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Too Close to Ignore

Australia's Borderland with PNG and Indonesia

Edited by Mark Moran and Jodie Curth-Bibb

MUP

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MELBOURNE UNIVERSITY PRESS

An imprint of Melbourne University Publishing Limited Level 1, 715 Swanston Street, Carlton, Victoria 3053, Australia mup-contact@unimelb.edu.au

www.mup.com.au

<social media logos>

First published 2020

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Text design and typesetting by J & M Typesetting

Cover design by Phil Campbell

Printed in Australia by OPUS Group

<NLA logo>

9780522875461 (hardback)

9780522875478 (paperback)

9780522875485 (ebook)

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Preface

I first observed Papua New Guinea (PNG) nationals crossing the border with Australia and entering the Torres Strait Islands in 1997, when I was on Saibai island to facilitate community planning for improvements to their water supply, sewerage and housing. My working life at that time was divided between developing countries in Asia and remote Aboriginal and Torres Strait Islander communities in Australia. As I stood on the foreshore, watching small groups cross the short distance by dinghy, I was struck by the clashing of two very different worlds. I knew that many of the visitors were related to the Saibai islanders and that the conditions of their entry was limited to traditional exchanges under a treaty. But I observed an air of supplication among the Papuans that I recognised from the poorest parts of developing countries I had worked in. I knew how disadvantaged the Torres Strait Islanders were compared to the rest of Australia, but clearly in this context the Papuans were much more disadvantaged again. I was struck by a mixture of surprise and trepidation. I remember not knowing which way to look.

It was a sight and a feeling that stuck with me, but it would be years before I had the chance to explore what was happening on the other side of the border. Later, I would discover that Garrick Hitchcock (author of chapter 9) was already doing his PhD on the political ecology in the South Fly District along PNG's border with Indonesia, and Kevin Murphy (chapter 2) would soon be starting his PhD analysing social relations along the border with Australia.

Around then I started a conversation that would last many years with Geoff Miller (chapter 6), who went on to take a placement as a health adviser with the Australian aid program in Daru. All the while I kept a close eye on the related research coming out of Torres Strait, especially the work of Bill Arthur and Will Sanders at the Australian National University.

After I joined the University of Queensland in 2013, I met Jennifer Corrin (chapter 3), who already had strong ties with the South Pacific as a legal practitioner and researcher. I would also meet Jodie Curth-Bibb (co-editor of this book and co-author of chapters 1, 5 and 8) and Peter Chaudhry (chapter 4), who both worked with me at the Institute for Social Science Research, along with research assistants Tsarie Duthie and Laura Simpson Reeves. By 2015 we had a sufficiently strong team to apply for a competitive ARC Discovery grant, which we won to commence in 2016.

Doug Porter from the World Bank and Bryant Alan from ANU encouraged us through the application, then advised us throughout the project's duration. We also learnt of the long-standing and locally respected work by CSIRO in fisheries, with James Butler and Sara Busilacchi approaching us in an uncommon spirit of open collaboration (chapters 7 and 8).

As fieldwork commenced on the PNG side, we were encouraged by widespread support from PNG government stakeholders at village, district, provincial and national levels. We were especially well received by the village

leaders and households in the South Fly villages we visited in the course of four field trips. Much of our travel was by shallow-draft banana boats, visiting coastal villages and following the river systems to inland villages, and extending west to PNG's border with Indonesia. Skilled operators such as Sapi Yo kept us safe along the weather coast.

We also did two field trips to the Torres Strait. We found strong support among the Torres Strait leadership, who shared their concern for their close neighbours while maintaining the need to protect the limited resources on their islands.

Simply put, we set out to understand a little-known part of the world and to recommend improvements. We collected socioeconomic data, attended community meetings and, crucially, interviewed community leaders and households. Interviews typically went for more than an hour, as people explained detailed and (for us) unexpected aspects of their lives.

Together we wrote this book as a means to raise awareness of a little-known but strategically important borderland. The people living on the PNG side want people living in Australia and other countries, and in Port Moresby and other PNG cities, to understand their situation, which is quite unlike anywhere else in PNG and the world. Compared to the Australian side, they experience a marked level of relative inequality and a disparity in public funding and services. They want assistance, but in ways that are appropriate to the unique constraints and opportunities they face.

We believe it is in Australia's national interest to understand the border from the perspective of the PNG nationals living there, and that their 'security' and development ultimately determines the 'security' of the Australian border. We think that many of the people working for the Australian and Queensland government authorities at a personal level believe this too, if allowed to shed the official line.

The other authors and I would like to thank our partners and families for their love, patience and support during the research and writing of this book.

We are also very grateful for the goodwill and openness extended to us by the many people who accommodated us and gave us their time for the interviews. An incredible exchange of learning occurred between the project team and the people who participated. We were continually surprised by the capabilities that exist within South Fly villages and the struggles they face with a lack of transportation, market penetration, funding and services. We hope that this book will encourage stakeholders to approach development of the region in ways that take advantage of its unique strengths as a borderland.

Mark Moran

Contributors

Sara Busilacchi has more than 20 years of experience as a fisheries consultant. Her main interests lie in coastal and marine resources management and conservation for the benefit of coastal communities. In the last decade, Sara's primary research has focused on the sustainability of Torres Strait fisheries and well-being of communities in the borderland between Australia and Papua New Guinea.

James Butler has been CSIRO Land and Water's Indo-Pacific Climate and Development Coordinator since 2016, linking CSIRO's research to major strategic research and development initiatives in the region. His research applies trans-disciplinary approaches to analyse complex development problems in the Asia Pacific.

Peter Chaudhry is an independent ethnographer and public policy specialist with research interests in poverty, social exclusion and the state.

Jennifer Corrin is Director of Comparative Law in the Centre for Public, International and Comparative Law at the T.C. Beirne School of Law, University of Queensland. She is admitted as a legal practitioner in Fiji, Solomon Islands, England and Wales, and Queensland, and is the author of *Contract Law in the South Pacific* (2nd edn, 2020). Jennifer's research focuses on law reform and development in plural legal regimes.

Jodie Curth-Bibb is a lecturer in the College of Business, Government and Law at Flinders University in South Australia. She has worked across research and practice for more than ten years with a focus on public sector reform and institutional capacity development in Pacific Island countries, as well as gender equity and social inclusion, indigenous governance, informal governance and justice mechanisms, and monitoring, evaluation and learning in policy implementation and program management.

Garrick Hitchcock is a consultant anthropologist with more than two decades research and work experience in southern New Guinea and Torres Strait. His PhD research (1995–98) examined the political ecology of the Bensbach or Torassi River area, on the border of Papua New Guinea and Indonesia. He is Director of Arafura Consulting and Honorary Senior Lecturer in the School of Culture, History and Language at the Australian National University.

Geoffrey Miller is a public health and development consultant who has extensive experience in supporting health system reform in fragile and conflicted Melanesian settings. Having worked on both sides of the Australia–PNG border and leading a range of health initiatives in both the Torres Strait Islands and PNG's Western Province, he has been a key contributor to the dialogue on cross-border issues.

Mark Moran leads the Development Effectiveness Group at the Institute for Social Science Research, University of Queensland. He has worked in a range of international and indigenous contexts, including Papua New Guinea, Timor Leste, China, Bolivia and Lesotho, and remote Indigenous communities in Australia. His book, *Serious Whitefella Stuff: When Solutions Became the Problem in Indigenous Affairs* (MUP), was published in 2016.

Kevin Murphy is a consultant anthropologist who has worked in Torres Strait since 1998 and the South Fly District of Papua New Guinea since 2002. His PhD research focused on the effects of the Torres Strait border on the people inhabiting the Papua New Guinea side of the borderland.

Glossary

ABA	Australian Broadcasting Authority
ABC	Australian Broadcasting Corporation
ABF	Australian Border Force
ABS	Australian Bureau of Statistics
ACIAR	Australia Centre for International Agricultural Research
ADB	Asia Development Bank
ADF	Australian Defence Force
ADRA	Adventist Development Relief Agency
AFMA	Australian Fisheries Management Authority
AFP	Australian Federal Police
AIHW	Australian Institute of Health and Wellbeing
ALRC	Australian Law Reform Commission
ALS	Area of Limited Statehood
ANAO	Australian National Audit Office
ANU	Australian National University
APEC	Asia-Pacific Economic Cooperation
ARC	Australian Research Council
ASMA	Australian Marine Safety Authority
ASOPA	Australian School of Public Administration
ATM	automatic teller machine
ATSILS	Aboriginal and Torres Strait Islander Legal Services
AusAID	Australian Agency for International Development
AusTrac	Australian Transaction Reports and Analysis Centre
BCDF	Bata Community Development Foundation
BHP	Broken Hill Pty Co Ltd
BIEN	Basic Income Earth Network
BIG	Basic Income Grant
BLO	Border Liaison Officer
BMO	Border Management Officer
BRTV	Building Resilience in Treaty Villages (Program)
BSP	Bank South Pacific
BWL	Bensbach Wildlife Lodge
CBCO	Cross Border Communications Officer
CDEP	Community Development Employment Projects scheme
CDRCP	Community Development and Resource Conservation Program
CEO	chief executive officer
CfAT	Centre for Appropriate Technology Limited
CHW	community health worker
CIMC	Consultative Implementation and Monitoring Council
CJG	Community Justice Group
CMCA	Community Mine Continuation Agreement

CMCAEA Community Mine Continuation Agreement Extension Agreement
COAG Council of Australian Governments
CSIRO Commonwealth Scientific and Industrial Research Organisation
DAIA Department of Aboriginal Island Affairs
DAWA Department of Agriculture and Water Resources
DDA District Development Authority
DEC Department of Environment and Conservation
DFAT (Australian) Department of Foreign Affairs and Trade
DIAC Department of Immigration and Citizenship
DIDR development-induced displacement and resettlement
DoE Department of Education
DOTS directly observed treatment, short-course
DPLGADepartment of Provincial and Local Government
DR-TB drug-resistant tuberculosis
DSIP District Service Improvement Programs
ECP Enhanced Cooperation Program
ECPNGEvangelical Church of Papua New Guinea
EITI Extractive Industries Transparency Initiative
EPIRB emergency position-indicating radiobeacon
EU European Union
FADTRC Foreign Affairs, Defence and Trade References Committee
FAO Food and Agriculture Organization
GDP Gross Domestic Product
GNI Gross National Income
HDRO Human Development Report Office
HHISP Health and HIV Implementation Services Provider
HIC Health Issues Committee
HIV Human Immunodeficiency Virus
HIV/AIDS Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
HSSDP Health Sector Services Development Program
IBIS (store) Islanders Board of Industry and Service
ICAD Integrated Conservation and Development
ICC Island Co-ordinating Council
INLOC company name
IT information technology
IUCN International Union for the Conservation of Nature
JAC Joint Advisory Council
JCU James Cook University
JICA Japan International Cooperation Agency
JP Justice of the Peace
JPBPC Joint District Planning and Budget Priorities Committee
JSS4D Justice Services and Stability for Development

KRA key result area
LAQ Legal Aid Queensland
LARC Long Acting Reversible Contraception
LGA Local Government Area
LLG SIP Local Level Government Service Improvement Programs
LLG local level government
LSMC Land and Sea Management Centre
MDR-TB multi-drug-resistant tuberculosis
MEPC Marine Environment Protection Committee
MFAT Ministry of Foreign Affairs and Trade
MIDR mining-induced displacement and resettlement
MMO Movement Monitoring Officer
MOA Memorandum of Association
MP Member of Parliament
MPI multidimensional poverty index
NAILSMA North Australian Indigenous Land and Sea Management Alliance
NARI National Agricultural Research Institute
NBC National Broadcasting Company
NCD non-communicable disease
NFA National Fisheries Authority
NGO non-government organisation
NIAA National Indigenous Australians Agency
NQPHN North Queensland Primary Health Network
NRI National Research Institute
NSO National Statistical Office (PNG)
ODA official development assistance
OECD Organisation for Economic Co-operation and Development
OPHI Oxford Poverty and Human Development Initiative
OPM Organisasi Papua Merdeka (Free Papua Movement)
OTDF Ok Tedi Development Foundation
OTML Ok Tedi Mining Limited
PBC Prescribed Body Corporate
PFD personal flotation device
PGK Papua New Guinean Kina
PHA Provincial Health Authority
PHPA Indonesia Department of Forests
PNG Papua New Guinea
PNG-APP Papua New Guinea Australia Policing Program
PNGDF Papua New Guinea Defence Force
PNGLR Papua New Guinea Law Reports
PSIP Provincial Service Improvement Programs
PZJA (Torres Strait) Protected Zone Joint Authority
QBFP Queensland Boating and Fisheries Patrol

QCAT Queensland Civil and Administrative Appeals Tribunal
Qld Queensland
QPS Queensland Police Service
RAILS refugee advice centre
RAMSI Regional Assistance Mission to Solomon Islands
RRRC Reef and Rainforest Research Centre
RSDP Rural Service Delivery Program
SAS Special Air Service
SBS Special Broadcasting Service
SDP (PNG SDP) Sustainable Development Program
SIP Service Improvement Programs
SME small- and medium-sized enterprises
SPAR Sector Performance Annual Report
STI sexually transmitted infection
TB tuberculosis
TFF Tuition Fee Free
TIM Traditional Inhabitant's Meeting
TLM Treaty Liaison Meeting
TLO Treaty Liaison Officer
TSIRC Torres Strait Island Regional Council
TSPZ Torres Strait Protected Zone
TSRA Torres Strait Regional Authority
TV television
TWMA Tonda Wildlife Management Area
TWMAC Tonda Wildlife Management Area Committee
UBI Universal Basic Income
UDDT Urine Diversion Dry Toilet
UN United Nations
UNCDF United Nations Capital Development Fund
UNDP United Nations Development Programme
UNEP United Nations Environment Programme
UNICEF United Nations International Children's Emergency Fund
UQ University of Queensland
USD United States dollars
VIP Ventilated Improved Pit
WASH water sanitation and hygiene
WDC Ward Development Committee
WEDC Water Engineering and Development Centre
WHO World Health Organization
WMA Wildlife Management Area
WPA Western Provincial Administration
WWF World Wide Fund for Nature
XDR-TB extensively drug-resistant tuberculosis

1

Introduction

Mark Moran and Jodie Curth-Bibb

Less than five kilometres from Australia's northernmost island lies the southern coast of Papua New Guinea (PNG) (figure 1.1).¹ Just 15 to 20 minutes in a dinghy (depending on the weather) and you are there. This geographical proximity is matched by a cultural closeness, as the people on either side of this passage of water have a long history of reciprocal relationships and shared identity. Despite this closeness, these peoples face a starkly different future, and they could hardly be further apart in terms of quality of life, well-being and access to opportunity.

<Figure 1.1 near here>

Map of the South Fly–Torres Strait region (J.R.A. Butler, S. Busilacchi and T. Skewes, 'How resilient is the Torres Strait Treaty (Australia and Papua New Guinea) to global change? A fisheries governance perspective', *Environmental Science and Policy*, vol. 91, 2019, pp. 17–26, p. 19)

The villagers on the PNG side of the border experience acute disadvantage. They rely on water tanks (which are often poorly maintained) or are forced to walk long distances to get fresh water; transport by dinghy is extremely expensive and at times dangerous; there is no electricity; the few health facilities that exist are often ill-equipped and unstaffed; and students often need to travel long distances to get to a primary school. Houses are made of bush materials and are not mosquito-proof. Villagers either use a pit latrine, if the household has one, or they use the beach or the bush for a toilet. There is limited access to markets and no employment opportunities close to home.

South Fly District of PNG can be seen as something alike to a triangle, defined by three powerful external influences: the Torres Strait Islands of Australia, the Merauke Regency of Indonesia and the Fly River Corridor, with the mining benefits and environmental impacts flowing from the Ok Tedi mine. In understanding the context, we have utilised a spatial conceptual tool that draws on the notion of a 'borderland', which extends beyond the district's administrative boundaries into Australia, Indonesia and the Fly River Corridor.

This borderland sits at the periphery of the PNG state. It receives very little in the way of public expenditure or service delivery from its government. But perversely, the prices for basic commodities are comparable to those in Torres Strait (table 1.1),² due to the high transportation costs, and macroeconomic distortions, due to the high levels of foreign direct investment in the PNG economy, predominantly from mining. Given the relative poverty experienced by those on the PNG side of the border, the elevated cost of goods is an enormous obstacle to development.

Although many can rely on subsistence crops rather than purchasing store goods, there is no avoiding the barrier of high-cost fuel in the South Fly. Fuel is essential for basic transportation to markets and health services, but the cost of a single litre of fuel can reportedly be as high as 10 kina (approximately A\$4). The cost of fuel is significantly cheaper in outer islands of the Torres Strait (A\$2), and even more so across the border in Indonesia due to a state fuel subsidy.³

<table 1.1 near here>

Table 1.1: Median basic commodity prices in the South Fly and Torres Strait Islands

[blank cell]	Fuel (cost/litre) (A\$)	Flour (cost/kg) (A\$)		Rice (cost/kg) (A\$)	
	Sugar (cost/kg) (A\$)	Salt (cost/kg) (A\$)			
Torres Strait Islands	1.95	1.71	3.96	2.05	1.53
South Fly	3.33 (K8)	3.12 (K7.5)	3.02 (K7.25)	3.12 (K7.5)	0.83 (K2)

Note: K in the South Fly row means kina.

Source: borderlands research data

Despite these difficulties, the people maintain strong families and social bonds within their village communities. For those villages with gardens, subsistence activities provide people with sufficient food and daily exercise, although they remain vulnerable to drought. People in these villages are already well engaged with the global cash economy and with the advantages and problems it brings. Many villages are becoming increasingly dependent on processed, store-bought foods like rice, flour and sugar, which are contributing to an increase in 'lifestyle diseases' such as diabetes.

When PNG was still a colony of Australia, the people in the South Fly and Torres Strait Islands enjoyed close relationships that fostered mutual benefits for both parties. This began to transform after PNG gained independence in 1975. Signed in 1978 and ratified in 1985, the Torres Strait Treaty then defined the border between Papua New Guinea and Australia. The benefits that flowed to Torres Strait Islanders as Australian citizens have steadily increased ever since, lifting their living standards. Meanwhile, the people living in the South Fly have received limited support from their government and aid agencies, and their living standards have deteriorated. Environmental damage caused by the Ok Tedi mine has spoiled the marine environment on which many of them depend, especially those villagers near the mouth of the Fly River.

In recent years, the management of the Australian border and the Torres Strait Treaty has increasingly hardened. By limiting traditional visits to 14 villages, there is now another divide: Treaty villagers, who benefit from the treaty, and those in non-Treaty villages, who do not. Many non-Treaty villagers now have to sell their produce and crafts to Treaty villagers, who then on-sell those products to Torres Strait Islanders, some of whom then themselves on-sell into mainland Australia.

South Fly villagers must carve out a livelihood in the border region to raise cash for various things, including costs associated with their children's schooling. Many still depend on productive cross-border relationships in Torres Strait. They

travel across the border to work as domestic help; access health services; engage in traditional activities; and sell arts, crafts and other goods. But these cross-border interactions are stifled by the vague and variably enforced regulations in place, which allow only for 'traditional' activities across the border. Work for PNG nationals in Torres Strait is fraught. Many are paid with food and second-hand clothes, or with meagre sums, so that their activities are deemed by Australian border authorities to qualify as traditional.

Although people of Torres Strait also experience disadvantage relative to non-Indigenous Australia, there is a sharp divide when looking across the border into PNG. Household incomes in the South Fly District are significantly lower: while Torres Strait Islanders reliably earn their income from work or welfare payments, South Fly residents' income is intermittent and diverse, from opportunistically selling crafts, gardening, hunting, fishing and, for a few, whatever remittances their relatives can manage. Torres Strait Islanders are concerned about the plight of people living in the South Fly, but they are also concerned by the pressure visitors place on their limited island resources, especially their water supply, health services and housing.

Health services for PNG nationals are extremely limited. When transport can be organised, patients make their own way to the hospital in Daru. But overcrowding in Daru's limited housing has made it difficult to control the epidemic of multidrug-resistant tuberculosis (MDR TB) and other disease outbreaks. Many South Fly residents access Australian health services for emergency care, putting pressure on Queensland Health clinics on the outer Torres Strait Islands. The precarious health context highlights the need for aid programs to take a population health approach that encompasses both sides of the border.

The problems of underdevelopment of the South Fly and the difficulties this has caused for border security have long been known. Consistent with Recommendation 25 of the 2010 Senate inquiry, *Torres Strait: Bridge and Border*,⁴ we set out to understand the development context of the South Fly borderland, with particular attention to the external effects of the Australian and Indonesian borders and the mining-affected Fly River Corridor. We then explored how international aid assistance and improved border management could ameliorate this underdevelopment.

The state of the borderlands

The Torres Strait Treaty defines a Protected Zone, control over which is divided between Australia and PNG, to preserve the traditional way of life of traditional inhabitants and the marine environment. This interacts with a number of other jurisdiction boundaries including Fisheries, Internal Waters, Coastal Waters, Territorial Sea, Contiguous Zone Limit, and Exclusive Economic Zone.⁵

The treaty also defines the cross-border passage of 14 PNG Treaty villages⁶ and 14 Torres Strait communities.⁷ The population affected by the border extends beyond these nominated villages and island communities, to include the greater Torres Strait

Region of Australia (to Thursday Island and the tip of Cape York), as well as much of the South Fly District of the Western Province of PNG.⁸ Although it is technically a maritime border, crossings are made daily in small dinghies. According to 2019 Australian National Audit Office (ANAO) Inquiry, more than 27 000 PNG nationals crossed the border in 2017–18.⁹

Those deemed to be ‘traditional inhabitants’ are subject to provisions under the Treaty, which allows them to cross the international border into the Torres Strait. Although initially there was no real enforcement of an official definition of ‘traditional inhabitants’, in 2000 formal notes were exchanged between PNG and Australia restricting the definition to the 14 Treaty villages.

The Torres Strait Treaty has been recognised for its innovation in international law and support for customary activity.¹⁰ It was designed to accommodate existing cultural ties and traditional ways of life and the associated travel between islands and across the international border. But as Kevin Murphy outlines (chapter 2), the social construction of the borderlands does not map easily onto the border and corresponding Treaty arrangements. There is a history of mobility to accommodate relationships, cultural exchanges, marriage, trade and resource extraction, as well as warfare and consequent internal migration inside this borderland. As some groups have permanently settled in new territories, they have pushed out and displaced others who still have claims to such lands today. The consequences of these movements continue to evolve and drive social tensions.

The existence and placement of the border under the treaty, and the administrative interpretations that have operationalised its management, has resulted in a range of asymmetries. At odds with a cultural ethos of reciprocity that borderlanders once shared, the current regime of border management instead fuels resentment that exacerbates pre-existing social tensions, with potentially destabilising effects. On the Australian side of the border, Torres Strait Islanders have access to the services and benefits of the Australian welfare state,¹¹ whereas on the PNG side people of the South Fly experience high levels of poverty and deprivation and a near-complete failure of public infrastructure, services and governance.

Within living memory, there was a time when living standards on either side of the border were similar. It is illuminating to compare a typical response to key questions from one side of the border to the other, to comprehend the enormity of the divide.¹² For instance, a qualitatively typical male respondent living in the South Fly in his fifties who has ten years of education will have living conditions starkly different from those of a comparable male residing in the Torres Strait, as table 1.2 indicates.

<table 1.2 near here>

Table 1.2: A comparison of several lifestyle indicators of two adult males of similar age and years of education from the South Fly and Torres Strait Islands

[blank cell]	South Fly village	Torres Strait Islands community
Household income in the last month	A\$199	A\$2840
Sources of income	Crafts, garden produce, hunted meat	Paid employment— via Community Development Employment Projects scheme (CDEP); spouse employed
Type of toilet	Pit latrine	Flush toilet
Water piped to house?	No (rainwater tank or river)	Yes

Note: CDEP is a Commonwealth Government program designed to provide an income for participants to undertake work that is deemed to be in the community interest. See M. Moran, D. Porter and J. Curth-Bibb, *Funding Indigenous Organisations: Improving Governance Performance Through Innovations in Public Finance Management in Remote Australia*, Australian Institute of Health and Welfare, 2014, pp. 1–63, www.aihw.gov.au/reports/indigenous-australians/funding-indigenous-organisations

Source: borderlands research data, 2018

We used the Multidimensional Poverty Index (MPI) to assess the level of poverty in the South Fly.¹³ The MPI measures 'deprivations' at the household and individual level across health, education and livelihood and living conditions. Each person making up the household is classified then as poor or non-poor, depending on the weighted number of deprivations. Following the work of John Burton, we made some adaptations to the MPI methodology so that it was appropriate for rural PNG.¹⁴

The villages in the South Fly recorded a multidimensional poverty index of 0.35.¹⁵ Our calculations of MPI were completed at a subnational district level, so they can be compared only with similar subnational estimates.¹⁶ The level of poverty in the South Fly is commensurate with that experienced in rural districts on Afghanistan and Sudan.¹⁷ It is also significantly worse than what is experienced in Papua Province of Indonesia (0.21).¹⁸ What this means in reality is that people are experiencing poverty that causes significant stress for many people of this borderland region.

Much of this poverty is understood by borderlanders as a failure of governance by the PNG state. We detail the sentiment on the ground in the South Fly regarding the governance mechanisms available to people, and we describe three forms of governance failure that local informants themselves have articulated to us:

- 1 the PNG Government's inability to get resources to the ground, associated with high levels of perceived corruption
- 2 the current inability of aid interventions to reach the people on the ground and their feelings of being disconnected from aid decisions and being powerless to hold aid to account, and
- 3 the effects of policy and associated governance surrounding the Australia's enforcement of the border.

Like borders elsewhere internationally, the border of Australia and PNG is not a natural objective thing, but rather the consequence of political manoeuvring and historical geopolitics. In exploring its historical evolution we illustrate its mismatch with the cultural geography that pre-dated it. We detail the failures in public service provision and governance and the related levels of poverty experienced by people living on the PNG side. We examine the administration of the border and its effects on people's daily struggle for survival on the PNG side. We unpack the current interpretation of the Treaty and ask: what are the options for contesting its application?

We demonstrate the asymmetrical effects of the border and the stark differences in opportunity and outcomes for those on the PNG side compared to those on the Australian side and those seemingly somewhere in the middle, including PNG nationals living in Treaty villages, and Papuan Australians who are now citizens of Australia living in the Torres Strait. We demonstrate how the application of the treaty has resulted in a tiered economy with mounting tensions arising between the haves and have-nots. We consider how the treaty produces a fourfold hierarchy of identities: Australian Torres Strait Islanders, Papuan

Australian citizens, PNG Treaty villagers and, finally, PNG non-Treaty villagers. These identities were once shared but are now increasingly divided. Divisions have been exacerbated by the Australian state in the way it privileges certain groups over others, and how those thus privileged have worked hard to protect those privileges.

We argue that the recent hardening of the border is undermining the prior success of the treaty. The focus on border enforcement, rather than building capacities across the border, exacerbates difference and inequality and fuels local resentments and tensions, which arguably destabilises the border. We therefore offer an alternative lens, using systems understandings to place-based governance that treats this region as a borderlands or border zone for public policy, trade and resource management. In doing so we centre our attention on people and on their experience. We show that Australia's attempt at securing the border is inescapably intertwined with the 'security' of people living on the PNG side, and that their well-being and goodwill is in Australia's national interest.

A borderlands theoretical framework

The borderland has always been a contested space, yet there have been recent and profound shifts in the discourse surrounding the Australian border and the management of it.¹⁹ Politicians have taken advantage of fears of drug-resistant tuberculosis, asylum seekers and people smugglers. In 2013 the treaty was described in the Queensland Parliament as 'one of the most lax border arrangements in the world'²⁰ and as a major national risk to Australia's 'health security'.²¹ In the same year, in response to the federal government's payment of \$18 million to Queensland Health to compensate for the cost of PNG nationals accessing the Queensland health system, the then Queensland Health Minister claimed that the payment was 'recognition that the Commonwealth Government cannot secure the Queensland–PNG border'.²² He went on to say that people crossing from PNG into Australia could be 'going anywhere' and that the border is 'open to people smugglers to continue their illegal trafficking of humans through a different route'. The border is, he said, 'as porous as a spaghetti colander'.²³

The notion of a porous border is not new and is certainly not unique to the PNG–Australia borderlands. The fluidity that is understood to characterise many border regions has resulted in a dedicated field of study. As early as 1916, Holdich and Lyde questioned how boundaries could be 'good or bad' depending on 'their intrinsic merit in fostering or limiting tensions', including wars between states.²⁴ Samuel Whittmore Boggs also questioned the universal and timeless 'good' of boundaries when he noted that the function of boundaries was specific to a certain time and space and that interaction across boundaries might be required to lessen tensions. Boggs asks: 'what tensions are created by the lines in such a case; and what devices may be used to relieve those tensions?'²⁵ Importantly, boundaries are continuously pushed and spaces reconfigured through essential movement of people and the maintenance of relationships in the 'everyday practices of survival and regulation'.²⁶

The development of border studies, or borderlands studies, is generally understood to have its origins in the key works of Prescott and Minghi in the 1960s,²⁷ and the classic texts of 'boundary scholarship' they produced in the following two decades. When borderlands studies first emerged, its largely 'state-centric' analysis appealed to 'sound boundary management as a fundamental aspect of "international" peace and order'.²⁸ This then advanced to understanding borderlands as unique socioeconomic geographies that are lived and dynamic spaces, with populations that take on unique borderland identities.²⁹ The early suggestion by Prescott in 'studying the attitude of borderlanders' was furthered by Minghi calling for research 'focusing on people within border zones as opposed to the boundaries themselves'.³⁰ This is critical to our understanding of this borderland region as we explore the manner in which this borderland has been historically constructed and socially constituted (chapter 2).

In his seminal work in attempting to theorise borders and borderlands, Brunet-Jailly proposes a holistic framework for exploring borderlands in a systematic way.³¹ In an attempt to synthesise the range of lenses that have been used in empirical studies on individual borderlands, Brunet-Jailly draws these approaches together to suggest four 'equally important analytical lenses': (1) market forces and trade flows; (2) policy activities of multiple levels of governments on adjacent borders; (3) the particular political clout of borderland communities; and (4) the specific culture of borderland communities.³²

<Figure 1.2 near order>

A theory of borderland studies (E. Brunet-Jailly, 'Theorizing borders: An interdisciplinary perspective', *Geopolitics*, vol. 10, 2005, p. 645)

The Brunet-Jailly Framework (figure 1.2) clearly resonates with our analysis of the PNG borderlands. We will demonstrate that the push and pull across these four factors at once brings borderlanders together and pulls them apart. Moreover, we question the relative 'goodness' of the border by drawing on August Lösch's classic text, *The Economics of Location*,³³ which points out the economic cost of borders and the reduction in efficiencies due to the barriers they erect for the flow of trade, goods and labour.³⁴ This description well describes the obstruction to trade in the PNG–Australia borderland, which affects most harshly those with the least.

Despite more than a century of scholarly interest in boundary studies and more than 60 years of interest in the concept of borderlands, there is very limited applied research in the PNG borderlands that draws upon a borderlands framework. W.S. Arthur is one notable exception, with his analysis *Autonomy and Identity in Torres Strait: A Borderline Case?*,³⁵ in which he argued that the 'Treaty and the associated Protected Zone have helped create a "borderland" with its own unique social, economic and political characteristics', and where the residents have come to identify as 'borderlanders'.³⁶

Given our emphasis on how people experience the border, we attempt to provide 'a view of governance from the perspective of those who are living it',³⁷ to observe the 'throwntogetherness' of governance.³⁸ This allows us to sidestep the state

as the 'methodological unit of analysis',³⁹ and to use the borderland as the centre in which to observe the governance relationships that weave in and out of it in the interests of optimising service delivery, public finance and local-level accountability. What emerges then is a bricolage of informal and formal institutions at the periphery of the PNG state, in what has been described as an 'Area of Limited Statehood' (ALS).⁴⁰

ALS scholars use what is understood as a 'spatial grammar' and the analysis of sociospatial relations.⁴¹ Like Brunet-Jailly's 'four factors', areas of limited statehood are understood not as ungoverned but as 'differently governed' spaces in a way that recognises institutional (formal and informal) and jurisdictional (including external jurisdictions) layering and contestation. When Risse puts forward a definition of ALS, he makes the point that they are avoiding the Eurocentric perspective of what has been normatively classified as 'fragile states', with its preoccupation with democratic 'good' governance. Instead they are focused on 'those parts of a country in which central authorities (governments) lack the ability to implement and enforce rules'.⁴² In the case of the PNG borderland, we are interested in spaces whereby the authority of the state does not reach partly because it is unable to service its population in a way that would engender recognition, legitimacy and loyalty from the 'periphery' to the centre.⁴³

When we take a place-based approach to governance and service delivery, we are better able to understand the complex intersections between policy arenas; the relationships between disparate sectors and disciplines can be traced as their complex intersections weave through this place. We see how poverty, income, livelihoods, fishing and marine resources, water, hygiene and sanitation, nutrition, health and environmental conservation are all heavily interdependent. Transport, infrastructure, education, and law and order intersect in ways that are mutually constituting or destabilising, affecting each other in ways that inextricably shape outcomes in other sectors. Governance, policy and service delivery responses that become greater than the sum of their parts. We argue that a borderlands, place-based systems analysis offers more sustainable policy solutions both to poverty and deprivation on the PNG side and to security and border protection on the Australian side.

The research

The project operationalises aspects of borderland studies and the ALS literature to understand the underdevelopment and potential for aid assistance, centred on the South Fly District. It is based on research that was completed with support from an Australian Research Council (ARC) Discovery grant, over a four-year period from 2016 to 2019, jointly led by two chief investigators from the University of Queensland: Professors Mark Moran and Jennifer Corrin. It drew on a range of literature, primary source material and documentary analysis, as well as the combined experience of the authors, three of whom—Kevin Murphy, Geoff Miller and Garrick Hitchcock—had been working in the South Fly for many years before

the project began. University of Queensland researchers Jodie Curth-Bibb and Peter Chaudhry brought important comparative experience from other parts of PNG and the bordering Solomon Islands, and from Vietnam's borderland with Laos and China, respectively. The chief investigators brought their experience of working in Aboriginal and Torres Strait Islander affairs in Australia: Mark Moran, and law reform and development in plural legal contexts in the Pacific and PNG: Jennifer Corrin. The project was also greatly enhanced by the contribution of two researchers – Sara Busilacchi and James Butler – from the Commonwealth Scientific and Industrial Research Organisation (CSIRO), who drew on their previous studies in this region, separate from the ARC project.

The research took a mixed method approach, combining unstructured interviews with officials, local leaders and aid workers; semi-structured interviews with community leaders in PNG and Torres Strait Islands; focus group discussions with community members in the borderlands region; observations in the villages visited; and, significantly, the completion of community-level and household-level surveys. All interviews were preceded by a community meeting, to explain the research and the sampling strategy. Informants were selected on the basis of advice from the community Village Recorder (or accountant), according to a stratified sample, based on age, gender and household composition.

The household-level survey collected data on health, education, livelihoods, living conditions and, importantly, cross-border mobility. It was divided into sections on household and individual respondent characteristics, including levels of schooling, religion, type of housing, household assets and access to water; livelihoods, including sources of income and the nature of existing cross-border income streams; health and access to health, including any access to cross-border health facilities; and cross-border interactions in general – whether and why respondents cross the border, where they go and how they get there. The predominantly multiple-choice survey ended with two open-ended questions: 'What is the one thing that you would like to see change that would improve your life?' and 'What is the biggest change in this village that has occurred over the past five years?'

The community-level survey captured data on infrastructure, governance and services. It was designed to be conducted with one or more community leader and to be triangulated with observations made of housing, infrastructure and other aspects of community life. It covered a broad range of community-level characteristics: including population, religion and languages spoken; public infrastructure, including roads, wharves, water sources, community infrastructure; commodities and prices of supermarket staples; the presence of governance actors and law and justice services; health issues, services and infrastructure; education and the levels of schooling offered; and connectivity in the community: the mobile phone coverage or access to two-way radios.

<Figure 1.3 near here>

Borderlands project field trip map. The researchers visited coastal and inland villages in the South Fly over four years.

In total, 273 household interviews in 35 villages were included in the study. Figure 1.3 depicts the villages visited over the four-year period.⁴⁴ The fieldwork occurred over five field trips. During the first trip in late 2016, the research team spent close to a month visiting five Treaty villages along the South Fly coast (Buzi, Bula, Mabuduan, Mari and Tais), and eight villages to the west of the South Fly District, closer to the PNG–Indonesian border (Balamuk, Bondobol, Indorodoro, Kiriwo, Korombo, Wando, Weam and Wereave). The second trip was in September and October 2017, during which researchers focused on the Treaty villages (Ber, Bula and Mabuduan again, Jarai, Old Mawatta, Parama, Sigabaduru and Sui). They also briefly crossed the border into Australia via Horn Island, visiting two of the outer Torres Strait Islands (Saibai and Boigu islands). In June 2018, the researchers returned to the South Fly for the third field trip, surveying villagers in non-Treaty villages to the east (Ume, Masingara and the Treaty village, Kadawa), then up a number of river systems, including the Oriomo (Abam, Dorogori, Mur Lagoon, Upaire and Wuroi), the Pahoturi (Dug, Kibuli, Kodoro, Ngao, Ardamroang and Wamorong), and the Mai Kussa (Dimiri and Sibidiri). The fourth field trip was to the Torres Strait only. A smaller team returned in October 2018 to the two outer Torres Strait Islands visited earlier, then to three islands with close associations to the South Fly villages (Badu, Darnley and Iama islands), with a version of the survey modified to fit a Torres Strait context. Finally, in August 2019, the researchers returned to the South Fly for the fifth and final field trip, to villages already visited to disseminate findings and seek input on the research recommendations.

We faced a few limitations with the research. The lack of administrative data provided by the Queensland and Australian government authorities hindered the work. In particular, Queensland Health (outpatient and inpatient presentations to outer Island clinics and medevacs) and the Border Force (immigration visits) hold data that would have greatly strengthened the research. Conversely in PNG we found the data to be forthcoming but unreliable.⁴⁵ As a result, almost all of the research is based on data that have been collected by the authors.

The survey instrument was adapted for each field visit as researchers gained a deeper insight into the situation in the South Fly. Improvements were made to the community and household survey on return trips, which reflected lessons learned. We also added additional questions in 2018, which allowed researchers to calculate the MPI of the region. However, these changes made comparisons between different years of data collection more difficult, with participants in earlier years not offered certain options. Additionally, there were instances of non-response or unrecorded responses throughout the collected surveys, which reduced sample sizes for some questions. For each response we have reported here, we have clearly stated the number of respondents asked the question so as to accurately reflect the data available for each question.

The CSIRO team has been working in the South Fly since 2011. During this period the team has conducted several projects focusing on small-scale fisheries and their multifaceted role for people in the region.⁴⁶ The first project in 2011–13 was funded by the PNG National Fisheries Authority (NFA) and the Australian Fisheries Management Authority (AFMA). It assessed the status of small-scale fisheries and their role in livelihood and food security.⁴⁷ This project was followed by two workshops in Cairns (October 2014) and Daru (June 2015) jointly funded by AFMA, NFA and the Australian Department of Foreign Affairs and Trade (DFAT), driven by the interest of stakeholders in the Treaty Zone and beyond to better understand the causes of asymmetrical development in the borderland region and how to address them.⁴⁸ This was followed in 2017–18 by a project that explored the legal and illegal value chains of some of the most valuable marine products harvested in the South Fly, funded by the NFA in partnership with the Australian Centre for International Agricultural Research (ACIAR).⁴⁹ Both projects employed a mixed-methods research approach, applying both quantitative and qualitative methods to collect data and information. This material was integrated with participant observation and informal conversations carried out by Busilacchi during her visits to Daru, Port Moresby, the Treaty villages and Jakarta.

The political economy investigation of cross-border marine resources and the flow-on effects of the Ok Tedi mine disaster on marine resources in the borderland waters of the Torres Strait are based on information collected by key informant interviews, focus group discussions and the market survey in 2011–13 and 2017–18. Data collected during a CSIRO–AusAID project in the coastal area of the Western Province in 1995⁵⁰ and during a CRC Reef–JCU study of the subsistence reef fisheries of the eastern Torres Strait communities in 2004 were used as a baseline.⁵¹ All data from CSIRO projects are referred to as such, and all remaining data are from ARC Discovery Grant borderlands research unless otherwise stipulated.

Conclusion

In search of solutions for these seemingly intractable problems, we take a transdisciplinary, systems approach that is anchored in place and informed by borderlands theory. From this position we examine the border from an anthropological, legal, governance, inequality and welfare, health systems, marine resource and conservation lens to better understand the interconnections and intricacies of public policy and development in this place.

Applying both a humanitarian and a security lens brings us to the same conclusion, which is that the South Fly is too close for Australia to ignore the poverty and increasing frustration and consequent tensions prevalent in the region. We argue that this problem is being exacerbated by a combination of a hardening border protection, compartmentalised policy prescriptions and partial solutions to complex problems. We suggest that a more place-based solution would look very different. Drawing on Brunet-Jailly's borderlands framework, we explore four factors: local cross-border culture; the policy activities of multiple levels of government; market

forces and trade flows (and associated resource management); and local cross-border political clout.

If we can sidestep the state as a unilateral methodological unit of analysis and instead explore the 'throwntogetherness' of the borderlands region, we can see that relationships run through this borderlands place in a way that illuminates other possibilities. We look to new policy prescriptions that will improve Australia's border management. We also look to how Australia's aid assistance to the South Fly can better take into account the effects of the border. Clearly, the borderland is a unique development context unlike anywhere else in the region. Importantly, for the same reason it offers great opportunities.

We also describe how increasing securitisation of the border is driving inefficiencies and ultimately exacerbating underdevelopment on the PNG side, which is then perversely undermining border security. Border management ought to take account of the tensions and asymmetries it creates among the people of the borderland and the potential for destabilising the border. Ultimately the most effective way to take pressure off the border is to draw on the positive experience of cross-border arrangements under the Treaty and to leverage existing cross-border relationships to improve people's lives and reduce inequalities rather than exacerbate them. Ultimately, we contend that the best way to keep Australia's border safe is to ensure that those people who reside in the borderland are afforded greater opportunity for development and dignity to alleviate the injustice they feel.

Notes

<Setter: take in notes here, numbered from 1 to end>

¹ J.R.A. Butler, S. Busilacchi and T. Skewes, 'How resilient is the Torres Strait Treaty (Australia and Papua New Guinea) to global change? A fisheries governance perspective', *Environmental Science and Policy*, vol. 91, January 2019, p. 19.

² As discussed below, while the people of Torres Strait experience disadvantage compared with non-Indigenous Australia, the level of disadvantage in the South Fly is striking.

³ Prices collected during fieldwork from village and community stores. On Indonesia fuel subsidies, see 'Pertamina open 123 one-price fuel stations in remote regions', *Jakarta Post*, 1 January 2019, www.thejakartapost.com/news/2019/01/01/pertamina-opens-123-one-price-fuel-stations-in-remote-regions.html.

⁴ Senate, Foreign Affairs, Defence and Trade References Committee [FADTRC], *The Torres Strait: Bridge and Border* [Senate Inquiry], Commonwealth of Australia, Parliament House, Canberra, 2010, p. 230.

⁵ M.B. Alcock, C.J. French and A. Hatfield, 'Australia's maritime jurisdiction in the Torres Strait', *GeoScience Australia*, 2010, pid.geoscience.gov.au/dataset/ga/68226.

⁶ Department of Foreign Affairs and Trade [DFAT], 'The Torres Strait Treaty', n.d., www.dfat.gov.au/geo/torres-strait/Pages/the-torres-strait-treaty.aspx. Many documents associated with the treaty refer to only 13 Treaty villages, and the spelling of some villages varies between documents. The current 'Guidelines for Traditional Visitors' names the Treaty villages as 'Bula, Mari, Jarai, Tais, Buji/Ber, Sigabadaru, Mabuduan, Old Mawatta, Ture Ture, Kadawa, Katatai, Parama and Sui'. Buzi and Ber together comprise a single ward with one LLG representative who also serves as their representative in the various Treaty-related forums; however, Buzi (Buji is a colonial spelling not now commonly used in the village) and Ber are in fact two separate villages, with their own distinct histories and identities. The four villages to the west of Buzi are also within multi-village wards, but each is counted separately in the Treaty documents (ibid.). The pronunciation of village names often varies according to the language and dialect of the speaker. We have opted to use the spelling that reflects the pronunciation in the dialect spoken by the people of that village. In some cases this deviates from the spelling used in Treaty-related documents and other sources.

⁷ The Torres Strait Island Treaty communities are 'Badu, Boigu, Poruma (Coconut Island), Erub (Darnley Island), Dauan, Kubin, St Pauls, Mabuiag, Mer (Murray Island), Saibai, Ugar (Stephen Island), Warraber (Sue Island), Iama (Yam Island) and Masig (Yorke Island)'. DFAT, n.d.

⁸ Senate Inquiry, 2010, pp. 41, 43.

⁹ Australian National Audit Office, Auditor-General et al., 'Coordination arrangements of Australian government entities operating in Torres Strait', *Auditor-General Report*, no. 41, ANAO, 2019, p. 17. Performance Audit, www.anao.gov.au/work/performance-audit/coordination-arrangements-australian-government-entities-operating-torres-strait.

¹⁰ H. Burmester, 'The Torres Strait Treaty: Ocean boundary delimitation by agreement', *American Journal of International Law*, vol. 76, no. 2, 1982; S.B. Kaye, 'The Torres Strait Islands: Constitutional and sovereignty questions post-Mabo', *University of Queensland Law Journal*, vol. 18, no. 1, 1994, pp. 38–49; W.S. Arthur, 'Autonomy and identity in Torres Strait: A borderline case?', *Journal of Pacific History*, vol. 36, 2001, p. 223; B. Milligan, *The Australia–Papua New Guinea Torres Strait Treaty: A Model for Co-operative Management of the South China Sea?*, Edward Elgar Publishing, Cheltenham, UK, 2013.

¹¹ It is important to note that Indigenous Australians have experienced significant negative consequences of colonisation and continue to have a much shorter life expectancy than non-Indigenous Australians. Many Indigenous Australians live in poverty, and more live in relative poverty. Indigenous disadvantage in Australia is multifaceted and stems from dispossession and ongoing institutional racism. Although the Torres Strait story is different from that of mainland Australia, with the Torres Strait enjoying governance arrangements

that allow for high levels of autonomy, many aspects of Indigenous disadvantage apply to this region and its people.

- ¹² Although the sample size is not generalisable, we have compared the data with census data available and with qualitative data we collected.
- ¹³ The MPI is a measure of acute poverty developed by the United Nations Development Programme (UNDP), Human Development Report Office (HDRO) and the Oxford Poverty and Human Development Initiative (OPHI). See UNDP, 'The 2018 Global Multidimensional Poverty Index (MPI)', United Nations Development Programme, www.hdr.undp.org/en/2018-MPI
- ¹⁴ Dr John Burton's work in Middle Fly in Papua New Guinea provided a guide for adapting the MPI methodology to the South Fly District. J.E. Burton, 'Are the people of Manda in Middle Fly poor? A development assessment using the Oxford Multidimensional Poverty Index', *Contemporary PNG Studies: DWU Research Journal*, vol. 28, no. 1, 2018.
- ¹⁵ This measure is designed for low- and middle-income countries, not high-income countries like Australia, so we calculated it only on the PNG side of the border.
- ¹⁶ Although not comparable with MPI values collated and analysed at the country level (due to the inclusion of urban populations, infrastructure and markets that are simply non-existent in rural areas—as well as the adjustments made to bring the South Fly MPI down to the regional level), it nonetheless helps for perspective to consider the MPI values in other countries. For instance, Timor Leste = 0.211; Vanuatu = 0.174; Laos = 0.211; Afghanistan 0.273; Democratic Republic of Congo = 0.328; South Sudan = 0.581. See UNDP, 'Table 6: Multidimensional Poverty Index: developing countries', United Nations Development Programme, www.hdr.undp.org/en/composite/MPI.
- ¹⁷ 'Country level analysis', OPHI, ophi.org.uk/multidimensional-poverty-index/databank/country-level.
- ¹⁸ Ibid.
- ¹⁹ B. Toohey, 'Australia's nebulous borders', *Eureka Street*, 4 September 2012, www.eurekastreet.com.au/article.aspx?aeid=32986.
- ²⁰ Queensland Parliament, Estimates Committee, *Estimates—Health and Community Services Committee—Health*, Queensland Government, 2013, pp. 5, 12, 42, www.parliament.qld.gov.au/documents/hansard/2013/2013_07_24_EstimatesHCC.pdf
- ²¹ K.A. Murray, R. Speare, L.F. Skerratt, S. Ritchie and F. Smout, 'Cooling off health security hot spots: Getting on top of it Down Under', *Environmental International*, vol. 48, 2012, pp. 56–64.
- ²² Queensland Parliament, Estimates Committee, L. Springborg, media statements: 'PNG–Queensland border unsecured', Queensland Government, 24 July 2013, www.statements.qld.gov.au/Statement/2013/7/24/pngqueensland-border-unsecured

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- ²³ A. Remeikis, 'PNG refugee plan: Border porous, says Springborg', *Brisbane Times*, 24 July 2013, www.brisbanetimes.com.au/national/queensland/png-refugee-plan-border-porous-says-springborg-20130724-2qiem.html
- ²⁴ As cited on pp. 635–6 in E. Brunet-Jailly, 'Theorizing borders: An interdisciplinary perspective', *Geopolitics*, vol. 10, 2005, pp. 633–49.
- ²⁵ W.S. Boggs, *International Boundaries: A Study of Boundary Functions and Problems*. Columbia University Press, New York, 1940, pp. xvii, 272.
- ²⁶ T. Raemaekers, 'The silent encroachment of the frontier: A politics of transborder trade in the Semliki Valley (Congo–Uganda)', *Political Geography*, vol. 28, 2009, p. 56.
- ²⁷ A. Paasi, 'Generations and the "development" of border studies', *Geopolitics*, vol. 10, 2005, pp. 663–71.
- ²⁸ C.H. Schofield and C. Grundy-Warr, 'Reflections on the relevance of classic approaches and contemporary priorities in boundary studies', *Geopolitics*, vol. 10, no. 4, 2005, pp. 650–62.
- ²⁹ Paasi, 2005.
- ³⁰ Schofield and Grundy-Warr, 2005.
- ³¹ Brunet-Jailly, 2005, pp. 633–49.
- ³² It is important to note that these lenses are considered equally important theoretically; that is, as lenses for analysis. It is not assumed that they are equally important empirically in each context.
- ³³ A. Lösch, *The Economics of Location*, Yale University Press, New Haven, CT, 1954.
- ³⁴ 'The effect of political frontiers naturally depends entirely on the kind and size of the barrier that they set up against trade; but under otherwise similar conditions, products with small necessary shipping distances are hardest hit. First, any given tariff rate has a more adverse percentage effect when low freight charges are added to the purchase price than when these charges are high. Second, there must be added to the customs duties all the annoying formalities at the border, which cause many small entrepreneurs to give up all foreign trade. A third, and especially important, factor is the technically necessary limitation of the number of border crossings. The resulting increase in distance between a seller and his customers is relatively greatest when the latter are near the border.' *Ibid.*, p. 206.
- ³⁵ Arthur, 2001, p. 223.
- ³⁶ *Ibid.*, p. 218.
- ³⁷ K. Higgins, 'A nation of villages? Exploring governance in Melanesia', PhD thesis, University of Queensland, Brisbane, 2018, p. 69.
- ³⁸ D. Massey, *For Space*, Sage, Thousand Oaks, CA, 2005, p. 140, in *ibid.*
- ³⁹ A. Ziai, 'The discourse of "development" and why the concept should be abandoned', *Development in Practice*, vol. 23, no. 1, 2013, p. 127.
- ⁴⁰ D. Craig and D. Porter, 'Safety and security at the edges of the state: Local regulation in Papua New Guinea's urban settlements: Local regulation in

Papua New Guinea's urban settlements', World Bank Group, 2018, documents.worldbank.org.

- ⁴¹ B. Korf, T. Raeymaekers, C. Schetter and M.J. Watts, 'Geographies of limited statehood', *Oxford Handbook of Governance and Limited Statehood*, ed. A. Draude, T.A. Börzel and T. Risse, Oxford University Press, 2018, p. 2, *Oxford Handbooks Online*.
- ⁴² T. Risse, 'Governance in areas of limited statehood', *Oxford Handbook of Governance*, ed. D. Levi-Faur, Oxford University Press, 2012, p. 4 (parentheses in original), *Oxford Handbooks Online*.
- ⁴³ We note, however, that the idea that service delivery somehow enhances legitimacy of governance regimes is also contested.
- ⁴⁴ Murphy, 2013, p. 90.
- ⁴⁵ The second limitation was the all-Australian, all-male team in the field. The project recruited Australians with prior experience of working in the South Fly, either as anthropologists or as advisers to the PNG Government. There are equivalent Australian female researchers who have worked in other remote parts of PNG, but we were not able to identify available women with experience in the South Fly. Although researchers made a concerted effort to interview a mixture of male and female villagers from a variety of household positions, the majority of respondents were still male heads of households, reflecting social norms and the gender of those doing the interviews. We have tried to mitigate this influence by being careful to interview female leaders where possible.
- ⁴⁶ The PNG National Fisheries Authority (NFA), driven by the need to understand the contribution of marine resources to the well-being and sustainable development of people in the region, and how to improve their management, has consistently collaborated with and supported this research. Several other agencies have been involved at different stages, including a local NGO based in Daru: Bata Community Development Foundation (BCDF). Its director, Daina Exon Budia, a highly respected elder of the South Fly community, was instrumental in the understanding and positive engagement with people in the communities and a critical intercultural broker between the CSIRO team and villagers.
- ⁴⁷ Detailed information on methodology and findings can be found in S. Busilacchi, J. Butler, T. Skewes, J. Posu, T. Shimada, W. Rochester and D. Milton, *Characterization of the Traditional Fisheries in the Treaty Communities of Torres Strait (Papua New Guinea)*, CSIRO, Australian Fisheries Management Authority, 2015, pp. 1–122.
- ⁴⁸ Detailed information on the methodology and findings can be found in J.R.A. Butler, S. Busilacchi, J. Posu, I. Liviko, P. Kokwaiye, S.C. Apte and A. Steven, 'South Fly District Future Development Workshop Report', *CSIRO Oceans and Atmosphere*, CSIRO, 2015, pp. 1–38.

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- ⁴⁹ Detailed information on the methodology and findings can be found in S. Busilacchi, J. Butler, I. Van Putten, M. Cosijn, A. Slamet, J. Posu and R. Fitriana, *Developing Legal Value Chains and Alternative Markets for South Fly District Fisheries (Papua New Guinea)*, CSIRO/ACIAR, 2018, pp. 1–77.
- ⁵⁰ G. Baines, I. Poiner, J. Cordell, M. Busse, D.A. Milton, J. Asafu-Adjaye, J. Owen, S.J.M. Blaber, J. Ellison, A. Harris, R. Kenchington and B.G. Long, *Papua New Guinea Western and Gulf Provinces Coastal Zone Management Plan: Feasibility Study Completion Report*, Australian Agency for International Development, Canberra, 1997, pp. 1–250.
- ⁵¹ S. Busilacchi, 'The subsistence reef fishery in the Torres Strait: Monitoring protocols and assessment', PhD thesis, James Cook University, Townsville, Qld, 2008.

The sociohistorical context of the borderlands

Kevin Murphy

This chapter describes and analyses the borderland region as a social field, defined by reference to the intersection of Papua New Guinea's borders with Australia in the south and Indonesia in the west. The borders establish a matrix of asymmetrical relationships, deriving from the facts that they are the means of geographical distinction between disparate nation states and that they are a focus of the exercise of state enforcement regimes. I argue that the asymmetrical structuring of relationships as they relate to the PNG–Australia border results in social tension across the border and exacerbates pre-existing social tensions within PNG. There is a wealth differential across the PNG–Indonesia border, but it is not as great as that across the PNG–Australia border. The Australian border administration has become progressively more restrictive in recent years as to who is allowed to cross the border and what they are permitted to do when they do cross under the 'traditional inhabitant' provisions of the Torres Strait Treaty. The state enforcement regime at the Indonesia border is in some respects more flexible than that at the Australia border, and it has become increasingly attractive for the trading opportunities it affords for people from South Fly District.

The people of the borderlands before colonisation

Defining social groupings on criteria of linguistic, social and cultural variation is always problematic. There are exceptions to generalisations; there is overlap at the margins, and the possibility of reifying groups where they might not exist as such. Nevertheless there are distinctions throughout the borderlands region in language, social organisation, ritual, ontology, economy and other sociocultural characteristics that correspond sufficiently for some general patterns to be evident. The people now living in this region maintain richly detailed oral histories that continue to inform their own understanding of similarity and difference among themselves, and there is some ethnographic information available from the publications of European missionaries, explorers, colonial government officers and anthropologists. These combined sources allow for a representation of patterns of linguistic, social and cultural variation, group definition and intergroup relations as they were before the commencement of colonialism in the 19th century.

The region of the New Guinea mainland directly to the north of Torres Strait is commonly known in the ethnographic literature as the 'Trans-Fly' after F.E. Williams's ethnography, *Papuans of the Trans-Fly*.¹ A more commonly used geographical descriptor in Papua New Guinea today is the term 'South Fly', after the name of the electoral district; however, these two terms are not strictly equivalent. 'Trans-Fly' in Williams's usage (and in that of others who followed him, including Knauff²) refers to a congeries of small groupings that inhabit most of the South Fly District but also extend a short distance westwards into what is now the Indonesian province of Papua. There are other, non-Trans-Fly groups who also live in South Fly District, these being the Kiwai in the east and the Suki in the north.

At the eastern end of this region is the Fly River Estuary, and to the north and north-east are the lower reaches of the Fly River. The Fly Estuary and several hundred kilometres further east are inhabited by people speaking numerous dialects of the Kiwai language group. The lagoons along the southern side of the Fly River, along the northern edge of South Fly District, are inhabited by people speaking the Suki language, and to their east, in Middle Fly District, are the people of the closely related Gogodala language group.

There is no distinct geographical marker between the western parts of the Trans-Fly culture area and their western neighbours. Speakers of dialects in the Marind language group inhabit the region centred on the Bian River, extending along the coast east of the Merauke River, almost as far as the Bensbach River, but inland there are some Trans-Fly groups west of the Indonesian border.

There is considerable diversity within the culture area designated as Trans-Fly, but nevertheless Williams was justified in his classification of the assortment of Trans-Fly groups together. It includes all of the other groups within the South Fly District besides the Suki and Kiwai, with the Marind neighbouring to the west beyond the PNG–Indonesia border. Among the pre-colonial sociocultural features common throughout the Trans-Fly grouping, and contrasting with adjacent neighbours the Suki, Kiwai and Marind, were the very small scale of residential groups, their wide dispersal across the land, and lack of occasions for large-scale social gatherings. Further, by comparison with other culture areas along the south coast of New Guinea, including immediate neighbours to east and west, the people of the Trans-Fly have been characterised as 'introverted' and 'culturally conservative',³ with strong separation of gender roles and low status of women. Relations of domination were directed inwards by men over women and boys, just as Trans-Fly men themselves were dominated by aggressive neighbouring groups.

The Trans-Fly region was, and still remains, a difficult place for people to live. There are environmental constraints on human habitation, including climate, topography, generally poor soils, lack of fresh water in the dry season and extensive flooding in the wet season. In addition to the harsh environment in which they lived, before colonial pacification the Trans-Fly people were predated upon by neighbouring groups of headhunters, and they were also engaged in internecine raiding among themselves. These factors resulted in relatively low population

density compared to neighbouring groups at the time of colonisation in the late 19th century.

The islands to the south of the South Fly region are inhabited by people who refer to themselves collectively as Torres Strait Islanders; they have commonly been classified as comprising a distinct culture area but could equally be classified as two subgroups of the Trans-Fly grouping. The language of the Eastern Islands is a dialect of the Eastern Trans-Fly language family, while the language of the Central and Western Islands comprises four dialects closely related to each other but distinct from the Eastern group, genetically related to Australian Aboriginal languages to the south but strongly influenced by Papuan languages to the north.⁴

Over several decades before the commencement of colonial administration, Kiwai people from the Fly River Estuary had progressively been establishing permanent settlements westward along the coast, and had forged relationships with the people of the eastern and north-western islands of Torres Strait. In some instances they achieved this by making alliances with Trans-Fly groups in the context of their internecine raiding, then stayed on to establish a village, from which they further expanded over time. In doing so, over the course of a few generations they effectively displaced some eastern Trans-Fly groups from their occupation of the land near the coast,⁵ and inserted themselves as middlemen in trade between eastern Trans-Fly people and Torres Strait Islanders.

The impact of colonialism occurred first on the islands of Torres Strait, beginning in the mid-1800s and intensifying from the 1860s. When colonial influence extended to the adjacent south coast of mainland New Guinea, from the 1880s, it was Coastal Kiwai people from villages located along the coast between the Binaturi River and the Fly River, who first engaged with the new regime. They were then well placed to act as agents and intermediaries for the British colonial officers in bringing the inland Trans-Fly peoples under control of the colonial government.⁶ Through the early colonial period coastal Kiwai people continued to expand westward along the coast at the expense of Trans-Fly groups, and they enjoyed a higher status within the new colonial order.⁷

On the western side of the Trans-Fly region, the border between British and Dutch colonial territories was established at the mouth of the Bensbach River. Headhunting raids by Marind people, who had been raiding from the west into the Trans-Fly region and north-western Torres Strait Islands, were effectively stopped by colonial authorities in the late 19th century.⁸ Unlike the Kiwai people further east, the Marind-Anim (i.e. Marind people) did not establish permanent settlements on the land where they had been raiding for heads east of the Bensbach River. As a result, at the time of colonial intervention there were no permanent settlements on the coastline between the British–Dutch border at the Bensbach River and the Kiwai village now known as Old Mawatta at the mouth of the Binaturi River.⁹

The Trans-Fly peoples were and are internally diverse in many respects, but on a large-scale ‘areal configuration’ analysis,¹⁰ they can be contrasted as a group with neighbouring culture areas. A defining characteristic of relations between the

various Trans-Fly groups and their neighbours on all sides was the fact that the neighbouring groups all practised headhunting and all raided the Trans-Fly groups; however, in all cases the situation was more complex than simple hostility and predation, as trade was also a significant feature of intergroup relations.

As coastal Kiwai people were expanding westward, consolidating their position on the coast and their relationships with Torres Strait Islanders, in the early colonial period remnant Trans-Fly groups west of the Pahoturi River moved to establish new villages on the coast. There had been interaction and movement between Trans-Fly people from near the coast and the hinterland since before the arrival of colonialism, but the new colonial order induced many people to migrate permanently from inland to the coast, and others to aggregate and settle in larger inland villages than had previously been their practice. Some of these were on the banks of rivers to facilitate easier access.

By the time of the establishment of the colonial regime in the 1880s, coastal Kiwai people had a village as far west as Old Mawatta at the mouth of the Binaturi River, and the people living at Old Mawatta claimed ownership of the land where a government station was briefly established further west at Mabudian, a village centre on the coast of Papua New Guinea's South Fly district. Kiwai people at Old Mawatta and Tureture formed alliances with some Bine (Trans-Fly) groups engaged in internecine warfare with other Bine groups, and through these alliances were given land to occupy where they established villages.

West of the Bensbach River, in what was Dutch New Guinea and is now Papua Province of Indonesia, were the Marind-Anim, known in the early colonial and ethnographic literature as Tugeri. Parties numbering in the hundreds travelled annually along the coast and up the rivers in canoes without outriggers on headhunting raids, and they annihilated many of the southern Trans-Fly groups as far east as the Pahoturi River.¹¹ These raids were ended with the intervention of the colonial government in the late 1890s, but it is likely that Marind raiding to the east were at the time a relatively recent phenomenon.¹² Torres Strait Islanders living on islands closest to the coast occasionally raided the Trans-Fly groups to their north for heads, sometimes in parties with allied Kiwai groups. Raids by Kiwai people from the east and Marind-Anim from the west were also made on the north-western Torres Strait islands of Saibai, Dauan and Boigu.¹³

Thus the patterns of settlement and movement of people along the coast, between hinterland and coast, and between islands and mainland, had been dynamic for at least several decades before colonial annexation. Changes to the spatial distribution of the various groups continued into the early colonial period. Following the suppression of Marind headhunting, Torres Strait Islanders from Boigu induced people who had occupied the hinterland to the west to establish villages on and near the coast; people from the villages of Bula, Jarai and Mari recount stories of how their forebears moved to the coast at the bidding of Torres Strait Islanders, the explicit reason being to facilitate trade, particularly of foodstuffs from the mainland, in exchange for commodity items from Boigu.

Oral and written accounts of the history of migration and occupation of land, particularly on and near the coast, are vehemently contested between groups in this area in the present day; however, when the varying versions are considered together, and the recorded observations of European missionaries, colonial officials and other visitors to the area are taken into account, the situation is reasonably comprehensible. To generalise: from the east, there was an expansion of Kiwai people along the coast, eradicating some Torres Strait Islander and Trans-Fly groups and displacing others, forming alliances and trading relationships with yet other Trans-Fly and Torres Strait Islander groups; while headhunting raids from the west by the Marind-Anim similarly depopulated and displaced Trans-Fly and Torres Strait Islander groups. The details of these population movements and group dynamics are disputed by those with parochial interests, as they are pertinent to the issues of land ownership, and administration of the 'traditional inhabitant' provisions of the Torres Strait Treaty, as discussed below.

The establishment of colonial borders

The location of Papua New Guinea's international borders derives from the historical process of colonisation. To the west, the Spanish and Portuguese had been vying over the trade out of the 'Spice Islands' of Moluccas and Banda from the early 1500s. By the early 1600s, however, the Dutch had seized control and eventually colonised all of what is now Indonesia; they first formally laid claim to the western half of New Guinea, as far east as the 141st meridian, in 1828.¹⁴ To the south, the British asserted imperial authority over the eastern half of the Australian continent in 1788, but it was not until the 1870s that the British colony of Queensland incorporated the islands of Torres Strait. This occurred in two stages: the islands within 60 miles of the Australian mainland were annexed to Queensland in 1872, the remainder in 1879.¹⁵

The eastern half of New Guinea was formally unclaimed by imperial powers until 1884, when the British and Germans agreed to divide it between themselves, with the Germans in the north and the British in the south (figure 2.1).¹⁶ Being the last part of New Guinea to be colonised, the area comprised what was left over after the previous annexations, and the boundary of Queensland taking in all of the islands of Torres Strait was very close to the New Guinea mainland (figure 2.2).

<figure 2.1 near here>

An extract of a map of Australia and New Guinea displaying the British and German annexations in 1885. (G. Hammond, map of Australia and New Guinea, showing British and German annexations, 1885 [cartographic material]. State Library Victoria, Melbourne)

<figure 2.2 near here>

An extract of a map of Torres Strait and the adjacent New Guinea mainland in 1892. (Surveyor General's Office, Queensland, National Library of Australia, nla.obj-232288376)

The main considerations in the decisions to annex the islands of Torres Strait to Queensland were a desire to regulate the activities of the *bêche-de-mer* (processed sea cucumber) and pearl fisheries and to control lawlessness in Torres Strait,¹⁷ and

fear that an imperial power other than Britain might be able to take advantage of unclaimed territory and potentially threaten Queensland.¹⁸ Similar reasoning lay behind the extension of British colonial control over the south-eastern part of New Guinea, as the activities of explorers, prospectors, timber-cutters, traders and labour recruiters were affecting village life;¹⁹ and, as noted, the Dutch had already claimed the western part of the island and the Germans were establishing themselves in the north-east.

The southern border with Australia

Once the Protectorate of British New Guinea had been proclaimed, the reasons for the 1879 northward expansion of Queensland's borders no longer applied. To some colonial administrators there seemed good reasons for the border to be moved southwards: practical difficulties of administering the outer islands from Thursday Island; cultural similarities between the Torres Strait Islanders and people of coastal New Guinea; a need for subjects in British New Guinea to have access to fishing grounds for both subsistence and commercial exploitation; and a desire for coastal waters along the south coast of New Guinea of sufficient breadth to allow boats to travel along the coast without having to leave the waters of the jurisdiction of British New Guinea and travel through Queensland waters were among them.²⁰

From as early as 1885 proposals were put forward to move the border between Queensland and British New Guinea southwards, and by 1898 agreement between the two administrations had been reached by which the northern half of the Warrior Reefs would go to British New Guinea, as well as the three north-western islands of Saibai, Dauan and Boigu. However, the agreement required the approval of the Queensland Parliament before it would become effective, but it was not submitted to parliament before the Federation of Australian colonies in 1901, and this introduced a further complication to the process. The new Constitution of the Australian Commonwealth required that for any state to cede any of its territory the approval of the Commonwealth Parliament, the parliament of the relevant state, and a majority of voters in a referendum in the relevant state all had to agree to the proposal. The Lieutenant-Governor of British New Guinea at the time, George Le Hunte, remarked that 'the long unfulfilled promise of the Queensland Government' had not come to pass, and he regarded the issue as 'an inequitable, arbitrary and purely unnecessary injustice to the Possession'.²¹ Despite the new constitutional requirements, the matter was raised for discussion several times again up to 1925, but ultimately no change was made and the 1879 border remained in place.²²

As the prospect of national independence came to be seriously contemplated by Papua New Guinean leaders in the late 1960s, many of the same concerns and arguments about the location of the border with Australia that had been raised in the early colonial period surfaced again. Members of the House of Assembly of Papua and New Guinea argued that the border should be moved southwards so that some of the islands of Torres Strait would come within the soon-to-be independent State of Papua New Guinea.²³ Such suggestions were resisted from the outset by Torres Strait

Islanders.²⁴ The Australian Government of Prime Minister Gough Whitlam was initially agreeable to relocating the border to align with 10° latitude; however, Torres Strait Islanders were supported in their resistance to the proposal by the Queensland Government of Joh Bjelke-Petersen.

Formal negotiations over a treaty, which would define the border, commenced in 1972, but agreement had not been reached by the time of Papua New Guinea's independence in 1975. Following three more years of negotiation, a compromise was struck, which involved splitting of the border into separate fisheries and seabed jurisdiction lines, and creation of a 'protected zone' spanning an area on both sides of the border that was to be subject to special provisions.

One of the consequences of this agreement is that the international border does not consist of a single line. The treaty defines a fisheries jurisdiction line and a seabed jurisdiction line, and over most of their length they follow an identical course, approximately halfway between the adjacent mainlands (figure 1.1). As they pass through Torres Strait they diverge, with the fisheries line making a sharp turn to the north, looping around Saibai, Dauan and Boigu then coming back south to join the seabed line. The result is that there is an area of split jurisdiction, commonly known as the 'top hat', where PNG has jurisdiction in matters relating to the seabed (such as sedentary fisheries, minerals and petroleum), but in the water above Australia has fisheries jurisdiction (but not including sedentary species). Within the top hat area there are three inhabited islands (Saibai, Dauan and Boigu) and one uninhabited island in which Australia has jurisdiction over the islands and a small surrounding area of territorial seas. There are other areas where PNG has seabed and fisheries jurisdiction, but isolated within this area there are some islands (each with a small area of territorial seas surrounding it) in which Australia has both fisheries and seabed jurisdiction. The ultimate effect of the jurisdiction lines agreed in the treaty was that, with the exception of three small, uninhabited islands very close to the New Guinea mainland (Kawa, Mata Kawa and Kussar), all of the Torres Strait Islands remained in Queensland and Australia.

Included in the provisions for regulation of the border are articles that establish a 'protected zone', which overlaps both seabed and fisheries jurisdiction lines, covering most of Torres Strait but not extending quite as far south as the main administrative centre of Thursday Island. The 'principal purpose' of the 'protected zone' is stated as being to 'protect the traditional way of life and livelihood of the traditional inhabitants' while a 'further purpose' is 'to protect and preserve the marine environment and indigenous fauna and flora'.²⁵

The means for protection of the traditional way of life and livelihood of the traditional inhabitants is set out in Article 11 of the treaty, which states that, 'subject to the other provisions of this Treaty, each Party shall continue to permit free movement and the performance of lawful traditional activities in and in the vicinity of the Protected Zone by the traditional inhabitants of the other party'. The other provisions that limit the right of free movement allow for laws relating to immigration, customs, biosecurity, health and criminal activities.

Some of the terms used in the treaty are given explicit, although vague, definition in Article 1:

1 (a) 'adjacent coastal area' means ... in relation to Papua New Guinea, the coastal area of the Papua New Guinea mainland, and the Papua New Guinea islands, near the Protected zone ...

(d) 'free movement' means movement by the traditional inhabitants for or in the course of traditional activities ...

(k) 'traditional activities' means activities performed by the traditional inhabitants in accordance with local tradition, and includes, when so performed—

- (i) activities on land, including gardening, collection of food and hunting;
- (ii) activities on water, including traditional fishing;
- (iii) religious and secular ceremonies or gatherings for social purposes, for example, marriage celebrations and settlement of disputes; and
- (iv) barter and market trade.

In the application of this definition, except in relation to activities of a commercial nature, 'traditional' shall be interpreted liberally and in the light of prevailing custom ...

(m) 'traditional inhabitants' means, in relation to Australia, persons who—

- (i) are Torres Strait Islanders who live in the Protected Zone or the adjacent coastal area of Australia,
- (ii) are citizens of Australia, and
- (iii) maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities; and in relation to Papua New Guinea, persons who—
 - (i) live in the Protected Zone or the adjacent coastal area of Papua New Guinea,
 - (ii) are citizens of Papua New Guinea, and
 - (iii) maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities ...

3 In this Treaty, the expression 'in and in the vicinity of the Protected Zone' describes an area the outer limits of which may vary according to the context in which the expression is used.

Although the Torres Strait Treaty was signed in 1978, the various measures that were agreed had to be legislated by the parliaments of both countries for its provisions to come into effect, and it was not until 1985 that the treaty was ratified.

During PNG's colonial period, up to the time the treaty was signed and ratified, the material conditions of living on either side of the border were not so far apart, and particularly for those islands relatively close to the New Guinea mainland, there was a degree of economic interdependence. Torres Strait Islanders were better placed in relation to the colonial and then post-colonial market economy, but they had need of many things that they could obtain only from mainland New Guinea, such as building materials, canoe hulls and, especially for the north-western islands, quite often also food and land on which to grow food. By way of trade, they provided Papuans with commodities including clothes, domestic and garden implements, and luxury foods such as tea, sugar, rice and flour.

Papuans had been engaged as labourers in the Torres Strait marine industries in substantial numbers from the 1890s to 1938, when the Queensland and Australian governments introduced restrictions on their recruitment.²⁶ The people from the coastal Kiwai villages were the first recruited to work in Torres Strait, but there were also people from the hinterland and Fly River Estuary who were later also involved. Throughout the same period there were also some boats that were owned and operated by the people of some of the coastal villages in the Territory of Papua, including Old Mawatta, Parama, Katatai and Tureture, which worked the waters of Torres Strait for pearl shell and trochus.²⁷ As described by Shug in some detail, particularly in relation to the coastal villages, 'the act of earning a livelihood in the marine industry is regarded by present-day residents as an integral part of their heritage'.²⁸

The Torres Strait marine industries were suspended through World War II, as most of the boats that had been working there when war broke out were commandeered by the Royal Australian Navy. More than 300 Papuans were recruited to serve on approximately 50 of those vessels;²⁹ Torres Strait Islanders were also recruited to serve on the same boats. Following the war, some coastal villages were able to acquire luggers and continued to work the waters of Torres Strait for a few years, but there was apparently no recruitment of Papuans to work on Australian boats in Torres Strait until the mid-1960s.³⁰ Through the 1950s the pearl shell industry was in decline, unable to compete with plastics for the main use of pearl shell as clothing buttons, but with the introduction of cultured pearl farming in the 1960s there was a revival in the diving industry as live shell was sought for use in pearl farms.

There was a shortage of available and willing labour on the Torres Strait Islands, as the prohibition on the migration of Islanders to mainland Australia were

progressively lifted, and many Islanders moved looking for better work opportunities, particularly in railway construction gangs. In this context the restrictions on Papuans working in Torres Strait were lifted, and during the decade from 1965 to 1975 they came to make up the majority of the Torres Strait marine industry workforce.³¹ As was the case up to the imposition of restrictions on recruitment of Papuan labour in Torres Strait in 1938, the workers came not only from villages on the coast but also from villages in the hinterland, particularly from the Pahoturi River villages.

In the lead-up to the signing of the Torres Strait Treaty in 1978, the Australian Department of Immigration set about finding Papuans who were resident in Torres Strait, technically illegally, and repatriating them to PNG. Those who had been resident for more than five years were given amnesty and allowed to stay, and were given permanent residency, and later many of them became Australian citizens; however, more than a hundred people were sent back to PNG.³²

The difference in the economic conditions on opposite sides of the Australia–PNG border that has emerged since the late 1980s is now palpable. In the Torres Strait Islands, on the Australian side, the residents have full access to the benefits provided by the Australian welfare state, including what their PNG neighbours describe as payments of ‘free money’ every fortnight. Although the rate of welfare dependency in Torres Strait is high, there are a number of salaried positions with government agencies on each island, and some people earn relatively large amounts of money by diving for crayfish. Since the treaty was ratified there has also been a dramatic improvement in infrastructure on the islands, with construction of sealed airstrips, modern health centres, high-tech communications facilities, reticulated water, sewerage and electricity, schools, modern housing and so on.

In the villages on the PNG side they have very few of these things. Their houses are made of bush materials and, for those fortunate enough to be able to obtain them, scraps of second-hand corrugated iron sheets, often salvaged from the Torres Strait Islands. There is no transport infrastructure and no electricity. There are only minimal medical services and poorly resourced education facilities. Despite the installation by AusAID of a few rainwater catchment structures with storage tanks in some of the coastal villages in 2002, a lack of drinking water during the annual dry season is common in many villages.

There is no welfare system that provides ‘free money’ in PNG, but there are a few opportunities to earn some money, particularly for those villages on or near the coast close to the township of Daru. There, crayfishing is a relatively lucrative source of income. Others are able to sell fish, turtle and dugong meat in Daru, and some inland villagers come to the Daru market to sell pig and deer meat and garden produce. As discussed further below, there is also an increasing trade, particularly of dried marine products, with Indonesia.

Until recently, some people have had access to another source of money, and the things that money can buy (as discussed further below, in recent years there have been increasing restrictions on the access that Papuan traditional inhabitants

have to the cash economy in Torres Strait). These are people who are allowed to cross the international border and enter the islands of Torres Strait by virtue of the 'traditional inhabitant' provisions of the Torres Strait Treaty. The amounts of money circulating on the islands and the availability of commodity goods that are difficult or impossible to find in Daru—let alone in the villages—has made access to the Torres Strait Islands highly desirable. The international border, which side of it one is from, and whether or not, if you are from the PNG side, you are allowed to cross the border under the Treaty, are significant—even defining—features of social life in this region. As Chaudhry discusses in chapter 4, it is not merely the access to the economic opportunities provided by status as a Torres Strait Treaty traditional inhabitant that is important here; the very act of recognition by the Australian state is significant in itself.

As noted above, the treaty contains no specific provisions for border control; rather it provides a broad framework by which the governments of Australia and PNG agreed to construct compatible administrative procedures to regulate cross-border activities. In 1984 the two governments formally agreed on interpretations of the phrases 'in the vicinity of the Protected Zone' and 'adjacent coastal area' for the purpose of administration of the Treaty. In relation to the PNG side of the border, this interpretation was 'adjacent coastal area' for the purpose of assisting in determining the traditional inhabitants of each country (Art. 1 (m) of the treaty). In relation to PNG, the area would be that part of PNG south of the parallel of latitude 9°S and west of the meridian of longitude 143°30'E together with the whole of the remainder of Parama Island and the villages of Sui and Sewerimabu, subject to the possibility of further areas being included as indicated below at para 5.

'in the vicinity of the Protected Zone'

In relation to Papua New Guinea, the 'vicinity' would be the area of Papua New Guinea jurisdiction outside the Protected Zone and south of the parallel of latitude 9°S and west of the meridian of longitude 144°E together with the whole of the remainder of Parama Island and the villages of Sui and Sewerimabu, subject to the possibility of further areas being included, as indicated below.³³

Subsequently the Australian Government seems to have gained the impression that there was also a list of Treaty villages created at that time. From the time the treaty was ratified in 1985 until 2000, however, there was little if any enforcement of any official definition of the category 'traditional inhabitant'.

What happened to the 1984 list of villages, if it was ever actually created, is something of a mystery. According to a report from DFAT to the foreign ministers of Australia and Papua New Guinea in 2001, 'in the intervening years it seemed that neither country appeared to have that list on file'.³⁴ In 1999 the two governments decided to prescribe a new list of villages, 'to eliminate the likelihood of confusion or conflict over which villages are covered by the Treaty'.³⁵ A list of villages that were to be classified as Treaty villages was compiled by the PNG Government and provided to the Australian Government. In 2000 formal notes were exchanged

between the two governments restricting the definition of traditional inhabitants to people from one of the following 14 villages: Sui, Parama, Katatai, Kadawa, Tureture, Mawatta, Mabuduan, Sigabaduru, Buzi, Ber, Tais, Mari, Jarai and Bula. It also stated that 'the identification of these villages should not exclude the application of free movement provisions to traditional inhabitants of additional villages, if at some point in the future their inclusion is deemed appropriate by the traditional inhabitants of Australia and Papua New Guinea'.³⁶

The effect of the new list, once implemented, was quite the opposite of its stated intention. The obscure process by which it was compiled, and the fact that it restricts traditional inhabitant status along lines that those who are excluded perceive to have an ethnic basis, led to considerable confusion and conflict over which villages are covered by the treaty and which villages should be included.

The new list of Treaty villages was enforced by Australian government officials from 2000. Traditional inhabitants coming across from PNG to the Australian Torres Strait Islands henceforth had to have their name on a 'pass', which is a form carried by the dinghy operator with names of all passengers, signed by an authorised person from a Treaty village (in most villages this is the local-level government Ward Member plus one other person from the village approved by the PNG Department of Foreign Affairs) stating that each of the passengers is from the Treaty village. In addition, people visiting islands other than Saibai, Dauan and Boigu on day trips have to have a prior invitation from the family that will host them while they are on the island, and this has to be approved through the councillor of that island.

When the new list of Treaty villages was introduced and enforced in 2000, people from numerous villages who had previously been allowed to visit the Torres Strait Islands were no longer permitted to do so. They were unhappy about this, and many of them began making representations to the relevant authorities both in PNG and Australia requesting that the villages they came from be classified as Treaty villages.

The 2003 Joint Advisory Council (JAC) meeting resolved to review their status and determine whether any more villages should be added to the list.³⁷ At that time I was conducting doctoral fieldwork, based at the treaty village of Buzi, and I was contracted on an arrangement between both governments to produce a report describing the basis of the assertions that were being made by people from non-Treaty villages for inclusion as Treaty villages.

The purpose of the report that I was contracted to provide, as I understood it at the time, was to assist the bureaucrats involved in the process to understand and assess the claims being made by people who were insisting they should be included in the list of Treaty villages. I provided my report and the following year the JAC met, but I do not know how the issue of excluded villages was dealt with as the JAC does not publish the content of its deliberations. Subsequent inquiries of DFAT about the issue has elicited the consistent response that the Australian Government would respond to a formal request to reconsider the list of Treaty villages if it were to come from the PNG Government, but it had not received such a request.

There is no formal review mechanism built into the treaty. After an initial spate of accounts of the negotiations that led to the eventual agreement,³⁸ and analyses of its legal implications,³⁹ with a few exceptions the terms of the Treaty and the situation of the border have attracted little public attention.⁴⁰

In 1991 the Australian Parliament's Joint Committee on Foreign Affairs, Defence and Trade conducted an inquiry into 'Australia's relations with Papua New Guinea', which included visits to receive submissions from people in Torres Strait in relation to 'Border Issues'. The committee's report noted that the free movement provisions of the treaty were stridently criticised by Torres Strait Islanders at the time, quoting from a submission by the Island Co-ordinating Council:

... the Island Co-ordinating Council was initially supportive of traditional movements but have since become disillusioned with the whole concept of traditional visits by the traditional inhabitants of Papua New Guinea within Torres Strait. The problem stems from the fact that traditional movement appears to be mono-directional; that is the movement of Papua New Guineans south seeking better facilities and employment.⁴¹

The committee received evidence from the ICC that 'since the 1980 moratorium on illegal immigration when many Papuans gained resident status, the numbers have increased. Most visits now are to contact these "new" Torres Strait Islanders'.⁴² Noting numerous concerns expressed by Torres Strait Islander witnesses, the committee's report concluded:

At the official level the Torres Strait Treaty appears to have worked well in practice. Nevertheless, the Committee is strongly of the view that more account will need to be taken of the views of Torres Strait Islanders in the future, otherwise there is a real danger that the situation could deteriorate into an irritant in the bilateral relationship and an embarrassment internationally.⁴³

No specific recommendations were made to the government on the management of traditional inhabitant issues at the border, although the committee recommended that 'steps be taken to discuss the problems of the Torres Strait with the Papua New Guinea Government and to put to the Papua New Guinea Government any modifications to the Treaty that are perceived to be necessary'.⁴⁴

In 2009 the Australian Senate Standing Committee on Foreign Affairs, Defence and Trade held an inquiry into matters relating to the Torres Strait region, including in its terms of reference the provisions of the Torres Strait Treaty. The committee received submissions from an array of Australian government departments and statutory authorities. Almost all of these speak of 'challenges' but give assurances that there is great cooperation between departments and with their counterparts in the PNG Government in managing the challenges. None recommend any significant change to the then current arrangements.

The submissions from Australian government departments and agencies and the committee's report give the overwhelming impression that the Australian Government was content with the treaty as it then operated. Despite some difficulties posed by the physical environment and the social and economic circumstances of the region, the various departments' submissions all stated that they were able to manage within the terms of the treaty to their satisfaction. Although the treaty creates a complex jumble of jurisdiction lines, the terms by which the free movement provisions allowing traditional inhabitants of PNG to cross to Australian islands are subject to a range of other considerations, and the traditional inhabitant provisions are worded in such a vague manner as to require substantial interpretation to be implemented. Although there are consultation processes through the annual Traditional Inhabitants Meetings (TIM), in my analysis it is the Australian government bureaucrats who have effectively imposed their interpretation of the treaty in the development of the 'Guidelines for Traditional Visitors' by which the treaty is managed.⁴⁵ It was not surprising therefore that their submissions to the Senate Inquiry recommended a light touch.

The vast majority of cross-border movements under the treaty are by Papua New Guineans visiting the Australian Torres Strait Islands. Almost all of the border enforcement activity is done by Australian authorities to monitor and protect the Australian side of the border. Furthermore, given that the 'traditional inhabitant' provisions are subject to restrictions arising from laws relating to such matters as immigration, customs, biosecurity and fisheries management, the treaty allows sufficient scope for Australian authorities to regulate and limit the activities of the Papua New Guineans who cross under the treaty provisions. The PNG Government has shown little interest in representing the interests of its citizens in the border region, and the public servants and police who are involved in cross-border monitoring and regulation generally rely on financial assistance from their Australian counterparts to enable them to participate in joint exercises and meetings. Those PNG citizens who are not content with the way the border operates have not been effective in their efforts to press for change.

The Senate Committee did not receive any submissions from PNG government departments, but there were several from disaffected PNG citizens who do not come from Treaty villages but believe that they should be classified as traditional inhabitants. The committee's final report states:

The committee understands that a number of villages along the coast adjacent to the Torres Strait maintain that they should be included as Treaty villages and are able to produce evidence that establishes their traditional connection to the Torres Strait. It understands that the 2000 exchange of notes contemplated that at some future stage additional villages may wish to be included as Treaty villages. The Australian Government has indicated that it is prepared to receive and discuss any such request from the PNG Government. Even though the committee

believes that any changes to the status of Treaty villages should be initiated by the PNG Government, it is of the view that the Australian Government should be aware of the views of these villages on the Treaty and their rights.⁴⁶

The committee's report made a range of limited recommendations for improving the way the treaty operates but did not consider that any substantial changes were required. It made no recommendations therefore in relation to whether or how the issue raised by people excluded from status as traditional inhabitants could or should be addressed.

By the time I wrote the report on the claims being made by people who were excluded from the 2000 Treaty village list, I had been living at Buzi for well over a year and had visited several other villages, both Treaty villages and inland villages that had been excluded. The issue of their exclusion irked them, and they wanted to tell me why they thought it was wrong. It was made clear to me that the issue of the treaty was only one aspect of a much broader set of disputes between the people of the coastal Kiwai villages and the Trans-Fly groups who lived in villages that were mostly inland (although there are a few that are on or very near the coast). I made a trip specifically to research the questions that I had to address in my treaty report, going by dinghy along the coast from Bula in the west to Parama at the mouth of the Fly River, and up the Wassi Kussa, Mai Kussa, Pahoturi and Binaturi Rivers and Kura Creek, to visit people living in inland villages. People came from numerous other villages (not on the banks of one of these rivers) to meet me on this trip. I also spent a couple of weeks at Daru, where I met mainly with people who originally came from villages in the Fly River Estuary. I spent another year at Buzi after writing my report on the treaty, during which I made another trip to many more inland villages, where these same issues came up for discussion on numerous occasions. The fact that I had done the consultancy work on the treaty was important in defining the context in which people told me their stories; hence I was told, without ever prompting, many stories that stressed connection and relationships with Torres Strait and the Torres Strait Islanders.

People from the excluded Trans-Fly villages were keen to tell me stories that demonstrated their relationship to Torres Strait. Equally or more importantly, they wanted me to understand the history of how the coastal Kiwai people had migrated in relatively recent times along the coast. In the Trans-Fly accounts, the coastal Kiwai migration caused physical displacement of Trans-Fly groups that had previously occupied the coast, but also resulted in coastal Kiwai people forming relationships with Torres Strait Islanders that, to some extent, displaced the relationships that the Trans-Fly groups previously had. They saw this pattern continuing with the introduction of the new Treaty village list.

According to the accounts that I was told by numerous people from excluded villages, when the request for a list of Treaty villages was made by the Australian Government to the PNG Government, the PNG Border Liaison Officer at Daru was a

man whose mother was from the coastal Kiwai village of Mabuduan. They saw a direct connection between this fact and the list that eventuated, which at first restricted Treaty village status to the coastal Kiwai villages of Sui, Parama, Katatai, Kadawa, Tureture, Old Mawatta and Mabuduan, plus the three Agob-language villages located on the coast: Sigabaduru, Ber and Buzi. Later the four far-western villages of Tais, Mari, Jarai and Bula were added. The people from villages that had been excluded said they were not consulted about the list before it was introduced and that the coastal Kiwai people had effectively managed to capture the decision-making process and exclude them.

Some aspects of this interpretation were confirmed in discussions I had with several of the people who had held elected leadership positions in the coastal Kiwai villages at the time. When people from the western villages learned that they were to be excluded and made representations for inclusion, the perception (and possibly the reality) of the coastal Kiwai leaders was that their agreement to include them was the reason they were eventually included. They explained to me that they did not really consider them to have 'traditional' relationships with Torres Strait, but they 'felt sorry' for them because they are remote. In recent generations they have cultivated relationships with Torres Strait Islanders, and furthermore they live on (or very near) the coast. (The basis of this reasoning is disputed both by the people of the western coastal villages and by others from inland, as discussed further below.)

Before colonial annexation in the 1880s, coastal Kiwai people had displaced several Trans-Fly groups who were living on and near the coast. The arrival of missionaries and colonial government officers in this region in the 1870s and 1880s occurred after the *bêche-de-mer* and pearl shell fisheries had been established in Torres Strait. coastal Kiwai people, particularly those living at Old Mawatta (then known as Katau), had been engaged in intensive interactions with European and Pacific Islander commercial fishermen before colonial annexation. Many coastal Kiwai men were recruited to work in the new colonial regime, and they were also the first to receive missionaries and be recruited as missionaries themselves. As policemen and missionaries, coastal Kiwai people were involved in the efforts of the colonial regime to induce the inland Trans-Fly peoples to settle in villages and to subjugate them to the law. Today there are many coastal Kiwai people who assert moral superiority to the Trans-Fly peoples, and those Trans-Fly people most directly affected by the coastal Kiwai expansion along the coast onto lands that they claim as their own continue to resent this. These Trans-Fly people attempt to claim the moral high ground themselves by asserting that they are the landowners and that the coastal Kiwai are recent immigrants.

Mabuduan was established as a government station in the early colonial days but was soon abandoned. It was relocated to Daru in 1895. Before the establishment of the government station Mabuduan was uninhabited, and after it was abandoned by government the coastal Kiwai who had been employed there as labourers and police also left. It was established as a 'model village' at the instigation of the colonial government in 1919 by coastal Kiwai people who were induced to move

from Mawatta.⁴⁷ It is noteworthy that Acting Resident Magistrate Flint, who had proposed the move to the Mawatta people and made the land officially available to them, wrote at the time that there was a 'danger of trouble arising between the immigrants and their neighbours, who would treat them as interlopers'.⁴⁸

However, the coastal Kiwai who settled at Mabuduan regarded themselves as the rightful landowners of the place. Although their village of Mawatta was some way to the east, they regarded themselves as the owners of the entire coastal area, having explored as far as the mouth of the Mai Kussa River, and were utilising fishing camps and garden sites in the vicinity of Mabuduan. In a similar manner to the claims of ownership of the Trans-Fly people, the coastal Kiwai claim to have taken possession of the land by virtue of being the first to explore, name and occupy it. They distinguish their claims by asserting that their ancestors were human and that their stories are true history, in contrast with the Trans-Fly stories, which the Mabuduan people argue involve mythical beings and should not be regarded as historically accurate.

The annual reports of the colonial government and various other documentary records from the time are clear on which villages were established before annexation and which after, and on where the first missionaries were posted. Nevertheless people from the coastal Kiwai villages and those of their nearby Trans-Fly neighbours dispute the history of these migrations and the circumstances in which the new villages were established. The disputes are multifaceted; they include a dimension in which ownership of land and marine resources are contested, but they also involve conflicts in which social status is a central concern.

The report that I wrote on this issue for the departments and agencies from both governments outlined the conflicting histories, noted that violent conflicts over issues of land ownership and colonial history had erupted on occasions, and suggested that the issue of status as traditional inhabitants was now implicated in the same complex of disputes. (My report was provided on a confidential basis to the government agencies that had engaged me, and remained so for several years, but a copy was released by the PNG Government to one of the respondent parties in the context of native title litigation in Australia in 2009.) I concluded that violent conflict over the issue of inclusion and exclusion from traditional inhabitant status was a distinct possibility, but I did not expect it to happen quite as soon as it did.

In 2004 there was a raid by people from the non-Treaty village of Masingara on the nearby treaty village of Old Mawatta in which almost all of the houses and other buildings were set on fire, and one old man was reportedly killed. This led to reprisal attacks on some Masingara people in Daru, and the people who were living in Masingara fled to the bush for many months in fear of further reprisals. The main protagonists of the violence and arson were brought to court and sentenced, and compensation for the damage caused was ordered and most has now been paid. Old Mawatta has been rebuilt and the people of the two villages coexist relatively peacefully now, but the issues that underlie the tensions between the two still remain.

This was not the first instance of conflict between these two villages (although it was the most extreme). The issues of contention are not limited to the inclusion of one and exclusion of the other from treaty traditional inhabitant status. Disputes over land ownership, access to fishing grounds, and contradictory histories concerning the arrival of the first missionaries and various other aspects of the early colonial period also figure.

Similarly structured social tensions between treaty and non-treaty villages also exist in relation to Kadawa and Dorogori, Tureture and Kunini, and Kulalae and Mabudian. Numerous other non-Treaty villages also continue to seek ways and means of pressing their case for inclusion.

As noted above, the Australian Government position on the issue has consistently been that it would consider any proposal put to it by the government of PNG, but it has received no such proposal. The relatively large numbers of people who come across to the islands, by comparison with the resident Torres Strait Islander population, places a burden on the people and facilities on the islands, and many Torres Strait Islanders would prefer the number of Papuan visitors to be reduced rather than increased. There is therefore no pressure on the Australian Government from the Torres Strait Islanders to allow more people to come across under the treaty; rather the reverse is the case.

Representatives of the existing Treaty villages attend the annual Traditional Inhabitants Meetings established under the treaty, and this is the body that government officials are supposed to consult in assessing whether changes should be made to the practical arrangements regulating the border and how they should be introduced. The coastal Kiwai villages, from Sui in the east to Mabudian in the west, collectively comprise a majority of the existing Treaty villages. These are the same people who have manifold disputes with the Trans-Fly groups who believe they should be included in the treaty provisions. As noted above, the formal note that defined the current list of Treaty villages did not preclude the hypothetical possibility of inclusion of further villages on the list, but the condition on which that could occur is important; it will only occur 'if at some point in the future their inclusion is deemed appropriate by the traditional inhabitants of Australia and Papua New Guinea'.

Given the burden already faced by Australian traditional inhabitants in accommodating the existing number of visitors and their consequent reluctance to increase numbers, and the political context of the current PNG Treaty villages, it appears unlikely that there will be any change to the current definition of who is recognised as coming within the category of traditional inhabitant until such time as there is a move by one or the other government to review the terms of the treaty. The wording of the treaty is vague and requires substantive interpretation in order for the categories that it establishes to function to exclude as well as include. The interpretations currently applied exclude people not on the basis of whether they meet the criteria of the treaty, but rather as a result of some deft political manoeuvring at the time the list of Treaty villages was introduced. Given the

broader political and socioeconomic context spanning the border, the terms of the treaty are arguably anachronistic.

As noted above, at the time the treaty was signed, in 1978, people who originated from PNG but had been living in the Torres Strait Islands for five years or more were allowed to choose whether to return to PNG or remain in Australia; those who remained were granted permanent residence. Most of them have since become Australian citizens, and their Australian-born children are automatically Australian citizens—but they are not recognised as Torres Strait Islanders, rather they are regarded by Torres Strait Islanders as Papuans. The stipulation in the treaty that traditional inhabitants who are Australian citizens must also be Torres Strait Islanders therefore means that, according to a strict application of the treaty, these people are excluded from the traditional inhabitant category.

Despite this, the existing practical arrangements do permit people who came originally from a Treaty village but are now Australian citizens to visit PNG ostensibly under the treaty, as the 'Guidelines for Traditional Visitors' state: 'PNG nationals from Treaty villages who become Australian citizens or permanent Australian residents and live in the Protected Zone can still make traditional visits to the PNG Treaty villages.'⁴⁹

The status of former PNG nationals who originally came from a village that is not on the list of Treaty villages is more problematic. There are some families living at Badu who originally came from the non-Treaty village of Kulalae; according to their accounts, they are prohibited from returning home for a visit under the treaty, and are required to travel on passports with visas.

Until recently there was no special provision for favouring PNG Treaty villages as part of Australia's international development aid program; however, since 2015 there has been a 'ranger' project, which started first at six Treaty villages, then expanded to include all of them, which is funded by the Australian Government and run by Australian contractors. There is also a new small hospital being built at Mabudian through an ADB project partly funded by Australian development aid. Although this is not based on it being a Treaty village, and is intended to serve the people of all of the nearby villages regardless of their status in relation to the treaty, there is a common perception among people from Mabudian and from other nearby non-Treaty villages that it is related to the fact that Mabudian is a treaty village. Further, there is a widespread misperception that money originating from the PNG Department of the Prime Minister that has been allocated to the local-level government (LLG) members of the Treaty villages actually derived from the Australian Aid program to provide development assistance to Treaty villages, and has been used on various things including purchase of community dinghies and engines, freezers for commercial fishing, sheets of roofing iron and walkabout sawmills (see chapter 4 for further details).

Until the 2019 LLG elections, the current treaty villages from Buzi east to Sui were part of the Kiwai LLG while those from Tais west to Bula were within the Morehead LLG area. Following that election, a new LLG government was created,

and the Treaty villages now comprise their own LLG, known as the Forecoast Kiwai LLG.

The increasing exclusivity of the treaty villages, and their successful efforts to capture benefits for themselves by leveraging their position in relation to the border, are likely to lead to further resentment by those who are excluded but believe that they should be included. People from non-Treaty villages commonly state a view that it would be preferable for the border to be closed altogether rather than the current situation, which they regard as unfair and unjust, be allowed to continue.

While the people of the Treaty villages have been somewhat successful in attracting special treatment in the form of development assistance in recent years, at the same time the activities they are permitted to engage in when they cross the border into Torres Strait have been progressively narrowed.

The stipulation that free movement of traditional inhabitants is to be subject to the other provisions of this treaty has significant consequences for the way in which the treaty operates in practice. These other provisions include measures for environmental protection, biosecurity, customs, health and law enforcement. A consequence of this is that laws introduced by a state relating to any of these things effectively override the possibility of actual free movement for citizens of the other state, as their movement and their activities are restricted by the laws relating to these other provisions.

When a dinghy from PNG arrives at one of the Torres Strait Islands, it must land at a designated landing place, and all of the passengers must wait in the dinghy until a movement monitoring officer (MMO), employed by the Department of Immigration and Citizenship (DIAC), arrives to attend to them.

Most MMOs are Torres Strait Islanders, and most of them come from the island where they are employed; there are also some who are Australian-citizen Papuans. When travelling to Saibai, Dauan or Boigu on a day trip, the PNG visitors must have a 'pass', which is a photocopied form on which the names of all the passengers in their dinghy or canoe are written, signed by the village councillor or another person authorised by PNG Department of Foreign Affairs. The authorised person's signature is supposed to provide an assurance that all of the passengers come from a Treaty village, and a person from one Treaty village is supposed to have the signature of the authorised person only from their own village.

Once the MMO has checked their pass, counted the names and matched them against the number in the dinghy, a biosecurity officer (like the MMOs, the biosecurity officers employed on all of the islands are Torres Strait Islanders) checks the cargo that the Papuans have brought. If they have mats or baskets or other woven materials, these are unpacked and checked for insects. The dinghy may be (and often is) checked for contraband (such as alcohol and drugs), and the passengers may be (and often are) told to empty their pockets for the same reason. Border Force officers from Thursday Island and Cairns frequently visit some of the islands, especially Saibai and Boigu, and they sometimes participate in the checking of cargo and paperwork. If everything is in order, the Papuan visitors are allowed to

move about the island. At Saibai and Boigu, there is a designated market area, near the designated landing place, and some Papuans set up their goods for trade, while others might have been requested to bring particular objects by somebody and will go to deliver their goods.

People travelling to other islands, and those who intend to stay for longer than one day at Boigu, Saibai and Dauan, are required to have a 'prior advice notice', which shows that they have been invited and have a place to stay on the island. It must be signed off by the island councillor before they arrive. At Boigu, Saibai and Dauan, this is usually done while on a day-trip, and the visitor must return home before coming back with the approved prior advice notice for a multi-day visit.

Each island council has some autonomy in the conditions that are imposed on Papuan visitors. All impose a time limit on the length of stay permitted, and on most islands this is two weeks, although in some circumstances, such as bad weather, people are allowed to stay longer. Occasionally all visits are prohibited, either to a particular island, if for example they have a water shortage, or to all islands, usually in the event of an outbreak of disease on the PNG side. Since 2019 strict limits have been placed on visitors from Mabuduan and Sigabaduru to Saibai. They had previously been frequent day-trippers, and many also often stayed on for several days, but from January 2019 they were permitted to travel only on Wednesdays, and only 30 people from each village was allowed on any given Wednesday. According to the former ward member for Mabuduan, there was then a total ban on people from his village visiting Saibai for the month of March. He and the ward member for Sigabaduru were then placed in an invidious position—they were made responsible for enforcing what they regarded as arbitrary and unreasonable restrictions imposed unilaterally by the Saibai councillor, and under pressure from the many more than 30 people from their villages who wanted to travel across each week. As at August 2019, a total and indefinite ban has been placed on visitors from Mabuduan to Saibai. It is not clear what the legal basis for such a ban is. In November 2019 the ban was lifted, but there remain strict limits on the number and frequency of visits.

The regulation of what is acceptable as 'barter and market trade' as a permitted traditional activity is ambiguous. The Treaty states that, 'in the application of [the definition of traditional activities], except in relation to activities of a commercial nature, "traditional" shall be interpreted liberally and in the light of prevailing custom'.⁵⁰ Papuans who visit the islands with goods to trade usually hope to engage in cash transactions and to use the money from the things they sell to purchase goods from the stores on the island; similarly, when working for Torres Strait Islanders they prefer to be paid in cash. However, there are some Torres Strait Islanders who insist that 'barter and market trade' should be interpreted as prohibiting cash transactions, and rather than pay for labour or goods with cash, they provide store goods to barter.

The 'Guidelines for Traditional Visitors' referred to above contains several statements interpreting the treaty, including statements about what is considered not to be a traditional activity:

Traditional visits do not include activities that are not traditional. Visits for health treatment, attending court cases, shopping at the store, picking up deliveries from the barge, baby sitting, working or accessing money from the ATM are not considered traditional activities ...

Traditional visitors can only travel by dinghy or canoe, not by aircraft.

The Treaty bans commercial activity, business dealings and working for money during traditional visits (e.g. cray fishing from a licensed Australian cray boat, selling artefacts or crabs to commercial operators, paid domestic assistance). Selling goods to non-traditional inhabitants is not permitted under the Treaty. Selling goods in the knowledge that they may on-sold [*sic*] is also not permitted under the Treaty.⁵¹

There is also an explicit reference to 'tradition and custom' in the following restriction on who may and may not come (discussed further above): 'Consistent with local tradition and custom, wives from non-Treaty villages can make traditional visits with their husbands if the man is from a Treaty village. Husbands from non-Treaty villages cannot make traditional visits if they are married to a woman from a Treaty village.'⁵²

However, while the guidelines refer to 'tradition' in relation to some regulations, there are others for which no such rationalisation is given, such as where they state:

Traditional Inhabitants must get a prior advice notice requesting a visit signed by the registered signatory (i.e. the village chairman in the case of PNG, and the elected representative in the case of Australia). The registered signatory from one village cannot sign a pass for someone from another village. The signed prior advice notice requesting permission to visit must be sent to the relevant community before visiting. Do not travel until you receive approval (signed pass) back from the community you wish to visit.⁵³

Similarly, there is no concern with 'tradition' in the requirement that 'children must travel with their parents or legal guardians', or the advice to:

Make sure you have enough petrol to travel back home. Always travel in daylight hours for your own safety. Make sure you carry safety gear on your boat (EPIRB, marine radio, flares, V-Sheet, Personal Flotation Devices—PFD Type 1, fire fighting devices, navigation equipment, bilge pump for boats over 5m, bucket for bailing water, anchor, oars or paddles, drinking water).⁵⁴

The guidelines define certain activities as not traditional and therefore not permitted under the treaty, but they are not consistently enforced, and several of the

activities that are prohibited are common practice—and a major reason for visiting the islands. Working as domestic labour for Torres Strait Islanders is a way to earn money, and goods sold to non-Torres Strait Islanders usually fetch higher prices than when sold to Torres Strait Islanders. Going to the store with money obtained from such work and from selling goods that have been brought across to trade is the main reason for visiting the islands. The statement in the guidelines that ‘the Treaty bans commercial activity’ directly contradicts the definition contained in the treaty that ‘barter and market trade’ are traditional activities.

The net effect of the ambiguous wording of the treaty is that those who are permitted to travel from PNG to the Torres Strait Islands are subject to arbitrary enforcement of regulations that represent the Australian Government’s interpretation of the treaty. When people of the borderland region travel west into Indonesia, the situation is markedly different.

The western border with Indonesia

Although the western half of New Guinea was claimed as a Dutch possession from 1828, there was no colonial administrative presence in the vicinity of the border at 141°E on the south coast at the time the Protectorate of British New Guinea was proclaimed in 1884. The headquarters of the Western District of British New Guinea were first established at Mabuduan in 1890, then moved to Daru in 1893⁵⁵—also a considerable distance from the Dutch border. Marind headhunting raiders from the west had been of concern to the new British colonial administration since shortly after it commenced, and expeditions to intercept them were led by Lieutenant Governor William MacGregor in the early 1890s. MacGregor was frustrated in his pursuit by not being able to determine where the border was. In order to create an easily visible marker, in 1895 agreement was reached between the British and Dutch to adjust the border slightly westwards, so that on the south coast it was aligned with the centre of the mouth of the Bensbach River, which was calculated as being at 140°1’47.9’E, and extended northwards at this longitude until it meets the Fly River.⁵⁶

The pattern of interaction across the Dutch–British colonial border, and later the Indonesian–New Guinea border, has been quite different from that between Queensland and British New Guinea/Papua New Guinea. As noted above, an early concern of both the British and Dutch was to suppress the Marind headhunting raids, which was accomplished in the late 1890s and early 1900s. Once peace was established between the Marind and their eastern neighbours, local trade increased, and there was some intermarriage between people across the border. The area on both sides of the border was remote from centres of power and commerce, and relatively isolated by comparison with villages closer to Daru and Torres Strait. Merauke developed as a centre of commerce in the birds of paradise trade for a period before World War II. An Australian military base was established at Merauke during the war, but it appears to have had relatively little effect on the people from the border area. Following World War II, Indonesia became an independent nation state in 1949, but it did not incorporate the former Dutch New Guinea until 1969.

In anticipation of PNG independence, a survey of the border area was conducted. Eventually it resulted in a treaty that was agreed by Australia and Indonesia in February 1973 affirming the location of the border at the mouth of the Bensbach River but calculated as being at 141°01'10'E.

A further treaty was agreed in November 1973 between the government of Australia (acting on its own behalf and on behalf of the government of Papua New Guinea) and the government of Indonesia in which provision was made for 'Border crossing for Traditional and Customary purposes'. Article 3 of that treaty provides that:

The traditional and customary practices of the peoples, who reside in a border area and are citizens of the country concerned, of crossing the border for traditional activities such as social contacts and ceremonies including marriage, gardening and other land usage, collecting, hunting, fishing and other usage of waters, and traditional barter trade are recognised and shall continue to be respected.

Article 4 allows that:

The traditional rights enjoyed by the citizens of one country, who reside in its border area, in relation to land in the border area of the other country and for purposes such as fishing and other usage of the seas or waters in or in the vicinity of the border area of the other country, shall be respected and the other country shall permit them to exercise those rights on the same conditions as apply to its own citizens.

Article 5 agrees that both governments would 'discourage the construction of villages or other permanent housing within a two kilometre zone on each side of the border'.

The 'border area' is not defined in the treaty, but it was agreed that it would be defined at a future date. An agreement between the governments of Indonesia and PNG in 1984 defined the border area as the census divisions that abut the border (on the coast, this was the Bensbach census division).⁵⁷ The 1984 agreement provided for 'Border crossing for traditional and customary purposes' in similar but not exactly the same terms as the second 1973 treaty:

Each country shall continue to recognize and permit movement across the Border by the traditional inhabitants of the other country who reside the Border Area and are citizens of the country concerned for traditional activities within the Border Area such as social contacts and ceremonies including marriage, gardening, hunting, collecting and other land usage, fishing and other usage of waters, customary border trade.

Thus 'traditional barter trade' was replaced with 'customary border trade'.

After the 1963 occupation of the former Dutch New Guinea by Indonesia, but before the 1969 United Nations sponsored vote for its incorporation within the Indonesian state, a number of people from the former Dutch side of the border crossed into what was at the time the Australian Territory of Papua and sought refuge there. They lived at Old Mawatta for several years, before moving on to Daru, where most of them lived at the time I first went to Daru in 2001. This group was known colloquially as Kondo-Marind, Kondo being the name of a village that some of them originated from and Marind being their language and 'tribal' name.

Some of the Kondo-Marind who moved to PNG married within the group, but there were also several marriages with Papua New Guineans. A whole generation had been born and grown up in PNG by the time I encountered them. My estimate of their number at the time of my main fieldwork (commencing late 2002) was approximately 250. Some of those who had married Papua New Guineans were living at Daru, and others in the villages of their spouse, including at Old Mawatta, Mabudian, Kadawa, Sigabaduru, Bula, Tati and likely several other villages. There were also two living at Buzi for some of the time that I lived there, although neither of them were married to local women.

Some of them had also moved to establish a village at Kunji, on the beachfront near Bula. At that time the PNG–Indonesia border area was actively patrolled by a group identified with the Organisasi Papua Merdeka (OPM; Free Papua Movement), led by a man named Joseph Makunamu. He had recruited a group of young men, some originating from the Indonesian side of the border, others from villages in the western part of South Fly District. They frequently moved camp, roving the country on both sides of the border, occasionally making attacks on Indonesian military facilities, but generally evading both Indonesian police and military, as well as the minimal police presence on the PNG side of the border (which consisted of a single police officer stationed at Weam).

The Kondo-Marind refugees living at Daru were assisted by the Catholic Church in acquiring a small area of land on which to build their settlement, but they struggled to make a livelihood. Some of them went fishing and sold their catch at Daru market, some found occasional day-labouring work, but, along with the people who had migrated from the Bamu River region of Middle Fly District,⁵⁸ collectively they were the poorest social group in a generally impoverished town.

Over a period of a few years beginning in approximately 2003, the Indonesian government sought to induce them to return to Indonesia; it began by supplying shipments of food to them in Daru, and promised that those who returned would be given land and assistance to start a new life back in Merauke. In 2004 about half of the Daru Kondo-Marind took up the Indonesian offer and went back, and about a year later most of the rest of them followed, so there is no longer a Kondo-Marind settlement in Daru. Some of those who had married a PNG spouse took their spouse to Merauke, while some stayed on in the village of their spouse. One of the consequences of the movement of the Kondo-Marind group into PNG, their

residence there for forty years and then return, is that there is now a network of kin relations between people from several villages, and Daru, with Merauke.

Over the decades since Indonesian occupation of what is now known as Papua Province, the town of Merauke has expanded significantly, and it is now a city of almost 100 000 people. A substantial proportion of these moved from other parts of Indonesia under the *transmigrasi* program. Data from the 2010 Indonesian census have a population of 87 634 for Merauke, of whom 40 578 had migrated from other provinces of Indonesia; this latter figure does not include children of transmigrants.⁵⁹ The population of Merauke Regency as counted in the same census was 195 716, of whom 76 943 had migrated from other provinces.⁶⁰

There was a former Dutch Catholic mission at Sota, which was developed into a small town populated with a significant proportion of transmigrants in the 1970s. Sota is at the border, on the Indonesian side, and just a few kilometres from the PNG village of Wereave. There has been extensive intermarriage between the people on either side of the border since a time before the border was created, so many people from the adjacent villages have family connections across it.

A group of people who originated from an area spanning the border, west of Weam, moved into Weam in the 1960s. Following some disputes over marriage exchanges, which spilled over into disputes over ownership of and access to land, they left Weam and moved back to establish a new village on their own land, at Tepam. According to accounts from people at Weam, this village was on the PNG side of the border but very close to the border. The PNG Defence Force then reportedly went and destroyed their village and told them to move back to Weam, outside the buffer zone along the border that the PNG and Indonesian governments had agreed to discouraging the establishment of new villages. According to accounts of the PNG soldiers involved, they merely told them to move but they refused. Instead they moved further west, across the border into Indonesia. But instead of destroying their new village of Yokwa (Iakijoe) the Indonesians have reportedly established a small military outpost there.

Although the treaty arrangements between Indonesia and PNG formally restrict 'traditional border crossers' to people who originate from the adjacent census districts, in practice people from inland PNG villages much further afield are permitted to cross at Sota to trade, and many travel on from there to Merauke. Similarly, people who cross the border along the coast are not in practice restricted to those from the adjacent census district.

There is an Indonesian border post at the mouth of the Bensbach River, staffed by military personnel, and another at Sota staffed by both military and civilian officials. People from PNG wanting to cross the border must obtain a pass from an authorised person, one of whom lives at Bula, another at Weam. When crossing the border on the coast, they have to report to the soldiers at the border post before going on to Merauke, where they present their pass to civilian officials at the port in Merauke; when crossing at Sota they present it to the officials there. Accounts of border-crossing activities by Papua New Guineans are consistent in describing how

relatively straightforward the processes are. The social relationships that exist across the border—many of them deriving from the connections established by the Kondo-Marind former refugees—facilitate increasing travel, mainly for trading purposes, across the Indonesian border.

While the 1984 PNG–Indonesia treaty provides for ‘traditional border-crossers’ to engage in ‘customary border trade’, it does not permit crossing by traders who have no ancestral connections to the area adjacent to the border. For Papua New Guineans crossing to Indonesia, the practicalities of crossing the border are such that there is no effective restriction on where in PNG they originate from, and people from villages far distant from the border (but generally within South Fly District) commonly make visits to Sota and Merauke.

Going the other way, Indonesian traders who are not ethnically Papuan commonly and frequently travel along the coast well beyond the area adjacent to the border, reportedly as far east as Kerema in Gulf Province. They are generally engaged in trading for highly profitable dried marine products and are reputed to make substantial profits from their activities (chapter 7). It is widely reported by villagers in South Fly District that as a consequence of their activities being illegal they have to pay bribes to carry on their business. They generally travel in modified banana boats with two and sometimes three outboard motors,⁶¹ in order to evade PNG law enforcement officers.

Since 2005, the extent of trading activity into Indonesia has increased substantially in my observation. It is particularly noteworthy that people from the western coastal villages which are Australian Treaty villages—Tais, Mari, Jarai and Bula—now commonly report that, apart from a few individuals, they generally travel to Boigu in Torres Strait only to avail themselves of medical facilities in an emergency; they have ‘given up’ on going there to trade, as they now have better trading opportunities with Indonesia.

Conclusion

The locations of the borders separating PNG from its neighbours west and south derive from the happenstance of the historical process by which European colonial powers extended the domain of their geographical control across the world in the 19th century. The differential encompassment of the indigenous peoples of what became the borderland region into three separate colonial regimes—later three nation states—has led to the development of distinct social identities that derive directly from their respective colonial and post-colonial histories.

The categorical definition of people deriving from the placement of the borders goes beyond their citizenship of one or another of the respective nation states; particularly in relation to the PNG–Australia border, the creation of a category of people as ‘traditional inhabitants’ has exacerbated the asymmetric effects of the border, creating and exaggerating inequalities and a hierarchy of identity and corresponding privileges. These effects are at odds with an ethos of reciprocity that

universally informs social action in the region, and arguably contributes to a politics of envy and resentment that underlies tensions at the Australia–PNG border.

In seeking to bolster border security by imposing greater restrictions at the PNG–Australia border, the Australian state has, in this analysis, instead made the border less secure. In 1989, a long-time observer of Torres Strait with lived experience as a schoolteacher at both Saibai and Daru, John Singe, suggested that the treaty was then ‘widely recognised as unworkable’ due to the lack of development on the PNG side of the border.⁶² The Australian Parliament’s Joint Committee on Foreign Affairs, Defence and Trade 1991 inquiry recommended that ‘action be taken to address the root cause of the problem—the depressed economic conditions and lack of health facilities in the Papua New Guinea coastal villages’.⁶³ Since that time the ‘root cause of the problems’ has evidently become worse, not better. In my opinion, the recommendation of the committee for action by the Australian Government to address the vast socioeconomic disparity remains sound but has not been effectively acted upon.

Notes

<Setter: take in notes here, numbered from 1 to end>

¹ F.E. Williams, *Papuans of the Trans-Fly*, Clarendon Press, Oxford, 1936. ‘Trans-Fly’ refers to the Fly River, which extends through Western Province and along the border with Indonesia.

² B. Knauft, *South Coast New Guinea Cultures: History, Dialectic, Comparison*, Cambridge University Press, Cambridge, 1993.

³ *Ibid.*, p. 222.

⁴ N. Evans, W. Arka, M. Carroll, Y.J. Choi, C. Döhler, V. Gast, E. Kashima, E. Mittag, B. Olsson, K. Quinn, D. Schokkin, P. Tama, C. van Tongeren and J. Siegel, ‘The languages of southern New Guinea’, in *The Languages and Linguistics of the New Guinea Area: A Comprehensive Guide*, ed. B. Palmer, De Gruyter, Berlin, Boston, 2017, p. 643.

⁵ Administrator, *Annual Report on British New Guinea from 1st July 1894 to 30th June 1895*, Government Printer, British New Guinea, 1896, p. 26.

⁶ Administrator, *Annual Report on British New Guinea from 1st July 1890 to 30th June 1891*, 1891, Government Printer, British New Guinea, p. xv. Administrator, *Annual Report on British New Guinea from 1st July 1891 to 30th June 1892*, Government Printer, British New Guinea, 1892, p. 34.

⁷ Administrator, *Annual Report on British New Guinea from 1st July 1890 to 30th June 1891*, Government Printer, British New Guinea, 1891, p. 42, cited W.N. Beaver, ‘Unexplored New Guinea’, Seeley, Service & Co., London, 1920, p. 107.

⁸ Beaver, 1920, pp. 117–19.

⁹ Lieutenant Connor travelled along the coast between Boigu and Daru in 1872 and reported that ‘the only inhabitants seen actually living on the coast of New

Guinea were those at Mowatta [*sic*] (a village at the mouth of the Katow [Binaturi] River), and a few at Yanga [*sic*—Yauga], a village abreast of the Talbot Islands [Boigu]' (Moresby and Connor, 1874, p. 2). However, according to the oral histories of the people of Strachan Island, Yauga was not a permanent village but was one of several camping places utilised by people who normally occupied the hinterland of Strachan Island; among them were also people from further inland who had been displaced by Marind raiders, some of whom are reputed to have migrated to Boigu around the time of initial colonial contact. In the same year as Lieutenant Connor's exploration, the missionary William Wyatt Gill visited the South Fly coast, and left missionaries at the villages of Katau (now known as Old Mawatta) and Torotoram (Tureture), as well as two villages on Bampton Island, one named Barama (Parama), the other unnamed, but evidently it was Gaziro. See W.W. Gill, *Life in the Southern Isles: Or, Scenes and Incidents in the South Pacific and New Guinea*, Religious Tract Society, London, 1876, pp. 218–42. See also J. Moresby and E.R. Connor, 'Recent discoveries at the eastern end of New Guinea', *Journal of the Royal Geographical Society of London*, vol. 44, 1874, pp. 1–14.

¹⁰ Knauft, 1993.

¹¹ A.C. Haddon, 'The Tugeri head-hunters of New Guinea', *Archives Internationales d'Ethnographie*, vol. 4, 1891, pp. 177–81.

¹² T.M. Ernst, 'Myth, ritual and population among the Marind-Anim', *Social Analysis*, vol. 1, 1979, pp. 32–53.

¹³ Haddon, 1891.

¹⁴ P.W. Van der Veur, *Search for New Guinea's Boundaries: From Torres Strait to the Pacific*, ANU Press, Canberra, 1966, pp. 6–13.

¹⁵ *Ibid.*, pp. 21–4.

¹⁶ There had been several previous attempts to annex eastern New Guinea by British explorers, but these were not accepted by the British Government until 1884. *Ibid.*, pp. 14–17.

¹⁷ D. Lawrence, 'Customary exchange across Torres Strait', *Memoirs of the Queensland Museum*, vol. 34, no. 2, 1994, p. 260.

¹⁸ S. Kaye, *The Torres Strait*, Martinus Nijhoff Publishers, Boston, 1997, pp. 35–8.

¹⁹ Lawrence, 1994, p. 261.

²⁰ Van der Veur, 1966, pp. 25–30.

²¹ *Ibid.*, p. 30.

²² *Ibid.*, pp. 30–5.

²³ K. Murphy, 'The cultural organisation of social difference and relatedness at the border between Australia and Papua New Guinea', PhD thesis, ANU, Canberra, 2013, pp. 62–5.

²⁴ L.R. O'Donnell, 'The Torres Strait: A case study analysis in multi-level governance', PhD thesis, Griffith University, Brisbane, 2006, p. 90.

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- ²⁵ Department of Foreign Affairs, Torres Strait Treaty, Article 10, www.austlii.edu.au/au/other/dfat/treaties/1985/4.html#fn0.
- ²⁶ D.M. Schug, 'The marine realm and a sense of place among Papua New Guinean communities of Torres Strait', University of Hawai'i, Honolulu, PhD thesis, 1995, pp. 153–63.
- ²⁷ *Ibid.*, pp. 166–7.
- ²⁸ *Ibid.*, p. 179.
- ²⁹ *Ibid.*, p. 186.
- ³⁰ *Ibid.*, pp. 186–90.
- ³¹ *Ibid.*, p. 191.
- ³² *Ibid.*, p. 225. Torres Strait Treaty Negotiations, Part 10, National Archives of Australia, A446, 1979/95006, recordsearch.naa.gov.au/SearchNRRetrieve/Interface/DetailsReports/ItemDetail.aspx?Barcode=1989247&isAv=N.
- ³³ Quoted in Department of Immigration and Citizenship (DIAC), Written Submission 16 to Senate Foreign Affairs, Defence and Trade References Committee, p. 6, para. 5. Senate, FADTRC, *The Torres Strait: Bridge and Border* [Senate Inquiry], Commonwealth of Australia, Parliament House, Canberra, 2010.
- ³⁴ Quoted in Murphy, 2004, p. 8.
- ³⁵ Quoted in *ibid.*, p. 8.
- ³⁶ Reference to the formal note with the list of Treaty villages and the statement about the possibility of including further villages comes from DFAT, 'Torres Strait Treaty and you', www.dfat.gov.au/geo/torres_strait/brief.html; it has since been removed from the department's website, but remains accessible via www.web.archive.org.
- ³⁷ The Joint Advisory Council (JAC) is established by the treaty. It meets annually and is made up of officials from the PNG and Australian governments with a few representatives of the traditional inhabitants from both sides; it reports and makes recommendations to the respective ministers. The other two annual meetings established under the treaty are the Traditional Inhabitants Meeting (TIM), where representatives of the traditional inhabitants from both countries, and the Treaty Liaison Officers, meet to discuss administration of the border, and the Treaty Liaison Meeting (TLM), which brings bureaucrats from both countries together to discuss border administration.
- ³⁸ For example, Boyce and White, 1981; Griffin, 1976.
- ³⁹ Lumb, 1990. H. Burmester, 'The Torres Strait Treaty: Ocean boundary delimitation by agreement', *American Journal of International Law*, vol. 76, no. 2, 1982, pp. 321, 322.
- ⁴⁰ Kaye (1994, 1997, 2001), O'Donnell (2006), Denoon (2009), Shug (1995, 1996, 1997, 1998), Arthur (2005) and occasional mentions in the press notwithstanding.

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- ⁴¹ Parliament, Joint Committee on Foreign Affairs, Defence and Trade, *Australia's Relations with Papua New Guinea* [Inquiry Report], Canberra, 1991, p. 204.
- ⁴² Ibid.
- ⁴³ Ibid.
- ⁴⁴ Ibid., p. 207.
- ⁴⁵ Murphy, 2013.
- ⁴⁶ FADTRC, 2010, pp. 282–3.
- ⁴⁷ ARP, 1919–20, p. 18.
- ⁴⁸ Ibid.
- ⁴⁹ DFAT, 'Guidelines for Traditional Visitors Travelling Under the Torres Strait Treaty', www.dfat.gov.au/geo/torres-strait/Pages/guidelines-for-traditional-visitors-travelling-under-the-torres-strait-treaty.aspx.
- ⁵⁰ *Treaty Between Australia and the Independent State of Papua New Guinea Concerning Sovereignty and Maritime Boundaries in the Area between the Two Countries, including the Area Known as Torres Strait, and Related Matters* ('Torres Strait Treaty'; the 'Treaty'), Australia–Papua New Guinea, signed 18 December 1978 [1985], ATS 4 (entered into force 15 February 1985), dfat.gov.au/geo/torres-strait/Pages/the-torres-strait-treaty.aspx.
- ⁵¹ DFAT, 'Guidelines for Traditional Visitors'.
- ⁵² Ibid.
- ⁵³ Ibid.
- ⁵⁴ Ibid.
- ⁵⁵ Administrator, *Annual Report on British New Guinea from 1st July 1889 to 30th June 1890*, 1890, pp. 15, 68. Administrator, *Annual Reports of British New Guinea from 1st July 1891 to 30th June 1892, 1893*, p. 41.
- ⁵⁶ Hitchcock, 2004, pp. 186–7.
- ⁵⁷ Ibid., p. 237.
- ⁵⁸ L.J. Hammar, 'Sex and political economy in the South Fly, Daru Island, Western Province, Papua New Guinea', PhD thesis, University of New York, 1996.
- ⁵⁹ Statistics Indonesia, www.sp2010.bps.go.id/index.php/site/tabel?tid=324&wid=9401000000
- ⁶⁰ Ibid.
- ⁶¹ Banana boats, also known as dinghies, are small, shallow-draft, fibreglass boats with outboard motors.
- ⁶² J. Singe, *The Torres Strait: People and History*, rev. edn, University of Queensland Press, Brisbane, 1989.
- ⁶³ Parliament, Joint Committee on Foreign Affairs, Defence and Trade, 1991, p. 207.

The Torres Strait Treaty

Jennifer Corrin

The Torres Strait is a passage and international shipping strait, 150 kilometres wide, between the far north of Australia and the south coast of Papua New Guinea (PNG). It comprises hundreds of islands, islets, coral reefs and cays, 17 of which are inhabited.¹ Most islands have only one or two villages, with populations ranging from about 80 to a thousand.² The area is governed by the Torres Strait Treaty between Australia and PNG.³ The treaty establishes a Protected Zone⁴ and a system of free movement for traditional inhabitants of certain islands in the strait and of some PNG coastal villages adjacent to it ('Treaty villages').⁵ This area is sometimes collectively referred to as the borderlands.⁶ Traditional inhabitants may travel across the border between Australia and PNG to carry out traditional activities within the Protected Zone and nearby areas.⁷ Once across the border, traditional inhabitants are subject to the law of the country they are visiting,⁸ administered by foreign institutions with which they are unlikely to be familiar. Domestic laws and the legal systems that surround them differ dramatically from one side of the border to the other. This includes not only substantive differences in the law but also different options for dealing with disputes that arise about the law, including the treaty provisions and surrounding legislation.

Many aspects of the treaty are contentious, which is hardly surprising given what is at stake for traditional inhabitants reliant on fishing and trade with other communities. Some treaty provisions are vague, in some cases perhaps deliberately so, and are open to different interpretations. The remoteness of the small, scattered communities, which are often without access to legal advice or other services, poses challenges for resolution of the problems that arise in the implementation of the treaty.

This chapter commences with an overview of the laws operating in the borderlands, to illustrate the complexities of the laws that affect the treaty arrangements. It proceeds to consider the limited avenues for traditional inhabitants and other communities in the vicinity of the borderlands to obtain advice on these laws if they wish to challenge the way in which the treaty is being implemented, or are faced with a criminal charge or involved in a civil dispute. It then reviews the options for the resolution of disputes relating to the treaty, both for the parties and for local bodies and individuals who contest its interpretation and application. This includes options provided by the state, such as court proceedings, and other pathways for dispute resolution on both sides of the border. It then examines more

specific areas of dispute that have arisen from the operation of the treaty, and considers whether there are adequate means of resolving them. The chapter draws on a small number of interviews conducted by the author on Saibai Island, Thursday Island and Horn Island in November 2017 and further survey work undertaken by members of the research team between 2016 and 2018.

Torres Strait

Torres Strait stretches for 90 nautical miles between Australia and PNG and constitutes a major international shipping route. It has been designated as a 'Particularly Sensitive [environmental] Area' by the International Maritime Organization,⁹ and provides a source of livelihood for the many distinct communities living in the area. The Torres Strait Islands are within the Australian state of Queensland and, as explained in chapter 1, fall into four geographical groups. The north-western islands, Saibai, Dauan and Boigu Islands, are part of Australia,¹⁰ even though they lie north of the seabed jurisdictional borderline.¹¹ A few small islands off the coast of PNG, including Daru, the capital of Western Province, are part of PNG.

The law

Traditional inhabitants are told in the 'Guidelines for Traditional Visitors',¹² issued by the Australian Government, that they must 'obey national laws and local laws and customs'.¹³ This section of the chapter outlines the sources of law with which traditional inhabitants have to contend. Unravelling applicable laws is a complex task. Both countries have a plural legal system, in the sense that there is more than one system in operation, but the sources of law and their content is different. There is a degree of asymmetry, as the traditional inhabitants from PNG are subject to a hierarchy of laws that puts customary laws above the common law. For Australian citizens, on the other hand, customary laws are not a general source of law and, as discussed below, will generally be enforced by state courts only if they have been endorsed by legislation. In Australia, the position is complicated by the federal system, which means that both Commonwealth and Queensland state laws apply. The degree of recognition of international laws may form another level of difference between the two countries' legal systems.

International law

Australia and PNG (the 'parties') are dualist states, which means that treaties have to be encapsulated in national legislation before they become part of domestic law.¹⁴ The most important agreement is the treaty itself, which was signed in December 1978 after negotiations lasting some five years,¹⁵ and thus became part of international law. The necessary local legislation in both Australian and PNG was not passed until 1984.¹⁶ This legislation effectively domesticated the treaty, making it a part of Australia and PNG law, and with that the treaty finally entered into force in February 1985.

It is a unique arrangement in that it defines the border zones between Australia and PNG differently, depending on the purpose. It sets a Seabed Jurisdiction Line, with Australia having rights to all things on or below the seabed south of the line and PNG having the same rights north of the line. However, the following islands, which lie north of the Seabed Jurisdiction Line, remain part of Australia: Anchor Cay, Aubusi Island, Black Rocks, Boigu Island, Bramble Cay, Dauan Island, Deliverance Island, East Cay, Kaumag Island, Kerr Islet, Moimi Island, Pearce Cay, Saibai Island, Turnagain Island and Turu Cay. These Australian islands north of the Seabed Jurisdiction Line also have their own territorial seas of three nautical miles unless otherwise specified in the treaty. The second main boundary is the Fisheries Jurisdiction Line, which follows part of the seabed line but deviates to create an area described as the 'top hat'. Australia has rights over swimming fish south of the Fisheries Line, and PNG has the same rights north of the line. Subsidiary management arrangements for commercial fisheries in the zone have also been put in place under the treaty. These allow the countries to work together in licensing and policing, and arranging for the sharing of the commercial catch. It also provides for preservation, protection and management of fisheries, with a view to making sure that commercial fishing is in harmony with traditional fishing.

As mentioned above, the treaty establishes a Protected Zone, and allows Torres Strait Islanders and the coastal people of PNG who come within the definition of traditional inhabitants to move freely (without passports or visas) to conduct traditional activities in and in the vicinity of the Protected Zone. While the treaty allows for free movement in both directions (i.e. by both Australian and PNG nationals), Australian government data show that more than 98 per cent of traditional movements are made by PNG citizens.¹⁷ As noted in the 2010 Senate Inquiry, *The Torres Strait: Bridge and Border* (the 'Senate Inquiry'), this 'suggests that some visits by PNG nationals may be prompted by the ability to trade and access services (such as medical centres and shops) in the island communities which are not readily accessible in PNG'.¹⁸ In practice, the free movement provisions are restricted by the guidelines, which are discussed later in this chapter.

There are a number of other treaties that influence the arrangements in the Torres Strait, including the Vienna Convention on the Law of Treaties, which is relevant to dispute resolution mechanisms in the treaty, which are discussed further below. Customary international law is also relevant in the borderlands and is capable of applying whether or not it has been incorporated into domestic law. It has been accepted by regional courts as a source of law, particularly with reference to maritime zones.¹⁹

Australian law

Constitutions and legislation

As Australia is a federal state, the national laws include both Commonwealth and Queensland state laws. The Australian Constitution is the supreme law in

Australia;²⁰ it empowers the Commonwealth Parliament to make national laws on certain matters that are of interest to the nation as a whole. At the state level, subject to the overriding power of the Commonwealth, the Constitution of Queensland is the supreme law.²¹ Beneath the constitutions in the legal hierarchy lies statutory law, at both Commonwealth and state level.²² The Australian Constitution outlines the Commonwealth Parliament's legislative power, with residual power being reserved for the states.²³

In addition to Acts implementing the treaty, there are a large number of Commonwealth and Queensland Acts that are relevant to the Torres Strait. These include the *Torres Strait Fisheries Act 1984* (Cwlth),²⁴ the *Native Title Act 1993* (Cwlth), the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth), the *Fisheries Administration Act 1991* (Cwlth) and the *Customs Act 1901* (Cwlth). Relevant state legislation includes the *Aboriginal and Torres Strait Islander Communities (Justice, Biosecurity) Regulation 2016* (Qld), the *Native Title (Queensland) Act 1993* (Qld) and the *Torres Strait Fisheries Act 1984* (Qld). There are also a number of shipping laws at both Commonwealth and state level.

Local laws

The outer islands of the Torres Strait fall within the Local Government Area (LGA) of the Torres Shire Council.²⁵ Within the LGA, they are represented by the Torres Strait Island Regional Council (TSIRC), which is empowered to make laws to regulate 'good rule and local government of its local government area'.²⁶ Such laws are commonly concerned with local administration and with community health and safety, for example, *Local Law No. 1 (Administration) 2013* and *Local Law No. 3 (Community and Environmental Management) 2014*.²⁷

Common law

The common law—that is, the law derived from the English common law, as developed by Australian courts—is also a relevant source of law in the Torres Strait. In Australia, the common law is regarded by the state as inferior to legislation but superior to customary laws. One of the most significant common law decisions is *Akiba v. Commonwealth*.²⁸ In that case, 13 island communities in the Torres Strait applied to the Federal Court of Australia for a determination of native title over part of the waters of the strait under the *Native Title Act 1993* (Cwlth).²⁹ The High Court confirmed the existence of native title over the waters. This included a non-exclusive group right of access to resources and to take resources in the native title areas for any purpose in accordance with the traditional laws and customs of the native title holders and the laws of the state of Queensland and the Commonwealth, including the common law.³⁰

Customary laws

Customary laws are not formally recognised as a general source of law in Australia.³¹ However, there are some legislative schemes that recognise specific customary laws

and require them to be taken into account in certain matters concerning particular persons.³² Queensland examples are bail applications under the Bail Act³³ and sentencing hearings under the Penalties and Sentences Act.³⁴

Although they are not recognised across the board, customary laws are still strong among indigenous peoples in the Torres Strait. Principles of traditional law common to Torres Strait Islanders were discussed at length in *Akiba v. Queensland (No. 2)*.³⁵ It was accepted by the court that, across the Torres Strait Islands, elders were the authorities who, where necessary, would interpret, apply and give effect to the laws and customs of their communities.³⁶ It was also noted by the court that communities are generally patrilineal³⁷ and that this provides indigenous inhabitants with:

- (a) an island or community identity
- (b) a place in the social organization of that community (such as by reference to lineages, family and clans), and
- (c) a basis upon which to acquire native title rights and interests.³⁸

Traditional beliefs are centred on a notion of 'balance' between this world and the Kibukuth,³⁹ and this has a strong influence on customary laws. Of particular relevance to justice are the principles of reciprocity and exchange, which underpin traditional law and inform particular laws and customs. Expert evidence in *Akiba* suggested that the Torres Strait Islanders enjoy a web of 'numerous and vibrant exchange relationships between individuals, clans and communities that were the lifeblood of [their] society':

Much of the trade involved the necessities of life, such as food items or the implements to obtain food, like the dugong harpoon. Some items changed hands as gifts, and other exchanges had specific ceremonial and social purposes. Trading voyages also provided the opportunity for courtship and entering into marriage arrangements, to 'show off new dances and songs' and for the spread of news, 'new ideas and innovation'.⁴⁰

Reciprocity and exchange manifest specifically in the following elements of traditional law:

- (a) the common practice of adoption of children
- (b) kinship, which may be understood as the principle underpinning social roles, duties and privileges
- (c) friendships and trading relationships.⁴¹

At one time reciprocity was also manifested in 'sister exchange' whereby, if a man from one family married a woman from another family, one of his female relatives had to marry a man from his wife's family in order to maintain balance.⁴² It appears that this tradition is no longer practised within the borderland area.

The law of Papua New Guinea

Constitution and legislation

The Constitution of the Independent State of Papua New Guinea (in this section, the 'Constitution')⁴³ and the Organic Laws constitute the supreme law of PNG.⁴⁴ These laws prevail to the extent of any inconsistency with any other act, whether legislative, executive or judicial.⁴⁵ Between themselves, the Constitution takes precedence and Organic Laws must be read and construed subject to the Constitution.⁴⁶ Acts of Parliament are next in the hierarchy of laws,⁴⁷ followed by other written laws. These include the provincial laws and 'subordinate legislative enactments'.⁴⁸ Subordinate legislation encompasses local-level government laws.⁴⁹ Written laws also include 'laws made under or adopted by or under the Constitution'. This brings into the legal system a range of laws set out in Schedule 2 of the Constitution, including a number of specified pre-independence Acts of Australia⁵⁰ and England.⁵¹ Subordinate legislative enactments under those laws and in force in PNG immediately before Independence Day were also saved.

Provincial laws and local laws

The Treaty and non-Treaty villages that lie within South Fly District were formerly divided into four local-level government areas: Daru Urban, Kiwai Rural, Morehead Rural and Oriomo-Bituri Rural. Before the 2019 elections, Kiwai rural was divided into the Forecoast Kiwai and Fly Kiwai Rural LLG areas. The scope of the provincial and local law-making powers is set out in the *Organic Law on Provincial Governments and Local-level Governments 1997*.⁵² This provides that the provincial legislature may, subject to the Constitution and the Organic Law, make laws on a range of matters including village and urban or community courts (but not their jurisdiction);⁵³ mediation and arbitration (but not in respect of disputes between different levels of government or jurisdiction).⁵⁴

Subject to the Constitution, the Organic Law and provincial government laws, local governments may make laws on matters including maintaining peace, good order and law through consultation, mediation, arbitration and community forums; dispute settlement; village communities; and the traditional barter system. The power to make laws on these matters is exclusive, unless the matter is of national interest, when the national parliament may legislate after the relevant minister has consulted with the government concerned.⁵⁵ However, provincial and local laws require the approval of the minister.⁵⁶ Provincial governments also have certain limited powers to raise revenue, including the right, subject to certain conditions, to impose sales and services tax. Unfortunately, there is no electronic access to Provincial or Local laws. The minister's approval is posted in the national gazette, but these are difficult to access, and only certain years are available on line.

The underlying law

The next source of law set out in the Constitution is the underlying law.⁵⁷ This is a unique type of law declared by state courts and derived from customary laws and common law⁵⁸ in force in England.⁵⁹ If there is a relevant provision of the Constitution or a statute governing the issues before the court, then the underlying law does not come into play.⁶⁰ However, if there is no written law, then the court must apply the underlying law, as formulated in previous cases. If there is no written law and the courts have not yet declared any relevant underlying law, then the court must apply customary law.⁶¹ If none of these sources apply to the issues in the proceedings, 'the court shall consider applying the common law'.⁶²

Customary laws

As discussed, relevant customary laws are drawn on to form the underlying law. This gives tacit recognition to the existence and validity of customary laws within the state system. However, they will apply only if it is consistent with the Constitution and legislation. Apart from state recognition, customary laws have their own source of authority derived from the fact that they are regarded as binding by those who are part of the relevant customary group. Custom is defined in the Constitution in the following terms:⁶³ "[C]ustom" means the customs and usages of indigenous inhabitants of the country existing in relation to the matter in question at the time when and the place in relation to which the matter arises, regardless of whether the custom or usage has existed from time immemorial.' This definition is important in the interpretation of the terms of the treaty, which refer to custom and tradition, as it emphasises that customary laws are not a static concept,⁶⁴ but rather a living law, capable of changing over time.

It is hard to be specific about customary laws as they are unwritten and differ from place to place. Knauft states that, in the late pre-colonial and early colonial era, the people of the south coast of New Guinea shared cultural preoccupations summarised as including 'fervent mythic-cosmological beliefs in the need for fertility regenerating, and the close articulation of fertility' with elaborate rituals; elaborate rejuvenation rites; feasts; and warfare.⁶⁵ However, within those broad themes, there were crucial divergences in the way they were articulated along the New Guinea coastline.⁶⁶ Over time, there has been large-scale movement of communities in the area, for example, some eastern Trans-Fly Groups have been displaced by Kiwai people.⁶⁷ These societal changes, together with the imposition of jurisdictional borders during and after the colonial period, have accentuated cultural differences between coastal dwellers themselves and between coastal dwellers and Torres Strait Islanders.⁶⁸

PNG is one of the few countries to have provided the common law courts with direction as to how to find and apply customary laws. The *Underlying Law Act 2000* provides that it is to be treated as law, not fact, and allows the courts to refer to cases, books, treaties, reports and other reference works on the relevant customary law and to statements of customary law made by local government authorities.⁶⁹

Common law

As in Australia, the common law is a source of law, but a significant difference lies in PNG in the fact that, as a component of the underlying law, it is inferior to customary laws. The doctrine of *stare decisis* is prescribed in the Constitution, whereby rules of law laid down in court decisions are binding on future courts, at least, if they are lower in the court hierarchy.⁷⁰ The Supreme Court and the National Court may depart from their own previous decisions but will approach such change with great caution.⁷¹

Obtaining legal advice and representation

The avenues for private individuals living in the borderlands to obtain legal advice are extremely limited, particularly on the PNG side of the border. There are no private lawyers on any island in the Torres Strait or in any of the South Fly villages. Nor are there any private lawyers on Thursday Island or in Daru. Where defendants or litigants have sufficient funds to pay, they may obtain legal advice from a private firm of lawyers in Cairns, Port Moresby or further afield.

On the Australian side of the border, the position is improved by occasional visits of the Aboriginal and Torres Strait Islander Legal Services (ATSILS). The ATSILS office is on Thursday Island, but their lawyers travel to other Torres Strait Islands when the Magistrates Court is sitting on circuit. The ATSILS brief is to provide advice and representation in criminal, family and civil matters. In practice, it has a limited capacity to deal with civil matters due to lack of resources.⁷² Further, the service is available only for 'Aboriginal and Torres Strait Islander peoples',⁷³ which is an issue for traditional visitors from PNG appearing on criminal charges in Australia. In theory, it may also be an issue for PNG citizens who have migrated to Australia as they are not 'Aboriginal and Torres Strait Islander peoples' in the narrow sense. In practice a broad approach is taken, and they are treated as falling within the ATSILS remit.

Since about mid-2018, Legal Aid Queensland (LAQ)⁷⁴ has been sending a lawyer from the Cairns office to represent parties in criminal cases coming before the Magistrates Court on circuit in the Torres Strait, to assist where the ATSILS lawyer has a conflict of interest.

Although, in theory, monthly legal advice sessions on non-criminal issues are provided by LAQ,⁷⁵ in practice this does not occur,⁷⁶ and the northernmost office of LAQ is in Cairns. The Youth Justice Services are also intended to visit communities every month to assist young people under 17 years of age who are subject to court orders.⁷⁷ In practice, these officers visit only quarterly from Cairns, when the Magistrates Court is on circuit. The same appears to be true of the probation and parole services provided by the Department of Corrective Services, based on Thursday Island.⁷⁸

In PNG, free legal advice is available from the office of the Public Solicitor, which is established under the Constitution 'to provide legal advice and assistance to impecunious persons in all fields of laws'.⁷⁹ However, resources are limited, and

assistance is focused on criminal proceedings and, in particular, assistance to those charged with an offence punishable by imprisonment for more than two years.⁸⁰ In theory, legal assistance is available in civil cases, but this is a lower priority than criminal cases. Moreover, the Public Solicitor's Office is based in Port Moresby. It has been requested by the government of PNG to set up fully-fledged branch offices in all provinces.⁸¹ However, there is no office in the Western Province and, although Public Solicitor's Desks have been established in some districts, this has not yet happened in the South Fly.⁸² The most accessible office for villagers in the South Fly would appear to be in Port Moresby, which is some 450 kilometres away. Public Solicitor's officers travel to Daru in advance of National Court sittings to give advice and to provide representation in serious cases.⁸³ Court staff also assist individuals to prepare summonses and affidavits.⁸⁴

Dispute resolution options

This section of the chapter outlines the options available for settling disputes concerning the treaty not only for the parties but also for local bodies and individuals who contest its interpretation and application. This includes options provided by the state, such as court proceedings, and other pathways for dispute resolution on both sides of the border.

Mechanisms in the treaty

The treaty does not establish a dispute resolution forum or refer disputes to a state court on either side of the border. Instead, it provides that any dispute between the parties arising out of the interpretation or implementation of the treaty must be settled by consultation or negotiation.⁸⁵ It goes on to provide that a party must consult on any matters relating to the treaty, at the request of the other party.⁸⁶

The treaty provides opportunities for ongoing consultation in the form of liaison arrangements. Each party must designate a representative, known as the Treaty Liaison Officer, to facilitate the implementation at the local level of the provisions of the treaty.⁸⁷ The treaty states that the Australia representative will be based at Thursday Island and the PNG representative at Daru unless 'a different location is required by the circumstances'.⁸⁸ In practice, the PNG representative appears to be based mainly in Port Moresby. The Treaty Liaison Officers are tasked with consulting on the practical operation of the treaty; keeping the local arrangements for free movement under review; and making appropriate recommendations on any problems that cannot be resolved locally.⁸⁹ In the exercise of these functions, the Treaty Liaison Officers must consult with representatives of the traditional inhabitants in their country, particularly in relation to problems relating to free movement, traditional activities and the exercise of traditional customary rights, and convey their views to their government. They must also maintain close liaison with national, state, provincial and local authorities of their country.

The other mechanism for consultation provided by the treaty is the Torres Strait Joint Advisory Council (JAC).⁹⁰ This consists of nine members from each party, including at least two national representatives; one member representing the government of Queensland and one representing the Fly River (Western) Provincial Government; and at least three members representing the traditional inhabitants.⁹¹ The functions of the JAC include making recommendations to the parties on any developments that might affect the traditional way of life and livelihood of the traditional inhabitants, their free movement, performance of traditional activities and exercise of traditional customary rights as provided for in the treaty; and any matters relevant to the implementation of the treaty.⁹²

Apart from having traditional inhabitants as members, the JAC is required to consult traditional inhabitants and to give them the opportunity to comment on matters of concern and to convey their views to the foreign ministers of both countries.⁹³ The other avenue for consultation with traditional inhabitants is the Traditional Inhabitants' Meetings (TIMS), which are said to be 'a forum for traditional inhabitants of both countries to discuss issues and activity in the region, and report concerns to government through their Treaty Liaison Officer'.⁹⁴ However, due to the restricted interpretation of traditional inhabitants, which is discussed in more detail below, membership is limited to those from the treaty villages and Torres Strait islands named in the guidelines.

After consideration of the JAC's reports and recommendations by the parties, consultations may be arranged to attempt to resolve any matters raised by the JAC.⁹⁵ The JAC meets at the request of either party. Meetings are chaired alternately by a representative of Australia and a representative of PNG, and held alternately in Australia and PNG,⁹⁶ or as otherwise arranged. The JAC held its 26th meeting in Port Moresby in February 2018. In practice, the costs associated with meetings are always met by Australia, even when held in Port Moresby.

Further guidance on disputes arising under the treaty can be found in the Vienna Convention on the Law of Treaties,⁹⁷ which is widely regarded as the authoritative guide to the formation, interpretation and effect of treaties. Australia is a party and is therefore bound under international law.⁹⁸ While PNG is not a party, the treaty may be regarded as international customary law and, as mentioned above, is thus binding irrespective of the fact that it has not been ratified.⁹⁹ In PNG, it is at least persuasive and is often discussed as if it were part of PNG's law.¹⁰⁰ The Preamble affirms 'that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law'. Apart from the general provisions on the application and interpretation of treaties, the convention lays out a procedure for dealing with disputes about the validity of a treaty or the existence of grounds for its termination or suspension. The first recourse laid down is for the parties to seek a solution through the means indicated in Article 33 of the Charter of the United Nations. This provides that parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, must first 'seek a solution by

negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice'.¹⁰¹ Article 66 of the Vienna Convention provides that if this means of resolution is not successful within 12 months, the following procedures should be followed:

- (a) any one of the parties to a dispute concerning the application or the interpretation of article 53 [Treaties conflicting with a peremptory norm of general international law] or 64 [Emergence of a new peremptory norm of general international law] may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration;
- (b) any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in Part V [invalidity, termination and suspension of the operation of treaties] of the present Convention may set in motion the procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.¹⁰²

The Annex to the Vienna Convention sets out a procedure for resolving disputes by conciliation. Conciliators are drawn from a list of qualified jurists drawn up by the Secretary-General of the United Nations from nominations submitted by UN member states. The conciliation commission consists of two members appointed by each party and a fifth member appointed by all four conciliators as chair.

The 'Joint Declaration of Principles Guiding Relations between Papua New Guinea and Australia' also contains a provision on dispute resolution, stating: 'Disputes between the two Governments will be settled peacefully through consultation, negotiation, or such other means as may be agreed and are consistent with the United Nations Charter.'¹⁰³

National forums – Australia

Queensland's common law court hierarchy consists of the Magistrates Court, the District Court, the Supreme Court and the Court of Appeal. The main tribunals for Queensland have been amalgamated in the Queensland Civil Administrative Tribunal.¹⁰⁴ Theoretically, these institutions extend to the Torres Strait Islands, but in practice the position is quite different from that in the rest of Queensland.

Magistrates Courts may sit only in places designated by the Governor in Council.¹⁰⁵ Some Torres Strait islands have been appointed as places to hold courts,¹⁰⁶ but only Thursday Island has a permanent court building, and it is currently without a resident magistrate. Instead, the 'Outer Island Court Circuit' has been devised, whereby a magistrate from Cairns visits designated islands on circuit, sitting about four times a year on circuit and about once a month on Thursday Island.¹⁰⁷ Magistrates have an extensive jurisdiction. In criminal cases, they may deal with a range of offences including not only traffic infringements and minor offences, such

as shoplifting or disorderly behaviour, but also more serious offences, such as burglary, assault, fraud and drugs.¹⁰⁸ Magistrates on circuit may commit serious offenders for sentence or trial in the District Court or the Supreme Court.¹⁰⁹

Magistrates may also deal with civil cases if the amount in dispute is \$150 000 or less.¹¹⁰

The Treaty islands designated as places for Magistrates Court sittings are Badu, Boigu, Erub, Mabuiag, Mer, Moa, Saibai, Warraber, Yam and Masig.¹¹¹ The court, known locally as the 'visiting Magistrates Court', aims to 'create a link between it and the ... Island Community',¹¹² facilitated by the requirement that they consider relevant submissions from local Community Justice Groups, including elders and respected persons when sentencing Torres Strait Islander offenders. Further, the court aims to reduce the need for Torres Strait Islanders to travel to Thursday Island to appear in the Magistrates Court and intends to be 'an effective mechanism for increasing participation and ownership by the community in the criminal justice process'.¹¹³

Visiting magistrates have a commission as a member of QCAT, so they may deal with tribunal matters when they visit Torres Strait Islands.¹¹⁴ The Magistrates Court sits more regularly on Thursday Island,¹¹⁵ and serious offenders are sent there or to Cairns for trial, depending on the seriousness of the matter. The District Court does not visit regularly on circuit, but it does sit about once a year on Thursday Island. It also sits on Palm Island and in Bamaga, at the tip of Cape York, from time to time.¹¹⁶ None of the other courts sit any closer than Cairns.

In 1984, provision was made for establishment of an 'Island Court' on each of the Torres Strait Islands, constituted by two justices of the peace who are Torres Strait Islander residents.¹¹⁷ Island Courts were empowered to deal with breaches of island by-laws; disputes concerning any matter accepted by the community resident to be a matter rightly governed by the usages and customs of the community; and matters committed to its jurisdiction by regulation.¹¹⁸ However, Island Courts were abolished in 2007.¹¹⁹ In theory the gap was filled by the pre-existing Justices of the Peace (Magistrates Courts),¹²⁰ constituted by two or more justices of the peace specially trained and appointed as Justices of the Peace (Magistrates Court) and empowered to impose penalties in relation to minor offences. Both the Island Courts and the Justices of the Peace (Magistrates Courts) were intended to be a local alternative to mainstream justice.¹²¹ However, there are no current Justices of the Peace (Magistrates Courts)¹²² on Torres Strait Islands,¹²³ and the nearest one is at Bamaga.

As Australia is a federation, the federal courts have jurisdiction throughout the country, including in the Torres Strait.¹²⁴ Generally, these courts do not travel on circuit to the Torres Strait, and the nearest resident judge and filing registry is in Cairns.¹²⁵ However, there is an exception in the case of native title claims, which the Federal Court hears from time to time on Torres Strait Islands.¹²⁶

National forums—Papua New Guinea

As on the Australian side of the border, in theory the state court hierarchy extends to South Fly villages. The state courts, in descending order, depending on the extent of their jurisdiction, consist of: the Supreme Court,¹²⁷ the National Court,¹²⁸ District Courts,¹²⁹ and Village Courts.¹³⁰ There are also certain specialised courts,¹³¹ and a number of tribunals,¹³² none of which sit in the South Fly villages.

The nearest National and District courts are in Daru.¹³³ There is a resident senior magistrate who sits about once a week to hear between 15 and 20 cases.¹³⁴ He also sits as a principal magistrate,¹³⁵ which means that he may hear civil cases involving up to K10 000¹³⁶ and try indictable offences triable summarily or commit a person to stand trial in the National Court for offences falling under Schedule 2 of the Criminal Code.¹³⁷ He may also hear appeals from Land Court decisions.¹³⁸ In theory, there is a resident judge, but in early 2018 he was still based in Port Moresby, as his residence was not complete. For the time being, the National Court sits on circuit from Port Moresby about twice a year, and parties from South Fly are required to make their own way to Daru for the hearings, which are listed for a period of about three weeks.¹³⁹ There is a District Court registry and a court clerk in Daru. There is also a subregistry of the National Court and, according to the Annual Court Calendar, this was to be converted into a full registry in 2018.¹⁴⁰

Only the Village Courts sit in the vicinity of South Fly villages. They are established by the minister by notice in the National Gazette in and for the area specified in the notice,¹⁴¹ which does not always correspond with a village in the strict sense, but may extend over a number of villages or settlement groups.¹⁴² In theory, all villages in the South Fly have access to a Village Court.¹⁴³ However, six out of the 35 villages surveyed in the South Fly reported that they did not have a Village Court magistrate. In the 12 Treaty villages included in the survey, only one reported not having a magistrate.¹⁴⁴ It appears that some Village Court magistrates have not been paid for some time and are not currently sitting.¹⁴⁵ Only 50 per cent of the interviewees in South Fly villages said that the Village Court had sat within the previous six months; about 21 per cent said it had been six months to a year and 30 per cent said it had been more than a year.¹⁴⁶

Their primary function is to ensure peace and harmony in the area for which they are established by mediating in disputes and endeavouring to obtain just and amicable settlements of disputes.¹⁴⁷ The court has jurisdiction where the dispute arose within its area, where the subject matter of the dispute is within the area, or all the parties are normally resident within its area,¹⁴⁸ with intervillage disputes being dealt with by joint sittings.¹⁴⁹ Most commonly, disputes in Treaty villages relate to family matters, including adultery, divorce and marriage exchange. These are followed by land disputes, then assault, fighting and domestic violence. Other issues are community disputes and sorcery.¹⁵⁰

A Village Court is constituted by at least three village magistrates,¹⁵¹ although, where custom provides for a system of chiefs or chieftainship, the minister may

declare that a village magistrate sitting alone will constitute that Village Court.¹⁵² It is unclear whether such a declaration has been made in relation of any of the Treaty villages. The mediatory jurisdiction may be exercised by a single village magistrate.¹⁵³ Village magistrates are appointed by the minister from a list of names provided by the head of the Village Courts Secretariat (the secretary), drawn up after consultation with any local-level government or, if there is none in the area where the Village Court is situated, the provincial government; and such others as he or the minister thinks it desirable to consult.¹⁵⁴ Each village court has a District Court magistrate assigned to it as principal supervising magistrate,¹⁵⁵ and it appears that the senior magistrate in Daru fulfils this role. Each court also has a Village Court clerk assigned to it,¹⁵⁶ but it is unclear whether this is happening in practice.

In theory, the jurisdiction is divided into civil and criminal,¹⁵⁷ but these categories are Western constructs, and in practice the distinction is blurred.¹⁵⁸ In civil cases, the Village Court may make orders for repayment of debts, compensation or damages up to K1000. The amount is unlimited if the claim relates to bride price, the custody of children, or death.¹⁵⁹ It may make custody and guardianship orders if the parents are not married or married under customary law. A Village Court has no jurisdiction to make orders concerning the ownership of land (although it may make an interim order pending a decision by the Land Court)¹⁶⁰ or to decide civil disputes involving the driving of a vehicle. A Village Court has criminal jurisdiction in respect of certain prescribed offences and contravention of local-level government laws or provincial legislation.¹⁶¹ It may impose a fine of up to K200, which may be ordered to be paid in goods instead of cash,¹⁶² or, in default, a term of imprisonment of up to six months.¹⁶³ As an alternative, it may make an order for community service for a period not exceeding eight hours a day, up to six days a week, for a total period of up to six months.¹⁶⁴ Similar orders may be made in civil cases for work to be done for the benefit of an injured or aggrieved party.¹⁶⁵ A Village Court may also make preventative orders if it considers that a dispute may cause a breach of the peace.¹⁶⁶

An important role in the work of the Village Court is played by the Village peace officer. This person may be appointed by the head of the Village Courts Secretariat¹⁶⁷ or by the Provincial Legislature.¹⁶⁸ The research team surveyed 18 villages in the South Fly about the presence of peace officers. Fifteen out of 18 villages reported having at least one peace officer, with six villages reporting more than one officer.¹⁶⁹ In recent times, land mediators have also been appointed to mediate land disputes in South Fly villages.¹⁷⁰

Points of contention

The practical application of the treaty has resulted in a number of problems for the inhabitants of Torres Strait Islands and Treaty villages. Many of these issues have arisen from the guidelines. These are what is often referred to as 'soft law', meaning that they are 'rules of conduct which, in principle, have no legally binding force but which nevertheless may have practical effects'.¹⁷¹ Those 'practical effects' are very

evident here, and although the guidelines are not law in the strict sense, they are more influential in the practical application of the treaty than the hard law. The guidelines were introduced in 2009 and revised in 2011. The Senate Inquiry states that the guidelines were an initiative of the Traditional Inhabitants Meeting (TIM) and that they were 'created by and for the traditional inhabitants and subsequently endorsed by the JAC'.¹⁷² This section of the chapter looks at five particular instances of dispute or difficulty that have arisen from the operation of the treaty and considers whether there are adequate means for dealing with them.

Exclusion of villages from the treaty arrangements

A particular point of contention that has arisen in relation to the treaty is the meaning of 'traditional inhabitants'. The treaty lays down three pre-conditions for qualification as a traditional inhabitant. In relation to Australia, 'traditional inhabitants' is stated to mean persons who:¹⁷³

- (i) are Torres Strait Islanders who live in the Protected Zone or the adjacent coastal area of Australia,
- (ii) are citizens of Australia, and
- (iii) maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities ...

In relation to PNG, it means persons who:

- (i) live in the Protected Zone or the adjacent coastal area of Papua New Guinea,
- (ii) are citizens of Papua New Guinea, and
- (iii) maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities.

This legislative definition is deceptively difficult to apply and capable of different interpretations. In particular, there is no definition of 'Torres Strait Islander', and definitions in other Australian legislation conflict,¹⁷⁴ so presumably interpretation rests in the three-way convention of establishing descent, self-identification and recognition by a community.¹⁷⁵ Nor does the treaty define the term 'traditional', although it is used frequently throughout the document.¹⁷⁶ Nor does it define 'customary associations'.¹⁷⁷ However, the part of the definition that has perhaps caused the most controversy is the meaning of 'adjacent coastal area'. This term is defined in the treaty as meaning 'in relation to PNG, the coastal area of the PNG mainland, and the PNG islands, near the Protected Zone; and, in relation to Australia, the coastal area of the Australian mainland, and the Australian islands, near the Protected Zone'. In the Agreed Note of 1984,¹⁷⁸ the term was clarified by reference to degrees of longitude and latitude, rather than by reference to places,

although the island of Parama and the villages of Sui and Sewerimabu were said to be included. A formal Exchange of Notes between Australia and PNG in 2000 was much more prescriptive.¹⁷⁹ It limited free movement by Papua New Guineans to traditional inhabitants from the list of Treaty PNG villages (chapter 2). This list was included in the guidelines, which also restricted Australian traditional inhabitants to people from a list of 13 Torres Strait Islands.

The question of extending the application of the free movement provisions to additional villages was left open in the Agreed Note of 1984 and in the Exchange of Notes in 2000.¹⁸⁰ Since then the matter has been raised on several occasions. In particular, the Senate Inquiry noted that it had

received submissions from a number of villages from the neighbouring region in PNG claiming that they have, and continue to have, legitimate rights in the Treaty area: that they were engaged in traditional cross-border movements long before PNG's independence. They produced detailed accounts of their strong and long-standing links to the Strait.¹⁸¹

However, the committee considered that 'any changes to the status of Treaty villages should be initiated by the PNG Government', and considered it sufficient to make the Australian Government aware of the fact that some villages maintained that they should be included and had evidence to support this.¹⁸²

Attempts were also made to raise this issue before the Federal Court of Australia in *Akiba v. Queensland (No. 2)*.¹⁸³ Although residents from PNG villages that were originally accepted as within the treaty arrangements were allowed (after an appeal) to pursue their rights in the claim area that might be affected by the proceedings, they were not allowed to use the case to argue for reinstatement of their villages as Treaty villages.¹⁸⁴

The dispute as to the appropriate villages to be included could be raised before the JAC, but, given that the representatives of the traditional inhabitants are from villages that are already included and the likely impact of extension on available resources, they are unlikely to act as advocates for this cause. The same goes for the TIM. In the absence of any likelihood of action by either party to the treaty, the question arises whether there is any course for individuals to take action to enforce their claims to be within the definition of traditional inhabitants. The normal way in which rights, benefits and obligations would be conferred on individuals would be through a provision in the treaty, which in turn would be incorporated in the domestic legislation implementing the treaty.¹⁸⁵ However, neither the treaty nor the domestic legislation in question on either side of the border confers such a right expressly.

Nevertheless, if government actions do not correspond with the treaty and/or the legislation incorporating it into domestic law (which repeats the treaty definition of traditional inhabitants),¹⁸⁶ this could be grounds for an application for judicial review. Similarly, where such actions do not comply with other legislation that

incorporates the treaty definition either directly,¹⁸⁷ or by reference to other legislation,¹⁸⁸ judicial review may be an avenue for redress. This is an administrative law avenue for challenging breaches of natural justice and errors of fact or reasoning employed by public decision-makers in reaching a decision.¹⁸⁹ In PNG, such applications may be heard by the Supreme Court or the National Court.¹⁹⁰ The distinctive features of administrative law in PNG may make it particularly amenable as a method of reviewing the position of villagers who were originally accepted as traditional inhabitants under the treaty and their descendants. The Constitution provides for 'the development of a system of principles of natural justice and of administrative law specifically designed for PNG, taking special account of the National Goals and Directive Principles and of the Basic Social Obligations, and also of typically Papua New Guinean procedures and forms of organization'.¹⁹¹

Some support for this approach can be found for this in Australian case law interpreting a bilateral treaty between Australia and New Zealand. In *Project Blue Sky Inc. v. Australian Broadcasting Authority*,¹⁹² the Australian Broadcasting Authority (ABA) implemented a local content standard, which ensured that television would have a minimum percentage of shows produced in Australia, as it was empowered to do under the *Broadcasting Services Act 1992* (Cwlth).¹⁹³ Project Blue Sky, a New Zealand company, challenged the validity of the standard on the basis that the ABA had not performed its obligations under a trade protocol, which provided that New Zealand producers would not be treated in a manner less favourable than Australian producers. Although on the facts the standard was held not to be invalid, the High Court held that the standard was in breach of the protocol. Accordingly, the case is authority in Australia for the power of the courts to ensure that the actions of government agencies correspond with international obligations. It is also persuasive authority in PNG,¹⁹⁴ where courts tend to follow the High Court of Australia. The likelihood of success of an application for judicial review is still far from certain, yet an application would have the benefit of airing these concerns and putting pressure on the parties to the treaty to put an end to the current limitations, which is a simmering source of discontent among those who are excluded from the arrangements.

An additional avenue of complaint is provided by the Ombudsman. Both PNG and the Commonwealth and states in Australia have such an officer. The Commonwealth and Queensland Ombudsmen's Offices are independent complaints investigation agencies. They investigate complaints from people who believe they have been treated unfairly or unreasonably by a government department or agency.¹⁹⁵ In the case of the Office of the Commonwealth Ombudsman, this includes complaints about the immigration functions of the Department of Home Affairs and about the Australian Border Force.¹⁹⁶ This avenue is open to non-citizens, and accordingly Treaty villagers could lodge a complaint. However, the Ombudsman cannot override the decisions of government agencies, nor issue directions to their staff. However, they can attempt to resolve disputes through consultation and

negotiation and, if necessary, by making formal recommendations to senior levels of government.¹⁹⁷

Treaty villagers could also lodge a complaint with the Papua New Guinean Ombudsman Commission, which is established by the Constitution,¹⁹⁸ supplemented by the Organic Law on the Ombudsman Commission. The Ombudsman may investigate on its own initiative, or on complaint by a person affected by the conduct of state bodies or officers.¹⁹⁹ The commission is primarily a recommendation body. However, it can publish the results of any investigation by forwarding it to specified government officials.²⁰⁰ The commission can also require the results of an investigation to be tabled in the parliament.²⁰¹ It may also refer a leader to the Public Prosecutor if satisfied that a leader is guilty of misconduct.²⁰² Like the courts exercising their power of judicial review, the commission must take the National Goals and Directive Principles fully into account in all cases as appropriate.²⁰³ A further advantage in this avenue is that the constitutional provision that the National Goals and Directive Principles are non-justiciable does not apply to the jurisdiction of the Ombudsman Commission.

The meaning of 'traditional activities'

One of the principal issues arising from the practical application of the treaty has been the narrow definition of 'traditional activities' in the guidelines and by enforcement officers. The treaty defines 'traditional activities' inclusively, rather than exhaustively, to mean:

- activities performed by the traditional inhabitants in accordance with local tradition, and includes, when so performed—
- (i) Activities on land, including gardening, collection of food and hunting;
 - (ii) Activities on water, including traditional fishing;
 - (iii) Religious and secular ceremonies or gatherings for social purposes, for example, marriage celebrations and settlement of disputes; and
 - (iv) Barter and market trade.²⁰⁴

Problems have arisen as to the boundaries of these categories. A particular issue is whether 'barter and market trade' includes sale of goods for cash. In the section headed 'Free Movement and Traditional Activities', the guidelines begin by paraphrasing the definition from the treaty, stating: 'Traditional activities include gardening, collection of food, hunting, traditional fishing, religious and secular ceremonies or gatherings for social purposes (for example, marriage celebrations and settlement of disputes), and barter and market trade.' However, the guidelines go on to set out what is not included in traditional activities, including the following statement:

The Treaty bans commercial activity, business dealings and working for money during traditional visits (e.g. cray fishing from a licensed Australian cray boat, selling artifacts [*sic*] to commercial operators, paid

domestic assistance). Selling goods to non-traditional inhabitants is not permitted under the Treaty. Selling goods in the knowledge that they may [be] on-sold is also not permitted under the Treaty.

These details do not appear in the treaty, and the guidelines' ban on 'commercial activity' could be said to unduly restrict, if not conflict with, the words 'barter and market trade' in the treaty definition of traditional activities.²⁰⁵ As 'soft' law, the guidelines cannot override the treaty and in cases of conflict must, in theory, give way. Persuasive authority for a broader interpretation of 'barter and market trade' can be found in *Akiba*,²⁰⁶ where it was expressly affirmed that indigenous native title holders have a non-exclusive right to take fish for commercial purposes in the Torres Strait.²⁰⁷ The narrow view is also contrary to the approach taken by the Australian Law Reform Commission in relation to native title. The commission recommended that the *Native Title Act 1993* (Cwlth) should be amended to make it clear that native title rights 'may comprise a right that may be exercised for any purpose, including commercial or non-commercial purposes; and ... may include, but are not limited to, hunting, gathering, fishing, and trading rights and interests'.²⁰⁸

Some Torres Strait Islanders and government officials consider that cash transactions amount to 'commercial activity' and that 'barter and market trade' is restricted to a process of exchange and does not include cash transactions. The guidelines have been relied on to prevent visitors from Treaty villages from selling food and artefacts for cash in the Torres Strait Islands. This has been a particular problem in Saibai, which has the largest number of visitors of any of the Torres Strait Islands within the protected zone, numbering about 15 000 in 2010.²⁰⁹ PNG visitors used to come almost daily to sell their handcrafted goods and artefacts and use the cash to buy goods from the store, until recently, when they were restricted to one day per week. At times, cash is prohibited from changing hands and from being spent by PNG visitors at local stores. Traditional inhabitants try various ways to sidestep the system (chapter 5). On Boigu, traditional visitors have also been prevented from withdrawing cash through the ATM, which, as mentioned below, is specifically outlawed by the guidelines, and have been forced to rely on relatives and friends to use the machine for them.²¹⁰

The definition of 'traditional activity' in the treaty is followed by a guide to interpretation: 'In the application of this definition, except in relation to activities of a commercial nature, "traditional" shall be interpreted liberally and in the light of prevailing custom.'²¹¹ While this demands a liberal interpretation of the definition, and one that takes into account prevailing custom, activities of a commercial nature are expressly excluded from its operation, so it gives little support to the argument that barter and market trade should be interpreted to include cash sales. However, that does not mean that the phrase does not extend to cash transactions on the basis of the ordinary meaning of the words.

The narrow interpretation of 'barter and market trade' might be argued to be in line with what is 'traditional', a word that explicitly qualifies the activities that are

allowed. However, this assumes a positivist view of 'tradition', as being handed down from generation to generation in an unchanging form.²¹² This is as opposed to the idea of tradition as a dynamic and living concept, which although based in the past will develop in line with changing circumstances.²¹³ Interpreting 'tradition' in a more flexible way is supported by the definition of the related concept of custom in the Constitution of Papua New Guinea,²¹⁴ which is set out above, and refers to 'customs and usages of indigenous inhabitants ... existing ... when ... the matter arises, regardless of whether the custom or usage has existed from time immemorial'.

It is interesting to note that, in relation to the phrase 'traditional fishing', it has been considered necessary to take legislative action to restrict this phrase from including some aspects of modern technology. This has been particularly the case where restriction is seen as necessary to protect an endangered species. For example, notices issued under the *Torres Strait Fisheries Act 1984* (Cwlth)²¹⁵ provide that dugong could be taken only with a traditional harpoon, called a wap.²¹⁶ However, this does not justify the broader reluctance to take a more flexible approach to 'traditional' practices in response to changing circumstances²¹⁷ and the poverty of villagers in the South Fly. The Senate Inquiry noted that the committee was 'unclear about the extent to which modern equipment and means of transport are allowed'.²¹⁸ It is certainly arguable that whether something is traditional should be judged on the basis of 'intent and purpose' of the activity rather than how it is carried out.²¹⁹

Neither the treaty nor the related domestic legislation confers a specific avenue via which individuals may challenge the interpretation of traditional activities represented in the guidelines or the way in which they are enforced by the Australian Border Force. However, as discussed in relation to the exclusion of villages from the treaty arrangements, if government authorities have misapplied the treaty, this may be grounds for an application for judicial review. It would also give grounds for complaint to the Ombudsman.

Attendance at court by traditional inhabitants

Another problem arising from the application of the treaty arises when a traditional visitor from PNG to a Torres Strait Island commits an offence. Under the treaty arrangements, offences other than illegal fishing are dealt with under Australian law.²²⁰ The practice is for the PNG offender to be charged and ordered or bailed to appear at the next sitting of the Magistrates Court, when it comes on circuit. This is the case in all but the most serious cases (where Queensland Police Service officers will arrive to take the offender into custody and transport them to Horn Island or Cairns), even though many of these offenders would be detained *in situ* in custody in less remote Australian locations. However, when that PNG person is required to return to a Torres Strait Island for the sittings, he or she does not qualify as a traditional visitor as the visit is not for the purposes of a traditional activity. In fact, the guidelines specifically provide that '[t]raditional visits do not include ... attending court cases'.²²¹

On the mainland, a foreigner without a visa would be detained²²² and, if he or she were required to attend court to answer a criminal charge, a Criminal Justice Stay Visa ('justice visa') would be issued.²²³ However, there is no way of processing such a visa on any Torres Strait Island. The nearest place for the issue of a justice visa would appear to be Brisbane.²²⁴

In practice, Papua New Guineans arriving to attend a court hearing are escorted to the court by a member of the Border Force. However, as they do not have a visa and do not qualify as traditional inhabitants, they are being forced into a position where they are unlawfully in the country. This could be argued to be an abuse of process, a point that has been argued by ATSILS before the Magistrates Court, but not determined.²²⁵ The position of the court itself when faced with a defendant who has appeared (even though he or she does not have a visa) seems to be that they have a duty to deal with those coming before the court. This could be justified by analogy with an 'appearance gratis' (which occurs under the common law, in civil proceedings, where a person who has not been properly served with the documents files an answer or appears at the hearing anyway).²²⁶

As in the case of the two other points of contention, discussed above, the practice of issuing Notices to Appear, and in effect taking alleged offenders into custody when they arrive to answer the notice, may constitute grounds for an application for judicial review and for complaint to the Ombudsman.

The narrow approach to the definition of 'traditional fishing' discussed above has led recently to prosecutions and confiscation of boats on the basis that PNG traditional inhabitants are taking fish and crustaceans for commercial use.²²⁷ The treaty provides that such offences are to be dealt with by the authorities of the party whose nationality is borne by the vessel or the persons alleged to have committed the offence, and not by the party in whose waters the offence occurred.²²⁸ In practice it is usually the Australian authorities who apprehend illegal fishers,²²⁹ and the treaty permits the authorities to detain them for as long as is required to conduct an investigation into the offence.²³⁰

After the investigation, traditional inhabitants are handed over to Papua New Guinean officials. Indictments are prepared by Australian authorities and sent to prosecutors in PNG and the defendants are taken before the District Court in Daru.²³¹ The process may take many months and, in the meantime, the accused are deprived of their livelihood. In cases where the alleged illegality rests on the fact that the fishing was for commercial purposes, if it can be established that the catch was within the bounds permitted by custom, this could be raised as a defence before the District Court. However, while the Public Solicitor may send an officer to present a defence at trial, there is little opportunity for advice before the hearing and the tendency is for the accused to plead guilty.

[Authority to ban visitors](#)

Another means of dealing with offences by PNG visitors has been the issue of banning orders by Island Councils. These orders prevent the alleged offender from

visiting under the traditional visitors' scheme. However, controversy has arisen as to the power of the council to issue such orders. The Australian state, represented by the Department of Foreign Affairs and Trade, may obviously issue banning orders. The treaty provides that 'each party reserves its right to limit free movement to the extent necessary to control abuses involving illegal entry or evasion of justice',²³² but does not say who may impose those limits. A party also reserves the right to take such measures as it sees fit to deal with 'problems which may arise'. This includes limiting freedom of movement in the case of an epidemic.²³³ In doing so, the state must act in accordance with Article 16(2), which states that in the administration of laws and policies relating to the movement of persons and goods in the Protected Zone, each party shall act 'in a spirit of mutual friendship and good neighbourliness', but bearing in mind the importance of discouraging the occurrence of illegal entry and practices prejudicial to effective immigration, customs, health and biosecurity control, 'under the guise of free movement or performance of traditional activities'.²³⁴

The guidelines are more specific about bans and provide that:

Traditional movement can be restricted for disease outbreaks, resource limitations (for example water shortages), security or quarantine concerns (Article 16 of the Treaty). Bans will only operate if required and reasonable. If you think a ban is not fair or reasonable, contact the Border Liaison Officer (BLO) in Daru and/or the Treaty Liaison Officer (TLO) in Thursday Island.

They also state that '[p]eople who do not follow Australian laws, customs or Treaty procedures, or who otherwise may be undesirable, can be banned from travelling under the Treaty' and that a person 'will be turned away and prevented from entering Australia if you ... travel with a person banned from making traditional visits'. These guidelines rely on Article 16 as their authority, so, again, it would appear that this power lies with the state.

In practice, it is clear that island councillors do issue bans and that this power is endorsed by the Treaty Liaison Officer and the Border Force.²³⁵ It could therefore be seen as a delegated authority from the state. Alternatively, it could be seen as an incident of the pass system. On the outer islands of Saibai, Boigu and Dauan, daily passes are obtained on arrival.²³⁶ For overnight stays, a person wishing to visit from PNG must obtain a signed Prior Advice Notice on invitation from a Torres Strait Islander who will host their visit. It is then approved by the island councillor, and signed off by DFAT and the Australian Border Force. In practice, the process of applying for and granting permission to visit varies from island to island. However, it remains the case that a councillor who wishes to ban a visitor for misconduct may refuse to issue a pass.²³⁷ This includes blanket bans on entire South Fly villages, as was in place mid-2019 for Mabudian village to visit Saibai Island, due to problems with overstayers.

With regard to breaches, disputes and criminal offences, prevention is no doubt a better response than cure. The 2010 Senate Inquiry suggested that the most effective solution would be more rigorous monitoring of entrants to ensure that they fall within the requirements of the Torres Strait Treaty. Clearly, local leaders are in a much better position than the Australian Border Force to know whether a person qualifies to visit. However, the authority that individual councillors have to issue bans is not clear. Councillors appear to be exerting their landowner rights over the treaty, in keeping with powers to limit entry under the local government legislation,²³⁸ and under their native title determination.²³⁹ But the treaty was otherwise domesticated by Commonwealth legislation issued in 1984, so it is ambiguous as to what domestic legislation prevails. Regardless of the legalities, in practice DFAT gives the councillor the administrative power to refuse a pass to potential visitors, and without this they are not entitled to enter, which the Border Force enforces.

There is also a possibility of issuing individuals with permanent travel bans under the *Migration Act 1958* (Cwlth).²⁴⁰ However, this power must be exercised by the Commonwealth Minister for Immigration.

Overstayers

Traditional visitors are permitted to remain in the place they are visiting only as long as the period specified on their pass.²⁴¹ The guidelines state:

If you stay longer than the approved period on your pass without the approval of the community then you become an 'overstayer' and you might be asked to leave or you might be forcibly removed. Overstaying puts lots of pressure and stress on communities. If you regularly overstay your visit, you might be banned from making future visits.

The research team did not gather data on overstayers, due to the risks this might involve for them. In its submission to the 2010 Senate Inquiry, TSIRC reported that 'Immigration turns a "blind eye" to overstayers', which 'makes a mockery of the Treaty'. It was said to be 'common knowledge that nothing will happen if you overstay your permit'.²⁴²

The position of overstayers is a contentious and ongoing problem.²⁴³ Many Papua New Guineans who arrive on Torres Strait islands as traditional visitors seek to stay. These include children left with relatives in order to make use of the school or health facilities. Overstayers also include visitors who are married to, or in a relationship with, Torres Strait Islanders or Papua New Guineans who have become Australian citizens or permanent residents and wish to become permanent residents themselves. The cost of applying for permanent residency is in the region of \$7000, and successful applicants most leave Australia and re-enter using their visa. This is a formidable barrier for many Papua New Guineans. While the Senate Inquiry noted that there was 'sympathy towards PNG nationals overstaying their permit due to

poverty',²⁴⁴ the research team observed the efforts taken by some councillors to limit visitors overstaying with their partners or relatives, citing the drain on limited resources (e.g. housing, water supply). One councillor described the difficulty of finding overstayers who were hidden in private residences, due to the difficulty in obtaining search warrants.²⁴⁵

Another category of overstayers is women seeking refugee status because of domestic violence. There is a possibility of applying for a Protection Visa (refugee status). However, this is a complex area of refugee law and depends on being able to show membership of a 'particular social group'.²⁴⁶ There is no advice available in the Torres Strait to assist Papua New Guinean women fleeing violence. They have to seek help in Cairns or Brisbane. Brisbane has the only specialised, not-for-profit, refugee advice centre ('RAILS') in Queensland. Contact is made by telephone, and language is often a problem. Applications for refugee status often take about 18 months to two years to process. During that time, applicants often have no income, and it would appear that they are not entitled to apply for any Centrelink payments, as they are unlawful non-citizens under the Migration Act.²⁴⁷ That Act provides that refugees who are deemed 'unlawful non-citizens' may be detained²⁴⁸ or removed²⁴⁹ from Australia, notwithstanding Australia's non-refoulement obligations under international law.²⁵⁰ However, the surveys did not reveal any instances of this occurring.

Bridging the gap

In the light of the absence of state courts and lawyers, the question arises whether alternative avenues of dispute resolution have developed. The following section considers first whether any traditional practices exist or have been revived independently of the state. It then moves to look at other existing options.

Traditional means

One of the functions of the PNG Village Courts is to '[e]ncourage parties in dispute to use local conflict resolution processes such as the "Local Chieftain System" or "Community of Elders"'.²⁵¹ Of the 21 villages surveyed in the South Fly, nine respondents from nine different non-Treaty villages reported that disputes were resolved by community leaders.²⁵²

Unlike the PNG side of the border, where customary laws and authority are still strong, on Torres Strait islands the influence of the state appears to have led to a diminution of traditional practices. There were no formal traditional resolution forums on any of the Torres Strait islands visited by the survey team.

Notwithstanding, many issues are resolved informally within the extended family in accordance with *ailan pasin* (island fashion). Moreover, there is some evidence that traditional practices are still in place to resolve matters in accordance with the cultural notions of balance in relationships. Elu describes this aspect of Torres Strait culture in the following terms:

It is also important to maintain the social balance within interpersonal relationships. Confrontation must be avoided. If an individual has a complaint about another person, it is not good to confront that person—a go-between must be appointed, who will then mediate. By this means, personal hurt and loss of face are avoided, and society can maintain harmony; when personal hurt and loss of face occur, serious rifts may develop, disrupting the social harmony.²⁵³

Traditional, non-violent means of resolving disputes may also be used in disputes between the Torres Strait Islanders and inhabitants of Treaty villages. A recent case example from Boigu Island occurred after a fight had broken out between two rival groups of youths from Boigu and the Treaty village of Buzi. There are various versions of the cause of the dispute, one being that it broke out on Boigu while the two groups were watching a State of Origin football game. After the fight, the Buzi youths returned to Boigu armed with bush knives and bows and arrows, terrorising community members, but without inflicting any physical injury. As a result of these actions, the Buzi youths appear to have been banned from travelling over the border for a year.²⁵⁴ After the year was up the question arose as to whether the PNG youths would be allowed to visit Boigu again. To decide this matter a community meeting was held between those involved and the traditional leaders. A large feast was arranged, accompanied by the exchange of traditional gifts. It was then agreed that the youths would be allowed to travel again.

While this is cited locally as an example of traditional dispute resolution, the state police were also involved and a Boigu man was charged with assault.²⁵⁵ SBS reported that local police, local council and federal agencies were working with community leaders on both sides of the border to resolve the dispute, so it is doubtful whether the process can be classified as purely traditional, but rather, it constitutes a hybrid between state and traditional processes. What is perhaps most telling is that this was the only example of traditional dispute resolution that was recited to the author during her survey work in November 2017.

Other initiatives to fill the gap

Community Justice Groups

Community Justice Groups (CJG) have been established on Torres Strait islands. They are funded by the Queensland Department of Justice and the Attorney-General.²⁵⁶ While their primary functions do not include resolution of disputes,²⁵⁷ in practice, the main work of the CJG consists of assisting the visiting Magistrates Court. Also, offenders may be referred to the CJG for cultural counselling and mediation.²⁵⁸ Members of the CJG work closely with a number of justice agencies including the Queensland Magistrates Court, Department of Corrective Services, Queensland Police Service and the Aboriginal and Torres Strait Islander Legal Service. The CJG works to support the community's understanding of and access to the justice system by working in conjunction with TSIRC by-laws and victim support

agencies.²⁵⁹ The CJG also assists courts in managing community-based offences and provides a network to implement crime prevention initiatives

The CJG is currently not operating on all islands. For example, there are currently no CJGs on Dauan,²⁶⁰ Mabuiag,²⁶¹ Poruma,²⁶² Saibai Island (although steps are being taken to re-establish the group)²⁶³ or Ugar.²⁶⁴

Churches

Canon law sits outside the formal hierarchy of laws in both Australia and PNG. However, it is allowed to operate if it is not in conflict with state law, and is regarded as binding on devout members of a church. Churches are a powerful force in the region,²⁶⁵ and religious activities are an accepted reason for traditional visits. PNG's churches exert wide influence across the country, and given the dysfunctionality of government service provision, they often play an important role in providing essential health, education and transport services.²⁶⁶

However, these services do not extend to the South Fly, and although the PNG Department of Justice and Attorney-General's web site lists the Catholic Church, Western Province as a source of justice-related programs,²⁶⁷ these do not extend to the South Fly villages. During interviews in villages in the South Fly, seven participants,²⁶⁸ coming from six different villages, said that disputes were resolved informally by the church.²⁶⁹ In some places, principles of canon law and practice have been syncretised with the customary laws of communities.²⁷⁰ Although a detailed discussion of church dispute resolution processes is outside the scope of this chapter, it is clear that, on both sides of the border, minor disputes and matrimonial matters are often settled by church officials.²⁷¹

Conclusion

From the preceding discussion it seems clear that there are grounds for revisiting the treaty to clarify its terms and to ensure that it fulfils its original objective of protecting the way of life of traditional inhabitants within the borderland. More urgently, the guidelines are in need of revision, as the practical application of the treaty has become out of step with the lived reality of inhabitants of the borderland. The interpretation of tradition as a relic of the past freezes community practices in time, rather than accepting the existence of living laws and culture.²⁷² The guidelines were said to be an initiative of the TIM, endorsed by the JAC,²⁷³ so there is no reason why they could not be revised at that level, without the need for amendment of the treaty or formal court proceedings. However, this would require the political will for change on the part of the meeting participants.

In the absence of revision at that level, options for challenging current practices include application for judicial review or referral to the Ombudsman. To date, neither of these options has been pursued as a pathway for challenging the restrictive meaning given to 'traditional activities', the practice of issuing notices to appear, or the exclusion of certain villages from the treaty provisions. Apart from the expense of court proceedings, the likelihood of success of an application for judicial

review is far from certain. However, it would have the benefit of airing these concerns and putting pressure on the parties to the treaty to introduce change. An investigation by the Ombudsman is a less expensive option, but would not directly alter the position. However, again, it would highlight the problems and have the potential to influence future policy.

With regard to the more specific issue of access to justice, it is clear that legal advice is not readily available for PNG nationals without the financial resources to seek assistance from an urban centre. The lack of access to legal advice and forums to air grievances makes villagers in the South Fly vulnerable to human rights abuses and is a serious cause for concern. The position on the Australian side is rather better with the quarterly visits by ATSILS lawyers to give advice to and represent Torres Strait Islanders and to advise and act for non-Torres Strait Islanders on LAQ's behalf. However, in between these times the only access to legal advice is by telephone, a luxury limited to those with access to a telephone and the required language skills.

With respect to traditional dispute resolution forums, the position is arguably reversed, with most PNG Treaty villages having access to a Village Court, with magistrates and peace officers drawn from the community. On the Australian side of the border, the position has been ameliorated by the quarterly sittings of the visiting Magistrates Court. However, it is unfortunate that the Justices of the Peace (Magistrates Courts)²⁷⁴ scheme has not been pursued and the Community Justice Groups are either inoperative or restricted to assisting the visiting Magistrates Court. While the expansion of the state system in the Torres Strait Islands is in many ways desirable, reliance on social benefits and services has undermined traditional dispute resolution processes. Ironically, the result appears to be that on Torres Strait Islands, there can be less opportunity to resolve disputes locally than on the other side of the border, where local leaders are still frequently called on to settle disputes informally.

It is a long way from the South Fly to Port Moresby and from the Torres Strait Islands to Brisbane, and it seems that the borderlands may be 'out of sight and out of mind'. On both sides of the border the chances of speedy resolution of disputes is slim. If justice delayed is truly justice denied, then it is high time for both countries to improve access to justice for their citizens in the borderland.

Acknowledgement

Jennifer Corrin would like to acknowledge the contribution of Josephine Vidler, Hamish Swanson, Antonia Bellas and Chris Vale, who provided valuable research assistance in the early stages of this research.

Notes

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- ¹ Torres Strait Regional Authority [TSRA], 'Community profiles', www.tsra.gov.au/the-torres-strait/community-profiles; Senate, FADTRC, *The Torres Strait: Bridge and Border* [Senate Inquiry], Commonwealth of Australia, Parliament House, Canberra, 2010, 6.32; 'Our communities', *Torres Strait Island Regional Council*, www.tsirc.qld.gov.au/our-communities.
- ² 'Our communities', *Torres Strait Island Regional Council*, www.tsirc.qld.gov.au/our-communities.
- ³ *Treaty Between Australia and the Independent State of Papua New Guinea Concerning Sovereignty and Maritime Boundaries in the Area between the Two Countries, including the Area Known as Torres Strait, and Related Matters* ('Torres Strait Treaty'; the 'Treaty'), Australia–Papua New Guinea, signed 18 December 1978 [1985], ATS 4 (entered into force 15 February 1985), dfat.gov.au/geo/torres-strait/Pages/the-torres-strait-treaty.aspx.
- ⁴ *Ibid.*, art. 10.
- ⁵ *Ibid.*, art. 11.
- ⁶ W.S. Arthur, 'Bridge or barrier: The Torres Strait borderland', in *Woven Histories, Dancing Lives: Torres Strait Islander Identity, Culture and History*, ed. R. Davis, Aboriginal Studies Press, Canberra, 2004, p. 208.
- ⁷ Treaty, art. 11. See also Treaty, Article 28.6: Illegal fishing is dealt with by the authorities of the party whose nationality is borne by the vessel or the persons alleged to have committed the offence.
- ⁸ Treaty, art. 2.
- ⁹ MEPC Resolution 53, MEPC 53/24/Add.1 (22 July 2005).
- ¹⁰ Dauan Island is geographically part of the north-western group of islands along with Saibai and Boigu; however, geologically it is part of the western group of islands. For this reason, Beckett groups Dauan with the high, rocky islands in the west such as Badu and Mabuiag; see J. Beckett, 'The Torres Strait Islanders', in *Bridge and Barrier: The Natural and Cultural History of Torres Strait*, ed. D. Walker, ANU, Canberra, 1972, pp. 310–11. See also D. Lawrence and H. Reeves Lawrence, 'Torres Strait: The region and its people', in Davis, 2004, p. 17.
- ¹¹ Lawrence and Lawrence, 2004, p. 17.
- ¹² The 2011 version of the Guidelines can be retrieved at www.dfat.gov.au/geo/torres-strait/pages/guidelines-for-traditional-visitors-travelling-under-the-torres-strait-treaty.aspx.
- ¹³ Guidelines.
- ¹⁴ See for example *Walker v. Baird* [1892] AC 491, 497; *Attorney-General for Canada v. Attorney-General for Ontario* [1937] AC 326; *Blackburn v. Attorney-General* [1971] 1 WLR 1037; *Maclaine Watson & Co. Ltd v. Department of Trade and Industry* [1989] 3 All ER 523.
- ¹⁵ In December 1973, a joint statement was issued by issued by Prime Minister Whitlam and Chief Minister at Parliament House, Canberra.

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- ¹⁶ *Torres Strait Fisheries Act 1984* (Cwlth); *Torres Strait Treaty (Miscellaneous Amendments) Act 1984* (Cwlth); *Torres Strait Treaty (Miscellaneous Amendments) Act 1984* (PNG) and *Fisheries (Torres Strait Protected Zone) Act 1984* (PNG).
- ¹⁷ Senate Inquiry, 2010, p. 9.
- ¹⁸ *Ibid.*, p. 98. This is hardly surprising in the light of the 2016 Human Development Index, which ranked PNG 154th in the world (out of 188) and Australia as 2nd: see S. Jahan, *Human Development Report 2016*, United Nations Development Programme, New York, 2016, p. 208.
- ¹⁹ See for example *Fa v. Naniura* [1990] PNGLR 506.
- ²⁰ *Commonwealth of Australia Constitution Act 1900* ('Australian Constitution'), s 5.
- ²¹ *Constitution of Queensland, 2001*; *Australian Constitution*, s 109.
- ²² *Australian Constitution*, s 51.
- ²³ *Ibid.*, s 51.
- ²⁴ *Torres Strait Fisheries Act 1984* (Cwlth),
www.legislation.gov.au/Details/C2016C00677
- ²⁵ *Local Government Act 2009* (Qld).
- ²⁶ *Ibid.*, s 28(1).
- ²⁷ Other examples include *Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2011*; *Local Law No. 7 (Indigenous Community Land Management) 2013*.
- ²⁸ (2013) 250 CLR 209, 209.
- ²⁹ *Akiba v. State of Queensland (No. 2)* [2010] 270 ALR 564, [344].
- ³⁰ *Akiba v. Commonwealth* (2013) 250 CLR 209, 209.
- ³¹ J. Corrin, S.J. Bennett and S. Chen, *Pleading and Proof of Indigenous Customary Law in Queensland Courts*, T.C. Beirne School of Law, University of Queensland, 2010, p. 8.
- ³² *Ibid.*, p. 45.
- ³³ 1980 (Qld), s 15.
- ³⁴ 1992 (Qld), s 9(2)(p).
- ³⁵ [2010] 270 ALR 564, [344].
- ³⁶ *Akiba v. Queensland (No. 2)* [2010] 270 ALR 564 [305].
- ³⁷ Matrilineal descent is recognised in some circumstances, including adoption and disposition of property; see *Akiba v. Queensland (No. 2)* [2010] 270 ALR 564 [182].
- ³⁸ *Ibid.*
- ³⁹ M. Elu, 'Cooking, walking and talking cosmology: An Islander woman's perspective of religion', in Davis, 2004, pp. 143, 146.
- ⁴⁰ *Akiba on behalf of the Torres Strait Islanders of the Regional Seas Claim Group v. State of Queensland (No. 2)* [2010] FCA 643 (2 July 2010) 16–17 [32]–[33] (Finn J).
- ⁴¹ *Akiba v Queensland (No. 2)* [2010] 270 ALR 564, 621 [223].
- ⁴² Elu, 2004, p. 146.

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- ⁴³ *Constitution of the Independent State of Papua New Guinea*, ch. 1 ('Constitution of Papua New Guinea').
- ⁴⁴ *Ibid.*, s. 11(1).
- ⁴⁵ *Ibid.*
- ⁴⁶ *Ibid.*, s 10(b).
- ⁴⁷ *Ibid.*, s 9(c).
- ⁴⁸ *Ibid.*, s 9(d)–(e).
- ⁴⁹ Made under the authority of the *Organic Law on Provincial Governments and Local-level Governments 1997* (PNG), s 44.
- ⁵⁰ *Constitution of Papua New Guinea*, sch 2.4.6 and sch 5, Part 1.
- ⁵¹ *Ibid.*, sch 2.4.6 and sch 4, Part 2.
- ⁵² *Ibid.*, s 42.
- ⁵³ *Organic Law on Provincial Governments and Local-level Governments 1997* (PNG), s 42(1)(i).
- ⁵⁴ *Ibid.*, s 42(1)(u).
- ⁵⁵ *Organic Law on Provincial and Local-level Governments 1997* (PNG), ss 41(2), (3) and (6) and 44(1).
- ⁵⁶ *Ibid.*, s 141.
- ⁵⁷ *Constitution of Papua New Guinea*, s 9(f).
- ⁵⁸ The common law to be applied is that in force immediately before 16 September 1975.
- ⁵⁹ *Constitution of Papua New Guinea*, sch 2.1.1–2.2.2.
- ⁶⁰ *Underlying Law Act 2000* (PNG), s 7(1).
- ⁶¹ *Ibid.*, s 7(2). This is unless it is inconsistent with (a) written law or (b) contrary to the National Goals and Directive Principles, the Basic Social Obligations or the Basic Rights guaranteed by the Constitution.
- ⁶² *Ibid.*, s 7(3).
- ⁶³ *Constitution of Papua New Guinea*, sch 1.2.
- ⁶⁴ See for example *Cook Islands Act 1915* (New Zealand), s 2 (repealed), which provides that "'Native custom" means the ancient custom and usage of the Natives of the Cook Islands'.
- ⁶⁵ B. Knauft, *South Coast New Guinea Cultures: History, Dialectic, Comparison*, Cambridge University Press, Cambridge, 1993, p. 40.
- ⁶⁶ *Ibid.*
- ⁶⁷ K. Murphy, 'The cultural organisation of social difference and relatedness at the border between Australia and Papua New Guinea', PhD thesis, ANU, Canberra, 2013, pp. 29–41.
- ⁶⁸ *Ibid.*, chapter 2.
- ⁶⁹ *Underlying Law Act 2000* (PNG), s 16.
- ⁷⁰ *Constitution of Papua New Guinea*, sch 2.9.
- ⁷¹ *Public Prosecutor v. Mondo* [1978] PNGLR 224.

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- ⁷² Anonymous source, interview, Magistrates Court, Thursday Island, Queensland, 6 November 2017.
- ⁷³ Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd [ATSIL], ‘Services’, www.atsils.org.au/services.
- ⁷⁴ See for example Torres Strait Regional Authority, *Torres Strait and Northern Peninsula Regional Plan 2009–2029 Saibai Community Booklet* [Integrated Service Delivery Booklet], Australian Government, 2012, p. 36.
- ⁷⁵ *Ibid.*
- ⁷⁶ Anonymous source, interview, Magistrates Court, Thursday Island, Queensland, 6 November 2017.
- ⁷⁷ Torres Strait Regional Authority, 2012, p. 36.
- ⁷⁸ Other legal services outlined in the Torres Strait Regional Authority’s Community Booklets as being available include outreach mediation services provided by the Dispute Resolution Centre in Cairns. However, interviewees seemed unaware of this service. Pro-bono legal advice is also provided by LawHelp to corporations registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cwlth)* but is limited to assisting entities seeking to register or transfer their incorporation to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cwlth)* and not-for-profit Aboriginal and Torres Strait Islander corporations already registered under that Act. See for example Torres Strait Regional Authority, 2012, p. 35.
- ⁷⁹ *Constitution of Papua New Guinea*, s 177(2).
- ⁸⁰ Anonymous source, interview, Magistrates Court, Thursday Island, Queensland, 6 November 2017.
- ⁸¹ ‘Legal aid for land disputes as Public Solicitor expands services’, Australian High Commission, Papua New Guinea, png.embassy.gov.au/pmsb/937.html.
- ⁸² District Court Clerk, interview by research team member, Daru Island, 19 June 2018.
- ⁸³ *Ibid.*
- ⁸⁴ *Ibid.* The Court Clerk and Resident Magistrate are Commissioners for Oaths, which allows them to witness oaths and affirmations as to the truth of the contents of affidavits.
- ⁸⁵ Treaty, art. 29.
- ⁸⁶ *Ibid.*, art. 30.
- ⁸⁷ *Ibid.*, art. 18.
- ⁸⁸ *Ibid.*, art. 18.4.
- ⁸⁹ Treaty, art. 18.
- ⁹⁰ *Ibid.*, art. 19.
- ⁹¹ *Ibid.*, art. 19.6.
- ⁹² *Ibid.*, art. 19.2.
- ⁹³ *Ibid.*, art. 19.4.
- ⁹⁴ DFAT, ‘The Torres Strait Treaty’.

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- ⁹⁵ Treaty, art. 19.5.
- ⁹⁶ *Ibid.*, art. 19.7.
- ⁹⁷ Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) ('Vienna Convention on the Law of Treaties').
- ⁹⁸ Australia acceded to the Convention on 13 June 1974, and it came into force on 21 January 1980.
- ⁹⁹ See for example United States Department of State, 'Vienna Convention on the Law of Treaties', www.state.gov/s/l/treaty/faqs/70139.htm (viewed 27 November 2018).
- ¹⁰⁰ See for example E. Kwa, 'Treaty law making in Papua New Guinea: After two decades *yumi stap we?*', *Melanesian Law Journal*, vol. 25, no. 3, 1997, p. 43.
- ¹⁰¹ *Charter of the United Nations*, art. 33.
- ¹⁰² *Vienna Convention on the Law of Treaties*, art. 66.
- ¹⁰³ *Joint Declaration of Principles Guiding Relations Between Australia and Papua New Guinea* 1987, as amended by exchange of letters 1992, www.dfat.gov.au/geo/papua-new-guinea/Pages/joint-declaration-of-principles-guiding-relations-between-australia-and-papua-new-guinea.aspx.
- ¹⁰⁴ Queensland Civil and Administrative Appeals Tribunal, 'Former Tribunals' (27 March 2012), QCAT, www.qcat.qld.gov.au/about-qcat/former-tribunals.
- ¹⁰⁵ *Justices Act 1886 (Qld)*, s. 22B.
- ¹⁰⁶ The places for holding Magistrates Courts in the Thursday Island Magistrates Court District are Badu Island, Bamaga, Boigu Island, Erub Island, Mabuiag Island, Mer Island, Moa Island, Saibai Island, Thursday Island, Warraber Island, Yam Island and Masig Island: *Justices Regulation* 2014, Sch. 1.
- ¹⁰⁷ Queensland Courts, 'Court Calendar—Saibai Island Magistrates Court' (2016), State of Queensland (Queensland Courts), www.courts.qld.gov.au/__data/assets/pdf_file/0004/443119/mc-saibaiisland-2016.pdf.
- ¹⁰⁸ *Justices Act 1886 (Qld)*, s 22A; *Magistrates Courts Act 1921 (Qld)*, s 4.
- ¹⁰⁹ *Justices Act 1886 (Qld)*, s 222; *District Court Act 1967 (Qld)*, s 29.
- ¹¹⁰ *Magistrates Courts Act 1921 (Qld)*, ss 2, 4.
- ¹¹¹ M. Irwin, 'Official opening of the Saibai Island Magistrates Court, Saibai Island, 29 January 2008' (speech). These are all the villages with airstrips; Poruma, Ugar and Dauan do not have one.
- ¹¹² *Ibid.*
- ¹¹³ *Ibid.*
- ¹¹⁴ *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*, s 171(2).
- ¹¹⁵ Queensland Courts, 'Court Calendar—Thursday Island Magistrates Court', State of Queensland, 2016, www.bit.ly/2CQER3y.
- ¹¹⁶ District Court of Queensland, 'Annual Report 2015–2016', 27 October 2016, p. 18.

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- ¹¹⁷ *Community Services (Torres Strait) Act 1984 (Qld); Community Services (Torres Strait) Act 2007 (Qld)*, s 78.
- ¹¹⁸ *Community Services (Torres Strait) Act 2007 (Qld)*, s 79. See further Queensland Law Reform Commission, *The Role of Justices of the Peace in Queensland*, Issues Paper, WP No. 51 (1998).
- ¹¹⁹ Explanatory Notes, *Local Government and Other Legislation (Indigenous Regional Councils) Amendment Bill 2007 (Qld)*.
- ¹²⁰ *Aboriginal, Torres Strait Islander and Remote Communities (Justice Initiatives) Amendment Act 1997 (Qld); Criminal Code (Qld)*, s 552C(1).
- ¹²¹ The Justices of the Peace initiative was a component of the Queensland Government's response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody 1991.
- ¹²² C. Cunneen, F. Allison, H. Loban, G. Luke and K. Munro, *Evaluation of the Remote JP Magistrates Court Program: Final Report*, Cairns Institute, James Cook University/Department of Justice and Attorney-General, Brisbane, 2010.
- ¹²³ Queensland Courts, *Remote Justices of the Peace (Magistrates Courts) Program*, State of Queensland, 1 February 2017, www.courts.qld.gov.au/services/court-programs/remote-justices-of-the-peace-program. Local residents who meet the requirements to become a Justice of the Peace (JP) in Queensland are eligible to undertake training to obtain qualifications as a JP and hold the accreditation of a JP (Magistrates Court).
- ¹²⁴ The federal hierarchy includes the Federal Courts, Family Court and Federal Magistrates Courts. The High Court is the common apex of the state and federal courts.
- ¹²⁵ Federal Circuit Court of Australia, *Federal Circuit Court of Australia 2016–2017 Annual Report*, Federal Circuit Court of Australia, no. 18, 12 September 2017, p. 38.
- ¹²⁶ See for example *Poruma People v. State of Queensland* [2000] FCA 1066.
- ¹²⁷ *Constitution of Papua New Guinea*, s 160.
- ¹²⁸ *Ibid.*, s 163.
- ¹²⁹ *District Courts Act 1963 (PNG)*, cap 40.
- ¹³⁰ *Village Courts Act 1989 (PNG)*, replacing the *Village Courts Act*, Cap 44.
- ¹³¹ These include the Military Courts, Taxation Courts, Coronial Courts, Mining Warden Courts, Land Courts and Traffic Courts, established by legislation pursuant to *Constitution of Papua New Guinea*, s 172.
- ¹³² For example, the Leadership Tribunal, established under the *Organic Law on the Duties and Responsibilities of Leadership (PNG)*.
- ¹³³ See further Papua New Guinea, Department of Justice and Attorney General, *Western Province: District Court, Daru, Kiunga & Tabubil*, www.justice.gov.pg/index.php/western-province
- ¹³⁴ District Court Clerk, interview, Daru Island, 19 June 2018.
- ¹³⁵ *Magisterial Service Act 1975 (PNG)*, s 8(2).

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- ¹³⁶ *District Courts Act 1963* (PNG), s 21(1)(a).
- ¹³⁷ *Ibid.*, s 20(1A); *Criminal Code Act 1974* (PNG).
- ¹³⁸ *Land Disputes Settlement Act 1975* (PNG), s 46.
- ¹³⁹ See for example National Judicial Staff Service, Public Notice 2/18. Ironically, there was a resident magistrate in Mabudian during the colonial era: HM Administrator of the Government, *Annual Report, British New Guinea, 1890–91*, Appendix L, 18 March 1891, p. 42.
- ¹⁴⁰ Papua New Guinea, National Court and Supreme Court, *Annual Court Calendar*, National Court and Supreme Court, 2018, pngjudiciary.gov.pg/images/pdf/2018-COURT-CALENDAR-FINAL-DRAFT_14.01.18.pdf
- ¹⁴¹ *Village Courts Act 1989* (PNG), s 4.
- ¹⁴² R. James and J. Luluaki, *Introduction to the Legal System of Papua New Guinea*, Melanesia Law Publishers, Port Moresby, 2011, p. 62.
- ¹⁴³ District Court Clerk, interview, Daru Island, 19 June 2018.
- ¹⁴⁴ Anonymous interviewees, multiple interviews, South Fly villages, 7 November 2016 to 18 June 2018.
- ¹⁴⁵ District Court Clerk, interview, Daru Island, 19 June 2018. In seven of the villages surveyed, community representatives were asked whether the magistrate was being paid; five reported that they had been paid in the last six months: anonymous interviewees, multiple interviews, South Fly villages, 7 November 2016 to 18 June 2018.
- ¹⁴⁶ Anonymous interviewees, multiple interviews, South Fly villages, 7 November 2016 to 18 June 2018.
- ¹⁴⁷ *Village Courts Act 1989* (PNG), s 52.
- ¹⁴⁸ *Ibid.*, s 36. If some parties reside outside the area, jurisdiction may be conferred by consent: s 36(a)(iv).
- ¹⁴⁹ *Ibid.*, s 56.
- ¹⁵⁰ Anonymous interviewees, multiple interviews, South Fly villages, 7 November 2016 to 18 June 2018.
- ¹⁵¹ *Village Courts Act 1989* (PNG), s 7.
- ¹⁵² *Ibid.*, s 8. Declaration is by notice in the *National Gazette*.
- ¹⁵³ *Ibid.*, s 53.
- ¹⁵⁴ *Ibid.*, s 16.
- ¹⁵⁵ *Ibid.*, s 15(1).
- ¹⁵⁶ *Ibid.*, s 22.
- ¹⁵⁷ *Ibid.*, divs 3 and 4.
- ¹⁵⁸ Australian Law Reform Commission [ALRC], *Recognition of Aboriginal Customary Laws*, Report No. 31 (1986) [770].
- ¹⁵⁹ *Village Courts Act 1989* (PNG), ss 45, 46.
- ¹⁶⁰ *Ibid.*, s 43.
- ¹⁶¹ *Ibid.*, s 41.

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- ¹⁶² *Ibid.*, s 42(1).
- ¹⁶³ *Ibid.*, s 61.
- ¹⁶⁴ *Ibid.*, s 42(2).
- ¹⁶⁵ *Ibid.*, s 44.
- ¹⁶⁶ *Ibid.*, s 51.
- ¹⁶⁷ *Ibid.*, s 26(1).
- ¹⁶⁸ *Ibid.*, s 34.
- ¹⁶⁹ Anonymous interviewees, multiple interviews, South Fly villages, 31 May, 2, 4–7, 9, 14–15 and 17–18 June 2018.
- ¹⁷⁰ It is understood that this initiative is part of DFAT’s JSS4D program: Cardo. ‘Justice Services and Stability for Development (JSS4D) Program’, www.cardno.com/projects/justice-services-and-stability-for-development-jss4d-program.
- ¹⁷¹ F. Synder, *Soft Law and Institutional Practice in the European Community: Institutions, Processes, Tools and Techniques*, EUI Working Papers (Law), No. 93/5, 1993.
- ¹⁷² Senate Inquiry, 2010, p. 23. ‘JAC’ is the Joint Advisory Council.
- ¹⁷³ *Treaty*, art. 1.
- ¹⁷⁴ Compare *Aboriginal and Torres Strait Islander Act 2005* (Cwlth), s 4 with *Aboriginal and Torres Strait Islander Elected Body Act 2008* (ACT), s 4.
- ¹⁷⁵ J. Gardiner-Garden, ‘Defining Aboriginality in Australia’, Current Issues Brief, no. 10, 2002–03, Parliament of Australia, Social Policy Group, 3 February 2003, [www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/cib0203/03Cib10#targetText=149%20\(2\)%20C%20in%20which,members%20of%20the%20indigenous%20community](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/cib0203/03Cib10#targetText=149%20(2)%20C%20in%20which,members%20of%20the%20indigenous%20community).
- ¹⁷⁶ B. Arthur, *Tradition and Legislation: Analysis of Torres Strait Treaty and Fisheries Act Terms*, Centre for Aboriginal Economic Policy Research, ANU, Canberra, 2004, p. 4.
- ¹⁷⁷ See further J. Corrin, ‘A question of identity’, unpublished conference paper, August 2018.
- ¹⁷⁸ ‘An agreed note of discussion of 21 May 1984, Section B’, referred to in D. Lawrence, *Memoirs of the Queensland Museum*, Queensland Museum, 1994, p. 374.
- ¹⁷⁹ Exchange of notes: Australia to PNG, 28 June 2000, and reply, 25 July 2000.
- ¹⁸⁰ *Ibid.*
- ¹⁸¹ Senate Inquiry, 2010, p. 280 [18:15].
- ¹⁸² *Ibid.*, pp. 282–3 [18.25].
- ¹⁸³ [2010] 270 ALR 564 [344].
- ¹⁸⁴ *Akiba v. State of Queensland* (No. 2) [2010] FCA 643 [955].
- ¹⁸⁵ Joint Statement by the Minister for Foreign Affairs, Senator Gareth Evans, and the Attorney-General, Michael Lavarch, ‘International treaties and the High Court decision in Teoh’, 10 May 1995, cited at Parliament of Australia, ‘Treaties and domestic law’, *Trick or Treaty? Commonwealth Power to Make and Implement*

Treaties,

aph.gov.au/parliamentary_business/committees/senate/legal_and_constitutional_affairs/completed_inquiries/pre1996/treaty/report/c06.

- ¹⁸⁶ *Fisheries (Torres Strait Protected Zone) Act 1984* (PNG), s 2.
- ¹⁸⁷ *Torres Strait Fisheries Act 1984* (Cwlth), s 3.
- ¹⁸⁸ See for example *Migration Act* (Cwlth), s 5.
- ¹⁸⁹ *Kekedo v. Burns Philp (PNG) Ltd* [1988–89], PNGLR 122.
- ¹⁹⁰ *Constitution of Papua New Guinea*, s 155.
- ¹⁹¹ *Ibid.*, s 60.
- ¹⁹² (1998) 194 CLR 355.
- ¹⁹³ *Broadcasting Services Act 1992* (Cwlth), s 60.
- ¹⁹⁴ *Constitution of Papua New Guinea*, sch 2.12(2).
- ¹⁹⁵ *Ombudsman Act 1976* (Cwlth); *Ombudsman Regulations 2017* (Cwlth); *Ombudsman Act 2001* (Qld).
- ¹⁹⁶ Commonwealth Ombudsman, ‘Immigration’, www.ombudsman.gov.au/How-we-can-help/immigration-ombudsman
- ¹⁹⁷ *Ombudsman Act 1976* (Cwlth), s 15.
- ¹⁹⁸ *Constitution of Papua New Guinea*, s 217.
- ¹⁹⁹ *Ibid.*, s 219(1). The most frequent cause for complain is breach of the leadership code: V. Narakobi, ‘Excess of Jurisdiction as the Basis of Judicial Review of the Ombudsman Commission’s Decision’, unpublished paper presented at the third annual national conference on the development of the underlying law, Port Moresby, 27 November 2017.
- ²⁰⁰ *Organic Law on the Ombudsman Commission* (PNG), s 23(1).
- ²⁰¹ *Ibid.*, s 22(4).
- ²⁰² *Ibid.*, s 22(2).
- ²⁰³ *Constitution of Papua New Guinea*, ss 219(1), (4).
- ²⁰⁴ Treaty, art. 1(k).
- ²⁰⁵ Treaty, art. 1(k).
- ²⁰⁶ *Akiba v. Commonwealth* (2013) 250 CLR 209.
- ²⁰⁷ *Ibid.*, [24], [75].
- ²⁰⁸ ALRC, *Connection to Country: Review of the Native Title Act 1993* (Cwlth), ALRC, no. 126, 2015, Recommendation 8–1.
- ²⁰⁹ Department of Immigration and Citizenship, ‘Statistical update for traditional movements within the Protected Zone (18 June 2010) to Senate Inquiry’, 2010.
- ²¹⁰ Anonymous interviewees, multiple interviews, Boigu, 5 and 20 October 2017, and Buzi, 7 November 2016.
- ²¹¹ Treaty, art. 1(k).
- ²¹² *Torres Strait Fisheries Act 1984* (Cwlth), s 3(2).
- ²¹³ See further B. Arthur, *Tradition and Legislation: Analysis of Torres Strait Treaty and Fisheries Act Terms*, Centre for Aboriginal Economic Policy Research, ANU, 2004, pp. 5–7.

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- ²¹⁴ *Constitution of Papua New Guinea*, sch 1.2.2 (1).
- ²¹⁵ E. Lilje, 'The museum researcher giving indigenous objects a voice of their own', *This Cambridge Life*, 7 June 2018, www.medium.com/this-cambridge-life/the-museum-researcher-giving-indigenous-objects-a-voice-of-their-own-e54feb8bbe45.
- ²¹⁶ Torres Strait Fisheries Management Instrument No. 16 (31 March 2017).
- ²¹⁷ See for example D. Denoon, 'The Hundred Fathers of the Torres Strait Treaty', R.G. Neale Lecture Series, Department of Foreign Affairs and Trade, 5 November 2009, www.naa.gov.au/collection/publications/papers-and-podcasts/international-relations-and-foreign-affairs/denoon-transcript.aspx.
- ²¹⁸ Senate Inquiry, 2010, p. 127.
- ²¹⁹ See further D. Polite, 'Traditional fishing rights: Analysis of state practice', *Australian Journal of Maritime and Ocean Affairs*, vol. 5, no. 3, 2013, pp. 120, 122.
- ²²⁰ *Treaty*, art. 16.3; Guidelines.
- ²²¹ Guidelines.
- ²²² *Migration Act 1958* (Cwlth), ss 189, 250.
- ²²³ *Ibid.*, ss 147, 148.
- ²²⁴ The visa is issued by the Minister or delegate under the *Migration Act 1958* (Cwlth), ss 157, 145(1)(a)(iii) and 38.
- ²²⁵ ATSil lawyer, interview, Magistrates Court, Thursday Island, Queensland, 6 November 2017.
- ²²⁶ *Pike v. Nairn and Co. Ltd* [1960] Ch 553; *Boyle v. Sacker* (188) 39 Ch D 249.
- ²²⁷ 'PNG fishers likely to face court over catch', *Cairns Post*, 29 May 2018.
- ²²⁸ *Treaty*, arts 28.6 and 28.6.
- ²²⁹ See for example 'PNG fishers likely to face court over catch', *Cairns Post*, 29 May 2018.
- ²³⁰ *Treaty*, art. 28.12.
- ²³¹ District Court clerk, interview, Daru Island, 19 June 2018.
- ²³² *Treaty*, art. 16.3(b).
- ²³³ *Ibid.*, art. 16.3(c).
- ²³⁴ *Ibid.*, art. 16.2.
- ²³⁵ Anonymous interviewees, multiple interviews, Thursday Island and Treaty villages, 15–27 October 2018.
- ²³⁶ See further Murphy, 2013, p. 233.
- ²³⁷ Guidelines. See also Department of Immigration and Citizenship, Submission No. 16 to Senate Inquiry, 2009, [6.13], Senate Inquiry, 2010, p. 127.
- ²³⁸ *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (Qld), Part 6.
- ²³⁹ *Saibai People v. Queensland* [1999] FCA 158 (12 February 1999), ss 4e and 4g, www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/1999/158.html.
- ²⁴⁰ S 16.

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- ²⁴¹ Additionally, the guidelines state that all islands have a maximum stay of three weeks, although the origin of this limit is unclear and its validity is open to question.
- ²⁴² Department of Immigration and Citizenship, Submission No. 16 to Senate Inquiry, 2009, [6.13].
- ²⁴³ See further *ibid.*, pp. 83–9.
- ²⁴⁴ *Ibid.*
- ²⁴⁵ Examples are Saibai and Iama islands: anonymous interviewees, multiple interviews, Darnley, Saibai and Iama Islands, 8 November 2017 and 16 October 2018.
- ²⁴⁶ *Migration Act 1958* (Cwlth), s 36(2); *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) art. 1A(2) (*'Refugees Convention'*).
- ²⁴⁷ *Migration Act 1958* (Cwlth) s 14, which provides that a 'non-citizen in the migration zone who is not a lawful non-citizen is an unlawful non-citizen'.
- ²⁴⁸ *Ibid.*, s 189.
- ²⁴⁹ *Ibid.*, s 198.
- ²⁵⁰ *Ibid.*, s 197C, which provides that: '(1) For the purposes of section 198, it is irrelevant whether Australia has non-refoulement obligations in respect of an unlawful non-citizen. (2) An officer's duty to remove as soon as reasonably practicable an unlawful non-citizen under section 198 arises irrespective of whether there has been an assessment, according to law, of Australia's non-refoulement obligations in respect of the non-citizen.'
- ²⁵¹ Papua New Guinea, Department of Justice and Attorney-General, *Western Province: District Court, Daru, Kiunga & Tabubil*, www.justice.gov.pg/index.php/western-province.
- ²⁵² Anonymous interviewees, multiple interviews, Treaty villages, 7 November 2016 to 18 June 2018.
- ²⁵³ M. Elu, 'Cooking, walking and talking cosmology: An Islander woman's perspective of religion', in Davis, 2004, p. 146.
- ²⁵⁴ The evidence is contradictory. PNG media reported that a ban was in place, and there is anecdotal evidence to support this. However, SBS was told by the Department of Immigration and Border Protections that no bans were in place: S. Armbruster, 'Assault charge after PNG–Torres Strait fight over State of Origin', SBS News, 29 July 2016, www.sbs.com.au/news/assault-charge-after-png-torres-strait-fight-over-state-of-origin.
- ²⁵⁵ *Ibid.*
- ²⁵⁶ Torres Strait Regional Authority, *Torres Strait and Northern Peninsula Regional Plan 2009–2029 Saibai Community Booklet* [Integrated Service Delivery Booklet], Australian Government, 2012, p. 35.
- ²⁵⁷ For a list of the primary functions, see *Torres Strait Island Communities (Justice, Land and Other Matters) Act 1984* (Qld) s 19.

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- ²⁵⁸ See for example Torres Strait Regional Authority, 2012, p. 35.
- ²⁵⁹ Department of Aboriginal and Torres Strait Islander Partnerships, *Saibai*, Queensland Government, 6 July 2017, www.datsip.qld.gov.au/publications-governance-resources/justice-resources/saibai#s-2-community-justice-group
- ²⁶⁰ Ibid.
- ²⁶¹ Ibid.
- ²⁶² Ibid.
- ²⁶³ Anonymous source, interview, Saibai Island, 8 November 2017.
- ²⁶⁴ Department of Aboriginal and Torres Strait Islander Partnerships, *Saibai*, Queensland Government, 6 July 2017, www.datsip.qld.gov.au/publications-governance-resources/justice-resources/saibai#s-2-community-justice-group.
- ²⁶⁵ See further J. Anderson, 'Productive power in the Papua New Guinea Church Partnership Programme', *Development in Practice*, vol. 25, no. 4, 2015, pp. 535, 536.
- ²⁶⁶ Ibid., p. 537.
- ²⁶⁷ Department of Justice and Attorney-General, *Western Province: District Court, Daru, Kiunga & Tabubil*, Papua New Guinea, www.justice.gov.pg/index.php/western-province
- ²⁶⁸ Out of a total of 23 interviewees. None of the seven were from Treaty villages.
- ²⁶⁹ Anonymous interviewees, multiple interviews, South Fly villages, 7–18 June 2018.
- ²⁷⁰ See for example L.R. O'Donnell, 'The Torres Strait: A case study analysis in multi-level governance', PhD thesis, Griffith University, Brisbane, 2006, p. 55.
- ²⁷¹ The Catholic Church, Western Province has a Marriage Tribunal: Papua New Guinea, Department of Justice and Attorney-General, *Western Province: District Court, Daru, Kiunga & Tabubil*, www.justice.gov.pg/index.php/western-province.
- ²⁷² See for example O'Donnell, 2006, p. 140.
- ²⁷³ Senate Inquiry, 2010, p. 23.
- ²⁷⁴ Explanatory Notes, *Local Government and Other Legislation (Indigenous Regional Councils) Amendment Bill 2007 (Qld)*.

The politics of distribution

Peter Chaudhry

'In Australia, they have everything there.'

Participant at a community meeting in Tureture village, October 2017

The helicopter rose above the dusty ground, scattering the remaining plastic chairs and sending the uninitiated who had remained too close, scampering for cover. Children squealed, elders muttered into the rags they clutched over their mouths and turned their backs, and the women responsible for overseeing the departing dignitaries' lunch rushed to cover the remaining plates with white linen tablecloths. As the helicopter disappeared over the trees and was lost in the midday sun, a silence settled over the centre of the village, which only minutes before had been alive with dancing, music and song.

It was October 2017. The occasion was the ground-breaking ceremony for a new 12-bed mini-hospital at Mabuduan, a village centre on the coast of Papua New Guinea's South Fly district. Mabuduan is only a few kilometres from the northern Torres Strait island of Saibai, which is Australian territory. The village is a Treaty village, enjoying special privileges under the agreement signed between Australia and Papua New Guinea (PNG) in 1978.¹ The new hospital was funded by the Australian Government, and the Australian High Commissioner had flown from Port Moresby that morning to preside over the ceremony. He was joined by the Minister of Borders and Immigration from the PNG Government and a host of other minor dignitaries.

The occasion had proceeded smoothly, with traditional dance performances at both the site of the new hospital just outside the village and in the village centre. The officials sat under a canvas shade while villagers performed in traditional costumes and small children took turns sitting in the red helicopter perched in the centre of the parched village square (figure 4.1). Speeches were made in which passing reference was made to the difficulties over negotiating compensation for the land between neighbouring villages, which had substantially delayed the project to date. The assembled villagers were exhorted by the dignitaries from Port Moresby to put aside their particular claims and grievances in the wider interests of 'development' in the region.

<Figure 4.1 near here>

The ceremony to celebrate the start of work for a new Australian-funded, 12-bed hospital in Mabuduan (Research team, 2017)

Also in attendance that day were a number of regional and local-level officials and politicians who had travelled to Mabuduan from the district centre of Daru Island that morning via the Australian-funded medical boat, the *Medics Queen*. This included the Member of Parliament for the South Fly, the Deputy Regional Governor for Western Province and the District Administrator. In the stilled aftermath of the helicopter's departure, these dignitaries quickly assembled and began to make their way back to the beach to reboard the *Medics Queen* for the slow journey back to Daru. Local villagers, however, had other ideas. For them, the departure of the helicopter marked the end of the official ceremony, a ritual of state they observed but could not influence. But with the local officials in attendance they seized the opportunity to air their grievances and hold their local representatives and officials to account. The dignitaries protested half-heartedly that the journey back to Daru was long and that they had to set off, but local people were not to be denied and hastily pulled up chairs for them in the shade under the large covered roof of the water-harvesting shed. They formed a horseshoe arrangement in front of the dignitaries, with elders of the village to the fore, ready to take their turns to speak.

The local dignitaries spoke first. The South Fly MP's speech stressed the wider benefits of the portfolio of projects he was championing: that 'development is a way forward' and that 'we reach out to communities to develop them'. The District Administrator stressed how the new hospital was intended for all of the residents of the South Fly and not just the Treaty villages: 'It's not just for you, it's for everyone,' he chided. He urged the people assembled there to get behind the project: 'Don't frustrate development.' The Deputy Governor for the province stressed how the provincial government had earmarked Mabuduan as a growth centre and that consequently lots of new services would be coming soon, including a high school and police post. But 'real true development takes time, it goes stages by stages'.

When it was their turn to speak, the response from the assembled villagers was extraordinary. Time and again local people stood up to eloquently castigate the assembled officials on the lack of infrastructure and services available in the South Fly; on the lack of opportunities for education, training and income-earning; on corruption and the widely held perception that money earmarked for the South Fly never made it through the multiple layers of regional and local administration. These are common themes echoed in all villages in the South Fly. As one village elder succinctly stated:

Our reputation as a province is down here [pointing to the ground]. People in the rural areas have suffered enough. We need village electrification, we need water and sanitation, we need IT services and social media. The public service machinery is not functional. Money doesn't flow out by itself.

In addition to the general discourse of discontent in the South Fly, the Treaty villagers aired additional grievances. Under the Torres Strait Island Treaty, villagers

from 13 villages along the South Fly coast have the right to travel to the Torres Strait Islands for 'traditional purposes' and receive support from an Australian government-funded rangers program. These privileges are a powerful material and symbolic tie to Australia for Treaty villagers and an important marker that validates their perception that they are special and different from other mainland Papuans, and that they enjoy a particular privileged status in relation to the former colonial power.

Villagers also expressed a powerful and vivid desire for an alternative development future, where young people had the opportunity to study, to fish freely in the fertile waters of the Straits, where local people could benefit from a 'free trade zone' with Australia, and where infrastructure investment could be made in new highways to the west, 'to open up markets to Asia'. They called for an airstrip to be built so they could transport their precious marine commodities quickly and efficiently: 'crayfish and barramundi fillets to Australia'. They called for support for women's small enterprises and for vocational training opportunities for their young people.

That long day in Mabudian brought together in one place the principal actors and prevailing narratives that shape politics in the South Fly today. National government representatives championing the long-standing, slow-moving projects of nation-building and national development; Australian government representatives embodying the enduring vestiges of colonial association and a tantalising external pathway to a better material future; local politicians expressing their frustration with what they perceive to be local people's narrow self-interest while lauding their own attempts to deliver services and infrastructure; and local people themselves, vocal and forthright in expressing their intense disaffection with their lot, lamenting perceived corruption and the post-colonial compact that they feel has served them poorly.

The border between Australia and the South Fly region of PNG creates a state effect that results in inequality, disaffection and a potent and intense form of distributional politics. Over time there has been a shift from a 'soft' to a much harder border, which reflects a change from mutual dependence at the end of the colonial era, to a time now where people of the South Fly can be described in Tania Murray Li's terms as a population 'surplus' to the needs of capital.² Today, the stark inequalities across the short spatial divide of the border exacerbate and fuel distributional politics in the South Fly. The border effects are made manifest in the local through a host of petty rules and regulations, locally enforced and often locally derived, that govern interactions between Papuan mainlanders and Torres Strait Islanders. Treaty villagers are now engaged in forms of distributional politics that embody a search for 'legibility': a legibility to the Australian state that would render them connected and thus able to establish forms of 'dependence' similar to those of Torres Strait Islanders. This dependence, I argue in this chapter, is not a choice but a biopolitical imperative. In conclusion I consider prospects for 'development' as mainland Papuans seek what Ferguson has theorised as a 'rightful share'.³

The Torres Strait border in historical perspective

*'Why is the border so close to PNG and so far from Australia'?*⁴

PNG secured independence from Australia in 1975. The demarcation of the boundary between the new state of PNG and Australia through the Torres Straits was intensively negotiated and it was not until December 1978 that a treaty was signed. The Treaty entered into force in February 1985 and defines the maritime boundaries of the two states through two lines, a Seabed Jurisdiction Line and a Fisheries Jurisdiction Line. Fifteen Australian islands lie north of the Seabed Jurisdiction Line, with their own territorial seas stretching three miles around. This has significant repercussions for South Fly villages closest to the islands of Saibai and Boigu, which lie just off the South Fly coast (figure 1.1).

The Treaty establishes joint liaison mechanisms through which the treaty is implemented and monitored, including Treaty Liaison Officers on both sides of the border, Traditional Inhabitants Meetings and a Joint Advisory Council. The Torres Strait Treaty also establishes a Torres Strait Protected Zone (TSPZ). This zone was established to enable Torres Strait Islanders and people from the adjacent coastal area in Papua New Guinea to carry out their 'traditional' way of life. Under the Treaty they can move freely (without passports or visas) in and near the Protected Zone, which encompasses the outer islands of Torres Strait, including Boigu and Saibai. The interpretation of what constitutes traditional activities is the source of much debate in the region and drives everyday political contestation, as we shall see.

Borders are not natural or self-evident 'facts'. Rather, they are artificial constructs, dividing lines imposed in often arbitrary ways that segment populations, social systems and landscapes. As such, borders are effects of power and the state systems that impose them. Borders have their own histories, and border effects may well wax and wane over time in response to changes in governmental intent and associated regulatory regimes (chapter 1: Introduction). These effects are particularly notable either side of the Torres Strait border. This is partly because the border was imposed relatively recently and has seen quite profound changes in the short time it has been in operation, largely in relation to developments on the Australian side. Villagers in the Treaty and non-Treaty villages along the mainland coast (mainland Papuans) are intensely aware of the role the border plays in shaping their lives and livelihood opportunities. They are keenly aware of the promises they feel were made at the time of independence and which they believe were subsequently never fulfilled. For villagers in the east of the South Fly, their discontent is exacerbated by the environmental impacts of the Ok Tedi mine in the headlands of the Fly River, which has significantly affected river flows, resulting in sedimentation and contamination that has fundamentally changed the ecosystem of the fisheries upon which their livelihoods depend (chapter 7).

The populations living on both sides of today's border were closely bound together in the colonial economy and have had a long and intimate association over centuries. These ties and connections did not simply stop at independence. Papuans

were employed as divers on the pearl luggers that plied the Torres Straits, and were known for their diving prowess. They were later employed on fishing boats as crayfish divers and worked closely with Torres Strait Islanders. This employment continued in the immediate post-colonial period after the border had been drawn, in the period before the Treaty came into force and the border became more formalised from 1985. Older residents of the South Fly villages reminisce fondly of those times both for the income they earned and for the camaraderie they enjoyed working closely with Torres Strait neighbours, although they also reported that some of the Torres Strait Islanders who skippered the boats looked down on them even then.⁵ One older interviewee on Boigu who had worked closely with Papuan mainlanders on the pearl luggers acknowledged that the success of the pearling industry in the straits was built on the hard work and skills of these Papuan mainlanders: 'They were pearl divers, not deck hands, they had skills and were well respected. They alternated the families that were recruited, so everyone from there got a chance.' He remembered fondly a time of much greater interaction and acknowledged candidly: 'The border has changed all that. If we don't have Centrelink, we'd still be sharing garden food.'

Older residents of the Treaty villages recall this period too as a time when Torres Strait Island standards of living were very similar to their own: a time of much greater mutual dependence and less formally governed exchanges. During a discussion in Mabuduan, older village members recounted how in the past Torres Strait Islanders would come across to the mainland regularly to tend gardens for food and they themselves could travel across to Torres Strait Islands freely to sell yams and sago. They also talked about how, in the past, Torres Strait Islanders would come across to get water when they had shortages. The situation is reversed now, and they are instead forced to beg for water: 'When we have no water we take our water containers across to Saibai and tell them we have a water shortage.' The free bartering of goods that took place in the past was confirmed in discussions with residents of Saibai, who recounted how they would exchange clothes with Papuan mainlanders for sweet potatoes, yam, sago and fruits like mango and coconut. They also described travelling to the mainland to barter in Mabuduan and further into the interior.

This earlier era of mutual dependence and interaction changed dramatically from the mid-1980s as the treaty came into force. In Sigabaduru, a large village lying directly across the water from Saibai, one interviewee observed:

We're living today in the same condition as our grandparents, nothing has changed. They [Torres Strait Islanders] used to live like us but when my sixth child came [1984] over there the changes came.

Government investment in Saibai and Boigu from the 1990s meant that Torres Strait Islanders were no longer reliant upon the mainland for growing food, acquiring building materials and canoes, and for water during times of scarcity. The Australian

state invested in clean water processing facilities, housing, education and social welfare to guarantee payments to sustain the population in a quite different way from the past.

While state investment in the Torres Strait Islands has accelerated, the Papuan side of the border has seen only stagnation. Investment by the PNG Government has been minimal, and the South Fly region remains one of the poorest in the country. This is keenly felt among a population that previously enjoyed considerable support from Australia, as colonial power, in the lead-up to independence.⁶ Tania Murray Li has vividly described the situation of populations at the margins of capitalist development as being ‘relative surplus populations’.⁷ Li argues that these populations have nothing of value to global capital—their labour is not required for production, and their meagre income means they are not important consumers of capitalist output.⁸ In the South Fly ‘surplus population’ status can be understood as a direct effect of the international border. South Fly labour had been important to colonial capitalism as a ready, cheap pool of labour within a wider colonial economic sphere, but this is no longer the case. Papuan labour today is not critical to the Torres Strait Islands economy, and Papuan mainlanders have no stake in the wider regional economy of northern Australia.

Inequality in the borderlands today

‘Island people have no resources but live lives of luxury; we have resources but live in poverty.’⁹

The border regime governing interactions across the Torres Straits has become more formalised over time, which has restricted mobility and opportunities for interaction between the two neighbouring populaces. Where once the relationship was marked by mutual interaction and interdependence, opportunities to travel and interact across the border are increasingly regulated, restricted and bureaucratised. This shift from a soft to a hard border has occurred over just three decades. While residents of the two nearest islands to the mainland, Saibai and Boigu, have been drawn closer into the Australian state nexus, Papuan mainlanders have been pushed further away. This estrangement and severing of ties has been keenly felt.

Inequalities between the Torres Strait Islands and the South Fly

Material differences across the short space of the Torres Strait are stark. They are exacerbated by the close proximity of the Papuan mainland to the Torres Strait Islands: it is only five kilometres between Saibai and the Papuan village of Sigabaduru. The Telstra mobile phone tower on Saibai is clearly visible from Sigabaduru and, for someone standing on the beach at night, the lights of the island glitter across the water while the coast of the Papuan mainland is shrouded in darkness.

Indeed, there are few places in the world where such stark inequality exists between two places that are so close. On the one hand Torres Strait Islanders enjoy

material conditions and levels of public service provision comparable to mainland Australia. Housing is publicly provided, there are fully equipped and expertly staffed health clinics, a clean water supply (including desalination plants), sanitation facilities and the Australian system of social security payments, which encompasses all households in Torres Strait Islands. Just across the border, villages in the South Fly have seen very limited investment by the PNG Government since independence. They face government corruption, crippling water shortages, a lack of basic infrastructure and services, and limited employment and livelihood opportunities.

Disparities are readily apparent to Treaty villagers because of their frequent trips across to Saibai and Boigu, where they can see livelihoods and community facilities quite different from their own. As one interviewee in the eastern village of Sui observed: 'I'm still living in a biri [leaf] house while the Torres Strait people live in luxury houses.' (See figure 4.2.) Inequalities are most apparent perhaps in terms of the infrastructure divide between Torres Strait Islands and the South Fly. Table 4.1 illustrates what is available on Saibai, in comparison to Sigabaduru, the closest South Fly village to Torres Strait Islands. Sigabaduru has a significantly larger population but a stark deficit in terms of social and physical infrastructure.

<Figure 4.2 near here>

A house in a village in the South Fly region of PNG (left) and a house on the island of Saibai in the Torres Strait Islands (Research team, 2017)

<table 4.1 near here>

Table 4.1: Comparison of infrastructure provision in Saibai and Sigabaduru

Infrastructure on Saibai (Torres Strait Islands)	Infrastructure on Sigabaduru (PNG)
Council office Council staff houses and guest houses Dongas for contractor accommodation Fuel bowser Water storage lagoons Water filtration centre Sewerage treatment works Cemetery Airstrip Helipad Seawall Health clinic Nurses' houses IBIS store School Teachers' houses Powerhouse generator and fuel tanks Border force and biosecurity office on waterfront Rangers workshop Waste dump Telecom tower Wharf and ramp Channel beacons	Communal water collection tanks (50 per cent broken) Health clinic is derelict Community meeting house School

Source: inventory made by research team, September–October 2017

Throughout the South Fly, poor housing, chronic water shortages and limited livelihood opportunities are the norm. South Fly communities are also increasingly susceptible to climate change and to the devastation caused by the Ok Tedi mine, which has deposited contaminated mine sediment along the Fly River and in the Gulf of Papua, affecting the marine environment upon which many South Fly residents depend. The Torres Strait Treaty also restricts the access of South Fly villagers to the wider marine fisheries of the Torres Strait, shutting off a significant livelihood and food resource (chapter 8). An elder from the village of Buzi observed: 'We have lost sea rights and have been badly affected by the treaty. The sea is where our people make money.' He went on to argue that the border is 'really unfair and inhuman' in denying them full rights to fish in the sea: 'We share the border, there's the line, but we're not sharing the resource.' 'The sea is our supermarket,' remarked another interviewee. The extent of material deprivation and limited livelihood opportunities in the South Fly is apparent in the data collected from household and community surveys conducted in both Treaty and non-Treaty villages during three field visits to the South Fly in 2016, 2017 and 2018.¹⁰

Services and livelihoods in the South Fly

In response to the question 'How would you describe the condition of your house?' (figure 4.3) the most frequent response (103 of 270) was 'poor'. A further 17 respondents answered 'very poor'. With no electricity network in the South Fly villages, households are dependent upon a generator or solar power, but very few of the survey respondents reported having a functioning generator (48 out of 265) and less than half had solar power. Solar power for most households in the South Fly means a small solar cell able to charge a mobile phone but nothing else.

<Figure 4.3 near here>

South Fly villagers describe the condition of their houses (Research data)

South Fly villages have rudimentary school buildings that often lack basic furniture and learning materials. Nevertheless, survey respondents reported a high level of school attendance by their children, reflecting the importance South Fly residents place on education. The primary reasons given for children not attending school were teacher absenteeism and children being engaged in livelihood activities (see table 4.2). Other difficulties included no money for school supplies and having no food to eat in the house. One interviewee in the village of Sigabaduru explained:

I don't send them to school if I've got nothing, if the kitchen is empty. They get weak. If they don't eat, they don't go because they can't do much work.

For children seeking to go to school beyond the elementary level, transport difficulties were a significant barrier, because many villages only have an elementary school.

<table 4.2 near here>

Table 4.2: Responses to the multiple choice question 'If your children do not attend school often, why not?'

Reasons for not attending school	No. of responses	Percentage of responses	Percentage of cases
Poor facilities/equipment	7	6	8
Teacher absenteeism	27	22	31
School not relevant/appropriate	13	11	15
Sickness and/or disability	9	7	10
Children engaged in livelihood activities	22	18	25
Transport difficulties/cost	12	10	14
Other	33	27	38
Total	123	100	

Note: Other reasons for not attending school included no interest, school charges/costs too high, different church, no food to eat/no water to wash/clothes too dirty, and school maintenance underway.

<figure 4.4 near here>

South Fly villagers indicate where they first go when they or a family member are sick. In some cases, researchers recorded additional responses to this survey question to reflect the experiences of the respondents (Research data)

As with education, the level of health care available in the South Fly is basic. In response to the question 'where do you usually go first when you or a member of your family are sick?', 63 per cent of respondents (159 of 251) reported that they visited a village aid post (figure 4.4). More than 80 per cent of respondents (203 of 247) affirmed that they face problems in attending the nearest aid post or other medical facility (see table 4.3), with the biggest problems listed being a lack of medicine, no staff, the cost of transport and the nearest functioning facility being too far away (see table 4.4). Many of the village aid posts are semi-derelict, and staff often spend months in the district capital Daru for various reasons, including awaiting their pay. Only 57 respondents reported visiting Daru General Hospital, which is a long boat trip away for most villagers (figure 4.4). Many cannot afford the cost of fuel or the fare to get there. Only a very few respondents (7 of 251) reported visiting an Australian facility in Torres Strait Islands when they first become sick.

<table 4.3 near here>

Table 4.3: Responses to the question 'Do you face problems when attending the nearest health facility?'

	No. of responses
No	44
Yes	203
Total	247

<table 4.4 near here>

Table 4.4: Responses to the multiple choice question 'What are the problems encountered at the nearest health facility?'

Problems encountered	No. of responses
No medicine	88
No staff	63
Cost of transport	59
Other	55
Too far away	41
Cost of treatment	24
Not open	12
Unwelcoming	8
Better service elsewhere	3
Not allowed	1
Total	354

Note: The options provided for this multiple-choice interview question changed to reflect responses from prior years. Reasons given for 'Other' include community health worker not being paid, in-fighting between communities blocking access to community health workers, lack of knowledge/appropriate supplies at the health facility, no radio, no accommodation and no lighting.

The health problems and diseases most commonly identified by survey respondents included cancer, diabetes, diarrhoea and malaria; cases of leprosy, cholera and HIV/AIDS are also reported (see table 4.5). The South Fly has been identified as a region of significant concern in relation to multi-drug resistant tuberculosis (MDR-TB); many international health agencies are working through Daru hospital to address MDR-TB. Many of these agencies are attempting to establish the scale of the problem in the South Fly villages, particularly those villages closer to Daru where there is a high level of mobility of villagers back and forth to Daru.¹¹ Responses to the community survey reported in figure 4.5 (question: Are there any people with tuberculosis in the village?) appear to show a higher reported incidence of TB in non-Treaty villages compared with Treaty villages, although there are problems with people self-reporting the incidence of TB, particularly where it is unlikely to have been properly diagnosed.¹²

<figure 4.5 near here>

4.5 South Fly community survey respondents indicate whether there are people with tuberculosis in the village (Research data)

<table 4.5 near here>

Table 4.5: Responses to the multiple-choice question 'What are the main health problems in the village?'

	No. of responses	Percentage of responses	Percentage of cases
Malaria	18	20	100
Cholera	7	8	39
Diarrhoea	17	19	94
Leprosy	5	6	28
HIV/AIDS	0	0	0
Diabetes	3	3	17
Cancer	7	8	39
TB	17	19	94
Other	16	18	89
Total	90	100	

Note: Community surveys recorded the responses to this question from 18 villages. The responses listed for 'Other' included asthma, pain, injury, dental problems, eye problems and disability.

South Fly villagers have severely restricted livelihood opportunities, particularly for formal, long-term employment. In response to the question 'Have you ever had a paid job?', half of respondents confirmed that they had (see table 4.6). However, the vast majority of these jobs were casual and short term in nature. For Treaty villagers, this often meant working casually in Saibai or Boigu, doing kitchen or garden work for Torres Strait Islanders. This kind of employment would generally be intermittent or for a few days only. The few people who reported more long-term employment invariably had spent time working in Port Moresby or were older respondents who had worked on the fishing or pearling boats during the colonial and immediate post-colonial era. Only 57 of 928 responses to the question 'What are your primary sources of income?' listed paid employment as a primary income source (see figure 4.6). All other income sources came from the private sale of fish, mussels and crabs, garden produce, game meat or handicrafts, and remittances.

<table 4.6 near here>

Table 4.6: Responses to the question 'Have you ever had a paid job?'

Have you ever had a paid job?	No. of responses
No	128
Yes	127
Total	255

<figure 4.6 near here>

South Fly villagers indicate their primary sources of income. The data collection for this survey question varied over the three field trips. In 2016 and 2017, respondents were allowed to record multiple responses with no limit, whereas in 2018 respondents were limited to three. Although the question asked for only a primary source of income, the vast number of responses per respondent reflects the necessity of the many and varied income streams South Fly villagers must maintain. 'Church' and 'Cross-border trade' were options in the multiple-choice question only in 2016. (Research data)

Treaty and non-Treaty village differences

Inequality between Torres Strait Islanders and mainland residents is not the only inequality fault line in the borderlands. The Torres Strait Treaty, as interpreted in the 'Guidelines for Traditional Visitors', gives residents of the 13 Treaty villages in the South Fly the right to travel freely to Torres Strait Islands, a privilege not open to non-Treaty villagers. Treaty villages comprise less than 10 per cent of the district's total population, and the advantages they enjoy generates political friction and discontent among non-Treaty village inhabitants.¹³ Treaty villagers have the right to cross to the Torres Strait Islands to trade and barter, to make family visits and to engage in traditional activities. They also receive financial investment from the Australian state, notably through the Treaty Village Resilience Programme run by the Reef and Rainforest Research Centre (RRRC), which provides employment opportunities for Treaty villagers as rangers and makes limited investment in Treaty villages for basic infrastructure. Treaty villagers have also used funds to buy boats and most recently to purchase refrigerators in an attempt to kick-start seafood businesses in their villages. Treaty village representatives participate in cross-border governmental forums with their Torres Strait Islands and Australian government counterparts and are recognised by the Australian authorities as having a set of rights and privileges beyond those of other South Fly villages.

<figure 4.7 near here>

South Fly villagers indicate the main reason they travel to Torres Strait Islands. The most common reason for non-Treaty villagers to visit Torres Strait Islands is for access to health care, whereas the most common reason for Treaty villagers to visit Torres Strait Islands is for trade. (Research data)

In response to the question 'Do you travel to Torres Strait Islands?', just under 90 per cent of Treaty village respondents confirmed that they do (see table 4.7). Surprisingly, however, just under half of non-Treaty villagers in the survey also reported that they travel to Torres Strait Islands. This is overwhelmingly for medical treatment at the clinics in Saibai and Boigu, as figure 4.7 shows. Under Queensland Health protocols, emergency cases from the South Fly should be accepted in Torres Strait Islands irrespective of the Treaty village status of patients (although this process is fraught with difficulties, as we shall discuss in the next section). For Treaty villagers, visiting the health clinic for emergencies is important, but they go for a range of other reasons too: for trade, to shop at the store, to visit family, to participate in customary celebrations and to work. Differences between Treaty and

non-Treaty villages in terms of their primary sources of income can be seen in figure 4.6. Twice as many Treaty villagers listed cross-border trade as their primary source of income, while non-Treaty villagers were more likely to engage in selling meat, garden produce or fish, mussels and crabs. There was little difference between Treaty and non-Treaty villagers in engaging in private business or paid employment, although private business in the survey excluded cross-border trade.

<table 4.7 near here>

Table 4.7: Responses to the question 'Do you cross into Torres Strait Islands?'

	Non-Treaty	Treaty	Total
No	73	12	85
Yes	69	100	169
Total	142	112	254

Treaty villagers (primarily Australian citizen Papuans) are more likely to have and maintain relations with relatives on the islands and reap benefits from these connections too. As one interviewee in Mabuduan noted:

Haves are the people who got a generator from their relatives in Torres Strait Islands, so haves are people who have relatives and connections over there.

Hierarchies of privilege and opportunity in the borderlands

What operates in the borderlands in practice, then, is a four-tier system of privilege, with Torres Strait Islander residents at the top, followed by Australian citizen Papuans in Torres Strait Islands next, then Treaty villagers, and non-Treaty villagers at the bottom. Torres Strait Islanders and Treaty villagers guard their privileges carefully, even while complaining that they are excluded from opportunities that others enjoy. The new hospital at Mabuduan is a clear example, with Treaty villagers complaining about how poorly they compare to Torres Strait Islanders, but also stating their view that the new hospital should be for their exclusive use and not for non-Treaty villagers.¹⁴ Treaty villagers in Parama further to the east stated similar views about the Daru hospital, arguing: 'Those of us from the Treaty villages should get free treatment as the money for the hospital is our money.'

The staggered and hierarchical nature of privilege and opportunity in the borderlands is clearly visible too in trading relations for traditional handicrafts across the Torres Straits. Crafts that make their way to Thursday Island (the regional centre) or Cairns for sale are often products that have been made by non-Treaty, inland villagers of the South Fly. There is an active market for the sale of handicrafts in the bigger Treaty villages, like Sigabaduru and Mabuduan; non-Treaty villagers being unable to go across to the Torres Strait Islands and therefore required to sell to those Treaty villagers who can. Treaty villagers in turn sell handicrafts to Torres Strait Islanders on Saibai and Boigu, who in turn have access to mainland Australia or to middle-men traders who come to buy handicrafts in bulk. Each stage of the market chain involves considerable mark-up, and the ability to 'trade up' is purely dependent upon citizenship status and the right to traverse borders in order to access wider market opportunities. These particular configurations of access and privilege determine livelihood opportunities in the borderlands and shape well-being outcomes and opportunities. They are a direct result, or effect, of the border and the particular provisions of the Torres Strait Island Treaty. These dynamics of inclusion and exclusion inevitably breed disaffection and discontent among the respective groups and fuel borderland political conflict.

Practices of exclusion in the everyday construction of the border

'They're building a wall around the islands.'¹⁵

The differences across the Torres Straits, between Papuan villages of the South Fly and the islands of Dauan, Saibai and Boigu, result from the overarching regulatory regime and border control policies of Australian state agencies. These reflect an intent on the part of the Australian state to ensure that the border is secure. However, the translation of policies and regulatory intent takes place through the actions of local officials and powerholders in Torres Strait Islands: the elected council representatives and delegated officeholders on the islands, and the local employees of the state border force and immigration agencies. Border effects are made manifest in the local, through the interpretation and action of local island people in their day-to-day engagement with Papuan mainlanders. A host of petty rules and regulations bureaucratise social interactions and opportunities for travel across the strait and envelop residents on both sides of the border in systems and narratives of regulation and control. These ultimately shape the social lives of all borderland residents.

For the Australian state and politicians, securitisation of the border is a pre-eminent concern.¹⁶ The initial spur for investment in the Torres Strait Islands coincided with the rise of the movement for Indigenous rights in Australia in the 1980s, consolidated and accelerated in the 1990s, then took a turn towards a greater focus on security from the 2000s, as Western states reacted to both the real and perceived threat of international terrorism and related fears of the consequences of transnational migration and open borders. Papua New Guinea's perceived weak governance regime and consequent inability to secure a long and porous border against transnational migrant flows meant that the Torres Strait Islands were seen as a frontline defence against the threat of undesirable migration. Torres Strait Islanders and Papuan mainlanders concur that the border regime has hardened considerably over time: population movement for mainland visitors has become tightly regulated and controlled, and this is an ongoing process.

At the ground-breaking ceremony for the new Mabudian hospital, the PNG Minister for Immigration and Border Control on several occasions described the Treaty villages as the 'last defensive line' for Australia. During fieldwork conversations and public gatherings, Treaty villagers would use this narrative too, often describing themselves as fulfilling an important security role in policing the border and making it safe for Australia against the unknown. Villagers in Sui, a Treaty village, wryly noted that Torres Strait Islander leaders have been successful in leveraging support from the Australian Government with threats that they will let people in, emphasising that they act as the security buffer for the Australian mainland. But villagers in Sui were quick to utilise this narrative too, emphasising that the South Fly is also a buffer. One village leader in Bula, in the west of the country, stated theatrically: 'PNG is the gateway for terrorism into Australia.' Others at the meeting went on to say, 'We're monitoring the border for Australia. We pick up when strangers come through.'¹⁷

Treaty villagers are severely affected by the tightening border regime on the islands. They are subject to increasing restrictions and controls on movement, and what they can and cannot do when they visit the islands. This is a source of intense

frustration, with one Sigabaduru interviewee observing: 'We're sharing the border. I understand their security needs, but I need money to survive. If we have the things they have, over there, then security will be OK', while another villager remarked, 'We're not sharing the border; they're just enforcing the border. That's not sharing.' For Papuan mainlanders, the tightening border regime is restricting their ability to pursue a livelihood: 'The border is not secure because I'm not secure. I need to survive.' Another interviewee remarked, 'We'll be forced to do things to survive. We're human beings like them—I understand the law but they have to understand our struggle.'

Papuan mainlanders are most aggrieved by what they consider to be inconsistency and partiality in the interpretation of Treaty rules. Villagers in Parama related how officials placed restrictions even on activities that are clearly traditional in nature. Parama residents have close familial ties with York Island and are occasionally invited to tombstone openings, an important cultural occasion to mark the passing of community members. These occasions can involve 600–700 people who want to travel, but they complain that Australian officials often put limits on the number of people they will allow, which devalues the occasion for both communities. Papuan mainlanders recognise that much of the interpretation of regulations is in the hands of local officials. As one interviewee noted, 'Security is me and the person on the other side, before the government.'

For Torres Strait Island powerholders, narratives and practice of regulation and control reflect a concern to manufacture and assert essential differences between themselves and their Papuan neighbours. Despite the shared history and strong cultural and familial ties that mark relations across the strait, Torres Strait Islanders are often adamant that they are essentially different from their Papuan neighbours and that Papuan culture and genealogies are quite separate from their own. Their status as Australian citizens and residents of Australian territory trumps, in these narratives, any past associations or possible familial, cultural or ethnic associations with Papuan mainlanders.¹⁸ Sigmund Freud famously framed this as 'the narcissism of minor difference', arguing in his essay 'The Taboo of Virginity' (1917) that 'it is precisely the minor differences in people who are otherwise alike that form the basis of feelings of strangeness and hostility between them'.¹⁹

Some Torres Strait Islanders' perceptions of difference to Papuans are applied through the application of a host of petty rules and regulations. These stem from the overarching border policies made by the Australian Government but crucially are locally interpreted and enforced. Island officials (who are themselves Torres Strait Islanders) can interpret the border treaty provisions in quite specific and often exclusionary ways, to make the border real. Four arenas are discussed below in which the terms of Papuan mainlanders' interactions with Torres Strait Islanders, the island economy and Australian services are set. They are borderland spaces of conflict in which Papuan mainlanders' frustrations and desires crystallise.

Access to health care

Both Boigu and Saibai have well-staffed and resourced health clinics that provide island residents with a quality of care comparable with similar facilities on the Australian mainland. In comparison, villages in the South Fly have no comparable clinics and a very rudimentary system of health care. Daru General Hospital has received significant investment in recent years from the Australian Government, for the treatment of MDR-TB in particular. Nevertheless, the level of care available at Daru hospital is in no way comparable to the Torres Strait Islands. It is in any case a long boat journey away for most Papuans in the South Fly, in comparison with the Torres Strait Islands facilities at Saibai and Boigu. Not surprisingly, then, many Papuans not only choose but also are compelled to travel to Torres Strait to receive medical treatment, particularly when the need is urgent.

South Fly residents recount how, in the recent past, access to the clinic was relatively straightforward, with medical staff there ready to treat any patient who presented, regardless of whether or not they were from the mainland. They believe this has changed over recent years, with Queensland Health funding a position for a Papuan doctor to be co-located at Saibai, to liaise with Daru hospital for the transfer of non-emergency cases that present at Torres Strait Island back to Daru. While everyone who presents on Saibai or Boigu is assessed, the practice now is for only extreme, life-threatening cases to be treated on Torres Strait Islands, usually where a medical evacuation to Thursday Island or Cairns is required. For other cases deemed not to be life threatening, patients are referred to Daru hospital or back to their community aid post for treatment. One interviewee from Sigabaduru observed, 'Nowadays, when we try and access health services across the Straits they don't accept us, only if we're about to die.'

The Australian state's investment in Daru hospital has been significant, and it is understandable that Australian officials wish to see South Fly residents using the district facilities instead of travelling to Torres Strait Island. However, communication with Daru hospital is difficult, and no regular boat transport is available. Mainland patients are required to find and pay for boat transport to Daru themselves and, as one elderly resident of Sigabaduru remarked, 'People without transport are the people who suffer.'

This lack of available transport can sometimes have tragic consequences. Ber village is only a short distance across the straits from Boigu, but, as a villager observed, 'Sometimes when health workers refer people to Boigu they refer them back to Daru and we lose the person.' During fieldwork in 2017, the story of an elementary school teacher from Ber was recounted to us by a number of separate interviewees. The teacher had visited Boigu three times and had been sent back each time, and eventually died in the clinic at Boigu in September. Villagers speculated that if the teacher had been treated on any of the previous trips, the outcome might have been different. Another young man from Sigabaduru we met during fieldwork had been badly burnt in an accident at home and travelled to Saibai for treatment.²⁰

He received dressings and medication for five days and was told to go to Daru for further treatment. However, he had no means of travelling to Daru, which is three hours away by boat, and despite being told transport would be arranged for him to get to Daru from Sigabaduru, the boat never came. At the time of the interview he had been waiting more than two weeks and had run out of clean dressings and medicine, and his burns were clearly festering badly. He was no longer able to stand and spent his days lying in an outdoor cot under a mosquito net. Decisions made on whether or not to treat patients at Torres Strait facilities can have serious, sometimes life or death, implications for Papuan mainlanders.

Opportunities for trade

Papuans rely heavily upon trading petty goods, handicrafts and fresh seafood on the islands of Saibai and Boigu. At the boat landing ramp on both islands Papuans from the Treaty villages hang up or lay out their wares for sale. This includes traditional items such as woven baskets, headdresses and skirts, hunting spears and traditional drums. They also sell store goods from Daru, such as boiled sweets and other confectionery. However, local biosecurity officers on the islands apply sets of rules in terms of what can be brought for sale, how much in terms of quantity, and how long they can stay in order to try to sell their wares.²¹ Mainland Papuans complain that these rules are becoming increasingly restrictive and that they often differ from week to week. For instance, they are no longer allowed to bring spearbox to sell (cheap Papuan tobacco, which is popular with people on both sides of the border but only available to buy in PNG). They are told 'No shop things, no garden food'. They have even been told that they cannot bring crab from PNG, only from Torres Strait Island waters, but Papuan mainlanders joked, 'How can they tell where the crab is from?!'

In fact, Papuans observe that Torres Strait Islanders with interests in trading crabs and other seafood use the notion of 'traditional activities' under the treaty to restrict the number of crabs Papuans can bring to trade and to determine the price. During fieldwork in 2017, biosecurity officers on the islands had set a limit of ten crabs per person as the maximum anyone could bring under the barter and exchange clause of the treaty. Torres Strait Islander middlemen involved in trading crabs maintained that only they could deal with outside dealers and that mainland Papuans had to sell to them in order for these middlemen then to sell on to traders at an inflated price. As a district official in Daru observed, 'Whatever is required on the islands we produce, but it is very complicated now. Treaty villagers are the middlemen.' There is a strong feeling among Papuan mainlanders that Torres Strait Islanders use the treaty language to try to exploit them.²² One Torres Strait Islander from Boigu who is sympathetic to the plight of Papuan mainlanders observed how there is insufficient volume of crabs to keep large-scale buyers interested but that they also stop Papuan mainlanders bringing across the crabs that could be sold. 'They restrict the opportunities for business so there is no enterprise on this island.'

Papuan mainlanders complained that they never knew whether they would be allowed to bring confectionery and store goods to sell, because sometimes the biosecurity officers at the boat landing ramp said these items were excluded under the barter and exchange clause of the treaty as not being 'traditional' commodities. They also complain that local enforcement officers interpret the treaty barter clause in a way that precludes exchange for money and insist instead that Papuans can only engage in barter exchange relationships, as their forefathers might have done. 'What does it really mean, "commercial"?' complained a Buzi villager. 'If I'm selling between Buzi and the islands, is that commercial?' Another remarked, 'They're playing the law over there, that's how they treat us.'²³

Papuan mainlanders insist that the narrow interpretation of barter and market trade does not recognise the prevalence of money in today's economy and their need for cash in order to pay for all kinds of necessary goods and services in daily life, such as school charges and medical fees. The world has changed, they contend, and treaty arrangements are outdated. 'Now money is everything. For our fathers it was different; they were illiterate.'

One village elder in Bula complained, 'Boigu people say: "That's the commercial price, not the trade and barter price." They'll try and barter, a bag of flour or rice for a crab. It's ridiculous.' He went on to say, 'We can go to Merauke [the Indonesian border town] and buy what we want at cheaper prices.' In fact, villagers in Bula, the westernmost coastal village in the South Fly, remarked upon the decreasing level of trade with Torres Strait Islanders. 'We only go that way [east to Torres Strait Islands] for a health emergency or to sell crabs or shells.' All other trade goes west now, to Indonesia. He added:

My generation used to trade with Torres Strait Islanders but the younger generation don't do that so much any more. It's harder to sell artefacts, drums, grass skirts in Torres Strait Islands as people have them already. There is no novelty.

Labour and money

As with the trade in commodities, local officials on Saibai and Boigu take a keen interest in the labour economy of the islands. Casual work on Torres Strait Islands is a critical livelihood strategy for many Treaty village households, and Papuan labour is integral to the operation of household economies on Saibai and Boigu too, with many Torres Strait Islanders employing Papuan mainlanders in their homes at some point. This labour is for domestic service (cooking and cleaning) and for doing gardening around Torres Strait Islanders' homes, as well as other *ad hoc* labouring tasks throughout the year. Remuneration for these tasks differs widely and is often dependent upon the relationship between Papuans and their employers.²⁴ Some receive money for their labour at what Papuan mainlanders consider a reasonable rate (A\$10–A\$20 a day), some receive a little cash and some household goods, while others receive only household commodities such as flour and rice. In these instances,

Papuans would complain that Torres Strait Islanders claimed they were not allowed to pay them in cash, because the treaty makes provisions for traditional exchange only. This is often the position of local officials, with immigration officers informing visiting Papuans that their rights extend to visits for traditional activities only and precludes labour for cash. One Torres Strait Islander store operator interviewed in October 2017 revealed he had been pressured by local officials when he employed Papuan mainlanders and paid them in cash. He was told he should pay in kind only. A local-level government (LLG) member from one of the Treaty villages expressed his indignation at the practice of households paying only in store goods for labour, saying, 'I said to the Boigu people, "You were dependent on the mainland before you got developed. How can you do that to your own people?"'

Regulating love

A final arena in which local officials make real the differences between Torres Strait Islanders and Papuan mainlanders is in the regulation of relationships between young people. A number of young women on Boigu are in relationships with young men from the mainland, in some instances having children by them. The men seek to stay with their partners on Boigu, but during fieldwork in 2017 these couples recounted stories of the barriers that the local island immigration officials placed on their visiting across the border.

One couple interviewed on Boigu had been together for more than a decade: she is from Boigu, he is from a Papuan mainland village. He is able to visit for two weeks and must then go back again for two weeks and apply for another pass before he can return. They had been told recently by border control officials that they could no longer continue as 'boyfriend and girlfriend' from the end of that year. The male partner was told that he would have to stay somewhere else on the island if he wanted to visit. The couple were in the process of securing papers to be able to marry, but this is not an easy process, requiring trips to the capital Port Moresby to get a passport, then to navigate an expensive process to secure a visa with the Australian authorities in Cairns. The visa fee of several thousand dollars is prohibitive and the couple felt that they should be allowed to stay together on the island for three months so that the male partner could work and save the money for the fee.

There were eleven or twelve couples on Boigu who faced the same restrictions and dilemmas, and all the partners from the mainland had recently been told that they would no longer be able to come over regularly to continue the relationship. When they apply for a pass to go either way, they must put down as the reason for travel as something other than their relationship, or else it would be refused, they claimed. Boigu women who want to take their children across to visit their fathers on the mainland must put down a wedding or funeral ceremony as a reason for travel, rather than a holiday with their father's family. The tightening of regulations is, they believe, the initiative of the local border officials and town authorities, but there is little they can do, as they require a signature from these officials on their pass before

they can travel. When they have complained, they have been told, 'The law is just here and that is how it is.'

Petty restrictions on Papuan mainlanders operate in other ways too: 'We've been told we can't give alcohol to PNG nationals, not even at a birthday party.' A number of interviewees from both sides of the border observed that Papuan mainlanders are also prevented from using the ATM to withdraw cash in the store on Boigu. Some Torres Strait Islanders felt that the access of Papuan mainlanders to shops and services on Saibai and Boigu should also be restricted; otherwise there would not be enough goods left for Torres Strait Islanders themselves. Store operators discounted this, however, noting that in fact the business generated by mainlanders visiting and buying staple foods such as flour and rice is what has kept the store afloat and makes the business viable. 'I always keep a spare pallet of the essentials in the back in any case, so we would never run out.' Again, it is perceived that these petty rules and regulations are imposed by local officials and powerholders and that they choose to interpret border and treaty regulations in a very narrow and prohibitive way. 'These laws are just man-made laws,' complained one Papuan mainlander.

The regulatory regime that Papuans face in their daily interactions on Saibai and Boigu and their perception of intense inequalities across the border fuel a fervent politics of both frustration and desire for 'development'. This is expressed through deep mistrust and disappointment towards the PNG state for the failed promise of post-independence development. But the focus of Treaty villagers' ire is also directed towards Australia and takes the form of a narrative of Australia's moral responsibility to look after and nurture the Treaty villages after 1975. The narrative is framed around failed promises and evidenced through their perception that the Treaty villages have been left behind in comparison to the Torres Strait Islands. Post-colonial promises have not been honoured, they feel, and the tantalising promise of development has consequently gone unfulfilled. It is to these beliefs and the political narratives through which they are expressed that I now turn.

Disaffection, desire and the politics of distribution

The way they are benefiting, we should be benefiting.²⁵

It was midday in Parama village, the only settlement on the island of Parama, which lies just off the South Fly coast, about 25 kilometres east of Daru Island. Parama guards the turbulent waters of the South Fly River estuary, and villagers who had gathered to talk were reflecting on the changes they had seen since colonial times, and the effects of the Ok Tedi mine upon the local fisheries. One of the village elders shared his reflections:

At independence in 1975 the Australian Government was taking care of us. Departments were there and functioning. They had been providing us fridges, cash crops and things to help us. [At independence] promises

were made, lots of promises, and these didn't arrive. After independence PNG didn't assist us properly, and then there was the Ok Tedi mine in 1982, 1984. Before that time, there were lots of fish, dugong, crayfish. After the mine started a lot of infection and the fisheries were badly affected. There was sand coming down from Ok Tedi that covered the reef. We are asking the government of PNG for assistance. A little comes but it doesn't make much difference. King tides cover the island, destroy the gardens. Ok Tedi has already ruined the sea so there are few alternatives.

This is a familiar narrative throughout the South Fly Treaty villages, and it encapsulates the frustrations of local people both with their own government and with the government of Australia. For the residents of Parama village that day, the solution was clear, and it lay just across the water.

Most of our lives are dependent on the marine resources, and when the water is damaged and the conditions are bad, we can't go out to sustain our lives. But in Torres Strait Islands, after 14 days they collect their money and do nothing. Though we share the same border, we don't share the same life. We are right at the bottom in life situations. But we're supposed to be the same as them. We should get the same treatment, the same payments as the [Torres Strait] Islanders.

In village after village across the South Fly, residents invoked powerful narratives of having been left behind by Australia at independence.²⁶ Notions of moral responsibility and promises unfulfilled manifest in very particular demands and a vision for how Treaty villagers should be able to live their lives. Desire centres on the trappings of state that Treaty villagers see their neighbours across the water in Torres Strait Islands enjoying: a well-resourced school with good teachers, a medical centre networked to the wider Australian health system, sufficient clean water throughout the year. Most powerfully, desire centres upon Centrelink payments and the ability to get money out of the cash machine each fortnight to pay for food and daily needs. 'We live on money now,' one interviewee in Tureture village said indignantly. '[Torres Strait] Islanders live on social benefit [which is] an actual benefit of life we're not receiving.'²⁷ The ability to get 'free' money out of a cash machine powerfully embodies the politics of both desire and discontent in the Treaty villages.

Resistance, legibility and 'dependence'

Papuan mainlanders of course take steps to bypass the restrictive border practices and the narrow interpretation of Treaty regulations described above. Much of this activity is covert: for example there is a flourishing underground trade in illicit alcohol supplied across the border from PNG. Boat operators in the South Fly villages will receive text messages from friends, family or contacts in Torres Strait

Islands, requesting an alcohol drop. They then land cheap alcohol purchased in Daru on remote parts of the island, or just off shore, to be collected later by their customers. There is trade too in marijuana grown in Papua and sold on Torres Strait Islands, several Papuan mainlanders having been caught and sentenced. One interviewee from Sigabaduru described how profitable running bootleg liquor and drugs is: 'They are fast money-making [whereas] with mats and wood carvings we just sit and waste our time.' He also described how some fishermen from the mainland go out to find sea cucumber, '... but they're not in our territory. Some people go to Australian territorial waters to get them. If they're caught they're caught; if not they're lucky.' Penalties for illegal fishing in Australian waters are severe, with Papuan mainlanders recounting stories of their boats being impounded, sunk or sold by local island officials.

These livelihood strategies are deployed by Papuan mainlanders to bypass the regulatory controls in place at the border, rather than a form of 'resistance' as classically understood. I contend that they are secondary to the primary aim of mainlanders in the borderlands, which is to be productively connected to the Australian state. Papuan mainlanders engage in illegal activities largely because this primary aim is constantly being frustrated. Political discourse in the Treaty villages expresses frustration with the PNG Government, which is seen as predatory and defunct, and with the Australian state, because of the denial of the historically rooted moral responsibility they feel the former colonial power bears to them. Their recognition of special status under the Treaty validates, in their eyes, their claims of connectedness. It is a politics of distribution that has, at its heart, a desire to be rendered connected and therefore legible to the Australian state. This desire to be rendered legible is a feature of politics prevalent in situations where a powerful state is in a position to render substantial assistance to those in need.²⁸ The Australian state is recognised by Papuan mainlanders as being both pre-eminent and efficacious, and they are engaged in claim-making to assert legibility and thus eligibility to the suite of benefits and services that Torres Strait Islanders enjoy.

Much mainstream political discourse characterises the close connection with the state enjoyed by Torres Strait Islanders and aspired to by Papuan mainlanders as 'dependence'. This dependency is often viewed pejoratively in development policy literature too, with development interventions advocated that are intended to grow 'independence' and 'self-sufficiency' for developmental subjects.²⁹ This, however, is quite removed from the reality of daily life in the borderlands, where sociality and social embeddedness govern all aspects of life. In fact, in the borderland context, it is hard to envisage what 'independence' would entail. The borderlands are at the periphery of the global economy and marginal to the operation of regional and global capital. Without the Australian state's security concerns for border management, and its efforts to 'close the gap' between its Indigenous and non-Indigenous populations, the Torres Strait Islands would arguably be in a similar situation to the Papuan mainland. The struggle for legibility in which residents of the South Fly are engaged is the pre-eminent means of sustaining life in a region

with very few alternatives. In a context where there are so few options, legibility to the state can mean quite literally the difference between life and death: it is then a biopolitical imperative—a means of sustaining life.

Distributional labour and a rightful share

What occurs in the South Fly Treaty villages resonates strongly with James Ferguson's theorisation of what he describes as 'the new politics of distribution', and particularly with his notion of the 'rightful share'.³⁰ Ferguson notes that would-be beneficiaries of the state are increasingly strident in their claim-making, couching claims in a language of entitlement. Demands articulated are not for 'rights' in the abstract but for a much more tangible 'rightful share'. Like Li, Ferguson observes that in a large number of places in the 'developing' world today, there is no access to wage labour opportunities, and no prospect of ever having it: it is a context of 'jobless growth' and a corresponding 'labour surplus' (global) economy. What is occurring, Ferguson holds, is not a 'strategy of global capital' to exploit labour but rather a demonstration of the very limited relevance of capital at any scale in many remote and unconnected places. Remote people are functionally isolated from a production system that has no use for them. Claim-making then is not about entitlement rooted in labour and a temporary inability to exchange labour in the marketplace as the source of purchasing power and consumption. Rather, Ferguson believes what is being articulated increasingly across the developing world is a wider claim of entitlement to distributive allocations, grounded in democratic citizenship. It is not founded on conceptions of charity but of the rightful share.

Politics, then, is not about people seeking 'independence' but about rendering legibility to power-holders and nurturing particular forms of dependence: dependence upon a patron (the state) to deliver real benefits to them, in order to sustain life. Engendering this dependence requires hard work. It is a form of what Ferguson describes as 'distributive labour', in terms of securing connections to those with influence, and is premised on people not as atomised individuals but as enmeshed in complex relations of mutuality. Dependence, then, is deeply social. Ferguson's treatise resonates strongly with the situation witnessed in the Torres Strait borderlands, where there is a particularly potent set of circumstances at play in the claim-making taking place. Papuan Treaty village residents are engaged in claim-making that transcends an international border and is directed at a neighbouring state. It is strongly influenced by the recent memory of colonialism and the rupturing of the colonial state, and is shaped by the imposition of an international boundary perceived to be increasingly formal and restrictive, which intensifies discontent.

These features are evident in the recent move by Treaty villagers to establish their own separate LLG entity that would bypass what is seen as a predatory central and local state system, and connect instead directly with Australian aid earmarked for the Treaty villages.³¹ This is a vivid illustration of the attempt to render legibility in a transnational context and demand a 'rightful share' from the former colonial

power. As one Treaty village member hoped, through the new Forecoast LLG they will be able to 'make our own laws' and so stop people illegally harvesting marine resources. He envisaged also having their own customs and immigration for border villages and that they would 'employ our own people to run this organisation; that's why we're sending them to school'. He concluded: 'Only when we separate will we have development.'

Conclusion

What is to be done? This is the question that bedevils national and local policy-makers, non-government organisations and development aid officials of the Australian Government. There appear to be few prospects for large-scale agricultural development in the South Fly; little or no manufacturing or industrial development opportunities; and concerns over the long-term sustainability of fishing resources (chapter 7). In this context, ongoing attempts to 'develop' the South Fly through business-as-usual development interventions to foster agricultural market integration or small business development offer few real prospects of success. Similarly, prospects appear bleak for the large-scale absorption of South Fly labour into the regional or global capitalist economy, certainly so long as health and education provision for young people in the district remains rudimentary. The South Fly appears to bear all of the hallmarks of a region peripheral to the needs of global capital, with South Fly residents being a 'surplus population', in Li and Ferguson's terms.³²

In this context it is not hard to understand the causes behind the rise of the potent politics of disaffection and desire that this chapter describes. Perhaps the strident claim-making that has resulted offers an opportunity to reframe understandings of 'development' in the region. James Ferguson's notion of politics today as increasingly drawing upon the notion of a rightful share has explanatory value in making sense of politics of the kind taking place in the South Fly. Through their narratives of disaffection and desire, Treaty villagers frame notions of rights and entitlements in a very material and specific way, through asserting a belief that they should receive their rightful share from the former Australian colonial power.

But what might this mean in concrete terms? In *Give a Man a Fish* (2015), Ferguson discusses the growing movement for universal basic income as being the mechanism through which a rightful share of a nation's wealth is distributed. Through a Basic Income Grant (BIG), every citizen of a state receives regular payments that guarantee an unconditional minimum income standard for every citizen. The payment is made regularly to every citizen with no further eligibility conditions, or conditionality on how the money should be spent. The BIG movement is growing, and the number of schemes in operation, both in the developed and developing worlds, has been steadily increasing.³³ The development policy literature on unconditional cash transfer schemes increasingly shows that such social payments are not only ameliorative but potentially transformative too, in enhancing recipients' long-term life prospects.³⁴ Ferguson documents how cash grants are a

ubiquitous feature of the social landscape in South Africa and increasingly other southern African states too. Might an unconditional basic income grant scheme offer a new kind of development opportunity for the South Fly?

In fact residents of the South Fly are already familiar with social cash payment schemes. There is an existing cash payment scheme in operation by the Ok Tedi sovereign wealth fund, which makes payments twice a year to all individuals affected by the operation of the Ok Tedi mine along the Fly River. This scheme has faced problems, with money slow to be released by the fund and payments remaining small (a few hundred kina each time). Nevertheless the mechanism for delivering payments directly to beneficiaries through the bank is established and familiar, and appears viable.³⁵

There is perhaps a unique opportunity to consider a BIG scheme of some sort in the South Fly region that is funded either (or dually) through Australia and the existing Ok Tedi fund of PNG; is predicated on a recognition of South Fly residents as owners and guardians of the borderland; and perhaps recognises their important role in environmental stewardship and 'border protection'. This would give credence to local political demands for a fairer post-colonial compact and would offer an alternative to moribund orthodox development interventions that have done little to improve the well-being or livelihood opportunities of the people of this remote region. A transnational BIG offers a tantalising opportunity for a new kind of development pact, one that helps meet the desired outcomes of different parties of a rightful share to national and regional wealth on one hand, and a secure and flourishing border region that safeguards the wider interests of the Australian and PNG states on the other.

Acknowledgements

I would like to thank Jodie Curth-Bibb and Tsarie Duthie for editorial comments and assistance with this chapter, and for assisting with survey data analysis and presentation. I would also like to thank Mark Moran, Kevin Murphy and Jodie Curth-Bibb for comments on drafts of the chapter, and Kevin Murphy and Geoff Miller for sharing their insights and extensive experience of PNG during fieldwork.

Notes

<Setter: take in notes here, numbered from 1 to end>

¹ The Torres Strait Treaty was signed in December 1978 and came into force in February 1985. See DFAT, 'The Torres Strait Treaty', www.dfat.gov.au/geo/torres-strait/Pages/the-torres-strait-treaty.aspx.

² T.M. Li, 'After development: Surplus population and the politics of entitlement', *Development and Change*, vol. 48, no. 6, 2017, pp. 1247–61.

³ J. Ferguson, *Give a Man a Fish: Reflections on the New Politics of Distribution*, Duke University Press, Durham, NC, and London, 2015.

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- ⁴ A rhetorical question voiced by a village meeting participant, September 2017.
- ⁵ At the time of fieldwork (October 2017), previous employees of Australian-owned and -operated pearl-diving boats were eligible to receive compensation for their historical underpayment in the industry. However, many villagers were not aware of this entitlement and had not applied for compensation. A small number of older village residents were also receiving payments under the award wages settlement for time they or their relatives spent working for the Department of Aboriginal Island Affairs (DAIA).
- ⁶ During fieldwork in Mabuduan, residents expressed nostalgia for the facilities that they had during colonial times: a bank, a trading centre, community hall and a boat. All gradually disappeared or broke down through the 1990s and were never replaced.
- ⁷ Li, 2017.
- ⁸ T.M. Li, *Land's End: Capitalist Relations on an Indigenous Frontier*, Duke University Press, Durham, NC, and London, 2014.
- ⁹ Interview, Sui village, October 2017.
- ¹⁰ Source of the data in all figures and tables is combined data from the household surveys conducted in November 2016, September–October 2017 and July 2018. The surveys covered both Treaty and non-Treaty villages.
- ¹¹ South Fly villages have unofficially designated 'corners' in Daru town, where village kin and clan groups have settled and where visiting village members stay, often in very overcrowded houses. Some village corner populations (e.g. Parama, which has three corners in Daru Town) have more residents than the origin village itself. Overcrowding is a key contributing factor in the spread of MDR-TB and, given the high levels of mobility between South Fly villages and Daru, it is highly likely that MDR-TB is a significant problem in South Fly villages too.
- ¹² At the time of fieldwork in October 2017, the Australian Government had spent A\$44 million on fighting TB in Papua New Guinea since 2011. Australian High Commissioner, speech, Ground-breaking ceremony in Mabuduan, 9 October 2017.
- ¹³ For a revealing examination of the process through which South Fly villages were granted Treaty village status, see K. Murphy, 'The cultural organisation of social difference and relatedness at the border between Australia and Papua New Guinea', PhD thesis, ANU, Canberra, 2013, chapter 3. There is long-standing conflict and antagonism between Kiwai-speaking villages (from Mabuduan east) and non-Kiwai villages to the west. This colours local perceptions of what constitutes a community with legitimate connections to Torres Strait Islands and therefore a claim to Treaty status. In conversation with villagers in Parama during fieldwork, they argued that Dorogori (a non-Treaty village) should be in the Treaty 'as they speak Kiwai' and therefore have a

better claim than all the 'non-Kiwai speaking villages who are in the Treaty'. They should be included, they argued, 'as they have the same lifestyle as us'.

- ¹⁴ The hospital is provided by the Australian Government to provide care for all South Fly villagers, irrespective of their Treaty status.
- ¹⁵ Buzi villager, October 2017.
- ¹⁶ This article from the *Australian* is an example of the positioning by the local MP, Warren Entsch, for better security and regulation of the border: S. Elks, 'Torres-PNG border checks must be bolstered', *Australian*, 26 August 2015, www.theaustralian.com.au/national-affairs/immigration/torrespng-border-checks-must-be-bolstered-warren-entsch/news-story/6bdcf6a5082cdf0561dbef8871172e8e.
- ¹⁷ Security officials from the PNG Government whom we met in Daru said the number of cases of international illegal immigrants crossing into Australia was very small, only three or four having been intercepted during the past year (in 2017). In fact cases are so rare that they are usually accommodated at a resort-style guest house in Daru Town rather than a security establishment before they are returned home. This was the case with a Bangladeshi immigrant who had been caught and was being accommodated in Daru in October 2017, before being sent to Port Moresby and repatriated.
- ¹⁸ There is a substantial community of Papuans on Saibai who live in an enclave on the island (Western Point) and have close family connections to Mabudian. They are resident and Australian citizens but have no native title rights on the islands. They complain of discrimination by Indigenous islanders, and it is their mainland relatives who are routinely barred or blocked from spending time on the islands. A senior island official acknowledged that relations with the Papuans at the Point (who are Kiwai) are 'complicated' and that he felt closer to the (non-Kiwai) Papuan mainlanders from Sigabaduru, with whom there are 'close blood lines'.
- ¹⁹ Quoted in M. Ignatieff, *The Warrior's Honor: Ethnic War and the Modern Conscience*, Chatto & Windus, London, 1998, p. 48. In an insightful analysis of the structuring of difference in the Balkans following the collapse of the former state of Yugoslavia, Ignatieff discusses how the common cultural elements and shared history of Serbs and Croats during the Balkan wars became less essential to the perceptions of their own identities than the 'minor' elements that divided them. He argues that this is rooted in a shared narcissism generated by conflict so that 'the smaller these differences may seem to outsiders, the larger they may loom in insiders' mutual self-definitions' (ibid., p. 50). 'The less substantial the differences between two groups', Ignatieff concludes, 'the more they both struggle to portray those differences as absolute' (ibid., p. 51).
- ²⁰ Interview, September 2017.

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- ²¹ One regular visitor to Torres Strait from Mabuduan remarked: 'The laws are getting tougher — we get moved out by 3–4pm.' Papuan mainlanders from the two largest villages close to Saibai have been allocated days on which they can come across to the island. Sigabaduru's days are Wednesday, Thursday and Friday; Mabuduan residents can travel on Tuesday, Wednesday and Thursday. No travel is allowed from Saturday to Monday.
- ²² The enforcement of tight biosecurity restrictions in Torres Strait Islands is felt keenly by Papuan mainlanders, who recall how even relatively recently local foodstuffs were freely traded across the waterway. Now, for example, taro from Fiji is sold in the stores on Torres Strait Islands, not taro grown only 5 kilometres away on the mainland.
- ²³ Tensions over what Buzi villagers see as their historical ill-treatment and being looked down upon by Boigu residents came to a head in 2016. A Buzi boat approaching the shore of Boigu was stoned by Boigu youth, and Buzi villagers subsequently returned in two boats and rampaged through the streets. As a result, a number of men received a one-year ban from the island. In Bula, residents recounted how Boigu villagers were told to remove their plastic water tanks as it was felt they attracted mosquitoes. The Bula villagers begged to be able to take the tanks, but the Boigu mayor ordered them to be taken to the tip and destroyed. Recycling cast-offs from the Torres Strait Islands is important for Papuan mainlanders. At every PNG village meeting discarded, broken plastic chairs from Torres Strait Islands are often the only furniture in evidence.
- ²⁴ Many Papuan mainlanders who work regularly on Saibai or Boigu have some family connection to the households they work for.
- ²⁵ Mainland LLG member, September 2017.
- ²⁶ During fieldwork we would often be approached by older Treaty village residents who would recount detailed family genealogies or talk about past colonial-era service and show detailed collections of documents, which they believed established their right to Australian citizenship. These conversations would be accompanied by collections of yellowing official documents relating back to the colonial era, indexed and carefully preserved in faded manila files or plastic sleeves.
- ²⁷ Village meeting in Tureture village, October 2017.
- ²⁸ See A. Walker, *Thailand's Political Peasants: Power in the Modern Rural Economy*: University of Wisconsin Press, Madison, 2012; P. Chaudhry, 'The struggle to be poor in Vietnam's northern borderlands: Politicalmetis and biopower in the local state arena', in *Connected and Disconnected in Viet Nam: Remaking Social Relations in a Post-Socialist Nation*, ed. P. Taylor, ANU Press, Canberra, 2016.
- ²⁹ This is an extension of neoliberal conceptions of the self as being an atomised individual, somehow separate from any social and communal bonds, the 'responsibilised' individual. See S. Trnka and C. Trundle, 'Competing

responsibilities: Moving beyond neoliberal responsabilisation', *Anthropological Forum*, vol. 24, no. 2, 2014, pp. 136–53.

³⁰ Ferguson, 2015.

³¹ Treaty village leaders are seeking to replicate the Torres Strait Regional Authority (TSRA) structure operating on the Australian side of the border.

³² T.M. Li, 'To make live or let die? Rural dispossession and the protection of surplus populations', *Antipode*, vol. 41, no. S1, 2009, pp. 66–93.

³³ Comprehensive information about the Basic Income Grant movement can be found through the Basic Income Earth Network (BIEN) (www.basicincome.org) and the UK's Citizens' Basic Income Trust (www.citizensincome.org). P. Parijs and Y. Vanderborght's *Basic Income: A Radical Proposal for a Free Society and a Sane Economy* (Harvard University Press, Cambridge, MA, 2017) is a good recent overview of the issues and arguments and a review of the available evidence. But for a powerful critique of the concept of basic income, see D. Zamora, 'The case against a basic income', *Jacobin Magazine*, trans. J.B. Boerop, 28 December 2017, www.jacobinmag.com/2017/12/universal-basic-income-inequality-work.

³⁴ Although there is general agreement among advocates over the core principles of universal basic income, there is no consensus over how UBI schemes should be structured, administered and paid for, and consequently what the impact will be. UBI pilot schemes to date have all been slightly different. Some of the more rigorous and long-standing schemes, such as Alaska's Permanent Fund Dividend and the 'Mincome' Guaranteed Annual Income Experiment in Manitoba, Canada, show significant benefits to new mothers and young people, for example, with better educational completion rates and reduced hospital visits, and improved mental health for participants (see www.basicincome.org/research/research-depository). Finland's two-year Basic Income Grant pilot project, which finished at the end of 2018, has been rigorously evaluated, and findings will appear on the Kela website (www.kela.fi/web/en/basic-income-experiment).

³⁵ During fieldwork in Daru, we witnessed the long lines of beneficiaries waiting to withdraw their payments from the two ATMs in the centre of Daru Town.

Governance

Mark Moran and Jodie Curth-Bibb

I am now into my second week of travelling across the Torres Strait, staying at Boigu Island. I have just awkwardly greeted the people from Buzi village, a mere 7 kilometres by dingy across the border into PNG. It has only been a few months since they had shared their food and houses with us. I know I owe them something, but I'm not sure what. They were so generous, sharing what they had. I give them an electronic keyboard for their church that I have carried up from Brisbane but seeing them now, I know it's too little.

They've lined up their handicrafts, wares and produce for sale, including live mud crabs allowed in by Customs [figure 5.1 and figure 5.2]. There was no natural shade, tarps, shelters or market stalls, just a thin shade cast from the wall of a concrete block building. Other boatloads of people sat in the full sun, floating slightly offshore, waiting to be processed by their not-so-distant relatives, now working for Border Force and Biosecurity. There were no potential buyers around, other than me. We talked about the news, people, politics and struggles over on the PNG side, their wares spread on the ground between us. There was nothing that I wanted or needed to buy. I debated handing them some cash. I wasn't sure if that was permitted as a traditional activity under the treaty, and I was in plain sight of the Boigu people who were my hosts on this trip. I could always send something later by electronic transfer, I thought. I said my goodbyes and wandered off back into the heat.

Later in the afternoon as I dallied in the Boigu store enjoying the air-conditioning, I observed a Papuan man as he slowly wandered the aisles, studying the prices, deliberating on what to buy with the five dollars in his hand. As I waited in the line, two local Torres Strait Islander women held up the line at the checkout, as they raced around the store gathering pizzas and other packaged foods. I tried to be patient. When they were done, I found a chair outside to enjoy my now melting ice-cream. The Buzi people were still there. They had moved their wares with the shade to the other side of the block building, now facing the store. It was going to be another long hot day for them, with little or no payoff, but despite this they show up every day that they were granted entry.

<figure 5.1 near here>

A woman from the South Fly selling crafts in the Torres Strait Islands (Research team, 2017)

<figure 5.2 near here>

A customs warning sign on display on the PNG side of the border (Research team, 2018)

The people of the South Fly District of PNG endure a near-total failure of governance and service delivery. At the heart of it people do not feel represented, they do not feel heard and they are living with an extreme level of deprivation that is not being addressed. Although problems of governance occur across PNG, the situation in the South Fly is made all the more stark by the social and economic inequalities of the borderland. The existence of the border with Australia creates a distinctly uneven effect that emphasises the relative disadvantage on the PNG side of the border. This is heightened by the recent history, familial relationships and shared culture in the region, which extend beyond PNG into Torres Strait and Australia. People in their fifties remember a time when these inequalities were not so marked.

The problem in PNG of failed service delivery is frequently characterised as a governance failure. It is generally understood as a failure of leaders to be held accountable for the spending of significant national resources and a failure of the citizens to hold those leaders to account. The solution therefore often offered by international aid agencies is to make the PNG state more like a liberal democratic state and to replicate the technologies of governance so as to guard against corruption and promote good governance. The favoured aid modality quickly resorts to capacity-building programs in the hotel function rooms of the nearest regional centre. But complexities of the South Fly are not well understood when viewed through a traditional development lens, as they ignore its location on an international border with two neighbouring nation states. The people living in the South Fly have a range of existing capabilities and potentialities that they struggle to realise due to a complex array of structural constraints, which have institutional, political and social dimensions.

Academics have in the past described rural life in PNG in terms of its 'subsistence affluence'.¹ There can indeed be high levels of social capital in some South Fly villages (e.g. community cohesion, informal committees, strong leadership) and natural capital (e.g. available land, marine resources). Unlike the Tok Pisin (Pidgin English) common to most of PNG, spoken English is the lingua franca in the South Fly stemming from the high levels of formal education provided by Australian teachers in the lead-up to independence. Some people have in the past also benefited from the proximity to Australia, establishing themselves as middlemen of cross-border trade. But people living in the South Fly also remain vulnerable, due to unreliable rainfall, drought, infectious disease, and domestic and factional violence, leaving people in living conditions that are difficult to survive. The absence of physical capital (e.g. transportation, water supply) and financial capital (e.g. savings, assets, loans), means that livelihood opportunities for enterprise

and employment remain very low. Everyone, it seems, is searching for markets for their produce and crafts, so they can get cash to buy consumables, health services and school charges.

In this chapter we question the assumptions that underpin how governments approach development in PNG—and the South Fly in particular. We suggest an understanding of governance that is mindful of local forms of decision-making and focused on the unique circumstances that arise in a borderland.

Conceptualising governance in the borderland

Governance in the borderland is best described as institutional layering of governance technologies over the top of existing informal institutions without regard for how they operate. Many of these existing informal institutions have evolved through both formal colonial and post-colonial influences. This institutional layering of governance is consistent with the concept of hybridity, which describes how Western notions of liberal democratic governance and bureaucracy operate alongside, over the top of and in conflict with what is often described as informal institutions.² We look to a body of literature known collectively as the areas of limited statehood and the concept of differently governed spaces. We argue that this theoretical framing relates strongly to the institutional bricolage described in the borderlands literature, whereby governance actors cobble together solutions depending on what is available to them (see the Introduction to this book).

Throughout the chapter we illustrate what research participants highlighted as being the three forms of governance failure: (1) the PNG Government's inability to get resources to the ground associated with high levels of perceived corruption; (2) the current inability of aid interventions to reach the people on the ground and their feelings of being disconnected from aid decisions and being powerless to hold aid to account; and (3) the deleterious effects of the policy and associated governance surrounding Australia's enforcement of the border.

What is understood by the term 'governance'? According to Plumptre and Graham,

Governance involves the interactions among structures, processes and traditions that determine how power is exercised, how decisions are taken and how citizens or other stakeholders have their say. Fundamentally, it is about power, relationships and accountability: who has influence, who decides, and how decision-makers are held accountable.³

The concept has since been used to both describe and prescribe. As noted by Offe, 'the concept of governance is used to grasp, on the one hand, institutions (a structure of rules), and on the other hand, a process (that of steering)'.⁴ He goes on to contend: 'The success of its dissemination is in contrast with the informational value of the term, when one refers to something as an instance of "governance", one has not yet expressed much—exactly because of the multitude of possible meanings.'⁵

We suggest that its appeal is essentially a vague perception of what is 'good', made up of collaboration, coordination, processes, accountability, transparency, legitimacy, authority and, importantly, control and management that will somehow 'steer' us (in our boats of multiple rowers) away from an ill-defined 'badness'. Thankfully the governance solution helps us to avoid specifically defining what the problem is, as we cannot quite agree and it tends to be political. What we pursue then are the technologies of governance that act as proxies.

As Craig and Porter describe, the formulaic prescription of state-building, with its use of 'travelling rationalities', requires us to claim 'general applicability that asserts the technical over the political, the formal over the substantive, and the categorical over the relational'.⁶ The operationalisation of 'good governance' as a form of aid assistance severs its political, substantive and relational core. It allows donor intervention in the technologies of governance while ostensibly avoiding the politics. It fools people into thinking that they can 'fix' broken systems with technical governance solutions.

Governance interventions are imbued with meaning in a Western context because these mechanisms are a product of the cultural histories of the West. The history in PNG is very different. If local origins and known trajectories for governance are ignored, the technical façade of governance becomes a blunt instrument in application of the development remedy. This matters because it is easy to appear to go through the motions of governance and spend significant resources establishing the institutions that do not ultimately benefit people.

The 'areas of limited statehood' literature (see the Introduction to this book) describes how those living on the periphery of states cobble together what is available to them into a unique bricolage of governance institutions and actors. Taking a spatial lens we can see that place, including places that span borders, should be taken as a unit of analysis. This lens helps us to understand how best we can draw on the bricolage of governance institutions working on the edge of the PNG state to better maximise service delivery and to realise improvements in the quality of life informed by the priorities and views of those living it. We then understand governance and service delivery as spanning multiple state influences, with the borderland at the centre, rather than at the periphery.

PNG's services and decentralised financing

Service delivery deficit

Daily life in the South Fly is hard as people struggle for water, food and basic housing. The typical house is made of a hand-hewn timber frame with leaves or bark roof and walls; only 41 per cent of respondents (49 out of 119) reporting having an iron roof (figure 5.3). The houses are small, usually comprising four small rooms and with a floor area of less than 40 square metres. Crowding was also a problem; out of 271 respondents, 118 indicated that 5–7 people live in these small spaces, with 55 respondents reporting 8–9 and 46 in excess of 10. These conditions are markedly

different from housing in the Torres Strait, where the average household size is 3.8 people,⁷ living in 3 to 4 bedrooms, across 150–200 square metres of social housing.

<figure 5.3 near here>

Researchers found that 70 of 119 households in the South Fly had roofs comprising mostly leaves or bark, while 49 had iron sheets for roofing. These iron sheets are distributed sporadically and sparingly, and are often in varying states of disrepair. (Research data)

The size of the villages we visited in the South Fly varied, from a few households to more than a thousand people, but the majority of village populations ranged from 100 to 400. Despite these numbers, in three villages there were no pit toilets, and five villages had less than ten toilets in total. Respondents also reported problems with access to clean water for hygienic purposes and the necessity of bathing in areas that are home to crocodiles. Only 19 of the 36 villages reported having mobile phone coverage, and most villages did not have access to two-way radio (21 of 34 villages). Only 15 of 35 villages reported having any village roads, and only 8 of 33 villages had a health aid post.

According to the Principal Education Advisor of the Western Province Department of Education,⁸ most children attend school to at least year 7, but their schooling can be significantly interrupted: ‘When the parents travel to other villages, or to work in the gardens, they take their children with them.’ In the course of our household survey, the primary reasons given by people for not attending school were children being engaged in livelihood activities and teacher absenteeism. Transport difficulties were also a significant barrier, because many villages only had an elementary school. The challenges to improving access to, and quality of, education are enormous. The increase of student numbers due to increased population and the Tuition Fee Free (TFF) policy of universal access has resulted in problems with the quality of education. Shortages of qualified staff are endemic. When policy changes occur, particularly in the area of curriculum, there is little or no capacity or resources to roll out reforms. Although there are 60 primary schools in the South Fly, there is only one secondary school to grade 12 located in Daru and one to grade 10 in Morehead, which only a few villages can reach by a daily commute. The Western Provincial Administration acknowledges that the provision of secondary schooling is beyond the budgetary capacity of the province.⁹ Despite these challenges, parents and communities place education as one of their highest priorities. Since the introduction of the TFF policy in 2012, schools are not allowed to charge fees, but during the survey from 2016 to 2018, the vast majority (79 per cent, or 23 of 29) villages still reported paying a range of charges to make up shortfalls.

From 2018 to 2019, the PNG Sustainable Development Program (SDP) made special payments to all school boards in the province, which should have reduced the need for any payments. Yet finding funds to pay for school-related charges remained a strong priority for subsistence households. Whatever the subsidies for education, obtaining ‘money for school charges’ was the morally most-upstanding use of money, and is deployed rhetorically as a reason for needing and asking others

for money, when it is actually needed for a much wider use. When the school is in another village, there are also accommodation, food and often transport costs.

Compared to education, the situation with health services was much worse. As outlined by Miller (chapter 6), even when villages had access to health centres they were generally in a derelict state. Respondents from 16 of 22 villages indicated that their health facility was neither open nor staffed. Of the 38 villages surveyed, four indicated that no health providers of any sort had ever visited the village, while 15 villages indicated visits from a health team member from Daru, and another 16 indicated they received visits from other health-related personnel. When asked about the frequency of such visits, seven villages indicated that they had not seen a health provider for more than a year, two reported seeing one sometime in the previous year; the remainder receiving more frequent visits (nine had received a visit in the last week). The frequency of visits correlated with the proximity to Daru. The survey supported the widespread view among stakeholders that the public health system in the South Fly had largely collapsed.

Barriers to effective service delivery include recruitment and retention of public servants with the right mix of qualifications and competencies. There have also been significant funding shortages recently in PNG due to a downturn in revenues and budget priorities of the national government, including substantial spending on international events.¹⁰ While staff costs have been prioritised, cuts have especially affected travel within districts. This creates the perverse situation of fully staffed offices in Daru but with insufficient financial capacity to travel to villages.

Teacher and health worker absenteeism in villages is often explained by the cost and time involved in travelling to Daru, to receive their pay and to do shopping. Health workers give many reasons why they are delayed in returning, but often it includes dealing with administrative problems with their pay. This can take so long that when the time comes to return to their village, they decide to wait for the next pay period. The PNG Government typically does not provide support for travel, so public servants are left to their own devices; some just run out money and do not have sufficient funds to pay for fuel for the return travel. There are many other reasons why public servants become trapped in Daru. Although living conditions in Daru are substandard, there are shops, a market, alcohol and satellite TV. If there are no teachers to cover for them, the school is closed. The impact on a village clinic is immediate, as there is only one health worker. Teachers who are absent from their school can be cut off the payroll and face the scrutiny of their school board and head teacher, but health workers can be absent for extended periods, with no punitive action or consequences.

Decentralised governance structures

Governance in PNG operates across five different levels: national, provincial, district, local and ward. The South Fly (Western) Provincial Government consist of three districts: South Fly, Middle Fly and North Fly. The South Fly District is composed of five local-level governments (LLGs): Daru Urban, Kiwai Rural,

Morehead Rural, Oriomo-Bituri Rural and the newly formed Forecoast Rural.¹¹ Each LLG is composed of a number of wards, which are made up of one or more villages in rural areas, or neighbourhoods in urban centres. Each ward elects their member to sit on the LLG, and they in turn elect their LLG president. In the case of the recently formed Forecoast LLG, they also elect their Treaty village chairman to represent them in Treaty-related negotiations.

As set out in the *Local-level Governments Administration 1997*, each ward should have a Ward Development Committee (WDC), made up of up to five associate members, two of whom should be women. The function of a Ward Development Committee is to be 'the principal community advisory unit for the ward to the LLG, and to determine the needs of the ward in relation to services, programmes and infrastructure'. The effectiveness and activity of the WDCs through the South Fly was highly variable from village to village. Even in the villages where a WDC was active, their deliberations were typically disconnected from the LLG level. A stated priority of the South Fly District Administration was to strengthen capabilities through a through a Ward Development Plan.

In addition to these formal structures, there are range of complex and fluid informal governance structures at a village level, representing a diversity of local interests, including land-owning, church(es), justice, youth, women and school groups. This local milieu of leadership and governance is highly fluid and tends to reorientate itself around external opportunities. Local stakeholders, including churches, aid organisations and schools, often play a critical role in supporting informal organisations.

Before 2014, the Joint District Planning and Budget Priorities Committee (JPBPC) was responsible for selection, prioritisation and approval of district funds. This changed with the *District Development Authority Act 2014* and the establishment and training of DDAs (District Development Authorities) across PNG through 2015. The purpose of a DDA includes the development of a regional development plan, disbursement of district support grants and other grants, and the provision of infrastructure and municipal services.¹² They report quarterly and annually to the Minister of Intergovernmental Relations. The existing DDAs vary in terms of their organisation, the governance mechanisms around them, the internal processes they use, the level of resources they have at their disposal, the roles they play and the capabilities they bring to bear.¹³

Although DDAs assume many of the responsibilities of the provincial government, they are not intended to replace them. The Act clearly states that the DDA must work constructively with provincial government and not contradict or be inconsistent with its standards, regulations, plans and other policies.¹⁴ Anecdotally, however, DDAs in practice routinely lack knowledge of—or ignore—provincial policy frameworks within which they ought to be operating.¹⁵ How a DDA works with the new Provincial Health Authorities (PHAs), for example, remains unspecified and unclear.

The South Fly DDA is chaired by the district member, and consists of the five elected LLG presidents, as well as the District Administrator, a women's representative and a church representative. The latter two are appointees of the member. It deliberates on project proposals that come to it from the LLGs. The South Fly DDA was initially described by the Acting Secretary of the Department of Implementation and Rural Development as being chaotic with acquittals 'submitted late or never'. But following training, the DDA was then celebrated for its turn-around. In 2017 the South Fly DDA was applauded in the media for being the first in the country to submit its 2016 spending reports.¹⁶

DDAs have certainly experienced some problems with their implementation, but there is nonetheless the potential for these authorities to promote locally owned development and service provision, and increased civil society scrutiny of public expenditure. Interestingly, the legislation notes:

... if an authority failed to properly publicise its meeting and has repeatedly prevented public attendance the Minister can direct that minutes of the last two meetings are made available at the district administration office, the next meeting is open to the public and the agenda for the next meeting is broadcast on the local radio.¹⁷

Decentralised finances and political accountability

According to a study conducted by the National Research Institute and Development Policy Centre, PNG Members of Parliament have received funding to spend in their electorate (known as constituency funds) since the 1980s, but the amount increased significantly from the mid-2000s through the Service Improvement Programs (SIPs). They concluded that PNG now relies on this type of 'constituency' funding to disburse its budget more than any other government in the world. The allocation of these funds is heavily influenced by Members of Parliament and the different committees they convene, with questionable accountability to their constituents.¹⁸

SIPs are available at the provincial, district and local government levels, known as PSIP, DSIP and LLGSIP respectively. The purpose of the SIPs is to fund specific development projects, rather than the recurrent expenditure much needed by government departments. Expenditure is limited to the following sectors: infrastructure, health, education, economic, administration, and law and justice. The Department of Implementation and Rural Development provided a guideline for the breakdown of funding allocations.¹⁹ Allocation per province for the PSIP should be K5 million per district per year. In addition, each district should receive K10 million of DSIP funds with a breakdown of K3 million for infrastructure, 2K million for health; K2 million for education; K1 million for law and justice, K1 million for economic development; and K1 million for administration. In 2016, these divisions were relaxed to allow district development authorities more discretion.²⁰ A further

K500 000 should be allocated per LLG. As the South Fly District is now made up of five LLGs, this should total K2.5 million.

The actual allocations can vary wildly from these figures, and there can be great disagreement between different stakeholders as to what funds actually reach the ground. Looking into the fiscal financial flows in PNG requires an intensity of effort and insider knowledge that is often only shared among powerful coalitions. The District Administrator in 2016 reported that the policy of having a figure higher than K500 000 per LLG ceased in 2013, and even then only about 75 per cent of it was actually released. Thereafter it was reduced to K100 000 when the district MPs and provincial governors broadly sought to curtail the power of LLG presidents. No money was released in 2016, allegedly due to financial freeze during corruption proceedings against the Western Provincial Governor.²¹

In 2017, as part of a launch of an economic stimulus plan, the Treasurer announced a cut-back to both PSIP and DSIP, noting that this reduction was just a temporary measure, due to problems with GDP downturns and an over-reliance on extractives for revenue.²² However, shortages and problems in funding are not the only problems. The SIP is also widely criticised for corruption and misappropriation, and for the limited impact it has on rural villages. Accusations of financial mismanagement made headlines when bishops of the Catholic Church called for the abolition of the SIP altogether.²³ They are also accused of enabling systems of patronage and perverting electoral outcomes through a kind of 'slush fund' for vote-buying.²⁴

The political dynamics at play between a Member of Parliament and his constituency were observed in the course of the fieldwork. The villages in the proximity of the Pahoturi river benefited when the late Aide Ganasi was elected in 2013 as the Member for South Fly (before rising within the ranks of the ruling People's National Congress to the position of Deputy Speaker). Until his untimely death in late 2016, he held considerable influence at the national level. The villages along the Pahoturi were grateful for the plentiful supply of iron sheets that the Member supplied. While the use of iron sheets for roofing was already somewhat widespread across the South Fly, the houses in the Pahoturi installed the sheets for walling, rainwater harvesting, sheds and fire pit shelters, or stored them for new houses they were planning. Although in a relative sense these villages were favoured, in an absolute sense the actual quantum of funding was small, considering that the total amount of DSIP funding for the South Fly District was reported to be almost K27 million over the four-year period 2013–16.²⁵ It did not take much of this allocation for them to be privileged relative to other villages, and any upper hand gained can be jealously guarded (chapter 2).

People across the South Fly took whatever support they could get, but they were well aware of how little money they actually received. There was widespread scepticism in the ability of their elected members and existing governance mechanisms to deliver funding or services. Despite a range of formal and informal governance capabilities at their village level, the extent of their influence seemed to

stop with their LLG member. They talked about having little influence, being forgotten, left behind and disconnected from the centre of government. With limited telecommunications and lack of money for transport, people relied on their political representatives coming to them. As the survey data revealed, this contact was infrequent at best.

When we questioned community leaders from 25 villages about the frequency of visits by their current or prior South Fly District member, 18 responded 'a long time ago' (more than 6 months) and 7 responded 'never'. Typically, once elected the district member relocates to Port Moresby, the capital, often leaving his (none has ever been female) wife and children at home. We also enquired about the local-level government (LLG) member, given that they are typically long-term residents of one of the villages within their ward. The LLG member visits were more frequent, yet the results were also mixed. Of the 25 villages surveyed, six reported that the LLG member lived there. Four villages reported a visit within the last week, five reported a visit within the last month, five reported within the last 6 months, with the remaining 5 reporting more than 6 months ago (figure 5.4). This result partly reflects that LLG members are elected according to wards that can span more than one village, but these villages are generally not far away.

<figure 5.4 near here>

Although the frequency of visits Local Level Government members make to South Fly villages varies widely, reportedly, South Fly members rarely or never visit these communities. (Research data)

The SIP gives the district MP and the LLG president and LLG members great influence over the allocation process, and their deliberation and committee business is largely transacted in Daru. The research participants observed that the degree of disconnect tends to correlate with the amount of time that the LLG member is away from his village. The more time a member spends in Daru or Port Moresby, the more he is socialised into a dysfunctional public finance system. The more time the member lives in his village, the more he remains socialised to village life, where a form of social accountability operates. There are LLG members who go to lengths to consult with their community, with public meetings and discussions about the selection and development of projects, and ways to maximise the use of local labour and other resources. In other villages, the Ward Development Committee is active, and it selects projects for LLGSIP funding. These LLG members then take these local deliberations forward to the DDA for funding allocations.

Once an allocation is secured, LLG members can then face considerable challenges in actually receiving the funds. The practical difficulties involved were observed with a village road project in Bula. The LLG member had overseen village labour in the execution of this project and kept careful records, but despite the approval and the funds being 'available', the money did not follow. The member then had to spend several months in Daru, repeatedly petitioning the District Administrator and Treasurer to release the funds. While there was money in the district's paper ledgers, there was no money in the district's bank account. It took

three months for the funds finally to arrive. Many LLG members spend equally extended periods in Daru, engaged in the protracted work of securing public finances. A significant portion of the budget is then consumed on administration costs, largely for accommodation and living expenses in Daru.

Whatever the problems of public finances, it does not appear to be due to any lack of public scrutiny over allocation of public finances. People are generally well informed and hold strong opinions on national and local politics. There is a very active Facebook page on anything to do with the Western Province, with a recurring focus on the accountability of public finances and elected officials.²⁶ As evidenced elsewhere,²⁷ social accountability mechanisms to an electoral constituency are a necessary but not a sufficient control on public expenditure. Structural mechanisms are also needed, including public finance instruments to administer effective distributions across jurisdictions, with locally derived indicators to measure effectiveness.²⁸ So there is no simple correlation between decentralisation and improved decision-making and accountability.

There are positive outliers to draw on. With Australian government support, the Consultative Implementation and Monitoring Council (CIMC) attempted to raise awareness and understanding of public budgets and expenditure at the local level,²⁹ through what it called the Budget Tracking Initiative.³⁰ The initiative worked with LLGs as well as local-level representatives and community leaders, non-government organisations (NGOs), church and women's groups to promote citizen-led monitoring. Unfortunately, the initiative was defunded from 2016, but before it ran out of resources, CIMC conducted training in Daru that resulted in the setting up of the DAKMO Watch Group,³¹ comprising members from the four South Fly LLGs. There was strong interest among the participants. CIMC reported the following account from a female participant involved in the training in an adjoining district.

This training has opened our eyes and made us more aware of how we can better access our development grants ... we have been fooled enough by our leaders. Now we know how to get them to fast track development in our area. They cannot hide any more because we know if they are lying or not.³²

Another positive account is the operation of school boards made possible through direct funding allocations, via the TFF since 2012, and via PNG SDP since 2018. This occurs with the involvement of the Provincial Office of the Department of Education, where there is a dedicated TFF coordinator. The department employs standards officers, other departmental staff monitor school expenditure and quality of education, but monitoring visits to villages are infrequent if they occur at all. School boards are locally elected for a three-year term, but the department approves them. There is a school bank account, with the school chair and the head teacher as joint signatories. The board prepares a plan and budget. After receiving the funds against the budget, the board must produce an acquittal of the expended funds

before they can be released. Although there were reports of problems, with quality of teaching, teacher absenteeism and attendance, it was clear that the schools were at least operating, compared to the lack of other services, including abandoned health posts.³³

There are significant challenges in overcoming the entrenched dysfunction of PNG's public finance system. Prior attempts at decentralisation reforms have all struggled, as has aid assistance in this area. People have little trust in the ability of their government to deliver public resources, which extends to governance of Australian aid assistance. As one interviewee said, 'If Australian government gives ten onions in a bag, there is a rat here who will eat them all one by one ... We should be living in permanent houses because there is enough money coming in, but it's being eaten by the rats.'³⁴

Too little of current PNG government and aid funding is currently reaching rural villages. A marked disconnect has emerged between South Fly villages and LLG and district headquarters in Daru, where the 'business' of public finances is transacted. People in the South Fly want increased oversight over public finance expenditure. The limited success of the CIMC, TFF and the LLGSIP (in some villages) suggests that there are opportunities to work through local organisations that enable local accountabilities. But structural reforms are also needed. It is unlikely that the SIP will change any time soon, as any reforms will threaten the privileges that elected MPs enjoy from it. The Department of Provincial and Local Government Affairs has plans to give village-level Ward Development Committee (WDC) more powers, including a ward SIP allocation disbursed via a Ward Development Plan.³⁵ The South Fly Administration is also supporting the development of Ward Development Plans. A number of village leaders in one village supported the idea of direct funding to the WDC via a community bank account.³⁶ Leaders in another village argued for 'deeds of agreements', which ensure that funding reached 'where the mouth is'.³⁷ Balanced with existing systems of political and social accountability, these structural reforms are worth exploring.

Australia's extrajurisdictional influence in PNG

Joint management

A distinct feature of governance in the border area is how the influence of the Australian state (whether intended or inadvertent) extends beyond its border. The large number of agencies active in the Torres Strait, and the level of resourcing that they enjoy, sit in stark contrast to the lack of resources on the PNG side. On the Torres Strait, at a local government level, Torres Strait Island Regional Council covers all of the land and sea territory in the Protected Zone under the treaty. At regional level, the Torres Strait Regional Authority is a statutory authority under the Australian legislation. At the state level, there is the full range of Queensland government departments that are active in regional areas, including health, police, education, justice and housing. At the Commonwealth level, there are four key

Australian government border authorities: Department of Foreign Affairs and Trade (DFAT), which administers the treaty; Department of Agriculture and Water Resources (DAWA) with responsibility for biosecurity; Australian Border Force (ABF; within the Department of Home Affairs) for border enforcement; and Australian Fisheries Management Authority (AFMA). In addition, the Australian Federal Police (AFP) plays an intelligence role, the Australian Defence Force (ADF) assists with reconnaissance; and the Australian Marine Safety Authority (ASMA) oversees boating safety. The Maritime Border Control in Canberra controls both ADF and ABF vessels and aircraft, including a 'cutter' vessel, two 'fast response boats' and two helicopters.³⁸

A bewildering number of cross-border committees oversees the administration of the treaty. The central body is the Joint Advisory Committee (JAC), comprising senior representatives from the Australian and PNG governments and the Queensland and Western Provincial governments, and traditional inhabitants from the Torres Strait Islands and PNG Treaty villages. It is in turn supported by four bilateral committees that meet annually or biannually: the Traditional Inhabitants Meeting (TIM), Fisheries Bilateral Meeting, the Environmental Management Committee, and the Health Issues Committee (HIC). DFAT then coordinates the Torres Strait Interdepartmental Meeting, which aims to progress the action items arising from the JAC and these four committees.

The JAC reports to the Senior Officials Meeting and Bilateral Security Dialogue (co-chaired by the DFAT Secretary and their PNG counterpart) with representatives from a range of Australian and PNG governments' law enforcement, immigration, customs, biosecurity and health entities. Its recommendations then go to the PNG–Australia Ministerial Forum (with the Foreign Affairs ministers of PNG and Australia attending), at the highest level of bilateral relations between the two states, where highly political issues like refugee processing on Manus Island are also discussed.³⁹

There are few, if any, opportunities for external observers and academic researchers to observe what occurs in the JAC and at these higher-level bilateral meetings, and documents were not available to the research team. An investigation in 2019 by the Australian National Audit Office (ANAO) found that JAC and subcommittee meetings were held regularly and were well attended, outcomes being documented and actions followed up. But it noted the lack of transparency, calling for DFAT to keep a register of JAC decisions and to share it with government stakeholders.⁴⁰

Elected PNG members who sat on JAC and TIM expressed their frustration at how these meetings unfolded. A long-standing member of JAC lamented how little influence the PNG members actually had in these meetings and how the Australian authorities and Torres Strait members 'pushed things through'. The member also expressed his view on how the real decision-making powers lay with the 'final meetings' that followed the JAC, including the Senior Officers Meeting and

Ministerial Forum, at which there was no local representation, or communication to the JAC of the discussion.⁴¹

The lopsided nature of the 'joint management arrangements' is also evident in the cross-border travel of Australian government officials, using Australian government patrol boats and helicopters. DFAT coordinates biannual Treaty Awareness Visits focused on explaining the rules embodied in the 'Guidelines for Traditional Visitors', and responding to issues raised by traditional inhabitants. A range of Australian and PNG government entities participate in these visits, representing traditional inhabitants, immigration, law enforcement, environment, biosecurity, health and fisheries.

More frequently, the Australian Border Force also organises bilateral joint cross-border patrols three and six times a year, for collaborative intelligence exercises, which includes ABF, Queensland Police, PNG Immigration, PNG Customs and the PNG Constabulary.⁴² The patrols take place over three to eight days and include visits to both PNG Treaty villages and Torres Strait Islands within the Protected Zone.⁴³ There are additional joint operations if a policing and enforcement threat emerges. During the course of fieldwork in 2016, a helicopter landed in a village we had just left by boat, responding to reports of alleged foreign asylum seekers travelling overland and wanting to hire a boat. These operations proceed largely at the instigation of the Australian border authorities, and the considerable transportation costs involved are paid by Australia. The Australian border authorities are accompanied by their PNG counterparts, and for the many villages along the South Fly, these extraordinary visits are the only visits they receive from these PNG agencies.

Australian government ministers have also travelled directly across the border from the Torres Strait, bypassing the normal protocols with the PNG Government and the High Commission in Port Moresby. During the study period, Indigenous Affairs Minister Senator Nigel Scullion, accompanied by the Member for Leichhardt electorate (which encompasses the Torres Strait), Warren Entsch, travelled by boat from the Torres Strait to Mabuduan.⁴⁴ Immigration officials travelled from Daru to process his entry. Their crossing qualified as a 'facilitated cross-border movement', whereby nominated health and other officials are allowed to enter or exit Australia and/or PNG conveniently via non-proclaimed ports, within the area covered by the treaty.⁴⁵

There is a massive imbalance in the scale of governance structures, resources, staffing and transportation vessels between the Australian and the PNG sides of the border. The power differential is so great that the current arrangements are better described as being consultative—or at best negotiated—rather than jointly managed in any equitable sense. Although they follow correct and due process, the Australian border authorities are largely able to operate extrajurisdictionally in the PNG state, and their resource-strapped PNG counterparts happily accommodate them.

Aboriginal and Torres Strait Islander affairs

The policies and practice of the many departments and programs that collectively constitute Aboriginal and Torres Strait Islander affairs also have a pervasive influence on the governance of the borderland. Torres Strait Islanders bear the consequences of cross-border visitation under the treaty more than any other Australians, given the limited water resources, social housing, fuel stocks and other services available to Island communities remote from mainland Australia. As one of Australia's First Peoples, Torres Strait Islanders assert their own sovereignty independent of the Australian state, including calls to separate from Queensland by establishing a self-governing territory.⁴⁶

They are entitled to play a leading role in the management of the border, including filling public sector jobs in the different border authorities. Job readiness and employment are also a major focus of Aboriginal and Torres Strait Islander Affairs policies. Government jobs are well paid and stable, in places where private sector employment is extremely low. All of the 27 biosecurity jobs in DAWA in are locally filled, as are the 10 Border Management Officer (BMOs) employed by the ADF.⁴⁷ Most identify as Aboriginal and/or Torres Strait Islander, and the remainder are former PNG nationals who are now Australian citizens.

There are instances where programs borne from Aboriginal and Torres Strait Islander Affairs have crossed over and hybridised across the border into PNG. The BRTV ranger program (discussed below) was originally modelled on a successful ranger program common to Indigenous communities in Australia, including the Torres Strait. In the course of discussions with LLG members, it was clear that they looked to their counterpart councillors in the Torres Strait for advice, especially with governance structures and processes, and ways to acquire Australian government funding.

On the Torres Strait side of the border, the public administration of Aboriginal and Torres Strait Islander affairs affords considerable powers to elected local government (represented by the councillor of the Torres Strait Island Regional Council or TSIRC) and native title holders (represented by the chair of the Prescribed Body Corporate or PBC), as well as the Torres Strait Regional Authority, which is a Commonwealth statutory authority with a board of elected Torres Strait Islander representatives. These elected officials hold important powers over 'visitation', under both local government legislation and the terms of their native title determination. They are also charged with powers to self-govern their Island communities, including impacts on their limited natural resources (e.g. water supply and fish stocks), available social housing, social services (health and schooling) and social well-being (disputes and relationships). This includes the negative impact on their communities that arise from cross-border visits by PNG nationals, including overstayers, and unlawful activity.

DFAT looks to these individual island councillors to approve visitor permits and to set the rules of visitation, including the particular days of the week and the

numbers of people who can cross. This includes the issuing of bans on individuals, and even blanket bans for whole PNG villages (see chapter 2). The rules of visitation vary between different Torres Strait Islands, as the pressures arising from PNG visitors, and the extent that they break the rules, vary between different Islands, with the outer islands of Saibai and Boigu being the worst affected.

Although there is always a rationale, these decisions can also become politicised locally, in keeping with the stance taken by individual councillors and their local constituency and deliberations. The cross-border movements of PNG nationals is a contentious matter within the Torres Strait Island population, and it is not dissimilar to the way the rest of Australia views immigration and refugees. Incumbent councillors take different stances into local government elections on issue of border security and visitor control.

Although locally led decision-making on visitation aligns with a principle of Indigenous self-governance, it does not necessarily align with the ‘spirit of mutual friendship and good neighbourliness’, as set out in the treaty. Some councillors continue to operate in accordance with ‘tradition’, including cross-border dispute resolution processes (see chapter 3), but other councillors are taking an increasingly hard line when rules are broken. In 2019, the Saibai councillor placed a ban on all visits from Mabudian village, punishing the entire village for the acts of a number of individuals who have broken the rules, largely by overstaying. The legal position regarding who has the power to limit and place such blanket bans, and what constitutes a valid ban under the treaty, is not clear.

A complex blurring is emerging between the two administrative arrangements under Aboriginal and Torres Strait Islander Affairs and border management. The powers of individual councillors intersect in unknown ways with the international and Australian domestic laws that govern the treaty and the powers vested in federal government agencies and the governance bodies set up to administer the treaty, including JAC and TIM. It appears as though a ‘soft’ compact has emerged between the border authorities’ increasing efforts at ‘border protection’, with some Torres Strait Islander leaders increasing efforts to ensure ‘self-governance’ of visitation.

Building Resilience in Treaty Villages program

An interesting case of Australia’s influence across the border is that of the Building Resilience in Treaty Villages (BRTV) program – also commonly referred to as the ranger program – funded under the Australian Aid Program.⁴⁸ In establishing its rationale, the program sought to reduce the number of inward visits to Australia (more than 27 000 during 2018–19) by targeting development programs in the Treaty villages.⁴⁹

BRTV began by adapting a successful model from Indigenous programming in Australia of Indigenous Land and Sea Management Centres (LSMCs) and the work of local Indigenous rangers.⁵⁰ This model operates in a large number of remote Indigenous communities across Australia, including the Torres Strait, through the

Land and Sea Management Unit of the Torres Strait Regional Authority (TSRA), with funding from the Australian Government's Department of Agriculture and Water Resources. In the Torres Strait, in addition to the normal role of natural and cultural resource management, the rangers are funded to undertake a range of biosecurity surveillance activities, including sharing information on the movement of people and goods across the border.⁵¹

<Figure 5.5 near here>

Rangers in the South Fly (Research team, 2016)

The focus of BRTV's operation is the employment, training and logistical support of their rangers, including the operation and maintenance of a small fleet of boats (figure 5.5). The rangers wear a uniform of khaki shirts and blue pants. They are paid 25 Kina on a casual basis for each day of training or village project work, injecting much-needed cash into the Treaty villages. Given the lack of comparable employment or sources of income, these positions are highly sought after, which can lead to an uneven benefit to the ranger's households and their relatives. The scope of services they provide differs from that of their Torres Strait counterparts. BRTV effectively operate a rural development program across a range of livelihood areas, including community resilience, improved food security, clean water and sanitation, disaster response, disease prevention, health promotion, leadership and governance.

The BRTV began as a pilot, with six Treaty villages under a \$1.7 million program from September 2014 to June 2017. The second stage of the program was rolled out in July 2017 with a scheduled completion date of June 2019, which expanded to all 14 Treaty villages and received \$2.4 million. The program is funded by the Australian Aid Program, under the Decentralisation and Citizen Participation Partnership (formerly the PNG Governance Facility), which is managed on behalf of DFAT by the multinational consultancy company Abt Associates. The program is implemented by the Reef and Rainforest Research Cooperative Research Centre (RRRC) based in Cairns, which subcontracted its operation to the INLOC Group. With its head office in Cairns, INLOC is a private company that provides a range of services, including first aid training, boating safety, ranger training and personal security services for people travelling to risky destinations overseas (including PNG). Many of its staff have prior experience with the Australian Army, including the elite Special Air Service Regiment (SAS). In advertising its capabilities in international development, INLOC publicises that it delivers integrated projects, water sanitation and hygiene (WASH), natural disaster relief, disease mitigation and community well-being services.⁵²

The stated objectives for Stage 2 of the BRTV seek a comprehensive set of outcomes and KRAs (key result areas) across the diverse sectors of economic enterprise, fisheries management, governance, gender, infrastructure, water supply, disease prevention, disaster response, food security and health. The range of proposed activities is very broad and, being inclusive of different options, seems as important as strategic prioritisation. The KRAs range from being broad in scope,

such as 'increased women's inclusion in leadership and decision-making', to highly specific, such as 'improve first respondent capacity for trauma and obstetrics in the villages'. While the broad aims potentially allow local prioritisation and articulation, the more specific ones appear to be offering predetermined solutions.

The program success has largely been sold on its ability to achieve results, by overcoming the logistical challenges in the South Fly, in comparison to alternative providers. Not surprisingly, then, it has tended to focus on tangible outputs. The prior military experience of INLOC workers gave them the skills to set up a remote camp and to manage the workplace health and safety of operating small dinghies in the open coastal waters. Their mere arrival in the Treaty villages, and their ability to perform repairs to some basic water supply infrastructure systems, won them early support. Often, this was the first time in some years that anyone from an external organisation had provided any material assistance. Its support only grew as the program expanded its activities into toilets, waste management, emergency first aid and assistance with birthing and transport. BRTV clearly stood apart compared to the development activities of the few international NGOs in the district, who tended to focus their effort on villages within a few hours travel from Daru. Establishing their base at Paho Island just offshore of Mabudian village, itself a two-hour dinghy ride west of Daru, immediately set the BRTV apart from the Daru 'aid scene'.

The program has overreached itself in some areas. Spacem Pikini, a PNG family planning organisation, conducted a week-long deployment to Paho Island and selected Treaty villages in November 2017. They trained female rangers to insert Long Acting Reversible Contraception (LARC) implants,⁵³ but not the more complicated procedure of how to remove them. Women were asked if they were pregnant before insertion, but they were not tested. After concerns were raised about the standard of service, the practice was stopped. Marie Stopes now provides a range of contraception and family planning services, in collaboration with BRTV.⁵⁴

BRTV also failed in some of its efforts. The program experimented with Urine Diversion Dry Toilets (UDDTs) in public places like schoolyards. The thinking was to not contaminate the high water table in coastal villages (where people still rely on wells) and to compost the waste. Although UDDT is a proven toilet design in other parts of the world, in PNG cultural barriers related to sorcery object to the composting and reuse of human faeces. Social barriers to the installation of toilets in public places also exist, as well as a lack of clarity about whose responsibility it was to maintain them. Few of these toilets are used.

The BRTV program is well connected politically at the highest levels in both Australia and PNG. It is closely allied to government ministers in Canberra, to prominent leaders in the Torres Strait and to elected members in PNG, including the former South Fly District member. The District Administrator in Daru was well informed of its activities, as was the Australian High Commission in Port Moresby, due in part to the domestic political stakes involved in Australia.

At a Ranger graduation ceremony in 2018 in Daru, we witnessed the level of commitment with the attendance of the Australian High Commissioner as well as

the Australian Member of Parliament for Leichhardt, the Honourable Warren Entsch.

Entsch has been a vocal publicist of the plight of South Fly and a strong advocate for funding support for the Daru General Hospital and for the BRTV ranger program. He is on the public record describing himself as the 'member for South Fly in the Australian Parliament'.⁵⁵ At the graduation ceremony, Entsch addressed the crowd, announcing: 'I pride myself as being acknowledged as the member in the Australian national parliament representing all of those Western Province and all of those Treaty villages.'⁵⁶

In Entsch's speech on the day, he addressed the rangers directly to congratulate them on their achievement and praise them for being leaders in their communities. He said that they will go on to be trainers themselves. He spoke with conviction of the future of the program in a way that suggests significant continuous Australian government commitment. He encouraged the 'little kids' present to be rangers themselves one day.

Entsch went on to explain the absence of the Treaty village chairman, who had been bitten by a snake a couple of days before the event:⁵⁷

If it hadn't have been for the ranger program he [the chair] may well have lost an arm or a leg or he might have lost his life ... but that didn't happen because the rangers applied a snake bandage to him. He was taken to Saibai clinic. I spoke to the nurses at the Saibai clinic only an a hour or so ago. He was treated so well he didn't even have to go further south to Thursday Island [applause] ... He's recovering now on Saibai and they said to me an hour ago that they were waiting on the last blood test before he was able to go back ... and he was wanting to get in the dinghy and come up here for the ceremony and I've told him ... 'That's not going to happen, you need to recover', but at the end of day ... it's what's been happening with the ranger programs and this is one example, one very current example. This is what's happening every day in these communities ... where each and every one of you, and this is why it's important that I talk to the rangers. [Addressing rangers] Each and every one of you are [*sic*] making such a difference in the lives of the communities you serve, and I say thank you for it!

The cross-border movement of elected members, with the support of the BRTV rangers, for a medical emergency is understandable. But Entsch's well-intentioned words show how the border can be a formality to those entitled to cross it while for others it remains illusively inaccessible. Neither the people from non-Treaty villages nor the people of Daru where the ceremony was conducted enjoy this privilege.

Community leaders in non-Treaty villages complained about their arbitrary exclusion from the development programs offered by the BRTV, in the absence of any alternative providers. Selecting only Treaty villages inescapably associates BRTV

with Australia's border management. It also fuels tensions between Treaty and non-Treaty villages.

As funding for the program shifted to the Australian Aid Program, with funding earmarked for governance and citizen participation, it reoriented its outcome areas accordingly. BRTV seeks a community-driven approach at the village level, as a means to build governance. Through local consultative decision-making processes, villages can prioritise their development goals from a menu of offerings from the program. Village perceptions of this process varied. Some villagers described a democratic process whereby community priorities were debated and consensus was built. Others were resentful of a seemingly arbitrary process in which outcomes were predetermined.

BTRV also seeks to be a catalyst for building leadership and local governance capacity, with the rangers acting as role models. From its start, it has worked closely with the LLG members and the Kiwai (now Forecoast) LLG president. There have been tensions at some villages due to the LLG members favouring their own families with allocations. In 2019, BTRV was working more deliberately with the village Ward Development Committee (WDC). They successfully inserted the senior ranger into each village to become one of the five associate members of WDC. They also introduced a rule whereby they will not start a project without a WDC meeting first posting the decision on the ranger community noticeboard. While clearly a positive step towards supporting local governance capabilities, there are also existing informal governance structures representing a diversity of local interests, which are typically complex and reorient according to different external opportunities. It is questionable how the rangers fit within this governance system as leaders themselves and the extent to which their leadership will diffuse as a model, especially beyond the grant period.

The BRTV is a complex hybrid organisation that reflects the elements of the three different Australian policy fields that dominate the border: Aboriginal and Torres Strait Islander affairs, border management and international aid assistance. It is quite uniquely a borderland organisation. As a result, it is easily misunderstood by other stakeholders. By overcoming the logistical challenges, BRTV is clearly helping to bring much needed improvements and cash injections into the Treaty villages.

As the success of the program largely relies on demonstrating results on the ground, the BRTV rangers and trainers have tended to maintain control over delivery. This expediency has, not surprisingly, led to the development of parallel structures. Whatever their weaknesses, there are LLGs, service providers and government departments that operate in the South Fly, and the mechanisms introduced by the BRTV have tended to override or be in tension with them. Principles of aid effectiveness and alignment requires interveners to draw on and strengthen existing systems rather than replace or compete with them.⁵⁸ In 2019, the BRTV was working towards a more collaborative approach and increasing its efforts at building capability in local governance and leadership.

Australian patronage of Treaty villages

A distinct feature of Australia's influence in PNG is the creation of 'haves', who then protect their privileges from the 'have nots'. The nomination of 14 Treaty villages in 2000 created a category of non-Treaty villages, whose inhabitants are no longer entitled to cross the border under a traditional visitor pass. Treaty villages now enjoy a range of privileges relative to neighbouring non-Treaty villages. Given their more frequent crossings, they are now better placed to maintain relations with Torres Strait Islanders and therefore reap the benefits of their connections, for labour, market trade and other financial transactions. They can then act as intermediaries or resellers in crafts sales and other commercial transactions across the border. For example, considerable trade now occurs in Mabudian village, including a small market on the beach, for non-Treaty villages up the Pahoturi River.⁵⁹

The BRTV ranger program is limited to Treaty villages, so they now also enjoy privileged access under the Australian Aid Program. Even more remarkably, in 2015, they were also privileged by a special-purpose grant from Prime Minister O'Neill's office. The exact details of how this came about are not clear, but we did find the following factual pieces to the puzzle. The source was an allocation of K16 million (some sources say K19 million) earmarked for flood and other disaster relief, of which K9 million was allocated elsewhere, including K3 million to the Daru School. Prime Minister O'Neill travelled to Daru in mid-2012 to present the cheque.⁶⁰ At a graduation ceremony for rangers in 2015 in Mabudian, attended by both the Honourable Warren Entsch and Nigel Scullion (federal Minister of Aboriginal and Torres Strait Islander Affairs), the late South Fly District member announced that K7 million of the original grant would be allocated to infrastructure projects in Treaty villages.⁶¹ Of what was now called the Treaty Village Improvement Program, K1 million was set aside as counterpart funding for BTRV, which was never received. According to accounting ledgers from the South Fly District Administration, about K1 million was spent on mostly travel-related and other administrative expenses over the two-year period 2105–16, with some irregularities such as funeral expenses.⁶² Members from the Treaty villages went on a shopping trip to Port Moresby, to purchase sawmills, iron sheets, laptops, whipper snippers, dinghies and outboards. Judging by our observations during fieldwork in 2019, the value of goods delivered to villages was less than K2 million, about a quarter of the original K7 million. An unknown amount of remaining funds were frozen and subject to a PNG Fraud Squad investigation.

Leaders in Treaty villages have long sought a governance structure that the Australian state could recognise and enter into agreements with, and formalising their distinction from non-Treaty villages was also seen as critical to achieving this. Initially, there was a proposal to establish a statutory authority, which then shifted to the establishment a new LLG. This was formalised with the creation of the Forecoast LLG, at the local-level government elections in mid-2019. The geography

of the new LLG is not contiguous, as there are some non-Treaty villages situated along the coastline.

Seeking preferential treatment is in part justified by claims of maintaining a human and geographical buffer zone made up of the borderland and its people — whoever claims this title and role can then be entitled to seek privileges and rewards from the Australian state (or at least this is a well-founded perception). In June 2018, at the graduation ceremony of the BRTV rangers, the Western Provincial Governor announced to the gathered crowd that the entirety of the Western Province served as Australia's buffer zone. The leaders of the Treaty villages also assert their role in monitoring the border and reporting when people break the rules, including when illegal immigrants attempt to cross (see chapter 4).

While these efforts are locally driven, they reflect distortions in opportunities from the Australia state bordering the region. The selective privileging of some villages over others does not derive from a perspective of sustainable development or public health of the South Fly people, which can only operate at a population level. Rather, it clearly accords with a logic of border control.

Cross-border health

Although access to health services is excluded under the terms of the Treaty, people are still able to find their way into the health system. People from Treaty villages entering on traditional inhabitant passes can be granted entry by the Australian Border Force for a purpose other than health, then subsequently present themselves to the health facility. According to a 2019 ANAO report, Queensland Health estimated that 2000 PNG nationals attend their Torres Strait Island clinics every year. The Queensland Government successfully argued that the treatment of these foreign citizens under an international treaty is a federal government responsibility and therefore receive an annual subsidy of more than \$5 million from the Commonwealth Department of Health.⁶³

In addition to whatever treatment they provide to PNG nationals who walk into the clinic, Queensland Health also adopts a humanitarian position and medevacs patients who are medical emergencies, every case being treated on its clinical merit. They adopt this position regardless of whether or not the patient is from a Treaty village, although non-Treaty villagers face more rigorous scrutiny by the ABF before being granted entry. If assessed by frontline nurses as a genuine emergency, PNG nationals then access the full entitlements of Australia's universal health-care system. Queensland Health estimates that approximately a hundred PNG patients are admitted to Thursday Island and other hospitals on the mainland each year.⁶⁴ This includes free treatment, medevacs and accommodation for the patient and an accompanying family member. They can find themselves detained by the ABF, however, as they are not legally allowed to travel outside the protected zone covered by the treaty.⁶⁵

Given the lack of health services in the South Fly, it is not surprising that people will seek treatment across the border. People know that they can avail

themselves of services at Daru General Hospital, but they must pay and the standard of the treatment is much lower. Even if they were to get to Daru, most stay in the crowded 'corners' of Daru and are susceptible to further disease transmission. As Miller outlines (chapter 6), Daru essentially acts a vector for disease transmission, and when people visit seeking health care, they are vulnerable and can then transmit new diseases from Daru to their villages upon their return.

Frontline health workers from Queensland Health have long realised the necessity of treating PNG nationals in order to control TB, which through the 2000s included the provision of services by Queensland Health through specialised TB clinics on Saibai and Boigu. As also illustrated by Miller, the decision to close these clinics by Queensland Health and to otherwise harden the border to health care, and to instead focus Australian aid on the development of TB services in PNG, resulted in a myopic focus on Daru to the detriment of many South Fly villages.

Many PNG nationals continue to try to use health services in Australia but now do so with a greater expectation of being rejected. Many are then referred back to PNG for treatment, but Queensland Health staff do so in the knowledge that there are few health facilities operating in the villages and very limited transport available for people to get to Daru. The frustration of local people regarding the level of care they receive in the villages and the restrictions placed on using Australian services is palpable. There is also some confusion and perceptions of buck-passing as to where else people should go, as one respondent explained it:

[They] tells us to go to Daru, medicine there. When I went there they said no medicine, go back to Saibai. They tell lies that we are getting good services, but it is bullshit.

Cross-border health provision has historically taken a Band Aid approach, which has in recent years focused on TB. In order to slow down disease transmission, a broader health systems strengthening approach is needed instead, which incorporates service delivery, public health, environmental health and development interventions to improve livelihoods and well-being; that is, to treat the borderland as a 'health zone' where public finances are allocated to provide a safer environment for those living on both sides of the border. Such an approach can not only reduce the push-and-pull factors at play with health-seeking behaviour but also protect the broader Australian population (chapter 10).

Limiting cross-border development

Limiting labour mobility

The people living in the South Fly once enjoyed marked labour mobility across the border into the Torres Strait, working in the pearling and fishing industries.⁶⁶ Although the location of the border was finalised with the signing of the treaty in 1978, it did not fully come into effect until 1985 when the treaty was ratified. During this transition, many of the PNG nationals who had been living in the Torres Strait

Islands made their way back to PNG, but locally significant numbers also remained in Australia.⁶⁷ Today they hold either Australian citizenship or permanent residency, and are referred to collectively by the Torres Strait Islanders as the 'citizens'.

Although Australian, they remain distinct from the Torres Strait Islanders, who retain their separate identity as a sovereign Indigenous people or First Nation of Australia. The households the 'citizens' occupy are disproportionately burdened by visitation by PNG nationals, leading often to overcrowding and risk of communicable diseases like TB (chapter 6).

Cross-border labour mobility is today tightly prescribed. The bilateral 'Guidelines for Traditional Visitors' explicitly 'bans commercial activity, business dealings and working for money during traditional visits (e.g. cray-fishing from a licensed Australian cray boat, selling artefacts to commercial operators, paid domestic assistance)'. This is a significant departure from the days when residents of the South Fly worked alongside Torres Strait Islanders on similar wages.

Labour mobility, however, continues informally and irregularly. Out of 244 respondent on the PNG side, about 30 per cent indicated that they sometimes work in the Torres Strait, only two indicated that they did so regularly. Similarly, of the 23 respondents from the Torres Strait, 38 per cent indicated that they employed people sometimes, and four indicated that they did so regularly. The scope of employment includes domestic chores (e.g. cleaning, housekeeping), food-gathering (e.g. fishing, hunting), supporting events (e.g. tombstone openings) and cultural activity (e.g. making mats). Most of this employment occurs on the outer islands. Some Torres Strait Islanders interviewed expressed their disdain with the practice, with some even emotively describing it as 'slave labour'. When payment is made in cash, the rate can be as little as \$10 a day, which is widely affordable to Torres Strait Islander households, including those that are limited to welfare payments. Some Torres Strait Islanders take advantage of the 'traditional' provisions of the treaty and limit reimbursement to 'trade and barter', effecting payment through such commodities as groceries or petrol. Despite the low payment, many PNG nationals seek the work, given the poverty that they face (chapter 4). As one Torres Strait Islander indicated,

They keep approaching me. Feel sorry for them. They're allowed to garden and fish if with locals. Couple of times a year I employ them, mostly with yard work, to rake up leaves.

The inability of people to work across the border curtails one of the most successful forms of economic development occurring across other borders globally. The only 'official' form of labour mobility open to people living on the South Fly, then, is via formal migration. To achieve this, people must apply through normal immigration channels, travel to Port Moresby, then enter Australia through a legal port such as Cairns in North Queensland (chapter 4). A number of Torres Strait Islanders and Papuan Australian 'citizens' were sponsoring their Papuan partners or children to emigrate to Australia, although they struggled with the expense and the

convoluted process involved. Informants reported that the direct cost involved was about \$7000, but if travel and other costs are included, the total cost involved was closer to \$10 000.

There is an opportunity for people from the South Fly to gain temporary 'seasonal' work in Australia through labour mobility programs under the Australian Aid Program run by DFAT (see chapter 10).

Limiting remittance flows

In the course of the household survey, a quarter of respondents (25 per cent; 99 of 392) indicated remittances from family and friends as being an important source of income. The amounts received were sporadic and small in value (median K100). The ability of people living in the South Fly to receive such remittances is, however, extremely limited. On the PNG side, there are only two ATMs in the South Fly District, and both are located side by side at the sole branch of Bank South Pacific (BSP) in Daru. Other mobile money agents, including Post PNG, Western Union and trade stores, are also limited to Daru.

Not surprisingly given the distance involved, for the villages further to the west, the ATMs on the Torres Strait islands of Boigu and Saibai are an obvious place to receive remittances, especially from relatives and friends living in the Torres Strait or elsewhere in Australia. PNG citizens can withdraw money from an ATM using an international credit card, but Border Force officers were reported as preventing people from doing so, regarding this not to be a traditional activity under the treaty. Indeed the bilateral 'Guidelines for Traditional Visitors', explicitly excludes 'accessing money from the ATM'.

Another channel involves deposits via electronic transfer into the bank account of a Torres Strait Islander or a former PNG now Australian 'citizen', who then withdraws the cash and hands it to the PNG national. Only Australian citizens are allowed to have a bank account, requiring '100 points' of identity documentation. The PNG national makes the arrangements with the Torres Strait Islander, who then texts the bank account details to their 'southern' friend or relative. This practice obviously relies on the honesty of the recipient, with people choosing only close relatives or trusted friends. There have nonetheless been instances when the money reportedly never arrived.

Outside the formal banking system, the Islanders Board of Industry and Service (IBIS) store supports financial flows and remittances across the Torres Strait. IBIS is registered as an Independent Remittance Dealer with AusTrac, under the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cwlth). Holders of IBIS accounts can in effect use them as deposit accounts, as opposed to credit or book-up (informal credit extended by shopkeepers to their customers). Relatives with an IBIS account can deposit an amount of (say) \$100, then notify their relatives on another IBIS store in the Torres Strait to withdraw it. Before anti-terrorism and money-laundering laws came into effect, some obliging IBIS store managers reportedly adjudicated over transfers to PNG nationals, via a verification phone call between

both parties. But this is now tightly prescribed and carries heavy penalties. IBIS stores require all transactions to be limited to Australian citizens who have an account, on proof of Australian identity documentation.⁶⁸ As for using the ATMs, a PNG national can still ask a trusted relative or friend with an IBIS account to access the facility on their behalf.

Another way to transfer remittances is to use commodities rather than cash, including generators, dinghies and outboard motors. Many people in the Torres Strait also donate used clothing, toys, kitchen utensils, garden tools and mechanical equipment for general distribution among the villages to which they are related.

The difficulty and obstruction in accessing what are essentially private family funds is a clear example of border protection trumping the development needs of South Fly residents. While DFAT's aid program actively promulgates the success of remittances as an outcome of regional aid assistance through labour mobility programs,⁶⁹ it actively participates in efforts to limit remittances from flowing across the border. Efforts to prevent money-laundering could be limited to large sums of money, not amounts of \$100–\$200, which are the typical sum remitted. Clamping down on remittance flows is yet another example of hardening of the border and thereby undermining the potential for development in the South Fly.

Beyond the remit of the treaty and border protection, there is the potential for aid assistance to be provided on the PNG side, to facilitate remittances and other financial flows, through the use of mobile phone telecommunication facilities and mobile money (chapter 10).

Limiting cross-border trade

The 'Guidelines for Traditional Visitors' limits crossings to traditional exchange and barter, explicitly excluding anything that is not traditional.

Traditional visits do not include activities that are not traditional. Visits for health treatment, attending court cases, shopping at the store, picking up deliveries from the barge, baby-sitting, working or accessing money from the ATM are not considered traditional activities.

Along with other developing countries, rural PNG is transitioning to the global cash economy. People now use cash to purchase a range of commodities, including staple foods and fuel. This is particularly the case for villages like Mabuduan, which has limited access to land and gardens. Limiting people's access to shopping at the community store on the basis of shopping not being a traditional activity is particularly outdated. While the Australian authorities do at times enforce this restriction, visitors are mostly able to find a way around it.

The restriction can also be one-sided, as Torres Strait Islanders also travel into PNG for shopping, taking advantage of their traditional inhabitant status. The estimated number of Torres Strait Islanders to cross in 2018–19 was estimated to be a thousand, compared to 27 000 PNG nationals coming the other way.⁷⁰ This particularly applies to the outer islands (e.g. Saibai) and the eastern islands (e.g. Darnley). Although a total ban was in effect on Mabuduan in 2019, people from

Saibai still travelled to Mabuduan, including a woman employed by the Australian Border Force.⁷¹

Torres Strait Islanders have travelled to Daru for shopping, despite the fact that it is not a nominated Treaty village. There is a variety of goods available on Daru, and they are much cheaper than what can be purchased on Thursday Island. One informant on Darnley Island advised that the cost of a fishing net was five times cheaper than on Thursday Island.⁷² As observed by the research team, Torres Strait Islanders use their Australian credit and debit cards on Daru to withdraw funds from the ATMs there, or they use them for store purchases and hotel accommodation. Other Torres Strait Islanders travel to the South Fly villages, to buy in bulk woven pandanus leaf mats and other traditional ornaments for major events such as tombstone openings. Torres Strait Islanders can also face similar travel restrictions to those living in the South Fly, with their councillors sometimes reluctant to issue passes or refusing to issue passes to them.

The guidelines do not explicitly prohibit the selling of goods between traditional inhabitants, so sales from Treaty villages to Torres Strait Islanders do frequently take place for cash. More than two-thirds (94 of 147) of respondents in PNG reported cross-border trade as being one their top sources of income in 2016 and 2017. In 2018, more than a third (34 per cent; 41 of 77) of respondents indicated that they sold things in the Torres Strait Islands that they had made or grown. The guidelines state that 'selling goods to non-traditional inhabitants is not permitted under the Treaty', but sales to non-Indigenous contractors working on the Torres Strait Islands do occur, and the returns to PNG people from these sales are the most lucrative and sought after.

The guidelines also state that 'selling goods in the knowledge that they may [be] on-sold is also not permitted under the Treaty'. On-selling for people who are not recognised as 'traditional inhabitants' is difficult to monitor, but we were able to collect limited qualitative data on these activities. On the PNG side, middlemen from the Treaty villages purchased goods from non-Treaty villages and then sold them into the Torres Strait, either buying the goods outright or selling them on consignment. Many informants complained that they receive poor prices and feel cheated in the process. From the survey data collected in 2018, more than two-thirds of respondents (71 per cent; 32 of 45) indicated their dissatisfaction due to the losses they incurred to the middlemen. Some Torres Strait Islanders also on-sell down the supply chain of traditional arts and crafts into Australia.

Some Torres Strait Islanders and 'citizens' also trade in the other direction, selling commodities like fuel and soft drinks to PNG nationals, including transporting these goods across to South Fly villages for their relatives to sell. One household on Saibai took cordial ice blocks across, which sold very well, given the heat and lack of refrigeration on the PNG side. Another used packaged cake mixes to bake cakes for sale.⁷³ One woman was actively travelling across into PNG to Buzi village to sell a range of goods, to raise the money needed for her partner to emigrate to Australia.⁷⁴

I buy clothes from Australia and sell them in Buzi, and flour and sugar and tea bags. Sell them from a little table. Told we can't sell it here [on Boigu to visiting PNG nationals]. People follow the rules.

Clearly an alternative to the current Treaty arrangements would be to establish a regulated arts and craft market, complete with shades and stalls. It might even attract some tourists to visit the outer Torres Strait Islands, which would have spin-offs for their local economies. People remembered from the past a weekly market day at Saibai, which did attract day-trippers from Thursday Island. Establishing such a market would bring economic benefits to both the South Fly and the Torres Strait, but it is unlikely to be entertained by the Australian authorities if it was seen to be making border crossings more attractive.

The growth of unregulated and often illegal trade in the South Fly of marine products, including fish maw and mud crabs, represent potentially massive international markets that could have been exploited by Torres Strait Islanders, which have instead been exploited by travelling Indonesian traders or Chinese merchants based in Daru.

Limiting marine livelihoods

Much of the nutritional needs of people in the South Fly is met through subsistence fishing activity. Selling marine resources is also one of the most important means of generating income. It is also critically important that people fish sustainably, within a regulated environment, in order to preserve their valuable fish stocks for themselves and future generations.

Under the treaty, the Protected Zone comes very close to the PNG border. The situation is most difficult for Buzi, Ber, Sigabaduru (Siga) and Mabudian, as they border the Fisheries Jurisdiction line that is enforced by Australia.⁷⁵ Not surprisingly under these conditions, border incursions by PNG fishers fishing in Australian waters are resulting in prosecutions. Although PNG nationals are prosecuted through the PNG court system,⁷⁶ Australian fisheries officers assist by sending paperwork, including photographs taken by aerial drones. According to a PNG fisheries officer, offenders usually have no legal representation and just plead guilty. In the officer's view, the fishermen know where the jurisdiction lines are so 'they can't plead ignorance'. The fines were reportedly K500 per fisherman and K1000 for the boat operator. On the occasions when they do not plead guilty, Australian fisheries officers will travel to Daru to give evidence.⁷⁷

At the time of apprehension and before offenders are handed over to the PNG authorities, the Australian border authorities confiscate the boats and fishing equipment. When a boat is judged unseaworthy, it is allegedly sunk and even burned. If it is in a reasonable condition, the boat is sold by public tender on Thursday Island, and Torres Strait Islanders then commonly buy them. The offender then has the potential added humiliation of seeing their boat skippered on the Torres Strait Side.

Although less frequent, a similar arrangement exists when Torres Strait Islanders commit an offence in PNG waters. Following arrest of the offender, Australian fisheries officers cross the border to collect them for prosecution in Australia.

These controls are justified by the Australian border authorities, in terms of managing marine resources, and in interpreting commercial trade as not being a traditional activity under the Treaty, but their ability to regulate fishing is limited to the part of the part of the Protected Zone within the Australian jurisdiction. The dysfunctional dynamics at play can be illustrated by the trade in mud crabs, given that the crab habitat is mostly on the PNG mainland. The Torres Strait Protected Zone Joint Authority (PZJA) does not classify crabbing as commercial fishing, so it is limited to traditional inhabitants only.⁷⁸ Cross-border trade of live mud crabs between traditional inhabitants has long occurred across the border, and Torres Strait Islanders have acted as middlemen for sales to other islands and further south. There is no data on the extent of this trade, but anecdotally, the numbers were not large, and they have been reducing in recent years as border management has hardened.⁷⁹ Meanwhile on the PNG side, a large and unregulated market has developed unchecked, through Indonesian traders travelling from Merauke and buyers operating for Chinese trade stores in Daru. Both undersized and female crabs ('jennies') are bought. Once local stocks are cleaned out, the buyers move further up the rivers. The PNG National Fisheries Authority (NFA) has been slow to release a management plan,⁸⁰ but there has been nearly two years of unregulated trade in the interim.

Controversially, the 'Guidelines for Traditional Visitors' have interpreted 'barter and market trade' in the treaty to mean a ban on 'commercial activity'. Looking to what might have been possible beyond such dictates, a regulated sustainable trade could have developed across the border into Australia between traditional inhabitants, with biosecurity officers enforcing quotas and male and correctly sized crabs. The trade could have been potentially branded as sustainable seafood, then exported live to Australian restaurants. The outer Torres Strait islands have frequent flights, so mud crabs could arrive in southern Australian cities on the same day. Suitable branding could have promoted traditional collection practices, as still commonly practised by women in the South Fly villages. Torres Strait Islander businesses could have profited, consistent with current efforts across Aboriginal and Torres Strait Islander affairs to facilitate enterprise development. Instead PNG villages have received low prices from travelling traders who sell into the Asian market, and they have depleted their limited resources, which could take years to recover.

Local PNG fishers are also finding international markets for shark fin, bêche-de-mer and fish maw (bladders; chapter 7).⁸¹ Considerable profits are possible from selling fish maw, primarily from barramundi and jewfish, which commercial fishermen in other parts of Australia are also exploiting.⁸² The main buyers in the South Fly are Indonesian traders, operating illegally in PNG waters, who then on-

sell into Asian markets. The Indonesian traders take risks and pay bribes, so they look for higher profits. The low payments that PNG fishers receive fuel the need for greater exploitation of resources, and so the cycle continues.

Research by CSIRO has indicated that shark fins are sold by exporters in Surabaya and Jakarta at prices almost a hundred times higher than their initial prices, while *bêche-de-mer* and fish maw have final prices 32 and 18 times higher respectively.⁸³ If PNG fishers were able to access these Asian markets directly, or at least to reduce the number of middlemen in the supply chain, they would clearly receive higher prices. A good start would be to have legal border posts with Indonesia, with customs and market facilities. Developing a direct export business from Daru would also significantly improve prices. If higher prices could be obtained through a more regulated legal market, it is reasonable to expect a reduction in overexploitation. Furthermore, this would provide the moral authority for NFA to undertake more enforcement.

Conclusion

As a way of drawing together the notion of being 'differently governed' at the 'limits of statehood', and the institutional hybridity and bricolage that can be observed in the borderland, we draw on the notion of place-based governance. A governance analysis that is 'situated in place' helps us to gain 'a view of governance from the perspective of those who are living it',⁸⁴ to observe their 'throwntogetherness'.⁸⁵ This allows us to sidestep the state as the 'methodological unit of analysis',⁸⁶ and to choose the borderland as the centre in which to observe the governance relationships that weave in and out of it. By doing so, we can see that relationships can and do cross boundaries and interface through nodes of governance at many different levels, be it formal or informal or a combination of both. Importantly, governance relationships—and service delivery relationships, for that matter—cross state borders.

From the perspective of place, we can see that the Australian Government as well as the Government of PNG and various other governance actors make up the governance landscape, which is unevenly affected by interventions and differently governed by local informal governance actors. While it rejects the notion of providing services to the South Fly population, the Australian state exerts its influence across the border through the creation of a special category of people who have certain cross-border rights as Treaty villagers. Australian politicians and departmental officers also enjoy facilitated border crossings and joint patrols and have the upper hand in joint management arrangements, due to resources being overwhelmingly in their favour. Both Australia and PNG strongly maintain their independent sovereignty, but the influence of the Australian Government clearly extends inside the PNG state.

From an Australian policy perspective, the borderland is a highly complex intersection of three different policy fields: Indigenous affairs, border management and international development assistance. The influence of all three of these fields

can be seen in the BRTV ranger program, which emerges as a unique hybrid borderland organisation. In terms of their relative influence, border management clearly trumps development assistance. This particularly applies to the limits placed on trade, remittance flows and marine livelihoods.

There is an opportunity to deliver more assistance through participatory decision-making and existing local governance systems, formal and informal. This approach—commonly called community-driven development—also presents the opportunity to sidestep corrupt and dysfunctional layers of government. Its allure has driven much of the policy reform in decentralised governance in PNG. But social and political accountability alone will not succeed without structural reforms, including public finance reforms and changes to governance systems. This requires a careful analysis of the political economy of the public finance system and privileges that the status quo affords to politicians and the coalitions that they form. Within these constraints, aid assistance to strengthen local-level governance can be a catalyst for changing the behaviour of these elites.

In this chapter we have summarised the institutional layering to illustrate the complex governance bricolage of the borderland. We suggest that a place-based approach to governance offers the possibility of the taking pressure off the border, but this is more than a governance problem—the broader solution is multifaceted, as addressed in other chapters. There are, however, place-based governance elements to all these different policy spaces. For instance, the public health challenge most certainly requires a place-based approach and would be best dealt with as a health zone that spans the borderlands. Likewise, the ecological, environmental and marine resource management and sustainability issues addressed in other chapters also present challenges that require place-based governance to wrap around them.

Most obviously, there is a dire need for a place-based approach to trade and associated governance of the border to allow movement of goods over the border in a manner that can stimulate economic growth and slow down the massive rate of exploitation of these waters, which is primarily driven by South Fly people being shut out from a possibility of legal trade through Australian ports.

Notes

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- ⁴⁸ During our 2018 fieldwork, we met Chloe Oliver, who was commissioned by Abt Associates, in their capacity as a facility manager for DFAT, to do a case study on the program. Her final report was not publicly available at the time of writing, but we were able to discuss our early findings with Oliver when she interviewed members of our research team.
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- ⁶⁷ How they came to remain was to a degree arbitrary. Some informants indicated that it came down to whether they could cultivate a Torres Strait Islander sponsor who was prepared to do the paperwork and legwork of finding them somewhere to live in one of the Torres Strait Islands.
- ⁶⁸ IBIS charges a small transaction cost of 10 per cent for amounts under \$200, then capped at \$20–\$50, depending on the amount.
- ⁶⁹ L. Cornish, ‘Data shows remittances and development are increasingly linked’, *Devex*, 22 June 2018, www.devex.com/news/data-shows-remittances-and-development-are-increasingly-linked-92988.
- ⁷⁰ ANAO, 2019, p. 17.
- ⁷¹ Observed during Mabudian field visit, 11 August 2019.
- ⁷² Male community elder, interview, 19 October 2018.
- ⁷³ Women with partners and close relatives in South Fly, interviews, 22 October 2018.
- ⁷⁴ Interviews, Boigu and Saibai, 19–24 October 2018.
- ⁷⁵ Protected Zone Joint Authority (PZJA), *Annual Report 2014–15*, Australian Fisheries Management Authority, 2017, pp. 1–61, pzja.govcms.gov.au/sites/g/files/net4491/f/afma-pzja-annual-report-2014-15.pdf.
- ⁷⁶ *Cairns Post*, 29 May 2018, www.afma.gov.au/news-media/news/papua-new-guinean-fishers-found-guilty-illegally-fishing-australian-waters
- ⁷⁷ Interview, Daru, 15 August 2019.

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- ⁷⁸ PZJA, 'Torres Strait crab fishery', n.d. (retrieved 16 January 2020), www.pzja.gov.au/the-fisheries/torres-strait-crab-fishery.
- ⁷⁹ S. Busilacchi et al., *Developing Legal Value Chains and Alternative Markets for South Fly District Fisheries (Papua New Guinea)*, CSIRO/ACIAR, 2018, pp. 22–30.
- ⁸⁰ The plan was due in late 2019, but at the time of writing it had not been released.
- ⁸¹ E. Sibson, 'Jewfish dominate black market to meet Asia demand', ABC News, 1 September 2019, www.abc.net.au/news/2019-09-01/black-jewfish-bladder-blackmarket-queensland-fisheries/11457106.
- ⁸² Ibid.
- ⁸³ Busilacchi et al., 2018, pp. 19, 21.
- ⁸⁴ K. Higgins, 'A nation of villages? Exploring governance in Melanesia', PhD thesis, University of Queensland, Brisbane, 2018.
- ⁸⁵ Massey, 2005, p. 140 in *ibid.*
- ⁸⁶ A. Ziai, 'The discourse of "development" and why the concept should be abandoned', *Development in Practice*, vol. 23, no. 1, 2013, p. 127.

Health at the margin

Geoffrey Miller

For most Australians, if they have heard of the borderlands region at all, it is most likely through sensational reporting in the Australian media about the threat posed by an ‘epidemic’ of tuberculosis (TB) in the remote Western Province of Papua New Guinea (PNG), just a short boat ride to the north. The presence of TB on Australia’s doorstep stoked a shrill political debate, rich with predictions of impending doom. The reaction to this threat from the north was a mix of fear and sympathy: sympathy for the plight of those living in poverty in PNG and facing the scourge of TB, but mainly fear of the danger TB posed to the Australian population—in the Torres Strait and beyond to the mainland. This fear fuelled by the perception of yet another menace encroaching on the border, in an era when the threat of border incursion looms large in the contemporary Australian narrative.

The complex intersection of geography, politics and public health provide the context to examine the realities of health in the borderland. With TB as a central narrative theme, and exploring its links to health system performance, poverty and risk, this chapter advocates an approach that posits the borderland as a ‘health zone’ where resources are allocated, not towards programs that satisfy the illusion of safety, but towards building systems that can most efficiently and sustainably ameliorate rather than exacerbate the health risks facing the people living in the borderland.

A brief history of the TB response

Queensland Health’s Cairns-based Regional TB Control Unit began running TB clinics on Saibai and Boigu islands in 2000 in response to TB being diagnosed in PNG nationals who had crossed the border seeking health care at the Primary Health Care Centres on the northern Torres Strait islands (see figure 1.1). Although the Torres Strait Treaty ‘Guidelines for Traditional Visitors’ do not recognise health treatment as a traditional activity under the treaty,¹ PNG people seeking health care frequently present to the Queensland Health clinics just a few kilometres from PNG mainland villages.² Stemming the flow of PNG patients into the Queensland health-care system, while maintaining Australia’s international humanitarian obligations to provide assistance, remains perhaps the most challenging, complex and emotionally charged element of the Torres Strait Treaty.

In early 2006, clinicians from TB Control Unit reported a rising incidence of TB, including drug resistant TB (DR-TB),³ in the Torres Strait, particularly among people from PNG.⁴ Evidence of the primary transmission of drug-resistant strains among

these people was first published in 2008,⁵ attracting the attention of the global public health community to the South Fly region as an emerging global hotspot for DR-TB. Concern about TB in the region then leapt to prominence in the wider community when Queensland Health announced in early 2011 that it would close the TB clinics in the Torres Strait and discontinue the treatment of PNG patients. The sudden decision to close the clinics was widely reported as the result of a funding dispute between the Queensland and Commonwealth governments over the cost of treating PNG patients.⁶

The subsequent outcry by Australian clinicians and politicians about the dire consequences for vulnerable patients and threats to Australia's health security posed by incomplete TB treatment delayed clinic closures while a staged program for the return of PNG patients to the PNG health system was developed. The program included a significant investment by the Australian Agency for International Development (AusAID) to upgrade health infrastructure, patient transport, diagnostic capability, medical supplies and clinical expertise at the Daru General Hospital to support TB patients and establish the foundation for the ongoing emergency TB response in the South Fly. Despite the moral outrage and forecasts of doom, all of the 92 patients who returned to PNG,⁷ including nearly a third with MDR-TB, successfully completed their TB treatment.

The long treatment period required to cure TB (up to two years for MDR-TB) makes treatment adherence difficult in any setting. The Queensland clinicians found providing treatment across an international border to people living without resources and a limited understanding of their illness to be highly problematic. Their efforts to support cross-border patients included the provision of travel vouchers to PNG patients to pay for fuel for return trips to the clinics on Saibai and Boigu islands and dispensing of drugs in blister packs to improve treatment adherence. However, the lack of effective engagement with the PNG health system and inability to harness treatment support within PNG communities—using the Directly Observed Treatment Schedule (DOTS) approach—made uninterrupted treatment difficult to achieve and resulted in some patients not completing their course of treatment and being lost to follow-up. As observed by TB risk assessments conducted by an independent infectious disease specialist⁸ and a WHO TB review team,⁹ and acknowledged by the Queensland Health Minister in the reasoning for clinic closures,¹⁰ despite its best intentions, the Queensland program contributed to the development of drug-resistant TB strains in the region. The cross-border TB program provides an illustration of how the restrictions imposed by the border prohibit the optimum distribution of essential services and increases the public health risk for populations living on both sides.

Policy and referrals

In 2009 Queensland Health enacted a policy for treating PNG nationals presenting to Torres Strait health facilities.¹¹ The policy supports, on humanitarian grounds, the treatment and care of PNG people presenting to Torres Strait clinics requiring acute

or emergency care or who present a public health risk. The policy makes no differentiation between Treaty and non-Treaty villagers,¹² recognising that the proximity of PNG villages and the paucity of health services in the South Fly will drive PNG people,¹³ irrespective of their treaty inhabitant status, to seek treatment in Australia.

The Queensland Health policy aligns to the COAG agreement, which supports ... the provision of health services to PNG nationals who travel through the Torres Strait and present at Queensland Health facilities, including providing support for the transition of PNG nationals presenting with TB to the care of the PNG health system ...¹⁴

The Queensland Health policy is enacted by frontline health staff who clinically assess each patient before treating, arranging medical evacuation to Thursday Island, Cairns or Brisbane, or referring patients back to PNG. Whenever there is uncertainty about triaging patients, frontline staff call on clinical support from doctors on Thursday Island in making decisions about treatment and referral. Patients with simple conditions are provided treatment and referred to their nearest PNG health facility for follow-up. Those with non-emergent, major (but stable) health conditions and chronic health conditions are referred to Daru hospital for treatment. (This includes people provisionally diagnosed with TB.) These patients are informed that transport will be arranged with Daru and are sent back to their home village to wait.

Queensland Health employs a Cross-border Communications Officer (CBCO), a PNG doctor based in Cairns who acts as an intermediary between the Queensland Health and PNG systems. The CBCO does not play a part in clinical decision-making. The officer's principal role is to liaise with clinicians and managers in Daru regarding patient referrals back to PNG. The officer informs Daru hospital via email of the referral and organises patient transport to Daru with the Provincial Health Office. The office then mobilises transport, if available, to collect the patient from their home village and transport them to Daru. An assessment conducted by the CBCO found that patients wait on average seven days before being transported to Daru. This wait often results in suboptimal outcomes for patients and sees significant numbers of patients re-presenting to Torres Strait clinics in that period.¹⁵ A system that refers patients for treatment in the full knowledge that they will experience significant delays in accessing that treatment fails to support continuity of care and must surely be questioned as morally and ethically unacceptable.

Timely patient transport along the remote South Fly coast presents a significant challenge. Australian Aid funded a purpose-designed ambulance vessel, the *Medics Queen*, in 2012 to support patient transport in the South Fly (figure 6.1). The vessel has greater carrying capacity and capability for travelling in rough seas than the dinghies commonly used along the coast. However, the *Medics Queen* has been plagued by mechanical problems, massive running costs and misadventure, and has

spent more time out of service than in the water. Treaty provisions prohibit the *Medics Queen* from retrieving patients directly from Torres Strait islands unless it complies with the facilitated cross-border movement requirements (see chapter 5), which require up to two weeks for approval and are therefore unhelpful in supporting day-to-day operations. This is inconsistent, as other vessels carrying people from non-Treaty villages seeking health care are permitted to enter Torres Strait communities to be assessed by health staff.

<figure 6.1 near here>

The *Medics Queen* (Research team, 2019)

Clearly, there are gross inefficiencies in the current patient referral and retrieval system stemming from inadequate cross-border communications and the limited transport options for PNG patients requiring higher levels of care at Daru hospital. These system failures have resulted in preventable deaths and provide a further example of how the enactment of restrictive, cross-border health policy increases risk both to individuals and potentially to the population of the borderland.

Why people cross

A range of push-and-pull factors cause people to cross the border seeking health care. The people of the South Fly have access—albeit increasingly restricted access—to a range of health services the rest of PNG can only dream of. For many, the closest service is a Queensland facility just a short dinghy ride away, and most people know what those services look like either from first-hand experience as patients or by accompanying sick or injured relatives. Our survey findings reflect this, revealing that 86 per cent of participants from Treaty villages and 35 per cent from non-Treaty villages had received treatment in Australian facilities and cited access to health facilities as a common reason for going to the Torres Strait.¹⁶

In stark contrast to the world-class services provided over the border, most PNG people have access only to a health system in crisis. The recent outbreak of polio, the resurgence of malaria and HIV, rising rates of leprosy and an emerging epidemic of tuberculosis are indicators that the PNG health system is unable to protect or treat its population. All elements of the system are struggling as a result of gross inadequacies in key enablers, particularly finance, human resources and governance.

PNG's national health budget was cut by about 30 per cent over the three-year period 2015–17, due to reduced government revenue resulting from a drop in commodity prices, and national expenditure prioritisation for high-cost activities, in particular the South Pacific Games (2015), PNG's national elections (2017) and the APEC Summit (2018). Although the budget recovered slightly over the 2018–19 period, the five-year budget cut of 17 per cent has severely compromised health services throughout PNG.¹⁷

PNG's Western Province Government (known as the Fly River Provincial Government) is primarily responsible for the provision of rural services in the province and relies on an annual health function grant from the national government

to mobilise health services.¹⁸ The Provincial Health Office in Daru provides oversight and support for rural health services, which are delivered by nurses and community health workers based in the network of health facilities across the province.

The Provincial Health Office has an annual operational budget of about A\$1.4 million. These are the funds required to provide fuel and transport to mobilise teams, distribute medical supplies, transport patients and maintain essential equipment—the fundamental requirements of a rural health service. These funds are appropriated in the annual budget. However, they are not what is actually received. During 2015, only 25 per cent of these funds (about A\$350 000) were released in reality, while in 2016 and 2017 the funding available for services reduced to a mere 6 per cent of the operational budget (about A\$80 000).¹⁹

As the majority of funding for health comes from PNG's national government, these funding cuts paralysed health services resulting in a decline in key health indicators.²⁰ Expenditure on health highlights the marked disparity in public finances on each side of the border. Australia's response to the poor health of the Indigenous Torres Strait Islanders results in a combined government expenditure on health services per Indigenous Australian of A\$8000, twice that spent per non-Indigenous Australian²¹ and about 70 times the Int'l\$109 per capita spent by the PNG Government.²²

The shortage of health workers (including physicians, midwives, nurses, allied health staff and community health workers) is contributing to the PNG crisis and is likely to worsen due to an ageing workforce and insufficient output of new graduates from training institutions to support workforce growth. Currently, PNG has workforce numbers less than a third of the 44 skilled workers per 10 000 population recommended by the World Health Organization²³ to provide universal health coverage and meet Sustainable Development Goals.²⁴ At present, an estimated 50 per cent off all government health positions in Western Province are vacant, leaving many facilities understaffed or closed.²⁵ There is currently a government freeze on recruiting to vacant positions, a further indication of national budget constraints. Our field surveys (2016, 2017 and 2018) revealed that most facilities along the South Fly coast were closed and that the district's health system outside Daru had largely collapsed.

Health workforce comparisons further emphasise the stark differences between health services. There are currently five community health workers providing basic services from six health facilities along the coast west of Daru at Masingara, Mabuduan, Sigabaduru, Buzi, Mari and Bula. If they are present in their communities,²⁶ they serve a population of more than 3000 people in villages scattered along 200 kilometres of remote coast.²⁷ This equates to one health worker for every 600 people. By comparison, the three adjacent Torres Strait Island communities of Saibai, Boigu and Dauan (the periphery of Australia's health system) have a combined population about 900 people confined to three small island communities. In total they have a resident health staff of 12 (6 remote area nurses and 6 health workers). This provides one health worker for every 75 people.²⁸

Additionally, the Torres Strait services regularly host up to 15 different medical specialist and allied health clinics and have unlimited access to aeromedical retrieval services, medical support and telemedicine facilities from the regional hospital on Thursday Island.²⁹

A further impediment to services has been the paralysis of the Western Province administration during the 2015–17 period resulting from the arrest and conviction of senior government officials for the misappropriation of funds.³⁰ This situation resulted in delayed and erratic disbursement of already limited funds, adding to the difficulties in delivering services.³¹

Aid posts

While inadequate funding, staff shortages and poor governance are at the core of the health system's problems, decaying infrastructure, lack of basic equipment and inconsistent medical supplies further contribute to the decline in services. Aid posts and the community health workers who staff them are the mainstay of PNG's health system. Scattered throughout rural and remote PNG, they provide the entry point and, in most of the country, the only access to health services for the majority of the population. They are usually staffed by a single community health worker who is trained to provide basic, frontline health care. More than three-quarters of the health facilities in Western Province are aid posts, nearly half of which are closed due mainly to a lack of staff, lack of medicine and supplies, run-down infrastructure and limited support (figure 6.2).³²

<figure 6.2 near here>

Empty medical packaging litters the ground beneath this abandoned aid post in the South Fly (Research team, 2018)

Infrastructure, equipment and supplies

The majority health facilities and health staff houses across Western Province require maintenance and repairs. Many are derelict. It is not uncommon to find leaking roofs, missing stairs and large sections of walls and floors consumed by termites. An infrastructure survey in 2010 found that 70 per cent of facilities did not have a reliable water supply, 69 per cent had no lighting and 90 per cent had no way of sterilising clinical utensils. Basic equipment was in short supply. Two-thirds of the facilities surveyed had no stethoscope, half had no thermometer, and three-quarters had no mop and bucket.³³ These basic tools are issued to clinics, but replacing them through the medical supply system can take months or years.

Aid posts are supplied with simple medications and supplies (antibiotics, antimalarials, antiseptic, dressings and so on) from the provincial medical store. Being at the end of the medical supply chain often means that they are last to receive (often limited) supplies. In Western Province the provision of routine medical supplies has declined by nearly a third in recent years. In 2017 there were shortages of essential supplies for nearly five months in the year,³⁴ resulting in basic medications such as antibiotics being unavailable, driving people to purchase and

procure these drugs from uninformed and unregulated sources and potentially contributing to the problem of growing antimicrobial resistance.³⁵ This provides another example of the importance of developing the PNG system—a key element of which is an uninterrupted supply of essential medicines—to minimise cross-border population health risks. Despite the system’s gross inadequacies (including very limited support and supervision), the majority of PNG’s rural and remote health workers remain committed to serving their communities and operate as best they can within a highly constrained context.

Access to services

The limitations of access to their failing health system are reflected in the responses from South Fly survey respondents. While most respondents (73 per cent) to the 2016–18 survey preferred to go to their nearest community health service (either an aid post or a health centre), the most common problems they identified were no medicines (24 per cent), the cost of transport (23 per cent) and the absence of health staff (15 per cent).

These inadequacies result in people bypassing local facilities and seeking health care either at the Saibai and Boigu clinics just across the border—for many a mere 15-minute boat ride away—or making the long sea journey to the province’s referral hospital at Daru.³⁶ For those living out near the Indonesian border, this means up to eight hours in an open dinghy along a weather coast—hard going even if you are well. The limited availability of transport and the high cost of fuel make the journey expensive and hazardous in rough weather;³⁷ however, for many villagers, it is the only PNG service available.

Improving access to affordable transport through a public ferry system (chapter 10) and initiatives such as a village transport scheme would greatly assist travel not only for health care but also for markets, education and other services available only in Daru. Village transport schemes support the provision of village-level transport using locally available transport resources subsidised by government or other funders. They operate using vouchers and other mechanisms to provide transport for access to essential services (supervised births, referrals for specialist care and so on). Resources are controlled by a village-level committee. PNG’s Tuition Fee Free (TFF) policy is an example of how government funds can be dispersed at village level through a local governance mechanism (school boards), which manages and acquits the funds and sets priorities for how funds are spent locally to support education. A similar mechanism could operate to support health, whereby a village health committee would utilise funds from government or donor sources to provide transport for those requiring medical services outside the village.³⁸

PNG patients in the Torres Strait

With various push-and-pull factors in effect, it is worth considering the changing patterns of health-seeking behaviour in the borderland. However, the picture of

presentation trends over time by PNG nationals to Torres Strait Primary Health Care Centres clinics is unclear.³⁹ Data collection related to PNG presentations to Queensland Health services has been inconsistent over the past two decades, during which time a number of methods and databases have been used. In the early 2000s no specific data related to PNG patients (including ethnicity) were collected by Queensland Health. The collection of a patient's demographic information is reliant on frontline health facility staff, and there is variability in application of this task.

Hence answering key questions about the impact of PNG presentations on clinic workloads and the cost of services is difficult. Such information is critical for budgeting, staff and resource allocation in the outer island clinics, and to provide evidence to support Queensland Health funding requirements from the Commonwealth. Importantly, these data would also indicate whether current strategies to reduce PNG patient flows are effective, and data detailing the reasons for presentation, health conditions and village of origin would also inform strategies for strengthening health systems in the South Fly.

The limited data available indicate that the vast majority PNG nationals seeking health care in the Torres Strait present to Saibai and Boigu Island primary health-care centres, with Saibai accounting for three-quarters of all presentations. In 2011–12, 977 PNG nationals crossed the border and presented as outpatients to a Torres Strait primary health care clinic in Queensland, and more than a thousand PNG people presented in 2012–13.⁴⁰ During the two-year period 2017–18, presentations appear to average about 600 per year.⁴¹ At the Saibai clinic, this equates to 15–20 per cent of patients seen each day. However, frontline staff indicate that occasions of service (i.e. the number of tests and procedures conducted for each patient during a single visit) is generally higher; thus the proportion of the daily workload taken up by PNG patients may be greater than their numbers indicate, as staff often spend more time with a PNG patient. This in part may explain the large discrepancy in PNG patient numbers reported by the Australian National Audit Office. In 2017 Queensland Health reported treating 1995 PNG patients, more than three times the 555 recorded by the Australian Border Force presenting at the border seeking health care and refused immigration clearance for a health reason but allowed entry.⁴²

There were reports from the PNG side of visitors seeking health care being refused entry or delayed by Australian Border Force officials before being assessed by Queensland Health staff. It is not possible to verify the frequency with which this occurs, but it is unlikely to be common practice. Once granted entry, people are escorted or make their own way to the Saibai and Boigu clinics, where they are assessed by frontline Queensland Health staff, some of whom have worked in these clinics for a decade or more. They are experienced in managing the tricky balance of assessing all PNG people who present to the clinics, providing treatment, referrals and medical evacuations in accordance with the Queensland Health policy, while ensuring that local residents are not disadvantaged in their access to services. In practical terms, this means that local people are given priority over visitors unless

the severity of a patient's condition demands otherwise. It is common to see prospective PNG patients waiting patiently for long periods outside Torres Strait clinics.

Despite our survey findings that health service access is a principal reason for cross-border visits by South Fly people, in relative terms, the number of health-care seekers is small. Those accessing health care in the Torres Strait account for less than 3 per cent of all visits by PNG people.⁴³

While health services along the South Fly coast have continued to decline, services at Daru General Hospital have been strengthened substantially since 2012 due mainly to the Australian Aid support for the emergency TB response. In 2018 there were 14 doctors based at the hospital, supporting a range of specialist services; in 2012 there was just one.⁴⁴ Community confidence in the facility has increased significantly, which is reflected in the doubling of outpatient presentations from 15 500 in 2015 to 33 500 in 2017.⁴⁵ This increase also reflects the increasing numbers of patients bypassing non-functional rural health services and presenting to the hospital. However, despite the improvements in medical staff numbers, the province's major health facility still has a clinical staff vacancy rate of 50 per cent and faces continuing funding and medical supply shortages. The hospital was closed twice in 2018 due to lack of operational funds,⁴⁶ and some medical positions were vacated in 2019.

A crude analysis of health expenditure further highlights cross-border disparity. The total operational budget at Daru hospital in 2017 was around A\$1.2 million. During that year 33 500 outpatients presented to Daru hospital. In 2017 the Commonwealth Government alone provided about A\$3.6 million to treat less than a thousand PNG people presenting to Queensland Health facilities.⁴⁷

Daru and the corners

Notwithstanding the improvements at Daru General Hospital, visiting Daru, even short term, carries inherent health risks. There are very limited formal support mechanisms for patients who present at Daru hospital,⁴⁸ leaving most patients and their carers reliant on the support of the community during their Daru stay. Most visitors are accommodated in the fringe settlements (known locally as 'corners'), and often stay for extended periods. Here they are exposed to the public health threats created by overcrowding, inadequate clean water and no sanitation.

Daru, the eponymous town on the island of Daru, is the capital of Western Province and the commercial and service centre for the South Fly District. Located just a couple of kilometres from the PNG mainland, it was originally established as a colonial administrative centre. Today Daru houses the provincial referral hospital, the South Fly's only high school,⁴⁹ its only banking facility, several large retail stores owned and operated by Chinese families, the South Fly District administration and the offices of most of Western Province's government departments, including health, education and agriculture. However, Daru is not the seat of Western provincial government, nor the residence of the government leadership, which in part might

explain its neglect and underdevelopment. The Western provincial government and the provincial treasury are located in Kiunga, 400 kilometres north-west of Daru, close to the Ok Tedi mining town of Tabubil and where Ok Tedi mining exports the mine's product via the Fly River.⁵⁰

Daru was originally established as a settlement for a population of a couple of thousand people, and today is home to 16 500 people.⁵¹ The population swells to more than 20 000 during the periods when recipients of Ok Tedi mine royalties stream into Daru to collect their biannual payments.⁵² This influx exacerbates the already overcrowded 'corners' where household populations average 13 residents, who sleep in shifts, and population densities rival those of vertical cities such as New York, exceeding 44 000 per square kilometre.⁵³ It also places increased pressure on Daru's ageing and increasingly dysfunctional infrastructure. The electricity supply is unreliable, and the few roads on the island are pot-holed tracks, which permit four-wheel-drive access only in the wet season. The town water supply, pumped from the Binaturi River on the adjacent mainland through an undersea pipe to the island, is frequently interrupted, and constant water rationing, often for just a couple of hours per day, is the norm.

Water rationing on Daru epitomises the complex challenges facing the provision of essential services in PNG. Water PNG is a state-owned enterprise responsible for managing water supply and sanitation in the urban areas of the country. Despite compensation being paid to the identified landowners 30 years ago, land ownership of the extraction site for Daru water remains in dispute, and rival land claimants regularly sabotage the water pumps on the river to leverage their claims for compensation. The pumps are diesel driven, and the inconsistent supply of fuel will often result in pumps sitting idle. The undersea pipeline is leaking and unstable, reportedly due to it losing a critical anchor point when a concrete foundation securing the line was stolen. In addition, there is an intermittent shortage of chemicals to treat water at the Daru treatment facility, and the increased demand from a resident population has overstretched a system that is already failing. The picture is one of a utility provider in permanent damage control and which has little likelihood of getting its 'head above water' in the foreseeable future. Daru has no sewerage treatment facilities. Septic toilets are present in just a few households and commercial premises, leaving the majority of the population to practise open defecation—using the mudflats and mangrove forests that fringe the island.

With the structural elements of disease propagation (overcrowding, inadequate clean water and limited sanitation) in abundance, Daru is an ideal environment for the diseases of poverty to flourish. Malaria, typhoid, leprosy and tuberculosis are endemic on the island, its TB rates, including rates of drug-resistant TB, rivalling those found anywhere in the world.⁵⁴ Daru is a risky location for residents and visitors alike.

Equally, sick people coming to Daru can unknowingly introduce diseases into the community, which can spread rapidly through the crowded 'corners'. The cholera outbreak of 2011 epitomised this situation. As part of the general influx of

Ok Tedi royalty recipients to the island in October 2011, a person from the south-east of the province who had contracted cholera became symptomatic *en route* to Daru and was accommodated by family on the island. The disease spread quickly and infected locals and visitors, some of whom took the bacteria back to their villages. A regional outbreak ensued with Western Province (mostly in South and lower Middle Fly districts) recording nearly 4000 cholera cases and 350 deaths,⁵⁵ the highest case fatality rate of any region in PNG during the epidemic.⁵⁶

TB, the environment and the response

TB is more common in countries where people live in absolute poverty; in poorly ventilated and overcrowded conditions, without adequate nutrition and have limited access to clean water and sanitation. These conditions epitomise life for most people on Daru and, not surprisingly, Daru is the epicentre of the region's tuberculosis epidemic and the base for the TB emergency response in the South Fly.

The response to TB has been a multi-stakeholder partnership of PNG government, non-government organisations and development partners convened in 2014. Built on the foundation established during the TB patient handover period, the program provides diagnostic and treatment services on Daru, with a focus on capacity development at Daru hospital, which has increased the number of medical staff, strengthened diagnostic capability, added a TB isolation ward and provided transport (the medical outreach and retrieval vessel, *Medics Queen*).

The Australian Government through its aid and domestic programs is the major contributor to the provision of health services for PNG nationals in the South Fly and Torres Strait. The investment, driven mainly by the political imperative of preventing the incursion of drug-resistant TB into the Torres Strait and beyond to the Australian mainland,⁵⁷ contributed an estimated 82 per cent of the total health operational budget in the region during 2017, mostly for TB management in Daru.⁵⁸ During the period 2011–17, AusAid (now DFAT) invested A\$44.7 million to control TB in Western Province.⁵⁹

Actions already taken include the provision of travel vouchers to PNG patients to pay for fuel for return trips to the clinics on Saibai and Boigu islands; dispensing of drugs in blister packs to improve adherence; and stockpiling of second-line anti-TB drugs in Cairns and on Thursday Island to ensure continuity of supply. Increased communication with health centres in PNG has been established to improve management of TB patients across the border and to involve PNG health centre staff in management.

Nearly half of the TB patients returning to PNG for treatment when the Queensland Health clinics closed in 2011–12 were from Daru, and this group comprised more than three-quarters of the MDR-TB cases in the group. More recent data confirm Daru as the hotspot: more than three-quarters of the 1485 people who commenced TB treatment at Daru hospital in the period 2015–17 are Daru residents.⁶⁰ The TB program continues to diagnose 40 new TB patients each month, 22 per cent of whom have drug-resistant TB.⁶¹ Better services have resulted in earlier

diagnosis and more accessible treatment via community-located treatment centres supported by community-based TB treatment supporters (providing DOTS) and peer counsellors—incentivised by a free daily meal for patients. Treatment completion and success rates now exceed 80 per cent; contact tracing⁶² has been strengthened, facilitating the diagnosis of both active and latent TB, and prophylactic therapy has commenced for at-risk groups.

The technical response to TB, driven principally by Australia's security interests, has stabilised the epidemic on Daru. Unless the enabling conditions that ensure TB continues to thrive on the island (and across the region) are addressed, however, the program runs the risk of being little more than a continuous and expensive Band Aid measure.

NCDs and the double burden of disease

Rapid development in the Torres Strait since the 1980s has resulted in significant improvements in living standards, which have brought with them attendant lifestyle risks. The introduction of processed foods through a network of retail outlets on the islands has enabled a rapid transition away from traditional diets to a Western diet of processed foods high in sugar and fat. The availability of packaged food and welfare money to purchase it has seen island populations abandon their gardens for the ease and convenience of the local store. This dietary change, coupled with reduced physical activity due to such changes as ready access to motorised transport and the reduction of activities associated with food production, has fuelled an obesity epidemic in the Torres Strait and consequent non-communicable diseases (NCDs) with rates many times that of the non-Indigenous Australian population. Two-thirds (67.2 per cent) of Torres Strait Islanders are overweight or obese, and 1 in 14 (7.2 per cent) have diabetes.⁶³ Consequently, a Torres Strait Islander man has a life expectancy 14 years shorter than his non-Indigenous counterparts; the figure for women is 10 years shorter.⁶⁴

Adding to the challenge of controlling communicable diseases in PNG is the emergence of NCDs, thus creating a double burden of disease and placing further pressure on a struggling health system. The growth of NCDs in PNG is also well advanced. More than 50 per cent of males smoke tobacco, obesity rates are rising (due mainly to changing diet) and cardiovascular disease, cancer and diabetes are now responsible for 56 per cent of all deaths (compared to 36 per cent for communicable, maternal, perinatal and nutritional conditions).⁶⁵

We found evidence of dietary transition across the South Fly. More than 90 per cent of the villages we visited had rice, flour and sugar for sale locally, and 76 per cent of people surveyed had eaten these foods within the past 2 weeks (100 per cent within the past month). These foods have become part of the staple diet in village households, and demand drives a local trade in rice, flour and sugar. Bundles of these products are purchased from trade stores in Daru and on-sold locally through village 'canteens'—small stalls set up outside people's homes. This model assists in

fostering the cash economy at village level as the need for cash to pay school charges,⁶⁶ transport and other costs grows.

Household gardens remain the principal food source for families; however, the annual cycles of drought and flood in the South Fly regularly result in crop failure and food insecurity. Relief, when it arrives, comes in the form of rice, flour and sugar, all highly valued not only as convenient alternatives to garden foods but also as a sign of status within PNG society.

The growing availability of processed foods, sugary drinks and tobacco at village level are fuelling unhealthy habits and the rise of NCDs. Men in PNG are increasingly dying from preventable lifestyle diseases and have a 10-year shorter lifespan (6 years for women) than their traditional counterparts in the Torres Strait.⁶⁷

The impact of the growing burden that NCDs place on the PNG health system cannot be underestimated. As the calls for renal dialysis, heart surgery and radiotherapy grow, particularly among the PNG elite, whose 'Western' lifestyles make them more vulnerable to chronic illness and who either mistakenly (or driven by self-interest) see these facilities as priority elements of the nation's health system. More resources towards high-end NCD interventions reduce the already constrained capacity in the PNG system to control existing threats (malaria, TB, HIV, leprosy). Widespread outbreaks of infectious diseases such as cholera (in 2010) and vaccine preventable diseases such as measles (in 2014) and polio (in 2018) are testament to a health system already struggling to cope with endemic communicable disease.

NCD risk factors such as diabetes and tobacco-smoking weaken the immune system and increase the risk of a person developing active TB.⁶⁸ The prevalence of NCDs in the Torres Strait and the rise of NCDs in PNG amplify the health security risk in the borderland and highlight the need to understand the complex threat of TB in a way that recognises all of the disease's enablers and risk factors.

Health security

All cross-border movement carries an inherent risk of disease transmission, and the movement of people through the Torres Strait enhances the risk of the spread of disease between Papua New Guinea and Australia. Horwood and colleagues note the potential for disease movement through the 'Indo-Papuan conduit'.⁶⁹ They highlight the imperative that disease control measures extend beyond Australia's borders and that effective cross-border communications are essential for effective surveillance and response to public health threats. Australian health agencies maintain surveillance of diseases of public health significance that could potentially cause outbreaks, risk lives and place pressure on the Australian health system. Border closure has been used as a measure to minimise public health and other threats, including during the 2011 cholera outbreak in PNG.

Disease risk remains a constant in the political narrative about protecting Australia's border, headlined by drug-resistant TB as the ever-present danger on Australia's doorstep. However, perceived risk—referred to in some analyses as community outrage⁷⁰—often overinflates actual risk. An independent risk

assessment of TB spreading across the border found that the risk to Australians of acquiring TB from PNG residents remains low as long as contact is confined to trading, fishing and other outdoor activity.⁷¹ Risk increases if activity involves extended cohabitation or sharing schoolrooms or homes without appropriate isolation and ventilation. The majority of Torres Strait Islanders diagnosed with TB in the Torres Strait have a history of extended stays in PNG or sharing crowded housing in Torres Strait communities with PNG families.

The risk assessment noted that managing TB services within a PNG national program is likely to reduce the risk of TB (including DR-TB) transmission to Australian residents in the short term, by reducing the number of PNG nationals seeking health care in Australia. As noted above, this approach has been adopted with some success, the TB program now well established at Daru and suspected TB cases presenting to Torres Strait clinics being referred to Daru to commence their treatment.

The data confirm this. Twenty cases of TB were diagnosed in the Torres Strait in 2014–15,⁷² while in 2017, the Torres and Cape Hospital and Health Service recorded four cases of TB for the year: two in the Torres Strait region and two on Cape York. Across Queensland as a whole, 201 cases of TB were notified in 2017.⁷³ As noted, the TB program on Daru alone diagnoses 40 new TB patients each month.

A communicable disease risk assessment conducted by Queensland Health's Tropical Regional Services echoes the findings that the risk of TB (including MDR-TB) incursion into Torres Strait communities to be relatively low whereas the perceived risk (described in the analysis as 'community outrage') is high.⁷⁴ The findings were similar for other emotively charged diseases, in particular HIV and cholera.⁷⁵

Discussion

Social determinants

In February 2010 the Western Province Government tabled a proposal for a cross-border regional study between Australia and Papua New Guinea under the Torres Strait Treaty at the bilateral Health Issues Committee (HIC) in Cairns.⁷⁶ The proposal recognised that since HIC was established in 2003 as a subcommittee of the intergovernmental Joint Advisory Committee, it had sought to address the demand on Queensland Health services imposed by PNG citizens and the risk of communicable diseases such as TB infiltrating northern Australia.

The proposal suggested that in addition to a narrow, unisectoral focus of providing better, more accessible health services for PNG citizens in PNG to stem cross-border health-seeking behaviour, HIC should consider how cross-border health issues might be addressed through a broader community development approach. Such an approach recognises that while quality, accessible health care is a key element of what are described as the social determinants of health,⁷⁷ equally important are the economic and social conditions in which people live. Education,

economic stability, income and employment, physical environments and healthy behaviour all contribute to well-being and influence the social factors at the root of the inequalities of health relevant to communicable and non-communicable diseases alike.

HIC supported the proposal but were unable to allocate resources to a cross-border regional study. This borderlands research became that study and provided the mechanism for understanding how people live and work in this region and how the borders affect their lives. Treating existing disease, particularly infectious disease (such as TB), often requires an urgent, targeted response and will always receive high priority. However, this should not be to the exclusion of taking action on the underlying social determinants of health or, indeed, broader health system strengthening.

Although the programmatic approach taken to addressing TB has stabilised the epidemic on Daru, it has had limited reach beyond the island. TB is endemic across the South Fly and was identified as a health problem in more than a third of the communities we surveyed. Encouragingly, there were signs in 2019 of the program extending its reach beyond Daru through a network of trained TB treatment supporters located in villages across the district.⁷⁸

Equally, while the TB program has built capacity at Daru hospital, it has had little influence on strengthening the broader health system. Systems thinking⁷⁹ recognises the interdependency of all of the key components of a health system⁸⁰ and the necessity to build and maintain capacity across all components if a stronger, sustainable system is to be achieved.

South Fly District is a low performer when comparing health outcomes nationally, with key indicators such as childhood immunisation, antenatal care and supervised births being stagnant or declining over the past decade. There remain unrealised opportunities to use the TB program as a vehicle for broader health system support. Australia and other donors will continue to support the TB response in Western Province, and as the program extends its reach, there would unquestionably be benefit in using the significant resources TB brings to the region to support an integrated primary health-care model. Equally, and perhaps more importantly, is the need to address the inadequacies of public health infrastructure that fuel endemic communicable disease in the region. At any one time up to 30 per cent of the South Fly District's population resides on Daru. Unless and until living conditions in the provincial capital and trading centre are improved by addressing the critical issues of water supply, sanitation and housing, Daru town will continue to propagate disease locally and act as a vector for disease transmission, thereby putting the regional population at risk and impeding development. Fixing Daru will require development at scale,⁸¹ which must be led by the PNG Government and will require substantial development partner support.

Borderland health zone

The inefficiencies created by the border in delivering health care might best be addressed by treating the border region as a health zone, in contrast to its current status as a buffer zone, and allowing the distribution of resources—including human resources—with a focus on efficiency rather than sovereignty. This will require rethinking the allocation made by the Australian state through the Queensland and national health systems, and Australian aid to the South Fly, to achieve greater efficiencies. The continued focus on addressing TB in the region provides the vehicle for strengthening the health system, promoting increased aid in the region and advocacy for addressing the underlying determinants of health. Aid support has increased in recent years with DFAT funding a major new health facility at Mabudian (scheduled for opening in 2020), World Vision’s ongoing WASH program in the South Fly and the Building Resilience in Treaty Villages program (albeit confined to Treaty villages). Also, a number of other development agencies are commencing activity in the South Fly.⁸²

An option for consideration would be reducing the constraints on cross-border movement of health professionals utilising the facilitated border-crossing provisions.⁸³ Australian clinicians would have access to Daru, Mabudian and other coastal health facilities via the Torres Strait for the purposes of clinical support, mentorship and training while PNG clinicians would have access to health facilities in the Torres Strait (and beyond) with the intent of building relationships, improving communication and retrieving patients. The precedent for this approach was set during the TB patient handover clinics on Saibai and Boigu during 2010–11 when PNG and Australian clinicians worked together to return PNG patients safely to the PNG system.

Some medical outreach to Mabudian has been occurring through the TB program, but it is infrequent, irregular and focused on TB patients.

The availability of health staff from Australia, potentially managed by Queensland Health, could also help alleviate the critical staff shortages in the South Fly in the short term. The soon to be opened new health centre at Mabudian provides an opportunity to test this approach, as it is unlikely that key clinical positions in the new facility will be filled by PNG staff, given the existence of widespread staff shortages and the relative remoteness of the facility.⁸⁴ Facilitating regular medical clinics by a doctor (and possibly other clinical staff) in Mabudian and Sigabaduru, on rotation from the Torres Strait Health Service, would eliminate most of the cross-border movement for health care.⁸⁵ A similar approach might also be considered for Buzi, adjacent to Boigu, which also receives a high proportion of health visits. Any arrangements for cross-border clinical support would be made collaboratively between Commonwealth Health, Queensland Health and the Western Provincial Health Authority and retain a focus on developing the capacity of South Fly health services.

Conclusion

The borderlands region of PNG has generated significant political turmoil over the past decade. TB and particularly DR-TB has been at the forefront of discussion around local governance, health services and health security. Australia's approach to handling what has been frequently described in media commentary, political discourse and medical journals as a crisis on Australia's northern border, has been to harden the border and to provide support for health services on the PNG side with a narrow focus on TB. The response has been driven by the politics of fear.

Some real gains have been made in containing the TB epidemic at its epicentre on Daru and building capacity at Daru hospital. The response has been costly, however, and has done little to strengthen the wider health system or address the underlying causes of the epidemic.

What is required is a strategic, long-term approach led by the PNG Government and supported by donor partners, which has two interrelated goals: strengthening of health systems in accordance with the Western Provincial Health Authority's strategic and operational plans⁸⁶ linked to a broader community development approach, aligned to the Western Province Government's Development Plan to address the underlying determinants of poverty.⁸⁷ This approach would incorporate strategies to ameliorate emerging lifestyle risk factors — including lessons learned from the Torres Strait — as PNG continues its transition from subsistence to a cash economy. Such approaches would be greatly assisted by positioning the borderland as a health zone within which the cross-border mobility of health staff is facilitated, communication and transport gaps are addressed, and inclusive population health approaches that strengthen rather than deplete health security are adopted.

Addressing the health asymmetries in the borderland requires a long-term view and might never be fully realised. Working towards reducing the current disparities, however, undoubtedly serves both the health security and, indeed, broader security interests of all borderland states.

Notes

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¹ DFAT, 'Guidelines for Traditional Visitors Travelling Under the Torres Strait Treaty', www.dfat.gov.au/geo/torres-strait/Pages/guidelines-for-traditional-visitors-travelling-under-the-torres-strait-treaty.aspx.

² The only reference to health in the Torres Strait Treaty is the statement that health procedures should not prevent free movement. The treaty does not require the automatic provision of health services to visitors; however, free movement often results in PNG nationals presenting at health facilities within the Torres Strait Protected Zone while in the course of conducting traditional activities.

The 'Guidelines for Traditional Visitors under the Torres Strait Treaty' set the rules for what can and cannot be done under the provisions of the treaty.

- ³ Drug resistant tuberculosis (DR-TB) includes both multi-drug-resistant tuberculosis (MDR-TB) and extensively drug-resistant TB (XDR-TB). MDR-TB is a form of tuberculosis (TB) infection caused by bacteria that are resistant to treatment with at least two of the most powerful first-line anti-TB medications, isoniazid and rifampin. XDR-TB is a form of TB resistant to second-line medications.
- ⁴ G. Simpson, P. Clark and T. Knight, 'Changing patterns of tuberculosis in Far North Queensland' (letter to the Editor), *Medical Journal of Australia*, vol. 184, no. 5, 2006, p. 252.
- ⁵ C. Gilpin, G. Simpson, S. Vincent, T. O'Brien, T. Knight, M. Globan, C. Coulter and A. Konstantinos, 'Evidence of primary transmission of multidrug-resistant tuberculosis in the Western Province of Papua New Guinea', *Medical Journal of Australia*, vol. 188, no. 3, 2008, pp. 148–52.
- ⁶ S. Elks, 'End of TB lifeline a cruel blow', *Australian*, 2 July 2011. K. Burns, 'TB crisis strikes in lawless PNG town', *Cairns Post*, 22 September 2011. 'Australian Govt under pressure to fund TB clinics', *National*, 28 August 2012.
- ⁷ Five handover clinics were conducted on Saibai and Boigu between October 2011 and June 2012. Twenty-eight of the 92 patients (30 per cent) completed their treatment in Queensland before handover for monitoring by the PNG team.
- ⁸ E. McBryde, *Evaluation of Risks of Tuberculosis in Western Province Papua New Guinea* (report), Burnet Institute, Melbourne, 2012.
- ⁹ WHO, Government of Papua New Guinea National Tuberculosis Program Technical Assistance Mission, 15–21 October 2011 (to evaluate the TB services in the South Fly District in Western Province, Papua New Guinea).
- ¹⁰ In 2013 the then Queensland Health Minister, Lawrence Springborg, claimed that the decision to close the TB clinics on Saibai and Boigu was made on the basis of advice provided by WHO. In a statement to the media, Springborg explained that the clinics were seen to be contributing to the development of MDR-TB because the clinics were not in a position to treat and monitor TB patients in an effective way. This had reportedly resulted in patients taking incomplete treatment and sharing drugs with their families. In the lead-up to the 2013 federal election, Springborg used the issue to link the Queensland government rhetoric to the 'stop the boats' mantra of Tony Abbott's election strategy. In a politically motivated attack, the Queensland Health Minister's office released a media statement claiming that the compensation payments to the Queensland Government from the federal government was acknowledgement from a Labour federal government that they were unable to secure our borders: '[T]he Federal Government approved an \$18 million compensation package to Queensland in recognition that the Commonwealth Government cannot secure the Queensland–Papua New Guinea border ... The \$18 million compensation deal, signed on 30th June by Federal Health Minister Tanya Plibersek, confirms

the Labor Government is fully aware that more than 1000 Papua New Guinea nationals freely cross the Queensland border each year to access health services without any passport or visa requirements, and no requirement to carry identification.' See R. Wilson, 'PNG nationals stream through "colander" Qld border for care', *Chronicle* (Toowoomba), 24 July 2013, www.thechronicle.com.au/news/png-nationals-stream-through-colander-qld-border-c/1957078.

- 11 Queensland Health, 'Management of Papua New Guinea nationals presenting to Queensland Health facilities in the Torres Strait', 2009, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed_inquiries/2010-13/torresstrait/qon/index, attachment 4.
- 12 See chapter 2 for details of the process used to select PNG Treaty villages.
- 13 The South Fly District borders the Torres Strait and is the southernmost of Western Province's three districts: North, Middle and South Fly.
- 14 Council of Australian Governments, *Project Agreement for the Management of Torres Strait/Papua New Guinea Cross Border Health Issues*, Commonwealth of Australia and Queensland and Intergovernmental Agreement on Federal Financial Relations. A stated Commonwealth role in the agreement is to 'provide a consequent financial contribution to Queensland to support the implementation of this agreement'.
- 15 Cross-border communication officer, personal communication.
- 16 By contrast, only 3 per cent of survey participants had been treated in an Indonesian health facility, and less than 6 per cent cited this as a reason for going to Indonesia. However, due to the paucity of government and other services in the western part of the South Fly, PNG residents of this region are increasingly looking west for trade and other opportunities, including education, banking and health. See chapter 2.
- 17 PNGECO5_WP [sic], 'PNG 2019 budget—health cut despite polio and drug shortages, administration big winner but political', *PNG Economics*, 14 November 2018, www.pngeconomics.org/2018/11/png-2019-budget.
- 18 Funding for Daru General Hospital, wages for government health service staff (both hospital and rural) and for drugs and supplies is provided at the national level through the National Department of Health (hospitals and drugs) and Department of Finance (public service wages).
- 19 A. Honjepari, 'Report to the Health Issues Committee meeting', Cairns, Qld, 2016; based on interviews on 4 November 2016 and 29 May 2018 at the Provincial Health Office, Daru, Western Province.
- 20 For example, pentavalent vaccine coverage of children under 1 year fell from 62 per cent to 29 per cent over the three-year period (SPAR).
- 21 Productivity Commission, '2017 Indigenous Expenditure Report', Steering Committee for the Review of Government Service Provision, 2017,

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- www.pc.gov.au/research/ongoing/indigenous-expenditure-report. Productivity Commission, Steering Committee for the Review of Government Service Provision, 'Report on Government Services 2018', 23 January 2017, www.apo.org.au/node/129126.
- ²² WHO, 'Papua New Guinea', www.who.int/countries/png/en. International dollars are used by WHO to compare expenditure between countries. 'An international dollar would buy in the cited country a comparable amount of goods and services a US dollar would buy in the United States' (datahelpdesk.worldbank.org/knowledgebase/articles/114944-what-is-an-international-dollar).
- ²³ WHO defines skilled health workers as doctors, midwives and nurses. PNG's Community Health Workers (CHWs) are not recognised as skilled health workers. Because CHWs are the *only* health staff providing services throughout most of the South Fly, they are included for the purpose of workforce comparisons. The total South Fly health worker to population ratio is 16.5:10 000.
- ²⁴ WHO, 'Health workforce requirements for universal health coverage and the Sustainable Development Goals', Human Resources for Health Observer Series, no. 17, 2016.
- ²⁵ P. Barren, 'PNG Workforce Statistics', unpublished report for PNG National Department of Health, 2017.
- ²⁶ Survey respondents in one coastal village estimate that their sole community health worker is absent approximately 75 per cent of the time. During the research team's August 2019 visit, only two of these six facilities had a CHW present, which is indicative of the absence of staff across the district.
- ²⁷ PNG National Department of Health, 'Projected populations by Health Facility Catchment', unpublished report, 2018.
- ²⁸ The outer Torres Strait Islands health worker to population ratio is 133:10 000.
- ²⁹ Queensland Health, 'Torres and Cape Hospital and Health Service', www.health.qld.gov.au/services/torres-cape.
- ³⁰ 'Western Governor Ati Wabiro and two others sentenced to 10 years in prison', *Post-Courier*, 18 November 2016, postcourier.com.pg/western-governor-ati-wabiro-and-two-others-sentenced-to-10-years-in-prison.
- ³¹ Various officials and councillors interviewed spoke of the lack of adequate recurrent funding to support the health system and its outreach to rural communities in the Western Province.
- ³² Western Province has four hospitals, 42 health centres and subhealth centres and 154 aid posts. Nearly half of all health facilities in the province are operated by church health services using church health service grants provided by the Government of PNG. However, there are only two church-run health facilities in the South Fly.

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- ³³ G. Miller, 'Exploring fundamental issues underpinning health service functionality in Western Province', unpublished report, 2010.
- ³⁴ PNG National Department of Health, 'National Report, 2018 Sector Performance Annual Review: Assessment of Performance 2014–2018', www.health.gov.pg/subindex.php?acts=1
- ³⁵ Antimicrobial resistance, resulting from incomplete treatment of TB, has been a major contributor to the development drug resistant strains of TB in the region.
- ³⁶ By dinghy, Daru is 2 hours from Mabuduan, 4 hours from Buzi and 8 hours from Bula (see figure 1.1).
- ³⁷ The standard fare by dinghy from Mabuduan to Daru is K200 (approximately A\$80) one way.
- ³⁸ PNG National Department of Health, 'PNG Maternal and Newborn Health Strategy' (draft), 2019.
- ³⁹ Due mainly to a lack of available data. See chapter 5.
- ⁴⁰ Queensland Parliament, Estimates Committee, L. Springborg, 'Media statements: PNG–Queensland border unsecured', Queensland Government, 24 July 2013, www.statements.qld.gov.au/Statement/2013/7/24/pngqueensland-border-unsecured.
- ⁴¹ Cross-border communication officer, Queensland Health, personal communication.
- ⁴² Australian National Audit Office [ANAO], Auditor-General et al., 'Coordination arrangements of Australian government entities operating in Torres Strait', *Auditor-General Report*, no. 41, ANAO, 2019, p. 61. Performance Audit, www.anao.gov.au/work/performance-audit/coordination-arrangements-australian-government-entities-operating-torres-strait. They might find themselves being detained by ABF, however, as they are not legally allowed to travel outside the Protected Zone covered by the treaty.
- ⁴³ PNG nationals made more than 34 000 visits to the Torres Strait in 2015–16, 95 per cent to the top western islands of Saibai, Boigu and Dauan (personal communication, Superintendent Area Command North Queensland, Australian Border Force).
- ⁴⁴ Daru General Hospital is the only health facility in the South Fly with resident doctors.
- ⁴⁵ Daru General Hospital, Western Province Health Stakeholders Meeting, Port Moresby, updated presentation, 10 May 2018.
- ⁴⁶ CEO of Daru General Hospital, personal communication.
- ⁴⁷ This does not include the additional funding Queensland Health claimed to provide to treat PNG people. Queensland Health quotes the total cost to treat about a thousand PNG people in 2013 as A\$13 million. The 2017 total figure is unavailable.
- ⁴⁸ There is a 10-bed accommodation facility at Daru Hospital for TB patients' families.

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- ⁴⁹ Daru High School is the only school in the South Fly where students can complete their secondary education.
- ⁵⁰ Ok Tedi Mine has contributed on average about 25 per cent of PNG's GDP annually since the mine opened in 1985.
- ⁵¹ Population census conducted before the WHO TB screening program in 2017–18: 'Daru: 2017 corner population density', unpublished report, Burnet Institute, Melbourne.
- ⁵² Ok Tedi Mining Limited provides biannual compensation payments to the mine affected villages along the Fly River under the Community Mine Continuation Agreement (CMCA).
- ⁵³ 'Daru: 2017 corner population density'.
- ⁵⁴ J. Furin and H. Cox, 'Outbreak of multi-drug resistant tuberculosis on Daru Island', *Lancet Respiratory Medicine*, vol. 4, no. 5, 2016, pp. 347–9.
- ⁵⁵ Western Provincial Administration, 'Details of the Cholera Response: Western Province Cholera Outbreak', unpublished report, 2011.
- ⁵⁶ P. Horwood and A. Greenhill, 'Cholera in Papua New Guinea and the importance of safe water sources and sanitation', *Western Pacific Surveillance and Response Journal*, vol. 3, no. 1, 2012, p. 13.
- ⁵⁷ Warren Entsch MP, Appropriation Bill 2012–13, www.warrenentsch.com.au/appropriation-bill-2012-2013. A. Katelaris, 'Short-sightedness puts Australia at risk' (editorial), *Medical Journal Australia*, vol. 195, no. 9, 2011, p. 487.
- ⁵⁸ Department of Foreign Affairs, Australian Government National Partnership Agreement—Management of Torres Strait–Papua New Guinea health issues—Extension, 2016. Expenditure figures do not include management fees paid to agencies and contractors delivering services (i.e. approximately 20 per cent).
- ⁵⁹ Australian High Commission, Papua New Guinea, 'TB factsheet update, 28 February 2017', www.png.embassy.gov.au.
- ⁶⁰ Over this period, 9.3 per cent of all Daru residents commenced treatment.
- ⁶¹ K. Chani, updated presentation, Western Province Health Stakeholders Meeting, Burnet Institute, Port Moresby, 9 May 2018.
- ⁶² Contact tracing is the process of identifying and testing people who have had sustained contact with confirmed TB cases—principally members of the patient's extended household.
- ⁶³ Northern Queensland Primary Health Network, 'Health snapshot Torres Shire', *Health Needs Assessment: Description of Health Service Use, Workforce and Consumer Need*, NQPHN, 2016, p. 132.
- ⁶⁴ Australian Institute of Health and Well-being, 'Australia's Health 2018', AIHW, 2018, www.aihw.gov.au/reports.
- ⁶⁵ 'Papua New Guinea', WHO, 2016, www.who.int/nmh/countries/png_en.pdf.
- ⁶⁶ Although PNG has a free education policy known as the Tuition Fee Free policy, students are still required to pay project charges to support the basic functions

of their school. In most instances, students who are unable to pay their charges are eventually barred from attending school.

- ⁶⁷ 'Papua New Guinea', WHO, 2016, www.who.int/nmh/countries/png_en.pdf.
- ⁶⁸ 'WHO Global Coordination Mechanism on the prevention and control of NCDs', WHO, www.who.int/global-coordination-mechanism/working-groups.
- ⁶⁹ P.F. Horwood, E.S. McBryde, D. Peniyamina and S.A. Ritchie, 'The Indo-Papuan conduit: A biosecurity challenge for northern Australia', *Australian and New Zealand Journal of Public Health*, vol. 42, no. 5, 2018, pp. 434–6. The term 'Indo-Papuan conduit' refers to 'the land and waterways directly to the north of Australia, connecting south-eastern Indonesia and New Guinea (including the West Papuan province of Indonesia [Papua Province] and Papua New Guinea (PNG)) to the Torres Strait and Cape York Peninsula of Australia'.
- ⁷⁰ The many approaches to disease risk assessment all include the three key elements of probability (of a disease occurring), impact (on the population if the disease does occur) and perception (how a particular disease is perceived by a population group; in some instances expressed as outrage). Community perception often determines government responsiveness to public health threats; that is, governments are often spurred to respond to disease threats that might affect only a small (often influential) proportion of the population but are perceived (often irrationally) to have dire, population-wide consequences.
- ⁷¹ McBryde, 2012.
- ⁷² Queensland Health, 'Tuberculosis in Queensland 2015', State Government of Queensland, Brisbane, 2016, www.health.qld.gov.au.
- ⁷³ 'TB case in the Torres Strait', Queensland Health, 2018, www.health.qld.gov.au/torres-cape.
- ⁷⁴ Queensland Health, 'Risk management of communicable diseases in the Torres Strait and Northern Peninsula', unpublished report, 2012.
- ⁷⁵ Recording about 1 per cent of HIV infections in PNG, Western Province has a relatively low prevalence of HIV compared to other PNG provinces (*STI, HIV and AIDS Annual Surveillance Report, 2010*, National Department of Health, PNG).
- ⁷⁶ Office of the Provincial Administrator, Western Province Administration, 'Proposal for a cross-border regional study between Australia and Papua New Guinea under the Torres Strait Treaty', tabled at the health issues committee, February 2010, Cairns.
- ⁷⁷ M. Marmot, 'Social determinants of health inequalities', *Lancet*, vol. 365, 2005, pp. 1099–104. The social determinants of health are the economic and social conditions that influence individual and group differences in health status. They are the health-promoting factors found in one's living and working conditions (such as the distribution of income, wealth, influence and power), rather than individual risk factors (such as behavioural risk factors or genetics)

that influence the risk for a disease, or vulnerability to disease or injury (Wikipedia).

- ⁷⁸ TB treatment supporters are trained to deliver DOTS and to be alert to the early symptoms of TB.
- ⁷⁹ 'Publications and other resources', WHO, www.who.int/alliance-hpsr/resources/en.
- ⁸⁰ The WHO framework of health system building blocks describes six subsystems of an overall health system architecture: leadership and governance; finance; health workforce; service delivery; access to essential medical supplies; and health information systems.
- ⁸¹ This will need to occur both on and off the island, because relocation of much of the population will be part of Daru's redevelopment.
- ⁸² Marie Stopes has an effective family planning program operating in the South Fly, UNICEF and ADRA are planning programs, the Digicel Foundation is building school classrooms and the World Bank has built community centres in a few villages.
- ⁸³ Australian Government, 'User requirements: Facilitated cross-border movement for certain government officials', unpublished document, 15 October 2010. Facilitated cross-border movement provisions permit certain nominated health and other government officials to conveniently enter or exit Australia and/or PNG via non-proclaimed ports within the area covered by the Torres Strait Treaty, at minimum cost and with minimal bureaucratic process.
- ⁸⁴ Mabudian Health Centre is a Level 3 health facility with 18 inpatient beds. According to PNG National Health Service Standards, Mabudian will require 20 staff (including 13 clinical staff). Currently, the old Health Centre at Mabudian has only two staff—both community health workers.
- ⁸⁵ The majority of PNG presentations for health care are at Saibai, and most of these people come from Mabudian, Sigabaduru and surrounding villages.
- ⁸⁶ The Western Provincial Health Authority was established and gazetted in August 2019.
- ⁸⁷ Western Provincial Government, *The New Way Forward: Western Province Development Plan 2018–2022*, Office of the Governor, Western Province, Papua New Guinea, 2018.

Fisheries

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The borderland of the Torres Strait–Trans-Fly encompasses the borders of Papua New Guinea (PNG), Indonesia and Australia (figure 1.1), and is characterised today by profound political and socioeconomic asymmetries.¹ The waters surrounding these countries are defined by the highly biodiverse Torres Strait, with its islands, reefs, seagrass meadows and mangroves. For centuries, Melanesian populations living along the coast of what is now the South Fly District in PNG and on the islands scattered in Australia’s Torres Strait have traversed these waters and maintained trade connections, kinship and cultural ties through intermarriage and warfare. These ties also extended to the Marind-Anim people in what is now the south-eastern corner of Papua Province in Indonesia.

The rich marine resources in the Torres Strait have long provided a major source of sustenance and livelihoods to populations in this borderland region. However, the skewed development of the neighbouring areas is driving divergent patterns of utilisation of marine resources. Due to their geographical and political isolation, communities along the coast of the South Fly today rely heavily on marine resources for food security and earning cash. On the Australian side of the border, fishing plays an important role in meeting and maintaining cultural needs and obligations for the Torres Strait communities, but this has declined over the years with the shift towards a cash economy supported by welfare payments from the Australian Government, characterised by Altman as a ‘hybrid economy’.²

Until the establishment of colonial borders, Papuan and Torres Strait populations shared waters and their resources according to customary accords, and moved freely in the region. However, the free movement of people, resources and goods has become increasingly regulated since European colonisation with the arrival in the Torres Strait of the London Missionary Society and the administration of the Queensland Government in the 1870s. Following PNG’s independence in 1975, the ratification of the Torres Strait Treaty between Papua New Guinea and Australia in 1985 increased the restrictions on the movement and trade of these borderland populations.³

When the Torres Strait Treaty between Australia and PNG was eventually signed in 1978, after six years of negotiations, it was welcomed by politicians, academics and the international community as an innovative cross-jurisdictional institutional framework. One academic concluded that ‘direct negotiation can successfully resolve complex maritime boundary disputes’, and ‘it also contains

several novel and significant features that may point the way to solutions elsewhere'.⁴

The Torres Strait Treaty has a cross-jurisdictional framework to regulate the management of shared marine resources in the Torres Strait. The framework includes stakeholders from local to national levels, although PNG representation is outnumbered by Australian representatives.⁵ The existence of these cross-jurisdictional institutional frameworks has not, however, always led to effective decision-making processes. Despite the presence of community representatives during the treaty's negotiation and later as regular stakeholders, the ever-evolving transboundary social and political dynamics in the South Fly have often been overlooked, creating a mismatch between the state-driven institutional framework governing the Torres Strait–Trans-Fly region and the everyday local livelihood realities, especially for Papua New Guineans. On the ground, this mismatch results in ambiguities which, due to limited livelihood activities, local people take advantage of to earn cash. Many of these small-scale economic opportunities involve cross-border trade, as often occurs in borderlands. However, when viewed from a state-centred and regulatory perspective, such cross-border trade overlaps definitions of informal, licit and illegal.⁶

Mismatches between scales (e.g. temporal, spatial, institutional, networks) in social–ecological systems are known to undermine their resilience.⁷ Overlooked and unresolved mismatches have a long history of resulting in the failed management of cross-border resources, as in the management of transboundary pollution and migratory species. In the Torres Strait–Trans-Fly region, these unregulated activities could have negative cascading effects on the sustainability of shared marine resources, and consequently on the well-being and livelihoods of South Fly and Torres Strait communities. Some of the fisheries resources may already be overexploited.⁸ This has been reported by South Fly villagers when discussing the declining status of sea cucumbers (*bêche-de-mer*) on the PNG side of the Torres Strait, despite a fishing moratorium that ran from October 2009 to April 2017:⁹

Today you can go [illegally] to the other side [Australia] and you can take 50/60 kg [of sea cucumber], but not on our side.¹⁰ If you go on our areas you can get one, half a bag. There is a big difference.

In this chapter we examine the challenge of mismatches between the state-centred institutions, the social and political realities at the community level, and the transboundary marine resources of the Torres Strait–Trans-Fly region. We apply Horstman and Wadley's political economy perspective, which they describe as 'centering the margins',¹¹ and involves understanding the social forces originating in borderlands. Using their framework, we give an overview of how states deal with the borderlands, then shift the focus to the perspective of the borders, wherein people 'negotiate border crossing in their everyday activities and extend the borderland into the central spaces through their movements'.¹²

To do this, we first describe the institutional context within which shared fisheries resources in the Torres Strait are currently managed. We then analyse the local, social and political dynamics in the South Fly. In this regard, we look at embedded power relations, how people adapt to the border and its institutions, and how borderlanders re-appropriate and use shared marine resources. We go further by including the environmental context of the region, and briefly discuss how changing social dynamics are generating unintended consequences for exploited marine resources. Important in this discussion is the role that globalisation¹³ and its driving economic forces are playing in transforming the Torres Strait–Trans-Fly region, and how they are changing the roles of people in the South Fly from peripheral actors in their own country to active participants in the global economy.

The discussion of this chapter is based on data and information from the CSIRO’s research projects, supplemented by information and quotes recorded during interviews for the ARC-funded project (chapter 1: Introduction).

Institutional framework for marine resources

The Torres Strait Treaty was designed and negotiated with the intention of managing the newly-formed border by giving priority to the long-standing dependence of borderland populations on the marine ecosystems in the Torres Strait, and acknowledging the importance of these resources for their livelihoods, well-being and cultural identity. As such, the Treaty established a Torres Strait Protected Zone (TSPZ), which includes PNG and Australian territorial waters, with the stated aim of protecting the ‘traditional way of life and livelihood’ of ‘traditional inhabitants’ in both PNG and Australia, including their development through the sustainable commercial exploitation of marine resources. Several years after ratification of the treaty, members of 14 Australian island communities and 14 coastal PNG villages (‘Treaty villages’) were formally recognised by agreement between the two governments as meeting the definition of ‘traditional inhabitants’.¹⁴

Under Part 5 (Art. 20 to 28) of the Torres Strait Treaty, PNG and Australia have sovereign rights to commercially exploit the fishery resources within the TSPZ while giving priority to the protection of traditional rights and the environment. Commercial fisheries in TSPZ are allowed and promoted for the economic development of traditional inhabitants. Art. 1(h) defines commercial fisheries as ‘the fisheries resources of present or potential commercial significance’. Under the present interpretation of the provision, eight fisheries are designated ‘commercial’, and of these, four are included under Art. 22 and 23 of the Treaty (see table 7.1 for details), whereby Australia is entitled to 75 per cent of the catch in the Australian jurisdiction of the TSPZ and PNG is entitled to 25 per cent, and vice versa in the PNG jurisdiction. Annual quotas and catch-sharing for the Art. 22 fisheries are negotiated annually by the Fisheries Bilateral Meeting.¹⁵

[<table 7.1 near here>](#)

Table 7.1: Designations given to fisheries in the Torres Strait Protected Zone under the Torres Strait Treaty, their stock status in 2016, and the relative participation in the fisheries by Australian and PNG fishers

Fishery and species	Co-managed Article 22	Stock status ^a	Australia and PNG participation in the fisheries
(a) Commercial			
Tropical rock lobster	Yes	Not overfished ^b	Australia and PNG
Prawn:			
Blue endeavour	Yes	Not overfished	Australia only
Brown tiger	Yes	Not overfished	Australia only
Spanish mackerel	Yes	Not overfished	Australia only
Reefline:			
Coral trout	No	Not overfished	Australia and PNG
Mixed reef fish	No	Not overfished	Australia and PNG
Barramundi	No	Uncertain	Mainly PNG
Beche-de-mer:			
Sandfish	No	Overfished	Australia and PNG
Other spp.	No	Not overfished/uncertain	Australia and PNG
Trochus	No	Uncertain	Australia only
Pearl shell	Yes	Uncertain	None
Mud crab	No	Uncertain	Mainly PNG
Blue swimmer crab	No	Uncertain	None
(b) Traditional			
Dugong	Yes	Not overfished	Australia and PNG
Turtle:			
Green turtle	Yes	Declining	Australia and PNG
Hawksbill turtle	Yes	Declining	Australia and PNG
Flatback turtle	Yes	Uncertain	Australia and PNG
Reef fishery:			
Mixed finfish	No	Uncertain	Australia and PNG
Invertebrates	No	Uncertain	Australia and PNG

a Monitoring of exploited stocks is carried out using various techniques at a frequency ranging from annually (lobster) to decadal (Spanish mackerel). Data are compiled from D.T. Wilson, R. Curtotti and G.A. Begg (eds), *Fishery Status Reports 2009: Status of Fish Stocks and Fisheries Managed by the Australian Government*, Department of Agriculture, Fisheries and Forestry and Australian Bureau of Agricultural and Resources—Bureau of Rural Sciences, Canberra, 2010; S. Busilacchi, J. Butler, T. Skewes, J. Posu, T. Shimada, W. Rochester and D. Milton, *Characterization of the Traditional Fisheries in the Treaty Communities of*

Torres Strait (Papua New Guinea), CSIRO, Australian Fisheries Management Authority, 2015; H. Marsh, J. Grayson, A. Grech, R. Hagihara and S. Sobotzick, 'Re-evaluation of the sustainability of a marine mammal harvest by indigenous people using several lines of evidence', *Biological Conservation*, vol. 192, 2015, pp. 324–30; Protected Zone Joint Authority, *Torres Strait Protected Zone Joint Authority Annual Report 2014–15*, Australian Fisheries Management Authority, Canberra, 2015; Department of the Environment and Energy, 'Recovery Plan for Marine Turtles in Australian Waters', Commonwealth of Australia, Canberra, 2017; and H. Patterson, R. Noriega, L. Georgeson, J. Larcombe and R. Curtotti, *Fishery Status Reports 2017*, Australian Bureau of Agricultural and Resource Economics and Sciences, Canberra, 2017.

- b Not overfished = healthy stocks; Uncertain = not enough information/no monitoring; Overfished = stocks in decline.

Source: adapted from Butler et al. 2019, from CSIRO projects

<table ends>

In 1984 the Protected Zone Joint Authority (PZJA) was established under Australian law to implement its fishery management responsibilities under the Treaty and is led by the Australian Fisheries Management Authority (AFMA). It is advised by seven committees focused on the most economically important fisheries. These include multilevel stakeholders drawn from government fisheries agencies, the fishing industry and Australian traditional inhabitants. PNG is represented on only three of the seven advisory committees by the PNG National Fisheries Authority (NFA) and fishers (figure 7.1).¹⁶ The NFA implements AFMA fishery management plans within the PNG jurisdiction of the TSPZ, and its own management plans in PNG territorial waters.

<figure 7.1 near here>

The fisheries governance framework in the Torres Strait Protected Zone. Grey shading denotes the relative PNG interest or representation, and white denotes the equivalent for Australia. Abbreviations are Protected Zone Joint Authority (PZJA); Torres Strait Regional Authority (TSRA); PNG National Fisheries Authority (NFA); Australian Fisheries Management Authority (AFMA); Queensland Boating and Fisheries Patrol (QBFP) (J.R.A. Butler, S. Busilacchi and T. Skewes, 'How resilient is the Torres Strait Treaty (Australia and Papua New Guinea) to global change? A fisheries governance perspective', *Environmental Science and Policy*, vol. 91, 2019, pp. 17–26)

While the AFMA has well-established and enforced management plans for the main commercial fisheries in the Torres Strait, PNG NFA has only recently developed management plans for the fisheries important for the livelihoods of people in the South Fly. Following a collapse of the sea cucumber fisheries in early 2000 throughout PNG waters, PNG NFA introduced a moratorium in October 2009, which was lifted in April 2017, when the new National Bêche-de-mer Fishery Management Plan 2016¹⁷ was implemented and successively amended in 2018.¹⁸ A Barramundi Fisheries Management Plan, which imposes size limits and other spatial and temporal measures in PNG territorial waters, was also gazetted following a crash of the South Fly fishery in the late 1980s.¹⁹ A Fisheries Management Plan for the Tropical Rock Lobster—one of the most economically valuable fisheries in the South Fly—has also been in place since 2002.²⁰

The Queensland Boating and Fisheries Patrol (QBFP) service undertakes fisheries surveillance within the TSPZ, supported by the Queensland Police and the Royal Australian Navy.²¹ The Treaty enables cross-jurisdictional enforcement and prosecution of infringements by Australian and PNG authorities. The QBFP also carries out community visits in the Torres Strait Islands to raise awareness and encourage voluntary compliance.²² Treaty Liaison Officers from Australia and PNG also conduct Treaty Awareness Visits, providing information on fisheries and other treaty matters such as health and biosecurity.

Since 2006 there has been increased Australian surveillance effort, which has significantly reduced incidents of illegal fishing by unlicensed PNG and Indonesian vessels.²³ Compliance issues and future priorities focus on the curtailment of illegal and unlicensed fishing, mainly for sea cucumber and crayfish in Australian waters by PNG small-scale fishers.²⁴ There is some collaboration between Australian and

PNG enforcement officers, but wider cooperation is limited by the lack of capacity among PNG agencies.

Along with the increased fisheries surveillance effort, other Australian authorities have been taking a stricter approach to the management of the border, by increasing controls and restrictions on cross-border transactions. An example is Australia's stance on biosecurity and environmental protection. Australian officials routinely monitor PNG and Australian villages along the border for signs of infectious diseases and also conduct risk mitigation and outbreak eradications where necessary. Unverified recounts in 2017 from respondents reported that extreme measures have occurred in the past, such as the extermination of pigs and chickens in the South Fly communities close to the Australian border, are sporadically adopted to control the spread of diseases such as Japanese encephalitis and avian influenza into Torres Strait. Under Art. 16(3) of the Treaty, biosecurity restrictions of certain goods and animals are also imposed on PNG traditional inhabitants visiting Torres Strait Treaty villages.

The growing emphasis on protection and border management is accentuating the 'hard line' between the two countries and their populations. External pressures are intensifying due to the fast-changing local, regional and global context, and Australia is moulding and interpreting the Treaty provisions to strengthen the border and mitigate the impacts of international security threats. Being far from state centres, local social dynamics are also evolving to adapt to regional and global change, with people utilising the opaque terms of the Treaty to alter their fishing and trading patterns, and to gain access to better services provided by Australia that are available on the Torres Strait Islands.

How local social dynamics adapt to the state-centred institutional framework

Since the creation of the border and its institutional framework, new power relations have been shaped among local PNG, Australian and Indonesian actors in what Herzog calls 'transboundary social formation'.²⁵

Torres Strait Islanders

While the Treaty promotes the sustainable use of marine resources in the Torres Strait to support the economic development of borderlanders through access to the TSPZ commercial fisheries (Treaty Part 5), the reality is very different. This is because access for South Fly fishers to two of the three most economically valuable fisheries²⁶ is difficult due to the resources—both capital and human—required to exploit these fisheries. Both the assets and skills that are required to operate are generally unavailable in PNG. Local people also lack the skills, knowledge and financial capital to apply for cross-border fishing licences, which would allow PNG traditional inhabitants to take advantage of the 25 per cent share of the catch in Australian waters of the TSPZ.

Despite these barriers, people in PNG Treaty villages adjacent to the Torres Strait Islands (i.e. Mabuduan, Sigabaduru, Buzi and Ber) use the Treaty's provisions to take advantage of their proximity and kinship relationships and access the Australian markets, both local and on the mainland. Recent marriages between South Fly people and Torres Strait Islanders, especially from Boigu and Saibai, have further strengthened these kinship relations. As a villager in Mabuduan explained in 2016:

We don't go to Daru. It's too expensive to travel and to purchase goods.
Less travel to Saibai ...

The villager also reported movement of goods from Daru to Saibai, with products sold including spears, tobacco, traditional clothes, cordial and ice blocks. Although the informant noted a trend that 'only whites buy crafts', Torres Strait Islanders are also known to rely on South Fly-made crafts for cultural events.

Conditions granted to the traditional inhabitants of PNG Treaty villages are often unlawfully extended to people from non-Treaty villages (commonly referred to as 'third-party people'), as a respondent from Mabuduan reported in 2016:

Some people bribing to get a pass here and other villages, Parama and Kadawa especially. They take third-party people to Darnley,²⁷ Stephen and Murray Islands. Usually they don't get caught, covered by Treaty people use surname from Treaty village.

The main products sold to Torres Strait villagers are handcrafts, kundu drums, mats, baskets and sago, along with marine products such as plate-size barramundi, mud crabs and shellfish.

As is common in borderlands elsewhere,²⁸ traditional trading and fishing activities constitute informal cross-border activities. When speaking about the harvest and trade of lobsters by PNG traditional inhabitants exceeding the quota allowed as traditional catch in TSPZ waters,²⁹ a villager reported:

In our hearts we are trying our best to make it a legal way that we just have access to Australia ... it is your [Australian] product that we are taking, because the boundary has already taken it over, but there is nobody to catch it and give it back to you. Now we are doing traditional fishing under Treaty arrangement, catching for our income living. We give the product back [to Torres Strait Islanders], they pay us, and we do our shopping in Saibai [Torres Strait Island].

The legal grey area created by the loose definition of 'tradition' in the Treaty is the avenue by which traditional inhabitants engage in activities not always recognised by Australia and PNG. The distinction between what is informal and what is licit becomes unclear in many cases. For example, selling marine products

locally is considered a 'traditional activity', but the practice becomes essentially commercial because they progress down value chains to distant markets on mainland Australia through value chains beyond the borderland. In these value chains, Torres Strait Islander buyers are uniquely placed as middlemen. As one PNG villager explained:

We try to sell straight to the buyers in Australia, but they [Torres Strait Islanders] did not allow us to make commercial, we cannot sell it straight to the buyer. What they tell us is that we have to have a middleman there at the island [Boigu]. So, I take it there, give it to you and sell it for me and then when the money comes [from mainland] we are sharing the money.

Often buyers in the Treaty villages buy products from non-Treaty villagers and sell them as traditional products, as reported by a non-Treaty villager:

Sometimes don't get the money expected for sales at Boigu by Buzi people, but sometimes we do. Haven't given up selling through Buzi, still doing it. One of the only ways to get money.

Indonesian Papuans

Due to the hardening of the border between Australia and PNG, people in the South Fly are looking to Indonesia for cross-border trading opportunities, in particular from Papua Province's economic hub of Merauke. People from Treaty villages as far away as Daru reported visiting Indonesia and Merauke several times. In 2018, three of seven respondents from one village visited by researchers for the ARC Borderlands project reported going to Indonesia multiple times, and all went to Merauke. New economic networks have also been emerging based on kinship and traditional trading relations between South Fly people and Indonesian Papuans — mainly from the Marind-Anim ethnic group — who are historically related. Groups of Indonesian Papuans regularly visit communities in the South Fly, mainly along the coast, for trading purposes. Borderlands researchers (chapter 1: Introduction) found that 55 per cent of survey respondents said they sold items they had made, grown or hunted to Indonesian traders (2 per cent said they sold things that were made, grown or hunted by others). One local official in Daru summarised the situation as follows:

Because Australian markets are very strange [*sic*], you know, the quarantine are very strict and nearly impossible to bring things to Australia, that is why they all head to Indonesia. But our concern is that Indonesia has so many diseases that we do not have and it will eventually end up here one day and then to Australia, so if Australia is concerned about ... they should relax a bit, you have to be ready for the impact.

What was until recently an informal cross-border trade between PNG and Indonesia, in which neighbouring villagers exchanged goods and money as part of their tradition,³⁰ has now evolved into a well-organised international—and mainly illegal³¹—trade driven by demand in Asia for high-value marine and wildlife products. Products leaving the South Fly transit through Merauke to the export ports of Surabaya and Jakarta in Indonesia, ultimately ending up in Asian markets, especially Hong Kong and Singapore. These external drivers, which are fuelling a lucrative illegal economy,³² have transformed the once-peripheral borderland actors of the South Fly into unintentional key participants in transnational economic networks.

As a result of these new trade activities, South Fly inhabitants and Indonesian Papuans have forged new social and economic relationships based on their traditional relationships. Relationships strengthened in the 1980s due to the Indonesian Papuans' migration to PNG as political refugees escaping persecution by the Indonesian Government. Recent marriages between Papuans and women in the South Fly have further reinforced their presence in the PNG communities. While PNG fishers provide the highly sought-after marine commodities, Indonesian Papuans act as middlemen in this cross-border trade. Papuan traders visiting the South Fly, especially those who have established themselves in the communities, have also become financial agents (e.g. providing fishing gear, lending money) and a supplement to the limited government services (e.g. helping students to gain education in Merauke, providing medicine, building a church).

People in the communities and local authorities mentioned the importance that these Indonesian traders have acquired for people's livelihoods in the South Fly. Villagers rely on the traders' visits in order to acquire goods and services that otherwise would not be available. As one woman in a village reported,

[W]hen they come from Indonesia, they live with us in our home, and what they bring they share with us. They become part of the family ... They pay the grounds and they pay the accommodation. They are very friendly, they are good people. They are very open, and they also help us with some of the situations, like if we want to go to Daru, or some other cases, if we want to go to meetings and all this. So, when we house them they help us with transport and other things here in the community.

Accounts in the villages suggest that officers at the border posts between PNG and Indonesia understand the struggle of the people and try to facilitate their everyday borderland activities and help when they are in need. Accounts nonetheless also suggest that collusion and corruption between local Indonesians, PNG authorities and the traders might be enabling the trade to flourish. Of the 73 respondents who reportedly crossed the Indonesian border, 89 per cent said that border police/customs officers were always present when they crossed the Indonesian border.³³ One respondent explained that when crossing the border there

is 'always border control, give them deer horn or bribe. Sometimes they turn you back.'

Contrary to the border between Australia and PNG, management of the PNG–Indonesia border is taking a more permissive approach, which is creating a bridge that sustains a constant flow of people and resources. As one government official explained,

Military people in Indonesia facilitate the illegal activity. They just let their citizens coming, going, doing their illegal poaching, come do illegal trade as far as Daru, because they get the cut. So it is like more organised type of trade, it is not like us [Papua New Guineans], just because our people are suffering when they see a feeding hand they capitalise that opportunity, it is an opportunity because of our lack of form of government, so people tend to look west for their survival, that's why I emphasise: we say it is illegal, but it is their survival ... and Indonesia is a gateway to Asia. Everything, every resource taken out of PNG is not PNG product, it is gonna get into Indonesia branded Indonesian product and then exported overseas. The big finances will finance these traders, they are not small people, they are big big business men. Indonesian, Javanese. And they are hooked up with the military.

The ambiguous and outdated terms and provisions of the Torres Strait Treaty, plus the relatively open conditions governing the PNG–Indonesian border, have allowed local livelihoods and social dynamics to adjust to rapid external drivers of change. These new relationships are characterised by a hierarchy,³⁴ in which power is distributed among the groups with respect to the amount of resources that they control.³⁵ In terms of the growing trade with Indonesia, power is exerted variably among different groups across the border. South Fly villagers have the least power, since they are completely dependent on the resources (especially finances and market knowledge) possessed by the Chinese end-buyers/financers, without which basic livelihood needs would not be met. They are also highly dependent on other value chain actors, such as the Indonesian traders, who allow them access to the international wildlife trade networks³⁶ and provide essential services such as access to education and health services in Merauke or Sota. Although the PNG villagers have primary access to marine resources, the other value chain actors have multiple alternative sources and therefore are not dependent on the South Fly fishers. The villagers are therefore replaceable and are consequently left largely powerless.

Consequences for shared marine resources

Fish 'maws' (dried fish bladders), *bêche-de-mer* (i.e. dried sea cucumber), shark fins and mud crabs are the primary marine products traded by PNG fishers in the South Fly (figure 7.2). Targeted species for the fish maws are black jewfish, barramundi and catfish. Both black jewfish and barramundi are highly vulnerable to

overexploitation. According to fishers, sandfish is the most targeted species of sea cucumber, although low-value deep-water species such as lollyfish and curryfish are also taken. Among the shark species regularly caught by fishers are several species, such as the endemic northern river shark and the green sawfish,³⁷ which are listed as endangered or critically endangered in the International Union for the Conservation of Nature (IUCN) Red List. Stocks of these resources are shared between Australia and PNG in the TSPZ and have high ecological, cultural and economic value for traditional inhabitants. Equally, the products derived from these resources have high value in Asia as a status symbol and for traditional medicine and food preparation.

<figure 7.2 near here>

Marine products traded with Indonesian middlemen by fishers in the South Fly. Clockwise from top left: live mud crab kept in a pen (S. Busilacchi, 2017); women and children drying sea cucumber to trade as *bêche-de-mer* (T. Greenwood, 2014); swim bladder (fish maw) from a black jewfish (T. Greenwood, 2014); dorsal fin removed from a shark to be sold dried (S. Busilacchi, 2014)

The current status of the sea cucumber stocks on the PNG side of the TSPZ is unknown due to the lack of reliable surveys, but reports suggest they have not recovered from the overexploitation that prompted the moratorium in 2009. Fishers in the South Fly agree that larger sea cucumbers have vanished, especially among the most valuable species such as sandfish. No formal assessment of the barramundi stock in the South Fly has been carried out recently,³⁸ but there is concern that fishing might be reaching unsustainable levels.³⁹ Recently recorded quantities of barramundi caught along the South Fly coast are similar to those in the mid-1990s immediately before a stock collapse. Similar concerns exist for some of the shark stocks,⁴⁰ black jewfish and mud crab stocks,⁴¹ which have never been assessed in the South Fly or the Torres Strait more broadly.

Some of the unsustainable fishing practices, such as the illegal exploitation of sea cucumbers during closed seasons, the catching of over- and under-sized barramundi, and the targeting of barramundi and black jewfish spawning aggregations, are threatening the long-term sustainability of these species. The overfishing is in part due to a combined lack of PNG and Indonesian capacity for the monitoring and enforcement of fishing and trading activities and the increasing global demand for these products as well as limited alternative livelihood opportunities. This trend reflects global patterns, with alarming overexploitation and extinction risks to many animal and plant species.⁴² In the Torres Strait–Trans-Fly region, the species being exploited for trade are among the most ecologically vulnerable, and some shark species are already listed as endangered or critically endangered by the IUCN Red List.⁴³

Addressing governance mismatches in the borderland

Clearly the governance of shared marine resources under the Treaty needs to address the mismatch between the state-centred institutional framework and the social and political realities at the community level, and account for the growing

evidence that several critical shared fisheries are overexploited (i.e. sea cucumbers, barramundi) or inadequately managed (e.g. mud crabs, black jewfish and sharks). Adaptive governance has long been promoted as a mechanism that can build the capacity of actors and ecosystems to be flexible and dynamically respond to unanticipated change.⁴⁴ The Torres Strait fisheries management structure has the advantage of allowing representation by Australian and PNG stakeholders and enabling regular meetings. However, PNG representation is generally poor due to capacity and resource constraints, which further enables Australian interests and policies to take precedence, thereby exacerbating the mismatch.

Clearly the governance of shared marine resources and their exploitation and trade needs to be re-examined in the context of rapid change and the growing social and political asymmetries between Australia and PNG, and PNG and Indonesia. This is paramount if the overexploitation and collapse of key fisheries is to be avoided and rectified and, with it, the prospects for sustainable livelihoods in the South Fly improved. Key interventions have been identified by Butler et al.⁴⁵ Treaty fisheries management processes should include all relevant stakeholders from across levels and borders, and their knowledge and perspectives should be accommodated equally. Current arrangements are dominated by Australian authorities and their resourcing, which limits the opportunity for PNG involvement. Higher-powered actors in the burgeoning cross-border value chains into Indonesia should also be included to provide potential solutions to the issues of overexploitation and poor terms of trade for local fishers. These measures could solve the cross-scale mismatch between the state-led institutional and governance arrangements, and the social and economic realities at the local level. However, the practicalities of providing sufficient resources and incentives for the effective participation by these stakeholders in such a remote and pan-national context are daunting. From a borderland perspective, the lack of development for Papua New Guineans and the ecological decline at the local level could potentially have a catastrophic impact on the region, unless governance arrangements can adapt.

As agreed during multi-stakeholder workshops organised in Daru to discuss solutions to the current unsustainable livelihoods in the South Fly, any interventions proposed to improve existing governance arrangements of shared marine resources, their exploitation and trade should take a systems approach. This means addressing concomitantly the multiple root causes of current unsustainable livelihoods, while also taking into consideration the needs of people in the South Fly. Improving the sustainability, transparency and legality of existing livelihoods and trade networks while ensuring greater returns to fishers and local actors through alternative culturally appropriate enterprise models was one of the solutions proposed during the workshop. Business models such as cooperatives⁴⁶ or 'hub-and-spoke' arrangements could enable fishers to enter new markets, thereby gaining greater market power, combined with improved product quality and value-adding. Enhancing market information for fishers and other local actors through

communications infrastructure would also be necessary to support these business models.

Alternative livelihood activities, which could diversify income and reduce pressure on marine resources, should also be trialled. Any proposed livelihood activities should incorporate learning from previous attempts to develop community-based development projects in the South Fly, such as the community-based barramundi farming developed under the Western Province Sustainable Aquaculture program supported by the PNG Sustainable Development Program, which included a hatchery in Daru. Local communities in the South Fly and national government agencies have started exploring potential alternative livelihoods, including the possible reintroduction of small-scale barramundi farming using locally sourced feed and equipment, small-scale sea cucumber ranching, crocodile farming using tilapia, climbing perch or snakehead fish as feed (all of which are invasives and regarded as pests), and farming of livestock (e.g. chickens).

During the above-mentioned workshops, participants also suggested implementing agreements that would permit free trade of resources in the border region, especially to meet the demand for other natural resources from the growing market in eastern Indonesia. The same interest was shown during interviews with cross-border middlemen, traders and local Indonesian authorities. As a local authority officer in Merauke explained,

[S]oon there will be the border licence meeting. I expect that this border trade [issue] will be brought up. The security approach is no longer applicable [enough] at the border. The GoI [Government of Indonesia] has been afraid of the trade of the guns and narcotic, drugs. [But] opening the trade [of natural resources] is better to support the communities at both sides of the border.

Merauke, and Indonesia at large, have developing economies and growing populations which concomitantly drive demand for marine, terrestrial and agricultural products. The population has been growing rapidly in the province of Papua, at an average rate of 5.39 per cent per annum between 2000 and 2010.⁴⁷ This rapid population growth is mostly attributable to the *transmigrasi* program of the 1970s.⁴⁸ Demand is burgeoning for meat from fish, deer, wild pigs and crocodiles, plus products such as crocodile skins, deer horns, penises and tendons, and cultivated or wild-harvested crops such as ginger, vegetables, sago and cassava.

New forms of cross-border economic cooperation should be investigated and implemented that would enable people in the South Fly to reach markets in neighbouring countries, not only for local consumption but also to meet demand from further afield. In the long term, integrated economic zones in transboundary areas with economic complementarity, such as the Growth Triangles in Asia and Africa, have been successful in reducing poverty of borderland populations.⁴⁹ As for the Zambia–Malawi–Mozambique Growth Triangle, the foundation for economic

cooperation in the borderland is each country's geopolitical proximity and their similar cultures and kinship networks, which are prerequisites for successful implementation of this concept.⁵⁰

In the short term, one feasible option is to implement a free trade zone following the PNG *Free Trade Zones Act 2000* in the PNG–Indonesia border area. A trade post in Bula would provide PNG border communities with legal and monitored access to the Indonesian market. The existing free trade post on the northern part of the PNG–Indonesian border, which connects Vanimo in the West Sepik Province to Jayapura, the capital of Papua Province, is often reported as a successful example, which could be adapted to the particular conditions of the southern coast.⁵¹ Mechanisms to account for the international nature of most of the existing cross-border trade could be investigated and implemented within the free trade agreements.

Similarly, a free trade zone could be implemented in the PNG–Australia border area. Community members expressed interest in agreements to permit cross-border trade of natural resources, as also expressed by a respondent in the South Fly:

[We] need to open a market venue within the area [TSPZ] to share the products between Torres Strait Islanders and us. Maybe we should look at the free trade arrangement within the TSPZ. We should provide a report at the bilateral meetings to discuss this issue. We need to open the market into the Torres Strait Islands. [For some villages] Indonesia is too far. Not only fish, but also products, maybe garden produces.

Such a zone is likely to take pressure off fish stocks and immediately improve economic outcomes for local fishers. If a free trade zone were created, PNG fishers could have direct access to lucrative Asian and Australian markets, which could possibly offer higher prices and ultimately reduce overfishing. If PNG fishers were receiving significantly higher prices for marine products, it would be reasonable to expect a reduction in exploitation. Furthermore, this move would provide the moral authority and legitimacy for greater enforcement.⁵² This is particularly the case if such a zone were accompanied by more inclusive and adaptive approaches to cross-border governance that take people's lived realities into account.

Conclusion

From a state-centred perspective, the interpretation and execution of the treaty provisions are currently mismatched with the fast-evolving social dynamics at the local level—as communities adapt to the externally generated pressures and opportunities presented by globalisation and climate change, while dealing with local issues such as population growth and local governance failures. The increasingly strict interpretation of the treaty by Australia is neglecting the local socioeconomic dynamics in the borderland, and the declining level of human development on the PNG side. Australia's stance has been to harden the border

between the two countries, which has had the effect of alienating and disempowering South Fly communities, restricting their livelihood opportunities and access to cash-earning activities.

Rapid change is evident in the borderland region, exhibited by escalating poverty, rapidly growing demand for marine products in the Asian economy, and resultant over-fishing and ecological collapse. In parallel, traditional kinship and trading relationships have been evolving across the PNG–Indonesia border, and consequently fishing and trading practices among PNG traditional inhabitants have changed significantly since the ratification of the treaty.

To address this mismatch, solutions based on systems understanding are proposed that address the root causes and symptoms of the problem. New forms of adaptive governance of shared marine resources and their exploitation and trade should be explored in combination with innovations aimed at empowering people in the villages, who experience and understand the issues first-hand.⁵³ Solutions should aim to improve the sustainability of livelihoods in the South Fly and decrease their dependence on exploitative relationships, especially with the end-buyers/financers in Asia. Ideas should be co-developed with the people of the South Fly. Options that should be explored include alternative livelihood activities based on less exploited natural resources, alternative enterprise models and implementation of agreements that would permit free trade across the border region, such as integrated economic zones or free trade zones.

Notes

<Setter: take in notes here, numbered from 1 to end>

¹ Busilacchi et al. describe how development asymmetries between the Torres Strait and coastal South Fly villages have been widening since the Treaty ratification. The authors argue that while the Treaty was intended to reduce the already existing asymmetries between populations in the borderland, Australia's strict interpretation of the Treaty provisions worked in the opposite direction. See S. Busilacchi, R.A.J. Butler, I. van Putten, Y. Maru and J. Posu, 'Asymmetrical development across transboundary regions: The case of the Torres Strait Treaty Region (Australia and Papua New Guinea)', *Sustainability*, vol. 10, no. 4200, 2018a, pp. 1–18.

² J.C. Altman, 'Alleviating poverty in remote Indigenous Australia: The role of the hybrid economy', *Development Bulletin*, vol. 72, 2007, pp. 47–51.

³ DFAT, 'The Torres Strait Treaty', www.dfat.gov.au/geo/torres-strait/Pages/the-torres-strait-treaty.aspx.

⁴ H. Burmester, 'The Torres Strait Treaty: Ocean boundary delimitation by agreement', *American Journal of International Law*, vol. 76, no. 2, 1982, pp. 321, 322.

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- ⁵ J.R.A. Butler, S. Busilacchi and T. Skewes, 'How resilient is the Torres Strait Treaty (Australia and Papua New Guinea) to global change? A fisheries governance perspective', *Environmental Science and Policy*, vol. 91, 2019, pp. 17–26.
- ⁶ According to Abraham and Van Schendel, licit activities are legally banned but socially sanctioned and protected. See I. Abraham and W. van Schendel, 'Introduction: The making of illicitness' in *Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalization*, ed. I. Abraham and W. van Schendel, Indiana University Press, Bloomington, 2005.
- ⁷ Gibson, Ostrom and Ahn define 'scales' as the spatial, temporal, quantitative or analytical dimensions used to measure and study any phenomenon (see C.C. Gibson, E. Ostrom and T.K. Ahn, 'The concept of scale and the human dimensions of global change: A survey', *Ecological Economics*, vol. 32, no. 2, 2000, pp. 127–239. A useful dissertation of scales, and their interactions, in social–ecological systems is given by Cash et al. (D.W. Cash, W. Adger, F. Berkes, P. Garden, L. Lebel, P. Olsson, L. Pritchard and O. Young, 'Scale and cross-scale dynamics: Governance and information in a multilevel world', *Ecology and Society*, vol. 11, no. 2, 2006, p. 8).
- ⁸ S. Busilacchi, J. Butler, T. Skewes, J. Posu, T. Shimada, W. Rochester and D. Milton, *Characterization of the Traditional Fisheries in the Treaty Communities of Torres Strait (Papua New Guinea)*, CSIRO, Australian Fisheries Management Authority, 2015, p. 122,
- ⁹ From CSIRO research.
- ¹⁰ On the Australian side of the TSPZ, the Australian Fisheries Management Authority (AFMA) closed the sandfish fisheries in 1995 and the black teatfish and surf redfish fisheries in 2002. A total allowable catch is annually set for all the other species. On the PNG side of the TSPZ, despite the fact that a moratorium was introduced by the PNG National Fisheries Authorities (NFA) in 2009, fishing has since continued.
- ¹¹ Horstman and Wadley centre the narrative of their collection of essays on borderlands in Asia around Baud and van Schendel's view on border studies, which departs from the classic view of how states deal with borderlands in favour of a new perspective from the state's periphery; that is, from the borders themselves. By moving away from state-centred studies, the focus of the studies becomes the social forces and the effects locally and beyond, originating in borderlands. See A. Horstman and R. Wadley, *Centering the Margin: Agency and Narratives in Southeast Asian Borderlands*, Berghahn Books, New York and Oxford, 2006; M. Baud and W. van Schendel, 'Toward a comparative history of borderlands', *Journal of World History*, vol. 8, no. 2, 1997, pp. 211–42.
- ¹² Horstman and Wadley, 2006, p. vii.
- ¹³ Described by Baud and van Schendel (1997) as 'the social–cultural, economic, political and demographic processes occurring within and transcending

nations, representing an intensification of human relations around the world, linking and shaping events in widely separated localities’.

- ¹⁴ According to the Treaty (Art. 1(k)), traditional inhabitants can undertake, within and ‘in the vicinity of’ the TSPZ, traditional activities performed ‘in accordance with local tradition’. Traditional activities include: ‘barter and market trade’ and ‘activities on water, including traditional fishing’, the latter being defined as ‘the taking ... for their own or their dependants’ consumption or for use in the course of other traditional activities, of the living natural resources of the sea’ (Art. 1(i))’. Art. 1(k) further sanctions that, ‘in the application of this definition, except in relation to activities of a commercial nature, “traditional” shall be interpreted liberally and in the light of prevailing custom’. The space left by this, and several other provisions, leaves the treaty open to various interpretations in its implementation by the two states.
- ¹⁵ Protected Zone Joint Authority, *Torres Strait Protected Zone Joint Authority Annual Report 2014–15*, Australian Fisheries Management Authority, Canberra, 2015.
- ¹⁶ Protected Zone Joint Authority, *Torres Strait Protected Zone Joint Authority Annual Report 2009–10*, Australian Fisheries Management Authority, Canberra, 2012.
- ¹⁷ Government of Papua New Guinea, *National Bêche-de-mer Management Plan, 2016. Fisheries Management Act 1988. Fisheries Management (Amendment) Act 2015*. Gazetted on 12 September 2016, National gazette N. G657. Government Printer, Port Moresby, Papua New Guinea.
- ¹⁸ Government of Papua New Guinea, *National Bêche-de-mer Management Plan, 2018. Fisheries Management Act 1988 (as amended)*. Gazetted on 6 June 2018, National Gazette N. G368. Government Printer, Port Moresby, Papua New Guinea.
- ¹⁹ Government of Papua New Guinea, *National Barramundi Management Plan 2004, Fisheries Management Act 1988*. Government Printer, Port Moresby, Papua New Guinea.
- ²⁰ Government of Papua New Guinea, *Torres Strait and Western Province Tropical Rock Lobster Fishery Management Plan, 2002. Fisheries Management Act 1988 and Fisheries (Torres Strait Protected Zone) Act 1984, Chapter 411*, Government Printer, Port Moresby, Papua New Guinea.
- ²¹ Protected Zone Joint Authority, 2015.
- ²² *Ibid.*
- ²³ Senate, Foreign Affairs, Defence and Trade References Committee [FADTRC], *The Torres Strait: Bridge and Border [Senate Inquiry]*, Commonwealth of Australia, Parliament House, Canberra, 2010.
- ²⁴ Protected Zone Joint Authority, 2015.
- ²⁵ L. Herzog, *Where North Meets South: Cities, Space, and Politics on the United States–Mexico Border*, Center for Mexican American Studies, University of Texas, Austin, 1990, p. 135.
- ²⁶ South Fly fishers are involved in the tropical rock lobster fisheries but not in the prawn and Spanish mackerel fisheries.

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- ²⁷ A visit to Darnley by borderlands researchers in 2018 revealed that traditional visits to Darnley were no longer permitted.
- ²⁸ W. van Schendel and E. de Maaker, 'Asian borderlands: Introducing their permeability, strategic uses and meanings', *Journal of Borderlands Studies*, vol. 29, no. 1, 2014, pp. 3–9.
- ²⁹ Currently the Protected Zone Joint Authority restricts traditional fishing catch of some species of economic importance such as tropical rock lobster and sea cucumber. A limit of three rock lobsters or sea cucumbers per person or six rock lobsters or sea cucumbers per boat (when there is more than one passenger) is applied. See 'Traditional fishing', Protected Zone Joint Authority, www.pzja.gov.au/the-fisheries/traditional-fishing.
- ³⁰ Cross-border movements and activities for traditional purposes between PNG and Indonesia are allowed under the 'Basic Agreement between the Government of PNG and the Government of the Republic of Indonesia on Border Arrangements 1974'. As already seen for the Australia–PNG border and the Torres Strait Treaty, often these activities are conducted around the grey areas framed by the provisions.
- ³¹ Several PNG and Indonesian biosecurity, export and custom regulations are breached when Indonesian traders cross the border with products bought in the PNG villages that subsequently enter the international value chains. For a detailed description, see S. Busilacchi et al., *Developing Legal Value Chains and Alternative Markets for South Fly District Fisheries (Papua New Guinea)*, CSIRO/ACIAR, 2018b, p. 72. With regard to bêche-de-mer, the trade with Indonesia also breaches the fisheries management regulations put in place by NFA to conserve the marine species (see notes 10 and 11 above). During the moratorium and the new management plan, the harvest has continued uninterrupted, and bêche-de-mer has been continuously traded with Indonesian traders. A ban on bêche-de-mer trade has been also in place in the Merauke district since 2012. Shark fins trade also breaches regulations in Indonesia. For more information see *ibid*.
- ³² It is estimated that, with an annual value of between US\$7 billion and US\$23 billion, illegal wildlife trade is the fourth most lucrative global crime after drugs, humans and arms. See C. Nellemann et al., *The Environmental Crime Crisis – Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources*, A UNEP Rapid Response Assessment, United Nations Environment Programme and GRID-Arendal: Nairobi and Arendal, 2014, www.grida.no.
- ³³ Officers were said to be present often by 1.37 per cent of respondents and never there by 9.59 per cent.
- ³⁴ In reviewing social hierarchy in organisations, Magee and Galinsky (2008) assert that how 'to arrive at a hierarchical form of social relations, member of social groups must ... take part in a process of informal interaction where rank

ordering of groups organically develops on at least one valued social dimension'. In the context of the transboundary social networks in the South Fly, resources are the valued dimension. See J.C. Magee and A.D. Galinsky, 'Social hierarchy: The self-reinforcing nature of power and status', *Academy of Management Annals*, vol. 2, no. 1, 2008, pp. 351–98.

- ³⁵ Magee and Galinsky (2008) base their definition of power on Pfeffer and Salancik's (1978) resource dependence theory, which states that 'power resides among a set of interdependent subunits that exchange resources with each other; the value of the resources that a subunit controls and the extent to which those resources can be obtained elsewhere determine the terms of exchange, and thus the power in relation to other subunits. If the value that a subunit provides can be replaced, then there is little dependence on that subunit, which consequently has little power in that social relationship.' See J. Pfeffer and G.R. Salancik, *The External Control of Organizations: A Resource Dependence Perspective*, Harper & Row, New York, 1978.
- ³⁶ A recent workshop in Daru with actors of these value chains highlighted that lack of human and financial capital and lack of flow of information and knowledge were among the main factors putting PNG villagers in a disadvantaged position in which they do not have any influence on actions and driving their engagement in illegal cross-border activities (Busilacchi et al., 2018b).
- ³⁷ A recent CSIRO/ACIAR project on shark resources of PNG (White, 2018) rediscovered the presence of river sharks in the Western Province (White et al., 2015). During the CSIRO projects, the presence of river sharks in the catches for fins were confirmed through photographic identification. The CSIRO/ACIAR project also highlighted the presence in the South Fly of some of the most threatened shark species worldwide. See W.T. White, *Sustainable Management of the Shark Resources of Papua New Guinea: Socioeconomic and Biological Characteristics of the Fisheries*, Final Report to Australian Centre for International Agricultural Research, Canberra, 2018, p. 67; W.T. White et al., 'Rediscovery of the threatened river sharks, *Glyphis garricki* and *G. glyphis*, in Papua New Guinea', *PLoS ONE*, vol. 10, no. 10, 2015.
- ³⁸ A recent bioeconomic assessment has been conducted in a collaboration between CSIRO, JCU, OTML and NFA in 2010; however, pressure on this resource has greatly increased in the last ten years. See H. Fisher, *The Biology, Socioeconomics and Management of the Barramundi Fishery in Papua New Guinea's Western Province*, Australian Centre for International Agricultural Research, Canberra, 2010, p. 54.
- ³⁹ Busilacchi et al., 2015.
- ⁴⁰ A survey of the coastal shark fisheries in 2014, conducted as part of the CSIRO/ACIAR project on shark resources of PNG, collected very important biodiversity information, but no stock assessments were done and more investigation is required. See White, 2018.

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- ⁴¹ The recent increase in exports (200 metric tonnes per year) of mud crabs from PNG to Singapore prompted NFA to develop a management plan, which is currently waiting endorsement from the NFA board. J. Kinch, personal communication.
- ⁴² E. Milner-Gulland, L. Cugniere, A. Hinsley, J. Phelps, M. Rolfe and D. Veríssimo, 'Evidence to action: Research to address illegal wildlife trade', *SocArXiv*, 4 September 2018.
- ⁴³ White et al., 2015; White, 2018. A broader discussion of the ecological impact of fishing activities in the TSPZ can be found in Busilacchi et al. (2015 and 2018b).
- ⁴⁴ As discussed by Butler et al. (2019), 'adaptive governance has recently evolved as a novel alternative to conventional 'command-and-control' governance. By combining the iterative learning, knowledge generation and problem-solving of adaptive management with the cross-scale stakeholder engagement, power-sharing and conflict resolution of co-management, adaptive co-management enhances the capacity of actors and ecosystems to be flexible and responsive to unanticipated change.'
- ⁴⁵ Butler et al., 2019.
- ⁴⁶ Cooperatives have not been successful in PNG in the past; however, participants to the workshops expressed interest in trialling alternative culturally appropriate forms of cooperative, which should be further investigated, incorporating learning from previous attempts to develop them.
- ⁴⁷ A. Ananta, D.R.W.W. Utami and N.B. Handayani, 'Statistics on ethnic diversity in the land of Papua, Indonesia', *Asia and the Pacific Policy Studies*, vol. 3, no. 3, 2016, pp. 458–74.
- ⁴⁸ The *Transmigrasi program* was designed to incentivise Javanese people to move from the crowded islands of Java and Bali to other islands, including the Papua Province.
- ⁴⁹ See C.C. Nshimbi, 'The human side of regions: Informal cross-border traders in the Zambia–Malawi–Mozambique growth triangle and prospects for integrating southern Africa', *Journal of Borderland Studies*, October 2017b, pp. 1–23; D. Wadley and H. Parasati, 'Inside South-East Asia's growth triangles', *Geography*, vol. 85, no. 4, 2000, pp. 323–34.
- ⁵⁰ C.C. Nshimbi, 'Networks of cross-border non-state actors: The role of social capital in regional integration', *Journal of Borderland Studies*, vol. 30, 2016, pp. 537–60.
- ⁵¹ Asian Development Bank, *Papua New Guinea: Preparing the Pilot Border Trade and Investment Development Project*, Technical Assistance Report, Project number 42135, 2008.
- ⁵² When implementing any of these interventions, careful attention should be given during the planning process to have in place efficient monitoring and enforcement mechanisms to avoid what economists define as the 'Jevon paradox' in which an increase in efficiency in how the resources are used is followed by an increase in utilisation, not a decrease. To avoid the unintended negative outcomes reinforcing unsustainable practices, careful planning and

monitoring is needed during the implementation of any interventions. The systems approach here proposed requires that any interventions are not taken in isolation but as part of a wider series of actions, which would include increased monitoring and presence of law on the ground and increased awareness and information-sharing along with livelihood diversification.

⁵³ According to Magee and Galinsky (2008), when groups experience a dynamic environment, or an external shock, hierarchy can change substantially.

Ok Tedi Mine

Sara Busilacchi, Jodie Curth-Bibb and James Butler

Early morning on Daru Island in the South Fly, overlooking the mainland coast and the mouth of the Fly River – life goes on as usual. Myriads of canoes with blue canvas sails dot the shores (figure 8.1). People from the fertile land along the Fly River visit Daru, as they have for centuries, to sell their goods in a gradual transformation of their traditional travel and barter system with coastal inhabitants.

<figure 8.1 near here>

Traditional outrigger canoes on the shore of the mainland coast. These are the traditional boats used by Fly River inhabitants to sail up and down the river (left). Women from the Fly River selling their produce at the local market in Daru (right). (S. Busilacchi, 2012)

Fly River [people] brought sago, coconut and banana. They used to sell it here [Daru], [then] they went back. Our people here [Daru], we had barter system at the time. From here we go out to the reef, we got dugong, we got turtle and then we get into the outrigger canoes, the sailing canoes, and then the people from here would go to sell it. Particularly turtle, in exchange for sago, coconut, banana.¹

The bountiful marine resources of the reefs and mangroves in the PNG waters of the Torres Strait are subject to the system of customary land and sea tenure of the populations of the South Fly. While there is some degree of contestation over rights of ownership,² the marine resources of the area have been used by the traditional owners, and are subject to proprietary claims, as expressed by a coastal Kiwai inhabitant:

What we are saying here is that all the coastal villagers, even if they live here in Daru, they have all their traditional fishing grounds. For Daru they use Bobo Maza,³ the traditional reef. But for Auwo Maza,⁴ we [coastal villagers] use it together. That is the biggest habitat for dugongs. Now the main fishing area is Auwo Maza; most of the people are going to Auwo Maza.⁵

Coastal Kiwai communities' livelihoods heavily depend on goods and services provided by these marine and other aquatic ecosystems due to the limited land available and poor quality of the soil. Fishing is still the main direct and indirect contributor to the local economy of coastal communities, as it provides food, income and employment.

The web of movements, trading and intermarriage between coastal Kiwai people and populations along the Fly River dates back to ancestral times, as reported in oral tales. These movements persisted during the colonial times, when PNG was first a British colony, then an Australian protectorate, and it is still continuing today. The recent movements and migration to Daru are, however, motivated by different reasons than in the past. Today the traditional bartering system has evolved to include money exchange in the transactions, with the transition to a cash-based economy among rural communities in Papua New Guinea.⁶ Money is important for the most basic needs such as medical costs, school charges and store goods.

Recently people from the Fly River have been settling in Daru more frequently during their visits to the town, often creating settlements on scarce public land.⁷ Among the main causes of this pattern of migration to Daru are the social and ecological impacts of the Ok Tedi Mine, not only in the operating sites but also along the 500-kilometre length of the Ok Tedi and Fly River systems downstream, since its opening in 1985 (figure 8.2).⁸

<figure 8.2 near here>

The Fly River–Torres Strait system (Tim Skewes, 2019)

Mining operations are often accompanied by what is defined as mining-induced displacement and resettlement (MIDR). This kind of displacement – which can be planned and forced – is prevalent internationally, especially when mineral deposits occur in areas with politically weak and powerless populations.⁹ The impact of resettlement in terms of development-induced displacement and resettlement (DIDR), or more specifically MIDR, is well understood in terms of the planned and forced movement of people away from the operating site for the ‘benefit of development’.¹⁰ The resettlement effect¹¹ following planned displacement is well known to have created widespread social, economic and ecological changes with risks of joblessness, homelessness, marginalisation, food insecurity, loss of common lands and resources, increased health risks, social disarticulation, the disruption of formal educational activities and the loss of civil and human rights.

Seldom considered is the unplanned slow internal migration – as in this case – due to the subsequent environmental impacts outside the originally planned mine-affected area of the operating site. This migration produces another layer of complexity and destitution to an already complex problem, which is difficult to predict and address in the planning phases. While this migration is at least in part caused by mining-induced environmental and natural resource degradation, the migration itself is also contributing to significant environmental impacts downstream and along the coast. In this case, resettlement is unplanned and, as in similar cases, failure to address these risks during the planning phase is known to generate ‘new poverty’, with poor people becoming even poorer, resulting in devastating consequences for long-term sustainable development.¹² The resettlement effects on Melanesian populations, as in other culturally similar places affected by mining operations, is amplified by the cultural notion that traditional ‘land is life’

and that land is the basis for sociocultural identity.¹³ As such, the footprint of mining operations goes well beyond material concerns.

The impact of this recent migration and resettlement in Daru on the marine social–ecological system of the borderland is the subject of this chapter. The analysis will first discuss how customary movements of people between the coast and the Fly River evolved gradually until suddenly changing, in part due to the consequences of the Ok Tedi mine and the flow-on resettlement of Fly River inhabitants to Daru island in the South Fly District—the main economic and administrative hub of the Western Province. We will then explore how the resettlement of the Fly River people on Daru has affected the marine system of the Torres Strait–Trans-Fly region. Finally, potential solutions are proposed and questions raised about how to solve this complex situation, which is affecting the whole borderland system and amplifying the instability of a region that is already facing a multitude of other complex challenges. The analysis is based on a series of related arguments, which are central to our discussion.

Migration and movement of people in this area is long-standing. In the past, however, people travelled along the river to exchange goods and participate in bartering markets and returned home. Now increasingly they stay in Daru. The resettlement of Fly River people in Daru is partly attributable to the social, economic and ecological impacts of the Ok Tedi mine operation on the Fly River system. First, the Ok Tedi mine has affected the river systems. As a result, people who were previously wealthy in terms of natural resources and subsistence living are now impoverished. Second, the continued lack of delivery of basic and essential services by the PNG Government along the Fly River, together with the decimation of subsistence living, has maintained the region in a state of destitution. As a result, people stay in Daru to avail themselves of the meagre services provided, including the hospital and schooling. Third, mine-affected people can collect their compensation payments at the only bank in the South and Middle Fly districts, which is in Daru. Although such cash payments are woefully inadequate, people go to Daru to receive the payments and often stay.

This migration and resettlement in Daru has caused significant ecological problems for the marine ecosystems in the Torres Strait and coastal South Fly. Impoverished settlers in Daru turn to coastal fishing as a last resort. As a result, fish stocks and marine resources are under significant pressure—exacerbated not only by the nutritional needs of this migrant population but also by the need for cash, which is partly (but poorly) satisfied by illegal trading with Indonesian traders (chapter 7). This complex web of factors has significant flow-on effects for the shared waters of the borderland. These effects, including migration and resettlement, contribute to social problems on Daru island and along the coastal South Fly—with considerable risk of exacerbating an already unstable borderlands area. Taking a systems lens to understanding the borderlands shines a light on the push-and-pull effects of mining alongside the similarly complex push and pull of the border itself. These

interconnections, we argue, are critical for understanding sustainability in terms of livelihoods and ecosystems in this borderland region.

The discussion of this chapter is based on data and information from the CSIRO research and is supplemented by information and quotes recorded during interviews for the ARC-funded project (chapter 1).

Customary patterns of movement of Fly River inhabitants

People inhabiting the coastal South Fly and the Torres Strait region are divided into seven culturally and linguistically different groups.¹⁴ Two groups are today part of the Torres Strait: the Meriam-speaking and the Kala Lagaw Ya groups. Among the five PNG groups, Kiwai speakers include 'inland Kiwai', who inhabit the islands and banks of the Fly River estuary, and 'coastal Kiwai', who inhabit the narrow beach ridges of the coastal plain on PNG mainland bordering the Torres Strait (figure 8.2). Coastal Kiwai have been actively engaged in trading and other cultural exchanges with inland Kiwai and the other Fly River (South and Middle Fly districts) and Torres Strait groups since well before European arrival. Oral stories from people of the Torres Strait–Trans-Fly region all tell of interactions among coastal Papuans, Fly River Papuans and Torres Strait Islanders through 'travels of historical characters whose journeys established village settlements and clan groupings, and recent accounts of settlement patterns and migrations that mirrored those journeys'.¹⁵

The traditional system of travel and barter slowly assumed different connotations under the British and Australian administrations, as explained by one coastal Kiwai respondent in Daru:

Kiwai people here, the Treaty people—they call them [coastal Kiwai]—we were doing this—fishing—going back to 1800, yeah, in the Torres Strait fisheries here, in that area Fly people, coming from, people from Fly villages and people from inland villages, to work in the Torres fisheries here, in 1800s, straight after the first light, so things were going all right.¹⁶

At that time, people in the Western Province provided cheap labour for government work projects, the Torres Strait fisheries and other privately owned foreign businesses. For this purpose, Daru, as the provincial administrative centre, became the main recruitment hub. From the late 1800s, with the establishment of the London Mission Society, it also became the centre of church activities. However, it was not until recently that people started remaining on the island for no apparent reason or existing family connection, as explained by a Fly River Kiwai-speaking leader:

After my father came back from WWII here [in Daru] there were no Kiwai islanders [from the mouth of the Fly River], only my father and other few

families. Ten-year time, they started to come here, but when they came here they had certain tasks. They could stay one week and then they had to go back, well monitored. They could not sleep on Daru and they had to go back and they could not eat mangoes and [there was a] 9 o'clock curfew. Since 1974 after that, as soon as white people go, people started migrating [to Daru] because of ... it was like there was no more law. They wanted to come here, some for job opportunities, but later, the Ok Tedi only started in 1980s, and they gave the compensation. Then they were coming here for the compensation, and the promises that they would have been given jobs. The influx here, they are from the Fly River. That's why I am always very vocal. The government cannot just tell them to go back; the government has to provide services.¹⁷

With the growth of Daru in the 1900s, the main buildings such as churches and government houses were established in the area east of what is now the main road, while on the west side the 'corners' started appearing. Corners are temporary, albeit increasingly permanent, settlements of groups of people from the same coastal and inland villages. The older, better established corners are closer to the town centre while recent immigrants live further from the centre of town in houses made of bush or scrap material and built on what until recently was mangrove flats (figure 8.3). Housing in the corners is overcrowded and lacking public infrastructure, including adequate sanitation and water supply, especially in those newly formed.

<figure 8.3]

One of the newly formed corners on Daru Island (left). Everyday life in a newly formed corner: men returning from a fishing trip on the background while a woman is cutting firewood for the evening meal (right). (T. Greenwood, 2017)

The Ok Tedi Mine disaster

The Ok Tedi Mine is located in the Western Province's Mount Fubilan, at the headwaters of the Ok Tedi River, a tributary of the 1050-kilometre-long Fly River system (figure 8.2). Since starting operations in 1984, Ok Tedi Mine has contributed significant sums to PNG government revenue and has produced 4.75 million tonnes of copper, 14.6 million ounces of gold and 31.4 million ounces of silver. In 2017 Ok Tedi Mining Limited (OTML) reported a profit of PGK 848 million (US\$266 million).¹⁸ The economic benefits of the mine to landowners and affected communities includes royalties, compensation and rental payments, employee wages, and supply chain opportunities. Added to this are the government revenues. For example, the provincial government receives royalties and Special Support Grants. Tax Credit Scheme projects are also implemented throughout the province.

Notwithstanding its economic benefits, Ok Tedi is well known to have caused significant environmental harm and associated costs for local communities. Broken Hill Pty Co. Ltd (BHP; the original mine owner) has itself acknowledged that the mine is an environmental disaster, and internationally it is recognised as one of the

worst ecological disasters ever to be caused by private sector activity — with far-reaching social and environmental consequences.

The Fly River, with its estuary, flood plains, lakes and tributaries, supported some of the richest fish, aquatic and wetland fauna in the Australasian Pacific.¹⁹ Since its opening, Ok Tedi Mine has discarded quantities of waste rock and tailings into the Ok Tedi and Fly Rivers.²⁰ From the early 1990s, approximately 90 000 tons of waste and tailings poured daily into the river systems. These sediments have been gradually filling the bed of the Fly River, resulting in the flooding of the fertile lands along the rivers, transforming them into bare, unproductive wastelands. About 1954 square kilometres of vegetation have died in the Fly River watershed since the commencement of the operation.²¹ A decline in fish species diversity (ranging from 21 to 80 per cent at various sampling sites) and fish biomass (ranging from 49 to 92 per cent at various sampling sites) was observed between 1983 and 2008, largely caused by habitat loss due to riverbed aggradation from the Ok Tedi operation.²² Since 2009, when long-term water and silt mitigation programs started, fish biomass has further significantly decreased, while the rate of fish species diversity and abundance decline has slowed.²³

Damage to the environment has also been caused by the discharge of untreated cyanide, copper and cadmium at levels about 10 times higher than the prevailing rates in Western countries. The increase in levels of bio-available copper have already caused the destruction of much of the phytoplankton that supports the food web on which fish depend.²⁴ Downstream from the mine, around 150 square kilometres of floodplains could also be potentially affected by acid rock drainage (i.e. sulphur-laden mine waste), which can release levels of soluble metals sufficient to cause toxicity to aquatic life when exposed to air.²⁵ It is recognised today that the lives and livelihoods of around 150 000 inhabitants of 158 villages have been disrupted by the Ok Tedi Mine operations.²⁶ These communities will continue to suffer the consequences well after the closure of the mine.

In 1996 BHP Billiton reached an out-of-court settlement with affected communities.²⁷ This was the result of a legal challenge by the communities for the damage caused by the environmental disaster — the consequence of several landslides, including one that dumped 170 million tons of rocks into the river system.²⁸ In 2002 BHP Billiton transferred its 52 per cent owner share to the PNG Sustainable Development Program (SDP) Ltd, a trust fund registered in Singapore.²⁹ The agreement allowed for BHP Billiton's withdrawal and the government-sponsored process for the continuation of the mine after BHP's departure.

The Community Mine Continuation Agreements (CMCAs) were legislated by the 2001 PNG National Parliament through the *Mining (Ok Tedi Mine Continuation (Ninth Supplemental) Agreement) Act*. Under the Mining Act, Ok Tedi Mine extended the mine's operations to 2010 and signed six separate CMCAs with 149 signatory mine-affected villages.³⁰ The agreements sought the communities' consent for the mine to continue, despite its known impact on their environment.³¹ In return, Ok Tedi Mine committed to compensate the signing communities (in addition to the

royalties paid to customary landowners and other compensation and benefit packages). All parties agreed not to pursue further legal action against Ok Tedi Mine.³² The CMCA's were reviewed in 2007, and the number of signatory villages grew from 149 to 156.³³ Altogether, these villages received additional payments for the period 2007–13.

In January 2011, Ok Tedi Mine became 100 per cent owned by the PNG Government,³⁴ and in 2013, the government legislated to directly assume the shareholding of PNG SDP.³⁵ Following the nationalisation of the PNG SDP, the PNG Government has been attempting to gain control of the cash assets of the fund worth US\$1.4 billion and still held in Singapore.³⁶ However, as recently as April 2019 Singapore's High Court ruled against the PNG Government. In a 149-page ruling, the judge stated that 'I acknowledge I found the state's narrative compelling and its logic attractive. But the essential problem ... is that this narrative stands alone and is unsupported by the evidence',³⁷ and concluded that 'for all these reasons set out, I hold that the state fails entirely in its claim against PNG SDP. It is not entitled to the relief sought'.³⁸

Because the PNG SDP has been put aside until the closure of the mine, it is not clear what the implications are for the funds, although it has been reported that they should be disbursed in Western Province according to the original intent.³⁹ However, this is unclear because CMCA Extension Agreements (CMCAEAs) were negotiated in 2012 to extend the mining operations.⁴⁰ The CMCAEAs provided the communities' consent for Ok Tedi Mine to continue mine operations from 2015 to 2025.⁴¹ As reported by Grice,⁴² 'the foundational agreements that now establish the compensation and benefits streams for Ok Tedi are the Mine Continuation Agreement and an MOA signed on the 21st of January 2017', which increased the Fly River provincial government's and specific purpose community entities equity holding to 33 per cent and reduce the PNG Government's holding to 67 per cent. The 33 per cent was split between the Mine Villages (9 per cent), the Fly River provincial government (12 per cent) and CMCA communities (12 per cent).⁴³

There are 26 leases under the Mining Act that provide for the leasing of customary land. The arrangements are governed by the Lease Compensation Agreements, with a total of K56 million (A\$23 million) paid to the relevant villages. A trust, known as the Non-Renewal Resources Fund, was established to manage the investment component of the compensation for future landowners. The account holds K40 million (A\$17 million) in trust for six Mine Villages (Migalsimbip, Wangbin, Bultem, Finalbin, Atemkit and Kavorabip) and four Okma villages (Ankit, Kumguit, Okteditau and Nioksikwi).⁴⁴

The current eight CMCA and the Mine Villages (Mine Lease Area) Trust Accounts receive development and investment funds, the funds being administered by the Ok Tedi Development Foundation (OTDF). OTDF was established and funded as part of the Mining Act to implement CMCA projects⁴⁵ and to provide 'tangible results and expected longer-term benefits that are focused on OTDF's vision; "To improve self-sustainability and quality of life of Western Province

communities” [*sic*].⁴⁶ The CMCA trustees include officers from the state, Ok Tedi Mine, churches and communities.

Despite the significant funding held in trust (or perhaps because it is held in trust) and the monies received by governments, landowners and families in mine-affected areas, the people of this region continue to live in extreme poverty. Life in the villages depended, and still depends, mainly on staple food provided by the surrounding environment, especially the river systems and the traditional gardens on the floodplains. However, the extent of the Ok Tedi Mine’s impact was clear as early as the 1990s when a Human Health and Ecological Risk Assessment conducted by the mine found that ‘the best water management option to determine the best technically and economically feasible response to the environmental impacts was the immediate closure of the mine’.⁴⁷ Yet the assessment also noted that ‘the balancing of the economic and the environmental needed to be taken into account’ since ‘immediate closure would appear to carry with it the worst social impact’.⁴⁸

Ultimately, both communities and the PNG Government have seen no alternative to trading off their environment and associated livelihoods in exchange for the promise of long-term development and the economic opportunities offered by the mine.⁴⁹ Today new threats—among which are population growth and increased globalisation of exploitation activities—are amplifying the impacts of the mine operation on the environment so important to the lives of people.

The environmental impact has continued, and during the 2007 review people from CMCA villages recounted fish declines, gardens being flooded for longer and sago harvests that could no longer sustain people’s needs.⁵⁰ Sullivan, Keleba and Tosa reported food shortages in the Manawete CMCA region (South Fly) as result of many years of pollution from the Ok Tedi Mine.⁵¹ Nonetheless ‘compensation payments had mostly been squandered with little to no investment made in the social and economic future of the CMCA regions’, as also acknowledged by Ok Tedi Mine and OTDF.⁵² While much is made of the payments to mine-affected families, payments have historically been meagre at best. In the period 2011–16 for instance, the mean CMCA case payment per capita per year has been US\$195, and in 2016 it was just US\$168.⁵³

A recent study found minimal impacts from OTDF’s social and economic development activities on poverty levels in the four CMCA villages included in the Torres Strait Treaty (Sui, Parama, Katatai and Kadawa) compared to the other Treaty villages not part of the CMCA.⁵⁴ In fact, among the Treaty villages, the ones that were also part of the CMCA had the greatest degree of deprivation in sanitation and electricity. This was despite the provision of solar panel electricity to all CMCA households in 2010.⁵⁵

Similarly, Burton’s studies conducted in Manda village in 1994 and 2004 for the purpose of assessing OTDF’s development impact reported very little development to show for the significant revenues being generated.⁵⁶ In Burton’s assessment, it is clear that the cost of operating in this region is prohibitive, which makes it very difficult for small interventions to have any significant impact, since any benefits are

absorbed by the cost of transport and living. For instance, Burton outlines OTDF investments in agricultural production and corresponding transport subsidies to get produce to market—and notes that the benefits after costs for the individuals involved were very limited. Farmers involved in such interventions were experiencing increases in income from zero to a few cents a day.⁵⁷

Burton's conclusion is stark: 'Manda people are objectively poor by world standards, whether measured by income or by life's outcomes, and independently of the fact that they are also mine impacted.'⁵⁸ While OTDF's long-term vision 'to improve self-sustainability and quality of life of [all] Western Province communities' remains a priority, it is evident from the above assessments that the situation is still extremely grave.

The lack of development impact brought about by projects was further highlighted in 2010 when a review of the CMCA found that 'social and economic development is lagging and indicators of women's overall empowerment on such issues as maternal mortality continue to be low, especially in the Middle and South Fly regions'.⁵⁹ In this review, Kori Maraga reported:⁶⁰

During the 2007 CMCA Review, the women were excited when the 10 per cent women and children deal was secured;⁶¹ but even to this day as I have gone onto facilitating the Mine Life Extension consultation, women are still confused on how they would access their 10 per cent or what it all means. Life goes on the same as 7 years ago since the securing of the deal. Impacts of the 10 per cent funding is [*sic*] yet to be felt by women in general in the mine-impacted communities.⁶²

Ok Tedi's role in changing movement patterns

Impacts of the Ok Tedi Mine operation are far-reaching, well beyond the impacts experienced by directly mine-affected areas and populations. With decreased availability of their main source of sustenance and lacking the services and infrastructure promised, people from CMCA villages along the South and Middle Fly River look to Daru, a non-CMCA region, for a basic living.⁶³

According to the PNG National Statistical Office (NSO) censuses, population in Daru more than doubled between 1980 and 2011, with estimates going from 7127 in 1980 to 15 142 in 2011.⁶⁴ Informal estimates from provincial government officials in Daru suggest that the population might have reached 20 000 (approximately 11 per cent of the provincial total), although it is not clear whether this includes immigrants from the Fly River and Treaty villages communities, or whether this is only the resident population.⁶⁵ We estimated that, according to the official NSO estimates, the highest annual growth rate occurred in the decade between 1990 and 2000, when it reached around 5.2 per cent per year. Lower annual growth rates were observed in the 1980–90 and 2000–11 periods with estimates of 1.9 per cent and 1.6 per cent annually, respectively. A 2009 survey commissioned by PNG SDP to NSO to profile the socioeconomic and demographic characteristics of urban centres in the Western

Province confirmed that of 12 per cent of the 1318 respondents had migrated to Daru from within the province.⁶⁶ Of these, 61.7 per cent arrived less than 20 years ago while 36.7 per cent arrived 20 years ago or more.⁶⁷ The main places of birth of respondents who migrated within the province were Kiwai rural (8 per cent of total immigrants), Bamu rural (3.6 per cent), Morehead rural (1.7 per cent) and Gogodala rural (1.1 per cent). The areas along the river within these districts are part of the Dubi, Manawete and Suki Fly Dodo CMCA Trust Funds. Oriomo-Bituri Rural (3 per cent) was another place often cited; however, this is not part of any CMCA Trust Funds.

Two factors seem to be driving migration to Daru, the first being the environmental impact on the areas along the river systems, which has disrupted subsistence living. An inland Kiwai respondent in Daru told us:

[Inland Kiwai] saw a decline in barramundi. They say it is because of pollution. When we are in the villages [along the Fly River] when we go down the beach we collect crabs, before Ok Tedi started. But now you cannot see them and also our freshwater turtles. Nothing.⁶⁸

The lack of services and infrastructure in the villages along the Fly River delivered by the PNG Government, even after all the Ok Tedi Mines projects and benefit packages, is the second motivation. Many people reported that they wanted to remain in Daru to allow children to attend school or a sick family member to access the hospital services. As a government official in Daru said,

[The Western Province] is depressed because of leadership and their mindset. They encourage that ethnic type of relation at the top level, and that is when abuse and misuse and financial corruption come in... [for example] with the Ok Tedi, nothing has changed, wasted money. Ok Tedi has been here. They did not do nothing, just wasted money, millions of Kina gone. There is nothing to measure. There is no tangible things [*sic*] to measure. We are still having road problems here.⁶⁹

This was reinforced by respondents in Daru, with one respondent reiterating the problem on several occasions:

Everyone here is blaming the government of the region. The services are not there [in the affected villages]. If the people are to be kept in their own areas, the services should be provided right there ... the services, the health centre, the schools. At the moment there is nothing there. That is why people come down here.

Migration is also facilitated by the annual travel of CMCA people to receive their compensation cash payments in Daru. Over the years, due to the worsening of the situation in the mine-affected villages and the chronic lack of services and

employment opportunities, people travelling to Daru have been prolonging their stay indefinitely, often becoming permanent residents.

Today people come here, they come for compo [CMCA payments], and the bêche-de-mer are here. See, they do not want to go back; they want to do illegal activities. They end up crossing the border [to go into Australian waters].⁷⁰

Social and environmental impacts of the migration of inhabitants from mine-affected areas to Daru

Similarly to people displaced by planned and forced DIDR, people resettling in Daru as a consequence of the migration caused by the unforeseen consequences of the Ok Tedi Mine are suffering the well-known resettlement effect, further exacerbating the pressure on shared marine resources in the area of the Torres Strait–Trans-Fly region. This is even more alarming considering the importance of these marine resources for people’s livelihoods in this transboundary area and the multiple global and local pressures to which they are concomitantly subjected.⁷¹ The steady influx of people to Daru is putting the limited resources on the small island under stress and increasing the instability of the social–cultural systems. Density on Daru has well surpassed the sustainability threshold of 100 persons per square kilometre, recommended for many PNG islands under current levels of technology.⁷²

Increasing scarcity of natural resources and disputes over their governance and/or transboundary nature are known to drive conflicts, further amplified by weak institutions and societal mechanisms in many developing countries.⁷³ The environmental and social impacts of Ok Tedi Mine’s operations and consequent migration of Fly River people to Daru have been identified among the main issues affecting the livelihoods, environment and well-being of the region’s people.⁷⁴ The unplanned migration of people to Daru from Ok Tedi--affected areas in the South and Middle Fly has resulted in overpopulation and unemployment, which are known drivers of such problems as overcrowding, associated pressures on water, sanitation and hygiene infrastructure and basic essential services, social conflict, increased incidence of transmittable diseases such as multi-drug-resistant tuberculosis, overfishing and increased illegal fishing. As outlined in chapter 6, this overcrowding contributes to Daru acting as an epicentre for communicable disease, because infection spreads rapidly through the high-density housing, particularly in the corners where there is a lack of basic WASH (water, sanitation and hygiene) infrastructure. People then return to outer villages, thus acting as vectors for the spread of disease across the broader region.

Social impacts

As noted during the CSIRO workshop in 2015,⁷⁵ joblessness,⁷⁶ marginalisation, food insecurity, loss of common lands and resources, increased health risks, social

disarticulation and disruption of formal education⁷⁷ are chronic issues among immigrants to Daru, who find themselves destitute, with no alternative to fishing for a living, whether legally or illegally. Fisheries have been long recognised as a last-resort activity, which offers an economic alternative for otherwise destitute people, who do not have financial or institutional access to other activities.⁷⁸

The situation was well explained by a respondent in Daru, who said:

Because the population on the island has increased and there is [*sic*] many people that are jobless and have no way of income, the easiest way to survive is by fishing and everyone, whoever is on the island, is the only thing they can do, fish.

The coastal waters and reefs, now regularly visited by the immigrant Fly River people, are subject to proprietary claims by coastal Kiwai-speaking people.⁷⁹ This has created social tension on the island between the two groups. Coastal Kiwai people we spoke to, however, understand the situation of immigrants, despite the fact that they feel their customary resources are being overexploited. With a decrease in available resources, social tensions among traditional owners and new settlers are likely to increase. As two coastal Kiwai traditional owners in Daru said to us:

We have these new settlers who came to Daru from the outback villages also fishing in the same traditional fishing grounds. The traditional owners cannot control it. Everyone is fishing together.

We have people all around Daru that are from inland; they are the ones using our resources. They are jobless, and us resource owners are just sitting down and observe. We should be the ones to stand up and say: 'No, you cannot sell fish. You go back to your own villages.' They are destroying our reef; they go out every day.

Confrontation between the haves and the have-nots—between Treaty villages and non-Treaty villages, communities compensated by Ok Tedi and those that are not—create a situation rife with social tension and conflict. Added to this is the overcrowded conditions in Daru and its corners, and the corresponding claims regarding the varying legitimacy of occupation—that being the difference between long-term residents from the British and Australian administrations, newer settled immigrants and recent squatters. These unsettling low-level conflicts all add to the stress experienced by those in this area who are struggling for access to resources for their very survival. Any social system under this sort of pressure is bound to experience higher levels of violence and conflict.⁸⁰

Environmental impacts

The continuous increase in the number of people regularly fishing in the waters of the Torres Strait escalates pressure on precious marine resources shared by

borderland populations in the Torres Strait Protected Zone (TSPZ), as explained by a traditional owner in Daru:

There are less fish compared to years ago when we had few fishermen. [There are] a lot of people, so [there are] a lot of activities happening at one time, and the number of fish decline fast and is shared among much more people.

Also, the way in which marine resources in the transboundary region are used has dramatically changed as a result of the migration of people from the CMCA areas. This change in fishing activities has resulted in the erosion of customary marine tenure practised by coastal Kiwai. Lacking local knowledge about the social and ecological systems and the ownership of exploited resources, new settlers have little consideration for the future and are driven by their short-term needs.⁸¹

Of the many fisheries present on Daru, there are two main fishing activities on which displaced people rely: reef fishing to sell fresh products at the local market in Daru, and the illegal fishing of sea cucumber for the trade of high-value marine products with Indonesian traders (chapter 7). A coastal Kiwai respondent in Daru reported:

If the authorities try to go down to the market, they do not see us sitting and selling those fish [reef fish]; it is the people from the Kiwai Islands. Lobster is the coastal people.

An inland Kiwai respondent told us:

Coastal villages—they are all divers, they sell crayfish and other things, but our boys were not trained to be divers, so they started pulling the nets. So *bêche-de-mer* and reef fishing are the main target fisheries where they can get income.

To better understand the origins of fishers and sellers in Daru, the CSIRO researchers asked where they come from. Of the 798 fishers and sellers (sellers are always related to fishers) surveyed, 65 per cent identified themselves as inland Kiwai, originally from villages along the Fly River banks or the Kiwai Islands (figure 8.4). This response strongly supports the qualitative information we gathered from interviews around Daru. It also indicates that the movement of fishers and sellers is mostly linked to the mining activities. Moreover, mine-affected people residing in the villages are given outboard motors and nets as part of their compensation packages,⁸² and they usually capitalise on them during their visits to Daru, as explained by an inland Kiwai respondent in Daru:

Ok Tedi supplies engines and dinghies to people inside the Fly River. They supply the ones living there but not us [from the affected areas]

living here. When they come here for compo [compensation] or the 9 supplement [i.e. the Mining (Ok Tedi Mine Continuation (Ninth Supplemental) Agreement) Act] or other issues then while they are here, then our people make a living, go out fishing. We go to the reef with low tide and with high tide we go to the lagoon. Diving [for sea cucumber].

<figure 8.4 near here>

Villages of origin of fishers and sellers (percentages) at the local market in Daru divided by areas (pie chart) and villages (bar graph). Grey denotes fishers from inland Kiwai and other Fly River villages while black denotes fishers from forecoast Kiwai, other coastal and inland South Fly villages. (S. Busilacchi, J.R.A. Butler, T. Skewes, J. Posu, T. Shimada, W. Rochester and D. Milton, *Characterization of the Traditional Fisheries in the Torres Strait Treaty Communities, Papua New Guinea*, Final Report to Australian Fisheries Management Authority, Canberra, 2014)

An insight into the impact of these unmonitored and unregulated activities on shared reef and reef-associated marine resources was obtained by the temporal comparison of the annual quantities of reef and reef-associated fish sold at the market in Daru and fishing effort (amount of fishing in person hours) required to catch them in 1995 and 2012 (figure 8.5). The comparison showed possible signs of overexploitation. A doubling in fishing effort of the artisanal fisheries in the last 20 years was followed by only a slight and non-significant increase of the catches. While catches of reef and reef-associated species had a 30 per cent decrease going from 197 tonnes in 1995 to 137 tonnes in 2012–13, fishing effort had an 80 per cent increase, with effort going from 151 281 person hours to 272 108 person hours.⁸³

<figure 8.5 near here>

Distribution of the total annual catch of the artisanal fisheries in Daru in 1995 (grey bar) and 2012–13 (black bar). Catch from unidentified reefs in 1995 amounted to 1 tonne while in 2012–13 it amounted to 19 tonnes; catch with 'not' answers amounted to 0.6 tonne in 1995 and 1 tonne in 2012–13. (S. Busilacchi, J.R.A. Butler, T. Skewes, J. Posu, T. Shimada, W. Rochester and D. Milton, *Characterization of the Traditional Fisheries in the Torres Strait Treaty Communities, Papua New Guinea*, Final Report to Australian Fisheries Management Authority, Canberra, 2014)

On Ibu Maza and Kor Kopi, the two most fished reefs of Auwo Maza observed increases in annual fishing effort allowed to maintain constant annual catches of fish caught. On the home reefs of Daru and Bobo islands, increases in annual fishing effort were followed by decreases in catches (figure 8.6). Respondents in Daru confirmed that some resources such as dugongs, turtles and bêche-de-mer had disappeared from the home reefs. On Auwo Maza, the constant quantities of reef and reef-associated species caught are most likely sustained by increased fishing effort and probably by a shift in visited reefs within Auwo Maza. Visits to areas south in Australian waters is common practice today, as often reported by respondents.

<figure 8.6 near here>

Total annual amount of reef fish sold at the Daru market, and caught on (a) Auwo Maza, (b) Daru and Bobo home-reefs, in tonnes (bars) and total annual fishing effort in person hours

(dots) in 1995 and 2012–13. (S. Busilacchi, J.R.A. Butler, T. Skewes, J. Posu, T. Shimada, W. Rochester and D. Milton, *Characterization of the Traditional Fisheries in the Torres Strait Treaty Communities, Papua New Guinea*, Final Report to Australian Fisheries Management Authority, Canberra, 2014)

Another sign of possible overexploitation of shared reef and reef-associated species on the PNG side of the Torres Strait was shown by the comparison of the average sizes of reef fish families in the PNG and Australian catch. All four selected reef fish families showed significant differences in sizes, with PNG sizes significantly smaller than Torres Strait for all selected families (figure 8.7). Growth overfishing occurs when sizes of caught fish decrease with time, which is recognised as an increasing problem for the sustainability and economic viability of fisheries.⁸⁴

<figure 8.7 near here>

Median length (centimetres) and interquartile for the four selected families of longtom (*Belonidae*), garfish (*Hemiramphidae*), mullets (*Mugilidae*) and Blackfish (*Siganidae*) in the TS and PNG reef catches (S. Busilacchi, J.R.A. Butler, T. Skewes, J. Posu, T. Shimada, W. Rochester and D. Milton, *Characterization of the Traditional Fisheries in the Torres Strait Treaty Communities, Papua New Guinea*, Final Report to Australian Fisheries Management Authority, Canberra, 2014)

Similarly, as discussed in chapter 7, valuable sea cucumber species have been overexploited to provide bêche-de-mer for the Indonesian cross-border trade. Respondents perceived a decline in sea cucumbers, which are now absent on the reefs closest to the villages. Today, sea cucumbers are caught only on Auwo Maza and often on the Australian side of the TSPZ, where densities are higher since 'on our reefs you cannot get sea cucumbers of the right size; they are too small. Now in these days people go out to the other side, the Australian side', as a respondent in Daru told us.

Over the years, decreases in the abundance of harvested species on the PNG side of the TSPZ have been pushing the ever-increasing number of fishers further from the coast and into distant waters, including Australian waters, to secure their daily catch (see chapter 7), as explained by a respondent in Daru:

When we were little we went down here [Daru home reef] and there were plenty [sea cucumbers], but since we started harvesting in 1989, it went a bit further, but we never go to the Australian side to fish. Maybe 10 or 15 years we never went far to fish and then we started going further [to reefs around Daru and along the coast], then Auwo Maza areas [Warrior Reef on the PNG side], and then later we have to pass down to Silver Reef [close to the border with Australia] and further down, and then right to the border, moon passage, and now today they are going on to the other side of the border, fishing.

Increases in the incidence of illegal trespassing into the Australian side of the TSPZ puts pressure on shared marine resources and Australian government services. As a consequence, an increase in Australian surveillance effort within the

TSPZ has been observed in the last 10 years (chapter 7), with the implementation of strong enforcement measures, such as destruction of the apprehended boats and prosecution and imprisonment of fishers.

Fishing in distant waters with overcrowded boats that lack basic safety gear also poses safety risks to PNG fishers, who 'know that this [illegal trespassing] is wrong but still go and get accidents and some die', as a respondent in Daru told us.

Recently Fly River people, especially the younger generations and newly formed families living on Daru, have also started moving out of Daru to the South Fly coast, building new fishing camps, which with time become well-established settlements. People in these camps are turning to coastal fishing for such species as barramundi and jewfish, which provide fish maw, and sharks providing fins and mud crabs, all for the trade with Indonesian traders (chapter 7).

Finding a way out

As this chapter demonstrates, the migration and movement of people in this area is long-standing. In the past, people travelled up and down the Fly River to exchange goods and participate in bartering markets before returning home. Now that their subsistence livelihoods have been disrupted by the Ok Tedi Mine operation and the government has failed to provide necessary services despite the substantial benefit packages, people have no reason to go home, and they stay in Daru. They stay for access to the limited services and to fishing grounds and local markets, and because there is no reason to go back. Ok Tedi Mine compensation payments draw people to Daru and they stay in the corners, which are susceptible to social tensions and consequent interpersonal violence, and create an epicentre for communicable diseases.

People who were once resource rich are now gravely impoverished. The consequent unplanned movement of people and permanent migration has transformed people from river fishers and subsistence agriculturists to coastal fishers. As a consequence, shared marine stocks in the Torres Strait are under huge pressure, driven by the nutritional needs of this immigrant population as well as the need for cash, which is partly (but poorly) satisfied through illegal trading with Indonesian traders (chapter 7). This has significant flow-on effects for the shared waters of the borderlands, which are already under considerable pressure as a result of the rapidly growing demand for marine products in the Asian economy and a lack of PNG fisheries management capacity (chapter 7).

If we follow the water, we can literally see the flow-on effects of the Ok Tedi Mine through to, and past, the border. The pressure on marine resources exacerbated by this migration creates an urgent need to review approaches to governing not only natural resources but also wider services. As such we argue that the approach to dealing with these interconnected issues needs to incorporate the broader region in a wider understanding of social and ecological systems. This must begin by taking the unit of analysis as the borderland, including those affected by

the Ok Tedi Mine, and must integrate resource management, poverty alleviation and service delivery across the whole region.

The Torres Strait Treaty (chapter 3) could provide an institutional framework whereby such an approach can be implemented if its adaptive mechanisms are strengthened through the introduction of formal review and renegotiation provisions.⁸⁵ The inclusion of all relevant stakeholders from all levels and borders—even those outside the Treaty region such as the Indonesian stakeholders (chapter 7) and the Ok Tedi Mine representatives—would better account for the rapid change occurring in the region. Ok Tedi Mine stakeholders' knowledge and perspective on issues such as the Fly River immigrants' settlement in Daru and the effectiveness of compensation arrangements and development programs could contribute solutions to improved resource management, health systems and poverty alleviation.

Taking a systems approach to poverty alleviation, food security, resource management and sustainability, and service provision will require a reassessment of the distribution of funding—including public finances flowing from Australia as well as from PNG governments, together with development funding that emanates from Ok Tedi. If such a connected approach was taken, it might be possible to slow down the depletion of renewable resources such as marine fish, while simultaneously improving the quality of life of local residents. Currently, interventions are disjointed and compartmentalised, and consequently transaction costs tend to absorb many of the potential benefits.

Furthermore, when one factor or one group of people is being targeted in isolation from other factors and groups, the broader system is not addressed—meaning that the enabling environment for poverty, malnutrition, disease and resource depletion remains largely unchanged and patterns of deprivation and environmental damage are uninterrupted. If we could change the approach to a system-informed approach, there could be an opportunity to generate multiplier effects, creating positive feedback loops that affect the system as a whole.

In chapter 7, we address governance issues around marine resource management on the border and make a number of recommendations that take a systems approach to tackle the multiple root causes of unsustainable livelihoods, while considering the needs of people in the South Fly. New forms of adaptive governance of shared marine resources should be explored in combination with interventions aimed at empowering people in the villages. Interventions should be developed around the needs and aspirations of people in the villages with the aim of improving the sustainability of their livelihoods. If the logic of these recommendations could be expanded to include the mine-affected area, there is the potential to generate meaningful change across the region (chapters 5 and 6).

Notes

<Setter: take in notes here, numbered from 1 to end>

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- ¹ Respondent in Daru; from CSIRO research.
- ² For information about the complexities of these claims, see chapter 2.
- ³ Maza means ‘reef’ in several languages of the region, including Kiwai, Agob and the Western Torres Strait languages Kala Kawaw Ya and Kala Lagau Ya.
- ⁴ Auwo Maza (literally ‘Big Reef’ in Kiwai language) is now known as Warrior Reef, and it is the big reef complex in the central Torres Strait waters shared between Australia and PNG (figure 8.5).
- ⁵ From CSIRO research.
- ⁶ Department of National Planning and Monitoring of PNG, *Papua New Guinea Development Strategic Plan 2010–2030*, Port Moresby, 2010, p. 155.
- ⁷ In PNG, 97 per cent of the land is held under customary tenure; see G. Banks, ‘Understanding “resource” conflicts in Papua New Guinea’, *Asian Pacific Viewpoint*, vol. 49, no. 1, 2008, pp. 23–34.
- ⁸ G. Banks, D. Kuir-Ayius, D. Kombako and B. Sagir, ‘Conceptualizing mining impacts, livelihoods and corporate community development in Melanesia’, *Community Development Journal*, vol. 48, no. 3, 2013, pp. 484–500.
- ⁹ T.E. Downing, ‘Avoiding new poverty: Mining-induced displacement and resettlement’, *International Institute for Environment and Development*, vol. 52, 2002.
- ¹⁰ J.R. Owen and D. Kemp, ‘Mining-induced displacement and resettlement: A critical appraisal’, *Journal of Cleaner Production*, vol. 87, January 2015, pp. 478–88.
- ¹¹ According to practitioners in the development arena, the resettlement effect involves ‘loss of physical and non-physical assets, including homes, communities, productive land, subsistence, resources, cultural sites, social structures, network and ties, cultural identity and mutual help mechanisms’. See Downing (2002) and Asia Development Bank, *Handbook on Resettlement: A Guide to Good Practice*, Asian Development Bank, Manila, 1998.
- ¹² Downing, 2002; Owen and Kemp, 2015.
- ¹³ N.A. Bainton and G. Banks, ‘Land and access: A framework for analysing mining, migration and development in Melanesia’, *Sustainable Development*, vol. 26, no. 5, 2018, pp. 450–60.
- ¹⁴ D. Schug, ‘International maritime boundaries and indigenous people: The case of the Torres Strait’, *Marine Policy*, vol. 20, no. 3, 1996, pp. 209–22.
- ¹⁵ D. Lawrence, ‘Shared space: Papuan perspectives of the Torres Strait’, in *Woven Histories, Dancing Lives: Torres Strait Islander Identity, Culture and History*, ed. R. Davis, Aboriginal Studies Press, Canberra, 2004, p. 190.
- ¹⁶ From CSIRO research. The Coming of the Light is a holiday in Torres Strait, to celebrate the London Missionary Society’s first landing on Erub in July 1871.
- ¹⁷ From CSIRO research.

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- ¹⁸ T. Grice, *Subnational Payments in Papua New Guinea's Extractive Sector: Scoping Study for PNG Extractive Industries Transparency Initiative (EITI)*, 2019, www.pngeiti.org.pg.
- ¹⁹ P. Adler, J. Brewer and C. McGee, *The Ok Tedi Negotiations: Rebalancing the Equation in a Chronic Sustainability Dilemma*, Keystone Center, 2007, www.mediate.com/pdf/The%20Ok%20Tedi%20Negotiations-TKC-08-24-07.pdf.
- ²⁰ The original mine design did not plan to discard the tailings directly into the river system. A permanent tailings disposal system, including a tailings dam, was planned and initiated. However, a landslide destroyed the tailings dam in 1984, and the government's willingness to proceed with the operation resulted in the dumping of the tailings directly in the river system. See W.S. Pintz, *Ok Tedi: Evolution of a Third World Mining Project*, Mining Journal Books, London, 1984.
- ²¹ Ok Tedi Mining Limited, *Annual Review 2016*, OTML, 2016, p. 59, www.miningdataonline.com/reports/annual/oktedi_2016_Annual_review.pdf.
- ²² A.W. Storey, M. Yarrao, C. Tenakanai, B. Figa and J. Lynas, 'Use of changes in fish assemblages in the Fly River system, Papua New Guinea, to assess effects of the Ok Tedi Copper Mine', *Developments in Earth and Environmental Sciences*, vol. 9, 2008, pp. 427–62.
- ²³ See 'Fish stock biodiversity', Ok Tedi Mining, www.oktedi.com/how-we-work/environmental-sustainability/fish-stock-biodiversity. Population growth—and therefore increased fishing pressure—and the introduction of exotic fish species that have replaced native species can be concurrent causes of the observed changes in fish biomass, abundance and species diversity.
- ²⁴ Adler, Brewer and McGee, 2007.
- ²⁵ A. Salleh, "'Toxic time bomb" awaits Ok Tedi', ABC Science, 5 September 2008, www.abc.net.au/science/articles/2008/09/05/2356711.htm.
- ²⁶ These figures include population in the CMCA villages. See 'Community Mine Continuation Agreement', Ok Tedi Mining, www.oktedi.com/how-we-work/community-relations/community-mine-continuation-agreement.
- ²⁷ G. Banks and C. Ballard, *The Ok Tedi Settlement: Issues, Outcomes and Implications*, National Centre for Development Studies, Research School of Pacific Studies, ANU, Canberra, 1997.
- ²⁸ S. Zorn, 'Despite our best intentions: Papua New Guinea's Ok Tedi Mine and the limits of expert advice', *Mineral Economics*, vol. 31, no. 1–2, 2017, pp. 13–21.
- ²⁹ More on the PNG Sustainable Development Program (PNG SDP) Limited can be found on their website: www.pngsdp.org. PNG SDP was mandated to invest two-thirds of its interest earnings into a bond to mitigate any negative impacts at the end of the mine's life. The other third was to be spent on sustainable development projects. Projects in Western Province should account for one-third of the spending from the 'development fund' while the other two-thirds should be spent in other parts of PNG. See C. Filer and P. Jenkins, 'Negotiating

community support for closure or continuation of the Ok Tedi Mine in Papua New Guinea', in *Large-Scale Mines and Local-Level Politics: Between New Caledonia and Papua New Guinea*, ed. C. Filer and P.Y. Le Meur, ANU Press, Canberra, 2017, pp. 229–59.

³⁰ Ibid.

³¹ B. Sharp and T. Offor, *Renegotiating a PNG Compensation Agreement: Applying an Informed Consensus Approach*, Resource Management in Asia–Pacific Program, Research School of Pacific and Asian Studies, ANU, Canberra, 2008.

³² The agreements committed to spend K180 million (A\$76.5 million) over the remaining life of the mine (2010 at the time) to compensate mine-affected communities that signed the CMCA. Fifty-eight per cent of the compensation package was provided to support sustainable development projects while 16 per cent was to be paid in cash to community members and the remaining 26 per cent was to be held in trust for future generations (Filer and Jenkins, 2017). The level of compensation in each separate CMCA was roughly proportionate to the level of environmental impact in each area. Originally, the South Fly region received no cash compensation but did receive funding for development projects (Sharp and Offor, 2008).

³³ Filer and Jenkins, 2017.

³⁴ Ok Tedi Mining Limited, *Annual Review 2011*, OTML, 2011, pp. 1–94, www.oktedi.com/wp-content/uploads/2019/04/Annual_Review_2011.pdf.

³⁵ Grice, 2019. The Government of PNG owns 87.8 per cent and the people of Western Province own 12.2 per cent.

³⁶ K.C. Vijayan, 'Papua New Guinea state fails to wrest control of US\$1.4b stake', *Straits Times*, 5 April 2019, www.straitstimes.com/singapore/courts-crime/papua-new-guinea-state-fails-to-wrest-control-of-us14b-stake.

³⁷ *Independent State of Papua New Guinea v. PNG Sustainable Development Program Ltd*, SGHC 68. High Court—Suit N 795 of 2014; originating summons N 234 of 2015, 2019, paragraph 187, p. 80, www.supremecourt.gov.sg/docs.

³⁸ Ibid., 2019, para 348, p. 146.

³⁹ Business Advantage PNG, 'Papua New Guinea state loses US\$1.4 billion PNG SDP legal battle', *Business Advantage PNG*, 5 April 2019, www.businessadvantagepng.com/papua-new-guinea-state-loses-us1-4-billion-pngsdp-legal-battle.

⁴⁰ Given legal effect under the 11th Supplemental Agreement (11SA).

⁴¹ Ok Tedi Mining Limited, *Annual Review 2017*, OTML, 2017, pp. 1–120, www.oktedi.com/wp-content/uploads/2019/01/2017-Annual-Review.pdf.

⁴² Grice, 2019.

⁴³ The total direct payments, transfers and social expenditure from the project in the period 2013–17 was K2.15 billion (A\$914 million), with K1.31 billion (A\$556 million) in direct payments to the national government (comprising group tax, dividends, production levy, equity payments and other taxes) and K839.45

million (A\$356 million) to subnational entities. The subnational payments made during this period include mandatory social expenditure (K448.12 million or A\$190 million), Infrastructure Tax Credit Scheme projects (K100.28 million or A\$42 million), landowner royalties (K96.92 million or A\$41 million), provincial and local-level government royalties (K82.08 million or A\$34 million) and discretionary social expenditure (K20.38 million or A\$8 million).

⁴⁴ Rental payments are also made at a rate of K12 per hectare annually – with a total of K2.2 million (A\$935 000) paid so far.

⁴⁵ According to the Ok Tedi Fly River Development Program Strategic and Operational Plan 2010–2015 during its first few years (2002–07), OTDF supported Ok Tedi Mine to ‘manage the CMCA process and develop activities took a backseat to mining operations’. A 2007 review of the CMCA’s subtly implied OTDF’s failure to deliver the envisaged social and economic development. The business plan further acknowledges that OTDF’s inefficiency continued until 2010. Some information on projects to be delivered for each of the five main areas since 2010 can be found at www.otdfpng.org. Health, education, economic development, infrastructure development and social development have been the main focus of OTDF.

⁴⁶ ‘About us’, Ok Tedi Development Foundation, www.otdfpng.org/about-us/

⁴⁷ Cited in Sharp and Offor, 2008, p. 3.

⁴⁸ Ibid., p. 3.

⁴⁹ The departure of Ok Tedi Mines would leave a void in service and infrastructure delivery. Filling the gap left from a weak and corrupted government, Ok Tedi Mine has assumed the role of ‘proxy state’, substituting for the provincial government in the provision of public goods and services (Filer and Jenkins, 2017; Sharp and Offor, 2008). Ok Tedi Mine is also the largest contributor to the economy. In 2006 the mining industry contributed up to 66 per cent of all cash income in Western Province (OTML, 2009). From 1982 to 2011, the Fly River Provincial Government received K1.65 billion (A\$704 million) in benefits and the Ok Tedi mine area landowners received K1.22 billion (A\$520 million). See Y. Popoitai and W. Ofosu-Amaah, *Negotiating with the PNG Mining Industry for Women’s Access to Resources and Voice: The Ok Tedi Mine Life Extension Negotiations for Mine Benefit Packages*, World Bank Institute, 2013.

⁵⁰ Sharp and Offor, 2008.

⁵¹ N. Sullivan, K. Keleba and W. Tosa, *Social Assessment for the World Bank’s PNG Rural Service Delivery and Local Governance Pilot Project*, Nancy Sullivan & Associates Ltd, Madang, Papua New Guinea, 2013, pp. 1–129, documents.worldbank.org.

⁵² Cited in Sharp and Offor, 2008, p. 3.

⁵³ J.E. Burton, ‘Are the people of Manda in Middle Fly poor? A development assessment using the Oxford Multidimensional Poverty Index’, *Contemporary PNG Studies: DWU Research Journal*, vol. 28, no. 1, 2018, p. 87.

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- ⁵⁴ S. Busilacchi, R.A.J. Butler, I. van Putten, Y. Maru and J. Posu, 'Asymmetrical development across transboundary regions: The case of the Torres Strait Treaty Region (Australia and Papua New Guinea)', *Sustainability*, vol. 10, no. 4200, 2018a, pp. 1–18.
- ⁵⁵ PNG SDP, *PNG Sustainable Program LTD—Annual Report 2007*, PNG SDP, Port Moresby, 2007.
- ⁵⁶ Burton, 2018, pp. 84–98.
- ⁵⁷ *Ibid.*, pp. 84–98.
- ⁵⁸ *Ibid.*, p. 96.
- ⁵⁹ Popoitai and Ofosu-Amaah, 2013, p. 3.
- ⁶⁰ Kori Maraga is an educator in the region and the recipient of the 2015 Pride of PNG Awards. She was a lead independent facilitator on the Mine Life Extension consultation in 2007 and 2012.
- ⁶¹ As result of the 2007 review, 10 per cent (K101 million) of the CMCA funds were dedicated to women and children's programs, a figure that was increased to 18.24 per cent during the 2012 review of the agreement. See Popoitai and Ofosu-Amaah, 2013.
- ⁶² Quoted in *ibid.*, p. 19.
- ⁶³ Butler et al. held a workshop in Daru with a wide range of participants from the public and private sectors, including villagers and Ok Tedi Mine representatives, to discuss the current situation in the South Fly and potential solution to achieve sustainable development for local communities. They identified Ok Tedi mine-induced migration to Daru as one of the main threats to sustainable development in the South Fly. See J.R.A. Butler, S. Busilacchi, J. Posu, I. Liviko, P. Kokwaiye, S.C. Apte and A. Steven, *South Fly District Future Development Workshop Report*, CSIRO Oceans and Atmosphere, Brisbane, and Papua New Guinea National Fisheries Authority, Port Moresby, 2015, p. 38.
- ⁶⁴ Census data from 1980 and 1990 retrieved from: www.citypopulation.de/PapuaNewGuinea.html; census data from 2000 and 2011 retrieved from: National Statistical Office (2011); National Population and Housing 2011, 'Count Me In'—Final Figures; PNG National Statistical Office, Port Moresby.
- ⁶⁵ J.R.A. Butler, E. Bohensky, Y. Maru, S. Busilacchi, V. Chewings and T. Skewes, 'Synthesis and projections of human population and socioeconomic drivers in Torres Strait and Western Province, PNG', NERP Tropical Ecosystems Hub, 2012, pp. 1–25.
- ⁶⁶ Biases in the sampling (over- or under-representation of new immigrants) could have been occurred if the new settlements in Daru were not visited during the survey.
- ⁶⁷ National Statistical Office and PNG Sustainable Development Program Ltd, *Western Province: Socio-Economic Urban Survey Report 2009*, NSO and PNG SDP, Port Moresby, p. 99.

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- ⁶⁸ From CSIRO research.
- ⁶⁹ From CSIRO research.
- ⁷⁰ Respondent from the inland Kiwai in Daru. From CSIRO research.
- ⁷¹ Busilacchi et al., 2018a and 2019. S. Busilacchi, S., J.R.A. Butler, W. Rochester and J. Posu, 'Drivers of illegal livelihoods in remote transboundary regions: The case of the Trans-Fly region of Papua New Guinea', *Ecology and Society*, vol. 23, no. 1, 2018a, p. 46. See chapter 7.
- ⁷² J.R.A. Butler, T. Skewes, D. Mitchell, M. Pontio and T. Hills, 'Stakeholder perceptions of ecosystem service declines in Milne Bay, Papua New Guinea: Is human population a more critical driver than climate change?', *Marine Policy*, vol. 46, issue C, 2014, p. 1–13.
- ⁷³ UNEP, 'Toolkit and guidance for preventing and managing land and natural resources conflict', *UN Interagency Framework Team for Preventive Action*, New York, 2012.
- ⁷⁴ Given legal effect under the 11th Supplemental Agreement (11SA).
- ⁷⁵ See the Introduction for further details on the CSIRO research projects.
- ⁷⁶ Jobs in Daru are very scarce and generally are not accessible to Fly River inhabitants, who have low levels of education.
- ⁷⁷ All common conditions observed in the Resettlement effect. See Downing, 2002.
- ⁷⁸ C. Benè, 'Contribution of small-scale fisheries to rural livelihoods in a water multi-use context (with particular emphasis on the role of fishing as "last resort activity" for the poor', in *Advisory Committee on Fisheries Research*, ed. B.P. Satia and D. Staples, FAO Fisheries Report No. 735, FAO, Rome, 2004, p. 198.
- ⁷⁹ More on the land and sea customary claims in the South Fly in Murphy (chapter 2).
- ⁸⁰ This is particularly true of gender-based violence (GBV). For more information about GBV as well as violence associated with sex work in the area (also exacerbated by the above-outlined conditions), see L. Hammar, 'To be young, female, and "normal": The health risks of absent sexual citizenship', *Journal of Medical Humanities*, vol. 20, no. 2, 1999, pp. 135–54.
- ⁸¹ J. Cinner, 'Socioeconomic factors influencing customary marine tenure in the Indo-Pacific', *Ecology and Society*, vol. 10, no. 1, 2005, p. 36.
- ⁸² Sullivan et al., 2013.
- ⁸³ S. Busilacchi, J.R.A. Butler, T. Skewes, J. Posu, T. Shimada, W. Rochester and D. Milton, *Characterization of the Traditional Fisheries in the Torres Strait Treaty Communities, Papua New Guinea*, Final Report to Australian Fisheries Management Authority, Canberra, 2014.
- ⁸⁴ Diekert lists the main factors that undermine the sustainability and economic viability of fisheries when growth overfishing occurs as: (1) large fish, which are the first ones to be removed, are those better able to buffer adverse environmental conditions; (2) if harvesting has evolutionary effects, the biased fish population's size/age structure can be irreversible, making them more vulnerable to adverse conditions; (3) loss of economic return associated with

the higher value of bigger fish, which are the ones that first disappear from populations. See F.K. Diekert, 'Growth overfishing: The race to fish extends to the dimension of size', *Environmental and Resource Economics*, vol. 52, no. 4, 2012, pp. 549–72.

⁸⁵ Butler et al., 2019.

WWF in the south New Guinea borderland

Garrick Hitchcock

In 1996 the conservation organisation World Wide Fund for Nature (WWF) launched its Tri-National Wetlands Program, an ambitious transboundary conservation, development and capacity-building initiative that aimed to support and enhance indigenous management of Wasur National Park in south-east Papua Province, Indonesia, the Tonda Wildlife Management Area (WMA) in south-west Papua New Guinea (PNG) and Kakadu National Park in Australia's Northern Territory.

In succeeding years, WWF's program in the south New Guinea borderland grew exponentially, with attempts to assist Maza WMA, a marine protected area near the Western Provincial capital Daru, create several new PNG WMAs contiguous to Tonda and the PNG–Indonesian border, and establish the Trans-Fly Ecoregion Program, stretching right across the southern lowlands of New Guinea, an area of more than 10 million hectares.

These initiatives were undertaken at a time when a range of global conservation organisations in Melanesia were attempting to implement Integrated Conservation and Development (ICAD) experiments, aimed at encouraging landowners to eschew unsustainable forms of 'development', such as logging and exploitation of marine resources, through (1) encouraging them to recognise the biodiversity values of their ancestral domains and (2) offering alternative, environmentally and economically sustainable, community-based pathways to development, such as ecotourism and other small-scale ventures. It was also coterminous with increased attention in the environmentalist community to the potential of transboundary protected areas to improve conservation effectiveness and deliver other ecological, social and political benefits.¹

This chapter examines these conservation efforts in the southern borderland of PNG, with reference to the experience of the peoples inhabiting the Tonda Wildlife Management Area (TWMA). WWF effectively ceased operating in south-west PNG in 2010. Today, local people express disappointment that there is very little to show for WWF's activities in the area over a decade or more, in terms of conservation or development outcomes. The area is plagued by a lack of services and development, and cross-border threats to local ecosystems and natural resources are as pervasive as ever, and include introduced pest species and cross-border wildlife trade and poaching. The latter has also been a factor in the recent militarisation of the border

area, in the form of PNG and Indonesian bases, with concomitant negative consequences for local communities.

Tonda Wildlife Management Area

The environment of south-west Papua New Guinea is unique in the country: it is low-lying and flat—most areas are less than 30 metres above sea level—and the landscape strongly resembles that of coastal and adjacent areas of tropical northern Australia. This, and the many species of shared flora and fauna, evidences the geologically recent land connection that linked these areas, last broken by rising sea levels, which created the Torres Strait some 9000 years ago.

The area experiences a monsoonal or tropical savanna climate, with around 75 per cent of annual rainfall (approximately 1700 millilitres) falling during a wet season between December and May. The strongly seasonal climate results in an environment where grassland, savanna and monsoon forest are the dominant vegetation types, and sees many areas inundated during the wet season, creating vast wetlands, followed by parched, drought-like conditions in the dry season. Of particular note is a large expanse of seasonally flooded open grassland—probably the largest such area in New Guinea—known as the Bula Plains, which stretches between the Bensbach and Morehead rivers. The mouth of the former watercourse marks the southernmost part of the international border between PNG and Indonesia (at 141°1'10' E longitude).

In the colonial period, this area of New Guinea was viewed in highly negative terms by European visitors. Some examples:

A hot and godless place to be in, in the dry season. It is absolutely without water except perhaps for some slimy mud in a swamp here and there, wherein wild pigs wallow.²

One of the most unpleasant areas of the habitable globe ... A vast swamp in the wet season and for the most part parched waterless land in the dry.³

There is nothing to induce settlement, nor would I ever advise anyone to go there.⁴

A country of few attractions ... from the European's point of view its economic prospects would seem to be practically nil.⁵

These landscape imaginaries would give way, in the post-war period, to more positive views as the Australian administration devoted attention to the possibilities of economic development in this remote, borderland environment. There was consideration of the possibility of establishing a cattle industry on the open floodplains along the Bensbach River, and the Fisheries Department conducted tests in the river, netting the abundant and commercially valuable barramundi. Recognition of the extreme seasonality of the area, isolation from markets, and

potential disease risks and biosecurity problems emanating from the proximity of the border quashed these plans. A more comprehensive CSIRO study of the land resources of south-west PNG in the 1960s finally identified the area as having little or no agricultural, forestry or mineralogical potential.⁶

Tonda, PNG's first WMA, evolved out of the Australian colonial administration's fascination, in the late 1960s, with the wildlife of the area. In 1968 ground and aerial surveys had highlighted the unique nature of the Bula Plains. Home to thousands of introduced Rusa deer and teeming with many other native species, the area's wildlife was described as being 'unparalleled in diversity and density elsewhere in Papua New Guinea'.⁷ In light of earlier disappointments, the administration's focus turned to the possibilities of exploiting these natural resources, in particular, ways to commoditise deer, such as culling for meat and jerky production. The spectacular image of huge herds of deer and vast flocks of waterbirds on the plains also suggested the idea of establishing some sort of protected area, based on the great African game reserves, to promote safari-style tourism.⁸ In 1970, a government Wildlife Station was established at Balamuk on the middle Bensbach, from where a research program commenced on deer and other wildlife resources with commercial possibilities, such as crocodiles.⁹

The administration also believed that local people should have some control over, and benefit from, any future development of these natural resources by outsiders. This appears to have stemmed from the unsatisfactory experience of deer shooters associated with an expatriate company operating in the area between 1965 and 1967; local people were particularly unhappy with the wastage of this operation. Bensbach villagers were being consulted in 1966 about plans by another company, Morehead Pty Ltd, to commence culling and fishing operations in the same area. That proposal included royalty payments for the exploitation of deer and barramundi, which would go into a trust fund for development and welfare in the district.¹⁰ Although this venture did not proceed, this concept was later incorporated into the TWMA rules.

In 1969 initial suggestions to villagers that they sell the land for a reserve were rejected outright. Their desire for local control and benefits, and protection of traditional hunting and land rights, resulted in the Wildlife Management Area concept. In this model the people were to remain the owners of the land and establish a committee, comprising village representatives, to draw up rules for the conservation, protection or regulated harvest of wildlife resources, with support from the Department of Conservation and Environment (DEC).¹¹

The administration noted that the concept of local people being involved in the management of wildlife resources in this way was 'unique'.¹² It seems, then, that the early refusal by villagers to alienate their lands resulted in the final form of the WMA system for the entire country:

The establishment of a protected areas system has proved to be extremely difficult because of the complex traditional land tenure system. New

legislation and novel approaches to environmental management are proving necessary. The Wildlife Management Area approach, whereby areas are reserved for conservation and controlled utilisation purposes at the request of land-owners, was designed to overcome this.¹³

The WMA program might be identified, then, as a form of Integrated Conservation and Development (ICAD), existing long before it became a fashionable conservation philosophy. Following continuous consultations with villagers through the early 1970s, and amendments to legislation to enable the declaration of WMAs, Tonda was finally gazetted in 1975 under the *Fauna (Protection and Control) Act 1966*.¹⁴ The TWMA Committee (TWMAC), consisting of 14 representatives from villages with traditional land and resource rights in the area, was established at the same time.¹⁵ Tonda was the first WMA in the country and, with an area of approximately 5900 square kilometres (figure 9.1), it remains the largest. A number of other WMAs have subsequently been established throughout PNG. However, Tonda is the 'flagship' of the system, and often featured prominently in government publicity about these voluntary areas.¹⁶

<Figure 9.1 near here>

The Tonda Wildlife Management Area (Garrick Hitchcock)

The creation of TWMA, on the eve of PNG's independence, although participatory, was still largely a top-down approach, emplaced within colonial ideologies of protected areas and safari-park aesthetics. Nonetheless, it is clear that local people were keen to protect their land and resources, and welcomed the administration's initiative — on their own terms as much as possible. Their motivation was not conservation for conservation's sake but a desire to benefit materially from the exploitation of their resources, through controls on their use by outsiders:

[T]he people in Tonda wanted development and to participate in the cash economy ... Tonda is an outstanding area of particular importance for wildlife conservation as it carries heavy populations of deer, wallaby, pig, duck, cassowary and many other forms of wildlife which previously were used for subsistence purposes only — food, ornamentation and for exchange ceremonies. The people were now aware that their wildlife held additional values.¹⁷

Indeed, in later years, conscious of their peripheral, borderland position, and the apparent lack of oil, gas and mineral resources that might otherwise provide a pathway to development, local people have described their wildlife as 'our gold', and the transboundary sale of commoditised flora and fauna to buyers in Indonesia has long been a key source of income, particularly for the inhabitants of the western part of the WMA, along the Bensbach River.¹⁸

The creation of TWMA also coincided with the establishment of the Bensbach Wildlife Lodge, a tourist venture offering fishing, hunting and birdwatching tours. Interest in establishing such an operation on the Bensbach began with a flight over the area by several PNG-based, expatriate Australian businessmen in mid-1971. In 1972 the administration, keen to promote development in the area, assisted the proponents to present their proposal to local villagers, who agreed to the project going ahead. Construction commenced the following year, and the lodge opened in late 1974, just before the establishment of the TWMA. Most of the Tonda rules gazetted in 1975 relate to the hunting of deer, ducks and fish taken by visitors to the lodge. Fifty per cent of such royalties were paid to the owner of the land (or river section) where the resources were taken; the other half was paid into a trust fund, designed to provide development and welfare to the communities of the TWMA, and to support the operation of the TWMA Committee (e.g. through financing annual meetings). Today, in large part due to firearms restrictions and its proximity to the Indonesian border, hunting of deer no longer takes place. The Bensbach is known as the 'Barra Capital of the World',¹⁹ a reference to the abundance of barramundi (*Lates calcraifer*), a popular sportsfish, and most visitors to the BWL come for the fishing. It also attracts numbers of birdwatchers on account of the large and diverse range of species found there.

During the early years of its operation, management of the WMA was apparently very much directed by staff of DEC. Most local people were subsistence gardeners and hunters, with little education or awareness of land and resource management, let alone business development or tourism. As the manager of the Bensbach Wildlife Lodge reported, in the early years of the TWMA, the driving force was a particular (expatriate) DEC staff member; with regard to the committee, 'What he said went. He ran the show.'²⁰

From the early 1980s, the financial difficulties of the PNG Government led to a reduction in funding for conservation and development programs in the country.²¹ The resulting lack of state support for the TWMAC adversely affected its ability to operate effectively.²²

In 1983 a consultant was engaged by the DEC to assess the status of WMAs throughout the country. Following his visit to TWMA in September of that year, he reported:

The Wildlife Branch was once very active in the area; they assisted the development of the management area, initiated the deer farming project and encouraged crocodile and butterfly farming. Cuts in public expenditure and restructuring of government departments have led to a complete run-down of all these activities. There is now only one wildlife officer in the area and he is unaware of his position, role and functions. He received little funding, supervision or guidance; he is unable to make patrols or do much extension work. In his own words, 'Normal yearly operations have entirely arrived at a stop.'²³

In 1993 the TWMA was nominated as a Wetland of International Importance under the Ramsar Convention, an intergovernmental treaty that promotes the conservation of wetlands and wise use of their resources.²⁴ Although this did little to improve the on-ground management of Tonda, it did force recognition of the need to improve DEC's commitment to the TWMA in order to meet its obligations under the convention.²⁵ In 2006 the PNG Government also nominated the Trans-Fly Complex, centred on Tonda WMA, for Tentative Listing as a World Heritage Site under the World Heritage Convention. To date, no further work has been done to further this nomination.²⁶

WWF: Wasur National Park, Indonesia

WWF established a presence in Wasur National Park, in 1991, the year after its declaration, working with indigenous Papuans to help protect wildlife and traditional resource rights, and to create sustainable development initiatives.²⁷ Wasur, comprising 413 810 hectares of wetland and woodland habitats, was established in 1990 by the WWF Indonesia Program in partnership with the Indonesian Department of Forests (PHPA). The park has achieved greater recognition of *adat* (customary) rights than almost any other conservation area in Indonesia, with indigenous communities being permitted to hunt and collect certain animals and plants; they also contribute traditional knowledge and advice to the park's management.

WWF staff based in Merauke soon turned their attention to the neighbouring Tonda WMA. In 1995 a visit was made to Tonda to gauge support for its assistance, seeking to address what it identified as the core problems precluding effective management of the area, namely a lack of funds, which prevented regular committee meetings from taking place, as well as 'a general lack of understanding about the role of the committee and a lack of awareness of some of the more pressing ecological problems'.²⁸ There was also recognition of a range of threats to Tonda. These included the introduction of pest species from across the border in Indonesia, such as weeds and invasive fishes, and an increase in transboundary poaching, carried out by residents of Papua Province netting for fish and sharks across the mouth and lower reaches of the Bensbach, and shooting crocodiles and deer. The environmental impact of deer on the wetlands, expansion of *Melaleuca* forest into open grasslands, and changing fire regimes were also areas of concern, as they were in Wasur. WWF attempted to tackle all of these issues, through several different projects, in order to make TWMA more than just a 'paper park'.

Tonda's problems

For WWF then, Tonda's main problems were ecological and anthropogenic to its environment, as well as the limited capacity of the local people to manage these through the TWMAC. These limitations were understood to be due to a lack of awareness of the threats and the responsibilities of the committee and local people, and exacerbated by years of insufficient government funding and support.

Tonda's problems were actually far more complex. Villages are scattered across a large area, and hence it has always proved difficult for the TWMA committee members to meet, on account of distance and travelling times, and lack of vehicles (and high costs of those few available for hire).

A long-standing source of local tension has been the payment of 50 per cent of all royalties to this body's trust fund. Many local landowners have never been happy about 'losing' what they consider to be half of 'their money', derived from the use of the resources of their lands and waters by tourists staying at the Lodge. This relates more generally to a problem of representation; Torassi people have sometimes expressed unease at the decision-making role of committee members from the eastern part of the TWMA, given that they are culturally and linguistically more distant and from areas that do not generate royalties. Some people consequently feel that they should not have a say in TWMA decisions that affect Torassi events. This would seem to be the rationale behind a move by some committee members in 1990 to divide the TWMA into two submanagement areas, east and west of the Morehead River, although these plans were later shelved.

The issue of representation has often made the committee less authoritative and hence less effective. Each village had its own member on the committee. However, this does not reflect the social system. The important units of society with respect to land and resource ownership are local clan groups, each with its own leader, and of which there are several in each village. There have often been tensions associated with the authority of committee members to speak for other landowners, and accusations that they have acted unilaterally in the past, making decisions without community consultation, and rarely report the results of their deliberations to villagers. Further, it is often the case that clan leaders and members see no benefit in adhering to the rules of the WMA, feeling they are entitled to use their lands and resources as they see fit.

Enforcement of WMA rules developed by the committee has also long been a problem. One commentator suggested that it was a lack of education and scientific understanding of conservation biology that was responsible for the committee being unable to enforce rules.²⁹ Rather, it is close ties of kinship throughout the area that make the application of sanction difficult, as the wrongdoer is very likely to be kin, or a member of a neighbouring, traditionally allied group. In fact, many local people supported the appointment of 'outside' officials to enforce the rules of the TWMA, to overcome the problem of not being able to fine close and extended family members—to do so would likely exacerbate existing disputes or create new ones.

In Bensbach, many of these representatives had been embroiled in a protracted land dispute over compensation for land on which the Bensbach Wildlife Lodge airstrip was built, which had forced its closure to tourists on a number of occasions. Land disputes between clans, exacerbated by the distribution of royalties, have also affected Lodge operations. Together, these problems led to local disillusionment, social unrest and a reduction in income for the TWMA committee, further weakening its ability to be an effective manager of the WMA.

WWF programs in south New Guinea, 1996–2010

Community Land Care Project and Trans-Fly Conservation Areas Project

In 1996 there was further community consultation with the people of the TWMA, to develop the Community Land Care Project and Trans-Fly Conservation Areas Project, which sought 'to address the declining management framework for Tonda Wildlife Management Area through capacity-building in conservation and eco-enterprises, and to link it more solidly to regional development planning'.³⁰ Specifically, this involved assistance to hold committee meetings, progress the gazettal of new rules and the appointment of rangers, and convening workshops on pest species and environmental changes.³¹

Following a delay in funding, WWF's activities began in earnest in 1998. Attempts were made to increase local recognition and support for the Maza WMA and to strengthen the functioning of its committee. Maza is a marine protected area of more than 1886 square kilometres established in 1978 to protect dugong (*Dugong dugon*). These plans were soon abandoned, due in large part to the local politics of marine resource use and ownership in Daru and the nearby coastal villages. They were compounded by lack of government agency capabilities by and considerable in-migration to Daru from adjacent areas of mainland Western Province, which have placed huge pressure on local marine resources and led to significant and seemingly intractable conflict between traditional owners and newcomers.

Tri-National Wetlands of Oceania Program

At around the same time, WWF initiated the Tri-National Wetlands Program (also known as the Tropical Wetlands of Oceania Program), which aimed to establish links between Tonda and its borderland neighbour, Wasur National Park in Papua Province, Indonesia, and Kakadu National Park in Australia's Northern Territory. It was hoped that this would enable the transfer of information and lessons learned on wetland management between these 'sister parks', which share similar ecosystems, species and threats but have very different management systems.³² With respect to the contiguous Wasur and TWMA, there was recognition that threats could not necessarily be addressed entirely within political boundaries. In-principle approval was given to this project by the PNG and Indonesian governments in 1996 at the Ramsar Conference in Brisbane,³³ and in June 2002 the three governments signed a Memorandum of Understanding in Bali, Indonesia, agreeing to cooperative action between the three states, including their indigenous people, to manage more than 3 million hectares of wetlands 'to provide sustainable livelihoods ... and conserve significant biodiversity'.³⁴

The program involved cross-border visits by rangers and committee members from each park to the others, for training and education.³⁵ There was an especially strong focus on documenting and learning about changing vegetation patterns, such

as the expansion of Melaleuca forests into open grasslands, and the link between this and Rusa deer and traditional fire regimes on both sides of the border.³⁶

Community Development and Resource Conservation Program

In 2004 funding for five years was obtained from the European Union to develop a Community Development and Resource Conservation Program (CDRCP). This sought to transform local livelihoods in the Trans-Fly radically through integrated conservation and development projects. In addition to encompassing the Tonda WMA, it also included two other sites in Western Province: the Oriomo River area to the east, and Suki area to the north.

<Figure 9.2 near here>

WWF created several new Wildlife Management Areas in the border area of south-west Western Province: an extension to the TWMA to the north, and two adjacent WMAs, Wariaver-Baro and Aramba-Suki. The total area stretched for almost 700 000 hectares. Wasur National Park comprises 413 810 hectares of wetland and woodland habitats. (Garrick Hitchcock)

As part of this program, WWF worked to create several new Wildlife Management Areas in the border area of south-west Western Province. These were an extension of the TWMA, to the north, as well as two new, adjacent WMAs, named Wariaver-Baro and Aramba-Suki, a total area of almost 700 000 hectares (figure 9.2). Considerable effort went into community consultation, liaison with local and provincial governments, and the DEC, which is responsible for endorsing and declaring WMAs. In September 2007, WWF launched these new areas at a ceremony in Bensbach, attended by PNG and Indonesian dignitaries, media and 'conservation celebrity' Jared Diamond. However, declarations of the three new areas apparently never went to the Legislative Council for gazettal as planned, and as such, the new areas do not exist. This was said to be the result of a directive within the DEC, related to plans to review its existing WMA policy. Whatever the reason, these delays frustrated many local people, some of whom blamed WWF for the lack of progress.

Trans-Fly Ecoregion Program

WWF became increasingly ambitious in New Guinea, establishing the Trans-Fly Ecoregion Program, which sought to protect grasslands, savanna, wetlands and forest stretching right across the southern lowlands of New Guinea, an areas of some 10 million hectares, or approximately 12 per cent of the island of New Guinea. According to WWF, the project was a 'plan to fill a major gap in conservation planning. To provide a conservation blueprint based on this crucial ecosystem, rather than on political boundaries.'³⁷ This stemmed from changes made by WWF in the late 1990s to the way it sought to implement conservation globally, to 'planning and implementing conservation and development programs on a larger scale than has been attempted so far'. The Trans-Fly was identified as a globally significant region encompassing outstanding examples of terrestrial, freshwater and marine

ecoregions, one that would also require a deep time commitment, with WWF calling for the development of long-term (50-year) goals for the region's conservation.³⁸

Successes and failures

WWF initiated a number of evaluations of their projects in south New Guinea. These found that the effectiveness of their programs had been compromised by a range of internal and external factors and that they were often far too complex in design and overly ambitious in scope. Among the identified 'in-house' problems were high staff turnover and poor morale, poor communications, failure to budget for the extremely high costs of aircraft, boat and car hire in this remote area, and failure to allow for cost increases over time. The delivery of social development and poverty alleviation initiatives by one of the world's leading conservation organisations was also questioned. Other issues included the fact that some communities saw no apparent threats to local biodiversity. Conversely others recognised the threats but reported a complete absence of any realistic remedies in the face of enormous environmental challenges, such as the eradication of pest fish species and the colonisation of grasslands by *Melaleuca* forests. These and other problems were all exacerbated by the extremely difficult political and institutional challenges of dealing with a largely absent and dysfunctional state, at all levels of government (national, provincial and local), and the area's borderland status, as a remote periphery and an underdeveloped backwater. They also found that the focus on transboundary management was premature, given the lack of capacity of the TWMAC, and the PNG state more generally, together with the vast differences between PNG and Indonesia in terms of governance regimes, the language barrier and the status of their Indigenous people.

WWF narratives of TWMA and south New Guinea

WWF narratives of Tonda celebrated its remarkable biodiversity and beauty, and stand in stark contrast to earlier colonial perceptions of a monotonous landscape, alternating between swampy morass and dry, waterless plain. One WWF publication went as far to describe the area as the 'last natural frontier of the World', and that 'to date, the Tonda WMA is still unmapped and the biodiversity is yet to be discovered. There is a need to conduct scientific studies—there could be plants and wildlife that is [*sic*] yet to be discovered';³⁹ a representation that obscured decades of research in the area, to present a picture of an exciting, unknown wilderness. More recently, a former Prime Minister of Papua New Guinea noted that a visitor had called it the 'last remaining fragment of the Garden of Eden'.⁴⁰ WWF brochures and websites detailing their activities in Tonda, Wasur and Kakadu were replete with images of smiling children in traditional costume; colourful waterbirds; and idyllic scenes of dugout canoes gliding past water lilies, which were no doubt calculated to appeal to the international donor community.

In 2002 support from the governments of Australia, PNG and Indonesia for the sister parks, in the form of the Tri-National Wetlands Initiative (which appears to be

the WWF Tri-National Wetlands Program with significant government funding) was bestowed the title of 'Gift to the Earth'. This is WWF's highest accolade for the good conservation work of others: 'a public celebration by WWF, the international conservation organization, of a conservation action by a government, a company, or an individual which is both a demonstration of environmental leadership and a globally significant contribution to the protection of the living world'.⁴¹ In fact, this status was self-awarded to their own project, which 'enables WWF to draw worldwide attention to the conservation achievement among media, funding agencies, and other international organisations, as well as the larger public'.⁴²

While these celebratory narratives are understandable in the context of attempts to secure funding vital to the initiation and continuation of such projects, given competition from other non-government organisations (NGOs) and 'donor fatigue', they obscured the political context of these protected areas. For Tonda, an exceedingly complex range of factors impinged on the ability of outsiders and locals alike to manage lands and resources effectively.

WWF relationship with local people

WWF and local people had very different expectations about the relationship they were establishing with each other. Local people couch relations with outsiders, in particular those that are continuous, in the idiom of kinship. From this flows an expectation of equality, partnership and reciprocity, part of their 'moral economy'.

It is clear from the letter of invitation that the TWMA committee sent to WWF in 1996 that local people expected more 'development' than 'conservation' to result from those interactions: the first of three areas of assistance sought from WWF was 'identifying areas of commerce (development incentives)'.⁴³ A PNG WWF officer noted this with respect to their operations in Tonda: 'Sometimes the expectations from the community is [*sic*] different; they see an outside body like WWF as being a provider of services.'⁴⁴

For many of the landowners who live in the TWMA, there is a sense of disappointment about WWF's activities. Despite WWF's having operated in the area for more than a decade, there is no evidence of 'development'. There is also a feeling that WWF exploited the Tonda 'brand' to develop multiple and ever-increasing programs. As one local man complained, 'they used our name' to obtain funding from international donors, which is claimed to have then been used elsewhere in the Trans-Fly or PNG.

Another complaint is that the results of research by WWF and the various scientists they contracted were never shared with local people; some also reported that researchers would show up in their communities unannounced, and others were unclear about the nature of the scientists' work. Although in a minority of cases researchers did publish their work, it appears that this was not communicated to villagers.⁴⁵

Nonetheless there is also appreciation for some of their efforts, including the delivery of technical assistance such as training and educational modules, and

exchange visits to Wasur and Kakadu National Park in Australia are fondly remembered by the participants.

Discussion

A number of studies, mostly written by anthropologists, have documented similar engagements between Melanesians and conservation NGOs. As with the TWMA, they have found that there was a disconnect between the goals of both actors: 'scientists and local people's different ways of perceiving, valuing, and using the natural world often conflict'.⁴⁶ These include Conservation International's disastrous experiment in Milne Bay Province, with its attempt to trade 'cargo' (Western development) for conservation.⁴⁷ Similarly, West has documented the profound disconnect between conservationists and the Gimi people of the Crater Mountain WMA in the 1990s, in terms of goals and expectations, leading to disappointment for both groups. Like the people of Tonda, the Gimi expected that in exchange for their engagement with 'conservation', the NGO would deliver development.⁴⁸ Another ICAD project, in the Bismarck–Ramu area of Madang, was beset with similar issues.⁴⁹ There, local communities were initially positive about establishing long-term reciprocal partnerships with NGOs because they believed participation in conservation activities would result in tangible benefits, including improved livelihoods and access to resources and services, such as boats and health-care centres or schools.⁵⁰

WWF is an environmental NGO, which, like all other Western conservationists, primarily seeks 'to address "the needs of nature" rather than the aspirations of its local guardians'.⁵¹ When WWF and local people spoke of conservation and development, they were speaking of different projects and orientations. In the case of Tonda, while WWF might have presented their work to locals as an Integrated Conservation and Development (ICAD) program, there was no observable contribution to 'development'. Both groups were talking past each other, and local aspirations were not met. More attention by WWF to the 'D' in ICAD might have done more to establish and build relationships than any number of workshops on deer grazing or fire regimes.

The attempts by WWF to engage with the TWMA committee and inhabitants of the area were not successful in the long term. This was partly due to dependency. NGO engagements are determined by cyclical donor funding, which is very difficult to maintain for years on end.⁵² This makes them, in a sense, as dependent as local people are on outside others and accounts, in part, for their essentialised representations of the people and landscape of the TWMA. Indeed the activities of WWF arguably promoted dependency, as they controlled the purse strings. Despite the efforts to include local people in decision-making, the structures largely replicated externally derived processes—ultimately this was an attempt to inculcate outsider (i.e. both regional and global hegemonic practices) management and conservation agendas. While WWF does acknowledge the importance of traditional knowledge in areas such as fire management, their failure to engage with local

politics means that they can never hope to understand the nature of local control over lands and resources and the source and nature of disputes. Attention to these details might suggest appropriate methods of dealing with conflicts, which so often affect the operation of Bensbach Wildlife Lodge, and hence royalty generation for the WMA committee.

Although there has been increased awareness of environmental issues among local people as a result of WWF activities, this did not translate into any meaningful ecological action on the ground, such as the elimination of the known pests in the area, e.g. the destruction of weeds. Unlike Kakadu in Australia, and even Wasur in Indonesia, the PNG Government is totally incapable of responding to such developments. The problems of the Tonda WMA are not local; on a borderland, adjoining the frontier of a large Asian state, they are subject to much wider global social, political and environmental forces. Life on a remote and underdeveloped borderland presents formidable obstacles to the implementation of conservation and development in the area.

The attempts by WWF to reinvigorate TWMA were dependent on continuous appeals to a fickle international donor community for large amounts of cyclical funding. This dependency accounts, in part, for their deployment of essentialised representations of the people and landscape of the Tonda WMA. However, this does not excuse it, nor the lack of attention paid to power in this intervention, which ultimately undermined it. WWF's models of 'capacity-building' were as much top-down as those of the DEC in the early years of TWMA's operations; they sought to inculcate the management and decision-making processes of outsider, largely Western NGOs, to local people.

Their attempts to develop new rules for the TWMA to govern resource commoditisation and the presentation of capacity-building exercises, such as 'conflict resolution' workshops, was not informed by any detailed knowledge of local society and culture. There was a failure to tackle sociocultural issues that would come to undermine the artificially imposed structure of the program and its governing mechanisms, resulting in disputes over what constitutes fair representation. Such notions of fairness and authority to speak for another associated with representation are inherently cultural. There was little point making new rules if there was no capitalist activity in the area and if management structures are not congruent with local kinship systems.

Many of the key outcomes sought by WWF in PNG, in terms of invigorating Tonda, and expanding conservation initiatives in south-west Western Province, appear to have been thwarted by DEC, with its gatekeeper role in terms of processing the gazettal of new rules and new WMAs. Whether through bureaucratic ineptitude or deliberate intent, it was able to stymie initiatives that WWF had spent many years working on with local communities, as well as enormous amounts of donor funds.

WWF staff themselves acknowledged that faced with a lack of state capacity—in the form of DEC—local solutions must be found to support the management of the Tonda WMA:

In reality, unless the committee can develop a system of self-funding to tackle the range of threats to Tonda and the services required to do this in the absence of government funding, Tonda is unlikely to function as a conservation area in more than name. Without a strong locally funded community institution to manage even local level management, there is never going to be an effective means of operating more broadly at the cross-border level.⁵³

They also understood that Tonda communities have few alternative ways to generation cash income other than the sale of natural resources (i.e. wildlife) and therefore suggested that supporting this trade, to the fast-growing Merauke borderland, was the best funding solution in terms of providing support for the Tonda WMA committee to undertake its management responsibilities. This is perhaps a strange suggestion from a conservation NGO dedicated to protecting wildlife, and one with no real answer to the exploitation that PNG borderland dwellers face when engaging in cross-border trade in wildlife species on the Indonesian side of the border.⁵⁴

International NGO ideas about relationships sit in stark contrast with Melanesian ethos, with the former establishing stakeholder relations based on short-term utility and the latter assuming longer-term reciprocal relations. This is particularly problematic, as noted in chapter 5, in places beyond the state's reach (in terms of capacity and authority) where organisations come to operate in a manner that assumes a public role to fill the gap of public services and authority. Not dissimilar to observations made in chapter 8 regarding OK Tedi's role as a quasi-state actor, international NGOs are used to fill gaps but might not be aligned with local priorities and are in no way accountable to local populations. Ultimately conservation NGOs routinely prioritise goals that might not be in the interest of local landowners, who are not merely 'stakeholders'. Conservation NGOs are particularly inclined to take on the responsibility of the state in areas of limited statehood as governments tend not to prioritise these elements of public policy and are happy to allow donor-funded bodies with the scientific expertise to fill the gap. Unfortunately, this reliance on gap-filling NGOs undermines transparency and accountability as NGOs are ultimately accountable to donors.

Conclusion

WWF's cross-jurisdictional conservation intervention in south New Guinea was not successful. Although many of its aims and activities were laudable, numerous factors conspired to undermine the potential of their programs—including the vast difficulties of working in the remote peripheries of two states, local cultural

orientations and expectations — which were often ignored — together with the funding modalities that prevail in the NGO sector. Ultimately this program was determined by the interests and imaginings of outsiders, and local desires and aspirations were unsurprisingly not met.

The experience of the international conservation establishment in Melanesia shows that there is a need to engage more directly with local social worlds. There is a need to engage in a respectful and pragmatic way, understanding that in most cases local communities see the relationship as potentially delivering services that the state should provide, and development more generally. In Tonda, the people want what conservationists themselves have; they want what people in the First World have. They want wealth, housing, health care, technology. Although they recognise the biodiversity values of their ancestral domains, they also see them as ‘their gold’, their pathway to development.

As Filer notes with regard to WMAs:⁵⁵

[E]xperience has shown that the different levels of government have almost no capacity to support the management of these areas, let alone to influence the activities of their resident customary owners ... Custody of PNG’s protected area network has thus devolved to a collection of national and international NGOs whose managers sometimes collaborate, but often compete, in bids to secure the foreign money required to sustain their own engagement with local communities. The net result has been a mixture of donor-funded conservation projects that normally last for a limited period of time and rarely have any long-term impact on local livelihoods.

In Tonda, wildlife resources are the basis of these livelihoods, but these are under increasing pressure from the Papuan (Indonesian) borderland. Wasur National Park is located next to Merauke, which has a population approaching a hundred thousand; it is the second largest Indonesian city on the island. Wasur is reported to have been degraded by years of poaching (both by locals and outsiders, including the military) and threatened by nearby agribusiness developments. This has in turn led to increased poaching in Tonda.

Following incidents along the southern PNG border area, including reports of activity by OPM (Organisasi Papua Merdeka; Free Papua Movement), transboundary trade in firearms, and increased poaching, in the mid-2000s the PNG Defence Force constructed a forward patrol post in Weam, on the upper Bensbach River, and based a platoon of army soldiers there. This may be seen as part of the increased securitisation of the Indonesian–PNG–Australian borderland discussed in other chapters in this volume. This development has had negative consequences, with local people reporting intimidation and robberies by Defence Force personnel.⁵⁶ Around the same time, the Indonesian navy established a patrol post at the mouth of the Bensbach. There have also been reports of similar intimidation, threats and

demands by personnel stationed there, by Bensbach people travelling in and out of the river, while travelling to and from Merauke and Daru.

In a 2015 coffee-table book on the TWMA, Peter O'Neill, then Prime Minister of PNG, stated that the area must become a national park, presumably under the *National Parks Act 1982*, after which World Heritage listing will be sought.⁵⁷ Local people know nothing about this proposal, and ask what it might in fact mean for both the TWMA and for themselves. Under the *National Parks Act 1986*, such areas can only be established on government land (i.e. alienated from the customary owners) or land that is the subject of a state lease, and most aspects of park management are under the control of the Director of National Parks. The Wildlife Management Area concept was founded on the premise of landowner recognition and control, and recognition of their right to benefit from their wildlife resources. They are unlikely ever to accept the imposition of a top-down, national park scheme for Tonda.

A 2017 assessment of PNG's protected areas found that Tonda was 'only in fair condition, and declining, due to multiple threats and lack of law enforcement capacity'.⁵⁸ Much of these threats to its biodiversity stem from its borderland location, where the PNG state is largely absent and does almost nothing to support, protect and manage this flagship area. Many villagers look to another NGO to fill this void. External assistance of this kind does not seem a likely future, given the failure of one of the world's largest conservation organisations to deliver meaningful conservation and development in this challenging environment.

Notes

<Setter: take in notes here, numbered from 1 to end>

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10

Conclusion

Mark Moran

Review of the 'Guidelines for Traditional Visitors'

The original architects of the Torres Strait Treaty drew on shared tradition, culture and mobility in pursuit of a two-way win, in the 'spirit of mutual friendship and good neighbourliness'. Its lack of prescription permits considerable interpretation in how it is administered. This openness sits at odds with border protection, with its preoccupation with security and highly prescribed procedures. According to its logics, border protection does not need to consider how to alleviate the underdevelopment of the South Fly, especially if any measure like commercial trade makes border crossings more attractive. But neither does it consider its adverse effects and, perversely, the risks that underdevelopment creates for border protection.

The consensus among government stakeholders that seemed to emerge from the 2010 Senate Inquiry was that the treaty and border management were working, along the lines of 'if it ain't broke, don't fix it'. Since that time, border management has hardened, so there does seem to be an unstated policy of correcting a prior laissez-faire approach. DFAT in its flagship 2017 Foreign Policy White Paper reaffirmed its commitment to preserving the integrity of the treaty as a foundation for border management.¹ If the realpolitik is to preserve the status quo, albeit with more enforcement, then consideration must sensibly include the adverse counter-effects that additional enforcement is having on the status quo. Staying with the 'Australia's security' lens, there are three clear risks that can arise from enduring poverty and lack of services in the South Fly. The first concerns the lack of a health systems approach to population health and infectious disease, including the rise of anti-microbial resistant TB. The second is the people of South Fly turning to trading with Indonesia, including the rise of resource exploitation and transnational crime (viz, the existing trade routes of Indonesian traders in fishery products).

The third is risks arising from the further disenfranchisement of people from the South Fly villages, leading to avoidance, resistance or conflict whereby PNG nationals start to disregard the treaty. The border and the treaty provisions act to produce a hierarchy of identities and associated opportunities and privileges. At the top is Torres Strait Islanders, followed by Papuan Australian citizens, Treaty villagers next and, at the bottom of the pile, non-Treaty villagers. This pecking order is clear in living conditions, access to markets and freedom of movement in the

borderland area. What is most striking, however, is the power relations exhibited through the enforcement of the border regime—where policies and regulations are often performed by local officials in the Torres Strait (figure 10.1). Here a host of petty rules and bureaucratic relationships come to define and control interactions across the border in ways that permeate daily life. These rules govern travel, access to health services, conditions of trade, opportunities for work, ability to earn money and even the conditions of romantic and marital relationships. Feelings of injustice and jealousy fuel resentment and instability, which is the last thing that anyone wants on Australia's doorstep.

<figure 10.1 near here>

A sign for arriving Treaty villagers in the outer Torres Strait islands (Research team, 2017)

The provisions in the treaty that define the international border and different jurisdictional boundaries are now deeply enshrined in the history of Torres Strait struggle for self-governance. As discussed by Kevin Murphy (chapter 2), the current location of the border was a major tactical victory for focal Torres Strait leaders, given the then proposal to exclude the outer Torres Strait Islands. The treaty enshrines a shared history and governance, which remains fundamental to culture and livelihoods in the borderland. Its original objective of protecting the way of life of traditional inhabitants remains sound. Improvements to the wording of the treaty might be considered, through removing the vagueness of what constitutes 'tradition'. Clearly what is 'traditional' has evolved since the time of the treaty signing, as it will continue to do. But any amendments would also open the door to changing other important aspects of the treaty that should be preserved.

Restricting the selling of goods and providing paid labour appears particularly mean-spirited, and would appear to be at odds with treaty provisions that allow 'barter and market trade'. Limiting access to ATMs shuts down an important means for some families to get remittances from relative and friends. Overstayers and other rule-breakers deserve to be penalised, but this should not lead to bans on entire villages, as those who do follow the rules make a crucial contribution to the fledgling economy in the South Fly. From our analysis, the problem is not with the Treaty itself but rather the way it has been interpreted through the administrative arrangements embedded in the 'Guidelines for Traditional Inhabitants'.²

The treaty guidelines should be subjected to a bilateral review, with equal input from representatives of all the people affected by it. While the guidelines could be renegotiated through the various bilateral committees set up under the treaty, the power imbalances between the Australian and PNG sides must be addressed. The people in the South Fly, including their elected members who sit on the treaty committees, do not have access to legal representation or policy advice. An environment of unequal power and resources is prone to injustice. The Australian Government could insist that the PNG Government provide this advice, or fund such arrangements, as it does before native title negotiations are allowed to proceed within Australia.

As discussed by Jennifer Corrin (chapter 3), the guidelines could constitute grounds for judicial review. This is an administrative law remedy to allow breaches of natural justice and errors of fact or reasoning taken by public decision-makers to be challenged. In PNG, such applications can be heard by the Supreme Court or the National Court. A less controversial, cheaper and less effective alternative would be to make a complaint to the PNG Ombudsman. While the likelihood of success is unknown, an application would have the benefit of airing these concerns and creating a more level playing field to remedy any unfair interpretations. It would also provide an opportunity to involve a broader number of stakeholders than currently involved on the Australian side, to ensure that Australia's security concerns are indeed properly managed.

Increasing aid assistance

Given Australia's preoccupation with its border management to protect national security interests, an obvious solution is to look to aid assistance that it provides to PNG and to ensure that it is better targeted and more effective in the South Fly. Before 2010, Australia provided surprisingly limited aid assistance to South Fly, the notable exception being the delivery and construction of rainwater tanks to coastal villages in 2002. Interestingly, these tanks were not limited to Treaty villages. There was also an Australian Provincial Health Adviser based in Daru under the Health and HIV Implementation Services Provider from the mid-2000s.³ Support ramped up significantly from 2010 with the outbreak of MDR TB and the handover of patients from Queensland Health, which had previously received treatment at TB clinics on the outer Torres Strait Islands. DFAT funded the construction of a TB ward and other infrastructure at Daru General Hospital, then clinical support via the Melbourne-based Burnet Institute and treatment support through World Vision.

As discussed in chapter 6, DFAT's assistance in health has largely since focused on Daru, on controlling the disease of most threat to the health security of Australia, rather than strengthening the Western Province health system. The other focus of DFAT's aid assistance has been its support to the BRTV ranger program operated by the Reef and Rainforest Cooperative Research Centre. Notwithstanding the achievements of BRTV, limiting it to the Treaty villages closely associates it with Australia's border management (chapter 5). There is a need to normalise aid assistance to the South Fly, with a priority on development outcomes rather than border management.

A positive development has been the recent arrival of international non-government organisations (NGOs) in the district. From 2015, World Vision has operated a WASH program in selected villages with funding from DFAT, initially up the river systems near Daru, before moving further west. Since 2017, Marie Stopes International has undertaken an outreach service from Daru, providing family planning services. In 2019, UNICEF started a capacity-building project with village midwives, along the Pahoturi River. Similarly, the National Agriculture Research Institute (NARI) was working with funding from the European Union to ensure food

security in Kibuli, a PNG Government's nominated 'growth centre'. Two multilateral aid programs have built infrastructure in some villages, both of which were funded in part by DFAT: the World Bank's Rural Service Delivery Program (RSDP), which has built school classrooms, resource centres and other facilities using a community-driven approach;⁴ and the Asian Development Bank's Health Sector Services Development Program (HSSDP), which has built a health centre at Mabudian through a special allocation of DFAT funds.⁵ These efforts are largely uncoordinated and appear scatter-gunned.

It is also interesting to contrast the South Fly with the other two districts in Western Province. The Middle Fly and North Fly districts of the Western Province face similar transportation and logistical challenges, yet they benefit from a range of church-based organisations, particularly supporting health. According to the Western Provincial Health Authority, more than half of the health facilities in the Middle Fly and North Fly are run by churches, including Catholic Health Services and the Evangelical Church of PNG (ECPNG). Funding from Ok Tedi has also facilitated health-system strengthening services, particularly through North Fly Health Services Development Program, run by an Australian company (formerly JTA, now Abt & Associates).⁶ Similarly, when BHP divested its ownership of Ok Tedi in 2002, it created the PNG Sustainable Development Program (SDP) to invest the substantial profits of the mine. PNG SDP has in the past funded a range of projects across the Western Province, as well as other parts of PNG, but comparatively little of this funding has benefited the villages along the South Fly coast.⁷ After a period of hiatus due to court proceedings, it has recently relaunched a number of development programs, which included upgrades to mobile phone towers and grants to school boards.⁸

Despite the strategic importance of this region for Australia's border security, the South Fly appears to have been a blind spot for aid agencies active in PNG. To understand why this was the case, we consulted a number of international aid workers. Some perceived that people living in the South Fly were already benefiting from accessing services in Australia, which is far from straightforwardly the case. Others had the view that the accounts of the Western provincial government were flush with income from the Ok Tedi mine and that the royalties and projects that it funded, so there was no need of any aid assistance. But little of this mining money reaches beyond the Fly River corridor to the coastal and western villages of South Fly District. This perception also extended to some PNG Government officials, where its fiscal equalisation formula reduces central funding to the Western Province in line with internal mining revenues.⁹ Others took a more punitive stance, pointing to the history of corruption and misappropriation in the Western Province. They argued that aid assistance would be better directed elsewhere, until a generation of leaders emerged who were of the calibre found in other provinces. Others took a more economic rationalist perspective, judging that a small, dispersed and remote population does not provide a sufficient return on investment.¹⁰

Other aid workers described how BRTV was already working there, so they should focus their efforts elsewhere. Again, BRTV provides only a limited range of services and only to a select number of Treaty villages. It is interesting to note how aid workers in Daru and Port Moresby held misconceptions about the BRTV, describing how it differed from the standard development practice they followed. This is consistent with our analysis in chapter 5, which found BTRV to be a unique hybrid organisation that spans the Australian policy fields of Indigenous affairs, border protection and international development. How it is perceived by mainstream aid agencies reinforces a finding from our research: that the borderland is a unique development context, which development agencies and their workers struggle to understand.

PNG does not receive high levels of aid, as measured on a percentage of its Gross National Income (less than 3 per cent in 2016),¹¹ which is considerably less than to other Pacific countries, but the quantity of the aid that it receives is disproportionately dominated by Australia (58 per cent of total overseas development aid [ODA] in 2016).¹² As a consequence, Australian aid is disproportionately influential. The Australian Government also struggles to reconcile three different policy platforms in the borderland, each of which is in tension and highly politicised within its domestic constituency: Indigenous affairs, border protection and its aid program to PNG. In approaching development in the South Fly, the Australian Government might encourage and partner with bilateral aid agencies from other countries (e.g. New Zealand's Ministry of Foreign Affairs and Trade, Japan's International Cooperation Agency), given that they do not have the same complex mix of national security and other domestic interests at play. There could also be partnering more with multilateral aid agencies (e.g. United Nations Development Program, UNICEF, multilateral development banks), given their experience of working multilaterally across other borders.

As the Australian border tightens—reducing access to trade, banking, shopping and health services—there is a corresponding need for international aid assistance to increase. This aid should be normalised with other parts of PNG, but in such a way that treats the borderland as a unique development context. This aid assistance should follow the logics of regional development and population health, and not limit itself to certain villages privileged under a border management regime.

Water supply

A high priority should be afforded to improved water supply. From the survey data, it was the mostly commonly listed improvement that people wanted in their community. Water supply, sanitation and hygiene (WASH) is a relatively uncomplicated, inexpensive and proven intervention, which could make an enormous difference to the environmental health, incidence of communicable diseases and general vulnerability of South Fly villages. Time saved in walking long distances to springs and swamps during the dry season would free people (usually women) for subsistence and other livelihood activities. A reliable water supply

would also take pressure off the border and the limited water resources of the outer Torres Strait Islands.

World Vision is actively and successfully undertaking a WASH program in the South Fly. It builds VIPs (Ventilated Improved Pit) latrines, and ensures that there is a hand-washing stand nearby. It is clearly making important improvements with sanitation and hygiene, but it seems to afford this a higher priority than an adequate water supply. It relies solely on rainwater tanks, which alone are not sufficient, given the unreliability and seasonality of the rainfall. Site selection is also conditional on villagers demonstrating behavioural changes in hygiene, including redeveloping their village layouts according to a Healthy Islands Concept.¹³ Without detracting from the success of the program and the significance of behavioural change, their practices seemed at times to overreach, with some villages being pressured to relocate houses to straighten and widen streets and to improve drainage.

There were major droughts in 1997 and 2015, and the emergencies that followed resulted in scarcity of both food and water. Emergency rice supplies were transported to the Morehead LLG, with the assistance of Ok Tedi Development Fund (OTDF) and DFAT.¹⁴ Rainwater tanks obviously fail early in a drought, and people then resort to walking to springs and swamps, at an ever-increasing distance as they dry up. With future droughts, it is possible that people would turn to the Australian border in desperation for water and food. Although this has not in the past involved large numbers, the risk is real. The Joint Advisory Council (JAC) that oversees the treaty has repeatedly raised the strategic importance of ensuring a reliable supply of drinking water in villages on the PNG side.¹⁵

Good supplies of underground water have been found in mainland coastal villages, including hand-dug wells at Buzi and a borehole in Kadawa village opposite Daru. The church-based Baptist Drillers in Daru, who are experienced in drilling boreholes, can be contracted subject to funding. Combining a solar pump and elevated tank would ensure a reliable supply.

Transportation

From the survey data, people ranked improving transportation among their highest priorities, after water supply, housing and economic opportunities. Compared to WASH, tackling the transportation problems of the South Fly is much more difficult and expensive (figure 10.2). There are substantial challenges in building roads across the flood-prone savannah, including multiple stream crossings, saturated alluvial soils, limited drainage and the need to import gravel over long distances.

Nonetheless, the Indonesian authorities are building roads in similar terrain across the border in Merauke Regency, so it must be possible. There is an existing inland track, optimistically called the Trans-Fly Highway, which travels almost the entire length of the South Fly District, from east to west from Weam through Morehead and Wipim to Oriomo. The road is impassable for much of the year, and there are few, if any, working vehicles.

<figure 10.2 near here>

A hand-painted sign in South Fly, advertising fuel for K7 (A\$3) per litre.

The South Fly has a long history of water transportation, as evident in the comparative lack of airstrips along the coast. Most villages visited still had a seaworthy outrigger wooden canoe, or the remains of one (figure 10.3). During the colonial period, different departmental boats travelled from Daru, along the coast and up the river systems. Dimiri village had its own boat during the 1980s and 1990s, which was used to ship copra and pineapples to Daru until the motor failed. Today the only transportation available is via fibreglass banana boats with typically 40-horsepower outboard engines, which are owned either by the community or privately. With the cost of fuel as high as K10 (\$5) per litre in some villages, there is little opportunity for farmers and fishers to get their produce to market. The high costs, difficulty and (at times) danger of water transportation stymies most development efforts, whether internally or externally organised.

<figure 10.3 near here>

An outrigger sailing canoe beached at low tide on Daru Island. (Research team, 2019)

Other Pacific Island nations face similar transportation problems, with small remote island populations and similarly high fuel costs, which have required substantial ongoing transportation subsidies.¹⁶ OK Tedi Development Foundation (OTDF) subsidises the operation of a ferry boat service down the Fly River, from Kiunga to Daru. There is every reason for a similar subsidy of a ferry the South Fly coast. A weekly ferry service that plied its way along the coast from Daru to Bula and back would be an enormous improvement, enabling people to get their goods to market. It would also take pressure off Australian services on the outer Torres Strait Islands, especially with health referrals to Daru hospital. It would also be enable traders to travel to the villages and even to buy and sell off the barge.

The subsidy could work via a voucher system. Each household or Ward Development Committee could be issued a number of vouchers for travel to Daru or Bula, for trade, shopping and service. Vouchers could also be used to target aid assistance: for example, vouchers to pregnant women for pre- and post-natal care to travel to Daru hospital. When Queensland Health refers patients across the border, they could supply them with a voucher to get them to Daru hospital. If a commercial ferry is not possible, this system could support a small fleet of registered operators using privately or community-owned banana boats.

There are three obvious places for the ferry to port: Mabudian, Buzi and Bula, at the mouths of the Pahoturi, Mai Kussa and Morehead rivers respectively. The ferry would need a shoal draft in order to navigate the shallow waters. The economic viability of this ferry, including economic returns to the Western Province, would be greatly enhanced if the ferry was to continue to Merauke, opening up international trade between Indonesia and PNG, as described above (figure 1.1).

Village economic development

From the household survey, people indicated economic development as being one of their top four priorities. Prior attempts at economic development projects in the borderland have largely failed. There are complex local issues surrounding communal ownership of land and other assets that can frustrate efforts towards enterprise and infrastructure development. Land ownership issues along the South Fly are exacerbated by prior migrations (chapter 2). Landowners strongly assert their rights, and reject the authority of elected members or community leaders to speak on their behalf. As the experience of WWF demonstrated, they are much more than stakeholders in a community development project (chapter 9).

Kevin Murphy observed an Australian Centre for International Agricultural Research (ACIAR) project that ran from the year 2000, based on extracting the oil from waria waria trees, using stills supplied to villages on the western side of South Fly District. Disputes arose over the ownership of the stills and access to the trees. In 2005, PNG SDP took over the project, investing into a joint venture with an Australian company, but by 2011 they had concluded that the business was not sustainable.¹⁷

There is also a history of landowners obtaining royalties and compensation from mining (chapter 8), which sets expectations of personal gain from development projects, regardless of the potential benefits that might accrue to their broader community. People may view the efforts of development agencies in a transactional sense, in terms of obtaining the services or public finances they do not receive from their government, rather than via a developmental lens of having their capacity built.

Smallholder developments in the South Fly have little chance of success, due to their isolation and disconnection from market supply chains. While high-value niche markets exist that are well suited to villager farmers and fishers, including organic foods and sustainable fisheries, the lack of transport infrastructure and exorbitant fuel costs for dinghies seriously inhibit the opportunities for market integration. This aligns with John Burton's research on the impact of small-scale agricultural projects in the Fly Delta, which showed that, even with a transport subsidy by the OTDF, any profits were largely absorbed by the costs of getting to market.¹⁸

PNG has a history of operating nucleus estates for commercial crops, typically as a joint venture between the PNG Government and an international corporation, surrounded by a number of smallholders. At the centre of each estate is an agricultural station, which acts as the commercial hub and demonstration farm. Participating outgrowers are then integrated into the estate's supply chains for agricultural inputs and outputs. PNG SDP is planning such a development at the Oriomo (Mer Lagoon). Its location on the Oriomo River, just north of Daru, is well suited for sea transportation, and the area has already been a site for commercial logging. Other parts of the Western Province are growing rubber, and there are

recent moves to grow rice. These efforts are laudable, but considerable obstacles remain in establishing and sustaining their economic viability.

Cross-border trade and Indonesia

In considering economic development, there are unrealised opportunities to take advantage of the South Fly as a borderland, with international trade across the borders into Australia and Indonesia. One of the most effective forms of development in other borderlands globally is the production of goods (e.g. fishing, agriculture, manufacturing) on the lower-income side, then selling those goods into the higher-income side. Economic zones can allow access to lucrative international markets, similar to the way that Free Trade Areas and Spatial Development Initiatives have been conceptualised elsewhere for borderlands.¹⁹ The foundations for economic cooperation in a borderland is each country's geopolitical proximity and their similar cultures and kinship networks.

Instead, current approaches to border management by Australia strive to limit any commercial trade with PNG. The 'Guidelines for Traditional Visitors' interpret 'barter and market' trade to exclude commercial activity, which leaves South Fly people hostage to low payments in cash, processed food or fuel. Significant opportunities for commercial trade that could have brought economic benefits to both the South Fly and the Torres Strait Islanders (see discussion on the trade of live mud crabs in chapter 5) have been overlooked. And while the Australian border has hardened, the Indonesian border has beckoned, as discussed further below.

There is a legal way to bypass the treaty border management arrangements, by exporting goods through an approved Australian 'port', the closest of which are Horn Island or Cairns. In terms of connecting to southern markets, Cairns is the far better option. A local businessman on Daru Island, Mereme Maina, who owns Maru Marine, has been exporting live lobster to Cairns since 2013.²⁰ The scale of the operation in terms of processing and gaining the necessary permits is extensive, consistent in size with what is widely classified as 'medium' enterprise.²¹

The BRTV ranger program has explored more village-level micro- and small-enterprises, for export into Australia. Taro is grown in plentiful quantities in the South Fly. Fresh, frozen and packages of powdered taro, which comes from as far away as Fiji, is sold in Torres Strait Island stores. The BRTV investigated the processing required to produce taro to reach Australian biosecurity standards, concluding that this would be feasible. They have also explored direct arts and crafts sales to Cairns arts and crafts dealers. Although their efforts might still reach fruition, they require intense logistical and administrative support brokered through a third party, compared to the obvious alternative of smallholders trading across the border.

Cash is now essential for survival, so if people are unable to trade with Australia, they will look elsewhere. There is a vibrant market in Daru, but access is largely limited to the villages nearby. Most villages rely instead on the Indonesian traders who visit their villages illegally from Merauke. Some traders also visit from

Daru to supply Chinese PNG businesses there. These travelling traders service a lucrative Asian market, again with low-cash payments for locals for what are extremely high-value products. The Indonesian traders take considerable risks and pay bribes, which they cover through high profits. The low payments that PNG fishers receive fuel greater exploitation of their limited resources, and so the cycle continues.

Fisheries and marine ecosystems management in the Protected Zone along the Australian border have also suffered from a logic that fails to respond to underdevelopment on the PNG side. The marine resources across the borderland are critical not only to their food security but also for earning much-needed cash. Problems of overfishing are exacerbated by environmental damage to the Fly River from the OK Tedi mine and the consequent internal migration to Daru. The management of marine resources is starkly divided, with little management occurring on the PNG side, and seemingly boundless resources and state-of-the-art surveillance technology on the Australian side. South Fly residents face fines and confiscation of their boats if caught, but some still run the risk in order to exploit the valuable and now more abundant marine resources on the Australian side.

The present situation requires an innovative governance response that reimagines the borderland in terms of local livelihoods, in ways that take pressure off the border and marine resources. Busilacchi and her colleagues (chapter 7) concluded the need for a trade agreement, starting first with the PNG–Indonesia border, and possibly extending it into Australia in the future. In their view, such a trade zone could both improve regulation and the prices that local fishers receive, opening up lucrative Asian markets, as well as ultimately reducing overfishing.

Indonesia and PNG authorities are actively working to facilitate and legalise cross-border trade, including discussions for a trade agreement.²² On the north coast side of PNG, where the Indonesian border intersects the Vanimo–Jayapura Highway, both governments have invested into developing the Wutung border post, which includes immigration and customs buildings and market facilities. The Fly River (Western) provincial government is already planning to build a smaller but similar border post at Weam (west of Morehead), to connect to the already sealed, two-lane road that runs from Merauke to the Indonesian border town of Sota. Near where the Indonesian border meets the south coast, they also plan to develop a border post at Bula village. There is already a small immigration office and staff house there. Bula is perfectly positioned for boats that travel along the coast, as well as connecting to villages inland via the Morehead River.

There is a population of almost 90 000 people living in Merauke Township, and almost 200 000 people living in the surrounding Merauke Regency (chapter 3). The Indonesian Government is considering a proposal to establish a new province there to be called South Papua.²³ In terms of its proximity, this market eclipses anything available to the people of South Fly District, whether within its boundaries or any centre to its north or east. As discussed above, a coastal vessel that regularly

travelled from Daru and Merauke and back, stopping at Bula, Buzi and Mabudian, would open up many export and import opportunities.

Labour mobility

The guidelines that are used to administer the treaty explicitly limit people crossing over to work. Where this still occurs informally, payments are quite low. There is little opportunity for improvement, given the general lack of employment opportunities in the Torres Strait. The people of South Fly's proficiency in English and prior history of working in the Torres Strait would nonetheless make them excellent candidates for seasonal work in Australia. People would not cross into the Torres Strait as traditional inhabitants but rather travel through normal immigration ports, via Daru or Port Moresby.

DFAT's Seasonal Worker Program and Pacific Labour Scheme facilitates the training, recruitment and placement of temporary overseas workers with Australian employers, primarily in the agricultural sector. A World Bank study found that the average worker remitted \$2200 during their period of employment, then returned with a further \$6650 in savings, or \$8850 in total.²⁴ This would be a huge boost to the livelihoods of a PNG household. Should 120 workers be recruited, this would return in excess of \$1 million into the district, which would have a marked influence on the local economy. A key consideration for recruitment is the job-readiness of the overseas workers, including their English literacy and familiarity with Australia culture. Many South Fly residents would be excellent candidates, given that English is their lingua franca and they have a prior history and familiarity of working in Australia.

Australia has recently extended its Pacific Labour Program to PNG. In 2019, a household in one South Fly village had themselves worked out how to apply via the immigration office in Daru. It is unlikely, however, that people from the South Fly will overcome the difficulty and cost of travel to Port Moresby, to locate the nearest registered recruiter and certified health centre.²⁵ But a special area intervention could be designed, with an office established in Daru to facilitate applications. The challenges of obtaining the necessary passports, documentation and health checks could be overcome with a targeted recruitment program.

Connectivity and mobile money

There is also unrealised potential from improved energy supply, most likely via solar power, but also small wind turbines. Forty-two per cent of village households (111 of 164) had a solar panel of some description, which they used for charging mobile phones or lighting at night. Improved energy access can also improve education, by extending the hours that children can do homework, and learning apps on tablets (figure 10.4). According to the value chain for agricultural and fishing markets, there can also be financial gains through local processing, drying or refrigeration. Transitioning from traditional bio-fuels used for cooking to more

efficient energy stoves can reduce air pollution and respiratory disease and the time needed to collect firewood.

<take in figure 10.4 near here>

A boy in a South Fly village uses a small solar panel to charge a mobile phone (Research team, 2018)

Combining energy access with connectivity could serve as a catalyst for improved livelihood outcomes. There is an existing network of mobile phone towers across the South Fly, but poor maintenance and coastal corrosion means that coverage can be unreliable. Compared to the costs of building roads over flood-prone savannah, building and maintaining mobile phone towers is within the financial reach of governments, aid agencies and mining companies. In 2018 work was completed to upgrade the Digicel system to 3G internet with financial support from PNG SDP. The upkeep of this infrastructure will ultimately depend on the adoption of mobile phones by users and by the economic returns to Digicel.

In many South Fly villages, the shared mobile phone is often suspended from a tree or a window, in the one place where reception appears intermittently. These 'spots' of signal could be strengthened by building boosters or repeaters, powered by solar panels. A range of appropriate technology products are available.²⁶ If no signal is available, there are low-bandwidth satellite receivers that work in combination with wi-fi. Low-cost smart phones can be programmed to communicate with each other, or cache data, with apps designed for low bandwidth.²⁷ Solar power arrangements can be combined with telecommunications towers and repeaters, to facilitate a localised power supply/charging station with internet access.²⁸

Villagers receive remittances from relatives living in urban centres like Port Moresby or in Australia, through Post PNG or BSP branches in Daru. Households affected by the Ok Tedi mine receive royalty and compensation payments, and government workers receive wages, or pensions if retired. These recipients then face high transportation costs to travel to Daru to collect these payments, which can exceed K100, consuming much, if not all, of the payment received.²⁹

Villagers are already transferring money between bank accounts through their mobile devices, reducing the need for expensive and risky travel to Daru. In most of the 20 villages visited in 2019, there was someone who had a mobile banking account, usually a school teacher, LLG member or entrepreneur. In Mari village, the member's family needed to get money to him in Daru. They took K100 to the school teacher, who immediately transferred the funds from money he had in his mobile bank where his pay is deposited. This had the bonus of giving the school teacher cash, allowing him to buy more produce locally, and reducing the need for him to travel to Daru.

The next step would be 'mobile money', which facilitates in-situ cashless buying and selling, and is starting to occur in urban centres in PNG. In comparison to carrying around cash, people enjoy the added security needed to avoid theft and harassment, especially women.³⁰ Digicel subscribers in the South Fly already exchange airtime (mobile top-up) via the 'Credit U Credit Me' system, a known

precursor to mobile money.³¹ Currently in the South Fly, most people were only transferring phone credits to their family and close friends, and not yet for trade. People were aware of this potential, and should they progress to it, mobile money could stimulate more local village market activity and trade.

There is also a range of e-services that could be provided, including health advice to village midwives. Extension services can be provided to smallholders, including market information, input and output transactions, and new seeds and other technology. It could limit absenteeism of village school teachers and health workers, who can get stuck in Daru waiting for their salary to arrive, for the weather to clear, or the myriad of other reasons that keep people in town. And it could reduce the influx of people travelling from the Fly River Corridor to withdraw their royalty payments, as described by Busilacchi and colleagues (chapter 8).

Direct payments

Too little of PNG government and aid funding is reaching rural villages. Our investigation into one PNG funding program targeting development of the Treaty villages revealed that only a quarter of the grant actually reached the ground (chapter 5). Too much public administration is transacted in Daru and too little in remote villages. In addition to the services and infrastructure that they fund, public finance payments inject much-needed cash to stimulate local market activity.

Mobile money would also offer an alternative funding modality for PNG government and aid assistance to reach remote dwellers, bypassing the endemic problems of leakage and misappropriation in the PNG public finance system. International aid agencies can facilitate direct-giving and crowd-sourcing, including micro-grants and cash transfers. Payments could also support targeted community development activities, including women, youth, aged or community groups. A local community group could have its own phone and mobile banking account, permitting direct payments to resource their plans. PNG's Tuition Fee Free (TFF) policy is an example of how government funds can be dispersed at village level through a local governance mechanism (school boards), which manage and acquit the funds and set priorities for how funds are spent locally to support education. A similar mechanism could operate to support health, whereby a village health committee would utilise funds from government or donor sources to provide transport for those requiring medical services outside the village. The same could apply to local government funding to the Ward Development Committee in accordance with their Ward Development Plan.

In chapter 4, Peter Chaudhry argues the case for a Basic Income Grant (BIG), guaranteeing an unconditional minimum income to all citizens. Social safety nets are cash transfers targeted at the poor and vulnerable and are increasingly recognised as effective tools to reach the most vulnerable.³² PNG's New Ireland province successfully tested social payments for aged and disability pensions, but struggled to move large volumes of cash through the LLGs and village ward structures, resulting in cash payments through hand-delivered envelopes. The administrative

requirements and security risk were considerable. Beneficiaries did not know in advance when payments would be received, so they were unable to plan their use of the funds. A World Bank assessment came to the obvious conclusion that an electronic payment system was needed instead.³³ This also applies to payments to village workers on labour-intensive community projects, as commonly used when disbursing LLG SIP funds. Payment could be made directly to the worker's mobile bank account on proof of time worked.

As with any intervention, there are risks. Making payments directly to people and organisations—where previously it was funnelled through government agencies—will fundamentally shift the politics between citizens, leaders, bureaucrats and international actors. People who are benefiting from the current status quo might oppose any changes to protect their privileges. Any attempts should be trialled on a small scale, and closely evaluated.³⁴

Shared governance

While both Australia and PNG strongly maintain their sovereignty, the governance of the South Fly is clearly shared between the Australian and PNG states. Our place-based analysis reveals a complex institutional layering, with the extrajurisdictional influence of Australia reaching into PNG. The number of visits is overwhelmingly dominated by PNG nationals crossing south into Australia, compared to the number of Torres Strait Islanders travelling north into PNG. The very opposite direction applies when it comes to the extrajurisdictional influence of each state. The PNG state does not reach into Australia in any measure, but the Australian state reaches well into PNG (figure 10.5). Whether because of its sheer distance from the capital, or the incorrect perception that the area is serviced by Australia, the PNG Government and aid agencies tend to stay away. What remains is a unique development context quite unlike anywhere else in the region and possibly the world.

<figure 10.5 near here>

An exterior wall of a house in a South Fly village patched up with an Australian Government Nation Building Project sign (Research team, 2016)

Understanding the development context of the South Fly requires an acceptance of this shared governance. The most compelling case is health, which clearly requires a health systems approach to the entire borderland population. Instead of Queensland Health drawing a line at the border, there is an opportunity for it to be working developmentally as a part of the PNG aid program, building the capability of the health system in PNG's Western Province. Real gains have been achieved in tackling TB on Daru, yet the response has been costly and at the expense of strengthening the health system and the underlying cause of the epidemic. Instead of treating the South Fly population as a 'buffer zone', with contingency planning for the next infectious disease crisis, a more effective approach would be to treat the borderland as a special 'health zone'. Building on the past precedents of the TB clinics that operated on Saibai and Boigu and 'facilitated border crossings' for patient retrieval, Australian health workers could provide clinical support, mentoring and

training in South Fly health posts, while PNG health workers could have access to health facilities in the Torres Strait.

A long-standing aid modality in PNG is ‘technical assistance’ provided by mostly Australian advisers. There has been a Provincial Health Adviser based in Daru since the mid-2000s, and clinicians and managers employed by the Burnet Institute now support the TB response at Daru hospital. There are also established precedents in PNG, and notably in Solomon Islands and elsewhere, whereby Australian public servants also fill similar roles in the host country, by performing duties ‘in line’ with the host government while capacity-building local ‘counterparts’. The risk of this model is that it can displace, rather than build, long-term sustainable institutional capacity. This approach was used in the Regional Assistance Mission to Solomon Islands (RAMSI) to establish law and order following civil unrest.³⁵ The role of technical advisers in similar capacities in PNG has in the past been the subject of considerable political controversy.³⁶ Nonetheless, recent shifts in national politics and the health problems and underdevelopment in the South Fly could allow for a differently negotiated agreement.

Drawing on these precedents, officers from Queensland Health could be running an international aid program, alongside their PNG counterparts, to strengthen the health system of the Western Province. They need not be directly involved in frontline service delivery to be effective in supporting others to fulfil this role. They would also be very well placed to broker across the two health systems.

A similar case could be made for other sectors, including policing. An alternative to the current practice of running intermittent joint cross-border patrols via helicopters would be for police officers to be based in Daru or Mabuduan, working to build the capability of their counterpart PNG enforcement agencies. They could work in closely with the \$13 million policing and border enforcement facility under construction in 2019 on Saibai Island in the Torres Strait.³⁷ Australian Federal Police (AFP) already has a capacity-building program operating in other parts of PNG, called the PNG–Australia Policing Program (PNG–APP). In mid-2019, the AFP donated two boats and a vehicle to the Transnational Crime Unit of the PNG Constabulary in Daru, but again the focus remained on combating cross-border crime.³⁸ Their scope of activities could sensibly extend beyond border management, to include general law and order, as it does elsewhere in PNG. The same could be said for fisheries monitoring management, with Australian fishery officers based in Daru.

Sharing security

The notion that this area is a borderland, with its own people, is of great consequence to how the people on the PNG side of the border think about their circumstances. Measures of absolute poverty indicate that people on the South Fly live in a state of acute poverty (as per the MPI measures in chapter 1). But from a social science perspective, relative poverty is also a significant concern, if not more so. It is not only how well off we are that matters but also how well off we are

relative to our neighbours.³⁹ A child can expect to live for 82 years if they are born in Australia, compared to 66 years in Papua New Guinea.⁴⁰ But these national figures mask differences within internal populations. In Australia, Aboriginal and Torres Strait Islander people live on average for 8 years less than their non-Indigenous counterparts. At even smaller scales, the disparities can become acute. One just has to reflect on differences between the suburbs of Alice Springs and the Aboriginal town camps on its fringe, or the tourism hub of Ayers Rock Resort and the nearby Aboriginal community of Mutitjula. A World Health Organization (WHO) report showed how children inherit vastly different life chances depending on where they are born, even in the same city. The life expectancy in the Glasgow suburb of Calton is 28 years less than the affluent suburb of Lenzie nearby.⁴¹ There are great differences in life expectancy both between and within nations, which tells us that the opportunities are determined not only by day-to-day conditions and people's agency but also by the structural arrangements that underpin these conditions.

Torres Strait Islanders remain disadvantaged relative to the remainder of Australia, as evident in 'Closing the Gap' measures,⁴² but in a relative sense, they are not disadvantaged relative to people in the South Fly. For people living on the PNG side of the border, development is understood in terms of what the Torres Strait Islanders have. This relative poverty drives their sense of entitlement and the frustration of unmet claim-making (chapter 4). Although the sentiment is complex, the consequences are clear. People living in the South Fly claim that in certain – indeed fundamental – respects, they are the same as the Torres Strait Islanders, and their logic follows that the border is arbitrary and they are entitled to make claims on the Australian state. Within living memory, they were administered by Australia until what they view as an arbitrary line excluded them within the new independent state of PNG. Such claims of sameness were almost always followed with claims against the Australian state. As one respondent put it in 2017: 'Government is responsible for the lives of the people. If Australia considers the way they live in Torres Strait, they should consider the way we live here. We should be treated directly on a family–family basis. Social benefit because [Torres Strait] Islanders get social benefit.'

The Torres Strait Islanders also acknowledge their closeness and their PNG relatives: '[T]hey are our family too.' But unlike the PNG nationals, they also point to their difference. As a man on Iama Island saw it: '[T]heir culture is similar, but different ... another way of how were doing it.' As is often the case among groups that enjoy a higher socioeconomic status, there can be resentment and prejudice. The same informant expressed his disappointment at the way his own people 'look past them, compare themselves higher'. A woman on Iama saw the treatment of visitors on the outer islands of Saibai and Boigu as being harsh, pointing to things like the lack of public toilet facilities compared to their islands, and the low payments that received for domestic help. Those on these outer islands counter that it is they who must carry the burden of more than 90 per cent of visitors, on behalf of the other islands. There are many examples of compassion: of Torres Strait Islanders hosting

visitors and sending money, clothes, equipment and other support. There was widespread empathy among Torres Strait Islander informants for the poor living conditions of people in the South Fly, and a lament at the lack of PNG government services. Even the harshest critics of 'lax' border management who argue for tighter border controls express their concern for the plight of PNG people on the other side.

The Torres Strait Treaty was an innovative design to accommodate traditional culture and mobility shared across the borderland. In the 1970s, Torres Strait Islanders and the people of South Fly were in much closer contact. They lived in similar conditions, as the differences between Australia's colonial administration of PNG and its 'colonial' administration of Aboriginal and Torres Strait Islander Affairs in the 1970s were not far apart.⁴³ Staffed by expatriate Australian teachers during the colonial period, Kodoro Primary School on the Pahoturi River in the South Fly was well regarded for the standard of its schooling. Some successful PNG leaders, including several sitting judges of the PNG Supreme Court, were schooled here in the 1960s. During an informal discussion with two of the judges,⁴⁴ they remembered that most of the Kodoro class mates went onto Daru High School, then to study at different universities in PNG. Their view was that the standard of education in Kodoro was higher than what was available on Saibai Island in Torres Strait. In the 1970s, schools in Torres Strait were not yet run by the Queensland Education Department, but instead by the notoriously paternalistic Queensland Department of Aboriginal Affairs and Advancement. Island schools were staffed by local teachers whom Singe described as 'undertrained and underpaid'.⁴⁵

While living conditions were then comparable fifty years ago, a great deal has changed since. The PNG Government's investment in the South Fly has declined, whereas the Australian Government's investment in Torres Strait has multiplied. Culture is never static, and the rate at which it changes is influenced by exogenous structural factors, including the global cash economy and redistributions that governments make. Although familial relationships and traditional norms and behaviour endure, it is no longer sufficient to characterise the borderland by its shared culture and identity.

A prominent factor that now defines this shared borderland culture instead is how security is intertwined. From the Australian side, the border is the focus of a range of interventions by the Australian and Queensland governments, including border protection, biosecurity, marine resource management and infectious disease control. How the border authorities manage these security risks is hardening, and 'traditional inhabitants' from PNG crossing to Australia under the Torres Strait Treaty are not able to sell their goods or avail themselves of medical services to the extent that they once enjoyed. Torres Strait Islander leaders share the same security concerns as the border management authorities, and strongly assert that it is their health and livelihood that are most at risk compared to other Australians from PNG visitation and migration. They are concerned about the pressure on their limited community resources, especially their water supply, fuel stocks and housing.

From the PNG side, people living in the South Fly villages have a history of protecting the border, despite the fact that they are not at serious risk from border incursions themselves.⁴⁶ In each Treaty village, there are two designated people with authority to sign a pass, which includes the LLG member if he or she is from that village. They enforce what they see as at times as arbitrary and unreasonable regulations imposed by Torres Strait Island councillors, including daily limits on the number of people who can cross and on which the days of the week they may do so (chapter 2). In 2019 with DFAT's support, the Torres Strait Islander councillors agreed through their Torres Strait Islander Regional Council (TSIRC) to limit visits to certain days of the week and to impose a 30-person daily limit. Village leaders in the Treaty villages affected established a roster so that everyone could have a turn. They are thus effectively volunteer agents who help manage the border, in controlling visits by traditional inhabitants from their village.

Occasionally foreigners from Africa and the Middle East have attempted to cross the border illegally into Australia, mostly by walking across from Indonesia. Once detected, the illegal immigrants are quickly reported to the PNG and Australian authorities. Local people pride themselves in the role they play in protecting the border; in the words of one informant: '[E]veryone in the community is Border Force.' One senior male leader on Parama Island expressed his concerns over the deterioration of relationships with Australia:

[You] really don't see the good side of PNG, both sides of the coin ... we need to be holding each other close ... we don't want to be turning to the Chinese or Indonesians! We could be moving into Australia, but the Treaty holds us together.

The Australian National Audit Office recently sounded its concern over the 'changing strategic and operational environment' due to the 'increasing population in the Treaty villages and the ensuing pressure this place on the Torres Strait Islander communities who receive these visits'. According to its 2011 census, the population growth rate nationwide in PNG is 3.1 per cent, with most of this increase occurring in the Highland Provinces.⁴⁷ Over the 8 years from 2009–10 to 2017–18, the number of visitors annually crossing the border increased from 2400 to 2700, an annual increase of 2.8 per cent.⁴⁸ This suggests that the increase in visitation is aligned with national population growth. There is no evidence to suggest that people in PNG are internally migrating to the South Fly. PNG has low levels of internal migration compared to other countries, due to cultural ties with land, strong societal bonds, the customary land ownership system, and lack of education and skills needed for employment.⁴⁹ The inbound migration that is occurring is largely to economic growth centres in large cities and areas where there is mining. There are no equivalent opportunities in the South Fly.

From the PNG side, the people of the South Fly endure serious poverty and a lack of services, whether via government, NGOs or foreign aid. They too face a range

of security issues, but expressed differently in terms of sufficient food, health care, climate change, policing and basic environmental health infrastructure, including water supplies. Their view is that their security is related to border security. In the words of one villager, 'The border is not secure because I'm not secure. I need to survive.'

Clearly, it is not in the interest of the Torres Strait Islanders or Australians more broadly to have such high levels of underdevelopment on the PNG side of the border, as the economic precariousness of such near neighbours exacerbates its task of managing security. As people make the transition from subsistence to specialised cash crops, and as the effects of climate change, changing rainfall and rising sea levels are felt, their vulnerability might well increase. And at times of humanitarian crises, desperate people tend to do desperate things.

The question is whether Australia's approach to tightening border control is having unintended consequences and in fact actually worsening the security risk. Certainly the view from the PNG side is that recent advances in maintaining border 'security' are undermining their food 'security' and livelihoods. The following quotes are from two respondents during a community meeting in 2017:

We're fed up with security concerns from Australia. We don't have good standard of living. I must travel there to get money to survive. If we have good standard of living, then the security is OK. We're not sharing the border; they're enforcing it. You must have fairness if you want to be good neighbours. Border is not secure because there's no development on this side.⁵⁰

Treaty allows us to go for some things, other things, but stop us from doing things, especially commercial fishing – not allowed in Australian waters. A hundred years ago we were allowed to go there. Today modern world – when Australia PNG talk about border they talk about security. But security is me and Torres Strait Island[er]s are security on that side.⁵¹

Notes

<Setter: take in notes here, numbered from 1 to end>

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