



THE NATIONAL
RESEARCH INSTITUTE
PAPUA NEW GUINEA

ISSUES PAPER

RECENT DEVELOPMENTS REGARDING NON-CITIZEN TECHNICAL ADVISERS IN PAPUA NEW GUINEA

Michael Anderson
Joachim Luma
Carmen Voigt-Graf

www.nri.org

Issues Paper 24

Abstract

The reliance on non-citizen technical advisers is a contentious part of Australia's aid program in Papua New Guinea due to the significant cost of non-citizen technical advisers and the perceived 'boomerang' effect associated with this development model.

In 2016, the PNG government introduced a new law to impose tighter control over advisers employed by aid contractors and subsequently terminated the placements of a number of Australian advisers seconded from Australian Government Departments.

The nature and implications of the new law are outlined, and existing models of engaging non-citizen technical advisers in PNG are discussed. Finally, a new model to engage non-citizen technical advisers in-line is proposed.

Dedication

This paper is dedicated to the memory of Raymond Logie who made a significant contribution to the development of the non-citizen technical adviser regulations in Papua New Guinea.

inquire
inform
influence

March 2017

This page is intentionally left blank



RECENT DEVELOPMENTS REGARDING NON-CITIZEN TECHNICAL ADVISERS IN PAPUA NEW GUINEA

By Michael Anderson, Joachim Luma and Carmen Voigt-Graf

Introduction

The reliance on non-citizen technical advisers¹ is a contentious part of Australia's aid program in Papua New Guinea. Australia, as PNG's largest development partner, generally provides non-citizen advisory support where there is a lack of local knowledge or expertise. However, PNG has long complained about the significant cost of non-citizen technical advisers and the perceived 'boomerang' effect associated with this development model. Commentators have also criticised the effectiveness of advisory support, pointing out that there is little evidence it has made any real contribution to capacity building within PNG's public sector. This issue was recently thrown into stark relief when Prime Minister Peter O'Neill told parliament that non-citizen advisers were making PNG nationals 'lazy' and did not always have the best interests of the country at heart. In a controversial move, the PNG government introduced a new law to impose tighter control over advisers employed by aid contractors and subsequently terminated the placements of a number of Australian advisers seconded from Australian Government Departments. This Paper will consider the context surrounding the Prime Minister's comments, in particular PNG's desire to reassert its sovereignty over non-citizens working within its public service. The nature and implications of the new law will be outlined, and the advantages and disadvantages of different regulatory regimes for non-citizen technical advisers, including the potential to engage them in in-line positions, will be discussed. The Paper concludes by identifying some options for further consideration by PNG and its development partners on the engagement of advisory support. Since most non-citizen technical advisers in PNG are funded by the Australian aid programme, the main focus

of this Paper is on Australian-funded advisers.²

Advisory support as part of Australia's aid programme to PNG

Different approaches of providing technical assistance through an aid programme have been used in PNG. In the first years following independence, the Australian government funded "in-line positions" in the PNG Government whereby non-citizens were funded to fill established public service positions following the normal lines of command, reporting, supervision and discipline. As part of PNG's localisation process (see Turner and Kavanamur, 2009), a shift took place in the 1980s towards providing technical assistance through non-citizen advisers who did not work in-line but as advisers alongside local counterparts.³

Most advisers funded by the Australian aid programme are engaged under rather unusual employment arrangements. Advisers are employed by third party aid contractors, which are mostly commercial companies. Under this model, individual advisers have employment contracts with the aid contractors. The aid contractors pay the wages and provide accommodation, transport, security, insurance and other benefits as per the employment contracts. While funding comes from the Australian aid budget, the aid contractors manage the individual advisers who are placed in PNG government departments to provide technical assistance and capacity building. Under this arrangement, there is no legal relationship between the adviser and their PNG Agency head. The only legal relationship is between the adviser and the contractor via their employment contract. In other words, the adviser is employed by an aid contractor, funded by the Department of Foreign Affairs and Trade (DFAT) which runs the Australian aid programme, and is 'loaned' to a PNG Agency to provide

¹ The term 'non-citizen technical adviser' will be used throughout this Paper to refer to 'expatriate' or 'foreign' technical advisers because this is the official term used in PNG. Different development partners use different terms to refer to non-citizen technical advisers, including the terms "experts" and "fellows".

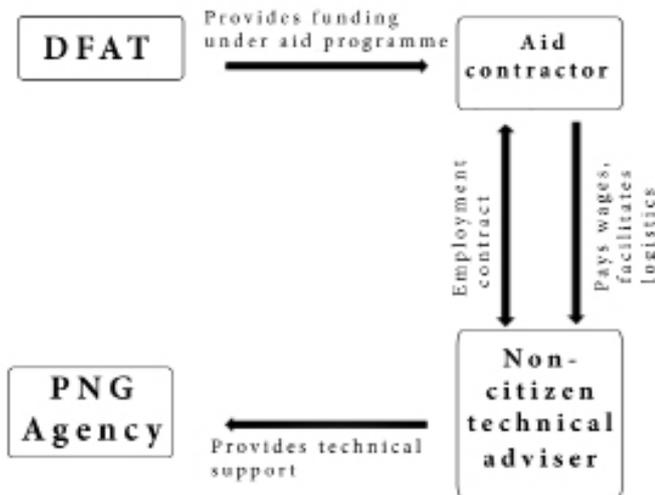
² Other bilateral and multilateral donors including the European Union and the Asian Development Bank also support technical advisers in PNG, although their number is much smaller than that of Australian funded non-citizen advisers.

³ For a general discussion of technical advisers and the role of private aid contractors in the Australian Aid Program see The Auditor General (2009), chapter 4.

technical support (see Figure 1).

While this situation may have suited the PNG Government in the sense that advisers were provided at no cost, the lack of control over these advisers has been a contentious issue for successive PNG governments.

Figure 1: Model of Australian non-citizen technical advisers



The Strongim Gavman Program

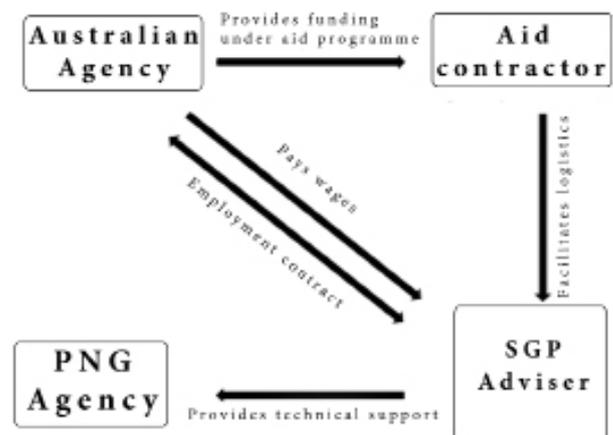
Another group of advisers are Australian federal public servants who are deployed to PNG under the Strongim Gavman Program (SGP) (see <https://dfat.gov.au/about-us/publications/Documents/strongav-manage-frame.pdf>). The SGP started in July 2009 as a whole-of-government engagement program involving Australian Government Agencies who provide capacity building and advice to counterpart PNG Government Agencies. The SGP started as the Enhanced Cooperation Programme (ECP) which was a bilateral assistance package, involving increased Australian assistance to policing, other law and justice agencies and border management, as well as economic and public sector management. Australian personnel, drawn from the Australian Federal Police (AFP), other state forces, and a number of government agencies, were to be placed into in-line positions in the Royal Papua New Guinea Constabulary (RPNGC) and other key Papua New Guinea institutions. The policing component, involving up to 230 Australian police officers, was to be additional to the existing aid program to Papua New Guinea.

The first batch of civilian officials under the ECP was sent to Port Moresby in mid-February 2004. There were lengthy delays in the implementation of the program and Australian

police began arriving in September 2004 after a compromise was reached in relation to the Australian government’s position that Australian police officers should be immune from prosecution under Papua New Guinea law. In May 2005, Papua New Guinea’s Supreme Court delivered its judgement on a constitutional challenge to the immunity provisions under the ECP initiated by Morobe governor and former judge, Luther Wenge. The court ruled unanimously that certain provisions of the enabling legislation, including those dealing with immunity, were unconstitutional. This resulted in the immediate withdrawal of the Australian police personnel although non-police officials deployed under the ECP continued their work. In 2006, Australian police advisers, rather than in-line police officers, were deployed under the ECP (Dinnen, 2009).

Until 2009 a number of Australian Government officials continued to work in PNG government agencies. In 2009 the SGP replaced the earlier ECP arrangement. Under the SGP, senior officials from the Australian public sector are placed in PNG Government Agencies for two to three years to provide specific public service policy and strategic advice and capacity development. These officials are subject to Australian laws, regulations and disciplinary procedures. While SGP officials primarily report to the PNG Agency head, they continue to be employed and paid as Australian public servants and thus also need to report to the SGP Team Leader, who is responsible for SGP officials in their team and ensures duty or care and reporting to the home agency (see Figure 2).

Figure 2: Model of SGP advisers



Over time, the Australian aid programme in PNG has become heavily reliant on technical assistance through non-citizen technical advisers. At the time of the 2010 Review of the PNG-Australia Development Cooperation Treaty (1999), it was estimated that 62% of Australia's assistance to PNG was allocated towards technical assistance, compared to 38% allocated to goods and services (Kwa, et al., 2010). This was more than double the global average. At the time of the Review, Australia's aid programme in PNG employed some 360 non-citizen technical advisers, including 50 Australian public servants. There were 240 long-term advisers, 50 short-term advisers, and 60 contract officers. According to the Review, the most controversial aspect of Australia's aid program to PNG was its heavy reliance on technical assistance. While the Review found that there was a strong demand for advisers from different parts of the PNG Government, evidence from PNG and other countries suggested that capacity building through advisers was not working as well as expected. Therefore, one of the recommendations of the Review was to reduce the reliance on technical assistance, to ensure that the primary line of reporting for all aid-funded personnel was to the PNG Government, and to pilot the use of aid-funded in-line positions.

Direct engagement of non-citizens in PNG's public service

In addition to non-citizen technical advisers who are donor funded, it is important to note that many non-citizens are directly engaged to work for the PNG Government. The legal framework for their engagement is the Public Employment (Non-Citizen) Act 1978 and the General Order 11. Non-citizens who are directly engaged are employees of the PNG Government and they occupy in-line positions. They exercise and have the same rights as their national counterparts.

These directly engaged non-citizens are paid a base salary equivalent to the local salary grade, and also receive an International Market Allowance (IMA) in order to attract suitably qualified persons from overseas (General Order 11.44). The Department of Personnel Management (DPM) does not maintain official statistics on directly engaged non-citizens and their number is therefore not known. Anecdotally, the majority of directly engaged non-citizens are from the Philippines, India, Pacific Island countries and Australia and most work in the Health and Education sectors.

Political directions of the PNG Government in 2015

On 30 July 2015, the Prime Minister of PNG, Peter O'Neill, was asked in Parliament about the possibility of non-citizen advisers spying on PNG. The fact that there were many

non-citizen advisers working in government departments, according to Peter O'Neill, has led to two things: "firstly, [it] is making our nationals quite lazy. They are not able to take ownership of decisions and are over dependent on consultants and advisers. ... Sometimes the advice given to the Government are [sic] not in the best interest of the nation." (<http://parliament.gov.pg/hansard>, 30 July 2015, access via Hansard, p.17–18).

In a surprise move, the Prime Minister then announced that the Government had taken a decision that "all foreign consultants and advisers contracts will end by December 31, 2015" (Hansard, 30 July 2015, p. 18). The announcement was widely reported in the PNG, Australian and international media (see e.g. Cochrane, 2015; The Guardian, 2015), due to its potentially wide-ranging implications on Australia's large aid programme in PNG.

Over the next couple of months, the Prime Minister's position that all foreign advisers would be expelled by the end of the year had softened. In September 2015, Peter O'Neill said that he did not want consultants and middlemen eating up aid budget allocations and wanted instead to ensure that non-citizen advisers showed loyalty to PNG (see e.g. Martin, 2015; Radio New Zealand, 2015).

The PNG Government then indicated it would expel "foreign government employees" from the public service and announced a new law (Regulation) dealing with non-citizen technical advisers (Pambuai, 2015).

The decision to expel foreign government employees theoretically applied to all nationalities. In practice, however, it resulted in the departure of all SGP advisers deployed within Central Government Agencies. Of the 33 Australian Commonwealth public servants deployed in advisory roles in the PNG government under the SGP in 2015, 15 adviser positions in Central Government Agencies, including Finance, Transport, Treasury, and Justice and Attorney General, ended on 31 December 2015. SGP advisers in PNG Statutory Authorities were not affected by the decision and remain in their roles.

In addition to the expulsion of SGP advisers from Central Government Agencies, the Secretary of the DPM, John Kali said that while aid-funded technical advisers had previously had no legal obligation to serve the State under the laws of PNG, they would be required to sign and execute contracts with the PNG Government.

The initial Regulations

Two new Regulations were gazetted and approved by Cabinet in November 2015 and came into effect on 1 January 2016.

The Public Employment (Engagement of Non-Citizen Technical Advisers) Regulation 2015 was made under the Public Employment (Non-Citizens) Act 1978. It specifically deals with the engagement of expatriate technical advisers who are employed by aid contractors and placed as advisers within the National Public Service.⁴ The law requires non-citizen advisers to sign a “Work Performance and Conduct Agreement” (WPCA) which requires them to follow the day-to-day direction of their PNG Department Heads. They are subject to the PNG public service code of conduct and must take the public service oath of loyalty. The Public Services (Management) (Engagement of Citizen Technical Advisers) Regulation 2015 was made under the Public Services (Management) Act 2014. It applies to citizen technical advisers who are employed by aid contractors to provide advisory support within Government Agencies. Citizen technical advisers are also required to sign a WPCA which creates the legal link between them and their Department head.

An invitation to PNG’s development partners including Australia to attend a briefing on the new Regulations was placed in the National newspaper (The National, 30 November 2015). The briefing was held on 3 December 2015.

Some development partners highlighted certain difficulties with the new arrangements. For example, a number of stakeholders indicated their citizens could not take the oath of loyalty to the PNG government required by the Regulation and many expressed reservations at the adoption of the PNG public service code of conduct. The regulations and the WPCA were also criticised for being too detailed and process focussed.

The new Regulation

Following further consultations with development partners and other stakeholders including Departmental Heads and Provincial Administrators, and an internal government working group on development issues which considered the issue of non-citizen technical advisers, a new Regulation applying to non-citizen technical advisers was developed by DPM and came into effect on 1 September 2016.⁵ The new Regulation simplifies the arrangements and removed many of the impediments identified by stakeholders. Advisers now have to

⁴ The Regulation does not apply to agencies outside of the PNG public service such as Statutory Authorities which are created under their own laws. The Regulation was also not applied to the RPNGC Police Force and advisers in the Autonomous Bougainville Government

⁵ The Regulation provides that all NCTAs who are engaged after 1 September 2016 are required to sign a Performance and Conduct Agreement. Advisers who were already in PNG on 1 September 2016 have until 1 December 2016 to sign on.

sign a one-page Performance and Conduct Agreement. Instead of taking the oath of loyalty to the PNG Government, a special purpose Code of Conduct for non-citizen technical advisers has been introduced.

Importantly, the new Regulation does not alter the four principles on which the original Regulation was founded. The four principles are:

- PNG sovereignty must be protected and respected;
- Non-citizen advisers must report to their respective Agency heads;
- Non-citizen advisers must meet certain behavioural standards; and
- Non-citizen advisers must build the capacity of their PNG counterparts.

The key aspects of the new Regulation are summarised below.

The Performance and Conduct Agreement is the centrepiece of the Regulation and creates a legal link between the non-citizen technical adviser and their PNG Agency Head. The Performance and Conduct Agreement is a simple, one-page document which is first signed by the PNG Agency Head, then endorsed by the DPM Secretary and finally signed by the non-citizen technical adviser at the same time as they sign their employment contract before entering PNG. The Performance and Conduct Agreement requires the non-citizen technical adviser to:

- Comply with a Code of Conduct;
- Be accountable to his or her Agency Head for their work performance; and
- Obliges the non-citizen technical adviser to develop the capacity of their PNG counterparts.

The Regulation describes its purpose as being “to protect Papua New Guinea’s sovereignty by establishing a legal framework to regulate the engagement of a (non-citizen) Technical Adviser”. The overt reference to “sovereignty” in the law is reflective of PNG’s desire to take back some control over the engagement of foreign advisers in its public service. This issue will be discussed in some more detail later.

Employees of foreign governments are not permitted to be engaged as technical advisers under the Regulation. They can however be engaged as advisers in the PNG National Public Service under an “Institutional Partnership arrangement” (IPA)⁶. IPAs are formal agreements (usually under an MOU

⁶ These arrangements are sometimes referred to as ‘Twinning’. They are fairly common between PNG agencies and their counterpart Australian Commonwealth agencies. For example, the PNG DPM has a capacity

or MOA) concluded between a PNG Government Agency and a similar Agency from another country aimed at providing capacity building assistance through staff exchanges, training and professional development, study tours and other targeted assistance. If inputs under an IPA involve Technical Advisers, their engagements are usually short-term (less than 3 months and often much shorter).

The recruitment process for non-citizen technical advisers engaged by aid contractors remains essentially unchanged by the Regulation. However, the law now expressly says that “The Agency Secretary must give final approval for the engagement of the preferred candidate following the recruitment and selection process”. The Regulation is clear that all costs associated with the engagement of a non-citizen technical adviser are borne by the aid contractor as the employer. However, the law allows for the PNG Government to make a co-contribution to these costs. It can be argued that by meeting some of the costs associated with non-citizen advisers the host Agency will feel greater ‘ownership’ over the adviser. Co-contributions could be in the form of a local salary, provision of a vehicle, payment of accommodation costs or any other contribution.

The Regulation addresses the difficult issue of in-line functions versus advisory roles of technical advisers by providing that non-citizen technical advisers may perform in-line functions. Non-citizen technical advisers may also be delegated powers and responsibilities including supervisory roles that are necessary to perform these in-line functions.

From a legal perspective, one problematic area concerns discipline and termination of non-citizen technical advisers as they are employed by aid contractors while working for PNG Agency Heads. In a strict application of the law, the employer is the only party that can discipline or dismiss an employee. The Regulation proposes a true ‘Melanesian’ outcome by providing that the Agency Secretary, the DPM Secretary and the Aid Contractor will “jointly determine the appropriate action to be taken under the circumstances” where matters relating to discipline might arise.

The Regulation requires the DPM Secretary to keep a register of all non-citizen technical advisers covered by the Regulation. Before endorsing an adviser, the register should be consulted to determine any possible past issues which may provide grounds for refusing a particular non-citizen further employment.

Details of the new arrangements including the Regulation

building agreement with the Australian Public Service Commission (see <http://www.apsc.gov.au/priorities/international-engagements/working-internationally>).

and the process to be followed are publicly available on the DPM website (www.dpm.gov.pg).⁷

Some of the major issues surrounding the engagement of non-citizen advisers

National sovereignty

The introduction of the new Regulation on non-citizen technical advisers seems to primarily result from a desire within the PNG Government to exert its national sovereignty. The provision that employees of foreign governments cannot be engaged as technical advisers under the Regulation stems from the decision of the PNG government to remove certain Australian SGP advisers in January 2016 who were accused of spying in the PNG Parliament. Under the new Regulation, foreign government employees can be engaged under an Institutional Partnership Arrangement. This possibility can be interpreted as a compromise between PNG and Australia following the removal of 15 SGP advisers. From a PNG perspective, Australian Commonwealth public servants can be engaged within the National Public Service but only if these are short-term, targeted inputs under an Agency-to-Agency MOU. The tightening of the condition of engaging foreign government employees helps PNG avoid a situation where long-term Australian public servants become embedded in the public service, such as under the SGP model, while at the same time enabling it to continue to benefit from support from the Australian public service.

PNG’s sovereignty has also been enhanced by the new requirement that the Agency Secretary give final approval for the engagement of the preferred candidate following the recruitment and selection process. This is an important provision which gives PNG the final say about which non-citizen technical advisers are allowed into its public service, regardless of whether they are employed and funded by aid contractors or governments.

Finally, the requirement that the Secretary of the DPM keep a register of all non-citizen technical advisers (and consult this Register before engaging any non-citizen technical adviser) also reflects PNG’s desire to increase its control and exercise a veto over the engagement of non-citizens in its public service.

While the introduction of a new Regulation is directed at all non-citizen advisers and is not specifically targeted at Australian advisers, it nevertheless affects Australians the most. The expression of national sovereignty through the Regulation

⁷The DPM has indicated it will conduct a similar review of the citizen Regulation with a view to harmonising the Regulations dealing with the engagement of citizen and non-citizen advisers.

can be seen as another sign of PNG's increasing assertiveness vis-à-vis the former colonial power and a gradual shift in the balance of power. Australia relies on PNG's hosting of the Manus Island Regional Processing Centre and would not want bilateral relations to deteriorate further.⁸ PNG on the contrary has become increasingly confident as expressed in the non-citizen adviser issue but also in other areas such as the withdrawal from the negotiations of the Pacific Agreement on Closer Economic Relations (PACER Plus) free trade agreement shortly before the conclusion of the negotiations despite Australia's diplomatic efforts to keep PNG at the table.

In-line versus advisory roles

Another contentious issue concerns the question whether non-citizen advisers should be engaged in-line or should occupy advisory roles outside the established public service positions. It is important to note that PNG already engages many non-citizens in-line directly under the Public Employment (Non-Citizens) Act 1978. In these instances, non-citizens are engaged in established positions in the public service, with the PNG Government being the employer of the non-citizens.

It is problematic, at least on a conceptual level, to engage non-citizen technical advisers who are employed by aid contractors in-line for the simple reason that they are not employees of the PNG Agency. It is impossible for the relevant PNG Agency Head to exercise genuine authority and control over non-citizens in in-line positions when the PNG Agency is not the legal employer. The new Regulation addresses this issue by requiring non-citizen technical advisers to sign a secondary Performance and Conduct Agreement. Non-citizen advisers will usually only provide advice and capacity-building support to a PNG Agency. They may also assume some in-line functions without being engaged in in-line positions.

If non-citizen technical advisers were engaged in in-line positions they would exercise in-line functions and potentially make decisions that could result in financial loss, or have other adverse consequences. The question then arises whether the aid contractor who employs the adviser, or the PNG Government is responsible for the actions and decisions of in-line non-citizen technical advisers. Following the *Wenge* decision of the Supreme Court regarding immunity for Australia police officers, non-citizen advisers working in-line cannot be granted specific immunity for their actions. It is not clear whether and how the rights of non-citizen tech-

nical advisers would be protected. Another contentious question arises from the responsibilities of non-citizens exercising authority over more junior PNG counterparts. It may not always be acceptable for non-citizens to involve themselves in issues related to supervision, performance management and discipline of PNG public servants.

Without opposing the adoption of an in-line model for non-citizen advisers, it is important to stress that the arrangement of non-citizen advisers filling in-line positions is potentially at odds with a model under which the non-citizen technical advisers are employed by third party contractors. It is therefore necessary to carefully consider a range of matters, including issues of liability, before a decision is taken to engage non-citizen technical advisers who are employed by aid contractors in in-line positions (see the personal account in the box below from one of the authors).

Conclusion and recommendations

Based on the discussion of existing models of engaging non-citizen technical advisers in PNG and recent events leading to the new regulation that came into effect in September 2016, this conclusion briefly summarises the three main existing models of engaging non-citizens in PNG Agencies and proposes a new model to engage non-citizen technical advisers in-line.

Model 1: Direct engagement

The PNG Government employs and pays non-citizens directly. These non-citizens are generally employed in-line.

Model 2: Employment of adviser by aid contractor

Under this model, non-citizen technical advisers are employed by aid contractors and 'loaned' to PNG Agencies. Since September 2016, the advisers have to sign a Performance and Conduct Agreement and Code of Conduct. While they may perform some in-line functions, they do not occupy in-line positions.

Model 3: Engagement under an Institutional Partnership Arrangement

Under this model, Australian Commonwealth public servants can be engaged within PNG Agencies but only for short-term, targeted inputs under a formal IPA.

⁸ On 26 April 2016 the PNG Supreme Court ruled the detention centre on Manus breached the right to personal liberty in the PNG Constitution.

Proposed model: In-line employment co-funded by aid provider

This proposal would see non-citizen technical advisers employed by the PNG Government in in-line positions with co-funding provided by the Australian aid programme from DFAT via an aid contractor. An important difference is that the PNG Government and not the aid contractor would be the employer of the advisers, the reason being that if non-citizen technical advisers are to work in-line, they need to be employed by the PNG Government. In this scenario, aid contractors can coordinate the logistics but cannot act as the

skills. ODI Fellows work as local civil servants for a period of two years, with the cost being shared between the PNG Government and ODI. There are currently four ODI fellows working for PNG Agencies who were selected and appointed by ODI, but are employees of the PNG government (ODI 2017). Under the ODI model, the PNG Government as the local employer is responsible for:

- Paying a salary equivalent to what would be payable to a locally recruited national with similar qualification and experience;
- Providing conditions of service such as accommodation,

A Personal Account

I have been an Adviser in various public sector departments in PNG over a period spanning more than a decade.

It can sometimes be a little tricky managing the three key stakeholders in your placement.

On the one hand, the managing contractor is your employer. They pay you, they assist with logistical issues (accommodation, vehicle, insurances, security, family matters etc) and generally 'look after' you while you are in-country. The contractor will usually also monitor your performance against your agreed terms of reference.

On the other hand, advisers spend almost all of their time in one or more government agencies working with PNG public servants. My experience is most Advisers will soon regard their designated PNG counterpart (usually the Secretary or Deputy Secretary) as their de facto manager – they report to them, take direction from them and (over time) develop a loyalty to them that makes it difficult not to treat them as the employer.

Finally, all Advisers are aware that the funding for the advisory position ultimately comes from DFAT. Depending on the work you do, most Advisers will have some awareness of DFAT policies and the objectives of the aid program, particularly as it relates to their specific role. Some advisers will have regular contact with DFAT team members whilst others may have almost no contact.

I had no issue signing the new Performance and Conduct Agreement and the Code of Conduct. In fact, the PCA just confirmed what was already happening in my placement. All of the other technical advisers I have spoken to were also happy to sign it, recognising that it did not change their current working arrangements.

The majority of Advisers including myself will readily concede that there are times when they actually perform a range of in-line functions – they 'do' as oppose to 'advise'. The amount of 'doing' can increase the longer you are in your role and the more trust builds up between you and your counterparts.

Taking up a genuine in-line role may make sense on paper, but in my view there are practical factors to consider. Would I be required to manage staff, including staff performance? What happens if I make a decision that is wrong or has negative consequences? Am I aware of all the cultural factors that may be at play within my workplace? These types of issues will have to be thought through before a non-citizen is placed in-line, and it may be that in-line responsibilities are not suitable for every placement.

Michael Anderson

employer of in-line advisers (see Figure 3).

A similar model already exists in PNG with the Overseas Development Institute (ODI) Fellowship Scheme.⁹ The PNG Government can make a request to ODI for specific

leave entitlements, expense allowances and medical insurance similar to those offered to local staff in similar grades; and

- Ensure fellows receive assistance in obtaining work permits and security clearances where required.
- ODI is responsible for:
- The selection of fellows;

⁹ ODI funds are provided by the UK's Department for International Development, DFAT, and the Bill and Melinda Gates Foundation. For more information, see www.odi.org/fellowship-scheme.

- Arranging placements;
- Providing Fellow’s pre-departure briefing and allowances;
- Paying a monthly supplement which takes into account local income, taxation, and accommodation costs;
- Providing medical insurance while in post; and
- Paying an end-of-Fellowships bonus, provided Fellows complete the full two-year assignment.

Since the ODI model allows non-citizens to be employed by the PNG Government while funding is provided by ODI, it allows non-citizens to work in-line positions, allowing them to make decisions, supervise staff, build capacity and so on, without the PNG Government having to bear the full costs. Non-citizens are employed in approved, funded, vacant, established positions and are subject to the same public service laws and standards as their PNG colleagues.

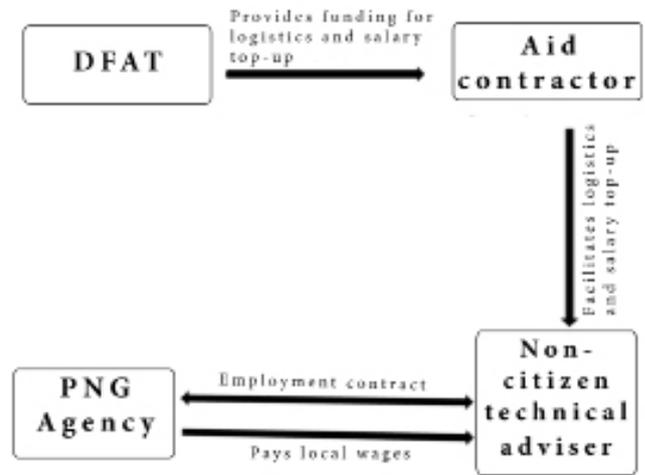
Under this model, the PNG Government pays a base salary equivalent to what would be payable to a locally recruited national with similar qualifications and experience. By incorporating them into the establishment and by paying them their base salaries, the PNG agencies take ownership of their non-citizen employees. The non-citizens occupying in-line positions cannot be referred to as advisers but can be called non-citizen employees.

It is suggested that the ODI model be used and adopted by other donors including DFAT. The role of aid contractors would be restricted to arranging the logistics including for accommodation, health insurance, transport and security, and the payment of salary top-ups. The aid contractors will not be employers of the non-citizens (see Figure 3). DFAT will continue to be the source of the majority of the funding for the non-citizen’s placement in the form of salary top-up and associated logistical costs such as accommodation, vehicle, insurance, family assistance and so on. The top-up of salary and payment for logistics by DFAT reflects the reality that this is necessary to both attract and retain non-citizen employees.

This proposed model is also very similar to the proposals made following the joint PNG/Australia review into technical adviser positions in 2010 (Governments of PNG and Australia, 2011). The review recommends greater use of in-line officers that are contracted directly to the PNG Government (see Recommendation 11). Specifically, the review recommends an approach where an adviser “has full delegations of a public servant, is fully accountable to the PNG Government and undertakes the full functions of the role but with an additional component specifying capacity building results

to be achieved” (Governments of PNG and Australia, 2011: 26).

Figure 3: Proposed model for engaging non-citizen technical advisers



The fundamental difference between this proposed model and the currently existing non-citizen technical adviser model is the recognition that the PNG Agency Head is the employer of the non-citizen. In our view, this reflects the reality of the engagement of many non-citizen technical advisers on the ground in PNG. It also makes little sense to have an adviser, who works on a daily basis in a PNG Agency and reports to the PNG Agency Head, to be employed by a commercial aid contractor. In this sense, the recent introduction of the Performance and Conduct Agreements is a band aid solution. Under the proposed model, there will be no need for these Agreements.

Finally, it should be acknowledged that the adoption of a new model for non-citizen technical advisers will need to be supported by an appropriate, robust legislative and regulatory framework. At the very least, PNG will have to review and update the Public Employment (Non-Citizens) Act 1978 which has remained largely unchanged since it was brought into operation shortly after independence. Similarly, the PNG Public Service General Orders do not provide adequate guidelines for the in-line engagement of non-citizens, particularly as it relates to advisers who are co-funded by contractors as part of an aid program. Lastly, there are a range of other matters (including important taxation issues) which will require careful consideration by both PNG and Australia before a new model for advisers can be introduced. It is suggested that all of these obstacles can be overcome; all

that is required is commitment from both parties to embrace a new way to engage non-citizen technical advisory support in PNG.

References

- The Auditor General, 2009. *AusAID's Management of the Expanding Australian Aid Program*, Audit Report No. 15 2009 10. Canberra: Australian National Audit Office.
- Australian High Commission *Port Moresby, 2016*. Update to Strongim Gavman Program. Updated 07 January 2016.
- Cochrane, L., 31 July 2015. "Papua New Guinea to ban foreign advisers claiming they could be spying, make local staff lazy", Australian Broadcasting Corporation, Retrieved from <http://www.abc.net.au/news/2015-07-31/png-prime-minister-bans-foreign-advisors/6661946>
- Dinnen, S., 2009. 'Thirty Years of Law and Order Policy and Practice: Trying To Do "Too Much, Too Badly, With Too Little"?' in R.J. May (ed.), *Policy making and implementation: studies from Papua New Guinea*. Canberra: ANU E Press: 233-260.
- Governments of PNG and Australia, 2011. PNG-Australia Development Cooperation Program: Joint review of Technical Adviser Positions funded by the Australian Aid Review, available at <http://dfat.gov.au/about-us/publications/Documents/FinalPNGAdviserReviewReport.pdf>
- Howes, Stephen, 2015. "Shifting in-line in Papua New Guinea", Devpolicy Blog, 6 August 2015, available at <http://devpolicy.org/shifting-in-line-in-png-20150806/>
- Kwa, E., Howes, S. and Lin, S., 2010. Review of the PNG-Australia Development Cooperation Treaty (1999), 19 April 2010, available at <http://dfat.gov.au/about-us/publications/Pages/review-of-the-png-australia-development-cooperation-treaty.aspx>
- Martin, L., 2015. 'PNG won't expel Australian staff', Sydney Morning Herald, 18 September 2015 Retrieved from <http://news.smh.com.au/breakingnewsworld/pngwontexpelaustrianstaff20150918431w3.html>
- Overseas Development Institute, 2017. ODI Fellowship Scheme 2017. London: ODI, available at www.odi.org/fel-
- lowship-scheme
- Pambuai, H., 2015. 'Foreign advisers to leave', The National, 16 November 2015. Retrieved from <http://www.thenational.com.pg/foreign-advisers-to-leave/>
- PNG Parliament, <http://parliament.gov.pg/hansard>, 30 July 2015, access via Hansard, p.17–18.
- Radio New Zealand, 21 September 2015. 'PNG PM puts distance on foreign advisers threat', Retrieved from <http://www.radionz.co.nz/international/pacific-news/284847/png-pm-puts-distance-on-foreign-advisors-threat>
- Strongim Gavman Program Management Framework, 2009. Final Version as endorsed at Ministerial Forum, June 2009, available at <https://dfat.gov.au/about-us/publications/Documents/stronggav-manage-frame.pdf>
- The Guardian, 2015. 'PNG will cancel contracts of Australians advising government, says Peter O'Neill', The Guardian, 31 July 2015. Retrieved from <https://www.theguardian.com/world/2015/jul/31/png-will-cancel-contracts-of-australians-advising-government-says-peter-oneill>
- The National, 2015. 'Department of Personnel Management Public Notice', *The National*, 30 November 2015, p. 47.
- Turner, M. and Kavanamur, D., 2009. 'Explaining Public Sector Reform Failure: Papua New Guinea 1975–2001', in R.J. May (ed.), *Policy making and implementation: studies from Papua New Guinea*. Canberra: ANU E Press: 9–25.

ABOUT THE AUTHORS

Michael Anderson worked as a non-citizen technical adviser within the Department of Personnel Management during 2016. He assisted the PNG government develop and implement the new Regulation for non-citizen advisers. Michael has previously assisted a number of PNG agencies with employment-related matters.

Joachim Luma is a graduate of the University of PNG and PNGIPA. He currently works for DPM in the Legislation and Administrative Reforms Division and was involved in developing the non-citizen technical adviser law. His home village is Mai in West New Britain Province.

Carmen Voigt-Graf is a Fellow at the Development Policy Centre at the Australian National University. She was based at the PNG NRI until the end of 2016 where her research focussed on labour market and labour mobility issues in PNG including the issue of foreign workers in PNG.



Research for this Issues Paper was funded by support from Australian Aid. The views expressed do not necessarily reflect those of the Australian Government.



THE NATIONAL
RESEARCH INSTITUTE

PAPUA NEW GUINEA

inquire, inform, influence

The National Research Institute, PO Box 5854, Boroko, Port Moresby, National Capital District 111, Papua New Guinea; Telephone +675 326 0300; Email: nri@nri.org.pg

This and other NRI publications are available from www.nri.org.pg.

The National Research Institute encourages readers to reproduce material from NRI Issues Papers, as long as they are not being sold commercially. As copyright holder, NRI requests due acknowledgement and a copy of the publication. For online use, we ask readers to link to the original resource on the NRI website.

The views presented in this paper are those of the authors and do not necessarily represent the views of NRI. © The National Research Institute 2016