



# Universal Periodic Review (UPR) for Papua New Guinea

39th Session (October 2021)

## The threats to human rights from mining

Joint NGO Submission by

### **Center for Environmental Law and Community Rights (CELCOR)**

The Center for Environmental Law and Community Rights (CELCOR) Inc, formed in 2000, is a not for profit, non-government environmental organization that works to protect the environmental and customary rights of the people of Papua New Guinea.

<https://celcorblog.wordpress.com>

[www.celcor.org](http://www.celcor.org)

### **Evangelical Lutheran Church of Papua New Guinea (ELCPNG)**

The Evangelical Lutheran Church of Papua New Guinea (ELC-PNG) is one of the major Christian Churches in Papua New Guinea. The ELC-PNG has a membership of over 1.2 million.

<https://www.elcpng.org>

### **Ozeanien-Dialog (OD)**

Ozeanien-Dialog, established in 2017, is an alliance of the Association of Protestant Churches and Missions in Germany, Bread for the World (Consultative Status with UN ECOSOC), Misereor (Consultative Status with UN ECOSOC), Missio Munich, Leipzig Mission, Mission OneWorld, Centre for Global Ministries and Ecumenical Relations and the Pacific Network. Ozeanien-Dialog strengthens Pacific voices in Europe and advocates together with Pacific non-governmental organizations and churches for resource justice, climate justice and

human rights.

<http://www.ozeanien-dialog.de>

## I. Introduction

1. When Papua New Guinea (PNG) last appeared before the Working Group during the 25th session held in 2016 the State reaffirmed its strong commitment towards the advancement and protection of fundamental principles and values of universal human rights enshrined in the Universal Declaration of Human Rights and the Charter of the United Nations.
2. PNG affirmed that the National Constitution accords to all persons living in PNG the basic rights and freedoms espoused by the Universal Declaration of Human Rights.
3. However, since 2016, the PNG government has failed to promote and protect the human rights of its citizens related to extractive industries. Meanwhile, two large-scale mining projects currently being planned threaten to further exacerbate the human rights situation.
4. Papua New Guinea is a developing country that possesses an abundance of natural resources. Mining in particular has long been one of the country's most important economic drivers. As of 2019 the industry accounted for 85 percent of exports and 30 percent of gross domestic product (GDP).
5. Extractive industries are an important engine of PNG's economic growth, but continue to give rise to serious human rights problems and environmental destructions. Extractive projects and the economic resources they represent have fueled violent conflict, abuse, and environmental devastation.
6. In addition to the social, economic and environmental impact on the population, extractive operations involve widespread human rights abuses.
7. Communities opposing extractive projects often face repression, threats and violence. When they have projects forced upon them, or when they consent to them in the name of empty promises that are never delivered, legitimate dissent and protests are often met with violence and abuses by police forces or private security operatives.
8. For instance, violence against women committed in the context of PNG's extractive industries remains a wide-spread human rights issue. In recent years Human Rights Watch documented gang rape and other violent abuses by private security personnel at PNG's Porgera gold mine, operated by Canadian company Barrick Gold.<sup>1</sup>
9. The **human rights impacted by mining in Papua New Guinea** include the **Right to Life**, the **Right to Water and Sanitation** (rivers polluted), the **Right to Food** (food supplies reduced in forests, gardens, rivers and sea), the **Right to Livelihood** (local economy disrupted), the **Right to Equal Protection before the Law** (alleged police

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<sup>1</sup> <https://www.hrw.org/sites/default/files/reports/png0211webwcover.pdf>

violence against protesters), the **Right to Property** (dwellings destroyed), the **Right to Freedom of Religion** and the **Right to Participation in the Cultural Life of the Community** (sacred sites damaged), and the **Right to Free, Prior and Informed Consent** by the Indigenous people of the area (inadequate consultation).

10. Affected communities across the country identify the following as key issues with regards to the exploitation of resources and human rights:

- Environmental destruction from mining, pollution of rivers and sea by mine waste and tailings
- Lack of Free, Prior and Informed Consent (FPIC) from landholders/customary title-holders
- Violence, especially gender-based violence linked to security hired by private sector and increasing risks of significant community conflict
- Lack of knowledge of human rights – international and domestic law
- Impacts on livelihoods, environment and peace from deforestation, and Special Agriculture Business Leases (SABLS)
- Poor or limited accountability for human rights violation and abuses
- Lack of a strategic partnerships between government and civil society for meaningful discussion and proactive measures to prevent harms caused to people/citizens by private sector investment

11. In the preceding paragraphs, two specific case examples are stated to exemplify the magnitude and the severity of the human rights abuse that is eminent and culminates to the ongoing abuse in the extractive industry.

## **II. Sepik Development Project and Wafi-Golpu Joint Venture**

### **Threats to Human Rights**

12. The country's extractive industries sector continues to grow despite ongoing human rights abuses and environmental degradation. In addition to an ambitious liquefied natural gas project led by ExxonMobil, the government permits two major mining projects 1) the ***Sepik Development Project*** and 2) the ***Wafi-Golpu Joint Venture*** in Morobe Province.

13. The plan for the largest mine in Papua New Guinea's history – the Frieda River copper-gold mine – carries a risk of catastrophic loss of life and environmental destruction and “appears to disregard the human rights of those affected”, according to 10 UN special rapporteurs.

14. In a letter<sup>2</sup>, the UN officials have written with “serious concerns” to the government of Papua New Guinea “to express our serious concern regarding the potential and actual threats to life, health, bodily integrity, water [and] food” as well as an alleged “lack of information for free, prior and informed consent of the indigenous people” to the mine proceeding.
15. Opposition to the Wafi-Golpu mine has been ongoing since it was announced that the partly toxic waste from the mine operations would be discharged overland through pipelines into the Huon Gulf. This is called 'Deep See Tailings Placement' and elsewhere in Papua New Guinea negative experiences have already been made with this procedure (Panguna, Misima, Lihir, Simberi, Ramu - in the future planned also Kula Gold on Woodlark).

### **Right to information and free, prior and informed consent**

16. PNG has an obligation to guarantee effective participation and access to information. These are important conditions to ensuring that the peoples living in the areas affected by mining can exercise their right to free, prior and informed consent (FPIC).
17. These human rights are also protected in the Constitution of the Independent State of PNG (PNG Constitution) via the right to freedom of information (s.51) and protection of unjust deprivation of property (s.53).
18. In the PNG context, customary rights to ownership of land and rivers are protected. However, we are concerned that for both extractive projects there has been no proper process of free, prior and informed consent.
19. Where the mines, including the discharge of waste into Sepik Basin watercourses as well as the deep-sea tailings placement (DSTP) into the Huan Golf in Morobe Province, affects the property rights of customary owners, free, prior and informed consent is fundamental to the legitimacy of the projects.
20. The people in the Sepik area and the Morobe Province have a right to life under the International Covenant on Civil and Political Rights, which PNG has acceded to and under s.35 of the PNG Constitution.

### **Sepik Development Project**

21. A failure of the tailings dam and the release of the toxic waste will be catastrophic resulting in loss of life and destruction of the receiving environment.
22. The risk posed by the development of the Project to the lives of indigenous peoples is unacceptable.

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<sup>2</sup> <https://savethesepik.org/wp-content/uploads/2020/09/UN-Letter-to-Papua-New-Guinean-Government.pdf>

23. The Sepik Peoples should not be required to bear the costs of the Project in perpetuity. Moreover, the PNG State is unable to guarantee this right, given it does not have the resources to oversee the proponent's maintenance of the tailings dam or to maintain it once the proponent has left.
24. The Environmental Impact Assessment (EIA) contains no details of the kind of "monitoring, maintenance and oversight, which will be needed both during operations and after closure" into perpetuity.
25. There have been 11 major tailings dam failures in the last decade, and the rate of such failures is increasing, so to say the risk of failure is 'very unlikely' appears to be an inadequate characterization from an empirical perspective.
26. Other impacts include the contamination of river and water sources; effects of contamination on biodiversity; and negative health impacts.

#### Wafi Golpu Joint Venture

27. Wafi Golpu Joint Venture – a partnership between Australia's Newcrest Mining and South Africa's Harmony Gold Mining Company – plans to build Papua New Guinea's largest underground mine near the city of Lae and the Watut River.
28. The operating Wafi Golpu mine would dump 13 million tonnes of waste per year into the Huon Gulf and the Coral Triangle.
29. Local communities have said they were not adequately consulted during the development of the mine plan and worry it will contaminate food and water supplies.
30. Communities upriver, which rely on the Watut River, could also be impacted – communities already suffering the impacts of the Hidden Valley mine, also owned by Wafi Golpu Joint Venture, which has polluted water, flooded villages and destroyed crops.
31. The Deep Sea Tailings Placement (DSTP) is likely to cause serious and long-term damage to the marine life with long term effects on the surrounding community who can no longer harvest from the sea they once depend upon.
32. The Environmental Impact Study (EIS) conducted by the developer itself claimed that the Morobe Province is an unstable region that is vulnerable to earthquakes.

#### **Right to culture**

33. Both large-scale mining projects threaten the right to culture protected by Article 27 of the ICCPR and under the International Convention on the Elimination of All Forms of Racial Discrimination (see General Recommendation No.23).
34. The projects threaten the practice and development of the spiritual and cultural beliefs of the people affected. These spiritual and cultural practices are dependent on a healthy environment.

### **Rights of the child**

35. Both projects undermine the rights of children to a healthy environment; to life and to culture, including unborn generations.

### **III. Recommendations:**

1. That the UN Human Rights Commission request a Commission of Inquiry into the Human Rights abuses in the extractive industry sector.
2. That the UN Human Rights Commission request a halt to all mining developments of the Sepik Development Projects and the Wafi Golpu Mining Project until all the solutions to tailings are technologically and mechanically safe for all lives including human beings who live within the vicinity of the proposed tailing disposals.
3. The UN Human Rights Commission to instruct the government of Papua New to stop all mining activities that will involve the sea which will have direct negative consequences on the people and their social life.
4. That the UN Human Rights Commission instruct the Conservation and Environment Protection Authority to cancel the Environment Permit issued to Wafi Golpu Mining Project in January 2021.
5. That the UN Human Rights Commission instruct the PNG government to stop ALL Deepsea Tailing Practices.
6. And UN Human Rights Commission instruct the PNG government to find the safest tailing treatment methods if any mine is to proceed in the future.