



United Nations in Papua New Guinea Joint Report for the Universal Periodic Review of Papua New Guinea, United Nations Human Rights Council 11th session, May 2011

Introduction

This report was drafted by the United Nations in Papua New Guinea for the Universal Periodic Review of PNG at the Human Rights Council's 11th session in May 2011¹. Due to space constraints this report will not be exhaustive and instead highlight the main human rights concerns in Papua New Guinea on which the UN is engaged.

1. Background and Framework

Papua New Guinea is the largest of the Pacific Island nations, both in terms of population, estimated at some 6.1 million, and in terms of land mass, covering approximately 460,000 square kilometres. Around 87 per cent of the population lives in rural areas of Papua New Guinea's varied and rugged terrain, most of which are not accessible by road. The country has a rich and unique cultural and ethnic diversity, with some 800 languages spoken by a population distributed over the mainland and the many islands. The population is forecast to grow to more than 11 million by 2050. Currently 40 per cent of the population is under the age of 18.

The country's level of human development remains low and has, in some areas, deteriorated over recent years. In 2010, Papua New Guinea's Human Development Index (HDI) is ranked at 137 (Human Development Report 2010). The HDI includes the following main indicators relating to Papua New Guinea: (i) Life expectancy at birth – 61.6 years; (ii) Adult literacy rate – 59.6 per cent and (iii) GNI per capita - US\$2,227 (<http://hdr.undp.org/en/statistics/hdi/>).

High demand for primary resources has shielded PNG from the global economic crisis. A new project signed in December 2009 to exploit PNG's gas fields in the Highlands is projected to double GDP over the next 10-15 years. While this could bring significant opportunities for human development if funds are invested appropriately for basic services like health and education, there are concerns that it could lead to a further deterioration of the situation, increased human rights violations, environmental destruction, corruption and misuse of public funds. PNG has a history of storing such revenues in overseas trust accounts and sovereign funds instead of reinvesting in the public budget, due to both limited capacity to absorb public finances and capacity constraints in the management of delivery

¹ UNDP, UNHCR, UNICEF, IOM, WHO, UNFPA, UNIFEM and OHCHR provided input for the report.

mechanisms. There are concerns that tensions created by the project, growing disparity in incomes and extreme poverty in the country could lead to social unrest, as was seen in Bougainville.

In Papua New Guinea the UN is Delivering as One. The UN Country Programme (2008-2012) is themed 'Partnership for Nation Building' and encompasses five broad developmental outcomes: Governance and Crisis Management - Government develops and implements effective governance and crisis management policies ; Foundation for Human Development (Health, Education and Child Protection) – By 2012, children, youth, women and men benefit from basic quality health, education and protection.; Sustainable livelihoods and Population - By 2012, rural communities in selected provinces of each region use improved sustainable livelihood practices.; Gender - By 2012, women and girls experience fewer gender inequalities in PNG; HIV and AIDS - By 2012, the rate of HIV and AIDS infection is halted or reduced and Government provides services to those people with, and affected by, HIV and AIDS. The UNCP Action Plan operationalizes the UN Country Programme that was signed mid-2007 as one of the world's first Joint UN Country Programmes. The overall aim is to simplify and harmonize the way the UN works at country level and to ensure that the UN Country Programme is aligned with and in support of national priorities and that national systems and procedures are utilized for programme delivery which reduces transaction cost significantly. The partnership on which this Action Plan is based on is further underpinned by the support of a wide range of stakeholders, including civil society and faith-based organizations, NGOs as well as multilateral bilateral development partners. The UN aim to use rights-based approaches to programming based on international human rights standards and will emphasize accountability, equality, empowerment and participation of all people. This approach will provide the operational expression of the link between development and human rights, especially in relation to supporting the rights of women, children and other vulnerable groups. The UNCP contains a specific human rights outcome: Intermediate Outcome 4: Government is aware of, respects, and provides for people's human rights while it empowers citizens to demand the protection of those rights from government.

A. Scope of international obligations

Papua New Guinea is a party to the following core human rights treaties ICCPR, ICESCR, CERD, CEDAW and CRC. PNG has not ratified CAT, CRPD or ICRMW or the optional protocols to the other treaties.

PNG acceded to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol on 17 July 1986 (henceforth referred to jointly as the 1951 Convention). When acceding to the 1951 Convention, PNG made reservations against seven of the Articles under the 1951 Convention: Article 17(1) [wage-earning employment], Article 21 [housing], Article 22(1) [public education], Article 26 [freedom of movement], Article 31 [refugees unlawfully in the country of refuge], Article 32 [expulsion] and Article 34 [naturalization]. Discussions are underway to remove these reservations.

B. Constitutional and legislative framework

Human Rights guarantees are included in the Constitution of the Independent State of Papua New Guinea, in particular Division III. 3 (Basic Rights). It stresses that "all persons in our country are entitled to the fundamental rights and freedoms of the individual... whatever their race, tribe, places of origin, political opinion, colour, creed or sex". These rights include the rights to life, liberty, security of the person and the equal protection of the law; and b) the right to take part in political activities; and c) freedom from inhuman treatment and forced labour; and d) freedom of conscience, of expression, of information and of assembly and association; and e) freedom of employment and freedom of

movement; and f) protection for the privacy of their homes and other property and from unjust deprivation of property. These rights are subject to such restrictions as are provided by law and necessary in a democratic society for a number of specified purposes. These are aimed at ensuring that the enjoyment of the acknowledged rights and freedoms by an individual does not prejudice the rights and freedoms of others or the legitimate public interest.

The UN is providing technical assistance to PNG on ways to further harmonize the national legal framework with the provisions contained in the international human rights treaties ratified by PNG. In 2002, Parliament amended the Criminal Code (Sexual Offences and Crimes Against Children) Act 2002 to strengthen prohibition against sexual violence. It introduces important changes that increased the possibilities of charging and convicting offenders of sexual assault on women and girls and criminalizes rape in marriage. Amendments were also made to the Evidence Act to enable special measures to be used in the case of witnesses who are under the age of 18 at time of giving evidence, or complaints relating to sexual or violent crimes, including use of screens and hearing evidence in camera.

The HIVAIDS Management and Prevention Act (HAMP Act) 2003 allows for prosecution of individuals as well as service providers who discriminate and deny services on the grounds on one's HIV status. It is aimed at preventing further transmission of HIV, promotion of service provision including treatment and care, and protection for the affected and infected from stigma and discrimination. An amended child protection legislation the Lukautim Pikinini Act was passed in November 2009. Its objective is to protect and promote the rights and well-being of all children regardless of gender and to protect children from all forms of violence, abuse, neglect, exploitation and discrimination. It implements recommendations made by the Committee on the Rights of the Child to improve protection of children's rights. Implementation is underway in 15 provinces, primarily through the roll-out of stakeholder training and training in the child protection officer operational manual. Interagency guidelines have also been developed, and a Government strategy is under finalization. Findings from Government and NGO capacity assessments are guiding the implementation. Provincial Lukautim Pikinini Councils are expected to be established in 2011 once the National Lukautim Pikinini Council is formally activated. These Councils will be mandated to oversee the implementation of the Act at the sub-national level. Other legal initiatives are outlined below under the different thematic areas.

C. Institutional and human rights structure

There is no National Human Rights Commission in Papua New Guinea. In 1995, the National Executive Committee (NEC) approved, in principle, the establishment of an independent Human Rights Commission. An options paper was drafted, that outlined the possible structures and functions and regional consultations were held across the country. In 2009 the legal drafting instructions were prepared for the enabling legislation (organic law and amendment to the constitution) to establish a NHRC. In 2010 work started on the costing of the Commission. A submission containing the legal drafting instructions for the enabling legislation to establish a NHRC have been presented to the NEC in 2010. It is hoped that the bills will be approved by parliament in 2011 (three readings required) and that the NHRC will be operational in 2012. There are concerns that with the frequent adjournment of parliament (to avoid votes of no confidence) and the elections in 2012 that the approval of the enabling legislation may be further delayed.

The Ombudsman Commission (OC) of Papua New Guinea was established to guard against the abuse of power by those in the public sector; assist those exercising public power to do their jobs efficiently and fairly and impose accountability on those who are exercising public power. It is an independent

institution established directly by the Constitution. In 2007 the Ombudsman Commission entered into a Memorandum of Understanding with the Police providing the former with oversight of investigations conducted by the Internal Affairs Department of the Police. In the past year there have been worrying developments with regards to threats to the OC. In December 2009 there was an armed attack on the life of the Chief Ombudsman, Chronox Manek, which left him seriously wounded; to date no one has been prosecuted. In 2010 a private members bill was introduced to parliament to take away powers of the Ombudsman “the Maladina amendments”. The bill was passed at its first reading but due to public protests it has not been presented to parliament for another reading.

The Office of Lukautim Pikinini has lead responsibility for child protection; and is supported by the National Lukautim Pikinini Council, a statutory body responsible for monitoring the implementation of the child protection legislation and providing government with ongoing technical and policy advice.

D. Policy measures (national action plans, strategies and human rights education)

Papua New Guinea does not have a National Human Rights Plan of Action. The main government development plans launched in 2010 are the National Strategic Plan 2010-2050 (Vision 2050) and Medium Term Development Strategy 2010-2015. It will be extremely important that adequate Government budget is allocated to key basic services such as education and health for PNG to attain its development objectives.

There are a number of sectoral plans which provide measures to implement human rights in different fields for example the overall policy framework governing the law and justice sector creates an enabling environment for child protection. The National Law and Justice Policy and Plan of Action – Towards Restorative Justice (1999) placed restorative justice at the centre of the government’s approach to addressing law and order. The Law and Justice Sector Program was subsequently developed to support law and justice sector initiatives and is funded jointly by the Papua New Guinean and Australian governments with around 60 million kina per year. The 2007 White Paper on Justice focuses the sector on key principles of local ownership, harmonization of programming, managing of results and mutual accountability in the Sector’s efforts to promote restorative justice. For example, key priorities in the current Law and Justice Sector Strategy Framework includes the strengthening of the juvenile justice system and building on efforts to support women and child survivors of violence to access the justice system. These priorities are further reflected in the increasing annual development budget allocations for child protection priorities.

With regards to women’s rights, the National Women’s Policy 1990 established the national machinery operating through the Department for Community Development and the National Council of Women clearly setting out their roles and responsibilities in dealing with women’s programmes, and the policy is currently being updated by Government. The 2003 Gender Equity in Education Policy aims at increasing equality for girls and boys in accessing their rights to education as well as providing opportunities for women to take on leadership roles in the educational system. The Gender Policy on HIV/AIDS 2006-2010 aims to mainstream gender across all government programmes and sectors with a HIV/focus. The National AIDS Council Secretariat are responsible in coordinating the programmes through a multi sectoral approach to assist in mitigating the impact of the epidemic on the lives of the most vulnerable groups such as women and girls. The NAC Gender Policy on HIV/AIDS 2006-2010 and the Guidelines for Developing Workplace Policy Toolkit on HIV/AIDS in December 2006 both place emphasis on the importance of gender equality and women’s empowerment.

At the regional level, the Pacific Forum Leaders' Communiqué of 2009 recognized sexual and gender-based violence (SGBV) as a risk to human security and a potential destabilizing factor for communities and societies alike and the urgent need to acknowledge the prevalence of SGBV in the Pacific at all levels of the community, whether occurring in the domestic context or during conflict and post-conflict situations. The National Councils of Women in the Pacific have been able to form a cohort that has been able to advocate for changes to the regional forums such as the Pacific Islands Forum Secretariat and the Melanesian Spearhead Group.

2. Promotion and Protection of Human Rights on the ground

A. Cooperation with international human rights mechanisms

PNG has not entered into a regular dialogue with the treaty bodies and frequently failed to submit reports to the committees. However in 2008 PNG submitted its first, second and third combined report to CEDAW for consideration. In July 2010 the Committee on the Elimination of Discrimination against Women met to consider the combined initial to third periodic report of Papua New Guinea (document CEDAW/C/PNG/3). Last examination by CRC was in 2004; see CRC/C/15/Add.229. Last examination by CERD was in 1984; see A/39/18. First reports are due for CCPR and CESCR.

In May 2010 the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Manfred Nowak, visited Papua New Guinea at the invitation of the Government and received good cooperation from the RPNGC and Correctional Services. Preliminary findings and recommendations were released at the end of the mission in May 2010 and the mission report will be presented to the Human Rights Council in 2011. In 1995 the Special Rapporteur on extrajudicial, summary or arbitrary executions, Bacre Ndiaye, visited the Papua New Guinea island of Bougainville. The report on his visit is in document E/CN.4/1996/4/Add.2. No standing invitation to Special Procedures has been made. The Government has not yet agreed to the requested visits by the Working Group on Arbitrary Detention, the Special Rapporteur on the right to education and the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights. A number of communications have been sent to the Government from Special Procedures and the High Commissioner for Human Rights but so far no response has been received.

B. Implementation of human rights obligations including (non-exhaustive list) with regard to:

i. equality and non-discrimination

Gender discrimination exists at all levels in Papua New Guinea evident in such indicators as literacy and also in the absence of women in decision making positions in government and all sectors of society at all levels. Violence against women is widespread in the home, community and also perpetrated by the State. There are extremely high levels of domestic violence in the country. Impunity for rape, domestic violence and sorcery related attacks fuels the violence. Less than half of the children are enrolled in primary school in rural areas and only slightly more than half of those that are enrolled complete Grade 5. Girls are less likely to be enrolled in school and frequently fail to complete their education.

In 2010 CEDAW (CEDAW/C/PNG/CO/3) made a series of recommendations to the Government to take steps to eliminate discrimination against women in PNG. The Committee urges the State party to proceed without delay with the full incorporation of the Convention into its domestic legal system in order to give central importance to the Convention as the basis for the elimination of all forms of discrimination against women and the achievement of gender equality. The Committee notes with concern that the Constitution does not include sex as a prohibited ground, thereby allowing for lawful discrimination on the grounds of sex or gender. The Committee is concerned about the barriers hindering women's access to justice, including in terms of geographical distance to and from courts, lack of legal aid, lack of information about their rights and lack of resources to access the services of lawyers. The Committee urges the State party to strengthen its legal complaints system to ensure that all women have effective access to justice. The State party is encouraged to accelerate the process of establishing a national human rights institution in accordance with the Paris Principles and to ensure that the institution will be provided with a broad mandate in respect of human rights, as well as sufficient human, financial and technical resources for its effective functioning, and that its composition and activities will be gender-sensitive and will fully address the issue of the promotion and protection of women's human rights.

The Committee expresses its serious concern about the persistence of harmful norms, practices and traditions, as well as patriarchal attitudes and deep-rooted stereotypes, regarding the roles, responsibilities and identities of women and men in all spheres of life. It expresses serious concern about reports of brutal torture and killings of women and girls accused of witchcraft, and urge the State party to take immediate and effective measures to investigate, prosecute and punish the perpetrators of such acts and to prevent their reoccurrence in the future. The Committee notes with concern that victim protection services and enforcement measures are insufficient. It is also concerned about the lack of shelters or safe houses, counseling and other services. In addition, the Committee expresses its deep concern about reports of sexual abuse of women upon arrest and in police custody, perpetrated by both police officers and male detainees, and at times in the form of collective rape, and that such abuses are rarely documented and investigated and perpetrators not prosecuted and punished. It urges the State party to give priority attention to the enactment and implementation of a comprehensive legal framework addressing all forms of violence against women in conformity with the Committee's general recommendation No. 19. Furthermore, it urges the State party to take necessary measures to ensure that custodial violence by officials, including acts of sexual abuse of women and girls are prosecuted and punished as grave crimes.

In addition to gender discrimination persons with disabilities are also in need of greater equality, women with disabilities face different layers of discrimination. The Papua New Guinea National Policy on Disability 2009 provides a framework to address the rights of people with disabilities. It was developed with the aim of making Papua New Guinea a more "inclusive" society, create greater awareness on the needs of people with disabilities and identify priority areas for action, to dismantle barriers hindering the full participation of people with disabilities in the social and economic life of Papua New Guinea. More action is required to implement the policy. The Government is considering ratification of the CPRD.

HIV stigma and discrimination adversely affects the lives of people living with HIV, people vulnerable to HIV, and their families. For many men and women diagnosed with HIV, the consequences of disclosing a positive test are devastating. Impacts include losing their jobs, violence, social exclusion and denial of care and emotional support, often from their own families and *wantoks*. For women, there are the

additional fears of losing their children and homes due to customs related to marriage and land rights. The fear of being stigmatized and discriminated against mean that people are less likely to be tested, less likely to tell their partner they are positive, and less likely to seek treatment and support services. Reducing stigma and discrimination is essential in controlling the HIV epidemic. ^[1]

In 2009, the number of adults (aged 15-49) living with HIV was estimated to be 35,800 which was equivalent to a national prevalence rate of 0.9%. To the end of 2009, a cumulative total of 11,520 people were estimated to have died because of HIV-related illnesses and 5,610 children had become orphans, losing one or both of their parents, as a result of the epidemic.²

Estimates of adult prevalence were developed for the four PNG regions: In the Highlands adult prevalence was estimated to be 1.02% in 2009, with indications that a plateau may have been reached. In Southern Region: adult prevalence was estimated to be slightly higher at 1.17%, while the epidemic may also have started to level off. This data is largely derived from the National Capital District and is not indicative of prevalence in other parts of the region. In Momase and New Guinea Islands: prevalence is estimated to be substantially lower than in the Highlands and Southern regions, at 0.63% in Momase and 0.61% in New Guinea Islands. It is now becoming evident that the trends of the epidemic across the country are not the same. While the epidemic in the Highlands is showing a small downward trend, from a peak in 2007, it has reached a plateau in the Southern region, and in the two other regions of Momase and New Guinea Islands the epidemic is still on rise, with no sign of a plateau.

Strategic Objectives for the Draft National HIV Strategy(NHS) 2010-15 include: Key legislation relating to HIV and STIs is reviewed and implemented, Legislative reforms to improve the environment for effective HIV and AIDS prevention, treatment and care, Increase awareness of human and legal rights, key legislation and the needs of more-at-risk populations in HIV prevention and care. Changing attitudes towards HIV and AIDS, people living with HIV, and people vulnerable to HIV, is a critical part of the NHS. We must reduce stigma and discrimination to improve prevention and treatment, care and support. Melanesian and Christian values of love and care must be supported with effective laws and a range of strategies and messages to promote tolerance, understanding, empathy and dignity.

PNG has created an enabling legislative and policy environment for addressing HIV through a range of policies and law. These include the *HIV/AIDS Management and Prevention Act (HAMP Act) 2003* and the *Lukautim Pikinini (Child) Act 2009*. The HAMP Act *inter alia* forbids HIV-related discrimination; forbids mandatory testing and requires that information about a person's status is kept confidential. However, the provisions under the Act have been rarely enforced and implementation is limited. Awareness and understanding of key Acts needs to be promoted among partner organizations, leaders and communities. Review, awareness raising and implementation of existing policies and laws will be major activities of the NHS. Laws that criminalize sex work and same-sex practices create barriers to people accessing services and also prevent service providers from operating in some locations, they reinforce vulnerability, stigma and discrimination. Greater advocacy from all stakeholders is needed to support plans for introducing reforms to legislation that aim to reduce vulnerability and stigma and discrimination.

Papua New Guinea's cabinet recently endorsed a review on existing laws governing prostitution and unnatural sex offences to be undertaken by the Constitutional and Law Reform Commission (CLRC). The

² National AIDS Council and National Department of Health, Consensus Workshop on HIV Estimation in PNG, 8-10 June, 2010

policy submission, from Community Development Minister Dame Carol Kidu,³ went before the National Executive Council on 01 June 2010. The council directed Attorney-General and Minister for Justice to refer the criminal laws and other relevant matters to CLRC. The submission had sought approval to strengthen PNG's response to HIV/AIDS and review criminal laws to decriminalize sex work and consensual homosexual practices.

ii. right to life

Extrajudicial, summary or arbitrary killings: Abuses and excesses by the Royal Papua New Guinea Constabulary (police) in PNG have undermined the primary objective of policing to uphold the law and maintain social peace and stability. Use of force is often not necessary or proportional. The Police Commissioner, the NCD Police Chief and other senior police officers reportedly issued shoot to kill orders in 2008. Reports are received of police killing suspects during pursuit or when they are caught. The government has employed States of Emergency, curfews, and special policing operations, such as military-style raids on villages and urban settlements to capture suspects and prison escapees. Correctional Service personnel reportedly use excessive force during prison breaks often killing and seriously injuring a number of detainees. The Government rarely investigates, prosecutes and punishes the perpetrators of these killings and the norm is one of total impunity.

Death penalty: Papua New Guinea has not carried out an execution since 1954, despite Parliament's reintroduction of the death penalty for willful murder in the Criminal Code (Amendment) Act 1991. Human Rights advocates are calling for the death penalty to be abolished in accordance with international norms.

Armed tribal conflict: Inter-tribal violence, often concerning conflicts over land and property rights, remains a very serious issue, and appears to be becoming more serious with the increased prevalence of high-powered rifles throughout the country. The influx of guns into the provinces greatly contributes to lawlessness and there are some concerns that a warlord culture is developing in some areas of the country. Fighting is often triggered by authorities' inaction to address crime (poor functioning of the police and criminal justice system) which allowed tensions to escalate, leading to mob justice—killings and destruction of property—against those suspected of wrongdoing. Despite the obligation to protect and punish violations of the right to life, the state is failing to act with due diligence and address causes of tribal fighting and take action to protect vulnerable populations. Internal displacement is a serious, but unacknowledged consequence of conflict in the Highlands. The tribal wars stretch over time and particularly with the employment of arms and the widespread and permanent damage to life and property in modern warfare, people flee their homes and resettle in the land of their kin or elsewhere. They live in other peoples' land for months or even years, but receive little government assistance since their internal displacement has not been registered as a cause for humanitarian intervention.

Sorcery related killings: Persons accused of sorcery continue to be the target of vigilante killings and violence; despite the significance of the phenomenon the Government is failing to act with due diligence

³ See articles in the local newspapers *PNG Cabinet endorses review on country's sex laws - THE NATIONAL – 22nd October 2010;* *PNG Sex Laws under Review - Post courier 5th Nov.2010*

to prevent such attacks, provide protection, investigate and prosecute perpetrators or address attitudes within society which encourage such crimes. The practice is particularly significant in the Highlands and Bougainville regions. The Constitutional Law Reform Commission Working Committee to review the law on sorcery and sorcery related killings has conducted workshops in different regions the findings will be used to reform the current legislation.

Maternal mortality: Mortality is one of the 3 demographic processes that affect the human population. Maternal Mortality Ratio in PNG is estimated is at 733 per 100,000 live births. The Lifetime risk of an urban woman dying of maternal death is estimated at 0.0028 which entails approximately 1 out of every 35 women in urban areas once reached age 12 will die of maternal death while at the same time the risk for a rural woman of the same age almost doubles. (1 in every 25 rural women of 12 years and above will die of maternal death). High Infant and Child mortality levels also deprive children of PNG the right to life. In 2006 infant and child mortality rates were estimated at 57 and 75 respectively meaning, for every for every 1000 children born in PNG, 57 die before they reach the age of 1 and 75 die before their 5th birthday. Women and children of Papua New Guinea are faced with a challenge for survival while giving birth to another life as well as challenge for sustaining a life in the first 5 years.

iii. liberty and security of person

Torture and other cruel, inhuman and degrading treatment or punishment: The Special Rapporteur on Torture and other cruel, inhuman and degrading treatment or punishment visited PNG in May 2010 and found systematic beatings of detainees upon arrest or within the first hours of detention, including during interrogation. Very often beatings are inflicted by the police as a form of punishment of suspects, reflecting complete disrespect for the presumption of innocence and the dignity of persons suspected of crimes. Widely practiced methods include beatings with car fan belts, bush knives, gun butts, iron rods, wooden sticks, stones, punching and kicking, used mainly to punish and intimidate detainees and to establish authority. There is no doubt that police beatings often reached the level of torture, as defined in the UN Convention against Torture (CAT). Outside detention, the police often use excessive force, not only in dealing with crime but also, for example, in evicting residents from settlements.

In correctional institutions, those who attempt or succeed in escaping are subjected to torture upon recapture as a standard practice. The forms of torture applied include brutal beatings with bush knives and gun butts, shooting detainees' legs and feet at close range and cutting their tendons with bush knives and axes after they are apprehended, with the intent of disabling them. The victims are usually kept in punishment cells without any medical treatment, which sometimes leads to their death. Collective punishment is also often applied in correctional institutions, where whole sections are sanctioned for the actions of a select number of detainees. The lack of effective complaints mechanisms, independent investigation and monitoring and similar safeguards create an environment of impunity fueling these practices. With regards to conditions of detention he found that there is a general atmosphere of violence and neglect in all police lock-ups and in many correctional institutions. It was also apparent that detainees had no knowledge of or trust in any complaint mechanisms available to them. The lack of effective oversight mechanisms and the prevalence of bribery in the criminal justice system result in prolonged detention in police custody or on remand for detainees, particularly those lacking financial means.

A 2005 review by Human Rights Watch of police violence against children suggests that widespread impunity and a lack of enforcement by existing accountability mechanisms is contributing to around 75 per cent of children who come into conflict with the law experiencing some form of police violence⁴. This includes 'panel beating', the colloquial term used to describe severe physical assault (often with the use of gun butts, fan belts and steel bars), rape and other forms of sexual abuse, torture and extra-judicial shootings. Anecdotal evidence also suggests that girls are frequently subject to physical and sexual abuse by police (often in return for being released without charge), however, girls remain invisible in the statistics that are currently available. Similarly, boys who identify as homosexual and both boys and girl survivors of commercial sexual exploitation are also targeted because they are perceived to engage in illegal behaviour and are threatened with further persecution if they complain about their maltreatment⁵. Sex workers are reportedly picked up by the police and forced into sex under threat of prosecution, sometimes amounting to gang rape. The Ombudsman Commission report 2009 into the Three-mile Guest House Raid documents a serious case of police violence in Port Moresby.

Police raids in particular have often led to civil claims against the state for compensation for physical abuse and indiscriminate destruction of property, costing the state monies it desperately needs for other activities. Mobile squads are the frequent targets of complaints for raiding villages and urban settlements, burning houses, killing livestock, destroying gardens, and beating and sexually assaulting residents. In the urban areas, it's the task force and the traffic police who are accused of extorting money and setting up false road blocks to extort money to buy alcohol.

In 2010, Amnesty International published a report, *Undermining Rights: Forced evictions and police brutality around the Porgera gold mine, Papua New Guinea*, it documents police violence and the forced eviction by police of families living alongside the Porgera gold mine. The report documents how between April and July 2009 police raided villages in the highlands of Papua New Guinea, burning down at least 130 buildings and forcing out families from their homes, including young children, pregnant women and the elderly. Residents of the area where most of the evictions took place, Wuangima, told Amnesty International that they had no prior warning that their homes would be demolished and in many cases had no opportunity to take their belongings before their houses were burnt. No alternative housing had been provided to them by the government and many families from the area now depend on their relatives for shelter and food. AI urges the government to carry out a full investigation into forced evictions and police violence, prosecute those responsible, and provide remedies to victims.

Rape /domestic violence: Gender-based violence has become an increasingly serious phenomenon in PNG. The Constitutional Law Reform Commission Report of 1992⁶ highlighted the nature and extent of domestic violence as a social problem over the 10-year period since the issue was first raised by the 1981 National Council of Women's Extraordinary General Meeting in a resolution to then Minister the Honourable Tony Bais, MP to take action. The study described domestic violence widespread affecting over two-thirds of families in the country with wife beating as common practice The same study also found that in most cases, domestic violence was condoned by some sections of the community as "normal" since bride price was seen to justifying a husband's right to beat his wife.

⁴ Human Rights Watch (2005). *Making Their Own Rules*. HRW: New York.

⁵ Human Rights Watch (2006). *Still Making Their Own Rules*. HRW: New York.

⁶ 1992 PNG Law Reform Commission Final Report, No.14 on Domestic Violence Report.

The Amnesty International 2006 Report⁷ and the latest research conducted by the CMIC Family Violence Sexual Action Committee (FVSAC) cited domestic violence in the homes as a serious concern. The presence of firearms also adds a dimension to the problems of domestic violence with research findings discovering it to be “distinctly gendered”⁸ and associated with criminal activities and endangering lives of women and girls. Violence assessments conducted by the Small Arms survey for NCD and Southern Highlands found that the most common forms of violence was gender based violence most specifically domestic violence. Gang rapes, knife attacks on wives, beating and sexual abuse of girls and in some instances incest and underage girls and torture and murder of women accused of being sorcerers are among the many forms of violence. The Family Sexual Violence Action Committee (FSVAC) under the Consultative Monitoring and Implementation Council (CMIC) as the overseer and coordinator for family violence matters have been extensively involved with key NGOs such as ICRAF, NCW provincial networks, YWCA, churches and youth in monitoring the problem of gender violence by compiling data and information for use for public policy planning and advocacy. NGOs such as FVSAC, ICRAF, YWCA, NCW and network need institutional support to ensure their work is sustained to provide much needed support for the victims and families.

iv. administration of justice and the rule of law

The Supreme Court, National Court of Justice, District Courts (Magisterial Service) and local and village courts form the independent justice system in PNG⁹. The formal justice system is not always accessible, effective and affordable and more people use the informal or village court system to settle disputes. Village Courts operate in over 80 per cent of Papua New Guinea and provide an inexpensive, readily available means by which ordinary people can seek justice. It is estimated that officials conduct 3000 Village Courts, hearing about half a million cases every year. Village courts operate under the Village Courts Act 1989 and the principal purpose is to maintain harmony within the community through mediation and application of customary law.

At the community level, there are low levels of knowledge of rights amongst village and community leaders, and many of the decisions made in the 3,000 village courts throughout Papua New Guinea discriminate against women and children¹⁰. Recent reports also suggest that many community leaders, including police, pastors and teachers, are some of the most common perpetrators of violence¹¹ and sexual exploitation¹², continuing to expose children to a generation of role models that promote these

⁷ 2006 Amnesty International Papua New Guinea Report.

⁸ Gender and Small Arms Violence in PNG. Discussion Paper 2004/8. State, Society and Government in Melanesian. Authors Sinclair Dinnen and Edwina Thompson. Strengthening gun control laws has not had sufficient political will power despite recent amendments to the Firearms Act 1998 amendments.

⁹ The National Court sits in all provincial and other major centres. Wherever there is a resident judge there is the National Court. Where there is no resident judge, the National Court sits when it makes its circuit to that area. The Magisterial Service administers, manages and sustains the operation of 70 District Court establishments and 400 Court Sitting (Circuit Court) locations throughout the country. The District Courts provide a mechanism for the administration of justice and the resolution of disputes.

¹⁰ GoPNG. (2007). Village Courts Secretariat Draft Operational Plan. DJAG: Port Moresby.

¹¹ Amnesty International. (2006). Papua New Guinea: Violence Against Women: Not Inevitable, Never Acceptable! Available at: <http://www.amnesty.org/en/library/info/ASA34/002/2006>

¹² UNICEF. (2006). CSEC and CSA – A Regional Report. UNICEF EAPRO.

rights violations as acceptable forms of behaviour. To promote greater leadership by community leaders, including village courts officials, the Village Courts Secretariat within the Department of Justice and Attorney General has developed a Child Protection Program that is currently being trialed in 4 districts. Supported by one national and four provincial child protection advisors, the Village Courts Secretariat facilitated child protection training for all Village Court Magistrates in the four focal districts between 2007 and 2010. Based on the Protective Environment Framework, the Triple A Community Consultation tool and the Human Rights Based Approach to Programming, this training has supported Magistrates and community leaders to identify a range of community-based initiatives to strengthen the protective environment of a total 71,000 children across these districts, including putting up signs that advise communities that serious offences will be referred to higher courts and conducting awareness campaigns in market places. An external evaluation of the programme is currently being finalised to assess the impact of the programme to date and to guide scale-up of the programme.

Limited legal aid is available from the Office of the Public Solicitors, in theory all citizens are entitled to it; however in practice there is a lack of access to legal aid for the majority of persons who seek justice.

Law and order problems continue to hamper efforts to promote good governance and leadership. An administrative review of the Royal Papua New Guinea Constabulary (2004) reported that communities rarely reported confidence in the competence of the police force to maintain law and order, or to act fairly and impartially. This is resulting in low morale within the Constabulary. Chronic underfunding by successive governments have resulted in the police performing their duties without proper uniforms, adequate vehicles and operational support and the deterioration of housing and welfare support for officers and their families.

v. right to privacy

Frequent reports of police raids and searches of settlements and homes of suspected criminals often marked by a high level of violence and property destruction including burning homes “cooking houses” and destroying gardens and belongings.

vi. marriage and family life

The culture of Papua New Guinea is multi-faceted and complex. With 800 different languages coexisting in PNG and a population of 6.1 million people, it is estimated that more than a thousand different cultural groups exist in PNG that have distinct cultural practices that have profound impact on the lives of the people and most importantly on the women. Three provinces in the country are matrilineal so land is inherited or traced through the female line of descent and in these areas, where women own the property; rates of violence against women are lower. The culture of ownership of women by men is one such practice that is recognized in a number of ways and chief amongst these are, inheritance of property and the customary law making women as chattels of the man¹³ in the context of the bride price exchange. Customary payments at marriage and on the birth of children are seen as giving men the right to control their wives and children. Other customary practices such as polygamous marriages, underage marriages and rapes in marriages are chief amongst some of the issues pertinent to gender inequalities

¹³ Paper on *Law Reform and its Implications for Women in PNG, common legal problems for women in PNG*. Presented by Meg Taylor on *Women Speak Out! A report of the Pacific Women’s Conference* in Auckland, NZ, Oct 27-Nov 2, 1975.

in which the Law Reform Commission had to battle with during the formulation of the laws prior to Independence in 1975¹⁴.

CEDAW expressed its concern about the multiple marital systems that apply in the State party and is concerned that the minimum age of marriage is 16 years for girls and 18 years for boys. The Committee is particularly concerned about the practice of polygamy, bride price, early marriages as well as forced and arranged marriages, and it is also concerned that other discriminatory customary practices persist, especially in rural and remote communities, with regard to, inter alia, marriage and its dissolution, as well as family relations, including inheritance.

vii. freedom of expression and association and peaceful assembly

The constitution provides for freedom of assembly; however, the government often limits this right in practice. Public demonstrations require police approval and 14 days' notice. Asserting a fear of violence from unruly spectators, police rarely give approval in practice.

In June 2001 police allegedly killed four student demonstrators and wounded twenty four others at, or near, the University of Papua New Guinea campus. The demonstrators were protesting against the government's privatization of public services and other structural adjustment program measures. The report of the commission of inquiry into the killings has not been released and no one has been held accountable.

PNG has very few NGOs or CSOs focused on promoting and protecting human rights. A small number of organisations are attempting to use the Courts to address human rights violations, but have difficulties because their limited financial resources do not allow them to engage the legal expertise to match the level of opposing counsel retained by the other parties. Human Rights Defenders are also threatened with harm and have been attacked and in some cases killed.

viii. right to participate in public and political life

Women are vastly under-represented in public and political life. PNG currently has only one female minister, no female governors, one female member of the National Parliament (who is also the sole minister), few nominated women MPs at the Provincial Assembly and LLG levels and only a few women in senior positions in the civil service, while the rest hold lower-level jobs.

In 2008, the National Executive Council (NEC), exercising the power available to it within the *Constitution of the Independent state of Papua New Guinea* (the *Constitution*), approved a process to

¹⁴ Ibid- especially in relation to taking into account (1) the traditions of the people as expressed in their customary law, and (2) the aims and needs of the people as expressed in their new Constitution. Traditional customs and the western laws sometimes are in conflict, especially in the field of women's rights. For example, the Constitution makes it clear that women should be treated equally.

enable the appointment three of women members of Parliament¹⁵ in an attempt to move toward equality of opportunity for all Papua New Guineans to take part in the political life of the country and improved participation and representation of women in Parliament. During 2008 and early 2009, the process identified three women as suitably qualified to be members of Parliament.

On 10 March 2009, the Prime Minister; Grand Chief Sir Michael Somare, moved a motion to nominate the first of the three women to Parliament. The Government did not have the numbers to pass the motion;¹⁶ so it was withdrawn before a formal vote was taken.¹⁷ To date, the motion has not been moved again although it remains on the Parliamentary Notice Paper. On 30 September 2009, the NEC formally gave effect to the outcome of the Lae National Leaders Summit; including specifically directing the National Strategic Plan Task Force (NSPTF) to undertake the necessary preparatory work to enable the creation of 22 reserve seats for women in the National Parliament.¹⁸ In meeting No 07/2009 via decision No 154/2009, the NEC approved that work be undertaken to bring about all consequential legal adjustments, reform and amendments to existing legal and constitutional pre-requisites to give effect to the provision of 22 reserve seats for women in the National Parliament.

The relevant constitutional amendment Bill on Equality and Participation Law 2010 is awaiting Parliamentary approval. It would require 83 votes and three parliamentary readings for the law to be enacted. In addition, there are 3 consequential amendment bills, namely the *Organic Law on Provincial and Local Level Government Elections*, *Organic Law on Provincial Local Level Government* and the *Organic Law on Political Parties and Candidates*. These organic law amendments are necessary to affect the Bill on the Equality Law Amendment Bill.

The Autonomous Region of Bougainville (ARB) introduced three reserved seats for women by law that recognized and acknowledged the role of women in public affairs. However, during the elections of 2005 it became clear that women candidates contested only for the reserved seats and not for the other seats. Despite the unintended outcome, the reserved seats ensured more women in the ARB Parliament.

Managerial positions for women at senior executive levels in the private sector has not been significant unlike the public sector where a number of women have been promoted in key economic portfolios as senior executive managers and Heads such as the Internal Revenue Commission and Mining and Petroleum whilst in the oversight roles, women have been appointed to head the Departments of Personnel Management, Justice and Attorney General and the NEC Secretariat. There has only been one woman National Court Judge with several magistrates appointed at the judiciary level over the last decade. Although these developments lift the profile of capable women, the parity between male and female appointments at the public service is still not on target based on the 1995 UN Women's Conference quota of 30%. The emphasis now is to ensure there is a critical mass of women leaders

¹⁵ The NEC process used the powers in sections 101 and 102 of the Constitution which enable the appointment of up to three members.

¹⁶ Nomination of members of Parliament requires a two thirds absolute majority, being 73 affirmative votes.

¹⁷ See Hansard 10 March 2009

¹⁸ In NEC Decision No 154/2009, NEC (2) noted the outcome of the Lae National Leaders Summit; (3) took specific note of the Morobe Communique, including the Governors Resolutions; (4) endorsed the Morobe Communique and the Governors Resolutions of the National Leaders Summit 2009 and (8) (iv) approved that the NSPTF, in working closely with all relevant Government Agencies, undertake work to bring about all consequential legal adjustments, reform and amendments to existing legal and constitutional pre requisites to give effect especially to the following: the provision of 22 reserve seats for women in the National Parliament.

equipped and trained as competent policy makers and implementers at senior executive levels both in public and private sectors, in addition to creating an environment at local levels which allow for women to step forward and be accepted as women leaders.

ix. right to work and to just and favorable conditions of work

CEDAW welcomed the adoption in 2004 of the Informal Sector Control and Development Act and notes that the Ministry of Labour and Industrial Relations has embarked on a labour laws review programme, commencing with the proposed Industrial Relations Bill providing for an appeals system. The Committee also welcomes the fact that the State party has ratified 24 important International Labour Organization conventions. However, the Committee regrets the limited data contained in the report on the situation of women in the labour force, which prevented it from obtaining a clear picture with regard to women's participation in the labour force in urban and rural areas, unemployment rates, the gender wage gap and vertical and horizontal labour force segregation. It also regrets the lack of information on women's labour rights, including protection from sexual harassment.

x. right to social security and to an adequate standard of living

Poverty is a serious human rights concern in PNG. More than one third of Papua New Guineans are living in poverty, an overwhelming share of the country's rural communities are caught in a poverty trap characterized by disease, income poverty, and poor access to clean water, health care, education, essential medicines, electricity, sanitation, communication, and transport. Malaria, HIV/AIDS, tuberculosis, and other diseases result in high child mortality rates.¹⁹ The poorest people in society are most vulnerable to severe abuses to their human rights in multiple areas. It is the lack of human rights protection that leaves people vulnerable to falling into economic and social destitution.

A large part of the rural population, and to a lesser extent, the urban population relies for their livelihoods on forest exploitation, fishing, hunting, and subsistence agriculture. Weak infrastructure, weak social service delivery mechanisms, marketing difficulties as well as low government and civil society capacity reduce the possibilities of alternative livelihood solutions as well as access to (renewable) energy schemes. Eighty-seven percent of the population lives in small, often isolated communities in rural areas. Very few state institutions have penetrated into these communities; as a result most of the population is not able to access rights they have in law or services necessary to fulfil their rights.

A rapidly growing population has resulted in many individuals leaving rural communities and moving to urban centres. In urban centres individuals largely lose the social protection offered by the 'wantok' system and have great difficulty realising their rights. These individuals join the large number of urban poor, which usually have little access to legal rights or services essential to the protection of their rights. Access to government services is poor, literacy rates are low, and corruption is common.

¹⁹ Achieving the MDGs, Millennium Villages Project Overview For UNDP Papua New Guinea April 4, 2008, briefing paper presented during Professor Sachs, Special Adviser on MDGs visit to PNG

There is no Social Security Policy however the Government is considering a Social Protection Policy. The National Executive Council has established a National Task Force on Social Protection, chaired by the Secretary for Community Development, and allocated K2 million in 2010 for the development of a social protection policy. With representatives from all key Government agencies, it is a unique interagency body – the first of its kind. This Task Force is currently finalizing research on potential social policy models for the consideration of the National Executive Council. This report will guide the government on adopting a PNG Social Protection Programme as a first step in addressing some of the economic shortfalls for particularly vulnerable populations.

Right to adequate housing/forced evictions: There are many gaps in relation to regulating housing that leads to violations of the right to housing. Forced evictions have occurred in many parts of the country, violating international human rights standards and deepening poverty for those who had been evicted. Around Port Moresby and other urban centres where there has been urban drift from rural areas there are settlements with no legal tenure for the residents or provision of services by the Government. Forced eviction and destruction of property is commonly used by the police as a punitive measure, a form of collective punishment for a community, following a crime and to pressure the community to provide information or handover those responsible for the crime. House and shop demolition, destruction of gardens, confiscation of goods in these cases amounting to arbitrary deprivation of property and cruel, inhuman and degrading punishment and violating the right not to be subjected to arbitrary or unlawful interference with one's privacy, family and home.

The poverty in urban settlements and traditional villages is a serious concern. Residents receive little to no assistance from government and live in a highly insecure environment and lack of water and sanitation were the most acute concerns. There had been no up-grading of the informal settlements, little to no provision of water and sanitation, maternal and child health was under threat due to poor living and security conditions, many children are not attending school because of the school fees, combined with the levels of poverty suffered, malaria and other diseases were prevalent due to poor hygiene, poor settlement locations and inability to take preventive measures and finally, poverty was entrenched.

In rural areas where resources are being extracted and land is taken over by international companies, traditional landowners have been forcibly evicted or have accepted agreements without genuine consultation and understanding of the consequences. Local NGOs like Center for Environmental Law and Community (CELCOR), and international NGOs in particular Mining Watch Canada and Oxfam have done some work on this area. Special Procedures have sent also sent communications to the GoPNG highlighting their concerns. The law needs to be enforced against state agents who carry out forced evictions and violate the right to be protected against arbitrary or unlawful interference with one's home and the right to live somewhere in security, peace and dignity.

Right to health : Health is a basic human right. Unfortunately low capacity of the health system in Papua New Guinea, limited of basic health education and specific climatic and environmental conditions, contributes to high maternal and child mortalities in the country. Due to the closure of a significant number of peripheral health facilities during last decades, access to Primary Health Care has dramatically reduced especially in the rural areas resulting in worsening health indicators and slowing progress towards MDG 4 and 5. According to results of the Demographic Health Survey conducted in 2006 (DHS 2006), PNG has one of the highest neonatal, infant and child mortality in the Asia-Pacific

region. Despite the overall trend towards reducing under five mortality in the last 10 years, there is no significant decline in neonatal mortality and low improvement in infant and child mortalities. Per 1,000 live births – neonatal mortality dropped from 31.6 in 1996 to 29.1 in 2006; infant mortality from 69.3 to 56.7 and under five mortality from 92.8 to 74.7. Maternal mortality ratio doubled resulting with an unacceptably high value of 733 maternal deaths per 100,000 live births. It is one of the highest rates in non-African nations in the world and second only to Afghanistan (this is highest in the world) in Asia-Pacific Region. The access to skilled care at delivery remains very low at 52% (DHS 2006). Often when complications appear during pregnancy, childbirth or postpartum, women are often too far from health services and with very limited access to emergency obstetric and newborn care.

All these elements do not allow the majority of population of PNG to benefit fully from their right to enjoy the highest attainable standard of health. To address this issues WHO in cooperation with other UN agencies offers a technical support in the areas of maternal, child, neonatal and adolescent health, health system strengthening, controlling of communicable diseases and outbreaks prevention and management. WHO involvement includes support in establishing and updating policies and regulations (such as Baby Feed Supplies Act), designing strategies and activities to reduce maternal and child mortalities, building capacity of the national staff and assisting the government in coping with disasters and outbreaks. This contributes directly to implementation of the rights to life of PNG people.

The Department of Health in conjunction with Family Sexual Violence Action Committee (FSVAC) is establishing Family Support Centres in major hospitals and health centres in the country. The centres provide day care, psychosocial, counseling, medical reports and paralegal advice. In a welcome development the Secretary for Health in circular dated 12 November 2009 directed all hospitals and health centres throughout the country to remove fees charged for domestic violence, sexual violence and child abuse cases and women and children injured in tribal fights.

xi. right to education

Education in PNG is provided by the government, voluntary organizations (notably churches) and the private sector, with expensive international schools in the main urban centres serving expatriates and the local elite.

The Education Reform in 1993 restructured the education system in PNG. It redefined schooling to consist of nine years basic education (three years of elementary and six years of primary) and four years of secondary education (grade 9 to 12). An important backdrop is the annual population growth rate in excess of 2.7 per cent. In 2005, the NDOE undertook a landmark Net Enrollment Study²⁰ of the education system in Papua New Guinea. The results of the study further highlighted the need to urgently address issues of access and quality of education (see through enrolments and retention rates) in order to achieve the Millennium Development and Education for All goals. Study data indicates that: Too few children were enrolling in school at the right age, Over-age enrolments are issues in the basic education system – especially at the elementary level and Disparities exist to the disadvantage of girls

²⁰ Net Enrollment Ratio Study, Final Draft, December 2008. National Department of Education.

Free education has been on the PNG political agenda since 1982, when it was introduced by the government but survived less than a year²¹. Subsequently it was replaced by a fee-subsidy system, with issues surrounding the proportion of fee funded by the government. In 2002, the Government provided a 'full fee subsidy', which, however, proved unsustainable, and in 2003, the system reverted back to what it was in 2001.

Currently, recognizing that school fees are one of the key major barrier for enrollment and completion, and place the poor at a disadvantage, the Government of PNG made a key policy decision for achieving UBE to eliminate fees from elementary and primary education over the period of UBE plan 2 (2009-2018). Fees will be eliminated from 2012 in elementary prep and will move into the lower and upper primary grades from 2015 and 2018 respectively. Government has committed itself to replacing these fees with decentralized subsidies. However, according to the current trend PNG will not achieve UPE by 2015.

xii. minorities and indigenous peoples

Papua New Guinean has a majority population of indigenous societies, with some 700+ different tribal groups recognized out of the total population and traditional landowners owning 97% of the land. The PNG Constitution and other Acts identify traditional or custom-based practices and land tenure, and explicitly sets out to promote the viability of these traditional societies within the modern state²². However, several conflicts and disputes concerning land use and resource rights continue to be observed between indigenous groups, the government and corporate entities.

Insufficient attention has been paid to the Governments duty of due diligence with regards to protection of the rights of the landowners and corporate and social responsibility regarding environmental degradation and pollution from resource extraction. The report *Bulldozing Progress : Human Rights Abuses and Corruption in Papua New Guinea's Large Scale Logging Industry*, Australian Conservation Foundation and CELCOR (2006) documents human rights violations in the logging industry in Western Province, Southern Highlands and Gulf Province including denial of right of landowners to

²¹ The national government cannot ensure 'free education', as the provinces within the Organic Law still have the right to set their own fee limits.

²² The Land Act (1996) sets out the procedures for the government to acquire customary land required for public purposes. The key provisions of the Act are (i) the government may acquire land, including improvements on land, through agreement or compulsory acquisition; (ii) in case of negotiated purchase, the government and customary owners mutually agree terms and conditions; (iii) even in case of compulsory acquisition, participation of leaders of customary landowners and local government representatives is sought in several steps; and (iv) compensation for affected customary land is provided to the landowner groups/clans, while compensation for land improvement (e.g. crops) is provided to individual land users. The Land Disputes Settlement Act (2000) sets out the procedures for resolution of disputes involving customary land. The Act provides for a land disputes committee at provincial level and land courts at local, district and provincial levels. The committee can appoint land mediators. The Act promotes resolution of disputes through mediation based on the principles of traditional dispute settlement. If mediation fails, it is followed by appeal to the courts. The Land Groups Incorporation Act (1974) recognizes the corporate nature of customary groups and allows them to hold, manage and deal with land in their customary names. A customary group can register with the Registrar of Incorporated Land Group (ILG) and, once registered, the rights and liabilities of the customary group become rights and liabilities of the ILG. An ILG may acquire, hold and dispose of customary land, enter into agreements for its use and management, and distribute any product or profits from the land. Each ILG must have a dispute-settlement authority, for dealing with disputes between group members or between the ILG and a member, including disputes over entitlement to membership.

make informed decisions and participate actively in decisions about their land; arbitrary detention and torture and ill-treatment of landowners, sexual abuse of women, contamination of food and water sources, destruction of cultural and spiritual sites and unjust working conditions. Recommendations include an inquiry into the alleged violations by the private companies and the public sector and to refer those responsible to the public prosecutor for criminal prosecution. According to information available no perpetrators have been held responsible and the situation in logging areas remains as described in the report.

In May 2010, parliament passed an amendment to the Environmental Act which would protect resource companies from any litigation related to environmental destruction and violation of labour laws or rights of landowners. Concerns are raised that the amendment prevents third parties from seeking remedies. The amendment is being challenged in court.

xiii. migrants, refugees and asylum seekers

Refugees²³: Currently, national legislation does not provide an adequate framework to deal with asylum-seekers and refugees in PNG. International obligations for the protection of the rights of refugees must be incorporated into national laws in order to be fully effective. At this stage, The Migration Act 1978 (the Migration Act) and its 1989 amendments authorize the Minister of Foreign Affairs “to determine a non-citizen to be a refugee” under section 15A. The current legislation does not provide any further details as to how this determination is to be made, nor does it outline the rights and obligations of asylum-seekers or refugees in PNG once they are recognized as refugees (e.g. type of documentation to be provided to them, residency status, and access to labour market). In particular, it does not provide a regularization clause for those who illegally arrived in the country. In order to provide a durable solution for Irian Jaya refugees at the East Awin refugee camp, the Government adopted the “Limited Integration” policy in 1996. The policy provided two options for refugees: permissive residency or voluntary repatriation. Those who did not wish to return to their country of origin were encouraged to integrate and assimilate into PNG society through the granting of Permissive Residency, whilst those who did not wish to continue to reside in PNG were encouraged to repatriate voluntarily. PNG houses some 9,700 West Papuan refugees, of which some 2,300 reside in an area allocated by the PNG Government, Iowara-East Awin, 5,000 in the border areas and another 2,400 in urban areas. In addition, there are 14 recognized non-Melanesian refugees and 6 asylum-seekers. While the current Government has shown a willingness to engage— including withdrawal of reservations, revision of the current Migration, drafting of a refugee policy – the current framework falls short of international standards and does not provide adequate protection to West Papuan refugees without permissive residence permits or to non-Melanesian asylum-seekers and refugees.

Trafficking/smuggling: PNG is a country both of transit and destination for trafficking in people. Since June 2010 the Department of Justice and Attorney General (DJAG) has been working on the drafting of the People Smuggling & Trafficking in Persons Bill. In August 2010 the Draft Bill on People Smuggling and Trafficking in Persons was presented to the Anti-Human Trafficking Committee which was formed in March 2009 in connection with a workshops held in Port Moresby to investigate issues and ways of combating human trafficking in PNG. The Human Trafficking Committee, which has met only once since its creation, was reactivated in August 2010, under the chairmanship of DJAG, to provide comments and

²³ For more information see UNHCR submission

suggestions on the Draft Bill. Many positive and valuable remarks were received as a result of the meeting. Many of these comments were considered and integrated by DJAG into the final version of the Draft Bill. On 29 September 2010 a workshop took place in Port Moresby, chaired by DJAG, to present the Draft Bill on People Smuggling and Trafficking in Persons and receive feedback and comments from a wide range of government and non-government stakeholders. About 70 participants attended the event, which had the Justice Minister as keynote speaker. The workshop's program strived to frame the Draft Bill in the National, Regional and International context to illustrate the complex and transnational nature of people smuggling and trafficking in persons and their implications on the human rights of the victims. The Bill is expected to be submitted to Parliament in March 2011 while the ratification of the UN Convention Against Transnational Organized Crime and supplementing Protocols is due to be ratified in September 2011.

Racism: There are growing indications of racial tension within PNG society, particularly as it concerns Asian communities (riots May 2009). A committee which was set up to investigate the riots has not delivered its findings so far.

xiv. IDPs

The situation of IDPs from natural disasters (volcano-Manam Island and rising sea levels-Caterat Islands), tribal conflict, and civil unrest (Bulolo) is a serious concern in PNG leading to protracted IDP problems and lack of effective action to address the situation. The authorities are not yet using the 1998 Guiding Principles on Internal Displacement and the 2010 Framework for Durable Solutions for IDPs and addressing the situation within a human rights framework with a particular attention to the protection of vulnerable persons.

xv. the situation of specific regions or territories

A violent conflict broke out in 1989 in the province of Bougainville partly due to dissatisfaction over the share of profits given to the local population from the operation of the Panguna copper mine as well as the environmental damage caused by mining. The civil conflict continued for nine years and involved nearly the whole population of Bougainville. The 2001 peace agreement paved the way for the establishment of an Autonomous Bougainville Government following the elections of 2005. A referendum is to take place within 15 years of the establishment of an Autonomous Bougainville Government on the future political status of Bougainville. The peace process is built upon principles of autonomy, weapons disposal and referendum. However, in addition to the formal requirements as per the peace agreement, Bougainville is looking for ways towards becoming economically viable. Mining being the sector which has underpinned wealth creation in Bougainville since independence, decision makers in Bougainville have put great emphasis on identifying processes that could lead to the reopening of revenue generation from mining. However, mining powers have not yet been drawn down from the central government, and hence mining as a potential cash earner for Bougainville remains controversial.

A Joint Supervisory Body (JSB) mechanism is in place to monitor the implementation of the peace process, including the drawing down of powers to the Autonomous Region. The first powers the Bougainville administration requested to be drawn down as per the peace agreement were the powers for oil, gas and mining extraction. Discussions are ongoing between the national Government and the

Bougainville administration in terms of how the economic aspirations of Bougainville can be supported. In this context, there is no fixed timeline for the drawing down of oil, gas and mining while the national Government is actively promoting alternative means of income generation for the Autonomous Region, primarily linked to agriculture (cocoa and copra).

Meanwhile, a number of grievances continue to exist between a number of groups and individuals on the island itself. To date there has been no transitional justice process for the human rights violations committed during the conflict. In addition to the post-conflict related trauma, many people also feel that they have either lost out as they have missed education opportunities as a result of the conflict, or that they have not been given a fair share for their efforts or sacrifices during the conflict. Add to this the continued prevalence of small arms on the island following the conflict, and a picture emerges of an emergent yet fragile post-conflict recovery where much remains to be done in terms of weapons disposal, livelihoods opportunities and strengthened human security.

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Bacre Ndiaye, visited the Papua New Guinea island of Bougainville in 1995 (E/CN.4/1996/4/Add.2) and made a number of recommendations which should be implemented.

3. Achievements, best practices, challenges and constraints

The main achievements have been legislative initiatives which have closed some gaps with regards to human rights protection. As mentioned above the enactment of the Sexual Offences and Crimes against Children Act under the revised Criminal Code, introducing a series of new offences, including marital rape, graded according to the seriousness of the harm and incorporating the ways in which women are sexually violated; the HAMP Act and the Lukautim Pikinini Act. There have also been some successes in juvenile justice, according to 2009 figures, 50% of children were diverted by police, 56% of children diverted by court. There has also been the adoption of a number of policies plans and programmes such as on protection of the rights of persons with disabilities cited above.

Particularly significant in 2010, was the commitment by the RPNGC and Correctional Service with regards to much needed reforms for the protection of human rights. On 24 June 2010 the UN Resident Coordinator and the Police Commissioner signed a letter of intent which provides the framework for collaboration on the UN human rights capacity building and training project for the Royal Papua New Guinea Constabulary. The first phase of the project a needs assessment will inform the content of the capacity building and training package.

The main challenge is implementation and enforcement. Corruption, weak governance and leadership capacity at national, provincial and district levels and impunity for grave human rights violations continue to be key constraints for the development of the country.

4. Recommendations to the Government of Papua New Guinea

National Human Rights Institution:

- Establish a National Human Rights Commission in accordance with the Paris Principles

Torture prevention:

- Take effective measures to combat impunity for extrajudicial killings and torture and other cruel, inhuman and degrading treatment and punishment by police and correctional service personnel
- Declare unambiguously by the highest authorities, in particular those responsible for law enforcement activities, that they will not tolerate torture or similar ill-treatment by public officials and that those in command at the time abuses are perpetrated will be held personally responsible for the abuses.
- Ensure prompt and thorough ex officio investigations for all allegations of ill-treatment or excessive use of force by an authority that is independent from the investigation and prosecution. Any officer known to be abusive should be removed from custodial duties. Heads of police stations and detention facilities shall be made aware of their supervisory responsibility.
- Ensure a comprehensive and structural reform of the Royal Papua New Guinea Constabulary in accordance with the recommendations of the Administrative Review Committee to the then Minister for Internal Security, Hon. Bire Kimisopa, in September 2004.
- Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, providing for regular preventive visits to all places of detention by an independent domestic monitoring body.
- Amend the domestic legislation to include torture as a serious crime with adequate penalties. The definition of the crime of torture should be in full accordance with article 1 of the Convention against Torture.
- Reduce, as a matter of urgent priority, the period of police custody to a time limit in line with international standards (maximum 48 hours). After this period, detainees should be transferred to a separate remand facility under a different authority.
- Establish accessible and effective complaints mechanisms in all places of detention. Complaints by detainees should be followed up by independent and thorough investigations, and complainants must be protected from reprisals.
- Increase funding for the Public Solicitor to ensure legal aid is available for those who need it, especially victims of human rights violations.
- Ensure that persons deprived of their liberty are confined in facilities where the conditions comply with international minimum sanitary and hygienic standards and that detainees are provided with basic necessities, such as adequate floor space, bedding, food, water and health care. Prisoners should be provided with opportunities for work, education, recreation and rehabilitation activities.
- Separate detainees on remand from convicted prisoners.
- Remove all children from adult detention facilities.
- Ratify the first Optional Protocol to the International Covenant on Civil and Political Rights which provides for the right of victims to lodge individual complaints to the UN Human Rights Committee.

- Abolish the death penalty and ratify the second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Refugees:

- Withdraw all reservations made to the 1951 Convention.
- Adopt a Refugee Policy. The necessary legal framework has not been developed and a number of protection and assistance gaps exist. A refugee policy would provide the necessary overarching direction for the Government.
- Revise the current Migration Act to adequately provide a legal framework for all refugees and asylum-seekers. Being mindful that PNG is not faced with a large number of new asylum-seekers, legislation, structures and processes should not be over-complicated, but should provide a solid basis for the processing of claims and protection and assistance of asylum-seekers. Provisions should reflect: conditions for granting refugee status (refugee definition, inclusion and exclusion, cessation); procedures and competent bodies; rights and obligations of an asylum-seekers and refugees; permits and documents; mass influx; and cooperation with UNHCR.
- Establish fair and efficient asylum-procedures along with administrative instructions for officials handling asylum claims.
- Establish reception arrangements for newly arriving asylum-seekers and clear guidance on the type of protection and assistance to be provided. This should go hand in hand with clear identification of which authorities are responsible for meeting basic needs (e.g. housing, food and access to medical services).
- Accede to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.
- Commit the necessary legal, political, financial and staffing resources to ensure that Papua New Guinea is able to discharge its responsibilities under the 1951 Convention and, in particular, to ensure that all claims for refugee protection are dealt with in an expeditious and fair manner, with appropriate support as required from UNHCR.

Maternal health:

- Improve access to reproductive health services including family planning, neonatal and child health.

Adequate standard of living:

- Adopt an action plan to guarantee housing is adequate, available and accessible to everyone, and prioritize the rural and urban poor.
- Develop a social security policy to ensure that a minimum level of security is provided to the most vulnerable social groups (poor families, elderly, sick and disabled persons) so they can maintain an adequate standard of living.

People Living with HIV:

- Reform punitive laws regarding sex workers, homosexuality and other most at risks populations and support implementation of the HAMP Act.
- Promote the rights of positive people, including sensitization on stigma and discrimination among key personnel in Government, church, private sector and civil society organizations

- Provide HIV related services in priority provinces where the prevalence is high and maintain support to the rest of the country.
- Support Leaders, programs and organizations at the national, provincial and local levels in their advocacy for the elimination of HIV-related stigma and discrimination.
- Develop community-based interventions and campaigns which reduce stigma and discrimination, based on social research and the Stigma Index, particularly in high prevalence locations
- Build the capacity of PLHIV and organizations to advocate and act against stigma and discrimination.
- Build capacity of organizations in human rights-based HIV and AIDS interventions and program.

Education:

- Make basic education not only free but also compulsory and secondary and higher education should also progressively be made free of charge.
- Reform the legal framework for education sector governance to address current fragmentation and ineffective coordination
- Revise the Teachers' Code of Ethics to provide stiffer penalties against violation of rights of children

Women:

- As recommended by CEDAW adopt the Equality and Participation Bill with 22 reserved seats for women in Parliament.
- Take all appropriate measures to increase the number of women in elected and appointed office at all levels, so as to comply with articles 7 and 8 of the Convention.
- Take concrete measures, including temporary special measures, in accordance with article 4, paragraph 1, of the Convention, the Committee's general recommendations Nos. 23 and 25, and to establish concrete goals and timetables in order to accelerate the increase in the representation of women in all spheres of public life.
- Take all necessary steps to meet its obligation to prevent, investigate and prosecute gender-based violence against women and to provide full reparation to survivors through the introduction and enforcement of legislation that prohibits all forms of gender-based violence.
- Invite the UN Special Rapporteur on Violence against Women, its causes and consequences to visit PNG.
- Take immediate and effective measures to investigate the incidences of torture and killings of women and girls, especially old women, based on accusations of witchcraft or sorcery, to prosecute and punish the perpetrators of such acts and to prevent their reoccurrence in the future.
- Ensure that women and girls who are victims of violence have access to immediate and effective means of redress and protection, including shelters and safe houses.
- Training for the judiciary and public officials, in particular law enforcement personnel and health-service providers, in order to ensure that they are sensitized to all forms of violence against women and can provide adequate support to victims.

Child protection:

- Strengthen the capacity of the Department for Community Development to coordinate data collection that will provide relevant data on the numbers, location and situation of vulnerable children, including those affected by HIV and AIDS
- Train Village Courts Inspectors to monitor disputes regarding inheritance that come before village courts
- Strengthen the capacity of provincial and district Lukautim Pikinini Councils to identify vulnerable children and oversee the distribution of land, property and other inheritance to these children

^[1] Kelly, A. et al., 2009. The art of living: The social experience of treatment for people living with HIV in Papua New Guinea. Goroka: PNG Institute of Medical Research.

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