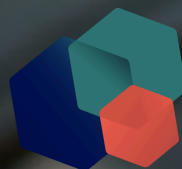


**POLICY BRIEF**

# **TrackGBV: Improving Access to Justice in the Solomon Islands**

SYSTEMATIC ANALYSIS OF GENDER DISCRIMINATION IN  
GENDER-BASED VIOLENCE (GBV) SENTENCING DECISIONS 2000-2023



**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 six 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.

In the Solomon Islands, our SAFENET partners welcomed us with open arms. We would like to specifically acknowledge the collaboration with the Legal Policy Unit at the Ministry for Justice and Legal Affairs and the Women's Development Division at the Ministry for Women, Youth, Children and Family Affairs who so graciously hosted the Train-the-Trainers Workshop in May 2024. The enthusiasm for improving access to justice for survivors among key stakeholders in the Solomon Islands is palpable, and we were honoured to engage in such a generative space.

To our civil society partners and colleagues across 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, 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 (PJSP), 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 over the years 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 Albert Palmer (Solomon Islands), 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), fmr. Chief Justice Michael Whitten (Tonga), and Chief Magistrate Usaia Ratuville (Fiji).

## **Table of Contents**

<b>Acknowledgements</b>	<b>2</b>
<b>Table of Contents</b>	<b>3</b>
<b>Executive Summary</b>	<b>4</b>
<b>Introduction</b>	<b>6</b>
Gender Bias and Discrimination in GBV Sentencing	6
TrackGBV	6
Methodology	7
<b>TrackGBV: Solomon Islands Data</b>	<b>9</b>
Key Insights	10
Survivor Stats	11
Gender Stereotypes	12
Sole Breadwinner Argument	13
Misapplication of First-time Offender Status	14
Customary Practices	15
Additional Justice Sector Delivery Challenges	17
<b>Recommendations</b>	<b>18</b>

---

## EXECUTIVE SUMMARY

This policy brief offers an updated analysis of gender-based violence (GBV) sentencing decisions for the Solomon Islands which includes cases from 2021-2023.<sup>1</sup> This analysis accompanies the **TrackGBV Solomon Islands: Improving Access to Justice for Gender-based Violence Cases Train-the-Trainers** program with SAFENET representatives, facilitated by ICAAD (International Center for Advocates Against Discrimination) in May 2024. The recommendations here were co-created by those participants.

For context, the Solomon Islands 2020 First Voluntary National Review into its progress on the United Nations Sustainable Development Goals (SDGs) noted that it has a deep commitment to achieving gender equality and ensuring women's full and effective participation in political, economic and public life.<sup>2</sup> However, this Review found that despite clear political will to reduce inequality and discrimination, women in Solomon Islands are still more at risk of experiencing severe discrimination and inequality in all areas of life governed by law. Further, levels of violence remaining alarmingly high, and GBV against women and girls is still largely tolerated in society.<sup>3</sup>

An essential component for eliminating GBV is a fair and unbiased judicial system. However, in many Pacific Island countries, including Solomon Islands, judicial sentencing decisions based on biased reasoning, gender myths and factors irrelevant to a perpetrator's violent offending are all too common. These contentious factors interfere with effective justice sector delivery, and as a direct consequence, perpetrators of GBV often receive disproportionately low custodial sentences (or, in some instances, no custodial sentence at all) which denies justice to the victims/ survivors.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee had a specific recommendation to the Solomon Islands in 2014 to “[i]mplement capacity-building programmes for judges, prosecutors, lawyers and the police on gender equality and raise awareness to eliminate the stereotyping and stigmatisation faced by women who claim their rights.”<sup>4</sup> The lack of data and analysis have historically masked the link between bias in judicial systems, limited access to justice, disproportionately low sentences in

---

<sup>1</sup> ICAAD's TrackGBV: Pacific Islands Country Reports offered analysis for seven jurisdictions including the Solomons Islands with cases from 2000-2021. See more: ICAAD, *TrackGBV: Pacific Islands Country Reports 2000-2021: Systematic Analysis of Gender Discrimination in Gender-based Violence Sentencing Decisions in Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tonga, and Vanuatu*, at 4 (28 March 2023), <https://icaad.ngo/2023/03/28/over-the-last-two-decades-bias-in-gender-based-violence-cases-has-shaped-discriminatory-outcomes/>.

<sup>2</sup> Goal 5, Target 5.2 is to achieve gender equality and empower all women and girls, including by eliminating all forms of violence against all women and girls in the public and private spheres. See more: United Nations, *Solomon Islands Voluntary National Review*, at 45 (June 2020), [https://sustainabledevelopment.un.org/content/documents/26795VNR\\_2020\\_Solomon\\_Report.pdf](https://sustainabledevelopment.un.org/content/documents/26795VNR_2020_Solomon_Report.pdf)

<sup>3</sup> United Nations, Permanent Mission of Solomon Islands to United Nations, at 1 (19 October 2023), <https://hlpf.un.org/sites/default/files/vnrs/2023/VNR%202024%20Solomon%20Islands%20Letter.pdf>.

<sup>4</sup> United Nations Convention on the Elimination of All Forms of Discrimination against Women, *Concluding observations on the combined initial and third periodic reports of Solomon Islands*, at 4 (14 November 2014), <https://www.undocs.org/CEDAW/C/SLB/CO/1-3>.

GBV cases and societal acceptance of GBV. This gap has also made it difficult to implement such capacity building for key stakeholders responsible for justice sector delivery.

ICAAD's TrackGBV program fills this gap by offering an evidence base of over 20 years of case law identifying key indicators of bias in judicial decisions and quantifying the links between the existence of such biases and the outcome of sentencing decisions. In the Solomon Islands, the TrackGBV data reveals that judicial officers raise gender stereotypes (e.g. victim-blaming) in GBV sentencing decisions in over 1 in 4 cases (26%) from 2015 to 2023. The impact of gender stereotypes and other contentious factors can also be quantified. The average sentence reduction from contentious factors in charges similar to rape was 1.7 years over the same time period. By revealing the court's reliance on gender stereotypes, customary practices, and myths that undermine accountability and redress for victims/survivors in GBV cases, TrackGBV aims to empower key stakeholders with data and insights to improve access to justice.

- Despite political will to address gender inequality and high rates of GBV in the Solomon Islands, critical gaps remain. One of those gaps is justice sector delivery unhindered by gender bias and stereotypes.
- ICAAD's TrackGBV program reveals the links between bias in judicial systems, limited access to justice, disproportionately low sentences in GBV cases, and the societal acceptance of GBV with case law analysis from GBV sentencing decisions from 2000-2023.
- In Solomon Islands GBV cases from 2015 to 2023, judicial officers raised gender stereotypes (e.g. victim-blaming) in sentencing in over 1 in 4 cases (26%). For example, the "sole breadwinner argument" was used to reduce sentences in over 1 in 3 (37.5%) domestic violence cases from 2015 to 2023.
- The average sentence reduction due to contentious factors (gender stereotypes, customary practices, or other contentious factors) in cases similar to rape in the same time period was 1.7 years.

---

## INTRODUCTION

### Gender Bias and Discrimination in GBV Sentencing

Society has become accustomed to seeing headlines reporting on GBV cases in the courts where justice has not been served, and the Solomon Islands is no exception. Large sentence reductions based on arguments grounded in rape myths or character references irrelevant to a perpetrator's violent offending are all too common. For victims/ survivors who seek justice in the courts, the TrackGBV data indicates that less than half receive an outcome unhindered by gender discrimination.<sup>5</sup>

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 from the last 23 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.

TrackGBV tracks key variables related to access to justice for women and girls and allows us to quantify the impact of contentious factors (gender stereotypes, customary practices, and other 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

TrackGBV began in 2013 in the Pacific. Since then, ICAAD and its law firm partners have reviewed over 5,000 cases and analysed 2,602 applicable sentencing decisions from 2000 to 2023. To ensure timeliness and relevance, ICAAD is continuing to review and add to the TrackGBV Data Dashboard,<sup>6</sup> accessible on the ICAAD website. The first update came in May 2024 with an additional 110 cases from the Solomon Islands between 2021 and 2023.

By reviewing sentencing decisions, the TrackGBV methodology allows us to track a range of variables and provide a baseline to measure the quantitative impact of gender discrimination within the judiciary. Regionally, the TrackGBV data has illuminated a number of patterns.

---

<sup>5</sup> ICAAD, *TrackGBV: Pacific Islands Country Reports 2000-2021: Systematic Analysis of Gender Discrimination in Gender-based Violence Sentencing Decisions in Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tonga, and Vanuatu*, at 4 (28 March 2023), <https://icaad.ngo/2023/03/28/over-the-last-two-decades-bias-in-gender-based-violence-cases-has-shaped-discriminatory-outcomes/>.

<sup>6</sup> ICAAD, *TrackGBV Dashboard*, <https://icaad.ngo/trackgbv-dashboard/>.

### Regional Snapshot:

- Victims/ survivors who come before the courts tend to fall between the ages of 6 and 17.
- Contentious factors were raised in 72.6% of cases regionally with a quantifiable impact on sentencing in 51.9% of cases.
- 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

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.<sup>7</sup> 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.**

<sup>7</sup> Fiji Women's Rights Movement, Sexual Violence Against Women and Girls Rape Case Analysis 2021, (16 March 2022),

[http://www.fwrm.org.fj/images/A2J/2021\\_Rape\\_Case\\_Analysis.pdf?fbclid=IwZXh0bgNhZW0CMtAAAR1T7kfSaQYKtRHkSXbXWv3xl4sM2hxPp0eVAPxLha0aEGy3\\_HHTTrTsXI5Q\\_aem\\_ARR3EF\\_4heuMngF30DSWcOP9AJkwmJmmxCAwOXlqfJbGbh94xqMIS\\_tNpxOCHsTxVH9Y6wzLOyAWsyL-ql6fh\\_J](http://www.fwrm.org.fj/images/A2J/2021_Rape_Case_Analysis.pdf?fbclid=IwZXh0bgNhZW0CMtAAAR1T7kfSaQYKtRHkSXbXWv3xl4sM2hxPp0eVAPxLha0aEGy3_HHTTrTsXI5Q_aem_ARR3EF_4heuMngF30DSWcOP9AJkwmJmmxCAwOXlqfJbGbh94xqMIS_tNpxOCHsTxVH9Y6wzLOyAWsyL-ql6fh_J).

### 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>8</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>9</sup>

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:

### Gender Stereotypes

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.

### Customary Practices

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 (e.g. bride price).

It is important to note that customary practices are not the same as customary values. Customary values that may *underpin* customary law and practices can include reciprocity, harmony, respect, and more. Customary practices can change while still upholding customary values.

### Other Contentious Factors

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>10</sup>

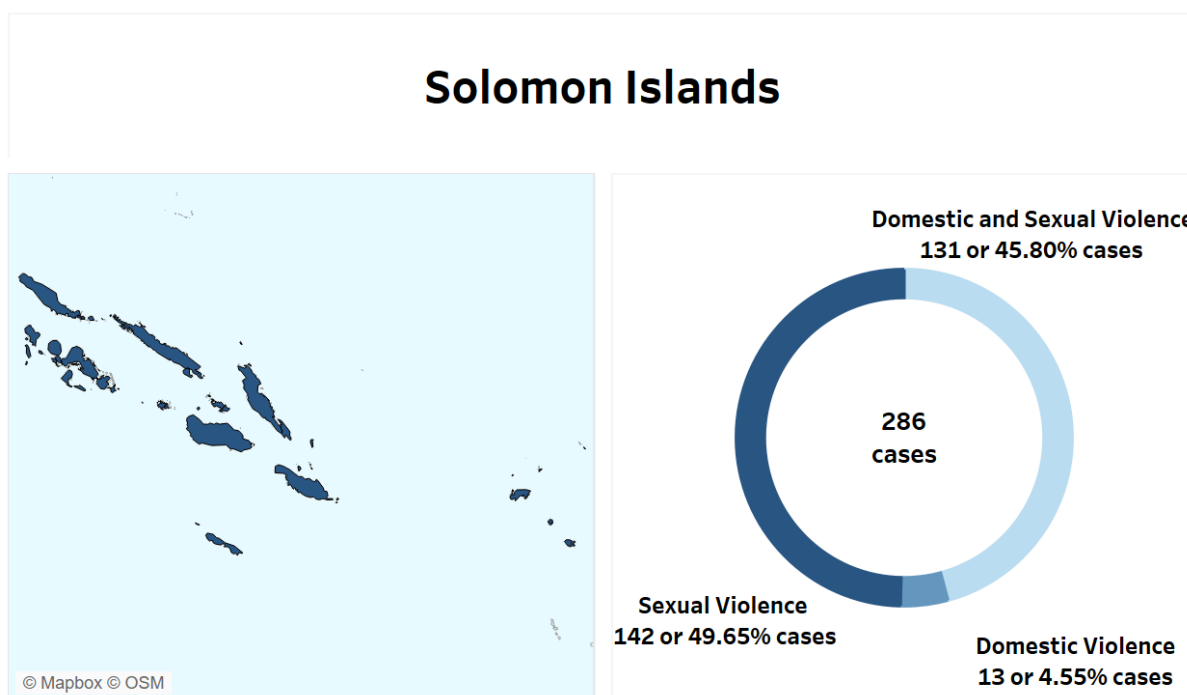
<sup>8</sup> Council of Europe, *Convention on preventing and combating violence against women and domestic violence* (2011), Article 3.

<sup>9</sup> *Ibid.*, at art. 36.

<sup>10</sup> ICAAD & Clifford Chance, *Sexual and Gender-Based Violence in the Pacific Islands: Handbook on Judicial Sentencing Practices*, 2018, <https://icaad.ngo/wp-content/uploads/2019/01/ICAAD-SGBV-Sentencing-Handbook-1.19.pdf>.



## TrackGBV: Solomon Islands Data



The Solomon Islands has a high rate of contentious factors raised in sentencing decisions, with contentious factors being used to justify a reduction in sentences in 55.9% of the 286 applicable cases. Between the two time periods of 2000-2014 and 2015-2023, marking the Family Protection Act in 2014, the Solomon Islands saw a decrease in contentious factors raised and applied in cases. However, contentious factors impacting sentencing constituting gender discrimination affected nearly half of GBV cases in the Solomon Islands (49.2%).

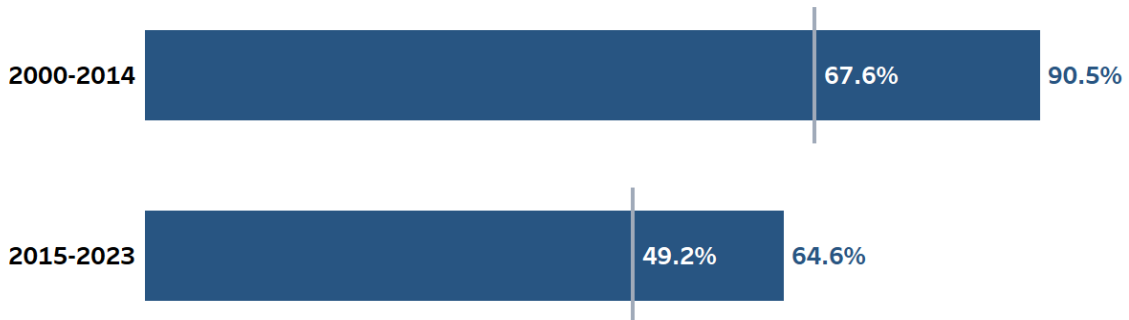


The TrackGBV methodology reveals several important patterns in the case law including the reliance on gender stereotyping in sentencing, specifically the use of the Sole Breadwinner Argument, the misapplication of first time offender status, the use of customary practices in mitigation, and a lack of victim/ survivor anonymity. The Solomon Islands has the highest rate of misapplication of first time offender status in the region, at 26.1% of cases, and a high rate of the application of the sole breadwinner argument, at 10.5% of cases. The TrackGBV data also reveals a gap in the safety of victims/ survivors when accessing the courts, with only 33.6% of cases protecting victim/ survivor anonymity.

## 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



Judges rely on Other Contentious Factors in 70% of impacted cases. Secondly, Gender Stereotypes featured in 43.75% of impacted cases with minimal change in the types of contentious factors over the two time periods. The average sentence reduction from contentious factors in charges similar to rape was 1.7 years in the 2015-2023 time period. The high frequency of contentious factors and significant impact on sentencing severely reduces trust in the legal system and access to justice for victims/ survivors.

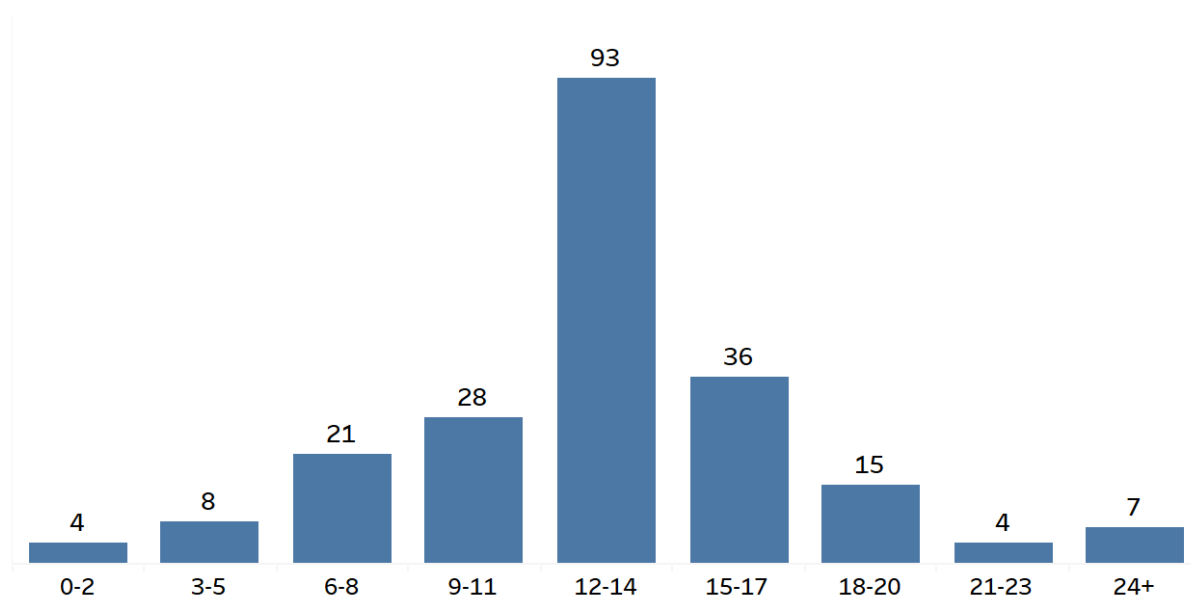
### Average Final Sentence with/without Contentious Factors in Solomon Islands

Rape	CF not raised	6.3 yrs
	CF raised	4.6 yrs
Attempted Rape	CF not raised	5.0 yrs
	CF raised	2.8 yrs
Incest	CF not raised	4.6 yrs
	CF raised	2.8 yrs
Sexual intercourse with a child under 15	CF not raised	4.8 yrs
	CF raised	3.0 yrs
Defilement of a girl under 13	CF not raised	7.0 yrs
	CF raised	2.6 yrs

## Survivor Stats

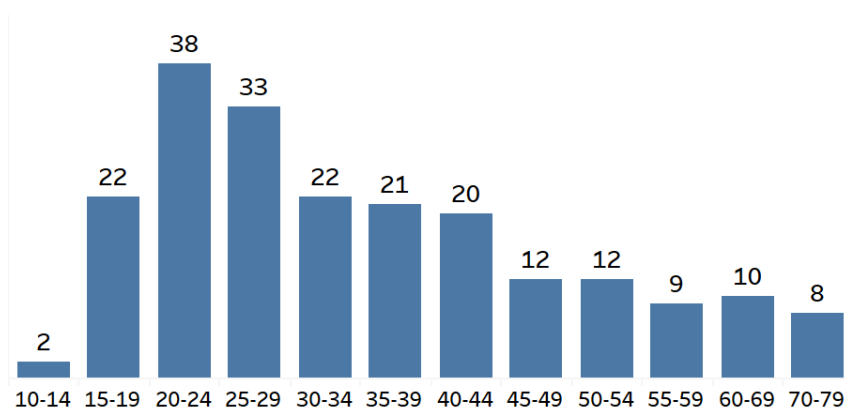
Across the region, we see a high frequency of sentencing decisions involving child survivors between the ages of 6 and 17. **In the Solomon Islands, 74% of victims/ survivors were children**, with the age group of 12-14 seeing the highest number of victims/ survivors in GBV cases. While there may be several contributing factors<sup>11</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. In sexual violence cases, 76.9% of victims/ survivors were children.

### Victim's Age Breakdown in Solomon Islands



The age of perpetrators, on the other hand, ranges. With a concentration in the 20-29 year old range, the ages of perpetrators are distributed up to the age of 70-79.

### Perpetrator's Age Breakdown in Solomon Islands



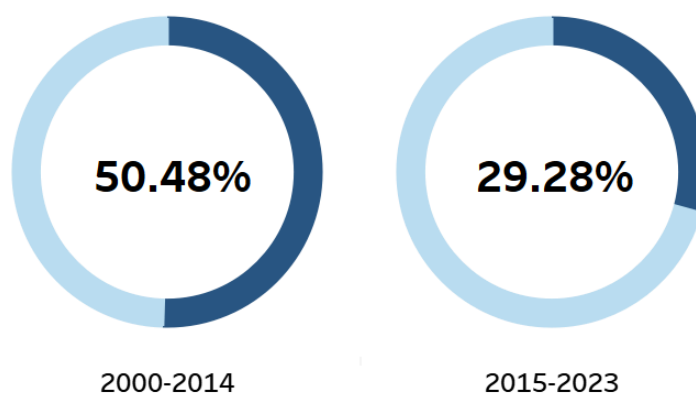
<sup>11</sup> More cases concerning girls coming before the court does not necessarily mean that the greatest prevalence of GBV involves girls under the age of 18. There are several factors that influence this number including: greater reporting of violence against children, prosecutors taking violence against children more seriously, less societal pressure for children to reconcile with the perpetrator of the violence, and significant underreporting of violence against women.

## Gender Stereotypes

Gender stereotyping occurs where there are generalised views or preconceptions about attributes, characteristics, or roles that should be performed by specific genders.

Gender stereotypes can affect all stages of the judicial process, from the initial reporting of the crime, documentation of forensic evidence, to the investigation, prosecution, and sentencing of the perpetrator. The presence of gender stereotypes can lead to inequitable sentencing based on contentious mitigating factors.

### Gender Stereotypes Raised in Solomon Islands



**In the 2015-2023 time period, Gender Stereotypes were raised in 29.3% of the cases, including being raised by judicial officers in 26% of cases.**

A Magistrate’s Court decision from 2019 provides an example of a common gender stereotype relied upon in sentencing in the Solomon Islands. In *R v Ramai* [2019]<sup>12</sup>, the magistrate decided a sentence for a domestic violence case involving a husband and wife. The husband grew jealous of his wife spending time with others, and one night he assaulted her. The magistrate identified that there was a pattern of threats over years and that “she was living in fear most of the time.”<sup>13</sup>

The magistrate sought to speculate on the possible causes of the dispute and attributed some blame to the wife, the victim, due to her drinking alcohol and spending time with friends who are not family members. From a starting sentence of 22 months, the magistrate reduced the sentence by 25% for a guilty plea, 4 months for a lack of criminal history (despite the acknowledged pattern of offending), and 6 months for a letter indicating that reconciliation had taken place. The final sentence was 5 months imprisonment. Often, a lower starting sentence can be attributed to the court weighing the gender stereotype (what a proper wife should be doing) as a form of provocation. This is extremely harmful and undermines the rule of law because it provides a form of justification to act violently.

<sup>12</sup> *R v Ramai* [2019] SBMC 33, <https://www.paclii.org/cgi-bin/sinodisp/sb/cases/SBMC/2019/33.html?>

<sup>13</sup> *Id.*, at para. 4.

**Rape myths:** prejudicial, stereotypical or false beliefs regarding rape, and characteristics of rape victims and rapists. Examples include:

- Women provoke rape by the way they dress or act.
- Only certain types of women are raped.
- If she didn't scream, fight, or get injured, it wasn't rape.
- There is a "right way" to respond to rape.
- A man cannot rape his wife.
- A man cannot rape someone with whom he has previously had consensual sex.

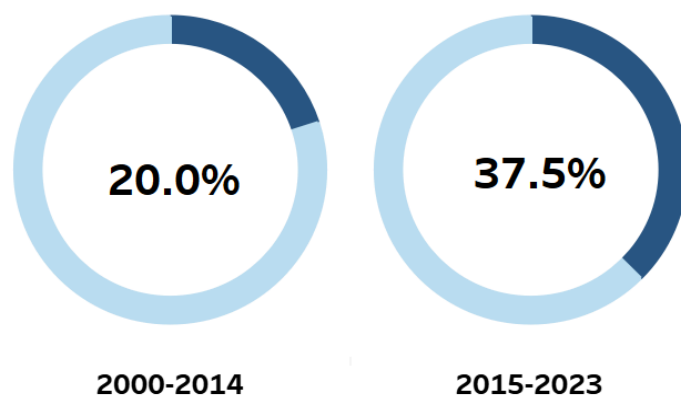
As an example in a sexual violence case, in *R v Velo* [2021]<sup>14</sup>, the judge relied upon gender stereotypes, specifically rape myths and victim-blaming in coming to a sentencing decision. In the case, the 44 year old perpetrator was convicted of sexual intercourse with a girl under 15 years of age and an indecent act on a girl under 15 years of ages, the victim being his 12 year old niece.

In the facts of the case, the judge noted that "[a]t that time the Complainant was wearing a very short trouser and exposed her thighs. This exposé [sic] or situation made the Defendant to an erection [sic] which led him to ask her for sex."<sup>15</sup> The defendant was given credit for first-time offender status and reconciliation, and the judge imposed a sentence of 5 years, of which he suspended the final 2 years.

### *Sole Breadwinner Argument*

The Solomon Islands has a high rate of a specific Gender Stereotype raised in sentencing, the Sole Breadwinner Argument. This is the notion that a perpetrator's sentence warrants reduction on the grounds of his family's economic dependence on him as a sole or main source of income for the family.

**Use of Sole Breadwinner Argument in DV cases in Solomon Islands**



<sup>14</sup> *R v Velo* [2021] SBHC 31, <https://www.paclii.org/cgi-bin/sinodisp/sb/cases/SBHC/2021/31.html>.

<sup>15</sup> *Ibid.*

In the Solomon Islands, this argument was used to justify sentence reductions in 10.8% of all GBV cases. Even in domestic violence cases in which the violence is caused by the sole breadwinner and directed against the supposed benefactors, this argument was applied in 37.5% of 2015-2023 cases.

As an example, in *Regina v Zonga* [2019]<sup>16</sup>, the accused threatened, beat, and raped his 17 year old daughter over the course of five months and was charged with one count of incest and one count of common assault. This Magistrate's Court decision failed to account for the relevant provisions of the Family Protection Act 2014.

The judge found a starting sentence of six years concurrent with a three year starting sentence for common assault. In mitigation, the judge granted a 30% discount for the accused's guilty plea and remorse and additional allowance for his first time offender status and Sole Breadwinner status.<sup>17</sup> The accused, the victim's father, is also given credit for being married with five children, which showed to the judge that he has "huge family responsibilities on his hand [sic]."<sup>18</sup> The final sentence was four years imprisonment.

The impact of incarceration certainly extends beyond the perpetrator and loss of income to households can cause unnecessary harm to families and victims/ survivors. However, identifying this argument applied by the courts allows us to zoom in on the role of the courts. The wellbeing of perpetrators' families is an important policy concern; however, a systems approach to GBV allows us to distinguish the role of the courts from the role of other government institutions which are better positioned to offer social services and welfare to both victims/ survivors and offenders. In the Solomon Islands, for example, the Social Welfare Division oversees the After Care Support for Prisoners' Families program which aims to fill that gap created from the incarceration of a sole breadwinner.

### *Misapplication of First-time Offender Status*

The TrackGBV data also points to additional procedural barriers to consistency and accountability, including the misapplication of first time offender status. 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.

---

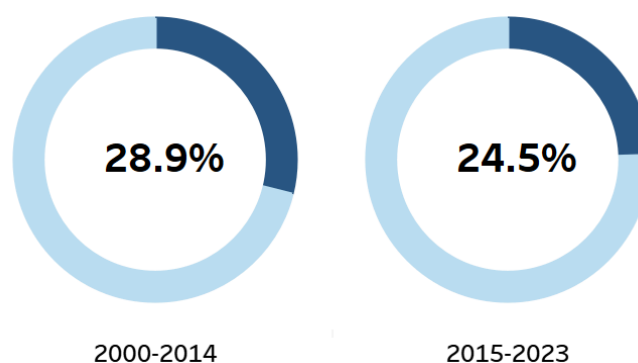
<sup>16</sup> *R v Zonga* [2019] SBMC 12, <https://www.paclii.org/cgi-bin/sinodisp/sb/cases/SBMC/2019/12.html?>.

<sup>17</sup> *Ibid.*, para. 27.

<sup>18</sup> *Ibid.*

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 concerning. **In the 2015-2023 time period, there was a misapplication of first time offender status in nearly one in four cases (24.5%).**

### Misapplication of FTO Status in Solomon Islands



As an example, *R v Maesiwari* [2019]<sup>19</sup> involved the 61 year old perpetrator raping the 12 year old victim on four separate occasions. He was charged with four counts of defilement, and the judge acknowledged the pattern of offending. The perpetrator also had a previous alcohol related conviction 39 years prior. Still, the judge granted the perpetrator first time offender status in addition to credit for his guilty plea, the delay in hearing the case, and his age resulting in a concurrent sentence of 6 months. The pattern of offending has been stipulated in the case and recognised by the court, yet, each separate act of offending occurring in the past is not recognised as a previous offence by the court. This is problematic when providing an offender with a first time offender discount in sentencing and goes against the very spirit of the law.

### Customary Practices

While customary law is subordinate to the Constitution and legislation, it plays an important role in the Solomon Islands. Customary practices like reconciliation and compensation play a critical role in restoring relationships and peace following violent incidents. However, when considering the role these practices should play in the courts, CEDAW notably requires states to:

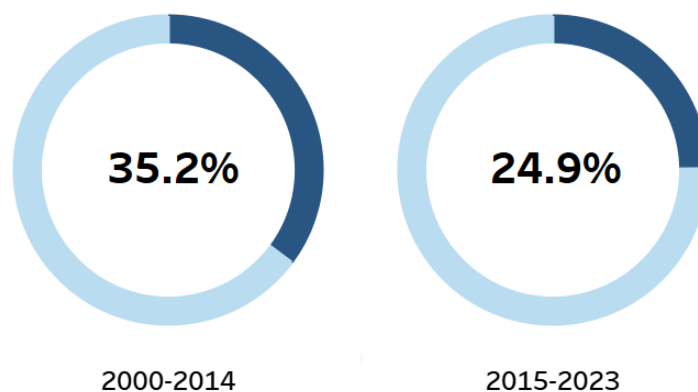
“Take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”<sup>20</sup>

<sup>19</sup> *R v Maesiwari* [2019] SBHC 67, <https://www.pacii.org/cgi-bin/sinodisp/sb/cases/SBHC/2019/67.html?>

<sup>20</sup> United Nations General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, art. 2(f) (18 December 1979), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-aga-inst-women>.

The CEDAW Committee’s concluding observations on the Solomon Islands in 2014 noted a concern over the use of community dispute settlement, and especially that settlement proceeds were not directed to the victim. The Committee recommended active discouragement of the use of mediation and monitoring of customary reconciliation.<sup>21</sup>

### Customary Practices Raised in Solomon Islands



In the most recent time period of 2015-2023, customary practices were raised in 24.9% of GBV cases. The Magistrates’ Court Act 1996 allows magistrates to promote reconciliation in cases of common assault<sup>22</sup>, and this is reinforced in the Magistrates Bench Book 2004.<sup>23</sup> The introduction of the Family Protect Act 2014 made it clear that compensation is not a defence for committing domestic violence;<sup>24</sup> however, the legislation does not prevent the promotion of reconciliation or its use in mitigation.

The use of reconciliation and compensation as mitigating factors extends to sexual violence cases. In *R v Gaugela* [2022]<sup>25</sup>, the 19 year old offender raped a 13 year old girl. He pled guilty to one charge of sexual intercourse with a child under the age of 15. The judge identified a starting point of 5 years and reduced the sentence by 20 months for the guilty plea and remorse, by 12 months for his youth and for the reconciliation and compensation, and by an additional 4 months for personal circumstances including that he is a single man with no prior convictions.

Additionally, the judge suspended the sentence in full because, despite acknowledging the law and precedent stating that children cannot consent to sexual intercourse, the judge said she was a “willing participant.”

The case law analysis revealed a recent trend in cases of sexual intercourse with children (under the Penal Code Amendment Act (2016)) in which the victim/ survivor’s perceived “consent” is used by the judicial officer to reduce sentences.<sup>26</sup>

The Penal Code Amendment Act (2016) specifies that for the offences of sexual intercourse or indecent act with a child under 15 (s 139) and sexual intercourse or indecent act with a

<sup>21</sup> *Supra* note 4, at 8.

<sup>22</sup> *Magistrates’ Court Act 1996*, Part IV, s 35 (1).

<sup>23</sup> *Solomon Islands Magistrates Bench Book*, at 158 (April 2004), <https://pjsp.govt.nz/assets/PJSI-Benchbooks/Solomon-Islands-The-Magistrates-Court-2004.pdf>.

<sup>24</sup> *Family Protection Act 2014*, No. 15 of 2014, Part 6, s 58 (3).

<sup>25</sup> *R v Gaugela* [2022] SBHC 128, <http://www.pacii.org/sb/cases/SBHC/2022/128.html>

<sup>26</sup> *Solomon Islands Penal Code (Amendment) (Sexual Offences) Act 2016*



child under 18 (s 140) that consent is not a defence. Further, section 136A defines clearly what consent means and when consent is not present.

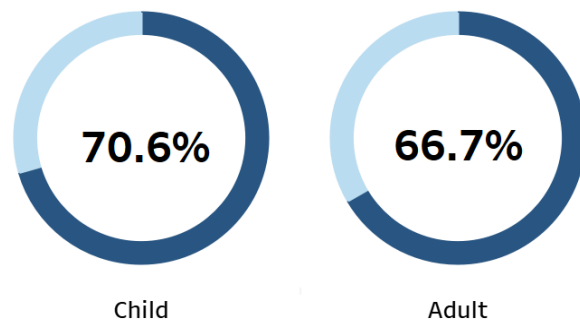
There are a number of recent cases in which consent is not being applied as a defence but it is used for weighty mitigation in sentencing. This transgresses the spirit of the law and constitutes gender discrimination.

### *Additional Justice Sector Delivery Challenges*

The TrackGBV data also points to additional procedural barriers to access to justice, namely the lack of victim/ survivor anonymity and the lack of medical reports cited in sentencing.

The lack of **victim anonymity** persists in the Solomon Islands courts. Between 2015 and 2023, victim anonymity was not maintained for child victims in 70.6% of cases and for adult victims in 66.7% 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.

**Anonymity not maintained in Solomon Islands**



The limited references to **medical reports** in sentencing decisions is also notable, demonstrating a potential gap in the use of medical evidence by the judiciary in the Solomon Islands. Medical reports serve as compelling evidence pointing to the severity of a crime and often have a strong influence on sentencing. Across the two time periods, there was a decrease in the percentage of sentencing decisions referencing medical reports from 30.5% to 16.8%, which can significantly impact accountability and create additional barriers to accessing justice.

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.

## Recommendations

In May 2024, 20 representatives from SAFENET<sup>27</sup>, the Solomon Islands GBV referral network, came together for a Train-the-Trainers program, “TrackGBV Solomon Islands: Improving Access to Justice for Gender-based Violence Cases,” facilitated by ICAAD and hosted by the Ministry for Justice and Legal Affairs (MJLA) and the Ministry for Women, Youth, Children, and Family Affairs (MWYCFA).

In the training, participants developed a set of policy recommendations based on the TrackGBV and their own insights across the SAFENET. Participants highlighted the need for safety, non-discrimination, human rights, survivors’ needs, confidentiality, respect, and trust to underpin the sentencing of GBV cases.

- **Develop a Sentencing Bill** with specific guidelines for sentencing ranges for gender-based violence offences (rape, domestic violence, etc.).
  - **Require custodial sentences** for convictions involving GBV.
  - **Increase sentencing starting points** within a new Sentencing Bill and in the review of the Family Protection Act to be in line with best practices in the region.
- **Develop practice directives** for judges and magistrates to reduce the influence of contentious factors on the sentencing of GBV cases.
  - **Eliminate the use of gender stereotypes in sentencing**, particularly victim-blaming and myths that result in gender-based discrimination when applied in mitigation.
  - **Eliminate the use of the sole breadwinner argument as a mitigating factor** in GBV cases given the After Care Support for Prisoners’ Families offered by the Social Welfare Division.
    - **Increase funding to the Social Welfare Division** to meet the needs of families of prisoners through the After Care Support for Prisoners Families program and ensure survivors and their families are made aware of this support.
    - In cases in which the sole breadwinner faces a custodial sentence, judges should advise victims/ survivors of the support available to them from Social Welfare.

---

<sup>27</sup> Participants were from the following organisations and agencies: Ministry for Justice and Legal Affairs; Ministry for Women, Youth, Children and Family Affairs; Honiara City Council; National Referral Hospital; Seif Ples; Social Welfare Division; Office of the Director of Public Prosecutions; Hope Trust; Ministry of Commerce, Industry, Labour, and Immigration; Solomon Islands Planned Parenthood Association

- **Clearly define first-time offender status**, so that this mitigating factor is not applied when there is evidence or credible testimony to indicate that there was a previous pattern of offending even when there is no prior conviction.
- **Eliminate the use of customary practices (example reconciliation and compensation) as a mitigating factor in GBV cases.**
- **Build the capacity of judges and magistrates** to better understand the impact of gender bias on sentencing outcomes and their obligations under the Constitution and CEDAW to prevent gender discrimination.
- **Increase research and funding support** for:
  - comprehensive rehabilitation programs for perpetrators, and
  - the gaps leading to case clearance delays.
- **Ensure that all cases from the Magistrate Court, High Court, and Court of Appeal are anonymised and uploaded to PaclII** (Pacific Islands Legal Information Institute) to ensure transparency from the courts.
- **Monitor sentencing data** by organising final sentences by specific offences, disaggregated by gender.
- **Build the capacity of health and legal professionals** to handle, present, and interpret medical evidence in GBV cases through a medico-legal train-the-trainers program.
- **Continue to train all key stakeholders on gender bias and discrimination in GBV cases**, including the Police, Public Solicitor's Office, Family Support Centre, Social Welfare Division, Christian Care Centre, Empower Pacific, PWDSI (People with Disabilities Solomon Islands), the Solomon Islands Bar Association, the Attorney General's Office, Law Reform Commission, all SAFENET members, so all key stakeholders are empowered to support increased transparency, consistency, and accountability.

There are also important areas for further research that can be done by judiciaries and key stakeholders. One area of particular importance for monitoring effective justice sector delivery is recidivism rates which can be analysed between the judiciary, police, and the Correctional Service while maintaining anonymity in the data.

This analysis offers a deeper dive into some of the trends over time and examples from what is available on the Dashboard. The regional analysis allows for comparison across jurisdictions and some trends over time; however, stakeholders may have additional questions to support their work towards improving access to justice for women and girls.

For more information, navigating the 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)).



[www.icaad.ngo](http://www.icaad.ngo)