

Universal Periodic Review Submission

Papua New Guinea  
2015

**Summary**

1. Human Rights Watch submits the following information on seven areas of concern regarding Papua New Guinea's (PNG) human rights record: police abuses, women's rights, asylum seekers and refugees, lesbian, gay, bisexual, and transgender (LGBT) rights, death penalty, extractive industries, and disability rights. This submission also assesses PNG's progress in implementing the specific recommendations it accepted in the last UPR round in 2011. This submission is not a comprehensive review of all human rights issues in PNG. It is our intention to complement the valuable reports submitted by nongovernmental organizations on different aspects of PNG's human rights record.

**Police Abuses**

2. During the 2011 UPR, PNG committed to taking "effective measures to prevent alleged abuse and violence by police officers,"<sup>i</sup> and "ensure their accountability for respecting human rights."<sup>ii</sup> Despite these commitments, police abuses remain rampant. Following a visit in March 2014, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions Christof Heyns expressed concerns about the use of excessive force by police during arrest, interrogation, and pretrial detention, sometimes resulting in death.<sup>iii</sup> Even severe excessive force cases rarely result in disciplinary action, suspension or prosecutions, according to Heyns.
3. In January 2015, police killed two market vendors in Port Moresby when firing indiscriminately into a crowd after a dispute between vendors and local council officials. So far no one has been arrested for the shooting and the assistant commissioner for police, Jerry Frank, was reported as having acknowledged, that although they believed the police did it, they "don't know which ones."<sup>iv</sup> PNG's Prime Minister Peter O'Neill condemned the use of "unacceptable excessive force," and sacked the then police commissioner, Geoffrey Vaki, in part for overseeing the police force over "a litany of cases of police brutality."<sup>v</sup>
4. Members of PNG's paramilitary police units (Mobile Squads), detention center staff, and local residents, were implicated in excessive use of force in quelling protests in February 2014 at the Manus Island detention center, which holds asylum seekers transferred by Australia for refugee status determination and resettlement. During the incident, at least 51 detainees sustained injuries and one detainee was beaten to death. PNG Deputy Police Commissioner Simon Kauba denied any involvement of PNG police in the violence. An Australian Senate inquiry found that the "mobile squad did not simply fire warning shots into the air, but rather fired dangerously into the centre, possibly directly at transferees."<sup>vi</sup> Authorities have since arrested and charged two contractors working at the center with the murder of Iranian asylum seeker, Reza Barati.

*Recommendations:*

- Criminally investigate and prosecute officers who commit criminal offences such as torture and prohibited forms of ill-treatment, rape, or use excessive force, and use administrative sanctions, including dismissal;
- Investigate and prosecute commanding officers who know or should know of such acts, and who fail to prevent or punish them;
- Improve the speed and efficiency with which cases of criminal action by police are sent to the public prosecutor.

**Women's Rights**

5. During the UPR review in 2011, PNG committed to taking "appropriate measures to fully implement the Convention on the Elimination of All forms of Discrimination Against Women,"<sup>vii</sup> and "implement policies and legislation aimed at gender equality and the empowerment of women, including combating all forms of gender-related violence."<sup>viii</sup> PNG also committed to taking specific measures to "eliminate domestic violence"<sup>ix</sup> and to "review the law on sorcery and sorcery-related killings and investigate, prosecute and punish perpetrators of such crimes."<sup>x</sup>

*Family Violence*

6. In June 2015, Human Rights Watch researched family violence in PNG, interviewing survivors of family violence, activists, service providers and experts. Our research was largely focused on the response by police and justice officials, as well as the availability of services. The government has adopted the 2013 Family Protection Act, established police Family and Sexual Violence Units (FSVUs) and hospital-based Family Support Centres, and initiated a process to develop a gender-based violence strategy.

7. However, although the Family Protection Act came into force in March 2014, it has not yet been implemented. The government says that the implementation must wait until it has adopted implementing regulations, although this delay is not required by the law. There is much work remaining to ensure appropriate law enforcement responses and comprehensive access to services for victims of family violence.
8. Police and prosecutors are very rarely prepared to pursue investigations or criminal charges against people who commit family violence, even in cases of attempted murder, serious injury, and repeated rape. Interviewees said that police, prosecutors, and courts seem reluctant to treat these cases as criminal matters, preferring to resolve them through mediation and/or the payment of compensation, even when it was clear that this was not the preference of the victim. Police often demanded money (“for fuel”) from victims before they would take action, or simply ignored cases that occurred in rural areas, instructing victims that it was their responsibility to bring the perpetrator to the police. These failures appear to occur in FSVUs as well as other police units.
9. Experts and organizations reported that survivors of violence faced significant barriers in obtaining interim protection orders (IPOs) and other forms of protection orders. Police often seem reluctant to refer survivors for IPOs and survivors who did seek IPOs and protection orders often said they encountered delays in the courts.
10. There is a dire lack of services for people requiring assistance after having suffered family violence. Safe houses (shelters) are absent in most areas and in short supply everywhere, qualified counsellors are all but non-existent, case management is very rarely provided, legal aid is almost entirely absent, and there is no safety net to assist survivors, especially those with dependent children, who need temporary support and assistance to leave their abusers and become financially independent. Much of the efforts on the ground to try to end family violence in PNG seems to be coming from activists outside the government with support from international donors. Family violence cannot be systemically tackled without full and sustained engagement and leadership by the government.

#### *Sorcery Accusations*

11. Human Rights Watch also interviewed a number of individuals and families who had been the target of accusations that they had engaged in “sorcery.” Many of these cases seemed to have their roots in long-running intra-family or intra-community conflicts over land or money. In other cases, sorcery accusations were wielded as a threat by abusive husbands. Sorcery accusations are often accompanied by brutal attacks, including burning of homes, assault, and sometimes murder. Our research suggests that women may be particularly likely to be targeted and less likely to be able to defend themselves from accusations.
12. Although the 1971 Sorcery Act, which had permitted claims of sorcery as a defense to murder, was repealed in 2013, the cases we looked at suggest that impunity continues for those who attack others on the pretext of sorcery accusations. People who have experienced such attacks can seek assistance from the police FSVUs but face similar difficulties to survivors of family violence in persuading police to pursue perpetrators and bring charges. So severe and real are the risks to people accused of sorcery, that the main approach used by NGOs seeking to help them is to permanently resettle them in another community, and a few NGOs have funding for this purpose.

#### *Recommendations:*

- Ensure that the Family Protection Act is implemented in full immediately;
- Require police to fully investigate and pursue arrest in all cases where an indictable offense has been committed, including in family violence and sorcery cases, regardless of the location of the offense or the suspect;
- Establish adequately staffed and resourced FSVUs in all major police stations, and refer all victims of family violence to FSVUs and transport them to these services;
- Analyze the processing of IPO and protection order applications, to determine whether delays or inappropriate denials are occurring in the processing of these application, and if so, develop and implement remedial measures;
- Ensure that neither village nor district courts ever demand fees from individuals seeking IPOs or protection orders, and make it a disciplinary offense for any court official to request such fees.
- Ensure availability of adequate shelter, psychosocial, legal, and other services for survivors of domestic violence, including in rural areas;
- Establish a system to provide a financial safety net for survivors of family violence who require assistance to meet their family’s basic needs, including those who become indigent due to a separation from an abusive partner.

#### **Asylum Seekers and Refugees**

13. More than 850 asylum seekers and 87 refugees are currently detained indefinitely in poor conditions on Manus Island two years after Australia announced it would process irregular maritime asylum seekers it had diverted there from areas of its territory and control and resettle those recognized as refugees within PNG or to other countries. Since January 2015, PNG and Australian authorities have transferred 40 men recognized as refugees

to a transit center, but they are still prevented from leaving Manus Island and are denied opportunities to work and study. Human Rights Watch visited Manus Island to interview refugees and asylum seekers in June 2015. Based on this research,<sup>xi</sup> we have the following concerns:

- Pressure on asylum seekers to abandon their refugee claims and return to home countries, combined with lengthy delays in refugee status determination and resettlement processing;
  - Mental health problems linked to prolonged and indefinite detention;
  - Arbitrary detention of asylum seekers and refugees in the police lock-up and jail;
  - Restrictions on refugees' freedom of movement and work rights;
  - Assault on a refugee by alleged authorities in Lorengau town; and
  - Mistreatment of gay asylum seekers.
14. PNG ratified the Refugee Convention in 1986, but despite promises to do so, has not yet lifted seven reservations to the treaty.<sup>xii</sup> However, it has failed to adopt a formal policy for integration of refugees within PNG. As of August 2015, not a single refugee had been resettled or integrated in PNG.
15. The February 2014 violence at Lombrum detention center has made many asylum seekers fearful about living in PNG. Asylum seekers and refugees also reported that conditions inside the detention center are overcrowded and that the protracted and indefinite nature of detention is causing significant mental health problems, including depression and anxiety. In January 2015, police detained a large group of asylum seekers for several weeks in crowded cells in the local jail and police lock-up following a hunger strike in Lombrum detention center. All correctional facilities including the jail and police cells have been designated as "relocation centers" under PNG immigration law, and as such asylum seekers can be held there by immigration authorities without charge and access to the courts or to lawyers. Many of the asylum seekers involved said the jail experience was traumatizing for them, reporting that at least two asylum seekers had attempted suicide.

*Recommendations:*

- End the mandatory detention of asylum seekers transferred from Australia, and only detain asylum seekers who represent no danger to the community for no longer than administratively necessary for identity, health, and security checks;
- Lift the effective ban on visitors to the detention center at Lombrum naval base and ensure that media and human rights organizations are allowed access;
- Urgently develop a comprehensive framework for the integration and resettlement of refugees;
- Immediately provide all recognized refugees in PNG with ordinary residency, employment authorization, and other common identity documents, freedom of movement, and work rights.

## **LGBT Rights**

16. In the 2011 UPR, PNG received recommendations to "decriminalize sexual relations between consenting adults of the same sex"<sup>xiii</sup> and to "amend national legislation to include 'sexual orientation' and 'gender' as prohibited grounds for discrimination."<sup>xiv</sup> The PNG criminal code outlaws sex "against the order of nature," which has been interpreted to apply to consensual homosexual acts, and is punishable by up to 14 years imprisonment.
17. In June 2015, gay asylum seekers on Manus Island told Human Rights Watch that gay men are either shunned or sexually abused or assaulted by the other men. Some gay asylum seekers are reported to have refused to participate in the refugee status determination process or to move to the transit center because they do not believe they can be integrated in PNG and are concerned for their safety. One gay man who had received a positive refugee status determination refused to leave detention and reportedly destroyed his positive determination document and opted to return home.

*Recommendations:*

- Immediately amend its laws to decriminalize homosexual relations;
- Publicly reaffirm that all people in PNG have the right to live free from discrimination and violence based on their sexual orientation or identity and that illegal acts of violence against them will be prosecuted.

## **Death Penalty**

18. During the 2011 UPR, PNG rejected recommendations to "abolish the death penalty"<sup>xv</sup> or "confirm the de facto moratorium on the death penalty."<sup>xvi</sup> Instead, in 2013, PNG expanded the scope of crimes eligible for the death penalty and signaled its intention to resume executions. As at May 18, 2015, thirteen prisoners were on death row but no executions had taken place.

*Recommendation:*

- Implement an immediate moratorium on the death penalty with a view towards abolishing the practice altogether.

## Extractive Industries

19. During its UPR in 2011, PNG received recommendations to “increase scrutiny over extractive and logging industries and associated companies and businesses, with a view of reducing its negative impact on the environment, and consequently, its negative effects on the full enjoyment of human rights.<sup>xvii</sup>”
20. Extractive industries remain an important engine of PNG’s economic growth, but continue to give rise to serious human rights concerns and environmental harm. Controversy raged around the alleged environmental impacts of the Ok Tedi Mine in 2014, and some violent clashes erupted around the controversial Ramu Nickel project. The government deployed security forces to Porgera and other restive areas of the highlands in 2014 as part of a state emergency. This led to allegations of violent abuses including the destruction of homes around Porgera.
21. Violence against women committed in the context of PNG’s extractive industries remains a wide-spread human rights issue. In 2011, Human Rights Watch documented gang rape and other violent abuses by private security personnel at PNG’s Porgera gold mine, operated by Canadian company Barrick Gold. Along with other steps, Barrick Gold responded by rolling out a compensation scheme paying out claims to more than 100 women in 2015. The company has commissioned an assessment to evaluate the impact of this remedy program.
22. In 2014, production and export began from PNG’s US \$19 billion Liquefied Natural Gas project, led by Exxon-Mobil. The project has transformative potential but there are serious concerns as to whether ordinary citizens will see any improvement to the realization of their economic and social rights from it. Key government institutions remain plagued by corruption and a questionable capacity to deploy the additional resources effectively. A recent government financial report has been criticized for failing to report on revenues from the Liquefied Natural Gas project.

### *Recommendations:*

- Provide financial support for the long-term development of local PNG groups with capacity for independent monitoring of the human rights, health and environmental impacts of extractives projects;
- Implement policies to ensure complete transparency of all government revenues and expenditures, to help ensure that extractives revenues bolster the government’s capacity to address obligations to fulfill economic and social rights obligations. Encourage vigorous public debate around government budgeting and expenditures;
- To reduce corruption and make better use of public funds to secure the enjoyment of economic and social rights of those living in PNG, particularly vulnerable communities, and to reduce human rights abuses in the extractive industries, PNG needs to strengthen and increase the resources and skills available to the Ombudsman Commission and the Auditor-General.

## Disability Rights

23. During its UPR in 2011, PNG accepted recommendations to ratify the UN Convention on the Rights of Persons with Disabilities.<sup>xviii</sup> The Convention was ratified in 2013. PNG also accepted recommendations to “implement the National Disability Policy<sup>xix</sup>” and “promote the creation of a database regarding persons with disabilities, with the objective of guiding relevant policies to make their rights effective.”<sup>xx</sup>
24. While PNG’s National Disability Policy was launched in May 2015, people with disabilities are often unable to participate in community life, go to school, or work because lack of accessibility, stigma and other barriers associated with disability. In many cases, people with disabilities are prevented due to inaccessible infrastructure from leaving their homes or are not allowed to do so because third parties have been put in charge of such basic decisions. Access to mental health care is limited, and traditional healers are the only option for many people with psychosocial disabilities. Children with disabilities in PNG face abuse, discrimination, exclusion, lack of accessibility, and a wide range of barriers to education.

### *Recommendation:*

- Take practical steps to fully implement the UN Convention on the Rights of Persons with Disabilities at the federal and state level to ensure people with disabilities enjoy equal rights and opportunities in the PNG community.

## Annex: Endnotes

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- <sup>i</sup> Recommendation 78.50 accepted from Republic of Korea.
- <sup>ii</sup> Recommendation 78.56 accepted from Slovenia.
- <sup>iii</sup> UN Human Rights Council, "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum: Mission to Papua New Guinea (3 to 14 March 2014)," 30 March 2015, A/HRC/29/37/Add.1, <http://www.refworld.org/docid/5577e4c44.html> (accessed 24 July 2015).
- <sup>iv</sup> "PNG police commissioner Geoffrey Vaki sacked," *ABC*, May 8, 2015, <http://www.abc.net.au/news/2015-05-08/png-government-sacks-police-commissioner-geoffrey-vaki/6454496>.
- <sup>v</sup> "PNG police commissioner Geoffrey Vaki sacked," *ABC*, May 8, 2015, <http://www.abc.net.au/news/2015-05-08/png-government-sacks-police-commissioner-geoffrey-vaki/6454496>.
- <sup>vi</sup> Parliament of Australia, Senate Standing Committees on Legal and Constitutional Affairs, "Incident at the Manus Island Detention Centre from 16 February to 18 February 2014 – 2014, Australia", December 11, 2014, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Manus\\_Island/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Manus_Island/Report) (accessed, August 17, 2015).
- <sup>vii</sup> Recommendation 78.15 accepted from Hungary.
- <sup>viii</sup> Recommendation 78.16 accepted from Brazil.
- <sup>ix</sup> Recommendation 78.20 accepted from Republic of Korea.
- <sup>x</sup> Recommendation 78.22 accepted from Poland.
- <sup>xi</sup> "Australia/Papua New guinea: the Pacific Non-Solution," Human Rights Watch news release , July 15, 2015, <https://www.hrw.org/news/2015/07/15/australia/papua-new-guinea-pacific-non-solution>.
- <sup>xii</sup> Recommendation 78.10 accepted from Hungary.
- <sup>xiii</sup> Recommendations 79.52 and 79.53 rejected from Slovenia and France.
- <sup>xiv</sup> Recommendation 79.54 rejected from United Kingdom.
- <sup>xv</sup> Recommendation 79.31-79.34 accepted from Spain, Holy See, Czech Republic and Slovakia.
- <sup>xvi</sup> Recommendation 80.2 rejected from France.
- <sup>xvii</sup> Recommendation 79.58 from Maldives.
- <sup>xviii</sup> Recommendations 78.6-78.9 from Republic of Korea, Australia, Slovenia and Maldives.
- <sup>xix</sup> Recommendation 78.37 accepted from Japan.
- <sup>xx</sup> Recommendation 78.38 accepted from Mexico.