



Accountability and remedy for victims of human rights abuses

Geneva 27 April 2017

G4S and the Manus Island Offshore Detention Centre (ODC), Papua New Guinea

1. When States pass control of detention centres to private security providers they give them enormous responsibility, discretion and coercive power. They not only put at risk the lives and wellbeing of detainees but also make accountability for corporate-related abuse more difficult to attain. As the case of G4S and Manus Island shows, when companies benefit from inhumane conditions of detention and are complicit with governments in undermining fundamental human rights the obstacles to remedy are particularly difficult to overcome.
2. In 2012, by agreement with Papua New Guinea (PNG), asylum seekers intercepted by the Australian navy were forcibly transferred to Manus Island - a remote facility about 800 km north of Port Moresby - where they were mandatorily detained for lengthy periods pending consideration of their refugee status in contravention of fundamental principles of international human rights law.
3. Between October 2012 and March 2014 G4S was contracted to oversee management and security at the centre. The contract was worth \$200 million USD. G4S Australia Pty Ltd is a wholly owned subsidiary of the global security group, G4S plc, which was one of the first signatories to the International Code of Conduct for Private Security Services Providers (ICoC).
4. In November 2012, the Manus Island ODC was intended to be temporary and had the capacity to house somewhere around 500 people, including families with children. By the beginning of 2014 the Centre held 1100 detainees, all single adult males. In February 2014, in three days of rioting, 69 detainees were injured, some of them seriously, and an Iranian asylum seeker, Reza Barati, was killed.

In this presentation I will discuss the different phases in the struggle for accountability and remedy against G4S: (i) the 2014 OECD complaint; (ii) the Australian senate inquiry; (iii) the criminal investigations in PNG ; (iv) the 2016 PNG Supreme Court ruling; (v) the on-going class action filed in Australia; and finally, (vi) what lessons can be learned from the G4S case.

Section (i) OECD Complaint

5. RAID's involvement can be simply explained: given the difficulties in obtaining judicial remedy in most jurisdictions, RAID has tested the OECD Guidelines for Multinational Guidelines and has filed and helped other NGOs file complaints. As a member of the Board of the International Code of Conduct Association (ICoCA) for private security providers, I had an interest in allegations against a UK registered signatory company.
6. In September 2014 RAID and the Australian NGO, the Human Rights Law Centre (HRLC), filed a complaint against G4S in an attempt to clarify its human rights responsibilities for operating the already controversial Manus Island detention facility. In 2013 the UNHCR had concluded that the policies, operational approaches, and harsh physical conditions of the Centre did not comply with international standards.¹ Under the contract with the Australian Government, G4S was required to provide and maintain a safe and secure environment for 'Transferees' and other people at the site, ensuring that their human rights, dignity and well-being were preserved.
7. We alleged that G4S was responsible for significant breaches of its obligations under the OECD guidelines in three broad areas: (i) its complicity in the unlawful detention of asylum seekers; (ii) its failure to conduct due diligence; and (iii) its failure to protect asylum seekers from harm. G4S dismissed the complaint on the grounds that it referred to the Australian policy of offshore detention and to matters over which G4S had no direct control.
8. There was a wealth of evidence to substantiate the complaint from a range of sources including UN bodies, witness statements to official inquiries and former employees who had worked at the Centre. Conditions at the Centre were extremely harsh: detainees had insufficient access to water and medical and mental health services; food was of poor quality. There were also allegations that young men held at the facility were sexually assaulted by other detainees with the full knowledge of staff at the Centre and the Australian Department of Immigration and Border Protection (DIBP).
9. Fears that the complaint would not be treated objectively by the Australian National Contact Point (ANCP) were borne out. After nine months of inaction, the case was rejected because "aspects of the complaint could be interpreted as commentary on [Australian] government policy", and also, perhaps contradictorily, because it was the PNG Government not G4S that was responsible for the operational standards at the facility.
10. We maintained nonetheless that G4S Australia and its parent company in the UK had a responsibility under the OECD Guidelines not "to cause or contribute to human rights

¹ UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 23-25 October 2013*

violations”.² G4S should not evade responsibility simply because those violations were sanctioned by the Australian Government. These views are underpinned by the soft law instruments to which G4S paid lip service, such as the UN Guiding Principles on Business and Human Rights and the ICOC.

Section (ii) Findings of the Australian Senate inquiry

11. The Australian Senate conducted an inquiry into the February 2014 violence.³ Its conclusions differed from the ANCP’s assessment. The Senate found that the violent events were “eminently foreseeable” and might have been prevented if there had not been a massive influx of new transferees⁴ into the Centre and if a clear system for determining refugee status had been established. The Senate largely commended G4S’s action at the time of the incident, but noted that it had received “extremely troubling evidence” in relation to the actions of some service provider staff.
12. The Senate did not examine in depth G4S’s performance nor did it reach adverse findings about alleged failures by G4S to meet its wider contractual obligations, though it did criticise the lack of proper training provided by G4S to its security staff, particularly local staff. The Senate concluded that “making reparations to individuals whose rights have been violated in the incident at the Manus Island [Regional Processing Centre], and preventing recurrences of human rights violations, is essential from the perspective of Australia's international obligations.”

Section (iii) Limited Criminal Investigations in PNG

13. There has been no criminal investigation into the alleged shortcomings of G4S, the company, for failing to uphold its contractual obligations. Even though the Australian High Court has found that the Australian Government has the power to participate in an offshore detention regime for as long as it serves the purpose of processing people’s refugee claims,⁵ this does not prevent G4S from being subject to civil and criminal liability. There is scope under Australian domestic law to hold a corporation accountable for human rights abuses when they fulfil functions traditionally performed by the State.⁶
14. There have, however, been individual criminal prosecutions in PNG. Two local employees, one of whom was a G4S guard, were convicted of the murder of Reza Barati. G4S denied media allegations that it had failed to cooperate with the PNG police in tracing other suspects, including two expatriate G4S employees, who had left the

² OECD Guidelines Chapter 4.2

³ The Senate Standing Committee on Legal and Constitutional Affairs inquiring into the incident at the Manus Island Detention Centre from 16 February to 18 February 2014; hereinafter Senate inquiry

⁴ In seven weeks, from 19 July 2013 to the election on 7 September 2013, the centre's population grew from 130 to 723—an increase of almost 600 per cent. In October 2013, the number of asylum seekers detained at the centre reached approximately 1100.3 By February 2014, at the time of the incident, there were 1338 asylum seekers Senate Report §3.3-3.4

⁵ *Case M68/2015*

⁶ Allens Arthur Robinson ‘Corporate Duty and Human Rights under Australian Law’ 2008

country. There is a common perception in PNG that expatriates working on Manus enjoy immunity from prosecution.⁷

15. The failure of the OECD procedures to hold G4S, the lead private contractor, accountable, contrasts with the effectiveness of public campaigning by the Australian civil society coalition No Business in Human Rights (NBIA). The NBIA campaign, which targeted investors and promoted shareholder activism, appears to have dissuaded the current lead private security contractors from renewing their contracts to operate Australia's offshore detention centres.⁸

Section (iv) PNG Supreme Court ruling – a partial remedy but an uncertain future for detainees

16. The death knell for the Manus ODC was the 2016 ruling of the PNG Supreme Court that the detention of asylum seekers on Manus Island was unconstitutional.⁹ The Centre is set to close in October 2017 when the current contract with Broadspectrum¹⁰ (which has provided services at Manus Island since March 2014), comes to end. This leaves the Australian government without a camp manager or security firm for the offshore detention network.

17. What will become of the 800 detainees still held on Manus Island? Their safety cannot be guaranteed.¹¹ Most have been held for more than three years. The vast majority of those assessed have been found to be refugees and are legally owed protection. Some may go to the USA if the Trump administration upholds the agreement with President Obama.

Section (v) Potential Remedy - Class Action in Australia

18. As far as RAID is aware, to date only one of the detainees injured during the February 2014 violence has received a settlement. There is now hope that other detainees may at last obtain compensation not only those who suffered harms in the February 2014 incident but also all those who have endured prolonged arbitrary detention at the Centre. In December 2016 a class action was filed by Melbourne-based law firm, Slater and Gordon, on behalf of 1900 detainees. The claim was brought against the Australian Government, G4s and Transfield (now Broadspectrum), for false imprisonment and for a failure to take reasonable care in relation to food and water, accommodation, healthcare and security arrangements at the Manus ODC. The case is due to commence in May 2017.

⁷ The Guardian 19 April 2016 'Reza Barati: men convicted of asylum seeker's murder to be free in less than four years'.
<https://www.theguardian.com/australia-news/2016/apr/19/reza-barati-men-convicted-of-asylum-seekers-to-be-free-in-less-than-four-years>

⁸ Broadspectrum and its subcontractor, Wilson Security, operate the Manus Island and Nauru regional processing centres.

⁹ Judgement is available at: <https://www.scribd.com/doc/310461159/PNG-Supreme-Court-Decision-on-Manus-Island>

¹⁰ Now owned by the Spanish company, Ferrovial

¹¹ HRLC reports that on 15 April 2017 drunken PNG soldiers opened fire on the Manus camp leaving refugees fearing for their lives. <https://www.hrlc.org.au/news/2017/4/21/scathing-senate-committee-report-reveals-further-evidence-that-nauru-and-manus-centres-must-be-evacuated-immediately>

Section (vi) - Lessons from G4S Manus Island

- The inherent unreliability of self-reporting

Despite the weight of evidence to the contrary, G4S told the Senate inquiry that it believed that “it performed the services under the Manus contract well and that it met and exceeded the requirements of the contract”. The Senate commented on the “striking difference between the official statements and evidence provided by the department and service providers running the centre.” One former employee said the Centre was not even fit to “serve as a dog kennel”.¹²

- Dangers of a lack of effective oversight

The Australian Government at times blocked visits by third parties including: UN bodies, human rights organisations, journalists and even members of the Senate inquiry - to prevent them from independently assessing and reporting on the conditions at the Centre.¹³ The Senate found that Centre staff, and in particular G4S personnel, were not selected, trained, qualified or equipped and the training of local staff was woefully inadequate. Abuse can more easily flourish when there are draconian non-disclosure agreements, no protection for whistle-blowers and no effective complaints mechanism for the victims.

- Perverse incentives in the contract

G4S stood to profit from the overcrowding, as it received an additional fee for each new ‘transferee’ it accepted. The contract included an incentives and abatement regime. From the Service Provider Reports it would seem that G4S was never penalised for any shortcomings in its performance. In fact the Australian Government rated its performance on welfare and security as either 4 (“exceeds expectations”) or 3 (“meets expectations”). G4S could also under an “Excusable Performance Failure Events” clause suspend certain key performance measures. This might have led G4S to downplay the significance of overcrowding at the Centre and fail to use its leverage to prevent the PNG police mobile squad, with its propensity to use disproportionate force¹⁴ being deployed around the Centre.

– Offshore regime not good value for money

In 2014, the estimated cost to the Australian tax payer for holding a single person in offshore detention for 12 months was over AUD \$400,000 [\$328, 268 USD). This compares to the much lower costs of providing accommodation, health and social services for a homeless person in Sydney, which was about AUD 28,700 [\$23, 553]. Leaving aside human rights considerations, it represents poor value for money.¹⁵ In 2015 the Senate estimated that processing claims in Australia would be 20 % of the costs of doing it offshore.¹⁶

¹² Rod St George, interviewed on Dateline, broadcast on SBS 23 July 2013.

¹³ Senate inquiry § 3.40

¹⁴ G4S Submission 1.4

¹⁵ Joffe G, Chow J, Heligman T, Wilhelm K, Collins L, Giles E et al. 2012. The economic costs of sleeping rough: an estimation of the average economic costs of homelessness as measured by utilisation of services over

Conclusion

The G4S case study suggests that commercial imperatives will always tend to override a company's allegiance to codes of conduct, corporate social responsibility policies and commitments.

In the absence of mandatory obligations there is a risk that codes become a marketing tool. The ICOC warns companies not to enter into contracts that may make them complicit in human rights violations and says that they cannot evade responsibility for human rights abuses by arguing they had to meet contractual obligations (Article 20). G4S Australia however tried to duck its responsibilities under the ICOC by claiming that these only applied to a specific entity, Global Risk Services, and not to the G4S group as a whole. Human rights due diligence and other 'voluntary measures' are part of a continuum but on their own they are insufficient to hold companies accountable or provide a means of redress for the victims unless they are mandatory and backed up by the threat of meaningful sanctions and a realistic prospect of obtaining a judicial remedy.

There is little doubt that the reputation of G4S suffered as a result of its alleged acts of omission and commission at the Manus Island ODC. However, for several years, the company escaped formal censure, criminal investigation and (as far as RAID is aware) financial penalties. The imminent closure of Manus Island Centre shows that without a private security provider and a willing "host" country Australia's offshore detention regime is not viable. With the class action underway G4S now faces extremely costly legal proceedings which, if successful, will finally demonstrate that there is no escape from legal liabilities for complicity in human rights violations.

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a 12-month period. Parity 25:37. Cited in Australia's Welfare 2013, Australian Institute of Health and Welfare 2013, Chapter 7 p. 284. Available at: <http://www.aihw.gov.au/publication-detail/?id=60129544079>

¹⁶ Hansard, Senate Estimates, 27-28 May 2013.