



# PACIFIC JUDICIAL STRENGTHENING INITIATIVE

## PROJECT COMPLETION REPORT

# GENDER AND FAMILY VIOLENCE

*June 2017 to May 2019*

**Report by: Tevita Seruilumi**



**FEDERAL COURT  
OF AUSTRALIA**



*PJSI is funded by the New Zealand Government and  
implemented by the Federal Court of Australia*

## 1.0 Introduction

This report details all activities facilitated by the Gender and Family Violence Adviser during Phase I of PJSI. These activities were delivered under Component Two, Substantive Justice, and Output 9 of the Initiative Design Document of the Pacific Judicial Support Initiative (PJSI) which focuses on accessibility and responsiveness of Pacific Islands courts in relation to gender and family violence.

The aim of the activities was to measurably improve the accessibility and responsiveness of court services to victims of gender and family violence, and victims' satisfaction with courts and justice outcomes according to law. Noting the severe and pandemic levels of gender and family violence across the region as measured against global benchmarks, the purpose of the activities was to address the need for courts to apply the rule of law, and be more accessible and responsive in delivering improved substantive justice outcomes.

Through the implementation of the activities, the following PJSI outcomes were sought:

- Judicial leaders from all PICs agree to proactively lead judicial attitudes towards ensuring appropriate legal treatment of victims of GFV aligning with codified norms;
- Regional leadership and/or Training of Trainers (ToT) workshop on GFV conducted;
- Continued support to and/or utilisation of the Family Violence Toolkit developed during the Pacific Judicial Development Programme (PJDP);
- A GFV Toolkit or regional resource developed that is refined in light of experience with multiple PICs;
- Local GFV nominated trainers are equipped with the tools (Toolkit) and ability to deliver GFV activities locally;
- Local workshop(s)/activities on GFV conducted;
- All PICs collect gender-disaggregated data and work towards the collection of GFV data;
- PICs already active in addressing GFV issues provided with nuanced support; and
- Linkages established with Non-governmental Organisations/Community Based Organisations established to: empower vulnerable groups and victims, and increase awareness about the criminality of GFV.

## 2.0 Summary of Methodology applied

It must be noted and fully acknowledged that in-country work implemented by PJSI on the Family Violence Toolkit was only made possible through the support given by the Courts, Magistrates and Judges at country level and through the support and endorsement of the Chief Justice in each of the six Pacific countries.

The implementation of the Gender and Violence work was primarily focused on working with the Courts in five Pacific Island Countries to review how they respond to family violence cases through the use of the Gender and Family Violence Toolkit developed by PJSI. The toolkit comprised of four key areas that the Court can use to review, guide, strengthen and monitor their work in responding to victims and perpetrators of domestic violence. A two week in-country visit would entail the following:

- I. Courtesy visit to Chief Justice or Acting Chief Justice.
- II. Courtesy visit / meetings with stakeholders working on family violence.



- III. 5-day participatory and learning workshop on toolkit content. Workshop also included sessions where participants developed court plans around the four key outcome areas of the tool kit.
- IV. Follow up discussions with participants – predominately participants who are magistrates, judges and court staff OR specific technical support in response to requests made from the court in country.
- V. Finalising draft court plans and drafting of country report visit.

The five-day workshop would cover the following areas:

- I. Day 1 and 2: Understanding gender and family violence.
- II. Day 3 and 4: Introducing and understanding the toolkit. The four key outcome areas of the toolkit are: Prevention, Collaboration, Victim Focus and Perpetrator Accountability.
- III. Day 5: Discussing action plans and developing of draft court actions plans.

The toolkit comprises a checklist, as well as other tools that can be used by the courts to make a self-assessment on its work on the four key outcome areas. Feedback from participants showed that the assessment questions were relative, practical and useful. The response to these self-assessment questions were used to guide discussions on the development of country court plans.

The in-country approach recognised that working on family violence is strongly linked to issues around gender inequality and unequal power relations between men and women. While the toolkit provided the court best practice guides on family violence, it was important to unpack issues around processes, systems and beliefs on gender inequality and power imbalances between men and women. This unconscious bias about the role of men and women often influences judicial thinking on how family violence matters are addressed.

One of the key barriers to fully appreciating gender equality and an effective response to family violence are the use of culture and religion. This was anticipated prior to in-country visits and sessions were planned to discuss and address these specific challenges, taking into consideration that the Pacific has a predominately Christian population.

On increasing the Court's role on prevention initiatives, the Court often was conflicted in its role with adjudicating cases versus the perception of being bias if they are too involved in family violence activities, for example family violence awareness or training with stakeholders. Through the in-country visits and workshops, the Courts were able to understand that they also have a role to play in prevention and awareness raising without jeopardizing their impartiality. Through the workshop, representatives from the Courts (for example judges and magistrates) agreed that informing the public about the law and what have been some (or what are the) of the legal consequences that perpetuate family violence does not affect their independence. However, majority still see their role primarily to respond to victims and perpetrators who are brought to their courts.

The focus on prevention was also linked to the outcome area of collaboration where the Courts have increased their appreciation of working with stakeholders to improve its response to victims and



perpetrators. There is also a need for the Courts and its stakeholders to have both an improved and uniformed understanding of family violence so that messages are not contradictory, excusing the violence or place the responsibility of change on victims. There is also the risk of how collaboration can influence the Courts response to the issue of family violence, for example glorifying change of perpetrators without any accountability for change or stakeholders not providing the courts real evidence to show how difficult it is to change the behaviour of perpetrators. The workshops emphasised that while collaboration is essential to strengthening support to victims and response to perpetrators, it is important that the responses have strong and unified messages against family violence.

With victim focus, the key emphasis was placed on how the Courts and stakeholders should change mindsets and perceptions that continue to put the blame on victims or belittle the seriousness of a man's choice to use violence. To understand this, participants had to be taken through a two-day intensive gender and family introductory session. This session could only be implemented by a skilled facilitator with a sound understanding and analysis of gender, family violence, culture, religion and a comprehensive understanding of family violence legislation in the Pacific. Once participants were able to overcome some of their biases against women and victims of family violence, they were in a better position to discuss how the courts could improve its services to victims under the three key areas:

- I. How victims are accessing the Courts;
- II. How victims feel when they are in the courts (safety); and
- III. If victims feel how they have been treated or if the outcome of their case is fair.

The last focus area of perpetrator accountability remains one of the greatest challenges in addressing family violence in the Pacific. While protection orders are being issued to victims it is rare for perpetrators of family violence to receive a custodial sentence. Some of the reasons for this lie beyond the control of the Courts but in comparison to sexual offences where a father has been found guilty of sexual offences, the courts would not be reluctant to impose custodial sentences. This is an area that needs further research and support. Without perpetrators being held accountable for their violence, the law and justice sector cannot effectively frame the deterrence principle. While there are several countries where the courts can refer perpetrators to a counselling or faith based program, much work is needed to ensure that those programs align to best practice. Such programs must focus on victim safety, perpetrator accountability and be implemented by people with the right skills and experience, have multiple inputs over an extended period of time and with the same group of perpetrators.

Five countries developed court plans that had different components that were linked to Prevention, Collaboration, Victim Focus and Perpetrator Accountability – see *Annexes C, E, F, G and H* below. These plans were presented to and approved by the Chief Justice in country.



### 3.0 Summary of Activities Delivered

Under Phase I of PJSI, the following GFV Activities have been delivered:

OUTCOME	OUTPUT
<b>Activity 1 – Promoting Substantive Justice Workshop</b>	Regional leadership workshop undertaken in coordination with Activity 1 to draft the approach to region’s judicial leaders to garner commitment for proactivity in the area of GFV. This Activity was held between 12 <sup>th</sup> – 16 <sup>th</sup> February 2018 in Port Vila, Vanuatu.
<b>Activity 2 – Gender and Family Violence Toolkit</b>	Development of a regional GFV resource / toolkit and 1 x testing of that GFV resource. This was completed in October 2017 and the testing of the toolkit was delivered as part (i) of Activity 3 below.
<b>Activity 3 – Gender and Family Violence In-Country Visits to PICs</b>	Two-week visits to five PICs to localize and deliver GFV / toolkit activities locally, including provide follow-up remote mentoring to local trainers. The GFV Visits that have taken place are as follows: <ul style="list-style-type: none"> <li>• Activity 3 (i) Tonga Country Visit, 12 – 23 June 2017</li> <li>• Activity 3 (ii) Nauru Country Visit, 19 – 23 November 2017</li> <li>• Activity 3(iii) Vanuatu Country Visit - 6 – 18 August 2018</li> <li>• Activity 3 (iv) Palau Country Visit, 12 – 21 November 2018</li> <li>• Activity 3 (v) FSM Country Visit, 7 – 18 January 2019</li> <li>• Activity 3 (vi) Samoa Country Visit, 20 – 31 May 2019</li> </ul>

### 4.0 Summary of Project Outcomes

#### *Key Outputs*

Six Pacific Island countries were introduced to the Family Violence Toolkit through a workshop delivery style training. This outcome is directly linked to the second outcome where four Pacific countries produced court plans on areas such as prevention, collaboration, victim focus and perpetrator accountability. The plans included both practical and achievable suggestions on how the court could improve its response to family violence. For example, setting up separate court rooms, having victim only spaces, working in partnership with civil society during public engagements and discouraging blaming of victims.

The third direct outcome is the increased numbers of court staff (including members of the judiciary) and its stakeholders showing an increased understanding of gender relations, family violence, power and control and addressing cultural and religious barriers to gender inequality and family violence. This improved understanding was reflected in the pre and post survey results as well as in how the court plans were drafted and worded, in particular attitudes around on victim blaming.



### *Expected and Unexpected Outcomes*

Increased understanding on gender relations and family violence. While the toolkit is a key area of focus of the in-country training, it was supplemented well by the gender relations and family violence introductory sessions. These sessions broke down some of the participants' bias towards women, victims and gender equality. It was appreciated by the majority of participants in all six countries. Most of the members of the judiciary had not been exposed to similar types of training that are victim focused and analyse power relations between men and women from a feminist perspective as well as include references to the law, development of the law and the laws context and application.

Although members of the judiciary might not openly acknowledge that their personal bias does in some way or another impact their interpretation or application of the law, it was unexpected to have participants express quite openly how the workshop and training helped them reflect on some of their own illicit bias and how they unintentionally reinforce thinking and behaviours around gender inequality or victim blaming.

## 5.0 Update against Results Framework

Result type	Result	Update
<b>Key short-term output</b>	PIC courts committed, trained & equipped with tools to better respond to gender & family violence issues.	This was completed during the in-country visits.
<b>Short-term outcome</b>	PIC courts exhibit more responsive and just behaviour and treatment that is fair and reasonable.	This has been achieved through development of court plans aligning to the four key outcome areas of the toolkit.
<b>Medium-term outcome</b>	PIC court services are more accessible, just, efficient and responsive.	Through implementation of the court plans courts will be able to work towards achieving this. Follow up on this medium-term outcome can be incorporated into the second phase of the project.
<b>Long-term outcome</b>	Court services are more accessible, justice, efficient and responsive.	Follow up on long-term outcome can included as part of the second phase of the project.

## 6.0 Lessons & Recommendations for the future

The Family Violence Toolkit training has given the countries some level of improved understanding of how to improve responses to family violence. The approach taken by PJSI in the toolkit to include victim focus and perpetrator accountability to address these two focus areas separately is different to other programs addressing family violence in the Pacific from a law and justice legal response. Often the approaches in working with the Courts and law and justice agencies are heavily focused on sensitivity towards victims



and over emphasizing the wishes of the victim which can often take precedent over holding perpetrators accountable. There is a great need to increase the work around perpetrator accountability and highlight the need for deterring sentences on family violence in the region.

The medium to long-term goals outlined in phase one should continue in phase two of the project, with the specific countries who want to move forward with continued technical support from PJSI. This continued support with the selected focus countries will address some of the challenges with the “one off training approach or remote support” from phase one. Increased visits and presence on the ground with counterparts from the courts build relationships, trust and familiarity. These are essential in strengthening the partnership at country level to assist the courts in progressing their efforts to achieve the medium and long-term goals.

While the second phase might focus on selected countries, it is highly recommend that all the countries who were part of the toolkit training in phase one are brought together for a regional workshop to discuss work on family violence focusing on the four key areas of the toolkit. This will allow countries who have progressed their plans and received more technical support to share their experiences and give other countries an opportunity to learn what improvements their courts introduced to respond to family violence. This regional workshop will also give them an opportunity to share some of the key challenges they have faced when trying to improve their work on the four key areas and how they have been able to work around it, or what technical support they can give to each other which can be done remotely and that is not resource extensive. Another reason for a regional family violence workshop is so that countries who are not included in phase two will continue to use and reference the toolkit. Without ongoing participation in these regional platforms, there is a risk that the toolkit in those countries (not part of phase two), will be shelved and forgotten. In addition to these regional workshops, it would be ideal to include all the countries in phase one in webinars and online discussion forums.

Addressing culture and religion, in particular Christianity, should be part of the work on promoting gender inequality and addressing family violence. The Pacific remains deeply entrenched in traditional interpretations of both culture and religion. These influence thoughts and perspectives as well as acceptance or non-acceptance of human rights, gender equality, women’s rights and ending violence against women including family violence. Inevitably these beliefs influence bias, attitudes and behaviours, including members of the judiciary and the courts. When addressing culture and religion, it is best to use a Pacific Islander to address these issues or if an expat facilitator, someone who is well versed with both culture, religion and gender equality. These topics can be quite confrontational if not facilitated in the right way. This does not mean that programs should shy away from these topics because they might lack the skill set and expertise to address it. It only demonstrates the need to work with Pacific Islanders or expats who can both address the issues respectfully whilst acknowledging peoples’ belief system but also have the expertise to interpret both culture and Christianity in a way that promotes human rights, gender equality, women’s rights and ending violence against women including family violence. It should also be acknowledged how in the Pacific, Pacific Islanders and organisations, including faith-based organisations have been successful in using both culture and religion to promote gender equality and addressing violence against women.



Whilst a two-week visit and remote support comes with a lot of limitations and challenges, I believe that I could have done more to introduce and strengthen the network between the Courts and some of the regional or bilateral programs working on family violence. I will try and strengthen work on this for the second phase, and if the PJSI management approves, can also make recommendations to other countries not included in phase two, on how they can access some of other technical services available and resources on addressing family violence. However, this will only be done upon request from the courts in-country. It is also important that should any introductions be made, that I am aware of the approaches used, as often they can undo or contradict some of the gains that PJSI have made in working with their courts to change their attitude and behaviours on women, victims, gender, perpetrators and family violence.

Organising remote support could also have been done better and this could have been part of the outcomes during the country visit. Having an agreed time to set up discussions on their court plans or on any issue relating to family violence would have been a better way of touching base with counterparts at the courts. This lesson will be taken into phase two of the project.

Acknowledging small gains is another area I will improve on. I became the Lead Adviser on family violence towards the end of the project. As the lead on this area, I would have acknowledged small gains that were made by the Courts when the in-country visits were implemented. These acknowledgements can be done by a variety of ways but moving forward into phase two I would love to highlight these achievements more. I would welcome suggestions on this from PJSI. From my end, I would suggest setting up a regional online forum where any progress made can be acknowledged and highlighted. Organisational/structural and individual progress and improvement to addressing gender inequality and family violence are rare in the Pacific, therefore when these changes are achieved, they should be acknowledged and appreciated better.

## 7.0 Conclusion

The implementation of the toolkit in the region was a success. Two key outcomes that indicate this is through the feedback from the pre and post surveys and the court plans that were developed by four of the six PICs. PJSI's work with the Courts remain one of the most critical and sensitive areas when working with the Judiciary on family violence. Two key aspects from PJSI also contributed significantly to success of phase one. First, the support from the Chief Justices on the work of PJSI in the region and second, the approach and technical skills of PJSI in implementing the workshops, training and technical support.

The four key focus areas in the toolkit provide the platform to progress work into the second phase. All four areas give the Courts a different perspective on how they can assess themselves. Through the implementation of the first phase, there is a growing need to strengthen the work around perpetrator accountability and victim focus. These two areas inevitably strengthen the courts role in the other focus areas; prevention and collaboration. This toolkit gives the Court the self-assessment tools it needs to improve key areas of court responses. This, however, should not limit PJSI from providing any remote support to all of the countries where the toolkit training have been implemented, including those that are not part of phase two.



The second phase should provide the pathway to strengthening existing work in selected countries. It should also learn from the first phase where, a one-off visit does not necessarily provide the optimum approach to giving mentoring and technical support. Despite support being offered remotely, it should be acknowledged that the toolkit concepts for some of the countries were relatively new and this requires some continuity both in training, in country visits and technical support to fully achieve some of the medium and long term outputs.

The courts willingness to reflect and their appetite to learn and develop new approaches was a major achievement. Although this was not fully acknowledged, the participation in country was phenomenal. Discussing gender equality and family violence is always controversial especially when it has components that question, challenge, discomfort and confront patriarchy. Significant feedback from participants showed that they were able to take in some of these lessons. While this often is attributed to the skills of the facilitators or the program, it has to be acknowledged that without the willingness to learn and change – nothing can be achieved.

PJSI's work and rapport with the judiciary in the region played a significantly role in the success of the implementation of the toolkit. Without the recognition of the other work PJSI has implanted in the region, the Family Violence Toolkit training would not have received the in country buy-in that was shown by the PICs. The implementation of other program components under the program collectively build the capacity of the courts in a range of human rights, law and order and development issues. Phase two will further PJSI's ability to influence the work of the courts in selected counties even more strongly on gender and family violence.

## 8.0 Annexes

Annex A – Project Terms of Reference

Annex B – Gender and Family Violence Toolkit

Annex C – Tonga Magistrates Court Family Violence Action Plan 2017-2018 (Draft)

Annex D – Tonga Family Violence Sentencing Guidelines

Annex E – Port Vila Magistrates Court Family Violence Action Plan (Draft)

Annex F – Palau Court Family Violence Action Plan 2018-2020 (Draft)

Annex G – FSM Court Family Violence Action Plan 2019-2021 (Draft)

Annex H – Samoa Court Family Violence Action Plan (Draft)



## Annex A: Project Terms of Reference

### *Terms of Reference: Gender & Family Violence Local Expert*

#### 1. PJSI GOAL & OBJECTIVES

The Government of New Zealand is funding the Pacific Judicial Strengthening Initiative (PJSI), which will be implemented by the Federal Court of Australia between June 2016 and June 2021.

The goal of PJSI is to build fairer societies by supporting the courts in 14 Pacific Island Countries (PICs) to develop more accessible, just, efficient and responsive justice services. These PICs are the Cook Islands, Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu. Re-inclusion of Fiji in PJSI activities will also be explored over the course of the Initiative at MFAT's direction. PJSI reports continuously to the Chief Justices of these PICs and to the Pacific Judicial Conference which convenes biennially.

PJSI will address numerous and diverse needs of the courts that relate to three major development challenges. These are: (i) expanding access to justice to and through the courts; (ii) building competent provision of substantive justice outcomes; and (iii) increasing efficient delivery of procedural justice services. To address these challenges, PJSI will focus on supporting two long-term objectives, or components:

- a) *Judicial Leadership* → courts are capable of leading and managing change.
- b) *Performance* → court services are accessible, responsive, fair and efficient.

PJSI will deliver services to support the courts to attain these objectives using strategies to transfer, build, devolve and localise capacity. These strategies will consolidate five thematic areas, being: judicial leadership, access to justice, professionalisation, substantive justice and procedural justice.

#### 2. ACTIVITY DESCRIPTION

##### a. Aim

The aim of this thematic cluster of activities is to measurably improve the accessibility and responsiveness of court services to victims of gender and family violence (GFV), and victims' satisfaction with courts and justice outcomes according to law.

##### b. Purpose

Noting the severe and pandemic levels of GFV across the region as measured against global benchmarks, the purpose of this specific activity is to address the need for courts to apply the rule of law, be more accessible and responsive in delivering improved substantive justice outcomes.

##### c. Duration and location

This short-term assignment requires the GFV Local Expert to work up to 90 input-days in and remotely with at least 6 PIC(s) between November 2016 and March 2019.

##### d. General approach

The GFV Local Expert will adopt the following general approach to completing this assignment:

- a) To transfer, build, devolve and localise capacity in all interactions with counterparts and mentor counterparts where appropriate in a culturally appropriate and respectful manner.



- b) Produce high quality, concise and accurate documentation, reports, and correspondence as required in a timely fashion and written in plain English.

#### e. Outputs

Prior to mobilisation, the GFV Local Expert will undergo a briefing, with the Lead GFV Adviser (Dr. Abby McLeod), the Technical Director, and the Team Leader. Under the oversight of the Team Leader, the GFV Local Expert will then work in close collaboration with, and at the direction of, the Lead GFV Adviser to undertake all aspects of this assignment.

On completion of this assignment, the GFV Local Expert will in collaboration with the Lead GFV Adviser support and contribute to the delivery of the following outputs:

1. Judicial leaders from all PICs agree to proactively lead judicial attitudes towards ensuring appropriate legal treatment of victims of GFV aligning with codified norms.
2. Regional leadership and / or Training of Trainers (ToT) workshop on GFV conducted.
3. Continued support to and / or utilisation of the Family Violence Toolkit developed during the Pacific Judicial Development Programme (PJDP).
4. A GFV Toolkit or regional resource developed that has been refined in light of the GFV Local Expert's experience with implementing the toolkit in multiple PICs.<sup>1</sup>
5. Local GFV nominated trainers are equipped with the tools (Toolkit) and ability to deliver GFV activities locally.
6. Local workshop(s) / activities on GFV conducted.
7. All PICs collect gender-disaggregated data and work towards the collection of GFV data.
8. PICs already active in addressing GFV issues provided with nuanced support.
9. Linkages established with Non-government Organisations / Community Based Organisations established to: empower vulnerable groups and victims, and increase awareness about the criminality of GFV.

#### f. Inputs

The GFV Local Expert is expected to identify and discuss with the Lead GFV Adviser opportunities to add value to PJSI activities to maximise benefits to its partner courts. The GFV Local Expert in collaboration with the Lead GFV Adviser is also to identify opportunities to: take advantage of possible judicial support from the Federal Court of Australia and the New Zealand Judiciary throughout the Output.

The GFV Local Expert will support the use of a 2-step regional → local capacity-building modality to deliver inputs as follows:

- 1 x development of a regional GFV resource / toolkit and 1 x testing of that GFV resource with counterparts in-PIC.
- Five x 2-week visits to PICs to localise and deliver GFV / toolkit activities locally.
- Provide follow-up remote mentoring to local counterparts.
- Any other inputs noted in the work plan developed, or necessary to achieve the defined outcomes.

<sup>1</sup> The proposed new toolkit or regional resource will focus on developing awareness, knowledge, skills, attitudes and tools for key court actors to become more accessible and responsive in enabling the rights of victims of GFV (as distinct from promoting the coordination of service providers, which is what the existing Toolkit does).



**g. Results Framework**

In undertaking this assignment, the GFV Local Expert will collaborate with the Monitoring and Evaluation Adviser to agree a cohesive and consistent approach to monitoring and evaluation (including pre-/post-activity and knowledge surveys being implemented by the Initiative) enabling delivery of the above outputs which contribute to the following outcomes and targets:

Result type	Result	Indicator	Target	Timeframe	Method / Data Source
<b>Key short-term output</b>	PIC courts committed, trained & equipped with tools to better respond to gender & family violence issues.	Number of: <ul style="list-style-type: none"> <li>• people trained / supported</li> <li>• people satisfied with training / support</li> <li>• local resources developed and used/delivered</li> </ul> NGO/CBO linkages established	<ul style="list-style-type: none"> <li>• 2 x regional activity attended by 14 pax (=28 pax)</li> <li>• 5 x local activities each training / supporting x 10 pax (=50 pax)</li> <li>• 80% mean satisfaction rating</li> </ul>	Years 1-2 following activities/inputs	Adviser Report including data from PICs.
<b>Short-term outcome</b>	PIC courts exhibit more responsive and just behaviour and treatment that is fair and reasonable.	The extent to which PIC courts deliver fair results.	5-10% improvement in delivering fairer results (year 1: 0-5% focus will be on building internal awareness / capacity)	Years 1-2 following activities/inputs	PIC/Adviser documented assessment of relevant reforms.
<b>Medium-term outcome</b>	PIC court services are more accessible, just, efficient and responsive.		15-40% improvement in delivering fairer results (year 3: 10-30%)	Years 3-4 following activities/inputs	
<b>Long-term outcome</b>	Court services are more accessible, justice, efficient and responsive.	% of court users who are satisfied with courts or consider them accessible, just, efficient and responsive.	20-50% increase in court users' satisfaction	Years 4-5 following activities/inputs	



## h. Reporting

In addition to regular email updates to the Team Leader, the GFV Local Expert will support the Lead GFV Adviser to supply the following reports in writing (in both MS Word and Acrobat versions) to the Team Leader by a date to be agreed:

- a. *Activity Completion Reports* following the completion of each in-PIC activity;
- b. *Project Completion Report* after the completion of all inputs; and
- c. Contributions to all *Six-Monthly Progress Reports, Annual Progress Reports, Court User Perception Report* and the *PJSI Completion Report* as required.

Contributions to the aforementioned PJSI reports are to be made by the following dates:

- a. Six-Monthly Progress Reports: 8 February 2017, 17 January 2018, 17 January 2019
- b. Annual Progress Reports: 21 July 2017, 21 July 2018
- c. Court User Perception Report: 17 January 2018
- d. Completion Report: 17 July 2019.

The format of the *Activity Completion Reports and Project Completion Report* will be provided prior to commencing implementation, and will in addition to reporting on the aforementioned results, indicators and targets need to include:

- 1) Details of the activity process and methodology.
- 2) How the inputs and outputs have contributed to achieving the outcomes and targets identified for this thematic cluster of activities.
- 3) Critical reflection of the relevance, efficiency, effectiveness, sustainability and impact of the activity and its outcomes.
- 4) Results from training assessments / other monitoring undertaken as part of activities.
- 5) Data on all individuals participating or receiving support from the GFV activities broken down by: gender; role; and nature of their involvement.
- 6) Recommendations for ongoing support if/as required.



## **Annex B: Gender and Family Violence Toolkit**

Please find the Gender and Family Violence Toolkit here:

<https://www.fedcourt.gov.au/pjsi/resources/toolkits#gender>



## Annex C: Tonga Magistrates Court Family Violence Action Plan 2017-2018 (Draft)

### FOCUS AREA ONE: PRIMARY PREVENTION

#### Outcome 1: Increase court engagement in primary prevention activities

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
<p>Conduct a public awareness campaign on family violence via radio (both AM and FM to ensure coverage of different groups). The awareness campaign would have two primary aims: 1) to send a strong message that violence against women is not acceptable and that it is against the law; and 2) to explain the roles and responsibilities of different government and non- government agencies so that victims know where and how to seek help. Talk back style would be appropriate.</p>	<p>To educate the public about their rights (to live free from family violence) and the ways in which they can access help.</p>	<p>To be undertaken collaboratively with other government agencies (police, health, MoJ, MIA) and key civil society organisations.</p> <p><i>Key court representative:</i> Legal Officer</p> <p><i>Technical assistance:</i> Abby to discuss collaboration with other donor-funded programs to source funding/coordinated approach</p>	<p>Campaign conducted</p> <p>Could undertake a survey of attitudes/knowledge of rights prior to and following campaign.</p>



## FOCUS AREA TWO: VICTIM FOCUS

### Outcome 1: Improved access to justice for the victims of family violence

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Create a toll-free number to enable victims to call the court at no cost in order to obtain a protection order immediately. This needs to be a new, dedicated line.	Some victims may wish to take urgent action but be unable to get to the court house	<i>Key court representative:</i> Chief Magistrate  <i>Technical assistance:</i> Nil	Toll free number established and community members are utilising it to obtain protection orders
When circuits are announced on the radio, mention will be made of the fact that circuit magistrates can hear family violence cases.	Not all victims of family violence have the resources to travel to Nuku'alofa, which is currently the only place that family violence matters are heard	<i>Key court representative:</i> Circuit magistrate  <i>Technical assistance:</i> Nil	Number of family violence cases heard through circuit
Basic posters and brochures on court processes be produced and displayed/made available so that victims understand the legal process.	Victims are afraid of coming to court, partly because they don't know what to expect	<i>Key court representative:</i> Legal officer with assistance of clerk (under CM)  <i>Technical assistance:</i> Abby and Tevita	Posters produced and displayed  Brochures produced and distributed



Form to be developed for clerks to assist them with the process of filling out applications for protection orders on behalf of victims.	Clerks require a solid understanding of the FPA in order to obtain relevant information from victims so that they can complete an application for protection orders on their behalf.	Key court representative: Legal officer  Technical assistance: Sarah Paulsen and RRRT	Form developed  Clerks trained in use of form  Clerks report using form and finding it useful (as determined through a follow up interview/questionnaire)
Information on fee waivers for those experiencing financial hardship be displayed at courts and provided to Clerks so that they can explain it to victims (for Supreme court matters such as divorce, custody, maintenance)	Money is a key barrier to accessing justice. Women are using the FPA to pursue non-family violence matters because it is free.	Key court representative: To be determined  Technical assistance: To be determined	Information on fee waivers publicly displayed  Number of fee waivers granted (disaggregated by sex M/F)
Application for fee waiver form be created	A clear process for fee waivers needs to be established.	Key court representative: To be determined  Technical assistance: To be determined	Form created
Clerks to be trained on fee waiver	Fee waivers will only be sought if clerks are able to explain the process to victims	Key court representative: To be determined  Technical assistance: To be determined	Clerks trained  Clerks confident to explain process



Liaise with disability advocates to further explore the barriers that disabled people face when attempting to access the courts	Consultations suggested that a range of barriers are currently preventing disabled people from accessing the courts	Key court representative: Chief Justice  Technical assistance: Nil	Consultation undertaken  Identified access to justice barriers addressed
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**Outcome 2: Improved safety (physical and psychological) for family violence victims using the courts**

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Establish a private room for victims to wait with their families before family violence court hearings. This may be the room opposite the Fasi court room, which is currently not being used. Alternatively, in the future it might be located in the new legal aid centre being established by RRRT.	Victims often feel afraid to wait with offenders before court. This would promote their psychological safety.	Key court representative: Chief Magistrate will direct that room only be used by victims (will direct Asa)  Technical assistance: Nil	Room utilised by women (and their families) prior to court.
Provide a chair for the offender to sit on during court hearings.	Victims (who are seated) may feel intimidated by offenders who are standing.	Key court representative: To be determined  Technical assistance: Nil	Procedure changed so that offender always sits rather than stands during hearings.



Train court staff in customer service/responding to the victims of family violence	Court staff are the first people who victims interact with. Their responses play a large role in creating positive or negative court experiences for victims	Key court representative: To be determined  Technical assistance: Tevita to explore options with training providers	Court staff trained  Court staff report increased knowledge/confidence dealing with victims
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**Outcome 3: Improved fairness for family violence victims using the courts**

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Examine rotation policy to see whether or not it enables the development of the expertise required to hear family cases in a fair and responsive way	Family violence is a complex matter. Responding appropriately requires a solid understanding of gender equality and key issues facing victims. This understanding takes time to develop.	Key court representative: Chief Justice  Technical assistance: Nil	Analysis of rotation policy undertaken and amended if recommended



### FOCUS AREA THREE: PERPETRATOR ACCOUNTABILITY

#### Outcome 1: Less inappropriately lenient sentences for the perpetrators of family violence

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Sentencing guidelines for family violence cases to be developed and approved for use by the CJ	Clear guidelines for sentencing will promote fairness, consistency and sentences that reflect the gravity of crimes committed	Key court representative: Chief Justice  Technical assistance: Tevita to produce draft guidelines	Sentencing guidelines developed  Magistrates utilising sentencing guidelines and report finding them useful (determined by a follow up questionnaire)
A process for regular review of sentencing be established, with a monthly review of written judgements	Review of sentencing will promote fairness and consistency if feedback is provided and leniency discussed. It will help ensure that sentences are not too lenient.	Key court representative: Chief Magistrate  Technical assistance: Abby and Tevita to develop a basic form to assist review and reporting of findings, in consultation with the Chief Magistrate	Review form developed in consultation with Chief Magistrate  Number of lenient sentences reduced



## FOCUS AREA 4: COLLABORATION

### Outcome 1: Ensure that basic administrative processes/information facilitate collaboration

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Create a standard contact list for key partner agency and non-government service providers	Effective responses to family violence require co-ordination. In addition, up to date information will assist clerks to provide victims with the details of relevant services.	Key court representative: To be determined  Technical assistance: To be determined	List updated
Work with the Ministry of Justice to establish a working level co-ordination group that will allow for an exchange of ideas and the identification of coordination challenges.	Holistic responses to family violence require a coordinated response. While a high level FPA Advisory structure exists, there appears to be an absence of working level coordination.	Key court representative: Chief Justice Technical assistance: Nil at present, worth exploring with NZ HC, noting forthcoming sectoral program.	Co-ordination group established



### FOCUS AREA 5: DATA COLLECTION, ANALYSIS AND REPORTING

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Update manual and/or electronic processes to ensure that victim/applicant and suspect/respondent data can be disaggregated by sex and age.	The ability to accurately report court statistics is a key component of transparency and accountability and helps tell a story about progress made towards improved responses to the victims of family violence.	Key court representative: To be determined  Technical assistance: Sarah Paulsen	Processes updated enabling disaggregation of data by sex and age.
Update manual and/or electronic processes to enable the recording of victim/applicant and suspect/respondent disability, including whether support is required.	Data is necessary to understand whether or not disabled people are accessing the justice system and the types of support that they require.	Key court representative: To be determined  Technical assistance: Sarah Paulsen	Processes updated to enable the collection of information on disability
Update manual and/or electronic processes to enable the collection of information on victim/applicant and suspect/respondent	Regionally, Chief Justices have committed to	Key court representative:	Processes updated to enable reporting on representation



<p>representation – self-represented/lawyer/legal aid</p>	<p>reporting against the Cook Islands Indicators, one of which relates to representation. In addition, it will be important to track the use of legal aid upon commencement of the RRRT-funded legal aid centre.</p>	<p>Technical support: Sarah Paulsen</p>	
<p>Update manual and/or electronic processes to enable the collection of information on fee waiver applications and approvals.</p>	<p>Court fees are a barrier to women’s access to justice. Collecting data on their use demonstrates the degree to which this barrier is being reduced.</p>	<p>Key court representative:  Technical support: Sarah Paulsen</p>	<p>Processes updated to enable reporting on fee waivers</p>
<p>Train clerks on new data requirements</p>	<p>Clerks will need to be trained on new data requirements in order to process changes to be effective.</p>	<p>Key court representative:  Technical support: Sarah Paulsen</p>	<p>Clerks trained and routinely recording sex, age, disability, representation and fee waiver information.</p>



## Annex D: Tonga Family Violence Sentencing Guidelines

### Tonga Magistrates Court sentencing guidelines for domestic violence – legal reference

#### Magistrate Court Act

**General Powers and Jurisdiction, section 8 (d)** - Every Magistrate Court shall have jurisdiction to try and discharge or convict and sentence all persons charged with committing offences which he is empowered by this or any other Act to hear and determine.

**Limit of summary jurisdiction, section 11** - ... Magistrate shall have jurisdiction to hear and determine all criminal cases in which the punishment provided by law does not exceed \$500 or 2 years' imprisonment.

**Election of summary trial section 35 (3)** - ... Where on the summary trial as herein provided the accused is convicted of the offence, then, if on obtaining information about his character and antecedents the Magistrate is of opinion that they are such that greater punishment should be inflicted for the offence than the Magistrate has power to inflict, the Magistrate may commit him in custody to the Supreme Court for sentence.

#### Criminal Offences Act

**Common Assault s112** Every person who wilfully and without lawful justification:

- a) Strikes at or actually hits another person with his and or with anything held therein, or
- b) Seizes or tears the clothes of another person, or
- c) Pushes, kicks or butts another person, or
- d) Spits or throws liquid or any substance on or at another person, or
- e) Sets a dog on another person.

is guilty of an offence and is liable in summary conviction to a fine not exceeding \$500 or in default of payment thereof to imprisonment for a period not exceeding one year.

**Grievous bodily harm s106 (1)** Every person who wilfully and without lawful justification causes grievous harm to any person in any manner or by any means whatsoever shall be liable to imprisonment for any period not exceeding 10 years.

(2) "Grievous harm" means—

- (a) any harm endangering life; or
- (b) the destruction or permanent disabling of any external or internal organ, member or sense; or
- (c) any severe wound; or
- (d) any grave permanent disfigurement.

**Bodily harm s107 (1)** Every person who wilfully and without lawful justification causes harm to any person in any manner or by any means whatsoever shall be liable to imprisonment for any period not exceeding 5 years.

(2) "Harm" for the purposes of this section means—



- (a) any injury which seriously or permanently injures health or is likely so to injure health; or
- (b) any injury involving serious damage to any external or internal organ, member or sense short of permanent disablement; or
- (c) any wound which is not severe; or
- (d) any permanent disfigurement which is not a serious nature.

#### Commentary

\*Note that penalties for grievous bodily harm and bodily harm fall beyond the jurisdiction of the Magistrates Court. Any case that has injury amounting to the outline in s. 106 and s.107 should be transferred to the Supreme Court.

### Family Protection Act

Domestic violence offence s28 (1) A person who —

- (a) commits domestic violence;
- (b) breaches a protection order;
- (c) fails to comply with a Police Safety Order; or
- (d) threatens, intimidates or assaults a health practitioner or social service provider who is acting in pursuance of a duty of care under section 27 of this Act.

**Domestic Violence penalty s28 (2)** - A person who commits a domestic violence offence referred to in subsection (1) shall be liable on conviction —

- (a) for a first offence, a term of imprisonment not exceeding 12 months or a fine not exceeding \$2,000 or both;
- (b) for a second or subsequent offence, a term of imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.

**Aggravation s28 (5)** - In relation to an act that constitutes domestic violence, the following circumstances shall be considered as aggravated circumstances, that the Court may take into account in ordering enhanced penalties for the offender, where —

- (a) domestic violence is committed against a child, or the action of domestic violence is performed in the presence of a child;
- (b) domestic violence is committed against a person with special needs, a pregnant woman, or a woman who, due to whatever reason, is incapable of resisting;
- (c) the violence is severe or life threatening;
- (d) a weapon is used; or
- (e) the respondent has committed repeated acts of domestic violence.

### Sentencing options

#### Criminal Offences Act

For domestic violence cases, the relevant punishments under the COA are:

#### Suspended sentence - Section 24 (3)

- (a) It shall be lawful for the Court when imposing a sentence of imprisonment to suspend the whole or part of such sentence for any period up to 3 years;
- (b) **Such sentence will be conditional on the offender not being convicted of an offence punishable by imprisonment during the period of suspension;**



- (c) **In the event of the offender being convicted of an offence punishable by imprisonment during the period of suspension he will thereupon be sentenced to serve the term of the suspended sentence in addition to the punishment imposed for such subsequent offence.**

#### **Compensation – section 25**

- (1) Any person who is tried and convicted in the Supreme Court of an offence may be adjudged by the Court to make compensation to any person injured or suffering loss by his offence.
- (2) Any person tried and convicted in a Magistrate's Court of an offence may be adjudged by the Court to make compensation not exceeding \$500 to any person injured or suffering loss by his offence.
- (3) **Any such compensation may be either in addition to or in substitution for any other punishment and in default of payment thereof the convicted person is liable to imprisonment for any period not exceeding 12 months.**

#### **Fines – section 26**

- (1) Where a person convicted of an offence is sentenced to pay a fine the Court shall, by its sentence, **direct that if the person fails to pay the fine at the time appointed he shall be imprisoned for a period not exceeding one year unless the fine is sooner paid.**
- (2) Any imprisonment to which any person is sentenced and becomes subject under subsection (1) shall commence at the expiration of the imprisonment to which he is sentenced for his offence.

#### **Time may be granted for payment – section 27**

The Court imposing any fine may grant time to pay the same provided that no longer period than 3 months shall be granted.

#### **Imprisonment for non-payment – section 28**

Whenever an offender is imprisoned for non-payment of a fine, the period of his imprisonment shall be reckoned as beginning from the date on which he entered the prison and not from the date of his conviction.

#### **Person imprisoned for non-payment of fine to be released on payment – section 29**

(1) Any person imprisoned for non-payment of a fine may pay or cause to be paid to the keeper of the prison the sum specified in the warrant of commitment and the keeper shall receive the same and shall thereupon discharge the prisoner if he is not in custody for any other matter.

Procedure on part payment of fine.

(2) Where any such person as aforesaid pays or causes to be paid to the keeper of the prison any part of the sum specified in the warrant of commitment, the keeper shall discharge the prisoner (if not in custody for any other matter) as soon as he has completed a proportion of his sentence equal to that proportion of the sum specified in the warrant which still remains unpaid.



### **Power to impose fine instead of imprisonment – section 30**

Where any person is convicted of any offence punishable by imprisonment such person may be sentenced to pay a fine in lieu thereof.

### **Imprisonment – section 32**

Every person sentenced to imprisonment or committed to prison shall be subject to imprisonment with hard labour unless the contrary is expressed in the sentence or warrant.

### **Defences not for consideration**

Intoxication shall not a form a defence under any criminal charge – s 21 (1) COA, unless if the state of intoxication was caused without consent by the malicious or negligent act of another person or the person charged was by reason of intoxication insane temporarily or otherwise at the time of such act or omission s 21 (2).

Provocation does not apply to domestic violence offences under the FPA or to offences of Common Assault, Assault causing Bodily Harm or Assault causing grievous bodily harm under the COA. Provocation is a defence only for the charge of murder where proving provocation can reduce the charge to manslaughter – s 88 COA.



## Tonga Magistrates Court sentencing guidelines for domestic violence – case law reference

### **Rex v Naufahu [2016] TOSC 18; CR 14 (23 May 2016)**

The accused was sentenced to five and half years for one count of domestic violence and one count of assault causing grievous bodily harm. The accused poured hot water on his wife. During sentencing the Court considered the following aggravating factors before arriving at a starting point of 8 years:

- After pouring hot water on victim, the accused took no action to relieve her distress or assist her in anyway;
- The injuries sustained by victim;
- Physical residual effects from the burns;
- Terrifying experience for the victim and psychological effects;
- Victim felt unable to return to family home; and
- Act was premediated.

In mitigation, the Court made mention to and consideration to the following:

- First offender;
- Aged 54;
- Long service to the armed services, including two overseas services;
- Involved with his church; and
- Had provided for his family.

The Court was careful in considering the probation report of how the accused had positively contributed to the community. The Court was of the view that the public personality was different to the one experienced by his wife in their private life.

The Court stated, **“The principal sentencing rationale in cases like this is the protection of victims of violence, deterrence of the prisoner and others in the community from this kind of offending towards women, denunciation of callous and cruel action like this, and appropriate retribution”**

The Court in considering the circumstances of the accused allowed for two and half years in mitigation. The total sentence was to five and half years. Further on the Court suspended the final one and half years of the sentence, which resulted in a total custodial sentence of four years.

The final 18 months was suspended on the following conditions:

- Not to commit offences punishable by imprisonment of two years;
- During period of suspension to reside where probation officer directs him to;
- He is not to communicate with or physically approach the complainant unless she has consented to it and informs probation officer that she is willing to see him;
- Does not consume alcohol during period of suspension;
- Attends a course on alcohol rehabilitation with the Salvation Army; and
- Attends domestic violence and abuse course with Women’s Crisis Centre.



**Commentary**

The case provides an example of the Court's consideration of aggravating and mitigating factors. Although the sentence is higher than the jurisdiction of the Magistrate's Court, it provides an illustration of how considerations can be made in relation to sentencing an offender who has assaulted his wife. The Court was cautious of the probation report of how the accused was a person of good standing in the community but was of the view that this was not who he was to his wife.

The judgement ordered the accused a range of conditions for the period of suspension that prioritized the safety of the victim. Failure to conform to any of the conditions would result in reactivation of the custodial sentence. These are good examples to make reference to when directing conditions for sentences which the Court may decide on suspending the sentence.

The judgement also refers to principles of sentencing in relation to the protection of victims, deterrence to the offender and deterrence to others who might be perpetrating domestic violence.

**Fukofuka v Police [2012] TOSC 33; AM 07 of 2012 (20 July 2012)**

The appellant was convicted of assault and assault occasioning bodily harm. The Magistrate sentenced the appellant to one-year imprisonment suspended for nine months for assault and two years for assault occasioning bodily harm. The injury caused on the victim was a laceration to the head. The appellant was ordered to three actual months in prison.

The Supreme Court squashed the sentences imposed by the Magistrates' Court and imposed a two-year good behaviour bond to the appellant. A requirement for bond over was mandatory attendance of an anger management, drugs and alcohol course. Appellant was convicted and discharged of assault.

It was raised in the judgement that that Magistrate did not take into account or make reference to the following during sentencing:

- That the appellant pleaded guilty;
- First time offender / not a habitual offender; (\* refer to opinion commentary)
- Did not make mention to why other sentencing options were not considered; and
- Did not explain the rationale for a custodial sentence.

The judgement also importantly states **"In a case of serious injury or in cases that follow a long history of abuse or cruelty, periods of imprisonment may well be justified even in the case of a first time offender."**

**Commentary**

The Magistrate when sentencing the appellant made several comments about the issue of domestic violence and was critical of abusive behaviour resulting from it. Although these messages should be highlighted more to offenders and inadvertently to the community as a deterrent, the principles of sentencing require the Courts to make proper considerations to the facts specific to the case, the situation around the offence, and the personal circumstances of the offender. The factors that should have been



considered in this case was; the extent of the injury, whether the offender displayed a habitual behaviour of being violent and abusive or whether the offender has shown remorse.

The Court Judgement does not necessarily bind the Magistrates Court in making a similar sentence, but states that the Court should show that it has given proper consideration and make mention to facts of the case and the situation of the offender when justifying custodial sentence.

**In relation to the mitigating factor of first time offender, the judgement states two situations where imprisonment can be justified: a) where there is serious injury b) long history of abuse or cruelty.** Even in cases where there is serious injury or long history of abuse or both, the Court must still consider and make mention to the situation of the accused, as the mitigating factors and the aggravating factors when making a decision on a custodial sentence.

### **R v Fatani [2004] Tonga LR 351 (15 October 2004)**

The accused was found guilty of assault causing bodily harm and was sentenced to 10 months imprisonment, with the second five months to be suspended on condition of the supervision of a probation officer and attendance of any programme directed by the probation officer. The accused assaulted his wife with an open hand. The duration of the assault was around eight minutes. The injuries sustained by the wife were cuts on her lip and cheeks, swollen face, a broken tooth, two black eyes and a fractured jaw. At the time of the assault, the wife was four months pregnant.

The victim accepted that she scratched her husband's chest and had thrown a lamp at him but the Court was satisfied that this was done in self-defence.

During his defence, the accused attempted to shift responsibility of causing the assault to his wife as a result of an argument that she started. The Court stated in the judgement: **"The accused needs to be told in no uncertain terms that no man is entitled to strike his wife unless this is really necessary as self-defence – which will not often apply, because the first obligation is to end the argument by walking away from it"**.

The Court assessed these injuries to amount to bodily harm. The aggravating factors considered were:

- The attack was unprovoked;
- Occurred in complainant's home, where she was entitled to feel safe especially from her husband;
- The complainant was four months pregnant;
- The attack was sustained over several minutes; and
- The complainant was hospitalized for several days.

Factors considered for mitigation were:

- No previous conviction;
- Hard working man;
- Attends church;



- He apologized to his wife;
- Showed remorse; and
- Promised to change.

In arriving to the sentence imposed the Court also took into significant consideration “**In these circumstances it is important that the sentence imposed in this case sends the right message to other men, namely that those who beat their wives and cause serious injury can expect to go to prison. In this case the deterrent aspect of sentencing is an important one – but I believe that a sentence of imprisonment is also required to denounce strongly this type of conduct on behalf of all society, and try and protect the community by making it a safer place for women and other vulnerable groups.**”

#### Commentary

The case highlighted the Court’s emphasis to address domestic violence and ensured that the sentence and sentencing remarks provided a deterrent to the accused and to the community. The case also showed how the Court can hold offenders accountable for their behaviour without putting blame on the victim of the situation. This case is an example of how the Court can condemn domestic violence and impose a custodial sentence after considering aggravating and mitigating factors. The sentencing range fell well within the jurisdiction of the Magistrate Court.

#### **Falou v Police [2015] TOSC 25; AM 13 of 2015 (7 August 2015)**

The appellant argued that the Magistrates Court did not consider his personal circumstances when sentencing him to six months imprisonment. The Supreme Court agreed with the sentence of six months and reactivated the sentence but made mention to several issues that should have been considered by the Magistrates Court when making its judgement. It was held that sentence was not manifestly excessive or inappropriate.

The appellant had previously been convicted of one count of assault under the COA and one count of domestic violence under the FPA. He was sentenced to 3 months imprisonment, suspended for one year. During the period of suspension, the appellant reoffended and assaulted his wife and daughter. The injury sustained from the assault was a swollen face. The Magistrate reactivated a sentence of six months imprisonment.

Although the Supreme Court maintained the six months imprisonment for the assault that took place during the period of the first suspended sentence, it stated that the following considerations should have been made and noted on the appellant circumstances the during sentencing (referring to the earlier sentence):

- First offender; and
- Shared responsibility for the children.

The judgement stated that the Magistrate’s Court should give clear reasons for any sentence imposed and where custodial sentence is contemplated a probation report should be requested.



The Court also gave the view that for the assault that took place during the period of suspension the six months reactivated sentence could well have been given cumulatively by the Magistrate.

The judgement held **“Parliament in Tonga has recently introduced domestic violence legislation to emphasise that domestic violence will not be tolerated and the Court must be responsive to this sentiment. This is not to say, however that the principles in sentencing should be abandoned altogether because a case involved domestic violence...”**

**Commentary**

Similar to **Fukofuka v Police [2012]**, this case emphasises on the considerations that the Court must make when sentencing a convicted person. A judgement on sentence has to have on record the considerations that aggravate and mitigate the sentence. Emphasising that domestic violence is unactable or will not be tolerated by the Courts is not enough. The Court also stated that for where accused have been found guilty of reoffending during the suspended sentence that a cumulative sentence would be justified.

[Tonga Magistrates Court sentencing guidelines for domestic violence, case law table illustrating considerations on sentencing.](#)

Fukofuka v Police [2012] TOSC 33; AM 07 of 2012 (20 July 2012)	
<u>Type/nature of violence</u> Punch to the head causing small laceration on victim’s head.	<u>Starting point</u> Not mentioned in the judgement.
<u>Sentence</u> Two-year good behaviour bond to the appellant. A requirement for bond over was mandatory attendance of a anger management, drugs and alcohol course.	
<u>Aggravation</u> Aggravation factors were not expressly stated in the judgment.	<u>Mitigation</u> <b>The Supreme Court reduced the Magistrate Courts’ sentence because there was no consideration to the following:</b> -A one off attack (attack not sustained); -No long history of violence (that was raised during prosecution); -Showed remorse -Apologized (even though not accepted by victim); and -First time offender.



<b>Falou v Police [2015] TOSC 25; AM 13 of 2015 (7 August 2015)</b>		
<u>Type/nature of violence</u> -Assault causing swollen face. -Reoffended by assaulting daughter during period of suspended sentence for assault.	<u>Starting point</u> Not mentioned in the judgement.	<u>Sentence</u> Six months imprisonment.
<u>Aggravation</u> Repeat offender (this was considered for the assault that took place during the period of the suspended sentence).  Although the Magistrates Court sentenced the appellant concurrently for the assault which took place during the period of suspension, the Supreme Court stated that for cases where accused have been found guilty of reoffending during the suspended sentence that a cumulative (instead of concurrent) sentence would be justified.		<u>Mitigation</u> Although the Supreme Court arrived at the same sentence imposed on the appellant, it stated that the following factors should have been considered by the Magistrates Court during sentencing: <ul style="list-style-type: none"> <li>- First offender; and</li> <li>- Shared responsibility for the children.</li> </ul> The judgement stated that the Magistrates Court should give clear reasons for any sentence imposed and where custodial sentence is contemplated a probation report should be requested.

<b>R v Fatani [2004] Tonga LR 351 (15 October 2004)</b>		
<u>Type/nature of violence</u> Assaulted wife with an open hand. Assault lasted for about eight minutes. The injuries sustained were cuts on her lip and cheeks, swollen face, a broken tooth, two black eyes and a fractured jaw.	<u>Starting point</u> Court arrived at a sentence of 10 months after balancing: -aggravating factors. -mitigating factors. -deterrence approach to domestic violence offence and offenders.	<u>Sentence</u> Sentenced to 10 months imprisonment, with the second five months to be suspended on condition of a supervision of a probation officer and attendance of any programme directed by the probation officer.
<u>Aggravation</u> -The attack was unprovoked; -Occurred in complainant's home, where she was entitled to feel safe especially from her husband; -The wife was four months pregnant; -The attack was sustained over several minutes; and -The wife was hospitalized for several days.		<u>Mitigation</u> -No previous conviction; -Hard working man and attends church; -He apologized to his wife; and -Showed remorse and promised to change.  Court reduced the custodial sentence to five months imprisonment, with the second five months suspended on conditions.



<b>Rex v Naufahu [2016] TOSC 18; CR 14 (23 May 2016)</b>	
<p><u>Type/nature of violence</u> The accused poured hot water on his wife. She suffered burns and there was physical residue (marks or scars) of the injury from the burns.</p>	<p><u>Starting point</u> Eight years, after consideration to the aggravating factors.</p>
<p><u>Sentence</u> Final sentence was five and half years. Further on the Court suspended the final one and half years of the sentence, which resulted in a total custodial sentence of four years.</p>	
<p><u>Aggravation</u> -After pouring hot water on victim took no action to relieve her distress or assist her in anyway; -Then injuries sustain by victim; -Physical residual effects from the burns. -Terrifying experience for victim and psychological effects; -Victim felt unable to return to family home; and -Act was premediated.</p>	<p><u>Mitigation</u> -First offender; -Aged 54; -Long service to the armed services, including two overseas services; -Involved with his church; and -Had provided for his family.  Two and half years was deducted from the starting point of eight years after consideration to the mitigating factors.</p>



## Annex E: Port Vila Magistrates Court Family Violence Action Plan (Draft)

**VISION:** The Vanuatu Magistrates’ Court condemns family violence and commits to providing an accessible, fair and safe court response to the victims of family violence

### FOCUS AREA ONE: PRIMARY PREVENTION

#### Outcome 1: Increase court engagement in primary prevention activities

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Routinely conduct awareness during circuits, particularly on gender and family violence	Circuits are the only opportunity for rural people to interact with Magistrates, who can play a key role in raising awareness about the law.	Key court representative: All Magistrates	Feedback from police and chiefs, as well as from women’s groups such as VWC.  Increased use of the courts for family violence matters in rural areas
Educate community chiefs in both rural and urban areas to refrain from handling family violence matters, including by encouraging victims to obtain family violence orders and by allowing the court to deal with matters according to the law	Chiefs currently focus on guarding the reputation of perpetrators and fail to understand the pain and suffering of victims. Their cooperation is essential to improved court and societal responses to family violence.	All Magistrates with technical assistance from VWC	Awareness undertaken by Magistrates during Court hearings

### FOCUS AREA TWO: VICTIM FOCUS

#### Outcome 1: Improved access to justice for the victims of family violence

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Increase awareness that an oral application for <i>ex parte</i> orders can be made via phone. This could be done while on circuit and through the distribution of basic education materials such as posters and pamphlets, including by police, chiefs and advocates.	The majority of those who utilise the courts for family violence matters are assisted by the Vanuatu Women’s Centre. Where centre staff are not available, phone applications are a useful alternative, removing transport and literacy barriers to access.	Key court representative: To be determined	Awareness raising undertaken  Applications by phone increase (baseline required)
Proof of service to be attached with <i>ex parte</i> orders	While proof of service is routinely enforced for other types of court orders, it is not	Key court representative: To be determined	Number of <i>ex parte</i> orders made with proof of service attached (current baseline is zero)



	currently enforced for orders made under the FPA.		
Translate ex parte orders in to Bislama and where constraints prevent this, orders and consequences to be explained clearly by the Court and Police in Bislama	English literacy is a key barrier to victim and perpetrator understanding of orders.	Key court representative: To be determined	Number of ex parte orders translated in to Bislama increased (need baseline)
Toll free number to secretaries – to produce ex parte applications	If awareness that ex parte applications can be made via phone increases, there will be increased demand for this service. A toll free number for the Courts would address some of the issues relating to financial barriers.	Key court representative: To be determined  May require additional human resources to meet demand.	Toll free line established
Train secretaries to accept and produce applications for ex parte orders. VWC to provide training.	Secretaries do not currently accept and produce many applications for ex parte orders thus training will be required.	Key court representative: Training Coordinator?	Secretaries trained and feel comfortable completing applications for temporary orders  Women's groups such as VWC report positive feedback from victims

**Outcome 2: Improved safety (physical and psychological) for family violence victims using the courts**

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Staff to be trained in victim-sensitive service provision	Victim psychological safety is heavily impacted by the way in which staff deal with them throughout the court process.	Key court representative: Training Coordinator  Technical assistance: Suggest VWC	Staff trained  Victim satisfaction surveys (anonymous) developed and demonstrate increased satisfaction with service provision. Feedback from women's groups on victim satisfaction could also be sought.
Execute ex parte orders ex parte. No defendant participation to be permitted.	Due to power disparities between perpetrators and victims, involving perpetrators in applications for temporary protection orders increases the chance of victim case withdrawal and exacerbates victims stress.	Key court representative: All Magistrates	Ex parte hearings no longer seeking perpetrator participation.



Security presence to be provided at court/chambers	There are currently no physical safety measures in place. Incidents of violence within the court room have occurred. Victims have a right to feel safe throughout the court process. Magistrates and court staff have also expressed concerns about their safety.	Key court representative: CM to recommend to CJ  To be decided. Necessitates budget discussion.	Security provided at court/chambers.
Safe room in new court building	The physical and psychological safety of victims is enhanced by separate waiting areas so that contact with perpetrators is avoided.	Key court representative: To be decided. Planning requirements for new building will need to be communicated.	Safe room established in new court building.

**Outcome 3: Improved fairness for family violence victims using the courts**

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Include review date on ex parte orders (mandatory)	To promote fair hearing and enhance victim safety.	Key court representative: All Magistrates	Review dates included on ex parte orders.
Basic guidelines be developed to remind judges of their own bias and promote a victim-sensitive response.	Bias impacts negatively upon victim outcomes before the court. Guidelines and checklists can assist Magistrates to constantly remind and check themselves.	Key court representative: All Magistrates  Technical Assistance: PJSI	Guidelines developed  Magistrates report utilising guidelines  Long term – less evidence of bias in judgements



**FOCUS AREA THREE: PERPETRATOR ACCOUNTABILITY**

**Outcome 1: Appropriate sentences for the perpetrators of family violence**

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Undertake quarterly review of family violence sentencing decisions	Regular review of sentencing decisions will enable the detection of bias in judgements and keep perpetrator accountability at the forefront of Magistrates' minds.	Key court representative: Chief Magistrate?	Quarterly sentencing reviews undertaken  Examples of bias in judgements recorded and discussed  Long-term – reduced incidence of bias in sentencing and more consistent and appropriate sentence
Publish sentences on PACLII and court website, and engage media	This will enhance accountability and serve as a deterrent	Key court representative: To be decided	Increase in sentences uploaded to PACLII and court website (will require baseline)  Increase in media engagement (will require baseline)
Secretaries to monitor payment of fines. Creation of a system will be required.	Perpetrators are only held accountable if payment of fines is enforced.	Key court representative: To be decided	Recording/monitoring system established and utilised



**FOCUS AREA 4: COLLABORATION**

**Outcome 1: Ensure that basic administrative processes/information facilitate collaboration**

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Create a pigeon hole for FPU	Enhance ease of document sharing	Key court representative: To be determined.	Pidgeon hole created

**FOCUS AREA 5: DATA COLLECTION, ANALYSIS AND REPORTING**

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Produce quarterly reviews of judgements and sentencing	To promote sentencing consistency and awareness of bias in judgement writing.	Key court representative: To be determined	Reviews produced and in the long-term, sentences are more appropriate, consistent and judgements free of bias.
Magistrates to report quarterly to Chief Magistrate on whether all temporary orders were issued ex parte and inclusive of a review date	To ensure compliance with changes recommended by Magistrates	Key court representative: All Magistrates	Reports submitted



## Island Provinces Action Plan

**VISION: The Vanuatu Magistrates’ Court condemns family violence and commits to providing an accessible, fair and safe court response to the victims of family violence**

### FOCUS AREA ONE: PRIMARY PREVENTION

#### Outcome 1: Increase court engagement in primary prevention activities

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Awareness raising about family violence and the law to be undertaken during court tours, where possible in collaboration with VWC	Lack of understanding about gender inequality and the law perpetuates family violence.	Key court representative: All magistrates	Awareness raising undertaken  Could conduct community surveys or focus groups to capture knowledge/attitudinal shifts. Feedback from women’s groups such as VWC could also be sought.
Senior Magistrates undertake a “train the trainer” program (possibly with the VWC) so that they are equipped to educate others (primarily the Magistrates for whom they are responsible and chiefs) on gender equality and family violence.	It is important that anyone providing education to others has the appropriate knowledge and skills to do so.	All Senior Magistrates, with technical support, possibly from VWC	Senior Magistrates trained to train others and report feeling confident to do so.

### FOCUS AREA TWO: VICTIM FOCUS

#### Outcome 1: Improved access to justice for the victims of family violence

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Leaflets and pamphlets be produced to increase victim understanding of the law and court process. To be distributed by court employees, police, chiefs and advocates.	Lack of understanding about rights and the court process is a barrier to accessing justice.	Key court representative: To be determined	Pamphlets produced and distributed/taken  Could undertake community surveys or focus groups to capture knowledge gains
Produce orders in Bislama and insert vision statement on all FV orders	Lack of English literacy is a barrier to victim and perpetrator understanding of orders. Inclusion of the vision statement sends a	Key court representative: To determine who would undertake translation, if required	Orders produced in Bislama and include vision statement



	strong message to society that violence against women is unacceptable.		
In rural areas with no police presence, chiefs to serve and explain orders to defendants (after receiving gender sensitisation by Senior Magistrates and VWC)	Chiefs are a valued source of authority and play a key role in condemning family violence.	Key court representative: To be determined  Technical assistance: VWC	Chiefs have received training  Chiefs are serving orders  Chiefs are not encouraging victims to remain with violent husbands

**Outcome 2: Improved safety (physical and psychological) for family violence victims using the courts**

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Court orderly/police presence	There are currently no physical safety measures in place. Incidents of violence within the court room have occurred. Victims have a right to feel safe throughout the court process. Magistrates and court staff have also expressed concerns about their safety.	Key court representative: CM to recommend to CJ	Physical security measures are in place
Separate waiting rooms to be allocated for use by victims	Victims have a right to feel safe throughout the court process. Separation from the perpetrator and the perpetrator's family whilst waiting is integral to victim safety.	Key court representative: To be determined	Separate waiting rooms established for victims
Partitions to be used in chambers. To be placed between victims and perpetrators	Would enhance victim psychological safety.	Key court representative: To be determined	Partitions utilised in chambers
Staff to be trained in victim-sensitive service provision	Victim psychological safety is heavily impacted by the way in which staff deal with them throughout the court process.	Key court representative: Training Coordinator  Technical assistance: Suggest VWC	Staff trained  Victim satisfaction surveys developed and demonstrate increased satisfaction with service provision. Feedback from women's groups such as VWC could also be sought.
Criminal aspects of family violence to be addressed as a matter of urgency	The criminal aspects of family violence are currently addressed less frequently than applications for protection orders	Key court representative: To be determined	A consultation (or ongoing meetings) with the Courts and the police (investigators and prosecutors)



		Courts and the police to discuss importance of charging perpetrators for DV offences and breach of orders.	Magistrates to have sessions with the police (investigators and prosecutors) during police training on FPA  Increased number of criminal cases bought before the Courts
Revise the application for protection orders to include instructions on the process to lay other charges if applicable.	The criminal aspects of family violence are frequently overlooked during applications for protection orders.	Key court representative: To be determined.  Technical assistance: Suggest VWC Senior Legal Officer	A consultation (or ongoing meetings) with the Courts and the police  Magistrates to have sessions with the police (investigators and prosecutors) during police training on FPA.  Increase number of criminal cases bought before the Courts
Execute ex parte orders ex parte. No defendant participation to be permitted.	Due to power disparities between perpetrators and victims, involving perpetrators in applications for temporary protections orders increases the chance of victim case withdrawal and exacerbates victims' stress.	Key court representative: All Magistrates	Ex parte hearings no longer involve perpetrators

**Outcome 3: Improved fairness for family violence victims using the courts**

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Basic guidelines be developed to remind judges of their own bias and promote a victim-sensitive response	Bias impacts negatively upon victim outcomes before the court. Guidelines and checklists can assist Magistrates to constantly remind and check themselves.	Key court representative: For use by All Magistrates  Technical assistance: PJSI	Guidelines developed  Magistrates report utilising guidelines  Long term – less evidence of bias in judgements



### FOCUS AREA THREE: PERPETRATOR ACCOUNTABILITY

#### Outcome 1: Appropriate sentences for the perpetrators of family violence

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Undertake quarterly review of family violence sentencing decisions	Regular review of sentencing decisions will enable the detection of bias in judgements and keep perpetrator accountability at the forefront of Magistrates' minds.	Key court representative: Chief Magistrate?	Quarterly sentencing reviews undertaken  Examples of bias in judgements recorded and discussed  Long-term – reduced incidence of bias in sentencing and more consistent and appropriate sentences
Monitor enforcement of penalties (if fines not paid default to community work/imprisonment). A system for monitoring will need to be created.	Perpetrator accountability only occurs with enforcement	Key court representative: To be decided	System created and utilised  Penalties enforced
Plea dates to be made known to police for arrested defendants to attend court as set by court and when attendance doesn't occur a warrant of arrest be issued.	Perpetrator accountability only occurs with Court enforcement	Key court representative: All magistrates	Appropriate penalties enforced.
Breaches to be dealt with urgently and perpetrators placed in lawful custody for 24 hours. Charge and court to follow.	Breaches are currently infrequently dealt with, undermining perpetrator accountability.	Key court representative: To be decided	Increased action taken against those who breach orders (will need to establish baseline)

### FOCUS AREA 4: COLLABORATION

#### Outcome 1: Enhanced collaboration

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Collaborate with VWC, Police, state prosecutors, chiefs, and male advocates to provide community awareness and improve service delivery.	Family violence requires a coordinated response.	Key court representative: To be decided	Increased work with others



### FOCUS AREA 5: DATA COLLECTION, ANALYSIS AND REPORTING

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Produce quarterly reviews of judgements and sentencing	To promote consistency and awareness of bias in judgement writing.	Key court representative: To be decided	Reviews produced and in the long-term, sentences are more appropriate, consistent and judgements free of bias.
Magistrates to report quarterly to Chief Magistrate on whether all temporary orders were issued ex parte and inclusive of a review date	To ensure compliance with changes recommended by Magistrates	Key court representative: All Magistrates	Reports submitted



## Annex F: Palau Court Family Violence Action Plan 2018-2020 (Draft)

### FOCUS AREA ONE: PRIMARY PREVENTION

#### Outcome 1: Increase court engagement in primary prevention activities

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Develop an annual community engagement plan, which outlines the ways in which the court will engage with and educate the community, using different approaches such as awareness raising, radio, press releases etc. Key issues for awareness: the law, court process, the availability of fee waivers and other matters of public relevance.	Lack of community awareness about legal rights and court process are a barrier to justice. Community engagement must be ongoing in order to be effective.	Key court representative:	An annual community engagement plan is produced and implemented Access to justice surveys evidence increased community understanding of legal rights and processes Increased applications for fee waivers
Translate court booklets and brochures in to Palauan.	The publication of court booklets and brochures in Palaun will increase information accessibility.	Key court representative: Judiciary & MCCA	Court booklets and brochures translated in to Palauan Access to justice surveys evidence increased information accessibility



Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Undertake an access to justice assessment, with a particular focus upon understanding the barriers that rural people face when attempting to access the justice system.	There is general understanding of the barriers rural people face when attempting to access the courts but more in-depth analysis would assist in the development of practical strategies to enhance rural access to police and court services.	Key court representative: Possible technical assistance from PJSI	Assessment undertaken Needs identified during access to justice assessment are addressed through practical strategies Subsequent access to justice assessments reveal improved access to justice for rural people
Undertake court user surveys (every two years) to ensure that the court is responsive to the victims of family violence.	An improved understanding of the victim experience will enable the court to constantly ensure that victims have access to safe and fair court services.	Key court representative: Possible technical assistance from PJSI	Court user survey developed and administered, enabling establishment of a baseline Court responsiveness to victim needs (access, safety and fairness) is evidenced by improvements in subsequent court user survey feedback

**FOCUS AREA TWO: VICTIM FOCUS (Outcomes 1 Access, 2 Safety and 3 Fairness)**

Include sign language translators on list of court translators.	Disabled people, including deaf people, face additional access impediments, including the need for support to negotiate the justice system.	Key court representative:	Sign language translators included in translators list Should a deaf person appear before the court, a translator is readily available
Parallel Palauan translation to be included in the English version of the application and other forms for protective orders.	To increase access to justice for those more comfortable speaking in Palauan.	Key court representative:	Palauan forms developed Access to justice surveys show that language is less of a barrier to access
Clerks to be provided with both induction and refresher training to enhance victim-sensitive service provision and enable them to perform their duties with confidence. Key issues to be covered: victim-sensitive service provision, interviewing, court processes, form assistance, witness testimony and other needs as	Clerks are committed to providing the best possible service to victims but sometimes feel ill equipped to do so. They are keen to engage in continuous improvement.	Key court representative: Possible technical assistance from PJSI	Induction and refresher training provided After establishing a baseline (prior to the provision of training), clerks report feeling more confident in their roles Court user surveys demonstrate improved client satisfaction with the services provided to them by clerks



determined by clerks, judges and client feedback. This could be formalised through a court training plan if desired.			
Ongoing training for judicial and court staff on domestic violence and victim-sensitive service provision.	It is important to keep abreast of contemporary good	Key court representative:	Ongoing training scheduled and delivered
This could be formalised through a court training plan if desired.	practice and engage in continuous learning to ensure that people continue to understand their own bias.	Possible technical assistance from PJSI	The PJSI post-workshop surveys could be used as a baseline, with post-training evaluations being undertaken to assess judicial and staff knowledge
Court staff to meet monthly in order to debrief.	Court staff are aware of the need to maintain confidentiality yet require a mechanism to enable them to share their concerns and frustrations. In the absence of counselling services, peer-to-peer support is a valuable way of doing this.	Key court representative:	Court staff meet monthly to debrief. Court staff report feeling less stressed (would need to establish a baseline)

### FOCUS AREA THREE: PERPETRATOR ACCOUNTABILITY

#### Outcome 1: Appropriate sentences for the perpetrators of family violence

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Undertake quarterly review of family violence sentencing decisions, to be facilitated by sharing judgements internally	Regular review of judgements and sentencing decisions will promote a collaborative approach and enable better analysis (and thus understanding) of sentencing decisions.	Key court representative:	Quarterly sentencing reviews undertaken Examples of bias in judgements recorded and discussed Long-term – reduced incidence of bias in sentencing and more consistent and appropriate sentences
Publication of trial sentences and judgements	Transparency and accountability	Key court representative:	Trial sentences and judgements uploaded to PACLII and court website



**FOCUS AREA 4: COLLABORATION**

**Outcome 1: Ensure that basic administrative processes/information facilitate collaboration**

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Regularly share and update agency and victim services contact lists	Timely service provision requires accurate information	Key court representative:	Contact lists regularly updated and shared Referrals are made in a timely fashion
Continue to engage with other FPA partners, ensuring that the court is represented in all relevant meetings and forums	A wholistic response to family violence is essential. This is reliant upon collaboration.	Key court representative:	The court is represented in relevant meetings and forums.



## Annex G: FSM Court Family Violence Action Plan 2019-2021 (Draft)

### FOCUS AREA ONE: PRIMARY PREVENTION

#### Outcome 1: Increase court engagement in primary prevention activities

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Specific training for Court Officers and Judicial staff on Family Violence (Pohnpei & Kosrae). (This training will also strengthen Court response to Outcome area 2).	Court staff and judicial officers must have an understanding of the issue before conducting awareness on family violence.	Director - Staff of Courts, Chief Justice with possible support from PJSI.	Funding proposal already prepared. Funding already secured. Training completed. Awareness undertaken.
Court staff to coordinate and discuss family violence awareness messaging with churches, government departments (Gender Division for Pohnpei) and police (Pohnpei and Kosrae).	Ensure court staff are involved in prevention work and the type of messaging given to the community.	Court staff, Director of Staff of Courts	Coordination meetings. Court staff involved in family violence community awareness.

### FOCUS AREA TWO: VICTIM FOCUS (Outcomes 1 Access, 2 Safety and 3 Fairness)

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Special room for victims of family violence at the court house (Pohnpei and Kosrae).	Victims feel uncomfortable waiting outside where they can be seen, and victims do not have a place where they can seek refuge when they are accessing justice.	Director – Staff of Courts and Chief Justice. Funding for the project has been approved and construction about to start for Pohnpei. Room has been selected in Kosrae and will be redesigned and refurbished to suit a victim friendly environment.	Plan and design for room to be finalized. Extensions / refurbishment / build to start. Project completed and victims using the rooms.
Supreme Court annual reporting to strengthen data collection/representation on family violence (similar to data collection on Human Trafficking).	Having data will improve understanding of prevalence of family violence and can also improve the Court's understanding of the dynamics of family violence.	Director – Staff of Courts, key court representative, representative from State Courts Possible technical assistance from PJSI.	Meetings to discuss data collection process, method/templates. Data collected.



State Court replicate similar data collection method on family violence cases.			
Coordinate future trainings to include Court Sheriffs and police (Pohnpei and Kosrae).	Sheriffs and police need to be trained to have an improved understanding of family violence. They should be included in future training with the Court staff.	Director – Staff of Courts and key court staff.	Police and sheriff to be included in future gender and family violence trainings.
Additional Court Sherriff's or National police to be stationed (or patrol) at the Court. (Pohnpei).	Need to make Court Houses feel safe for victims.	Director of Court Administration, key representatives from Sheriffs and from police.	Meeting with Court, Sheriff and Police. Increased presence or patrols in around the Court.
Clerks to be provided with training on victim centred approaches to service provision (Pohnpei and Kosrae). Key issues to be covered: Basic listening and acknowledgement skills, nonjudgmental interviewing, court processes and understanding of the newly drafted DV Act application form.	Court staff are keen on supporting victims. After the training, Court staff realise that there is more for them to learn in order to improve their responses to victims.	Key court representative. Possible technical assistance from PJSI.	Induction and refresher training provided.
Training for Court staff, police and support advocates for survivors on restraining order application forms, process and procedures once they are finalised and passed (Pohnpei).	Court staff to be aware of different forms, process and procedures.	Key court representative.	Training on court forms undertaken.

#### FOCUS AREA FOUR: COLLOBORTATION

Action: What?	Rationale: Why?	Responsibility & Resourcing: Who and how?	Progress indicators
Directory of services (Pohnpei).	Court staff to know where to refer victims of family violence to when necessary.	Key Court Staff and DV Taskforce.	Directory created.



## Annex H: Samoa Court Family Violence Action Plan & Recommendations (Draft)

### **Draft Samoa Family Violence Court Action Plan & Recommendations, Gender and Family Violence Toolkit Workshop, Ministry of Justice Conference Room, 21 – 27 May 2019**

The following draft is a summary of the in-depth discussions and reflections that were had during the workshop on the key focus areas of the Gender and Family Violence Toolkit. The draft also summarises the context of the work and approaches on the four focus areas that already exist in Samoa. Finally, it highlights a key focus on prevention that the Family Violence Court (FVC) wants to initiate to increase women's access to justice.

#### **Focus Area 1: Prevention**

Prevention work and awareness raising in Samoa is undertaken by various government ministries and civil society groups. A recent survey by the Ministry of Women and a National Inquiry on Family Violence indicated high levels of family violence in Samoa. Family violence awareness has to consider the high prevalence of family violence as well as the high likelihood that individuals could be, or already have been, exposed to it.

Awareness raising by FVC has increased over the years. Before continuing its role in prevention/public engagement and awareness raising, a key prerequisite for the court is to undergo training on the issue of family violence. This was a key focus of the week. The toolkit training was an opportunity to introduce the court staff and stakeholders to basic concepts of gender relations, as well as the cause and dynamics of family violence. The gender component was limited to two days. FVC has requested for more training with a similar kind of approach be implemented for court staff, stakeholders working with the courts and other members of the Judiciary.

There are existing programs on gender, gender-based violence and family violence working in the communities. However, during the week it was identified that messages on family violence can be both mixed and inconsistent. This includes ongoing victim blaming, condoning reasons that give impunity to family violence, and a confusion around the root causes and excuses of family violence. Some of these have probably resulted from limited training, mentoring and guidance opportunities that individuals have had. This assumption does not take away the work that many organisations and groups have implemented for the people of Samoa. Nor does it discount their efforts to support victims or help perpetrators seek a different path from violence.

The FVC, through the PJSI Family Violence Toolkit Training, appreciates and has demonstrated an increased understanding of the root cause of family violence and some of its dynamics. It would be difficult for the FVC to request/recommend other service providers to change their approaches to or shift their understanding and analysis of family violence. During the week, it was strongly recommended that the FVC can lead community engagement (in collaboration with other key stakeholders, for example the police) on the issue of family violence with an approach that understands the different types of



family violence and its root cause, is clear on the excuses for domestic violence and with a focus on encouraging victims to access formal law and justice services.

This Family Violence Toolkit Training developed the capacity of the FVC to understand the dynamics of family violence. The FVC is strategically placed to play a key role in raising awareness on the Family Safety Act (FSA) and the services that the court offers to victims of family violence. The FVC has the experience and practical knowledge of the legal system, its processes, and the different outcomes court users can expect when they access justice. Through its own work and its close working relationship with the police and support services, the FVC can help frame community awareness and training to have an increased focus on access to justice.

The FVC is aware of other service providers working within communities in the area of family violence. The FVC will not replicate the work of existing programs that conduct training and awareness raising on gender and family violence. Public engagement by the FVC will be specifically focused on family violence with an emphasis on access to justice. The prevention/awareness approach will have a clear analysis of the root cause of the problem and will prioritize “Do No Harm” approaches when working to address family violence. The communities where the work or outreach of the Family Violence Access to Justice Initiative will take place will be determined after consultation with other stakeholders. It will also be dependent on information provided through the FVC data.

### **Family Violence, Access to Justice Initiative**

The Family Violence Access to Justice approach will involve the courts, working with members selected primarily from the FVC staff and those identified from the communities (for example Community Justice leaders) and the police. The FVC acknowledges that such an approach will require significant technical support and a capacity development support plan. FVC will request support from PJSI to provide ongoing technical support and funding. Funding for intermediary capacity development opportunities can also be sought from other development partners. Ensuring the sustainability of this approach will involve five components:

Component 1: Selected individuals will receive intensive training on a range of topics such as gender, gender inequality, gender-based violence, violence against women, understanding culture and religion and family violence. The primary aim of the first capacity development component will be to challenge participants’ individual biases against women, gender inequality and family violence. The second purpose is to strengthen individual knowledge and understanding on articulating responses around gender inequality, gender equality and family violence. The effectiveness of the latter is significantly dependant on the former.

Component 2: Training of Trainers (TOT), with a similar approach used during the intensive training. The TOT will help trainers/facilitators through development of basic tools/training material on how to guide discussions on gender inequality and family violence. It will identify opportunities where they



can engage, elaborate and challenge a statement or questions relating to gender inequality and family violence. The TOT will provide challenging and confronting workshop/training scenarios which participants will be tested to present and navigate on.

Component 3: Awareness and training community leaders and influential individuals on Family Violence Access to Justice. These community leaders or influential individuals can be those that are part of existing mechanisms within the community that address social issues or family violence. The selected leaders and individuals will include women. Outreach will only take place after Component 1 and 2 have been completed. The outreach on Family Violence, Access to Justice will not create an additional system within communities to address, settle, mediate or counsel cases of domestic violence, as this approach can both intentionally and unintentionally limit women’s access to justice. Outreach will be conducted in selected communities that have been exposed to some level of training and awareness on gender and family violence. This assumes that there will be less resistance compared to communities that have not been exposed to any outreach. However, due to the nature of the work on family violence and how it will address inequality, power and control, it can also be assumed that there will be different levels of resistance from different communities. There will also be an ongoing opportunity to mentor and build capacity of the core team involved in components 1 and 2. This is to ensure that they have the adequate knowledge and skills to improve their own appreciation and understanding of the issue and their ability to communicate with others on the content.

Component 4: Ongoing remote support where individuals can reflect and review how they have been able to conduct awareness and trainings on family violence. This component can be arranged through Skype meetings/discussions.

Component 5: This component will be ongoing. It will involve refresher training to individuals who have undergone the TOT, as well as supporting new staff involved in addressing family violence. The FVC, through support from PJSI (intermediary support – 2 years), will ensure that high quality capacity development and ongoing mentoring/support components are designed into the planning in order to develop capacities of selected persons. This will ensure consistency and sustainability. This component will be implemented through PJSI in-country visits as well as working in partnership with development partners to bring in the relevant technical support. Through continued collaboration with other stakeholders, it is envisioned that the Family Violence, Access to Justice initiative will create a momentum of change. Further, it will encourage a willingness to review and strengthen existing approaches to how Samoa is addressing family violence and victim’s access to justice.

Understanding family violence	Recommendations	Follow up actions
Have Judicial Officers received training on the causes and consequences of family violence?	Opportunity to engage other members of the Judiciary involved in cases of violence against women and family law.	FVC to continue engagement with Judiciary. This will be discussed with A/CJ and after the appointment of CJ.



Yes . Through IJS sponsored annual seminars for NZ Family Violence Court Judges.		
Have Court Officers received training on the causes and consequences of family violence? Yes. The first training is the workshop on Gender based violence conducted by PJSI.	More follow up training to strengthen understanding of family violence and improved responses to victims and perpetrators.	FVC to request PJSI for continued support for capacity development of its court staff on the issues of family violence.
If training has been conducted, did it actively challenge the attitudes and behaviours that perpetuate family violence? Yes	Yes, the training addressed this. It has also been requested for similar training to be conducted with other members of the Court.	FVC to request PJSI for continued support for capacity development of its court staff on the issues of family violence.
<b>Public Engagement</b>	<b>Recommendations</b>	<b>Follow up actions</b>
Does your court do awareness raising about laws relating to family violence?	The FVC can strengthen its role in this area.	FVC to request PJSI and donor partners to support the Family Violence, Access to Justice initiative, which includes continued capacity development and mentoring components.  FVC to work with its close stake holders (example the police) to carry out awareness raising on the FSA and the dynamics of family violence, with an emphasis on encouraging access to justice and support services.

### Focus Area 2: Victim Focus

The discussions that focused on response to victims covered all three subcategories of access, safety and fairness. While there have been significant surveys undertaken on the prevalence of family violence, there has yet to be a survey focused on access to justice. An access to justice survey focusses on court user satisfaction, in particular, views and perceptions of the victims of family violence. The group discussed and agreed on two key achievable actions that



can be undertaken to improve how victims feel when they access the courts. The FVC has used a therapeutic approach to address matters of family violence. Strengthening the focus on the impacts and consequences of family violence on the victims should also be a key consideration, when working to rehabilitate perpetrators and supporting victims. The FVC will continue to work with PJSI in the next phase to make improvements on its overall response to victims. The FVC can incorporate victim focus elements into its five-year strategic planning which it intends to draft in the second half on 2019.

Victim focussed approaches	Recommendations	Follow up actions
<p><i>Access</i> Have you undertaken an Access to Justice Assessment? No</p>	<p>FVC to look into possibility of undertaking an access to justice assessment with victims of violence family who access the Court as well as police.</p>	<p>FVC to request for assistance to progress this recommendation.</p> <p>FVC to request PJSI for technical support, if required.</p>
<p><i>Safety - physical</i> Does your courthouse have a private room where victims can rest/relax? No</p>	<p>Discussion to allocate a space/room in the Court House for this purpose.</p>	<p>FVC to work with the Ministry for Justice to ensure that a room or space can be allocated for victims. This can also be incorporated into the FVC Strategic Plan.</p> <p>FVC to draft guidelines on the use of the room to prioritize the needs and safety of victims.</p>
<p><i>Safety – psychological</i> Does your courthouse have easy to read signs so that people can understand where to go? No</p>	<p>Discussion to put up directional signs showing court users the location of the court.</p>	<p>FVC to work with the Ministry for Justice to request/ensure signs are put up to assist court users in finding the location of the FSVC. This discussion will await the appointment of the new CEO.</p>
<p><i>Fairness</i> Inclusion of Victim Impact Report (VIR) during sentencing of perpetrators.</p>	<p>Courts to continue working with victim support groups and the police in ensuring that VIR are submitted during sentencing for consideration.</p>	<p>FVC to continue it work in ensuring submission of VIR prior to sentencing.</p>



<p>Partial</p>		<p>Police and victim support group to continue its work in partnership with the Court to ensure timely response/submission. VIR are provided by Police Prosecutors when a physical act of domestic violence is committed.</p>
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**Focus area 3: Perpetrator accountability**

The following recommendations and follow up actions consider the therapeutic nature of the FVC, where the court, with support from service providers, works with the victim and perpetrator in finding a solution to ensure that there is peace within the family. The FVC has two major responses to perpetrators: mandated referrals to a rehabilitation program and sentencing.

In most cases, referrals to perpetrator rehabilitation programs by the FVC are limited to first offenders or when the nature of the violence (or reoffending) or injury may be categorised as less serious. The key service providers for mandated referrals for perpetrators from the court are, Samoa Victims Support Group (SVSG) and Teen Challenge. It was acknowledged during the workshop that whilst there has been anecdotal evidence to indicate that programs working with perpetrators have worked, there is also an opportunity for service providers to review their approaches. Doing so will ensure that they are in line with some of the documented evidence of what works in perpetrator programs and what the key component are to ensure perpetrator accountability.

Currently, perpetrators are being held to some level of account for their choice to use violence through legal alternatives where accused is detained until the hearing or detained over the weekend. These measures by the Court and the police, albeit temporary, give an indication to the perpetrator of the unlawful nature of the act that he has committed. The FVC gives custodial sentences to offenders found guilty of serious acts of family violence, repeat offenders or those who have breached their protection order, depending of the type and severity of the breach. Irrespective of the sentence or order given to a perpetrator

When a perpetrator is referred to a mandated program, a date is then set for a review of the program and a sentencing date. The program provider provides a report to the Court on date of mention highlighting the program attended, the contents of the program, observation of the perpetrators, a separate interview of the victim and highlight any concerns raised during the program and recommendation whether the person should continue with the program.

It was discussed how clear messaging can also be used as a tactic to holding perpetrators accountable for their choice to use violence. The FVC will continue engagement with PJSI for technical support in its work on responding to perpetrators.



Perpetrator accountability	Recommendation	Follow Up Actions
Does your court review sentencing outcomes to ensure that the family violence sentences are not too lenient? Yes, but opportunity to improve.	Groups rehabilitating perpetrators mandated from the FSVC should provide the Courts information on: <ul style="list-style-type: none"> <li>- If perpetrator has completed the course;</li> <li>- Accepted responsibility for choosing to be violent and demonstrated behaviour change;</li> <li>- Any high-risk behaviours;</li> <li>- Has not reoffended.</li> </ul>	FVC to continue its work with groups working with mandated referrals.  Opportunity for FVC and program providers to review the reports and include any other information which will assist the Court in determining the appropriate sentence.
Does your court publish anonymised family violence judgements and sentencing on PACLII? Yes, but opportunity to improve.	FVC to share its anonymised judgments and sentences on family violence on PACLII.	FVC to publish more sentences on PACLII.  Opportunity for FVC to strengthen message its messages to perpetrator when they try to excuse their behaviour or blame the victim.
Court to give clear messages to perpetrators of family violence.	Clear messaging to perpetrators on their choice to use violence is inexcusable and that the victims are never at fault. These stern messages should be given irrespective of the sentence, warning or referral. This approach demonstrates to perpetrators that the FVC will not condone or tolerate any form of family violence.	FVC was encouraged to provide clear and stern messages to perpetrators on: <ul style="list-style-type: none"> <li>- Their choice to use violence;</li> <li>- Irrespective of excuses or triggers, family violence is unacceptable;</li> <li>- The victim is never to be blamed.</li> </ul>
Court has improved understanding and articulating different types of family violence.	While intimate partner violence remains the most common and repetitive form of family violence, violence against children and against other family members is also an issue in Samoa. An analysis that the FVC can use to analyse family violence is the following. For the three different types of family violence the FVC can show: <ul style="list-style-type: none"> <li>-which is most common/highest form of family violence;</li> <li>-for family violence indicate sex of victim/s and offender/s</li> <li>-repetitive nature;</li> <li>-type/s of violence used;</li> </ul>	The FVC to work on this analysis.  FVC to request technical assistance from PJSI, if required.



	-type/s of injuries sustained; -withdrawal rates; -if possible, show the support (or level of support) given by the family, community, leaders from the community or church to the victim vs the perpetrator.	
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#### Focus area 4: Collaboration

Collaboration efforts discussed were also linked to some of the recommendations for prevention work. It was suggested that the FVC should call for regular meetings (for example closed quarterly meetings) with its stakeholders to discuss and review its approaches to victims and perpetrators of violence. These meetings can be an opportunity to discuss/review critical or serious cases. During the workshop, the idea of initiating a discussion with media organisations was raised, in order to sensitize how they report cases of family violence. Often media reports reinforce victim blaming or report stories that could imply impunity towards acts of violence.

Collaboration	Recommendation	Follow Up Actions
Establish / re-establish Family Violence Taskforce	FVC to lead or coordinate the task force or seek discussions with relevant ministries and stakeholders to establish taskforce.  However, it was also noted that the National Inquiry on Family Violence recommended the establishment of a Family Violence Desk. The group discussed the caution needed around replication.	FVC to follow up with relevant ministries and stakeholders on establishment of a task force or desk. This can be discussed during the Strategic Plan Workshop.
Do you meet regularly with key partners to ensure court users received a coordinated service? No	This can be strengthened. The workshop has provided the opportunity to continue this engagement and partnership.	The FVC to organise regular meetings, for example quarterly meetings. The FVC will schedule this in their court schedule which is usually 3 months in advance.  This can also align to the meetings to discuss work with perpetrators.



<p>When a woman is killed, is there a compulsory critical case review process in place whereby all relevant actors review what happened, what each agency did, and what more could have been done to prevent her death so that all actors across the justice chain can learn lessons? No</p>	<p>This should be done. This should also be done for cases of grievous/serious assault for example attempted murder.</p> <p>There is also the possibility to work with the media to improve its reporting of family violence cases. FVC to also invite media representatives to selected trainings.</p>	<p>The FVC/or most appropriate organisation to organise review meeting.</p> <p>Work with the media can be revisited. In the FVC 2017 Conference, the media was invited, so this opportunity and dialogue can be strengthened.</p>
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