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SUBMISSION TO SELECT COMMITTEE
Conditions and treatment of asylum seekers and refugees
at the regional processing centres
in the Republic of Nauru and Papua New Guinea

Submitted by
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SUBMISSION TO SELECT COMMITTEE

Inquiry into the serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre and Manus Regional Processing Centre

INTRODUCTION

This submission is presented on behalf of the Josephite Justice Office, a ministry of the Congregations of the Sisters of St Joseph. The Sisters of St Joseph and our Associates (numbering over two thousand women and men) were founded in the mid-nineteenth century by Mary MacKillop and Julian Tenison Woods to work with those suffering from poverty and social disadvantage. We educate, advocate and work for justice for earth and people, and especially for those pushed to the margins of our world.

There is no doubt that the lives of asylum seekers are being damaged and destroyed by the Australian Government's legislation and policies. Political leaders continue to use asylum seeker policy as a political weapon and wedge. They use the duplicitous language of 'criminality', 'border protection' and 'illegal boat people', to invoke the support of Australians and to win political compliance for what has been widely condemned by International human Rights Organisations and the U.N., and by religious and community leaders in Australia and beyond, as blatant breaches of human rights and treaty obligations.

Those affected by the harsh conditions in Nauru and on Manus Island have had their health and lives placed in severe jeopardy. It is on their behalf that we present this analysis and submission.

PURPOSE OF CONSULTATION

The Government has identified the purpose of this consultation as being to examine:

'The serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre, with particular reference to:

- a. the factors that have contributed to the abuse and self-harm alleged to have occurred,
- b. how notifications of abuse and self-harm are investigated,

- c. the obligations of the Commonwealth Government and contractors relating to the treatment of asylum seekers, including the provision of support, capability and capacity building to local Nauruan authorities,
- d. the provision of support services for asylum seekers who have been alleged or been found to have been subject to abuse, neglect or self-harm in the Centres or within the community while residing in Nauru,
- e. the role an independent children's advocate could play in ensuring the rights and interests of unaccompanied minors are protected,
- f. the effect of Part 6 of the Australian Border Force Act 2015,
- g. attempts by the Commonwealth Government to negotiate third country resettlement of asylum seekers and refugees,
- h. additional measures that could be implemented to expedite third country resettlement of asylum seekers and refugees within the Centres, and
- i. any other related matters.'

Consequently, this submission will focus on:

- The factors contributing to confirmed abuse and self harm on Nauru and Manus Island
- Concerns related to the investigation of ongoing reports of abuse and self-harm
- The failure of the Commonwealth Government and contractors to provide appropriate support and conditions for those seeking asylum
- The urgent need for reform in Australia's responsibility to asylum seekers, reaching far beyond suggestions such as the appointment of an independent children's advocate, and attempts to negotiate third country resettlement arrangements.

1. FACTORS AND CONCERNS RELATED TO THE ONGOING ABUSE AND SELF-HARM THAT HAVE OCCURRED

The Australian Human Rights Commission (AHRC), the Office of the United Nations High Commissioner for Refugees (UNHCR), a Senate Select Committee, and a government-appointed independent expert have each highlighted many of the practices that have contributed to the abuse and self-harm of asylum seekers, and called on the Government to change them. The reports from the Government's own Moss Review have been confirmed by recent reports from Human Rights Watch, Amnesty International, by the ABC Four Corners Report, by the Australian Medical Association (AMA), and by the Nauru Files.

Six areas have been identified by these bodies as contributing to abuse and self-harm:

- The forcible transfer of detainees to Nauru and Manus Island, and their sense of hopelessness in being trapped
- The debilitating uncertainty about their futures
- Physical, emotional, mental and sexual abuse of vulnerable people and ongoing refusals to accept complaints of mistreatment
- The denial of appropriate medical care
- Countless daily humiliations that have cumulatively served to dehumanise individuals, to violate their dignity, and to build a culture of fear
- The lack of transparency and accountability mechanisms

In spite of the attempts by Government to hide what is happening in offshore detention centres, these facts have been clearly identified by reviews such as the Moss Report, as well as by staff and the human rights bodies named above. In fact, the Moss Review and later reports from medical, technical and administrative staff have been scathing in their indictment of the level of care of asylum seekers in Nauru and of the failure of authorities to deal with the extreme mistreatment that is occurring.

The UN Subcommittee on the Prevention of Torture that visited Nauru in 2015 was unable to discuss the team's findings for confidentiality reasons. The chair, Malcolm Evans, said however, that there are 'grave concerns around the entire set-up' for asylum seekers:

The idea of holding all of those seeking asylum in closed institutions ... of this nature – with no real understanding of what their long-term future is likely to be – is bound to be a cause of great distress'

Following their investigation of conditions on Nauru, Human Rights Watch and Amnesty International have confirmed these conclusions:

“By forcibly transferring refugees and people seeking asylum to Nauru, detaining them for prolonged periods in inhuman conditions, denying them appropriate medical care, and in other ways structuring its operations so that many experience a serious degradation of their mental health, the Australian Government has violated the rights to be free from torture and other ill-treatment, and from arbitrary detention, as well as other fundamental protections.”

2. THE FAILURE OF THE COMMONWEALTH GOVERNMENT AND CONTRACTORS TO PROVIDE APPROPRIATE SUPPORT AND CONDITIONS FOR THOSE SEEKING ASYLUM

Human Rights advocates, U.N. representatives, lawyers, and religious and community leaders have condemned unequivocally the failure of the Commonwealth Government and its contractors to provide support and conditions for those seeking asylum. This failure is exacerbated by the lack of transparency and accountability mechanisms on Nauru and Manus Island. Outsourcing has enabled governments (of Australia, Nauru and PNG) to evade responsibility and scrutiny for even the most alarming instances of maladministration and abuse.

The Moss report highlighted significant failures of the Commonwealth and these have continued to persist in spite of numerous other reviews and criticism. According to medical, technical and managerial staff and those employed by churches, the asylum seekers in Nauru live with constant fear, in unsanitary and inadequate medical conditions and intense heat. There have been multiple reports of assault and sexual abuse. Self-harm and suicide attempts are common. Physical violence, sexual harassment, abuse and intimidation from guards, as well as from locals and other inmates, have been shown to be endemic to the centre. Combined with these indefensible hardships, people experience prolonged periods without processing, and now no prospect of release, of family reunion or employment. All have led to the well-documented accounts of mental illness, self-harm and suicide.

After reports of repeated incidents of sexual assault and child abuse, the Department of Immigration admitted it had known of over 50 cases of assault and done nothing about them. Their argument has been that this is a matter for the Nauruan government and the

contractors who operate the facility. Moreover, the poor wording of the agreements with contractors makes follow-up very difficult.

Following their 2015 visit, the U.N. torture prevention team called for greater transparency on conditions and systems governing the immigration detention centre in Nauru.

Even in the face of such urging, political leaders in Australia refuse to disclose what is happening in these detention centres, citing both security considerations and the fact that the Governments of Nauru and PNG are responsible for the operation of the centres. This means of course that accountability is minimised and the Australian community is left in ignorance regarding the realities being experienced by asylum seekers. Secrecy and lack of transparency, as a consequence, cloud the views of ordinary Australians about what is being done in our name to some of the most vulnerable people in the world today – people fleeing violence, torture and death from places such as Iraq and Syria.

These ongoing aberrations highlight the extent of the Government's failures

- to establish relevant human rights standards,
- to take action when complaints have been made,
- to oversee the behaviour of the company to whom it has outsourced the responsibility of the Detention Centre and the care of asylum seekers

Outsourcing has facilitated the expenditure of public money, and the implementation of public policy, without any of the restraints and scrutiny that normally limit public sector behaviour. Abuse, rape and harassment of elected officials can be dismissed as an issue for contractors or other governments, despite occurring within Australian-funded facilities or being carried out by Australian-funded staff.

Because these acts are being done in Australia's name, and with a budget of more than a billion taxpayer dollars, it is in the ethical and public interest to have independent and transparent oversight, not only of our offshore processing centres, but also of the scapegoating mechanisms that operate in the 'stopping the boats' campaigns. Restrictions are widespread:

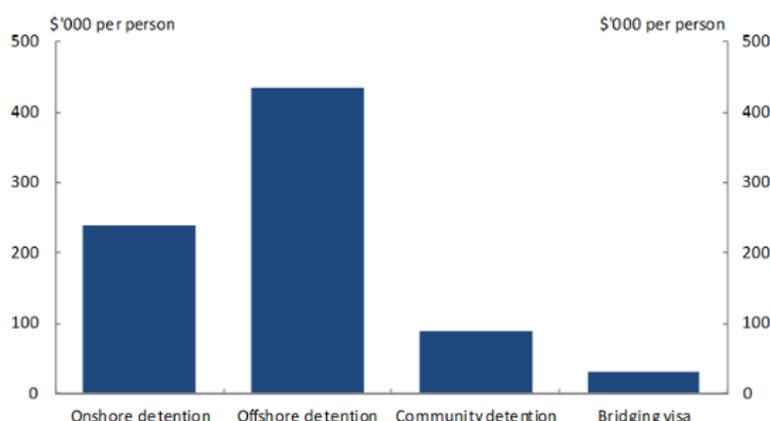
- Journalists and other citizens do not have access to the centres
- Communication is restricted
- Despite the recent Government back down on reporting by medical staff, other staff members are threatened with legal action if they report abuse

- The totally unjustified withdrawal of ‘Save the Children Staff’ has exacerbated ongoing fear
- According to other reports, Facebook, a major method of communication on Nauru, has also been banned.

A clear and convincing conclusion has therefore emerged that abuse has occurred, that appropriate action has not been taken, and that by outsourcing its responsibilities for people fleeing for their lives, the Australian Government has failed to honour its obligations to the asylum seekers. Abuse has been institutionalised through bipartisan consensus, and Australians have been kept largely ignorant of the prohibitive costs of offshore detention in an economic climate, which appears to be focussed on budgetary constraints.

3. THE PROHIBITIVE COSTS OF OFFSHORE DETENTION

The Refugee Action Coalition has pointed out that the costs of offshore detention are prohibitive. In the first half of 2015, detention on Manus Island and Nauru cost the government \$1.2 billion, indicating that the policy of offshore detention is indeed politically motivated and a stark indication of the government’s priorities. This enormous sum could be more valuably allocated to reverse government cuts and boost spending on critical areas such as health and education.



‘Detaining a single asylum seeker on Manus or Nauru costs \$400,000 per year. Detention in Australia costs \$239,000 per year. By contrast, allowing asylum seekers to live in the

community while their claims are processed costs just \$12,000 per year, one twentieth of the cost of the offshore camps, and even less if they are allowed the right to work.’ (RAC 2016)

These statistics demonstrate clearly that the policy of offshore detention, even on this level, is not delivering value for money. As other submissions to this consultation indicate, even with such economically self-serving and favourable contracts, the contractors are not meeting the agreed terms. Nor are they delivering services that meet Australian standards.

4. THE URGENT NEED FOR REFORM IN AUSTRALIA’S RESPONSIBILITY TO ASYLUM SEEKERS, CLEARLY INDICATED IN CURRENT LEGISLATION.

Fifteen years of dishonest language, the establishment of questionable laws to support the ideologies of the Parties, and the secrecy surrounding the plight of those in detention, have all intensified an untenable situation, and resulted in deliberate cruelty to innocent women and men fleeing for their lives.

As Josephites, we maintain that it can never be moral

- to detain innocent people
- to detain these same innocent people for months and years without hope or future
- to abdicate responsibility for those seeking protection in Australia by shunting them to off-shore islands under the rule of foreign countries.
- to keep babies, children and their families in living conditions which threaten their health and security
- to violate systematically the UN provisions for the protection of asylum seekers, the care of children and the human rights of all people.

5. FUNDAMENTAL ISSUES FOR US AS THE AUSTRALIAN COMMUNITY

The effects of Australia’s failure to exercise justice and compassion in its treatment of asylum seekers are real and corrosive, and have been clearly demonstrated in the destructive and abusive situation that has developed in Nauru and on Manus Island. Both major parties, by maintaining politically expedient policies, must bear responsibility for this.

The evidence from the Moss Review, and reported instances of on-going abuses have reinforced recent highly disturbing findings. Australia’s asylum policy has been found to

have breached the International Convention against the treatment of asylum seekers and conventions against abuse and torture.

The culture of fear, misinformation, and silence regarding the truth of the asylum seeker situation, here and in other asylum seeker centres, shames us as Australians, and undermines what is best in our national character.

6. RECOMMENDATIONS

While Nauru continues as a “regional processing country” for children and adults who seek asylum in Australia, the Nauruan government should take action to ensure that children’s rights, recognised in the Convention on the Rights of the Child, are respected, protected, and fulfilled, especially with regard to:

1. Responding to complaints of physical and sexual violence;
2. Ensuring children have access to appropriate medical care for their physical and mental well-being;
3. Improving living conditions for refugees and asylum seekers;
4. Ensuring that rights to freedom of expression and information are upheld; and
5. Preventing discrimination and harassment of refugee and asylum-seeker children in schools.

An Independent children’s’ advocate could assist with such a task. Nonetheless, much more is needed to deal with the current crisis. The Commonwealth Government has clearly failed its responsibilities in connection with the conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea. More fundamentally, it has failed in its duty to take reasonable care of all asylum seekers – adults and children. This failure has included both its responsibilities for asylum seekers who have fled to this country for refuge, and its accountability for the centres to which it has outsourced its responsibilities.

Recent reports from human rights groups, the UN and medical, technical and administrative staff read like reviews of a failed prison. Here are people who have escaped from terror and torture in their own countries, being treated like criminals, although they have committed no criminal act, and have sought asylum in accordance with international law. For Australia to have exempted itself from that law is reprehensible. To have outsourced its responsibilities for asylum seekers is inexcusable.

There is no doubt that Royal Commissions in the future will hold Governments and their officials to account for the harsh cruelty of their policies, the abandonment of their international obligations, and their abuse of power. The recorded complaints of concerned Australians and of international bodies will hold them unequivocally responsible. We know that any person, community or Government is judged by its care for the most vulnerable, and for this Australia needs to be held to account.

The evidence is clear. Irreparable harm is being perpetrated in our name. Recent reports on conditions in detention centres indicate the depths to which we have slipped as a country. Australia's present policy regarding the global issue of people seeking safety is unsustainable, unsafe and unjust, and does not offer protection to people who need it. In the absence of alternatives being promulgated by either government or the opposition, or by relevant government departments, a new approach is imperative.

We strongly believe that there are credible and innovative international law-compliant alternatives to current policy.

Josephites are urging the Australian Parliament therefore

- To establish a National Summit to allow the Australian community to consider alternatives to the current injustice and abuse being carried out in our name
- To legislate for a one-off amnesty for those on Nauru and Manus Island, so that they can be given refugee status in Australia
- To authorise the immediate release of all children from onshore and off shore detention centres

The question for all of us must be faced. What sort of country and planet will our children, grand children and great grand children inherit, if current policies continue to be pursued?

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