

# Border refugees in PNG

This document strives to describe the arrival of West Papuan asylum seekers in Papua New Guinea (PNG) and to analyse their present day challenges and difficulties. One could periodise the arrival of West Papuan refugees in (PNG) in four main waves (Zocca 2008:122- 127). Three of these four waves are of particular interest for this document.

## First arrivals

The first wave took place during the Australian Administration of PNG (1963-1975). By 1975 it was estimated that 4200 people had crossed into PNG of whom most were repatriated by Australian authorities. Events in West Papua<sup>1</sup> since 1961 provide the backdrop against which flight from West Papua can be analysed. After gaining its independence, Indonesia claimed the whole of the territory that had belonged to the Dutch East Indies. According to international law of succession of states, it was common practice for a newly independent state to inherit the whole territory that had belonged to the former colonial power. However, West Papua was not included among the areas handed over by the Dutch to the recently independent Indonesia. In fact, West Papuans, with Dutch encouragement, began taking the first steps to self-determination including the election of a Council, the adoption of a national anthem and a national flag in 1961. The Indonesia government headed by Sukarno reacted by declaring a total mobilization to retain West Papua (called Dutch New Guinea at the time) within Indonesian sovereignty. The Sukarno government embarked on a common brand of postcolonial nationalism frequent among newly independent states, which included the persecution of minority populations who were forced to flee (Zolberg 1983; Zolberg *et al* 1989).

After a prolonged negotiation process, in which West Papuans did not partake, the Netherlands and Indonesia reached an agreement whereby Dutch New Guinea was to be ceded to Indonesia (New York Agreement of 1962). However, it was not to be transferred directly to Indonesia; instead, according to the agreement, a temporary United Nations (UN) administration was to administer the territory for a minimum of seven months (Saltford 2000: 72). Despite no maximum time having been stipulated, the UN withdrew in May 1963. The agreement also referred to the people exercising their freedom of choice regarding their future; in other words, an act of self-determination through which West Papuans would choose their fate.

The Act of Free Choice took place in 1969 after the brief UN transitional authority. 1022 delegates appointed by the Indonesian administration voted to remain a part of

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<sup>1</sup> West Papua is used throughout this paper to refer to the territory which has otherwise been designated as 'Netherlands New Guinea' during Dutch colonial rule, renamed 'West Irian' by Indonesia from 1962-1973, 'Irian Jaya' from 1973-2001. The territory was divided in 2003 to create two provinces, Papua and West Irian Jaya, the latter renamed West Papua in 2007. For convenience and given that Papuans refer to themselves as West Papuans, the paper shall designate the territory and its people by West Papua or West Papuan.

the Republic of Indonesian. A minority had voted for the estimated 700,000 Papuans, who inhabited West Papua, and thus Indonesia annexed its seventeenth province and the flight of West Papuans took on new dimensions. The Australian Administration recorded 1695 West Papuans crossing the border in 1969 alone (Glazebrook 2004:207). Furthermore, since that time West Papuans have consistently opposed the territory's incorporation into Indonesia arguing that the Act of Free Choice was improperly conducted and therefore invalid (Tsamenyi 1989: 182-183).

During the Australian Administration, a minority of political activists were awarded permissive residence status on the condition they refrain from engaging in political activity whilst in PNG. During this period, OPM and TPN<sup>2</sup> members continued to live in a few camps along the border. When PNG achieved its independence in 1975, those who had settled away from the border were granted citizenship.

### Second arrivals

In 1975 after PNG obtained its independence a second wave of arrivals began. The new Michael Somare government was less tolerant of OPM members and refugees in general. The government understood OPM presence as endangering its diplomatic relations with Indonesia and some OPM members were initially arrested and extradited to Indonesia thus arousing protest movements in PNG. As a result, the government opted to extradite them to third countries.

### The main influx

The flow of West Papuans into PNG continued and reached a high point during the third wave from 1984 to 1987 when 12000 people crossed the border and requested asylum. Up until this point, crossings involved relatively small numbers if compared to this latter influx. As a result, it had been relatively easier for the PNG government to handle the situation although, as mentioned before, a few individual OPM leaders had to be resettled in third countries due to political reasons.

The 1984 influx of refugees originated from two main areas: the border area and those who did not come from the border area. Those who came from non-border areas (mainly came from Biak, Sorong, and Mamberamo) made up approximately 10% of the total influx (Zocca 2008: 128). Some of those who came from the border area have been referred to as 'traditional border crossers', and not refugees, since their traditional lands straddle the international border and they had been moving freely over what is considered by many an arbitrarily determined international boundary by colonial powers in 1894 and which cut across communally held land. In fact, the Australian Administration in the 1960s classified the east-west movement of people along the border as movement of 'traditional border crossers'. This movement was characterised by being temporary in nature and for the purpose of

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<sup>2</sup> OPM is a West Papuan pro-independence movement. Its military arm Tentara Pembebasan Nasional (TPN) has historically conducted low-level armed attacks against Indonesian security forces. Historically, OPM has been characterised by its fragmentations due to leadership struggles and factions with different priorities.

traditional activities such as gardening, hunting, fishing, customary border trade, social contacts and ceremonies such as marriage (Glazebrook 2001: 10).

However, it was clear that the movement of those who had crossed *en masse* in 1984 was neither to be temporary in nature nor for purposes of traditional activities. Asylum seekers were prompted to cross into PNG by a series of incidents and armed clashes between OPM forces and Indonesian troops in various parts of West Papua over the proclamation of independence and the raising of the West Papua flag in February 1984.

However, there are more profound and entrenched structural causes underpinning the conflict and the refugees' flight than skirmishes over the raising of a flag. The deep forces impelling flight can be found in the Indonesian State's practices of cultural indoctrination, economic exploitation, condemnation of Papuan political expression, and land usurpation through State endorsed policies of transmigration. According to interviews conducted by the International Commission of Jurists (ICJ) with refugees in the border camps, flight from West Papua came as a result of 'human rights issues – freedom of association, discrimination against Melanesians in education and public service, denigration of Melanesian culture and attempts to weaken it, the effects of Indonesia's transmigration policies, the subordination of proper legal processes to political controls. Some spoke of economic issues – Indonesians dominate business and economic life, Melanesians are less able to afford the bribes that were said to be necessary for advancement and public service' (ICJ 1986: 49).

Concomitantly, there were also reports of OPM exerting pressure on local people to join the OPM or to flee to PNG in order to gain international publicity. For instance, a PNG Red Cross report confirms:

The nearly universal impression from talking to refugees and confirmed by PNG officials we met was that the people were fleeing to PNG primarily because OPM leaders had told them to. It was suggested that they are very afraid of the OPM, although no one will say what kind of reprisals would be taken against them if they refuse to obey (PNG Red Cross in Tsamenyi 1989: 185).

This led the PNG government to refer to them as illegal border crossers.<sup>3</sup> The government sustained the view that it had no legal obligation to recognize their claim to refugee status or to grant asylum based on two reasons. First, according to the PNG government, West Papuans were not refugees under international law. Second, PNG had not acceded to the Refugee Convention and its Protocol and therefore had no legal obligations towards asylum seekers even if they were refugees. As a result, West Papuans were frequently prosecuted and jailed for having entered PNG illegally and some were forcibly repatriated (Tsamenyi 1989: 186). Both grounds are highly debatable: first, a government cannot claim that asylum seekers are not refugees under international law without first undertaking or having the UNHCR

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<sup>3</sup> During the relocation of refugees away from the border camps and to East Awin, the PNG Government considered those who refused to relocate 'illegal border crossers' or 'traditional border crossers' but not refugees. This *modus operandi* is highly contentious.

undertake a refugee status determination process; second, States do not only incur in international obligations when they sign and ratify treaties but also through international customary norms such as, for example, the principle of *non-refoulement*. Therefore, the PNG government was under certain international obligations towards the asylum seekers. In addition, PNG government's obstinacy in categorising West Papuan asylum seekers in 1984 as border crossers or illegal border crossers instead of refugees seems more of a subterfuge which permitted the government to avoid predetermining their status (thereby creating international obligations towards the asylum seekers) whilst, at the same time, encouraging and hoping for repatriation.

In the meantime asylum seekers found refuge in sixteen holding camps along the border from Vanimo in the north to Bula in the south. There were a few hundred who settled in nonrecognized camps on the border and even on the Indonesian side of the border (Preston 1992: 850). As a norm, local people agreed to temporary settlements (quickly designated as 'camps') being arranged where asylum seekers had arrived. Land for housing and gardening was made available. A majority of the asylum seekers from the Waropko and Mindiptana area were subsistence farmers before their flight and thus familiar with harvesting produce from shifting horticulture. Those from northern or western areas were mainly fishermen or professionals working for the Indonesian Government.

In these makeshift camps, and unlike many other parts of the world, people were relatively free to move in and out, visit other places, even gardens on their own land across the border, and look after their new gardens (Preston 1992: 859). More to the point, there was no police or military presence at the camps. It is however hard to generalize camp conditions for all 16 as they differed from one another in terms of distance to town, their size, relationship with landowners, and the general availability of resources for building houses and gardens (Glazebrook 2001:9).

The initial reaction of the PNG government was one of wishing the refugees away. It hoped that without assistance they would return to Indonesia. Thus, involvement by the UNHCR was discouraged and no additional assistance was provided to provincial governments in the border area (Preston 1992: 857). It was thought that these type of 'services' would 'pull' more refugees into PNG. However, the death of nearly 100 people from starvation in Komokpin camp combined with worldwide media, local media, and parliamentarians' criticism forced the PNG government to accept that refugees would not repatriate and that the UNHCR's intervention would be needed. PNG acceded to the 1951 Convention relating to the status of Refugees and its 1967 Protocol in July 1986 (in force for PNG on October 15, 1986). It lodged reservations with regard to the obligations stipulated in 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 32 [naturalisation]. According to Tsamenyi the reservations lodged can be understood on two grounds. First, PNG's security concerns regarding its relationship with Indonesia and its policy of appeasement led to all reservations except those on Articles 17, 21, and 22. The remaining reservations have to do with PNG's second concern: being unable to deliver the socio economic services according to Convention standards (Tsamenyi 1989).

After PNG's accession, it was agreed that the UNHCR was to provide assistance in the form of food items while medical supplies were administered under the combined efforts of the International Committee of the Red Cross (ICRC) and Save the Children Fund. Moreover, on 6 September 1986, it was announced that the UNHCR informed the ICJ that they had determined that all 'West Papuans who had crossed the border between April 1984 and July 1986 were all regarded by the UNHCR as *prima facie* refugees, on the basis of their mass influx into PNG' (ICJ-RCOA 2003: 708).

As both third-country settlement and repatriation seemed unlikely, the PNG government began to seek places away from the border to resettle refugees. Already in the late 1970s, the persistent presence of refugee seekers in PNG had propelled the UNCHR to pressure the PNG government to create a relocation centre away from the border in Oksapmin (Preston 1992: 848). Such advice had fallen on deaf ears. In 1986, the government's new refugee policy sought to relocate the refugees to East Awin approximately 120km away from the international border. Refugees were encouraged to relocate to take advantage of East Awin's economic potential, increased security and services to be made available to them (Preston 1992: 863).

A survey carried out throughout the sixteen border camps by the UNHCR in 1987 found that a majority was willing to be resettled, a minority welcomed repatriation, while thirty percent declared their wish to remain in their border camp although this was not an option (Preston 1992: 863).

Despite the UNHCR's findings when actual relocation took place between 1987 and 1989 only about 3500 West Papuans moved from the border to East Awin (Glazebrook 2004: 209). However, approximately 4500 West Papuans (mainly Muyu people) refused to relocate and remained in the border camps in the Western Province (Glazebrook 2004: 209). A combination of well-founded doubts on government and UNHCR promises of perks at East Awin, uneasiness with respect to access to water, building materials, and crop potential, as well as pressure from OPM groups not to leave the border area, deterred many (Preston 1992: 864). In addition, many Muyu desired to remain close to their own lands and sago<sup>4</sup> stands, as well as continue with their political resistance against Indonesia which was proscribed in East Awin (Glazebrook 2001: 13; Glazebrook 2004: 209).

The PNG government closed all the Western Province refugee camps in the border area when refugees were unwilling to relocate. No action was undertaken to forcefully remove them from the area but all administrative, food, and health assistance was withdrawn. Furthermore, those who chose to stay on in the 'officially closed' camps 'lost all rights to protection as refugees and ranked as illegal border crossers liable to prosecution' (Preston 1992: 864). With the PNG government and the UNHCR's withdrawal from the border camps, the provision of health, educational, and social services, in addition to pastoral care, was left in the hands of the Diocese of Daru-Kiunga.

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<sup>4</sup> Sago is a staple food for many and also a primary source of roofing material.

From the PNG government's point of view, many of those who refused relocation to East Awin and remain in the 'officially closed' camps on the border area are either engaged in activities with OPM or provide support and assistance to the OPM. For instance, supplies including food items and mosquito nets have been intercepted on their way to West Papua (ICJ-RCOA 2003: 412). The involvement of alleged refugees in insurgency activities (i.e. in this case the West Papuan refugee undertaking acts of insurgency against the Indonesian authorities form within PNG) would be sufficient grounds for them to lose their status of refugee, as the status of combatant is incompatible with the status of refugee.

In addition, there is some degree of incompatibility between West Papuan refugees' claim that they came to PNG because they were unable to live in West Papua as a result of a well-founded fear of persecution and their regular travel to West Papua. In other words, these 'safe' trips to West Papua could potentially indicate that there is no longer a basis for claiming refugee status and thus a protection need for these individuals and since there is no longer a well-founded fear of persecution, refugee status should cease (ICJ-RCOA 2003: 407, 724). However such an analysis should be tempered by acknowledging the ongoing dangers of exercising freedom of expression in West Papua. Moreover, those who chose to take these 'safe' trips to West Papua do so at their own peril. There are many stories of harassment and violence when they are intercepted by Indonesian military. Finally, as one refugee in the bulge of the Fly River put it, 'we cross to the Indonesian side because the market there is closer and thus cheaper to get to than the one in Kiunga. We know it's risky but what are we to do?'

### Nowadays

The overall political situation governing the border settlements has not changed much since the late 1980s to this date with five exceptions. First, in an attempt to provide a durable solution<sup>5</sup> to West Papuan refugees, the PNG government terminated in 1997 the application procedures for 'permissive residency'. Holders of 'permissive residency' are entitled to various rights and obligations. Among the former are freedom of movement within PNG although limited to non border areas; right to employment in similar conditions as nationals; right to access educational services; access to health services and facilities. Regarding obligations, holder of a permissive residency permit need to abide by PNG laws and not engage in activities that might affect the relationship between PNG and Indonesia; not to reside in border areas, and not to engage directly or indirectly with OPM activities (Glazebrook 2004: 211).

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<sup>5</sup> Durable solutions to displaced refugees are usually thought to be: repatriation to their country of origin; local integration in the country of asylum; or resettlement to a third country. However, the numerous and ongoing cases of protracted refugee situations begs the question whether a prolonged presence of refugees in camps, sometimes a whole generation if not more, has not converted refugee camps into an alleged *de facto* solution to refugees' plight in addition to the officially supported ones of voluntary repatriation, resettlement and integration in the country of asylum.

This 'limited integration' option of 'permissive residency' was not offered to border refugees since a *sine qua non* condition for application is to have resided in East Awin for at least six months. As a result, this introduction of 'permissive residency' option only for those in East Awin has created an element of differentiation among the West Papuan refugees in PNG: those in the border area can expect lesser entitlements than those who accepted to be relocated to East Awin.

Second, despite the State of PNG's reservations to the 1951 Refugee Convention, border refugees appear to enjoy unhindered freedom of movement and can access educational services provided they can afford the fees. It would thus seem that the PNG government has chosen to turn a blind eye to these practices despite them being at loggerheads with the PNG governments reservations to the 1951 Refugee Convention. In other words, despite the government's reservation to Article 22(1) and their frustration with border refugees' refusal to relocate to East Awin, schooling age refugees have found their way into Primary Schools in Membok, Kiunga, and elsewhere as well as Secondary Schools in Kiunga and other urban centres such as Tabubil and Ningerum. Some border refugees students make their way to East Awin where they pursue their primary education whilst in the care of *wantoks*. Some of those students unable to further pursue their education due to low marks or lack of economic resources make their way to Merauke, Jayapura or Mindiptana in West Papua. In general, refugee students face the challenge of mustering the hefty school fees but this is no different than what the local population face. Refugee children as well as local children receive some financial support through the Diocese of Daru–Kiunga.

Third, the number of border refugee settlements has increased as new ones have been set up as offshoots of the original ones. For example, Yoot, Mapruam, and Memeyop on the bulge of the Fly River are offshoots of the original Kuyu camp. There are in total 20 border refugee settlements in the Western Province alone.

Fourth, the PNG Government continues to refer to refugees in the border settlements as either 'illegal border-crossers' or 'traditional border-crossers' in its official documentation. Given the precariousness of border refugees' legal status in PNG they are uneasy with this situation and would like their status to be settled once and for all. Most refuse to return to West Papua before independence is achieved for fear of ill treatment by the Indonesian military. Only a few are supportive of autonomy<sup>6</sup> within Indonesia, and this only as a preliminary situation leading to full independence.

Fifth, border refugee settlements along the Ok Tedi and the Fly Rivers have been negatively affected by more than 20 years of pollution and increased flooding in the

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<sup>6</sup> A reform-oriented Indonesian Government enacted a Special Autonomy Law in late 2001. Autonomy potentially enables Papua to determine its affairs according to its norms and rules whilst leaving Indonesia's territorial integrity untouched. Actual implementation of the Special Autonomy Law is still today far from satisfactory in the eyes of many Papuans.

case of the Fly River ones. Refugees in these settlements will most likely have to move from their current settlements to a radius of approximately 10 km. Both Western Province Government and PNG National Government are currently discussing this. Visits to Yogi and Dome confirmed both refugees and *as ples* (local people) uneasiness with their new plight and in the refugees case uncertainty of where to go next.

### Conclusion

The PNG Government has 'tolerated' the presence of refugees in the border area in PNG. Despite the PNG Government's shortcomings, the most relevant being the discontinuation of services to border refugees and their lack of any official status in PNG, the PNG government has generally provided refugees with protection against *refoulement* and individuals who might not qualify as refugees under the 1951 Refugee Convention with temporary protection. Moreover, PNG is one of the few State parties to the 1951 Refugee Convention in the Pacific region.

Moreover, on the whole, any analysis of whether general living conditions amongst the border refugee population is consistent with human rights standards should acknowledge that the border refugees' predicament differs little from that of the local population. This has been indirectly confirmed by the UNHCR's *Country Operations Plan 2007 Papua New Guinea* when it states that 'UNHCR's standards are higher than the locally existing standards, [and] meeting UNHCR's standards would create disparity and conflict between beneficiaries and locals'. Notwithstanding and importantly, most refugees in the border area are not landowners. This has a significant impact on their capacity to earn an income at the market since their harvests are necessarily smaller than local peoples' harvests given their reduced access to land. In gross terms, despite similarities between local population and refugees, there remain unfulfilled human right standards and particular rights owed to refugees that remain unattainable.

In recent years, from a policy of 'tolerance' the PNG government seems to have entered a phase of 'renewed interest' in the border refugees. In 2005 a joint exercise amongst the PNG government, UNICEF, UNHCR, and the Diocese of Daru-Kiunga led to the issuance of birth certificates to children born in border settlements. As a result, more than 1,700 West Papuan refugee children, among others, were given birth registrations for the first time. Unfortunately, the PNG government did not process applications for birth certificates from certain refugee border settlements. More recently, in 2008 the PNG government has conducted census of some of the refugee border settlements<sup>7</sup>. The national census scheduled for 2010 will provide a timely opportunity to confirm data collected in 2008 and to include those excluded in 2008.

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<sup>7</sup> The government conducted census in 10 of the 20 refugee border settlements with one being officially on the Indonesian side of the border. The other 10 refugee border settlements with two of them officially on the Indonesian side of the border were not included in the census.

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