



**University of Oklahoma College of Law
International Human Rights Clinic
The United States of America**

Report on the Independent State of Papua New Guinea for the
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EXECUTIVE SUMMARY

The International Human Rights Clinic of the University of Oklahoma College of Law U.S.A. submits the following report to the Eleventh Periodic Review of the United Nations Human Rights Council. Specifically, the report concerns indigenous people in the Independent State of Papua New Guinea and surveys Papua New Guinea's compliance with certain human rights obligations. This report and the attached annex focus on four selected areas: (I) Women's Rights, (II) Education, (III) Health and (IV) Natural Resources and Environment.

The Clinic notes the expressed commitment of the Papua New Guinea (hereinafter PNG) government to increase compliance with its international obligations. PNG has submitted several plans that address the issues faced by the indigenous population. These plans include measures to achieve the country's human rights objectives with regards to its indigenous population.

I. WOMEN'S RIGHTS

Normative and Institutional Framework

International Provisions: Papua New Guinea acceded to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) on 12 January 1995 without reservations, understandings or declarations. Because the treaty applies to women generally, and by virtue of the fact that 77% of PNG's population is considered indigenous, indigenous women in the country are guaranteed all of the rights under the treaty. Several CEDAW articles are especially relevant to PNG, particularly article 14 which addresses the needs of rural women. PNG is also a party to the following International Labour Organization conventions relating to women: C45, C100, C103, C111, C122 and C138. Additionally, if the UN Declaration on the Rights of Indigenous Peoples applies as customary law, PNG is bound by articles 21 and 22. This section focuses on PNG's CEDAW obligations.

Domestic Undertakings: PNG has taken some steps that impact compliance with the CEDAW which are discussed in detail in paragraphs 18 to 22 of the Annex. Such steps include: the National Gender Policy and Plan on HIV and AIDS 2006-2010 and, in light of the Millennium Development Goals, the Medium Term Development Strategy for 2006-2010. Examples of domestic legislation targeted at women's rights and issues include: the Equality and Participation Bill, the Lukautim Pikinini (Child Protection) Act and the 2002 Sexual Offenses and Child Protection Act. PNG also created the Office for Development of Women (ODW) through the Department for Community Development Gender and Development Branch.

Human Rights on the Ground

With respect to some CEDAW obligations, PNG is in partial compliance; however, the country is lacking with respect to key articles. CEDAW article 2 condemns discrimination and General Comment 19 of the CEDAW Committee defines discrimination to include gender-based violence; however, PNG has not incorporated domestic violence offenses into its criminal laws. Neither the PNG constitution nor legislation contains a substantive recognition of gender equality. Article 14 specifically recognizes rural women; however, PNG has not taken measures to comply, leaving rural women with no substantive promise of equality.

Women in PNG face serious obstacles. PNG had the lowest Gender-related Development Index (GDI) of the Pacific Island Countries in 2007-2008. The GDI is a composite index measuring indicators relating to women's life expectancy, health, knowledge and

standard of living. PNG is a patriarchal society where a high incidence of gender-based domestic violence against women exists. Sexual assault, rape, killing and wife beating are among the most prevalent offenses and are perpetrated in high numbers in rural areas. Women are victimized for many reasons including accusations of sorcery/witchcraft and HIV/AIDS infection. This implicates article 2 of the CEDAW due to the lack of incorporation of domestic violence offenses into the criminal code.

Women also face serious inequalities in governmental representation/participation. PNG has taken no special measures to comply with CEDAW articles 7 and 8, requiring equality in governmental participation/representation. In its 35 years of independence, only 4 women have ever served in the PNG parliament; currently there is only 1 woman in the 109-seat parliament, the first to serve in the past decade.

Recommendations

- Amending the PNG constitution to include an enforceable substantive recognition of gender equality that is neither superseded by pre-independence law or in conflict with customary law. In regard to article 55(3) of the Constitution, such a provision would expressly state that it supersedes the operation of pre-independence law.
- Adopting a generally applicable definition of discrimination for general use in the legal system, including recognition of gender-based domestic violence as discrimination.
- Amending domestic criminal law to incorporate domestic violence offenses.
- Implementing special legislative measures, such as quotas, to ensure women participation in all levels of governmental structure, including the appointive/administrative leadership positions, elected positions and all levels of the civil service.
- Enacting special legislation to ensure rural women full equality and rights to improvement and development, specifically with respect to employment and education.
- Enacting legislation to fund and staff the Office of Development of Women.
- Implementing the goals and directives of plans like the National Gender Policy and Plan on HIV and AIDS 2006-2010 and the Medium Term Development Strategy 2006-2010.
- Advancing complete incorporation of the CEDAW into PNG domestic law without further delay; and, acceding to the Optional Protocol to the CEDAW.
- Implementing concrete measures to investigate violence against women.

II. EDUCATION

Normative and Institutional Framework

International Obligations: PNG ratified the Convention on the Rights of a Child (CRC) on 2 March 1993 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 21 July 2008. CRC article 28 and ICESCR article 13 require state parties to recognize every child's right to education, and to make primary education compulsory and freely available for all children. CEDAW article 10(f) obliges state parties to take appropriate measures to reduce female drop-out rate and to organize programs for girls and women who have left school prematurely.

Domestic Undertakings: In October 2009, the National Executive Council of PNG adopted the Universal Basic Education Plan 2010 – 2019 (UBE) directing the government's efforts to provide universal basic primary education for children and improving educational infrastructure. Primary education in PNG is not free, but the

government provides partial subsidies. The UBE acknowledges the disparity in school enrollment rates for boys and girls. In recognition of the high drop-out rate for girls, PNG has partnered with UNICEF to develop the “Accelerating Girl Child Education” program discussed in paragraph 32 of the Annex.

Human Rights on the Ground

Eliminating gender disparity in primary and secondary education is one of the key targets of the Millennium Development Goals (MDG). Eighty-five percent (85%) of PNG’s population lives in rural areas. Many are subsistence farmers living in poverty. School enrollment and retention rates are among the lowest in East Asia and the Pacific. PNG’s gender gap in primary schools is the highest in the region. The primary school enrollment rate for boys is 80% and for girls is 70%. Of girls aged 7-12 year, only six in ten are enrolled, and three will likely complete grade eight. There are three main reasons for this. First, school fees are a financial burden for poor families and tend to choose to educate sons rather than daughters. Many families see little value in educating girls who traditionally have a low status in this society and are kept at home for household chores. Second, due to widespread parental concern about harassment, physical and verbal abuse, and possible pregnancy, parents withdraw their girls from school. Third, girls are expelled from school when they become pregnant. In addition, PNG does not have an adequate number of teachers staffing its primary schools and in particular female teachers.

Recommendations

- Maintaining and expanding the use of educational subsidies and scholarships to encourage and maintain female enrollment.
- Establishing as high priority the adoption of a plan to secure compulsory, free primary education consistent with ICESCR article 2(1) and article 14.
- Increasing awareness of the importance of educating girls and the need to keep girls in school and provide infrastructure to ensure the safety of girls in school.
- Promoting the importance of native tongue and bilingual education especially at the primary and early secondary level.
- Placing emphasis on the recruitment of women to teach in rural schools.

III. HEALTH

Normative and Institutional Frameworks

International Obligations: ICESCR article 12 recognizes the “right of everyone to the highest attainable standard of physical and mental health.” CEDAW article 12 obliges states to take “all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to healthcare services.” Article 12 also includes a provision to ensure women receive “appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary.” CRC article 12 requires state parties to “strive to ensure that no child is deprived of his or her right of access to such healthcare services.” It also states that state parties “shall take appropriate measures to diminish infant and child mortality.” PNG has not submitted state party reports for the ICESCR and the CRC. In 2004 PNG adopted the Millennium Development Goals (MDG), and several of the goals include provisions concerning healthcare. MDG 4 calls for a reduction of the child mortality rate. MDG 5 calls for improved maternal health; including universal access to reproductive health and improving the “proportion of births attended by skilled health personnel.” MDG 6 identifies the need to combat HIV/AIDS,

malaria and other diseases. If the DRIP is determined to serve as evidence of customary international law then Articles 21 and 24 would be binding on PNG. Article 21 provides that indigenous peoples have the right to improvement of their health. Article 24 provides that indigenous people have a right to traditional medicines, health practices, and have a right to access all health services.

Domestic Undertakings: Four provisions of the PNG constitution explicitly refer to public health. Article 1(4) calls for “improvement in the level of nutrition and the standard of public health. Article 38(1)(a)(i) permits the regulation or restriction of rights and freedoms where necessary for the public health, including animal and plant health, as well as the protection of children and disabled persons (whether legal or practical). While not applicable to this discussion, health is also mentioned in constitution article 44(iv) in the context of freedom from arbitrary search and entry and the authorization of the inspection of goods, premises, vehicles, ships, or aircraft entering PNG.

In 2007, PNG passed the Provincial Health Authority Act (PHAA) as part of an effort to create a single authority to manage hospitals and primary healthcare services throughout the provinces. This passed in part due to the perceived failures of decentralizing the healthcare system.

The Australian Agency for International Development (AusAid) is a key stakeholder in PNG and seeks to facilitate sustainable development and the reduction of poverty. AusAid is involved with several initiatives concerning HIV/AIDS, healthcare quality and access.

Human Rights on the Ground

The main issues regarding healthcare and the indigenous people of PNG include: access to healthcare services, maternal mortality, child mortality and HIV/AIDS. There are also continued problems with institutional and technical capacity to manage financial resources, and numerous rural health access points have closed, but are still reported open. Access to health services is limited, especially in rural areas where the majority of the population lives. Maternal mortality in PNG is among the highest in the Pacific. From 1996-2006 the maternal death rate average was 733 per 100,000 live births, reflecting insufficient progress towards MDG 5. Infant mortality in PNG is also among the highest in the Pacific region. During the period between 2005-2010 it was 50.8 deaths per 1,000 live births. These problems are due in large part to a lack of skilled midwives and healthcare professionals. Moreover, the under-five mortality rate is 64 deaths per 1,000 live births. This also represents insufficient progress towards achieving MDG 4. Approximately 1.5% of the population aged 15-49 is living with HIV and PNG is not on track to achieving MDG 6.

Recommendations

- Submit state party reports for the ICESCR and CRC.
- Development of a structure for the efficient dispersal of funds related to healthcare.
- Strengthen partnerships with international stakeholders and NGOs for improvement of access to healthcare.
- Incorporate into the national health policy a mechanism for indigenous communities to report abuses, neglect and closures of healthcare offices.

IV. NATURAL RESOURCES AND ENVIRONMENT

A. Natural Resource Extraction

Normative and Institutional Frameworks

International Provisions: ICESCR articles 1 and 25 provide that all people share in the “right [to] freely determine their... economic, social and cultural development,” in addition to an “inherent right... to enjoy and utilize fully and freely their natural wealth and resources.” Additionally, if the DRIP is deemed to serve as evidence of customary international law, article 8, section 2(b) and article 32 will be relevant as binding on PNG in that they require consent and redressability for actions involving lands and natural resources of indigenous populations.

Domestic Undertakings: For purposes of settling land disputes, land in PNG is classified as either alienated or unalienated. Alienated lands comprise less than 5% of the total land holdings and are governed by the PNG constitution. Unalienated lands, also known as customary lands, comprise the majority of the land base and are governed by customary law and the Land Dispute Settlement Act (LDSA) of 1975. The LDSA sets out a three-stage process for settlement of land disputes, which includes compulsory mediation by a local land mediator, arbitration in a Local Land Court if such mediation fails, and appeal in a provincial court as a last resort. For the purpose of identifying groups and individuals involved with or owning communal lands near commercial extraction sites, an informal registration process is provided for in the Land Groups Incorporation Act (LGIA) of 1974.

Human Rights on the Ground

The land dispute resolution system under the LDSA fails to meet the needs of indigenous landholders. Since inception, the LDSA three-step system has been underfunded, understaffed and under-prioritized, resulting in an unacceptable number of outstanding unheard matters. The LGIA does not provide for income distribution to individual members but only to representatives or trustees defined by the group upon registration. In instances such as the Bougainville crisis where trustees breach their fiduciary duty and keep the distributed funds for themselves, the individual members are often unable to seek redress, due to the backlog in the LDSA system. This ultimately leads to social disharmony, inter-tribal and inter-clan fighting, and increased crime rates. Moreover, the delays and inter-tribal strife increase the costs of and slow resource development, resulting in a moratorium on exploration and extraction at certain sites.

Recommendations

- Considering accession to ILO Convention 169 on indigenous and tribal peoples in independent countries.
- Providing further funding and resources for the land dispute system.
- Considering an amendment to the LGIA to include a more formal registration process in addition to a system for ensuring income distribution to not only clan representatives, but individual clan members as well.
- Considering supporting the Declaration on the Rights of Indigenous People.

B. Environment

Normative and Institutional Frameworks

International Provisions: The ICESCR provides that all people share in the “right to an adequate standard of living... including food, clothing, and housing, and to the continuous improvement of living conditions.” The Kyoto Protocol represents a commitment to reduce greenhouse gases and spare populations the disastrous effects of climate change. The Convention on Biological Diversity requires parties to “adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity.” Additionally, if the DRIP is deemed to serve as evidence of

customary international law, Article 29 will be relevant as binding on Papua New Guinea in that it provides for the “right to conservation and protection of the environment.”

Domestic Undertakings: The PNG Department of Environmental Conservation (DEC) plans to develop an Environmental Sustainable Economic Growth (ESEG) policy and an Environment Protection Authority (EPA) with an explicit mandate of natural resource conservation. Since 2000, DEC has administered the Environment Act, which provides an administrative mechanism for promoting sustainable development and human well-being. In May 2010, the Environment Act was amended to prohibit third party lawsuits against resource projects.

Human Rights on the Ground

Deforestation: Nearly one quarter of PNG’s rainforest was damaged between 1972 and 2002 due to illegal commercial logging. Deforestation threatened the indigenous habitat and ecosystems, which are essential for sustainably living on the land. Furthermore, deforestation contributes to climate change by destroying previous carbon sinks. Due to the rising sea levels attributed to climate change, the Carteret Islands no longer bear fruit trees or the taro upon which the inhabitants depend. In the long term, the islands face complete submersion.

Mining Waste: In March 2010, indigenous landowners obtained from the PNG National Court an injunction against a nickel mine that piped its slurry waste to the sea, degrading their shoreline and the marine life on which they depend. Basing its order on gross public and private nuisance and breaches of the Environment Act, the court required an alternative to the dumping, and emphasized grave environmental concerns.

Recommendations

- Considering adoption of effective mechanisms to ensure compliance with international obligations regarding deforestation and climate change.
- Considering adoption of measures to regulate and investigate any political influence or abuse of indigenous rights.