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VIOLENCE AGAINST WOMEN AND CHILDREN IN VANUATU: THE DATA



VIOLENCE AGAINST WOMEN AND CHILDREN IN VANUATU: THE DATA

a. Overview

There is no statistical system for crime and justice statistical reporting in Vanuatu, with the sector consisting of the Vanuatu Police Force, the Ministry of Justice and Community Services (MJCS), the Judicial Services Commission, State Law Office, Public Solicitor and Public Prosecutor, Correctional Services and traditional chiefs. Each agency produces statistics but these are not disseminated and collection, compilation and reporting systems range from databases to manual compilation from registers. (Vanuatu National Strategy for the Development of Statistics: A Strategy for the Agenda of Building Capacity in Statistics 2016–2020, p.45).¹

Since 2010, the *Stretem Rod Blong Jastis* (Clear Path to Justice) program has been assisting the law and justice sector to improve criminal statistics from the Police, the Public Prosecutor and Supreme Court, with the sector-wide assessment of institutional and individual capacity forming the basis of development for the sector.

At the time of this report a new case management system (CMS), developed by LexisNexis, was being implemented in the Supreme Court and the Magistrates Court. A different case management system is being introduced in the Police force, State Law Office, and Offices of the Public Solicitor and Public Prosecutor. The extent to which these case management and reporting systems can, and will interact with one another in the future, is not clear.

As there was no sector-wide dataset available, this research relied upon the following justice sector agency's individual datasets:

- Supreme Court of Vanuatu – included data for the Magistrates Court and Island Courts. Case management systems have only been in place in the courts since November 2015. Prior to that, the courts' maintained a statistical database via Microsoft Excel. The dataset dates back to 2001 and had been "cleansed" in preparation for migration to the new CMS to be implemented in January 2016.
- Magistrates Court of Vanuatu – this additional Microsoft Excel dataset contained specific data about family protection order cases in the Port Vila, Santo and Tanna Magistrates Courts from 2008 to 2015 (2015 was incomplete). Some of the fields within this dataset were not migrated into the new CMS and were therefore not available in the "cleansed" Supreme Court dataset noted above.
- Vanuatu National Statistics Office (VNSO) – For all national statistics, this report relied upon the 2009 National Census.
- Vanuatu Police Unit (CRIMS) – this Excel dataset was obtained from the Criminal Information Management Systems (CRIMS) Unit in Vanuatu. The dataset dates back to 2009. The 2015 data is incomplete and has therefore been omitted from the analysis.
- Vanuatu Office of the Public Prosecutor – This dataset dates back to 2003. As the 2015 data was incomplete it was omitted from the analysis.
- Vanuatu Department of the State Prosecutor (DSP) – This dataset only contains data from Port Vila between 2012 and 2015. Other islands either rely on manual record keeping or maintain a separate database which is not integrated into the Port Vila (DSP) system. The 2015 data was incomplete and was omitted from the analysis.
- Vanuatu Women's Centre (VWC) – VWC rely upon manual data collection methods. This report used the findings from the 2009 VWC "National Survey on Women's Lives and Family Relationships" report and the "Mid-term review of the Vanuatu Women's Centre phase 5 July 2007 – June 2012" report to the Australian Department of Foreign Affairs.

¹ Vanuatu National Statistics Office (2015) Vanuatu National Strategy for the Development of Statistics: A Strategy for the Agenda of Building Capacity in Statistics 2016–2020, p.45.

While reasonable care has been taken in analyzing the datasets and preparing this report, the analysis is limited due to the quality of the data entry, the limited data fields and subsets and the fact that the sector does not follow standardized methods for recording information.

The Courts

b. Supreme Court of Vanuatu

The Supreme Court of Vanuatu has unlimited jurisdiction to hear and determine civil and criminal proceedings. It has jurisdiction to hear questions concerning elections, as well as any cases from citizens about emergency regulations made by the Council of Ministers. Appeals from the Supreme Court, both in the exercise of its original and appellate jurisdiction (civil and criminal appeals from the Magistrates Court and appeals from Island Courts as to ownership of customary land), are heard by the Court of Appeal. The Court of Appeal is constituted under s.48 by two or more Supreme Court judges sitting together. The Court of Appeal's decision is final as there is no longer any appeal lying to the Privy Council.²

The Supreme Court currently consists of the Chief Justice and Justices appointed on local terms and conditions. One justice is seconded on a rotating basis from the New Zealand District Court to the Vanuatu Supreme Court for a period of up to 2 years. At the time of writing there were seven justices: Chief Justice Vincent Lunabek, Hon. Justice Oliver Saksak; Hon. Justice Stephen Harrop; Hon. Justice Mary Sey; Hon. Justice David Chetwynd; Hon. Justice Dudley Aru; Hon. Justice Daniel Fatiaki, on the Supreme Court bench.

This section of the report relied upon the migrated and “cleansed” data of the Supreme Court of Vanuatu dating back to 2001. The dataset was very limited and of those data fields collected, many were incomplete. Many important data fields did not exist (e.g., gender and age of defendant; gender and age of victim; whether either had a disability, were represented by council or self-represented etc.). In 2016 the Supreme Court migrated this data to a new case management system referred to as the “CMS” where it is understood that a more complete dataset will be collected.

² New Hebrides Act 1980, s. 2(2), sch. 2, repealing New Hebrides (Appeals to Privy Council) Order 1975.

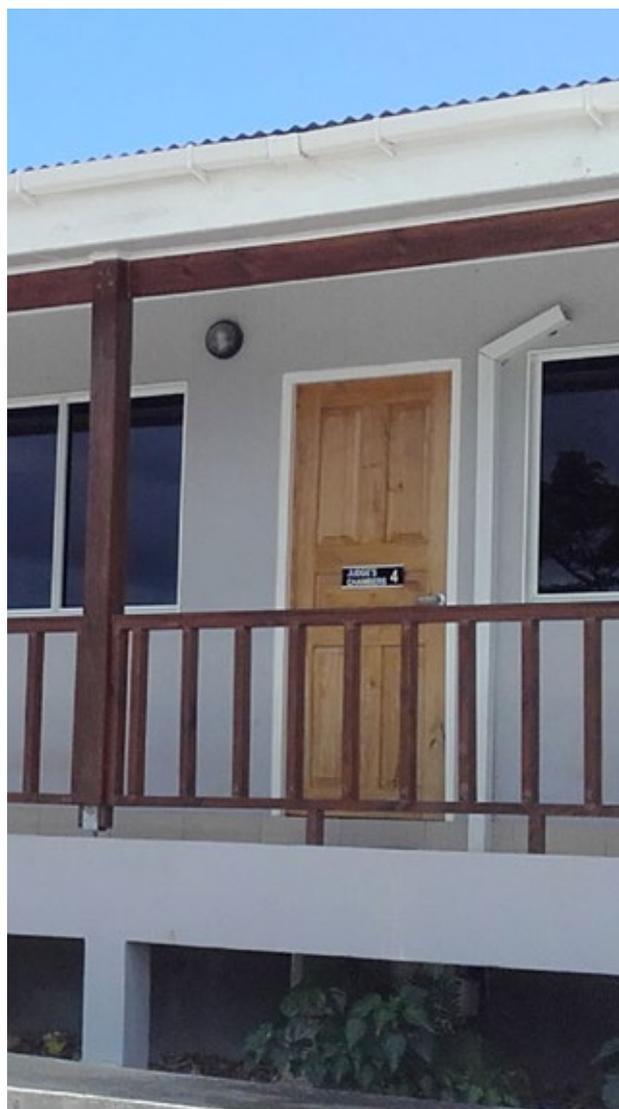
Vanuatu Judiciary – Vision and Mission Statement

Vision Statement

A judiciary that is independent, effective, efficient and worthy of public trust and confidence, and a legal profession that provides quality, ethical, accessible and cost-effective legal service to our people and is willing and able to answer to public service.

Mission Statement

To dispense justice speedily, fairly, independently and with improved quality of external inputs. To improve access to justice by effective, efficient and continuous improvements of judicial institutions. To be a Judiciary that conducts its business with dignity, integrity, accountability and transparency.”



Supreme Court offices, Port Vila. Photo credit: Indira Rosenthal

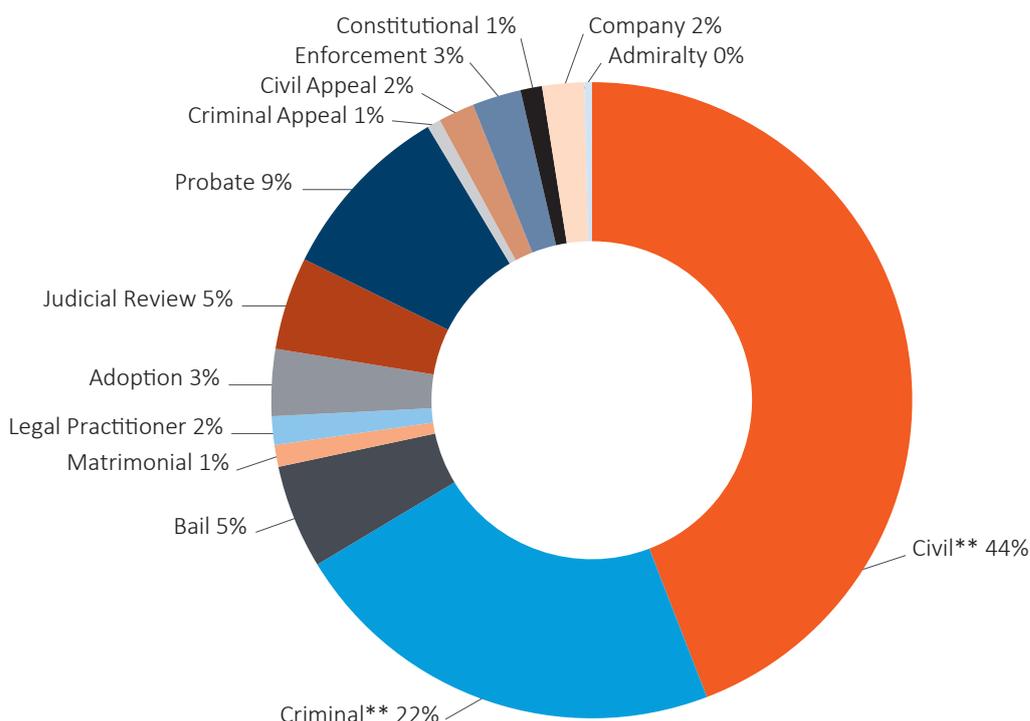
Supreme Court Locations



Figure 3.1: Process map for serious offence cases in the Supreme Court



Chart 3.1: Percentage of filings 2012–2015 (by case type) in the Supreme Court of Vanuatu



Process map for serious offence cases in the Supreme Court

Figure 3.1 above is a general process map for serious offence cases in Vanuatu. Serious offences include all sexual offences and other criminal offences, including domestic violence, where the maximum penalty exceeds two years imprisonment.

Supreme Court workload 2012–2015³

Cases filed 2012–2015

Over the last four years, on average, the Supreme Court of Vanuatu has had 752 cases filed each year. Of these cases, the majority were civil (44%) and criminal cases (22%). From interviews with the Supreme Court Justices it appears that the majority of criminal cases filed in the Supreme Court relate to violence against women and children and in particular sexual violence against girls. This is explored later in this Part in the CRIMS dataset (which looks at charges laid by the Vanuatu Police Force). Chart 3.1 above illustrates the breakdown of the types of cases filed in the Supreme Court of Vanuatu.

³ Data from 2015 is incomplete and only includes data entry up to and including September 2015.

Chart 3.2: Rate of filing in the Supreme Court 2012–2015

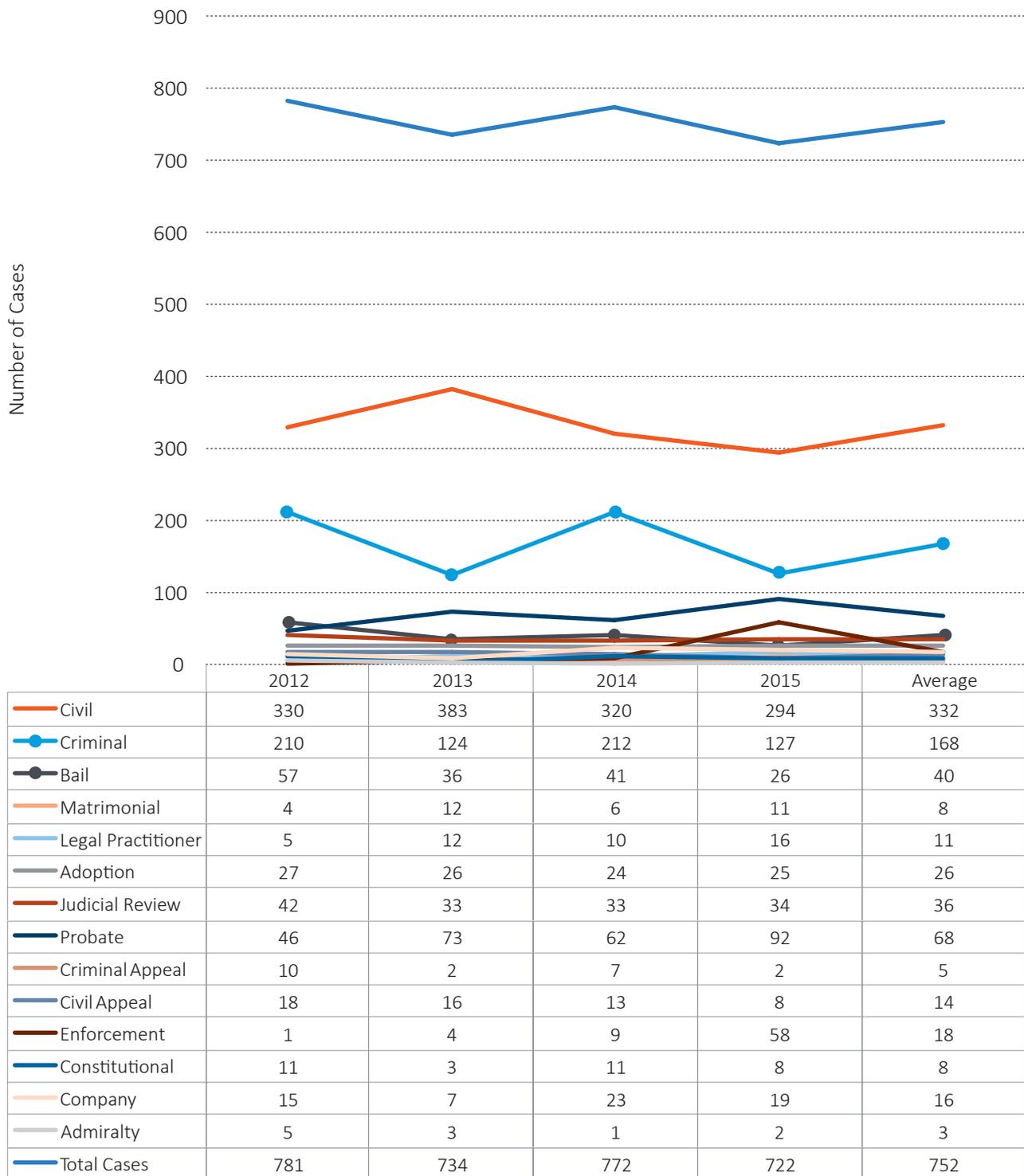


Chart 3.2 above shows the total number of cases, by case type, filed between 2012 and

2015. It further shows that the rate of filing in the Supreme Court remains fairly stable.

Table 3.1: Finalised Cases in the Supreme Court 2012–2015

| Case Type | 2012 | 2013 | 2014 | 2015 | Average |
|--------------------|------------|------------|------------|------------|------------|
| Civil | 253 | 350 | 322 | 258 | 296 |
| Criminal | 178 | 155 | 146 | 158 | 159 |
| Bail | 48 | 40 | 39 | 25 | 38 |
| Matrimonial | 6 | 9 | 6 | 6 | 7 |
| Legal Practitioner | 5 | 0 | 2 | 28 | 9 |
| Adoption | 22 | 29 | 28 | 18 | 24 |
| Judicial Review | 18 | 30 | 21 | 20 | 22 |
| Probate | 38 | 69 | 59 | 63 | 57 |
| Criminal Appeal | 3 | 4 | 8 | 0 | 4 |
| Civil Appeal | 8 | 6 | 17 | 11 | 11 |
| Enforcement | 0 | 2 | 3 | 21 | 7 |
| Constitutional | 8 | 3 | 4 | 13 | 7 |
| Company | 23 | 9 | 19 | 17 | 17 |
| Admiralty | 0 | 6 | 3 | 2 | 3 |
| Total Cases | 610 | 712 | 677 | 640 | 660 |



Supreme Court reception, Port Vila. Photo credit: Indira Rosenthal

Finalised cases 2012–2015

For the years 2012–2015, the Supreme Court of Vanuatu finalises on average 660 cases annually. The table above shows the number of cases finalised by file type.

Table 3.2: Clearance rate in the Supreme Court of Vanuatu

| Case Type | 2012 | 2013 | 2014 | 2015 | Average |
|--------------------|------------|-------------|------------|------------|------------|
| Civil | 77% | 91% | 101% | 88% | 89% |
| Criminal | 85% | 125% | 69% | 124% | 101% |
| Bail | 84% | 111% | 95% | 96% | 97% |
| Matrimonial | 150% | 75% | 100% | 55% | 95% |
| Legal Practitioner | 100% | 0% | 20% | 175% | 74% |
| Adoption | 81% | 112% | 117% | 72% | 95% |
| Judicial Review | 43% | 91% | 64% | 59% | 64% |
| Probate | 83% | 95% | 95% | 68% | 85% |
| Criminal Appeal | 30% | 200% | 114% | 0% | 86% |
| Civil Appeal | 44% | 38% | 131% | 138% | 88% |
| Enforcement | 0% | 50% | 33% | 36% | 30% |
| Constitutional | 73% | 100% | 36% | 163% | 93% |
| Company | 153% | 129% | 83% | 89% | 113% |
| Admiralty | 0% | 200% | 300% | 100% | 150% |
| Total Cases | 78% | 103% | 88% | 89% | 90% |

Clearance rate 2012–2015

The clearance rate, expressed as a percentage, compares the number of cases that have been finalised with the number of cases that have been initiated or filed. The clearance rate is an indicator of efficiency, which measures how well the Court uses its resources to manage its caseload. The internationally accepted target applied by courts is 100% (the number of cases finalised equals the number of cases filed), which aims to ensure there is no increase in the backlog of cases.

The Supreme Court of Vanuatu, on average, has a clearance rate of 90% overall. Areas of concern are enforcement cases (30%), that involve an application for the enforcement of orders, made in either the Magistrates Court or the Supreme Court, and judicial review cases (64%) involving the review of decisions in the Magistrates Court. Both types of cases have an impact on cases related to violence against women and children.

Cases related to women and children 2012–2015

As previously noted, the current dataset does not capture details about the gender or age of the offender/victim or the applicant/respondent in a case in the Supreme Court. Supreme Court justices have stated that in cases before them, women and girls are most likely to be the victim and the offender is most likely to be a male in a criminal case.⁴ In matrimonial cases, the justices reported that the respondent is most likely to be a woman. This differs from other studies that show that applicants in family law matters are generally more likely to be female. In adoption cases, the applicant is also most likely a female. The following data has therefore focused on the three categories of cases – criminal, matrimonial and adoption cases – in the Supreme Court that are most likely to affect women and children in the formal justice system in Vanuatu.⁵

4 This claim is supported by the CRIMS data in relation to violence cases.

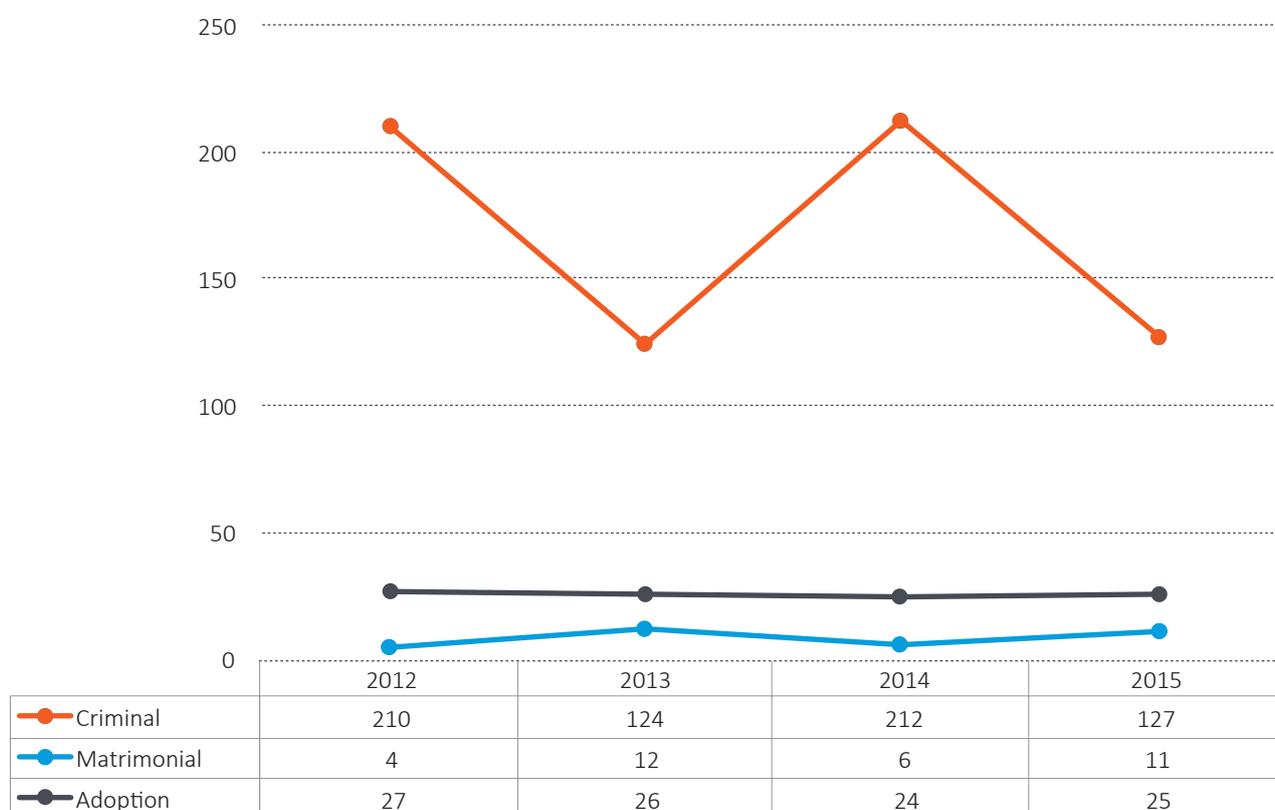
5 In the dataset provided by the Supreme Court, all civil cases had been removed, therefore no information could be provided about this set of cases.



Table 3.3: Rate of filing, finalisation and clearance in the Supreme Court of Vanuatu

| Case Type | 2012 Filed | 2012 Finalised | Clearance Rate | 2013 Filed | 2013 Finalised | Clearance Rate | 2014 Filed | 2014 Finalised | Clearance Rate | 2015 Filed | 2015 Finalised | Clearance Rate | Average |
|-------------|------------|----------------|----------------|------------|----------------|----------------|------------|----------------|----------------|------------|----------------|----------------|-------------|
| Criminal | 210 | 178 | 85% | 124 | 155 | 125% | 212 | 146 | 69% | 127 | 158 | 124% | 101% |
| Matrimonial | 4 | 6 | 150% | 12 | 9 | 75% | 6 | 6 | 100% | 11 | 6 | 55% | 95% |
| Adoption | 27 | 22 | 81% | 26 | 29 | 112% | 24 | 28 | 117% | 25 | 18 | 72% | 95% |

Chart 3.3: Rate of filing (subset of cases) 2012–2015



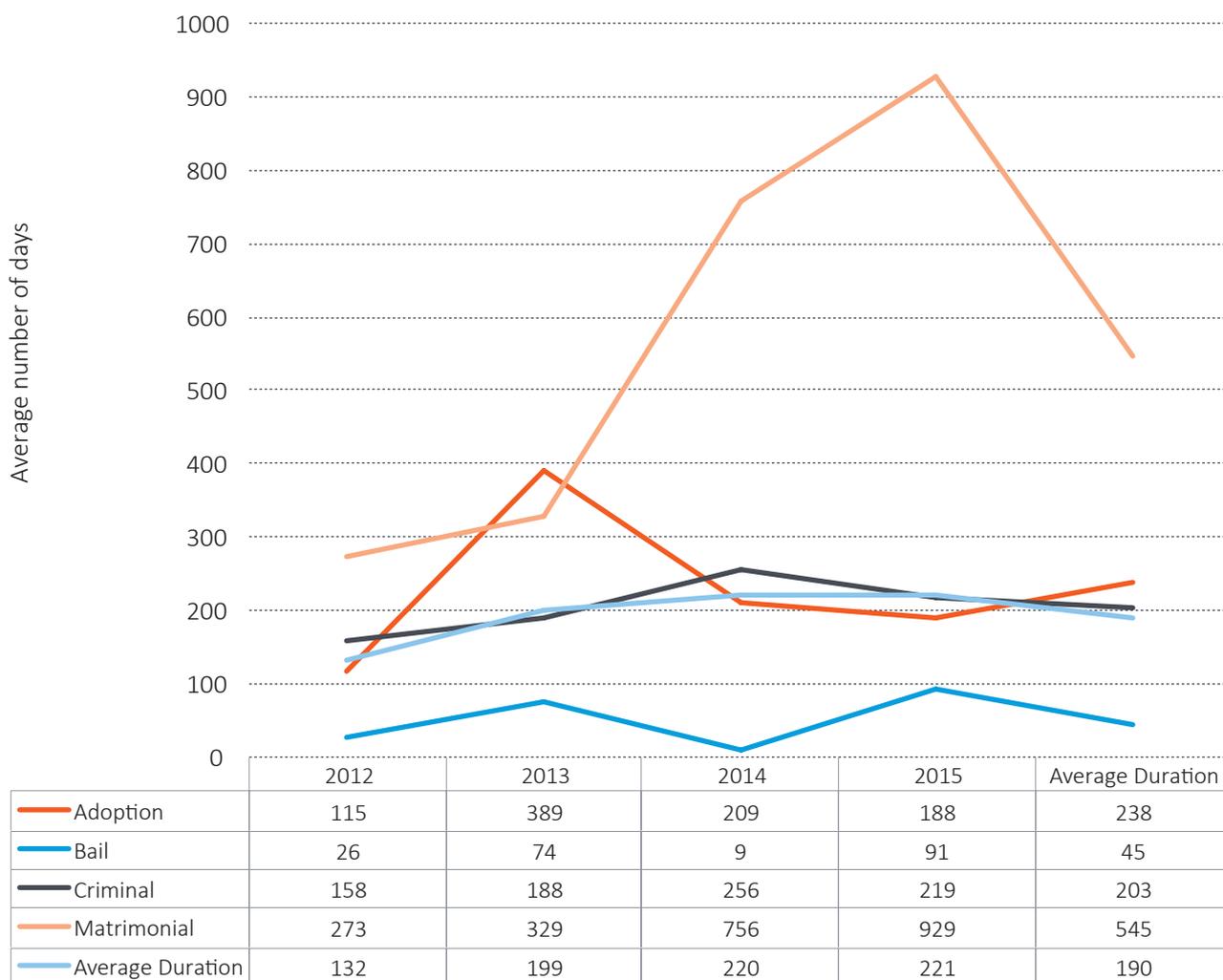
Subset of cases in the Supreme Court where women and children are most likely to be involved in a case

Table 3.2 above shows the filing, finalisation and clearance rates for the subgroup of cases most likely to affect women and children in the Supreme Court.⁶

⁶ The 2015 data from the Supreme Court was incomplete. It has been used here to assist with averages.

Photo credit, previous page: UN Women/Ellie van Baaren

Chart 3.4: Supreme Court average duration of a case in days 2012–2015



Average duration of a case 2012–2015

Chart 3.4 above details the average duration (in days) of the subset of Supreme Court cases where women and children are most likely to be involved in a case. It clearly indicates that although the number of matrimonial cases is relatively small, they take considerably longer than other cases to finalise in the Supreme Court. In comparison, the Chief Justice noted in the 2014 Supreme Court Annual Report, that the average time from filing to finalisation in relation to civil cases was 694 days.



Supreme Court, Judges Chambers, Port Vila.
Photo credit: Indira Rosenthal

Location of cases 2012–2015

The following tables detail the filing locations and hearing locations of Supreme Court cases. They illustrate that

while 75% of the population resides in “rural”* areas of Vanuatu (areas outside of Port Vila and Luganville), the overwhelming majority of cases are filed and heard in urban locations.

Table 3.4: Filing location 2012–2013

| | | 2012 | 2013 | 2014 | 2015 | Total | % rural location |
|--------------------|------------------------|------------|------------|------------|------------|------------|------------------|
| Adoption | | 27 | 26 | 24 | 25 | 102 | 3% |
| Sanma Province | Luganville | 8 | 4 | | | 12 | |
| | Santo – Unspecified | | | 3 | | 3 | |
| Shefa Province | Port Vila | 19 | 22 | 21 | 25 | 87 | |
| Criminal | | 210 | 124 | 212 | 127 | 673 | 26% |
| Penama Province | Ambae | | | 3 | 6 | 9 | |
| | Penama – Unspecified | 5 | | | | 5 | |
| | Pentecost | | | 4 | 2 | 6 | |
| Shefa Province | Epi | | | 3 | 5 | 8 | |
| | Port Vila | 149 | 75 | 103 | 45 | 372 | |
| | Tongoa | 2 | | 1 | | 3 | |
| Tafea Province | Isangel | | 1 | 1 | 4 | 6 | |
| | Tanna | 2 | | 10 | 2 | 14 | |
| Malampa Province | Lakatoro | | | 1 | 5 | 6 | |
| | Malekula – Unspecified | 1 | 1 | 23 | 14 | 39 | |
| | Paama | 2 | 1 | | 1 | 4 | |
| Sanma Province | Luganville | 45 | 39 | 22 | 18 | 124 | |
| | Santo – Unspecified | | | 39 | 22 | 61 | |
| Torba Province | Torba – Unspecified | 3 | 6 | 2 | | 11 | |
| | Gaua | | | | 1 | 1 | |
| Matrimonial | | 4 | 12 | 6 | 11 | 33 | 3% |
| Sanma Province | Luganville | 1 | | | | 1 | |
| | Santo – Unspecified | | | | 1 | 1 | |
| Shefa Province | Port Vila | 3 | 12 | 6 | 10 | 31 | |
| Total | | 241 | 162 | 242 | 163 | 808 | 32% |

* Rural for the purpose of this report refers to all locations apart from the two main settlements towns of Luganville and Port Vila.

The table below shows that on average (during 2013–2015) only 23% of criminal cases, 3% of adoption and 4% of matrimonial cases were decided in rural* areas

outside Port Vila and Luganville in the Supreme Court of Vanuatu despite the fact that 75% of the population lives in rural or remote areas of Vanuatu.

Table 3.5: Hearing location 2012–2013

| | | 2012 | 2013 | 2014 | 2015 | Total cases | % heard in rural area |
|--------------------|---------------------|------------|------------|------------|------------|-------------|-----------------------|
| Adoption | | 22 | 29 | 28 | 18 | 97 | 3% |
| Sanma Province | Luganville | 7 | 4 | 1 | | 12 | |
| | Santo – Unspecified | | | 2 | 1 | 3 | |
| Shefa Province | Port Vila | 15 | 25 | 25 | 17 | 82 | |
| Criminal | | 178 | 155 | 147 | 158 | 638 | 23% |
| Torba Province | Unknown | 3 | 2 | 4 | 1 | 10 | |
| Penama Province | Ambae | | 1 | 2 | 7 | 10 | |
| | Unknown | 3 | 1 | 1 | | 5 | |
| | Pentecost | | | 1 | 5 | 6 | |
| Sanma Province | Luganville | 45 | 49 | 13 | 18 | 125 | |
| | Santo | | | 26 | 28 | 54 | |
| Malampa Province | Ambrym | | 1 | | | 1 | |
| | Malekula | 1 | | 2 | 33 | 36 | |
| | Paama | | 2 | | 2 | 4 | |
| Shefa Province | Epi | | | 3 | | 3 | |
| | Tongoa | 2 | | 1 | | 3 | |
| | Port Vila | 120 | 99 | 89 | 56 | 364 | |
| Tafea Province | Erromango | | | | 1 | 1 | |
| | Tanna | 4 | | 5 | 7 | 16 | |
| Matrimonial | | 6 | 9 | 6 | 6 | 27 | 4% |
| Sanma Province | Luganville | | 1 | | | 1 | |
| | Santo | | | | 1 | 1 | |
| Shefa Province | Port Vila | 6 | 8 | 6 | 5 | 25 | |
| Total | | 206 | 193 | 181 | 182 | 762 | 30% |

* Rural for the purpose of this report refers to all locations apart from the two main settlements towns of Luganville and Port Vila.



Magistrates Court, Malekula. Photo credit: Indira Rosenthal

c. Magistrates Court of Vanuatu

Magistrates Courts operate under section 12 of the Judicial Services and Courts Act as first instance courts exercising summary jurisdiction over certain civil matters, where jurisdiction has been expressly conferred on them by statute. Section 1 of the Act provides for Magistrates to have a general jurisdiction in matters where the total claim does not exceed VT 1,000,000,000 (A\$ 12,116) except claims relating to permanent physical damage to a person. Magistrates also have jurisdiction to hear cases relating to:

- a. Disputes between landlords and tenants where the amount claimed does not exceed VT 2,000,000;
- b. undefended petitions for divorce or nullity of marriage;⁷ or
- c. Maintenance of children or wives;⁸ or any other law providing for the maintenance of children, mothers of children or wives by the fathers of children or husbands as the case may be where the annual sum claimed does not exceed VT 1,200,000.

⁷ Subject to such directions as may be made by the Chief Justice.

⁸ See s.1(d) relating to claims made under the – (i) Maintenance of Family Act [Cap. 42] (ii) Maintenance of Children Act [Cap. 46].

Under s. 2, Magistrates cannot hear cases concerning wardship, guardianship of minors and persons of unsound mind, interdiction, appointment of a *conseil judiciaire*, adoption, civil status, succession, wills, bankruptcy, insolvency or liquidation of corporate bodies.

In its criminal jurisdiction, the Magistrates Court hears cases that concern any criminal proceedings for an offence for which the maximum penalty does not exceed 2 years imprisonment. It has jurisdiction to hear appeals from civil decisions from Island Courts, except decisions as to ownership of land, where appeal is to the Supreme Court.

The Magistrates Court is also the principal jurisdiction to hear cases under the Family Protection Act 2008.

Location of Magistrates Courts in Vanuatu



Figure 3.2: Process map non-serious offences



Figure 3.3: Process map for Family Protection Order



Process map for cases in the Magistrates Court

The process for all “non-serious” criminal offences, that is those where the maximum penalty does not exceed 2 years imprisonment, which includes cases such as breaches of family maintenance orders and Family Protection Orders, is shown in Figure 3.2.

Part 4, s. 28 of the Family Protection Act (2008), sets out the procedure in Figure 3.3 for an application for a Family Protection Order in the Magistrates Court.

Magistrates Court cases filed 2013–2015

The majority of cases heard in the Magistrates Court are criminal and violence cases. Unless otherwise specified, the Supreme Court of Vanuatu provided the data used for this analysis. It is the “cleansed” data used for the migration to the new case management software. The dataset provided only included data from 2013 to 2015. Within the dataset, only data relating to criminal, juvenile, matrimonial, preliminary investigations and violence cases was provided.

In particular, the Magistrates Court data does not currently allow for the breakdown of:

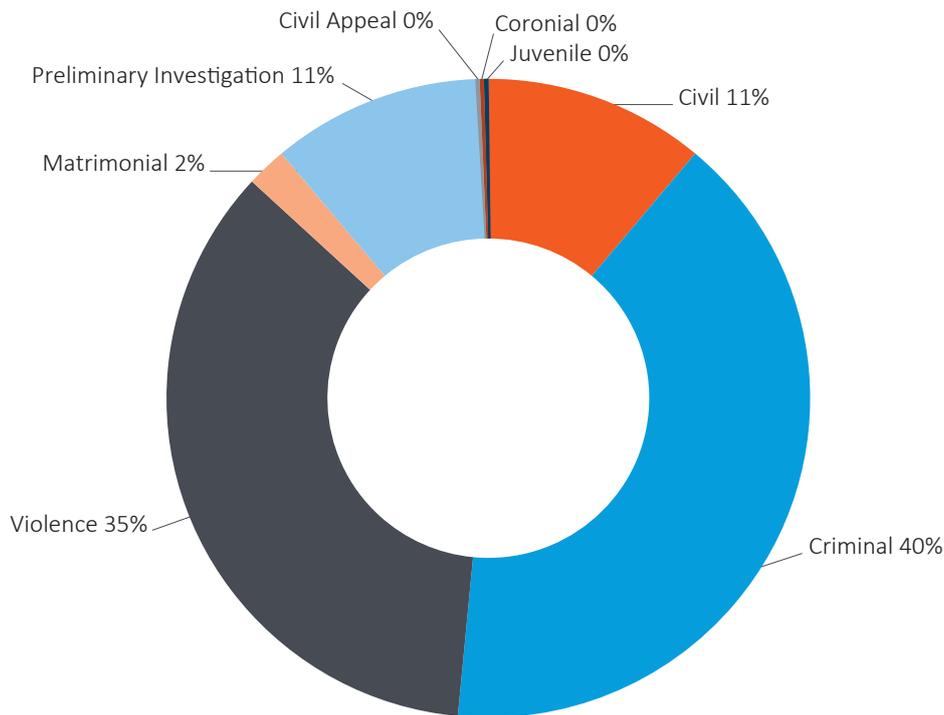
- Total number of temporary protection orders granted (although s 28 (4) of the Family Protection Act 2008 requires the Magistrates Court to keep a register of all applications for family protection orders received and granted).



- Total number of final protection orders granted;
- Number of criminal cases brought under s 10 of the Family Protection Act 2008;
- Number of other criminal cases of violence involving family member/intimate partner;
- Number of other criminal cases of violence not involving family member/intimate partner.

Magistrates Court, Port Vila. Photo credit: Indira Rosenthal

Chart 3.5: Percentage of cases filed 2013–2015 in the Magistrates Court of Vanuatu (by case type)



On average, the Magistrates Court of Vanuatu has 2196 cases filed each year. Of these cases, 37% related to family law and family violence, 40% to criminal cases heard and decided in the Magistrates Court and a further 11% being criminal cases referred to the Supreme Court. For these 51% of criminal matters it is not possible to determine whether they involve violence against women and children, as this subset of information is not currently captured.

Anecdotal evidence from interviews with Magistrates and the Deputy Registrar and other justice sector actors suggests that the data is counted in the following way:

- Matrimonial – includes uncontested applications for dissolution of marriage, applications for child custody and property.
- Preliminary Investigations – includes all serious offences within the jurisdiction of the Supreme Court including all sexual offences, domestic violence offences under the FPA, other serious assaults, and other offences where the penalty is more than two years imprisonment.
- Violence – relates to applications for Family Protection Orders.
- Criminal – includes all offences within the jurisdiction of the Magistrates court. These matters may involve cases of violence against women and children.

There will be a certain margin for error as it is not clear if registry staff categorise cases in the same way. An example is whether all registry staff list domestic violence criminal offences under s10 of the FPA as “Violence” or “Criminal” cases.



Courthouse and registry, Sanma. Photo credit: Indira Rosenthal

Chart 3.6: Rate of filing in the Magistrates Court 2013–2015

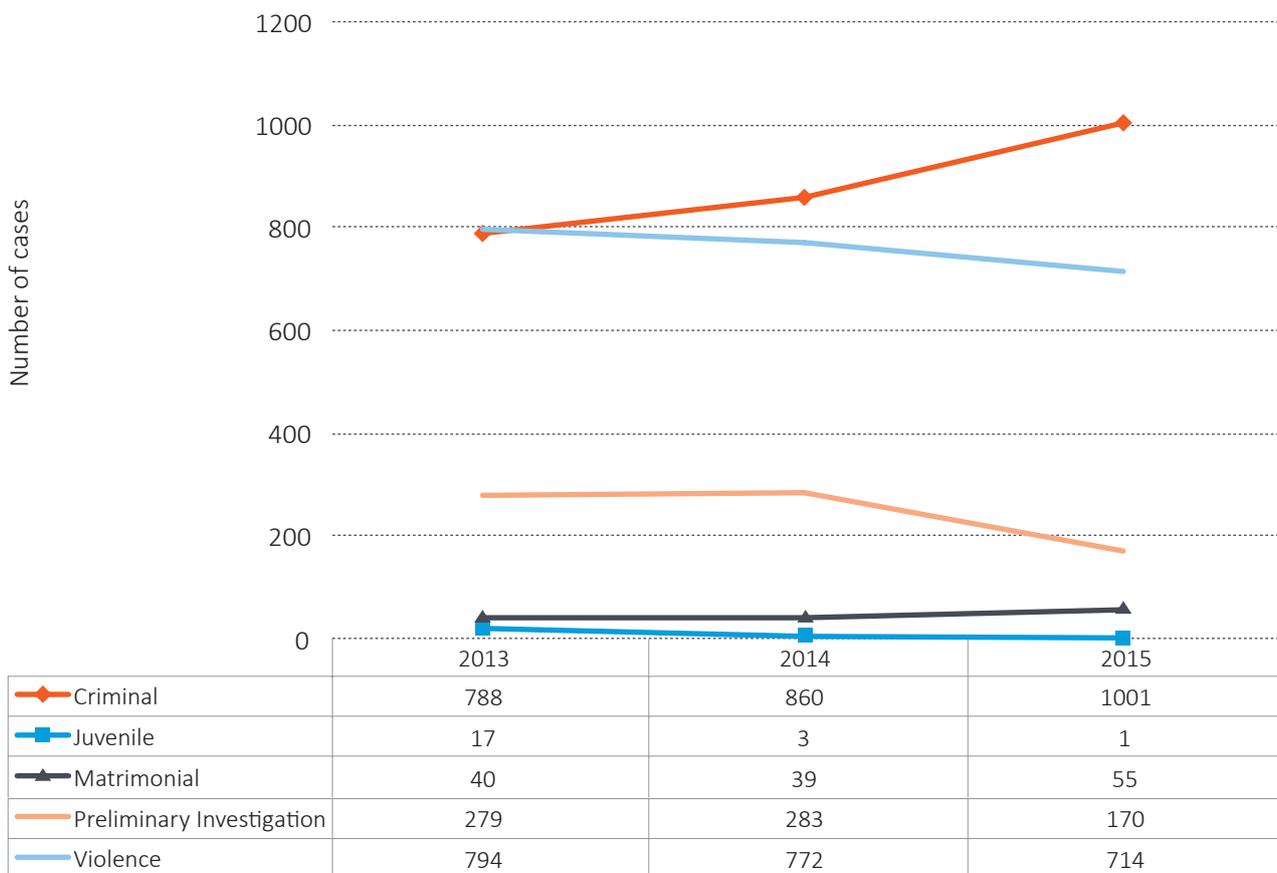


Chart 3.6 above shows the total number of cases filed, by case type, in the Magistrates Court between 2013 and 2015.⁹



Inside the courthouse at Malekula. Photo credit: Indira Rosenthal

⁹ The rate of filing for civil cases is not contained in this line graph, as the raw data was not provided.



Open air courthouse, Tanna. Photo credit: Indira Rosenthal

Table 3.6: Magistrates Court filing, finalisation and clearance rates 2013 – September 2015

| Case Type | 2013 Filed | Finalised | Clearance Rate | 2014 Filed | Finalised | Clearance Rate | 2015 Filed | Finalised | Clearance Rate | Average |
|---------------------------|------------|-----------|----------------|------------|-----------|----------------|------------|-----------|----------------|------------|
| Criminal | 788 | 652 | 83% | 860 | 971 | 113% | 1001 | 889 | 89% | 95% |
| Violence | 794 | 706 | 89% | 770 | 820 | 106% | 714 | 660 | 92% | 96% |
| Matrimonial | 40 | 28 | 70% | 39 | 32 | 82% | 55 | 37 | 67% | 73% |
| Preliminary Investigation | 278 | 204 | 73% | 281 | 314 | 112% | 169 | 175 | 104% | 96% |

Family law and family violence cases in the Magistrates Court

As previously noted, the current dataset does not capture detail about the gender or age of offender/victim or applicant/respondent in a case in the Magistrates Court. In interviews with Magistrates and court staff, it was noted that in violence cases women and girls are most likely to be the victim and in both Family Protection Order (“violence”) and domestic violence (“criminal”) cases, the offender is most likely to be a male. In matrimonial cases, the Magistrates reported that the applicant is most likely to be a

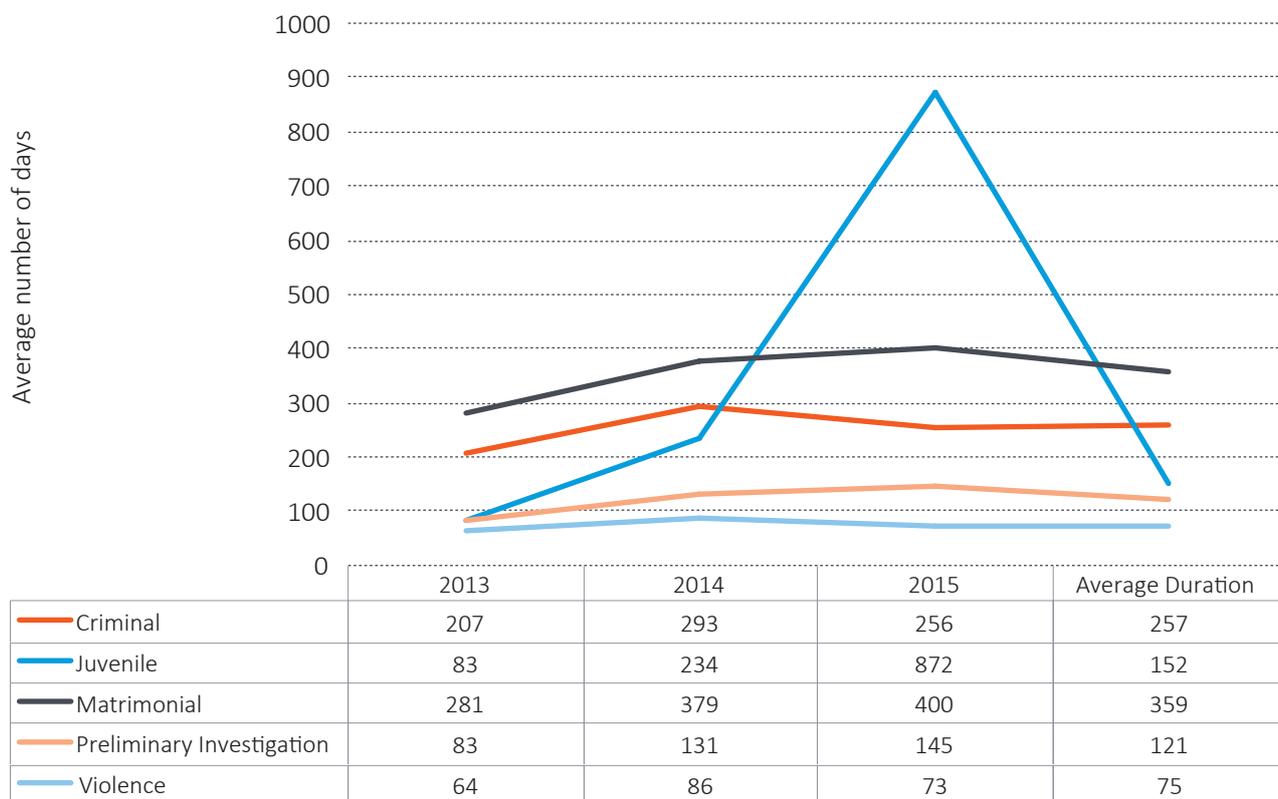
woman. The following data has therefore focused on four categories of cases (criminal, matrimonial, preliminary investigation and violence cases) in the Magistrates Court that are most likely to affect women and children in the formal justice system in Vanuatu.

The table above shows the filing, finalisation and clearance rates between 2013 and 2015 for the subgroup of cases most likely to affect women and children in the Magistrates Court.

Photo credit, next page: UN Women/Murray Lloyd



Chart 3.7: Magistrates Court average duration of a case (in days)



Of this subgroup, Chart 3.7 above details the average duration (in days) of finalised cases. It illustrates that the time taken to finalise matrimonial cases is on the rise with it currently taking on average 400 days. It further highlights that the time taken to hear preliminary investigations is also increasing, with it currently taking 145 days.

Location of hearings

The majority of cases in the Magistrates Court were heard in either Port Vila or Luganville, despite 75% of the population living in rural areas. The data shows that:

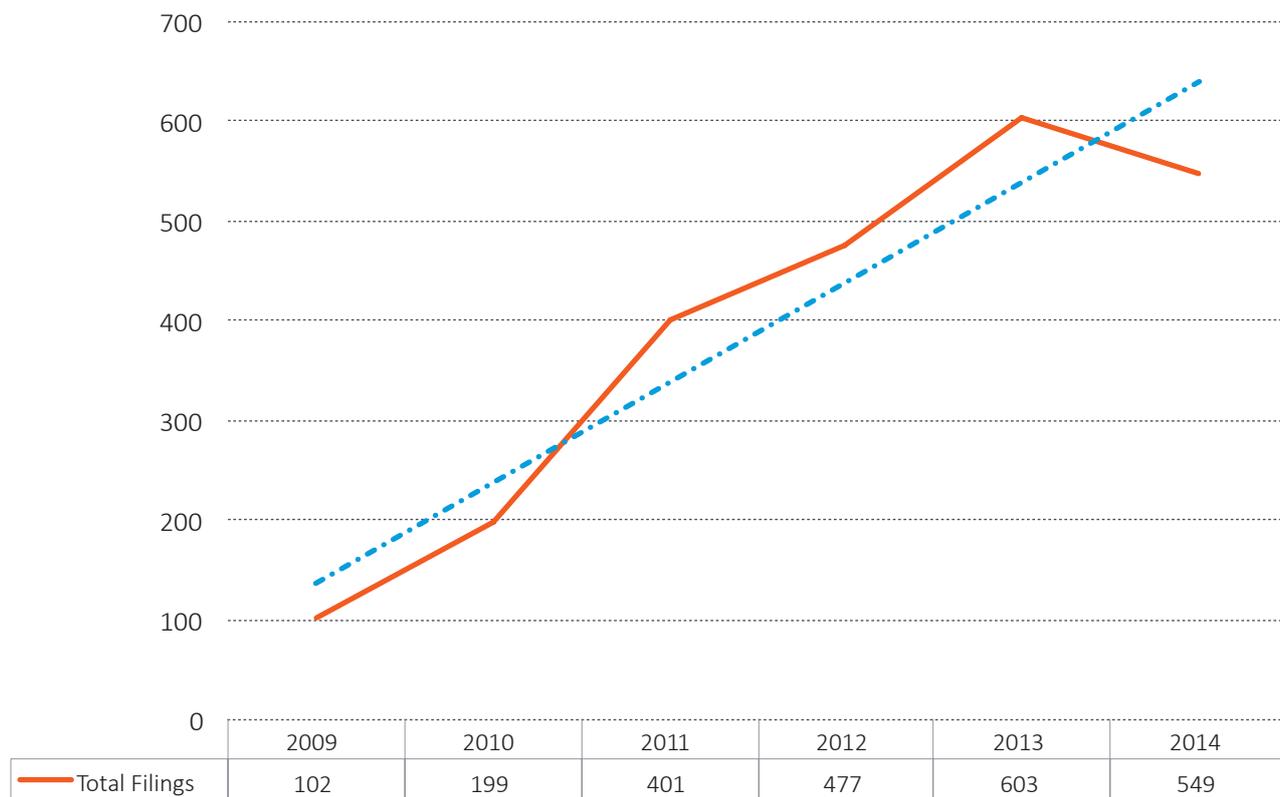
- Only 8% of violence cases (on average during 2013–2015) were decided in the Magistrates Court in rural areas outside Port Vila or Luganville.
- 98% of matrimonial cases are decided in Port Vila or Luganville.

Table 3.7: Location of hearings 2013–2015

| | 2013 | 2014 | 2015 | Total | % heard in a rural area |
|------------|------|------|------|-------|-------------------------|
| Adoption | 29 | 28 | 18 | 75 | 4% |
| Luganville | 4 | 1 | | 5 | |
| Port Vila | 25 | 25 | 17 | 67 | |
| Santo | | 2 | 1 | 3 | |

| | 2013 | 2014 | 2015 | Total | % heard in a rural area |
|--------------------|------|------|------|-------|-------------------------|
| Juvenile | 14 | 3 | 1 | 18 | 6% |
| Luganville | 1 | | | 1 | |
| Port Vila | 12 | 3 | 1 | 16 | |
| Tongoa | 1 | | | 1 | |
| Maintenance | 97 | 172 | 110 | 379 | 14% |
| Isangel | | 24 | 10 | 34 | |
| Lakatoro | 7 | 10 | 1 | 18 | |
| Luganville | 23 | 26 | 8 | 57 | |
| Port Vila | 66 | 112 | 90 | 268 | |
| Sola | 1 | | 1 | 2 | |
| Matrimonial | 37 | 38 | 43 | 118 | 2% |
| Lakatoro | | 1 | | 1 | |
| Luganville | 3 | 4 | 2 | 9 | |
| Port Vila | 34 | 33 | 40 | 107 | |
| Santo | | | 1 | 1 | |
| Violence | 706 | 821 | 664 | 2191 | 8% |
| Ambae | | | 1 | 1 | |
| Ambrym | 1 | 1 | | 2 | |
| Erromango | | 1 | | 1 | |
| Isangel | | 14 | 26 | 40 | |
| Lakatoro | | 25 | 12 | 37 | |
| Luganville | 121 | 189 | 161 | 471 | |
| Maewo | | | 1 | 1 | |
| Malekula | | | 21 | 21 | |
| Pentecost | | | 2 | 2 | |
| Port Vila | 570 | 549 | 429 | 1548 | |
| Sola | | 2 | | 2 | |
| Tanna | 14 | 40 | 8 | 62 | |
| Torba | | | 3 | 3 | |

Chart 3.8: Total Family Protection Order filings 2009–2014



Total filings of Family Protection Orders 2009–2014 (pre CMS migration data)

Between 2009 and 2014 court administration staff kept a separate manual dataset to record information related specifically to Family Protection Orders. Data from this manual collection shows the number of applications for Family Protection Orders filed in Vanuatu.

In an interview at the Port Vila Magistrates Court, the Court Administrator mentioned that:

In 2008, 100% of applications for Domestic Violence Orders were from female applicants. These applications attracted a fee of VT 3000. [NB. The Family Protection Act 2008 replaced Domestic Violence Orders with Family Protection Orders for which no fees are payable].

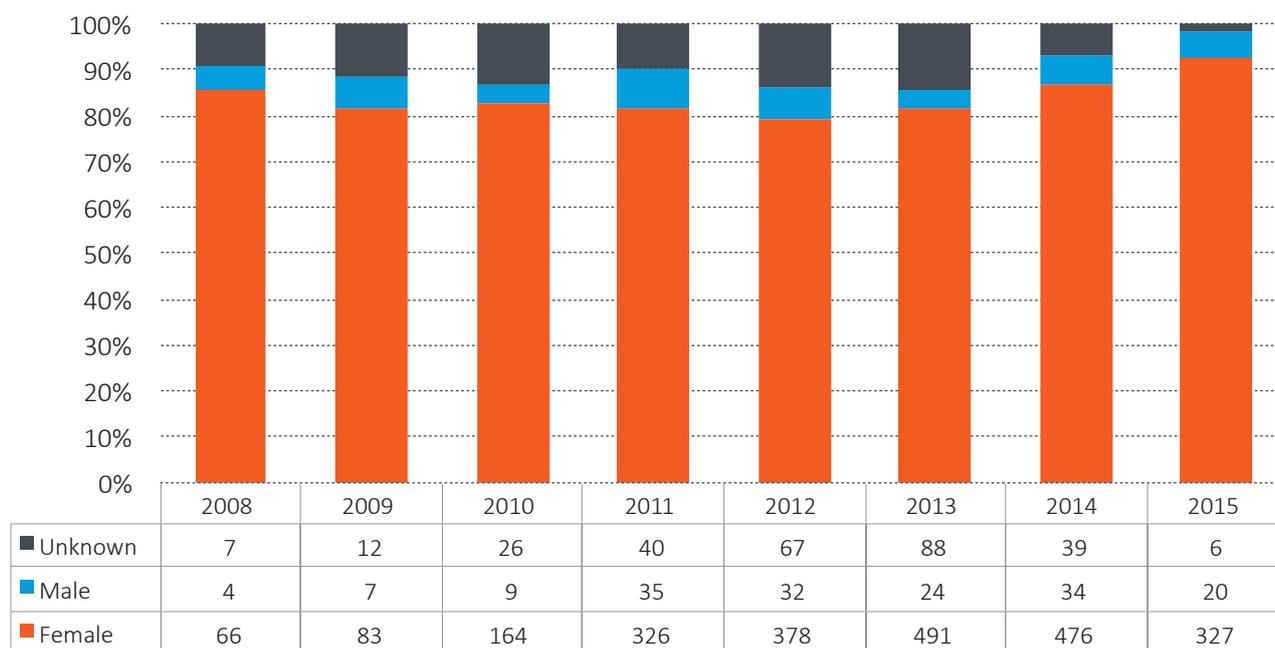
From 2009 to 2010, women filed 99% of applications filed in the Magistrates Court. There was no Court fee associated with these

applications. The number of Protection Order cases increased from 2011 onwards with the VWC filing the majority of applications. The parties involved in these applications were mainly husband and wife, children and parents, boyfriend and girlfriend.

The Court Administrator said on average the Port Vila registry receives an application for a Family Protection Order every day and, on some days, up to 6 applications a day.

The linear forecast illustrates that there continues to be an increase in the number of these applications filed in the Court, with an average of 389 applications for Family Protection Orders in the six years since the Family Protection Act came into force. However, the number of applications for Family Protection Orders remains extremely low compared with the figures on family violence reported by women in the 2009 Vanuatu National Survey on Women’s Lives and Family Relationships.

Chart 3.9: Gender of applicant for Family Protection Order 2008–2015



Gender of applicant and assistance with Family Protection Orders in the Magistrates Court 2009–2014

From 2008 to mid-2015, the Port Vila Magistrates Court recorded gender disaggregated data in its register of Family Protection Orders. These records indicate that the overwhelming majority of applicants for a protection order in the Magistrates Court were women (94% where the gender is known). This is consistent with anecdotal evidence from interviews with all Magistrates and their court staff.

The Magistrates Courts CMS is unable to provide reports on assistance provided to the applicant in making a Family Protection Order. However, the Magistrates Court register in Port Vila (kept prior to 2015) recorded information about who assisted the applicant to bring an application for a Family Protection Order to the Magistrates Court.

This “pre-migration data” provides a greater level of information and the table below illustrates that between 2009 and 2014 (the final year data was recorded), there was:

- a steady increase in the number of women filing applications for a Family Protection Order;
- on average, 9 in 10 women (93%) sought assistance to bring an application for a Family Protection Order to the Magistrates Court;
- 92% of women who sought assistance for a Family Protection Order were assisted by the Vanuatu Police Family Protection Unit (FPU) or the Vanuatu Women’s Centre (VWC); and
- there has been a steady increase in the number of women seeking assistance from the VWC to obtain a Family Protection Order. This may be attributed to a number of factors, but especially to the VPF Family Protection Unit in Port Vila deciding in early 2014 to cease assisting applicants with their Family Protection Order applications and, instead, to focus their resources on investigating serious domestic violence and sexual offences.

Table 3.8: Provision of assistance for Family Protection Orders

| Family Protection Orders | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | Total 2009–2014 | Average | Percentage Seeking Orders |
|--------------------------------------|------------|------------|------------|------------|------------|------------|-----------------|------------|---------------------------|
| Vanuatu Women’s Centre | 83 | 113 | 83 | 96 | 149 | 324 | 848 | 141 | 38% |
| USP Community Legal Centre | 2 | 3 | 1 | 0 | 0 | 0 | 6 | 1 | 0% |
| Self-Represented Litigant | 8 | 28 | 21 | 32 | 42 | 17 | 148 | 25 | 7% |
| Public Solicitor’s Office | 4 | 2 | 5 | 5 | 3 | 4 | 23 | 4 | 1% |
| Family Protection Unit | 0 | 45 | 286 | 344 | 401 | 132 | 1208 | 201 | 54% |
| Other | 5 | 8 | 5 | 0 | 2 | 3 | 23 | 4 | 1% |
| Total Applications | 102 | 199 | 401 | 477 | 597 | 480 | 2256 | 376 | 100% |
| Unknown | 0 | 0 | 0 | 0 | 6 | 69 | 75 | 13 | |
| Total where assistance sought | 94 | 171 | 380 | 445 | 555 | 463 | 2108 | 351 | |



Photo credit: UN Women/Ellie van Baaren



Efate Island Court Clerk, Alida Tchivi and Ambae Island Court Clerk, Nailyn Abel. Photo credit: Indira Rosenthal

d. Island Courts

Arrangements have been made for Island Courts by the *Island Courts Act 1983*¹⁰ enacted pursuant to s. 50 of the Constitution. The Courts, of which there are currently twelve, are set up by the Chief Justice who also determines their geographical and subject-matter jurisdiction.

The *Island Courts Act*,¹¹ which sets up and regulates the Island Courts, provides that the President of the Republic, with the advice of the Judicial Service Commission, appoints not less than three justices to each Island Court. It further requires that:

- At least one of the three Justices sitting in each Island Court shall be a Custom Chief (with a possibility of his being a member of the National Council of Chiefs);¹²
- A supervising magistrate be appointed for each court;
- Appeals from the Island Courts, which lie to the Magistrates or Supreme Court, must be heard with at least two assessors knowledgeable in custom.

Criminal jurisdiction is limited to offences committed within the geographic jurisdiction of the Island Courts, or those cases in which the defendant is ordinarily resident within their territorial jurisdiction.

The maximum penalty is a fine of VT 24,000 (A\$290) or six months imprisonment. Where a fine is ordered, the Court may order it to be paid in goods up to the value of the fine.

Civil jurisdiction arises in the place where a defendant is ordinarily resident, or the cause of action arose. In civil matters jurisdiction is limited to claims up to VT 50,000 (A\$605), however claims for maintenance are not limited in amount.

Section 10 provides that the customary law, which prevails within the territorial jurisdiction of the Island Courts shall be applied provided that this is not in conflict with any written law or contrary to justice, morality, or good order. Where the Court applies a prevailing customary law, the proceedings shall be recorded by a clerk of the Court and thus become a precedent for the Island Courts.

The Courts are not bound by the rules of evidence and legal representation is not allowed. Appeal lies to the Magistrates Court, except in relation to disputes as to land, where appeal is to the Supreme Court. The Court hearing the appeal must sit with two or more assessors knowledgeable in custom.

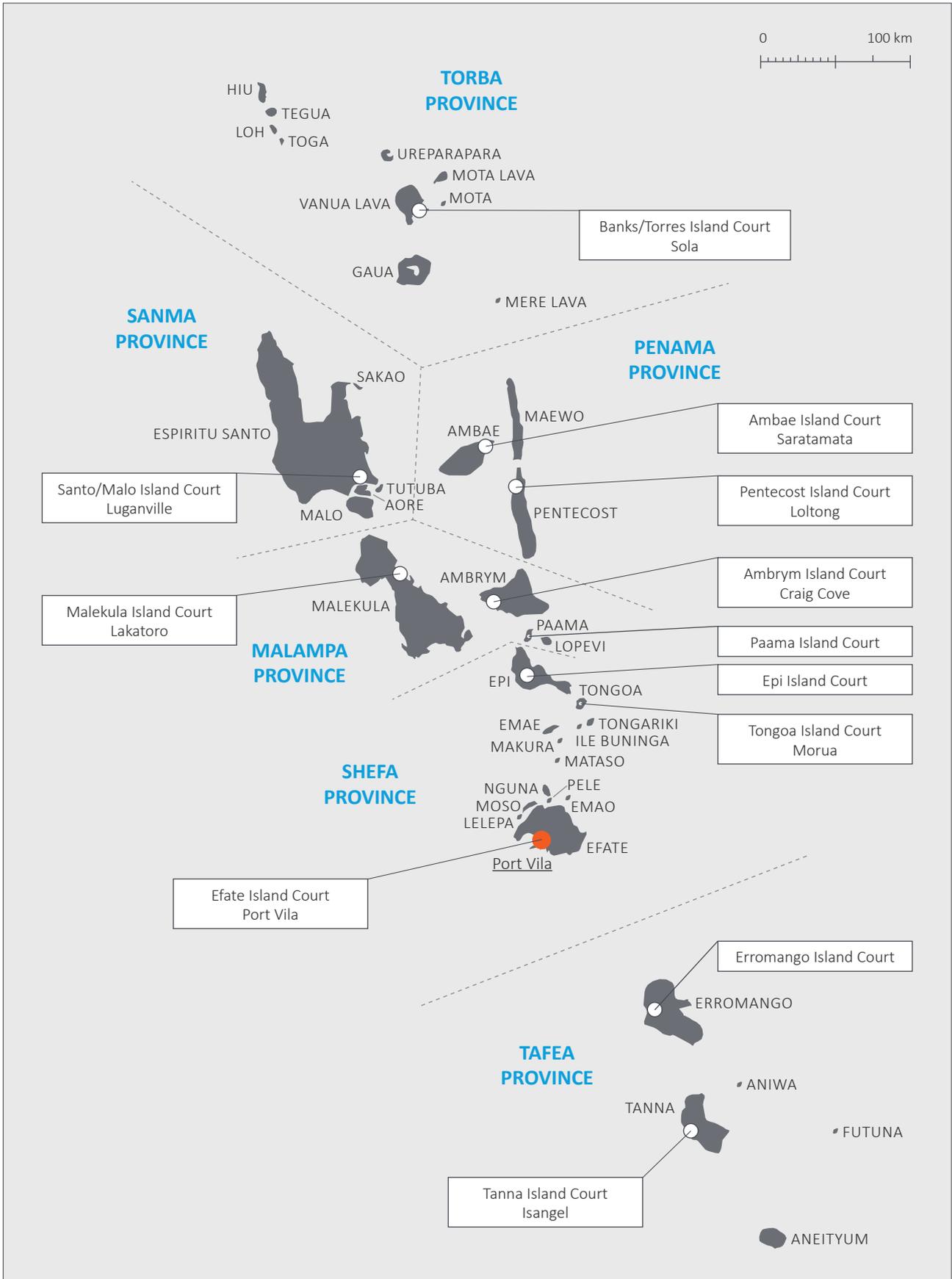
The twelve operational Island Courts are located in the each of the six provinces.

10 Act No. 10 of 1983.

11 Island Courts Act No. 10 of 1983.

12 The overwhelming majority of Chiefs in Vanuatu are male.

Location of Island Courts in Vanuatu



Process map for cases in the Island Court

Figure 3.4: Process map for cases in the Island Court

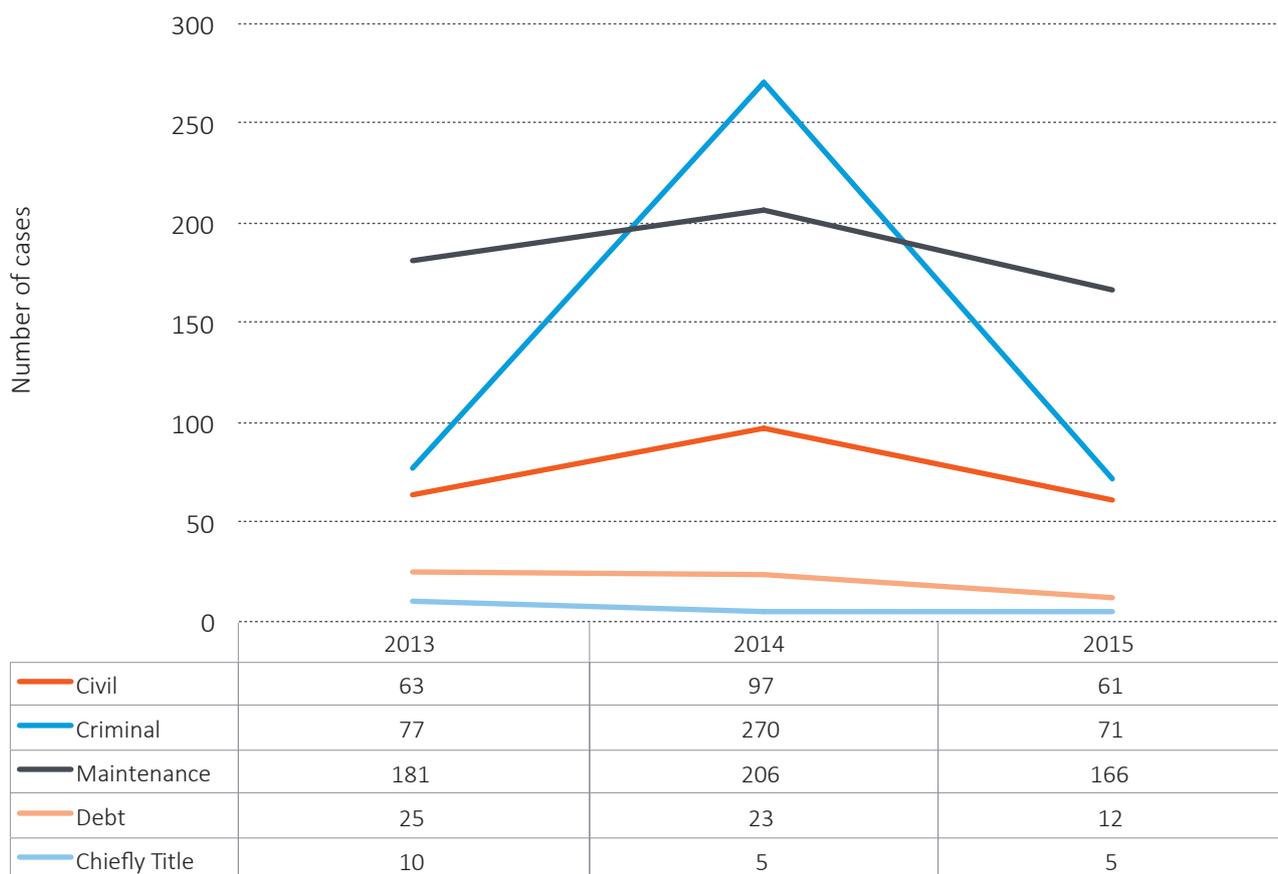


Cases filed 2013–2015

The dataset from the CMS for the Island Courts is very limited and it is not possible to ascertain who brings civil, maintenance or debt related cases to the Court, nor what the outcomes were in these cases.

On average, 424 cases are filed in the Island Courts of Vanuatu each year. A significant percentage of these cases relate to child maintenance applications (46% on average), criminal matters (30%) and civil cases (18%). Only women can seek child maintenance orders in the Island Court. (See section 1, *Maintenance of Children Act*.)

Chart 3.10: Island Courts cases filed 2013–2015



Percentage of total filings 2013–2015

Chart 3.11: Island Courts – percentage of total filings

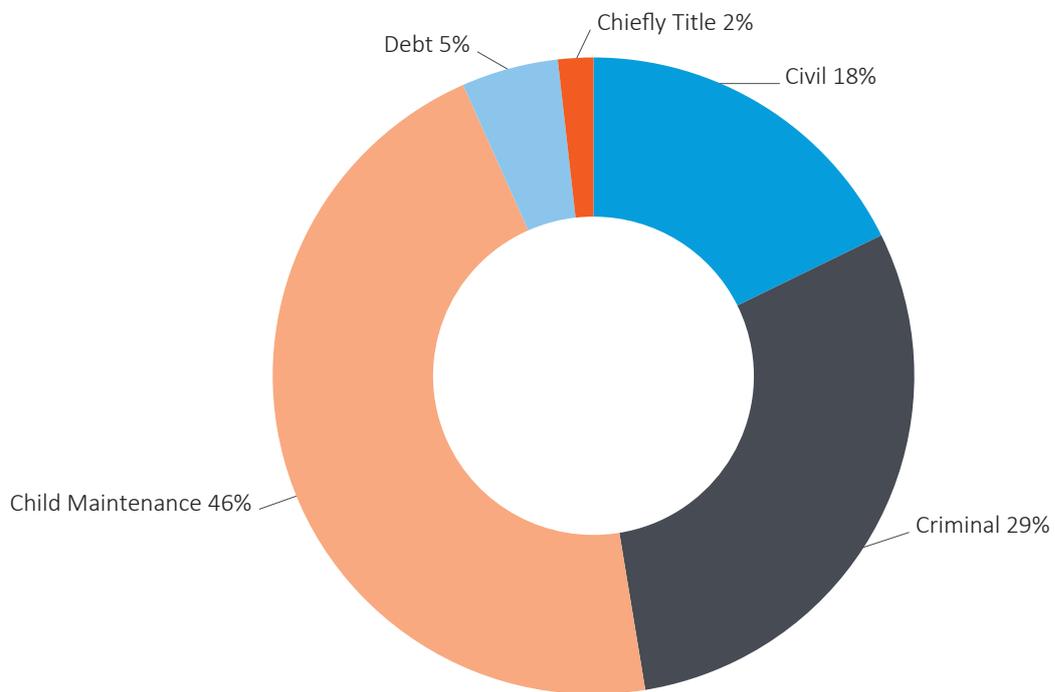
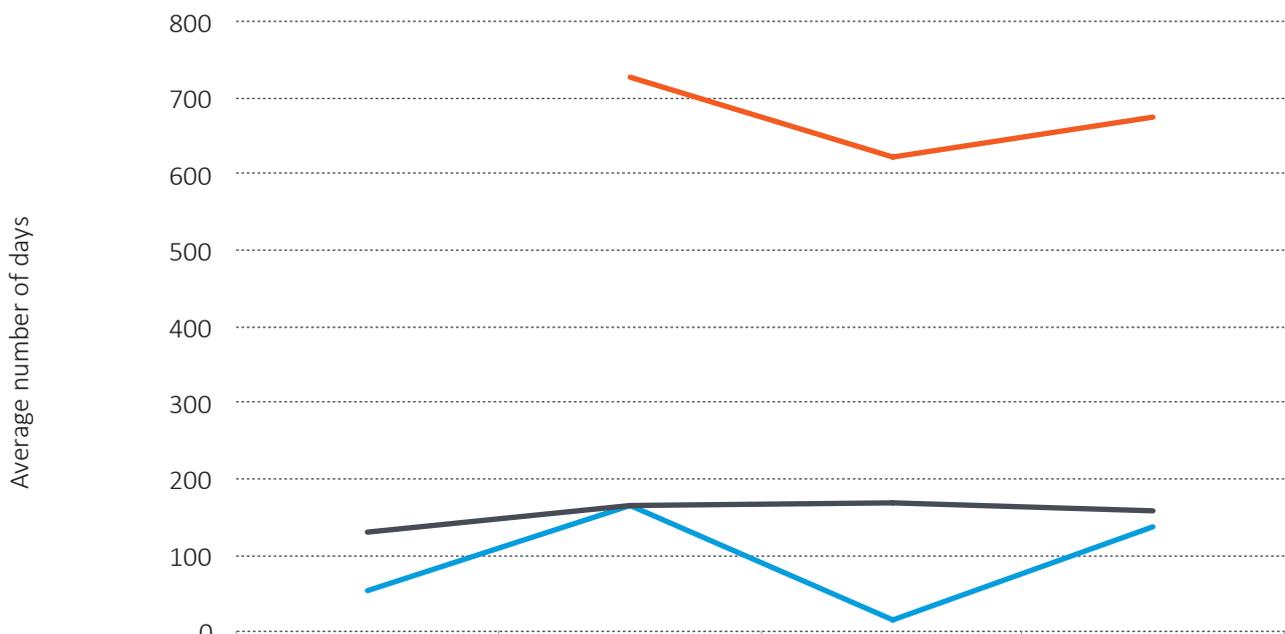


Photo credit: UN Women/Olivia Owen



Island Court Administrator Office, Port Vila. Photo credit: Indira Rosenthal

Chart 3.12: Island Courts average duration of a case (in days)



| | 2013 | 2014 | 2015 | Average Duration |
|---------------|------|------|------|------------------|
| Chiefly Title | | 726 | 621 | 674 |
| Criminal | 52 | 164 | 14 | 136 |
| Maintenance | 129 | 165 | 170 | 157 |

Average duration of cases (days)

The average duration of all cases in the Island Courts is 149 days. However, individually it takes 674 days on

average for chiefly title, 136 days for criminal matters and 157 days for maintenance cases.

Table 3.9: Island Court clearance rates 2014–2015

| | 2013 In | 2013 Out | Clearance Rate | 2014 In | 2014 Out | Clearance Rate | 2015 In | 2015 Out | Clearance Rate |
|---------------|------------|-------------|-------------------|------------|-------------|-------------------|------------|-------------|-------------------|
| Civil | 63 | 39 | 62% | 97 | 31 | 32% | 61 | 57 | 93% |
| Criminal | 77 | 35 | 45% | 270 | 310 | 115% | 71 | 46 | 65% |
| Maintenance | 181 | 97 | 54% | 206 | 172 | 83% | 166 | 110 | 66% |
| Debt | 25 | 21 | 84% | 23 | 20 | 87% | 12 | 13 | 108% |
| Chiefly Title | 10 | 0 | 0% | 5 | 2 | 40% | 5 | 2 | 40% |
| Total | 356 | 192 | | 601 | 535 | | 315 | 228 | |

Clearance rate 2012–2015

The clearance rate for cases in the Island Court is detailed in the table above. The clearance rate of chiefly title, criminal and maintenance cases remains well below 100% which means that the number of cases pending will be increasing.

We enable this through strong leadership by:

- Developing a disciplined, skilled and capable workforce;
- Using modern equipment, systems and facilities;
- Continuously striving toward best practice in management and policing.

e. Vanuatu Police Force

The Vanuatu Police Force Family Protection Units are specialised units for the investigation of family and domestic violence offences under the Family Protection Act and sexual violence offences under the Penal Code. FPU also serve Family Protection Orders made under the FPA.

Vanuatu Police Force – Vision and Mission Statement

Vision Statement

A modern and professional Police Force united in delivering an effective policing service, in partnership with our communities for a safe and secure Vanuatu.

Mission Statement

To protect and defend our people, property and borders by the detection and prevention of crime through law enforcement in partnership with our national and international communities.



Northern District Police Headquarters, Santo. Photo credit: Indira Rosenthal

Location of Vanuatu Police Force Family Protection Units

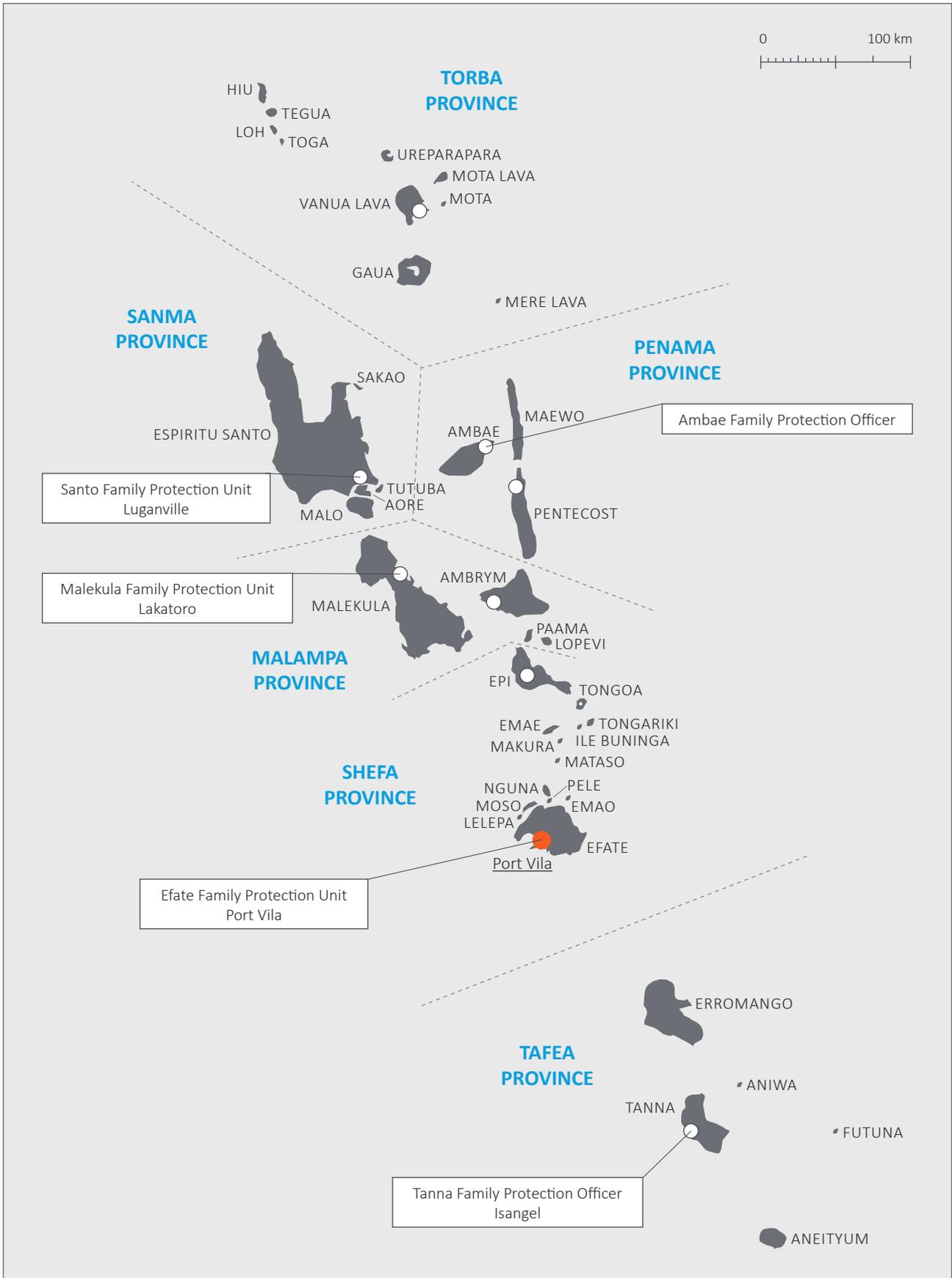


Table 3.10: Charges laid per year

| Crime Description | 2012 | 2013 | 2014 | Grand Total |
|---|------------|------------|------------|-------------|
| Act of indecency with a young person | 7 | 16 | 8 | 31 |
| Act of indecency without consent | 14 | 3 | 7 | 24 |
| Aggravated sexual intercourse with a child | 3 | | | 3 |
| Domestic violence offence | 121 | 114 | 153 | 388 |
| Incest | 14 | 14 | 6 | 34 |
| Indecent act in public place | 1 | 5 | 6 | 12 |
| Indecent matter | 2 | 5 | 9 | 16 |
| Intentional assault | 496 | 508 | 488 | 1492 |
| Intentional homicide | 5 | 12 | 4 | 21 |
| Kidnapping | 10 | 5 | 3 | 18 |
| Sexual intercourse with child under care and protection | 3 | 6 | 6 | 15 |
| Sexual intercourse without consent | 45 | 53 | 60 | 158 |
| Unlawful sexual intercourse | 19 | 22 | 9 | 50 |
| Grand Total | 740 | 763 | 759 | 2262 |

CRIMS dataset

The analysis above is based on the data from the “CRIMS” database and provided to the research team by the Vanuatu Police Force (VPF). This dataset is the only one in the formal justice sector that contains information about the gender of the offender and victim, the age of the offender and victim and their nationality. Importantly, it is also the only dataset in Vanuatu’s formal justice sector that records subtypes of crimes.

It is understood that the VPF will introduce a new case management system during 2016 and that migration

of the old data has started. It is recommended that the full breadth of data currently collected by the VPF continue with the new CMS. As the 2015 dataset was incomplete, it has only been used in some analysis to indicate averages.

Total charges – sexual and other physical violence 2012–2014

The CRIMS dataset shows that police lay, on average, 754 charges per year for sexual and other physical violence offences.

The following table shows the gender of the victim for each of the charges.

Table 3.11: Gender of victim

| Charge | 2012 | 2013 | 2014 | Grand Total |
|---|------|------|------|-------------|
| Act of indecency with a young person | 7 | 16 | 8 | 31 |
| Female | 4 | 12 | 8 | 24 |
| Male | 3 | 4 | | 7 |
| Act of indecency without consent | 14 | 3 | 7 | 24 |
| Female | 4 | 3 | 7 | 14 |
| Male | 10 | | | 10 |
| Aggravated sexual intercourse with a child | 3 | | | 3 |
| Female | 3 | | | 3 |
| Domestic violence offence | 121 | 114 | 153 | 388 |
| Female | 103 | 82 | 117 | 302 |
| Male | 18 | 30 | 36 | 84 |
| Unknown | | 2 | | 2 |
| Incest | 14 | 14 | 6 | 34 |
| Female | 14 | 12 | 6 | 32 |
| Male | | 2 | | 2 |
| Indecent act in public place | 1 | 5 | 6 | 12 |
| Female | 1 | 4 | 6 | 11 |
| Male | | 1 | | 1 |
| Indecent matter | 2 | 5 | 9 | 16 |
| Female | 1 | 3 | 8 | 12 |
| Male | 1 | 2 | 1 | 4 |
| Intentional assault | 496 | 508 | 488 | 1492 |
| Female | 146 | 151 | 219 | 516 |
| Male | 350 | 347 | 268 | 965 |
| Unknown | | 10 | 1 | 11 |

| Charge | 2012 | 2013 | 2014 | Grand Total |
|--|------------|------------|------------|-------------|
| Intentional homicide | 5 | 12 | 4 | 21 |
| Female | 1 | 2 | 1 | 4 |
| Male | 4 | 10 | 3 | 17 |
| Kidnapping | 10 | 5 | 3 | 18 |
| Female | 9 | 4 | 3 | 16 |
| Male | 1 | 1 | | 2 |
| Sexual intercourse with child under care and protection | 3 | 6 | 6 | 15 |
| Female | 3 | 6 | 6 | 15 |
| Male | | | | 0 |
| Sexual intercourse without consent | 45 | 53 | 60 | 158 |
| Female | 41 | 49 | 56 | 146 |
| Male | 4 | 4 | 4 | 12 |
| Unlawful sexual intercourse | 19 | 22 | 9 | 50 |
| Female | 19 | 18 | 8 | 45 |
| Male | | 4 | 1 | 5 |
| Grand Total | 740 | 763 | 759 | 2262 |

The following should be noted:

1. The police reported that they do not inquire into whether there has been a history of domestic violence when investigating cases of intentional homicides of women by their partner/husband or ex partner/husband. They also reported that they do not record any history of domestic or family violence in cases of intentional homicide of women.
2. Anecdotal evidence from interviews across the formal justice sector and the 2011 VWC National Women's Survey indicate that the prevalence of sexual offences against women and girls is much higher than these figures suggest.

Total sexual and other physical violence offences against women and girls 2012–2014

The 2009 Vanuatu National Survey on Women's Lives and Family Relationships found that 44% of women surveyed experienced sexual and other physical violence by their husband/partner in the 12 months prior to the survey. Using population figures from the 2009 Census, this 44% of women, equates to 22,901 women experiencing family violence in the previous 12 months.

The CRIMS dataset shows that on average, 380 charges (50%) per year relate to sexual and other physical violence against women and girls (see Table 3.12). Based on the 2009 survey of women who experience physical and/or sexual violence, this equates to only 2% of cases where police laid charges.

Table 3.12: Percentage of cases involving violence against women and girls

| Charge | 2012 | 2013 | 2014 | Grand Total |
|--|------|------|------|-------------|
| Act of indecency with a young person | 7 | 16 | 8 | 31 |
| Female | 4 | 12 | 8 | 24 |
| Per cent of total | | | | 77% |
| Act of indecency without consent | 14 | 3 | 7 | 24 |
| Female | 4 | 3 | 7 | 14 |
| Per cent of total | | | | 58% |
| Aggravated sexual intercourse with a child | 3 | | | 3 |
| Female | 3 | | | 3 |
| Per cent of total | | | | 100% |
| Domestic violence offence | 121 | 114 | 153 | 388 |
| Female | 103 | 82 | 117 | 302 |
| Per cent of total | | | | 78% |
| Incest | 14 | 14 | 6 | 34 |
| Female | 14 | 12 | 6 | 32 |
| Per cent of total | | | | 94% |
| Indecent act in public place | 1 | 5 | 6 | 12 |
| Female | 1 | 4 | 6 | 11 |
| Per cent of total | | | | 92% |
| Indecent matter | 2 | 5 | 9 | 16 |
| Female | 1 | 3 | 8 | 12 |
| Per cent of total | | | | 75% |
| Intentional assault | 496 | 508 | 488 | 1492 |
| Female | 146 | 151 | 219 | 516 |
| Per cent of total | | | | 35% |
| Intentional homicide | 5 | 12 | 4 | 21 |
| Female | 1 | 2 | 1 | 4 |
| Per cent of total | | | | 19% |

| Charge | 2012 | 2013 | 2014 | Grand Total |
|---|------------|------------|------------|-------------|
| Kidnapping | 10 | 5 | 3 | 18 |
| Female | 9 | 4 | 3 | 16 |
| Per cent of total | | | | 89% |
| Sexual intercourse with child under care and protection | 3 | 6 | 6 | 15 |
| Female | 3 | 6 | 6 | 15 |
| Per cent of total | | | | 100% |
| Sexual intercourse without consent | 45 | 53 | 60 | 158 |
| Female | 41 | 49 | 56 | 146 |
| Per cent of total | | | | 92% |
| Unlawful sexual intercourse | 19 | 22 | 9 | 50 |
| Female | 19 | 18 | 8 | 45 |
| Male | | | | 90% |
| Total Sexual and other physical violence | 740 | 763 | 759 | 2262 |
| Total Violence Against Females | 349 | 346 | 445 | 1140 |
| % of total violence charges | 47% | 45% | 59% | 50% |

Total sexual violence offences against women and girls 2012–2014

On average, 88% of charges were for sexual violence cases perpetrated against females (see Table 3.13),

44% of charges related to other physical violence and 78% of charges were for domestic violence offences (see Table 3.14).

Table 3.13: Total sexual violence offences against women and girls 2012–2014

| Charge | 2012 | 2013 | 2014 | Total |
|--------------------------------------|------|------|------|-------|
| Act of indecency with a young person | 7 | 16 | 8 | 31 |
| Female | 4 | 12 | 8 | 24 |
| | | | | 77% |
| Act of indecency without consent | 14 | 3 | 7 | 24 |
| Female | 4 | 3 | 7 | 14 |
| | | | | 58% |

| Charge | 2012 | 2013 | 2014 | Total |
|--|-----------|------------|------------|------------|
| Aggravated sexual intercourse with a child | 3 | | | 3 |
| Female | 3 | | | 3 |
| | | | | 100% |
| Incest | 14 | 14 | 6 | 34 |
| Female | 14 | 12 | 6 | 32 |
| | | | | 94% |
| Indecent act in public place | 1 | 5 | 6 | 12 |
| Female | 1 | 4 | 6 | 11 |
| | | | | 92% |
| Indecent matter | 2 | 5 | 9 | 16 |
| Female | 1 | 3 | 8 | 12 |
| | | | | 75% |
| Sexual intercourse with child under care and protection | 3 | 6 | 6 | 15 |
| Female | 3 | 6 | 6 | 15 |
| | | | | 100% |
| Sexual intercourse without consent | 45 | 53 | 60 | 158 |
| Female | 41 | 49 | 56 | 146 |
| | | | | 92% |
| Unlawful sexual intercourse | 19 | 22 | 9 | 50 |
| Female | 19 | 18 | 8 | 45 |
| | | | | 90% |
| Total sexual violence offences charged | 108 | 124 | 111 | 343 |
| Total charges for sexual violence against females | 90 | 107 | 105 | 302 |
| Percentage of total charges for sexual violence against females | | | | 88% |

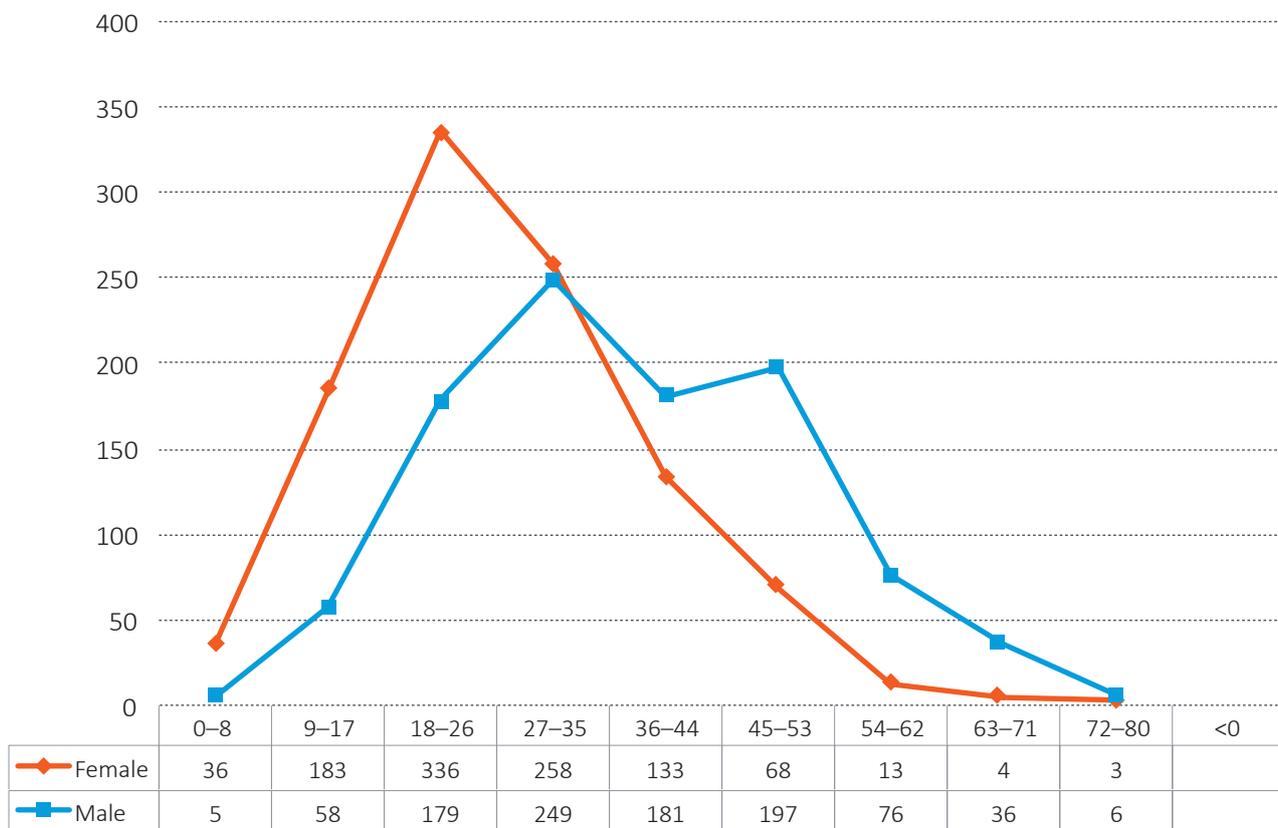


Photo credit: UN Women/Olivia Owen

Table 3.14: Total non-sexual physical violence offences against women and girls 2012–2014

| Charge | 2012 | 2013 | 2014 | Total |
|--|------------|------------|------------|-------------|
| Domestic violence offence | 121 | 114 | 153 | 388 |
| Female | 103 | 82 | 117 | 302 |
| | | | | 78% |
| Intentional assault | 496 | 508 | 488 | 1492 |
| Female | 146 | 151 | 219 | 516 |
| | | | | 35% |
| Intentional homicide | 5 | 12 | 4 | 21 |
| Female | 1 | 2 | 1 | 4 |
| | | | | 19% |
| Kidnapping | 10 | 5 | 3 | 18 |
| Female | 9 | 4 | 3 | 16 |
| | | | | 89% |
| Total physical violence offences charged | 632 | 639 | 648 | 1919 |
| Total charges for sexual violence against females | 259 | 239 | 340 | 838 |
| Percentage of total charges for sexual violence against females | | | | 44% |

Chart 3.13: Age of victim sexual and non-sexual offences



Age and gender of victim in sexual and non-sexual offences

Between January 2012 and December 2014 there were 2262 charges related to sexual and/or other physical violence. Of these, 241 did not have data on the gender of the victim or the offender, or the age of the victim. For the purposes of this research these cases have been removed from the analysis below.

Chart 3.13 above shows (where recorded) the age and gender of the victim for all sexual and other physical violence charges; sexual violence charges only and other physical violence charges only.



Photo credit: UN Women/Olivia Owen

Chart 3.14: Age of victim sexual offences only

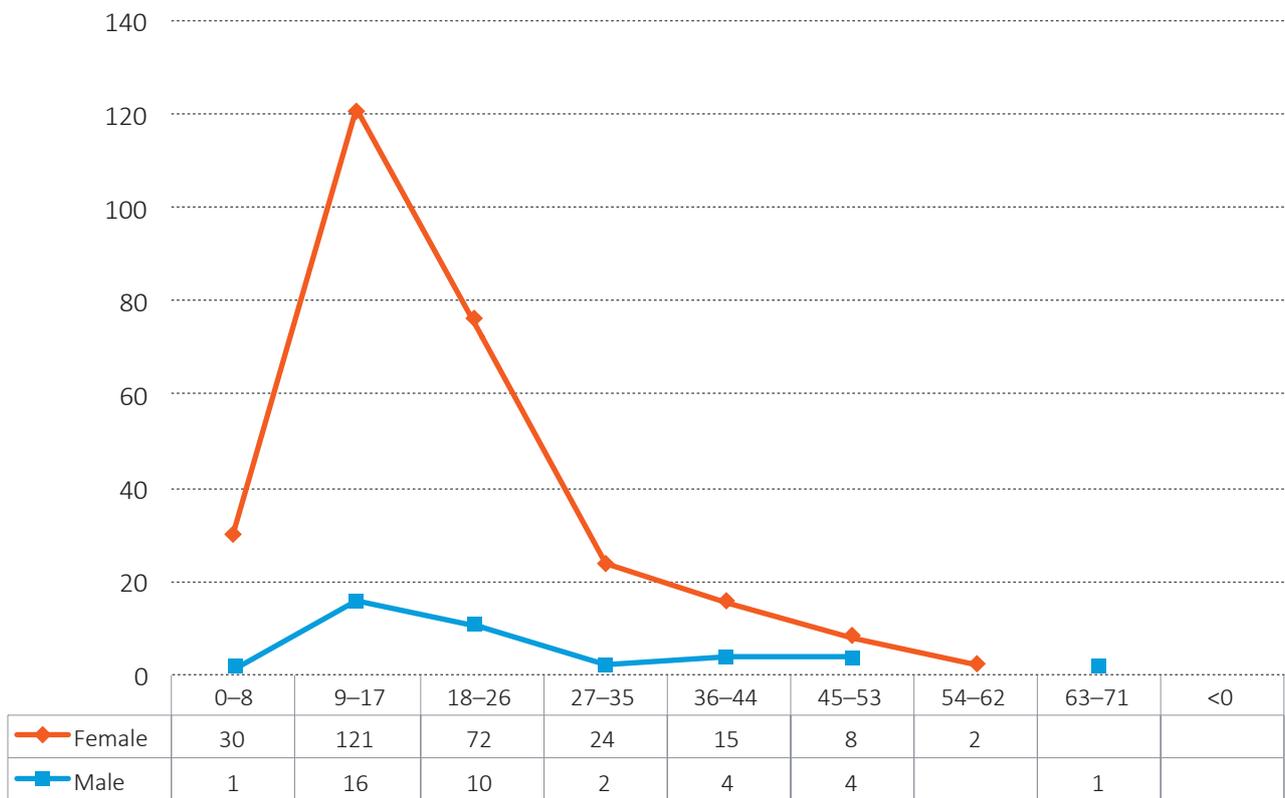


Chart 3.14 above highlights that the majority of charges for sexual violence offences relate to offences perpetrated against girls under the age of 18. Of 310 cases involving sexual offences, 272 cases involve female victims and 38 cases involve male victims.

Photo credit: UN Women/Olivia Owen



Chart 3.15: Age of victim non-sexual offences only

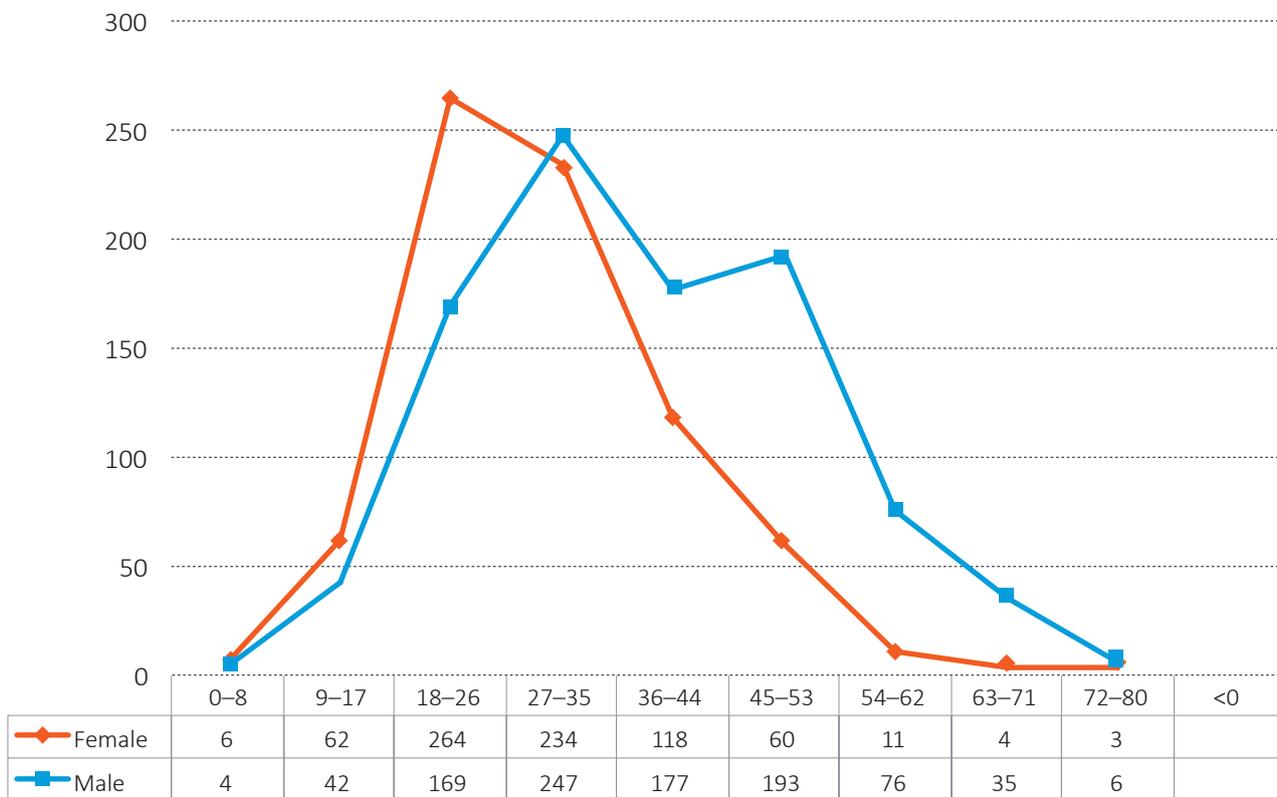


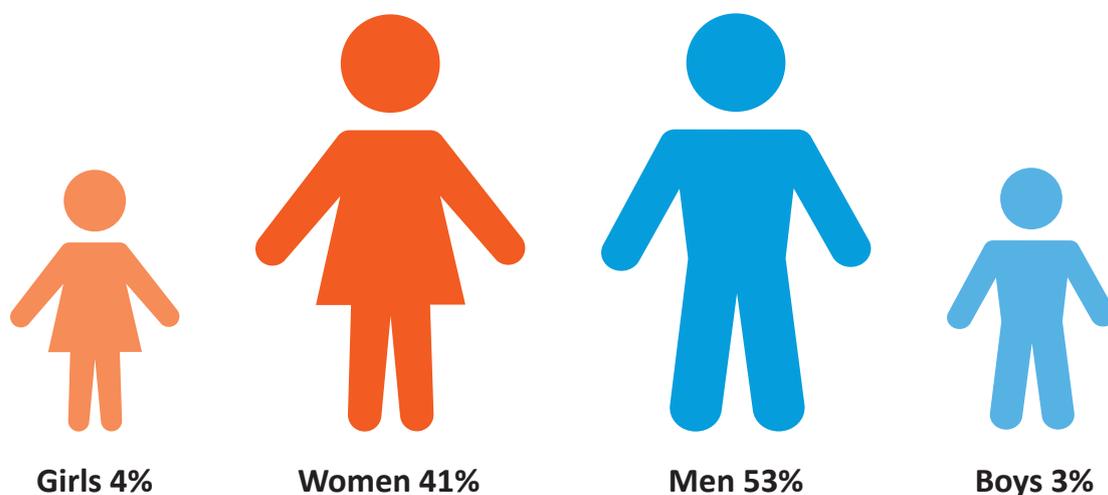
Chart 3.15 above highlights that the majority of charges laid for non-sexual violence offences relate to victims between the ages of 18 and 35 years of age. Of 1711 cases involving non-sexual offences, 762 cases involve female victims and 949 cases involve male victims.

Photo credit: UN Women/Olivia Owen



Figure 3.5: Percent of non-sexual violence by gender

Non-sexual violence by gender of victim N = 1711 (2012–15)

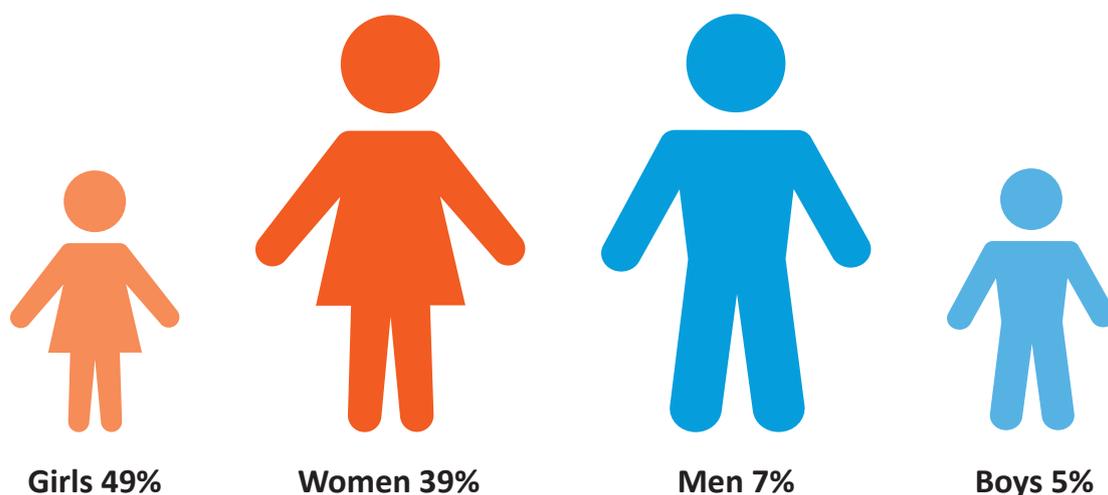


Female Perpetrator – 10%, Male Perpetrator – 90%

90% of non-sexual violence is perpetrated by men. 53% of victims were men, 41% women.

Figure 3.6: Percentage of sexual violence by gender

Sexual violence by gender of victim N = 310 (2012–15)



Female Perpetrator – 7%, Male Perpetrator – 93%

93% of sexual violence is perpetrated by men. Girls (49%) and women (39%) were the overwhelming victims of sexual violence in Vanuatu.

f. Department of the State Prosecutor

The Department of the State Prosecutor Office (DSP) operates from four venues in Vanuatu: Luganville, Santo, Saratamata, Ambae, Lakatoro, Malekula, and Port Vila.

The data provided by the DSP was limited to the following data fields collected between 2012–2014:

- Province of the offence
- Date of offence (although this is mostly incomplete)

- Nature of the offence
- Offender origin
- Date file is received by DSP
- Court hearing date
- Court outcome.

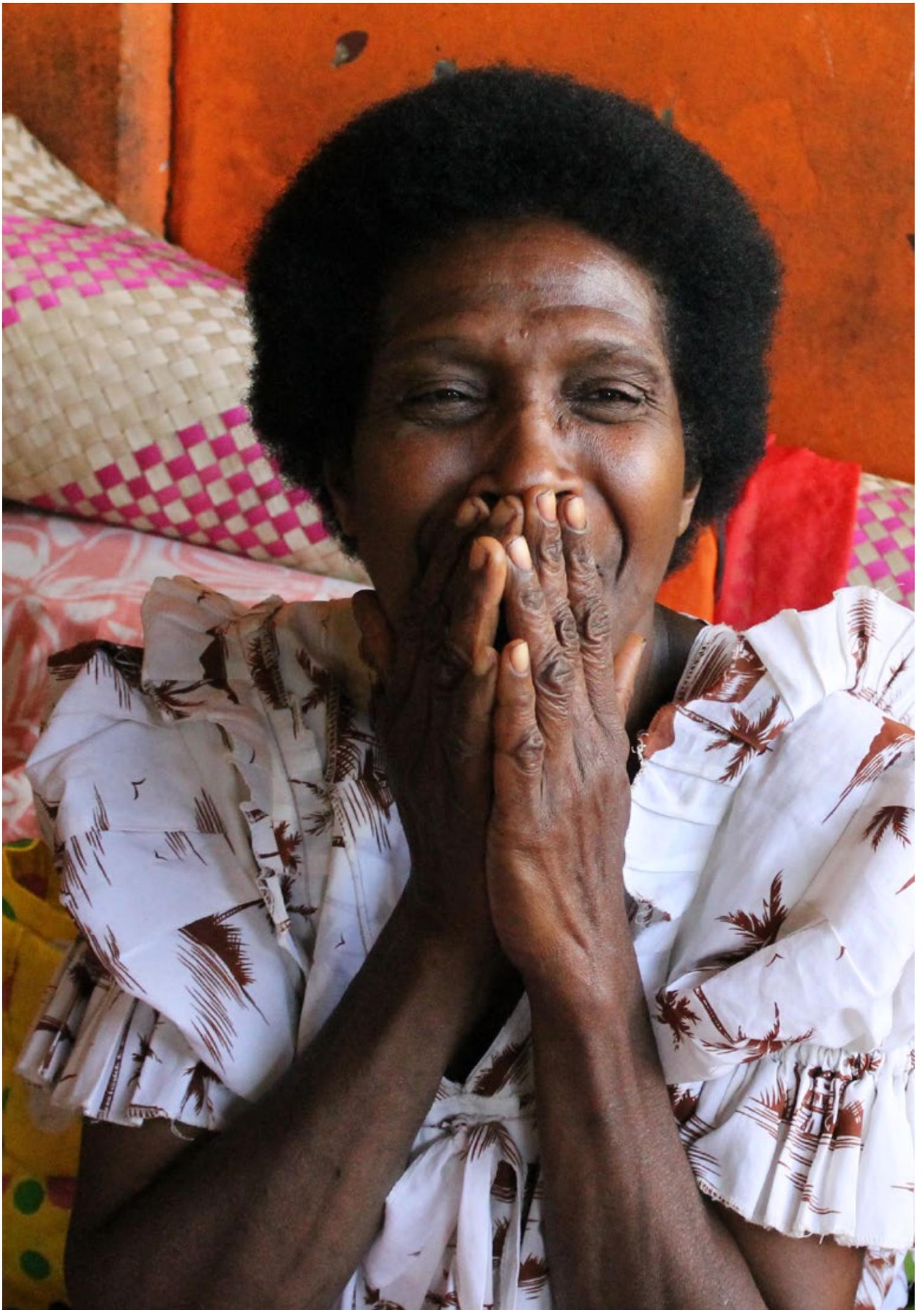
The DSP does not keep gender disaggregated data on the offender or any information about the victim. The data relating to court outcomes and sentencing was very limited.

Table 3.15: Cases in the Department of the State Prosecutor 2012–2014

| | 2012 | 2013 | 2014 | Total Number of Cases By Type |
|---|-----------|------------|------------|-------------------------------|
| Act of indecency with a young person | | 2 | 10 | 12 |
| Act of indecency without consent | | 2 | 5 | 7 |
| Domestic violence offence | 11 | 24 | 43 | 78 |
| Family maintenance offences | 1 | 13 | 14 | 28 |
| Incest | | 1 | 3 | 4 |
| Indecent act in public place | | 2 | 5 | 7 |
| Indecent matter | 1 | 2 | 6 | 9 |
| Intentional assault | 19 | 120 | 205 | 344 |
| Intentional homicide | | 2 | 5 | 7 |
| Sexual intercourse with child under care and protection | | 5 | 3 | 8 |
| Sexual intercourse without consent | 3 | 14 | 38 | 55 |
| Unlawful sexual intercourse | | 6 | 4 | 10 |
| Total Cases Per Year | 35 | 193 | 341 | 569 |

Table 3.16: Cases by province

| Province | 2012 | 2013 | 2014 | Total Number of Cases By Type |
|-----------------------------|-----------|------------|------------|-------------------------------|
| Malampa | 9 | 48 | 137 | 194 |
| Unknown | 15 | 88 | 49 | 152 |
| Sanma | | | 2 | 2 |
| Shefa | 10 | 57 | 151 | 218 |
| Tafea | 1 | | 2 | 3 |
| Total Cases Per Year | 35 | 193 | 341 | 569 |



g. Office of the Public Prosecutor

The Constitution establishes the Office of Public Prosecutor (OPP), with posts for the Public Prosecutor, a Deputy Prosecutor and Assistant Prosecutors. Currently there is a Public Prosecutor and seven Assistant Prosecutors – four located in Port Vila, one in Santo and a further three to be recruited as at the time of this report. The position of Deputy Prosecutor is currently vacant.

Vision

“Upholding the rule of law”

Mission

We achieve our vision by being:

“A robust prosecution service that supports national aspirations of peace and good governance.”

Between 2012 and 2014 the Office of the Public Prosecutor dealt with 686 cases. 319 cases (46%) related to family protection and sexual offences (categorised as Morality cases). All other cases (54%) relate to violence against the person, which potentially includes violence against women and children, however the data is not age or gender disaggregated.

Table 3.18 details a further break down of the cases within family protection and morality cases.

Photo credit, previous page: UN Women/Olivia Owen

Table 3.17: Cases in the Office of the Public Prosecutor 2012–2014

| Offence Category | 2012 | 2013 | 2014 | Total Number of Cases by Type |
|-----------------------------|------------|------------|------------|-------------------------------|
| Family Protection | 55 | 12 | 78 | 145 |
| Morality | 57 | 37 | 80 | 174 |
| Offences against the person | 86 | 94 | 187 | 367 |
| Total Cases Per Year | 198 | 143 | 345 | 686 |

Table 3.18: Offences by type 2012–2014

| Offence | 2012 | 2013 | 2014 | Total Number of Cases by Type | Percentage of Total Cases |
|--|------|------|------|-------------------------------|---------------------------|
| Family Protection | 55 | 12 | 78 | 145 | 21% |
| Breach of Family Protection Order | 4 | | 2 | 6 | |
| Contempt Of Court Order | 1 | | | 1 | |
| Domestic Violence | 41 | 9 | 60 | 110 | |
| Domestic Violence and Kidnapping | 1 | | | 1 | |
| Failure to Maintain Family | 8 | 3 | 16 | 27 | |
| Morality | 57 | 37 | 80 | 174 | 25% |
| Act of Indecency with a Young Person | 9 | 1 | 12 | 22 | |
| Attempted Sexual Intercourse Without Consent | 5 | 1 | | 6 | |
| Cross Indecency | | 1 | | 1 | |

| Offence | 2012 | 2013 | 2014 | Total Number of Cases by Type | Percentage of Total Cases |
|--|------------|------------|------------|-------------------------------|---------------------------|
| Domestic Violence | | | 1 | 1 | |
| Incest and Sexual Intercourse Without Consent | 3 | 2 | 4 | 9 | |
| Incest and Unlawful Sexual Intercourse with a Young Person | 1 | | | 1 | |
| Incest and Unlawful Sexual Intercourse | 1 | | | 1 | |
| Indecent Act in Public Place | 1 | 1 | 4 | 6 | |
| Indecent Assault | 1 | 1 | | 2 | |
| Rape | 1 | | | 1 | |
| Sexual Intercourse with a Child Under Care and Protection | | 7 | 7 | 14 | |
| Sexual Intercourse without Consent | 33 | 20 | 35 | 88 | |
| Unlawful Sexual Intercourse | 1 | 1 | 10 | 12 | |
| Unlawful Sexual Intercourse and Sexual Intercourse Without Consent | 1 | 1 | 3 | 5 | |
| Unlawful Sexual Intercourse with a Child Under Care and Protection | | 1 | 2 | 3 | |
| Kidnapping and Sexual Intercourse without Consent | | | 2 | 2 | |
| Offences against the person | 86 | 94 | 187 | 367 | 53% |
| Total Cases Per Year | 198 | 143 | 345 | 686 | |

h. Office of the Public Solicitor

The Office of the Public Solicitor (OPS) is established under Article 56 of the constitution¹³ and its role is to provide legal assistance to needy people or to any person on being directed to do so by the Supreme Court.

The Public Solicitor is the only government funded legal service in the country.

Regrettably a dataset was not provided by the OPS, so the research team could not identify the volume or types of cases it handles or the gender of its clients.

From discussions with actors in the formal justice sector however, the Office of the Public Solicitor

faces significant budgetary constraints which makes it difficult for lawyers to circuit to other islands to provide advice, legal representation to litigants or defend accused persons.

See also the discussion in Part Four of this Report.

i. Vanuatu Women's Centre

Vanuatu Women's Centre goal

The Vanuatu Women's Centre's program goal is "to eliminate violence against women and children throughout Vanuatu".

¹³ Section 5(1) of the Public Solicitor's Act (Cap 177).

Location of Vanuatu Women’s Centre Services



The following data on the operations of the VWC, a non-government organisation, is included in this Part as the VWC is the primary organisation in Vanuatu delivering counselling, support and legal advice and representation to women and children experiencing family and sexual violence, as well as in divorce, child custody and maintenance proceedings. Its services are offered from its Port Vila headquarters and from four provincial branches in Sanma, Torba, Malampa and Tafea. It also runs 43 community-based Committees Against Violence Against Women (CAVAWs) around

the country, providing basic counselling and referral services.

Chart 3.16 shows the increase in the total number of new clients and repeat counselling sessions provided by VWC, its Provincial Branches and CAVAWs from 2007–2015.

In 2015, the VWC provided a total of 4595¹⁴ counselling sessions at VWC Port Vila, Provincial Branches and CAVAWs with 1667 sessions for new clients (see Chart 3.17).

Chart 3.16: Total clients 2007–2015

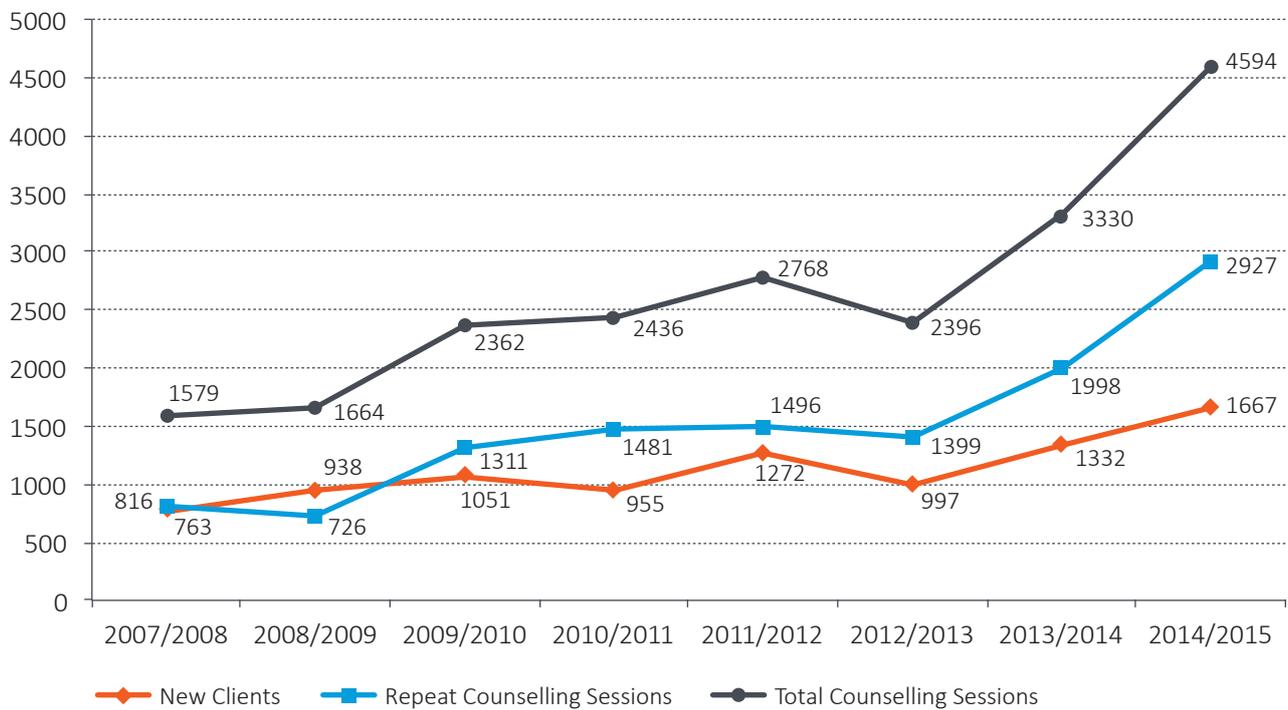
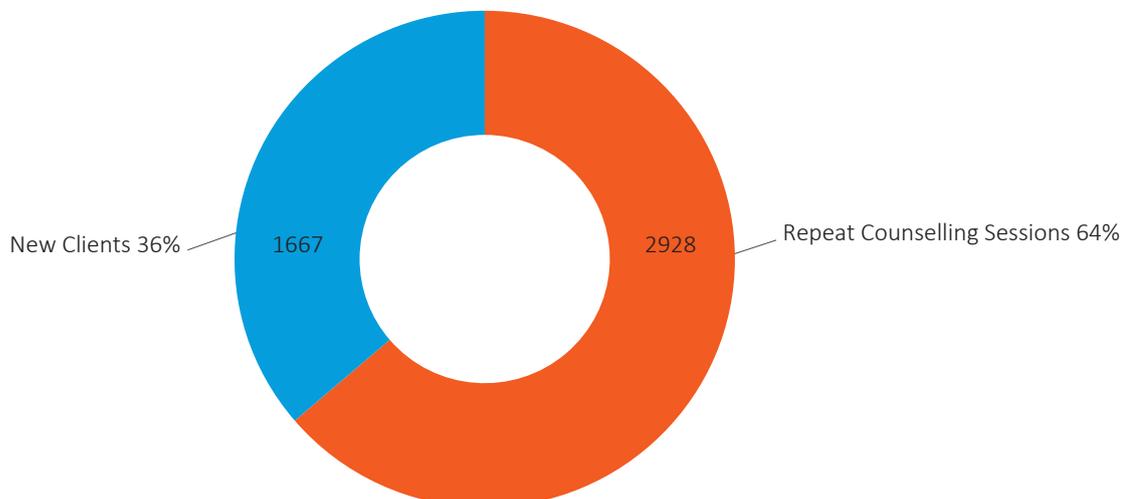


Chart 3.17: Total counselling sessions in 2015



¹⁴ December 2015 Progress Report for the Vanuatu Women’s Centre.

Chart 3.18: Breakdown of new clients

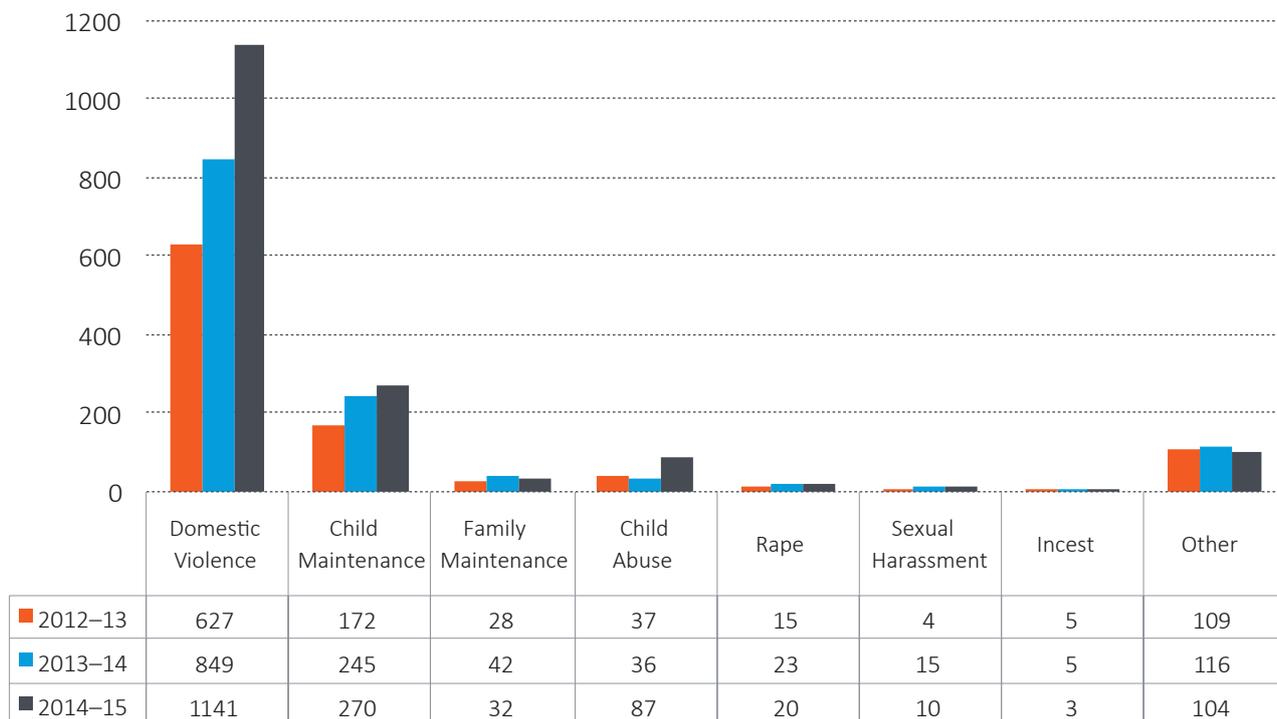
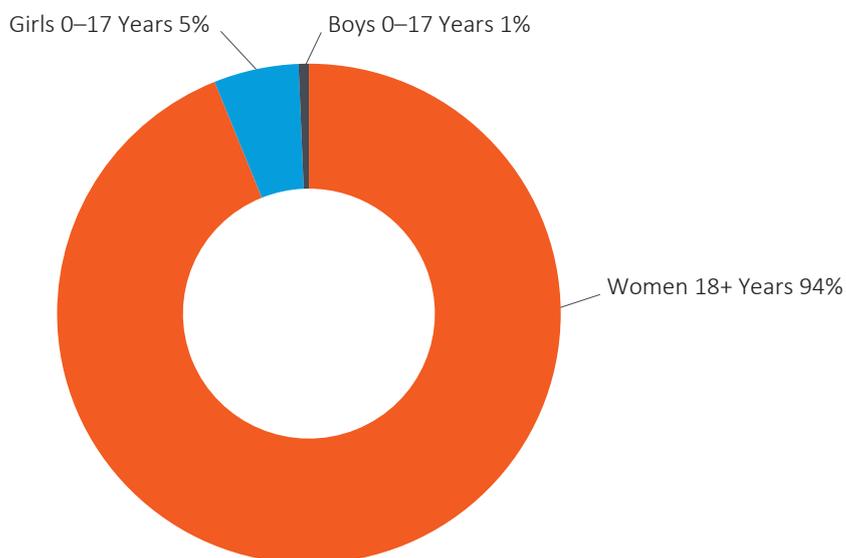


Chart 3.19: Age group of new clients 2014-15



The vast majority of new clients who accessed the Vanuatu Women’s Centre sought domestic violence related support and counselling.

Of those 1667 new clients who accessed VWC in 2014-15, the vast majority were women 18 years and older. Only 6% of new clients were 17 or younger (5% girls and 1 % boys).

Chart 3.20: Repeat clients 2012–2015

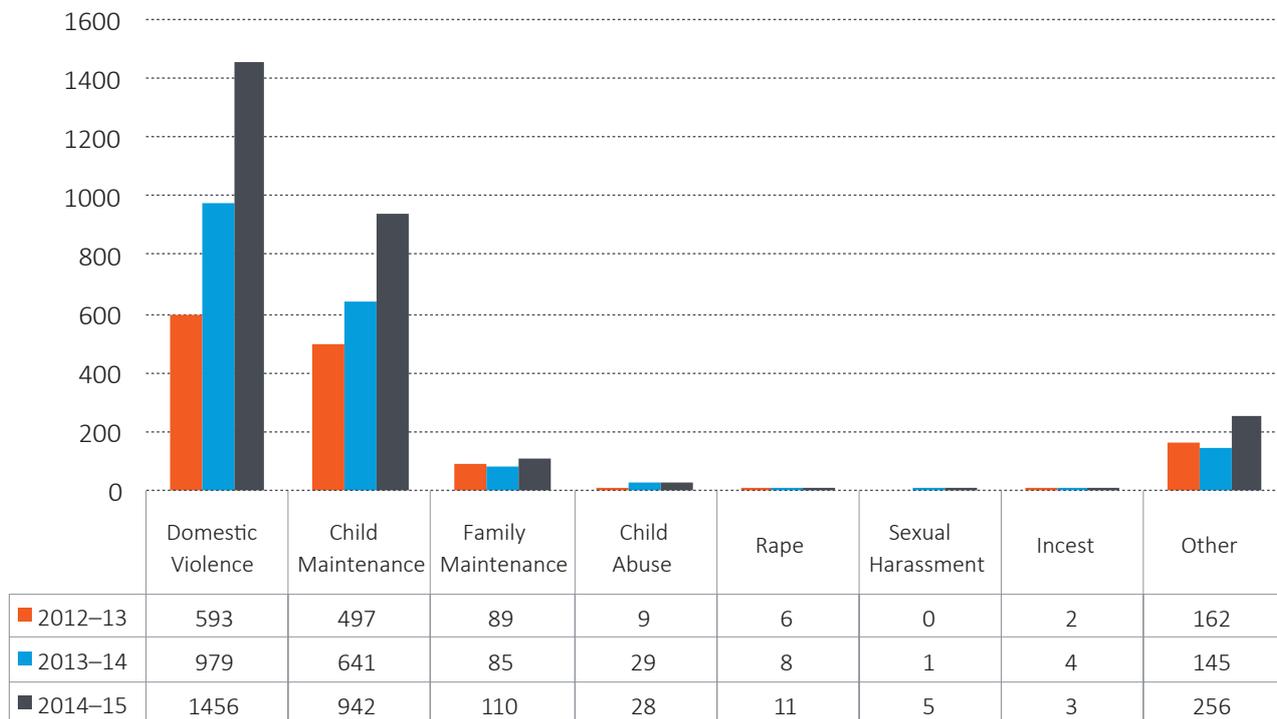
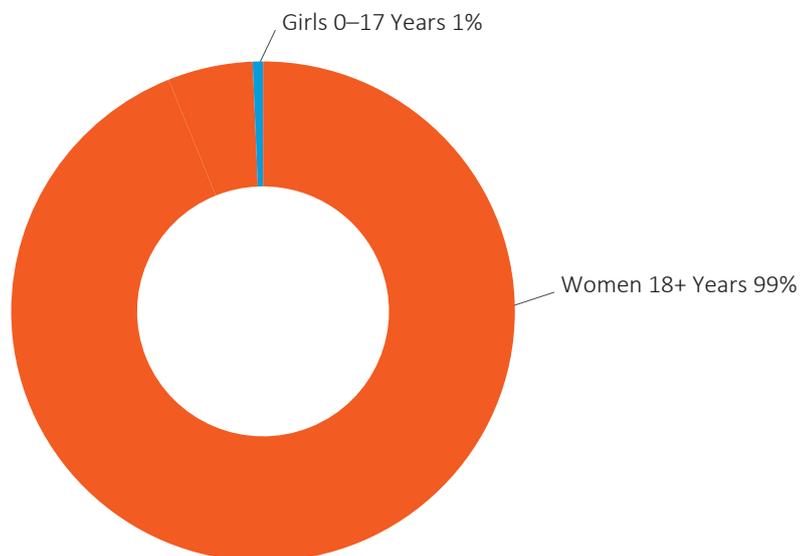


Chart 3.21: Age group of repeat clients 2014–15



The majority of repeat clients to VWC accessed the service for domestic violence and child maintenance related issues.

Almost all repeat clients to VWC in 2014–15 were women 18 years and older with only 1% girls 17 and younger accessing the service.

j. Access to justice for people with a disability

The Disability Desk in the Ministry of Justice and Community Services (MJCS) is responsible for compliance with the Convention on the Rights of Persons with Disabilities (CRPD) to which Vanuatu is a state party. It also has responsibility for implementing the national disability policy, with oversight from a national committee, and valuable support from NGOs as implementing partners.

The 2009 National Census reported that approximately 5% of people in Vanuatu live with a disability.¹⁵

The research team was unable to find disability disaggregated data collected or published by any justice sector agency in Vanuatu. The research found that there is no formal intersection between the formal justice sector and disabled persons organisations (DPOs). There is no clear disability inclusive strategy to assist women and children with a disability to access the formal justice system in Vanuatu.

Part Six of this Report looks in more detail at access to the formal justice system for women and children with disabilities.

k. Understanding court users and improving data collection

The lack of demographic information about justice seekers adversely affects the Courts' ability to respond to the needs of women and children, including those with a disability, and inhibits the effective functioning of, and equal access to the Courts.

An essential pre-requisite for tackling the barriers faced by women and children in their interaction with the courts is to better identify these individuals, to fully understand the particular barriers they face, and to ensure an effective flow of information between court administrators and judicial officers about the needs of these clients.

Courts should introduce or improve the collection of data in the following areas to appropriately determine a woman or child's:

- Disability, if any;
- Literacy levels;
- Bislama language proficiency;
- Whether an interpreter or other communication assistance is required, including sign interpretation.

The benefit of collecting this information is that it would assist the Courts to ensure they are responsive to the needs of their users. In particular, it would enable the Courts to tailor their responses to the needs of women and children.

Courts should introduce or enhance mechanisms to assess satisfaction levels among court users. Regular court user satisfaction surveys and complaints mechanisms help to assess satisfaction levels among court clients and to measure responsiveness of courts to the needs of diverse communities. They also demonstrate that courts, judicial officers and staff are open and accountable in their operations.

Courts have traditionally focused on quantitative measures of performance and outcomes to assess client satisfaction. However, research indicates that perceptions of the court system by court users are influenced more by a fair process than a favourable outcome. Courts should adopt processes to include qualitative assessments as part of their framework for assessing quality of service, as well as quantitative factors such as the time taken for a case to proceed to a full hearing. Qualitative indicators should include questions that related to how women and men perceive the service they received when attending court, their treatment by judicial officers and court staff and whether their legal issues were satisfactorily resolved. Client satisfaction surveys should explore the conduct of court staff, the quality of court administrative processes and the conduct of judicial officers in court. Client satisfaction surveys do not consider the judicial decision a client received in a matter, as this can only be determined through an appeal process. Survey indicators could include:

- Whether the user found the court to be accessible;
- Perceptions of safety and privacy;
- Whether staff were courteous, friendly and helpful;
- The extent of the client's understanding of court processes;

¹⁵ UNICEF Pacific and Vanuatu National Statistics Office (2014) *Children, Women and Men with Disabilities in Vanuatu: What do the data say?* p. 24.



Sanma Counselling Centre (VVC). Photo credit: Indira Rosenthal

- The timeliness and convenience of those processes; and
- The client’s perceptions of fairness.¹⁶

More specific information that could be sought includes:

- The availability of plain language forms and documents;
- The availability of translated forms and information documents;
- Distance travelled to get to court;
- Time spent in court;
- Availability and use of audio-visual technology;
- The availability of interpreter assistance and qualifications of interpreter.

I. Interviews with Judges and Magistrates

The International Framework for Court Excellence (IFCE), is a quality management system designed to help courts improve their performance. It represents an all-encompassing approach to achieving court excellence, rather than a more limited focus on particular aspects of court governance, management, or operations, which includes a framework of core

values that are aligned with seven areas of excellence¹⁷. It has an important role in assisting courts to improve the quality of their services. Many courts around the world regularly assess their performance against the IFCE to ensure they are tracking well in their application of the model.

Part of the IFCE is a self-evaluation process using the Court Excellence Self-Assessment Questionnaire. This Questionnaire evaluates a court’s performance against the seven areas of excellence, and provides guidance for courts to improve their performance.

The IFCE questionnaire was adapted for this research and the following table illustrates the results from 17 interviews in total including those with the Chief Justice and two Justices of the Supreme Court of Vanuatu, the Chief Magistrate and all other Magistrates (7 in total), the Deputy Registrar, the Magistrates Court Administrator, the clerk at the Tanna Magistrates Court and three Island Court Clerks. It shows that the majority of respondents felt that they listened to, and communicated well with the court user and treated them with respect. The majority agreed that the court did not produce or distribute information about the court to the public, however 53% felt that the court provided information to assist litigants without representation. All acknowledged that the website, and the publishing of the court’s complaints procedure and policy did not exist or it could be improved.

¹⁶ International Framework for Court Excellence, 2nd edition, March 2013 <<http://www.courtexcellence.com/Resources/The-Framework.aspx>>

¹⁷ <http://www.courtexcellence.com/>

Table 3.19: International Framework for Court Excellence self assessment

| | No | | Can Improve | | Yes | |
|---|----|-----|-------------|-----|-----|-----|
| We listen to court users and treat them with respect. | | | 2 | 12% | 15 | 88% |
| We communicate clearly to defendants and their lawyers | | | 1 | 6% | 16 | 94% |
| We produce and distribute information to the public about the court | 11 | 65% | 4 | 24% | 2 | 12% |
| We provide people with disabilities with support and easy access to the court and our services | 9 | 53% | 4 | 24% | 4 | 24% |
| Our hours of operation make it easy for users to get their business done | 1 | 6% | | | 16 | 94% |
| We provide information to assist litigants without representation | 4 | 24% | 4 | 24% | 9 | 53% |
| We can demonstrate that people leaving court understand the court programs and services they have experienced | 3 | 18% | 5 | 29% | 9 | 53% |
| People are able to get their business with the court done in a reasonable time | | | 16 | 94% | 1 | 6% |
| We make it easy for people to find the relevant courtroom in which a hearing is taking place | 2 | 12% | 1 | 6% | 14 | 82% |
| Our website is easy to negotiate and contains relevant information | 16 | 94% | 1 | 6% | | |
| Our website is useful to users | 16 | 94% | 1 | 6% | | |
| We treat members of minority groups the same as everyone else | | | 1 | 6% | 16 | 94% |
| We publish information on court procedures and our complaints policy | 14 | 82% | 3 | 18% | | |

m. Recommendations

The availability and accessibility of good quality statistical information is integral to actors in the formal justice sector so that they can effectively design and implement quality services that are non discriminatory and meet the needs of users and justice seekers. It is critical that these actors are able to quantify and examine what cases are in the system and whether there are groups/cases that require specific attention. This must include the cases in which women and children are disproportionately represented as victims or applicants in Vanuatu, namely domestic and family violence, sexual violence and other physical violence, sexual and non-sexual violence against children and matrimonial matters.

A number of actions are recommended:

1. Gender disaggregated information about the applicant/victim and the offender/respondent should be collected in the following cases:

- i. In the Supreme Court:
 - Adoption
 - Civil
 - Criminal
 - Matrimonial
- ii. In the Magistrates Court:
 - Civil
 - Criminal
 - Juvenile
 - Matrimonial
 - Preliminary Investigation
 - Violence

iii. In the Island Courts:

- Civil
- Criminal
- Maintenance

2. Age disaggregated data:

The current dataset from the Courts does not provide for age disaggregated data, although it is available in the CRIMS dataset. Given the extremely high rate of sexual violence offences against girls reported in the CRIMS dataset it is recommended that this data be collected for both the victim and offender by all Courts, the Public Prosecutor and the State Prosecutor.

3. Case type data

Under s. 28(4) of the FPA, the Magistrates Court is required to keep a written register of all applications for Family Protection Orders made and all Family Protection Orders granted. However, it is not possible to accurately determine the number of these orders as the Court does not use “Family Protection Orders”, in its records but instead uses several other terms which can have more than one meaning. Most often the Court appears to use “domestic violence” to refer to Family Protection Orders. However, as this term can refer to other matters within the Court’s jurisdiction, the data are unclear. Given this, the CMS for the Courts should use the term “Family Protection Order” for clarity.

The CMS also needs to be able to provide a deeper analysis of the various case types within each Court. It is therefore recommended that all the Courts collect case sub-type information including:

- For Criminal proceedings – what type of crime (i.e., sexual violence; domestic violence; incest; arson etc.)
- For Violence cases– (i.e., Interim Family Protection Order; Final Protection Order; Enforcement of Protection Order etc.)
- Civil cases be categorised together with a subtype (i.e., matrimonial, property, maintenance etc.)

4. Legal representation data

- In criminal cases, whether the victim and offender are legally represented and by whom (e.g. NGO, justice sector agency or private lawyer)
- In civil cases, whether the applicant and respondent are legally represented and by whom (e.g. NGO, justice sector agency or private lawyer)

5. Court fee waiver

Between July 2012 – November 2015, the Vanuatu Women’s Centre supported women and children with court filing fees in 535 cases including 465 child maintenance cases (87%), two child custody cases, 28 matrimonial cases (5%), five civil cases (1%) and 35 other matters (7%). These women were unable to afford the court filing fee in these civil cases and without support from VWC (and the Australian Government Aid Programme) would have been excluded from the formal justice system. In future, all Courts should collect data on:

- the number of cases in which a party requests that the court waive a fee,
- the number of cases where a court fee is waived,
- the gender and age of the applicant and
- the case type for which the court fee is waived.

6. Geographical information

In order to assist with planning and management of the court’s cases, and to ensure parties, their representatives and witnesses are able to access the court and hearings it is recommended that the CMS record the following location data:

- Details of offence location
- Where the case was filed
- Where the case was heard
- Was the case heard on a circuit
- Were teleconference or videoconferencing facilities used

7. Outcomes and access to results in a case

The quality of data recorded as to the outcome of each individual case was not sufficient to determine the actual outcome in a case. Accordingly, the Court CMS should require the Courts to record the precise penalty, if any, in criminal cases.

Reasons for decision should be produced, published and readily available. Judgments should be in writing and published (sufficiently anonymised to protect victims) on PACLii and any notable judgments should be reported in the Court Annual Report.

8. Standard monthly court reports prepared for the Chief Justice, Justices and senior court administrators:

- a. General court performance reports to assist the court with measuring timeliness and delay, clearance rates, attendance, rate of appeal, number of complaints etc.
- b. Summary workload by application type – this should also provide a further breakdown of those criminal cases that affect women and children e.g. Sexual violence, violence against women and children
- c. More specific reports that relate to the types of cases that have an impact on women and children such as:
 - i. Gender of applicant in all Family Protection Orders and other civil matters
 - ii. Information about who assisted the applicant party to bring an Family Protection Order or other civil matter to court
 - iii. Percentage of cases with fee waiver and non-fee waiver in all civil cases but particularly child maintenance and family law matters
 - iv. Geographical information that details:
 - offence location
 - Where the case was filed
 - Where the case was heard and whether the case was heard on a circuit and whether teleconference or videoconferencing facilities were used
 - v. Outcomes in a case
 - Number of cases finalised
 - Number of judgments delivered and published
 - Number of appeals lodged
 - vi. Client feedback and complaints

9. Integrated data systems in the formal justice sector

Where law and justice case management systems work in conjunction with one another they can provide essential information to ensure that women and children are able to access the formal justice system and realise their human rights. The formal justice sector should consider the following:

- i. Using identical terminology for data collected, including the name of offences, any category of offender or victim, such as “child” for a victim under the age of 18 years, and “juvenile” for an accused or convicted person who was under the age of 18 years at the time of the offence, etc. to improve transparency and analysis of women and children’s access to the formal justice system.
- ii. Consider the introduction of a “Unique Identification Code” for each case and offender that is used across all justice sector agencies so that the sector is able to conduct a Case File Attrition Analysis at a later date.
- iii. Develop a range of regular reports related to women and children’s access to the formal justice system (with a specific focus on violence against women and children’s cases) that form the basis for discussions at a strategic level.

10. Accessibility for justice seekers with special needs

- i. None of Vanuatu’s justice sector agencies are currently able to determine if people with a disability are accessing the formal justice system. It is strongly recommended that all datasets capture whether an applicant, respondent, plaintiff, victim or suspect has a disability and, where possible, the nature of that disability using standard categories developed in consultation with the Disability Desk of the Ministry of Justice and Community Services (MJCS).
- ii. There is currently no formal intersection between the formal justice sector and DPO’s. Regular stakeholder meetings should be held with DPO’s (among others) to ensure that the formal justice system is meeting the needs of this group of justice seekers.
- iii. A report in the annual report on the extent, quality and ready availability of facilities and services for and information on:
 - Access for persons with disabilities
 - Access to interpreter services
 - Access to help and information
 - Access for unrepresented litigants



Photo credit: UN Women/Olivia Owen

11. Vanuatu National Strategy for the Development of Statistics (2014–2020)¹⁸

At the time of writing, the following recommendations in relation to the crime and justice sector in Vanuatu were yet to be implemented. It is strongly recommended that they be implemented without delay.

- i. MJCS to continue to implement a programme to improve statistics collected across the law and justice sector and by NGOs engaged in the formal justice system;
- ii. MJCS develop a coordination system for centralised access to regular statistical data on crime and justice;
- iii. Crime and justice statistics are compiled and analysis disseminated annually and made available online.

12. Client feedback, complaint mechanisms and measuring user satisfaction

There is a lack of client feedback and complaint mechanisms for the formal justice system agencies to ensure that the services provided are accessible to all, in particular, services to women and children. There are no court user surveys, regular court-stakeholder discussions or other mechanisms to identify and remove barriers to accessing the

formal justice system or to review public satisfaction with the quality of justice services with a view to improvements. It is therefore recommended that the formal justice sector agencies consider:

- i. Publishing practices and procedures so they are readily available to the public.
- ii. Adopting and implementing client feedback and complaint mechanisms for court users and others to make complaints concerning the service provided by judicial officers, court staff, prosecutors, police and lawyers.
- iii. Conducting regular user satisfaction surveys to inform the strategies and practices of the justice sector agencies.
- iv. Introducing multi-sector quarterly meetings to identify challenges and develop coordinated responses for women and children experiencing violence by health, counselling, justice sector agencies, women and children’s CSOs, Disabled Persons Organisations and professional bodies. Consider using video conferencing facilities in provincial government offices to allow the participation of people outside Port Vila. Justice sector agencies would consider and implement suggestions (where appropriate) and report back to the stakeholder group, and through their Annual Report, as to any action taken.

¹⁸ Vanuatu National Strategy for the Development of Statistics: Final Draft Strategy for the Agenda for Building Capacity in Statistics 2014–2020 pp.45–46.

Photo credit, next page: UN Women/Olivia Owen