



Caritas Australia

THE CATHOLIC AGENCY FOR OVERSEAS AID AND DEVELOPMENT

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Brenton Holmes
The Secretary,
Senate Select Committee on a Certain Maritime Incident
Parliament House
Canberra 2600

Dear Mr Holmes

Caritas Australia welcomes the opportunity to make a submission to the Select Committee on a certain Maritime Incident, focusing on the issue of the 'Pacific Solution'.

Our submission only addresses criterion c) in the Terms of Reference.

Yours sincerely

Jack de Groot
National Director

Submission to the Senate Select Committee on a Certain Maritime Incident

Caritas Australia is the official overseas aid and development agency of the Catholic Church in Australia. Part of the international Caritas network, which is present in 154 countries, Caritas Australia has a long history of involvement in the Pacific region. It brings to this submission the views of partner organisations, Church agencies and Catholic Bishops in the Pacific as well as its own analytical perspective based on direct involvement in emergencies, development assistance and with refugees.

This submission responds to the Inquiry's Terms of Reference:

(c) in respect of the agreements between the Australian Government and the Governments of Nauru and Papua New Guinea regarding the detention within those countries of persons intercepted while travelling to Australia, publicly known as the 'Pacific Solution':

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- (i) the nature of negotiations leading to those agreements,
 - (ii) the nature of the agreements reached,
 - (iii) the operation of those arrangements, and
 - (iv) the current and projected cost of those arrangements

Principles

Caritas Australia's submission is based on the values and principles enunciated in the Social Teachings of the Catholic Church. It looks to *Refugees: A Challenge to Solidarity*, issued in 1992 by the Pontifical Council for the Pastoral Care of Migrant and Itinerant People and the Pontifical Council 'Cor Unum'. In addition there are numerous relevant Social Encyclicals and Apostolic Letters, the Papal messages for World Migration Day, and the interventions of the Holy See delegations at United Nations meetings.

- Catholic teaching suggests that *de facto refugees* (who are victims of armed conflicts, misguided economic policy or natural disaster), and *internally displaced persons* (i.e. who have not crossed an international frontier) should also be recognised as refugees and accorded international protection.
- Asylum is a fundamental right

*"While moments of economic recession can make the imposition of certain limits on reception desirable, respect for the fundamental rights of asylum can never be denied when life is seriously threatened in one's homeland."*¹

¹ Refugees: A Challenge to Solidarity, n 4
JSM
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- Forcibly displaced persons, now numbering in the tens of millions, require an expansion of assistance, and the relevant international agreements need to be extended to include additional categories of people.²
- Asylum seekers, like all other human beings, have human rights and these must include legal protection.³ Breaches of international law undermine Australia's reputation as well as the rule of law.
- Distinguishing between voluntary and involuntary asylum seekers blurs the essential reasons for the current movements of people.
*"... the element of free choice is hardly the principle reason for people deciding to move abroad. The economic differences between countries as well as human rights abuses and the existence of conflicts that force people to leave need to be addressed."*⁴
- The problems of refugees must be confronted at the roots.⁵
"This will require comprehensive programs to create security for people through, inter alia, debt relief, increases and more effective development assistance, investment in people and their creative capacities ..."
- Preservation of human dignity is essential.
*"We call for the abandonment of the practice of turning boats away and of escorting them to other countries such as Nauru and Papua New Guinea. This is an unconscionable practice."*⁶
- Maltreatment of people in order to persuade others to adopt a certain course of action is fundamentally wrong.
*"We should never deliberately hurt a person in order to issue a warning to others. Our policies should not use asylum seekers as a means of deterring others from seeking asylum in Australia. Neither should xenophobic feelings be exploited for political advantage."*⁷

Caritas assessment

Caritas Australia has conducted its own assessment of conditions in the camps holding asylum seekers in Nauru and on Manus Island. This has required visiting those camps and interviewing individuals on site. This has not been easy as many obstacles had to be overcome in order to be able to accomplish this. These obstacles included:

- Restrictions on visas to enter Nauru
- Restrictions on visiting Manus through the location of the Manus facility within a PNG Naval base
- A certain amount of opposition to an assessment visit from local people

It is clear that restrictions on visitors are designed to prevent independent analysis and questioning of the 'Pacific Solution' policy and program. While it is not possible to designate specific responsibility for the imposition of restrictions there appear to be few

² For example the Holy See delegation to the Executive Committee of the Office of the High Commissioner for Refugees called on the international community to "work to safeguard, consolidate and, where necessary deepen the regime of asylum and protection and to strengthen its application in the changing situation of our world."

³ The Holy See, welcoming the UN's Guiding Principles on Internal Displacement, stated: "A truly international protection regime must cover all those who lack adequate legal protection. As the nature of conflict in today's world changes, so too must the nature of the international response."

⁴ Refugees: A Challenge to Solidarity, n 8

⁵ As in (2) above

⁶ Refugees and Asylum Seekers. A statement by the Australian Catholic Bishops Conference, 26/3/02

⁷ As above (6)

benefits to the host governments (Nauru and PNG). The only beneficiary is the Australian Government.

Opposition from local people stems from their perception that benefits, such as employment, are being gained by the local community. Not wanting to risk these benefits they have sometimes expressed the view that outsiders are not welcome if they threaten those benefits. The Bishop of Kavieng, in whose diocese Manus Island is situated, has condemned these benefits as 'blood money'. This indicates more than a polarisation of local opinion. It points to a crucial moral dilemma created by the camps. Some local people stand to benefit from the incarceration of innocent people. Further, they may become dependent on that incarceration, the longer it goes on.

The Caritas visits to both Manus and Nauru were not as comprehensive as might have been wished. This is due to the extraordinary circumstances posed by the restrictions described above. Nevertheless we are able to report from first hand evidence.

Another reason for local opposition to outside questioning is the fear that retribution may result. It is widely feared in PNG and Nauru that Australian aid will be reduced, as a form of punishment, should the 'Pacific Solution' have to be closed down as a result of local activities such as allowing independent investigation to take place, or of speaking out against the program. This has implications for Australian foreign policy (see below).

Response to Terms of Reference

(ii) the nature of agreements reached

1 **Lack of transparency** – Caritas Australia's efforts to investigate conditions in Nauru and Manus Islands has revealed a fundamental fear of independent scrutiny. There appear to be no regular independent visitors to either place. There appears to be no source of independent legal advice available to detainees. Regulations adopted appear to be completely ad hoc and there is no clear source of authority.

1.1 Different conditions are in place in Nauru (where security is more a case of keeping outside people out than detainees in) than in Manus (a Naval base and tightly secured behind barbed wire). It appears that the 'Pacific Solution' is not a single program but an ad hoc set of arrangements depending on local conditions. In the Manus facility the International Organisation for Migration (IOM), responsible for managing the camp, would not allow any contact with detainees. In Nauru, the same organisation allowed contact.

1.2 A lack of transparency, in a situation of detention, has enormous potential for allowing abuse to take place. Given the fact that some detainees are traumatised (please refer to Dr John Pace's report for Amnesty International) as well as reports of a "strike" at Manus⁸ there appears to be a great deal that may be covered up. Only fully independent access will enable the full story to be revealed.

1.3 Lack of transparency also exacerbates local fears – of possible retribution by the Australian Govt – and of being abandoned should the camps close down. Nauru is in an

⁸ Bishop Ambrose Kiapseni MSC 22/3/02 – Local sources indicate that the asylum seekers on Manus believe they were "tricked" into landing on Manus when they thought they were going to Sydney and have engaged in a series of acts of non-cooperation including refusing to use the school facility.

extremely difficult financial situation and is almost entirely dependent on Australian goodwill. Manus Island is a neglected corner of PNG with poor living conditions. To local eyes the camps appear like a life buoy to a drowning person. Unfortunately they are unsustainable and will come to an end, possibly leaving the local communities in a worse state than when they started because they may have become dependent on the short term cash income. This sort of situation is normally avoided by development professionals and agencies, such as AusAID. It contradicts the Australian Government's own Pacific aid strategy.

- 1.4 The lack of transparency is a matter of government policy – involving agreements between the governments of Nauru and Papua New Guinea with Australia. It is a self-serving policy, not one designed to assist either the local communities or the asylum seekers.

2.1 The Operation of those Agreements

- 2.2 **Religious guidance.** There is no source of religious service available to the detainees on Manus. The local priest has been turned away twice and there is no chaplain at the Naval base. Detainees have great need of religious guidance. The number of Christians is small (estimated at 20-30) and they are unable to participate in worship. Islamic religious guidance appears to be entirely a matter for the asylum seekers' own self-organisation.

- 2.3 **Living conditions.** While food and shelter availability is clearly higher than the local communities' there are still aspects which are unacceptable. Manus Island is notorious for Malaria, Dengue Fever and other tropical diseases. There has been local comment, as well as media reports in Australia, that some detainees have caught malaria. No precautions are adequate against Dengue fever. Simply put, the asylum seekers should not be placed in such a potentially difficult health situation.

- 2.4 **The relatively high living standard** of the detainees, in regard to food and shelter, poses a problem for relationships with the local community and consequently Pacific relations with Australia. The asylum seekers, particularly on Manus Island, are provided with health facilities and food security which are the envy of all residents of the island. From the local perspective these benefits are being withheld from local people by Australia. They see that Australia has the capacity to provide such services yet it does not bother to do so. In the local culture such behaviour is not that of a good neighbour.

- 2.5 **Water availability** is a key issue in Nauru. A water expert from Australia has been on the island and has recommended a new desalination plant be installed for the camps which will increase the amount of water per person from 180 lt per day to approximately 230. This will be higher than is available to the Nauruans. It has been suggested that excess should be made available to Nauruans. This may not be sustainable after the camp is closed.

- 2.6 **Local perspectives.** Some Pacific Islanders welcome the asylum seeker camps because of the money they bring to the local economy. But the camps are also a potential source of disharmony because of the underlying differences which are perpetuated. To many Pacific Islanders Australia does what it likes, with no regard for local needs or interests. This attitude has existed for many years, souring relations and breeding envy and a sense of victimhood. The descent into violence in parts of Melanesia can be partly linked to lack of meaningful paid work, huge differences between ordinary life and what can be seen on television from Australia and America, and the feeling that

no-one cares. The Pacific Solution is seen as merely the latest instalment in a long history of similar actions.

2.7 **Long term problems.** The Pacific Solution provides much needed cash to the Pacific Governments involved as well as to local communities. We understand that up to 200 local people are employed by the Manus facility. A major upgrading of the hospital on Manus Island is taking place. The benefits flowing do not provide a long term solution to local living standards or need for services. When the camps are closed down the local communities will be left with very little for the millions of dollars spent.

2.8 As time passes and the initial benefits wear off the stage is being set for some difficult problems. These include:

- The asylum seekers may be detained for years and consequently may become desperate enough to break out and damage local people and property⁹
- The relatively high standard of living of the detainees (eg on Manus) may become a source of jealousy to local people
- A conflict of interest (between the detainees and their hosts) may be cemented into place and the hosts become dependent on the continued existence of the camps and the unjust treatment of asylum seekers.
- Development priorities become skewed by the existence of the camps. This has already commenced with the possible use of aid funds to pay for Nauru's fuel bill and the hospital on Manus. Development priorities need to be established at a national level, not through an ad hoc arrangement determined by outside interests.

2.9 Potential for harm. Detainees on Nauru are showing evidence of smouldering resentment and anger. In spite of the efforts of OIM to make their lives secure and comfortable and to provide education (including computer training – services denied in the Australian detention camps) they are fundamentally insecure. They have access to Sky-channel TV and are aware of what is happening in other camps (in Australia) but there is no news of their camp. Not knowing what is going to happen to them is causing anguish, depression and could lead to desperate acts.

2.10 Legal issues. According to Fr Frank Brennan, the detention of asylum seekers on both Nauru and Manus Island is unconstitutional.¹⁰ Continuing with this program is undermining the rule of law in the South Pacific. The legal systems, particularly the courts, function well in the Pacific countries (in comparison with most developing countries) and Australian aid programs have gone a long way to ensuring this outcome. The 'Pacific Solution' is having a negative impact on these programs.

2.11 Not a long term solution. The 'Pacific Solution' makes very little contribution to a long term resolution of the problem of people smuggling. It is probable that most of the asylum seekers will be granted refugee status. In this event they will either:

- Be accepted into another country (including Australia). This means that the people smugglers can assure future customers that they only need head towards Australia, be transported to a Pacific Island for a few months, then be sent to a Western country – clearly a good option.
- Or - Remain in a camp indefinitely. This will be enormously expensive, traumatic to those detained, and continue to corrupt local communities and development programs.

⁹ Nauru Deputy Prime Minister Reny Namaduk has stated that there are "ominous signs" that the detainees may not be resettled, and may be staying for a lot longer than the Australian Govt promised. He said "he could see anxiety building in the eyes of asylum seekers on Nauru as time marches on". (SMH 1/3/02)

¹⁰ Fr Frank Brennan, "The constitutions of PNG and Nauru both contain bills of rights which set clear limits on the use of detention and on the requirement for free legal access to legal assistance. Being constitutional guarantees, these restrictions cannot legally be negated with a cheque book approach. These restrictions cannot be removed by national parliamentary legislation nor by executive government policy nor by bilateral government negotiations."

2.12 Australian foreign policy

There are serious implications for Australian foreign policy in the Pacific region, in effect undermining much good work in recent years. The relevant problem areas include:

- The persuasion of local interests with cash (in effect bribes), in pursuit of a narrowly defined Australian national interest.
- Implied threat to withhold aid funds or other benefits from governments that do not “toe the line”.
- The possible use of Australian aid funds for purposes that do not fit within AusAID’s Pacific strategy.
- The use of Australian Defence Forces for non military purposes.
- The imposition of narrowly defined Australian national interests onto a regional strategy which has previously encouraged regionalism and cooperative behaviour.
- Through an excessive focus on a relatively minor issue (the asylum seekers) larger Pacific issues are being ignored (eg the descent into chaos and corruption in parts of Melanesia). In particular Australian defence assets, which could be actively engaged in the region in peacekeeping, training or to head off civil insurrection, are being used to transport asylum seekers at great cost.
- The amount of money required for the Pacific Solution is extremely high – rumoured to be in the order of \$500 million. This exceeds the total aid program in the South Pacific.
- The complete text of the agreements establishing the detention camps have yet to be published. Neither have the budgetary arrangements been explained, opening the question as to whether aid funds have been misused. The lack of transparency is unacceptable.

3. Key Principles and issues – a summary

3.1 The abuse of innocent persons for our own gain is a fundamental wrong. The Australian Government, for its own interests, has:

- denied the asylum seekers a right of asylum normally guaranteed them under international law¹¹
- degraded the language of politics in Australia through false allegations aimed at demonising the asylum seekers
- ‘persuaded’ neighbouring governments, with cash grants, possibly with threats, to imprison, without trial, the asylum seekers
- placed some of the asylum seekers in a potentially dangerous health situation
- imprisoned the asylum seekers even though they have broken no law

3.2 The Australian Government has undermined regional cooperative efforts through its unilateral, self-interested approach. While much effort in the past, including the establishment of the South Pacific Commission and other regional bodies, has gone into

¹¹ Specifically, the 1951 Convention on Refugees through which Australia undertook: “to provide asylum irrespective of the mode of arrival”.

encouraging mutual problem solving, the Pacific Solution demonstrates naked power politics. Pacific governments have been pressured¹² and compromised.

- 3.3 The self-respect of local communities and some Pacific states has been undermined through making them complicit in an unjust action by the Australian Government. The Pacific Solution undermines good relationships between Australia and Pacific Islanders.
- 3.4 The Pacific Solution does not solve the problem of unauthorised travel to Australia. While little action is taken over the many thousands of unauthorised over-staying tourists (mostly European or North American) those travelling by boat are subject to a program of physical and psychological intimidation through the use of the Defence Forces and detention. Making life unpleasant for people is a clumsy and inhumane approach to a complex problem. The source of refugees lies in poverty and war. A stronger commitment to the United Nations agencies and to multilateral solutions should be utilised. A stronger commitment to overseas aid programs in the source countries should be attempted.
- 3.5 The prognosis for the situation of the asylum seekers in the long term is not good. The Australian Government appears to be intending to continue and even expand the current program. The news of plans for a large detention centre on Christmas Island (Australian territory but excised for this purpose) points to expectations of much larger numbers of detainees. There is no clear way of providing the asylum seekers with a place to go. It is possible that they may be stranded in detention for years.
- 3.6 The Pacific Solution has been clouded in secrecy. The agreements with the governments of Nauru and Papua New Guinea have not been made public. The budgetary arrangements have not been clarified. No adequate reporting on the program has been undertaken. A transparent, independent source of information is urgently required to continually monitor developments in the camps.

¹² The PNG Foreign Minister John Pundari was sacked immediately after criticising the Australian approach to PNG (Oct 21, 2001)