

Deep Dive into

Divorce and Separation in **Uganda** 2020



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What are the problems related to divorce and separation in Uganda? This report is an open invitation for all working with family justice in Uganda to identify better practices.


We truly believe basic justice care for everyone is possible. With data and technology, we co-create high quality justice based on what people need in today's world.

Working evidence-based gives a chance for targeted solutions, from grass-roots to legislative level.

That's why we spoke to over 6000 randomly selected Ugandan adults. We learned about their justice needs. We heard family-related problems over and over.

Now we present these results in the form of this report – Deep dive into Divorce and Separation in Uganda. We hope the results benefit justice providers in Uganda to create solutions that eventually grant access to justice for all.

Real justice transformation requires diversity and shared commitment to a goal. What can you do?

A photograph of a dilapidated house with a tiled roof and a large tree in a grassy field under a cloudy sky. The house has two large, empty window openings and peeling paint. The tree is large and leafy, with some yellowing leaves. The ground is covered in tall grass. The sky is overcast with grey clouds.

” The law is very clear, if
[the relationship] cannot
work out then you can separate.
But it is always hard to divorce.

This Deep Dive into Divorce and Separation is supported by the Swedish International Development Cooperation Agency (SIDA) in Uganda. We are grateful to the staff of SIDA in Uganda and Sweden for their support and advice.

This study would not have been a success without the considerable support of the Secretariat of the Justice, Law and Order Sector (JLOS) in Uganda, who contributed valuable time and knowledge.



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Disclaimer

This report is a living document and subject to revision. Whenever the report is revised it will be posted at www.hiil.org/projects. This version of the report was generated on August 10th, 2020.

Executive Summary

Family relationships are the most important building blocks in people's lives. Among many other things they provide love, care, security, income and prosperity.

Human relationships are complex. This means that families and partnerships do not always work. People need to split and continue further with their lives. Data shows that in Uganda, this happens at least 370,000 times a year. Seven percent of adult Ugandans encounter divorce or separation. Women are significantly more likely to name divorce or separation as their legal problem which is the most serious and difficult to resolve. Poor, uneducated and rural women and their children are the most vulnerable when the family relationship is falling apart. This requires a specific gender focus when discussing divorce and separation.

The impact of divorce or separation on people's lives is significant. The consequences of divorce and separation are experienced as harsher than most other types of legal problems. Especially in situations of domestic violence the existence of accessible paths to justice for divorce

and separation might be a matter of life or death.

Two avenues exist for ending a family relationship. Divorce is the process for dissolving formal marriages. Separation is the term used in situations of termination of informal family relationships. Later in the report we call such relationships *customary marriages*.

When faced with divorce or separation many Ugandans take active stance. When faced with divorce or separation, many Ugandans take an active stance. Eighty-four percent look for advice or information on how to resolve the problem. Eighty-seven percent take action by involving the other party or engaging a third party. Most processes of family separation take place outside of formal institutions. Family and community networks is where most people turn for advice and resolution. Institutions are engaged less frequently. Police and Local Council Courts (LCCs) are the most commonly used justice institutions in Uganda, yet their users are relatively few. Even fewer people go to courts and lawyers to resolve their divorce or separation problems.

Going to a family court requires resources which many Ugandans do not have. Legal fees are deemed as unaffordable. Slow procedures concern many people and professionals. There is also a cultural stigma around going to court to ask for a divorce. Women in particular are under significant pressure not to seek divorce in court as this is considered anti-social behaviour.

Separation is a diverse practice defined mostly by culture and tradition. It takes place in informal settings. Little has been standardized on this path to justice. People go to family members, community authorities, cultural institutions, LCCs, police and many other processes. Sometimes these processes work well. But sometimes they are experienced as confusing. The lack of binding effect of the decisions of cultural institutions increases legal uncertainty. Led by community values the cultural institutions, including LCCs are inherently opposed to separation. Legal awareness is low and people who need justice can easily become confused. Women and children are at greater risk of negative experiences due to adverse cultural beliefs, unfair processes and outcomes.

Half of the Ugandan people who encountered a legal problem related to divorce or separation managed to resolve it fully or partially. The two most often achieved outcomes are safety for the children and prevention of violence in the family. These are positive findings. Our interpretation is that family justice in Uganda works and delivers results. But not everyone receives fair resolution. The other half of the people say that their problem has not been resolved. Relatively few people believe that divorce or separation procedures deliver fair division of property and debt, secure housing and incomes. This indicates that a lot can be improved so more people and families are helped to reach fair resolutions and continue further with their lives.

In the last section of this report we share interventions that can improve access to justice in divorce and separation cases. We also identify actors and stakeholders who can use the evidence and knowledge from this report to improve access to justice when the people in Uganda divorce or separate.



7%

of Ugandans have gone through divorce or separation in the past four years

85%

of people seek legal advice – most people ask advice from their social networks

87%

of people take legal action to solve their divorce or separation

32%

of divorce and separations are left without a formal solution



1

Introduction to the Study

Legal problems related to divorce and separation are one of the most frequent and pressing justice needs in Uganda. In 2015, HiIL conducted a Justice Needs and Satisfaction survey in Uganda, resulting in a report describing the population's needs for fair solutions. The report made evident that in Uganda, the three most prevalent legal problems are in the domains of family (and namely divorce), land, and crime. These problems need further investigation in the form of a Deep Dive report.

HiIL publishes special reports on all of these specific problems to provide in-depth knowledge on their prevalence, causes and consequences. These reports feature quantitative Justice Needs and Satisfaction data from 2019 and qualitative data from 2018. To improve access to justice, we analyse this data and examine gaps or knots in the system to attain fair remedies for these justice problems.

This particular Deep Dive report focuses on individuals who reported recent experience with a divorce or separation problem as their most pressing justice need. The report reviews these justice problems, their consequences and possible solutions, and examines specific issues related to family justice.

First, this report outlines the HiIL methodology. Then we introduce the most common justice problems related to divorce and separation in Uganda. Next, we explore what Ugandans do in these situations and how they evaluate the outcomes of their justice journeys. Finally, we present key findings and action points for future development.

Methodology

The results of this report are based on HiIL Justice Needs and Satisfaction quantitative data set from 2019, and complementary qualitative interviews collected in 2018.

Quantitative research methodology

The quantitative research data consists of 6129 randomly selected adult individuals who were interviewed during June and July in 2019. They were asked to report any justice problems they have encountered in the past four years. Our standard approach is to disaggregate results based on a number of variables, such as gender, income, education, and other relevant demographic factors.¹



6129
adults interviewed

Demographics of the sample

- A bit more than half (52%) of the sample is female.
- The mean age is 33 years. More than a half (55%) of the respondents are between 25 and 54 years of age.
- Around 80% of the respondents come from rural areas.
- Many (37%) of the respondents are married monogamously, and some (6%) are in a polygamous marriage. 7% are married, but live separately. Another 30% are single and have never been married, while 4% are divorced. Widow(er)s make up 6% of the sample.
- The average household size consists of 4,3 people.
- Seventy percent of the people interviewed have one or more child(ren). On average, people have 1,9 children aged 14 or younger.
- Many respondents are self-employed (36%), followed by people who are engaged in informal work (18%) and people who work for an employer (12%). Nine percent of the respondents are carers, and 8% temporarily unemployed.

¹ We only report differences if they are statistically significant at a 10% level or better.

- Nine percent have completed no (formal) education. Almost three quarters (70%) have completed primary or secondary education. A considerably smaller group has completed vocational training (13%) or university/postgraduate education (7%).

Qualitative research methodology

The qualitative data for this research was collected by trained HiiL staff members. The interviews were conducted from October to November in 2018 during field visits in Kampala, Arua, Soroti and Kabale. The snowball method was applied to identify respondents. Selection was based on access to networks and willingness to collaborate for this research. We collected a total of twenty-three (23) divorce/separation problem interviews, of which sixteen (16) are justice provider interviews and seven (7) are layperson interviews.

With the qualitative data we aim to gather deeper insights about access to justice in situations of divorce and separation. How do the problems look in people's lives? How to these problems look from the perspective of the formal and informal justice institutions? Why some people go to courts, others to LCCs, and others simply do nothing? How the needs

for justice impact people? To what extent people manage to reach fair resolutions for divorce and separation?

Collection and analysis of the qualitative data followed a process of best research practices. First, interviewers were trained on how to conduct in-depth interviews and specific subject matters of family justice. A thematic outline for the interviews was developed. Then, data was collected, recorded and transcribed. Next, the interviews were coded in Atlas.ti. The coding scheme was designed to apply researchers' knowledge of family justice in Uganda and identify recurring themes across interviews. The codes were peer-reviewed and organized into broader themes around which this Deep Dive report is structured. Hence, the themes presented in this report are based on several mentions in the interview the data. The featured comments are intended to animate the survey and interview findings. The comments are selected based on their representativeness and suitability to report (i.e. no personal information is disclosed). However, the findings identified are based on a bigger group of comments than only the featured ones.

What works?

There is a paradigm shift towards evidence-based working taking place in the justice sector. In the end of the report, we will introduce 'what works' alongside with the key findings. The 'what works'-sections contain evidence-based, actionable interventions that can be applied by justice workers, organizations and users.

The guideline approach to what works

One way of finding out what works can be done by developing a set of recommendations, which forms a guideline. The Family Justice Catalogue (developed by HiiL) contains such a set of recommendations. The following three elements of the guideline approach are highlighted:



Identify practice-based evidence (PBE). Local justice workers from the informal and formal sectors have gathered best practices for resolving pressing justice problems through their experiences in the field. These best practices can be collected from government, local, and civil society leaders.



Identify evidence-based practice (EBP). International literature contains evidence which supports or invalidates interventions to justice issues. These interventions can be tested and the quality of evidence that underlies them can be classified, in order to define actionable recommendations that practitioners can apply in practice.



Combine PBE and EBP. Test whether the suggested local practices (practice-based evidence) are consistent with the recommendations (evidence-based practice).

Find all steps and the full guideline approach on www.hiil.org.

Fact sheet: divorce and separation in Uganda

According to the [Constitution of the Republic of Uganda](#) (1995), “Men and women of the age of eighteen years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution.”³

Divorces are regulated by the Divorce Act.⁴ Any married Ugandan resident can apply for a divorce. If both parties to the marriage are African, divorce may be filed to Chief Magistrate’s court. If either of the parties is non-African, the petition has to be filed in the High Court. [Divorce proceedings](#) include the following steps:

1. Filing a petition
2. Supporting documents to the petition
3. Summons
4. Answer to the petition
5. Mediation
6. Hearing
7. Decree Nisi, leading to Decree Absolute⁵

Marriage procedures are regulated in the [Marriage Act](#). Five types of legal marriages are recognised:

1. Civil marriages
2. Moslem marriages
3. Church marriages
4. Customary marriages
5. Hindu marriages.⁶

For a Muslim or Hindu marriage, the Marriage Act does not apply.

For the marriage to be [official](#), a certificate with a duplicate has to be signed immediately after the celebrations. Marriage can also be contracted at the registrar’s office. A customary marriage can be converted to a legal marriage (Church or Civil) by signing the certificate.⁷

³ Constitution of the Republic of Uganda, 1995. www.ulii.org/ug/legislation/consolidated-act/0

⁴ Divorce Act. www.ulii.org/ug/legislation/consolidated-act/249

⁵ Divorce Proceedings. Uganda Law Society. www.elac.uls.or.ug/article.php?id=37

⁶ Uganda Registration Services Bureau. Legal marriages in Uganda. www.ursb.go.ug/civil-registration-2/

⁷ Ugandan Marriage Act. Chapter 251. www.ulii.org/ug/legislation/consolidated-act/251

Previous research on family justice in Uganda

This report builds on a body of research on family justice in Uganda. This research has been conducted over the past two decades by a diverse range of national and international organisations. Their main findings are summarized here.

Family Justice in Uganda 2017⁸

In 2017 HiiL report discussed Family justice in Uganda. The report is based on survey data with a nationally representative sample, in-depth interviews and several group sessions with professionals. Family problems in this research include separation, wills, inheritance, custodial disputes but also domestic violence. People who encounter family problems and namely the female respondents describe them as very impactful. Most people do not consult formal sources and go to their social network. In their quests for solutions the disputants in family problems combine various paths to justice.

The Family Justice report recommends wider use of the scalability of the Ugandan LCCs. Family members are also seen as a source of support, advice and dispute resolution. Practical recommendation of the report is to embrace justice from the perspective of the users and develop a set of terms of reference. Such terms of reference should be based on the explicit needs of the people for fair outcomes in family disputes.

Uganda Legal and Judicial Sector study: formal and informal justice providers⁹

The World Bank study examines and evaluates developments in the JLOS (Justice Law and Order Sector) institutions. This study consists of a desk review, an analysis of studies, one-on-one interviews with representatives of institutions of the JLOS and actors within the private sector, and an analysis of relevant statistical information.

LCCs and clans bear great responsibility for disputes. Efforts to improve access to family justice should institutionalize links with and use of the LCCs in collaboration with the clans or elders. This can be challenging, because of biases in these fora, in particular towards women and children.

The resolution of disputes by customary leaders encourages consensus-building among community members and decisions reached with their help are generally more acceptable by the parties. However, the research asserts that traditional approaches to justice can reinforce structural inequalities in society. Care should be taken to ensure that the rights of traditionally marginalized groups like women, children and the disabled are not compromised.

Access to justice for the poor, marginalized and vulnerable¹⁰

The 2017 Access to Justice Trends Analysis Report has the goal of increasing learning and sharing, document good practices and make recommendations to inform and shape the future of access to justice in Uganda. The report highlights bottlenecks as regards to access to justice for the poor, marginalized and vulnerable. It mentions the lack of confidence in the justice system, the use of the English language with illiterate audiences and cultural and social barriers. An adversarial system of justice combined with rules and procedures can be distressing and disempowering, especially for vulnerable people.

8 HiiL. 2017. Family Justice in Uganda. <https://bit.ly/2ATQYxt>

9 World Bank. Uganda Legal and Judicial Sector Study Report. <https://bit.ly/2noYUn8>

10 LAPSNET. Access to Justice for the Poor. <https://bit.ly/2ASdtTg>

Justice for refugees¹¹

The UNICEF Uganda report points out that many refugees lack access to essential services and are facing family separation.

Rule of Law Index: Uganda (2019)¹²

The World Justice Project Rule of Law Index relies on household and expert surveys to measure how the rule of law is experienced in practical, everyday situations by the general public worldwide. According to the 2019 edition, 17% of people dealing with legal issues in Uganda faced family-related problems. The most helpful sources of help are friends and family. Sixty-five percent of people dealing with justice issues experience a hardship. For 25%, this hardship is a relationship breakdown or damage to a family relationship. Slightly more than half of the people (53%) felt the process followed to resolve the problem was fair, regardless the outcome. Fifty-two percent indicate that the problem is fully resolved, while 19% say that the problem persists.

Justice for women¹³

The High-level Group on Justice for Women report highlights critical concerns for women and girls and the transformational potential of equitable justice outcomes. According to the report, women's justice needs vary, depending on their socioeconomic and family status and other sources of advantage and disadvantage.

11 UNICEF. 2018. Uganda Annual Report 2018. <https://bit.ly/2IAB2Ex>

12 World Justice Project. 2019. Rule of Law Index. Uganda. <https://bit.ly/2IyN8ya>

13 The High-level Group on Justice for Women. Justice for Women. <https://bit.ly/2IAB2Ex>

Glossary of legal problems mentioned in the report

Legal problem: a problem that is solvable by legal means. Includes disputes and grievances of a serious kind between at least two parties.

Divorce and separation: ending a formal marriage or informal cohabitation.

Family problem: in the survey, family problems include divorce/separation; parental/custody rights; disputes over maintenance; disputes over child support; inheritance and wills; and forced marriage.

Domestic violence: violence between family members. Includes physical, emotional or sexual abuse; intimidation; economic deprivation.

Story of Charity

Charity is a 37-year old woman

“ I am Charity, 37 years, and I have stayed in marriage for 20 years. I have six children. The challenges in my marriage came around when the first child was born, we had on and off misunderstandings until it reached to a divorce. The first time when we almost divorced was after the fourth child. We reached a court level with the help of FIDA [International Federation of Women Lawyers, NGO]. However, my husband pleaded and I forgave him. I thought he would change but it became even worse. So, I decided to divorce him because it was now beyond what I could handle: fighting, cruelty, adultery and so many other things. I felt my life was really in short. I made up my mind and decided to divorce him.

The first time when he fought me, it was even in front of my mother, that thing really touched me. I felt pain and that day I told him that today

is the last day of me and you being husband and wife. I told him to leave my house, but he still fought me the second time in that very week. We had had mediation by the Police family protection unit. There I told that I was divorcing him, and they said that divorce can only be done in court and gave me a go-ahead to court to file divorce.

So, I had to take the case from the family child protection unit to court, where I was advised to get a lawyer. I had no money to pay a lawyer with six children all at school. So, one of the lawyers from court told me that if I can't afford a lawyer, I should go to FIDA or Legal Aid Project. There I found Madam [name], who helped me to face the court.

Before going to the police, we had sat down with the clan people several times, even my family members, my

mother, brother on different occasions. There were times he fought me to death point and broke my arm. This is a man who could not change and I said I wasn't in the right path, that is why I made a decision to divorce him.

Some told me that it's bad to divorce because you will be lonely and the children will need both their parents. I think it's not bad, because if I had insisted to stay in the marriage, I would have lost my life. By the time of the divorce I had developed peptic ulcers, and at times I would even vomit because it would stress me all the time. Right now, I find my life easy because I am living a good life here. I don't have a man around but I have everything else, my children are there, they go to school, I provide fees and there's food. I think that is all because I am hardworking and provide for myself and my kids.





2

**What are
the problems?**

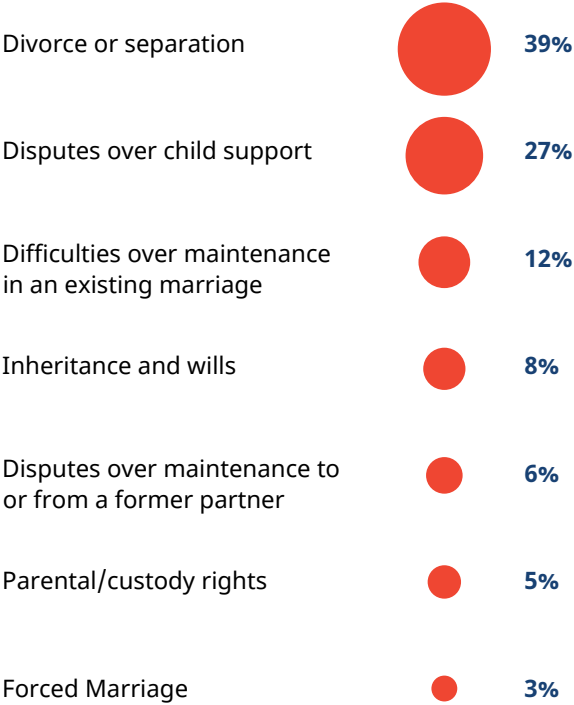
Divorce or separation is the most common family problem

After the legal problems related to crime, land, neighbours, domestic violence and employment family legal problems are the fifth most prevalent type of justice need in Uganda. Nearly one in five people (18%) who had encountered a legal problem had to deal with a serious and difficult to resolve family problem with a legal dimension in the past four years.

Within the category of family legal problems divorce or separation makes the most prevalent category.

Forty-eight percent of the individuals who report a family problem had to deal with divorce or separation. If we look at the whole adult population of Uganda, we estimate that about 7% experience divorce and separation every 4 years. This translates to roughly 370,000 people every year! Considering that divorce and separation affect at least two persons (and many more in reality), this is a justice need that affects many people in Uganda.

MOST COMMON LEGAL FAMILY PROBLEMS



N = 900 persons with 1113 problems

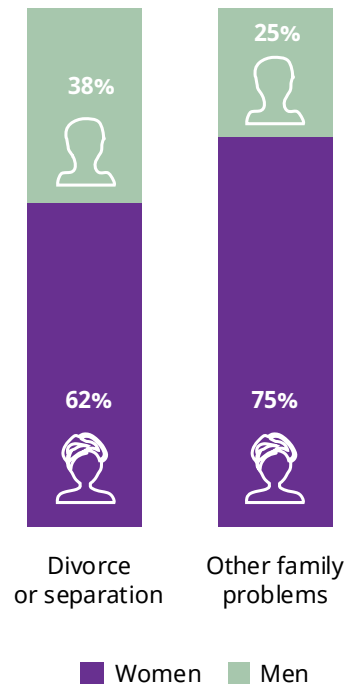
More women than men report family problems as their most serious problem (70% vs. 30%). Of those who report divorce or separation as their most serious problem, 62% are women and 38% are men. The prevalence of women describing divorce or separation as their most serious problem can be clearly seen in the impact of such problems.

Poor, uneducated and rural women and their children are the most vulnerable when the family relationship is falling apart. As such, they are in greatest need for just and fair resolutions.

Having children increases the likelihood of encountering divorce, separation and other family problems. In 80% of the cases of separation and divorce there are children involved. As we discuss further in the report, the interests and perspective of the children is an issue for this type of legal problem.

“Divorce mainly affects poor ladies. They are vulnerable and helpless, so they might stay in that abusive relationship.” (Legal Aid Officer, Soroti)

FAMILY PROBLEMS BY GENDER



N = 4175 persons

The difference between divorce and separation

Divorce is used for dissolution of a formal marriage. Separation is the term used in situations of termination of family relationships that from the outset are not official. Such categories of family relationships are referred to as informal, traditional or customary marriage. Some respondents make a difference between informal and traditional marriage.

“[The definition] depends on how much the tradition is being kept. I mean [informal marriage is] when the two meet in a bar and before you know it they have started living together in the same house and producing children. Traditional [customary] marriage is when the man is introduced by his wife to her family and they accept him as their in-law.” (LCC Chairperson, Kampala)

In this report, we will look at all terminations of relationships in which people cohabit and/or have children.

Divorce proceedings are in the exclusive jurisdiction of the Ugandan courts of law. Separation is a much more diverse practice defined mostly by culture and tradition. As such, separation can involve a dynamic mix of diverse participants: the separating partners, public authorities, community or family-level institutions.

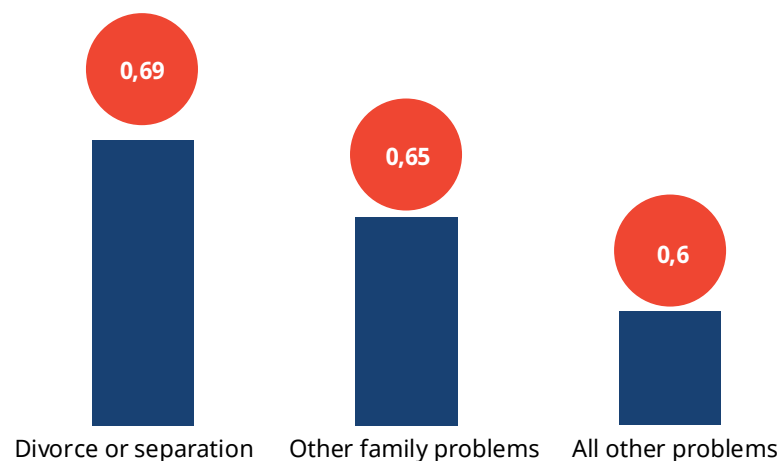
In terms of conditions, processes and impact the differences between divorce and separation are considerable. Below, we will focus on the difference between the two from the perspective of the users of justice in Uganda. Particular focus will be placed on the gender aspect of divorce and separation.

Impact of divorce or separation

The impact of divorce or separation on people's lives is greater than the impact of the other types of legal problems. This specific legal problem is also more impactful than the other family-related problems.

HOW IMPACTFUL WAS THE FAMILY PROBLEM?

0=not impactful at all; 1=extreme impact



N = 4175 persons

Ending a family relationship has considerable impact on the lives of the people involved. When such relationships end abruptly, people encounter grave life-changing negative effects. For some (mostly women), divorce or separation is the way out of domestic violence. In extreme cases, the existence of accessible paths to justice might be a matter of life or death.

“ Sometimes you fear it [domestic violence] could even reach death because sometimes they fight to the extent of admission in hospital. (Police Officer, Kampala)

Next to security concerns, we see that in divorce or separation situations the whole livelihood and human development of the people involved is threatened. Family relationships require commitments and life-long investments. Stress and related ill-health are inevitable part of almost all divorce or separation situations. Property, work and business relationships, status in the society and community are uncertain in such situations. In a matter of short period of time life can change dramatically for the worse. In situations of divorce or separation women are much more likely to be on the losing side.

“ So, in situation when there is a divorce we see that many times the women are forced out of their homes with nothing. They don't go with any property, because they don't formally belong to those homes. (Program Specialist, Kampala)

“ What we usually see is that when there is divorce, the women are forced out of their homes many times without property, without anything because from the beginning that part was not well documented. (Program Specialist, Kampala)

Divorce or separation problems have particularly negative impact on children. In the most dramatic cases of family breakdown, the children are exposed to abuse, torture and exploitation. Family breakdown can lead to situations of children getting into conflicts with the law, or even ending up living on the streets.

The well-being and best interests of children are also key dimension of divorce or separation procedures. When relationships are breaking, the children are the most vulnerable participants. In extreme cases, such consequences can aggravate considerably. It is a question whether the justice system is sufficiently responding to their needs.

” *We are looking at the children that will suffer, and definitely most of them suffer when a family breaks up.* (Police Officer, Kampala)

” *Many families or households that come into divorce make their children much more vulnerable since the children are exposed to abuse, torture, exploitation and the fact that communities aren't aware how to avoid divorce, the illiteracy levels are low and they are not aware of where to report and how it's done, we have heard instances where we have in the region stakeholders like local council leaders, clan leaders, religious leaders.* (Senior Probation and Social Welfare Officer, Kampala)



What do people without a legal problem think?

To assess the legal awareness and general perception of family problems, we also asked people who have not encountered a legal problem to estimate the likeliness of encountering similar issue.

We asked them: *imagine you had to deal with a dispute related to child maintenance.* Approximately one in three think that it is likely or very likely that they will experience such a problem in the near future.

HOW LIKELY DO YOU THINK YOU MIGHT EXPERIENCE THIS PROBLEM IN THE NEXT 3-4 YEARS?



■ Very unlikely
 ■ Unlikely
 ■ Not likely or unlikely (unsure)
 ■ Likely
 ■ Very likely

N = 970 persons



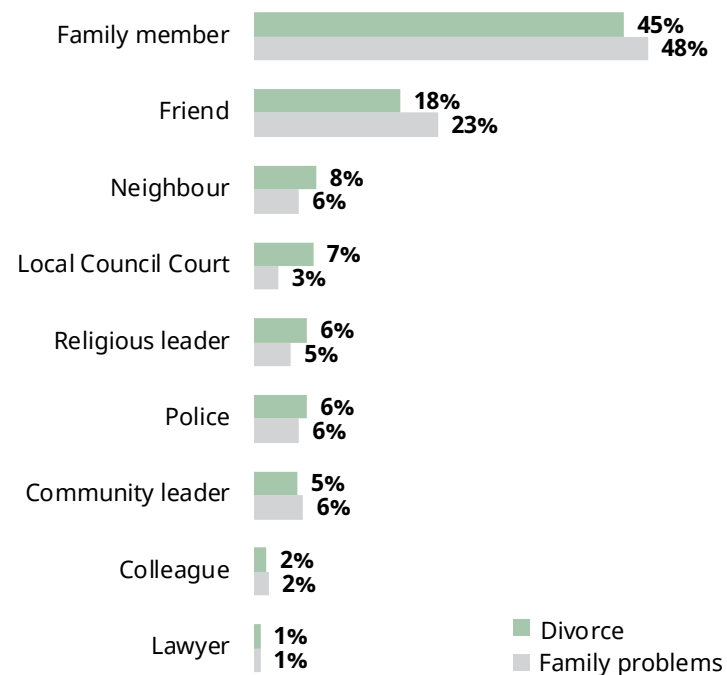
3

**Seeking
legal advice**

Low legal awareness is a factor that affects how people in Uganda deal with divorce and separation. As discussed above, there is little knowledge among the general population about rights, processes and institutions when it comes to marriage, divorce and separation.

“We also know that there is a high illiteracy and also low awareness. Not very many people, especially women are aware of the existing legal frameworks so even where it is in existence they may not know where to go. They may not know how to go there, they have challenges. But otherwise the system is there. What we are trying to work on is reforming it to make it may be a little bit more accessible. (Program Specialist, Kampala)

SOURCES OF LEGAL ADVICE



N = 430 persons with
661 responses

Ugandans tend to rely on their personal network for obtaining information and advice in cases of divorce or separation. Ugandans facing divorce or separation seek advice from LCCs, religious leaders and police more often than those dealing with other family issues.

Very few people engage lawyers in the process of divorce. As discussed above, lawyers are perceived as unaffordable by many Ugandans. For some, the anticipated or actual legal fees are a barrier to obtaining divorce from a court. This barrier is particularly high for people from rural areas.

Legal aid provided by legal aid centres or NGOs is one option to bridge the gap. Women are particularly in need of

“Just like any other case in Uganda, lawyers are very expensive. Some people have even failed to go through divorce because they cannot afford to pay a lawyer and because they do not have legal aid service to aid them go through the divorce process. So the distribution of lawyers also in our country is centered in the urban areas. (Senior Legal Officer, Kampala)

“The lawyers play a very big role but I mean not everyone can access services of a lawyer. It is expensive. They are few. Okay I know here in Kampala they are many but if you are to go upcountry there are very few lawyers. (Program Specialist, Kampala)

legal aid services. There are providers who work to bridge the gap but still legal aid is only available to few of the people who need information, advice and representation. Usually people learn about such services by word of mouth or from announcements on radio shows. When it comes to family justice, the survey does not detect a significant share of advice coming from legal aid providers. Yet, when people find their way to legal aid services, they find them useful. This finding is corroborated by insights from the in-depth interviews.

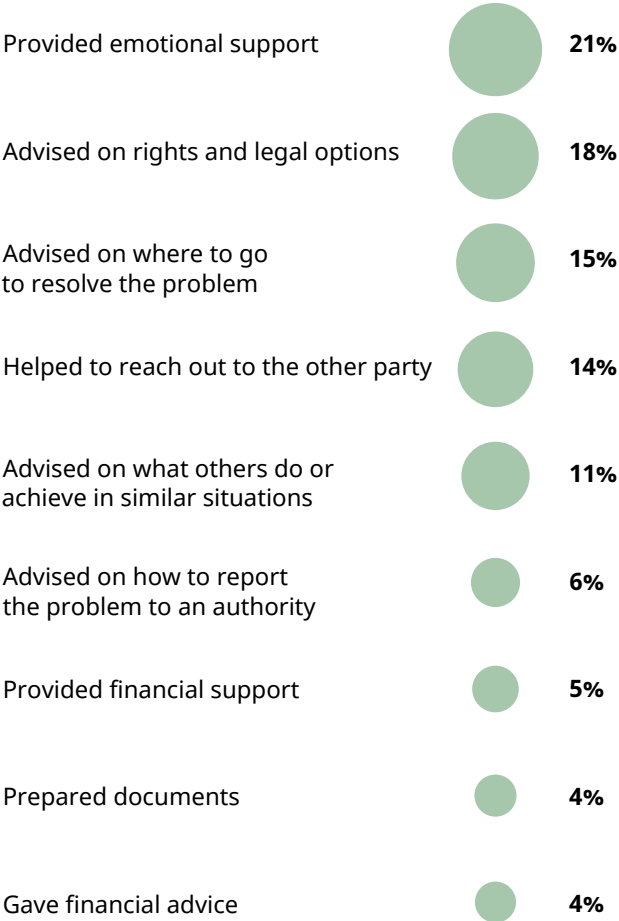
“Usually it's referral, what I noticed from my practice. But sometimes people go to Legal Aid clinics because they know it's a woman's thing. (Family Justice Expert, Kampala)

“Because people are poor like I have told you. Most of our clients in divorce are ladies, they are always poor, they are vulnerable and helpless, so they might stay in that abusive relationship for a while but once they hear an announcement on radio, they hear about legal aid, someone will come. (Senior Legal Officer, Soroti)





HOW DID THE ADVISER HELP IN RESOLVING FAMILY DISPUTES?



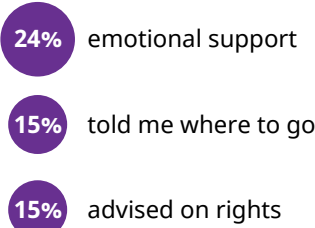
N = 430 persons with 523 responses

A mixed picture emerges when we look at the content of legal advice. Very often, the actions of the advisers are beyond the parameters of the law. Sources from the social network emphasize on the emotional needs of the people who go through divorce and

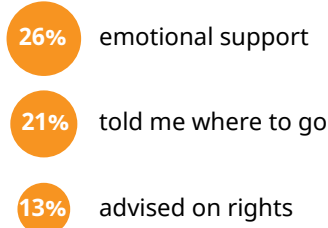
separation. Formal and informal justice institutions inform people about their rights, help to connect to the other party or provide practical information about what to do or what others have achieved in similar situations.

WHAT DID THE ADVICE PROVIDE OR DO FOR YOU?

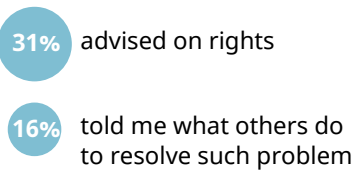
FAMILY MEMBERS



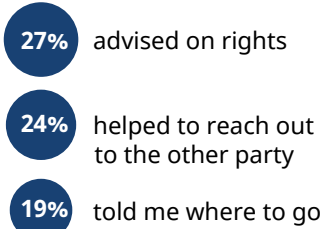
FRIENDS



LCCs



POLICE



Oftentimes, finding the proper sources of legal information and advice is not straightforward. There are cases in which the people have to travel confusing paths to justice.

Many Ugandans rely on informal sources of information and advice when dealing with divorce and separation. Particularly in the cases of divorce the lack of access to qualified legal advice is a significant risk. In a formalistic and highly structured adjudication process, the users of justice need competent and clear advice. As we can see from both survey and interview data, very few people can afford the services of lawyers or legal aid providers in situations of divorce and separation.

” *[The parties] went to about 5 police stations then finally they came to us here. (Police, Kampala)*

” *Lawyers are very, very important. Because it is them who actually draft these documents based on information that has been given. They can give you a general picture of why people conduct divorces, the successes of divorces, whether actually people go through with them, the situation that happens during the hearings. (Senior Registration Officer, Kampala)*





4

**Towards
resolution**

Divorce and separation are two different ways to end a formal or informal family relationship. However, despite the similar outcomes there are considerable legal differences. These differences affect profoundly the choices that the people involved in family problems have.

Divorce in the strict sense is an adjudicative process for terminating a registered civil marriage. Only the courts of law in Uganda can hear and decide cases of divorce. Later in this report we will see that other parties can be involved informally as well but the final decision is only issued by a competent court.

When there is no registered civil marriage most of the interviewed professionals as well as lay people talk about customary marriage or co-habitation. We do not have precise data, but according to the in-depth interviews, many of the marriages in Uganda are not registered. One expert quoted research according to which more than half of the marriages in Uganda are customary.¹ The survey data reveals that only a tiny minority of

3% of the people who say they had to deal with divorce and separation went to a court!

Particularly in rural areas, customary marriages seem to be common practice. These are informal marriages. In fact, some experts make a distinction between informal and traditional marriages. Traditional marriage is the family relationships based on the observance of traditions such as acceptance by in-laws, dowry etc. The informal version of customary marriage is associated with the decision of a couple to start living together.

The type of marriage largely affects the material and non-material consequences of the relationship. Ownership of assets, custody rights, right to child maintenance, spousal alimonies, and inheritance are all key dimensions in which registered and customary marriages differ. In the case of formal marriage, the grounds for divorce and the consequences are laid out in the Divorce Act.

Customary marriages are dissolved by mere separation. Unlike divorce, there is no formal separation procedure and no binding substantive rules. Separation is largely a matter of informal arrangements.

There is a widespread understanding among legal experts that customary marriages can pose legal risks for women and children when it comes to separation. Their rights and entitlements are not secured, and they are difficult to protect in such circumstances. The question that arises is: why do people choose customary marriages?

There are many and nuanced answers to that question. First, it is the lack of knowledge about the legal consequences of living together in a customary marriage. Often people and particularly women enter a customary marriage because they lack awareness of the possible consequences of such marriage.

” So what happens is that in the event of a customary marriage there is a traditional practice. At the time of divorce, they are handling it at a community level at a household level, at a family level. (Probation Officer, Kampala)

” So for those [marriages] that are not registered, really it is an uphill task to even save, if it is property, to save even a single property for the woman, it is very, very hard. (Senior Legal Officer, Kampala)

” Women are ignorant of the law, of information regarding their rights. Very few people have information. (Probation Officer, Kabale)

¹ Interview with expert from an international organization

Convenience and ease are two powerful factors that make people in Uganda to choose customary marriage. For some, customary marriage is a way to avoid institutions and “keep it small”. Saving money is another motivation for preferring customary over formal marriage.

There are professionals who during the interviews depicted customary marriage as a strategy employed by some men to achieve favourable distribution of property rights in case of separation.

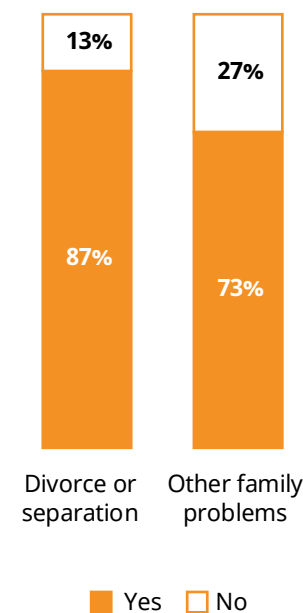
“ Well, I think it is about preferences. Some people don't like crowds; some people just want to have a small private thing like in hard economic times, they say you know what let's keep it small and have food on our table. Or that people want to formalize their relationship and they say “we are still young, we don't have all that money, let's just keep it small and private. (Family Justice Expert, Kampala)

“ So many men are now not willing to contract legal marriages for fear of losing property in case the marriage goes wrong. (Senior Legal Officer, Kampala)

Resolving divorce and separation

Ugandan people are active in their pursuit to resolve their justice needs. There is no exception in the cases of divorce and separation. More people who report divorce or separation as their most serious problem took action to resolve their problem compared to those with other family problems (87% vs. 73%²).

DID YOU TAKE ACTION TO RESOLVE THE PROBLEM?



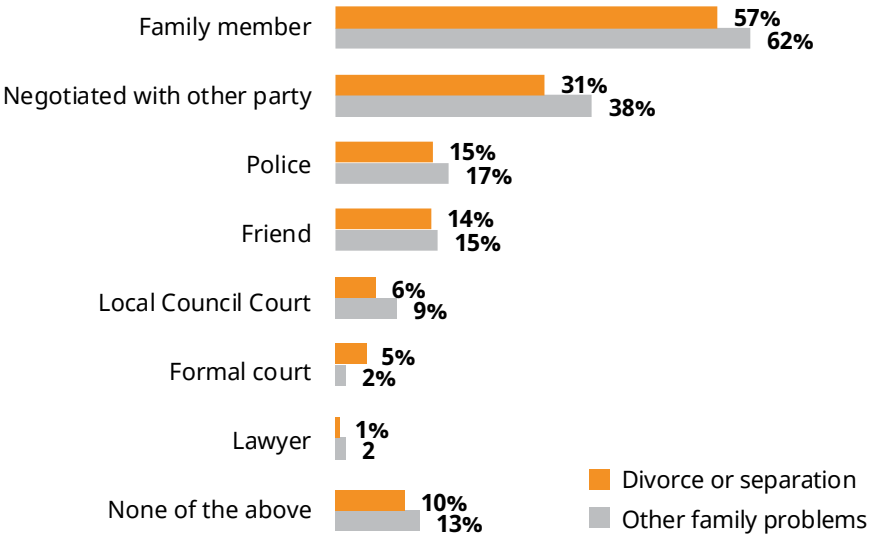
N = 511 persons

² The difference is not statistically significant.

When dealing with divorce and separation, in comparison to other problems people are significantly more to:

- Negotiate directly with the other party (38% v. 31%)
- Involve a family member as a decision-maker (62% v. 57%)
- Bring the matter to a LCC (9% v. 6%)

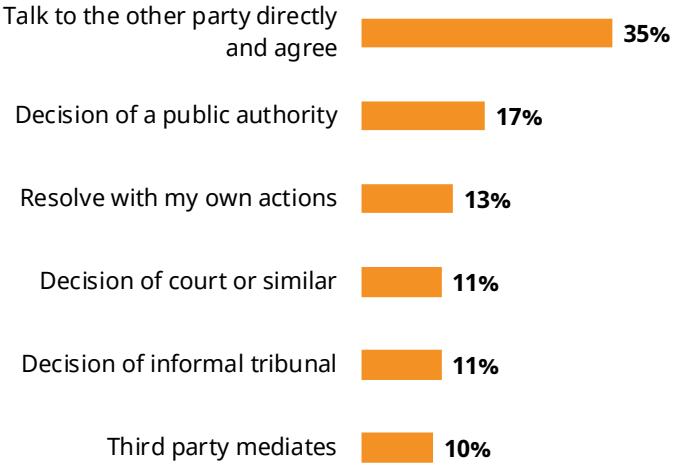
WHO DID YOU CONTACT FOR DISPUTE RESOLUTION?



N = 511 with 872 responses

When asked what would be the ideal way to resolve divorce or separation, most people (35%) with such a problem say that they want to achieve an agreement with the other party. Others (13%) prefer to resolve the issue with own actions. The rest see the ideal resolution as some sort of adjudication or mediation by a formal or an informal dispute resolution authority.

IN AN IDEAL SITUATION, HOW WOULD YOU RESOLVE DIVORCE OR SEPARATION?



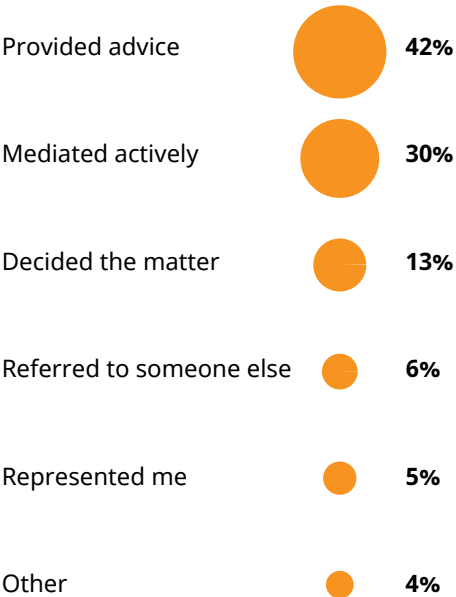
N = 175 persons



In the survey, we asked what did the third party do in the process of divorce or separation.³ The most often employed strategy is to advise the parties (42% of all interventions). Active mediation or reconciliation follows next. Deciding the matter through some form of formal or informal adjudication is relatively rarely practiced in divorce and separation cases in Uganda.

In only 13% of the interventions a third party took a decision. This indicates that the parties themselves are expected to be active in pursuing their interests in the cases of divorce and separation.

WHAT DID THE THIRD PARTY DO FOR YOU?



N = 143 persons with 245 responses

3 Individuals who only selected Negotiated with other party skipped that question.

Which dispute resolution process people end up in depends on the type of the problem. Formal adjudication and courts are involved when the parties want to end a formal marriage. When the marriage has been formed under Sharia law, the divorce is in the jurisdiction of the Sharia courts.

Informal marriages are terminated through diverse processes and procedures. Usually separation is being arranged at a family, clan or community level. Many talk about cultural institutions that deal with such problems. People with authority within the family are often sought for advice and dispute resolution. Community level institutions such as elders, clan leaders or LCCs can also be involved in one way or another in the process of separation. In some instances, religious authorities play a role in divorce and separation.

Despite the multitude of processes, only half (51%) of all reported problems of divorce or separation are completely or partially resolved. Alarming, in 32% of the cases the respondents say that they did not manage to resolve the issue and are not considering further action.

This resolution rate of 34% completely resolved problems (51% if we put together the divorce and separation problems that are deemed to be completely or partially resolved) is higher than that of other family problems. Excluding divorce and separation we see that only 34% of the family problems are considered fully or partially resolved.

HAS YOUR PROBLEM BEEN RESOLVED?



Yes, completely Yes, partially No, the problem is on-going No, and I'm not taking further action

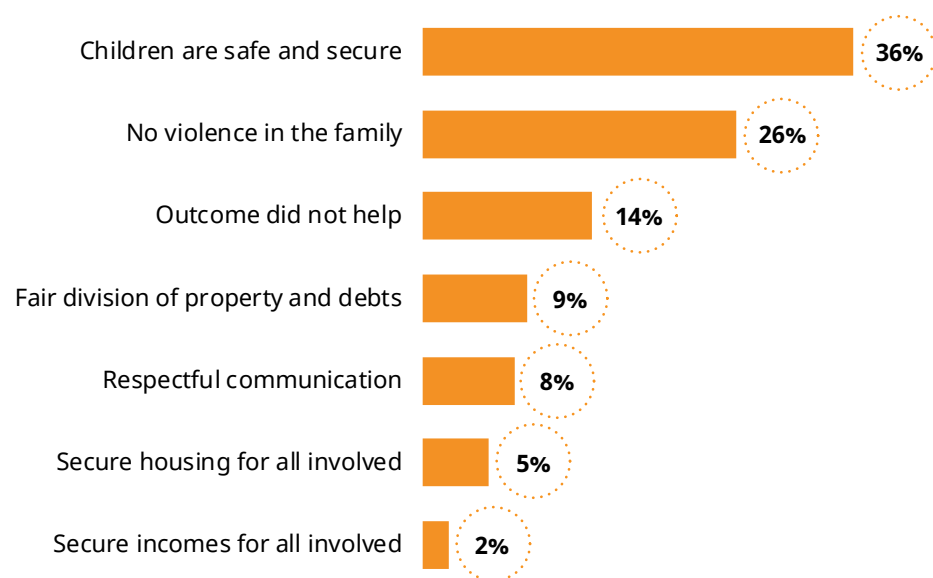
N = 182 persons

How does the resolution of divorce or separation affect people? We did ask the people who consider the problem completely or partially resolved about the practical results of the dispute resolution process.

The two outcomes that most often take place when the problem is completely or partially resolved are:

- Children are safe and secure, and;
- Prevention of violence in the family.

WHAT DID THE OUTCOME BRING TO YOU?

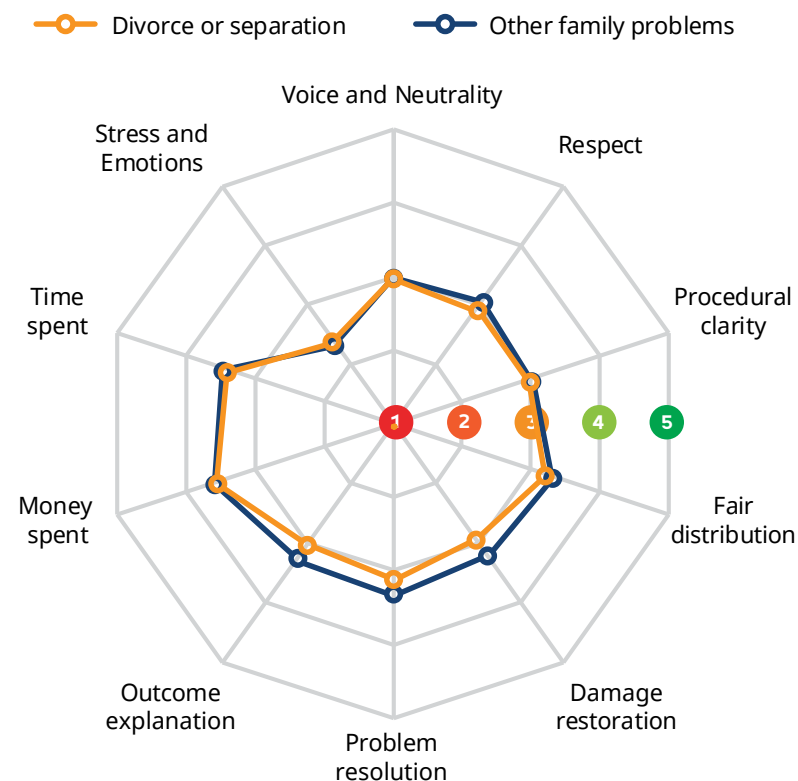


N = 189 persons

Other desirable outcomes such as fair division of property and debt, secure housing and incomes, however, are rarely reported by the people who go through divorce or separation processes.

In terms of the quality of the processes, the quality of the outcomes and the costs of accessing justice, divorce and separation are experienced as less satisfactory. In the spider-web below we compare this with the score of other family legal problems.

JUSTICE JOURNEY EVALUATION



Family courts

On all dimensions of process and costs divorce and separation processes receive lower scores, meaning that the users of justice are less satisfied. A mixed picture emerges from the perceived quality of the outcome. Individuals who have experienced either divorce or separation do not see that the (formal or informal) justice processes are restoring the damage that the problem is causing. On the other hand, they are slightly more satisfied with the distribution of the assets in divorce and separation proceedings. This picture of the perceived quality and costs of the justice journeys reveals that there is a big potential to deliver better justice when people seek to end their relationship and move forward with their lives.

Below we delve deeper into the insights of lay people and justice professionals on formal and informal processes for divorce and separation. Our specific focus is on the perceptions and experiences with the different justice journeys.

Going to a court for divorce is considered a rare and unusual experience. First, only part of the family relationships in Uganda are formalized and as such the courts of law possess limited jurisdiction. More importantly, there are many barriers to courts which affect the justice journeys for divorces.

For many people going to a court is a measure of last resort. As we commented above, about 5% of divorce or separation cases are referred to a court. Apparently, only selected cases make their way to formal adjudication. According to the quote below, such trigger for instance might be a serious and systemic violence.

” *[People] only go to court when the domestic violence is too much where the woman has been battered so badly or she needs school fees for the child or property but mostly what takes them to court is the distribution of property.* (Legal Officer, Kabale)



Usually other formal or informal mechanisms are used before filing a case in court. Police plays a role when some sort of violence is involved. Relatives, elders and others who have influence over the parties will try to mediate and reconcile so that the dispute is resolved at the lowest possible level. There are, however, aspects of divorce that are in the exclusive jurisdiction of the family courts – i.e. custody rights and division of property.

- ” *Of course many people - especially in the villages - start with police and end up in the courts of law. And then when it comes to the informal [system], usually it is the clans, the family settings, the religious [leaders], the pastors - yes, that kind of thing.* (Program Specialist, Kampala)
- ” *Both parties will get their relatives, elders especially and parents in most cases are required to be present, they sit, the two people mention their issues, and declare that they cannot continue living together. And then the elders will settle, which, [the parties] agree. And this works when the couple agrees towards all the suggestions and processes. But where there is a conflict, like for example if you argue over the custody of children, or you dispute over division of properties, then you have to go back to court, you have to go to court, and now you have to go through the normal legal process of divorcing.* (Senior Legal Officer, Kampala)
- ” *We first went to the LC and the Police which did not yield any fruits but eventually went to Court.* (Layperson, Kabale)

There is also a cultural stigma in going to court to ask for divorce. Especially women are under great pressure to not resort to court to seek divorce, as this is seen as antisocial behaviour. Part of the pressure comes from the immediate family and community who see divorce as unwanted and even shameful event. Another part of the social pressure stems from the position of women in formal or informal marriages, and the negative economic and social prospects after divorce. The same is true for separation.

- ” *That issue of [being in a conflict with the] father of my children, and how people will hear the fact that we are divorcing is very, very common.* (Senior Legal Officer, Kampala)
- ” *The challenge [of going to court to arrange divorce] is that most women don't want to reach that extend of divorce.* (Police Officer, Kampala)

- ” *The law is very clear. If the relationship cannot work then you need to separate. But it is always hard to divorce. I mean to convince these women to reach there because they look at a lot of things: “when I divorce now where will I start from”. For many of them, the man is like the source of living, he is everything. They have been with the man for some time, they have given birth to several children and think that they cannot even remarry.* (Police Officer, Kampala)
- ” *In most cases women will come and they tell you that “I can no longer handle this marriage but divorce is not an option for me. My parents will not allow, they will not allow me to go back.* (Senior Legal Officer, Kampala)
- ” *Women will have so many problems within the marriage, but they will always think about their children first, their parents and relatives, then the public image; even for those who are not educated, they will always consider these issues.* (Senior Legal Officer, Kampala)

Privacy or the lack thereof in court proceedings is another reason for people to avoid courts in sensitive family matters.

“At all levels because it is not easy when you reach court the people start unleashing what you never expected and the gallery is enjoying but you are feeling very small or belittled. (Senior Legal Officer, Soroti)

Some experts even talk about “fear of courts”.

“There people who are scared of court and when you mention anything about Court, they gave up on a case. (Senior Probation and Social Welfare Officer, Kampala)

Delay is often the first association when lay people and experts talk about courts. Legal proceedings are long and hence can take quite a lot of time. As in many countries, in divorce proceedings there is a purpose-built delay in the form of a six-month “cool-down period” in which people can look at the matter and try to achieve an amicable settlement.

“Delay, the delayed process, there’s a lot of delay in court unless parties have come up to agree at the level of mediation, the process takes a lot of time, so the person is always psychologically tormented until that day when the court makes its pronouncement. (Senior Legal Officer, Soroti)

“In Kabale I have seen a divorce case going for 5 years without being completed so really the process in court and contracting a legal divorce takes a long period of time compared to the non-legal process where that one can take you one day, 2days or one week. (Legal Officer, Kabale)

Another barrier on the way to family courts are out-of-pocket expenses. Particularly the prospect of hiring a lawyer to advise and represent in the matter is unaffordable for many.

“People can’t afford these legal fees. (Senior Registration Officer, Kampala)

“What brings people to us [legal aid organizations] mainly is lack of resources. They don’t have money to hire advocates. (Senior Legal Officer, Soroti)

Family courts, however, are not only seen in a negative light. Adjudication means that known and predictable substantive and procedural rules will be applied and the final act of the court will have a binding effect on the parties. Courts are particularly effective in dealing definitively with the property claims which make a significant part of the divorce.



Cultural institutions

Informal or customary marriages are dissolved through customary and informal institutions. Such informal institutions can involve family members such as Senga (Fraternal Aunt), elders, clan heads, LCCs, and so forth. Separation can also be achieved bilaterally between the parties in the relationship. The choice of path to justice is not straightforward. There seems to be multiple and sometimes even competing processes for dissolving customary marriages.

” *But when it comes to the customary marriages, yes, you might not go to court for a divorce, but you can end your marriage customarily depending on what your culture or your tradition requires.* (Senior Legal Officer, Kampala)

Unlike the family courts and their adjudicative approach, the cultural institutions aim for a mix of mediation, reconciliation and arbitration. This is their strength but also their weakness. On the one hand, this approach is in line with what people want and need. On the other hand, non-binding reconciliation might not resolve the problem. Another disadvantage of the approach is that community values can be preferred over the interests of some parties. Very often the interests of women and children might be affected by the adherence to such values.

” *You know, in our tradition, it is very hard to divorce. It is not nice to hear about a failing marriage. How can you fail in marriage? How can you as a woman fail in marriage? How can you as a man fail to maintain a marriage? So there are not so many options that we have culturally.* (Senior Legal Officer, Kampala)

” *Ok, In Teso because of their culture divorce is unheard of. Women could endure everything that comes their way in the names of marriage because it was a taboo to be a single lady without a man. The clan would not allow it.* (Regional Coordinator, Soroti)

” *They [cultural institutions] promote settlement. They promote maintenance of the family tie. But the legal options mostly, if you go the divorce route, the marriage will end and you have very sharp consequences of it, parties cannot live together, the children will be affected because one spouse has to leave the matrimonial home, and that aspect of continuity is lost. But when you have the non-legal option of mediation through elders, and so forth, somehow you will find that perhaps the people can reconcile, and the children are looked after by both parents, and somehow when the parents are looking after children you sure of less delinquency. Because when there is no parental control children are going to go to the streets or learn bad habits for lack of guidance, and end up into criminal activity because there is nobody guiding them, or they have nobody providing their needs therefore they must fight for themselves.* (Deputy director, Kampala)

There are accounts of NGOs working to sensitize cultural institutions about the interests of the vulnerable, particularly children, in separation procedures. Some experts, particularly from the NGO sector, see a progressive change. Women are becoming more empowered and aware of their rights. This trend, however, is still fragile and needs improvement to become sustainable.

Involvement of reluctant parties and enforcement of the outcomes of the justice processes of cultural institutions is particularly problematic. These processes are built around the assumption that people participate voluntarily and comply because of respect for community authorities. However, enforcement of court decisions, namely for child custody and child support, can also be difficult.

” *Actually we had some programs involving clan heads and we used to talk to them about all those things that whenever they are mediating such cases, let them have the best interest of the child at heart because they are silent victims of our actions in every single bit of our actions.* (Regional Coordinator, Soroti)

” *Women are more enlightened about their rights and everything so the rules are getting a little bit relaxed.* (Regional Coordinator, Soroti)

” *So those processes are there but many times they are not conclusive. They don't give like a long term solution. Many times these are just counseling, reconciliatory counseling or go back and apologize, that kind of thing. So they may not give you a long term solution. And many times even when you go there still you may not get the help that you were looking for. But different communities handle it differently.* (Program Specialist, Kampala)

Experts caution that cultural institutions are inherently opposed to separation. Family and community integrity revolve around stable families. Separation is in a way a deviation of this value. Therefore the cultural institutions might not be objective in the first place towards the needs of the parties, and actively promote family reunion.

One specific challenge for cultural institutions is the problem of ascertaining property rights and the fair distribution of property in case of separation. The informal nature of customary marriages renders it difficult to prove who owns the property accumulated during the cohabitation. After several years of cohabitation, tracking down individual contributions to the family property and determining a fair division of property can prove difficult. Not surprisingly, women and children are more likely to be treated unfairly.

” *I would say [cultural institutions] are more accessible, but I wouldn't say they are the most effective because they don't give the actual solution. They give like a short term intervention but not a lasting solution because many times I mean even when you are counselled there is a high probability that this problem may reoccur. And many times they don't aim at actually giving you a divorce. They try to protect, so they will make sure a divorce doesn't happen, they reconcile.* (Program Specialist, Kampala)

” *That is always in the talks and the unending quarrelling but we have never got a case where they separate and divide the property. The women always walk away without sharing.* (LCC Chairperson, Kampala)

” *The clan leader isn't elite enough in taking the decisions on the plight of the child and taking into context the best interest of the child, they don't have principles of child protection. He will only check that basing on what the clan and the culture states. Say if this woman has been proved in the household as a woman who is exercising witchcraft, she must leave, they will not look at the vulnerability.* (Senior Probation and Social Welfare Officer, Kampala)



In comparison to cultural institutions, the rules and procedures applied by courts are clearer. Yet, courts are not seen as accessible. Moreover, the individuals who use court services are more likely to have access to expensive courts. The quote below comes from an expert whose opinion is based on her knowledge and status.

” *The law is clear on divorcing, the court has discretion to determine who takes what, and then it is even much easier to discuss issues of custody of the children; the process is basically easy.* (Senior Legal Officer, Kampala)

Local Council Courts

The role of the LCCs is particularly interesting in the cases of separation. Legally speaking, LCCs do not have jurisdiction over divorce and separation. However as a cultural institution they are involved. People seek especially advice and conciliation from the LCCs. Using their informal power, LCCs can resolve many disputes as they are close to the community. Usually this happens when the immediate institutions such as family or clan structures fail to reconcile and reach an amicable and acceptable resolution. In that way, the LCCs act as an informal dispute resolution provider. Many experts see this as a positive way of tackling the problem at the lowest possible level.

The involvement of LCCs seems to have a positive effect on the whole justice journey, even in the relatively few cases of divorce that are taken to courts. The justice providers shared that evidence collected at LCC level is used later on during the preparation of divorce proceedings in court. Such evidence is not admissible in court directly but helps the parties to prepare their cases.

” *By the time these cases escalate, people have gone through clan meeting and family meetings and LCCs. It is the LCCs who are going to say maybe what is happening [with] these people, [why the] relationship is becoming toxic. LCCs also try to resolve. You cannot avoid the Local Council.* (Family Justice Expert, Kampala)

” *The local councillor is the immediate authority to the couple since s/he always knows the relatives of both parties. And, at times, it's the court of first instance.* (LCC Chairperson, Kampala)

” *LC1 is informing courts of law so the lawyer will rely on the information that has come from the LC1 whether biased or not.* (Senior Probation and Social Welfare Officer, Kampala)

As community institutions, LCCs might not be eager to work towards a fair resolution of the problem but towards preserving the community values. This raises questions about their impartiality, especially in cases in which separation is better for the interests and needs of all or some of the parties.

Another doubt about the impartiality of LCCs in family cases and particularly in separation comes from the vested interests at community level. In small dwellings where people live in tight communities and know each other well, the councillors might be tempted to take sides. Hence, the ideal of an objective and unbiased third party is challenged.

From a gender perspective, LCCs might be biased against the interests and needs of women in separation proceedings. LCC leadership is mostly male and as such is inclined to pay more attention to the interests of men.

” *The role of LC I is to make sure that we bring together the couples and in most cases we don't encourage separation or divorce.* (LCC Chairperson, Kampala)

” *Our main role is to ensure that they don't divorce because we support no side to leave their marriage.* (LCC Chairperson, Kampala)

” *Most of the local councils are relatives of the local people. And majority of the LCC chairpersons are men. Naturally you will find them siding with their fellow men. If the LC1 chairman is your father-in-law and you are bringing his son before him for a divorce... basically a lot is compromised at that level. So, when it comes to things that are technical such as divorce, I don't see a very big role that LCCs can play.* (Senior Legal Officer, Kampala)

” *They will go mainly to the LCC. But the community that we live in is male-dominated. There are only rare cases where we have a female LCC chairperson, namely in the urban centers. In the villages we find that we do not have any other sources.* (Probation Officer, Kabale)

Besides the challenges, cultural institutions have clear advantages in resolving family matters and specifically in arranging separation. Such institutions are embedded in the community and hence are approachable and affordable. There is much less social, economic and geographical distance to cultural institutions when people need to sort out their family disputes.

Usually cultural institutions apply non-adversarial processes to resolve problems. They use a mix of mediation, reconciliation and arbitration to guide the parties towards a solution. This emphasis on reconciliation is experienced as user-friendly and less stressful when compared with the adjudication approach of the courts. Reconciliation is not only seen as a procedural approach, but also as a strategy to obtain results that are fair, and correspond to the interests of the parties involved.

” *Mediation brings about settlement, you can agree upon custody of children and how to maintain them, or how to share family resources in an amicable manner instead of fighting tooth and nail....[Cultural institutions] promote settlement. They promote maintenance of the family tie. In the legal options [adjudication] mostly, if you go the divorce route, the marriage will end and you have very sharp consequences of it, parties cannot live together, the children will be affected because one spouse has to leave the matrimonial home, and that aspect of continuity is lost. But when you have the non-legal option of mediation through elders, and so forth, somehow you will find that perhaps the people can reconcile, and the children are looked after by both parents.* (Deputy director, Kampala)

” *When it's contentious it is adversarial so it is a win-lose, that is it. I don't think divorce creates a result of win-win.* (Senior Registration Officer, Kampala)



5

Findings and implications

Impact of divorce and separation

Divorce and separation are the most common family problems in Uganda. During the past four years, 7% of Ugandans have experienced this kind of ending of a relationship. This translates to at least 370,000 divorces and separations a year. Divorce or separation always affects at least two people, but also children are often involved. Hence the number of people affected by divorce and separation is even greater than the actual number of divorces and separations.

Legally speaking, marriage types are regulated by the Marriage Act and divorce is regulated by the Divorce Act. However, many people go into a steady relationship through traditional means without formalising the relationship. When the marriage is not established under the Marriage Act, the Divorce Act does not apply. Especially those situations can be difficult to resolve.

Divorce or separation is a very impactful event in a person's life – so much so, that in comparison to other family problems, people who have experienced family problems evaluate divorce and separation as the most impactful. Ending a relationship usually means re-arranging everyday life and re-organising financial matters while going through emotions. Most common consequences of divorce or separation are stress-related illnesses (71% of people who went through divorce or separation), loss of time (51%) and loss of income (48%). Majority of people simultaneously experience multiple of these consequences. During divorce or separation, especially women and children are at disadvantage due to financial limitations.

While legally divorce and separation are two different matters, the impact and consequences are similar. The justice system, formal and informal, should be able to provide solutions to situations where people are rebuilding their lives. The building blocks of these solutions can look similar, despite the legislative parameters.



Justice Gap: What do people do and achieve?

7% of Ugandans have gone through divorce or separation during the past four years

18% of divorce and separation problems are on-going

34% of divorce and separation problems are resolved

17% of divorce and separation problems are partially resolved

32% of divorce and separation problems remain unresolved

A little over a half of people are able to resolve their divorce or separation problem fully (34%) or partially (17%). Approximately one in three (32%) do not reach any solution to their case. This means not being able to conclude a divorce or separation, or issues related to it. To dissolve a formal marriage, the procedure has to go through a court. Many people however are in long-term relationships that are not formalised under the Marriage Act. When these relationships dissolve, the couple can need assistance equal to a divorce. More often than not people engage

informal justice providers for all ends of relationships, including formal marriages. Often family members are involved in the negotiation. In over one in ten cases also police are involved. Barriers to reaching a solution, both in formal and informal justice venues, are cultural stigma around divorce, fear of courts, limited finances and delays in cases. Those who receive a solution, often report that the resolution did not restore the damage of the problem. There is room for improvement in family justice, and supporting people through their difficult decisions can improve the well-being of all involved, including the children.

Most often the outcome that people achieve as a result of a legal process is security for children and absence of violence. Effective financial and housing arrangements are mentioned less frequently.

What works to resolve problems related to divorce and separation

Advice that people need is more than mere legal information. The advice that people seek and get from their social circle such as family and friends is mostly helping with emotional needs. Formal and informal justice institutions inform people about their rights, help to connect to the other party or provide practical information about what to do or what others have achieved in similar situations.

When possible, the most effective way to resolve divorce or separation seems to be an agreement between the parties. When the situation demands a third party, most often the third party participates by advising the parties or by mediating and reconciling. Deciding the matter through a formal or informal adjudication is practiced relatively rarely.

When asking what people going through divorce or separation would prefer, almost 40% respond ideally a third party decides for them, and 10% would prefer a third party to mediate. This suggests that third parties and separating couples would benefit from processes that more often lead to closure with the help of a third party, instead of pursuing voluntary agreements for too long.

What works in justice delivery services

Regardless of the judicial form of the relationship, when people divorce or separate, they have similar needs in resolutions: moving on from the situation with their needs being met. Many people seek help not only from a court, but also from informal sources. People often mention Local Council Courts as helpful during divorce and separation. Family courts are hardly used as they exercise jurisdiction only over formal marriages, and their processes are formal and adversarial. Informal processes by cultural institutions, as well as the LCC's, are generally appreciated by their users. Yet some justice providers share a concern that they may be biased in their vision of the proper roles and behaviours of women and men.

Understanding



Both parties of the situation have their own emotions, needs and interests that should be uncovered

and recognised. Mapping the unmet interests and needs and making them explicit can help in finding a solution that both parties understand and accept. Unequal interaction patterns between the parties may disregard the needs and fuel the conflict. Emotions such as anger, fear, sadness or joy are important signals of needs. Communication techniques such as active listening, summarizing, and reframing can give people voice, building understanding between parties. Often basic human needs are at stake and need to be addressed throughout the resolution process.

Implications

Shaping solutions



While each case of divorce and separation is unique with parties that have their specific needs, taking lessons from

other cases can help in uncovering possible solutions to the case at hand. Justice providers bring their experience to the table, while the parties to the conflict can shape solutions during a mediation process or as part of a problem-solving court process. Documenting the decisions properly is necessary for a finalised agreement.

Accepting



It is important for the parties to commit to the agreement or resolution. Decisions that restore what is lost and guarantee

peace have potential in securing ownership of the decision by both parties. A closure in a way that both parties see fit can help the parties to leave the case behind and move on. Not taking further action or not appealing can also signal acceptance.

When there are considerable difficulties in reaching a decision between the parties, a decision of an authority might be needed. In these cases the authority should objectively see both parties' point of view, including the children, and help in deciding the case. A good resolution makes sure that children involved in the situation are safe and secure, and parties involved can continue their life as uninterruptedly as possible.

These findings suggest several ways in which the resolution of disputes related to divorce and separation can be improved. The Marriage Bill, put forward by the Uganda Law Reform Commission in 2017, proposes a collection of reforms in governing the institution of marriage. It proposes aligning and consolidating the laws of marriage in Uganda to reflect the socio-economic realities of Ugandan people. When compared to the research results, the Marriage Bill proposal reflects the current practices on divorce and separation in Uganda.

The practice of advice and resolution can be strengthened by enhancing the resolution processes that are geared towards reaching agreement and closure by a neutral decision-maker when needed. The data suggest that many couples and their advisers succeed in achieving fair outcomes.

As a next step, justice workers dealing with any separation disputes can be provided with know-how and best practice on how to resolve such disputes amicably. This can include increased capacity to negotiate and mediate disputes, and to include standards and rules for fair solutions. Such "sharing of rules" has potential in contributing to the protection of vulnerable groups, especially women and children, from the biases that can result from being subject to informal, local dispute resolution mechanisms.

Given the impact of especially unresolved family disputes on people's lives, the benefits of such improvements can be very substantial. Investing in the local resolution capabilities for disputes relating to divorce and separation can be an important contribution to the well-being of the many Ugandans whose relationship is facing an end.

Limitations to the Methodology

A word of caution about the quantitative data

Our approach includes quantitative survey data supported by qualitative interview data with users of justice. We also conduct interviews and rounds of feedback with Ugandan justice experts. Despite these efforts, there are limitations to the data, just as in every study.

- Some findings are based on answers from a limited number of people. For deeper details about people's experiences with specific justice journeys, different and larger samples are needed. This can be achieved with, for example, problem-specific research instruments.
- Some people might not report problems due to shame and fear. For example, when people have spent time in prison or have had problems with figures of authority.
- Cultural norms may cause people to under or over-report problems. Dependency relationships also play a role.
- We did not include sub-samples for particular vulnerable groups, such as disabled people or victims of gender-based violence. We recognise that these are important problems and populations for the Ugandan society and hope to collect data on their justice needs in the future.
- Our standard approach is to disaggregate results based on a number of variables, such as gender, income level, education level, etc. We only report differences if they are statistically significant at a 10% level or better.

Limitations to the qualitative data

Unlike the survey data, the qualitative data from the interviews are not generalisable to any population. Rather, this qualitative data help to contextualize the survey data. They describe choices and strategies. Deeper interaction with lay people and justice providers makes possible a more nuanced perspective on the complex phenomenon of accessing justice after experiencing a family problem. This combination of methodologies provides both breadth and depth to the report. Qualitative data also help to formulate further questions for investigation.

The following caution must be reiterated: the comments featured in this report cannot and should not be generalised beyond the individual sources. In the text, we provide

views and verbatim quotes from lay people and justice providers. These opinions represent only the ideas of the interviewed respondents. Others might have radically different opinions. As our sample of qualitative sources is limited, the data does not claim to achieve saturation.¹

When a certain point is being made in the report, there are usually several respondents who share a particular view. The analysis aims to add descriptive and explanatory knowledge to family justice problems. What is important is that such an opinion exists and is shared by justice providers and/or lay people. By acknowledging these views, we can better understand all aspects of family justice, and create a building ground for exchange of experiences.

¹ A point after which the interviews with the same outline do not produce additional information.

Interviewees

List of justice providers interviewees

	Role	Sector	Location
1	Officer in Child and Family Protection Unit	UPF	Kampala
2	Senior Legal Officer	CSO	Kampala
3	Family Justice Expert	JLOS	Kampala
4	Deputy director	Academic	Kampala
5	Program Specialist	International organisation	Kampala
6	Senior Registration Officer	Government agency	Kampala
7	Probation and Health Officer	CSO	Kampala
8	Senior Probation and Social Welfare Officer	Government	Kampala
9	Child and Family Protection Unit	UPF	Kampala
10	Regional Coordinator	CSO	Soroti
11	Senior Legal Officer	CSO	Soroti
12	Probation Officer	Government	Kabale
13	Legal Officer	CSO	Kabale
14	LC Chairperson	LCC	Kampala

	Role	Sector	Location
15	Family Law Advocate	Private sector	Arua
16	Grade 1 Magistrate	Judiciary	Arua

List of layperson interviews

	Location
1	Soroti
2	Soroti
3	Kabale
4	Kabale
5	Kampala
6	Kampala
7	Kampala

HiiL publications on Uganda

Data reports

Justice Needs and Satisfaction, 1 st wave	2016
Family Justice	2017
Deep Dive into Land Justice in Uganda	2020
Deep Dive into Separation and Divorce in Uganda	2020
Deep Dive into Crime in Uganda	2020
Justice Needs and Satisfaction, 2 nd wave	2020

Solutions Research

Family Justice Catalogue	2020
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Other

Online Dashboard on Justice Needs in Uganda	2020
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About Hiil and the authors

Hiil (The Hague Institute for Innovation of Law) is a social enterprise devoted to user-friendly justice. That means justice that is easy to access, easy to understand, and effective. We will ensure that by 2030, 150 million people will be able to prevent or resolve their most pressing justice problems. We do this by stimulating innovation and scaling what works best. We are friendly rebels focused on concrete improvements in the lives of people. Data and evidence is central in all that we do. We are based in The Hague, City of Peace and Justice.

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