

# Full Country Report on Dispute-Resolution Practices in Fiji

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## 1.0 Introduction

Fiji possesses a complex, pluralistic legal landscape where deeply embedded customary practices coexist and interact with a formal legal system inherited from its colonial past. This dualism is not merely a legal curiosity but a lived reality for the nation's citizens, who navigate both traditional and state-sanctioned channels to resolve their disputes. The strategic importance of understanding this coexistence cannot be overstated for anyone involved in legal, diplomatic, or commercial processes with Fijian nationals, as the path to a fair and durable resolution often lies at the intersection of these two worlds.

### 1.1 Overview of Fiji's Cultural and Legal Composition

Fiji's cultural and legal environment is shaped by its history. The nation's population is composed of two primary cultural groups: the indigenous Fijians, known as *taukei*, and the Indo-Fijian population, whose ancestors were brought to the islands as indentured laborers by the British between 1879 and 1916. This colonial legacy created not only a distinct social dynamic but also a rigid dual system of land ownership. Today, approximately 84% of Fiji's land is held under customary tenure, vested in tribal groups (*mataqali*), of which the vast majority (approximately 91% of total land) is administered by the iTaukei Land Trust Board (TLTB). This arrangement is a significant and persistent source of conflict; indeed, research shows land disputes are one of the most common legal problems experienced by Fijians. Consequently, Fiji operates under a dual system of dispute resolution, comprising deeply rooted traditional mechanisms alongside a formal, state-sanctioned legal framework modeled on Western common law.

### 1.2 Purpose and Scope of the Report

The purpose of this report is to provide a comprehensive, analytically robust overview of both customary and formal dispute-resolution practices in Fiji. The scope of this analysis covers the historical and cultural foundations that underpin traditional conflict resolution, the contemporary constitutional and statutory framework governing the formal justice system, and the complex, often fraught, interplay between these two systems. It concludes with a comparative analysis of Fijian practices against Western mediation standards and provides practical implications for mediators and legal professionals engaging with parties from Fiji.

### 1.3 Significance of Understanding Fijian Dispute Resolution

A nuanced understanding of these parallel systems is critical for effective engagement. Research from the 2018 HiiL "Justice Needs and Satisfaction" report reveals that a significant portion of the Fijian population—47%—encounters serious legal problems over a four-year period. In seeking justice, they navigate both formal institutions and informal community channels. This dynamic creates what has been aptly described as an "uneasy transition"

between the two systems, where individuals and even state actors like the police may refer matters back and forth, creating uncertainty and potential barriers to justice. For external legal and mediation practitioners, appreciating this reality is fundamental to designing processes that are not only effective but also culturally safe and respectful.

This report will begin by examining the historical and cultural bedrock upon which Fiji's unique approach to conflict resolution is built.

## 2.0 Cultural and Historical Foundations of Conflict Resolution

To comprehend contemporary dispute resolution in Fiji, one must first understand its historical and cultural bedrock. Traditional mechanisms for resolving conflict are not relics of a bygone era but living systems that continue to shape social relations, particularly in rural communities. These practices, profoundly influenced by British colonial policy, are rooted in core cultural values that prioritize the restoration of communal harmony over the assertion of individual rights, a philosophical orientation that stands in stark contrast to Western legal traditions.

### 2.1 Major Cultural Groups and Colonial Context

Fiji's social and legal fabric is woven from the experiences of its two major cultural groups: the indigenous Fijians (*taukei*) and the Indo-Fijians. Indo-Fijians were brought to Fiji by the British colonial administration between 1879 and 1916 to work on sugar cane plantations. The British policy of "indirect rule" deliberately created separate administrations for the two groups to minimize social friction and maintain traditional *taukei* structures. This policy of 'indirect rule' was not a passive preservation of tradition; it was an active construction of it, freezing dynamic local customs into a rigid, codified system that served colonial administrative ends. This policy also institutionalized a rigid land-tenure system that protected native land from sale, a decision that has had a lasting impact on the social, economic, and political dynamics between the two communities and remains a primary source of legal conflict.

### 2.2 Traditional Mechanisms for Resolving Conflict

Rooted in the need to maintain peace in close-knit, interdependent communities, a sophisticated array of traditional dispute resolution mechanisms exists. While varying in formality, they share a common goal of reconciliation and restoration.

- ***Turaga ni koro* (Village Headman):** The village headman is typically the first point of contact for disputes at the community level, acting as a mediator and facilitator for minor conflicts before they escalate.
- **Chiefs and Elders' Councils:** As the primary authority figures in the customary justice system, chiefs and councils of elders hear disputes, facilitate dialogue, and make decisions that are considered binding by the community.
- **Reconciliation Ceremonies ( *Bulubulu* ):** The *bulubulu* is a formal, ritualized process of apology and forgiveness aimed at mending relationships. This ceremony is not merely a settlement but a social purification, ritually severing the conflict and reintegrating the parties into the communal whole.

- **Talanoa Dialogue:** A less formalized and more intuitive interactive dialogue, *talanoa* is a process of inclusive, participatory, and transparent discussion used to bring leaders and parties together to share stories and find consensus.
- **Restitution and Compensation:** Central to customary justice is the concept of restoration, often involving the presentation of customary valuables or other forms of compensation to settle grievances. The presentation of a *tabua* (whale's tooth) is the highest form of customary settlement, representing a profound gesture that carries more weight than its material value, symbolizing the gravity of the apology and the restoration of social order.

## 2.3 Historical Principles Underpinning Customs

The philosophical principles that form the foundation of these mechanisms are fundamentally restorative rather than retributive. The primary objective is the restoration of community harmony and the mending of relationships, based on the practical understanding that the parties must continue to live together. Two core principles guide this approach:

1. **Collectivism:** The community is prioritized over the individual. A wrongdoing is not just an offense against an individual but a disruption to the entire social fabric.
2. **Kinship:** Responsibility for an act and its resolution is often shared by the entire family or clan (*mataqali*). This focus on collective responsibility contrasts starkly with the Western common law tradition's emphasis on individual culpability and the isolation of the offender from the community during the penalty process.

## 2.4 Function in Pre-Colonial and Early Contact Periods

Prior to colonial intervention, these systems operated autonomously. Traditional land transfers, for instance, occurred through conquest, dowry, and gifts, with ownership proven by usage and community recognition rather than formal registration. The arrival of the British marked a turning point. What is often referred to as "tradition" today is, in fact, an amalgam of British administrative ideas and selected local customs. The colonial administration systematically codified certain regional customs, giving them universal application, while outlawing others it found offensive. This process simplified and institutionalized custom, freezing it in a way that altered its naturally dynamic and flexible character.

This historical context provides the foundation for the modern legal framework that was constructed alongside, and often in tension with, these enduring customary practices.

# 3.0 Contemporary Legal Framework and Formal Dispute-Resolution Systems

Operating in parallel with these customary practices is Fiji's modern, state-based legal system. Established under the 2013 Constitution, this framework provides a formal, rights-based avenue for justice. It includes a structured judicial hierarchy and a growing ecosystem of Alternative Dispute Resolution (ADR) mechanisms modeled on Western systems, which are increasingly utilized in commercial, civil, and even state-related disputes.

## 3.1 Constitutional and Judicial Structure

The 2013 Constitution is the supreme law of Fiji, establishing an independent judiciary and a number of constitutionally mandated commissions. The court system is hierarchical, providing clear avenues for appeal and review.

- **Supreme Court:** As the final appellate court, it hears appeals from the Court of Appeal and has original jurisdiction over specific constitutional questions.
- **Court of Appeal:** Hears appeals from judgments of the High Court.
- **High Court:** Possesses unlimited original jurisdiction in civil and criminal matters and hears appeals from the Magistrates' Courts.
- **Magistrates' Courts:** These are the courts of first instance for the majority of civil and criminal cases, with jurisdiction over matters such as personal claims up to \$50,000 FJD and criminal offenses with sentences up to 10 years.

The Constitution also mandates the creation of key bodies to ensure access to justice and the protection of rights, including the **Human Rights and Anti-Discrimination Commission** and the **Legal Aid Commission**.

### 3.2 Key Institutions and Statutory Provisions

Several statutory bodies and key pieces of legislation are central to the administration of justice and dispute resolution in Fiji, particularly concerning land and family matters.

- **Native Lands Commission (NLC):** *The primary arbiter of customary land ownership, operating outside the formal court system.* Established under the Native Lands Act, the NLC is charged with the critical duty of ascertaining and resolving disputes over the ownership of native lands and the registration of customary landowning units in the *Vola ni Kawa Bula* (VKB).
- **iTaukei Land Trust Board (TLTB):** *The administrative custodian of native land, whose approval is required for leases and land use.* This board administers approximately 91% of all land in Fiji on behalf of the landowning *mataqali*, and its approval is required for all dealings concerning native land.
- **Small Claims Tribunal:** *An accessible, low-cost forum for minor civil disputes within the formal judiciary.* A division of the Magistrates' Court, this tribunal is designed to provide prompt and inexpensive relief for civil claims under \$5,000 FJD, with simplified procedures that do not require legal representation.
- **Legal Aid Commission:** As guaranteed by the Constitution, this commission provides legal services, advice, and representation to individuals who cannot afford to hire a private lawyer, ensuring that access to justice is not contingent on financial means.
- **Relevant Legislation:** Key statutes that govern dispute resolution include the **Domestic Violence Act**, the **Crimes Act**, and the **Family Law Act**, which provide the legal framework for addressing criminal offenses and family-related disputes.

### 3.3 State-Sanctioned and Private ADR Programs

Alongside the court system, Fiji has developed a robust set of ADR programs that reflect an alignment with global trends in dispute resolution.

- **Fiji Mediation Centre (FMC):** A private body offering professional mediation services for family, commercial, and small case disputes. The FMC operates with

formal rules and procedures, provides a roster of accredited mediators, and offers a model mediation clause that parties can include in their contracts to pre-emptively choose mediation.

- **ADR Framework of the Fiji Revenue & Customs Service (FRCS):** An example of a state body that has adopted a structured, Western-style mediation process for resolving tax disputes, managed by impartial ADR Practitioners who act as neutral facilitators.
- **Court-Annexed Mediation (CAM):** Mediation is also integrated into the civil court process, where judges can refer cases to CAM at their discretion to encourage settlement before a trial.
- **International Arbitration:** The enactment of the **International Arbitration Act 2017** signals Fiji's commitment to aligning with international standards for commercial dispute resolution and its ambition to serve as a regional hub for arbitration.

The existence of these two distinct systems—one rooted in collectivist custom and the other in individualistic, rights-based law—naturally raises the question of how they interact in practice.

## 4.0 Relationship Between Customary Practices and the Modern Legal System

The interaction between Fiji's customary and formal legal systems is not one of simple separation but of complex coexistence, defined by a central paradox: the very points of formal recognition and parallel operation are often the sources of significant friction. Rather than indicating a harmonious integration, these intersections frequently highlight the deep philosophical divides between the two frameworks. This section analyzes the key points of recognition, parallel operation, and tension that define Fiji's pluralistic legal environment.

### 4.1 Formal Recognition of Customary Law

While the 2013 Constitution is the supreme law, other legislation provides for the application and consideration of custom within the formal legal system. The **iTaukei Affairs Act**, for example, explicitly encourages the use of traditional reconciliation to maintain peaceful coexistence. In criminal law, case law demonstrates that courts have the discretion to consider a customary reconciliation ceremony (*bulubulu*) as a mitigating factor in sentencing. However, judges are increasingly reluctant to accept this in serious cases, particularly domestic violence. As Judge Yohan Liyanage noted in *State v Chand*, victims often do not have an equal voice in such processes: "Judicial experience has shown that they do not have equal bargaining power as their spouses. They are forced to reconcile... because of cultural and social constraints placed on them. The Domestic Violence Decree is designed to take away those constraints..."

### 4.2 Parallel and Hybrid Operations

In many instances, the two systems operate in parallel, with citizens choosing the forum they believe is most appropriate. A prime example is the **Native Lands Commission (NLC)**, an institution that operates largely outside the formal judicial system. Its mandated duty is to resolve disputes over customary land and titles, and its decisions have been designated by law

as "final and conclusive," and not subject to review or appeal in the formal courts. This creates a distinct and powerful justice stream for a critical area of Fijian life. A more informal parallel operation occurs at the community level, where it is common practice for police to refer minor disputes, such as neighborhood conflicts, back to the *Turaga ni koro* for resolution before formal charges are considered.

### 4.3 Identified Frictions and Limitations

Despite these points of intersection, there are critical areas where customary norms and modern legal principles are in direct conflict. These tensions highlight the profound philosophical differences between a system focused on communal harmony and one centered on individual human rights.

- **Individual Rights vs. Communal Harmony: The Case of Domestic Violence:** The most significant area of friction concerns domestic violence and sexual and gender-based violence (SGBV). While customary reconciliation aims to restore relationships, this goal is fundamentally at odds with the legal imperative to protect victims and hold perpetrators accountable. Judicial opinion has become increasingly firm that under the **Domestic Violence Decree 2009**, such offenses are "no longer reconcilable." There is widespread concern that customary reconciliation can be forced upon victims, who may be pressured by family and community to forgive their abusers to maintain peace.
- **Denial of Due Process:** The final and conclusive authority of the NLC presents a fundamental paradox. The legal finality, intended to safeguard the integrity of customary land tenure, simultaneously denies indigenous Fijians the due process protections and right of appeal that are central tenets of the formal legal system to which they are also subject. This creates what critics call an "accountability crisis" by prohibiting judicial review and effectively denying indigenous Fijians the right to challenge decisions affecting their fundamental land rights through the formal court system.
- **Contradiction in Law:** Direct contradictions exist between customary and statutory law. A clear example is found in inheritance laws. Legal adoptions, formally recognized in the Register of Births, are not recognized in the *Vola ni Kawa Bula* (Register of Customary Land Owners). This means a legally adopted child cannot inherit the customary land rights of their adoptive parents, creating a direct and irreconcilable conflict between their formal legal status and their customary standing.

These deep-seated differences become even more apparent when Fijian customary processes are compared directly with the values and procedures of Western mediation.

## 5.0 Comparative Analysis: Customary/Local Practices vs. Australian and Western Mediation

The differences between Fijian customary dispute resolution and Western mediation models, such as those prevalent in Australia, are not merely procedural but are rooted in fundamentally different worldviews, values, and objectives. While both may involve a third party assisting in a conflict, their underlying philosophies and process architecture diverge significantly. This analysis deconstructs these differences across several key domains to provide a clear comparative framework.

Feature	Fijian Customary/Local Practices	Australian/Western Mediation Model
<b>Core Values</b>	Analyzes the focus on restoring <b>collective harmony</b> , mending relationships, and maintaining community cohesion. The group is prioritized over the individual.	Evaluates the emphasis on <b>individual autonomy</b> , self-determination, finality of contract, and the determination of individual rights and obligations.
<b>Role of Third Parties</b>	Details the role of <b>elders, chiefs, and the <i>Turaga ni koro</i></b> as authority figures who may act as facilitators, decision-makers, and guardians of custom. Their role is often hierarchical.	Describes the role of the <b>accredited mediator</b> as a neutral, impartial third party with no interest in the outcome, whose sole function is to facilitate negotiation between the parties.
<b>Formality &amp; Process</b>	Characterizes the process as often informal, dialogue-based ( <i>talanoa</i> ), and flexible. It is deeply embedded in social relations and may not follow a rigid structure.	Defines the process as highly structured and formal, often initiated by a signed <b>Mediation Agreement</b> , with clear stages such as opening statements, agenda setting, and caucuses.
<b>Core Principles</b>	Assesses how concepts of <b>confidentiality, neutrality, and voluntariness</b> are understood differently. Processes are often public, third parties are respected authorities (not neutrals), and community pressure can impact voluntariness.	Explains that <b>confidentiality, neutrality, and voluntariness</b> are non-negotiable pillars of the process, contractually guaranteed and central to its integrity.
<b>Communication Styles</b>	Analyzes the communication style as predominantly <b>high-context</b> . It is often indirect, relational, and reliant on shared understanding, ritual, and non-verbal cues.	Characterizes the communication style as <b>low-context</b> . It is direct, explicit, fact-driven, and focused on the clear articulation of positions and interests.
<b>Outcome Formation</b>	Describes outcomes as oriented toward <b>consensus, authority-based decisions, restorative acts</b> (e.g., <i>bulubulu</i> ), and community-driven solutions that allow relationships to continue.	Explains that outcomes are formed through a <b>negotiated settlement agreement</b> , a legally binding contract that resolves the specific dispute, often with no expectation of a continuing relationship.

These fundamental differences have profound practical implications for external mediators seeking to work effectively with parties from Fiji.

## 6.0 Implications for Mediators Working with People from Fiji

The significant divergence between Fijian and Western dispute resolution paradigms requires foreign mediators to adopt a posture of deep cultural awareness and procedural flexibility. A rigid application of the standard Western mediation model is not only likely to fail but may

also inadvertently cause offense or escalate the conflict. This section provides practical guidance and strategies for conducting culturally safe and effective mediation with Fijian parties.

## 6.1 Cultural Sensitivities and Risk Factors

A Western mediator must understand several key cultural factors to avoid missteps and build an effective process. Failing to appreciate these dynamics creates significant risk.

- **High-Context Communication:** Fijian communication is often indirect and relational. The true meaning of a statement may lie in the context, non-verbal cues, and shared understandings rather than the explicit words used. A mediator accustomed to low-context, direct communication risks misinterpreting politeness as agreement, or silence as consent.
- **The Primacy of Relationships:** For many Fijian parties, preserving social harmony and mending relationships may be a more important outcome than "winning" on the substantive issues of the dispute. An aggressive, interest-based negotiation that damages a relationship may be seen as a failure, even if it results in a favorable material settlement.
- **Concept of "Face" and Respect:** Publicly challenging a person, especially an elder or authority figure, can cause them to lose dignity or "face," which can be deeply shaming and may derail the entire process. Direct confrontation should be avoided. Showing appropriate respect for age and status is paramount.
- **Collective vs. Individual Identity:** An individual at the mediation table may not be negotiating solely for themselves but as a representative of their family or clan (*mataqali*). They may not have the final authority to make a decision without consulting this wider group, a factor that must be built into the process timeline.

## 6.2 Guidance for Conducting Culturally Safe Mediation

Creating a safe and effective mediation process requires a fundamental shift from a task-focused to a relationship-focused approach. The mediator should invest significant time in building rapport and trust before attempting to address the core conflict. This involves what mediation expert Lisa Ting terms "relational talk"—conversations designed to understand the nature and role of the other party before addressing the business of negotiation. A mediator must demonstrate humility, openly acknowledge their own cultural lens and potential for misunderstanding, and position themselves as a respectful facilitator rather than an expert in charge.

## 6.3 Strategies for Adapting the Mediation Process

To accommodate these cultural dynamics, the standard Western mediation model must be adapted. A mediator should consider abandoning a rigid adherence to procedural stages in favor of a more flexible, flowing dialogue that allows parties to communicate in a way that feels natural to them. The use of private sessions (caucuses) becomes particularly valuable, not just as a tool for confidential negotiation, but as a safe space where a party can speak more directly and freely without the fear of causing public disrespect or loss of face to the other side. This can help the mediator understand underlying interests that would not be voiced in a joint session.



## 6.4 Opportunities to Incorporate Culturally Congruent Practices

A culturally sensitive mediation can be strengthened by integrating elements that are congruent with local practices. Where appropriate and with the parties' consent, this could include:

- Allowing for the presence of elders or respected family members, whose role mirrors their established function in Elders' Councils, to act as advisors or support persons.
- Using narrative processes that permit parties to "tell their story their way," reflecting the principles of *talanoa* dialogue to build mutual understanding.
- Acknowledging the potential role of a formal apology or a symbolic gesture as a meaningful part of the final settlement, which mirrors the restorative function of the *bulubulu* ceremony.

By adapting their approach, mediators can create a hybrid process that respects cultural norms while still providing a structured and effective path to resolution.

## 7.0 Conclusion

This report has detailed a dispute resolution landscape in Fiji that is a dynamic and evolving tapestry woven from the threads of indigenous custom, colonial legacy, and modern globalized law. Neither the formal nor the customary system exists in a vacuum; they are in constant dialogue, creating a complex legal reality that citizens and practitioners must navigate. This pluralism presents both unique challenges and powerful opportunities for justice.

### 7.1 Summary of Key Insights

The analysis conducted throughout this report yields several critical insights for understanding dispute resolution in Fiji.

1. **A Pervasive Legal Pluralism:** Fiji operates a dual system where citizens actively utilize both customary and formal mechanisms to resolve disputes. This creates a fluid environment where parties may move between systems, leading to opportunities for tailored justice but also significant challenges, ambiguity, and friction at their intersection.
2. **Conflicting Core Objectives:** A fundamental tension exists between the primary goal of the customary system—the restoration of communal harmony—and that of the formal legal system—the determination and protection of individual rights. This conflict is most acute and visible in cases involving customary land tenure and domestic violence, where collective interests clash with constitutional and human rights principles.
3. **The Evolving Nature of Both Systems:** Neither system is static. Customary law is being continuously contested and reinterpreted, particularly in response to advocacy for women's rights and critiques of its application in serious criminal matters. Simultaneously, the formal system is progressively adopting international ADR standards, particularly for commercial disputes, signaling a move towards greater alignment with global legal norms.

## 7.2 Observations on Future Trends and Reform

The future of dispute resolution in Fiji will likely be defined by the continued negotiation between these two systems. Fiji's move toward ratifying international conventions like the Singapore Convention on Mediation indicates a clear trend towards strengthening formal ADR for international commerce, which may further establish Fiji as a regional hub. Concurrently, judicial activism and legislative reform continue to shape the debate around the appropriate role of customary reconciliation in criminal law, especially in cases of gender-based violence. Proposals for creating more structured, hybrid institutions, such as a dedicated Centre for Dispute Resolution for customary lands, suggest a growing recognition that the path forward may lie not in choosing one system over the other, but in thoughtfully integrating the strengths of both.

## 7.3 Importance for Practitioners in Australia and the West

For Australian and other Western legal and mediation practitioners, the key takeaway from this report is that cultural competency is not an optional add-on but a fundamental prerequisite for effective and ethical engagement with Fijian individuals and entities. The assumption that a Western, low-context, and individual rights-based model of dispute resolution is universally applicable is a fallacy that will lead to failure. For the unprepared practitioner, intervention in this context risks not merely professional failure, but the perpetuation of injustice and the exacerbation of the very conflicts they seek to resolve.

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