

INTERNATIONAL COMMISSION OF JURISTS (AUSTRALIAN SECTION)

REPORT

ON

MISSION TO PAPUA NEW GUINEA

2 TO 16 SEPTEMBER 1984

CONCERNING THE REFUGEE STATUS

OF "BORDER CROSSERS"

FROM IRIAN JAYA

10 December 1984

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## CHAPTER 1

### I N T R O D U C T I O N

#### BACKGROUND TO THE MISSION

The Executive Committee of the International Commission of Jurists (Australian Section), at its meetings in April and May, 1984, gave consideration to reports that some thousands of people had crossed the border from Irian Jaya into Papua New Guinea. It also considered reports that the two governments were negotiating to arrange the early repatriation of most of them.

At its meeting on 21 May, 1984, the Executive Committee resolved that letters should be sent to the High Commissioner for Papua New Guinea in Australia, the Indonesian Ambassador to Australia, the Australian Minister for Foreign Affairs, the representative of the United Nations High Commissioner for Refugees (UNHCR) in Australia, and to the International Commission of Jurists in Geneva. The letters sought information from the recipients as to their understanding of the situation and, where appropriate, their likely policy in regard to the issues.

At its meeting on 18 June, 1984, the Executive Committee considered further reports on the situation and resolved in principle to seek permission from the Papua New Guinea Government to send a Mission to Port Moresby and to the border areas. The primary purpose of the Mission would be to clarify the status in international law of the refugees by inquiring why they left Irian Jaya and what they felt about returning. It was considered that other nations, especially Australia, might have a role to play in assisting the Papua New Guinea Government in terms of the principles of "international solidarity and burden-sharing".

The President and four other members of the Executive Committee expressed their willingness to take part in the Mission. Arrangements were also made through the Netherlands Section of the International Commission of Jurists for a member of the Netherlands Human Rights Institute to join the Mission.

Application was made to the High Commission of Papua New Guinea for permission to visit the country and to go to the border camps. Permission was given and visas were granted. The Australian members of the Mission held a series of planning meetings. Arrangements were made to leave Sydney for Port Moresby on Sunday 2 September, to meet the Netherlands representative on Monday 3 September, to visit the border areas from Monday 3 to Thursday 6 September and for three of the Australians to return home on Sunday 9 September - the other members of the Mission were able to remain some days longer.

Some days before the departure date it became apparent that the Papua New Guinea Government had reservations about the Mission. Further detail was sought from the Australian Section. It was only after an intensive round of telephone and other communications between 29-31 August that the Government's approval for the Mission to proceed was clarified.

#### MEMBERS OF THE MISSION

The members of the Mission were:-

JOHN DOWD, M.P. (N.S.W. Parliament) President,  
Australian Section ICJ, as leader of the Mission

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PROFESSOR GARTH NETTHEIM, Professor of Law,  
University of New South Wales, member of the  
Executive Committee of the Australian Section, ICJ

MR. DANIEL ROWLAND, Solicitor, N.S.W., Head of the  
Centre for Technology and Social Change at the  
University of Wollongong, member of the  
Executive Committee of the Australian Section, ICJ

MR. DAVID BITEL, Solicitor, N.S.W., member of the  
Executive Committee of the Australian Section, ICJ

FATHER L. VAN DER BERG, of Megeen, the Netherlands,  
member of the Netherlands Institute of Human Rights,  
formerly missionary to Irian Jaya, Bachelor of Canon Law,  
attending at the invitation of the Netherlands Section  
of the ICJ.

#### SUMMARY OF MISSION

The five Australian members met the head of the PNG Department of Foreign Affairs, Mr. Matane and his principal political adviser, Mr. Oaisa and discussed the refugee problem for an hour and a half on the first day of arrival. Discussions were also held with members of the press and former Irian Jayan residents living in Port Moresby.

Two members of the Mission, Professor Nettheim and Judge Martin, then flew to Vanimo in the north to visit the Blackwater Camp near Vanimo, and the camps at Green River and Kamberatoro. The remaining members joined by Father Van der Berg, flew to Kiunga in the Western Province, to visit the refugee

camps at Kungim, Komopkin, Atkamba, Niogombin and Dome and the hospital at Rumginae.

In all these places, members of the Mission conducted interviews with refugees. In addition, members of the Mission had interviews with patrol officers, police officers, the district head in the Western Province North Fly area (Mr. Trevor Downes), the Catholic Bishops in the Vanimo and Kiunga areas, other Catholic Priests, a local Member of the National Parliament, (Mr. Warren Dutton), people resident in the towns, and officers of the Foreign Affairs Department stationed in Vanimo.

The Mission was given considerable assistance in understanding the issues involved by these officers and, of course, by the cross-section of persons involved in the camp areas, all of whom had lived with the situation for some months. Members of the Mission had the opportunity of examining particular records showing the names and numbers of people in the various camps. Some members of the Mission also had the opportunity of discussing the conditions of the refugees and the medical circumstances with hospital workers at the Rumginae Hospital.

The leader of the Mission flew from Kiunga to Vanimo to visit the Blackwater Camp and talked to members of the Catholic Mission, other residents of the town, and PNG Foreign Affairs Officers.

On return to Port Moresby, further discussions were held with press and with former Irian Jayan residents now living in PNG and with officers of the United Nations High Commissioner for Refugees, some of whom had visited the camps. An interview was granted on Saturday, 8th September by the Indonesian Ambassador and a lengthy discussion took place with him.

Three members of the Mission remained on during the following week and carried out further discussions with officials from the Department of Foreign Affairs, the Red Cross, Save the Children Fund, the UNHCR and others. One of

the members, Father Van der Berg, then visited Vanimo and the camps in that region.

The purpose of outlining this history is to underline the fact that, as well as direct evidence, the members of the Mission had an opportunity to compare their impressions and evidence with other people in the area who had worked with this problem in order to give them a perspective on the evidence they had taken. (Detail of interviews are set out in Appendix 1.)

#### INTERIM REPORT

Before the members of the Mission separated at the end of the week, they agreed in principle on the conclusions and recommendations arising from what they had learned during the course of the Mission. These were drawn up by the Australian members after they had all returned to Sydney, and they were released in the form of an Interim Report dated 24 September 1984. Father van der Berg returned directly to the Netherlands from Port Moresby and it has not been possible for him to contribute actively to the preparation of this Report.

#### TERMINOLOGY

For convenience, in this report the term "refugee" will be used rather than trying to distinguish precisely the particular status of the various groups. As will be seen from our conclusions and recommendations, with the exception of a small number who will voluntarily return, the balance are either refugees or "persons in the situation of a refugee" and are thus entitled to United Nations High Commissioner for Refugees assistance. The more neutral word, "border-crosser", only covers the status of some of those who have come into Papua New Guinea.



## CHAPTER 2

### HISTORICAL BACKGROUND

Prior to the coming of Europeans the large island of New Guinea was inhabited throughout by people ethnically described as Melanesians. Other homes of Melanesians were the Solomon Islands, Fiji, New Caledonia, Vanuatu (formerly New Hebrides) and Australia (the Torres Strait Islanders).

In the early 19th Century the Dutch, who had established a colonial empire in Java and other islands of the East Indies, claimed and commenced to set up outposts in the Western half of New Guinea. The Eastern half was later colonised in the North by Germany and in the South by Great Britain.

Holland claimed the 141st meridian as the border between West and East and later this became recognised by the other powers, but was varied mainly by excluding a section which diverged in a curve to the West so as to coincide with the course of the Fly River.

At the turn of the 20th century Papua became a territory of Australia and after World War I German New Guinea became mandated territory of Australia under the League of Nations.

### WORLD WAR II AND AFTER

In 1942 the Japanese army invaded part of Australian New Guinea and Papua and took over the Dutch Western half of New Guinea along with the rest of the Dutch East Indies, and the Dutch left.

In 1944 United States and Australian forces drove the Japanese from Western New Guinea and the Dutch returned. The Dutch also returned to Java and other parts of the East Indies after the defeat of Japan but were resisted by Indonesian nationalists led by Sukarno. Eventually in 1949 they ceded the Indies to the Indonesian Republic, but not Western New Guinea.

The Dutch continued to administer Western New Guinea and in 1961 established and held elections for a New Guinea Council with some legislative powers and, in the following year, for ten Regional Councils. Self determination was proposed in the late 1950's and early 1960's to the people of the Dutch colony.

The Indonesian Republic meanwhile conducted a campaign for the transfer to it of Western New Guinea by military action, by raising the matter in the United Nations and by other means.

Eventually by agreement dated 15 August 1962 between the Netherlands and Indonesia the Netherlands agreed to hand the country over, first for administration by the United Nations for seven months and thereafter by Indonesia. The agreement provided that before the end of 1969 the inhabitants were to decide whether to remain part of Indonesia or not. The decision was to be made by what was variously described as an "act of free choice" and an "act of self determination". The arrangements for it were to be the "responsibility of Indonesia". A representative of the Secretary-General of the United Nations was to carry out "responsibilities to advise, assist and participate in" those arrangements. (Article XVII).

The agreement provided that the arrangements to be made by Indonesia would include "the eligibility of all adults, male and female, not foreign nationals, to participate in the act of self-determination to be carried out in accordance with international practice, who are resident" at certain prescribed dates. (Article XVIII).

Indonesia was to "guarantee fully the rights, including the rights of free speech, freedom of movement and of assembly, of the inhabitants...". (Article XXII).

## THE "ACT OF FREE CHOICE"

Indonesia took over the administration in May 1963. The Indonesian name for the island of New Guinea was Irian and the Western part was given the name "Irian Jaya" ("Irian victorious").

The Indonesian government, at all times, claimed that it was entitled to treat the Western part of the island of New Guinea as part of its territories and considered that an "act of self-determination" was unnecessary. Ultimately the Indonesian Government held such an act of "self-determination" in August 1969. It proposed that the act should be effected by the members of eight district assemblies by the Indonesian method of consultation (musjawarah). The members were to be selected by the same method.

The UN Secretary-General appointed a Bolivian diplomat Mr. Ortiz Sanz as his representative and he arrived in Indonesia in April 1968.

In his final report to the Secretary-General, Mr. Ortiz Sanz said that during his stay he received 179 petitions, a little more than half favouring adhering to Indonesia, the remainder opposing. The latter "often expressed criticism of the Indonesian administration; complained against acts of repression by the Indonesian armed forces; denounced the lack of guarantees for basic rights and freedoms, including the freedom to organize opposition political parties; requested the release of political prisoners and the participation in the act of free choice of all West Irianese...; denounced resolutions... in favour of Indonesia as false and signed by people under pressure from Indonesian officials; asked for the application of the "one-man, one-vote" system...; and expressed the view that opposition groups should be given representation in the councils".

Ortiz Sanz noted that "since 1965 a situation of unrest and turmoil, marked by sporadic armed clashes, had existed in the Manokwari regency"; that in April-May 1969 "an outbreak of hostilities occurred in Waghete and

Enarotali, two important towns of the Paniai Regency"; and that there were press reports "that in April 1969 there had been increased border crossings" into the territory of Papua and New Guinea. (Author/journalist Peter Hastings has suggested that more than 4000 people crossed the border between 1963 and 1969, including 1700 between January and August 1969).

Ortiz Sanz made several representations to the Indonesian Government to improve conditions for the act of self-determination.

First he suggested unsuccessfully that "the democratic, orthodox and universally accepted method of one-man one-vote" be used at least in the developed urban areas.

Secondly he suggested that to give effect to the Netherlands-Indonesian agreement a special statute be enacted granting the people of the territory the basic rights of freedom of speech, movement and assembly. The Government replied that they were already guaranteed by the Indonesian Constitution. Ortiz Sanz in his report expressed his "reservation regarding the implementation of Article XXII of the (1962) Agreement" which guaranteed the basic freedoms. He said: "In spite of my constant efforts, this important provision was not fully implemented and the Administration exercised at all times a tight political control over the population".

Thirdly he suggested the promulgation of a general amnesty so as to create an atmosphere of peace and freedom for the act of free choice. This was not done but 346 political detainees were released including a former Governor of Irian Jaya.

Ultimately after the process of "consultation", the "act of free choice" was made in the eight assemblies consisting of a little over 1,000 persons. Not one spoke in opposition to integration with Indonesia. Ortiz Sanz's final report said that an act of free choice had taken place in West Irian "in accordance with Indonesian practice". It is noticeable that he refrained from

using the words contained in Article XVIII of the Netherlands-Indonesian Agreement - "in accordance with international practice".

In addition to his reservation about the implementation of Article XXII noted above, he stated: "The petitions opposing annexation to Indonesia, the cases of unrest in Manokwari, Waghete and Enarotali, the flight of a number of people to the part of the Island that is administered by Australia, and the existence of political detainees, more than 300 of whom were released at my request, show that without doubt certain elements of the population of West Irian held firm convictions in favour of Independence. Nevertheless the answer given by the consultative assemblies to the questions put to them was a unanimous consensus in favour of remaining with Indonesia".

At the United Nations General Assembly the Netherlands, Indonesia and others moved to note and to acknowledge the Secretary-General's report on the act of free choice and to acknowledge the fulfilment of the tasks entrusted to him under the Netherlands-Indonesian Agreement. The representative of Ghana moved an amendment that the population have a further opportunity of free choice by 1975. The amendment was lost by 60 to 15, 24 abstaining, the supporters of the amendment being mainly African States. The substantive motion was then carried 84 to nil, 30 abstaining.

In his speech the Ghanaian representative said: "I have also consulted many delegations on the questions under consideration, and in my observation there is deep concern and reservation about the mockery of justice and democracy, through which this Assembly has been taken. Some have said we made the mistake in 1962 therefore we should now look only to the future. Others say that there is an atmosphere of inevitability about the vote on this resolution, however unsatisfactory it is. Others are playing regional power-politics, over this issue of the destiny of a people. Still others, while recognizing the wide disquiet, are prepared to invoke loyalties which have no

relevance to the situation and which are in violation of the principle of self-determination."

#### AFTER THE "ACT OF FREE CHOICE"

In 1975 the Australian territory of Papua New Guinea became independent of Australia. Papua New Guinea became a member of the British Commonwealth with a Governor-General representing the Queen and a Westminster style of government.

Since 1969 there have been other crossings of the border by Melanesian people from Irian Jaya into Papua New Guinea. Some of these crossings appear to have occurred at times of guerilla activity by forces opposed to the Indonesian Government and retaliatory activity by the Indonesian armed forces. In particular about three thousand persons crossed the border at a time of such activities in 1977-78. The guerillas are Melanesian West Irianese but appear to be by no means a unified force and have almost no modern weapons. They appear not to have large numbers and, though not restricted to border areas, they appear to operate mainly there. The guerillas and their supporters object to Indonesian rule and call for independence of Irian Jaya which they refer to as "West Papua". They call themselves Organisasi Papua Merdeka (O.P.M.) meaning "Free Papua Movement".

During the period from 1977 until the end of 1983 there were isolated incidents which expressed the movement towards independence.

There were some political arrests including that of the prominent Melanesian cultural leader Arnold Ap in November 1983.

Over the last five years the Indonesian Government has accelerated the policy which has been carried on in Indonesia of transmigration and one of the designated areas of transmigration is the Irian Jaya border region. Fear or at least awareness of this policy exists in the minds of many people living

near the border. The policy in fact transfers large numbers of people from parts of Indonesia (mainly Java) to other parts of Indonesia.

In 1979 Indonesia and Papua New Guinea concluded a basic border agreement which defined the border area and regulated activities along the border. A Joint Border Committee was established to formulate guidelines and procedures for giving effect to the agreement. The agreement regulated border crossings for traditional and customary purposes. This was necessary because the border cut through clans, clan lands and lands whose people were closely connected in language, trade, intermarriage and other forms of intercourse. The agreement facilitated border crossings for traditional activities within the border area such as trade, water usage, gardening and social contacts and ceremonies, providing that they were to be free from normal immigration controls. As to other border crossings, the agreement provided that they were to be made through designated points of entry and in accordance with the ordinary laws as to entry. A further agreement (not yet available) was concluded in October 1984 to replace the earlier agreement.

#### THE 1984 CROSSINGS

On 13th February 1984 two persons attempted to raise a free West Papua flag in place of the Indonesia flag outside a government building in Jayapura (the administrative capital of Irian Jaya) and one of them was shot. There is strong evidence that a fairly widespread plan had been made by ethnic Melanesians to attempt to take over the administration by force and that it was aborted. There followed fairly substantial disturbances at widely scattered places along the border by members of the O.P.M. and by Indonesian armed forces. Thereafter over a period of some months a large number of Melanesians crossed the border into Papua New Guinea at a number of widely spread places along both the Southern, Central and Northern parts of the

border and most have remained. They number about ten thousand men, women and children.

On 17th April 1984 a joint communique was issued following discussions between the Honourable Rabbie L. Namaliu, the Papuan New Guinea Minister for Foreign Affairs and Trade and the Indonesian Minister for Foreign Affairs, Dr Mochtar Kusumaatmadja and Minister for Home Affairs, Mr Soepardjo Roestam, in Jakarta.

The communique expressed the continuing concern of the Papua New Guinea government about the influx of illegal border crossers. The Indonesian Foreign Minister agreed that the two governments should co-operate in returning border crossers to their homes in an orderly manner. The Papua New Guinea Minister expressed concern for the safety of refugees who returned to Indonesia and the Indonesian Minister gave an assurance that the safety of returned border crossers would be guaranteed provided they were not involved in acts violating Indonesian Law. The Indonesian Minister expressed concern about the activities of anti-Indonesia elements in the border area especially after the abduction of a Swiss pilot into Papua New Guinea territory. In reply, an assurance was given that the Papua New Guinea "government would not allow its territory to be used as sanctuary by anti-Indonesia elements".

Mr. Namaliu told the PNG Parliament in May that repatriation of illegal border crossers other than genuine refugees would proceed between May and June 1984. That did not occur.

In August 1984 the Secretary for the Papua New Guinea Department of Foreign Affairs and Trade announced the intention of that Government within the next few weeks to send back to Irian Jaya the great majority of the border crossers. They were to be escorted by Defence Force personnel. Genuine refugees would be allowed to remain until a third country was found for them.



Since the communique of 17th April 1984 there have been meetings of an Indonesian-Papua New Guinea liaison Committee and there was an announcement in the Press that 17 September 1984 had been agreed on as a tentative date for repatriation and that Indonesia had approved that date. However Mr Namaliu later indicated that that date was not a final one. (Post Courier, 3 September 1984). Since then other dates for repatriation have been proposed.

A team of Indonesian Government officials called a "verification committee" visited the Blackwater Camp near Vanimo in early November and were the subject of an attack by people within the Blackwater Camp.

As at the date of writing there has been no reported official repatriation of persons who crossed the border.

## CHAPTER 3

### REPATRIATION AND THE CONSTITUTION OF PAPUA NEW GUINEA

The PNG Migration Act controls the entry of persons into the country.

An argument has been advanced by certain lawyers in Papua New Guinea that to return against their will refugees who enter PNG without regard to correct immigration procedures would be a breach of sections 35, 36 and 41 of the Papua New Guinea Constitution. (The Times of Papua New Guinea, 16 August, 1984).

Section 35 provides that no person shall be deprived of life except by court sentence, lawful act of war or other specified lawful means. There appear to be no judicial decisions as to the meaning of the section. It is difficult to see that it could prohibit the mere expulsion of persons entering Papua New Guinea even if they were persons who were held to be entitled not to be expelled under international law. The possibility that they might suffer death outside PNG, even if that could be legally established, would hardly seem to change the position.

Section 36 provides that no person shall be tortured or suffer treatment or punishment that is cruel, inhuman or inconsistent with human dignity. Pursuant to it, prisoners who have established that they were beaten in PNG gaols have been granted injunctions against gaol authorities. (Pauta & Susuve [1982] PNGLR 7). Again, in the absence of any authority, it is difficult to see that the possible consequences elsewhere of expulsion from PNG could, even if legally established, be held to render unconstitutional mere expulsion from PNG, as long as it was not itself accompanied by treatment of the forbidden kind.

Section 41 is much wider and potentially gives great scope to the judiciary to control the executive. It declares unlawful any act done under a valid law which in the particular case is harsh or oppressive or not warranted by or disproportionate to the circumstances of the case, or not reasonably justifiable in a democratic society having proper regard for the rights and dignity of mankind. Section 39 provides guidance for determining whether an act is so reasonably justifiable.

In Premdas' case [1979] ENGLR 329 the Supreme Court declined to hold unlawful a deportation order made by the Minister for Foreign Affairs and Trade against a non-citizen who was employed by another Minister to assist him, who was not a member of the Public Service, and in respect of whom the Prime Minister had asked the Minister to end his employment. The majority judges expressed themselves in varying terms but basically held that even though they might have acted differently from the Minister for Foreign Affairs and Trade, it had not been proved on the facts that the making of the deportation order came within the forbidden categories. The Court further held that although the Migration Act validly provides that a deportation order made by the Minister cannot be reviewed or made the subject of an appeal by a Court, the making of such an order must still be subject to the Constitution, and the facts are reviewable by the Court for the purposes of Section 41 of the Constitution.

It follows that any attempted expulsion of a border crosser, whether following a deportation order or otherwise, could be reviewed by the Supreme Court. The burden of proof lies on the person seeking review under section 41 (s.41(2)). All the facts would have to be considered by the Court, and one would have to be bold indeed to predict the outcome, except to say that Premdas' case suggests that the burden of proof would not be a light one.

It has also been suggested that, independently of the Constitution, any person attempting to expel another from PNG would need the authority of a Court conviction or other order. This is not correct. Under s.8 of the Migration Act the Minister may order the deportation of a prohibited immigrant, the effect of which is that the immigrant is to be deported and may be kept in custody in the meantime (s.10). A non-citizen who enters PNG without a valid entry permit is a prohibited immigrant. Section 8 is not unconstitutional and no Court order is necessary. In particular, s.8 does not infringe s.42 of the Constitution which protects personal liberty. Section 42(1)(g) specifically permits deprivation of liberty for the purpose of deportation. (Perryman v. The Minister for Foreign Affairs and Trade [1982] PNGLR 339.)

Section 39(2) of the Constitution permits the Supreme or National Court to declare a law invalid as not "reasonably justifiable in a society having a proper regard for the rights and dignity of mankind". That provision was not argued in Perryman's case. It is hard to see that it could have been in view of the terms of s.42(1)(g) of the Constitution referred to in the judgment.

So, it appears that the only possible impediment to repatriation that might arise under the Constitution is section 41, the broad language of which has not been tested in such a situation as the involuntary repatriation of refugees.

## CHAPTER 4

### INTERNATIONAL LAW CONCERNING REFUGEES

...the twentieth century has sometimes been described as "the century of the uprooted". Though the refugee problem is not new, indeed Adam and Eve have been described as refugees, in earlier times refugees such as the Huguenots, were dealt with on an ad hoc basis by the countries to which they fled. It is only comparatively recently that the need for international action has been realised, and, to a degree implemented...

(P. Hyndman, "An appraisal of the development of the protection afforded to refugees under international law". (1979-81) 1 Lawasia (N.S.) 229, 229-230.)

The principal elements of modern international refugee law are provisions for the protection of refugees and provisions for an international agency to see to their protection and assistance. The "Magna Carta for Refugees" today is the multilateral Convention relating to the Status of Refugees which was adopted in 1951 under U.N. auspices, as supplemented by the 1967 Protocol relating to the Status of Refugees. To date, 96 nations have adhered to the Convention and/or Protocol but they do not include Papua New Guinea or Indonesia. In 1950 the United Nations General Assembly approved the Statute of the Office of the United Nations High Commissioner for Refugees, and the Office (UNHCR) commenced operations in 1951. In consequence "the refugee today no longer stands alone completely at the mercy of the goodwill of the State". (S. Aga Khan, Legal Problems Relating to Refugees and Displaced Persons, Academie du Droit International de la Haye, 1976. I Recueil des Cours 287, 314.)

The 1951 Convention binds States Parties by a number of provisions dealing with the legal status, rights and duties of refugees in the country of refuge. Of these the most important are provisions relating to non-expulsion and non-refoulement i.e. no refugee should be returned to a State or territory

where he or she may face persecution, (Article 33 of the 1951 Convention). Some of the provisions are designed to safeguard interests of the country of asylum. States Parties to the Convention are under no obligation to confer a right of entry or residence to refugees, subject only to the prohibition of refoulement. States Parties undertake to co-operate with the Office of the UNHCR, and a series of General Assembly resolutions has urged all governments to co-operate with the Office.

The 1951 Convention as modified by the 1967 Protocol attempted a general definition of the term "refugee", in essence, as a person who

...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country...

This definition is a relatively narrow one. It is similar to the definition in the UNHCR Statute. Broader definitions have been adopted in some national legislation and in the Convention of the Organization of African Unity.

In Europe there has developed the notion of the de facto refugee, and the UNHCR has, over the years, been authorised to deal with additional categories of persons, e.g. "externally displaced persons in a refugee-like situation", that is, people who have crossed an international frontier because of man-made disturbances which seriously disrupt public order and who do not have the protection of their country. (The UNHCR has also, from time to time, been vested with competence to provide material assistance to people who have returned to their country).

The UNHCR, in order to operate in all countries, must maintain a stance of neutrality in matters of international politics. It has accumulated considerable expertise in the practical working out of refugee status in a wide variety of circumstances, and offers such expertise to governments. But it generally leaves determination of refugee status of particular persons to

the government of the country in which the person is claiming that status, in accordance with certain basic principles established by the UNHCR Executive Committee. The UNHCR would not necessarily accept as authoritative determinations about refugee status made by governments; a person who meets the criteria of the UNHCR Statute qualifies for the protection of the United Nations provided by the High Commissioner whether or not he is in a country that is a party to the 1951 Convention or the 1967 Protocol, or whether or not he has been recognized by his host country as a refugee under either of these instruments. In its functions of humanitarian assistance, the UNHCR can also rely on the extended ranges of persons within its competence.

The standard definition of a refugee contains both subjective and objective elements. The person must have a fear of persecution for one of the listed reasons, and that is a subjective matter. But those charged with determining refugee status also need to establish that the fear is "well-founded". The term "persecution" is not defined but probably extends to cover violations of internationally recognised human rights. This, then, requires a human rights inquiry into circumstances within the country concerned. A finding that a person's fear of persecution is "well-founded" can, accordingly, be regarded as political comment about that country, and such a determination may be seen as having political repercussions.

The government of a country which has the task of deciding whether a person is a refugee may also feel that the task of finding that a person's fear of persecution is well-founded may cause political difficulties with a powerful neighbour with which it wishes to maintain friendly relations. It is worth noting, however, that the source of the feared persecution need not necessarily be the government - "persecution by a third party where the government offers no protection because of clandestine support or inability of control is just as good." (J. Gilbert, "Right of Asylum: A Change of

Direction", (1983) 32 International and Comparative Law Quarterly, 645). Accordingly, it may wish to have such people returned, or to have them go to some third country, or it may choose to grant a right of residence under some less politically charged category than that of refugee. Such considerations suggest that the Convention and Statute definitions of "refugee" may merit reconsideration and broadening. In an attempt to meet this problem, the General Assembly Declaration on Territorial Asylum (Resolution 2313 (XXII)) states "that the grant of asylum by a State to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State".

The existing definition is also essentially individualistic, and recent years have seen a number of instances of mass influxes of people. In such cases UNHCR proposes a prima facie (but rebuttable) interim determination that the entire group are in a refugee-like situation so that none should be repatriated unless and until it can be established that particular individuals are not refugees and should be sent back. Formal determination of refugee status is not a pre-condition to the operation of the principle of non-refoulement. (Grahl-Madsden, The Status of Refugees in International Law (1972), 224.)

The problem of large-scale influx has recently been addressed in Conclusion No.22 (XXXII) of the Executive Committee of the High Commissioner's Programme. The essential features are as follows:

I.

The document notes "the increasing number of large-scale influx situations in different areas of the world and especially in developing countries". The asylum seekers include refugees (within the meaning of the Convention and Protocol) or persons "who, owing



to external aggression, occupation, foreign domination or events seriously disturbing public order...are compelled to seek refuge..." Such large-scale influxes frequently create serious problems and the search for durable solutions requires that the receiving States should receive assistance in the context of "international solidarity and burden-sharing".

## II.

If the receiving State is unable to admit asylum seekers on a durable basis, it should at least admit them on a temporary basis.

"In all cases the fundamental principle of non-refoulement - including non-rejection at the frontier - must be scrupulously observed". The document goes on to amplify the standards in Article

31 of the 1951 Convention in a number of particulars, including:

- (a) they should not be penalized or exposed to any unfavourable treatment solely on the ground that their presence in the country is considered unlawful; they should not be subjected to restrictions on their movements other than those which are necessary in the interest of public health and public order;
- (c) they should receive all necessary assistance and be provided with the basic necessities of life including food, shelter and basic sanitary and health facilities; in this respect the international community should conform with the principles of international solidarity and burden-sharing;
- (g) the location of asylum seekers should be determined by their safety and well-being as well as by the security needs of the receiving State. Asylum seekers should, as far as possible, be located at a reasonable distance from the frontier of their country of origin. They should not become involved in subversive activities against their country of origin or any other State;
- (n) they should be granted all the necessary facilities to enable them to obtain a satisfactory durable solution;
- (p) all steps should be taken to facilitate voluntary repatriation.

### III.

The UNHCR should be allowed access to asylum seekers and permitted to exercise its function of international protection and to supervise the well-being of the people.

### IV.

Because a mass influx may place unduly heavy burdens on a receiving State, other States shall take all necessary measures to assist within the framework of international solidarity and burden-sharing. "Primary consideration should be given to the possibility of finding suitable solutions within the regional context". Burden-sharing should involve provision of short-term financial and other assistance when necessary. Burden-sharing should also be directed towards facilitating voluntary repatriation, promoting local settlement in the receiving country or third country resettlement. Third country resettlement should be "in a cultural environment appropriate for their well-being".

Lastly,

In a spirit of international solidarity, Governments should also seek to ensure that the causes leading to large scale influxes of asylum seekers are as far as possible removed and where such influxes have occurred, that conditions favourable to voluntary repatriation are established.

The UNHCR Executive Committee Conclusion can have no more force than that of recommendation. Even the terms of the 1951 Convention and the 1967 Protocol are not binding on a State such as Papua New Guinea (or Indonesia) which has not ratified them. However, even non-party States have certain international law obligations in relation to refugees. Such obligations may be found in the

human rights provisions of the UN Charter and the Universal Declaration of Human Rights. In particular, it appears that the principle of non-refoulement has become a part of customary international law binding on all States so as to forbid the return of refugees other than in circumstances of voluntary repatriation. (G. Goodwin-Gill, International Law and the Movement of Persons Between States (OUP, 1978), 141.)

Voluntary repatriation is the theme of conclusion No.18(XXXI) of the Executive Committee of the High Commissioner's Programme. Sections of that document of particular relevance to the current situation are as follows:

The Executive Committee

- (a) Recognized that voluntary repatriation constitutes generally...the most appropriate solution for refugee problems;
- (b) Stressed that the essentially voluntary character of repatriation should always be respected;
- (c) Recognized the desirability of appropriate arrangements to establish the voluntary character of repatriation...and for UNHCR, whenever necessary, to be associated with such arrangements;...
- (f) Called upon governments of countries of origin to provide formal guarantees for the safety of returning refugees and stressed the importance of such guarantees being fully respected and of returning refugees not being penalized for having left their country of origin for reasons giving rise to refugee situations;...
- (h) Considered that UNHCR could appropriately be called upon - with the agreement of the parties concerned - to monitor the situation of returning refugees with particular regard to any guarantees provided by the governments of countries of origin;...

As noted, the principle of non-refoulement should apply as a matter of international law to every nation of first refuge so as to permit only the voluntary repatriation of asylum-seekers. To make the principle effective in practice, it is essential that the receiving country be assured of international solidarity and burden-sharing, especially in the search for durable solutions

...in the absence of an established pattern of international co-operation in the speedy provision of resettlement places for refugees admitted on a temporary basis by countries of first refuge unable or unwilling to allow local settlement of some or all of the refugees, these countries are unlikely to act in accordance with the non-refoulement principle and the danger of seeing them either turn back refugees at their borders, or even send back refugees already admitted, increases dramatically. (J-P.L. Fonteyne, "Burden-Sharing: An Analysis of the Nature and Function of International Solidarity in Cases of Mass Influx of Refugees", in D.W. Greig (ed.), 8 Australian Year Book of International Law (ANU, 1983), 1977.)

So while, as a matter of law, the country of first refuge bears primary responsibility for observance of the principle of non-refoulement, other countries also have responsibilities to make the principle effective through the concepts of international solidarity and burden-sharing. It has been argued that those responsibilities are now not only pragmatic and moral but legal.

## CHAPTER 5

### ATTITUDES OF GOVERNMENTS

The President of the International Commission of Jurists (Australian Section) wrote in June to the Australian Minister for Foreign Affairs, to the Ambassador of the Republic of Indonesia, and to the High Commissioner of Papua New Guinea seeking the comments of the respective Governments on the situation represented by the refugees. Letters received in reply also provided us with copies of other documents. Other governmental statements - or press reports of government statements - have been considered. And members of the Mission had the benefit of generous discussions in Port Moresby with the Secretary of the PNG Department of Foreign Affairs and Trade and the Indonesian Ambassador. From these sources we attempt to summarise the published attitudes of the respective governments.

#### AUSTRALIA

The Minister for Foreign Affairs, the Hon. Bill Hayden, M.P., wrote on 21 August, 1984. He expressed the Government's concern

at the events that have taken place on the Indonesian/PNG border, an area close to Australia and involving countries with which we have close and important relations. The Government is also mindful of the welfare of the border crossers and the difficult political and humanitarian issues involved in their care and repatriation.

The letter went on to state that the Government recognized that the matter "is primarily the responsibility of the Indonesian and PNG Governments to resolve." Mechanisms in place between the two countries to deal with such situations, particularly the Border Agreement of 1979, "should be utilised without outside interference".

The Minister noted understandings reached between the two countries, particularly

that most border crossers are expected to return to Irian Jaya in the near future and the assurances given by the PNG Foreign Minister to Parliament that those who have a well-founded fear of return would be allowed to stay in PNG for the time being.

The letter went on to discuss the role of the UNHCR. It acknowledged the High Commissioner's considerable experience and the Australian Government's long record of active support for his work. The Minister noted that the UNHCR had maintained contact with the PNG Government and had "contributed to the care and maintenance of some of the border crossers". And it noted that the Indonesian Government

while expressing a preference for a purely bilateral resolution of the problem has not opposed the present arrangements between the UNHCR and the PNG Government.

The Australian Government's approach on the question of possible further UNHCR involvement was that Indonesia and PNG should work the matter out themselves. But the Australian Government had made clear its own view

that the solution to the problem of the border crossers should take full account of the important humanitarian considerations involved....

The Minister also stated that the Australian Government had

let it be known that we stand ready to offer assistance in resolving problems if requested by the two Governments concerned.

*in dat 201 niet geargebene.*

#### PAPUA NEW GUINEA

The High Commissioner to Australia, His Excellency, A. Tololo, wrote on 11 July 1984 enclosing considerable documentation. He told us of his Government's "firm belief" that most of the crossers came to PNG "out of fear and uncertainty following Indonesian military operations and OPM threats". His Government,

...with the generous assistance of the UNHCR and non-government agencies has been able to provide shelter, and essential services for the crossers until alternative arrangements have been made.

He went on to say that, following assurances from the two Governments

...these people have agreed to return to Irian Jaya under a repatriation programme...which is expected to begin in the immediate future.

His Excellency added that, during discussions in Jakarta in April, the Indonesian authorities had agreed to allow

...officials from the Papua New Guinea Embassy in Jakarta to witness the return of crossers to Irian Jaya and for these officers to make further monitoring visits to Irian Jaya from time to time.

The letter went on to say that those considered to be genuine political refugees would be referred to the UNHCR to seek and arrange third country domicile. And it mentioned Indonesia's rejection of PNG's request that the UNHCR be involved in monitoring the safety of those who return to Irian Jaya.

The letter concluded by noting the strain on the PNG Government's resources in ensuring that adequate essential services are provided to the refugees.

On 2 September, the Secretary of the Papua New Guinea Department of Foreign Affairs, Mr. Paulias Matane, met members of the Mission.

He told us that the people in Blackwater Camp near Vanimo had all been interviewed thoroughly. About half of them would qualify for refugee status as politically motivated. Some had deserted from the military. Some had left because they were not satisfied with the way they had been treated. Others were not political, but were relatives of those who were.

The other people who had crossed the border were not involved in political activities - or if so, only in a minor way. They were simple bush people. Mr. Matane said that he had spoken to "situation leaders" in Vanimo and Kiunga and had been told that they want to go back when things become normal on the other side of the border. They were afraid of activities of the

Indonesian military. Indonesia itself was concerned about border stability because of OPM activity. Mr. Matane went on to say that some had fled from the OPM itself. The OPM demanded their support, but they were simple bush people who were interested only in their gardens, pigs, fish and so on. If support was not provided, the OPM intimidated them. If asked, the people would not give fear of the OPM as a reason for their departure because of fear of retribution. Only in-depth interviewing could bring out this factor. He told us that the people in the remote camps were mainly old people, women and children - his Government did not know where the able-bodied men are.

Mr. Matane told us of progress in Indonesia-PNG negotiations for repatriation. PNG, he said, wanted written guarantees that the people would be safe. He said that PNG wanted its officers from the Jakarta Embassy to be present when people were taken back across the border, and for them to be free to go to any of their villages at any time.

He spoke about Indonesia's transmigration programme and his Government's concern about its impact on the culture of the Melanesian people in Irian Jaya. This concern had been expressed to the Indonesian Government and PNG wished to develop cultural exchanges between the two halves of the island.

The Secretary told us that border crossers had placed a strain on the food supplies (e.g. sago) of PNG village people so that outside relief supplies were needed for them as well as the border crossers. But PNG was concerned that too much spoon-feeding would kill initiative, so the Government did not give much, deliberately, so as to leave them to rely, in part, on bush food. Indonesia had provided some money for relief supplies and had been asked to provide more. PNG had also asked UNHCR to assist. All outside aid should be co-ordinated through the appropriate Government officers in Western Province and West Sepik Province.



Mr. Matane spoke about proposals that the border crossers should be allowed to remain in PNG. Local resettlement was not feasible, he said, because land was not available. Some people from Irian Jaya had been given residence status in the past and had engaged in political agitation. Those who qualify as refugees will not be allowed to stay in PNG but will have to be resettled in other countries. So far, no countries in the region had volunteered to take refugees.

On 10 September three members of the Mission had a further meeting at the Department of Foreign Affairs with the officer in charge of political affairs, Mr. Oaisa, and one of his officers. He was told of what the Mission had learned at the camps and also in discussion with the Indonesian Ambassador. He said that he knew most of what he was told but our advice that the refugees would refuse to return was news to him. He insisted that PNG would require a commitment from Indonesia guaranteeing the safety of the refugees who returned and containing provisions for monitoring their well-being which were unlimited. Final terms of the agreement with Indonesia were still being worked out. The Department was working on a voluntary repatriation agreement and believed that the people would go back if given proper assurances by the Indonesian Government. The Department would not allow further refugees to cross the border.

#### INDONESIA

The Minister Counsellor at the Indonesian Embassy in Canberra, Johannes Sutantio, wrote on 8 August. He referred to terms of the 1979 border agreement between Indonesia and PNG about border crossings for traditional and customary purposes (Article 4) and for other purposes (Article 7). The letter continued:

...there are, from time to time, Irian Jayans who flee across the border because of provocation and intimidation by elements of the so-called Free Papua Movement (OPM), who are bent on creating trouble along the border area of Irian Jaya and PNG.

Indonesia does not have political refugees even though OPM elements sometimes call themselves political refugees. However they cannot be regarded as such since they form into gangs operating along the border, pillaging villagers and occasionally disrupting village governments in that area. OPM is banned by law and it is a criminal offence to provide assistance in whatever form to the OPM. From time to time the Government offers amnesty to the remnants of OPM. For example, fifty-five OPM members, led by Isak Auri surrendered on May 15 at an army post, 130 km. southwest of Jayapura.

With regard to the recent border crossers who took temporary refuge in PNG, in Jakarta and recently during their meeting in Surabaya, both the Governments of Indonesia and PNG agreed that they will be returned to Irian Jaya. The process of returning those people will start soon. We believe that those border crossers are not refugees, in the international sense, and as Indonesia and PNG have reached resolution on this question, we deem it unnecessary to involve the services of the UNHCR.

On 8 September, the Indonesian Ambassador in Port Moresby, His Excellency Imam Soepomo, granted members of the Mission an extended interview. He spoke of his Government's concern for border security and concern that the OPM might be using PNG territory as sanctuary. He claimed that the OPM had instigated the recent exodus of border village people by telling them that there would be conflict between the OPM and Indonesians. Others who had crossed had been involved in the attempted takeover or were sympathisers or family members. Indonesia sought repatriation only of those who wished to return. Those who returned would not be regarded as having committed an offence merely by leaving Indonesia without permission. Military deserters would be subject to military discipline, but otherwise only those who were very active would be charged with subversion. He did not think that there would be charges laid against families for providing food and shelter to activists. Village people could return to their villages and public servants in the villages could go back to their positions.

The Ambassador said that Indonesia did not accept that the UNHCR or any third party should be involved in the repatriation, which was purely a bilateral matter. His Government's understanding of the role of PNG officials from the Embassy in Jakarta was that they would be welcome to visit to see that people settled down after repatriation - it was not to see that they were treated fairly. Indonesia contemplated occasional visits, but no on-going monitoring in the sense of supervision and interference.

His Excellency said that he had been given to understand, by the PNG Government and the Minister, that the majority of the village people wished to go back, and would be returned when the PNG Government had Indonesian assurances that they would be safe. The Indonesian Government had been proceeding on that assumption, and he expressed considerable surprise at our suggestion that this might not be the case. He told us that a joint PNG-Indonesian team was to visit the camps beforehand to verify that the people did wish to go back.

The Ambassador was perturbed by stories that we had been told of repressive actions by Indonesian armed forces and others, and promised to investigate.

## CHAPTER 6

### VISITS TO THE CAMPS

#### PRELIMINARY NOTE

It is proper to begin by noting certain difficulties that the Mission had to deal with in the course of its investigations in PNG.

There was a degree of obfuscation on the part of certain government officials. There was also a natural reticence on the part of local officials to make statements which might place them in some difficulty with their superiors; notwithstanding this, we encountered a remarkable degree of frankness. One example was the disclosure to us of the existence of a hitherto unannounced large camp in the Western Province.

There was the matter of time. We could allow only eight days for the Mission. Travelling, and consultations in Port Moresby, took about four days, leaving four working days for interviewing in the border camps. However, dividing into two groups the Mission was able to visit all the major camps.

Then there was the matter of communication. Only the representative from the Netherlands and one of the Australians spoke Indonesian. Accordingly, much of the interviewing had to take place through interpreters. In some places double translation was necessary: Indonesian or local dialect to Pidgin, Pidgin to English. Inevitably translation reduces the precision of interviews. In addition, some people may have felt nervous about speaking freely through the interpreters. And there may have been some initial suspicion in speaking to those members of the Mission who could speak Indonesian.

Then there was the matter of selecting people to interview. Courtesy and the need to achieve co-operation led us to speak first to leaders of the

different groups. Of course, the leaders would have been largely in a position to speak for the group as a whole as, in most cases, the decision to leave Irian Jaya seems to have been a group decision. Other interviewees were pushed forward by the groups or presented themselves. However no obstacle was placed in the way of us selecting people at random for interview. Those of the Mission who spoke Indonesian were particularly well placed to do this.

Another matter to note is that it was frequently difficult to conduct interviews in private. The people live in a communal style of life and, of course, there was great interest in the visit of the Mission. But again, we did manage to conduct some of the interviews in relative privacy.

The recital of these difficulties may make them appear considerable. In practice we were aware of them and we are confident that they have been largely offset by the sheer number of interviews which we conducted with refugees, and by the opportunities which we had of talking to numbers of other people (officials, Church people and others) who have had the benefit of longer and closer contact with them.

We have done our best to make due allowance for these difficulties, for any possible motivation of interviewees to answer untruthfully, and for the fact that some of them may also have been questioned recently by representatives of other organizations and authorities. Having done so, we are confident that the general picture which we obtained and which we present here is fair and accurate.

#### KUNGIM

(Visited on 3 September, 1984, by John Dowd, David Bitel and Daniel Rowland.)

Kungim Camp is located close to the border in the northern region of Western Province, not far from the foothills of the Star Mountains. It was

originally located some 20 minutes walking distance from Kungim village but in August the refugees began to reconstruct a camp from bush materials closer to the village. There is no road communication to other centres and reliance is placed on an airstrip for small planes. Mission planes have used the airstrip to bring in supplies for the camp and the village. The village is centred around a church and there are about 20 substantial Western type buildings. A local kiap is stationed permanently at Kungim. Most food has been obtained by foraging in the nearby jungle.

The refugees in the camp have come from five separate villages from the kecamatan (sub-region) of Mindiptana all of which are Roman Catholic. All the refugees are members of the Iongum tribe, many have familial ties with people in PNG. Although Bahasa Indonesia is the lingua franca of the refugees, the tribal language is also spoken and is the means of communication with PNG villagers. One of the villages, Ingembit, of about 300 people, actually straddles the border. All the people of Ingembit left for Kungim in April 1984. The move appears to have been precipitated after the February events in Jayapura. Indonesian troops carried out "operasi turun" (operation clean sweep) in the area between 18-20 April. Ingembit people said that troops had entered the villages of Woropko, Tinika and Ninati and had shot indiscriminately in the church, in the school and in homes. Pigs, chickens and other domestic animals had been killed. It was said that cartridges from the incident had been brought into PNG by people from those villages and handed to PNG officials.

One Ingembit man said he had heard that three teachers had been killed by the Indonesians in Mindiptana in June. He had also been told that in May a primary schoolteacher in Mindiptana named Pak Ebi had been shot in the ankle because he was suspected of being an OPM leader. This man said that he never met any OPM people, but there was some evidence that the OPM had sent word

that the people should leave; some left because of that, but the rest left because of the Indonesian military activity.

A local PNG official commented that there were few men and women aged between 16-22 in the refugee camp. This was put to the people but was rejected by them.

We were told that the refugees would not return to the village if the Indonesians did not leave and that the people wanted freedom from Indonesia. In particular, they wanted the right to raise the Free West Papua flag and the right to have their own "hak" (an Indonesian word loosely translated as "rights"). The people also spoke of the physical and cultural differences between the Indonesians and the Melanesians. Not one of the people to whom we spoke said that they would return voluntarily to Irian Jaya, and many said they would rather die at the hands of PNG soldiers than Indonesian soldiers.

#### KOMOPKIN

(Visited on 4-5 September, 1984, by John Dowd, David Bitel and Daniel Rowland.)

To get to Komopkin refugee camp required a 50 minute drive from Kiunga to Memingiri, three hours walk through the jungle to the Ok Tedi River, and a 40 minute canoe trip down the river to the village of Komopkin. The village is situated some 3 1/2 hours south by bush track from Kungim on a small tributary of the main river in a very picturesque location. About 150 members of the Iongum tribe live in the village.

The Komopkin refugee camp is about 5 minutes walk from the village and houses over two thousand refugees. The PNG administration has stationed a Kiap, a Health Officer and a Police Constable permanently in the village.

The people at the camp had suffered serious malnutrition and over 100 people had died. About 100 people had been sent to the mission hospital at Rumginae for treatment and were still there.

The oldest woman in the camp was 64 and the oldest man was 68. Most of the other refugees were in their forties or younger. We were told that 165 refugees had returned across the border saying that they planned to join the OPM. Most were men though some were women, and most were aged between 18-30. We were told that the only weapons of the OPM were bows and arrows. There were no firearms. The absence of older sons or brothers of interviewees was frequently explained on the ground that they were studying in Jayapura.

The refugees had come from nine villages in the Mindiptana district: Woropko, Kawangtet, Kangedot, Yetetcum, Amuan, Ninati, Upetjetko, Kawanget, and Wangatkimbi. All villages are Christian - two Protestant, seven Catholic. They had started to cross the border in April. The last group had arrived on 15 August, comprising some 12 men and 9 women from Wangatkimbi - they had left on 6 May and had spent three months in the bush.

The refugees lived in group houses arranged in accordance with their villages. Conditions were cramped and new houses were being built.

We were told that Ninati had a population of 755. All had left - 304 to Komopkin, the rest to Kungim. They left on 12 April following shootings by Indonesian soldiers in Woropko and in Ninati itself. The people related the troubles to the February flag-raising in Jayapura. It had also been reported to the refugees that Indonesians had "shot up" the villages of Kangedot and Upetjetko, causing the villagers there to flee. We were told that one man - Donatus Ayam - had been killed in the shootings in Kangedot. There was a rumour that Javanese transmigrants were to move into the now empty villages.

A villager from Woropko said that he heard shooting in the village on 12 April from about 6-7 a.m. He and all the other villages immediately left - he



took some of his personal effects but others left everything behind.

A man from Upetjetko said that 284 people from his village had crossed the border. Other villagers confirmed the story of Indonesian soldiers shooting in the village. The journey to Komopkin had taken a week.

In one reported instance, a village church had been "shot up" by Indonesian soldiers who had broken the host and destroyed priestly vestments. This story was corroborated by the Bishop of Kiunga who reported that villagers had gathered the desecrated religious items and brought them to him.

We were given details of the deaths of ten people on the way to Komopkin from various villages - a girl aged 1, two girls aged 3, a boy aged 5, a girl aged 7, a woman aged 37, and four men aged 40, 45, 50 and 60.

All people questioned denied that the OPM or anyone associated with it had told them to leave. All declared that they would not go home until the Indonesians had left Irian Jaya. One said that they would prefer to be killed by people with fuzzy hair than by people with straight hair. As in Kungim, not one refugee spoken to indicated preparedness to return, except the join the OPM.

Further questions about the OPM produced varied responses. One OLD man seemed fearful when asked about it, looked around, and did not wish to discuss it. Another man said "OPM is not an organization, it is just a feeling that everyone has for their own fate". Another said, "we are all the OPM".

#### RUMGINAE MISSION HOSPITAL

(Visited on 5 September, 1984, by John Dowd, David Bitel, Daniel Rowland and Father Van der Berg.)

Rumginae Mission Hospital is the main hospital in the North Fly area of Western Province and is run by one of the Christian mission groups. It is

strategically located in the border of the two tribal groups - the Akium and the Iongum, about 30 km. north of Kiunga. About 100 of the seriously ill refugees at Komopkin had been transferred there.

One of them is the widow of Donatus Ayam. She confirmed that Indonesian soldiers came to the village of Kangedot about 8 p.m. on the Sunday before Easter. When they started shooting, everyone fled, but her husband had been away from the village, returned when he heard the firing, and was killed.

We spoke there to other people from Kangedot, Wangatkimbi and elsewhere. A leader of the refugees at the hospital insisted that the people had left their villages because of the shooting and their general fear, and that they would not return until the Indonesians had left. He denied that the OPM had told people to move. But one woman said that they had left at the suggestion of the local OPM leader. People standing near told her that she should not have said this, but she replied, heatedly, "Why not? It was the truth."

## GREEN RIVER

(Visited on 4 September, 1984, by Garth Nettheim and Trevor Martin)

Green River Government Station is about 150 km inland from Vanimo. It is located in flat, sandy, marshy country near the headwaters of the Sepik River. Close to the airstrip are about 20 government houses and offices. The border crossers are camped near the station in huts built from bush materials. The PNG government originally provided some food but, by the time of our visit, the provincial administration had no money for the purpose, and the Catholic Church was supplying relief provisions.

The border crosser population fluctuates between 400-500 as people go in and out of the bush for food, etc. Some of the people came directly to the station; others were rounded up by the Riot Police from border villages and brought into the station, though some people are still accommodated in PNG villages. They have traditional ties with people on the PNG side of the border and have been given hospitality by them. All appeared to be people whose rights to cross and re-cross for traditional purposes are recognized in the Border Agreement.

We interviewed people from Umuaf, Yamarab and Binum. This involved a double translation process: Bahasa to Pidgin; Pidgin to English. Enough interpreters were available to permit us to conduct separate interviews.

Most of the people seemed to have left in April. When asked why they left, most gave as their reason the desire for independence for West Papua/Irian Jaya. Some mentioned fear that their land would be taken. Some mentioned fear of Indonesian soldiers. A number of them firmly denied that the OPM had said that they should move, but three said that OPM instructions had been a factor.

Two men from Umuaf said that Indonesians had killed 8 of their people who had remained behind, as punishment for those who had left. From that

experience they expected that they, too, would be shot for leaving if they were to return. One young man said that he had heard that the Indonesians had subsequently destroyed the houses, gardens and animals.

Three men from Binum said that their people met the Umuaf people on the move and heard from them about the killings. They feared that Indonesian soldiers were pursuing the Umuaf people and also decided to move. One of them said that Indonesians had taken their village land in 1973 and that they had been living in the bush near the border for most of the time since then. One Binum man said that a few of his people had stayed behind and he understood that they were all right.

A Yamarab man said that all his people had moved out. Several Yamarab people said that they had heard that the Indonesians had chased the Yurup people, and one mentioned that soldiers had killed two women left behind by the Yurup people when they had moved. An old man from Yamarab said that the Indonesians had chased them, too, but was not more specific. One man said that they had sometimes lived in the bush when they were scared.

Later interviews with people who had crossed the border further north near Kamberatoro following direct contact with Indonesian soldiers served to confirm that word of those contacts had moved south ahead of the soldiers so as to cause the people at Green River to cross the border. The Indonesian troop movements which triggered the move were themselves presumably a response to the February uprising in Jayapura, and also the kidnapping of a Swiss pilot and the killing of his Indonesian passengers.

Some of the people questioned said that they would go back to Irian Jaya if they knew it would be safe for them to do so, but none were ready to rely solely on Indonesian government assurances that they would be safe. Others insisted that they would not go back until Irian Jaya was independent.

## KAMBEROTORO CAMPS

(Visited 4-5 September, 1984, by Trevor Martin and Garth Nettheim)

Kamberotoro is a Catholic mission station some 100 km south of Vanimo and less than 10 km from the border. It is accessible only by air, usually by means of the Church's own Cessna. Some 1200 Dera villagers live in the area.

Among the border crossers, the people from Yurup and Amgotro are also from the Dera clan, and the Ubrub people who arrived have marriage ties to the Deras. They and several other groups - Komando, Mangapi, Jabanda, Jibela and Dubu - came in April, numbering about 600. Another 200 arrived in June from the Senggi district.

Interpreting was, again, a two-stage process: Irian Jaya languages to Pidgin; Pidgin to English. There were insufficient interpreters available to permit us to conduct separate interviews.

One Yurup man interviewed, a teacher, alleged that Indonesian soldiers had treated educated people such as public servants and teachers as politically suspect: they had killed a teacher at Yurup in 1969 and one in Senggi in 1977, and they had attempted to kill others including himself in 1978. These attacks on teachers not only alarmed the teachers but the people generally. The people in the area also believed that the Indonesian District Officer was keeping money which the government had allocated for rural development purposes. The same man said that the people of Yurup had moved out of their village in 1978 and crossed into PNG; they had gone back to Irian Jaya later in 1978 but, instead of returning to Yurup, they had lived in the bush. Earlier in 1984 Indonesian soldiers returned to the area and the people crossed the border to Kamberotoro, though some were still in the bush. The teacher said that he, personally, would not return to Irian Jaya, even if other Yurup people returned, because he is known to the Indonesian authorities as an educated person with an interest in politics. Another Yurup

man, without education, confirmed that the village people had lived in the bush since 1978 and moved out again early in 1984 when Indonesian troops came to the area. He had seen the soldiers himself. When asked the colour of their hats he answered that they were red. (Kopasandha paratroop forces wear red berets.)

An Ubrub man mentioned the killing of a teacher in 1969 and went on to say that his people had moved out into the bush in 1973 and had never returned to Ubrub. Some were still in the bush but many had moved into PNG in March, 1984, when Indonesian soldiers came looking for them. He had heard that on 5 July an Indonesian plane dropped a bomb on one Ubrub bush camp killing ten people and injuring others.

A man from Amgotro said that his people had left on 13 August, 1978. He was a village leader and, therefore, suspect in the eyes of the Indonesian military. When troops were damaging houses he attempted to stop them. In consequence, he was held in the guardhouse for 6 months during which time he was beaten. When he was released, he left with his family and, indeed, the entire village. They had lived in the bush since that time. Early in 1984 Indonesian helicopters came looking for them. Indonesian soldiers (with red hats) pursued them and shot dead four people.

A Dubu man said that his people had moved out on 5 June, 1969, after conflict with Indonesians during which one boy was killed. They never returned to the village but lived in the bush in the Dubu area. In 1984 Indonesian armed forces came looking for them by air and on the ground and they fled. Shots were fired at them but no-one was hit.

A man from Komando told us that his people had left in 1978. There had been a history of dissatisfaction with the Indonesian military - soldiers would claim people's land and all that was on it on payment of an unfairly small sum. But the particular trigger for the 1978 exodus appeared to have

been the disappearance of public servants in the area. They had lived in the bush since 1978 but crossed into PNG in March, 1984, when Indonesian soldiers chased them. There had been shooting, and some people had been hit, but he did not know if any had been killed.

The people from the Senggi district seemed to be the only people at Kamberotoro who had not left their villages prior to 1984. A village leader from Werlef told us that they, too, had had problems in 1977. The Indonesians had detained four people as OPM suspects and killed one of them, a teacher, on 20 May, 1977. But they had stayed on. They had had other bad experiences: the District Officer (a Melanesian from the coast) had kept a large sum of money given by the Government for rural development. Soldiers took valuables such as cassowaries, pigs, or bird of paradise plumes for low payments and beat up a person who demanded a proper price. When the councillor learned that the Dubu people were leaving he felt particularly vulnerable and decided to leave. The rest of the people decided to go too, and they left on 14 June, 1984.

None of the people interviewed were prepared to believe Indonesian promises that they would be safe if they returned to Irian Jaya. Two of them also saw the move into PNG as an opportunity to claim independence for Irian Jaya.

#### BLACKWATER CREEK

(Visited 3 September and 6 September by Trevor Martin and Garth Nettheim; 7 September by John Dowd and Garth Nettheim.)

The camp is on a dirt road about 15 km inland from Vanimo, the West Sepik provincial capital. It is a government camp on government land so that the people are able to hunt and to forage for bush materials for hutbuilding,

without encroaching on the land of nearby villagers. Many of the huts are solidly constructed. Gardens have been established and further clearing for gardens is continuing. The people had also constructed an open air church.

Several figures have been given as to the numbers of people in the camp, between 800 to 1,000. People are still coming in, though the largest influx was between February-May, 1984. A few have gone back. The camp is guarded by police but the people are not under strict confinement and they have relatively easy access to Vanimo. New arrivals are kept at a quarantine camp 1 km away.

One member of the community was able to interpret for us directly from Bahasa to English. The camp is regarded by the PNG government as the place where the politically active people are held, with others. They came from Jayapura and nearby districts although some had originally come from other parts of Irian Jaya. Many of those spoken to were active participants in an aborted plan to take over the administration of the province on 11 February, 1984; others are relatives of the activists. Not all the activists are from the educated elite; for example, some fishermen had an important role in transport and communications before and after the planned uprising. Many of the people left Irian Jaya for Vanimo in large, outboard fishing canoes; some crossed the border through the bush on foot.

Most of those spoken to consider themselves to be refugees and are fearful that they would face trial - or worse - if they returned, because of their involvement in the planned coup. If they are not accepted for asylum in PNG some expressed a wish for third country resettlement under UNHCR auspices. Some said they would prefer to be killed in PNG rather than be returned to Indonesia.

Some said that they left because Indonesian intelligence agencies knew of their activities; others say that the mere fact of their departure will be



enough to make them suspect. Those who were able to bring out members of their families did so not only for personal reasons but because of a desire to protect their relatives from interrogation or retribution. Those with close relatives still in Irian Jaya expressed concern for their safety.

The people we spoke to came from various walks of life - teacher, lecturer, student, public servant, building worker, lawyer, pastor, fisherman, soldier, mariner, wife or parent. Several members of Arnold Ap's Mambesak performing group are in the camp. So are Ap's widow and children.

Some of the people said that they had aided OPM fighters in the bush in various ways. One had earlier been an active guerilla. Some had particular roles in the 11 February coup plan. Others, as mentioned, are non-activist relatives who left with the activists, or left afterwards when they learned that the police wanted to question them. Most of the people avow support for the aims of the OPM.

We learned of one woman who was about to go back to Jayapura. We spoke to an old couple who would be willing to go and live with their daughters in their home village if they would be safe, and to an elderly lady who would be prepared to return if she could go straight to her village. A fisherman whose wife and children are still in Irian Jaya also said he was willing to go back.

But most of the people spoken to appear to be fearful of returning. They said that they would not trust Indonesian guarantees that they would be safe, even if there were some additional arrangement for monitoring their well-being after they returned. We were told of some political people who were returned to Jayapura after the troubled period of 1977-1978 and were punished and even killed. One man we spoke to who came out in 1978 went back in 1982 under a promise of safety. He told us that he was put in gaol for three months. During the first two weeks in gaol he was constantly beaten. He was kicked in

the ribs so that he vomited blood for two days. He was beaten with rifle butts. A relative of his received similar treatment.

Some of the people spoken to at Blackwater Camp had good career positions under the Indonesian administration and we asked what had led such people to undertake the risky business of an attempted takeover. The responses we got were various. Some talked at the broadest political level about self-determination. Some spoke 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 in education and public service. The fishermen had particular complaints that Sulawesi traders caused trouble at the fish market and had offered them such low prices for their catches that fighting had broken out between the two groups on several occasions leading to a number of killings. One such occasion was around the time of the planned uprising.

None of the people we spoke to had personally been displaced by transmigration land acquisitions, though this has, we were told, occurred in other parts of the province. One interviewee referred to the problems caused by transmigration in these terms:

They take many parcels of land without proper payment. People lose their lands. People are not paid much attention by the government, only transmigrants. And then they become slowly separated from their lands ... We feel that slowly, in future, we will become aliens in our own environment. And our culture, the values of our culture, are being broken by outside culture from Java or other Indonesian islands. And later we will become a minority in our own land. And also the influence of Islam because many of the transmigrants are Islamic people.

We asked a number of people if they got on well with Indonesians at a personal level. Many conceded that they had good relationships with some Indonesians, and several referred to Indonesian Christians in the same church congregations or Indonesians attending the same schools. There has been some intermarriage.

We asked for accounts of bad Indonesian conduct of which people had knowledge. One OPM man, while in the bush, said that he had seen a number of instances of killing of people and livestock and destruction of houses.

Raising of the West Papua flag in public places has occurred on a number of occasions. The man who raised the flag in Jayapura on 13 February, 1984, was shot. In 1981 some students raised the flag in front of the House of Assembly; they were detained by the police, tried and gaoled. Some women who raised the flag in front of the Governor's House in 1980 were less fortunate - they were detained by the military and, we were told, were still in military detention at Pandam 17, Cenderawasih, in Jayapura. Some of them, we were told, had become pregnant after being raped. We were given their names.

One person said that he witnessed soldiers burning about seven houses and destroying livestock belonging to people suspected of being OPM members. The incident occurred on 18 September, 1983, in Yansu village in the Kemtuk-Gresi district near Jayapura. We were given a written statement outlining details, dates and places of that and other incidents, killings and other actions attributed to the Kopasandha.

One man claimed to have witnessed, in another part of the province, the killing and mass burial of some 60 villagers in 1972. He also witnessed the torture of his own brother who has hit on the head with a hammer and stabbed in the stomach, but survived.

One woman reported that during action against the OPM in 1969 near her village, the soldiers entered her village, burned West Papua flags and Bibles, and took kitchen utensils, goats and other things.

One man said that his brother, an OPM member, had been caught in the bush by soldiers, trussed to a pole like a pig, and shot.

One man supplied a detailed written account of ill-treatment he had received during several spells in detention as an OPM supporter. Several people said that they had been involved in the fish market fighting with the Sulawesi traders. One man bore a knife wound in his midriff. One man's son had been stabbed to death.

Two informants spoke to us about the detention and the death of Arnold Ap, curator of the Museum of Cenderawasih University. We were told that while he was held by the Kopasandha commandos he had been tortured by electric currents, beatings with rifles and cigarette burns. Another told of the finding of Ap's body in a cave: soldiers took it to the military hospital and planned a secret burial, but a hospital employee recognized the corpse and word got out. The body was then taken in a coffin to Ap's house where it was washed and placed in another coffin for burial. Our informant, who had known Ap for some years, was present and told us that Ap's arms were broken and he had bayonet wounds in his sides and stomach.

With the exception of the few people who were prepared to return, the majority of those interviewed at Blackwater Camp - activists and relatives - declared that they did not wish to be returned to Irian Jaya for fear of punishment.

## CHAPTER 7

### THE HUMANITARIAN ISSUES OF AID AND ASSISTANCE

#### INTRODUCTION

The primary purpose of the Mission was to investigate the legal and political status of the "border crossers". During the course of our inquiries a subsidiary issue arose as to their needs for food, medical and other humanitarian aid in the period of approximately six months from February-March, when the border crossings first commenced, until August-September, when full-scale humanitarian assistance to all areas commenced. Some weeks before the arrival of our mission there was news of approximately 100 deaths, largely from malnutrition, in refugee camps in the Western Province.

#### THE INTERNATIONAL LEGAL FRAMEWORK

The appropriate contemporary standards relevant to humanitarian assistance in cases of a large-scale influx of asylum seekers are represented by Conclusion No. 22 (XXXII) of the Executive Committee of the UN High Commissioner's Programme.

In particular, Article IV B (2)(c) states that, pending the achievement of a durable solution for such people, they

...should receive all necessary assistance and be provided with the basic necessities of life including food, shelter and basic sanitary and health facilities...

#### PNG GOVERNMENT POLICY: FEBRUARY - JULY 1984

The refugees started crossing in large numbers into PNG from February 1984, but it was only in August, following confirmed reports of deaths in the camps, that significant and appropriate humanitarian assistance started flowing to the needy camps in the Western Province.

In the months before August, the PNG Government's public statements played down any humanitarian problems of the refugees. They were described as "illegal border crossers", and official announcements from February onwards stated that they would shortly be repatriated. It was reported that the crossers at Vanimo owe it to intervention by the UNHCR in February for temporary sanctuary being offered them in the Blackwater camp. (National Times, 6 April 1984). The Roman Catholic church based at Vanimo undertook responsibility for the feeding of refugees at their Kamberatoro mission. It also fed the people at the Green River Government Station after Government provided funds dried up.

The police and defence forces were used at this early stage. A police squad was sent into Vanimo in February, and two Defence Force platoons and additional police were sent to Bewani and Amanab districts in April, as the Government said, "to reassure the public, especially the border-dwellers, of their safety". (Press statement by the Prime Minister the Rt. Hon. Michael Somare, 3 April 1984). Later in July, riot police were stationed in Komopkin village in the Western Province for a period of two weeks.

Conditions were placed on the crossers, and "for security reasons" they were not allowed to move out of their temporary settlements. (Prime Minister's press statement, 3 April, 1984). It was later alleged by a missionary in the Western Province that these restrictions on movement contributed to the refugees' food problems as it effectively restricted them to an area with insufficient food resources to feed them. (Report by Roy Woods, Runginae Health Centre, 6 August 1984).

In March, as an indication of official disapproval of border crossing, the Government prosecuted a number of male crossers at Vanimo for illegal entry. One group was sentenced to six weeks jail, while the other group was given suspended sentences. Further charges were deferred, as the Foreign

Minister explained to Parliament in May, because the Government had decided to repatriate all illegal border crossers other than those who qualified for refugee status. This, he explained, would begin towards the end of May and continue into June, in terms of the joint communique between the Governments of Indonesia and PNG dated 17 April.

Among reasons given for pursuing a policy of repatriation was that "people in the border areas of PNG have urged the Government to repatriate illegal border crossers immediately" (Statement to Parliament by PNG Minister for Foreign Affairs and Trade, Hon. Rabbie Namaliu on "Recent Developments on the Common Border and in relations with Indonesia", 21 May, 1984).

Our mission in early September found no evidence of such sentiments among the PNG citizens along the border. In the Western Province, for example, the refugee camp at Atkamba has been assimilated into the local village, and in Kungim the initial camp was moved closer to the local village - clear evidence of the PNG citizens' desire to have the refugees with them. Another example is of the Akium tribesmen from the Rumginae district who collected food aid for the Komopkin refugees on hearing of their plight, even though the refugees were Iongum, the traditional clan enemies. It was also reported to us that PNG village leaders from the Kiunga district had approached government officials offering to sell their land for the resettlement of the refugees.

The Government in July was still stating publicly that repatriation would occur "within a couple of weeks" and that much of the repatriation would be voluntary. (Statement by Secretary, PNG Department of Foreign Affairs, Mr. Paulias Matane, Sydney Morning Herald, 2 August 1984). The overall impression of Government policy during this period is one of emphasis on early repatriation.

AID AND ASSISTANCE: FEBRUARY - JULY

(1) Government Humanitarian Assistance

During this initial six months period, there is little evidence of P.N.G. Government aid for the refugees' basic necessities K22,800 was provided, at an early stage, by the Indonesian Government to help its citizens who had crossed the border and we are unaware of any follow-up aid.

On the 20th July, the Member for North Fly, Mr. Warren Dutton, visited a number of camps in the Western Province and made the observation that the Government had supplied food to those camps only twice since their establishment, and that the food supplied lasted only one week.

His conclusion was that the Government "appears to be attempting to allow starvation to take the place of the meaningless and unenforceable 'illegal immigrant' policy." He urged the Government to take immediate and effective action to provide adequate food and medical supplies. (Press release, Mr. Warren Dutton, 1 August, 1984). The PNG Government denied that it had tried to starve the refugees back across the border (The Newcastle Herald, 17 August 1984).

(2) Church Humanitarian Assistance

At the same time, there is some evidence of Government directions to church groups in the Western Province discouraging the supply of food to the refugees. The Member for North Fly indicated that the churches in the Kiunga District had reluctantly agreed to the Government's "direction" not to supply food to the refugees. As



a result, he said, the full burden of saving the refugees from excessive hunger fell on the PNG villagers. (Press release, 1 August, 1984).

Government sources apparently denied this allegation, indicating that they were only concerned that church interests did not try to make the task of looking after the refugees more complicated. (Sydney Morning Herald, 15 August, 1984). In West Sepik Province, the Roman Catholic church continued to provide assistance.

(3) U.N.H.C.R. Humanitarian Assistance

Initially, the UNHCR was unable to gain official access to the refugees. On 4th June, an official note was presented by the UNHCR to the PNG Government stressing its desire for full access to those persons seeking asylum and indicating its readiness to provide whatever assistance was required for the care and maintenance of those asylum seekers in PNG. (Refugees (UNHCR, Geneva, July, 1984, page 11)). While the UNHCR provided financial aid for the refugees in Blackwater camp, it was not until the public outrage in August about the deaths in the Komopkin camp that the PNG Government accepted substantial assistance from the UNHCR for the care and maintenance of the asylum seekers in PNG. In early September, the P.N.G. Government signed an agreement with the UNHCR under which the latter agreed to provide K.800,000 for assistance to the refugees until December 1984.

(4) Local P.N.G. Villagers' Humanitarian Assistance

Despite official statements about local resentment towards the refugees, it is clear that in the Western Province especially a major part of assistance to the refugees came from the PNG villagers

supplying them with the basic staple food diet of sago, and permitting them to forage in their tribal lands.

Since the refugees vastly outnumbered the PNG villagers in most camps, the latter's own valuable food resources were depleted. As a result, the humanitarian needs of the refugees became those of their host villagers too, who in any event live in areas of endemic malnutrition.

#### THE AUGUST REVELATIONS AND THE AFTERMATH

The visit in early August by Roy Woods to Dome and Komokpin refugee camps alerted the public to the terrible malnutrition and sickness particularly in the latter camp, and to a lesser extent, in other camps in the Western Province.

The overall picture that emerged at this time was one of severe malnutrition, particularly among children (up to 88%). In addition, there was a high incidence of malaria (up to 80%), and many other skin and respiratory diseases. This had contributed to the deaths that had occurred in the previous weeks, largely among children and some older people.

As a result of the public revelations and subsequent ground assessments (by officials from the Department of Health, the Department of Foreign Affairs, the Department of Provincial Affairs, the Red Cross, the Save the Children Fund, WHO, UNHCR and others), food, medical aid, clothing and other forms of assistance were forthcoming.

As a result of the September 7 agreement between the PNG Government and the UNHCR, regular supplies of appropriate humanitarian assistance are now assured for those in the camps, at least until the end of 1984.

## CHAPTER 8

### CONCLUSIONS AND RECOMMENDATIONS

#### CONCLUSIONS

1. That a large number of the approximately 11,000 refugees now consider themselves to be indefinitely or permanently displaced from Irian Jaya. These comprise mostly people with traditional border-crossing rights under the Border Agreement between PNG and Indonesia and having clan and language affiliations with people on the PNG side. They include also a further, smaller group of urbanised people, mainly coming from the Jayapura area.
2. That this large number of people are either refugees within the terms of the 1951 Convention and 1967 Protocol Relating to the Status of Refugees, or are people clearly in a refugee-like situation within the mandate of the United Nations High Commissioner for Refugees, excepting that small number that is now prepared to return voluntarily.
3. That because the people who have come across are people from the immediate border area, most with clan and language affiliations on the PNG side, there is therefore little evidence that the taking of this number of refugees will open a floodgate for refugees from other parts of Irian Jaya.
4. That the displacement of this large number of persons is an indication of serious problems within Irian Jaya.

5. That there is clear evidence of human rights violations in the area of Irian Jaya nearest to PNG by the Indonesian authorities against local villagers.
6. That the eyewitness evidence concerning the state of Arnold Ap's body and the injuries shown, are clearly inconsistent with the statements made by Indonesian officials that he was shot escaping.
7. That there is some evidence that the PNG Government was deficient in distributing aid and assistance to the refugees during the first few months after they had crossed in Papua New Guinea.

#### RECOMMENDATIONS

1. That no one be returned involuntarily to Indonesia.
2. That the United Nations High Commissioner for Refugees be given full authority and responsibility, in conjunction with the Government of PNG, to provide assistance to the refugees pending the achievement of durable solutions.
3. That nations, and national and international aid agencies, including the UNHCR, be urged to offer assistance to PNG to care for the refugees pending the achievement of durable solutions, and also to help to achieve such durable solutions.
4. That the administrative arrangements for the distribution of aid to the refugees include the participation of the UNHCR and appropriate church agencies.

5. That the Indonesian Government take no immediate action against the families and property of refugees so that the prospects of voluntary repatriation are not diminished.
6. That the Indonesian Government make clear both the precise nature of criminal charges that individual refugees will attract on their return to Irian Jaya, and the appropriate authority, civil or military, to deal with such charges, and that the Indonesian Government provide firm guarantees, subject to UNHCR monitoring, that those who return voluntarily will face no other punishment or penalty.
7. That the PNG Government ensure that, for the time being, all refugees be given permissive residence status within PNG.
8. That the PNG Government invite the assistance of the UNHCR in the determination of the status of the refugees.
9. That the PNG Government ensure that before refugees are interviewed to determine their status, appropriately qualified advisers be made available to them.
10. That the PNG Government ensure that those refugees who have actively participated in political actions (mainly those refugees in the Blackwater Camp near Vanimo) be given refugee status and settled within PNG or, if necessary, in other countries within the region. The remainder should be located where possible in their own clan/language groupings within PNG, but at some reasonable distance from the border to prevent them from constituting a continuing problem for PNG - Indonesian relations.

11. That the PNG Government should not discriminate against the refugees in decisions on the granting of citizenship.
12. That Australia has a special role to play in the future of the refugees from Irian Jaya as the most appropriate independent nation in the region and, in particular, Australia should be willing to accept some of the refugees for whom third country resettlement is deemed necessary.
13. That the Indonesian Government, in the implementation of the policy of transmigration in Irian Jaya, be urged and encouraged to respect the culture, traditions and rights of the indigenous people of Irian Jaya.
14. That both the Indonesian Government and appropriate international organisations, within and outside the UN system, should investigate the situation in Irian Jaya, to examine the problems that have given rise to the refugees leaving the country, with a view to their resolution.
15. That an internationally supervised enquiry be held into the circumstances surrounding the death of Arnold Ap in view of statements made by the Indonesian Government conflicting with evidence made available to the mission and to others.
16. That Indonesia and Papua New Guinea ratify the 1951 Convention and 1967 Protocol Relating to the Status of Refugees.

17. That Indonesia and Papua New Guinea ratify the International Covenant on Civil and Political Rights.

John Dowd

Trevor Martin

Garth Nettheim

Daniel Rowland

David Bitel

APPENDIX 1

MEETINGS, DISCUSSIONS AND INTERVIEWS

2 September

Port Moresby

Mr Barry Wyborn, Australian High Commission

Mr Oaisa, Head, Political Division, Department of Foreign Affairs

Mr Paulias Matane, Secretary, Department of Foreign Affairs

Mr Franz Joku, Editor, The Times of Papua New Guinea

Mr Bernard Narakobi, lawyer

Mr Martin Ende, assistant to Mr Narakobi

Mr Leo Saulep, Administrative Secretary, West Sepik Province

3 September

Vanimo

Mr Laurence Sapien, Department of Foreign Affairs

Mr Moses Boi, West Sepik Provincial Administration

Bishop John Etheridge, Vanimo

Mr Tom Ireeuw and other refugees, Blackwater Camp

Kiunga

Mr Trevor Downes, District Officer for North Fly area of

Western Province

Western Province Department of Health Field Officers

Refugees at Kungim Camp

Mr Kuk, Kiap at Kungim Camp

Bishop Deschamps, Kiunga

Warren Dutton, M.P.



4 September

Green River            Mr Peter Tavun, Officer-in-Charge, Government Station  
Government            Mr Denis Monipa, Health Officer  
Station                Refugees at Green River Camp  
Kamberatoro            Father John Curtis  
Roman Catholic        Brother Jerome  
Mission                Bishop John Etheridge  
                          Mr Somata, District Officer, Amanab  
                          Refugee leaders at Kamberatoro Camp  
Komopkin                Refugees at Komopkin Camp  
                          Villagers from Komopkin village, PNG

5 September

Kamberatoro            Refugees at Kamberatoro Camp  
Vanimo                 Brother Jerome  
Komopkin                Refugees at Komopkin Camp  
                          Kiap, Health Officer and Constable at Komopkin  
Rumginae                Refugees at Rumginae Hospital  
Mission                 Roy Woods, Head, Rumginae Mission Station  
Hospital  
Kiunga                 Sister Nicole

6 September

Vanimo                 Refugees at Blackwater Camp  
                          Mr David Andrews, Department of Foreign Affairs  
Kiunga                 Priests at Kiunga Montfort Mission  
                          Professor Ian Smith, Department of Political Science,  
                          University of Papua New Guinea

Dr Eli Dekel, World Health Organization representative,  
Papua New Guinea  
Officers of the Department of Industrial Development

7 September

Vanimo Refugees at Blackwater Camp  
Kiunga Mr Noah Taikimeng, MP for the North Fly area in the Western  
Province Parliament  
Minister for Industrial Development in Western Province  
Port Moresby Mr Henry Frendo, UNHCR, Port Moresby  
Mr Everts, UNHCR, Geneva

8 September

Port Moresby His Excellency Imam Soepomo, Indonesian Ambassador to PNG  
Mr Brian Brunton, Law Faculty, University of Papua New Guinea  
Mr Franz Joku, Mr Adolph Hanasby and other Irian Jayan residents  
His Excellency, Mr Bob Birch, Australian High Commissioner

10 September

Port Moresby Mr Oaisa, Head, Political Division, Department of Foreign Affairs  
Deputy Secretary, PNG Red Cross  
Representative, Save The Children Fund, PNG.

APPENDIX 2

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