



Judicial Sentencing Practices

Analysis of Sexual & Gender Based Violence Cases
in the Pacific Island Region



About ICAAD

The International Centre for Advocates Against Discrimination (ICAAD) is a non-profit organisation that combats structural discrimination and promotes human rights norms consistent with public international law. By leveraging partnerships, ICAAD brings together passionate multidisciplinary teams of lawyers, data scientists, universities, and design strategists to improve access to justice for women, girls, and vulnerable communities, while strengthening the capacity of civil society and government.



Why SGBV in the PICs

- ICAAD attorneys first began work on sexual & gender based violence (SGBV) in Pacific Island Countries (PICs) when handling four cases of Fijian women seeking asylum in the United States in 2011 and 2012.
- In 2013, ICAAD engaged two law firm partners, Manatt and DLA Piper to help conduct strategic assessments to better understand the problem of access to justice for women and girls.
- Team members from ICAAD and DLA Piper later traveled to Fiji to meet with over 25 stakeholders to better understand gaps that local NGOs, government, and others have been trying to fill.

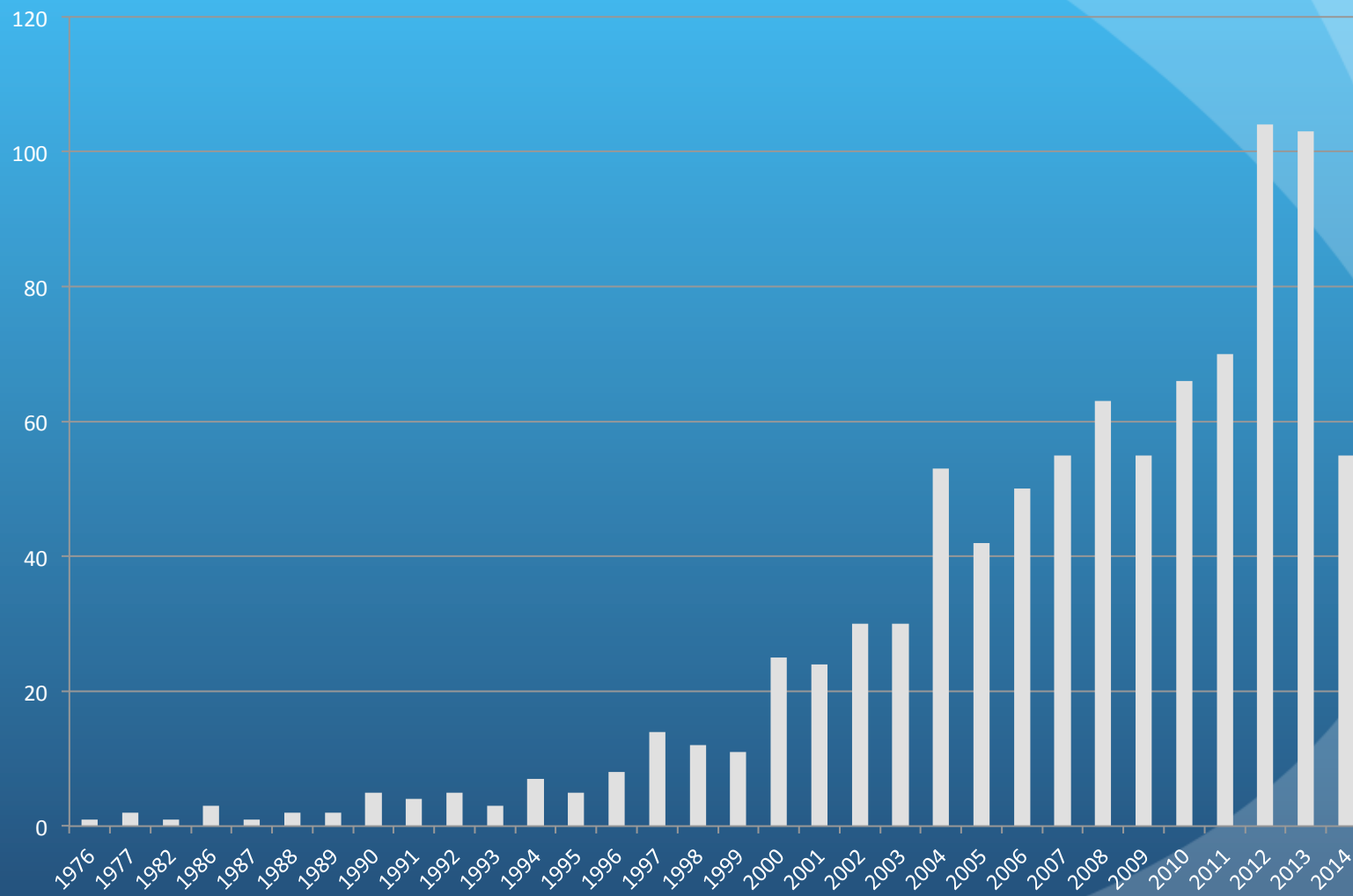


Methodology

- Focus on the use of certain mitigating factors in sentencing decisions
- Analysis of 931 sentencing records in randomly selected domestic violence and sexual assault cases in 11 PICs through the PacLII database
- Selection of 5 cases per year, per court (e.g. Magistrate, Appellate, Supreme Court)
- Majority of cases analysed are between 2000-2014
- Boolean search: sentence AND (rape OR defil* OR sexual OR indecent OR "domestic violence" OR ((girlfriend OR wife) w/5 (abuse OR hit OR strike OR punch))).



Number of Cases by Year



While Justice Should Be Impartial the Judiciary Cannot Remain Blind



Symptoms of Judicial Blindness are a lack of:

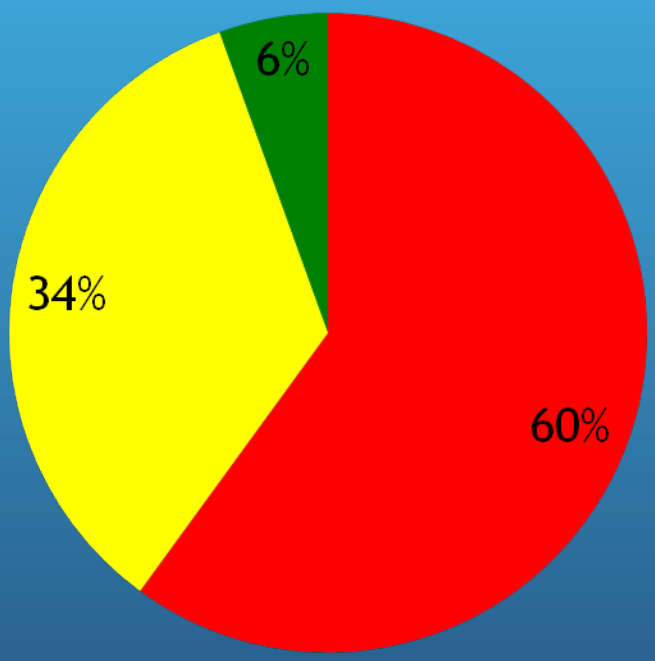
- Consistency
- Transparency
- Accountability





Majority of Victims are Girls

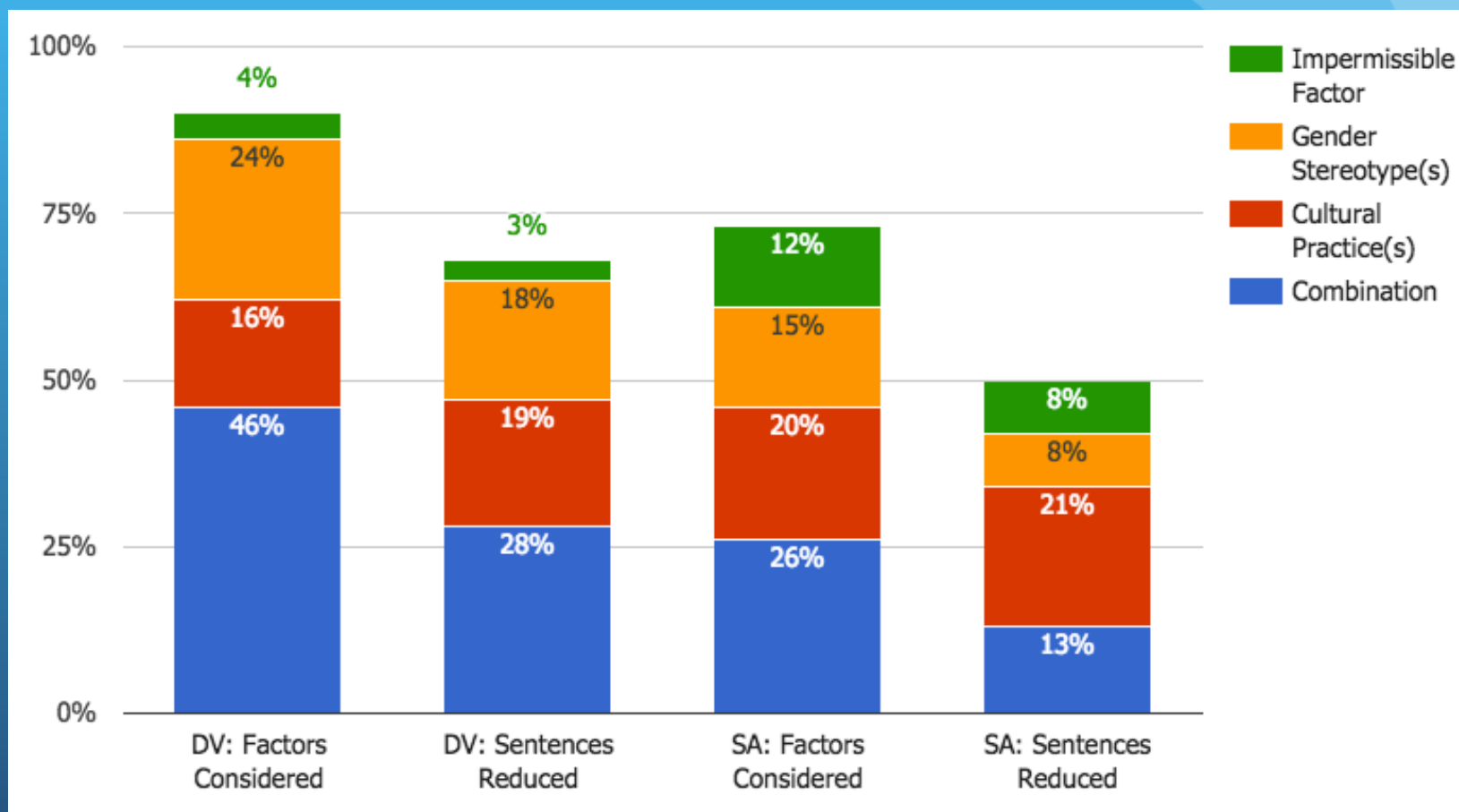
■ Girls (Under 18) ■ Women ■ Age Unspecified



28.1% (265) of all cases involved victim/survivors aged 12-15 years.

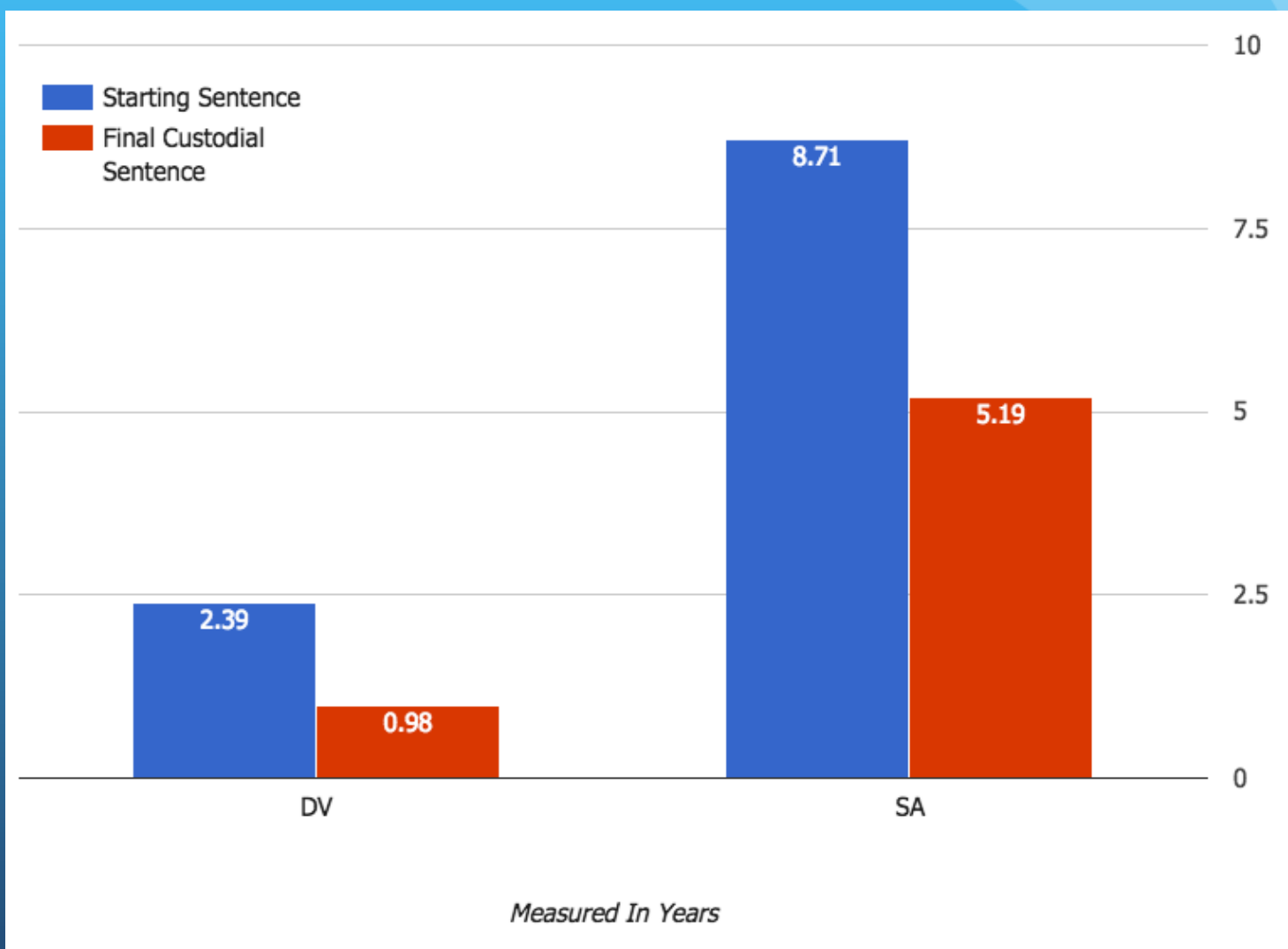


Factors Considered and Sentences Reduced: Domestic Violence (DV) and Sexual Assault (SA) Cases





Impact of Mitigating Factors on Sentences



Factor: Cultural Norms



Cultural norms undermine justice for women in cases of SGBV by:

- Creating a power imbalance
- Removing women's voice and agency from the process
- Creating circumstances that girls may not understand and cannot consent to

Examples of Cultural Norms Found in Cases

Reconciliation (both customary and informal)	Jungle justice, such as maiming or spearing
Formal apology and acceptance (reconciliation)	Payback, including destruction of property or physical violence to family
Belief in sorcery	Bride-price
Banishment from the village	Payment of a fine to the village chief
Payment of compensation	



Factor: Gender Stereotyping

Gender stereotyping undermines justice for women in cases of SGBV. It does so in 5 ways:

- By compromising a judicial officer's impartiality
- By influencing a judicial officer's understanding of criminal offences and perception as to whether violence has occurred, especially in cases of marital rape, rape of sex workers & DV
- By affecting judicial officers' views about witness credibility and legal capacity
- By causing judicial officers to blame the victim and prevent them from holding perpetrators accountable
- By impeding access to legal rights and protection for victims of violence



Factor: Provocation

The concept of provocation can reflect gender stereotypes.

For example:

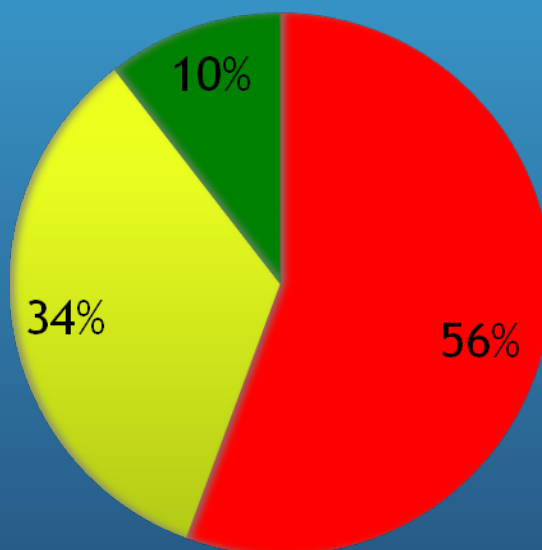
- Jealousy over seeing an ex-girlfriend or ex-wife with another man
- Response to nagging
- Refusal to have sex
- Where wife asks for the return of money from spouse
- Self defence from an attack



Factor: Provocation

Domestic Violence Cases

- Provocation Not a Factor
- Provocation
- Provocation in Murder or Manslaughter





Other Inappropriate Factors Considered

Consideration of the:

- Educational and career prospects of the perpetrator or victim
- Perpetrator's regular attendance in church
- Fact that perpetrator did not infect the survivor with an STD
- Fact that perpetrator did not inflict further injury on the survivor, cause physical harm, or torture the victim/survivor
- Fact that the perpetrator was drunk
- Fact that the victim/survivor did not become pregnant



Key Recommendations

1. Remove cultural norms and gender stereotypes as a form of mitigation
2. The victim/ survivor should be entitled to restitution in both civil and criminal proceedings
3. Intrusive sentences (jail, work release, electronic monitoring, and probation) result in a significant decrease in rearrest for domestic violence
4. Independent Body (e.g. Solicitor General) should have monitoring oversight over sentencing, and refer cases to the Ct. of Appeal where sentences appear lenient