

Stereotypes reducing sentences for gender violence in Pacific courts

By Sienna Lake

A report released late last year from the [International Centre for Advocates Against Discrimination](#) (ICAAD), a US legal NGO, outlines the significant obstacles to justice faced by survivors of sexual and gender based violence (SGBV) in Pacific courts.

The report, '[An Analysis of Judicial Sentencing Practices in SGBV Cases in the Pacific Island Region](#)' [pdf], was released in December and examined 908 sentencing records of sexual assault and domestic violence cases from Fiji, Solomon Islands, Tonga, Papua New Guinea, Kiribati and Vanuatu.

The report analysed the judicially sanctioned acceptance of 'contentious factors' raised by the defendant during court cases as a means of reducing sentence length for perpetrators of SGBV.

These 'contentious factors'—defined by the report as those which, when used in determining culpability by the court, discriminate against survivors on the basis of gender—included whether the perpetrator was the 'bread-winner' for their family, alleged 'provocation' by the survivor, and participation in customary reconciliation ceremonies.

The application of these contentious factors, raised in 75 percent of cases examined by the report, was used by the judge to justify a sentence reduction in just over half of cases.

The report finds the ‘bread-winner’ argument most problematic, especially in domestic violence cases. When a man’s role as a provider for the family is considered, the focus shifts from achieving justice for the survivor to ensuring the perpetrator’s family is not punished for their actions. Courts also often fail to acknowledge the potential danger to the family if the perpetrator were to return.

The bread-winner argument was successfully argued in 26 percent of cases examined, but the number was as high as 39 percent if the bread-winner argument was raised in tandem with other contentious factors. (The perception that women depend on their partners for socioeconomic reasons was also found to impede their access to justice in a recent [report](#) examining gender violence in Timor-Leste.)

Customary law was another area of concern. The constitutions of the majority of Pacific countries examined state that customary law can be taken into account by judges in sentencing. Customary reconciliation practices can include compensation payments (usually to the father of a survivor or village chief), formal apology and acceptance, physical punishment by a village chief or the family of the survivor, destruction of the perpetrator’s property as a form of retribution, or banishment from the village.

The report found that in cases where customary reconciliation was put forward as a mitigating factor by the defence (with 20-49 percent of defendants claiming they had performed or would undertake customary reconciliation), 36 percent of perpetrators had their sentence reduced. In addition to this, these cases were more than twice as likely to result in a non-custodial sentence than cases that did not consider contentious practices.

‘Rape myths’ were found to further obstruct justice. Sentences were reduced in 14 percent of cases where these were raised by the defendant, with perpetrators claiming defences such as: the survivor had previous sexual partners, so was not as affected by the sexual assault; that the event didn’t psychologically harm the

survivor (seldom backed by evidence); or that the survivor didn't run away, or report the sexual assault earlier, making her complicit or partly to blame.

A variety of other contentious factors were also raised in the cases examined by the report. For example, in domestic violence cases, provocation, such as a wife arguing with her husband, was at times used as a factor in sentencing. In some sexual assault cases, the fact that the survivor did not contract any sexually transmitted infections or was not injured or impregnated meant that the perpetrator's sentence may be decreased by the judge. Reductions sometimes applied if the perpetrator started attending church after the attack or was drunk at the time of the attack.

While the reverse of some of these could constitute an aggravating factor, the report notes that their use as mitigating factors is dangerous because the malice and intent behind the attack remains unchanged.

The report calls for greater consistency of judicial sentencing practices across Pacific countries and for the removal of culturally-driven gender bias in SGBV cases, which only adds to inequality in the region and places Pacific women at further risk.

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