

Submission to the UN Office of the High Commissioner for Human Rights for the consideration of the Universal Periodic Review of the Independent State of Papua New Guinea during the 25th session

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FOCUS ON:

West Papuan Refugees

I. Introduction to the Report

This report, submitted by the Unrepresented Nations and Peoples Organization (UNPO) on the occasion of the 23rd session of the Universal Periodic Review (UPR), during which the Independent State of Papua New Guinea (PNG) is under consideration, will focus on the human rights violations suffered in the country, with a particular emphasis on the circumstances and status of the West Papuan refugees. First, this report will open with a brief introduction to the refugees, providing a summary of their history and of their current situation. Second, it will outline the violations of international human rights treaties acceded and signed by PNG. Third, the report will propose recommendations concerning the current matter with an aim to facilitate constructive discussion during the 25th session of the UPR.

II. Background

There are many underlying causes to the presence of roughly 10,000 West Papuan refugees in PNG and around its border. To look back, in 1828, with the establishment of Fort du Bus, the western part of New Guinea was officially named The Netherlands New Guinea by the Kingdom of The Netherlands (Proclamation of Delden). With this act, West New Guinea officially became a colony of the Netherlands.

Over a hundred years later, the New York Agreement of 15 August 1962 transferred West New Guinea to Indonesia. In accordance with this agreement, in fact, the administration of the territory was first transferred to United Nations Temporary Executive Authority (UNTEA), under the jurisdiction of the UN Secretary-General,¹ and later to Indonesia.² Subsequently, the so-called "Act of Free Choice" took place. This was a vote by 1025 men selected by the Indonesian military in Western New Guinea, who were asked to vote by raising their hands in a display for United Nations observers. The event was noted by the United Nations in General Assembly resolution 2504 (XXIV), without specifying whether it complied with the underlying New York Agreement, nor whether it was an act of "self-determination", as referred to and described in United Nations General Assembly resolutions 1514 and 1541 (XV) respectively. Article XVIII d of the New York Agreement, ensuring self-determination of the residents of the region, was violated, as were the United Nations Charter, the Universal Declaration on Human Rights and the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), which safeguard the rights of people of non-self-governing territories.

Since Indonesia took over West Papua from UNTEA on 1 May 1963, West Papuan civilians were repeatedly tortured and killed by the Indonesian military forces, leading to a civil conflict which went on for decades and is yet to be fully resolved. In 1984, ten thousand people were forced to

¹ United Nations, (West New Guinea - UNSF Background). Retrieved from: <http://www.un.org/en/peacekeeping/missions/past/unsfbackgr.html>

² The New York Agreement - August 1962. Retrieved from: <http://freewestpapua.org/documents/the-new-york-agreement/>, art. I, II and XII

flee to PNG in view of their political views, of their connections with outlawed organizations or even simply of their poor economic and security conditions. Over thirty years later, many of these refugees are still living in refugee camps along the border. Even in those camps, the West Papuan refugees cannot be sure of their safety. The Indonesian Army is reported having crossed the border of PNG many times.³ Also, the Indonesian government sold a significant portion of the resource-rich land of West Papua to multinationals to exploit the local mines, forests, and energy reserves, forcing the West Papuans traditionally living in those areas to relocate.

As the people of West Papua are still seeking independence and freedom from colonial rule, the fulfilment of their right to self-determination and redress for the years of human rights violations, refugees across the border continue to struggle for recognition of their human dignity, while lacking basic human rights. Many refugees, despite the poor conditions in which they live, do not have the option to return to West Papua, as a very likely arrest lingers over their heads (for being politically active and for having applied for political asylum).

III. Human Rights Issues

West Papuan refugees are distributed in several camps that placed mostly along the border between PNG and West Papua. The refugees face many significant and practical issues that interfere with their inherent human rights. PNG has acceded to *inter alia* the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Social, Cultural and Economic Rights (ICESCR) and the 1951 Convention Relating to the Status of Refugees. However, it has made reservations to the latter Convention, which have critical effects in this instance. Among the other camps, the United Nations High Commissioner for Refugees (UNHCR) and the Border Affairs Division of the PNG Department of Village Services and Provincial Affairs control and are in charge of the refugee camp in East Awin, which is home to 3,400 refugees.

a. Human rights linked to citizenship and statelessness

West Papuan refugees have experienced hardships since their arrival in PNG over thirty years ago. Even though official registration has taken place coordinated by the United Nations in cooperation with PNG, most refugees lack basic rights associated with citizenship, because of the impossibility to legalize their presence in the country. To apply for citizenship, refugees must pay a fee of PGK10.000, which correspond to approximately 3500 US\$, a large amount of money that they cannot afford.

PNG has accommodated the refugees by introducing a visa system under the 1978 Migration Act, referred to as “permissive residency”. This status grants refugees rights such as free movement,

³ UNPO (2014). West Papua Member Page. Retrieved from: <http://unpo.org/members/7843>

engagement in business activities, employment, enrolment in PNG schools and tertiary institutions and access to health facilities.⁴ However, the system has unreasonable restrictions.

The permissive residency status is offered for renewable periods of three years. The conditions to obtain it include *inter alia*:

- *Residency of West Papuan applicants at East Awin for a period of six months;*

This requirement already brings to some problems, as the majority of refugees live outside East Awin and do not wish to resettle there.⁵ The residency requirement is difficult and disruptive in attaining permissive residency status as it requires the refugees to return to East Awin for a period of six months every three years in order to obtain the renewal of their residency status. It entails leaving behind their livelihood and family. Such added displacement brings about significant negative consequences for the well-being of a refugee. Hence, not many refugees outside East Awin have been able to meet the requirement and therefore they do not hold identity papers and travel documents, nor do they enjoy the political, civil, economic and social rights granted by the permissive residency status such as freedom of movement and access to jobs and education.

- *Not to engage directly or indirectly in any political activity that might affect the good relationship between the governments of PNG and Indonesia;*
 - *Not to hold executive positions nor be financial members of any political parties in PNG.*
- (...)

PNG's Minister of Immigration and Foreign Affairs, Mr Rimbink Pato, has clarified that the government is taking steps to improve the current situation of refugees, including by waiving or significantly reducing the citizenship application fee.⁶ Also, Pato has issued a media release in November 2014 stating that: "The NEC [National Executive Council]'s decision will move people out of this limbo and enable them to obtain all of the rights and responsibilities of Papua New Guinean citizenship."⁷ To date, there is no information available on the implementation of these developments.

4 UNHCR, "(New permits allow Indonesian refugees to move on in Papua New Guinea) <<http://www.unhcr.org/434fd2e34.html>> accessed 17 September 2015

5 ICJ-RCOA 2003. Retrieved from: http://www.jrs.org.au/files/documents/test/Places/border_refugees.pdf.

6 UNHCR sub regional operations profile - East Asia and the Pacific (2015). Retrieved from: <http://www.unhcr.org/pages/49e488e26.html>

⁷ Ministry of Foreign Affairs & Immigration, 'PNG Takes Action On Refugees' (Media Release, 4th November) <<http://www.immigration.gov.pg/images/documents/Media%20Release%20-%20PNG%20Takes%20Action%20on%20Refugees.pd>> accessed 17 September 2015

On the basis of the above mentioned facts, Papua New Guinea is disregarding articles 12 and 16 of the ICCPR and articles 6, 12, 13, 15 of the ICESCR in particular. Also of importance is the Convention Relating to the Status of Stateless Persons (CSSP). Nationality is an inherent right of every human being and the reduction of the number of stateless people is a crucial aspect dealt with by the international community. Article 17(k) of the Indonesian Basic Law No 62 of 1958 states that Indonesian citizens lose their citizenship if they are, “other than for state's service, domiciling abroad during 5 consecutive years by not declaring one's wish as to continue being a citizen before the period has lapsed and thereafter every two years; such a wish shall be declared to the Representation of the Republic of Indonesia at one's residence.” This means that the West Papuan refugees who have domiciled in PNG for over five years have lost their Indonesian citizenship. Article 26 of the CSSP ensures freedom of movement. The CSSP further obliges its Contracting Parties to issue identity papers to any stateless person in their territory who does not possess a valid travel document.⁸ Also, Contracting Parties must issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents.⁹ These provisions are similarly reflected in the Refugee Convention.

By disregarding these provisions, PNG's practice is contrary to the Convention Relating to the Status of Stateless Persons and the Refugee Convention. PNG has not made reservations to the mentioned articles 27 and 28 of the latter convention.

b. Implementation of ICESCR Rights

In regards to the 1951 Refugee Convention, Papua New Guinea has made seven reservations in accordance with article 42 (1) to articles 17 (1), article 21, article 22 (1), article 26, 31, 32 and 34. It revokes the obligations therein. As a consequence, Papua New Guinea does not accord a certain number of rights to refugees regarding, for example, housing and education, as well as provisions on penalties, freedom of movement and possibility of expulsion of the refugees. These are mainly social and cultural rights, that are largely disciplined also in the ICESCR, of which PNG is a party.

In relation to the full realization of ICESCR rights, State Parties are required to: “take steps towards that goal within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.”¹⁰

⁸ Article 27, Convention Relating to the Status of Stateless Persons.

⁹ Ibid, Article 28.

¹⁰ General Comment 3 ICESCR: The Nature of State Obligations

Even though there is discretion in State priority in regards to ICESCR rights, as it has been recognized that the rights can only be implemented gradually and often at great cost for the State, they have an obligation to report on the development of these rights. They should indicate measures and the basis on which they are considered to be the most “appropriate” under the circumstances.

Moreover, Amnesty International has reported serious human rights violations such as harassment, detention without charge, torture, rape and extra-judicial killing of people perceived to be politically opposed to the Indonesian government and/or of indigenous Papuan ethnicity. These actions have occurred both in West Papua and just across the border of PNG. Indonesian military and security forces have a long history of mistreatment of indigenous Papuans while enjoying impunity as reported by international human rights NGOs.¹¹

In conclusion, for all these reasons, by denying West Papuan refugees the previous mentioned essential human rights, Papua New Guinea is further breaching international human rights law.

Furthermore, the reservation made by PNG to article 33 on the prohibition of expulsion breaches PNG’s own obligations under article 13 of the ICCPR.

Expulsion or return of refugees could also possibly violate article 3 of the Convention against Torture (CAT), given Indonesia’s human rights abuses against *inter alia* those who are opposed to its regime or anyway are politically active.

c. Discrimination

Presently, the actions and immigration law policies of PNG have led to the division of all refugees settled in the country in three categories:

- “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.”¹²

Article 3 of the Refugee Convention states that “*the Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin*”. As previously explained, the requirements to obtain permissive resident status are often troublesome for the refugees to meet. Consequently, not all West Papuan refugees hold such status and are

¹¹ Amnesty International, (Indonesia: End Mass Arbitrary Arrests of Peaceful Protesters in Papua) <<https://www.amnesty.org/en/documents/asa21/1851/2015/en/>> accessed 17 September 2015.

¹² 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. Retrieved from: <http://www.refworld.org/pdfid/4ccfe3cf2.pdf>

therefore treated differently. A difference in treatment accorded to refugees in PNG (on account of e.g. their status and country of origin) amounts to a violation of Article 3 of the Refugee Convention.

IV. Recommendations

Given the above-mentioned human rights situations, the Unrepresented Nations and Peoples Organization urges to take the following recommendations into consideration:

1. *Take prompt and appropriate steps to provide proper documentation for West Papuan and other refugees;*
2. *Remove its reservations to the 1951 Refugee Convention, to grant refugees their human rights under the mentioned international conventions and treaties;*
3. *Establish a commission that enacts and ensures the implementation of the supposed changes made to immigration law such as the removal or reduction of the current application fee;*
4. *Allow for less strict conditions to obtain the permissive residency status, i.e. abolishing the requirement of residency in a specific camp;*
5. *Avoid the expulsion and return of West Papuan refugees;*
6. *Take measures to promote representation of the refugees in public institutions such as Parliament and Government and co-operation with civil society bodies such as non-governmental organizations advocating for the rights of refugees;*
7. *Legislate a clear policy on the determination, protection and processing of refugee status as well as their rights.*