and social network mechanisms.

Land justice is the second problem that we examined more closely. Legal problems around land have a very high impact on the people involved. Eight out of ten people take some action to resolve it. Social networks, *Turaga ni koro* and *mataqali* (land owning units) play a vital role in advising people in cases of land disputes. Respondents told us that resolving land problems is costly.

Most Fijians trust justice institutions. The Legal Aid Commission and traditional justice mechanisms are trusted slightly more than courts, government and police.



# JUSTICE NEEDS AND SATISFACTION IN FIJI

## Approach to measuring access to justice in Fiji

The primary goal of this report is to assess access to justice in Fiji. To do this we conceptualise access to justice as a basic human right, but also as a practical capability to resolve disputes, disagreements and rights violations in a just and fair manner. This means that an accessible justice system guarantees sufficient and effective mechanisms through which people can resolve their needs for justice in a fair manner.

To assess the state of access to justice in Fiji we start with the citizens' needs for justice. We explore the situations in which the people need protection of the law. Such situations might have negative connotations – becoming a victim of a crime, being sacked from work or suffering a personal injury. But a justice need might have a positive meaning – registering a new-born child, buying a house or signing an employment contract.

An integral part of our approach is that the justice needs are deemed as situations that occur in real life. Our experience in studying justice needs shows that only a tiny proportion ever end up in courts, police stations or lawyers' offices. There are many different ways to respond to a justice need and the institutional mechanisms are only a fraction of the set of options. Some people do nothing when they experience a problem and just leave it to chance to get a fair resolution. Others travel many different paths to justice in order to resolve their problems.

We interviewed 4,910 randomly selected people in Fiji about their justice needs. This is the most comprehensive study of this kind in Fiji. The people told us about their problems and their successes. They told us in detail how they perceive the justice mechanisms in Fiji.

To complete the study of access to justice in Fiji we also talked to the people and organizations on the supply side. In that sense this report is based on a mixed-method approach. In-depth interviews with key informants and users, focus groups with representatives of relevant demographic and institutional sectors, and working sessions of co-creation with stakeholders are part of our qualitative toolbox.

## How we measure access to justice

People use formal and informal processes to resolve their legal problems. These are called justice journeys. HiiL quantifies these justice journeys by asking people about their perceptions of three dimensions: the process, the outcomes, and the costs of the journeys. The questions are categorised and displayed in ten easy-to-understand indicators of the costs and quality of access to justice.

### 1. The costs of justice



Money spent on the process: Monetary costs for legal fees, travel, advisors.



Time spent on the process: Time spent searching for information, evidence, attending hearings, travel, etc.



Stress and negative emotions attributed to the process.

### 2. The quality of the procedure



Voice and neutrality: Process control, decision control, neutrality, consistent application of rules.



Respect: Respect, politeness, proper communication.



Procedural clarity: Timely and accurate explanation of procedures and rights.

### 3. The quality of the outcome



Fair distribution: Distribution is fair according to needs, equity and equality criteria.



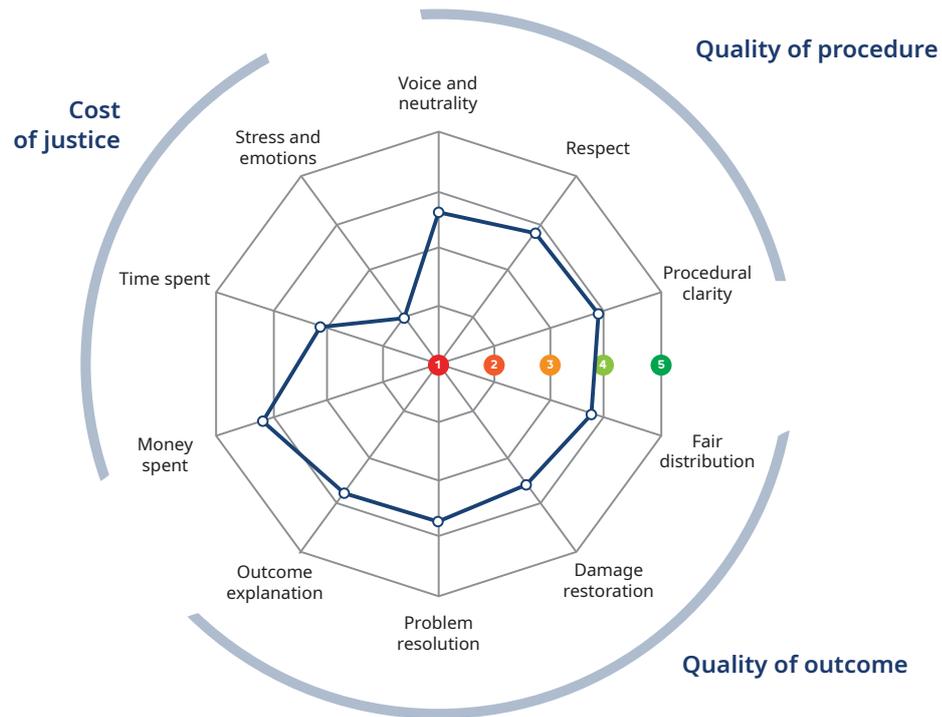
Damage restoration: Fair compensation for monetary loss, emotional harm and damage to relationships.



Problem resolution: Extent to which the problem is resolved, and the result is enforced.

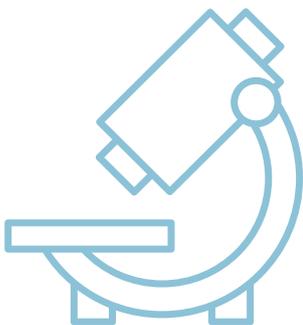


Outcome explanation: Extent to which the people receive access to outcome information.



### Desk research: Understanding the access to justice context

Thorough desk research was conducted to understand the legal, political, social and economic environment of Fiji. We reviewed the legal framework, starting with the Constitution. Recent legislative initiatives relevant to access to justice were explored. In addition, we reviewed past and current projects and initiatives in the field. The result of this analysis is discussed in the first part of the study.



### Survey research: listening to the people of Fiji

To map out the justice needs and experiences of the people of Fiji we adapted the Justice Needs and Satisfaction tool. Thorough desk research and interviews with stakeholders were used to adapt the tool to the legal, social, economic and cultural specifics of Fiji. From a substantive perspective, the instrument (structured questionnaire) first identifies the justice needs of the people and then gauges more than 40 elements of the justice journeys.

We trained 45 enumerators and supervisors from the network of the Fiji Bureau of Statistics. All enumerators had significant experience with surveys on various topics. During a two-day training session all enumerators and supervisors were trained on the subject matter of the Justice Needs and Satisfaction tool. The training focused specifically on the concepts of justice needs, operationalization of various categories and sub-categories of needs, strategies for obtaining legal information and dispute resolution mechanisms. Sampling, randomization, data quality, dealing with non-response, ethical considerations and mastering the hardware and software platforms were also part of the training of the interviewers and supervisors.

Divisions	Total Enumeration Areas by division	Sample Enumeration Areas by divisions	Percentage of selected EAs per division (%)
Eastern	87	34	39
Central	645	242	38
Western	616	231	38
Northern	254	95	37
Fiji Total	1,602	602	38

## Sampling

The sample of the survey was designed with three criteria in mind – diversity, representation and possibility for robust generalization of the results. It was important to conduct interviews in all divisions of the country. The table above shows the basic approach. For instance, from all 87 Enumeration Areas (EAs) in the Eastern division, 34 were randomly selected for the survey. These 34 EAs represent 39% of all EAs in the Eastern division.

The sample design took into consideration the randomization of the interviews within the selected EAs. Several enumerators working in the same division were under the supervision of a supervisor. Each enumerator was assigned to a specific EA and was given a detailed map of the area. These maps clearly outline the borders of the area as well as the beginning of the interview path. Each interviewer was instructed to follow the defined path and conduct interviews in households based on a sampling step. The sampling step (i.e. every fifth household) was defined on the basis of the total number of households in the area.



A sample of 5,000 effective interviews was targeted in order to achieve a margin of error within 1.5%. Practically, this means that with the achieved sample we are reasonably certain that the true proportion of people who encountered justice needs over the previous 4 years is  $\pm 1.5\%$  around the estimated 46.78% of respondents who reported experience of one or more justice needs.

## Individual and focus group interviews

In-depth interviews were conducted in Fiji between February and April 2018. Using a protocol for semi-structured interviews, we spoke to more than 60 stakeholders in the formal and informal justice systems of Fiji. Interviews were conducted with judges, magistrates, police officers, officials from central and local public authorities, private and legal aid lawyers and activists from civil society and grass root organisations.

Twenty focus groups with citizens and civil society organisations were carried out in different divisions.

This combination of bottom-up and top-down data helped us to spot the successes and challenges of justice as experienced by the people who live in the Fijian cities, towns and villages, in remote locations and small islands, of different age, gender and formal education level. By examining the justice system from the perspective of the users, we provide the project partners with a new and actionable insight into the way justice is perceived by its users. Moreover, this data shows the way towards more accessible, effective and fair justice.

## Limitations of the methodology

There are limitations to the data, just as in every study:

- Some findings are based on answers from a limited number of people. For a deeper understanding of people's experiences with specific justice journeys, different samples are needed. This can be achieved with, for example, problem-specific research instruments.
- Some people might not report problems due to shame and fear. For example, victims of domestic violence, victims of other types of crimes, parties in family disputes etc.
- Cultural norms may cause people to under or over-report legal problems. Dependency relationships also play a role in people remaining silent.

The following caution must be reiterated: the quotes featured in this report cannot and should not be generalised beyond the individual sources. In the text, we provide views and verbatim quotes from citizens and experts. These opinions represent only the ideas of the interviewed respondents.





# THE CONTEXT OF ACCESS TO JUSTICE IN FIJI

This chapter makes an introduction to the topic of access to justice in Fiji. It presents an overview of the key legislation and policies in the field, along with crucial recent developments, such as the establishment of the Legal Aid Commission, that have impacted the ability of the population to access justice. It summarises the responsibilities of the formal justice institutions that play a role in the formulation and delivery of justice policies. The chapter also discusses the role of informal justice mechanisms in resolving disputes and their interaction with formal justice institutions and procedures.

## Constitutional and legislative framework

The Constitution proclaims that Fiji is a state founded on eight values, of which one is “an independent, impartial, competent and accessible system of justice”.<sup>1</sup> This important function of access to justice indicates the priority of equal, affordable and effective justice for the Fijian society and justice system.

The Constitution enshrines certain rights that are elements of the broader notion of access to justice. Sections 13 and 14 lay out the rights of arrested, detained and accused persons. These include the right to habeas corpus and its constituent elements. Where such persons do not have sufficient means to engage a legal practitioner and the interests of justice so require, they are entitled to be “given the services of a legal practitioner under a scheme for legal aid under the Legal Aid Commission”.<sup>2</sup>

The right to access courts or tribunals, guaranteed under section 15, provides that “the State, through law and other measures, must provide legal aid through the Legal Aid Commission to those who cannot afford to pursue justice on the strength of their own resources, if injustice would otherwise result.” The Constitution also enshrines equality before the law and the right to equal protection.<sup>3</sup>

In addition to protecting individuals’ rights, the Constitution also sets out the duties of institutions responsible for ensuring access to justice. Foremost among these are the courts of law. Courts of general jurisdiction are the Supreme Court, the Court of Appeal, the High Courts and the Magistrates’ Courts. Specialized courts include among others the Small Claims Tribunal, the Tax Tribunal and the Employment tribunal.

## Access to justice: Legal and institutional frameworks

In addition, the Constitution stipulates the establishment of independent judicial and legal institutions that are crucial for the provision of access to justice. The most prominent of these in the provision of access to justice is the Legal Aid Commission. It is an independent body given significant autonomy to determine how it should discharge its mandate.

<sup>1</sup> Constitution of the Republic of Fiji 2013, s 1(c).

<sup>2</sup> Ibid, s. 13(c) and 14(d).

<sup>3</sup> Ibid, s. 26(1).

## Legal Aid Act 1996 and the Legal Aid Commission

The Legal Aid Act 1996 established Legal Aid Commission as a body whose duty it is to “provide, subject to the resources available to it, legal assistance to impoverished persons.”<sup>4</sup> The Legal Aid Commission can provide legal assistance through a variety of means, including arranging for the services of private legal practitioners, making available the services of the Legal Aid Commission employees, providing for a duty lawyer at courts or tribunals, and educating the public.<sup>5</sup> In practice, the Legal Aid Commission provides the bulk of its services through qualified staff lawyers.

The Legal Aid Act provides the Legal Aid Commission with a broad discretion in deciding who is eligible for legal aid, the scope of its services (including the types of matters in which legal assistance will be provided) and on whether to provide its services free of charge or at a cost. In accordance with section 8(1) of the Legal Aid Act, the Commission developed the Legal Aid Policy Guidelines to set out more precisely the terms of the assistance it would provide. The Guidelines state they are aimed at ‘assisting as many impoverished persons as possible’, while applying to both Fijian citizens and foreign nationals.<sup>6</sup>

The Legal Aid Commission provides legal aid to the vast majority of those applying for it. For instance, in 2016, only 2% (247 out of 12,573) of applicants did not meet eligibility criteria (either based on merit or on a means test). The majority of the recipients of assistance from the Legal Aid Commission are men. From 2012-2016, the Legal Aid Commission has assisted twice as many men as women due to the fact that the majority of accused in criminal cases are men. More than 6,000 women initiated family law or domestic violence restraining order applications in the Fiji courts in 2016. One in three of these women were represented by the Legal Aid Commission.<sup>7</sup>

The Legal Aid Commission provides legal aid in criminal, family and civil cases, which places Fiji in a unique position in the region and above and beyond international human rights standards and comparative practice.<sup>8</sup> The applicant for legal aid may be means tested and may have to satisfy the Commission that she or he has reasonable prospects of success in the matter for which legal assistance is sought.<sup>9</sup> The Legal Aid Commission has set the means test at a net annual income or earnings of FJD\$15,000. The means

<sup>4</sup> Legal Aid Act 1996, s 6.

<sup>5</sup> Ibid, s 7.

<sup>6</sup> Legal Aid Commission, ‘Legal Aid Policy Guidelines’.

<sup>7</sup> Fiji Women’s Rights Movement, ‘Balancing the Scales: Improving Fijian Women’s Access to Justice’ (2017).

<sup>8</sup> See UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems ([https://www.unodc.org/documents/justice-and-prison-reform/UN\\_principles\\_and\\_guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf), last accessed 5 March 2018); see also the Global Study on Legal Aid Report ([https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global\\_Study\\_on\\_Legal\\_Aid\\_-FINAL.pdf](https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global_Study_on_Legal_Aid_-FINAL.pdf), last accessed 5 March 2018).

<sup>9</sup> Legal Aid Act, s 7-9.

test is flexible for juveniles, and remand and convicted prisoners.

The Act also regulates the manner in which applications will be processed by the Legal Aid Commission and the rights of applicants to have decisions of the Commission reviewed.<sup>10</sup> Additionally, the Act contains administrative provisions governing the functioning of the Commission, the manner in which it disposes of its finances and its liabilities.<sup>11</sup>

The Legal Aid Commission is funded by the Government of Fiji. Its budget for August 2016 – July 2017 was \$5 million FJD, or approximately \$6 FJD per capita (approximately \$2.87 USD).<sup>12</sup> This is a sizeable figure and compares favourably even to many developed countries. For instance, according to the latest available figures from 2013, Japan allocated \$1.98 USD, Lithuania allocated \$0.174 USD, South Africa allocated \$1.87 USD and Spain allocated \$3.16 USD per capita.<sup>13</sup>

In 2016, the Legal Aid Commission provided advice in 16,667 cases, of which 6,454 pertained to family law, 2,649 to criminal law, and 7,564 to civil law.<sup>14</sup> When it comes to legal representation in court, the Legal Aid Commission represented 15,363 clients in court in 2016, including 9,457 men and 5,906 women. Of these, 3,298 were in family law cases, 4,410 in criminal cases and 7,655 in civil cases. Aside from the 15,363 cases in which clients were represented by the Legal Aid Commission, the Commission also briefed out a further 937 cases to private lawyers.

As of 31 December 2016, the Legal Aid Commission was staffed by 176 employees, of which 87 were lawyers and 89 were corporate staff.<sup>15</sup> However, the Legal Aid Commission's new organisational structure foresaw a total of 209 employees to be recruited by 31 July 2018. At the time of writing, the Legal Aid Commission was still in the process of recruiting qualified persons for these positions. The new staff will be needed to cover the significant expansion in services that the Legal Aid Commission is providing to the Fijian population. It has expanded its reach geographically across Fiji, as well as substantively, with its recent venture into providing legal aid in civil matters. As a result, the Legal Aid Commission has become a major part of the institutional framework for resolution of legal problems in Fiji.

The Legal Aid Act provides the foundation for the expansive provision of free legal aid in Fiji. It does not constrain the Legal Aid Commission to criminal matters only, and the Legal Aid Commission has used this mandate to provide legal aid in a wide range of cases. The open-ended language in the provisions regulating eligibility have also allowed the Legal Aid Commission

to interpret its provisions generously and to be guided by the needs of the people and the interests of justice in deciding on applications.

## The Judicial Department and the courts

According to article 97 of the Constitution of Fiji, “the judicial power and authority of the State is vested in the Supreme Court, the Court of Appeal, the High Court, the Magistrates’ Court, and in such other courts or tribunals as are created by the law”. The Judicial Department is comprised of courts of general jurisdiction, specialised tribunals, and court support staff. Its mission is to “ensure a judicial system that is accessible, efficient, effective and transparent”.<sup>16</sup> The Head of the Judiciary is the Honourable Chief Justice. The Chief Magistrate heads the Magistracy and the Small Claims Tribunal, while the Chief Registrar is the Chief Accounting Officer of the Department and heads the Court Support Staff.<sup>17</sup>

The Magistrates’ Court<sup>18</sup> is a court of first instance for most civil and criminal cases in Fiji, as well as for traffic, inquest and juvenile cases, along with family cases on rare occasions. In civil claims, the Magistrates’ Courts have jurisdiction over matters including personal claims in which the matter in controversy does not exceed \$50,000 FJD, the tort of trespass, the appointment of guardians and the custody of children, and over issuing domestic violence restraining orders. In criminal matters, the Magistrates’ Courts have jurisdiction over criminal offences and misdemeanours that are punishable by maximum sentences of 10 years under the Crimes Act.<sup>19</sup>

There is a total of 36 Magistrates’ Courts in 22 towns and population centres.<sup>20</sup> These contain 20 courts in 12 centres in the Central and Eastern divisions, including one each in far-flung Rotuma and Kadavu. In the Western division there are 11 courts in 7 centres, while in the Northern division there are 5 courts in 3 population centres.

The High Court provides redress for violations of the Bill of Rights and acts as a court of first instance in certain civil matters (including tax, employment relations, pensions’ disputes), criminal matters, probate and admiralty. Magistrates’ Courts’ decisions can be appealed to the High court. In criminal matters, it hears all indictable offences (such as murder, treason, manslaughter, rape, aggravated robbery, and so on). The High Court sits in Suva, Lautoka and Labasa.

The Juvenile Court deals with juveniles who have been charged with a criminal or a traffic offence and care order applications from the Social Welfare Department.

<sup>10</sup> Ibid, s 12-16.

<sup>11</sup> Ibid, s 17-36.

<sup>12</sup> As of 11 July 2018, according to the exchange rate on [www.xe.com](http://www.xe.com), last accessed 11 July 2018.

<sup>13</sup> UNODC and UNDP, ‘Global Study on Legal Aid: Global report’ (2016).

<sup>14</sup> Legal Aid Commission, ‘Strategic Plan: Promoting Greater Access to Justice for all Fijians’ (2017) section 1.5.1.

<sup>15</sup> Legal Aid Commission, ‘Strategic Plan: Promoting Greater Access to Justice for all Fijians’ (2017) section 1.5.6.

<sup>16</sup> Judicial Department Strategic Plan 2019-2023.

<sup>17</sup> Judicial Department of Fiji, <http://www.judiciary.gov.fj/>, last accessed 31 July 2018.

<sup>18</sup> Ibid.

<sup>19</sup> Crimes Decree 2009. Referred to as the Crimes Act under Act No. 31 – Revised Edition of the Laws (Consequential Amendments) Act 2016 s 107(b)(i) (“reference made to any “Decree” will now be replaced with the word “Act”).

<sup>20</sup> Magistrates’ Court of Fiji, <http://www.judiciary.gov.fj/index.php/magistrates-court>, last accessed 20 July 2018.

This is a closed court and only parents/guardian(s) are allowed access, along with the prosecution, representatives from the Department of Social Welfare, counsel and other such persons. It may be convened as a separate court, or a Magistrates' Court can be convened to specifically hear a charge against a juvenile or exercise any other jurisdiction conferred upon the Juvenile Court. The Juvenile Court can dispose of all cases brought before it except murder or attempted murder, which must be heard in the High Court.

The Court of Appeal has jurisdiction to "hear and determine appeals from all judgments of the High Court".<sup>21</sup> As such, it is less frequently the institution directly responsible for providing justice to citizens seeking redress before the courts, as most citizens do not have the resources to file appeals against rulings of the High Court.

The Supreme Court, as the final appellate court, may grant special leave to appeal in both civil and criminal matters. Such leave to appeal may sometimes be used to settle questions of law. It is the court of final instance.

Aside from these courts of general jurisdiction, the Fijian judiciary also includes specialised tribunals such as the Employment Relations Tribunal and the Small Claims Tribunal (see appendix 1). In criminal matters, key institutions for ensuring access to justice for victims or witnesses of a crime include the Fiji Police Force and the Office of the Director of Public Prosecutions (see appendix 1).

## Traditional and informal justice processes

Traditional and informal dispute resolution is firmly embedded in the social and legal culture of Fiji.<sup>22</sup> It should be noted that place of residence are factors associated with the dynamics of using traditional dispute resolution methods. Urban communities are seen as having shifted to more modern forms of dispute resolution, with the traditional dispute resolution mechanisms only being applied in rural communities. Even in these communities various social, legal and cultural factors interact to constantly decrease the role and importance of traditional justice. With time traditional justice mechanisms in Fiji are used less often.<sup>23</sup>

Maintaining law and order, harmonious and peaceful living in the community as well as ensuring that traditional leadership is upheld and respected are key objectives of the iTaukei Affairs Act.<sup>24</sup> Section 83 of the iTaukei Affairs Act stipulates that "For the purposes of peaceful co-existence, traditional reconciliation shall be encouraged at all times, however, this shall not distract the due process of law where necessary".

*"Their primary role [of traditional justice] is to maintain peace and harmony in local – usually village – communities. In practice, they often exhibit a distinctly restorative character in the management of disputes and conflict on the basis that parties will have to continue to live together in relatively tight-knit and inter-dependent social settings. They may nevertheless also exhibit distinctly retributive characteristics and operate in a harsh and discriminatory manner against certain groups, including children and women."*<sup>25</sup>

Traditional justice reflects the importance of reconciliation in tight communities where the levels of inter-dependence are high and where the parties in a conflict must continue to live in close proximity.

The aim is not the punishment of wrongdoers but the restoration of community harmony. This restorative process includes the reintegration of those who have breached the communal norms.

*"Such approaches are particularly widespread in rural areas and disadvantaged urban communities where access to state justice remains problematic for many citizens. 'Traditional' approaches are accessible, culturally appropriate and tailored to the most common types of conflict in local communities, including inter-personal security; protection of land, property and livestock; and family and community disputes."*<sup>26</sup>

Traditional justice mechanisms in Fiji take different forms. In minor disputes, an apology – *o soro* – is sought in order to settle the issue informally within or between families. Other dispute resolution processes follow more structured procedures with assembly of the disputing parties and a neutral person or persons who decide the matter on behalf of the community.<sup>27</sup> An example is the *i Bulubulu* ritual of reconciliation used by villagers throughout Fiji.<sup>28</sup> *Bulubulu* means "to bury the past and make peace for the future". The ceremonial procedure usually involves the presentation of traditional items of wealth or status such as *tabua* (whale's tooth) and *yaqona* (kava). An admission of wrongdoing is followed by a request for forgiveness. The offended party is obliged by custom to reciprocate in an equally conciliatory manner.

The customary way of solving conflicts is not intended to punish or alienate the wrongdoer from the community. While the perpetrators of wrong actions recognise that they are at fault, they are also being helped by the community to change and live according to the norms of society. The overall intention of the process is to normalize the relationships. Therefore the traditional justice processes rarely include a process of fact finding or application of norms. In that sense, traditional justice

<sup>21</sup> Constitution of the Republic of Fiji 2013, s 99(3).

<sup>22</sup> Ratu Filimone Ralogaivau, 'Problem Solving Courts: Blending Traditional Approaches to Dispute Resolution in Fiji with Rule of Law - The Best of Both Worlds' in The University of the South Pacific (ed), *The University of the South Pacific* (The University of the South Pacific 2006).

<sup>23</sup> Merry Engle, 'Tensions between Global Law and Local Social Justice'.

<sup>24</sup> iTaukei Affairs Act 2016, s 4(II).

<sup>25</sup> UNICEF, "'Traditional' Justice Systems in the Pacific, Indonesia and Timor-Leste' 1.

<sup>26</sup> UNICEF, "'Traditional' Justice Systems in the Pacific, Indonesia and Timor-Leste' (2009) 4.

<sup>27</sup> Chief Justice of Fiji, His Honour Justice Daniel V. Fatiaki. (March 2005) "Opening address to Alternative Dispute Resolution (ADR) workshop" Suva, Fiji Islands.

<sup>28</sup> Andrew Arno, 'Ritual of Reconciliation and Village Conflict Management in Fiji' (1976) 47 *Oceania* 49.

in Fiji should be seen not only as a dispute resolution procedure but as part of a larger set of processes and norms aimed to ensure community cohesion.

Traditional leaders, elders (*qase*), parents, and the church play an important role in the prevention of crime and conflict in the village. Village Councils and their sub-committees have an important role in the maintenance of the social order. For instance, the Law and Order sub-committee has to ensure that law and order is upheld at all times.<sup>29</sup>

The form of dispute resolution normally depends on who is involved and the seriousness of the dispute. In the case of disputes between members of different groups of extended families or sub-clans (*mataqali*), the head of the clan (*yavusa*) might convene a meeting of the disputing factions, including disputes between men and women and adults and children. The *Turaga ni koro* (village head) is likely to assist. Disputes within the family settings are generally seen as the responsibility of parents.

*“Turaga ni koro need to undergo training so that they can assist; district level: advisory councillors can also assist in the facilitation of mediation or resolving disputes, however they also need to undergo training and become familiar. In-depth knowledge would be useful and assist in processes.”* (Interview with Legal Aid Commission representatives)

The social position and personal qualities of the neutral third party are very important in this procedure. A chief would try to approach the problem of reconciling offenders with their victims through various approaches. The first is the need to listen to both parties impartially. The second is the ability to recognise which party is to be blamed for the problem. The third, and also most important, is the ability to reconcile the differences between the two groups. In an attempt to reconcile differences the chief also gives words of advice, more to the ‘troublemakers’ or the ‘accused’ than to the aggrieved party. The chief may advise the trouble makers to present their offering to those who have been wronged. At last the craft of traditional conflict resolution is the ability to bring about forgiveness between the two parties.

There are also concerns about the values promoted by traditional justice mechanisms. These processes focus on peaceful settlement, compromise and agreement where communal interests outweigh individual rights and interests. Hence some basic human rights might be infringed for the sake of communal harmony. Other concerns are that *Bulubulu*, although decreasingly, is still used as a substitute for criminal prosecution and punishment of cases of gender based violence. In some of these cases the father of the victim receives

an apology and forgives the perpetrator, while the victim has little or no say in the process.<sup>30</sup> Therefore the traditional justice mechanisms might be seen as oppressive to women.

<sup>29</sup> iTaukei Affairs Act, s 26b.

<sup>30</sup> Sally Merry Engle, ‘Tensions between Global Law and Local Social Justice: CEDAW and the Problem of Rape in Fiji’, Conference Justice Across Cultures (Hassenfeld Conference Center, Brandeis University 2004).



# LISTENING TO THE PEOPLE OF FIJI



# Prevalence of legal problems

Demographics  
Prevalence of legal problems  
Conclusions



## Demographics of the sample

- 4,910 inhabitants of Fiji were interviewed, face-to-face, between March and June 2018.
- The sample is equally divided between women and men<sup>33</sup> and in terms of urban/rural divide.<sup>34</sup>
- The average age of respondents is 41 years old.
- The average household size is 5 persons.

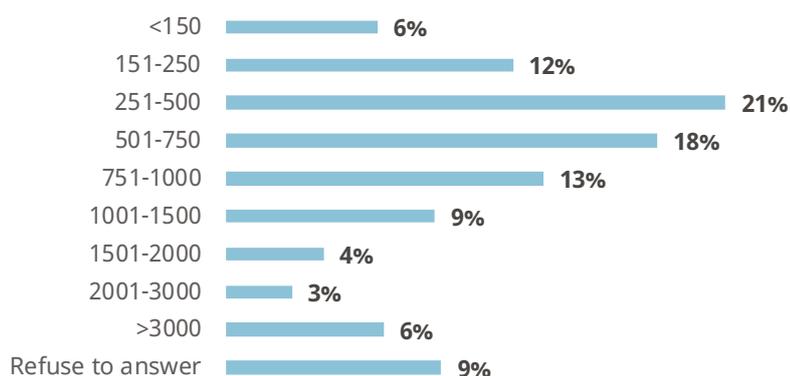
in Fiji lies between 31%<sup>35</sup> and 34%.<sup>36</sup> Household income distribution in the sample agrees with these figures, as almost 40% of the respondents live in households with a monthly income of less than 500 FJD.

Age & category name	
Youngster (18-24)	17%
Young adult (25-39)	35%
Middle age (40-64)	39%
Old age (over 65)	9%

Marital status	
Single (Never married)	22%
Married	67%
Married, but Separated	2%
Divorced	2%
Widowed	8%

Monthly household income group	
Low	18%
Lower middle	38%
Middle	22%
High	13%
Refuse to answer	9%

### HOUSEHOLD INCOME (FIJI DOLLARS)



According to UNDP and the World Bank, the poverty rate

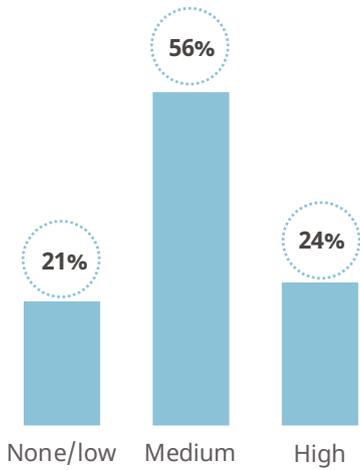
<sup>33</sup> This is consistent with the actual gender distribution, according to the 2017 census data.

<sup>34</sup> According to the 2017 census, Fiji's population is slightly more urban (55.9%) than rural (44.1%).

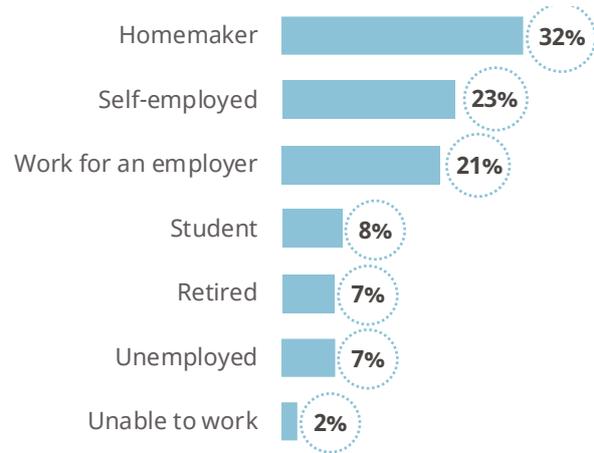
<sup>35</sup> <http://www.pacific.undp.org/content/pacific/en/home.html>

<sup>36</sup> <https://data.worldbank.org/country/Fiji>

**FORMAL EDUCATION LEVEL**

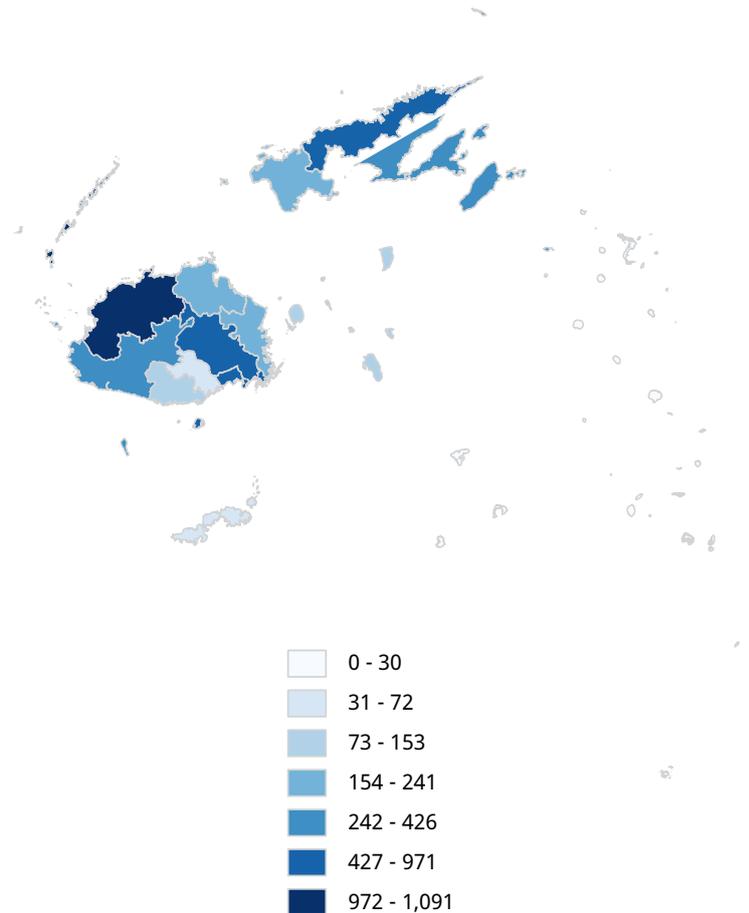


**OCCUPATION**



The enumerators covered all 14 provinces in Fiji’s four divisions. Rotuma island was not covered due to its difficult access. The table below shows the number of observations per province.

Province	Observations
Ba	1,091
Naitasiri	971
Rewa	600
Macuata	587
Cakaudrove	426
Nadroga-Navosa	296
Tailevu	241
Ra	166
Bua	162
Lomaiviti	153
Serua	78
Kadavu	72
Namosi	36
Lau	31

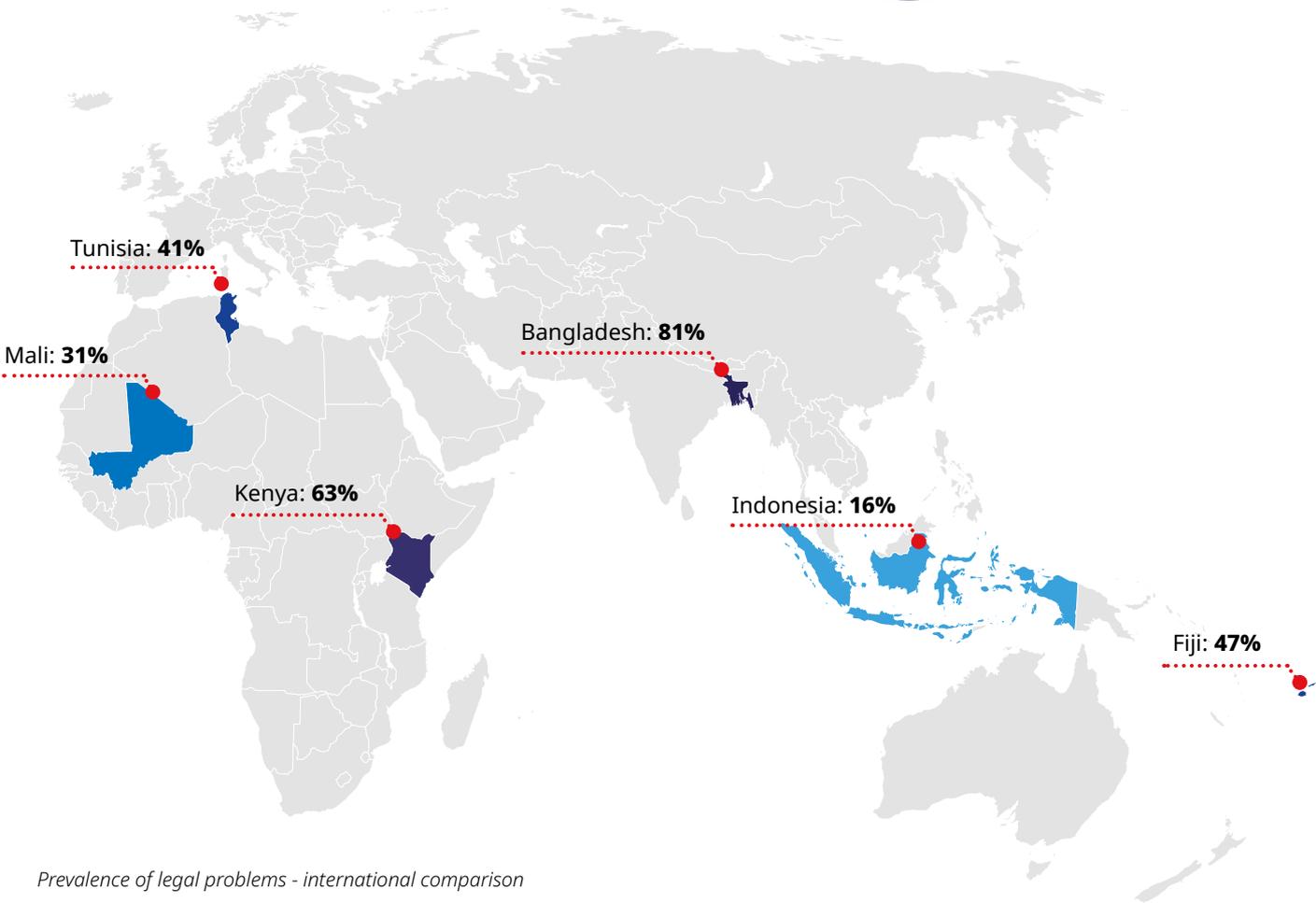
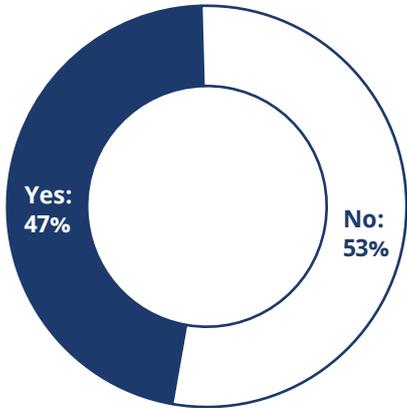


Observations in the sample per province

# Prevalence of legal problems

**Almost half of the inhabitants of Fiji had to deal with one or more serious legal problems in the previous 4 years**

EXPERIENCED A LEGAL PROBLEM



Prevalence of legal problems - international comparison

47% of the adult population in Fiji has experienced one or more legal problems during the previous four years. This implies that approximately 100,000 people experience at least one legal problem every year.

Many people in Fiji have to deal with legal problems in their daily lives. This high level of occurrence of legal problems is acknowledged by various providers of justice services. There is a general agreement that the demand for justice is overwhelming. Specifically, the demand for adjudication is seen as overwhelming and increasing. There is almost a feeling of crisis among some judges and magistrates.

*"We aim at a good and high-standard judicial system, but we lack a number of judicial officers. This is because the needs are expanding. Caseloads have been increasing, lots of people are coming into courts."*  
(High level judicial officer)

*"There are a lot of cases in the courts. Before there was a very small circuit. The workload increased a lot. The pressure on judges and magistrates increased a lot."*  
(High level judicial officer)

*"The demand is incredible. We [magistrates] wish there are more courts."* (Magistrates)

*"There are a lot of land problems, disputes about ownership. Disputes between the clans themselves about ownership of particular land as the people living on the land might be misinformed as to who is the owner."*  
(Focus group with citizens)

This view that the demand for justice in Fiji is overwhelming can also be found outside of the courts. The supply of legal services and specifically legal aid is not keeping pace with demand.

Another aspect of the high level of legal problems is that Fijian society is undergoing profound transformation and this has relevance in terms of the role of the law in the lives of individuals and communities. Particularly strong is the observation that social norms or rather the lack of social norms is eroding social cohesion. Young people are particularly seen as losing traction with the social norms of the past. Problems such as youth unemployment, drinking, drug use and trafficking, internal migration and the related practice of squatting

are all trends that endanger public order. Participants in focus groups express views that crime rates are increasing as a result. Young people are particularly susceptible to getting involved in problems. Early school drop outs are linked to a proclivity for engaging in unlawful behaviour, hence causing problems with legal implications.

These social trends are seen as fuelling legal problems and affecting how justice is being delivered in Fiji.

*"Over Christmas, my brother's son was drinking around the village [not allowed to drink inside the village], day after there was supposed to be a community gathering. But day after guy came with yanqona, presented it, so I convened a meeting [where] everyone spoke, some cried; we eventually went to community gathering, presented what happened, and spokesperson of village said "thanks for teaching us again" about what happens. However, traditional processes of speaking, being told off, are not happening. It's actually dying."* (Civil society activist, D50)

*"A concern to us now are drugs. In some villages, we had raids. In Kadavu and Vanua Levu - marijuana [was found]."* (Senior civil servant)

There is a degree of co-occurrence of problems; people with legal problems experience an average of 1.7 disputes. Co-occurrence is highest in the central division at 2.2, while in the Northern division it is 1.1. In the Eastern division it is 1.2 and in the Western division the figure is 1.5.



**For different groups in society, experiencing a legal problem is more or less common:**

- Men (49%) are slightly more likely to experience legal problems than women (44%).
- Young adults and middle age adults (around 50%) are more likely to experience legal problems than the young and the old age group (around 40%).
- More highly formally educated individuals report a higher prevalence of experiencing legal problems (almost 50%).
- People in the lower-middle income group (54%) are most likely to report legal problems, while those in the high-income group (36%) are least likely to do so.
- There is a distinct geographical divide between the four divisions of Fiji:

Division	Prevalence of legal problems
Western	54%
Eastern	47%
Central	44%
Northern	41%

At various levels many of the interviewed stakeholders and non-lawyers outlined a distinction between urban and rural areas. In terms of experiencing legal problems, there are views that urban dwellers are more likely to recognise the legal implications of the problems and also to use the law as a means of resolution.

*“Urban area cases get more reported than rural.”*  
(Legal Aid Commission Officer)

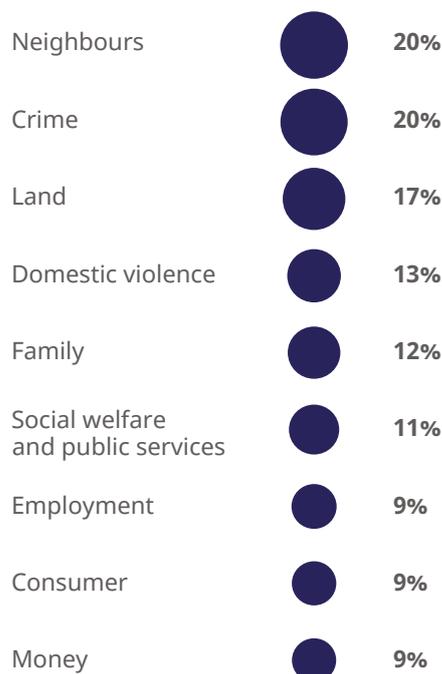
On the other hand, people from rural areas, and particularly those from remote areas, have less access to justice. Lack of knowledge of rights and legal awareness is a particular problem in these areas.

*“Urban areas are fine but rural areas are marginalised and most vulnerable.”* (Focus group with persons with disabilities)

People identified up to five different problem categories they had experienced in the previous four years.

Neighbour-related disputes, land conflicts and crime are the most commonly experienced legal problems in Fiji. Domestic violence is another category that is quite common.

**MOST COMMON LEGAL PROBLEMS**



- Men encounter more legal problems than women concerning crime (23% compared with 16%), land (22% compared with 12%), and employment (11% compared with 7%).
- Women, on the other hand, experience more problems than men related to domestic violence (19% compared with 7%) and family disputes (15% compared with 9%).
- Domestic violence and employment are most common among the young (19%) and young adults (17%).
- Land disputes occur much more frequently among older sections of the population, most often among those in middle adulthood (22%) and old age (25%).
- Higher income groups face more crime, employment problems, consumer problems and housing issues, while lower income groups more often deal with land disputes and social welfare/public services issues.
- More formally educated individuals face more domestic violence and employment problems, while those with a lower level of formal education face land disputes and social welfare/public service issues more often.

It is plausible that certain problems are under-reported. Below, we discuss possible reasons why victims of domestic violence are perhaps less inclined to report

their problems. Domestic violence is still linked to stigma and shame. These barriers affect people's willingness to involve other individuals or institutions in the process of resolving the problem. It also affects the extent to which occurrences of legal problems are reported in the JNS survey.

*"Reporting such matters [domestic violence] could cause you to lose respect."* (Group interview with Development professionals )

Corruption is another example. Admitting corruption can be perceived as an act of incrimination. Cultural norms can also intervene.

*"Corruption is still a big problem; people are still not reporting it as much as they should but compared to 5-10 years ago the situation gets better because people trust us. Number of complaints has increased. So, change of perception has improved: the perceptions of 'there is no victim', 'it's a tradition', those are difficult to change. Unfortunately, judges and magistrates indirectly have the same perception – it's not murder, it's not rape, so it's not as serious."* (Interview with officer from a public authority)

Power imbalance and hierarchical differences also influence people's willingness and freedom to report legal problems.

*"People don't want to come forth, go against their bosses, [...], they don't want to make statements."* (Interview with officer from a public authority)

Certain sections of society are also unlikely to report legal problems. People living in remote and rural

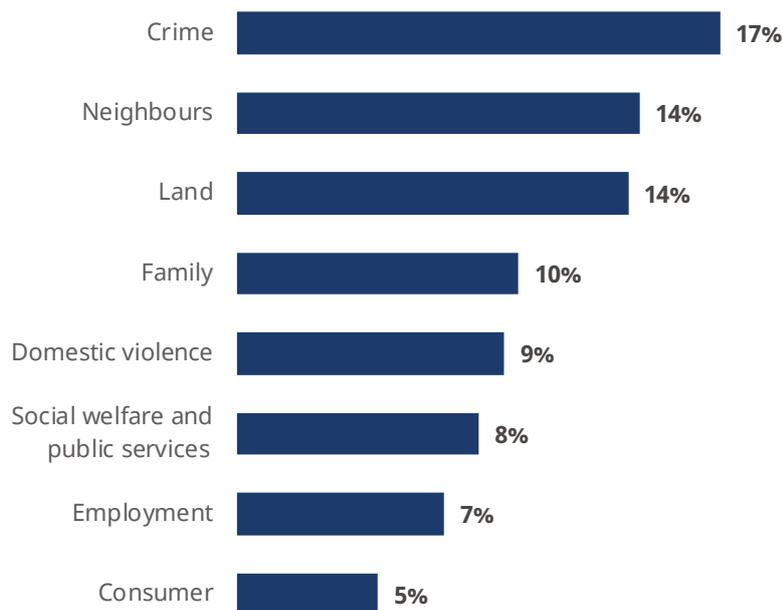
areas are an example. LGBTI people in Fiji are another example of a community whose legal problems remain hidden from society and the justice system.

*"Because of certain realities that we go through in this country, it's the fear that do not allow the LGBTI people to access [legal] services."* (Interview with CSO representative)

Perceived barriers make the people of Fiji under-report legal problems. This means that the 47% prevalence rate should be seen as a lower range of the prevalence of legal problems. It is likely that certain legal problems such as domestic violence, corruption, some instances of family and crime problems are under-reported. Vulnerable groups are more likely to remain silent about their legal needs and problems. From policy and service delivery perspectives this translates into a need to constantly monitor areas and populations where legal problems might remain hidden. Civil society organisations have a particularly important role in bridging these gaps.

Survey respondents also identified the legal problem that they considered to be most serious. The rest of the analysis in this report focuses on this one specific problem.

#### MOST SERIOUS PROBLEM



Crime, conflicts with neighbours and land disputes are the most common serious problems experienced by the people of Fiji. The table below shows the estimated number of people affected by these three problems each year.

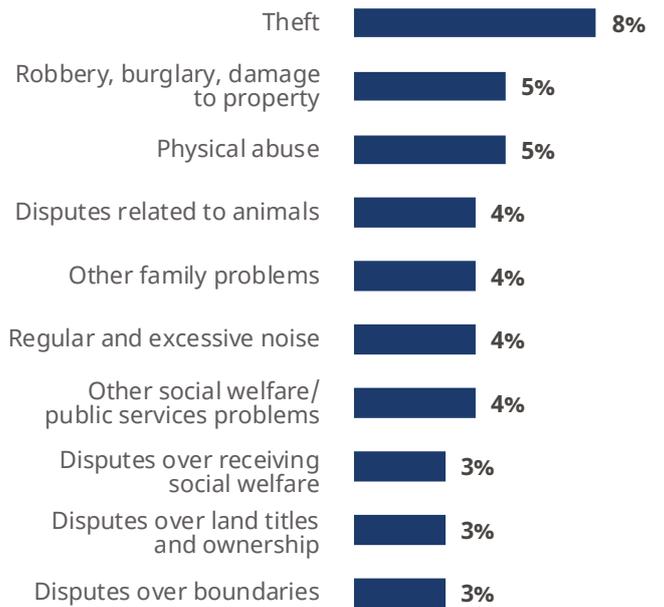
PROBLEM CATEGORY	PEOPLE AFFECTED PER YEAR
 Crime	17,000
 Neighbours	14,000
 Land	13,500

- Men report more problems around land and crime as their most serious, while women are more likely to report domestic violence and family disputes as their most serious problem.
- Older individuals identify land disputes as their most serious legal problem. For younger individuals, employment disputes and domestic violence are more pressing.
- Lower levels of income and formal education are associated with more land disputes and issues around social welfare/public services, while those with higher levels of income and formal education more often face employment and housing issues.

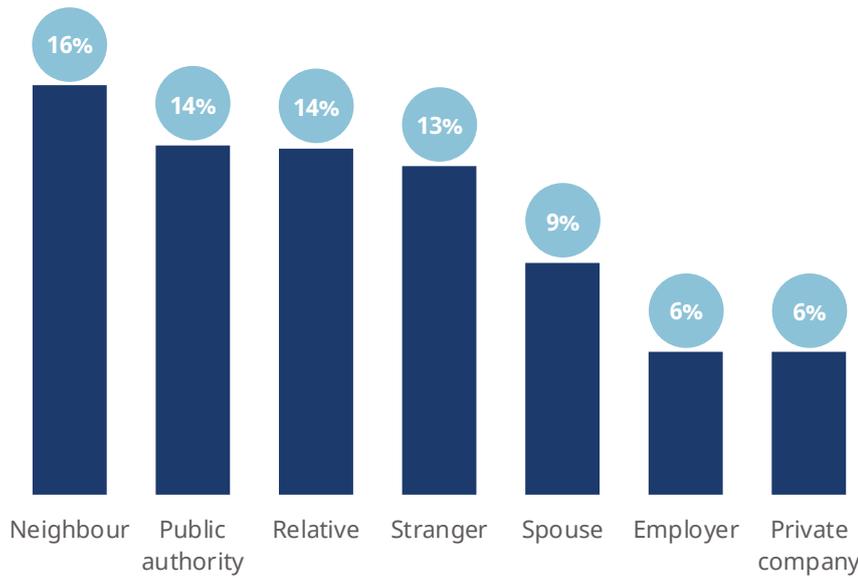
The 14 problem categories are broken down into 90 specific problems. The graph below highlights the top ten. Theft clearly stands out as the most commonly reported serious problem.



**MOST SERIOUS SPECIFIC PROBLEM**



**COMMON OPPOSING PARTIES**

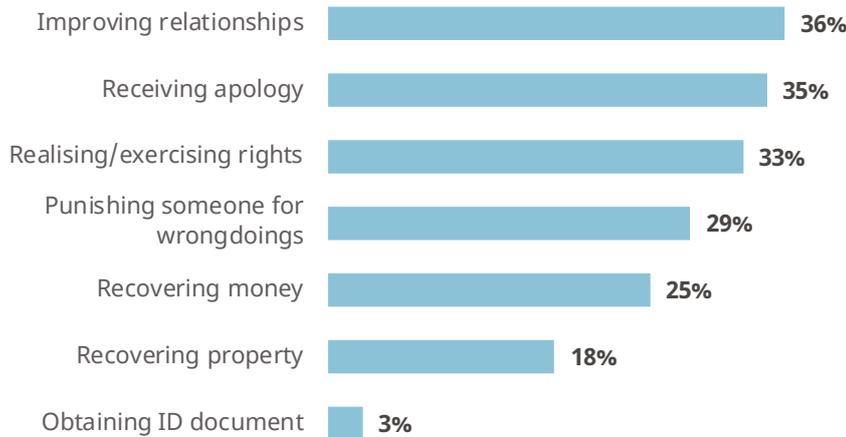


The most common opposing party is related to the type of legal problem experienced:

- For crimes people mostly deal with strangers (58%).
- Land disputes often involve relatives (25%), landowners (25%), and public authorities (19%).
- Domestic violence almost exclusively involves either the spouse (58%) or a relative (23%).



**WHAT DID YOU EXPECT TO ACHIEVE THROUGH RESOLUTION?**



Men focus more on recovering money (27%) and property (21%), while for women improving relationships (38%) and receiving an apology (38%) are more important.



The category of legal problem has a strong influence on people’s expected outcomes:

- Improving relationships is important for domestic violence cases (68%), family disputes (68%) and conflicts between neighbours (57%).
- Receiving an apology is also central in domestic violence cases (64%) and neighbour disputes (55%).
- Realising/exercising rights is a common desired outcome in employment disputes (54%) and social welfare/public services issues (46%).
- Someone being punished for wrongdoing is particularly desired for domestic violence (40%) and crime (57%).
- Lastly, recovering of money is important in employment disputes (55%) and recovering of property in land disputes (53%).

- Men and women are impacted to the same degree.
- People with a lower level of formal education and/or income indicate being impacted more strongly than those with higher levels of formal education and/or income.
- For domestic violence (68%), family disputes (66%), social welfare/public services issues (66%) and land disputes (63%) people more often state the impact is substantial (severe or very much so).

**HOW DID THE LEGAL PROBLEM AFFECT YOUR LIFE?**

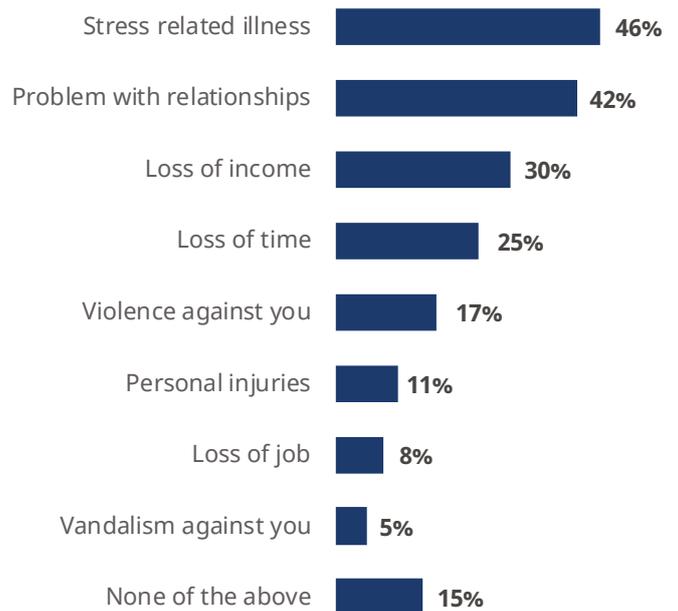


- The negative effect was severe
- Very much so
- Moderately
- Just a little bit
- Hardly affected me negatively

On average, 60% of those who experienced a legal problem indicated that it affected their life either severely or very much so. This clearly shows that these problems are not trivial and have a significant impact on people.

*“People lose faith in the justice system due to the lengthy and costly process. Some are affected with the trauma or stigma of not accessing proper justice.” (FGD in Labasa)*

**DID YOU EXPERIENCE ... ?**



Stress related illnesses and problems with relationships are the two most common consequences of legal problems. There are important differences across different groups:

- Loss of income (36% compared with 24%) and time (28% compared with 21%) is more common for men than women.
- Women face more violence against them than men (20% compared with 15%).
- Violence against you and personal injuries as consequences are more common among younger sections of the population and among those with a higher level of formal education.

# Conclusions

- Experiencing a legal problem is a common occurrence, with one out of every two adults facing one or more legal problems in the previous four years. This translates to roughly 100,000 legal problems every year. Crime, conflicts with neighbours and land disputes are considered the most serious issues. Domestic violence is strikingly common.
- Many barriers curtail people's freedom and ability to report a problem. This is particularly true for specific types of problem and specific groups. Unreported and hidden problems require the special attention of service providers, civil society organisations and policy makers.
- When attempting to resolve their legal problems, people mostly wish to improve relationships, receive an apology and realise/exercise their rights. People are less focused on the material aspects of the disputes and care more about restoring interpersonal harmony.
- The impact of legal problems on people's lives is substantial, with more than half indicating it affects their life either very much or severely. Due to legal problems, people often face stress related illnesses, problems with relationships, loss of income and loss of time. Violence against a person and personal injury are also quite common.



# Seeking and receiving legal information and advice

Sources of legal information and advice  
Reasons for not seeking legal information or advice  
Conclusions



To frame a problem as legal and to look for suitable solutions in the law one has to be aware of the legal aspects of the problem. In that respect, legal awareness is key for the ability to use the law to achieve fair and constructive resolutions to the legal problems. Legal awareness is about understanding the applicable rights and obligations in particular situations. It is also about knowing what to do to resolve a problem. Being aware of the legal aspects and consequences of a specific situation enables action and ultimately fair resolution. As one focus group participant put it “[Legal awareness] gives you the confidence to come out and complain” (Focus group with people with disabilities).

Obtaining legal information and legal advice is a crucial step in responding to a legal problem. The choices might be intimidating and most people need information and advice on how to navigate the system to achieve resolution. People who are dealing with legal problems need to know about their rights. They also need practical information about the available remedies, how the processes work, how much they cost and how long they take. Lack of legal information can cause significant harm.

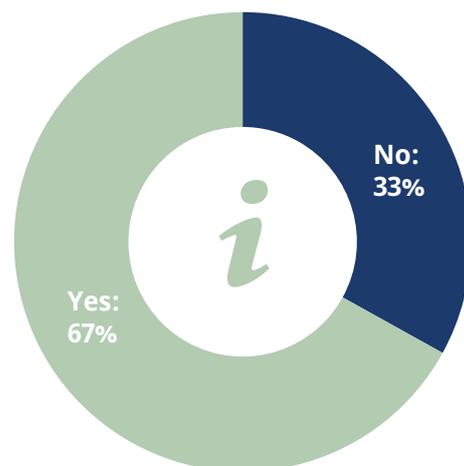
*“I had a client who didn’t know about a register of land, until they were forced to move, because a hotel had bought their land. There is a limitation period (statute of limitations), so it’s late.” (Interview with CSO)*

When people are supported with timely, comprehensive and competent information and advice, justice journeys are more likely to lead to fair outcomes that resolve the legal problems.

*“Educate individuals on crime and the differences in what is right and wrong and what to do and how to go about finding a responsible person to help and access justice” (Focus group with people with disabilities)*

We asked the respondents whether they sought legal information and legal advice for their problems. Two in three people seek some form of legal information and advice. On average they consult 1.8 sources. Fijians seem reasonably satisfied with the information they receive. Twenty percent are unsatisfied or very unsatisfied.

#### DID YOU SEEK LEGAL INFORMATION AND ADVICE?



- The likelihood of seeking legal information and advice depends on the types of problem that people experience. All else being equal, among the seven most common problems, Fijians are most likely to seek legal information and advice when dealing with land issues (80%), crimes (73%) and employment disputes (73%), and least likely to do so when dealing with neighbour related disputes (61%).
- Fijians with a high level of formal education are slightly more likely to seek legal information and advice (68%) than those with lower level of education (66%).

The fact that most people actively seek legal information and advice corresponds with an expressed view that in recent years there has been a slight improvement in legal awareness in Fiji. This improvement started with the legal framework: “The constitution is protective of unrepresented litigants” (Interview with High court judges). Legal aid is developing rapidly and helping with the implementation of the policies in the field. Various initiatives of public authorities and CSOs are focusing on legal awareness.

*“There are lots of education programmes on rights, so people are more aware”* (Interview with High court judges)

Despite the successes, there are plenty of challenges in the field of legal awareness, and legal information and advice. One third of the respondents say that they did not look for external help to resolve their problems. Many others seek information from the people around them and never reach institutional sources which are assumed to be better able to provide competent and helpful information.

## Where do Fijians look for legal information and advice?

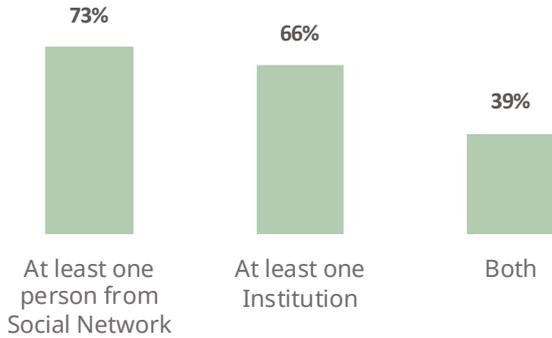
There are many people and institutions in Fiji that can provide legal information and advice. We divide them into two groups: the social network and institutions.



Social network	Institutions
Relatives	The Police
Friends	Legal Aid Commission
Neighbours	Roko Tui (or other public authority)
Colleagues	iTaukei Land Trust Board
Employers	Private Lawyers
Turaga ni koro	Village Council
Qase (Traditional leaders)	Employment Tribunal
Church Leaders	iTaukei Land and Fisheries Commission
Trade Unions	Labour Inspectorate
	Justice of the Peace
	NGO
	Human Rights and Anti-discrimination Commission

The next paragraphs focus only on those people who experienced legal problems and sought legal information. The data shed light on the different sources they use and how satisfied they are with them.

**WHERE DO PEOPLE SEEK LEGAL INFORMATION AND ADVICE?**



- Seventy-three percent of Fijians seek legal information and advice from one or more person in their social network. 65% consult at least one institution. 39% seek information and advice from both their social network and institutions.
- People who face problems related to employment (88%), family (85%) or neighbour related disputes (81%) more frequently consult their social networks, while people who have to deal with accidents (79%) or crimes (86%) are much more likely to seek information or advice from institutions.
- Those living in rural areas are more likely than their urban counterparts to consult both institutional and social network sources.
- A worrying observation is that while Fijians are very likely to consult institutions concerning crimes in general, they are much less likely to do so for domestic violence issues (52%).

**Police, relatives and friends most frequently consulted sources of information**

Overall, the police, relatives, friends and the Turaga ni koro are the sources that Fijians consult the most for legal information and advice. Problem types, income and living in rural or urban areas are the factors that influence where people seek legal information and advice the most.

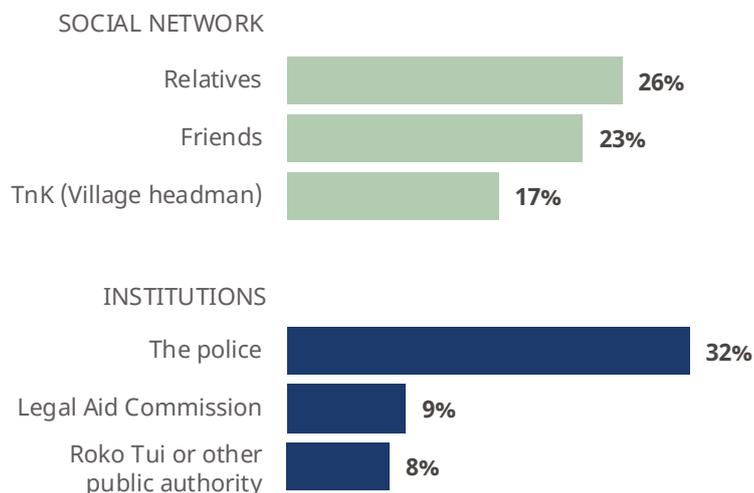
**Social network**

The social network is an important source of legal information and advice. Seventy-three percent of the people who seek information and advice consult someone around them – family member, friend, neighbour or community leader. This is particularly visible in the villages. People there tend to have close relationships, the family has an important role and formal institutions are less present. Members of the community depend more on each other. When solving legal problems people from rural and remote communities are more confined to the village boundaries. In this environment, seeking and receiving legal information and advice is not a straightforward process, rather it is part of various inter-related communal paths.

*“Within the village, you go to different people, go to head of the clan, to all the families, try to reconcile, talk to both parties.” (FGD with women from Beqa)*

*“Women go to the priest. They go to the Turaga ni koro who is the village headman or the chief. They go to some other advisor from that community. Or to some other leader within that community.” (Interview with CSO)*

**COMMONLY CONSULTED SOURCES OF LEGAL INFORMATION**



## Institutional sources of legal information and advice

Accessing competent legal information and advice from professional sources is key for access to justice. This requires effective and open institutions which are committed to helping people overcome their problems, including legal problems. There are a few available choices. The professional sources may not be accessible to everyone. Institutional sources are distant for many Fijians living in rural and remote areas. Victims of crime, and particularly women, face significant challenges when it comes to receiving information from the police.

*“Women are becoming a bit more aware of the services being provided and whom to approach it’s just that the police, the way they react and behave often that is an impediment for them to go further.” (Interview with CSO)*

At the same time, the gradually increasing legal awareness is presenting a new type of challenge for the formal and informal institutions that deliver justice in Fiji. People have higher expectations from them. There is disappointment when the expectations are not met.

*“Women go to the police a lot more now than they would’ve 10 years ago or 20 years ago; there are better laws; there’s a lot more awareness and so on.” (Interview with CSO)*

We concentrate now on the police and Turaga ni koro, since there are some interesting differences in the users of justice who seek legal information and advice from them.

## Police

- The police is consulted mostly by Fijians who face crimes, and to a lesser extent those who face domestic violence and neighbour related disputes.
- Fijians with a high level of income are more likely to consult the police than Fijians at the bottom of the income scale.

## Turaga ni koro

- Fijians who have social welfare and neighbour related problems are most likely to consult the village headman, while those with employment, domestic violence and family problems are least likely to do so.
- People with a low or medium level of formal education are more likely to consult the village headman than those with a high level of formal education.
- Fijians who live in rural areas are more likely to consult the village headman than those in urban areas are.



## Legal aid

There is a shared understanding that the services of private lawyers in Fiji are expensive.

*“A lot of people resort to alternative dispute resolution, partly because of this [slow court procedures] and partly because lawyers are very expensive. So, a lot of times when people are evicted, they can't get a lawyer. They also don't know that the Legal Aid Commission provides free legal aid in civil matters. That's why we need robust legal education.”* (Interview with CSO)

A significant proportion of people obtain legal information and advice from lawyers funded and organised by the Legal Aid Commission. Roughly one in ten of all respondents who sought legal information and advice received it from the Legal Aid Commission. Considering the bottom-up approach to measuring access to justice in Fiji, this is a remarkably high proportion.

During the interviews and focus group discussions, stakeholders and citizens seemed reasonably satisfied but suggested improvement of the awareness, and hence the coverage, of the Legal Aid Commission.

*“Educate individuals on crime and the differences in what is right and wrong and what to do and how to go about finding a responsible person to help and access justice”* (Focus group with people with disabilities)

Some people who know about the Legal Aid Commission might only relate it to criminal legal aid.

*“People think they only deal with criminal matters.”* (FGD in Levuka)

## Challenges that vulnerable people face

People from several vulnerable groups are particularly affected by legal awareness gaps. Those from vulnerable groups have more intense legal problems and thus more acute needs for information and advice. Young people,

people with disabilities, women and rural people are particularly negatively affected by low legal awareness.

*“Young people are not very aware of the access to the Legal Aid Commission services.”* (Interview with official from Ministry of Youth)

*“We [women] have no idea of how the justice system works in Fiji.”* (Focus group with women in Nakavu)

*“The issue of access is real for those on wheel chairs for myself is the access to information.”* (Interview with CSO working with persons with disabilities)

*“Another issue is counselling services, referral mechanisms that are there – understanding legal frameworks, and seeing how these persons can access services.”* (NGO working on needs of persons with disabilities)

Fijians with less formal education are particularly challenged by complex and difficult-to-understand legal procedures. Such procedures are intimidating and confusing. People need guidance and referrals to help them navigate the legal system.

*“Another issue is counselling services, referral mechanisms that are there – understanding legal frameworks, and seeing how these persons [with disabilities] can access services.”* (Interview with CSO)

*“A lot of civil procedures have to be simplified. The system has been seen as complex. Too technical. Lengthy judgements look like from the 19th century.”* (Senior justice sector officer)

Inhabitants of rural areas are particularly exposed to the risks of difficult-to-comprehend legal procedures which require assistance to navigate. As discussed above, in rural and remote settings the availability of competent providers of legal information and advice is limited. People need to rely on people from their social network.

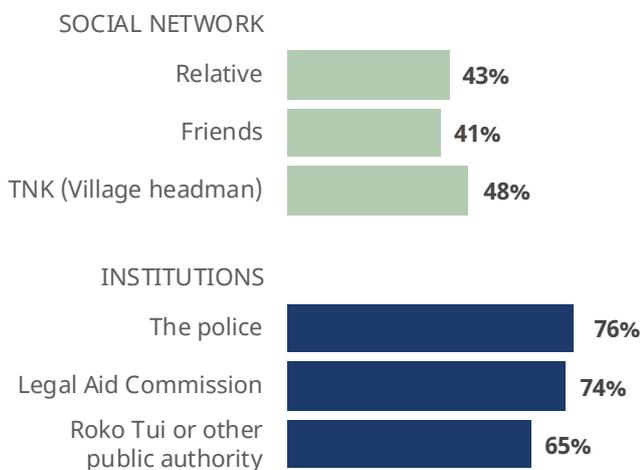
*“In rural areas we need simpler information. For instance, leaflets with pictures would be better. If I have to go to court, I would be worried that I would be spoken to in a language I don't understand – so would be helpful to have a simple brochure to access”* (Focus group in Suva with people with disabilities)



# Most helpful sources of information

The relative helpfulness measures the ratio of the number of people who claim a specific information source has been most helpful, divided by the total number of people who used that source. Only sources that have been used by at least 75 people in our sample are included in the analysis.

## RELATIVE HELPFULNESS IN PROVIDING LEGAL ADVICE

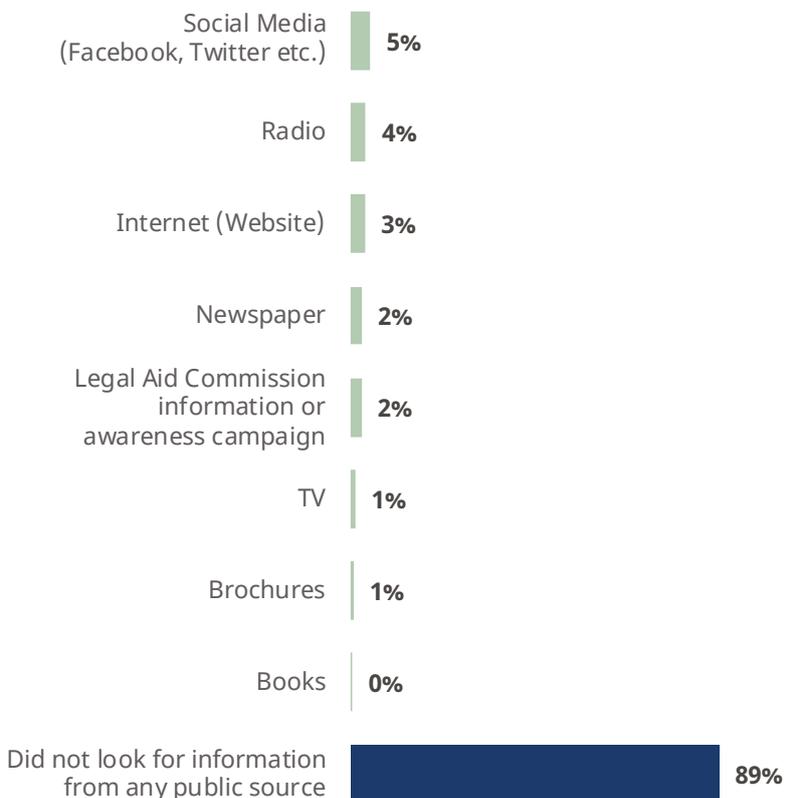


The graph shows that institutions that provide legal information and advice are evaluated as most helpful more often than the social network. Providers of legal information that are not among the top three most frequently used institutions, and are therefore not included in the graph, are still more helpful than the social network (private Lawyers: 79%, iTaukei Land Trust Board: 74%)

## Public sources of information

The provision of free, easily accessible legal information and advice is becoming increasingly important all over the world. In order to create just societies with equal opportunities, public sources of information are vital. However, in Fiji, just as in most of the countries in which HiIL has measured access to justice, public sources of legal information are not widely used among the population.

## MOST FREQUENTLY CONSULTED PUBLIC SOURCES OF INFORMATION



# Reasons for not seeking legal information or advice

## WHY DID YOU NOT SEEK LEGAL INFORMATION AND ADVICE?



- Fijians in the lowest income group are particularly affected by their lack of legal knowledge. They are substantially less likely to not know where to look for legal information and advice than those with moderate or high incomes. In contrast, those with moderate or high incomes are more likely to believe that advice would not help them.
- Fijians with employment problems are substantially more likely to abandon the problem than those with any other of the major problem types.
- Fijians who live in rural areas do not know where to look for information and advice slightly more often than others.
- Fijians with social welfare problems are more likely to not know where to look for legal information and advice than those with any other of the major problem types. People who deal with neighbour-related problems or those facing crimes are in fact the least likely to be hindered by a lack of knowledge.

Most people refrain from seeking legal information and advice because they do not feel convinced of successful outcome. A stakeholder from an NGO advocating for the rights of people with disabilities connected this barrier to a feature of Fijian culture. Not being able to resolve a problem is seen as a sign of weakness. In this context, doing nothing is preferable to trying and failing.

*"Confidence is a big factor! To advise an individual to use the legal system is difficult in and of itself. A lot find it's an easier solution to swallow their pride and the pain and see if they can do better next time."*

(CSO working with persons with disabilities)



# Conclusions

- Two in three Fijians seek legal information and advice in response to their legal problems. However, this depends on the types of problem they experience. There seem to be problems with access to justice for conflicts where the other party is a public or private institution, for example with obtaining ID documents, consumer problems and corruption.
- Fijians seek legal information and advice from both their social network and institutions.
- When conflicts originate within the community, the social network is more likely to be consulted for legal information and advice, while for problems like crimes, Fijians are more likely to consult institutions.
- The police, relatives, friends and the Turaga ni koro are the most commonly used sources of legal information and advice. Problem type, household income and whether people live in rural or urban areas are the factors that influence where Fijians seek information the most. Those with high household incomes are most likely to consult the police. People living in rural areas, are most likely to consult the Turaga ni koro.
- A lack of knowledge about where to look for legal information and advice is a particularly big problem for Fijians on low incomes. This is also true for Fijians with social welfare problems. Moreover, lack of knowledge and long distances from institutions prevent many Fijians living in rural areas from seeking legal advice.
- Overall, Fijians have proper access to legal information and advice. However, some groups, particularly those with low incomes, are disadvantaged. Future policy programmes should aim at including those groups and strengthening their legal empowerment.





# Strategies for responding to legal problems

Taking action  
Costs and quality of justice  
Problem resolution  
Conclusions



After establishing the most pressing justice needs and identifying the most commonly sought sources of legal information and advice, we focus on the different dispute resolution strategies that people use. We differentiate between three different approaches: self-actions, engaging the social network, and engaging institutions. We reveal the specific actions that people take, investigate how helpful the actions are, highlight existing barriers to justice and assess whether taking action is helpful in resolving the legal problem at hand.

## Justice in Fiji – between traditional and formal institutions

From an access to justice perspective it is important to understand the role traditional justice plays in Fiji. According to most of the respondents there is space for both formal and informal justice in Fiji. The latter is deeply embedded in the communities. Most of the problems resolved there will not reach the formal institutions. Traditional justice also has specific characteristics that justify its existence:

*“Bulubulu could not be transferred to the court, because magistrates or judges do not understand it.”* (Interview with CSO).

But there is also tension between traditional and formal justice. The role of traditional justice is gradually shrinking: “Since 1977 the authorities (of chiefs) are decreasing” (Interview with senior judicial officer). Issues that were formerly dealt with by means of reconciliation are expected to be referred to the police. Violent crimes and domestic violence are often tossed between formal justice and traditional justice mechanisms. This leaves perceptions of uncertainty and arbitrariness.

*“The traditional Bulubulu in my village takes place when it suits the communities. Otherwise they won’t do anything. They will say: let the police handle it. This has been in cases of rape, assault, burglaries.”* (Interview with CSO)

*“People are torn between indigenous and formal dispute resolution mechanisms. Some buy the kava, go to others and beg forgiveness; others recognise that some disputes can’t be handled this way; there is a ‘no drop’ policy for sexual violence.”* (Interview with Development professionals )

The relationship becomes particularly tense when people and problems bounce between informal and formal institutions. This mostly happens with crimes in smaller villages.

*“Sometimes the Turaga ni koro does not play his role well and the issues are not solved in the proper manner, so some issues should really be taken direct to the police. And when such cases are reported to the police station, they refer us back to the Turaga ni koro and the issue is not solved.”* (FGD with women in Nakavu)

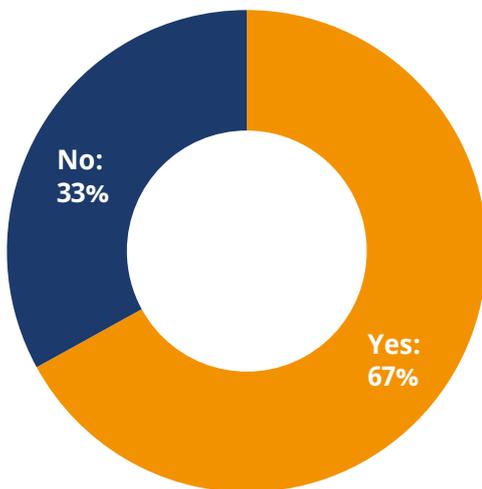
One view which reconciles the difference is that traditional justice should deal with smaller disputes, whereas most serious and impactful problems should find their way to the formal authorities. Hence Turaga ni koros often refer problems to the police and other authorities. There are also indications that Turaga ni koros work with the legal aid lawyers: “Turaga ni koro will try and resolve it, seeking help from the Legal Aid Commission or advisory councillors.” (FGD with Legal Aid Commission lawyers)

# How active are people in Fiji in resolving legal problems?

67% of people take some form of action to resolve their legal problems. Every year about 68,000 people take action, while approximately 33,000 do not initiate any form of dispute resolution. This proportion should be discussed in light of the concern that the amount and complexity of legal problems in Fiji is continually increasing. This is particularly worrying for magistrates and judges who feel overwhelmed.

*“Demand [for justice] is incredible. They [magistrates] wish there were more courts.”* (Interview with magistrates)

## DID YOU TAKE ANY ACTION TO RESOLVE YOUR LEGAL PROBLEM?



- In the Eastern (79%) and Western (76%) divisions, people are more likely to take action than in the Central (64%) and Northern (54%) divisions.
- Women and men are equally likely to take action to resolve their legal problems.

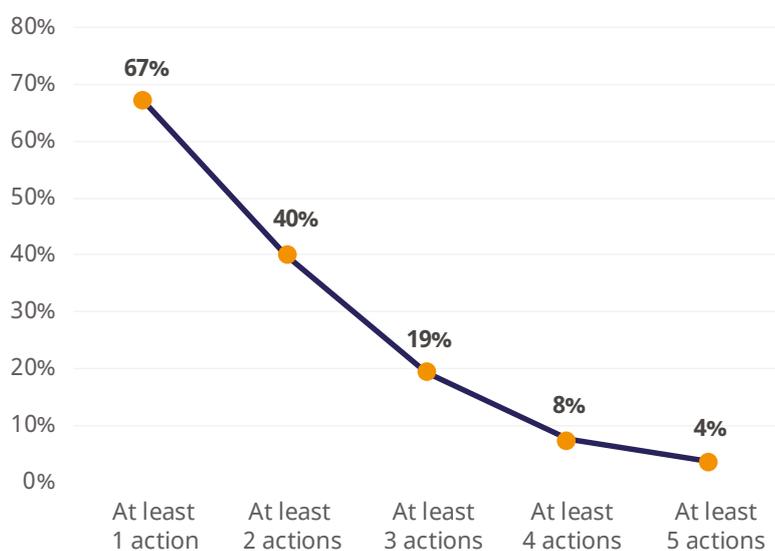
## Most try to resolve legal problems through their own actions

Taking self-actions to resolve the dispute at hand is the most common approach. Eight out of 10 people who take some form of action rely on self-actions. This is substantially more than the use of social networks or institutions. 15% of Fijians use all three types of dispute resolution mechanism. People who take some form of action engage 2.1 sources on average.

MECHANISM	USED %
 Self-actions	75%
 Social network	44%
 Engage institutions	50%

Undertaking more than one action to resolve a legal problem is quite common. The type of dispute resolution mechanism that people use is an important factor in this, however. People are much less likely to take a second action if their first action was to engage an institution. This illustrates the typical justice journey in Fiji. People try to deal with the problem themselves. If this does not help, they involve family and friends. The next step is to involve traditional justice providers. The formal dispute resolution institutions are the last resort.

**DID YOU TAKE ANY ACTION TO RESOLVE YOUR LEGAL PROBLEM?**



For self-actions, all three options have been included in the graphs of this chapter. However, for the social network and institutions the number of options is larger. The table below shows all options that were included in the study for these two mechanisms.

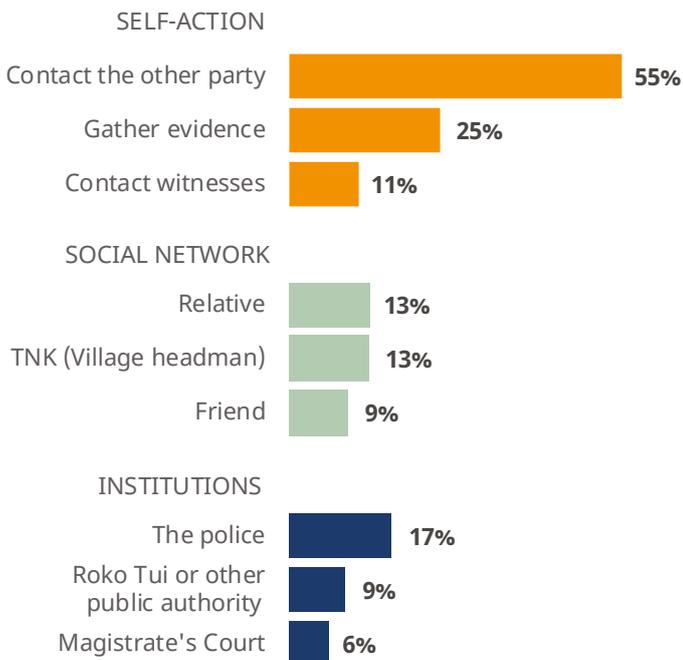
Social network	Institutions
Friend	Magistrates' court
Colleague	High court
Relative	Supreme court
Church leader	Small claims tribunal
Neighbour	Arbitration court
Turaga ni koro	Roko Tui or other public authority
Bulubulu	The police
Member of mataqali	Employment tribunal
Village council	Employer
	Labour inspectorate
	Juvenile court
	iTaukei land and fisheries commission
	Office of the Director of Public Prosecution



## Self-action is the most common action

The percentages in the graph below are based on the number of people who have taken some form of action.

### COMMON DISPUTE RESOLUTION MECHANISMS



Self-action is the most common type of action taken by people. More than half the people directly contact the other party. Among institutions, the police is a popular dispute resolution mechanism. The type of legal problem people face plays a major role in which approach people use to resolve their problem:

- For crimes, people rely heavily on the police (80%).
- When faced with a conflict with a neighbour, people often try to resolve it by contacting the other party directly (71%).
- For land disputes people are more likely to approach the village headman (23%), a member of the mataqali (21%) and institutions (63%).
- In cases of domestic violence, people rely more on relatives (33%) and the police (34%).
- Family disputes are taken to the Magistrates' Court (21%) quite often.

## Traditional justice in Fiji

Traditional justice in Fiji takes place mostly in rural communities. It is seen as a cultural norm that maintains communal integrity rather than as a substitute for formal justice. It is a mechanism which glues the community and ensures that communal issues are dealt with at the lowest level. "If people decide to go to police without the traditional system - this will destroy the relations within the community" (FGD with women from Beqa). In people's view, traditional justice ranges from how children respond to their parents to resolution of serious crimes. There is an understanding that traditional justice mechanisms predominantly deal with less serious problems, whereas the more complicated issues are, or should be, referred to formal institutions.

*"For our community, the minor cases are best solved by the Turaga ni koro. For bigger issues or conflicts, e.g. land disputes, this is better to be solved by the authorities such as TLTB or Ministry of Lands and National Resources."* (FGD with women from Nakavu)

Almost all of the evidence about traditional justice refers to its use by communities of Fijians of iTaukei descent. Other groups either do not use it often or the research design did not manage to capture their practices.

*"Fijians of Indian descent don't resolve problems traditionally any more (before used panchayat but no longer). In last 5 decades we had an evolution of systems, Fijians of Indian descent and Fijians of Chinese descent no longer use [traditional justice mechanisms]. There have been fractures to those systems. People lean more to western resolution mechanisms, like mediation. In some villages they still have it, but not everywhere."* (Interview with CSO)

Traditional justice mechanisms are dynamic. They change according to the social trends and the shifting legal and institutional framework. There are voices that consider that *Bulubulu* is losing its identity and authority. One challenge is that Turaga ni koros are overburdened or do not have the required qualifications to fill in the role of community leaders. Turaga ni koros are expected to do a lot but are not adequately compensated: "They are paid by the government - 100 FJD or 200 FJD a month. But the work they lose is never compensated by government. And they have to do a lot, because they have to be at every village event." (Interview with CSO, D50)

Some think that nowadays traditional justice involves less dialogue between the parties and is becoming automatic:

*"Everyone is expected to say their bit, they share how this offence affects them, the criticism is constructive. But now this bit is dying out; they just come, present, accept and are supposed to settle it on their own."* (Interview with CSO)

Other experts see changes in the practice of traditional reconciliation:

*“We have witnessed a shift from the informal mechanism of Bulubulu, to one where we come down hard saying this is a crime.”* (Interview with CSO)

Inherent bias is another challenge for traditional justice in small rural settlements. Kinship and other links between Turaga ni koros and the people and groups involved in disputes question the neutrality of the process:

*“In most villages, everyone is related due to family links or intermarriages so for such cases the Turaga ni koro must ensure that decision made are neutral to keep the relationship between families”* (FGD with women from Lautoka)

Bulubulu resolves disputes on the basis of forgiveness and acceptance. Offenders seek forgiveness and victims tell how they are affected and what they want. But this restorative justice element is becoming less visible:

*“Why not allow traditional BB to do restoration. What we have now – I commit an offence, I am punished by the state – but there is no restoration”* (Interview with CSO)

The Ministry of iTaukei affairs is introducing legal norms that regulate various aspects of communal life. Traditional justice mechanisms also adapt according to social changes:

*“We need to train [traditional] adjudicators on what the developments are in the law and attitudes”* (Interview with CSO)

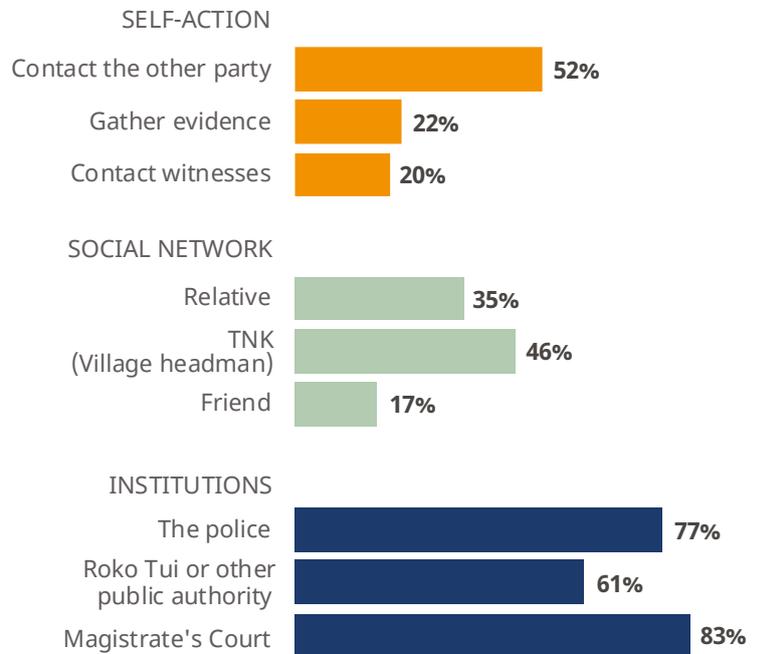
### Turaga ni koro

Turaga ni koro is the village headman who is most often associated with the organisation and delivery of traditional justice. Turaga ni koros have mixed functions as authorities in the community but also as a part of the Fiji government administration at the local level. For instance, Turaga ni koros will communicate with higher local authorities at district and provincial level. Turaga ni koros play a role in informing the community about matters with legal consequences, such as domestic violence restraint orders.

*“When we have issues or crimes in the village, especially the cases that are being known, these issues are dealt by the Turaga ni koro. The Turaga ni koro gathers the concerned family or the individual and they sit and try and solve it at that level. If he/she knows they cannot solve it then they ask the family if it is Ok to be taken to higher authorities such as the Fiji police force.”* (FGD with women from Nakavu)

Personal qualities and capabilities play a significant role in the success of Turaga ni koros. There are Turaga ni koros who are considered good and able to solve problems. Qualities which a Turaga ni koro has to possess are: neutrality, a good education, and diverse views which allow them to represent everyone in the community. Turaga ni koros have to be *“[...] reliable, pro-active and committed”* (FGD in Labasa). Thanks to their capacity, Turaga ni koros should be able to reach fair solutions. Turaga ni koros should know when a problem can be resolved with the means of traditional justice and when it should be referred to a different mechanism. An example of a poorly functioning Turaga ni koro is a leader who bounces cases back and forth to other authorities.

### RELATIVE HELPFULNESS



## Capacity of institutions to deliver access to justice

Formal institutions in Fiji are considered more useful in resolving disputes compared with self-help and neutrals from the social network. There are serious concerns, however about the capacity of the institutions to organise and deliver justice. Backlogs in courts lead to delays.

*"Some cases take 5-6 years in magistrates' courts"*  
(Interview with high level justice officer).

Many users of justice and stakeholders express dissatisfaction with the long response times to calls for services, particularly in rural and remote areas.

*"In remote islands, that might take at least a day or two [for police] to arrive."* (High level police officer)

*"There was a dispute in my area – threats and trespass. Police was called on Wednesday- no action by Friday."*

*"So, I went to ask and they said [there is] no transport or manpower. So, I called a Suva based officer and they came straight away."* (FGD in Levuka)

The perceived shortcomings of the formal institutions for dispute resolution directly reflect on the trust that the people of Fiji have in them.

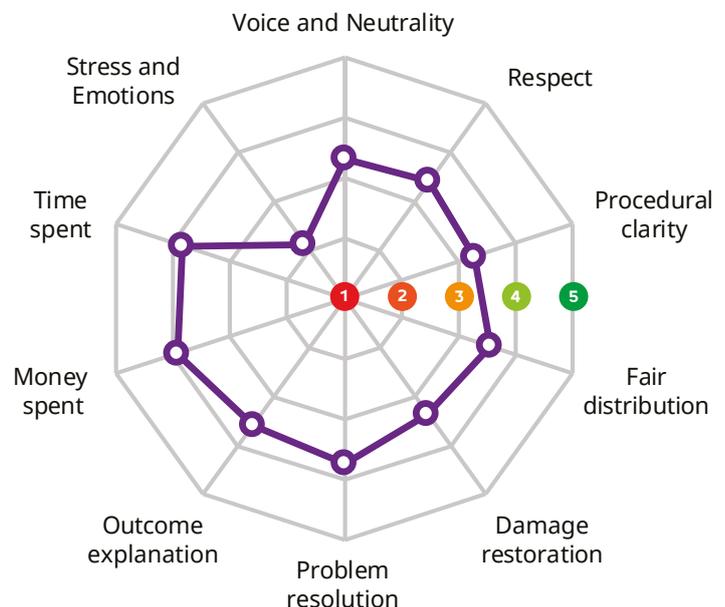
*"Lengthy court procedures are a deterrent factor and makes people think twice about this process. Many have lost faith in the justice system."* (FGD in Labasa)

*"The complainant had lost faith in the Police as they had not registered his complaint and was viewed as being unfair and biased."* (FGD in Labasa)

## Costs and quality of justice

We asked people to rate their justice journeys on ten dimensions, covering the cost of justice and the quality of both the procedure and the outcome. Each of these dimensions consists of several underlying indicators. Scores range from 1 (worst) to 5 (best). Most dimensions show a score between 3 and 4, which is above the middle of the scale and generally indicates a reasonably positive justice journey. The amount of stress and negative emotions experienced is an exception here.

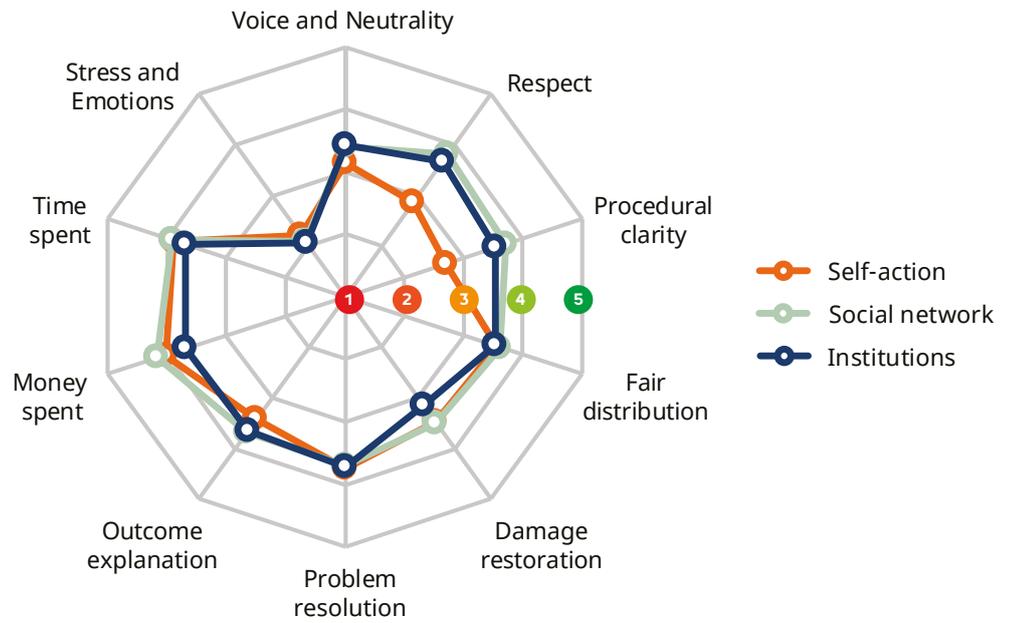
COSTS AND QUALITY OF JUSTICE



When looking at the three main dispute resolution mechanisms, the most important difference can be found in the quality of the procedure. Here, institutions and the social network score substantially better than self-actions. People are more satisfied

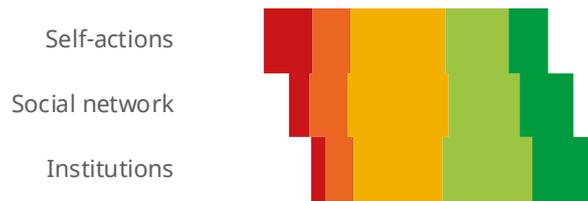
about how well their thoughts and views were considered during the process, the amount of respect they received and how well the procedure was explained to them.

COSTS AND QUALITY OF JUSTICE BY RESOLUTION MECHANISM

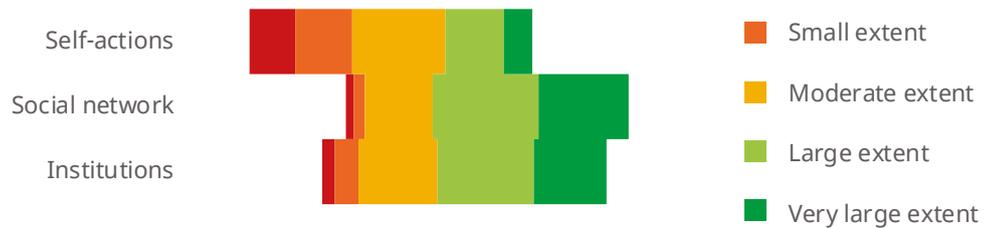


QUALITY OF THE PROCEDURE

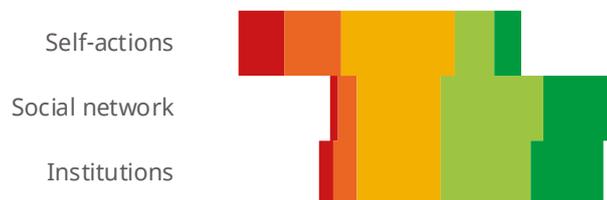
WAS YOUR VOICE HEARD?



WERE YOU TREATED WITH RESPECT?



WAS THE PROCEDURE EXPLAINED TO YOU?

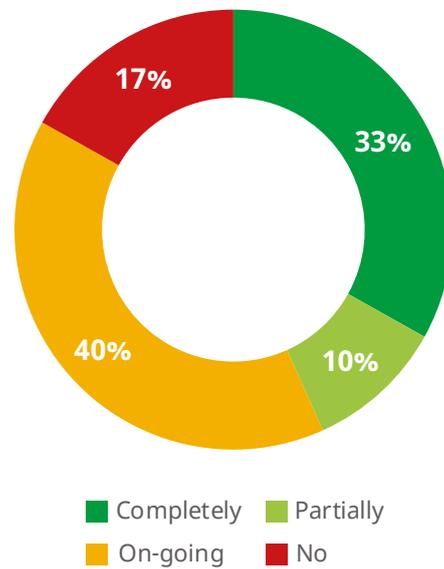


# Significant number of legal problems remain unresolved

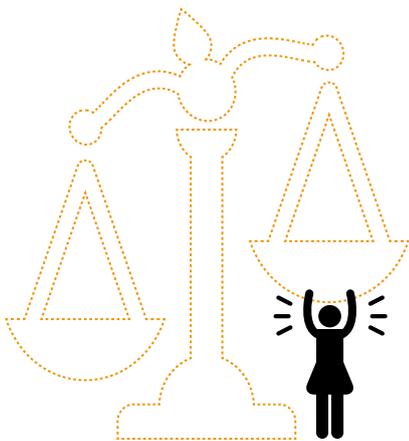
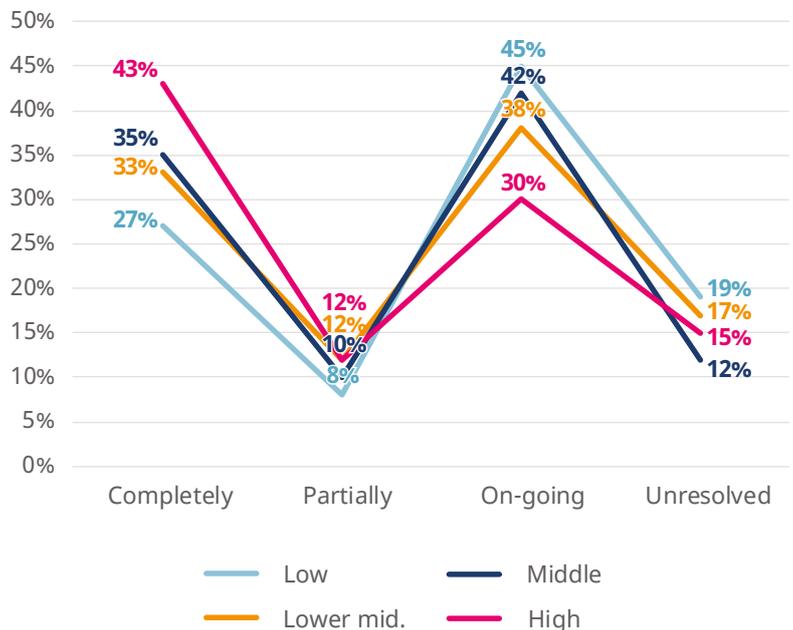
Of the people who take some form of action, only about one in three manage to completely resolve their legal problem. Adding those who do not take action and those who do not manage to resolve their problem completely gives us nearly 80,000 people with unresolved legal problems each year in Fiji.

- Those with a higher level of income and/or formal education or more likely to completely or partially resolve their legal problems.
- For domestic violence (71%), family conflicts (57%) and neighbour related disputes (63%) the complete/partial resolution rate is higher than average.
- People experiencing land disputes (31%), social welfare/public services issues (11%) and crime (34%) face lower rates of complete/partial resolution.

HAS YOUR LEGAL PROBLEM BEEN RESOLVED?



PROBLEM RESOLUTION AND INCOME LEVEL



## Barriers to access to justice

- Women indicate not wanting to aggravate relationships (15%) as reason for not pursuing resolution of the problem more often than men (11%), while men abandon the problem (40% compared with 34%) more often and are more skeptical about achieving a positive result (36% compared with 31%) than women.
- Not knowing what to do, not having enough money and the problem of long distances are all much less problematic for those with a higher level of formal education and/or income.
- Younger people are more likely to indicate that the problem isn't serious enough or that they have concerns about aggravating relationships, while they are less likely to be impeded by distance or money than older people.

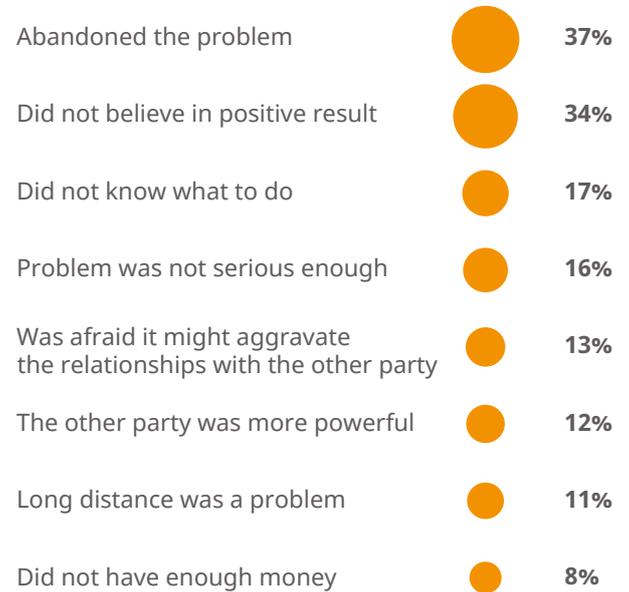
Although geographical distance was rarely mentioned in the survey, many experts and citizens interviewed framed it as a barrier. Fiji is a country of dispersed islands and this makes access to justice challenging. Distances turn into barriers to access to justice because people from remote areas often do not have the time or money to achieve fair resolutions. Going to another place to seek justice is a considerable hindrance. Outside of their communities, people can rely on significantly less support. Even finding a place to stay while dealing with legal procedures might be a challenge, particularly for those who are suffering from illness or disability.

*“Decentralised system in divisions – how women can access division commissioners, and courts locally, etc. If you bring someone in, they have to stay with family members, no accommodation available. Say a woman with disabilities comes in from rural setting to access courts, facilities in courts are not accessible, so individual has to stay with other family members, so they might go through further trauma.”* (Interview with CSO)

People from rural and remote areas face more challenges in terms of access to justice.

*“Rural dwellers have more problems with access to justice purely on the bases of geographical isolation from the court and Legal Aid Commission services.”* (FGD with women from Sigatoka)

## REASONS FOR NOT TAKING ACTION TO RESOLVE A LEGAL PROBLEM



## The interaction between women and traditional justice

Female respondents and gender organisations are particularly critical of traditional justice in Fiji. It is seen as non-representative of the interests and needs of community members who are less powerful. Women, particularly young women, single mothers and children are considered politically excluded in the community decision making processes, including the mechanisms for resolving disputes.

*"[Traditional justice] does not allow women to voice their opinions or the problems we face in the community or at home. [...] In a village like Nakavu, the women tend to sit at the back of the community hall during the village meeting and are not allowed to contribute to the village matters. This is the greatest barriers for a woman in the village"* (FGD with women from Nakavu)

*"Young women are not able to participate in village meetings or have the right to have a say in the traditional justice due to status in the village."* (FGD with women in Lautoka)

Traditional justice is seen as even more unfair to vulnerable groups such as LGBTI:

*"In most of our [LGBTIQ] cases, it is a negative thing as most of us are not accepted."* (Focus group interview with LGBTI).

One solution emerged from interviews and focus groups – to include women in village meetings. This is expected to increase their ability to voice concerns and participate equally in the community.

# Conclusions

- Justice providers feel overwhelmed by the growth of the number of legal problems in Fiji. They consider the current levels as part of a rising trend.
- Two thirds of all people who face a legal problem take some form of action to resolve their dispute. The most common strategy is self-actions - people try to reach a fair resolution by their own means. Most people try to resolve the problem through direct contact with the opposing party.
- Traditional justice and Turaga ni koros, however, are seen in a mixed light. They are accessible, fast and community friendly mechanisms for resolving disputes. On the other hand, they can exclude certain members of the community and are reliant on the personality of the dispute resolution provider.
- Very few people resolve their problems in the courts of law. However, courts and other formal institutions for resolving problems are perceived as helpful. Around 80% of the people who use either the police or the Magistrates' Court rate this mechanism as the most helpful in resolving the dispute.
- Four out of ten legal problems are either completely or partially resolved. The type of legal problem experienced plays a large role here. 71% of domestic violence disputes are deemed to be completely or partially resolved, while for social welfare/public services issues this number is only 11%.
- The users of justice in Fiji rate the costs and quality of the justice journeys in the middle of the scale. Stress and negative emotions are outliers; people perceive the justice journeys as stressful. Institutions and the social network are seen as significantly better in terms of the quality of the procedure than self-action.

*In the next two chapters the report will concentrate on two particular areas of access to justice – domestic violence and land disputes. The purpose of these explorations is to deepen the knowledge about these crucial issues and to show how the available data can be used to understand specific problems.*



# Domestic Violence

Impact of domestic violence  
Seeking information and advice  
Paths to justice  
Conclusions



Domestic violence is one of the most profound forms of discrimination and disrespect of basic human rights. Firstly, it is committed by someone from the most immediate environment of the victim – a spouse, parent, sibling or other family member. Secondly, domestic violence takes place in the private realm and very often remains hidden from the community. This increases tremendously the barriers to justice for the victims of domestic violence. Even if redress mechanisms exist, victims first have to take the problem outside of the private sphere. This transition is stressful, shameful and dangerous. For many victims, mostly women, this is one of the most difficult barriers to justice to overcome. Last but not least, domestic violence is often entangled in cultural norms which perpetuate it rather than discourage it.

*“Sometimes the victim is told “if that comes out, you still have to live here”, you face shame. They sit down and suffer silently; but in recent times this has started to come to light, and only because of changes to the law. Also pathways for it to come to front. Also empowerment and workshops.”* (CSO working with persons with disabilities)

During interviews with key stakeholders and citizens two on-going trends were identified. On the one hand, domestic violence is still a problem for many Fijians, predominantly Fijian women. Nineteen percent of the female respondents who reported a problem had to deal with domestic violence. We believe that this proportion does underestimate the scale of the problem. The Justice Needs and Satisfaction study asked about domestic violence and many other legal problems. In the course of a household survey it is possible that some respondents did not have sufficient privacy to disclose this information. Moreover, the survey asked about experiences in the past four years. Therefore it is not unusual to see that the reported prevalence of domestic violence is lower compared to other studies conducted with different methods and approaches.

To enhance our understanding of this problem we collected significant amount of data from qualitative interviews. We heard many concerns about victims of domestic violence in rural and remote areas who have few choices but to accept the abuse as a normal part of life. Communal practices of dispute resolution are geared towards reconciliation and suppression of conflict. Often this leads to neglect or even tolerance of various forms of domestic abuse.

*“[There are] traditional and cultural norms associated with domestic violence. Often verbal abuse goes unnoticed.”* (Interview with CSO)

Culturally embedded domestic violence is highly gender-related. In Fiji, men hold a dominant position in household and a degree of domestic violence towards women for disciplining purposes is widely accepted.<sup>38</sup> Cultural norms have created societal structures which maintain gender inequality and prevent women from seeking justice. Keeping families together is considered to be the most important value, even more so than women receiving justice.<sup>39</sup>

But we also heard that social, legal and institutional change is taking place in Fiji. Recently, the expectations of gender roles have been changing despite the long-established social order which aims to retain traditional values. The police has accepted a “no-drop” policy for domestic violence complaints. Public prosecution is taking domestic violence seriously. Additional court sittings on remote islands aim to bring justice closer to victims of domestic violence. Higher level courts and notably the Supreme Court are delivering harsher sentences in cases of domestic violence. Most importantly, during the in-depth interviews we heard about noticeable signs of social change which is leading to a reconsidered role of women in Fijian society and communities. This new role is slowly bringing about empowerment and domestic violence is being re-framed from a daily practice into an intolerable act of violence.

*“When I brought the complaints to the police they would try to reconcile us, but I said no and the cases proceeded. He got three prison sentences of one year and six months; one year two months; and one year and three months. I took him back each time as he is my husband, I love him and we are committed to each other. At the moment, however, I have a DVRO against him and he is living in our home and we live at my sisters. The DVRO is working and he is more normal now and he is no longer violent.”* (FGD with women from Nasinu)

In this chapter we show how people in Fiji experience domestic violence and which paths to justice they use to resolve the issue.

<sup>38</sup> Lynda Newland, ‘Villages, Violence and Atonement in Fiji’ in Aletta Biersack, Margaret Jolly and Martha Macintyre (eds), *Seeking Justice in Fiji, Papua New Guinea and Vanuatu* (ANU Press 2016), p. 56

<sup>39</sup> A Biersack, ‘Human Rights Work in Papua New Guinea, Fiji and Vanuatu’, *Gender Violence & Human Rights : Seeking Justice In Fiji, Papua New Guinea & Vanuatu*, Australian National University Press, Acton, 2016, p. 298

# Domestic violence – a frequently occurring need for justice

Domestic violence is the fourth most frequently occurring category of legal problem for the people of Fiji. Almost 6% of the respondents in the sample say that in the previous 4 years they had to deal with a serious and difficult-to-respond-to situation of domestic violence.

Among women, however, domestic violence is the second most frequently occurring legal problem. More than 8% of women who participated in the study report an experience of being a victim of domestic violence.

How can we interpret these percentages? A large-scale survey from 2014 in 28 EU member states reported that 8% of the interviewed women experienced some form of gender-based violence in the year before the interview. This finding is somewhat similar to the results from the JNS in Fiji. There are clues, however, that domestic violence and particularly gender-based violence is under-reported in Fiji. Firstly, the face-to-face survey method used in the JNS inevitably makes some respondents, particularly women, less willing to share details about intimate, and for some shameful, experiences. For sampling reasons, the interviews took place in household settings. This too made some respondents careful when reporting domestic violence. Thirdly, the level of awareness of rights, entitlements and redress mechanisms is positively correlated with the audacity to tell an enumerator about a case of domestic violence and then discuss the matter at length. All these factors provide enough indications that the overall 6% prevalence rate and 8% prevalence of domestic violence among women are the very bottom of the pyramid of occurrences of domestic violence in Fiji.

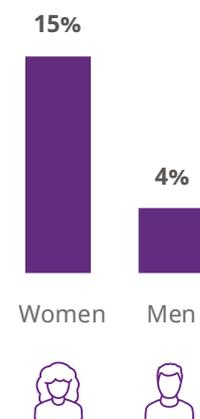
## Domestic violence as the most serious legal problem

As the data revealed above, in their daily lives the people of Fiji encounter many different types of legal problem. Respondents could report more than one legal problem. When we asked which problem was most serious and difficult to resolve, 9% of the respondents pointed to the issue of domestic violence.

Domestic violence as the most difficult legal problem is reported significantly more often by women than by men.

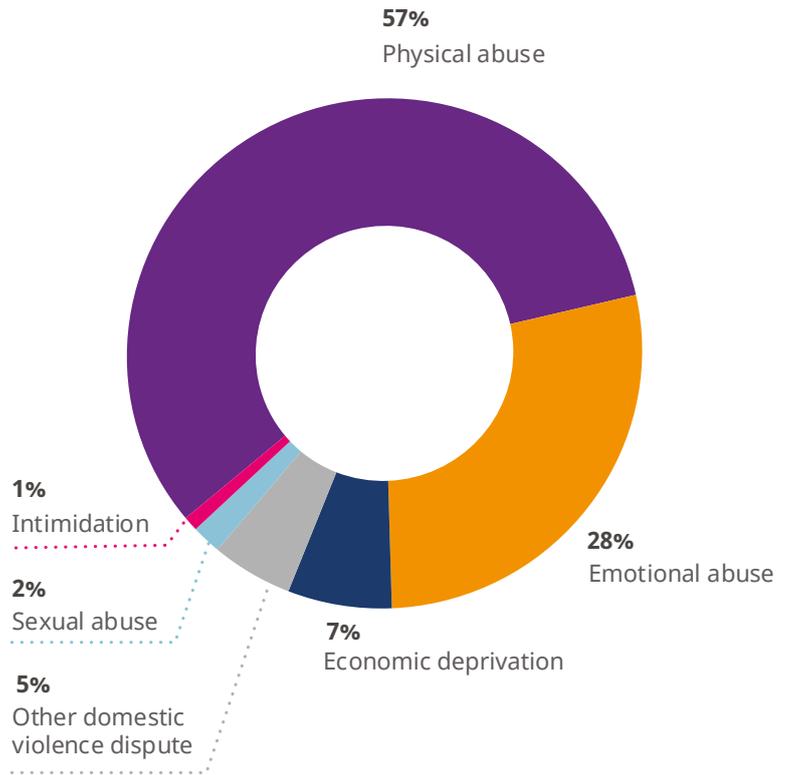
Most often the other party in the dispute is a spouse (58%) or a relative (23%). Women more often report domestic violence from a spouse, whereas men are slightly more often than women concerned about abuse from a relative.

### MOST SERIOUS LEGAL PROBLEM - DOMESTIC VIOLENCE



Physical abuse is the most frequently occurring type of domestic violence. Almost 60% of victims report being hit, kicked, slapped or otherwise physically abused. Many respondents also report emotional abuse. The men who were victim of domestic violence report similar problems as women – physical and emotional abuse accounting for about 85% of all cases of domestic violence. Women, however, report sexual abuse and economic deprivation much more frequently than men do. Economic deprivation refers to the situation in which the economically stronger partner in a family or a relationship does not provide for the other party or related individuals as a form of abuse.

TYPES OF DOMESTIC VIOLENCE



**Factors of vulnerability**

Domestic violence does not happen randomly. We have already seen that Fijian women are exposed to a significantly higher risk of becoming victims of some sort of abuse by the people around them.

Domestic violence affects mostly young people and predominantly young women. The mean age of the victims is 34 years, whereas the mean age of the whole sample is 41 years.

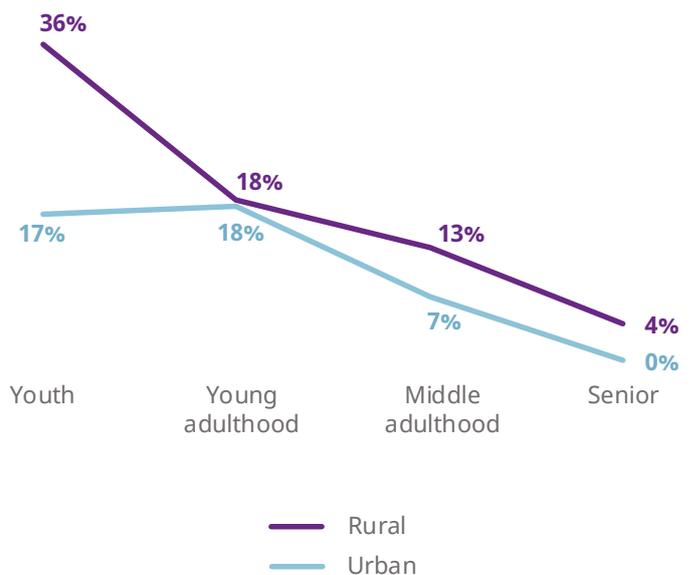
Young women living in rural areas are particularly harshly affected by domestic violence. More than a third (36%) of rural women under 25 say that domestic violence was the most serious legal problem they encountered in the previous 4 years. For comparison, 18% of rural women between 25 and 39 and 13% of those between 40 and 55 had to deal with domestic violence. The trend looks similar for urban women but at a slightly lower rate.

From all divorced or separated respondents who experienced a legal problem respectively 29% and 23% said that domestic violence was the most serious legal problem they had to deal with.

Other factors associated with a risk of suffering domestic violence include:

- Being female
- Being young
- Having children
- Being separated or divorced

EXPERIENCE OF DOMESTIC VIOLENCE BY AGE GROUP AND LOCATION

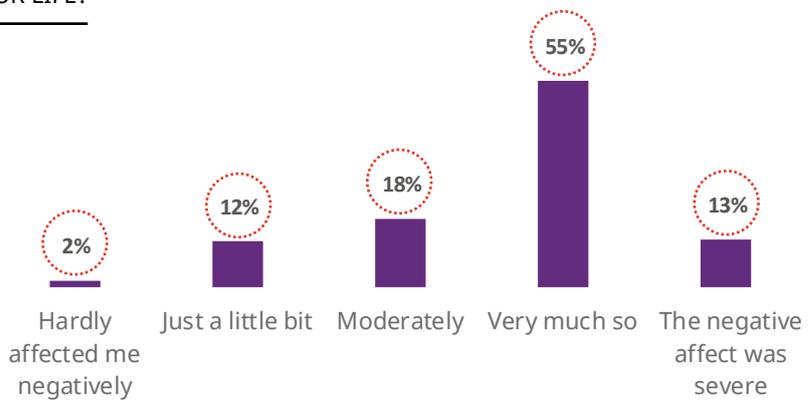


# The impact and burden of domestic violence

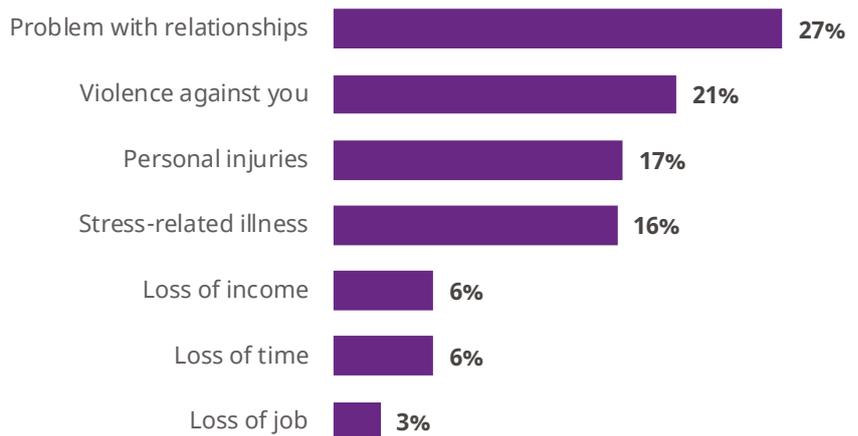
Different legal problems inflict different burdens on the individuals involved. Compared with other legal issues, the victims of domestic violence report more severe impacts. Very few describe the effect as negligible. Combined, 68% say that the domestic violence had a high or severe effect on their life. Sexual abuse and economic deprivation have the most negative impact on the victims. Women report slightly higher negative impacts as a result of domestic violence.

Most victims of domestic violence say that the most palpable types of burden are deterioration of important relationships, violence, personal injuries and serious stress. On average, victims of domestic violence say that they suffered 2.6 types of negative consequence. The respondents who had to deal with other types of problem reported on average two instances of negative consequences.

## HOW DID DOMESTIC VIOLENCE AFFECT YOUR LIFE?



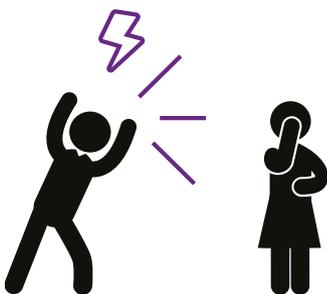
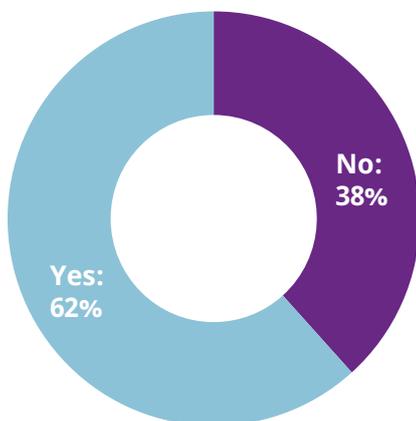
## BURDENS OF DOMESTIC VIOLENCE



## Where victims of domestic violence seek information and advice

Of the people who said that domestic violence was their most serious issue of the previous four years, 62% sought some sort of information and advice. Men are significantly less likely to seek support in cases of domestic violence. This difference might be interpreted as an indication that social stigma and prejudice have a considerable effect on male victims of domestic violence. Most of the victim support infrastructure is focused on women and not on men.

DID YOU SEEK INFORMATION AND ADVICE TO RESOLVE YOUR PROBLEM?



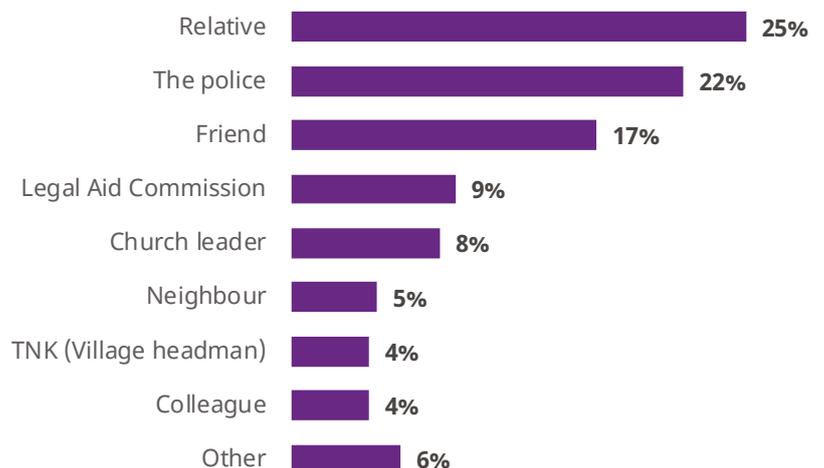
The victims of domestic violence who do seek information and advice most often go to relatives. Together with friends the two options account for 42% of the strategies to receive information about dealing with domestic violence. Sources from the social network are close and trusted by the victims. However, the social network might have a detrimental effect on efforts to counteract domestic violence effectively. Relatives and friends are seldom qualified to advise competently on the legal implications of and remedies for domestic violence. In many cases, they may even ignore or tolerate domestic violence due to social or cultural norms.

With that in mind, we see that women are significantly more likely to seek information and advice from relatives than men are. Relatives could be a valuable part of the informal strategies to respond to domestic violence. However, family members might also reinforce beliefs and practices which make domestic violence possible and even agreeable.

Informal or traditional mechanisms at communal level play a less visible role in the patterns for searching for information. Compared to relatives and friends fewer people go to church leaders or Turaga ni koros in cases of domestic violence. The stories about the effectiveness of these sources are mixed.

Of the formal sources of legal information and advice,

### SOURCES OF LEGAL INFORMATION AND ADVICE



the police and legal aid lawyers are the most often used. About one in five victims of domestic violence seeks support from the police. Here, we note again that the actual number of domestic violence instances is probably much larger than reported due to various barriers, biases and reporting filters. The preliminary conclusion is that few victims of domestic violence go to the police to report the issue.

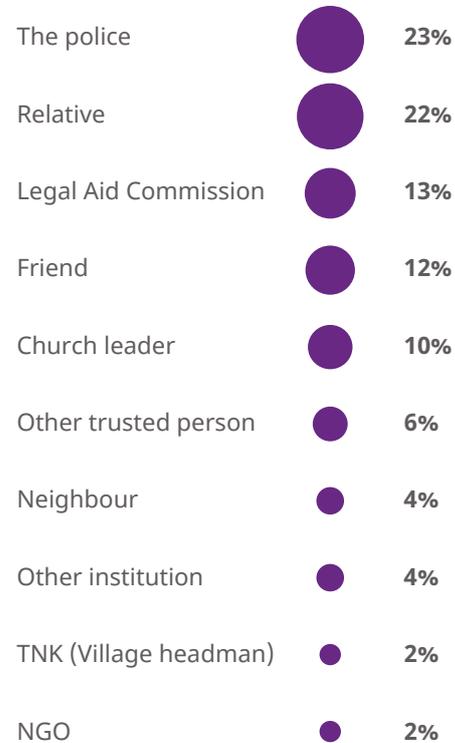
Legal aid lawyers are well recognised by the respondents as providers of information and advice. Almost 10% of victims of domestic violence who sought legal information and advice went to an office of the Legal Aid Commission. Considering the thoroughness and geographical reach of the sample, it is staggering to see that legal aid is the second most common institutional choice.

There is a certain discrepancy between the survey data and the qualitative accounts about strategies for engaging communal authorities. According to the interviews, *Turaga ni koros* and the *Bulubulu* procedure are often engaged in cases of domestic violence. In the survey data we see that *Turaga ni koros* are engaged relatively rarely. Four percent of the victims who sought information and advice about their problems received it from *Turaga ni koro*. Church leaders are selected two times more often than *Turaga ni koros* but community forums are not that prevalent.

This means that community-level authorities (neutral decision makers in dispute resolution procedures) are engaged selectively for certain types of problems. These might be the more serious issues that considerably affect communal harmony and order. It is also possible that not all victims rely at similar rates on community-level authorities to inquire about information about cases of domestic violence.

We also asked the victims of domestic violence to rate the providers of legal information and advice according to their usefulness. Police and the Legal Aid Commission are the first and third most useful sources of information and advice.

#### USEFULNESS OF LEGAL INFORMATION AND ADVICE



When we only look into the categories that respondents selected as sources of advice, we see that legal aid lawyers are rated as the most useful sources of advice, followed by church leaders, the police and relatives.



# Domestic violence and the paths to justice

More than half of the people who experienced domestic violence (and said that this was their most serious problem) took some sort of action towards finding a resolution. This is the same proportion as the people who searched for information and advice. There is a large and positive correlation between the two strategies.<sup>39</sup> People who seek legal information and advice are significantly more likely to take action to respond to domestic violence.

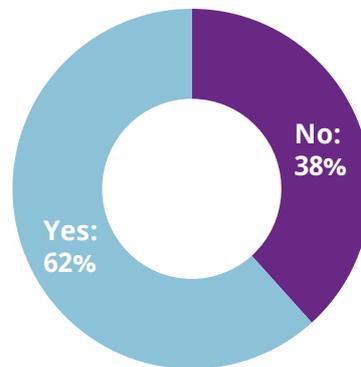
Victims from urban areas are significantly more active compared with rural residents. Seventy percent of the victims of domestic violence living in urban areas say they took some action in response to the problem. For victims from rural areas of Fiji this proportion is 55%.

For women the difference is even bigger. 75% of the female victims of domestic violence from urban areas took some sort of dispute resolution action. Significantly fewer (55%) of the rural women who encountered domestic violence took active steps to resolve the issue. Many different factors contribute to this difference: less access to effective dispute resolution mechanisms in rural areas, higher awareness among urban victims of their rights and available remedies, and more conservative social and cultural values in rural communities.

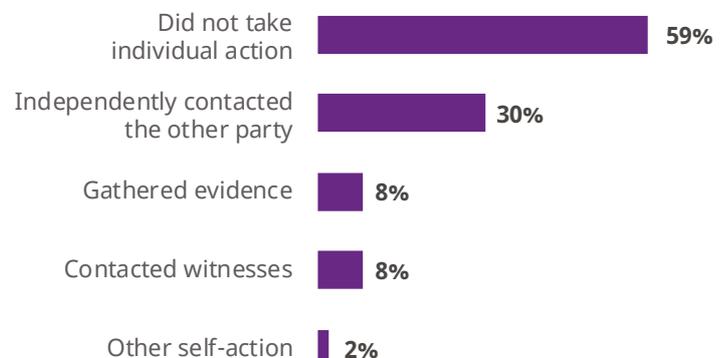
Contacting the other party is the most frequently used self-action strategy by the victims of domestic violence. Other strategies for self-help are used only rarely.

Similar to the pattern of seeking information and advice, relatives and friends are the most frequently used informal third-parties that people in Fiji engage in situations of domestic violence. Communal mechanisms for delivery of dispute resolution such as church leaders and Turaga ni koros are engaged much less frequently. Of the 214 respondents who reported domestic violence, only 12 and 8 reported the engagement of church leaders or Turaga ni koros, respectively.

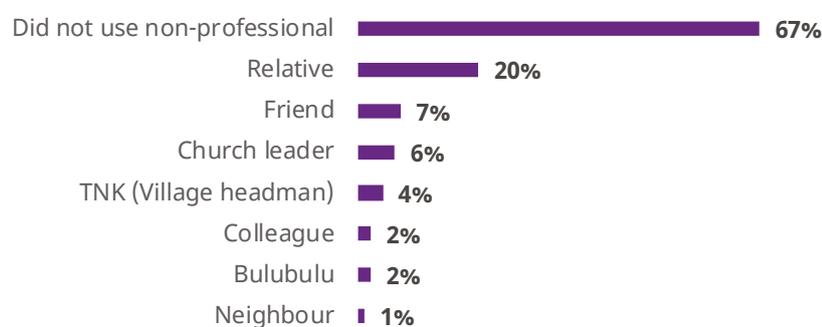
## DID YOU TAKE ACTION TO RESOLVE THE DOMESTIC VIOLENCE ISSUE?



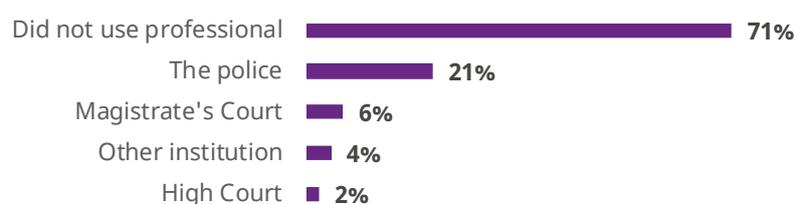
## DID YOU TAKE OWN ACTION TO RESPOND TO DOMESTIC VIOLENCE?



## SOCIAL NETWORK (NON-PROFESSIONAL NEUTRAL)



## PROFESSIONAL NEUTRAL



Of the institutional mechanisms for responding to domestic violence, the police is used most often. Still only one in five of the reported cases of domestic violence is being reported to police. Significantly fewer cases go to courts or other institutions. Around 70% of the people say that no formal dispute resolution mechanism was used to resolve the problem.

Victims were asked about their reasons for not taking action to resolve the problem. Abandoning the problem altogether is the most prevalent reason for remaining inactive (19% from all reasons). Another 19% of reasons for remaining passive were explained as fear of deteriorating the relationship with the other party or parties involved. Furthermore, 15% did not believe that they could achieve a positive outcome.

Shame and social stigma are serious barriers to justice, but improvements are being seen.

*"Sometimes the victim is told "if that comes out, you still have to live here", you face shame. They sit down and suffer silently; but in recent times this has started to come to light, and only because of changes to the law. Also pathways for it to come to front. Also empowerment and workshops" (CSO working with persons with disabilities)*



Another barrier to access to justice is the long and uncertain transition from informal to formal institutions. There is pressure to keep and reconcile domestic violence at family and community level.

*“What we have found in our research is that it takes an average 2 years for a woman to actually report matters of violence.”* (Interview with CSO)

### Most useful paths to justice for domestic violence

The police is seen as the most useful path to justice by people who report domestic violence. One quarter of them say that the police was the most useful resolution mechanism. The next most useful source is the self-action of independently contacting the other party (23%). Relatives are assessed by 18% as the most helpful source. Around 8% say that Magistrates’ Courts are the most useful mechanism for resolving domestic violence problems. Community mechanisms, such as church leaders and Turaga ni koros are assessed as most helpful by respectively 5% and 3% of victims of domestic abuse.

There are criticisms about police actions in cases of domestic violence. Escalation of the problem to the police can be difficult because the police might be perceived by some victims as unmotivated and slow in responding to cases of domestic violence. Some of the respondents in the qualitative interviews think that the police is too eager to push the victims to reconcile, in violation of the “no-drop” policy.

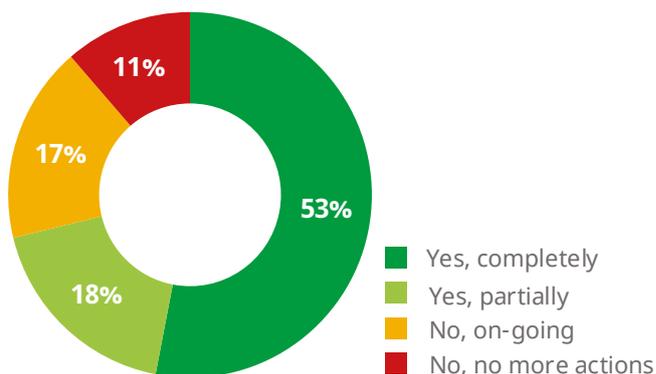
*“For DVROs although it is legislated they [Police] know that it is in the law but they still don’t practice it and that is a difficulty and they are always encouraging reconciliation.”* (Interview with CSO)

*“Often when these issues [domestic violence] happen in the village, it is often advised for families to solve their own issues.”* (FGD with women from Nailaga)

*“If they [women] ring the police - it takes the police so long to come that the couple have reconciled by the time they get there. [...] The police will ask us ‘are you sure you want to report your husband’- it discourages the women to carry on with the complaint.”* (FGD in Levuka)

Most victims of domestic violence say that the problem has been resolved completely or partially. There is a difference in the dispute resolution rates reported by victims living in rural and urban areas. Rural citizens report more unresolved problems. Victims from urban areas are twice as likely as rural victims to say that their problem was partially resolved (24% compared with 12%).

### PROBLEM RESOLUTION



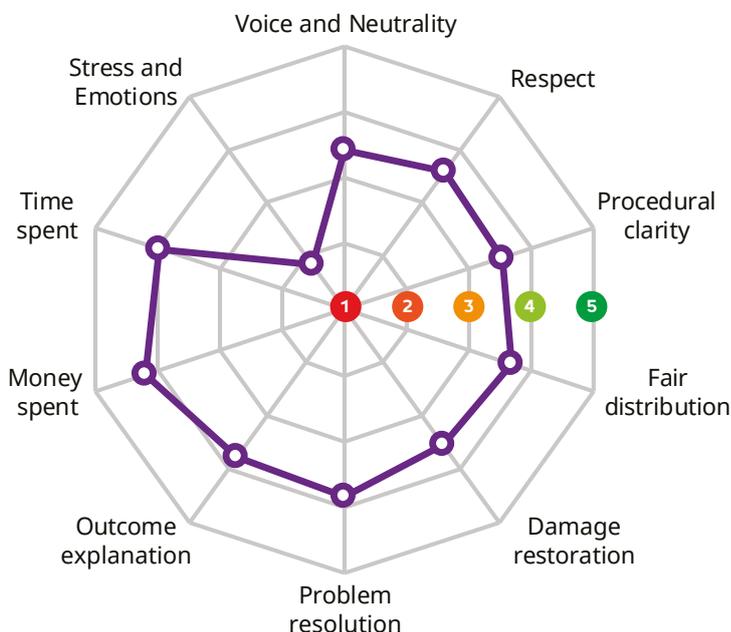
### How victims of domestic violence perceive the justice processes

The chart below shows how victims of domestic violence assess the costs, quality of procedure and quality of outcome of the available paths to justice.

Victims of domestic violence report average satisfaction with the three important aspects of the procedure – Voice and neutrality (3.4), Respect (3.5) and Procedural clarity (3.5). The outcomes of the justice procedures for resolving domestic violence problems score slightly higher.

Stress and negative emotions score lowest. For many victims, the stress and negative emotions of going through a process for resolving domestic violence are excessive.

### COSTS AND QUALITY OF PATHS TO JUSTICE FOR DOMESTIC VIOLENCE



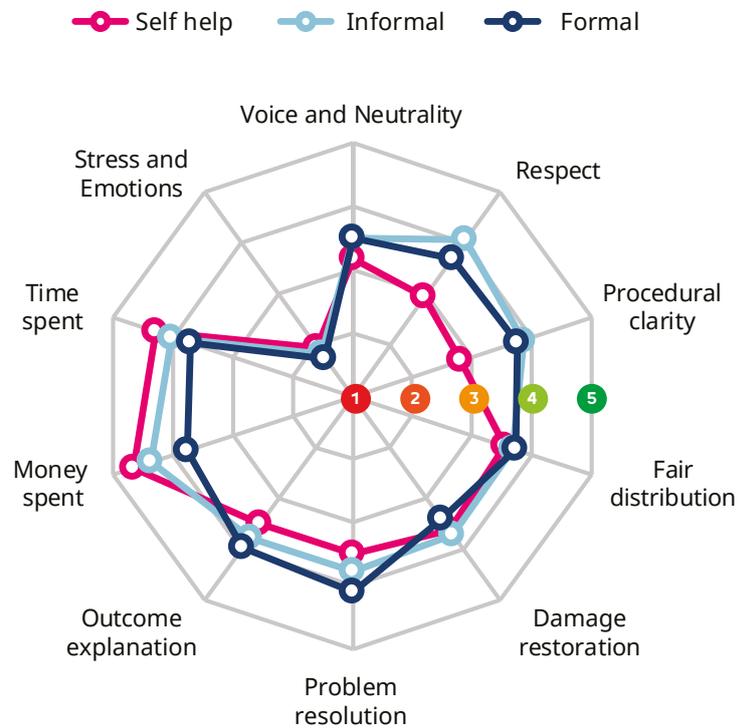
There is a marked difference in how the different paths to justice are perceived by the victims of domestic violence. Self-help, which is the most commonly used dispute resolution mechanism, performs poorly in terms of process. In such situations the victims cannot rely on the intervention of third-party neutrals. They have to deal with the aggressor on their own. Hence, they do not feel heard, do not think that the process is unbiased or that they are treated with respect.

Formal and informal justice mechanisms receive higher scores in terms of process quality. In particular, the informal processes make people feel that they are treated with respect and dignity.

When it comes to the perceived quality of the result, the victims of domestic violence find that self-help is less likely to resolve the problem. Formal mechanisms, such as the police and, for some, Magistrates' Courts are seen as more effective for resolving problems. Nevertheless, it should be mentioned that their effectiveness is not perfect. A lot of improvements are possible and indeed needed to provide proper justice for the victims of domestic violence.

Self-help and informal mechanisms are more accessible for the people who need them. Victims report spending less money and time on self-help and informal mechanisms as compared with formal dispute resolution processes. Associated stress is a serious burden and perhaps a barrier to justice.

## COSTS AND QUALITY OF PATHS TO JUSTICE FOR DOMESTIC VIOLENCE



## Conclusions

- Legal problems caused by domestic violence are the fourth most frequently occurring legal problem in Fiji. We think that this is a low estimate of the actual prevalence rate. Around half of these problems are considered by the victims as completely resolved.
- Most often the strategy to resolve a situation of domestic violence is to talk to the other party and try to stop the abuse.
- The police is involved in around 20% of the situations. Many cases remain unreported.
- Physical and emotional abuse are the most frequent examples of domestic violence, but sexual abuse and economic deprivation are also reported, particularly by women.
- Domestic violence has significant negative impacts and consequences on the people who experience it. Combined, 68% say that the domestic violence had a high or severe effect on their life.
- Women and particularly young women from rural areas are at particularly high risk of becoming a victims of domestic violence and abuse.
- Living in a rural environment significantly affects how people experience encounter, respond and resolve domestic violence problems.
- Less rarely than women, but men are also affected by domestic violence.
- When men experience domestic violence, their problems are more likely to remain hidden. We hypothesize that this might be the result of social norms or lack of infrastructure to adequately respond to situations in which men are the victims of domestic violence.
- On average 62% seek for information and advice. This leaves a gap of 38% who do not reach out even to the family to seek for information.
- Stress and emotions are the lowest points of the justice journeys for domestic violence for the people in Fiji. The victims who make the steps to the formal justice providers are more satisfied with the fairness of the process compared with those who rely on self-actions or on informal dispute resolution mechanisms.



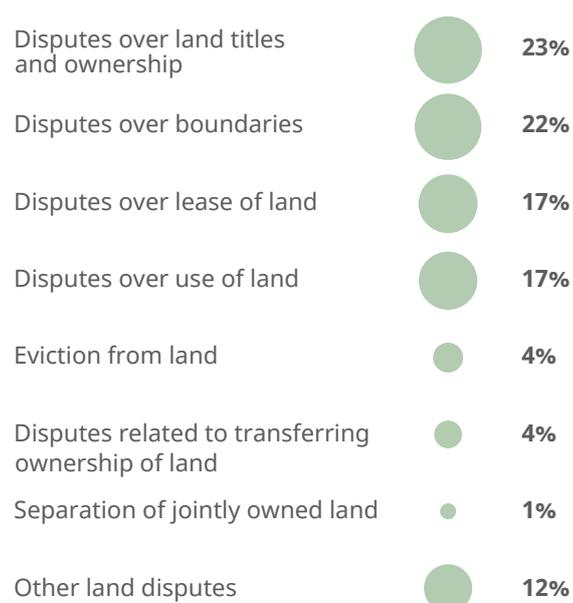
# Dealing with land disputes

Impact of land disputes  
Seeking information and advice  
Cost and quality of justice  
Conclusions



Land disputes are one of the most common and serious legal problems for the people in Fiji. The survey results show that 17% of the people had to deal with a land dispute and 14% indicate it was their most serious legal problem. Land problems are also often at the root of a range of other problems, such as family and neighbour related disputes. In this chapter, we take a closer look at land disputes, how people deal with them and how they evaluate their justice journeys. Only a small proportion of land in Fiji can be transacted. Many land disputes arise from conflicts over communal (native land - between 85% and 91% of the land) and government (Crown) land. In Fiji, the native land is subdivided between reserve and land that is not under reserve and where leases are issued. Disputes emerge around conflicts over titles, boundaries, leases and use of land.

#### SPECIFIC LAND DISPUTES



Two particular examples of frequent land disputes emerged from the qualitative interviews with stakeholders and users of justice: the proliferation of squatters and the acquisition of land holds by holiday resorts.

Squatting is a phenomenon related to poverty.

*"Many people earning less than 15,000 a year stay in squatter areas without proper legal documents."*  
(Development expert)

Nonetheless, other interviews affirm that rich people also participate in this practice:

*"People who are well-off live in squatter settlements and rent out their usual apartments. They are given a water supply and other utilities"* (Interview with the Legal Aid Commission)

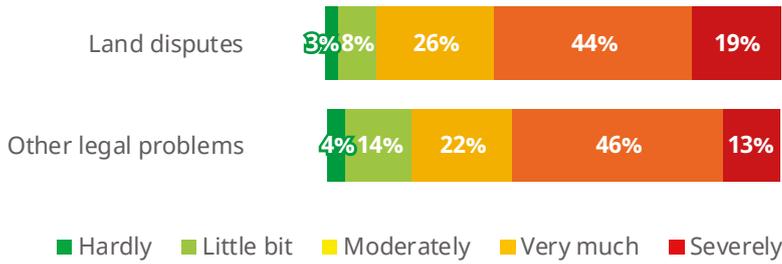
Resorts are involved in different types of dispute: holiday resort representatives approach villages in which they would like to build new property. People complain about this, particularly about taking advantage of local decision-making processes:

*"Resorts come with a lot of false promises. Traditionally, the villagers would decide things in a meeting, but not write them down. Then, the resorts would go back on it"*  
(FGD with men)

Another problem is that resorts are built on land which, according to the people, should be used for other purposes:

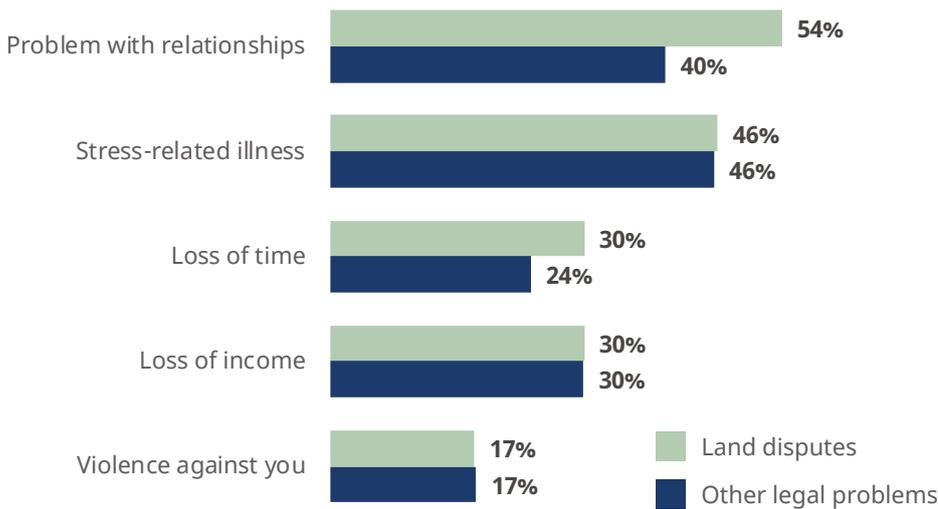
*"In Naiwaisomo, an Australian person had started setting up a resort, then abandoned it and left it for the state to handle. The land should have gone to farming"*  
(FGD with men)

HOW DID YOUR PROBLEM AFFECT YOUR LIFE



The impact of land disputes is substantial, with 19% indicating it affected their life to a severe degree. Land is strongly connected to livelihoods and plays a major role in people’s lives. Conflicts around land are thus very impactful and affect entire families and communities.

DID YOU EXPERIENCE ... ?



Land disputes are likely to lead to problems with personal relationships. Since land is so central to livelihoods and communities, it is understandable that conflicts put a heavy strain on relationships. Conflicts with individuals in the village or with external parties can strongly affect a person’s peace of mind and sense of security. People also indicate that they experience a lot of stress and lose substantial amounts of time and money due to land disputes.

Violence, despite ranking low among the consequences of land disputes, may manifest as consequences of related problems. As stated before, land problems are deeply connected to family and neighbour problems, particularly when they are experienced by women:

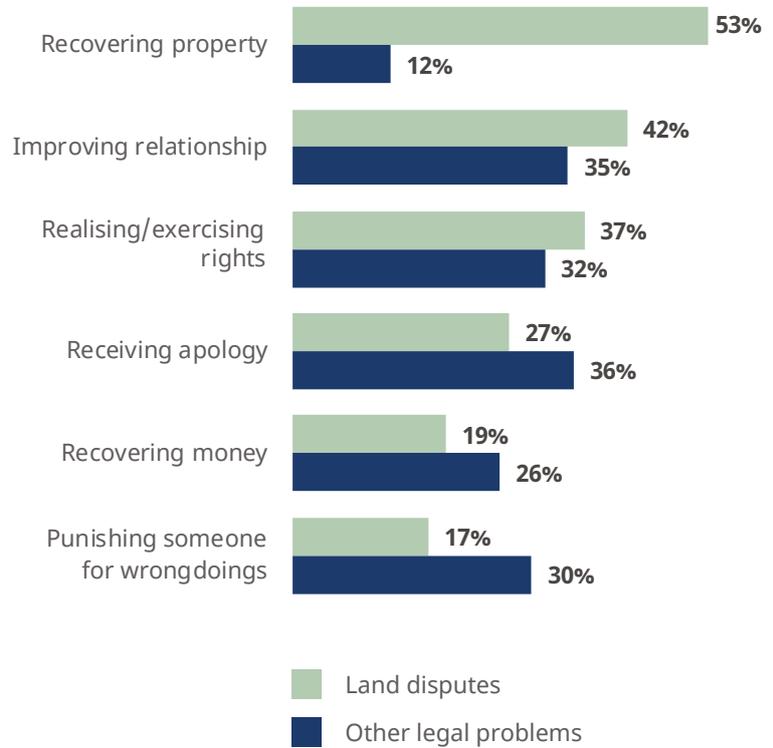
*“If the land title holder is a female, relatives will play a role. Extended family have shared interest in property. This leads to questions over whether domestic violence is genuine or has a hidden motive behind it.” (Interview with official from the Legal Aid Commission)*



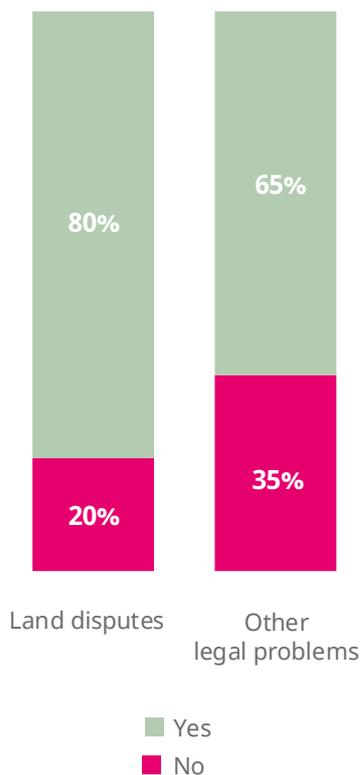
While attempting to resolve land disputes, people mostly expect to recover property, improve relationships and exercise their rights. People are less interested in receiving an apology or in others being punished for wrongdoings. They simply want their property rights to be recognised and respected.

People who experience land disputes are quite active in seeking legal information and advice. Eight out of ten people choose to inform themselves about how to resolve their dispute. Compared with other legal problems, people tend to rely much more on Turaga ni koros and clan leaders (mataqali). The TLTB also plays a vital role in the delivery of pertinent legal information and advice. 42% of people who experienced a land problem and sought information approached the TLTB. The TLTB plays an important role in the process of leasing land. The institution has the authority to receive, review and decide disputes about land leases.

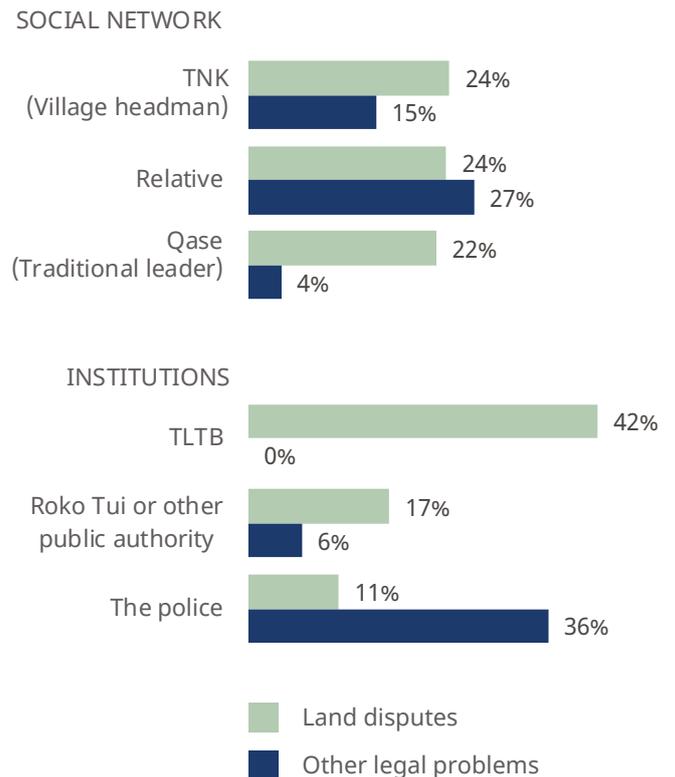
WHAT DID YOU EXPECT TO ACHIEVE THROUGH RESOLUTION OF YOUR PROBLEM?



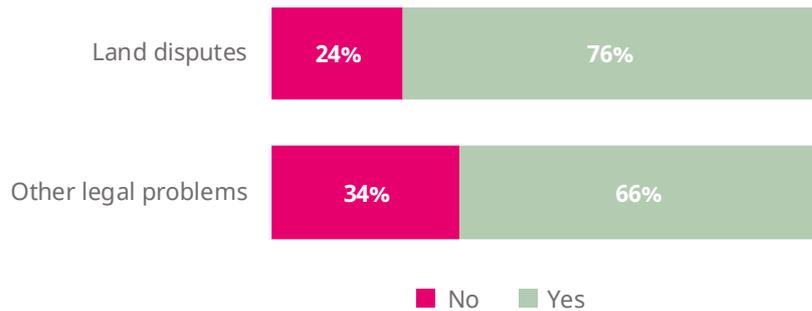
DID YOU SEEK LEGAL INFORMATION AND ADVICE?



COMMON SOURCES OF LEGAL INFORMATION AND ADVICE



## DID YOU TAKE SOME FORM OF ACTION TO RESOLVE THE DISPUTE?



Eight out of ten people who experienced a land dispute took some form of action to resolve it. The willingness to take action is slightly higher than for other legal problems. Going to institutions is a common way of resolving disputes. The TLTB plays a significant role in resolving land disputes. From the social network, Turaga ni koros, clan leaders (mataqali) and the village council are frequently used.

### Institutions are rated as helpful providers of justice

70% of people who use the TLTB select it as the most helpful mechanism to resolve their problem. The relative helpfulness of Turaga ni koros and clan leaders is much lower, at 37% and 34%, respectively. Self-action is also not considered to be very helpful in resolving land disputes. Contacting the other party directly, for example, is only selected as the most helpful mechanism by 28% of the people who used it.

Data from the qualitative interviews corresponds to what we found in the survey data:

*“Mostly in villages people solve their land disputes among themselves, or the provincial council solves them- through a village meeting” (FGD in Levuka)*

Sometimes the availability of multiple dispute resolution mechanisms precludes people from going to court to get their problems resolved:

*“People are torn between indigenous and formal dispute resolution mechanisms. Some buy the kava, go to others and beg forgiveness.” (Group interview with Development professionals )*

Users of justice agree with this argument:

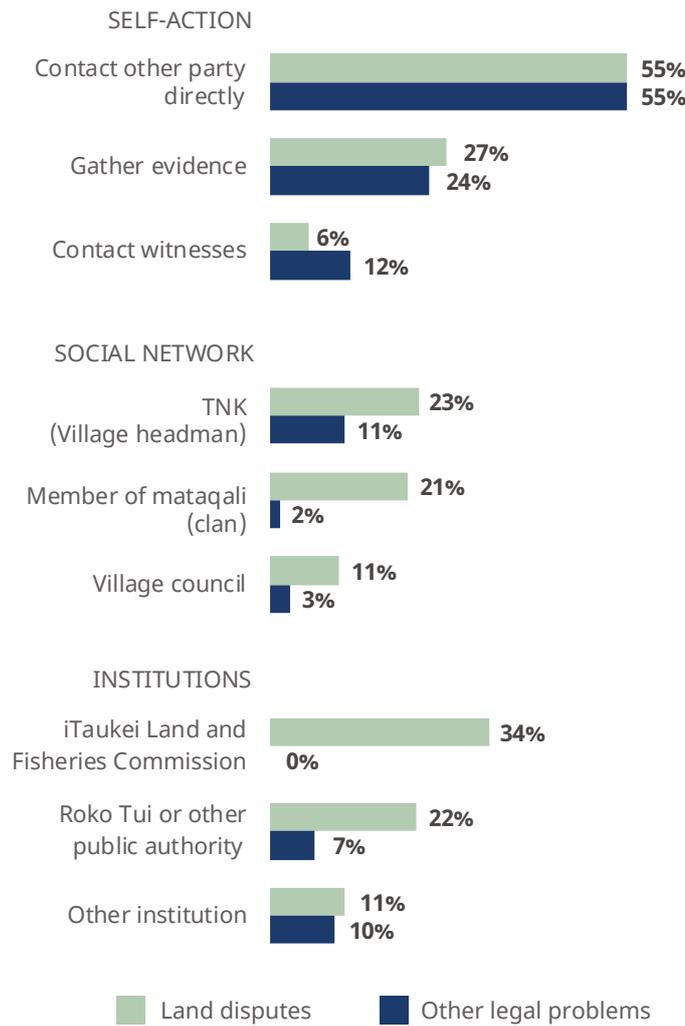
*“Land issues are not taken to the police but resolved through talking, a gathering to discuss, a council between three villages to discuss, where representatives are sent” (FGD with women)*

Resolution outside the courts seems to be the preferred strategy by institutions themselves:

*“For intra and inter-community disputes on land boundaries, our strategy is for them to consult among themselves and to agree. We, the Native Lands Commission, are the last resort. Whole groups of people come together at evening gathering or it could be during festive season [and formulate their claims]. Then the Commissioner decides, and then that can be appealed to the iTaukei Tribunal” (Official from Native Lands Commission, Ministry of iTaukei Affairs)*



**COMMON DISPUTE RESOLUTION METHODS**



During the qualitative interviews with stakeholders and users of justice, we heard that people tend to keep resolution outside courts if possible:

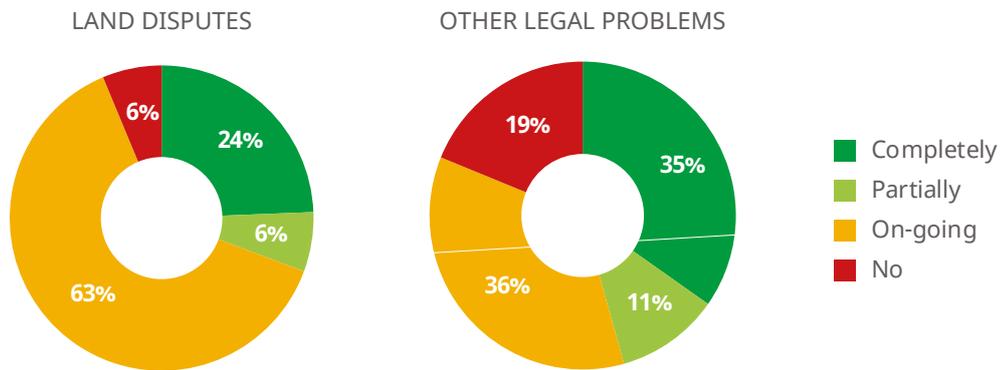
*“A lot of the land disputes do not make it to court because of lack of resources; but the number of land disputes is the highest in Fiji’s history; with that come brawls, trespass, theft of crops, etc.” (Interview with women’s lawyers association)*

We heard details about the costs of the procedures:

*“People would need to file the case in civil court, and then would need to proceed to High Court. Most law firms would need a retainer of 5,000, plus you would need a representative action (class action) of a Mataqali – and it [the clan] does not have the money. Cases are filed, but are not always successful, because the defendants are TLTB, etc. and they have means as well.” (Interview with women’s lawyers association)*

Resolving land problems is time consuming compared with other legal problems. Almost two thirds of land disputes are on-going, indicating that the process to resolution is lengthy and time consuming. The differences between trying to resolve the problem via self-action, one’s social network or institutions has a significant impact on resolution rates. The number of problems that are completely resolved is much higher for the latter two mechanisms.

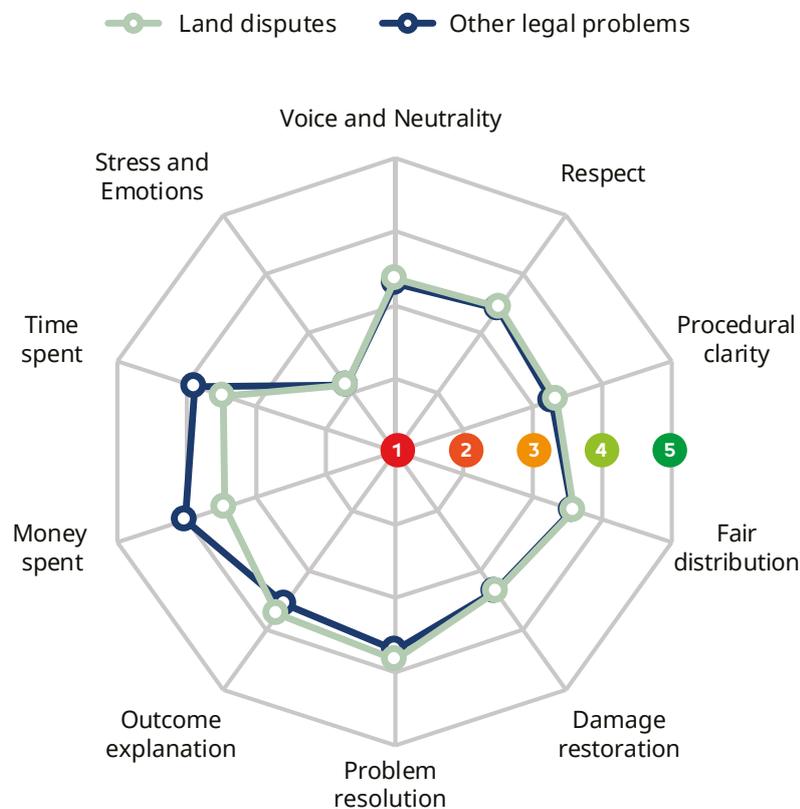
**HAS THE PROBLEM BEEN RESOLVED?**



	No	On-going	Partially	Completely
Self-action	4%	74%	11%	11%
Social network	16%	38%	13%	33%
Institutions	2%	71%	2%	25%

# Cost and quality of land justice

## COST AND QUALITY OF JUSTICE – COMPARISON



The costs and quality of land justice are evaluated similarly than for other legal problems. The main differences are the higher costs in terms of time and money required to deal with the problem.

Despite the concerns about time and monetary costs of procedures, Fijian institutions are improving certain aspects of their procedures, namely, the speed of data and document processing which, in time, will generate faster procedures:

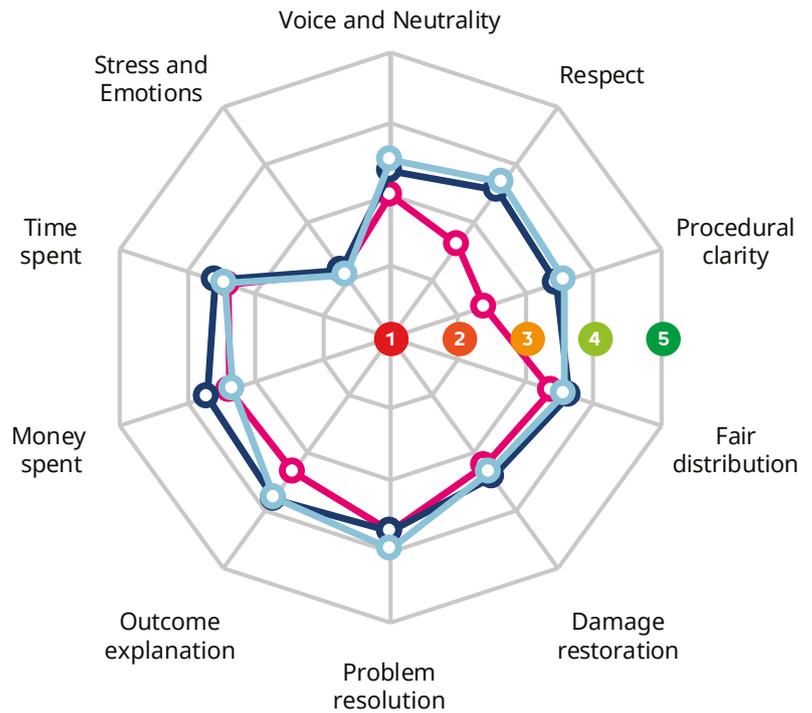
*“Most of the documents are now digitalised and searchable online, so that has improved processes. Users can do things quicker now. The lag was creating lots of cases.”* (Interview with official from Solicitor General’s office)



When looking at land disputes specifically, we find that institutions and the social network are rated higher than self-action. This strongly applies to the quality of the procedure, but the quality of the outcome is also rated more positively. People feel more heard, respected and the procedures are explained to them more thoroughly when engaging their social network and institutions.

COST AND QUALITY OF LAND JUSTICE

Self-action    Social network    Institutions



QUALITY OF THE PROCEDURE

WAS YOUR VOICE HEARD?



WERE YOU TREATED WITH RESPECT?



WAS THE PROCEDURE EXPLAINED TO YOU?



- Not at all
- Small extent
- Moderate extent
- Large extent
- Very large extent

# Conclusions

- Land problems are common and impactful. They strongly affect the relationships between people. The people in Fiji actively pursue recognition and upholding of their land rights.
- Many legal problems are the consequence of unresolved land disputes. In the most serious cases, violent crimes can be traced back to disputes about land.
- The iTaukei Land and Fisheries Commission plays a significant role in the resolution of land disputes. For many people, the Turaga ni koros, clan leaders and the village council are also important.
- Land disputes are more expensive and time consuming to resolve than other legal problems. Resolution rates are high when people use their social network and institutions, but the number of problems that are on-going and unresolved is substantial.
- The cost and quality of the land justice journey is comparable to other legal problems, with only the amount of money and time required being somewhat higher for land disputes.
- The difference observed between self-action, the social network and institutions in terms of the quality of the procedure in previous chapters is further amplified when people have to deal with land disputes. Institutions and the social network provide a much better experience as dispute resolution procedures.



# **Trust in justice institutions and legal empowerment**



Trust in institutions is important for economic growth and for increasing fairness in daily life. If justice institutions are present and trusted, then daily interactions are more likely to be resolved fairly in the so-called shadow of the law.

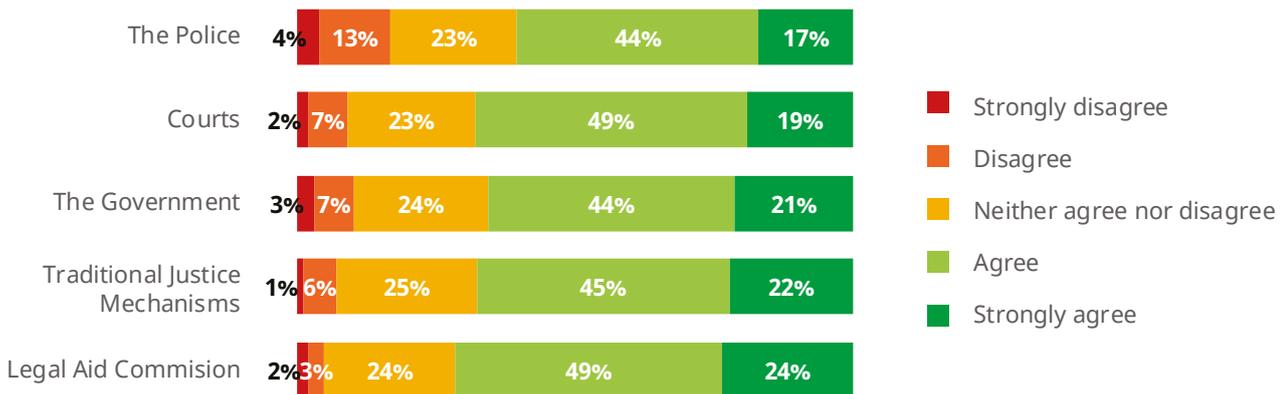
We asked everyone in our sample the questions in this chapter regardless of whether they had experienced a legal problem or not. Respondents could rate their level of trust in five legal/political institutions on a scale from 1 (no trust at all) to 5 (high level of trust).

### Fijians show high levels of trust in institutions

People have a fairly high level of trust in the justice institutions. As we can see in the chart on the next page the overall trust in institutions in Fiji is higher than in the Netherlands.

At least 60% of the respondents strongly agree or agree that they trust the police, courts, government, traditional justice mechanisms and the Legal Aid Commission.

#### TRUST IN INSTITUTIONS



Courts	Traditional Justice Mechanisms	Police	Government	Legal Aid Commission
3.76	3.81	3.57	3.73	3.90

However, in addition to the high level of trust identified in the survey the qualitative interview show some nuances and concerns of the participants. Such concerns relate particularly to the work of the police.

Official representatives of the police are aware that tardiness is an issue, but see some improvements, and have self-criticisms:

*“We’ve been praised by some in the Western division for responding in 6-8 minutes (as our charter says we should be). However, for remote islands, that might take at least a day or two to arrive. But we should be able to attend within the shift of 8 hours (within a patrolman’s shift)”*  
 (Interview with senior police officer)

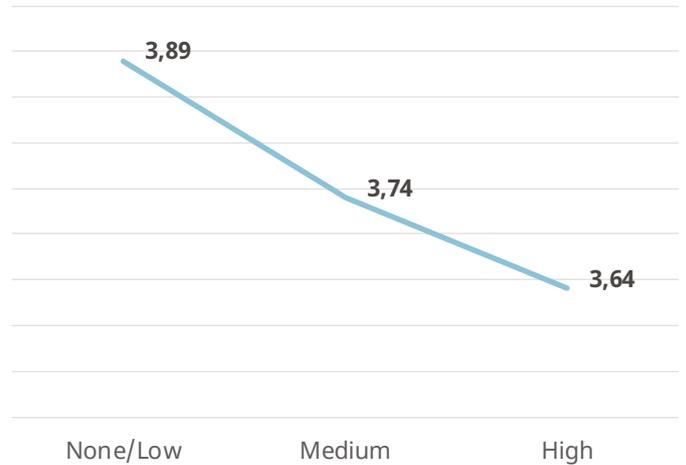
The survey data shows no differences in the distribution of trust between genders in respect to the police.

People who experienced a legal problem show lower levels of trust in institutions (3.65) than those who did not have a problem (3.84).

People who take any type of action to resolve their problems show lower levels of trust in courts and traditional justice mechanisms.

The level of trust changes with one’s level of formal education; as the level of formal education increases, trust decreases. People in the low-income group tend to express higher levels of trust in institutions, while the levels of trust of other income groups varies little.

TRUST IN INSTITUTIONS BY LEVEL OF FORMAL EDUCATION



OVERALL INSTITUTIONAL TRUST

Bangladesh 3.98

Jordan 3.81

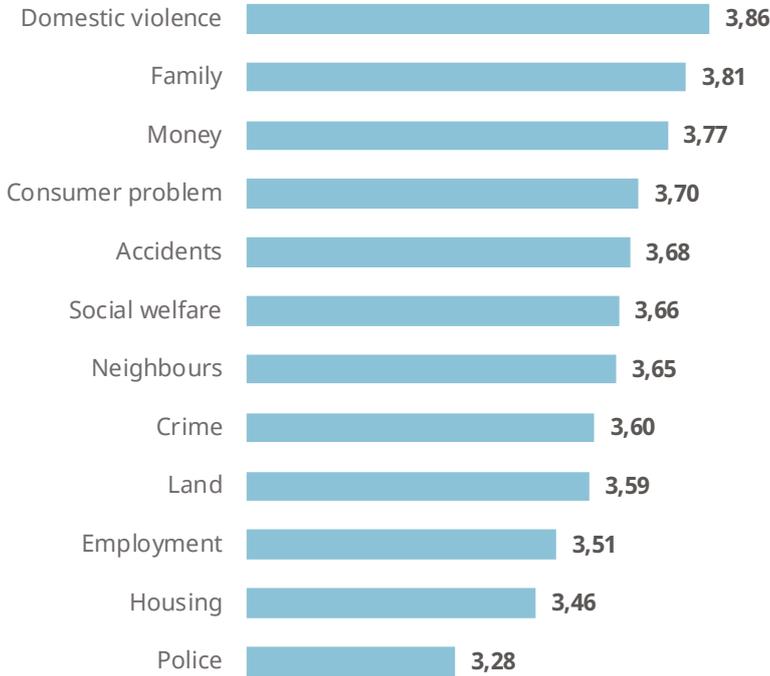
Fiji 3.75

Uganda 3.40

The Netherlands 3.36



## TRUST IN INSTITUTIONS BY PROBLEM CATEGORY



People who have experienced problems with the police report the lowest average level of trust in institutions. Their trust in the police is particularly low (2.45) with over 50% having a negative sentiment.

Slow and inefficient justice procedures diminish trust in institutions, such as the police. Improving justice procedures in terms of speed, but also in terms of respect, voice and accountability may improve trust in institutions.

## People in Fiji have positive perceptions of the courts

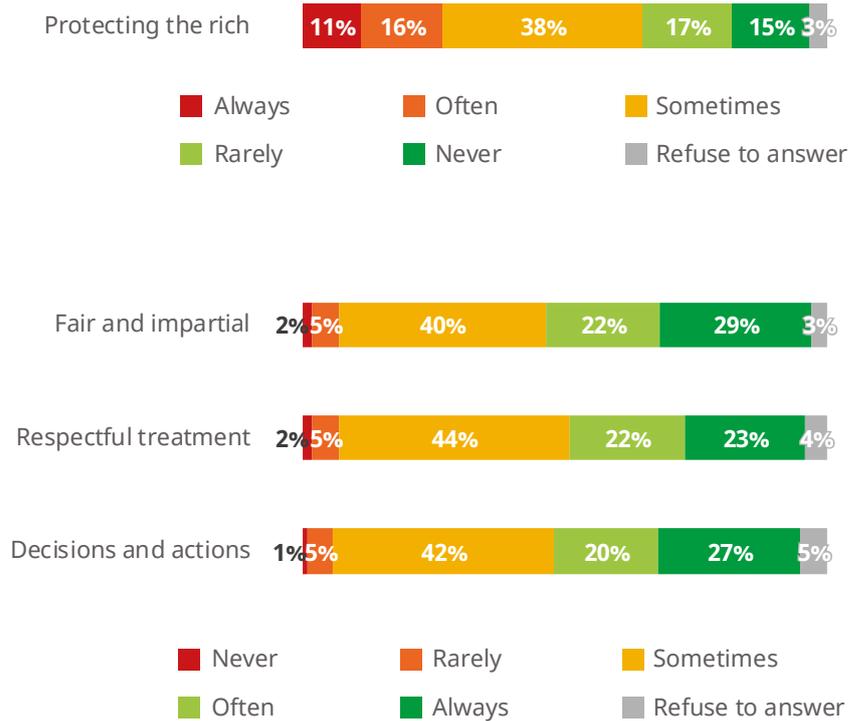
We asked people about their perceptions of the Fijian courts based on four statements:

- i. *Courts generally protect the interests of the rich and powerful above those of ordinary people.*
- ii. *How often do you think the Fiji courts make fair, impartial decisions based on the evidence before them?*
- iii. *Based on what you have heard, or your own experience, do courts generally treat the people in Fiji with respect?*
- iv. *When dealing with citizens, how often would you say the courts generally explain their decisions and actions when asked to do so?*

Statement i. has a negative formulation, while statements ii, iii and iv are phrased in a neutral way.



## PERCEPTION OF THE COURTS



Perceptions of the courts are positive. For each statement, no more than one out of four people stated negative opinions. Positive opinions tend to account for almost 50%. Nonetheless, the most frequent answer chosen was "sometimes", which is a neutral answer. Still, people hold the perception that the courts protect the rich and powerful over ordinary citizens.

- People with low levels of formal education tend to have a more positive perception of the courts in Fiji.
- Individuals with less income trust the courts more.
- People with employment problems tend to have more negative views of the courts than people experiencing other problems. People who have experienced domestic violence and crime, on the other hand, more often indicate a positive view of the courts.

## Subjective legal empowerment

We define legal empowerment as the confidence in one's own abilities to use the law to improve one's life. We measured that through several hypothetical scenarios. Legally empowered people believe in their capacities to deal successfully with legal problems. Using everyday life situations, we asked respondents if they feel capable of achieving a fair resolution to a legal problem. The scenarios are:

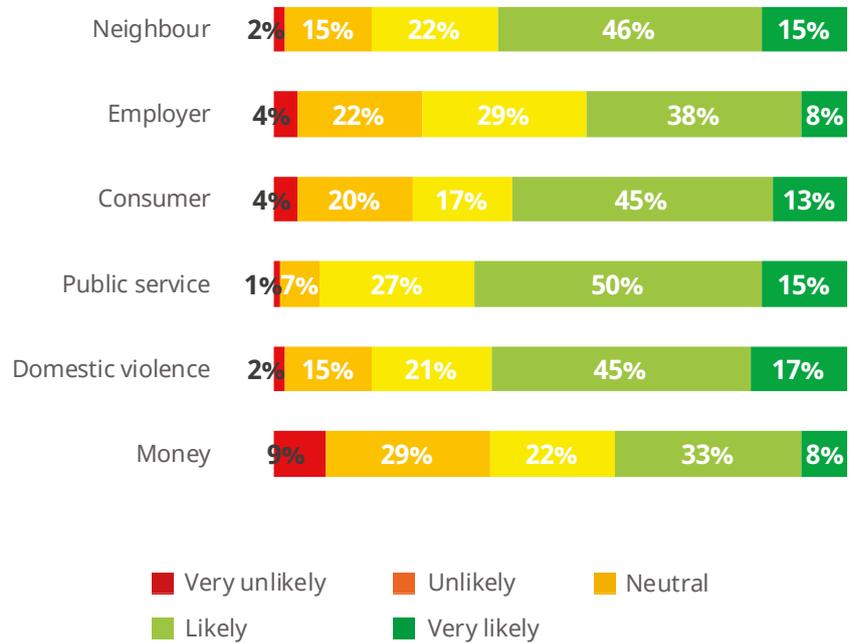
- *You had a conflict with a neighbour who often causes a significant disturbance to you, for instance by making a lot of noise or leaving garbage out.*
- *You had a problem with your employer, for example a conflict over your dismissal.*
- *You bought a cell phone from a big retailer and it was defective.*
- *You had a conflict with the official authority that issues National ID Cards (or similar).*
- *You became a victim of domestic violence and were physically hurt by a family member.*
- *You lent approximately 250 FJD to a friend and he refuses to pay it back.*

People in Fiji are confident that when experiencing different legal problems they would achieve a resolution. In four of the six scenarios, at least 50% of the people report they would be likely or very likely to achieve a fair solution.

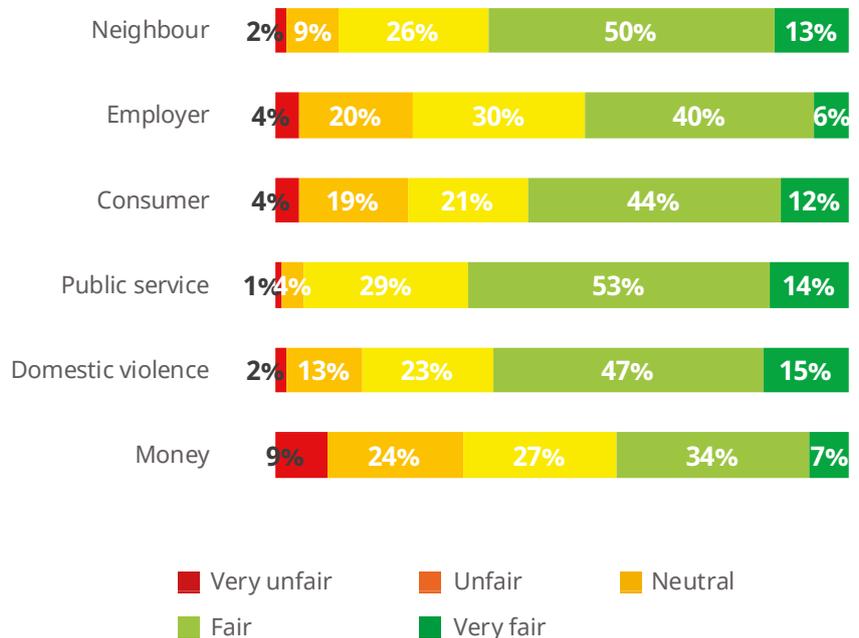
Middle-income earners are the least likely to feel empowered in case of an employment dispute, followed by the low-income group. The low-income group is also least likely to feel it could achieve a resolution in case of a money problem.

The patterns regarding perceived fairness of outcomes tend to follow the patterns in the previous graph. Problems regarding employment and money are perceived as difficult to resolve, and if an outcome is achieved, the expectation is that the outcome would not be fair.

**PERCEIVED LIKELIHOOD OF FINDING A SOLUTION**



**PERCEIVED FAIRNESS OF OUTCOMES**



# Conclusions

- Fijians report high levels of trust in institutions. People express more distrust when asked about the police, which is common around the globe. The Legal Aid Commission is trusted the most among the five institutions.
- Regarding legal empowerment, understood as the confidence of a person to be able to achieve an outcome should they face a legal problem, employment problems and money problems (informal lending) are the categories where a higher percentage of people feel less able to resolve their disputes.





# CONCLUSIONS AND RECOMMENDATIONS



# Conclusions

Almost half – 47% - of the adult citizens of Fiji encountered one or more serious legal problems in the past four years. This translates to at least 100,000 justice needs per year. Many people, their families and communities need access to justice in order to reach just and fair resolutions.

Most of the legal problems that the people of Fiji encounter do not belong to the big social issues that attract the attention of media and policy makers. Disputes between neighbours, crimes (mostly property and petty violent crimes), land disputes, family and domestic violence problems, are the most frequently occurring categories of legal problems. These problems, however, have significant repercussions on the lives of the people involved. Sixty percent of the people involved in legal problems estimate that the impact of the problem was very serious or severe.

The amount of legal problems in Fiji should be put into perspective. There is a shared view that there is an increase in the amount of problems that require just and fair resolution. Judges, magistrates and lawyers specifically spoke about a visible growth of requests for adjudication.

Several factors are deemed to contribute to this increase in demand. Fijian society is undergoing profound transformation which results in eroding social norms and cohesion. Internal and external migration, youth unemployment, the use of drugs and alcohol, and dropping out of school are among the causes of a feeling that social norms have become less effective in achieving social and communal harmony.

Social, demographic and economic trends contribute to the rise of legal problems. In that respect a prevalence of 47% of legal problems can be interpreted as a normal finding. This perceived increase in demand for justice concerns both formal and informal justice providers. Namely, institutional providers such as courts and administrative tribunals feel overwhelmed with the growing demand for justice.

Two thirds of the people in Fiji take active steps and pursue a resolution for their legal problems. They take their own actions or involve someone from their social network or public institutions in an attempt to resolve the problem. Also two thirds of the people with problems look for information or advice that will help them reach a fair resolution. However, only 43% of the people who had a problem and took action say that their problem has been completely or partially resolved. More than half of the legal problems of Fijians continue to trouble the people involved. This means that each year around 50,000 justice needs are not completely and fairly resolved.

## What works in justice in Fiji?

The survey and qualitative data point to successes of justice in Fiji. More courtrooms have been opened to better serve the people of Fiji. Specialisation is also

taking place – the Small Claims Tribunal is an example. Experts and stakeholders see shortened times of disposition of court cases. The use of alternative dispute resolution methods is actively promoted. The caseload of the Fiji Mediation Center is steadily growing.

Legal aid merits a specific mention. The Legal Aid Commission is assessed as the most helpful source of legal information and advice. Nine percent of the people who sought some sort of legal information and advice received it from Legal Aid Commission lawyers. Such widespread availability of legal aid is an indication of extensive coverage but also of awareness and trust. Even respondents from rural areas were familiar with the service. This is a positive sign, but there is still a room for improvement in knowledge about legal aid (specifically in civil and family matters). The interviewed citizens, experts and stakeholders in the Fiji justice system see the legal aid scheme mostly in a positive light.

Another positive aspect of the access to justice landscape in Fiji are the active civil society organisations. They are involved in advocacy, awareness-raising, legal advice and representation. They are particularly present and active in Suva and other big cities. However, this is also the challenge for CSOs – people from rural and remote communities have much less access to their services.

## What are the challenges?

As mentioned above the demand for justice is significant and it appears to be on the rise. In the short and medium term it is highly likely that the amount, and perhaps complexity and impact, of legal problems will increase. In order to meet this demand the supply of justice journeys should be strengthened. The survey and qualitative data show a couple of areas where improvements are needed in order to provide faster and fairer results to existing and future legal problems.

This Justice Needs and Satisfaction study reveals that nearly 60% of the legal problems are not resolved. Poor people are at a significant disadvantage. They are less likely to say that their problems are resolved compared to people with higher incomes. This is a justice gap that needs attention and action.

What are the causes of the justice gap? First, legal awareness is a challenge. One third of the Fijians who experienced a legal problem did not look for information or advice from institutional sources or the people around them. Very few seek information from social media on internet, web sites, TV or radio. There is a big cohort of people who encounter a legal problem but do not seek information. The main reasons are that they classify the problem as not important or not believing that advice would have helped to reach a resolution. The users of justice are also hindered by a cognitive barrier – many do not look for legal information and legal advice simply because they do not

know where to search for it.

Rural and remote communities are at particularly high risk of not knowing enough about how to resolve their legal problems. They are distant from institutional sources. In Fiji internet and electronic media are not used much for access to justice purposes. In this situation the only feasible strategy is to rely on the experience and advice of the people around them – family, friends, neighbors. These sources are trusted but might not be sufficiently knowledgeable to provide reliable information.

Legal aid has commendable coverage. But in rural and remote areas there are concerns that individuals and communities are not aware of its existence or the details of using legal aid to resolve their concrete problems. For instance, people might know about the Legal Aid Commission and its core services, but might not be aware of vital specifics such as the availability of civil legal aid.

More legal information will increase legal awareness. But it should be designed and delivered in a smart way. One size does not fit all. Legal information should be practical and focused on the problems that the people encounter. To achieve greater impact, it is best is to focus on the problems that affect most people in Fiji – disputes between neighbors, petty crimes, land disputes, family disagreements and domestic violence. Information should also be embedded in procedures so that the users of justice are not referred back and forth between providers of legal information and legal advice.

Aside from the gaps in legal awareness loom challenges with dispute resolution. Private lawyers are seen as expensive. This strengthens the belief that the rich have more and better access to justice.

About a third of legal problems that respondents face are not followed up by them. A relatively small proportion of cases make it to the courts of law. The rest of the legal problems are referred to traditional or formal justice journeys. Self actions, such as contacting the other party in the dispute, are the most prevalent strategy. This is a reasonable approach but it can only work if there are mechanisms to use if the opponent is not cooperative. This opens the space for traditional and formal institutions in dispute resolution.

People who used formal institutions such as courts, police and administrative tribunals rate them as more useful than self-action and informal processes. Institutions, however, are not easy to reach. Many people do not know what to do and where to go when they have legal problems. The services of private lawyers are expensive. Poor and disadvantaged people can rarely if ever afford legal counsel. Despite its increased budget and growing service delivery, the Legal Aid Commission faces increasing demand. The barriers for those from rural and remote communities are particularly pronounced. Their journeys to formal institutions are long, uncertain and expensive. Women, and especially young women, are facing higher barriers. They are more frequently victims of domestic violence but have fewer resources to take the problem to a justice

journey that can lead to a fair solution. Persons with disabilities report problems with physical access and a lack of translation into sign language. Sexual minorities firmly believe that they are discriminated against by the institutions.

A frequent critique of institutions, and particularly the police, is that they are slow to respond to people's problems. Many respondents in qualitative interviews shared their disappointment with the unpredictable pace of police response to crimes. This happens frequently in remote areas and particularly in cases of domestic violence. Not being taken seriously might be the experience of some women who attempt to respond to domestic violence. Efforts have been made but the data clearly points to a considerable gap in the institutions' capacity to provide access to justice.

When the formal institutions are inaccessible and unaffordable the two remaining options are – self-action and traditional justice mechanisms. These mechanisms are considered less fair in terms of process fairness. When there are no neutral and fair rules to equalize the positions of the parties, such processes favour one of the parties – usually the one which is stronger, richer and more powerful.

Traditional justice is the logical next step. However, we see that traditional justice in Fiji is not a simple construct. There are different practices with different values for the various communities. Traditional justice is more clearly present in the rural communities. There the figure of Turaga ni koro and the *Bulubulu* reconciliation process have prominent roles. Using their personal and communal authority Turaga ni koro resolve problems between people in the community. If a problem is difficult to resolve or falls outside of their jurisdiction Turaga ni koro will refer it to official institutions – most often to the police. The relationship between traditional justice and official institutions is an uneasy one. This is mostly visible in the process of collaboration in responding to serious crimes that occur in the communities.

Various dynamics challenge traditional justice in Fiji. People migrate and the values of youth are changing. Formal justice claims jurisdiction over problems that were firmly in the domain of traditional justice. These and other factors are putting pressure on Traditional justice. It is shrinking in scope but the volume of demand is increasing. Traditional justice has not been institutionalised significantly. The performance of Turaga ni koro depends mostly on his or her personal qualities and less on norms and policies.







# Recommendations

The people of Fiji told us about their experiences with legal problems. We also listened to the stories of justice providers. Based on the resulting comprehensive set of data, we present recommendations for improving access to justice. These recommendations are based on data from this project and Hiil's experience in measuring, innovating and transforming justice. The examples provided demonstrate how the recommendations work in other regions and countries, and how could work in Fiji.

We do not advocate following these recommendations blindly. Rather, we invite the relevant actors to look at the data about the justice needs of the people, gather inspiration about what works in justice and commence a process of justice transformation. Each nation and each institution has its own path.

The first sections of this chapter outline recommendations in specific fields. The last section summarises a process for justice transformation that can prevent or resolve many legal problems in Fiji.

# Continue to listen to the people of Fiji. Measure justice regularly.

This study outlines the demand and supply of justice in Fiji as of 2018. It establishes a valuable baseline. But this picture changes over time. People's needs shift along with major social and technological trends. The supply of justice services also fluctuates. To keep a finger on the pulse of justice, the problems, perceptions and experiences of the justice users in Fiji should be studied over time. Doing so ensures evidence-based policy, relevant resource allocations and effective services. Every two to four years a new wave of information should be collected. Repeated studies on access to justice are common globally. For example, they are undertaken on a routine basis by justice authorities in England and Wales, the Netherlands, Canada and Australia. In Mali and Uganda, HiiL, in collaboration with national institutions, collected longitudinal data about justice needs. This data will make possible to link the justice needs of ordinary people in Fiji to evidence-based policies and accessible, affordable and effective justice services.

## Case: Mali – embedding repeat bottom-up data into Ministry of Justice policies

Mali's Ministry of Justice decided to conduct a second Justice Needs and Satisfaction study in 2018, to track the justice developments in the country, compared to HiiL's first study in 2014. Experts from the Ministry participated in the creation of indicators that would be a part of the measurement in matters such as post-conflict reconciliation or corruption. This resulted in a report in which stakeholders were able to see how problems evolved over four years, as well as the behaviours and means people use to get them resolved. What dispute resolution mechanisms resolve problems and how do they compare to the numbers of the previous version? How do people in different areas of the country resolve their problems? These and more questions can only be answered with repeated measurements.

**Source:** [www.hiil.org/projects/second-justice-needs-and-satisfaction-in-mali/](http://www.hiil.org/projects/second-justice-needs-and-satisfaction-in-mali/)

## Suggested action plan:

### Develop a national Justice Needs and Satisfaction study to be administered on a regular basis



**Objective:** To integrate a systematic measurement of access to justice, conducting follow-up longitudinal studies of the justice needs of the people of Fiji.



**Who:** The Office of the Attorney General could take the lead on this, or the Judicial Department, with support of the Fiji Bureau of Statistics and of the Legal Aid Commission. Additional support could be provided by international and/or national organisations with knowledge and experience in measuring access to justice.



**How:**

- Adapt the research methodology based on the lessons learned from this study to develop a routine national justice survey – or attach to existing national surveys routinely conducted by the Fiji Bureau of Statistics.
- Conduct quantitative interviews with a comparable sample, or determine the appropriate sample size and revise.
- Analyse the data to understand the status quo and trends in justice needs and perceptions, convene a national workshop to present and review findings and develop suitable policy recommendations.
- Use the knowledge to improve policies and services related to access to justice.
- Measure Fiji's progress in achieving the Sustainable Development Goals, namely goal 16.3 to 'promote the rule of law at the national and international levels, and ensure equal access to justice for all'.
- Plan the next iterations of the Justice Needs and Satisfaction Study.



**When:** Every 3-4 years.

## Promote evidence-based policies and justice delivery

Evidence-based decision-making ensures that decisions reflect facts, and links process to results. Collecting bottom-up justice evidence is about finding out what works and what doesn't work in a specific period and in a specific context. Once we know what works to prevent or resolve people's justice needs we can even move further to explain how it works. Measuring and benchmarking the demand and supply of justice is therefore a continuous process.

Justice policies that are based on bottom-up data and prioritise the most prevalent and impactful justice problems increase the legitimacy of the justice sector as a whole. To promote evidence-based policies and service delivery requires a culture of seeking, sharing and using evidence. The tools necessary to build an environment where evidence is systematically used for formulating policy are: reliable data, sufficient resources and an evidence-based culture. Stakeholders in the justice sector need to be trained to understand data, to translate data into concrete initiatives in their institutions and to share this data within, between and beyond their institutions, both nationally and internationally.



### Case: Legal advice and information for citizens in Mali

In Mali the Bureaux d'assistance juridique et judiciaire (BAJJ) was set up in 2015 by the civil society organisation Deme-So. Thirty-eight such offices were set up. The BAJJ provide citizens with legal information and mediation. The BAJJ programme has now been linked to the formal justice system; their offices are included in court buildings, creating proximity and opportunities for interaction between the formal system and informal service provision.

To support the work of the BAJJ, Deme-So built a dashboard to track the progress of the work of the paralegals and to monitor the quality of their work from the user's perspective. Deme-So adapts their services based on the needs of citizens and the satisfaction of their clients.

The BAJJ programme has now been linked to the formal justice system; their offices are included in court buildings, creating proximity and opportunities for interaction between the formal system and informal dispute resolution.

*Source: Innovating justice: needed & possible. Report of the Innovation Working Group of the Task Force on Justice 28 January 2019*

## Action plan:



**Objective:** Conduct a review of key justice policies and justice delivery mechanisms, match with the identified justice needs of the population at the forefront and explore improving those policies and delivery mechanisms accordingly. (See also the establishment of a Justice Innovation Strategy below).



**Who:** Office of the Attorney General, Legal Aid Commission, Judicial Department, Office of the Director of Public Prosecution and other key stakeholders from the Justice Sector.



**How:**

- Series of workshops to discuss the key findings of the Justice Needs and Satisfaction study in key justice areas such as land justice, family justice, criminal justice, domestic violence, etc.
- Brief sector analyses of the match between the evidence about citizens' needs for justice and the current policies and service delivery mechanisms. This could take the form of a detailed process analysis (e.g. of court processes), needs assessment and/or a gap analysis to compare actual performance with potential or desired performance.
- These analyses should be followed up by policy action and improvements in service delivery.



**When:** After the publication of the *Justice Needs and Satisfaction in Fiji* report.



# Continue investment in a pro-active and agile legal aid system

The legal aid system in Fiji is ambitious, forward-looking and widely recognised as effective. The results of the study demonstrate that many people know about legal aid and use it for resolving legal problems. But there are challenges - people from remote areas, women and specifically vulnerable women are unfamiliar of it and/or do not use it. Several recommendations follow from that:

- **Specialisation:** the data show that disputes between neighbours, crimes, land disputes, domestic violence and family issues are the most common justice needs in everyday life in Fiji. In order to increase its reach and impact, the legal aid system must prioritise the areas in which justice needs are both frequent and impactful. Specialisation can take different shapes: a review of existing, and the design of new, processes for preventing or resolving problems, better training of legal aid lawyers and staff, the development of practice areas of legal services by public defenders.
- **Holistic approach:** most legal problems are multifaceted. Aside of the legal aspect, legal problems have many dimensions including economic, social, cultural, healthcare and others. The successful resolution of such problems requires interdisciplinary teams that put people and their needs at the centre.
- **Better outreach:** people from rural areas in Fiji have less access to legal advice, legal information and formal dispute prevention and resolution services. Formal justice institutions, particularly the Legal Aid Commission, should continue experimenting with diverse channels for the delivery of legal information and advice:
  - Face to face advice;
  - Written consultations;
  - Call centres and dedicated phone lines;
  - Information and advice delivered via low-tech solutions such as SMS;
  - Web-sites for legal information and advice;
  - Social media campaigns and interaction possibilities;
  - Web chats and 'chatbots' for better engagement of and communication with clients;
  - Apps that help with information, advice or dispute resolution.

## Action plan:



**Objective:** Further strengthen the delivery of legal aid in Fiji based on evidence of citizens' justice needs.



**Who:** Legal Aid Commission, UNDP.



**How:**

- UNDP to support the Legal Aid Commission in using the results of the Justice Needs and Satisfaction study to review the degree to which the Legal Aid Commission's priorities are aligned with people's justice needs.
- Using the evidence of justice needs develop an internal training plan to ensure full institutional and individual technical capacity in key areas of demand.
- The Legal Aid Commission should consider developing an experimental plan/approach to ensure evidence-based delivery of legal aid in key areas, including land justice or domestic violence. This could potentially be done through the use of innovative outreach mechanisms that bring the Legal Aid Commission's services closer to the people, at the same time generating data for further research. This could include further specialisation within the Legal Aid Commission, and/or inclusion of external entities (e.g. domestic violence service providers) to provide specialised non-legal advice on key issues.
- The implemented measures should include measurement and evaluation metrics.

# Invest in bridge-builders, narrow the gaps between formal and informal justice

Legal aid, however invaluable, does have its limits. No country can adequately meet the justice needs of its people relying only on adjudication provided by courts, or legal aid delivered by lawyers. Fiji should consider investing in scalable justice infrastructure that can address people's justice needs at the grassroots level. Informal and formal justice can be linked to accessible justice journeys that help the people to resolve their problems in a fair and just manner.

Community-level dispute resolution processes and institutions can be important access to justice mechanisms, if integrated in processes designed according to users' needs. The roles and responsibilities of traditional and formal justice should be well delineated. One of the best practices of linking informal and formal justice mechanisms is to organise hybrid processes in which dispute resolution starts at community level. Most problems are resolved through a mix of conciliation, mediation and arbitration processes. If the disagreement remains the dispute can proceed to a formal institution which builds on the informal process.

Consideration should be given to user-centered design solutions in which neutrals or intermediaries are available to prevent or resolve legal problems as close as possible to people and communities. Such parties enable active intake, diagnosis and approach to the other party seeking fair solutions. HiiL user friendly justice calls these neutrals 'bridge-builders'. (For details see HiiL's recent report *Elephant in the courtroom*, HiiL 2018)

Bridge-builders can be particularly effective in justice problems rooted in valuable relationships such as disputes between neighbours, land disputes, family and domestic violence, whilst recognising limits on what they can do within the letter of the law.

Bridge-builders could be Turaga ni koros, other community leaders, legal aid lawyers, mediators, public servants, and even police officers; however, in the Fijian context, the most common and widely present are likely to be Turaga ni koros which play a crucial role in promoting (or denying) access to justice through the formal system. Bridge-builders can act as the link between people and justice. They can also integrate formal and informal justice in a user-centered way. (*Elephant in the courtroom*, HiiL 2018)

## Action plan:



**Objective:** Identify bridge builders who can prevent and resolve legal problems in the communities.



**Who:** UNDP, Legal Aid Commission, community organisations, Ministry of iTaukei Affairs, UN Women, potentially CSO service providers.



**How:**

- With justice partners, UNDP should consider holding a workshop with representatives of the Legal Aid Commission and representatives of local authorities, namely Turaga ni koros and other community leaders, to identify possibilities for organising bridge-builders.
- One area should be prioritised and a concrete action plan developed containing a target problem. Given, the scope of the issue in Fiji, arguably this target problem could be focused on sexual and gender-based violence. This would establish a clear role for bridge-builders, methods for dispute resolution, any requisite training needs, and a framework to measure outputs, outcomes and successes.
- Implement the action plan on a pilot basis.

## Case: problem solving in Central and South America

The *Facilitadores Judiciales* [Justice Facilitators] are specially trained justice problem solvers who work under the supervision of judges. They act as a bridge between the formal justice system and communities where the reach of courts is problematic. There are currently more than 11,000 such facilitators. Through cooperation agreements with the OAS, the following states are a part of the programme: Argentina; Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay and the Dominican Republic.

**Source:** *Innovating justice: needed & possible, Report of the Innovation Working Group of the Task Force on Justice 28 January 2019*

# Invest in justice innovation

Ministries of justice and judiciaries have limited budgets. There is little and often no funding for new services and innovative products that directly address citizens justice needs. Different kinds of funding models are key to creating an ecosystem for justice innovation. First, seed funding should be available for innovators who want to experiment with new ideas, produce and test prototypes, design business models or create new partnerships. This could take the form of a Justice challenge - a competition between justice innovators. Second, larger grants should be considered to help promising initiatives to scale up and create more impact thereby reaching more citizens. Next to funding models, current regulations for justice innovations may need to be reformed to facilitate their scaling to meet demand. A new infrastructure could be built which offers equal opportunity to innovators, clear principles and independent evaluation.

An example of what type of innovations can come out of such a Justice Innovation Hub:

## Case: Online delivery of legal information and advice in Uganda

BarefootLaw, Uganda is a startup that provides legal information on land disputes, violence against women and girls, family or children's issues, and business issues for small to medium enterprises. It has over 400,000 users and uses three means to reach those with questions: an automated response system called LawVoice, LawText that provides short targeted text messages, and a web/Facebook interface. The business model is still grant-supported but there is a possibility to generate revenue through the partial commercialisation of specialised services and their data.

*Source: Innovating justice: needed & possible, Report of the Innovation Working Group of the Task Force on Justice 28 January 2019*

## Case: How to stimulate justice innovation: HiiL's Accelerator Hubs.

The Hubs are communities in countries or cities that support justice innovations. Oftentimes, justice startups need local expertise, daily or weekly guidance, and community connections in order to grow and succeed. These Hubs, led by a professional and experienced manager, provide this support. Hubs provide customised support to justice innovations based on their phase of development. This includes helping brand new startups develop and validate their ideas, or later stage startups prepare for investment and international recognition. Other support is provided by fostering and guiding connections to the formal justice sector. A Justice Innovation Growth Fund is now being set up to support this structure.

*Source: Innovating justice: needed & possible, Report of the Innovation Working Group of the Task Force on Justice 28 January 2019*



### Case: Assisting Kenyan women to use the law to do business

Sauti, Kenya is a startup that helps women cross-border traders in East Africa. They are often unaware of their rights and obligations. This makes them vulnerable to harassment, impounding of goods, and extortion by border officials. The Sauti platform allows these traders direct access to officially sourced and up-to-date trade and market information, accessible on any mobile phone. Sauti's trade and market information platforms have benefited over 3 700 cross-border traders to date. They are currently operational in Kenya and Uganda, and launched the platform in Rwanda in 2018.

*Source: Innovating justice: needed & possible, Report of the Innovation Working Group of the Task Force on Justice 28 January 2019*

### Case: Fair and constructive online divorce in The Netherlands

Uit Elkaar is an online conflict resolution platform in the Netherlands that uses the latest knowledge on conflict resolution to help parties resolve their problem. Its current configuration is for divorce, but it can also be configured for other dispute types. Couples collaborate on their personal divorce agreements. Working together, step-by-step towards fair agreements. Online, in their own time and own pace. The platform also provides access to individual and professional support. The business model is a user-pay model.

*Source: Innovating justice: needed & possible, Report of the Innovation Working Group of the Task Force on Justice 28 January 2019*

### Action plan:



Objective: Establish a Justice Innovation Fund and support Fijian justice innovators.



Who: Office of the Attorney General, UNDP and other international donors, HiiL user friendly justice.



How:

- Establish a Justice Innovation Fund with clear objectives to invest in justice innovation in Fiji.
- Ensure sufficient funds are allocated to kick-start the Justice Innovation Fund.
- Organise a call for justice innovations – similar to the current Fiji Young Entrepreneur Scheme - then select, award and support the best justice innovations in Fiji with:
  - Regular (daily or weekly) mentorship and training on how to run a justice innovation business.
  - Establishment of an ecosystem of Fijian justice innovators who can learn from, and support each other, share experiences and maintain a focus on the bigger goal of access to justice.
  - Seed funding.
  - Any other benefits/incentives that fit.



When: On an annual basis.

# Focus on the vulnerable people who need protection under the law: Promote gender equality and non-discrimination

Certain groups and communities in Fiji are particularly vulnerable in terms of access to justice. Women encounter far more domestic violence, often remaining passive because they do not want to aggravate or jeopardize a relationship. Young rural women are particularly disadvantaged. People living in remote areas have special challenges inherent to the country's archipelagic nature. Members of the LGBTI community face discrimination from institutions and communities.

Various actions can deliver better access to justice to the vulnerable.

## Case: Legal information and services for women in South Africa

In 2018 HiiL selected Lady Liberty, from South Africa, as one of the most promising legal innovations of the world. Its focus is to provide access to basic legal information and services to vulnerable and marginalised women and girls in poor, disadvantaged communities who otherwise cannot access the law. They travel to rural, poor and remote communities with a mobile office and provide legal information and services to women. Their services focus on domestic violence, marriage, divorce and wills.

*Source: [www.ladyliberty.org.za](http://www.ladyliberty.org.za)*

## Action plan:



**Objective:** Design and implement specific strategies to ensure equal access to justice for vulnerable groups in Fiji.



**Who:** Legal Aid Commission, Police, Human Rights and Anti-Discrimination Commission, UNDP.



**How:**

- Conduct series of workshops dedicated to identifying specific vulnerable groups.
- Bring data from various sources, including Justice Needs and Satisfaction Study, administrative data, court data, CSOs etc. in order to better understand vulnerability.
- Develop an action plan focusing on a particular vulnerable population that entails clear access to justice targets, specified roles and responsibilities of the stakeholders in the process and a framework to measure outputs and outcomes.
- Implement the action plan on a pilot basis and review lessons learned.



# Use technologies for better access to justice

In the 21<sup>st</sup> century information and communication technologies are as critical to access to justice as courts and lawyers were in the 20<sup>th</sup> century. Many justice needs in Fiji can be met by creative use of technology for providing or augmenting access to justice. Where to look for innovation? HiiL's experience with identifying, helping and scaling up justice innovations shows that most of the innovations in the justice sector start on a small scale. Innovative solutions to the justice needs of people are provided by start-ups, small law firms, NGOs, courts, ombudsmen or public authorities (Elephant in the courtroom, HiiL 2018).

Promising trends can be summarised in two broad clusters according to the maturity of the given technologies. There is significant global experience in the following areas of relatively mature applications and technologies:

- Websites providing free or paid access to laws, case law and legal documents. Beyond information about individual or group rights, entitlements and obligations, such resources provide process information (steps needed to solve a problem), referral to institutions and providers, fee calculators, etc.
- Call centres, email, instant messages and web-based Q&A and referral applications. The difference with the first category is that this host of applications provide specific advice about the needs of a specific client. In the Netherlands, a significant proportion of the publicly funded first level legal advice is delivered by phone or email. Websites simplify legal provisions so they become more accessible to non-lawyers. Indian and Ukrainian legal innovations, Lawtoons ([www.lawtoons.in](http://www.lawtoons.in)) and Memelex (<https://axon.partners/memelex>) respectively, explain fundamental rights, contracts and other legal concepts using cartoons. Consequently, the law becomes more comprehensive and people's legal awareness increases.
- Web-based or mobile platforms organize marketplaces that link people and businesses with lawyers, mediators, arbitrators and other providers of legal services. For example, online platforms that sell legal documents to small businesses and families, or documents such as wills, trademarks filings, employment contracts and filings for incorporation are created for the user through an online questionnaire (Elephant in the courtroom, HiiL 2018)

## Case: E-justice Portal in the EU

Citizens and businesses in the EU member states are supported by an European E-justice Portal (<https://beta.e-justice.europa.eu>). This web-site provides easy to use information and referrals for some of the most commonly occurring legal problems that citizens and businesses can encounter. Its users can find easy to use information how to resolve specific problems. For instance, the module European Judicial Atlas in Civil matters navigates the users how to find problem-solving information in areas such as Small claims, EU payment orders, finding and using legal aid etc.

## Case: Market place for legal services in the Middle East

Legal Advice Middle East ([www.legaladviceme.com](http://www.legaladviceme.com)) is an online platform for legal services awarded by HiiL. The platform guides the individuals and organizations that have legal problems to describe this problem and link it to the most suitable provider of legal services.

The following examples enlist technologies which are still in their infancy but can have great transformative effect on access to justice:

### Online dispute resolution

Whilst information tools deliver information and advice, the concept of Online dispute resolution (ODR) moves one step closer to assisting users to resolve their justice needs. ODR means that most or the whole of the dispute resolution process takes place online. The archetypical example is the eBay Resolution center which resolves over 60 million e-commerce disputes per year. ODR can offer procedures that are based on user-centered design and use the latest knowledge of dispute resolution and technologies to provide seamless and inclusive justice journeys. See above: UiteElkaar

### Use of artificial intelligence

Artificial intelligence (AI), notably machine learning, is already used for a number of classification and prediction tasks in the field of justice. Algorithms are reviewing documents to help with legal research ([www.rossintelligence.com/](http://www.rossintelligence.com/)), due diligence (<https://ebrevia.com>) and litigation. Similar approaches are used to analyse contracts (<https://www.kirasystems.com/>) and predict case outcomes. Chatbots are one great example of using AI-based technology to improve access to justice through better, faster and cheaper access to legal information. Many government agencies and private actors are deploying chatbots to communicate with their constituencies and clients. Automated chatbots can be designed and trained to perform actions. For instance, chatbots can fill in data in document templates, file complaints, distribute information etc.

### Blockchain and smart contracts

Blockchain is a technology creating digital ledger which can record almost anything which has value – coins and financial transactions, ID documents and ownership titles, votes and shares, property and contractual rights, positive and negative reviews. Its main promise is in the field of civil justice. The technology provides reliable and affordable authentication of authorship and content of documents. For instance, databases of legally significant facts and deeds can be easily established relying on a public ledger which is replicated (distributed) on many computers and is, in essence, impossible to tamper with.

Blockchain technology will transform and probably disrupt many areas of the law in the months and years to come. Countries like Estonia, Ghana, Honduras, Ukraine, Sweden, Georgia and the Indian state Andhra Pradesh are already experimenting with registering land titles and ownership rights using blockchain. There is great hope that this will make land transactions more affordable, transparent and secure. In the field of family justice, there are already examples of e-marriage and marriage certificates encoded in public and private blockchains. Inheritance, dowry, prenuptial agreements could be further fields of innovation. Smart contracts can help women to secure and enforce their rights.

### Case: Online dispute resolution as a software service

Australian start-up Resolve Disputes Online (RDO) provides ODR services on a Software as a service (SAAS) basis. RDO offers case management, file sharing, messaging, audio & video capabilities and settlement/judgement functionality in their product.

*Source:* <https://www.resolvedisputes.online>

### Case: Chatbot for legal advice and services

Nigerian justice startup Lawpadi (<https://lawpadi.com/>) offers an automated assistant that helps users to deal with justice needs of individuals and businesses. The assistant provides information but also can solve problems such as change of name or company registration via a guided process or by connecting to a lawyer. The information is provided in the form of Questions and Answers asked in natural language.

*Source:* <https://lawpadi.com>

### Case: Blockchain-powered land registry

In India, a partnership between UNDP and a private company looks to transform the land registry through use of blockchain technology called Ethereum. The pilot testing will take place in the small city of Panchkula, Haryana. Using blockchain the project aims to ensure buyers that they buy the correct plot and it belongs to the seller.

*Source:* [www.undp.org/content/undp/en/home/blog/2018/Using-blockchain-to-make-land-registry-more-reliable-in-India.html](http://www.undp.org/content/undp/en/home/blog/2018/Using-blockchain-to-make-land-registry-more-reliable-in-India.html)

## Action plan:



Objective: Establish a working group to discuss, develop and pilot promising technologies that can improve access to justice.



Who: Legal Aid Commission, Human Rights and Anti-Discrimination Commission, Judicial Department, Ministry of Communication (Digital Fiji team), UNDP and other international donors, HiIL user friendly justice.



How:

- UNDP is currently working toward establishing an innovation section in its Pacific Office.
- In addition, there exists the sizeable “Digital Fiji” project under the Ministry of Communications which is moving toward e-identity and digitisation of government services and management of an online government information system.
- Along with the UNDP Access to Justice Project team, the Innovation team could establish a justice sector working group with the responsibility to review needs and promising technologies that can improve access to justice and related information in Fiji.
- Identified opportunities can be piloted and experiences reviewed through the working group.
- The capacity of this working group should be built by UNDP to identify and integrate promising technologies in the operations of the participating agencies.



# Time for bold justice transformation: Justice Innovation Strategy for Fiji

Justice transformation begins, but does not end, with the data produced during the Justice Needs and Satisfaction Study. Transformation also requires actionable innovation strategies in which committed justice leaders come together around Justice Delivery Goals. Building on the Justice Needs and Satisfaction Study, the HiIL Justice Transformation Lab could turn data into an implementable Justice Innovation Strategy designed to solve the most pressing legal problems facing the people of Fiji.

To do this, HiIL identifies and brings together a group of leaders from across the justice spectrum to assess the most pressing legal problems of Fijians based on data. In light of these priorities, a diverse stakeholder team is assembled, including representatives from government, civil society, academia and the private sector, to carry this work forward. Priorities are formulated as Justice Delivery Goals which set out clear targets to outline concrete improvements for people and are linked to specific and measurable indicators of success. Pathways are developed, mapping out different challenges and opportunities on the road toward meeting the Goals.

By the end of the process, the stakeholder team takes ownership of the Justice Delivery Goals, establishes cross-system collaboration and develops shared understandings and system-transforming intentions. A final report will then be published and launched containing detailed innovation strategies.

## Action plan:



**Objective:** Develop a Justice Innovation Strategy for Fiji

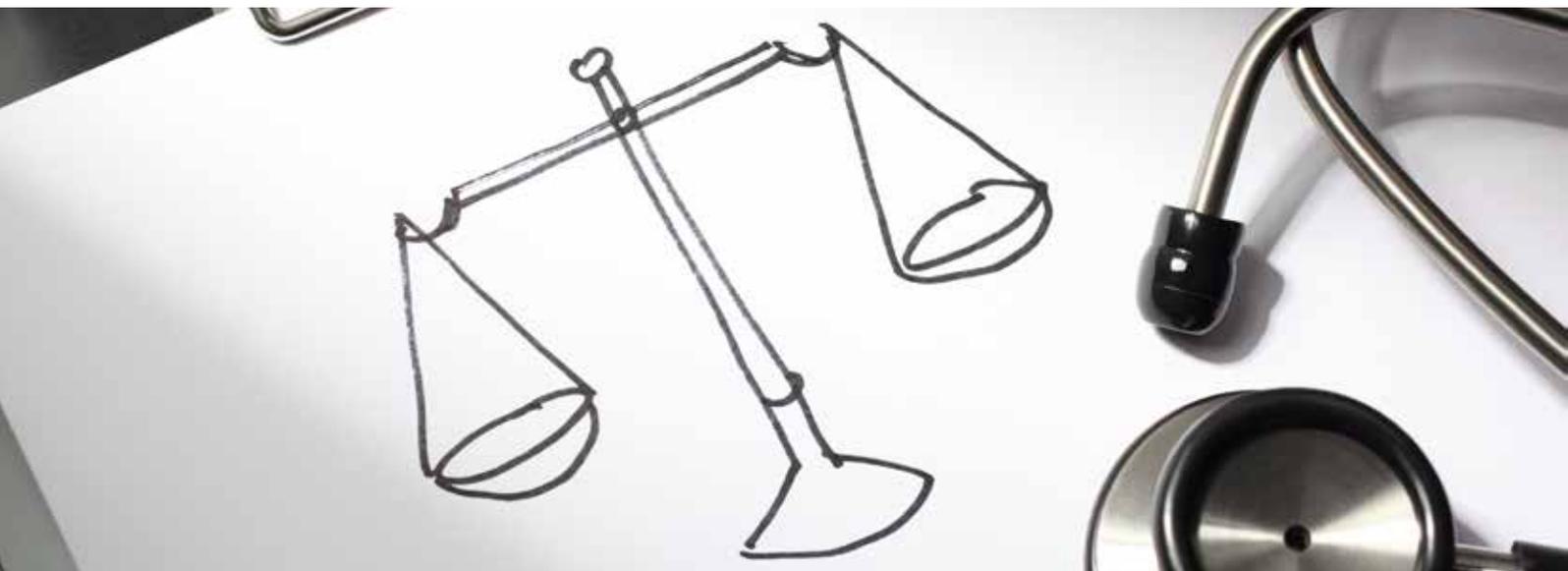


**Who:** Office of the Attorney General, Legal Aid Commission Fiji, Judicial Department, Office of the Director of Public Prosecution, Fiji Police Force, Human Rights and Anti-Discrimination Commission, and other key stakeholders from the justice sector.



**How:**

- Establish a stakeholder team from the justice sector who will drive the process of developing Justice Innovation Strategy.
- Based on the data from the Justice Needs and Satisfaction Study, the group develops a concrete agenda with justice delivery goals and related specific targets. These process for formulating and measurity the Justice Delivery Goals resembles the approach of the Sustainable Development Goals.
- The group forms dedicated sub-groups working on specific targets of the Justice Delivery Goal.
- The working groups develop solutions to reach the justice delivery goal and its targets.





# Appendix 1: Main dynamics in access to justice in Fiji

This section will highlight some of the key dynamics in access to justice in Fiji. It is not intended to be an exhaustive look at every issue, institution or law that impacts access to justice; rather it is meant to provide a closer look at the most prominent issues and topics that recurred throughout the research, in conversations with experts, stakeholders, government officials and citizens.

## Access to justice for women

Gender-based violence is a particularly serious and prevalent legal and social problem in Fiji. The most frequent forms of gender-based violence are domestic violence between spouses, rape, sexual assault and child sexual abuse.<sup>1</sup> Fiji's rates of violence against women and girls are among the highest in the world, as 64% of women who have ever been in an intimate relationship have experienced physical and/or sexual violence by a husband or intimate partner in their lifetime. This compares with an estimated global prevalence of physical and/or sexual intimate partner violence over a woman's lifetime of 30%.<sup>2</sup>

In another illustration of the widespread nature of violence against women, in Fiji 43 women are injured, one woman is permanently disabled, and 71 women lose consciousness every day.<sup>3</sup>

Despite these high figures, researchers and activists are encouraged by what they perceive as sexual and gender-based violence (SGBV) being acknowledged as a major issue in Fijian society "now that more people are talking about the issue."<sup>4</sup> The data also gives some cause for optimism; according to a recent study by the Fiji Women's Rights Movement (FWRM), "in all categories of sexual offences cases (rape and attempted rape cases, indecent assault, child sexual abuse cases) reported by women and girls to the Fiji Police, the number of cases

increased from 2009 to 2012 and then decreased from 2012 to 2015."<sup>5</sup>

An analysis of the case law shows that judicial attitudes towards SGBV have been largely supportive of survivors. A review of hundreds of cases found "no instance where gender stereotypes, customary forms of reconciliation or other contentious factors were raised by the judicial officer" nor that the judicial officer "has raised customary forms of reconciliation in their judgment" in any of the 89 rape cases decided in 2016 and 2017 in the High Court.<sup>6</sup> In 18 of those 89 rape cases, the judicial officer reduced the sentence for the accused on the basis that the accused was a 'sole breadwinner'.<sup>7</sup>

This analysis of the case law is echoed in the attitudes of legal practitioners. Nearly all (96%) of "legal practitioners surveyed believed that access to the formal justice system for women in Family Law and violence matters has improved since the introduction of the Family Law Act and Domestic Violence and Crimes Acts."<sup>8</sup> The courts, says one legal practitioner, are "doing a great job of raising awareness"<sup>9</sup> of domestic violence and on how to obtain redress.

Moreover, 91% of legal practitioners surveyed "believed that the quality of legal outcomes for women has improved and 83% of legal practitioners surveyed believed that the enforcement of legal outcomes for women has improved."<sup>10</sup> Another indicator of this is that, of the women surveyed by the FWRM who did access the courts, "nine in ten were successful in obtaining a domestic violence restraining order, child custody or maintenance order, or divorce."<sup>11</sup>

Despite the encouraging analysis of the case law and the impressions of legal practitioners that access to justice for women has improved, it is clear that women still face sizeable problems in this regard. Women still

<sup>1</sup> Lynda Newland, 'Villages, Violence and Atonement in Fiji' in Aletta Biersack, Margaret Jolly and Martha Macintyre (eds), *Seeking Justice in Fiji, Papua New Guinea and Vanuatu* (ANU Press 2016).

<sup>2</sup> Fiji Women's Crisis Centre, 'Somebody's Life, Everybody's Business: National Research on Women's Health and Life Experiences in Fiji' (2013).

<sup>3</sup> Fiji Women's Crisis Centre, 'A survey exploring the prevalence, incidence and attitudes to intimate partner violence in Fiji' (2010/2011).

<sup>4</sup> Interview with Fiji Women's Crisis Centre (Suva, 7 March 2018).

<sup>5</sup> Fiji Women's Rights Movement, 'Balancing the Scales: Improving Fijian Women's Access to Justice' (2017).

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Interview with Fiji Women Lawyers' Association representatives (Suva, 12 February 2018).

<sup>10</sup> Fiji Women's Rights Movement, 'Balancing the Scales: Improving Fijian Women's Access to Justice' (2017).

<sup>11</sup> Ibid.

lack information on how to access services, on criminal justice proceedings and on their cost.<sup>12</sup>

It takes over two years (an average of 868 days) for women to report cases of domestic violence. In addition, activists believe that some of the most serious types of violence still go under-reported. One well-known organisation believes that only one in ten instances of rape is reported.<sup>13</sup> Most rapes are committed by people known to the survivor, and half of these are committed by relatives, so there are high rates of sexual abuse of girls and boys. In addition, sexual harassment “is rife”,<sup>14</sup> which has resulted in activists making concerted efforts to educate citizens. It is believed that sexual harassment is also under-reported because survivors are reluctant to be victimised again through the reporting process.

Those that do report violence face additional difficulties: two in three women surveyed in the aforementioned study faced difficulties in going to the police, with the police telling them to resolve the issue within the family or village, or the police failing to take them seriously.<sup>15</sup> This, activists believe, points to “lots of issues with the police department, including [a lack of] qualifications, their understanding of their role. Police attitudes need to change.”<sup>16</sup>

## Domestic Violence Act 2009

Disputes frequently invoked during the interviews covered by this report centre on domestic violence. The principal piece of legislation governing the response of the authorities is the Domestic Violence Act 2009. The Act stipulates that “each police officer has a duty to prevent the commission of domestic violence offences, to detect and bring offenders to justice and to apprehend all persons who the police officer is legally authorised to apprehend and for whose apprehension sufficient grounds exist.”<sup>17</sup>

The Act effectively enshrines a ‘no-drop’ policy that obligates the police to investigate all claims of domestic violence to the fullest extent. It uses unusually robust terms when describing the duties of the police. For instance, “each police officer must [emphasis added] when an incident of domestic violence is reported, respond in a timely way, investigate and render such assistance as is reasonable in the circumstances to the victim.”<sup>18</sup> Furthermore, each police officer “must make an application for a domestic violence restraining order for the protection of a person who is, or may become, a victim of domestic violence” in certain cases laid down by the Act. The application is made against a person that has been charged or that may pose a risk of perpetrating domestic violence.

The use of “each police officer” and “must” in the wording of the above-mentioned sections indicates

an intent on the part of the drafters to ensure that individual police officers do not exercise their discretion when it comes to investigating and processing claims of domestic violence.

Having enshrined the measure of the Domestic Violence Restraining Order (DVRO), the Act goes on to stipulate in detail the mechanism through which the DVRO is supposed to be implemented in the justice system. It states that “a legal practitioner who receives instructions to act for a person” (that may include potential or actual victims or perpetrators of domestic violence) “must provide the person at the earliest reasonable opportunity with information” that explains the services or programmes available to them.<sup>19</sup> This obligation applies unless the legal practitioner believes such information would not be useful or appropriate.<sup>20</sup>

The Act also prescribes the manner in which DVROs are to be administered, including who can apply, the grounds for making a DVRO, and the possibility for a police officer to apply to a magistrate or judge by telephone for an interim DVRO.<sup>21</sup> This measure has, according to interviews conducted to date, been an enabling tool for increasing the use of DVROs and allowing victims to access justice. The Act contains other provisions to ease the burden on victims, including allowing the Court to hear an application by telephone,<sup>22</sup> and providing that proceedings in a Court when exercising jurisdiction under the Act are to be heard in closed court, subject to limited exceptions.<sup>23</sup>

## Access to justice of persons with disabilities

According to the Fiji National Council for Disabled Persons, people with disabilities are “largely invisible and disadvantaged in terms of access to education, health services, employment, livelihood opportunities and support services ... (and) due to a lack of awareness and understanding of disability in the wider community, discrimination against those living with disabilities is widespread”.<sup>24</sup> Its baseline study from 2010 showed that there were 11,402 persons with disabilities in Fiji who lived in challenging circumstances: 89% of the employable persons with disabilities are not employed, 20% of persons with disabilities suffer some sort of abuse, only 10% of persons with disabilities receive family assistance, and there is very little awareness of disability among persons with disabilities and their families.<sup>25</sup> Other reports have asserted that there are challenges in ease of movement throughout police stations and certain areas are inaccessible to some physically disabled people.<sup>26</sup>

According to one leading NGO, the existing obstacles to Fijian persons with disabilities’ access to justice vary

<sup>19</sup> Ibid, s 16(1).

<sup>20</sup> Ibid, s 16(2).

<sup>21</sup> Ibid, s 25.

<sup>22</sup> Ibid, s 41.

<sup>23</sup> Ibid, s 56.

<sup>24</sup> Fiji National Council for Disabled Persons, ‘A survey on people with disabilities’ (2010).

<sup>25</sup> Ibid.

<sup>26</sup> Fiji Access to Justice & Pacific Security Sector Governance: Project Activity Report (2017) 6.

<sup>12</sup> Interview with FWRM representative (Suva, 9 February 2018).

<sup>13</sup> Interview with Fiji Women’s Crisis Centre (Suva, 7 March 2018).

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Interview with NGO representative (Suva, 9 February 2018).

<sup>17</sup> Domestic Violence Act 2009, s 12.

<sup>18</sup> Ibid, s 13(1).

somewhat according to the particular impairment: for the deaf, the primary issue is access in terms of language, while “the issue of [physical] access [to buildings] is real for those in wheelchairs”, and for the visually impaired, the main issue is “access to information” and how to access materials.<sup>27</sup>

This view is backed by another leading NGO advocating for the rights of persons with disabilities, which states that infrastructure and “access to information” are the key issues in terms of access to justice.<sup>28</sup> Its members also highlight the myriad ways in which persons with disabilities’ rights are violated, such as being “paid less for the same work” because it is assumed they cannot work as hard due to their disability. The “biggest challenge”, however, will “always be in the domestic setting”, with sexual abuse of persons with disabilities being prevalent.<sup>29</sup>

These obstacles will have to be tackled by Fiji if it wishes to comply with the UN Convention on the Rights of Persons with Disabilities (CRPD), which it signed in June 2010, and eventually ratified in 2017.<sup>30</sup> The ratification of the CRPD entails Fiji ensuring persons with disabilities are included in public life and taking a number of positive measures to improve the level of enjoyment of human rights by persons with disabilities. Some initial measures are being taken, with the Legal Aid Commission focusing on the provision of legal services to persons with disabilities.<sup>31</sup> However, much more remains to be done in order to ensure full compliance with the Fijian Constitution and the CRPD.

### Criminal Procedure Act 2009

The Criminal Procedure Act governs criminal proceedings. It sets out the powers of the police, the Office of Director of Public Prosecutions and other institutions in conducting criminal proceedings, as well as the rights and duties of accused persons, witnesses and others involved in criminal proceedings. The accused may be compelled to appear before the court through the issuance of a summons issued by a judge or magistrate.<sup>32</sup> Notwithstanding the issuance of a summons, the accused may also be compelled to appear before a court through the issuance of a warrant of arrest.<sup>33</sup>

The Criminal Procedure Act also prescribes the provisions governing criminal proceedings when the accused person has a disability. However, these provisions pertain to such instances where the accused person has a mental disability; they do not regulate instances where the accused has other disabilities that may impact criminal proceedings (such as hearing or visual impairments).

<sup>27</sup> Interview with Pacific Disability Forum, (Suva, 8 February 2018).

<sup>28</sup> Interview with Fiji Disabled Peoples’ Federation (Suva, 12 February 2018).

<sup>29</sup> Ibid.

<sup>30</sup> UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008), 2515 UNTS 3.

<sup>31</sup> Interview with Fiji Disabled Peoples’ Federation (Suva, 12 February 2018).

<sup>32</sup> Criminal Procedure Act 2009, s 76.

<sup>33</sup> Ibid, s 84.

The Criminal Procedure Act stipulates that where the “court has reason to believe that the accused person may be of unsound mind so as to be incapable of making a proper defence, it shall inquire into the fact of such unsoundness and may adjourn the case.”<sup>34</sup> If the court is of the opinion that the accused is “of unsound mind so that he or she is incapable of making a proper defence”, it shall postpone further proceedings in the case and either “act in accordance with any law dealing with mental health” or “in the absence of any appropriate provision of such a law, make any order or orders that the court considers appropriate to protect the interests of the accused person and of the public.”<sup>35</sup> The Act stipulates that a person may use the defence of insanity.<sup>36</sup> In addition, it prescribes the procedure for when the accused does not understand proceedings.<sup>37</sup>

The Act prescribes that “any person accused of an offence before any criminal court, or against whom proceedings are instituted under this Act in any court, may of right be defended by a lawyer.”<sup>38</sup> In proceedings before Magistrates’ Courts, if the accused person does not engage a lawyer, the Act stipulates that the court shall, at the close of the examination of each witness for the prosecution, “ask the accused person whether he or she wishes to put any question to that witness”.<sup>39</sup> The Act contains further guarantees for accused persons that do not engage a lawyer, namely, “where any sentence is passed or order made by a Magistrates’ Court in respect of any person who is not represented by a lawyer, the person shall be informed by the magistrate of the right of appeal at the time when the sentence is passed, or the order is made.”<sup>40</sup>

In addition, the period of limitation (of 28 days) for filing an appeal may be extended if “the appellant’s lawyer was not present at the hearing before the Magistrates’ Court”.<sup>41</sup> Furthermore, “if the appellant was not represented by a lawyer at the hearing before the Magistrates’ Court, the High Court” may consider this to be grounds for an appeal.<sup>42</sup>

The Criminal Procedure Act also contains provisions that provide for the protection of vulnerable witnesses. Before a trial starts, a prosecutor may apply to a magistrate or a judge for directions as to procedures by which the evidence of a vulnerable witness is to be given at the trial.<sup>43</sup> The directions may include giving evidence outside the courtroom, placing a screen or a one-way glass so that the vulnerable witness cannot see the accused, admitting evidence in the form of a videotape, and so on.<sup>44</sup> The magistrate or judge may receive advice from qualified persons on the effects that giving evidence will have on the vulnerable witness, and will have regard for the need to “minimise stress” on such a

<sup>34</sup> Ibid, s 104(1).

<sup>35</sup> Ibid, s 104(2).

<sup>36</sup> Ibid, s 105.

<sup>37</sup> Ibid, s 108.

<sup>38</sup> Ibid, s 165.

<sup>39</sup> Ibid, s 177(3).

<sup>40</sup> Ibid, s 246(3).

<sup>41</sup> Ibid, s 248(3).

<sup>42</sup> Ibid, s 279(2).

<sup>43</sup> Ibid, s 295(1).

<sup>44</sup> Ibid, s 296(1).

witness as well as for the right to fair trial when deciding what directions to give in such circumstances.<sup>45</sup>

It is also noteworthy that the Court may proceed with hearings in the absence of the accused in cases where the accused is charged with an offence punishable with imprisonment of no more than 12 months and/or a fine not exceeding 10 penalty points and where the accused does not appear at the time and place appointed by summons.<sup>46</sup> However, such convictions may be set aside by the Court if it is satisfied that the absence was from causes “over which the accused person had no control, and that there is an arguable defence on the merits.”<sup>47</sup>

## Crimes Act 2009

The Crimes Act sets out the criminal offences under which a person may be held criminally liable in Fiji, while codifying the general principles of criminal responsibility under the country’s laws. This section presents the most relevant provisions from the perspective of the access to justice survey.

The Act prescribes that children under 10 years old cannot be held criminally responsible, while those between 10 and 14 years old can only be held criminally responsible if the child knows that his or her conduct is wrong,<sup>48</sup> which is a question of fact that has to be proved by the prosecution.<sup>49</sup>

The Act also prescribes that “a person can be criminally responsible for an offence even if, at the time of the conduct constituting the offence, he or she is mistaken about, or ignorant of, the existence or content of an Act or Act that directly or indirectly creates the offence or directly or indirectly affects the scope or operation of the offence.”<sup>50</sup> This re-statement of the common law principle that ignorance of the law is no defence underlines the importance of raising awareness of the law among the population of Fiji, as the consequences of being ill-informed can entail a loss of liberty and criminal responsibility.

The Act also provides that the “prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged”.<sup>51</sup> The codification of this, and other common law principles (for instance, that “a legal burden of proof...must be discharged beyond a reasonable doubt”),<sup>52</sup> are important guarantees for suspects and defendants in the criminal justice system, as they provide the preconditions for a level playing field that is required for meaningful access to justice.

The bulk of the Crimes Act contains definitions of specific offences. Those of particular interest for the access to justice survey (considering their prominence in the preliminary interviews) are sexual offences and some

offences against property. With regard to the former, the Act expanded the definition of rape, providing that a child under the age of 13 years is incapable of giving consent,<sup>53</sup> and that rape is punishable by imprisonment for life. It also defines a range of other sexual offences, including sexual assault (punishable by imprisonment for ten years, with aggravated forms of sexual assault punishable by up to fourteen years’ imprisonment),<sup>54</sup> indecent assault (punishable by imprisonment for five years),<sup>55</sup> the defilement of children under 13 years of age (punishable by imprisonment for life)<sup>56</sup> and of children between 13 and 16 years of age (punishable by imprisonment for ten years).<sup>57</sup>

The Act also creates two distinct criminal offences if a person makes his or her household available for sexual offences against children or young persons. Thus, the Act stipulates that if a person who is the “owner or occupier of premises, or having or assisting in the management or control of premises, induces or knowingly permits” any person under the age of 16 years “to resort or be upon the premises for the purpose of being unlawfully and carnally known by any person”, this may constitute an offence punishable by imprisonment of either twelve or ten years.<sup>58</sup> This is of particular relevance in instances where sexual offences have been taking place in villages and tight-knit communities, with the implicit consent of relatives.

Although the preliminary interviews flagged disputes over eviction and contractual disputes as the most frequently occurring when it comes to land, the Crimes Act also proscribes some offences against property that may occur in such cases. These include the theft of land, which occurs in limited circumstances,<sup>59</sup> and criminal trespass, which requires the verification of the Minister for Fijian Affairs if it occurs on native land.<sup>60</sup>

## Legislation governing land rights

There are three categories of land title in Fiji: Freehold, State lease and iTaukei lease. Freehold land is privately owned and can be bought and sold between parties, subject to restrictions placed on non-Fijian citizens. State lease lands are owned by the state and can only be leased with its consent. iTaukei land is the most prevalent, with up to 91% of land in Fiji falling into this category.<sup>61</sup> It is owned by groups or clans called the mataqali, but it is held in trust by the iTaukei Land Trust Board (TLTB) and can only be leased with the consent of the landowners.

The native land title regime is regulated by two key acts: the iTaukei Lands Act [Cap 133] (formerly known as the Native Lands Act)<sup>62</sup> and the iTaukei Land Trust

<sup>45</sup> Ibid, s 295(3) and 295(4).

<sup>46</sup> Ibid, s 167.

<sup>47</sup> Ibid, s 172.

<sup>48</sup> Crimes Act 2009, s 27(1).

<sup>49</sup> Ibid, s 27(2).

<sup>50</sup> Ibid, s 36(1).

<sup>51</sup> Ibid, s 57(1).

<sup>52</sup> Ibid, s 58(1).

<sup>53</sup> Ibid, s 207(3).

<sup>54</sup> Ibid, s 210.

<sup>55</sup> Ibid, s 212.

<sup>56</sup> Ibid, s 214.

<sup>57</sup> Ibid, s 215.

<sup>58</sup> Ibid, s 219-220.

<sup>59</sup> Ibid, s 294.

<sup>60</sup> Ibid, s 387.

<sup>61</sup> Interview with TLTB representatives (Suva, 15 February 2018).

<sup>62</sup> The title was amended by the Native Lands (Amendment) Decree 2011 (Decree no.7 of 2011).

Act [Cap 134] (formerly known as the Native Land Trust Act).<sup>63</sup> The Native Lands Act provides that “native lands shall be held by Fijians of iTaukei descent according to iTaukei custom as evidenced by usage and tradition.”<sup>64</sup> Such lands may be cultivated, allotted and dealt with by Fijians of iTaukei descent according to their customs and subject to any regulations made by the iTaukei Affairs Board, “and in the event of any dispute arising for legal decision in which the question of the tenure of land amongst Fijians of iTaukei descent is relevant all courts of law shall decide such disputes according to such regulations or native custom.”<sup>65</sup>

The Native Lands Act also prescribes the creation of the iTaukei Lands Commission, which is comprised of one or more commissioners, “who shall be charged with the duty of ascertaining what lands in each province of Fiji are the rightful and hereditary property of owners of iTaukei descent”.<sup>66</sup> The description of boundaries and the ownership of lands is entered into a “Register of iTaukei Lands”.<sup>67</sup> The Commission is further mandated with conducting inquiries into, and resolving, disputes over iTaukei land.<sup>68</sup> The decisions of the Commission can be appealed to an Appeals Tribunal, consisting of three members appointed by the Minister of iTaukei Affairs.

The iTaukei Land Trust Act establishes the iTaukei Land Trust Board (TLTB).<sup>69</sup> Its Board of Trustees is headed by the Prime Minister (in his capacity as the Minister for iTaukei Affairs). Control of all iTaukei-owned land through mataqalis is vested in the TLTB, and the Board administers all such land for the benefit of its owners.<sup>70</sup> The iTaukei Land Trust Act stipulates that iTaukei land shall not be alienated by its owners, except to the Crown.<sup>71</sup> It adds that any Fijian of iTaukei descent to whom any land has been transferred (by virtue of a ‘iTaukei grant’), shall not transfer it without the consent of the Board.<sup>72</sup>

The land administered by the TLTB includes both reserve land (which cannot be leased)<sup>73</sup> and land that is not part of reserve land, which can be leased or licensed by the Board.<sup>74</sup> For land to be leased or licensed, the TLTB has to be satisfied that it “is not being beneficially occupied by the owners of iTaukei descent”, and is not likely over the duration of the lease or license to be required by the owners “for their use, maintenance or support.”<sup>75</sup>

TLTB may deduct, as administrative expenses, up to 10% of the total amount received for rent.<sup>76</sup> In addition,

<sup>63</sup> The title was amended by the Native Land Trust (Amendment) Decree 2011 (Decree no.8 of 2011).

<sup>64</sup> Native Lands Act, s 3.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid, s 4

<sup>67</sup> Ibid, s 8.

<sup>68</sup> Ibid, s 4-6.

<sup>69</sup> iTaukei Land Trust Act, s 3.

<sup>70</sup> Ibid, s 4.

<sup>71</sup> Ibid, s 5(1).

<sup>72</sup> Ibid, the owner shall not “transfer such land or any estate or interest therein or charge or encumber the same”.

<sup>73</sup> Ibid, s 15-18.

<sup>74</sup> Ibid, s 8.

<sup>75</sup> Ibid, s 9.

<sup>76</sup> Interview with expert from TLTN (Suva, 14 October 2019)

it may only lease out 75% of land that is listed under a landowning unit. In order to take land out of reserve land – to carry out the so-called ‘dereservation process’ – the TLTB needs the majority of owners under the indigenous register to consent to that.<sup>77</sup>

## Legislation governing the rights of persons with disabilities

Discrimination against persons with disabilities is illegal. According to the Constitution, persons with disabilities specifically have the right to reasonable access to all places, public transport, and information, to use braille or sign language and to reasonable access to materials and devices relating to the disability.<sup>78</sup> However, the Constitution also provides that the law may limit these rights “to the extent that is necessary”.<sup>79</sup> Moreover, there is no definition of what is “reasonable” in the law.

The U.S. State Department’s annual report on the state of human rights highlights the inadequacy of the Fijian legislative framework in giving effect to constitutional guarantees provided for persons with disabilities. It states that, despite the rights conferred upon persons with disabilities by the Constitution and other statutes, there was “very little enabling legislation on accessibility for persons with disabilities, and there was little or no enforcement of laws protecting them”.<sup>80</sup>

## Accident Compensation Act 2017

The Motor Vehicles (Third Party Insurance) Act 1948 provides for compulsory insurance against third party risks arising out of the use of motor vehicles. Despite third party insurance being compulsory for all registered motor vehicles, not all victims of motor vehicle accidents receive compensation. The exclusion provisions within the insurance contracts do not provide protection to all third parties who are injured from accidents involving motor vehicles and not all insurance claims are redressed. As a result, many Fijians who have been victims of motor vehicle accidents have been denied compensation.

The Accident Compensation Act 2017, which came into force on 1 January 2018, remedies this injustice. The Accident Compensation Act 2017 establishes the Accident Compensation Commission Fiji (‘ACCF’) and provides for a ‘no fault compensation scheme’ through which victims of accidents will be compensated without having to prove fault or negligence. The no fault compensation is intended to make the redress for accident victims simple by providing compensation by way of application to the ACCF. This is less adversarial than the current system and more efficient as it saves costs, time and lessens the impact of the trauma suffered by victims.

<sup>77</sup> iTaukei Land Trust Act, s 15-17 and interview with TLTB (Suva, 15 February 2018).

<sup>78</sup> Constitution of Fiji, s 42(1).

<sup>79</sup> Ibid, s 42(3).

<sup>80</sup> United States Department of State, ‘Country Reports on Human Rights Practices for 2017’ 19.

From 1 January 2018, owners of motor vehicles no longer have to take third-party insurance with an insurance company. A levy is instead paid into the Accident Compensation Fund and is payable through the Land Transport Authority ('LTA'). This will make the LTA a one-stop shop for the payment of all motor vehicle registration costs. The Accident Compensation Fund will be administered by the Ministry of Economy and the Reserve Bank of Fiji will assist with such reinsurance arrangements as necessary.

### **International Arbitration Act 2017**

Fiji acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the 'New York Convention' on 27 September 2010. The New York Convention is widely considered as the foundational instrument for international arbitration. The International Arbitration Act 2017 was drafted to implement Fiji's obligations and commitments under the New York Convention. Fiji has an existing Arbitration Act 1965 that covers arbitration at a domestic level. The International Arbitration Act 2017 however, covers arbitration at international level.

By enacting the International Arbitration Act 2017, Fiji now has modern legislation and the potential to become a regional hub for international arbitration, while fulfilling its obligations and commitments under the New York Convention. Moreover, complying with the New York Convention and other relevant instruments signifies its commitment to create the right environment for investment and potentially creating new jobs.

### **Personal Property Securities Act 2017**

In 2014, the Fijian Government initiated work on security transactions reform to facilitate the financing of movable or personal property in order to provide access to credit for micro, small and medium enterprises and individuals.

A personal property securities law allows lenders to secure their interests in collateral concurrent with disbursement of loan funds, and also to determine without any delay whether a proposed debtor has previously pledged particular collateral to secure a loan.

The ability to perform this sort of search against a would-be borrower generates much greater confidence among lenders extending credit, knowing that the collateral for their loan has not been previously pledged. Due in large part to the efficiency of such regimes, most asset-based lending in developed economies is based upon personal property, rather than land, serving as collateral.

The enactment of the Personal Property Securities Act 2017 will see Fiji implement this reform and enable it to take advantage of new financing procedures and products which in turn will improve the lives of ordinary Fijians without administrative restrictions to accessing credit.

### **Electoral (Amendment) Act 2017**

The Fijian Elections Office (FEO), committed to continuously improving its standards and operations, carried out a review of existing electoral laws and procedures shortly after the 2014 General Elections. The purpose of the review was to identify and improve procedures and processes, in light of the challenges faced throughout the election process, in preparation for the next general elections and other elections carried out by the FEO.

The recommendations and other amendments to existing procedures contained in the Electoral (Amendment) Act are intended to ensure the efficiency and effectiveness of electoral processes and procedures.

### **Other relevant legislation and policies**

The Family Law Act introduced a specialist Family Division of the High Court and Magistrates' Court.<sup>81</sup> It also introduced no fault divorce, as well as counselling services and the obligation to pay child, spousal or parental maintenance.<sup>82</sup>

The Juveniles Act governs proceedings for children who offend or are in need of care, and provides that all people who offend under the age of 17 are regarded as 'juveniles' and are dealt with in juvenile courts.<sup>83</sup> The intentions behind this Act were to extricate children and young people from the adult court system, to provide a more sensitive approach to dealing with young offenders and to provide better general protection for children.

The Human Rights Commission Act stipulated that the Human Rights Commission should be created as a national human rights institution.<sup>84</sup> In addition to the courts established by the Constitution, legislation stipulating the creation of additional courts and tribunals is also of importance.

The Employment Relations Promulgation established the Employment Relations Tribunal and the Mediation Service,<sup>85</sup> the Small Claims Tribunal Act established the Small Claims Tribunal,<sup>86</sup> while the Magistrates' Courts Act established Magistrates' Courts.<sup>87</sup>

The Judicial Department Strategic Plan 2019-2023 places a high value on accessibility of justice.<sup>88</sup> It proclaims that the Judicial Department's mission is "to ensure a judicial system that is accessible, efficient, effective and transparent." Among its seven strategies is "establishing client needs and satisfaction" (strategy 5), which is focused on promoting legal awareness among the population. It also includes "providing affordable and accessible court services" (strategy 6), which aims to

<sup>81</sup> Family Law Act 2003, s 15.

<sup>82</sup> Family Law Act 2003.

<sup>83</sup> Juveniles Act Cap 56, s 22.

<sup>84</sup> Human Rights Commission Act 2009, s 5.

<sup>85</sup> Employment Relations Promulgation, s 202 and s 193, respectively.

<sup>86</sup> Small Claims Tribunal Act, s 3.

<sup>87</sup> Magistrates' Courts Act, chapter 14.

<sup>88</sup> 2017-2020.

bring court proceedings closer to the average citizen by decentralising the courts, improving court facilities and undertaking other measures aimed at making proceedings more accessible.

The Judicial Department Public Sector Investment Program 2018 – 2020 foresees the establishment of a Judicial Information Unit (JIU). Its objective is to ‘support the Judicial Department in creating positive public awareness and to provide access to and delivery of a high standard of relevant justice services in an efficient, effective, economical and timely manner’. To do this, the JIU will focus on community outreach and on enabling the creation of ‘one stop shops’ for information for the general public.

The goal of the Legal Aid Commission Strategic Plan 2019-2021 is to make legal aid “accessible, credible, affordable, sustainable and accountable” by improving the service provided by the Legal Aid Commission, creating a more efficient management, and otherwise expanding the reach of the commission (including through new offices and a toll-free hotline).<sup>89</sup>

There has been a range of policies aimed at eradicating violence against women and children. Of particular note is the ‘no-drop’ policy, introduced in 1995 to ensure the police fully investigate allegations of domestic violence and requiring police and prosecutors to bring such cases to court.<sup>90</sup> Other key policies include the Women’s Plan of Action, which focuses on five thematic areas, including eliminating violence against women and children.<sup>91</sup>

The purpose of the National Policy on Persons Living With Disabilities 2008-2018 is to “provide a framework for addressing disability in Fiji and to develop a more ‘inclusive’ society”.<sup>92</sup> It groups the objectives of the policy into 12 strategic areas, including “promoting the rights of women and children with disabilities” (objective 5), “access to built environment and transport systems” (objective 6), and “access to information and communications technology” (objective 8). However, the policy is notably short on detail on how the access to justice for persons with disabilities should be increased.

## Land rights

Land issues have evolved and become more prominent over time. These disputes have arisen over the use of iTaukei lands (which comprise the overwhelming majority - up to 91% - of land in Fiji). Disputes over eviction have become widespread, with some tenants being in rent-arrears for up to 20 years.<sup>93</sup>

<sup>89</sup> Legal Aid Commission Strategic Plan 2017-2020.

<sup>90</sup> ‘For the National Congress on Women — Fiji Women’s Crisis Centre’, <http://www.jiwomen.com/are/discussion/for-the-national-congress-on-women>, last accessed 20 July 2018.

<sup>91</sup> ‘Women’s Plan of Action (2010-2019)’, <http://www.welfare-women.gov.fj/index.php/women1/womens-plan-of-action-2010-2019.html>, last accessed 20 July 2018.

<sup>92</sup> Fiji National Council for Disabled Person with the Ministry of Health, Women and Social Welfare, ‘A National Policy on Persons Living with Disabilities 2008-2018’.

<sup>93</sup> Interview with TLTB representatives (Suva, 15 February 2018).

Many of the disputes stem from the rise of informal settlements (*vakavanua*). These occur for various reasons; one of the most notable is the desire of some landlords to avoid the requirements imposed by the iTaukei Land Trust Act. Namely, landlords and tenants are wary of paying the administrative fees charged by the TLTB (which may amount to 10% of the rent).<sup>94</sup> In addition, they are keen to avoid the bureaucracy that comes with following the formal procedure through the TLTB: “take those docs to TLTB, that can be a lengthy process...it’s a headache.”<sup>95</sup>

These informal arrangements eventually give rise to disputes that prove to be intractable and difficult to resolve. The reasons vary, including some tenants having left for overseas, and others not having met the conditions of their leases. In addition, informal settlements have occurred in greater numbers in the aftermath of Cyclone Winston, with many migrants seeking better housing and/or economic opportunities in Viti Levu. This is a “big issue”<sup>96</sup> for land administrators, particularly because of the myriad issues that arise, including the right to access services such as water and electricity.

The iTaukei Land Trust Board (TLTB) is governed by the TLTB Act 1940.<sup>97</sup> As mentioned above, the mandate of the TLTB is to administer land belonging to the Fijians of iTaukei descent through their clans (*mataqali*). This amounts to 91% of land in Fiji, including both reserve land and land that is not under reserve and where leases are issued. The TLTB administers close to 400,000 leases, including residential, agricultural and others, which range from 30 to 99 years.<sup>98</sup> It collects rent paid by tenants to the owners of the land it administers, and distributes it to the accounts of the landowners.

The TLTB plays an important role in access to justice for persons embroiled in disputes over housing and land. In addition to its role as the administrator of iTaukei-owned land, it acts as a facilitator in cases, for instance, where a tenant is late on the payment of his or her rent, has failed to survey their land, or has otherwise breached their lease conditions.<sup>99</sup> While there are no ordinary remedies for such breaches, the TLTB tries to take into account the circumstances of a particular case, including whether tenants may have misunderstood the terms of the lease, and open informal negotiations with the tenant, or refer the two parties to the Mediation Centre at the High Court. This, TLTB officials claim, offers a quicker and cheaper alternative to a trial before the courts. Thus, the TLTB acts as an informal corrective to the courts in housing and land disputes, including in eviction disputes which have become frequent in Fiji for a variety of reasons, including as a result of the precarious status of settlers in informal settlements (*vakavanua*), due to the inability of tenants to pay for

<sup>94</sup> Interview with TLTB expert (Suva, 14 October 2019).

<sup>95</sup> Interview with mataqali chief (Suva, 6 February).

<sup>96</sup> Ibid.

<sup>97</sup> iTaukei Land Trust Act 1940, s 3-4.

<sup>98</sup> Interview with TLTB expert (Suva, 14 October 2019).

<sup>99</sup> Ibid.

rent, or due to the fact that it is not uncommon for some tenants to sublet their land.<sup>100</sup>

The TLTB is overseen by a Board of Trustees headed by the Prime Minister (in his capacity as the Minister for iTaukei Affairs). Aside from its headquarters in Suva, it has regional offices in Nadi, Lautoka and in Labasa, and has recently opened sub-regional offices in five other towns across Fiji in an effort to be more accessible to its clients.

As was mentioned above, the Native Lands Act prescribes the creation of the iTaukei Lands Commission, which is mandated with determining the rightful ownership of iTaukei Lands<sup>101</sup> and resolving disputes over issues such as the hereditary ownership or the demarcation of iTaukei land.<sup>102</sup> Its decisions are entered into a Register of iTaukei Lands.<sup>103</sup> Its decisions can be appealed to the iTaukei Appeals Tribunal.

### Employment Relations Tribunal (ERT)

The Employment Relations Tribunal (ERT) was established through the 2007 Employment Relations Promulgation.<sup>104</sup> It is mandated with assisting employers and their representatives and workers and trade unions to “achieve and maintain effective employment relations, in particular, by adjudicating and determining any grievance or dispute between parties to employment contracts.”<sup>105</sup> With regard to access to justice, the ERT’s most important function is to hear claims from employees that are terminated unlawfully, and had no relief given. The ERT’s jurisdiction includes adjudicating on employment grievances and disputes, including breaches of employment contracts.<sup>106</sup>

### Small Claims Tribunal

The Small Claims Tribunal is a division of a Magistrates’ Court established under the 1991 Small Claims Tribunal Act<sup>107</sup> to “provide prompt and inexpensive relief to Claimants.”<sup>108</sup> It deals with claims such as debt recovery, damage to property, and consumer claims that do not exceed \$5,000 FJD.<sup>109</sup> It does not deal with claims for recovery of wages or related employment grievances, the recovery of land or any estate therein, or with the title of land.<sup>110</sup> Claimants do not have to be represented by a lawyer before the Small Claims Tribunal and only have to pay the \$5.75 FJD filing fees. In court, the proceedings are designed to enable parties that do not have legal representation to have equality of arms with

opponents with deeper pockets. The jurisdiction of a Small Claims Tribunal is exercised by a referee, who will first present the parties with the possibility of going through mediation. Should the parties be unwilling to proceed through mediation, or should this process fail to yield an agreement, a court hearing will be held on the same day.<sup>111</sup> The Small Claims Tribunal sits in Suva, Lautoka and Labasa, and Mobile Tribunals provide services throughout the country.

As it operates under a common law framework, which emphasises the adversarial nature of court proceedings, the Fijian court system places a high premium on the ability of litigants and parties before the court to be legally represented by qualified legal practitioners. This imperative has been somewhat alleviated by the advent of the Small Claims Tribunal, which allows litigants to represent themselves in simplified proceedings accessible to the layman. Nonetheless, it requires a cadre of lawyers to be available for those that cannot afford legal representation; the Legal Aid Commission has been mandated with attempting to meet this need.

### Police, prosecution and access to justice in criminal matters

In criminal matters, key institutions for ensuring access to justice for victims or witnesses of a crime include the Fiji Police Force and the Office of the Director of Public Prosecutions. Both bodies are enshrined in the Constitution, in sections 117 and 129, respectively. Criminal proceedings are governed by the 2009 Criminal Procedure Act (CPA).<sup>112</sup>

The principal mandate of the police is to investigate criminal charges, while the mandate of the Office of the Director of Public Prosecutions is to institute and conduct criminal proceedings.<sup>113</sup> An important exception is the police having the mandate to prosecute summary offences; this is a task undertaken by so-called ‘police prosecutors’ with oversight by the Director of Public Prosecutions. Aside from instituting and conducting criminal proceedings, the Office of the Director of Public Prosecutions is also mandated with taking over or discontinuing criminal proceedings that have been instituted by another person or authority (except proceedings launched by the Fiji Independent Commission Against Corruption).<sup>114</sup>

Victims and witnesses are protected by a number of provisions in the CPA. For instance, before a trial starts, a prosecutor may apply to a magistrate or a judge for directions as to procedures by which the evidence of a vulnerable witness is to be given at the trial.<sup>115</sup> The directions may include: giving evidence outside the courtroom, placing a screen or a one-way glass so that the vulnerable witness cannot see the accused, admitting evidence in the form of a videotape, and so

<sup>100</sup> Ibid.

<sup>101</sup> Native Lands Act, s 4

<sup>102</sup> Ibid, s 4-6.

<sup>103</sup> Ibid, s 8.

<sup>104</sup> Employment Relations Promulgation 2007, s 202.

<sup>105</sup> Employment Relations Tribunal, <http://www.judiciary.gov.fj/index.php/2013-10-22-22-19-41/employment-relations-tribunal>, last accessed 11 July 2018.

<sup>106</sup> Employment Relations Promulgation 2007, s 211.

<sup>107</sup> Small Claims Tribunal Decree 1991, s 3.

<sup>108</sup> Small Claims Tribunal Decree 1991.

<sup>109</sup> Small Claims Tribunal Decree 1991 as amended by Small Claims Tribunal Decree (Amendment) Promulgation 2007.

<sup>110</sup> Small Claims Tribunal Decree 1991, s 9 and Employment Relations Promulgation 2007.

<sup>111</sup> For more on the Small Claims Tribunal, please see ‘Small Claims Tribunal’, <http://www.judiciary.gov.fj/index.php/2013-10-22-22-19-41/small-claims-tribunal>, last accessed 11 July 2018.

<sup>112</sup> Criminal Procedure Act 2009.

<sup>113</sup> Constitution of the Republic of Fiji, s 117 and 129.

<sup>114</sup> Ibid, s 117.

<sup>115</sup> Criminal Procedure Act, s 295(1).

on.<sup>116</sup> The magistrate or judge may receive advice from qualified persons on the effects that giving evidence will have on the vulnerable witness, and will have regard for the need to “minimise stress” on such a witness as well as for the right to fair trial when deciding what directions to give in such circumstances.<sup>117</sup>

In addition to the guarantees provided by the CPA, the Office of the Director of Public Prosecutions has policies, including its Prosecution Code and the Child Protection Guidelines, fleshing out its stated policy that ‘victims and witnesses are key stakeholders in the fight against crime’.<sup>118</sup>

Aside from protecting the interests of victims and witnesses, the CPA also contains protections ensured to provide the accused the right to fair trial. For instance, it prescribes provisions governing criminal proceedings when the accused person has a disability. However, these provisions pertain to such instances where the accused person has a mental disability; they do not regulate instances where the accused has other disabilities that may impact criminal proceedings (such as hearing or visual impairments).

The CPA stipulates that where the “court has reason to believe that the accused person may be of unsound mind so as to be incapable of making a proper defence, it shall inquire into the fact of such unsoundness and may adjourn the case.”<sup>119</sup> If the court is of the opinion that the accused is “of unsound mind so that he or she is incapable of making a proper defence”, it shall postpone further proceedings in the case and either “act in accordance with any law dealing with mental health” or “in the absence of any appropriate provision of such a law, make any order or orders that the court considers appropriate to protect the interests of the accused person and of the public.”<sup>120</sup> The Act stipulates that a person may use the defence of insanity.<sup>121</sup> In addition, it also prescribes the procedure for when the accused does not understand proceedings.<sup>122</sup>

The Act prescribes that “any person accused of an offence before any criminal court, or against whom proceedings are instituted under this Act in any court, may of right be defended by a lawyer.”<sup>123</sup> Further provisions are set to assist those that are not represented by a lawyer: in proceedings before Magistrates’ Courts, if the accused person does not engage a lawyer, the Act stipulates that the court shall, at the close of the examination of each witness for the prosecution, “ask the accused person whether he or she wishes to put any question to that witness”.<sup>124</sup> In addition, the Act provides that, “where any sentence is passed or order made by a Magistrates’ Court in respect of any person who is not represented by a lawyer, the

person shall be informed by the magistrate of the right of appeal at the time when the sentence is passed, or the order is made.”<sup>125</sup>

As is the case with the courts and the Legal Aid Commission, the Police Force and the Office of the Director of Public Prosecutions have also in recent times sought to expand their services and improve their accessibility to citizens. The above-mentioned provisions of the CPD, which provide a balance of protections for the rights of the accused and of victims and witnesses, offer a framework for the police and the prosecution service to effectively investigate and prosecute criminal offences.

## Human Rights and Anti-Discrimination Commission

The Human Rights and Anti-Discrimination Commission (originally established as the Human Rights Commission)<sup>126</sup> is mandated by the Constitution with “receiving and investigating complaints about alleged abuses of human rights and tak[ing] steps to secure appropriate redress if human rights have been violated, including making applications to court for redress or other forms of relief or remedies.”<sup>127</sup> The Commission can investigate or research, on its own initiative or on the basis of a complaint, any matter in respect of human rights.<sup>128</sup> According to the legislation governing its functioning, the Commission’s mandate extends to investigating allegations of “unfair discrimination” in areas including employment, access to a trade or profession, the provision of goods, services or facilities, public access, the provision of housing, land and accommodation, and education.<sup>129</sup>

The Commission was dormant from 2006 and lost its accredited status by the International Coordinating Committee for National Human Rights Institutions (ICC) under the Paris Principles.<sup>130</sup> However, Parliament has recently provided significant funding which resulted in commissioners being appointed in 2015 and a new director being appointed in 2016. Under its current leadership, the HRADC intends to “bridge the gap between the people and the Constitution” and to prioritise access to justice.<sup>131</sup> As a result, and taking into account its mandate, the HRADC has made it its priority to investigate conditions in detention, allegations of torture, and allegations of domestic violence. This, the Commission believes, will help provide access to justice for some of the most disadvantaged and vulnerable members of society.<sup>132</sup>

To enable it to effectively investigate the complaints that it receives as well as other human rights abuses

<sup>116</sup> Ibid, s 296(1).

<sup>117</sup> Ibid, s 295(3) and 295(4).

<sup>118</sup> Office of the Director of Public Prosecution, <http://odpp.com.fj>, last accessed 24 July 2018.

<sup>119</sup> Criminal Procedure Act 2009, s 104(1).

<sup>120</sup> Ibid, s 104(2).

<sup>121</sup> Ibid, s 105.

<sup>122</sup> Ibid, s 108.

<sup>123</sup> Ibid, s 165.

<sup>124</sup> Ibid, s 177(3).

<sup>125</sup> Ibid, s 246(3).

<sup>126</sup> Human Rights Commission Act 2009, s 5.

<sup>127</sup> Constitution of the Republic of Fiji 2013, s 45(4)(e).

<sup>128</sup> Ibid, s 45(4)(f).

<sup>129</sup> Human Rights Commission Act 2009, s 19(3).

<sup>130</sup> Principles Relating to the Status of National Institutions (The Paris Principles), UN General Assembly Resolution 48/134 (adopted 20 December 1993).

<sup>131</sup> Interview with Director of Human Rights and Anti-Discrimination Commission (Suva, 7 February 2018).

<sup>132</sup> Ibid.

in accordance with its mandate, the HRADC is actively trying to build its capacity. It has partnered with UNDP on the REACH project, whereby it has sought to extend legal awareness and services throughout Fiji. This project forms part of its wider outreach efforts, through which the HRADC is attempting to educate the Fijian population on its constitutional rights and the avenues for legal redress at its disposal. The continuation of these efforts will, the Commission intends, ensure it is once again compliant with the key Paris Principles of accessibility, independence, and financial autonomy, and restore its accreditation by the ICC.

## Mediation Centre

The Mediation Centre (MC) was launched in 2015 as a not-for-profit organisation. It offers mediation in three primary areas: family disputes, commercial disputes, and small claims where the sum claimed is \$50,000 FJD or less.<sup>133</sup> It can mediate disputes from parties that access the centre on their own, or through the court-annexed mediation process, whereby it is suggested to parties in a court case that they should engage in mediation. In such instances, the case is suspended for the duration of the mediation and if the parties resolve their dispute it is recorded as a settlement and lodged in court. If mediation fails due to the lack of consent of one or both parties, the dispute is referred back to court.

To date, the MC has mediated 166 matters, 67% of which were mediated successfully, and 84% of which were settled within a day. The parties are free to choose the mediators to mediate their case.<sup>134</sup> Promptness is important for the parties using mediation as an alternative to settling disputes in courts. However, it is important for another reason: having one's case mediated through the MC requires significant financial resources. In small claims, each party is charged \$500 FJD daily by the mediator for his/her services, with an additional one-time fee of \$50 FJD charged by the MC.

In commercial mediation, used for disputes above \$50,000 FJD, there is a progressive fee structure in place. For instance, for disputes where the sum in dispute is between \$50,000 FJD and \$100,000 FJD, each party is charged \$800 FJD daily, along with a one-time fee to the MC of \$200 FJD, while for disputes where the sum in dispute is between \$100,001 FJD and \$250,000 FJD, each party is charged \$1,000 FJD daily, along with a one-time fee to the MC of \$200 FJD. Parties in family disputes are charged according to the same fee schedule as outlined above, thus, the cost of mediation depends on the sum being disputed.

However, it should be noted that in court-annexed matters (i.e. matters referred to the MC by the courts), each party is charged \$150 FJD daily. Moreover, in such matters, the Master or the Deputy Registrar may

exercise his/her discretion and waive a part or all of the fees if a party is "genuinely in financial difficulty".<sup>135</sup>

The MC's increasing workload (it began by mediating just three disputes in 2015), resources and backing by the Chief Justice indicate it could have a more prominent role in resolving disputes in the future. However, it remains to be seen what bearing its fees will have on the ability of parties to access it and use mediation to resolve their disputes.

## Civil society organisations

There is a long history of civil society participation in Fiji, which can be traced to the arrival of Christian missionaries in the 1830s.<sup>136</sup> Civil society organisations promoting religious and social welfare aims sprung up and have retained a strong degree of involvement in Fijian public life, including in the fields of welfare protection and education. For instance, the overwhelming majority of primary and secondary schools are communally owned.<sup>137</sup> Despite the rich history of civil society in Fiji, due to its stated purpose, this section will focus its attention on some of the CSOs that are active in the protection of human rights and in promoting and supporting access to justice. For the sake of brevity, this overview is not exhaustive, but is rather intended to highlight some of the key issues around access to justice and the organisations addressing them.

There are a number of prominent Fijian CSOs active in the field of human rights. Some of the best resourced have their roots in the feminist movement and are staunch advocates of women's rights and of gender equality. The Fiji Women's Rights Movement (FWRM) has been actively working on "eliminating discrimination and enhancing gender equality for 31 years."<sup>138</sup> It has sought to achieve this by enhancing democratisation through its work with civil society coalitions, while also focusing on transforming laws, policies, and institutions, and providing in-depth research on the most pressing aspects of gender equality. Among its activities, FWRM has sought to highlight the plight of women seeking just outcomes when their marriages are dissolved and advocated for an improved Family Law Act. In addition, in the course of its work to address domestic violence and sexual and gender-based violence (SGBV) it has carried out research on the case law on the topic.

The Fiji Women's Crisis Centre (FWCC) has been in existence for 34 years. Its focus is on all forms of violence against women, including intimate partner violence, rape, sexual assault, sexual abuse, sexual harassment, and so on. It provides direct support to victims of violence against women, including through its counsellor advocates who can represent the interests of victims in police stations, through legal aid and court proceedings, as well as in accessing other services.

<sup>133</sup> The Mediation Centre, <https://fijimmediation.org/about-us/#faqs>, last accessed 21 July 2018.

<sup>134</sup> Interview with Fiji Mediation Centre representative (Suva, 7 March 2018).

<sup>135</sup> Fiji Mediation Centre Fees, [https://fijimmediation.org/wp-content/uploads/2018/03/FMC-Approved-Fees-Schedule\\_Scan\\_Website-Upload.pdf](https://fijimmediation.org/wp-content/uploads/2018/03/FMC-Approved-Fees-Schedule_Scan_Website-Upload.pdf), last accessed 21 July 2018.

<sup>136</sup> Mohammad Hassan Khan, Ashiana Shah, Suliana Siwatibau, 'CIVICUS Civil Society Index Report for Fiji' (2007).

<sup>137</sup> Ibid.

<sup>138</sup> Interview with FWRM representative (Suva, 9 February 2018).

The FWCC also has a large community awareness programme, which aims to increase the levels of knowledge and change attitudes on the topic of violence against women. This programme is not exclusively focused on women, but also works with men (and other groups, such as people with disabilities, LGBTIQ persons, and others). The FWCC has also set up a training institute, whose participants include police officers as well as others involved in combating SGBV, such as teachers, those working with HIV positive persons and others.

Organisations advocating for the interests of persons with disabilities are also active in Fiji. The Fiji Disabled Peoples' Federation (FDPF) has been working on a range of issues. For instance, it is advocating for greater accessibility for persons with disabilities to institutions, with physical barriers still posing a challenge. Moreover, persons that are visually and/or hearing impaired have tremendous difficulties in accessing information, which the FPDF is attempting to rectify through its advocacy work. The FPDF has also engaged with the Office of the High Commissioner for Human Rights (OHCHR) to provide sensitivity training to Fiji police recruits and to police officers for dealing with persons with disabilities.

The Pacific Disability Forum is an organisation that represents the interests of persons with disabilities across the Pacific. Its work focuses on advocacy and on building the capacities of institutions, including justice sector institutions, to better serve persons with disabilities. A particular area of its focus is to support Fiji in fulfilling its commitments resulting from its ratification of the Convention on the Rights of Persons with Disabilities (CPRD)<sup>139</sup> in 2017, including those requiring the full participation of persons with disabilities which entail physical access to justice sector institutions, as well as access to information.

The Pacific Centre for Peacebuilding (PCP) is a regional organisation working on conflict transformation. The PCP is working closely with the government on promoting the concept and practice of restorative justice. It has partnered with the Fiji Corrections Service, the Police Force, and other institutions to train their officers in how to treat offenders and how to resolve disputes with and between them. It is active in community peacebuilding and attempting to resolve conflicts centred on the delivery of services to communities in Vanua Levu. It is also building the capacities of women who are in leadership positions and are thus able to influence policy. Its work aims to enable these women to understand and influence decision-making processes around government grants to foreign investors, so as to ensure that proper consultations take place.

The Haus of Khameleon (HoK) is an organisation that advocates for the rights of the LGBTIQ population. The HoK advocates to ensure transgender women can enjoy their constitutional rights and is active in trying to hold Fijian institutions to account through the Universal Periodic Review process. The HoK has undertaken

research on access to justice which was published in 2018 and which documents the difficulties facing transgender women in accessing justice, including widespread discrimination and hostile attitudes by institutions, as well as cultural attitudes that discourage them from seeking redress for widespread sexual abuse.

Medical Services Pacific provides medical counselling for survivors of abuse, while also registering complaints of child abuse through the national child helpline that it manages on behalf of the Ministry of Social Welfare. These complaints are then referred to the appropriate authorities, such as welfare officers. It provides a confidential community service that has had success in increasing the number of prosecutions of abusers through the justice system.

Save the Children Fiji is actively attempting to improve child protection by changing the culture of treatment of children at home and in official institutions. It raises awareness in communities and trains teachers and other officials on 'positive discipline', which teaches methods other than corporal punishment for disciplining children. It is also advocating for the development of standard operating procedures for responding to complaints of child abuse.

## Recent access to justice studies

This study is the first all-purpose access to justice household survey of its kind conducted in Fiji. However, other studies have provided useful context and data for the research. Foremost among these is the Fiji Women's Rights Movement's 'Balancing the Scales: Improving Fijian Women's Access to Justice' survey on women's access to justice, published in 2017, which was referenced in this introduction. As the title suggests, this survey is focused on women and the obstacles they face in accessing justice in Fiji.

The survey shows that significant advances have been made in the legislative frameworks and in the case law regarding violence against women. For instance, as mentioned above, the number of cases of sexual offences (rape and attempted rape, indecent assault, child sexual abuse) reported to the Fiji Police Force fell between 2012 and 2015.

In addition, the FWRM's review of hundreds of cases found "no instance where gender stereotypes, customary forms of reconciliation or other contentious factors were raised by the judicial officer" nor that the judicial officer "has raised customary forms of reconciliation in their judgment" in any of the 89 rape cases decided in 2016 and 2017 in the High Court.<sup>140</sup> Legal practitioners surveyed shared a positive view of recent developments, with 96% stating that, since the introduction of the Family Law Act and Domestic Violence and Crimes Acts, access to the formal justice system for women in family law and violence matters has improved, and with 91% stating that the quality of legal outcomes for women has improved.<sup>141</sup>

<sup>139</sup> UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008), 2515 UNTS 3.

<sup>140</sup> Fiji Women's Rights Movement, 'Balancing the Scales: Improving Fijian Women's Access to Justice' (2017).

<sup>141</sup> *Ibid.*

Nonetheless, the study also highlights many difficulties faced by women in obtaining justice through the formal justice system. For instance, the police and prosecution service are not utilising forensic evidence that could be helpful to survivors to prosecute those accused of rape: "In none of the 67 rape cases decided in the High Court in 2016 and published on PaCLII was forensic evidence presented in the case."<sup>142</sup>

Other studies have highlighted the issue of SGBV in stark terms. The Fiji Women's Crisis Centre study, 'Somebody's Life, Everybody's Business: National Research on Women's Health and Life Experiences in Fiji', published in 2013 provided a baseline for the prevalence of SGBV in Fiji. It found that 64% of women who have ever been in an intimate relationship have experienced physical and/or sexual violence by a husband or intimate partner in their lifetime. This, the FWCC's study claims, means that Fiji's rates of violence against women and girls are among the highest in the world when compared with an estimated global prevalence for physical and/or sexual intimate partner violence over a woman's lifetime of 30%.<sup>143</sup>

Another FWCC study provides more data; its 'Survey exploring the prevalence, incidence and attitudes to intimate partner violence in Fiji', published in 2011, shows that every day in Fiji 43 women are injured, one woman is permanently disabled, and 71 women lose consciousness due to violence.<sup>144</sup>

Issues other than SGBV, however, are not as well documented in Fiji, at least with regard to recent developments. Some research papers have documented the record of the Legal Aid Commission in providing free legal aid. For instance, the Pacific Islands Law Officer's Network 36th Annual Meeting's country report on Fiji provides an overview of the challenges facing the Legal Aid Commission, as well as its successes.<sup>145</sup> It notes the expansion of services being provided by the Legal Aid Commission, as well as its efforts to train staff and to provide 'first hour' legal assistance to those arrested that cannot afford a lawyer.

The Fiji National Council for Disabled Persons, 'A survey on people with disabilities' from 2010 shows the precarious state of affairs facing persons with disabilities in Fiji.<sup>146</sup> It states that persons with disabilities are "largely invisible" and "disadvantaged" in respect to access to education, health services and so on. It contains data that highlights some of the difficulties facing persons with disabilities, including: 89% of the employable persons with disabilities are not employed, 20% of persons with disabilities suffer some sort of abuse, 14% of persons with disabilities live in isolation,

only 25% of women and girls with disabilities participate in decisions made by their families, only 10% of persons with disabilities receive family assistance, and 2% of women with disabilities have a history of unwanted pregnancy.<sup>147</sup> Despite the enactment of constitutional guarantees of access to all places, public transport and information, to the use of braille and sign language, and to reasonable materials related to disability, little has changed in this regard.

The U.S. State Department's annual report on the state of human rights for Fiji highlights some issues pertinent to this study. It specifically highlights the successes of the 'first hour' procedure and states that "authorities generally allowed detainees prompt access to counsel and family members."<sup>148</sup> Among other issues, it also highlights the plight of persons with disabilities, stating that despite the rights conferred upon them by the Constitution and other statutes, there was "very little enabling legislation on accessibility for persons with disabilities, and there was little or no enforcement of laws protecting them."<sup>149</sup>

Other reports tend to focus on the situation prior and immediately following the last armed coup in 2006 and are thus of limited value for our purposes. It can thus be surmised that the other studies on access to justice tend to highlight the issue of SGBV. They highlight the successes of expanding access to justice wrought principally by the Legal Aid Commission and the challenges facing the Fijian judiciary and justice system, including resolving land issues, questions of remoteness, and issues facing persons with disabilities.

## Access to justice related projects and initiatives

This study is being conducted under the auspices of the Access to Justice project, managed by the UNDP and funded by the EU and the UNDP. The project started in July 2016 and is set to last until December 2020. The project's stated outcome is "Fijians empowered for access to justice and Fijian key justice sector institutions strengthened to deliver access to justice, particularly for impoverished and vulnerable groups."<sup>150</sup> In accordance with this, the project has sought to strengthen the capacities of the Legal Aid Commission and the Judicial Department, as well as their service delivery. In addition, it aims to strengthen the capacities of CSOs for supporting access to justice.

UNDP's Rights, Empowerment and Cohesion (REACH) for Rural and Urban Fijians project aims to "promote peace building, social cohesion and inclusiveness."<sup>151</sup> The project, which is financed by the Government of

<sup>142</sup> Ibid.

<sup>143</sup> Fiji Women's Crisis Centre, 'Somebody's Life, Everybody's Business: National Research on Women's Health and Life Experiences in Fiji' (2013).

<sup>144</sup> Fiji Women's Crisis Centre, 'A survey exploring the prevalence, incidence and attitudes to intimate partner violence in Fiji' (2010/2011).

<sup>145</sup> Pacific Islands Law Officer's Network 36th Meeting, 'Country Report: Fiji' (2017), [http://pilonsec.org/images/2017/Annual\\_Meeting/Country\\_Reports/2017-PILON-Country-Report-Fiji.pdf](http://pilonsec.org/images/2017/Annual_Meeting/Country_Reports/2017-PILON-Country-Report-Fiji.pdf), last accessed 20 July 2018.

<sup>146</sup> Fiji National Council for Disabled Persons, 'A survey on people with disabilities' (2010).

<sup>147</sup> Ibid.

<sup>148</sup> United States Department of State, 'Country Reports on Human Rights Practices for 2017' 5.

<sup>149</sup> Ibid, 19.

<sup>150</sup> UNDP, 'Fiji Access to Justice Project', [http://www.pacific.undp.org/content/pacific/en/home/operations/projects/democratic\\_governance/Fij\\_A2J.html](http://www.pacific.undp.org/content/pacific/en/home/operations/projects/democratic_governance/Fij_A2J.html), last accessed 31 July 2018.

<sup>151</sup> UNDP, 'REACH project', [http://www.pacific.undp.org/content/pacific/en/home/operations/projects/democratic\\_governance/rights-empowerment-and-cohesion--reach--for-rural-and-urban-fij.html](http://www.pacific.undp.org/content/pacific/en/home/operations/projects/democratic_governance/rights-empowerment-and-cohesion--reach--for-rural-and-urban-fij.html), last accessed 31 July 2018.

Japan and the UNDP, commenced in 2015 and is set to run until 2018. The project has been active in raising awareness among citizens of their constitutional rights and in enabling mobile services, including legal assistance by the Legal Aid Commission, to be provided to citizens in remote areas of Fiji.

The Pacific Judicial Strengthening Initiative (PJSI) is a project that supports courts in 14 countries across the region, including Fiji, to develop “more accessible, just, efficient and responsive justice services.”<sup>152</sup> The project, which commenced in June 2016 and is financed by the Government of New Zealand, is set to run until June 2021. It has five themes, one of which is access to justice; the purpose of this theme is to improve the accessibility of court remedies through legal empowerment in the guise of outreach and courts informing the public of their role.

Another initiative of particular note is the ‘First Hour’ procedure. As mentioned above, this procedure was adopted by institutions including the Judicial Department, Office of the Director of Public Prosecution, Fiji Police Force, Legal Aid Commission and Human Rights and Anti-Discrimination Commission to ensure the Legal Aid Commission will provide legal assistance within the first hour of a person being arrested. It began in November 2016 as a 6-month project but has been extended, with the Legal Aid Commission having attended to over 1,200 persons in the two police stations in Suva where the ‘first hour’ initiative has been piloted.<sup>153</sup>

An important initiative is the court help desks being introduced in courts across Fiji. In accordance with the aforementioned Judicial Department Public Sector Investment Program 2018 – 2020, the JIU intends to upgrade its community outreach and ‘one stop shops’ for information for the general public. Accordingly, the Judicial Department has, with the support of the UNDP, established three information centres (*Help Desks*) in courthouses in Suva, Lautoka and Labasa for all citizens, but particularly for impoverished and vulnerable groups.

The FWRM is implementing an EU-funded initiative called ‘Balancing the Scales: Improving Fijian women’s access to justice’.<sup>154</sup> This project, which commenced in 2015 and is scheduled to conclude in December 2018, aims to improve justice for women, and particularly marginalised and minority groups of women. Its specific objectives are to “enhance understanding of women’s rights in relation to justice among marginalised and minority groups of women” and to foster an “enabling environment for improved women’s access to justice.”<sup>155</sup> As part of this, the project has supported research conducted by the FWRM and by the Haus of Khameleon

into the access to justice of women generally, and transgender women, respectively.

<sup>152</sup> PJSI, ‘Pacific Judicial Strengthening Initiative’, <http://www.fedcourt.gov.au/pjsi/about-us>, last accessed 20 July 2018.

<sup>153</sup> Interview with Legal Aid Commission representatives (Suva, 6 February 2018).

<sup>154</sup> Balancing the Scales: Improving Fijian Women’s Access to Justice, [https://ec.europa.eu/europeaid/projects/balancing-scales-improving-fijian-womens-access-justice\\_en](https://ec.europa.eu/europeaid/projects/balancing-scales-improving-fijian-womens-access-justice_en), last accessed 31 July 2018.

<sup>155</sup> Ibid.



# About the project

The Justice Needs and Satisfaction in Fiji study was supported by the Fiji Access to Justice Project, which is funded by the European Union (EU) and implemented by the United Nations Development Program (UNDP). The Fiji Access to Justice Project supports access to justice for impoverished and vulnerable groups through empowering people to access their legal rights and services, and strengthening key justice institutions to deliver improved services.

## Hiil

Hiil (The Hague Institute for Innovation of Law) is a social enterprise devoted to user-friendly justice. That means justice that is easy to access, easy to understand, and effective. Our mission; by 2030, 150 million people will be able to prevent or resolve their most pressing justice problems. We do this by stimulating innovation and scaling what works best. We are friendly rebels focused on concrete improvements in the lives of people. Data and evidence are central in all that we do. [www.hiil.org](http://www.hiil.org), [www.justice-dashboard.com](http://www.justice-dashboard.com)

## EU

The Member States of the European Union have decided to link together their know-how, resources and destinies. Together, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.

## UNDP

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