



Government of Papua New Guinea

**Mapping and analysis of legal
and policy frameworks**

THE PROTECTION OF CHILDREN FROM ALL FORMS OF VIOLENCE AND CHILD FOCUSED JUSTICE IN PAPUA NEW GUINEA

REPORT

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Acronyms

CSO	Community Service Organisation
CPO	Child Protection Officer
CPV	Child Protection Volunteer
DC&FSC	District Child and Family Services Committee
DCD	Department for Community Development
DFAT	Australian Department of Foreign Affairs and Trade
FSC	Family Support Centre
FSVAC	Family and Sexual Violence Action Committee
FPA	Family Protection Act 2013
FBO	Faith Based Organisation
GBV	Gender Based Violence
GBV Strategy	PNG National Strategy to Prevent and Respond to Gender Based Violence
JSS4D	Justice Services and Stability for Development Program
LPA	Lukautim Pikinini (Child) Act 2015
NC&FSC	National Child and Family Services Council
NLPP	National Lukautim Pikinini (Child Protection) Policy 2017-2027
NEC	National Executive Council
OCFS	Office of Child and Family Services
ODW	Office of the Development of Women
PNG	Papua New Guinea
PCFSC	Provincial Child and Family Services Councils
RPNGC	Royal Papua New Guinea Constabulary
SDGs	Sustainable Development Goals
UN	United Nations
UNCT	United Nations Country Team
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
VAC	Violence Against Children
VAW	Violence Against Women
VAWG	Violence Against Women and Girls
WHO	World Health Organisation

1. Introduction

This paper presents the findings from a comprehensive mapping and analysis of laws, policies and institutional frameworks aimed at addressing violence against children (VAC), child protection and child justice in Papua New Guinea (PNG). The overall aim of the mapping and analysis is to take stock of all existing legal and policy documentation, to ascertain the barriers, gaps and weaknesses, as well as strengths, and to provide the Government of PNG and UNICEF PNG with evidence-based recommendations for legal development and reform.¹

While nationally representative data on violence against children (VAC) and the experiences of children in the justice system are scarce in PNG, the limited available information indicates that children in PNG experience some of the highest rates of violence in the Asia-Pacific Region and have very little access to child-friendly and rights-compliant justice systems. PNG has made significant progress in improving legal and policy frameworks for the protection of children. A key development was the passage of the Lukautim Pikinini (Child Protection) Act in 2015. Other laws aiming to protect children and women from violence and create a child-friendly justice system include the Family Protection Act (2013); Juvenile Justice Act (2014); Civil Registration Act (2014); the National Strategy to Prevent and Respond to Gender Based Violence 2016-2025 and National Child Protection Policy (2017-2027). While these and other key laws and policies provide a solid foundation for the protection of children from all forms of violence and access to child-friendly justice systems and services, key gaps in legal protection for children remain, limiting the enabling environment for the protection of children and their rights.

In addition, gaps, barriers and bottlenecks in the institutional framework and coordination between different institutions have limited the extent to which these laws and policies are able to be implemented effectively. A better understanding of where these key gaps and barriers lie is essential. A comprehensive legal framework and properly capacitated and well-coordinated institutional framework are essential to ensuring the protection of children from all forms of violence and abuse and to a rights-compliant child justice system. Understanding the gaps and barriers to the full compliance of the law and institutional framework with international standards will provide key insights into how these systems can be strengthened, resulting in better protection of children in all settings.

1.1 Background and Objectives

The PNG Government has committed, under Priority 1 of the Child Protection Policy 2017 – 2027, to ‘strengthen the legal and policy framework and enforcement measures’, including through the reviewing and appropriately amending the existing legal and policy framework and enforcement measures (Priority 1.1), by undertaking to:

- ‘Proceed with the full incorporation of the articles of the CRC and other relevant international conventions into the PNG legal system to place the CRC at the centre of the protection of the best interest of the children;’

¹ UNICEF Papua New Guinea, Request for a contract for services, The Protection of Children from all forms of violence and child focussed justice: Mapping and analysis of the legal and policy frameworks in Papua New Guinea.

- ‘Review and amend all other PNG legislation with an impact on children in need of protection and their families to align with the Convention on the Rights of the Child (CRC) and the Lukautim Pikinini (Child Protection) Act 2015 (LPA);
- ‘Review and amend the policy and regulatory frameworks under the relevant legislation to align with the CRC and the LPA 2015’; and
- ‘Review and address barriers to enforcement of compliance to all PNG legislation with an impact on children in need of protection and their families.’

Within this framework, the objective of this report is to present a mapping and analysis of all relevant laws, policies, strategies, protocols, planning documents etc. concerning the right to protection and child focused justice in PNG in order to review the extent to which they are compatible with the UN Convention on the Rights of the Child (CRC) and other relevant international standards and understand their gaps, strengths, weaknesses and opportunities as well as their linkages. This mapping and analysis will provide the evidence and recommendations required to begin operationalizing Strategy One and Priority 1.1 of the Child Protection Policy.

The research therefore involved:

2. Mapping existing and emerging laws, policies, strategies and accompanying coordination structures related to children;
3. Conducting an analysis highlighting the strengths, weakness, gaps and opportunities of identified legislation, regulations, policies, strategies and their coordination structures in relation to the implementation of the rights to protection and child focused justice within PNG; and
4. Development of evidence-based recommendations for further action and law reform to bring law and policy in line with the CRC provisions and principles and improve coordination, as required by the Child Protection Policy.

1.2 Scope

The mapping and analysis focused on both the substance and contents of the laws and policies, how they interact with one another, as well as the gaps, strengths, weaknesses, and opportunities in their implementation both nationally and provincially.

The research primarily focused on a mapping and analysis of documentation to identify gaps in laws, policies and institutional frameworks ‘on paper’; however, in order to understand how gaps and barriers in legal and institutional frameworks function and impact ‘on the ground’, the research also involved some analysis of implementation or application of laws, policies and institutional structures. This was limited to deepening the understanding of the legal, policy and institutional frameworks rather than involving a more generalized analysis of implementation (which is outside the scope of this study).

The research focused specifically on certain areas the Convention’s General Measures of Implementation in PNG, namely, legislation, comprehensive policy and strategy, and coordination. It falls outside the scope of the research to review all areas within the CRC’s General Measures of Implementation, including data collection, awareness-raising, and public finance for children.

The mapping and analysis included the following topics:

- **Protection of children from all forms of violence:** physical violence; family / gender-based violence; sexual abuse; sexual exploitation; abduction, sale of children and trafficking; protection of children in the digital environment; child and forced marriage; harmful practices; child labour; and children in armed conflict.
- **Child protection system and processes:** early intervention; reporting, assessment and response; alternative care; and adoption and guardianship.
- **Child justice:** Child victims and witnesses; specialised child justice institutions and systems; limits of criminalisation (minimum age of criminal responsibility, status offences, discriminatory laws etc.); diversion; procedural safeguards; sentencing and use of detention; and safeguards and conditions in detention.

Non-discrimination was analysed as a cross-cutting theme.

Information box: Sources of law in PNG's legal system

PNG has a plural or mixed legal system, with both 'written' (statutory), common and customary sources of law. These sources of law are expressly recognised in PNG's Constitution and the Underlying Law Act 2000. The Constitution (section 9) provides that the sources of law are: the Constitution and the Organic Law (which are the supreme law) (section 11); Acts of Parliament; Emergency regulations; Provincial laws; Laws made or adopted by or under the Constitution or any laws (including subordinate legislation); and the Underlying law. Customary law is defined as "customs and usages of the indigenous inhabitants of the country existing in relation to the matter in question at the time when and the place in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial" (Schedule 1.2.2(1) of the Constitution; section 1 of the Underlying Law 2000).

Section 4 of the Underlying Law stipulates that written law has precedence over customary law and common law, and customary law has precedence over common law. Therefore, Courts must apply statutory law above customary and common law (section 6). While written law has precedence over customary law, customary law is applied by PNG's many Village Courts, which are established and governed by the Organic Law.² While customary law has an important place in PNG's legal system, this study focuses on written (statutory) law, and the in-depth examination of PNG's many customary laws is outside the scope of this analysis.

1.3 Structure of the report

This report sets out the methodology, including the analytical framework and processes and data collection methods, along with the findings and recommendations. The report contains four substantive sections:

- **Section 2 sets out the analytical framework and methodology**, including: (a) the framework that was used to facilitate systematic and uniform analysis of national and provincial laws, policies, guidance etc. The framework was developed through the categorisation and sub-categorisation of types of violence, contexts of violence and key legal rights and processes; and (b) the framework for

² Section 47, Organic Law.

mapping and analysis of PNG institutions (government departments, ministries and coordinating bodies) that have ultimate responsibility for relevant pieces of child protection legislation related to the protection of children from all forms of violence and child focused justice. These frameworks were applied during the analysis phase of the consultancy to enable identification of gaps, inconsistencies, strengths and weaknesses in the legal and policy framework, and institutional and coordination framework and ultimately identify the barriers and bottlenecks to the legal and institutional framework for the children's protection in PNG.

- **Section 3, 4 and 5 sets out the findings of the mapping and analysis**, in three sections: violence against children; child protection system; and child justice. These sections provide a detailed analysis of the legal and policy framework followed by a mapping and analysis of the institutional framework for operationalisation and implementation of laws and policies.
- **Section 6 details concrete recommendations** that follow the findings made in sections 3 – 5.
- **Annex A** includes a bibliography.
- **Annex B** includes an analytical matrix that was developed for the legal and policy analysis.
- **Annex C includes the data collection tools** which were used for data collection with key informants and stakeholders.
- **Annex D** contains the ethical protocol that was used for the data collection.

2. Methodology

The study, which was primarily desk based, involved a mapping and analysis of national and provincial laws, policies and other instruments against key international standards. It also involved a mapping and analysis of institutions mandated with operationalising laws and policies relating to violence against children, child protection and child justice. Key international standards, particularly those set out in the UN Convention on the Rights of the Child (CRC) set out a framework of legal principles and standards to which States parties are obliged to adhere and which should inform all government legislation, policy and practice in relation to children. It also sets out a number of specific protections from violence, child protection and child justice, along with other general standards. The Convention and the General Comments published by the CRC Committee, set out the measures, including legislative measures, which States parties must take to ensure that children are protected from violence and the elements and actions required to ensure the provision of child friendly justice (see information box ‘CRC obligation’, below for more detail).

PNG ratified the CRC in 1993, without any reservations / declarations and is therefore committed to its provisions (however, it is yet to ratify the three Optional Protocols to the CRC on children and armed conflict (OP 1), child sexual exploitation (OP 2) and the individual complaints procedure (OP 3)). It has also ratified CEDAW, CRPD, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In terms of child labour, PNG has ratified all eight core ILO Conventions, including the Minimum Age Convention (No.138) and Convention No.182 on the Worst Forms of Child Labour – both ratified by PNG in 2000.

Information box: CRC Obligations

States are obliged, pursuant to Article 4 of the CRC, to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights” contained in the Convention. In addition, all articles of the CRC must be interpreted in light of the four general principles contained in the Convention (Articles 2, 3, 6 and 12). Article 2 provides that States must respect and ensure the Convention rights to each child without any discrimination, “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.” Article 3 requires States to ensure “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” According to the CRC Committee, ‘best interests’ should be interpreted in the light of the rights contained in the Convention, including rights relating to violence against children.³ Article 6 recognizes the child’s inherent right to life, and requires States to “ensure to the maximum extent possible the survival and development of the child.” Article 12 requires States to “assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

It is also worth noting that, in international law, special provisions apply to particular groups of children, who require increased protection because of marginalization or particular vulnerability. These special provisions

³ CRC Committee, General Comment No. 13.

will be taken into consideration when analysing the PNG laws, policies and strategies. Due to their particular vulnerability to violence, girls enjoy special protection against violence under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the United Nations Declaration on Violence against Women. The United Nations Convention on the Rights of Persons with Disabilities (CRPD) sets out the rights of persons, including children, with disabilities and the obligations of States parties. 17 Article 16(1) of the Convention requires States to “take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.” States are required, under Article 16(5), to “put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.”

2.1 Analytical frameworks

The study relied on the development of analytical frameworks for carrying out a review of national laws, policies and strategies using international standards as the yardstick against which these laws, policies and strategies are measured.

2.1.1 Framework for analysis of laws and policies

In order to develop the framework for the law and policy analysis, an analysis of international standards was first carried out, as contained in key international conventions and elaborated in General Comments and General Days of Discussion of treaty monitoring bodies (particularly those published by the UN Committee on the Rights of the Child), UN Special Rapporteur reports and other Standards and Guidelines published by UN agencies and bodies.⁴ Following this, a list of topics / themes were developed, in accordance with the different types of violence experienced by children or the different components of child protection and child justice systems. The analysis of international standards informed the creation of a series of components or indicators against each theme, and these were detailed in an analytical matrix (attached at Annex B).

The team then developed a comprehensive compendium of relevant PNG laws, policies, guidelines, standards, procedures etc. in relation to each theme.

Finally, the analytical matrix was used to facilitate a systematic and uniform analysis of national and provincial laws, policies, guidance etc. In carrying out the analysis, gaps were identified in the PNG laws, policies and strategies. ‘Gaps’ were defined as areas in which national laws, policies and strategies are not consistent with international standards in the protection afforded to children across the identified areas / topics. The compliance of PNG laws and policies were assessed against each indicator (i.e., necessary component of a law /system according to international standards), and ranked accordingly:

	Law / policy is not compliant with international standards / there are large or significant gaps in compliance.
	Law / policy is moderately compliant with international standards, though there are some gaps or inconsistencies.

⁴ Key provisions from these documents are identified throughout the report.

Law / policy is compliant with international standards.

2.1.2 Analytical framework for institutional mapping and analysis

The analytical framework for the institutional analysis was designed to facilitate a systematic and uniform analysis of the institutions that were mapped. The institutional mapping and analysis was linked to the mapping and analysis of laws, policies and strategies (please see analytical matrix at Annex B): it was carried out in a manner that aimed to ensure that institutional frameworks were considered in terms of how and the extent to which they enable operationalisation of substantive laws and policies according to the analytical categories set out in the matrix.

Institutional mapping is fundamentally a process of analysis. It is an empirical and practical exercise designed to achieve a particular goal. In this case, the goal was to map government institutions that have ultimate responsibility for relevant pieces of child protection legislation related to the protection of children from all forms of violence and child focused justice. A mapping exercise describes the main roles of relevant entities. A key assumption underpinning a mapping exercise, particularly in the area of human services, is that there are often many actors with relevant mandates, but they are not always known or visible in the sector in which they are located. Mapping is one way of making these institutions visible and showing the connections and spheres of influence between them. Mapping can also provide a means for identifying overlapping mandates, powers and functions and for generating evidence to support efforts to strengthen the operation and enforcement of laws and regulations.

For this mapping exercise, Coram International has defined institutions as systems of rules, both formal and informal. These rules establish and define the boundaries of any institution. These entities are recognised as having a regulatory role, authority, power and influence in relation to child protection.

Institutional mapping is often part of broader stakeholder mapping. A useful way to distinguish between the two is that institutional mapping is primarily concerned with governance and systems, whereas stakeholder mapping is primarily concerned with individuals and representatives of groups and organizations, who have a stake, claim or interest in a particular issue.

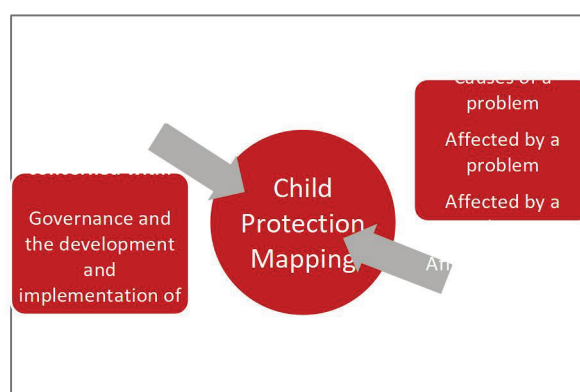


Figure 1: Institutional versus Stakeholder mapping

2.2 Methods

The study was primarily a **desk-based analysis** of laws and institutional frameworks relating to violence against children, child protection and child justice, as set out above. However, the study also included primary data collection to ensure inclusion of all necessary documents for the analysis, and to enable a contextualised and more concrete understanding of gaps in laws and frameworks and an examination of priorities of key stakeholders for reform.

Data was collected from national stakeholders, along with a range of sub-national stakeholders through a series of **consultative interviews**. Researchers experienced challenges accessing key stakeholders, particularly those at the sub-national level. This was in part caused by travel restrictions in response to the Covid-19 pandemic, which limited the ability of the research team to travel to PNG and limited the availability for key stakeholders. However, the team worked with a PNG legal expert in order to facilitate data collection. The following consultations were conducted:

Figure 2: List of consultation participants

National level stakeholders	
Government officials	<ul style="list-style-type: none"> National Family and Sexual Violence Action Committee Secretariat (two interviews conducted) Office of Children and Family Services
UN / international agencies	<ul style="list-style-type: none"> Pacific Women UN Resident Coordinator’s Office UNICEF, Child Protection UNFPA, Gender Based Violence UNDP, Governance and Peacebuilding Consultant
NGOs / CSOs	<ul style="list-style-type: none"> ChildFund PNG Bel isi / Oil Search (national level)
Provincial stakeholders	
NGOs / CSOs	<ul style="list-style-type: none"> Femili (National Capital District) ChildFund (East New Britain)

Consultative interviews were qualitative and semi-structured in nature: data collection tools were developed to guide the interviews (see Annex C). Researchers aimed to conduct interviews in a participatory manner and were guided by stakeholders’ responses within the broader frame of the research questions. Questions were asked based on the respondents’ experiences and with a view to encouraging the most authentic and responsive data.

The KIIs sought to establish:

- The mandate of each informant and their key responsibilities relevant to child protection / child justice in PNG;
- Perceptions of each key informant as to the key deprivations suffered by children in PNG (nationally/ in their respective province);

- Additional documents to include in the analysis;
- Experiences of the informant related to the development of laws and policies in PNG (i.e., involvement in drafting, implementing laws, policies etc.);
- Perceptions on key gaps in laws, policies, strategies and guidance that hinder the protection of children and their rights;
- Key informant's perceptions of barriers and bottlenecks in implementation of child protection legislation in PNG; and
- Details of coordination between government departments, Ministries and other stakeholders in PNG, at national and provincial level.

KIs were carried out through virtually (via Zoom and WhatsApp), given the Covid-19-related travel restrictions in place during the research phase.

2.3 Validation

An earlier draft of this report underwent two rounds of review by key UNICEF staff members.

2.4 Limitations and risk management

Given the challenging context for the research (during the Covid-19 pandemic), in which restrictions and work from home arrangements were in place during the data collection phase, a number of stakeholders did not take up the interview request. Therefore, information could not be collected from some key stakeholders, in particular, from Government representatives at the national and provincial levels. However, the impact of this was somewhat mitigated by the study primarily being a desk-based analysis.

2.5 Ethics

The research was guided by UNICEF's Procedure for Ethical Standards in Research, Evaluation, Data Collection and Analysis.⁵ The methodology, data collection tools and ethical guidelines were reviewed by UNICEF's external ethics process and ethical clearance was attained.⁶

⁵ UNICEF, *UNICEF Procedure for Ethical Standards in Research, Evaluation, Data Collection and Analysis*, 1 April 2015, available at: <https://www.unicef.org/media/54796/file>

⁶ HML IRB Review #322EPNG20.

3. Laws, policies and institutional frameworks to address violence against children

3.1 Summary of international standards

Many of the CRC's rights relate to violence against children; however, the central provision is Article 19, which provides:

(1) "States parties shall take all appropriate legislative, administrative and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

(2) "Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

The CRC Committee has elaborated the legal content of Article 19 and has provided useful guidance to States parties on their obligations to ensure that children are protected from violence in its General Comment No. 13. In this document, the Committee stated that Governments are required to take "a broad range of measures cutting across all sectors of Government, which must be used and effective in order to prevent and respond to all forms of violence."⁷ According to the Committee, legislative measures "refer to both legislation, including the budget, and the implementing and enforcement measures. They comprise national, provincial and municipal laws and all relevant regulations, which define frameworks, systems, mechanisms and the roles and responsibilities of concerned agencies and competent officers."⁸

In her Annual Report to the United Nations Human Rights Council in 2013, the Special Representative of the Secretary-General on Violence against Children set out the obligations on States to respond to violence against children. She stated that legislation is a fundamental element in safeguarding children from violence, and that "legislation prohibiting all forms of violence is a key component of a comprehensive national strategy to children's protection from violence."⁹

⁷ CRC Committee, General Comment No. 13: The right of the child to freedom from all forms of violence, CRC/C/GC 13, 18 April 2011, paras. 39 and 40.

⁸ CRC Committee, General Comment No. 13: The right of the child to freedom from all forms of violence, CRC/C/GC 13, 18 April 2011, paras. 39 and 40.

⁹ United Nations Human Rights Council, Annual Report of the Special Representative to the Secretary-General on Violence against Children, A/HRC/22/55, 4 January 2013, paras. 21 and 21(b).

The CRC Committee has emphasized that Article 19 is strongly linked to a broad range of provisions in the Convention, and must particularly be considered in the light of Article 5 (respect for the rights, duties and responsibilities of parents), Article 9 (right not to be separated from parents against will, unless this is in the best interests of the child), Article 18 (recognition that parents have primary responsibility for the upbringing of the child) and Article 27 (right of the child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development).

International law obliges States to criminalise all acts of violence against children in all settings. According to the CRC Committee, the Convention imposes an obligation on States to “review and amend domestic legislation in line with Article 19 and its implementation within the holistic framework of the Convention, establishing a comprehensive policy on child rights and ensuring absolute prohibition of all forms of violence against children in all settings and effective and appropriate sanctions against perpetrators.”¹⁰ Legal definitions of violence against children in national law must cover all types of violence in all settings. CRC Article 19 requires States to prohibit all forms of physical or mental violence against children, and that “frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence.” It also provides that legal definitions of violence “must in no way erode the child's absolute right to human dignity and physical and psychological integrity by describing some forms of violence as legally and/or socially acceptable.” Where acts of violence are criminalized, the criminal law should not allow any defences or justifications to violence against children in any setting. In addition, States need to be sure that their legislation contains suitable and appropriate penalties for perpetrators of violence against children.

3.2 Physical and emotional abuse and neglect

3.2.1 Context

Physical violence is the deliberate or intentional use of physical force that either results in, or has the potential to result in, bodily harm.¹¹ Available data indicate that physical violence against children is a cause for concern in PNG and that children are particularly at risk in the home. A study in 2013 found that 85 percent of men who are fathers report that they beat their children.¹² In another telephone survey of around 12,000 people across the country, 65 per cent of the respondents reported having experienced physical violence as a child (67 per cent of the male respondents and 62 per cent of the female respondents).¹³ According to the most recent Demographic and Health Survey (DHS), carried out in 2016 – 2018, 56 per cent of women aged 15 – 19 years reported having experienced physical violence since the age of 15 years.¹⁴

In addition to physical violence, international standards set out obligations to address non-physical forms of violence against children, including emotional violence. Also, law should clearly define and prohibit neglect,

¹⁰ Committee on the Rights of the Child, General comment no. 13: The right of the child to protection from all forms of violence. 2011. CRC/C/GC/13, para. 41.

¹¹ This is a relatively narrow definition of physical violence based on the broader definition of violence in the World Report on Violence and Health. See Krug et al. 2002. World report on violence and health. WHO. P.5 http://apps.who.int/iris/bitstream/10665/42495/1/9241545615_eng.pdf [12.07.17]

¹² Rachel Jewkes , Emma Fulu , Yandisa Sikweyiya (2013) Family, Health and Safety Study, Bougainville, Papua New Guinea

¹³ UNICEF PNG, *Telephone survey on adult attitudes and practices towards violence against children* (2016).

¹⁴ National Statistical Office (NSO) and ICF. 2019. *Papua New Guinea Demographic and Health Survey 2016-18, 2019*, Port Moresby, Papua New Guinea, and Rockville, Maryland, USA: NSO and ICF.

which is the failure of those responsible for a child's care to meet their physical and psychological needs, to protect them from danger or obtain basic services (as long as caregivers have the means, knowledge and access to such services).¹⁵ It is worth noting that, according to the CRC Committee, whether (absence of) care amounts to neglect depends on a caretaker's "means, knowledge and access."¹⁶ Thus, according to international standards, neglect that is a result of poverty or deprivation is not considered to be violence perpetrated by caretakers, while neglect that occurs when the caretaker has the knowledge, means and access necessary to prevent it is considered to be a form of violence.

3.2.2 Analysis of laws and policies

Article 19 of the CRC obliges States to ensure legal protection of children from all forms of physical or mental violence, injury or abuse and neglect or negligent treatment while in the care of parents, legal guardians or any other person who has the care of the child.

Physical violence

Physical abuse of children should be punishable under national criminal laws as an offence of causing harm or assault and should not be justifiable on the grounds of reasonable correction of a child.¹⁷ In particular, corporal punishment and other cruel or degrading punishment or treatment of children should be explicitly prohibited within the home or family, in schools, in residential care facilities for children and in all places of custody or detention.¹⁸

PNG's Criminal Code Act 1974 ('Criminal Code') contains a comprehensive set of provisions that criminalise physical violence generally, along with several provisions that apply specifically to children. Acts of physical violence are clearly and comprehensively prohibited and accorded appropriate sanctions, typically according to the severity of the injuries inflicted. This includes common assault (section 243 and 244), assault occasioning grievous bodily harm (section 315), unlawful homicide (section 298), wilful murder (section 299), murder (section 300) and manslaughter (section 302). These provisions apply to adults and children alike.

In addition, several provisions of the Criminal Code apply just to infants, including infanticide (wilful act or omission by a woman causing the death of her child under the age of 12 months). This provision applies where "the balance of a woman's mind was disturbed" by her not having recovered from the effects of childbirth to the effect of lactation consequent on giving birth to the child. It allows a woman to be charged with infanticide rather than wilful murder or manslaughter, which carries a lesser penalty, recognising the need for a specific offence that applies to mothers whose mental state has been disturbed by giving birth.

Killing an unborn child is also a separate offence, and this applies to "a person who, when a woman is about to be delivered of a child, prevents the child being born alive by any act or omission" (section 312). This offence carries a maximum penalty of life imprisonment. Causing death by acts done in childbirth is a

¹⁵ Committee on the Rights of the Child, General comment no. 13: The right of the child to protection from all forms of violence. 2011. CRC/C/GC/13, para. 20.

¹⁶ Committee on the Rights of the Child, General comment no. 13: The right of the child to protection from all forms of violence. 2011. CRC/C/GC/13.

¹⁷ Committee on the Rights of the Child, General comment no. 13: The right of the child to protection from all forms of violence. 2011. CRC/C/GC/13.

¹⁸ Committee on the Rights of the Child, General comment no. 13: The right of the child to protection from all forms of violence. 2011. CRC/C/GC/13.

separate offence that applies “when a child dies in consequence of an act done or omitted to be done by any person before or during its birth, the person who did or omitted to do the act shall be deemed to have killed the child” (section 292). It is assumed that these offences would not apply in the context of a consensual abortion carried out by an appropriate medical professional (which would be a violation of a woman’s right to sexual and reproductive health).

A general prohibition on the use of torture and cruel, inhuman or degrading treatment or punishment is set out in PNG’s Constitution (section 36): “No person shall be submitted to torture (whether physical or mental), or to treatment or punishment that is cruel or otherwise inhuman or is consistent with respect for the inherent dignity of the human person.” While it is important that this general prohibition on the use of torture is contained in the country’s ‘supreme law’, torture and cruel, inhuman or degrading treatment is not contained in ordinary law (apart from a provision in the Juvenile Justice Act 2014 – section 102(1)(a), which prohibits the use of cruel, inhuman or degrading treatment or punishment within juvenile justice institutions) and is not further defined or applied in specific contexts.

In contravention of international standards, defences exist in the Criminal Code in relation to corporal punishment at home, apparently in alternative care settings and in schools. Section 278 of the Act states that “It is lawful for a parent or a person in the place of a parent, or for a school master, or master, to use, by way of correction, towards a child, pupil or apprentice under his care such force as is reasonable in the circumstances.” What is to be considered ‘reasonable in the circumstances’ is not defined, which further limits the protection of children from physical violence in these settings.

It is noted that corporal punishment, along with cruel, inhuman or degrading treatment or punishment is expressly prohibited in justice institutions according to sections 102(1)(a) and (b) of the Juvenile Justice Act 2014.

Emotional violence and neglect

According to international standards, non-physical forms of child abuse – mental or emotional abuse and neglect – should be clearly and comprehensively defined and prohibited in law.¹⁹ Emotional violence is defined in the CRC Committee’s General Comment No. 13 as: “all forms of persistent harmful interactions with the child, for example, conveying to children that they are worthless, unloved, unwanted, endangered or only of value in meeting another’s needs; scarring, terrorizing and threatening; exploiting and corrupting; spurning and rejecting; isolating, ignoring and favouritism; denying emotional responsiveness; neglecting mental health, medical and educational needs; insults, name-calling, humiliation, belittling, ridiculing and hurting a child’s feelings; [and] exposure to domestic violence.”²⁰ The Committee sets out five types of neglect:

- Physical neglect: “failure to protect a child from harm, including through lack of supervision, or failure to provide the child with basic necessities including adequate food, shelter, clothing and basic medical care.”

¹⁹ Article 19(1), CRC; Committee on the Rights of the Child, General comment no. 13: The right of the child to protection from all forms of violence. 2011. CRC/C/GC/13.

²⁰ Committee on the Rights of the Child, General comment no. 13: The right of the child to protection from all forms of violence. 2011. CRC/C/GC/13, para. 21.

- Emotional neglect: “lack of any emotional support and love, chronic inattention to the child, caregivers being “psychologically unavailable” by overlooking young children’s cues and signals, and exposure to intimate partner violence, drug or alcohol abuse.”
- Neglect of children’s physical or mental health: “withholding essential medical care.”
- Educational neglect: “failure to comply with laws requiring caregivers to secure their children’s education through attendance at school or otherwise.”
- Abandonment: “a practice which is of great concern, and which can disproportionately affect, inter alia, children out of wedlock and children with disabilities in some societies.”²¹

There are no provisions in the Criminal Code which define and prohibit emotional violence against children. However, the Criminal Code contains several provisions that criminalise neglect and child abandonment. Section 283 imposes an explicit duty on parents /carers to provide the “necessities of life” for a child. Where failure to provide the necessities of life causes consequences to the life or health of a child, the person has made a criminal omission. Section 284 imposes a duty on ‘the head of a family’ who has charge of a child to provide the necessities of life to the child and shall be deemed to have caused any consequences that result to the life or health of the child by reason of any omission to perform that duty. However, this section only applies to children under the age of 14 years and not to all those under 18 years, as required by international standards. In addition, while failure to ‘provide necessities of life’ would likely encompass all forms of neglect listed above, the law would be more protective if these different forms of neglect were explicitly listed, defined and prohibited.

The Criminal Code prohibits child abandonment. Section 325 provides that “a person who unlawfully abandons or exposes a child under the age of two years so that– (a) the life of the child is, or is likely to be, endangered; or (b) his health is, or is likely to be, permanently injured, is guilty of a misdemeanour.” Section 362 (‘Desertion of children’) of the Criminal Code clearly defines and prohibits abandonment of a child; however, again, the provision only applies to children under the age of 14 years and not to all those under 18 years. Also, the offence is a ‘misdemeanour’ only and is punishable by a maximum of 1 year imprisonment.

According to the LPA (section 2), neglect and emotional abuse are grounds for referring a child into the child protection system (see below).

Peer violence and bullying in schools

While the general provisions of the Criminal Code Act that prohibit specific acts of violence continue to apply in schools, there are no specific legal provisions that address bullying – a form of peer violence that takes place in schools and other settings, though the Cybercrime Act 2016 does prohibit cyberbullying (this is set out below, section 3.7). This is a significant gap – children would be provided with greater protection from bullying through a policy or legal mandate placed on schools to prevent and address bullying. The CRC Committee has highlighted that any measures aimed at addressing bullying should be developed together with children.²²

²¹ Committee on the Rights of the Child, General comment no. 13: The right of the child to protection from all forms of violence. 2011. CRC/C/GC/13.

²² Committee on the Rights of the Child, General comment no. 13: The right of the child to protection from all forms of violence. 2011. CRC/C/GC/13.

3.2.3 Summary of key gaps in law and policy

Indicators	Analysis of PNG law and policy	Gaps
(a) Physical abuse of children is clearly defined and prohibited and there are no child-specific or intimate partner-specific defences.	<p>Acts of physical violence are clearly and comprehensively prohibited in the Criminal Code Act 1974 and accorded appropriate sanctions, typically according to the severity of the injuries inflicted. These provisions apply to adults and children alike. In addition, several provisions of the Criminal Code apply just to infants, including infanticide; killing an unborn child by preventing the child being born alive by any act or omission; and causing death by acts done in childbirth.</p> <p>Also, causing a child physical harm or failing to protect a child from another person causing them physical harm is a ground for referring a child into the child protection system, under the LPA.</p> <p>However, it is a defence to the use of physical violence in the context of domestic discipline (see below).</p>	Exception exists to the use of physical violence against children.
(b) Corporal punishment is explicitly criminalised in the home / family.	It is lawful, under the Criminal Code, for parents / carers to use 'reasonable force' against a child for the purposes of 'correction.'	Corporal punishment not criminalised in the home.
(c) Corporal punishment is explicitly criminalised in schools.	It is lawful, under the Criminal Code, for a school master to use 'reasonable force' against a child for the purposes of 'correction.'	Corporal punishment not criminalised in schools.
(d) Corporal punishment is explicitly criminalised in alternative care settings	It is lawful, under the Criminal Code, for a 'person in the place of a parent' to use 'reasonable force' against a child for the purposes of 'correction.'	Corporal punishment not criminalised in alternative care settings.
(e) Corporal punishment is explicitly criminalised in places of detention.	Cruel, inhuman or degrading treatment or punishment is explicitly prohibited in juvenile justice institutions.	No gaps.
(f) Emotional / mental abuse of children is clearly defined and prohibited.	There is no definition or prohibition of emotional violence against children in the Criminal Code; however, emotional violence is a ground for referring a child into the child protection system under the LPA.	Emotional abuse of children not criminalised.
(g) Neglect of children is clearly defined and prohibited and includes physical, emotional, educational, health-related neglect and abandonment.	<p>The Criminal Code prohibits failure to provide the necessities of life for children by parents / carers. However, this section only applies to children under the age of 14 years and not to all those under 18 years, as required by international standards. All forms of neglect are not explicitly listed.</p> <p>The Criminal Code prohibits child abandonment</p>	Provisions on neglect and abandonment only apply to children under 14 years.

	and child desertion, but these provisions only apply to children aged under two (abandonment) and under 14 years (desertion). The LPA also prohibits abandonment According to the LPA (section 2), neglect is grounds for referring a child into the child protection system (see below), and the LPA sets out the duties of parents / guardians to 'maintain a child' (section 8).	
(h) Torture and other cruel, inhuman or degrading treatment or punishment is clearly defined and prohibited.	The Constitution contains a general prohibition on the use of torture and cruel, inhuman or degrading treatment or punishment.	No gaps.
(i) Obligation on schools to have measures or policies in place to address and respond to bullying.	No legal mandate on schools to prevent and address bullying.	No legal mandate on schools to prevent and address bullying.

3.3 Family violence / intimate partner violence²³

3.3.1 Context

Family violence is a form of violence that disproportionately affects women. It refers to all types of physical, sexual or psychological violence by a family or household member against another family or household member. Family violence includes intimate partner violence, which refers to all types of physical, sexual or psychological violence by an intimate partner or ex-partner, including physical aggression, sexual coercion, psychological abuse and controlling behaviours.²⁴

Rates of family violence are extremely high in PNG. According to the 2016/2018 Demographic and Health Survey, 56 per cent of women aged 15 – 49 years in PNG have experienced physical violence since the age of 15 years and 28 per cent have experienced sexual violence. Further, 63 per cent of ever-married women have experienced spousal physical, sexual or emotional violence, with the most common being physical violence (54 per cent). Help seeking among survivors of gender-based violence is low: the DHS found that 39 per cent of women who had experienced physical or sexual violence had not sought help or told anyone about the violence.²⁵ In a study carried out in 2013 in Bougainville, 28 per cent of women reported having experienced emotional abuse, 23 per cent experienced economic abuse, 22 per cent physical violence and 24 per cent sexual violence from their partner in the previous year.²⁶ The same study indicates that about half of perpetration of violence starts in adolescence.²⁷ This study also captured reported perpetration of violence by men, with very concerning findings: 62.4 per cent admitted that they had committed rape

²³ It should be noted that one of the core structural drivers of gender-based violence against women, including family or intimate partner violence, is systemic gender inequality. A number of laws are in place in PNG that relate to gender equality, including within marriage. However, a comprehensive analysis of these laws is outside the scope of this paper.

²⁴ WHO, Violence against women: factsheet (2017), available at <http://www.who.int/en/news-room/factsheets/detail/violence-against-women>

²⁵ PNG National Statistical Office, *Papua New Guinea Demographic and Health Survey 2016 – 2018* (2019), Chapter 16.

²⁶ Rachel Jewkes, Emma Fulu, Yandisa Sikweyiya (2013) Family, Health and Safety Study, Bougainville, Papua New Guinea

²⁷ Partner for Prevention (2013), Why some men use violence against women and how we can prevent it: Quantitative findings from the United Nations multi-country study on men and violence in Asia and the Pacific.

against a child or women – 59 per cent against a partner (marital rape), 41 per cent against a non-partner, and 53 per cent against a marital and non-partner; 80 per cent claimed that they had perpetrated physical and/ or sexual violence against a partner; 57 per cent declared that they had perpetrated some form of economically abusive act²⁸ against a partner; 14 per cent acknowledged that they had been involved in gang rape; and 64 per cent confessed that they had committed their first rape before age 20 (23 per cent were younger than 15 years of age when they first raped another person).

3.3.2 Analysis of laws and policies

In addition to the CRC, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a key international instrument that addresses the rights of women and girls to be protected from family violence. The Convention holds States accountable for all forms of discrimination against women, including those that take place within private, domestic or family life. CEDAW does not explicitly refer to violence against women and girls, however, in General Recommendation No. 19, the CEDAW Committee affirmed that the term ‘discrimination’ as defined in Article 15 must be interpreted to include “violence that is disproportionately directed against a woman because she is a woman or that affects women disproportionately,” and noted that “under general international law and specific human rights covenants, States may ... be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.” This was reaffirmed in a later General Recommendation by the CEDAW Committee (No 35 of 2017).²⁹

International standards require that States legislate to ensure a wide range of flexible remedies for survivors of domestic violence to discourage and prevent violence within interpersonal and family relationships, as well as to protect and support survivors. These remedies should include both criminal/penal and civil measures, including protection and restraining orders. Legislation should also establish a requirement that a prompt and appropriate range of social and health services are made available to survivors of domestic violence by State authorities.³⁰

PNG has developed specialised legislation to address family violence. The Family Protection Act 2013 (FPA) aims to protect family members from violence through the criminalisation of acts of family violence and through legislating a system of civil remedies – the granting of interim protection orders and protection orders.

Definition of family violence

The FPA contains a clear and comprehensive definition of ‘domestic violence’, which includes any of the following acts if committed by against a ‘family member’:

- (a) Assault;
- (b) Psychological abuse, harassment, intimidation;

²⁸ The most frequent are (i) withholding earnings from partners (42.9 per cent); (ii) forcing a partner out of the house (24.3 per cent); taking the earnings of a partner (23.9 per cent) and prohibiting a partner from working (18.6 per cent).

²⁹ CEDAW Committee, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, 26 July 2017.

³⁰ CEDAW Committee, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, 26 July 2017; United Nations Economic and Social Council, A Framework for Model Legislation on Domestic Violence, 2 February 1996, E/CN.4/1996/53/Add.2.

- (c) Sexual abuse;
- (d) Stalking so as to cause apprehension or fear (stalking is further defined in section 5(2) to mean: following the person; watching the person; loitering outside the premises where the person lives, works or otherwise frequents; or making persistent telephone calls, text messages etc.;
- (e) Behaving in an indecent or offence manner;
- (f) Damage or causing damage to the family member's property; or
- (g) Threatening to any of the above acts.

Notably, the Act specifies that a single act may amount to domestic violence, or a number of acts that form a pattern of behaviour may amount to domestic violence, even though the acts in isolation may appear minor (section 5(3)). This is significant: section 5(3) appears to clarify that coercive control (which is *a pattern* of acts of assault, threats, humiliation and intimidation or other abuse), falls within the definition of domestic violence.

Relationships covered by the FPA

The FPA also provides quite a comprehensive definition of 'family member', to which the criminal and civil provisions apply; a definition that encompasses children and adult family members. The provisions of the FPA apply to the following persons:

- (a) The spouse of the person; or
- (b) A child of the person or a child of the person's spouse; or
- (c) A parent of the person or a parent of the person's spouse; or
- (d) A grandparent; or
- (e) A brother or sister of the person or a brother or sister of the person's spouse; or
- (f) Any other person who is treated by the spouse as a family member.³¹

'Spouse' is further defined as someone who is married to the person; is living with the person or has lived with the person in a 'married-like' relationship; or has a biological child with the person, whether or not they are living or have lived together. Some gaps exist in the Act's definition of 'family members', which has the effect of denying protection from family violence to some persons. In order to comply with international standards,³² the legal protections against domestic violence should encompass a full range of family and intimate relationships, including all current and former intimate partners (including those not living in the same house), all children within the household and family setting, including offspring, relatives, adopted children and child household workers. The definition of 'family member' in the FPA denies the protections of the law to all non-cohabiting couples, including for instance adolescents (along with adult women) who are dating but not living together in a 'married like' relationship. Dating adolescents are protected within their home from the acts of their live-in family members but are not recognised as requiring protection from intimate partners. Moreover, the FPA narrows the protection of women, as it does not apply outside the context of marriage or 'married like' / cohabiting (same sex) couples (except where the couple have a biological child together). Also, the Act explicitly denies protection to same sex couples, as the definition of

³¹ Section 2, Family Protection Act 2013.

³² United Nations Economic and Social Council, A framework for model legislation on domestic violence, 2 February 1996, E/CN.4/1996/53/Add.2, Article 2, Section B, Article 3.

spouse only encompasses persons of the opposite sex, which is a violation of international standards that prohibit discrimination against LGBTI+ persons.

Children and protection from family violence

Recent studies have noted that, globally, and in PNG, family violence frequently involves violence against both women and children. Where these forms of violence co-occur, it is important that protection systems are properly coordinated to provide a holistic and comprehensive response that meets the needs of both women and children. However, while the FPA applies to children, it is silent as to how the Act should interact with the child protection system and in particular, the LPA. While it applies to children, as family members, it does not provide any guidance on how their needs and interests are to be met within family violence response systems. Though it should be noted that some clarity is provided in the Provincial GBV Secretariat Standard Operating Procedures. The 2014 Family and Sexual Violence Protection Order Rules for Magistrates is also silent as to how the needs of children should be determined and met in the granting of Interim Protection Orders and Protection Orders. According to several Key Informants interviewed for this study, the silence in the FPA on how the interests of children should be positioned within its processes is a significant gap in the law.

Criminal sanctions and civil remedies

Section 6 of the FPA makes domestic violence a criminal offence, attracting a maximum penalty of two years imprisonment. While this is broadly compliant with international standards, which require the criminalisation of domestic violence, the Act does not set out how prosecutions for domestic violence should interact with provisions in the Criminal Code. For more serious acts of domestic violence (rape, sexual assault, assault causing grievous bodily harm etc.), it is assumed that the perpetrator would be charged under the relevant sections of the Criminal Code which attracts more severe penalties.

The report of the United Nations Working Group on good practices in legislation on violence against women requires that States ensure that police and courts have the power to issue protective orders to address violence against women, for instance, barring orders or orders to require a person to stay away from the vicinity of the victim.³³ The FPA sets out a process for the provision of protection orders for survivors of family violence, in conformity with this guidance. Protection Orders and Interim Protection Orders allow family members to be afforded immediate protection from violence (for instance, an interim protection order could be sought with the aim of keeping the family member/s safe while the criminal matter is being investigated). The Family Protection Regulation 2017 provides further detail on the legal process for the granting of interim family protection orders and family protection orders, along with the process for mediation, counselling and compensation. Importantly, neither the FPA or the 2017 Regulations *mandate* mediation as a remedy or as a necessary step prior to the granting of a Protection Order. The provision of these civil remedies is therefore consistent with international standards.

Policy

In addition to the FPA and Regulations, preventing and addressing family violence is a clear policy priority for the Government of PNG. One of the aims of PNG's Mid-term Development Strategy is achieving zero tolerance for GBV. The PNG Medium Term Development Strategic Plan 2010 – 2030, which sets out the long-term action plan for achieving the objectives in PNG's Vision 2050, includes, as one of its objectives a 'safe,

³³ UN Women, Good practices in legislation on 'harmful practices' against women, Expert group meeting, Addis Ababa, 26– 29 May 2009: Report of group meeting, para. 30.

secure and stable environment for all people in PNG’ and for ‘protecting women and girls and boys from all forms of violence, abuse, exploitation and discrimination’.³⁴

The PNG National Strategy to Prevent and Respond to Gender Based Violence, 2016-2025³⁵, is designed to elevate and prioritize the prevention of and response to GBV, which it defines as encompassing family violence and violence against women. The plan has four key objectives. In broad terms they are:

- by 2025, GoPNG has a functioning GBV governance and institutional structure supporting the achievement of zero tolerance towards GBV;
- standardize and institutionalize data collection and research to evidence-based planning, budgeting and programming;
- ensure continued quality and sustained coordinated responses, referrals and service delivery for survivors of gender-based violence; and
- scale up, standardize, and decentralize inclusive, quality initiatives and messaging for prevention of gender-based violence.

The *National Implementation Plan to Prevent and Respond to Gender Based Violence 2016-2025*³⁶ provides a management framework for the ensuring the four goals of the GBV strategy, as outlined above, are achieved.

Notably, PNG’s first national summit on ending gender-based violence in November 2020, which was led by the Coalition of Parliamentarians to End GBV, focused on VAW and VAC. Following the national summit, the Coalition affirmed their commitment to ending GBV: “As elected leaders of Papua New Guinea, representing our people and in pursuit of our National Constitution and its Goals and Directive Principles, we recognise that GBV is the single greatest human rights violation and development impediment for our country; We commit ourselves to taking all action necessary to reducing GBV and promoting gender equality, respect and partnership.”³⁷ The Coalition adopted a resolution at the close of the Summit, in which it asserted its commitment to resourcing and implementing the National GBV Strategy.

Implementation challenges

While the FPA is a comprehensive and protective law that is broadly consistent with international standards (though with some gaps), and the elimination of family violence (as a form of GBV) is a clear policy priority for the PNG Government, it should be noted that significant challenges exist that have impaired the implementation of the FPA and severely limited the ability for women and children to seek protection from violence and receive appropriate support and services. These challenges are summarised in a 2016 report by the South Pacific Community and the UN OHCHR and include: a lack of information about services, protection and justice for victims of family violence, particularly in remote regions; insufficient government and police presence in remote regions; no government safe houses and a shortage of privately owned safe houses; inappropriate use of community mediation as a substitute for prosecution and arrest; a lack of case

³⁴ Government of Papua New Guinea, Papua New Guinea National Strategic Plan 2010-2050, GoPNG, Port Moresby, 2009, p. 31.

³⁵ Department for Community Development and Religion, Papua New Guinea National Strategy to Prevent and Respond to Gender Based Violence, 2016-2025, p82.

³⁶ Government of Papua New Guinea, National Implementation Plan to Prevent and Respond to Gender Based Violence 2016-2025.

³⁷ See GBV Summit webpage: <https://www.pngu4equality.com/>

management services and cohesive support networks for victims; the burden of seeking redress through the legal system, including lack of legal representation, high financial cost, unreceptive police and court systems; social (harmful) practices such as polygamy, bride price and accusations of sorcery; and an inability to leave abusive relationships, owing to economic dependence on abusers, fear of losing custody of children, or social stigma.³⁸

3.3.3 Summary of key gaps in law and policy framework

Indicators	Analysis of PNG law and policy	Gaps
(a) Family / intimate partner violence is clearly defined and prohibited in law.	The Family Protection Act 2013 clearly and comprehensively defines and prohibits family violence through criminal sanctions and civil remedies.	No gaps.
(b) All acts of family violence / IPV are recognised and criminalised.	The Family Protection Act 2013 provides a clear and comprehensive definition of family violence that includes isolated acts as well as patterns of behaviour (coercive control).	No gaps.
(c) All types of family relationships are protected.	The Family Protection Act 2013 applies to a range of family relationships. However, it denies protection to same sex couples and to non-cohabiting couples (without a biological child).	Same sex and non-cohabiting couples are not protected.
(d) No exceptions exist to family violence / IPV.	The law does not recognise any exceptions to family violence against women; however, the Criminal Code Act permits the use of 'reasonable force' against children for 'correction.'	Corporal punishment of children is not prohibited.
(e) Law / policy is in place to address drivers of family violence / IPV.	The Gender Based Violence Strategy sets out a range of activities aimed at preventing and addressing family violence.	No gaps.
(f) Civil remedies exist to protect survivors of family violence.	The Family Protection Act sets out a process for the granting of Protection Orders and Interim Protection Orders.	No gaps.
(g) The law provides a right to services and support for survivors of family violence.	There is no legal right or process of referral to comprehensive services and support for survivors of violence.	No legal right or referral process set out in law for survivors to access services.

3.4 Sexual violence and abuse

3.4.1 Context

Sexual violence is any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.³⁹

³⁸ SPC and OHCHR, Human rights in the Pacific: A situational analysis, 2016, p. 108.

³⁹ *World report on violence and health* (Heise & Garcia-Moreno, 2002; Jewkes, Sen & Garcia-Moreno, 2002 at p.149 http://apps.who.int/iris/bitstream/10665/42495/1/9241545615_eng.pdf [12.07.17] It is noted that the definitions of sexual violence differ according to the age of the victim / survivor. Children below the legal age of consent will often be considered a victim of (statutory) rape. This is discussed in more detail below.

Rates of sexual violence in PNG are high. Data from the 2016 – 2018 DHS indicate that 28 per cent of adolescent girls aged 15 – 19 years had experienced sexual violence. In 2013, more than half of all rape victims who went to a hospital were under age 16. Twenty-five per cent were under 12 years of age, and 10 per cent were under eight years of age. Around 60 per cent of children who went to a women’s shelter in Port Moresby had been abused.⁴⁰ Data from Family Support Centers in some part of PNG indicate that children are particularly at risk of sexual violence: 49 per cent of survivors who reported to Family Support Centers in Lea in 2011 were children under 18 years and 22 percent were under 12 years. In Tari, 74 per cent of cases presenting at the Family Support Centre were children under 18 years while 56 percent are under 12 years.⁴¹ A study carried out last year in Port Moresby, Lae and Arawa found, based on police, prosecutor and NGO data, that more than 75 per cent of victims of sexual offences are female, and, of these, almost 75 per cent are aged under 18 years (with 15 – 16 years being the average age of victims).⁴²

3.4.2 Analysis of laws and policies

According to Article 34 of the CRC, States are obliged to take all appropriate measures to “protect the child from all forms of ... sexual abuse.” Specifically, States are obliged to ensure that domestic laws protect against “the inducement or coercion of a child to engage in any unlawful sexual activity.” National criminal laws should have comprehensive provisions penalizing all forms of sexual abuse of children, providing equal protection to girls and boys.

Minimum age of consent to sexual activity

According to international standards, an appropriate age of consent to sexual activity should be set out in law. Any sexual activity involving a child under this age should be regarded as illegal, without the need to establish the absence of consent factually. While a particular age is not prescribed in international law, according to the CRC Committee, States should take into account “the need to balance protection and evolving capacities, and define an acceptable minimum age when determining the legal age for sexual consent.”⁴³ The legal age of consent to sexual activity should be the same for boys and girls and relate equally to same sex sexual activity. States should avoid criminalising “adolescents of similar ages for factually consensual and non-exploitative sexual activity,”⁴⁴ for instance, through a ‘close in age’ exemption. Also, recognition should be given to sexual activity involving a position of trust through higher age / increased penalties.

PNG’s Criminal Code Act establishes 16 years as the age of consent to sexual activity: it criminalises persons who engage in “an act of sexual penetration with a child under the age of 16 years”, with a maximum penalty of 25 years imprisonment, or life imprisonment where the child is under 12 years of age (section 229A). The law recognises sexual activity with a child under 16 involving a position of trust, authority or dependency and imposes a harsher penalty (maximum life imprisonment) for these acts (section 229A(3)).

⁴⁰ ChildFund, *Stop violence against women and girls in Papua New Guinea* (2013).

⁴¹ Medecins Sans Frontieres, 2011. *Hidden and Neglected: The Medical and Emotional Needs of Survivors of Family and Sexual Violence in Papua New Guinea*. pp.17

⁴² Putt, J. and Dinnen, S., Australian National University, *Reporting, Investigating and Prosecuting Family and Sexual Violence Offences in Papua New Guinea* (2020).

⁴³ UN Committee on the Rights of the Child, General comment no. 20 (2016) on the right of the child during adolescence, 6 December 2016, CRC/C/GC/20, para. 40.

⁴⁴ UN Committee on the Rights of the Child, General comment no. 20 (2016) on the right of the child during adolescence, 6 December 2016, CRC/C/GC/20, para. 40.

The Act also criminalises other sexual activities. “Sexual touching” of children under 16 years is included in section 229B and “indecent acts directed at a child” is included in section 229C. In both of these sections, higher penalties apply for acts involving a child under 12 years and in cases involving a relationship of trust, authority of dependency, consistent with international standards. Consistent with international law, the Criminal Code Act sets the age of consent at 18 years for acts involving an existing relationship of trust, authority or dependence (section 229E). In accordance with international standards, the Criminal Code legislates a ‘close in age’ exemption, which provides a defence to statutory rape where “the child was aged 12 years of older, and the accused was no more than two years older than the child” (section 229F(b)).

However, some gaps exist. Unfortunately, the law sets a lower age of 14 years for sexual consent in the case that a child is married to the person involved (section 229G). It should also be noted that the law on sexual consent and that relating to sexual violence against children in general is discriminatory against LGBTI+ adolescents – it criminalises same sex (male) sexual activity, including penetration (section 210) and “indecent practices” (section 212).

Rape and other sexual offences

According to international law, PNG law must ensure acts of sexual violence are comprehensively criminalised and that sexual assault, including rape, is characterised as “a crime against the right to personal security and physical, sexual and psychological integrity.”⁴⁵ The definition of sexual crimes (including marital or acquaintance rape) must be based on the lack of freely given consent and should take into account coercive circumstances.⁴⁶ In particular, consent of a child (over the statutory age of consent) should be invalidated if force, coercion or threats were used or the perpetrator is in a position of trust, authority or in a situation of vulnerability or dependence (including a mental or physical disability).⁴⁷ Sexual offences should be defined comprehensively to include all contact and non-contact sexual acts and all penetrative and non-penetrative sexual acts and the law should be equally applicable to girls and boys. Sexual harassment (unwelcome sexual behaviour such as physical contact or advances, sexual remarks, sexual demands, showing pornography etc.) should also be clearly defined and prohibited.⁴⁸

PNG’s Criminal Code, along with a series of amendments (e.g. the Criminal Code (Sexual Offences and Crimes against Children Act 2002), contain a range of provisions which criminalise acts of sexual (and other) violence against children (and adults). Harsher sentences were introduced under the 2002 Act, and the defence of marriage in rape cases was removed (meaning that rape was criminalised within marriage), and the requirement for corroboration in evidence was removed.⁴⁹ According to the Criminal Code (Amendment) Act 2013, which inserted section 347C into the Criminal Code, certain acts of aggravated rape now carry the death penalty, including where the victim is under 10 years of age. It is noted that the use of the death penalty, while not against international law where imposed for the most serious offences, is nonetheless believed by many States to be a violation of human rights.

⁴⁵ CEDAW Committee, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, 26 July 2017, para. 29.

⁴⁶ CEDAW Committee, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, 26 July 2017, para. 29.

⁴⁷ CEDAW Committee, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, 26 July 2017, para. 29(c).

⁴⁸ CEDAW Committee, General recommendation no. 19, 1992, para. 18.

⁴⁹ Sepoe, O., UNDP, *Gender based violence in Papua New Guinea: A review of literature and interventions, 1975 – 2015.*

Section 347 of the Code criminalises rape, section 348 criminalises attempted rape and section 349B criminalises procurement of someone or conspiracy with another to commit rape. Rape is defined, in accordance with international standards, as sexual penetration without consent, with a heavier sanction in circumstances of aggravation, which are set out in section 349A. Aggravating circumstances include (inter alia) the abuse of a position of trust, authority or dependence, and where the accused person is a member of the same family or clan.

Section 349 criminalises sexual assault, which is committed where, without a person's consent, another person, (a) touches, with any part of his body, the sexual parts of that other person; or (b) compels another person to touch, with any part of this body, the sexual parts of the accused person's own body. The provision sets out higher penalties in aggravating circumstances. Importantly, sexual assault is committed where there is an absence of consent. Section 229D criminalises 'persistent sexual abuse of a child', which involves a person committing two or more sexual offences (as defined in the Code) in relation to a particular child (whether or not of the same nature). The provision allows for some flexibility in terms of establishing specific dates of each offence. If one or more of the relevant acts involved penetration, the sanction is life imprisonment.

For the purposes of rape, sexual assault and other offences contained in the relevant part of the Criminal Code Act, consent is defined in section 347A, as "free and voluntary agreement", and section 347A(2) lists circumstances in which it can be considered that consent is not given. These circumstances are quite comprehensive and include situations of force, threats etc. but also inability to give consent due to incapacitation, and the abuse of positions of power, authority and trust. The section also explicitly specifies that consent can be withdrawn at any time, despite the initial giving of consent and encompasses acts involving a mistake about the sexual nature of the act or identity of the person. Importantly, section 347A(3) appears to recognise the need for active consent. It clarifies that, where consent is an issue in a criminal charge, a judge or magistrate must have regard to the following: "(a) the fact that the person did not say or do anything to indicate consent to a sexual act is normally enough to show that the act took place without the person's consent; and (b) a person is not to be regarded as having consented to a sexual act just because – (i) he did not physically resist; or (ii) he did not sustain physical injury; or (iii) on that or on an earlier occasion, he freely agreed to engage in another sexual act with that person or some other person." Section 347B establishes that belief that the person consented is not a defence to the crimes of rape and sexual assault where the accused's belief arose from self-induced intoxication; reckless or wilful blindness; or the accused did not take reasonable steps to ascertain consent.

However, a gap exists in that the Criminal Code does not appear to prohibit all forms of *non-contact* sexual violence against children, other than that encompassed by provisions on child sexual exploitation (set out below), and provisions on 'indecent acts' – prohibited in section 229C (indecent act directed against a child, though only a child aged under 16 years) and 227 (general provision on indecent acts). Indecent acts can include uttering of indecent words (section 227 (2)). Other non-contact offences are not defined in the Code, including, significantly, grooming, which involves preparing children to be sexually abused, for instance, by befriending them and removing their inhibitions with the intention of abusing them. Sexual grooming can also be carried out using communication technologies remotely before arranging to meet with them in person to sexually abuse them. Where children are groomed for the purpose of sexual abuse, several preparatory acts will occur before the abuse, such as chatting to the child online, engaging the child in

sexually explicit conversations, and meeting the child in person. It is important that preparatory acts are criminalized to ensure that the law can provide a basis for intervention where it is suspected that an offender is grooming a child before he or she actually meets with the child with the purpose of sexually abusing them. Sexual harassment – unwelcome sexual behaviour such as physical contact or advances, sexual remarks, sexual demands, showing pornography etc. – is also not criminalised in PNG’s Criminal Code Act.

3.4.3 Summary of key gaps

Indicators	Analysis of PNG law and policy	Gaps
(a) An appropriate age of consent to sexual activity has been established that is: the same for boys and girls and same sex persons; an appropriate close in age exemption applies to ‘factually consensual’ situations; and recognition is given to sexual activity involving a position of trust through higher age / increased penalties.	The Criminal Code sets 16 years as the age of sexual consent for boys and girls, with 18 years as the age of consent with relationships involving a position of trust, authority or dependency. However, a lower age applies (14 years) where the child is married to the person. The law is discriminatory in criminalising same sex (male) sexual activity.	Lower age of consent to sexual activity applies in marriage and discriminatory laws criminalise same sex (male) sexual activity.
(b) Rape is clearly defined and prohibited in all settings and contexts (including in marriage and against boys), is constituted by lack of consent and applies to all types of penetration.	Rape is criminalized and clearly defined as penetration without free and full consent. Consent is defined comprehensively and the law appears to include the need for ‘active consent’.	No gaps.
(c) Law criminalises full range of other sexual offences (including online sexual violence), with appropriate remedies and sanctions.	Criminal Code defines and prohibits sexual assault (committed, in accordance with international law, where there is an absence of consent) and indecent acts directed at a child. However, the law does not comprehensively criminalise non-contact sexual violence against children, notably, offences relating to grooming, and sexual harassment.	Some non-contact sexual acts, such as grooming and sexual harassment, are not criminalised.
(d) Law / policies / strategies are in place to address drivers of sexual violence and gender-based violence.	The GBV Strategy addresses the prevention of sexual violence as a form of GBV, though it does not focus explicitly on sexual violence against children.	Insufficient policy focus on sexual violence against children specifically.

3.5 Sexual exploitation

3.5.1 Context

Sexual exploitation is any situation where the victim takes part in sexual activity in exchange for a gain or benefit (or for the promise of a gain or benefit) to themselves or a third party.⁵⁰ This definition encompasses

⁵⁰ Terminology Guidelines. Interagency Working Group on Sexual Exploitation of Children. June 2016. <http://cf.cdn.unwto.org/sites/all/files/docpdf/terminologyguidelines.pdf> p 23 [27.07.2017]

prostitution and pornography, including online sexual exploitation.⁵¹ Sexual exploitation can be distinguished from sexual violence, as exploitation contains the element of exchange.⁵²

While data are limited and further research is needed on these issues, it appears that children are exposed to the risk of sexual exploitation in PNG. A 2011 survey by the International Labour Organization (ILO) found that an increasing number of children – mostly girls – are involved in commercial sexual exploitation in Port Moresby. Roughly 41 per cent of children become sex workers prior to age 15.⁵³

3.5.2 Analysis of laws and policies

Article 34 of the CRC requires States to undertake to protect the child from all forms of sexual exploitation, and in particular to take all appropriate national steps to prevent the exploitative use of children in prostitution or other unlawful sexual practices. The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OPSC) also sets out obligation on the part of States parties to take steps to address commercial sexual exploitation of children. The use of a child in sexual activities for remuneration or any other form of consideration should be a distinct crime, and the law should include provisions to penalize offering, soliciting, obtaining, procuring or providing a child for these activities.⁵⁴ States must also ensure that criminal provisions on commercial sexual exploitation of children apply extra-territorially, in order to protect children from child sex tourism. States should also make it an offence to organize, facilitate or promote sexual exploitation of children in travel and tourism.⁵⁵

In addition to several general provisions in PNG's Criminal Code, sexual exploitation of children is quite comprehensively covered in Part IV, Division 2B the Criminal Code, which was inserted into the Code pursuant to the Criminal Code (Sexual Offences and Crimes Against Children) Act, No. 27 of 2002 and covers the exploitation of children in prostitution and pornography.

Sexual exploitation of children in prostitution

Article 3 of OPSC requires that States make child prostitution a criminal offence, whether such offences are committed domestically, transnationally or on an individual or organized basis. PNG law defines "child prostitution" broadly, as "the provision of any sexual service by a person under the age of 18 years for financial or other reward, favour or compensation, whether paid to the child or some other person." Importantly, this definition encompasses any sexual act (i.e. it is not limited to penetration) and covers other types of commercial exchange (in addition to cash), recognising that child prostitution can and does occur as an exchange for non-monetary benefits, such as food, clothing, gifts, shelter, alcohol and drugs. The offences relating to child exploitation in prostitution must explicitly refer to all children under the age of 18 years.

According to international law, the acts relating to child prostitution that are to be criminalized include offering, obtaining, procuring or providing a child for prostitution, attempting to commit such acts, or complicity or participation in any of these acts. As set out in the table below, PNG's Criminal Code clearly

⁵¹ https://www.unicef.org/protection/57929_79672.html

⁵² Terminology Guidelines. Interagency Working Group on Sexual Exploitation of Children. June 2016. <http://cf.cdn.unwto.org/sites/all/files/docpdf/terminologyguidelines.pdf> p 24 [27.07.2017]

⁵³ ILO 2011, in UNICEF PNG, *Situation analysis of children* (2018), unpublished.

⁵⁴ Articles 2(b) and 3.1(b), Optional Protocol on the Sale of Children.

⁵⁵ UN CRC Committee, General Comment No. 13, 2011, paras. 25, 76.

defines and prohibits all of these acts (with harsher penalties applying in relation to children under the age of 12 years).

Figure 3: Summary of acts relating to child prostitution that are prohibited in PNG law

Act	Description ⁵⁶	PNG law
Offering	To ask someone if they would like a child for sex; to advertise the availability of children as sexual partners. An offer may occur in a range of ways, including verbally or via newspapers, internet, mobile phone or any other form of communication.	Section 229L: Any person who intentionally offers or engages a child for the purposes of child prostitution is guilty of a crime.
Obtaining	The prohibition on obtaining a child for prostitution targets the client of a prostituted child. It refers to the transaction by which a person acquires the sexual services of a child. Where a person has attempted to involve a child in sexual activities for remuneration, but has not yet engaged in any sexual activity, this should also trigger criminal responsibility.	Section 229K: A person who – (a) participates as a client or is otherwise involved with a child in an act of child prostitution; or (b) invites, persuades or induces a child to engage in child prostitution with him or her or any other person, is guilty of a crime.
Procuring	To arrange for a child victim to be made available to a customer, for example by ‘buying’ a child for someone, or arranging for a child to be brought to a particular place for them.	Section 229M: a parent, guardian or person with care or custody of a child who knowingly and allows or facilitates, in any way, the engagement of that child in an act of child prostitution is guilty of a crime. Section 229N: A person who knowingly receives any financial or other reward, favour or compensation from child prostitution is guilty of a crime.
Providing	To make a child available to someone who so requests. This would include a parent or a relative who sells a child for the purposes of prostitution or sells the child to a brothel owner who provides a customer with access to a child. Owners, occupiers, managers or anyone else who knowingly or recklessly permit premises to be used for child prostitution should be treated as providers	Section 229M: a parent, guardian or person with care or custody of a child who knowingly and allows or facilitates, in any way, the engagement of that child in an act of child prostitution is guilty of a crime. Section 229N: A person who knowingly receives any financial or other reward, favour or compensation from child prostitution is guilty of a crime. Section 229O: A person who is an owner, lessor, manager, tenant or occupier of property who – (a) knowingly allows child prostitution to take place on that property; or (b) within a reasonable time of gaining information that an act of child prostitution has taken place on that property, fails to report such occurrence to the police, is

⁵⁶ ECPAT, Strengthening laws addressing child sexual exploitation, 2008, p. 62.

	guilty of crime.
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Several other provisions in the Criminal Code relate to the exploitation of children in prostitution; however, they have more limited application. Section 214 creates an offence for householders or occupiers of premises to induce or knowingly permit any girl under the age of 16 years to be “unlawfully carnally known by any man.” Section 220 criminalises the abduction of an unmarried girl under 18 years with the intent for her to be “carnally known” by any man. These provisions are quite limited in that they only apply to girl victims, male perpetrators and (in the case of section 214) girls aged under 16 years.

Other provisions in the Criminal Code set out particular offences in relation to prostitution (e.g. section 221: unlawful detention with intent to defile or in a brothel; and section 231: running ‘bawdy houses’); however, they are not explicitly focused on children.

The offence relating to conspiracy to commit an act relating to prostitution (section 222: ‘Conspiracy to defile’), only applies to victims who are women and girls, limiting the protection afforded to boys (and men).

Article 8 of the OPSC designates children engaged in child prostitution as victims. Consistent with this provision, section 229Q of PNG’s Criminal Code Act states that “No person under the age of 18 years shall be charged with an offence under this subdivision of any sexual service by that child for financial or other reward, favour or compensation.”

Sexual exploitation of children in pornography

As with child prostitution, Article 34 of the Convention on the Rights of the Child (CRC) requires States to take all appropriate national, bilateral and multilateral measures to prevent the exploitative use of children in pornographic performances and materials. States should also have a distinct and well-defined offence of child pornography (defined as any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes) that penalizes producing, distributing, disseminating, importing, exporting, offering, selling and accessing or possessing child pornography.⁵⁷ States are also required under the OPSC to criminalize attempts to commit these acts, as well as complicity or participation in these acts, and to ensure that all of these acts are “punishable by appropriate penalties that take into account their grave nature.”

Child pornography is clearly defined in PNG’s Criminal Code (by virtue of the amendments passed in 2002 under the Criminal Code (Sexual Offences and Crimes Against Children) Act, No. 27 of 2002). Under Part IV, Division 2B of the Code, child pornography is defined as: “(a) any photographic, film, video or other visual representation – (i) that show a person who is or who is depicted as being under the age of 18 years and is engaged in, or is depicted as engaged in, sexual activity; or (ii) whose dominant characteristics is the depiction, for a sexual purpose, of the genital or anal region of a person under the age of 18; or (b) any audio representation of a person who is, or is represented as being, a child and who is engaged in, or is being represented as being engaged in, sexual activity; or (c) any written material, visual representation or audio

⁵⁷ Articles 2(c) and 3.1(c) OPSC. The OSPC does not explicitly recognise the need to criminalise simple possession, though the UN Committee on the Rights of the Child recommends that voluntarily accessing and posing child pornography should be criminalised.

representation that advocates, counsels or encourages sexual activity with children, irrespective of how or through what medium the representation has been produced, transmitted or conveyed and, without prejudice to the generality of the foregoing, includes any representation produced by or from computer graphics or by the other electronic or mechanical means.”

This definition is comprehensive and aligns with international law, which requires all means of transmission (audio, visual, written, and produced, transmitted or conveyed through any medium), and it includes simulated and virtual depictions. It covers both sexual activity and representations of parts of a child’s body for sexual purposes. Given the definition of “child” in this Part of the Code, the provisions apply to all children under the age of 18 years.

As set out in the table below, PNG’s Criminal Code prohibits all of the acts required under international law associated with child pornography, including the act of ‘simple possession’ (without the requirement of intent to distribute, disseminate etc.).

Figure 4: Summary of acts relating to child pornography that are prohibited in PNG law

Act	Description ⁵⁸	PNG law
Production	Producing child pornography refers to its creation or making, by whatever means. This may include taking photographs of a child, morphing (digitally created, blended images of adults and children), organizing and/or directing films or audio recordings, sexual posing, etc.	Section 229R: A person who – (a) uses a child for the production of child pornography; or (b) causes or procures a child to be used for the production of child pornography; or (c) having the care or custody of a child, consents to or allows the child to be used for the production of child pornography, is guilty of a crime. Section 229S: A person who – (a) knowingly <i>produces</i> , distributes, prints or publishes any child pornography...is guilty of a crime.
Offering	This may be done through a range of different means whether verbally or via newspapers, the Internet (for example through a website), mobile phones or other forms of ICT. It does not matter whether a subsequent transaction actually takes place. The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse establishes an offence of making available child pornography to cover, for instance, the creation of child pornography websites.	Section 229S: A person who – (a) knowingly produces, distributes, <i>prints or publishes</i> any child pornography; or (b) knowingly imports, exports, <i>sells or shows</i> any child pornography...is guilty of a crime. Penalty:
Distribution and dissemination	This refers to the act of delivering, giving, selling or sending of child pornography materials, including through computer systems (e.g. file sharing programmes, popular online chat mediums or webpages).	Section 229S. A person who – (a) knowingly produces, <i>distributes</i> , prints or publishes any child pornography; or (b) knowingly <i>imports, exports, sells or shows</i> any child pornography...is guilty of a crime.

⁵⁸ ECPAT, Strengthening laws addressing child sexual exploitation, 2008, p. 75.

	This would include the import/export of child pornography.	
Possessing	Having child pornography under someone’s control or owning the materials. In order to be considered a criminal act, the OSPC requires that possession be coupled with the intent to distribute the materials, or to commit any of the other above acts. Though the CRC Committee has stated that ‘simple possession’ should also be criminalised.	Section 229T: A person who knowingly possesses any child pornography is guilty of crime.

It is noted that the Cybercrime Act 2016 also explicitly prohibits the acts of offering, making available, distributing or accessing pornography (s.17(1)) and section 18 makes it an offence to use electronic means to commit acts prohibited under sections 229R, 229S and 229T of the Criminal Code 1974 (as amended by the Criminal Code (Sexual Offences and Offences Against Children) Act 2002. Section 18(2) adds an offence of using an electronic system to access child pornography.

Other general obscenity law provisions also apply to child pornography, as set out in the Criminal Code and the Classification of Publication (Censorship) Act 1989. Section 228 of the Criminal Code criminalises various acts (selling, distributing, importing etc.) relating to “obscene publications and exhibitions.” The Classification of Publication (Censorship) Act 1989 contains provisions relating to the control and prohibition of ‘objectional publications’ which are defined to include (inter alia) a publication that “depicts a child (whether engaged in sexual activity or otherwise) who is, or who is apparently, under the age of 18 years, in a manner that is likely to cause offence to a reasonable adult person and is undesirable in the interest of the public” (section 2).

In relation to child pornography, specific groups of individuals should, as a matter of best practice, be subject to an affirmative obligation to report suspected cases of child pornography or exploitation. These include persons who may come across child pornography images in the course of their work, for instance, internet service providers, photo developers, information technology professionals and so on. Section 44 of the Cybercrime Act 2016 extends liability to ICT service providers where they intentionally or knowingly store information for users indicating illegal activity; initiate or aid in commission of a crime; or where they conceal information or otherwise frustrate criminal investigations. These acts are criminalised, with different penalties applying to natural persons and corporations. The extension of liability to ICT service providers is a positive initiative; while the provision does not explicitly impose positive reporting obligations on organisations, creating an offence of ‘intentionally or knowingly storing’ child pornography content effectively extends liability for failure to report.

Exploitation of children in sex tourism

Child sex tourism is “the exploitation of children for sexual purposes by people who travel locally or internationally to engage in sexual activities with children.” It often involves the use of tourism infrastructure, including travel agencies, transport, accommodation and other tourist-related services, to facilitate contact with children. Although there is no specific mention of ‘sex tourism’ in international conventions, it falls squarely under provisions preventing sexual exploitation of children. The Convention on the Elimination of Discrimination against Women (CEDAW), which requires States to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation or prostitution of women.” Article 34 of

the CRC also requires States parties to protect the child (whether girl or boy) from all forms of sexual exploitation, while Article 35 requires States to take all appropriate national, bilateral and multilateral measures to prevent the sale of children. The OSPC places more specific requirements on States, providing that States criminalize and exercise territorial jurisdiction over acts of child sexual exploitation (i.e. those acts occurring within the jurisdiction of the State, regardless of the nationality of the offender).⁵⁹

The Criminal Code (Amendment) Act 2016 extended the jurisdiction of Criminal Code to apply extraterritorially. According to the amended section 12 of the Code, the Code applies to acts or omissions done (a) within the territory of PNG; (b) on land, air or sea vessel; and (c) by a national of PNG outside the territory of PNG if that act or omission constitutes a criminal offence where it was done. However, there does not appear to be any provisions to permit the prosecution of a non-PNG national who commits acts of child sexual exploitation after they return to their home countries. This represents a gap; extraterritorial legislation ensures that offenders cannot avoid criminal liability for offences against children simply by returning to their home country. It also acts as a safeguard in cases in which it is not possible for the offender to be extradited to PNG.

It is considered best practice for States to criminalize preparatory acts relating to child sex tourism so that their nationals and residents can be prevented from committing criminal acts against children once they travel abroad. Preparatory acts include any actions taken in a destination country relating to child sex tourism (for example, actively and intentionally seeking online information about a child sex tourism destination, making a booking at a hotel for the purpose of sexually exploiting a child and so on). Preparatory liability is important as it has the potential to prevent acts of child sexual exploitation. Preparatory provisions should establish that it is an offence to commit any action in preparation for any sexual exploitation offence, regardless of whether the exploitation is actually committed and regardless of whether it is committed with the intention of committing any specific sexual exploitation offence.⁶⁰ In PNG, there are no distinct offences in law that criminalise various acts carried out to plan and organise child sex tourism.

3.5.3 Summary of key gaps

Indicators	Analysis of PNG law and policy	Gaps
(a) Commercial sexual exploitation of children is clearly defined and all acts prohibited: offering, obtaining, procuring, providing.	Commercial sexual exploitation of children is clearly defined in the Criminal Code Act and the acts of offering, obtaining, procuring, providing.	No gaps.
(b) The prohibition on commercial sexual exploitation applies to all children up to 18 years, providing equal protection to boys and girls.	Provisions of the Criminal Code relating specifically to children exploited in prostitution apply to all children over 18 years; however, several general provisions (most notably, the provision prohibiting conspiracy to commit an act relating to child prostitution) applies only to girls / married girls / girls aged under 16 years.	Some general Criminal Code provisions apply only to girls (and some only to unmarried girls and girls under 16 years).
(c) Law exempts children exploited in commercial sexual exploitation from prosecution.	The Criminal Code Act states that persons under the age of 18 years shall not be charged with offences related to prostitution.	No gaps.

⁵⁹ Article 4(1), OSPC.

⁶⁰ ECPAT. (2012) Protection and the OPSC: Justifying good practice laws to protect children from sexual exploitation, p. 10.

(d) Child pornography is clearly defined and all acts prohibited: production, offering, distribution / dissemination, possession.	A clear and comprehensive definition of child pornography that complies with international law is provided in the Criminal Code Act, and acts relating to production, offering, distribution / dissemination and possession (including 'simple possession') are criminalized. Various acts relating to child pornography is also prohibited under obscenity laws (Criminal Code) and the Classification of Publication (Censorship) Act 1989.	No gaps.
(e) Reporting obligations are imposed on service providers and other professionals	The Cybercrime Act 2016 extends liability to ICT providers for storing, initiating or aiding the production of child pornography, and for concealing information, thereby making them liable for failing to report.	No gaps.
(f) Laws relating to child sexual exploitation apply extraterritorially	PNG's Criminal Code Act applies to PNG nationals while abroad, but it does not cover acts committed by non-PNG nationals when they return to their country of origin.	Criminal law does not extend to non-PNG nationals when they return to their home country.
(g) It is an offence to organize, facilitate or promote sexual exploitation of children in travel and tourism.	No specific offence relating to the organisation, facilitation or promotion of sexual exploitation of children in travel and tourism.	No specific offence relating to 'preparatory acts' in travel and tourism.

3.6 Abduction, sale of children and child trafficking

3.6.1 Context

Child trafficking and exploitation appears to be an issue in PNG. It has been reported that traffickers exploit foreign and local women and children in sex trafficking, domestic servitude, forced labour in the tourism sector, manual labour, forced begging, and street vending, and approximately 30 percent of Papua New Guinean sex trafficking victims are children under the age of 18, with some as young as 10 years old.⁶¹ Some parents force children to beg or sell goods on the street, and some sell or force their daughters into marriages or child sex trafficking to settle debts, resolve disputes between communities, or support their families.⁶² In addition, some parents reportedly transfer their children—some as young as 12—to other families via informal paid adoption arrangements that, absent monitoring or registration practices, increase their risk of exploitation; this is particularly prevalent among girls, whom adoptive families often seek out as potential sources of future bride-price income.

3.6.2 Analysis of laws and policies

Under the OPSC, States are required to criminalise the sale of children, which is any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.⁶³ Abduction and the removal or retention of a child in violation of the rights of custody of

⁶¹ USA Department of State, *Trafficking in persons report* (20th ed.) (2020), p. 400.

⁶² USA Department of State, *Trafficking in persons report* (20th ed.) (2020), p. 400.

⁶³ Article 35, CRC; article 2(s), OPSC.

another person should also be prohibited.⁶⁴ All acts relating to the trafficking of children should also be criminalised and comprehensively addressed in law and practice.⁶⁵

The PNG Government passed the Criminal Code (Amendment) Act, Act 13 of 2013, which amended the Criminal Code by creating of new Division – Part III, Division 10 – on people smuggling, and Part IV Division 1A on trafficking in persons.

Sale of children

Under international law, the Government of PNG must ensure that the sale of children is criminalised, and this must include any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.⁶⁶

Under PNG law (the 2013 amendment to the Criminal Code), slavery or practices similar to slavery are recognised as a form of exploitation connected to trafficking in persons. Under the Code, “Slavery or practices similar to slavery...includes, but is not limited to, the following: (a) the selling, bartering or buying of a person without that person's consent for value received or other consideration; or (b) the selling, bartering or buying of a person under the age of 18 against the best interest of that person, for value received or other consideration; or (c) the status of debt bondage intended as the condition of a person who has no real or acceptable alternative but to provide labour or personal services or those of a person under his control to repay a debt, if the value of those services or labour, as reasonably assessed, is not applied towards the liquidation of the debt or the length and nature of those services or labour are not limited and proportionate to the debt; or the status of domestic servitude intended as the condition of a person who is forced, by physical or psychological coercion, to work without any real financial reward, deprived of liberty and in a situation contrary to human dignity.” Also, the LPA contains an offence, ‘sale of children’, constituted where a person sells or intends to sell a child for his personal gain’ (section 82(1)), and where a person (a) solicits the sale of a child; or (b) accepts or intends to accept proceeds of the sale; (c) receives the child upon payment being made (section 82(2)). Assuming that ‘personal gain’ includes all forms of remuneration, this definition complies with international law.

Child abduction

Child abduction, sometimes referred to as kidnapping, is the unauthorised removal of a child from the custody of the person with whom the child lawfully lives. While States are required to criminalise particular forms of violence associated with child abduction, such as trafficking and child prostitution, it is also essential that States criminalise the act of abduction. In order to ensure that children are legally protected from both stranger and parental abduction, the law must criminalize not only abduction that occurs by force or coercion, but also abductions that involve the unlawful removal from the care of the parent/guardian with whom the child lawfully resides. The most protective laws also expressly criminalize acts of abduction outside the territory of the State (inter-country abductions).

Under PNG’s Criminal Code Act, various acts of abduction and kidnapping are criminalised; however, these provisions tend to be quite narrow and limited to girls under 16 or children 14 years. Section 351 prohibits

⁶⁴ Article 35, CRC.

⁶⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime 2004 (Palermo Protocol).

⁶⁶ Article 35, CRC; article 2(s), OPSC.

the abduction of an unmarried girls under 16 years (defined as “a person who unlawfully takes an unmarried girl under the age of 16 years out of the custody or protection of her father or mother, or other person having the lawful care or charge of her, and against the will of the father, mother or other person”). Section 361 (child stealing) criminalises the deprivation of a child from a parent or guardian or any other person with lawful care of the child. However, this provision only relates to children over the age of 14 years. Sections 353 (kidnapping) and 354 (kidnapping for ransom) also apply to children and adults alike. However, the act of removing a child under 18 years from a parent / guardian is not criminalised.

Child trafficking

Trafficking in persons is the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation (including sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs).⁶⁷ This definition has three elements: an act (recruitment, transportation, transfer, harbouring or receipt of persons); a means (the threat or use of force or other forms of coercion etc.), and a purpose (exploitation). However, according to international law, in the case of persons under the age of 18 years, it is not necessary to demonstrate that the act of trafficking took place by any means (force, threats etc.).⁶⁸

- ***Criminalisation of all acts connected to child trafficking***

States must ensure that all acts connected to child trafficking set out in international law (recruitment, transportation, transfer, harbouring and receipt of children) are criminalized in domestic laws. In accordance with these requirements, PNG’s Criminal Code (as amended in 2013) criminalises trafficking in persons, including: “any person who recruits transports, transfers, conceals, harbours or receives any person” (section 208C(1)) (though these acts are not defined).

- ***Means of trafficking***

Under international law, it is not necessary to prove that particular means were used (threat or use of force, coercion, abduction, fraud, deception, abuse of power, giving or receiving payments) in the course of trafficking a child (under age 18).⁶⁹ There is a gap in PNG law, as the crime of trafficking in persons includes a ‘means’ element and this requirement also applies to children. Means include: (a) threat; (b) use of force or other forms of coercion; (c) abduction; (d) fraud; (e) deception; (f) use of drugs or intoxicating liquors; (g) the abuse of office; (h) the abuse of a relationship of trust, authority or dependency; (i) the abuse of a position of vulnerability; or (j) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person (section 208C(1)). Though, according to section 208E, “it is not a defence to a charge (of trafficking)...that the trafficked person consented to any acts under those sections.”

- ***Purpose (exploitation)***

⁶⁷ Article 3(a), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime 2004 (Palermo Protocol).

⁶⁸ Article 3(c) and 3(d), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime 2004 (Palermo Protocol).

⁶⁹ Article 3(c) and (d), Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.

In international law, the act of child trafficking must be for the purpose of exploitation. This should, according to Article 3(a) of the Palermo Protocol, include “at a minimum, prostitution and other forms of sexual exploitation; forced labour or services; slavery or practices similar to slavery; servitude; or the removal of organs.” In accordance with article 3(a) of the Palermo Protocol, forms of exploitation under PNG’s Criminal Code (pursuant to the 2013 amendment) include: “the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs.”

- ***Extraterritorial application of trafficking provisions***

Given the international nature of acts of human trafficking, it is important that provisions that criminalise these acts apply extraterritorially. Section 208B of the Criminal Code Act explicitly provides that the provisions on trafficking in persons continue to apply “(a) if they occur wholly in Papua New Guinea; or (b) if they occur in Papua New Guinea but a part of their preparation, planning, direction or facilitation takes place outside Papua New Guinea; or (c) if they occur outside Papua New Guinea but a part of their preparation, planning, direction or facilitation takes place in Papua New Guinea; or (d) if they occur in Papua New Guinea and have effects in Papua New Guinea as well as outside Papua New Guinea; or (e) if they occur outside Papua New Guinea and have effects overseas as well as in Papua New Guinea.” Thus, the provisions prohibiting acts associated with child trafficking have broad extraterritorial coverage.

- ***Assistance to victims of trafficking***

According to international law, the law should make provision for assistance to and protection of child victims of trafficking and abduction,⁷⁰ and child victims should also be explicitly exempt from prosecution from any offences relating to their trafficking, sexual abuse and exploitation.⁷¹ Section 208F of PNG’s Criminal Code Act clearly exempts all victims of trafficking from prosecution in respect of any offences that is a direct consequence of being trafficked. Section 208G provides for the Minister to take all appropriate measures to assist victims of trafficking, including: protecting their right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; protecting their physical safety; and providing medical, psychological and material assistance. Section 208G requires that assistance should be given to ensure respect for the special needs of women and children, and it permits the making of arrangements to permit the stay of trafficking victims in PNG on humanitarian grounds and the integration of victims who are PNG citizens into society, and assistance facilitating the return to their home country, with due regard to their safety, dignity, physical and psychological conditions. These protective provisions conform to international standards.

Implementation challenges

While PNG’s laws on child trafficking are comprehensive and broadly conform to international standards, there are clear challenges implementing these laws in practice. Since the enactment of the anti-trafficking law in 2013, the government has not achieved any trafficking convictions. This has been attributed to the insufficient allocation of financial and human resources, very low awareness among government officials and the public, and endemic corruption among officials, particularly in the logging sector.⁷²

⁷⁰ Articles 6 – 8, Palermo Protocol.

⁷¹ Report of the Special Rapporteur on the Sale of Children, 2015, para. 82(g).

⁷² USA Department of State, *Trafficking in persons report* (20th ed.) (2020), p. 399.

3.6.3 Summary of key gaps

Indicators	Analysis of PNG law and policy	Gaps
(a) Abduction and the removal or the retention of a child in violation of the rights of custody of another person is prohibited.	The Criminal Code Act prohibits acts of kidnapping, abduction and ‘stealing children’; however, these provisions are limited to girls and apply in specific circumstances (abduction) or to children under 14 years only (‘stealing children’). There is no offence constituted by removal of a child from their parent / guardian.	No separate offence of removal of a child from their parent / lawful guardian.
(b) The sale of children (any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration) is clearly set out in law and prohibited.	The LPA prohibits the sale of children and the definition is consistent with international law. The Criminal Code Act prohibits the sale of children as a form of exploitation within the context of trafficking.	No gaps.
(c) Child trafficking is clearly set out in law and covers all acts relating to trafficking: (i) recruiting; (ii) transporting; (iii) transferring; (iv) harbouring; and (v) receiving, and covers all types of exploitation, without the need to establish a ‘means’ of trafficking.	Child trafficking is clearly defined in the Criminal Code Act (pursuant to the 2013 amendment) and the acts of recruiting, transporting, transferring, harbouring, and receiving are prohibited. Different forms of exploitation are covered under these trafficking in persons provisions, consistent with international law. However, the offences relating to trafficking require that a means is used on child victims of trafficking (force, threats, coercion etc.), which is inconsistent with international standards.	Offences relating to child trafficking require the establishment of a ‘means’ (force, threats etc.)
(d) Child trafficking is an offence regardless of the child’s ‘consent.’	The Criminal Code Act clearly provides that consent is not a defence to trafficking offences.	No gaps.
(e) Trafficking law applies to all children (boys and girls) equally	Trafficking in persons offences apply equally to boys and girls (and men and women).	No gaps.
(f) Child trafficking laws and extraterritorial application.	The Criminal Code Act explicitly applies extraterritorially to cover offences related to human trafficking.	No gaps.
(g) Strategy / policy is in place to address the drivers of child trafficking.	No strategy / policy is in place.	No strategy / policy is in place.
(h) Laws and policies are in place to ensure access to services for child victims of trafficking and exploitation.	The Criminal Code Act provides that the Minister may undertake all appropriate measures to support the needs of trafficking victims (with special focus on the needs of women and children).	No gaps.
(h) The law exempts children from prosecution for acts relating to trafficking and sexual exploitation.	The Criminal Code Act explicitly provides that victims of trafficking cannot be prosecuted for any acts related to their trafficking.	No gaps.

3.7 Protection of children in the digital environment

3.7.1 Context

The CRC Committee has recognised, in its recent General Comment on children’s rights in relation to the digital environment, that the digital environment opens up “new ways to perpetrate violence against children, by facilitating situations in which children experience violence and / or may be influenced to do harm to themselves or others.”⁷³ In particular, the Committee highlights that digital technologies may be used to solicit children for sexual purposes to participate in online sexual abuse and exploitation. Other forms of violence can include cyberaggression, including bullying and threats to reputation, the non-consensual creation and sharing of sexualised text or images and the promotion of self-harming behaviours. The Committee notes that, for *children* involved in perpetrating these acts, States should pursue “preventative, safeguarding and restorative justice approaches.”⁷⁴

3.7.2 Analysis of laws and policies

The CRC Committee notes, in its General Comment No. 25, that States are under an obligation to take legislative and administrative measures to ensure children are protected from violence in the digital environment, including through ensuring that children’s online protection is integrated within national child protection policies. States should implement measures that protect children from risks, including cyberaggression and digital technology-facilitated and online child sexual exploitation and abuse, ensure the investigation of such crimes and provide remedy and support for children who are victims.⁷⁵ States should also take measures to ensure compliance by businesses with their obligations to prevent their networks or online services from being used in ways that cause or contribute to violations or abuses of children’s rights, including their rights to privacy and protection, and to provide children, parents and caregivers with prompt and effective remedies.⁷⁶

The PNG Government adopted a National Cybercrime Policy in 2014. This Policy includes provisions on the prevention and response to online sexual exploitation of children and cyber harassment and bullying, and sets out the need for new legislation. While the Policy is welcome, it does not include sufficient focus on children and does not adequately cover prevention and response to VAC and protection risks in the digital environment for children.

As noted above, section 19 of the Cybercrimes Act 2016 contains a comprehensive provision that prohibits the use of an ‘electronic system’ for the purpose of sexual exploitation or abuse (see section 3.5).

The Cybercrimes Act 2016 also prohibits acts of cyber bullying and cyber harassment (section 22(1)): “A person who, intentionally and without lawful excuse or justification, or in excess of a lawful excuse or

⁷³ UN Committee on the Rights of the Child, General Comment No. 25 (2021) on Children’s rights in relation to the digital environment, 24 March 2021, CRC/C/GC/25, para. 80.

⁷⁴ UN Committee on the Rights of the Child, General Comment No. 25 (2021) on Children’s rights in relation to the digital environment, 24 March 2021, CRC/C/GC/25, para. 81.

⁷⁵ UN Committee on the Rights of the Child, General Comment No. 25 (2021) on Children’s rights in relation to the digital environment, 24 March 2021, CRC/C/GC/25, para. 25.

⁷⁶ UN Committee on the Rights of the Child, General Comment No. 25 (2021) on Children’s rights in relation to the digital environment, 24 March 2021, CRC/C/GC/25, para. 26.

justification, or recklessly, uses an electronic system or device whether or not it is connected to the internet...) to: (a) initiate; (b) facilitate; or (c) participate in, any communication or online discussion or posts with or regarding a child, directly or indirectly... with the purpose of: (i) bullying, intimidating, threatening, demeaning, ridiculing or stalking or causing emotional distress; or (ii) supporting such repeated acts under Subparagraph (i) in respect of that child, is guilty of a misdemeanour. Though these acts will be considered a crime if they result in psychological or physical harm to a person (subsection (2)). Penalties include criminal penalties and prohibitions from using electronic systems or devices, and lighter penalties apply to child offenders.

However, the 2014 Policy and 2016 Act are silent as to how acts of peer violence are to be addressed (e.g. non-consensual ‘sexting’; promotion of self-harm etc. Also, besides provisions extending liability to digital service providers in relation to child sexual exploitation, as discussed above (section 3.5), the Law does not set out duties or liability on the part of businesses for protecting children from violence in the digital environment.

3.7.3 Summary of key gaps

Indicators	Analysis of PNG law and policy	Gaps
(a) National policy / strategy is in place for the protection of children in the digital environment.	The Government adopted a National Cybercrime Policy in 2014; however, the Policy does not include sufficient focus on children and does not adequately cover prevention and response to VAC and protection risks in the digital environment for children.	National policy does not adequately cover VAC in the digital environment.
(b) Law defines and prohibits online grooming of children	Section 19 of the Cybercrimes Act 2016 contains a comprehensive provision that prohibits the use of an ‘electronic system’ for the purpose of sexual exploitation or abuse, which covers acts of grooming.	No gaps.
(c) Law defines and prohibits acts of cyber aggression / cyber attacks	The Cybercrimes Act 2016 prohibits cyber bullying and cyber harassment, but it is silent on (other) forms of peer violence, such as non-consensual ‘sexting’ and image sharing and promotion of self-harm and so on. There are no provisions on responsibilities or liabilities of businesses (apart from in the context of child sexual exploitation).	Forms of peer violence (e.g. sexting, promotion of self harm) is not addressed in law, and the responsibilities and liabilities of businesses are not comprehensively addressed.

3.8 Child and forced marriage

3.8.1 Context

Child marriages (where at least one party is below the age of 18 years) and forced marriages (where at least one party does not provide free and full consent to the marriage) are known to occur in PNG. According to data from the 2016 – 2018 National Demographic and Health Survey, eight per cent of girls are married before the age of 15 years and 27.3 per cent are married before the age of 18 years.⁷⁷ Most of these

⁷⁷ PNG National Statistical Office, *Papua New Guinea Demographic and Health Survey 2016 – 2018* (2019), p. 66.

marriages occur outside of formal registration systems.⁷⁸ There are also reports of forced marriages, with some girls reportedly sold as wives by parents, village chiefs and family members to local mining and logging workers in areas where extractive industries operate.⁷⁹ Young girls sold into polygamous marriages may be forced into domestic service for their husbands' extended families or exploited in sex trafficking.⁸⁰

3.8.2 Analysis of laws and policies

Child marriage is defined as marriage where at least one party is below age 18 years. Although neither the CEDAW nor the CRC establish a specific minimum age for marriage, the Committees of both treaty bodies have recommended that the minimum age for marriage for both men and women should be set no lower than 18 years.⁸¹ According to international standards, States must set a minimum age of marriage at 18 years or above in national law, and this age should apply to all forms of marriage (statutory, customary, religious etc.).⁸² No exceptions (e.g. based on parental consent or consent of a magistrate / registrar / religious leader) should apply,⁸³ and the minimum age of marriage should be the same for boys and girls.⁸⁴ The law should also require free and full consent of the intending spouses and prohibit forced marriage.⁸⁵ Registration of marriages should be compulsory and require proof of age and free and full consent.⁸⁶

Laws regulating marriage, including the conditions for marriage (among them, minimum age requirements), and solemnisation and registration requirements are set out in the Marriage Act 1963. The Matrimonial Clauses Act 1963 sets out provisions on the dissolution or marriage and related matters. The Marriage Act 1963, in contravention of international law, establishes different minimum ages for marriage for boys and girls. Section 7(1) provides that a male is of marriageable age from 18 years and a female is of marriageable age from 16 years. Also, the law permits marriage of girls from the age of 14 years and boys from the age of 16 years where a Judge or Magistrate authorises the marriage (section 7(2)). In order to do this, a party to the marriage can make an application to the Judge or Magistrate who must hold an inquiry into the facts and circumstances and be satisfied that the applicant has attained the minimum age of 14 years (girls) / 16 years (boys) and "the circumstances of the case are so exceptional and unusual as to justify the making of the order" (section 7(3)). While an exception only appears to be permitted in limited cases, providing an exception that effectively allows for the marriage of girls at 14 years (and boys at 16 years) is clearly against international law, as is the establishment of different minimum ages based on gender.

In addition, the statutory provisions on minimum marriage ages do not appear to apply customary marriages; section 3 of the Marriage Act 1963 states that persons shall always be deemed capable of entering a

⁷⁸ Girls not brides: Papua New Guinea: <https://www.girlsnotbrides.org/child-marriage/papua-new-guinea/>

⁷⁹ Girls not brides: Papua New Guinea: <https://www.girlsnotbrides.org/child-marriage/papua-new-guinea/>

⁸⁰ UNICEF PNG, *Situation analysis of children* (2018), unpublished.

⁸¹ CEDAW Committee, General Recommendation No. 21, 1994, A/47/38; CRC Committee, General Comment No. 20, para. 40.

⁸² Article 16.2, CEDAW.

⁸³ UN CEDAW Committee, General Recommendation No. 21 on Equality in Marriage and Family Relations, 1994; UN CRC Committee and UN CEDAW Committee, Joint General Recommendation on Harmful Practices, 2014, para. 55(f).

⁸⁴ UN CEDAW Committee, General Recommendation No. 21 on Equality in Marriage and Family Relations, 1994; UN CRC Committee and UN CEDAW Committee, Joint General Recommendation on Harmful Practices, 2014, para. 55(f).

⁸⁵ Article 1, Convention on Consent to Marriage, Minimum age for Marriage and Registration of Marriages; Article 16.1(b), CEDAW, art. 16.1(b); UN CEDAW Committee, General Recommendations No. 21, 1994, para. 16.

⁸⁶ Article 3, Convention on Consent to Marriage; Article 16.2, CEDAW; UN CEDAW Committee, General Recommendations No. 21, 1994, para. 39.

customary marriage “in accordance with the custom prevailing in the tribe or group to which the parties to the marriage or either of them belong or belongs.” According to section 6, the provisions on minimum ages of marriage do not apply to customary marriages.

Part V of the Marriage Act 1963 regulates the solemnisation and registration of marriages. This part requires that all marriages are registered and sets out conditions for the registration, which include the giving of free and full consent by both parties to the marriage (and evidentiary requirements of consent). There is also a provision (section 5 – Protection of women) that prohibits the marriage of a woman “in accordance with custom,” where the woman objects to the marriage or purported marriage. However, this only applies where “excessive pressure” has been exerted on her and where it would be a “hardship to compel her to conform to custom.” This provision is very limited in application and does not prohibit all forced marriages – it only applies to women and it also does not require an absence of free and full consent but rather the exertion of “excessive” pressure and “hardship.”

Section 58(1) of the Marriage Act criminalises a person “who goes through a form or ceremony of marriage with a person who is not of marriageable age”, imposing a maximum sanction of five years imprisonment (though only for marriages of girls aged 16 years and over). Confusingly, the LPA criminalises child marriage where “a person, by act or omission, facilitates the marriage of a child, either by custom or law.” The LPA does not define ‘child marriage’, though ‘child’ is defined as a person under 18 years. It is unclear which law prevails in the case of the marriage of, for instance, a girl aged 16 years (which would be lawful under the Marriage Act 1963).

The law does not set out any civil remedies for child marriage or forced marriage of children, such as Protection Orders / Restraining Orders that can be used to prevent child or forced marriages from occurring.

3.8.3 Summary of key gaps

Indicators	Analysis of PNG law and policy	Gaps
(a) Minimum age of marriage (above 18 years) is clearly set out in law and minimum age of marriage is the same for girls and boys.	The minimum age of marriage is set at 18 years for boys and 16 years for girls, contrary to international standards.	The minimum age of marriage for girls (16 years) is below that set out in international law.
(a) There are no legal exceptions permitting marriage below the age of 18 years (e.g. pregnancy, parental permission etc.).	The law permits the marriage of girls from 14 years and boys from 16 years in certain conditions, with the approval of a Judge or Magistrate.	The law sets out exceptions for the minimum age of marriage and permits marriage from 14 years (girls) / 16 years (boys) with Judicial approval.
(b) There is a legal requirement to register all marriages, with a requirement of proof of age.	The Marriage Act stipulates that marriages must be registered and details a registration and solemnisation process, including a requirement for evidencing age and consent.	No gaps.
(c) Child marriages are prohibited in law, with sanctions and legal remedies.	Child marriages are prohibited and criminalised; however, this likely does not apply to girls aged 16 – 18 years.	Child marriages are criminalised but not for girls from 16 years.
(d) Forced marriages are prohibited in law, with sanctions and legal remedies.	Section 5 of the Marriage Act prohibits customary marriages of women where excessive pressure has been imposed on the	There is no criminal prohibition on forced marriages.

	woman and the marriage would cause her hardship; however, this does not amount to a prohibition on forced marriages as it only applies to women and does not apply through the denial of free and full consent (but rather requires “excessive pressure” and “hardship”).	
(e) Civil legal remedies exist to prevent and address child and forced marriages.	No civil remedies are provided in law to prevent child or forced marriages.	No civil remedies exist for child or forced marriages.
(f) Policy / strategy is in place to address the drivers of child and forced marriages.	No policy or strategy is in place to explicitly address the drivers of child marriage.	No policy / strategy on preventing child marriages.

3.9 Harmful practices

3.9.1 Context

The term ‘harmful practices’ refers to acts carried out as part of a particular tradition, custom, religion or culture that have the potential to result in physical or emotional harm to a child. These practices are usually carried out without the consent of the child, and often serve the purpose of expressing and reinforcing the subordinate role and diminished value and position of children, especially girls, within a given culture or society.⁸⁷ The term can be applied to a wide variety of different practices within a wealth of different cultures and traditions. These include: corporal punishment, female genital mutilation/cutting (FGM/C), violent and degrading initiation rites (including virginity inspection), forced and early marriage, so-called ‘honour’ crimes, accusations of witchcraft (and associated rituals), and binding, scarring, burning and branding parts of the body.⁸⁸

In PNG, recognised cultural practices that are harmful to children include polygamy; the tradition of brideprice; and sorcery related violence. Polygamy, which is practiced in some communities across PNG, has been recognised by CRC and CEDAW as “contrary to women’s and girls’ dignity” and a practice that “infringes on their human rights and freedoms, including equality and protection within the family.”⁸⁹ The Committees note, in their Joint General Comment on harmful practices that evidence suggests that girls are more likely to be married to much older men in polygamous marriages, increasing their risk of violence,⁹⁰ and have negative impacts on the economic wellbeing of women and children.

Brideprice is a traditional practice that exists in many parts of PNG. It involves the payment by a man to the family of a woman (or girl) that he wishes to marry. Brideprice has a number of potentially harmful consequences for women. According to the UN special rapporteur on violence against women following a visit to PNG, “The practice of bride-price was identified by many stakeholders as an important trigger of

⁸⁷ CEDAW, ActionAid UK and the International Planned Parenthood Federation, Harmful Traditional Practices Affecting Women and Girls.

⁸⁸ CRC Committee, General Comment No. 13.

⁸⁹ UN CRC Committee and UN CEDAW Committee, Joint General Recommendation on Harmful Practices, 2014, para 24.

⁹⁰ UN CRC Committee and UN CEDAW Committee, Joint General Recommendation on Harmful Practices, 2014, para 26.

domestic violence, as men commonly feel entitled to control and even abuse their wives as a result of having paid the bride price, thus regarding women as their property”⁹¹

Violence related to accusations of sorcery is also a practice that is harmful to children in PNG. Sorcery may be blamed when a tragedy occurs in a community, particularly a death, and family members may seek to blame a culprit. A person accused of sorcery may be subjected to, or at least threatened with, physical violence, often leading the person to flee the community.⁹² According to a report by the Pacific Community and OHCHR, “the number and severity of violent incidents resulting from accusations of sorcery have escalated in recent years, further threatening the rights and security of women and girls.”⁹³

3.9.2 Analysis of laws and policies

The UN CRC and CEDAW Committees have emphasized the importance of identifying and taking legislative and other actions to address practices harmful to children and ensuring that any laws, norms or practices (traditional, customary or religious) that justify or condone such practices, that promote gender-based violence or that discriminate on the grounds of gender are repealed.⁹⁴ In order to protect children effectively, national legislation needs to include a clear and comprehensive prohibition of all harmful practices against children. The overall prohibition in the legislation should be supported by detailed provisions, including enforcement provisions, to ensure protection for both girls and boys. There should be no exemptions from the protection, including no exemptions on the ground of culture, tradition, honour or religion.⁹⁵

The LPA contains a general prohibition against harmful practices in section 80: “A person commits an offence if he unlawfully subjects a child to a social or a customary practice that is harmful to a child’s wellbeing as guided by the principle of the best interests of the child.” However, what is considered a ‘harmful practice’ is not defined and it is unclear which practices would fall within this provision (however, it could be argued that, in the absence of a definition in PNG law, Courts could be guided by definitions in international instruments).

Bigamy / polygamy

The CRC and CEDAW Committees have noted that the CEDAW Convention sets out explicit obligations to discourage and prohibit polygamy as it is contrary to the Convention.⁹⁶ Although polygamy has traditionally been practiced in many of Papua New Guinea’s communities, a 2014 amendment to the country’s civil registration law outlawed the practice. Section 9 provides that “a person who practices bigamous or polyandrous relationship is guilty of an offence.” Also, bigamy is prohibited under the Criminal Code and this provision appears to apply to statutory and customary marriages (“a person who is married through a form or ceremony of marriage”).

⁹¹ United Nations High Commissioner for Human Rights, “Special Rapporteur on Violence against women finalizes country mission to Papua New Guinea,” March 26, 2012.

⁹² Human Rights Watch, *Bashed Up*, 2015.

⁹³ Pacific Community and OHCHR, *Human rights in the Pacific – a situational analysis*, 2016, p. 108.

⁹⁴ UN CRC Committee and UN CEDAW Committee, *Joint General Recommendation on Harmful Practices*, 2014, paras. 13, 55

⁹⁵ UN CRC Committee and UN CEDAW Committee, *Joint Comment on Harmful Practices*, 2014, paras. 13, 29, 55; UN CEDAW Committee, *General Recommendation No. 35*, 2014, para. 26.

⁹⁶ UN CRC Committee and UN CEDAW Committee, *Joint General Recommendation on Harmful Practices*, 2014, para 27.

Brideprice

The CRC and CEDAW Committees recognise the payment of brideprice as constituting a ‘sale of children’ which States are required to prohibit in accordance with the OPSC. It is also recognised as impeding the right for women to freely choose a spouse, contrary to the provisions of CEDAW.⁹⁷ Unfortunately, the practice of paying brideprice is not prohibited in PNG.

Sorcery-related violence

While several general Criminal Code provisions would apply to forms of VAC in the context of witchcraft / sorcery, the Criminal Code (Amendment) Act 2013 amended the Code to include explicit reference to violence in this context. Section 299A of the Criminal Code (inserted pursuant to the Criminal Code (Amendment) Act 2013) explicitly criminalises wilful killing in the context of sorcery / witchcraft accusations: “Any person who intentionally kills another person on account of accusation that the person is practicing sorcery is guilty of wilful murder.” As no legal defences apply to violence conducted in the context of sorcery accusations, other provisions of the Criminal Code (assault, grievous bodily harm etc.) will apply to these acts.

3.9.3 Summary of key gaps

Indicators	Analysis of PNG law and policy	Gaps
(a) Bigamy / Polygamy is clearly set out and prohibited in law.	Bigamy is prohibited under the Criminal Code and is also prohibited under the Civil Registration (Amendment) Act 2014.	No gaps.
(b) Dowry or bride price is prohibited in law (e.g. recognized as a form of sale of children).	No provisions exist that prohibit bride price.	No provisions exist that prohibit bride price.
(c) Violence against children in the context of sorcery is prohibited in law.	There are no defences to the use of violence in the context of sorcery accusations, so the Criminal Code provisions prohibiting acts of violence would apply to these acts. The Criminal Code (Amendment) Act 2013 explicitly criminalises wilful killing in the context of sorcery / witchcraft accusations.	No gaps.

3.10 Child labour

3.10.1 Context

Child labour can generally be described as “work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.”⁹⁸ The difference between acceptable child work and child labour depends on “the child’s age, the types of work performed, the conditions under which it is performed and the objectives pursued by individual countries.”⁹⁹

Reliable data on child labour in PNG are not available. However, it has been estimated that child workers represent 19 per cent of the labour market in PNG, some of whom are subjected to forced labour or child

⁹⁷ UN CRC Committee and UN CEDAW Committee, Joint General Recommendation on Harmful Practices, 2014, para 23.

⁹⁸ ILO, ILO says global number of child labourers down by a third since 2000, 23 September 2013.

⁹⁹ ILO and Inter-Parliamentary Union, Eliminating the worst forms of child labour: A practical guide to ILO Convention No. 182, Handbook for Parliamentarians No. 3 2002, p 16.

prostitution (US Department of State, 2015). Child labour in PNG can be found in urban and rural settings. In urban areas, evidence shows that boys as young as age 12 are working as *market taxis* (carrying heavy loads). Young girls are being exploited in bars (*mosko girls*), and children are being forced by their parents and/ or other adults to beg, sell goods and collect bottles for cash, among other activities. Among the street children in Port Moresby, 86 per cent were involved in activities characterized as hazardous work.¹⁰⁰ In the rural areas, boys and girls engage in subsistence agriculture, mining, logging and other activities. In both settings, it is common to find girls working in the domestic service sector (sometimes without pay) to settle family debts to lenders.¹⁰¹

3.10.2 Analysis of laws and policies

The CRC requires States to ensure that children are protected from all forms of economic exploitation and from hazardous or harmful work.

Minimum age of employment

According to international standards, a minimum age for work or employment should be established in law, which is at least 15 and is the same as the age for completion of compulsory schooling.¹⁰² Where children engage in ‘light work’, the minimum age should be 13 years and the law should define and regulate this work.¹⁰³

The minimum age of employment is set out in PNG’s Employment Act 1978. Section 103(1) of this Act sets the minimum age for employment at 16 years. However, it permits the employment of children aged 11 to 16 years provided the employer obtains a statement from a medical practitioner that the child is fit for the type of work proposed; the written consent of the child’s parent / guardian is obtained (section 103(2)); and provided the employment takes place outside school hours and is not prejudicial to school attendance (section 103(3)). Children aged 11 to 13 years may only be employed in a family undertaking, while those aged 14 to 16 years may be employed in any industry, other than the fishing industry. Children aged 14 and 15 years may be employed during school hours where “the employer is satisfied that the person no longer attends school.” This provision appears to allow children as young as 11 years to work (in a family undertaking), against international standards. It also permits work by children who are of compulsory school age, which is inconsistent with international standards (though with the proviso that the employer must be satisfied that the child is no longer in school).

The Employment Act 1978 does not set any maximum hours of work for children, though it prohibits employment of children between the hours of 6pm and 6am (except for 16 and 17 year olds who are working in a “family undertaking”) (section 105).

Hazardous child labour

¹⁰⁰ In this context, hazardous work involves washing cars in the road; controlling traffic; working as a street vendor or scrap metal scavenger; collecting bottles, cans, tins and containers; carrying cargo from trucks; moving furniture or chopping firewood.

¹⁰¹ ILO 2011 and USA Department of State 2015, in UNICEF PNG, *Situation analysis of children* (2018), unpublished.

¹⁰² Article 32.2(a), CRC; Article 2(3), ILO Convention 138.

¹⁰³ Article 7(1), ILO Convention 138.

According to international law, States are obliged to clearly define and prohibit the engagement of children under the age of 18 in the worst forms of child labour and hazardous labour.¹⁰⁴ Violations of child labour laws should be punishable by appropriate penalties, and it should be a criminal offence to involve children in the worst forms of child labour: slavery or practices similar to slavery, debt bondage and serfdom, forced or compulsory labour and use of children for illicit activities such as drug trafficking.¹⁰⁵

Section 104 of the Employment Act 1978 prohibits the employment of a child (though only a child aged under 16 years – not 18 years as required by international standards) in “any employment or in any place or under working conditions that are injurious or likely to be injurious to the health of the person.” The determination of whether employment is injurious is to be evidenced by a certification by a medical practitioner (section 104(2)). The Employment Act also criminalises employment of a child under 16 years where this employment is “injurious to health, dangerous or unsuitable” (section 105).

The LPA (section 54) also prohibits and criminalises the causing of permitting of a child (aged under 18 years) to be engaged in work: in which conditions are likely to be hazardous; which interferes with the child’s education; or which is harmful to the safety, health or physical, mental, spiritual or social development of the child. Penalties include a fine / a maximum of five years employment for a parent / carer or an employer. While this provision is quite broad, it is also vague and the types of work considered to be hazardous or harmful are not further defined. As a result, this provision is likely to be subject to individual discretion. Clear guidelines are required to identify or provide further guidance on the particular types of work that are considered harmful or hazardous.

3.10.3 Summary of key gaps

Indicators	Analysis of PNG law and policy	Gaps
(a) Engaging a child under the age of 18 in the worst forms of child labour, including all work that is likely to jeopardize his/her health, safety or morals, is prohibited.	The employment of children in hazardous or harmful work is prohibited and criminalised in the LPA (with a more limited provision, applying to children aged under 16 years) contained in the Employment Act 1978.	No gaps.
(b) Laws / regulations are in place to clearly define prohibited hazardous or harmful work.	However, there is no guidance to define the types of work that are to be considered hazardous or harmful.	No guidance on the type of work considered to be hazardous or harmful.
(c) Child labour rules apply to children working in both the formal and informal sectors, including domestic work.	There are no explicit provisions on domestic work, though general provisions would apply in this type of work. However, the minimum age of employment is lowered to 11 years for ‘family undertakings,’ against international standards (which would apply to domestic work within the family). No definition of ‘light work’ is provided.	No explicit provisions on domestic work, and minimum age of employment for work in ‘family undertakings’ (11 years) is below international standards.
(d) The minimum age for work or employment is set at least 15 years.	The minimum age of employment is 16 years. However, exceptions exist that effectively permit children from 11 years to work in a ‘family undertaking’ and children from 14 years to work in any industry (other than the fishing industry), provided they are fit for the work,	Exceptions permit employment of children from 11 years in ‘family undertakings’ / 14 years in any industry besides fishing, provided certain

¹⁰⁴ Article 3, ILO Convention 138; Articles 3 – 4, ILO Convention 182.

¹⁰⁵ Article 32(2)(c), CRC; Articles 3, 7(1), ILO Convention 182.

	and it is not prejudicial to school attendance.	requirements are met.
(e) If the law permits children under the minimum age to engage in 'light work', the minimum age is at least 13, and the law defines and regulates the types of light work that children can engage in.	The minimum age for work in 'family undertakings' is 11 years, and there is no definition of 'light work'.	No definition of light work and minimum age for work in 'family undertakings' (11 years) is below international standards.
(f) Strategy / policy is in place to address the drivers of harmful child labour.	No strategy or policy is in place to address drivers of harmful child labour.	No strategy / policy in place.

3.11 Children in armed conflict

3.11.1 Context

While there are no recent reports of children being involved in armed forces in PNG, a comprehensive and enforced legal framework prohibiting the use of children by State and non-State armed groups is crucial. Children involved in armed groups are likely to suffer extreme forms of exploitation and abuse that will have long-lasting consequences.¹⁰⁶

3.11.2 Analysis of laws and policies

The Optional Protocol to the CRC on the involvement of children in armed conflict (OPAC) requires all States to prohibit compulsory recruitment of children under the age of 18 into the armed forces.¹⁰⁷ National laws should also set a minimum age for voluntary recruitment into the armed forces of at least 15 years,¹⁰⁸ and if voluntary recruitment of children under 18 is permitted, safeguards should be in place to verify age, to ensure that recruitment is genuinely voluntary, fully informed and with informed consent of the child's parent/ guardian, and to ensure children 15–18 years do not take a direct part in hostilities.¹⁰⁹ The law should also criminalise the recruitment or use in hostilities of children under the age of 18 by armed groups.¹¹⁰

There are very limited national laws relating to the involvement of children in armed conflict in PNG. The only applicable laws are the Geneva Conventions Act 1976, which incorporates the four Geneva Conventions into domestic law. However, the Act is silent on the incorporation of the two Additional Protocols, and the four Geneva Conventions do not address the involvement of children in hostilities in detail. The other applicable laws are the provisions on child labour in the LPA and the Employment Act 1978, which were discussed in section 3.10 above. It is likely that recruitment into armed forces is captured by the prohibition of harmful or hazardous labour, though this is not expressly stated in either law.

3.11.3 Summary of key gaps

¹⁰⁶ UNICEF, Children recruited by armed forces, August 2021, available at: <https://www.unicef.org/protection/children-recruited-by-armed-forces>

¹⁰⁷ Article 2, OPAC.

¹⁰⁸ Article 38(3), CRC.

¹⁰⁹ Article 3, OPAC.

¹¹⁰ Article 4, OPAC.

Indicators	Analysis of PNG law and policy	Gaps
(a) Compulsory recruitment of children under 18 into the armed forces is prohibited in law.	Compulsory recruitment of children under 18 years into armed forces is not explicitly prohibited in law (though this would likely fall within the definition of hazardous work, which is prohibited in the LPA).	No explicit prohibition of compulsory recruitment of children under 18 years into armed forces.
(b) The law sets a minimum age of at least 15 years for voluntary recruitment into the armed forces. Safeguards are in place to verify age and to ensure that recruitment is genuinely voluntary and with informed consent of the child's parents/ guardians.	There is no minimum age established for voluntary recruitment of children into the armed forces, though the Geneva Conventions do apply in PNG by virtue of PNG's Geneva Conventions Act 1976. Laws on minimum age of employment would apply however, limiting employment of persons under 16 years (unless an exception applies).	No explicit minimum age of recruitment into voluntary armed forces.
(c) The law criminalizes the recruitment or use in hostilities of children under the age of 18 by armed groups.	The law does not explicitly criminalise the recruitment or use of children under 18 years by armed groups (though this would likely fall within the definition of hazardous work, which is prohibited in the LPA).	No explicit criminalisation of the recruitment or use of children under 18 years by armed groups.

3.12 Birth registration

3.12.1 Context

Birth registration is a fundamental right and is key to unlocking other child rights. In the context of protection and justice, birth registration is crucial for ensuring that children can access age-based legal protections, such as laws relating to child marriage, sexual offences, anti-trafficking and sexual exploitation laws, child labour laws, and specialised systems such as child protection and child justice laws, systems and services. According to the most recent DHS, PNG has very low rates of birth registration: only 13 per cent of children under five had their births registered and only seven per cent had birth certificates.¹¹¹ Rates of birth registration are particularly low in rural areas and among poorer households.¹¹² It is important that the law provides the right to all children to have their births registered and that it sets out an accessible process for birth registration.

3.12.2 Analysis of laws and policies

The right to birth registration is recognised in the International Covenant on Civil and Political Rights,¹¹³ and the CRC.¹¹⁴ It is also recognised in the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families¹¹⁵ and the Convention on the Rights of Persons with Disabilities.¹¹⁶ The UN Committee on the Rights of the Child provides that States should ensure all children are registered at

¹¹¹ National Statistical Office (NSO) and ICF. 2019. *Papua New Guinea Demographic and Health Survey 2016-18, 2019*, Port Moresby, Papua New Guinea, and Rockville, Maryland, USA: NSO and ICF, p. 13.

¹¹² National Statistical Office (NSO) and ICF. 2019. *Papua New Guinea Demographic and Health Survey 2016-18, 2019*, Port Moresby, Papua New Guinea, and Rockville, Maryland, USA: NSO and ICF, p. 13.

¹¹³ ICCPR, article 24(2).

¹¹⁴ CRC, article 7.

¹¹⁵ Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, article 29.

¹¹⁶ Convention on the Rights of Persons with Disabilities, article 18.

birth through a universal, well-managed registration system that is “accessible to all and free of charge.”¹¹⁷ Registration should be available to all, without discrimination of any kind, for instance on the basis of the marital status of the child’s parents, race, religion etc. or due to a child’s legal status as a migrant, asylum-seeker or refugee. Late registration should be facilitated where needed.¹¹⁸ A law should set out an effective system for birth registration that must be flexible and responsive to the circumstances of families, for example by providing mobile registration units where appropriate.¹¹⁹ While provision may be made for incentivising for birth registration, absence of a birth certificate should not be grounds for refusing access to basic services, such as healthcare, education and social welfare, even where this is aimed at incentivising birth registration.

The Civil registration in Papua New Guinea is regulated by the Civil Registrations Act 1963 and the Civil Registrations Regulations 1967. The Civil Registration (Amendment) Act 2014 established a national register and PNG’s national ID system. It also established the Office of the Registrar General and provided the Registrar General with the power to establish an Office in each province, headed by a provincial registrar.

The Civil Registrations Act 1963 places a duty on the Registrar to procure information about the birth of a child from an appointed ‘collecting agent’ (sections 13 and 14). A parent must ensure that a child’s birth is registered within three months of the date of birth of the child (section 25(2)). However, birth registration is not compulsory for all. The 1963 Act only requires registration of births that occur in a ‘compulsory registration area’ or on ‘prescribed premises’ (section 25), which must be established by the Minister (section 12) – it is not clear that these premises or areas have been established in practice.¹²⁰ For births that occur outside of a compulsory registration area or a prescribed premise, the registrar general may exercise discretion and register the birth (section 26(a)). This does not amount to an obligation to register all births, or a right to access birth registration, which is inconsistent with international law.

In accordance with international law, birth registration and birth certificates have been free of charge since the Civil Registration (Amendment) Act 2016 repealed the power of the registrar general to prescribe fees to be collected in relation to civil registration.

It should be noted that the Civil and Identity Registration Bill 2018 will soon go before Parliament. This will repeal the 1963 and 2014 Acts and generally strengthen the civil registration systems, in line with international standards.¹²¹ The Government’s commitment to improving birth registration rates is evident in the PNG Civil Registration and Vital Statistics Plan 2020 – 2021, with a vision to ensure “universal and timely civil registration of all births and deaths occurring in Papua New Guinea so that every citizen has a legal identity and the country is able to produce vital statistics from civil registration records for social and economic planning”, by 2050. In order to achieve this vision, the focus will be on improving access to

¹¹⁷ UN Committee on the Rights of the Child, General Comment No. 7: Implementing child rights in early childhood, 20 September 2006, CRC/C/GC/7/Rev.1, para. 25.

¹¹⁸ UN Committee on the Rights of the Child, General Comment No. 7: Implementing child rights in early childhood, 20 September 2006, CRC/C/GC/7/Rev.1, para. 25.

¹¹⁹ UN Committee on the Rights of the Child, General Comment No. 7: Implementing child rights in early childhood, 20 September 2006, CRC/C/GC/7/Rev.1, para. 25.

¹²⁰ Pacific Community and United Nations Children’s Fund (UNICEF), Civil registration and vital statistics in Papua New Guinea, 2021, Noumea, New Caledonia: Pacific Community.

¹²¹ ¹²¹ Pacific Community and United Nations Children’s Fund (UNICEF), Civil registration and vital statistics in Papua New Guinea, 2021, Noumea, New Caledonia: Pacific Community.

registration services through utilising available health infrastructure and providing registration services which are easily accessible to local people.

3.12.3 Summary of key gaps

Indicators	Analysis of PNG law and policy	Gaps
(a) The law provides the right to birth registration for all children.	Births are only required to be registered where in 'prescribed premises' or 'compulsory registration areas', and the registration of births outside these areas is only discretionary.	There is no obligation on the Registrar to ensure that all births are registered (only those in designated areas / premises)
(b) The law allows birth registration for all children, without discrimination on any grounds.	The Law does not provide an explicit right to birth registration for non-nationals who are born in PNG; however, the law does not prohibit the registration of these births.	No explicit right to registration of births of non-nationals in PNG.
(c) The law provides that birth registration is free.	The Law prohibits the Registrar from claiming fees for births registered.	No gaps.
(d) Birth registration / a birth certificate is not a condition for accessing basic services (health, education, social welfare etc.)	Birth registration / birth certificate do not appear to be a condition for accessing basic services.	No gaps.

4. Child protection system laws, policies and institutional framework

4.1 Introduction

While international standards elaborate criminal laws that States parties are obliged to put in place in order to address violence, abuse, neglect and exploitation of children, the CRC also requires States to have civil laws in place; States must have a child protection system set out in law, standards and detailed guidance, and systems and services must be in place to support implementation of these laws.

In particular, the CRC recognises the right of children to grown up with their parents, and that parents have the primary legal responsibilities for ensuring a child's wellbeing and development (Article 5). However, it also requires States to have legal processes, systems and services for identifying, referring and responding to situations in which children are at risk of harm (Article 19). Laws and standards should be in place and services available for children who cannot live at home, including systems and services for children in alternative care. Child protection processes should be guided by the best interests paramountcy principle – that, in all decisions affecting children, their best interests shall be a primary consideration (Article 5).

The Lukautim Pikinini (Child) Act 2015 (LPA), which replaced the Child Welfare Act, is the key child protection law designed to protect and promote the rights and wellbeing of all children and in particular, those at risk of violence and other forms of harm. PNG's child protection system is contained primarily in the LPA and accompanying Operational Manual. The LPA sets out the laws that apply to children in need of care and protection, and it also sets out the administrative and institutional framework for child protection. The Government's policy priorities, objectives and a framework for strengthening the child protection system is set out in the Lukautim Pikinini (Child Protection) Policy 2017 – 2027.

4.2 Legal framework

4.1.1 Early intervention

Legal framework

Article 5 of the CRC entrenches the principle that parents have primary legal responsibility for a child's wellbeing and upbringing, and States are obliged to ensure that families / carers are provided with the support and services they need to ensure they are able to fulfil their obligations to children under their care. This should be set out in national law through a general statement of the government's obligation, in line with the CRC, to support families in their child-rearing responsibilities and to protect children from all forms of violence, abuse, neglect or exploitation.¹²²

The LPA accordingly recognises that the family usually provides the first line of protection for children. For example, Principle (e) states that: "wherever possible, the relationship between the child and his family should be maintained and strengthened." Section 7 recognises the right of the child to live with their parents,

¹²² Articles 18(2) and 19, CRC; Para 32, UN Guidelines for the Alternative Care of Children.

unless this is not in their best interests (e.g., due to exposure to violence, abuse, neglect or exploitation). Section 8 sets out a range of duties for parents to maintain their children and ensure that their basic needs are met.

These principles are reiterated in the LPA Operational Manual 2015, which sets out a number of principles that guide the child protection system (section 2.2). These include the right of the child to live with their parents / family and, where a child is in need, that support should be provided to enable the child to live with their family: “wherever possible, the relationship between a child and his family should be maintained and strengthened; where a child is considered to be in need of care or protection, the necessary assistance or support should be provided to the family, wherever practicable, so that the child may remain with his family; in deciding what action is necessary to protect a child from harm, the course to be followed must be the least intrusive intervention in the life of the child and his family that is consistent with the paramount concern to protect the children from harm; and interventions should be aimed at remedying the harmful situation and providing a plan to return the child to his family, unless to do so is contrary to the child’s best interest.”

While it is important that the law recognises the rights of children to grow up in their families and for parents to be provided with support to enable them to fulfil their obligations as parents, there does not appear to be any supporting guidance on the types of services and support that can be provided to parents and how this is to be delivered.

Summary of gaps

Indicator	Analysis of PNG law and policy	Gaps
(a) The law includes a statement of the government’s obligation to support families in their child-rearing responsibilities, and to protect children from all forms of violence, abuse, neglect or exploitation.	The LPA recognises the right of children to live with their parents, unless this is not in their best interests. The LPA Operational Manual includes a number of principles that require assistance to be provided to a child’s family where required, in order to ensure that a child can live with their family. However, there is no guidance setting out the specific services and support available.	No detailed guidance on services and support available to parents and how this is to be delivered.

4.1.2 Reporting, assessment and response

Legal analysis

The CRC obliges States under Article 19(2) to have systems in place for children at risk of harm when in the care of parents and family, or for children whose parents or family are unable to care for them. This includes children experiencing or at risk of “all forms of mental violence, injury or abuse, neglect or negligent treatment or exploitation, including sexual abuse” while in the care of their parents, family or carers. States must ensure that effective systems are in place for “identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment.” Ensuring timely identification and response to children in need of care and protection requires clear procedures for reporting, referral and care planning.

Definition of a child in need of care and protection

Child protection legislation should include a definition of the circumstances in which a child might be in need of care and protection that encompasses children under the age of 18 who are orphaned or without parental care and/or who have experienced or are at risk of all forms of violence, abuse, neglect and exploitation.¹²³

Consistent with this requirement, the LPA comprehensively sets out the circumstances in which a child is to be considered in need of protection (section 2): a child whose parents are dead or incapacitated; who have been abandoned; who have been or are likely to be physically harmed, sexually or emotionally abused and the child's parents are unable or unwilling to take action to protect the child; where a child is likely to be harmed due to physical violence, neglect or emotionally or sexually abused or exploited by their parent or guardian; where the parents medically neglect the child; where the child is at risk of serious harm due to domestic violence; where the child is consistently subjected to exposure or exhibition that is harmful to their physical or psychological wellbeing; where the child is exploited in child labour by the parents or where the parents do not take action to protect the child from exploitation by another; where there are serious differences with the child's parents, resulting in suffering to the child's wellbeing; and in the case of child trafficking.

Obligation to refer and referral processes

The law should make provision for reporting of children in need of care and protection, including an accessible mechanism for children and families to request assistance and mandatory reporting for professionals working with children.¹²⁴ In addition, there should be clearly defined procedures for referral, assessment and inter-agency cooperation in responding to children in need of care and protection.

According to the LPA, where a key professional working with a child believes that the child is in need of protection, they are mandated to refer the case to the Office of Children and Family Services (section 38(3)), where Child Protection Officers have duties to assess the child and take appropriate action. Section 38(4) provides a comprehensive list of professionals with mandatory reporting duties in relation to children in need of care and protection. There are also procedures for Police emergency protection where a child is in immediate danger (section 46). The LPA also provides that any member of the public may (but is not mandated) to report to the Office of Child and Family Services where they reasonably believe that a child is in need of care and protection (section 38(1)). The LPA Operational Manual clarifies that any person means a family member, guardian, neighbour, member of a clan or the child themselves (section 4.1.1). Guidance is provided in the LPA Operational Manual on the meaning of 'reasonably believe' – "a legal term that means the person notifying the child must have heard, or seen or been told enough about what is happening to the child that anyone in the community hearing the same thing would also think the child needs protection." To ensure that members of the public feel free to refer when necessary, the LPA provides that their identity must be kept confidential unless the person agrees or permission is given by the Court (section 41).

Assessment obligations and care planning

The law should provide for making decisions about what support and interventions are appropriate and necessary in the child's best interest. Children should be guaranteed the right to express their views and to participate in decision-making about their care and protection.¹²⁵

¹²³ UNCRC, GC 19.

¹²⁴ UN CRC Committee, General Comment No. 13, 2011, para. 49.

¹²⁵ Article 12, CRC.

The LPA sets out responsibilities for Child Protection Officers (CPOs) to carry out assessments and care planning following a child protection referral. Section 42 gives CPOs the broad power to undertake any investigation they consider necessary in relation to a child protection referral; however, this must include a Child Protection Safety Assessment and a Safety Placement Decision. The LPA Operational Manual contains an information sheet on signs that a child may be in need of care and protection to guide CPOs in assessing harm.

The LPA also sets out emergency search, removal and protection powers in cases where a child is in immediate danger. The Act permits removal of a child to a place to safety (sections 43 to 46). The Act sets out procedures for abandoned, lost or runaway children (sections 48 and 49).

The LPA Regulations 2018 also set out procedures and processes for care planning (Part VI). Detailed guidance is provided to CPOs in the LPA Operational Manual. The Manual details procedures and obligations on the assessment and provision of services to children, according to the level of harm or risk they are exposed to or the category of harm. This includes detailed guidance on carrying out Child Safety Assessments and Safety Placement Decisions, along with accompanying forms (section 8), and guidance on opening and maintaining case files (Section 9). Step by step guides and flow charts are included, detailing the processes to be taken by CPOs, timelines and necessary forms to enable care planning. However, the Manual does not explicitly set out a process for multi-disciplinary assessment or care planning.

In accordance with international law, the LPA enshrines the best interests principle and applies it to all decisions affecting a particular child: “in all actions and decisions made under the Act concerning a particular child, the best interests of the child must be the paramount consideration, and where any conflict arises between the interests of the child and another person, the interests of the child are paramount” (section 5(a)). Section 5(3) of the LPA lists the circumstances to which decision-makers should have regard when making an order or determination under the Act. While this section does not explicitly refer to the determination of a child’s best interests, it effectively provides guidance to decision makers (Courts, Child Protection Officers etc.) on the factors to be considered in determining an outcome that is in accordance with the child’s best interests. This section is comprehensive and child-focused – consistent with international standards.

The LPA also includes, in its section on guiding principles (section 5(1)(l)), participation rights for children, in accordance with international law: “Wherever a child is able to form his own views on a matter concerning his welfare, he must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the development capacity of the child.” Section 5(2) provides a list of information to which a child is entitled and directs the Office of Children and Family Services to ensure that a child has the information they need to participate meaningfully in decisions relating to their care and welfare. It also provides that children must be informed of decisions and outcomes, and provides an opportunity for children to respond to outcomes.

Provision of services

The law should also make provision for a range of care, recovery and reintegration services for children, including immediate crises needs and ongoing support relating to their physical and mental health, safety,

repatriation, family reunification or alternative care, education, vocational training, life skills and legal assistance.¹²⁶

The LPA sets out a range of services for children in need of care and protection, including temporary accommodation and various forms of alternative care (see below, section 4.1.4), and it places responsibility on the Director of Children and Families to provide a range of services and support for the care and wellbeing of all children under their care, temporarily or permanently (section 52). Section 13 of the LPA Manual sets out guidance and standards on commissioning NGO and FBO services for children in need of care and protection, including the provision of out of home care.

Removal processes

While separation of a child from his or her parents should occur only when the child is in danger of harm or when otherwise necessary, provision must also be made for formal or compulsory protective interventions, including restraining orders and removal of the child or perpetrator, where necessary in the child's best interest.¹²⁷ Any decision regarding the removal of a child against the wishes of his or her parents must be made by competent authorities and subject to judicial review, and the child, parents and other interested parties should have the right to participate in the proceedings and make their views known.¹²⁸ Removal decisions should be regularly reviewed, with a view to promoting the child's return to his/her parents once the original causes of removal have been resolved.¹²⁹

Part V, Division 3 of the LPA makes provision for the compulsory removal of a child in need of care and protection by a competent body (gazetted CPOs) to a place of safety where this is necessary, initially on a temporary basis (it also makes provision for care planning and service delivery where parents / carers provide consent – see Part VI LPA Regulations 2018). The Director or a CPO can apply to the the Family Court to make a Temporary or Permanent Child Protection Order to place a child in need of protection with caregivers who are not the child's parents, following a child protection hearing (sections 97 – 99). In this situation, the Court, before making such an order, should consider whether the child can be placed with a family member, neighbour, or other member of the child's community or extended family with the consent of the family (section 94(2)). The Family Court must consider a Care Plan for a child, prepared by the Director or CPO, before making a decision on an Order (Section 99).

There are no provisions in the LPA requiring the review of Child Protection Orders or placement decisions; however, the LPA Operational Manual provides that Care and Protection Orders may be modified or cancelled on application to the Family Court by the Director of Children and Families (section 12.3).

Summary of gaps

Indicator	Analysis of PNG law and policy	Gaps
(a) There is a definition of the circumstances where children are in	The LPA provides a comprehensive list of circumstances in which a child will be in	No gaps.

¹²⁶ Articles. 19, 39, CRC; Articles 9(3), 4, OSPC.

¹²⁷ UN CRC Committee, General Comment No. 8, 2006, para. 41; UN CRC Committee, General Comment No. 13, 2011, paras. 55(p), 56.

¹²⁸ Articles 9(1) and 9(2), CRC; UN Guidelines for the Alternative Care of Children, 2009, para. 47.

¹²⁹ UN, Guidelines for the Alternative Care of Children, 2009, para. 14.

<p>need of care and protection that encompasses children under 18 years who are orphaned or without parental care and who have experienced, or at risk of, all forms of violence, abuse, neglect and exploitation.</p>	<p>need of protection, and this includes children who are without parental care and those who are at risk of all forms of violence, abuse, neglect and exploitation.</p>	
<p>(b) The law makes provision for reporting children in need of care and protection, including an accessible mechanism for children/families to request assistance, and mandatory reporting for professionals working with children.</p>	<p>The LPA sets out a mandatory reporting duty for professionals who work with children – these professionals must refer a case to the Office of Child and Family Services where they believe a child is in need of care and protection. Any member of the public may (but is not mandated) to refer a case. The LPA Operational Manual clarifies that a child themselves or a family member may refer a case to a Child Protection Officer.</p>	<p>No gaps.</p>
<p>(c) There are clearly defined procedures for referral, assessment/investigation and inter-agency cooperation in responding to children in need of care and protection.</p>	<p>The LPA sets out powers and processes for assessing and responding to children in need, in accordance with the type of protection need and / or degree of urgency. Detailed processes and tools (forms, checklists etc.) are provided in the LPA Operational Manual. However, the law and manual do not explicitly set out how multi-agency cooperation is to be effected.</p>	<p>Further guidance on multi-agency approaches to assessment and care planning is needed.</p>
<p>(d) The law makes provision for a range of care, recovery and reintegration services for children.</p>	<p>The LPA sets out a range of services for children in need of care and protection, including temporary accommodation, various forms of alternative care and it places responsibility on the Director of Children and Families to provide for the care and wellbeing of all children under their care, temporarily or permanently.</p>	<p>No gaps.</p>
<p>(e) Decision-making in child protection cases is mandated to be guided by the best interest of the child principle.</p>	<p>The LPA requires all actions taken under the Act to be guided by the principle that the best interests of the child are paramount.</p>	<p>No gaps.</p>
<p>(f) Law / guidance provides children the right to express their views and have due consideration given to these views commensurate with the child's capacity.</p>	<p>The LPA provides that children have the right to express their view and to have these views taken into consideration in care and welfare decisions that relate to them, in accordance with their developmental capacity. They also have a right to information to support their meaningful engagement, and on decisions made relating to them.</p>	<p>No gaps.</p>
<p>(g) The law provides for care and protection orders or other formal interventions, including restraining orders and removal of the child or perpetrator where necessary to protect the child from significant harm and in the child's best interest.</p>	<p>The LPA sets out a process for the granting of Care and Protection Orders, either with the consent of the child's parents / carers or through application to the Family Court. It provides that all decisions relating to a child must be made in the child's best interests.</p> <p>Under the FPA, children (as 'family</p>	<p>No gaps.</p>

	members’) may also apply for Interim Protection Order and Protection Orders in relation to parents / carers or other family members.	
(h) Any decision to separate a child from his or her parents is made by competent authorities and subject to judicial review, with participation of the child and parents and other interested parties in any such proceedings, and in making their views known.	The LPA authorises the Director or a CPO to apply to the Family Court for a Temporary or Permanent Child Protection Order and the process for a care hearing is detailed in the LPA. While the LPA allows the Family Court to summon any person of interest to a child protection hearing, it does not explicitly provide the right for children and parents / carers to make their views known in these hearings.	No explicit provision for the right of children and parents / carers to make their views known in child protection hearings.
(i) Law provides that the decision is regularly reviewed, with the aim of promoting the child’s return to parental care, once the original causes of removal have been resolved.	The LPA does not make provision for the regular review of a Child Care and Protection Order / placement decision.	There are no provisions requiring the review of child protection placement decisions or care plans.

4.1.3 Alternative care

Legal analysis

Obligation to provide alternative care

Article 20(1) of the CRC provides that “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.” States are obliged to ensure that a child in this situation receives alternative care, including, inter alia, “foster placement, kafala of Islamic law, adoption or if necessary, placement in suitable institutions for the care of children.”¹³⁰ The United Nations Guidelines on the Alternative Care of Children, while not legally binding, sets out in detail the measures and procedures that States should follow in identifying and responding to violence against children who are removed from their primary carers. The general principles and perspectives of the Guidelines state: “Where the child’s own family is unable, even with appropriate support, to provide adequate care for the child, or abandons or relinquishes the child, the State is responsible for protecting the rights of the child and ensuring appropriate alternative care, with or through competent local authorities and duly authorized civil society organizations.” The UN Standards require that a range of emergency, short-term and long-term care options should be available.¹³¹ Care should be in family-based settings and large, residential institutions should not be made available.¹³²

The LPA places an obligation on the Director of Children and Families to make provision for the care of a child who is temporarily or permanently in their care, and this can include: (a) placing the child or permitting the child to remain in the care of a member of the child’s family; (b) placing the child in the care of an approved foster parent or other suitable person; or (c) planning the child in any other child-friendly place

¹³⁰ Articles 20(2) and 20(3), CRC.

¹³¹ Para. 54, UN Guidelines for the Alternative Care of Children 2009.

¹³² Para. 22, UN Guidelines for the Alternative Care of Children 2009.

approved by the Director (section 52(2)). Section 45 of the LPA mandates the Director, in emergency cases requiring immediate removal of a child, to provide a temporary place of safety.

However, there are several gaps. While international standards require alternative care to be in family and community-based settings (rather than institutions), there is no provision in law stating that residential institutions are not permitted (or are only permitted as a last resort or where constructive to the child's best interests). Also, there do not appear to be any standards guiding the delivery of different forms of alternative care, though section 9 of the LPA Regulations permit the Director to accept applications for foster carers. However, there are no regulations or rules which detail processes for recruiting, vetting and monitoring the provision of foster or other forms of care, along with standards of service. Though the development of minimum standards for out of home care is mandated under section 68 of the LPA.

Decision making

The UN Guidelines include provisions on how the decision should be made to remove a child from their home environment and under which circumstances. Alternative care decisions should be based on the best interest of the child, necessity and appropriateness. They should take into account the nature and quality of the child's attachment to his/her family, the family's capacity to safeguard the child's well-being and harmonious development, the child's need or desire to feel part of a family, the desirability of the child remaining within his/ her community and country, the child's gender, cultural, linguistic and religious background and his/her relationships with siblings, with a view to avoiding their separation.¹³³ Children should have the right to be involved in any decision about their placement and to have their views given due weight in accordance with their evolving capacities.¹³⁴ Children separated from their parents should be entitled to maintain personal relations and direct contact with them, unless this is contrary to the child's best interest.¹³⁵

Consistent with international law, the LPA provides that decisions as to a child's placement in alternative care shall be made in accordance with the child's best interests (section 94(1)). To ensure that the best interests of the child are taken into account and that the placement is appropriate to the child's needs, the Office of Children and Family Services shall consider: the desirability of keeping brothers and sisters in the same family unit; the need to maintain contact with the child's relatives and friends; and preservation of the child's cultural, racial and linguistic heritage; and the continuity of the child's education and religion (section 94(2)). Children are also entitled to maintain close relationships to persons significant to them, including parents, siblings, family members, peers etc. (section 5(k)). According to the LPA's general principles (section 5), a child who is able to form his own views on a matter concerning his welfare must be given an opportunity to express those views freely and to have those views given due weight in relation to decisions on the child's care.

Standards and oversight

According to international law, standards of care should be in place for all alternative care providers, and all alternative care providers should be obligated to register with and be authorized by the social welfare or other competent authority.¹³⁶ The law should require independent inspection and monitoring of all children

¹³³ Paras. 6, 7, 11 – 17, 57, 62, UN Guidelines for the Alternative Care of Children 2009.

¹³⁴ Article 12, CRC; para. 6, UN Guidelines for the Alternative Care of Children 2009.

¹³⁵ Article 9(3), CRC.

¹³⁶ Paras. 55 and 105, UN Guidelines for the Alternative Care of Children 2009.

in alternative care, including frequent scheduled and unannounced visits.¹³⁷ Children in care should also have access to an effective and impartial mechanism through which they can make complaints or express concerns regarding their treatment or conditions of placement.¹³⁸

Part IX of the LPA governs the licensing and inspections of out of home care, which is defined in section 2 to include family-based and residential forms of care. It mandates that anyone in charge of an establishment intended to be used for the out of home care of a child under 18 years of age must be licensed (section 65(b)). Anyone providing out of home care without a license is liable to a fine or term of imprisonment for a term not exceeding two years (section 70(4) and 74(1)). Section 72(1) permits a CPO to enter an out of home centre at any time and request an inspection of the centre and child/ren. In addition (section 72(2), annual inspections are mandated. Non-compliance with a condition of licencing can lead to removal from the register of out of home care providers (section 73). Section 13 requires the Director to supply a form for use in inspections; however, there does not appear to be any forms or detailed processes for inspections of out of home care providers.

Summary of gaps

Indicator	Analysis of PNG law and policy	Gaps
(a) There is a legal obligation on the State to provide alternative care for children without parental care or who cannot in their best interest be permitted to remain in parental care. This includes a range of emergency, short-term and long-term alternative care options are provided, including kinship care, respite care, foster care, supervised independent living arrangements, adoption and residential care.	The LPA mandates the Director of Children and Families to provide alternative care in emergency, short-term and longer-term care. However, a hierarchy of care is not provided that ensures children are placed in family-based settings. There is no explicit statement in the law that makes care placements in residential institutions a last resort option.	No explicit provision in law that residential care is not to be used (or only used where it is constructive to the child's best interests).
(b) Standards of care are in place for all alternative care providers.	Standards are not in place for different forms of alternative care.	No detailed standards of care for different forms of alternative care.
(c) Law / regulations provide a system for registration of all alternative care providers and all providers must be registered with social welfare.	The LPA provides a process for the registration of alternative care providers.	No gaps.
(d) The law requires independent inspection and monitoring of all children in alternative care, including frequent scheduled and unannounced visits.	Under the LPA and the LPA Regulations, annual inspections are a requirement for all out of home care providers, and ad hoc inspections by CPOs are permitted. However, there do not appear to be any detailed guidance or tools (forms, checklists etc.) to guide inspections.	No detailed guidance or tools for inspections of alternative care providers.
(e) The law requires that alternative care decisions be based on the best interest of the child.	The LPA requires that decisions on a child's care placements be based on their best interests.	No gaps.
(f) Children have the right to be involved in any decision about their	The LPA provides the right for children to express their views as to their care-related	No gaps.

¹³⁷ Paras. 55 and 128, UN Guidelines for the Alternative Care of Children 2009.

¹³⁸ Paras. 59 and 99, UN Guidelines for the Alternative Care of Children 2009.

placement and to have their views given due weight in accordance with their evolving capacities.	decisions and to have these views taken into account in accordance with their development capacity.	
(g) Children separated from their parents are entitled to maintain personal relations and direct contact with them, unless this is contrary to the child's best interest.	The LPA provides that children in alternative care are entitled to maintain close relationships with persons who are significant to them (parents, siblings, family, peers etc.).	No gaps.
(h) Children in care have access to an effective and impartial mechanism whereby they can notify complaints or concerns regarding their treatment or conditions of placement.	There is no mechanism in law to allow children to make complaints about the conditions or treatment in care placements.	No complaints mechanism for children in care.

4.2.4 Adoption

Legal analysis

According to the CRC, States should ensure that child adoptions are authorised only by competent authorities.¹³⁹ Criteria should be set out in law that the competent authority shall make an adoption determination based on an assessment of the child's needs and the capacity of applicants to provide the most appropriate environment for the child, and observation of the relationship between the child and prospective parents.¹⁴⁰

Adoption in PNG is governed by the Adoption of Children Act 1968, which is quite dated and does not always align with subsequent legal developments. While the Act does provide some important safeguards, it does not mandate a Government agency (for example, the Office for Child and Family Services) as the competent body to oversee the whole adoption process, including assessing the situation of children and potential adoptive parents, providing counselling, family tracing for the purposes of adoption proceedings etc. (though the Act does mandate particular functions for the Director of Child Welfare). Also, it does not recognise the Family Court as having jurisdiction in adoption determinations. Rather, under the Adoption of Children Act, jurisdiction for adoption orders rests with the National Court. The Adoption Act is in need of amendment to ensure that it includes key legal developments, such as the establishment of the Family Court, and to bring it into line with international standards and best practice.

However, in accordance with international standards, the Adoption of Children Act provides that the Court may not make an adoption order unless it is satisfied (on the basis of a written report by the Director of Child Welfare) that the applicants are of "good repute", fit and proper and will fulfil the responsibilities as parents to the child (section 9(1)). However, further detail on making this assessment is not provided, nor does the law stipulate that counselling shall be provided to parents, where required.

¹³⁹ Article 21(a), CRC.

¹⁴⁰ UN Declaration on social and legal principles relating to the protection and welfare of children, with special reference to foster placement and adoption nationally and internationally, 95th Plenary Meeting, 3 December 1986, para. 14, 16.

According to international standards, national law should provide that the child's best interests are the paramount consideration in making a decision on adoption¹⁴¹ and it should also expressly provide the right for children to express their views on the proposed adoption, having regard to their age and maturity, and the law should set an age at which children's consent to adoption is required.¹⁴²

In conformity with these standards, the Adoption of Children Act 1968 states that, for the purposes of the Act "the welfare and interest of the child concerned shall be regarded as the primary consideration" (section 5). Section 22 recognises that a child who has attained the age of 12 years must consent to an adoption (unless there are special reasons for dispensing with consent, though these reasons must relate to the welfare and interests of the child). However, the Act does not provide a more general right for children under 12 years to have their views expressed and taken into account.

International law states that parents / guardians must give informed consent to an adoption (where such counselling may be necessary) (article 21(a)). Provision should also be in place to ensure that birth parents' consent to adoption or guardianship is fully informed and voluntary (unless stipulated conditions to dispense with consent have been met), to prohibit any form of inducement or coercion and to require that parents receive information and counselling before giving their consent.¹⁴³

The Adoption of Children Act requires that the consent of the child's parent/s / legal guardian/s before an adoption order can be made, unless specified criteria are met, including that the parent cannot be found or identified; the person does not have capacity to give consent; the child has been abandoned, deserted or persistently neglected; or the person has failed, for a period of one year or more, to "discharge the obligations of a parent or guardian" (section 21(1)). However, there are no explicit provisions prohibiting any form of inducement or coercion or a requirement for counselling, if required.

International standards require the law to prohibit private and independent adoption or guardianship arrangements, and to ensure that all adoptions are approved by the court or other competent authority based on a full assessment of the child and the prospective parents.¹⁴⁴ The Adoption of Children Act is inconsistent with these international standards. The Act gives legal recognition to customary adoptions, which it defines as being "where a child is or has at any time been in the custody of and is being or has been brought up, maintained and educated by any person or by two spouses jointly as his, her or their own child under any adoption in accordance with custom, then for the purposes of any law the child shall be deemed to have been adopted by that person or by those spouses jointly, as the case may be" (section 53). It allows Local Courts to grant a certificate of adoption (section 54). However, it does not make any provisions for a full assessment to be carried out of the child and prospective parents by a competent body.

There do not appear to be any laws on intercountry adoption of children from Papua New Guinea, and Papua New Guinea is not a party to the Hague Convention of 29 May 1993 on the Protection of Children in the Context of Intercountry Adoption.

Summary of gaps

¹⁴¹ Articles 3 and 21, CRC.

¹⁴² Articles 12 and 21, CRC.

¹⁴³ Article 21(c), CRC.

¹⁴⁴ Article 21(a), CRC.

Indicator	Analysis of PNG law and policy	Gaps
(a) A competent authority has been designated to oversee the adoption process	While the law mandates certain functions for the Director of Child Welfare and the National Court, it does not designate an authority to oversee the whole adoption process.	The law does not designate an authority to oversee the whole adoption process.
(b) Adoptions must be approved by a Court / competent authority based on a full assessment of the child and adoptive parents	The law requires an assessment to be provided to the courts by the Director of Child Welfare based on an assessment of the prospective adopters before an adoption order is made; however, it does not set out detailed criteria or a process for this assessment.	The law does not set out a detailed process for assessments of prospective adopters.
(c) Adoptions must only be granted with the free and full consent of parents	The law provides that parents must give consent to an adoption, unless specified criteria are met. However, there are no explicit provisions prohibiting any form of inducement or coercion or a requirement for counselling, if required.	There are no explicit provisions prohibiting any form of inducement or coercion or a requirement for counselling, if required.
(d) The law provides the right for children to express their views and have those views taken into account in a proposed adoption, commiserate with their age and capacity.	The law provides that children aged 12 years and over must consent before an adoption order is made; however, there is no provision in law granting children under 12 years with the right to express their views and have those views taken into account in a proposed adoption, commiserate with their age and capacity.	There is no provision in law granting children under 12 years with the right to express their views and have those views taken into account in a proposed adoption, commiserate with their age and capacity.
(e) The law provides that the best interests of the child shall be the paramount consideration in any decision about adoption of the child.	The law states that, in adoption determinations, the welfare and interests of the child shall be the paramount consideration.	No gaps.
(f) Private and independent adoption is prohibited and the law provides that all adoptions should be approved by the court or other competent authority based on a full assessment of the child and the prospective parents.	The law gives legal recognition to customary adoptions. While these adoptions can be approved by a Local Court, there is no requirement for an assessment of the child and prospective parents by a competent authority.	There is no requirement for an assessment of the child and prospective parents by a competent authority in customary adoptions.

4.3 Mapping and analysis of institutional framework for child protection

4.3.1 Introduction

This section of the report describes the institutional arrangements for the legal and policy frameworks for child protection including VAC in PNG. It maps the institutions (government departments, ministries and coordinating bodies) that have ultimate responsibility for relevant pieces of child protection legislation related to the protection of children from all forms of violence. The section is in three parts. The first part provides an overview of the key institutions and sub institutions and their main functions. Sub instructions includes Offices, Branches, etc., of departments. The second part is a visual representation of the key institutions, based on their roles in the design and implementation of legislation and policy and their

influence in setting the agenda for legislative and policy reform. The third part is an analysis of critical gaps in the institutional arrangements.

4.3.2 Overview of the key institutions and their main functions

At the national level the main institutions for the legal and policy frameworks for child protection is the Department for Community Development and Religion and its various sub institutions. Other institutions include the Royal Papua New Guinea Constabulary, Magisterial Services, Department of Education, National Department of Health and the Department of Labour. Below is a brief overview of the functions of each institution at the national and sub national levels.

The Department for Community Development and Religion

The Department for Community Development and Religion (DfCDR) is the lead national agency and anchor for the child welfare component of the national Child Protection System. The primary function of DfCDR is to develop legislation, policies, and programmes to promote and protect the rights of marginalized and vulnerable groups such as women, children, persons living with disability and the elderly. It implements these functions through several specific offices. Its main reporting line is to the National Executive Council (NEC) through the office of the Minister. Within the Department there are several sub institutions (Offices, Branches, etc.,) that exclusively or partly have mandates related to children. These sub institutions include the Office of Child and Family Services; the National Child and Family Council, the Office of the Development of Women and GBV Secretariat; the Inter-Agency Working Group Child Protection and the Sub-Cluster of the Protection Cluster. These sub-institutions are outline below.

- *Office for Child and Family Services*

The Office for Child and Family Services (OCFS) was established by Article 12 of the LPA. Its primary function is the overall coordination of the implementation of the LPA. This includes the development, monitoring and implementation of regulations, guidelines and standards. Its other functions include sector policy development and implementation; resource mobilisation and allocation; and coordinating the preparation of Whole of Government budget for the implementation of the LPA. It includes the provision of family services including promoting and protecting the wellbeing of children and families. The powers of the OCFS are broad and include the power to consult with any individual or agency ‘that in the opinion of the Office, would assist in the protection and welfare of children.’

- *National Child and Family Services Council*

The National Child and Family Services Council (NC&FSC) was established by Article 18 of the LPA. The functions of the NC&FSC are broad and include to monitor and enforce implementation of the LPA. Related functions include policy and programme development and the provision of advice to the Minister. This includes to ‘foster collaboration and assist organisations engaged in the provision of services designed to promote the well-being of children, families and communities and promote and protect families to provide conducive environments for the protection and wellbeing of children.’ It consists of members from the OCFS, and the heads of key central and line departments.

- *Child Protection Officers and Child Protection Volunteers*

Article 35 of the LPA establishes Child Protection Officers who can be any serving welfare officers and persons performing similar functions may be appointed. Their primary function is to prevent and respond to

violence, exploitation, neglect, and abuse of children. Article 36 (2) states that the powers conferred on Child Protection Officers include the power to prevent violence under the Family Protection Act 2013. Article 37 of the LPA allows for the appointment of Child Protection Volunteers who can be government or NGO staff or volunteers from community organisations or the community more broadly. According to the LPA, only Gazetted Child Protection Officers can conduct child protection assessments and respond to child protection cases.

There are limited numbers of these Child Protection Officers and, even where referrals are made directly or through other service providers, it is particularly challenging to receive a response, creating delays and dilemmas for service providers who are keen to ensure that appropriate action is taken and that children are safe and looked after. The Pikinini Defenders campaign¹⁴⁵ is calling on the government to make a commitment to fund 300 new Child Protection Officers (up from 115 currently). Stakeholders noted that the Child Protection Officers have limited opportunities to access quality training and were mostly overloaded with cases. These cases included women provided with Family Protection Orders referred to Child Protection Officers for help in the management of the orders, particularly as they related to children.

At the sub-national level there are several important institutions for child protection including VAC.

- *Provincial Child and Family Services Councils*

Article 24 of the LPA establishes Provincial Child and Family Services Councils (PCFSC) in every province. Under the LPA, the Provincial Government is required to ‘provide professional, secretarial, other services, facilities and funding or otherwise as may be reasonably required to enable the Provincial Council to perform its functions effectively.’ The main functions of the PCFSC are to implement and administer the provision of the LPA and to advise the Provincial Government on any ‘child and family matters’. Provincial Administrators are designated as the chairpersons of the Provincial Councils. Other members include the Senior provincial Magistrate, the Provincial Police Commander and the Provincial Advisers for Health, Education and so forth.

- *Provincial GBV Action Committees*

The primary function of Provincial Action Committees is to strengthen and support effective coordination, prevention and response interventions at the sub-national levels. This includes to endorse Annual Provincial Plans. It is intended that Provincial FSVACs that are part of the National FSVAC will operate as the Provincial GBV Action Committees.

- *District Child and Family Services Committees*

Article 27 of the LPA establishes District Child and Family Services Committees. Like the Provincial Councils, the main functions of the District Committees are the development of local policies to support the prevention and response to child protection risks, including VAC. The Committees are also empowered by the legislation to investigate and inquire into child and family matters affecting the wellbeing of children. The District Committees are also empowered ‘to give advice and guidance in the rationalisation and co-operation of services designed to promote child welfare and to achieve the most effective utilisation of services.’

- *District GBV Action Committees*

¹⁴⁵ Pikinini Defenders <<https://www.savethechildren.org.au/media/media-releases/pikinini-defenders>>, accessed 22 June 2021.

The primary function of District GBV Action Committees is to strengthen and support effective coordination, prevention and response interventions at the sub-national levels. Like the Provincial Committee, the main functions of the District GBV Action Committees is to support effective coordination in promoting prevention and providing quality GBV responses at the sub-national levels.

4.3.3 Child Protection and Social Services institutions

Papua New Guinea has made notable progress in designing and implementing a multi sectoral response to child protection, including for VAC. Below is an outline of some of the main institutions involved in this effort.

The Department of Justice and Attorney General

The Department of Justice and Attorney General is the central agency responsible for the administration of legal services and the provision of law and justice services. Its major functions include legal and policy reform, regulation, monitoring and oversight. In the areas of child protection these functions include the development and revision of policies, laws, and regulations, including for VAC and child justice. It includes the provision of technical guidance in the development of protocols, operational guidelines, codes of conduct and other regulatory frameworks with respect to children who come into contact with the justice system. This includes the integration child protection in justice sector strategies and work plans. A critical aspect of this work is the provision of legal assistance to children in need of protection and their parents, guardians or support persons who act on behalf of the children. Within the Department there are several sub institutions (Offices, Branches, etc.,) that exclusively or partly have mandates related to children. These sub institutions include the Juvenile Justice Committee; Juvenile Justice Service; Legal and Policy Branch; Crime Prevention and Restorative Justice Branch; Probation and Parole and Village Courts Secretariat. These sub-institutions are outlined in section five on 'mapping and analysis of child justice institutions'.

Royal Papua New Guinea Constabulary

The Royal Papua New Guinea Constabulary has a critical role to play in child protection, particularly in the protection of children from violence, abuse, exploitation and neglect and in prosecuting offenders. This includes applying the principles of child friendly policing. This involves allocating resources to establish child-friendly spaces in police facilities and providing protection services for children who come in contact with the law, guided by clear protocols and guidelines. At a programme level this includes scaling up Family and Sexual Violence Units and ensuring that they have sufficient staffing and other resources to provide gender sensitive and child friendly services.

Magisterial Services

The Magisterial Services plays an essential role in the delivery of child protection particularly in terms of VAC, particularly in regard to child neglect and family protection matters impacting on children. This includes the establishment and operation of Family Courts. Its role includes training and building the capacity of magistrates in the delivery of child-friendly services and the development and monitoring of protocols and guidelines for children accessing courts.

Department of Education

The Department of Education has a multi-functional role in child protection, guided by the inclusion of child protection in education sector plans and budgets. Key functions include integrating child protection indicators in education sector monitoring and information systems and conducting research. A key function

entails developing and/or revising policies, laws, regulations, standards, protocols, codes of conduct, and guidelines on protection and safety of children in all education settings. This includes setting-up early detection, complaints, reporting, referral, monitoring, and coordination mechanisms and systems to provide timely assistance to children in need of protection in education settings. Related to this is the provision of safe and secure learning environments for children to learn. Programme priorities include implementing the behaviour management policy, establishing child-friendly counselling services for children in all schools and undertaking programmes and activities to prevent violence against children in schools. This entails providing training to enhance the knowledge of staff members and teachers on the prevention and protection of children from violence in schools.

National Department of Health

The main functions of the National Department of Health in relation to child protection are the integration of child protection in health sector plans and budgets including the integration of child protection indicators in the Health Information Management System (HMIS). At the programme level, the key priorities are the scaling up of Family Support Centres and the integration of parenting programme for violence prevention in the Antenatal Care (ANC) programme and the Expanded Programme on Immunization (EPI).

4.3.4 Central agencies

Department of National Planning and Monitoring

The key role of the Department of National Planning and Monitoring in relation to child protection is to set national targets for child protection in consultation with the Department for Community Development and Religion.

Office of and Department of Prime Minister/NEC

The main roles and responsibilities of the Office of and Department of Prime Minister and National Executive Council (NEC) in relation to child protection is to ensure appropriate leadership, commitment and accountability to implementation of LPA. This includes endorsement of policy, strategy, and structure for the Office for Child and Family Services.

Department of Treasury

The main function of the Department of Treasury in relation to child protection is to establish and implement child sensitive budget process including allocating a specific budget for child protection based on 'Whole of Government' budget. This includes the allocation of funds in the development budget to support child protection sector development and the allocation of funds in Provincial Services Improvement Programs.

Provincial and District Administrations

The primary role of Provincial and District Administrations is to allocate appropriate budget and human resources to plan, monitor and coordinate implementation of child protection programmes at provincial, district and lower levels of government. At the provincial level this includes the Provincial Child and Family Services Council, the Provincial Office of Child Welfare, and Provincial GBV Action Committee. At the District level this includes the District Child and Family Services Committee, the District Office of Child Welfare and the District GBV Action Committee. However, despite this assigned role, there are very few functioning

committees and those that are operating have virtually no staff and no budget for programmes or operational costs.

Department of Foreign Affairs and Trade

The primary role of the Department of Foreign Affairs and Trade is to facilitate ratification of optional protocols protecting children in PNG. This includes ensuring the monitoring of implementation and reporting as required in the protocols and ensuring government compliance to international commitments.

Department of Provincial Affairs and Rural Development

The primary role of the Department of Provincial Affairs and Rural Development in relation to child protection is to develop locally appropriate policies for protecting children in all provinces. This includes ensure that government administration plans and budgets at all levels are appropriate for children and that community-based protection systems are established for children and their families.

4.3.5 Government corporations, private sector, development partners and NGOs

Transport service providers

The primary functions of transport service providers, which includes the National Airports Corporation, PNG Ports Services, Road Transport Authority, in relation to child protection are to provide appropriate surveillance of un/accompanied child travellers and develop, monitor and implement guidelines for identifying, reporting and responding to suspicions of child trafficking and smuggling. Related functions include ensuring that public transport services are friendly to children while also providing special considerations and measures for evacuating child survivors (and their carers) of violence, abuse and exploitation.

Tourism and hospitality industries

The primary roles of the tourism and hospitality industries such as tour service providers and accommodation service providers, in relation to child protection are to provide surveillance of children accessing hospitality services and developing, implementing and monitoring a child safeguarding policy for all workers to identify and prevent child prostitution. This includes ensuring guests and tourists are informed about protection of children against sexual exploitation.

Extractive Industries

The main roles of the extractive Industries, mining, forestry, fishing, agriculture authorities and related in relation to child protection are to ensure serious corporate and social responsibilities for, and obligations to, children and their communities so they are not worse off after extraction. This includes ensuring that child safeguarding policies for all agencies in mining and agriculture and that for every resource extracted from the country, a small portion of its income is earmarked to sustain and protect children.

Security Forces

The main duties of security forces and related service providers, such as the PNG Chamber of Commerce or a regulating body of security services, in relation to child protection are to formalising security services and protection supports for safe evacuation. This includes ensuring that child safeguarding policy for all security workers and ensure security and escort services provision considers the needs and protection of children.

Human Resources Development Sector

The human resources development sector includes the Department of Personnel Management, human resources development institutions, the Office of Higher Education and the Public Services Commission. The primary roles of the sector in relation to child protection are to develop national qualification standards, guidelines and instruments for protection workforce in consultation with the Office of Lukautim Pikinini and to develop a pathway of career development for the child protection workforce.

Media, Information Technology and Communication

The primary role of media and information technology and communication (ITC) companies and the sector as a whole, in relation to child protection is to regulate, monitor and restrict the flow of harmful information and media exposure to children. Making the internet safe for children is the goal. This includes ensuring safe and secure access to educational information from the media and ITC sectors.

Non-government sector

The main roles of the non-government sector, in relation to child protection are to develop child protection prevention and responsive services and support local level capacity to deliver preventive and responsive services.

Development partners

The primary functions of development partners, in relation to child protection are to provide funding to support the implementation of child protection activities and programmes at the district government, local government and community levels, in line with the SDGs. This includes the provision of technical support and funding for capacity development for child protection workforces along with support research and evidence building.

4.3.6 Implementing institutions and influencing institutions

Drawing from the information presented in the section above, this part of the report seeks to provide a visual representation or summary of the key institutions for child protection legislation related to the protection of children from all forms of violence. The starting point for this analysis is that all the institutions listed in the National Lukautim Pikinini (Child Protection) Policy are important and accordingly have been included. The institutions are divided into four groups, according to their importance (high and medium) for the **design and implementation of legislation and policy** and for their importance (high and medium) in **influencing the agenda for legislation and policy reform**.

Figure 6: Institutional mapping of key agencies for Child Protection in Papua New Guinea

HIGH		Institutional Mapping Child Protection		HIGH	
DESIGN & IMPLEMENTATION OF LEGISLATION	IMPLEMENTATION		INFLUENCE		INFLUENCING THE AGENDA FOR LEGISLATION AND POLICY REFORM
	<p style="text-align: center;">↓</p> <p>Government institutions</p> <ol style="list-style-type: none"> Ministry of Community Development Youth and Religion 		<p style="text-align: center;">↓</p> <p>Government institutions</p> <ol style="list-style-type: none"> Office of and Department of Prime Minister/NEC Department of National Planning and Monitoring 		

	<ul style="list-style-type: none"> ○ Office of Child and Family Services ○ National Child and Family Council ○ Office of the Development of Women and GBV Secretariat ○ Inter-Agency Working Group Child Protection ○ Sub-Cluster of the Protection Cluster <ol style="list-style-type: none"> 2. Department of Justice and Attorney General 3. Royal Papua New Guinea Constabulary <ul style="list-style-type: none"> ○ Family and Sexual Violence Units 4. Magisterial Services <ul style="list-style-type: none"> ○ Family Court 5. Correctional Services 6. Department of Education 7. National Department of Health 8. Department of Labour and Employment <p>Non-government sector</p> <ol style="list-style-type: none"> 1. Family and Sexual Violence Action Committee 2. Child Protection Alliance (and other International and national NGOs and faith organisations with a strong mandate for child protection) 	<ol style="list-style-type: none"> 3. Department of Treasury 4. Ombudsman Commission of PNG 5. Constitutional and Law Reform Commission 6. Office of the First Legislative Counsel 7. Department of Provincial Affairs and Rural Development 8. Provincial and District Administrations 9. Public Services Commission 10. Department of Personnel Management 11. Office of Higher Education 12. Human Resources Development institutions 13. National GBV Advisory Committee <p>Non-government sector, development partners and others</p> <ol style="list-style-type: none"> 1. PNG Institute of National Affairs 2. Consultative Implementation Monitoring Committee 3. Media, Information Technology and Communication Sector 4. Development Partners 5. Human Resources Development institutions such as Universities, training colleges and private training providers 	
	<p>Government institutions (Provincial and District)</p> <ol style="list-style-type: none"> 1. Provincial Child and Family Services Council 2. Provincial Office of Child Welfare 3. Provincial GBV Action Committee 4. District Child and Family Services Committee 5. District Office of Child Welfare 6. District GBV Action Committee <p>Non-government sector</p> <ol style="list-style-type: none"> 1. Family and Sexual Violence Action Committees 2. Provincial and district NGOs 	<p>Government institutions and others</p> <ol style="list-style-type: none"> 5. Department of Foreign Affairs and Trade 6. National Court 7. Tourism/Hospitality Industries (Tour Service Providers, Accommodation Service Providers) 8. Transport Service Providers (National Airports Corporation, PNG Ports Services, Road Transport Authority) 9. Extractive Industries (Mining, Forestry, Fishing, Agriculture Authorities and agencies) 10. Security Forces/ Service Providers (Chamber of Commerce or regulating body of security services) 	
<p>MEDIUM</p>			<p>MEDIUM</p>

High importance for the design and implementation of legislation and policy: The first box (top left-hand corner) is the group of institutions with high importance for the design and implementation of legislation and policy. This group consists of eight individual institutions and several sub-institutions and the non-government sector with a strong mandate for child protection. This includes coalitions such as the Child Protection Alliance and specific agencies such as Save the Children along with other international and national NGOs and faith organisations. This group has a significant role to play in designing new laws and policies and clear accountabilities for their implementation. Investing in strengthening strong partnerships within this group, based on an advanced understanding of the multi-dimensional aspects of child protection would deliver meaningful results for children. Priorities for investments include fostering and building trust and a shared commitment to problem solving and applying a multi-sectoral response to child protection, as opposed to working in legislative or technical silos. Strengthening the capacity of this group to drive change is key for effective implementation of key laws and policies.

Medium importance for the design and implementation of legislation and policy: The third box (bottom left-hand corner) is the group of institutions with medium importance for the design and implementation of legislation and policy. This group consists of six individual institutions and NGOs. Like the group above, this group has an important role to play in informing the design of new policies and supporting their implementation, particularly at the provincial and district levels. Investing in strengthening the capacity of this group to implement a multi-sectoral response to child protection, as opposed to working in legislative or technical silos, is key.

High importance for influencing the agenda for legislation and policy reform: The second box (top right-hand corner) is the group of institutions with high importance for influencing the agenda for legislative and policy reform. This group consists of 13 individual institutions and several NGOs, development partners and others, including universities, donors and UN agencies. This group has an elevated level of influence in setting priorities for legislative and policy reform. Strengthening the knowledge of this group on child protection through effective communication channels is key for building momentum and demand for action for child protection. High level, high impact communication is required with his group. The use of evidence informed advocacy strategies is likely to yield results.

Medium importance for influencing the agenda for legislation and policy reform: The fourth box (bottom right-hand corner) is the group of institutions with medium importance for influencing the agenda for legislative and policy reform. This group consists of six government institutions and sectors, such as the tourist sector. Like the group above, this group can influence the setting of priorities for legislative and policy reform. Again, strengthening the knowledge of this group on child protection through effective communication channels is key for building momentum and demand for action for child protection.

4.3.7 Critical gaps

There are two critical gaps in the institutional arrangements for child protection including VAC, relating to legislative silos and national planning and response to VAC.

Legislative silos

As noted in the analysis of child protection laws, the scope of the LPA is extensive covering many key child protection concerns. However, the functions of the institutional bodies such as the Office of Child and Family

Services and the National Child and Family Services Council, and equivalent bodies at the district levels are limited to the LPA rather than having a broader scope of all welfare related child protection concerns. In other words, the institutional arrangements for child protection are based on a legislative silo (i.e., the LPA), rather than being based on a child protection system, where the institutional arrangements cover several pieces of legislation.

National planning and response to VAC

There is currently no action plan for preventing and responding to the multi-types of violence experienced by children in PNG. This includes violence in the home, in school, in the community and online. This violence includes physical, sexual and emotional abuse, neglect and exploitation. As shown by the legal review, there are several gaps in the protection and response to VAC. While it may be necessary to fix these gaps through further legislative reform, this could no doubt take several years to achieve. It may be more efficient time wise and also in recognition of the urgency to improve the safety of children, to rapidly develop an action plan for VAC.

5. Child justice system laws, policies and institutional framework

5.1 Summary of international standards

The CRC contains a number of provisions applicable to children in contact with the law (either as victims / witnesses or suspects / offenders). Article 40 is a key provision and provides that States Parties must recognise “the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.”¹⁴⁶ Article 40(2) sets out a number of procedural rights to which children who come into conflict with the law are entitled. Article 40(3) provides that States must specify a minimum age below which a child is not to be held criminally responsible. It also states that where appropriate and desirable, children in conflict with the law must be dealt with without resorting to judicial proceedings, ensuring that human rights standards and legal safeguards are protected and provided. Article 40(4) provides that a range of sentencing dispositions must be available to children in conflict with the law, including “care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care.”

Article 37 concerns deprivation of liberty and provides safeguards against unlawful or arbitrary detention, and requires states to ensure that the arrest, detention or imprisonment of a child “shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”¹⁴⁷ It also provides that children deprived of their liberty must “be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age”, and shall maintain contact with their family. Article 37(d) requires States to ensure that children deprived of their liberty have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

The rights of children in conflict with the law have been elaborated in the CRC Committee’s recent General Comment No. 24 on Children’s rights in the justice system, and are set out in a number of ‘soft laws’, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) 1985, the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) and the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Rules).

Child witnesses are also entitled to special protections according to international standards. These protections are set out in the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime 2005.

¹⁴⁶ Article 40(1), CRC.

¹⁴⁷ Article 37(b), CRC.

5.2 Context

Children who come in contact with the law (as victims / witnesses or suspects / offenders) in PNG face significant barriers to accessing formal justice systems and do not encounter a child-friendly and rights-compliant system. Children who come into conflict with the law can experience violence and mistreatment. In 2011, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment found, following a country visit to PNG, a considerable number of cases of physical violence perpetrated against persons by police, along with a general atmosphere of violence and neglect in detention facilities.

Child victims and witnesses also face challenges in accessing justice. It is estimated that between ten and twenty percent of survivors of violence have access to the formal court system in PNG.¹⁴⁸ Lack of access to and a lack of confidence in the formal justice system, beliefs that some types of violence are 'private' and the knowledge that police are often perpetrators of violence themselves¹⁴⁹ cause many survivors of violence to resort to the informal village courts system. These courts have the legal mandate to settle minor offences, resulting in compensation settlements for serious crimes. The widespread culture of compensation, whereby money is paid to victims' families for crimes committed, means that perpetrators of family and sexual violence often evade imprisonment and any official recognition of their violence as a criminal act. Perpetrators often remain within their communities, exposing survivors to the threat of repeated violence.¹⁵⁰ A study carried out last year on the reporting, investigating and prosecution of family and sexual violence cases found that, while there had been an increase in reporting of family and sexual violence cases in the study locations (Port Moresby, Lae and Arawa), it was estimated that only around six per cent of complaints made to the specialist police units (Sexual Offences Squads) made it to the National Court due to a high number of withdrawals and disappearances by victims.¹⁵¹ It was found that complainants frequently seek to withdraw cases and important witnesses do not reappear, owing to significant pressure exerted on victims and capacity challenges within the justice system, leading to challenges in investigations and considerable delays in judicial proceedings.¹⁵²

5.3 Child victims and witnesses

5.3.1 Analysis of laws and policies

Child victims and witnesses of crime too often are left unprotected under domestic law and suffer disproportionately as a result of judicial processes that are not child friendly. In addition to the physical, psychological and emotional trauma that children experience, too often the court system intimidates, confuses and re-traumatizes child victims and witnesses.

¹⁴⁸ Special Rapporteur on Violence against Women country mission to Papua New Guinea, March 2012

¹⁴⁹ UN Women, *Ending violence against women and girls: Evidence, data and knowledge in Pacific Island countries* (2011) (2nd ed.).

¹⁵⁰ MSF 2016

¹⁵¹ Putt, J. and Dinnen, S., Australian National University, *Reporting, Investigating and Prosecuting Family and Sexual Violence Offences in Papua New Guinea* (2020).

¹⁵² Putt, J. and Dinnen, S., Australian National University, *Reporting, Investigating and Prosecuting Family and Sexual Violence Offences in Papua New Guinea* (2020).

Several Articles of the UN Convention on the Rights of the Child (UNCRC) underpin an approach to child justice that protects and upholds the rights of child victims and witnesses within the criminal justice system, including: the best interests principle (Article 3); the right to be treated with dignity and compassion (Article 39); the right to non-discrimination (Article 2); the right to be informed (Article 40); the right to express views and concerns and be heard (Article 12); the right to effective assistance (Article 20) and the right to privacy (Article 16). The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography also contains detailed protections on the right to safety and right to be protected on hardship in the criminal justice process which directly impacts on children's experiences of the criminal justice system.

In PNG there is no stand-alone law that outlines the rights of child victims and witnesses in domestic legislation. Instead, what few protections that do exist for child victims and witnesses are fragmented across multiple pieces of primary legislation and standard operating procedures for those involved in the criminal justice system. This has led to substantial gaps in legal protection afforded to child victims and witnesses. The key laws that include provisions related to child victims and witnesses are the Evidence Act and its amendments, the Criminal Code (1974) and to a lesser extent the Constitution of Papua New Guinea. None of these laws contain explicit references to the UNCRC or its key principles.

Expedition of cases involving child victims and witnesses

No provisions exist in the law or Magistrates Manual of Papua New Guinea which ensure that cases involving child victims and witnesses are expedited through the criminal justice process, meaning that children could wait a significant amount of time before being able to have their case resolved. This further adds to the burden of children in court proceedings and is not in line with best practice.

Child participation in criminal proceedings

Under Article 12 of the CRC, a child victim or child witness of a crime must be given an opportunity to fully exercise her or his right to freely express her or his view in accordance with United Nations Economic and Social Council resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. According to these Guidelines, "age should not be a barrier to a child's right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child's age alone."¹⁵³

Historically children in Papua New Guinea have not been recognised as competent witnesses within the legal system. However, the Evidence (Amendment) Act 2002 brought about a change in the law which ensures that children are no longer considered to be inherently unreliable witnesses by reason of age alone. Under the Act, the credibility of child witnesses are instead to be assessed on a case by case basis. However, requiring the assessment of a child's competence on a 'case by case' is inconsistent with the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, which requires a presumption in favour of the child being able to give testimony in Court proceedings. Assessment processes serve as a barrier to ensuring children's right to participate as witnesses is guaranteed.

¹⁵³ United Nations Economic and Social Council resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, para. 18.

Legal protections for child victims and witnesses

Protections do exist for children and young people who are found to be competent to give evidence in Court. Under Article 37(b) of the Evidence (Amendment) Act 2002, child victims and witnesses - defined as those persons aged under 18 - are able to testify using ‘special measures order.’ These orders detail a range of measures that can be taken by a Judge in a case where distress is likely to as a result of testifying in order to reduce the discomfort of the child or young person. These provisions include:

- Screens to prevent the witness from seeing the accused;
- Allowing for the presence of a support person of the witness' choosing seated with the witness;
- Dispensing with the formality of the courtroom, including judicial clothing and seating arrangements;
- Relocating proceedings to other places the Judge sees fit;
- Removing members of the public without an interest in the proceedings from the courtroom whilst a child is giving evidence;
- Examination of the witness through an intermediary, who shall communicate and explain in child-friendly and age appropriate language the questions; and
- Allowing for evidence to be given by video-link from outside the courtroom.

Additionally, the Constitution of PNG allows for an interpreter to be provided under certain circumstances (Article 37(4)(d)), which is particularly important given the linguistic diversity of the country and challenges in ensuring children from linguistic minorities are able to participate fully in legal proceedings. Whilst this is broadly in line with Article 46 of General Comment 24 of the CRC, more could be done to support children, including those with disabilities, throughout the process of giving evidence. In particular, there is no impartial and trained guardianship service in Papua New Guinea outlined in law to support child victims and witnesses before, during and after trial.

Additionally, whilst Article 37(c) of the Evidence Act 1975 allows for children to give evidence using video link, children still have to be available for cross-examination (under Article 570 (1) of the Criminal Code). However, protections do exist in the Evidence Act to prevent accused persons from directly cross-examining children. In order to be in line with international standards, the law should strengthen protections for children subject to cross-examination to minimise the risk of further harm to the child and to ensure they are fully informed throughout the trial.

5.3.2 Summary of key gaps

Indicators	Analysis of PNG law and policy	Gaps
(a) Children of all ages are recognized as competent witnesses and their testimony is not presumed invalid by reason of age alone.	According to PNG law, the credibility of child witnesses should be assessed on a case by case basis, which goes against international standards, which require that all children above the age of criminal responsibility are to be presumed competent.	The assessment of a child’s competence as a witness on a ‘case by case’ basis, is not in line with international standards, which require States to ensure that all children above the age of criminal responsibility are presumed competent to participate in Court proceedings.
(b) Criminal proceedings against perpetrators of crimes against children can always be	The law does not require parental consent in order to initiate criminal proceedings against perpetrators of crimes against children.	No gaps.

initiated the police or prosecutor and do not require the consent of a parent/guardian.		
(c) Mediation / informal settlement only takes place when it is in the best interests of the child.	Whilst legal pluralism and informal justice mechanisms were not covered by this legal review, informal dispute resolution mechanisms and mediation are commonly used in Village Courts. The National Court Act was amended in 2008 to provide procedures for alternative dispute resolution through mediation and other related methods. Further, in 2010, the National Court made 'Rules Relating to the Accreditation, Regulation, and Conduct of Mediators'. Neither document requires that the best interests of the child guide decision making processes. These courts have the legal mandate to settle minor offences, resulting in compensation settlements for serious crimes. The widespread culture of compensation, whereby money is paid to victims' families for crimes committed, means that perpetrators of family and sexual violence often evade imprisonment and any official recognition of their violence as a criminal act.	No reference to children's best interests in the 2008 amendments to the National Court Act or Village Courts Act.
(d) The law recognizes the vulnerability of child victims and the best interest of the child is a primary consideration guiding the entire process.	There are no explicit provisions on child victims and witnesses in the Juvenile Justice Act. The best interests paramountcy principle is not contained in the Criminal Code or Evidence Act, which includes provisions relating to (child) witnesses.	The best interests paramountcy principle does not explicitly apply to child witnesses.
(e) The law makes provision for child victims to be provided appropriate accompaniment and support services throughout the legal process (e.g. through a guardian).	The Evidence (Amendment) Act (2002) allows for special measures orders in cases involving children. Amongst other provisions, this provides for the judge to allow in some cases a person to support the victim in court, for example by sitting near them while they give evidence. Additionally, screens may be used to reduce re-traumatization, the use of video link is permitted and formalities of the courtroom can be dispensed with. The Constitution of PNG allows for an interpreter under certain circumstances (Article 37(4)(d)).	There is no guardianship service in PNG. Additional support services are also not provided for in law, including a lack of supports for children with disabilities.
(f) Cases involving child victims and witnesses are required to be expedited.	There are no clear provisions on expediting cases involving child victims and witnesses in the Criminal Code, Evidence Act, Juvenile Justice Act or the Magistrates Manual of Papua New Guinea.	No provisions on expediting criminal cases involving child victims / witnesses.
(g) Provision is made for measures to reduce hardship and assist children to give testimony (e.g. evidence via video link).	Article 37(C) of the Evidence Act (1975) allows for children to give evidence using video link. Protections do exist in law to prevent accused persons from directly cross-examining children (defined as those under 18 years old), however, no other provisions apply to limit the harm of cross-examination of child witnesses. Children	Limited legal protections exist to minimise the harm of cross examination of child witnesses.

	may also be asked to give evidence at pre-trial hearings under Article 37 (d) of the Evidence Act.	
(h) Child victims are guaranteed the right to privacy throughout the process, and there are restrictions on publishing their identity.	Should a child be asked to give evidence at a pre-trial hearing, the Judge has discretion to only allow limited persons in the Courtroom, and the accused can be removed from the courtroom and only allowed to watch from a separate room using video link (Article 37 (d)(4)(e) of the Evidence Act).	There is no absolute right to privacy for child victims / witnesses.
(i) Measures are available to protect the safety of child victims and their family and to prevent intimidation and retaliation.	Under Article 126 of the Criminal Code, it is an offence to prevent witnesses from attending Court or preventing witnesses from producing anything in evidence, that carries the penalty of no more than one year in prison.	There are no specific protections for witnesses after they have given their testimony in Court under the Criminal Code. Additionally, there are no specific provisions related to intimidation.
(j) Child victims have access to suitable procedures to seek compensation for damages.	All victims in PNG have the right to seek compensation and to recover loss or damages to property, be compensated monetarily for bodily harm, or loss of belongings. The Papua New Guinea Criminal Code also allows for compensation to victims and families of victims.	No gaps.

5.4 Specialised system for child justice

5.4.1 Analysis of laws and policies

Article 40(3) of the CRC requires States to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged, accused of, or recognised as having infringed on the criminal law. Building on this foundation, the CRC Committee details in General Comment 24 the need for a separate system for children with differentiated and individualised approach that takes into account the damaging results of children being exposed to the adult criminal justice system.¹⁵⁴

Papua New Guinea’s Juvenile Justice Act 2014 sets out a framework for a distinct and specialised child justice system. The Act aims to “establish the basis for the administration of a comprehensive and separate juvenile justice system based on the principles of restorative justice, Melanesian tradition and contemporary juvenile justice practices.” In line with the CRC, Section 6A(i) of the Act states that at all stages of the process, the criminal justice system for juveniles (i.e. those aged under 18 years of age) must be separate from that of adults. This is in line with international standards and best practice.

In addition, the Act establishes the PNG juvenile justice service run by a National Director with service delivery being undertaken by employed and volunteer Juvenile Justice Officers in communities throughout PNG (Section 7). Juvenile Justice Officers and Volunteer Juvenile Justice Officers hold primary responsibility for the administration of the child justice system, including responsibilities for supporting children in conflict with the law, preparing assessments of individual children for the police and courts, promoting and facilitating the use of diversion and community-based sentences for children.

¹⁵⁴ UN Committee on the Rights of the Child, General Comment No. 24 on children’s rights in the justice system, CRC/C/CG/24, 18 September 2019, Section 1.2.

Juvenile Courts

The Act gives Ministers the power to establish a Juvenile Court ‘in and for an area specified in the notice’ (Section 14), led by a Magistrate. However, in contravention of international standards, the Act falls short of mandating the establishment of Juvenile Courts across PNG and providing that all cases involving children be heard in these Courts. A lack of political will, financial and human resources often mean in effect that the provision of Juvenile Courts is very limited and they largely exist on an ad hoc basis. In areas where a Juvenile Court has not been established or there is no Juvenile Court Magistrate available to preside over the Juvenile Court, a child’s case will instead be heard by a court of summary jurisdiction exercising jurisdiction over a child in conflict with the law (Section 19).

Concerningly, where established, Juvenile Courts can only handle cases that would ordinarily be punishable as summary offences or otherwise triable in District Courts. The reach of Juvenile Courts is therefore limited. Juvenile Courts are unable to hear cases of homicide, rape or any other offence punishable by death or imprisonment for life. In such cases, under Section 20 of the Juvenile Justice Act, National Courts are responsible for trial proceedings. Whilst the law mandates that in such cases “when exercising jurisdiction under this section, the National Court shall, so far as is practicable, sit and conduct proceedings in accordance with this Act” this does not *guarantee* child-friendly proceedings. This is particularly concerning given the extensive list of crimes that attract a maximum sanction of the death penalty or life imprisonment and therefore the extensive number of cases involving children in conflict with the law that would fall under the jurisdiction of the National Courts rather than Juvenile Courts.

Juvenile Justice Committees

The Act also provides for the establishment of a National Juvenile Justice Committee which is responsible for monitoring the implementation of Act, promoting cooperation between national Government agencies, and developing national plans related to child justice and crime prevention (Section 23).

These Committees may also exist at the Provincial level at the discretion of the Director of the Juvenile Justice Service (Section 26). The purpose and membership of these groups is to be established by the National Director and is not articulated in the Juvenile Justice Act itself. However, Sections 15 and 16 of the Juvenile Justice Regulation 2018 details the membership and role of the provincial level Juvenile Justice Committee. The regulation provides for a more expansive role for Provincial level Committees, including the planning, monitoring, coordination and administration of juvenile justice, diversion and rehabilitation at the provincial level.

Detention of children

Children can be detained in juvenile institutions, remand centres, or juvenile sections of correctional institutions. Under Section 96(2) of the Juvenile Justice Act children may only be detained in juvenile sections of correctional institutions where those institutions are separate and detached from adult prisons. More detail on the specific provisions for children in detention are detailed in Section 5.8.

Multi-disciplinary teams

Community based conferences are established under Section 32 of the Juvenile Justice Act to develop diversion agreements. Conferences are comprised of a facilitator, the child in conflict with the law, the child’s parent, the victim, support persons for the victim, Police Officers and a Juvenile Justice Officer.

However, Community based conferences do not follow best practice in that they do not have wider membership from professionals who interact with children, for example social workers and teachers.

5.4.2 Summary of key gaps

Indicators	Analysis of PNG law and policy	Gaps
<p>(j) A Specialised child justice system is in place, with specialised institutions and units (including courts), and applies to all children from the minimum age of criminal responsibility to 18 years.</p>	<p>The Juvenile Justice Act establishes a comprehensive and separate juvenile justice system in PNG for children (defined as those under 18 years of age). This includes the establishment of the juvenile justice service.</p> <p>The Act permits, but does not mandate, the establishment of local Juvenile Courts. However, these courts can only hear certain cases and oftentimes do not exist in practice, with children’s cases instead being heard courts of summary jurisdiction or national courts.</p> <p>The National Juvenile Justice Committee monitors implementation of Act and is responsible for developing national plans on child justice.</p> <p>Children can be detained in juvenile institutions, remand centres, or juvenile sections of correctional institutions.</p>	<p>Juvenile Courts are unable to hear cases of homicide, rape or any other offence punishable by death or imprisonment for life even if that offence was committed by a person under the age of 18 years.</p> <p>The Juvenile Justice Act permits the establishment of juvenile courts but does not mandate their establishment, meaning courts exist only on an ad hoc basis.</p>
<p>(k) Multidisciplinary teams are in place to respond to children in conflict with the law.</p>	<p>Community based conferences are responsible for developing diversion agreements and are comprised of a facilitator, the child in conflict with the law, the child’s parent, the victim, support persons for the victim, Police Officers and a Juvenile Justice Officer.</p>	<p>Community based conferences do not follow best practice in that they do not have wider membership from professionals who interact with children, for example social workers and teachers.</p>
<p>(l) Strategies / polices are in place to address drivers of child offending.</p>	<p>One of the functions of the National Juvenile Justice Committee under Section 25 of the Juvenile Justice Act is ‘to periodically develop national plans for the implementation of juvenile justice initiatives and for juvenile crime prevention’. The Juvenile Justice Regulation provides more detail on the role and membership of provincial level juvenile justice committees, including planning and coordinating diversion and rehabilitation and the implementation of the Juvenile Justice Act.</p>	<p>No gaps.</p>

5.5 Limits of criminalisation

5.5.1 Analysis of laws and policies

Minimum age of criminal responsibility

The minimum age of criminal responsibility is the minimum age at which a child is regarded by the State as being capable in law of committing a crime. A child under the minimum age of criminal responsibility should not be charged or tries for an offence, nor should be or she be subject to any criminal sanction or measure.

Under PNG's Juvenile Justice Act, the minimum age of criminal responsibility is ten years old. This is contrary to General Comment 24 of the UN Committee on the Rights of the Child, which in 2019 concluded that states should be encouraged to increase their minimum age to at least 14 years of age in accordance with Article 41 of the CRC. The Committee also recommended that states should consider having a higher minimum age of criminal responsibility, for instance 15 or 16 years of age. This General Comment built on Rule 4 of the Beijing Rules which states that "in those legal systems recognising the concept of the minimum age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity."¹⁵⁵

Such a low age of criminal responsibility risks unnecessarily criminalising children, often for minor offences, for matters which should be seen as matters of social welfare or child protection.

Age Assessments

Age assessments are an incredibly important processes, particularly in countries which do not have high rates of birth registration (see above, section 3.12). They can help to establish a child's access to age-specific protections and systems within the child justice system.

In circumstances where a child's age is disputed, Section 4 of the Juvenile Justice Act sets out a system for age assessments. It instructs court to have regard for the following factors (in order of cogency):

- the person's birth certificate or baptismal certificate;
- a previous determination of the age of the person by a Court;
- hospital or health clinic records, church records or school records of the person;
- an entry about the person in a clinic book, a village record book, or other documentation of a similar nature;
- statements made by the person, a parent or any other person likely to have direct knowledge of the age of the person;
- an estimation of the age of the person made by a medical practitioner; and
- the person's physical appearance.

These methods are largely in line with the CRC Committee's General Comment 24 which states that assessment of a child's physical and psychological development should only be used as a method of last resort where other methods (such as obtaining a child's age from official records) are unavailable. Notably, the Act does not provide guidance on how such physical age assessments should be carried out. For example, the law does not prohibit, as General Comment 24 recommends, "using only medical methods based on, inter alia, bone and dental analysis, which is often inaccurate, due to wide margins of error, and can also be traumatic."¹⁵⁶

Additionally, the law does not have requirements that assessments are undertaken in a prompt, child- and gender-sensitive and culturally appropriate manner. Given that age determination is an inexact science and

¹⁵⁵ UN CRC Committee, General Comment No. 24 on children's rights in the child justice system, 2019, paras. 20–27.

¹⁵⁶ UN CRC Committee, General Comment No. 24 on children's rights in the child justice system, 2019, para. 34.

the process can often be traumatic for a child who feels they are not believed, stronger safeguards are needed in the national law to ensure this process is conducted in a child-friendly manner.

Under Section 4 of the Juvenile Justice Act, there are no specific provisions for giving a child the benefit of the doubt where age is unknown or disputed. Given that there is no single reliable method for making precise age estimates and no conclusive medical test exists, the law should expressly give children the benefit of the doubt in the case of inconclusive evidence, as recommended by the CRC Committee in its General Comment 24.¹⁵⁷ Furthermore, there is no clear process for disputing or appealing an age assessment determination under the Juvenile Justice Act.

Status Offences

Status offences are offences set out in law that can only be committed by persons with a certain status – in this case, by children, and can subject children to unnecessary and harmful exposure to the criminal justice system. Such offences typically include: truancy from school, running away from home, violations of curfew laws or being ‘ungovernable’ or badly behaved.¹⁵⁸ According to the UN Committee on the Rights of the Child General Comment 24, States should close *“pathways into the child justice system through the decriminalization of minor offences such as school absence, running away, begging or trespassing, which often are the result of poverty, homelessness or family violence.”*¹⁵⁹ Additionally, Guideline 56 of the Riyadh Guidelines also calls for the repeal of status offences.

Overall, there are few status offences in Papua New Guinean statutes. One example of a status offence law that exists in PNG is the Curfew Act 1987 which allows for the Head of State to, by means of proclamation, impose a curfew on ‘every person within a specified age group’ (Section 3(1)b) for a period of no more than two months at a time. Whilst this regulation is not *de jure* discrimination against children and young people, such legislation is overwhelmingly likely to be applied to children and young people.

Discriminatory legislation

Article 2 of the CRC prohibits “discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.” The Constitution of Papua New Guinea further enshrines equality and non-discrimination provisions into national law which ensure that all citizens have the same rights, provisions, obligations and duties irrespective of race, tribe, place of origin, political opinion, colour, creed, religion or sex (Section 55). However, this provision is not sufficient to protect all children within the juvenile justice system who are subject to less favourable treatment.

As noted above (section 3.5), PNG criminalises consensual same-sex sexual activity between men, with a maximum prison sentence of 14 years (Criminal Code, Section 210). This includes male children above the minimum age of sexual consent. The Criminal Code also uses discriminatory, derogatory and stigmatising language against male sexual relationships such as ‘unnatural offences’ and ‘against the order of nature’. Same sex relations between women and girls are not criminalised. Marriage also remains illegal for both

¹⁵⁷ UN CRC Committee, General Comment No. 24 on children’s rights in the child justice system, 2019, para. 34.

¹⁵⁸ Status offences also include the criminalisation of consensual sexual acts by adolescents under a minimum age. This is discussed above at section 3.4.

¹⁵⁹ UN CRC Committee, General Comment No. 24 on children’s rights in the child justice system, 2019, para. 12.

male and female same-sex couples in PNG, and as such the marital exemption which applies to a person having sex with a married child over the age of 14 does not apply.

PNG law or policy does not appear to require special consideration to be given to the needs children with disabilities, nor are there special provisions for their treatment within the criminal justice system. Without a comprehensive set of protections that remove children with impaired capacity due to disabilities or neurodevelopmental disorders from the child justice system, these children will suffer disproportionately.

5.5.2 Summary of key gaps

Indicators	Analysis of PNG law and policy	Gaps
(a) The minimum age of criminal responsibility (MACR) is set out in law and is above 14 years of age. There are no exceptions specified in law for lowering the MACR in certain circumstances.	Under the Juvenile Justice Act 2014 the minimum age of criminal responsibility is 10 years old.	Minimum age of criminal responsibility is 10 years old and does not meet the international standard of 14 years old.
(b) A system of age assessments is in place, relying on documentation and testimony from parents, teachers, religious leaders etc. where a child's age is unknown.	A system for age assessments exists under the law for cases where the person's age is disputed, including a significant list of methods of assessment.	No guidance provided on the procedures for conducting physical or psychological age assessments, including no requirement that assessments are undertaken in child-friendly manner.
(c) Provisions are in place giving the child the benefit of the doubt where age is unknown / disputed.	The law has no specific provisions for giving a person the benefit of the doubt where age is unknown or disputed. Additionally, there is no clear process for disputing or appealing an age assessment determination under the Juvenile Justice Act.	The law does not give children the benefit of the doubt in cases where age assessments are inconclusive. Additionally, there is no appeals process in cases where age assessments are disputed.
(d) Status offences are not criminalised (including school absence, running away, begging, trespassing etc.) and consensual sexual acts between children are not criminalized.	There are no specific status offences outlined in the Criminal Code or Juvenile Justice Act. The Curfew Act does contain provisions for age related restrictions which could be considered status offences.	The Curfew Act contains restrictions on the movement of persons within specified age groups, leaving open the door for the criminalisation of children in the basis of age.
(e) The criminalisation of acts is not discriminatory on any grounds (e.g. on the grounds of sexuality or gender identity).	Papua New Guinea criminalises consensual same-sex sexual activity between men (it does not criminalise same-sex sexual activity between women).	Consensual same-sex sexual activity remains criminalised for boys and men of any age.
(f) Children with impaired capacity, due to disabilities or neurodevelopmental disorders, are not in the criminal justice system, through automatic exclusion or exclusion through individual assessments provided in law.	No provisions in the Juvenile Justice Act that gives consideration to the needs of children with disabilities.	No provisions on children with disabilities in Juvenile Justice Act.

5.6 Diversion

5.6.1 Analysis of laws and policies

In order to reduce the negative effects of children's involvement in the juvenile justice system, the CRC obliges States to develop procedures which allow children's behaviour to be dealt with without resorting to judicial measures, wherever appropriate and desirable providing that their human rights are safeguards are fully respected.¹⁶⁰ This is known as diversion.

Diversion is the process of 'diverting' children away from the formal legal system to a more informal resolution in the community. According to the UN Committee on the Rights of the Child "Diversion should be the preferred manner of dealing with children in the majority of cases."¹⁶¹ This process also functions as a way of promoting restorative justice that is in line with traditional practices, and allows offences committed by children to be dealt with informally by families and communities rather than formally through the courts. This can be done at any time in the justice process depending on the specific circumstances of the case, and is considered to be a 'stepped' response for children who commit criminal offences. This may include taking no further action, issuing a warning, police diversion, prosecutor diversion or pre-trial diversion, court-led diversion and, as a last resort, trial.

Diversion is not a new concept in PNG, although in recent years it has been reinforced by the National Law and Justice Policy and the passing of the Juvenile Justice Act. Children in conflict with the law may be considered for diversion under Section 28 of the Juvenile Justice Act if four key criteria are met: (1) The child must voluntarily acknowledge responsibility for the offence; (2) The child must give consent to the use of diversion, alongside one of the child's parents (if the child has one or both parents); (3) Diversion cases must meet an evidentiary threshold, i.e. there must be sufficient evidence to proceed with the case and the prosecution is not barred at law; and (4) There must be a determination made that it is in the best interests of justice for the matter to be resolved informally. Section 28(2) sets out in more detail on the criteria used to determine whether the diversion in a case is in the interests of justice. These provisions are largely compatible with General Comment No 10 (Para 27) of the UN Committee on the Rights of the Child.

However, no provisions exist in the Juvenile Justice Act to explicitly safeguard children from potential coercion and intimidation in this process. Such provisions are essential to ensure that children make informed decisions regarding their decision to take part in diversion proceedings. To ensure children are not pressured into consenting to diversion programmes the Beijing Rules require States to put measures in place to ensure children are not pressured into either acknowledging responsibility for the offence or into consenting to the diversion programme.

A variety of diversion options are available for children in conflict with the law under Section 29(1) of the Juvenile Justice Act. These measures aim to tackle the root causes of a child's behaviour in order to prevent further offending and include a warning, formal apology, counselling, monitored behaviour, non-residential vocational training, restitution and financial compensation. None of the diversion measures listed in the Act deprive children of their liberty.

¹⁶⁰ CRC, *op. cit.*, Art 40(3)(b); see also Beijing Rules 6 and 11.

¹⁶¹ CRC, General Comment 24, Para. 16.

Police diversion can take place in PNG under Section 29(2) of the Juvenile Justice Act. This gives police officers the power to divert children prior to referring a child's case to Prosecutors. Under Section 40(1), Police must "consider whether to take no further action or to divert the juvenile" before initiating criminal proceedings, including by issuing a warning, initiating a community-based conference or taking another diversion measure as set out in Section 29. Detailed guidance on this is outlined in Chapter 2 of the Royal Papua New Guinea Constabulary (RPNGC) Juvenile Principles and Guidelines for Police.

Implementation challenges: Police Juvenile Policy and Protocol

While the Police Juvenile Policy and Protocol is regarded as an excellent tool, it has been noted that it is not routinely being applied to children in conflict with the law.¹⁶² Despite the existence of rights based legislative frameworks which specify that detention of juveniles should only occur for three categories of serious and violent offences, few children have access to alternatives, including diversion. PNG correctional services statistics suggest that 49 per cent of all children in conflict with the law are detained at the pre-trial stage, often with adults, and rarely with adequate access to legal or medical support, or independent and transparent oversight of their treatment.¹⁶³ The majority of these detentions are for divertible offences, which, according to the Juvenile Justice Law 2014, include those offences for which the child acknowledges responsibility for the offence, consents to the diversion measure, there is sufficient evidence to proceed with a prosecution and it is in the interests of justice to proceed with diversion.¹⁶⁴

In PNG, Magistrates are provided with the discretion to impose diversion at the first hearing prior to the beginning of the trial. Under Section 62 of the Juvenile Justice Act, a child can be referred by a Magistrate to a community-based conference whose role it is to work with the child and key stakeholders to create a diversion agreement. Pending successful completion of the diversion agreement, the child's case can then be discharged. Courts can also dismiss a case against a child if the child should have been diverted at an earlier stage in proceedings under Section 43(1) of the Act. Court diversion is guided by a Juvenile Court Protocol issued by the Chief Magistrate.

According to international law, children should be protected from any admission or statement they make as part of a diversion process being used against them in any current or subsequent legal proceeding. This protection exists for children in PNG under Section 31 of the Juvenile Justice Act, even if the child does not comply with the diversion agreement.

5.6.2 Summary of key gaps

Indicators	Analysis of PNG law and policy	Gaps
(a) Law provides possibility of diversion for children in conflict with the law as a priority and diversion is available for the majority of offences / cases	A stepped process of diversion is in place to allow children in conflict with the law to be diverted to more informal routes. The law sets out key criteria for diversion which are largely in line with the CRC. Both police and court-led diversion are	No gaps.

¹⁶² UN General Assembly, Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Mission to Papua New Guinea*, 7 February 2011, A/HRC/16/25/Add.5.

¹⁶³ Department for Community Development and Religion 2016, in UNICEF PNG, *Situation analysis of children* (2018), unpublished, p. 82.

¹⁶⁴ Section 23(1) Juvenile Justice Act 2014 (Section 27(2) sets out a list of criteria to guide decision making around diversion).

	<p>clearly articulated in the Juvenile Justice Act and further detailed in the Juvenile Court Protocol issued by the Chief Magistrate and the RPNGC Juvenile Principles and Guidelines for Police.</p>	
<p>(b) The law provides the following guarantees in relation to diversion:</p> <p>(i) Diversion should be used only when there is compelling evidence that the child committed the alleged offence, that he or she freely and voluntarily admits responsibility, without intimidation or pressure, and that the admission will not be used against the child in any subsequent legal proceeding;</p> <p>(ii) The child is to be given the opportunity to seek legal or other appropriate assistance relating to the diversion offered by the competent authorities, and the possibility of review of the measure;</p> <p>(iii) Diversion measures should not include the deprivation of liberty; and</p> <p>(iv) The completion of the diversion should result in a definite and final closure of the case. Although confidential records of diversion can be kept, they should not be viewed as criminal convictions or result in criminal records.</p>	<p>i. Article 28 of the Juvenile Justice Act provides that the child must both voluntarily acknowledge responsibility for the offence and diversion cases must meet an evidentiary threshold, i.e. there must be sufficient evidence to proceed with the case and the prosecution is not barred at law. Under Article 31, children are also protected from any admission or statement they make being used against them.</p> <p>ii. A child in custody following arrest is entitled to speak in private with a legal representative, however access to legal aid is limited to cases where the sentence would be two years imprisonment or more.</p> <p>iii. None of the diversion measures listed under Article 29 of the Juvenile Justice Act deprive children of their liberty.</p>	<p>More clarity is need in law to minimise the possibility of children being intimidated into acknowledging responsibility for the offence.</p> <p>Limited access to legal aid for children.</p>
<p>(c) The law provides for a range of different diversion measures and restorative justice measures for children in conflict with the law.</p>	<p>A variety of diversion options are available for children in conflict with the law under Section 29 of the Juvenile Justice Act including a warning, formal apology, counselling, monitored behaviour non-residential vocational training, restitution, financial compensation.</p>	<p>No gaps.</p>

5.7 Procedural safeguards

5.7.1 Analysis of laws and policies

The CRC and the International Covenant on Civil and Political Rights both set out minimum guarantees and protections for children in the juvenile justice system. The minimum guarantees set out in the CRC are further elaborated in the Beijing Rules, which set out minimum standards of practice for all stages of the child justice process.

Presumption of innocence

Constitutionally, all persons within Papua New Guinea charged with a criminal offence are to be presumed innocent until proved guilty according to law. This means that the burden of proving a child committed an offence lies with the prosecution. These protections are in line with Article 40(2)(b)(i) of the CRC and Article 66 of the Rome Statute which codify the presumption of innocence under international law. The presumption of innocence is a fundamental principle in human rights law and can also be traced back to Article 11 of the Universal Declaration of Human Rights.

Right to be informed of reasons for arrest

International standards contain the fundamental right that all persons under arrest must be informed of the reason for their arrest. Article 9(2) of the ICCPR provides that anyone who is arrested shall be informed at the time of arrest for the reasons for their arrest. Additionally, Article 40 of the CRC requires that every child is informed “promptly and directly of the charges against him or her, and, if appropriate, thorough his or her parents or legal guardians.” In PNG, the provisions related to arrest are set out in the Arrest Act 1977 and are complimented by specific provisions related to children in the Juvenile Justice Act. Children must be informed if they are under arrest and Police Officers have a responsibility to explain the nature of the allegations, cite rights the child is entitled to and answer any questions the child may have (Juvenile Justice Act, Section 46). This must be done using child-friendly language in line with Articles 47 and 48 of CRC General Comment 24 which explains that “providing the child with an official document is insufficient and an oral explanation is necessary. Although children should be assisted in understanding any document by a parent or appropriate adult, authorities should not leave the explanation of the charges to such persons.” The law also provides that parents are notified of the arrest of their child immediately and not more than 24 hours after the arrest, in line with Rule 10.1 of the Beijing Rules and General Comment 24, which explains that “notification of parents should not be neglected on the grounds of convenience or resources.”¹⁶⁵

Implementation Challenges: Police abuse and impunity

According to Minister for Police Bryan Kramer “a rampant culture of police ill-discipline and brutality” remain a major issue, and widespread corruption, abuse and a lack of accountability for crimes committed remain hallmarks of the Papua New Guinean Police Force.¹⁶⁶

Although the Constitution of PNG prohibits torture or cruel, inhuman or degrading treatment or punishment, individual police and correctional services officers frequently beat and otherwise abuse citizens in the process of arrest, interrogation and detention (both pre and post trial). According to the US State Department’s Country Report on Human Rights Practices Report of 2020, “there were numerous press accounts of such abuses, particularly against young detainees”.¹⁶⁷ Research by Human Rights Watch has found that children continue to be particularly affected by police abuse, and have been subject to brutal beatings, rape and torture.¹⁶⁸

¹⁶⁵ CRC, General Comment 24, Para. 47.

¹⁶⁶ Ben Doherty., Papua New Guinea police accused of gun running and drug smuggling by own minister, 18 September 2020. <https://www.theguardian.com/world/2020/sep/18/papua-new-guinea-police-accused-of-gun-running-and-drug-smuggling-by-own-minister>

¹⁶⁷ US State Department., *2020 Country Reports on Human Rights Practices: Papua New Guinea*. 30 March 2021. <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/papua-new-guinea/>

¹⁶⁸ Human Rights Watch., Papua New Guinea: The events of 2020. <https://www.hrw.org/world-report/2021/country-chapters/papua-new-guinea>

Not only is police abuse a major problem in PNG, but there is a lack of accountability for police officers who violate the law. Complaints by members of the public regarding police violence are common, despite intimidation and fear of reprisals. However, within the police there is little or no willingness to investigate, prosecute or punish offenders. The 2016, a PNG Human Rights Report noted that: “In January the Police Commissioner told the media that from 2007 to 2014, there were 1,600 complaints of police abuse, resulting in demotions for 134 officers; monetary fines for another 417; and the clearing of 202 officers. He stated that over the same period, authorities recommended more than 600 dismissals but only 247 were successful, as the courts dismissed most of the cases.”¹⁶⁹ Mechanisms outside the police such as the [Ombudsman’s Commission](#), Public Solicitor’s Office and civil claims against the State are also ineffective in reducing police violence.¹⁷⁰

Right to be heard in proceedings affecting children

Under Section 66(2), Courts must allow children and their parents to have a full opportunity to be heard and participate in proceedings, in line with 40(b)(iii) of the UNCRC, which provides for the presence of a child’s parents or guardians in judicial proceedings so long as it is in the child’s best interests. This is important to ensure children feel practically and emotionally supported in the courtroom.

International law also provides for children’s right to have their views heard in decisions which affect them, recognising their vital procedural role as contributors in criminal proceedings, but also social importance of ensuring children are involved in the judicial process (Article 12, CRC). In the context of criminal proceedings, this establishes the right of every child, once they are capable of forming views, to freely express her or his views in all matters affecting her or him and for those views to be given due weight in accordance with the child’s age and maturity. In particular, the Convention requires that this right must be fully observed from the moment of arrest, through the pre-trial stage when the child has the right to remain silent, to the right to be heard by the police, the prosecutor and the Magistrate at the initial hearing. Additionally, this right is to be guaranteed through the trial process, or as part of any decision to divert a child’s case. In particular, children must be given the opportunity to express their views on the decision of the court or Magistrate and any sentence imposed, and the specific wishes or preferences that the child may have should be given due weight.

Article 6 of the Juvenile Justice Act establishes the General Principles of the Juvenile Justice Act. Contained within Article 6 (c) of the Act is the right of a child to “express his or her views before any decision affecting the juvenile is taken.” Article 66(2) of the Act gives children and their parents the right to be heard and participate in proceedings and Article 66(3) makes clear that Courts must ensure the child and their parents understand the case so far as is practicable, but little detail is provided on what this means in practice. Whilst this in principle permits the participation of children in the juvenile justice system, it does not detail how this should be done in practice, nor does it instruct juvenile justice professionals to give “due weight” in decisions affecting the child. Without this critical mandate to give effect to children’s views, children’s right to be heard is not be fully realised within the judicial system in PNG, contrary to one of the most fundamental principles of the CRC.

¹⁶⁹ US State Department., *2016 Country Reports on Human Rights Practices: Papua New Guinea*. P 5.

¹⁷⁰ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment., *Report of the Mission to Papua New Guinea*. 2010, p 12.

The Guiding Principles set out in Article 6 of the Act also entitle children to be addressed in their language of choice, including the use of an interpreter if necessary. However, no detail is provided in the Act on how such provision should be coordinated or resourced and at which stages of the legal process an interpreter must be provided. No provision is made in law for free interpreters. Given that PNG is the world's most linguistically diverse country with the existence of more than 800 local languages,¹⁷¹ the provision of interpretation is essential to the effective functioning of the judicial process. The CRC Committee recognises that without the provision of interpreters, children's right to effectively participate and be heard in judicial proceedings cannot be realised. As a result, the Committee, in its General Comment No. 24, advises that "Proceedings should be conducted in a language the child fully understands or an interpreter is to be provided free of charge."¹⁷² Particular provision should also be made for deaf, hard of hearing and speech impaired children, in order to ensure effective access to justice for children with disabilities.

Access to legal representative

The right to legal representation for children in Papua New Guinea remains limited. Article 37 of the CRC provides that children shall have access to prompt legal or other appropriate assistance upon arrest. In PNG, Section 52(3)d(i) of the Juvenile Justice Act provides that a child in custody following arrest is entitled to speak in private with a legal representative, including a Public Solicitor if the child is entitled to legal aid. Police Officers are also required to inform children of this right (Section 49). However, in practice, access to legal aid is severely limited, and children are only entitled to legal aid if the offence they are being charged with carries a sentence of over two years imprisonment. Whilst access to free legal aid is not addressed in the CRC, the International Covenant on Civil and Political Rights and Rule 18(a) of the Havana Rules enshrines the right to free legal assistance for children if they are unable to pay for a lawyer.

During Court hearings, the law also mandates that children have explained to them the nature of the allegations in "simple language and in a manner and terms appropriate to the age and level of understanding of the juvenile" (Juvenile Justice Act, Section 63 (2)). Under Section 68 of the Act, a children's right to legal representation at all stages of the proceedings is reaffirmed.

Bail and pre-trial detention

International law severely limits the circumstances in which children can be placed in pre-trial detention. In particular, the CRC Committee is clear that pre-trial detention should only be used as a last resort and only for the shortest appropriate period of time. In any case, the Committee has recommended that "pre-trial detention should not be used except in the most serious cases, and even then, only after community placement has been carefully considered."¹⁷³ In line with the CRC Committee's recommendations, if a child in PNG is remanded into custody before trial the Courts are mandated take reasonable steps to expedite the completion of the proceedings to minimize the time the child spends in custody pre-trial (Juvenile Justice Act, Section 59(2)). However, the legislation does not set out a maximum amount of time a child can be detained pre-trial or require actors in the child justice system to give the highest priority to expediting the administration of cases where children are in pre-trial detention, in contravention of Rule 17 of the Havana Rules.

Implementation challenge: Pre-trial detention and bail

¹⁷¹ CRC/C/15/Add.229, Para 7.

¹⁷² CRC, General Comment 24, Para. 47.

¹⁷³ CRC, General Comment 24, Para. 86.

High crime rates coupled with a lack of administrative and judicial resources have led to an extensive backlog of persons awaiting trial being detained in remand centres. The US State Department estimated that 40 per cent of the adult prison population is detained pre-trial. Although reliable figures on the rate of pre-trial detention do not exist for children, evidence suggests that children are held in pre-trial detention for extended periods of time. Whilst pretrial detention is subject to periodic judicial review, the slow pace of police investigations frequently delays cases for years.¹⁷⁴

Arrested children are frequently denied bail because police are unable to locate parents, citing transport and communication constraints. According to a recent study, around 65 per cent of juveniles that entered correctional services facilities were detained on remand.¹⁷⁵

Rights to privacy

Uniquely, children have the right to have their privacy respected at all stages of judicial proceedings.¹⁷⁶ This protection is given to children specifically in recognition of the unique harm undue publicity could have on them and the negative impact the proceedings would have on the child’s future. Article 112 of the Juvenile Justice Act expressly prohibits the publication of a child’s name or any identifying details about the child that may lead to the identification of the child, except in certain limited cases such as publication of the information is necessary to assist in apprehending the juvenile or a child is considered to be a danger to others. In non-indictable offences, in the interests of privacy, children cannot be photographed or fingerprinted. Article 111 of the Juvenile Justice Act also provides for safeguards to protect the privacy of children’s official records, including ensuring records are anonymised even if being used in a technical capacity (i.e., training).

5.7.2 Summary of key gaps

Indicators	Analysis of PNG law and policy	Gaps
(a) The following safeguards are provided in law: (i) That the child is to be presumed innocent until proven guilty according to law; (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence; (iii) To have the matter determined without delay by a competent, independent and impartial authority or	i. The Constitution of Papua New Guinea codifies the presumption of innocence until proven guilty. ii. Under Section 46 of the Juvenile Justice Act a child must be informed if they are under arrest, explain the nature of the allegations, cite rights the child is entitled to and answer any questions the child may have. The law provides that parents are notified of the arrest of their child immediately and not more than 24 hours after the arrest. Children’s right to legal representation at all stages of the proceedings is enshrined in law. iii. The law mandates that the Court take	<p>Children can be remanded into custody. No set time limit on the pre-trial detention of children. Lack of detail on provision of interpreters for children. No legal aid for children whose crimes have a sentence which is less than 2 years imprisonment.</p> <p>No provision for children’s views to be given ‘due weight’ in the juvenile justice system, contrary to Article 12 of the UNCRC.</p>

¹⁷⁴ US State Department., *2020 Country Reports on Human Rights Practices: Papua New Guinea*. 30 March 2021. <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/papua-new-guinea/>

¹⁷⁵ Department for Community Development and Religion 2016, in UNICEF PNG, *Situation analysis of children* (2018), unpublished.

¹⁷⁶ UNCRC, Article 40 (2)(b)(vii)

<p>judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;</p> <p>(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;</p> <p>(v) Right to be heard in the context of child justice proceedings;</p> <p>(vi) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;</p> <p>(vii) To have the free assistance of an interpreter if the child cannot understand or speak the language used;</p> <p>(vii) To have his or her privacy fully respected at all stages of the proceedings; and</p> <p>(viii) The right to privacy at all stages of the proceedings</p>	<p>reasonable steps to expedite the completion of the proceedings to minimize the time the child spends in pre-trial detention.</p> <p>v. Courts are required to allow children and their parents to have a full opportunity to be heard and participate in proceedings. However, children no detail is provided on how children are able to do this in practice. Additionally, Magistrates are not mandated to give 'due weight' to children's views in line with their age and maturity, as set out in Article 12 of the UNCRC.</p> <p>vi. Children are able to be heard by a Juvenile Court, a court of summary jurisdiction exercising jurisdiction over a child in conflict with the law or national court presided over by a Magistrate. Children also have the right to appeal their cases. The law has safeguards to prevent bias and prejudice and promote impartiality.</p> <p>vii. Children are entitled to be addressed in their language of choice, including the use of an interpreter if necessary. However, this right is not detailed in the Juvenile Justice Act and there is no provision for free interpretation.</p> <p>vii. Children's cases are to be kept confidential at all times, including restrictions on the publication of children's names and restrictions on persons in the courtroom. In non-indictable offences, in the interests of privacy, children cannot be photographed or fingerprinted. The Juvenile Justice Act also provides for safeguards to protect the privacy of children's official records.</p>	
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5.8 Sentencing and use of detention

5.8.1 Analysis of laws and policies

The CRC does not set out specific sentences which should be imposed on children in conflict with the law. Rather, it requires that States should have a variety of measures available to ensure that children's behaviour can be dealt with in an individualised way which is appropriate to their well-being, proportionate to the child's circumstances and the nature of the offence, considers their age and the principal aim of

reintegration into society. Article 40 of the CRC articulates the range of possible sentences that can be imposed on children.

A variety of community-based sentencing options are available to the Courts in PNG under Section 80 of the Juvenile Justice Act. When a child is convicted of an offence, the Magistrate must refer the child to an authorised facilitator whose role it is to convene and facilitate a community-based conference for the purpose of making recommendations to the Court on an appropriate sentence through a pre-sentencing report. This is in line with rule 16 of the Beijing Rules. Sentencing options for children in conflict with the law include a range of custodial and non-custodial sentences including good behaviour orders, counselling, supervision and guidance orders, probation, non-residential vocational training or rehabilitation program, compensation and community service orders.

The UN Committee on the Rights of the child imposes strict limits on the use of detention for children. Article 37(b) of the Convention states that children can only be deprived of their liberty and received a custodial sentence if this is done as a last resort and for the shortest possible period of time. Additionally, it provides that detention should not be used as a punishment but rather an opportunity to work intensively and therapeutically with children for the purposes of reintegration. The Juvenile Justice Act allows for the imprisonment of a child over the age of 14 years old as a last resort and under specified conditions.¹⁷⁷ However the law does not prohibit detention for children under 16 years old as recommended in General Comment 24.¹⁷⁸ This is a major inconsistency which permits the detention of children ages between 14 and 18 years old. In order for this sentence to be imposed, the child must have committed a “serious indictable offence” and, under Section 81 (1) of the Juvenile Justice Act there must be, upon consideration, no reasonable alternative or combination of alternatives to detention.

The CRC Committee has been clear in its General Comments 8, 10 and 24 that the use of corporal punishment on children is violation of Article 37 (a) of the CRC and could amount to cruel or degrading treatment. PNG law sits in line with the CRC Committee on this issue and has a clean prohibition on the corporal punishment of children in Section 85 (1)(a) of the Juvenile Justice Act.

Whilst the death penalty remains in place for adults in PNG, the Criminal Code (1974) prohibits the use of the death penalty for those who commit an offence under the age of 18 years old. This is in line with Article 6(5) of the ICCPR, Article 37 (a) of the CRC and Rule 17.2 of the Beijing Rules.

Legal provisions that require mandatory minimum sentencing or monetary fines for adults, such as the Criminal Code (Minimum Penalties) (Amendment) Acts, do not apply in cases of children in conflict with the law. Section 75(2) of the Juvenile Justice Act specifically prohibits their use. This provision is in line with General Comment 24 of the CRC which sees mandatory minimum sentences as “incompatible with the child justice principle of proportionality and with the requirement that detention is to be a measure of last resort and for the shortest appropriate period of time.”¹⁷⁹ The CRC goes on to recommend against the use of even guidelines for minimum sentences for children.

¹⁷⁷ Juvenile Justice Act, Section 82 (2)(a)(i)

¹⁷⁸ General Comment 24, Para. 89.

¹⁷⁹ General Comment 24, Para. 78.

Life imprisonment of children is prohibited under Section 85 (1)(c) of the Juvenile Justice Act. This is in line with Article 37(a) of the CRC which prohibits the use of life imprisonment without any possibility of release for children.

One of the guiding principles of the CRC is that the best interests of the child should be the primary consideration in all actions concerning children.¹⁸⁰ This should include decisions around the sentencing of children. In PNG, the General Principles of the Juvenile Justice Act (Section 6) state that children's best interests and accountability for actions is to be viewed with an emphasis on the need for the child's rehabilitation and reintegration into society. This is in line with the CRC. Additionally, Section 76 (1)(c) of the Act states clearly that one of the four purposes of sentencing a child is to "promote the rehabilitation and reintegration of the juvenile into the family and community".

5.8.2 Summary of key gaps

Indicators	Analysis of PNG law and policy	Gaps
The law prohibits unlawful and arbitrary detention of children	The Juvenile Justice Act only allows for the detention of children as a last resort and under specified conditions. Fair trial processes are in place to protect children.	No gaps.
A variety of community-based sentences are in place and are used for children (care and supervision orders, probation, counselling, foster care, education and vocational training programmes and family-based programmes)	A variety of community-based sentences are available for children in conflict with the law including good behaviour orders, counselling, supervision and guidance orders, probation, non-residential vocational training or rehabilitation program, compensation and community service work.	No gaps.
Law specifies that detention can only be used as a last resort and for the shortest possible period of time and cannot be imposed on children under the age of 16 years	Detention of children shall only be used as a measure of last resort and for the shortest period necessary. The law prohibits the detention of a child under 14 years old however the law does not prohibit detention for children under 16 years old in line with General Comment 24.	Law does not prohibit detention of children between 14 and 16 years old.
Corporal punishment is prohibited	Corporal punishment of children is prohibited.	No gaps.
The use of the death penalty is prohibited	Use of the death penalty on children is prohibited.	No gaps.
Mandatory minimum sentences are prohibited	Mandatory minimum sentences or monetary fines are to be disregarded in the case of children in conflict with the law.	No gaps.
Life imprisonment without parole is prohibited in relation to children	Life imprisonment of children is prohibited.	No gaps.
Law provides that the child's best interests and their need to reintegrate guides sentencing decisions	Under the General Principles of the Juvenile Justice Act (Section 6) children's best interests and accountability for actions is to be viewed with an emphasis on the need for the child's rehabilitation and reintegration into society.	No gaps.

¹⁸⁰ CRC, Article 3.

5.9 Safeguards and conditions in detention

5.9.1 Analysis of laws and policies

An extensive set of rights apply to children deprived of their liberty. Article 37 (a) of the UNCRC states that: “every child deprived of liberty shall be treated with humanity and respect for inherent dignity of the human person, and in a manner which takes into account the needs of persons his or her age.” Children in detention are also guaranteed civil, political, economic, social and cultural rights. The Havana Rules apply to children in custody and detail the treatment of children in detention and the conditions of their detention, including both the administration of juvenile justice and physical conditions in detention for children.

Right to legal representation and to challenge legality of detention

As outlined above in Section 5.7, children in PNG have a right to legal representation at all stages of legal proceedings, including in detention. The Juvenile Justice Act provides that children in detention have the right to unrestricted and private visits from a legal representative.¹⁸¹ Additionally, children have the right to challenge the legality of the deprivation of liberty through the comprehensive right of appeal set out in the Juvenile Justice Act. The Act guarantees that children in Juvenile Courts, courts of summary jurisdiction exercising jurisdiction over a child in conflict with the law and the National Court (as applicable) all have the right of appeal. Grounds for appeal are detailed in Section 91 of the Juvenile Justice Act and include situations of substantial miscarriages of justice such as contravention of the law, Courts being improperly constituted, Courts exceeding their powers/jurisdictions and that sentences imposed on a child were excessive or inappropriate.

Separation from adults

The CRC¹⁸² and the ICCPR both require that where children are deprived of their liberty, they are separated from adults, unless it is considered in the child’s best interests not to do so. This is to ensure the safety and well-being of children and to better facilitate their future reintegration into society. In PNG, children can be detained in juvenile institutions, remand centres, or juvenile sections of correctional institutions. The Director for Juvenile Justice is responsible for overseeing and supervision of six Juvenile Institutions (including remand centres and correctional institutions) across the country, some of which are operated by the Roman Catholic Church. According to the information available to the authors at the time of writing, the following juvenile justice institutions were operating in the country:

- Erap Boys Town in Lae, Morobe Province
- Wewak Boys Town in Wewak, East Sepik Province
- Jegarata Male Juvenile Centre in Popondetta, Oro Province
- Hetune Female Institution in Popondetta, Oro Province
- Hohola Remand Centre in Port Moresby, NCD
- Mabiri Juvenile Rehabilitation Centre, Buka, Autonomous Region of Bougainville (AROB)¹⁸³

¹⁸¹ Juvenile Justice Act, 2014, Section 100 (1).

¹⁸² CRC, Article 37(c).

¹⁸³ Dentana, L., ‘Implementing juvenile justice and restorative approaches in Papua New Guinea’, United Nations Asia and Far East Institute, available at:

https://www.unafei.or.jp/publications/pdf/RS_No101/No101_16_IP_Papua_New_Guinea.pdf

Section 96(2) of the Juvenile Justice Act states that children may only be detained in juvenile sections of correctional institutions where those institutions are separate and detached from adult prisons, and that they are used only for children under the age of 18 years old. They must be provided with proper and appropriate accommodation, supervision and suitable facilities for recreation and rehabilitation of children. This is in line with the CRC, however the Committee does note in General Comment 24 that “States parties should establish separate facilities for children deprived of their liberty that are staffed by appropriately trained personnel and that operate according to child-friendly policies and practices.” As such, working to develop more juvenile institutions in PNG and move away from the practice of detaining children in juvenile sections of correctional institutions which are staffed by those trained in child justice would be more in line with the spirit of the Convention.

Children detained in police custody post-arrest are to be kept separate from adult detainees according to Section 52(3)(a) of the Juvenile Justice Act. However, this law is qualified in that it is only required to be followed ‘to the extent possible’. This leaves space for the possibility that children can still be detained in adult custody at the convenience of the arresting Police Officer or where no separate cells are available. This provision is especially concerning for children in rural areas with limited capacity in police custody or in situations where large numbers of people are being detained and space is limited, as a child’s right to be detained separately from adults may be compromised.

Implementation Challenges: Detention of children in police custody

Whilst the law affords some protection to children detained in police custody, implementation challenges persist. A visit by the UN Special Rapporteur in 2010 found that the practice of detaining children alongside adults in police cells was considered standard practice in all police stations visited. The conditions in police detention in PNG are very basic: detainees often have no access to showers and toilets, no ventilation, scarce food supplies, no access to medical professionals and no rights to family visitation. Human Rights Watch has reported that Police in PNG “routinely held juveniles with adults in police detention cells, where older detainees often assaulted younger detainees”.¹⁸⁴ Additionally, in some rural communities where space in police cells was limited, male and female detainees are detained together contrary to Section 107 (2) (a) of the Correctional Service Act.

Contact with family

Children have enshrined in international law a comprehensive set of rights related to contact with family members. This is vital given the adverse impact that removing children from their families can have on their wellbeing. Article 37(c) of the CRC specifically provides for this and reaffirms a child’s right to maintain contact with his or her family through visits and correspondence. According to Section 101 of the Juvenile Justice Act, children have the right to receive visits from family or friends at least once per week and to receive telephone calls from a parent or responsible person. Crucially, disciplinary measures cannot include the restriction of family visits (Juvenile Justice Act, Section 102 (1)(e)). Additionally, in line with Rule 59 of the Havana Rules, subject to any reasonable conditions that may be established by the institution, children

¹⁸⁴ Human Rights Watch, 2020 Country reports on human rights practices, 30 March 2021, available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/papua-new-guinea/>

have the right to leave the institution for a specified period for a variety of reasons including to visit their family.

In practice however, given the limited number of juvenile institutions in the country, children are often detained some distance away from their families, making visitation an impossibility. A lack of internet access and computers also makes virtual forms of visitation (i.e. through video calls) unfeasible. This falls short of the Committees expectation that, to facilitate visitation by family, children “should be placed in a facility as close as possible to his or her family’s place of residence.”¹⁸⁵

Conditions in detention

The Juvenile Justice Act provides for a comprehensive set of rights for children in detention, including the right to healthcare, minimum standards of sanitation and hygiene, food that ensures a well-balanced diet, the provision of clothing, medical treatment, the right to freely practice religion, daily time for leisure activities.¹⁸⁶

The 2006 Police Juvenile Justice Policy and Diversity Protocol prohibits the use of torture and other cruel, inhuman or degrading treatment or punishment of children in detention (Rule 1) and provides that juveniles deprived of their liberty should be treated with humanity¹⁸⁷ and with respect for their inherent dignity (Rule 3). Rules 4 and 7 set out the safeguards that apply to children in detention, including: the right to prompt access to legal and other appropriate assistance; the right to challenge the legality of their detention before a court; the right to be informed of charges; the right to have matters determined without delay by a competent, independent and impartial authority or judicial body; and the presumption of innocence, among others.

Additionally, legislation related to the conditions of adult detention also applies as a minimum standard for the detention of children in PNG. Basic standards are largely set out in the Constitution and the Correctional Service Act 1995 and include:

- **Housing standards:** Section 122 of the Correctional Service Act provides for suitable accommodation of person’s detained in PNG including establishing basic standards for maintenance, sanitation and hygiene.
- **Food:** Section 123 of the Correctional Service Act sets out minimum standards for the provision of healthy and nutritious food rations, in line with a detainee’s dietary restrictions. This regulation is supplemented by Sections 70 and 71 of the Correctional Service Act and its Standing Orders.
- **Clothing:** Section 124 Correctional Service Act provides for the proper regulation of clothing for prisoners.
- **Hygiene:** Sections 96 and 125 of the Correctional Service Act set out minimum standards for basic sanitation (including bathing and bathroom facilities) and establishes responsibilities of prisoners to take care of their own appearance.

¹⁸⁵ General Comment 24, Para. 94.

¹⁸⁶ Juvenile Justice Act, Section 101 (1).

¹⁸⁷ See also Juvenile Courts Act, Section 48(2), the Lukautim Pikinini (Child) Act, Section 99 and the Correctional Service Regulation, Section 122.

- **Exercise:** Section 79 of the Correctional Service Act allows prisoners at least one hour of fresh air per day for exercise.
- **Medical Care:** Section 141 of the Correctional Service Act provides prisoners with the right to reasonable medical care, and at the expense of the detainee, the provision of a private medical provider. It also mandates the establishment of a Medical Officer in each correctional institution.
- **Punishment:** Section 36(1) and 37(17) of the Constitution of the Independent State of Papua New Guinea provides for freedom from inhumane treatment and Section 156 of the Correctional Service Act sets out the standards for the punishment of prisoners:

However, such provisions do not meet the minimum standards outlined in the Havana Rules, which establish the basic rights of children in detention. The standards set out in these comprehensive set of regulations include access to basic sanitation (Article 34); the right to the possession of personal effects (Article 35); the right to wear their own clothing (Article 36); food that is suitably prepared, meets all health needs and accommodates dietary restrictions (Article 37); the right to education or vocational training provided outside of the detention facility (Articles 38-46); the right to exercise and leisure time, including physical education and therapy (Article 47); right to practice a religion if so desired (Article 48); right to the provision of mental and physical healthcare (Article 49); right to weekly visitation and twice weekly communication via phone with family (Articles 60 and 61). Additional provisions also cover limitations on the use of force and appropriate punishments for children who violate the rules of correctional institutions.

Whilst the Juvenile Justice Act does set out many of these standards more broadly, there are no detailed provisions on children's rights and guarantees to minimum standards in detention, either in the Act itself or in supporting Regulations or Guidelines.

Children in detention who are of compulsory school age should have the same right to education as children in the community, according to Articles 28 and 29 of the CRC. Rules 38 and 39 of the Havana Rules requires that education be provided outside the detention facility in community schools wherever possible, and under Rule 18 (b) children detained pre-trial should be provided with opportunities to continue their education. Under Section 101(1)(m) of the Juvenile Justice Act, children in detention are permitted, "to the extent that it is reasonably practicable, to continue his or her education." This falls short of the absolute right to education set out in the CRC's provisions as it allows the Government of PNG the ability to 'opt out' of educational provision based on reasons of convenience and practicality. Similarly, the right to vocational training is qualified in the Act to the extent that it is reasonably practical, despite Rule 42 of the Havana Rules reinforcing children's right to participate in such activities. Furthermore, under the Havana Rules, children are entitled to access a fully equipped library for educational and recreational purposes. Such provision is not enshrined in PNG law, and reports suggest that most children are not able to access reading materials whilst in detention.

5.9.2 Summary of key gaps

Indicators	Analysis of PNG law and policy	Gaps
(a) Law provides that every child deprived of liberty has: the right to prompt legal and other appropriate assistance; the right to challenge the legality of the deprivation	Children have a right to legal representation at all stages of legal proceedings. Section 100(1) of the Juvenile Justice Act provides that children in detention have the right to unrestricted and private visits from a legal representative. Children found guilty of an offence have the right of appeal.	No gaps.

<p>of liberty before a court or other competent, independent and impartial authority.</p>		
<p>(b) Law provides that all children arrested or deprived of his or her liberty should be brought before a competent authority within 24 hours to examine the legality of the deprivation of liberty or its continuation.</p>	<p>Section 52 (3e) of the Juvenile Justice Act mandates that children deprived of liberty should be brought before a Court without delay, and not later than 24 hours after the child was arrested or detained.</p>	<p>No gaps.</p>
<p>(c) Law provides that every child deprived of liberty is to be separated from adults, including in police cells.</p>	<p>Children may only be detained in juvenile sections of correctional institutions where those institutions are separate and detached from adult prisons, are shall only be used for children under the age of 18 years old and provide proper and appropriate accommodation, supervision and suitable facilities for recreation and rehabilitation of juveniles.</p> <p>Children detained in police custody post-arrest are to be kept separate from adult detainees according to Section 52 (3a) of the Juvenile Justice Act. However, this law is qualified in that it only has to be followed 'to the extent possible', which leaves open the door to the possibility that children can still be detained in adult custody.</p>	<p>Children in police custody are protected from being detained alongside adults only 'to the extent possible', leaving open the possibility that children may be detained alongside adults in certain circumstances.</p>
<p>(d) Law provides right for every child deprived of liberty to maintain contact with his or her family through correspondence and visits and a guarantee that the child is placed as closely as possible to their family's place of residence.</p>	<p>Children have enshrined in law a comprehensive set of rights related to contact with family members. Children have the right to receive visits from family or friends at least once per week and to receive telephone calls from a parent or responsible person. Disciplinary measures cannot include the restriction of family visits.</p>	<p>Children are oftentimes kept far away from family members, which practically limits contact with family members.</p>
<p>(e) Law provides that incommunicado detention is not permitted for persons below the age of 18 years.</p>	<p>There is no specific provision preventing incommunicado detention but the right to maintain contact with family and friends at least once per week is enshrined in law (as above).</p>	<p>No gaps.</p>
<p>(f) Law provides a guarantee that children should be provided with a physical environment and accommodation conducive to the reintegrative aims of residential placement.</p>	<p>The Juvenile Justice Act (Section 101) provides for a comprehensive list of rights for children in detention, including the right to healthcare, minimum standards of sanitation and hygiene, food that ensures a well-balanced diet, the provision of clothing, medical treatment, the right to freely practice religion, daily time for leisure activities.</p>	<p>No gaps.</p>
<p>(g) Law provides the right of every child to education suited to his or her needs and abilities and, where appropriate, to receive vocational training in occupations likely to</p>	<p>Under Section 101 of the Juvenile Justice Act children have the right to benefit from education, rehabilitation and vocational training programs. However, these rights are applicable 'to the extent that it is reasonably practicable'.</p>	<p>The right to receive education and vocational training is qualified in legislation and only applies 'to the extent that it is reasonably practicable.'</p>

prepare him or her for future employment.		
(h) Laws / guidelines on detention facilities meet the standards of the Havana Rules and Mandela Rules.	Some adherence to the Havana Rules is contained within Article 100 of the Juvenile Justice Act, however overall, there are large areas where the Act lacks the specificity of the Havana Rules and falls short of the comprehensive standards enumerated within them.	Significant areas where the law lacks detail or does not meet the standards set out in the Havana Rules.

3.2 Mapping and analysis of child justice institutions

This section describes the institutional arrangements for the legal and policy frameworks for child focused justice in PNG. It maps the institutions (government departments, ministries and coordinating bodies) that have ultimate responsibility for relevant pieces of legislation related to child focused justice. The section is in three parts. The first part provides an overview of the key institutions and sub institutions and their main functions. Sub instructions includes Offices, Branches, etc., of departments. The second part is a visual representation of the key institutions, based on their roles in the design and implementation of legislation and policy and their influence in setting the agenda for legislative and policy reform for child justice. The third part is an analysis of critical gaps in the institutional arrangements.

5.10.2 Overview of the key institutions and their main functions

At the national level the main institutions for the legal and policy frameworks for child focused justice is the Department of Justice and Attorney General, and its various sub institutions. Other institutions include the Royal Papua New Guinea Constabulary, Magisterial Services, Correctional Services, Department of Education, National Department of Health and the Department for Community Development and Religion. Below is a brief overview of the functions of each institution at the national and sub national levels.

The Department of Justice and Attorney General

The Department of Justice and Attorney General is the lead agency and anchor for the child justice component of the national Child Protection System. It is the central agency responsible for the administration of legal services and the provision of law and justice services. Its major functions include legal and policy reform, regulation, monitoring and oversight. In the areas of child protection these functions include the development and revision of policies, laws, and regulations, including for VAC and child justice. It includes the provision of technical guidance in the development of protocols, operational guidelines, codes of conduct and other regulatory frameworks with respect to children who come into contact with the justice system. This includes the integration child protection in justice sector strategies and work plans. A critical aspect of this work is the provision of legal assistance to children in need of protection and their parents, guardians or support persons who act on behalf of the children. Within the Department there are several sub institutions (Offices, Branches, etc.,) that exclusively or partly have mandates related to children. These sub institutions include the Juvenile Justice Committee; Juvenile Justice Service; Legal and Policy Branch; Crime Prevention and Restorative Justice Branch; Probation and Parole and Village Courts Secretariat. These sub-institutions are outlined below.

National Juvenile Justice Committee

The National Juvenile Justice Committee was established by way of Article 23 of the Juvenile Justice Act 2014. The primary functions of the National Juvenile Justice Committee are to oversee and monitor the implementation of Juvenile Justice Act 2014 and to promote collaboration between all government departments and agencies and other organisations, agencies and civil society groups involved in implementing the juvenile justice system. Additional functions include developing national plans for the implementation of juvenile justice initiatives and for juvenile crime prevention and sharing information, review progress and coordinate implementation of juvenile justice initiatives.

Juvenile Justice Service

Within the Department of Justice and Attorney General, the Juvenile Justice Service is primarily responsible for the implementation of the Juvenile Justice Act 2014. It is based in in the Community Based Corrections (CBC). The Juvenile Justice Service is staffed by the Director of the Juvenile Justice Service and support personnel at their headquarters in Port Moresby and by Juvenile Justice Officers in provinces where they have been deployed. There are approximately 14 Juvenile Justice Officers and located at the provincial level. The primary functions of the Juvenile Justice Officers are to provide support and advice to juveniles at all stages of the juvenile justice process.

Village Courts and Land Mediation Secretariat

The primary function of the Village Courts and Land Mediation Secretariat in relation to child justice is to administer and implement the legislation on village courts. This includes the Village Courts (Amendment) Act 2014 which updates the Village Courts Act to bring it in line with the Juvenile Justice Act 2014.

Crime Prevention and Restorative Justice Branch

The Crime Prevention and Restorative Justice Branch is the lead agency for crime prevention including juvenile crime prevention, and restorative justice interventions in partnership with other government agencies and civil society. It provides a clearing house on crime prevention and restorative justice.

The Office of the Public Solicitor

A key function of the Office of the Public Solicitor is to represent and defend juveniles charged with an offence punishable by imprisonment for more than two years. The Office of the Public Solicitor also has a mandate to seek damages on behalf of juveniles whose rights have been violated in the juvenile justice system.

Ombudsman Commission of Papua New Guinea

A key function of the Ombudsman Commission of Papua New Guinea is to monitor the treatment of juveniles and other prisoners. This includes visiting and inspecting places of detention and conducting interviews and investigates matters where individuals' rights have allegedly been abused.

At the **sub-national level** there are several important institutions for child justice.

Provincial juvenile justice committees

Article 26 of the Juvenile Justice Act 2014 allows for provincial juvenile justice committees to be established at the discretion of the Director of the Juvenile Justice Service after consultation with the Provincial Administrator of a Province or autonomous region. This includes appointing members of the Committee and

determining the Committee's functions. A Provincial Juvenile Justice Committee can determine its own procedures. Article 15 of the Juvenile Justice Regulation 2018¹⁸⁸ describes the composition and functions of the Provincial Juvenile Justice Committee. These functions include planning and coordinating the implementation of the Act; planning and coordinating the local delivery of diversion and rehabilitation to a juvenile by relevant government and community services; and sourcing additional funding to support the implementation of the Act. Additional functions include improving the conditions of detention and welfare of juveniles, inspecting detention facilities, data gathering and sharing and reporting to the National Juvenile Justice Committee on an annual basis on the implementation of the Act and on the state of juvenile justice services within the province or autonomous region.

Village Courts

With more than 1,500 gazetted Village Courts across the country, their primary role is to ensure peace and harmony in the communities in which they operate. Despite having limited access to training opportunities, Village Courts are obliged to attempt the resolution of disputes first by way of mediation, which is a mandatory requirement under the Village Courts Act 1989. The Village Courts Act addresses offences relating to fights or violence directed at a person and the property of a person.

5.10.3 Child Justice and Social Services institutions

Papua New Guinea has made notable progress in the integration of child justice concerns into the functions of various line ministries. Below is an outline of some of the main institutions involved in this effort.

The Department for Community Development and Religion

The Department for Community Development and Religion (DfCDR) is the lead national department for the welfare component of the national Child Protection System. The primary function of DfCDR is to develop legislation, policies, and programmes to promote and protect the rights of marginalized and vulnerable groups such as women, children, persons living with disability and the elderly. It implements these functions through several specific offices. Its main reporting line is to the National Executive Council (NEC) through the office of the Minister. Within the Department there are several sub-institutions (Offices, Branches, etc.) that exclusively or partly have mandates related to children. These sub-institutions include the Office of Child and Family Services; the National Child and Family Council, the Office of the Development of Women and GBV Secretariat; the Inter-Agency Working Group Child Protection and the Sub-Cluster of the Protection Cluster. These sub-institutions are outlined in Section 3 on the 'mapping and analysis of child justice institutions'.

Royal Papua New Guinea Constabulary

The Royal Papua New Guinea Constabulary has a critical role to play in child justice, particularly in terms of diversion, arrest and bail. This includes applying the principles of child-friendly policing and protecting the rights of children in contact with the justice system, including alleged offenders. This involves allocating resources to establish child-friendly spaces in police facilities. At a programme level this includes the provision of a range of justice services including policing and prosecution, diversion services, and services to victims and witnesses through the Family and Sexual Violence Units.

Magisterial Services

¹⁸⁸ Papua New Guinea, Department of Justice and Attorney General, Juvenile Justice Regulation, draft, 2018, Article 15.

The Magisterial Services plays an essential role in the delivery of child friendly justice for child witnesses, victims and alleged offenders. This includes the establishment and operation of Juvenile Courts and Family Courts. Its role includes training and building the capacity of magistrates in the delivery of child-friendly services and the development and monitoring of protocols and guidelines for children accessing courts. The Juvenile Justice Act 2014 directs Juvenile Courts to treat juveniles differently from adults and imposes separate procedures and sentencing practices for alleged juvenile offenders. It also empowers National Court judges and magistrates to inspect institution or police station or 'lockup facilities' at any time without prior notice.

Papua New Guinea Correctional Service

A key role of the Papua New Guinea Correctional Service is the provision of Juvenile Institutions and related rehabilitation programmes based on the Minimum Standards for Juvenile Institutions.

Department of Education

A key role of the Department of Education is to ensure that juveniles in correctional institutions can attend school and that Technical, Vocational Education Training (TVET) programme is accessible for juveniles either serving sentence in the community or an institution.

5.10.4 Central agencies

Department of National Planning and Monitoring

The key role of the Department of National Planning and Monitoring in relation to child protection is to set national targets for child protection in consultation with the Department of Justice and Attorney General.

Office of and Department of Prime Minister/NEC

The main roles and responsibilities of the Office of and Department of Prime Minister and National Executive Council (NEC) in relation to child justice is to ensure appropriate leadership, commitment and accountability to implementation of Juvenile Justice Act 2014 and related legislation. This includes endorsement of policy, strategy, and structure for the Juvenile Justice Service.

Department of Treasury

The main function of the Department of Treasury in relation to child justice is to establish and implement child sensitive budget process including allocating a specific budget for child justice based on 'Whole of Government' budget. This includes the allocation of funds in the development budget to support child justice sector development and the allocation of funds in Provincial Services Improvement Programs.

Provincial and District Administrations

The primary role of Provincial and District Administrations is to allocate appropriate budget and human resources to plan, monitor and coordinate implementation of child justice programmes at provincial, district and lower levels of government. At the provincial level this includes the Provincial Juvenile Justice Committee. However, despite this assigned role, there are very few functioning Juvenile Justice committees and those that are operating have virtually no staff and no budget for programmes or operational costs.

Department of Foreign Affairs and Trade

The primary role of the Department of Foreign Affairs and Trade is to facilitate ratification of optional protocols protecting children in PNG. This includes ensuring the monitoring of implementation and reporting as required in the protocols and ensuring government compliance to international commitments.

Department of Provincial Affairs and Rural Development

The primary role of the Department of Provincial Affairs and Rural Development in relation to child justice is to develop locally appropriate policies for protecting children in all provinces. This includes ensure that government administration plans and budgets at all levels are appropriate for children and that community-based protection and justice systems are established for children and their families.

5.10.5 Government corporations, development partners and NGOs

Human Resources Development Sector

The human resources development sector includes the Department of Personnel Management, human resources development institutions, the Office of Higher Education and the Public Services Commission. The primary roles of the sector in relation to child justice are to develop national qualification standards, guidelines and instruments for the justice workforce in consultation with the Juvenile Justice Service and to develop a pathway of career development for the child justice workforce.

Non-government sector

The main roles of the non-government sector, in relation to child justice are to develop child protection prevention and responsive services and support local level capacity to deliver preventive and responsive services.

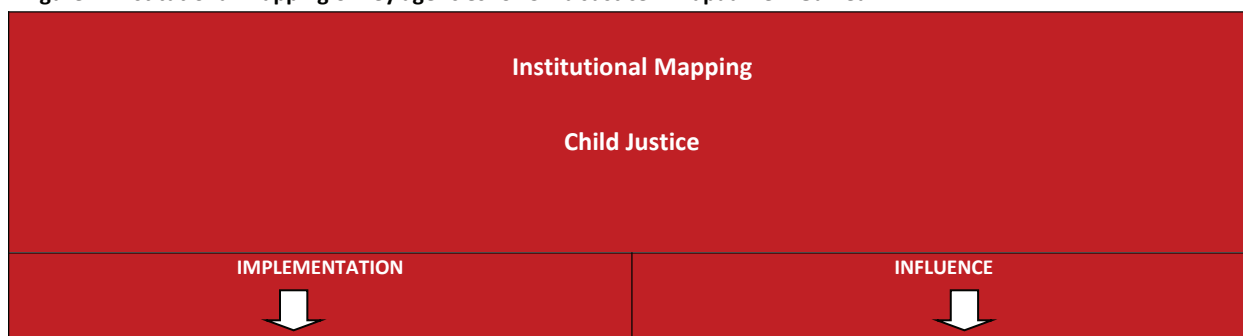
Development partners

The primary functions of development partners, in relation to child justice are to provide funding to support the implementation of child justice activities and programmes at the district government, local government and community levels, in line with the SDGs. This includes the provision of technical support and funding for capacity development for child justice workforces along with support research and evidence building.

5.10.6 Implementing institutions and influencing institutions for child justice

Drawing from the information presented in the section above, this part of the report seeks to provide a visual representation or summary of the key institutions for legislation related to child focused justice. The institutions are divided two groups for the *design and implementation of legislation and policy* and in *influencing the agenda for legislation and policy reform*.

Figure 7: Institutional mapping of key agencies for Child Justice in Papua New Guinea



<p>Government institutions</p> <ol style="list-style-type: none"> 1. Department of Justice and Attorney General <ol style="list-style-type: none"> a. National Juvenile Justice Committee b. Juvenile Justice Service c. Provincial Juvenile Justice Services d. Crime Prevention and Restorative Justice Branch e. Probation and Parole f. Village Courts and Lands Mediation Secretariat 2. Royal Papua New Guinea Constabulary <ol style="list-style-type: none"> a. Juvenile Justice Services b. Family and Sexual Violence Units 3. Magisterial Services <ol style="list-style-type: none"> a. Family Court 4. Correctional Services 5. Department of Education 6. National Department of Health 7. Department of Labour and Employment 8. Ministry of Community Development, Youth and Religion <p>Non-government sector</p> <ol style="list-style-type: none"> 1. International and national NGOs and faith organisations with a strong mandate for child justice) 	<p>Government institutions</p> <ol style="list-style-type: none"> 1. Office of and Department of Prime Minister/NEC 2. Department of National Planning and Monitoring 3. Department of Treasury 4. Ombudsman Commission of PNG 5. Constitutional and Law Reform Commission 6. Office of the First Legislative Counsel 7. Department of Provincial Affairs and Rural Development 8. Provincial and District Administrations 9. Public Services Commission 10. Department of Personnel Management 11. Office of Higher Education 12. Human Resources Development institutions 13. Department of Foreign Affairs and Trade 14. National Court <p>Non-government sector, development partners and others</p> <ol style="list-style-type: none"> 1. University of PNG Law School 2. Development Partners 3. Human Resources Development institutions such as Universities, training colleges and private training providers
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Design and implementation of legislation and policy: The first column is the group of institutions with high importance for the design and implementation of legislation and policy. This group consists of eight individual institutions and several sub-institutions and the non-government sector with a strong mandate for child protection. This includes coalitions such as the Child Protection Alliance and specific agencies such as Save the Children along with other international and national NGOs and faith organisations. This group has a significant role to play in designing new laws and policies and clear accountabilities for their implementation. Investing in strengthening strong partnerships within this group, based on an advanced understanding of the multi-dimensional aspects of child justice and child protection would deliver meaningful results for children. Priorities for investments include fostering and building trust and a shared commitment to problem solving and applying a multi-sectoral response to child protection, as opposed to working in legislative or technical silos. Strengthening the capacity of this group to drive change is key for effective implementation of key laws and policies.

Influencing the agenda for legislation and policy reform: The second column is the group of institutions with high importance for influencing the agenda for legislative and policy reform. This group consists of 14 individual institutions and several NGOs, development partners and others, including universities, donors and UN agencies. This group has an elevated level of influence in setting priorities for legislative and policy reform. Strengthening the knowledge of this group on child justice and child protection through effective communication channels is key for building momentum and demand for action for child justice and child protection. High level, high impact communication is required with his group. The use of evidence informed advocacy strategies is likely to yield results.

5.10.7 Critical gaps

A critical gap in the institutional arrangements for justice for children is the institutional disconnect between the Child Protection System and the Child Justice System with the two systems appearing to operate in silos, despite legislative frameworks that promote collaboration.

Figure 8: Institutional disconnect between the Child Protection System and the Child Justice System

Institutional Mapping Child Protection System – welfare and Justice					
Child Protection System - Welfare			Child Protection System - Justice		
Policy	Law	Institutional mechanisms	Institutional mechanism	Law	Policy
National Lukautim Pikinini (Child Protection) Policy 2017-2027	The Lukautim Pikinini (Child) Act 2015	National Child and Family Services Council Office of Child and Family Services Family Courts Provincial Office of Child Welfare Provincial Child and Family Services Council District Office of Child Welfare District Child and Family Services Committee	National Juvenile Justice Committee National Juvenile Justice Service Juvenile Courts Provincial Juvenile Justice Committee	Juvenile Justice Act 2014	Juvenile Justice National Plan 2018 – 2022

This disconnect is highlighted in the National Juvenile Justice Plan,¹⁸⁹ as a critical challenge for the broader child protection and child justice sectors: “There is currently limited engagement between the OCFS and agencies responsible for the implementation of the juvenile justice reforms. Consequently, there is an opportunity to develop a common understanding and improved working relationship between the Director of the OCFS and front-line government agencies who work with juveniles (RPNGC, the courts, CS and the JJS) about how they will coordinate to meet their respective legislative obligations to uphold the welfare of juveniles.” One way to realise this opportunity would be to further promote a multi-sectoral response to child protection, covering both VAC and child justice. This would include concerted efforts to strengthen and synergise training and broader capacity building on Child protection Officers and Juvenile Protection Officers. An example of how this plays out on the ground is in the area of diversion programmes. Community based conferences do not follow best practice in that they do not have wider membership from professionals who interact with children, for example social workers and teachers.

Section 25 of Juvenile Justice Act 2014 establishes the functions of the National Juvenile Justice Committee, which includes to ‘promote collaboration between all government departments and agencies and other organisations, agencies and civil society groups involved in implementing the juvenile justice system’. Article 18 of the LPA establishes the functions of the National Child and Family Services Council which include to ‘foster collaboration and assist organisations engaged in the provision of services designed to promote the

¹⁸⁹ Papua New Guinea, Department of Justice and Attorney General, Juvenile Justice National Plan 2018 to 2022, Annex 5, Capacity Analysis of Key Stakeholders in the Juvenile Justice System, 2018, p. 37.

well-being of children, families and communities.’ As there are no legal or structural barriers to collaboration between the two sectors, there is an opportunity to strengthen collaboration between the two parts of the Child Protection System – Welfare and Justice. This can be done by investing in fostering and building trust across the two sectors and by encouraging a shared commitment to problem solving and to applying a multi-sectoral response to child protection and child justice, as opposed to working in legislative or technical silos.

6. Children’s right to participation

While a child’s right to participation has been addressed in several sections in this report, including in ensuring children’s voices are heard and their views taken into account in child protection decision-making and in child justice systems, this section addresses the right for children to participate, more broadly, in Government decision making at national, provincial and local levels.¹⁹⁰ The right to participation is a guiding principle of the CRC; a fundamental principle that connects to and helps unlock the Convention’s other rights, including rights relating to protection from violence, abuse, neglect and exploitation, and rights within child protection and child justice systems. Therefore, a separate section in which this core right is addressed more generally was felt necessary.

6.1 Context

Little information is available on the realisation of the right to child participation in Government decision making at all levels of Government. According to PNG’s National Youth Policy, 2020 – 2030 notes that there is no effective provision for youth participation at national, local or provincial government level; however, it also notes that youth participation has been supported within churches and NGOs across the country.

6.2 Legal analysis

Article 12 of the CRC establishes the right of children to express their own views freely in all matters affecting them, and the right to have those views given due weight in accordance with the child’s age and maturity.¹⁹¹ This was further expanded upon by the CRC Committee in General Comment No.12 of 2009, which emphasises the fundamental nature of the right. The Comment also highlights that Article 12 should be used in the interpretation and implementation of all other rights in the Convention.¹⁹²

Adolescence (10 – 19 years) is a significant period of developmental change, and as such it is recognised as a time when children should be particularly encouraged to exercise their right to participation.¹⁹³ The CRC Committee’s General Comment No.20 on child rights during adolescence calls for States to ensure that “adolescents are involved in the development, implementation and monitoring of all relevant legislation, policies, services and programmes affecting their lives, at school and at the community, local, national and international levels”.¹⁹⁴ The General Comment also encourages States to support adolescents in forming organisations through which participation can occur, to adopt policies to increase opportunities for

¹⁹⁰ The right to participation extends to other institutions, including schools etc. However, this section will focus on child participation in the context of Government processes.

¹⁹¹ UN General Assembly, November 1989, *Convention on the Rights of the Child*, Article 12.

¹⁹² CRC Committee, 2009, *General Comment No.12 (2009): The right of the child to be heard*, section D23, CRC/C/GC/12.

¹⁹³ UNICEF, 2018, *Conceptual Framework for Measuring Outcomes of Adolescent Participation*.

¹⁹⁴ CRC Committee, 2016, *General Comment No.20 (2016) on the implementation of the rights of the child during adolescence*, CRC/C/GC/20.

engagement, and invest in awareness-raising among adults on the right to participation, an important element in ensuring adolescent's enjoyment of this right.¹⁹⁵

The realisation of children's participation rights requires adults and societies to actively create spaces in which children and young people can be empowered to participate. However, space alone is not enough for participation to be meaningful.¹⁹⁶ Not only do young people need opportunities to form and express views, these expressions must be facilitated in a number of inclusive mediums, listened to, and importantly, acted upon to ensure participation is meaningful rather than tokenistic.¹⁹⁷ Whilst it is not necessary that children's views and opinions be translated into policy in every instance, they must be given appropriate weight and real consideration by policymakers. Further, if child participation has influence, any decisions made should be reported back to children and young people, explaining how and why the decision was made in a certain way.¹⁹⁸ Meaningful participation, therefore, should be evidenced through these reporting processes. It is also important that young people be involved in measuring participation: instruments developed by adults may not reflect the reality of children's influence on decision-making.¹⁹⁹

At the international and regional levels, youth (generally defined as those aged 15 – 24 years) participation is a key priority. In 1995, the UN adopted the World Programme of Action for Youth – an international strategy to address youth issues and increase opportunities for the participation of youth in society. This commitment was reaffirmed through UN General Assembly resolution 58/133, which reiterates the importance of the full and effective participation of youth and youth organisations at the local, national, regional and international levels in promoting and implementing the World Programme of Action for Youth and in evaluating the progress achieved and the obstacles encountered in its implementation.²⁰⁰

The Pacific Youth Development Framework, 2014 – 2023, developed by the South Pacific Community to guide priorities and strategic action on youth development, recognises effective youth participation as “integral to a right-based framework and to promote youth development.”²⁰¹ It recognises that effective youth participation “involves young people in governance, management, design and delivery of initiatives in a way that genuinely gives young people decision-making power. It is based on an agenda that is jointly set between young people and adults, and avoids tokenism.”²⁰² It includes the following objectives: that Governance structures empower young people to increase their influence in decision-making processes; Representative structures for youth are strengthened and are inclusive of diverse groups. Governments increase their investments in youth; and Governments and representative structures for youth share responsibilities in development processes.

¹⁹⁵ Ibid.

¹⁹⁶ UNICEF, 2018, *Conceptual Framework for Measuring Outcomes of Adolescent Participation*.

¹⁹⁷ UNICEF, 2018, *Conceptual Framework for Measuring Outcomes of Adolescent Participation*.

¹⁹⁸ UNICEF, 2018, *Conceptual Framework for Measuring Outcomes of Adolescent Participation*.

¹⁹⁹ Charles, A & Haines, K, 2014, *Measuring Young People's Participation in Decision Making*, International Journal of Children's Rights, 22: 641-659.

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²⁰¹ Secretariat of the South Pacific Community, *The Pacific Youth Development Framework: A coordinated approach to youth-centred development in the Pacific*, 2015, SPC: Suva, Fiji, p. 9.

²⁰² Secretariat of the South Pacific Community, *The Pacific Youth Development Framework: A coordinated approach to youth-centred development in the Pacific*, 2015, SPC: Suva, Fiji, p. 9.

The law in PNG provides basic rights to political participation to its citizens. According to PNG's Constitution, all citizens should have an equal opportunity to participate in, and benefit from, the development of the country (article 2). It provides for: "(1) An equal opportunity for every citizen to take part in the political, social, religious and cultural life of the country; and (2) The creation of political structures that will enable effective, meaningful participation by our people in that life and in view of the rich cultural and ethnic diversity of our people..." Article 5, which contains a set of basic rights for all citizens, includes "the right to take part in political activities."

The National Youth Development Act 2014 establishes youth development authorities at the national (section 5), provincial (section 33), district (section 43) and local government (section 52) levels. The functions of these bodies include providing advice on Government law and policy relating to youth affairs; authorise, coordinate, implement and monitor youth development activities; develop and provide policy and technical advice to National, Provincial and Local-level Governments, and other functions relating to youth policy and programming (section 5). The Act provides that the National Board shall include youth representatives to be elected at the National Youth Forum (section 8) – one male and one female. The Youth Development Councils at the Provincial (section 34), District (section 44) and Local (section 53) levels also must contain youth representatives. This provides a legal avenue for youth to be engaged in political processes at all levels of Government; however, there are no provisions requiring representation by youth who are marginalised or are in vulnerable situations.

PNG's National Youth Policy 2020 – 2030 also has as a core goal: "improve wellbeing of young people through greater and meaningful participation in all levels of society and government" (para. 2.3).

There do not appear to be any legal mandates or frameworks for the meaningful participation of children and adolescents in political processes.

6.3 Summary of gaps

While the National Youth Development Act 2014 provides a legal mandate and framework for the engagement of youth in Government processes at all levels, there is no requirement for inclusion of representatives from a diverse group of youth.

There is no legal mandate or framework for the meaningful participation of children or adolescents in Government decision making processes.

7. Conclusion and recommendations

While the legislative framework for the protection of children from violence and child justice are relatively strong and comprehensive in PNG, critical gaps remain. These gaps limit the protection afforded to children and should be addressed through amendments to laws and through the development (where required) of standards and guidelines to support the implementation of laws. The institutional framework for the protection of children and child justice is well articulated in PNG's laws and policies. However, the functioning of institutions is, in practice, limited, with some critical gaps in institutional frameworks to support implementation of laws and policies.

It should also be noted that, outside the legal, policy and institutional framework, substantial challenges exist in ensuring their coverage and effective implementation across the country (though a detailed examination of implementation challenges was outside the scope of this paper).

The following recommendations are made in order to improve the legal, policy and institutional frameworks for the protection of children from violence, abuse, neglect and exploitation and within child protection and child justice systems:

7.1 Legal reforms

Violence against children

- Explicitly prohibit in law the corporal punishment of children in the home, alternative care settings and schools and remove the defence to assault in the context of 'reasonable punishment' of children contained in the Criminal Code. Ensure that the implementation of this prohibition is supported by a campaign to address social and cultural norms and practices that support the corporal punishment of children.
- Explicitly prohibit, in law, the different forms of emotional violence and neglect of children, as set out by the UN Committee on the Rights of the Child.
- Amend the law to ensure that the provisions on neglect and abandonment in the Criminal Code apply to all children up to the age of 18 years.
- Develop a comprehensive legislative and policy framework on bullying, ensuring the meaningful engagement of children and adolescents. This should include placing obligations on schools and other institutions to take comprehensive action to prevent and address bullying effectively.
- Amend the Family Protection Act to extend its scope to unmarried 'dating' couples without children and same sex couples.

Develop detailed guidance to set out a process for linking the Family Protection Act and Lukautim Pikinini Act in cases of co-occurring violence against women and children.²⁰³

- Develop a legal referral process for women subjected to family / gender-based violence to access case management services and support.
- Remove the provision in the Criminal Code which lowers the minimum age of sexual consent to 14 years in the case that a child is married.
- De-criminalise same sex sexual acts.
- Develop provisions to criminalise all non-contact sexual violence against children, including offences related to grooming and preparatory acts committed in the context of child sex tourism.
- Introduce a legal provision that criminalises the removal of a child from their parent / legal guardian (child abduction).
- Remove the legal requirement of 'means' (force, threats, coercion) in child trafficking offences.
- Develop comprehensive provisions to address online peer violence, including sexting, promotion of self harm etc.
- Extend liability to and impose reporting obligations on service providers and businesses in child sexual exploitation.
- Raise the minimum age of marriage to 18 years for both boys and girls and remove the exceptions that permit marriage under the minimum age.
- Prohibit forced marriages (to be defined as marriage without the free and full consent of either party).
- Develop civil remedies to prevent forced or child marriages, including e.g. restraining orders.
- Prohibit the payment of brideprice (to be defined as a form of sale of children), and recognise marriages involving the exchange of brideprice as unlawful and invalid.
- Set the absolute minimum age for child labour at 13 years for light work (and provide a comprehensive definition of light work), and 16 years for other forms of work, except for hazardous work.
- Develop regulations setting out rights of children in employment (hours, payment etc.).

²⁰³ For more detailed recommendations on linking FPA and LPA processes, please see 'Analysis of frameworks for addressing VAW and VAC in PNG' (2021), by UNICEF PNG and Coram International.

- Explicitly prohibit the recruitment of children (under 18 years) into armed forces and the use of children by armed groups.
- Ensure that the Civil and Identity Registration Bill is adopted and implemented.

- Develop and implement a comprehensive national policy and action plan to address the drivers of all forms of violence, abuse, neglect and exploitation of children and to strengthen systems and services to respond to violence against children.

Legal framework for child protection

- Develop detailed guidance for child protection officers on the prevention of family separation, including on case management and delivery of programmes and services to prevent violence, abuse and neglect of children in the family.

- Develop detailed guidelines on delivering multi-agency child protection assessments and care planning.

- Incorporate an explicit legal provision into the LPA on the right of children and parents / carers to make their views known and have them taken into account (commensurate with the best interests of the child paramountcy principle) in child protection hearings.

- Introduce an explicit legal provision into the LPA and guidance requiring reviews of child protection placement decisions and care plans.

- Develop and adopt a legal provision in the LPA that residential care is not to be used as an alternative care placement, except where necessary and constructive to the child's best interests.

- Develop and support the implementation of detailed standards of care for different forms of care (guardianship, foster care, adoption etc.).

- Develop detailed guidance and tools for the inspection of alternative care providers.

- Develop and support the implementation of a complaints mechanism for children in care.

- Update the law on adoption and ensure that it includes (in addition to the current legal framework):
 - The designation of a competent authority to oversee the adoption system and processes;
 - A detailed process for the assessment of prospective adopters;
 - Provisions explicitly prohibiting any form of inducement or coercion of parents;
 - The right for all children to express their views in adoption decisions and have these views taken into account (commensurate with the best interests of the child paramountcy principle); and
 - Processes and standards for customary adoptions.

Justice for Children

- Develop a Law that sets out the rights of child victims and witnesses, bringing together fragmented legislation in the Evidence Act, Criminal Code and Constitution. This should be consistent with international standards and include: the support to be provided to children and young people who are victims and witnesses of crimes; a presumption that all children are competent to give evidence unless there is compelling reasons that this is not consistent with their best interests; support to support children with disabilities to give evidence; measures to reduce harm when cross examining child witnesses; and the establishment of a Guardianship service.
- A provision should be inserted into the Juvenile Justice Act (and the Magistrates manual) that cases involving children in conflict with the law and / or child victims and witnesses must be expedited.
- Mediation and informal justice processes, including those presided over by Village Courts, should make children's best interests a guiding principle of their work.
- Provisions to protect the identity of child witnesses should be strengthened, including protections after a child has given evidence, stronger prohibitions on intimidation and stronger restrictions on publishing the names of child victims and witnesses.
- The Juvenile Justice Act should be amended to mandate the establishment of Juvenile Courts and require that all cases of children in conflict with the law must be heard in a Juvenile Court. Resources should be made available to increase the provision of these courts and increase the number of Magistrates and Juvenile Justice Officers.
- The Juvenile Justice Act should also be amended to ensure all crimes can be tried by Juvenile Courts, including those that would ordinarily be punishable on summary offences or otherwise triable in District Courts
- The membership of community-based conferences should be expanded to also include a wider membership, including professionals who interact with children, for example social workers and teachers.
- The minimum age of criminal responsibility should be raised from 10 to at least 14 years old. Consideration should be given to having a higher minimum age of criminal responsibility, for instance 15 or 16 years of age in line with General Comment 24 of the UN Committee on the Rights of the Child.
- Guidance on the conduct of age assessments should be strengthened to include guidance on physical age assessments and requirements that assessments are undertaken in a prompt, child- and gender-sensitive and culturally appropriate manner. Additionally, the law should be amended to give children the benefit of the doubt where age is unknown or disputed.
- The Curfew Act should be repealed or amended to remove curfews imposed on 'every person within a specified age group.'

- Guidance should be strengthened to take greater account of the unique situation of children with disabilities in the juvenile justice system.
- The right to legal advice and representation and the provision of legal aid to children should be extended to those cases where the sentence would be less two years imprisonment.
- A provision should be inserted into the Juvenile Justice Act that states that detention of children shall only be used as a measure of last resort and for the shortest period necessary. The use of remand/pre-trial detention of children should be limited to exceptional cases. Strict time limits should be put in place to limit the amount of time children spend in pre-trial detention.
- A provision should be inserted into the Juvenile Justice Act to give children's views 'due weight' within the child justice system, in line with their age and maturity, in line with Article 12 of the UNCRC.
- The Juvenile Justice Act should be amended to prohibit the detention of children between 14 and 16 years old.
- Smaller juvenile correctional institutions and remand centres should be built in each province to ensure children detained as a measure of last resort and for the shortest period necessary can be kept close to family, to better facilitate weekly visitation and community reintegration.
- Support the implementation of law so that children are never be detained pre or post trial in detention facilities alongside adults.
- Standards of living for children in juvenile in correctional institutions should be comprehensively set out in guidance / regulations to be brought fully in line with the Havana Rules. Children should be given the right to wear their own clothing, should be given adequate access to sanitation facilities, access to water, a healthy and balanced diet in line with their dietary restrictions, religious and cultural needs.
- All children should be given access to education outside the detention facility in community schools, and access to vocational training where applicable. Every effort should be made to facilitate such education.

Child, adolescent and youth participation

- Develop a comprehensive legal mandate and framework for child and adolescent participation in Government processes, including the development and provision of support for the establishment of adolescent and youth councils, forums and clubs.

7.2 Institutional arrangements

Child Protection including VAC

- **Legislative silos**

As noted in the analysis of child protection laws, the scope of the LPA is extensive covering many key child protection concerns. However, the functions of the institutional bodies such as the Office of Child and Family Services and the National Child and Family Services Council and equivalent bodies at the district levels are limited to the LPA rather than having a broader scope of all welfare related child protection concerns. It is recommended that the mandate of the Child and Family Services and the National Child and Family Services Council, and related sub-national bodies be expanded to put in place an overall coordination mechanism for the national child protection system, dealing with welfare aspects of child protection. It is further recommended that this change be achieved through the development of specific regulations rather than through legal reform.

- **National planning and response to VAC**

There is currently no action plan for preventing and responding to the multi-types of violence experienced by children in PNG. This includes violence in the home, in school, in the community and online. This violence includes physical, sexual and emotional abuse, neglect and exploitation. As shown by the legal review, there are several gaps in the protection and response to VAC. It is recommended that GoPNG develop a national plan to prevent and respond to violence against children.

- **Implementing institutions and influencing institutions**

There are a range of institutions with ***high and medium influence for the design and implementation of legislation and policy*** and for ***influencing the agenda for legislation and policy reform***. Specific actions are required to strengthen institutional capacities.

- Agencies ranked as having ***high importance for the design and implementation of legislation and policy***. It is recommended that investments be made in strengthening strong partnerships within this group of agencies, based on an advanced understanding of the multi-dimensional aspects of child protection, as this would deliver meaningful results for children. Priorities for investments include fostering and building trust and a shared commitment to problem solving and applying a multi-sectoral response to child protection, as opposed to working in legislative or technical silos. Strengthening the capacity of this group to drive change is key for effective implementation of key laws and policies.
- Agencies ranked as having ***medium importance for the design and implementation of legislation and policy***. Like the group above, it is recommended that investments be made in strengthening the capacity of this group to implement a multi-sectoral response to child protection, as opposed to working in legislative or technical silos, particularly at the sub-national level.
- Agencies ranked as having ***high importance for influencing the agenda for legislation and policy reform***. This group of agencies has an elevated level of influence in setting priorities for legislative and policy reform. Strengthening the knowledge of this group on child protection through effective communication channels is key for building momentum and demand for action for child protection. It is recommended that high level, high impact communication be used with his group. The use of evidence informed advocacy strategies is likely to yield results.

- Agencies ranked as having **medium importance for influencing the agenda for legislation and policy reform**. This group of agencies can influence the setting of priorities for legislative and policy reform. Again, strengthening the knowledge of this group on child protection through effective communication channels is key for building momentum and demand for action for child protection.

Child Justice

- **Institutional arrangements between the Child Protection System and the Child Justice System**

A critical gap in the institutional arrangements for justice for children is the institutional disconnect between the Child Protection System and the Child Justice System with the two systems appearing to operate in silos, despite legislative frameworks that promote collaboration. It is recommended that investments be made in strengthening collaboration between the Child Protection System and the Child Justice System with the aim of overcoming the current disconnect between the two systems. This should include fostering and building trust across the two sectors and encouraging a shared commitment to problem solving and applying a multi-sectoral response to child protection and child justice, as opposed to working in legislative or technical silos.

- **Implementing institutions and influencing institutions**

There are a range of institutions with **high influence for the design and implementation of legislation and policy and for influencing the agenda for legislation and policy reform**. Specific actions are required to strengthen institutional capacities and to mobilise support for child justice reform.

- Agencies ranked as having **high importance for the design and implementation of legislation and policy**. There are eight individual institutions and several sub-institutions and the non-government sector with a strong mandate for child justice. This group has a significant role to play in designing new laws and policies and clear accountabilities for their implementation. It is recommended that investments be made in strengthening strong partnerships within this group, based on an advanced understanding of the multi-dimensional aspects of child justice and child protection as this would deliver meaningful results for children. Priorities for investments include fostering and building trust and a shared commitment to problem solving and applying a multi-sectoral response to child protection, as opposed to working in legislative or technical silos. Strengthening the capacity of this group to drive change is key for effective implementation of key laws and policies.
- Agencies ranked as having high importance in **influencing the agenda for legislation and policy reform**. This group consists of 14 individual institutions and several NGOs, development partners and others, including universities, donors and UN agencies. This group has an elevated level of influence in setting priorities for legislative and policy reform. Strengthening the knowledge of this group on child justice and child protection through effective communication channels is key for building momentum and demand for action for child justice. High level, high impact communication is required with his group. The use of evidence informed advocacy strategies is likely to yield results.

