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Child Sexual Abuse in Fiji: Authority, Risk Factors and Responses

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Abstract

While child sexual abuse is a problem worldwide, the risk factors for the perpetration of child sexual abuse within Fiji are unique in their relation to the traditional and communal nature of Fijian society. In this article, culturally relevant dynamic risk factors found within contemporary Fijian society are identified and understood alongside static factors contributing to abuse. Although there have been recent changes to sexual offence legislation and traditional criminal justice system responses to victims of sexual abuse, state-sanctioned responses continue to maintain victimising practices. Equally, the relative rural isolation means many Indigenous Fijian (iTaukei) communities continue to use customary restorative justice practices that may marginalise the rehabilitation of victims and offenders for the communities' benefit. However, a culturally specific amalgamation of traditional criminal justice and customary restorative responses may help to create more holistic protection for survivors of child sexual abuse in Fiji.

Keywords: sexual violence – child sexual abuse – trauma – Indigenous – restorative justice — customary justice – Fiji – South Pacific

Introduction

While there is an absence of data and large-scale studies of sexual violence in Fiji (Powell and Percival 2010; UNICEF Pacific 2006), research suggests that up to 22 per cent of students and 29 per cent of school leavers in Suva know survivors of child sexual abuse ('CSA') (Save the Children Fiji 2005:25). Such abuse is often perpetrated by acquaintances of the victim, authority figures, or people the victim trusts, including family members (Adinkrah 1995:84; Save The Children Fiji 2005:25–6). Despite the prevalence of CSA within Fiji, only recently has there been a significant change to its legislative standards to tackle this offence via the implementation of the *Crimes Decree 2009* (Fiji) ('*Crimes Decree*').

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International and non-governmental organisations ('NGOs') currently donate millions of dollars to Fiji. For example, Australia's total official development assistance in 2012–13 was A\$49.2 million (AusAID 2013:54). This funding is often targeted at police and courts to help improve traditional criminal justice practices, including creating specific working groups aimed at responding to CSA (AusAID 2013:191). Despite these programs, the number of Offences against Public Morality (the category in which sexual offences fall) reported to the Fijian Police Force steadily increased from 718 cases in 2005 to 2980 cases in 2012 (Fiji Bureau of Statistics 2013). The total number of child sexual abuse cases as reported in Fiji Police statistics rose from 162 in 2005 to 846 in 2011 (Fiji Bureau of Statistics 2012). Despite the excellent work of gender empowerment activists in increasing awareness, this rising trend in reporting of sexual offences seemingly reflects a growing number of incidents. CSA within Fiji constitutes a growing concern both for the traditional criminal justice system and organisations that respond to this abuse.

The failure to adequately address CSA in Fiji is partly due to successive governments' use of and reliance on Western legal doctrine in creating sexual offence statutes at the expense of modifying and utilising existing forms of culturally reflexive justice. While attempts to align new sexual offences legislation within South Pacific nations and Fiji with international treaties have provided further protection to the survivors of CSA (Forster 2009), such legislation has also marginalised the cultural causations of this offence (Schultz 1995). For example, new legislative reforms have not recognised the role of culturally reflexive authority in the commission of CSA.¹ This is despite qualitative studies that suggest rural areas, or outposts of iTaukei² customary tradition, have higher rates of CSA due to culturally contextualised risk factors of billeting children with extended families (UN Women 2011:15–16) and reluctance to believe that it is anything other than a family matter (Schultz 1995:32–4). Other factors include the belief that violence against children is 'common and culturally acceptable in many pacific countries' and the low status of and disrespect for women (Griffen 2006: 'Violence against children' [1]). Additionally, the consumption of *kava* (an intoxicating beverage made from the crushed root of a pepper tree) is culturally significant, playing an important role in social, political and religious functions, and acts as a dynamic risk factor alongside the unique communal relationships within iTaukei society. To more effectively address such cultural causes of CSA, Fijian legislation needs to be aligned with international best practice, including human rights frameworks (Braithwaite 2014), while simultaneously recognising and utilising methods of mediation reflecting local culture and traditions (Forster 2009:862–4) that may respond to, and counter, the customary causes of this offence.

Existing alongside traditional criminal justice paradigms are customary restorative ceremonies that have been historically used by iTaukei communities in Fiji. The *bulubulu* ceremony³ has been used for centuries and shares the core tenets of current Western restorative justice paradigms. These include the victim's ability to refuse mediation, symbolic restitution and the requirement that a contrite offender should begin the ceremony immediately after his or her actions (Arno 1976:52–5; see also Daly 2006). An additional

¹ While this article primarily focuses on Indigenous Fijian responses to CSA, domestic and sexual violence also occurs in the Indo-Fijian community (see Lateef 1990).

² The iTaukei people are recognised as the Indigenous inhabitants of the Fijian isles. The terms 'iTaukei' and 'Indigenous Fijians' are used interchangeably.

³ The terminology used in this article may not apply to all iTaukei communities. Fiji is culturally heterogeneous, even between close island neighbours. As such, names and minor aspects of the mediation ceremonies may differ between locations and restorative ceremonies are practised differently under different names in different locations. For example, similar in form to *bulubulu*, *i soro* mediation is used for less severe offences (Cretton 2005:404). This article uses the term *bulubulu* to encompass these practices. Fijian restorative responses to offending involve mediation and we use the terms 'restorative practice' and 'mediation' interchangeably.

benefit of this customary dispute mechanism is that it has both a formal and informal format. For minor offences, an informal ceremony of direct discussion between the victim and offender is used (Arno 1976:57–8) and, for more serious offences, a formal *bulubulu* ceremony is required. This involves the offender selecting a mediator, placing the victim in a position of power during conferences, and the exchange of *kava* and *tabua* (a ceremonial whale tooth representing purity and symbolic virginity) as restitution (Abramson 1995: 202–3; Arno 1976:52–4). One example of this formal ceremony and a demonstration of the importance of customary justice is the rumoured use of *bulubulu* as a peacemaking tool after the Fijian coup of 2000 (Cretton 2005:403–4). Newspapers reported that, in the days following the coup, George Speight provided *kava* to the representatives he held hostage in the Fijian Parliament, and offered *tabua* to the then Prime Minister as a formal apology (Cretton 2005:403).

Despite the potential success of culturally contextualised restorative justice for many offences, its use in cases of sexual violence is controversial. Nonetheless, many conferencing programs are based on the customs of Indigenous populations and have mediated other related offences. The Navajo peace-making ceremonies currently operating in North America use Indigenous custom to tackle gendered violence (Coker 2006; see also Zion and Yazzie 2006). By using the traditional creation myths of the Navajo nation, offending behaviour and violence towards women is placed in direct contrast to communal values (Coker 2006; Zion 1998; Winfree 2011:299–301). Additionally, the adjudication occurs completely separate to the traditional criminal justice system and is entirely overseen by respected community members (Coker 2006:70–1). By rejecting the discourse of Western legal practice, the sustained use of peace-making has allowed the Navajo nation to retain its indigenous identity while simultaneously responding to the challenges left by colonisation and political exclusion (Zion and Yazzie 2006). However, its use has been limited to domestic violence and minor crimes (Coker 2006), despite its potential to address any abuse-supportive belief structures that motivate sexual offences. It also rejects one of the basic victim-empowerment tenets of restorative justice: the apology by offenders to survivors. Daly (2006) has noted that while an apology is an important element of conference proceedings that may ensure victim wellbeing, issues with procedure and process may dilute its effect. In cases of CSA, the offender's delivery of an apology may not be suitable. Nonetheless, other restorative paradigms in the Pacific region have successfully responded to this severe form of offending.

As the first nation to officially endorse restorative conferences, New Zealand has been at the forefront of developing best practice in creating culturally appropriate responses, including to issues involving youth (Maxwell and Hayes 2006; Shearar and Maxwell 2012). Project Restore in New Zealand has had tremendous success in conferencing sexual offence cases. Engaging a combination of rehabilitative and restorative techniques to ensure the victim's wellbeing, offenders and victims can confront the harmful behaviour in a safe and productive manner (Centre for Innovative Justice 2014:33; Julich 2009:246–8). However, while other conferencing programs in New Zealand focus on customary Māori dispute resolution techniques, Project Restore is based on a Western theoretical framework that does not place at its heart the different experiences of Māori and other minority offenders (see Centre for Innovative Justice 2014:31–3). By assuming a universal archetype of offender and victim, Project Restore may also not account for the unique needs of Indigenous survivors of sexual assault or the risk factors within the wider community. Consequently, though achieving positive results, this restorative practice may not recognise the challenges faced by Indigenous populations, who may prefer culturally reflexive responses to sexual violence, which acknowledge their history and independence. In the case of Fiji, *bulubulu* could be an effective

method of responding to sexual violence, particularly that against children, and could help promote offender desistance and rehabilitation.

Dynamic risk factors for CSA in Fiji

Child sexual abuse creates multiple forms of trauma, including physical, psychological and social harm that can persist throughout a survivor's life. Immediate injuries and secondary health complications may ensue, such as mental health concerns and transmission of sexual infections, which may significantly reduce the quality and length of a survivor's life (Griffin 2006; Gal, Levav and Gross 2011; Hillis et al 2000). Consequently, CSA impacts on many aspects of the physical, psychological and social wellbeing of survivors, and survivors require medical care, therapeutic intervention and a supportive environment to prevent continued suffering or secondary victimisation. Survivors of CSA suffer differing forms of trauma, impacted by factors including individual resilience and the nature and length of their victimisation (Bal et al 2004:118–19; Crosson-Tower 2005:181). Engaging with the traditional criminal justice process — including describing instances of abuse to the police or a court — can revictimise survivors (Caprioli and Crenshaw 2015:8–11; Kunst, Popelier and Varekamp 2014:337). Although state responses to instances of CSA can be effective, the suitability of a method to address abuse depends on the resilience of each victim and the circumstances of each offence. Responses to CSA should be victim oriented, allowing the needs of the survivor to be prioritised over criminal justice processes. Thus, restorative responses may be most beneficial as they allow a victim to contribute to the outcome for the offender while empowering the victim through the intervention process. Any restorative intervention should address the dynamic and culturally specific risk factors that may facilitate sexual abuse and account for the unique relationships between victims and offenders.

Within iTaukei communities, extended family members adopt the titles and roles (such as 'uncle') of direct guardians. Unlike Western normative nuclear families, kinship within iTaukei culture represents a child's lineage to a spirit ancestor. This means that villages form a clan based on customary ties rather than biological relationships (Spencer 1939:49–50). In Fijian society, descent is patrilineal and status is derived from the father's side (Spencer 1939:50) and each person is part of a *matangali* (clan) linked to a spirit ancestor. The larger *matangali* comprises a number of *mbito* (smaller groups). These smaller groups, although not genealogically linked to the larger group, are considered close family members due to their connection to a son of the spirit ancestor. Culturally, all individuals within the clan are considered relatives, and most marriages occur between individuals from different *matangali*, and are therefore exogamous (Spencer 1939:50). Within these non-consanguinal family groups, a chief provides the highest level of paternal and patriarchal authority as 'an effective warrior and provider' (Toren 1994:203). Socioculturally, these biologically unrelated clan members are considered family (Spencer 1939:50). Communal family encourages cooperative communication strategies and provides greater resilience for individuals (DeFrain, DeFrain and Lepard 1994). However, the larger communal family also provides a number of biologically unrelated offenders greater access to children in a context where many instances of CSA in iTaukei communities should be considered incestuous.

UNICEF Pacific reports that due to the 'complexities and challenges of researching and collecting quantitative information in [the Pacific], the data on the existence and prevalence of sexual abuse and sexual exploitation of children are largely quantitative' (2006:xi). '[O]f the 35 cases of child sexual abuse reported to the Police Sexual Offences Unit in 2000, 33 were committed by a trusted family member' (Save the Children 2005:28–9). Empirical

research on CSA by the Fiji Women's Crisis Centre suggests that the largest group of offenders responsible for 45.1 per cent of all incidents were male family members who were not fathers or stepfathers (Fiji Women's Crisis Centre 2013). CSA occurring within a *matangali* and *mbito* is seen by the community and victims as commensurate with abuse conducted by a consanguinal offender. The contemporary Western-based legal system in Fiji does not recognise these offences as comparable to incest. Furthermore, as CSA has the potential to disrupt familial bonds within the entire clan, there is an acute risk of secondary victimisation and victim blaming within Indigenous Fijian communities. Both the statistics and cultural practices suggest that pseudo-parental authority (not adequately addressed by current criminal legislation) facilitates CSA.

Many static risk factors for CSA, such as alcohol, become dynamic when placed in an iTaukei context. As outlined above, *kava*, although not alcoholic, causes intoxication, acts as a sedative and limits mobility (Tomlinson 2004:657–8; Lester 1941:98). Culturally, *kava* facilitates, justifies and excuses CSA through the creation of abuse-supportive myths. Although the mythological origin of *kava* can differ between villages and South Pacific nations, in many instances these stories emphasise violent sexual behaviour and aggressive masculinity. One example of this is in a fable where men wanted *kava* (a woman) to join them at the ceremonial grounds. Against her wishes she was forced to join them and the men then had sex with *kava* who remained at ceremonial grounds indefinitely after being too ashamed to return to the village (Kristiansen 2009:239–40). Anthropological studies report that men excessively consume *kava* in Fiji to 'heighten their experience of the wild' (Abramson 1995:205). They also indicate that those who cannot find a sexual partner 'will report to the cows of Serea' (Abramson 1995:205) — the term used for a promiscuous woman who is perceived as having lost her soul and is considered an animal (Abramson 1995:201). These stories amalgamate *kava* and its associated ceremonies with sexually aggressive belief structures and violent acts of masculinity, which foster abuse-supportive mindsets that lead to CSA. Additionally, intoxication by *kava* preserves its consumer's cognitive abilities, and offenders who commit CSA under the influence of *kava* maintain sufficient *mens rea* to be held culpable for the offence.

This cultural mythos is also seen within other South Pacific practices. Sexual contact and marriage between kin was historically a privilege given to authority figures, and may still be perceived by some as a cultural right (Whitman Newell 1950:45). These privileges were transposed into each household of the villagers. Although fathers were not allowed to engage in intrafamilial sexual activity with daughters, this was not considered as serious as *suvasora* (incest) with other family members (for example, sexual activity between siblings or between mother and son). Father-daughter sexual activity carried no severe penalty if the victimisation remained out of public knowledge (Malinowski 1957:447–8). This abuse was linked to the masculine and patriarchal authority of village and household leaders, and sibling relationships were considered a more serious violation of sexual taboos (Malinowski 1957:447–8).

Similarly, sexual activity between men was common during historical initiation rites. These traditional ceremonies required young boys to fellate and consume the semen of older clan members as they transitioned to manhood (McIntosh 1999:8). This was done to pass along fertility and Allen (1998) notes these practices occurred across the South Pacific. This is consistent with anthropological suggestions that the first descriptions of ritualised homosexuality were reported from Fiji (McIntosh 1999:7). The practice of such customs is today considered a form of CSA and may demonstrate that authority figures were modifying customary beliefs to enable abuse. The perception of sexualisation as a method of attaining manhood may also form a source of victimisation for the survivor and may prevent reporting

of CSA offences.⁴ Additionally, same-sex CSA can impact the socialisation and identity formation of the survivor (Lew 1990). Often it manifests in sexual confusion as the survivor attempts to reconcile their victimisation and sexuality (Lew 1990:54–7). The resultant negative self-image can often lead to socially unacceptable behaviour, including homophobic attitudes utilised as a cognitive self-defence mechanism to separate the survivor from the abuser (Lew 1990:54–9). While a number of these abusive practices were halted during the British colonisation of Fiji and the subsequent spread of Christianity, some remain.

Historic and contemporary methods of addressing CSA in Fiji

Traditionally, iTaukei communities used culturally specific restorative justice practices, such as *bulubulu*, to resolve disputes. These are adjudicated by village elders and negotiated by senior male family members (Merry 2004). As described in one of the few anthropological accounts of this ceremony by Arno (1976), the formal *bulubulu* ceremony begins with an offender demonstrating *maduâ* — or the restorative concept of shame — for their actions. Ideally, genuine shame is demonstrated by the offender, which *bulubulu* automatically absolves; however, *bulubulu* is often used as a means to prevent further traditional criminal justice repercussions for the offender's behaviour (Arno 1976:51). The *bulubulu* ceremony is not designed to normalise interactions between the offender and victim, but is used as a tool to ensure harmony within the *vanua* (land and its inhabitants) (Cretton 2005:404). During the proceedings, the victim (or victim's representative) is seated in a position of authority above the offender and mediator (a person chosen by the offender and from the victim's family), and is given the symbolic status of a chief by being presented a *tabua* (Arno 1976:50). The exchange of a *tabua* (whale tooth) represents a ritualised trade of purity. Although the response to the offence via symbolic restitution may be seen to commodify the survivor's trauma and does not address the victim's needs, it operates as a symbolic apology and restores harmony within the community.

Often an offender's mediator will attempt to force mediation by contextualising 'the offender ... not only as an individual but as the member of a descent group and that the relations are at stake' (Arno 1976:54). When coupled with the presence of the victim's family, this immediately places pressure on the victim to contextualise his or her suffering from the offender's perspective, and not the victim's own traumatic experience. *Bulubulu* is formulated through a dialogue dominated by the offender, and which uses the discourse of community to compel a survivor's forgiveness. In the event that the offender and the offender's speaker are barred from conducting the ceremony as a result of the victim refusing to acknowledge their presence by saying '*sa vinaka*', the offender is expected to return multiple times with village elders to force forgiveness (Arno 1976:54). Although it employs a culturally restorative paradigm, *bulubulu* requires no apology to the victim but directly to his or her family or kin group (Jalal 2009:11–15; Merry 2004). As male family members act as negotiators during the *bulubulu* ceremony, it is unclear how *bulubulu* may operate in cases of consanguinal abuse. Thus it is possible that certain cultural responses to CSA may further victimise the survivor, much like the traditional criminal justice system (Elliott, Thomas and Ogloff 2014).

Based upon common law, the Fijian criminal code was inherited through British colonisation and included provisions preventing the achievement of justice for all survivors of CSA. The *Penal Code 1970* (Fiji) ('*Penal Code*') included provisions prohibiting sexual offences in ch 17 ('Offences against morality'). The *Criminal Procedure Code 1944* (Fiji)

⁴ For further details on semen rituals and their importance in traditional South Pacific society see Godelier (2003).

contained a corroboration rule requiring that a witness's testimony corroborated the involvement of the defendant, including in instances of sexual violence. While the requirement for corroboration was present in the case of *Mark Mutch v The State*, this was found to have been dispensed with and was not followed in *Balelala v State*. The s 178 ('Incest by males') and s 179 ('Incest by females') provisions criminalised only heterosexual penile-vaginal sexual activity between proscribed family members. The maximum severity of the penalty was determined by the offender's gender. Female offenders had a maximum sentence of seven years, and male offenders life imprisonment where the victim was under 13 (*Penal Code* ss 178–179). The legislation provided that no prosecution could be commenced without the sanction of the Director of Public Prosecutions and thus created a hurdle in the process responding to such offending (*Penal Code* s 181). These requirements severely limited the prosecution of CSA offenders. Additionally, the legislation was framed from a perspective that excluded men from being seen as victims of sexual offences, including rape (*Penal Code* s 149). The incest provisions mirrored British legal standards of the early 20th century and did not apply to those in positions of trust, including step-parents or communal guardians.

In 2009, the Fijian legislature updated the *Penal Code* to reflect a number of contemporary Western standards regarding sexual offences, although many aspects of this reworked legislation remain victimising. The new *Crimes Decree* addresses many deficits of the *Penal Code*, including removing some of the gendered limitations on victims and offenders. It expands the term 'carnal knowledge' in the new *Crimes Decree* s 206(5) beyond penile-vaginal penetration to include penile-anal penetration, although it uses the discriminatory term 'sodomy'. Also, the *Crimes Decree* provides greater legal protection to non-gender binary individuals and those who have surgically constructed genitalia (*Crimes Decree* s 206(6)).⁵ New s 223 ('Incest by any relative') applies to male and female offenders and has a maximum penalty of life imprisonment where the victim is under 13. Where the victim is over 13, the maximum is 20 years' imprisonment. This new provision omits to provide protection from non-consanguinal individuals within the communal family. The *Crimes Decree* does recognise positions of control and trust in relation to 'Indecent assault' (s 212), although it does not extend to other members of the same community or apply to other sections of the *Crimes Decree*. Replicating the deficiencies of the *Penal Code* s 181, the *Crimes Decree* requires the Director of Public Prosecutions to approve any charges under the incest provision (*Crimes Decree* s 223(7)).

Unsurprisingly, legislation has done little to improve the situation in rural Fiji, and some families and victims of CSA attempt reconciliation through *bulubulu*. The improved statutes are likely to have limited impact in such settings. Therefore, both individually and when combined, the contemporary legal and customary responses to CSA within Fiji remain limited, and have the potential to revictimise survivors. Thus further reforms are required.

New ways to respond to CSA in Fiji

Despite the problems noted with the Fijian sexual offence statutes, a United Nations report in 2008, before the changes in the *Crimes Decree*, stated that Fiji was the only country in the region whose provisions were not inadequate (UNICEF 2008:10). However, the reframed and improved statutes of the *Crimes Decree* fall short of providing a suitable response to all forms of CSA. This is in a context where child sexual abuse remains the most common form of sexual violence (Fiji Women's Crisis Centre 2013:67). In addition, Fiji's legislative

⁵ An important element to incorporate the recognition of non-heterosexual sexual activity into sexual offence legislation and provide greater protection.

frameworks do not reflect the unique culture of the Fijian people. The *Crimes Decree* does not use an authority clause for certain offences and omits roles of coercive power, such as traditional leaders (*Crimes Decree* s 206(2)). It fails to recognise the communal nature of many Fijian families and that it may cause the same level of trauma for a victim, regardless of whether there is a biological relationship between victim and offender. To appropriately respond to these concerns, CSA by an offender within the community should be considered as incest and command similar criminal justice system responses. Additionally, traditional roles such as chiefs still present within iTaukei society should be directly referenced within the legislation as positions of power. Community responses, such as *bulubulu*, should also be acknowledged as dispute resolution mechanisms within the legislative provisions.

The focus on Western and traditional criminal justice responses to CSA since colonisation has also marginalised communal methods that address offending. Customary methods of mediation, such as *bulubulu*, contain victimising practices, but, with modification and when utilised appropriately, may be both culturally sensitive and suitable for responding to some incidents of CSA in Fijian communities. This is important, as iTaukei conceptualisations of justice do not follow the individualistic Western model; they are concerned with communal wellbeing and preservation of group harmony. While *bulubulu* may be effective in mediating many offences, more research is needed into its use and impacts in cases of CSA. Merry (2004:8–9) notes that modification of community restorative processes is occurring within developed areas of Fiji, where women are beginning to mediate their disputes and set their own terms of forgiveness. These developments require stakeholders such as the government and victims' rights advocates to engage with traditional leaders to ensure their practice both empowers the victims of CSA and reflects the unique customs and culture of the iTaukei people.

A communal approach to viewing rights and responsibilities within Fiji may allow for the creation of a holistic framework to address all forms of sexual offending in iTaukei communities. For example, there is little distinction in many instances between the trauma and impact of consanguinal and non-familial CSA within the Fijian context. As such, a combination of legal and restorative responses to these offences could be created that would both protect and empower the survivors of sexual abuse. This new framework could provide a flexible method of sentencing, which scales the punitive outcome of mediation or traditional criminal justice systems to the trauma suffered by a victim. Additionally, such responses may be effective within these communal groups, as they ultimately promote the accountability of communal leaders that may transition into more balanced *bulubulu* mediation outcomes.

While there are elements of *bulubulu* that may be beneficial to the victim, ensuring that these ceremonies are conducted in a consistent and empowering manner is difficult in Fiji. Aspects such as the victim's ability to refuse mediation are valuable in a restorative justice response. However, the offender's family should not be allowed to try to force the acceptance of an apology against the victim's wishes (see Singh, Singh and Fields 2013:20). In Western culture, offenders committing crimes against children are often ostracised. The *bulubulu* process places community harmony at its core, and while we do not advocate placing the community at risk, the role of the community is important in furthering rehabilitation and preventing reoffending. The role of *kava* could be reimagined to a purely symbolic function and not consumed during the ceremony. Its place in iTaukei dispute resolution needs to be reconsidered in contemporary Fiji by key Indigenous stakeholders. Recording the ceremony could provide the opportunity for oversight of mediation processes conducted by traditional leaders. It might also provide an opportunity to challenge the outcome through the criminal justice system. In this dispersed island population, with its many diverse cultures and practices, focus should be on improving access to justice, rather than implementing a homogenised approach.

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