

Papua New Guinea



CEDAW Legislative Compliance Review

Legislative Compliance of Papua New Guinea

6.1 Overview

This Chapter examines and assesses Papua New Guinea's (PNG) legislative compliance with CEDAW. PNG ratified CEDAW on 12 January 1995 obliging it to work towards the modification of its constitution and legislation to accord with the articles of CEDAW although it is recognised that legislative compliance will be achieved through gradual and incremental change. The assessment of PNG's compliance is based on the indicators identified in Chapter One and should be read in conjunction with the commentary on each indicator included in that Chapter. In sum, PNG has achieved full compliance with 28 of 113 indicators, partial compliance with 32 indicators and no compliance in relation to the remaining 53 indicators. The next section provides a brief synopsis of the findings of the review. Following the synopsis is a series of tables, each related to an article of CEDAW, and each containing the relevant indicators, the level of compliance achieved by PNG (i.e. yes, no or partial compliance), the relevant legislation and finally where required, a brief commentary explaining how the legislation does or does not meet the indicator.

It should be noted that the Papua New Guinea legislative review was conducted using all materials available at the time, and that although every effort was made to obtain the most recent and up-to-date legal material, it is possible that there will be errors or omissions.

6.2 Synopsis of Findings

1. Article 1 (which defines discrimination) in conjunction with Article 2 requires States Parties to guarantee a range of fundamental rights and freedoms in their constitutions including substantive equality and freedom

from discrimination on grounds of sex, marital status, sexual orientation, HIV status and disability. The Constitution of PNG guarantees the rights and freedoms of citizens in many of the areas required by CEDAW. However, the Constitution does not provide a guarantee of substantive equality nor the right to the highest standard of physical and mental health attainable. The rights and freedoms guaranteed are also subject to the rights and freedoms of others and do not affect pre-independence laws. Further, the Constitution of PNG does not contain a definition of discrimination or any specific anti-discrimination clause in accord with CEDAW, which means discrimination against women is lawful in PNG.

2. Articles 2 and 3 together mandate the establishment by legislation of national bodies and machinery to monitor the implementation of law and policy to foster the advancement of women. No human rights machinery has yet been established by the PNG Constitution although a Gender and Development Division has been set up within the Department of Social Welfare and Development which plays a role in the advancement of women. However, as it has not been established by legislation, it is vulnerable to removal in times of economic and political upheaval.
3. Article 2 condemns discrimination against women in all its forms and obligates States Parties to eliminate discrimination against women without delay. General Recommendation 19 issued by the CEDAW Committee makes explicit that the definition

of discrimination includes gender violence and recommends that 'sanctions, penalties and compensation' be introduced in relation to gender based violence. Sexual assault is a form of gender violence as it is overwhelmingly perpetrated against girls and women, and therefore must be prevented and remedied, as far as possible, through legislative means. In 2003 with the introduction of the *Criminal Code (Sexual Offences and Crimes against Children) Act 2002* PNG changed its sexual assault regime to provide substantial compliance with the indicators related to sexual violence. A series of new offences were introduced extending penetration to all orifices by the penis or any other object. The offences are graded according to the seriousness of the harm and incorporate the ways in which women are sexually violated. Tougher sentences were introduced, the marital immunity that had previously protected husbands from a charge of rape was removed, and the requirement for corroboration was removed.

4. Incest is a gendered crime since it is primarily perpetrated against women and girls by men in the context of unequal power relations. Criminalising all parties to an incestuous sexual encounter is contrary to CEDAW and may dissuade a victim of an incestuous sexual assault from reporting it in fear of being charged with an offence. In PNG although there *is* an offence of incest in the Code with which women over 18 can be charged there is a defence of coercion implicitly recognising the power imbalance between and women and male relatives. However, full compliance with CEDAW requires either an express definition of coercion that recognises the differential power imbalance or the abolition of the provision.

5. The admission of the prior sexual history of a victim in order to establish that she consented to the sexual act in question is a common law rule which perpetuates the myth that a victim's previous sexual relationship with either the accused or others makes it more likely she consented. Compliance with CEDAW requires legislation that prohibits the application of the rule. PNG has *not* however legislated against the use of prior sexual conduct. Proof of resistance is another common law rule which requires victims to establish that they physically resisted the perpetrator otherwise consent may be inferred. It is discriminatory because physical resistance may be an unrealistic expectation of a victim against a strong or armed perpetrator, and does not take into account how fear and power imbalances may immobilise the victim. PNG, however, has *not* legislated against the requirement for proof of resistance by the victim in non-compliance with CEDAW. Corroboration (independent evidence that connects the accused person with the crime) is a common law rule that requires a judge to advise the jury that it is dangerous to convict the accused on uncorroborated evidence. PNG, in compliance with CEDAW *has* legislated against the necessity for corroboration in sexual offence prosecutions.

6. The PNG Criminal Code provides a defence in sexual assault prosecutions for the accused to claim that he did not know the girl was not of legal age in offences relating to girls over 12. This places the onus on the minor to establish her age rather than the perpetrator to ascertain age and is non-compliant with CEDAW as a result. Consent is not available as a defence for sexual assaults on girls under 16, however, full compliance with CEDAW

- requires that consent is unavailable for girls under 18.
7. Minimum sentences and mandatory prosecution ensure that sexual violence against women is treated seriously. PNG, however, does not have mandatory prosecution or minimum sentences for sexual assault offences. In addition, the legislation specifically provides for custom to affect criminal sentencing which may reduce a sentence if there has been forgiveness. Bail, which should not be granted if there is any risk to a sexual assault victim, is available as a matter of entitlement unless the charge is 'serious'.
 8. Although General Recommendation 19 (which concerns violence against women) identifies domestic violence as a form of discrimination that inhibits women's ability to enjoy rights and freedoms on a basis of equality with men, PNG has not yet incorporated domestic violence offences into its criminal laws. This is required for compliance with CEDAW.
 9. Infanticide refers to the killing of a child by its mother (in contrast to abortion which refers to the destruction of a foetus). Full compliance with CEDAW requires that an offence of infanticide replaces a charge of murder or manslaughter and has a reduced sentence recognising the societal pressures that lead women to kill their children. Women who do so should not be held accountable to charges of murder or manslaughter. An offence of infanticide is contained in the PNG criminal law legislation but it reduces a charge of murder to manslaughter, rather than replacing both murder and manslaughter with a separate offence and a corresponding less severe penalty. Further, the definition of infanticide is restricted solely to the effects of lactation and birthing. Such a view of the causes of infanticide has been largely discredited by research, which instead has linked such killings to post-natal depression caused also in part, by the social pressures of raising children.
 10. Article 4 requires that special measures provisions be introduced into national constitutions and legislation. PNG *has* incorporated special measures provisions into its constitution for 'the special benefit, welfare, protection and advancement of females'.
 11. Article 5 requires States Parties to abolish or modify customary practices that discriminate against women. In PNG, the Constitution recognises the legitimacy of customary law provided however, that it is not repugnant to humanity, does not result in injustice or that it is not contrary to the interests of a child under 16. Although the provisos provide some protection against discrimination the absence of a guarantee that equality between men and women takes precedence over custom, traditional practices that discriminate against women may be lawful in some circumstances. This is apparent in several areas of women's lives, discussed below, where domestic laws incorporate custom to the disadvantage of women.
 12. Article 6 requires States Parties to suppress all forms of trafficking in women and the exploitation of women in prostitution and Articles 2 and 11 require the elimination of discrimination against women in employment. Cumulatively, these articles mandate both the protection of sex workers

from exploitation whilst also affording them the rights and protections of other workers. The act of soliciting is not an offence in PNG for sex workers, which complies with CEDAW. However, PNG criminalises the aiding and abetting of sex work and the operation of organised premises. Experience and research shows that organised premises rather than street work provide a safer work environment for sex workers. Legalising brothels and implementing work conditions and safeguards that are present in other workplaces (such as regulated standards of occupational safety, standard rates of pay, parental leave, sick leave) would therefore provide greater safety for sex workers and the community.

13. PNG introduced in the *Criminal Code (Sexual Offences and Crimes Against Children) Act 2003*, a comprehensive range of offences protecting the exploitation of children creating offences for parents, clients and anyone who participates in child prostitution. However, there is little protection for non-consenting adults forced into sex work or for the prevention of the trafficking either of girls or non-consenting women.
14. Article 7 obligates States Parties to take all appropriate measures to eliminate discrimination in women's political and public lives. Universal suffrage and equal legal rights to political representation for women has been achieved in PNG. However, PNG which currently has only 1 female member of parliament out of a total of 109 seats has not introduced special measures such as quotas to ensure higher numbers of women enter parliament and participate in the governance of their countries.
15. Article 8 requires States Parties to ensure

that women have equal opportunities to represent their governments at the international level. Although there is no legal barrier preventing women from representing their governments in PNG, the low numbers of women who do so necessitates the introduction of quotas to raise participation.

16. Article 9 requires States Parties to eliminate discrimination in the areas of nationality, citizenship and domicile. PNG grants women equal rights in all areas of citizenship and nationality and is in full compliance with CEDAW in these areas. Women have equal rights with men when they marry a non-national, they can determine their children's citizenship and nationality equally with the fathers of their children and have equal rights to acquire and obtain citizenship.
17. Article 10 obligates States Parties to ensure women have equal rights and opportunities in education. The provision of compulsory education is essential to ensure girls are equally prioritised and not discriminated against in early education. However, neither primary nor secondary school is compulsory for boys or girls in PNG. Further, discrimination is still prevalent in schools where girls and women face expulsion because of their pregnant status. An absence of a prohibition on the expulsion of pregnant girls from school perpetuates such discrimination.
18. Article 11 obligates States Parties to eliminate discrimination in employment. Women in PNG have many of the same rights in employment as men. However, there are a number of aspects of employment law in PNG which discriminate against women and do not comply with CEDAW, including the absence of anti-discrimination provisions in

- the employment legislation. The legislation prohibits women from working at night, in mines and from engaging in heavy labour. Although there are exceptions to these protectionist provisions, they nevertheless restrict the autonomy of women to freely choose their occupation.
19. Finally, it should be noted that legislative reform in employment law is being pursued in PNG with the drafting of an Industrial Relations Bill. If enacted, the Bill will raise the compliance of PNG in relation to Article 11 of CEDAW significantly.
 20. In the area of maternity leave, the public service sector in PNG offers more generous allowances than the minimum standards granted in the private sector. Neither sector fully meets the standards of 14 weeks paid maternity leave recommended by CEDAW and the International Labour Organisation (the ILO recommends a period of 14 weeks maternity leave and CEDAW recommends that this period be paid). The public service entitles female civil servants to 12 weeks of maternity leave of which 6 are on full pay. The private sector also provides 12 weeks leave but it is unpaid. Further protection from dismissal ends upon the expiry of the approved maternity leave period, leaving women in precarious positions in relation to job security if they require (or choose) to take further leave.
 21. Whilst the legislation creates a general duty on employers to provide 'safe' working conditions, PNG has not introduced any specific health protection for pregnant workers. Breastfeeding mothers are provided with breaks of half hour duration twice daily. However, these conditions are insufficient to enable breastfeeding mothers to balance the needs of young children with the demands of work. Similarly, the absence of any state or employer funded childcare facilities in PNG is likely to accentuate the difficulties nursing mothers face in the workplace.
 22. The CEDAW Committee in General Recommendations 12 and 19 has identified sexual harassment in the workplace as a form of discrimination against women. General Recommendation 19 defines sexual harassment as unwelcome sexually determined behaviour such as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands whether by words or actions. Such actions can be humiliating for the recipient and are discriminatory when they create a hostile work environment. Protection from sexual harassment *is* provided in the public sector, however, it is absent from the *Employment Act* leaving workers in the private sector without any means of redress.
 23. Article 12 requires States Parties to ensure that women have access to health care services including those related to family planning. Abortion is criminalised in PNG with a penalty of 7 years imprisonment and there is no exception to save a mother's life. The failure to decriminalise abortion and to provide safe accessible facilities for women who require abortions endangers their health and that of any child born subsequent to a failed abortion since research indicates that when a mother dies (including as a result of unsafe abortion) the chance of survival of all surviving children under 5 is significantly reduced.
 24. Article 13(b) of CEDAW provides that women should be afforded equal rights to

bank loans, mortgages and other forms of financial credit free from discrimination. Although there is no legislative barrier to women in PNG from accessing such services, discrimination continues to hinder women from obtaining credit and loans to purchase property or businesses, thus interfering with their autonomy and ability to earn a livelihood. Article 13(c) of CEDAW requires that women have an equal right to participate in recreational activities, sports and all aspects of cultural life and there are no legislative barriers in Papua New Guinea preventing women from doing so.

25. Article 14 obligates States Parties to put in place measures to ensure the equality of rural women. Rural women often play a significant role in the economic survival of their families and communities although they are frequently disadvantaged in areas such as land ownership, health, education and housing to name a few. The achievement of substantive equality for rural women and compliance with CEDAW requires temporary special measures provisions to be incorporated into both the Constitution and legislation. PNG, however, has not done so as yet.
26. Article 15 requires States Parties to guarantee women equality before the law and equal rights to participate in all aspects of civil life. PNG does not guarantee women equality before the law, however, there are no legal barriers to women's participation in court and tribunal processes, nor are women denied the right to conclude contracts and administer property.
27. Article 16 obligates States Parties to remove discrimination in family and personal laws including marriage, separation, divorce, maintenance, child custody, property division, paternity and inheritance.
28. The CEDAW Committee in General Recommendation 21 has nominated 18 as the minimum age of marriage for both males and females. In PNG, in non-compliance with CEDAW, the minimum age for marriage is 18 for males and 16 for females, reinforcing a view that girls 'mature' more quickly than males. In 'exceptional' circumstances the court can grant permission for males of 16 and females of 14 to marry. Permitting the marriage of girls at 14 falls well below the accepted age for marriage recommended by the CEDAW Committee and constitutes child marriage. Further, customary marriage is lawful in PNG and does not come under the perusal or regulation of the formal law although the court can forbid a marriage if there is excessive pressure on a woman to conform. PNG does however, in compliance with CEDAW, require the registration of all marriages and the consent of *both* parents in the marriage of minors. However, whilst bigamy is a criminal offence, this law is not applicable to customary marriages.
29. Fault based divorces, which require proof of a matrimonial offence such as desertion or habitual rape, place women in the difficult position of having to provide evidence of situations that may be humiliating, embarrassing, or that may interfere with their dignity and privacy. Women also face discrimination in proving fault, particularly cruelty and adultery if they choose not to be witnesses or they do not wish to attend court proceedings. Divorce in PNG is based on fault based criteria (including adultery, desertion and cruelty) and is therefore not compliant with CEDAW. In addition, the court can order

- the restitution of conjugal rights, a provision which is manifestly discriminatory. There is also provision for damages for adultery, which is a criminal offence. These are discriminatory provisions imparting the notion that one spouse (typically the female spouse) is the property of the other.
30. The CEDAW Committee in General Recommendation 19(23) (which deals with violence against women, in relation to Articles 16 and 5 of CEDAW) states that a lack of economic independence or an inability to gain custody of their children upon separation forces many women to stay in violent or difficult relationships. The division of property is based on what is 'just and equitable', which fails to provide a clear criteria for judges. Such criterion is unlikely to include women's unpaid contributions to the household.
 31. PNG *does* provide for maintenance orders during separation and after divorce for both children and spouses. However, the basis on which maintenance is provided is left largely to the discretion of the court with the broad criteria of the 'means, earning capacity and conduct' of the parties. The latter, however, imports a notion of fault which is discriminatory to both children and spouses. The standards recommended by CEDAW, i.e., the needs and means of both parties, the financial commitments of both parties to themselves and others, their respective capacities to earn and the needs of any children for whom maintenance is sought are unlikely to be prioritised.
 32. In General Recommendation 21, which deals with equality in family relations, the CEDAW Committee states that the division of marital property should include recognition of non-financial contributions during a marriage such as raising children, caring for elderly relatives, and discharging household duties. However, the division of property in PNG after divorce is based on what is 'just and equitable', which fails to provide a clear criteria for judges. Such criterion is unlikely to include women's unpaid contributions to the household.
 33. The best interests of the child as the paramount consideration is universally accepted as the principle on which custody determinations should be based, according to Article 16(f) of CEDAW. PNG *has* adopted the recommended standard of the best interests of the child as the paramount consideration in custody disputes after separation and divorce in full compliance with CEDAW.
 34. In General Recommendation 21 the Committee states that the right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence. Women in PNG do not enjoy equality in relation to the ownership, administration, enjoyment and disposition of property since land tenure is based on custom leaving men in control of many aspects of land and property.
 35. Article 16 requires that inheritance laws should apply equally to males and females. Although the legislation does guarantee equality to men and women in inheritance, it does not apply to customary land which is based instead on patrilineal lines and can discriminate against women as long as it not repugnant to humanity, does not result in injustice or is contrary to the interests of a child under 16.

LEGISLATIVE COMPLIANCE OF PAPUA NEW GUINEA

36. A series of tables detailing PNG's compliance with CEDAW is provided in the following pages. Each table relates to an article of CEDAW and contains the applicable indicator(s), the level of compliance achieved, the relevant legislation and finally where required, a brief commentary explaining how PNG's legislation does or does not meet the indicator.

Papua New Guinea: Detailed Analysis of Indicators

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.1 Does the Constitution guarantee fundamental rights and freedoms to men and women equally including in the political, economic, social, cultural, civil or any other field?	Partial	<p><i>Constitution of the Independent State of Papua New Guinea 1975,</i></p> <ul style="list-style-type: none"> • s 55 (1). Gives all citizens the same rights, privileges, obligations and duties regardless of sex. • s 55(3). This section 'does not affect the operation of a pre-independence law'. • s 35-38. Liberty, freedom from forced labour, from arbitrary search and entry, conscience thought and religion, expression, assembly and association, freedom of employment, right to privacy, right to vote and stand for public office, freedom of information, freedom of movement, unjust deprivation of property, equality of citizens. 	<p>The rights protected include many of those required by CEDAW and these are afforded equally to men and women. There is therefore partial compliance with this indicator but notable absences include:</p> <ul style="list-style-type: none"> • Substantive equality is not a guaranteed right. • Freedom from discrimination is not a guaranteed right. • The right to the highest standard of physical and mental health attainable is not a guaranteed right. • The rights that are protected are limited by the imposition of obligations and duties and pre-independence laws are unaffected.
1.2 Is there a constitutional guarantee of substantive equality between men and women?	No		Equality between men and women is not one of the protected rights.
1.3 Does the Constitution contain an anti-discrimination clause on the ground of sex/gender?	No		No anti-discrimination provision.
1.4 Does the Constitution contain an anti-discrimination clause on the ground of marital status?	No		
1.5 Does the Constitution contain an anti-discrimination clause on the ground of sexual orientation?	No		
1.6 Does the Constitution contain an anti-discrimination clause on the ground of HIV status?	No		
1.7 Does the Constitution contain an anti-discrimination clause on the ground of disability?	No		

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.8 Does the breadth of the anti-discrimination clause encompass direct and indirect discrimination?	No		
1.9 Does the anti-discrimination clause bind public authorities and institutions?	No	<i>Constitution of the Independent State of Papua New Guinea 1975.</i> <ul style="list-style-type: none"> • s 34(a). Between individuals as well as between governmental bodies and individuals; and • s 34(b). To and in relation to corporations and associations (other than governmental bodies) in the same way as it applies to and in relation to individuals. 	Although the Bill of Rights binds public authorities, there is no compliance with this indicator in the absence of anti-discrimination provisions.
1.10 Does the anti-discrimination clause bind any person, organisation or enterprise?	No	<i>Constitution of the Independent State of Papua New Guinea 1975 s 34(a)(b).</i> As above.	Although the Bill of Rights binds individuals and organisations, there is no compliance with this indicator in the absence of anti-discrimination provisions.
1.11 Are sanctions imposed for breach of anti-discrimination clause?	No	<i>Constitution of the Independent State of Papua New Guinea 1975, s 23.</i> Imprisonment for up to 10 years imprisonment or fine for a breach of the Constitution.	In the absence of an anti-discrimination clause, there is no compliance with this indicator.
1.12 Are there specific domestic violence offences in criminal law legislation (Penal Code)?	No	<i>Criminal Code 1974.</i> There is no specific domestic violence protection. Two offences could be used: <ul style="list-style-type: none"> • s 343. Common assaults - 6 months imprisonment. • s 344. Aggravated assaults - fine or 12 months imprisonment. 	These provisions do not embrace the variety of situations that constitute domestic violence and fall well short of compliance. The low sentences also limit their effectiveness to protect women from domestic violence.
1.13 Is stalking a criminal offence?	No		No offence in the Penal Code that could be used in situations of stalking.
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	No		
1.15 Is there mandatory prosecution for domestic violence offences?	No		
1.16 Does the criminal law legislation provide a broad range of sexual assault offences graded on the basis of seriousness to the victim?	Yes	<i>Criminal Code (Sexual Offences and Crimes Against Children) Act 2002</i> has introduced a new sexual assault regime into the Criminal Code. The new regime includes a series of	

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		offences covering all forms of abuse and graded on the basis of seriousness to the victim. Substantial penalties have been introduced for these offences.	
1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects to anus, vagina and mouth?	Yes	<i>Criminal Code 1974, s 347</i> (amended by s 17 of the <i>Criminal Code (Sexual Offences and Crimes Against Children Act 2002)</i>). Sexual penetration includes introduction of penis or any other body part or other object to mouth, vagina or anus.	
1.18 Is there an offence of incest for the criminal law legislation for girls and women? If there is no offence of incest then there is full compliance with this indicator.	Partial	<i>Criminal Code 1974, s 224</i> . An offence for a woman over 18 to 'permit' carnal knowledge by father, brother, son, or other lineal ancestor'. It is a defence if she was acting under coercion.	There is an offence of incest in the Code through which women over 18 can be charged with an offence. Although there is a defence of coercion recognising the power imbalance between women and male relatives, full compliance with CEDAW requires an express definition of coercion, which includes the differential power imbalance or the abolition of the provision.
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the legislation?	Yes		
1.20 Is consent specifically defined outlining coercive circumstances?	Partial	<i>Criminal Code 1974, s 347</i> . Lack of consent if there is force, threats or intimidation, fear of bodily harm, false representations as to the nature of the act and in impersonating husband.	This list is limited and does not cover the range of ways in which consent can be induced, for example, a threat to a third party. The list should therefore be non-exhaustive.
1.21 Is there a legislative prohibition on use of prior sexual conduct to establish consent?	No		
1.22 Is there a legislative prohibition on requirement for corroboration?	Yes		
1.23 Is there a legislative prohibition on a requirement to provide proof of resistance?	No		

**ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION**

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no defence of honest and reasonable belief then there is full compliance with this indicator.	No	<i>Criminal Code 1974, s 229F.</i> Defence of honest belief over 16 for sexual offences against females 12 and over.	To be compliant with this indicator, there should be no defence available to the perpetrator of 'honest and reasonable belief that the victim is of legal age'. The legislation does provide such a defence as it is open for the defendant to argue in relation to any girl over the age of 12 that he believed she was over 16. This removes the onus from the male perpetrator to verify the age of the girl to that of the girl to reveal her age. This is discriminatory and non-compliant with CEDAW.
1.25 Is a defence of consent unavailable in relation to a victim under 18?	Partial	<i>Criminal Code 1974, s 213, s 215, s 216.</i> Consent is not a defence for girls under 16.	Full compliance with the indicator requires that consent is not a defence in relation to any girl under 18.
1.26 Is there an exemption from prosecution for marital rape? If yes, then there is no compliance with this indicator?	Yes		To be compliant with this indicator men should not be exempted from prosecution for marital rape. If the Penal Code contains a law which protects men from being charged with marital rape, then there is no compliance with this indicator. The Penal Code does <i>not</i> exempt husbands from prosecution for marital rape and PNG is therefore in full compliance with this indicator and with CEDAW.
1.27 Is there mandatory prosecution for sexual offences?	No		
1.28 Is bail unavailable for sexual offences if there is risk to victim?	Partial	<i>Bail Act 1977, s 4.</i> Bail for rape can only be granted by National or Supreme Court. There is a presumption that it will be granted unless	Rape and defilement are regarded as 'serious' offences. However, the

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		'serious assault'. No exception for sexual offences.	penalty for indecent assault is only 2 years and is unlikely to be classified as serious. Potentially therefore, any assault that does not involve penile penetration may result in bail being granted.
1.29 Are there minimum sentences for sexual offences?	No	<i>Criminal Code 1974</i> . <ul style="list-style-type: none"> • s 231. Rape - life imprisonment However <ul style="list-style-type: none"> • s 19. Allows the court discretion to shorten sentences for rape and defilement. All other sexual offences are 'not exceeding' the designated penalty therefore there is no minimum sentence.	Failure to designate minimum sentences allows light sentences to be issued in relation to sexual offences.
1.30 Is there a provision in the criminal law legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	No		Note that s 349B makes it an offence to order a person to commit a sexual offence on another as 'payback'.
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	Yes	<i>Criminal Law (Compensation) Act 1991, s 2</i> . An award for compensation can be made to the victim.	
1.32 Does the criminal law legislation allow for infanticide to replace a charge of murder or manslaughter?	Partial	<i>Criminal Code 1974, s 301(1)(a)(b)</i> . A woman who causes the death of her child under 12 months by a wilful act or omission in circumstances where her mind was disturbed from the effect of giving birth to the child or the effect of lactation consequent on the birth of the child may be guilty of infanticide and punished as if she had been guilty of the manslaughter of the child.	A charge of infanticide should be a replacement offence for both murder and manslaughter with a much lighter sentence to recognise the societal pressures that might lead a mother to kill her child.
1.33 Does the definition of infanticide include environmental and social stresses?	No	As above.	Research suggests that women who kill their children do so in part because of the environmental and social stresses of raising children. Basing infanticide solely on the perceived hormonal and biological weaknesses that women suffer during childbirth and lactation does not comply with this indicator.

ARTICLE 3: GUARANTEE OF BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
3.1 Is there legislation establishing national human rights machinery charged with promoting and protecting human rights including women rights?	No		
3.2 Is there legislation establishing a funded body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	Partial	<i>National Council of Women Incorporation Act 1979, s 4 (a) - (e)</i> . Establishes a National Council of Women charged with representing the views of all Papua New Guinea women, providing opportunities for mutual understanding amongst women, and to promote understanding and exchange of views with regional and international organisations in matters of common concern to women.	There is partial compliance with this indicator because: <ul style="list-style-type: none"> • The National Council of Women whilst not empowered to monitor the implementation of non-discriminatory law does have some power to influence policy for the advancement of women. • A Gender and Development Division has been established within the Department of Social Welfare and Development. Although not established by legislation and therefore susceptible to removal during economic or political upheaval the Division has some monitoring powers in relation to law and policy for the advancement of women.

ARTICLE 4: ACCELERATION OF EQUALITY BETWEEN MEN AND WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
4.1 Does the Constitution contain a temporary special measures provision?	Yes	<i>Constitution of the Independent State of Papua New Guinea, 1975, s 55(2)</i> . For the special benefit, welfare, protection or advancement of females.	

ARTICLE 4: ACCELERATION OF EQUALITY BETWEEN MEN AND WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, HIV status and disability?	Partial	<i>Constitution of the Independent State of Papua New Guinea 1975, s 55(2)</i> . Exempt on the grounds of sex.	Affirmative action is exempt from a discrimination action on the ground of sex but not marital status, sexual orientation, disability and HIV status.

ARTICLE 5: SEX ROLES AND STEREOTYPES

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
5.1 Is there a provision in the Constitution which gives precedence to a constitutional guarantee of equality if there is a conflict between custom and equality law?	No	<i>Constitution of the Independent State of Papua New Guinea, 1975</i> <ul style="list-style-type: none"> Schedule 2.1(1). Customary law is part of the 'underlying law' of Papua New Guinea. Subject to two provisos. Schedule 2.2(a). Cannot be inconsistent with the Constitution or with statute Schedule 2.2(b). Not valid if inappropriate to conditions of country. <i>Customs Recognition Act 1963</i> . <ul style="list-style-type: none"> s 3(1). Custom to be recognised. s 3(1)(a). Not if result in injustice or contrary to public interests. s 3(1)(b). Not if contrary to best interests of child under 16. 	Customary law has constitutional legal status in Papua New Guinea. Although there are some limits on customary law, in the absence of a constitutional guarantee that equality between men and women takes precedence over customary law, women have no recourse against discriminatory practices.

ARTICLE 6: EXPLOITATION OF WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.1 Is the act of soliciting decriminalised?	Yes		No offence for soliciting.
6.2 Is aiding and abetting consensual acts of soliciting decriminalised?	No	<i>Summary Offences Act 1966, s 55, s 56, s 57.</i>	
6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	Partial	<i>Criminal Code 1974</i> . <ul style="list-style-type: none"> s 229L. Offence to be a client to a child, to procure or to engage - 15 year imprisonment or life if under 12 years. s 229M. Offence for parent to allow or facilitate child - 10 years imprisonment. s 221. Detain a woman without her consent 	These offences provide strong protection for child sex work, however, the penalties in relation to women procured against their will are low and therefore compliance with

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ARTICLE 6: EXPLOITATION OF WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		with intent that some other person may have carnal knowledge with her. Withholding clothes constitutes detaining. - 2 years imprisonment. <ul style="list-style-type: none"> • s 222. Using false pretences or other fraudulent means - 3 years imprisonment. 	this indicator is partial.
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No		Sex workers should be afforded all the rights and protections of other workers.
6.5 Is the trafficking of women prohibited?	Partial	Criminal Code 1974. <ul style="list-style-type: none"> • s 218. It is an offence to procure entice or lead away any girl or woman so that some person may have carnal knowledge with her either inside or outside Papua New Guinea - 3 years imprisonment. • s 219. Procure using drugs – 7 years imprisonment But both require corroboration.	The legislation provides some protection against the trafficking of women, however, compliance is partial because: <ul style="list-style-type: none"> • The penalties are low. • Corroboration is required placing an unreasonable burden on victims.
6.6 Is sex tourism prohibited?	No		

ARTICLE 7: POLITICAL AND PUBLIC LIFE

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
7.1 Is there an equal right to vote?	Yes	Constitution of the Independent State of Papua New Guinea 1975, s 50.	
7.2 Is there equal eligibility for political representation?	Yes	Constitution of the Independent State of Papua New Guinea 1975, <ul style="list-style-type: none"> • s 50. Equal eligibility for political representation. • s 129(h). Authorises the payment in certain circumstances of a percentage of electoral expenses incurred by a female candidate. 	
7.3 Is there legislative provision for minimum quotas of women in Parliament?	No		Despite equal eligibility to enter parliament only 1 woman has held or currently hold any of the 109 seats in the PNG parliament. Quotas, which have raised numbers of women in parliament in other countries, may assist in achieving substantive equality in this area.
7.4 Do women have an equal right to participate in NGOs?	Yes		No legal barrier to participation.

ARTICLE 7: POLITICAL AND PUBLIC LIFE

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilise to promote the advancement of women, without political interference?	No		<i>Associations Incorporation Act 1966</i> enables organisations to register but the aims of the society must fall within a specified lists of non-political objectives.

ARTICLE 8: INTERNATIONAL REPRESENTATION AND PARTICIPATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
8.1 Is there equal opportunity for women to represent government at international level and participate in the work of international organisations?	Partial		Although there is no legal barrier preventing women from representing government at the international level, few do, and the introduction of a quota system would ensure full compliance with this indicator.

ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
9.1 Do women have an equal right to acquire, change or retain their nationality?	Yes	<i>Constitution of the Independent State of Papua New Guinea 1975, s 65.</i>	
9.2 Does marriage to an alien or change of husband's nationality affect wife's nationality? If there is no change to a wife's nationality after marriage there is full compliance with this indicator.	Yes	<i>Constitution of the Independent State of Papua New Guinea 1975, s 67.</i>	To be compliant with this indicator, the marriage of a woman to a non-national should not affect her nationality. The legislation does <i>not</i> alter the nationality of female citizen upon marriage and therefore there is full compliance with this indicator and with CEDAW.
9.3 Do both spouses have equal rights in residency, citizenship and employment when married to a non-national?	Yes	<i>Constitution of the Independent State of Papua New Guinea 1975, s 97.</i>	
9.4 Do both spouses have an equal right to determine the nationality of children?	Yes	<i>Constitution of the Independent State of Papua New Guinea 1975, s 66.</i>	
9.5 Do women have and equal right to obtain a passport?	Yes	<i>Passports Act 1982, s 5.</i>	

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ARTICLE 10: EDUCATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
10.1 Does the legislation guarantee women and girls equal to access to education?	Partial	<i>Education Act 1983, s 4 (d) (e).</i> Object of act is to make education accessible to the poor and the physically, mentally and socially handicapped as well as to those who are educationally disadvantaged as far as this can be done by legislative means.	Full compliance with CEDAW requires that the legislation explicitly guarantees equal access to education for girls and women. In partial compliance with the indicator the legislation indirectly provides them with a legal right to accessible education.
10.2 Is there legislation that creates special measures for the advancement of women in education?	No		
10.3 Is there compulsory primary education for girls and boys?	No		
10.4 Is there compulsory secondary education for girls and boys?	No		
10.5 Is there compulsory family life (reproduction and sexual health) education in schools?	No		
10.6 Is there a legislative prohibition on expulsion from school because of pregnancy?	No		

ARTICLE 11: EMPLOYMENT			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.1 Are there anti-discrimination provisions in employment legislation on the grounds of sex, marital status, pregnancy, sexual orientation and HIV status with sanctions?	Partial	<i>Employment Act, 1978, s 97(a)</i> . Prohibits discrimination by employer on account of sex.	No protection is provided on the grounds of marital status, disability, sexual orientation and HIV status.
11.2 Are there special measures provisions for the advancement of women in employment?	No		
11.3 Do women enjoy equal conditions of work including leave, superannuation and Workers Compensation?	Partial	<ul style="list-style-type: none"> • <i>National Provident Fund Act 1980, s 2</i>. Employee is defined as 'employed for wages for any kind of work'. • <i>Workers Compensation Act 1978, s 1</i>. Worker excludes outworkers and casual worker. • <i>Employment Act 1978, s 1</i>. Employee means a person serving another person under a contract of service. s 10 If casual excluded from sick leave and 'piece-rate worker excluded from hours of work and overtime. • <i>Public Service General Order 20.63-71</i> made pursuant to the <i>Public Service (Management) Act 1995</i>. If a female officer has 'breadwinner status' she is entitled to all and same entitlements as a male officer. If employee believes she is being discriminated against then she can request a review. 	<p>This is an inclusive definition of a worker.</p> <p>The exclusion of outworker and casual worker will disproportionately impact upon women.</p> <p>The exclusions from certain conditions for casual and piece rate worker will disproportionately affect women.</p> <p>This provision means that if a woman is not classified as breadwinner she can be discriminated against in regard to entitlements. In addition, de facto relationships are not recognised in relation to spousal benefits. All workers should be equally entitled to family entitlements.</p>

LEGISLATIVE COMPLIANCE OF PAPUA NEW GUINEA

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	Partial	<ul style="list-style-type: none"> <i>Public Service General Order 15.59. 20.73</i> made pursuant to the <i>Public Service (Management) Act 1995</i>. Includes sexual harassment as an offence with possible dismissal as penalty. This applies to public service workers. No protection in the <i>Employment Act 1978</i> and no provision in the Criminal Code which could be used. 	Explicit protection from sexual harassment for public service workers provides partial compliance with this indicator. However, there is no similar protection for women in the private sector.
11.5 Does the definition of sexual harassment protection the breadth of unwanted behaviours?	Partial	<i>Public Service General Order 15.59; 20.73</i> made pursuant to the <i>Public Service (Management) Act 1995</i> . The definition includes demands of a sexual nature in exchange for promotion and other benefits or unwelcome verbal or physical suggestions which creates offensive or intimidating working environment.	This is a comprehensive definition covering a range of unwanted behaviours.
11.6 Does the legislation contain an equal pay provision?	Yes	<i>Employment Act 1978, s 97 (b)</i> . Employer who fails to pay a 'female employee the same wages as a male employee employed at the same level in the same work is guilty of an offence.	
11.7 Does the legislation contain pay equity legislation?	No		
11.8 Does the legislation provide for an equal retirement age?	Partial	<ul style="list-style-type: none"> <i>Public Services (Management) Act 1995, s 56</i>. Guarantees equal retirement age. No legal guarantee of equal retirement in <i>Employment Act 1978</i>. 	Equal retirement age applies to public service workers but there is no legal protection of retirement age of private sector workers.
11.9 Are there restrictions on women's choice of employment? If there are no restrictions on women's choice of employment then there is full compliance with this indicator.	No	<p><i>Constitution of the Independent State of Papua New Guinea 1975, s 48</i>. Every person has the right to freedom of choice of employment for which she has the qualifications lawfully required.</p> <p><i>Employment Act 1978,</i></p> <ul style="list-style-type: none"> <i>s 98</i>. Prohibits females from employment in heavy labour work, underground mines unless a responsible position, and non-manual work. <i>s 99</i>. Women cannot be employed between 6pm and 6am unless in a responsible position at managerial or technical level, employed in health or welfare services, or an undertaking in which only family members are employed. 	To be compliant with this indicator, there should be no restrictions on a woman's choice of employment. Although the Constitution gives all citizens the right to choose their employment the <i>Employment Act</i> prevents women from undertaking certain types of work. This is discriminatory and in non-compliance with the indicator and with CEDAW.

ARTICLE 11: EMPLOYMENT			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.10 Does the legislation provide for health protection during pregnancy?	Partial	<i>Employment Act 1978, s 127-132.</i> General duty on the employer to oversee the health and welfare of workers.	Although there is a general duty to provide medical care there is no particular responsibility on employers to provide health protection for pregnant workers.
11.11 Does the legislation provide for paid maternity leave of not less than 14 weeks?	Partial	<ul style="list-style-type: none"> • <i>Employment Act 1978, s 100.</i> Unpaid leave such as 'necessary for hospitalisation' prior to birth and 6 weeks after the birth if the person has been employed for not less than 108 days within a 12 month period or not less than 90 days within a 6 month period immediately preceding. An additional period of 4 weeks if sick due to confinement can be granted. • <i>Public Service General Order 14</i> made pursuant to the <i>Public Service (Management) Act 1995.</i> Six weeks prior to the birth on unpaid leave (or sick or recreation leave) six weeks following birth on full pay. Probationary officers, however, are not entitled to paid leave. 	Both public and private sectors provide maternity leave however only the public service provides paid leave but only for six weeks. This does not meet the standards recommended by CEDAW and the ILO and does not realistically allow women to manage both their childcare responsibilities and their employment.
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	Partial	<i>Employment Act 1978, s 100 (b).</i> If employed for more than 90 days cannot terminate employment without workers consent during the 90 days. An additional period of 4 weeks if sick due to confinement. After this dismissal is lawful.	Although women are protected from dismissal during the period of 90 days leave, they are unlikely in the absence of paid childcare to be able to retain their jobs. Full compliance requires protection from dismissal for a reasonable period.
11.13 Does the legislation guarantee the provision of childcare by employer or state?	No		
11.14 Does the legislation provide reasonable nursing time during work hours?	Partial	<p><i>Employment Act 1978.</i></p> <ul style="list-style-type: none"> • <i>s 101(1).</i> Nursing children or breast feeding allowed 'not less than one half hour twice daily during normal working hours'. • <i>s 101(1).</i> Must be counted as working hours for the purpose of calculating wages <p><i>Public Service General Order 14</i> made pursuant to the <i>Public Service (Management) Act 1995.</i> Period not exceeding 1 hour twice on each day for a period not in excess of 6 months from birth of child.</p>	The provision of two half hour breaks in the private sector and two one hour breaks in the public sector, in the absence of childcare facilities is unlikely to enable women to retain their jobs whilst nursing young children.

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ARTICLE 12: HEALTH CARE AND FAMILY PLANNING

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
12.1 Do women have access to safe and legal abortion facilities?	No	<i>Criminal Code 1974, s 225.</i> Abortion is a criminal offence -7 years imprisonment for woman, anyone who assists: 14 years imprisonment.	These provisions are discriminatory to women because: <ul style="list-style-type: none"> • The criminalisation of abortion denies women access to safe medical facilities and encourages the use of unsafe methods and facilities. • The criminalisation of abortion restricts women's autonomy and right to choose if and when they have children. • The serious penalty for women who procure their own abortion of 7 years fails to account for the reasons why women may choose to abort. • Abortion is unlawful even if to save a mother's life.

ARTICLE 13: ECONOMIC AND SOCIAL BENEFITS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
13.1 Do women have an equal right to family benefits regardless of marital status?	Yes		PNG does not have a social security system.
13.2 Do women have an equal right to receive bank loans, mortgages and financial credit?	Yes		No legal barrier to obtaining bank loans, mortgages and financial credit.
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes		No legal barrier to equal participation in recreational activities, sports and cultural life.

ARTICLE 14: RURAL WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
14.1 Is there legislation that provides for special measures to advance substantive equality for rural women?	No		Many women in PNG live in rural communities and it is crucial that Papua New Guinea incorporates special measures into either the national constitution or legislation to advance substantive equality.

ARTICLE 15: EQUALITY BEFORE THE LAW AND CIVIL MATTERS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
15.1 Does the Constitution guarantee equality before the law?	No		
15.2 Do women have an equal capacity in civil matters – can women sue?	Yes	<i>Married Women's Property Act 1953, s 2.</i>	No legal barrier to the capacity of women to sue.
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes		No legal barrier to participate in courts and tribunals.
15.4 Do women have an equal right (regardless of marital status) to conclude contracts and administer property?	Yes	<i>Married Women's Property Act 1953, s 3.</i>	No legal barrier to the capacity of women to conclude contracts and administer property.
15.5 Do women have an equal right to be executors or administrators of estates?	Yes	<i>Wills Probate and Administration Act, 1966. Married Women's Property Act 1953, s 16.</i>	No legal barrier to appointing women as administrator of estates.
15.6 Is there legislation nullifying all contracts and instruments that limit women's legal capacity?	No		No specific legislation that has this effect.
15.7 Do women have an equal right to choose residence and domicile?	Yes		No legal barrier preventing women from choosing their place of residence and domicile.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.1 Does the legislation guarantee women's entry into marriage with full and free consent?	Partial	<p><i>Marriage Act 1963.</i></p> <ul style="list-style-type: none"> • s 17 (1)(d)(1). A marriage is void if the consent of either of the parties is not a real consent because it was obtained by duress or fraud. • s 3. Customary marriage lawful and according to the custom of the tribe or group which either spouse belongs to. • s 5. Court can forbid a customary marriage if woman objects and excessive pressure to persuade or hardship to compel her to conform to custom. 	<p>The legislative recognition of customary marriage does not guarantee the right for women to enter marriage with full and free consent. The right of the court to forbid marriage only if <i>excessive</i> pressure or <i>hardship</i> to compel her to conform to custom, is clearly discriminatory. It implies that full and free consent may not be required.</p>
16.2 Does the legislation allow marriages to be nullified if they took place under force, duress or undue influence?	Partial	See above 16.1	See above 16.1
16.3 Is there an equal minimum age of 18 for marriage?	No	<p><i>Marriage Act 1963.</i></p> <ul style="list-style-type: none"> • s 7. 18 for males and 16 for females. Male of 16 and female 14 can apply to judge or magistrate for an order authorising marriage. Presumption against authorisation unless 'exceptional or unusual circumstances'. • s 6. Customary marriages exempt from these requirements. 	<p>These provisions are discriminatory because:</p> <ul style="list-style-type: none"> • The marriageable ages differ. • Authorising marriage for girls at 14 is well below the CEDAW Committee's recommended age of 18. • Customary marriages are not subject to any age restrictions.
16.4 Is there a legislative prohibition on child marriage?	Partial	<i>Marriage Act 1963, s 58.</i> An offence to marry a person not of marriageable age.	Since it is permissible to marry at 14 and customary marriages are exempt this is not a strong prohibition on child marriage and therefore is not fully compliant with the indicator.
16.5 Does the legislation require registration of marriage in official registry?	Yes	<i>Marriage Act 1963, s 4.</i>	
16.6 Does the legislation prohibit bigamy?	Partial	<i>Criminal Code 1974, s 360(8).</i> Bigamy is an offence but does not apply to customary marriages.	

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.7 Do women have an equal right to choose a family name?	Yes	No legal requirement to choose particular family name.	
16.8 Is the consent of both parents equal in marriage of minors?	Partial	<i>Marriage Act 1963, Schedule 1.</i> If under 21 consent from both parents or guardian if child is legitimate. Mother or guardian if illegitimate.	Although equal for children born within marriage, the failure to include fathers if the child is not born within marriage does not designate equal responsibility for children to the parents.
16.9 Are both spouses equal in ownership, acquisition, management, administration, enjoyment and disposition of property?	No		The legislation does not guarantee equality to both spouses in the ownership, acquisition, management, administration, enjoyment and disposition of property, Land tenure is instead primarily based on custom (which is guaranteed by the Constitution) where women are not fully equal in ownership, acquisition, management, administration, enjoyment and disposition of property.
16.10 Does the legislation provide for maintenance and custody order during separation based on need?	Partial	<i>Matrimonial Causes Act 1963</i> <ul style="list-style-type: none"> • s 40. Separation order available on fault based grounds. • s 43(3). Husband must pay maintenance. • s 73. 'As it thinks proper having regard to the means, earning capacity and conduct of the parties and all relevant circumstances'. 	These provisions are discriminatory and non-compliant with CEDAW because: <ul style="list-style-type: none"> • Although maintenance is available, it is only upon a separation order which requires that fault be established. • The actual amount will be determined partially on the basis of 'conduct' which also imparts a notion of fault.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	No		
16.12 Does the legislation provide for restitution of conjugal rights not available? If the legislation does not provide such an order then there is full compliance with this indicator.	No	<i>Matrimonial Causes Act 1963, Division 4, s 17 s 48-54.</i> Provides for a 'decree of restitution of conjugal rights' enables petitioner to request order for conjugal rights if they are denied without 'just cause or excuse'.	To be compliant with this indicator, the legislation should not empower the courts to provide an order for restitution of conjugal rights. The legislation <i>does</i> provide for orders for restitution of conjugal rights (which are discriminatory as they take away a woman's autonomy to choose when and with whom she has sexual relations) and therefore is in non-compliance with this indicator and with CEDAW.
16.13 Does the legislation provide for no-fault divorce?	No	<i>Matrimonial Causes Act 1963, s 17.</i> Fault based divorce. Separation of 5 years if no other fault based criteria.	The requirement to prove fault operates to the detriment of women who may find it difficult to provide evidence and to attend court. It detracts from their autonomy to make decisions about their lives.
16.14 Is there a duty on the court to promote reconciliation? If the legislation does not contain such a duty then there is full compliance with this indicator.	No	<i>Matrimonial Causes Act 1963, s 10.</i> If it appears to the judge there is a reasonable possibility of a reconciliation the judge can adjourn the proceedings, nominate a marriage guidance person or interview them her/himself with view to achieving reconciliation.	To be compliant with this indicator, there should not be a duty on the court to promote reconciliation between estranged spouses. Such a duty is discriminatory and non-compliant with CEDAW because it removes women's choices or reduces their autonomy to choose to leave a relationship. The legislation <i>does</i> place a duty on the court to promote legislation and

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			therefore is non-compliant with the indicator and with CEDAW.
16.15 Does the legislation provide for an equal division of property after divorce including recognition of unpaid contribution; future needs and future earning capacity calculated?	Partial	<i>Matrimonial Causes Act 1963, s 75.</i> 'Just and equitable in the circumstances'.	None of the criteria recommended in GR 21 are included in the provision. Instead, it is left to the courts to interpret the meaning of just and equitable denying any safeguards for women whose unpaid contribution to the marriage is unlikely to be recognised.
16.16 Does the legislation provide for the payment of child support after divorce based on need?	Partial	<i>Matrimonial Causes Act 1963.</i> <ul style="list-style-type: none"> • s 76 (g)(i). Court can order payment of maintenance of a child. • s 73. 'As it thinks proper having regard to the means, earning capacity and conduct of the parties and all relevant circumstances'. 	These provisions do not fully comply with the indicator because: <ul style="list-style-type: none"> • Reference to conduct implies the award is partially fault based rather than based on the needs of the child. • Can discharge an order if the party who receives it remarries which detracts from the principle of joint responsibility for parenting.
16.17 Does the legislation provide for maintenance for ex-spouse based on commitments, income, earning capacity, assets?	Partial	<i>Matrimonial Causes Act 1963,</i> <ul style="list-style-type: none"> • s 76 (f). Court can order payments to a party of a marriage. • s 73. 'As it thinks proper having regard to the means, earning capacity and conduct of the parties and all relevant circumstances'. • s 76(i). Can impose terms and conditions. 	The reference to conduct implies fault is relevant and the ability to impose conditions may result in the curtailment of the freedom of one of the parties.
16.18 Is custody and access to children based on best interests of child regardless of relationship of parents?	Yes	<i>Matrimonial Causes Act 1963, s 74.</i> 'Interest of the child paramount'.	

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.19 Does the legislation provide damages for adultery? If there is no provision for damages then there is full compliance with this indicator.	No	<ul style="list-style-type: none"> • <i>Adultery and Enticement Act 1988</i>, s 4, s 5. Damages available from adulterous spouse and third party. • <i>Native Regulation (Papua) Act 1939</i>, s 17. Adultery a criminal offence. • <i>Sorcery Act 1971</i>. Provides a defence to a charge of adultery on the basis that it was instigated by sorcery. 	To be compliant with this indicator, the legislation should not provide damages for adultery. Damages for adultery are discriminatory as they seek to punish the sexual behaviour of consenting adults and interferes with their autonomy. The legislation <i>does</i> provide a right to damages for adultery and therefore is non-compliant with the indicator and with CEDAW.
16.20 Do women have equal rights to guardianship, wardship, trusteeship and adoption?	Partial	<i>Adoption of Children Act 1968</i> . <ul style="list-style-type: none"> • s 7. Equal right to adopt. • s 8(b). The court cannot make an order if the adopter being a male person, is less than 18 years older than the child, or, being a female person, is less than 16 years older than the child. 	The different ages for males and females are discriminatory.
16.21 Does the legislation recognise de facto rights (including same-sex couples) on the same basis as marriage?	No	No recognition of de facto relationships.	
16.22 Does the legislation provide an order for establishing parentage?	No		
16.23 Does the legislation provide for a contribution to pregnancy and child birth costs by father to unmarried mother?	No		
16.24 Does the legislation provide for the payment of child support for children born outside marriage?	No		

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.25 Does the legislation provide for equal inheritance laws?	Partial	<i>Wills Probate and Administration Act, 1966.</i> s 82 - 88. The legislation applies equally to males and females. But s 2. Does not apply to customary land.	The legislation does provide for equal inheritance, however, customary land is outside the scope of the law. Customary rules of inheritance may therefore lawfully operate in conflict with the legislation even if they discriminate against women.
16.26 Is there legislation requiring the court to apply CEDAW and CRC to domestic family law when relevant?	No		

