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# DATA ANALYSIS - FAMILY LAW AND VIOLENCE AGAINST WOMEN AND CHILDREN CASES

## Fiji Courts



*Balancing the Scales- Improving Fijian Women's Access to Justice' research report is funded by the European Union and UN Women.*



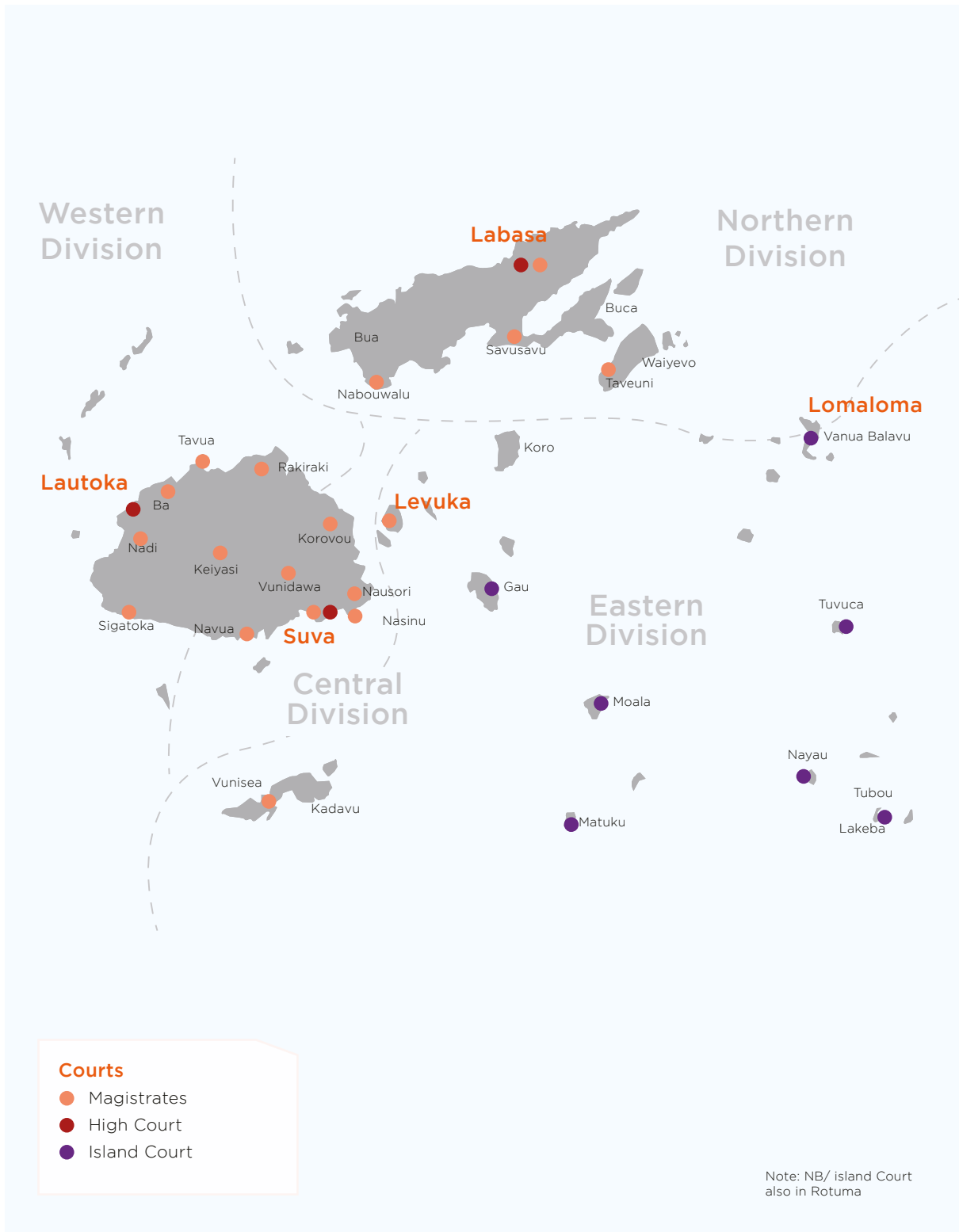
# Data Analysis - Family Law and Violence Against Women and Children Cases

Fiji Courts

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# Court Locations in Fiji



## Acknowledgments

The data in this annex has been provided by the Fiji Courts. The FWRM Research Team would like to thank the Honourable Chief Justice Anthony Gates, the Honourable Madam Justice Anjala Wati, Chief Registrar Mr. Yohan Liyanage, Registrar Mr. Vinay Sharma and staff of the Family and Criminal Registry for their assistance in providing data in support of improving Fijian women's access to justice.

# Recommendations

1. The Fiji Courts to consider collecting and publishing the following data:
  - number of cases heard at Island Court sittings.
  - number of Domestic Violence Restraining Order (DVRO) applications that are granted or not granted by the Family Court and Magistrates Court each year.
  - number of applications for a waiver of a court fee due to financial hardship and whether these are granted or not granted.
  - how the parties are represented: self-represented, private lawyer, pro-bono lawyer or Legal Aid Commission.
  - the average duration from filing to finalisation of different categories of family law and violence against women and children cases.
2. The Fiji Courts consider publishing annually on its website court data presenting trends over time, including sex disaggregated data.
3. The Fiji Courts consider the following in relation to service delivery:
  - providing duty solicitors/ community helpdesks at court registries to assist clients to complete court forms.
  - providing disability inclusive service information.
  - reviewing Court forms with a view to simplifying them.
  - displaying information about the court fee waiver in each court location to assist clients who face financial hardship..
  - alerting lawyers and clients via text message if their hearing is postponed.
  - implement pre-trial conferences with Counsel to narrow issues in dispute and to better prepare the case for trial.
  - provide separate waiting area for women that have a DVRO application to be heard in Court.
  - applications for appeal to the High Court heard in the same location the matter was heard at first instance to address the barriers of cost and distance raised by women victim/survivors.
  - develop standard operating procedures and provide training to court registry staff in order for court staff to provide clear and uniform information to court clients.
  - separate child-friendly waiting room in the court registry for women with children.
  - conducting an audit of all court registries to see whether they meet the minimum standard for people with disabilities. Consider installing ramps, elevators or arrange alternative Court hearing rooms at ground level to assist women and men with a mobility impairment.

4. The Fiji Courts consider publishing annually:
  - a summary of the feedback it receives from its own customer feedback mechanism as well as surveys conducted externally to the Court that seek client and court stakeholder feedback on the services provided by the Court.
  - how it intends to respond to this feedback.
5. The Chief Justice consider a Practice Direction instructing judges and legal practitioners that the following will not be considered as mitigating factors and nor will a sentence reduction be provided in cases of sexual and other forms of violence, where the perpetrator is:
  - appearing before the Court for the first time charged with sexual and other forms of violence but the perpetrator has been charged and found guilty of other counts of violence over a number of years.
  - the sole breadwinner in the Family (based on the case authority *Raj v State* decided in March 2014).
6. Judgments in the Magistrates Court related to cases of rape and attempted rape, sexual assault, indecent assault and child sexual abuse should be published on Pacific Islands Legal Information Institute (PacLII) (with redaction/ anonymization where required).
7. The Fiji Courts and Ministry of Women, Children & Poverty Alleviation should consider ways to increase the number and collaborate on the training of social welfare officers who are able to provide the Court with reports in cases of:
  - Adoption
  - Family law
  - Criminal cases involving child perpetrators
  - Criminal cases victim survivor/witnesses
8. The Fiji Courts publish sex disaggregated data in their annual report.
9. The Fiji Courts consider providing clear and uniform information to the public regarding DVRO application and processes.
10. The Fiji Courts provide the following for all staff:
  - Disability awareness training focussed on attitudes, myths and stereotypes. This training should highlight the cases in which the court has provided outstanding support services to women and girls with a disability.
  - Gender sensitivity training to ensure that all staff have an understanding of the key gender equity principles and how these underpin their work. The training should highlight cases in which the agency has provided support services to women and girls victims/survivors of domestic violence.



- Violence against women training emphasising the 'No Drop Policy' for the Police and the inappropriate use of reconciliation when dealing with domestic violence complaints.
  - Training on DVROs, including the requirements of and process for making a DVRO application.
11. The Fiji Courts consider reporting and publishing the number of staff who have undertaken this training.
  12. The Fiji Courts consider providing disability inclusive service information to the public.
  13. The Fiji Courts consider coordination with Fiji Police Force, Office of the Director of Public Prosecutions and the Ministry of Health to strengthen the procedures that apply to the collection and use of forensic evidence in violence against women and children cases.

The research report with the full list of recommendations can be accessed at the following link:  
[Balancing the Scales: Improving Fijian Women's Access to Justice](#)

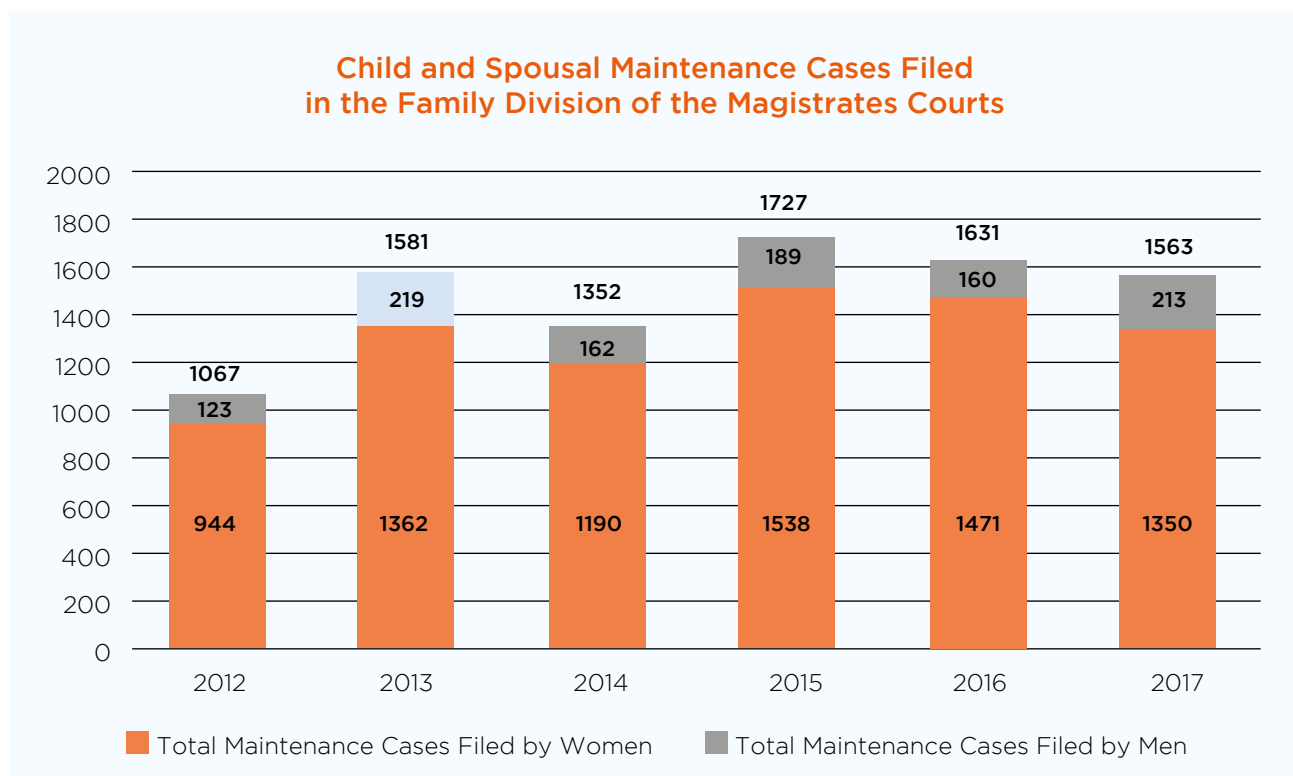
## Fiji Courts: Findings

### Budget Allocation

Estimate Year	Payroll (Seg 1 & 2)	Other Operations (Seg 3 to 7)	Capital (Seg 8 to 10)	VAT (Seg 13)	Total Budget (million) FJD
2015 <sup>1</sup>	22.3447	4.0358	11.6500	2.3523	40.3828
2016 <sup>2</sup>	26.4410	4.6867	11.4380	1.4508	44.0165
2016/2017 <sup>3</sup>	25.3835	7.2507	6.4500	1.1376	40.2218
2017/2018 <sup>4</sup>	0.0	54.4635	0.0	0.0	54.4635

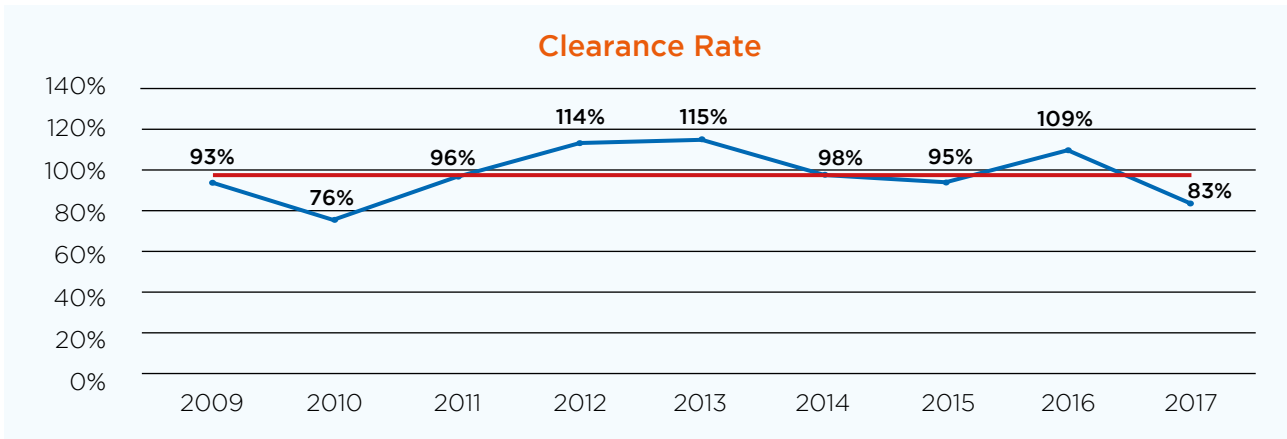
Note: 2017/2018 funding to the Judiciary is under Seg 6.<sup>5</sup>

The budget allocation for the Fiji Courts has increased from \$40,382.8 in 2015<sup>6</sup> to \$54,463.5 in the 2017/2018 budget<sup>7</sup>

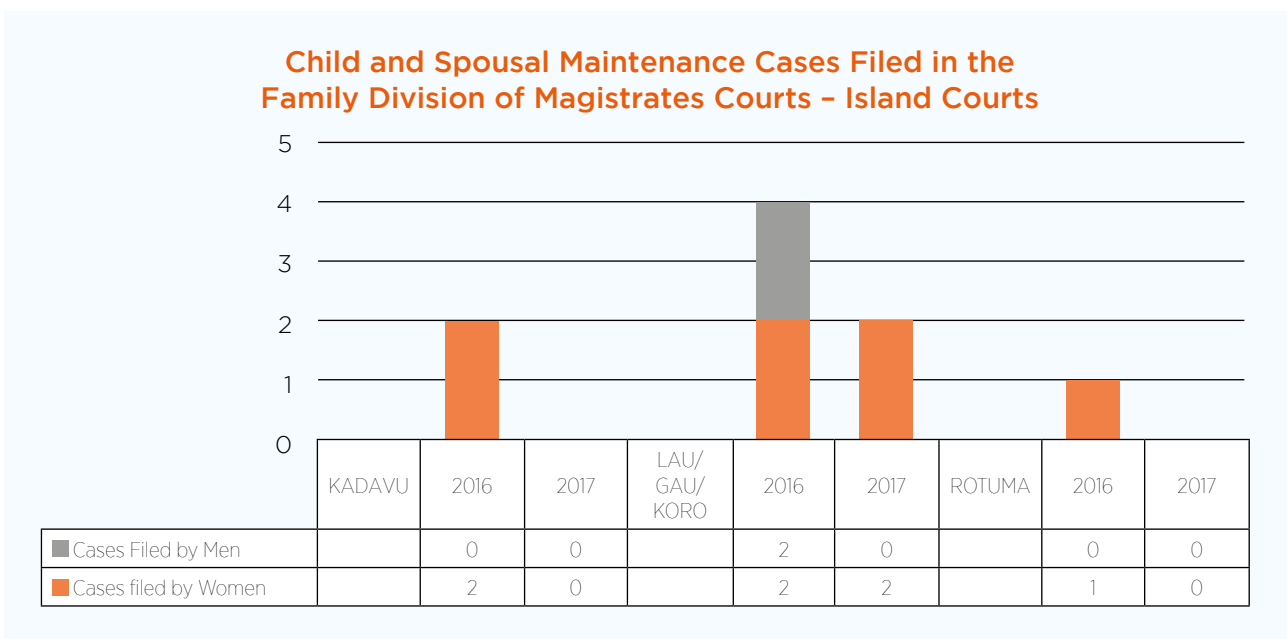


Women applying for child and spousal maintenance in the Magistrates Courts increased from 944 cases in 2012 to 1350 cases in 2017.

Women were the applicant party in 9 out of 10 of these maintenance cases.<sup>9</sup>



In 2017, the clearance rate for child and spousal maintenance cases was 83%. The 5 year average trend clearance rate was 100%.<sup>10</sup>



Child and Spousal Maintenance Cases Filed in the Family Division of Magistrates Courts - Island Courts<sup>11</sup>

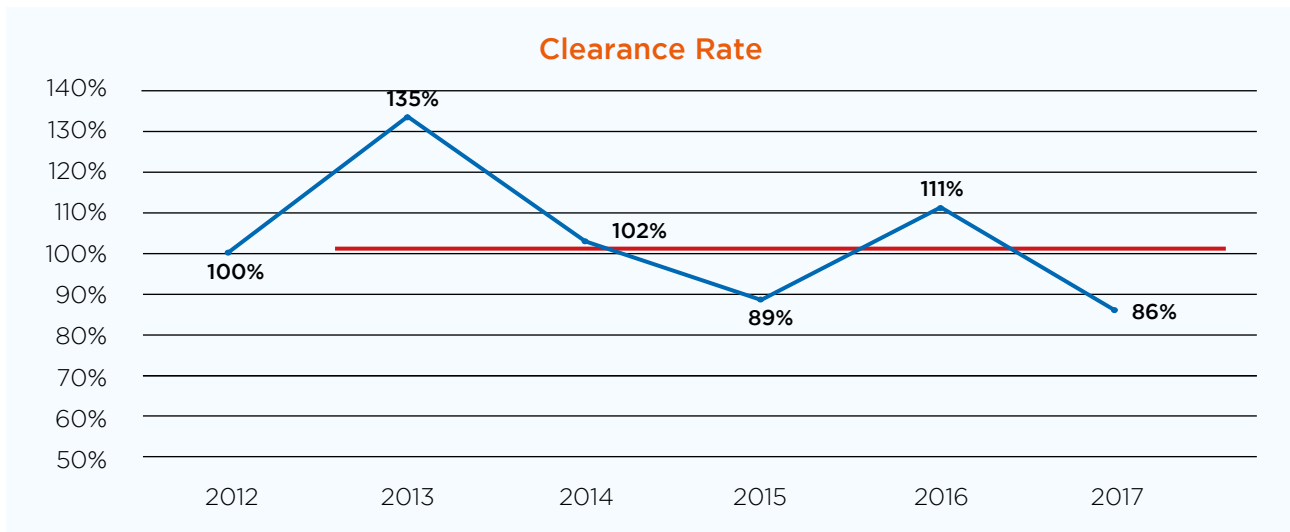
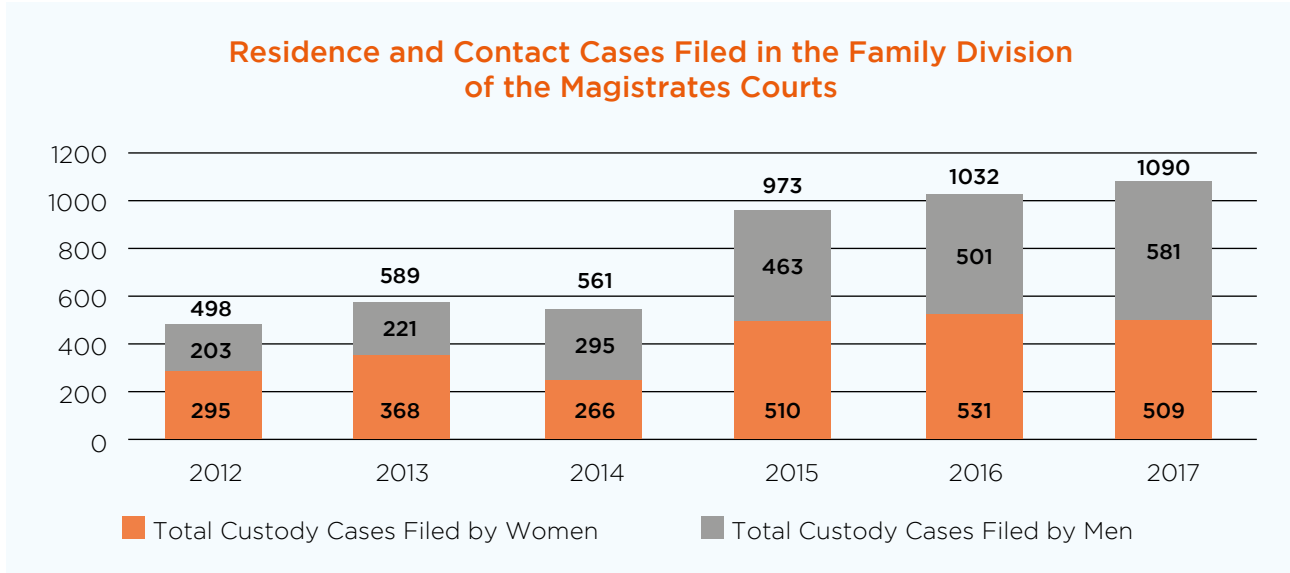
Overall, women were the applicant party in 78% of the child and spousal maintenance cases from 2016 to 2017 initiated in the Family Division of the Magistrate Court in Island Courts.<sup>8</sup>

Only 2 women initiated maintenance cases in Kadavu from 2016 to 2017.<sup>12</sup>

Twice as many women compared to men from 2016 to 2017 initiated maintenance cases in Lau/Gau/Koro.<sup>13</sup>

Only 1 woman initiated a maintenance case in Rotuma from 2016 to 2017.<sup>14</sup>

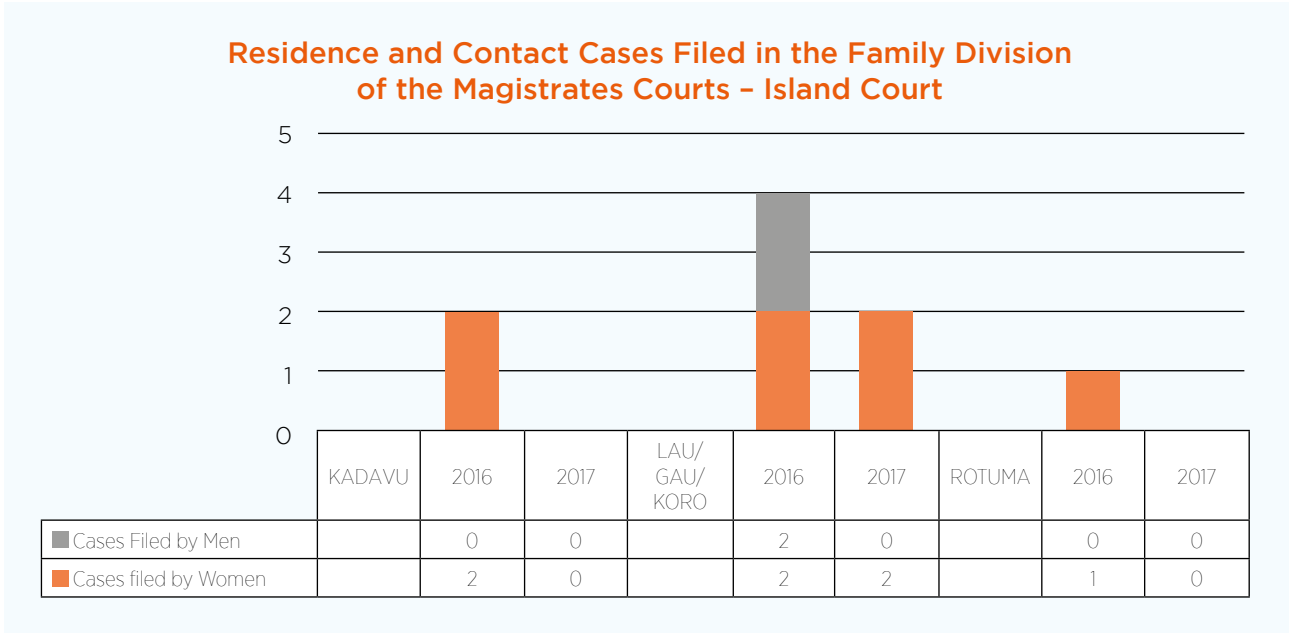
The data represented is inadequate to determine clearance rates in the Family Division of the Magistrates Courts- Island Courts.



The number of residence and contact cases filed in the Family Division of the Magistrates Court has more than doubled from 498 cases in 2012 to 1090 cases in 2017.<sup>15</sup>

Women and men file almost equal numbers of residence and contact cases.<sup>16</sup>

In 2017, the clearance rate for residence and contact cases was 86%. The 5 year average trend clearance rate was 105%.<sup>17</sup>

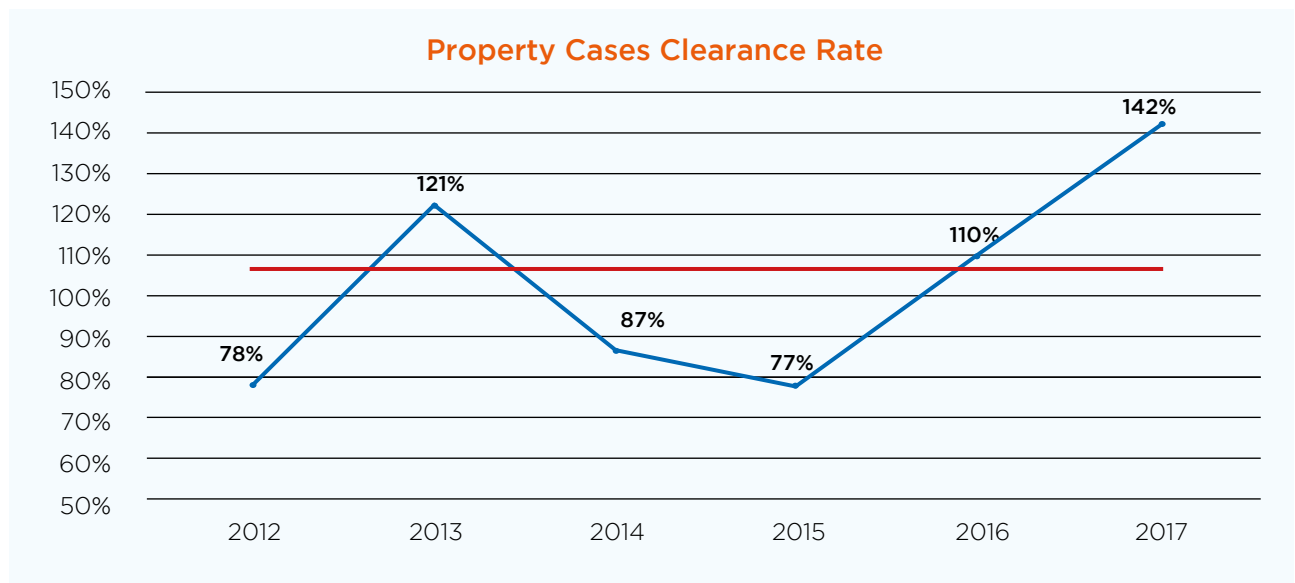
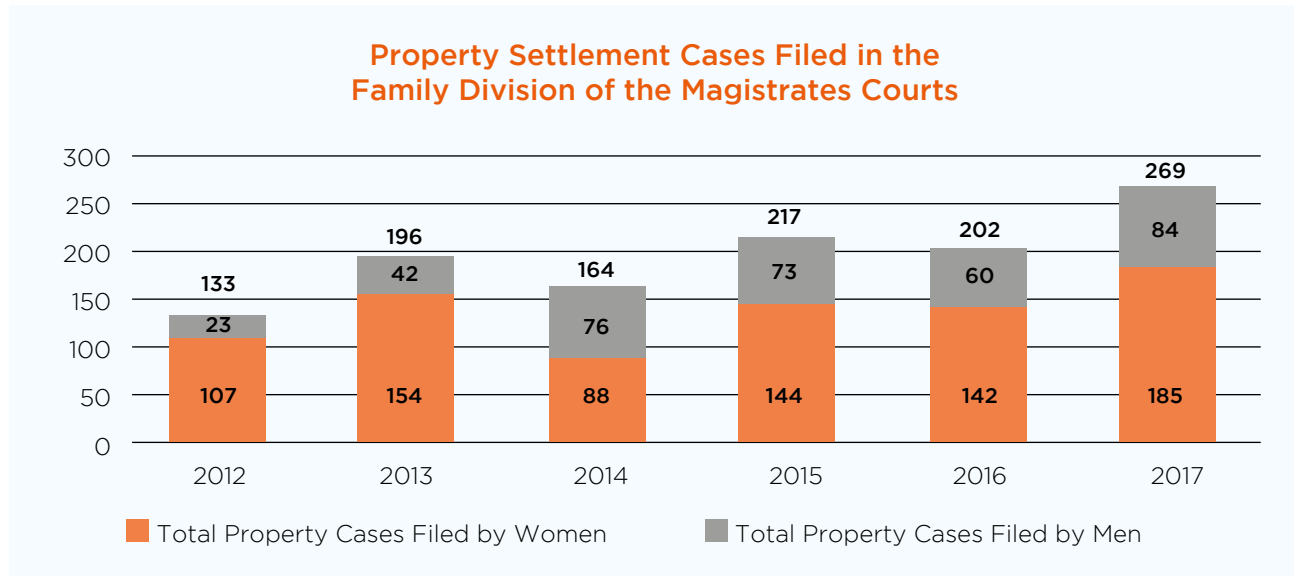


Only 1 residence and contact case was initiated by a woman in 2017 and 1 residence and contact case was initiated by a man in 2017 in Kadavu.<sup>18</sup>

Twice as many women initiated residence and contact cases than men in Lau/Gau/Koro from 2016 to 2017.<sup>19</sup>

Zero residence and contact cases were initiated in Rotuma from 2016 to 2017.<sup>20</sup>

The data represented is inadequate to determine clearance rates in the Family Division of the Magistrates Courts- Island Courts.<sup>21</sup>



The number of property cases initiated in the Family Division of the Magistrates Court has doubled from 133 cases in 2012 to 269 cases in 2017.<sup>22</sup>

Women initiated 7 out of 10 property cases in 2017.<sup>23</sup>

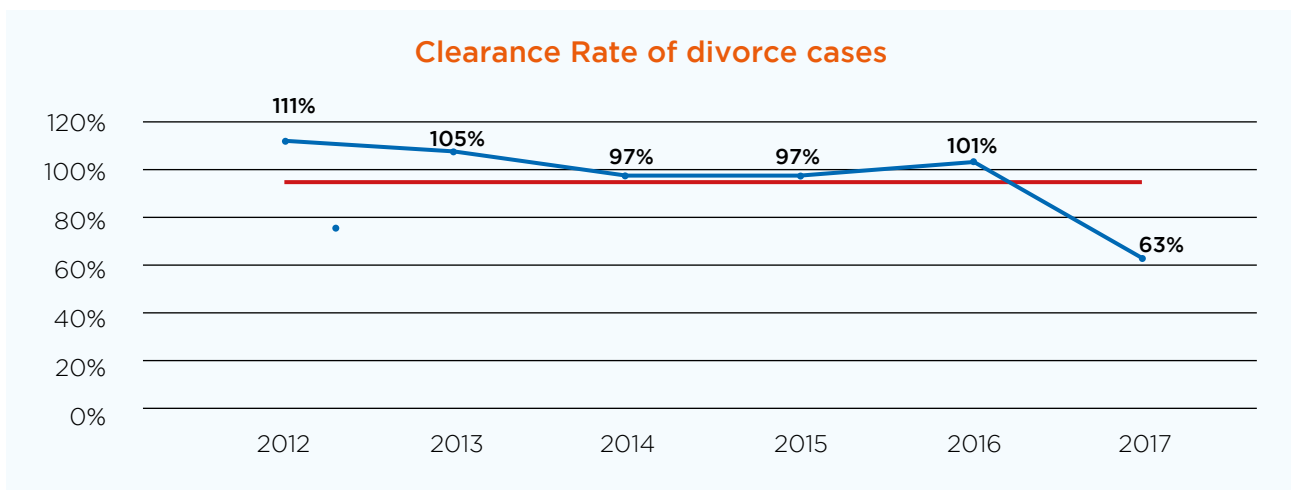
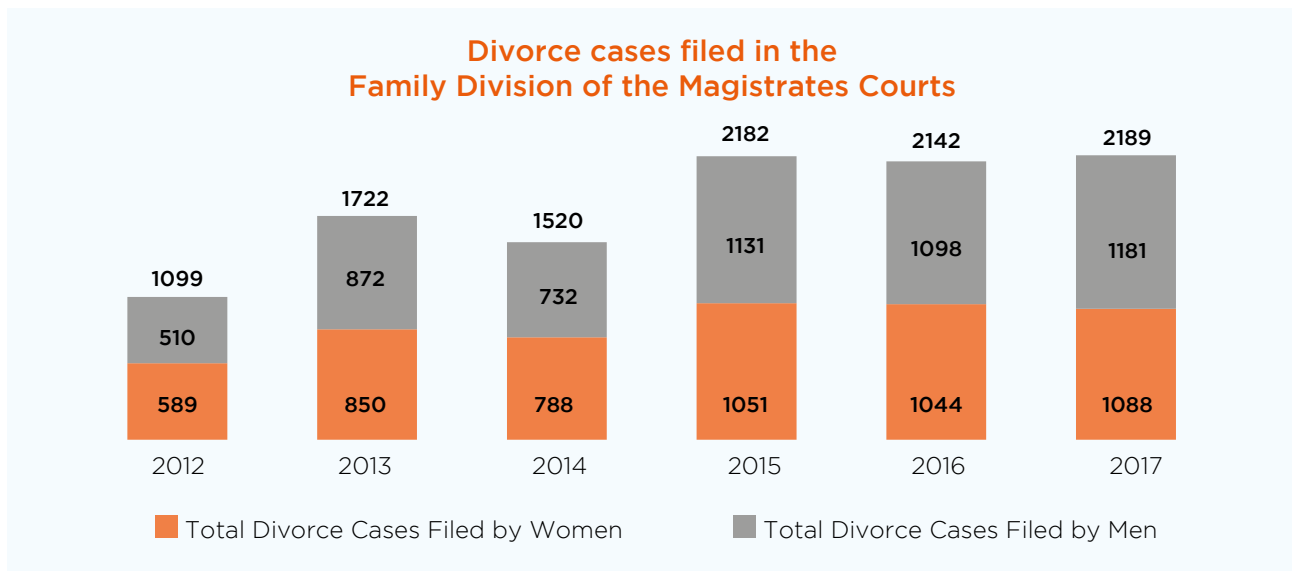
In 2017, the clearance rate for property settlement cases was 142%. The 5 year average trend clearance rate for property settlement cases was 107%.<sup>24</sup>

**Property Settlement Cases Filed in the  
Family Division of the Magistrates Courts - Island Court**

Year	Cases filed by Women	Cases filed by Men
KADAVU		
2016	0	0
2017	0	0
LAU/GAU/KORO		
2016	0	0
2017	0	0
ROTUMA		
2016	0	0
2017	0	0

During the 2016 -2017 Island Court sitting, zero property settlement cases were initiated.<sup>25</sup>

There are 37,750<sup>26</sup> people living in the four island provinces of Fiji (Kadavu, Lau, Lomaiviti and Rotuma). The majority of these people own property communally or through the Vola ni Kawa Bula<sup>27</sup> (Native Land Register). Due to this, it is difficult to initiate property settlement cases.

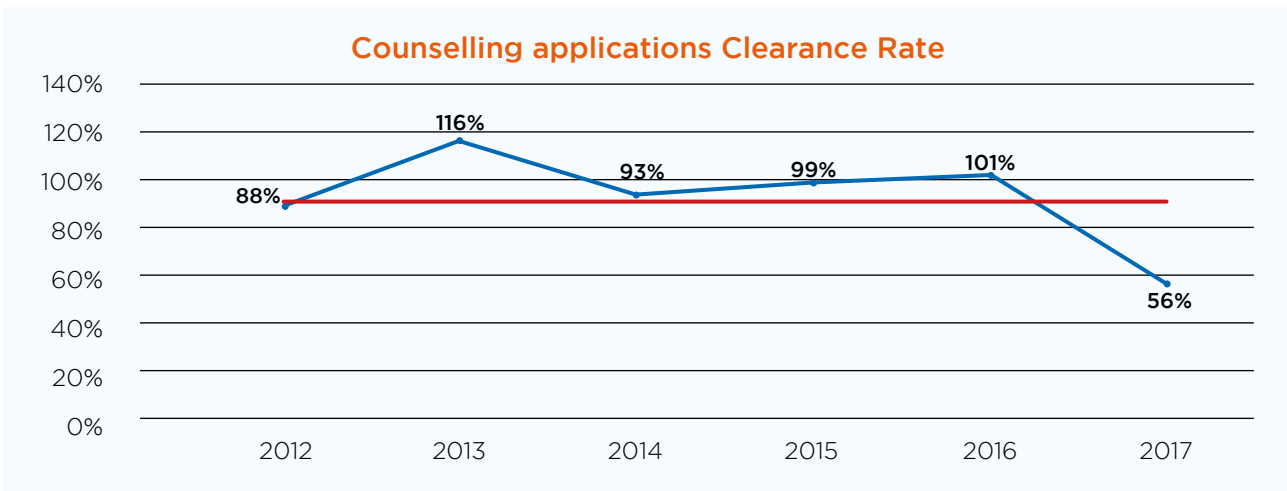
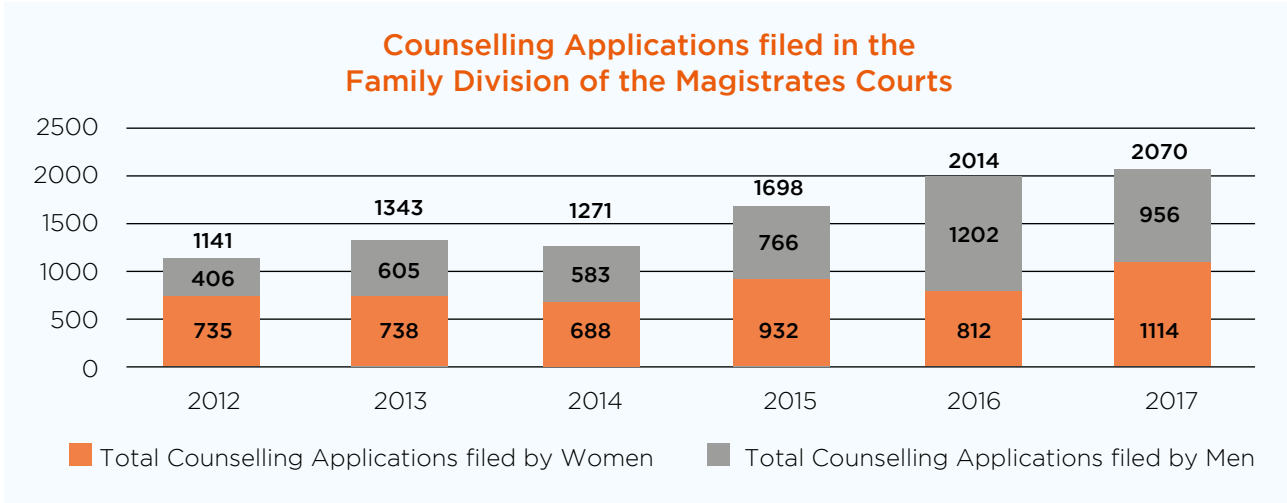


The number of divorce cases filed in the Family Division of the Magistrates Court has doubled from 1099 cases in 2012 to 2189 cases in 2017.

Between 2012-2017, men and women filed similar numbers of divorce cases in the Magistrates Court.<sup>28</sup>

In 2017, the clearance rate for divorce cases was 63%. The 5-year average trend clearance rate for divorce cases was 93%.<sup>29</sup>



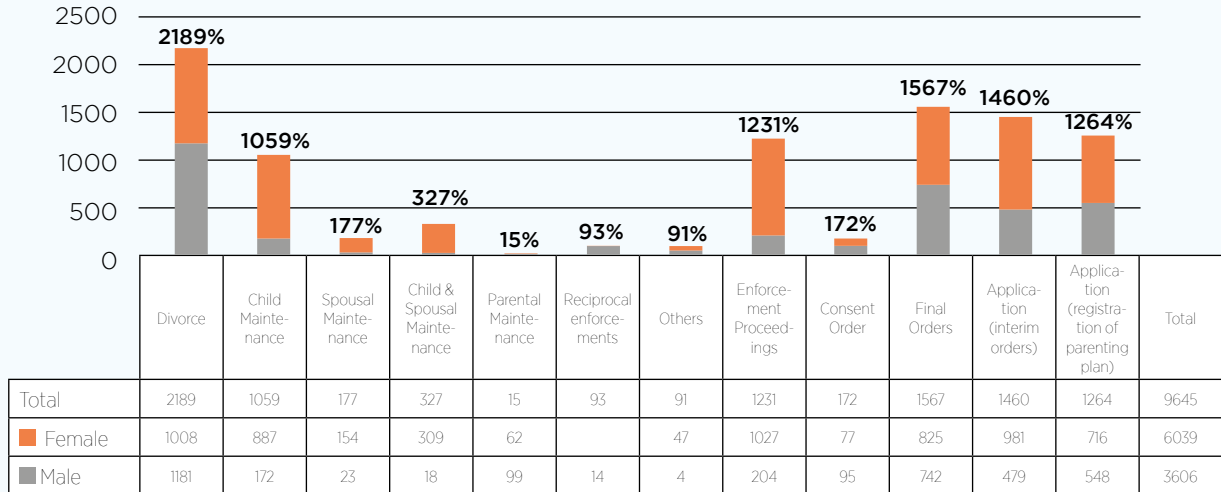


The number of counselling applications filed in the Family Division of the Magistrates Court has almost doubled from 1141 cases in 2012 to 2070 cases in 2017.

Women and men file similar number of counseling applications in the Family Division of the Magistrates Court. Three out of Four counseling applications relate to residence and contact arrangements for children.<sup>30</sup>

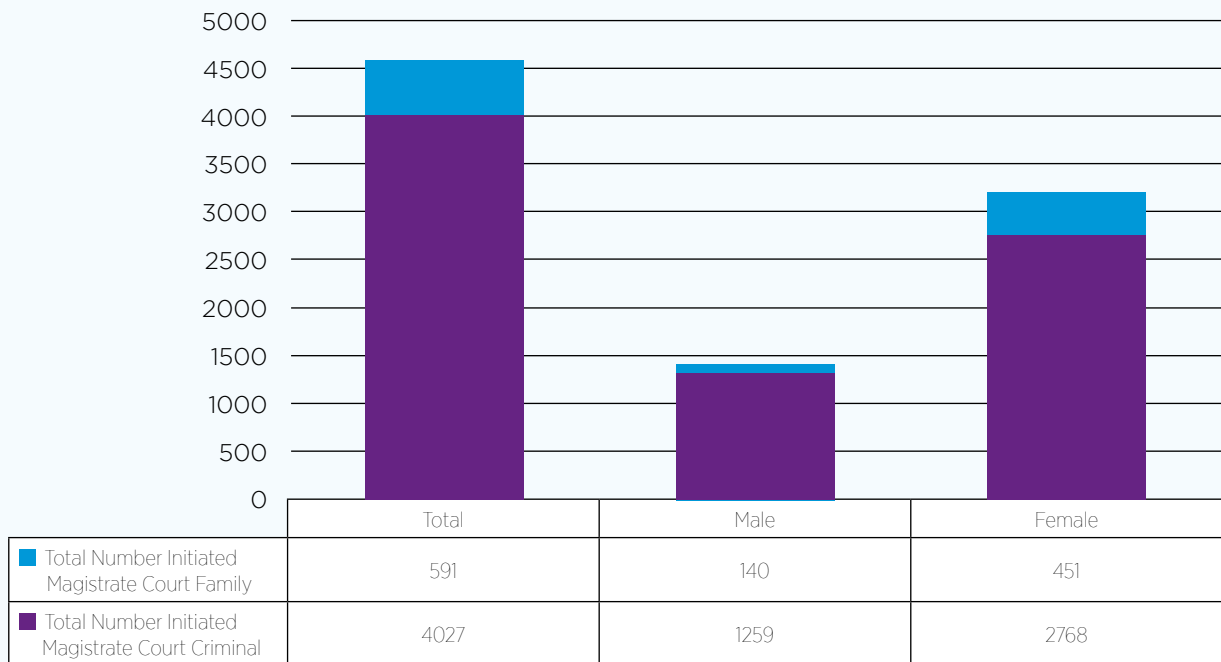
In 2017, the clearance rate for counseling applications 56%. The 5-year average trend clearance rate for counseling applications was 92%.<sup>31</sup>

**Applications in the Family Division of the Magistrates Court 2017 by Sex**



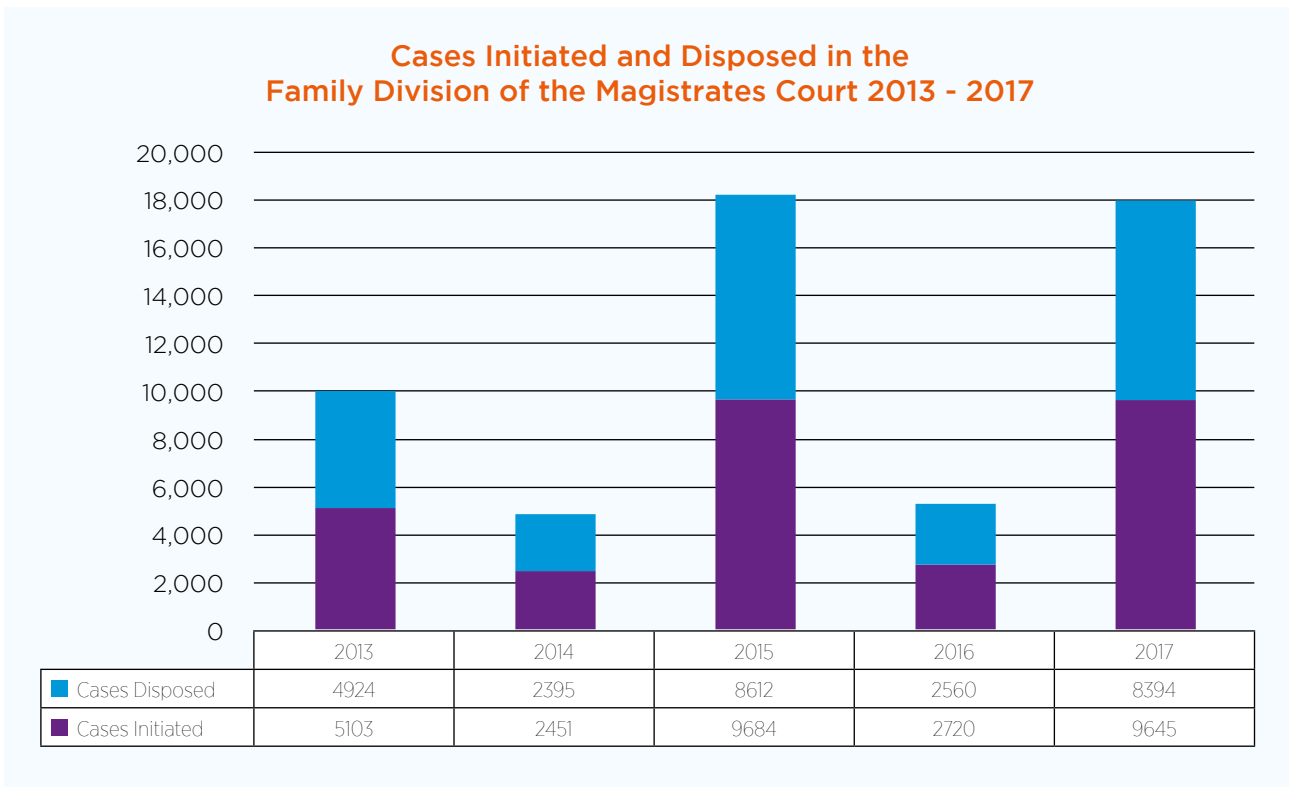
In 2017, 6,039 of 9,645 (63%) applications in the Family Division of the Magistrates Court were filed by a woman.<sup>32</sup>

**DVRO Cases Initiated in 2017**

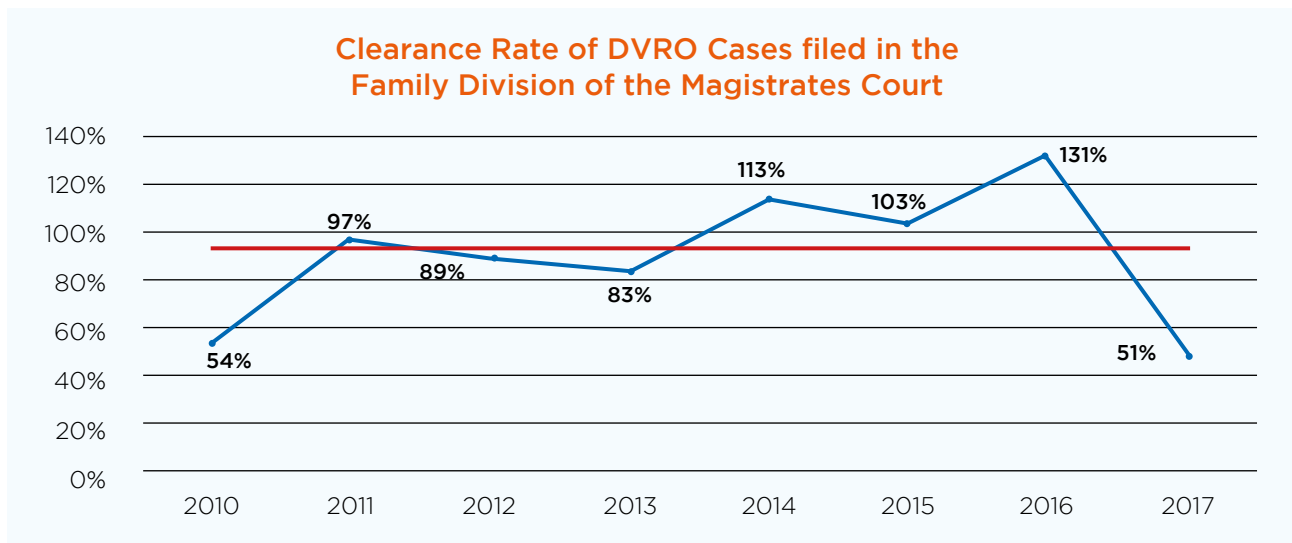
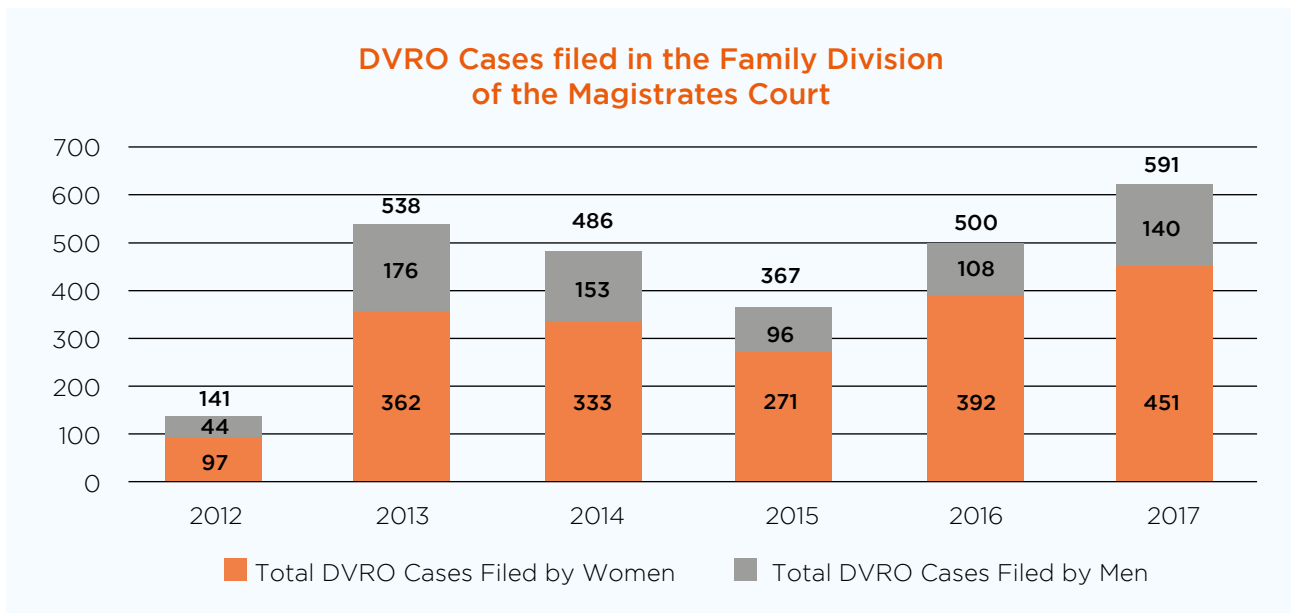


In 2017, 4,027 DVRO applications were initiated in the Criminal Division of the Magistrates Court whilst 591 DVRO applications were initiated in the Family Division of the Magistrates Court. This shows that nine out of ten (87%) of all DVRO applications are initiated in the Criminal Division of the Magistrates Court.<sup>33</sup> Section 26(1)(b) of the Domestic Violence Act allows the Courts to make Domestic Violence Restraining Orders on its own motion to ensure the safety and wellbeing of a victim in domestic violence.<sup>34</sup> The Courts application of this section in Criminal cases whereby the parties share a domestic relationship accounts for the high number of DVRO applications initiated in the Criminal Division.<sup>35</sup>

In 2017, women initiated 9258 family law or domestic violence restraining order applications in the Family and Criminal Divisions of the Magistrates Court.<sup>36</sup>



The Family Division of the Magistrate Court has been able to dispose of the majority of the cases initiated in the last 5 years.<sup>37</sup> The average clearance rate in the last 5 years is 91%.<sup>38</sup>

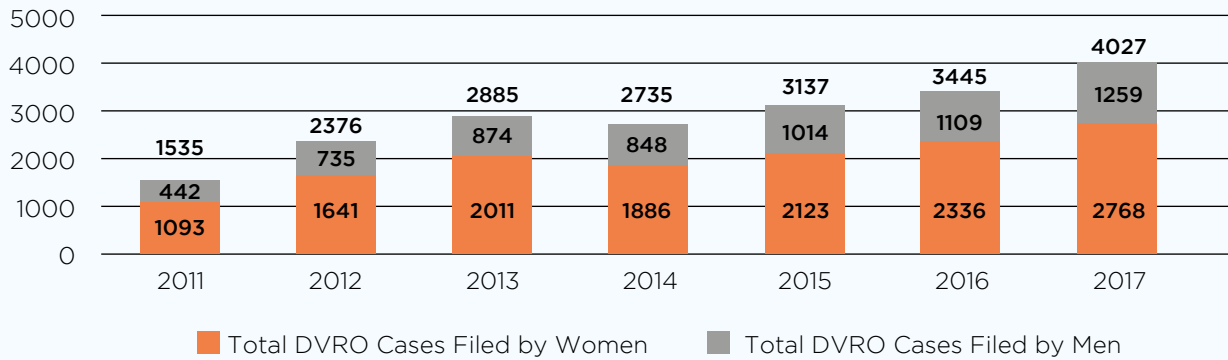


Women initiating domestic violence restraining order applications has quadrupled from 97 cases in 2012 to 451 cases in 2017.<sup>39</sup>

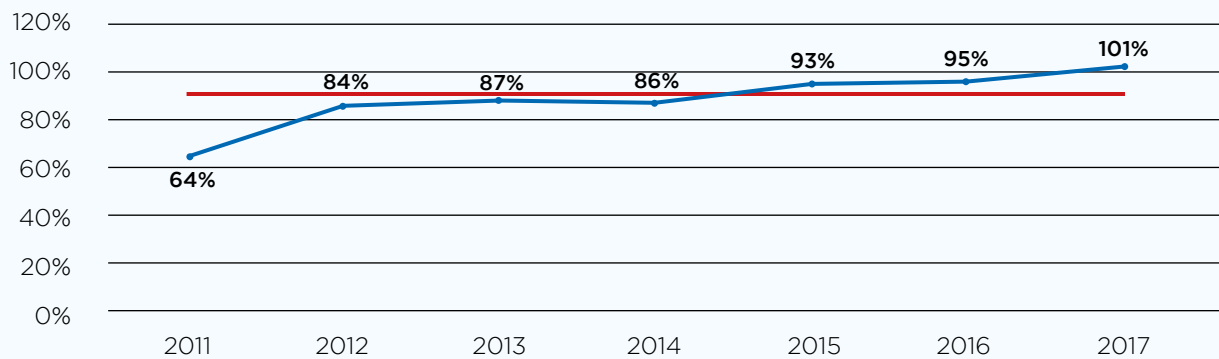
Women bring 7 out of 10 DVRO cases in the Family Division of the Magistrates Court.<sup>40</sup>

In 2017, the clearance rate for DVROs was 51%. The 5 year average trend clearance rate was 96%.<sup>41</sup>

### DVRO Cases filed in the Criminal Division of the Magistrates Court



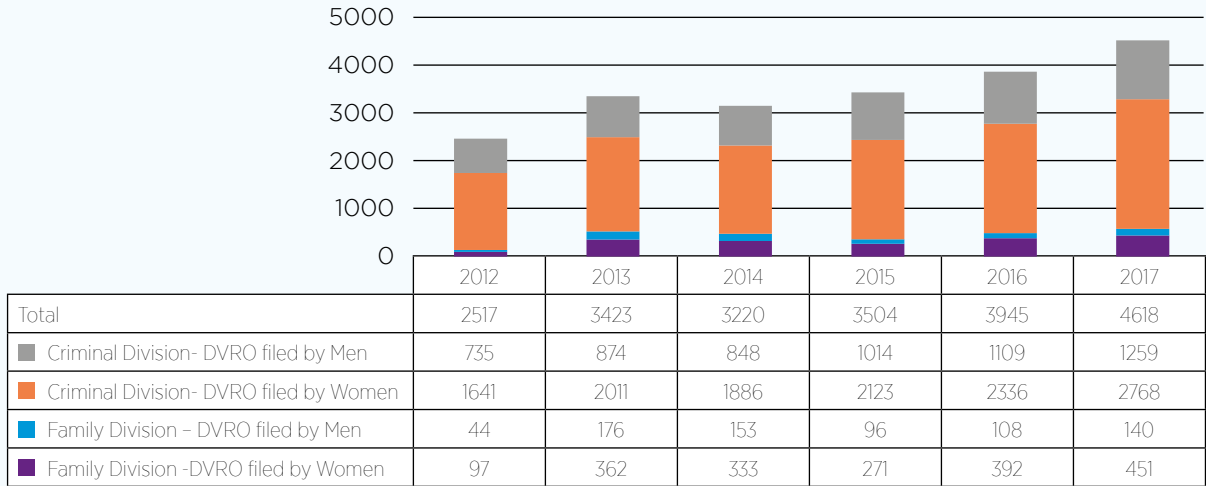
### Clearance Rate



The number of women applying for DVROs has more than doubled between from 1,093 cases in 2011 to 2,768 cases in 2017.<sup>42</sup>

In 2017, the clearance rate for DVROs was 101%. The 5 year average trend clearance rate was 92%.<sup>43</sup>

### DVRO Applications in the Family and Criminal Divisions of the Magistrates Court

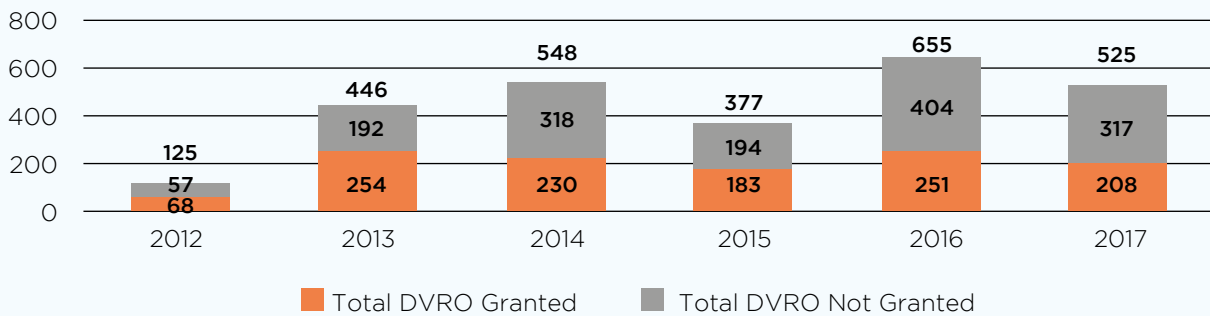


The highest number of DVRO applications are filed in the Criminal Division of the Magistrates Court.<sup>44</sup>

Women filed 9 out of 10 DVRO cases from 2012 to 2017.<sup>45</sup>

87% of DVROs are filed in the Criminal Division of the Magistrates Court, however data is not collected on the outcomes of these cases.<sup>46</sup>

### Outcome of the DVRO Applications in the Family Division of the Magistrates Court



The Family Division of the Magistrates Court does collect data on the outcomes of DVRO cases. In 2017, the Fiji Courts presented outcomes in these cases as 'DVROs granted' or 'DVROs not granted'. In 2016 this gave the impression that the Judicial Officers had dismissed 404 of 655 (62%) of DVRO applications. The Fiji Courts analysed the Family Division data at the Suva

Registry and found that the category of "not granted" included following<sup>47</sup>:

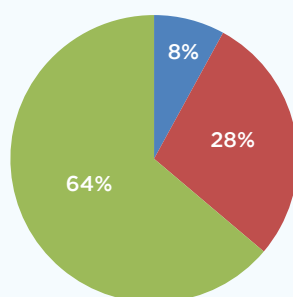
- Dismissed - A case is dismissed after being heard and the orders are not granted on the merits for example, lack of evidence.
- Withdrawn - In the instance whereby the Applicant voluntarily asks to withdraw their application for a DVRO.
- Struck Out - A case is disposed without hearing the case for example, the parties have not appeared at court.
- Revocation - Cancellation of permanent orders.

### Restraining Order Cases Filed in the Family Division of the Suva Magistrates Courts - Not Granted

The following 'not granted' data is only from Suva Family Court Registry.

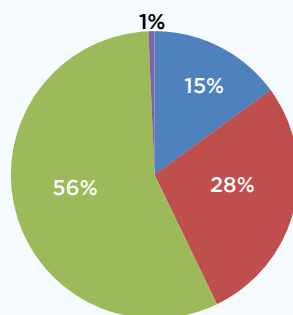
2016		2017	
Dismissed	15	Dismissed	22
Withdrawn	53	Withdrawn	41
Struck Out (non-appearance/dual application)	120	Struck out( non-appearance/dual application/living separately/settled)	83
Revocation	0	Revocation	1
<b>Total Not Granted</b>	<b>188</b>	<b>Total Not Granted</b>	<b>147</b>

#### 2016 - Not Granted by Reasons



- Dismissed
- Withdrawn
- Struck Out (non appearance/ dual application)
- Revocation

#### 2017 - Not Granted by Reasons

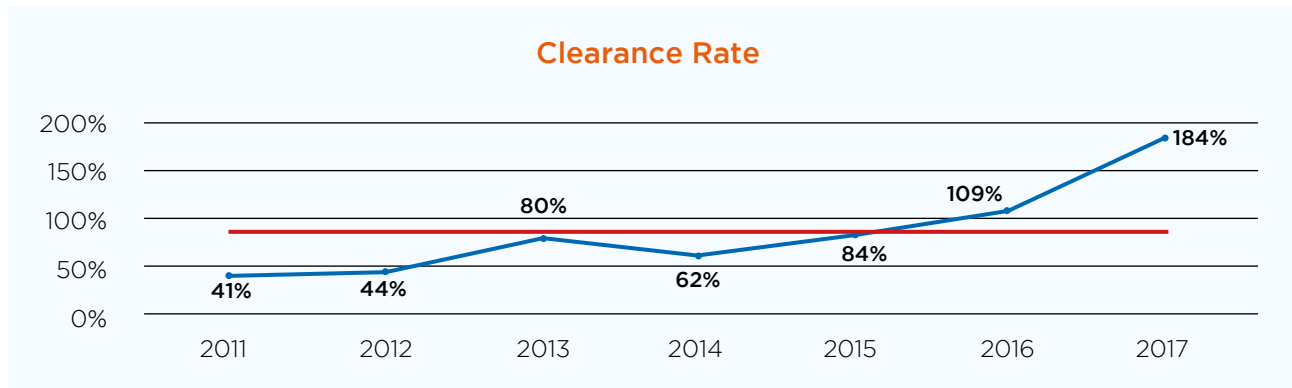
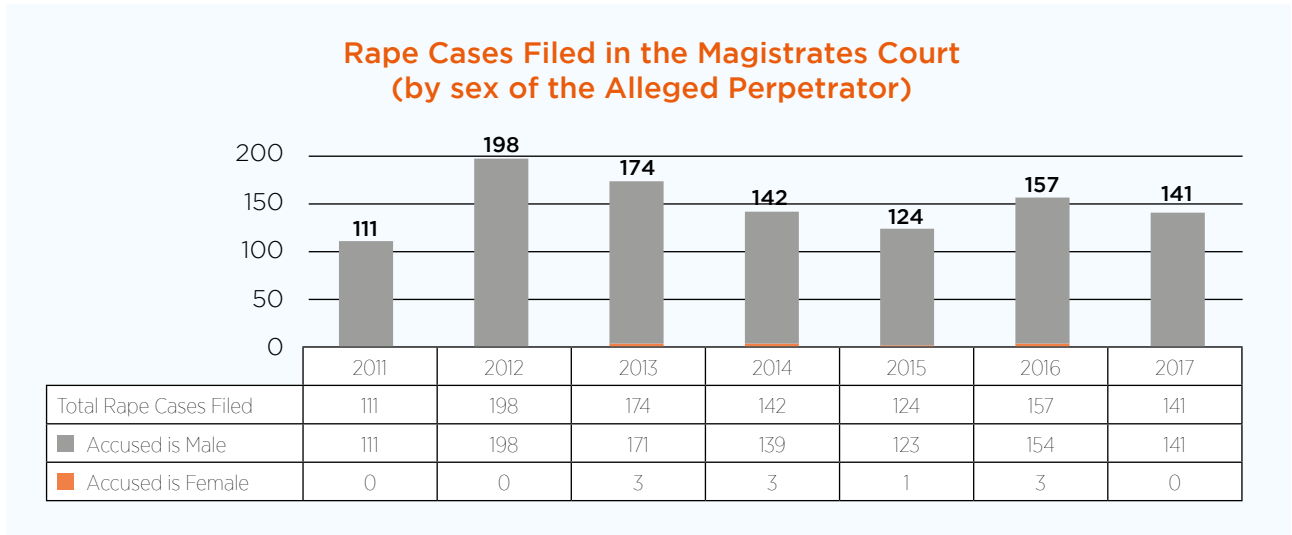


- Dismissed
- Withdrawn
- Struck out( non appearance/ dual application/living separately/settled)
- Revocation

Almost 50% of DVROs- Not Granted in the Family Division of the Magistrates Court were from the Suva Family Court Registry.<sup>48</sup>

In the Suva Magistrates Court, 8 out of 10 of the cases analyzed were struck out for non-appearance or withdrawn by the parties. As women bring the majority of DVRO cases to the Courts, this raises concerns as to the reasons behind their withdrawal or non-appearance in these cases.<sup>49</sup>

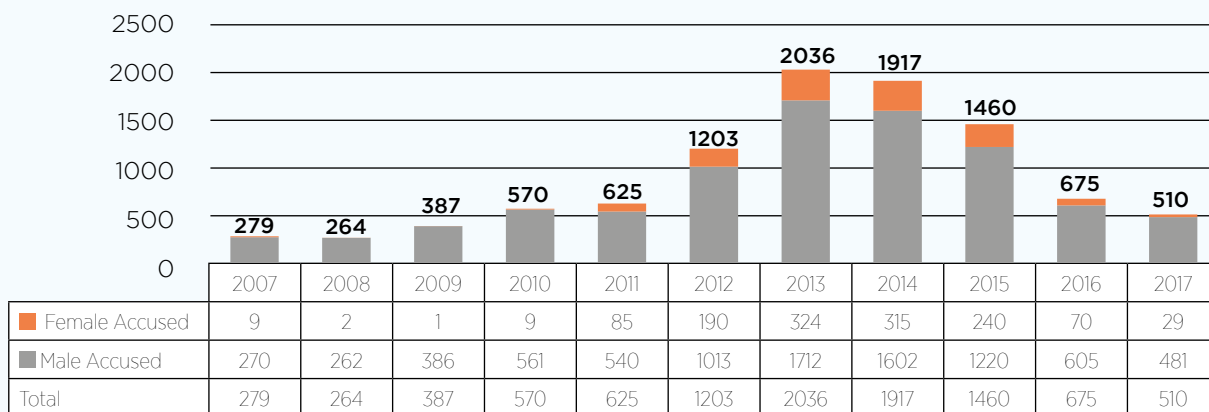
### Court Data - Criminal Cases involving Violence Against Women



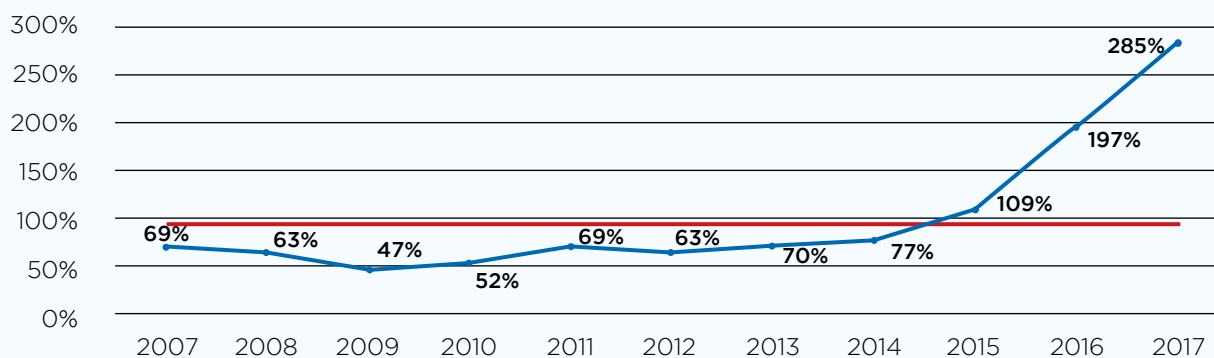
Between 2011 to 2017, in 99% of Rape cases filed in the Magistrates Court the accused was male.<sup>50</sup> Over the last 5 years the average clearance rate in Rape cases heard in the Magistrates Court is 104%.<sup>51</sup>



### Sexual Offence cases filed in the Magistrates Court (by Sex of the Alleged Perpetrator)



### Clearance Rate



The number of sexual offence cases has grown from 279 in 2007 to 2,036 in 2013 before falling to 510 cases in 2017.<sup>52</sup> Between 2007-2017, in 94% of sexual offences cases filed in the Magistrates Court the accused is male. Over the last 5 years the average clearance rate for sexual offence cases is 148%.<sup>53</sup>

## Analysis of All High Court Family Law Cases 2010-16 – 260 Cases

The Family High Court mainly hears appeal and first instance nullity cases.

There are similar numbers of men and women bringing cases to the Court<sup>54</sup>:

- 43% of women have no legal representation in their Family Court cases compared with 35% of men.
- 49% of men and 42% of women pay for private legal representation for their cases in the High Court.

In a random sample of 25% of all cases<sup>55</sup>:

- no instance of gender stereotypes, customary forms of reconciliation or other contentious factors were raised by the Judicial Officer.
- 69% of the cases were dismissed.
- 42% of the cases were for nullity of marriage.

## Analysis of all Rape Cases published on PacLII decided in the High Court (2017)

In none of the 60 rape cases decided in 2017 in the High Court were gender stereotypes or customary forms of reconciliation raised by the Judicial Officer.<sup>56</sup>

Of the 60 rape cases analyzed in 2017<sup>57</sup>:

- In 42 of 60 cases (70%) the Judge found the accused guilty of rape
- In 6 of 60 cases (10%) the accused was found guilty of a lesser charge
- In 12 of 60 cases (20%) cases the accused was acquitted

The average starting sentence in the 42 cases where the Judge found the accused guilty of rape was 9 years and 10 months. The average final sentence was 11 years and 6 months.<sup>58</sup>

In 1 out of 60 cases analyzed, a forensic pathology report was referred to in Court.<sup>59</sup>

It took an average of 2.9 years for the judgment to be handed down from the date of the incident.<sup>60</sup>

Of the 60 rape cases<sup>61</sup>:

- 28 cases (47%) involved girls aged 1 to 17 years as the victim survivor. Lowest age being a 1 year old in 2 separate cases.
- 32 cases (53%) involved women as the victim/survivor.
- 1 case involved person with a disability as the victim/survivor.

Men were the accused in 59 out of 60 cases (98%) with an average age of 37 years.<sup>62</sup>

## **Analysis of appealed rape sexual assault cases published on PacLII decided in the Court of Appeal (2016- 2017)**

Of the 129 rape sexual assault cases analyzed from 2016 and 2017, 60 were the subject of an appeal and show<sup>63</sup>:

- All 60 were appealed by the Defendant.
- In the 4 appeals that had been finalized by June, 2018:
  - In 3 cases the original sentence was affirmed on appeal.
  - 1 case the original sentence was reduced on appeal.

## Transparency – Sex Disaggregated Data and Annual Reports

1. The Fiji Courts collect sex disaggregated data for family law and violence cases. The Court is committed to the swift publication of criminal court cases on PacLII, often publishing judgments within one week of the case being decided in court. In 2016, the Court published more than 1,000 cases on PacLII.
2. The Fiji Courts does not however publish any family law judgments on PacLII as these judgments are not yet redacted or anonymised to remove the parties' names.
3. The Fiji Courts also have not published an annual report since 2011.
4. The Judicial Department has customer feedback forms in the Family Court Registry in Suva encouraging feedback from court clients on their experience at the court, what could be improved and what clients would like to see in future.

## End Notes

- 1 Source: Fiji Budget Estimates 2015
- 2 Source: Fiji Budget Estimates 2016
- 3 Source: Fiji Budget Estimates 2016/2017
- 4 Source: Supplement to the 2017-2018 Budget Estimates
- 5 Source: Supplement to the 2017-2018 Budget Estimates
- 6 Source: Fiji Budget Estimates 2015
- 7 Source: Supplement to the 2017-2018 Budget Estimates
- 8 Source: Data provided to FWRM by the Fiji Judiciary (2012-2016 was received in August 2017 and 2017 data in March 2018).
- 9 Source: Data provided to FWRM by the Fiji Judiciary (2009-2016 was received in August 2017 and 2017 data in March 2018).
- 10 Source: Data provided to FWRM by the Fiji Judiciary (2009-2016 was received in August 2017 and 2017 data in March 2018).
- 11 Source: Data provided to FWRM by the Fiji Judiciary (received April 2018).
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- 24 Source: Data provided to FWRM by the Fiji Judiciary (2012-2016 was received in August 2017 and 2017 data in March 2018).
- 25 Source: Data provided to FWRM by the Fiji Judiciary (received April 2018).
- 26 Census of Population and Housing, 2007, Fiji Bureau of Statistics <https://www.statsfiji.gov.fj/statistics/2007-census-of-population-and-housing> (accessed June 2018)
- 27 I Taukei Lands and Fisheries Commission, Ministry of iTaukei Affairs <http://www.itaukeiaffairs.gov.fj/index.php/divisions/itaukei-lands-and-fisheries-commission> (accessed June 2018)
- 28 Source: Data provided to FWRM by the Fiji Judiciary (2012-2016 was received in August 2017 and 2017 data in March 2018).
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- 30 Source: Data provided to FWRM by the Fiji Judiciary (2012-2016 was received in August 2017 and 2017 data in March 2018).

## Data Analysis - Family Law and Violence Against Women and Children Cases

## Fiji Courts

- 31 Source: Data provided to FWRM by the Fiji Judiciary (2012-2016 was received in August 2017 and 2017 data in March 2018).
- 32 Source: Data provided to FWRM by the Fiji Judiciary (received April 2018).
- 33 Source: Data provided to FWRM by the Fiji Judiciary (received April 2018).
- 34 Source: Section 26(1)(a) of the Domestic Violence Act 2009.
- 35 Source: Information provided to FWRM by the Fiji Judiciary (received April 2018).
- 36 Source: Data provided to FWRM by the Fiji Judiciary (received April 2018).
- 37 Source: Data provided to FWRM by the Fiji Judiciary (2013-2016 was received in August 2017 and 2017 data in March 2018).
- 38 Source: Data provided to FWRM by the Fiji Judiciary (2013-2016 was received in August 2017 and 2017 data in March 2018).
- 39 Source: Data provided to FWRM by the Fiji Judiciary (2012-2016 was received in August 2017 and 2017 data in March 2018).
- 40 Source: Data provided to FWRM by the Fiji Judiciary (2012-2016 was received in August 2017 and 2017 data in March 2018).
- 41 Source: Data provided to FWRM by the Fiji Judiciary (2010-2016 was received in August 2017 and 2017 data in March 2018).
- 42 Source: Data provided to FWRM by the Fiji Judiciary (2011-2016 was received in August 2017 and 2017 data in March 2018).
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- 47 Source: Data provided to FWRM by the Fiji Judiciary (received April 2018).
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- 50 Source: Data provided to FWRM by the Fiji Judiciary (2011-2016 was received in August 2017 and 2017 data in March 2018).
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- 52 Source: Data provided to FWRM by the Fiji Judiciary (2007-2016 was received in August 2017 and 2017 data in March 2018).
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- 54 Source: Data provided to FWRM by the Fiji Judiciary (received June 2017)
- 55 Source: Data provided to FWRM by the Fiji Judiciary (received June 2017)
- 56 Source: Data retrieved from Pacific Islands Legal Information Institute <http://www.paclii.org/> (accessed January 2018)
- 57 Source: Data retrieved from Pacific Islands Legal Information Institute <http://www.paclii.org/> (accessed January 2018)
- 58 Source: Data retrieved from Pacific Islands Legal Information Institute <http://www.paclii.org/> (accessed January 2018)
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- 60 Source: Data retrieved from Pacific Islands Legal Information Institute <http://www.paclii.org/> (accessed January 2018)
- 61 Source: Data retrieved from Pacific Islands Legal Information Institute <http://www.paclii.org/> (accessed January 2018)
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- 63 Source: Data provided to FWRM by Fiji Judiciary (received June 2018)





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