



Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report
- Universal Periodic Review:
PAPUA NEW GUINEA

I. Background and Current Conditions

1Papua New Guinea (PNG) acceded to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol on 17 July 1986 (henceforth referred to jointly as the 1951 Convention). When acceding to the 1951 Convention, the PNG Government made reservations against seven of the Articles under the 1951 Convention: Article 17(1) [wage-earning employment], Article 21 [housing], Article 22(1) [public education], Article 26 [freedom of movement], Article 31 [refugees unlawfully in the country of refuge], Article 32 [expulsion] and Article 34 [naturalization]. Discussions are underway to remove these reservations.

2International obligations must be incorporated into national laws in order to be fully effective. At this stage, The Migration Act 1978 (the Migration Act) and its 1989 amendments authorize the Minister of Foreign Affairs “to determine a non-citizen to be a refugee” under section 15A. The current legislation does not provide any further details as to how this determination is to be made, nor does it outline the rights and obligations of asylum-seekers or refugees in PNG once they are recognized as refugees (e.g. type of documentation to be provided to them, residency status, and access to labour market). In particular, it does not provide a regularization clause for those who illegally arrived in the country. Currently, national legislation does not provide an adequate framework to deal with asylum-seekers and refugees in PNG.

3In order to provide a durable solution for Irian Jaya refugees at the East Awin refugee camp, the Government adopted the “Limited Integration” policy in 1996. The policy provided two options for refugees: permissive residency or voluntary repatriation. Those who did not wish to return to their country of origin were encouraged to integrate and assimilate into PNG society through the granting of Permissive Residency, whilst those who did not wish to continue to reside in PNG were encouraged to repatriate voluntarily.

4 PNG houses some 9,700 West Papuan refugees, of which some 2,300 reside in an area allocated by the PNG Government, Iowara-East Awin, 5,000 in the border areas and another 2,400 in urban areas. In addition, there are 14 recognized non-Melanesian refugees and 6 asylum-seekers.

5 While the current Government has shown a willingness to engage with UNHCR in different areas – including withdrawal of reservations, revision of the current Migration, drafting of a refugee policy – the current framework falls short of international standards and does not provide adequate protection to West Papuan refugees without permissive residence permits or to non-Melanesian asylum-seekers and refugees.

II. Information on positive aspects/achievements

6 PNG currently has a positive reputation for dealing with refugees in a fair and humane way, in particular, since the adoption of the Limited Integration Policy in 1996. PNG grants most basic refugee rights, but only to those West Papuan refugees who relocated to Iowara-East Awin for at least six months.

7 The Government is in full recognition of the fact that current policy, legal and institutional arrangements fall short of the 1951 Convention standards and has started to address some of the issues. For example, the outcomes from the 22 April 2010 Roundtable on discussing *Legal and practical challenges faced in addressing the protection of non-Melanesian asylum-seekers and refugees* in PNG included:

- The formation of a government working group to consider the withdrawal of the reservations to the 1951 Convention (reactivation of a previous group);
- The establishment of another working group to review PNG domestic legislation and consider how the 1951 Convention can be implemented into PNG Law;
- The need for the development of a PNG Refugee Policy.

8 In partnership with UNHCR, the Department of Foreign Affairs convened on 27 July and 4 August 2010 stakeholder consultative meetings on the withdrawal of the seven reservations; there was agreement among participants to withdraw all seven reservations. The next step is to finalize the Draft Policy Submission to the National Executive Council on the Withdrawal of the Reservations.

9 The Immigration and Citizenship Service (ICS) has been set up as an independent, self-accounting statutory authority and no longer has any administrative or legislative accountability to the Department of Foreign Affairs and Trade. However, the organization still reports to the Minister for Foreign Affairs, Trade and Immigration.¹ This set-up should pave the way for the recruitment of dedicated Officers within ICS to deal with refugee issues and gradually take over refugee status determination.

¹ The main purpose of the reform was to make ICS to respond more efficiently to the needs of the business community (under the LNG project it is envisaged that some 30,000 foreign workers will be needed).

10Furthermore, the area Iowara-East Awin has been included in Government development plans by the District North Fly, thereby allowing the settlement to equally benefit from development activities. The PNG authorities have also allowed the establishment of quasi local-level administration structures in the Iowara-East Awin settlement, which allow self-management by refugees and local residents in cooperation with the Camp Administrator (a Government official).

11III. Challenges and constraints, and suggested recommendations

121. National system for refugee protection

13Issue 1: Differential treatment of refugees. The future legal framework should provide the same rights to all refugees irrespective of country of origin.

14The current policy and legal framework has resulted in the creation of three categories of refugees:

- West Papuan refugees with permissive residency permits;
- West Papuan refugees whose stay has never been regularized and do not hold permissive residency permits; and
- Non-Melanesian refugees and asylum-seekers, the majority of whom have no formal recognition by the PNG Government of their refugee status.

Currently, each of these categories of refugees is treated differently. This is inconsistent with PNG's obligations under the 1951 Convention, which states that refugees should not be discriminated against according to their country of origin.²

15Issue 2: The status of refugees. The Government is encouraged to provide legal recognition to all refugees (which would also include the broadening of the current Limited Integration Policy/revision of Migration Act).

16The current Limited Integration Policy gives legal status, rights and obligations to West Papuan refugees who relocated to Iowara-East Awin and obtained permissive residence permits (PRPs) only. Only some West Papuan refugees living in the urban areas have PRPs. West Papuan refugees living in the border areas were determined by the Government to be refugees *prima-facie*, but they have no legal recognition of their status.

17Refugee status determinations for non-Melanesian refugees have been processed by UNHCR PNG Country Office for the last two years. The Government does not formally endorse the decisions of UNHCR and therefore refugees are left in a legal limbo, not least because they have not been able to legalize their stay (only refugee claimants who arrived in 2003/2004 were processed by the PNG authorities). For many refugees, this situation has gone on for many years. As a result, these refugees do not have access to basic rights during their stay in PNG.

² Article 3 of the 1951 Convention.

18Issue 3: Access to identity and travel documentation. Asylum-seekers should be provided by the Government with an identity document and temporary stay permit clearly stating the rights and obligations of the holder. The Government should also be encouraged to develop a new visa for all persons recognized as refugees (regardless of country of origin). The visa should clearly articulate the rights and responsibilities of the person during his/her stay in PNG. Alternatively, the Limited Integration Policy could be expanded to allow West Papuan refugees (without relocation to East Awin) and non-Melanesian refugees to apply for PRPs. In addition, the Government should provide Convention Travel Documents.

19Under Articles 27 and 28 of the 1951 Convention, PNG is required to provide identity documents to any refugee who does not possess valid travel documentation or Convention Travel Documents.

20Once a non-Melanesian asylum-seeker has been found to be a refugee, there is no mechanism for the regularization of their stay in PNG or for the issuance of formal documentation by the Government. This makes refugees vulnerable to harassment when stopped by police and may make it difficult for refugees to access their right to protection.

21Currently, only West Papuan refugees who agreed to relocate to East Awin for at least six months are entitled to receive PRPs. Other West Papuan refugees who were determined to be refugees on the basis of their mass influx, but have not moved to East Awin cannot obtain PRPs. These refugees have no alternative method for obtaining documentation indicating their status.

22Those granted PRPs can also apply for a certificate of identity, in accordance with the Passport Act. This certificate is considered a basic form of identity and can be recognized as a travel document in some other countries. Non-Melanesian asylum-seekers and refugees cannot apply for this certificate. PNG does not provide refugees with Convention Travel Documents.

23Issue 4: Access to labour. The Government should withdraw its reservation to Article 17(1) of the 1951 Convention. It should also provide all West Papuan refugees with employment rights (those without PRPs should either be enabled to apply for PRPs or granted rights through another process). Finally, it should provide non-Melanesian refugees and asylum-seekers with full work rights (alternatively, if asylum-seekers have only limited or no work rights, the Government to provide adequate support structures for them).

24PNG made a reservation to Article 17(1) of the 1951 Convention restricting wage-earning employment for refugees. Through application of the Limited Integration Policy, only West Papuan refugees who have current PRPs have work rights. West Papuan refugees whose PRPs have expired or who have remained in the border areas are not authorized to work. Most of these refugees survive through subsistence farming. A small number who have found employment work without authorization, which has sometimes caused problems within the community.

25 Non-Melanesian asylum-seekers and refugees who are in PNG after attempting to enter Australia are provided with basic support by the International Organization for Migration under an agreement between the Australian Government and PNG. Others are currently provided basic assistance by UNHCR. It is unlikely that this assistance can continue in the long term.

Issue 5: Liberty and security of person. The Government of PNG should be encouraged to create an environment of acceptance for refugees and asylum-seekers. UNHCR is ready to work closely with the Government on an awareness and advocacy campaign to improve respect for refugees' rights and combat racism and xenophobia.

27 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.

28 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.

29 The security situation for Asians has significantly deteriorated since April 2009 when a number of protests were staged against people of Asian descent or of Asian appearance. This group is perceived to encroach upon PNG nationals' employment and business opportunities. There were violent protests in the capital Port Moresby and in a number of provincial towns resulting in looting, deaths in Port Moresby, road closures, the use of tear gas to disperse riots and the harassment and targeting of Asians by nationals.

30 Harassment is experienced by the majority of asylum-seekers and refugees, including non-Asian refugees. The involvement of the police and the very poor record they have with regard to human rights also represents a risk of escalation to urban warfare.

Issue 6: Freedom of movement. The Government should be recommended to withdraw its reservation to Article 31 of the 1951 Convention. Legislation should be amended to allow for the regularization of illegally arriving asylum-seekers and refugees. Further, mechanisms at land border points should be created to allow referral of persons in need of international protection to relevant authorities, instead of detention and prosecution of these persons for illegal entry.

32 PNG made a reservation to Article 26 of the 1951 Convention restricting refugees' freedom of movement. The Basic Rights outlined in the Constitution of PNG grant the right to freedom of movement to citizens and non-citizens irrespective of their country of origin (subject to any restrictions imposed by law on non-citizens). The Migration Act under section 15C states that, "the Minister may, by instrument in writing, direct a refugee or class of refugees or non-citizen

claiming to be a refugee to reside in a relocation centre.” Implementation of this Section may be inconsistent with Article 26 of the 1951 Convention.

33 West Papuan refugees who were granted PRPs are given freedom of movement within PNG except movement to and within border areas (including residence). The reasonable restriction was made by PNG for security reasons directly related to the reasons for the West Papuans refugees’ departure from West Papua. The restriction on freedom of movement is not applied to other non-citizens, but this is because there are no other non-citizens for whom the restriction would be relevant.

34 Non-Melanesian asylum-seekers and refugees who arrive without meeting the necessary entry requirements are considered “illegal” under the Migration Act and their movement can be restricted until the determination of their refugee status. In practice, even those awaiting determination of their status in Port Moresby have been moving around freely. However, cases of arrest and detention have been reported at land border points where persons in need of international protection have been prosecuted instead of being referred to the competent authorities or to UNHCR.

35 Issue 7: Access to education. The Government should be encouraged to withdraw its reservation to Article 22(1) of the 1951 Convention and to gradually achieve free universal education (primary education).

37 PNG made a reservation to Article 22(1) of the 1951 Convention restricting refugees’ access to primary education. Current policy and legislation stipulates the provision of free education in elementary and primary schools to all children, without discrimination.

38 In practice, West Papuan refugee pupils generally have access to educational facilities, irrespective of whether they hold PRPs. However, factors such as the non-availability of community or primary schooling in the vicinity or fees (project fees in primary schools and school fees for secondary and tertiary schooling) limit access. These issues affect citizens equally.

39 UNHCR would like to note that the Government allowed the establishment of, initially permitted and later fully registered schools at the East Awin settlement. PNG textbooks and curriculum are used, with students sitting for Grade 6 and 8 national examinations. Students with good academic results are selected from Grades 9 and 10 and continue to secondary schools. Some have even continued up to tertiary education with support from UNHCR through the grant of scholarships. However, this does not reflect the general trend.

40 Issue 8: Access to land/housing. The Government is encouraged to withdraw its reservation to Article 21 of the 1951 Convention and to undertake efforts to implement housing programmes. Needs of refugees should be reflected in newly developed housing policies. Access to government housing schemes by foreigners should be extended to refugees.

41 PNG made a reservation to Article 21 of the 1951 Convention restricting access of refugees to housing. PNG faces a serious housing shortage resulting from a severe lack of land availability and housing programmes, particularly in the urban areas. Refugees are not able to purchase land; only citizens can acquire a freehold title to land.

42 For West Papuan refugees residing in East Awin, PNG purchased land from traditional landowners and refugees were required to build their own houses using bush materials, as in other PNG villages. The condition of housing in the border areas differs, depending on the extent to which local residents allow refugees to use bush materials for housing. Some West Papuan refugees living in urban areas have only make-shift accommodation.

43 Non-Melanesian asylum-seekers and refugees do not have access to any government housing. They are currently being supported by either IOM or UNHCR (see above).

44 Issue 9: Statelessness and access to naturalization. The Government should be asked to withdraw its reservation to Article 34 of the 1951 Convention. In addition, the Government is encouraged: to provide the opportunity for one-off naturalization with reduced or no fees for those West Papuan refugees who have been in the country for at least 8 years; to automatically give PNG citizenship to children born in PNG to a refugee parent if they would otherwise be stateless; to reduce or waive the citizenship application fee for all refugees who have been in the country for more than 5 years.

45 PNG made a reservation to Article 34 of the 1951 Convention restricting access of refugees to naturalization. Under the current policy, only West Papuan refugees with PRPs are entitled to apply for PNG citizenship after eight years of legal residency and fulfillment of other criteria stipulated in section 67(2) of the Constitution. After imposing a fee of K 10,000 (nearly USD 4,000) for the grant of PNG citizenship, there has only been one West Papuan refugee who has been able to afford this amount and gain citizenship.

46 In addition, under the Indonesian Citizenship Law, West Papuan refugees have forfeited their Indonesian citizenship if they reside outside the country for five years and have not expressed a wish to remain a citizen before that time.³ The loss of Indonesian citizenship also affects the person's children. Consequently, children born to refugees in PNG are effectively stateless. Given this context, affordable access to PNG citizenship which also takes into account the special situation of refugees becomes paramount.

47 Issue 10: Accession to the Statelessness Conventions. The Government of Papua New Guinea should consider accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

48 Stateless persons who satisfy the refugee definition contained in article 1A(2) of the 1951 Refugee Convention are afforded the necessary international protection associated with that status. However, the international refugee protection regime does not specifically address the entitlement to rights of non-refugee stateless persons in need of international protection.

³ Article 17 (k) Indonesian Law 62/1958.

49 Accession to the 1954 Convention relating to the Status of Stateless Persons would establish a framework to protect such individuals, even though they are likely to be very few in number, and would work to avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met.

50 The 1961 Convention on the Reduction of Statelessness establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in human rights treaties. An increase in the number of States parties is essential to strengthening international efforts to prevent and reduce statelessness.

51 Overall recommendations:

- Withdrawal of all reservations made to the 1951 Convention. The majority of the reservations made by PNG have to be understood in the historical context where PNG has been a young nation and felt unable to provide services to refugees that it was unable to provide to its own citizens. In addition, PNG has ratified other human rights treaties which contain similar obligations without including reservations.
- Adoption of a Refugee Policy. The necessary legal framework has not been developed and a number of protection and assistance gaps exist. A refugee policy would provide the necessary overarching direction for the Government.
- Revision of the current Migration Act to adequately provide a legal framework for all refugees and asylum-seekers. Being mindful that PNG is not faced with a large number of new asylum-seekers, legislation, structures and processes should not be over-complicated, but should provide a solid basis for the processing of claims and protection and assistance of asylum-seekers. Provisions should reflect: conditions for granting refugee status (refugee definition, inclusion and exclusion, cessation); procedures and competent bodies; rights and obligations of an asylum-seekers and refugees; permits and documents; mass influx; and cooperation with UNHCR.
- Establishment of fair and efficient asylum-procedures along with administrative instructions for officials handling asylum claims.
- Establishment of reception arrangements for newly arriving asylum-seekers and clear guidance on the type of protection and assistance to be provided. This should go hand in hand with clear identification of which authorities are responsible for meeting basic needs (e.g. housing, food and access to medical services).
- UNHCR recommends that the Government of Papua New Guinea accedes to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.
- Lastly, the Government of PNG should commit the necessary legal, political, financial and staffing resources to ensure that Papua New Guinea is able to discharge its responsibilities under the 1951 Convention and, in particular, to ensure that all claims for refugee protection are dealt with in an expeditious and fair manner, with appropriate support as required from UNHCR.

IV. Capacity Building and Technical Assistance

52UNHCR is ready to continue to provide technical assistance and capacity-building for designated government staff, as well as assist in building the required institutional capacity to support:

- a) The process of withdrawal of reservations to the 1951 Convention;
- b) The drafting and adoption of a Refugee Policy for PNG;
- c) The revision of the Migration Act;
- d) The establishment of refugee status determination procedures and training of staff;
- e) The establishment of reception procedures.

In addition, UNHCR will continue to support authorities in strengthening the capacities of officials dealing with human crisis and disasters.

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