

# Family protection orders in the Pacific region

Report from a symposium held in December 2021

Edited by Judy Putt and Lindy Kanan



Australian  
National  
University

Department of  
Pacific Affairs



Pacific  
Community  
Communauté  
du Pacifique



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# Abbreviations

ALFeLa	Asisténsia Legál ba Feto no Labarik	MJLA	Ministry of Justice and Legal Affairs
ANU	The Australian National University	MWYCFA	Ministry of Women, Youth, Children and Family Affairs
AP	Authorised person	NHRI	National Human Rights Institute
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women	PIC	Pacific Island country
COVID-19	Coronavirus Disease of 2019	PIFS	Pacific Islands Forum Secretariat
CRC	Convention on The Rights of The Child	PJDP	Pacific Judicial Development Programme
CSO	Civil society organisations	PJSI	Pacific Judicial Strengthening Initiative
DFAT	Department of Foreign Affairs and Trade	PNG	Papua New Guinea
DFV	Domestic and family violence	PO	Protection order
DV	Domestic violence	PSN	Police safety notice
DVRO	Domestic violence restraining order	PSO	Police safety order
EHFV	Eastern Highlands Family Voice	PSO	Public Solicitor's Office
EVAW	Elimination of violence against women	PTA	Parent Teacher Association
EVAWG	Eliminating violence against women and girls	PWNAVAW	Pacific Women's Network Against Violence Against Women
FLARE	Feminist Learning Advocacy Research and Empowerment	RTP	Regional Training Program
FPA	Family Protection Act	RWG	Regional Working Group on the Implementation of Domestic Violence/ Family Protection Legislation
FPO	Family protection order	SARV	Sorcery accusation-related violence
FSC	Family Support Centre	SIFPA	Solomon Islands Family Protection Act
FSM	Federated States of Micronesia	SPC	Pacific Community
FSV	Family and sexual violence	TPO	Temporary protection order
FSVU	Family Sexual Violence Unit	UPR	Universal Periodic Review
FWCC	Fiji Women's Crisis Centre	VAPJP	Vanuatu-Australia Policing and Justice Program
FWRM	Fiji Women's Rights Movement	VAW	Violence against women
GBV	Gender-based violence	VAWG	Violence against women and girls
HRSD	Human Rights and Social Development	VWC	Vanuatu Women's Centre
IPO	Interim protection order	WCCC	Women and Children's Crisis Centre
JP	Justice of the peace		
JSS4D	Justice Services and Stability for Development program		
LGBTQI+	Lesbian, gay, bisexual, transgender, queer and intersex		







## Contributors

Author biographies are listed here in alphabetical order of last name.

### Ms Kiungui-Kepa Be'Soer

Ms Kiungui-Kepa Be'Soer is the legal adviser with Voice for Change, Jiwaka Province in Papua New Guinea. Ms Be'Soer completed her law degree at the University of Papua New Guinea. Her role involves providing legal advice and assisting to prepare legal documents for the women and girls who seek support from Voice for Change, including helping with interim protection orders and family protection orders.

### Ms Olinda Cardoso

Ms Olinda Cardoso is the program manager for Asisténsia Legál ba Feto no Labarik (ALFeLa)—Legal Aid for Women and Children, Timor Leste. She is responsible for organisational development, donor relationships and compliance, and monitoring and evaluation. Ms Cardoso works closely with lawyers and legal officers at ALFeLa and is deeply engaged with the sector and stakeholders working on the rights of women and children related to the justice system in Timor Leste.

### Ms Stephanie Dunn

Ms Stephanie Dunn is a lawyer by profession and has an extensive background in litigation work within the family, civil and criminal law jurisdiction in Fiji. As a legal and advocacy officer with the Fiji Women's Crisis Centre, Ms Dunn has facilitated training in Fiji and the Pacific exploring laws to help end violence against women and the associated challenges. Ms Dunn is a part of the Asia Pacific Forum on Women, Law and Development through its Pacific Sub-regional committee, Regional Council and the Program Organising Committee of the Feminist Law and Practice Program as a member and focal person.

### Ms Catherine Evans

Ms Catherine Evans is a lawyer and patron of Punanga Tauturu Inc. (Women's Counselling Centre) in the Cook Islands. Ms Evans qualified with a bachelor of laws from Auckland University in 2001 after having five children. Ms Evans has practised as legal adviser to government entities in New Zealand and the Cook Islands, lately as deputy solicitor-general. Ms Evans has worked in private practice in New Zealand and now in the Cook Islands. Ms Evans has worked across a variety of law topics including family and domestic violence, employment, public and administrative law, Cook Islands land law, commercial, large contracts, anti-money-laundering and counter-terrorist financing and United Nations anti-corruption work. She is the founding chairperson of Tauranga Aka'Au (Mediation Centre Inc.) established in 2019 and has mediated a number of disputes.

### Ms Johanna Gusman

Ms Johanna Gusman is a human rights and social inclusion adviser with the Pacific Community. Ms Gusman

previously held roles as a visiting research scholar at Georgetown University Law Center focusing on global health and human rights, especially for vulnerable populations including women and girls. Ms Gusman has also served as a visiting researcher at Oxford University (Mansfield College) hosted by the Bonavero Institute of Human Rights working on facilitating access to justice where there is a perceived power imbalance in civil liability systems. Ms Gusman has worked around the globe with the World Health Organization as a focal point on the cross-section of gender, human rights and trade/investment.

### Ms 'Ofa-Ki-Levuka Guttenbeil-Likiliki

Ms 'Ofa-Ki-Levuka Guttenbeil-Likiliki is a filmmaker and a human rights advocate for women and children in Tonga and across the Pacific. Ms Guttenbeil-Likiliki is the director of the Women and Children Crisis Centre in Tonga, which she helped establish in 2009, and was awarded the Pacific Community's (SPC) Human Rights Award in 2010 and again in 2014. Ms Guttenbeil-Likiliki has been nominated twice (2012, 2013) for the US Secretary of State International Women of Courage Award for her activism and advocacy for women and children's rights in Tonga. She is also a seasoned trainer in gender, human rights and ending violence against women in the Pacific.

### Dr Fiona Hukula

Dr Fiona Hukula is the gender specialist at the Pacific Islands Forum Secretariat (PIFS). Dr Hukula's role at PIFS includes leading on the PIFS component of the Pacific Partnership to End Violence Against Women and Girls. Her role also involves working closely with civil society networks and Pacific governments to roll out and support policies relating to gender equality. Prior to joining the PIFS in April 2021, Dr Hukula was a senior researcher with the Papua New Guinea National Research Institute and deputy chair of the Papua New Guinea Constitutional and Law Reform Commission. She has over 20 years experience as a policy and social researcher working in the area of gender, informal justice and urban sociality. Dr Hukula received a PhD in social anthropology from the University of St Andrews, Scotland, in 2015.

### Inspector Lily Joel

Inspector Lily Joel is the officer in charge of the Family Protection Unit in the Vanuatu Police Force.

### Ms Lindy Kanan

Ms Lindy Kanan is a senior research officer at the Australian National University's Department of Pacific Affairs. She works on projects relating to gender, domestic violence, safety, wellbeing and Pacific labour mobility. Ms Kanan previously worked as an assistant director in the Family Violence Programs Section at the Australian Attorney-General's Department and chief executive officer of Friends of Femili PNG. She is an experienced international development practitioner and has lived and worked in Vanuatu, Papua New Guinea,

India, Bangladesh and Sri Lanka. She has worked for the United Nations, the Vanuatu Skills Partnership and various non-government organisations including Oxfam and Childfund.

### **Ms Luania Kirori**

Ms Luania Kirori is a founding member of the Eastern Highlands Family Voice. Ms Kirori has maintained her passion for human rights and empowerment for over 20 years, working in the government and community sectors, including volunteering with the Young Women's Christian Association and as the chief commissioner for PNG Girl Guides (2005–6). In 2013, she obtained a diploma in guidance and counselling from the University of Goroka. She has shown leadership, dedication, and an ability to find solutions and build strategic relationships. Ms Kirori is particularly passionate about building the confidence of young girls and women in Goroka.

### **Senior Magistrate 'Elisapeti Makoni Langi**

Senior Magistrate 'Elisapeti Makoni Langi was appointed to her current role in the Tongan judiciary in 2018. As senior magistrate, one of her tasks is to rule on applications for protection orders and enforce orders regarding custody and child support. Prior to being appointed as a senior magistrate she was an acting supreme court judge and assistant senior crown counsel in Tonga. Senior Magistrate Langi was awarded an Australian Leadership Award in 2014 and studied a masters of criminology at the University of Sydney.

### **Mr Aaron Mane**

Mr Aaron Mane is the senior legal officer for Family Support Centre, Solomon Islands. He graduated with a bachelor's degree in law at the University of the South Pacific. In 2005, Mr Mane joined the Public Solicitor's Office for eight years before resigning to contest in a provincial election, where he was the runner-up. In 2014, he joined the Family Support Centre as the in-house lawyer. He provides advice and legal representation in courts for survivors/victims of domestic violence, including travelling to provincial centres if there is any call about urgent or serious domestic violence matters that needs a protection order.

### **Ms Neomai Maravuakula**

Ms Neomai Maravuakula is the team leader, Governance and Institutional Strengthening at the Pacific Community (SPC). She has been with SPC for over eight years providing technical support to countries in the region on various human rights and development issues. Ms Maravuakula began her career as a lawyer in private practice in Fiji and later worked with the Fiji Women's Rights Movement with a focus on family law, ending violence against women and human rights in Fiji and across the region. She has over 10 years experience supporting countries in the region on human rights, gender equality and development.

### **Ms Tatavola Mataskelekele**

Ms Tatavola Mataskelekele is the coordinator and principal legal officer at the Vanuatu Women's Centre (VWC). She manages and coordinates the work of the VWC. She is a registered legal practitioner at the Supreme Court of Vanuatu. She has worked at the VWC for 11 years providing legal advice and representation to women and children, enabling them to access the formal justice system. She believes in human rights and that everyone is born equal, despite one's status in society, thus she is a human rights advocate. She also facilitates training on gender relations, gender-based violence, human rights and the law to local community groups, and interested government and non-government institutions as part of VWC's human and legal rights lobbying and advocacy towards gender equality. Ms Mataskelekele graduated with a bachelor of laws in September 2008, a graduate diploma in legal practice in December 2008 at the University of the South Pacific, and a masters of law from The Australian National University in 2019.

### **Ms Radhika Naidu**

Ms Radhika Naidu has over 16 years experience and is admitted to practice in both New South Wales and Fiji. She joined Sherani & Co. post admission, where she worked for over 13 years specialising in complex estate matters, commercial work, family cases, conveyance, trademarks, etc. Ms Naidu has appeared in all courts and tribunals in Fiji and is a renowned female litigator. Ms Naidu was also president of the Fiji Women Lawyers Association for several years until 2018. In 2019 Ms Naidu joined Australian law firm Legal on London, with offices in Canberra and Sydney. Legal on London has since opened a sister branch in Lautoka — Radhika Reddy Law. Ms Naidu works for all three offices.

### **Ms Swastika Narayan**

Ms Swastika Narayan was admitted to the Fiji Bar of Legal Practitioners in 2009. She has been a partner in a prominent law firm based in Suva, Diven Prasad Lawyers, for several years and she now runs her own practice — Swastika Legal, based in Suva, Fiji. Ms Narayan practises civil litigation largely involving commercial transactions, company disputes, property law, wills and estates, family law and insurance. She is an author of the journal article 'Racial Discrimination in Fiji' (Journal of South Pacific Law, 2008). She previously served as a council member and treasurer for the Fiji Law Society. She currently serves as a council member and treasurer for Fiji Women Lawyers Association. Outside her professional roles, Ms Narayan likes reading, dancing and spending time with her babies.

### **Ms Tracey Newbury**

Ms Tracey Newbury is a senior program manager with the International Women's Development Agency. She previously worked with the Australian Government's aid program, including as manager of Pacific Women

Shaping Pacific Development, and was posted in Papua New Guinea and Vietnam. Ms Newbury also worked for UNAIDS and UNHCR. She has an undergraduate degree in development studies and anthropology and a graduate diploma in public health from The Australian National University. Ms Newbury is on the board of the Australian Capital Territory Domestic Violence Crisis Service.

### **Ms Vaela Ngai**

Ms Vaela Ngai is the director of the Women's Development Division, Ministry for Women, Youth, Children and Family Affairs in Solomon Islands.

### **Ms Lisepa Paeniu**

Ms Lisepa Paeniu is the acting senior prosecutor in the Office of the Attorney General in Tuvalu. She has been a Tuvalu government lawyer since 2015 and has a range of experience in legal drafting, prosecution, legal training and providing legal advice to all government departments. Ms Paeniu has represented Tuvalu at various regional and international meetings.

### **Dr Judy Putt**

Dr Judy Putt is currently employed as a senior research fellow in the Department of Pacific Affairs at The Australian National University. With degrees in anthropology and criminology, Dr Putt has extensive applied experience in policy, practice and research. Her notable achievements relate to supporting efforts to improve personal and community safety and the justice system, addressing transnational resource and trafficking crimes, and using collaborative and participatory mixed research methodologies. In the past five years, she has been involved in major research projects related to addressing family and sexual violence, most notably in Papua New Guinea.

### **Ms Mele Rakai**

Ms Mele Rakai is currently president of the Fiji Women Lawyers Association and has held this position since 2019. She is also member of the Fiji Law Society Council. Ms Rakai is a partner of Sherani & Co., a law firm based in Suva and she has over 14 years of experience practising law in Fiji.

### **The Hon. Honora E. Remengesau Rudimch**

Justice Honora E. Remengesau Rudimch was first appointed to the Palau Court of Common Pleas in 2005 and was the only judge in this court for 15 years. After the Family Protection Act was enacted in 2012, and the Court of Common Pleas designated as the first instance court for civil protective order cases, she has worked on the implementation of this Act, conducting public outreach and raising awareness on the prevalence of domestic violence and coordinating assistance and training in Palau. On 8 February 2021 she was appointed as a justice of the Trial Division of the Palau Supreme Court.

### **Ms Koisau Sade**

Ms Koisau Sade is a senior policy officer in the Women's Development Division of the Ministry for Women, Youth, Children and Family Affairs in the Solomon Islands.

### **Mr Tevita Seruilumi**

Mr Tevita Seruilumi is a lawyer and works as an adviser in PNG to strengthen the investigation and prosecution of violence against women. He works with the Family and Sexual Violence Units, Sexual Offences Squad, Criminal Investigation Division and police prosecutors within the police and Office of the Public Prosecutor. He also provides technical advice to the Department of Justice and Attorney General on the Family Protection Act, including implementation and amendments and developing training. He has extensive experience advising and training the judiciary in the Pacific on strengthening responses to violence against women. Mr Seruilumi developed and piloted a perpetrator program which aligns to best practice and prioritises women's safety.

### **Ms Cate Sumner**

Ms Cate Sumner has worked in the Middle East, Asia and the Pacific and her career spans working with the international law firm Baker & McKenzie in Cairo, the United Nations Relief and Works Agency in the Gaza Strip and Jerusalem, the Department of Foreign Affairs and Trade in Canberra, and the International Development Law Organisation in their offices in Manila and Sydney. In 2005, Ms Sumner established Law & Development Partners (L&DP) to work on access to justice, legal identity and judicial reform programs across Asia and the Pacific. L&DP's focus is on improving access to justice for women, children and people with a disability.

### **Ms Moliei Simi Vaai**

Ms Moliei Simi Vaai is the chief executive officer of the Ministry of Justice and Court Administration in Samoa and chair of the Regional Working Group on the Implementation of Family Protection/Domestic Violence Legislation.

### **Ms Polly Walker-Dorras**

Ms Polly Walker-Dorras is a senior project officer with the Vanuatu-Australia Policing and Justice Program.

### **Mr Miles Young**

Mr Miles Young is the director of the Human Rights and Social Development Division at the Pacific Community, based in the organisation's regional office in Suva, Fiji. Born and raised in Fiji, he has over 20 years of professional experience in the Pacific, Asia and Africa. Mr Young has worked in a variety of areas including access to justice, legal aid, education, legal and economic empowerment of communities, women's rights and gender equality, constitution-making, judicial administration, human rights, international trade law, agriculture, biosecurity and pesticides.





# 1. Introduction

Lindy Kanan and Judy Putt

## The symposium

On 9 December 2021, the Pacific Community (SPC) and The Australian National University (ANU) co-convened a virtual ‘Symposium on family protection orders in the Pacific region’.<sup>1</sup>

The symposium brought together expertise from across the region, including from the Cook Islands, Fiji, Samoa, Palau, Papua New Guinea (PNG), Solomon Islands, Timor Leste, Tonga, Tuvalu and Vanuatu.

The chapters of this publication are based on the presentations that were given at the event, and provide insightful accounts of how family protection orders and domestic and family violence (DFV) response systems are working across the Pacific.

The speakers contributed a rich array of expert perspectives and included lawyers, judicial officers, academics, police officers, government officials, and representatives from specialist DFV services, regional bodies and aid projects.

## Family protection orders

The Pacific region has some of the highest rates of DFV in the world. Family protection orders are a relatively new phenomenon in the region and have been introduced as part of legislation to address DFV since 2008.

In a nutshell, a family protection order is a tool that is used to protect a person from DFV. It can be issued by a court or other designated authority, depending on the legislation in place in that country. Each order will have a ‘respondent’ which is the person that the court believes may perpetrate violence in the future. The order includes conditions that the respondent has to abide by. These types of legal orders can have different names in different jurisdictions. The various names used in the Pacific include family protection order, protection order and domestic violence restraining order.

Orders can be short or long term, with some being called ‘temporary’ or ‘emergency’ or ‘interim’ orders until a more substantive or longer-term order is in place. Temporary orders that can only be issued by police also exist, such as the ‘police safety notices’ in Solomon Islands and ‘police safety orders’ in Tonga and Cook Islands.

The names of the pieces of legislation that enshrine these orders in law are reflective of Pacific cultural values, with emphasis on the family and collective safety, rather than the individual. Hence, we find an

assortment of ‘family protection’, ‘family safety’ and ‘family peace’ legislation.

A regional working group is now in place to improve implementation of the legislation. You can read more about it in chapter 2 which is authored by the working group chair, Molie Simi Vaai.

In chapter 3, Neomai Maravuakula describes some recent history of gender equality work in the Pacific region which gave rise to the creation of family protection order legislation.

## Key themes

Those who attended the symposium, and who read this collection of papers, will see that there are a number of themes that are common across countries in the region. While each country is unique with its own cultural and political nuances, these are some of the shared issues relating to family protection orders that we noted:

### Accessibility

Accessing family protection orders (or any service for that matter) can be difficult in rural and remote areas, which accounts for three-quarters of the Pacific population.<sup>2</sup> Sometimes there are no services or the cost of transport to access a service is prohibitive.

Legislation in PNG, Solomon Islands and Vanuatu uses local and/or informal justice actors to support granting of family protection orders where formal courts do not have a presence. We hear about the Vanuatu and Solomon Islands experiences respectively in chapters 9 and 13.

In chapter 16, Miles Young reminds us of the importance of improving access to justice in rural areas from an equity standpoint, even when the task may seem overwhelmingly complex and expensive.

Other discussions around accessibility included the use of telephone and email to issue orders rather than applying in person. These were used in some cases during the COVID-19 pandemic but also have a place during non-crisis times.

Lastly on accessibility, there is a need to ensure that different groups in society have equal access, including people with disability and the LGBTQI+ community, as discussed by Stephanie Dunn in chapter 6.

### Data

There is very little data and research publicly available on family protection orders in the Pacific region.

<sup>1</sup> The recordings are available online on the ANU Department of Pacific Affairs YouTube playlist ‘[Symposium on Family Protection Orders in the Pacific Region](#)’.

<sup>2</sup> The Pacific Community 22/3/2018, [Supporting Data Driven Progress towards SDGs in Pacific Agriculture and Fisheries](#).

In terms of court data, Cate Sumner explains in chapter 4 how despite this legislation now being in place in 14 Pacific countries, only four countries' courts are reporting family protection order numbers in their annual reports.

In chapter 12, Radhika Naidu, Swastika Narayan and Mele Rakai argue that access to information on previous court judgements is needed for lawyers, as well as the public.

Papua New Guinea is one country where specific research on family protection has been conducted. Judy Putt and Lindy Kanan summarise the study in chapter 15.<sup>3</sup>

In general, there is a need for more research, evidence and data on family protection orders to be collected and be made accessible.

### **Civil society**

In most countries, it is civil society groups that are taking the lead on advocacy and support services for DFV survivors. Women with access to a specialist DFV support service have a greater chance of getting a family protection order in place. In most countries, government support for DFV victim support services is lacking.

'Ofa-Ki-Levuka Guttenbeil-Likiliki provides the perspective from Tonga's Women and Children Crisis Centre in chapter 5 and Stephanie Dunn writes on behalf of the Fiji Women's Crisis Centre in chapter 6.

### **Implementation**

One of the biggest challenges is the implementation of family protection orders. While passing legislation is a huge step, it is not the final step and there is a lot of work to be done with government departments and service providers to ensure that systems and processes are in place that support the family protection order regime. Neomai Maravuakula eloquently makes this point in chapter 3.

Chapter 10, authored by Tracey Newbury, Olinda Cardoso, Kiungui-Kepa Be'Soer, Luania Kirori and Aaron Mane, describes how inadequate implementation by law and justice systems results in further vulnerabilities for people who are most in need.

### **Awareness**

Legislation is ineffective if citizens do not know it exists, or how it can assist them. Educating the public, as well as relevant service providers about family protection orders and how they work was a common theme.

In chapter 4, Honora E. Remengesau Rudimch and 'Elisapeti Makoni Langi discuss public awareness of family protection orders in Palau and Tonga respectively, from their perspectives as judicial officers.

In chapter 8, Johanna Gusman discusses the gap caused by the lack of a designated entity to take responsibility for public education on the topic in Samoa, particularly in rural areas.

### **Attitudes**

Another theme that came through strongly is the challenge around unhelpful attitudes towards DFV. A number of speakers mentioned that attitudes of police and court officials were an impediment to the success of family protection order systems.

'Ofa-Ki-Levuka Guttenbeil-Likiliki discusses patriarchal norms in Tonga in chapter 5 and the impact they have the effectiveness of orders.

In chapter 14, Tevita Seruilumi give an overview of perpetrator re-education and advocates for a Pacific approach to changing men's attitudes and behaviour.

Fiona Hukula in chapter 16 argues that at the core of addressing domestic violence is the need to challenge our own ingrained views about men and women, our roles in relationships and issues of power.

### **Policing and enforcement**

Lastly, and related to the 'implementation' point above, we heard about gaps due to poor policing and enforcement. Challenges included police taking too long to serve orders (or not serving them at all) and police not taking action when an order is breached. It was suggested that a DFV survivor is less likely to obtain a family protection order if a police service is their first point of contact with the DFV service system.

Lisepa Paeniu provides some specific examples around lack of enforcement in chapter 11 and Catherine Evans mentions the challenge around police delaying in the service of orders in chapter 7.

## **Conclusion**

While it may seem from the key themes mentioned above that there are only problems, we believe that, on the whole, family protection orders are a good thing. Research show that they can be effective in making survivors feel safe and providing protection from further harm. While they are not perfect, family protection orders do provide an important option for survivors of DFV who seek reparation through Pacific justice systems and this government-sanctioned response should not be undervalued.

Thank you to all of the people who spoke at the symposium and who contributed to this publication. Special thanks to the team at SPC who helped make the symposium possible — Neomai Maravuakula, Julieanne Wickham and William Nainima.

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<sup>3</sup> Also see Department of Pacific Affairs 3/10/2022, [New Research Released on Family Protection Orders in Papua New Guinea](#).

## 2. Opening remarks from the chair of the Regional Working Group on the Implementation of Family Protection/Domestic Violence Legislation

Moliei Simi Vaai

Bula, Namaste, Talofa lava, Kia Orana, Malo e lelei, la orana, Fakaalofa lahi atu, Taloha ni, Halo Olketa, Kam na mauri, Kia ora. Virtual greetings and a warm welcome.

I am honoured to be invited to provide the opening remarks for this symposium on protection orders, as the Chair of the Regional Working Group on the Implementation of Family Protection/Domestic Violence Legislation or the Regional Working Group as it is more commonly known.

For those who may not be familiar with the Regional Working Group let me first give you all a brief background. In 2018, the Human Rights and Social Development (HRSD) Division of the Pacific Community (SPC), convened a 'Regional Consultation on the Implementation of Domestic Violence Legislation: From Law to Practice' for senior government representatives from ministries/departments responsible for implementation of domestic violence legislation. A key outcome of this meeting was the establishment of the Regional Working Group on the Implementation of Domestic Violence/Family Protection Legislation.

Yesterday, the Regional Working Group launched the outcomes document from its 2nd Annual Meeting which was conducted in August of this year. The meeting discussed and built on key agreements and recommendations arising from the 14th Triennial Conference of Pacific Women in April 2021, regarding gender-based violence, and discussed common challenges, best practices, and ways to ensure that family protection and domestic violence legislation are responsive during times of crises. Among the key areas agreed to by members of the Regional Working Group was the need to strengthen the implementation of the region's family protection/domestic violence legislation to ensure that it is able to respond effectively during crises. The 2nd Annual Meeting of the Regional Working Group also focused its discussions on key priority areas including counselling, advisory committees/councils and monitoring and evaluation.

Hence the timeliness of this symposium on protection orders, where it allows us to discuss and consolidate the experiences and knowledge of the region in terms of the provision of protection orders for survivors. On behalf of the Regional Working Group, I wish to extend our gratitude to The Australian National University and the Pacific Community for providing this space to share and discuss.

Ladies and gentlemen, violence against women and domestic violence constitutes the most severe expression of gender-based discrimination and disempowerment of women and girls. It is a threat to democracy, peace and

security, an obstacle to sustainable development and an appalling human rights violation. It weakens social cohesion and harmony, social justice, and constitutes a heavy burden on national economies.

Those of us here in this space know the extent of domestic violence in the Pacific Islands region. It has some of the highest rates in the world and Pacific Islands governments, development partners and stakeholders in the region have continued to take measures to eliminate this problem, including passing family protection/domestic violence legislation. The Pacific Islands region has a total of 14 pieces of family protection / domestic violence legislation. These legislations establish protections mechanisms that provide for the protection of a survivor of domestic violence.

Today, we come together as a region and as key implementing partners to discuss and share, and we welcome and thank the speakers and panellists from different institutions and organisations, including government, development partners and civil society who will share with us today. It is even more crucial, particularly during this global COVID-19 pandemic. We have seen a rise in numbers of domestic violence and violence against women and girls. We need to continue to work together, and learn from each other, so that our experiences will inform and strengthen our response to domestic violence and ensure that survivors are able to access the protection that they need.

Ladies and gentlemen, before I end, I would like to once again, thank The Australian National University and the Pacific Community for convening this important and timely symposium.

Participants, including members of the Regional Working Group who are present today, I invite you to make the most of this opportunity to share and learn from each other.

Stakeholders of Pacific Islands governments – thank you so much for the continued support and solidarity to address violence against women and particularly domestic violence, as well as the support provided over the years to support the development, passage and implementation of Pacific family protection and domestic violence legislation.

Finally, please enjoy the discussions and contribute as much as you can.

Thank you and fa'afetai.





# 3. Regional overview of legislation relating to family protection orders

Neomai Maravuakula

## Abstract

Over the past 10 years the Pacific region has progressed significantly with the passing of domestic violence (DV) legislation. The legislative framework has defined domestic violence and relationships that are covered under these laws. It also provides protection measures that survivors are able to access through various modalities. It sets out specific roles for stakeholders that provide support for survivors of DV. The paper will provide an overview of regional progress with the respective legislation and the key achievements and challenges with the implementation of the law. The overview also specifically focuses on the various protection mechanisms that are available in the region and some of the broad experiences with its implementation.

As other papers in this report share specific country experiences of family protection legislation, this paper will provide an overview of the legislation across the region – on where we have come from, why a particular focus on domestic violence legislation, where we are now and some of the challenges.

In terms of violence against women in our region, many who practice or do work in this area know the realities that are faced are similar across the region. A key reason to have domestic violence and family protection legislation is the high rates of violence against women and girls. The first quadrennial report on Pacific Sustainable Development emphasises the high rates of intimate partner violence. These rates reinforced findings that are seen through the series of family health and safety studies that were undertaken in multiple countries.<sup>1</sup> For example, these studies found a high proportion of women had experienced sexual violence inflicted by their intimate partner – 63 per cent in Melanesia, 44 per cent in Micronesia and 43 per cent in Polynesia.

The development of specific legislation was one response from government. In the past we had offences that addressed violence but there was a need for specific family violence legislation. There were many factors that encouraged and supported the development of domestic violence legislation.

The momentum to end violence against women in the Pacific has multiple strands. We are fortunate in the region to have established an active women's movement, organisation or network which has been doing a lot of work to end violence against women and girls, with or without government. The momentum has included advocacy for legislation, the passage and implementation of the domestic violence laws. In the early days, Ministries for Women pushed for gender equality and an end to violence against women, which involved mapping strategies with ministers and across government. As a result, national gender and EAW (eliminating violence against women) policies were established, along with implementing regional commitments to end gender inequality and to meet commitments to international human rights treaties (such as the Convention on the Elimination of all Forms of Discrimination Against Women – CEDAW), and Universal Periodic Review (UPR) recommendations.

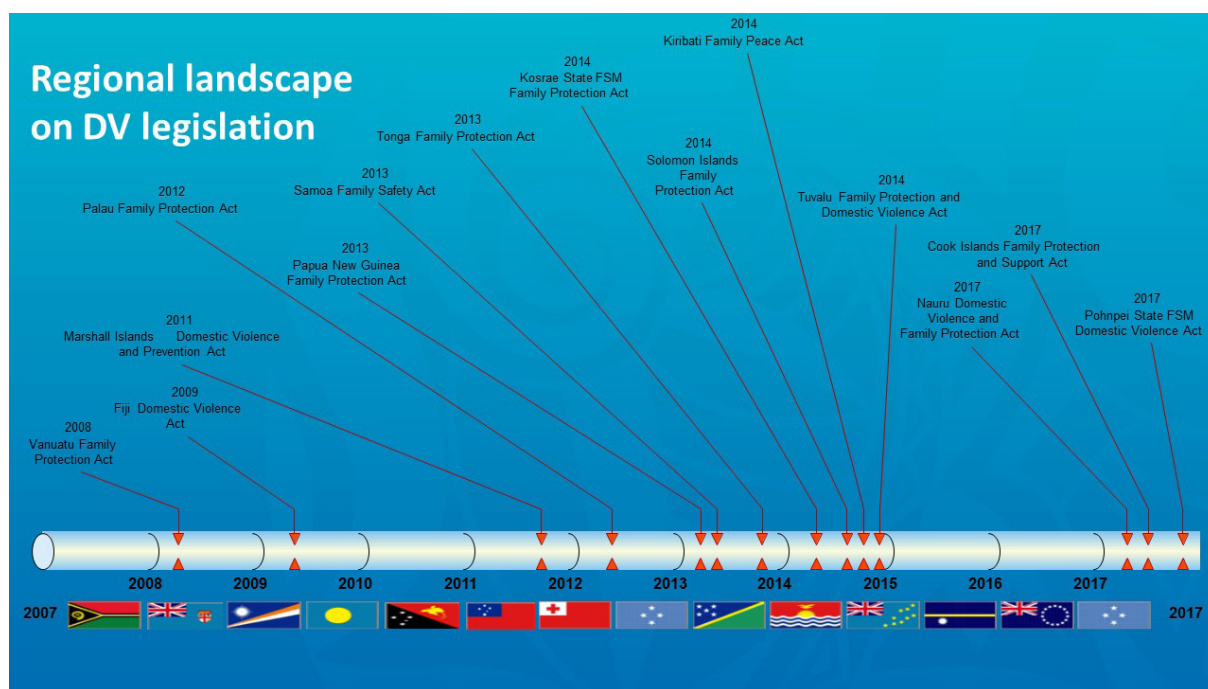
The recent triennial Pacific Women's Conference, the ministerial meeting, again focused on what our ministers for women have mapped out for the next three years. We know that through our leaders, we have the Pacific leaders gender declaration,<sup>2</sup> all of these great commitments, but we need to put into action the many words or the many commitments that our leaders have made. Our various countries are also parties to a number of international human rights treaties which look at how states can address the high rates of violence that are being experienced by not only women and girls, but other vulnerable members of our families and communities.

Through all of these various factors, and there were many others, there was a momentum by governments to look at developing or drafting their standalone domestic violence or family protection legislation. One of the things that we recognised, in the early days as we were supporting our member countries with developing the legislation, was that it was a different kind of law being brought to address an issue that, by many, is viewed as a private matter. Sometimes we were working with colleagues in countries where it was being asked: how do we do this? How do we take what families struggle with in their homes and put them in a law and have a court now deciding or have courts intervening in what was considered private? We knew that there were best practices developed around the drafting of legislation on domestic violence, and we were grateful that many of

1 Pacific Islands Forum Secretariat 2018, [First Quadrennial Pacific Sustainable Development: Report 2018](#), 12.

2 See Pacific Islands Forum 2012, [Pacific Leaders Gender Equality Declaration 30 August 2012](#), Rarotonga, Cook Islands. See SPCRRRT 2013, [Tonga: Legal Analysis on Violence Against Women: Drafting Options for Legislative Reform](#); SPCRRRT 2013, [Kiribati](#); SPCRRRT 2013, [Samoa](#); SPCRRRT 2013, [Solomon Islands](#); SPCRRRT 2013, [Tuvalu](#).

**Figure 1: Regional landscape of domestic violence legislation**



Source: Regional Working Group on the Implementation of Family Protection and Domestic Violence Legislation.

our countries were keen to look at this best practice to understand what we have to have in place if we develop domestic violence laws.

But then the best practice needed to be also combined with the contextual setting of our countries, to ensure that the legislation fitted the context of the country for which it would apply. As a result we worked with some of the countries in our region to develop what we call drafting options. As they were developing their domestic violence legislation, the officers were enabled to unpack what most would want these laws to contain, and develop some of the reasoning around these provisions.

In Figure 1, you can see the diagram that the chair for the regional working group shared in 2018 when we convened regional consultations that were 10 years after the first country, Vanuatu, had passed its domestic violence legislation. It is a snapshot to show where we are, and where we have come from. From starting my work in the women’s movement in Fiji and then progressing to do work in the region, I know that working to address violence against women is one of the hardest things to do. It is hard to have conversations, and it is hard to convince our leaders for change to happen.

But as my colleagues and I put this diagram together a couple of years ago, I said to them, look at what has happened since 2008 and the progress that has been made by our various governments to have this specific legislation that addresses domestic violence. We have 14 pieces of legislation. In 2008, the Vanuatu Family Protection Act was passed. By 2017, we had the most recent pieces of legislation — in the Cook Islands and Pohnpei State in the Federated States of Micronesia.

With the laws of 14 different countries, we needed to consider what the respective legislation covered, what they had in common, and what we could learn from them. The key features and characteristics of the domestic violence laws related to how the following were defined or prescribed:

- domestic violence
- domestic relationships
- domestic violence offences
- protection orders
- duties of police/police safety orders
- duties of lawyers and judges
- duties of health professionals
- counselling
- advisory committees
- other aspects, for example, special funds, duties of other officials.

There were specific definitions of what domestic violence is, including physical and psychological aspects. In the past, we did have legislation that focused on the physical aspects of domestic violence, but the development of the new laws was an opportunity to unpack that and define the various ways that domestic violence is perpetrated. Not just physically — the legislation also refers to economic abuse and psychological abuse. When we were supporting countries in areas that were new for them, it involved trying to understand what does it look like? What does it look like in our role, whether you are a police officer or whether you are in the courts? How do I identify this abuse and how do I recognise it in my work?

Another key aspect of this legislation is the definition of domestic relationships. The laws clearly define what a domestic relationship is. It also brought in specific domestic violence offences, and the offence of breaching domestic or family protection orders.

In terms of the violence that a person or family faces, there is the need for immediate protection. The laws brought in protection mechanisms that assisted families to get that immediate relief or support. Another interesting aspect of these laws was finding ways to make these orders accessible. This includes being able to access them during hours and after hours because we know that a lot of times the violence happens at night at the weekend, when the courts are not open. It may happen in communities where the police are far away. We may not have the financial means to go to the nearest police station. The law in terms of the protection mechanism was trying to explore ways to make things easier and accessible for a survivor even down to the forms that had to be filled in, and trying to look at ways that this can be simplified for a survivor to be able to access an order. Therefore, the laws include specific duties for lawyers or judges, and for health professionals.

The laws detail how dealing with domestic violence affects a family, the community, and sometimes individuals in certain roles. There is the temptation of key service providers who may have a role to carry out A, B or C, but who may be tempted to also assist the family in other ways, even if it is not their role. Part of the support we provided to countries was to make sure that those who have specific roles under the law understand the parameters that are expected of them. But also, that we cannot do this work in isolation. That you know when a survivor appears at the court, she has also gone to the hospital if their children start to show signs of what is happening at home. How do we ensure that that connection or that referral pathway is there?

Lastly, I have highlighted the various features of domestic violence legislation, but I want to mention one more interesting aspect of some legislation – a special fund. Some of our countries have specific funds that have been set up to support survivors. Sometimes, one of the key challenges for survivors is that a woman may be dependent for economic support on the person that is perpetrating the violence. Some of the laws provide for funds that may assist a survivor or an organisation that works closely with survivors.

Our countries have demonstrated great momentum since 2008. Although there are good intentions, the question I ask my team and the ministries that I work with is: is it just words on a page, is it great words to have in a law and to have on paper, but at the end of the day, do these words matter to a survivor? The other papers in this collection share experiences of where the law has worked, and where it may not have worked, and how we could maybe improve on some of these areas, particularly around that immediate protection that survivors look for.

I have highlighted a couple of challenges, as countries work towards implementation, which I am sure many share. I have covered the law, the landscape and what has brought us to this place and the features that are there, but the question is whether they do make a difference in the life of survivors. Many who work in the area know there are challenges in supporting survivors to access protection and around resources, which are not just the fees that survivors have to pay to apply for orders. It may be the fear to get to an office of a specialist service or the fear to get to the courts or to the police station.

There are various kinds of programs that are happening in our region, from the Family Protection Legal Aid Centre that provides free service support to survivors of domestic violence to the work that our colleagues in Solomon Islands are doing, through the access to justice work that the Ministry of Women at the Ministry of Justice are doing. There are great words in our legislation, but the test is how we implement the law. Our colleagues in Solomon Islands are taking the work out to the provinces. These laws are for everybody and are not necessarily accessible. How applicable is the law for a woman who is out there in the province, for a woman irrespective of whether she is in the main centre on the outer islands – can she access protection orders? If the women cannot, what do we need to be putting in place? And by we, I mean government and the key stakeholder partners that support survivors.

Figure 2 shows Kiribati's Implementation Plan for their Family Peace Act, put together to highlight what the implementation looks like. It shows a whole of community or whole of society support and collaboration to ensure that those in the middle of family, those who experience the violence, can access the protection that is in the legislation. It shows that governments cannot do it alone. The courts cannot do it alone. We need the schools and we need our churches. We need people in the community because we are not just applying the law. We need to work with communities to understand that the violence that people may be experiencing or that they are perpetrating is wrong and that if you are perpetrating violence on your family, then you will be dealt with by the law. If you have family members who are experiencing this, you should be able to access help and this is where you can access help. And if you do so, your family should not be stigmatised for that.

I want to share this image because it portrays what is needed. While we have legislation that has been developed by government, it has to be resourced and implemented by government. Government needs everybody on board and basically all of the various players or people that are connected to this social problem. If we do not work with our governments, the law will not work, and the provisions or protection orders will not come to life.

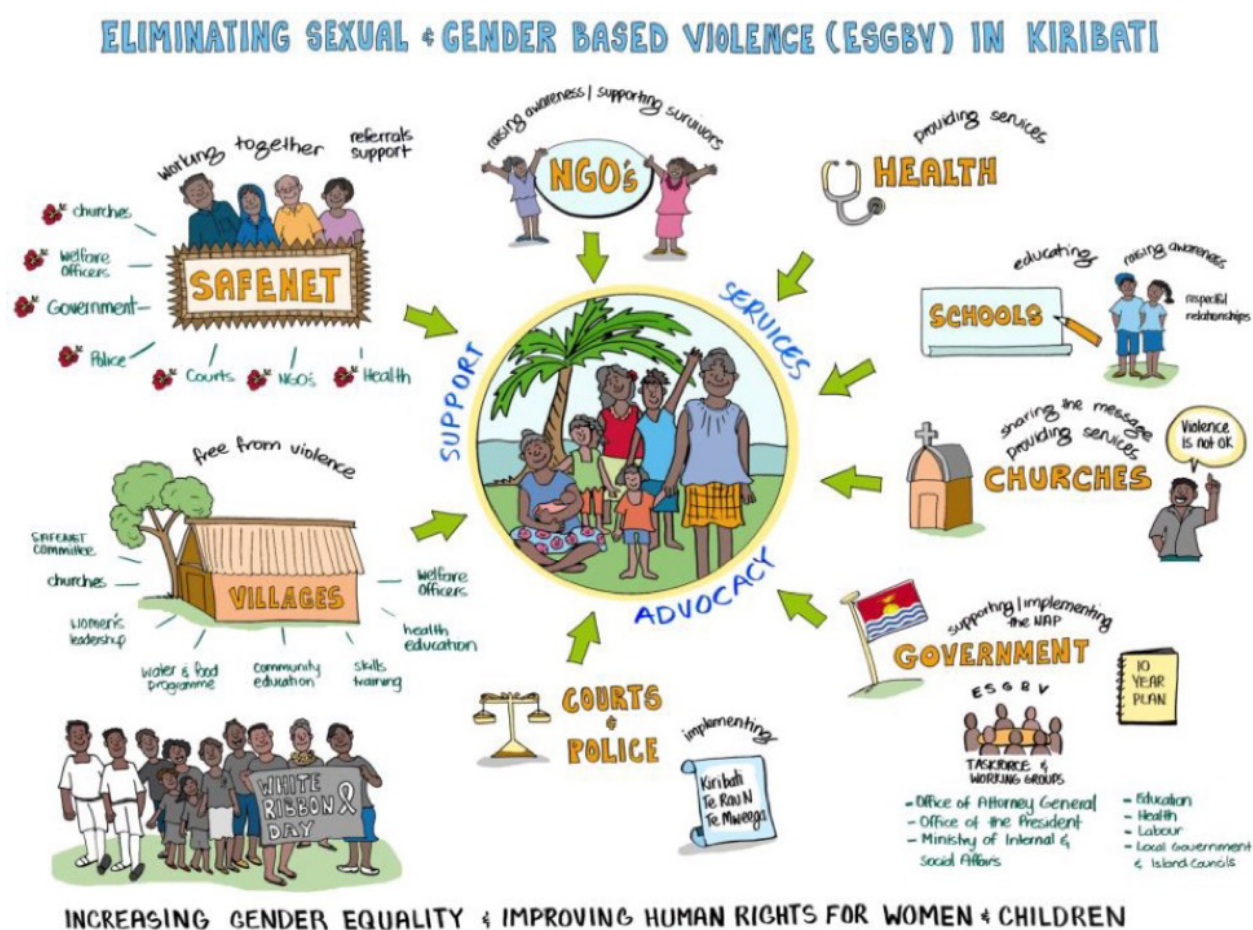
Finally, many times we hear from our partners that this is not happening. Although it is great to pass this law, nothing is happening afterwards. At the launch event for the Regional Working Group Outcomes Document<sup>3</sup>

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3 Regional Working Group 2021, Outcomes Document.



Figure 2: Picture of Kiribati's Implementation Plan for the Family Peace Act



Source: Implementation Plan for the Te Rau N Te Mwenga (Family Peace) Act 2014.

I shared with you the story of when we started this journey of developing domestic violence legislation. We looked a lot outside internationally for best practice and for advice for our countries. I have shared with many of our countries and with my colleagues in the past 10 years, that we have experienced the journey of having this legislation, there must have been something that we have done right. There must have been challenges that we have faced that we can learn from.

That is what government ministries are trying to do. Sometimes they face the challenge of being the ministry that is appointed to develop the law, and to figure out how it can be implemented. But, as I mentioned previously, unless the other government ministries and other civil society agencies come together, the law will not come to life. This is one of the key things that our Regional Working Group is trying to do to ensure that implementation is improved: implementation for provisions that have not been activated in order to meet the bigger goal of ensuring that survivors can access justice.

The Regional Working Group on the Implementation of Family Protection and Domestic Violence Legislation is made up of permanent secretaries of ministries who lead on the implementation of domestic violence legislation. Chaired by Samoa with the deputy chair from Nauru, the purpose is to encourage cross learnings in the

region on the implementation of the DV legislation. It is also an opportunity to encourage collective momentum that enables the region to continue to progress the implementation of the DV legislation and ensure that survivors of DV are supported.

# 4. 2020 Pacific Judicial Strengthening Initiative Court Trend Report: Ten years of reporting family protection order cases across the Pacific 2011–20

Cate Sumner

## Abstract

The year 2022 marks a decade since the signing of the Pacific Leaders Gender Equality Declaration. Without courts providing case data on protection order and criminal family violence cases it is very difficult for countries to measure progress against National Plans on ending family violence and ending violence against women and children as well as the goals outlined in the Gender Equality Declaration.

The session provided an overview of those Pacific courts that are publishing data in their annual reports on the number of family protection orders, and outcomes in these cases. The session also canvassed why family protection order data should be presented in court annual reports together with other gender, age and disability disaggregated data. The session presented the experience of courts in Fiji, Palau, Marshall Islands, Tonga and Vanuatu on publishing information on family protection order cases.

Facilitated by Cate Sumner, a ‘question and answer’ discussion with Justice Honora Rudimch from the Supreme Court of Palau and Senior Magistrate ‘Elisapeti Langi from Tonga considered:

1. Information sessions for the public on the Family Protection Act
2. Access to the court for obtaining protection orders—how are applications from remote areas handled by the court. How were protection order applications received from during the COVID-19 lockdown? Did the number of protection order cases rise or fall during COVID-19?
3. Using data to analyse service delivery by courts
4. Interim and final protection orders — how did COVID-19 affect the service of orders for interim and final orders?
5. Criminal domestic violence offences.

## Background

For the past 10 years the Pacific Judicial Development Programme (PJDP)/Pacific Judicial Strengthening Initiative (PJSI) has been funded by the New Zealand government and implemented by the Federal Court of Australia. In 2022 the program will be continued as the Pacific Justice Sector Programme and implemented by Te Kura Kaiwhakawa. I have been working as an

adviser for the last decade, and I will look at key areas through the annual reports of courts in Pacific Island countries. What will be considered is how data has been recorded, and whether the data is disaggregated by sex, age and disability. How this information is shared in a timely way and reviewed with stakeholders, such as women’s groups, faith based groups, the shelters, the crisis centres, the police and the courts, provides the opportunity to reflect upon and adapt what is happening in these countries and better meet the family protection challenges and the protection order challenges.

The Pacific Leaders Gender Equality Declaration was adopted in 2012 and reaffirmed in 2013. Leaders committed to implement specific national policy actions to progress gender equality, including those that would contribute to ending violence against women. These tangible policy actions included (i) the need for sex-disaggregated data to inform government policies, (ii) implementation of essential services including legal services for women and girls who are survivors of violence and (iii) imposing appropriate penalties for perpetrators of violence.

Courts play an important role in ensuring these policy actions are given effect through publishing (i) sex-disaggregated data on Family Protection Act and other violence cases involving women and girls, (ii) information on the legal aid services available to women and girls who are survivors of violence and the pathways for these cases coming to court and (iii) data on outcomes in Family Protection Act and other violence cases involving women and girls.

An excellent publication is the Pacific Roadmap of Gender Statistics.<sup>1</sup> Five strategic areas are identified — identifying priorities, producing gender data, analysing and disseminating the data, and enhancing knowledge management and learning — that can act as important drivers and act as a backbone to achieving gender equality.

I have been working for the past decade on the court trend reports of which there have been five iterations. The most recent is the 2020 Court Trend Report, which was finalised in May 2021. The report summarises a decade’s worth of court annual reporting from the 14 judiciaries included in the PJDP/PJSI. In 2011, the chief justices developed 15 Cook Island indicators (see Figure 1), which is how we look at the work the courts do and these indicators cover case management, including access to the courts, whether you can waive a fee, when the courts go on circuit, whether there is legal aid and assistance, whether there is a complaint handling mechanisms, where the courts are overloaded in terms

1 UN Women 2020, [Pacific Roadmap of Gender Statistics](#).

## Figure 1: Cook Island Indicators

### Indicator 1: Clearance Rate

The result against this indicator is obtained by dividing all cases finalised in a year by cases filed.

### Indicator 2: Average Duration of a Case

The result against this indicator is obtained by totalling the days for each case from the date the case is filed to the date it is finalised and then dividing this by the number of cases finalised.

### Indicator 3: Percentage of Appeals

The result against this indicator is obtained by dividing the number of cases appealed to a higher court by the number of cases finalised in the level of court jurisdiction from which the appeal is made.

### Indicator 4: Overturn Rate on Appeal

The result against this indicator is obtained by dividing the number of appeal cases in which the lower court decision is overturned in whole or in part by the total number of appeals.

### Indicator 5: Percentage of Cases that are Granted a Court Fee Waiver

The result against this indicator is obtained by dividing the number of cases that are granted a court fee waiver by the total number of cases filed.

### Indicator 6: Percentage of Cases Disposed Through a Circuit Court

The result against this indicator is obtained by dividing the number of cases finalised through a circuit court by the total number of cases finalised.

### Indicator 7: Percentage of Cases Where a Party Receives Legal Aid

The result against this indicator is obtained by dividing the number of cases where a party receives legal aid by the total number of cases filed.

### Indicator 8: Documented Process for Receiving and Processing a Complaint That is Publicly Available

To show results against this indicator a documented process for receiving and processing a complaint should be available to the public.

### Indicator 9: Percentage of Complaints Received Concerning a Judicial Officer

The result against this indicator is obtained by dividing the number of complaints received concerning a judicial officer by the total number of cases filed.

### Indicator 10: Percentage of Complaints Received Concerning a Court Staff Member

The result against this indicator is obtained by dividing the number of complaints received concerning a court staff member by the total number of cases filed.

### Indicator 11: Average Number of Cases Per Judicial Officer

The result against this indicator is determined by dividing the total number of cases filed by the number of judicial officers.

### Indicator 12: Average Number of Cases Per Member of Court Staff

The result against this indicator is obtained by dividing the total number of cases filed by the number of court staff.

### Indicator 13: Court produces or contributes to an Annual Report that is publicly available in the following year

This indicator is demonstrated through the publication of an annual report in the year immediately following the year that is the subject of the annual report.

### Indicator 14: Court Services Information

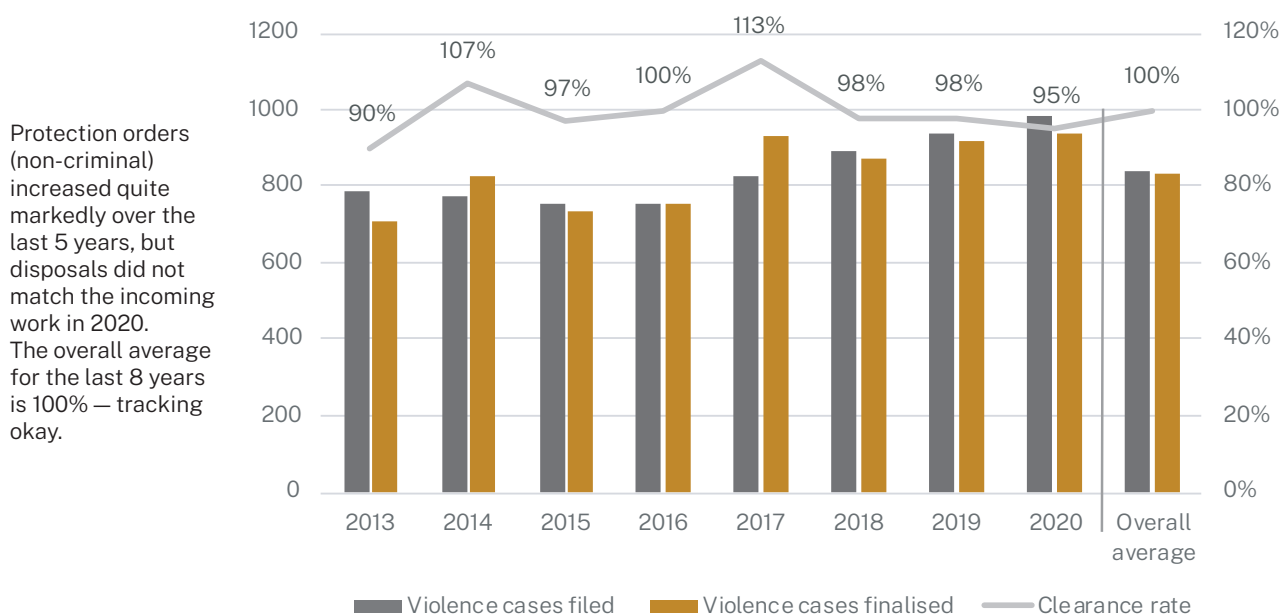
Information on court services that is publicly available.

### Indicator 15: Publication of Judgements

Court publishes judgements on the internet (through PacLII or their own website).

Source: 2020 Court Trend Report.

## Figure 2: Magistrate's Court domestic violence workload



Source: Annual Report 2020, Judiciary of the Republic of Vanuatu.



of the cases per judicial officer, and transparency. When we began a decade ago, not many courts were reporting against these indicators. In 2020, you can see most of them are (see Figure 1).

## Protection order data

Four jurisdictions present information on protection orders in their annual reports in 2020 (see Table 2). Almost a decade on from the Pacific Leaders Gender Equality Declaration, we have quite a long way to go in terms of courts, every year, documenting protection orders and outcomes, so that these can be shared with all of the different national stakeholders that are working to end family violence. I hope that when we have this conversation in 2030 it will be a different picture.

**Key Point 1:** Despite 13 Pacific countries enacting Family Protection Acts during 2008–17 only four of these countries present any data on protection order cases in their annual reports. These courts are Vanuatu following the enactment of the Family Protection Act in 2008, Marshall Islands following the enactment of the Domestic Violence and Prevention Act in 2011, Palau following the enactment of the Family Protection Act 2012 and Tonga following the enactment of the Family Protection Act in 2013.

**Key Point 2:** Of the 15 Pacific courts that engage with the New Zealand (NZ)-funded Pacific Justice Sector Programme, four courts (27%) published annual reports in 2020 that included data on protection order cases filed and finalised and the gender of the applicant and defendant. These courts were the Marshall Islands, Palau, Tonga and Vanuatu.

In the Marshall Islands court annual reports there is information on the number of protection orders and sex disaggregated data. Data for the last three years shows an increase in 2020, which I think is one of the impacts of COVID-19. The Vanuatu courts report has an amazing presentation of data. Their 2020 report includes figures on domestic violence workload in Magistrates' Courts (see Figure 2).

**Key Point 3:** Of the 15 Pacific courts that engage with the NZ-funded Pacific Justice Sector Programme, two courts (13%) published annual reports in 2020 that included data on the outcomes of protection order cases. These courts were Palau and Tonga.

In Palau, the 2020 Court Annual Report included data on the number of protection order cases filed and finalised, and gender disaggregated data on the cases filed. Importantly there is information on outcomes. Figure 3 shows how the majority of temporary orders were granted, with for example 94 per cent being granted in 2020. As summarised by the annual report, in 2020, 54 or 90 per cent of the civil protective order cases resulted in a final protective order granted; five

or 8 per cent of the cases had the temporary restraining orders terminated by petitioner and/or lapsed; and one or 2 per cent of cases resulted in a protective order not being granted. There were four cases still pending at the end of the year. Three were initially denied a temporary restraining order

Coming to Tonga, there is a range of useful information in the annual report for 2020 on criminal domestic violence cases, which includes the sex of victims and perpetrators, the offence categories and the outcomes. In terms of family protection orders, there is data on clearance rates and on the sex of the applicants. It is revealed that 76 per cent of applicants were recorded as females, and that 46 per cent of cases were filed by the Family Protection Legal Aid Centre. Box 1 shows an excerpt from the annual report that outlines the outcomes from the different type of orders that were sought. An extraordinary achievement is that the report includes the number and duration of cases by individual registries.

**Key Point 4:** Of the 15 Pacific courts that engage with the NZ-funded Pacific Justice Sector Programme, one court, Tonga, published an annual report in 2020 that included information on who assisted the applicant to file the protection order case. Almost half of the protection order cases were filed by the applicant themselves, 46 per cent were filed on behalf of the applicant by the Tonga Family Protection Legal Aid Centre, 3 per cent by private lawyers and 2 per cent by the Tonga Police Domestic Violence Unit. This data helps national stakeholders working toward national strategies to end family violence to better understand how these cases come to court.

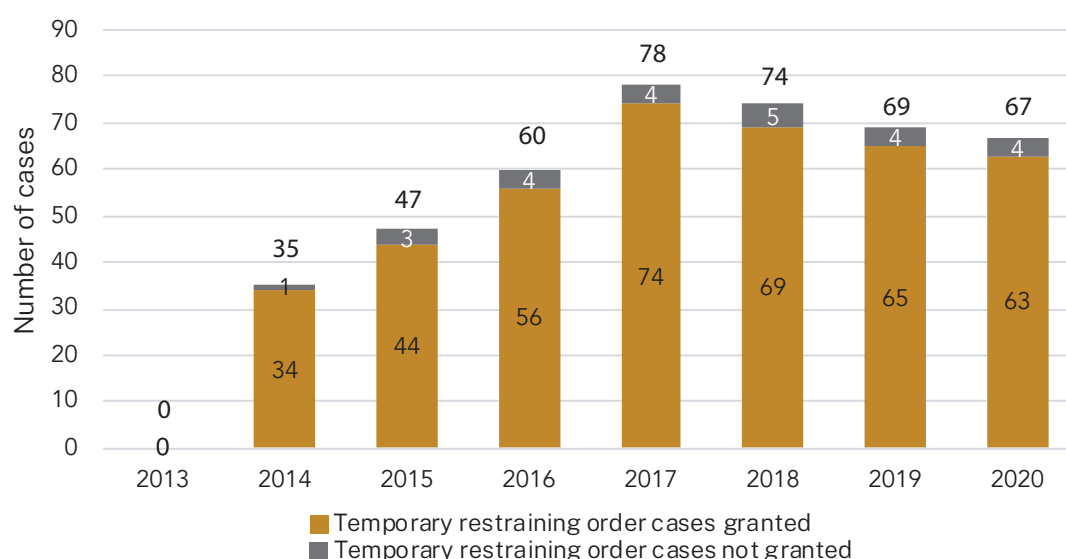
**Key Point 5:** Of the 15 Pacific courts that engage with the NZ-funded Pacific Justice Sector Programme, one court, Tonga, published an annual report in 2020 that included information on the filing of protection order cases by registry and the average number of days that it took to hear the case at each registry.

## Next steps

The range of national and regional stakeholders participating at the Pacific Communities and ANU Symposium on Family Protection Orders in the Pacific Region highlighted the importance of receiving regular administrative data on gender and family violence cases handled by the courts.

The year 2022 marks a decade since the signing of the Pacific Leaders Gender Equality Declaration in which leaders committed to support the production and use of sex disaggregated data and gender analysis to inform government policies and programs. It is very difficult for countries to measure progress against national plans on ending family violence and ending violence against women and children without regular analysis of administrative data, including court data.

**Figure 3: Outcomes from civil protection order cases, Palau**



Source: 2020 Court Annual Report, Palau.

**Table 1: Percentage of the 14 PJDP countries that report on the indicator in the 2011 baseline year and 2020 Court Trend Report**

Indicator	Percentage of the 14 PJDP countries that report on the indicator in the:	
	2011 Baseline Report	2020 Trend Report
1 Clearance rate	64% (9 of 14)	78.5% (11 of 14)
2 Average duration of a case from filing to finalisation	14% (2 of 14)	71% (10 of 14)
3 Percentage of appeals	57% (8 of 14)	71% (10 of 14)
4 Overturn rate on appeal	21% (3 of 14)	71% (10 of 14)
5 Percentage of cases that a granted a court fee waiver	21% (3 of 14)	78.5% (11 of 14)
6 Percentage of cases disposed through a circuit court	50% (7 of 14)	85% (12 of 14)
7 Percentage of cases where a party receives legal aid	14% (2 of 14)	64% (9 of 14)
8 Documented process for receiving and processing a complaint that is publicly available	21% (3 of 14)	50% (7 of 14)
9 Percentage of complaints received concerning a judicial officer	21% (3 of 14)	71% (10 of 14)
10 Percentage of complaints received concerning a court staff member	14% (2 of 14)	71% (10 of 14)
11 Average number of cases per judicial officer	57% (8 of 14)	78.5% (11 of 14)
12 Average number of cases per member of court staff	43% (6 of 14)	71% (10 of 14)
13 Court produces or contributes to an annual report that is publicly available in the following year	7% (1 of 14)	50% (7 of 14)
14 Information on court services is publicly available	29% (4 of 14)	71% (10 of 14)
15 Court publishes judgments on the internet (court website or the Pacific Legal Information Institute)	93% (13 of 14)	85% (12 of 14)

Source: 2020 Court Trend Report.

Currently, only two Pacific courts publish an annual report with detailed data on protection order cases. In future, regional partners may consider supporting Pacific courts to strengthen their ability to publish regular administrative data on protection order cases that includes the following trend datasets for the previous three to five years:

- Indicator 1: Protection order court data on cases filed, finalised and clearance rates including type of protection order (interim/final)
- Indicator 2: Protection order court data on cases filed, finalised and clearance rates including type of protection order (interim/final) (by registry/island)
- Indicator 3: Protection order cases as a percentage of total cases filed in the Magistrates Court
- Indicator 4: Average duration of a protection order case – total cases and disaggregated by registry
- Indicator 5: Sex/ gender disaggregated data for the applicant and respondent in protection order cases

- Indicator 6: Number of cases in which any of the parties in a protection order case indicate they have a disability
- Indicator 7: Number of protection order cases – relationship between the applicant and respondent
- Indicator 8: Number of applicants who were assisted with the preparation of their protection order case and by whom: women’s centre/ police family protection unit/ authorised persons/ public solicitor/ private lawyer
- Indicator 9: Outcomes in protection order cases
- Indicator 10: Number of protection order cases filed and finalised remotely including type of protection order (interim/final)
- Indicator 11: Number of protection order cases heard remotely (authorised person/phone/ SMS/ email/ circuit court)
- Indicator 12: Number of FPA criminal cases or other criminal offences that involve a family member.

**Table 2: Protection order data, by country, 2020**

	Latest published Annual Report	Protection Order data in Annual Report – Y/N	Sex disaggregated data for protection order cases
Cook Islands	2016	No	No
FSM Supreme Court	2020	No as protection orders not heard in the Supreme Court	
Fiji	Not in last decade	No	No
Kiribati	2018–2019	No	No
Marshall Islands ✓	2020	Yes	Yes
Nauru	2010	No	No
Niue	2015–2019	No	No
Palau ✓	2020	Yes	Yes
PNG Magistrate’s Court	2012	No as Magistrate’s Court has not published an annual report since 2012	No
Samoa	2018–2019	No	No
Solomon Islands	2015–2019	No	No
Tokelau	2016–2018	No	No
Tonga ✓	2019–2020	Yes	Yes
Tuvalu	Not in last decade	No	No
Vanuatu ✓	2020	Yes	Yes

### **Box 1: Excerpt from Courts of Tonga Annual Report 2019–2020<sup>1</sup> on protection order outcomes**

Of the different types of orders sought, 38% were for emergency protection orders (EPO), 56% were for temporary protection orders (TPO), 5% were for final protection orders (FPO) and 1% were for protection orders. At times, a particular attitude to democracy may attract multiple correlations across different demographic variables. For example, some responses demonstrated significant associations with respondent age, education and gender. We used a general linear model to ensure that findings were significant in their own right, while controlling for relationships with the other demographic variables. It should be assumed throughout the report that each significant relationship was identified in this way.

Of all EPO applications, 79% were granted, 8% were refused and 13% were withdrawn.

Of all TPO applications, 85% were granted, 5% were refused and 10% withdrawn.

Of all FPO applications, 88% were granted. Of the 12% of applications refused, 57% were granted an EPO and 43% were granted an IPO instead.

As to types of domestic violence, 36% were mental and emotional abuse cases, 31% were physical abuse cases, 12% were economic abuse cases, 7% were harm or danger to health or wellbeing cases and 2% were sexual abuse cases. The remaining 12% cases solely sought interim custody and access.

<sup>1</sup> [Courts of Tonga Annual Report 2019–2020](#).

the family side of the Magistrate's Court was, after I became a magistrate in 2018, I was ordered to take over the family court. So I do have a bit of experience with the Family Protection Act. The protection orders remained with the family court magistrate for a year and a half, before we all decided to let the other magistrates have some experience dealing with family protection. What we did was run the training with them on the Family Protection Act and on the family protection orders. If there is anything they need help with now, this still comes to me.

#### **Cate Sumner**

Could you tell us a little bit about what you learned from the different ways that you have conveyed information about the Family Protection Act and what you learned from those discussions?

#### **Justice Honora**

In the beginning, obviously a lot of the public did not know that the Family Protection Act had been enacted, and back in 2012 even the judiciary did not quite know the extent of its obligations under the law. It was not until 2014 when the courts finally took it upon itself, to say – okay, we have this obligation that we are supposed to be creating these forms and allowing a mechanism for survivors to come and seek protection.

But there really was not any sort of mechanism in place or collaboration with other stakeholders. The judiciary then met with the other stakeholders and actually entered into a memorandum of understanding where a lot of significant agencies that were involved, at least understood their role and how we can connect with each other. After we got that settled then we started these outreach and public awareness activities, to let the public know that there is this law that was passed, and the agencies have collaborated and to let the public know how it is being done.

I was fortunate enough in the beginning to do a presentation before the Senate of our local Congress where I reminded them there was the law and gave them some information about the prevalence at that time. There had been a study that was done in Palau about the prevalence of domestic violence and so when I presented to Congress, I let them know that they were on the right track, obviously, by passing the law. But this was the actual picture for Palau. These were the challenges that we were facing at the time, so we really needed to seek their assistance to help us with all of that.

We were fortunate to do presentations before Congress, but I think a lot of our annual activities were also reaching out to the community via the radio station. At the time a senator had regular weekly programs with the radio station, and we were able to reach out to her and appear on the talk shows with her every now and then to go over the data and how to file for a protective order. We would give out the numbers so that they could call if they needed assistance.

There was also working with the schools. We had this memorandum of understanding with the hospital at the time and then education. The Ministry of Education was not part of the memorandum of understanding, but we had been reaching out to the board and the education ministry to seek assistance. We did presentations during their teacher conferences. We have also tapped

## **Panel discussion**

Ms Cate Sumner, The Hon. Honora E. Remengesau Rudimch, Senior Magistrate 'Elisapeti Makoni Langi

#### **Cate Sumner**

I might ask each of you to say a few words about yourself and your role and maybe a bit about your journey with the Family Protection Act in your country. I ask Justice Honora to start with that.

#### **Justice Honora**

It was this year that I became a justice and I moved up to the trial division. Over the last 15 years I have been with the Court of Common Pleas which when the Family Protection Act was first legislated was designated as the first court to deal with domestic violence cases. I have been the main judge handling the cases. Since I have moved up to trial division, we unfortunately still do not have a Court of Common Pleas judge so I am still the designated judge.

We have come a long way with respect to really coordinating and getting this information out to the public about the Act and letting people know that there is this protection available that they can tap into.

#### **Senior Magistrate 'Elisapeti Langi**

My name is Elisapeti Langi and I am a senior magistrate in the Tongan judiciary. My experience with

into the PTA (parent teacher association) meetings at elementary to high school public schools. In the beginning it was just to let them know that there is this protection law that has been passed, that they are now able to use protective orders and what they were.

Throughout the years we progressed in our outreach awareness activities to what the prevalence of domestic violence is in Palau and explaining domestic violence. Still, a lot of people in the community think that it is a private matter. They do not know that they can seek assistance, and it is against the law. This year we have taken a step back and now we are doing an overview of what the statute is, what protection is provided and then moving on to the prevalence. We are doing more of a summary.

This year, and I do not know why we never did it in previous years, we finally did a presentation to the Council of Chiefs at the national level. They were very supportive. They say this is something that is a responsibility of the chiefs of each of the different states, that we should be taking on this. It was a very good outcome and we hope to continue to work with them spreading the word and reaching out to communities.

#### **Cate Sumner**

Now I would like to go to Tonga. From reading the Tongan judiciary annual report I know that you have a very good working relationship with the Family Protection Legal Assistance Centre. One of the things that interests me is public awareness. Given that you have the Family Protection Centre, how do you work together, particularly in the outer islands?

#### **Senior Magistrate Langi**

The Family Protection Centre has done awesome work in relation to getting domestic violence cases and protection orders to us. One of the challenges that I discussed with the centre, is the outer islands, where it is a problem to access protection orders. Fortunately the centre has expanded the services from the main island to one of the outer islands. I am also looking forward to expanding to some of the other outer islands. But I think we all share the same challenges in relation to the outer islands getting access to obtain protection orders.

In relation to obtaining access to protection orders here in Tonga we have a very good system in place. I think we know from the reports from the judiciary that we have about five or six different agencies that the public can access to obtain protection orders. The main one, of course, being the Family Protection Legal Aid Centre, and also the domestic violence unit in the Magistrate's Court. A few access the women's crisis centre, through our national crisis centre. We also have a police domestic violence unit, but they mostly deal with the criminal offences, and they always refer the protection order applications to us or to the Legal Aid Centre.

#### **Cate Sumner**

One of the things that we spoke about is a dedicated clerk really assisting with these cases in your main court. Can you just paint us a picture of what it is like for a survivor coming to the Magistrate's Court?

#### **Senior Magistrate Langi**

In order to access protection orders, they will come through the Family Protection Legal Aid Centre, or from the street to the Magistrate's Court. Here we have a domestic violence unit with a trained clerk whose sole responsibility is to accept applications. Our applications for protection orders are free of charge. People come here and then the clerk fills in the necessary forms and she types up the application. She then gives it to the magistrate who is in charge of the family court at the time. Whoever is in charge would go through it, and then either accept or refuse the order. The clerk will then work closely with designated police officers. It is specifically assigned only for the domestic violence unit, and the court works closely with them in relation to servicing those orders.

#### **Cate Sumner**

What is the situation in your registries on the other groups of islands to the north? If somebody comes to the court, is there a clerk there who can help them when they come to those courts?

#### **Senior Magistrate Langi**

Yes, still go through the same process. Applications from the outer islands still need to be filed in the capital. What is done is when the order is granted, it is then sent over to the police stations in the outer islands for service.

#### **Cate Sumner**

For the woman that is located on the outer island — does she physically have to go to those registries in the outer islands or can she phone them?

#### **Senior Magistrate Langi**

The Family Protection Act allows for protection order applications to be made by phone calls or emails. So I think what they would do is contact the nearest police station in the outer islands and have the applications sent through them.

#### **Cate Sumner**

When we look at the barriers — of cost, distance and knowledge — I would be interested in your thoughts on how you have addressed that.

There is a question for Justice Honora that has come through, which asks whether you take the lead on the awareness and training or does someone else do it?

#### **Justice Honora**

Yes, in terms of coordinating the events, the judiciary is not the one to do it. It is through our collaboration with other ministries. We are not the main agency, because we still need to maintain impartiality. We come in as part of the event and we give the presentation. For the most part, it has been me. I am the face of the court that goes and does the outreach and talks to the people.

Like Tonga we have a designated clerk. We train all our clerks to be able to fill out and assist the survivors that come in, but she is the one that is really designated for after hours and other matters. The clerk comes along too during the outreach presentations.

#### **Cate Sumner**

You developed early on a fabulous brochure. Through all of your outreach and the radio programs, these are the messages that would be going out — that



24/7 you can ring this number at the court, and we can help you with a protection order and there is no cost.

**Justice Honora**

There is definitely no cost and there is always going to be somebody available. In emergency situations, we say you need to call 911. If there is a violation you need to call 911. But if for whatever reason they do not want to seek 911 assistance then yes, definitely, they have these numbers. It is free and there will certainly be somebody available to assist them.

**Cate Sumner**

Coming back to you, Magistrate, some concluding comments around the court's engagement with other stakeholders in Tonga. We have heard about the Family Protection Legal Aid Centre but in terms of the national strategy of ending violence, your remarks on that wider group of agencies that look at family protection and family violence issues would be interesting. And your thoughts on getting clear, simple messages across lots of islands that protection orders are free.

**Senior Magistrate Langi**

Unfortunately, I have not been as proactive as Justice Rudimch in relation to the Family Protection Act. But I would like to say, when we had the first lockdown in 2020, in March 2020, we had what we called the Supreme Court COVID-19 Response Plan. That was initiated by our Chief Justice, who has been very proactive in getting together and coming up with changes to our procedures and processes for better access. To be part of the national COVID plan for the judiciary, we have assigned magistrates to work on certain days.

We had a first week lockdown and so the whole country was not allowed to go anywhere, everyone stays at home, except of course the essential workers. For our national plan, we assigned magistrates for each day, we would receive the applications for protection orders and work and issue them during the national lockdown. But that was then revised and the Chief Justice suggested using online applications, which would be more easier during that time where everyone was told to stay home.

We encouraged online applications and when I speak about online applications, I mean emails and those emails came directly to us and orders were issued by emails. They were then served by the police. I need to commend our clerk who was working during that lockdown period for all the work that she did, to be able to get these applications to us and then get them out. It is important to have these systems in place to make it work. Because without her, it would take time for the applications to reach us and then take time for the orders to actually go out to the perpetrators. She was a huge part of the success that we saw during the lockdown here.

We have in our legislation the police safety order (PSO), as well as three different types of protection orders. When you are talking about access to justice, the police are the first point of contact and when the victims go to the police they can issue a seven days PSO and that stops the perpetrator from contacting the victim and stops further domestic violence. Within those seven days, the applications come to us for the relevant protection orders. That is another important aspect of that whole collaboration between the key stakeholders, the police having the power under the Family Protection Act to issue police safety orders because most of the time they are the first point of contact.

**Cate Sumner**

I hope that we have given an overview of what we can see across the Pacific in terms of protection orders coming through the annual reports of judiciaries. We would like to see more judiciaries reporting on protection orders and your courts do an excellent job of that. Thank you so much for giving the nuts and bolts of how you make the words of the Family Protection Acts a reality in your countries.

# 5. Impact of strong patriarchal norms on the effectiveness of family protection orders and police safety orders in Tonga

‘Ofa-Ki-Levuka Guttenbeil-Likiliki

## Abstract

The aim of the paper is to raise awareness of the impact of strong patriarchal norms (laws, policies, cultural, religious and traditional practices, behaviours and attitudes) on the ineffectiveness of family protection orders (FPOs) and police safety orders (PSOs) in Tonga. It applies a gender sensitive lens to an analysis of the challenges and barriers of FPOs and PSOs from being implemented effectively. Most importantly, it seeks to shift the paradigm from blaming and criticising female survivors’ decisions to a place of better understanding and to help create and develop programs and initiatives to tackle this.

Family protection orders (FPOs) have a high risk of becoming redundant in a country where women’s rights are restricted in terms of ownership of land and property, patriarchal laws, policies, practices and behaviours. In the majority of cases where a female survivor requests a protection order, the male perpetrator is highly likely to be the land and property owner. This in of itself pushes female survivors to leave the home because she feels she has no right to stay on her husband’s property or land.

Tonga does not have a social welfare system established for female survivors of violence, so once she leaves the home, she is basically left unsupported with her children. The Tongan cultural safety net is lacking and not working the way it used to. It is a huge misconception that she can return to the family home and be taken care of by her extended family. In most cases, the perpetrator is the breadwinner.

When you bring all these factors together it is common practice for breaches in FPOs or police safety orders (PSOs) to be breached by the survivor herself; allowing the perpetrator to make contact and come into contact with her and the children. The judiciary, police and the community at large criticise female survivors when this happens, not having an in-depth understanding of the impact of patriarchal laws, practices and behaviours on female survivors’ decisions.

The Women and Children’s Crisis Centre (WCCC) Tonga has anecdotal evidence, through women’s stories, of the challenges and barriers that they face — which lead to the high-risk decisions they make — that result in breaches to the FPOs and PSOs that were made to protect them and their children.

I am going to start with an example of internalised patriarchy. It is a case study that I will share with all of you. However, if any of this triggers you in any way there are agencies and crisis services that can be accessed for counselling services.

I was married to a very abusive man, it took me a long time to understand that I was a survivor of violence. In fact, it took me just over 20 years of violence and abuse to understand that what was happening to me was not normal. Since the day we got married, I was told and reminded many, many times of my role as a wife. That was, to ensure that all my husband’s needs were met. I was to cook for him, wash his clothes, clean the house and also attend to his family needs, especially his father, elderly grandmother, and elderly grandfather who were living with us. This became all my sole responsibility as a good Tonga wife at the age of 20. Eventually, we had children. In fact, seven children, all seven children are my responsibility. Whenever I failed to uphold these expectations, I was disciplined by my husband. For example, one day I remember I was to boil some hot water for my husband’s grandfather to take a shower. Once the water was hot, I poured it into the shower tin and put in some cold water to make it warm. My child number two at the time was playing around that area. She was about three or four years old, ran past and jumped into the shower tin. And because of her muddy feet the water was no longer fit for my husband’s grandfather, who was sitting inside the shower waiting for me to take the shower tin to him. I called out and asked him to wait as I needed to boil some more water as the water was dirty because of my child’s feet. My husband hearing this became very angry. He came from behind me yelling and screaming at me, telling me how useless I was, and careless, that his grandfather was sitting waiting inside the shower hold because of my stupidity. He grabbed my neck and pushed me down on the ground. He pulled my hair up to push my face inside the Shelton to drown my face. I put my face and hand up and he punched me right in the face. He then told me to hurry up and get the cloth to stem the blood coming out of my nose. When my mother found out about what had happened, she told me off for not being more careful. She said that I should have beaten my child for being careless. And that if I had beaten my child, she would learn and never do that again. Another incident was when I was pregnant with child number five. The doctor advised me that I should think about contraception or tubal ligation as my health was not 100 per cent. I told my husband that I wanted to get it and he told me to shut up and that I was not allowed. When I asked him again he accused me of wanting to have sexual affairs with other men and that was why I wanted to take the



contraception. He proceeded to strangle me and then he forced me to have sex and he was very violent while he was doing it. I did not know that this was marital rape until counselling sessions.

This is one story of many, many, many other stories that draws a picture of how complex it is and how difficult the situation is in Tonga and across the Pacific and how difficult it is to deal with cases of violence against women and young girls. It is difficult in Tonga because it is a very conservative and traditional, and very much a patriarchal society.

The Women's Crisis Centre has collected women and children client statistics from 2014 when the Family Protection Act came into force. The Act was passed by the Legislative Assembly in 2013, assented to by the king, and then we started to use it in 2014. From our statistics up until 2020, I have managed to identify 108 police safety orders that our counsellors have directly been involved in in terms of our counsellor advocates, working with the police to get these orders issued. In addition to that, 19 protection orders were direct applications to the court, because the Family Protection Legal Aid Centre did not start till 2018. Therefore, a lot of this crisis centre work was done by counsellors working closely with the courts, as well as the police. Sadly, however, the percentage of the total number of cases – PSOs and FPOs that were directly dealt with – 198 in total since 2014 – 47 per cent of those have been breached. That is a critical point and we need to talk about the reality, the reality of how far this protection is working for a woman and our young girls.

There are some challenges with the FPOs and PSOs that we have observed and discussed many times here at the crisis centre. To summarise, as bullet points, these include:

- **The attitudes and behaviours of key agencies.** Police, extended family members, judiciary, even workers in the crisis centres and the non-government organisations, these are spaces that still find some kind of window to justify the violence and the abuse that has been perpetrated against a woman. To understand this is to understand the genderisation of how we are raised in Tonga. We have been taught to believe the roles and the expectations on women and girls and the roles and expectations of men and boys. Embedded in this is that leadership, power and control are delegated to our men. Whereas for a woman, we have to be submissive, humble, accepting and, of course, forgiving. We face characteristics of these traits, be they social obligations or responsibilities – it is all expected of you. Just because you were born female or a male then it translates into every other thing that we do here in Tonga, every other space that we are part of. For example, we are told these things as babies into our childhood, when we go to school. The same thing in school – that is one of the issues that we are advocating and lobbying for from the crisis centre, for curriculum reform to teach our children about gender equality, gender equity, and that if you are not being taught this at home, then you need a safe space to learn about it. Because when you are

being taught at home about these gender norms they are being reiterated. Then it is being honed into us and then we go from there into the classroom. And again, it is being reiterated in the classroom. Then, of course, we are going to internalise it. Once we internalise it, we believe it and it becomes really difficult and challenging to change. Especially when we move into institutions and become leaders of those institutions or implementers in those institutions, for example, the police, the judiciary and non-government organisations, the health sector, monitoring and evaluation, and eventually when we develop our own families. Everything that we have learned as children, that we have genderised and we have internalised, we have connected in the heart and the head. We then practice that and we implement it in the institutions that we are part of. It is based on patriarchal beliefs and strongly embedded cultural, social norms. It is very difficult to change. When we have that clear understanding, we can then apply that to how well our FPOs and PSOs are working.

- **The land laws.** The way we are raised is that the man is the head of the household and the woman must be submissive to her husband. Under the land laws, for example, women cannot register land in Tonga. This is reserved for our men. So when PSOs are issued or served what do you think the men say? Of course, they will turn around and say to their wives, you get off my land. You go away somewhere else. Seek safety somewhere else. This is my land. We need to look at these realities. Because this is what women are facing here in Tonga. It is not easy to remove the perpetrator from the home when he legally owns the home and he legally owns the land. You can imagine that the woman is worse off if the surrounding neighbours or the surrounding homes are his family. How do you think this will be received by police turning up to remove the owner of the land and the owner of the house from the home for up to seven days? Okay, so he is removed, but then the surrounding homes are his family. I do not think many of our women would be able to handle that. Our safe house is always being used because of that.

We have to bring in the reality of our land laws and how discriminatory they are because this is what it results in when we are trying to apply for PSOs or even FPOs. More often than not the woman will remove herself from the home unless of course it is a rental accommodation, or it is her family home. But most of the time in the Tongan context, the majority of the women leave their home and go to live with the husband.

- **Delayed processes.** Justice delayed is justice denied. We often talk about this. When police safety orders or protection orders are to be served and the police are going around trying to find the perpetrator whether it is on the main island, or one of the outer islands, the first 24 hours pass and they cannot find the perpetrator. The crisis centre counsellor advocates always try to help and assist in this process by trying to find out from the survivor or from people connected to the survivor as to possible locations where the perpetrator is. We feed this information

to the police. Sometimes it is helpful and sometimes it is not helpful. There are very good police officers who take the information and they actually go to the locations that we have provided the information about and find the perpetrator. Then there are those police who, because of the genderisation, the internalisation and then the institutionalisation of gendered attitudes and values, they do not want to use that information. The whole strategy is to delay the access to justice. Because once we pass the 48-hour window, most often the survivor will come back and say he has contacted me, he has asked for forgiveness or somebody in the family has already approached her asking for forgiveness and she no longer wants to go ahead with it. We are always mindful of this key fact.

- **First come, first served approach of the Family Protection Legal Aid Centre.** We have a very good working relationship with the Legal Aid Centre, but because it is a legal aid centre, if the perpetrator first approaches them, if the husband approaches them first, they will take the case on his behalf. If the survivor approaches, they have already taken the perpetrator's story, as a survivor, so the framing of the perpetrator and the survivor is a complex issue. Those of us working in the area of ending all forms of violence against women and girls need to understand carefully and deeply before we move into the space, otherwise it will end up as a double-edged sword for women and young girls. Understanding the complexities of patriarchal norms, deeply entrenched gender inequalities, we start to question in that situation, you need to question who holds the power and the privilege in that situation, even if they call themselves a survivor. I will give you an example. A woman already had a protection order. She was at home with her young daughter. She was in the shower, and she had left her phone on the bed. There was a knock at the door, the little girl opened the door because she heard the voice and the voice was familiar to her. It was her father. The protection order was against her father. The young girl opened the door, rightly so, because it is her father. He then entered the house. He went up to the bedroom, got the wife's phone on the bed and started doing whatever he was trying to do on the phone. The wife came out of the shower hearing his voice, was traumatised and started screaming, and said what are you doing here? She was just in a towel. She approached him to take the phone out of his hand. They then ended up on the bed in a scuffle with each other. He called the police and filed a complaint of attempted rape by her. We got involved at a later stage and heard about the events. This is why at the crisis centre we said we really have to tread carefully when it comes to protection orders and safety orders and the breaching of those, to understand how perpetrators can strategically use their privilege and their power to mastermind and manipulate the system and manipulate processes. This is a clear

example of what we are dealing with. Recently in the last year, the crisis centre has experienced some backlash from the courts. While we have some really good ones, and I want to acknowledge [name given], who is a really wonderful clerk who really does go out of her way to help our counsellor advocates at the crisis centre, not everybody is [name given] and that is the reality. Some of our counsellor advocates have been stopped from filing directly with the courts. A few of them have been directed by magistrates – not Magistrate [name given] – to go directly to the Family Protection Legal Aid Centre and file through them. However, there is a right to file directly to the court and use the clerks there. These barriers and these challenges are real issues because Tonga is a small country. Everybody knows everybody. If the survivor says I do not want to use the services of the free Legal Aid Centre I would like you to assist me to speak directly to the courts, she should have the option and rightly so. And vice versa, if somebody says that they want to go to the free Legal Aid Centre, and do not want to go through the crisis centre, we would rather they use the other service. Those options should be there and they should be accessible. It should never be a challenge and a barrier to access justice.

To finish off, this whole area of violence against women is one of the biggest obstacles that I see. As the leader from the Women and Children's Crisis Centre, I see the hierarchical positioning. The crisis centres are always looked at and questioned about the credibility of the counsellors, and asked – when did you go get your schooling? Where is your certificate of eligibility? Our validity and credibility are always questioned. Because Tonga is such a stratified society, such a hierarchical society, we automatically place ourselves within that hierarchy. We need to also acknowledge that with these legal aid centres transitioning into government services, we should not forget the work that is done on the ground and by non-government organisations.

It has been said that the first point of access to justice is the police. I would argue that it starts much earlier, as soon as the survivor reaches out to somebody, is brave enough to tell her story. That is her first point of access to justice. The fact that she has got the courage to speak out and to seek help at the crisis centre, whether it is with a friend or with a colleague, this is the first point of access to justice – that she has spoken out. She wants to tell her story. She needs help. She wants the violence to stop. That is the point where her journey begins.



# 6. Accessing family protection orders in the Pacific: Gaps and challenges

Stephanie Dunn

## Abstract

The global average of intimate partner physical and/or sexual violence for women is 30 per cent while Pacific women report higher levels of violence. For example, of the 12 countries in the Pacific that have undertaken national research so far — Kiribati (68%), Fiji (64%), Solomon Islands (64%), Vanuatu (60%), and the Republic of the Marshall Islands (51%) have recorded the highest rates of intimate partner physical and/or sexual violence for women. Palau has recorded the lowest, at 25 per cent. While 13 countries around the Pacific have legislation in place that allows for protection orders, there are still serious gaps seen throughout the Pacific at the implementation level. These gaps become barriers for survivors who are trying to access these protection orders normally, and particularly during times of crisis such as COVID-19, natural disasters and political crises. This paper briefly discusses the gaps based on the experience of the Fiji Women's Crisis Centre (see Box 1).

It is important to keep in mind what was discussed by the previous speaker in terms of patriarchy and the power imbalances because this is the cause of gender-based violence (GBV) and impacts access to justice especially for survivors of GBV who are predominately women.

Whenever we think of the Pacific, we always think of it as paradise — sunny beaches, smiling faces, very relaxing atmosphere — but the reality for those of us in the Pacific is that beneath this wonderful depiction we have a very big issue of domestic violence. The statistics that have been provided previously paint a very daunting picture of the realities that the Pacific is being faced with.

While there has been great development in terms of our legislation, policies and practices around getting protection orders for survivors, access to justice is still an issue in the Pacific. The challenges in accessing the justice system are quite similar for our Pacific nations.

One such challenge is that survivors still face difficulties in accessing protection orders under these legislations especially with the law enforcement agencies around the Pacific. A key part of that enforcement agencies are our police. We have noticed with the police that they either do not know the laws or do not understand the laws. There is an unnecessary delay in response to reports of domestic violence as well as service of protection orders. Police also encourage

reconciliation at police stations by reinforcing the gender stereotypes of the submissive wife and marital vows — reminding them that they should not break up the family, to think of the family and the perpetrator's employment and her reputation. The delay in service places survivors at higher risk of further harm and makes it harder for them to report a breach.

We have seen that survivors are at the most risk when they decide to leave a violent relationship. Therefore, the laxity in the attitude of the police and the delay in their response puts the survivors in more danger, whereby some women have lost their lives. There is a great need for systemic change instead of a change on a case-by-case basis that we are seeing on the ground.

Further victimisation of the survivors by the formal justice system creates mistrust in the system making the survivors lose confidence in the system and this may lead to a drop in reporting. It is important that the players in the formal justice system recognise the gendered nature of domestic violence and their own bias. Gender bias may result in decisions or actions based upon preconceived notions of gender roles rather than on fair and impartial assessment of individual situations. Therefore affecting the way decisions are made in court or how police respond.

There is a great need for gender sensitisation training of all the stakeholders in the justice system, including the judiciary. This training should only be done by the experts working in the GBV area such as those organisations that are part of the Pacific Network Against Violence Against Women. These organisations have worked tirelessly to ensure that elimination of violence against women is on everyone's agenda and continue to respond to survivors of GBV. Based on the lived realities of the survivors, these organisations know what works and what does not work. They understand the local context and are able to contextualise the programs to the communities that they are working in.

The cost of accessing justice is also quite high for most survivors, while filing fees for applications of protection is free, it is the cost of making it that build up such as travelling costs, photocopying, internet (most of the Pacific nations' internet costs are very high). It is always important to understand the huge power imbalance between the survivors and the perpetrators. Recognising this and also taking into account the patriarchal structures that we have is vital in ensuring that the survivors are able to get the services that they need.

Better protection for survivors involves ensuring that the system is inclusive for all survivors, whether they have disabilities, and depending on the languages that they speak. You cannot have a 'one shoe that fits all' solution at all times. Look at your regulations. Look



### **Box 1: About the Fiji Women's Crisis Centre**

Fiji Women's Crisis Centre (FWCC) is a civil society organisation based in Fiji that has been operating for over 37 years. FWCC continues to implement effective local and regional programs of service delivery, training, mentoring and providing technical advice to strengthen work on the elimination of violence against women in Fiji and the Pacific.

FWCC's core business is counselling and through counselling FWCC is able to document the realities faced by women and girls and assist them as well as noting the gaps that exists in the current legal framework. FWCC also runs the government funded 24/7 toll-free National Domestic Violence Helpline.

FWCC's community education, Male Advocacy for Women's Human Rights Program and the Regional Training Institute; FLARE (Feminist Learning Advocacy Research and Empowerment) are other key components that assists in reducing individual and institutional tolerance of violence against women, and increasing available and appropriate services for survivors. As part of FLARE, FWCC has a regional training program (RTP) that is held twice each year for four weeks and is available to women and men working in the area of violence against women and children in the Pacific. As part of the RTP, FWCC lawyers facilitate legal literacy training exploring the VAWG (violence against women and girls) laws and the challenges under it in the Pacific.

FWCC is the Secretariat for the Pacific Women's Network Against Violence Against Women (PWNAVAW – Regional Network), a network that has now been in existence for over 28 years. It functions as a community of practice, with mutual learning and collective action, focusing on emerging challenges and themes to improve the quality of work to eliminate violence against women and girls across the Pacific.

FWCC has for the past 37 years continued to challenge discriminatory laws and advocate for changes in laws and policies to improve the situation of women and girls in Fiji and the Pacific.

at your provisions of the law and see how well you can improve access to services for survivors.

Some countries have more progressive legislation, orders can be obtained over the phone outside court operating times. A good example is The Domestic Violence Act 2009 in Fiji where the police is the only institution that assists in obtaining a domestic violence restraining order over the phone. This particular provision assisted during COVID-19 when movement was restricted and accessing courts was difficult.

The current legislations are gender neutral. Gender neutral legislations is another issue because while the legislation supposedly treats everyone the same, it

fails to take into consideration the gendered nature of gender-based violence and it operates on the notion that everyone is treated the same on the ground. However, the lived realities of survivors highlights that this is not so.

The Regional Working Group on the Implementation of Family Protection and Domestic Violence Legislation (RWG) launched the outcomes documents from its 2nd annual meeting, which was held in August 2021, on 8 December 2022. It is great to see that the outcomes document prioritises counselling. When we look at accessing services, we have to assist survivors to come out of these violent situations and to improve the situation for them and their children. It is not just about getting a family protection order. It is about getting them to a safe place, getting them economic participation so that they are able to support themselves and their children, and ensuring that they are in a better position when they come out of the violent situation compared to when they had started trying to access the service. It is about 'do no harm', ensuring that they come out on the other side better off than when they started. It is ensuring that the survivors are not re-traumatised while accessing the justice system.

To summarise, some of the current gaps are:

- a. Enforcement agencies like the police do not know or understand the laws around protection orders.
- b. The language of the legislation is gender neutral and does not recognise the gendered nature of domestic violence. It has been noted that these laws become another tool for perpetrators, who are mostly men, to further victimise survivors (predominantly women).
- c. There is a need for gender sensitisation training for the judiciary and enforcement agencies like the police to ensure appropriate and timely response to survivors.
- d. The geographical location of most people living in the Pacific Islands makes it difficult to access protection orders due to the remoteness of some areas. Transportation and travel expenses put a greater burden on survivors coming from rural areas.
- e. Individuals do not know or understand the laws around protection orders and this affects them in applying for one.
- f. Most laws around protection orders in the Pacific do not cover domestic violence committed online.
- g. Protection orders needs to be in a form that is easily accessible, including for those with disabilities and in the LGBTIQ community.
- h. Many of the laws need to be amended to include the recognition of coercive control. For example, Fiji's Domestic Violence Act 2009.

# 7. Cook Islands Family Protection and Support Act 2017: Successes and challenges

Catherine Evans

## Abstract

The Cook Islands Family Protection and Support Act 2017 (the Act) is a comprehensive piece of legislation. It brings together the fundamental family laws into one Act. It provides for divorce, child and domestic support, parenting arrangements, care and protection and domestic violence. It repealed much of the old legislation in place since 1915 and amended Acts of the New Zealand parliament adopted in the Cook Islands. While the Cook Islands was a participant in the work done by the United Nations Development Programme and the Pacific Community's Regional Rights Resource Team in Fiji since 2010, it took the Cook Islands seven years to pass its Act in parliament, long after the other jurisdictions in the region. Police safety orders are a feature of the Act which the police have used regularly since 2017 and it appears they have used them well and understand the purpose for them. The Act provides jurisdiction for justices of peace (JPs) to preside over protection order applications. This has raised some issues about understanding the purpose of the orders, judging the threshold required to be applied to without notice applications, and the threshold required for a final protection order (PO) to be granted. Some temporary protection orders (TPOs) have been granted for disputes between parties which do not meet the threshold for a PO to be issued. While there have been successes relating to implementation of protection orders in Cook Islands, a number of challenges remain. TPOs are being used for land disputes between family members, and there are issues around timely service of orders. Although the Act provides that there are no filing fees for protection order applications there are also costs involved with obtaining orders if assistance is sought from lawyers. The regulations are drafted so that people can apply to the court for orders without legal assistance, there is an obligation on the registrar to assist applicants and there is an obligation on the police to advise survivors about protection orders. The Women's Counselling Centre, Punanga Tauturu Inc, does provide funding for legal assistance to its clients wishing to apply for a protection order however there is not a large amount of funding for this work.

## Background

The Family Protection and Support Act 2017 (the Act) is a comprehensive piece of legislation. It brings together the fundamental family laws into one Act. It provides for divorce, child and domestic support, parenting arrangements, care and protection of children, and domestic violence. It repealed much of the old legislation in place since 1915 and amended Acts of the New Zealand parliament adopted in the Cook Islands. While the Cook Islands was a participant in the work done by the United Nations Development Programme and the Regional Rights Resource Team in Fiji since 2010, it took the Cook Islands seven years to pass its Act in parliament, long after many other jurisdictions in the region.

In this paper I will focus on Part 6 of the Act, which is the part that covers domestic violence.

## Part 6 Domestic violence

Part 6 provides for civil remedies to complaints of physical, emotional, psychological, sexual and economic abuse. The definitions of a domestic relationship and domestic violence provide assistance with the grounds upon which an applicant relies to obtain a protection order.

In Section 90, the definition of domestic relationship recognises de facto relationships but only relationships between heterosexual couples. In other respects the definition is very broad, covering

- Married or in a de facto relationship
- In a close personal relationship with the other person
- Has a child with the other person
- Family member of the other person
- A domestic worker for the other person
- Dependent on the other person because of a disability, illness or impairment
- Shares or recently shared residence with the other person
- Is a child who:
  - Ordinarily resides with the other person; or
  - Regularly resides or stays or resided or stayed with the other person.

The kind of relationships covered go beyond what are normally regarded as domestic relationships, as the definition extends to those who work in a home, for example as a nanny or a gardener, and where people have been sharing a residence, such as flatmates. Who might be a family member of the other person is also very broad, spanning multiple generations and distant kin. This legislation has been used where people are related

to each other and they are having a dispute over the land, and it becomes physical or comes within the definition of domestic violence.

Under the Act, there is also a broad definition of domestic violence, including:

- Physical abuse
- Sexual abuse
- Economic abuse
- Emotional, verbal or psychological abuse
- Stalking
- Causing death of or injury to an animal
- Behaviour which reasonably causes a person to fear injury or damage to property
- Causing or allowing another person to do the things above
- Threatening the things above
- Doing any of the things above to cause the person to be afraid
- Single act or a pattern of behaviour may constitute domestic violence.

The usual forms of abuse and stalking are covered but in addition it includes causing death or injury to an animal which arose as an issue during consultations with villages in 2012. Similarly, concerns were raised about being afraid of injury or damage to property, either by a person or where they have got someone else to do it.

### Police safety orders

Police safety orders (PSOs) are a feature of the Act which the police have used regularly since 2017 and it appears they have used them well and understand the purpose for them. They are issued by the police if domestic violence has been committed or if there is reasonable grounds to fear domestic violence, and do need the consent of the protected person. The police must make a PSO in respect of a child if domestic

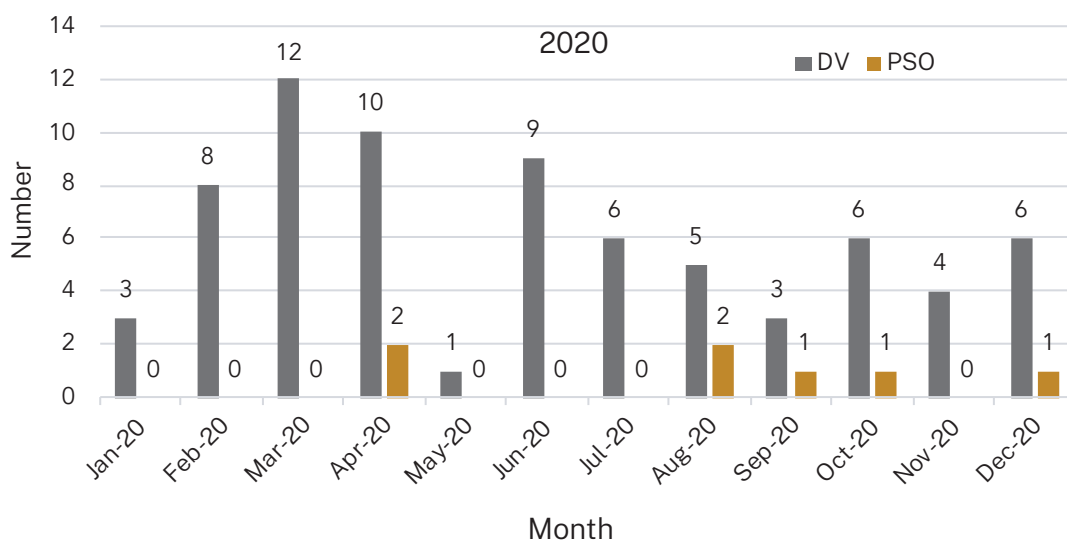
violence is committed on the child or the child’s welfare is likely to be adversely affected by domestic violence. A PSO against a child under 16 years is prohibited. PSOs can be issued for up to five days. The person issued with a PSO must immediately surrender weapons and the police must assist the offender off the property and ensure they have a place to stay – away from the survivor. They must advise the survivor how to obtain a protection order to replace the PSO when it lapses. The police must explain to the offender what the PSO requires them to do or not do.

Police statistics for 2020 and 2021 show an increase in the issuing of PSOs. The numbers must be understood in the context of a small population. There are about 18,000 people in the Cook Islands but many went over to New Zealand during the COVID-19 pandemic, and now we have about 15,000 people in the country. It does have the advantage that it makes it easier for police to serve people with documents, because of the size of the country and its population.

In 2020, there were 73 domestic violence incidents recorded by the police, and seven PSOs were issued (see Figure 1). The orders were issued against seven men, of whom two were recorded as repeat offenders, and related mainly to adult females and two children.

In 2021, there were 70 domestic violence incidents recorded, and 30 PSOs issued by the police (see Figure 2). The big increase in PSOs, compared with the previous year, was explained by the police as a refocus of their work towards domestic violence. With the 30 PSOs, the police statistics show that 80 per cent of those subject to the order were male and that four were repeat offenders. Of the 50 persons recorded as protected by the order, 32 were female, 8 male and 10 children. In the majority of cases (n=22) violence was recorded as being used, threats were used in six cases, and four were recorded as ongoing domestic violence.

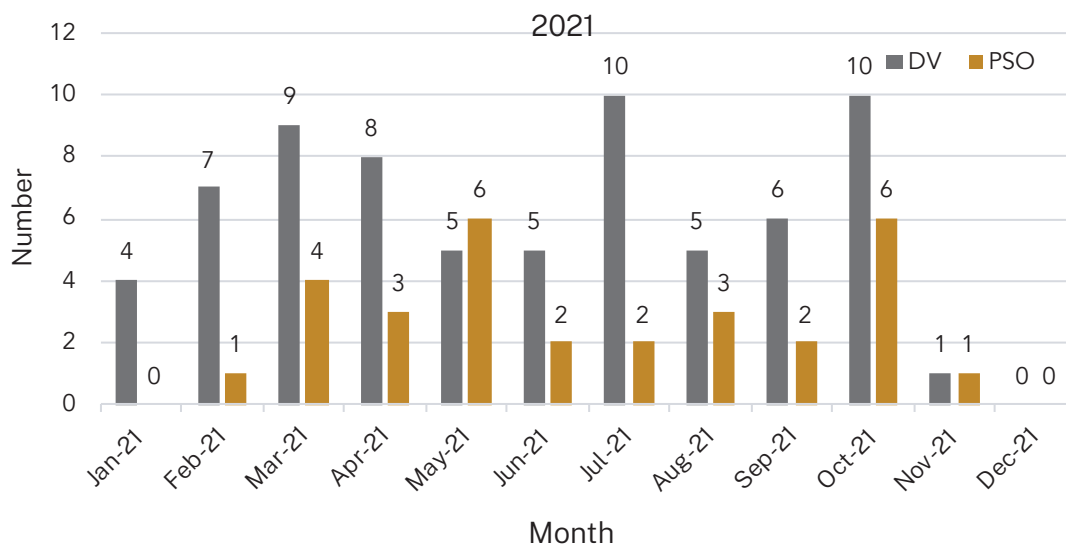
**Figure 1: Domestic violence incidents and police safety orders recorded by police, Cook Islands, 2020**



Source: Cook Islands Police Service



**Figure 2: Domestic violence incidents and police safety orders recorded by police, Cook Islands, 2021–20**



Source: Cook Islands Police Service

### Protection orders

A protection order can be applied for with or without notice. The without notice threshold is high, the delay that would be caused in serving the respondent is likely to cause serious harm.

An order obtained without notice provides for protection for three months, as a temporary protection order (TPO). The TPO becomes final by operation of law at three months if the respondent has not challenged it. It is final until later discharged or amended. Conditions of orders can apply to weapons and to the occupation of a residence. There is also provision for compensation to the protected person for loss caused to them due to having to find other accommodation, and for injuries to themselves.

In terms of access to justice, people can apply for protection by phone or by email to the registrar, and then by going in and filling in a form. There are no forms at the moment online, on the Ministry of Justice website, which is something that needs to be addressed. Although people in the outer islands are able to apply for protection orders under the legislation, they have very little ability to do so.

Protection orders have to be served within 24 hours of being made. We have found the police very helpful in getting the TPO served as soon as they are made.

Figure 3 shows the number of protection orders that were granted in 2020 and in 2021. In 2020 a total of 13 orders were granted by the courts, and in 2021 there were a total of 16 orders granted.

Similarly, age was also found to have a strong significant relationship with attitudes to this question.

Respondents aged 21–29 were significantly less likely (58%) to state that ‘democracy is always preferable to any other kind of government’ than respondents aged 30–59 (67%) or aged 60+ (69%). This finding was the first of several to suggest relatively strong generational differences in political attitudes in Samoa.

### Challenges

The Act provides jurisdiction for justices of the peace (JPs)<sup>1</sup> to preside over many of the applications under the Act. This has raised some issues about understanding the purpose of protection orders, judging the threshold required to be applied to without notice applications, and the threshold required for a PO to be granted. Some TPOs have been granted for disputes between parties which do not meet the threshold for a PO to be issued, tit-for-tat spats.

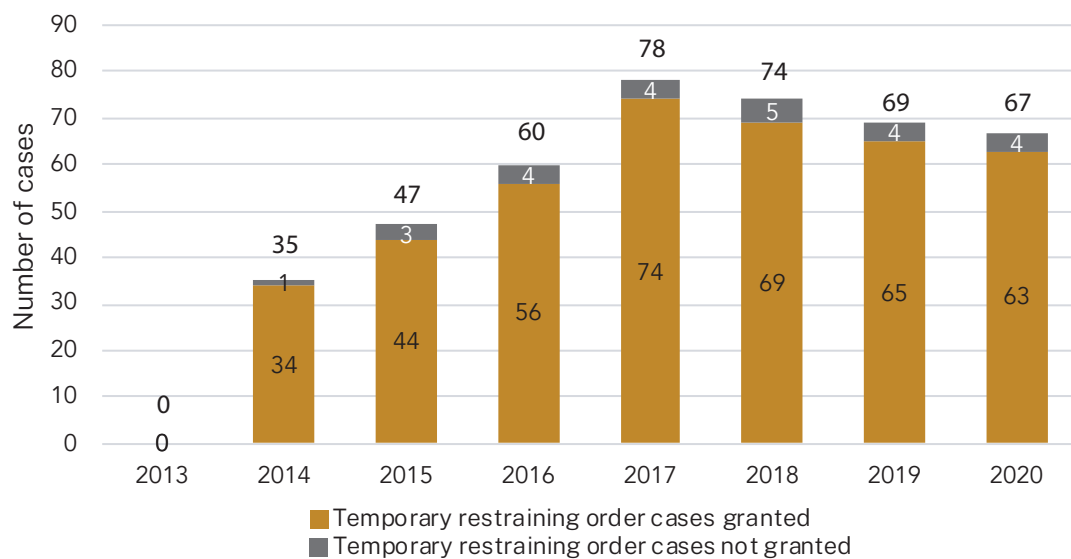
Some TPOs have been granted in an attempt to resolve a land dispute which has become strongly verbal and could become physical, but a TPO is not going to resolve the land dispute.

A TPO issued by a JP must be served by the police on the respondent within 24 hours of it being issued. This has caught people out on a couple of occasions and the process has had to be repeated because the respondent was served late. The police must explain to the respondent what the PO restrictions are and what the consequences are of breaching them.

While the registrar is required to issue a final TPO, counsel draft and file the final protection order for sealing at the time that the TPO lapses. Counsel must

<sup>1</sup> The Judicature Act provides that JPs have limited High Court jurisdiction and the FPS Act provides JPs with jurisdiction to make orders. The Constitution establishes the High Court – Land Division, Civil Division and Criminal Division, then there is a Court of Appeal. The highest appeal court is the Privy Council.

**Figure 3: Protection orders granted by the High Court, Cook Islands, 2020 and 2021**



Source: High Court, Cook Islands

then require the police to serve the final order on the respondent.

Some applicants have applied for a TPO without legal advice. The cost to obtain a TPO varies but the Women’s Counselling Centre, Punanga Tauturu Inc., provides funding for legal assistance to its clients wishing to apply for a TPO. There is limited funding for this work.

# 8. Identified gaps in protection orders and future priorities for action: A case study of Samoa

Johanna Gusman

## Abstract

Samoa's first State of Human Rights Report identified family violence as the most pressing human rights violation, which led to Samoa's historic National Public Inquiry into Family Violence (the 'Inquiry'). The Inquiry found the legislative framework around family violence to be reasonably robust, most importantly via the Family Safety Act 2013, which introduced several new policies and procedures to better deal with family violence, including, inter alia, police response to complaints and the creation of protection orders. However, the Act does not offer protection to those who report an occurrence of family violence that they have witnessed — often children or other family members. According to the 2015 State of Human Rights Report, only 25 per cent of adults who witness abuse even report it to the police, often because they fear that their report will not remain confidential, and that they will not be offered a protection order to safeguard them from retaliation. Furthermore, the Inquiry found that a large proportion of family violence is perpetrated against women and girls. Given that studies have recorded significantly high rates of violence against women (some estimates are upwards of 60 per cent), this highlights a gap in both the reporting of and protection from violence and may signal a future priority for action for the region. This article explores both legal and culturally appropriate interventions to closing this gap and calls for future implementation of legislation to expand protection to witnesses of violence to safeguard them against retaliation.

## Introduction

Protection orders are a civil remedy typically issued by a court or by the police to prevent a person from contacting, harassing, or harming another person. In general, protection orders evolved under civil law and

focused on the protection of persons who are exposed or potentially exposed to violence in a domestic setting by prohibiting the offender from any further acts of violence and/or enabling victims to remain in the family home to the exclusion of the offender.<sup>1</sup> Across the globe, civil legal systems use protection orders as a common method of addressing domestic violence.

Family and gender-based violence is a well-recognised, widespread problem in Pacific Island countries (PICs). Across the Pacific government leadership has consistently recognised the need for action against this type of violence. For example, in the years following the 2012 Pacific Leaders Gender Equality Declaration, Pacific leaders have continually acknowledged the prevalence of gender-based violence and committed to its eradication.<sup>2</sup> According to UN Women, the region is among the worst for ratings related to gender equality and the prevalence of family violence.<sup>3</sup> In Samoa specifically, the World Health Organization surveyed women and found that 46 per cent of women aged 15 to 49 years-old had experienced some sort of violence — sexual and physical — most often perpetrated by their partners. Further, for the 35 per cent of women surveyed who had their first sexual experiences under the age of 15, they described it as 'forced'.<sup>4</sup> Approximately 97 per cent of women who were victims of violence did not report it to the police, and 35 per cent of these women said they did not report it because domestic violence is considered a private matter between a husband and wife.<sup>5</sup>

This article analyses how protection orders can be bolstered in the Pacific to better serve the parties they were designed to protect. Given the nature of family violence, rarely is a perpetrator's actions contained to one person. Contemporary family protection acts are designed to address situations of immediate danger and protection orders tend to act more as a band-aid to the larger problem than a solution that gets to the problem's core. Thus, the purpose of this article is to (1) examine Samoa's approach to protection orders — recognising that legal approaches to preventing domestic violence are limited and eradication of the problem will require more than mere legal reform

1 Forester 2011, [Ending Domestic Violence in Pacific Island Countries: The Critical Role of Law](#).

2 See for example, Pacific Islands Forum 2017, [H.E. Charmaine Scotty's Remarks on Behalf of the Pacific Islands Forum at the Commission on the Status of Women, PIFs Communiqué, 14–24 March 2017](#).

3 UN Women n.d., [Global Database on Violence against Women, Research and Data: Ending Violence against Women](#).

4 Proportion of ever-partnered women aged 15–49 years experiencing intimate partner physical and/or sexual violence at least once in their lifetime. Secretariat of the Pacific 2006, *The Samoa Family Health and Safety Study*; Garcia-Moreno et al. 2005, *WHO Multi-Country Study on Women's Health and Domestic Violence against Women*.

5 UN Women n.d., [Asia and the Pacific: Samoa — Violence against Women](#).

— and (2) explore the lessons learned from Samoa so that other PICs can implement similar, culturally appropriate approaches to protection orders in addressing the problem.

## History of protection orders in the Pacific and in Samoa

Currently, 13 PICs have developed specific legislation to address family violence. With regard to protection orders specifically, the Cook Islands, Fiji and the Solomon Islands were among the first of the PICs to grant these types of orders in situations of domestic violence.<sup>6</sup> Now, the majority of PICs have some form of legislation that provides for protection orders, including Cook Islands, Fiji, Kiribati, Federated States of Micronesia (Kosrae and Pohnpei), Palau, Papua New Guinea, Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.<sup>7</sup> Many PICs still have restrictions related to protection orders, often inapplicable to husbands or partners to some degree. For example, recognition of marital rape is still limited, and cultural norms indicate that abuse is considered a minor offence, even by the women themselves, or reporting abuse is considered incompatible with a wife's love for her husband.<sup>8</sup> Additionally, same-sex couples are excluded as well as other de facto relationships such as caregivers and extended family members. For many PICs, only married women — and not partners or girlfriends — are entitled to seek protective orders. It is also important to note that for the first countries that adopted protection orders, the laws were directly taken from a colonising or former colonising country without regard for local customs or context,<sup>9</sup> which may contribute to the limited use of such laws.

In Samoa, Section 4 of the Family Safety Act 2013 provides for the issuance of protection orders for victims of domestic violence irrespective of marital status. It provides protection order procedures in courts as well as charges the police with the obligation to assist and inform complainants of their rights to prosecute. Section 4(6) also allows for protection order applications to be made at any time outside of court hours, allowing timely remedies when needed at no cost.<sup>10</sup> As far as its use, according to Samoa Law Reform Commission, since 2013, a total of 379 interim protection orders were lodged with approximately 82 per cent of those interim orders made permanent.<sup>11</sup> While it is

promising that statistics are being tracked, these numbers demonstrate that use of protection orders remains low while rates of violence stay constant. According to Samoa's Office of the Ombudsman, a major concern commonly expressed during the National Public Inquiry into Family Violence was that while the passage of legislation has been impressive, its implementation has not.<sup>12</sup>

## The need for expanded legal protections for witnesses of family violence: Lessons learned in Samoa

Like with most laws and legal mechanisms dealing with violence against women and girls, there is a significant need to close the gap between the anatomy protection order policies and the lived realities of what that population faces both in the home and within their communities. Samoa offers several lessons learned that can be applied to the region including, decolonising family laws governing protection orders, combating instances of retaliation by expanding protections to witnesses of family violence (to both increase reporting rates and decrease instances of retaliation towards other family members such as children), and increasing public knowledge of protection orders, particularly in rural and outer island areas where access to services is most limited.

## Decolonising family protection laws around protection orders

Samoa has done a commendable job of trying to address the problem at its core. It has made serious strides over the last decade to tackle gender-based and family violence. Following its first-ever State of Human Rights Report in 2015, Samoa launched its historic National Inquiry into Family Violence and discovered a range of interesting findings that may bring insight into future use of protection orders in the state as well as the region. This is perhaps what makes Samoa a prime regional example: the impetus for addressing family violence came from the state itself. Further, the investigation to addressing it came from its National Human Rights Institute (NHRI) — the Office of the Ombudsman — the same institution that identified family violence, with an emphasis on violence against women and girls, as a core human rights violation to tackle. Change is best catalysed when it comes from within the culture and not imported

6 In the Cook Islands, protection orders are termed 'non-molestation orders', in Fiji they are named 'restraining orders', and in Solomon Islands, they are simply referred to as 'orders'. See Forester 2011, *Ending Domestic Violence in Pacific Island Countries*.

7 Advisory Council/Committee sub-committee and HRSD 2021, *Discussion Paper on the Scope of Protective Measures under DV legislation in Times of Public Emergencies and Natural Disasters*, 2021 Regional Working Group Annual Meeting, 24–26 August 2021.

8 UN Women n.d., *Asia and the Pacific*.

9 The Cook Islands law was adopted from New Zealand, Fiji replicated their law from Australia, and the Solomon Islands provisions came from English law.

10 Forester 2011, *Ending Domestic Violence in Pacific Island Countries*.

11 Government of Samoa, Samoa Law Reform Commission 2016, *Samoa's Legislative Compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, Final Report 17/16.

12 Samoa Office of the Ombudsman/NHRI 2018, *National Public Inquiry into Family Violence in Samoa/State of Human Rights Report 2018*, 26.

from former colonising laws.<sup>13</sup> This is how culturally appropriate recommendations to address violence are realised. Take for example Recommendation 31 from the Inquiry: ‘Empower the Village Fono/Village Family Safety Committee to play a direct role in the protection of individual cases of family violence through provision of shelter for victims and appropriate penalties for perpetrators.’<sup>14</sup> This approach bases protection orders within the context of the community and may also be a better way to address family violence at a broader, non-individual level.

### **Combating retaliation responses to protection orders**

Despite retaliation from an abuser being a common response to notice of a protection order, little exists to track or reduce this dangerous response. According to NHRI’s survey in its State of Human Rights Report, only 25 per cent of participants who witnessed abuse against women and girls and their village in the past year reported it.<sup>15</sup> The attitudes, particularly the belief that issues such as family violence should be settled within the family, help foster a ‘culture of silence’ on the issue within villages.<sup>16</sup> In August of this year, the Regional Working Group on the Implementation of Family Protection/Domestic Violence Legislation, under a priority area on access to justice services, acknowledged the need to develop innovative methods to ensure continual access to legal documents (e.g. protection orders) and provision of services during emergencies and crises.<sup>17</sup> Expanding protection orders to witnesses of family violence is one such innovative and needed method to ensure broader accesses. Samoa’s approach for villages to encourage the reporting and monitoring of protection orders as well as for parole in relation to family violence, provides an important cultural context for making protection orders as robust as possible. As highlighted in the Inquiry, the Village Fono has an important role to play in the enforcement of protection orders and is well-placed to support their enforcement, including in preventing retaliation responses and protecting witnesses of harm.<sup>18</sup>

### **Increasing public knowledge of protection orders**

Samoa’s inquiry also uncovered an implementation barrier for services to children and families given the fact that no entity is currently responsible for educating the public, particularly in rural areas, about what protection orders are, how to obtain them, and what resources exist for survivors of violence to offer support.<sup>19</sup> When children can be covered by default under protection orders, either when they report violence or ipso facto experience it as a witness, it can be a tiny step towards a violence-free future envisaged for the Pacific. Children are harmed by violence in the home, so the problem must maintain a focus on the populations most harmed — women and children.

### **Conclusion**

Addressing these identified gaps in protection orders should be a future priority for the Pacific region. A violence-free future is possible when communities can advance the legal framework around protection orders and expand implementation mechanisms alongside changing cultural approaches to family violence. As stated in Samoa’s National Public Inquiry, ‘Family violence sits behind a veil of silence which allows it to continue to menace the lives of our people, especially the most vulnerable among us’. A key part of lifting that veil is to disallow those suffering to continue in their silence and expand protection orders to witnesses of violence. This can be especially helpful in addressing violence against children and help bring greater public awareness of protection orders across the Pacific as is sorely needed.

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13 The inquiry also allowed for more invisible issues to gain attention. For example, violence is inter-related. The prevalence of male-on-male violence (e.g. brother-on-brother or between family members) is often less talked about but was highlighted on several occasions.

14 Samoa Office of the Ombudsman/NHRI 2018, *Sā’ili’iliga Lautele i Sāuāga i Totonu o’iga i Sāmoa (Summary)*. Apia.

15 Samoa Office of the Ombudsman 2015, *Sā’ili’iliga Lautele i Sāuāga i Totonu o’Aiga i Sāmoa*.

16 CEDAW 2012, Concluding Observations of the Committee on the Elimination of Discrimination against Women: Samoa, UN Doc CEDAW/C/WSM/CO/4-5, 9–27 July 2012.

17 Regional Working Group 2021, *Outcomes Document: Second Annual Meeting of the Regional Working Group on the Implementation of Family Protection/Domestic Violence Legislation*, 24–26 August 2021.

18 Samoa Office of the Ombudsman/NHRI 2018, National Public Inquiry into Family Violence in Samoa/State of Human Rights Report 2018, 43.

19 Ibid., 39.





# 9. Family protection orders: The Vanuatu experience, 2008 to the present

Lily Joel, Tatavola Mataskelekele and Polly Walker-Dorras

## Abstract

The Family Protection Act (FPA) became part of the laws of Vanuatu in 2008, providing survivors of domestic violence with access to family protection orders (FPOs). Since the Act was introduced, the Vanuatu Police Force and the Vanuatu Women's Centre (VWC) have been the lead agencies assisting survivors with applications for and enforcement of orders. The VWC has also supported the establishment of Committees against Violence against Women (CAVAWs), which help enable survivors living in remote locations who are unable to access courts or policing services, to apply for FPOs.

While applications for FPOs have steadily increased each year in Vanuatu since the enactment of the Family Protection Act (FPA), service and enforcement of orders is not without challenges, particularly given the limited reach of formal justice services across Vanuatu's 82 islands, and the significant geographical challenges communities in rural and remote locations face in accessing these services. The FPA recognises these and other challenges faced by vulnerable persons, and there is provision under the Act for 'authorised persons' (APs) to be appointed. APs are community members who are trained and appointed to issue temporary protection orders (TPOs) in their communities. In 2017, the Ministry of Justice and Community Services led the piloting of the first appointments of APs in locations on the islands of Santo and Efate. The implementation and monitoring and evaluation of this pilot program is being supported by the Vanuatu-Australia Policing and Justice Program (VAPJP). This pilot phase has produced valuable insights into the benefits and challenges of TPOs, particularly in rural and remote locations.

This conversation comes at a critical time for the people and government of Vanuatu where dialogues are underway to formally transition the AP Program into the Vanuatu government architecture. How this occurs, and what further planning and consultation is required, remains a live issue for the government and partners.

## Tatavola Mataskelekele, Vanuatu Women's Centre

I will briefly describe how the Family Protection Act has assisted women, especially women, victims of domestic violence since it came into force in 2009. So, prior to 2009, domestic violence protection orders were obtained by way of the Vanuatu Court Civil Procedure Law where

victims had to apply for a domestic violence protection order by filing a civil claim and a sworn statement in support of the claim and statements of undertaking to pay for damages in the event that the case is vexatious. We do have to pay a cost of 3000 batu, about \$30.

That was quite a challenge then and so after 2009, upon the Family Protection Act being assented to and coming into force, it was much easier for victims to apply for a protection order. A victim only needs to fill in a very simple form. Basically, a name and your address and a contact and the defendant's name and address and contact and the grounds of application – why she is applying for a protection order. Also because there is a waiver for court fees in the legislation so there is no need for victims to pay for a court fee. It's now free, and so that assisted the victims of domestic violence. You can make it much easier for them. According to the experiences of the clients of the Vanuatu Women's Centre, it enabled our clients to get a quick protection from the courts as per the legislation, the Magistrate's Court has to treat family protection orders applications as a priority. Messages are contained in that manner. Victims take a protection order and await the criminal aspect of case that has been processed by the Family Protection Unit and the police; victims see it's very helpful for their protection.

A lot of clients have reported that obtaining a protection order has changed a perpetrator's behaviour. In the past the perpetrator or perpetrators were getting away with the violence because the victim must be reporting to other agencies. But once a report has been done, and a protection order has been obtained, the perpetrator hears the court and the criminal justice system and takes the initiative to change his violent behaviour. However, from our clients' experience, there are also some perpetrators who say the victim has applied for family protection orders several times. It comes down to the perpetrator and his aggressive behaviour and his unwillingness to change. Our clients also want to report that with the family protection orders. But when she comes with a family issue through counselling some of the behaviours amounts to domestic violence as well. Under section 13 of the Family Protection Act of Vanuatu the court may include conditions that prohibit the complainant or defendant from doing any actions that does not promote harmonious family relationships. So then she comes to understand that she is bound by the terms and conditions of the orders as well. The Act gets both parties to try and live harmoniously.

Understanding the dynamics of violence against women and girls or domestic violence is very vital for those in decision-making authorities. We see that training

of persons in authority whether it is police, officials or any other person in a decision-making authority is very vital. I would like to acknowledge that the Vanuatu police force has done some training with the assistance of the Pacific Women's Network against violence against women and the Australian Federal Police, as well as the Vanuatu Women's Centre has run some training with these agencies. So it has with their understanding of people it has made progress much easier.

I would have been in the centre for almost 13 years now. There has been a big change from when I started 11-12 years ago to how police and other agencies respond today. It's also rural women who are able to access family protection orders through the VWC with CAVAWs, the Committee Against Violence Against Women, which comprises of women in the community and also our male advocates and our sub-centres in the provinces. So it works where a woman, a victim is in one of the rural areas and the courts or the police are in the minority on the island, the woman goes through the centre network, a CAVAW can assist the woman in connecting her to the VWC office in the province where she's from — a sub-centre of the office in Port Vila. That sub-centre of VWC will assist that woman in applying for a protection order to the courts. Also, in some areas where there is internet, a good internet connection, applications can be emailed to the courts directly to apply for family protection orders.

One thing I want to emphasise is the importance of networks and networking, and not only by the Vanuatu Women's Centre and its male advocacy networks, but networking with the police and chiefs and churches and education authorities because, once we all understand, people then understand how to refer victims to them. Making an application for a protection order or making a victim much safer is much easier because we do not only receive referrals from our own network platform, but other agencies as well.

We do face challenges in family protection orders. I did mention that the police response to domestic violence and child protection has significantly improved in the past. But there are still several challenges in the serving of family protection orders by the police. One is mainly due to the geographical challenges. The police are on certain islands, they are not on all of the islands and so they have high transport costs which makes a service of protection orders *hard*. Then, as mentioned, people's attitudes is also very important. So from VWC experience we have a very good collaboration in certain provinces with certain police commanders, but in other provinces the collaboration is not very good. It comes down again to one's attitudes towards, one's sensitivity towards the issue of violence against women and girls and domestic violence.

Courts are not on all the islands and so it is quite hard for reviews to take place on time, reviews of family protection orders, of the current practice. For example, if a court order is made February 2021, then the review of the protection order will have to wait until the next court tour and that could be in December 2021 or next year 2022. These are the challenges victims face with a review of family protection orders.

We also face challenges on all the islands. The Family Protection Act states that the police have the power to serve protection orders, but because police are not on all the islands, we have instances where we have asked the court to name persons other than the police to serve a protection order. On some islands we ask the courts to ask male advocates to serve the protection order or chiefs or the area secretaries or area administrators, people who have some status standing in the community and respected by the community to serve family protection orders. It's not in the law. But that's what we do to ensure that defendant is being served the family protection order.

Yes, and another challenge on courts they do play a very important role to ensure safety of victims. Whether it's women and children, they sometimes ask for a lower period for protection orders, to be shorter. So sometimes victims ask for a month or two months or three months for a protection order. We have challenges with protection orders in the rural areas. By the time police or the chiefs are ready to serve the family protection order her protection order back home has just lapsed. Challenges such as releasing defendants on day one, repeat offenders, and we need to work on ways that will enable all agencies to work together.

### **Inspector Lily Joel, officer in charge of the Family Protection Unit with the Vanuatu police force.**

In the Family Protection Unit, in 2010 we had two staff when we dealt with violence issues. It is challenging for us to do the investigation as well as the application as well as serving the orders. We refer the application to the Vanuatu Women's Centre to help us with the applications. They help us with the applications, but we still investigate and serve the orders. It is challenging for us as most of the orders are not served for cases that we have to investigate. Back in 2017 the Vanuatu Women's Centre had training with police commanders, and that's when we went through the Family Protection Act. It has come to a common understanding that all the orders have to be dealt with by the officer in charge of the police station. From there the Family Protection Unit is no longer serving the orders, all orders that have been directed from the magistrate to the police are the responsibility of the officer in charge of the police station.

I found out that most of these orders are still not being served, early this year. We found out that some of the victims were complaining to the magistrate that the orders are not being served. The magistrate has to summons the officer in charge of the police station to explain why the order was not served. From there all the orders are now served compared to the past. We also deal with breach of orders. Once an order has been breached, police have the right to charge if the accused has committed another crime based on the Criminal Procedure Code (CDC). When we arrest according to the CDC and if the accused committed another crime, then we have charged also for the crime that has been committed. This is in Port Vila. In Santo and other parts of Vanuatu they still do the application and serving.

## Polly Walker

I am a senior project officer with the Vanuatu-Australia Policing and Justice Program (VAPJP). For context, the VAPJP is a bilateral Australia-Vanuatu government partnership program that commits a range of support to Vanuatu's justice and policing sector.

In 2008, when the legislation was passed, and enacted in 2009, the legislation provided for the appointment of what we call authorised persons (APs) and this is largely to overcome the geographical challenges. When you think about Vanuatu with 82 inhabited islands, these challenges are significant. We've got three islands with main town centres that have a hub of government services, but once you leave Santo, Efate and Malekula, getting access to justice services is incredibly difficult due to the geography. When you're outside of those town centres, transport costs are extremely expensive. Roads are not very good. So access to justice is a real challenge based on our geography, there's lots of other challenges, but geography is certainly a significant one.

Authorised persons in the Act are individuals who live in their communities. They can be in a range of different positions – they can be chiefs, they can be teachers, nurses, or just people who write to the minister asking to be appointed. Once they are appointed, they have the power to issue temporary protection orders for survivors of domestic violence within their communities.

It was clear from the wording of the Act that these positions are designed to provide access in locations where access is extremely limited. But it took a very long time for the positions to be piloted because while they sound simple in theory, the practice of starting these positions is actually fairly complicated, noting issues of safety, putting people on the frontline of domestic violence in a remote community with no backup or support from policing services. There was a lot of thinking that had to go into the training that needed to be given: how we would bring these positions about? What sort of support they would be entitled to?

There was a long period of time when the Department of Women's Affairs did a lot of research and thinking about how it could happen. Then in 2016 a formal request was made to our program to assist the Ministry of Justice and Community Services to establish these positions as a pilot program. I came on board in 2017 and joined a small team that was charged with setting up the pilot program on behalf of the Ministry of Justice. The pilot program involved designing a training program, selection of the sites and the individuals who eventually became APs. The way that the sites were selected was based on trying to identify sites with a variety of characteristics. There were some urban sites in Port Vila, one on North Efate and three rural/remote sites on Santo. Of those three, one was particularly remote requiring access by a truck for about two hours and then a one-hour boat ride, that was the most remote. One of the most important criteria was that there had to be telephone reception. There are still a large number of villages in Vanuatu where there is very limited to no phone reception. In order to combat the safety issues

there really needed to be access to phone reception, as well as a road and boat access to the village for police. We couldn't choose a site where they would need to walk through the mountains to get to the village. There needed to be some way that police could get there reasonably quickly if there was a safety issue for the authorised person.

In 2018, the first APs were appointed by the president of Vanuatu. There were 12, and they commenced work. The program was evaluated in 2019. It was an internal evaluation with the support of an external evaluator.

I should also add that one of the mechanisms that was brought into the pilot of the APs was something that we call police rotations. That happened on the island of Santo and it was about trying to combat some of the safety issues. We are incredibly grateful to the police force for their commitment to this program, and the connection they have with the APs. What would happen is that every six weeks two officers would travel out to one of the pilot communities and stay in the community for three nights and four days. During that time, they could do awareness about the AP role, but they could also do normal policing work, or they could respond to cases that have come up from the APs. They were also able to meet with chiefs and take reports of cases from community members, even if they were not domestic violence cases. It really provided a regular policing presence in those communities, which was really vital for the security and safety of the AP. For communities who had never ever seen police in their community before, it was something quite revolutionary.

That combination of the AP and police rotation program was evaluated in 2019. In brief, the evaluation findings found that these AP services were having a positive impact on people and community life. It was found that there was a general increase in communities members' understanding of what domestic violence is. There was an increased access to justice because while they issued temporary protection orders the APs were also providing a referral to essential justice services. They're able to claim a reimbursement under the Act. They are able to claim a reimbursement of funds used to take victims into town, for example, or to the hospital. They were actually able to take victims for the most serious cases into town to report to police and have the cases progress to court.

Because of the strong partnership with the police through the police rotations, there was – although obviously it wasn't perfect – but in most cases, there was generally a fairly quick police response to the reports being made. There was this sort of increase in access to justice for these rural and remote communities. It's hard to tell whether domestic violence had actually reduced because there wasn't much of a baseline because in these remote communities, the vast majority of domestic violence cases are still handled within customary dispute resolution processes. To understand what the levels of violence were before the AP program is very difficult.



When we've done monitoring and evaluation surveys, the perception of the community is that domestic violence incidents have reduced. For example, people reported hearing less fights in houses, chiefs reporting seeing less domestic violence cases coming to them. There's definitely a perception that there's been a reduction that I can't support with data.

There are currently three female APs noting that in leadership in Vanuatu communities, particularly in more rural and remote settings, women are often not part of community leadership positions. Women face perhaps more backlash than men did in this role. For a while initially, people were quite happy to see a woman appointed but when it came to women making decisions in the community that affected people's rights and responsibilities — and women being able to come up to a perpetrator and tell him you're not allowed to do this, an order stops you from seeing your wife, you have to stay 100 metres out — that was quite confronting for some people. Some women reported a sense of backlash and lack of support, whereas one female AP reported a real sense of now being included in the community leadership and making a change in terms of the perception of women in leadership roles in her communities. There was a mixed experience of female APs.

Being associated with police rotations was found to have been incredibly important for the safety of the APs but also contributed to community trust and confidence in the police. There were some reports of an increased perception of safety within the community. That was in 2019. The program continues today.

However, there have been some changes. In the town sites we found that APs were not utilised. This is partly due to the fact that in town sites there's a choice of other justice services, you can go directly to the court or the police — it may be that having a member of your community as an AP has not been seen as useful in this context. Whereas in the rural and remote setting, people describe it as having 'justice at our doorstep', of not having to walk out or not having to pay any money, not have to take a really long trip in a truck or a boat, actually just being able to cross the community and knock on the door of the AP's house. For rural and remote communities, it's been a game changer in terms of access to justice.

However, there are challenges: APs are voluntary positions and do not receive any payment. Most of them rely on subsistence farming for a living. It can take up to a day of their time to handle a case because they not only take the complaint and make the order, they're also responsible for the service of the order. They can either do that through personal service or over the phone. Or sometimes they can use a chief in the community if there's a safety issue. The amount of time it takes to find the perpetrator, explain the order to make sure they understand it, it can take a significant amount of time. Then if they are referring and taking the complainant to town, you can talk about two days or three days. This is time they cannot go to the garden and get food. Particularly for those who have young children who have school fee obligations or things like that, it has significant personal toll doing this work.

Over the four years, in terms of the monitoring and evaluation, some individuals certainly experience fatigue and raise the possibility of perhaps greater support financially. That's something that is an ongoing challenge because obviously from a resource perspective, but also in terms of whether the people would be then motivated by the right reasons to take on the role. You are talking about communities where there's little to no other paid work so if you introduce paid work it becomes quite a political issue. That's been quite a significant concern.

Despite these challenges, there's certainly a strong commitment to the work. We've seen an ongoing use of the service in those rural sites which are now the only current active site continuing over four years now. Oversight of this program has been by the Ministry of Justice, Vanuatu, but it is implemented by our program. That includes doing the training, doing the monitoring and evaluation, operating a 24 hour helpline for the APs to call when they have difficulties or they need advice, providing reimbursements for expenses etc.

This is a significant piece of work but now the big challenge is how do we transition this to a fully Government of Vanuatu-implemented service. There is an implementation partnership group that includes the Vanuatu Women's Centre, the police, the Ministry of Justice, the Department of Women's Affairs, and the Malvatumauri Council of Chiefs, Corrections and the Department of Local Authorities. That group is looking now towards the transition. Complicating all of this is that the Ministry of Justice is also possibly being dissolved in Vanuatu with agencies being under different ministries.

The transition process is now looking at DWA as the owning agency — that's the Department of Women's Affairs. What we agreed with DWA is that there will be a person appointed in 2022, who will work very closely with our team to scope and explore how a transition can happen. That's a really big challenge. We're also hoping to trial an expansion. Now that we know how these positions work, and we understand some of the challenges involved in a very in-depth way, we're now looking at what next and how do we roll this out? It will need to be slow and need to be careful — every island is very different and has its own customary practices and its own governance structures. It's not a country where one model that works here is necessarily going to work everywhere. It needs to be quite a slow and well thought out process. That's where we're looking at to the future. That's where we've been and where we going to.

## Questions, with answers from the panel

**Question:** A question for the inspector in Vanuatu. When there is a breach of a protection order, do the police charge the offender with the offence of domestic violence or charge him with breach of an order or both? What is the practice in Vanuatu and why?

**Inspector Joel:** One wants to charge with a breach of an order. If any additional offences have been committed, we charge them as well.



**Question:** Were the courts comfortable with the role and appointment of the authorised persons?

**Polly Walker:** Thanks for the question. My understanding is that they are because, as we've noted this significant geographical challenge in Vanuatu and I can't underestimate how significant it is. I think that there is an understanding of the need. I am not saying there are not concerns because you are giving a community member a quasi-judicial function. Certainly, there may be concerns about how that might be carried out and whether there might be overreach and things like that. I think the legislation is quite good in the sense that they can only make a temporary protection order and it can only be for 14 days. They're allowed to extend it once for another 14 days, but that is it, 28 days. If the victim requires ongoing protection, it has to be referred to the Magistrate's Court for an application. My understanding is that there is an appreciation of the need for this service in those more remote locations and breaches of authorised persons' protection orders have been prosecuted successfully in the Magistrate's Court in Santo. So there's certainly an acceptance that the orders have power under the Act.

**Question:** How are police and authorised persons working in a coordinated way and are authorised persons in places where there are no police? And how are breaches of those orders addressed?

**Polly Walker:** Yes, authorised persons are in places where there are no police. The three main sites in Santo, the closest one is about an hour-and-a-bit drive to the town of Luganville, which is the nearest police station. In terms of how they work together, I have to really commend the Vanuatu police force for their commitment to supporting the authorised person program through those police rotations that I explained where the police go out and stay in the community for three nights four days about every six weeks to two months.

They communicate with APs that way but also we've worked very closely to train police officers so they know who APs are and what they do, particularly within the Family Protection Unit. When an AP comes with a case the police know who they are and understand why they bring the victim to the police station.

In terms of breach of order, the AP usually has to bring the complainant into the police station with a copy of the order, explain the conduct that resulted in the breach and then the police will respond following that report. We haven't had a huge number of breaches reported. I'm not saying is an indication that they don't happen, although our monitoring and evaluation would suggest that largely the orders are quite respected. But when there is a breach the police have responded promptly. That has been really important to the position because if there is no response the faith of the community in the AP's work is quite affected. So it's really important that we build that relationship with the police.

**Question:** Has there been applications to discharge protection orders in Vanuatu? If yes, what was the result from that process?

**Tatavola Matakelekele:** If perpetrators seek an application, it is at the discretion of the courts. The courts must treat the safety of the victim as a priority. And look at the previous offences of the perpetrator. Usually applications are made but are not granted by the courts. Only if the perpetrator shows the claim is a vexatious claim. But the perpetrator can apply for the courts to hear the case much earlier than the victim.

**Polly Walker:** Just to add on the APs, there is a provision under the Act that a person can either go back to the same AP or to a different AP to request that the order be revoked. But we haven't had a situation yet, as far as we know, where a perpetrator has sought to have an order revoked. And that may be because there's such short orders. They're only 14 days. And perhaps people feel that may as well just do what is required for 14 days rather than then go through a process of seeking to have it removed. So far we haven't had that experience. Noting it's a very small pilot.

**Question:** How are the more informal or alternative systems of justice understood by the community, particularly survivors? Are they seen as more beneficial than the state, disruptive to it or a bit of both?

**Polly Walker:** So in terms of the views around the customary system, I think it's far better understood than the state justice system. Certainly, the vast majority of domestic violence disputes or cases, would be resolved through approaching the family leader or the chief in that community. Particularly when you're talking rural and remote, there's very little awareness of the law and of the formal justice system. Our experience with APs in some communities is that they brought to the fore that sort of conflict or tension. While we have to get the endorsement of the community leadership for the positions to be in place, and even some APs are chiefs, but there is a sense in some areas, (perhaps as they start to become more aware of the work that APs do) — that the AP is undermining the role of the chief, sort of asking if this is this minimising our customary governance system — but over the time, chiefs, once they understand the AP role is actually quite limited and the customary systems still have a very important role to play in community governance, they've been able to work more harmoniously. And in fact a lot of chiefs now refer cases to APs. Because our chiefs themselves, particularly those in the community, they can see the cycle of violence happening, they can see the same couples coming back to them every time and they fine the perpetrator and he does it again. For some chiefs, they've actually really found it incredibly useful to have an AP in the community that they can hand these cases to when the community system isn't working, the community system isn't providing enough of that deterrence. It's a really unique thing around the Pacific with this sort of hybrid justice system. There are areas where they work well together and areas where there's definitely tension and a sense that the formal justice system is taking away from the customary system.

**Question:** It's a question for Inspector Joel. Does she believe some police are less likely to make criminal charges for domestic violence because of the option of protection orders?

**Inspector Joel:** It's up to the victim, if she wants a protection order, we refer her to the Women's Centre for the application if she needs an order. But if she wants us to continue with the criminal charge, then we do this. We have a no drop policy when the statement is lodged, the case has to be taken to court and the victim wants to withdraw the case. She would have to explain to the judge why she wants to withdraw. We have a no drop policy, we don't drop cases once it's been reported to the police.

# 10. More than words on paper: The reality of protection orders for service providers in Papua New Guinea, Solomon Islands and Timor Leste

Tracey Newbury, Olinda Cardoso, Kiungui-Kepa Be'Soer, Luania Kirori and Aaron Mane

## Abstract

Interim protection orders (IPOs) and family protection orders (FPOs) are important instruments in the response to family violence across the region. They should protect the survivor and warn the perpetrator. The effective use of IPOs requires police, judiciary and community to understand their roles and responsibilities and to act accordingly. But the experience of many survivor support services is that the law and justice system is not fully supporting their implementation, which results in further vulnerabilities for those people most in need.

In Solomon Islands, the Family Support Service has found that while Magistrates' Courts issue protection orders, the police often do not execute these orders, due to complacency, lack of resources or reluctance. This can lead women to be in greater danger than before. In Papua New Guinea (PNG) there are gaps between legislation and implementation. The experience in Jiwaka Province, PNG, is that the Magistrate's Court is not granting protection orders quickly enough. Voice for Change has found that too often, there are often delays to magistrate hearings, resulting in delays, additional expense and loss of women for women. Often this results in them not pursuing the orders. Similar issues affect the implementation of protection orders in Eastern Highlands. Arresting officers do not follow up or check on complainants; court adjournments can result in survivors giving up and perpetrators continue the violent behaviour. Protection orders are important for children as well as for women, Timor Leste's Women and Children's Legal Aid service will present on how it works with their clients.

- ALFeLa prioritises legal assistance for victims of gender-based violence and domestic violence from all municipalities.
- ALFeLa provides additional assistance, such as transport, food and accommodation, so that victims can access the formal justice system.
- ALFeLa provides legal assistance to women who are accused of domestic violence in cases of self-defence or where mitigating circumstances apply, such as they themselves have been victims of domestic violence. ALFeLa will provide strong defence to ensure that women who suffer from domestic violence are not re-victimised when they take action to protect their lives.

Client data from January 2021 to November 2021 shows there were 636 new cases, 219 closed cases and a total of 2184 active cases. Almost all clients are female and more than two-thirds are more than 17 years of age. One in five (21.3%) were recorded as under 17 years. Table 1 shows the number of clients by the recorded type of domestic violence cases. For the same period, Table 2 presents the type of sexual violence and sexual abuse cases and Table 3 the type of civil cases.

ALFeLa is working to strengthen networks and partnerships, especially with judicial actors, in order to protect the rights of women and children. Over the years, ALFeLa has improved its referral mechanisms in order to be more effective and efficient. ALFeLa collaborates with partners in order to respond to the needs of rural women and children, who live far from the courts and service providers. The service refers cases to other service providers and receives referrals in a manner which is active, effective and responsive to the clients' needs. There has been an increase in client referrals from the referral networks and service providers in each of the municipalities.

We work in collaboration with our partners in order to respond to clients' needs. Most do not stay in the safe house and are at home or in a refugee camp. The roads are very bad, and it is difficult to travel to the courthouse. From our network, we get permission to contact a client about the hearing and filing schedule. In 2021, we created a WhatsApp group to check that our clients are safe and secure.

Most of our referrals are from the police. We receive 80 per cent of our cases from what is called the vulnerable police unit. The second source of referrals is from the organisations that provide medical examinations to women who have experienced violence.

## Olinda Cardoso, Asistência Legal ba Feto no Labarik – ALFeLa, Timor Leste

Women and Children's Legal Aid (Asistência Legal ba Feto no Labarik - ALFeLa) is an independent and impartial not-for-profit legal aid organisation. It is a Timorese organisation, based in Timor Leste and governed by the needs of women and children in this country. Currently, ALFeLa works in all 13 municipality districts from offices in Dili, Baucau, Suai and Oe-Cusse. ALFeLa provides high quality legal assistance to women and children to access the formal justice system.

During 2021 because of the state of emergency declared in response to the COVID-19 pandemic we needed authorisation from the government to travel from one municipality to another. Because of our good relations with the police, they allowed us to travel if we were providing legal assistance to victims of gender-based violence. We have a high number of cases this year, with a large number of pending cases as the case is not processed through the legal system. There are too few prosecutors and public defenders, and we have advocated to the government to undertake recruitment for more judicial actors. We are also limited by the number of staff we have, with only 12 legal officers. Since 2020 ALFeLa has established a pilot project to provide paralegal training to all municipalities to respond to partners' needs.

**Table 1: Type of recorded domestic violence cases by number of clients, January–November 2021**

	Number	%
Simple offences against physical integrity	304	81.5
Serious offences against physical integrity	8	0.2
Mistreatment of a spouse	29	7.8
Mistreatment of a minor	11	2.9
Rape aggravating/sexual violence	14	3.7
Sexual abuse of a minor	5	1.3
Homicide	2	0.5
TOTAL	373	99.9

**Table 2: Type of sexual violence and sexual abuse cases**

	Number	%
Human trafficking	5	3.5
Rape aggravating/sexual violence	93	64.6
Sexual abuse of a minor and aggravated	46	31.9
TOTAL	144	100.0

**Table 3: Type of civil cases**

	Number	%
Alimentation/parental authority (food, guard, visit)	19	76.0
Divorce/paternity recognition	2	8.0
Regulation of parental authority (food, guard, visit)	4	16.0
TOTAL	25	100.0

### **Kiungiu-Kepa Be'Soer, Voice for Change, Jiwaka, Papua New Guinea**

I work with Voice for Change as a legal person. I am part of the Legal Aid Program under the EAW (ending violence against women) Response Desk. The EAW Response Desk is the biggest program component of Voice for Change, we respond mostly to survivors and victims of gender-based violence (GBV) and sorcery accused related violence (SARV).

The EAW Response Desk has three program offices within Jiwaka Province. Jiwaka Province is a newly established province of the Highlands Region of Papua New Guinea (PNG) and is comprised of three districts (North Waghi, South Waghi and Jimi). We have two offices in the South Waghi District and one office in the North Waghi District.

Our legal aid program initially started in 2020. Before that, we had our EAW Program project officers

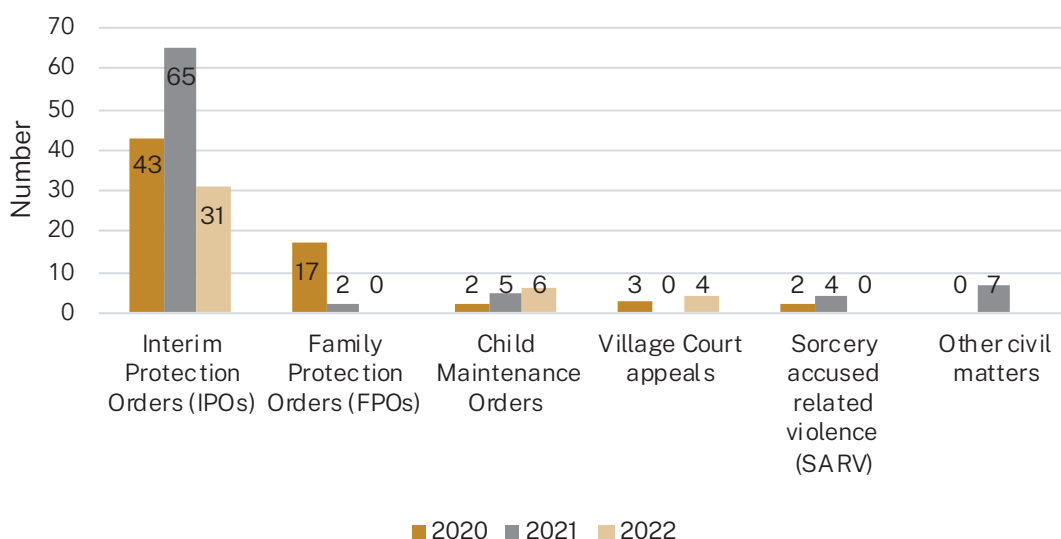
assisting clients who came seeking help to apply for interim protection orders (IPOs) and some family protection orders (FPOs). Basic paralegal services were rendered to 179 survivors from 2017 to 2019.

In 2021 there was an increase in the number of survivors coming to the office. The major factor was because of news spreading among the women and communities that there is legal representation available at the Voice for Change office.

In 2020 for our second quarter report, we completed a total of 43 IPOs, 17 of them were family protection orders; of the 43 IPOs, eight of them were reported back to the office as successful with orders being granted.

Figure 1 below shows the summary statistics and the number of survivors we have attended from 2020 to 2022 (January–June).

**Figure 1: Legal aid services from 2020 to 2022 (January–June)**



Source: Voice for Change.

## Challenges

There are many challenges working with rural survivors, especially women. Most of the survivors have no access to telephones, hence it is difficult to get updates and progress reports on their IPOs and protection orders. The majority of the rural survivors have no proper formal education. Most have only completed grade three, four, or five at primary school, as such they are vulnerable and intimidated when they go before the magistrate.

Another factor is the survivor's fear of the perpetrator and his relatives when they are applying for protection orders. The Highlands men of PNG are known for their violence. Cases where perpetrators are professional working men and if the survivor tries to apply for an IPO, the situation upscales for the survivor. Survivors are normally threatened to not do anything and the whole community rallies behind the perpetrator and they tell the woman not to do anything that will jeopardise his employment.

Another challenge is the court system itself. In Jiwaka, we only have one district courthouse located in Minj Town, South Waghi District. Currently to date, that is the only courthouse judicially servicing the whole population of Jiwaka. Survivors in other districts must travel to that courthouse to access its services and most of these survivors are rural women who cannot afford the transportation costs of going back and forth to the courthouse. It is also frustrating that most of the sitting magistrates that preside over the IPOs and protection orders are not there most of the time. Hence, most of the IPOs and protection orders are adjourned to a later date which lowers the morale of the survivors seeing that justice will take longer to serve.

The Family Protection Act 2013 in PNG provides for the interim protection order which is only 30 days unless it can be renewed or replaced by a protection order. The protection order period is specified for up to two years. If the period is not specified, the order remains in place for six months. For most women come

we apply for protection orders that last for a long duration of time.

## IPO/FPO breach

An IPO/FPO breach must be reported to the police station right away. When IPOs are breached, we advise them to go to the police station. Too often, perpetrators are not apprehended due to police lacking enough manpower to make the arrest, and the unavailability of the police car. The breaching of IPOs and protection orders is not taken seriously. Most of the perpetrators are in rural areas, when they breach an IPO, they are on the run and police officers cannot locate them.

## Way forward

Law and order need to be enforced. The Family Sexual Violence Unit (FSVU) in all police stations needs to have its own vehicles on standby and more police personnel to attend to GBV cases and IPO breaches.

Government needs to strengthen and fund the existing networking stakeholders, especially the police and hospital.

More advocacy and awareness needs to be carried out on the protection orders. Information is power: the more you know, the more you will empower others.

Voice for Change also has a safe house to cater for cases that are dangerous and where lives of survivors are in immediate danger. We help rescue and host them till they recover, and we help with statements for an IPO application.

## Conclusion

To conclude, VFC is doing a tremendous job on the ground, and I can see changes in the communities that we are working with. There are many good success stories also from survivors who have testimony to share. All our work and daily newsletters are published on our website. If you need any additional information, you can email me.



## Luania Kirori, Eastern Highlands Family Voice, Papua New Guinea

The purpose of this paper is to discuss and reflect upon counselling referrals in relation to child protection and interim protection orders.

The vision of the Eastern Highlands Family Voice (EHFV) is to promote happy, healthy, harmonious and wealthy families in the Eastern Highlands province and beyond. The mission is to work towards zero tolerance to gender-based violence, child abuse, gender inequality; to promote family values, gender equality, child rights; and to alleviate poverty in our society. EHFV takes a multi-pronged approach to ending violence within and outside the family, employing field staff and working with children, men and women through dedicated programs and face-to-face counselling. EHFV uses four pairs of key methods: counselling and referrals, teaching and training, awareness and advocacy and organisational development and capacity building.

EHFV responds to client/survivor needs with a holistic and supportive service. EHFV goes beyond counselling, with empowerment programs through focus group discussions. We identify survivors with similar problems and engage them through vocational skills to empower them to be economically independent. We do follow-up and home visits for monitoring and evaluation purposes, and seek to accurately record, store, manage and report data.

Child protection is about ending child abuse. It is everyone's business to protect the child. It is often argued that governments should focus their attention, resources and legal protection on the most extreme forms of violence against children, on what most people understand to be child abuse. This is problematic for the following reasons.

- The Convention on the Rights of the Child (CRC) protects children from all forms of violence and the Committee on the Rights of the Child has made it clear that states must have a national strategy and legal and policy framework for ending violence against children. Like other human rights treaties, it establishes the right to life, provides absolute protection against human or degrading treatment or punishment and it protects the child from armed conflict and sexual and economic exploitation. A human rights approach acknowledges the impact of poverty, lack of education and limited health care on children's exposure to violence, and on the opportunity they have to escape it.
- States must have strategies to prevent and respond to all of these rights violations – but this must sit within an overall national plan to end all violence against children.
- Consistent with the child's civil rights is the unique role of the family.

The most common categories of abuse are physical, sexual, emotional and neglect. A human rights approach to child protection has three overriding concerns – to

promote and protect the child's human dignity, physical integrity and self-respect.

In our overly populated country, and in an identity crisis era, it is easy to forget and ignore these greatest needs. The child protection system in Papua New Guinea (PNG) suffers from limited human resources capacity. The weak governance and coordination mechanisms are inadequate and it is difficult to access both preventive and responsive services. There is a lack of reliable data.

Violence includes physical, sexual and emotional abuse as well as neglect. These are the reality for most children in PNG. These children are unsafe in their own homes and communities. It can be devastating with short- and long-term repercussions on a child's health and wellbeing. The abuse and neglect impairs children's cognitive development and causes irregular perceptions. The advent of new technologies, particularly mobile phones and internet access, are bringing opportunities and risks.

The solution includes improving legal policy frameworks for the protection of children. A strong foundation for a national child protection system is provided by the Lukautim Pikinini Act 2009, (#7 of 2009 ILO) / LPA 2015, which was certified in March 2016.

The prevention of violence and abuse involves working with, and building a network, of partners such as government agencies, faith-based and community-based organisations to address the underlying causes of violence through the implementations of positive disciplining, parental teaching, promoting basic life skills and media-based awareness. Our responses include counselling services for survivors and perpetrators of gender-based violence, and of family and sexual violence and abuse. We do case management and follow up, including home visits. We do telephone counselling and create child friendly spaces. A child search warrant involves a referral to the police and then to the child welfare office.

Counsellors at EHFV have a very broad role that includes support work as well as therapeutic work and they rely on a range of tools to assist clients. One option is a referral to a more appropriate or differently skilled individual or organisation, such as non-governmental organisations or government bodies like the police and hospitals, courts and child welfare office. EHFV counsellors work with all gender-based violence and human rights stakeholders in Goroka to varying degrees. As there is currently a lack of coordinated government response and a lack of resources within the province to address gender-based violence, the relationships that EHFV has with partners is essential in the provision of healing and protective services. EHFV uses its partners to respond to clients' needs with a holistic and supportive service.

Many survivors self-refer to EHFV. They come after hearing an EHFV radio program, seeing the

EHFV-marked car, the office door or being a part of one of the programs that visits Eastern Highlands communities with trainings and counselling. Others come after referral by a stakeholder or family member. Word of mouth appears to be the most effective way of spreading information about the service.

### **Interim protection orders and protection orders**

Survivors can seek assistance to fill out an application for an interim protection order (IPO) from the police Family and Sexual Violence Unit, the Public Solicitor's Office, courts and the Department for Community Development, Youth and Religion Office. A notice of 14 days is served. If any time before the given time of two weeks, the perpetrator breaks the law the survivor should report this to a police officer who may lay charges against the perpetrator. After receiving an interim protection order, the survivor can ask for a protection order for longer term support. Both the IPO and the protection order is issued by the courts. Protection order can last for up to two years.

The challenges with the orders include court adjournments and, in some cases, the survivors give up. The police do not do follow-ups or check on complainants. In addition, the perpetrator may continue his or her violent behaviour.

### **The Family Protection Act is like 'Cherubim and a flaming sword'<sup>1</sup> that strike halfway: Family protection orders in Solomon Islands based on the experience of Family Support Centre (FSC), Solomon Islands**

#### **Aaron Mane, Family Support Centre, Solomon Islands**

Family protection orders came into being in Solomon Islands in 2014 by an Act of parliament known as Family Protection Act (FPA) and had the force of law in 2016. Before that, it was (and continues to be) a restraining order under the Magistrates' Courts (Amendment) Act 2007 and the Affiliation, Separation and Maintenance Act 1971 of Solomon Islands that can provide safety and protection for survivors of domestic violence (DV) or under the Penal Code criminal charges such as assaults and other related offences.

The FPA gives choice to survivors of DV to either lodge a claim, report in civil or criminal or both at the same time. So it can be likened to a double-edged sword that guides the survivor and strikes the perpetrator if he crosses the line. A survivor can report and open a domestic violence case and the police have the power to charge and if found guilty the offence carries a maximum penalty of \$30,000 or three years imprisonment or both. At the same time, a survivor

can apply for a civil protection order and if it is urgent, apply for an Interim Protection Order (IPO) first, then go for a Final Protection Order (FPO) which can last up to five years. If in breach of such orders it is a criminal offence which carries a maximum penalty of \$30,000 or three years imprisonment or both.

A closer look at what this means is that a perpetrator could feel the impact and the message that could quickly spread like wildfire that there are cherubim and a flaming sword that guide or protect potential survivors or victims and if one tries to cross that line a double-edged sword is waiting for him or her.

So far, this is not the case in Solomon Islands. Experience shows that only one edge of the sword fully strikes, that of the Magistrate's Court in issuing IPOs and FPOs while the other side of the sword, that of the police, is complacent or too reluctant to strike. We have not fully realised the full intention or benefit of this law for survivors and potential survivors in Solomon Islands because the other edge of the sword is not willing or too complacent to strike at the same time or at some later time.

We forecast that if both edges of the sword strike together, there will be better protection and safety for survivors and potential survivors and potential perpetrators would be deterred, and Solomon Islands will change.

I would like to describe an imaginary or ideal situation for survivors of domestic violence in Solomon Islands as expected by this Act, the FPA:

1. if one survivor runs to the police, she gets what she wants instantly: that is, a police safety notice (PSN) because of the imminent danger. It can go for 21 days and can be renewed once only. (Unlike before, when she would be tossed to and fro, for example, from the police to Public Solicitor's Office and/or to the Family Support Centre etc., and even back, and if no magistrate is available, she has to wait. She would give up and go back to the perpetrator again.) This PSN gives her a breathing period (a 'panadol') to ease her and to decide whether to go for a protection order before/after expiry of 21 days in civil case or report and open a DV case with police (criminal case) against the perpetrator (or she can take both options together) to be discussed later. (Remember, she can bypass this PSN and go straight for a protection order).
2. If she opted for a protection order alone, before or after the expiry date of 21 days or after renewal she can go to the court with the assistance of the police as mandated by the FPA (but police still fail) or by a lawyer (currently in use) and get an IPO then a FPO, which can last for five years — enough for her to do other good things in life free from violence.
3. If she opted for a criminal report to the police rather than the protection order, then she can open a criminal

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1 'Cherubim and a Flaming Sword' — Genesis 3:24 which depicted angels with a sword with flames turning every which way guarding the tree of life after the fall of man and woman from the garden of Eden.

case for DV against her perpetrator. DV is an offence which carries a maximum penalty of a \$30,000 fine or three years imprisonment. The perpetrator can be apprehended and be charged. (However, the problem remains: the police would want to cross-check her report with the perpetrator by calling him or getting him to the station or the investigation would be done reluctantly or would take longer because of various excuses — as usual.)

4. If she opted to go for both a protection order and a criminal case of domestic violence, then she can do it. She can get at the end of the day a protection order that would last for five years against the perpetrator and if a successful prosecution by the police for the domestic violence case, then the perpetrator can go to prison or be fined as another penalty arising from the same domestic violence.

So, there can be two cases (both civil and criminal) going on arising from the same facts or acts and the perpetrator faces double consequences.

What about when orders are breached?

5. If there is a breach of the PSN, IPO or FPO, then there are consequences. It is an offence against the state — a \$30,000 fine or three years imprisonment. It should be effective. (However, the problem is, for example, when a PSN is issued it is likely that it would not be served by the police. Even if it is served and there is a breach, there would be no arrest at all. Let us take the IPO that is issued by the court. The IPO would likely not be served by the police or if it is served on the perpetrator, and the perpetrator breached certain conditions — for example, that he must leave the house or return certain properties — police are either reluctant/refuse to arrest or make excuses. So, they are not helpful. If the police do their duties, there would be a reduction in court processes, for example, a trial to get FPO would not be needed since the perpetrator has already been apprehended and is waiting for court on criminal charges for breaching an IPO.)

So, it is like a double-edged sword should these problems not exist. It should be an effective tool for survivors in Solomon Islands.

To summarise, the flaw right now is not really the prosecution of such cases or the Magistrates' Courts dealing with such cases but the police's reluctance or failure to investigate, lay charges, serve court documents (PSN, IPO, FPO etc.) and arrest for breaches of PSN, IPO and FPO on the basis of various excuses.

Because of these failures and the tendency of the police to cross-check with the perpetrators when survivors report domestic violence, and the slowness and reluctance to carry out an investigation, survivors are further harmed and put in greater danger.

If the police were prompt and did their part, the Solomon Islands would realise the full intention of the law in protecting survivors of domestic violence.

# 11. Tuvalu's Family Protection and Domestic Violence Act: Challenges with protection orders

Lisepa Paeniu

## Abstract

The Tuvalu Family Protection and Domestic Violence Act came into force in 2014 and provides for a number of types of protection orders. The paper will outline the types of orders and discuss some of the challenges in obtaining a protection order, as well as some of the challenges experienced after an order is in place.

## Introduction

The Tuvalu Family Protection and Domestic Violence Act (the Act) came into force in 2014. Under the Act, the court must grant a protection order if it is satisfied that the perpetrator has used or is likely to use violence against the complainant; and if the protection order is necessary for the protection, safety, health and wellbeing of the complainant and any dependants. Applications for protection orders can be made at Island Courts, the Magistrates' Courts, the Senior Magistrates' Court or the High Court.<sup>1</sup>

## Types of protection orders

The Act provides for five types of protection orders as described below.

### 1. Emergency protection order

Emergency protection orders can be made *ex parte* and last for up to three days. They can only be renewed once after expiry, upon a new application by the complainant.

### 2. Temporary protection order

Temporary protection orders can also be made *ex parte*; however, they last for 30 days. The court is required to list the case for hearing prior to the expiry of the order.

### 3. Consent protection order

An application for a consent protection order may be granted by the court upon the consent of the parties to the proceedings. The orders are made *inter parte*. A consent protection order remains in place until a further order is made by the court or until it is cancelled by the court.

### 4. Interim protection order

Interim protection orders may be granted where an application for a protection order is made *ex parte*. Interim protection orders can remain in place for up to two years. They can also end when a further order is made by the court, when they are cancelled or if they expire and an application for extension is dismissed.

### 5. Final protection order

When a court receives an application for a protection order, it may adjourn the case and:

- order a social enquiry report from the social welfare worker or registered counsellor; or
- make directions for the complainant or defendant to attend counselling; or
- make directions for the complainant and defendant to attend a conciliation conference.

In the above circumstance, the social welfare worker or registered counsellor must submit a report to the court in advance of the next hearing. If the defendant is not present when the final protection order is issued, it must be served on him/her. Final protection orders remain in force until they are varied, extended or cancelled by the court.

## Challenges

There are a number of challenges associated with obtaining and enforcing protection orders in Tuvalu. Some of these challenges are outlined below, along with examples of what happens in practice.

### After hours orders

According to the police, one challenge is the fact that orders cannot be granted on the weekend as the magistrates are not available. In these circumstances, the perpetrator may be held in police custody until they calm down. If he (or she) does not calm down, he may be held until the victim and any children can be relocated to a safe house and a protection order is issued, generally on the Monday morning.

### Incomplete applications

Another challenge is a lack of detail provided in the application. There is only one police officer working on these cases, and the case can be delayed when there is not enough specific information provided in the protection order application as the police officer has to follow up to obtain additional information.

### Parties not adhering to conditions

On some occasions, neither party follows the conditions of the protection order. For example, the woman and children may be in the safe house, and the husband may visit and they agree to reunite a few days later. It is difficult to tell the couple that the man is not allowed in the safe house if they are married and they both wish to reconcile.

<sup>1</sup> Family Protection and Domestic Violence Act 2014, section 5.

### **Limited enforcement personnel**

Another challenge is the limited number of police personnel. For example, there was a case where the complainant (the woman) relocated to a family member's house with her children after the protection order was granted. The respondent (the man) found out where she was and visited the house and threatened the woman and the children with a machete. The situation went on for hours before the police were able to intervene.

### **Limited consequences for breaches**

The consequences for breaching a protection order are not adequate. Only two protection order breaches have been reported so far and the penalties were minimal. In one case the perpetrator was ordered to be relocated to his home island. He went to his home island but then came back to the capital and continued the abuse. No further penalties were imposed and the case has not gone back to court. In the other case, the couple reconciled and no action was taken regarding the breach.

### **Awareness**

More needs to be done regarding awareness of the Act. Women are continuously suffering from domestic violence in the home and are not seeking orders because they do not know about them. The police and the Gender Affairs Department need to do further work around raising awareness.

When protection orders are granted, they are usually only an Emergency Protection Order and it does not proceed to a longer order. If there was more awareness, women might seek out the longer-term orders. Women ask the police to lock up the perpetrator as they fear their safety and most do not know that long-term protection orders are available.

### **Lack of translated materials**

Another issue is that the legislation is in English. It would be better if it was translated into Tuvaluan so that more people can understand it.

## **Discussion and conclusion**

Protection orders have been useful to an extent in Tuvalu. All protection order applicants have been successful in obtaining orders; however, there are generally less than 10 issued per year and they do not advance from Emergency Protection Orders to longer-term orders.

Despite the legislation, attitudes towards domestic violence in the community remain out of step with international human rights instruments. Interviews with a small sample of men on the street revealed that most think that domestic violence is a justified cultural practice, and that it is necessary so that women know their place.

The Tuvalu Family Protection and Domestic Violence Act has been a good thing for Tuvalu; however, more public education is needed so that more women and children can be protected and kept safe by the laws. More counsellors are also needed to meet the needs of the population.



# 12. Fiji's experience with domestic violence restraining orders

Radhika Naidu, Swastika Narayan and Mele Rakai

## Abstract

This paper provides information on Fiji's experience with domestic violence restraining orders (DVROs) and is based on our experience working as legal practitioners in Fiji. The paper first provides some background on Fiji's domestic violence legislation. It then explains which courts issue DVROs and discusses elements of the legislation regarding applying for orders. It then covers a number of topics, including criminal proceedings, monetary relief, safe houses, access to judgements and enforcement. Lastly, we provide some case examples before closing with our thoughts on whether the law is working.

## Background to the legislation

Following Fiji's military coup in 2006, the military government passed around 300 decrees, which subsequently became law. One of those decrees is now the Domestic Violence Act (the Act) which commenced on 1 December 2009.

Although the Act was not passed through a democratic process, its progressive nature is a reflection of the efforts by Fiji's women's rights organisations such as the Fiji Women's Crisis Centre and the Fiji Women's Rights Movement. The Fiji Law Reform Commission also played an integral role, having prepared a Domestic Violence Bill prior to the 2006 coup which ultimately led to it being passed as a Decree and then subsequently as an Act.

Use of the Act was a bit like an experiment in the early years, but the volume of cases has picked up significantly. The provisions in the Act are now used routinely by the Fiji Women Crisis Centre, the Legal Aid Commission of Fiji and private legal practitioners around the country.

The objects of the Act are:

- a) to eliminate, reduce and prevent domestic violence;
- b) to ensure the protection, safety and wellbeing of victims of domestic violence;
- c) to implement the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and related conventions; and

- d) to provide a legally workable framework for the achievement of paragraphs (a), (b) and (c) above.<sup>1</sup>

Part 3 of the Act sets out the provisions relating to domestic violence restraining orders (DVROs). A court may make a DVRO for the safety and wellbeing of a person if satisfied that the person is, or has been, in a family or domestic relationship with the respondent, and:

- a) the respondent has committed, is committing, or is likely to commit domestic violence against that person or against another person relevant to the application; and
- b) the making of the order is necessary for the safety and wellbeing of the person or another person relevant to the application, or both.<sup>2</sup>

## DVROs and the courts

Under the Domestic Violence Act 2009, a domestic violence restraining order (DVRO) can be sought in the High Court, in the Magistrate's Court (including in their Family Divisions), as well as in a Juvenile Court. Despite this, it has become a norm in Fiji for DVRO-related matters only to be filed in the Family Division of the Magistrate's Court (known as the Family Court).

Suva as the capital has two Family Courts; however, other towns have either one Family Court, or it is the Civil or Criminal Court which sits as a Family Court on a specific day of the week to hear the relevant cases.

Most locations in Fiji do not have a fully operational Family Court with the ability to hear DVRO applications on a daily basis. When urgent matters arise, the application may be able to be heard on the same day if a magistrate can take the case, but if not, it will be pushed out to the next day. This is especially an issue in Lautoka and Ba and some other locations. However, this has now changed with the judiciary making all DVRO applications urgent so they are called the same time they are filed by applicants and were treated as such during the pandemic. However, there are still areas to improve on in Fiji with the issue of DVROs.

## Applying for DVROs

A DVRO application can be made by an adult victim or a person who cares for the adult victim. For children that need protection, the DVRO application can be made by a parent, guardian, adult who lives with the child or the child themselves if they are over 16 years. Applications can also be made on behalf of victims by a police officer, welfare officer, the Fiji Public Trustee or any other

1 Fiji Domestic Violence Act 2009, s6.

2 Fiji Domestic Violence Act 2009, s23.

person where the court deems it necessary for the safety or wellbeing of the victim.<sup>3</sup>

Despite these provisions in the Act, most applicants are assisted by the Legal Aid Commission or private practitioners. Police and welfare offices are not routinely supporting victims to apply for DVROs, and this is something that needs to change. Because victims do not know where to go for support, and are dealing with a significant amount of trauma, often some days have passed before their DVRO application is submitted. This can be problematic when the applicant is asked whether there is still a genuine threat from the perpetrator. More needs to be done in terms of ensuring that support with preparing DVRO applications is available, and that people know how to access it.

While the police are authorised to provide assistance, and make applications on behalf of victims, this is not being done. DVRO forms are not available in police stations and when victims present to police, they are more likely to encourage reconciliation with the perpetrator than take a statement from the victim. This is not the correct role of the police.

Another underutilised provision in the Act is section 25 which allows for police to apply for a DVRO via telephone. We are not aware of this being done in Fiji.

### **DVROs and criminal proceedings**

Under the Act, courts can make DVROs by their own motion. For example, if there are criminal proceedings underway, and the victim is in a family or domestic relationship with the accused, the court can initiate a DVRO to protect the victim.<sup>4</sup>

The courts can also impose additional conditions when issuing a DVRO, such as with regard to non-contact between the applicant and respondent,<sup>5</sup> protection of the spouse of the applicant (where the spouse is not the respondent)<sup>6</sup> and temporary custody of children.<sup>7</sup>

These provisions in the Act allow for a range of orders to be made to protect the applicant and their children, without the need to file separately with the Family Court if criminal charges are already being pursued. This is not being done regularly however.

We also see this issue in relation to sexual offences where the parties are in a domestic relationship. Although sexual abuse is a form of domestic violence,<sup>8</sup> neither the judiciary nor the prosecution are using provisions from the Domestic Violence Act. This means that the sentences and penalties are not as high as they could be for sexual offenders. Both the prosecution and the judiciary are failing victims and are not doing what they have been trained to do.

### **Monetary relief and safe houses**

The court can include conditions on the DVRO that the respondent must provide urgent monetary relief to the victim.<sup>9</sup> This is a very important provision, especially given that Fiji does not have safe houses. While civil society organisations are providing whatever support they can, this monetary support provides relief so the victim can meet her and her children's needs if separating (even temporarily) from the perpetrator. We recognise that Fiji's civil society organisations are very active and vocal in this space; however, we believe it is time for Fiji to establish safe houses as an option for victims of domestic violence.

### **Access to judgements**

All DVRO proceedings in Fiji are held in a closed court except where they are taking place alongside criminal proceedings. Section 57 of the Act restricts the publication of identifiable information regarding cases; however, we have a situation where no information is being published. Having access to previous case outcomes would be of great benefit to legal practitioners, as well as judicial officers who could then ensure greater consistency. Section 57 does allow for information to be shared with professionals and students for training purposes; however, a more transparent approach would be to make the case information public without any identifying information.

Fiji has recently decided to publish all Family Court judgments and not reveal names of the parties. The same could be done for DVRO proceedings, especially for inter parte matters that go to a full hearing. Having access to these proceedings will be of great benefit for civil society groups, legal practitioners and judicial officers.

### **Enforcement: Service of orders and breaches**

Having a DVRO granted by a court is one part of the process, but the process is not complete until it is served on the person that the applicant is seeking protection from (the respondent). This is the responsibility of the police. Sometimes it is not done and we, as legal practitioners, have to continuously follow up with the police until it has been served. It is important because if an order is breached, criminal proceedings cannot be initiated if the order was not served on the respondent. So then the purpose of getting the DVRO in first place is futile.

The standard of proof for DVROs is the 'balance of probabilities'. For a DVRO breach, as it is a criminal offence, the standard of proof is 'beyond reasonable doubt'. The penalty for breaching a DVRO is FJD 1000 and

3 Fiji Domestic Violence Act 2009, s19.

4 Fiji Domestic Violence Act 2009, s26.

5 Fiji Domestic Violence Act 2009, s29.

6 Fiji Domestic Violence Act 2009, s30.

7 Fiji Domestic Violence Act 2009, s31.

8 Fiji Domestic Violence Act 2009, s3.

9 Fiji Domestic Violence Act 2009, s34.

12 months imprisonment for a first offence, and FJD 2000 and 12 months imprisonment for subsequent offences.<sup>10</sup>

Similar to serving orders, police are also needed to assist where DVROs are breached. They are not providing assistance as they should be however. We recognise that the pandemic has put greater pressure and more responsibilities on the police, but we do not accept it as an excuse. Even if police need to enforce COVID-19-related restrictions and containment areas, it should not be done at the expense of victims of domestic violence. In Fiji the required legislation is in place but the police and other service providers are not assisting to ensure the laws are enforced. We need more research and evidence to understand why this is the case.

## Case examples

The below cases provide some examples of how the Act has been used in practice. Many of the examples are based on our personal experiences as legal practitioners in Fiji.

### Case example 1

The case involved a male who injured his de facto partner with an iron rod. Criminal charges were laid for unlawful wounding under the Crimes Act. During the Magistrate's Court proceedings, the offender used the fact that he was the sole breadwinner, and also that the couple had later reconciled, as mitigating factors. The victim was present and confirmed to the court that they had reconciled. The magistrate accepted the reconciliation as a mitigating factor, and sentenced him to 18 months imprisonment. The case was appealed in the High Court which found that the magistrate should have applied provisions from the Domestic Violence Act.

In Case example 1, a DVRO should have been granted by the Magistrate's Court on its own motion. Also, the sentence was well below the maximum term for unlawful wounding under the Crimes Act (five years imprisonment) as the reconciliation was used as a mitigating factor.

We believe that the judiciary needs to go further in cases where the parties have reconciled – they need to question whether the victim feels safe and investigate whether they have been coerced by the perpetrator to drop the case. Even if the victim truly wants to reconcile, the judiciary has a responsibility to assess whether she and her children are going to be safe from further harm.

Case example 1 shows that the judiciary is not using the Act as it could to protect victims, and that police prosecutors are not making DVRO applications together with criminal proceedings.

### Case example 2

The DVRO respondent was a man. His partner applied for and was granted the DVRO while he was on a business trip to another island. When he returned home, he was presented with the DVRO at the front gate by the applicant and was not able to enter the home. He sought legal assistance for court orders that would allow him to enter the home and retrieve possessions that he needed for his business. The matter was resolved for before it was heard by the court.

Case example 2 highlights two points:

- The woman lived in fear, and only gained the courage to apply for a DVRO while her partner was on another island.
- The respondent was a well-known Suva business man; all families no matter their education, social or economic status can be affected by domestic violence.

### Case example 3

The DVRO applicant was an elderly man and the respondent was his daughter. The daughter and her family lived with the father in his house and this created a lot of issues. The application for a DVRO had to be withdrawn, however, as it contained allegations that were 'too general'.

Case example 3 shows that while applicants may be undergoing a challenging situation at home, their ability to express themselves clearly can affect their prospect of obtaining a DVRO.

### Case example 4

A man was charged with assault causing actual bodily harm and breach of a DVRO after punching his wife causing injury. The court found him guilty and he was sentenced to 12 months imprisonment. Considering his family situation as a father supporting five children, he was only required to serve four months in prison and the remaining eight months as a suspended sentence for three years. For the safety of the victim a permanent DVRO was also issued.

Case example 4 shows that while a crime may be severe, the family situation may be taken into account which impacts in the final outcome. It highlights the tensions between justice being served and the need for the victim and children to be supported financially.

<sup>10</sup> Fiji Domestic Violence Act 2009, s77.

### Case example 5

In this case the applicant and the respondent were stepsisters. An interim DVRO was issued against the respondent and her husband because they were harassing the applicant and her two sisters. The order included conditions for the respondents to stay 100 metres from the applicant and her two sisters; vacate the applicant's house forthwith; not destroy or remove any household items; and not use any weapons against the applicant and her sisters.<sup>1</sup> After a full trial, the interim DVRO was made permanent.

1 The orders were made under sections 27 (non-molestation), 29 (non-contact), 32 (possessions), 33 (use of weapons), 35 (occupancy) and 36 (tenancy).

Case example 5 demonstrates the domestic violence is not only an issue between spouses or between parents and children. It can also take place between siblings. The law covers a broad range of family and domestic relationships as described in section 2 of the Act, including:

- a. spouse;
- b. other family member;
- c. person who normally or regularly resides in the household or residential facility;
- d. boyfriend or girlfriend;
- e. person who is wholly or partly dependent on ongoing paid or unpaid care or a person who provides such care.

### Case example 6

A woman sought a DVRO because she wanted to take a property from her partner. The DVRO was granted but then the applicant asked the court for the property and the court dismissed the case.

Case example 6 highlights a problem we see sometimes where DVROs are being used in property disputes and not strictly for their intended purpose. The Fiji Women's Rights Movement has done some research in this area but more is needed. We want to make sure the people accessing the court system are using it for the right reason.

### Is the law working?

As mentioned earlier, the first object of the Act is 'to eliminate, reduce and prevent domestic violence'. The question remains as to whether the Act is working in this regard.

One of the greatest barriers we see in terms of implementing the Domestic Violence Act is the attitudes

of the prosecution, the police and the judicial officers whose task it is to use and enforce the law. We feel that in many instances it is patriarchal attitudes in our society that are preventing women from fully accessing justice. It also reflects broader societal attitudes if violence and sexual assault are being used as ways to deal with problems within intimate partner and family relationships. Additionally, the bench is not gender-balanced and it is clear that the male-dominant judiciary sometimes fails to understand the severity and trauma of the events that women are facing.

Civil society groups in Fiji are working hard to tackle the problem, but still there is so much violence. Fiji has made international news for its domestic violence issues. In February 2021 Aljazeera News published that the rate of women experiencing violence from an intimate partner in Fiji is twice as high as the global average (64 per cent versus 30 per cent). The article also discusses the COVID-19 pandemic and the increase in frequency and intensity of violence against women that has come with it.<sup>11</sup> This correlates with a report from the Fiji Women Right's Movement that found that domestic violence in Fiji increased during the pandemic.<sup>12</sup>

At a workshop held in Suva in October 2020, the (then) Minister for Women, Children and Poverty Alleviation, the Hon. Mereseini Vuniwaqa, stated that about 10 women were killed at the hands of their partners in 2019. This is an alarming number for a small country like Fiji. She also stated that so far in 2020, the police had recorded 573 cases of crimes against children and 1644 cases of crimes against women. The crimes against women included:

- 1545 cases of assault-related offences including murder, attempted murder, manslaughter, infanticide, serious assault, acting with intent to cause grievous harm, assault causing actual bodily harm and common assault; and
- 99 cases of sexual offences.

In Fiji we have more work to do to in terms of enforcement of our Domestic Violence Act before we can say that it is meeting its objectives. Perhaps the penalty for breaching a DVRO is not harsh enough and needs to be strengthened to act as a deterrent. Police responses also need to be faster and more effective. More awareness needs to be done with police officers so they can assist in a timely manner.

If we look at the fact that several domestic violence cases are being filed and considered by the courts every month, then the Act is certainly working to an extent. It means that matters are being reported and the justice system is responding. It means that steps are being taken towards the second object of the Act, 'to ensure the protection, safety and wellbeing of victims of domestic violence'.

No matter how commendable a law is, no matter how well it appears to set out a framework for equality, the proof of a law is in its implementation.

11 Aljazeera 24/2/2021, 'Crisis within a Crisis': Violence against Women Surges in Fiji.

12 Fiji Women's Rights Movement 2020, Assessment of Women's Access to Justice in Fiji during COVID-19 Pandemic from January to May 2020.



# 13. Implementing the Family Protection Act: The Solomon Islands experience

Vaela Ngai, Koisau Sade, Ruby Awa and Merrilynne Pryde

## Abstract

This paper provides information on the domestic violence (DV) legislation in Solomon Islands, and the mechanisms that are used to prevent and respond to DV including police safety notices and protection orders. The paper then discusses the 'Access to Justice' project, a unique project which supports implementation of 'authorised justices', people who have authority to issue interim protection orders across the country and who play an important role in rural and remote areas. Finally, the paper provides some statistics and trends relating to use of the domestic violence legislation in Solomon Islands, discusses the challenges and suggests some ways forward.

## Introduction

### Solomon Islands Family Protection Act

The Solomon Islands Family Protection Act (SIFPA, or 'the Act'), was passed in parliament in 2014 and enacted in 2016. So it has only had a few years of implementation and is still relatively new. The SIFPA criminalises domestic violence and establishes two key mechanisms for protection of survivors: police safety notices (PSNs) and protection orders (POs).

Another objective of the SIFPA is to ensure support services are available for survivors, particularly by strengthening referral pathways between service providing organisations.

### Police safety notices

PSNs can only be issued and served by the police. They last for 21 days and can be extended for a further 21 days. They have two mandatory conditions: not to commit domestic violence and not to possess a weapon. Apart from those, survivors can request additional conditions.

PSNs need to be filed in court for them to be effective. A police officer must assist the survivor to apply for a protection order within the 21-day period. Breach of a PSN is a criminal offence.

### Protection orders

There are two types of protection orders. One is an interim protection order (IPO) which is a temporary order and the other is the final protection order. An IPO is the first step in the process to get a final protection order.

A protection order can be applied for by the survivor or by another person on their behalf, especially in the case of vulnerable groups such as children or people

with disability. IPOs remain effective either until they are revoked or until a final protection order is granted.

Final protection orders can last up to five years. Interim Protection Orders can be issued by magistrates or 'authorised justices', which we will discuss below. Final protection orders can only be issued by a magistrate.

Like PSNs, a breach of either an IPO or final protection order is a criminal offence.

### Access to Justice project

The Access to Justice project, known as A2J, ran from 2017 to 2020 in Solomon Islands. It was funded by the United Nations Trust Fund and the Australian Government, and technical assistance was provided by the Pacific Community.

It was a pilot project which took place in two provinces — Malaita and Guadalcanal — and 37 sites, most of which are quite remote.

Although the program has now officially ended, the project design and objectives are continuing under the Ministry of Justice and Legal Affairs (MJLA) and the Ministry of Women, Youth, Children and Family Affairs (MWYCFA).

### Authorised justices

Before we get to the project, we need to explain a provision of the SIFPA. Similar to the 'authorised persons' under the Vanuatu Family Protection Act, the SIFPA also has a quasi-judicial mechanism; authorised justices have the power to issue IPOs.

There are two categories of authorised justices: justices of the Local Courts and prescribed persons. The Local Court justices are our traditional chiefs and have authority under the Local Courts Act of the Solomon Islands. The Local Court justices have had a role in hearing land disputes since 1959. Under the Local Courts Act, the chief justice has the power to give the Local Court justices other jurisdictions, and this is how they now also have jurisdiction to issue IPOs under the SIFPA.

Authorised justices are based in villages and are the traditional leaders in those villages. In order to become a Local Court justice, they need to be able to show that they are recognised as chiefs in the villages.

This system of authorised justices had been put in place given that 80 per cent of our population lives in remote areas. Those remote areas do have local leaders, people of good standing in the community who are the custodians of the peace and already look after the law and order issues. So they now have this extra duty of issuing IPOs.



## Solomon Islands' point of difference

It is now a good point to explain one of the differences between protection orders in the Solomon Islands compared with protection orders in some other Pacific Island countries.

An application for a protection order in Solomon Islands is for a final protection order. This is unlike other countries where the interim or emergency protection order might be one process, and then the applicant would need to lodge a new application to apply for a longer-term order.

Under the SIFPA the application can start with an IPO, which is where the authorised justices come in, but it is part of the process of getting a final protection order which ends with the Magistrate's Court.

So the authorised justices play a role in this remedy, which really comes under the jurisdiction of the Magistrate's Court.

What this also means is that the IPO does not have a particular time frame (like 21 days or 30 days as in other countries), but it ends when an event takes place. This would be when a decision is made on a final protection order in the Magistrate's Court. It also ends if it is revoked, which can be done in the Magistrate's Court or by an authorised justice following a revocation application by either the applicant or respondent.

## Interim protection orders and standards of proof

Applications to an authorised justice for an IPO can be made *ex parte* and outside of ordinary business hours.

If the Magistrate's Court or the authorised justice is satisfied that there is a likelihood that there has been domestic violence, and that the person has no available remedy or there is a need for protection from further domestic violence, then they can issue the IPO.

Protection orders are a civil remedy. Authorised justices are effectively local chiefs based in villages. They are unlikely to have gone through law school or to have been to any training in the law previous to their being awarded their position as an authorised justice.

There is a difference between the standard of proof for IPOs and for final protection orders. For IPOs, the standard of proof is what is considered 'sufficient and appropriate, considering the nature of the order'.<sup>1</sup> For the final protection order the standard of proof is on 'a balance of probabilities'. So when the authorised justices attend training, they are presented with cases where they have to look at the evidence provided and consider whether it is 'sufficient and appropriate' regarding whether domestic violence has occurred.

## Evidence

Another issue is the admissibility of evidence. Since protection orders are a continuous matter that ends at the Magistrate's Court, we need to be careful about how to take evidence to make sure it is admissible in court. For example, we do not want a situation where a survivor walks for three hours to appear in court only to find that the evidence has been deemed inadmissible because of a technicality.

In the Solomon Islands, as is the case in other Pacific countries, the evidence can be submitted to the court as sworn statements or it can be taken under oath. When someone gives evidence under oath, they stand in the dock, usually in the courtroom, and they swear on the Bible to tell the truth and nothing but the truth.

During the training that is done under the A2J project, the authorised justices are trained on taking evidence. They are told that if the applicant is unable to write the story or complaint on the application form, they must get them to take an oath before listening to the story. The story is subsequently written on the application form and becomes admissible evidence since it was taken under oath.

In the Magistrates' Courts they have two options — lawyers can prepare a sworn statement, or the person can be put on the stand to swear that the information in the form is the truth.

## Going to court

Where the process starts with an authorised justice, the police have a statutory duty to serve the orders on the respondent and also file the orders with the court. This triggers the process for the matter to be picked up by the Magistrate's Court to then review it in relation to the final protection order.

An issue we find here is that women find it difficult to access support when the case goes to court. It starts at the village level with the authorised justices who are local and who are accessible. When it goes to a hearing with two parties at the Magistrate's Court, however, women do not always have access to legal representation.

We do have the Public Solicitor's Office here in the Solomon Islands, similar to legal aid in other countries, who have a duty to provide free legal support for the public. A lot of their work is defending criminal matters and we have a unit within them called the Family Protection Unit. Unfortunately, even with that unit, they go by their mandatory duty under their legislation and their policies where it is a first come, first served basis. So practically what happens is you have a woman who applies for a protection order, but then when it goes to court, the men are the ones who are likely to get a lawyer. This is because the Public Solicitor's Office defends the accused most of the time and it is also run on a first come, first served basis. So when men get served with an order, they rush down to the Public Solicitor's Office and get allocated a lawyer to defend them.

In Solomon Islands there is a non-government organisation called the Family Support Centre which has 10 offices across the country. The Family Support Centre has a legal unit and they are the most likely to represent affected women. There are also private lawyers, but most women do not have the funds required to engage them.

Another issue with the final protection order hearing is the possibility for survivors to be cross-examined by the defence. This really puts the survivors at a disadvantage.

<sup>1</sup> Solomon Islands Family Protection Act 2014, section 20(3).

## A2J implementation

The project's key objective is to ensure that survivors of domestic violence have access to protection – and the authorised justices are part of the protection mechanisms under the SIFPA.

So we had a situation where we have these people in the communities, the authorised justices, who really know the custom, but we needed them to be gender sensitised, to understand the SIFPA and to be familiar with some legal procedures. They need to be able to ensure that the survivor receives protection.

The purpose of the project was to build the capacity of authorised justices. After the third year we also worked with prescribed persons, and with what were called community facilitators. The role of the community facilitators was to increase awareness on the SIFPA, the criminality of domestic violence, and most importantly, to make people aware of the people in the community who can provide protection orders.

So for three years the project trained the authorised justices to do their duties under the SIFPA to issue protection orders. It also worked with community facilitators to disseminate information on the protection mechanism that can now be accessed through these authorised justices – which meant no longer travelling for three days to access a court, which is unaffordable for most women in rural areas.

Given that most of the Local Court justices are male, at the beginning of the project we were mostly working with men. Initially there were 44 men and two women, but by the end of the project, an additional 36 women were trained as authorised justices and became prescribed persons.

## Service of orders

Like in other countries, protection orders only become effective when the police serve the orders. Under the legislation, this can be done by any police officer, it does not have to be an officer from a family violence unit. So IPOs can be served by a frontline police officer at a station, right up to the police officer in charge of the police station.

The other thing to note is that if the order is not served within three months, then it becomes null and void. But if it is served, then it stays in force until the matter is reviewed by the Magistrate's Court for a protection order, or there is a revocation.

## Training

In terms of the training that was carried out for the authorised justices, we were very conscious that these were men and under their watch, Solomon Islands had two-thirds of women between the ages of 15 and 49 (or about 60–64%) experiencing intimate partner violence, according to the statistics. So under the watch of these current leaders, we had a high tolerance of domestic violence, and low reporting. So our starting point was that most of the men were likely to allow and justify the domestic violence taking place in communities.

We provided training so that these people could see domestic violence as wrong. It was a tough call since some are influential people in the community, but we did make recommendations for some to be cut – those that were unable to be gender sensitised and unable to change their mindset. Fortunately, in our experience, a good majority were receptive to the training. They learned that domestic violence was wrong when they understood the causes and effects of the violence. Many changed their mindset and went on to be champions of ending domestic violence in the community.

The training had two parts. The first was covering core concepts such as:

- gender inequality
- the link between gender inequality and domestic violence
- a human rights-based approach
- the definition of domestic violence, according to the SIFPA.

They also learned about the principles and protocols to follow as authorised justices when responding to a survivor of domestic violence. This included, for example:

- find a private place
- assure the survivor of the confidentiality and privacy of information that they share
- do a risk assessment and safety plan
- make referrals and set up referral pathways in their own communities.

The second part of the training was on how to fill in the forms.

The training took place for three years in Guadalcanal and Malaita. Along with the Pacific Community, UN Women also came on board to support mentoring of government officers from local courts, the MJLA and MWYCFA. These two ministries are now rolling out the training so that all communities and provinces of Solomon Islands will be covered. It is being done alongside our SAFENET<sup>2</sup> referral system.

## Key statistics and trends

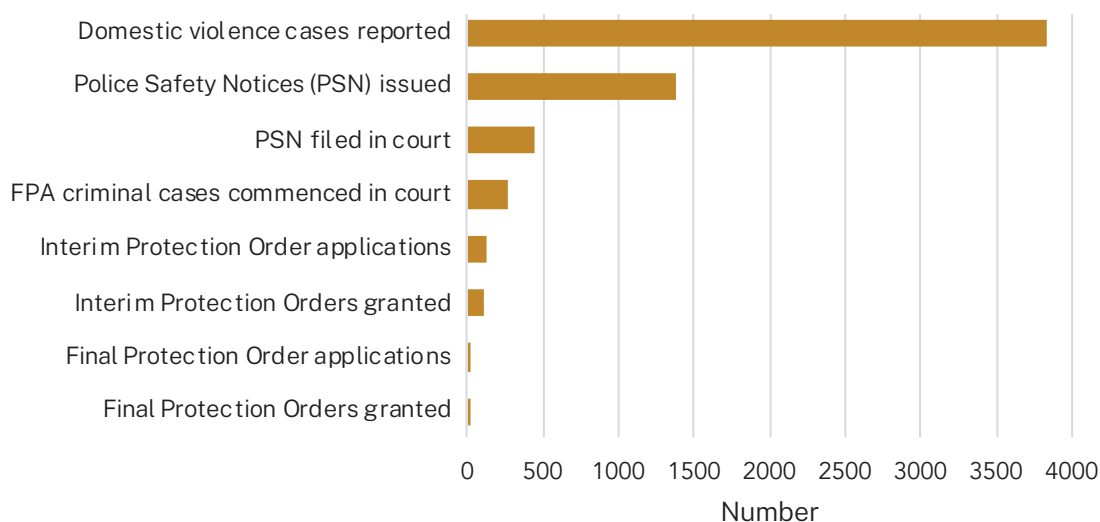
In this section we will look at the key statistics and trends relating to the SIFPA.

Figure 1 shows the protection mechanisms under the Act and how they have been applied in the first three years of implementation from 2016 to 2019. It shows that 3839 domestic violence cases were reported to the police. It is important to note, however, that the police are only one service provider under the SAFENET referral system: different service providers receive reports of domestic violence and not all are reported to the police.

Importantly, you can see a substantially higher number of people reporting domestic violence to police as compared to those receiving protection through a PSN or protection order. We have very high rates of attrition and at the end we can see that out of the 3839 cases, only 13 have resulted in a final protection order being issued.

<sup>2</sup> SAFENET is the name of the network of government and non-government organisations who are working to improve services for survivors of sexual and gender-based violence in the Solomon Islands.

**Figure 1: Comparison of consolidated police and court data from all locations, 2016 to 2019**



Source: Ministry of Women, Youth, Children and Family Affairs, 2021.

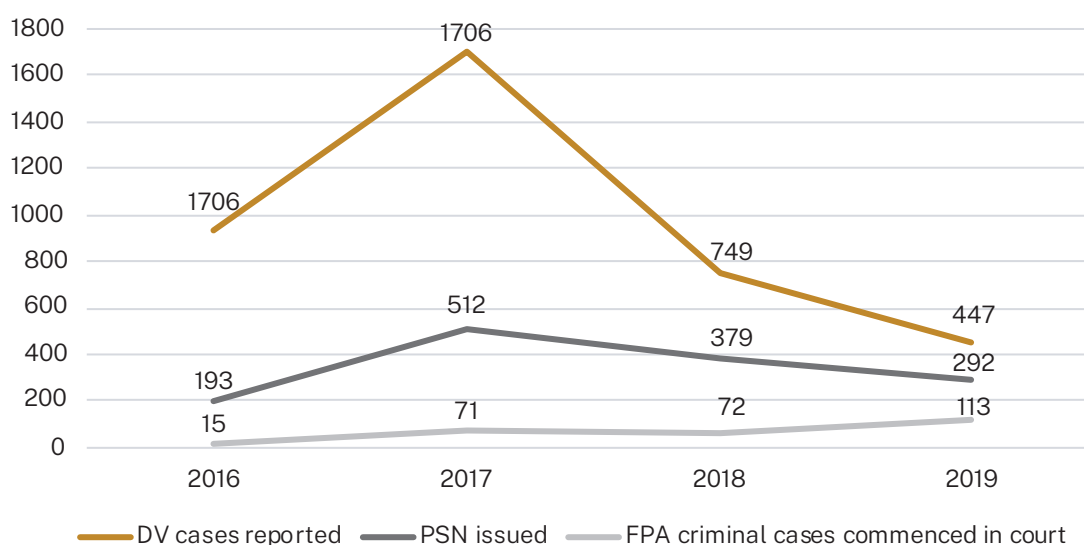
We can see that police safety notices were the most preferred protection mechanisms; however, most of them were not filed in court and these were rendered ineffective. So we have more work to do to ensure that PSNs are filed in court.

Figure 2 (below) shows the same protection mechanisms as Figure 1, but includes the trends from 2016 to 2019. The top line shows the number of reported cases, with the highest in 2017 at 1706 cases and decreasing to 447 cases in 2019. The graph also shows there was a small drop in the number of PSNs issued from 2017 to 2019 and a slight increase at the end of 2019 in criminal cases under the SIFPA that were brought to court. Between 2016 and 2019, there were 104 IPOs issued compared to 13 final protection orders. This could mean that many court cases are still pending,

that the application was withdrawn or that the Interim Protection Order may have been revoked.

In the Solomon Islands context, overwhelmingly, women report that they would like to remain in their relationship or just want the violence to end. The lack of uptake for final protection orders could be related to a preference for temporary measures such as PSNs and IPOs. Women have reported that the PSNs have been effective in interrupting the violence, therefore there is no need to pursue a protection order. However, there are also reports that some women continue to seek multiple PSNs. It is likely that women are not being given adequate information and are not receiving the support they need to apply for the longer-term protection of a protection order.

**Figure 2: Justice sector responses to domestic violence, 2016 to 2019**



Source: Ministry of Women, Youth, Children and Family Affairs, 2021.

## Challenges

In this section we outline four key challenges that Solomon Islands has experienced in implementing protection orders.

The first is, as we saw in the statistics above, the extremely low numbers of both interim and final protection orders being issued. PSNs and IPOs are designed to provide temporary protection against domestic violence until a survivor is able to obtain a final protection order. However, in practice we see that most commonly, PSNs are used for protection rather than the protection orders. This shows the need to ensure accurate information is disseminated to the public about protection orders and how to apply for one.

The second challenge is ensuring that survivors receive assistance from police to apply for protection orders. Section 16 of the SIFPA requires police to not only serve the PSN but also assist survivors to apply for a protection order. However, from our experience we know that this is not happening. It could be because police are not aware of the duties under the Act; frequently they refer survivors on to others that are part of the referral system, rather than personally assisting them to apply for an order. Also, most survivors are not aware of their rights under the Act and rely on police to tell them about protection orders and PSNs. Additionally, many women have poor experiences with police or may face other barriers reporting to police. In the Solomon Islands context examples of barriers include if the police officer is a relative of the perpetrator or the very high cost of travelling to access police.

The third challenge is the lack of appropriate follow-up by police after IPOs are issued by authorised justices. For example, since the authorised justices have been put in place, no IPOs have been filed in court (this is the responsibility of police). Also, service of orders and service of PSNs on respondents is not always being completed. This may be because police do not understand that it is their role, or because they are severely under-resourced.

The fourth challenge is that it is very difficult to access Magistrates' Courts for final protection order hearings. Accessing Magistrates' Courts is challenging in general in the Solomon Islands due to the infrequency and inaccessibility of circuit courts outside of Honiara and regional centres. Since the commencement of the Act up to the end of 2019, only one application for a final protection order was heard outside of the central Honiara Magistrate's Court.

## Ways forward

In this section we outline the next steps for implementation of the SIFPA.

Significant progress was made in 2020 with the review of the SIFPA. This was done through a comprehensive process of nationwide consultations, which was jointly conducted by the MWYCFA and MJLA staff, supported by a remote international consultant.

In 2020 we initially saw the COVID-19 pandemic as a barrier to conducting the consultations to inform

the review, especially the border restrictions that prevented the international consultant from travelling to Solomon Islands. This meant that the local staff from MWYCFA and MJLA were fully engaged, and scaled up, to complete the consultations on the ground across all our nine provinces. This was a positive thing for us as it provided the opportunity for us to develop stronger relationships between the national and provincial level partners that are working together to implement the Act. It also strengthened the relationship between the two ministries.

The SIFPA review is key to our moving forward. The review report has made 42 recommendations that include legislative amendments, training for duty bearers including police, increasing public awareness, changes to data collection and analysis, policy improvements, research and development and also a reflection on learning from our experiences.

In particular, the review recommends comprehensive training for police, justice sector representatives and other frontline duty bearers, especially on their respective responsibilities under the Act. The recommendations from the review directly address the challenges identified above relating to police training, regulations for authorised justices and in facilitating better access to justice for survivors.

The Family Protection Advisory Council, which was established under the SIFPA, have approved the review report and have overseen the development of an initial implementation plan with costing estimates. We are looking forward to tabling the report, along with the recommendations, implementation plan and costings, in cabinet in February 2022. This will be a joint cabinet submission by the ministers responsible for women and justice. This is a ground-breaking achievement for the Solomon Islands. It is fitting here to thank the Australian Government through the Department of Foreign Affairs and Trade for the financial support they have provided to enable us to conduct the review.

The A2J project will continue and is now jointly owned and led by MWYCFA and MJLA. The project will continue to conduct training for authorised justices and we are aiming to roll it out to at least one province each year.

Other significant progress so far is that the drafting instructions have been completed for the regulations for authorised justices, which define comprehensively the role of local court justices and the prescribed persons.

One of our key aims is that we want to see greater representation of women as authorised justices at the provincial level. This will also assist to facilitate access for survivors who may be more willing to speak to or seek help from other women.

The project aims to build on existing community resources and strengths and enhance community understanding of gender-based violence and how to respond. Through this, we want to continue to create pathways for survivors to access the formal justice system through informal community systems that lead to the formal system, especially through the local courts.

Finally, the first years of implementation of SIFPA have shown that survivors use the Act to seek protection in ways that work for them. For example, we saw in the statistics that the temporary protection measures are the most utilised.

Through our ongoing work to implement the recommendations from the review of the SIFPA and also through the A2J project we are seeking to enable women, especially those without ready access to the former justice system to access these protections.

While we have seen some progress and achievements, we acknowledge that there is still much to be done. The review highlighted a lot of learnings that we have to take on board. However we, the Solomon Islands team from MWYCFA, we look forward to more of these kinds of spaces, for sharing and learning from each other. The SIFPA is still a baby for us and we are always willing to learn and to see how we could improve access to justice for women, especially in the rural and remote areas of the Solomon Islands.



# 14. Re-educating perpetrators of domestic violence: A Pacific approach

Tevita Seruilumi

## Abstract

There is overwhelming evidence that the majority of perpetrators of domestic violence (DV) are men. Courts have shown sterner attitudes in most rape, sexual assault and 'serious' DV cases where there is a grievous bodily harm or unlawful wounding. For cases of DV where there is no or minor physical injury there is a tendency for the courts to award a sentence that does not reflect the true nature of the offence or the cycle of violence. For DV cases where there are no 'visible' injuries or if the perpetrator is a first offender the courts would most likely issue a warning, a bound over or suspended sentence which means that there is no custodial sentence. Evidence from women's groups shows that due to women's socio-economic status, most will continue cohabiting with their husband/partner after reporting a case of DV. Therefore, for women's safety, there must be an intervention working specifically with perpetrators aimed at changing their violent behaviour.

Many countries in the Pacific have enacted DV legislation that criminalises DV and authorises the courts to order perpetrators for counselling but the court cannot mandate existing counselling services for women victims of violence against women (VAW) to provide services to male perpetrators. At present the only available counselling services are those that are established primarily to provide counselling support to women victims. As a result, many perpetrators who have been through the formal justice system do not have any mandated program that can help address their violent behaviour.

While counselling is stipulated in the DV legislation, counselling is an approach used with survivors which is non-judgemental and empowering. Perpetrator programs should be focused more on re-education of men's thinking about individual use of violence, power and control rather than counselling.

As a region, women in the Pacific are experiencing higher rates of violence against them than women from other regions.<sup>1</sup> For example, the Family Health and Safety Surveys and Demographic Health Surveys

conducted in Fiji, Kiribati, Papua New Guinea, Solomon Islands and Vanuatu found that two out of three women have experienced some form of domestic violence in their lifetime. A survey conducted in the Autonomous Region of Bougainville indicated that two out of every three men had perpetrated some form of violence against his partner.<sup>2</sup>

While women in the Pacific experience other forms of violence against women (VAW), domestic violence, perpetrated by an intimate partner or family member, is the most common and repetitive form. There is overwhelming evidence that the majority of perpetrators of domestic violence are men and the perpetration of domestic violence continues with impunity.

While a few men may not perpetrate physical or sexual violence, they may use other forms of coercion and control in their relationships. However, coercive control without the use of physical violence is rare in the Pacific given strongly male-dominated and patriarchal societies, high rates of domestic violence, widespread attitudes that show acceptance for and that excuse domestic violence, and higher levels of impunity. In the Pacific countries with higher rates of domestic violence, physical violence is used extensively by men. Men in these countries have a greater sense of entitlement and use physical violence, in private and public spaces, to control and punish their partners, other female family members, and other women who deviate from traditional gender roles and expectations. Understandings of coercive control in the Pacific context must be informed by men's behaviours and their use of violence within the domestic violence dynamics that are experienced by women in the Pacific. Men use violence to establish dominance, prevent women leaving, repress conflict, establish privilege and control women.<sup>3</sup> The practices of coercive control, such as intimidation, threats, surveillance, degradation, shame, isolation and control, maintain a man's dominance over the survivor. Coercive control enables men's physical and sexual violence by further controlling and manipulating survivors, including manipulating them into not leaving or not seeking help.

Higher rates of domestic violence mean that programs working with men and boys to change attitudes and behaviours are a necessity in the Pacific. While there are various programs working in the region that include boys and men, including one that is regarded as

1 WHO 2013, Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-partner Sexual Violence.

2 Fulu et al. 2013, Why Do Some Men Use Violence Against Women and How Can We Prevent It?

3 Stark 2007, Coercive Control: How Men Entrap Women in Personal Life.

a best practice — the Fiji Women’s Crisis Centre (FWCC) Male Advocacy Program for Women’s Human Rights (Male Advocacy Program), which was later adopted by the Pacific Women’s Network Against Violence Against Women — there is only one program in the Pacific that is specifically designed as a behaviour change program for domestic violence offenders. It is called the Respectful Families Program, in the Autonomous Region of Bougainville, and its effectiveness is robustly monitored through the voluntary participation of spouses. While other interventions may work with men and boys, including domestic violence offenders, without the tools and expertise to assess and validate the behaviour change of individuals it is difficult to categorise awareness programs, schools programs, curriculum programs and advocacy programs that engage with men as behaviour change programs working with domestic violence offenders.

### **Why and how to work with male domestic violence perpetrators**

Courts in the Pacific have shown sterner attitudes in most sexual assault and ‘serious’ domestic violence cases where there is a grievous bodily injury. However, even for cases where there is significant injury sustained by the survivor, courts do still issue lenient sentences. For cases of domestic violence where there is no visible or minor physical injury, there is a tendency for the courts to award a sentence that does not reflect the true nature of the offence or the cycle of violence that the survivor is subjected to. An analysis on judicial sentencing trends in the Pacific showed that contentious factors were raised in 90 per cent of domestic violence cases (of the 111 cases analysed) and in 66 per cent of the cases it led to a reduction in sentence.<sup>4</sup> Contentious factors raised during mitigation included gender stereotyping, the consideration of customary practices which may be linked to gender discrimination (such as forgiveness ceremonies) or other factors which unjustly privilege the interests of the perpetrator over the interests of the victim. For domestic violence cases where there are no ‘visible’ injuries or if the perpetrator is a first offender, the courts will most likely issue a warning, a bound over or suspended sentence which means that there is no custodial sentence. Evidence from women’s groups across the region shows that, due to women’s socio-economic status, most women will continue cohabiting with their husband/partner after reporting a case of domestic violence.

Therefore, for women’s safety, there must be an intervention working specifically with perpetrators aimed at changing their violent behaviour. Women’s safety has to be realised within their homes and one of the most direct ways to influence and enhance the safety of a woman who has accessed the justice system is to work with the man that she continues residing with. Working with men to end domestic violence within the homes through a robust program can build environments

that allow women more freedom and choice over their lives, because it is addressing men’s broader tactics of control and manipulation, which can increase women’s feeling of safety.

Many countries in the Pacific have enacted domestic violence legislation that provides for protection orders, creates an offence of domestic violence or breach of protection orders and authorises the courts to order perpetrators undertake counselling. However, the court cannot mandate existing counselling services for women survivors of VAW to provide services to male perpetrators. At present the only available counselling services are those that are established primarily to provide counselling support to women survivors. As a result, many perpetrators who have been through the formal justice system do not have any mandated program that can help address their violent behaviour.

While counselling is stipulated in the domestic violence legislation, counselling is an approach used with survivors which is non-judgemental and empowering. From an understanding of the dynamics of domestic violence and the use of power and control, the counselling approach, which provide options and empowerment for survivors, is not the best practice method of working with domestic violence perpetrators. What is required is a changing of attitude and behaviours, and this can only be done through re-education. A re-education program for male perpetrators of domestic violence facilitates a process where he should acknowledge his past use of violence, accept responsibility and be given the opportunity and environment to make positive attitude and behaviour changes to choose not to use violence in the future. Perpetrator programs should be focused on the re-education of men’s thinking about their individual use of violence, power and control rather than counselling.

Similarly, mediation when used in domestic violence cases must involve mediators who are well versed with gender, gender relations, gender inequality, domestic violence, patriarchy, women’s rights and all forms of discrimination against women. Otherwise, mediators will often suggest for women to stop making the man angry or to be respectful of the man or to perform her ‘role’ properly. This places the responsibility back onto the survivor who is experiencing the violence and subjected to power, control and, in most cases, abuse. Another common harm done by mediators is placing responsibility to stop the violence on both the survivor and the perpetrator. Again, this approach also implies responsibility and blame on the women and perpetrators often use this as a coercive and controlling tactic. This is why a re-education program should be the preferred approach over mediation.

Another approach that is used outside the Pacific is anger management. Although this is not a common method used with perpetrators in the Pacific, anger management — similar to counselling and mediation — does not address power and control and the perpetrator’s deliberate choice to use violence as a tactic to control

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4 ICAAD and DLA Piper 2015, *An Analysis of Judicial Sentencing Practices in Sexual & Gender Based Violence Cases in the Pacific Island Region*.

and abuse their power. Anger management often perceives domestic violence perpetrators as men who cannot control their anger. Experiences from survivors, crisis services, women's groups and the police indicate that perpetrators are able to control their anger in other aspects of their lives but choose not to control their anger against their wives/partners and deliberately choose to use violence against them. Therefore, the anger and use of violence is controlled, deliberate, and purposeful. The same analysis can be used to address issues around alcohol consumption and drunkenness, and its linkages to domestic violence. It is used similarly to camouflage the perpetrator's intention and deliberate choice to use violence. This is supported by some research which shows that perpetrators are more likely to assume responsibility for their violence and less likely to blame the victim if they could claim to be under the influence of alcohol at the time of perpetration.<sup>5</sup> Alcoholics Anonymous or substance abuse programs therefore are not best suited to address domestic violence perpetration, because it does not address the cause of domestic violence. These reasons reiterate why a perpetrator re-education approach should be the preferred model.

The need to work with men to change their attitudes and behaviour on VAW has become an increasing focus in the work to end VAW globally and in the Pacific. The women's movement in the Pacific has been critical in building the foundation that has allowed the work on addressing VAW in the Pacific to become what it is today, including how it has evolved to work with men. There are a growing number of organisations in the Pacific that are or are beginning to work with men. However, only a few organisations have components in their program that work with men from a women's rights-based approach. An example is the FWCC's Male Advocacy Program which is a concrete example that shows that an approach centred on women's human rights and that challenges men's behaviours can work effectively in the region. The Male Advocacy Program focuses on men who want to advocate for women's human rights and FWCC does not view the program as a perpetrator program.

Many organisations working with men to address VAW and women's human rights while labelled as behaviour change programs do not effectively work on behaviour change or monitor men's behaviour during the program nor do they adopt a women's human rights or survivor-centred approach.

While there are programs working with men to address VAW, as expressed above, this is not the same as a standalone perpetrator program. Community programs working with men do not stringently hold participants accountable for their past use of violence or choice to further perpetuate violence but address the issue of men's violence and gender inequality more generally and without holding individual men accountable from a program perspective.

## Limitations of current programming

While there is only one standalone perpetrator program in the Pacific, there are some organisations in the Pacific that are or are beginning to work with perpetrators as part of a broader program. The following key challenges in the Pacific regarding programs working with male perpetrators of domestic violence indicate the need for comprehensive behaviour change programs for domestic violence offenders in the Pacific.

Most of these programs do not prioritise survivor safety as a core component of their work. While there is mention of non-continuance of violence as an emphasis of the program, it is not articulated from a survivor-centred approach. Survivor safety and survivor referral should remain a priority of any perpetrator program. There are organisations working with perpetrators that are more concerned about keeping the family together rather than survivor's safety or choice to live with her abusive husband/partner. Similar to other institutions that respond to domestic violence, this indicates that without the proper training and sensitisation on violence against women, many programs working with men often reinforce stereotypes and perceptions that promote male dominance, gender inequality and survivor blaming tendencies.

Prioritising the wellbeing of the family or safety of the children at the expense of women survivors is another area of concern from those who work with survivors and perpetrators. Often the safety and interests of children are used against survivors as a tactic to prevent them from leaving abusive relationships. Likewise, when working with perpetrators, the focus of behaviour change is often on the harm that domestic violence can cause to the children. While the violence witnessed by or used on children is also a form of domestic violence, most programs working with men are unable to articulate that violence against women is equally harmful, horrendous and unacceptable.

Another challenge is that most programs do not address and/or hold men accountable for use of coercive control and many do not address the risk of manipulation tactics by the perpetrator. Many organisations that work with men are not able to make connections between gender inequality, discrimination against women and girls and how this leads to unequal power relations which are then abused in the form of violence and abuse. Because they are not able to make this link, they are unable to show men how the use of coercive control falls within the broader context of male domination, in society in general and within the context of an intimate partner relationship. Many organisations or persons working with men are not able to connect why a man's thinking that he needs to know his wife's whereabouts, passwords or what she is wearing, or who she is with is a sense of entitlement and control and how this is deeply connected to their use of violence against their wife/partner.

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5 Noonan, Taylor and Burke 2017, Links between Alcohol Consumption and Domestic and Sexual Violence against Women: Key Findings and Future Directions.

Many approaches working with men often do not realise how men can use laws, legal systems, support services, faith-based organisations and even men's programs against their wife/partner. Understanding this likely behaviour from men is critical. Men's ability to use these services against women or access this service as a tactic against women should be realised. While there are many services for women who experience violence, because of patriarchal settings in the Pacific and men's enjoyment of privileges and power, men collectively will have access to information and support over survivors. Also, men who are perpetrators are more likely to have someone in a position of power, authority and influence that might be able to assist or provide support to them. Many organisations and individuals working with men are not aware of these dynamics and this exacerbates the possibility of colluding with domestic violence perpetrators.

Most programs do not address inequality within relationships as well as broader structural inequality, violence and discrimination against women. Many also do not address cultural and religious practices and misinterpretations of women's status and unequal power relations. The focus is on the violence and how to mitigate or stop the violence. Without linking domestic violence to gender inequality, it is difficult to achieve any behaviour transformation. Gender inequality is a cause and consequence of domestic violence. A program cannot address actual perpetration of violence without looking into unfair distribution of work, privileges and decision-making within a family. One of the reasons that this is a continued struggle is that gender equality often contradicts interpretations of culture and religion that promote male superiority over women. As a result, some programs that work with men and boys often contradict key messages advocated by leading Pacific feminist and women's rights activists against VAW.

Experiences from the Pacific show that some programs do exist through faith-based organisations or are affiliated with faith-based perspectives. Similar to community programs, these faith-based programs, although well intended, do not have the in-depth analysis and understanding of perpetrator behaviours or the dynamics of domestic violence. These well intended programs create more harm for survivors. Some faith-based approaches focus on messages of 'forgiveness' and 'everyone deserves a second chance', which can imply sympathy rather than accountability for perpetrators. This is also used to coerce survivors back into abusive relationships when they are seeking options to leave or access justice.

Many organisations working with perpetrators do not work within the formal law and justice system to hold perpetrators accountable under the law. The danger to this approach is that despite good intentions, it can 'decriminalise' domestic violence and often this can be viewed as a similar approach to mediation and counselling, which as explained previously are harmful models. Another reason why the interaction with the formal law and justice system is limited is because of

the lack of technical experience to design programming that can interface between the courts and leading services, or experts who can be trained on how to work with domestic perpetrators, within the best practice approach. Enforcing criminal and family protection legislation is critical to holding the perpetrator accountable for previous and any future use of violence. Current programs working with men as perpetrators in the Pacific do not have significant consequence components as part of the program because they do not have any links to the formal justice system. This drastically impacts the effectiveness of those programs in holding perpetrators accountable.

Many programs are being implemented by organisations or individuals without specific or advanced skills to deal with the complexities of working with men and domestic violence perpetrators. There are organisations that work with men on gender and violence against women but are unable to explain the cause of the violence, and unable to make linkages to the gendering processes and gender inequality. These programs do not understand or make connections to patriarchy, discrimination against women and girls or how domestic violence is a gendered offence and how it is about power and control. These organisations that claim to be working on behaviour change with men or male perpetrators most often have no monitoring or accountability mechanisms built into their programs that validate self-reported claims of behaviours change by men – therefore they would be unable to demonstrate any actual behaviour change. Working with domestic violence perpetrators is a high-risk area of work. Without a high level of technical and training expertise and analysis on men's violence against women, it would be impossible to implement a perpetrator program in the Pacific that aligns to best practice and prioritises the safety of survivors. Working with perpetrators of domestic violence as a behaviour change program should align to best practice models and also what has worked and is contextual to women's status in the Pacific. It is also important to integrate and build on from Pacific approaches that have worked and have been recognised as effective models in working with men.

### **Integrating global evidence, best practice and Pacific expertise**

Globally, there have been few rigorous evaluations of men programs to address VAW and the geographical span of the evaluations completed is limited to largely to higher resourced settings.<sup>6</sup> The interventions that have been evaluated have shown weak levels of impact. The small body of evidence for interventions involving men that are relevant to perpetrator programs shows that they should:

- Be conducted over many hours with multiple interventions with the same group.
- Explicitly address the norms, behaviours and relationships associated with manhood and seek to transform gender norms to promote gender equality.

6 Jewkes, Flood and Lang 2014, From Work with Men and Boys to Change of Social Norms and Reductions of Inequities on Gender Relationships, 1580–9.



- Include a clear theory of change grounded in an understanding of the problem – that VAW is caused by gender inequality.

Current global evidence indicates that interventions with men to reduce and prevent VAW cannot be undertaken successfully without the provision of services for survivors.

The current evidence also shows that initiatives that focus on raising awareness and changing gender attitudes alone have not led to sustained behaviour change. Interventions that are targeting men who are more likely to have a predisposition to violence or are currently practicing violence need to specifically respond to this existing predisposition and violent behaviour in order to prevent further violence and must be different to interventions that target men generally.

Globally there have only been few evaluations of perpetrator programs and the evaluations that have been conducted have shown no evidence that such programs effectively stop re-offending which shows a need to rigorously evaluate any interventions aimed at male perpetrators. Of the evaluations that do exist it appears that interventions that address masculinity show more promise at changing the behaviour of perpetrators. Current evidence also shows that changing men's use of violence is particularly difficult in communities where there is conflict and where the use of violence to show dominance is especially strong, which is the case Pacific countries with high prevalence of VAW and violence generally.

The Australian *National Outcome Standards for Perpetrator Interventions*<sup>7</sup> align to the rationale provided above and includes the following standards:

1. Women and their children's safety is the core priority of all perpetrator interventions.
2. Perpetrators get the right interventions at the right time.
3. Perpetrators face justice and legal consequences when they commit violence.
4. Perpetrators participate in programs and services that change their violent behaviours and attitudes.
5. Perpetrator interventions are driven by credible evidence to continuously improve.
6. People working in perpetrator intervention systems are skilled in responding to the dynamics and impacts of domestic, family, and sexual violence.

Experience in implementing programs that work with men in the Pacific has shown that incorporating the following standards is critical to programs working with men. Programs should:

- Be held accountable to women's rights and survivor-centred crisis counselling services.
- Align to feminist principles that adopt a comprehensive understanding and analysis of gender, gender inequality, discrimination against women, power relations, men's violence against women and women's human rights.
- Articulate why it works with male perpetrators and not survivors/survivors of domestic violence.

Fundamental to domestic violence perpetrator programs is prioritising women's safety by addressing men's attitudes and behaviour but also understanding manipulation tactics. There must be ongoing critical examination and reflection on the risk of collusion with perpetrators and how it can jeopardise women's safety and undermine wives'/partners' lived experiences throughout the program.

This paper aims to demonstrate that the Pacific has the expertise to articulate, develop and strengthen perpetrator programming that is evidence based and aligns to best practice. With the right technical expertise from within the region, the Pacific can develop perpetrator re-education programming that aligns to the six Australian Outcomes Standards, refines approaches to adhere to feminist principles, integrates Pacific context and best practice with multiple layers of accountability for the program participants and develops programming that works with strong women leaders and aligns to leading crisis services. The Pacific will be able to combine the strength of its work in supporting women, survivors, women's access to justice and protection under the law, advocacy and lobbying with a different emphasis on working with domestic violence perpetrators to directly monitor, influence and improve women's safety.

7 Department of Social Services 2015, *National Outcome Standards for Perpetrator Interventions*.





# 15. Formal justice engagement with family protection orders in Papua New Guinea: Research findings

Judy Putt and Lindy Kanan

## Abstract

The presentation focused on the main findings from a major research project on the use and effectiveness of family protection orders in Papua New Guinea (PNG). Involving a large team and collaborating with specialist family and sexual violence services, the research was conducted in multiple sites across the country. More than 100 applicants and 140 stakeholders were interviewed, and justice and client statistics analysed to form a picture of whether the orders were being used and did offer safety to applicants. In particular, the paper highlights system and sector challenges, and refers to the recommendations that centred on improving the formal justice sector's response to survivors of domestic and family violence.

## Introduction

First, we want to acknowledge that the research was undertaken by a large group of people, so we are talking about research that was collectively done, not just by ourselves. Second, those of you who have seen the short videos we made as a result of the project might find that we are echoing some of the key conclusions that emerged from the research that are presented in the videos.<sup>1</sup>

In PNG there are two types of family protection orders: interim protection orders and protection orders. There are no police safety notices. Family protection orders (FPOs) were introduced in PNG under the Family Protection Act which passed through parliament in 2013 and was then enacted in 2014. However, regulations were not passed until 2017, so we only started to see implementation effectively occurring from 2017 onwards.

A key element in the legislation is that there is a specific criminal offence of domestic violence. In the past (and now) there is a range of criminal offences that someone can be charged with when an incident of domestic violence occurs but, very importantly, the legislation now makes it crystal clear that domestic violence is a criminal offence. Other key elements of the legislation are the civil regime which introduced the family protection orders, and the introduction of the criminal offence for breaching a FPO.

The research questions that guided the project were:

1. How have FPOs been implemented in PNG and are they being used?
2. What are the process and system challenges?
3. What has been the impact of FPOs on:
  - individual applicants and respondents;
  - justice system and service delivery; and
  - society?

The focus here is on the process and system challenges that we found, but also our findings in relation to the impact of having FPOs on individual applicants and respondents, the justice system and service delivery and on society as a whole.

The research was funded by the Pacific Women Shaping Pacific Development Program and the Justice Services and Stability for Development program. Our university partners were the University of Papua New Guinea and the PNG University of Technology. Our civil society research partners were Femili PNG, the Nazareth Centre for Rehabilitation, FHI360 and Voice for Change. The research was undertaken at the following locations:

- Port Moresby, National Capital District
- Lae, Morobe Province
- Mount Hagen, Western Highlands Province
- Minj, Jiwaka Province
- Popondetta, Oro Province
- Buka and Arawa, Autonomous Region of Bougainville

The project took place from mid-2019 to late 2020. Key parts of the research included interviews with 118 survivors who had applied for an IPO, interviews with 140 stakeholders (services, police, courts etc) and a survey of young adults in the two largest urban centres of PNG, Lae and Port Moresby. We extracted what we could in terms of data from the records held by the police, courts and by specialist services that support survivors. We also sat in on family protection order hearings and observed court processes.

## Findings

### Awareness

We found there is an increasing awareness of IPOs, especially among young, urban and more educated adults. There is often limited understanding however of the actual process and of longer-term protection orders and who can apply for them.

<sup>1</sup> The videos can be accessed on [www.youtube.com](http://www.youtube.com) by searching for the 'Department of Pacific Affairs ANU' channel then selecting the 'PNG Family Protection Order Project' playlist. They can also be accessed via [this link](#).

## Advice and practical help

Family and friends and the police are the most likely to provide information and advice. Practical help is usually from police or from specialist family and sexual violence (FSV) services if there is one available locally. Help is often needed with forms as many applicants cannot read or write English well, or at all. This is an issue that came up in the symposium.

## Trends and patterns

In terms of the trends and patterns, the available evidence suggests that the number of IPOs (which last up to 30 days and can be extended for another 30 days) increased substantially from 2017 to 2019 but then stabilised. The COVID-19 pandemic has also had an effect on numbers in 2020 and 2021.

We found considerable variation in the number of IPOs being issued across the provinces of PNG. Each province has a District Court in the capital of that province and in six provinces, we found that they issued over 100 IPOs in 2019. However, very few were issued in the highland provinces and not many POs (the longer-term orders which can last up to two years) were being issued anywhere except in locations where Femili PNG operates — one of the crucial family and sexual violence (FSV) specialist services. Femili PNG has a long history now of providing legal advice to survivors, helping them with applications and taking a case management approach with clients.

## Applicants and respondents

We found that nine out of 10 of the IPO applicants are women, and they usually have children. The respondent is typically a male spouse. The majority of applicants had family support and financial means to live on their own, albeit precariously.

The most common action by the respondent at the time of receiving an order was to comply. The second most common reaction was threatening or furious behaviour.

## Justice system challenges

Challenges facing the justice system include:

- A lack of or intermittent access to basic resources such as printers, ink and vehicles.
- A reliance on written records by the formal legal system.
- Limited skills and limited gender sensitivity amongst staff.
- Insufficient numbers and high rates of absenteeism of crucial personnel.

In an earlier presentation, we heard about the significance of having a dedicated clerk of the court working on protection orders: this is the case for District Courts in PNG. However, if that clerk is away, it might mean that cases are not progressed for weeks on end.

## Specific issues with family protection orders

Some specific issues we found with POs are:

- The applicants are often unclear about the process.
- The terminology can be confusing and unhelpful.
- The courts may not be a safe place for victims.

- The process is too slow. IPOs are meant to provide immediate or very quick protection for victims but on average it took 14.8 days for an order to be issued.
- The police are not always assisting with service of summonses and orders, or responding to reports of breaches (very variable across locations).
- The high costs associated with court appearances, especially if the applicant has to travel to an urban centre and the case is adjourned numerous times.

## Impact on applicants and respondents

Here we highlight some of the impacts that family protection orders have had. They include:

- 81 per cent of applicants said they felt safer as a result of having an IPO. Many of them were followed up over a period of time.
- Feelings of empowerment and improved mental wellbeing.
- Survivors told us that the following things were helpful to have:
  - Help from a local specialist FSV service
  - Family support
  - Somewhere to live
  - Police action
  - The respondent appearing before a District Court magistrate.
- However, applicants were cautious about the feelings of safety being sustained over the longer term.
- In a minority of cases the respondents did not stop the abuse or violence. However, for the majority, the respondents (70%) did comply with the orders.
- Interestingly, most breaches that were reported by our interviewees were threats by phone or text message that breached one of the conditions of the order. However, very few of these breaches were reported to the police or court and quite a few of the women did not realise that these threats constituted breaching the order (and were hence a criminal offence).

## Impact on justice system and society

The family protection order regime has had a number of impacts on the PNG justice system and society more generally. Most notably, it has created extra workload for the District Courts.

Under the legislation, Village Courts have the power to issue IPOs, which is how PNG has tried to provide access to orders in rural areas — as Village Courts are dispersed throughout the country in both urban and rural areas. Our investigations found that very few orders were being issued by Village Courts.

FPOs have provided another avenue that police and other services can use to seek justice for victims that come to them, and they have really welcomed having that option.

There has been, in some places, strengthened coordination between the specialist FSV services, courts and the police.

We found no link between criminal and civil matters. For example, there seemed to be no expectation if there

was a criminal matter being pursued through the courts related to domestic violence, that a protection order will be issued by the court. We did find it had happened in a few instances in the Autonomous Region of Bougainville.

There was no articulated stance on how customary or community-based processes should or could work alongside family protection orders.

## Conclusions

There were seven conclusions that we drew from the study:

1. Family protection orders are becoming more well known, but the processes are not well understood.
2. Increasing awareness is important, but the system needs further funding and resources to respond to demand.
3. Police have a critical role to play, but do not always fulfil their role effectively.
4. Specialist FSV services make a big difference by supporting and helping survivors.
5. Obtaining orders depends on access to District Courts, and committed magistrates.
6. FPOs improve safety for most applicants; however, service of the order is a time of risk.
7. Having family and church support can improve the effectiveness of FPOs and reduce the risks to survivors.

This has been a short overview of the research and I hope it has been enough to give you a flavour of the project. We did produce a number of papers and reports, so I encourage you to look at those for further information.<sup>2</sup>

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<sup>2</sup> The papers and reports are available via this link: Department of Pacific Affairs, 3 March 2021, [New Research Released on Family Protection Orders in Papua New Guinea.](#)





# Concluding remarks

Fiona Hukula

Thank you so much for the invitation to be part of the symposium. Thank you to colleagues at the Pacific Community (SPC) and The Australian National University (ANU), it has really been a wonderful event. It was a long day, but this is something that is very close to my heart and it relates to work I did in Papua New Guinea (PNG) prior to joining the Pacific Islands Forum Secretariat.

I would like to share some thoughts on what I heard as well as reflect on my own experiences in PNG. Thank you to everyone who presented. I have observed some linkages and key themes across the region with regard to implementation of family protection legislation and protection orders. One key challenge is around administration and policing; not just in numbers of police, but accessibility of police by the population. We heard that is an issue in PNG, Solomon Islands and Vanuatu. Many countries in the Pacific have remote islands, and in PNG there are the highlands, so access to justice is an issue because of geographical barriers.

There is some excellent legislation in the region and we should be proud of the work that has been put in across the different countries to ensure that domestic violence is being addressed within our formal justice system. However, there are barriers to accessing the formal justice system so people use informal justice or mediation systems which might mean going to village or local courts, local leaders, elders and pastors. One thing that I have taken from today is the recognition of the importance of involving these leaders, whether they are traditional leaders or church leaders, and ensuring that they are able to assist in whatever way they can so that the protection mechanisms in the legislation are implemented in our respective countries.

Another important issue is the cultural and social barriers that hinder women from accessing these services – not only within our communities, but also within the service providers. We heard of examples around policing and the judiciary and I would like to reflect on what Ms Johanna Gusman said about Samoa. She said that the protection orders are a band-aid solution to a larger problem. Likewise, Ms 'Ofa-Ki-Levuka Guttenbeil-Likiliki gave a very powerful presentation on

challenging the patriarchy because we have to work within all of these different layers to address domestic violence in our societies.

Before I conclude I want to thank Ms Neomai Maravuakula for the great overview which set the scene for what is happening in our region regarding family protection order legislation. The presentation on data and reporting by Pacific courts regarding family protection legislation was also really important. It highlighted that only four countries in the region are reporting on this topic in their annual reports. Data is important because it can show us where we are doing the right thing and where the blockages are. We saw in places like the Solomon Islands, where they are collecting data, there is a lot of work that is going on and they can now use that data to address the issues that they face. We all know that data is important in terms of allocation of resources, especially through our respective government budgeting processes. We need that data so that we can continue to advocate and lobby for ownership within our national, provincial and local level governments.

Finally, I would like to say that at the core of addressing domestic violence is the need to challenge our own ingrained views about men and women, our roles in relationships and issues of power. An intervention such as a protection order is one aspect of the larger picture and work needs to continue on to address gender inequalities and prevent violence against women more broadly. We need collaboration, partnerships and to learn from one another. This symposium was a wonderful avenue to learn about the great things being done and also the challenges that we face within our region. Thank you so much SPC and ANU for the opportunity to share some words.

Can I thank ANU for inviting SPC to co-host this symposium and I hope there will be more collaborations in the years to come. I had also like to thank and congratulate the speakers for their presentations. Unfortunately, I did not have the opportunity to listen in to all of the sessions today but from the ones I did attend, the speakers provided very generous and very useful contribution so *vinaka vakalevu* (thank you very much) for your sharing.

# Concluding remarks

Miles Young

First, can I thank ANU for inviting SPC to co-host this symposium and I hope there will be more collaborations in the years to come. I would also like to thank and congratulate the speakers for their presentations. Unfortunately, I did not have the opportunity to listen in to all of the sessions today but from the ones I did attend, the speakers provided very generous and very useful contribution so *vinaka vakalevu* (thank you very much) for your sharing.

Before I go any further, I just wanted to request a moment to reflect on the untimely and very sad passing of someone who many of us knew, Miss Kiki Stinnett. Kiki was the head of the Chuuk Women's Council in the Federated States of Micronesia (FSM) and she passed away last Thursday. She will be remembered very fondly by many of us as a warm and generous friend and a long-time gender equality champion. Kiki worked tirelessly to improve the lives of women and address violence against women and girls, not just in Chuuk and FSM but across the Pacific. The Chuuk Women's Council will be gathering tomorrow to celebrate her life and those who may be interested in attending can reach out to the council for details. So thank you for giving me the opportunity to mention that and just to acknowledge Kiki as many of us knew her and will remember her fondly.

It is always a difficult task to follow my good friend Fiona Hukula and to provide some concluding remarks on a subject as big and complex as domestic violence, gender-based violence and gender equality. I will focus on three points, and I hope I do justice to them with my comments.

The first point goes to the issue of servicing and working in rural and remote communities. I understand that there has been quite a bit of discussion around that throughout the day. We all know there is a clear need to address domestic violence/gender-based violence in rural and remote communities. We all know that it is expensive work, it is complex work and it is difficult work. We completed a project recently, the Access to Justice project in the Solomon Islands, in which we supported the implementation of the Solomon Islands Family Protection Act and supported survivors of domestic violence to access interim protection orders. We know how difficult it is to work in rural and remote areas. While perhaps we did not achieve the outcomes we were hoping for in that particular pilot project, nonetheless progress was made, albeit incremental progress. During the course of undertaking the evaluation of the project, there was some robust discussion around whether the project could be deemed a success and the extent of any success.

I suspect these kinds of discussions take place quite often in projects which are in rural and remote communities, and I think the danger is that those types of discussions discourage investment in access to justice and ending gender-based violence initiatives. It comes back to the fundamental question of the price of justice. From my own perspective, a priority for our organisation, SPC, will be to work with our members for continued and greater investment in initiatives around domestic violence, family protection legislation implementation and supporting survivors to access justice. I think it is important that we continue to keep that as a priority because, from an equity standpoint, it is important that all communities receive the benefit of support. Yes, these are difficult environments in which to work, the successes may not be so obvious earlier on, but as we have heard today, there certainly are lessons to be learned and there are certain successes, and it is important that we continue to keep that as a priority.

The second point I wanted to cover is around the work that civil society organisations (CSOs) have played in ending violence against women and girls, gender-based violence, domestic violence and in gender equality more generally. They play a key role and we must continue to support CSOs already working in this space, as well as encourage and support newer CSOs; it is important we do that. Sometimes the relationship between governments and CSOs is, by and large, one in which governments rely heavily on CSOs to provide key services such as a shelter and accommodation, counselling and psychosocial support, to operate helplines and those sorts of things. One of the things we need to keep at the back of our minds is to not create a situation of over-reliance by governments on the services provided by CSOs. We do not want a situation where governments abdicate their core responsibilities and government ownership of addressing violence against women and girls, gender-based violence and gender equality is weakened. We also do not want to weaken the role that CSOs play in keeping governments accountable.

My third and final point, and this has come up throughout the conversations and *talanoa* today, is that to address domestic violence/gender-based violence, we need to progress gender equality. Tevita Seruilumi covered that in his presentation. The next five to 10 years will be critical. At the moment there is a lot of donor interest in supporting initiatives around gender equality and gender-based violence but, as we all know, that interest can shift at short notice. I am quite optimistic that we can make some significant progress over the

next few years and I wanted to just point to three recent developments, and if we can capture the opportunities that these developments offer us, I think we can make quite significant progress:

- The first one is the work that the Pacific Islands Forum Secretariat is doing in terms of reviewing the Pacific Leaders Gender Equality Declaration. I know from the consultations that have taken place that the next iteration of the declaration is all about committing our Pacific leaders at the highest levels to greater responsibility and accountability for progress towards gender equality in the region. So, if the declaration comes out and it is a much stronger declaration and there is a greater responsibility on our leaders, greater accountability for progress towards gender equality, then I think that is a fantastic opportunity for us to seize and push our Pacific leaders in this area.
- A second recent development has been the launch of the Pacific Islands Forum annual Women Leaders Meeting. The importance of this is that it is a step in the direction of ensuring that gender issues play a more prominent role in the deliberations of the Pacific leaders in their annual Pacific leaders meetings. So the idea is that, ultimately, gender issues will be a standing agenda item in the Pacific Islands Forum leaders meeting and that through that, it will be a higher priority for Pacific leaders.
- The third recent development is the Pacific Women Lead program which is the Australian Government's new five-year \$150 million gender equality program. As many of you will know, Pacific Women Lead is the next iteration of the Pacific Women Shaping Pacific Development program. The difference between Pacific Women Lead and its predecessor is that the design emphasises a greater degree of Pacific ownership of the program, including through its governance, management and the implementation team. I think that is a very positive step and it is a step that ensures that Pacific Women Lead will be much more Pacific-owned and Pacific-driven.

Those are just some concluding remarks that I wish to make and again I would like to thank The Australian National University for this opportunity to co-host and collaborate on this symposium. I know it has been a very long day and we have just reached the 6 pm mark here in Suva. Again I would just like to congratulate all the speakers and the presenters and thank them for giving up their valuable time. I also thank those who have logged in from across the Pacific, and I suspect beyond the Pacific as well, for taking time to share and discuss these very important issues facing the region.

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# Annex 1

Symposium on family protection orders in the Pacific region, 9 December 2021

TIME (FIJI)	TIME (AEDT)	TOPIC	SPEAKER
10:00am	9:00am	Housekeeping and overview	Mr William Nainima, Adviser — Human Rights and Social Development, Pacific Community Ms Lindy Kanan, Senior Research Officer, Department of Pacific Affairs, Australian National University
10:05am	9:05am	Prayer	Ms Julieanne Wickham, Officer — Human Rights and Social Development, Pacific Community
10:10am	9:10am	Welcome	Professor Nicole Haley, Head, Pacific Research Program, Department of Pacific Affairs, Australian National University
10:15am	9:15am	Opening remarks on behalf of the ‘Regional Working Group on the Implementation of Family Protection/Domestic Violence Legislation’	Ms Moliei Vaai, CEO, Ministry of Justice and Court Administration, Samoa and Chair of the ‘Regional Working Group on the Implementation of Family Protection/Domestic Violence Legislation’
10:25am	9:25am	Regional overview of legislation relating to family protection orders	Ms Neomai Maravuakula, Team Leader, Governance & Institutional Strengthening, Human Rights and Social Development Division, Pacific Community
10:40am	9:40am	Overview of Pacific Courts Annual Reporting on the implementation of Family Protection Acts and experience from selected Pacific Courts	Chaired by Ms Cate Sumner, Adviser, Pacific Judicial Strengthening Initiative <ul style="list-style-type: none"> <li>The Hon. Honora E. Remengesau Rudimch, Associate Justice, Trial Division, Supreme Court of Palau</li> <li>Senior Magistrate ‘Elisapeti Makoni Langi, Tonga</li> </ul>
11:30am	10:30am	Break	
11:40am	10:40am	1. Impact of strong patriarchal norms on the effectiveness of FPOs and police safety orders in Tonga 2. Accessing family protection orders in the Pacific: Gaps and challenges	1. Ms ‘Ofa-Ki-Levuka Guttenbeil-Likiliki, Director, Women and Children Crisis Centre, Tonga 2. Ms Stephanie Dunn, Legal and Advocacy Officer, Fiji Women’s Crisis Centre
12:20pm	11:20am	1. Cook Islands Family Protection and Support Act 2017 — Successes and challenges 2. Identified gaps in protection orders and future priorities for action: A case study of Samoa	1. Ms Catherine Evans, Lawyer and Patron, Punanga Tauturu Inc (Women’s Counselling Centre), Cook Islands 2. Ms Johanna Gusman, Human Rights and Social Inclusion Advisor, Pacific Community
1.00pm	12.00pm	Panel: Family protection orders — the Vanuatu experience — 2008 to date	Panel members: <ul style="list-style-type: none"> <li>Inspector Lily Joel, Officer in Charge, Family Protection Unit, Vanuatu Police Force</li> <li>Ms Tatavola Mataskelekele, Coordinator, Vanuatu Women’s Centre</li> <li>Ms Polly Walker-Dorras, Senior Project Officer, Vanuatu Australia Police and Justice Program</li> </ul>

1.50pm	12.50pm	Break	
2.00pm	1.00pm	Regional Panel: More than words on paper – the reality of Protection Orders for Service Providers in Papua New Guinea, Solomon Islands and Timor Leste	<p>Chaired by Ms Tracey Newbury, Senior Program Manager, International Women's Development Agency</p> <ul style="list-style-type: none"> <li>• Mr Aaron Mane, Senior Legal Officer, Family Support Centre, Solomon Islands</li> <li>• Ms Kiungui-Kepa Be'Soer, Legal Officer, Voice for Change, PNG</li> <li>• Ms Luania Kirori, Eastern Highlands Family Voice, Papua New Guinea</li> <li>• Sr Lorraine Garasu, Nazareth Centre for Rehabilitation, Bougainville Papua New Guinea</li> <li>• Ms Olinda Cardoso, Program Manager, Asisténsia Legál ba Feto no Labarik (ALFeLa), Timor Leste</li> </ul>
3.00pm	2.00pm	Break	
3.10pm	2.10pm	Tuvalu Family Protection and Domestic Violence Act: challenges with obtaining and carrying FPOs	Ms Lisepa Paeniu, Crown Counsel, Office of the Attorney General, Tuvalu
3.25pm	2.25pm	Panel: Fiji's Experience with the Domestic Violence Restraining Order Act 2009 and subsequent amendments: how well they are working or not, the challenges experienced and how to overcome these?	<p>Panel convened by the Fiji Women's Lawyers Association and chaired by Ms Adarshani Vikash, Lecturer, Fiji National University</p> <ul style="list-style-type: none"> <li>• Ms Radhika Naidu, Head of Litigation, Reddy Law, Fiji</li> <li>• Ms Swastika Narayan, Principal, Swastika Legal, Fiji</li> <li>• Ms Mele Rakai, Barrister and Solicitor, Sherani &amp; Co, Fiji</li> </ul>
4.00pm	3.00pm	Break	
4.10pm	3.10pm	Panel: Implementing the Family Protection Act: The Solomon Islands experience	<p>Panel members:</p> <ul style="list-style-type: none"> <li>• Ms Vaela Ngai, Director, Women's Development Division, Ministry for Women, Youth, Children and Family Affairs (MWYCFA), Solomon Islands</li> <li>• Ms Koisau Sade, Senior Policy Officer, Women's Development Division, MWYCFA, Solomon Islands</li> <li>• Ms Ruby Awa, Former Project Manager, Pacific Community Regional Rights Resource Team, Access to Justice Project</li> </ul>
5.00pm	4.00pm	1. Perpetrator/Men's Behavior Change Programming 2. Formal justice engagement with FPOs in PNG: research findings	<p>Chaired by Mr Apolosi Bose, Deputy Director, Justice Services and Stability for Development (JSS4D), PNG</p> <ol style="list-style-type: none"> <li>1. Mr Tevita Seruilumi, Family and Sexual Violence &amp; Gender Equality, Disability and Social Inclusion Adviser, JSS4D, PNG</li> <li>2. Dr Judy Putt, Department of Pacific Affairs, Australian National University</li> </ol>
5.40pm	4.40pm	Concluding remarks	<ul style="list-style-type: none"> <li>• Dr Fiona Hukula, Gender Specialist, Pacific Islands Forum Secretariat</li> <li>• Mr Miles Young, Director, Human Rights and Social Development Division, Pacific Community</li> </ul>
6:00pm	5:00pm	Close	Symposium organising committee









## Afterword

Domestic violence includes physical, emotional, psychological, economic and sexual abuse.

In a family home where violence occurs, it affects family members of the survivor of violence. I experienced the effect of domestic violence when I was a child. I witnessed my father bash up my mother really badly. I was psychologically affected that I did not concentrate in class. My mind drifted off from class very often and I was having nightmares. I could not find happiness in school or being with my friends. I was disturbed psychologically. Luckily the physical violence occurred twice and it never happened again.

This shows the effect domestic violence has on family members of the survivor. Imagine if the violence is continuous in a family home. This can result in lack of interest in school, marriage separation, broken homes, deaths etc.

So domestic violence is a very serious issue that needs to be stopped.

Submission from a survivor, Papua New Guinea



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## Department of Pacific Affairs

Coral Bell School of Asia Pacific Affairs  
ANU College of Asia and the Pacific  
The Australian National University  
Canberra ACT 2600

E [dpa@anu.edu.au](mailto:dpa@anu.edu.au)

W [dpa.bellschool.anu.edu.au](http://dpa.bellschool.anu.edu.au)

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