

Thursday, 1<sup>st</sup> May 2014

### ***Submission***

#### ***To the Senate Inquiry into the incident at the Manus Island Detention Centre: 16<sup>th</sup> February to 18<sup>th</sup> February 2014.***

Reference 'k': "the Australian Government's duty of care obligations and responsibilities" is cited from the Terms of Reference as submission validation.

### ***Introduction***

The Government's means for "stopping the boats" –off-shore processing and mandatory detention of asylum seekers are, by their very nature, inconsistent with the duties owed to asylum seekers according to the United Nations charter to which, it is understood, Australia is a signatory.

There seems to be an assumption by the two major political parties in Australia that, because they both agree on similar forms of punishment for asylum seekers or refugees who come to this country without following protocol, the overwhelming majority of the people who live in Australia support them and therefore whatever policy is devised will be acceptable without question.

The amount of public dissent disproves the idea the majority of Australians support off-shore processing and mandatory detention of asylum seekers. Public dissent is growing steadily –street demonstrations, letters to news media and to members of parliament, articles in newspapers and magazines, condemnatory messages from the pulpit, from legal and sporting bodies, even from commercial enterprises. The official secrecy attached to the operations at the on-shore and off-shore detention centres and lack of information about the treatment of individuals in detention adds to public disquiet.

It stands to reason that in a climate of such widespread public disquiet, this Inquiry will need to be able to distinguish between the official line that "the asylum seekers are not being punished but are being used as warnings to others" and the philosophy that all humans have equal rights and may not be used as means to an end and recognise that the line of racism is easy to cross.

### ***Controlling Input***

This investigation into the February incident and the conditions of immigrant detention on Manus Island is going to end up less than satisfactory unless the scope of the investigation includes legal protection for any of the detainees and eye-witnesses prepared to provide first-person accounts to the Inquiry.

The Manus Island incident is not an isolated one in recent asylum seeker history in this country and therefore is of sufficient importance for the Government to recognise the need for guaranteed legal protection for the detainees so that truth can be assured and that input to inquiry is seen to be fair and open.

### ***Planned cruelty***

There must be a great deal of fear of reprisal in these people who have never been arrested and charged with a crime but are incarcerated like common criminals. From news reports we understand they receive little or no official information and remain ignorant of their fate or why they are being held in detention. In news reports of the Manus incident, when staff were told after the affray to check the rooms they found detainees still hiding under beds too scared to come out. According to another news story claims were made that the training of the PNG nationals employed as security guards for Manus was totally inadequate. They were

unprepared to perform many of the duties assigned to them, including being part of an emergency response team. Surely, Australian authorities would have been expected to oversee such training to be of a sufficiently high standard to be able to cope with such an emergency as this was. If they were not then, of course, the detainees would be the ones who would suffer most from the inadequacy of their guards.

### ***Bullying tactics***

In such a situation authorities would be aware of how vulnerable the detainees are to bullying and violence. Australia does not in law imprison whole families yet there are plenty of asylum seekers' and refugees' families with young children incarcerated in our immigrant detention centres for very long terms. Certainly expectation of retaliation of some kind would be a deterrent for parents to refrain from admitting being an eye-witness let alone giving evidence thus limiting valuable input to the Inquiry.

The following two paragraphs are from an article concerning the Manus Island incident which appeared in The Age (22 April 2014): *“The carnage that unfolded twenty-four hours later (17 Feb 2014) invites the question of who bears greatest responsibility for the next night. Clearly, there were many contributing factors, including the lack of training of PNG nationals, the climate of suspicion and fear, the failure of centre management to act on intelligence that violence was inevitable and the provocative chants and hostile behaviour of some detainees.*

*“But the inescapable conclusion is that this was the consequence of the decision of both major parties in Australia to send asylum seekers to a remote island, detain them indefinitely in harsh conditions and give them no certainty about how and when their claims for refugee status would be determined.”*

Despite being out of context with the original article by Michael Gordon, quoting the above two paragraphs serves as an appropriate illustration of the Government's folly in trying to abrogate its responsibility of care, to another country, by forcing asylum seekers into detention in PNG or anywhere else off-shore that it chooses.

### ***Expanding the club of willing countries***

The present federal Government has increased its “permanent solutions” plans for people seeking asylum in Australia by expanding the resettlement places into a “club” of nations to take refugees. Scott Morrison, the Immigration Minister, told the Fairfax Media in a recent interview that a country's economic capacity is irrelevant to his expansion of a “club” to take refugees.

One of the poorest countries in the region, Cambodia, seems the present mostly likely target. Both Immigration Minister Morrison and Foreign Minister Julie Bishop independently have made recent trips there. Screwing the weak sounds like keeping the bully white.

### ***Off-shore policy criticized***

The Indonesian Foreign Minister Marty Natalegawa, without specifically mentioning the boat turn-back policy, said that “shared responsibility, not shifting of responsibility” was the way forward. He was speaking at an international conference into protection of asylum seekers only a matter of ten days ago. An Australian delegation was also in attendance led by Deputy Ambassador to Indonesia David Engel. So, even Indonesia is prepared to show its dislike of Australia's off-shore policy.

### ***No information and shock-treatment***

In determining causes at Manus, the Inquiry should look at the situation in all the immigrant detention centres, especially Christmas Island.

Christmas Island is also remote but well-established but even there health services are limited' Gillian Triggs of the Human Rights Commission recently reported on the misery of children who live in these camps. There are 24 new babies who have been born on Christmas Island. According to an article in The Sunday

Age (20.04.14) by Jacob Varghese of Maurice Blackman Lawyers he went there with a colleague to meet the detained parents of these babies born in Australia. The new parents, he said, are at their wits-end having to navigate, daily, a maze of officialdom just to meet their newborns' needs.

On top of all that are even worse worries for these parents. The only thing they have been told is that "they will never get a visa for Australia." Varghese says they have no idea what the Government has in store for them, or how long they will be in detention. Will it be months, years, decades? "This is tortuous for parents of newborns. The strangest cruelty of the government's approach is the threat of removal to Nauru." The U.N. says Nauru is inhumane and not fit for children.

### ***Borderline racism***

"For inexplicable reasons, the government's approach to removing people from the (Christmas) Island is horrifyingly heavy handed." Varghese said he was told "detainees are awakened at 3 or 4 am, given 10 minutes to pack their belongings and then frog-marched to a van that takes them to the airport. One can imagine the horror felt by these young families especially those recently escaped from persecution in their homeland. Every night, these families go to bed in fear of that ominous knock on the door.

"Whether they are unauthorized maritime arrivals or not," according to Varghese, "asylum seekers are not criminals. Most importantly, criminals cannot pass on their liability to imprisonment to their children."

### ***No change in the climate of uncertainty***

On Manus, detainees were told they had no prospect of being settled outside PNG if their claims for refugee status were eventually recognised (news report 22.04.14), and the big question for the asylum seekers and the Australian public is who makes that decision now, Australia or PNG?

Any wonder the detainees particularly those young, active men became angry and objected when the whole aim of their long, hard and tedious journey was to be allowed to be accepted and settled in Australia. Then, after arriving in Australia, they were transported like felons to a different country and locked up without trial or reason.

There is no knowing from the news item whether or not this information was official or leaked unofficially. As on Christmas Island a similar message about detainees' prospects was enough to create a climate of despair and fear, whereas on Manus Island it caused anger, frustration, desperation and the realisation that they faced possibly bleak lost years in detention. Their despair manifested itself in their nightly demonstrations in the compound which usually ended peacefully but faced with this latest piece of news their chants became offensive and enraged the PNG nationals.

Those managing the centre could have built a decent level of trust and goodwill and dispelled damaging rumours if they had allowed for interaction with local residents outside, it was reported. Adding to the tension in the compounds of the centre was the refusal of management to allow detainees to humanize their environment by growing plants. The stage had been set for confrontation and nothing had been done about changing the climate that was being allowed to develop by Australia and PNG jointly.

### ***Problems raised by this off-shore process***

The UN's sub-committee on prevention of torture chairman, Malcolm Evans, drew attention to the fact that by continuing to detain asylum seekers in Nauru, another off-shore detention facility location, Australia was "at risk of putting that state in breach of its international obligations." Nauru has not established an independent local body for overseeing detention centres and therefore "has obligations it has clearly not fulfilled" according to Professor Evans.

Nauru may not on the surface appear to be linked to any disturbance in Manus but in the matter of sovereignty it does because Australia's Immigration Minister brought up the fact when faced with questions about access for the U.N. Several United Nations bodies had been prohibited from inspecting that detention centre by having access suddenly denied or revoked, according to what the Fairfax Media discovered, and Minister Scott Morrison had said repeatedly the Australian Government played no part in the decision and respects Nauru's sovereignty.

That raises questions about the deals done by Australia with these countries. Will this investigation be permitted to know the details of the deal struck with PNG? Will any of the detainees or the PNG nationals be permitted to appear before the Inquiry or will the Committee's representatives be allowed to interview them in the detention centre? Will PNG's sovereignty intervene to prevent interviewing to occur? If so, how accurate can be the Inquiry?

Another question arises: in the event of an individual asylum seeker's clearance for refugee status from ASIO, the individual concerned, previously long term and held on Christmas Island, is discovered to be on Manus Island in detention, would that asylum seeker be returned and released in Australia?

Australia's duty of care obligations are certainly in question. Who is doing the checking of an asylum seeker's credentials for refugee status now if the individual is in Manus Island detention centre, Australia or PNG? Can PNG veto any finding if Australia is still doing the health checks or the security checks?

### ***Emptying the detention centres***

On Thursday, 24<sup>th</sup> April 2014, The Age published an article in which Scott Morrison is quoted as saying he "looked forward to the day when there is no one in the centres."

Why not begin emptying them right away starting with those on Christmas Island and elsewhere on the mainland. There are several country towns who have embraced the asylum seekers and found them to be friends and great workers. Let the Government get busy advertising the fact and instead of using so much money keeping them in detention help them to go and work for their living.

On the other hand remember the 1950's *Start a new life in Australia for 10 pounds*. Migrants came in their hundreds and worked on the Snowy Hydro scheme and in the Holden Car manufacturing factories. Now we are about to lose Ford, GMH and Toyota so why can't the Government see the value in Electric Car manufacturing? We already have the workers and the asylum seekers. Retrain all of them like was done in the 1950s. After all electric car technology is more than 100 years old.

In the 21<sup>st</sup> century the market should be more open to its possibilities and the workers just as willing. Even a carmaker would want to stay and have a go.

Kendall Lovett.