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Committee against Torture

Views adopted by the Committee under article 22 of the Convention, concerning communication No. 1079/2021*, **, ***

Communication submitted by:	A.A. (represented by counsel, Daniel Taylor)
Alleged victim:	The complainant
State Party:	Australia
Date of complaint:	4 May 2021 (initial submission)
Document references:	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 6 July 2021 (not issued in document form)
Date of adoption of views:	27 November 2025
Subject matter:	Immigration detention in Australia and Papua New Guinea; transfer of the complainant to a regional processing country (Nauru)
Procedural issue:	Extraterritorial jurisdiction; level of substantiation of claims
Substantive issue:	Measures to prevent acts of torture; cruel, inhuman or degrading treatment or punishment
Article of the Convention:	2, 3, 16

1.1 The complainant is A. A., a national of the Islamic Republic of Iran born in 1988. He claims a violation of his rights under articles 2, 3 and 16 of the Convention. The State Party has made the declaration pursuant to article 22 (1) of the Convention, effective from 28 January 1993. The complainant is represented by counsel.

1.2 On 6 July 2021, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to issue a request for interim measures under rule 114 of the Committee's rules of procedure.

* Adopted by the Committee at its eighty-third session (10–28 November 2025).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Jorge Contesse, Claude Heller, Erdogan Iscan, Peter Vedel Kessing, Liu Huawen, Maeda Naoko, Ana Racu, Abderrazak Rouwane and Bakhtiyar Tuzmukhamedov.

*** Individual opinion by Committee member Bakhtiyar Tuzmukhamedov (dissenting) is annexed to the present decision.

Factual background

2.1 Between 2008 and 2013, more than 50,000 people travelled unlawfully to Australia on more than 820 individual boat voyages. During this period, more than 1,200 people drowned in the attempt to reach Australia on small and often unseaworthy vessels that were unsuited to long voyages across the open ocean. The Australian Government was committed to ensuring this does not happen again, and so has introduced border policies to address the risks that arise as a result of people attempting to travel illegally by boat to Australia.

2.2 As part of these policies, on 13 August 2012, the Australian Prime Minister and the Minister for Immigration and Citizenship announced the establishment of regional processing arrangements in Nauru and Papua New Guinea,[1] facilitated by amendments to the Migration Act of 1958. These amendments provided for the designation of Nauru and Papua New Guinea as regional processing countries for the taking of any offshore entry person (later changed to "unauthorised maritime arrival") arriving on or after 13 August 2012 to a regional processing country for protection claims assessment. Regional processing arrangements and the management of individuals under those arrangements are the responsibility of the host regional processing country. Refugee status determination is conducted under the domestic laws of the regional processing country.

2.3 The complainant arrived on Christmas Island on 24 July 2013, as an unauthorised maritime arrival. He was transferred to Manus Regional Processing Centre, Papua New Guinea on 19 December 2013[2] under section 198AD of the Migration Act. There he was tortured including by having his throat slit by a guard who garrotted him almost causing his death.[3] The holding of the complainant in these conditions caused such harm to his physical and mental health that he became suicidal to end the suffering and engaged in self-harm including through attempted self-immolation. Due to the stress, he suffers from a skin condition psoriasis which is disfiguring his face and body and further contributing to his suicidality. At an unknown date in 2016, the Papua New Guinea Supreme Court ordered his and other's release from the detention centre.[4]

2.4 On 17 June 2019, the complainant signed a consent form to temporarily transfer to Australia for medical treatment. The agreement specified, among others, that while in Australia, the complainant would be detained in an immigration detention facility on the basis that he was an unlawful non-citizen. On 18 June 2019, the complainant was transferred to Australia[5] for medical treatment for severe dermatitis and mental health issues.[6] According to a clinical advisory team opinion issued by the Department of Home Affairs on 17 March 2021, the complainant, since his transfer, had been seen on multiple occasions by dermatologists at a tertiary-level hospital outpatient clinic and had received a diagnosis and treatment recommendations. His compliance with treatment however was poor, but his condition nevertheless improved. According to the same document, on 9 March 2021, the complainant declined to attend a dermatology clinic appointment due to his requiring a security escort. Since his transfer to Australia, his mental health had been managed with input from a psychiatrist, who noted on multiple occasions that no mood or psychotic disorders were present. He attended routine mental health screening with a mental health nurse in February 2021 and disclosed underlying anxiety with his situation and a sense of persecution, however denied any acute risks. He was therefore assessed by the medical officer as not needing to remain in Australia.

[1] Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to, and assessment and settlement in, Papua New Guinea of certain persons, and related issues, 6 August 2013; Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues, 3 August 2013; and Memorandum of Understanding between the Republic of Nauru and Australia on the Enduring Regional Processing Capability in Republic of Nauru, September-October 2021.

[2] No details on who performed the transfer.

[3] The complainant submits photos with scars on his neck.

[4] No details.

[5] No details on who performed the transfer. He was held in detention in Australia until 7 April 2022.

[6] The State Party mentions several dates of different medical consultations.

2.5 Notwithstanding the previous infliction of torture and imprisonment in Papua New Guinea, in order to escape immigration imprisonment in Australia,[7] the complainant requested on 15 November and on 10 December 2020 to be removed back to Papua New Guinea.[8] However, on 20 March 2021, migration authorities of Papua New Guinea informed the Australian authorities that they were not accepting the return of any transitory persons in an attempt to stop the increase in Covid-19 cases.[9] On 7 April 2021, the Australian authorities obtained approval from the authorities of Nauru to accept seven transitory persons, including the complainant.[10]

2.6 On 15 December 2020, the complainant filed an application in the then Federal Circuit Court of Australia (FCC)[11] seeking a declaration that his detention was unlawful and an order for release from detention (habeas corpus). The FCC dismissed his case on 2 August 2021. The complainant appealed the FCC decision to the Federal Court of Australia. On 29 November 2021, the Federal Court of Australia dismissed his appeal. On 24 December 2021, the complainant filed an application in the original jurisdiction of the High Court and by way of a later amended application sought orders for the conduct of a non-refoulement assessment of protection claims asserted against Nauru and Papua New Guinea, prior to the authorities taking any steps to remove him from Australia. This case is ongoing.

2.7 On 7 April 2022, the Minister for Home Affairs intervened in the complainant's case and granted him a Bridging Visa Class E (BVE). Since that date, the complainant has been living in the community. He remained on a valid BVE until 10 December 2022. On 18 August 2022, the Minister intervened to allow the complainant to apply for a subsequent BVE at the expiry of the existing one. As a holder of a BVE and accordingly a lawful non-citizen, the complainant is not eligible for transfer to a regional processing country. As a transitory person, the complainant would not be settled in Australia and was encouraged to engage in third country resettlement options. The extended BVE grant provided additional time for him to engage in third country migration outcomes.

Complaint

3.1 The complainant complains under article 2 of the Convention that the State Party held him in detention in conditions of torture in Papua New Guinea. Then although transferred to Australia and detained for the purpose of receiving medical treatment, he has not received any medical treatment. He considers that his ongoing detention is calculated to destroy his mental health and force him to return to the Islamic Republic of Iran, from which country he fled fearing persecution.

3.2 The complainant invokes article 3 to allege risk of torture in Nauru because of being a refugee. He submits that in Nauru, the authorities inflict this harm, and if inflicted by the local population, there is no protection of law. In Nauru, the complainant would have no refugee assessment process and would be exposed to violence against him by locals due to his ethnicity and being a refugee.

3.3 The complainant explains that the State Party's resumption of operation of immigration imprisonment camps in Nauru has led to ethnicity-based violence by locals against refugees, with the refugees having no protection of law. There is widespread and systematic rape of women and children resulting practically in the evacuation of most women and child refugees. There is widespread and systematic bashing and attempted murder of refugees including by the authorities with no protection of law. Refugees are subjected to arbitrary arrest and imprisonment by Nauru police and Emergency Response Team, including

[7] Transitory persons brought to Australia from a regional processing country for a temporary purpose are subject to held immigration detention on arrival in Australia under section 189 of the Migration Act, until they depart or are otherwise granted a visa or residence determination through Ministerial intervention.

[8] Transitory persons were required to return to a regional processing country at the completion of the temporary purpose for which they were transferred to Australia.

[9] The regional processing arrangements with Papua New Guinea ended on 31 December 2021.

[10] It is Australian Government policy that no transitory person will settle permanently in Australia.

[11] In 2021, the Federal Circuit Court was merged with the Family Court of Australia to form the Federal Circuit and Family Court of Australia, effective from 1 September 2021.

for the crimes of protest or self-harm. This is regularly accompanied with severe bashing, kneeling on the detainees' neck, purported body cavity searches amounting to digital rape, and holding immigration prisoners completely naked and handcuffed exposed to local prisoners for extended periods of time for these offences of protest or self-harm.

3.4 The complainant also considers – at the time of submission of his communication – that his holding in immigration imprisonment approaching its ninth year is inhuman and degrading, thus violating article 16 of the Convention. The denial of medical treatment and conditions and duration of indefinite held custody is cruel, inhuman, and degrading treatment, imposed to make an example of him because of coming to Australia by boat in 2013.

State Party's observations on admissibility and the merits

4.1 On 25 October 2022, the State Party challenged the admissibility of the complaint, arguing that the complainant's claims under articles 2 and 16 with respect to alleged torture and ill-treatment while he was in Papua New Guinea relate to alleged violations occurring outside the State Party's territory and jurisdiction and that his other claims are manifestly unfounded within the meaning of rule 113 (b) of the Committee's rules of procedure. Accordingly, the State Party has not addressed the merits of the complainant's claims regarding alleged violations of the Convention during his time in Papua New Guinea.

4.2 With regards to his access to medical treatment after his transfer to Australia, the State Party submits that the complainant has not provided any explanation or documentary evidence to substantiate his allegations, beyond the general statement that "no medical treatment has been provided". Contrary to the complainant's allegations, the State Party submits that he has received adequate healthcare while in Australia (para. 2.4 above). With respect to his physical health, the complainant has been treated for a chronic skin condition and for ear, nose and throat issues. The complainant's mental health has also been closely monitored while in Australia and he has received treatment where required. He has been frequently assessed by clinicians from the Department of Home Affairs contracted detention health service provider. The complainant has also had ongoing appointments for mental health reviews and counselling sessions with counsellors from the Queensland Program of Assistance to Survivors of Torture and Trauma (QPASTT).[12] His mental health has been managed with psychiatric input. For this reason, the State Party considers that any allegation the complainant has not received medical attention in Australia is manifestly unfounded.

4.3 With regards to the complainant's detention in Australia, the State Party submits that he is no longer in detention and has been residing in the community since 7 April 2022. Further, contrary to the complainant's allegation that his detention was designed to "destroy" his mental health and "force" him to return to the Islamic Republic of Iran, the State Party explains that immigration detention under the Migration Act is administrative in nature and not applied for punitive purposes. The health and safety of all persons held in detention is a priority for the Australian Government, and all immigration detention placements are decided using a risk-based approach which considers the individual's circumstances.

4.4 The State Party considers that the complainant has failed to present any evidence in substantiation of his claim that his detention constituted cruel, inhuman or degrading treatment. Contrary to his allegations with respect to the denial of medical treatment, the complainant has at all times had access to adequate healthcare while in Australia both in detention and when living in the community. While in immigration detention, the complainant has had access to clinical health services to a standard broadly commensurate with health care available to people in the Australian community through the public health system, including mental health services. These services have been provided at no cost to him.

4.5 The State Party clarifies that the complainant has attended multiple consultations with psychiatrists, general practitioners and external specialists for his mental health and physical health issues throughout his time in immigration detention. On 15 June 2021, he withdrew his consent for all treatment from the detention health service provider and signed a medical refusal consent form. As a result, from this date until his release into the community on 7

[12] On file.

April 2022, the complainant did not access medical services available to him, aside from receipt of his three Covid-19 vaccinations. Nonetheless, he continues to have access to the State Party's public health care system.

4.6 As to the complainant's allegations with respect to being removed to Nauru, the State Party declares that while he holds a BVE, he will not be taken to Nauru. However, should the complainant ultimately be transferred to Nauru when his BVE expires, pursuant to the memorandum of understanding agreed between Nauru and Australia, Nauru has assured the State Party that transferees will be treated with dignity and respect, in accordance with relevant human rights standards, and not be refouled to a third country. Further, should the complainant be transferred to Nauru, a pre-transfer assessment would be conducted by the Department of Home Affairs to identify whether there are any obstacles to transfer, including any health, legal and/or operational obstacles.

4.7 On the merits, the State Party rejects the complainant's allegations that he has been denied medical treatment. While in Papua New Guinea, the complainant was treated for ear, nose and throat issues and received secondary treatment for dermatological, orthodontic and urological issues, as well as mental health issues. Since his arrival in Australia, he has been treated by dermatologists on multiple occasions as a hospital outpatient client and has received mental health treatment and treatment for ear, nose and throat issues.[13]

4.8 According to the State Party, nothing in the complainant's treatment in detention constitutes torture or cruel, inhuman or degrading treatment or punishment. It reiterates that the complainant's immigration detention was administrative in nature and was due to his status as an unlawful non-citizen in Australia pending his transfer back to a regional processing country or his resettlement in a third country. His detention was of a temporary nature and was subject to regular review. On 7 April 2022, he was granted a BVE and now resides in the community. Immigration detention can be distinguished from imprisonment as persons in immigration detention are not detained in a prison, are not considered to be prisoners, and are not being held in detention for punitive reasons.

4.9 The State Party insists that the complainant, as a holder of a BVE, is not currently eligible for transfer to Nauru. His extended BVE is intended to provide additional time for him to engage in third country resettlement options. He was on a resettlement pathway to Canada, however he declined to attend the medical examination required to progress resettlement to Canada and later withdrew from the process. It is also open to him to apply for permanent resettlement in Papua New Guinea. Should the complainant ultimately not engage in a third country resettlement process, at the expiry of his BVE he would be taken to Nauru after the Department of Home Affairs undertakes a pre-transfer assessment to determine whether there are any obstacles to transfer, including any health, legal and/or operational obstacles. Even if it is accepted that there is a general risk of violence in Nauru, the State Party submits that the complainant has not established additional grounds to show that he is at foreseeable, real and personal risk of torture if transferred to Nauru.

Complainant's comments on the State Party's observations on admissibility and the merits

5.1 On 12 August 2023, the complainant submitted his comments on the State Party's observations. He submits that the State Party has now stopped offshore processing and accordingly the argument for offshore processing necessary to save lives carries no merit. He insists that the State Party had effective control, management and oversight over the detainees in the detention centre in Papua New Guinea, including the authority to bring such persons to Australia, as ultimately and belatedly occurred with the complainant. The State Party paid for, and staffed, the detention centres in which the transferees were illegally and arbitrarily detained in Papua New Guinea.

5.2 The complainant recalls that while in detention in Papua New Guinea, he was attacked by an unknown person who slashed his throat. The Australian Government and the private security firm which was the contractor for the Australian Government providing security in the detention centre and detaining the petitioner and others in Papua New Guinea, have never

[13] The State Party mentions the dates of medical treatment.

accounted for this act of torture, never apologized, never investigated it, or sought to provide justice, or recompense, for it. He submits that acts of attempted murder are acts of torture and that the State Party had a duty to not allow the infliction of such torture on the complainant, and further, to investigate it and punish it. It also had a duty to rehabilitate the complainant.

5.3 Should the complainant be removed to Nauru, he would be subject to persecution due to belonging to the particular social group of male transferees from Australia. There have been continuous reports of serious acts of violence against transferees by locals and guards including rape and grievous bodily harm. There have been reports of police stripping transferees naked and digitally penetrating them in the police cells as well as punching them.[14] There is no effective protection of law there. These problems depend in part on the numbers of detainees sent to Nauru by the State Party as when the locals are demographically threatened there is serious violent response to that. The State Party's policies to date of flooding Nauru with a population of prisoners who were mostly single young men of a different ethnicity, was a recipe for communal conflict, as occurred in the complainant's case. To transfer the complainant to Nauru for an indefinite period means ultimately forcing him to return to the Islamic Republic of Iran. While the State Party mentions pre-transfer assessment before transfer to a regional processing country, the complainant declares that no such pre-transfer assessment was conducted in his case.

5.4 The complainant contests the State Party's statement that events relevant to his application occurred outside its jurisdiction. He explains that the Australian Government maintained control of the detention centres with its own Australian Border Force officers, both acting under the Australian Government and seconded to the Papua New Guinea Government, and it provided the entire security contracting firm charged with holding the complainant and the other transferees in detention. Moreover, it always maintained jurisdiction over the complainant enabling it, in particular, to bring him to Australia at any moment. This it did belatedly in 2019. While the State Party claims that Papua New Guinea had responsibility for the treatment of detainees, that was patently untrue, as was ultimately shown by the complainant's evacuation, and practically all other detainees, to Australia, usually because of their health deterioration due to their indefinite detention into a state of medical emergency, as was the case for the complainant.

5.5 The complainant mentions that the security firm in the detention centre in Papua New Guinea was a contractor in the employ of the State Party, so the complainant was under the jurisdiction of the State Party at all material times. Hence the classification of the complainant under the Migration Act 1958 as a "transitory person" because he was transferred to Manus Island, was a legal liability which endured throughout his time in Papua New Guinea and Australia and up to the present date. He explains that there is no process in Australian law for termination of transitory person status other than the acquisition of Australian citizenship. Even final departure from Australia does not trigger any provision for termination of transitory person status. In any case, he considers that the State Party maintained responsibility, care and control over him at all relevant times, which is further shown by the conduct by the Australian Government of two inquiries into the incident in which he was harmed, and ultimately by the Australian Government bringing him to Australia. The complainant notes that the State Party has failed to provide to the Committee the relevant materials held in its possession as to these two inquiries in relation to the incident in Manus Island, insofar as they relate specifically to him.

5.6 The complainant explains that while the State Party appears to claim that there was a law to transfer to a regional processing country all unauthorized maritime arrivals except those exempted by the Minister, in practice what occurred was that only a random portion of them were actually transferred. It is also to be noted that the State Party had to evacuate transferees from Papua New Guinea and Nauru back to Australia in order to make way for new arrivals.

5.7 As to the State Party's statement that his allegations are manifestly unfounded, the complainant insists that having his throat slit from ear to ear by an employee contractor of the State Party while illegally detained by it in Papua New Guinea is a very serious matter,

[14] No references.

as is nine years of arbitrary detention in atrocious conditions leading to life threatening physical and mental health deterioration.

5.8 The complainant alleges that no adequate medical care was provided for his complex conditions, which ultimately required him to have an environment in freedom in which he could recover and manage his condition. He was detained by the State Party for over 33 months before being released with a bridging visa. While on 17 March 2021, the complainant was assessed as no longer needing to be in Australia for medical treatment, the State Party offers no satisfactory explanation for his continued detention until 7 April 2022, as to why it could not so release him earlier. In any case, Papua New Guinea did not accept any of the transferees back, and the Australian Government despite knowing about this, maintained the complainant and others in a state of indefinite detention in Australia under the fiction that they were to be returned to Papua New Guinea. The Minister for Home Affairs and Minister for Immigration were the only two people with the power under Australian law to release the complainant, and that power was non-compellable and not justiciable, and therefore completely arbitrary.

5.9 As to health and welfare services in Papua New Guinea, the complainant asserts that while the State Party claims to have provided necessary health services to detainees and transferees, these services were clearly inadequate as to the complainant, and practically to the whole cohort, as their health deteriorated to such an extent that their life, health and safety were at serious risk and they were transferred to Australia for medical treatment.

5.10 The complainant notes that although the State Party claims that transfer to Australia would not occur without the consent of the Papua New Guinea Government, however it does not mention that Australian Government officers were seconded to the Papua New Guinea Government for the management of the regional processing centres.

5.11 The complainant submits that the State Party's statement that its policy is that "no transitory person will settle permanently in Australia" is untrue since the first cohort of transitory persons evacuated back to Australia in 2013 had that bar lifted and were allowed to apply for temporary protection visas/safe haven enterprise visas, and those transitory persons who were granted such visas have now been allowed to apply for Resolution of Status permanent visas. The complainant refers to section 5 of the Migration Act 1958, which provides that transitory person includes any person who was taken to a regional processing country and includes those subsequently transferred to Australia.[15]

5.12 The complainant concludes that the State Party knows fully well that it owes a duty to consider his claims under the Refugees Convention but yet refuses to do so. In this way, it continues to abrogate its international obligations. That the State Party continued to detain the complainant for a further thirty months after medically evacuating him to Australia can only be construed as a repudiation of Australia's international obligations.

Additional submission from the State Party

6.1 On 15 November 2024, the State Party provided further observations. It reiterates that it at no time had effective control over detainees in the Manus Regional Processing Centre in Papua New Guinea because its officials at no time detained those individuals or took physical custody of them. The Papua New Guinea Immigration and Citizenship Authority made the ultimate decision as to whether individuals were to be transferred to Australia or not. The mere presence of Australian Border Force officers in the Manus Regional Processing Centre is insufficient to meet the high standard required for a State to be effectively controlling territory abroad.[16] Australian Border Force officers were not – as alleged by the complainant – seconded to the Government of Papua New Guinea. Australian Border Force officers provided Papua New Guinea with capacity building support to build their protection claims assessment and status resolution capabilities. The role of the Department of Home Affairs in the Manus Regional Processing Centre was to support the Papua New Guinea Government

[15] https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/ma1958118/s5.html.

[16] Human Rights Committee, Replies to the list of issues (CCPR/C/AUS/Q/5) to be taken up in connection with the consideration of the fifth Periodic Report of the Government of Australia (CCPR/C/AUS/5), CCPR/C/AUS/Q/5/Add.1, 21 January 2009, page 4.

to implement arrangements through the management of service delivery contracts. All actions associated with the operation of the Manus Regional Processing Centre were the responsibility of the Papua New Guinea Government. Similarly, the presence of private security personnel in the Manus Regional Processing Centre is also insufficient to meet this standard. In addition, the State Party submits that it at no time had effective control over detainees in the Manus Regional Processing Centre because its officials at no time detained those individuals or took physical custody of them. Hence the complainant's claims with respect to any treatment occurring in Papua New Guinea are inadmissible.

6.2 On the merits, the State Party reiterates that the complainant's detention in Australia was not arbitrary or indefinite. His detention was subject to review to assess the appropriateness of the accommodation and services provided, including the length and conditions of the complainant's detention. It explains that the Department of Home Affairs conducts reviews through its case management service. Case managers develop a case plan for each person in immigration detention, and these plans are subject to regular assessments.

6.3 As to the complainant's allegation that a large number of transferees were transferred back to Australia in 2013 and allowed to apply for protection visas, the State Party clarifies that on 13 February 2023, the Australian Government announced that it would move Temporary Protection visa and Safe Haven Enterprise visa holders onto permanent visas. It is implementing this policy by enabling eligible visa holders to apply for a Resolution of Status Visa. However, individuals who have had their visa cancelled or refused will not be eligible to apply for a Resolution of Status Visa. People who fall under Australia's protection obligations (and therefore cannot be returned to their home country), but fail a character or security test, may be considered for third-country resettlement. Transitory persons brought to Australia from regional processing countries (Papua New Guinea and Nauru) for medical treatment – around 1,100 people – and transitory persons still in those countries do not form part of the legacy caseload and are not eligible for this visa pathway.

6.4 As to the complainant's alleged deportation to Nauru, the State Party repeats that as the holder of a BVE and lawful non-citizen, it is not currently open to transfer the complainant to Nauru. In accordance with Australian Government policy, as a transitory person, the complainant does not have a settlement pathway in Australia and is encouraged to engage in third country resettlement pathways such as resettlement in New Zealand. The designation of Papua New Guinea as a regional processing country lapsed on 1 April 2023 and further designation has not progressed. Since 1 April 2023, there is no option for the complainant to be taken to Papua New Guinea under the Migration Act.

6.5 The State Party submits that arguments relating to the Refugees Convention are outside the scope of this communication and are therefore inadmissible in accordance with Rule 113 (a).

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee notes that the State Party contests the admissibility of the claims related to the facts that occurred in Papua New Guinea on the grounds that the facility in Papua New Guinea was not under its jurisdiction. The State Party argues that it did not exercise any effective control over detainees in the Manus Regional Processing Centre in Papua New Guinea because its officials at no time detained those individuals or took physical custody of them. Nonetheless, the Committee notes that the complainant insists that the State Party maintained control of the detention centres with its own officers, it provided the entire security contracting firm charged with holding the complainant in detention and it always maintained jurisdiction over him, enabling it, in particular, to bring him to Australia at any moment.

7.3 The Committee recalls that, pursuant to article 22 of the Convention, it receives and considers communications from or on behalf of individuals subject to a State Party's jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention, provided that the State Party has declared that it recognizes the competence of the Committee in that regard.[17]

7.4 In the present case, the Committee notes that, in order to determine whether certain of the claims made by the complainant may be considered under the Convention, it is necessary to determine whether the complainant was located in a territory where the State Party exercises its jurisdiction. In this regard, the Committee notes the State Party's allegation that while detained at the Manus Regional Processing Centre, the complainant was located in a place that was not under the jurisdiction of the State Party, but rather under the jurisdiction of Papua New Guinea. The Committee also notes the complainant's allegation that the State Party maintained control of the detention centre through its staff.

7.5 The Committee notes that the complainant was transferred by the State Party to Papua New Guinea at the end of 2013, pursuant to the section 198AD of the Migration Act 1958, and that he was placed in immigration detention in the Manus Regional Processing Centre. The Committee considers that the complainant's placement in detention in Papua New Guinea, pending the processing of his protection claims, was a necessary and foreseeable consequence of the transfer of the complainant by the State Party.

7.6 The Committee observes that pursuant to a 2014 report of the Australian Senate's Legal and Constitutional Affairs References Committee as to the incidents during which the complainant was attacked by an unknown person who slashed his throat, the Manus Regional Processing Centre was entirely funded by the Australian Government; operational, maintenance, security and welfare support services were provided by service providers under contracts with the Australian Government; and the Australian (departmental) officials managed or had significant involvement in the Regional Processing Centre processes in respect of individuals held there.[18] The Committee also observes that the Australian Government provided capacity building and funding for the Manus Island centre and, under an agreement with Papua New Guinea, coordinated the contract administration process for the provision of services at the centre. Various providers had entered into contracts with the department, representing the Commonwealth, in order to provide services in the areas of garrison and security services, health and medical services, welfare support, and interpreting services.[19] The Committee then takes note of the Australian Senate Committee's view on the existence of "harsh and inhumane conditions at the Manus Island Regional Processing Centre"[20] and that "it is clear from evidence presented to the committee that the Australian Government failed in its duty to protect asylum seekers".[21]

7.7 The Committee further notes the Australian Senate Committee's conclusions as to the responsibility of the Australian Government in relation to the Manus Island Regional Processing Centre: the evidence provided by experts in international human rights law was unequivocal in stating that Australia was and still is "exercising effective control with respect to the Manus Island Regional Processing Centre and the individuals held there."[22] The Australian Senate Committee considered that "the degree of involvement by the Australian Government in the establishment, use, operation, and provision of total funding for the centre clearly satisfied the test of effective control in international law, and the Government's ongoing refusal to concede this point displayed a denial of the State Party's international obligations."[23] The Australian Senate Committee also agreed with the view put to it by international human rights law experts that, even if the State Party did not exercise "effective

[17] Committee against Torture, General comment no. 4 (2017), para. 6.

[18] Parliament of Australia, Senate Standing Committees on Legal and Constitutional Affairs, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, 11 December 2014, para. 7.24.

[19] Ibid., para. 2.10.

[20] Ibid., para. 8.10.

[21] Ibid., para. 8.6.

[22] Ibid., para. 8.33.

[23] Idem.

control", it would still be liable for breaches of international human rights law that occurred in respect of asylum seekers held at Manus Island under the doctrine of joint liability. And it concluded that, "questions of effective control aside, the Australian Government, as the architect of the arrangements with Papua New Guinea, had a clear and compelling moral obligation to ensure the treatment of asylum seekers held on Manus Island was in accordance with the principles and minimum standards contained in international human rights law".[24]

7.8 The Committee recalls paragraph 16 of its General comment no. 2 (2007) on the implementation of article 2 by States Parties, which defines the principle of "factual or effective control" when establishing the exercise of jurisdiction. The Committee observes that the State Party established policies to transfer unauthorized maritime arrivals who arrived in Australia after 13 August 2012 to be accepted at regional processing centres, either in Nauru or in Papua New Guinea, to have their protection claims assessed. The State Party funded the detention operations, was authorized to jointly manage them, participated in monitoring them, selected companies which would be responsible (directly or through subcontractors) for construction, security, garrison, health and other services at the detention centre. The Committee also recalls its findings in respect of the reports submitted by the State Party under article 19 of the Convention, in which it considered that all persons who are under the effective control of the State Party, because inter alia they were 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.[25] In light of all of the factors described above, the Committee considers that the significant levels of control and influence exercised by the State Party over the operation of the Manus Island Regional Processing Centre amounted to such control during the period when the complainant was detained, attacked and injured at the Centre. The Committee thus considers that while he was detained at the Manus Island Regional Processing Centre, the complainant was subject to the jurisdiction of the State Party.[26] Therefore, the Committee considers that article 22 (2) of the Convention does not pose an obstacle *ratione loci* to the admissibility of the complainant's claim under article 2 of the Convention in relation to his detention at the Manus Island Regional Processing Centre.

7.9 Insofar as the communication concerns the alleged transfer of the complainant to Nauru, the Committee notes the State Party's information that the complainant, as a holder of a BVE, is not currently eligible for transfer to Nauru and at the expiry of his BVE, he would be taken to Nauru only after the Department of Home Affairs undertakes a pre-transfer assessment to determine whether there are any obstacles to transfer, including any health, legal and/or operational obstacles. In the light of this information and in the absence of a decision in force to transfer the complainant to Nauru, the Committee considers that this claim has become moot. When taking this decision, the Committee is aware that, in any event, the complainant would be able to submit a new case to the Committee against the State Party if a new risk relating to his removal to Nauru arises in the future.

7.10 The Committee notes that the State Party challenges the admissibility of the complainant's claims under article 16 as to the length of immigration detention in Australia and lack of medical treatment, on the basis that they are manifestly unfounded. The Committee notes the State Party's explanation that the complainant's immigration detention was administrative in nature and also takes note of the detailed account of the healthcare consultations and treatment received by the complainant. It then notes that the complainant has neither informed the Committee about these treatments nor commented on the State Party's allegations. In the absence of any further relevant information as to the alleged lack of medical treatment, the Committee concludes that the complainant has failed to substantiate his claim sufficiently for the purpose of admissibility.[27]

7.11 The Committee considers, however, that the complainant has sufficiently substantiated his claim of excessive length of immigration detention for the purposes of

[24] Ibid., para. 8.34.
[25] CAT/C/AUS/CO/4-5, para. 17, and CAT/C/AUS/CO/6, para. 29.
[26] *Mona Nabhari v. Australia* (CCPR/C/142/D/3663/2019), para. 7.15; and *M.I. and al. v. Australia* (CCPR/C/142/D/2749/2016), para. 9.9.
[27] *S.K. v. Australia* (CAT/C/73/D/968/2019), para. 12.6.

admissibility. Accordingly, it declares the complaints under articles 2 and 16 (1) of the Convention admissible and proceeds with their consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

8.2 In the present case, the issue before the Committee is whether the complainant's detention in the Manus Island Regional Processing Centre in Papua New Guinea and his immigration detention in Australia constitute a violation of the State Party's obligations under articles 2 (1) and 16 of the Convention to take effective legislative, administrative, judicial or other measures to prevent acts of torture or of cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction.

8.3 As to the complainant's detention in the Manus Island Regional Processing Centre in Papua New Guinea, the Committee notes his allegations that the State Party held him illegally in detention in conditions of torture, culminating in a murder attempt of the complainant and lack of investigation and rehabilitation. The complainant also alleged that he was held in "atrocious conditions" and lacked adequate medical care. The Committee also notes that the State Party has refrained from commenting on the merits of the complainant's allegation with regard to his time spent in Papua New Guinea. Due weight must therefore be given to the complainant's allegations, to the extent that they have been properly substantiated.

8.4 The Committee recalls its conclusions and recommendations in respect of the reports submitted by the State Party under article 19 of the Convention, in which it urged the State Party to adopt the necessary measures to guarantee that all asylum seekers or persons in need of international protection who are under its effective control are afforded the same standards of protection against violations of the Convention regardless of their mode and/or date of arrival. The Committee further held that the transfers to the regional processing centres in Papua New Guinea (Manus Island) and Nauru, which in 2013 were deemed by the Office of the United Nations High Commissioner for Refugees not to provide "humane conditions of treatment in detention", and that these transfers do not release the State Party from its obligations under the Convention.[28]

8.5 In the present case, the Committee notes that the State Party has not submitted any information or evidence that it has taken measures to protect the complainant from acts of torture or ill-treatment during his detention in the Manus Island Regional Processing Centre in Papua New Guinea. Moreover, the State Party has not provided any information on measures taken by them to have the local authorities investigate the act of cutting the complainant's throat while in detention and to duly punish those responsible. It also did not inform the Committee on the conditions of the complainant's detention of approximately three years in Papua New Guinea and on the availability of effective medical treatment. In that connection, the Committee reiterates its concerns at the State Party's policy of transferring asylum seekers to the regional processing centres located in Papua New Guinea (Manus Island) and Nauru for the processing of their claims, despite reports on the harsh conditions prevailing in those centres, such as mandatory detention, overcrowding, inadequate health care, and allegations of sexual abuse and ill-treatment. The combination of the harsh conditions, the protracted periods of closed detention and the uncertainty about the future reportedly creates serious physical and mental pain and suffering amounting to ill-treatment.[29] It further notes that these conditions have allegedly compelled some asylum-seekers to return to their country of origin, despite the risks that they face there.[30] Moreover, monitoring and oversight of local authorities and their agents should have been all the more stringent since Papua New Guinea is not a State Party to the Convention, rendering the complainant without a remedy under the Convention. In the light of the foregoing, the Committee finds a violation of article 2 (1), read in conjunction with article 1 (1) and of

[28] CAT/C/AUS/CO/4-5, para. 17.
[29] Idem.
[30] CAT/C/AUS/CO/6, para. 29.

article 16 of the Convention in respect of the circumstances of complainant's detention in the Manus Island Regional Processing Centre in Papua New Guinea.

8.6 The Committee further notes the complainant's allegation that his indefinite detention in Australia from 24 July to 19 December 2013 and from 18 June 2019 to 7 April 2022 and the conditions in which he was held were inhuman and degrading. It also notes the State Party's statement that the complainant's immigration detention was administrative in nature and was due to his status as an unlawful non-citizen. The State Party also claims that the detention was pending his transfer back to a regional processing country or his resettlement in a third country, so it was of a temporary nature and was subject to regular review.

8.7 The Committee recalls its conclusions and recommendations in respect of the reports submitted by the State Party under article 19 of the Convention, in which it expressed concern that detention continued to be mandatory for all unauthorized arrivals, until the person concerned was granted a visa or was removed from the State Party and that the law did not establish a maximum length for a person to be held in immigration detention, reportedly resulting in protracted periods of deprivation of liberty. [31] The Committee therefore recommended the State Party to repeal the provisions establishing the mandatory detention of persons entering its territory irregularly and ensure that detention was only applied as a last resort, when determined to be strictly necessary and proportionate in each individual case, and for as short a period as possible.[32] The Committee also expressed concern about what appeared to be the use of detention powers as a general deterrent against unlawful entry rather than in response to an individual risk and about poor material conditions of detention in some facilities.[33]

8.8 The Committee notes that the Human Rights Committee held that while detention in the course of proceedings for the control of immigration is not arbitrary per se, it must be justified as being reasonable, necessary and proportionate in the light of the circumstances, reassessed as it extends in time, not be based on a mandatory rule for a broad category, take into account less invasive means of achieving the same ends and be subject to periodic re-evaluation and judicial review.[34]

8.9 In the present case, the Committee observes that in total, the complainant spent almost three years and three months in immigration detention based on his status as unlawful citizen. It is undisputed that the sole reason for the complainant's administrative detention in Australia was his unauthorized entry into Australia, by irregular maritime means, as an asylum claimant. While the State Party argues that the complainant's detention was subject to review to assess the appropriateness of the accommodation and services provided, including the length and conditions of detention, the Committee considers that the State Party did not identify individualized and specific reasons that would have justified the need to deprive the complainant of his liberty for such a protracted period of time, taking into account his earlier prolonged detention in Papua New Guinea.[35] The State Party also did not explain any reason specific to the complainant for continuing to detain him, why a less restrictive measure could not have ensured the complainant's availability for removal or why he was not transferred earlier to community detention.

8.10 The Committee considers that the State Party failed to explain or to provide sufficient information that the complainant's prolonged and indefinite detention was justified as being reasonable, necessary and proportionate in the light of the circumstances. It further notes that the State Party has not submitted information in respect of the complainant's conditions of detention. Accordingly, the Committee finds a violation of article 16 of the Convention with respect to the complainant's immigration detention in Australia.

9. The Committee, acting under article 22 (7) of the Convention, concludes that the facts before it reveal a violation by the State Party of article 2 (1), read in conjunction with article 1 (1) and of article 16 of the Convention.

[31] CAT/C/AUS/CO/4-5, para. 16.
[32] Idem.
[33] CAT/C/AUS/CO/6, para. 27.
[34] For example, *A.K. et al. v. Australia* (CCPR/C/132/D/2365/2014), para. 8.4.
[35] *Mona Nabhari v. Australia*, para. 8.6.

10. The Committee urges the State Party to: (a) provide the complainant with an opportunity to have his asylum claims examined by the competent authorities of the State Party; (b) provide the complainant with appropriate redress, including compensation for material and non-material damages, restitution, rehabilitation, satisfaction and guarantees of non-repetition; and (c) ensure that similar violations do not occur in the future.

11. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State Party to inform it, within 90 days of the date of transmittal of the present decision, of the steps it has taken to respond to the above observations.

Annex

Individual opinion of Committee member Bakhtiyar Tuzmukhamedov (dissenting)

1. For the reasons set out below, I respectfully disagree with conclusions reached by the Majority in this Decision concerning Communication No. 1079/2021 in the matter of A. A. against Australia, and wish to distance myself from the approach taken by the Majority.

2. I observe with regret the dependence of the Majority on the concept of "effective control" which, controversial in and of itself,[1] is completely irrelevant in the context of the communication at hand. Suffice is to note that in the recent Advisory Opinion on Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem the International Court of Justice clearly linked "effective control" to military occupation, as did earlier the European Court of Human Rights in its tone-setting *Loizidou v. Turkey*,[2] developed in *Al-Skeini and Others v. the United Kingdom*,[3] and further refined in *Jaloud v. the Netherlands*,[4] where it stated that "effective control" is a "consequence of lawful or unlawful military action"[5] by a State, resulting in its authority being exercised over an area outside the territory of that State. Apparently, the establishment of the Manus Regional Processing Centre has been the outcome of bilateral intergovernmental negotiations resulting in an international treaty, governing the Centre's operation, rather than military occupation.

3. Under the terms of that treaty designated the Memorandum of Understanding (MOU), [6] the Government of Papua New Guinea made an "*offer*" to "*host*" persons transferred from Australia (Preamble, section five, emphasis added). While according to para. 6, "the Government of Australia will bear all costs incurred under this MOU", the Centre was made part of "*joint* cooperation" (para. 2, emphasis added) between the two contracting States. Moreover, under the MOU, the Chief Migration Officer of Papua New Guinea would serve as the Administrator of the Centre (para. 22). These and other provisions of the MOU indicate that the Government of Papua New Guinea entered into the treaty with Australia in the exercise of its free sovereign will and did not surrender its jurisdiction over the territory on which the Centre was set up. It remains for me to be perplexed by the failure of the Majority to draw comparisons between the said MOU and a similar, in terms of object and purpose, treaty referenced on multiple occasions during the review in the course of the same 83rd session of the Committee, of the Third Periodic Report submitted by Albania.[7] Under the terms of that treaty – the 2023 Protocol between the Governments of Albania and Italy – facilities on Albanian territory to which migrants attempting to enter Italy would be temporarily transferred, was to be "subject exclusively to Italian jurisdiction" (Art. 4 para. 2), those facilities to be "built and managed in accordance with Italian legislation" (Art. 5 para. 1) with Albanian authorities only ensuring "the maintenance of law and order and public security on the perimeter outside the areas and during land transfers to and from the areas in Albanian territory" (Art. 6 para. 2).

4. While claims under articles 2 and 16 (1) of the Convention with respect to alleged ill-treatment at Manus Center should have been rejected as those events occurred on the territory

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[1] The discussion of a judicial dialogue focused on "effective control" between the International Court Justice and the International Criminal Tribunal for the Former Yugoslavia, joined by the European Court of Human Rights, lies outside the scope of this Opinion.

[2] *Loizidou v. Turkey* [GC], no. 15318/89, 18 December 1996.

[3] *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, 7 July 2011.

[4] *Jaloud v. the Netherlands* [GC], no. 47708/08, 20 November 2014.

[5] *Al-Skeini and Others v. the United Kingdom*, para. 138 et seq.

[6] Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to, and assessment and settlement in, Papua New Guinea of certain persons, and related issues, available at https://www.dfat.gov.au/sites/default/files/joint-mou-20130806.pdf.

[7] See discussion in Concluding Observations, CAT/C/ALB/CO/3, paras. 41-42.

which, under the terms of the MOU, remained under the jurisdiction of Papua New Guinea, facts as presented to the Committee reveal a violation of article 5 (1) (b) of the Convention, because if violent ill-treatment of the complainant, while he was confined to Manus Center, had been inflicted upon him by a guard or an employee contractor, then the jurisdiction of Australia over those persons was applicable. They should have been either Australian government officers or government contractors, hence heavily regulated. That violation could be established by the Committee *proprio motu*, and that could be achieved without resuming pleadings, the latter implying reengagement of the complainant and the State Party to seek their observations on the views of the Committee, rather than of each other, in a way initiating a trialogue.

5. Furthermore, it should be recalled that the Committee has consistently underscored, whether in dialogues with States Parties or in reviewing individual communications, the urgency of promoting awareness of the Convention by way of training of all personnel involved in the custody, interrogation or treatment of any individual subjected to any form of deprivation or restriction of liberty. In line with that well-established practice, the Decision should have been enhanced by an *obiter dictum* stating that facts of the communication **may** (emphasis added) reveal neglect by the State Party of the proper implementation of article 10 of the Convention by reason of its personnel deployed on a mission abroad being insensible, unwilling or reluctant to prevent ill-treatment of the complainant A.A.