Department of Pacific Affairs

Domestic Violence in Papua New Guinea: A Case Study from Boroko District Court, Port Moresby

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In May 2021, in PNG's national parliament, a special parliamentary committee on gender-based violence conducted public hearings and invited submissions to gain evidence on the breadth of the problems and positive steps that could be taken to combat them. These hearings follow a national summit on gender-based violence held in November 2020, which added to the growing momentum to improve the justice system's response to domestic violence (DV) and DV complainants. While the Family Protection Act 2013 introduced specific offences for DV and breaches of family protection orders under the Act, we do not know if prosecutions on these charges are increasing in the courts.

The incidence of DV in PNG, and gender-based violence more broadly, is believed to be amongst the highest in the world. Evaluating the scale of the problem, including variations across time and different geographic areas — as well as the impact of reforms — is hindered by a lack of robust and reliable data (Putt and Dinnen 2020). A notable exception to this lack of research is an in-depth study undertaken several years ago that examined domestic violence cases in the Boroko District Court, a busy urban court in Port Moresby (Ganaii 2017). This is the first and only study of domestic violence cases in the District Courts and provides important insights into aspects of the criminal justice process, as well as factors beyond it, that can influence the outcome of judicial proceedings and the experiences of complainants in DV cases. The study is a good example of what can be revealed through careful data collection and analysis.

The National Court and the District Court are the two main trial courts in PNG dealing with criminal offences under statutory laws such as the Criminal Code Act 1974 and the Summary Offences Act 1977.[1] District Courts hear generic violent offences such as common and aggravated assault. In 2018, District Courts across PNG dealt with more than 14,000 summary offences and approximately 6000 committal hearings to the National Court, but it is not possible from available data to determine how many of these involved a domestic or family relationship between victim and offender. However, in 2016, 50 per cent of all new registered summary offence cases at the Boroko District Court, recorded on a monthly basis, were DV cases[2] and, of these, more than 50 per cent were assault cases (Ganaii 2017). Yet, the majority of DV cases were struck out by the court due to the non-appearance of complainants and defendants. In addition, warrants for the arrest of defendants were rarely executed.

Data from the Boroko District Court indicated that DV cases were being struck out when:

- defendants failed to appear
- police failed to execute bench warrants of arrest
- complainants (survivors) failed to turn up for mentions or otherwise showed little interest in their case
- complainants withdrew support for the prosecution case.

The study examined what lay behind these outcomes. In cases where the defendant failed to appear, it found that the police appeared unable or unwilling to hold defendants on remand (in custody), citing the common practice of what is colloquially known as 'snake bail' where defendants are released without proper bail procedures being followed. Such irregularities typically involve police officers releasing defendants on payment of 'bail' but without issuing a receipt or providing any date for when the defendant has to return to court. The inability of police to identify defendants or transport them to court was another reason given for non-appearance of defendants.

Police failure to execute bench warrants was attributed to various factors such as not knowing the defendant's residential or work address, lack of manpower or transport to effect the bench warrant, defendants fleeing the jurisdiction, and the police officers undertaking the arrest not being notified about the bench warrant or not having received it at their police station.

Where complainants failed to turn up to court, or when they withdrew their support for prosecution, the study found a number of factors at play, such as lack of awareness about the court process, including about the legal consequences of having the defendant arrested and charged. The complainants' withdrawal of support for prosecution was also attributed to fear of retaliation by the defendant, concern about the financial

consequences of having a defendant incarcerated where they were the sole breadwinner in the family, and/or because the defendant had already paid compensation or had promised to do so.

In response to these findings, the study made a number of recommendations for consideration by District Courts and other relevant justice stakeholders:

- collation of detailed monthly statistical reports enumerating the work of the court.
- preparation and publication of awareness materials (information sheets) for court users, particularly for domestic violence criminal and civil proceedings. The study determined that the most useful awareness materials should cover DV offences heard in the District Court — what a person should do and where should they go when an act is committed against them, what happens at the police station and what happens at the court.
- creation of a dedicated DV court in Port Moresby, based on safe court principles, to hear civil and criminal DV cases.
- provision of training, mentoring and upskilling of magistrates and staff, including on the criminal justice process, data entry and collation, and victim rights.
- fostering closer cooperation in the delivery of justice services to vulnerable groups, particularly with government agencies such as the police and with non-government organisations such as specialist family and sexual violence services (Ganaii 2017).

Conclusion

The study demonstrates how DV cases make up a significant proportion of criminal proceedings in a busy urban District Court. It provides rare insights into the day-to-day challenges facing complainants and the magistrates working to prevent and deter DV, as well as providing recommendations to help overcome them. Systematic evidence, collected at a local level, would contribute to addressing the dearth of robust data about the criminal justice system and its workings. Such data would also enable assessment of the impact of important reforms aimed at protecting vulnerable groups, such as the Family Protection Act.

Notes on authors

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Endnotes

1. PNG's Village Courts deal with the largest volume of cases, with the power to hear relatively minor village-based or community problems such as gossip, swearing, minor assaults, drunkenness and disturbing the peace.
2. For the study, domestic violence matters were defined as summary offences committed in a family setting.

References

Ganaii, T. 2017. Domestic Violence Cases at the Boroko District Court. Magisterial Services of Papua New Guinea.

Putt, J. and S. Dinnen 2020. *Reporting, Investigating and Prosecuting Family and Sexual Violence Offences in Papua New Guinea*. Canberra: Department of Pacific Affairs, ANU.

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