

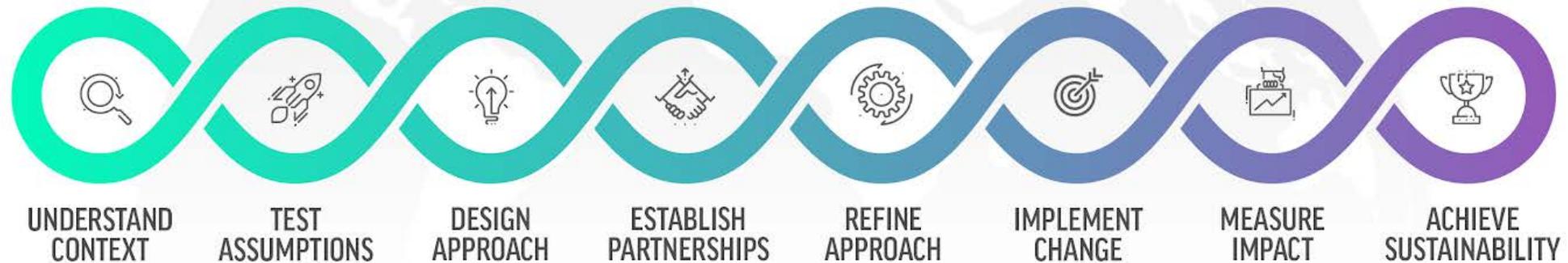


# TRACKGBV

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:

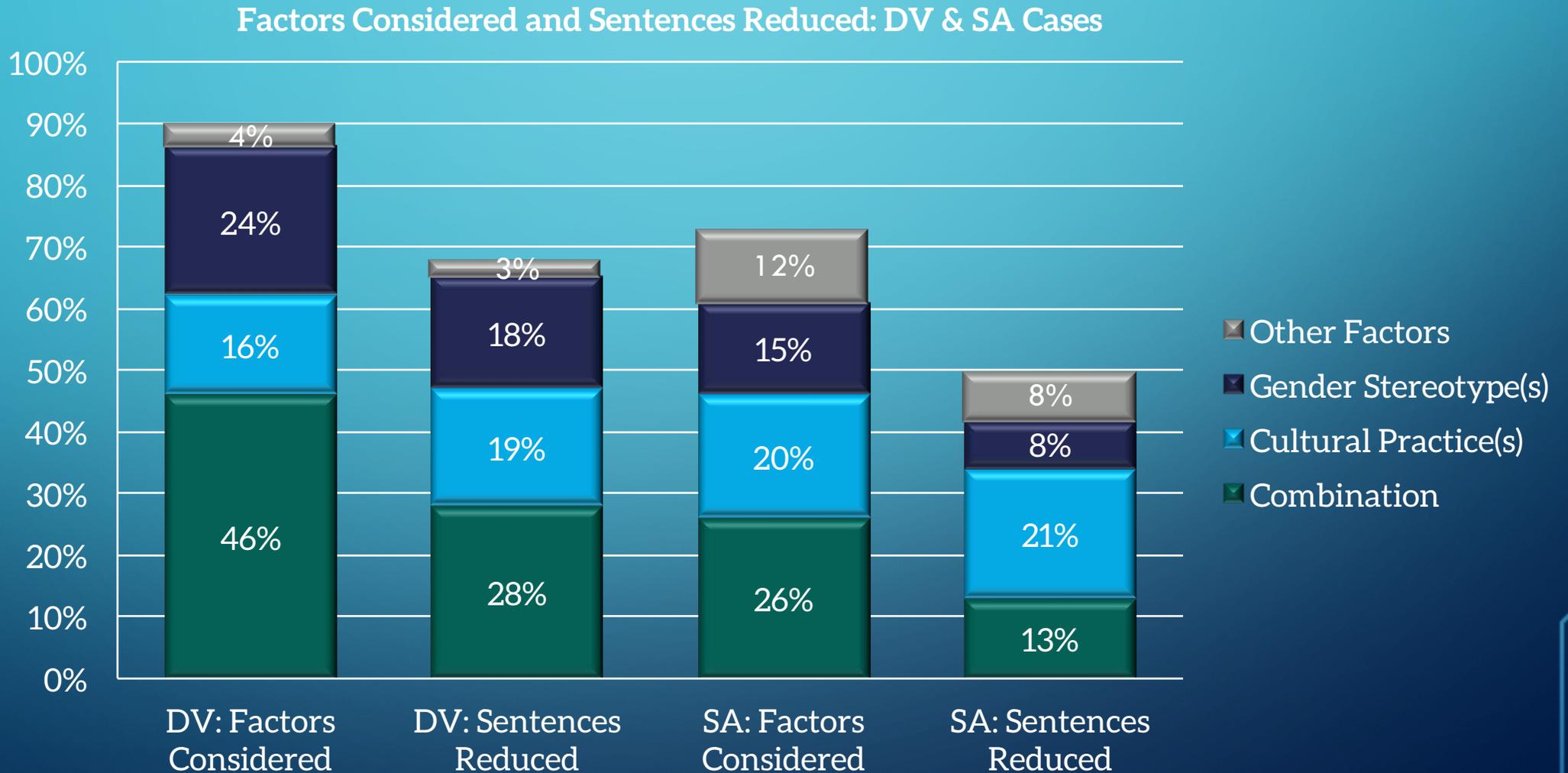
- Consistency
- Transparency
- Accountability



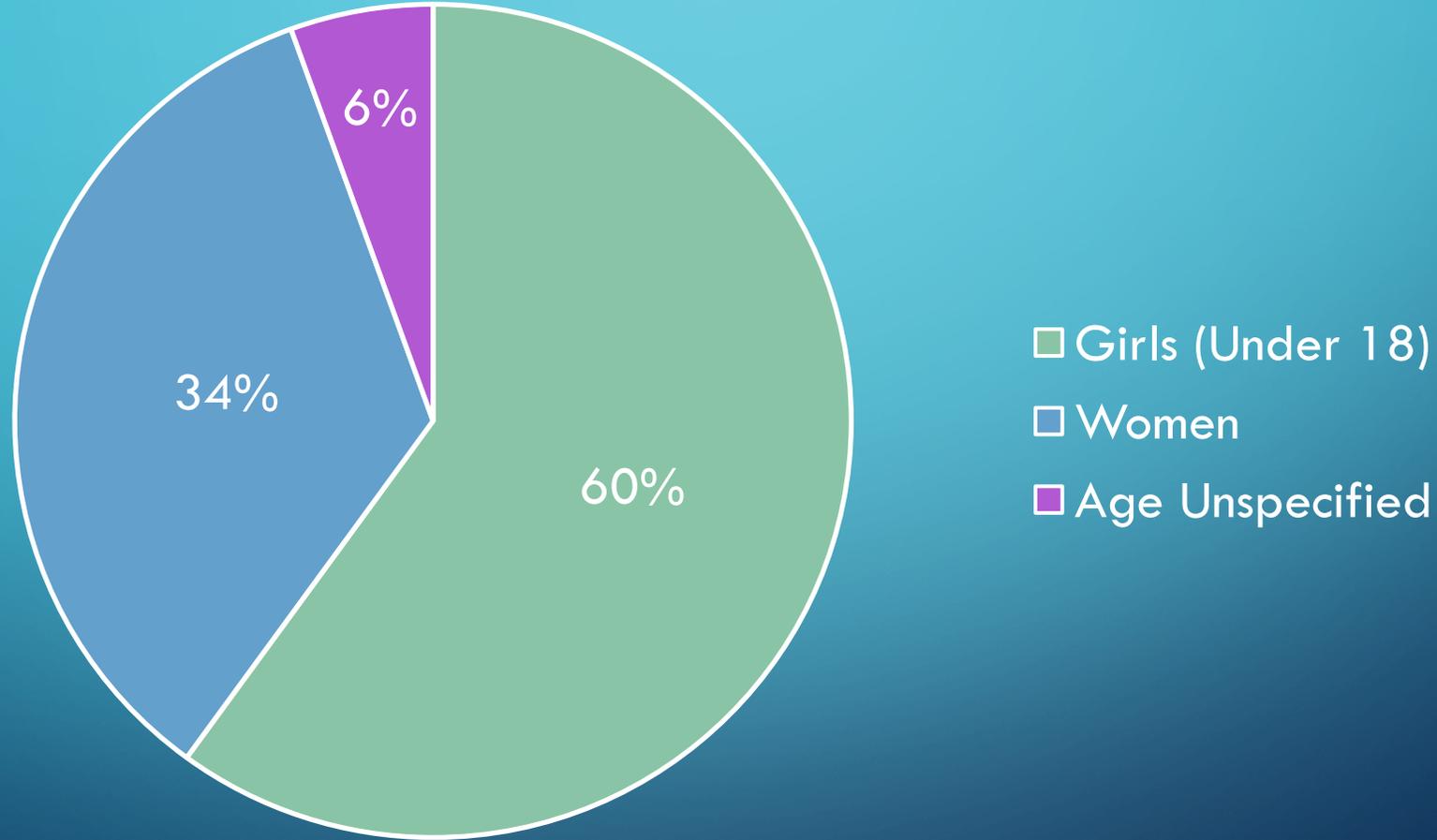
# METHODOLOGY OF CASE LAW ANALYSIS

- 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

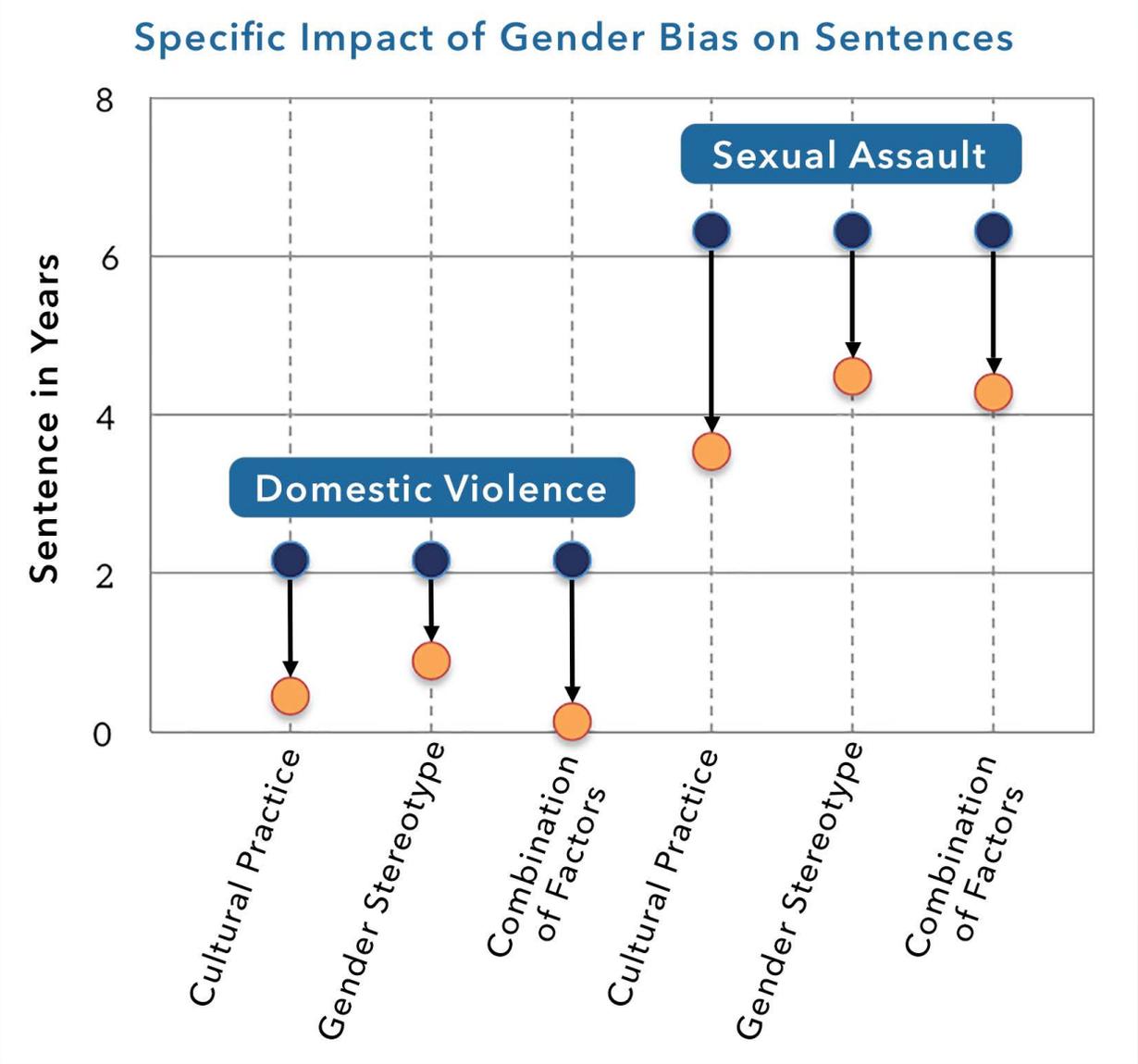
# GENDER STEREOTYPES UNDERMINE JUSTICE FOR WOMEN IN CASES OF SGBV BY:

- 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

**ICAAD conducted rule of law trainings in 5 countries with over 300+ senior legal officers, magistrates, AGs, Solicitor Generals, prosecutors, and civil society advocates from across the Pacific.**

**Honiara, Solomon Islands (Dec. 2015)**  
Pacific Islands Law Officers Network

**Port Vila, Vanuatu (Mar. 2017)**  
Vanuatu Women's Crisis Center

**Nadi, Fiji (Nov. 2014)**  
Regional Gender & the Law Conf.

**Suva, Fiji (Nov. 2017)**  
Sexual Harassment Train the Trainers

**Alofi, Niue (Nov. 2017)**  
Assessing GBV in Niue

**Brisbane, Australia (Sept. 2015)**  
2nd Annual South Pacific Lawyers Conf.

**Other locations shown on the map:** PALAU, WEST PAPUA, EAST TIMOR, SOLOMON ISLANDS, TUVALU, NIUE, FRENCH POLYNESIA, NEW ZEALAND, AUSTRALIA, NEW CALEDONIA, MARSHALL ISLANDS, FEDERATED STATES OF MICRONESIA, PHILIPPINE ISLANDS, WESTERN SAMOA, EASTERN SAMOA, TOKELAU ISLANDS, TUAMOTU ARCHIPELAGO, PITCAIRN ISLANDS, MARQUESAS ISLANDS, PHOENIX ISLANDS, SOCIETY ISLANDS, AUSTRAL ISLANDS, NORTHERN LINE ISLANDS.

# 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

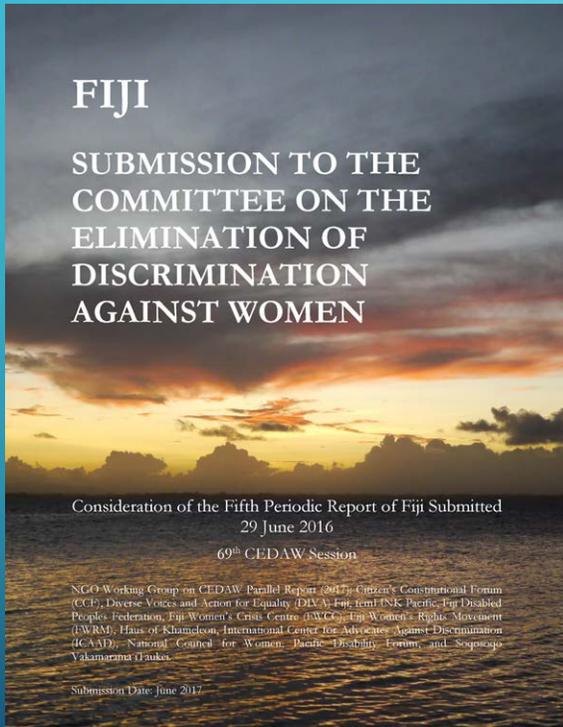
**FIJI**

**SUBMISSION TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN**

Consideration of the Fifth Periodic Report of Fiji Submitted  
29 June 2016  
69<sup>th</sup> CEDAW Session

NGO Working Group on CEDAW Parallel Report (2017): Citizen's Constitutional Forum (CCF), Diverse Voices and Action for Equality (DVA), Fiji Item INK Pacific, Fiji Disabled Peoples' Federation, Fiji Women's Crisis Centre (FWCCC), Fiji Women's Rights Movement (FWRM), Hara of Kibadze, International Center for Advocates Against Discrimination (ICAAD), National Council for Women, Pacific Disability Forum, and Sogosoqa Vakamarama (Lauke).

Submission Date: June 2017



**BALANCING THE SCALES:  
IMPROVING FIJIAN WOMEN'S  
ACCESS TO JUSTICE**



**PACIFIC**  
JUDICIAL STRENGTHENING INITIATIVE

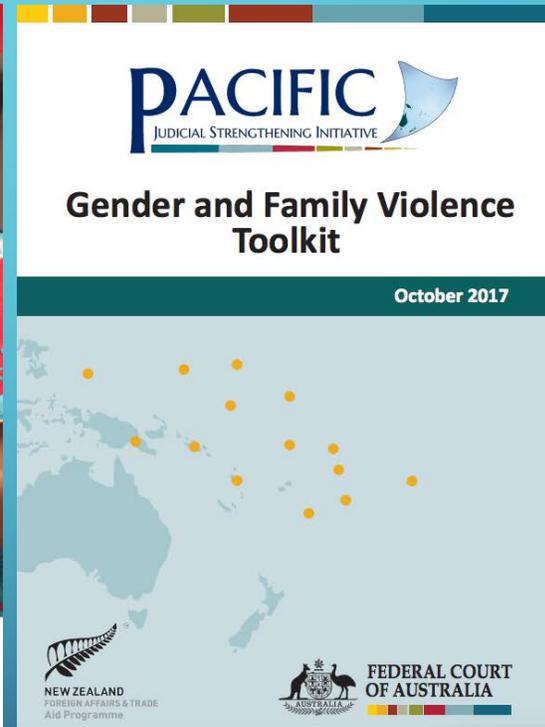
**Gender and Family Violence  
Toolkit**

October 2017



NEW ZEALAND  
FOREIGN AFFAIRS & TRADE  
Aid Programme

FEDERAL COURT  
OF AUSTRALIA



**PACIFIC**  
JUDICIAL STRENGTHENING INITIATIVE

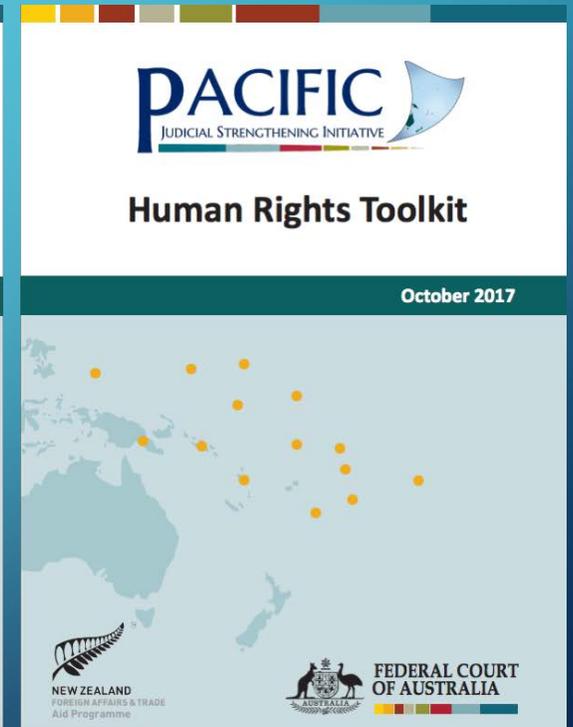
**Human Rights Toolkit**

October 2017

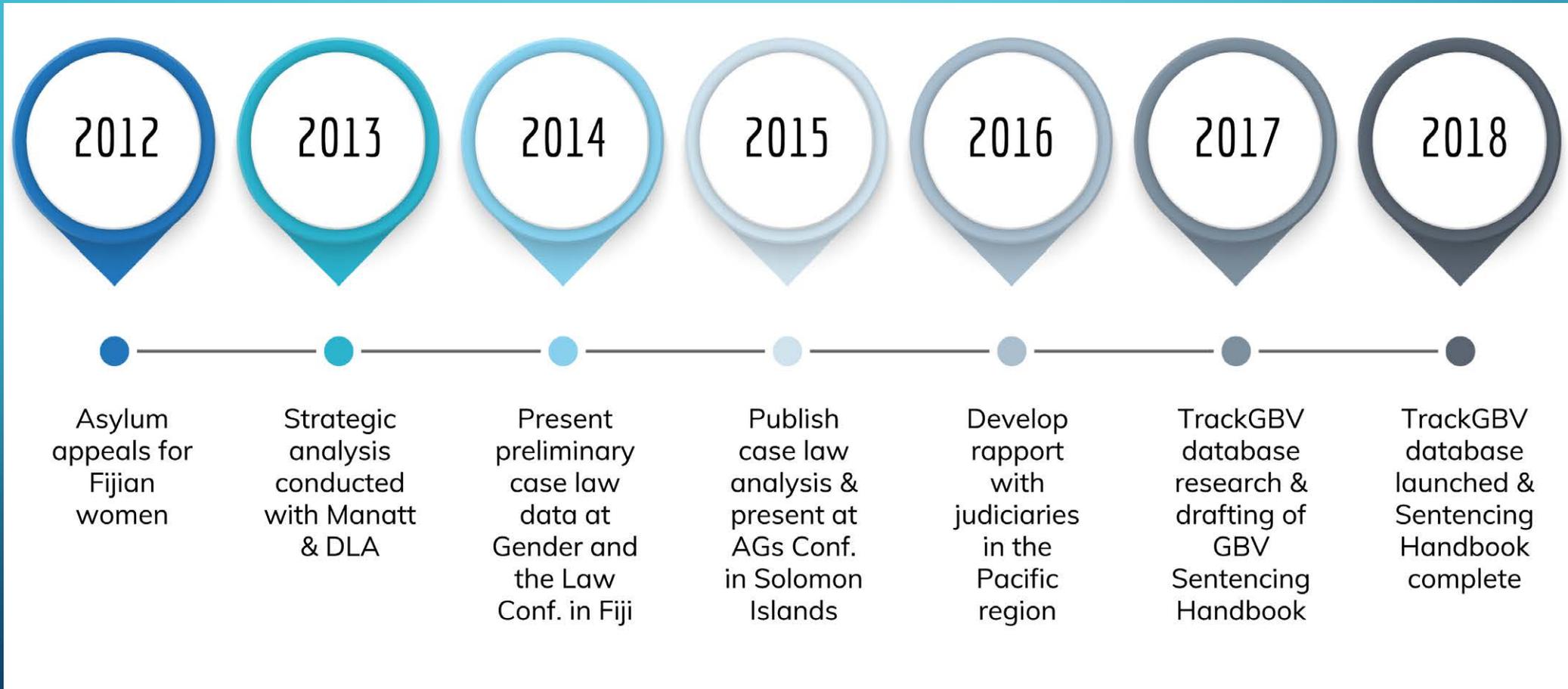


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# IMPLEMENTATION TIMELINE



# INDIVIDUAL EXPERTISE CANNOT BE THE DRIVING FORCE BEHIND SYSTEMS CHANGE

