

Family Protection Orders: Court Processes in Papua New Guinea

Lindy Kanan, Judy Putt and Philemon Opur

February 2021



Introduction

This report outlines some findings and observations about how courts in Papua New Guinea (PNG) handle the family protection orders (FPOs) introduced under the Family Protection Act 2013. It is based on direct observations of 33 court hearings in Port Moresby and Lae conducted between 28 January and 24 March 2020. These findings and interpretations of the court observations are informed by a larger study on FPOs that included interviews with stakeholders across seven locations: Port Moresby, Lae, Popondetta, Buka, Arawa, Mount Hagen and Minj. This report discusses the following topics:

- terminology
- communication
- adjournments
- safety and security
- hearing schedules
- documentation
- legal representation
- service of orders
- intersection with family law issues
- magistrate knowledge
- characteristics of the parties and
- order conditions.

Findings and observations

Terminology

The research team observed that among the general public, including court officials, there is a lack of differentiation between interim protection orders (IPOs) and longer-term protection orders (POs). 'IPO' has become commonly used to refer to any matter related

to FPOs. While the Family Protection Act 2013 uses 'family protection order' as an umbrella term that includes both IPOs and POs, the full terms and their acronyms are rarely used. Even most courts do not make a distinction between the terms, listing all matters as IPOs on their notice boards, even PO hearings. This lack of differentiation may be contributing to a limited understanding of POs and the process for having an IPO converted to a PO.

The acronym PO is also problematic. While it stands for protection order (DJAG 2017), the research team at times observed stakeholders incorrectly calling POs 'permanent orders' and 'preventative orders'. The use of 'permanent order' shows that there is an understanding that POs are longer lasting than IPOs, however no orders are 'permanent'; POs can only remain in force for a maximum of two years. We suspect that 'preventative order' is sometimes used due to confusion with preventive orders issued by Village Courts and other types of restraining orders issued by District Courts.

Communication

The research team was generally impressed by the magistrates' communication in the court room. Parties were given a choice about the language used in the proceedings, and the magistrates took a lot of time and care to ensure that parties understood what was happening, how the orders worked and the consequences if orders were not complied with. (We are cognisant that magistrates may conduct themselves differently when there is no external observer present).

The following are some further observations regarding communication and information flow between the

courts and court users:

- Despite the care taken by magistrates, parties were observed to be confused about a number of aspects of the process, including which court room to go to for the hearing, at what time and on which day.
- Applicants were observed to be unsure about what to do after the court hearings and did not know where or when they could collect the orders that had been granted.
- The court front counters are often very busy and it can take quite some time to queue to ask a question. While the busier courts have clerks dedicated to FPO matters, it can be difficult for members of the public access to them.
- The courts observed had large numbers of people milling around, which added to the confusion and made it difficult for parties to hear their names being called to enter the court room.

Adjournments

A common theme across the research sites was the number of times matters were adjourned. While in many cases there seemed to be reasonable explanations, in other cases the adjournments appeared to be due to disorganisation of the court or a lack of clear communication with the parties. Some reasons noted for adjournments included:

- proof of service of IPO not on file
- applicant and/or respondent not present

- magistrate not present
- magistrate needed more time to read the particulars and was not ready to make a ruling and
- documentation was missing/incomplete.

Adjournments, while sometimes necessary, contribute to frustration for those seeking safety through the courts.

Safety and security

In terms of safety, excellent practices were observed where the applicant was a client of a specialist service such as Femili PNG. In such cases, we observed that applicants had transport provided and were able to enter the court premises, as well as individual court rooms, via the back door or staff entrance. Women who were residing at a safe house were able to attend an IPO hearing without being sighted by people in the public areas of the court. For applicants who were not Femili PNG clients, we did not observe any specific measures being taken, such as safe entry/exit points or waiting areas.

Another area of concern was the publishing of names on the public court lists, which could lead to further risk for applicants, particularly in small communities. Busy and open court rooms also mean a lack of confidentiality.

Hearing schedules

The schedule for hearing days was observed to be working well in some locations. For example, in Lae, IPO and PO hearings are conducted on Tuesdays and Thursdays, as well as any other weekday if the matter is urgent.

Example 1. Observation of an IPO hearing

- IPO application dated Friday 28 February.
- Case scheduled for hearing on Tuesday 3 March.
- Magistrate unable to hear on Tuesday as too busy. Case adjourned to Wednesday.
- Magistrate is available for the hearing on Wednesday. Applicant is on their way from the safe house but is not present when the magistrate wants to hear the case. Magistrate adjourns case to Thursday.
- Applicant is arriving at the court on Wednesday when she is informed the hearing has been adjourned to Thursday. Applicant returns to safe house.
- Applicant and magistrate are both present on Thursday. Hearing takes place and IPO is granted.

This case highlights multiple adjournments, additional time taken and a lack of provision of clear information. Disorganisation meant that time and resources were wasted, with stakeholders travelling back and forth between the court and safe house.

At other courts, however, the schedule seemed to be dictated by individual magistrates' preferences. This meant that court clerks had to reallocate FPO matters to other courts depending on where the most helpful and cooperative magistrates were located.

Documentation

As mentioned in the previous section on adjournments, poor quality documentation reduced the effectiveness of the process. Of the court files reviewed by the research team, the quality of documentation such as affidavits was greatly improved where the applicant was assisted by a service such as Femili PNG, which has lawyers on staff in both Port Moresby and Lae.

Obtaining assistance with court documentation can be challenging across PNG. At a court in Port Moresby, staff were observed directing applicants to the Office of the Public Solicitor and the police Family and Sexual Violence Units for help with paperwork. In smaller towns, court staff mentioned that they assist the public when they have time. In some locations, so-called 'street lawyers' charge fees for assistance with legal documentation.

Legal representation

Most parties at the hearings observed by the research team were self-represented. At least two PO hearings had respondents represented by lawyers (with self-represented applicants). Applicants without legal representation were observed successfully obtaining POs against respondents defended by lawyers.

Service of orders

FPOs do not come into effect until they are served on the respondent. While the police should serve the orders, in reality this is often left up to the applicant. This results in either the non-service of orders or a lack of proof of the service of orders, which in turn means that the case cannot progress to the next stage (POs cannot be issued without proof of the service of an IPO, and breaches cannot be prosecuted without proof of the service of an IPO or PO). As mentioned previously, lack of proof of service is a recurrent issue in the FPO process.

Intersection with family law issues

The intersection of violence and family law issues was apparent throughout hearings. Issues such as divorce and adultery were brought up at IPO and PO hearings, and magistrates were observed explaining to parties the separate processes they would have to follow for seeking a divorce, obtaining child maintenance or pursuing compensation under the Adultery and Enticement Act.

Magistrate knowledge

The magistrates observed in Lae and Port Moresby were knowledgeable when issuing orders. They understood that applicants were sometimes in life and death situations and were generally careful to ensure that the conditions of the orders were relevant to individual cases.

Example 2. Observation of a PO hearing

- Applicant not present but magistrate begins proceedings without her.
- Respondent admits the allegations are true. Police have already taken action regarding damage to property.
- Applicant arrives late and is able to participate in the hearing.
- Applicant says respondent's behaviour changed after being served the IPO.
- Magistrate asked the parties if they agree to a PO to 'maintain stability in the marriage'. They agree.
- PO issued for two years.
- Applicant told not to provoke the respondent.

This case highlights the flexibility of the court in accommodating late arrivals, that the IPO was reportedly successful in changing the respondent's behaviour and that a PO was seen as a tool to 'stabilise' a relationship. It also highlights the victim-blaming attitude of the magistrate, who warned the applicant against provocation.

Good training practices were observed, such as newly appointed magistrates sitting in on IPO and PO hearings with experienced magistrates before taking cases themselves. In a small number of cases, magistrates were observed to have controversial views, such as blaming the victim for the violence.

Characteristics of the parties

The following characteristics were observed regarding the parties to the proceedings:

- Applicants were mostly women, but there were also some male applicants.
- All hearings involved heterosexual intimate partner or former partner relationships.
- Many of the applicants were observed to have low literacy levels and a lack of familiarity with court processes. Some were visibly distressed by the ordeal.
- FPO respondents included educated members of the community, including those in occupations who ‘should know better’, such as a police officer and a lawyer.
- Some women applicants were observed struggling with noisy babies/children — particularly those who were residing at a safe house and (one assumes) did not have easy access to a relative or other person who could assist with the children while she attended court.

Order conditions

Order conditions were not always practicable. For example, sometimes a respondent received a condition such as not communicating with the applicant even if they lived together. Parties were confused about how to continue living together but still comply with the orders. In one case, the magistrate clarified that they could still communicate, just not in an aggressive or threatening manner. In another case, order conditions were breached when the respondent (living elsewhere) used a child as an intermediary to gather information and communicate with the applicant.

Other notable observations

- Parties were observed arguing outside the court. In one case, the respondent was trying to pressure the applicant to agree to certain things before entering the court room.

- Many cases mentioned prior or concurrent informal justice processes. In some, compensation had been paid but recourse was now being sought through the formal justice system because the agreement had been broken or the parties were not satisfied with the outcome.
- Most IPO hearings were given a return date of two weeks later. Though IPOs last for 30 days, we assume this is done to provide a buffer in case the matter is adjourned and the PO hearing does not go ahead until the latter part of the 30-day IPO period.
- Some women who were living with their husband’s extended family found that an IPO put them in a more precarious situation, and it was more likely for the woman and her children to be neglected or shunned by the husband’s family.

Conclusion

A number of processes and practices were observed that positively contribute to a functioning FPO system. However, practices differ between provinces and even between courts in the same city. In some locations, the system only keeps running thanks to the dedicated and passionate clerks and magistrates — though they face many obstacles, such as a lack of the basic resources they need to carry out their duties. In Lae and Port Moresby, court staff appeared to be greatly assisted by the presence of Femili PNG, which helps facilitate communication between the courts and applicants and ensures documentation is in order.

The system could be further improved for survivors of domestic and family violence if attention was paid to some key issues, including:

- the provision of accessible legal information — for example, a leaflet on FPOs that court staff could provide explaining the terminology and process
- a clearer differentiation between IPO and PO proceedings
- improved communication and trauma-informed support for parties, particularly those not familiar with court processes
- a reduction in the number of times cases are adjourned
- safe entry and exit points for applicants

and waiting areas that keep applicants and respondents separate

- ensuring that there are options for urgent IPOs to be issued on any given day and
- ensuring clear, safe and well-resourced processes are in place for IPOs and POs to be served on respondents.

A further consideration is the co-location of services that can provide support with the preparation of IPO and PO documentation. Other countries have seen some success in co-locating support services such as non-governmental organisation court advocacy workers, legal aid lawyers and police within court premises. This could be considered in PNG to ease the burden on court users who have to travel to different locations to access service providers.

This report was prepared as part of a larger research project on FPOs in PNG. The main report, authored by Judy Putt and Lindy Kanan, is titled 'Family Protection Orders in Papua New Guinea' and is available online at the Department of Pacific Affairs, The Australian National University. The research project was supported by the government of Australia in partnership with the government of Papua New Guinea as part of the Pacific Women Shaping Pacific Development Program, the Justice Services and Stability for Development Program and the Pacific Research Program.

Author notes

Lindy Kanan is a senior research officer and Judy Putt is research fellow with the Department of Pacific Affairs at The Australian National University, Canberra. Philemon Opur is an independent researcher.

Reference

DJAG (Department of Justice and Attorney General)
2017. *Guidance Notes for the Family Protection Act*
2013. Waigani: Government of Papua New Guinea.



Department of Pacific Affairs

Coral Bell School of Asia Pacific Affairs

ANU College of Asia and the Pacific

Coombs Building

9 Fellows Road

Acton ACT 2601 Australia

+61 2 6125 152

dpa@anu.edu.au

dpa.bellschool.anu.edu.au