

## ARTICLES

# Strengthening Gender Equality Through the Law\*

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### Introduction

Papua New Guinea (PNG) is under a dark cloud of violence and particularly gender-based violence. Gender based-violence (GBV) and gender inequality have become a hallmark of PNG. Although there is not much data collected in PNG, the existing data is alarming enough to call for action to bring about gender balance and elimination of all forms of violence against women.

There are many factors that affect the achievement of gender balance and GBV is one of those main factors. According to a study in 2015, GBV highly affects women's participation in the economy. Sixty-eight percent of survey participants experienced GBV with 47% experiencing more severe forms of GBV. The courts in PNG have also observed the increase in severity of GBV and have imposed stiffer penalties on perpetrators.<sup>1</sup>

It has been debated over the last two decades that, despite a wide range of laws on rights and freedoms, inequality in PNG is not addressed in reality. Based on international assessments and reports, PNG has not fared well when it comes to gender inequality. In 2012, PNG was ranked at 134 out of 145 countries using the Gender Inequality Index (GII).<sup>2</sup> In 2014 PNG was ranked 140 out of 155 countries on the GII indicating huge gender disparities. When compared to other countries, similar indicators did not show too well for PNG.

In the country's 2010 CEDAW Shadow Report, the late Scholla Kakas, President of the National Council of Women (NCW), in her "Forward" address stated that "the progress of women in Papua New Guinea has not kept pace with the overall efforts of successive governments to achieve economic and political of the country".<sup>3</sup>

How can PNG reverse this negative trend? In 2012, a study by the Secretariat of the Pacific Community (SPC) observed that mainstreaming gender would help improve gender inequality in the country. The SPC identified six strategic areas that the Government of PNG had to focus on to promote and strengthen gender mainstreaming in the country.<sup>4</sup> This enabling environment included:

1. Legal and Policy Framework
2. Political Will
3. Organisational structure

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<sup>1</sup> *State v Roth* (2019) N7770; *Keoa v Keoa* (2017) N6941 and *State v Markus* (2015) N5944.

<sup>2</sup> "Human Development Report," United Nations Development Programme 2013, accessed January 15, 2015. <http://hdrstats.undp.org/images/explanations/PNG.pdf>.

<sup>3</sup> UNIFEM, 2010. The CEDAW Shadow Report on the Status of Women in Papua New Guinea and the Autonomous Region of Bougainville.

<sup>4</sup> Braun, T., *Stocktake of the Gender Mainstreaming Capacity of Pacific Islands Government- Papua New Guinea* (Noumea: Secretariat of the Pacific Community, 2012).

4. Accountability Mechanisms
5. Technical Capacity
6. Funding Adequacy

The SPC suggested that by addressing these six key areas, PNG would adequately address gender mainstreaming in the country. These and other reports both in PNG and outside the country provides an array of suggestions for improving gender inequality in PNG.

The Government and its agencies can easily adopt some of these suggestions and make a real effort in tackling and improving gender inequality in PNG. In this paper, I present the legislative reforms initiative of the government, which seek to reduce gender inequality. The ongoing reform work of the government will hopefully address three of the main concerns raised by the SPC – that is: Legal and Policy Reform, Political Will and Organisational structure. The aim of the paper is to show that, despite the negative reports on gender inequality in PNG, the Government is working positively and progressively to arrest gender inequality through a number of policy and legislative reforms.

## **Status of Gender in PNG**

### *Gender Studies*

A series of studies and Government reports show that PNG lags in many areas of gender inequality. Multilateral and regional partners have also commissioned a study on gender inequality in 2012 to provide up-to-date data on gender inequality for the Government and its partners. The study focused on the three themes of the Government's policy on gender and development: (1) access to resources through education, health and entrepreneurship; (2) access to rights through legal and social empowerment (including power to address gender-based family and sexual violence); and (3) access to voice through participation in decision-making.<sup>5</sup>

The study revealed some of the following shortcomings of the country in the three thematic areas.

1. Access to resources through education, health and entrepreneurship
  - There is a persistent gap in the percentage of girls and boys of eligible age enrolled in secondary school, tertiary education and training institutions. At primary school level, the gender gap has narrowed in the last 15 years.
  - Concerns for girls' safety are a significant barrier to their school attendance.
  - Violence (and the threat or fear of it) significantly reduces the range of actions a woman can take to support her family and enhance her health and education, as well as that of her children.
  - There has been little improvement in key health indicators (e.g., maternal mortality, access to reproductive health care, malnutrition among women and children) especially for the majority rural population.
  - Health services have declined in rural areas, and the impact of this is larger for women who face greater obstacles to accessing such care than men. For example, when women need to travel to health care centres they face greater security risks and bear greater opportunity costs than men.
  - Gender relations and gender inequality are significant drivers of the HIV and AIDS epidemic in Papua New Guinea.
  - Women and girls are more vulnerable to HIV infection and other STIs. Women's lack of power and rights in sexual relations and the high risk of gender-based violence increase the likelihood of HIV transmission.
  - Fear of violence, abandonment, stigma and discrimination hinder women's willingness to negotiate for safer sex and to seek HIV testing or treatment.
2. Access to rights through legal and social empowerment (including power to address gender-based family and sexual violence)

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<sup>5</sup> PNG Government., *Papua New Guinea Country Gender Assessment* (Port Moresby: PNG Government, ADB, UNDP, Australian Aid, 2012) xvi.

- There are inequalities in men's and women's economic opportunities in the agriculture sector that lead to inefficient use of the country's labour resources.
  - Women farmers do not receive the level and type of training and extension support that they need to contribute their full potential to the agricultural economy.
  - Women traders are more disadvantaged than men by unsafe and insanitary markets, and poor transport infrastructure.
  - There are continuing differences and inequality between women and men in formal labour force participation, occupations and wages.
  - In general, women and girls work longer hours than men and boys.
  - The Constitution provides for gender equity and equality, but customary law, recognised by the Constitution, discriminates against women in relation to rights and property.
  - The Law Reform Commission has examined and made recommendations on gender issues in laws relating to adultery, prostitution, polygamy, succession and inheritance, marriage and divorce, and maintenance. Some laws, based on gender considerations, have been amended or passed. But law reform has had limited beneficial impacts for women so far.
  - The police and prosecution authorities continue to have difficulties in applying and enforcing the law. The justice and law enforcement systems are weak, and there is insufficient policing and inadequate application of the law.
3. Access to voice through participation in decision-making
- Papua New Guinea remains close to the bottom of the world's scale for women's parliamentary representation and participation.
  - Of the 111 members of parliament, only three are women as of November 2012. In the previous parliament there was only one woman.
  - Only two private corporate entities in Papua New Guinea have women on their boards.
  - Although laws allow women's representatives to be nominated to provincial and local governments, their representation is often tokenistic and their participation appears to be very limited.
  - Mainstreaming of gender across government has resulted in some sound policies and strategies, but few of these are budgeted and implemented.

The proponents of the study made four major recommendations. First, allocate specific budget resources to the Department for Community Development, Youth and Religion (DCDYR) to enable the Department to monitor the implementation of Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and report on this. Second, the Department of National Planning and Monitoring (DNPM) to give greater prominence to gender in the review of the Medium-Term Development Plan. Third, disseminate the National Policy on Women and Gender Equality. Fourth, convene a joint task force of the Department of Treasury, DNPM and DCDYR to map gender budget annually.<sup>6</sup>

The 2012 study by the Government and its partners basically confirmed most of the data that the World Bank identified in its study. The World Bank concluded that globally the status of women did improve markedly but a number of areas still needed improvements. The World Bank said: "Gender disparities still remain in many areas, and even in rich countries. The most persistent and egregious gaps include"<sup>7</sup>:

- *Excess deaths of girls and women.* Females are more likely to die, relative to males, in many low- and middle-income countries than their counterparts in rich countries. These deaths are estimated at about 3.9 million women and girls under the age of 60 each year. About two-

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<sup>6</sup> Id, at xviii-xix.

<sup>7</sup> Note 1, at p xx1.

fifths of them are never born, one-sixth die in early childhood, and over one-third die in their reproductive years. And this number is growing in Sub-Saharan Africa, especially in childhood and the reproductive years and in the countries hardest hit by the HIV/AIDS epidemic.

- *Disparities in girls' schooling.* Despite the overall progress, primary and secondary school enrolments for girls remain much lower than for boys for disadvantaged populations in many Sub-Saharan countries and some parts of South Asia.
- *Unequal access to economic opportunities.* Women are more likely than men to work as unpaid family laborers or in the informal sector. Women farmers tend to farm smaller plots and less profitable crops than men. Women entrepreneurs operate in smaller firms and less profitable sectors. As a result, women everywhere tend to earn less than men.
- *Differences in voice in households and in society.* In many countries, women—especially poor women—have less say over decisions and less control over resources in their households. And in most countries, women participate less in formal politics than men and are underrepresented in its upper echelons.

The World Bank identified the following areas for reform:

- Addressing excess deaths of girls and women and eliminating gender disadvantage in education where these remain entrenched.
- Closing differences in access to economic opportunities and the ensuing earnings and productivity gaps between women and men.
- Shrinking gender differences in voice within households and societies.
- Limiting the reproduction of gender inequality across generations.<sup>8</sup>

When these two studies are compared, the message for PNG is loud and clear – a lot remains to be done in addressing gender inequality in the country. This however does not mean that PNG has not done much in this field. On the contrary, PNG has made positive strides in many areas, particularly in the area of policy and legislative reform, to combat gender inequality. This new approach has been evident in the last 10 years. In this paper we look at the Government's efforts in this new move by PNG to reduce gender inequality.

#### *Gender and Economy*

In 2012, the World Bank's 'World Development Report' declared that, "Gender equality is a core development objective in its own right. It is also smart economics. Greater gender equality can enhance productivity, improve development outcomes for the next generation, and make institutions more representative."<sup>9</sup>

It has been reported that the global economy would grow by \$28 trillion by 2025 if women participated in the labour force to the same degree as men - a 26% increase and almost equivalent to the combined GDPs of the U.S. and China. The report, titled "The Power of Parity: How Advancing Women's Equality Can Add \$12 Trillion to Global Growth" also found that even incremental progress on gender equality could have a big payoff. If every country matched the participation rates of the highest-performing countries in their region, global activity would increase by \$12 billion - equivalent to the GDPs of Japan, Germany, and the UK combined.

According to the report, the three major factors holding women back are lower work force participation, fewer hours worked, and the fact that women are disproportionately represented in low-productivity sectors like agriculture.<sup>10</sup>

If the global community agrees that gender equality leads to better outcomes for a country, then how has PNG, as a member of the global village, responded to this challenge?

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<sup>8</sup> Id, at pxxii.

<sup>9</sup> World Bank., *World Development Report 2012: Gender Equality and Development* (Washington DC: World Bank, 2012) xx.

<sup>10</sup> Report by McKinsey Global Institute, at <http://time.com/4045115/gender-inequality-economy/> (accessed 8 March 2019).

A profiling study by Japan International Cooperation Agency (JICA) in 2010 found that formal employment opportunities for women are limited. Only 5% of women in PNG are in formal employment. On average employees experienced a total of 7.8% incidents of GBV in the past 12 months, of which 2.4% incidents were of severe GBV. On average, each staff member loses 11.1 days of work per year as a result of the impacts of GBV. For a firm in this survey, estimated 26,200 staff hours are lost per year.

The cost of staff time lost due to GBV is huge. For one of the firms concerned, it is estimated to total K300, 000.00. For another firm almost K3, 000,000.00 representing 2% and 9% respectively of those companies' total salary bills.

#### *The Benefits of Gender Equality*

The government must have an all-inclusive approach to ensuring social and economic rights of women and girls. Workplaces must design policies that prohibit and prevent direct and indirect discrimination and recognize that equality and rights, opportunities and treatment at work is about ensuring that all persons are treated with respect and encouraged to reach their full potential.

The benefits of gender equality are many. In a society-

- when girls are educated it lowers fertility rates, reduces maternal mortality and improves the health of their children;
- when all members of the community have access to economic opportunity it helps their families prosper and the country's economy grows; and
- when the safety and security of women at work and girls is guaranteed, they can more effectively contribute to better outcomes for their families, communities and the country.

And in the workplace:

- when women, men, people living with disabilities and representatives from disadvantaged groups participate in policy formulation and decision-making it leads to more responsive policies and decisions and improved distribution of services;
- a diverse workplace will have positive and effective communication with its clients based on a deep understanding of the community's interests;
- when the safety and security of women at work and girls is guaranteed, they can more effectively contribute to better outcomes for their families, communities and the country; and
- a gender equitable and socially inclusive workforce that reflects the PNG community demographics will also support the public service, to understand and assist, the various needs of everyone in our community, leading to improved service delivery.

### **The Government's Policy and Legislative Reform Program on Gender Equality**

The *Constitution* of PNG, like constitutions of many other countries, provides for the protection of fundamental rights and freedoms of individuals regardless of their race, tribe, place of origin, political opinion, colour, creed or sex.<sup>11</sup> It is important to observe that the *Constitution* is the supreme law of PNG. It is therefore very encouraging that the fundamental rights and freedoms of individuals are recognised and guaranteed by the *Constitution*.

It is however, one thing to make legal declarations and another to implement them. A quick scan of the PNG legal system will show that there is sufficient legal protection for every citizen of the country, yet as shown above in the previous section, there are still glaring inequalities between men and women in the country. This is where the role of policy and law reform becomes critical.

The Government has been progressively dealing with the issue of GBV through policy and law reform since the early 2000s. In undertaking this policy and legislative reform program, the Government is mindful of the country's obligations under relevant international treaties and other legal instruments.

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<sup>11</sup> Sections 32 to 56 of the *Constitution*. See Kwa, E, "The Enforcement of Human Rights in Papua New Guinea: Tru O Giaman" in Kwa EL, Bhalla S, Muroa G, Linge, G, Tennent D and Yapao G (ed), *Development of Administrative Law in Papua New Guinea* (New Delhi: School of Law and Business Studies & UBSPD, 2000).

The government has sought to synergise its policies and laws to the following international conventions and instruments: the Beijing Declaration and Platform for Action; the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); the Convention on the Rights of Children (CRC); and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>12</sup>

In this section of the paper, three major national policies that promote gender equality are identified and reviewed. A set of legislative reforms targeting gender equality are also identified and discussed.

*Policy Reform*

In the area of policy, PNG did not do much after the Beijing Conference until 2011 when the Government adopted the 2011–2015 National Policy for Women and Gender Equality. This policy was to guide the work of the Office of Development for Women (ODW) which was set up by Government in 2005.

In the last seven years however, the Government has made significant inroads in the area of gender equality policy reform. The Government began its intervention in the public sector with the adoption of the Gender Equity and Social Inclusion (GESI) Policy in 2013. The Government also adopted the Lukautim Pikinini Policy in 2015 and the Gender Based Violence Strategy in 2016. Some of these critical policy imperatives are briefly highlighted below.

In its Vision 2050, an overarching development platform adopted in 2009, one of the seven pillars are gender. Pillar 1 of Vision 2050 is on ‘Human Capital Development, Gender, Youth, and People Empowerment’ towards a healthy, and wealthy society by 2050. All Government agencies are directed to implement the Vision 2050.

To support the implementation of Vision 2050, the Government adopted the action plan for Vision 2050 called the Development Strategic Plan 2010-2030 (DSP) in the following year (2010). This document sets out the roadmap for implementing the Vision 2050. A key statement of the DSP 2030 is that by 2030 there should be “zero tolerance for violence against women and children.”<sup>13</sup>

One of the recent milestones achieved by the Government on gender equality is its adoption in 2013 of the GESI Policy. The main objective of GESI is to promote and strengthen fairness and equity across and within the public service. The mainstreaming of this policy is to enable agencies to create safer working environments for both men and women, at the same time encouraging career advancement especially for women.

The GESI Policy which was promulgated by the Department of Personnel Management makes it mandatory for the creation of a Gender Desk in all government departments, agencies and statutory bodies. This is a major breakthrough by the Government because for the first time, it has acknowledged and accepted its responsibility in tackling gender inequality right where it matters – the Government and its instrumentalities!

In 2015, it was reported by the Department of Personnel Management that two years after the GESI Policy, gender disparity in the higher echelons of the public service was not improving.

<b>SENIOR PUBLIC SERVANTS CONTRACT OFFICERS</b>		
<i>Department/Agency Grouping</i>	<i>Female</i>	<i>Male</i>
Key Central Government Departments	34	66
National Departments	23	77

<sup>12</sup> Sliviak-Kidu, J, “Cross-cutting Issues at Provincial Levels in Papua New Guinea” in Kwa, E, Stanley, L, Kesenga, D, Fairio, M, Winnia, X and Kwa, V (ed), *Decentralisation for an Integrated, Strong and Prosperous Papua New Guinea* (Port Moresby: Constitutional and Law Reform Commission, 2016) 166.

<sup>13</sup> PNG Government., *Papua New Guinea Development Strategic Plan 2010-2030* (Port Moresby: PNG Government, 2010) 112.

Provincial Administrations	8	92
Hospitals and Provincial Health Authorities	24	73

The figures in the above table give an overview of how well the various groupings of government are handling gender equality in terms of employment statistics at the Senior Contract Officer Grade levels.

When the figures in the above table are compared with specific key government agencies, the picture is different. This is shown in the table below.

CENTRAL GOVERNMENT AGENCIES- SENIOR PUBLIC SERVANTS CONTRACT OFFICERS		
Agency	Female	Male
Finance	28	72
Treasury	31	69
Department of Personnel Management	40	33
Prime Minister & National Executive Council	33	67
National Planning & Monitoring	33	67
Internal Revenue Commission	38	62

The table above deals with percentage comparisons of senior male and female contract officers in the key Central Government Agencies mentioned above. Taken together, this group has the best ratio of females (34%) to males (66%).

To expedite the implementation of the GESI Policy in the public service, the Government took a bold decision in 2016 that required every government department and agency to establish a GESI Desk in their departments and agencies before any restructure to their departments and agencies was approved by the Department of Personnel Management. This intervention by the Government is slowly gaining momentum in the public service with the creation of Gender Desks in several government departments and agencies.

The Lukautim Pikinini Policy 2015 provides the policy framework for protecting children. The policy sets out the mechanisms for dealing with children. An important aspect of the policy is the establishment of a dedicated government agency called the Child and Family Services that is primarily responsible for all matters relating to children.

The Child and Family Services is managed by a Director who reports to the Child and Family Services Council. The Council was established only in 2018 and is currently setting up the Child and Family Services secretariat. The Child and Family Services fall under the auspices of the DCDYR.

A major breakthrough on GBV came about in 2016 when the Government of Prime Minister Hon. Peter O'Neill approved the GBV strategy titled 'Papua New Guinea National Strategy to prevent and Respond to Gender Based Violence 2016-2025'.<sup>14</sup> This is a milestone which PNG can be proud of. For the first time, PNG now has a holistic roadmap for dealing with GBV. The DCDYR is responsible for spearheading the implementation of this policy.

<sup>14</sup> Government of Papua New Guinea, *Papua New Guinea National Strategy to Prevent and Respond to Gender Based Violence 2016-2025* (Port Moresby, Department for Community Development, Youth and Religion, 2016).

The vision of the policy is: “An inclusive, peaceful society where government, in partnership with its citizens, embraces diversity, equality and equity, recognizes, respects and promotes the rights of all citizens, and secures just and sustainable development for all”. The goal of the policy is:

The Government of Papua New Guinea, in partnership with all its key stakeholders, will prioritize the prevention of and response to Gender Based Violence to enable a quality of life without fear of violence.<sup>15</sup>

There are four objectives of the Government in dealing with GBV. These are:

1. To ensure that by 2025 the Government of PNG has a functioning GBV governance and institutional structure supporting the achievement of zero tolerance towards GBV, aligned with the PNG Development Plan, Papua New Guinea Vision 2050 and with the Sustainable Development Goals 2016-2030,
2. To standardize and institutionalize data collection, and facilitate ongoing in-depth research to support evidence-based planning, budgeting and programming to end gender-based violence, □
3. To ensure quality, continuity and sustainability of coordinated responses, referrals and service delivery for survivors of gender-based violence, and □
4. To scale-up, decentralize, and standardize inclusive, quality initiatives and messaging for prevention of gender-based violence at all levels and in all sectors of society.<sup>16</sup> □

A national secretariat is envisioned by the policy to coordinate the Government’s effort in preventing and responding to GBV in the country. Unfortunately, at the time of writing, the DCDYR is yet to establish the secretariat. The Government is mindful of this delay and has recently instructed the Department to expedite the establishment of the secretariat so that it can fully implement the GBV Policy.

#### *Law Reform*

Gender-based violence is a serious ongoing problem for PNG. This phenomenon has also attracted the attention of the Courts. In 2001, Kandakasi J (as he then was) made these observations in *State v Joe Butema Arua* (2001) N2076:

*Wife beating is now an offence in our country. This has been brought about because of husbands beating up wives as if they are not more than just mere beings fit only to be their wives. Even after the enactment of the laws against wife beating, many men are continuing to beat up their wives. Some of the beatings are ending up in deaths. Currently, the women in our country are continuing to call for violence against women and girls to stop. Yet a few men like the Defendant are continuing to beat up and even kill their wives. These men fail to appreciate the fact that their wives are human beings like them and have the right to live and to be treated with human dignity and respect. They do not appreciate the fact that women are inherently weaker than men are and as such they need to be treated with care and respect. Men need to show the women or their wives that they truly love them. If they do not love their wives, they should not have married them at the first place, or if their love has grown cold, they should let them go their own way rather than killing them.*

The courts have taken a very firm position against GBV, particularly violence against women and girls. In 2015, commenting on the passage of the *Family Protection Act 2013*, *State v Simba (No2)* (2015) N6015, the National Court (Geita J) observed that “[D]espite courts attempts in trying to stop wife beating in their stern judgments menfolk continue to offend. The crime appears to escalate every year instead of decreasing”.

The Government has been proactive in the area of policy and legal reform in addressing GBV. Since 2000, the Government has undertaken some major legislative reforms relating to gender equality and continues to review laws and engage in activities to promote and protect women. Some of the notable examples include: The *Criminal Code (Sexual Offences Against Children Act)* 2000; the

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<sup>15</sup> Ibid, p13.

<sup>16</sup> Ibid.

*Constitutional Amendment No 32. Equality and Participation Law 2011*; the *National Council of Women Act 2013*; the *Family Protection Act 2013*; and the *Lukautim Pikinini Act 2015*.

These pieces of legislation are significant milestones in addressing women's issues in PNG, particularly to promote equal participation and to increase women's participation in the development of the country. A summary of these and other related legislation and proposed Bills dealing with gender equality are presented below.

The first major reform was the amendment to the *Criminal Code Act 1974* relating to sexual violence. The *Criminal Code (Sexual Offences Against Children Act) 2000* was enacted to protect the interest of children against sexual exploitation.<sup>17</sup> In *Stanley Sabiu v The State* (2007) SC866, the Supreme Court, in support of the Government's fight against GBV, stressed strongly that the Parliament was opposed to crimes of sexual violence against children.

To complement the amendment to the *Criminal Code Act* in 2000, the Government also amended the *Evidence (Amendment) Act 2000* to strengthen the legal framework to protect women and children against sexual violence. This amendment now enables a spouse to be a compellable witness in sexual offence cases.

In 2009, the Parliament enacted the *Land Registration (Customary Land) (Amendment) Act*.<sup>18</sup> This legislation was developed by the Constitutional and Law Reform Commission (CLRC) and successfully enacted by Parliament. This law provides for the registration of customary land with the view to opening up the land for economic activities. For the first time, the law specifically provides that the leadership of the customary land group (incorporated land groups (ILG)) must include two women. The law also enables women to have equal access to customary land.

The push for a temporary special measure for equal women's participation in Parliament almost became a reality with the *Constitutional (Amendment No 32) - Equality and Participation Law* in 2011, when Parliament amended the *Constitution* to create 22 Reserve Electorates for Women. Although the *Constitution* was amended, the enabling law, the *Organic Law on National and Local Government Elections* was not amended to complement the Constitutional amendment. The Equality and Participation Law was to give effect to the Second Goal of the *National Goals and Directive Principles* which provides for equality and participation of all citizens to enable them to participate either directly or through a representative in consideration of any matter affecting his or her interests or the interest of the community. It was certified on the 28<sup>th</sup> December 2011 to come into operation on the issue of writs for the 2012 General Elections.

In 2013, the Government enacted the *National Council of Women Act* and repealed the *National Council of Women Incorporation Act* (Chapter 1041) 1979. The new law creates a single national women's peak body. It was certified on 5<sup>th</sup> December 2013. The new Act provides for a clear, transparent administrative structure, powers and functions, with a system of checks and balances and very clear linkages between the National Council of Women and government and other agencies.<sup>19</sup> It calls for a separation of powers and functions between the political and administrative leadership, and enables the National Council of Women to fulfil obligations under international obligations.

In the same year the Government also enacted four pieces of legislation that impacted on the status of women in PNG. These were the repeal of the *Sorcery Act 2013*; the *Criminal Code (Amendment) Act 2013*; and the *Family Protection Act 2013*. The repeal of the *Sorcery Act 1971* was to remove the belief in sorcery as an excuse to assault and sometimes kill innocent people, particularly vulnerable women.<sup>20</sup> As one of the consequences to the repeal of the *Sorcery Act*, the *Criminal Code Act 1974* was amended to include two additional offences that would attract the death penalty: (1) sorcery-

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<sup>17</sup> See *State v Kankan* (2017) N6630.

<sup>18</sup> See brief comments on this legislation in Reference by *Igo Namona Oala* (2011) SC1129.

<sup>19</sup> See *State v Laina* (2008) N3344 (stealing of NCW funds).

<sup>20</sup> Constitutional and Law Reform Commission. *Review of the Law on Sorcery and Sorcery Related Killings* (Port Moresby: CLRC, 2012).

related killing, and (2) the rape and killing of a child under the age of 10 years. The *Criminal Code Act* was amended again in the same year to cater for human trafficking.<sup>21</sup>

The *Family Protection Act* was enacted to address domestic violence in the country. The legislation is a new law that responds to the escalating incidence relating to gender-based violence. This Act is aimed at addressing gender-based violence and abusive partners. This law makes domestic violence a criminal offence which carries a penalty of two years imprisonment. Recently in *State v Simba (No2)* (2015) N6015, Justice Geita sadly observed that, even with the enactment of the *Family Protection Act* in 2013, domestic violence appears to be on the increase.

In 2014, the Government quietly enacted another law that gave greater protection to customary marriage. The *Civil Registration (Amendment) Act* 2014 was crafted by the CLRC with the full support of the DCDYR and other sister agencies. With this law, all births, deaths and marriages will now be compulsorily registered. This new law also provides for the issuance of a National Identification Number to every citizen. It also provides that a customary marriage can now, for the first time since Independence in 1975, be registered as a legal marriage. This means that women who married under custom can now seek protection in terms of their husband's assets and properties if there was a divorce or death.

The *Lukautim Pikinini Act* 2015 was enacted to protect children and especially women and the girl child. This legislation addresses issues relating to child welfare, with a particular focus on the protection of children. Issues involving custody, maintenance, adoption, child protection services, pregnant women in contact with the law (e.g. prison) and their children are now covered by this law. The *Infants Act*, the *Deserted Wives and Children's Act* and the *Lukautim Pikinini Act* 2009 were repealed by this new Act. The *Lukautim Pikinini Act* 2015 provides a one-stop-shop for all matters relating to the welfare of a child. In addition, the law provides for clear administrative structures at the national, provincial and district levels.

The Government has through the CLRC, been spearheading a number of legislative reforms with relevant government and other stakeholders, to reform the laws to reduce gender inequality in the country. Some of these Bills are now before the relevant regulatory bodies for approval while work is continuing on others. The Bills that are awaiting regulatory approvals include: (1) Marriage (Amendment) Bill 2015; Matrimonial Causes (Amendment) Bill 2015; and Censorship Bill 2015. The CLRC has also been working on the Women's Health Protection Bill and the Women's Protection Law for Bougainville.

The Marriage (Amendment) Bill is aimed at defining marriage as a union between a consenting man and a woman. The law will complement the *Lukautim Pikinini Act* 2015 which now outlaw's child marriages (under 18 years).<sup>22</sup> The Matrimonial Causes (Amendment) Bill seeks to provide equality of parents to children in divorce proceedings and also the equal apportioning of properties between the spouses. The Censorship Bill introduces new offences relating to the abuse of women and girls.

The proposed Women's Health Protection Bill deals with screening, vaccination, treatment and management of breast and cervical cancer. Cervical cancer is the biggest killer of women in PNG and the developing world. According to Professor Emeritus Khunying Kobchitt Limpaphayom, globally, more than 500,000 new cases and more than 275,000 deaths annually relate to cervical cancer; and 85% of cervical cancer cases and deaths occur in developing countries.<sup>23</sup> In PNG, over 1000 new cases of cervical cancer are diagnosed annually and kill about 663 women a year.<sup>24</sup> This data shows how increasing and widespread cancer is among the women. Therefore, CLRC has proposed a Women's Protection Bill, which was presented for the first time at the Medical Symposium on the 2<sup>nd</sup> of September 2015, at the Gateway Hotel, Port Moresby, PNG.

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<sup>21</sup> See *Konori v Jant Ltd* (2015) N5868 for a brief statement on this legislation.

<sup>22</sup> Section 86, *Lukautim Pikinini Act* 2015.

<sup>23</sup> Guest Speaker at the Medical Symposium, Caritas Technical School, Port Moresby, Papua New Guinea, September 2015.

<sup>24</sup> Human Papillomavirus and Related Diseases Report 2019 at [www.hpvcentre.net](http://www.hpvcentre.net) (accessed on 14 July 2019).

The Women’s Health Protection Bill is aimed towards protecting women from cancer, particularly cervical and breast cancer; providing services for vaccination, screening and treatment. Given the sensitivity and the technicalities involved in the processes, the CLRC worked closely with the PNG Women Doctors Association to draft the Bill.<sup>25</sup>

In 2016, the Government again through the CLRC collaborated with the UN Women in PNG to develop a Women’s Protection Bill for Bougainville. The aim of the proposed law is to develop a one-stop-shop law covering various issues relating to women. There are already examples of this type of law in the Asia Pacific region which PNG wants to emulate. The CLRC was also, through this partnership, developing a Bill to statutorily establish the Bougainville Women’s Federation (BWF). This activity has progressed rapidly with the presentation of the draft Bill to the BWF Annual General Meeting in October 2016.<sup>26</sup>

## Implementing CEDAW

The CEDAW is the key international instrument to measure gender parity. CEDAW is an important human rights tool that promotes equality between men and women. PNG ratified the CEDAW in 1995. After thirteen years, it presented its first and only periodic report in 2010 under the leadership of the then Minister for Community Development, Dame Carol Kidu. The next periodic review was scheduled for 1 July 2014 (4<sup>th</sup> periodic report), but the report is yet to be submitted.

Since the 2010 CEDAW observation report, the Government has through its different agencies undertaken various activities to comply with CEDAW. However, these efforts have been sporadic and uncoordinated. For instance, in the area of law, the country amended its law on Decentralisation in 1997 to require the participation of women in political leadership at the provincial and local levels of Government.<sup>27</sup> Then in 2000, it amended the *Criminal Code* to address sexual violence against women and girls.<sup>28</sup> The Government also amended the *Evidence Act* to make a spouse in sexual offence cases not only competent but also a compellable witness. No further law reform was undertaken until in the last seven years as indicated by the table below. The increase in legislative reforms is attributed largely to the work of the Government through its law reform agency – the CLRC.

The Table below shows a summary of the principal areas of concern and recommendations that came out of the Forty-sixth Session, on 30 July 2010 by the Committee on the Elimination of Discrimination against Women for PNG and the efforts of the Government in addressing these concerns.

	Principal areas of concern	Recommendations	Status
1.	Recommendation 24: Temporary Special Measures	State party consider applying various types of temporary special measures in areas in which women are underrepresented or disadvantaged.	Proposed Organic Law on Decentralisation 2019 to create a seat for women in the 22 Provincial Assemblies

<sup>25</sup> The Bill is being finalized by CLRC for presentation to stakeholders before a final draft is submitted to regulatory authorities for endorsement and enactment.

<sup>26</sup> The draft Bill was completed and presented to the Bougainville Government in 2017 for enactment by the ABG Parliament.

<sup>27</sup> In 1995 the Government introduced the *Organic Law on Provincial Governments and Local-level Governments* 1995 to usher in a two-tier system of government at the sub-national level. Two important provisions in the Organic Law now enables 22 women to participate in the 22 Provincial Governments and two women in each of the rural local-level Governments and one woman in every urban local-level government.

<sup>28</sup> The amendments to the Criminal Code increased penalties for sexual offences against women and girls and also banned child prostitution and pornography.

2.	Recommendation 26: customary practices and stereotypes	The State party to put in place without delay a comprehensive strategy, including legislation, to modify or eliminate customary practices and stereotypes that discriminate against women in conformity with articles 2, 2 (f) and 5 (a) of the Convention.	Proposed Organic Law on Gender Equity being developed by CLRC
3.	Recommendation 28: torture and killings of women and girls	State party to take immediate and effective measures to investigate the incidences of torture and killings of women and girls, especially old women, based on accusations of witchcraft or sorcery, to prosecute and punish the perpetrators of such acts and to prevent their reoccurrence in the future.	(a) Repeal of <i>Sorcery Act</i> 1971 (b) Amendments to <i>Criminal Code</i> 2013 to impose death penalty for rape of girl under 10 years and sorcery related killings
4.	Recommendation 30: violence against women	State party to undertake in-depth study on all forms of violence against women and report to the Secretary-General (A/61/122/Add.1 and Corr.1).	(a) <i>Family Protection Act</i> 2013 (b) Amendments to <i>Criminal Code</i> 2000 (sexual violence) (c) Proposed Organic Law on Gender Equity
5.	Recommendation 32: on trafficking in human beings	State party to prepare and adopt a legislative framework on trafficking in human beings, including the prevention of trafficking, the timely prosecution and punishment of traffickers, the provision of protection from traffickers/agents and quality support and programmes for victims.	Amendments to <i>Criminal Code</i> 2015 (human trafficking)
6.	Recommendation 34: Equality and Participation Bill with 22 reserved seats for women in Parliament.	State party to expeditiously adopt, through its Parliament, the Equality and Participation Bill with 22 reserved seats for women in Parliament.	Constitution amended in 2011 to provide for 22 Women Electorates. Still waiting for amendments to Organic Law on National and Local Government Elections to provide election procedure
7.	Recommendation 36: registration of all births and marriages	The State party take effective measures to achieve timely registration of all births and marriages and undertake awareness raising measures, throughout the country, particularly in rural and remote areas, on the importance of registering births for the equal status of women.	(a) Amendments to <i>Civil Registration Act</i> 2014 (provides for registration of all Papua New Guineans and marriages) (b) Proposed amendments to <i>Marriage Act</i> 2015 to protect marriages
8.	Recommendation 38 Bougainville Education Plan	The Committee recommends that the State party continue to strengthen its efforts under article 10 of the Convention through implementation of	(a) Free Education Policy of national Government covering ABG

		its 10-year education plan and the Bougainville Education Plan in order to achieve the equal access of all girls to all levels of education in line with the Millennium Development Goals.	(b) Proposal for Bougainville Women's Protection Law
9.	Recommendation 40: women in the labour market	The State party to ensure equal opportunities for women in the labour market, in accordance with article 11 of the Convention	(a) Proposed amendments to the labour laws 2016-17 (b) Review of the Workers Compensation Act 2015-18
10	Recommendation 42: health care	The State party to take concrete measures to enhance all aspects of health care for women in accordance with article 12 of the Convention and the Committee's general recommendation No. 24 on women and health in order to effectively address differential needs in the area of general health and the specific health needs of women, including those with special needs.	Proposed Women's Health Protection Bill 2015
11.	Recommendation 44: HIV/AIDS	The Committee recommends that the State party take continued and sustained measures to address the impact of HIV/AIDS on women and girls, as well as its social and family consequences.	Ongoing liaison with Aids Council to review HIV/AIDS Management and Prevention Act
12.	Recommendation 46: poverty alleviation and sustainable development.	State party to make the promotion of gender equality an explicit component of its national development plans and policies, in particular those aimed at poverty alleviation and sustainable development.	Responsible Sustainable Development 2014 (national policy to supplement Development Strategic Plan 2030)
13	Recommendation 48: de facto situation	State party to provide in its next report a comprehensive picture of the de facto situation of disadvantaged groups of women, including older women, women with disabilities and migrant women, in all areas covered by the Convention, as well as information on specific programmes and achievements.	(a) Disability Bill completed and before State Solicitor for clearance to go to Parliament in 2019 (b) Proposed Organic Law on Decentralisation 2015 provides seat for people with disability on 22 Provincial Assemblies
14	Recommendation 48: marriage and family relations	The State party to harmonize its civil, religious and customary law with article 16 of the Convention and to accelerate reform in respect of the laws relating to marriage and family relations in order to bring its legislative framework into compliance	(a) Proposed Marriage (Amendment) Bill 2015 to protect marriages (b) Proposed Matrimonial Causes (Amendment) Bill

		with articles 15 and 16 of the Convention.	2015 to protect married women's property and enable registered customary marriages to fall under this law (c) <i>Lukautim Pikinini Act 2015</i> (provides safeguards for children and families)
15	Recommendation 52: Autonomous Region of Bougainville: equal opportunity and participation in the decision-making processes	Autonomous Region of Bougainville: The State party to take the necessary measures to ensure women's involvement in the establishment of peace and reconciliation in Bougainville, including through their equal opportunity and participation in the decision-making processes in all spheres of development.	Work on proposed Bougainville Women's Protection Law (CLRC and UN Women 2017)

The Government has provided strong support to the CLRC to progress legislative reforms to ensure the government achieves the aims of CEDAW. It is promising to note that since 2013, the CLRC has been actively promoting this agenda through the CEDAW Compliance Legislative Reform Program. The aim of the program is to consult partners and stakeholders to implement the findings and recommendations contained in the 2007 'CEDAW Legislative Compliance Review' Report of UNIFEM. Since the publication of this report, little has been done by the Government to implement the recommendations of that study which identified a number of laws that needed to be repealed or amended to enable the country's compliance with CEDAW. The CLRC approved this program because it realised that the Commission needed to contribute to the Government's effort in arresting gender inequality in the country.

The CEDAW Compliance Legislative Reform Program therefore follows from the Government's commitment and assurance that it was moving forward to ensure that the provisions of CEDAW were fully complied with. The CEDAW Compliance Legislative Reform Program is managed by the CEDAW Legislative Review Committee established by the CLRC 'to review, assess and propose changes to laws relating to the welfare of women'. The Working Committee is made up of UN Women, Department of Justice and Attorney General, Consultative Implementation and Monitoring Council (CIMC), the Office of the Legislative Counsel, Teachers Association Welfare Fund, PNG Women Doctors Association and the Civil Registry Office. It has expanded in recent meetings with representatives from other agencies joining the Working Committee- Welfare Office, Office of the Development of Women, the Department of Community Development, National Council of Women, YWCA and the UNDP.

Through the coordination of the CEDAW Legislative Review Committee, proposed amendments to two laws relating to women have been workshopped, finalised and submitted to the relevant regulatory bodies for approval to be presented to the Parliament for enactment. These two laws are the Matrimonial Causes (Amendment) Bill, and the Marriage (Amendment) Bill. They are in compliance to CEDAW and particularly address the gaps identified in the 'CEDAW Legislative Compliance Review' report.

The Working Committee has been working on a comparative study project towards compiling a Report on CEDAW Compliance in PNG. The project was started in October 2016 and suspended in the early part of 2017, and was reactivated with funding from UN Women. The aim of the project is to engage stakeholder organisations, identify, and compile relevant data. The project will shed some light on the different activities that organisations are doing to address inequality, particularly on CEDAW compliance in PNG.

## **The Fight Back against Gender Inequality by Non-State Actors**

The issue of GBV and gender inequality is not only being tackled by the Government but also the private sector, including NGOs. There is a strong fight back against this evil that ravages families and communities in the country by non-State actors. Examples include the breakthrough work of Femili PNG Inc; the Digicel Foundation's 'Man of Honor Program'; Westpac Bank's 'Outstanding Women Award'; and the City Pharmacy Limited's 'Pride of PNG Awards for Women'. These positive interventions by non-State actors add value to the efforts of Government in the policy and legal spaces.

For instance, in a 2017 report by Femili PNG Inc, an NGO based in Lae that deals with survivors of family and sexual violence, the organisation recorded that:

257 men signed a pledge to end family and sexual violence in their homes and communities during the 2016 Morobe Show held on October 15 and 16. 46 women also signed the pledge. They traced their palm on a piece of coloured paper and signed their name to show their support to end family and sexual violence in Lae and around the country.

"I will not use this palm to hit my wife or daughter or even my children... I promise. This is my commitment during this 2016 Morobe Show," said a father of four from Bulolo, as he signed the pledge against FSV. More and more male teenagers, including school children signed up to support the call to end FSV issues in their families, in Lae city and in PNG.

"I just do not want to see or hear women and children becoming victims to FSV in my neighbourhood," said Jacky Hiob, an 18-year-old student. "We boys should respect girls and celebrate them because they are very special", Patt Mais, another male teenager said. "We will say NO to family and sexual violence. We want change... we do not want to see our mothers and sisters affected by this," a group of boys from Bayun High School said.

These boys were part of a group of enthusiastic show-goers who made these decisions after learning of the plight of female FSV survivors.<sup>29</sup>

This is a small but a powerful story about change. A change in attitude and behaviour that goes unnoticed by local and international observers of gender-based violence in PNG. Another powerful story is that of Digicel Foundation's Man of Honour Program that seeks to recognise and promote men of integrity who stand up to violence within their communities.<sup>30</sup>

The Westpac Bank's 'Outstanding Women Award' and the City Pharmacy Limited's 'Pride of PNG Awards for Women' are programs designed to identify and celebrate outstanding women across the country. These outstanding women are nominated by individuals and communities according to various categories and are put through a rigid screening process before winners are announced. These two award programs are very successful and encourage more women to stand up and take leadership roles in their communities to promote gender equality.

These positive developments by the non-State actors and the push by the Government to reverse gender inequality is a fight back that must be recognised and applauded by everyone who is interested in the fight against gender-based violence and gender inequality.

In the international arena, these stories do not get mentioned appropriately. I would like to posit that, although PNG does have a serious problem with gender-based violence, positive and serious steps have been taken by the Government of PNG and the private sector and the NGO community to reverse the trend. This shift is an acknowledgement by the people and the Government that gender-based violence does negatively impact on the development of PNG.

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<sup>29</sup> <http://www.femilipng.org/png-men-pledge-to-stop-violence/> (accessed 9/10/17).

<sup>30</sup> See the October 2017 Digicel Foundation Newsletter.

## **Conclusion**

The picture is clear – PNG has made a marked improvement in its effort in addressing gender inequality through both law and policy. PNG has made major inroads in the last 10 years in promoting gender equality and protecting women and children through policy and legal reforms. The challenge for PNG is sustaining its efforts over the long term. There is hope that the Government will continue to push for more legislative and policy reform to align with CEDAW.

The 2012 reports by the Government of PNG and its partners and the World Bank and the report by SPC highlighted a number of strategic approaches that PNG needed to take to tackle gender inequality. One of these is through policy and law reform. The work of the Government in reforming the policy and law on gender is a positive step and shows the Government's commitment to reducing gender inequality in the country. The policy and law reforms will, over time, positively influence changes in societal behaviour and attitudes towards the women of Papua New Guinea.

The work of the non-State actors as partners to Government in this space is encouraging and commendable. This partnership highlights the importance of working together as friends to ensure that the Government systems and processes are equitable and inclusive to achieve gender balance.