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DEPARTMENT OF JUSTICE & ATTORNEY GENERAL

Village Courts & Land Mediation Secretariate

Brief on the Role of Village Courts and Land Mediation Secretariate in addressing GBV for Special Parliamentary Committee Hearing on Gender Based Violence in Papua New Guinea

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Background

By way of background and introduction, the following points discuss the issues around the access to justice, role of Village Courts in dealing with Gender Based Violence (GBV) cases and the role of the Village Courts in the implementation of the *Family Protection Act 2013* and its Regulation that enables Village Courts to issue Interim Protection Orders (IPOs) contributing to the government's efforts in addressing GBV;

- GBV and or Family and Sexual Violence (FSV) are some of many complex law and order issues embedded in our society of diverse cultural practices that continues to increase at an alarming rate causing disharmony and fear in the lives of families; men, women and children in the communities.
- Village courts are empowered under the Family Protection Act to issue IPOs to address domestic violence (DV), GBV and Family Sexual Violence and make referral of more serious cases to police to deal with and other responsible agencies for provision of specific and specialized services.
- Before the enactment of the Family Protection Act in 2013, Village Courts were already dealing with DV and GBV cases using its powers and jurisdiction under the Village Court Act 1989 and its amendments in 2014 particular in the inclusion of at least one women magistrate in all village court areas and its enabling VC Regulation.
- The Department of Justice and Attorney – General (DJAG) as a central agency plays a vital role in embarking on the whole of government approach to addressing law and order issues and GBV as a cross-cutting issue has a very significant impact on the social, economic, legal and cultural aspect of development in our country.

Access to justice and Role of Village Courts and Land Mediation Secretariate

- There are 1,680 village courts areas in PNG with over 18,480 village court officials manned by 11 officials per Village court who are actively serving in their respective Village court areas. By far village court system is the only critical government system that reaches about 80-90% of the country's population and over 98 % coverage, thus deals with majority of the unreported GBV cases. This system if mobilized which the government through DJAG is; through the

Crime Prevention through Revitalized Village Courts System Strategy 2020-2030 has the ability significantly address GBV at the community level.

- Since violence in general stems from many facets, in PNG where 97% of land is owned by customary land owners, our statistics suggest that land issues do contribute to GBV. The Secretariate also administers 356 Land Mediation Divisions with a total of 1,424 under the Land Dispute Settlement Act 1975 who mediate land matters as the first stage of the 3-tier land dispute resolution mechanism.
- Village Courts has the powers and jurisdiction under its prescribed offences provided for by the Village Courts Act and its Regulation to deal with offences that amounts or may relate to domestic violence and gender-based violence in nature. The cases listed in the village courts prescribed offences include;
 - stealing
 - assault
 - insulting
 - damaging property/plants
 - gossip, spreading false rumors.
 - drunkenness
 - customary marriage dissolution
 - maintenance and child custody in customary marriages
 - sorcery;
 - ✧ pretending to practice sorcery
 - ✧ paying someone to perform the act of sorcery
 - ✧ in possession of charms
- Structurally Village Courts and Land Mediation Secretariate has over 60 staff including the 22 Provincial Liaison Officers based in all provinces including the Autonomous Region of Bougainville providing interface between the Secretariate and the provinces to ensure effective coordination of the operations of 1,680 village courts areas and 356 land mediation divisions across the country.

Village Courts Role in addressing GBV

- The first ever Village Court Policy being perused at the NEC level with its Implementation Framework already operationalized calls for serious investment in Seven (7) Key Result Areas over a period of 10 years (2020-2030) in the government's efforts on revitalizing the village court system to prevent crime, thus creating a just and peaceful society for our communities . With respective to GBV, this policy intervention at the minimum takes into account increased accessibility to justice services as well as recognizing and strengthening the civic participation and leadership responsibilities at the

community level with improved and modernized infrastructure to effectively deliver services.

- The revitalization of the village courts system will enable the implementation of the following legislation and plans that deals with matters relating to GBV and DV;
 - the *Family Protection Act 2013*, the *Family Protection Regulation 2017* and the *Family Protection Act Guidance Notes*;
 - the *National Action Plan against Sorcery Accusation Related Violence (NAP - SARV)*;
 - *Village Courts Act 1989*; and
 - *Crime Prevention through Revitalized of the Village Courts System Strategy 2020 – 2030*.
 - Other government functions can utilize the village court system to deliver services through to the community level.

Village Courts specific questions as asked in the request letter to the Attorney General

Data Collection re Interim Protection Orders processed by village courts

- Village Courts and Land Mediation Secretariate have a data collection and reporting system that captures all its cases heard. This information is compiled by our clerks and forwarded to the Secretariate on quarterly bases which we refer to as Quarterly Data Returns
- Our quarterly data return forms dose not capture IPO specific data however, 57% (8/14) of Village Courts Prescribed Offences covers offences with GBV and DV in nature. Village Courts in this perspective thus significantly contributes to GBV and DV
- Through our revitalization efforts, data on IPOs processed by village courts will be captured through the review of our Quarterly Data Return forms

Has the Secretariat addressed the issue of fees?

- Awareness through village court officials on no fees for IPOs is ongoing. Awareness conducted through refresher training to the 314 officials in the 5 provinces and the general public on the free issuance of IPOs by Village Court Officials
- Through inspections and face visits to court areas officials have been warned that issuance of IPO is free of charged and not to charge clients.

- Village Court Officials Training manual is being reviewed and the No Fee and IPO issuance or processing will be captured.

What has been done since the last hearings to build capacities of village court magistrates to address GBV?

- IPO forms printed and distributed to most provinces with support from JSS4D
- Two (2) IPO trainings delivered in Western and Southern Highlands Provinces and IPO forms given to the officials
- Planning a refresher training for those village courts in the provinces who have undergone IPO training
- Review of the village court training manual to capture SOP on the issuance of IPOs

We hear IPOs are not issued on time, what is being done to address that

- For village courts we are still using the village court powers in dealing with DV and GBV only using village powers as only a limited number of officials have been trained in the JSS4D provinces . A total of 314 officials in 5 provinces supported by JSS4D
- The issue of not issuing IPOs on time may be from other provinces who have not done undergone refresher trainings that includes the IPO issuance/processing.

Role of Village Courts through Crime Prevention through Revitalized Village Courts System Strategy 2020-2030

- Village Courts play a critical role in the fight against GBV. The implementation of this Strategy is in the progress of mobilizing to deliver critical justice services at the community level. Recent diagnostic into the data management of the village court system revealed that one of the main contributing factors to ineffective data management in the village courts system is illiteracy amongst village courts clerks who are responsible for recording, collating and analyzing village courts data. That is the main reason why we cannot measure fully the prevalence and types of crimes in a given province at a specific time frame.
- The above strategy now focuses on **seven (7)** key result areas that will enable the role of the village courts at the community level more effectively and

guide in its delivery of justice services. Below is the snapshot of the 7 Key Result Areas to appreciate to appreciate the essence why we need to invest in these as our priority for the next 10 years;

- ✧ Ability to manage village court system – focuses on adopting high literacy levels into the village courts. – *Grade 12s only will be considered for Village Court Clerk and Peace officers* to improve on data/information recording, collation and reporting have an energetic workforce to improve on issuing/serving court orders including the IPOs. The call for Gr.12s is to contribute to reducing high unemployment rate by engaging the high number of Gr.12 leavers to be engaged as officials with the aim of providing career pathways to enable them to move on to cater for another lot of Gr. 12s. The Village Court Policy states that a quarter of any recruitment round for the disciplinary forces by allowed for village courts to equally select village court officials from around the country to join the forces.
- ✧ Good Governance in Village Courts system – focuses on transparency in the appointment of village courts officials (*Circular issued by Hon. Kramer in May 2021 calling for all Provincial Governments to establish Provincial Village Courts Committees (PVCC) and conduct transparent elections and appointment of village court officials*);
- ✧ Community Policing, Crime Prevention and Respect for the Rule of Law – focuses on crime prevention, tailored community policing with village courts peace officers given more responsibilities to police communities;
- ✧ Access to justice – focuses on creation of more village court areas to enable rural communities to have greater protection and access to justice;
- ✧ Reconciliation and Re-integration – focus on communities having conflicts such as tribal fights to resolve disputes through peaceful means;

- ✧ Partnership Arrangements – focuses on forging allies and partnerships with other non-state actors in village courts work and oversight and decision making; and
 - ✧ Modernized infrastructure – construction of village courts houses and connectivity with the Districts, Province and Port Moresby.
- Make referrals within the Referral Pathway, and making the appropriate referral to the next agency for appropriate and specialize services
 - The Partnership Arrangements which exist within the Referral Pathway is the key to the effectiveness of the Referral Pathway and the primary focus is creating accessibility for the victim or user of the different services.
 - The Referral Pathway is used by a number of Human Rights Programs areas that fall within the criteria of GBV, FSV.
 - The Department is supportive of the establishment of the Referral Pathway because it creates a National Referral Mechanism for Cases for all Human Rights matters, from domestic Violence to Transnational Organized Crime's such as Human Trafficking.
 - The Referral Pathway has proven to be very effective and numerous cases have been progressed through this mechanism

Family Protection Act 2013 and the Family Protection Regulation 2017

- The *Family Protection Act 2013* (FPA) was developed in 2013 and in 2017 its Regulation was developed and commenced operation. This legislative framework was established to address the prevalence of domestic violence in the country which was at that time affecting 2/3 of households in the country as reported by the Constitutional and Law Reform Commission (CLRC) in its 10-year study report into domestic violence in the country.

- The FPA, (traditionally treated as a private matter) now becomes a matter of public concern, and provides protection to family members. The definition of a family member is critical in the application of the FPA because it shows who in the family may seek its protection. This is the most common form of violence in the country that occurs within the family. This does not mean that others are not protected, violence that usually occurs within families – domestic violence, therefore the idea of family protection is to provide protection to those within the family who are experiencing domestic violence to deter such acts and promote safer homes and stronger families.
- Families that are free from domestic violence enjoy their rights and freedoms equally and are able to perform and contribute more meaningfully and this equates to strong nation building and help bring broken families back together by protecting them and safeguarding the family institution from another aggressive family member. *A strong family equates a strong nation.*
- When designing the FPA, one of the critical points of discussion was how to protect members of families living in the rural communities. According to the PNG Population Census, majority of the people reside in rural and remote areas. In addition to this, PNG's geographical settings makes access to justice and formal services difficult for the majority of the population in those areas where victims may wish to seek protection from domestic violence.
- This is where the role of the village court is both critical and fundamental with regards to women's access to justice and equal protection under the law.
- The answer was catered for in the FPA by including the Village Courts System as an implementer. Village Courts now has the power to also issue Interim Protection Orders (IPO). This policy decision was crucial as it enabled rural communities experiencing domestic violence to seek protection and redress through the Village Courts System.
- Since the commencement of the FPA, the department in partnership with CIMC and other stakeholders continue to implement this legislation through awareness and building the capacity of key service providers in the referral pathway.

- From 2018 – 2019, my department conducted trainings for Village Court Officials in the Autonomous Region of Bougainville, Oro, Morobe, Western and Southern Highlands Province through funding support by the Australian Government and other donor agencies such as Oil Search Limited. Village Court officials who have undergone the FPA training so far are provided as follows;

Provinces	Total No. of Village Court Areas	Village Court Officials Trained	VC Officials not Trained
AROB	46	162	20%
ORO	46	30	75%
MOROBE	100	18	90%
WESTERN	47	58	50%
SOUTHERN HIGHLANDS	120	46	95%
TOTAL:		314	

- DJAG capacity building support for Village Court Officials is focused on training officials on their roles and responsibilities under the Act and Regulations but also inclusion of training content on awareness on gender sensitization, human rights frameworks and violence against women. Following these trainings, mass printing of the Interim Protection Order forms and Referral forms have been done by JSS4D and will be distributed once trainings have been rolled out for officials in the 1680 Village Court areas throughout the country.

National Action Plan against Sorcery Accusation Related Violence

- The National Action Plan against Sorcery Accusation Related Violence (NAP – SARV) was also developed by my Department in partnership with relevant partners. The NAPSARV focuses on 4 focus areas including;
 - i. Legal and Protection,
 - ii. Services (health, counseling),
 - iii. Research, and
 - iv. Advocacy.

Legal and Protection

- The work under this focus area has resulted in the Criminal Code Amendment of 2013 which included Section 299A that says that if you kill someone on account of accusation of sorcery you're guilty of willful murder and the penalty of which is Death. The precedent case that uses this amendment in charging its offenders is the National Court ruling by Justice Cannings on the State v Don Kakiwi [2018] PGNC 3; N7067 where 120 persons were convicted and are now serving various sentence including the death penalty.
- Some notable work in this space also includes the human rights defenders who work to protect, repatriate and re-integrate survivors of SARV. A Direct Victim Support grant was also established under my Department in 2020 to assist organizations who deal with direct victim support. However, the Government in 2021 removed the funding.
- The Department also entered into partnership arrangements with a number of Churches and Non-Government organization in 2020 and provided funding to support the community level intervention programs that they have to address sorcery accusation related violence. The organizations are; Tribal Foundation, CIMC-FSVAC, Femili PNG, Wantok Radio Light, Enga Catholic Church and Lutheran Church.

Key Challenges

- The law cannot operate in a vacuum, it must be implemented by the courts, specifically the District Courts and the Village Courts.
- The link between the survivor/perpetrator and the District Court Magistrates and/or Village Court Magistrates is critical
- Not enough court rooms, staff, equipment to assist District Court Magistrates and/or Village Court Magistrates when intending to deliberate on matters, even after issuance of FPOs, the District Courts are unable to follow-up on

cases that it has granted FPOs to confirm and verify whether the FPA is creating positive changes or not.

- Illiteracy level of Village Court Officials is a major challenge, coupled with language barriers poses and even bigger challenge for implementers, especially when the village court officials are elders of a village.
- An even bigger set-back would be that upon making redundant elder village court officials and replacing them with younger men may see an abuse of power, this is subject to further discussions. However, change is inevitable where implementation is concerned.
- There is more work to be done and it cannot fall entirely on the shoulders of the government. It is necessary that Provincial Governments and government institutions in the provincial centers must work together on implementation activities and reciprocate expertise and technical assistance and sharing of essential resources.

Recommendation on supporting cases through the Referral Pathway

- One of the main constraints in providing services within the Referral Pathway is the limited funding available to assist with cases.
- The Department strongly recommends for funding to be made available to service providers within different program areas. For example, an arrangement can be made between DNPM, DJAG through the SARV Core Committee and the Tribal Foundation for a yearly grant to be provided for Tribal Foundation to provide case managements services for SARV cases that fall within a criteria for cases that may receive Government Funding. The Tribal Foundation could then be requested to provide data for the persons and cases it progressed, and this data can be counted as the Government's data for cases and persons it has assisted.