

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the human rights to safe drinking water and sanitation and the Special Rapporteur on the human rights of migrants

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the human rights to safe drinking water and sanitation and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 33/30, 33/9, 33/10 and 34/21.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **situation of refugees and asylum seekers on Manus Island in connection with the closure of the Manus Regional Processing Centre**.

According to the information received:

In August 2012, the Government announced the reopening of the regional processing centres, and the reinstatement of third-country processing for asylum seekers arriving unauthorized, by boat, after 13 August 2012. Australia signed agreements with Papua New Guinea and Nauru to resume offshore processing, after it was previously dismantled in 2007.

In July 2013, the Government announced that all refugees and asylum seekers who entered Australia by boat would not be allowed to remain in Australia, and would instead be sent to Nauru or Manus Island, and then, in the case of a positive assessment and determination of their claims, would either be resettled in Nauru, Papua New Guinea or a third country.

Arrangements for third-country resettlement were made with Cambodia and the United States. So far, seven people have been resettled in Cambodia (of whom four have subsequently returned home), and 54 have been resettled to the United States. The current arrangement with the United States requires the latter to assess refugees for resettlement, but it is under no obligation to resettle any of them, although around 1,250 places are included for this cohort under the US resettlement quota for the next financial year. This presents significant concern for asylum seekers determined to be refugees but who are left to remain on Manus Island and Nauru.

In April 2016, the Supreme Court of Papua New Guinea declared the detention centre on Manus Island unconstitutional, as it breached a number of human rights provisions set out in the national Constitution. However, the centre remained open for 18 additional months, although some movement restrictions in and outside of the centre were lifted. In May 2017, the Australian Government stated that the centre on Manus Island would be closed by 31 October 2017.

As of October 2017, there were 606 single adult men in the Manus Island detention centre and 35 have been resettled elsewhere. In February 2017, 65 men were living in the East Lorengau Refugee Transit Centre (ELTC). A total of six people have died on Manus Island, including one murder in 2014. Many of the people detained have been there for over four years.

The 606 still in the detention centre have been given the choice to either move to the ELTC on Manus Island, to resettle elsewhere in Papua New Guinea, to apply for transfer to Nauru or to return to the country which they fled from. However, out of concern for their safety and protest about a lack of durable solutions for their future, the 606 men have so far refused to leave the detention centre.

There is currently no water, food, electricity or access to medical treatment for those remaining in the centre. While some of the residents were able to store up food supplies, this will not last long. People are currently forced to collect rain water and dig into the ground to find drinking water.

Without electricity, people must endure tropical heat and insects. There are also allegations that contractors have cut water pipes and emptied water tanks. Cuts to water supply have left toilets inoperable, causing concerns regarding the sanitary conditions of the camp. This is threatening public health and increasing the risk of infection, and the spread of major diseases.

There are multiple reports that people in the detention centre are very sick and need urgent medical treatment. Some have been sick for a long time while there are no staff, services or health providers available. Those requiring treatment no longer have medicine and none is provided by Australian or Papua New Guinean authorities. Other services, including recreational facilities and support services, have also been closed.

The residents are also fearful of being attacked or harmed by the local population, police and the navy. There is increased Papua New Guinean military build-up outside the centre and the Department of Immigration has posted a document on the fences in the centre warning that if people stay in the centre, they will face action by the navy. Residents in the centre are repairing fences in order to protect

themselves. There are allegations that the local population has been looting in the centre, due to the lack of security in it.

The centre residents are experiencing anxiety, and other mental health symptoms. There are reports of self-harm among those remaining, including a man who cut his wrist and his chest using a razor.

There are ongoing concerns about the safety of refugees who have accepted to resettle in the local communities on the island. Refugees have previously experienced a number of attacks, including in a violent incident in 2014 in which one individual was murdered and a shooting incident in 2017 which resulted in the injuring of nine people. There are serious concerns about violence directed at refugees in the community.

While a majority of the Manus Island locals are supportive of the refugees, groups of local young men, often intoxicated and sometimes armed with sticks, rocks, knives, or screwdrivers, have frequently assaulted and robbed refugees and asylum seekers on the Island. In at least three serious attacks since June 2017, victims required emergency medical attention in Port Moresby or Australia. The victims are concerned that the local police is not adequately investigating their claims and does not protect them from harm.

There is an additional concern that refugees who are gay may face additional abuse given that consensual sex between men is considered to be a crime in Papua New Guinea that is punishable by imprisonment.

The Australian Government expects all those currently in the Manus Regional Processing Centre to move to the ELTC. However, that centre can only accommodate 400 refugees. While other accommodation facilities, such as West Lorengau House, can accommodate 300 refugees, it is reported that it is not habitable. As of 30 October 2017, the construction was not complete. Containers are surrounded by mud and do not have electrical or water connections. Construction is being significantly hampered by rain.

Those who have had their refugee claims rejected, or those who have not submitted their claims or refused to participate in their status determination process, are expected to move into the “Hillside House”. This is a high security detention facility, and there are concerns that people will remain detained there indefinitely, as return or alternative arrangements are not in place. There are also concerns that those who have not been adequately assessed may have substantial refugee claims and may face persecution should they be forcibly returned.

There are also ongoing concerns regarding the lack of medical and mental health support for the refugees who remain in the community on Manus Island. There are

regular reports that the Australian Government has refused to transport people from the island to Port Moresby or to Australia, resulting in lack of timely and adequate medical treatment. Three people on Manus Island have died as a result, while two others have committed suicide after a lack of appropriate mental health support.

Welfare arrangements, such as counselling services, are insufficient for refugees and asylum-seekers on the island. Only four Immigration and Citizenship Service Authority caseworkers are providing assistance to a total population of over 700 (refugees and asylum-seekers).

Local government officials have complained of a lack of case workers and interpreters as well as inadequate local hospital facilities as particularly worrying. Local community leaders and landowners have referred to the resettlement of refugees in the local community as “inappropriate”.

The lack of information together with the level of mistrust between asylum-seekers and refugees and the Government of Australia is not conducive to appeasing their anxiety and mental fatigue after years of detention-like conditions.

Without making any judgment as to the accuracy of the information made available to us, we express grave concern at the consequences on the life, health and security of the refugees and asylum-seekers detained in the Manus Regional Processing Centre due to its closure as of 1 November 2017 and the resulting withdrawal of all life-support and other services. Given the facts, we have also transmitted a similar urgent appeal to the Government of Papua New Guinea.

The situation as alleged appears to be in contravention of the right to seek asylum as well as the rights not to be arbitrarily deprived of life or liberty, as guaranteed by articles 3, 9 and 14 of the Universal Declaration of Human Rights and articles 6, 9, 10 and 19 of the International Covenant on Civil and Political Rights (ICCPR), which Australia ratified on 13 August 1980. It also appears to contravene the right of everyone to the highest attainable standard of physical and mental health and of the human rights to water and sanitation, as guaranteed by articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, acceded to by Australia on 10 December 1975.

We wish to recall that a number of UN human rights mechanisms have expressed heightened concern about the use of offshore processing centres for irregular migrants and declared that the situation was amounting to cruel, inhuman and degrading treatment or punishment according to international human rights law standards. According to article 2, 3 and 16 of the Convention against Torture, all persons who are under the effective control of Australia, because they were *inter alia* transferred by the State party to centres run with its financial aid and with the involvement of private contractors of its choice, enjoy the same protection from torture and ill-treatment under the Convention. Hence,

Australia has the ultimate responsibility for asylum seekers and refugees transferred by Australia to the Regional Processing Centres in Nauru and Papua New Guinea.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under our mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide any information about the urgent measures being taken to ensure that essential services, such as water, food supplies, electricity, sanitation, medical facilities and care, and security are provided to the residents held in the Manus Regional Processing Centre, until adequate and long-term solutions are worked out to address their specific situation. In this regard, please explain the hand-over arrangements in place between the Australian service providers and their successors in Papua New Guinea in order to ensure that the basic rights and humane treatment of the residents in the centre are respected. Please also explain how exposing asylum seekers and refugees to such conditions is in line with Australia's international obligations.
3. Please describe the process of asylum claim assessment and status determination, including the access opened to the asylum seekers to be informed of their rights and to have legal assistance. In particular, please explain the steps taken by the Government to ensure that asylum seekers in the processing center are provided with appropriate information so as to make an informed choice and decision about their future.
4. Please provide any further information on resettlement options for asylum seekers and refugees, outside of Papua New Guinea, including to mainland Australia. Please explain how your Excellency's Government will ensure that any agreement regarding third-country resettlement is meaningful and viable — in terms of numbers, timeliness and opportunities to rebuild lives.

While awaiting a reply, we urge that prompt measures are considered to ensure that essential life-support services are provided to all the centre residents, until long-term solutions are being worked out.

We would also like to inform your Excellency's Government that we may publicly express our concerns regarding the situation in the future, as we believe the wider public should be alerted to this situation. Should we take this step, we will indicate that we have been in contact with your Excellency's Government to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

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