

VICTIM SUPPORT
Heads of Agency Group Report
6 October 2016

This report addresses “victim support” in criminal cases. It deals with cases that have been lodged with the police. The report does not deal with victims of unreported crimes or Family Protection Applications.

The report looks at victim support during three stages of the criminal justice process – before court, during court, and after court.

In most legal systems, over the last 20 years, reforms have been introduced to support victims during each stage of the criminal process. In Vanuatu, these reforms have not yet happened. There is a need for the existing law and procedures relating to victims to be updated.

Consultations were held with 29 individuals. Seta Waqanitoga, Project Officer at MJCS, assisted with consultations.

GOOD NEWS STORIES

- PPO has included “victim support” as an activity in its 2016 business plan. Three staff are responsible for the activity.
- PPO now requires advice to be prepared on all files before trial, and advice on possible appeal grounds after trial.
- Police have implemented the Standard Operating Procedure in Family Protection (DV) cases. This orders police to investigate, arrest, charge the offender, and to consider the protection of the victim in deciding bail.
- Police and SPD have listed a backlog of 241 cases in the Magistrates Court for October and November 2016.
- Vanuatu Women’s Centre now has a police officer on site 5 days a week in Port Vila and 3 days a week in Tanna.
- At a recent PACMAS workshop, VWC has highlighted the importance of suppressing the identity of victims in media reports.
- Corrections has set up and conducted a victim awareness module for offenders at Luganville and Port Vila Correctional Centres (high, medium, low

risk). A NZ volunteer has established this. The module has been shown to the Parole Board.

- Corrections attend every Supreme Court tour. They contact victims (when available) in preparing Pre Sentence Reports. Corrections also try to contact victims in “high risk” parole cases to establish their views before the case is heard by the Parole Board.
- Courts do a good job of suppressing the name of the victim in judgments.
- PSO has conducted legal awareness in north Tanna and Maewo in 2016.
- Informal sector: Care’s “Leftemap Sista” program has conducted workshops for over 300 youth. Many youths find confidence to report crimes during these workshops.

THE CHALLENGES

Many previous recommendations have not been analysed, reviewed or implemented.

There is no system or process in place for any agency or individual to analyse, approve, reject or progress recommendations.

There is a paralysis in reform implementation.

CEDAW concluding observations on Vanuatu’s Combined 4th and 5th Periodic Reports (2016). 14 recommendations not implemented. 5 recommendations partly implemented.

Vanuatu National Survey on Women’s Lives and Family Relationships (2011). 9 recommendations not implemented. 1 implemented

UNICEF Protect me with love and care (2008). 12 recommendations not implemented. 4 partly implemented. 1 implemented.

Total: 35 previous recommendations not implemented

UN Women (2016) “Women and Children’s Access to the Formal Justice System in Vanuatu”. 51 new recommendations.

HIGH PRIORITY RECOMMENDATIONS

1. Public Prosecutor's Office to establish and recruit the post of Victim Support Officer by March 2017.

SRBJ or other donor to fund the new VSO position during 2017 whilst Government of Vanuatu funding is obtained for 2018. Funding to include a training and travel budget.

- This recommendation is supported by the Public Prosecutor.

Fiji and Solomon Islands have victim support agencies. NZ has a victim support office and a victim advisor in each court building and victim's rights legislation.

The role of the VSO would be to support victims through the court process, including:

- Refer the victim to medical and counselling services.
- Keep the victim updated with each stage of the investigation and each court date.
- Explain court procedures and what will happen in Court.
- Advise the victim about any bail applications and seek the victim's views.
- Arrange for the victim to meet with the trial prosecutor before trial.
- Visit the Court building before trial and orientate the victim as to what will happen in court, including options for giving evidence such as closed court and use of protection screens.
- Discuss the need for an interpreter, closed court and screen barrier with Prosecutor before trial.
- Attend Court Tour the week before trial and assist locate and prepare the victim for trial.

- Assist the victim in circumstances where there is a request for withdrawal of charges.
- Attend trial and support the victim in Court.
- Debrief the victim after evidence is given.
- Advise the victim of outcome of case.
- Help obtain a Victim Impact Statement from the victim for use in sentencing proceedings, and seek details about possible compensation, reconciliation etc.
- Liaise with the victim, referral services, VPF Victim Support Unit and Correctional Services, including possible release of the offender on parole.
- Build support networks with VWC, NGO's, schools, community organisations and other agencies, especially in remote areas, to assist victims to report crimes.

2. Police and prosecutors to proceed with charges of 'sexual intercourse without consent' (life max) instead of 'unlawful sexual intercourse' (14 yr or 5 yr max) in cases involving victims under 15 years who do not consent to sex.

USI is a charge intended for consensual sex where the girl is under 15. SIWC (rape) is a charge for cases where there is no consent. A more serious charge results in a higher sentence.

- This recommendation has been APPROVED AND IMPLEMENTED BY PP.
- Training on this recommendation was conducted last Friday.
- Louis [2013]. Spear J: "I am completely at a loss to understand why you are charged with unlawful sexual intercourse when the victim in this case was only 8 years of age. Surely, it could not be thought that an 8 year old girl was capable of giving a true consent to a person over 4 times her age and who was in the role of step father; it is simply ridiculous.... I look at the pre-sentence report and I notice

that the recommendation is for a suspended term of imprisonment. That is simply unacceptable.”

2011-2013: At least 10 cases involving the charge of **unlawful sexual intercourse** where the victim was under 15 and offender over 21, where clearly there was no possibility of consent, including

- Andy [2013]. 30 year old offender and 10 year old victim. Vaginal and anal rape. Good behaviour bond increased to 3 years prison on appeal.
- Sam [2012]. 40 year old raped 12 year old daughter about 20 times. Threats with a knife. 3 years 8 months prison.
- Edge [2011]. 64 year old raped step daughter for 5 years. She was 9-14 years old. “*you turned her into your sexual slave*”.
- Jerry [2011] 23 year old offender had sex with 14 year old victim. Threatened her with an axe as she walked home from a nightclub. 1 year 11 months prison.
- Sigi: 11 year old victim raped by 52 year old uncle over a 2 year period. Pregnant. Previously served 8 years prison for similar offending.

3. (a) Waive all medical report and hospital consultation fees for victims of crime, especially women and child victims of sexual and violence offences.

(b) Waive birth certificate fees for girls under 15 who have been sexually assaulted.

VWC and FPU report that cases cannot progress because victims are unable to pay 500VT for a medical report (NRH) or 800VT (NOW 1500vt) for a birth certificate (Civil Status Office). Many of these victims are children. The documents are needed as evidence.

Some cases do not go to Court because of these fees. Some police use their personal money to pay these fees. There should be a high level policy direction to waive these fees.

Medical Superintendent agrees with this proposal. Civil Status say that they waive fees in these cases.

Similar recommendations made in 2016 UN Women and CEDAW reports. The State has an obligation to provide these services for free.

- NEED TO FIND OUT WHY FEES ARE NOT BEING WAIVED IN SOME CASES.
- SEEK AGREEMENT WITH CIVIL STATUS, FINANCE AND HEALTH. A direction should be issued to Cashiers to waive these fees for victims of crime.
- SUGGESTION: HOAG TO ALLOCATE THIS TASK AND TO REPORT BACK NEXT MEETING.

4. All police to be trained in the FPU Standard Operating Procedure by the end of 2017. The SOP to be translated into Bislama and posted in all police stations.

The SOP is a mandatory order of the Commissioner and states in part:

“3.3 If a Police officer has reasonable grounds to believe that a person has committed a domestic violence offence or has breached the conditions of a family protection order, the officer **must investigate** the allegation.

3.4 If, as a result of that investigation, the officer has reasonable grounds to believe the person has committed a domestic violence offence or has breached the conditions of a family protection order, the officer **must charge** the person with a domestic violence offence.

3.5 If the complainant is in danger of physical injury, the officer must arrest the person and take him or her into custody. These are in addition to powers and requirements to arrest pursuant to the Criminal Procedure Code.

3.7 Section 45 of the Act states that, **if the complainant is in danger of physical injury, any person arrested pursuant to section 44 must be kept in custody and brought before a magistrate or justice of an Island Court as soon as practicable**, but no later than 48 hours from the time of arrest. In calculating the period of 48 hours, Saturday, Sunday and any public holiday is not to be counted.

3.8 **When** a suspect has been arrested for committing a domestic violence offence or breaching conditions of a family protection order, and the investigation indicates **the complainant is not in danger of physical injury, the defendant should be released on bail conditions** to appear in Court on the next available Court date, pursuant to section 60 of the Criminal Procedure Code; **not just released for later summons.**”

- Police intend for this training to occur. Responsibility of Police Training Unit.

5. Criminal Procedure Code to be amended to provide vulnerable victims the choice to give evidence in closed court, have a support person present and have the defendant shielded by a screen.

This type of provision is standard in other jurisdictions – eg Solomon Islands, NZ, all Australian jurisdictions. Examples of legislation from these jurisdictions are attached to this report.

Possible new_section 83 (1A) of Criminal Procedure Code:

In a trial for any violence offence or sexual offence; a complainant, child witness or vulnerable witness, if he or she chooses, shall adopt one or more of the following protections:

- (a) give evidence in a closed court;
- (b) give evidence with a screen barrier in front of the defendant/s;
- (c) give evidence in the presence of a support person.

unless there are exceptional circumstances which justify the evidence being given without these protections.

- Policy paper to DCO.

6. Victim Impact Statements to be requested and provided in all Supreme Court sentencing cases, unless the victim is unavailable or unwilling to provide a statement.

What is a VIS? These are standard in other jurisdictions. They give the victim an opportunity to explain the harm suffered. The statement is used in sentence proceedings. It gives the victim a voice.

Because locating a victim can be difficult, the statement should be taken as early as possible after the case is lodged with police.

- Policy paper to DCO. Short amendment to legislation required.

7. Outstanding Court warrants for fail to appear to be executed. 87 warrants in Magistrate's Court and 32 in Supreme Court.

It is understood that this task will be commenced after the backlog cases in MC are listed.

- VAPP may need to assist with fuel money.

8. Police holding cells to be established or upgraded in Malekula and other provincial posts where needed.

Issue raised by Chief Justice, Corrections and Police.

Recent cases where the Magistrate in Malekula has remanded persons in custody. Correctional Services were not aware of the orders. Because there is no holding cell, the remandees remained free until the warrants expired.

All these priority recommendations are practical, low cost, quickly achievable and directly related to service delivery.

OTHER RECOMMENDATIONS

Public Prosecutor's Office

9. Special training for prosecutors in conducting trials for sexual offences.
10. PPO to finalise internal policy on victim support.

Police

11. Police to establish Victim Support Unit by June 2017. Current plan is for 3 officers to staff the unit. A VSU was recommended in 2011.

12. Police to allocate more officers to FPU. Currently only 6 FPU officers. The FPU has an enormous workload. Similar recommendation by UNICEF in 2008.

MJCS

13. MJCS, Police, Judiciary and DOCS should include victim support activities in their annual business plans.
14. Monitoring and Evaluation. Relevant data be collected to track progress on victim support. eg number of victims supported by VSO each year.

Courts

15. New Court Building in Port Vila with special facilities for victims, including separate waiting room and capacity to electronically record oral evidence in criminal trials.

A functional Court facility will allow all stages of a criminal case to be heard in open court rather than in Chambers. Open and transparent criminal justice is a fundamental principle of the rule of law. Court rooms must be available so that all stages of a criminal case are conducted in open court, where victims, media and the general public have access. Open courts are subject to closed court provisions for protection of vulnerable witnesses.

Recording evidence reduces the time a victim needs to give evidence and protects the reliability of evidence for appeals, thus reducing the possibility of the victim having to go through a re-trial.

16. Trained interpreters to be used in criminal trials. Interpreter training for judges, lawyers and interpreters.

Recommendations were made in 2008 and 2016 for trained interpreters for victims with a disability.

Court clerks are often used as interpreters on Court tours. They are also used in Port Vila when trained interpreters are unavailable. In one recent case defence counsel was requested by the Court to find a USP student to interpret Bislama/ English on a Court tour. In another recent case a Bungalow owner interpreted and this caused difficulties for the victim giving evidence in the trial.

Court interpretation is a difficult and important skill. Interpretation should be simultaneous. Trained and qualified interpreters will improve the quality of justice experienced by victims.

The Department of Language Services is a resource that could be used more often. This option could be further explored.

Vanuatu Women's Centre

17. Conduct training for judiciary, private lawyers, public lawyers and prosecutors on how to deal sensitively with victims.

18. VWC to prepare a list of cases each month where there has been a breach of the Family Protection Unit SOP. The list should include the names of victims who have been sent away by police or sent to VWC where a crime has been reported but not investigated.

This report is to be provided to Commander South and OIC of FPU. The report is to include the name of each victim and offender, date of complaint to police, location of police station and outline of offence. The report could also be provided to the Professional Standards Unit.

These recommendations could be reviewed by HOAG at the next meeting to monitor progress and implementation.

Ideally there needs to be a “fixer” appointed who is responsible for progressing recommendations.

Special thanks to the following persons who were consulted for the preparation of this report:

Courts: Chief Justice Vincent Lunabek, Justice Paul Geoghegan

PPO: Public Prosecutor Josaia Naigulevu, Marie Taiki, Bettina Ngwele.

Corrections: Director Johnny Marango, Daniel Tavoia
Heather Smyth (VSA volunteer Luganville Prison)

PACLII: Kym Freriks and Anita Jowitt

USP: Sofia Shah

Private Bar: Nigel Morrison, Mary Grace Nari

Interpreter: Jennifer Nicholls

VWC: Merelyn Tahi, Vola Matas

VAPP: Brett Jackson and John Connoley

Police: Sarah Tabi, Noelline Stephen, Morality Unit, Luganville.
Davis Saravanu, Sandrine Bila, FPU, Port Vila.

SPD: Wycliff Tarilenga

PSO: Jacob Kausiama, Jane Tari

CARE: Viviane Obed

Disability: Sam Kaiapam

Child Desk: Elizabeth Mael

NRH: Medical Superintendent Trevor Cullwick

Stephen Barlow

Public Solicitor's Office

6 October 2016

ANNEXURE: VICTIM LEGISLATION IN OTHER JURISDICTIONS

Evidence Act (2009) Solomon Islands

Arrangements for vulnerable witnesses

41. (1) Where a court considers that the capacity of a witness to give evidence satisfactorily may be limited and that limitation may be lessened by making special arrangements for the taking of that person's evidence, the court may make such special arrangements that it sees fit in the interest of justice.

(2) Without limiting the generality of subsection (1), special arrangements may be requested by –

- (a) victims of a crime against morality;
- (b) victims or witnesses in domestic violence proceedings;
- (c) persons under the age of 18 years; and
- (d) persons with a mental or physical disability, illness or impairment.

(3) The court must have regard to the following matters in determining what orders to make –

- (a) the desirability of minimising distress or trauma for the witness;
- (b) the witness must be treated with dignity, respect and compassion;
- (c) the possibility of the witness being intimidated when giving evidence;
- (d) the proceeding should be resolved as quickly as possible.

(4) Special arrangements that the court may make include the following –

- (a) closing of the court;
- (b) restriction on publication of evidence;
- (c) obscuring the witness from the view of the accused in a criminal trial;
- (d) remote audio visual taking of evidence;
- (e) allowing a support person to accompany the witness;
- (f) making an order under section 27.

Criminal Procedure Act 1986 (NSW)

291 Proceedings must be held in camera when complainant gives evidence

(1) Any part of any proceedings in respect of a prescribed sexual offence in which evidence is given by a complainant is to be held in camera, unless the court otherwise directs.

(2) This section applies even if the complainant gives evidence by means of closed-circuit television or other technology or under any alternative arrangements available to the complainant under section 294B or under Part 6.

(3) The court may direct that the part of proceedings in which evidence is given by the complainant be held in open court only at the request of a party to the proceedings and only if the court is satisfied that:

- (a) special reasons in the interests of justice require the part of the proceedings to be held in open court, or
- (b) the complainant consents to giving his or her evidence in open court.

(4) The principle that proceedings for an offence should generally be open or public in nature, or that justice should be seen to be done, does not of itself constitute special reasons in the interests of justice requiring the part of the proceedings to be held in open court.

(5) If the court directs that the part of the proceedings in which evidence is given by the complainant be held in open court, that does not affect the entitlement of the complainant to give evidence in the manner provided for by section 294B or by Part 6.

(6) If the proceedings are proceedings in which a record of the original evidence of the complainant is tendered by the prosecutor under Division 3, this section does not require the record to be tendered in camera or, if the record is an audio visual or audio recording, heard by the court in camera.

(7) This section does not affect the entitlement of a complainant to have a person or persons present when giving evidence under section 294C.

Northern Territory EVIDENCE ACT - SECT 21F

Closure of court in certain cases

(1) The court is to be closed, in a case involving a charge of a sexual offence or a [serious violence offence](#), while the evidence of a [vulnerable witness](#) is being taken.

(2) This section extends both to the [examination](#) of the [vulnerable witness](#) and to the re-play before the court of an [audiovisual record](#) of the witness's evidence.

(3) While the court is closed under this section, a person must not remain in the courtroom, or a place from which the person can overhear the proceedings in the courtroom, without the court's permission.

"vulnerable witness "means a witness in proceedings:

- (a) who is a [child](#); or
- (b) who has a cognitive impairment or an intellectual disability; or
- (c) who is the alleged victim of a sexual offence to which the proceedings relate; or
- (d) whom a court considers to be vulnerable.

ALSO:

Subject to subsection (2A) and [section 21B](#), a [vulnerable witness](#) is entitled to give evidence using one or more of the following arrangements as chosen by the witness:

(a) that the evidence of the [vulnerable witness](#) be given at a place outside the courtroom and transmitted to the courtroom by means of closed circuit television where that facility is available;

(b) that a screen, partition or one-way glass be placed to obscure the witness's view of a party to whom the evidence relates but not so as to obstruct the view of the witness by the judge and the jury (if any);

(c) that the [vulnerable witness](#) be accompanied by:

(i) a relative;

(ii) a friend; or

(iii) any other person who the [vulnerable witness](#) requests to accompany him or her and whom the court considers is in the circumstances appropriate to accompany the [vulnerable witness](#);

for the purpose of providing the [vulnerable witness](#) with emotional support;

(d) that the court be closed while evidence is being given by the [vulnerable witness](#) in the proceeding (including evidence given under cross-examination) and that no persons remain in or enter a room or place in which the court is being held, or remain within the hearing of the court, without its permission.

(2A) The court may make an order that the [vulnerable witness](#) is not to give evidence using an arrangement under subsection (2) if satisfied that:

(a) it is not in the interests of justice for the witness's evidence to be given using that arrangement; or

(b) the urgency of the proceeding makes the use of that arrangement inappropriate.

(2B) In determining whether or not it is in the interests of justice to use an arrangement under subsection (2), the court must have regard to the following matters:

(a) the need to minimise the harm that could be caused to the [vulnerable witness](#) by giving evidence;

(b) the interest in the [vulnerable witness](#) being able to give evidence effectively.

NZ Criminal Procedure Act 2011

97 Persons who may be present if oral evidence taken from complainant in case of sexual nature

(1) If, in accordance with an oral evidence order, oral evidence is taken from a complainant in a proceeding for an offence specified in [section 93\(1\)](#), no person may be present except the following:

- (a)** the Judge:
- (b)** the prosecutor:
- (c)** the defendant and any person who is for the time being acting as custodian of the defendant:
- (d)** any lawyer engaged in the proceedings:
- (e)** any officer of the court:
- (f)** the Police employee in charge of the case:
- (g)** any member of the media as defined in [section 198\(2\)](#):
- (h)** any person whose presence is requested by the complainant:
- (i)** any person expressly permitted by the Judge to be present.

(2) Before the complainant starts to give evidence, the Judge must—

- (a)** ensure that no person other than those referred to in subsection (1) is present; and
- (b)** advise the complainant of the complainant's right to request the presence of any person under subsection (1)(h).