



2021 RWG Annual Meeting

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23 - 25 August 2021 (Cook Islands)

Discussion paper on the scope of protective measures under DV legislation in times of public emergencies and natural disasters.

INTRODUCTION AND BACKGROUND

Coordination and collaboration by government and civil society stakeholders is key when providing support and assistance for survivors of domestic violence. This is important to ensure the effective implementation of Domestic Violence (DV) or Family Protection (FP) legislation. A multisector, coordinated approach to supporting survivors of DV ensures that regardless of when and where a survivor reaches out for assistance there will be relevant service providers that will be able to assist a survivor's unique needs, and coordinated referrals across agencies. During periods of crisis (which includes the pandemic and natural disasters) coordination and collaborative services are required, and at times, additional services required.

This discussion paper has been prepared by the Advisory Council/Committee sub-committee, with the support of the Secretariat (HRSD). The members of the sub-committee included representatives from the Federated States of Micronesia (FSM), Marshall Islands, Samoa, Tonga and Tuvalu.

This paper was compiled from the discussions with the members of the sub-committee and also research undertaken by the Secretariat.

PURPOSE

The purpose of this paper is to inform the RWG of the scope and accessibility of protective measures available to survivors of family violence during times of public emergencies and provide recommendations to the RWG.

Key objectives include:

1. To examine, identify and discuss the scope of protective measures available to survivors of family / domestic violence during times of public emergencies.
2. To discuss the accessibility of protective mechanisms under DV / FP Legislation during times of public emergencies.
3. To provide recommendations to the RWG to stimulate further discussions, through the work of Advisory Councils or various national coordination bodies, on strengthening the coverage of DV / FP legislation for the safety and protection of survivors of family / domestic violence in times of public emergencies.

It is intended that the RWG will use the discussions arising from this discussion paper to establish its strategy to address the challenges and gaps in relation to the availability of and accessibility to DV protective measures available by law.

STATUS OF ADVISORY COUNCILS/COMMITTEES IN THE REGION

Advisory councils / National coordinating bodies for DV legislation in the Pacific

In the region, five countries have established advisory councils under their DV/FP legislation. These include Kiribati, PNG, Solomon Islands, Tonga and Tuvalu. There are other countries that have established broad coordinating committees even though not set out in law. The committees or taskforces coordinate the various stakeholders responsible for the implementation of a broad range of EAWG prevention and response, including relevant DV legislation.

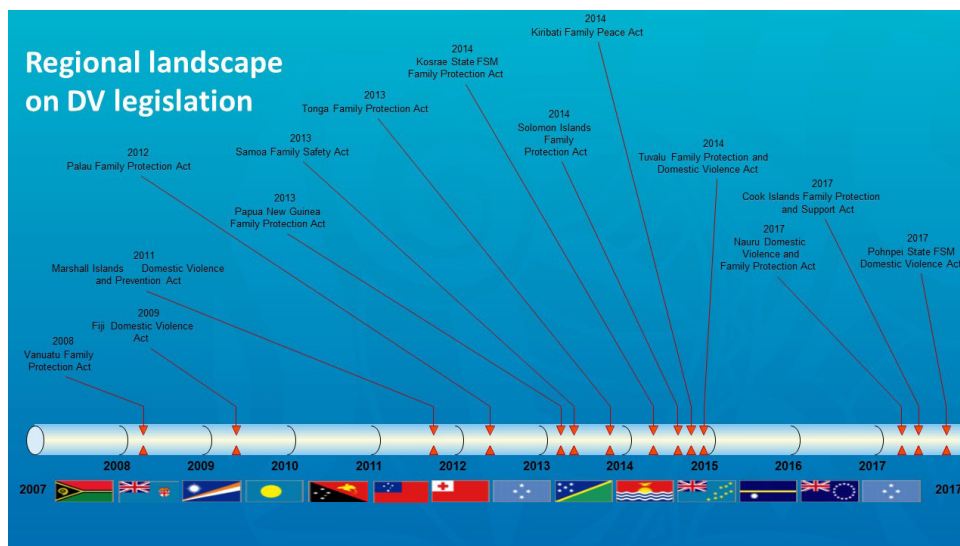
Laws, in these countries that sets out advisory councils, specifically provide for:

- » Establishment of these bodies;
- » A specific role for the advisory body to support and makes recommendations on the services and measures that are able under the law for the lead Minister;
- » May make regulations prescribing matters required to implement the law;
- » A key role of coordinating the various stakeholders that have a role in implementation of the law.

In several countries in the Pacific region have interagency, broad coordination task forces or committees that oversee broad EAWG actions at national level. For example, in Kiribati, the Ending Sexual and Gender Based Violence (ESGBV Committee) or Fiji with the National EAWG Task Force, these have been established by cabinet decision to assist in overall coordination of government and non- government action in the prevention and response to EAWG. These broader coordination bodies oversee and support broad coordination of efforts to prevent and respond to gender-based violence (GBV), such as coordination of frontline services, carrying out awareness programs and providing policy advice and direction. These coordination bodies sit alongside FP/DV advisory council in countries where both exist.

Several countries in the region have accelerated on establishing protocols, guidelines and coordination bodies specifically for frontline service providers to ensure that women and girls who experience violence benefit from coordination, collaborative care with safe referrals and compassionate care. For example, in Solomon Islands and Kiribati SAFENET and in Fiji, the SDP Working Group. In Tonga this would be the FPAC Referral sub-committee and the Case Management Working Group.

The legal framework for the protection of individuals against the problem of family violence



13 Pacific Island countries now have specific legislation to address the problem of family / domestic violence. The legislations provide a response to address domestic violence in the respective countries. The legislation was developed with a specific purpose which included:

- Provide greater protection from domestic violence and clarify duties of Police (FIJ / TON)
- Provide for the offence of domestic violence and family protection orders in cases of domestic violence (VAN)
- Promote and preserve harmonious domestic relationships and prevent acts of violence within families (POHNPEI)
- To provide for the protection and safety of persons who are subject to physical, sexual or mental abuse occurring within, or as a consequence of their domestic interpersonal relationship with the abuser or abusers. (KOSRAE)
- Provide for the protection of families from domestic violence (SOL)
- Provide for greater protection from violence within domestic relationships (TUV / KIR)
- To ensure investigation, prosecution and punishment of perpetrators of domestic violence. (RMI)
- Provide for the protection of victims of domestic violence and the rehabilitation of persons in domestic relationships against domestic violence (NAR);
- Provide for responses to domestic violence (CKI)

Police Safety Orders / Notices

Police Safety Orders are available under the Domestic Violence Legislation of Cook Islands, Kiribati, Nauru, Palau, Solomon Islands and Tonga.¹

Protection Orders

These are available under the DV legislation of Cook Islands, Fiji, Kiribati, Kosrae (FSM), Palau, Papua New Guinea, Pohnpei (FSM), Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.

KEY IMPACTS OF COVID-19 AND CRISIS (INCLUSIVE OF THE COVID-19 PANDEMIC AND TROPICAL CYCLONES) AND THE ROLE OF ADVISORY COUNCILS AND COMMITTEES.

At the height of the implementation of COVID-19 measures, people were required to spend more time living in confined spaces. Schools were closed, public gatherings restricted, curfews put in place, there was an increase in unemployment rates with the prolonged border closures. All these stressors have contributed to the already high rates of violence that have been experienced in families in our region. Some countries, such as Fiji experienced tropical cyclones at the same time as COVID-19.

Response services focussed on health responses to the COVID-19 pandemic and also a justice response to those that breached government restrictions. DV services across the region advocated to be deemed 'essential services' to ensure continued operations despite the restrictions. Frontline crisis centre's adapted their modalities to on-line counselling and remote telephone and hotline support because of the challenges with meeting face-to face. Across the region, National Women's Machineries adapted their coordination mechanisms and multisector protocols to ensure they could bend and flex during disasters and the COVID-19 pandemic.

1 In Tuvalu, it is available under the Police Powers and Duties Act.

With the restriction to the freedom of movement during the pandemic has raised a lot of questions with regards to the accessibility and responsiveness of the DV legislation, as well as innovative approaches coming out of countries.

THE MEASURES TAKEN TO PREVENT OR CONTAIN THE SPREAD OF COVID-19

From 31 January, Pacific Island countries started to put in place measures to respond to COVID 19. These measures presumably derived their mandate from either the country's Constitution or legislation.

At the height of the uncertainties associated with COVID-19, most PICs resorted to declaring States of Emergencies.

Other measures included:

Public Health and Disaster Management Legislation also make

- a. Public Health Measures (Fiji)
- b. Disaster Management Measures (Fiji and Nauru)
- c. Emergency Management Act – Tonga

The implementation of these measures were evident in the following ways:

- Closure of schools
- Social distancing
- Curfews

While there have been on-going challenges through the pandemic and the impacts of the various Tropical Cyclones, it has also provided an opportunity to explore and adapt various initiatives. For example, in 2019 Fiji launched its *Fiji National Delivery Protocol for Responding to Cases for GBV* and since then the SDP has been adapted for emergency response and COVID-19. In addition, Tonga also launched in 2021 its *Tonga National Service Delivery Protocol for Responding to GBV*, similarly a key aspect of this document was to ensure the establishment of minimum standards and to establish coordination pathways, that could bend and flex before, during and after emergencies.

KEY LESSONS OF APPLYING THE DV/FP LEGISLATION

1. Accessibility

The COVID-19 pandemic has highlighted the challenge of ensuring the provisions of the law is accessible during times of crisis. The DV/FP legislation in particular was drafted to be understandable and accessible for survivors of DV. To ensure that people were able to seek information and services without the reliance on a lawyer. An example of this is through the application process for a protection order, the various countries have developed simple forms and set out processes. However, the applications still have to be submitted to courts that are mostly based in the urban areas. The COVID-19 pandemic also saw the restriction or closure of the courts and so it made more difficult for survivors to access protection orders. In response to this, some countries developed IEC materials and clear guidance for women on how to access a DVRO online. Many of the FP/DV legislation have existing provisions that allow for phone applications to be made for protection orders, however these systems have not been activated in the countries.

Health care services for both physical injuries and psychological impacts are also covered by the FP/DV legislation. Further, none of the countries in the Pacific had specific provisions in their domestic violence legislation to allow survivors exemptions to access essential services like counselling and DV protection orders during lockdowns and curfew hours, or cross into containment zones to access these. In practice though service providers like Police, etc have been granted status as essential services. Many governments also diverted funding and resources towards efforts to prevent and response to the outbreak of COVID-19 and in doing so, took away much-needed attention from essential services required by survivors of violence. Accessibility to Legal and Social services support during emergencies was a major challenge as they are not considered essential services in Tonga and many other Pacific countries.

2. Coordination and provision of essential services during a pandemic.

The pandemic also highlighted another gap for implementation during a pandemic. To ensure effective responses to DV and implementation of the legislation, it is key that there is a coordinated response. In many countries there are intensive efforts to coordinate response, but it goes beyond the FPA/DV legislation is around the broader GBV coordinated care work (e.g. Safe Net, Samoa IESG, Fiji SDP, etc). These mechanisms are activated also during emergencies, for example, the SDP in the North really accelerated during the GBVIE response to TC Yasa.

However, the pandemic was a health crisis and therefore needed a health response. As countries went into States of Emergency there were only limited services that were considered as essential services during crisis. It is not written in law that GBV services should be considered essential and able to operate. This limited the coordination support that would be required to support a survivor. This is another area of implementation and coordination that must be strengthened to ensure that the DV/FP legislation is more responsive and can be reactive during a crisis.

3. Social service support for a survivor.

A survivor of DV requires various types of assistance and support. In addition to the protection mechanism, the legislation for some countries also provides for financial support to access immediate assistance and safe accommodation. With the increase in DV statistics it tested the ability of social responses to support a survivor. In some countries the safe accommodations were either filled up or difficult for survivors to access with the limitation on movement. This meant survivors of DV had to continue to reside in the home with the perpetrator for prolonged periods of time. In Tonga only the Police and Health Services were considered essential services. Social and Legal services were not – GBV survivors could not access these services and allocation were not available for those requiring assistance during curfew would have not been able to seek assistance if warranted. Tonga does not have a GBV referral pathway in time of emergencies. However, a draft pathway was included in the SDP, 2021. Needs further coordination and collaboration with Emergency front-line Ministries as it differ from the GBV referral front-liners. Legal and social services are not considered essential services in time of emergency in Tonga and many other countries.

4. Implementation of Police Duties - The “No Drop Policy”

Crucial to the duties prescribed under the law is the enforcement of the ‘No Drop Policy’. The ‘No Drop Policy’ was adopted by the Fiji Police Force and the Royal Solomon Islands Police Force (RSIPF), which effectively removed the discretion from police to reconcile and/or withdraw domestic violence complaints. Unfortunately, during both normal times and now during the COVID-19 pandemic the implementation and application of the ‘No Drop Policy’ has been inconsistent. Often victims are encouraged to reconcile and/or withdraw their complaints rather than informing the abused woman of her rights and assisting her to obtain a safety order or notice. In a breach of the order/notice, police are known to merely warn perpetrators rather than arrest and charge the person with ‘contempt’ as authorized under the Act. This has severe consequences for the safety of survivors who make complaints, including those who have complained of breaches to these safety orders/notices. The reference to the “No Drop Policy” in the Tonga National Service Delivery Protocol for Responding to GBV, will be revised with “evidence-based persecution” implied and not informed.

CONCLUSION

The DV/FP legislation in our region are specifically drafted to ensure that a survivor of DV is able to access justice and be able to access the relevant information and services that they may require. However, implementation continues to be a challenge for a range of reasons, and coordination and collaboration between stakeholders continues to be an area that needs to be addressed. The COVID-19 pandemic and impacts of recent Tropical Cyclones have both accelerated efforts to provide coordinated and collaborative care and, in some instances, exacerbated gaps in the FPA/DV legislation and implementation. These need to be addressed to ensure a survivor of DV is protected and also has the relevant assistance. Below are some recommendations for the consideration of the RWG:

RECOMMENDATIONS

1. As the region looks to strengthen its response mechanisms to the COVID-19 pandemic there must be recognition of the continued high rates of DV in our region. It will therefore be important to gather genuine updated data and properly track reported cases of GBV.
2. Establish an ‘Advisory Council/ Committee or sub-committee on Domestic Violence & Emergency Response’ for Coronavirus (COVID-19) and other similar crisis for survivors (Advisory Committee). The Advisory Committee is to advise the medical health official in charge, and has women’s human rights NGO and CSO members on it. Meetings are to be regular. Also ensure that the critical role of the Advisory Committee is to devise a communications strategy. Furthermore, it is important to draft a domestic violence and human rights framework for survivors living with disabilities, the elderly, non-heteronormative/ non-binary survivors, etc to be implemented and accessible everywhere. Ensure people with complex support needs, survivors with psychosocial or intellectual disabilities and survivors with communication disabilities are properly assisted in the DV system.
3. Ensure all organisations and groups that provide services and assistance to women experiencing violence are included as part of their list of essential services and ensure that they remain open for the duration of natural disaster and COVID-19 restrictions.

4. Support organisations and groups that assist women experiencing violence by providing additional resources and tools such as personal protective equipment (PPE) to ensure that they can remain open safely and continue to offer their services.
5. Ensure referral pathways are adapted to the situation and remain available to assist survivors during this time. Train frontline workers to recognise and refer cases of violence to the appropriate service providers, especially as modalities shift such as online and telephone referrals.
6. Review of the DV/FP legislation to ensure that it is responsive and able to assist survivors during times of humanitarian crises and the COVID-19 pandemic.
7. Adapt existing 'Interagency Service Delivery Protocols' for emergencies and stipulate the specific guidelines for standard operating procedures for interagency response to gender-based violence during crucial circumstantial emergencies like COVID-19, etc. The evidence shows that gender-based violence is a serious issue globally and standard operating procedures for responding to cases across agencies and sectors is critical to a successful response. It must be acknowledged that some Pacific countries have done an excellent job in adapting their National Systems for Coordinated Care for Survivors of GBV. For example, in Solomon Islands and Kiribati SAFENET and in Fiji, the SDP Working Group for COVID-19 and cyclones. In Tonga this would be the FPAC Referral sub-committee and the Case Management Working Group. It is working and can be influential for other countries to adopt.
8. Promote a multi-sectoral coordination and partnership between the health system and other public agencies (e.g., legislature, judiciary, public safety, social services), private organizations (e.g., women's groups, NGOs, private health centre's) and communities of faith, to address violence against women and girls in a comprehensive manner, avoiding duplicating efforts.
9. Recognizing that our rich culture and spirituality are strengths in our advancement toward gender equality and ending violence against women and girls especially in a COVID-19 context. Initiatives developed should ensure culture and spirituality are honoured and embedded within all programming.