



AUSTRALIAN SENATE

## LEGAL AND CONSTITUTIONAL

REFERENCES COMMITTEE  
LEGISLATION COMMITTEE

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29 May 2006

Mr Henry Domzalski  
Senior Regional Protection Officer  
United Nations High Commissioner for Refugees  
Regional Office for Australia, New Zealand, Papua New Guinea and the South Pacific  
Email: domzalsk@unhcr.org

Dear Mr Domzalski,

### **Inquiry into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006**

Thank you for giving evidence to the Committee at its public hearing in Canberra on Friday 26 May 2006.

Please find attached questions which were taken on notice by Mr Wright and yourself during the appearance before the Committee. I would be grateful if you could provide answers to these questions by **cob Thursday 1 June 2006**.

If you require further information, please contact the Secretariat on (02) 6277 3560.

Yours sincerely

Jonathan Curtis  
**Committee Secretary**

**Senate Legal and Constitutional Legislation Committee**  
Inquiry into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006

PUBLIC HEARING  
FRIDAY 26 MAY, 2006

**Questions on notice – United Nations High Commissioner for Refugees**

Question 1 (p. 4 *Proof Hansard*)

**Senator BARTLETT**—Papua New Guinea have ratified the refugee convention and protocol, as I understand it, but I believe there are a few articles they have absented themselves from. I cannot remember the technical term. Do you know what those are?

**Mr Wright**—They have seven reservations at the moment, which we have been working with the government of Papua New Guinea to encourage them to withdraw. When they acceded—I think it was 1987—they put those seven reservations in, because they felt that they could not live up to their responsibilities under those articles of the convention. These were in relation to things like access to housing, education and employment, so they had reservations at that time. They may now, we believe, be in a position to withdraw those reservations and be able to fulfil their responsibilities. In some cases, they have actually fulfilled their responsibilities under the very articles that they have made reservations to, so it would seem appropriate to us that they withdraw at least five of those seven, and they are considering that in government at this time.

**Mr Domzalski**—Those reservations, I believe, are the same reservations that Australia made when it signed the convention in 1954 but were removed upon the signing of the protocol in 1967. Often, when states sign onto the convention, they are a bit cautious in that way to undertake more responsibilities than they feel they can handle. It was the Australian experience that those reservations were no longer called for, and they were removed, and we hope the same will take place with Papua New Guinea.

**Senator BARTLETT**—You mentioned five out of seven; what would be the other two?

**Mr Wright**—I believe that one of them is to do with citizenship, but I would have to take that on notice.

**Senator BARTLETT**—If you could ...

Question 2 (p. 5 *Proof Hansard*)

**Senator MASON**—Mr Wright, could you help me with a bit of background information. I am trying to take up where Senator Bartlett left off. What percentage of people who arrive by boat in this country are ultimately classified as refugees? Do you know?

**Mr Wright**—No, I do not know off the top of my head. We do get statistics from the government of Australia that are regularly published by UNHCR in its annual statistics.

**Senator MASON**—Can you take that on notice.

**Mr Wright**—I can take that on notice.

**Senator MASON**—Can you also take on notice what the percentage is of people who arrive by air and claim refugee status and are finally determined to be refugees. I think it might be interesting for the committee as a bit of background.

Question 3 (p. 8 *Proof Hansard*)

**Senator NETTLE**—Is one of the reservations to the refugee convention that the Papua New Guinea government has about not being prepared to sign onto the clause prohibiting the deportation of refugees?

**Mr Domzalski**—I do not believe that is the case but I would have to check. The deportation is distinguished from the refoulement, which is the forcible return and there are two provisions in the convention. One of them, the one on refoulement, which is the forced return to a place of danger, is a provision to which there is no reservation—it is a non-derogable provision. It would not be possible for the government to take exception to that one and that is the key provision.

**Mr Wright**—Let me say, we came, obviously, today prepared to talk about Australian legislation, and I am happy to take that question on notice as well so I do not believe there is any reservation by Papua New Guinea on deportation.



# UNHCR

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

## UNHCR Regional Representation

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01 June 2006

Notre/Our code: PRL 2

Re: **Questions on Notice**

Ref: 26 May 2006 Hearing of the  
Senate Legal and Constitutional Legislation Committee  
Regarding the *Migration Amendment (Designated Unauthorised Arrivals) Bill 2006*

### Question 1 (p. 4 *Proof Hansard*)

The Government of Papua New Guinea, in accordance with article 42 paragraph 1 of the 1951 Convention relating to the Status of Refugees, made a reservation with respect to the provisions contained in articles 17 (1) (Wage Earning Employment), 21 (Housing), 22 (1) (Public Education), 26 (Freedom of Movement), 31 (Refugees Unlawfully in the Country of Refuge), 32 (Expulsion) and 34 (Naturalization) of the Convention and does not accept the obligations stipulated in these articles.

Whereas previously UNHCR understood that the Government of Papua New Guinea was considering removing its reservations to all but articles 26 and 34, UNHCR is currently informed that the Government of Papua New Guinea is engaging in inter-ministerial consultations with regard to removing its reservations to all seven of the above-mentioned articles.

In practice, since the establishment of “Permissive Residence” which has allowed recognized refugees freedom of movement within Papua New Guinea, refugees have been able to move freely about the country, and have access to wage earning employment, housing and public education.

### Question 2 (p. 5 *Proof Hansard*)

With regard to the request for the percentages of asylum-seekers processed by the Government of Australia accepted as refugees broken down by sea versus air arrivals, pursuant to discussions between UNHCR and the Department of Immigration and Multicultural Affairs (DIMA), DIMA has kindly agreed to provide the answer to this question.

### Question 3 (p. 8 *Proof Hansard*)

There is no Convention provision relating to “deportation”.

However, Article 32, which relates to “Expulsion” is among those articles to which the Government of Papua New Guinea has made a reservation (see reply to Question 1 above).

Article 32 reads as follows:

**“Article 32. *Expulsion***

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary. “

To UNHCR’s knowledge, since 2003, no person who has manifested a request to seek asylum has been expelled from Papua New Guinea. Notwithstanding Papua New Guinea’s formal reservation to article 32, UNHCR considers Papua New Guinea’s current practice to be in conformity with its provisions.