

Family Protection Orders in Papua New Guinea: Summary Report

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Introduction

Funded by the Australian Government through the Pacific Women Shaping Pacific Development program, Justice Services and Stability for Development program and the Pacific Research Program, the purpose of our research project was to investigate whether the family protection orders (FPOs) introduced under the Family Protection Act 2013 (FPA) were being accessed by, and improving the safety of, domestic and family violence¹ (DFV) survivors. The Act, as well as the introduction of civil restraining orders specifically targeted at preventing and reducing DFV, represented a significant milestone in efforts to address in DFV in Papua New Guinea (PNG).

The research project on FPOs in PNG was undertaken from late 2019 to August 2020.² It was a collaborative project that involved researchers based in Australia and PNG, local researchers in various communities and several non-government organisations (NGOs). More than 25 people assisted with the research activities, which occurred in seven locations across PNG — Minj, Mount Hagen, Lae, Port Moresby, Popondetta, Buka and Arawa. A range of methods were employed during the project, including:

- a survey of 180 young adults in Port Moresby and Lae
- 211 interviews with 118 interim protection order applicants across the seven sites
- meetings and interviews with at least 140 stakeholders across the seven sites
- observations in two District Courts and the Family Court in Lae and Port Moresby
- the collation of justice and client statistics in each of the seven sites.

The findings from the research are synthesised and summarised under the headings implementation and impact.

Implementation

The stated intent of the FPA includes promoting safe, stable and strong families; preventing and deterring domestic violence at all levels of society; and ensuring there is effective protection for the victims of domestic violence. Upon application, an FPO can be issued by a court for a stipulated period of time, with conditions imposed on the respondent that seek to prevent further domestic violence. Those who can apply for FPOs include spouses, family members — including children — and any person treated by the spouse as a family member. Regulations for the FPA were gazetted, and guidelines produced by the Department of Justice and the Attorney General, in 2017. There are two types of FPOs: interim protection orders (IPOs), which are for 30 days and can be extended for another 30 days, and longer-term protection orders (POs), which can be imposed for up to two years. Breaching an order's conditions is a criminal offence with a maximum penalty of up to two years imprisonment. Under the FPA, Village Courts can issue IPOs and District Courts can issue both IPOs and POs. In terms of whether IPOs and POs are known about and being issued, our project found the following.

Awareness, knowledge and practical help

Based on previous large scale surveys conducted on law and justice topics in 2015 and 2018, there is now more public awareness of IPOs, with approximately one-fifth of the population having heard of IPOs in 2018. Our survey of young adults suggests that a higher proportion, closer to one-third, of this mostly

well-educated group in urban centres know about IPOs. However, the level of understanding of FPOs, most notably POs, and knowledge of the process is often limited, with, for example, some people assuming applicants can only be women.

Our research indicates that family and friends and the police are the two key groups most likely to advise the general public, including DFV survivors, about FPOs. Similarly, the police, in addition to specialist family and sexual violence (FSV) services if they operate in the local area, are the agency most likely to offer practical help with completing an FPO application. Such assistance is much needed, with our research indicating that as many as a third of applicants cannot read or write English well or at all. The police Family and Sexual Violence Units (FSVUs) in particular are the frontline service where many survivors will first hear about and obtain guidance on FPOs. However, based on FSVU records, IPOs were recorded as an outcome in only approximately 10 per cent of cases, which requires further investigation.

Trends and patterns in numbers

Available data and stakeholder perceptions indicate that more IPOs are being issued, especially since 2017, but there is considerable variation in uptake across the provinces. In 2018, only six District Courts registered more than 100 IPOs — Kokopo, Lae, Popondetta, the National Capital District (NCD) Family Court, the Port Moresby District Court and Goroka. Very few were recorded in some provinces, including other Highlands locations. Statistics garnered from our research sites show a comparable pattern in 2019, which suggests a stabilisation in numbers, a limit in the capacity of the courts to deal with applications and that only in Lae and Port Moresby are many POs being issued.

Applicants and respondents

Many DFV survivors have longstanding histories of abuse and violence, and applying for an IPO can be a big step, frequently triggered by a recent incident and underlying factors or triggers such as alcohol and drug abuse, financial neglect by the respondent and his relationships with other partners. Based on the characteristics of our survey sample, stakeholder opinions and Femili PNG client data for Lae, we estimate that approximately nine out of 10 IPO applicants are women, the respondent is usually a male spouse and that most women are living with at least two children.

The majority of IPO applicants had the support of their family to take out an IPO and the financial means to live on their own, although in many cases this was through the precarious businesses of ‘table marketing’ and gardening, or, for a few, relying on money from family.

The applicants expected the orders to prevent or stop the abuse and violence. For the majority, it appears the orders did result in an improvement in their safety. According to the IPO applicants, the most common initial reaction of respondents at the time of service of the order was anger, followed by fear, though the most common action was to comply or accept the order, followed by threatening or furious behaviour.

System and process challenges

Many challenges were raised by stakeholders in relation to the justice system that apply generically to all matters reported to the police or addressed through the District Court and Village Court systems. These challenges relate to physical resources, such as intermittent and uneven access to vehicles, fuel, printers, paper and ink. The formal legal system depends on written records, which generates difficulties for those responsible for making the system work as well as clients of the system. As in the broader service landscape, there are also challenges around having skilled or gender-sensitive staff, often-high rates of absenteeism and insufficient numbers of crucial personnel.

Observations in District Courts revealed that applicants are often confused about the process, and the terminology used does not help, especially surrounding POs. Additionally, courts are not designed with the safety of court users in mind, and the names of IPO applicants are publicly displayed.

Among those we interviewed, the average time between their application and an IPO being issued was 14.8 days. IPO applicants stressed that they would like a timelier process, especially for the issuing of IPOs, as well as for police to assist more, notably with the service of orders and breaches of orders. The relatively high rate at which applicants withdraw or do not appear, and the low rate of conversions of IPOs to POs, can be partly attributed to a lack of knowledge about an already slow and unresponsive process — in addition to pressures exerted by respondents. Other factors that inhibit the process are the costs associated with multiple court appearances, especially if the applicant has to travel to an urban centre, and the affect other community justice processes may have had on the

applicant's willingness to pursue an order.

At the heart of these challenges is a picture of variable and not always commendable practices that should instead be based on principles that adhere to victim rights and universal access to protection and applied in a consistent and safe fashion.

Impact

In order to assess whether FPOs acted as intended, the primary research materials were reviewed for indicators of impact, with the most relevant being the interviews with IPO applicants.

Individual applicants and respondents

Based on our research, the majority of applicants who are issued an IPO issued feel safer as a result (81.3 per cent of IPO applicants interviewed). However, many complainants are cautious about expecting this feeling of safety to be sustained over the longer term. Among our sample of IPO applicants who were followed up with for two months after they applied, we found that their perceptions of safety became more polarised, either feeling increasingly safer or less safe. Such a finding underlines specific times of risk, such as during the service of the order and the subsequent few weeks after the order is served, as well as the need to provide support to survivors over the longer term, especially with obtaining POs.

What contributed to feeling safer, for the IPO applicants, included having a local specialist FSV service, family support, somewhere to live and police intervention or action. In terms of process, what was seen as helpful included the respondent appearing before the District Court or Family Court magistrate and/or the police being involved.

It does not appear that having an IPO or PO results in the separation of couples. In many cases, separation had already occurred, and if physical separation was an IPO condition it was often only a short-term measure. In terms of living arrangements, again there was evidence of short-term changes, including stays in safe houses, and only a minority of interviewees appeared to have moved in with family and relatives. The majority of interviewees were financially independent either through a wage or marketing and/or gardening, although the latter was viewed as precarious, which meant that some had experienced adverse economic effects because of the situation. In fact, most of the evidence indicated positive outcomes such as greater feelings

of empowerment and improved mental health for both successful IPO and PO applicants and their families as a whole.

The corollary to these positive outcomes for complainants was the impact of the IPOs on the respondents. For a minority of the IPO applicants, there was no desistance in the abuse or violence, and this should not be ignored, especially if the survivor cannot access family support. However, our survey found that the majority of IPO respondents (70.1 per cent) complied with the IPO, which related to their respect or fear of the law and the courts, an understanding or acceptance that their behaviour had to change and a range of practical reasons. The most common forms of breaches experienced by complainants were verbal abuse and threats by phone or text, though not many of these were reported to the police by the interviewees. The available FSVU and District Court data revealed few reports of charges being laid or convictions recorded for breaches of IPOs or POs.

Justice system, service delivery and society

The introduction of FPOs has certainly had an impact on the justice system. It has created an extra workload for District Courts, but has also given the FSVUs and other frontline services that have contact with DFV survivors another avenue through which to seek justice and protection.

Their introduction has strengthened the ties and coordination between specialist FSV services, the courts and the police. However, there remains no link between criminal and civil matters, nor an articulated stance on how community-based processes should work with FPOs. The Nazareth Centre for Rehabilitation (NCR) is the exception, with a well-reasoned position that gives primacy to the law, particularly the FPA, while also encouraging a parallel process — dialogues with families — to increase the probability of a woman's safety back in her village.

FPOs are a central feature of the FPA that are becoming more well known and demonstrate that the state, at least symbolically, supports DFV survivors and the cessation of abuse and violence. How much this may lead or contribute to shifts in societal views of gender roles and matrimony is impossible to quantify, but our survey of young adults suggests that certain kinds of abusive or violent behaviours are not viewed as the prerogative of the husband by this age group.

Seven key conclusions

At the end of the research project, seven key conclusions were reached:

- FPOs are becoming more well known, but the processes are not well understood.
- Increasing awareness is important, but the system needs further funding and resources to respond to demand.
- Police have a critical role to play but do not always fulfil their role effectively.
- Specialist FSV services make a substantial difference by supporting and helping survivors both in times of crisis and over the longer term.
- Obtaining orders depends on access to District Courts and committed magistrates.
- FPOs improve safety for most applicants; however, service of the order is a time of risk.
- Having family and church support can improve the effectiveness of FPOs and reduce the risks to DFV survivors.

Recommendations

We found examples of both progress and effective local arrangements, and believe it is important to build on these gains. There is a general perception among stakeholders that IPOs can help DFV survivors, as well as that they are a less expensive option than other generic preventative orders. At the research sites, we heard of activities that sought to educate the communities and train key stakeholders on the FPA. Stakeholders reported improvements in service provision for DFV survivors, with specialist FSV services often demonstrating exemplary practices. In Bougainville, we heard of examples of men's programs and working with village leaders and justice processes, and encountered committed police, court officials and magistrates at all of the research sites.

Despite these encouraging developments, based on our findings and conclusions, we have identified nine recommendations for action:

1. That justice sector stakeholders improve public awareness and knowledge of FPOs.

Efforts to better inform the general public need to span a range of audiences and focus on different sections of the population. It should be clear that orders are preventative in nature and act as a warning, with criminal sanctions only brought to bear if the conditions of the orders are breached. Using local networks can be invaluable in disseminating such information, through linkages and workshops with human rights defenders

(HRDs), community leaders and schools. A tailored strategy is required for young adults in the main urban centres and could use, for example, social media to better inform this age group. In addition, court users would benefit from the provision of accessible legal information, for example, a leaflet on IPOs and POs that court staff could provide explaining the terminology, process and what to expect.

2. That the government of PNG and the donor community provide ongoing, long-term funding to civil society organisations to improve and expand victim support services for FPO applicants across the country.

The system needs to be bolstered to keep up with the demand for FPOs. There should be more specialist FSV services and safe houses that provide immediate and longer-term support for survivors. A suite of skills is required of the workforce, including case work, trauma-informed practice, counselling and working with children and families. Various practice tools such as risk assessments and protocols for sharing case information could be developed and shared across services. To promote awareness and sensitivity within organisations and improve coordination, DFV 'champions' or mentors could be appointed within non-specialist services. Given that many applicants have low literacy levels, any in-person support (ideally trauma informed) that could be provided by the courts, NGOs or public solicitor's staff would be of great assistance.

3. That donor community support targets capacity building, and key agencies involved in the FPO process prioritise skills development.

Key weaknesses in the system and process could be mitigated through the following measures:

Frontline services

Investment should be made in practical training sessions for frontline services (such as safe houses, FSVUs, FSCs and public solicitor and community development offices) on how to assist survivors with IPO applications and, most importantly, affidavits to ensure they cover the relevant information. Such workshops should involve IPO clerks.

Village Courts

Officials and magistrates need guidance and applied practice completing forms in order to issue and register IPOs.

Police

An emphasis on police responsibilities in relation to serving orders and summons and responding appropriately to reports of breaches of orders by laying charges should be incorporated into training and professional development and monitored by managers.

District Court magistrates

Magistrates should receive more training on DFV, including the FPA and the relevance of DFV to the family, civil and criminal jurisdictions. We recommend a circular or other mechanism distributed to all magistrates that:

- emphasises that IPOs may be required urgently and encourages the issuing of urgent IPOs via email or over the phone³
- draws attention to the way DFV survivors are often harassed and threatened by texts and phone calls, and highlights that the conditions of FPOs could explicitly forbid such behaviour
- reminds them that FPOs can be ordered at the time of sentencing for criminal matters, or while criminal cases are still being determined.

4. That the government of PNG considers options for improving the specialisation and efficiency of courts to process FPOs, as well as other matters relating to domestic violence and family law.

A survivor may have matters also being heard in the

Family Court and under both the civil and criminal tracks.⁴ Individual magistrates may not be aware of this, nor of earlier court proceedings. Introducing a ‘flag’⁵ to track DFV cases involving the same parties that is accessible in a timely fashion would help magistrates be fully informed of concurrent actions. In addition, there are various ways DFV could be better addressed through priority and special listings, specialised courts or designated magistrates, as well as the adoption of safe court principles wherever possible. Given the socio-economic and cultural diversity across PNG, different approaches may be required in different provinces.

5. That both civil society and the donor community give consideration to expanding programs that work with FPO respondents.

The majority of FPO respondents are men. Building on the trial of a men’s program in Bougainville and other male advocacy initiatives, we recommend continuing to test and develop initiatives that work with men through male advocacy training and networks, men’s behaviour-change programs and couple or family counselling.

6. That the Magisterial Services of PNG work towards nationally consistent and timely reporting on FPOs.

Nationally consistent and timely reporting could assist in providing a more accurate picture of FPO use across the country. The redesigned report format should include clear fields relating to the numbers of IPOs and POs applied for, granted or dismissed, as well as the time taken to obtain the order. Data fields should also cover breaches and whether counselling, mediation or compensation was ordered by the court.

7. That national and provincial stakeholders such as the Family and Sexual Violence Action Committee (FSVAC) use available data to monitor how FPO processes are working.

We recommend the continued collation and review of whatever data can be accessed related to the following:

- assisting or advising survivors about FPOs, including the number of clients seen by FSVUs, safe houses, the public solicitor’s office and specialist FSV services
- timeliness in issuing IPOs, including the time taken between lodgement and the issuing of an IPO and the time taken between an IPO

being issued and its conversion to a PO

- variability in registering IPOs and issuing POs, including annual numbers for every District Court across PNG
- enforcement of charges, including recorded reports and charges for breaches of orders by police and courts.

8. That justice sector agencies consider how FPOs or similar mechanisms can be more accessible in rural areas.

Since Village Courts are not likely to start issuing IPOs, even when they know they can, guidelines could be developed for preventative orders tailored to addressing and preventing DFV that can be issued by Village Court magistrates with the intent and conditions of IPOs. A further reform could involve amending the FPA to extend the provisions related to Village Courts and FPOs.

9. That the good practices employed to issue FPOs during the COVID-19 state of emergency are continued by the justice sector.

The lessons learnt from the 2020 lockdown should be consolidated and used to develop guidelines that ensure key services remain accessible while still endeavouring to protect the workforce and clients from the pandemic (or whatever risk is at hand).

Author notes

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Endnotes

1. In this report, we most commonly refer to domestic and family violence (DFV) to make it clear that the abuse and violence takes place between current and former intimate partners such as spouses, as well as between or against family members. There are both male and female victims of DFV, but evidence underlines that they are predominantly the latter. The term FSV (family and sexual violence) is also used in this report, given the acronym's wide in Papua New Guinea.
2. The main report, titled *Family Protection Orders in Papua New Guinea*, by Judy Putt and Lindy Kanan is available online or upon request from the Department of Pacific Affairs, Australian National University, Canberra.
3. In Port Moresby, it is recommended that provision is made for urgent IPOs to be issued on any given day at a single court.
4. These could include family law matters such as child maintenance, child custody, adultery, etc., as well as criminal matters such as domestic violence or other offences.
5. The practicalities of how such a flag would be made and accessed would need to be worked out.



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