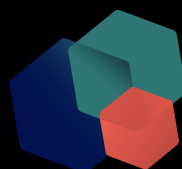


# TrackGBV: Pacific Regional Analysis and Tonga Country Report 2000-2021

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 Ratuville (Fiji).

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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,  $\frac{1}{3}$  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>	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.
<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>	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.

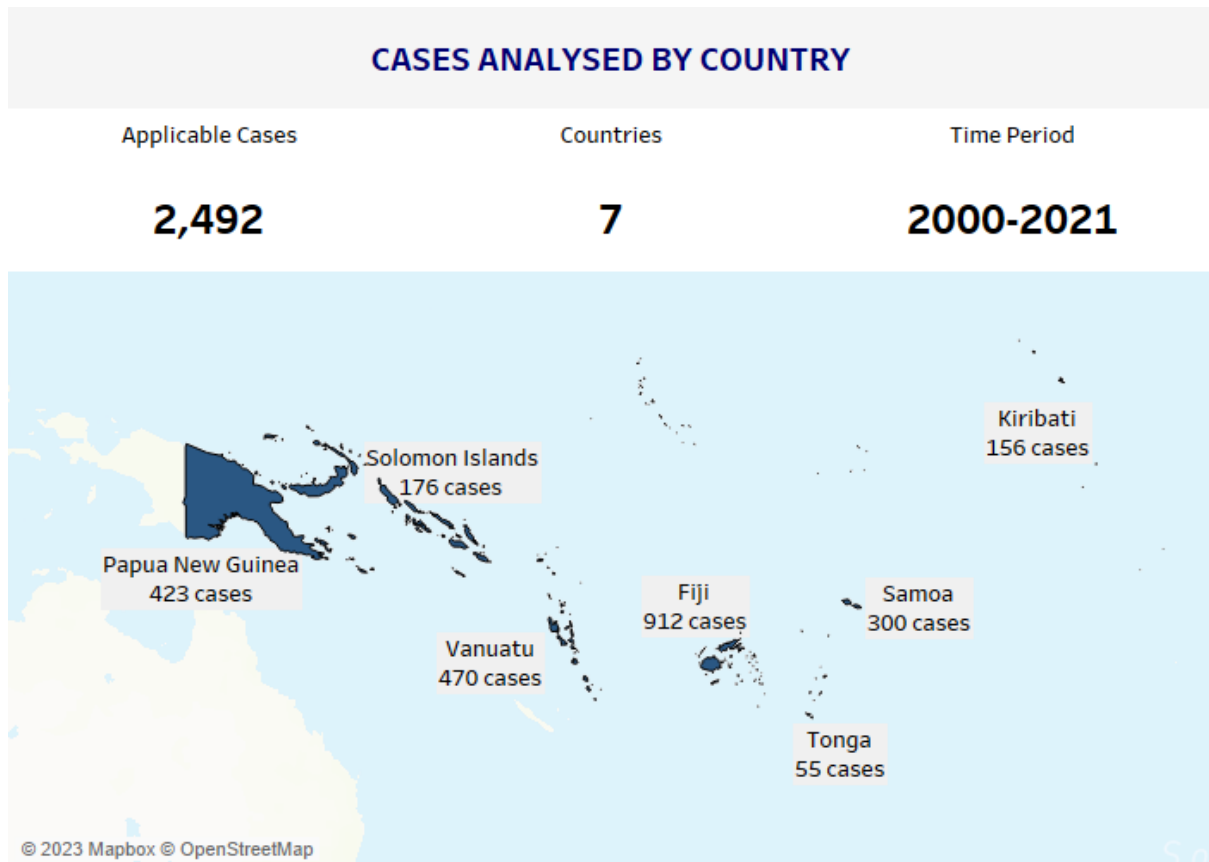
For more detailed information on the TrackGBV methodology, please refer to our handbook.<sup>3</sup> The up-to-date TrackGBV Dashboard can be explored at this link: <https://icaad.ngo/trackgbv-dashboard/>. The following report provides a narrative and in-depth analysis of the Pacific region and the specific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

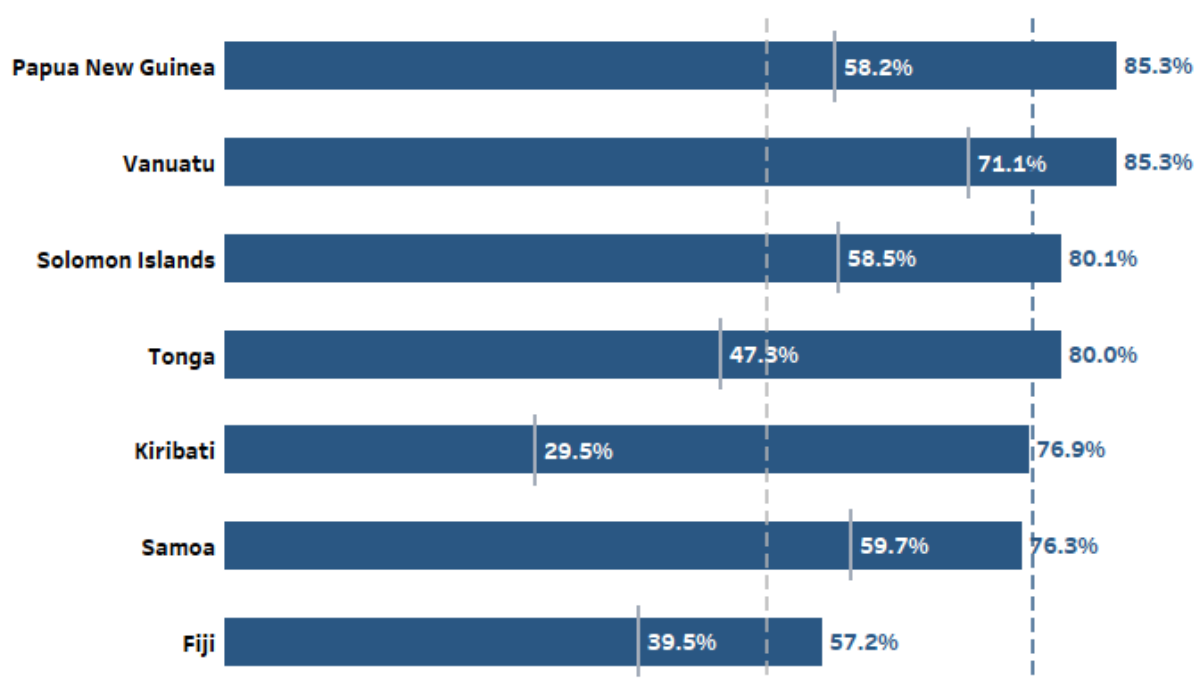
Across the region, contentious factors were raised in 77.6% of cases, with those contentious factors impacting the final sentence in 51.4% of decisions. **For victims/ survivors who seek justice in the courts, less than 1 in 2 receive an outcome unhindered by gender discrimination.**

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

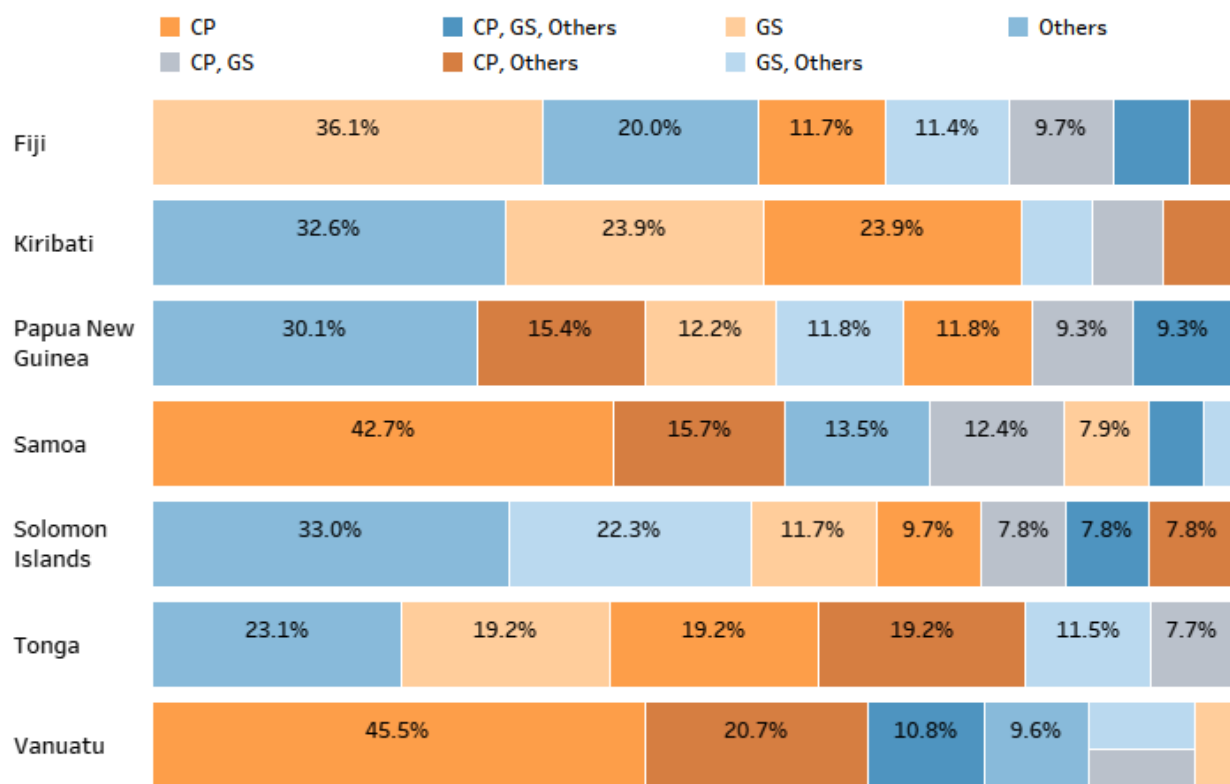


(PILON) in the Solomon Islands and shared our findings with The Chief Justice and attorney general’s office in Tonga during this period.

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.

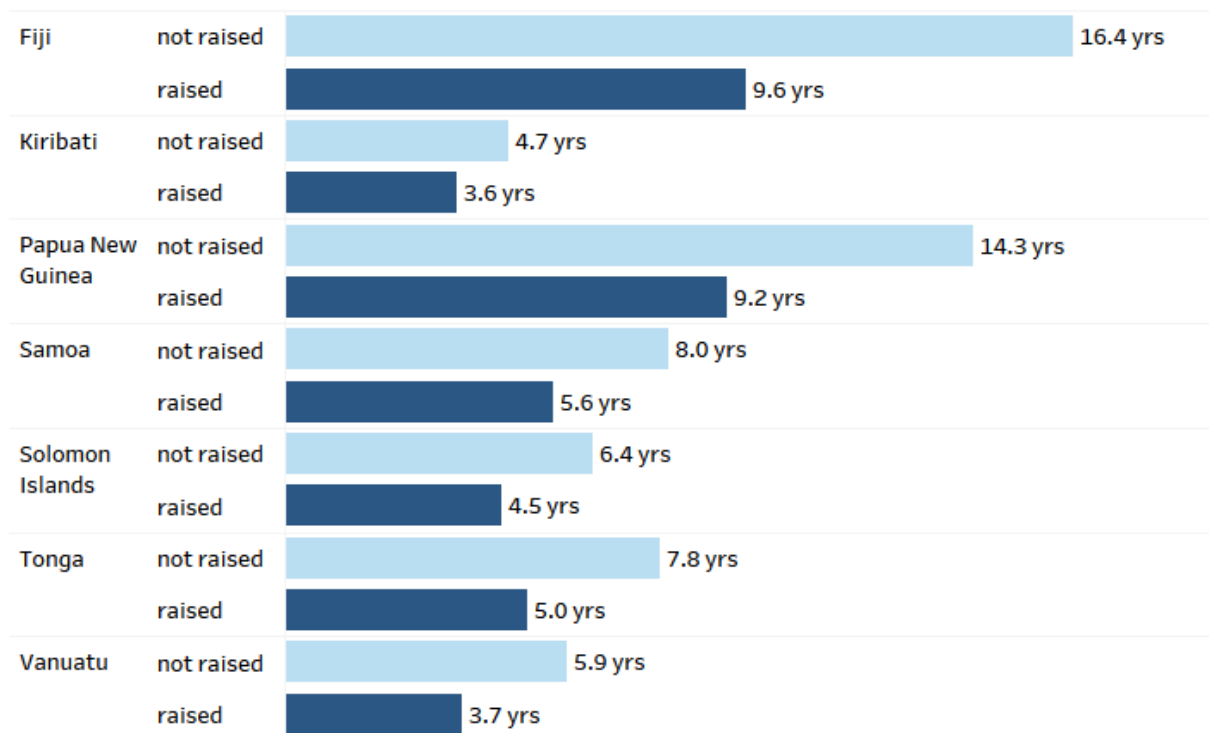
## Sentencing Outcomes

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 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 Breadwinner 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%

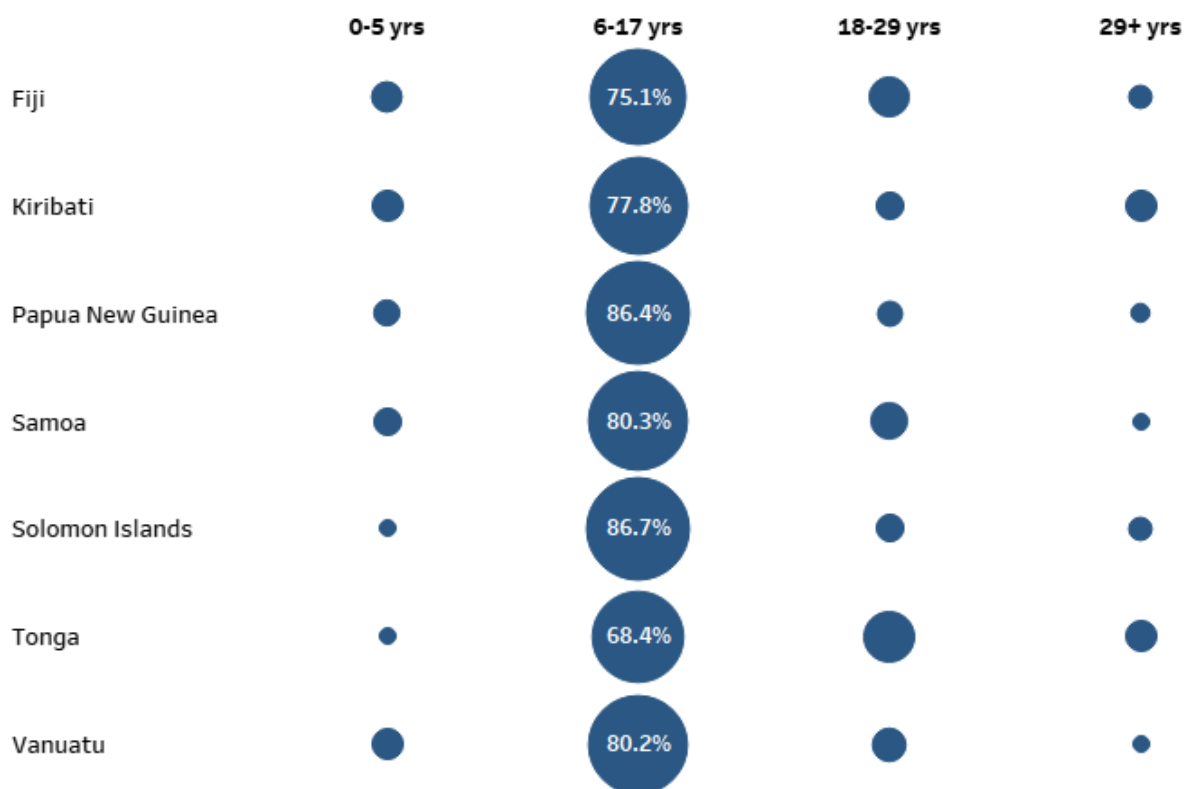
Across the region, there is also a significant proportion of cases in which victim anonymity is not protected in GBV cases. Anonymity is particularly important where communities are smaller, and people are more likely to find out about private matters. Ensuring victim anonymity is an important part of 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

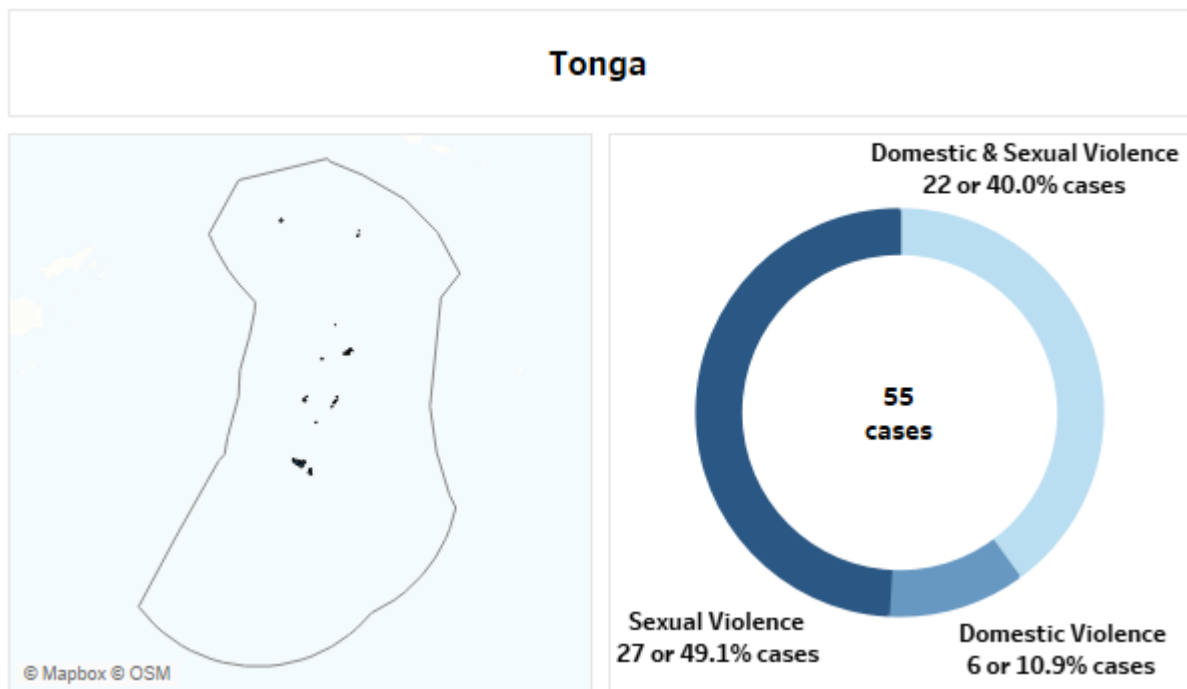
Despite progress in some jurisdictions on reducing judicial bias and improving access to justice for women and girls, notable gaps remain. Based on ICAAD's research and training, the following steps are recommended for each jurisdiction and should involve all key stakeholders, including judiciaries, 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.

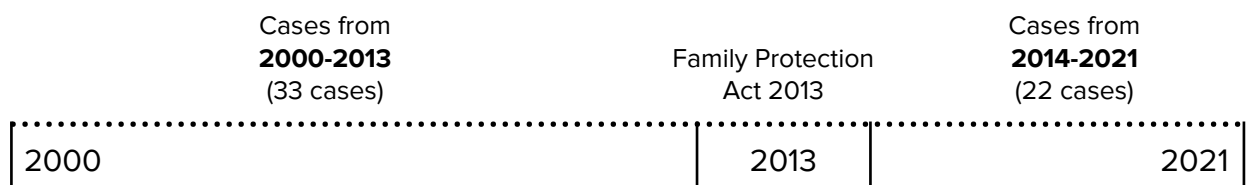
There are also important areas for further research that can be done by judiciaries in partnership with ICAAD. For example, in jurisdictions with a high proportion of partially or fully suspended sentences, like Tonga and Papua New Guinea, additional research should be done by judiciaries to track perpetrators 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: Tonga



Tonga has the third highest rate of contentious factors raised in sentencing decisions in the TrackGBV data at 81.8% of cases, falling close behind Papua New Guinea (PNG) and Vanuatu. From the 55 applicable GBV cases reviewed in Tonga from 2000-2021, contentious factors were used to justify a reduction in sentences in 43.6% of cases.

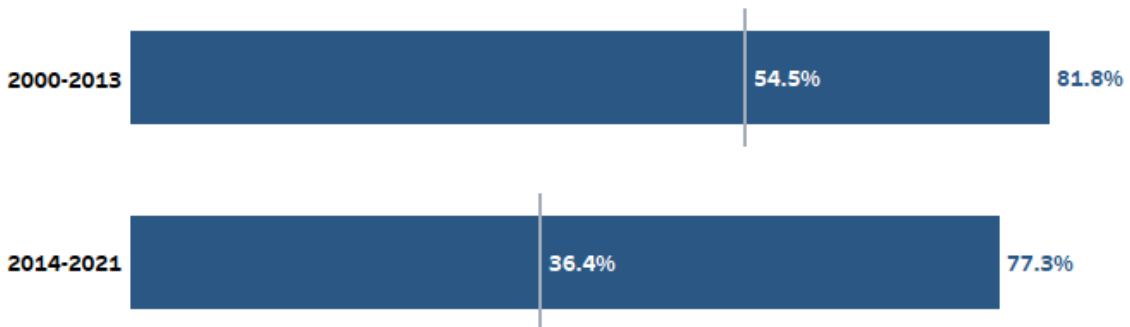
The TrackGBV methodology reveals several important patterns in the case law, including the frequency of partially and fully suspended sentences for perpetrators of GBV as well as the misapplication of first time offender status. Tonga stands out regionally with respect to partially and fully suspended sentences in GBV cases, which were issued in 63.6% of cases, and perpetrators who were unjustifiably granted first time offender status, in 24.1% of cases.



## 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 Tonga, the prevalence and use of contentious factors has decreased across the two time periods. While Tonga does feature a smaller data set with only 55 cases, contentious factors were raised in 84.8% of cases between 2000 and 2013 compared with 77.3% of cases between 2014 and 2021. The use of contentious factors to justify sentence reductions decreased from 48.5% to 36.4% across the same two time periods. The most common contentious factors relied upon were Other Contentious Factors, used alone in 22.2% of cases, and Gender Stereotypes, used alone in 18.5% of cases. The application of Customary Practices in any combination with other contentious factors increased significantly over the two time periods, from 31.58% to 50.0%.

The impact of these contentious factors on sentencing is significant. The average sentence reduction in rape cases with contentious factors increased from half a year to a year across the two time periods. In domestic violence cases, custodial sentences were not given in half of 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.

In the time period from 2014 to 2021, 72.7% of cases featured a partially or fully suspended sentence. In addition to contentious factors applied in mitigation, suspended sentences result in large sentence reductions and sometimes no custodial sentence at all. Other Contentious Factors is the primary category of contentious factors involved when sentences were suspended, being used in some combination of contentious factors in 71.43% of cases between 2014 and 2021.

The TrackGBV data also points to additional procedural barriers to consistency and accountability, namely the misapplication of first time offender status and the lack of medical reports cited in sentencing. 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. Tonga has one of the highest rates of misapplication of first time offender status in the region, at 21.4% of cases. 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 lack of medical reports in sentencing decisions is also notable, demonstrating a medico-legal gap in the judiciary in Tonga. Medical reports serve as compelling evidence pointing to the severity of a crime and often have a strong influence on sentencing. While there was an increase in the percentage of cases relying on medical reports from 15.2% to 31.8%, this percentage is still low and represents a major access to justice gap.

The lack of victim anonymity persists in Tongan courts. Victim anonymity was not maintained for child victims in 47.1% of cases and for adult victims in 62.5% 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

There are three recent cases that help illustrate some of these trends. In *Rex v Mo'unga* [2017], the perpetrator was charged with 14 counts of sexual violence related offenses including rape, incest, and serious indecent assault involving six victims over the course of six years.<sup>6</sup> In sentencing, the judge found a starting point of 15 years as a concurrent sentence and deducted four years in mitigation to account for the guilty plea, lack of previous convictions, and remorsefulness noting that in the witness box, the perpetrator quoted scripture and “said he had found god.”<sup>7</sup> Credit for quoting scripture and displaying religiosity constitutes Other Contentious Factors. The judge then partially suspended the final sentence relying on the same mitigating factors by two years, so long as he did not commit any offenses, reside with women or girls, and undergo an appropriate course and counselling for sexual abuse.

The case also includes details of personal circumstances for the perpetrator which were not explicitly taken into account in sentencing but feature commonly in Tongan case law. For example, we know that the perpetrator “left school at a young age and helped his family with fishing and on a plantation.”<sup>8</sup> In some cases, these personal circumstances are explicitly applied as mitigation, representing Other Contentious Factors.

**Average Final Sentence for cases involving Sexual Violence**



In *Rex v Mo'unga* [2017], we also have a clear example of the misapplication of first time offender status. The case details the repeated offending with six different victims over six years, including the challenges faced by victims/survivors in attempting to report before charges were finally brought in 2016. The judge gave undue credit to the perpetrator’s previous character given that limited access to justice is the reason he did not have prior convictions for the repeated offending over six years.

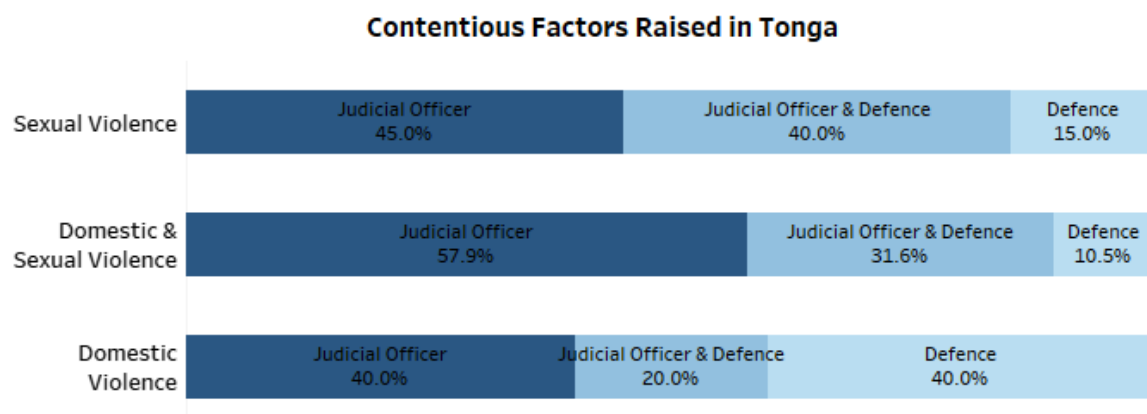
<sup>6</sup> *Rex v Mo'unga* [2017] TOSC 13, <http://www.paclii.org/cqi-bin/sinodisp/to/cases/TOSC/2017/13.html?stem=&synonyms=&query=mo%20unga>.

<sup>7</sup> *Ibid.*, para. 12.

<sup>8</sup> *Ibid.*, para. 2.

*R v Luka* [2021] illustrates the impact of Other Contentious Factors in a domestic violence case.<sup>9</sup> The defendant pled guilty to causing serious bodily harm against his de facto partner. The de facto partner found the defendant having an affair at their neighbour’s house and yelled at the defendant and ran out of the room. The defendant “chased after her, grabbed her and hit and punched her repeatedly.” The defendant only stopped after “his mother tackled him to the ground.”<sup>10</sup>

The judge found a starting point of two years and six months. In mitigation, the judge explored the provocation argument made by the defendant, that the “rude comments at him about his mother and sisters” were “too hurtful and that he felt intense anger and could not control himself.”<sup>11</sup> The judge rejected the blatant provocation argument given that the victim’s language was a direct response to the situation the defendant initiated by having sex with another woman.



Still, the judge implied that the defendant’s anger and alcohol abuse played a significant role in the offence representing a misunderstanding of GBV and its root causes. The judge reduced the starting sentence to 20 months for the defendant’s lack of previous convictions, early guilty plea, and remorse – despite the fact that he claimed he was provoked by the victim. The judge then suspended the final eight months of the sentence requiring that the defendant complete anger management and alcohol awareness courses.

In another case, *R v Tu’ifua* [2018], the judge critically examined Customary Practices and applied a number of Other Contentious Factors.<sup>12</sup> In the case, the offender raped his friend’s girlfriend while she was unconscious from intoxication. The judge found a starting point of five

<sup>9</sup> *R v Luka* [2021] TOSC 46, [http://www.paclii.org/cgi-bin/sinodisp/to/cases/TOSC/2021/46.html?stem=&synonyms=&query=title\(R%20and%20Luka%20\)](http://www.paclii.org/cgi-bin/sinodisp/to/cases/TOSC/2021/46.html?stem=&synonyms=&query=title(R%20and%20Luka%20)).

<sup>10</sup> *Ibid.*, para. 2.

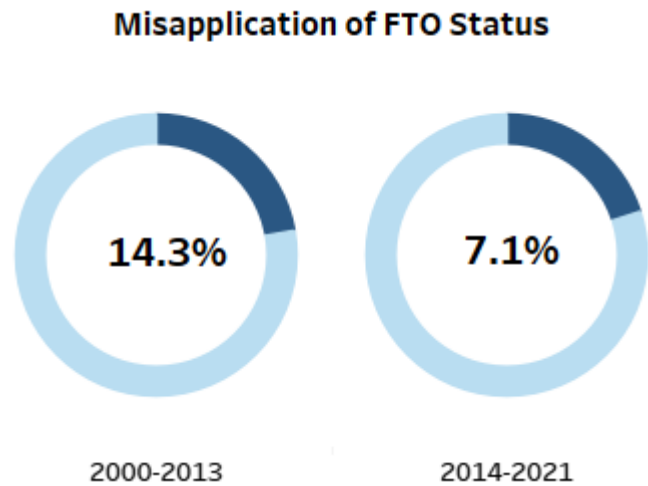
<sup>11</sup> *Ibid.*, para. 21.

<sup>12</sup> *Rex v Tu’ifua* [2018] TOSC 73, <http://www.paclii.org/cgi-bin/sinodisp/to/cases/TOSC/2018/73.html?stem=&synonyms=&query=tu-ifua>.

years and six months and allowed a discount of one year for the offenders' lack of previous convictions for any serious or similar offending, previous good character and support to his family, and the community references which demonstrated that he was a useful member of the community.<sup>13</sup> This constitutes a misapplication of first time offender status, given that the offender did have a prior conviction involving alcohol abuse and presented alcohol "as a cause of the offending," signifying a lack of previous good character or willingness to reform.<sup>14</sup> Additionally, undue credit was given for reference letters from the Town Officer and a retired pastor from the offender's Church.

The offender claimed to be apologetic, yet also rejected his role in the offending and that it happened at all. The judge still found good prospects for his rehabilitation and partially suspended the final 18 months of his sentence, requiring courses on alcohol and drug abuse and sexual abuse against women.

While there has been progress in some ways around judging applications of Contentious Factors, there is still significant room for improvement underpinned by a need for judicial officers to understand the root causes of GBV.



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<sup>13</sup> *Ibid.*, para. 10.

<sup>14</sup> *Ibid.*, para 5, 8, and 9.

## Recommendations

Despite progress in Tonga 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 Tonga 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 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 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
  - Clarify the meaning of first time offender to exclude those who have an established pattern of offending
- **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. Given the high rate of suspended and non-custodial sentences in Tonga, rates of reoffending would be particularly valuable to assess the impact of probation periods and rehabilitation programs.

## 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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