

PAPUA NEW GUINEA

BRIEFING TO THE UN
COMMITTEE ON THE
ELIMINATION OF
DISCRIMINATION
AGAINST WOMEN

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Papua New Guinea

Briefing to the UN Committee on the Elimination of Discrimination against Women: Violence against Women

I. Introduction

Amnesty International submits the following information for consideration by the Committee on the Elimination of Discrimination against Women (the Committee) in advance of its pre-sessional working group meeting on 10-14 August 2009, during which Papua New Guinea's Initial, Second and Third Periodic Reports¹ will be considered. The briefing identifies issues that have arisen from Amnesty International's recent work on Papua New Guinea (PNG) and which, in the view of Amnesty International, raise concerns about PNG's compliance with its obligations under the *Convention on the Elimination of All Forms of Discrimination against Women* (the Convention).

This briefing does not reflect the full range of concerns of the organisation in terms of respect, protection and fulfilment of women's rights in PNG, but looks primarily at the pervasiveness of gender-based violence in the country.

Specifically, this briefing highlights Amnesty International's concerns regarding:

- The failure of the State 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.
- The failure of the State and its agencies to introduce other effective measures to prevent gender-based violence.
- The inadequate provision of support services (including psychological, medical and legal support, as well as emergency shelters) for survivors of gender-based violence.

¹ See UN Doc. CEDAW/C/PNG/3, 22 May 2009.

- The lack of current statistical data on the nature, extent and causes of violence against women.

II. State obligation (General Recommendation No. 12 (8th Session, 1989) and General Recommendation No. 19 (11th Session, 1992))

2.1 *Need for the introduction and implementation of legislation to protect women against all forms of gender-based violence*

There is no law in PNG that addresses all aspects of gender-based violence, and domestic violence in particular.

In 2002, PNG introduced the *Sexual Offences and Crimes Against Children Act* (which falls under the Criminal Code).² The Act, which amended a number of sections of the Criminal Code, covers rape (including marital rape), sexual assault and child sexual exploitation. Meanwhile, corresponding amendments to the rules of evidence and procedure abolished the requirement that there must be evidence to corroborate the survivor's testimony in rape and other sexual assault cases.³

While the Government of PNG has, by enacting the above Act, made a significant step toward protecting the basic rights of women in PNG, shortcomings in the implementation of the Act, as well as a lack of other laws addressing other specific forms of gender-based violence such as domestic violence and sexual harassment, reveal that women remain a group in PNG society who are targeted for violence with almost complete impunity for the perpetrators.

In particular, while there have been numerous attempts to get a Family Protection Bill off the ground, there is currently no legislation specifically criminalising domestic violence, so that domestic violence cases currently fall under the Criminal Code. In this sense, no distinction is made in the statute between violence that occurs in the context of a family relationship and violence which occurs in the context of wider community life. Also, in criminal justice systems, both formal and traditional, there is an assumption that an intimate relationship between the victim and the perpetrator acts as a kind of defence, which ensures that the ordinary law of assault is not applied. This contravenes the right of women, under Article 15(1) of the Convention, to equal protection of the law.

² http://www.paclii.org/pg/legis/consol_act/ccoacaca2002462/ (as at 22/07/09).

³ Section 352A of the Criminal Code.

Amnesty International believes the Government of PNG must identify and address the root causes of violence against women, in addition to prosecuting perpetrators and ensuring reparations to survivors. Gender inequality and discrimination is supported by customs such as polygamy and bride price, which strengthen men's belief that they 'own' their wives.

With respect to gender discrimination and law reform, the Government of PNG should:

- Modify or repeal existing laws and regulations that discriminate against women and girls in family or public life. A review of current legislation, particularly family law legislation, and its compliance with the Convention has already been undertaken by the Department of Justice and Attorney General. The outcome of this review should be subsequently developed into a legislative reform package, which includes specific domestic violence legislation, to be introduced to the National Parliament.
- Conduct a review of customary laws and practices particularly as they relate to marriage, the payment or return of bride price, adultery, the dissolution of marriage, the custody of children and the division of property upon divorce or death, and adopt measures including legislation to modify or abolish any customary laws and practices which are identified as being inconsistent with the Convention and other human rights treaties to which PNG is a party. All decisions by customary bodies should be subject to appeal in front of formal courts.
- Conduct a review of existing measures available to prevent, or where necessary, prosecute, members of the community who conspire to pervert the course of justice by pressuring female survivors of gender-based violence to "settle" serious criminal charges by way of compensation payment alone. If existing measures are found to be inadequate for this purpose, the possibility of new, specific legislation should be investigated. Special attention should be given to how diversion of cases from the formal justice system contributes to a failure of protection by the law, and leads to further acts of violence by the same perpetrator against the same woman or girl.

2.2 *Need for stronger measures to eradicate all forms of gender-based violence*

Gender issues and approaches have not been explicitly and systematically integrated into PNG's development plans, particularly in regard to government expenditure. Government efforts to address violence against women have been slow due to policymakers' reluctance to acknowledge domestic and other forms

of gender-based violence as public matters, and to understand the dynamics and consequences of such violence. The overall approach to gender-based violence has been unstructured, with little coordination between agencies and no existing network to link agencies working on similar issues around the country.

With respect to adopting measures to eradicate gender-based violence, the Government of PNG should:

- Invite the UN Special Rapporteur on Violence against Women, its causes and consequences to visit PNG and to report on the adequacy of measures adopted by the State to both prevent, investigate and punish violence against women and girls and to provide redress to victims.
- Ensure that the National Government and each Provincial and local-level government has a plan for preventing violence against women and girls. A common framework should be established for these plans that ensures coherence across provinces and ensures the plans address all aspects of the State's due diligence obligations, the practical measures to be adopted at each stage of implementation, the timescale for implementation, and the resources which will be provided. Throughout PNG, responsibility for addressing violence against women and girls should be assumed at the most senior political level. Introducing a time-bound, resourced and cohesive method of addressing gender-based violence is essential and urgent. These should be benchmarked and regularly assessed to appraise the effectiveness of these measures.

2.3 *Need for greater provision of support services for women who are survivors of violence*

The right to a remedy for victims of violence against women includes the right to access services to assist in recovery and rehabilitation. Government services generally in PNG are in a state of neglect, particularly in rural areas. As a result, survivors of gender-based violence are unlikely to receive either adequate medical care, counselling or legal support, or to have access to emergency accommodation.

Women human rights activists in PNG have long been at the forefront of efforts to prevent violence against women. They do essential work offering shelter, counselling and legal advice to survivors of violence, with little or no support from the government.

With respect to the provision of services to survivors of violence, the Government of PNG should:

- While recognising that the State is the primary duty bearer under international human rights law, work with non-governmental organisations, including church organisations and international donors, to ensure that women and girls who are subject to gender-based violence have access to healthcare services, counselling, emergency accommodation and long-term and sustainable housing solutions and legal advice and to ensure that such services are provided which respects and promotes women's rights.
- Ensure that clear referral protocols which link police, healthcare and welfare services (such as counselling, emergency accommodation and paralegal advice) are in place; that relevant staff and their superiors are familiar with the protocols and that they are followed systematically.
- Ensure that healthcare professionals, welfare officers, counsellors and legal advisors are given training in how to respond to female survivors of gender-based violence in a manner which respects women's human rights and prioritises the safety and welfare of the survivor. In particular, it should be impressed upon staff who deal with female survivors of gender-based violence that they personally play an important role in determining how women and girls perceive the violence they have suffered and how they understand their options and rights with respect to obtaining justice and redress.
- Adopt a comprehensive approach to ensuring the economic and social rights of women and girl survivors of violence, including the rights to housing, social security education, and work.

2.4 Need for current statistical data on the incidence of gender-based violence

Interviews conducted by Amnesty International reveal there is a general consensus that gender-based violence against women is widespread and pervasive in PNG; however, the exact dimensions of the problem are simply not known. With respect to intimate partner violence, the most commonly cited data is based on research conducted by the Law Reform Commission between 1982 and 1986, and is primarily derived from a questionnaire survey completed by 1,191 men and 1,203 women, focus group discussions, and hospital and police studies. The research covered urban elites, people living in urban squatter settlements and rural villagers from 16 of the country's 20 provinces. The research found that on average two thirds of women had been hit by their partners.⁴

Anecdotal evidence suggests that rates of intimate partner violence are unlikely to have decreased in the intervening decades, and some women's organisations fear they may have risen.

Information on rates and patterns of sexual violence, both within the family and the community is similarly limited. The most commonly cited data is based on research conducted by the Papua New Guinea Medical Research Institute in 1993, which found that 55 per cent of women interviewed said they had been forced into sex against their will, mostly by men known to them. Half of the married women involved in the survey said that their husbands had used beatings or threats to force them into sex. Men who participated in the same study described gang rapes as a common practice and approximately 60 per cent of men interviewed indicated they had participated in rape of this sort before.⁵

⁴ For a summary of the Law Reform Commission's findings see: Papua New Guinea Law Reform Commission, "Final Report of Domestic Violence - Report No.14.", Port Moresby, 1992, p. 16. The data is based on information supplied by both husbands and wives, which, in any case, was almost entirely consistent. The data also includes information on the frequency and severity of violence between spouses and the extent to which weapons or other instrument were used.

⁵ The data is based on a study by the National Sex and Reproduction Research Team and Carol Jenkins. The study involved 423 interviews with men and women and 61 focus groups representative of 82% of the population. The results are summarised in Bradley, C. & Kesno, J, "Family and Sexual Violence in Papua New Guinea: An Integrated Long Term Strategy. Report to the Family Violence Action Committee of the Consultative Implementation and Monitoring Council, Discussion Paper No. 84." Institute of National Affairs, Port Moresby, 2001, pp. 8, 12 -13.

In the PNG Government's very frank initial report to the Committee on the Rights of the Child, it was stated that "young women all over the country are at high risk of rape, gang rape and other forms of violent sexual assault."⁶ In the same report, preliminary research was referred to which found that 30 per cent of girls and women in one urban settlement had been victims of sexual violence.⁷

With respect to the collection of data on violence against women and girls, the Government of PNG should:

- Develop and provide the necessary resources to implement a standard system for collecting data and compiling statistics on violence against women and girls for use by all service agencies. Such a system should ensure that data is not just collected but also routinely collated, widely published and used to inform targeted government planning. Such a system should also be used to measure the impact of any measures adopted by the government to address violence against women and girls.
- Without compromising confidentiality, ensure data relating to a specific woman, particularly historical records which reveal patterns of violence, is available to assist in the criminal prosecution of acts of gender-based violence or to assist a woman to obtain civil remedies.
- Provide training to those responsible for gathering data to impress upon them the importance of individual confidentiality; the importance of data collection for successful prosecution of crimes of gender-based violence; the importance of data collection for planning purposes; and the necessity to proactively seek information on gender-based violence from women and girls.
- Provide support for the National Research Institute to conduct a national baseline survey of family and sexual violence, including by facilitating access to government records and staff and by instructing all government agencies to lend their full cooperation to those conducting the survey.

⁶ Committee on the Rights of the Child, "Consideration of Reports Submitted by State Parties Under Article 44 of the Convention – Papua New Guinea", UN Doc. CRC/C/28/Add.20, 21 July 2003, para. 172.

⁷ *Ibid* at para. 397.

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