



## **OFFICE OF THE CHIEF MAGISTRATE**

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### **CIRCULAR NO 07 OF 2020**

## **MAGISTRACY'S OBLIGATIONS UNDER THE FAMILY PROTECTION ACT 2013, JUVENILE JUSTICE ACT 2014 AND LUKAUTIM PIKININI ACT 2015**

### **MAGISTRACY'S RELEVANCE IN RESPECT OF THE GENDER BASED VIOLENCE (GBV) AND FAMILY AND SEXUAL VIOLENCE (FSV) ISSUES AND THE MAGISTERIAL SERVICES'S (MS) OBLIGATIONS IN RESPECT OF THE GESI POLICY.**

Magisterial Service (MS) is consciously managing the administrative requirements pertinent to the discharge by the District Court of its functions under the *Family Protection Act 2013*, *Juvenile Justice Act 2014*, and *Lukautim Pikinini Act 2015*.

MS is also cognizant of the GoPNG's GESI Policy that require State agencies and public servants to embrace the principles of respect, equity, and diversity in the workplace. MS has a GESI desk and has within its structure a position for a GESI Officer responsible for the implementation of GESI Policy. Both the MS and the Lower Judiciary are undergoing an org reform. A suitably qualified officer will be appointed to the GESI position when the reform works are complete.

MS consciously strives to be non-discriminatory in its endeavours and is committed to support the principles of fairness and equality for all its employees. Social inclusion is imbedded in all MS practices and business processes.

### **DISTRICT COURT'S FUNCTIONS UNDER THE THREE STATUTES.**

The District Court's functions under the *Family Protection Act 2013*, *Juvenile Justice Act 2014*, and *Lukautim Pikinini Act 2015* are clear. Magistrates who

preside in the District Courts, exercise their functions in the Court Room. They are required to discharge the Judicial Discretion impartially in open court.

## **MS'S RESPONSIBILITY.**

MS has a responsibility to make sure that Court facilities and the general Court environment are conducive for juveniles and other vulnerable court users including women and children. MS has a duty to make sure that Court Rooms where juveniles are dealt with, either as persons in conflict with the law or as witnesses and where women and children are litigants or witnesses, are family safe pliant.

Within our perennial budget constraints, in collaboration with willing stakeholders where appropriate, MS is focused on delivering family safe courts. For instance, we are engaged with the NCDC now, to build additional Court Rooms and address Court Room access challenges at the Port Moresby District Court /Family Court. We want to deliver on our responsibility to provide a conducive environment for juvenile court users, including child witnesses, juveniles in conflict with the law and minors with disabilities and their carers as well as survivors of domestic violence.

Managing the urgencies that underpin Protection Orders (IPOs & PPOs) is a core MS imperative. We are now on top of that: We are rolling forth a streamlined process. Courts are on standby for urgent Protection Order applications. We are watching the case management turnaround times, and mindfully creating finality. We collaborate well with our closest process partner, the Royal Papua New Guinea Constabulary (RPNGC) on prosecution of crimes and enforcement of court orders.

Going forward, we will attend, contribute meaningfully, and volunteer our organizational experiences at conferences and consultations where national GBV and FSV issues management best practices are articulated. We will collaborate at the various Committee levels [some of which we chair] with State agencies.

***We will engage with stakeholders – at arm's length. We cannot collaborate with anyone, be it from within or without the MS, on the exercise of the Judicial Discretion. The Judicial Discretion must always be independently discharged.***

## **CONTINUING CHALLENGES FOR MS**

We are not rolling out our Family Safe Court concept at a suitable pace due to budget constraints. For the moment, our momentum forward is dictated, shaped, and tied to

the Memorandum of Agreements (MOA) that we have signed with the Provincial Governments as well as MS's quota of the GoPNG PIP Budget.

The legal landscape within which the Family Court jurisdiction operates (District Courts often has concurrent jurisdiction) is premised around the availability and the capacities of other critical implementing State agencies:

- MS and the Courts it administers walk lockstep with the Royal Papua New Guinea Constabulary (RPNGC) in these Court's Criminal track. When the RPNGC is limping we limp, when it is crippled so are we.
- The functionality of the Family Court criminal jurisdiction is premised on the availability without fail of Welfare officers and Community Based Correction (CBC) officers and the Juvenile Court Officers (JCOs) for juvenile matters and diversions. The Family Court's domestic violence sentencing function is informed by the appropriate law and shaped by the outcomes from CBC officers (who generate the Pre-Sentence Reports) and the prosecutors (who tender into evidence the Victim Impact Statements). Sentences passed with reform of the offender in mind (suspended sentences, community work orders, protective custody orders, and detention with engagement in life skill courses at Juvenile Institutions etc) are implemented and supervised by and through the Department of Community Development and the Juvenile Directorate.

The management and prevention of GBV and FSV issues in PNG is dependent in the first instance on primary Intervention (Prevention & Survivor services) and Diversion Programs of the Department of Community Development. When Early Intervention and Diversion Programs are working there is no need for anyone to go to court. That is just as well because lasting peace and harmony in the home or within the family unit and or within the extended tribal context, cannot be wrought by compulsion (through court orders).

- There are costs of managing the aftereffects; costs on the individual and family, costs to the State in terms of policing, prosecution and enforcement, costs to affected businesses, and costs implications for national growth and development. Direct and associated costs can be minimized and contained if the implementing agencies are fully capacitated and their internal and external functions support structures are in place and functioning in a synchronized manner for Early Intervention and Diversion Programs to be effective. It is for this that the importance of the provision of counseling and mediation services by the responsible Government agencies cannot be overstated.

## **MS PROACTIVITY IN THE GBV & FSV SPACE GOING FORWARD**

The District and Family Court, and Magistrates who preside in these Courts, cannot be proactive in the Early Intervention and Diversion space. The sooner the State, State entities and those working with them realize this salient fact the better it is for the administration of justice and perception of impartiality of the Courts. Judicial officers and Court staff are necessarily restrained from openly collaborating with those in the Early Intervention and Diversion space by the need to maintain and protect the independence of the Courts. The Judicial Discretion cannot be influenced by anything other than applicable law, facts of the case, and pre-sentence reports.

For juveniles, the courts are obligated to inquire into whether or not diversion had been attempted and if not, to make an order for diversion.

### **MS will do the following:**

We will continue to roll out our Family Safe Court concept. We will rely on the Memorandum of Agreements (MOA) that we have signed with the Provincial Governments and District Development Authorities for new Court houses. We will rely on GoPNG PIP funding for existing court room improvement and rehabilitation. We will engage and partner with other approved agencies.

We will work with partner agencies and stakeholders to generate effective and timely prosecution and disposition of GBV and FSV cases. To this end we stand ready to explain how we are discharging the statutory role of the District and Family Courts to those who work with GBV and FSV survivors. As the need arises our experienced Magistrates and senior Registry staff will explain the process around issuance of Protection Orders (POs) and ‘offender reform pliant’ court orders. We will facilitate stakeholder interface at our structured trainings, including at our Judicial Orientation trainings and Continuing Legal Education workshops. Stakeholders will be invited to make presentations that inform us about their aspirations and the challenges they face in managing their Early Intervention and Diversion programs, so that we are suitably informed as to how we may assist in the front end work.

All our trainings around our obligations under the three statutes [*Family Protection Act 2013, Juvenile Justice Act 2014, and Lukautim Pikinini Act 2015*] will be, as they currently are, only delivered through the PNGCJE – strictly based on and through training content vetted by the Judiciary’s leadership.

The practice at the moment of participation by invitation at stakeholder conferences and workshops by our Magistrates, often around themes that do not reflect the Courts' delivery areas and manner of delivery prescribed and postulate in law, is an unnecessary adventure for us, and is fraught with risks for the independence of the Courts the participating Magistrates will go back and preside over.

We are available for consultations on law reform work that are being carried out by authorized entities and agencies, including the CLRC. MS actors who need to become relevant in this space will be authorized by the Chief Magistrate. Court practice and court craft reform will be shaped by our on-bench experiences.

### **ATTENDANCE BY MAGISTRATES & COURT STAFF AT WORKSHOPS HOSTED BY STAKEHOLDERS**

The following protocols shall apply in respect of all stakeholder hosted workshops:

- I. When directed by the Chief Magistrate all Magistrates and Court staff shall attend workshops and trainings on GBV and FSV provided through the structured judicial programs of the PNGCJE.
- II. No Magistrate and Court staff shall attend workshops and trainings on GBV and FSV, outside of the structured judicial programs provided through the PNGCJE, without the express authorization of the Chief Magistrate.
- III. Approved Magistrates and Court staff who attend at suitable workshops and trainings on GBV and FSV provided by stakeholders will do so as speakers or content providers on and over the functions of the Family Court and District Court under the relevant statutory framework.
- IV. The Chief Magistrate's authorization for attendance at workshops and trainings on GBV and FSV provided by stakeholders will be informed by the suitability of the training content and program outline.



**Mark Pupaka**  
Chief Magistrate

4<sup>th</sup> December 2020