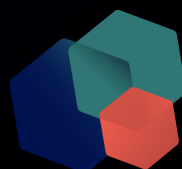


# TrackGBV: Pacific Regional Analysis and Samoa Country Report 2000-2021

SYSTEMATIC ANALYSIS OF GENDER DISCRIMINATION IN  
GENDER-BASED VIOLENCE SENTENCING DECISIONS



**ICAAD**  
Human Rights Innovation

## Acknowledgements

ICAAD is deeply grateful to our law firm partner Clifford Chance LLP and the Clifford Chance Foundation for providing both pro bono and financial support to enable ICAAD to build relationships and programs across the Pacific Island region over the last five years. We would also like to acknowledge pro bono support in the form of case law analysis conducted by Manatt, Phelps, and Phillips LLP and Linklaters LLP. Finally, we'd like to thank Conduent and Tableau, our technology partners, for respectively providing a legal database platform for review and a data visualisation tool, pro bono.

To our civil society partners and colleagues in the Pacific, we owe a great debt of gratitude to those who welcomed us into the region almost a decade ago and have continued to support our work, collaborate on projects to advance gender equity, and help build each other's capacity and technical knowledge. Special thanks to the Fiji Women's Rights Movement, Vanuatu Women's Centre, SPC Regional Rights Resource Team, Pacific Women's Watch, Family Support Centre Solomon Islands, Solomon Islands Safenet Partners, Pacific Island Law Officer's Network, UN Women Pacific, Samoa's National Human Rights Institution (Ombudsman), Tuvalu Family Health Association, Banaban Women's Organization, Pacific Justice Sector Programme, Women United Together Marshall Islands, Makefu Women's Village Council (Niue), Munro Leys, University of the South Pacific, and our first friend and colleague in the region, Roshika Deo.

Moreover, we appreciate the guidance provided by several judges who took the time to meet with us, evaluate our work, jointly craft judicial directives, and provide case law to improve judicial transparency. Special thanks to the Honourable: Chief Justice Carl B. Ingram (Marshall Islands), fmr. Chief Justice Owen Paulsen (Tonga), fmr. Chief Justice Anthony Gates (Fiji), fmr. Chief Justice Patu Falefatu Sapolu (Samoa), and Chief Magistrate Usaia Ratuveli (Fiji).

## Table of Contents

|                           |    |
|---------------------------|----|
| Executive Summary         | 4  |
| Methodology               | 5  |
| TrackGBV: Pacific Islands | 7  |
| Regional Summary          |    |
| Contentious Factors       |    |
| Sentencing Outcomes       |    |
| Survivor Stats            |    |
| Regional Recommendations  |    |
| Samoa                     | 14 |
| Key Insights              |    |
| Case Examples             |    |
| Recommendations           |    |
| Next Steps                | 20 |

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## EXECUTIVE SUMMARY

Society has become accustomed to seeing headlines reporting on cases of gender-based violence (GBV) that have made it to the courts where justice has not been served. Suspended sentences based on arguments grounded in rape myths and sentence reductions based on character references irrelevant to a perpetrator's violent offending are all too common. For victims/ survivors who seek justice in the courts, less than half receive an outcome unhindered by gender discrimination.

It's one thing to have an isolated example of a case with its own unique circumstances, and it's another to build an evidence base of over 20 years of case law that tracks the patterns and impacts of biased judicial decision-making, regionally and by country. TrackGBV does just that, using data and technology to support judicial policy reform with the goal of removing gender discrimination from judicial decision-making.

The TrackGBV data tracks key variables related to access to justice for women and girls and allows us to quantify the impact of contentious factors on sentencing. In many Pacific Island Countries and in countries around the world, perpetrators of domestic violence and sexual offences often receive disproportionately low sentences or no custodial sentences at all. TrackGBV aims to tell the story of how that happens in each jurisdiction.

TrackGBV began in 2013 in the Pacific Islands region. Since then, ICAAD and its law firm partners have reviewed over 5,000 cases and analysed 2,492 sentencing decisions from 2000 to 2021. To ensure timeliness and relevance, ICAAD will continue to review and add to the [TrackGBV Data Dashboard](#), accessible on the ICAAD website. Sentencing decisions allow for the identification of the presence of contentious factors (see page 6) and numerous other variables, providing a baseline to measure the quantitative impact of gender discrimination within the judiciary.

The TrackGBV data has illuminated a number of patterns in the region. Victims/ survivors who come before the courts tend to fall between the ages of 6 and 17. When it comes to access to justice, the impact of contentious factors is clear. Contentious factors were raised in 77.3% of cases regionally with a quantifiable impact on sentencing in 51.9% of cases. While the frequency and types of contentious factors raised and applied in cases vary across jurisdictions, in cases with charges similar to rape, sentences were, on average, 1/3 shorter when contentious factors were raised. The TrackGBV data also points to additional procedural barriers to consistency and accountability, namely the lack of medical reports, the misapplication of first time offender status, and the lack of victim anonymity. Despite progress in some jurisdictions on reducing judicial bias and improving access to justice for women and girls, TrackGBV reveals notable gaps for judiciaries across the region.

## Methodology

ICAAD reviewed 5,000 cases, analysed 2,492 applicable cases, and conducted a secondary review of 1,860 cases (75% of applicable cases). Our methodology involves training reviewers who manually analyse cases and tag corresponding variables relevant to gender-based violence (GBV) cases. Reviewers are primarily lawyers at our partner law firms including Clifford Chance; Manatt, Phelps, and Phillips; and Linklaters. Our CSO partners also review cases; Fiji Women's Rights Movement publishes an annual report on Fiji cases focused on sexual offence sentencing decisions. And finally, our tech partner, Conduent, played a vital role in developing the platform (Viewpoint) where the case law analysis was completed, and outputs from this analysis were hosted on Tableau's data visualisation platform.

Applicable cases for review are sentencing decisions in which the actions of the perpetrator include elements of **domestic violence** and/ or **sexual violence** and the victim was identified as female.

### Gender-based violence (GBV)

An umbrella term for any harmful act that is perpetrated against a person's will, and that is based on socially ascribed (gender) differences between males and females. **For the purposes of this report, we reviewed only cases involving GBV against people who identify as girls/ women or female specifically, of any age.**

### Domestic violence

"All acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim."<sup>1</sup>

### Sexual violence

"Engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object; engaging in other non-consensual acts of a sexual nature with a person, or causing another person to engage in non-consensual acts of a sexual nature with a third person."<sup>2</sup>

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<sup>1</sup> Council of Europe, Convention on preventing and combating violence against women and domestic violence (2011), Article 3.

<sup>2</sup> Council of Europe, Convention on preventing and combating violence against women and domestic violence (2011), Article 36.

Applicable cases are reviewed against **51 variables** including the use of contentious factors by the judicial officer and defence, and whether they were raised and/ or used to justify a reduction in the sentence. The three categories of contentious factors are:

|                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Gender Stereotypes</b>        | <p>Stereotypical attitudes and beliefs regarding gender and the way in which men and women should interact within society. Gender stereotypes also include rape myths: prejudicial, stereotypical or false beliefs regarding rape, and characteristics of rape victims and rapists.</p>                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Customary Practices</b>       | <p>This includes forms of out-of-court justice and reparation including payment of compensation, formal apology, and reconciliation. It also includes where customary practices are used as justification for criminal acts which undermine equal protection under the law for female victims/survivors (eg: accusations of witchcraft, or bride price).</p> <p>It is important to note that customary practices are not the same as customary values. Customary values that may <i>underpin</i> customary law and practices can include reciprocity, harmony, respect, and more. Customary practices can change while still upholding customary values.</p> |
| <b>Other Contentious Factors</b> | <p>This includes any other factors which unjustly privilege the interests of the perpetrator over the interests of the victims/ survivors. For example, considering the fact that the perpetrator participated in church or community activities as a mitigating factor.</p>                                                                                                                                                                                                                                                                                                                                                                                 |

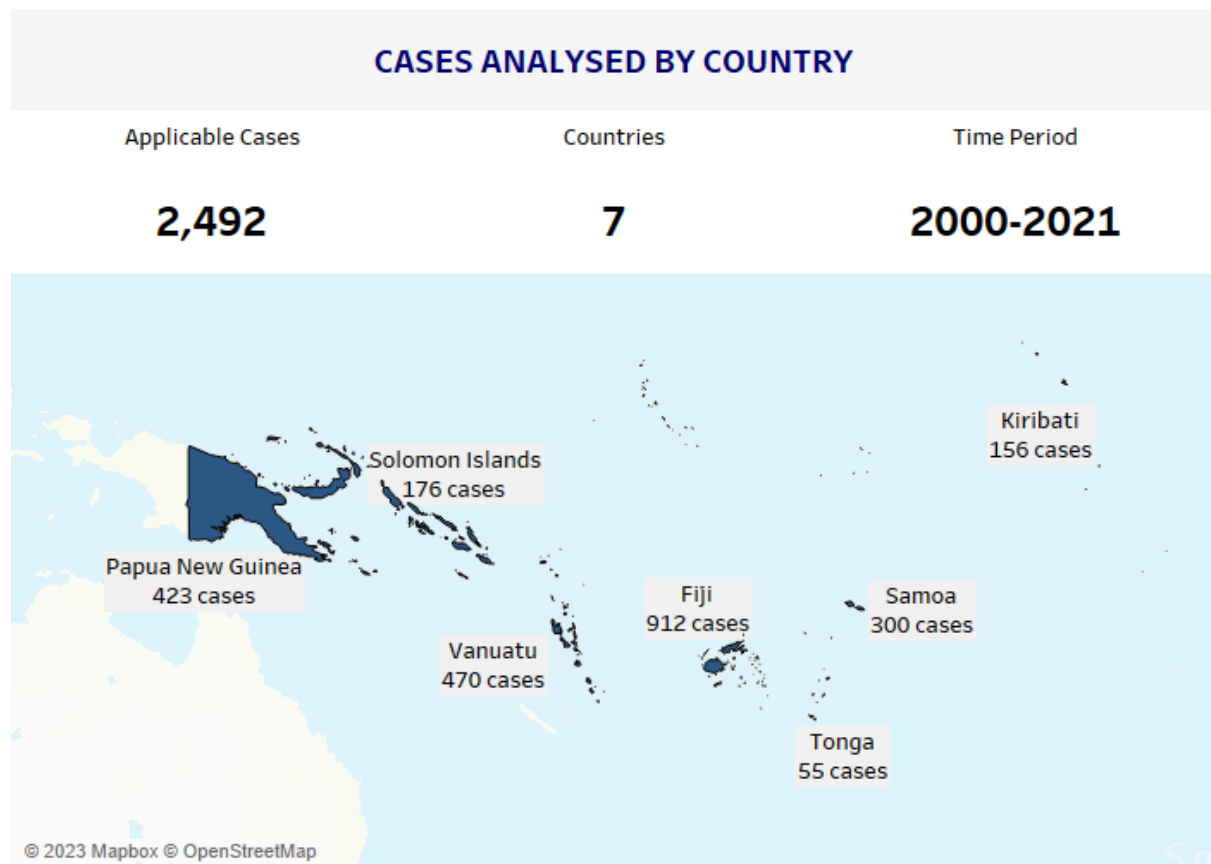
For more detailed information on the TrackGBV methodology, please refer to our handbook.<sup>3</sup> The up-to-date TrackGBV Dashboard can be explored at this link: <https://icaad.ngo/trackgbv-dashboard/>. The following report provides a narrative and in-depth analysis of the Pacific region and the specific patterns in seven Pacific jurisdictions from 2000-2021.

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<sup>3</sup> *Sexual and Gender-Based Violence in the Pacific Islands: Handbook on Judicial Sentencing Practices*, ICAAD & Clifford Chance, 2018.

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## TRACKGBV: PACIFIC ISLANDS



### Regional Summary

Across the Pacific Islands region, contentious factors were raised in 77.6% of GBV cases with those contentious factors impacting the final sentence in 51.4% of decisions. The TrackGBV data tracks key variables related to access to justice for women and girls and allows us to quantify the impact of contentious factors on sentencing. While the frequency and types of contentious factors raised and applied in cases vary across jurisdictions, the impact of contentious factors when applied is clear. On average, in cases with charges similar to rape, sentences were  $\frac{1}{3}$  shorter when contentious factors were raised. This section provides an overview of TrackGBV data from 2000-2021 with recommendations for training, institutionalising best practices, and promoting accountability in Pacific judiciaries.

## Contentious Factors

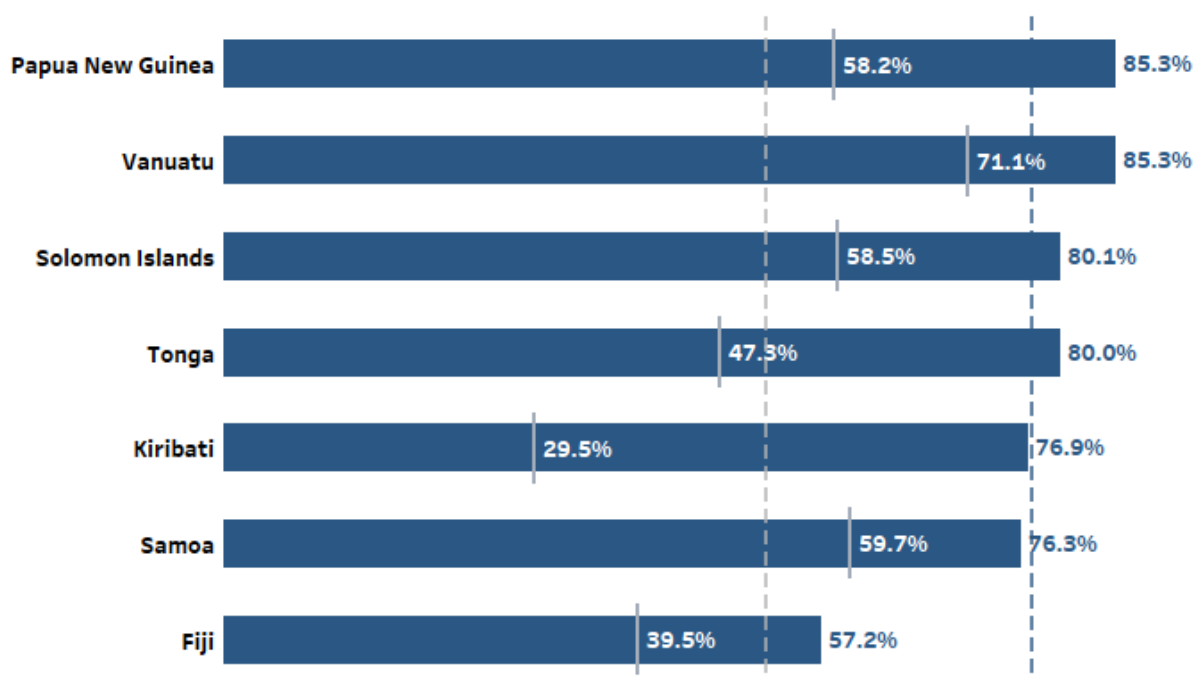
Across the region, contentious factors were raised in 77.6% of cases, with those contentious factors impacting the final sentence in 51.4% of decisions. **For victims/ survivors who seek justice in the courts, less than 1 in 2 receive an outcome unhindered by gender discrimination.**

The frequency and types of contentious factors vary across jurisdictions. Vanuatu has the highest rate of both contentious factors raised and those impacting final sentences. While Papua New Guinea has the same frequency of contentious factors raised, it has a lower rate at which those factors impact decisions. Kiribati has the lowest rates of these jurisdictions; however, 29.5% of decisions still feature gender discrimination in the form of contentious factors.

### Contentious Factors Raised vs. How Frequently they Impact Decisions

Contentious Factors Raised (Regional Average) ----

Decision Impacting Contentious Factors (Regional Average ---)



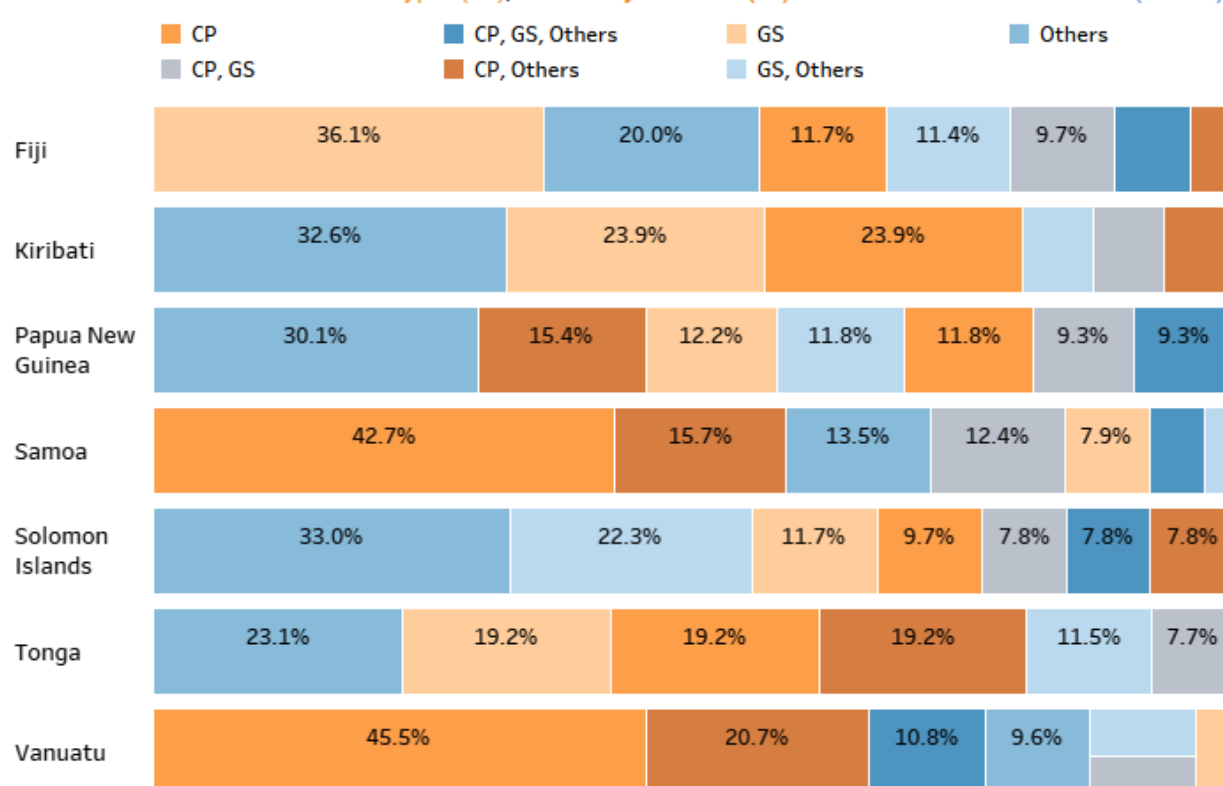
In terms of change over time, four of the seven jurisdictions have seen a decrease in both impacting contentious factors and contentious factors raised: Fiji, Kiribati, Solomon Islands, and Tonga. Fiji witnessed the greatest change over time, going from 55.6% of cases with impacting contentious factors in 2010-2014 to 31.3% in 2015-2021. The time period from 2015 to 2021 marked ICAAD's engagement with the Fiji judiciary, which involved co-designed directives with the former Chief Justice and Chief Magistrate, as well as the training of key stakeholders with the TrackGBV Dashboard. Additionally, ICAAD presented to all the offices of the attorney general from the Pacific region at the Pacific Island Law Officers' Network

(PILON) in the Solomon Islands and shared our findings with The Chief Justice and attorney general's office in Tonga during this period.

Three of the seven jurisdictions saw an increase in the use of contentious factors including Papua New Guinea, Samoa, and Vanuatu. Samoa had the sharpest increase over time, with an increase of 20.3% in contentious factors impacting final sentences. Papua New Guinea similarly saw an increase of 12.0%, and Vanuatu saw a small increase of 4.2%. In Samoa and Vanuatu in particular, this increase has coincided with an entrenchment of customary law and its wide application in the courts, even when it constitutes gender discrimination.

### Type of Contentious Factors used in Mitigation

Contentious factors: Gender Stereotypes (GS), Customary Practices (CP) and Other Contentious Factors (Others)



While the frequency of contentious factors in cases and the change over time tell an important story, the types of contentious factors help to illuminate what underlies judicial biases. In the Pacific, Customary Practices play a prominent role in most judiciaries which can, at times, be used to reinforce patriarchal norms.<sup>4</sup> Contentious factors are often applied in combination with others, as seen in Fiji, Kiribati, Papua New Guinea, Solomon Islands, and Tonga. Samoa and Vanuatu see higher rates of Customary Practices being used as the sole contentious factor or alongside Other Contentious Factors.

<sup>4</sup> Customary values can be maintained and embodied through different institutions and at the community level in a way that is not applied as particular Customary Practices that constitute gender discrimination in the Courts. See more on page 6.

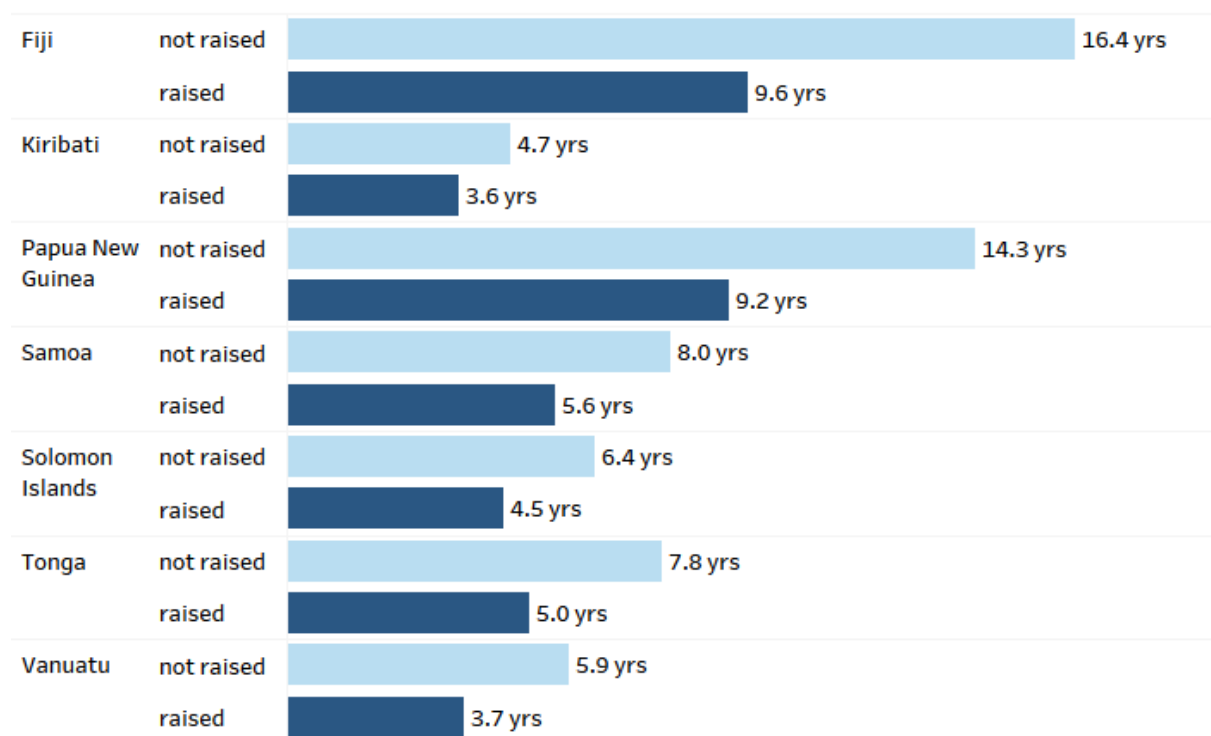
## Sentencing Outcomes

TrackGBV allows us to quantify the impact of contentious factors on sentencing. While the frequency and types of contentious factors raised and applied in cases vary across jurisdictions, the impact of contentious factors when applied is clear. **In the average final sentences for charges similar to rape, sentences in which contentious factors were raised are lower in every jurisdiction than sentences without contentious factors.** In Fiji where there is the widest gap between sentences with and without contentious factors raised, the difference is 7.1 years. **On average, in cases with charges similar to rape, sentences were  $\frac{1}{3}$  shorter when contentious factors were raised.**

In addition to reduced sentences, contentious factors can also lead to no custodial sentence or partially or fully suspended sentences. This is most common in Tonga where 63.6% of sentences were either partially or fully suspended, and 18.2% of perpetrators were not given a custodial sentence.

### Average Final Sentence for Charges Similar to Rape

contentious factors raised vs. contentious factors not raised



The TrackGBV data also points to additional procedural barriers to consistency and accountability, **namely the lack of medical reports, the misapplication of first time offender status, and the lack of victim anonymity.** The use of medical reports has decreased over time, with the highest proportion of medical reports not being cited in sentencing decisions in

Kiribati, Vanuatu, and Tonga. Medical reports serve as compelling evidence pointing to the severity of a crime and often have a strong influence on sentencing. There has been a slight increase in the use of medical reports in sentencing decisions in Samoa and a more significant increase in Tonga. Still, there is seemingly a regional gap in terms of integrating medical evidence into the decision-making process.

Given how many existing barriers there are for victims/ survivors seeking justice through the legal system, the frequency of the misapplication of first time offender status is notable. Our methodology tags these misapplications when there is clear evidence of past violence, and the judge still awards first time offender status, often with a large sentence reduction. In Papua New Guinea, Solomon Islands, and Tonga, first time offender status was misapplied in over 20% of cases.

### Judicial Statistics

Indicators are **High**, **Medium** or **Low** based on regional averages

|                  | Custodial Sentences not given | Suspended Sentences partially/fully | Victim Anonymity not maintained | Medical Reports not cited | First-Time Offender misapplication | Sole Bread-winner argument used |
|------------------|-------------------------------|-------------------------------------|---------------------------------|---------------------------|------------------------------------|---------------------------------|
| Fiji             | 10.1%                         | 16.1%                               | 41.6%                           | 62.8%                     | 6.7%                               | 19.7%                           |
| Kiribati         | 17.9%                         | 19.2%                               | 46.8%                           | 91.0%                     | 12.0%                              | 4.5%                            |
| Papua New Guinea | 13.9%                         | 34.0%                               | 70.2%                           | 68.3%                     | 22.3%                              | 3.3%                            |
| Samoa            | 9.7%                          | 2.3%                                | 33.7%                           | 69.0%                     | 16.7%                              | 7.7%                            |
| Solomon Islands  | 4.0%                          | 9.1%                                | 65.9%                           | 71.6%                     | 25.9%                              | 12.5%                           |
| Tonga            | 18.2%                         | 63.6%                               | 52.7%                           | 78.2%                     | 21.4%                              | 7.3%                            |
| Vanuatu          | 23.2%                         | 21.9%                               | 57.9%                           | 82.1%                     | 15.2%                              | 10.2%                           |

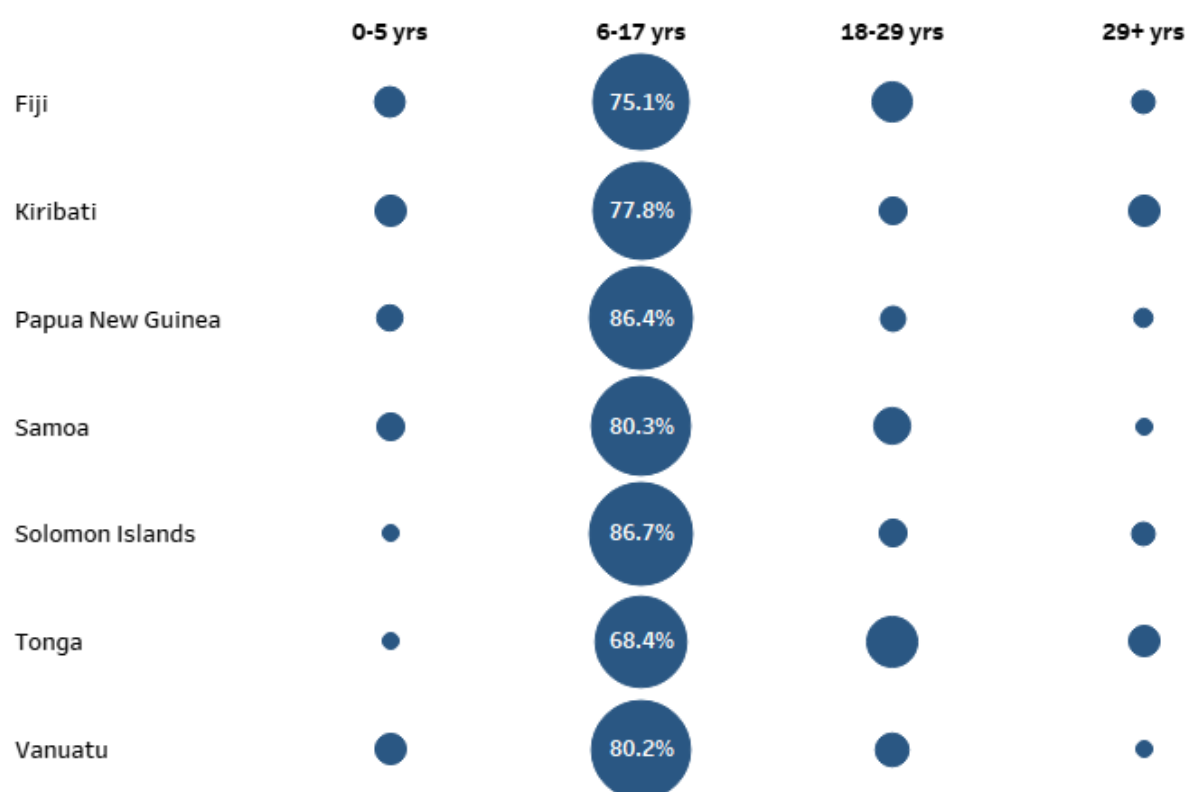
Across the region, there is also a significant proportion of cases in which victim anonymity is not protected in GBV cases. Anonymity is particularly important where communities are smaller, and people are more likely to find out about private matters. Ensuring victim anonymity is an important part of improving access to justice, as it improves the sense of safety for the victim/ survivor and trust in the system.

While TrackGBV is focused specifically on sentencing decisions, these insights point to broader implications for access to justice, policing, healthcare, legislation, and social norms. Institutionalising best practices for adjudicating GBV cases fairly can help these systems come together to improve consistency, transparency, and accountability for victims/ survivors.

## Survivor Stats

Across the region, we see a high frequency of sentencing decisions involving child survivors between the ages of 6 and 17. While there may be several contributing factors<sup>5</sup> that do not necessarily indicate that this age group has the highest prevalence of GBV, it is important to identify – for the development of Pacific judiciaries – the demographics of victims/ survivors coming before the courts, and that the volume of cases involving sexual violence and children is incredibly worrisome.

### Percentage of Cases involving Sexual Violence based on Victim/Survivor Age



<sup>5</sup> More cases concerning girls coming before the court does not necessarily mean that the greatest prevalence of GBV involves girls under the age of 18. There are several factors that influence this number including: greater reporting of violence against children, prosecutors taking violence against children more seriously, less societal pressure for children to reconcile with the perpetrator of the violence, and significant underreporting of violence against women.

## Regional Recommendations

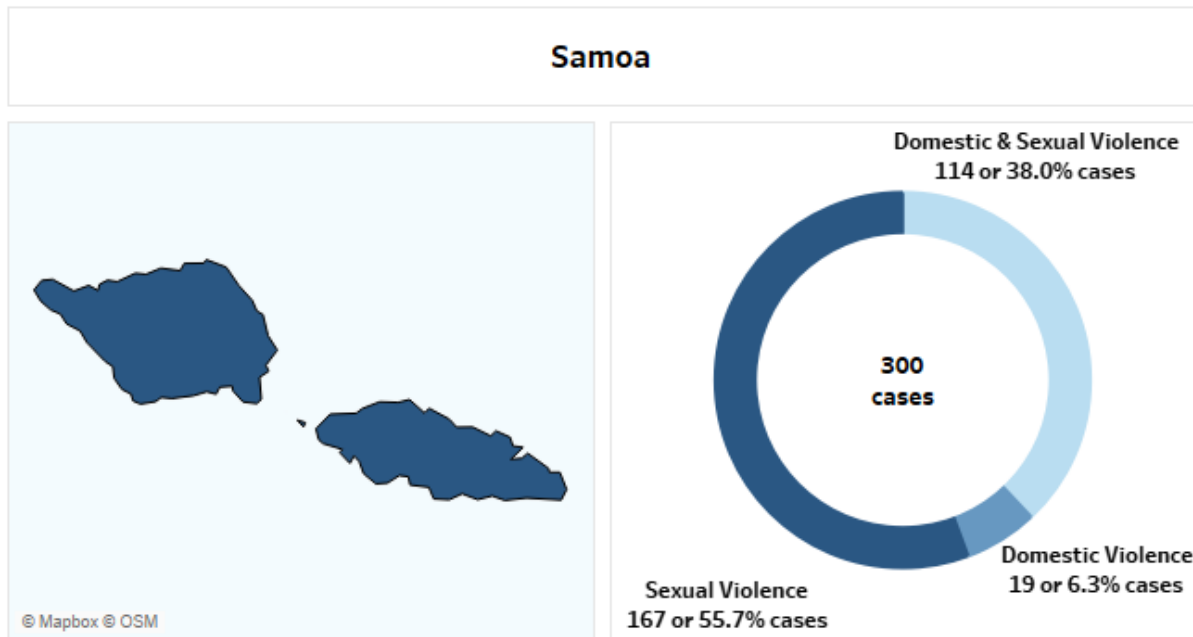
Despite progress in some jurisdictions on reducing judicial bias and improving access to justice for women and girls, notable gaps remain. Based on ICAAD's research and training, the following steps are recommended for each jurisdiction and should involve all key stakeholders, including judiciaries, lawyers, GBV related service providers, women's rights advocates, survivors, police, survivors, and healthcare professionals.

- **Review jurisdiction-specific TrackGBV data in the [TrackGBV Dashboard](#).** As explored in this report, each jurisdiction has unique challenges as it relates to gender discrimination.
- **Offer training specific to the needs of the jurisdiction.** ICAAD has collaborated with judiciaries to conduct Train-the-Trainers modules on the TrackGBV data that instils a deep understanding of gender justice for stakeholders.
  - Additionally, ICAAD has developed medico-legal training content for the Pacific that can be adapted for specific jurisdictions in order to bring together legal and medical professionals to address access to justice gaps.
- **Issue judicial directives.** Based on training outcomes, judicial administrators can show leadership in issuing judicial directives to institutionalise best practices for all judges.
- **Practice accountability.** The TrackGBV Dashboard is regularly updated with new case law allowing key stakeholders to track progress over time, and this analysis can be disaggregated. This can pinpoint finer trends in the data to support judiciaries. Judiciaries also may want to establish mentoring programs to ensure that new judges are supported to understand best practices.

In Fiji, we were able to track the impact of our substantive engagement with the judiciary and its impact on case outcomes by breaking out a time period from 2015-2021, marking that engagement. Going forward, other jurisdictions can similarly track their progress towards access to justice as a result of training and engagement with the TrackGBV data.

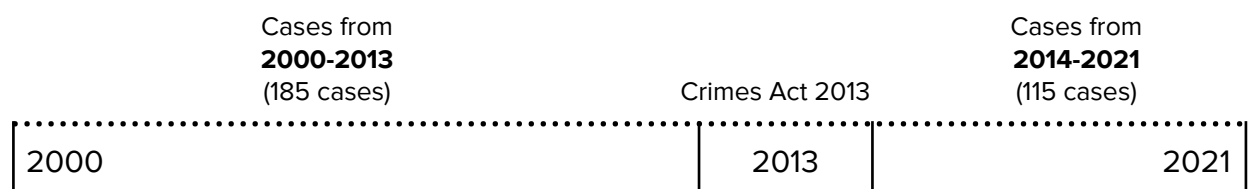
There are also important areas for further research that can be done by judiciaries in partnership with ICAAD. For example, in jurisdictions with a high proportion of partially or fully suspended sentences, like Tonga and Papua New Guinea, additional research should be done by judiciaries to track perpetrators who breach the terms of their suspended sentence (i.e. tracking recidivism rates) and evaluate judicial decision-making on those grounds. ICAAD's CSO partners have also raised important concerns about the process for protection orders, which is an important area of inquiry as it relates to victims/survivors' direct safety. Furthermore, the TrackGBV data disaggregates case analysis by disability and sexual orientation. While there are not enough cases for an in-depth quantitative analysis for these categories, qualitative case review can point to additional gaps in protection for vulnerable groups.

## TrackGBV: Samoa



Across the two time periods of 2000-2013 and 2014-2021, Samoa saw the largest increase in contentious factors raised and applied in cases. From the 300 applicable GBV cases reviewed in Samoa from 2000-2021, contentious factors were used to justify a reduction in sentences in 59.7% of cases. Samoa also has one of the highest rates of Customary Practices as a contentious factor in GBV cases.

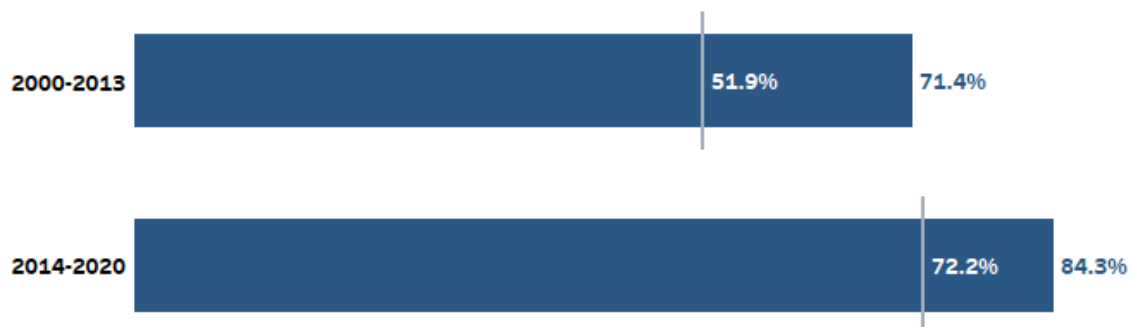
The TrackGBV methodology reveals several important patterns in the case law including the proportion of cases involving child victims/ survivors and the misapplication of first time offender status. In Samoa, 76.8% of cases involved child victims/ survivors, and 16.7% of cases featured a misapplication of first time offender status.



## Key Insights

Gender bias and gender stereotyping are both a cause and consequence of GBV as well as a barrier to the legal system's capacity to respond to it. When judges use or validate contentious factors in sentencing decisions, gender biases are legitimised at the institutional level, resulting in discrimination.

### Contentious Factors Raised vs. How Frequently they Impact Decisions



In Samoa, the prevalence and use of contentious factors has increased across the two time periods. Between 2000 and 2013, contentious factors were raised in 71.4% of cases and used to justify sentence reductions in 51.9% of cases. Between 2014 and 2021, contentious factors were raised in 84.3% of cases and used to justify sentence reductions in 72.2% of cases, which showed the largest increase over the two time periods in the region. The most common contentious factors relied upon fell under the Customary Practices category, with judges relying on Customary Practices alone in 42.7% of impacted cases. The use of Customary Practices as a proportion of cases impacted by contentious factors increased from 41.1% to 44.6% across the two time periods, while Gender Stereotypes in any combination of contentious factors decreased from 31.58% to 24.10%.

The impact of these contentious factors on sentencing is significant. The average sentence reduction in rape cases with contentious factors is 1.6 years and 1.5 years for domestic violence cases. The high frequency of contentious factors and significant impact on sentencing severely reduces faith in the legal system and access to justice for victims/survivors.

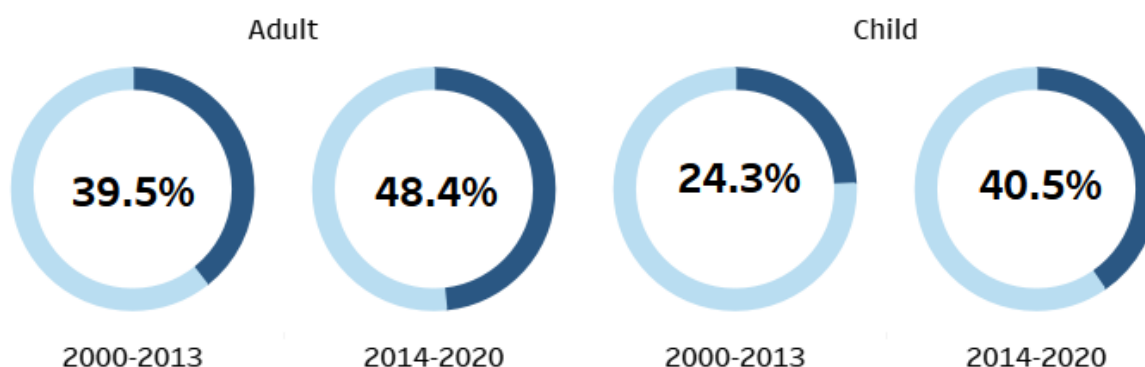
The TrackGBV data also points to additional procedural barriers to consistency and accountability, namely the lack of medical reports and the misapplication of first time offender status. The use of medical reports in sentencing decisions increased slightly over the two time periods. Medical reports were cited in 33.9% of cases between 2014 and 2021. Medical reports serve as compelling evidence pointing to the severity of a crime and often have a strong influence on sentencing. The lack of reliance on medical reports in Samoa demonstrates a medico-legal gap.

### Average Final Sentence with/without Contentious Factors (CF) in Samoa

|                                           |               |         |
|-------------------------------------------|---------------|---------|
| Rape                                      | CF not raised | 9.1 yrs |
|                                           | CF raised     | 8.3 yrs |
| Attempted Rape                            | CF not raised | 5.7 yrs |
|                                           | CF raised     | 2.8 yrs |
| Indecent Assault                          | CF not raised | 3.3 yrs |
|                                           | CF raised     | 1.5 yrs |
| Sexual conduct with child under 12        | CF not raised | 4.4 yrs |
|                                           | CF raised     | 1.0 yrs |
| Sexual conduct with young person under 16 | CF not raised | 1.9 yrs |
|                                           | CF raised     | 1.1 yrs |

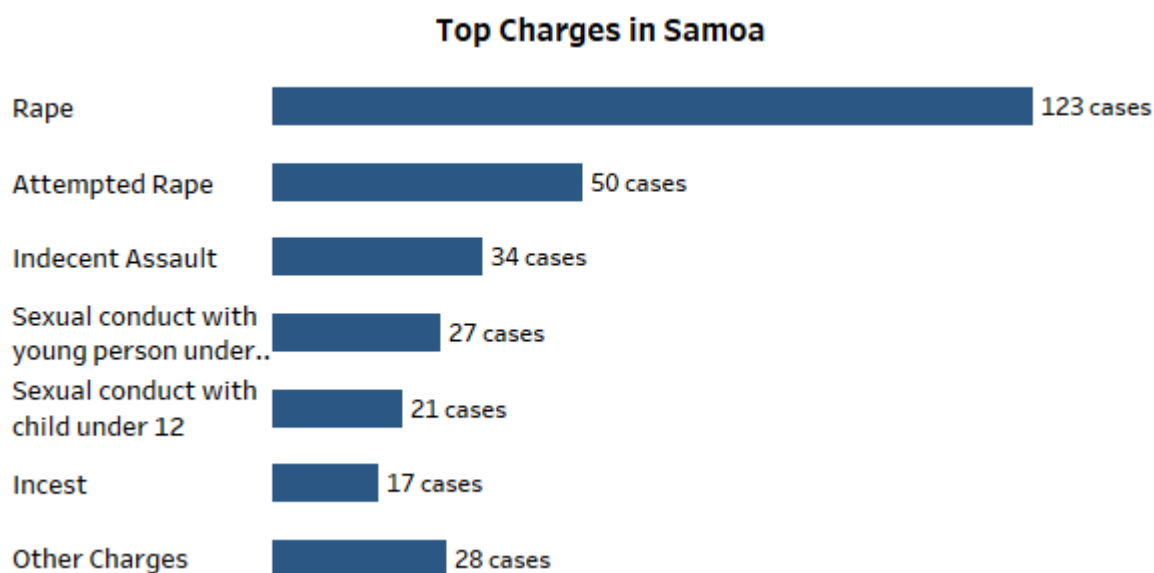
Noting how many existing barriers there are for victims/ survivors seeking justice through the legal system, the frequency of the misapplication of first time offender status is notable. Our methodology tags these misapplications when there is clear evidence of past violence, and the judge still awards first time offender status, often with a large sentence reduction. The misapplication of first time offender status came up in almost 16.7% in Samoa, with a slight increase over the two time periods.

### Anonymity not maintained in Samoa



The lack of victim anonymity is also significant. Victim anonymity was not maintained for child victims in 30.3% of cases and for adult victims in 43.5% of cases. Anonymity is particularly important where communities are smaller, and people are more likely to find out about private matters. Ensuring victim anonymity is an important part of improving access to justice, as it improves the sense of safety for the victim and trust in the system.

While TrackGBV is focused specifically on sentencing decisions, these key insights point to broader implications for access to justice, policing, healthcare, legislation, and social norms more broadly. Institutionalising best practices for adjudicating GBV cases fairly can help these systems come together to improve consistency, transparency, and accountability for victims/survivors.



## Case Examples

In Samoa, customary law is a source of law per the Constitution, which explains the prevalence of Customary Practices. There are two areas of legislation specifically relevant to GBV cases. The first is the treatment of customary reconciliation, which can be promoted in the courts under the Alternative Dispute Resolution Act 2007, section 17. The second is the Village Fono Act of 1990 which requires Samoan courts to take into account punishments already imposed by village council (*fono*) in mitigation.

The way this plays out in the courts can be illustrated in *Police v Laki* [2018]<sup>6</sup> from the Supreme Court. The case involved the rape of two girls by an older male relative. For one of the victims/ survivors, the rape was repeated in their home over two months, and the other victim/ survivor was raped by the same man walking from their home on an inland road. The defendant initially pleaded not guilty and had a warrant issued for his non-appearance at early court matters.

In sentencing, the judge reduced the 14 year maximum penalty to seven years and reduced a further six months accounting for the defendant's record of service rendered to his family

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<sup>6</sup> *Police v Laki* [2018] WSSC 65, [http://www.paclii.org/cgi-bin/sinodisp/ws/cases/WSSC/2018/65.html?stem=&synonyms=&query=title\(Police%20and%20Laki%20\)](http://www.paclii.org/cgi-bin/sinodisp/ws/cases/WSSC/2018/65.html?stem=&synonyms=&query=title(Police%20and%20Laki%20)).

supported by his references from his pastor and a *matai* (chief).<sup>7</sup> These factors are categorised as Other Contentious Factors, given they are irrelevant to the offending against his own family members and unjustly privilege his interests over those of the victims/survivors.

The judge went on to deduct an additional six months for his reconciliation with the family, which constitutes Customary Practices as a contentious factor. While Customary Practices are crucial to ensuring relationships in the family and community are restored where possible, they should not distract from court proceedings focused on accountability. Further, they should centre the interests of the victims/ survivors. In this case, according to the Victim Impact Report, “[b]oth girls expressed disappointment that no personal apology was made to either of them by the defendant only the family to family reconciliation.”<sup>8</sup>

The judge deducted a further one year for penalties imposed on the defendant by the *fono*, an additional example of Customary Practices.<sup>9</sup> In the 2018 National Inquiry into Family Violence in Samoa, *fono* most commonly impose fines as penalties on the perpetrator and his family and often plays an intermediary role in what incidents get reported to the police.<sup>10</sup> The final sentence in this case was three years, which is particularly egregious for rape cases even where contentious factors have been raised. Of rape cases with contentious factors raised, the average sentence was 5.6 years, compared to eight years without contentious factors.

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<sup>7</sup> *Ibid.*, para. 13.

<sup>8</sup> *Ibid.*, para. 10.

<sup>9</sup> *Ibid.*, para. 15.

<sup>10</sup> Samoa Office of the Ombudsman National Human Rights Institution, *National Public Inquiry into Family Violence in Samoa*, 2018, Inquiry Finding 34, p. 29: [https://www.ombudsman.gov.ws/wp-content/uploads/2022/09/SHRR-2018-National-Public-Inquiry-into-Family-Violence\\_-English.pdf](https://www.ombudsman.gov.ws/wp-content/uploads/2022/09/SHRR-2018-National-Public-Inquiry-into-Family-Violence_-English.pdf).

## Recommendations

There is a critical need for progress in Samoa to reduce judicial bias and improve access to justice for women and girls given the sharp increase in contentious factors over the two time periods. Based on ICAAD's research and training, the following steps are recommended for Samoa and should involve all key stakeholders, including judiciaries, lawyers, GBV related service providers, women's rights advocates, police, survivors, and healthcare professionals.

- **Offer training specific to the needs of the jurisdiction.** ICAAD has offered one virtual Train-the-Trainers program with a small cohort in 2021 which should be offered to more stakeholders. The training goes in-depth on the TrackGBV data that instills a deep understanding of gender justice for stakeholders.
  - This training should involve critical conversations about Customary Practices in GBV cases with appropriate stakeholders.
  - Additionally, ICAAD has developed medico-legal training content for the Pacific that can be adapted for specific jurisdictions in order to bring together legal and medical professionals to address access to justice gaps.
- **Issue new judicial directives.** Building on training, judicial officers can issue judicial directives to institutionalise best practices for all judges. These directives may specifically address the findings from the TrackGBV data, such as:
  - Ban the use of Other Contentious Factors, including character references, in mitigation
  - Clarify and ban the use of contentious factors in suspending sentencing
- **Practice accountability.** The TrackGBV Dashboard is regularly updated with new case law allowing key stakeholders to track progress over time, and this analysis can be disaggregated. This can pinpoint finer trends in the data to support judiciaries. Judiciaries also may want to establish mentoring programs to ensure that new judges are supported to understand best practices.

There are also important areas for further research that can be done by judiciaries in partnership with ICAAD. Samoa has experimented with Specialist Courts including the Family Violence Court and Alcohol and Drugs Court, which require additional research to understand outcomes.

## Next Steps

This analysis offers a deeper dive into some of the trends over time and examples from what is available on the [TrackGBV Dashboard](#). The regional analysis allows for comparison across jurisdictions and some trends over time, and the country reports look at each of the seven jurisdictions. However, stakeholders may have additional questions to support their work towards improving access to justice for women and girls.

For more information, navigating the [TrackGBV Dashboard](#) and its many features may help you to uncover the insights you are looking for. Stakeholders can highlight specific data and download PDF reports on the Dashboard. The ICAAD team is also available to collaborate in disaggregating the raw data for additional insights and to work with stakeholders to make use of this data within judiciaries and advocacy efforts.

Additionally, ICAAD is prepared and experienced in helping jurisdictions approach some of the recommendations outlined in this report including training and developing judicial directives. ICAAD has collaborated with judiciaries to conduct Train-the-Trainers modules on the TrackGBV data that instils a deep understanding of gender justice for stakeholders.

To collaborate, please contact Erin Thomas ([erin@icaad.ngo](mailto:erin@icaad.ngo)).



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