



Universal Periodic Review (UPR) 23rd Session

(2nd to 13th November 2015)

Human Rights Situation in Papua New Guinea

**Joint Submission of :
Franciscans International
Edmund Rice International
VIVAT International**

Geneva, September 2015

INTRODUCTION

1. The organizations listed below present this submission concerning the human rights situation in Papua New Guinea (PNG) for consideration by the UPR Working Group at its 25th session, April/May 2016. The human rights issue addressed is ***the rights of asylum seekers and refugees***. This is a joint submission of **Franciscans International (FI)¹, Edmund Rice International (ERI)² and VIVAT International**.

Asylum Seekers and Refugees

First-Cycle UPR Recommendations

2. In the previous UPR, Papua New Guinea accepted recommendations on human rights issues relevant to asylum seekers and refugees, including to withdraw the reservations issued to seven articles to the Convention relating to the Status of Refugees 1951, and to take effective measures to prevent alleged abuse and violence by police officers, encouraging the Government to respond appropriately to the Special Rapporteur on the question of torture's concerns and recommendations on this matter, and to ratify the Convention Against Torture, and implement the recommendations of the Special Rapporteur on the question of torture in order to address the violations to fundamental rights highlighted by him during his visit, notably, the generalized ill-treatment of detainees, the total absence of rights of incarcerated persons, the degrading excessive periods of preventative detention.³

Legal and Institutional Framework

3. On 6 August 2013 the Papua New Guinea (PNG) Government signed a Memorandum of Understanding (MoU)⁴ with the Government of Australia to implement a third-country processing regime under which asylum seekers' claims to Australia will be processed in a country outside Australian territory. A similar MoU was also signed between Australia and PNG in March 2013⁵ relating to the transfer to, and assessment and settlement in PNG of certain persons, and related issues. Initially, PNG was declared a regional processing country with one processing site on Manus Island. Since the MoU signed on 6 August 2013, however, PNG may host other Processing Centres in PNG, host Transferees under other arrangements, such as community-based arrangements, at various locations in Papua New Guinea.

Promotion and Protection of Human Rights on the Ground

¹ Franciscans International was founded in 1989 and has a General Consultative Status with the ECOSOC since 1995. FI supports Franciscans and partners working at the local and national levels and assists in bringing their concerns and expertise to the UN.

² Edmund Rice International (ERI) is an international NGO, founded in 2005 and with consultative status with ECOSOC since 2012. ERI is supported by two Catholic Religious Congregations, the Christian Brothers and the Presentation Brothers. ERI has a special interest in the rights of the child, the right to education and in eco-justice.

³ The report of the UN Working Group of UPR, A/HRC/18/18, paras 78.10, 78.50, 79.3-7, 79.29.

⁴ See the related document at http://dfat.gov.au/geo/papua-new-guinea/Documents/joint-mou_20130806.pdf

⁵ See the related document on the designation of PNG at <https://www.humanrights.gov.au/sites/default/files/document/publication/third-country-processing-regime.pdf>.

4. We are concerned about the conditions faced by individuals wishing to seek asylum in Australia, especially those detained in the Manus Island processing centre in PNG. According to Australia's Department of Immigration and Border Protection, there have been regular transfers of asylum seekers to Manus Island from Australia since July 2013. By May 2015, the centre held 943 asylum seekers.⁶
5. The conditions of the migration detention for asylum seekers in PNG facility have been consistently criticised as unacceptable by national and international observers. The detention arrangements have been continuously criticised. It has been concluded by the Australian Parliamentary Joint Committee on Human Rights that the likely impact on physical and mental health of asylum seekers was contrary to the rights to health in the ICESCR⁷ and the prohibition against degrading treatment on the ICCPR⁸ of which PNG is a signatory party.
6. It was also found by Human Rights Watch that those granted refugee status in PNG have been denied the liberty of person, right to work and the right to freedom of movement, which PNG has an obligation to guarantee as part of a constitutional basic rights.⁹ PNG has made reservations to the right to work, public education, housing and freedom of movement under the Refugee Convention.¹⁰ PNG immigration officials explained the rejection of work opportunities for refugees with the fact that the governor of Manus designated the Island as a regional processing centre with the aim of integrating them elsewhere. Even applications for engaging in volunteer work were refused by the local authorities, essentially denying the refugees from making their time on Manus worthwhile and moving on with their lives. Reports from Manus Island also indicate that women asylum seekers face particularly adverse conditions, which may violate PNG's obligations under CEDAW.¹¹
7. The UN High Commissioner for Refugee (UNHCR), UN Human rights mechanisms and national and international NGOs have been alarmed by allegations of human rights violations at the Manus Island facility. The most striking cases included the death of two Iranian detainees, Mr Reza Berati and Mr Hamid Kehazaei.
8. Mr Reza Berati died after allegedly being beaten to death, and 77 others were injured following violent unrest at the centre on 17-18 February 2014. According to our information the number of injured person were in fact around 200 persons. The lack of transparency at the facility makes it difficult to ascertain a complete picture of events. However, based on eyewitness accounts reported to Australian media,¹² it appears a protest by detained asylum-seekers escalated when Papua New Guinean police, including a dog squad, were asked to enter the facility by the contracted security firm. This lead to a violent clash involving local police, contracted security and detained asylum-seekers, which saw

⁶ <http://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-may2015.pdf>.

⁷ International Covenant on Economic Social and Cultural Rights.

⁸ International Covenant on Civil and Political Rights.

⁹ Constitution of Papua New Guinea 1975, Art 5(e), available at <http://www.wipo.int/edocs/lexdocs/laws/en/pg/pg011en.pdf>.

¹⁰ <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3d9abe177&query=1951%20Refugee%20Convention>.

¹¹ Convention on the Elimination of Discrimination against Women.

¹² G4S SSO Eyewitness Statement, reported in The Guardian Australia, accessed at <http://www.theguardian.com/world/2014/feb/25/revealed-g4s-guard-says-he-invited-in-png-police-dog-squad-before-manus-riot> on 4th March 2014

shots fired. Despite the allegation of the involvement of the security personnel working in the detention centre, no one has been charge.

9. The case of Mr. Hamid Kehazaei was also mishandled and was reported brain dead on 4 September 2014 after suffering a heart attack from having cut his foot and not receiving sufficient medical attention. The omission to and PNG's failure to investigate, effectively prosecute and punish it violates PNG's obligations under international law. A former staff member reported that they witnessed the "mistreatment and abuse, and degrading treatment that asylum seekers transferred to Manus Island endure on a daily basis... The attacks, whilst brutal and utterly devastating, did not surprise myself or my colleagues... I believe whilst the centre remains open more deaths and serious injuries are inevitable."¹³
10. Furthermore, jails, as well as police stations on Manus Island have been designated as "relocation centres" in accordance with PNG immigration law. The asylum seekers can be held there without having the right to legal counsel or right to a fair trial. It seems that they are treated as criminals, rather than traumatized asylum seekers only hoping for a free and better life. We have received a report of the using of this 'relocation center' in January and February 2015, where up to 70 asylum seekers were put for the period of three weeks.
11. In January 2015, several hundreds of asylum seekers in Manus Island went for a hunger strike. According to our source who spoke with the detainees, they protested against their situation in the centre and wanted to get the attention of the Government of Australia. The hunger strike was believed to have started after detainees were told they could no longer use running water to wash themselves because of a technical problem. Detainees are also said to have been angered by reports that some of them will be moved to a separate facility, where they fear they could be vulnerable to attack by locals on Manus Island.¹⁴
12. In August 2015, two incidents involved two Iranian asylum seekers that were deported from Manus against their will back to their country of origin where their passports were seized, they had to report to police and could possibly face degradable and inhumane treatment. PNG guards escorted them even though their appeal concerning the applications for refugee status were still pending in court. Not granting asylum seekers the right to review the decision, contradicts PNG own constitution. After claiming that these actions pervert the course of justice, on 25th of August 2015, the PNG Supreme court issued a temporary injunction order for deporting asylum seekers against their will.
13. With regards to the application for refugee status, all asylum seekers will first be sent to Manus Island, where their status will be assessed. All legitimate political refugees will be sent to Papua New Guinea, whilst all non-genuine and economic refugees will be either repatriated, move to a third country other than Australia if it should be found unsafe to be repatriated, or remain in indefinite detention on Manus Island. As has been demonstrated earlier, however, in the case of the two Iranian asylum seekers, PNG did not seem to respect the international *jus cogens* norm on the prohibition of torture. It could be found that deporting individuals who might face inhumane or degrading treatment in their country of origin fall under exactly that norm.

¹³ Ben Zajac, Speaking out, Guardian Australia, Online Publication, 21 January 2015 accessed 16 September 2015 < <https://www.themonthly.com.au/blog/bec-zajac/2015/21/2015/1421797900/speaking-out>>.

¹⁴ Information from BBC <http://www.bbc.com/news/world-asia-30825514>

14. The asylum seekers on Manus Island said that the length of the process for being granted refugee status varies and can have extensive delays. Some applications may take a year or longer. Even after having been determined as refugees, many individuals were still “waiting to be formally granted refugee status.”¹⁵ Following a first positive determination, refugees had to cope with long waiting periods of up until months in order to receive the second status determination. Documents sent to them with the purpose of explaining the determination were often incomplete.

15. Another prevalent issue that asylum seekers in Manus Island are experiencing is that PNG has never adopted a formal resettlement policy for the resettlement abroad or in PNG. Officials say the policy has the aim of making refugees more economically independent but it has not been submitted to the cabinet yet. This puts many asylum seekers in a legal limbo, where they are full of fear, uncertainty and anxiety for their future life.

16. We recommend the Government of Papua New Guinea to

1. *To ensure the reception of asylum seekers and processing of their claims accords with international humanitarian and human rights law;*
2. *To immediately close the detention centre for asylum seekers (Regional Processing Centres) on Manus Island;*
3. *To investigate and bring to justice those who were involved in the killing of Mr Reza Berati in 17th and 18th February, 2014 and the mishandling of the health situation of Mr Hamid Kehazaei that lead to his death;*
4. *To end the Memorandum of Understandings (MoUs) with the Government of Australia on implement of “a third-country processing regime” for the asylum seeker seeking international protection to Australia and request Australia to fulfil their international human rights and humanitarian obligations;*
5. *To invite the UN Special Procedures, especially the UN Working Group on Arbitrary Detention and the UN Special Rapporteur on the human rights of migrants for a visit and to report the human rights situation of asylum seekers being detained in Manus Island.*

¹⁵ <https://www.hrw.org/news/2015/07/15/australia/papua-new-guinea-pacific-non-solution>.