



Human rights in Papua New Guinea: is this where we should be settling refugees?

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Australia has had a long, and at times tumultuous, relationship with our nearest neighbour, Papua New Guinea. This relationship took a twist in late 2012, with the re-opening of the off-shore processing centre on Manus Island, and again in February 2014, when Iranian asylum seeker Reza Berati was murdered by locals during a violent disturbance at the centre. The latest test of the strength and endurance of the relationship between PNG and Australia came in April 2016, when the PNG Supreme Court ruled that the detention of asylum seekers on Manus Island breached the right to personal liberty in the PNG constitution. This article provides much-needed insight into the human rights situation in PNG, and makes recommendations regarding the prospect of resettling refugees in that country.

Keywords: Papua New Guinea, PNG, human rights, refugees, asylum seekers, Manus Island

Introduction

The Regional Resettlement Arrangement (RRA), concluded between Papua New Guinea (PNG) and Australia in 2013, poses a number of human rights concerns.

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While much attention has recently been devoted to the human rights issues associated with the Manus Island Regional Processing Centre (Penovic and Dastyari 2016; Creek 2014; Fleay and Briskman 2013), there has been little research into the problems associated with the resettlement of refugees in PNG once their claims for asylum have been processed (Warbrooke 2014). This article considers these resettlement plans within the context of the current human rights situation in PNG. As the first refugees to be resettled in PNG are being prepared for release into the community, it offers a timely contribution to the realities of Australia's 'PNG Solution' (the colloquial term for Australia's plan to resettle refugees in PNG).

The article begins by giving some background information on the development of the RRA. This is followed by an examination of the human rights situation in PNG and how it may affect the resettlement of refugees pursuant to the RRA. It considers the PNG Supreme Court decision and analyses PNG's commitment to international human rights, including the human rights treaties it has ratified, its reporting rate under these treaties, and its voting record on human rights issues at the United Nations. It then takes a look at the human rights situation in PNG on the ground, including the status of civil and political rights, social and economic rights, and rights relating to refugees and asylum seekers. This is followed by an analysis of some of the continuing obstacles that stand in the way of human rights progress. The final section addresses the question of whether Australia should be resettling refugees in PNG. It answers strongly in the negative, pointing to PNG's incapacity to take on these refugees and the serious human rights risks associated with resettlement.

Background to the Regional Resettlement Arrangement

In 2001, Australia began its Pacific Solution asylum seeker policy, in which irregular maritime arrivals (asylum seekers arriving by boat without a visa) were taken to Manus Island and Nauru for processing (Phillips and Millbank 2003). As part of this policy, Australia opened a Regional Processing Centre (RPC) in the PNG province of Manus to be used for immigration detention and offshore processing of asylum claims. However, the RPC ceased to be used in 2004, and officially closed in 2008 (Billings 2013, 279–80).

In late 2012, Australia reopened the Manus Island RPC. Since then, the RPC has been the subject of extensive attention due to allegations of serious human rights abuses. The monitoring visit to Manus Island by the UN High Commissioner for Refugees (UNHCR), in June 2013, found living conditions in the RPC to be 'harsh' and 'below international standards' (UNHCR 2013, 1). One month later, a former staff member came forward with claims that sexual assault and abuse among asylum seekers were not only commonplace in the RPC, but also occurred with full knowledge of staff

(ABC 2013b). She also claimed that self-harm and suicide attempts occurred ‘almost daily’ (Laughland 2013). In 2014, these allegations were verified by leaked documents and comments from other former employees (Roddan et al 2014).

On 17 February 2014, riots broke out in the Manus Island RPC, leading to the death of Iranian asylum seeker Reza Berati and the injury of approximately 60 other detainees (Cornall 2014, 62). Since then, further unrest, hunger strikes and clashes between asylum seekers and security guards have been reported (Cochrane 2015b). In March 2015, the Special Rapporteur on Torture found Australia to be in violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in relation to the conditions and violence in the Manus Island RPC (Mendez 2015). Neither the Australian nor the PNG government has accepted responsibility for these human rights violations (cf Penovic and Dastyari 2016).

Australia and PNG signed the RRA in July 2013. The RRA provides that irregular maritime arrivals to Australia will be settled in PNG if they are found to be refugees (PNG Government and Australian Government 2013a). The RRA is supported by two memorandums of understanding (MOUs) between Australia and PNG. The first MOU was signed in August 2012, and did not provide for the resettlement of refugees in PNG. The second MOU, signed in July 2013, confirmed the PNG government’s acceptance to resettle refugees in PNG. Although the permanency of these arrangements was called into question in late 2014 (Medhora 2014), plans appear to be going ahead. PNG has approved a number of asylum claims (Cochrane 2014), and several refugees have been moved to the Lorengau ‘refugee transit centre’ on Manus Island (Dutton 2015). However, to date, no refugees have been resettled within the community.

The planned resettlement of refugees in PNG has encountered strong criticism due to concerns that PNG does not have the capacity to take on refugees, being itself a country that produces refugees and asylum seekers (174 and 86 respectively in 2013 (Porteous 2013)). As the first refugees were being prepared to be resettled in PNG in January 2015, hundreds of asylum seekers staged a two-week protest, with many going on hunger strikes and some even sewing their lips together (Cochrane 2015a). This protest, however, did not impact resettlement plans, with the first refugees moved out of detention to the Lorengau transit centre midway through the hunger strike (Doherty 2015a; 2015b).

The Decision of the PNG Supreme Court

The decision of the PNG Supreme Court of Justice in *Belden Norman Namah, MP Leader of the Opposition v Hon Rimbink Pato, Minister for Foreign Affairs and Immigration*

(26 April 2016), that the detention of asylum seekers in the Manus Island detention centre was unconstitutional, sent shockwaves through the asylum-seeker community and the governments of both Australia and PNG. The PNG Constitution provides that 'no person shall be deprived of his personal liberty' unless it is necessary to achieve one of nine exceptional and enumerated purposes. The Supreme Court held that none of the nine exceptions applied. A 10th exception, which had been added by the government in an attempt to make the detention of asylum seekers and refugees on Manus Island lawful, was held to be invalid. Accordingly, the detention of the men transferred from Australia to Manus Island detention centre has no valid basis in PNG law (Gleeson 2016).

The effect of the decision is that the detention centre on Manus Island must close, and PNG's Deputy Permanent Representative to the United Nations, Fred Sarufa, said as much to the UN Human Rights Council during its Universal Periodic Review of PNG in May 2016 (ABC News, 2016).

It is beyond the scope of this article to provide a detailed analysis of the Supreme Court's decision. But what is clear is that the judgment increases the likelihood of refugees being resettled in PNG. Manus currently houses 900 men, of whom approximately 450 are asylum seekers awaiting processing and 450 are recognised refugees. According to Maria O'Sullivan:

Those who have been recognised as refugees could be taken out of detention and moved to an open facility or other community arrangement in mainland PNG. This would comply with the Supreme Court ruling. But, it would face practical difficulties and concerns. [O'Sullivan 2016.]

These 'practical difficulties and concerns' are addressed in this article.

Human rights in PNG and the Regional Settlement Arrangement

Facts do not cease to exist because they are ignored.

– *Aldous Huxley*

This section provides an overview of human rights in PNG. It explores PNG's commitment to human rights in international law and politics, and exposes some of the key human rights concerns facing PNG, from the lack of housing and employment in PNG to police brutality and the persecution of particular groups. It also assesses how these human rights problems may affect the resettlement of refugees pursuant to the RRA.

Treaties PNG has ratified	Treaties PNG has <i>not</i> ratified
International Convention on the Elimination of All Forms of Racial Discrimination (CERD) [January 1982]	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)
Convention on the Rights of the Child (CRC) [2 March 1993]	International Convention for the Protection of All Persons from Enforced Disappearance (CED)
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) [January 1995]	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
International Covenant on Economic, Social and Cultural Rights (ICESCR) [July 2008]	Optional Protocol to the Convention against Torture (CAT-OP)
International Covenant on Civil and Political Rights (ICCPR) [July 2008]	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
Convention on the Rights of Persons with Disabilities (CRPD) [September 2013]	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
	First Optional Protocol to the ICCPR
	Second Optional Protocol to the ICCPR, Aiming at the Abolition of the Death Penalty
	Optional Protocol to ICESCR
	Optional Protocol to CEDAW
	Optional Protocol to CRPD
	Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure

Table 1: Ratification status of international treaties by PNG

PNG's international commitment to human rights

Treaty ratification

PNG has ratified six of the nine core human rights treaties. Indeed, it is third in the Pacific in terms of human rights treaty ratification, after Australia and New Zealand (OHCHR Regional Office for the Pacific and the Pacific Islands Forum Secretariat 2009). Table 1 sets out the treaties that PNG has ratified, as well as those to which it has yet to commit.

In contrast to its relatively good position on treaty ratification, PNG's reporting to the relevant human rights treaty bodies on its compliance with the human rights treaties it has ratified has been poor (Amnesty International 2011). For example, its first report to the Committee on the Elimination of Discrimination Against Women was 13 years late (CEDAW 2010), and the Committee on the Elimination of Racial Discrimination

has not received a report from PNG since 1983 (OHCHR 2015). This significantly curtails the ability of the UN treaty bodies to assess PNG's compliance with its human rights obligations and is problematic in terms of the RRA, as it could make it difficult for the international community to monitor the human rights situation of refugees being resettled in PNG.

A number of UN human rights bodies and experts have expressed concern at the fact that PNG is not yet a party to a number of important human rights treaties and their optional protocols. In particular, during the 2011 Universal Periodic Review, the Human Rights Council (HRC) urged PNG to urgently ratify the CAT and its Optional Protocol (HRC 2011b). The Special Rapporteur on Torture made a similar recommendation following his mission to PNG in 2010 (Laughland 2013).

PNG's voting in the UN in relation to human rights issues

In the UN General Assembly, PNG has often taken a passive stance towards human rights, and frequently abstains from human rights-related resolutions. For example, it was the *only* state to abstain on a 2014 General Assembly resolution concerning the impact of globalisation on the full enjoyment of human rights (UN 2014a). It also abstained from a range of resolutions on the human rights situation in particular states, including Iran and Israel/Palestine (UN General Assembly 2015b; UN 2014b).

PNG has even abstained from General Assembly resolutions relevant to its own internal human rights situation. For example, although male same-sex relations are illegal in PNG, it has abstained from resolutions that are both in favour of and against the recognition of sexual orientation and gender identity (SOGI) rights. In late 2008, PNG did not support the Declaration on Sexual Orientation and Gender Identity, which condemns discrimination and violence based on SOGI. PNG also refused to support the opposing statement, which objected to the application of international human rights law to SOGI (UN 2008). In November 2010, PNG also abstained from a General Assembly resolution, which successfully removed the reference to sexual orientation from a resolution on extrajudicial, summary or arbitrary executions (UN 2010b).

Recently, PNG has adopted a slightly more active role in relation to some human rights resolutions. For instance, in December 2010, PNG reversed its previous position on the resolution on extrajudicial, summary or arbitrary executions to vote in favour of restoring the reference to sexual orientation (UN 2010c). However, its more active role has not always been in favour of human rights progress. In 2014, for example, PNG modified its position on the death penalty to vote against a resolution condemning it (UN General Assembly 2015a). Furthermore, it has largely maintained

a passive stance in relation to resolutions that are less relevant to its own human rights situation.

PNG's passive voting record on human rights resolutions in the UN is worrying in terms of resettling refugees there. At worst, it could suggest a lack of commitment to international human rights generally. At best, it could indicate an unwillingness to mix human rights issues with its international relations. This is problematic with respect to the RRA, which is highly wrapped up with PNG's relationship with Australia. If PNG is reluctant to condemn the human rights situations in countries with which it does not have a particularly close relationship, then it is unlikely to call attention to human rights concerns that pertain to its agreement with Australia, its closest neighbour and largest aid donor. Australia and PNG's complex and sometimes problematic relationship is discussed further below.

Social and economic rights in PNG

PNG's estimated gross domestic product (GDP) (at purchasing power parity) was US\$21.248 billion in 2014, which amounts to US\$2472 per capita (IMF 2014). This is quite low in terms of international standards; PNG's GDP ranks 146th in the world (see CIA 2015). However, since 2008, PNG has experienced a robust period of economic growth, especially in comparison to its Pacific neighbours. According to the World Bank, it has outpaced its Pacific neighbours since 2005, due to expanding activity in non-tradable sectors (Trading Economics 2015). In early 2015, there were predictions that PNG would experience the largest economic growth in the region (ADB 2015a, xx), if not the world (Economist 2015), that year, due to the commencement of the large-scale liquefied natural gas project in 2014. Yet, falling commodity prices, drought and the temporary suspension of the Ok Tedi mine in 2015 caused a sharp reduction in PNG's GDP growth rate (ADB 2015b; Flanagan 2016). These factors have also led to a reduction in government revenue, resulting in substantial budgetary cuts and an increase in government debt (IMF 2015)

PNG continues to confront serious development and poverty-related issues. It has not met the seven Millennium Development Goals (UNDP 2015), and an estimated 40 per cent of PNG's population (over 2 million people) still live in poverty and/or face hardship (UNDP 2012). The Human Development Index, which grades countries according to life expectancy, education and per capita income, ranked PNG 157th out of 187 countries in 2014 (UNDP 2014). This places it in the category of 'low human development'.

The high levels of poverty and health-related issues in PNG have led to concerns that it may not have the resources to settle refugees pursuant to the RRA with Australia

(Saul 2013). Furthermore, as the vast majority of PNG's population (approximately 80 to 85 per cent) still reside in traditional rural communities and live off subsistence farming, the job market in PNG is severely limited (Connell 2005). This may make it very difficult for refugees to find employment. PNG also does not have a formal welfare system to support people in the event that they cannot find work (Hayward-Jones 2013).

Public health in PNG is also an area of concern. The average life expectancy in PNG is 60 for men and 65 for women (WHO 2015). Infant mortality rates remain relatively high. PNG's healthcare system has been described as 'dysfunctional', due to the inadequate delivery of basic health services, especially in rural areas, and the lack of proper sanitation and water supply (Pacific Islands Forum Secretariat 2013, 21). One of the greatest health concerns for PNG over the past 25 years has been the HIV/AIDS epidemic. PNG has the highest rate of HIV in the Pacific region, with around 32,000 persons living with HIV in 2013. The prevalence rate of adults between 15 and 49 years old is 0.7 per cent (UNAIDS 2015b). This compares to a prevalence rate of 0.2 per cent for the same age bracket in Australia (UNAIDS 2015a). The HIV/AIDS situation in PNG has, however, been improving due to foreign aid and the formation of the National AIDS Council (Coghlan 2011). The annual number of new HIV infections detected throughout PNG has decreased since 2009 (Coghlan 2011, 48), and the number of HIV-related deaths fell by 23 per cent between 2005 and 2013 (Aids Data Hub 2015).

Another serious issue is housing. Ninety-seven per cent of land in PNG is customarily owned (Medhora 2014). This land cannot be bought and sold (Hayward-Jones 2013, 2). The limited amount of land owned by the government is overcrowded (Medhora 2014). In the urban centres, there is little rental accommodation (Hayward-Jones 2013, 2) and rental prices are extremely high (UNHCR 2007, 6). This means that refugees may struggle to find somewhere to live. As such, the social and economic landscape in PNG suggests that it is an inappropriate place to settle refugees.

Civil and political rights in PNG

The preamble to the PNG Constitution provides that 'all persons in our country are entitled to the fundamental rights and freedoms of the individual'. It then details a set of human rights provisions that include almost all the rights and freedoms in the Universal Declaration of Human Rights.¹ Yet, despite these constitutional

1 These include, inter alia, the right to life, freedom from inhuman treatment, freedom of expression, and freedom of conscience, thought and religion, the right to privacy, and freedom from discrimination on the grounds of 'race, tribe, place of origin, political opinion, colour, creed, religion or sex'.

protections, PNG is currently ravaged by severe human rights violations. This section of the article limits its examination to the human rights concerns that are most likely to affect refugees resettled in PNG pursuant to the RRA. These include police brutality and excessive punishment, such as the death penalty, as well as the human rights abuses facing particular minority groups, such as women, children, Muslims, and lesbian, gay, bisexual, transgender and intersex persons (LGBTI).

Police brutality, prison conditions and excessive sanctions

Excessive uses of force and abuses of power by police in PNG were observed by both the UN Special Rapporteur on Torture in 2010 (Nowak 2011, 39–45) and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in 2014 (Heyns 2015, 22–31). The Special Rapporteur on Torture reported on severe beatings and the use of torture against prisoners who attempt to escape, including the practice of shooting prisoners' legs and feet and cutting tendons with bush knives and axes (Nowak 2011, 59, 42). The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions described reports of the use of arbitrary lethal force by police (Heyns 2015, 25). The Special Rapporteur noted in his report that:

It is widely perceived that police in Papua New Guinea are prone to using high levels of unwarranted force. Several reasons were put forward, including poor working and living conditions of the police; understaffing; the perception by police that they must assert themselves in a violent environment; cases of misuse of the wantok system where police officers may use their position to protect their relatives; corruption; low remuneration; lack of training on human rights standards regarding the use of force; and lack of accountability. [Heyns 2015, 25.]

It was also observed that excessive force had been reported when carrying out raids of illegal informal settlements (Heyns 2015, 6). Resettled refugees who are unable to find proper housing may be especially vulnerable to such police violence. Indeed, there have been reports that many of the current refugees in PNG, who came from West Papua in the mid-1980s, are at risk of evictions and police violence due to poverty-related concerns (Cochrane 2015c).

In addition, the conditions of detention facilities in PNG are poor. These already affect refugees who are detained in the RPC on Manus Island. As mentioned above, the UNHCR has expressed concern about the general living conditions in the RPC, which it described as cramped, crowded, hot and unhygienic (UNHCR 2013, 45). Similar concerns have been voiced in relation to correctional institutions in PNG. In 2011, the HRC noted that prisons were frequently overcrowded and filthy, and lacked access to water (HRC 2011b, 52–53). These conditions could affect resettled refugees, who

may come into contact with the criminal justice system — the likelihood of which is increased by the lack of employment and housing opportunities available to them.

As noted above, PNG continues to have the death penalty. Although PNG is a de facto abolitionist state, having not used the death penalty since 1954 (Heyns 2015, 89), in 2013 it expanded the scope of crimes eligible for the death penalty² and indicated its intention to resume executions (Human Rights Watch 2015a, 2). There are currently 13 individuals on death row (RNZ 2015). While these persons were expected to be executed in 2015, a lack of infrastructure has resulted in the inability to carry out the executions (ABC 2015).

In 2014, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions noted that as the death penalty is only to be imposed for the most serious crimes, PNG's provision for the death penalty for offences such as piracy, treason, aggravated robbery and aggravated rape likely constitutes a breach of international human rights law. He also expressed concern that the legal framework currently lacks provisions that would prohibit the imposition of the death penalty on juvenile offenders, pregnant women, new mothers and persons with psycho-social disabilities (Heyns 2015, 93):

... the death penalty may be imposed only in the context of the stringent functioning of the law and order system, in order to ensure the highest respect of due process and fair trial guarantees for the defendants, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights. During his visit, the Special Rapporteur was informed of shortcomings in that area, such as extraction of confessions under duress, ill-treatment of persons in custody, lengthy proceedings, or high levels of corruption among various authorities. [Heyns 2015, 91; footnote omitted.]

Refugees may be at a particular risk of being subject to inadequate processes and excessive sanctions due to the socio-economic difficulties that they may encounter.

Vulnerable groups

There are a number of groups in PNG that are particularly vulnerable to human rights abuses. These include women, children, Muslims and LGBTI persons. The societal intolerance of Muslims and LGBTI persons in PNG is particularly problematic, given

2 The *Criminal Code (Amendment) Act 2013* adds two additional criminal offences to which the death penalty may apply: these are 'wilful murder of a person on account of accusation of sorcery' (new s 299A) and 'aggravated rape' (new s 347C). It has also amended the sentence for 'aggravated robbery' from life imprisonment to the death penalty (amendment of s 386).

that some of the refugees to be resettled there are likely to be Muslim and LGBTI. According to the UNHCR, Muslim asylum seekers comprise the majority religious group at the RPC on Manus Island (UNHCR 2013, 20 [96]). Furthermore, there have been reports that there are a number of gay asylum seekers who are currently being detained at the RPC (Laughland 2014). There are currently no women or children being detained in the Manus Island RPC (Metcalf 2014). However, as the 2013 MOU makes no distinction between refugees according to age or gender, it is possible that, in the future, refugees who are female and/or underage will also be resettled in PNG.

LGBTI persons

In PNG, consensual same-sex relations between men are illegal. Anal sex between men can result in up to 14 years' imprisonment (*Criminal Code Act 1974*, s 210), while acts of 'indecent' between men can result in three years' imprisonment (*Criminal Code Act 1974*, s 212). Although these crimes are infrequently prosecuted, the US Department of State found that they contribute to the vulnerability of LGBTI persons through 'societal stigmatisation' (US Department of State 2013, sections 6, 13; 2014, sections 6, 18). This reflects Ryan Goodman's contention that, whether or not they are enforced, laws that criminalise sexualities can have far-reaching effects on social attitudes (Goodman 2001, 643; for discussion of Goodman, see Stewart 2014, 6–7).

In her research, Stewart finds that gay men in PNG 'must endure discrimination and abuse everywhere ... [they are] bullied and even raped by police, open to blackmail, thrown out of home, sacked from work, [and] forced by custom into marriage' (Stewart 2014, 2). These laws are also seen to contribute to PNG's HIV/AIDS epidemic by driving men who have sexual relations with men underground, impeding their access to services aimed at prevention, testing, care and treatment (Kirby 2011, 4–5).

Although PNG was called upon to decriminalise homosexuality in the 2011 Universal Periodic Review (HRC 2011b, 79.52–53), it rejected these recommendations, citing ongoing national consultation on the issue as its reason for being unable to give a definitive response to these concerns (HRC 2011c, 79.52–53). Between 2007 and 2010, the then Minister for Community Development, Dame Carol Kidu, attempted to make submissions to Cabinet in relation to the decriminalisation of sex work and sodomy (Stewart 2014, 293). However, the pre-screening committees rejected all the submissions. In 2010, she managed to persuade the then Attorney-General, Ano Pala, to challenge the constitutional validity of the laws before the Supreme Court. Yet, only a few weeks later, Pala was replaced by a new Attorney-General 'known for his conservative religious views on social issues' (Stewart 2014, 293). Since then, little

progress has been made to advance law reform efforts, and it is unlikely that the laws will change in the near future.

Although same-sex relations between women are not illegal, there is widespread disapproval of lesbianism in PNG society (Kaleidoscope Trust 2013, 63) and traditional attitudes that advocate the use of brutal sanctions against lesbians persist (Fitzpatrick 2015). In the 2011 Universal Periodic Review, the United Kingdom called upon PNG to include 'sexual orientation' as a prohibited ground for discrimination in its Constitution (HRC 2011b, 79.54). This recommendation was also rejected by PNG on the same grounds noted above (HRC 2011c, 79.54).

Transgender persons in PNG, commonly known by the Pidgin term *Palopa*, are also subject to severe discrimination and violence. A research project that interviewed transgender individuals in PNG in 2011 found that 57 per cent of the interviewees had reported physical violence, while 47 per cent reported sexual violence (Wong and Noriega 2013, 20). The results were even higher for transgender people engaged in sex work; 64 per cent of such respondents reported having been physically abused in the previous six months, and 57 per cent reported having been raped in the same time period (Wong and Noriega 2013, 18). Many claimed that this abuse was perpetrated by police (Wong and Noriega 2013, 18). Although intersex children, known as *kwolu-aatmwol* ('female thing transforming into male thing') in the Eastern Highlands, are generally accepted in PNG, in some instances they are killed at birth (Nataf 2010, 36, 40).

In light of the criminalisation of homosexuality and the existence of severe discrimination against LGBTI persons in PNG, particular concern has been expressed in relation to settling LGBTI refugees as part of the RRA (Lyengar 2014; Potts 2013). As mentioned above, it has been reported that there are several gay asylum seekers currently being held in the Manus Island RPC, who have fled their country of origin due to persecution on the basis of their sexual orientation (Laughland 2014). According to Amnesty International, these men were told that if they were caught committing a homosexual act at the RPC, the staff would report the incident to the PNG police (Amnesty International 2013). Not surprisingly, these men have expressed grave fear of persecution if they are resettled in PNG (Laughland 2014; Brown 2015).

Muslims

Since 9/11, there has been an increase in anti-Muslim rhetoric in PNG, including calls to ban Islam, as well as a number of violent attacks by Christians on Muslims (Flower 2012b, 201). In 2002, for example, there was a firebomb attack on a mosque (ABC 2002, cited in Flower 2012b). Although this persecution has primarily been directed

at the growing population of indigenous converts to Islam (Flower 2012b; cf Flower 2012a), anti-Muslim sentiment has played a prominent role in the local opposition to the settlement of refugees in PNG pursuant to the RRA with Australia (Glazebrook 2014, 8). As such, there is some concern that there will be tensions between Muslim refugees settled under the RRA and the local Christian population (Liam Cochrane, cited in ABC 2013a). At the very least, the UNHCR notes that there is 'likely to be little community understanding of Islam and few places of worship' (UNHCR 2013, 25 [124]).

Women

PNG has been described as 'one of the most dangerous places in the world to be a woman' (Human Rights Watch 2015a). In its Concluding Observations on PNG in 2011, the CEDAW Committee noted widespread violence against women, including sexual violence (CEDAW 2010, 29–30). It is estimated that a staggering 70 per cent of women in PNG experience rape or sexual assault in their lifetime (Human Rights Watch 2015a). Furthermore, a 2013 UN study on 'Men and Violence in Asia and the Pacific' found that 80 per cent of men in Bougainville admit to using physical or sexual violence against women (Fulu et al 2013, 192). If female refugees are resettled in PNG under the RRA, they may be at an even higher risk of sexual violence due to their status as 'outsiders'.

Children

The rights of children in PNG are also a significant concern. Both the Committee on the Rights of the Child and the HRC have made comments about a range of human rights issues facing children, such as poor health care, educational deficiencies and the low rate of birth registration, as well as child labour and child prostitution (HRC 2011b; CRC 2003). The Committee on the Rights of the Child has expressed particular concern at the very high rate of sexual abuse and rape of girls between the ages of 11 and 15 (CRC 2003, 397), while the UN Special Rapporteur on Torture drew attention to the problem of accommodating juveniles and adults together in some prisons (Nowak 2011, 67–68). It is currently unclear whether children will be resettled in PNG under the RRA. However, PNG's poor record in relation to children's rights indicates that it is not a safe place to resettle child refugees, especially if they are unaccompanied minors.

Refugees and asylum seekers in PNG

PNG has been a party to the Convention Relating to the Status of Refugees since 1986, but it has made a number of significant reservations relating to the right

to work, the right to housing, the right to education, freedom of movement, and facilitation of naturalisation of refugees. However, PNG appears to be taking steps to lift these reservations (UNHCR 2015), and the government has agreed to withdraw the reservations in relation to asylum seekers transferred to PNG pursuant to its agreement with Australia (PNG Government and Australian Government 2013b).

The UNHCR estimates that PNG currently has just over 9700 refugees (UNHCR 2015). Almost all of these refugees came to PNG from West Papua in Indonesia between 1984 and 1986, due to political turmoil and economic discontent in the region (Irin News 2012). In its submission to the HRC as part of PNG's 2011 Universal Periodic Review, the UNHCR stated that the current refugee framework in PNG 'falls short of international standards and does not provide adequate protection to West Papuan refugees' (UNHCR 2011, 2).

Permissive residency permits (PRPs) are available to West Papuan refugees who have been in the designated refugee settlement in East Awin for at least six months. These are issued for renewable periods of three years and grant working and travelling rights, as well as access to health and education services (Glazebrook 2014, 3). However, only an estimated 40 per cent of West Papuans hold PRPs (Irin News 2012), and many West Papuans encounter substantial difficulty in having their PRPs renewed after three years. In 2003, a joint mission of the International Commission of Jurists and the Refugee Council of Australia reported that 75 per cent of the PRPs issued to East Awin camp residents had expired and had not been renewed (Australian Section of the ICJ and RCOA 2013, 621). This is problematic because, without a PRP, refugees in PNG have limited rights due to the above-noted reservations PNG has in relation to the Refugee Convention (see, generally, UNHCR 2011).

Furthermore, even for those who hold a PRP, there is a range of concerns in relation to the terms imposed by the PRP system. For example, the requirement that West Papuans must return to East Awin, which lies in a remote jungle location with limited accessibility, for six months every three years in order to renew their PRP has been described as 'gratuitous and disruptive' (Glazebrook 2014, 3–4). In addition, the prohibition on resettling near border areas is difficult for refugees who wish to stay close to their land and families on the other side of the border (Irin News 2012). Although persons holding a PRP for eight years are entitled to apply for PNG citizenship, this is an impossibility for most due to the application fee of 10,000 kina (almost A\$5000) (UNHCR 2013, 7).

Another serious concern is the treatment of non-Melanesian asylum seekers. There are currently a very small number of refugees from other countries — including Afghanistan, Myanmar, Sri Lanka and Vietnam — in PNG (UNHCR 2009, 1).

Unlike West Papuans, they are not entitled to PRPs and the majority have no formal recognition by PNG of their refugee status. As such, these refugees often do not have access to basic rights, such as employment and public education (UNHCR 2011, 3).

In contrast to refugees from West Papua, who are seen as part of a wider Melanesian ethnic group and are usually accepted by PNG society, the UNHCR reports that non-Melanesian asylum seekers and refugees in PNG are particularly vulnerable to xenophobia and racism (UNHCR 2011, 5). In 2009, a number of violent protests were staged against persons of Asian descent or appearance.

As most, if not all, of the refugees to be settled in PNG pursuant to the RRA will be non-Melanesian, it is likely that they will encounter similar legal and social problems. The UNHCR has expressed concern that any refugees resettled in PNG from the Manus Island RPC will also experience hostility and violence from locals (UNHCR 2013, 120–24). In making these statements, it noted that in the past it ‘has been obliged to remove “non-Melanesian” refugees for resettlement to third countries, including Australia, precisely because of severe limitations of finding safe and effective durable solutions in PNG itself’ (UNHCR 2013, 7 [22]). Although there is suggestion of legal change — especially in relation to the refugees settled pursuant to the RRA — as the law currently stands, refugees resettled from Manus Island are unable to access public education and employment (UNHCR 2013, 25 [124]). Moreover, PNG’s experience with West Papuan refugees suggests that, even if the law is modified to grant refugees basic social and economic rights, there may be difficulties in obtaining the relevant residency permits.

Another factor that makes resettlement of refugees in PNG problematic is the fact that PNG currently lacks the training and capacity to adequately process the applications for asylum that it will receive pursuant to the RRA. In 2013, the UNHCR found that a lack of experience and training meant that PNG officials did not have the capability to properly conduct refugee status determination assessments (UNHCR 2013, 2 [II]). In 2014, it found that asylum seekers held in the Manus Island RPC had not received any approximate timeframes in relation to the processing of their applications, ‘causing distress and a deep sense of helplessness’ (UNHCR 2014, 5 [26]). These deficiencies in PNG’s law and infrastructure cast doubt on the viability of resettling refugees there.

Progress and continuing obstacles

We all know that human rights cannot just be transplanted as external principles into individuals or their communities. Human rights principles must be internalized by each

individual, women and men, and must be absorbed and expressed in their own ways and within the positive aspects of their cultural values and beliefs.

– *Thoraya Ahmed Obaid, Executive Director, United Nations Population Fund*

Although PNG has made some progress in recent years, corruption, a lack of resources, an ineffective legal system, and cultural attitudes still present a barrier to addressing many of these human rights concerns. These continuing obstacles suggest that the human rights situation in PNG is unlikely to improve in the near future.

Human rights progress

PNG has taken steps towards establishing a national human rights institution in accordance with the Paris Principles (HRC 2011b, 56; UN General Assembly 1993; 1994). In 1997, the National Executive Council, PNG's cabinet, endorsed the creation of an independent human rights body (Amnesty International 2011, 3). This commitment was reaffirmed in 2007 by the Final Option Paper on the establishment of the PNG Human Rights Commission. A draft Bill for the establishment of the Commission was prepared in 2008. However, it has not yet been enacted. In the 2011 Universal Periodic Review, PNG confirmed its commitment to establishing this 'overdue and vital body' (HRC 2011b, 57).

A specific human rights unit has been established within the Ombudsman Commission,³ to investigate complaints of human rights violations by the police (International Advisory Commission of the Commonwealth Human Rights Initiative 2005). In 2013, the Commission received 34 complaints against police. Other measures have also been adopted to combat police violence. Since 2008, for example, the Australian Federal Police has provided human rights-based training to local police pursuant to the PNG–Australian Policing Partnership (US Department of State 2014, 4, 5). The UN and the International Committee of the Red Cross have also occasionally provided human rights training to PNG police (US Department of State 2014). In addition, a number of human rights inquiries into police violence have been launched over the past five years by Justice David Cannings, the PNG judge who presides over the Human Rights Division of the PNG National Court (Fox 2013; SBS 2014). However, there have been some difficulties in implementing these inquiries

3 The Ombudsman Commission is a constitutional body, established by ss 217–219 of PNG's Constitution. In addition to its traditional role of investigating administrative practices and decisions of governmental bodies, s 219(1)(c) of the Constitution gives the Commission the power to investigate alleged discriminatory practices.

due to a lack of cooperation from the PNG government, which has, on a number of occasions, sought injunctions to prevent the inquiries.⁴

In terms of violence against women, PNG amended the Criminal Code in 2002 to extend the definition of rape to include marital rape (s 17 of the *Criminal Code (Sexual Offences and Crimes Against Children) Act 2002*, amending s 347 of the *Criminal Code Act 1974*), as well as oral and anal rape (s 2 of the *Criminal Code (Sexual Offences and Crimes Against Children) Act*, amending s 6 of the *Criminal Code Act*). The 2002 amendments also saw the creation of new sexual offences, such as inducing another to commit a sexual act (s 349B of the *Criminal Code Act*). PNG has taken a number of positive steps in relation to domestic violence. The *Family Protection Act 2013*, which passed unanimously, criminalises domestic violence; gives legislative backing for interim protection orders; allows neighbours, children and relatives to report domestic violence; and gives powers to police to remove perpetrators from their homes (Amnesty International Australia 2013). The establishment of the Family and Sexual Violence Action Committee (FSVAC) is also regarded as a positive development in the efforts to combat violence against women (Aisi 2013). The FSVAC is a partnership between government agencies, the private sector, NGOs and development partners that was created to provide information and training with regards to gender-based violence (AusAID 2008, 47). In August 2015, a free hotline for victims of family and sexual abuse was launched in PNG (ABC 2015b).

Other laws that have a positive human rights impact are the *Lukautim Pikinini (Child) Act 2009*, which protects and promotes the rights and wellbeing of the child and is based on the principles set out in the CRC, and the *HIV/AIDS Management and Prevention Act 2003*, which protects against HIV/AIDS-based discrimination (cf, for discussion, HRC 2011a). In 2013, the PNG Foreign Affairs and Immigration Minister, Rimbink Pato, stated that the government is also taking active steps to remove the citizenship application fee for long-term refugee groups (Glazebrook 2014, 4). As mentioned above, PNG has also expressed its intention to remove its reservations to the Refugee Convention.

Continuing obstacles

Despite these recent successes, there are barriers that stand in the way of PNG overcoming many of its most serious human rights issues. These include corrupt

4 For example, when Justice Cannings launched an inquiry into the suppression of the protest in the RPC on Manus Island in February 2014, the PNG government sought and obtained an injunction against the inquiry from PNG's Supreme Court in March 2014. Cannings responded by launching a new inquiry into the human rights situation of asylum seekers being held in the RPC (see Fox 2014).

government, lack of resources, an ineffective justice system, and deeply rooted cultural attitudes.

Corruption and political instability

PNG politics are rife with corruption. The Corruption Perceptions Index (CPI) ranks countries and territories based on how corrupt their public sector is perceived to be, with number 1 being the least corrupt and 175 being the most corrupt. In 2014, the CPI ranked PNG 145th (Transparency International 2014). Since early 2014, PNG has also been on the 'grey list' of the Financial Action Task Force (FATF), an intergovernmental organisation that aims to combat money laundering and terrorist financing (FATF 2014). In 2015, the FATF determined that deficiencies remain in PNG's strategic anti-money laundering and counter-terrorist financing measures (FATF 2015). Furthermore, in June 2014, PNG's Prime Minister, Peter O'Neill, was served with an arrest warrant for allegedly expropriating \$31 million in public funds (AAP 2014). Mr O'Neill's response was to attempt to shut down the anti-corruption Taskforce Sweep (Cochrane 2015d) and to dismiss the deputy police commissioner (AAP 2014).

PNG has also experienced considerable political instability in recent years. Between 2011 and 2012, the office of Prime Minister was disputed between Peter O'Neill and Sir Michael Somare. This 'unprecedented constitutional crisis' (AFP 2011) saw the Parliament and Supreme Court clash, the replacement of the Governor General (Poling and Shearer 2011) and an attempted coup (Hodal 2012). The crisis came to an end when a general election was held in 2012 and Somare supported O'Neill as Prime Minister (Economist 2012).

Corruption and political instability can hinder human rights progress. This can be seen, for example, in the alleged misappropriation of hundreds of thousands of dollars intended to help fight HIV/AIDS by PNG's National AIDS Council (Gridneff 2008). The involvement of high level government officials in corrupt activities, as well as their related lack of willingness to address corruption, will prevent human rights-related programs and bodies from having any real impact (Luker and Sinclair 2010, 15).

Lack of resources

Another obstacle — which is linked to the frequent misappropriation of funds — is the lack of resources. The effectiveness of the police force in PNG is seriously hampered by a lack of personnel and funding, resulting in an inability to adequately combat issues ranging from violent tribal conflict (US Department of State 2011, 17) to child

marriage (US Department of State 2014, 16) and child labour (US Department of State 2014, 21). It is feared that the *Family Violence Act* may never truly be able to address domestic violence in the manner intended, due to a lack of resources to adequately implement its measures (Human Rights Watch 2015a). Lack of funds is cited as the cause of lengthy pre-trial detention, poor prison conditions, and the incapacity of the Ombudsman Commission to investigate and address detention facilities and reports of police violence (US Department of State 2011, 7, 4). It is also most likely the cause of the difficulties experienced by West Papuans when attempting to renew their PRPs (Glazebrook 2014, 6).

PNG–Australia relations and aid

PNG and Australia have a close relationship due to PNG being Australia's most proximate neighbour, as well as a former colony of Australia. Australia governed the south-eastern portion of the island (Papua) from 1906, and the north-eastern part (New Guinea) from 1919, after it was granted a mandate over the former German New Guinea by the League of Nations (Hudson 1974, viii). Following World War II, Australia's mandate became a UN Trusteeship (Hudson 1974, 76–78). PNG achieved self-government in 1973, and full independence from Australia in 1975.

Since then, Australia has remained heavily involved in PNG's affairs and Australia is PNG's largest aid donor. Australian aid to PNG in 2014–15 was estimated to be A\$577.1 million (DFAT 2015a). Australia's aid relationship with PNG is the product of negotiations that occurred in the lead-up to PNG's independence (Denoon 2012, 137–39). Michael Somare, who was the Chief Minister of PNG at the time, pushed for a strong Australian commitment to aid, fearing economic collapse without continued assistance (Denoon 2012, 139). As an independent PNG was also in Australia's interests, former Australian Prime Minister Gough Whitlam declared that 'Australia [was] no longer willing to be the ruler of a colony', and agreed to a robust aid program (Woolford 2013).

There is also increasing trade and economic cooperation between Australia and PNG. In March 2014, Australia and PNG signed an Economic Cooperation Treaty, which covers trade and economic cooperation, as well as Australia's development assistance to PNG (DFAT 2015b). Total trade between Australia and PNG in 2013–14 was A\$6.8 billion and Australian investment in PNG is worth over A\$20 billion (DFAT 2015a).

However, Australia has arguably used its economic relationship with PNG as leverage to persuade PNG to cooperate with Australian policies (Narayanasamy and Parfitt 2014, 46). For instance, in December 2003, former Australian Foreign Minister

Alexander Downer negotiated an agreement with PNG — the Enhanced Cooperation Program (ECP) — in which Australia would place Australian advisers within PNG's public service and Australian police officers within PNG's defence forces. To secure PNG's agreement to the ECP, Downer threatened to cut some of Australia's annual aid (Hawksley 2006).

Similarly, Australia has used its foreign aid as a bargaining tool in its border protection program (Narayanasamy and Parfitt 2014). Since 2001, both Nauru and PNG have received substantial development aid in return for allowing asylum seekers to be processed in facilities on their territory (Narayanasamy and Parfitt 2014). Furthermore, PNG was promised an additional A\$420 million in aid funding in connection with its agreement to the RRA in 2013 (Narayanasamy and Parfitt 2014, 47).

Australia's use of its aid budget in the context of its asylum-seeker policy has been criticised as 'neo-colonial' and 'coercive' (Narayanasamy and Parfitt 2014). There is concern that it may undermine human rights progress in PNG by inhibiting the country's capacity to make its own development decisions (Narayanasamy and Parfitt 2014, 46). Australia's use of aid as a bargaining chip also may result in PNG accepting more refugees than it can actually accommodate.

Flaws in the legal system

Human rights progress is also hampered by deficiencies in PNG's legal system. These flaws are not only the result of a lack of resources, including a lack of judges (Glazebrook 2014, 6), but also due to the complex and post-colonial nature of its legal system. The PNG Constitution is characterised by a clash of legal traditions; on the one hand, it adopts a Western human rights regime, on the other, it gives customary laws a prominent place in the country's legal system (Corrin 2014, 155). Christine Stewart attributes the ineffectiveness of PNG's constitutional Bill of Rights to the 'tensions between this ... body of imported law which is often paternalistic, outdated and inappropriate, and many of the fundamental principles of customary law' (Stewart 2014, 298).

Additionally, Stewart suggests that the mismatch of legal principles may be to blame for the political instability and rampant corruption in PNG, noting that '[t]he "collision" between introduced and traditional political practices has produced a hybridised "non-liberal democratic political culture", involving cronyism, bribery, coercion, and a marked absence of morality and ethical standing on the part of leaders' (Stewart 2014, 56).

Customary law, which is incorporated into PNG's legal system via the *Underlying Law Act 2000* (Corrin 2014, 155), while very important to PNG's independence and cultural heritage, can be problematic from a human rights perspective. The village courts, which deal with disputes at the village level, only apply custom. These courts are notorious for violating the rights of women and children, as many customary practices discriminate against them (Talao 2009, 7). For example, in the 1990s, there were a number of cases in which the village courts required perpetrators of murder or wrongful death to give away their daughters, or other young women, as compensation (Stewart 2014, 55).

Police brutality in PNG can also be contextualised within its colonial history. In colonial times, the line between police and the army was blurred and warrior-like individuals were often selected to be police (*kiaps*) to 'pacify' the local population. As Stewart writes, 'this quasi-militaristic tradition has left its legacy in the retributive and violent nature of policing today' (Stewart 2014, 52).

Cultural attitudes

The culturally ingrained nature of gender inequality presents a formidable barrier to human rights progress in PNG. 'Big Man' culture, as Dame Carol Kidu termed it to the CEDAW Committee, is embedded in PNG tribal culture (UN 2010a). This is evident, as Kidu pointed out, when addressing the PNG Parliament on another occasion, in the fact that there was traditionally no word for 'rape' in Motu (Griffen 2006, 28), one of PNG's official languages. It is difficult for the legal developments in the area of violence against women to succeed when 'unquestionably, the prevailing gender ideology in PNG is that violence is an entirely appropriate corrective to even the slightest failure of wives to fulfil their perceived marital duties and proprieties' (Eves 2010, 57).

It is also these strong culturally based understandings of gender that hinder progress in the area of SOGI rights, as LGBTI persons frequently challenge prevailing gender norms (Stewart 2014, 294–95). In addition, conservative Christian values (perhaps even increasingly 'fundamentalist') are commonly cited as the reason that PNG is unlikely to decriminalise homosexuality in the near future. It is interesting to note that, despite evidence of 'ritual homosexuality' in PNG indigenous culture (Stewart 2014, 154), this prevailing practice has not informed the references to customary law in criminal cases concerning same-sex consensual relations (Stewart 2014, 113).

Similarly, anti-Muslim sentiments from the Christian population, as well as social attitudes regarding ethnicity and kinship, could stand in the way of PNG adequately protecting the rights of refugees and asylum seekers. As the UNHCR declared in

2011, non-Melanesian refugees are 'unlikely to integrate into local society or overcome the obstacles they face preventing their legal integration' (UNHCR 2011, 5 (Issue 5)).

In sum, without large-scale social, political, cultural, economic and legal change, there is unlikely to be any significant improvement in promoting and protecting human rights in PNG.

Should we be settling refugees in PNG?

There are many challenges facing the international community today but few, in my mind, are more pressing than those of finding humanitarian solutions to refugee problems.

– Poul Hartling, former UN High Commissioner for Refugees

The RRA is the product of a complex post-colonial relationship between PNG and Australia, in which the latter makes use of PNG's dependence on aid to secure its cooperation in Australia's border protection policies. This has given rise to a situation where Australia is prioritising its domestic political interests over human rights concerns associated with resettling refugees in PNG.

PNG lacks the capacity to adequately resettle refugees, both specifically in relation to processing claims, and generally in terms of its economy, health care and other national infrastructure. Poverty is still a significant and pervasive issue facing PNG, both in urban settlements and in rural areas. As described earlier, lack of access to basic education and primary health care, and public health issues, such as HIV/AIDS and malnutrition, are ongoing concerns.

Refugees resettled in PNG are likely to be at serious risk of human rights violations by virtue of their status as 'outsiders' and the shortcomings in the legal framework. PNG's experience with non-Melanesian refugees and migrants has shown that they are vulnerable to (sometimes violent) xenophobia and racism, and that their rights are inadequately protected under PNG law. Furthermore, it is a particularly dangerous arrangement for refugees who are Muslim or LGBTI, given the human rights concerns in PNG that these groups currently face.

Even more concerning is the fact that these problems are unlikely to improve in the near future. There are a number of obstacles that stand in the way of human rights progress in PNG, including lack of resources, reliance on aid, corruption, political instability, cultural attitudes, and deficiencies in the justice system. Furthermore, PNG's lack of reporting under international human rights treaties, as well as its passive stance in the UN regarding human rights issues, render it difficult for the international community to effectively monitor and respond to these concerns.

In sum, the human rights situation in PNG makes it an unsuitable country for the resettling of refugees. Indeed, the fact that PNG itself currently produces refugees is demonstrative of this (Porteous 2013). There is also a strong argument that resettling refugees in PNG would likely breach Australia's international legal obligations (Dastyari 2013). The non-refoulement principles in both Art 31(1) of the Refugee Convention and Art 3 of the CAT prohibit the sending of persons to places where, in the case of the former, they may suffer persecution, or where, in the case of the latter, there is substantial danger of them being subjected to torture. In light of the vulnerability of some groups of refugees to human rights violations in PNG, in addition to reports of torture, Australia should seriously reconsider this arrangement. ●

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