

**PENANG SANGAM HIGH SCHOOL  
YEAR 11 HISTORY  
WORKSHEET 19-21**

**Fiji's Legal System**

**Objective:**

- Identify the different courts.
- Describe Fiji's legal system.



**Definitions**

Court	The building, hall, or room in which such cases are heard and determined
Justice	The upholding of what is just, especially fair treatment and due reward in accordance with honor, standards, or law.
Appeal	The judicial review by a superior court of the decision of a lower court
Legal Officer	a public official employed to administer or advise in legal matters
Law	The system of rules which a nation or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties
Civil Society	Non-governmental and not-for-profit organizations that express the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations.
Trial	Examination of evidence and law by a court to determine the charges or claims
Judiciary	A system of courts of law for the administration of justice

**Introduction**

The earliest iTaukei relied on decision making by their chiefs, but after the British colony began, courts were established to solve legal disputes. This is when iTaukei first heard the expression to “go to court”. This meant appearing before a court of law, where a Judge or a Magistrate would act as a tribunal and administer justice.

After annexation in 1874, Courts of Law were established by the British for a variety of decision-making. For example, in 1881-1890 the Land Court of Rotuma heard 100 disputes over land ownership and use.

, in 1987 the Supreme Court was renamed as the High Court of Fiji. A new Supreme Court was created at the same time as the final **Court of Appeal** in Fiji.

This legal decision making is called the **legal system** or sometimes the **judiciary**, (technically ‘judiciary’ only refers to a group of Judges). The Fiji Judicial Department website describes itself in this manner:

*The judiciary comprises of Magistrates and Judges who preside in the Magistrates Court, High Court, Court of Appeal and Supreme Court. The judiciary (was) reformed on the Administration of Justice Decree 2009 (No 9). The (Judicial Department) comprises of support staff that provide administrative and logistic support to the Resident Magistrates of the Magistrates Court and Judges of the High Court, Court of Appeal and Supreme Court.*

A government usually has a Judicial Department, and a Ministry of Justice. The Attorney-General heads the Legal Drafting Section, Law Reform Commission, Law Review Commission, Legal Aid Commission and the Office of the Solicitor General

Legal systems differ around the world, and their judgements are often controversial, especially in cases involving discrimination on the basis of age, gender, religion and **civil rights**.

A legal system involves a **constitution** which lists the basic principles of the system. A legal system includes set of laws, Judges and Magistrates who “hear” cases, lawyers who argue for their clients and in some cases a **jury** that is called to hear the evidence and advise the Judge of innocence or guilt.

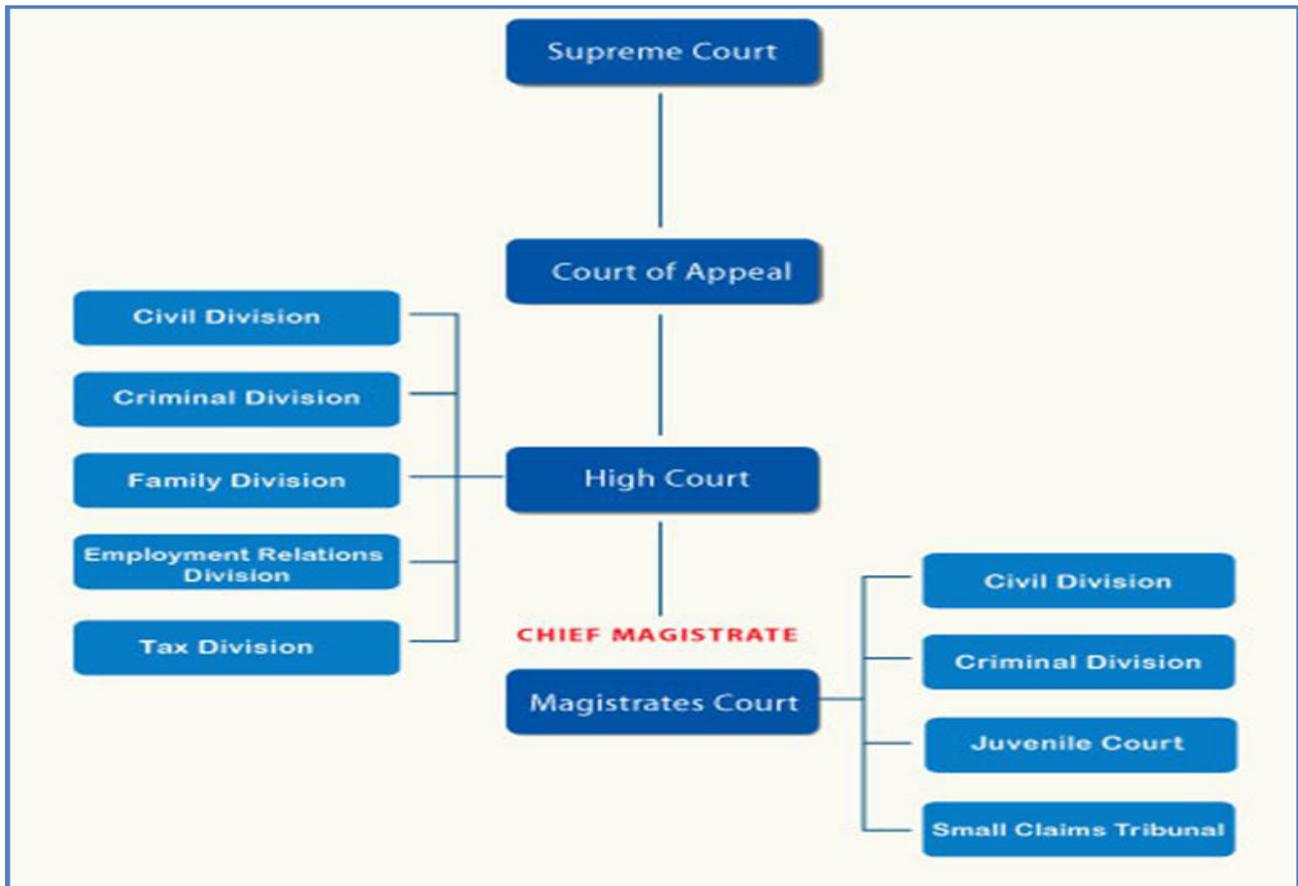
Legal systems therefore rely on a number of crucial principles.

**Justice** for all is one key principle.

A **constitution** also states the basic laws by which a government rules the nation and also lists the rights of citizens. Laws also change so there is a constant need for revision and **law reform**.

There is also a system of **judgment** or decision-making.

Fiji has a Supreme Court, a High Court, a Court of Appeal, and a Magistrates Court.



## **Fiji Independent Commission Against Corruption**

The Fiji Independent Commission Against Corruption (FICAC) was suggested in 1987 but not established until May 2007. It is a part of the legal system because it is able to receive complaints, and investigate crimes and corruption within the government's administration. It can initiate a prosecution.

the government can ask FICAC to investigate crime and corruption *within* the government. The FICAC can also respond to a public complaint and start an investigation into the government's administration.

### **The role of legal officers**

#### **1. The Prosecutor**

The **Prosecutor** is the State's chief legal representative in the court. They are lawyers who possess a law degree, and are recognized as legal professionals by the court. Their job is to represent the state (the government and society). Prosecutors present the case in a trial against an individual accused of breaking the law.

#### **Prosecutor's role is to:**

- convince a judge and a jury that law enforcement has brought the right person to trial
- make accurate and fair summary of the offence, the evidence and the charge
- modify or add charges based on the evidence
- decide to cancel a trial if there is no likelihood of gaining a conviction
- gather evidence independently or rely on law enforcement (police) or other agencies
- be responsible for administering all rules on how evidence is gathered, examined and presented
- ensure all witnesses are available during the trial.

#### **2. Director of Public Prosecutions (DPP)**

The DPP is appointed, not elected and is subject to varying degrees of control by the Attorney General, usually by a formal written directive.

#### **The role of the DPP is to**

- be the head of the prosecuting authority.
- respond to the police, during the course of the investigation, to advise them on the validity and accuracy of the evidence.
- represent the government's interest in criminal trials.

#### **3. Attorney General (AG)**

AG, is appointed by the President on the advice of the Prime Minister. The AG is the only member of Cabinet, apart from the Prime Minister and Speaker, specifically mentioned in the Constitution. The AG can take part in Cabinet, and can sit in the Parliamentary sessions but is not eligible to vote. The AG's role is to give legal advice to Parliament. The normal practice in Fiji has been that the AG is also the Minister for Justice. The AG is required to be a qualified lawyer.

The AG's role is to:

- Be the main legal advisor to the government.
- be responsible for law enforcement and public prosecutions.
- represent the state, especially in criminal prosecution.
- provide essential legal expertise and support to the Parliament including,
  - legislative drafting
  - legal aid
  - "the prerogative of mercy" (advising the President),
  - liquor licensing and
  - film censorship.
- be responsible for all legal needs of government departments, statutory bodies, and state-owned enterprises.

### **3. Ombudsman**

in most nations an Ombudsman is appointed for a term of four years by the President on the advice of the Prime Minister, the Leader of the Opposition and any other leaders of parties in the House of Representatives.

The role of the Ombudsman is to:

- investigate any action taken by any officer or government authority.
- be responsible of investigating breaches of any fundamental rights protected by the Constitution of Fiji, in relation to the administration.
- represent the interests of the public by investigating and addressing complaints reported by individuals.
- investigate complaints by voters and attempt to resolve them, through recommendations or mediation.
- exercise the same powers as the High Court in relation to attendance and examination of witnesses.

### **5. Magistrates**

Magistrates are officers of the state. They are like a Judge, but work only in the lower Courts.

Their roles are to:

- act fairly and impartially
- listen to the evidence and make a decision on that evidence
- ask questions only to clear up ambiguities.
- issue a search warrant or a warrant for arrest.
- grant bail or remand accused persons in custody pending trial
- check paperwork and deal with bail
- arrange the date for appearance at the Magistrates Court.
- impose 6 months in jail for a single offence and up to 12 months when a defendant is convicted of two or more offences.

### **6. Judges**

Judges are entitled to a wide degree of freedom in the way in which he or she conducts proceedings in the court and deals with cases justly. They must not give legal advice, but may speak in public about the law and the administration of justice.

- To check on the misuse of power
- To conduct judicial review (of the legal system)
- To improve the effectiveness of the justice system
- To sentence an accused person
- To review and correct a sentence imposed by a lower court (Magistrates court)
- To be solely responsible for passing a sentence

### **7. Solicitors**

Solicitors are lawyers but they are not allowed to present arguments in a trial or Court Room. Solicitors prepare legal documents for their clients, for example;

- . business contracts
- . sale of land
- . transfer of titles
- . general advice on legal matters
- . marriage contracts
- . divorce settlements
- . wills
- . adoption
- . certified documents (Oaths)

Solicitors, Lawyers and Barristers can also be a Commissioner for Oaths.

## 8.Lawyers

Lawyers have a wide range of responsibilities and duties in the Courts. Their role in society is even more important as they are acting as a voice for others.

Some lawyers are called Barristers. This means they have been 'admitted to the Bar'. This allows them to represent a client in a trial or court room.

In the Court Room the role of lawyers is:

- To defend a person or organization in legal proceedings
- To act on behalf of their client
- To act in a manner which is in their client's best interest



## Other Roles within the Nation's Legal System

- **Bailiffs**

A law officer whose job is to take possessions and property of people who cannot pay their debts as determined by a Court Order.

- **Fiji Police Force**

Apprehend criminals, gather evidence and prepare cases to present to the DPP and the Courts.

- **Fiji Corrections Service**

Ensures that convicted person serve their sentence as determined by the courts

- **Military Police**

Is independent of the legal system but operates as a legal system within the military service regarding breaches of military law.

- **Official Receiver (Bankruptcy)**

A legal officer that examines bankrupt persons under the direction of the Court.

- **Registrar of Titles**

A legal office that?

- **Registrar of Births, Deaths and Marriages**

Keeps an official record of all births, deaths and marriages.

- **Justice of the Peace**

A legal officer appointed their own community to witness and certify documents.

- **Fiji Land and Titles Court**

Keeps record and makes judgements on matters affecting land titles (this is a unique and an important historical part of the legal system)

- **Juvenile Courts**

It makes judgements on cases related to children (between 13-18 years of age)

- **Small Claims Tribunal**

It makes judgements on claims less than \$5000 such as debt recovery, service charges, damage to property, consumer claims and work order. The Small Claims Tribunal is important because it enables citizen to solve legal problems without the high cost and time of going to the court.

- **Family Court**

It makes judgements on family laws such as the custody of children and cases related to family and domestic relationships. The Family Court deals with matters not involving criminal cases. The police will attend the Family Court only when there is a threat of abuse or violence in the court room.

So, you can see by this list that the legal system in Fiji is very complex and far bigger than just judges and lawyers in the courtroom. Your teacher might suggest that you carry out an independent individual research project on any one of the above roles.

## **System of Courts**

The Court system will uphold the principles of equality, fairness and access while protecting the dignity and rights of all members of the community. The Court system comprises the DPP, Lawyers (Barristers), Magistrates and Judges who preside in the Magistrates Court, High Court, Court of Appeal, and Supreme Court.

## **Procedure of a Trial ; A Criminal Case**

### **1. Investigation**

When a crime is reported, the police are responsible for conducting an investigation. A suspect may be arrested or issued a citation in lieu of arrest. After completing their investigation, the police submit their reports to the DPP. The DPP's Office reviews the case and decides whether to charge an individual or individuals with a crime. Police officers may also submit an incident report.



Police arriving at a crime scene to carry out their investigation, 2013.

Source: [www.fijitimes.com](http://www.fijitimes.com)

When a person is arrested and taken to jail, they may remain in jail until their arraignment or may be released. If released, the defendant must sign a release agreement. The conditions of the release agreement include appearing in court as ordered, not leaving Fiji without the permission of the court, and not having any contact (direct or indirect) with the victim of the crime. The release agreement is in effect until the court case is concluded.

### 3. Filing Criminal Charges

A criminal case begins when the DPP's Office, files a charging document (complaint, information or indictment) against the defendant.

A crime is a **felony** if the maximum penalty includes a sentence of more than one year of jail. Common Felonies include illegal possession, manufacturing and delivery of drugs, robbery, burglary, theft, identity theft, assault and sexual assault crimes.

A crime is a **misdemeanor** if the defendant cannot be ordered to serve more than one year in jail. Common misdemeanors include minor assault, harassment, menacing, minor theft, criminal trespass.

### 4. Arraignment

The arraignment is the first court appearance after a defendant is arrested or issued a citation. At the arraignment, the defendant is formally advised of the criminal charges filed.

### 5. Preliminary Hearing

At a preliminary hearing, the DPP must present evidence to the court to show that;

- a. a felony has been committed
- b. the DPP has sufficient evidence to prosecute the defendant for the offense.

A defendant may waive his right to this hearing and proceed to the next step in the prosecution.

### 6. Entering a Plea

If the defendant enters a plea of not guilty, a trial date will be set. It may be several months before a trial takes place, and the trial may be reset (postponed) more than once. When the case goes to trial, victims and witnesses will be subpoenaed to testify. If the defendant enters a guilty plea or a no contest plea, the defendant may be sentenced at the time of the plea, or the sentencing may be scheduled for a later date if the victims have requested to be present.

### 7. The Trial

A trial can have a Judge or be decided by a Jury (In Fiji a Jury is referred to "Assessors"). A trial follows an established sequence.

- i. The DPP presents the case
- ii. The DPP calls witnesses for the Prosecution

- iii. Lawyers for the accused question the prosecution's witnesses
- iv. The lawyers for the accused present their case
- v. The lawyers for the accused calls witnesses for the Defense
- vi. DPP questions the defense's witnesses
- vii. DPP sums up the case for the Prosecution
- viii. Lawyers for the accused sum up the case for the Defense
- ix. The Judge instructs the Assessors to make a decision
- x. The Jury meets in private to make a decision
- xi. Chairperson of the Assessors announces the decision (guilty or not guilty)
- xii. Judge considers the case and the assessors decision and announces a verdict (a sentence)

In some trials, the Judge withdraws to consider the case and may not announce a verdict or sentence for sometimes as long as a month. Trials are a popular topic on television shows and movies. However, these films and movies are often made in Hollywood or Bollywood and show legal processes that are different to Fiji's. The accused can question a court ruling. This is called an appeal system. An appeal is made to a court of higher authority than the court of the original ruling. (see below under Supreme Court)

## The Supreme Court

The Supreme Court is the highest court in Fiji. It is also the final Court of Appeal(see diagram on p. 5).

If the accused is unhappy with a Magistrates Court or High Court verdict or sentence, they may present a case for the trial to be heard again at a higher court. This is called the Court of Appeal.

## Other Aspects of the Legal System

Apart from the Courts there are many other individuals and organisation with a direct concern with the legal process. These organisations and individuals are usually referred to as civil society. They provide legal advice to citizens, raise awareness on legal issues and provide assistance to victims, prisoners and former offenders.

### (a) Fiji Law Society

This is the official body that registers and regulates the activity of all lawyers in Fiji.

### (b) Legal Aid Commission

To provide legal services to those people who are unable to afford the services of a private legal practitioner. The Legal Aid Commission was established in July 1998. It provides legal representation in the Court and other related services. The Commission's Board comprises of the Solicitor-General who is also the Chairperson, the Chief Registrar, three legal practitioners and two members who are not legal practitioners. <http://legalaidfiji.org/>

### (c) Fiji Women's Rights Movement

The Movement is a multiethnic and multicultural non-governmental organisation. It is committed to the removal of all discrimination against women. Therefore it is an important player in the legal process because by changing laws they can achieve reforms and attitudinal changes. It lobbies and presents issues to the Fiji Government and to the United Nations. It promotes legal issues in relations to:

- feminism,
- democracy,
- the rule of law
- good governance

- Human rights.
- Multi-ethnicity (multiculturalism)
- Healthy environment

The Fiji Women's Rights Movement often signs Legal Documents and International Treaties and Conventions related to women's rights on behalf of the Fiji Government. <http://www.fwrn.org.fj/index.php/about-us/constitution>

### (d) Fiji Women's Crisis Centre

The Fiji Women's Crisis Centre (FWCC) is directly involved in the legal process by providing legal support for women and children who suffer of violence. The Centre's work addresses legal matters related to

### (e) Fiji Human Rights Commission

Fiji Human Rights Commission was established in 1999 to protect and promote human rights for the people of Fiji. It is important in the legal process because it offers free legal advice on alleged violation of human rights such as child labor, human trafficking, child abuse, corporal punishment and parental negligence. The FHRC investigates allegations. It's Legal Division prepares a case for presentation to the Courts or refers the case to relevant government departments. The FHRC conducts regular visits to schools upon invitation to run awareness programs.

<http://www.fhrc.org.fj>

## Conclusion

Most citizens know there is a 'court' which can make a judgment if they are worried about the law, for example;

- new law
- government policy or decree
- being accused of a crime
- want to challenge a land lease
- get your money back from a dishonest trader
- get a divorce
- decide on the parentage of a child.
- And other legal problems

Most people also know what the law is and how a Judge decided in an earlier case. Judges follow the decision of earlier court cases. Judges use these cases, evidence, verdicts and punishments as a guide. This is called **legal precedent**.

Appeal	The judicial review by a superior court of the decision of a lower court
Legal Officer	a public official employed to administer or advise in legal matters
Law	The system of rules which a nation or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties
Civil Society	Non-governmental and not-for-profit organizations that express the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations.
Trial	Examination of evidence and law by a court to determine the charges or claims
Judiciary	A system of courts of law for the administration of justice

### Common Law

Assessors

Legal system

Civil rights

Subpoena

**Prosecutor**

**Complaint** an allegation that some person known or unknown has committed or is guilty of an offence;

**felony** if the maximum penalty includes a sentence of more than one year of jail

**Police Officer** includes any member of the Royal Fiji Police Force;

**Preliminary Investigation** - an investigation of a criminal charge held by a magistrates' court with a view to the committal of the accused person for trial before the Supreme Court; **Summary Trial** a trial held by a magistrates' court under Part VI.

**Legal precedent** When Judges follow the decision of earlier court cases. Judges use these cases, evidence, verdicts and punishments as a guide

**misdemeanor** if the defendant cannot be ordered to serve more than one year in jail.