

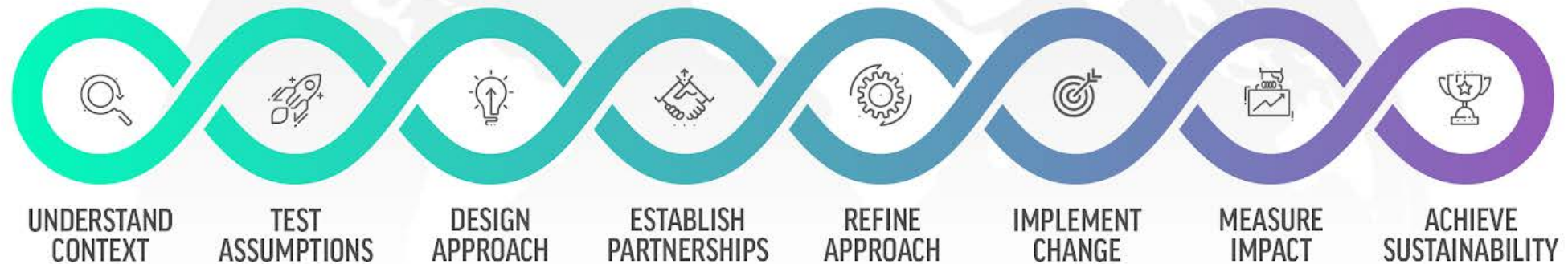


# TRACKGBV

COMBATING VIOLENCE AGAINST WOMEN & GIRLS WITH  
EVIDENCE-BASED APPROACHES TO JUDICIAL CHANGE

INTERNATIONAL CENTER FOR ADVOCATES AGAINST DISCRIMINATION (ICAAD)

# SYSTEMS APPROACH TO DISRUPT DISCRIMINATION





# FACIALLY NEUTRAL LAWS AND **DISPARATE IMPACT**





# TRACKGBV: STRENGTHENING JUDICIAL TRANSPARENCY, CONSISTENCY, AND **ACCOUNTABILITY**





# WHILE JUSTICE SHOULD BE IMPARTIAL THE JUDICIARY CANNOT REMAIN BLIND

Symptoms of Judicial Blindness

are a lack of:

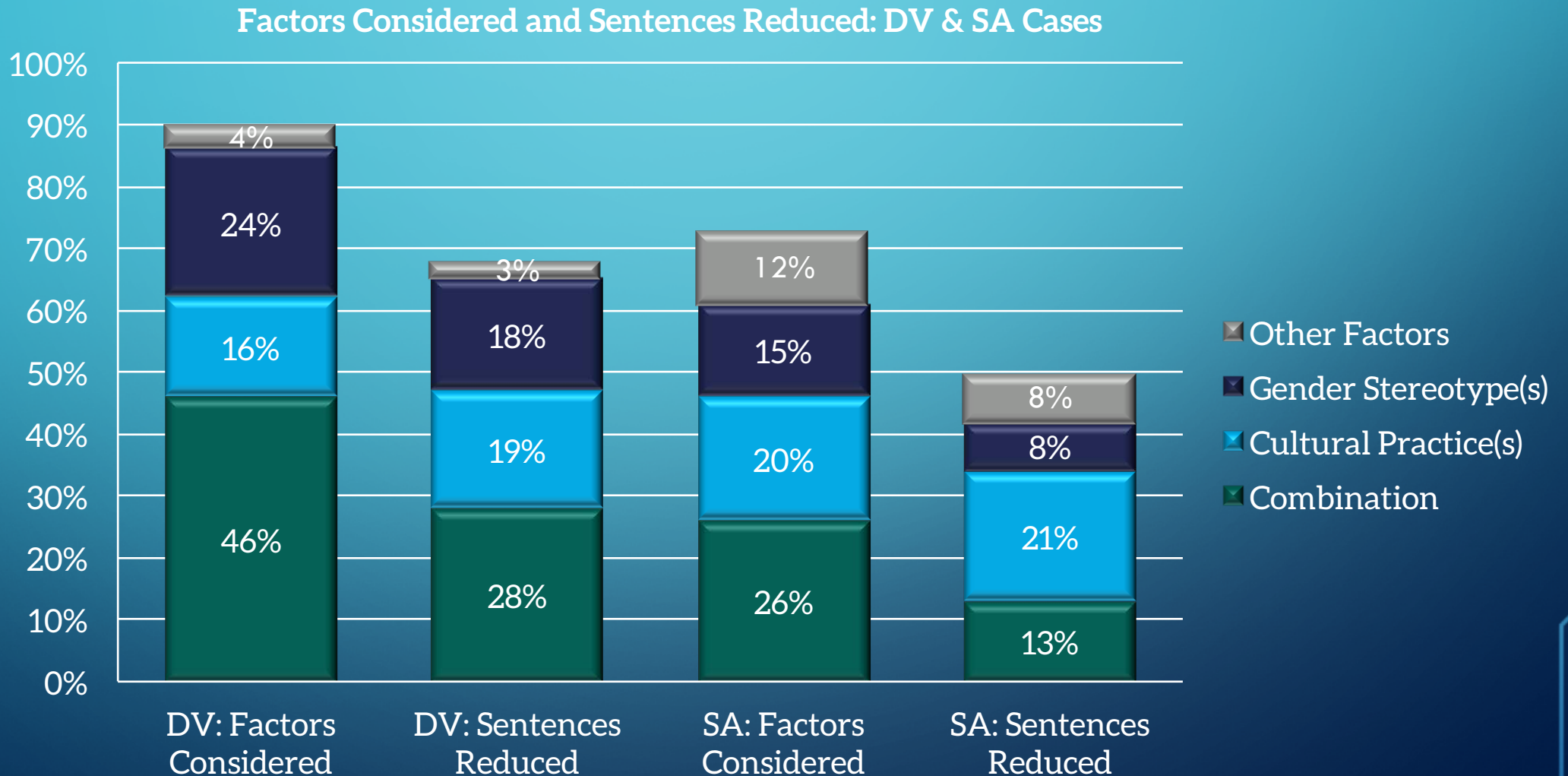
- Consistency
- Transparency
- Accountability



# METHODOLOGY OF CASE LAW ANALYSIS

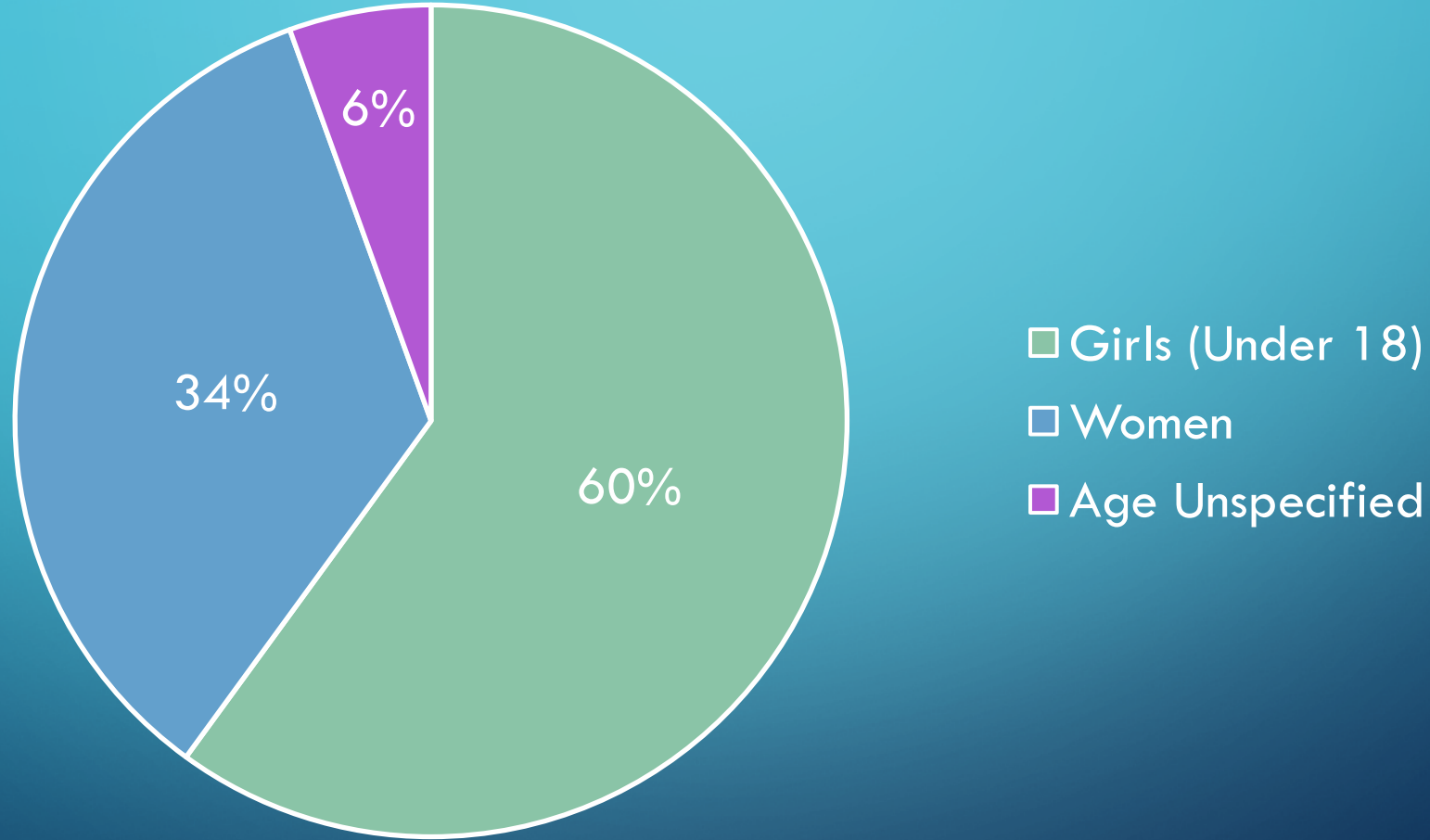
- Focus on the use of certain mitigating factors in sentencing decisions
- Conducted analysis of 908 sentencing records in domestic violence and sexual assault cases in 12 PICs through the PacII database
- Random selection of 5 cases per year, per court (e.g. Magistrate, Appellate, Supreme Court)
- Majority of cases analysed were between 2000-2014
- Sample 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))).

# FACTORS CONSIDERED AND SENTENCES REDUCED: DOMESTIC VIOLENCE (DV) AND SEXUAL ASSAULT (SA) CASES





# MAJORITY OF VICTIMS ARE **GIRLS**



**28.2%** (256) of all cases involved victim/survivors aged 12-15 years.



# FACTOR: GENDER STEREOTYPES

Examples of gender stereotypes in cases:

- Victims whose circumstances do not match those of the constructs of an “real” rape victim against whom all victims/survivors of sexual assault are measured find their credibility in question
- Male is the head of the household
- Male is the breadwinner
- Women should be subservient
- Women “exist to fulfill the desires of men”
- Women provoke men into violence

# FACTOR: CULTURAL NORMS

Examples of Cultural Norms or Customary Practices in cases:

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



# FACTOR: **MYTHS**

Examples:

- Rape occurs between strangers in dark alleys;
- Women provoke rape by the way they dress or act;
- Rape is a crime of passion; and
- If the victim/survivor didn't scream, fight or get injured, it wasn't rape.

# 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



# GENDER STEREOTYPES UNDERMINE JUSTICE FOR WOMEN IN CASES OF SGBV BY:

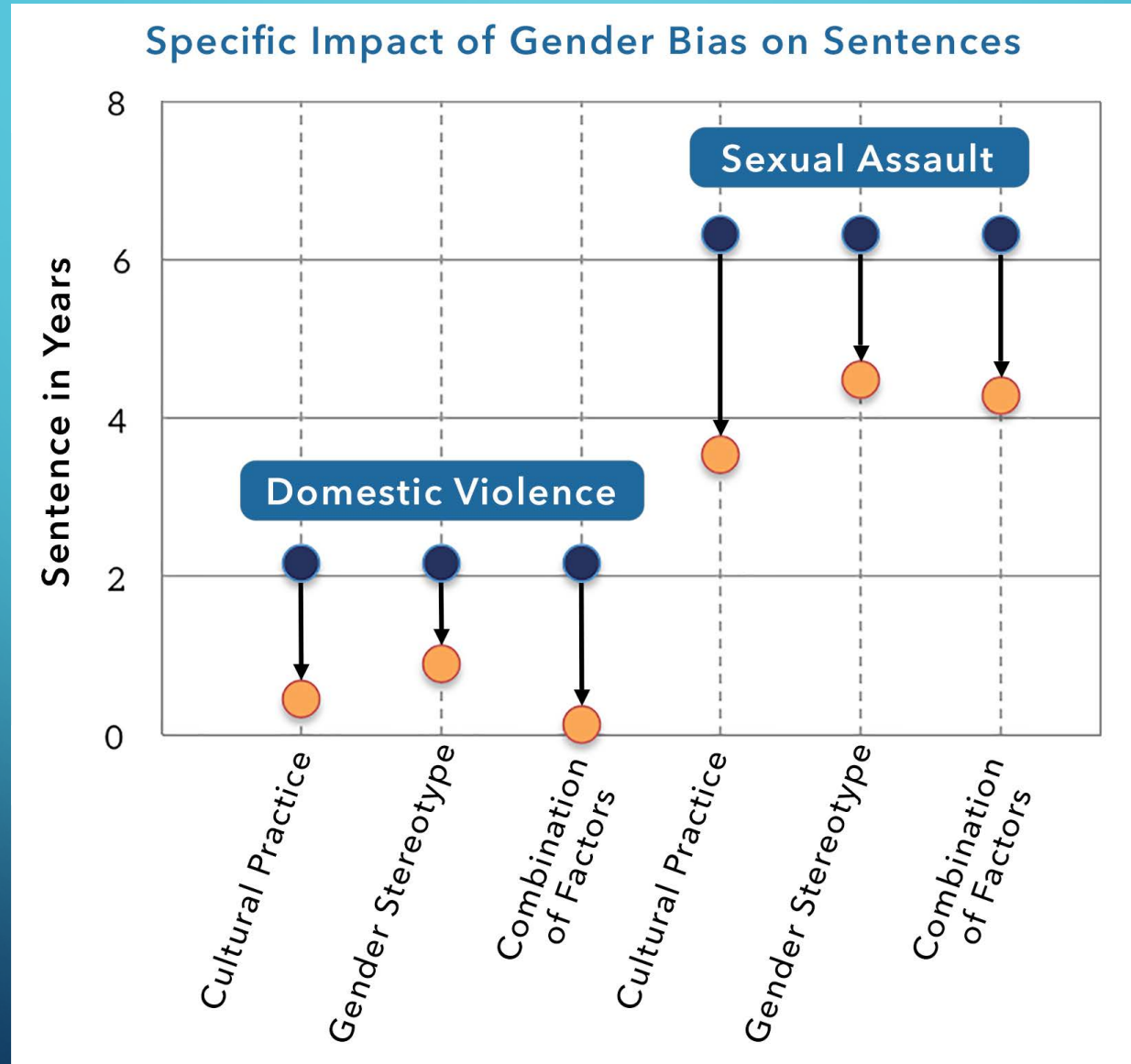
- Compromising a judicial officer's impartiality
- Influencing a judicial officer's understanding of criminal offences and perception as to whether violence has occurred, especially in cases of marital rape, rape of sex workers & DV
- Affecting judicial officers' views about witness credibility and legal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

# 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



# IMPACT OF MITIGATING FACTORS ON SENTENCES




# IMPLEMENTATION: COMBATING VIOLENCE AGAINST WOMEN & GIRLS IN THE PACIFIC






# IMPLEMENTATION: COMBATING VIOLENCE AGAINST WOMEN & GIRLS IN THE PACIFIC



**PENAL CODE (AMENDMENT) (SEXUAL OFFENCES) ACT 2016**  
(NO. 3 OF 2016)

*PASSED by the National Parliament this third day of May 2016.*  
*(This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true copy of the Bill)*

  
Clezy Rore  
Clerk to National Parliament

*ASSENTED to in Her Majesty's name and on Her Majesty's behalf this eighteenth*

**From:** Chief Magistrate  
**To:** All Resident Magistrates  
**c.c:** Chief Registrar; Deputy Registrars; Senior Court Officers; and Court Officers  
**Re:** Sentencing Consideration: DVRO and access to Legal Aid  
**Date:** 16<sup>th</sup> May 2018

In consultation with the International Centre for Advocates against Discrimination and with the endorsement of His Lordship the Chief Justice I forward these directives for implementation in your daily work.

**1. DEFINING FIRST TIME OFFENDER STATUS**

*It has come to the Court's attention that some prior decisions were made where the sentence of a respondent was mitigated on the basis of first time offender status despite the record showing a history of violence.*

1.1 When determining whether a respondent is a first time offender, Magistrates are encouraged to consider evidence of past violent conduct even if respondent's actions were not the subject of a previous criminal conviction.

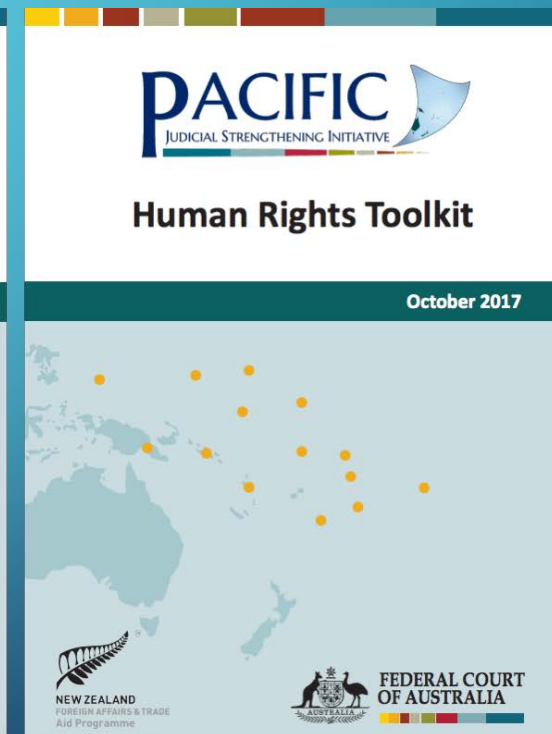
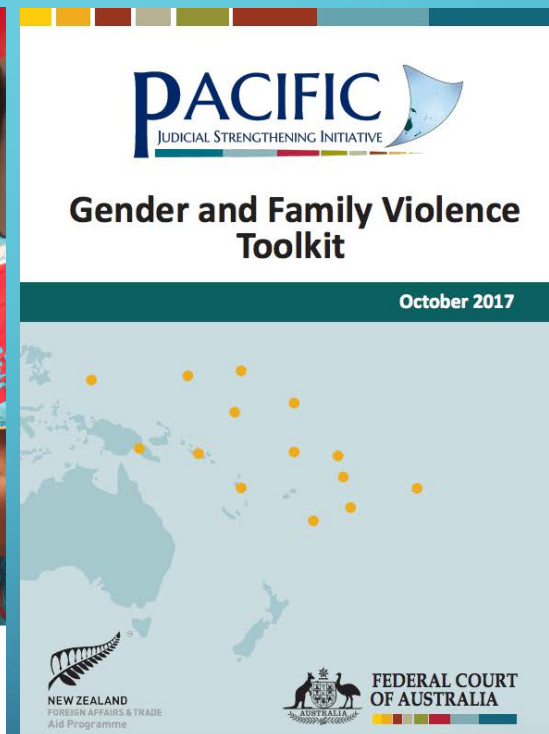
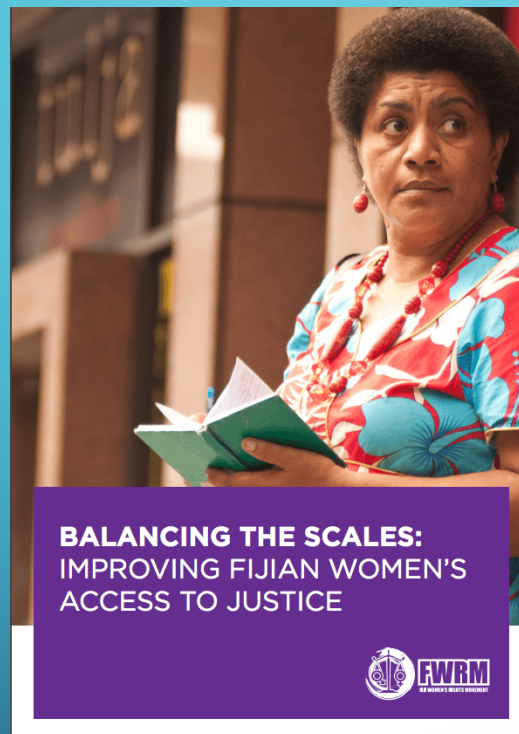
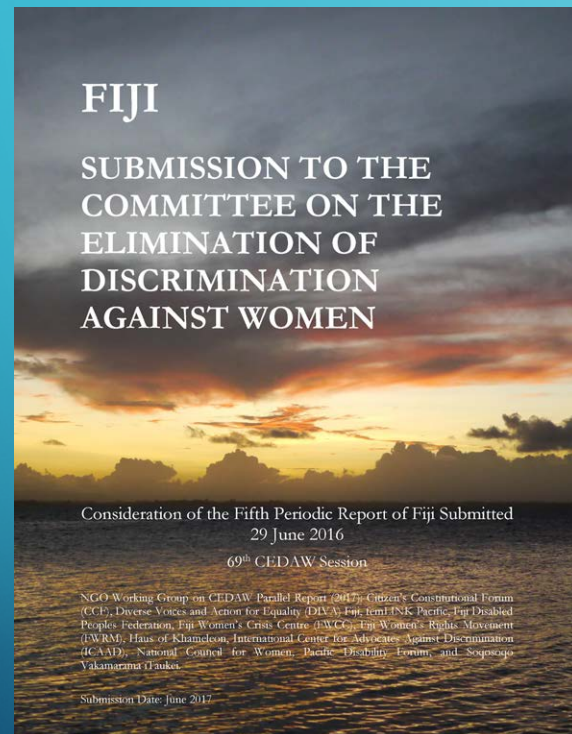
1.2 For example, if credible testimony is given by the complainant or there is evidence of a prior domestic violence incident in a doctor's report that was not reported to police, that evidence of past violence should be considered to determine that the respondent is not a first time offender.

1.3 Furthermore, where respondent has prior criminal convictions of a different nature than domestic violence or sexual assault, the sentence of the respondent should not be mitigated on the basis of being a first time offender.



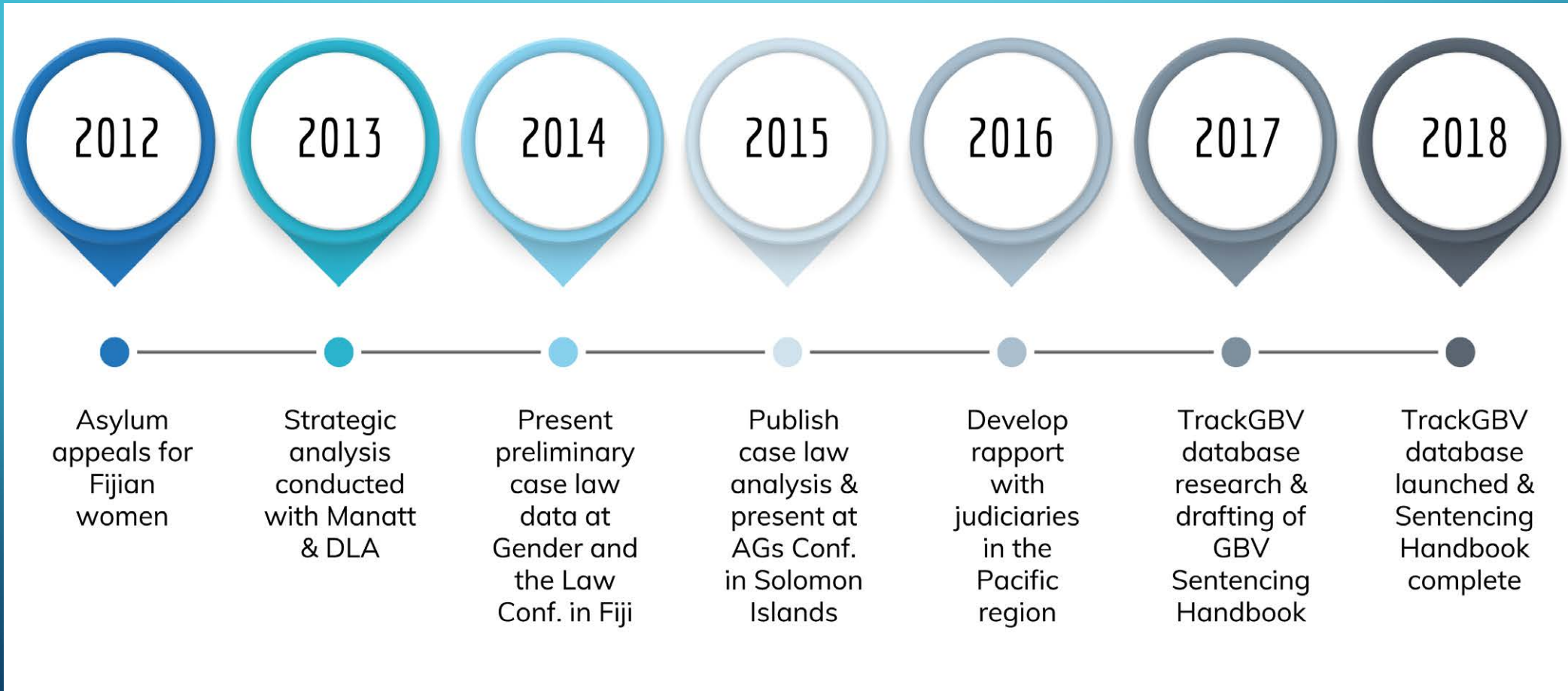


# SUSTAINABILITY: COMBATING VIOLENCE AGAINST WOMEN & GIRLS IN THE PACIFIC





# IMPLEMENTATION TIMELINE



# INDIVIDUAL EXPERTISE CANNOT BE THE DRIVING FORCE BEHIND **SYSTEMS** CHANGE

