

## Papua New Guinea

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

Statutory and customary marriages are recognised in Papua New Guinea (PNG) under the 1963 Marriage Act. While statutory marriages are subject to numerous formalities prescribed under Division 2 of the Act – e.g. a written declaration of intention to marry by both parties, the solemnisation of the union with the presence of two witnesses – customary marriages are not bound by the same formalities and are deemed valid if performed in accordance with the custom prevailing in the tribe or group to which either or both parties belong to (art. 3). No legal minimum age of marriage therefore applies to customary marriages.

The 2014 Civil Registration Amendment Act introduced important changes by outlawing polygamous marriage (art. 39) and requiring the registration of all marriages, including customary marriages (art. 37 and 39). Accordingly, the Registrar-General must ensure that both parties are not marrying a second spouse and that they have received the blessing of the church or a written notice / certificate from the Village Court Magistrate (art. 39). Despite these provisions, polygamy continues to be practiced by men, as it is seen as a marker of wealth and status and possibly resulting in increased levels of violence in the family (HRC, 2013).

The Marriage Act contains provisions prohibiting forced customary and statutory marriages. If a woman enters into a customary marriage due to excessive pressure, or if the marriage customs creates undue hardship, the District Court Magistrate will forbid the marriage (art.5). Likewise, statutory marriages based on consent obtained by duress or fraud will be declared void (art. 17 para. 1d). Forced marriages are punished in both cases by a fine of up to K400 or up to six months' imprisonment (art. 5 and 61). If the forced marriage was orchestrated by abducting the woman, the offender faces up to seven years' imprisonment (Criminal Code art. 350).

The scope of these provisions is limited by kinship rules, which determine who a person will marry. Several cultures in Papua New Guinea still practice the 'bride price payment', whereby two kin groups exchange a bride for a marriage payment in the form of food and ceremonial goods (ADB, 2012). Forced marriages are also performed through the exchange of two sisters between two communities. Arranged marriages are often used to resolve disputes, settle peace treaties, or as a means for men to ensure that their aged parents are looked after (ADB, 2012).

At the time of writing, amendments to the Marriage Act and 1963 Matrimonial Causes Act were being drafted and tabled for Parliamentary reading, namely to introduce a definition of marriage encompassing both customary and non-customary marriages, so that all marriages "meet certain basic requirements regarding consent and marriage age" (Global Legal Monitor, 2016). At present, customary marriages fall outside of the scope of the Matrimonial Causes Act, which regulates parental responsibilities, dissolution of marriage, re-marriage and other important aspects of family law. Under

the Matrimonial Causes Act remarriage is only possible if the marriage was dissolved by death (art. 34).

### **b) Child marriage**

The 2009 Lukautim Pikinini (Child Protection) Act raised the age of majority from 16 to 18 years, and was amended in 2015 to enforce a minimum legal age of marriage of 18 years, for all marriages. However, the revised law is yet to be certified by the government (June 2016 Index of Papua New Guinea legislation), meaning that the provisions of the 1963 Marriage Act continue to apply. Accordingly, only statutory marriages are bound by a legal minimum age of marriage, which is set at 16 years for girls, and 18 years for boys (art. 7 para 1). Judges can also allow girls and boys of respectively 14 and 16 years of age to marry someone of 'marriageable age', provided that 'the circumstances of the case are so exceptional and unusual as to justify the making of the order' (art. 7 para. 2-3). Those who facilitate early marriages face a fine of up to K400 000 or a prison sentence of up to six months (art. 62-63).

The amendments to the Marriage Act include provisions to align the text with the 2015 Lukautim Pikinini Act, so that 18 years becomes the standard minimum legal age for all marriages (customary marriages included), and so that fines (K10 000 - 20 000) and prison sentences (5-7 years) are imposed on persons who force underage marriages (Global Legal Monitor, 2016; Siraba, 2015). Until the amended Marriage Act is passed by Parliament, and until the 2015 Lukautim Pikinini Act is certified, a gap in protection remains for girls in statutory marriages, and for girls and boys alike in customary marriages. Child marriage is widely accepted in almost all tribes in Papua New Guinea, whose traditional laws base marriage criteria on puberty or maturity, rather than on the age of the child (Goa, 2014).

### **c) Household responsibilities**

Parental responsibilities are imposed on both parents under numerous texts: the Lukautim Pikinini (Child Protection) Act (art. 7-8), the Child Welfare Act (art. 94), the Deserted Wives and Children Act (art. 22), and the Criminal Code (art. 284). Such obligations towards children encompass many aspects of their upbringing, including maintenance, education, food and medical attention. By contrast, the law does not contain any specific provisions on other aspects of family life, such as the right to head the household, to choose the family home, or to act as the legal guardian of children etc. The tradition is for women to move to live with their husband's kin after marriage (ADB, 2012).

### **d) Divorce**

The 1963 Matrimonial Causes Act – which only applies to statutory marriages and does not apply to the Autonomous Region of Bougainville – provides women with the same right as men to initiate divorce, provided that their petition is based on one or several of the 14 'faults' listed in art. 17 (e.g. adultery, desertion, acts of cruelty, habitual intoxication, refusal to consummate the marriage). The dissolution of customary marriages can however be certified by a magistrate under the 1963 District Courts Act (art. 22A).

Legal provisions relating to statutory marriages also provide women with the same right to be the legal guardian of their children after divorce (Matrimonial Causes Act art. 74), and with the same responsibilities as men towards their children (Deserted Wives and Children Act art. 10). There are no reports of discriminatory practices towards women, both in relation to initiating divorce, and with regards to their rights to legally represent their children after divorce, although the Asian Development Bank (ADB) reports that many women do not have the necessary resources to prove in court that their husbands have committed adultery or abuse, and that many women face difficulties in enforcing favourable child custody court orders (ADB, 2012).

### e) Inheritance

The 1966 Wills, Probate and Administration Act provides women and men with the same right to make a will upon reaching 21 years of age (art. 11-12). When succession is governed by a will, daughters and female surviving spouses have the same right as sons and surviving male spouses to inherit land and assets (art. 84). Surviving spouses cannot be disinherited through a will, as they are entitled to a compulsory portion of the estate: one third if the deceased has lineal descendants, or half the estate in the absence of lineal descendants (art. 84). Customary inheritance laws apply in the absence of wills (art. 35) and are based on patrilineal lines in most kinships, thereby discriminating against women on many occasions (ADB, 2012).

## 2. Restricted Physical integrity

### a) Violence against women

Violence against women (VAW) is very problematic in PNG as it is frequently perpetrated in family settings, prisons and police stations, and further exacerbated by the tribal *wantok* system, the widespread belief in witchcraft and sorcery, and the high levels of substance abuse (HRC, 2013). Women are sixteen times more like to be accused of sorcery than men and, thus, frequent victims of sorcery-related torture and killings (HRC, 2013). Women who marry into different tribes, as well as widows and elderly women with no children to protect them, are particularly at risk (HRC, 2013). The *wantok* solidarity tradition protects perpetrators, potentially deterring victims and witnesses from reporting information to the police and subsequently the police from pursuing the perpetrators (HRC, 2013). Other reported forms of VAW include property destruction (e.g. identification documentation) (HRC, 2013).

The country has taken steps to address VAW. At the legislative level, the 2002 Sexual Offences and Crimes Against Children Act introduced important changes, including the criminalisation of marital rape and new provisions on evidence, so that victims of sex crimes no longer need to produce medical evidence or a witness (Biersack et al., 2016). In 2013, the 1971 Sorcery Act was repealed so that the accusation of sorcery no longer constitutes a plausible defence in murder cases, and a new article on sorcery-related killings was introduced in the Criminal Code (HRC, 2016).

In 2015, the government endorsed a National Action Plan against Sorcery and Witchcraft-related Violence (SNAP), followed by a 2016-2025 National Strategy on Gender Based Violence (GBV) in March 2017 (HRC, 2016; UNDP, 2017). The strategy sets out to establish an institutional structure and

governance model on GBV, to ensure quality research and data collection on GBV, to ensure sustainable and coordinated responses, referrals and service delivery for survivors of GBV, and to scale-up inclusive messaging and initiatives to prevent GBV. To do so, the strategy provides for the creation of a Ministerial GBV Committee, consisting of relevant government departments (e.g. Health, Justice and Attorney General, Planning and Monitoring, Education) responsible for planning, budgeting and implementing GBV activities. The strategy also endorses the creation of a National GBV Advisory Committee, tasked with screening research proposals, ensuring appropriate data sharing, and developing protocols and ethical guidelines for research on GBV.

However, to date, both policy texts reportedly lack funding and capacity for implementation (HRC Addendum, 2016). Moreover, cases of VAW rarely reach courts bound by the Constitution and national laws (district courts or the National Court), and are often resolved by village courts instead, through mediation processes and compensation payments (Biersack et al., 2016). For this reason, a key target of the 2016-2025 strategy is to ensure that at least 60% of gender-based violence cases are resolved by the formal justice system by 2025.

#### **b) Domestic violence**

Domestic violence is criminalised under the Family Protection Act (2013), although the bill is yet to be implemented (HRC Addendum, 2016). Domestic violence is defined as assault, psychological or sexual abuse, harassment, intimidation, stalking, indecent or offensive behaviour, or property damage perpetrated against a family member (art. 5). The notion of domestic violence encompasses the threat of committing any of the aforementioned acts and is applicable to current / former spouses and de facto partners (art. 2). More serious offenses such as sexual assault, serious physical harm or child sex offenses are sanctioned by harsher penalties under the Criminal Code.

The penalty prescribed by the law is a fine of up to K5000 and/or imprisonment for up to two years (art. 6), as well as compensation if the victim suffered financial loss, property damage or personal injury (art. 21). Two types of family protection orders can also be granted by the court, free-of-charge (art. 25). The first is an interim protection order of up to six months (art. 7 and 14), which can be requested orally or in writing at a village or district court and issued without a hearing. The second is a longer-term protection order of up to two years issued by a Magistrates Court after a hearing (art. 16). The measures contained in these orders can vary greatly, from permitting the perpetrator to continue living with the victim (providing that the perpetrator refrains from further abuse) to total exclusion from the family home, refraining from destroying property, and mandatory mediation or counselling (art. 8-11).

Hospital-based Family Support Centres (FSCs) were introduced in 2003 as safe spaces offering medical / psychological assistance, counselling and legal advice to survivors of domestic violence, and as a mechanism for community outreach on domestic violence prevention (IOD PARC Australasia, 2016; Biersack et al., 2016). Police Family and Sexual Violence Units (FSVUs) have also been established to provide survivors with police and prosecutorial support. 15 FSCs and 15 FSVUs were reportedly functioning in 2015 (IOD PARC Australasia, 2016; Biersack et al., 2016). The welfare of children abused in family settings is also at the heart of the revised 2015 Lukautim Pikinini (Child Protection) Act, which

requests the creation of several child welfare bodies at national and provincial levels (IOD PARC Australasia, 2016; Biersack et al., 2016).

Despite these measures, female survivors of domestic violence face difficulties in accessing support, especially due to the lack of FSVU resources and the unresponsiveness of these units, particularly in rural areas or in cases involving powerful members of the community (HRC, 2017; Biersack et al., 2016). Abusive husbands commonly silence their wives by using or threatening to use sorcery accusations against them, while those who speak out are often told by the police to solve their problems at home or to pay them to take action (HRW, 2015). Lack of qualified counsellors and legal aid are additional barriers (HRC, 2017). The 2016-2025 National Strategy on Gender-based Violence aims to address these challenges through several measures, including by creating two GBV training centres by 2021, by establishing a 24-hour hotline by 2018, and by establishing two national shelters by 2020.

The high number of female victims of domestic violence in the country is linked to several causes, including polygamy and widespread acceptance of the practice (HRC, 2013). It may also be linked to the practice of bride-price payment, as husbands feel entitled to abuse and control their wives, whilst victims' families fear being obliged to pay compensation or to repay the bride price if they support the victim (HRC, 2013). In some instances, cases of domestic violence in marital relationships have ended with victims murdering their partner or his girlfriend(s) (HRC, 2013).

### c) Rape

Rape contains a penalty of 15 years' imprisonment and is defined as the act of sexually penetrating someone without his or her free and voluntary agreement (Criminal Code art. 347). The law contains a non-exhaustive list of situations characterising lack of consent and further specifies that the absence of physical resistance or the lack of injury do not suffice to characterise consent; nor does the fact that the victim consented to engaging in another sexual act with the perpetrator, either at the time of the act or on an earlier occasion (art. 347A). The law also specifies that the accused cannot allege his or her belief that the person was consenting if such belief arose from self-induced intoxication or reckless or wilful blindness, or if the accused did not take reasonable steps to ascertain whether the person was consenting (art. 347B).

After marital rape was criminalised in 2002 (art. 349), aggravated forms of rape were introduced in 2013 (art. 347C: gang rape, child rape, rape with a weapon, or rape with armed robbery). Aggravated rape carries the death penalty rape, despite the concerns raised by Amnesty International since 2014 (Amnesty International, 2014).

Despite the toughening of the legislation, rape remains widespread in PNG, with UNICEF referring to an 'epidemic level' in 2013 and highlighting women's inability to move about freely from fear of being raped (HRC, 2013). Gang rapes are particularly frequent with reports of criminal gangs promoting sexual violence against women as a means of asserting masculinity and strengthening male bonding (HRC, 2013). Rape is also frequent in regions facing tribal conflicts as it is seen as the symbol of tribal

dominance (HRC, 2013). Testimonies of rape linked to land disputes and electoral processes have also been collected (HRC, 2013).

In the 2016-2025 National Strategy on Gender Based Violence, the government recognises the critical need to increase awareness about the harmful effects of rape and other forms of GBV, as well as the need to ensure more accessible legal services for survivors of GBV. In this context the strategy aims to scale-up and decentralise GBV prevention messages and interventions, and to increase the provision of legal aid services by 2025.

#### **d) Sexual harassment**

Although there is no legislation on sexual harassment, national policies aim to prevent this form of violence in learning environments and the public service (2002 policy on Gender Equity in Education; 2013 policy on Public Service Gender Equality and Social Inclusion), and in all spheres as of 2017, since the adoption of the 2016-2025 national strategy on gender-based violence.

#### **e) Female genital mutilation**

There are no reports that female genital mutilation is a concern in PNG (UNICEF, 2016).

#### **f) Abortion**

Abortion is illegal in PNG, unless it is performed to save the life of the woman (Criminal Code art. 225, 226, 280b). As such, any woman who intends to procure her own abortion or who permits someone from causing her abortion faces up to seven years' imprisonment, while any person who unlawfully procures a miscarriage faces up to 14 years' imprisonment (art. 225). Those who unlawfully supply or procure drugs or instruments to a woman, while knowing that these are intended to be used for an abortion, face up to three years' imprisonment (art. 226).

Abortions may be acceptable under some local customs if the mother is unmarried or if the pregnancy is the result of an adulterous or incestuous relationship (UN DESA). There are reports that induced abortions are frequently practiced through ingestion of plant substances, binding of the abdomen and heavy massage (UN DESA). In 2016, the governor of Port Moresby called for a public debate on the abortion law, raising concerns that many women are endangering their lives by resorting to underground abortion (RNZ, 2016).

### **3. Restricted Access to productive and financial resources**

#### **a) Secure access to land and assets**

Customary land – belonging to clans, tribes and land groups – accounts for 97% of all land in PNG (Kariga et al., 2016). Such land is owned and used in accordance with local customs and traditional beliefs, as opposed to the remaining 3% of land that belongs to the State and is regulated by the 1966 Land Act. The Land Act therefore does not apply to all groups of women.

State-owned land can be leased through applications reviewed by the Land Board (Land Act part X), and land tenants may apply to the government to sublease, subdivide, consolidate or dispose of such land (Land Act part XVII, XVIII, XIX). As such, female land tenants have the same rights as male tenants

to use and make decisions over State-owned land, and to use it as collateral (Land Registration Act art. 2, Land Act art. 128, 130 and 131). Land titles for State-leased land are acquired through registration processes, according to the provisions of the 1981 Land Registration Act, which allows joint land titling of proprietors and tenants (art. 16 and 34), making no reference to the marital status or relationship between the individuals. Customary land rights may also be registered to appoint a trustee (art. 98).

The Land Act protects the interests of customary landowners by stipulating that state-owned land can be declared customary land, that the disposal of customary land must respect customs, and that the office of the Custodian for Land Trust protects the interests of customary landowners (Part XX). Women rarely have decision-making powers over customary land though, and lose rights over the land of their kin group after marriage, when they move to the kin group of their husband and start cultivating land belonging to that group (ADB, 2012).

The National Agricultural Research Institute is supporting the PNG Women in Agriculture Development Foundation (PNGWiA) to enhance women's farming activities. The Foundation namely organises trainings for rural women and provides them with networking activities (PNGWiA website).

With regards to non-land assets, the 1953 Married Women's Property Act provides married and unmarried women with the same rights as married and unmarried men to own, use and dispose of property (art. 2). Spouses can jointly administer property (art. 3-4), but the law discriminates against women by requiring them to obtain the consent of their husband before investing his money (art. 9), while no such obligation is created for men. Moreover, the vast majority of women are married under customary law and are thus deprived of property rights, given that men are seen as the custodians of a kin group's property (ADB, 2012). In addition, the Matrimonial Causes Act does not provide clear protection for women for the settlement of property after divorce (IFC, 2010).

### **b) Secure access to formal financial resources**

The Married Women's Property Act provides women with the same right as men to make deposits in banks and financial institutions, regardless of their marital status, without the need for the husband's signature. In practice however, unsalaried women require a salaried husband as guarantor to obtain loans, and thus face challenges in accessing finance (IFC, 2010). In addition, women rarely control their business incomes as husbands traditionally assume control of significant financial returns, while the customary *wantok* system also allows male relatives to request the female relative to hand over her financial resources (IFC, 2010).

Credit is provided to women through the Women's MicroBank (the first women's financial institution, which opened in 2014) and PNG Microfinance (who has 50% of female customers). The government is working to strengthen and expand these institutions with the support of international donors (e.g. Asian Development Bank, International Finance Corporation) (ADB, 2012). The government has for instance set a target to increase the rate of female-owned SMEs, from 25% in 2013 to 35% in 2017 (government of PNG, 2015).

### c) Workplace rights

PNG is a party to ILO Conventions 100 and 111 on equal remuneration and non-discrimination. Accordingly, the Constitution protects the freedom to choose an occupation, and the 1978 Employment Acts imposes fines on employers guilty of discrimination based on sex, and on employers who violate the principle of equal remuneration for work of equal value (art. 2). The Employment Act prohibits women from being employed in mines or in heavy labour (art. 98), and from working night shifts, unless they occupy a managerial or technical position, or work in a family business or in the health or welfare sector (art. 99). The law also prohibits employers from terminating the contract of a pregnant employee without her consent (art. 100).

However, the provisions of the law on non-discrimination in employment are very general, without any reference to terms and conditions, promotions, trainings, hiring etc., and the fine imposed on employers who discriminate against women is very low (only up to K200). Moreover, there is no specific body in place to deal with cases of discrimination based on sex; nor any provisions on parental and paternity leave; and only very restricted provisions on maternity leave rights (maternity leave is both unpaid in non-government sectors and limited to a period of 6 weeks after giving birth). In addition, very few women engage in formal employment (only 5% in 2013) (HRC, 2013), meaning that the majority are not covered by the Employment Act.

## 4. Restricted Civil liberties

### a) Citizenship rights

The Constitution provides PNG women with the same right as men to acquire and change their nationality as well as confer their nationality to their children and to renounce it, regardless of their marital status (art. 2 and 11). Marriage to a PNG national does not automatically confer PNG nationality but is taken into account when applying for naturalisation (art. 68). Dual nationality is accepted since the Citizenship Amendment Act was passed in December 2016.

The Civil Registration Act regulates birth registration and provides mothers with the same obligation as fathers to register their children within three months of the birth, free of charge (art. 15 para. 2 and art. 25). Late registrations can be issued directly by the PNG Civil and Identity Registry, or through an application to a Magistrate or District Court (art. 25-26). Birth registration is facilitated in rural areas through 'collecting agents' who forward information to registry offices (art. 17), and through an online registration site (Data2x, 2014).

Amendments to the Civil Registration Act in 2014 introduced the National Civil Register and made it compulsory for all PNG citizens to be registered in this computerised system (art. 37C). Those who fail to register face a fine of up to K500 or six months' imprisonment (art. 37C para. 3). The 2014 amendments also introduced national identity cards for all citizens aged 18 years and over (art. 37C para. 4).

The 1982 Passports Act provides women with the same right as men to obtain passports, both for themselves and for their children, regardless of their marital status (art. 4 and 7).



There are no reports of discriminatory practices towards women in relation to birth registration and ID/travel documents.

### **b) Voting**

The Constitution of PNG grants the same voting rights to women and men, upon reaching 18 years of age (art. 50 and art. 126 para. 3), as does the Constitution of the Autonomous Region of Bougainville (art. 8 para. 1c and art. 14 para. 2). Illiteracy is a general impediment to voter awareness in rural electorates (Commonwealth Observer Group, 2012). Moreover, during the 2012 general elections, women in the Highlands were reportedly pressured to vote for candidates set by male family members (Commonwealth Observer Group, 2012).

### **c) Political voice**

Women and men have the same constitutional right to become Prime Minister, to be elected as a Member of Parliament, and to be appointed as a judge (art. 103, art. 142 para. 2, art. 169 para. 2 and art. 170 para. 2). There are no reserved seats for women in the National Parliament, after the stalling of the 2011 Equality and Participation Bill, which contained provisions for 22 reserved seats for women. However, reserved seats are established at the local level as follows: one seat in each Provincial Assembly and in each urban 'Local-Level Government', and two seats in each rural 'Local-Level Government' (art. 10 para. 3e and art. 29 para. 1ciii and 1d).

The Constitution of the Autonomous Region of Bougainville stipulates that women should be fairly represented in all constitutional bodies (art. 19) and therefore establishes three reserved seats for women in the House of Representatives (art. 55 para. 2b)ii), and one reserved seat in the Bougainville Executive Council (art. 80 para. 1c). The Constitution of Bougainville does not discriminate against women in the right to hold public office as a judge (art. 121 para. 4) or Parliamentarian (art. 56 para. 1-3).

Female candidates have been trained on parliamentary processes ahead of the general election at the end of June 2017 (UNDP, 2011). Currently, only 3 out of 111 Members of Parliament (MPs) are women (UNDP, 2017), only one woman holds a Cabinet position (Embassy of PNG to Indonesia, website), and only 3 out of 39 judges of the Supreme and National Courts are women (NSPNG, website). At the local level, women accounted for only 1% of rural council representatives and 10% of urban council representatives in 2013 (UNDP, 2014). The lack of sanctions for failing to implement the temporary measures aimed at enhancing local female representation (reserved seats) may contribute to their slow implementation.

The political underrepresentation of women is also linked to other factors, including family connections in politics, as well as the role of traditional local leaders (older men), whose support is required to win seats in most rural electorates (UNDP, 2014). In addition, resistance to temporary special measures has been reported at senior levels of government, in political parties, and by some women themselves who already enjoy a high political status or believe that quotas send the message that women are incapable of being elected (UNDP, 2014).

#### d) Access to justice

The Married Women's Property Act stipulates that married and unmarried women can sue and be sued (art. 2c), while the 1987 Criminal Practice Rules and 1983 National Courts Rules, which regulates civil and family matters, both confer equal weight to testimonies given by women and men. In addition, the law includes elements to support women in filing lawsuits, particularly through the free filing of criminal suits, the possibility for the reduction or waiver of fees in civil cases, support to illiterate parties in civil cases, and protective measures for proceedings relating to sexual offences under the Evidence Act (e.g. closed hearings, measures to prevent witnesses from seeing the accused, no cross-examination by the accused).

The CEDAW Committee raised concerns in 2010 about the barriers impeding women's access to justice, including the distance to and from courts, the lack of legal aid, the lack of information about their rights, and the lack of resources to pay for legal services (CEDAW, 2010). The CEDAW Committee also expressed concerns about the discriminatory provisions of customary law that are applied by Village Courts, and the fact that these courts often go beyond their jurisdiction to resolve cases of rape through mediation and compensation payments (HRC, 2013). Some studies have shown that women are less likely to bring cases before Village Courts, where customary law does not accord women the same rights as men (ADB, 2012).

The Office for the Development of Women (ODW) was established in 2005 as a stand-alone structure to enhance women's participation in the development of PNG (Government of PNG). Its mandate encompasses policy advice, implementation and gender mainstreaming; research, monitoring and evaluation; coordination and monitoring of international commitments, and the building and strengthening of partnerships. There are no laws governing the production or dissemination of gender statistics.

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