



info@icaad.ngo  
Tel: +1-917-971-5713  
www.icaad.ngo

**United Nations Human Rights Council  
Universal Periodic Review: Papua New Guinea**

Submission of the International Center for Advocates Against Discrimination (ICAAD)  
39th session of the UPR Working Group, May 2021  
March 25, 2021

**Postal Address:**

International Center for Advocates Against Discrimination (ICAAD)  
18 Leroy Place  
Chappaqua, NY 10514  
USA

**About ICAAD**

ICAAD is a registered 501(c)(3) with special consultative status with the United Nations Economic and Social Council. Established in 2013, ICAAD works at the intersection of legal innovation and human-centered design to create evidence-based programs with organizations and communities to combat structural discrimination. By taking an integrated approach, we are able to improve resilience, safety, and equity across systems. ICAAD's key activities include:

- **Advocacy & Reform:** Advocates can work with our legal and behavioral design teams to reform discriminatory policy.
- **Data & Research:** Organizations can leverage our data resources to fill gaps in knowledge and plan more strategic interventions.
- **Capacity Building:** Local NGOs and Governments can benefit from ICAAD's expertise in institutionalizing best practices.
- **Emerging Tech:** ICAAD explores how transformational technologies could expand social good programming and benefit human rights.

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## **INTRODUCTION**

While Papua New Guinea has made efforts to address the high rates of gender-based violence (GBV), challenges persist in ensuring it is taken seriously by government institutions. This report will cover the area of GBV and access to justice for women and girls with the specific examples of violence related to accusations of sorcery and the use of contentious factors<sup>1</sup> like reconciliation and provocation in GBV sentencing decisions that contribute to impunity for offenders.

### **Methodology**

1. ICAAD conducted a case law analysis of applicable Papua New Guinea GBV cases since 2000. The key challenges are highlighted here, but more in-depth analysis can be found in the "Comparative Legal Review."<sup>2</sup> The following documentation also includes supplementary data from the Human Rights Measurement Index (HRMI).<sup>3</sup>

## **GENDER-BASED VIOLENCE AND ACCESS TO JUSTICE FOR WOMEN AND GIRLS**

### **General Issue Statement**

2. Information from case law analysis of applicable GBV cases since 2000 depicts some progress as well as remaining challenges in terms of eliminating GBV in Papua New Guinea. Discriminatory treatment of women in Papua New Guinea is present in all spheres of life. Entrenched traditional patriarchal customs and cultural norms are used to justify GBV and discrimination. Contentious factors including customary practices like reconciliation as well as gender stereotypes like victim-blaming are frequently considered by judges.<sup>4</sup>

### **Supporting Examples**

3. In the previous UPR cycle, there were several recommendations around the state continuing its "efforts to combat violence against women and children, especially domestic violence and violence related to accusations of sorcery."<sup>5</sup> Recommendations

also included taking GBV seriously by ensuring justice for victims/survivors and ensuring that government institutions do not perpetuate gender discrimination in the process. While efforts have been made to address these recommendations, the data demonstrates several remaining challenges, including violence related to accusations of sorcery and gender discrimination in the sentencing of GBV cases.

4. **Violence related to accusations of sorcery.** Belief in sorcery combined with gender discrimination has continued to fuel violence against women, including immolation and murder, as a method for obtaining property rights, removing older women from society who are deemed to be an “economic burden,”<sup>6</sup> or blaming them for unforeseen deaths or disease.<sup>7</sup> According to a survey by the HRMI, 53% of human rights experts identified women and/or girls as being at risk for having the right to freedom from torture violated in PNG.<sup>8</sup> When respondents were asked to provide more context about who was especially vulnerable to torture in 2019, respondents mentioned community and family violence against women and girls, particularly those who are believed to be affiliated with sorcery.
5. Sorcery even appears in domestic violence cases. In the case of *State v Toby* [2017],<sup>9</sup> the defendant was convicted of manslaughter for beating his wife to death. The defendant told the court his mother told him that witchcraft had caused his wife’s death. The defendant stated he did not intend to cause the death of his wife. The mother of the defendant stated that the death of the victim at the hands of her son was a result of witchcraft and not his violent assault. The case featured other contentious factors including excusing the defendant for letting his anger get the best of him. After analyzing the mitigating and aggravating factors the judicial officer started the sentence at 9 years imprisonment, which is a low starting point for manslaughter. It is clear that domestic violence is not treated as seriously as it needs to be. While the accusation of witchcraft was not considered in mitigation by the court, there is an underlying issue in Papua New Guinea that witchcraft and sorcery could be an excuse for violence, particularly directed at women and girls.
6. There has been some progress in how the courts have dealt with sorcery/witchcraft in GBV cases. In *State v Uma* [2019], the defendants were tried for three counts of attempted murder. There were six defendants that harmed and tortured three women, two of whom were pregnant and one an elderly woman. The judge noted that sorcery/witchcraft accusations and the torturing of women and men have become increasingly prevalent.<sup>10</sup> In the past, judges have used the belief in sorcery/witchcraft as a special mitigating factor in sorcery related killings, but this judicial officer did not agree.

All of the defendants were sentenced in the same measure regardless of the majority having it be their first time offence. The starting point of the sentence was 7 years, but due to the gravity of the offence the judicial officer increased the sentence by 3 years but deducted 2 years for compensation paid during the reconciliation ceremony. It is important to note that the judicial officer took this offence seriously and did not consider sorcery/witchcraft as a mitigating factor.

7. **Reconciliation in GBV sentencing decisions.** Reconciliation is traditionally used in Papua New Guinea, as in many PICs, to resolve conflicts between groups and to maintain peace.<sup>11</sup> Compensation in particular, is the predominant method of settling problems.<sup>12</sup> While customary law is subordinate to the Constitution,<sup>13</sup> which recognizes equality of all, customary law is still relied upon at the Village Court level. In addition, section 19 of the Criminal Code Act 1974 gives judges an “unfettered discretion”<sup>14</sup> to impose lesser sentences than the maximum specified, and there is no minimum sentencing. As such, judges at National Court level also frequently take into account whether compensation was paid or reconciliation has taken place to mitigate sentences in sexual assault and domestic violence cases.<sup>15</sup>
8. Reconciliation constitutes gender discrimination in GBV cases because the injuries of the individual are secondary to that of the group, and thus sexual assault and general assault cases are resolved by compensating the victim’s family, usually its male leaders.<sup>16</sup> Victims/ survivors are often excluded from this process and its outcome. This can leave women doubly wronged, firstly by the initial assault and secondly when they do not receive compensation, but a male relative does. The CEDAW Committee has identified and called for the abolishment of the use of traditional apologies or reconciliation as a form of resolution of violence against women offences.<sup>17</sup>
9. *State v Lahuwe* [2018]<sup>18</sup> is an illustrative example of this issue. In the case, the victim returned home to her husband, the defendant, with her five children after visiting her relatives. Shortly after, an argument ensued, and the perpetrator stabbed the victim in the side. She died shortly after. The defendant pleaded guilty, had no previous convictions, cooperated with the police, and showed sincere remorse. His relatives also paid K7000 (appx. \$2000) in compensation to the victim’s family. This amount is notably higher than the maximum compensation judges can order of K5000 (appx. \$1400). The judge considered these factors in sentencing the perpetrator to 9 years imprisonment, which was on the lower tier of sentences for murder. However, finding that “mitigating and extenuating circumstances” existed, the judge wholly suspended the perpetrator’s sentence placing him on probation for 5 years.<sup>19</sup>

10. In *State v Riria* [2020], the defendant pleaded guilty to one count of sexual penetration of a child under 16 years old, the defendant's daughter. The offence of sexual penetration charged under s. 229A of the Criminal Code Act carries the maximum sentence of 25 years imprisonment. Where circumstances of aggravation are alleged, the prescribed maximum penalty is life imprisonment.<sup>20</sup> The judicial officer set a starting point of 6 years and reduced the sentence by 5 months for the following reasons:

"I take into account, your plea of guilty, supported by a prior good conduct, expression of remorse and cooperation with police. Payment of compensation has followed your arrest. That act together with your further offer to pay compensation is evidence of genuine remorse and acceptance of your unlawful act. It is proof of your taking full responsibility for your wrongdoing and disrespect towards your own family and that of your wife's line."<sup>21</sup>

The defendant was also ordered to pay compensation within three months to the victim and the maternal uncles. The defendant would be under the Probation Officer's supervision until discharged.

11. **Provocation is recognized as a legal defence in Papua New Guinea.** Often, when the court believes provocation exists, it will consider a lower sentencing tier, and thus offence, as the starting point for the sentence prior to consideration of aggravating and mitigating factors. Since 1992, the Village Courts Handbook and public information sheets described the offence of assault or hitting as "hitting without a good reason" but without any definition of a good reason (e.g. self defense).<sup>22</sup> The Papua New Guinea Law Reform Commission found that in the context of patriarchal norms, and most village court positions being held by men, the result is that "almost anything a wife does which her husband does not like could be considered a good reason".<sup>23</sup>

12. Case law analysis reveals that the behavior or conduct that satisfies de facto provocation is not clearly articulated. *State v John* [2019] is a recent example of de facto provocation being used to justify a short sentence for murder. In that case, the defendant and victim were married, and while the perpetrator was traveling, the victim "was seen drinking beer in company [sic] of other men...".<sup>24</sup> When the perpetrator returned and found the victim had left the house in the middle of the night, he relentlessly assaulted her. She was knocked unconscious and died later at the hospital due to the head injury. The uncorroborated claims of the victim's infidelity became the central argument in considering what sentence range the judge would choose. The judge stated:

"The prisoner and deceased were sleeping in their bedroom when the deceased woke up and went outside following her self-fish [sic] desire of the flesh. I pose this question. 'What man can accept such rude and self-fish behaviour or conduct of his wife and easily forgive her for her misdeeds?' In my view, most men will not condone such actions of their wives and most will resort to violence as in this case. Such are natural reactions of human beings. The prisoner naturally became very angry and assaulted the victim when she returned to the bedroom sometime later. In view of the prisoner's statement on allocatus, particularly, the 'de facto provocation' available in this case, I am of the view that the sentence should commence at the bottom range of the guide line."<sup>25</sup>

As such, the judge sentenced the perpetrator to 8 years of hard labor. The de facto provocation argument is an example of victim-blaming due to the vague definition of provocation in the Criminal Code Act<sup>26</sup> and the significant discretion judges have to use contentious factors to unjustly privilege perpetrators. Papua New Guinea has noted the recommendation to "take further measures and strengthen its legislation to prevent and punish all forms of violence against women and girls."<sup>27</sup> The above examples demonstrate that not only has this not been sufficiently addressed but that it is crucial to upholding the rights of women and girls.

## **Recommendations**

13. Implement national programs to change prevailing social norms. Address gender roles within schools and community; implement programs to promote income equality and increase political participation of women. Women in Papua New Guinea have long been conditioned to believe that they are inferior to men.
14. Strengthen legislation to criminalize all forms of GBV including sexual harassment.
15. Introduce measures that limit the use of contentious factors in the sentencing of GBV cases including de facto provocation, reconciliation, and other gender stereotypes and victim-blaming.
16. Define torture as a serious offence, punishable by sanctions commensurate with the gravity of the torture and ensure that no statement obtained by torture is invoked as evidence in any proceedings.

17. Take concrete measures to protect women, who remain marginalized, discriminated against and at the high risk of being subjected to violence.

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<sup>1</sup> Singh, H., Singh, K., Leese, R., Huts, S., Goddard, E. and Harris, S., *Sexual and Gender-Based Violence in the Pacific Islands: Handbook on Judicial Sentencing Practices*, ICAAD & Clifford Chance, 2018, available at: <https://icaad.ngo/wp-content/uploads/2019/01/ICAAD-SGBV-Sentencing-Handbook-1.19.pdf>.

<sup>2</sup> ICAAD, *Comparative Legal Review of The Impact of Gender Stereotyping on Judicial Decisions in Violence Against Women Cases Across the Pacific Island Region*, at 64-66 (2020), available at: [https://www.sistersforchange.org.uk/wp-content/uploads/2020/02/SistersForChange\\_EJA\\_ComparativeLegalReview-GenderStereotypingVAW\\_CW\\_Feb2020.pdf](https://www.sistersforchange.org.uk/wp-content/uploads/2020/02/SistersForChange_EJA_ComparativeLegalReview-GenderStereotypingVAW_CW_Feb2020.pdf).

<sup>3</sup> HRMI Rights Tracker, 2020, available at: <https://rightstracker.org/en/country/PNG?tab=atrisk>.

<sup>4</sup> *Supra* note 1, at 64.

<sup>5</sup> Section II of the Report of the Working Group, A/HRC/25/7, at Recommendation 104.120 (Sept. 22, 2016).

<sup>6</sup> OHCHR, *Women's Rights are Human Rights*, at 76 (2014).

<sup>7</sup> Jalal, I. *Harmful Practices Against Women in Pacific Island Countries: Customary and Conventional Laws*, UN Division for the Advancement of Women, UN Economic Commission for Africa, 2009, p.19, available at: [https://www.un.org/womenwatch/daw/egm/vaw\\_legislation\\_2009/Expert%20Paper%20EGMGPLHP%20\\_I mrana%20Jalal .pdf](https://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Expert%20Paper%20EGMGPLHP%20_I mrana%20Jalal .pdf).

<sup>8</sup> HRMI Rights Tracker, 2020, available at: <https://rightstracker.org/en/country/PNG?tab=atrisk>.

<sup>9</sup> *State v Toby* [2017] PGNC 340.

<sup>10</sup> *State v Uma* [2019] PGNC 214.

<sup>11</sup> It must be noted that the cultural and customary norms of Papua New Guinea vary and are not found universally practiced across the country.

<sup>12</sup> AUSAid, *Violence against women in Melanesia and East Timor: Building on global and regional promising approaches*, 2008, p. 112, available at: [https://dfat.gov.au/about-us/publications/Documents/vaw\\_cs\\_full\\_report.pdf](https://dfat.gov.au/about-us/publications/Documents/vaw_cs_full_report.pdf).

<sup>13</sup> Constitution of The Independent State Of Papua New Guinea, Division 3C, s.5: [http://www.paclii.org/pg/legis/consol\\_act/cotisopng534/](http://www.paclii.org/pg/legis/consol_act/cotisopng534/).

<sup>14</sup> *State v Panta (No.2)* [2013] PGNC 111.

<sup>15</sup> *State v Babaina* [2018] PGNC 210; *State v Toby* [2017] PGNC 340; *State v Bonnie* [2018] PGNC 206; *State v Kariat* [2017] PGNC 246.

<sup>16</sup> Amnesty International, *Papua New Guinea Violence Against Women: Not Inevitable, Never Acceptable!*, September 2006, p.4, available at: <https://www.amnesty.org/download/Documents/72000/asa340022006en.pdf>.

<sup>17</sup> CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women*, CEDAW/C/PNG/CO/3, 30 July 2010, p. 7.

<sup>18</sup> *State v Lahuwe* [2018] PGNC 518.

<sup>19</sup> *Id.*

<sup>20</sup> Criminal Code Act (1974 as Amended 2006), Chapter 262, Division 2A., s.229A

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<sup>21</sup> State v Lahuwe [2018] PGNC 518.

<sup>22</sup> Law Reform Commission of Papua New Guinea, *Final Report on Domestic Violence*, Report Number 14, 1992.

<sup>23</sup> *Id.*

<sup>24</sup> State v John [2019] PGNC 166.

<sup>25</sup> *Id.*

<sup>26</sup> *Supra* note 20, at Division 1, s.303.

<sup>27</sup> Section II of the Report of the Working Group, A/HRC/25/7, at Recommendation 104.94 (Sept. 22, 2016).