



OFFICE OF THE PUBLIC PROSECUTOR

REPORT TO SPECIAL PARLIAMENTARY COMMITTEE ON GENDER BASED VIOLENCE IN PAPUA NEW GUINEA

Introduction

The Office of the Public Prosecutor (OPP) is a Constitutional Office established by sections 176(1) and 177(1) of the Constitution. It plays a key role in the criminal justice system and is the only law institution responsible for the prosecution of criminal cases in the National and Supreme Courts of Papua New Guinea. Criminal cases prosecuted by the OPP relate to serious offences committed within family settings, communities and by the State (eg. in custodial facilities). These offences are set out primarily in the *Criminal Code* but also in other legislation. The offences include homicides, serious assaults, robberies, fraud and corruption, sexual offences, and other indictable offences. These cases are referred to the OPP following committal proceedings in the District Courts.

In discussing the workload of the courts in the 2022 National Court Calendar, Salika CJ states the following:

“The Calendar is a guide only and adherence to it depends on budgetary and other unforeseen factors beyond our control as to whether a circuit will be mounted or not. Lawyers especially from the Office of the Public Prosecutor and the Public Solicitor are a big part of the success of a Court Calendar in a legal year. Their availability is dependent on the budget given to them by the State. The budget support by Parliament and the Government to the public lawyers is critical to ensure the Courts and the lawyers work together to uphold the rule of law and uphold the Constitutional dictates. They cannot do this when that support is not forthcoming from the executive government”.¹

¹ Page 4 National Court Calendar

Response to Recommendation 55 of the Committee's Report

Consistent with Salika CJ's comments above, there are readily identifiable factors which impact the capacity of the OPP to prosecute Gender Based Violence (GBV) cases in a timely and effective manner. These factors are listed below with details following:

1. Shortage of lawyers
2. No administrative or support staff in the FASO unit
3. Absence of a Victim Liaison Officer
4. Lack of a dedicated bus and driver for witnesses and FASO staff
5. Lack of specialized training for the provincial lawyers
6. No phones or phone credits to allow efficient communication
7. Specialist facilities available at the National Court

1. Shortage of lawyers

The OPP currently employs 41 lawyers² which service the entire country. To say it is significantly understaffed in terms of both lawyers and corporate support staff is an understatement. There are currently 9 funded legal positions being advertised with another 32 positions unfunded. There is a pressing need to have the remaining 32 legal positions funded to adequately staff the OPP, including its FASO team.

The majority of lawyers are based at the Headquarters in Port Moresby, NCD. Apart from the three Executives, namely the Public Prosecutor and two Deputy Public Prosecutors³, there are currently ten State Prosecutors and twelve Legal Officers based in the NCD.

Only State Prosecutors⁴ are able to present Indictments in the National Court at the commencement of a trial. Prosecutors based in Waigani mainly prosecute cases in the National Court at Waigani. However, these lawyers are also assigned to circuits in the National Courts which sit in most provinces around the country. The Office also has a Corporate Division comprising of one Director, three Divisional Managers and fifteen support staff.

Family & Sexual Offences Unit (FASO) in NCD

In 2012, the OPP set up a Family and Sexual Offences (FASO) Unit in the OPP Waigani Office as a mechanism to respond to the particular needs of survivors and offenders affected by family and sexual violence. All sexual offences in NCD are dealt with by this Unit, having previously been committed to the National Court for trial by Magistrates in the District Court. The FASO unit at present only operates in the Office at Waigani in NCD⁵ and comprises of five lawyers with no support staff. Apart from its core function of prosecuting perpetrators of

² Twenty lawyers are female and twenty one are male.

³ One of whom is the first female Deputy Public Prosecutor

⁴ Eight are female and 14 are male

⁵ National Capital District

crime in the higher courts, the FASO Unit also engages in inter-agency training and awareness activities in relation to GBV and SARV⁶. It must be understood that because the specialised FASO Unit only operates in NCD, prosecutors in the provincial branches and those who are assigned on circuit duties have the overall task of prosecuting all categories of cases under the *Criminal Code*, including family violence and sexual offences. These lawyers do not generally have the specialised training of those lawyers in the FASO unit in Waigani.

The FASO unit currently has 161⁷ open files awaiting trial or files which have commenced hearing. This is simply too many files for five lawyers to manage and prosecute with the degree of preparation required for such serious and complex matters. The pressure has increased on the lawyers with trials being listed every week of every month following the appointment of new Acting Judges mid-way through 2021. The number of judges increased with no corresponding increase in lawyers to appear before the judges. The Acting Judges are now sitting during in the 4th week of every month which had formerly been used by Prosecutors to prepare their upcoming trials for the next month and travel to and from circuit areas as required. This 4th week of every month was also used to train new and existing lawyers, hold Workshops, give written and oral advice and hold information sessions for vital areas such as SARV.

For the FASO unit to operate in a timely and effective manner, it would require an increase of four lawyers in POM. This would allow for cases to be adequately prepared both in POM and when lawyers are attending circuit. For FASO cases to receive the attention they deserve an increase of six FASO trained lawyers in the provinces is recommended.

Solution – Increase the number of lawyers in FASO Waigani by 4

Increase the provincial FASO lawyers by 6. (these 10 positions are currently unfunded)

2. No administrative or support staff in the FASO unit

The FASO unit operates without any support staff and there are no funded positions for support staff. There is no-one available to take phone messages when lawyers are in court, do photocopying, compile reports and statistics, follow up on travel arrangements, liaise with other agencies or assist with the general administration of files. The addition of two support officers would have a significant impact on the operation and efficiency of the unit. The inclusion of support staff to the unit would allow the lawyers to focus on the legal aspects of the preparation of a prosecution instead of being distracted by a myriad of administrative tasks, all of which need addressing prior to a trial.

⁶ Sorcery Accusation Related Violence

⁷ As at 23 February 2022

Solution – provide the FASO unit with funding for two support officers (one secretary and one paralegal)

3. Absence of a Victim Liaison Officer (VLO)

This is a role previously filled in the FASO Unit but has been vacant for nearly four years due to a shortage of suitable candidates applying for the position. More recently a short listing of potential candidates was created and the VLO position in Waigani is likely to be filled shortly.

This is a crucial role for the FASO Unit as this person is dedicated to looking after the large number of victims post committal to trial. The role encompasses regular communication with witnesses and managing their expectations in terms of appearances in court, attending conferences with prosecutors, and providing notification of upcoming court dates. Presently, our five prosecutors are left to do this which ultimately means there is very little contact with the witnesses because the lawyers simply don't have the time to do this, meaning contact with witnesses is sometimes lost. (I note the police are expected to maintain contact with the witnesses also but they have similar resource issues). Regular communication between lawyers (or the VLO) and witnesses in these types of sensitive cases is integral to the building of a relationship based on trust which impacts positively upon the confidence of the witness giving evidence at trial.

VLOs routinely attend court with witnesses and this is critically important because they sit outside court with witnesses waiting for the witness to be called to give evidence. When possible, the VLOs visit the courtroom with the witness prior to the day the witness has to give evidence in court to familiarise them with the courtroom and staff. We have had many experiences where witnesses are intimidated by the accused or the accused's relatives outside court and this has a significant impact on the willingness and ability of the witness to give evidence in court. The prosecuting lawyer is in court when this happens and is not able to prevent it from occurring. The value of this role cannot be underestimated as the VLO is able to ensure that the witness is kept in a safe place and lessen the likelihood of interference or intimidation of the witness.

A properly qualified and trained VLO is capable of and responsible for the preparation of Victim Impact Statements which are presented to the National Court at the sentencing stage of a trial. These statements tell the crucial story surrounding the crime from the victim and/or the victim's family's point of view. This is a very significant part of the criminal justice process as it gives the victim or survivor an opportunity to tell his or her story to the court and detail the impact the crime has had on their life. It provides the victim with a voice and a sense that they are being heard. The sentencing judge is then better able to understand the ramifications of the crime on the victim and take that into account when sentencing the prisoner. This is usually

done by the judge referring to specific comments in the Victim Impact Statement which gives the victim confidence that their experience has not been overlooked.

Currently, in the absence of a Victim Liaison Officer, Victim Impact Statements are often not prepared due to the pressures of time on the prosecuting lawyer. This is far from ideal and does not place the consequences of the crime before the court.

I note we have Victim Liaison officers in our Lae, Goroka and Alotau offices but not one in Waigani, nor any other provincial cities. Those officers have not received training for more than five years. The funding of this position would make a significant difference to the effectiveness of the FASO unit in Waigani which prosecutes the greatest number of FSV cases in the country.

Solution – Appoint a suitably qualified Victim Liaison Officer to the FASO unit and provide up to date training for the VLOs in the provinces

4. Lack of a dedicated bus and driver for witnesses and FASO staff

The responsibility to locate and transport witnesses lies primarily with the RPNGC which sometimes struggles to find adequate resources to carry out this essential function.

Witnesses and victims are required to attend the OPP prior to trial for the purpose of witness conferencing. They frequently struggle to find the fare for the PMV⁸ if they do not have police assistance and lawyers often give the witnesses money to get home or share food with them while they are at the office. They are then subsequently required to attend court and face similar challenges with transport.

Provision of transport once in the care of the OPP in a dedicated vehicle where they are free from intimidation from the accused or their family, where they don't have to worry about the bus fare and arriving on time, can make all the difference in an FSV prosecution. It is a long journey to get a child witness from the day of initial complaint to the police, to appearing in a trial at the National Court and there is virtually no support for them along the way. Once a witness is brought to the OPP by police, it becomes the responsibility of the OPP to accompany those witnesses to court and look after them at court.

A dedicated FASO unit bus equipped with a driver would provide a buffer for witnesses attending court from the chance of intimidation and threats from the accused and/or his family, along with the greater certainty of the witness attending court and attending on time.

Such support for victims and witnesses can mean the difference between a witness or victim attending court or making the decision not to attend. There can be no prosecution without the witnesses, no matter how skilled or experienced the prosecutor may be.

⁸ Public Motor Vehicle

Solution – provide a dedicated 15 seater bus and driver to the FASO unit

5. Lack of specialised training for the FASO based and provincial lawyers

Due to the current listing of trials in the National Court all year round there is no opportunity for workshops or training for the FASO lawyers both in Waigani and in the provinces. This means new lawyers are not properly trained and potentially not adequately supervised when first appearing in court as new lawyers. This is particularly problematic in the provinces where resources are even more scarce. An increased number of lawyers in the FASO unit in Waigani would allow the more senior lawyers to conduct training and mentoring in the provinces and also provide workshops and CLEs⁹ for other lawyers. Negotiating some breaks in the legal calendar with the Chief Justice of the National Court so that lawyers can attend training and specialized workshops would also be crucial to the initial and ongoing training of lawyers, which would in turn impact upon the likelihood of successful prosecutions.

Solution – Obtaining breaks in the legal calendar to allow for specialized training of lawyers

6. No phone system to allow timely and efficient communication

All OPP lawyers need access to phones to communicate with their colleagues, supervisors, senior lawyers at the OPP, defence lawyers, members of the RPNGC¹⁰ and witnesses. Often directions are received from the bench with lawyers expected to respond swiftly. This is not always possible when lawyers are relying on their own resources to communicate with necessary parties.

A simple but effective remedy to this problem is to provide the OPP with funds for a CUG (closed used group) phone service. This service is provided by mobile operators (such as Digicel) to mobile subscribers (in this case, OPP lawyers and administrative staff). The service allows those staff members to call any member within the designated group free of charge. The service prevents the misuse of public funds by restricting the numbers called (for free) to those listed in the Office. It does not permit private calls to be made. The service also provides for SMS¹¹.

Solution – Provide funds for a CUG service for all OPP staff

7. Collaboration with the National Court

There are three main areas where collaboration with the National Court would be highly beneficial to the prosecution of GBV cases.

(i) A separate stream or list for sexual offences

⁹ Continuing Legal Education

¹⁰ Royal Papua New Guinea Constabulary

¹¹ Short Message Service

The establishment of a separate list in the National Court for hearing cases involving sexual offences would streamline the listing and prioritisation of such cases. When lengthy delays occur between a sexual offence being committed and finally being listed for trial in the National Court, memories become less reliable and the witness/victim has to relive the offending all over again. This delay does not give the victim of a sexual offence an opportunity to have some closure and know that they do not have to give evidence again. Some women have subsequently married or have new partners who do not know about the offending and the women don't want to reveal the prior offending to their new partners.

Many of the victims of sexual offending are children. The longer the delay that occurs between the offending and the provision of evidence in the National Court at trial means the evidence may be less reliable due to fading memories of the event and the process of anticipating giving evidence and having to relive their story of assault in front of strangers has the effect of re-traumatising the child (and adult) witness. This process is less damaging when the duration of waiting for a trial is lessened.

A further advantage of having a separate list for sexual offences is that the judge hearing these types of offences can receive specialised training in this area and play an active role in ensuring optimum management of the list and cases.

(ii) Special measures

The sensitive nature of the evidence given by the witnesses and victims in these cases means that special measures should be utilised to protect vulnerable witnesses. There are provisions in the *Evidence Act* 1975 that are currently utilised by the prosecutors to obtain court orders which permit a screen¹² to be placed in front of a victim/witness to prevent the victim from seeing the accused. A recent case in the National Court at Waigani saw an accused leaning around the screen in an attempt to intimidate the young child witness.

There are other provisions in the *Evidence Act* which have not yet been utilised due to a lack of facilities. An order may be sought by the prosecution which allows the victim to give evidence from another location by way of closed circuit television¹³. Also, there is a provision which permits a victim to give evidence by way of a pre-recorded interview¹⁴. Whilst such provisions are standard in other countries PNG is yet to implement these provisions already provided for in the legislation due to resourcing issues.

(iii) Waiting room for victims and their families in new National Court

¹² 37B(1)(2)(a) Evidence Act

¹³ 37B(1)(2)(h) Evidence Act

¹⁴ 37C(1) Evidence Act

Currently all witnesses including victims of sexual offences wait outside the designated court room until they are called to give evidence. This is far from ideal as they are often seated close to the accused (when he is on bail) or the accused's family and supporters. This is undesirable and inappropriate as it gives an opportunity for intimidation to occur which can greatly impact upon the witnesses ability to give coherent and confident testimony. The use of a separate room for the witness to give evidence would overcome this but when this is not possible, particularly in the provinces, the provision of a waiting room with access exclusive to these witnesses, their families and prosecutors would be a significant improvement.

Response to Recommendation 56 of the Committee's Report

The current practice within the OPP is that complainants and interested parties in a case are permitted to write formally to the Public Prosecutor to air their grievances regarding delays or enquire about the status of cases. Such complaints have been uncommon but have been attended to promptly. The other main source of complaint is from witnesses who are unfamiliar with the delays that occur as cases progress through the courts. The OPP response is to explain the reasons for the delay.

Constitutionally, the OPP recognises the independence of the Police Commissioner. Following committal, the jurisdiction of the police ends and the prosecution becomes the responsibility of the OPP. Any complaints made post committal must be made to the OPP.

Collaboration with the RPNGC

The OPP already has close ties with the RPNGC and regularly works with its officers, managers, SOS team and liaises with the AFP PNG advisers. Every year Workshops are conducted with combined participants from the OPP and RPNGC. An example of this is the OPP Pikinini Workshop conducted in November 2021 in POM where attendees included the Public Prosecutor, Mogish J., members of the RPNGC (SOS and FSVU), lawyers from the OPP and special guests from external jurisdictions. In addition OPP Prosecution Workshops for OPP lawyers and RPNGC members are held on an annual basis with facilitation taking place between the most senior members of each Office and their advisers. The Public Prosecutor is in regular contact with the Police Commissioner to discuss the many challenges faced by their respective Offices and officers.

The collaboration between RPNGC, PNG-APP and OPP lawyers throughout the year is aimed at strengthening coordination, identifying training needs and coaching and mentoring key officers. For instance, joint training workshops were conducted in mid 2021 for fifteen RPNGC officers from SOS, FSVU, CID and Police Prosecution by the OPP's Family and Sexual Offences Unit (FASOU) and a further 15 officers from CID, SOS, FSVU, Prosecution and the Transnational Crimes Unit on Human Trafficking in PNG by a senior prosecutor from OPP. The training was also an opportunity for OPP prosecutors, to conduct training and to

share their prosecutorial experience with police investigators and prosecutors and vice-versa.

In February 2022 a joint meeting was held between Salika CJ, the Public Prosecutor, the Public Solicitor, members of the RPNGC and other interested parties. The purpose of the meeting was to discuss how to improve the conduct of trials in the National Court and to minimise delay where possible.

Budget

The Budget below is submitted following the Committee's request for same:

Points raised in Response	Page no.	Item	Cost per unit	Recurring or annual cost	Total cost
1	2	Salary of lawyer x 10	K 37,042 ¹⁵	Annual	K 370,420
2	3	2 Support staff	K 90,568	Annual	K 90,586
3	4	VLO + Training	K 45,055 K 70,000	Annual Annual	K 45,055
4	5	Bus Driver	K 105,000 K 25,570	One off Annual	K 105,000 K 25,570
5	6	Breaks in National Court Calendar	Nil	Nil	
6	6	CUG Annual cost Plus deposit	K 756 K 126	Annual One off	K 765 K 126
7	7	Computer/printer Ink cartridges	K 34,283.67 K 9,039.08	- Annual	K 34,283.67 K 9,039.08
8	7	Collaboration with National Court	Nil	Nil	

Summary

Although some factors impacting upon the ability of the OPP to prosecute FASO matters in a timely manner have been outlined above, they cannot be seen in a vacuum. It is impossible not to mention the impact of the inadequate and dated salary structure that exists, the lack of housing for lawyers, particularly in the provinces, and general employment conditions which have made it problematic to retain both junior and experienced staff.

In addition the OPP must be viewed realistically, that is, as interdependent on the efforts and resources of the RPNGC, the Public Solicitor's Office and the courts. None of these institutions operate effectively on their own but are reliant on the efficiency and cooperation of each other.

Statistics

Attached are the FASO statistics for the years 2019 to 2021.

¹⁵ Based on 2019 Base Salary scales, midway point

FAMILY & SEXUAL VIOLENCE PROSECUTION STATISTICS 2019-2021

SOUTHERN REGION

NCD	2019	2020	2021
FSV committals received	47	44	52
Family/domestic violence	24	18	25
Sexual offences	23	26	27
Convictions to date	23	24	27
Acquittals to date	13	11	9
Discontinued	3	4	1
Pending to date	8	5	15

CENTRAL	2019	2020	2021
FSV committals received	28	35	20
Family/domestic violence	13	24	12
Sexual offences	15	11	8
Convictions	16	21	5
Acquittals	8	6	2
Discontinued	4	3	1
Pending	0	4	12

MILNE BAY	2019	2020	2021
FSV committals received	37	49	24
Family/domestic violence	18	34	11
Sexual offences	19	15	13
Convictions	34	27	9
Acquittals	2	5	4
Discontinued	1	1	0
Pending	0	16	11

MOMASE REGION

MADANG	2019	2020	2021
FSV committals received	36	28	31
Family/domestic violence	23	19	26
Sexual offences	13	9	5
Convictions	11	5	3
Acquittals	2	3	0
Discontinued	0	1	2
Pending			

NEW GUINEA ISLANDS REGION

KOKOPO, ENB	2019	2020	2021
FSV committals received	74	11	25
Family/domestic violence	46	4	13
Sexual offences	28	7	12
Convictions	45	3	5
Acquittals	17	2	3
Discontinued	6	1	0
Pending	6	5	17

KIMBE, WNB	2019	2020	2021
FSV committals received	30	10	16
Family/domestic violence	14	5	1
Sexual offences	16	5	15
Convictions	29	10	8
Acquittals	0	0	0
Discontinued	1	0	1
Pending	0	0	7

MANUS	2019	2020	2021
FSV committals received	43	41	35
Family/domestic violence	26	20	18
Sexual offences	17	21	17
Convictions	26	20	14
Acquittals	11	8	6
Discontinued	2	4	1
Pending	4	9	14

HIGHLANDS REGION

Data requested yet to be submitted.

Take note:

The above data was submitted by our provincial branch information management officers through manual record collation. All OPP branch offices in most provinces are not adequately equipped with technological resources and quality internet capacity. Some of our provincial IMOs are still using manual data entry methods. The OPP needs an updated case management software/ system that would help efficient and accurate production of our case statistics. A central database linking up all the provincial offices to the headquarters would have made this task easier to accomplish.
