

No. 27 of 2002.

Criminal Code (Sexual Offences and Crimes Against Children) Act 2002

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2002.

Criminal Code (Sexual Offences and Crimes Against Children) Act 2002.

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INDEPENDENT STATE OF PAPUA NEW GUINEA

No. of 2002.

AN ACT

entitled

Criminal Code (Sexual Offences and Crimes Against Children) Act 2002,

Being an Act to amend the *Criminal Code Act* (Chapter 262) and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. INTERPRETATION (AMENDMENT OF SECTION 1).

Section 1 of the Principal Act is amended by inserting the following definition after the definition of "company":—

"complainant" means a person against whom an offence is alleged to have been committed;"

2. REPEAL AND REPLACEMENT OF SECTION 6.

Section 6 of the Principal Act is repealed and is replaced with the following:—

"6. SEXUAL PENETRATION.

When the expression "sexual penetration" or "sexually penetrates" are used in the definition of an offence, the offence, so far as regards that element of it, is complete where there is—

- (a) the introduction, to any extent, by a person of his penis into the vagina, anus or mouth of another person; or
- (b) the introduction, to any extent, by a person of an object or a part of his or her body (other than the penis) into the vagina or anus of another person, other than in the course of a procedure carried out in good faith for medical or hygienic purposes."

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3. NEW SECTION 6A.

The Principal Act is amended by adding the following new section after Section 6:–

"6A. RELATIONSHIP OF TRUST, AUTHORITY OR DEPENDENCY.

(1) When the term "relationship of trust, authority or dependency" is used in the definition of an offence, the offence, so far as regards that element of it, is complete upon proof that there was an existing relationship of trust, authority or dependency between the accused and the victim at the time the offence occurred.

"(2) A "relationship of trust, authority or dependency" includes, but is not limited to, circumstances where –

- (a) the accused is a parent, step-parent, adoptive parent or guardian of the complainant; or
- (b) the accused has care or custody of the complainant; or
- (c) the accused is the complainant's grandparent, aunt, uncle, sibling (including step sibling) or first cousin; or
- (d) the accused is a school teacher and the complainant is his pupil; or
- (e) the accused is a religious instructor to the complainant; or
- (f) the accused is a counselor or youth worker acting in his professional capacity; or
- (g) the accused is a health care professional and the complainant is his patient; or
- (h) the accused is a police or prison officer and the complainant is in his care or control."

4. NEW SECTION 21A.

The Principal Act is amended by adding the following new section after Section 21:–

"21A. VICTIM IMPACT STATEMENTS.

(1) For the purposes of determining the sentence to be imposed on an offender, the court shall consider any statement that may have been prepared in accordance with Subsection (2) of a victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

"(2) A statement referred to in Subsection (1) must be –

- (a) prepared in writing in the form and in accordance with the procedures established for that purpose; and
- (b) filed with the court.

"(3) A statement of the victim of an offence prepared and filed in accordance with Subsection (2) does not prevent the court from considering any other evidence concerning any victim of the offence for the purpose of determining the sentence to be imposed on the offender.

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- "(4) For the purposes of this section, "victim", in relation to any offence –
- (a) means the person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence; and
 - (b) where the person described in Paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in Subsection (1), includes the spouse or any other relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care or support of that person or any dependent of that person."

5. IMMATURE AGE (AMENDMENT OF SECTION 30).

Section 30 of the Principal Act is amended by repealing Subsection (3).

6. KNOWLEDGE OF AGE IMMATERIAL (AMENDMENT OF SECTION 209).

Section 209 of the Principal Act is amended –

- (a) by repealing the words "woman or girl" (twice occurring) and replacing them with the following:–

"person"; and
- (b) by repealing the word "she" and replacing it with the following:–

"the person".

7. UNNATURAL OFFENCES (AMENDMENT TO SECTION 210).

Section 210 of the Principal Act is amended in Subsection (1) –

- (a) in Paragraph (a) by deleting the words "has carnal knowledge of" and replacing them with the following :–

"sexually penetrates"; and
- (b) in Paragraph (b) by repealing the words "has carnal knowledge of" and replacing them with the following :–

"sexually penetrates"; and
- (c) in Paragraph (c) by repealing the words "have carnal knowledge of" and replacing them with the following :–

"sexually penetrates."

8. REPEAL OF SECTION 211.

Section 211 of the Principal Act is repealed.

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9. REPEAL OF SECTION 213.

Section 213 of the Principal Act is repealed.

10. REPEAL OF SECTION 215.

Section 215 of the Principal Act is repealed.

11. REPEAL OF SECTION 216.

Section 216 of the Principal Act is repealed.

12. REPEAL OF SECTION 217.

Section 217 of the Principal Act is repealed.

13. REPEAL AND REPLACEMENT OF SECTION 223.

Section 223 of the Principal Act is repealed and is replaced with the following:—

"223. INCEST.

(1) A person who engages in an act of sexual penetration with a close blood relative is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

"(2) For the purposes of this section, a close blood relative means a parent, son, daughter, sibling (including a half-brother or half-sister), grandparent, grandchild, aunt, uncle, niece, nephew or first cousin, being such a family member from birth and not from marriage or adoption.

"(3) No person shall be found guilty of an offence under this section if, at the time the act of sexual penetration occurred, he was under restraint, duress or fear of the other person engaged in the act."

14. REPEAL OF SECTION 224.

Section 224 of the Principal Act is repealed.

15. NEW DIVISIONS IV.2A AND 2B.

The Principal Act is amended by inserting after Division IV.2 the following new Divisions :—

"Division 2A. – Sexual offences against children.

"229A. SEXUAL PENETRATION OF A CHILD.

(1) A person who engages in an act of sexual penetration with a child under the age of 16 years is guilty of a crime.

Penalty: Subject to Subsections (2) and (3), imprisonment for a term not exceeding 25 years.

"(2) If the child is under the age of 12 years, an offender against Subsection (1) is guilty of a crime and is liable, subject to Section 19, to imprisonment for life.

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"(3) If, at the time of the offence, there was an existing relationship of trust, authority or dependency between the accused and the child, an offender against Subsection (1) is guilty of a crime, and is liable, subject to Section 19, to imprisonment for life.

"229B. SEXUAL TOUCHING.

- (1) A person who, for sexual purposes –
- (a) touches, with any part of his or her body, the sexual parts of a child under the age of 16 years; or
 - (b) compels a child under the age of 16 years to touch, with any part of his or her body, the sexual parts of the accused person's own body,

is guilty of a crime.

Penalty: Subject to Subsections (4) and (5), imprisonment for a term not exceeding seven years.

"(2) For the purposes of this section, "sexual parts" include the genital area, groin, buttocks or breasts of a person.

"(3) For the purposes of this section, a person touches another person if he touches the other person with his body or with an object manipulated by the person.

"(4) If the child is under the age of 12 years, an offender under Subsection (1) is guilty of a crime, and is liable to imprisonment for a term not exceeding 12 years.

"(5) If, at the time of the offence, there was an existing relationship of trust, authority or dependency between the accused and the child, an offender against Subsection (1) is guilty of a crime, and is liable to imprisonment for a term not exceeding 12 years.

"229C. INDECENT ACT DIRECTED AT A CHILD.

(1) A person who commits an indecent act directed at a child under the age of 16 years is guilty of a crime.

Penalty: Subject to Subsections (2) and (3), imprisonment for a term not exceeding five years.

"(2) If the child is under the age of 12 years, an offender under Subsection (1) is guilty of a crime, and is liable to imprisonment for a term not exceeding seven years.

"(3) If, at the time of the offence, there was an existing relationship of trust, authority or dependency between the accused and the child, an offender against Subsection (1) is guilty of a crime, and is liable to imprisonment for a term not exceeding seven years.

"229D. PERSISTENT SEXUAL ABUSE OF A CHILD.

(1) A person who, on two or more occasions, engages in conduct in relation to a particular child that constitutes an offence against this Division, is guilty of a crime of persistent abuse of a child.

Penalty: Subject to Subsection (6), imprisonment for a term not exceeding 15 years.

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"(2) For the purposes of Subsection (1), it is immaterial whether or not the conduct is of the same nature, or constitutes the same offence, on each occasion.

"(3) In proceedings related to an offence against this section, it is not necessary to specify or prove the dates or exact circumstances of the alleged occasions on which the conduct constituting the offence occurred.

"(4) A charge of an offence against this section –

- (a) must specify with reasonable particularity the period during which the offence against this section occurred; and
- (b) must describe the nature of the separate offences alleged to have been committed by the accused during that period.

"(5) For an accused to be committed of an offence against this section –

- (a) the court must be satisfied beyond reasonable doubt that the evidence establishes at least two separate occasions, occurring on separate days during the period concerned, on which the accused engaged in conduct constituting an offence against this Division in relation to a particular child; and
- (b) the court must be so satisfied about the material facts of the two incidents, although the court need not be so satisfied about the dates or the order of those occasions.

"(6) If one or more of the occasions involved an act of penetration, an offender against Subsection (1) is guilty of a crime and is liable, subject to Section 19, to life imprisonment.

"229E. ABUSE OF TRUST, AUTHORITY OR DEPENDENCY.

(1) A person who engages in an act of sexual penetration or sexual touching of a child between the ages of 16 and 18 years with whom the person has an existing relationship of trust, authority or dependency is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 15 years.

"(2) It is not a defence of a charge under this section that the child consented unless, at the time of the alleged offence, the accused believed on reasonable grounds that the child was aged 18 years or older.

"229F. CONSENT NO DEFENCE.

Subject to Section 229E, it is not a defence to a charge under this Division that the child consented unless, at the time of the alleged offence –

- (a) the accused believed on reasonable grounds that the child was aged 16 years or older; or
- (b) the child was aged 12 years or older, and the accused was no more than two years older than the child.

"229G. DEFENCE – MARRIAGE.

A person is not criminally responsible for an offence against this Division in respect of an act if, at the time of the act, the child was of or over the age of 14 years and the person was married to the child.

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"229H. CORROBORATION NOT REQUIRED.

On a charge of an offence against any provision of this Division, a person may be found guilty on the uncorroborated testimony of one witness, and a Judge shall not instruct himself or herself that it is unsafe to find the accused guilty in the absence of corroboration.

"229I. RULE OF EVIDENCE.

On the charge of an offence against any provision of this Division, the spouse of the accused person is a competent and compellable witness.

"Division 2B. – Commercial sexual exploitation of children.

"229J. INTERPRETATION.

For the purposes of this Subdivision –

"child" or "children" means a person under the age of 18 years;

"child prostitution" means the provision of any sexual service by a person under the age of 18 years for financial or other reward, favour or compensation, whether paid to the child or some other person;

"child pornography" means –

- (a) any photographic, film, video or other visual representation –
 - (i) that shows a person who is or who is depicted as being under the age of 18 years and is engaged in, or is depicted as engaged in, sexual activity; or
 - (ii) whose dominant characteristics is the depiction, for a sexual purpose, of the genital or anal region of a person under the age of 18; or
- (b) any audio representation of a person who is, or is represented as being, a child and who is engaged in, or is being represented as being engaged in, sexual activity; or
- (c) any written material, visual representation or audio representation that advocates, counsels or encourages sexual activity with children,

irrespective of how or through what medium the representation has been produced, transmitted or conveyed and, without prejudice to the generality of the foregoing, includes any representation produced by or from computer graphics or by other electronic or mechanical means.

"229K. OBTAINING THE SERVICES OF A CHILD PROSTITUTE.

- (1) A person who –
 - (a) participates as a client or is otherwise involved with a child in an act of child prostitution; or
 - (b) invites, persuades or induces a child to engage in child prostitution with him or her or any other person,

is guilty of a crime.

Penalty: Subject to Subsection (2), imprisonment for a term not exceeding 15 years.

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"(2) If the child is under the age of 12 years, an offender against Subsection (1) is guilty of a crime, and is liable, subject to Section 19, to life imprisonment.

"229L. OFFERING OR ENGAGING A CHILD FOR PROSTITUTION.

(1) Any person who intentionally offers or engages a child for the purposes of child prostitution is guilty of a crime.

Penalty: Subject to Subsection (2), imprisonment for a term of 15 years.

"(2) If a child is under the age of 12 years, the offender against Subsection (1) is guilty of a crime, and is liable, subject to Section 19, to life imprisonment.

"229M. FACILITATING OR ALLOWING CHILD PROSTITUTION.

Any parent, guardian or person with care or custody of a child who knowingly and allows or facilitates, in any way, the engagement of that child in an act of child prostitution is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 10 years.

"229N. RECEIVING A BENEFIT FROM CHILD PROSTITUTION.

Any person who knowingly receives any financial or other reward, favour or compensation from child prostitution is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 15 years.

"229O. PERMITTING PREMISES TO BE USED FOR CHILD PROSTITUTION.

Any person who is an owner, lessor, manager, tenant or occupier of property who –

- (a) knowingly allows child prostitution to take place on that property; or
- (b) within a reasonable time of gaining information that an act of child prostitution has taken place on that property, fails to report such occurrence to the police,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 15 years.

"229P. MISTAKE AS TO AGE.

It is a defence to an offence under Sections 229K and 229M that the person reasonably believed that the child was aged 18 years or older.

"229Q. CHILD NOT TO BE CHARGED.

No person under the age of 18 years shall be charged with an offence under this Subdivision of any sexual service by that child for financial or other reward, favour or compensation.

"229R. CHILDREN NOT TO BE USED FOR PORNOGRAPHIC PURPOSES.

A person who –

- (a) uses a child for the production of child pornography; or

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- (b) causes or procures a child to be used for the production of child pornography; or
- (c) having the care or custody of a child, consents to or allows the child to be used for the production of child pornography,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 15 years.

"229S. PRODUCING AND DISTRIBUTING CHILD PORNOGRAPHY.

A person who –

- (a) knowingly produces, distributes, prints or publishes any child pornography; or
- (b) knowingly imports, exports, sells or shows any child pornography; or
- (c) knowingly possesses any child pornography for the purpose of distributing, publishing, exporting, selling or showing it,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 10 years.

"229T. POSSESSION OF CHILD PORNOGRAPHY.

A person who knowingly possesses any child pornography is guilty of a crime.

Penalty: Imprisonment for a term not exceeding five years.

"229U. DEFENCE OF INNOCENT PURPOSE.

It is a defence to a charge against Sections 229R, 229S and 229T that –

- (a) the material alleged to constitute child pornography has a genuine medical, legal, scientific or educational purpose; or
- (b) the material alleged to constitute child pornography has artistic or cultural merit; or
- (c) the accused believed, on reasonable grounds, that the child depicted in the material alleged to constitute child pornography was over the age of 18 years.

"229V. DEFENCE OF OFFICIAL USE.

It is a defence to a charge against Sections 229Q and 229R that the accused was in possession of child pornography–

- (a) for the purpose of prevention, investigation or prosecution of an offence under the Code; or
- (b) in the exercise of a function under the *Classifications of Publications (Censorship) Act 1989*."

16. AMENDMENT OF TITLE OF DIVISION V.7.

The title of Division V.7 of the Principal Act is amended by repealing the words "Assaults on Females: Abduction" and replacing them with the following:–

"Sexual offences and abduction."

17. REPEAL AND REPLACEMENT OF SECTION 347.

Section 347 of the Principal Act is repealed and is replaced with the following:–

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"347. DEFINITION OF RAPE.

(1) A person who sexually penetrates a person without his consent is guilty of a crime of rape.

Penalty: Subject to Subsection (2), imprisonment for 15 years.

"(2) Where an offence under Subsection (1) is committed in circumstances of aggravation, the accused is liable, subject to Section 19, to imprisonment for life."

18. NEW SECTIONS 347A AND 347B.

The Principal Act is amended by inserting the following new sections after Section 347:—

"347A. MEANING OF CONSENT.

(1) For the purposes of this Part, "consent" means free and voluntary agreement.

"(2) Circumstances in which a person does not consent to an act include, but not limited to, the following :—

- (a) the person submits to the act because of the use of violence or force on that person or someone else; or
- (b) the person submits because of the threats or intimidation against that person or someone else; or
- (c) the person submits because of fear of harm to that person or to someone else; or
- (d) the person submits because he is unlawfully detained; or
- (e) the person is asleep, unconscious or so affected by alcohol or another drug so as to be incapable of freely consenting; or
- (f) the person is incapable of understanding the essential nature of the act or of communicating his unwillingness to participate in the act due to mental or physical disability; or
- (g) the person is mistaken about the sexual nature of the act or the identity of the person; or
- (h) the person mistakenly believes that the act is for medical or hygienic purposes; or
- (i) the accused induces the person to engage in the activity by abusing a position of trust, power or authority; or
- (j) the person, having consented to engage in the sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity; or
- (k) the agreement is expressed by the words or conduct of a person other than the complainant.

"(3) In determining whether or not a person consented to that act that forms the subject matter of the charge, a judge or magistrate shall have regard to the following :—

- (a) the fact that the person did not say or do anything to indicate consent to a sexual act is normally enough to show that the act took place without the person's consent; and

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- (b) a person is not to be regarded as having consented to a sexual act just because –
 - (i) he did not physically resist; or
 - (ii) he did not sustain physical injury; or
 - (iii) on that or on an earlier occasion, he freely agreed to engage in another sexual act with that person or some other person.

"347B. WHERE BELIEF IN CONSENT IS NOT A DEFENCE.

It is not a defence to a charge under this Part that the accused person believed that the person consented to the activity that forms the subject matter of the charge where –

- (a) the accused's belief arose from his –
 - (i) self-induced intoxication; or
 - (ii) reckless or willful blindness; or
- (b) the accused did not take reasonable steps, in the circumstances known to him at that time, to ascertain whether the person was consenting."

19 REPEAL AND REPLACEMENT OF SECTION 349.

Section 349 of the Principal Act is repealed and is replaced with the following :–

"349. SEXUAL ASSAULT.

- (1) A person who, without a person's consent –
 - (a) touches, with any part of his body, the sexual parts of that other person; or
 - (b) compels another person to touch, with any part of his body, the sexual parts of the accused person's own body,

is guilty of a crime of sexual assault.

Penalty: Subject to Subsection (4), imprisonment for a term not exceeding five years.

"(2) For the purposes of this section, "sexual parts" include the genital area, groin, buttocks or breasts of a person.

"(3) For the purposes of this section, a person touches another person if he touches the other person with any part of his body or with any object manipulated by the person.

"(4) Where an offence under Subsection (1) is committed in circumstances of aggravation, the accused is liable to a term of imprisonment not exceeding 10 years."

20. NEW SECTION 349A AND 349B.

The Principal Act is amended by inserting after Section 349 the following new sections:–

"349A. INTERPRETATION.

For the purposes of this Division, circumstances of aggravation include, but not limited to, circumstances where –

- (a) the accused person is in the company of another person or persons; or

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- (b) at the time of, or immediately before or after the commission of the offence, the accused person uses or threatens to use a weapon; or
- (c) at the time of, or immediately before or after the commission of the offence, the accused person tortures or causes grievous bodily harm to the complainant; or
- (d) the accused person confines or restrains the complainant before or after the commission of the offence; or
- (e) the accused person, in committing the offence, abuses a position of trust, authority or dependency; or
- (f) the accused is a member of the same family or clan as the complainant; or
- (g) the complainant has a serious physical or mental disability; or
- (h) the complainant was pregnant at the time of the offence; or
- (i) the accused was knowingly infected by Human Immunodeficiency Virus (HIV) or knowingly had Acquired Immune Deficiency Syndrome (AIDS).

"349D. PROCURING A SEXUAL OFFENCE.

A person who hires, induces or conspires with another person to commit an offence under this Division is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 20 years."

21. RULE OF EVIDENCE (AMENDMENT OF SECTION 352).

Section 352 of the Principal Act is amended –

- (a) by repealing the word "wife" and replacing it with the following :-

"spouse"; and

- (b) by repealing the words "but not" and replacing them with the following :-

"and".

22. NEW SECTION 352A.

The Principal Act is amended by inserting after Section 352 the following new section:-

"352A. CORROBORATION NOT REQUIRED.

On a charge of an offence against any provision of this Division, a person may be found guilty on the uncorroborated testimony of one witness, and a Judge shall not instruct himself that it is unsafe to find the accused guilty in the absence of corroboration."

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I hereby certify that the above is a fair print of the ***Criminal Code (Sexual Offences and Crimes Against Children) Act 2002*** which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the ***Criminal Code (Sexual Offences and Crimes Against Children) Act 2002*** was made by the National Parliament on 28 March 2002.

Speaker of the National Parliament.

