Foreword

This booklet, Introduction to Human Rights Law – Papua New Guinea, highlights some of the specific legislation the Papua New Guinean (PNG) Government had passed to address family and sexual violence and other gender related violence in PNG.

Family and sexual violence is epidemic in PNG. Medecins Sans Frontiers (MSF) stated in their report, Return to Abuser (March 2016), ‘In PNG, women and children endure shockingly high levels of family and sexual violence, with rates of abuse estimated to be some of the highest in the world outside a conflict zone’.

The Office of the Public Prosecutor estimated that during its last reporting period, 55% of all sexual violence cases dealt with the abuse of children under 16 years old. According to the Department of Health, two out of three women have experienced physical and sexual violence. We are also seeing a rise in the number of women, children and men being trafficked internally and into PNG. The PNG Government has also amended the Criminal Code in 2013 to give harsher penalties to those who are accused of inciting or causing sorcery related violence.

This booklet provides a guide to the user(s), giving a brief snap shot of the basic human rights specified in the PNG Constitution and specific legislation that relates to family and sexual violence. It helps the user(s) to understand that family and sexual violence is not a private matter but a criminal offence and that you cannot injure another person without facing the full force of the law.

We hope that this is also a tool that helps community advocates to educate the community on their rights and laws that protect them and to bring change in their communities by sharing the information in this booklet. Remember, a life free from all forms of violence is your right.

Ms. Ume Wainetti
National Program Coordinator
FSVAC

Ms. Heather MacLeod
Country Director
World Vision PNG
Acknowledgement

On behalf of the Institute of National Affairs (INA), Consultative Implementation and Monitoring Council’s (CIMC) and World Vision Papua New Guinea (WVPNG), we would like to take this opportunity to acknowledge the following individuals and organisations that contributed to develop this booklet on Introduction to Human Rights Law - Papua New Guinea.

Working Committee

Ms. Ume Wainetti, National Program Coordinator – CIMC-FSVAC
Mr. Isi Oru, Senior Program and Projects Officer – CIMC-FSVAC
Ms. Rebecca Robinson, Technical Advisor – CIMC-FSVAC
Ms. Enid Kantha, Programme Specialist – IOM
Ms. Kirsten Newton, FSV Advisor – Justice Services and Stability for Development (JSS4D)
Mr. Tevita Seruilumi, Consultant – Fiji

Review Committee

Mr. Henry Yamo, Deputy Executive Officer – CIMC
Ms. Ume Wainetti, National Program Coordinator – CIMC-FSVAC
Ms. Stella Rumbam, Zone 1 Operations Manager – WVPNG
Mr. Donald Kanini, Gender and Grants Officer – WVPNG
Ms. Leah Dama, Gender, Faith & Development Officer – WVPNG
Ms. Lorna Maso, Gender and Social Inclusion Coordinator – WVPNG
Ms. Ruth Koddy, Principal Legal Officer – DJAG
Ms. Louisiana Pep, Legal Officer - DJAG
Mr. David Kuvi, State Prosecutor – Office of the Public Prosecutor

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**Introduction**

The Family and Sexual Violence Action Committee (FSVAC) is a sectoral committee of the Consultative Implementation and Monitoring Council (CIMC). FSVAC is mandated to look into the problems associated with family and sexual violence and to come up with concrete ways of addressing the problem in Papua New Guinea (PNG). CIMC-FSVAC is comprised of representatives from the government, private sector, non-government organizations, churches and development partners in which World Vision Papua New Guinea (WV PNG) is a member.

CIMC-FSVAC in partnership with WVPNG is implementing the legal literacy project under the Papua New Guinea Leadership Against Gender-Based Violence funded by European Union. WVPNG is a member of the WV International (WVI) partnership which implements relief and development projects in over 100 countries throughout the world. In PNG, World Vision is registered as a local NGO under the name World Vision (PNG) Trust.

This booklet on Introduction to Human Rights Law - Papua New Guinea has been designed for community advocates and educators working to reduce family and sexual violence and other gender related violence. We hope that it will help user(s) to understand key legislations and their applications related to family and sexual violence in PNG.
Human Rights

Human rights are inherent to all human beings, regardless of nationality, place of residence, sex, sexual orientation, or ethnic origin, colour, race, political belief, economic status, religion, age, language, or any other status. We are all equally entitled to our human rights without discrimination (Universal Declaration on Human Rights).

The Constitution of Papua New Guinea: Knowing Your Basic Rights

The PNG Constitution is the highest law in the country. Parliament must ensure that all other laws are consistent with the Constitution. This means that other laws or customary practices cannot take away rights given by the Constitution. If a law goes against what is in the Constitution, Parliament needs to change the law. The Constitution gives rights and freedoms to every PNG person. These are human rights.

The Government of PNG is responsible for making sure that everyone’s rights are protected – this makes the Government the duty bearer. All women, men, girls and boys in PNG are entitled to the rights and freedoms included in the Constitution – this makes you, rights holders. As a rights holder, you also need to make sure that you do not do anything that takes away another person’s basic rights.

The National Court now has a Human Rights Track and Human Rights Rules that allow (amongst other things):

• A person to commence a human rights proceeding (e.g. complain about a breach of human rights) by filling out a Human Rights Enforcement Application form.
• The Court to commence proceedings on its own initiative (i.e. without a formal complaint being made).
• Any person to bring any suspected human rights breach to the attention of the Court.

This means that it is not just a victim who can bring a case for enforcement. It can also be:

• a person or body who has an interest in the protection and enforcement of human rights, or
• a person representing an international body with responsibility for protecting human rights, or

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• any other person or body who has sufficient interest in the protection and enforcement of human rights as approved by the court.

Basic Rights are:

Right to freedom
No one can be forced to do anything that is not required by law. It includes freedom of speech and expression, movement, residence, and the right to practice any profession or occupation.

Right to life
No one can kill another person. The right to life can be limited if the National Court finds someone guilty of serious crime such as aggravated rape or wilful murder and can order an execution.

Freedom from inhumane treatment
No one can be tortured.

Important
• Any violence or torture against another person or a group of people by an individual or group of people including members of their family or community is inhumane treatment.

Liberty of the person
A person has the right to move about freely unless he/she comes into conflict with another person rights, example: trespassing on private property. A person’s movement can also be restricted when they have broken the law. Then the Government can arrest, detain and sentence that person for their crime.

Freedom of employment
Everyone has the right to work. No one can be refused work based on their race, tribe, place of origin, political opinion, disability or sex.

Important
• This does not mean that someone is entitled to any kind of work. Different jobs will require different qualifications, skills and experience.

Freedom from forced labour
No one can be forced to do work they have not consented to do and where there is an element of exploitation for example forced prostitution, child labour (example: a child babysitting a child). This right is limited for people who have been found guilty of a criminal offence and are imprisoned.
Freedom from search and entry
No one’s home or property can be searched unless:
1. the law has given specific powers to a government department to enter a house under situations where someone is at risk or it is believed that a crime has been committed.
2. the Court makes an Order (search warrant) allowing for a house to be searched.

Freedom of expression
Everyone can express their views and opinions freely by speech or publication as long as it does not infringe on another person’s rights.

Right to privacy
Everyone has the right to a private family life and private communications with other people.

**Important**
- This right can be limited if a crime has taken place within the home or if a recorded private communication is required in court as evidence.

Equality
Everyone has the same rights and responsibilities regardless of clan, race, tribe, place of origin, political opinion, religion or sex.

**Important**
- The Constitution allows for the creation of laws that benefit groups that are discriminated, including women, children and young people, underprivileged and vulnerable groups.

Family Protection Act 2013: The new offence of Domestic Violence
Under the *Family Protection Act 2013*, domestic violence is an offence. Domestic Violence occurs when someone does one of the following to a family member:

- Assault (whether physical or otherwise)
- Psychological abuse, harassment or intimidation
- Stalking
- Offensive or indecent behavior
- Damage to property
A ‘family member’ is:
- A spouse
- A child or step child
- A parent or parent in law
- A grandparent
- A brother or sister or brother or sister in law
- Any other person who is treated as a family member.

**Penalty:** A fine of up to K5000 and/or imprisonment for up to two years and compensation.

Note: The domestic violence offence is only intended to be used for less serious matters. Other serious offences like: serious physical harm or committing sexual assaults or child sexual offences are dealt with under the *Criminal Code*, which has higher penalties, although the *Family Protection Act* may still be used to obtain Interim Protection Orders or Protection Orders in these cases.

**Protection Orders under the Family Protection Act**
Under the Family Protection Act, an applicant may apply for **two different types of orders**, which are civil orders (not criminal orders):

a) An Interim Protection Order; or
b) A Protection Order.

**Interim Protection Order (IPO)**

(a) Immediate protection for complainant and other family members against domestic violence
(b) Contains conditions that **restrain, restrict and prohibit the behaviour of the defendant** in order to prevent further violence
(c) No lawyer required
(d) Obtained at village court and/or district court
(e) The court will assist with forms if required
(f) 30 days duration with a 30 day extension if required
(g) NO FEE

Note: An application for an IPO may be made **without the knowledge of the defendant** if the court is satisfied that any delay would put the applicant or a family member in danger of domestic violence or cause undue hardship. However, the order is only effective once it has been served on the defendant.
Protection Order (PO)

A PO differs from an IPO in the following key respects:
(a) Only a District Court Magistrate can issue a PO; and
(b) Up to 2 years in duration

IPO or PO?

An IPO will usually be issued where there is immediate danger of domestic violence and the applicant needs protection while further evidence is gathered or while the full case is waiting to be heard. The defendant need not be notified of the hearing. The Magistrate may convert the IPO into a PO when she or he makes a final decision on the case.

A PO is normally issued once the District Court Magistrate has made his or her final decision on a domestic violence case or application for a protection order. It will usually be made once the defendant has been notified and has had a chance to have his or her side of the story heard.

Enforcement

An IPO or a PO, as long as it has been validly served on the defendant, is enforceable in any part of Papua New Guinea by any District Court or police officer.

Penalty: Breach of an IPO or a PO is a criminal offence for which the penalty is a maximum fine of K10,000 and/or imprisonment for up to three years.

Sexual Violence: Criminal Offence

Sexual violence

Any sexual act or attempt to obtain a sexual act by violence, coercion or deceit. This includes unwanted sexual comments or advances or acts directed against a person’s sexuality, regardless of the relationship to the victim.

The Criminal Code Act 1975, has criminalized any act of sexual violence as a criminal offence. The Code was amended in 2002. Under the amended Criminal Code (Sexual Offences and Crimes against Children Act 2002), it is a crime:

(a) For a person who is in the position of trust or authority to have any CONSENTING sexual relationship with a child aged below 16 years old.
(b) If the child is under the age of 12 years old, the penalty increases to life imprisonment.


**Rape**  
A person who sexually penetrates a person without his/her consent is guilty of the crime of rape.

**Marital Rape**  
This applies to non-consenting sexual activities involving men and women over the age of 16 (inclusive of people who are married or in a sexual relationship). Under the *Amended Criminal Code Act 2002*, it is a crime without consent to:

(a) force sex on a man/woman  
(b) put a penis into another person’s mouth  
(c) put any body part (finger etc) into another person’s anus or vagina.  
(d) force his/her wife or husband to have sex against his/her will.

**Penalty:** depending on the nature of the abuse, the accused can be jailed up to 15 years or life imprisonment (pack rape, using of weapons, tools etc.)

**Sexual Penetration**  
The act of penetrating (entering into/inserting) of a penis or a foreign object without consent into another person’s vagina, anus or mouth. Even the slightest penetration is considered complete penetration.

**Penalty:** If the child (survivor) is under 12 years old, or the perpetrator has abused the position of trust, he/she can be jailed for life.

Note: Other than in the course of a procedure carried out in good faith for medical or hygienic purposes.

**Sexual Assault**  
A person who, without a person’s consent – touches, with any part of his/her body, the sexual parts of that other person; or compels another person to touch, with any part of his/her body, the sexual parts of the accused person’s own body, is guilty of a crime of sexual assault.

**Penalty:** Subject to Subsection (4), imprisonment for a term not exceeding five years.
For the purpose of this section, ‘sexual parts’ include the genital area, groin, buttocks or breast of a person.

**Procured Sexual Offence**
When you order or plan a sexual attack on another person for payment or payback you are committing a sexual offence (crime), even if you are personally not involved in the act.

**Penalty:** Imprisonment for a term up to 20 years.

**Sex Crimes against Children**
It is a criminal offence to engage in any sexual activity with a child under the age of 16 years with or without consent.

**Sexual Touching**
It is crime to touch the sexual parts of a child (buttocks, anus, vagina or breast) or to force a child to touch the sexual parts of the perpetrator’s body.

**Penalty:** The perpetrator will be charged and jailed up to 7 years. If the survivor is under 12 years old or the perpetrator has abused a position of trust, he/she can be imprisoned up to 12 years.

**Indecent act directed at a Child**
Exposing of one’s private parts to a child in a sexual way or making children expose themselves in a sexual way.

**Penalty:** imprisonment for 5 years. 7 years imprisonment if the survivor is under the age of 12 or the position of trust has been abused.

**Persistent Sexual Abuse of a Child**
Committing any of the above sexual crimes against a child over a long period of time.

**Penalty:** the perpetrator imprisoned up to 15 years imprisonment.

Note: It is not necessary to remember the dates or exact circumstances of the sexual abuse.
Criminal Code Amendment 2013 on People Smuggling and Trafficking in Persons

Human Trafficking involves:

**ACT:** the recruitment, transportation, transferring, harbouring, or receiving of payments or benefits to have control over another person.

By **MEANS:** threat, force, coercion, deception or the giving and receiving of payments or benefits to have control over another person.

For the **PURPOSE:** of exploitation including prostitution, sexual exploitation, forced labour, domestic servitude, slavery and other similar practices.

*(Adapted from the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons)*

**How does Trafficking work?**

1. **Transnational Trafficking**- takes place between two or more countries.
2. **Domestic/Internal Trafficking**- takes place within (i.e: rural-urban, village-village).

   Note: When identifying an Adult Victim of Trafficking, ALL three elements must be present. In the case of a Child/ren, only two elements need to be present; the ‘means’ is irrelevant.

**Penalties for Trafficking in Persons:**

In 2013, the PNG *Criminal Code* was amended through *Criminal Code (Amendment) Act No 30 of 2013* to cater for the offence of human trafficking in line with the international definition.

   (a) **Adults:** imprisonment for a term not exceeding 20 years.
   (b) **Child/Minor:** imprisonment not exceeding 25 years.
   (c) If the Victim of Trafficking (VoT) is subjected to circumstances that could result in death or results in death: life imprisonment.

**What is People Smuggling?**

People Smuggling is an organized illegal crossing over an international border that is provided in return for a certain payment or benefit by the migrant.

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People Smuggling:

(a) ALWAYS occurs over an international border.
(b) Is a CRIME AGAINST the STATE.
(c) Although in some cases is consensual, the act of smuggling can be dangerous and abusive.
(d) Does not always but \textbf{CAN} lead to human trafficking.
(e) Involves large profits which provide the means for smugglers to continually update their strategies and techniques.
(f) Occurs through irregular migration channels, which means that migrants risk their health and dignity in order to reach their destination.

Penalties for People Smuggling under the \textit{Criminal Code}:

A person who intentionally facilitates unlawful entry of another person into the country in order to obtain a benefit either knowingly or being reckless to the fact that the person’s entry is unlawful is \textbf{Guilty of a Crime}!

- Unaccompanied minor: imprisonment for a term not exceeding 20 years.
- Unaccompanied minor: imprisonment for a term not exceeding 20 years.
- If the smuggled person is subjected to circumstances that are cruel, inhuman or degrading including exploitation and/or could result in death or serious harm - imprisonment for a term not exceeding 20 years.

Differences between Human Trafficking and People Smuggling

<table>
<thead>
<tr>
<th>Human Trafficking</th>
<th>People Smuggling</th>
</tr>
</thead>
<tbody>
<tr>
<td>No/False consent</td>
<td>Consent - voluntary</td>
</tr>
<tr>
<td>Can be transnational or domestic</td>
<td>ONLY transnational - always occurs over an international border</td>
</tr>
<tr>
<td>Exploitation</td>
<td>No exploitation</td>
</tr>
<tr>
<td>Crime against an individual</td>
<td>Crime against the State</td>
</tr>
<tr>
<td>Commodity = person</td>
<td>Commodity = movement/service</td>
</tr>
</tbody>
</table>

Remember:

1. \textbf{Human Trafficking} is the exploitation of a human being and always a violation of their human rights.
2. \textbf{People Smuggling} is an organised illegal border crossing.
Sorcery-related Violence

The PNG Government has totally repealed the *Sorcery Act of 1971* and made Amendments to the *Criminal Code* which Parliament passed in 2013 addressing sorcery-related violence.

The Amendments to the *Criminal Code* relating to sorcery hold accountable before the law the following:

(a) those who are levelling the accusations  
(b) the witch doctor (glasman/meri) who are hired to confirm the accusation  
(c) the persons who are actually carrying out the torture and killing.

Sorcery and witchcraft accusations are a social and development issue. In Papua New Guinea, sorcery-related violence is proving to be very destructive, creating an atmosphere of fear within individuals, family members and the community. The forms of sorcery-related violence are sexual exploitation, mutilation of body parts, burning and torture and killing of innocent women, men and children. It further demeans the respect which is due to all people.

The Amendments to the *Criminal Code 2013* state that:

(a) Any person who kills another on the account of accusation of sorcery is guilty of wilful murder and may be given the death penalty.  
(b) A person who attempts to kill another person on the account of accusation of sorcery would be held on the charge of attempted murder and can be liable for the sentence of imprisonment for life.  
(c) Any person who is found to be an accessory to killing or attempted killing on account of accusation of sorcery will be liable for the sentence of life imprisonment.  
(d) Any person found to have conspired to kill on account of accusation of sorcery is guilty of a crime and is liable for a sentence of 14 years imprisonment.  
(e) A person who incites, encourages, urges, counsels or commands the unlawful killing on the account of accusation of sorcery is guilty of a crime and will be liable for a sentence of 7 years imprisonment.
## Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitution</td>
<td>This is the Supreme Law of the Country—put simply, it is the Mama Lo. It provides for all the rights of every individual living in PNG. It also gives authority for other laws to be made that guide everyone.</td>
</tr>
<tr>
<td>Legislation</td>
<td>These are laws that are passed by Parliament. They are also known as statutes and/or Acts of Parliament. They get their authority from the Constitution.</td>
</tr>
<tr>
<td>Human Rights Track</td>
<td>This is a special avenue provided by the National and Supreme Courts for people to enforce their rights in the higher courts of the country. It is managed by a Human Rights Judge of the National Court, who presides over all such cases.</td>
</tr>
<tr>
<td>Human Rights Rules</td>
<td>These are a special set of rules used by the Human Rights Court as a guide for dealing with human rights cases that come before it.</td>
</tr>
<tr>
<td>Human Rights Proceeding</td>
<td>Any case that concerns human rights and goes to court through the human rights track.</td>
</tr>
<tr>
<td>Human Rights Enforcement Application Form</td>
<td>This form can be obtained from the Human Rights Track at the National Court House in Waigani. It is a simple document that a person claiming human rights abuse can fill out and is used to commence the process of a human rights case.</td>
</tr>
<tr>
<td>Qualified Rights</td>
<td>An individual's right can be restricted or regulated for the sake of public interest or for the protection of rights and freedoms of others. For example, you have a right to move about freely however that right is restricted when you are on private property.</td>
</tr>
<tr>
<td>Guaranteed Rights</td>
<td>Generally refers to all those rights guaranteed under the Constitution and are enforceable under Section 57 of the Constitution, which includes any qualified right.</td>
</tr>
<tr>
<td>Liberty</td>
<td>The freedom of a person to move about freely and do as he/she wishes within the confines of law.</td>
</tr>
<tr>
<td>Key Populations</td>
<td>Also referred to as most-at-risk populations are people who inject drugs, gay men and other men who have sex with men (MSM), transgender persons and sex workers.</td>
</tr>
</tbody>
</table>
References

PNG Constitution

*Criminal Code Act 1975: Sexual Offences*

*Criminal Code (Sexual Offences and Crimes against Children) Act 2002*

*Criminal Code (Amendment) Act 2013 Trafficking and People Smuggling in Persons*

*Criminal Code (Amendment) Act 2013 Sorcery-Related Violence*

*Family Protection Act 2013*