UNIVERSAL PERIODIC REVIEW OF PAPUA NEW GUINEA

SUBMISSION BY THE UNITED NATIONS COUNTRY TEAM IN PAPUA NEW GUINEA FOR THE SECOND CYCLE

Introduction

- 1. As Papua New Guinea (PNG) prepares for its second cycle review of the UPR in 2016, this submission is prepared by the United Nations Country Team in PNG. While the submission provides information on progress to implement the recommendations made to PNG during the first cycle of Universal Periodic Review, it does not attempt to provide a comprehensive overview of the human rights situation in PNG.
- 2. In the context of progress made since the first cycle review in 2011, it is hoped that the second periodic review will seize the opportunity for the Government and stakeholders to engage in consultations and exchange of views and lead to more effective implementation of the 2011 recommendations, challenges and other developments.

I. BACKGROUND AND FRAMEWORK

- **A. Scope of international obligations** (cf. 1st UPR cycle recommendations 78.1-78.10 and 79.1-79.15 on treaty action regarding international human rights treaties)
- 3. At the adoption of the UPR outcome document in 2011, PNG accepted recommendations to ratify a number of international human rights treaties. On 29 September 2013, PNG ratified the Convention on the Rights of Persons with Disabilities (CRPD). Steps were also taken to lift the seven reservations to the 1951 Refugee Convention, although as of August 2015 these had not yet been lifted.
- 4. PNG also accepted recommendations to consider to accede to or ratify the Convention Against Torture (CAT) and its Optional Protocol; Optional Protocol to Convention on the Elimination of Violence Against Women (CEDAW OP); and the Convention for the Protection of All Persons from Enforced Disappearance. As of July 2015, these had not been ratified. The UNCT encourages the Government of PNG to ratify CAT and its Optional Protocol, the CEDAW OP, the Convention for the Protection of All Persons from Enforced Disappearance, and all other remaining core human rights treaties and their optional protocols.
- **B.** Legislative framework (cf. 1^{st} UPR cycle recommendation 78.16 22; 79.16, 20 and 22-24, in particular addressing violence against women)
- 5. On 18 September 2013, Parliament passed the Family Protection Act with a 65-0 vote in favour of the Act. The Act came into force upon certification on 11 March 2014. The Family Protection Act criminalizes domestic violence and gives legislative backing for interim protection orders. It allows neighbours, relatives and children to report domestic violence, and gives police the power to remove perpetrators from their homes to protect the victim. This is a significant step towards providing protection to victims of domestic violence. The Government is currently taking steps, supported by the UN, donors and national civil society actors, to implement the Act.

- 6. In May 2013, Parliament repealed the Sorcery Act (1971). The Sorcery Act had provided that fear of sorcery could be used as a defence in murder cases. The repeal followed high profile cases of killings related to allegations of sorcery and witchcraft that contributed to a national outcry against such violence, which often targets women.¹
- 7. On 13 February 2014, Parliament passed the Juvenile Justice Act. The Act was certified and came into force on 30 May 2014. The Act establishes a juvenile justice system focusing on restorative justice as an alternative to imprisonment, rehabilitation, fast tracking of juvenile's cases, and increased monitoring of conditions in places of juvenile detention through regular inspections by juvenile court magistrates.
- 8. On 9 June 2015, Parliament passed the Child Protection Act (Lukautim Pikinini Act) with a 73-0 vote. The legislation strengthens child protection, and provides that the interest of the child is paramount in all actions and decisions concerning the child. The legislation provides protection from all forms of abuse, neglect and maltreatment. A significant amendment to the Act allows children to report abuses without a parent or guardian's consent in serious cases such as rape. The Act also removes discrimination against children born outside of wedlock. The development of regulations for both the Juvenile Justice Act and the Child Protection Act (2015) were in the final stages in August 2015. The overarching National Policy on Child Protection has also been drafted and is ready for submission to the National Executive Council. The UNCT calls for increased investment, both human and financial, to support effective implementation of these Acts. It recognizes that initiatives to train relevant government departments in this legislation are underway, and recommends that these be strengthened.
- 9. PNG adopted the Special Session of the United Nations General Assembly (UNGASS) 2001 Declaration of Commitment on HIV/AIDS and subsequent international declarations on HIV and AIDS, committing to enact legislation to eliminate discrimination against people living with HIV or AIDS as well as groups and individuals vulnerable to infection. PNG also committed to develop strategies and legal protection to combat stigma and social exclusion associated with the epidemic. A review and report on the main criminal law provisions of the Criminal Code Act 1974 and the Summary Offences Act 1977 covering sex work and male to male sex in PNG is still outstanding by the Constitutional and Law Reform Commission since a 2010 directive by the Minister of Justice & Attorney General and National Executive Council. As of August 2015, the review which would include recommendations for the offences to remain, be repealed or amended had yet to be completed. The UNCT in PNG recommends that the CLRC complete the review of the Criminal Code Act 1974 and the Summary Offences Act 1977 in consistency with human-rights based approach to Public Health practices.
- **C.** Institutional and human rights infrastructure and policies (cf. 1st UPR cycle recommendations 78.23-34)
- 10. During its first UPR cycle, PNG accepted recommendations to establish a National Human Rights Commission. While steps were taken to finalize draft legislation, as of September 2015, the legislation has yet to be tabled in Parliament. The UNCT in PNG recommends that PNG adopt legislation to establish a National Human Rights Commission, that this legislation comply with the Paris Principles, and that sufficient

¹ See paragraph 24 below.

resources are allocated to ensure that the Commission is established and can function independently and in accordance with international standards.

11. PNG's Medium Term Development Plan 2011 to 2015 (MTDP) provides a roadmap towards achieving PNG's Development Strategic Plan and its "Vision 2050". The MTDP has been extended to last until 2017 in order to align with the schedule of General elections. The plan prioritises a number of key sectors, including primary and secondary education, access to water and sanitation, which, together with improved infrastructure and strong public sector management, has the potential to improve access to basic rights for many people in Papua New Guinea.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

- **A.** Cooperation with international human rights mechanisms (cf. 1st UPR cycle recommendations 78.39-46)
- 12. On 15 August 2014, the Government of PNG submitted its first Beijing Platform for Action periodic review. In 2015, initial preparations were underway to submit PNG's initial report under CRPD. However, a number of treaty reporting obligations remain outstanding. The UNCT recommends that the Government of PNG develop a Core Common Document and take clear steps to fulfill its reporting obligations under human rights treaties, including by submitting initial reports to the ICCPR and ICESCR, and periodic report on the Convention on the Rights of the Child (CRC).
- 13. PNG issued a Standing Invitation to Special Mechanisms on 11 May 2011. In 2012, the Special Rapporteur on violence against women, its causes and consequences conducted an official country visit to PNG. In 2014, the Special Rapporteur on extrajudicial, summary and arbitrary executions conducted an official country visit to PNG.
- 14. PNG took steps to start implementing recommendations made by the Special Rapporteur on Torture, who conducted an official visit to PNG in 2010, including collaborating with the UN to conduct a human rights assessment of the Royal PNG Constabulary in 2011, and initiating a programme to integrate human rights training into the Bomana Police Training College. To increase the monitoring of places of detention, the Anti-Discrimination and Human Rights Unit of the Ombudsman Commission has also trained their staff on human rights and detention monitoring in 2014 and 2015, in partnership with the UN.

III. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

- **A.** Equality and non-discrimination (1st UPR cycle recommendations 78.35-78.38 and 78.47-78.49, and 78.51)
- 15. In January 2013, the Government of PNG launched its Gender Equity and Social Inclusion (GESI) Policy. GESI established a framework for promotion of gender equity and social inclusion practices across the National Public Service. The policy applies to all Government Departments, at the national and local level. In addition to gender, the policy addresses other areas where individuals are directly or indirectly disadvantaged or discriminated against, including people living with disabilities, HIV/AIDS, discrimination on

the basis of race, sex, or other personal attributes. The policy contains an action plan, with indicators and timeframes for implementation in six priority areas.²

- 16. Women's participation in political office in PNG is low. In the 2012 national elections, three women were elected out of a total of 111 seats (2.7%). Efforts to pass legislation prior to the 2012 elections to reserve 22 seats for women did not attract the necessary number of votes in Parliament. In the Autonomous Region of Bougainville, three out of 39 parliamentary seats are reserved for women. In local elections held in 2015, one woman also won an open seat. The UNCT recommends that the Government of PNG continues efforts to strengthen women's participation at national and sub-national levels, in collaboration with national and international partners.
- 17. On 29 May 2015, the Government of PNG launched its National Policy on Disability. The policy included provisions in areas such as health and education, and made sign language a fourth official national language of PNG. Steps are also underway to develop a national pension for the elderly and persons with disabilities under a social inclusion policy.
- 18. Male same-sex sexual activity is prohibited by the PNG Criminal Code (S.210), and carries a sentence of up to 14 years imprisonment. While these provisions are not usually implemented, they have facilitated extortion and social stigmatization of Lesbian, Gay, Bisexual, and Transgender (LGBT) persons in PNG. They have also reportedly hampered the ability of LGBT persons to access medical treatment, including for HIV/AIDS. Sex workers and persons most at risk to contract HIV/AIDS are also unable to access medical treatment and services due to discrimination by health workers.
- **B.** Right to life, liberty and security of person (cf. 1st UPR cycle recommendations 78.50-51, 56-59 and 79.26, 29, 40, 41 on policing and human rights; 1st UPR cycle recommendations 78.53, 62-64, 79.37 on children and human rights; 1st UPR cycle recommendations 79.45,46, 48 on sorcery and violence against women; and 1st UPR cycle recommendations 78.54,55 on trafficking)
- 18. There continue to be frequent reports of excessive use of force by police, in some cases reportedly leading to death. Public trust in the Royal Papua New Guinea Constabulary (RPNGC) is low, and there are reports of corruption, failure to provide protection, ill-treatment and harassment. The Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, who visited the country in 2014, documented allegations of "police using excessive force against suspects during arrest, interrogation and pre-trial detention, and when carrying out raids of illegal informal settlements". He expressed deep concern at reports that "police officers who use excessive force which results in death are rarely disciplined, suspended from office or prosecuted in court".
- 19. The RPNGC has initiated efforts to strengthen human rights compliance. In 2013, the Australian Federal Police-RPNGC Policing Partnership was strengthened with the deployment of an additional 50 AFP officers to provide frontline advisory support. Efforts are underway to strengthen the quality of recruit training by upgrading the Bomana Police Training College into a national "Centre of Excellence". New training modules have or are being developed or updated in areas including gender based violence, human rights, and child protection in collaboration with international partners. The establishment of Family and

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² Department of Public Service Gender Equality and Social Inclusion Policy, Department of Personnel Management. Available at: http://bcfw.org.pg/wp-content/uploads/2014/11/PNG-NPS-GESI-Policy-.pdf

Sexual Violence Units in 14 police stations, with specialized police officers, is intended to strengthen the ability of police to address high levels of gender based violence. These efforts, in addition to other initiatives underway, which include increasing the number of police officers and strengthening senior leadership, should be continued.

- 20. PNG has upheld its moratorium on the death penalty. On 28 May 2013, the Criminal Code Amendment Act (2013) was adopted. The Act extended the possible imposition of the death penalty to the crimes of aggravated robbery (s. 386.2) and aggravated rape (s. 347c), and specified that the death penalty may also be imposed in cases of wilful murder of a person on account of accusations of sorcery (s. 299A). The increase in crimes carrying a possible death sentence occurred in the context of efforts to deter serious crimes, including killings resulting from accusations of sorcery. At the time of writing, 12 persons are reported to be on 'death row' in PNG. While recognizing the need for strong action to protect its population against such crimes, the UNCT believes that other measures, including strengthening the rule of law and increasing access to justice, would constitute a more effective way to address crime. The UNCT recommends that PNG maintain its moratorium on the death penalty with a view to abolish it de jure.
- 21. Although violence against children is prohibited under the Child Protection Act (2015), corporal punishment is not explicitly prohibited. Article 278 of the Criminal Code (1974), which provides for the use of "such force as is reasonable under the circumstances" by parents and school-masters is yet to be repealed. The UNCT recommends that Article 278 of the Criminal Code 1974 be repealed, and that PNG prohibit corporal punishment.
- 22. On 7 November 2014, Parliament passed the Civil Registration (Amendment) Act. In February 2015, the Government launched the PNG National Identity Project which aims to have all citizens of PNG registered and provided with a birth certificate. The National Identity Project includes plans to establish capacity for civil and birth registration at provincial level throughout the country. This constitutes significant progress. There is a need to consider establishing civil and identity registration capacity beyond the provincial capital to further improve access to civil registration services.
- 23. Violence against women remains prevalent in Papua New Guinea. In 2014 the Government drafted a National Strategy to Prevent and Respond to Gender Based Violence (GBV) 2015-2050. The strategy is currently awaiting endorsement by the National Executive Council. Four provinces have finalized their local level GBV strategies, informed by the National Strategy, and have committed funds for implementation. Another six provinces were developing strategies at the time of writing. A central part of provincial level strategies are the establishment of a provincial Secretariat for Family and Sexual Violence Action Committee (FSVAC) to facilitate coordinated responses, support capacity building initiatives and collect data on GBV. In recognition of the significant role civil society actors have played in service provision, the National Strategy includes these actors as important counterparts in the national and sub-national responses. The UNCT recommends that the Government of PNG endorse the National Strategy to Prevent and Respond to Gender

⁴ PNG Criminal Code (1974), "278. DOMESTIC DISCIPLINE. It is lawful for a parent or a person in the place of a parent, or for a schoolmaster, or master, to use, by way of correction, towards a child, pupil or apprentice under his care such force as is reasonable under the circumstances".

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³ In addition to these crimes, crimes that carry a possible death sentence are treason (s 37), piracy (s 81) and wilful murder (s. 299).

Based Violence 2015-2050 in order to achieve zero tolerance to GBV as set out in the PNG Vision 2050.

- 24. In 2013, civil society organizations across PNG staged a National Haus Krai (day of mourning) which raised significant awareness about gender based violence in the country. This occurred in the aftermath of serious violations against women, including two high profile cases of torture and murder of women accused of practicing sorcery in February and April 2013. The Government in collaboration with other actors held three conferences which led to the drafting of a Sorcery National Action Plan, which proposed a multi-sectoral approach to combating violence related to allegations of sorcery. The plan was submitted for the endorsement of the National Executive Council in early 2015. The UNCT recommends that the Government of PNG continue to strengthen its efforts to address gender based violence, including by providing training and awareness raising among all government and non-government actors on GBV and sorcery accusation related violence, as well as strengthening accountability mechanisms, and allocating sufficient budget to support such programmes.
- 25. On 19 July 2013, Parliament passed the Criminal Code (Amendment) Act 2012. The legislation came into force on 30 June 2014. The legislation makes people smuggling and trafficking in persons a criminal offence and creates a legal base to protect victims. The Government of PNG also adopted a Trafficking in Persons National Action Plan and took steps to strengthen the capacity of law enforcement agencies and judicial bodies to identify trafficking cases and act on them. The UNCT in Papua New Guinea recommends that the Government of PNG ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons.
- 26. The Government of PNG took positive steps to address the situation of West Papuan refugees in PNG, some of whom have resided in PNG for decades. In November 2014, the Government committed to register West Papuan refugees in PNG and assist their applications for PNG citizenship through naturalization, with the support from UNHCR. The Government also waived the Kina 10,000 (US\$4,000) citizenship fee⁵ for West Papuan refugees living in PNG for over 15 years.
- 27. On 19 July 2013, the Governments of Australia and PNG announced the Regional Resettlement Arrangement. The Agreement provided for the transfer of asylum seekers trying to reach Australia by boat, to be sent to PNG for their subsequent detention in an immigration centre on Manus Island. Ongoing concerns have been raised about poor conditions and lack of independent oversight in the Regional Processing Centre. In February 2014 one asylum seeker died during violence in the centre while others were injured. Six months later another detainee died in September 2014 reportedly as a result of inadequate treatment of a legwound. There are only adult male asylum seekers in Manus Island. As of August 2015, 920 asylum seekers were awaiting Refugee Status Determination at the Regional Processing Centre, and 45 men that have been granted and accepted their refugee status in Papua New Guinea have been transferred to the Regional Transit Centre. Not one person has yet been resettled in PNG since the RRA came into effect in 2013, as the PNG Government has yet to complete a framework and policy for resettlement as of August 2015. Thus the timeline for the resettlement of refugees is unclear and detention indefinite. **The UNCT in PNG**

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⁵ 'PNG takes action on refugees", Ministry of Foreign Affairs and Immigration, 4 November 2014. Available at: http://www.immigration.gov.pg/images/documents/Media%20Release%20-%20PNG%20Takes%20Action%20on%20Refugees.pdf

recommends that independent human rights monitors be granted full and unfettered access to the Manus Regional Processing Centre, and that the Government finalize a comprehensive resettlement policy as soon as possible.

- **C. Right to Health** (cf. 1st UPR cycle recommendations 78.67-70; 79.27)
- 28. In 2014, the Government of PNG adopted a policy on Free Primary Health Care and Subsidized Specialist Services. The policy aims at achieving equity and universal access to health services by eliminating user fees and ensuring financial protection against catastrophic expenditures on health. A number of policies were adopted to improve maternal health, including the Youth and Adolescent Health Policy (2013), the National Health Sector Gender Policy (2014), the Infant and Young Child Feeding Policy (2014) and the National Family Planning Policy (2014).
- 29. The Government of PNG articulates these policies in the National Health Plan, 2011-2020 as part of its vision for better health, with special focus on vulnerable populations; however effective implementation of these policies at provincial and community levels remains a challenge. The main responsibility for health service delivery lies with the recently established District Development Authority. Effective coordination between the National Department of Health, Provincial Health Authority and District Development Authority will be key in improving the performance of the health sector. Some concrete steps were taken to implement the health policies including a gradual increase of the student intake of the five midwifery training institutions to train midwives for deployment in rural hospitals, and the establishment of a National Maternal Death Committee to review the contributing factors of maternal death and to find solutions to reduce preventable deaths.
- 30. The National HIV and AIDS Strategy (NHS 2011-2015) has been extended to 2017 to align with the MTDP. The NHS makes provisions for strategic information, access to prevention for mother to child transmission, reducing GBV, reducing stigma and discrimination, law reform and implementation of existing laws.
- 31. PNG has an estimated HIV prevalence rate of around 0.66% of the adult population. Data from 2013, estimates that antiretroviral medicines to treat HIV were delivered to 80% of those in need, and to 55.26% of pregnant women in need of antiretroviral drugs for PPTCT. The quality, reliability and extent of strategic information on the Papua New Guinea epidemic is poor and has resulted in a national response based on incorrect assumptions. Although the country now fully funds treatment domestically and has approved the new WHO treatment guidelines, making treatment available earlier, many locations lack treatment facilities, and the regular supply and reliable logistic management of AIDS related medications remains problematic. Legal and policy impediments such as the criminalization of sex work and same sex sexual relations hinder the response, especially the provision of services to key affected population groups and individuals.

D. Right to education (cf. 1st UPR cycle recommendations 78.67, 68, 72, 73 and 79.59-66)

In 2012 the Government implemented the Tuition Fee Free (TFF) education policy which covers the cost of tuition for students in public schools from primary school to Grade 10, and extended the TFF to include project fees in 2015. The Policy also subsidises 75% of the National Education Board (NEB) approved tuition fees for students enrolled in Grades 11 and

12 in secondary schools, and national high schools. This also applies to students attending vocational centres and flexible, open and distance education (FODE), with parents and guardians liable for 25% of tuition for students in these sectors.

TFF is critical to improving access to education, especially by disadvantaged and marginalised children, including girls and children with disabiltiies, by reducing the financial burden on parents and families.

TFF has contributed to increased enrolment in schools, particularly in basic education, with almost 2 million children enrolled in 2014 compared with about 1 million a decade before (NEP 2015 -2019, p.20). The overall gross enrolment rate for basic education improved to 96 per cent in 2014, compared to 71 per cent in 2000. In the secondary sector, the rate improved by 10 percentage points to 22.5 per cent from 2000 to 2013. Despite these achievements, significant disparities still exist across the country and there are said to be almost half a million children out of school.

The surge in school enrolments has also negatively impacted attendance rates and contributed to over-crowded classrooms, higher teacher-pupil ratio, older aged children, bullying, shortage of qualified teachers and teaching-learning materials. Delays in the distribution of the TFF and subsidies have also delayed school attendance in some schools. Stronger monitoring of the TFF and its expenditure is needed, as well as better targeting of the policy, including allocating more resources to remote and less-resourced schools.

One third of the National budget for the Department of Education, K605 million (approx. USD 215 million), was allocated towards the TFF in the 2015 National Budget. The TFF is part of the Government's Universal Basic Education plan (UBE 2010–2019), which aims to ensure that "all school-aged children have equal access to quality basic education..." (National Department of Education [NDoE] 2009, p. i).

E. Climate change and environment (cf. 1st UPR cycle recommendation 78.71, 79.51, 57, 58, 67)

The NEC approved the Protected Areas Policy (PAP) in December 2014 and completed drafting instructions for a new Protected Areas (PA) Bill in June 2015, based on internationally recognized categories of protected areas administered by the International Union for the Conservation of Nature (IUCN) and the United Nations Convention on Biological Diversity. Findings from a review of the Food Security Policy were also integrated into a new draft covering 2016-2025.

In July 2014 the NEC approved the Climate Change Policy to address climate change issues in the country consistent with the United Nations Framework Convention on Climate Change. This led to the formulation and approval of the Climate Change Act in July 2015, which elevates the Office of Climate Change and Development's status to an Authority which administers and regulates development activities in the country to minimise or avoid adverse climate change related impacts.

IV. TECHNICAL

Assistance Framework for PNG 2012-2015 (UNDAF) has been extended to **ASSISTANCE** (cf. 1st UPR cycle recommendations 78.74)

32. The United Nations Development Assistance Framework (UNDAF) 2012-2015 was extended to 2017 to align with the Government's Medium Term Development Plan. The

UNDAF focuses on four outcome areas: governance for equitable development; social justice, protection and gender equality; access to basic services; and environment, climate change and disaster risk management. Key strategies which underpin the UNDAF are; capacity development, the promotion of human rights and the application of a human rights-based approach to programming, the promotion of low carbon growth and climate change resilient development, the empowerment and strengthening of civil society, the promotion of evidence-based monitoring systems, the mainstreaming of gender equality and opportunities for women, and combating HIV and AIDS and other communicable diseases. The UN in Papua New Guinea stands ready to continue to support national efforts to further the promotion and protection of human rights and progress towards achieving the Millennium Development Goals.

V. OTHER AREAS

Religious Freedom

33. In 2015 the PNG Trade Union Congress advocated to the Governor General and the Prime Minister to introduce policy and regulation on the principle of the separation of church and government in response to a campaign to replace traditional artefacts at the Parliament Haus with a "Pillar of Unity." A campaign to build a Pillar of Unit with a flame at the top and "The Word of God" written at the bottom is ongoing. As part of a Reformation, Restoration and Modernization program to instil national unity, the Speaker of Parliament, Mr. Theo Zurenuoc, ordered the removal of several traditional wooden carvings and totem poles adorning the National Parliament House in 2013, resulting in their partial destruction, claiming they were non-Christian and represented witchcraft, immorality and idolatry. Following a public outcry which involved more than 1000 people signing an online petition calling for "stronger intervention to protect PNG's cultural heritage from wilful destruction by religious extremists", the Prime Minister decreed that the removal of the artefacts from Parliament Haus should be stopped. The UNCT in PNG recommends that PNG continues to protect its traditional cultural heritage and the diversity of religions in the country.

Internally Displaced Persons

34. Challenges in securing land in PNG delay durable solutions for internally displaced persons (IDPs) caused by natural and manmade disasters. Communities displaced from a volcanic eruption in care centres in Manam, Madang Province have yet to be permanently resettled 10 years on. In 2015 the Department of Provincial and Local Level Government Affairs (DPLLGA) initiated a review of existing legislation for the development of the country's first policy on IDPs. An IDP profiling and monitoring system that can receive inputs from the Provinces and Districts through Local Level Government offices, will be launched in November 2015. The UNCT recommends that the Government continue efforts to develop a policy on IDPs and ensure that it is compliant with the Interagency Standing Committee framework for durable solutions for IDPs and the UN guiding principles on internal displacement.

UNCT Papua New Guinea

September 2015