

Defining Trafficking in Persons and Exploitation in Papua New Guinea

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Trafficking in persons or human trafficking¹ as it is more commonly known, has been described as a grave violation of human's rights or modern day slavery, a phenomenon that effects every country in the world, including Papua New Guinea (PNG). Human trafficking is also a relatively new crime, although exploitative practices described as human trafficking and forms of slavery have existed for hundreds of years in Melanesian cultural practices and throughout other cultures worldwide.

One of the earliest international documents that makes reference to Trafficking in Persons and Slavery like conditions and treatment of human beings is the Paris Convention against White Slavery 1904. Until very recently, major initiatives on identifying and preventing cases of trafficking in persons have focused on women and girls and sexual exploitation in the form of forced prostitution. In PNG as well, the exploitation of women and girls into forced prostitution and other forms of sexual exploitation has also been the main concern until recently, where reported cases have indicated that there has been an increase in labour exploitation cases concerning male victims of varying ages. The recent trend in reported cases in PNG, changes the stereotype that all victims of human trafficking are female who are forced into prostitution.

International Definition of Human Trafficking

The issue of trafficking in persons was not on the international agenda until the mid-1990 when it was noted that there has been an increase in the cross-border exploitation of young women and girls within South East Asia and Europe. Both the Charter of the United Nations and the Universal Declaration of Human Rights declare that rights are universal, in that they apply to everyone, irrespective of race, sex, ethnic origin or other distinction.

The earliest recognised international agreements on human trafficking or slavery and slave like conditions include; the *Paris Convention against White Slavery* 1904, the *International Convention for the Suppression of the Traffic in Women and Children* 1921, and the *Convention to Suppress the Slave Trade and Slavery* 1926 promulgated by the League of Nations.

The current recognised international definition of trafficking in persons is provided for under the United Nations *United Nations Transnational Organised Crime Convention* 2000 (UNTOC) or Palermo Convention and its supplementary protocols.

The United Nation's Protocol to Suppress, Prevent and Punish Trafficking in Persons, Especially Women and Children (UN TIP Protocol) which supplements the UNTOC, was officially adopted by the United Nations Member States and the broader international community in December 2000.

The UNTIP Protocol defines the term 'trafficking in persons' as follows:

...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose

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¹ Throughout the paper the terms 'Trafficking in Persons' and 'Human Trafficking' will be used interchangeably.

of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Key Concepts contained in the International Definition

The international definition under the UNTOC and UNTIP Protocol contain certain features which have been adopted by most countries (that are party to the UNTOC), which have developed legislation aimed at combating human trafficking. These key features in the UNTIP Protocol are summarised below.

<p>Elements of Trafficking in Persons</p> <p><i>Act (What the trafficking/offender does)</i></p> <p><i>Means (How the act is done)</i></p> <p><i>Purpose (Why the act is done)</i></p>	<p>Under the UNTIP Protocol all three elements; Act, Means, and Purpose must be established for there to be an identifiable offence.</p> <p>Recruitment, transportation, transfer, harboring or receipt of persons</p> <p>Threat or use of force, or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person</p> <p>Exploitation (which includes at a minimum-</p> <ul style="list-style-type: none"> • the exploitation of the prostitution of others or other forms of sexual exploitation, • forced labour or services, slavery or practices similar to slavery, servitude or • the removal of organs) <p>The UNTIP Protocol provides a list of the forms of criminal acts deemed to be a type of exploitation (Article 3A)</p>
<p>Consent</p>	<p>The consent of a trafficked person or victim is irrelevant if any of the means listed in Article 3A were used to as a means to obtain the consent of the victim.</p> <p>There are cases where a victim's right to consent and make a decision to leave an exploitative situation is lost during the process of exploitation. Consent can also be obtained through force, by deception or when an offender takes advantage of a victim's position of vulnerability (Article 3B).</p>
<p>Age of Majority</p>	<p>A child is anyone under the age of 18 years.</p> <p>Any child that is recruited, transported, harboured or any person in receipt of a child in order to exploit the child has committed offence, regardless of the means (listed in Article 3A) used (Article 3C and D).</p>
<p>Movement / Internal / Cross Border</p>	<p>Trafficking in persons is an offence that involves movement, however at times the movement does not occur over an international border. There are instances where trafficking in persons occurs internally or within a locality.</p>

	This is the main difference when comparing trafficking in persons to people smuggling which always occurs across international border.
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Indicators of Trafficking in Persons

In addition to elements of trafficking in persons there are also internationally recognised indicators as listed in the Operational Indicators of Trafficking in Human Beings 2009.² These indicators are useful as a guide to identifying potential cases or instances of human trafficking. The Operational Indicators of Trafficking in Human Beings is a comprehensive list of indicators developed jointly by the International Labour Organisation (ILO) and the European Commission to be used by preventing human trafficking stakeholders in identifying potential human trafficking cases.

However, it must also be noted that not all indicators are definitive, because each case of human trafficking is unique and the behaviour of victims and offenders vary according to each case. Also the context of the exploitation and location where the offence has been committed may influence the sets of circumstances one would identify as an indicator of human trafficking. The presence of an indicator of human trafficking in any case should be treated with caution, as all cases should be properly reported to a government law enforcement agency for further investigation and referral.

The Government’s Legislative efforts in Counter Trafficking in Persons

Although trafficking in persons has been around for hundreds of years, a coordinated response to preventing trafficking in persons only began to materialise and gain momentum internationally in the early 2000’s.

PNG’s response has been equally slow; this is due in part to the response by government in creating an offence and the lack of awareness amongst government law enforcement agencies in identifying cases. Another issue is the ‘observed’ lack of political will. However, things changed in early 2009 when assistance from the international community, particularly the United Nations (UN) and the International Organisation for Migration entered into a support arrangement with the PNG Government (through the Department of Justice and Attorney General) to provide technical assistance in the development of legislation to criminalise the transnational crimes of trafficking in persons and people smuggling.

The PNG Counter Trafficking in Persons Project was initiated in 2010 as a means for the country to develop an effective response to identifying trafficking in persons cases, preventing exploitation of victims, creating awareness on counter trafficking in persons issues and prosecution of offenders. The approach in preventing incidences of trafficking in persons commenced with the development of amendments to the *Criminal Code Act 1974 (CCA)* to create the offence of trafficking in persons in 2013.

Definition of Human Trafficking in PNG

The CCA was amended by the *Criminal Code (Amendment) Act 2013*³ to create human trafficking and people smuggling offences. Upon the gazettal of the amendment on 24th July, 2014 the following offences shown in the table below came into effect.

Division 10 – People Smuggling	Division 1A - Trafficking in Persons
Section 206D <i>People Smuggling</i>	Section 208C <i>Trafficking in Persons</i>

² https://www.ilo.org/global/topics/forced-labour/publications/WCMS_105023/lang--en/index.htm.

³ No.13 of 2013.

Section 206E <i>Falsifying Travel and approval Documents or Approval to Travel or Stay Documents</i>	Section 208D <i>Trafficking in Persons with Knowledge or Recklessness</i>
Section 206F <i>Consent of Smuggled Person not a Defence</i>	Section 208E <i>Consent of Trafficking Person not a Defence</i>
Section 206G <i>Immunity from Criminal Prosecution</i>	Section 208F <i>Immunity from Criminal Prosecution</i>
Section 206H <i>Orders for Expense</i>	Section 208G <i>Assistance to and Protection of Trafficked Persons</i>
Section 206 I <i>Assistance to and Protection of Smuggled Persons</i>	

People smuggling and human trafficking are separate crimes in the CCA which are often confused. There is a distinct difference between the crimes of people smuggling under Sections 206D and 206E compared to the trafficking in persons crimes under Section 208C and 208D of the CCA. People smuggling under Section 206D and 208E are offences against the State, unlike human trafficking under Sections 208C and 208D which are offences against an individual.

The nature of the human trafficking offence under Sections 208C and 208D allow victims, the avenue to initiate, a human rights application against an offender where there are potential human right violations which may have occurred, when a victim has been exploited in circumstances set forth in Section 208B of the CCA.

Relationship between Human Trafficking and People Smuggling

Another key distinction between people smuggling and human trafficking is the fact that people smuggling always take place over an international border, unlike human trafficking which can occur internationally (over an international border) or internally (within country).

A key element of both people smuggling and human trafficking is the ‘movement of people for an exploitative or smuggling purpose which benefits the offender’. In human trafficking, this movement does not need to occur over an international border. This important fact can be inferred from PNG’s first reported case of trafficking in persons - the 2015 Chimbu Human Trafficking Case⁴, which occurred internally, and resulted in the movement of victims from a coastal area to the highlands region within PNG where the sexual exploitation and forced prostitution of the victims took place. Although this case is currently before the National Court, the outcome of this case will set a precedent in PNG on the application of Section 208C and 208D of the CCA.⁵

The final distinction between human trafficking and people smuggling is the intent of both offences. People smuggling is an offence and a crime committed against the State, while human trafficking is a crime against the individual and can also be seen a breach of a person human rights to the Basic Rights provided under Division 3 of the *Constitution*.

Features and Issues with the Application of the Trafficking in Persons Offence Provision under the Criminal Code Act 1974

A close examination of Sections 208B, 208C, 208D and section 208E CCA reveals that they are very similar to the international definition and standards set by the UNTIP Protocol. However, there are

⁴ ‘Sexual Slavery Victims Rescued’ *The National* newspaper, 15th September 2015, page 7.

⁵ The trial has been completed and the National Court will hand down it’s decision hopefully before the end of this year.

some unique features of the 2013 amendment which sets PNG apart from other jurisdictions. These differences are highlighted below.

1. What is Exploitation defined as in the PNG Human Trafficking context?

Exploitation is defined under Section 208B to cover the following criminal acts:

...the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

From the definition above it can be inferred that there are three general categories of exploitative behaviours described by Section 208B and these forms of exploitation are:

a) Forms of Sexual Exploitation

Forced Prostitution

Sexual forms of exploitation include ‘forced prostitution’ which is the act of forcing or coercing a person through the use of some forms or means to subject a person into forced prostitution. This is especially the case where minors are involved, because by law, minors do not have the capacity to consent to any form of prostitution which is the main inference drawn from Section 2 of the *Lukautim Pikinini Act 2015 (LPA)*. This ability to freely consent is different from an adult who willingly chooses to engage in prostitution. However, in some cases, such as the Chimbu Human Trafficking Case of 2015, adults were threatened with violence and made to offer sexual services for money.

Forced prosecution remains the main form of exploitation in the human trafficking context. Forced prostitution is also the most common method of exploitation of female victims.

Sexual Exploitation

Section 208B uses the phrase ‘other forms of sexual exploitation’ which is an undefined term under the CCA. Unfortunately, this phrase is not defined under other related legislation and case law. Although the term ‘sexual exploitation’ remains undefined, there is a suit of provisions that criminalise the sexual exploitation of minors such as Division 2B of the CCA.

The key sexual exploitation offences under Division 2B of the CCA include:

Section 229K - CCA	Obtaining the Services of Child Prostitute
Section 229L - CCA	Offering or Engaging a child for Prostitution
Section 229M	Facilitation or Allowing Child Prostitution
Section 229N	Receiving a Benefit from Child Prostitution
Section 229O	Permitting Premises to be used for Child Prostitution
Section 229R	Children not to be used for Pornographic Purposes
Section 229S	Producing and Distributing Child Pornography

These provisions were introduced in 2005 and have been effective in combating the commercial sexual exploitation of minors. However, only the conduct of child commercial exploitation is defined, and not the term ‘sexual exploitation’. Sexual exploitation is however defined by the UN in its document ‘the United Nations Glossary on Sexual Exploitation and Abuse. The document defines sexual exploitation as: [A]ny actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of

another'.⁶This definition can be adopted by PNG in combating sexual exploitation in the country.

Although not directly making a reference to the definition provided by the UN, the PNG courts have embraced this wide definition. For instance, in *The State v Minjihau*,⁷ the court established that, the offender, a 47 year old male, who had sex with a 14 year old female on four different occasions and on each occasion the offender gave the victim money, knowing that the victim needed that money. In effect the offender exploited the victim sexually by taking advantage of the victims need for money.

The case of *The State v Thomas*⁸ also shows how exploitation can occur in the country. The victim who was a 15 year old female, at the time when the offence was committed, deposed that, "there was sexual intercourse on more than one occasion, and that on each occasion the accused would trip her up so that she fell to the ground, have sexual intercourse then give her money." This evidence was corroborated by the accused who admitted that, "he had sex with the victim 44 times during 2003 and on each occasion the victim asked for money beforehand."

Although sexual exploitation is not defined by legislation, there are several examples in case law where offenders have taken advantage of a perceived need by the victim. Therefore, there is an inferred definition of sexual exploitation, and this definition can be taken into account when understanding and defining what sexual exploitation is in the human trafficking context.

b) Forms of Labour Exploitation

Section 208B of the CCA defines human trafficking for the purposes of exploiting a person for their labour as 'the exploitation of...forced labour or services, slavery or practices similar to slavery, servitude.' The key concepts in this definition are 'forced labour or services', 'slavery or practices similar to slavery', and 'servitude'. These terms are taken broadly as forms of labour exploitation.

Forced Labour and Services

Forced labour is defined by section 208B to mean, 'all work or services which are extracted from any person under the menace of any penalty and for which the person has not offered himself voluntarily'. This definition is clear for the purposes of understanding human trafficking in the forced labour context. The other concepts conveyed by the definition of exploitation are undefined by PNG legislation.

Slavery and Practices Similar to Slavery and Servitude

Slavery or practices similar to slavery is also defined by Section 208B. It means the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised and includes, but is not limited to, the following:

1. the selling, bartering or buying of a person without that person's consent for value received or other consideration; or
2. the selling, bartering or buying of a person under the age of 18 against the best interest of that person, for value received or other consideration; or
3. the status of debt bondage intended as the condition of a person who has no real or acceptable alternative but to provide labour or personal services or those of a person under his control to repay a debt, if the value of those services or labour, as reasonably assessed, is not applied towards the liquidation of the debt or the length and nature of those services or labour are not limited and proportionate to the debt; or

⁶ United Nations Glossary on Sexual Exploitation and Abuse, [Prepared by the Task Team on the SEA Glossary for the Special Coordinator on improving the United Nations response to sexual exploitation and abuse] 05th October 2016.

⁷ (2002) N2243.

⁸ (2005) N2828.

4. the status of domestic servitude intended as the condition of a person who is forced, by physical or psychological coercion, to work without any real financial reward, deprived of liberty and in a situation contrary to human dignity.

This definition of slavery or practices similar to slavery is similar to Article 1 of the Slavery Convention 1926 and Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956.

Slavery is also expressly prohibited by the *Constitution* under Section 253, which provides that, ‘slavery, and the slave trade in all their form, and all similar institutions and practices, are strictly prohibited.’

A case that discusses the nexus between slavery, practices similar to slavery, servitude and human trafficking is the human rights case of *Konori v Jant*.⁹ In this case, the plaintiffs made an application against their former employer, the defendant, alleging that the defendant company had infringed their human rights by placing them in ‘slavery like’ working conditions. The plaintiffs alleged that they had been forced to carry logs without safety gear, underpaid, not fed, not equipped, exploited as cheap labour, treated as slaves inhumanely, under the guise of a contract. They claimed that the defendant breached their right to protection from inhuman treatment under Section 36(1) of the *Constitution*, and sought compensation under Sections 57 and 58 of the *Constitution*.

After the trial, the court rejected the plaintiffs’ application and threw out the case. Although the ruling of the National Court was not in favor of the plaintiffs, this was the first case in PNG dealing with slavery and human trafficking under the 2013 amendments to the CCA. The court considered the 2013 amendment and accepted the definition of key terms such as, slavery, slavery like conditions.

Servitude is another practice closely associated with human trafficking. However, the term servitude is not defined by legislation. Nevertheless, the concept of servitude is conveyed through Section 208B.

c) The Removal of an Organ

The removal of organs is an undefined term in section 208B. Although it is clearly stated as a form of exploitation that is prohibited by the CCA, there is no clear definition of some of the following aspects of organ removal:

1. What an organ is for the purposes of Sections 208C and 208D?
2. Whether a contractual relationship between the donor of the organ and the trafficker, or offender and the recipient of the organ has an impact on the outcomes of a human trafficking (for the purposes of organ removal) case.
3. Whether there is a difference between organ donation (for medical purposes) and the organ removal in the human trafficking and criminal context, and what those main differences are.
4. Other issues related to organ donation for medical purposes, such as a policy or medical practice or standards, and if these factors can be used as determinants or criminal elements in a human trafficking (for the purposes of organ removal) case.

From March to May 2019, there was increased hysteria created by reports and allegation of criminal networks operating organ trafficking and kidnapping in the National Capital District.¹⁰ This has necessitated the focus on what organ removal is and how arrests and charges can be laid for human trafficking for the purposes of organ removal.

There is a 2017 reported case¹¹ of a woman that had provided her ovaries to her mother who resided in Australia to assist her mother and her step father for use in Intravenous Fertilization

⁹ (2015) N5868.

¹⁰ ‘Women and Girls warned of Abduction’, *The National* newspaper, 14 March 2019.

¹¹ Department of Justice and Attorney General – Trafficking in Persons Case Database.

Treatment (IVF). The victim in this matter was a minor at the time and claimed that her health has suffered as a result of the IVF procedure. The victim was unable to make a claim against her mother because of a time bar, since the IVF procedure took place when the woman was a teenager.

There were issues in progressing this matter, as there is no legislation dealing with IVF treatment, and the rights of donors. Although the victim felt that she had been exploited by her mother and had parts of her body extracted without her consent, she was unable to lay a complaint under any legislation. The only avenue available to her currently is a human rights enforcement application in the National Court.

These issues were also compounded by the fact that Section 208B is not clear on whether ‘an organ’ for the purposes of organ removal can also include ‘ovaries’ which are a ‘collection of human reproductive cells’ and not an organ in the strict sense. There is also the additional issue of what constitutes removal of an organ, and how must these organs be removed from the human body, for an offence to be committed, and whether ‘voluntarily donating’ an organ can eventually be a criminal offence, if the terms of the organ donation agreement are not fair to the donor.

More work is required around this area of the law. However, case law or the development of further government policy or legal reform can provide clarity on the application of the law to organ removal cases.

d) Other Forms of Exploitation undefined by Section 208B

Forced Marriage

Forced marriage is considered by many jurisdictions to be a type of exploitation for the purposes of human trafficking. Section 208B is very clear on what exploitation is in the strict human trafficking context. At present, it may be difficult to classify cases of forced marriage as human trafficking cases, unless the complainant is able to clearly prove all the elements of the offence of human trafficking under Sections 208C and 208D.¹²

Informal Adoption and Billeting

A broad array of ‘cultural practices that support a range of living arrangements for children, including billeting of children within familial networks’ expose children to the risk of being trafficked and exploited within the family unit.¹³

In PNG this has been observed in children being sent between family members from a rural to an urban area to provide an opportunity for education or employment. Customary practices that allow for informal adoption or fostering and billeting has the potential to expose children to the risk of being trafficked and exploited by family members, especially in the area of forced labour or services.¹⁴

However, in all cases, the complainant and the State must be able to prove that the elements of the human trafficking offence under Section 208C and 208D are present in the case.

2. Consent in PNG Law

Section 208E provides that the consent of a victim cannot be used as a defence by the offender or trafficker.

It is generally accepted that any adult of sound mind has the capacity to consent and contract. The age of adulthood being 18 years and over. Many have argued that in numerous cases of human

¹² Under the *Lukautim Pikinini Act* (LPA), child marriages is prohibited in PNG. Under the LPA, the age of marriage is 18 years.

¹³ “The Trafficking of children in the Asia-Pacific”, *Trends and Issues in Crime and Criminal Justice* (No. 415 –April 2011) Australian Institute of Criminology,

¹⁴ Kwa, E and Onom, N, “The Law of Adoption in Papua New Guinea” in Corrin, J and Farran, S, (ed), *The Plural Practice of Adoption in Pacific Island States* (New York: Springer, 2018) pp67-86.

trafficking, the victims do agree to be placed in a position that ultimately leads to their exploitation. However, the inverse is also true and there are occasions where victims have been forced, coerced, deceived or in extreme situations even prevented from leaving an exploitative situation that they had initially consented to.

At present there is no definitive case law in PNG which discusses the issue of consent in the human trafficking context.

3. Children and Consent under the LPA versus CCA age of Consent

Age, consent and criminal liability are all different but related issues. In PNG legislation provides the differences on age of majority, age of consent (for sexual offences) and age of criminal liability. These three issues are important because in 2014 through an amendment to the CCA¹⁵, the age of criminal liability under Section 30 of the CCA was changed from seven to 10 years.

Another significant change was made earlier in 2002 through an amendment to the CCA¹⁶ which created a scheme of sexual offences against children. Under the amendment, a child is defined under Section 229J as anyone under the age of 18 years.

There are different standards set by legislation with regard to the age of majority and the age of consent. For the CCA and the LPA, the provisions are highlighted in the table below.

	Legislation	Provision and Standard
Age of Majority (General)	<i>Lukautim Pikinini Act (LPA) 2015</i>	Child means a person including a boy or girl under 18 years (Section 2)
Age of Majority and Consent (Sexual Offences) (Criminal)	CCA	Child or Children means a person under the age of 18 years (Section 229J) For the purposes of Division 2A and 2B a child does not have the capacity to consent to sexual relations with an adult.
Age of Criminal Liability	CCA	A person under the age of 10 years is not criminally responsible for any act or omission (Section 30)

The definition of ‘child’ in the CCA and LPA are consistent with those provided by international law through the UNTIP Protocol and the United Nations Declaration on the Rights of the Child. Both treaties recognise that a child is someone aged 18 years or younger, and ‘children are incapable of providing informed consent’ to sexual relations as well as any form of exploitative practice.

The distinction between the age of consent and the age of criminal liability is also important considering that in human trafficking cases victims can also be charged for criminal conduct.

4. How does Immunity from Criminal Prosecutions apply to a victim of Human Trafficking?

There is a general confusion that exists with stakeholders working in the area of preventing human trafficking, that once a person has been identified as a victim, by some sort of assessment, that he or she by default is a victim and should be immune from prosecution. There is a danger in declaring that, someone is prima facie, is a victim of human trafficking without first going through the investigation and committal process, because declaring a victim and excluding that victim from prosecution grossly undermines the principle of burden of proof and the role of the State in prosecution.

¹⁵ No.25 of 2014.

¹⁶ No.27 of 2002.

Stakeholders working in the area of preventing human trafficking should recognise that in common law jurisdictions such as PNG, only a court of competent jurisdiction can decide whether a person charged under Section 208C or 208D, is a victim of human trafficking that should be afforded immunity under Section 208F. At present no other agency has the power to make such a determination, unless a decision to make special measures available to a person, is made by the Minister for Justice, using his powers under Section 208G. However, using this process to make special measures for victims may be open to challenge in court by the Public Prosecutor, or in some instances of private prosecutions by another agency or law firm.

Current Application of Trafficking in Persons Offence Provision in Case Law

The first case in PNG to make reference to the offence of trafficking in persons and the definition of trafficking in persons under Section 208B is the National Court case of *Konori v Jant*. Apart from this case, the courts have yet to elucidate the concept of human trafficking in PNG and set out what exploitation is, and how it must be identified and treated by law enforcement agencies.

Elements required to prove the offence of Trafficking in Persons

A human trafficking crime is a criminal offence, therefore police have jurisdiction over this matter, even where cases involve foreign nationals. The matter commences when a complaint is laid with police. The complaint is investigated by the police and processed through the Committal Court to the National Court.

The elements of human trafficking are divided into three broad categories depending on who is prosecuted:

1. The first category are principal offenders (Section 7 of the CCA).
2. The second category are persons who assisted in the commission of an offence (Section 10 of the CCA).
3. The third category are victims of the crime that have been arrested and charged for committing another offence, but have committed the offence as a direct result of being trafficking and exploited.

These are shown in the table below.

Element	Section in CCA and Category of Offender	Standard
<i>Actus Reus</i>		
Use of the following 'Actions' to place a victim in a position where they can be easily trafficked and exploited	Section 208C(1) of the CCA (Category 1) Section 208D(1) of the CCA (Category 2)	<ul style="list-style-type: none"> • Recruitment (of a person) • Transportation (of a person) • Transfer (of a person) • Concealing (a person) • Harboring (a person) • Receiving (a person)
Use of the following 'Means' or 'methods'	section 208C(1)(a)-(j) of the CCA (Category 1) section 208D(1)(a)-(j) of the CCA (Category 2)	The use of- <ul style="list-style-type: none"> • threats; or • force or other forms of coercion; or abduction; or • fraud; or • deception; or • use of drugs or intoxicating liquors; or • the abuse of office; or • the abuse of a relationship of trust, authority or dependency; or the abuse

		<ul style="list-style-type: none"> of a position of vulnerability; or the giving or receiving of payment or benefits to achieve the consent of a person having control over another person.
Types of 'Exploitation' that must exist in a set of circumstances in order for a case to be considered a Human Trafficking case.	<p>section 208C(1) of the CCA (Category 1)</p> <p>Section 208D(1) of the CCA (Category 2)</p>	<p>The act of exploiting a victim through-</p> <ul style="list-style-type: none"> forced prostitution; other forms of sexual exploitation forced labour or services; slavery or similar practices; Servitude removal of organs.
<i>Men's Rea</i>		
Intention	Section 208C(1) of the CCA (Category 1)	The person has the intent to exploit and benefit from the exploitation of another person.
Knowledge or Recklessness	section 208D(1) of the CCA (Category 2)	The person assisted in the exploitation of another person.
<i>Offences committed as result of being trafficked and exploited</i>		
Knowledge or Recklessness	Section 208D(1) of the CCA (Category 3)	For victims who participate in the commission of a human trafficking offence as defined by Section 208c and 208D.
Commission of a criminal offence under the CCA or another legislation	Section 208F(1) (2) of the CCA (Category 3)	<p>Victim are required to satisfy the National Court on 'Reasonable Grounds';</p> <ol style="list-style-type: none"> they are a victim of human trafficking the offence they have committed is a direct consequence of being trafficked and exploited. <p>Both requirements under Section 208F(1) (2) must be satisfied, for the court to rule that a person is Immune from criminal prosecutions.</p>

The elements outlined above can be proved through relevant evidence, whether it is a statement or other form of evidence that is dependent on the circumstances of the case.

Summary

In examining the definition of human trafficking in PNG, it is clear that human trafficking is a new crime and the law around the offence as a transnational organised crime (pursuant to Section 208A of the CCA) or the breach of human rights is underdeveloped. This situation will change once the Chimbu Human Trafficking Case and other landmark cases are decided by the courts.

When dealing with reported or alleged incidences of human trafficking, it is crucial that lawyers, government law enforcement agencies, and Non-Government Organisations, providing psychosocial assistance (for victims), consider the strict definition of human trafficking under the CCA. It is equally important to consider the rights of victims and consider each case on its merits, as there is a danger in straying away from the strict definition of human trafficking and exploitation (under the CCA), which can result in an error in the application of the law.