

# **Shadow report to the 70<sup>th</sup> Session of CEDAW**

## **Review of Australia Extraterritorial Obligations**

### **Submitted by:**

- HELP Resources Inc.,
  - Voice for Change Inc.,
  - Bougainville Peoples Research Centre and
  - Hela Women Never Give Up (emerging)
- Together with
- Development Alternatives with Women for a New Era (DAWN)

**June 2018**

## **CONTENTS**

1. Summary
2. States' extraterritorial obligations in relation to human rights
3. History of Australian investments in Extractive Industries in PNG
4. Australian Companies Currently Operating in Extractive Industries in PNG
5. Denial of Women's Rights in Extractive Industries Supported by Australia

Specific violation of the obligations contained in Articles 1, 2, 3, 5, 6, 11, 13, 14 of CEDAW, and in General Recommendations 19, 28, 30 and 34 of the CEDAW Committee

## 1. Summary

This submission is made by Civil Society Organisations working in PNG and Bougainville - HELP Resources Inc., Voice for Change Inc., Bougainville Peoples Research Centre and Hela Women Never Give Up - together with Development Alternatives With Women for a New Era (DAWN), a feminist, human rights and social justice advocacy group from the global south based in Fiji. Through this submission we wish to draw attention of the CEDAW Committee to the following:

- The failure of the Australian Government to meet its obligations to protect the human rights of women outside Australian territory, specifically in Papua New Guinea (PNG), where women's rights are being seriously denied and violated as a result of the operations of Australian-owned extractive industry companies operating extraterritorially;
- The culpability of the Australian Government in financially aiding the expansion of extractive industries in PNG in the interests of Australian companies, despite knowledge of both the highly destructive social and environmental impacts of previous Australian mining operations in PNG, and the very high risk of extractive industries escalating armed conflict and violence in the new province of Hela, where Australian companies hold 42.5% shares in the controversial PNG LNG project;
- The failure of the Australian Government to ensure that:
  - free, prior and informed consent is obtained by Australian owned companies from women in communities in mining areas;
  - gender equal sharing of mining revenue is instituted as part of mining agreements/contracts made by Australian owned Extractive Industry (EI) companies with the PNG state;
  - gender equal access to jobs and training in Australian owned EI companies and associated businesses is practiced;
  - women's security and access to justice in areas affected by the activities of Australian-owned EI companies are guaranteed.

## **2. States' extraterritorial obligations with regard to human rights**

It is now accepted that international law and redress mechanisms must begin to address gaps in human rights protection that have become critical in the context of globalization. The Maastricht Principles on Extraterritorial Obligations (ETO) in the area of Economic, Social and Cultural Rights, (Maastricht Principles, 2013) identifies inter alia the lack of human rights regulation and accountability of transnational corporations (TNCs) as one such gap. The Maastricht Principles note that States must assume extra territorial obligations for regulating globalization and ensuring universal protection of all peoples and groups. Under international law, States assume obligations and duties to respect, protect and fulfill human rights. The obligation to protect requires States to protect individuals and groups against human rights violations committed by state agents or private individuals. A number of regional and international human rights mechanisms have affirmed that States also have extraterritorial obligations in relation to human rights violations committed by non-state actors under their jurisdiction, including transnational corporations.

The CEDAW Committee reiterated by General Recommendation 28 (2010) that the obligations of States parties applied extraterritorially to persons within their effective control, even if not situated within their territory. It also affirmed that States parties are “responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory”. Therefore, the obligations of States Parties also extend to acts of national corporations operating extraterritorially and States Parties must ensure that such private actors do not commit acts of discrimination against women, as defined by CEDAW. This would “include cases in which national corporations extend loans to projects in conflict-affected areas that lead to forced evictions and which call for the establishment of accountability and oversight mechanisms for private security and other contractors operating in conflict zones.” (quoted in CEDAW GR30, para.10)

The CEDAW General Recommendation 30 (2013) also affirms that States Parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are on their territory. Moreover, it affirms that the Convention also requires States Parties to regulate the activities of domestic non-State actors within their effective control who operate extraterritorially.

CEDAW GR 30 further notes that States are bound to apply the Convention in conflict and post conflict situations when they exercise extraterritorial jurisdiction “in the context of bilateral or multilateral donor assistance for conflict prevention and humanitarian aid, mitigation or post-conflict reconstruction.... and in the formation of trade agreements with conflict-affected countries” (para.9).

The CEDAW Committee also recommended that the State parties: (a) Apply the Convention and other international human rights instruments and humanitarian law comprehensively in the exercise of territorial or extraterritorial jurisdiction whether acting individually or as members of international or intergovernmental organizations and coalitions; and (b) Regulate the activities of all domestic non-State actors, within their effective control, who operate extraterritorially and ensure full respect of the Convention by them (GR30, para.12).

In addition, CEDAW GR 30 notes, “in conflict or post conflict contexts State institutions are often weakened or certain government functions may be performed by other Governments, intergovernmental organizations or even non-State groups. The Committee stresses that, in such cases, there may be simultaneous and complementary sets of obligations under the Convention for a range of involved actors, both State and non-State for acts of commission or omission.” In this context a State party remains responsible for its obligations under the Convention within its territory and extraterritorially and also has a responsibility to adopt measures to ensure that the policies and decisions of any organizations under its purview, conform to its obligations under the Convention (GR30, para.13).

In General Recommendation 34 on Rights of Rural Women (2016), the CEDAW Committee affirmed that States Parties should regulate the activities of non-state actors within their jurisdiction, including those operating extraterritorially. It also affirms that States are obliged “to take regulatory measures to prevent any actor under their jurisdiction, including private individuals, companies and public entities, from infringing or abusing the rights of rural women outside their territory” (GR 34, para.13).

In General Recommendation 35 expanding the scope of GR 19 on violence against women the CEDAW Committee notes that Gender-based violence against women occurs in all spaces and spheres of human interaction... [and] in settings, resulting from acts or omissions of State or non-State actors, acting territorially or extraterritorially...or extraterritorial operations of private corporations” (GR35, para.20). GR 35 also notes that “States parties must have an effective and accessible legal and legal services framework in place to address all forms of

gender-based violence against women committed by State agents, whether on their territory or extraterritorially” (para. 20). Most importantly in elaborating the due diligence obligations of States the CEDAW Committee notes that “States parties will be held responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women, including actions taken by corporations operating extraterritorially. In particular, States parties are required to take the steps necessary to prevent human rights violations perpetrated abroad by corporations over which they may exercise influence, whether through regulatory means or the use of incentives, including economic incentives” (GR25, para.24).

Along the same lines, the Committee for Economic, Social and Cultural Rights has affirmed that States have an obligation to protect the rights to health, water and fair working conditions of persons outside their territory and who are impacted by the activity of enterprises under States’ jurisdiction.

### **3. History of Australian investments in Extractive Industries in PNG**

PNG became independent from Australian colonial rule in 1975, but Australian-based banks and businesses still have dominant influence in PNG’s economy. Five thousand Australian companies operate in PNG with investments of AU\$5.8 billion. There are at least 100 mining companies of varying sizes in various stages of exploration or development. Thirty three projects are currently in operation with major Australian interests in some of largest mines as well as in the oil and gas fields (Fletcher 2009).

The Australian government-owned Export Credit Agency (ECA) - **Export Finance and Insurance Corporation (EFIC)** - has supported investments in PNG’s extractive projects for more than five decades. They have poor transparency, weak obligations, and often support risky and unsustainable projects. The people and environment of PNG have paid a heavy price for EFIC-backed projects operated by Australian mining companies in the past. (Fletcher 2009; Flannagan and Fletcher,2018)

**Rio Tinto of Australia** operated the **Bougainville Copper Limited** copper mine from 1969 to 1989; and **Australian Broken Hill Propriety (BHP)** Billiton held majority ownership and managerial control in the **Ok Tedi Gold and Copper** mine in the remote Western Province between 1980 and 2002.

In Bougainville, discontent over the dumping of tailings in the Jaba river, benefit sharing arrangements (between the central government and the host province, between the host landowning community and rest of the province, between clans of the landowning community and between successive generations of male landowners) and the influx of workers and Extractive Industry migrants from other provinces, escalated into open conflict.

The Australian government and Rio Tinto allegedly supported the PNG government's military efforts to quell the rebellion. A decade of civil war and a blockade on supplies to Bougainville resulted in the loss of 20,000 lives, and allegations of war crimes including sexual violence perpetrated by all parties to the conflict (Sirivi and Havini, 2004). Bougainville Copper Limited (BCL) stands accused of not only contributing to the catastrophic war but also of failing to fulfill landowner demands for remedy, including compensation for loss and trauma and restoration of severely damaged land and river systems.

In Ok Tedi, BHP caused irrevocable environmental and social damage by abandoning plans for a tailings dam and instead dumping tailings directly in the Fly river. Pollution in the lower Fly destroyed fishing, gardening and water supplies. BHP denied responsibility, so landowners filed lawsuits in Australian courts. BHP influenced the PNG government to outlaw landowner protest and offshore lawsuits. When BHP faced damages and compensation claims that threatened to cost it billions of dollars, tie it up in the courts for years, and further damage its international corporate reputation, denial turned to admission of culpability for wholesale damage of the Fly River system. BHP subsequently divested itself of majority shareholding and handed over ownership to a 'future fund' it created, PNG Sustainable Development Fund' PNGSDF, managed from Singapore, thereby allegedly depriving the PNG state of tax revenue/interest earnings. As an exit strategy, BHP successfully lobbied the PNG government to pass a law guaranteeing it permanent immunity from litigation for environmental damage caused by the mine. The law was subsequently revoked following a change of government, which nationalized the mine and took control of PNGSDF and still threatens to sue BHP.

Despite multiple lessons from landowner protests, armed conflicts, decades of boom and bust, ongoing fiscal management crises and natural disasters, Australia

continues to invest heavily in expanding PNG's extractives-dependent economy, through Fly-in, Fly-out (FIFO) operations in remote, rural areas, fueling community conflict, environmental degradation and corruption and largely excluding women from voice and participation.

#### **4. Australian Companies Currently Operating in Extractive Industries in PNG**

(i) Australia's **Newcrest Mining Ltd**, one of the world's largest gold companies, holds 100% ownership of Lihir Gold Mine, on Lihir Island, and is now PNG's biggest open-pit gold producer. Women have been excluded from consultations and ongoing negotiations with the mine management (Macintyre 2003a; Bainton 2010; Hemer 2013).

Negative impacts of the Lihir Goldmine include the dumping of tailings and rock waste directly into the sea; ongoing relocation and resettlement of communities and resulting loss of agricultural land, access to fishing areas and livelihoods including for women, and dependence instead on costly purchased food; loss of tradition and community cohesion; increased population with the influx of 2,000 mineworkers; and rise in social problems including increased crime and violence against women (Macintyre 2003b; Hemmer 2017).

(ii) **Australian companies Oil Search** (29%) and **Santos** (13.5%) are major joint venture partners, with PNG state corporations Petromin Holdings Ltd (0.2%) and Minerals Resources Development Corporation (2.8%), in the \$US19 billion Liquefied Natural Gas (LNG) project led by US giant Exxon Mobil (32.4%), PNG's largest and expanding EI project which is expected to run for 30 years.

The combined Australian share of the project is 42.5%. Oil Search Ltd. also operates all of the countries producing oilfields, holds 'an extensive appraisal and exploration portfolio' and is currently 'undertaking a range of exploration and appraisal activities to support further LNG expansion in PNG' (<http://www.oilsearch.com/who-we-are>).

The **Australian government-owned EFIC** provided a \$A500 million loan to enable fast-tracked **PNG LNG project** construction and start-up in the remote undeveloped Hela region, knowing that the PNG government had not completed due diligence in securing free, prior and informed consent (FPIC), landowner identification, incorporation of landowner groups, and social license to operate (Fletcher, 2009:29).



PNG LNG was promoted as transformational for the PNG economy, promising 50% GDP increase. However, after four years of gas exports, GDP increase is just 10% and PNG's economic indicators are regressing. Beneficiaries are business leaders and politicians who operate in the interests of the US and Australian-based banks and corporations. By 2016, household incomes across PNG fell by 6%, employment by 27% and government services, including education, health and infrastructure, by 32% (Flannagan and Fletcher, 2018).

Hela was made an official province in 2012. Government presence, service delivery and law and justice systems are inadequate. Hela's armed conflict and extremely high levels of violence against women are exacerbated by high levels of small arms possession (Alpers, 2005), and since 2005, a further build-up of illegal high-powered weapons with EI cash benefits from oil developments and PNG LNG construction phase (Fletcher, 2012; Main and Fletcher, 2018).

With the advent of the Australian supported PNG LNG project, reports indicating that the failure to identify landowners, could further escalate armed violence and further victimize women were ignored (Kopi, 2009; Fletcher and Webb, 2012; McIlwraith, 2012). Gas production, processing and export commenced in 2014, but no royalties have been paid. As a consequence, since 2016 new forms of armed tribal fighting led by youthful 'warlords' have caused the deaths of many men and women, displaced thousands, overwhelmed the local police, and totally disrupted the province.

Oil Search Foundation (OSF), the company's Corporate Social Responsibility arm, plays a significant and highly-publicized role, funded by tax credit schemes, in maintaining health facilities in the province, providing humanitarian relief at project sites and construction of large infrastructure projects in the capital. Yet OSF has failed to ameliorate the terrible situation of women in remote, rural traditional, patriarchal Hela society, as a consequence of the social upheaval and resentment surrounding its huge gas extraction project. Hela women are currently subjected to multiple layers of trauma and displacement, exacerbated by high-powered weapons, now in the hands of youthful warlords (Arigo, 2018).

Two very recent reports from Jubilee Australia about the PNG LNG project (Flanagan and Fletcher, 2018) highlight the inflated projected growth in GDP, in state revenue and in landowner earnings, based on flawed pre-project modelling, which caused the PNG government to overspend, resulting in a budget crisis, a 6% fall in the purchasing power of the kina, school and health facility closures, essential medicine shortages across PNG, deteriorating roads and bridges, and cutbacks in

government spending in rural areas with impacts at the household level falling heaviest on women.

Main and Fletcher (2018) examined the build-up of civil unrest around the LNG project, worsened by the non-payment of resource rents due to landowners. It was the responsibility of the PNG State to identify the LNG landowners a decade ago, before construction on the project started, and the continuing failure to accomplish this is a major factor in the unrest. Questions about gun violence in Hela, the arms build-up around the project, and whether Australia's involvement in backing the project through its export credit agency EFIC was the subject of an adequate risk assessment, were the focus of cross-questioning in Australia's Senate Estimates Committee in 2017.

In the view of Jubilee Australia the escalation of conflict in Hela to 'a Bougainville type situation' is a very real possibility. The organisation reported having confidential information that 'weapon stockpiles exist in the region of the PNG LNG project' and one source estimated that in Hela '65 per cent of males over 24 possess a firearm' (Fletcher, 2009:42).

Main and Fletcher also look at the aftermath of the 7.5M earthquake that struck Hela Province on 26 February 2018. The earthquake which displaced some 50,000 people, affecting about 500,000 altogether, was followed by continuous aftershocks. The impact of the earthquake on livelihoods, as in all disasters, fell heaviest on women, compounding the effects of the national budget crisis and local civil unrest. PNG LNG operations were suspended for a month, but quickly resumed. Oil Search Foundation assisted in the relief effort but the additional displacement and dispossession of remote communities, and their vulnerability in rudimentary care centres heightened the deaths. A state of emergency was declared. Many basic services have not resumed operating. The situation is still too dangerous for Australian Aid, Law and Justice consultants, and NGOs contracted by Oil Search to resume their fly in/fly out technical support services.

## 5. Denial of Women's Rights in Extractive Industries Supported by Australia

### Specific violation of the obligations contained in Articles 1, 2, 3, 5, 6, 11, 13, 14 of CEDAW, and in General Recommendations 19, 28, 30 and 34 of the CEDAW Committee

The two extractive industries involving Australian companies cited above have impacted the rights of women significantly.

#### Specific Problems faced by Lihir women impacted by the Lihir Gold Mine<sup>1</sup>.

- **Women were not in a position to give free, prior and informed consent FPIC.** Women were excluded from initial consultations and low levels of representation in negotiations since the mine commenced in 2000. Newcrest did not enable adequate information and understanding of social and environmental risks. Women's literacy levels were low, and language used was inappropriate and inaccessible due to different cultural worldviews.
- **Women have lost traditional, matrilineal land rights influence and control.** Newcrest did not provide adequate or appropriate information to enable women to understand that mining agreements meant permanent and irrevocable loss of land (Macintyre, 2002; Hemer, 2017).
- **Loss of access to farming land and fishing rights and associated status as producers and providers** Lihir women traditionally acquired status through the bearing and raising of children, and through the production of garden food and pigs that could be exchanged for shell money. Forced relocation and resettlement highly restrict women's access to land and resources in their traditional role as providers of livelihoods and have imposed a burden and risk of dependence on cash for expensive and poor quality imported foods (Macintyre, 2003b, Hemmer, 2017).
- **Women employed by the mine experience unequal employment opportunities and conditions.** Paid work in the mining company or its contractors, is dominated by men, particularly in more senior roles. Entrenched gender inequality norms are reinforced within the masculine workplace rather than being challenged by notions of gender equity and non-discriminatory policies. There is open antagonism; sexual harassment and discrimination in terms of opportunities for promotion, remuneration and in-

---

<sup>1</sup> Based on discussions with Lihir women and Newcrest contracted gender advisers and the reports of Independent anthropologists contracted at different times by Newcrest Mining Ltd.

service training. There is a lack of affirmative action, no maternity leave and no workplace childcare (Macintyre, 2003a; Bainton, 2010; Hemer, 2013).

- **Unequal access to mining benefits.** Women have limited access to benefits. Compensation and royalties are largely paid to men, and onward distribution of this money through lineages has been problematic, with women rarely having any access to it (Macintyre, 2002).

### **Specific Problems faced by Hela women impacted by the PNG LNG project<sup>2</sup>**

- **Total exclusion of women from decision-making over benefits.** PNG LNG management and operations have ‘gone along’ with a situation where demand for royalties is made by men, all clan representations are made by men, and payments for land taken up by the project have all gone to men (Main and Fletcher, 2018).
- **Women’s Access to land and land rights reduced.** PNG LNG presence has introduced different value and meaning to land and women are increasingly losing access and rights to land for gardens (Main and Fletcher, 2018).
- **Diminished services for women survivors of violence:** Oil Search Foundation has assumed leadership of the Hela Provincial Health Authority, management of the hospital and rural health centres in Hela Province, including the hospital-based services providing medical and psycho-social support to women survivors of extreme family violence (established and operated by MSF -Doctors without Borders - for 7 years 2008-15). GBV services in the main town have been down-sized, the one skilled trauma counselor re-allocated to a library job and demand is now overwhelming capacity. Efforts to decentralize these services have been aborted by ongoing armed tribal fights and high security risks (MSF, 2011 & 2016; Arigo, 2018).
- **Reduced access to Justice in the context of escalating conflict.** Hela’s local regular police cannot cope with the current levels of armed violence and killings. Staff designated to deal with VAW survivors are constantly diverted to regular policing efforts. Plans and promises by the Australian Aid-funded Law and Justice program to support establish and staff a Family and Sexual Violence Unit at the police station and a Safe House (refuge) have been suspended till 2019, due to the ongoing violence and security restrictions over their consultants (Arigo, 2018).

---

<sup>2</sup> Based on information supplied by the Jubilee Australia reports, Hela women, Hela Police, and NGOs contracted by Oil Search Foundation

## References

- Alpers, P. (2005) *Gun-running in Papua New Guinea: From Arrows to Assault Weapons in the Southern Highlands*. Special Report No. 5. Small Arms Survey [online] <http://www.smallarmssurvey.org/fileadmin/docs/C-Special-reports/SAS-SR05-Papua-New-Guinea.pdf>
- Arigo, A (2018) Personal communication from Tari, Hela
- Bainton, N.A., 2010. *The Lihir Destiny: Cultural Responses to Mining in Melanesia*. Canberra: ANU E Press (Asia-Pacific Environment Monograph 5).
- Flanagan, Paul and Luke Fletcher 2018. *Double or nothing. The Broken Economic Promises of PNG LNG*. Sydney: Jubilee Australia Research Centre
- Fletcher, L. 2009. *Risky Business. Shining a Spotlight on Australia's Export Credit Agency* Sydney: Jubilee Australia Research Centre
- Fletcher, L and Webb, A. 2012: *Pipe Dreams: The PNG LNG Project and the Future Hopes of a Nation*. Sydney: Jubilee Australia Research Centre
- Hemer, S. 2017 Gender Mainstreaming and Local Politics: Women, Women's Associations and Mining in Lihir in In Filer, C and Le Meur, P, eds. (2018) (2018) *Large Large-scale Mines and Local-level Politics. Asia-Pacific Environment Monograph 12 pp 207-28*  
<https://press.anu.edu.au/publications/series/asia-pacific-environment-monographs/large-scale-mines-and-local-level-politics>
- Kopi, M. (2011) *Violence and Insecurity in the Southern Highlands of Papua New Guinea* [Online]. [https://www.oxfam.org.nz/sites/default/files/reports/Tari-report-final\\_2011.pdf](https://www.oxfam.org.nz/sites/default/files/reports/Tari-report-final_2011.pdf) [Accessed on 6 September 2017]
- MacIntyre 2011. 'Problems with gender mainstreaming approaches' in Macdonald and C. Rowland (eds), *Tunnel Vision: Women, Mining and Communities*. Fitzroy: Oxfam Community Aid Abroad.
- , 2003a. 'The Changing Value of Women's Work in Lihir.' Paper presented at the conference on 'Women in Mining: Voices for Change', Madang, Papua New Guinea, 3–6 August.
- , 2003b. 'Petztorme Women: Responding to Change in Lihir, Papua New Guinea.' *Oceania* 74(1–2):
- , 2011. 'Modernity, Gender and Mining: Experiences from Papua New Guinea.' In K. Lahiri-Dutt (ed.), *Gendering the Field: Towards Sustainable Livelihoods for Mining Communities*. Canberra: ANU E Press (Asia-Pacific Environment Monograph 6).
- Main, Michael and Luke Fletcher 2018. *On shaky ground. PNG LNG and the consequences of development failure*. Sydney: Jubilee Australia Research Centre

Médecins Sans Frontières.(2011) *Hidden and Neglected: The medical and emotional needs of survivors of family and sexual violence in PNG* [Online].  
[www.doctorswithoutborders.org/publications/reports/2011/06-15-Papua-New-Guinea-Sexual-Domestic-Violence%20report.pdf](http://www.doctorswithoutborders.org/publications/reports/2011/06-15-Papua-New-Guinea-Sexual-Domestic-Violence%20report.pdf) [Accessed on 5 September 2017]

Médecins Sans Frontières. (2016) *Return to Abuser: Gaps in Services and a failure to Protect Survivors of Family and Sexual violence in Papua New Guinea* [Online].  
<http://www.msf.org.au/sites/default/files/attachments/msf-pngreport-def-lrsingle.pdf> [Accessed on 5 September]

McIlraith, J. (2012) *The Community Good: Examining the Influence of the PNG LNG Project in the Hela Region of Papua New Guinea*  
<http://www.oxfam.org.nz/report/the-community-good-examining-the-influence-of-the-png-lng-project-in-the-hela-region-of-papua-new-guinea> [Accessed on 5 September 2017]

Sirivi, JT and Havini MT. (2004) *As mothers of the land: the birth of the Bougainville Women for Peace*. Australian National University. Research School of Pacific and Asian Studies [http://pacificinstitute.anu.edu.au/sites/default/files/resources-links/Pandanus/As Mothers of the Land.pdf](http://pacificinstitute.anu.edu.au/sites/default/files/resources-links/Pandanus/As_Mothers_of_the_Land.pdf)

*\* Grateful appreciation is extended to all who assisted in preparing this report. Special thanks to John Burton, Professor of Papua New Guinea Studies, Centre for Social Research, Divine Word University, Madang, Papua New Guinea.*

**CONTACT:**

Development Alternatives with Women for a New Era (DAWN)

**Global Secretariat**

Level 2 JP Bayly Trust Building, 193 Rodwell Road, Suva, Fiji.

Ph: (+679) 3311330

Email – [Kumi.dawn@gmail.com](mailto:Kumi.dawn@gmail.com) (Kumi Samuel)

[ta.helpresources@gmail.com](mailto:ta.helpresources@gmail.com) (Elizabeth Cox)