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Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns

Addendum

Mission to Papua New Guinea (3 to 14 March 2014)*

Summary

The Special Rapporteur on extrajudicial, summary or arbitrary executions conducted an official visit to Papua New Guinea from 3 to 14 March 2014. This report presents his main findings and proposes recommendations to ensure better protection of the right to life in Papua New Guinea.

Many formal steps have already been taken to ensure the protection of human rights and the right to life in Papua New Guinea, but they are not properly implemented.

A package of reforms is required; a piecemeal approach will not work. The Special Rapporteur recommends, inter alia, that Papua New Guinea establish: a national human rights institution which could help to facilitate the introduction of human rights in school curricula and police training; a centre for human rights within the University of Papua New Guinea; and witness and victim protection programmes; as well as encourage the establishment of a human rights-focused non-governmental organization. Also, a larger and better trained police force would strengthen the certainty of conviction for criminal offences, which, in turn, would contribute to countering calls for the reintroduction of the death penalty.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

Annex

[English only]

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, on his mission to Papua New Guinea (3 to 14 March 2014)

Contents

I. Introduction

1. At the invitation of the Government of Papua New Guinea, the Special Rapporteur on extrajudicial, summary or arbitrary executions conducted an official visit to the country from 3 to 14 March 2014. The aim of the visit was to examine the level of protection of the right to life in Papua New Guinea, including government efforts to prevent unlawful killings and to ensure justice and redress in such cases. The report focuses on the situation at the time of the visit and reference is made to subsequent developments. The draft report was sent to the Government on 6 February 2015.

2. The Special Rapporteur thanks the Government of Papua New Guinea for its invitation and for the open cooperation and support provided during his visit by officials from the Department of Foreign Affairs, particularly, the late Dennis Bebego, former Acting Director-General of the Multilateral Development and Cooperation Division. He is also grateful to the United Nations Country Team, in particular, the Resident Coordinator and the staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Papua New Guinea for their invaluable support during both the preparation and conduct of his visit.

3. The Special Rapporteur visited Port Moresby (National Capital District), Goroka (Eastern Highlands Province), Kundiawa (Simbu Province), Lae (Morobe Province), Manus Island and Buka (Autonomous Region of Bougainville). He met with the Minister of Justice and Attorney-General, the Minister of Police, secretaries, commissioners and high-level officials of the Ministry of Foreign Affairs, the Royal Papua New Guinea Constabulary (RPNGC) and the Office of the Public Prosecutor. He also met with the Chief Justice, the Public Solicitor and the Chief Ombudsman, and held discussions with the judge in charge of the Human Rights Track of the National Court. In the provinces and the Autonomous Region of Bougainville, he met with governors, provincial administrators, provincial police commanders, other police force officials, representatives of the Office of the Public Prosecutor and the Office of the Public Solicitor, and judges, magistrates and clerks of the National Court, district courts and village courts. The Special Rapporteur visited the Regional Processing Centre on Manus Island and the Barawagi Prison in Simbu.

4. The Special Rapporteur held meetings with representatives of non-governmental organizations (NGOs), human rights defenders, academics, as well as victims of extrajudicial, summary or arbitrary executions and their relatives.

5. The Special Rapporteur expresses regret that no official of the private security firm G4S was available to meet with him in Port Moresby and Manus Island, and that he was not given the opportunity to meet with asylum seekers at the Manus Island Regional Processing Centre — the Australian government offshore immigration detention and processing centre.

II. Context

6. Papua New Guinea faces a high level of violence, which often has lethal consequences. The Special Rapporteur encourages the Government to build a robust and effective system to break the cycle of violence and to take measures to protect the right to life.

7. The authorities must have the political will to make significant strides to protect human rights, including the right to life. Although there are many challenges, during his visit, the Special Rapporteur identified some positive factors.

8. Those factors include the fact that:

(a) The Constitution and legal system provide strong protection, at the formal level, for civil and political rights, coupled with remarkably open provisions and procedures on legal standing;

(b) The judiciary is well-respected;

(c) A significant percentage of government and other officials and leaders is open to moving forward the protection of human rights in the country;

(d) The country has a strong development trajectory and potentially an important role to play in the broader regional arena; and

(e) The Government has recognized and acknowledged the need for change; the current challenge is implementation.

9. Papua New Guinea has immense natural resources that are increasingly being exploited as the driver of one of the fastest growing economies in the world.[1] The country is becoming increasingly integrated into and asserting itself in the international economy. Internal and external pressure to follow and uphold international human rights standards is increasing. Now is the time to set a solid framework for sustained growth and an inclusive society, based on human dignity and the rule of law.

10. A piecemeal approach that addresses only parts of the system will not suffice. Rather, a visionary and comprehensive process, driven by the leaders of Papua New Guinea, with the support of the international community is needed. No single reform measure that is currently being implemented by the Government, or proposed in this report, can take Papua New Guinea society forward on its own; a number of steps must be taken simultaneously in order for the synergy to make a difference.

11. It is particularly important to ensure that the institutions and procedures required to steer Papua New Guinea society in the right direction are in place. While some such institutions and procedures already exist, most are weak or lacking. The Government is taking steps to strengthen key institutions, including the judiciary, the police and national oversight mechanisms, and those efforts should be continued.

12. Several interlocutors indicated that progress has begun in the area of domestic violence, owing to concerted joint efforts of activists, government officials and other stakeholders. Although the level of domestic violence remains high, legislative and structural developments, such as family sexual violence units in police stations, family support centres in hospitals and various awareness-raising campaigns, provide national leadership in effecting behavioural change.

13. Although the mandate of the Special Rapporteur focuses on a particularly dark side of society, the purpose of the mandate is to facilitate a process of comprehensive change which, in the case of Papua New Guinea, is both necessary and achievable with adequate political leadership.

III. Systemic challenges

14. At around seven million, the population of Papua New Guinea is relatively low for such a large landmass.[2] The population is predominantly rural (only 13 per cent

[1] See www.businessinsider.com/worlds-fastest-economies-2012-10?op=1.

[2] See http://data.worldbank.org/indicator/SP.POP.TOTL; and http://data.worldbank.org/indicator/EN.POP.DNST?order=wbapi_data_value_2012+wbapi_data_value+wbapi_data_value-last&sort=asc.

urbanization) and fragmented,[3] and the level of literacy is around 63 per cent.[4] A large part of the country is difficult to reach and many communities are mostly closed to the outside world. The country has more than 800 distinct languages and over 200 cultural groups.

15. During his visit, the Special Rapporteur encountered numerous references to the role of the "wantok" system in Papua New Guinea society. "Wantokism" is the social glue, the kinship of people from the same clan or group, whose customs are often stronger than that of the law and the State, particularly in remote areas of the country, where the presence of State institutions is limited.

16. There were also many references to the practice of "payback" between individuals or groups which often result in killings. "Payback" is an act of retaliation carried out usually by a group whose members have been harmed on the individual, his or her relatives or group that perpetrated the harm. In many cases, the harm is considered resolved once the perpetrator has paid a financial compensation to the family of the victim, which may, in some instances, benefit only the family and not the victim or society at large. In the context of the right to life, the practice of payback can lead to impunity in the case of murder.

17. Impunity is further enhanced by the fact that many payback cases are not reported, due to the sense of solidarity among the group, so that a member may not report the acts of other members of the group or testify against them. Witnesses are often reluctant to testify out of fear of retaliation from within the group. The police, prosecutors and local magistrates are part of their own group, outside of their careers, and can be influenced or pressured in their professional duties.

18. Of special importance to the right to life is the strong belief in the power of the supernatural, particularly sorcery and witchcraft, among large parts of the population and the consequent perceived need to defend oneself and one's group against such powers — often by using deadly force.

19. Papua New Guinea is in many ways a country of paradoxes. Although there are many challenges, positive elements, such as the close ties that bind people, respect for each other and commitment to the common good must be recognized and acknowledged.

IV. Use of force by the police

20. The right to life is protected in section 35 of the 1975 Constitution of the Independent State of Papua New Guinea. However, section 35 also provides that the right to life may be limited in certain circumstances, including as the result of the use of force that is reasonable in the circumstances of the case and is permitted by any other law: for the defence of any person from violence; to effect a lawful arrest or to prevent the escape of a lawfully detained person; to suppress a riot, an insurrection or a mutiny; to prevent a person from committing an offence; to suppress piracy or terrorism or similar acts; or as a result of a lawful act of war. Section 35 expressly states that the use of reasonable force in the aforementioned scenarios does not absolve anyone from any liability in respect of killing another.

21. Section 14 (1) (c) of the Arrest Act, 1977, enables authorized persons to use all reasonable means to effect an arrest where a suspect resists arrest. However, section 14 (2) limits the use of force to that which is reasonable in the circumstances, and any force greater than what is reasonable is not justified. Similar provisions are contained in

[3] See http://apps.who.int/gho/data/?theme=country&vid=15600.

[4] See http://apps.who.int/gho/data/?theme=country&vid=15600.

section 16 (1) (b) and (2) of the Act, which relate to private citizens effecting arrests, and section 17 (1) (b) and (2), which concern the duties of a policeman after an arrest. Sections 16 and 17 of the Arrest Act provide that when a private citizen or policeman arrests a suspect, the suspect must be taken to a police station and only force that is reasonable in the circumstances may be used to prevent the suspect from escaping. Moreover, the excessive use of force is outlawed by section 281 of the Criminal Code Act, 1974, which proscribes "the use of more force than is justified by law under the circumstances", including in circumstances where force is lawfully used. International law clearly states that only such force as is necessary and proportionate to the circumstances may be used and, in extreme circumstances, intentional lethal force may only be used where it is absolutely necessary in order to protect life. Those provisions are open to different interpretations.

22. During his meeting with the Police Commissioner of RPNGC, the Special Rapporteur was informed that new standing orders had been developed and would soon be issued. The Police Commissioner indicated that a copy of the orders would be forwarded to the Special Rapporteur to analyse its compliance with international standards. The Special Rapporteur has not yet received a copy of the new orders. While new standing orders are important, the ultimate test will be their impact.

23. From interviews with the police and members of the public, it appears that neither the police nor the public has a clear idea of when police officers are allowed to fire live ammunition. Several allegations have been made of police using excessive force against suspects during arrest, interrogation and pretrial detention, and when carrying out raids of illegal informal settlements. The Special Rapporteur was deeply concerned at reports that police officers who use excessive force which results in death are rarely disciplined, suspended from office or prosecuted in court.

24. Another area of concern is the treatment of individuals in police custody. The Special Rapporteur was alerted to cases where police had brought wounded individuals to police lock-ups and failed to provide them with medical assistance. It seems that, in practice, proper records are often not kept of who are held in the cells, why they are held, for how long and their medical conditions. The Papua New Guinea authorities are required to ensure the protection of persons in custody as States are held to a high level of diligence to protect the lives of detainees and must take adequate measures to do so.[5] It is hoped that the new cell management system will bring some relief.

25. It is widely perceived that police in Papua New Guinea are prone to using high levels of unwarranted force. Several reasons were put forward, including poor working and living conditions of the police; understaffing; the perception by police that they must assert themselves in a violent environment; cases of misuse of the wantok system where police officers may use their position to protect their relatives; corruption; low remuneration; lack of training on human rights standards regarding the use of force; and lack of accountability. The Special Rapporteur heard the testimony of one individual who was accused by the Commander of a police station in the area of performing sorcery, which killed the Commander's son. The Commander allegedly carried out a series of attacks, which destroyed four of the accused's houses.

26. It is alleged that many police officers have at least one firearm in their possession at all times, even when off duty. The RPNGC Administrative Review Committee raised concern about this in its September 2004 report. It stated that the rules and regulations for

[5] See Human Rights Committee, communication No. 84/1981, *Dermit Barbato* v. *Uruguay*, Communication no. 84/1981, Views adopted on 21 October 1982, para. 9.2.

the storage and handling of firearms were clear and adequate, but were not being enforced. It recommended that the relevant rules and regulations be enforced and that supervisors be held personally responsible for enforcing them. It also recommended that firearms be stored in secure armouries and that it should be an offence for police to carry a firearm while off duty.[6] However, those recommendations do not seem to have been implemented.

27. There seems to be widespread perception among the police that human rights and policing are on opposing sides, instead of an understanding that the function of the police is to protect human rights. That highlights the need for enhanced training of pre-service and in-service police officers on the basic principles of human rights and their role in policing.

28. Police officers receive limited human rights training. The Special Rapporteur was informed that the provisions on human rights in the Constitution are covered in pre-service police training. However, from interviews conducted during his visit, the Special Rapporteur had the impression that human rights was not a substantive part of the training. The Minister of Justice and Attorney General stated in an interview that police training in general was insufficient and that he was advocating a longer training period from the current six months to 18 months. He also recognized the value of refresher courses.

29. The Special Rapporteur was informed that the Papua New Guinea police force would be increased from 5,300 to 8,000 members, which would be a significant and welcome development. However, a mass recruitment of police officers should not be at the detriment of adequate training, including in human rights. In order to ensure that a new police culture is created and that the old one is not merely transferred to the new arrivals, recruits must be targeted for special human rights training and seasoned officers should be required to take refresher courses. In discussions with the Police Commissioner of RPNGC, the Special Rapporteur was assured that a stronger human rights approach would be taken to policing, including in the training of new recruits.

30. There have been some positive initiatives in police training, but they do not seem to have been sustainable. For instance, the Special Rapporteur was informed of an initiative undertaken by NGOs in Simbu in 2009/2010 to provide human rights training to the police, which had had a positive impact for a period of time.

31. Despite the problems in the police force, the senior management of the Constabulary showed an openness to reform. There have also been attempts in the past to reform the police; one example that appears to be widely respected is the review carried out by the RPNGC Administrative Review Committee in 2004. However, the recommendations in the Committee's report remain largely unimplemented. Another positive development is the collaboration between the Constabulary and the Ombudsman Commission and the move to adapt the Memorandum of Agreement signed in 2007 by the Ombudsman Commission and the RPNGC into legislation.

A. Community Auxiliary Police

32. In some areas of the country, there was an initiative called the Community Auxiliary Police. In terms of the Police Act, 1998, the Auxiliary Police is afforded the same powers as the regular police force. However, since they are volunteers, they do not receive payment for their services unless otherwise prescribed in Regulations (see section 129 (1) of the Act). The exercise of their powers is limited to the geographical area in which they are

[6] Papua New Guinea, Institute of National Affairs, *Report of the Royal Papua New Guinea Constabulary Administrative Review Committee to the Minister for Internal Security Hon. Bire Kimisopa*, September 2004, p. 17.

appointed (see section 127). The Special Rapporteur was informed that the majority of Community Auxiliary Police sections had been closed throughout the country, due to complaints of abuse. Nonetheless, the Community Auxiliary Police in Bougainville, which is supported by New Zealand, is noteworthy. The Auxiliary Police in Bougainville has approximately 337 members, all of whom are paid staff who assist in alleviating the pressure on the regular police force.

B. Correctional services

33. Section 112 (3) of the Correctional Services Act, 1995, authorizes a correctional officer to use a firearm if he or she "believes it to be necessary to maintain the good order and security of the correctional institution or the custody of a detainee". Furthermore, section 112 (4) provides that a correctional officer shall not be "liable for injury or damage caused by the use of force, instruments of restraint or firearms when acting in accordance with this section." Such provisions allow for scenarios where excessive use of force can be regarded as lawful, as well as the avoidance of accountability.

34. There have been frequent reports in the media about prison breakouts to which the authorities have sometimes responded with deadly violence.

V. Private security firms and the right to life

35. Private security companies are widespread in Papua New Guinea, and employ more guards than there are police officers in the country. According to the Security Industries Authority, there are approximately 400 licensed security firms in Papua New Guinea, with approximately 20,000 employees.[7]

36. Private security companies are governed by the Security (Protection) Industry Act, 2004, which contains provisions on, inter alia, the granting of licenses and permits in relation to security services. Licensed security officers and security guards may undertake duties relating to crowd control.

37. Although restrictions are placed on the carrying of firearms by employees of private security companies, the Special Rapporteur was informed of cases in which their employees had used excessive force and, in some instances, their conduct resulted in the death of individuals. There have been several complaints that employees of private security companies do not receive appropriate training and that many are often employed because they know someone in the company, regardless of their skills. Members of the police indicated that private security companies did not have manuals or standing orders to guide their conduct, and that they hired anyone. While the Security (Protection) Industry Act contains provisions relating to training and restricting the authority granted to private security companies, the information received from witnesses regarding the conduct of the employees of private companies calls into question the extent to which the Security (Protection) Industry Act is actually implemented, especially insofar as training and holding individuals and companies accountable are concerned.

38. Several stakeholders stressed the need for a regulatory framework for private security companies and some consider their existence to be an indictment of the State and its duty to provide security, claiming that they send the wrong message to the community. One problem with private security companies is that, although they perform the same functions that the State would normally perform, they are not accountable in the same way.

[7] See www.sia.gov.pg/seccomps.html.

39. The Special Rapporteur noted that there have been instances in which private security companies arrived at the scenes of domestic violence before the police.

40. Regardless of whether such companies are purely private enterprises, the State has an obligation to ensure the right to life of its citizens, which includes taking measures to ensure that those carrying out policing tasks do so only after receiving appropriate training and that they are held to account when they act outside of the law. In that regard, it is important that existing legislation is enforced, specifically in relation to training. It may also be useful to create a framework which provides greater clarity relating to the accountability of private security companies, including, for instance, the reporting of their activities.

41. Submissions are currently being accepted on the amendments to the Security (Protection) Industry Act, 2004. This is a prime opportunity for stakeholders to make their voices heard and to actively contribute to the formulation of the law.

VI. Manus Island Regional Processing Centre

42. The Special Rapporteur visited the Regional Processing Centre for asylum seekers on Manus Island — an Australian initiative — to gain a better understanding of the events that took place there from 16 to 18 February 2014, during which riots broke out, leaving one detainee, Reza Barati, dead and approximately 62 others injured. The Special Rapporteur was informed that a second person later died, apparently due to lack of treatment for an infected leg wound. The Special Rapporteur was not allowed to enter the camp itself or speak to any of the detainees, but he was able to discuss the riots with relevant authorities from Papua New Guinea and Australia.

43. Based on that brief and limited visit, the Special Rapporteur established that the detainees were in a possible dead-end situation: there was uncertainty as to their future and whether they would be resettled in Papua New Guinea. On the one hand, the camp authorities indicated that detainees would be resettled in Papua New Guinea if they qualified as refugees; on the other hand, the highest authorities in the country stated that that was a misunderstanding. The uncertainty is fuelled by the fact that the process itself is very slow.

44. Claims that a bullet was lodged in the buttocks of one of the injured raise the issue of why less lethal weapons were not used in what amounted to a foreseeable and foreseen situation of crowd control. It would be important to analyse ballistic evidence in order to evaluate the claims made by the police that only warning shots were fired during the riots.

45. Various investigations have been undertaken, four of which were launched by the Government of Papua New Guinea, the Government of Australia, RPNGC and Justice David Cannings, the latter, at his own initiative under section 57 of the Constitution of Papua New Guinea. The Minister of Foreign Affairs and Immigration, Rimbink Pato, reportedly stated in an interview that the report of the investigation by the Papua New Guinea Government would be released soon and that the police was still in the process of finalizing its investigation. The investigation initiated by Justice Cannings has been halted and an application by the Government of Papua New Guinea, alleging bias on the part of Justice Cannings, is pending before the Supreme Court.

46. On 5 March 2014, the Australian Senate tasked the Legal and Constitutional Affairs References Committee with carrying out an inquiry into the incident at the Manus Island Processing Centre from 16 to 18 February 2014 and requested that it present a report by

26 June 2014. The final report was tabled in December 2014.[8] Reportedly, this inquiry has not received the cooperation of the Papua New Guinea Government and cannot operate extraterritorially.[9]

47. The Special Rapporteur recalls that all investigations should be prompt, impartial, independent and transparent, and in order to ensure credible outcomes, such investigations should receive the cooperation of all involved. Furthermore, in the event that the investigations into the Manus Island incident point to the culpability of specific individuals, they should be prosecuted and a serious effort should be made to improve the situation of asylum seekers on Manus Island.

48. The Special Rapporteur is concerned that there have not been any significant changes since February 2014 to alleviate the situation at the detention centre. While there have been media reports that initial refugee-status determination interviews have been completed in relation to the majority of asylum seekers, no asylum seekers had been resettled in Papua New Guinea as of January 2015. The situation at the Manus Island centre is clearly very unhealthy and volatile, and both States remain responsible for protecting the human rights — including the right to life — of the asylum seekers in the camp.

VII. Killings by non-State actors

A. Violence related to sorcery and witchcraft accusations

49. Violence related to accusations of sorcery and witchcraft is a widespread problem in many parts of Papua New Guinea. In some instances, when a person dies (generally of unexplained causes or prematurely), someone is accused of having caused the death by witchcraft and is attacked by community members as "payback".

50. The reality of the terror, pain and suffering and social disruption caused by accusations of sorcery and witchcraft is only fully understood when one is confronted with the family of victims and the survivors who carry the scars of the attacks. The identification of individuals as witches or sorcerers is arbitrary and subjective. According to many people interviewed, the accusation may be motivated by considerations such as jealousy or greed (e.g. wanting the property of the accused person); aimed against those who do not fully fit in (e.g. not showing enough grief when someone dies); or intended to get rid of outsiders, the elderly and the marginalized, often women. It is a vicious practice with no place in today's human rights era.

51. The Special Rapporteur was informed that, on more than one occasion, the police had been reluctant to intervene as they, themselves, were members of the community and might face retributive attacks or were afraid of the alleged sorcery or witchcraft tool. In some cases, police officers stated that they lacked the manpower to intervene against large crowds. Sorcery-related killings are generally carried out by a group of people. In the rare cases where perpetrators have been apprehended, it was often only those involved in the actual killing that were charged, not the instigators of the violence, although the law is flexible enough to prosecute instigators.

52. The law may offer some relief to persons accused of sorcery and witchcraft. The Special Rapporteur learned that the Office of the Public Solicitor had helped four (elderly)

[8] See www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Manus_Island.

[9] Amnesty International, *This is still breaking people* (Australia, May 2014), p. 20.

people to bring civil defamation suits in similar cases. One magistrate stated that she had referred to section 7 of the Summary Offences Act, 1977, which prohibits the use of "threatening, abusive or insulting words", in, for instance, cases where a person has called another a *sanguma* (witch or sorcerer). That would result in a fine and/or compensation. While such cases are exceptions, they do provide a starting point.

53. The repeal of the Sorcery Act, 1971, was a positive development. Section 16 of the Act allowed for sorcery as provocation to be raised as a defence in cases of sorcery-related murder, for example, that the deceased was a sorcerer who provoked the murder, and if that were proven, the accused might be found guilty of a lesser offence.[10]

54. While views differ in the legal profession, a senior judge informed the Special Rapporteur that, nowadays, in most cases of sorcery-related killings, the motive is seen as an aggravating circumstance. That appears to be a sensible approach.

55. The Government has taken other steps to address sorcery-related violence, including in particular the process led by the Department of Justice and Attorney General to develop a multi-sectoral national action plan on sorcery and witchcraft accusation-related violence, through consultation with a wide range of governmental and non-governmental stakeholders. If formally adopted and implemented, the action plan would make an important contribution towards eradicating the violence associated with belief in sorcery and witchcraft.

B. Killings resulting from tribal fighting

56. Traditionally, tribal violence occurred in the villages. However, today, it has found its way into the cities as well. Fights between members of different tribes occur regularly and may be triggered for a variety of reasons, including sorcery and witchcraft, land and territory-related issues, jealousy and inequality. Payback violence is regularly cited as being linked to tribal disputes.

57. Tribal violence has become increasingly violent over the years as individuals have greater access to firearms.

58. The Inter-group Fighting Act, 1977, prohibits certain conduct related to inter-tribal fighting with a view to eradicating this problem; the mere fact of taking part in inter-tribal fighting is an offence. Section 11 (2) of the Act provides for a punishment of between three and six years imprisonment, where a person has taken part in inter-tribal fighting that has resulted in death. However, that provision does not absolve a person from any other offence that he or she may be guilty of in terms of another law (see section 11 (3). Furthermore, in terms of section 11 (3A), where, after an inquiry, a Court determines that an individual is a principal offender or a leader of the fight that results in death, he or she shall be liable to imprisonment for a term of 20 to 30 years. While in some cases, individuals involved in tribal fighting have been prosecuted, problems often arise in relation to securing witnesses to support the prosecution, as many people fear that they will be subjected to payback if they testify.

59. Tribal disputes are often brought before the village courts, rather than the higher level courts. In Goroka, a Peace Park — a large open space — has been established, where the magistrates of the Village Court, the tribal groups involved, the police and other interested parties meet to mediate problems and reach a settlement. Generally, a cash payment of is offered as compensation to resolve the dispute. However, it may happen that

[10] See Sorcery Act 1971, sects. 7 and 16.

the communities are not satisfied with the financial compensation offered, which could give rise to renewed fighting. In addition, Village Court mediations could foster impunity if the tribal fight involved crimes such as killing or rape and serious physical injury.

C. Domestic violence

60. Domestic violence and rape are widespread and serious concerns in Papua New Guinea. Although they do not always result in death, the threat thereof remains.

61. The Government has taken some positive steps to address violence against women, including involvement in initiatives to highlight the issues relating to gender-based violence and, notably, the passing of the Family Protection Act in September 2013, which criminalizes domestic violence.

62. The Special Rapporteur considers that much more education about and awareness of domestic violence is needed and that the Family Protection Act must be enforced as a matter of priority. School curricula should include positive values, for example, in life skills courses. In the context of sorcery-related killings, education could take the form of ensuring that proper medical explanations are given to the aggrieved relatives of those who were killed. That could go a long way in curbing accusations that sorcery played a role in the deaths.

63. The Special Rapporteur emphasizes that strengthening the police would help to ensure that perpetrators are held accountable and would reduce recourse to acts of vigilantism.

VIII. Institutions and procedures for protection and accountability

A. The police

64. One of the main problems relating to the police is the lack of both human and financial resources. The number of police officers has increased marginally since Independence, whilst the population has tripled. Police officers are housed in substandard accommodations; their salaries are low and they need new uniforms. Addressing those issues could have a positive impact on police behaviour and could contribute to addressing the acceptance of bribes and general corruption within the force.

65. A general culture of accountability for violent crime is essential for the protection of the right to life. On several occasions, the Special Rapporteur was told that the police do not always carry out investigations and when they do, they are not done properly. In some instances, “petrol money” or other payment must be given to the police before they even consider investigating a matter or carrying out an arrest. Some interlocutors stated that the police accepted bribes to overlook a particular matter.

66. There have been allegations of secondary victimization during the investigation phase, whereby witnesses and/or victims have been mistreated by the police. For that reason, witnesses are often reluctant to come forward to testify or provide information. The Special Rapporteur was told that the police obtain confessions through coercion. In some instances, cases have been thrown out for lack of evidence as such confessions are inadmissible. The Special Rapporteur was also informed of a practice called “snake bail”, whereby the police may arrest a person for a serious offence, but record it as a lesser offence so that the person is released. Concern was also raised about whether, in practice, the coroner investigated every case of death in custody. The Special Rapporteur emphasizes that the police must carry out investigations properly, ensure that cases are brought to court

and that adequate evidence is presented to ensure proper prosecutions. Failure to do so thwarts accountability and could amount to a violation of the State's obligations under international law.[11]

67. It was reported that police officers maintained allegiance to their tribes or "wantoks", which, in some instances, are valued more than their law enforcement duties. Indeed, conduct such as that of the Commander mentioned in paragraph 25 above, where police resources are used to exact a personal vendetta should not be tolerated, and appropriate action should be taken against such abuse of power.

68. The Police Commissioner mentioned that officers had to give a report every time they discharged a firearm. He acknowledged that, on occasion, police officers violate the law, but claimed that delinquent officers were usually brought to task. That picture is very different from the information received from victims and other stakeholders. The Special Rapporteur was informed of many cases of blatant use of excessive force by the police, for which no action was ever taken to hold the police officers to account.

69. The Special Rapporteur was informed that complaints against the police were dealt with by the Internal Investigation Unit (IIU), which is independent of police stations. However, in practice, complaints must be lodged at a police station, which dissuades victims of police abuse from lodging complaints as they would have to do so to the same body that carried out the abuse. The Special Rapporteur was informed of a case where the victim was too afraid to go to the police to lodge a complaint because he had received threats. A similar internal investigation process also exists for correctional services staff; however, it seems that correctional services officers are rarely, if ever, prosecuted or convicted.

70. In general, an investigation can only be initiated after a person lodges a complaint to the police. However, allegedly the police do not wear identification badges and, in some instances, they do not even wear uniforms, which makes it difficult for a victim of police violence to lodge a complaint since he or she cannot prove that the perpetrator is a police officer. When complaints have been lodged, they have not always been followed up as police officers are often unwilling to investigate or testify against their colleagues. The Special Rapporteur emphasizes that allegations of serious misuse of force by police officers must be properly investigated. While it is important to strengthen the internal investigative system, improving discipline within the police force and improving the command and control structure are equally important

71. In 2007, a Memorandum of Agreement was concluded between the RPNGC and the Ombudsman Commission for the Ombudsman to oversee internal investigations into complaints against police officers.

72. The Special Rapporteur was informed that a process is under way to adapt the Memorandum of Agreement into legislation so as to formalize the relationship between the IIU and the Ombudsman Commission. That would offer an opportunity to strengthen the system, and the authorities should also consider enhancing the independence of the Unit Head, for example, conferring special powers and requiring that the Head report directly to the Police Commissioner.

[11] See Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, paras. 16 and 18.

B. Witness and victim protection

73. Witnesses are often reluctant to come forward to testify due to intimidation by perpetrators of crimes or by members of the group to which the accused belongs. The intimidation may not be immediate and may be directed at the witness or at someone in his or her group. The system of payback was also raised as a reason why a standard witness protection programme would not be feasible in Papua New Guinea. Indeed, the programme would have to ensure protection for the witness and his or her family members for an extended period of time. It has also been argued that resources are not available to provide the level of protection that witnesses would require. Papua New Guinea does not have a victim protection programme either. While there are bound to be problems with such programmes, the benefits would outweigh the drawbacks and, in the long run, they would save lives and facilitate accountability. A legislative framework for victim and witness protection should be adopted based on the particular needs of the context in Papua New Guinea.

74. The Special Rapporteur was informed of a "rapid response" initiative in Simbu, where NGOs, in collaboration with local State actors help individuals accused of sorcery, as well as their family members, to relocate from their place of residence to another part of the country. While that may appear to be a life-saving solution, such initiatives should be viewed as a last resort measure to be employed only when State protection mechanisms fail. The individuals relocated in such circumstances often face severe challenges, including the lack of basic economic security.

C. Court proceedings

75. Legal proceedings take a long time, and it can take up to three years for some serious cases to reach the court. There are allegedly over 4,000 arrest warrants currently outstanding, some of which date back to the 1980s.

76. The Special Rapporteur was concerned about the lack of public awareness of human rights and the mechanisms in place to protect them. It is imperative that human rights awareness and education be carried out throughout the country in schools, for law enforcement officers and especially for the public, so that they know what mechanisms are available to them.

77. The Special Rapporteur was informed that it was very difficult to file civil claims against the State as documents have to be served in person within six months on designated State officials[12] whose offices are in Port Moresby, and that some people have abandoned their claims against the State because they were unable to serve documents on government officials. It has been suggested that the State should accept documents served by post; however, some people have stated that claims have been struck down due to incorrect service.[13] Even if the State has, on occasion, not raised objections to service by post, it is merely an unwritten practice and the rule can be prohibitive.

78. With the establishment of the Human Rights Track in 2011, the issue of servicing claims in person might to some extent be circumvented. In terms of section 57 of the Constitution, human rights contained in the Constitution are enforceable through the

[12] See Claims By and Against the State Act, 1996, section 5.

[13] Human Rights Watch, "Making their own rules: Police beatings, rape, and torture of children in Papua New Guinea, September 2005 vol. 17, No. 8 (C), p. 102. www.hrw.org/sites/default/files/reports/png0905.pdf.

National and Supreme Courts. The Human Rights Track deals with court cases relating to the rights contained in the Constitution. Rule 6 of the Rules of the Courts elaborate upon section 57 of the Constitution and establish standing before the court in respect of a broad range of actors, including any person or body with an interest in protecting and enforcing human rights and international organizations, such as the United Nations. The Human Rights Track is user-friendly and enables anyone to bring human rights cases to court. However, awareness-raising will be needed for the initiative to reach those who most need it.

D. National human rights institution

79. National human rights institutions have a promotional as well as a protective function and play an important role in many societies around the world. The notion of establishing a national human right institution in Papua New Guinea has been accepted for some time. Such an institution must comply with the Principles relating to the status of national institutions (the Paris Principles) (General Assembly resolution 48/134, annex) and should have a broad mandate covering abuses by both State and non-State actors. While significant work had been undertaken towards completing the draft Constitutional amendments and the draft Organic Law providing for the establishment of a national human rights institution,[14] it seems that inexplicable delays have occurred. The Special Rapporteur urges the Government to complete those laws as a matter of priority. He underlines that the Government should also give strong consideration to establishing, at the same time, a provincial office of the national human rights institution in at least one province, for example, in Simbu. He is of the opinion that such an office could play an important role in addressing the issue of witchcraft and sorcery-related violence in that province, and would also provide invaluable support to the human rights defenders in that province.

E. Access to lawyers

80. A limited number of lawyers is available in Papua New Guinea and many people simply cannot afford to pay their fees. The Office of the Public Solicitor provides free legal assistance in respect of civil and criminal matters to those who are unable to afford a private lawyer, and in the case of criminal matters to those facing a sentence of two or more years. The Office also has a dedicated human rights desk. Private lawyers are expensive and very few practice criminal law.

81. Few lawyers are interested in joining the Office of the Public Solicitor due to poor benefits offered, in particular, inadequate housing. The Special Rapporteur believes that improving the benefits would attract solicitors country-wide, which would ease the workload of the existing ones. Civil society should also make efforts to obtain funding to establish an NGO that employs human rights lawyers. The possibility of establishing a pro bono system should also be considered. The Special Rapporteur noted that there was a vast vacuum in that area and had held constructive discussions with the Papua New Guinea Law Society in that regard.

F. Human rights-focused non-governmental organizations

82. While human rights defenders in Papua New Guinea are doing commendable work in respect of specific human rights issues, there is no well-established NGO that addresses

[14] See A/HRC/WG.6/11/PNG/1, para. 36; and A/HRC/WG.6/11/PNG/2, para. 12.

general human rights matters. Knowing that there is a body that can take up the causes of the people they interact with and which can serve as a watchdog would in part ensure the accountability of the police and others. The same applies to a legal advice centre for people who cannot afford private legal representation. There is a clear need for both in the country.

83. Ideally, the establishment of a local NGO as well as the establishment of an office by an international human rights organization would cover both legal and human rights issues. In that regard, the University of Papua New Guinea can play a role on both fronts — by creating a legal clinic and establishing a centre for human rights.

G. University of Papua New Guinea

84. Experience worldwide has shown that universities are invaluable resources for societies seeking to move forward their human rights agenda. Universities educate young people to staff the system; keep in touch with international developments; carry out research; advise role players, including the Government; inform the public; and in some instances, assist with reporting to treaty and other international bodies. It would be a significant development if the University of Papua New Guinea were to develop its human rights capacity, by having on staff a lecturer dedicated to the topic, including human rights in the curriculum, and establishing a centre for human rights. The University should also ensure that its students participate in international human rights events, such as international moot courts. The School of Law should take a pro-active approach in that regard and consider creating a legal clinic.

H. United Nations

85. OHCHR currently has two professional staff in Papua New Guinea. It would be of great value to the region if a fully-fledged OHCHR country office were to be set up in the country. Such a team would be a valuable partner for many local human rights initiatives, including the establishment of a national human rights institution.

86. Upon meeting with officials of the Department of Foreign Affairs, the Special Rapporteur mentioned the difficulties he had encountered to correspond with the authorities in Papua New Guinea while he was preparing for his visit. At present, Papua New Guinea does not have a permanent mission in Geneva, therefore urgent appeals and allegation letters are communicated through the Permanent Mission to the United Nations in New York.

IX. Death penalty

87. During his visit, the Special Rapporteur was informed of the legislative amendments made to the Criminal Code in September 2013 concerning the death penalty. The death penalty may now be imposed as a sentence for two new crimes, namely, "wilful murder of a person on account of accusation of sorcery" and "aggravated rape", and the sentence for "aggravated robbery" has been amended from life imprisonment to the death penalty.[15]

88. There have been various reports about the Government's intention to start implementing capital punishment in response to the high level of violence in the country. While the Special Rapporteur acknowledges the magnitude of the challenge that the

[15] Criminal Code (Amendment) Act, 2013, certified on 18 September 2013.

Government faces in addressing the high level of killings and violence in the country, he does not consider the death penalty to be the answer to the situation. Inter alia, implementing capital punishment would provide a false sense of security and divert attention away from effective long-term solutions such as better policing, economic development, robust correctional institutions and education.

89. Currently, 13 people are on death row in Papua New Guinea, all convicted of wilful murder. However, Papua New Guinea has long been considered a de facto abolitionist State with regard to the imposition of the death penalty. The last execution in the country occurred in 1954, 21 years prior to Independence.

90. The Special Rapporteur strongly encourages the Government to maintain its international positioning as an abolitionist State and refrain from implementing the death penalty. There is a distinct and sustained global trend away from the death penalty as its numerous weaknesses are now widely recognized. The reintroduction of the death penalty by some outlier States are distinct exceptions which have attracted wide criticism. Indeed, after many centuries of experimentation, humanity as a whole has lost faith in State-inflicted death as a form of punishment, inter alia, because it is no longer accepted that it has distinct deterrent powers. The death penalty creates a false sense of security. Papua New Guinea would be moving in the wrong direction by reinstituting the death penalty — both in relation to the global trend and its own Supreme Court's restrictive interpretation of when the death penalty may be considered as appropriate punishment — and is likely to damage its quest to curb violence by doing so.

91. The Special Rapporteur is concerned that implementing the death penalty at the present time could lead to numerous violations of international standards. In that regard, international law requires that the death penalty may be imposed only in the context of the stringent functioning of the law and order system, in order to ensure the highest respect of due process and fair trial guarantees for the defendants, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights.[16] During his visit, the Special Rapporteur was informed of shortcomings in that area, such as extraction of confessions under duress, ill-treatment of persons in custody, lengthy proceedings, or high levels of corruption among various authorities.

92. The right to appeal is a crucial safeguard that must be applied to all persons facing the death penalty. According to information received, at least one of the 13 individuals currently on death row received the death sentence on appeal before the Supreme Court. The Special Rapporteur was informed that the decisions of the Supreme Court cannot be appealed. If that is the case, the execution of persons sentenced to death at the level of the Supreme Court would be a violation of international law if their right to appeal their sentence is not ensured.

93. International law also states that the death penalty may be imposed only for the most serious crimes, which is interpreted as being the crime of intentional killing. The amended Criminal Code provides for the death penalty for the offences of aggravated robbery, aggravated rape and piracy or treason, which do not constitute most serious crimes.

94. The legal framework regarding the death penalty in Papua New Guinea also lacks provisions that would prohibit the imposition of the death penalty on juvenile offenders,[17]

[16] See Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by Economic and Social Council resolution 1984/50.

[17] The SR was informed that the Juvenile Justice Act has been passed in Parliament. The final version of the text is not yet available, however, it is alleged that an earlier version prohibited imposition of the death penalty on juveniles.

new mothers and persons with psycho-social disabilities, which opens the way for another violation of international standards, should the death penalty be imposed on such persons.

95. Furthermore, the current text of the Criminal Code (Amendment) Act, 2013, providing for the death penalty in cases of wilful murder, killings related to sorcery accusations and aggravated rape may be interpreted as imposing capital punishment in a mandatory way.[18] The mandatory imposition of the death penalty is contrary to international standards and appears to be contrary to the interpretation of the Supreme Court which, in the case of *Steven Loke Ume* v. *The State* (2006) SC 836, assessed whether the law provided for mandatory death sentences and found that:

> "…the law as it stands today is quite clear — that the imposition of the death penalty since 1965 has always remained discretionary. The death penalty is the maximum penalty for wilful murder (or for that matter, the three (3) other crimes which carry the death penalty) and therefore discretionary" (para. 39).

96. The Special Rapporteur remains unconvinced of the deterrent effect of the death penalty. In addition to studies at the international level which prove that the death penalty is not necessarily an effective deterrent of crime, several interlocutors shared the opinion that the death penalty might actually lead to further killings in Papua New Guinea, given the payback culture. While the Special Rapporteur condemns the existence of the payback culture, he acknowledges that payback-related killings might increase if the death penalty is carried out. Some members of the judiciary and prosecutors indicated that they would have to give very careful consideration to the reimposition of the death penalty, due to fear of lethal reprisal against them and their families.

97. At the time of writing this report, the Special Rapporteur learned that the Government plans to rethink the death penalty. The Prime Minister had stated, "We certainly do not want to be seen as a country that is actively promoting the death penalty as a means of enforcing law and order in the country. We are actively debating the death-penalty issue … and there may be some need for review."[19] Insofar as that represents a new approach, the Special Rapporteur welcomes that statement.

X. Role of extractive industries

98. Space does not permit a full discussion of this topic, but it is important to raise the issue. Extractive industries are an important component of the economic development of Papua New Guinea, but they pose significant risks to the protection of life. In the extreme case, the history of Bougainville is a telling reminder of the dangers associated with the exploitation of natural resources, where the underlying legal and normative framework has not yet been settled. Concern that the necessary framework to meet the expected economic growth is not in place in the country as a whole is in fact the broader point of this report.

99. The stakes are high, as are the risks that government forces or private security firms will become entangled in the protection of the underlying interests through the use of force. That underscores the need for discipline and control in those sectors.

[18] See Criminal Code Act 1974, sect. 19.

[19] See http://www.wsj.com/articles/papua-new-guinea-may-review-death-penalty-prime-minister-says-1425954144.

XI. Killings during the Bougainville crisis

100. An important element of the Special Rapporteur's visit was to examine the progress made in the peacebuilding and redress processes in the Autonomous Region of Bougainville following the conflict that erupted in 1989 and lasted 10 years. The conflict took an unaccounted for number of lives and resulting in a yet unknown number of mass graves.

101. A former Special Rapporteur on extrajudicial, summary or arbitrary executions visited the region in 1995. In his report[20] to the Human Rights Commission in 1996, he presented a comprehensive overview of the conflict and the violations of the right to life, as well as made recommendations relating to the killings that occurred during the crisis. In relation to the peace and reconciliation process, he recommended that education, training and the administration of justice be enhanced. The current Special Rapporteur's visit was therefore an opportunity to examine the follow-up to those recommendations.

102. Important developments have taken place since 1995 in relation to building peace in the Region. The Bougainville Peace Agreement was signed in 2001, which paved the way for elections in 2005 for the establishment of the Autonomous Bougainville Government. Among the most recent initiatives, are 2011 Konnou Peace Agreement between factions, the Bougainville Peace and Security Framework and its Implementation Strategy, in 2012, and the eligibility of Papua New Guinea and Bougainville as a beneficiary of the United Nations Peacebuilding Fund, in 2013.

103. Nonetheless, a considerable number of grievances still persist and the application of various transitional justice measures may be necessary. In that regard, the Special Rapporteur was informed, in particular, of the need of the families of the many disappeared persons to locate the graves of their relatives and to ensure proper burial.

XII. Conclusions

104. **All the issues raised in this report present formidable challenges. However, the Special Rapporteur remains convinced that the prospects of investment of time, effort and resources to advance human rights having a positive impact on the society as a whole are probably greater in Papua New Guinea than in countries in comparable situations. Papua New Guinea has the opportunity to set a vibrant and burgeoning society on a solid human rights foundation. The Special Rapporteur urges the Government of Papua New Guinea to adopt a visionary approach in that regard and calls on the international community to support the Government of Papua New Guinea in achieving that objective.**

105. **It is clear that a number of steps needs to be taken to move the human rights and, in particular, the right to life agenda forward. It is important that the Government of Papua New Guinea take cognizance of how the interplay between different components can benefit society, for instance, the establishment of a national human rights institution can help to introduce human rights in school curricula and police training; a human rights centre within the University and the establishment of a human rights-focused NGO would contribute to strengthening protection of human rights; a witness and victim protection programme would help to make the criminal justice system more efficient; a larger and better trained police force could strengthen the certainty of conviction for criminal offences, which, in turn, would contribute to**

[20] See E/CN.4/1996/4/Add.2.

countering calls for the reinstatement of the death penalty. All of the aforementioned proposals are interlinked; therefore, it is important that the challenges facing Papua New Guinea are approached holistically and not viewed in isolation from each other.

XIII. Recommendations

A. To the Government of Papua New Guinea

106. **In collaboration with other stakeholders, a focused, realistic human rights strategy should be developed.**

107. **The adoption and implementation of the National action plan on sorcery and witchcraft accusation-related violence should be fully supported by an holistic approach that draws on various sectors. A national awareness-raising and education campaign, involving high-level representatives of the Government, churches, the education system, as well as prosecutors and public solicitors, members of the village courts and the media should be embarked upon.**

108. **As a matter of priority, a national human rights institution should be established and serious consideration should, at the same time, be given to establishing a provincial office of the human rights institution, for example, in Simbu Province.**

109. **Human rights and, in particular, the right to life should be included in school curricula and the necessary steps should be taken to ensure that school curricula include education on the unacceptability of all forms of interpersonal violence, in particular, in the context of accusations of sorcery and witchcraft, tribal affiliations and domestic violence.**

110. **A adult education programme to promote and raise awareness about human rights and mechanisms, including the Human Rights Track of the National Court, should be established.**

111. **Better and regular institutionalized training on human rights for police and correctional services officers, including refresher courses, should be ensured and police officers should be trained on the use of firearms.**

112. **Increased resources should be made available to the police so as to strengthen its capacity in terms of both numbers and quality of duty performed.**

113. **A proper legal framework for the use of force by and accountability of private security firms should be established.**

114. **Measures for stricter gun control should be strengthened.**

115. **Witness and victim protection schemes should be established.**

116. **The effective and independent functioning of the Internal Investigations Unit within the Constabulary and the Ombudsman Commission should be strengthened.**

117. **The de facto abolitionist approach to the death penalty should be maintained with a view to abolishing it de jure.**

118. **Engagement with United Nations human rights bodies should be continued and strengthened, in particular through:**

(a) The ratification of the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;

(b) Regular and timely reporting to the human rights treaty bodies;

(c) Continued engagement with the special procedures of the Human Rights Council, in particular through the facilitation of official visits by mandate holders and implementation of their recommendations;

(d) The setting up of a mechanism to respond in a regular and timely manner to communications from the special procedures mechanisms concerning alleged human rights violations In that regard, it may be expedient to reconsider the standard protocol and, for example, request OHCHR to send the communications to both the Permanent Mission to the United Nations in New York and the Ministry of Foreign Affairs and Immigration in Port Moresby directly.

119. **Together with the Government of Australia and as a matter of priority, the position of the asylum seekers at the Manus Island detention centre should be clarified, and investigations into the February 2014 riots should be independent and transparent.**

B. To the United Nations

120. **OHCHR should strengthen its presence in the country by establishing a country office in Papua New Guinea, and provide it with adequate resources to carry out the mandate of human rights monitoring and technical assistance.**

C. To civil society and other actors

121. **The Papua New Guinea Law Society should consider ways to involve its members in the human rights arena, including by providing legal services on a pro bono basis.**

122. **At least one local NGO focused on human rights should be established and international human rights NGOs should consider setting up an office in Papua New Guinea.**

123. **A legal clinic aimed at providing legal aid to those who cannot afford private counsel should be established.**

124. **The University of Papua New Guinea should consider the development of its human rights capacity as a top priority.**