

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review:

2nd Cycle, 25th Session

PAPUA NEW GUINEA

I. BACKGROUND INFORMATION

Papua New Guinea (PNG) acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* in 1986 (hereinafter jointly referred to as the *1951 Convention*). At the time of accession to the *1951 Convention*, the Government of PNG made seven reservations.¹ These reservations were partially lifted on 20 August 2013.² PNG is not a party to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) or to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*).

On 8 September 2012, the Governments of PNG and Australia signed a *Memorandum of Understanding* (the *2012 MOU*)³ relating to the transfer to PNG of asylum-seekers who had arrived by sea to Australia without valid visas, to have their asylum claims assessed in accordance with PNG law.

¹ The seven reservations were made in respect of the following *1951 Convention* provisions: Article 17(1) [wage-earning employment], Article 21 [housing], Article 22(1) [public education], Article 26 [freedom of movement], Article 31 [refugees unlawfully in the country of refuge], Article 32 [expulsion] and Article 34 [naturalization].

² The text of this notification of withdrawal reads: "... In accordance with article 42, paragraph 2 of the Convention, I wish to communicate to you that Papua New Guinea withdraws its reservation with respect to the provisions contained in articles 17 (1), 21, 22 (1), 26, 31, 32 and 34 of the Convention in relations to refugees transferred by the Government of Australia to Papua New Guinea and accepts the obligations stipulated in these articles in relation to such persons. This withdrawal has immediate effect. The reservation remains in effect for all other persons..." See: https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en#EndDec.

³ *Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the Transfer to and Assessment of Persons in Papua New Guinea, and Related Issues*, signed by the Governments of Australia and Papua New Guinea on 8 September 2012.

Subsequently, the Governments of Australia and PNG entered into a *Regional Resettlement Agreement* (the *RRA*) on 19 July 2013, agreeing (among other things), that Australia would transfer asylum-seekers who have arrived by sea to PNG for processing of their asylum claims and that PNG, not Australia, would settle on a permanent basis, those asylum-seekers who are determined to be refugees. Consequently, the Governments of Australia and PNG entered into a new *Memorandum of Understanding* on 6 August 2013⁴ (the *2013 MOU*), which supports the *RRA* and supersedes the *2012 MOU*.

The national legislative framework governing asylum in PNG is set out in the *Migration Act 1980* (Act) and the *Migration Regulation 1979* (Regulation). UNHCR has provided bilateral comments to PNG on the current framework and also in respect of a draft *Bill for an Act entitled Migration Act 2013* and the draft *Migration Regulation 2013*, which has not yet been introduced before Parliament.

PNG currently hosts asylum-seekers and refugees who may be categorized as follows:

- a) Asylum-seekers and refugees transferred to PNG from Australia in accordance with the *2013 MOU*. As of September 2015 there were 1,019 transferred asylum-seekers and refugees in PNG.
- b) Indonesian (West Papuan) asylum-seekers and refugees. This group is estimated to encompass some 10,000 individuals, many of whom crossed into PNG in 1984 and have remained in settlements or informal border camps for around three decades. While a proportion have been granted permissive residency permits and a small minority have been granted citizenship, the majority of the group remain without legal status.
- c) Non-West Papuan asylum-seekers and refugees who have arrived spontaneously in PNG and who have not been transferred from Australia. As of September 2015, to UNHCR knowledge there were 8 spontaneously arrived asylum-seekers and refugees in PNG. Members of this group are not detained and to UNHCR's knowledge are protected from *refoulement*.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 1st cycle UPR recommendations

Linked to 1st cycle UPR recommendation no. 78.10: “Withdraw the reservations issued to seven articles to the Convention relating to the Status of Refugees 1951 (Hungary).”⁵

UNHCR welcomes the Government of PNG's current approach of not applying in practice any of the reservations issued to seven articles to the *1951 Convention* to refugees in PNG.

⁴ *Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the Transfer to, and Assessment and Settlement in, Papua New Guinea of Certain Persons, and Related Issues*, signed by the Government of Australia on 5 August 2013 and the Government of Papua New Guinea on 6 August 2013, available at: <http://www.refworld.org/docid/54f6cc631.html>.

⁵ “Report of the Working Group on the Universal Periodic Review: Papua New Guinea,” A/HRC/18/18, 11 July 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/PGSession11.aspx>.

However, UNHCR notes that the partial withdrawal of the seven reservations to the *1951 Convention* by the Government PNG, as a matter of law, only applies to refugees transferred by the Government of Australia to PNG (see further Issue 1 below).

Additional achievements and positive developments

UNHCR welcomes the announcement by the Government of PNG to waive formerly prohibitive citizenship application fees in respect of all applications made by refugees and an initiative to substantially resolve the protracted situation of West Papuan refugees living in PNG.⁶ In 2015, an exercise commenced to register all West Papuan refugees living in settlements and urban centres in PNG. The politically sensitive border camps will be addressed at a later time. All individuals registered through the exercise will have an opportunity to regularize their legal status in PNG, either through application for naturalization, where eligible, or through application for a refugee visa once legislation is passed providing for such visas. It is expected that the majority of the protracted West Papuan refugee population will meet the residency requirement of eight years residence in PNG.

UNHCR strongly supports this initiative and is providing technical and resource support to the Government of PNG, including through project design, provision of customized registration software and associated hardware, training of officials, and direct implementation support.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 1st cycle UPR recommendations

Issue 1: Reservations to the 1951 Convention

Linked to 1st cycle UPR recommendation no. 78.10: “Withdraw the reservations issued to seven articles to the Convention relating to the Status of Refugees 1951 (Hungary);”

Although as noted above the Government of PNG’s approach is to not apply in practice its *1951 Convention* reservations to any refugees in PNG, it has only partially withdrawn its reservations to the *1951 Convention* in relation to refugees and asylum-seekers transferred from Australia under the *2013 MOU*. As such, the reservations continue to apply in relation to West Papuan refugees and non-Melanesian refugees who have arrived in PNG spontaneously.

Recommendations:

UNHCR recommends that the Government of PNG:

- a. Take formal steps to withdraw the seven reservations to the *1951 Convention* in full.

⁶ Ministry of Foreign Affairs & Immigration, ‘PNG Takes Action on Refugees’ (Media Release, 4 November 2014), available at: <http://www.immigration.gov.pg/minister/100-png-takes-action-on-refugess.html>.

Additional protection challenges

Issue 2: Legal and physical detention conditions at the offshore processing centre

UNHCR's general position is that asylum-seekers and refugees should ordinarily be processed in the territory of the State where they arrive, or which otherwise has jurisdiction over them, which is in line with State practice.⁷ All cooperation arrangements should build on and strengthen national asylum systems, not undermine regional cooperation.

With these general observations in mind, UNHCR's position is that the physical transfer of asylum-seekers and refugees from Australia to PNG, as an arrangement between two Contracting States to the *1951 Convention*, does not extinguish the legal responsibility of the transferring State (namely Australia) for the protection of asylum-seekers affected by the arrangements. Both Australia and PNG have shared and joint responsibility to ensure that the treatment of all transferred asylum-seekers and refugees is fully compatible with their respective obligations under the *1951 Convention* and other applicable international instruments.

Where transfers take place, UNHCR considers that the transfer arrangement needs to guarantee that each asylum-seeker:⁸

- a) is individually assessed as to the appropriateness of the transfer, subject to procedural safeguards, prior to transfer. Pre-transfer assessments are particularly important for groups with specific needs, including unaccompanied and separated children. The best interests of the child must be a primary consideration;
- b) is admitted to the proposed receiving State;
- c) is protected against *refoulement*;
- d) has access to fair and efficient procedures for the determination of refugee status and/or other forms of international protection;
- e) is treated in accordance with applicable international refugee and human rights law standards, for example, appropriate reception arrangements; access to health care, education and basic services; safeguards against arbitrary detention; identification and assistance of persons with specific needs; and
- f) if recognized as being in need of international protection, is able to enjoy asylum and/or access a durable solution within a reasonable time.

UNHCR undertakes regular visits to the offshore processing centre in PNG. The most recent published report by UNHCR is from its monitoring mission of 23 to 25 October 2013.⁹

International legal standards

The right to liberty and security of person¹⁰ and freedom of movement¹¹ are fundamental rights enshrined under international human rights law, including under the *1966 International*

⁷ See UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, May 2013, available at: <http://www.refworld.org/docid/51af82794.html>; See also UNHCR, "Protection Policy Paper: Maritime interception operations and the processing of international protection claims: legal standards and policy considerations with respect to extraterritorial processing", November 2010, available at: <http://www.refworld.org/docid/4cd12d3a2.html>.

⁸ See UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, May 2013, para. 3(vi), available at: <http://www.refworld.org/pdfid/51af82794.pdf>.

⁹ See UNHCR, *UNHCR monitoring visit to Manus Island, Papua New Guinea*, 26 November 2013, available at: <http://www.refworld.org/docid/5294aa8b0.html>.

Covenant on Civil and Political Rights (the ICCPR) (to which both PNG and Australia are party) and the *Universal Declaration of Human Rights* (the UDHR).

In addition to these rights, the *1951 Convention* provides for the non-penalization of refugees and asylum-seekers¹² and for the freedom of movement and choice of residence for refugees lawfully in the territory, which includes asylum-seekers.¹³

Although UNHCR acknowledges that detention of asylum-seekers is not prohibited under international law *per se*, it is only lawful if it is:¹⁴

- a) pursued for a legitimate purpose of protecting public order, public health or national security;
- b) necessary in the individual case (requiring an individualized assessment of the asylum-seeker);
- c) reasonable in all the circumstances (requiring an assessment of any special needs of the individual); and
- d) proportionate to a legitimate purpose.

Further, UNHCR notes that consideration of alternatives to detention forms part of the overall assessment of the necessity, reasonableness and proportionality of detention in any given situation.¹⁵

In relation to reception conditions put in place by States for asylum-seekers, UNHCR's Executive Committee of the High Commissioner's Programme has recommended, among other things, that reception arrangements be guided by respect for 'human dignity and applicable international human rights law and standards.'¹⁶

Legal framework regarding detention at the offshore processing centre in PNG

UNHCR notes that s. 42(1) of PNG's Constitution provides that subject to certain limited exceptions, no person shall be deprived of his personal liberty.¹⁷

¹⁰ See Articles 3 and 9 of the *1948 Universal Declaration of Human Rights (UDHR)* and Article 9 of the *International Covenant on Civil and Political Rights (ICCPR)*.

¹¹ See Article 12 of the *ICCPR*, which covers the right to freedom of movement and choice of residence for persons lawfully staying in the territory, as well as the right to leave any country, including one's own.

¹² See Article 31 of the *1951 Convention*, in particular Article 31(2) which provides that restrictions on movement shall not be applied to refugees (or asylum-seekers) who have entered irregularly, other than restrictions which are necessary, and such restrictions shall only be applied until the individuals' status is regularized or they gain admission to another country.

¹³ See Article 26 of the *1951 Convention*.

¹⁴ UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html>.

¹⁵ See UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.unhcr.org/505b10ee9.html>.

¹⁶ UNHCR Executive Committee of the High Commissioner's Programme, *Conclusion on reception of asylum-seekers in the context of individual asylum systems*, 8 October 2002, No. 93 (LIII) - 2002, available at: <http://www.refworld.org/docid/3dafdd344.html>. See generally UNHCR, *Global Consultations on International Protection/Third Track: Reception of Asylum-Seekers, Including Standards of Treatment, in the Context of Individual Asylum Systems*, 4 September 2001, EC/GC/01/17.

¹⁷ Those limited exceptions are as follows: '(a) in consequence of his unfitness to plead a criminal charge; or (b) in the execution of the sentence or order of a court in respect of an offense of which he has been found guilty, or in the execution of the order of a court of record punishing him for contempt of itself or another court or tribunal; or (c) by reason of his failure to comply with the order of a court made to secure the fulfillment of an obligation (other than a contractual obligation) imposed upon him by law; or (d) upon reasonable suspicion of

International legal standards require that decisions to detain, or to extend detention of, asylum-seekers at the regional processing centre be in accordance with national laws. In particular, those laws must prescribe minimum procedural safeguards, which are compatible with international human rights law, including, but not limited to:

- a) following an initial individualized decision to detain an asylum-seeker, asylum-seekers are given reasons for their detention in writing and receive regular periodic reviews of the necessity for the continuation of detention before a judicial or other independent authority to have the detention decision reviewed;
- b) a maximum period for detention of asylum-seekers ought to be prescribed;
- c) right to challenge the lawfulness of detention before a court of law at any time;¹⁸ and
- d) persons in detention must be given access to asylum procedures and be provided with accurate legal information about the asylum process and their rights.¹⁹

At the time of UNHCR's visit in October 2013, asylum-seekers were subject to deprivation of their liberty, on a mandatory basis, in a closed place without an assessment as to the necessity and proportionality of the purpose of such detention in the individual case, and without being brought promptly before a judicial or other independent authority. This is still the case for transferred asylum-seekers in PNG.

When viewing the legal parameters and practical realities of the regional processing centre in their totality, UNHCR is of the view that the mandatory detention of asylum-seekers in PNG amounts to arbitrary detention, which is inconsistent with international law.

Conditions at the offshore processing centre

At the time of UNHCR's visit in October 2013, UNHCR welcomed some positive developments since its previous visit in June 2013, but expressed that it was deeply troubled to observe that the current policies, operational approaches and harsh physical conditions at the offshore processing center did not comply with the international standards. This remains the case for transferred asylum-seekers and refugees.

UNHCR is concerned that the current detention conditions will continue to create serious challenges for the psycho-social wellbeing of the detained asylum-seekers. In particular, UNHCR considers that the conditions at the offshore processing centre, including the practice of detaining all asylum-seekers on a mandatory and open-ended basis without an initial

his having committed, or being about to commit, an offense; or (e) for the purpose of bringing him before a court in execution of the order of a court; or (f) for the purpose of preventing the introduction or spread of a disease or suspected disease, whether of humans, animals or plants, or for normal purposes of quarantine; or (g) for the purpose of preventing the unlawful entry of a person in Papua New Guinea, or for the purpose of effecting the expulsion, extradition or other lawful removal of a person from Papua New Guinea, or the taking of proceedings for any of those purposes; or (h) in the case of a person who is, or is reasonably suspected of being of unsound mind, or addicted to drugs or alcohol, or a vagrant, for the purposes of- (i) his care or treatment or the protection of the community, under an order of a court; or (ii) taking prompt legal proceedings to obtain an order of a court of a type referred to in Subparagraph (i); (i) in the case of a person who has not attained the age of 18 years, for the purpose of his education or welfare under the order of a court or with the consent of his guardian.'

¹⁸ Article 9(4), *ICCPR*.

¹⁹ See UNHCR Excom Standing Committee Conference Room Paper, *Detention of Asylum-Seekers and Refugees: The Framework, the Problem and Recommended Practice*, June 1999, EC/49/SC/CRP.13, Figure 2; and UNHCR's *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, 28.

individualized assessment and the lack of durable solutions within a reasonable timeframe, coupled with the protracted period spent there by some asylum-seekers and refugees (for many almost two years), raise serious concerns about their compatibility with international law.²⁰

Indeed, UNHCR has deep concerns that the current conditions create a return-oriented environment and have also led to an increasing number of asylum-seekers refusing to engage in the refugee status determination (RSD) process. In view of the circumstances, a decision to return to a country of origin or not to engage in the RSD process should not be taken to indicate an absence of a *bona fide* claim for refugee status or other forms of international protection.

Recommendations:

UNHCR recommends that the Government of PNG:

- a. Ensure that reception arrangements for asylum-seekers fully respect human dignity and applicable international human rights law and standards;²¹
- b. Ensure that the detention of asylum-seekers is in compliance with international legal standards, including by assessing the necessity to detain in each individual case according to the applicable criteria and, in the absence of necessary, reasonable and proportionate limitations arising from each individual case, ensuring that asylum-seekers enjoy freedom of movement;
- c. Provide asylum-seekers with reasons for their detention in writing and in a language they understand, and allow them to challenge the decision to detain, with periodic reviews thereafter to ensure no one is detained longer than necessary, with express maximum periods for such detention; and
- d. Turn the regional processing centre in PNG into an open centre.

Issue 3: Refugee status determination procedures

UNHCR acknowledges that progress has been made towards removing different procedures and degrees of protection in respect of the determination of status and the protection of asylum-seekers who fall into different categories so that, in principle, the same refugee definition applies to all asylum-seekers in PNG regardless of where they are from or their mode of arrival in PNG.

In relation to transferred asylum-seekers at the offshore processing centre on Manus Island, UNHCR welcomes considerable progress that has been made in terms of implementing sound RSD procedures, but would urge that these procedures be enshrined in domestic legislation as a matter of priority and that failed asylum-seekers who wish to seek judicial review be given access to legal representation.

UNHCR wishes to commend the PNG Immigration and Citizenship Services Authority and the important role it has played within a very short timeframe to enhance capacity and

²⁰ See UNHCR *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012.

²¹ ExCom Conclusion on reception of asylum-seekers in the context of individual asylum systems, 8 October 2002, NO. 93 (LIII) – 2002, and the Global Consultations on International Protection/Third Track: Reception of Asylum-Seekers, Including Standards of Treatment, in the Context of Individual Asylum Systems, 4 September 2001.

expertise of PNG officials to conduct RSD assessments. However, UNHCR would urge that the expertise of the RSD officers also be employed to assess claims made by spontaneously arrived asylum-seekers and not exclusively transferred asylum-seekers. Otherwise, there is concern that the protection claims of spontaneously arrived asylum-seekers may not be assessed in a fair and timely manner.

Despite progress that has been made, UNHCR has grave concerns that due to the length of time that many transferred asylum-seekers have been detained at the offshore processing on Manus Island (for many two years or more) and their rapidly deteriorating psycho-social wellbeing, an increasing number of asylum-seekers will refuse to engage in the RSD process. UNHCR is also concerned that in some circumstances asylum-seekers (or indeed refugees), despite being informed of conditions in their home country, may choose to return despite it not being safe to do so. In such instances, questions arise as to whether such a decision to return home is truly informed and voluntary and very careful assessment of such cases by PNG and Australian officials, in collaboration with medical professionals, is integral to safeguard against *refoulement* by both the PNG and Australian Governments.

Recommendations:

UNHCR recommends that the Government of PNG:

- a. Ensure that RSD procedures are enshrined in domestic legislation as a matter of priority;
- b. Provide access to legal representation for failed asylum-seekers who wish to seek judicial review;
- c. Employ RSD officers' expertise and skills to assess claims made by spontaneously arrived asylum-seekers and not exclusively transferred asylum-seekers, as a matter of priority; and
- d. Put in place assessment procedures by PNG and Australian officials at the offshore processing centre, in collaboration with medical professionals, to determine why asylum-seekers are not engaging in the RSD process and to ensure that any decisions by asylum-seekers to return home is truly informed and voluntary.

Issue 4: Durable solutions

UNHCR acknowledges the significant goodwill and effort of PNG's Immigration and Citizenship Services Authority to develop refugee settlement capacity. However, from UNHCR's first-hand experience in supporting Melanesian and non-Melanesian refugees for nearly 30 years, it is clear that sustainable integration of non-Melanesian refugees in the socio-economic and cultural life of PNG raises formidable challenges and protection issues.²² UNHCR has been obliged to remove 'non-Melanesian' refugees for resettlement to third

²² In UNHCR's 2010 submission on PNG's Universal Periodic Review, it was observed that: 'Crime in PNG is frequent and largely violent, usually committed by gangs and often directed at foreigners. Persons of concern, unlike most expatriates in PNG, cannot afford additional security. Non-Melanesian asylum-seekers and refugees in PNG are particularly vulnerable to xenophobia and racism amongst the local population. Non-Melanesian refugees are perceived to be foreigners and are unlikely to integrate into local society or overcome the obstacles they face preventing their legal integration (e.g. access to the labour market)...Non-Melanesian refugees are more likely to be marginalized and unable to access formal or informal protection systems, especially in the Highlands and in Port Moresby. Harassment is experienced by the majority of asylum-seekers and refugees, including non-Asian refugees. The involvement of the police and the very poor record they have with regard to human rights also represents a risk of escalation to urban warfare.'

countries, including Australia, precisely because of severe limitations to finding safe and effective durable solutions.

Particular concern is expressed in relation to refugees who may be bisexual or homosexual, as PNG's *1974 Criminal Code Act* criminalizes homosexuality, with penalties of between three and 14 years. For these refugees, being transferred to a country for processing and potential settlement that criminalizes homosexuality raises serious protection concerns.

UNHCR considers that for effective and sustainable local integration, certain minimum standards need to be met. Importantly, protection against *refoulement* must be ensured, in accordance with universally applicable customary international law and the terms of the *1951 Convention*.²³ The *1951 Convention* sets out additional obligations and rights that must be observed and extended to refugees granted asylum by a signatory State. These rights include, *inter alia*, the right to protection under the law and access to the judicial system, property rights, freedom of movement and of association, the right to wage earning employment, and rights to housing and education.²⁴

UNHCR notes that for effective integration, legal frameworks should include provisions for enduring legal status and a pathway to naturalization, and the right to family unity and reunification with nuclear and dependent family members abroad, in accordance with key provisions of international human rights law, which state that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State."²⁵ However, currently, there is no legal or regulatory guidance setting out a refugee's right to family unity in PNG.

As noted above, PNG has lifted its seven reservations to the *1951 Convention* with respect of refugees transferred by Australia, including the reservation relating to naturalization, but in practice treats the seven reservations as lifted in respect of all refugees in PNG. Additionally, substantial fees applicable to citizenship applications have been waived by Government in respect of all refugee applicants.

As at the time of reporting, access to durable solutions for refugees in PNG differs between the three categories of refugees outlined in section I above. Below is an overview of protection issues in respect of transferred refugees and spontaneously arrived refugees only.

Transferred refugees and spontaneously arrived refugees

As noted above, any asylum-seeker who arrives by sea to Australia without a valid visa on or after 19 July 2013 may be transferred to PNG for processing and, if determined to be a refugee, will not be returned to Australia, but will be provided with an opportunity to settle permanently in PNG. However, progress towards settlement and integration of transferred refugees is impeded pending finalization by the Government of PNG of a refugee settlement policy.

²³ See Article 33 of the *1951 Convention*.

²⁴ See Articles 13, 15, 16, 17, 21, and 26 of the *1951 Convention*.

²⁵ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 16(3); and UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 23(1).

UNHCR reaffirms its position that, in the context of transfer arrangements to PNG, Australia maintains a shared legal responsibility with PNG to ensure that appropriate legal standards are met for individuals determined to be refugees and that their rights under the *1951 Convention* are fulfilled. These include access to sustainable durable solutions in Australia, such as appropriate settlement services, if other safe and sustainable solutions cannot be found elsewhere and within a reasonable timeframe. In the current circumstances, this is not a responsibility that rests solely with one State alone.

In relation to spontaneously arrived refugees, they do not have access to Government settlement support. The Government of PNG has stated its intention to extend settlement support to spontaneously arrived refugees.

Recommendations:

UNHCR recommends that the Government of PNG:

- a. Approve and implement a refugee settlement policy;
- b. Regarding refugees transferred by Australia, where settlement is not a feasible option for any refugee or person in need of complementary protection (especially also due to his/her sexual orientation), within a reasonable time period, PNG, together with Australia, should identify what other options are available, including settlement to Australia, and ensure full compliance with the *1951 Convention* and other applicable international laws and standards;
- c. Establish a transparently constituted oversight body that is able to assess the overall viability and integrity of settlement policy and implementation; and
- d. Take immediate action to incorporate family reunification rights into its domestic laws and regulations to enable the swift and efficient reunion of refugees with their nuclear and dependent family members as early as possible.

Issue 5: Complementary protection

PNG is a party to the *1966 International Covenant on Civil and Political Rights* and the *1979 Convention on the Elimination of All Forms of Discrimination against Women*. UNHCR notes that PNG is not a party to the *1989 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (and its *Optional Protocol*) (the *CAT*).

UNHCR welcomes steps taken by the PNG Government to ensure that transferred asylum-seekers who do not meet the definition of a refugee may still be entitled to complementary protection. However, PNG has not codified these complementary international human rights law obligations into domestic law or set out at law a process for determining whether an individual is in need of complementary protection.

UNHCR recommends that PNG take the necessary steps to implement complementary protection legislation covering all asylum-seekers who are found not to be refugees, but are nonetheless in need of international protection.

In this regard, UNHCR notes the right to complementary protection arising under Article 7 of the *ICCPR*²⁶ (to which PNG is a party) and also in relation to the

²⁶ See UN Human Rights Committee (HRC), *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, [9]: ‘In the view of

prohibition against torture, which is a peremptory or *jus cogens* norm²⁷ (a norm from which no derogation is permitted by any State).²⁸

Recommendations:

UNHCR recommends that the Government of PNG:

- a. Take the necessary action to codify the right to complementary protection and to implement a legal and regulatory framework that provides guidance at law for RSD officers to determine whether an individual is in need of complementary protection.

Issue 6: Protection of stateless persons

As noted above, PNG is not a party to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*), which ensures minimum standards of treatment for stateless persons in respect to a number of fundamental rights. These include, but are not limited to, the right to education, employment, housing and public relief. Importantly, the *1954 Convention* guarantees stateless persons a right to identity and travel documents and to administrative assistance.

To UNHCR's knowledge, PNG does not have a statelessness determination procedure for identifying stateless person in a migration context and does not have provisions in its immigration law to grant legal residence to non-refugee stateless persons or to provide other rights to stateless persons, which could ensure that protections contained in the *1954 Convention* are guaranteed.

UNHCR would like to highlight that in November 2014, UNHCR launched its Global Campaign to End Statelessness by 2024. Action Nine of the *Global Action Plan to End Statelessness 2014-2024* calls for accession to the *Statelessness Conventions* to ensure that every person has a nationality and that stateless people enjoy a basic set of human rights. Action Six of the *Global Action Plan* involves granting protection status to stateless migrants and facilitating their naturalization, including by establishing statelessness determination procedures.²⁹

In relation to refugees and asylum-seekers transferred under the *2013 MOU*, UNHCR notes that Australia is a party to the *1954 Convention* and is obliged to respect the rights of stateless persons guaranteed under it, including stateless asylum-seekers and their children. As such, UNHCR is of the view that Australia's responsibilities under applicable international instruments to which it is a party remain engaged and cannot be extinguished by the physical transfer of asylum-seekers to PNG. Since PNG is not party to the *1954 Convention*,

the Committee, States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States parties should indicate in their reports what measures they have adopted to that end.'

²⁷ See Article 53 of the *Vienna Convention on the Law of Treaties*.

²⁸ International Court of Justice ("ICJ"), *Questions relating to the obligation to prosecute or extradite (Belgium v Senegal)*, Judgment on the Merits of 20 July 2012 [99]. It is noted that Australia is a party to the *1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*, but PNG is not. However, on the basis that torture has attained the status of a peremptory or *jus cogens* norm, PNG is bound under international law not to *refouler* a person to a place where he or she will be subjected to torture, despite the fact that PNG is not a party to the *CAT*.

²⁹ UNHCR, *Global Action Plan to End Statelessness*, 4 November 2014, available at: <http://www.refworld.org/docid/545b47d64.html>.

appropriate protection may not be available for stateless asylum-seekers transferred to PNG, particularly if they are found not to be refugees.³⁰

Recommendations:

UNHCR recommends that the Government of PNG:

- a. Accede to the *1954 Convention relating to the Status of Stateless Persons*; and
- b. Establish a statelessness status determination procedure and grant protection status to stateless migrants.

Issue 7: Prevention of statelessness

The *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*) provides an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties that address the right of children to acquire a nationality, including the *Convention on the Rights of the Child* (Article 7) and *International Covenant on Civil and Political Rights* (Article 24). An increase in the number of States parties to the *1961 Convention* is essential in strengthening international efforts to prevent and reduce statelessness.

UNHCR would like to note that Action Two of the *Global Action Plan to End Statelessness 2014-2024* calls on States to ensure that no child is born stateless, including by ensuring that nationality laws: 1) allow children born in the territory of a State to acquire the nationality of that State if they would otherwise be stateless; 2) grant nationality to children born to nationals abroad who would otherwise be stateless; and 3) provide that foundlings are presumed to be nationals of the State in which they are found. While PNG's nationality law does contain some safeguards to prevent childhood statelessness, it is unclear how these provisions are implemented in practice.

Recommendations:

UNHCR recommends that the Government of PNG:

- b. Accede to the *1961 Convention on the Reduction of Statelessness*.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
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³⁰ UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>.

ANNEX

Excerpts of Recommendations from the 1st cycle Universal Periodic Review and Recommendations of Special Procedure mandate holders

PAPUA NEW GUINEA

We would like to bring your attention to the following excerpts from the 1st cycle UPR recommendations and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Papua New Guinea.

I. Universal Periodic Review

Recommendation ³¹	Recommending State/s	Position ³²
Refugee and Statelessness Conventions/Regional Instruments/National Legislation		
78.10. Withdraw the reservations issued to seven articles to the Convention relating to the Status of Refugees 1951;	Hungary	Supported
79.14. Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.	Slovakia	Supported ³³
Ratification of the Convention against Torture		
78.4. Study the possibility of ratifying CAT, OP-CEDAW and the International Convention for the Protection of All Persons from Enforced Disappearance (CED);	Argentina	Supported
78.5. Consider ratifying CAT;	Poland	Supported
79.2. Ratify as soon as possible important international human rights instruments to which it is not yet a party, inter alia, CAT, CRPD and CED, and issue a standing invitation to special procedures;	Japan	Noted ³⁴
79.3. Consider ratifying CAT and its Optional Protocol, and CRPD;	Brazil	Supported ³⁵
79.4. Ratify CAT;	Slovenia	Supported ³⁶
79.5. Consider acceding to the main international human rights instruments to which it is not party, particularly CAT and its Optional Protocol;	Costa Rica	Supported ³⁷
79.6. Ratify CAT, as well as its Optional Protocol;	Switzerland	Supported
79.7. Ratify CAT and accede to its Optional Protocol;	United Kingdom	Supported
79.8. Ratify CAT and the Optional Protocol thereto and bring the	Czech Republic	Noted ³⁸

³¹ All recommendations made to Papua New Guinea during its 1st cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review: Papua New Guinea," A/HRC/18/18, 11 July 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/PGSession11.aspx>.

³² Papua New Guinea's views and replies can be found in the Addendum, A/HRC/18/18/Add.1, 30 September 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/PGSession11.aspx>.

³³ **Addendum:** "This related to Refugee Convention – we are in process of withdrawing our reservations to the Refugee convention and this related area will also be considered."

³⁴ **Addendum:** "PNG ratifies on the basis of national priorities and may not be possible to implement the recommendations in its entirety."

³⁵ **Addendum:** "Because this recommendation does not in itself impose a legal obligation to ratify these international instruments but it allows for the government to consider ratifying with or without reservations."

³⁶ **Addendum:** "There are constitutional rights in this regard that are provided for under the PNG Constitution."

³⁷ **Addendum:** "Refer to notes under 3."

definition of torture in line with the international standards in order to criminalize such treatment;		
79.9. Ratify CAT and its Optional Protocol, and consider designating the national human rights institution, when established, as the country's national preventive mechanism;	Maldives	Noted ³⁹
79.10. Become party to CAT and its Optional Protocol;	New Zealand	Supported
79.11. Sign and ratify CAT, CED and CRPD;	Spain	Supported
Sexual and Gender-Based Violence/Violence against women		
78.16. Develop further and implement policies and legislation aimed at gender equality and the empowerment of women, including combating all forms of gender-related violence.	Brazil	Supported
78.17. Consider reinforcing the legal framework for the prevention of violence against women.	Argentina	Supported
78.18. Take steps to implement a comprehensive legal framework addressing all forms of violence against women and children.	Canada	Supported
78.19. Introduce and implement a comprehensive legal framework to protect women and girls against all forms of gender-based violence and, in particular, introduce legislation that prohibits domestic violence.	Norway	Supported
78.20. Make every effort to eliminate domestic violence, with special attention to enacting and implementing a comprehensive legal framework addressing all forms of violence against women, sharing the international communities' concerns on the lack of laws specifically prohibiting violence against women and girls within the family.	Republic of Korea	Supported
78.35. Undertake a national awareness campaign about the lasting negative effects of gender-based violence.	United States of America	Supported
78.36. Support efforts to create safe places for women who have been victims of gender-based violence.	New Zealand	Supported
78.51. Continue to take a comprehensive approach through its law and justice, civil society and health programmes to address the high incidence of violence against women.	Australia	Supported
78.52. Undertake more effective measures to address the problems of impunity and violence against women and girls, including by strengthening law enforcement and the judicial system.	Malaysia	Supported
79.21. Develop a legislative reform package to eliminate gender-based violence.	Germany	Noted ⁴⁰
79.22. Enact and implement a comprehensive legal framework addressing all forms of violence against women	Poland	Supported ⁴¹
79.23. Adopt an adequate legal framework to combat all forms of	France	Supported ⁴²

³⁸ **Addendum:** "PNG implements at its own pace and may not be possible meet the international line of definition."

³⁹ **Addendum:** "HRC is intended to deal with all Human Rights issues and not only specific issues in relation to torture."

⁴⁰ **Addendum:** "There has already been a legislative review of all existing laws to ensure CEDAW compliance. Only implementation aspect that is still outstanding."

⁴¹ **Addendum:** "Amendments have been done to relevant laws concerning violence against women. For instance, the amendments to the Criminal Code Act recognizing marital rape. There is currently work on a Family Protection Bill that will include Interim protection orders in relation to domestic violence."

violence against women and put in place an effective complaint system in order to bring the perpetrators of these acts before justice.		
79.24. Adopt legislative measures to eliminate gender violence and ensure that all women and girls who were victims of gender violence have access, among others, to health, legal and emergency services as recommended by the Committee on the Elimination of Discrimination against Women.	Spain	Supported ⁴³
79.45. Take immediate measures to investigate cases of brutal torture and killings of girls and women, especially elderly women, accused of witchcraft, and to prosecute and punish perpetrators.	Czech Republic	Supported ⁴⁴
79.48. Ensure that all complaints on gender-based violence, regardless of perpetrators, be investigated and brought to justice (Maldives);	Maldives	Supported ⁴⁵
Trafficking in Persons		
78.54. Modify its legislation to ensure that the provisions prohibit and penalize the sale and trafficking of girls and boys under the age of 18 for sexual and labour exploitation.	Hungary	Supported
78.55. Increase efforts to prosecute offenders of human trafficking, identify and protect trafficking victims, and make efforts to prevent trafficking crimes.	United States of America	Supported
79.13. Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crimes;	United States of America	Supported ⁴⁶
Birth Registration		
78.62. Take necessary measures to ensure that all children are registered at birth.	Czech Republic	Supported
78.63. Ensure that all children are registered at birth and make every effort to register all persons not previously registered.	Slovakia	Supported
78.64. Increase efforts to ensure the registration of all children at birth.	Brazil	Supported
Discrimination based on sexual orientation		
79.52. Decriminalize sexual relations between consenting adults of the same sex.	Slovenia	Noted ⁴⁷
79.53. Decriminalize sexual relations between consenting adults of the same sex.	France	Noted ⁴⁸
79.54. Amend national legislation to include “sexual orientation” and “gender” as prohibited grounds for discrimination.	United Kingdom	Noted ⁴⁹

⁴² **Addendum:** “The proposed Family Protection Bill will cater for this.”

⁴³ **Addendum:** “That is the ongoing effort of the PNG Government.”

⁴⁴ **Addendum:** “This is in line with our current review of our laws relating to Sorcery.”

⁴⁵ **Addendum:** “That is the current position and efforts of the PNG Government.”

⁴⁶ **Addendum:** “Process has already begun with relation to the ratification of these instruments.”

⁴⁷ **Addendum:** “There is ongoing national consultation on this issue and as such no definite answer can be provided at this stage.”

⁴⁸ **Addendum:** “There is ongoing national consultation on this issue and as such no definite answer can be provided at this stage.”

⁴⁹ **Addendum:** “There is ongoing national consultation on this issue and as such no definite answer can be provided at this stage.”

II. Special Procedures Mandate Holders

Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, 18 March 2013, [A/HRC/23/49/Add.2](#)

Law and policy reforms

89. The Special Rapporteur recommends that the Government:

- (o) Review and make the necessary amendments to the human rights track within the Supreme and National Courts, to ensure that cases of violence against women are given priority and are resolved swiftly by the courts;
- (p) Take measures to strengthen the provision of legal aid to women who have been subjected to violence, including women who have been charged with the murder of their abusers;
- (q) In cooperation with women's organizations and development partners, and as a matter of urgency, develop a project for the establishment of a government-run shelter for women victims of violence in the Highlands region;
- (r) Establish a coordinated and integrated referral system to include all sectors, such as the health, police, legal, social welfare and education sectors, with a view to address the protection needs of women and girls who have been subjected to violence. Develop, to this end, the necessary regulations, protocols and instructions to provide clear guidance to service providers;
- (s) Put in place emergency procedures to rescue and resettle women who are at risk of suffering sorcery-related violence in their communities;
- (t) Establish and enforce sanctions against entities that charge women victims of violence for health services or medical reports;
- (u) Cooperate closely with and provide support for non-governmental organizations, particularly those operating in remote regions, to ensure their full participation in all efforts aimed at eliminating violence against women.

Statistics and data collection

90. The Special Rapporteur recommends that the Government:

- (a) Establish a standardized system for the collection and analysis of data, disaggregated by sex, race, age, ethnicity and other relevant characteristics, in order to understand the magnitude, trends and patterns of violence against women in the country;
- (b) In cooperation with development partners and donor agencies, develop monitoring and evaluation tools to evaluate progress made in responding to violence against women in a clear and systematic way, and integrate such tools in the country's periodic demographic and health surveys.

Societal change and awareness-raising

91. The Special Rapporteur recommends that the Government:

- (a) Design and launch targeted awareness-raising campaigns to educate and change societal attitudes, particularly those that place women in a lower social status than men;
- (b) Train and sensitize the media on issues related to women's rights generally and violence against women in particular, in order to contribute to changing the predominant social and cultural beliefs and attitudes that perpetuate harmful stereotypes and myths about women;

(c) In collaboration with development partners and donor agencies, develop, systematize and tailor capacity-building and training activities for all those involved in providing services to women who have been subjected to violence, including policymakers, judicial officers, health-care professionals and other service providers.