

# Papua New Guinea's Refugee Track Record and Its Obligations under the 2013 Regional Resettlement Arrangement with Australia



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In the lead-up to the Australian Federal Election in September 2013, public attention focused dramatically on Papua New Guinea (PNG) in terms of the joint PNG–Australia Regional Resettlement Arrangement, the subject of a memorandum of understanding (MOU) signed on 6 August 2013 (DFAT 2013a). In short, Australia would transfer asylum seekers who arrived in Australia by boat after 19 July 2013 to PNG where their claim for refugee status would be assessed, under PNG law, and those found to be refugees would be resettled in PNG ‘and in any other participating regional, including Pacific Island, states’ (DFAT 2013b). (Nauru is the only other current participating regional state, with Cambodia considering resettlement of asylum seekers at the time of publication (AAP 2014).) While the Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012<sup>2</sup> provided for *assessment* of asylum seekers by PNG, it was the August 2013 Regional Resettlement Arrangement (mentioned as the 2013 Arrangement) that provided for *resettlement* in PNG, of asylum seekers determined to be refugees. In accordance with the 2013 Arrangement, the full cost of implementing the arrangement in PNG, that is, transfer, assessment, and resettlement, would be met by Australia.

PNG has a track record related to the assessment and resettlement of asylum seekers. The discussion paper begins with a brief outline of PNG policy responses to West Papuan asylum seekers from neighbouring Indonesian Papua. It focuses on the permissive residence system (part of a PNG ‘Limited Integration’ policy) offered to West Papuan refugees living at the former United Nations High Commissioner for Refugees (UNHCR) resettlement site at East Awin in

Western Province since 1997. Limitations of the permissive residence permit, particularly issues related to eligibility and permit renewal, illustrate challenges faced by the PNG government and bureaucracy to design and administer a visa system. PNG’s track record of assessing and resettling West Papuan asylum seekers since 1984 is looked at against the terms of the 2013 Arrangement, which requires PNG to determine the refugee status of asylum seekers transferred by Australia to the offshore processing centre on Manus Island, review negative determinations, and resettle in PNG those determined to be refugees.

The second section considers PNG’s obligations under the terms of the 2013 Arrangement. In relation to status determination, an efficient and procedurally fair determination process requires legislation i.e., domestic refugee law, and an effective immigration bureaucracy. It can be argued that neither of these elements were present at the time of the 2013 Arrangement. However, at the time of publication of this paper in mid-2014, some status determinations and a review process had been announced. In relation to resettlement, ongoing disagreement by the PNG government over the terms of resettlement (which refugees are to be resettled, how many refugees will be resettled) threatens to undermine the terms of the 2013 Arrangement. Australia has underwritten the costs of implementing resettlement under the Arrangement, although the details are not explicit. Nor are details available about any social planning being undertaken for the resettlement of refugees. The author takes up UNHCR’s charge of a ‘xenophobic phenomenon’ in relation to the reception of non-



Melanesian refugees in PNG, and offers some context. It is argued that social planning that works towards minimising inter-community tension is critical to resettlement.

The 2013 Arrangement is subject to annual review by the Australian–PNG Ministerial Forum. The sustainability of the Arrangement in terms of legal challenges<sup>3</sup> and security issues is the subject of the third section. Responding to the announcement of the first status determination decisions at the time of publication of this paper, the conclusion summarises some of the major issues related to PNG's responsibilities under the Arrangement: procedurally fair assessment and review processes, and resettlement planning.

### PNG's track record on West Papuan refugees

Several related events in Papua generated the phenomenon of West Papuans seeking asylum in neighbouring PNG. Arguably, the catalyst was the 1961 United Nations-brokered transitional arrangement (UNTEA) that ceded Netherlands New Guinea to Indonesia, followed by the 1969 referendum, commonly glossed as the Act of Free Choice, which resulted in a declaration of (then) West Irian as Indonesia's seventeenth province.<sup>4</sup>

In the 1960s, West Papuans moving eastwards across the border were classified by the Territory Administration as traditional 'border crossers'.<sup>5</sup> The Migration Ordinance of 1963 contained no clear provisions for dealing with non-traditional border crossers and assessment of their status was at the colonial administrator's discretion. By determining asylum applications individually, the Australian, and later, PNG administrations, in effect masked the political nature of the movement (Blaskett 1989). Generally speaking, the PNG Government preferred to categorise West Papuans as border crossers rather than refugees. This avoided predetermining their status, and encouraged repatriation as the most appropriate response. In 1968 some West Papuans granted temporary permissive residence permits were relocated away from the international border to a 'camp' on Manus Island established by the Territory of Papua New Guinea administration (May 1986; Neumann and Taylor 2010).

It was not until the influx of 11,000 West Papuans from February 1984 that the question of status became a sensitive topic for the PNG national cabinet and press. It is important to note that this figure included 9435 Muyu whose traditional land straddles the international border and who share language and kin relations with Yonggom customary landowning groups in PNG (Kirsch 1989, 1996). It was argued that those who had crossed en masse could not be categorised according to the technical term border crosser, as their movement was not temporary in character or for the purpose of traditional activities.

The PNG Cabinet agreed on 17 July 1986 to accede to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees.<sup>6</sup> PNG made seven 'reservations' (or exclusions) to the 1951 Convention:<sup>7</sup> Article 17(1) [Wage-earning employment], Article 21 [Housing], Article 22(1) [Same treatment as nationals in the provision of elementary education], Article 26 [Freedom of Movement within the Territory of PNG], Article 31 [Non-imposition of penalties for illegal entry or presence], Article 32 [Prohibition against expulsion of refugees], and Article 34 [Favourable treatment in citizenship processing including reduction of relevant fees] (ICJ-RCOA 2003). These reservations reflected the government's reported concern that it did not have the economic capacity to grant refugees the same social assistance as PNG citizens (UNHCR 2013a). The UNHCR determined the status of those who had crossed to be refugees *prima facie*, that is, due to their mass movement as a result of generalised conflict, and the PNG Government and UNHCR subsequently relocated some 3500 West Papuans from 17 informal camps along the international border to East Awin in Western Province.<sup>8</sup>

In 1996, the PNG Government announced a 'Limited Integration' policy that encouraged integration through permissive residency if West Papuan refugees wished to remain in PNG, and for those who did not wish to integrate, the policy supported voluntary repatriation to the Indonesian Province of Papua (UNHCR 2010). Under PNG's 1978 Migration Act, permissive residency status could be accorded to refugees for renewable periods

of three years, subject to eight conditions. One requirement not listed but reportedly regulated is the requirement for refugees to be resident at East Awin in the six months prior to application (ICJ-RCOA 2003). The eight main conditions are:

1. To abide by the laws of PNG
2. Not to engage directly or indirectly in any political activity that might affect the good relationship between the governments of PNG and Indonesia
3. Not to reside in the border areas of West Sepik and Western provinces except East Awin camp
4. Not to engage directly or indirectly in OPM activities including holding of military and civil positions in the organisation
5. Not to hold executive positions nor be financial members of any political parties in PNG
6. Not to vote or stand in national, provincial and local government elections in PNG until attainment of citizenship
7. To notify the appropriate authority of any change of address and place of residence in PNG
8. Permits are subject to renewal annually.

Permissive residents would have the following rights:

1. Free movement within PNG except to and in border areas
2. Engagement in business activities including leasing of government land and access to banking facilities
3. Employment with similar conditions as nationals
4. Enrolment in PNG schools and tertiary institutions
5. Access to health services and facilities
6. Access to PNG courts
7. Freedom of worship
8. Freedom of marriage
9. Eligibility for naturalisation after eight years qualifying period as permissive residents
10. Freedom to return to Indonesia again to take up permanent residency at own expense (ICJ-RCOA 2003:42–3).

An international campaign lobbying the PNG Government to offer permissive residency to West Papuan refugees claimed that permissive residency

would mitigate the impact of the government's reservations to Article 26 of the 1951 Convention, by permitting freedom of movement within PNG. Freedom of movement allowed by permissive residency, albeit away from the border, was viewed optimistically by West Papuan refugees, as relocation to other regions would offer economic opportunity as well as maintenance of kin relations (Glazebrook 2008).

Significantly, the first batch of permissive residency applications was intercepted and seized by members of the customary landowner groups of the East Awin site, who may have feared two consequences arising from the granting of permissive residency: first, this status allowed resettlement elsewhere in PNG which could relieve the government of its obligation to compensate customary landowner groups for use of their land, and second, all West Papuan applicants were required to be resident at East Awin for a period of six months, further depleting natural resources in the settlement site and surrounds.

Problems with renewal of permissive residency permits threatened to undermine the system. These problems illustrate challenges experienced by cabinet and the immigration bureaucracy in designing and administering a visa system for non-nationals. In 2003, the Citizenship Advisory Committee instituted under PNG Constitution Articles 75 and 76 had not met for eight years due to the absence of funds allocated for its operation, and two permanent members of parliament had yet to be appointed (ICJ-RCOA 2003). A joint mission of the International Commission of Jurists and Refugee Council of Australia reported that: 'While 75 percent of the camp residents had been granted Permissive Residence, the three-year permits have expired and they have not been renewed. Those who did not receive permissive residence were given no indication as to why this decision was made. The status of all camp residents is therefore unclear.' The mission recommended that renewal of permissive residency permits be automatic if conditions had been met by the applicant. Few West Papuans living outside East Awin had been able to fulfil the seemingly gratuitous and disruptive requirements of permissive residency, particularly living at East

Awin for six months, and returning after three years for a further six months to satisfy permit renewal requirements (ICJ-RCOA 2003).

Integration of West Papuans at East Awin at least, is being planned for on several fronts.<sup>9</sup> One clarification is timely here: while this section focuses on West Papuan refugees at East Awin, PNG hosts some 6000 other West Papuans, either refugees or living in a refugee-like situation (UNHCR 2013c). At the time of publication of this paper, permissive residency applications from West Papuans resident at East Awin were being processed by the PNG Department of Provincial and Local Level Government Affairs (DPLLGA), and field visits to East Awin and the border region had been conducted in 2012 by DPLLGA officers for the purposes of permit renewal. The eligibility requirement that applicants be resident at East Awin for six months is reportedly unchanged, however. Second, planning is being undertaken for the former UNHCR relocation site at East Awin to be incorporated into the North Fly district by the next local government elections in 2017, allowing participation in council elections by West Papuans resident at East Awin. The implications of this incorporation for West Papuans is a subject for further research. The third point relates to the current routine practice of PNG birth certificates issued to children born at East Awin. Ratification of the 1961 Convention on the Reduction of Statelessness, which requires nationality to be granted to persons born in the state who would otherwise be stateless, would ensure this practice is not vulnerable to domestic politics. Ratification would also extend these rights of citizenship to the children of West Papuans born elsewhere in PNG.

The final point relates to PNG Foreign Affairs and Immigration Minister, Rimbink Pato's speech to parliament on 18 September 2013 that disclosed that the government was 'taking active steps to regularise the status of other long-term refugee groups in PNG. This will include removal of the citizenship application fee [PGK10,000=AUD3909]<sup>10</sup> for refugees to assist with their full integration within PNG society' (MFAI 2013). West Papuans holding permissive residency permits are entitled to apply for PNG

citizenship after eight years of legal residency and fulfilment of other criteria in section 67(2) of the constitution. Should Minister Pato act upon his publicly stated intention, the ambiguity over the legal status of West Papuans in PNG could be resolved, providing opportunity for genuine resettlement.

By way of summary, PNG's recognition of West Papuan asylum seekers *prima facie* as refugees did not require processes of status determination or review of negative decisions to be established by the government. Neither was human resource capacity of the kind required to forensically investigate the individual cases of asylum seekers from the Middle East and South Asia ever needed. Significantly, the design and administration of the visa system (permissive residency permits) for West Papuan refugees reflects on the capacity of cabinet and the immigration bureaucracy. Several factors have impeded West Papuan resettlement in PNG in economic and political terms. These include: reservations (or exclusions) made by PNG to the 1951 Convention, and problems of access to citizenship. Social acceptance of West Papuans, who are fellow Melanesians, has been taken for granted, and has not been the subject of planning.

This track record is now held up against PNG's obligations under the terms of the 2013 Arrangement in the section below. First, however, a brief background to the 2013 Arrangement is elaborated.

### Background to the 2013 Arrangement

PNG has hosted an offshore processing centre for Australia on Manus Island between 2001 and 2008, and since 2012. In 2001, the Federal Government introduced legislation glossed as the 'Pacific Solution', which excised Christmas Island, Ashmore and Cartier Islands, and Cocos (Keeling) Islands from the Australian migration zone. Arriving at an 'excised offshore place' meant that asylum seekers were processed under a different system and had different rights to arrivals at non-excised places. The new Act allowed for intercepted asylum seekers to be removed offshore, transferred to Manus Island (PNG) or Nauru, or forcibly returned to Indonesia from where they could apply to enter Australia. Australia signed an MOU with PNG in October

2001, allowing construction of a processing centre to accommodate and assess the claims of asylum seekers on Manus Island, with management by the International Organization for Migration.<sup>11</sup> Claims were to be processed by Australian immigration officials, but not under Australian law, and claimants had no access to legal assistance or judicial review. The incoming Rudd Government abolished the Pacific Solution, announcing in February 2008 that the centres on Manus and Nauru would no longer be used, and that future 'unauthorised boat arrivals' would be processed on Christmas Island, which would remain excised from Australia's migration zone.

During the Rudd and Gillard Australian Labor Party governments (2009–2012) around 19,000 people in 338 boats arrived (Phillips and Spinks 2011). More than 1500 asylum seekers were recorded as drowning at sea since 1998 (Hutton 2013). A domestic political discourse saw the Opposition Coalition under Tony Abbot criticising government policy for this steady and increasing flow of asylum seekers, in part, blaming the Rudd Government's closure of off-shore processing on Manus and Nauru.

On 14 August 2012, the Australian Parliament introduced legislation, the Regional Processing Act, to allow offshore processing of asylum seekers in Nauru and PNG. On 16 May 2013, legislation was passed which extended the excision policy to the Australian mainland. Asylum seekers arriving by boat anywhere in Australia were no longer able to lodge a valid protection claim except at the discretion of the Minister for Immigration, and would be at risk of being transferred offshore for processing. Previously, the excision policy applied only to excised offshore places, such as Christmas Island. The Regional Processing Act paved the way for the 2013 Arrangement signed by prime ministers Rudd and O'Neill on 6 August 2013.

In summary, under the 2013 Regional Resettlement Arrangement (DFAT 2013a, 2013b) 'any unauthorized maritime arrival entering Australian waters will be liable for transfer to Papua New Guinea (in the first instance, Manus Island) for processing and resettlement in Papua New Guinea and in any other participating

regional, including Pacific Island, states.' In relation to refugee status determination, specifically,

The Government of Papua New Guinea assures the Government of Australia that it will: ... b. make an assessment, or permit an assessment to be made, of whether or not a Transferee is covered by the definition of refugee in Article 1A of the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Related to the Status of Refugees

whereupon, those whom it determines to be refugees will be enabled to settle in PNG.

The following sections outline PNG's responsibilities under the 2013 Arrangement related to status determination and review of negative decisions, and resettlement.

### **PNG's Obligations under the Arrangement Determining Refugee Status under PNG Law**

The particular procedure for determining a person's status as refugee is not prescribed by the 1951 Convention, except to say that any procedure should be 'fair and efficient' (UNHCR 2011). Separate from the 1951 Convention, UNHCR (2011) has defined a fair and efficient procedure as requiring 'that States designate a central authority with the relevant knowledge and expertise to assess applications, ensure procedural safeguards are available at all stages of the process and permit appeals or reviews of initial decisions.'

The UNHCR began work with the PNG Government in 2002 to develop refugee legislation, drafting a refugee law Act which was subsequently abandoned in favour of a simplified model developed by the Pacific Immigration Directors Conference as an annex to the amended *Migration Act 2005* (UNHCR 2007). At a 2010 roundtable on legal and practical challenges faced in addressing the protection of non-Melanesian asylum seekers and refugees in PNG, a working group was formed to review PNG domestic legislation and consider how the 1951 Convention can be implemented (UNHCR 2010). At the time of the 2013 Arrangement, while much of the groundwork for developing refugee legislation for PNG had been done, codification had yet to take place.

Under the 2013 Arrangement, PNG is responsible for carrying out refugee status determination to be managed and administered by PNG, under domestic law, with support from Australia. Several provisions of the PNG Migration Act and Regulation are inconsistent with PNG's commitments under the 1951 Convention. The UNHCR (2013a) advised amending the PNG Migration Act and Regulation governing the status determination of asylum seekers; specifically, the detailing of asylum processes and procedures in PNG. For example, asylum seekers should be informed about their legal rights and entitlements, as well as the procedures to be followed to assess their claims for refugee status including the legal basis, the decision-making authority, and the indicative time frames for these various steps, as well as an independent merit review process.

Legislation is one matter, expertise to determine status is another. In a letter dated 9 October 2012, the UN High Commissioner for Refugees, Mr Antonio Guterres, advised the Australian Minister for Immigration and Citizenship, Chris Bowen, that the immigration bureaucracy in PNG did not have sufficient capacity to undertake refugee status determination under the Refugee Convention (UNHCR 2012):

There are currently no immigration officers with the experience, skill or expertise to undertake Refugee Status Determination under the Refugee Convention. Since 2008, in the absence of any national capacity in this regard, UNHCR has been obliged to exercise its mandate to determine asylum seekers' need for protection and to find solutions through resettlement. We recognise that efforts are presently being made to identify and train a small cadre of officers in asylum and refugee issues. Over time, capacity will improve but, depending on the scale and complexity of the task of processing cases and protecting refugees under the bilateral arrangements, it will likely remain insufficient for an important period of time.

UNHCR officials visiting the processing centre on Manus Island in June 2013 observed assessment interviews by the PNG Immigration

and Citizenship Services Authority (PNGICSA). They reported that the PNG officials were 'rigidly directed by use of a detailed template and script, leaving little scope for capture of information relating to individual circumstances of the applicant in his country of origin, or protection problems experienced in transit countries' (UNHCR 2013a). During a follow-up visit to the processing centre in October 2013, UNHCR officials noted that due to the particular complexities of their countries of origin, asylum seekers were 'likely to present very complex cases requiring a high level of skill, experience and expertise by decision makers' and doubted that PNGICSA officers could undertake adequate determinations without ongoing mentoring and adequate quality oversight (UNHCR 2013d). UNHCR officials observed two or three PNG refugee status determination officials conducting status determination interviews mentored by one experienced Department of Immigration and Border Protection official for more than 1100 asylum seekers (UNHCR 2013d). (On 30 May 2014, there were 1230 asylum seekers detained in the processing centre on Manus Island (ACBPS 2014).)

In May 2014, Minister Pato announced that an undisclosed number of asylum seekers had received initial assessments of their refugee status, and that a 'review process' existed for those who had received negative determinations (Cochrane 2014c). The PNG Government had earlier stated its intention to establish an independent review panel comprised of an officer from the Department of Justice and an officer from the Attorney General's Department (UNHCR 2013d). Whether these members have experience, expertise and knowledge in refugee law has not been revealed. The background of review panel members aside, the review process should accord UNHCR's procedural standards in order to satisfy PNG and Australia's obligations under the 1951 Refugee Convention. For example, every rejected applicant should be informed of the right to appeal a negative decision and the relevant procedures, and the reasons for the rejection in order to allow them to decide whether to appeal or not, and to focus their submissions on issues that are relevant to the appeal application. And the

appeal should be decided by an immigration officer who has equivalent or greater experience with refugee status determination than the officer who decided the original claim (UNHCR n.d.).

### Resettlement in PNG

According to the terms of the 2013 Arrangement, those asylum seekers determined to be refugees will be offered resettlement in PNG. Disagreement in relation to the question of resettlement in PNG existed from the time of inception of the 2013 Arrangement until the first announcement of decisions about status determination. Initially, Prime Minister O'Neill was reported as saying there was 'no agreement that all genuine refugees will be settled in PNG' and 'We will take what we think we are able to assist, but we are also aware that we have our own issues with refugees from West Papua' (Australia Network News 2013). In February 2014, Minister Pato explained to the parliament that PNG officials had started processing refugee applications, but as PNG did not have a visa category for refugees, third country resettlement of refugees would be explored by an expert panel (Cochrane 2014a). In May 2014, at the time of announcing the first status determination decisions, Minister Pato announced that cabinet's expert panel may determine resettlement to be selective, based on a quota, or on the skills background of the person (Cochrane 2014c). Selective resettlement is not in accordance with the 2013 Arrangement, and the resettlement options for those asylum seekers determined to be refugees but not subsequently permitted to resettle in PNG had not been elaborated at the time of publication of this paper.

The following section shifts from who might be resettled, to how resettlement might be implemented. Under the 2013 Arrangement, all resettlement costs incurred are to be met by Australia, while AUD26 million additional support for Manus Province is to extend Australia's existing support under the Partnership for Development to Manus Province (approximately AUD14 million over 2012–15) (DFAT 2014). While the details of Australian Government support for resettlement have not been substantiated, the

intent is critically important given PNG's current 'low human development' ranking by the United Nations Development Programme in 2012 (156 out of 186 countries), measured in terms of life expectancy, access to knowledge via mean years of schooling, and standard of living measured by gross national income (UNDP 2013a). PNG is also ranked 156 out of 186 countries for gender-based inequality measured in terms of maternal mortality and adolescent fertility rates, parliamentary participation and secondary and higher education rates, and labour market participation (UNDP 2013b).

Resettlement is a process, and a state of 'being settled' is enabled both by material support, and a positive community reception. In 2010, the United Nations Office for the High Commissioner for Refugees commented on the reception in PNG of asylum seekers who are not Melanesian:

Crime in PNG is frequent and largely violent, usually committed by gangs and often directed at foreigners. Persons of concern, unlike most expatriates in PNG, cannot afford additional security. Non-Melanesian asylum-seekers and refugees in PNG are particularly vulnerable to xenophobia and racism amongst the local population.

Non-Melanesian refugees are perceived to be foreigners and are unlikely to integrate into local society or overcome the obstacles they face preventing their legal integration (e.g. access to the labour market). West Papuan refugees are seen as part of a wider Melanesian ethnic group because of strong kinship and are, therefore, better accepted by the local population. Non-Melanesian refugees are more likely to be marginalized and unable to access formal or informal protection systems, especially in the Highlands and in Port Moresby. (UNHCR 2010, p. 5)

Australia is aware of 'serious law and order problems' in PNG, and the factors that DEAT claims generate insecurity in PNG (poverty, unemployment, poor governance) are the same priorities directing Australian aid to PNG.

In considering resettlement of non-Melanesian refugees in PNG, UNHCR's unsubstantiated reference to xenophobia can be taken up further. Xenophobia has been described as an increasingly global phenomenon in the instance of South–South movement of migrants and refugees. Crush and Ramachandran's (2009) report to the United Nations Development Program on the relation between xenophobia, international migration and human development, describes a pattern where people of 'irregular' status are vulnerable to victimisation due to their lack of status in the received state, and discrimination can lead to marked inequalities in the long term between migrant and non-migrant populations. These authors advise that the prevalence and manifestation of xenophobia can be measured and understood through qualitative and quantitative research that allows for the development of evidence-based counter strategies. For example, attitudes of nationals towards asylum seekers and refugees elicited through qualitative and quantitative survey work; attitudes of political parties manifest in legislative debate and published manifestos; media depiction of migrants and refugees; and existing tolerance towards 'ethnic minorities' (2009:5).

At the time of the announcement of the initial status determination decisions, National Capital District Governor Powes Parkop paid for a full-page advertisement in local newspapers in the form of an open letter to PNG Immigration Minister Pato. In the letter, Parkop proposed broad opposition to settlement in PNG to be influenced by the perception that some asylum seekers might be extremist Muslims (Cochrane 2014b). While the Australian Department of Border Protection and Immigration does not disclose data on the breakdown of the religious background of asylum seekers, it can be projected from the nationalities listed that a significant number of asylum seekers subject to transfer to PNG are Muslim. Flower (2012a) has estimated that if the current rate of conversion growth continues, the Muslim population of PNG (5000 in 2012) will barely exceed 10,000 by 2020, but settlement of 'a larger active population of born Muslims'

through the 2013 Arrangement could facilitate further conversions (Flower in Chandler 2013).<sup>12</sup> Reflecting a global phenomenon, anti-Muslim rhetoric and violence in PNG has increased since 9/11. Acts of violence target indigenous Muslims, repeated calls to 'ban Islam' are made by churches and politicians alike, and formation of Islamic centres and schools are protested (Flower 2012b). How can intercommunity tensions be minimised in the process of resettling refugees in PNG, and especially refugees who are Muslim?

De Renzio's (2000) review of literature on intercommunity ties in PNG is useful here. He says that processes of trade, urbanisation and nation-building have lessened barriers to intercommunity ties that were generated by geographical cleavages which separated social systems, differences in customs, and fear of warring tribes and sorcery (Simet and Iamo 1992 in de Renzio). Affiliation based on shared place of origin, ethnicity and language remains an important factor influencing social behaviour, particularly in urban areas of PNG. This affiliation produces a support network (Monsell-Davis 1993 in de Renzio) which functions to supplement 'very meagre publicly-provided social security and social welfare mechanisms' (de Renzio 2000). However, intercommunity solidarity might be generated, and tensions reduced, through the work of 'bridging' organisations that are characterised by horizontal ties which cut across kinship lines and wider social networks — for example, sports clubs, church groups, women's and youth organisations, trade unions and other non-governmental organisations (ibid.). Where organisations characterised by horizontal ties are 'scaled up', they may 'overcome locally confined solidarities, gain bargaining power and access wider information networks' (Fox 1996 in de Renzio).

This section has outlined PNG's obligations under the terms of the 2013 Arrangement, and raised several capacity-related issues in relation to status determination and review processes, and social planning for resettlement. While the arrangement is subject to annual review by the Australia–PNG Ministerial Forum, its sustainability may be affected by several domestic issues, namely, legal challenges and security issues.



### Sustainability of the 2013 Arrangement

Opposition leader Belden Namah has claimed the transfer, processing and possible resettlement of asylum seekers in PNG to be unconstitutional (*Australian* 2013b). Following dismissal of an initial challenge in the Supreme Court, he filed a further challenge claiming that the arrangement did not accord with section 42 of the PNG Constitution, which states that all persons, whether citizens or not, have personal liberties in PNG and that the personal liberties of foreigners can only be restricted or restrained by the government if they enter the country illegally. It has been argued that asylum seekers transferred to PNG under the terms of the arrangement have not consented to enter PNG, and have not therefore broken any PNG laws allowing for their detention and the restriction of their personal liberties (e.g., ToKunai 2013). On 29 January 2014, the Supreme Court found that Belden Namah did have standing to challenge the constitutionality of the Manus processing centre.

The same bench of the Supreme Court also ruled that asylum seekers had a right under the PNG Constitution to apply to PNG courts for alleged human rights abuses. The Supreme Court said that asylum seekers could make a complaint to the National Court under section 42(5), or file a human rights enforcement application under section 57 to enforce their rights, including rights under section 42 of the PNG Constitution. The court reminded the public that the Human Rights Rules 2010 — part of National Court Rules — were made to simplify applications for alleged human rights abuses. The court commented: ‘As easy as the Human Rights Rules make it to commence section 57 proceedings, we take judicial notice of the fact that none have been commenced, either by the transferees presently being accommodated at the regional processing centre in Manus or by any other person or body on their behalf.’ The court further commented that the two constitutional offices of Public Solicitor and Ombudsman Commission should be taking the lead in the protection and enforcement of human rights in Papua New Guinea (*Islands Business* 2014). The Supreme Court judgement may provide the

impetus for other activity by human rights groups on behalf of those detained on Manus.

Local members of parliament and customary landowner groups on Manus Island have made various protests in relation to the processing centre. It was reported that the PNG Government placed a ban on international media coverage of the 2013 Arrangement in order to carry out local consultation without external influence (Rooney 2013). Since construction work on the new facility began, local members of parliament and customary landowner groups have protested the management of the site: construction contracts have been sourced outside Manus; and compensation is claimed for use of a dumpsite and gravel pits, anchorage and waste management of Australian ships, and sewage disposal. Significantly, islanders reported damage to the sago palm, the source of their staple food, with garbage generating black fly infestation. Landowners have already protested by blocking access to dumps and gravel pits in August, and threatening to shut down water supplies (*Australian* 2013a). Tensions are inevitable where interactions take place between customary landowning groups and the state or corporations on the issue of the use of natural resources. This was demonstrated at East Awin, and is currently being played out on Manus Island. Detaining asylum seekers and resettling refugees in PNG where most landholding is customary, and not commoditised, must be conceived from the point of view of customary landholders.

Security concerns pose another threat to the 2013 Arrangement. A demonstration that ‘flared’ in the processing centre on Manus on 17 February 2014 resulted in 77 asylum seekers treated for injuries, mainly head injuries, and the death of one asylum seeker (DIBP 2014). In late February, UK-listed security firm G4S were replaced by Transfield, which will subcontract security on Manus to Wilson Security, as it does on Nauru (Butler 2014). The Australian ‘Cornall review’ released in May 2014 found that tensions had become aggravated by antagonism between some asylum seekers, and some PNG nationals employed at the centre and their supporters in the local community, and that a ‘major task’ existed to

rebuild trust (Rushton 2014). PNG deputy police commissioner Simon Kauba issued a statement directly contradicting the findings of the Cornall review related to the involvement of PNG police (Wroe 2014).

Amnesty International (2013) have flagged two effects of insecurity within the processing centre on Manus. First, asylum seekers reported heightened anxiety about resettlement following experiences of confrontation, and second, concerns about security in the event of resettlement in PNG may compel some asylum seekers to return to their country of origin in spite of the risks faced there, effecting a 'constructive refoulement' and thereby violating the principle of non-refoulement.<sup>13</sup> From the commencement of Operation Sovereign Borders on 18 September 2013 until 30 May 2014, 264 asylum seekers from offshore processing centres, including Manus Island, were reported as 'voluntarily' returning to their country of origin (ACBPS 2014).

### Conclusion

Asylum policy in PNG and Australia underwent two major shifts in 2012–13 generated by memoranda of understanding between the governments of PNG and Australia. While the 2012 Regional Processing Act provided for the assessment of asylum seekers by PNG, it was the August 2013 Regional Resettlement Arrangement that provided for the resettlement in PNG of asylum seekers determined to be refugees. While PNG has a track record related to the assessment and resettlement of non-Melanesian asylum seekers, this paper has argued that the particularities of West Papuans, specifically, their kin relations with Papua New Guineans, and their recognition *prima facie* as refugees, did not necessitate any capacity building relevant for carrying out assessment, review, or resettlement under the terms of the 2013 Arrangement. In fact, PNG's track record, specifically, administration of the permissive resident permit system for West Papuans, reflected poorly on PNG's capacity to fulfil its obligations at the time of inception of the Arrangement.

Under the 2013 Arrangement, refugee status determination is to be managed and administered

by PNG, under domestic law, with support from Australia. The announcement in May 2014 by Minister Pato that an undisclosed number of asylum seekers had received initial assessments of their refugee status, and that a 'review process' existed for those who had received negative determinations, gives rise to two points. First, while status determinations have begun to be made, it cannot be assumed that the process reflects procedural fairness. UNHCR officials have advised that given their countries of origin, asylum seekers on Manus Island are likely to present complex cases that require expertise by decision makers. The capacity and integrity of the PNG Department of Immigration in the area of status determination and decision making must continue to be built through mentoring and adequate quality oversight by experienced Department of Immigration and Border Protection officers. In relation to the establishment of an independent review panel, adoption of a review process should accord UNHCR's procedural standards in order to satisfy PNG and Australia's obligations under the 1951 Refugee Convention.

At the time of announcing these initial determination decisions, Minister Pato indicated that cabinet's expert panel may determine resettlement to be selective, based on a quota, or on the skills background of the person. Selective resettlement does not accord with the 2013 Arrangement. But the other point to be made about resettlement is intercommunity tension, which has already become evident on Manus Island. The importance of research-based social planning that will assist resettlement of refugees in the long term by minimising intercommunity tension cannot be overstated.

The final point relates to a positive effect of the 2013 Arrangement on the resettlement prospects of West Papuan refugees. Public discourse surrounding the arrangement has positioned West Papuans holding permissive residence permits as 'fellow Melanesians', deserving citizenship. Should Minister Pato act upon his publicly stated intention to remove the citizenship application fee for West Papuan refugees, the ambiguity over the legal status of West Papuans in PNG could be

resolved. Enabling citizenship and the means for resettlement for West Papuan refugees is a positive, albeit incidental, effect of the 2013 Arrangement. It is also fair, given that the 2013 Arrangement compelled PNG to lift its reservations to the 1951 Refugee Convention for asylum seekers transferred under that Arrangement only, and not for West Papuans.

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### Endnotes

- 1 Diana Glazebrook undertook fieldwork among West Papuans at East Awin in 1998–99 towards a PhD in Anthropology (ANU). Her thesis was published as the monograph *Permissive Residents* by ANU E Press in 2008. In 2003–04, while a post-doctoral research fellow at the Centre for Cross-Cultural Research at the ANU, Diana did fieldwork in Dandenong, Melbourne, to look at the resettlement strategies of Hazara people released from detention on temporary protection visas, and in Iran, from where Hazara asylum seekers were making secondary movement to Australia. The transfer and possible resettlement in PNG of Hazara asylum seekers (and others) under the Regional Resettlement Arrangement has brought these two research themes together. Diana is executive editor of the *Asia Pacific Journal of Anthropology* at the ANU.
- 2 The 'Regional Processing and Other Measures' Act 2012 can be viewed at <<http://www.immi.gov.au/legislation/amendments/2012/120818/lc18082012-01.htm>>, viewed 31/3/2014.
- 3 In the High Court of Australia the plaintiff is challenging the validity of section 198AB ('Regional Processing Country') of the Migration Act, claiming that the Commonwealth was not constitutionally empowered to remove a person to a third place where the conditions are 'punitive' (Case of Plaintiff S156/2013 v Minister for Immigration and Border Protection and Anor). <[http://www.hcourt.gov.au/cases/case\\_s156-2013](http://www.hcourt.gov.au/cases/case_s156-2013)>, viewed 1/4/2014.
- 4 The island of New Guinea is shared by the country of Papua New Guinea to the east, and to the west the 'Indonesian Province' of Papua, previously known as Netherlands New Guinea (to 1962), West Irian (1962–73), and Irian Jaya (1973–2001). In 2001, the name Irian Jaya was changed to Papua and ratified through the Special Autonomy Bill for Papua (Basic Law number 21 of 2001) by the Indonesian Parliament in Jakarta. In this paper, people from the Indonesian Province of Papua living in PNG who have been categorised as refugees are referred to as 'West Papuan' as this is their preferred term, and one that distinguishes them as a nation rather than a provincial Indonesian ethnicity. When referring to territory, I use 'Indonesian Province' of Papua and 'Irian Jaya' depending on the period of reference. Both recognise the region's administration as a province of the Indonesian Republic since 1969. Where West Papuans refer to their homeland, I follow their own use of 'West Papua'.
- 5 Article 4 of the Basic Agreement between the Government of PNG and Government of the Republic of Indonesia on Border Arrangements, 29 October 1984.
- 6 The 1951 Convention Relating to the Status of Refugees was later amended by the 1967 Protocol, which removed the geographical and time limits of the 1951 Convention. These documents define refugee status and entitlements (legal protection and other assistance) (UNHCR 2011).
- 7 Reservations are permitted at the time of ratification or accession, but may not be made to those provisions considered fundamental, including Article 1 [definition of the term 'refugee'], Article 3 [non-discrimination], Article 4 [freedom of religion], Article 33 [non-refoulement] and Article 16(1) [access to the courts] (UNHCR 2011).
- 8 Nine of these settlements are inside PNG and two inside Papua but close to the border (ICJ-RCOA 2003:paragraph 623).
- 9 Recent data related to East Awin has been provided by anthropologist Ian Bryson's October 2013 research for a social impact assessment for a petroleum development in the area (personal communication 2013).
- 10 1 PGK = 0.390977 AUD as at 1/04/2014.
- 11 The 1951 Convention defines a refugee 'as a person who is outside his or her country of nationality or

habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him— or herself of the protection of that country, or to return there, for fear of persecution’ (Article 1A(2)) (UNHCR 2011), whereas an asylum seeker is a person whose claim to refugee status has not yet been definitively evaluated (UNHCR 2013b).

- 12 William Maley (personal communication October 2013) makes an important qualification here: that asylum seekers from Afghanistan who are ethnic Hazara may have become secularised as a result of the influence of Maoist ideology, and even those who identify as Shi’a Muslim do not have a history of proselytisation due to the risk this would entail as a result of their minority status of Shi’a in Afghanistan.
- 13 The principle of non-refoulement contained in Article 33 of the 1951 Convention is considered its cornerstone. According to this principle, ‘a refugee should not be returned to a country where he or she faces serious threats to his or her life or freedom’ (UNHCR 2011).

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