



Royal Papua New Guinea Constabulary Commissioner's Circular

Circular No

4/2009

File No

Subject

SEXUAL OFFENCES

POLICY

The law of Papua New Guinea recognises a range of sexual offences which covers both consensual and non-consensual activities. This policy applies to all types of sexual offences but focuses on offences committed on an unwilling victim, and particularly on the offences of rape and sexual assault.

While sexual offences are committed against both males and females, the overwhelming majority of offences are committed against females. In many of those cases the offender is known to the victim, and offenders can include the husband or other family member of the victim. Sexual offences are one of the most traumatic and feared crimes in Papua New Guinea and one of the most serious survivable criminal offences. As such all complaints of a sexual offence will be investigated fully and thoroughly regardless of the social standing or status of the offender or victim and regardless of whether the victim and offender are known to each other.

The Constabulary strongly encourages the reporting of sexual offences. In the normal course of events, police officers enjoy a wide discretion when making decisions about undertaking or continuing an investigation or when making decisions about prosecuting an offender. It must be clearly understood that it is the intention of this policy to severely curtail the discretion of police officers in respect of sexual offences. All complaints will be documented, all offenders will be prosecuted where there is sufficient evidence, all victims will be treated with respect and dignity and all victims will be referred to any available support services, regardless of whether the victim makes or continues a complaint. It is also immaterial if the alleged offence is

not recent. To the greatest extent possible, officers will treat historical offences in the same manner as an offence which was recently committed.

When taking complaints or when otherwise involved in the investigation of sexual offences all officers will act in a professional, objective and unbiased manner. In particular, members of the Constabulary will:

- i. treat all victims with respect and courtesy;
- ii. ensure the dignity of the victim is protected;
- iii. not attempt in any way to discourage a victim from making a complaint;
- iv. not attempt in any way to resolve a complaint of a sexual offence as a family dispute, a civil matter or in any way other than as a complaint of a serious criminal offence.

Compensation paid to the victim has, in the past, been used as an excuse by police officers to cease an investigation or not take a complaint. Police officers have also sought to resolve complaints of a sexual offence by means which have been suggested were restorative justice initiatives. This constitutes a disciplinary offence and such practices will cease immediately. Whether compensation has been paid or not, or whether compensation has been promised, is not to be considered when making decisions about the investigation of the offence or about the prosecution of the offender. The matter of compensation, whether paid or promised, or the matter of whether any restorative justice initiative has been pursued, has no bearing whatsoever on any police response, on any investigation, or on the prosecution of an offender.

Failure to comply with any aspect of this policy represents a clear breach of discipline and will be viewed as disobeying a lawful direction of the Commissioner. Any departure from this policy, either specifically or generally, will render the officer subject to disciplinary action.

PURPOSE

The purpose of this circular is to clarify the position of the Constabulary in relation to the investigation of sexual offences. It is recognised that currently, a range of practices exists across the Constabulary when responding to complaints of this type, some of which are quite clearly unacceptable. The purpose of this circular is to clarify the expectations on any officer who receives a complaint of a sexual offence, or who is involved in the investigation or prosecution of a sexual offence.

All police officers and their supervisors must clearly understand that current practices which do not meet the standards of this policy are no longer acceptable and will not be tolerated.

This circular is also intended to provide procedural guidelines to assist officers who receive a complaint of a sexual offence or who are involved in any aspect of the subsequent investigation.

DEFINITIONS

In this circular the following terms have the meanings shown:

“complainant” means the victim of a sexual offence who has made a complaint about the offence.

“police station commander” means the person appointed to the position of police station commander and includes any person for the time being acting in that role.

“sexual offence” means a criminal offence in which sexual activity is an essential element of the offence.

“welfare service” is a generic term applied to any organisation, government or otherwise, which provides a service of any nature to victims of sexual offences.

REFERENCES

Arrest Act 1977

Criminal Code Act 1974.

Evidence Act 1975

CONTENTS

1. General Requirements

The law of Papua New Guinea creates numerous offences which are of a sexual nature. Some of those offences can be committed on an unwilling victim (such as rape and sexual assault) and some can be committed by consensual activity between two people (such as unnatural offences and indecent practices between males). All police officers, like other members of the community have their own beliefs and values relating to sexual activity. However when dealing with either the victims or offenders in sexual offence matters, police officers will put aside their own standards and act professionally, objectively and in an unbiased manner.

It is recognised that in a country as diverse as Papua New Guinea it is impossible to provide a set of procedures which will apply to all cases. It is also recognised that in remote locations where there is no police presence, sexual offences may be dealt with by local procedures involving traditional remedies. It is further recognised that the location at which an offence occurred might make it impossible for police officers to attend the crime scene. For these reasons the attachment to this circular sets out the procedures that should be followed in an ideal case. In any specific case the procedures set out in the attachment will be complied with to the extent it is possible to do so under the circumstances.

Police officers are placed in a difficult position when investigating sexual offences. Police are required to fully investigate the offence, and this includes gathering all available evidence which may assist with the identification of the offender or the prosecution of the matter. At the same time however police will ensure that the emotional and psychological needs of a victim are met. This means assuring the victim of the support of the police and making arrangements to ensure their safety and welfare.

2. Receiving a Complaint of a Sexual Offence

The impact of a sexual offence on a victim can be one of the most traumatic events a victim will ever suffer. Each victim will react in a different way and the behaviour of

the victim can not be used as an indicator of his or her truthfulness or otherwise. Police officers will not make assumptions about the truthfulness of a complainant based on their own perceptions of the victim's behaviour. When a police officer receives a complaint of a sexual offence the officer will:

- i. Immediately take all action necessary to secure the physical safety of the victim;
- ii. Attempt to put the victim at ease by assuring them they are safe, they are not to blame for the offence and that their complaint is being taken seriously;
- iii. Put in place the first response procedures set out in the attachment; and
- iv. Immediately advise the Police Station Commander by the most expedient means available.

The specifics of taking action to respond to a serious criminal offence will vary from case to case, but will normally entail obtaining personal particulars of the victim and details of the offence, the offender and the location. The intention at this point is not to obtain full particulars, but to obtain sufficient information to identify and secure the crime scene, identify and secure any relevant evidence and to assist in the identification and location of the offender.

3. Responsibilities of Police Station Commander

Police Station Commanders will maintain at the police station a contact list of local welfare agencies and the nature of the service each welfare agency is able to provide to a victim of a sexual offence. The contact list will also include the names of the relevant contact people, their telephone numbers and any other means of contacting the agency.

On being notified of a report of a sexual offence the Police Station Commander will:

- i. Ensure all appropriate first response procedures are put in place immediately. This includes following the procedures set out in the attachment to this circular to the extent that it is possible to do so under the circumstances;
- ii. Ensure the matter is entered in the Occurrence Book and that a crime report is completed and furnished;
- iii. Appoint a specific officer to act as the investigating officer for the matter;

- iv. Treat the victim with dignity and respect and arrange referral to local welfare agencies that can provide a service to the victim.

A victim who has received immediate crisis counselling and support will almost certainly be a better witness than one who is left without any support and counselling.

4. Interviewing Victims

When a statement is taken from the victim of a sexual offence or the victim is being interviewed a person who is of the same sex as the victim will be present at all times. The statement may be taken or the interview conducted by a police officer of the opposite sex, but a person of the same sex as the victim must also be present. That person does not necessarily have to be a police officer. Any departure from this aspect of this policy will be treated as a discipline offence.

In addition all victims should be advised they have the right to have a support person with them while being interviewed or providing a statement. When a victim nominates a support person to be with them, the investigating officer will arrange for that person to be present.

The interview is to take place in a private and comfortable location, where the victim feels comfortable to talk. Under no circumstances should any interview take place in the presence of the alleged offender.

It is vital that the victim describe the sexual offence in his or her own words. Police should use the language that the victim is familiar with. Where language is an issue, police should obtain the services of an interpreter.

If the victim is a child or juvenile, police officers should always focus on the welfare and interest of the child or young person. The child should never be further traumatised by the interview process. Investigators should pay particular attention to the body language of the child and respond appropriately. It is important to establish the child's level of understanding in relation to sexual matters. Investigators should be mindful of the fact that establishing the level of understanding of the child may be of assistance in confirming the child's story. Children will not usually have knowledge

and understanding of sexual matters unless they have been victims of sexual offences.

5. Medical Examinations

Investigating officers will make arrangements for a medical examination to be conducted on the victim to treat any possible injuries or wounds, carry out tests for any sexually transmitted diseases and/or pregnancy and provide treatment as appropriate.

Medical examinations should also be conducted to collect any physical or forensic evidence that may be directed to establishing whether a victim has been sexually penetrated to any extent or sexually assaulted. All possible evidence of the commission of the crime should be obtained from the examination of the complainant including signs of injury corroborating lack of consent (these signs may consist of bruises, lacerations, scratches etc, on any part of the body, including the thighs and genital area). Arrangements should be made as soon as practicable to ensure that any evidence is obtained.

Prior to medical examination police officers will:

- i. Fully inform the victim of the importance of retaining forensic evidence;
- ii. Ensure that the victim is fully aware of the procedures involved in the medical examination;
- iii. Ensure written and signed consent is obtained for any forensic examination; and for the taking of necessary evidentiary photographs;
- iv. Advise the victim that she may have a support person/worker present during the examination;
- v. Arrange transport for the victim to the nearest Medical Centre;
- vi. Contact Medical Staff in advance and advise that a victim of a sexual offences will be attending;
- vii. Advise Medical Staff that a purpose of the examination is to obtain evidence to support a prosecution and that an affidavit will be obtained from them at a later date.

If the victim is a child, police officers must inform the child, their parents or carers that the child will be treated and examined by a doctor.

If the suspect is detained soon after a complaint is made, a medical examination of the suspect will be conducted. When a suspect does not consent to a medical examination immediate action will be taken under section 22 of the Arrest Act to obtain a court order for a medical examination.

Responsibilities of Prosecutors

Sections 37D to 37I of the Evidence Act 1975 provide a range of measures intended to protect the interests of vulnerable and intimidated witnesses. Victims of sexual offences are always to be considered vulnerable and open to intimidation. As such prosecutors will, in every case, seek to obtain the protections of those sections for every victim of a sexual offence.

7. Withdrawal of complaints

Police are expected to support and encourage victims of sexual offences throughout the legal process. Under no circumstances should a member of the Constabulary encourage a victim of sexual violence to withdraw a complaint.

If a request to withdraw a complaint is made after the investigation has commenced the police investigator in charge of the case must obtain a written statement from the complainant setting out that the:

- i. complainant reported a particular incident to the police;
- ii. complainant wishes no further police action in the case and the reasons for the withdrawal of the complaint; and
- iii. request is made in the exercise of the complainant's free will, and not under duress or intimidation by any person.

Prior to ceasing an investigation the investigator will refer the victim to any relevant and available local welfare service and if necessary, assist the victim to access the service. The investigating officer will attempt to ensure the victim accesses counselling, before the withdrawal of the complaint is acted on.

If after counselling the victim still wishes to withdraw the complaint, or if the victim refuses to take part in counselling the investigating officer will report on the matter to his or her Police Station Commander. The Police Station Commander will authorise ceasing the investigation.

Prior to authorising the ceasing of an investigation the Police Station Commander will ensure that:

- i. All efforts have been made to provide the victim with counselling and other available welfare service;
- ii. The decision to withdraw the complaint has been made by the victim of their own free will and not under duress.

8. Compliance with this Policy

Divisional Commanders, Provincial Police Commanders, Metropolitan Superintendents and Police Station Commanders, are to ensure this circular and the accompanying attachment are brought to the attention of all police officers under their command.

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Commissioner of Police