



FOLLOW UP TO THE PREVIOUS REVIEW

1. Amnesty International welcomes the positive steps taken by the Papua New Guinean (PNG) government to implement the recommendations it committed to at the last UPR session in July 2016. The annex to this submission contains a matrix of recommendations from the last Universal Periodic Review which identifies the recommendations that have been implemented, not yet implemented or partly implemented.
2. Amnesty International formally acknowledges and supports the submission and recommendations by CIVICUS and PIANGO on protecting human rights defenders and the rights to freedom of expression and peaceful assembly.
3. Regrettably, PNG rejected recommendations towards abolition of the death penalty in the previous review.¹ Despite some moves in recent years to implement the death penalty, no executions have been carried out since 1954, making the country de-facto abolitionist in practice. Based on court reports, 20 people are estimated to have received death sentences for murder.
4. PNG noted but has not yet implemented two recommendations to safeguard the human rights of refugees and asylum seekers.² As of 31 December 2020, 137 refugees and asylum seekers remained in PNG, who have been forcibly sent there by the Australian government, with most accommodated in Port Moresby.
5. Further action is needed to protect the full range of human rights within PNG including the right to be free from torture, the right to health care, the right to freedom of expression and the rights of marginalised groups of people including women, children, people of diverse sexual orientation and gender identities, refugees and asylum seekers.
6. Despite acceptance of recommendations to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, PNG has not done so.³ PNG also remains behind on its treaty body reporting for the five core human rights treaties it is a party to, despite supporting recommendations to strengthen its reporting in the previous review.⁴

THE NATIONAL HUMAN RIGHTS FRAMEWORK

7. PNG has a Constitution with a Bill of Rights.
8. Persons can access the courts to obtain a remedy for human rights violations, this can be time consuming and costly, putting access to justice for human rights remedies out of reach for the majority of the population. As court decisions are not subject to mandatory public reporting of all decisions, there is no accurate information on the number of prosecutions under some laws.
9. Judicial and legal systems, including the police, are absent or even harder to access in rural and remote locations such as PNG's highlands.
10. The Ombudsman Commission and the Internal Investigations Division (IAC) of the Royal Papua New Guinea Constabulary (RPNGC) can receive complaints about police conduct and ill treatment. Both lack sufficient independence, resources, and enforcement powers to adequately discipline and dismiss police

officers where complaints of misconduct have been substantiated by evidence.

11. PNG has no National Human Rights Institution that is compliant with the Paris Principles. The Ombudsman Commission has some limited functions related to human rights issues.
12. Human Rights complaints under the Constitution can be brought to the High Court or by the High Court of its own initiative (a unique aspect of PNG's Constitutional powers). This investigative function has been used by the High Court primarily to visit and highlight the inadequate conditions within prisons and provides an avenue for redress. Unfortunately, this has been ineffective at improving the accountability of the security forces in their treatment of detained persons.

THE HUMAN RIGHTS SITUATION ON THE GROUND

WOMEN'S RIGHTS AND GENDER BASED VIOLENCE

13. Abortion is only permitted when the woman's life is threatened.⁵ In 2015, a woman from the Autonomous Region of Bougainville was convicted and sentenced to four years in prison under PNG's abortion law, becoming the first reported conviction. Her conviction was overturned on appeal in 2018 by the Supreme Court, which noted a recent difficult pregnancy and birth meant the law had not been breached because her life was threatened.
14. PNG has a high maternal mortality ratio⁶ and extremely high rates of sexual and physical violence against women. PNG passed the Family Protection Act in 2013 (which provides for domestic violence protection orders), but it is rarely enforced. The police have specialist family and sexual violence units in police stations across the country, but a lack of adequate resources including victim support, means that cases are rarely prosecuted.⁷
15. The age of consent for marriage is 18 years old for men and 16 years of age for women, but marriage can lawfully occur at 15 years old with the consent of the father, mother, guardian, or a judge.⁸ In practice, early marriage occurs with the agreement of a parent or guardian, without judicial oversight. Bride price is commonly paid to the family of the bride in exchange for marriage.
16. Violence and killings continue as a result of sorcery accusations, with women more likely to be accused than men.
17. PNG criminalizes activities related to sex work resulting in sex workers experiencing a high level of violence and stigma in the community and from law enforcement officers. Crimes against sex workers are not taken seriously and police extort sex workers for money or sexual favours. Sex workers are also discriminated against in accessing health care and at times sex workers have been harassed by the police for carrying condoms.⁹

DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY

20. Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people in PNG experience high levels of stigma, discrimination and violence.
21. PNG's criminal laws criminalize male same-sex sexual activity (ss210 and 212).
22. PNG's Constitution (s55) states that all citizens have the same rights irrespective of 'race, tribe, place of origin, political opinion, colour, creed, religion or sex' but it does not explicitly protect from discrimination on the basis of sexual orientation or gender identity.
23. Access to adequate health care, including sexual and reproductive health information, is a challenge and LGBTI people report discrimination when accessing health services or fear their privacy will not be

protected. According to UNAIDS there are around 45,000 people living with HIV in the country, and around 65% access anti-viral medications.¹⁰ Decriminalization and addressing the violence and discrimination against LGBTI people is critical in ensuring people feel safe and able to access adequate health care services.

FAILURE TO ADDRESS INTERCOMMUNAL VIOLENCE

24. In February 2021, 19 people were killed and hundreds displaced after intercommunal violence in Hela Province.¹¹ Weak institutions and the lack of resources for law enforcement agencies in affected areas has meant the state has failed to protect people from such violence and hold perpetrators to account.
25. In many cases intercommunal violence is triggered by fighting over extractive resources and land disputes (see also related recommendations on the environment and human rights).

HEALTH CARE AND PANDEMIC RESPONSE

26. Access to adequate health care is limited in PNG due to a lack of technical equipment and expertise across the country.¹² In particular, access to health care is very limited for urban poor and rural remote communities. PNG rejected recommendations in the previous review to improve access to health care.¹³
27. PNG's response to the COVID-19 pandemic included announcing a state of emergency. After June 2020, the state of emergency was replaced with the National Pandemic Act 2020 which continued a number of measures and restrictions under the state of emergency, but with less parliamentary oversight. Concerns about the law include that it bypasses constitutional and human rights protections and penalties may be excessive in some cases. Up to five years imprisonment and 50,000 PGK fines can be imposed for not complying with a directive or for spreading misinformation (see section 47 of the Act).
28. In March 2020, around 300 nurses went on strike and protested over the lack of personal protective equipment. Amnesty International received reports that medical professionals who treated persons with COVID-19 early in the pandemic were vilified and harassed by the public and media, resulting in risks to their personal safety. In July 2020, a number of health care workers contracted COVID-19 after an outbreak linked to a testing facility. Additionally, there were reports that patients were refused medical care at hospitals unless they could present a negative COVID-19 test result.¹⁴
29. As at February 2021, there were 1,692 confirmed cases of COVID-19, and 21 deaths.¹⁵ The World Health Organisation has noted low testing numbers and at least two provinces have large-scale community transmission.¹⁶

CLIMATE CHANGE AND ENVIRONMENTAL RIGHTS

31. Noting that Papua New Guinea is particularly vulnerable to the impacts of climate change, Amnesty International welcomes the submission of its second Nationally Determined Contribution in December 2020, and its commitment to decarbonising the country's energy sector by 2030 and to adopting a "gender-responsive, human rights-based approach" in all planning and implementation of the NDC.¹⁷
32. Failing to rapidly phase out fossil fuel subsidies by 2025 and fossil fuels as quickly as possible in line with the latest IPCC evidence, and by 2050 at the latest, to reduce carbon emissions could represent a violation of PNG's human rights obligations in relation to climate change. In February 2021, the PNG government and France's Total SA signed an agreement for the 5.4 million tonne a year Papua LNG project.¹⁸
33. Environmental rights defenders and indigenous communities face risks to their own liberty and security and rights to freedom of expression and peaceful assembly, in areas impacted by extractive industries. They also face challenges in accessing remedies for human rights violations by corporations because of weak national institutions.

34. In 2011, PNG granted its first deep sea mining lease to Nautilus Minerals near Rabul. The company later became bankrupt, with the government losing its share of investment in the venture. In late 2019, the Prime Minister noted this case and expressed some support for a moratorium on deep sea mining. Other Pacific Island countries have since joined the call for a moratorium on deep sea mining because of concerns over environmental impacts on oceans, a key source of life and livelihoods for Pacific Islands people.¹⁹

REFUGEES AND ASYLUM SEEKERS

34. Of the refugees and asylum seekers that were forcibly sent to PNG in 2012 under Australia's policies to deter refugees and asylum seekers arriving by boat to Australia, 137 refugees and asylum seekers remained (as at 31 December 2020).
35. Refugees and asylum seekers have suffered significant human rights violations under this bilateral arrangement.²⁰ Those with negative asylum assessments have not been provided with the right to appeal these decisions through a fair process with adequate legal representation. Amnesty International remains concerned that refugees and asylum seekers who are temporarily in Australia for medical care may be returned to PNG rather than offering them the freedom and protection required with regards to their status.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Papua New Guinea to:

The national human rights framework

- Ratify the remaining core human rights treaties, and expedite ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty, the Optional Protocol of the Convention against Torture, and the two optional protocols on the Convention of the Rights of the Child and, where necessary, seek international cooperation and assistance to incorporate these treaties into domestic law and update on its existing treaty body reporting obligations.
- Amend the Bill of Rights in the Constitution to prohibit discrimination on the basis of sexual orientation and gender identity.
- Implement an immediate moratorium on the death penalty with a view towards abolishing the practice altogether.
- Establish a National Human Rights Institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).
- Establish an independent and effective investigations and complaints mechanism to address allegations of torture and other ill-treatment and other forms of abuse by the police and security forces; ensure it has a broad and strong mandate and fully complies with international law and standards and effectively engages with civil society in the process.

Women's rights and gender-based violence

- Fully decriminalize abortion and ensure universal and safe access to abortion and other sexual and reproductive health rights.
- Fully implement the Family Protection Act and a national action plan to address all forms of gender-based violence and ensure women are able to access justice, including through free legal aid support

when they have experienced violence.

- Ensure that survivors of sexual violence and abuse have unrestricted access to women's shelters and provide adequate financial and human resources to women's support services, including for effective victim protection.
- Work with local communities to ensure that harmful practices (and laws and policies that support them) that discriminate against women such as early or forced marriage, sorcery-related killings) and bride price are abolished.
- Fully decriminalize sex work and related activities so that sex workers, and organizations that work with them, are not targeted by law enforcement agencies.

Discrimination on the basis of sexual orientation and gender identity

- Immediately repeal sections 210 and 212 of the Criminal Code Act.
- Publicly reaffirm that all people in PNG have the right to live free from discrimination and violence based on their sexual orientation or gender identity and that acts of violence against them will be prosecuted.

Failure to address intercommunal violence

- Ensure there are adequate law and order resources devoted to addressing conflict and ensuring perpetrators of violence are held accountable in accordance with the right to a fair trial.
- Ensure inclusive participation of women and children and other affected individuals in peacebuilding measures, from a human rights-based perspective, with a primary focus on protecting the right to life.

Health care and pandemic response

- Ensure that any penalty for breaching lockdown and other coercive enforcement measures conform with the principles of legality, necessity, proportionality and non-discrimination and ensure the powers and responsibilities of law enforcement officials are clearly circumscribed and refrain from bestowing any additional powers or immunities to enforce pandemic response measures.
- Ensure that all healthcare workers are able to adequately protect themselves during the COVID-19 pandemic, including by access to sufficient quantities of personal protective equipment, that they are protected from stigma and abuse in relation to their employment enabling them to work free from reprisals, intimidation or threats, and that their right to strike and right to freedom of expression is respected.
- Increase public health sector resources and ensure that economic recovery packages protect the right to an adequate standard of living for all persons, including people on lower incomes, those working in the informal sector, and others who may be at risk and most affected by the COVID-19 crisis and set up monitoring and review mechanisms to assess their impact and amend as necessary.

Climate change and the environment

- Support the recognition by the UN of the right to a safe, clean, health and sustainable environment
- Support the establishment of a UN Special Rapporteur with a mandate on human rights and climate change.
- Adopt and implement human rights consistent adaptation and disaster risk reduction measures that adequately protect people from the foreseeable and unavoidable impacts of climate change.
- Phase out fossil fuel subsidies by 2025 and fossil fuels as quickly as possible in line with the latest IPCC evidence, and by 2050 at the latest.

- Ensure just transition away from fossil fuels and the use of harmful plastics in a way that also provides greater social protection and the creation of new jobs that deliver sustainable and decent employment.
- Support a global moratorium on deep sea-bed mining in order to protect the rights to life and livelihoods for coastal communities, including Pacific Islands people.
- Work with affected local communities and businesses to address the harmful and ongoing impacts of extractive industries in the country, including but not related to mining sites at Ok Tedi, Panguna and Porgera and logging sites, and guarantee the right to a remedy.
- Ensure human rights defenders, indigenous communities and the right to freedom of expression are protected in raising climate change and environmental issues, including in relation to extractive industries, and ensure civic society participation, equality and diversity (including on gender) in the development of climate and environmental policies .

Refugees and Asylum seekers

- Immediately end refugee and asylum seeker arrangements with the Australian government and ensure that the remaining refugees and asylum seekers who wish to do so are transferred to Australia or settled in a country where they are safe and their rights are respected and protected.
- Ensure that all asylum seekers with negative asylum assessments are entitled to appeal their decision through a fair trial process, and that no person is returned to their country of origin in breach the principle of non-refoulement.

¹ A/HRC/33/10, Recommendations 104.3 (Namibia), 104.4 (Monténégro, Portugal), 104.80 (France), 104.81 (New Zealand), 104.82 (Panama), 104.83 (Norway), 104.84 (Philippines), 104.85 (Portugal), 104.86 (Spain), 104.87 (Turkey), 104.88 (Norway), 104.89 (Australia), 104.90 (Holy See), 104.91 (Italy)/

² A/HRC/33/10, Recommendations 104.161 (Sweden), 104.159 (Mexico), source of government position at A/HRC/33/10/Add.1

³ A/HRC/33/10, Recommendations 104.5 (Chile), 104.6 (Czech Republic, Denmark, France, Ghana, Guatemala, Honduras, Italy, Timor-Leste, Montenegro, Panama, Portugal, Uruguay, Turkey), 104.7 (Sierra Leone), 104.8 (Morocco), 104.9 (Indonesia), 104.10 (Japan), 104.11 (Slovenia), 104.12 (Czech Republic, Italy, Ghana, Guatemala, Honduras, Portugal, Turkey), 104.13 (Chile)

⁴ A/HRC/33/10, Recommendations, 104.56 (Uruguay), 104.57 (Czech Republic), 104.58 (Panama), 104.59 (Turkey)

⁵ Sections 228, 229 and 285 of the Criminal Code Act 1974 (Papua New Guinea)

⁶ World Health Organisation, *Minister pledges to reduce high maternal and newborn mortality*, Joint Press Release, 28 February 2019, <https://www.who.int/papuanewguinea/news/detail/28-02-2019-minister-pledges-to-reduce-high-maternal-and-newborn-mortality#:~:text=For%20every%201000%20births%20in,in%20WHO's%20Western%20Pacific%20Region>.

⁷ Griffith Asia Institute, Dr Fiona Hukula, *Gender based violence in Papua New Guinea*, 24 August 2020, <https://blogs.griffith.edu.au/asiainsights/gender-based-violence-in-papua-new-guinea/>

⁸ Marriage Act 1963 (Papua New Guinea), sections 7 and 8

⁹ Amnesty International, *Outlawed and abused: The criminalization of sex work in Papua New Guinea*, 2016, <https://www.amnesty.org/en/documents/asa34/4129/2016/en/>

¹⁰ UNAIDS, *HIV data check on Papua New Guinea's NC*, 6 March 2020, <https://www.unaids.org/en/keywords/papua-new-guinea>

¹¹ ABC Pacific Beat, *19 Dead and hundreds displaced in tribal violence*, 3 February 2012, <https://www.abc.net.au/radio-australia/programs/pacificbeat/un-tribal-violence/13115922>

¹² World Health Organization, *Papua New Guinea* page, <https://www.who.int/workforcealliance/countries/png/en/>

¹³ A/HRC/33/10, Recommendations 104.141 (China), 104.146 (Thailand)

¹⁴ Amnesty International, *What health workers want us to know*, 7 December 2020, <https://www.amnesty.org/en/latest/news/2020/12/what-health-workers-want-us-to-know/>

¹⁵ ABC News, *Papua New Guinea COVID cases surge, Timor-Leste imposes first lockdown over outbreak fears*, 8 March 2021, <https://www.abc.net.au/news/2021-03-09/png-timor-leste-face-growing-outbreaks,-concern-in-australia/13229098>

¹⁶ WHO, *Situation Report for Papua New Guinea*, 19 January 2021, [20210119_png-covid-19-health-situation-report-56.pdf](https://www.who.int/docs/default-source/situation-reports/20210119_png-covid-19-health-situation-report-56.pdf) (who.int) [NB: this latest report does not consider the surge in cases reported in February 2021 but was the most recent report at the time of writing this submission.]

¹⁷ Papua New Guinea's Enhanced Nationally Determined Contribution 2020, <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Papua%20New%20Guinea%20Second/PNG%20Second%20DC.pdf>, Summary of PNG's Enhanced National Determined Contribution, <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Papua%20New%20Guinea%20Second/PNG%20Enhanced%20NDC%202020%20Summary.pdf>

¹⁸ Reuters, Sonali Paul and Tom Westbrook, *Papua New Guinea, France's Total sign fiscal agreement for Papua LNG Project*, 9 February 2021, <https://www.reuters.com/article/us-papua-lng-total/papua-new-guinea-frances-total-sign-fiscal-agreement-for-papua-lng-project-idUSKBN>

¹⁹ Environmental Defenders Office, *Community win over FOI bid in PNG Seabed Mining Case*, 14 September 2020, https://www.edo.org.au/2020/09/14/community-win-over-foi-bid-in-png-seabed-mining-case/?fbclid=IwAR1w9evr0zRnSBYTGJ87OG7ff3j1xVrlwF1QLopZ2MhcN8gcFpBM2s7G_IM

²⁰ Amnesty International: *This Is Breaking People: Human Rights Violations at Australia's Asylum Seeker Processing Centre on Manus Island, Papua New Guinea*, 11 December 2013, <https://www.amnesty.org/en/documents/ASA12/002/2013/en/>; *This is still breaking people: Update on human rights violations at Australia's asylum seeker processing centre on Manus Island, Papua New Guinea*, May 2014, https://www.amnesty.org.au/wp-content/uploads/2016/09/This_is_still_breaking_people_update_from_Manus_Island.pdf; and *Health Care Cuts: Australia's Reduced Health Care for Refugees and Asylum Seekers in Papua New Guinea*, 17 May 2018, <https://www.amnesty.org/en/documents/asa34/8354/2018/en/>