

Domestic Violence and Family Law in Papua New Guinea

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February 2021



Introduction

This paper arose from a research project on family protection orders (FPOs) in Papua New Guinea (PNG), during which it became apparent that many matters being brought to the police and courts involved both domestic violence and family law issues. It also became clear that there was a lack of current information available regarding family law in PNG, with the only comprehensive textbook on the subject last updated over 25 years ago (Jessep and Luluaki 1994). This paper seeks to provide an overview of PNG's family law architecture, explain how it is administered by PNG courts and discuss the interaction between family law and domestic violence matters. It concludes with some suggestions that could make the system easier to navigate for PNG citizens. The annex provides a list of the family law legislative instruments currently in force, as well as those that have been repealed.

Context

While domestic violence and family law issues are closely interrelated anywhere in the world, this appears particularly true in PNG with its high rates of domestic violence. The interrelationship between family law matters and domestic violence was evident in our research (Putt and Kanan 2021), with family law matters regularly cited in affidavits, court hearings and interviews relating to FPOs. Another recent research project (Putt and Dinnen 2020) highlighted the lack of information and options for citizens seeking assistance with family law matters, with police Family and Sexual Violence Units (FSVUs) dealing with a large number of 'welfare' cases.¹ Family disputes and the separation of intimate partners can be additionally complex to navigate given the interplay between statutory and customary laws in PNG.

Family law in PNG

Family law deals with issues relating to family and domestic relationships. Major topics covered by family law include marriage, divorce, child maintenance, property claims following separation and the custody and adoption of children (Jessep and Luluaki 1985:11).

Much of PNG's family law legislation was adopted as a result of the Australian colonial administration and reflects the laws of Australia and the United Kingdom prior to PNG's independence in 1975. Legislation in this category still in force in PNG today includes:

- the Marriage Act 1963
- the Matrimonial Causes Act 1963
- the Civil Registration Act 1963
- the Adoption of Children Act 1968 and
- the Adoption of Children (Customary Adoptions) Act 1969.

The following pieces of family law legislation also predate independence but have now been repealed:

- the Deserted Wives and Children Act 1951
- the Infants Act 1956 and
- the Child Welfare Act 1961.

In the three decades immediately following independence, only one new law was introduced in this sphere: the Adultery and Enticement Act 1988. This Act allows an individual to claim compensation of K1000 for adultery² and K500 for enticement³ through the District Court. An action under the Act can be brought against the spouse, the person with whom the spouse committed adultery, or both.

Another quiet couple of decades ensued, followed by a suite of legislative reforms in the 2010s that intersect with family law issues, namely:

- the Family Protection Act 2013

- the Family Protection Regulation 2017⁴
- the Juvenile Justice Act 2014
- the Lukautim Pikinini Act 2015 and
- the Lukautim Pikinini Regulation 2011.

The Lukautim Pikinini Act (LPA), roughly translatable as the Looking after Children Act, was first introduced in 2007, then replaced in 2009 (Sullivan 2013:16) and again in 2015.

This paper focuses on the most recent suite of legislation and attempts to explain how it interfaces with the courts. However, there are many aspects of family law not discussed here, such as marriage, divorce and property. A full list of legislative instruments relevant to family law in PNG is provided in Annex 1.

The Family Court

PNG's Family Court was established by the LPA 2015.⁵ The 2007 and 2009 LPAs also referenced a court with similar functions called the Pikinini Court. The LPA 2015 confirms that all District Court magistrates are Family Court magistrates.⁶

Though the Family Court was established by the LPA, it also deals with matters under other pieces of legislation, including the Family Protection Act (FPA), Juvenile Justice Act (Family Law Legislations 2017) and Adultery and Enticement Act.

Across PNG, District Courts sit in their Family Court jurisdiction when they deal with civil matters relating to the previously mentioned legislation.⁷ While there are 70 District Court locations in PNG — which in theory also cover 400 circuit court locations (Magisterial Service of Papua New Guinea 2011) — it is only the National Capital District (NCD) that has a designated Family Court building with specialised Family Court magistrates.

According to a 2016 report (Child Frontiers 2016:41), the Magisterial Service of Papua New Guinea is developing a plan to establish Family Courts and train designated magistrates. The current status of this plan is not clear.

Children and family law

In some jurisdictions, child protection issues are not strictly considered 'family law', but in PNG, the LPA is front and centre of Family Court matters. The LPA is not confined to child protection matters, however, and also deals with family law matters such as spousal maintenance, child maintenance and child custody and access.

The LPA 2015 states that the Family Court has jurisdiction to hear and determine matters relating to:

- child protection
- parenting orders (child custody)
- maintenance of a child and parent
- access to a child
- guardianship of a child
- adoption of a child and
- any other powers given under the LPA 2015.

Domestic violence and family law

The key pieces of legislation relating the domestic violence in PNG are the FPA 2013 and the Family Protection Regulation 2017. The FPA brought in a criminal offence for domestic violence and a regime for issuing civil FPOs.

A distinction to make when considering domestic violence and family law matters is the jurisdiction (criminal or civil) and the different standards of proof required for adjudication. With criminal matters, the burden of proof is beyond reasonable doubt, while with civil matters it is on the balance of probabilities. Criminal offences such as the domestic violence offence and the breach of protection order offence under the FPA are heard in District Courts sitting in their criminal jurisdiction.⁸ Family law issues such as adultery and child custody are civil matters because they are disputes between private citizens. As such, they do not involve the state as a party (for example the police prosecutor) or involve criminal offences. FPOs are also civil matters.

While District Courts across the nation can sit in either their criminal or civil (for example, Family Court) jurisdiction depending on the matter being heard, the NCD Family Court in Port Moresby can only hear civil matters. So, when it comes to the FPA, the NCD Family Court can conduct FPO hearings but cannot hear criminal matters such as domestic violence offences.

Matters such as child abuse and neglect can be dealt with as either civil or criminal matters depending on the nature of the alleged harm, the outcome being sought and by whom.

There is a large array of potential legal issues involving families, and different avenues for legal recourse to be sought depending on the issue. This makes the legal system complex to navigate and provides some explanation as to why police FSVUs deal with so many

Table 1: Domestic violence and family law: civil and criminal distinctions

	Civil	Criminal
Examples of types of matters	<ul style="list-style-type: none"> • FPO issued under the FPA • Adultery (Adultery and Enticement Act) • Parenting order (child custody) (issued under the LPA) • Maintenance order (child or spouse) (issued under the LPA) • Adoption of child (LPA) 	<ul style="list-style-type: none"> • Domestic violence offence (issued under the FPA) • Breach of FPO (issued under the FPA)
Parties	Private citizen versus private citizen	State versus private citizen
Court	<ul style="list-style-type: none"> • District Court sitting in Family Court jurisdiction • NCD Family Court 	District Court sitting in criminal jurisdiction
Standard of proof	Balance of probabilities	Beyond reasonable doubt

‘civil’ matters — people are not sure where else to go to have their issues resolved. Provincial Community Development divisions and public solicitors also assist with matters relating to families, including child protection, custody and maintenance.

Given the high rates of domestic violence in PNG, and the experiences of other countries,⁹ it is likely that many citizens who are grappling with family law matters are also dealing with domestic violence. One FSVU officer-in-charge told us that 60 per cent of their domestic violence cases involve ‘adultery’ where the man has a new partner but continues to threaten and abuse the former partner.

Where multiple issues are at play, for example a combination of domestic violence, adultery and child custody, seeking support through the legal system is not straightforward and three separate legal processes would need to be initiated to seek recourse through a District Court.

Village Courts in PNG comprise another tier of the justice system. Village Courts have the authority to issue FPOs under the FPA, however, uptake of this provision has been extremely limited (see Putt and Kanan 2021). Still, in most provinces ‘marriage problems’ is one of the most common matters heard by Village Courts,¹⁰ with assault, bride price and threatening words being the next most common (Village Courts and Land Mediation Secretariat 2011). Though Village Courts have not been a focus of our research, given these statistics, we can infer that a complex assortment of domestic violence

and family law matters are being brought to the attention of Village Courts.

Conclusion and recommendations

Citizens of PNG with issues relating to family law face a complex system if they seek to resolve matters through legal avenues. There are multiple places where issues can be reported and support sought, including police stations, Village Courts, District Courts, public solicitors’ offices, civil society organisations and Community Development departments. In Port Moresby, there are additional options including the NCD Family Court and the Office for Child and Family Services.

Some of this complexity could be ameliorated, at least in Port Moresby, if, for example, one court was designated (and resourced) as a specialist Domestic Violence and Family Court that dealt with both criminal and civil domestic violence and family law proceedings. Ideally, a range of common matters (for example domestic violence, maintenance, custody and adultery) could be heard by one magistrate as part of a single case, which would reduce the need for individuals, particularly survivors of violence, to file multiple cases and tell their story multiple times, which can be retraumatising.

Co-location of services could also assist the public in navigating the various actors in the system. For example, having a representative from the Office of the Public Solicitor available at the court premises to provide advice and assist with documentation could greatly improve the experience of court users.

This report was prepared as part of a larger research project on FPOs in PNG. The main report, authored by Judy Putt and Lindy Kanan, is titled 'Family Protection Orders in Papua New Guinea' and is available online at the Department of Pacific Affairs, The Australian National University. The research project was supported by the government of Australia in partnership with the government of Papua New Guinea as part of the Pacific Women Shaping Pacific Development Program, the Justice Services and Stability for Development Program and the Pacific Research Program.

Author notes

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Endnotes

1. The research found that between one-fifth and almost half of the complaints received by the police's FSVUs relate to non-criminal 'welfare' matters such as divorce, adultery and maintenance, as well as child protection matters such as neglect (Putt and Dinnen 2020:23).
2. The legislation defines adultery as an act where a spouse engages in voluntary sexual intercourse with a person other than his/her spouse.
3. The legislation defines enticement as persuading or attempting to persuade the spouse of another person to commit an act of adultery, regardless of whether the contemplated act of adultery is committed or not.
4. The Family Protection and Lukautim Pikinini regulations play an important role in assisting justice practitioners to interpret and implement the corresponding Acts. In both cases, the regulations came in a few years after the original Act once it was clear further guidance was needed.
5. See Part XII, Division 1 of the LPA 2015.
6. *ibid.*
7. See, for example, *Kongoni v Anis* [2012], where the Lae District Court sat in its Family Court jurisdiction to hear a matter relating to the Adultery and Enticement Act 1988.
8. See, for example, *State v Kaivi* [2018], where the Buka District Court sat in its criminal jurisdiction to hear a matter relating to a domestic violence offence.

9. In Australia, for example, 70 per cent of family law matters dealt with by the Federal Circuit Court involve allegations of family violence (Commonwealth of Australia 2017:102).

10. Other common matters heard by Village Courts are stealing, debt and property damage.

References

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- Putt, J. and L. Kanan 2021. *Family Protection Orders in Papua New Guinea*. Canberra: ANU.
- Sullivan, N. 2013. [*Desk Review of Child Protection Services in PNG Today for World Vision.*](#)
- Village Court and Land Mediation Secretariat 2011. Report on Joint Magisterial Services and Village Courts Indicator Workshop. Port Moresby, 1–2 August.

Cases

- [*Kongoni v Anis* \[2012\] PGDC 4; DC2056.](#)
- [*State v Kaivi* \[2018\] PGDC 30; DC3068.](#)

Annex 1. Table of PNG legislation relevant to family law

The below table provides a list of legislation that relates to family law. The status of the laws are taken from the 2019 Department of Justice and Attorney General documents Index to the Laws of Papua New Guinea and Index to Repealed Acts. Legislation currently in force is shaded green while legislation that has been repealed is white.

Name of act/regulation	Status	Family law issues covered
Adoption of Children Act 1968 Adoption of Children (Amendment) Act 1971 Adoption of Children (Customary Adoptions) Act 1969 Adoption of Children (Customary Adoptions) Regulations 1970 Adoption of Children Regulation Adoption of Children (Temporary Provisions) Regulations 1971 [Amendment]	In force	Adoption of children
Adultery and Enticement Act 1988 Adultery and Enticement (Amendment) Act 1989	In force	Adultery
Child Welfare Act 1961 Child Welfare Act 1961 Child Welfare Act 1962 Child Welfare Act 1963 Child Welfare Act 1965 Child Welfare Act 1966 Child Welfare Act 1968 Child Welfare (Amendment) Act 1971 Child Welfare (Amendment) Act 1983 Child Welfare (Destitute Children) Act 1968 Child Welfare (Reciprocal Arrangements) Act 1968 Child Welfare (Reciprocal Arrangements) (Amendment) Act 1969	Repealed Replaced by Lukautim Pikinini (Child) Act 2007	Child welfare, children's courts, custody of neglected children, children's institutions, child maintenance, parentage
Child Welfare Regulations 1962	In force	Child welfare
Civil Registration Act 1963	In force	Registration of births, deaths, marriage and adoption
Criminal Code (Sexual Offences and Crimes Against Children) Act 2002	In force	Sexual assault of children
Customs Recognition Act 1963	In force	Customary marriage, divorce, custody and guardianship

Name of act/regulation	Status	Family law issues covered
Deserted Wives and Children Act 1951 Deserted Wives and Children Act 1955 Deserted Wives and Children Act 1961	Repealed Replaced by Lukautim Pikinini (Child) Act 2015	Custody of children and maintenance of women where the man has left without providing a means of support
District Courts Act 1963 (and approximately 26 related District Court Acts and regulations)	In force	Dissolution of customary marriage
Family Protection Act 2013	In force	Domestic violence
Family Protection Regulation 2017	In force	Domestic violence
Infants Act 1956 Infants (Amendment) Act 1975	Repealed Replaced by Lukautim Pikinini (Child) Act 2015	Custody and welfare of infants
Juvenile Courts Act 1991	Repealed Replaced by Juvenile Justice Act 2014	Juvenile courts
Juvenile Justice Act 2014	In force	Juvenile justice system
Lukautim Pikinini (Child) Act 2007	Repealed Replaced by Lukautim Pikinini (Child) Act 2015	Protection and promotion of child rights
Lukautim Pikinini (Child) Act 2009	Repealed Replaced by Lukautim Pikinini (Child) Act 2015	Protection and promotion of child rights and wellbeing
Lukautim Pikinini (Child) (Amendment) Act 2014 Lukautim Pikinini (Child) Act 2015 Lukautim Pikinini (Child) Regulation 2011	In force	Protection and promotion of child rights and wellbeing, and related matters
Maintenance Orders Enforcement Act 1970 Maintenance Orders Enforcement (Amendment) Act 1970 Maintenance Orders Enforcement (Amendment) Act 1976 Maintenance Orders Enforcement (Amendment) Regulations 1976 Maintenance Orders Enforcement Regulations 1971 Maintenance Orders Enforcement (United Kingdom) Regulation 1983	In force	Maintenance of a wife, husband or child

Name of act/regulation	Status	Family law issues covered
Marriage Act 1963	In force	Marriage registration, marriage restrictions, customary marriages, marriageable age, bigamy
Marriage Regulations 1964 Marriage Regulations 1965 [Amendment] Marriage (Amendment) Regulation 1979 Marriage (Amendment) Regulation 1986 Marriage (Amendment) Regulation 1998	In force	Marriage
Married Women's Property Act 1953 Married Women's Property (Amendment) Act 1970	In force	Capacity, property and liabilities of married women
Matrimonial Causes Act 1963 Matrimonial Causes Rules 1965 Matrimonial Causes Rules (No 2) 1965 Matrimonial Causes Rules 1971 [Amendment]	In force	Grounds for divorce, custody and maintenance of children following divorce or nullity of non-customary marriage





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