



Australian Government

Department of Immigration and Border Protection

ACTING SECRETARY

25 June 2014

Ms Claire Mallinson
National Director
Amnesty International Australia
Locked Bag 23
BROADWAY NSW 2007

Dear Ms Mallinson

**Australian Government's Response to Amnesty International Reports
arising from visits to Manus Offshore Processing Centre**

Thank you for your letter of 15 May 2014 to the Minister for Immigration and Border Protection, informing him of the findings from Amnesty International's visit to Manus Offshore Processing Centre (OPC) in March 2014. The Minister has asked me to respond on his behalf.

I note that you have requested a detailed response regarding the implementation of the recommendations that Amnesty International has made, following the recent visit in March 2014 and the previous visit in November 2013.

An Australian Government response to all of Amnesty International's recommendations is at Attachment A. This response has been approved by the Minister. A copy of this response has also been provided to the Government of Papua New Guinea (PNG).

Please note that there are several legal considerations that determine the scope of the Australian Government response:

- As you will appreciate, OPCs are hosted by the sovereign governments of PNG and Nauru and are managed under the laws of the respective host countries.
- Consistent with the Memoranda of Understanding (MOUs) signed with the governments of PNG and Nauru, Australia's role is that of supporting the OPCs through the provision of services through contracted service providers.
- Responsibility for managing the OPCs lies with officers appointed by the governments of PNG and Nauru under their respective laws. Those officers have the duty to ensure that persons residing in the OPCs are treated in a fair and humane manner, consistent with their domestic laws and the relevant international treaties that the country has signed up to.

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- The consistent position taken by Australia is that while we are assisting PNG and Nauru in the management of the centres, this assistance does not constitute the level of control required under international law to engage Australia's international human rights obligations extraterritorially in relation to the persons concerned.

Therefore, where relevant, the Australian Government response explicitly identifies issues that fall within the remit of the Government of PNG (for instance, refugee status determination processing, legislative reform, integration of refugees and PNG's adherence to international law).

Thank you for bringing Amnesty International's findings to the Minister's attention.

Yours sincerely

Liz Cosson AM CSC

Australian Government's response to the Amnesty International Reports

Report 1 - This is breaking people: Human rights violations at Australia's asylum seeker processing centre on Manus Island, Papua New Guinea

RECOMMENDATIONS TO THE AUSTRALIAN GOVERNMENT

1. On the right to seek asylum and the reform of punitive asylum policies

- a) *Immediately review the Regional Resettlement Arrangement with Papua New Guinea and end offshore processing and the offshore detention of asylum seekers.*
- b) *Transfer all asylum seekers held in the Manus Island detention centre back to Australian territory and give them full access to asylum procedures in Australia.*
- c) *Remove all other punitive and discriminatory asylum policies that focus on boat arrivals, including harsh visa regimes.*

The Australian Government is committed to the Regional Resettlement Arrangement.

2. On the transfer of asylum seekers to Papua New Guinea

- a) *End the transfer of asylum seekers to Papua New Guinea.*

The Australian Government is committed to the Regional Resettlement Arrangement.

3. As interim measures until the transfer of asylum seekers under the Regional Resettlement Arrangement is ended:

- a) *Take immediate steps to ensure that contracted security guards do not employ force during the transfer of asylum seekers from Australia to Papua New Guinea unless strictly necessary for the maintenance of security and order, or when personal safety is threatened.*

Force is not employed during the transfer to Offshore Processing Centres (OPCs). Transferees are free to move. Security staff are contracted to treat transferees equitably and fairly with dignity and respect.

- b) *Take immediate steps to ensure that security guards do not engage in other practices that are degrading or humiliating in effecting the transfer of asylum seekers.*

Security staff are contracted to treat transferees equitably and fairly with dignity and respect. Any reported incidences of inappropriate behaviour are managed appropriately.

- c) *Ensure that any further transfer of asylum seekers to Manus Island does not exceed the detention centre's capacity or lead to detention in inhumane conditions.*

Infrastructure and facilities at the Manus OPC are consistent with current population needs and are continually being updated and improved.

- d) *Ensure adequate time for rigorous age assessment processes, including contact with home country and the gathering of relevant documentation and other information, prior to any transfer.*

The 48 Hour Rapid Transfer Model does not apply to persons undergoing an age determination assessment. Claims are carefully considered and only those persons assessed as more likely than not to be adults are considered for transfer to Manus.

The department has not knowingly transferred unaccompanied minors (UAMs) to the Manus OPC.

- e) *Ensure adequate time for proper health checks prior to transfer, including appropriate assessment, diagnoses, and treatment of any illnesses, injuries or disabilities and that asylum seekers are not transferred to a facility where these health needs cannot be addressed or under circumstances in which their health would be adversely affected.*

The department's health service provider International Health and Medical Services (IHMS) undertakes pre-transfer health screening of all detainees prior to transfer to an OPC within 48 hours of their arrival in an Australian territory. The health screening includes a chest x-ray, a full detainee history and examination by a general practitioner, general baseline observations, mental health screening, pathology collection and vaccinations. If clinically indicated, urinalysis and a finger prick blood sugar level will also be conducted. Should a detainee be identified with a specific health requirement, transfer to an OPC may not proceed until the appropriate health services are in place, and the person is clinically assessed as fit to travel.

4. On the promotion of refugee protection in transit countries

- a) *Promote and facilitate the development of refugee law and refugee protection in transit countries in Southeast Asia, including by encouraging states in the region to ratify the 1951 Refugee Convention and its 1967 Protocol.*
- b) *As a priority, work with the Indonesian Government to address people smuggling in a manner that tackles these crimes without punishing its victims.*

Australia is an active member of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime and will continue to work closely with our regional partners to respond to the challenges of irregular migration and people smuggling. Australia reserves the right to implement policies to ensure the integrity of its borders and to effectively manage migration and humanitarian programmes. Australia has a long and proud history of refugee resettlement and boasts one of the world's best settlement programs. This year Australia has reserved 11 000 places for refugees and others in humanitarian need as part of its offshore humanitarian programme. Australia will continue to work with the United Nations High Commissioner for Refugees to provide resettlement to those in greatest humanitarian need.

5. On conditions of detention in the Manus Island Regional Processing Centre

- a) *As interim measures until all asylum seekers detained on Manus Island are transferred to Australian territory:*

Accommodations

Use the newly constructed compound in the Manus Island detention centre to relieve crowding in the other compounds, and redesign other compounds to ensure that detainees are not held inhumanely. In particular:

1. *Cease the use of P Dorm as housing.*

While there are no plans to cease using P Block, there are plans to update the block and improve the air circulation.

2. *Reduce the number of asylum seekers held in Oscar compound, for example by reconfiguring it to create several compounds, with sufficient latrines and other services for each.*

Infrastructure and facilities at the Manus OPC are consistent with current population needs and are continually being updated and improved.

Clothing

1. *Provide all detained asylum seekers with sufficient clothing, including shoes.*

Transferees are provided with the following clothing:

- 2 x t-shirts
- 1 x long sleeve shirt
- 2 x shorts
- 1 x tracksuit pants
- 6 x underwear
- 2 x socks
- 1 x shoes
- 1 x thongs
- 1 x pyjamas
- 1 x rain poncho
- 1 x sun cap
- 1 x sunglasses
- 1 x laundry bag

Clothing/footwear is replenished on a one for one exchange as required.

Protection from the elements

1. *Ensure that detainees in all compounds have adequate cover from the sun and rain, particularly in the areas where they gather to wait for meals or for escorts to attend medical appointments and other interviews.*

At meal times, transferees may be required to queue for a short period of time for their meals in the air-conditioned dining room. Transferees may also wait for a short period of time for medication in shaded areas.

Shaded communal areas are provided in each compound for use by transferees. The design of the Manus OPC expansion works also includes large outdoor covered recreation areas for use by transferees

Access to drinking water

1. *Ensure that all detainees, particularly those in Oscar compound, have access to sufficient clean drinking water for their use whenever they need it.*

Transferees have unrestricted access to bottled water at all times.

Hygiene

1. *Ensure that all latrines are adequately supplied with hand soap at all times and replenished as often as necessary.*

Hand soap is supplied in all toilets in all compounds and is replenished as required.

2. *Ensure that all detainees receive an adequate supply of personal care and hygiene items, including soap, shampoo, washing powder, and shaving implements.*

Toiletries are supplied for each transferee and are replenished as required. Transferees are also able to purchase additional products from the canteen.

3. *Take immediate steps to ensure appropriate drainage so that no standing water remains in latrines or other areas.*

Remedial works have taken place to address the drainage issues adjacent to the ablutions in the Oscar compound. The department is working with Transfield Services to deal with drainage and other issues at the Lombrum OPC site.

Meals

1. *Schedule staggered meal times insofar as possible to reduce the amount of time detainees must spend in queues.*

The dining mess is open for breakfast, lunch and dinner for 2 hours per meal each day. Most of the compounds have meal times scheduled between 6am-8am, 12pm-2pm and 6pm-8pm.

Access to information and contact with the outside world

1. *Ensure that all detained asylum seekers are able to communicate freely and in full confidentiality with visitors and that they have adequate opportunity to communicate with the outside world, subject to reasonable conditions to ensure security and good order.*

Dedicated phone and internet rooms are provided at the Manus OPC.

Service providers manage access to television, phones and internet to ensure equitable access to these services. Where there is a specific need to access these services, case managers will arrange additional access.

Service providers work to optimise scheduling to increase access to these services.

2. *Ensure that all detained asylum seekers are able to exercise their right to access to legal counsel, interpreters, doctors, refugee and migrant assisting organizations, members of their families, friends, religious and social assistance and the UNHCR, and that this right is not impeded in practice.*

Health, medical, a multi-faith prayer room and interpreter services are freely available at the OPC. For all other services/contacts, there are no restrictions placed on who transferees contact via telephone, mail, email and/or internet.

3. *Ensure that all detained asylum seekers are afforded regular and sufficient periods to make telephone calls at times that are appropriate for the part of the world they are calling. One group of detainees should not receive less access to telephones than other groups by virtue, for example, of the compound to which they are assigned.*

Dedicated phone and internet rooms are provided at the Manus OPC.

Service providers manage access to phones and internet to ensure equitable access to these services. Where there is a specific need to access these services, case managers will arrange additional access.

Service providers work to optimise scheduling to increase access to these services.

4. *Ensure that all detained asylum seekers are given regular and sufficient periods of time to send and receive email and to receive information. No group of detainees should receive less computer time than any other group due to factors such as the compound to which they are assigned.*

Dedicated phone and internet rooms are provided at the Manus OPC.

Service providers manage access to internet to ensure equitable access to these services. Where there is a specific need to access these services, case managers will arrange additional access.

5. *Ensure that there are no limits on the number of letters that can be sent and received by detainees. Legal mail should not be opened or otherwise read by detention centre staff.*

Transferees can purchase stationery and stamps from the canteen. There is no limit on the number of letters that can be sent or received by transferees.

All mail delivered to the Manus OPC addressed to a transferee is treated in confidence and distributed to that person in a closed room.

All mail for transferees is opened by a staff member in the presence of the transferee and a witness.

Each transferee must sign the received mail form to acknowledge that their mail has been delivered to them.

6. *Allow any detained asylum seeker to have a radio and allow regular opportunities to watch television.*

Service providers manage access to television, phones and internet to ensure equitable access to these services. Where there is a specific need to access these services, case managers will arrange additional access.

Service providers work to optimise scheduling to increase access to these services.

7. *Take steps to ensure that detained asylum seekers have access to a library that is adequately stocked with recreational and instructional books.*

The library at Manus OPC contains a selection of junior fiction, adult fiction and non-fiction and approximately 45 books in Persian texts and 10 in Sinhala texts. Each compound also has access to a mobile library service once per fortnight.

There will also be a selection of dictionaries, including foreign language dictionaries, picture dictionaries and English dictionaries for distribution and use through education, welfare and canteen which are expected to arrive in late May or early June 2014. Transfield Services have also ordered 1 569 religious texts in various languages for distribution and use through the religious/cultural program, welfare and canteen. These are not expected to arrive on island until June 2014.

Activities

1. *There should be no arbitrary or unreasonable restrictions on participation in activities. For example, detainees should either be permitted to take part in excursions with the footwear they have or, alternatively, should be provided with shoes.*

Recreational activities including excursions are open to all transferees.

There is a duty of care to ensure that transferees are appropriately attired for activities and excursions, including footwear. All transferees are provided with appropriate footwear which includes closed shoes and thongs.

Protection from harassment and violence

1. *Take appropriate steps to ensure that particular individuals or groups are not subjected to bullying by other detainees.*

Trained and qualified safety and security officers are present in the transferee compounds and respond to any incident, including harassment or violence.

Each transferee has an Individual Management Plan and regularly meets with a case manager to support their wellbeing and welfare whilst accommodated at the centre.

There is a Managed Accommodation Area available to transferees requiring additional support. Further managed accommodation is included in the design for the Manus OPC expansion works.

Issues relating to bullying or harassment are addressed through regular engagement with transferee community leaders. Ultimately, however, all transferees at the Manus OPC are adults and there is an expectation that incidents of bullying will be reported, without which there is limited action that service providers can perform in this space.

2. *Take appropriate steps to ensure that detention centre staff never engage in insulting or demeaning behaviour, including the use of "Boat IDs" in place of names to refer to detained asylum seekers.*

Staff are contracted to treat transferees equitably and fairly with dignity and respect. Any incidences of inappropriate behaviour toward transferees is reported and managed appropriately.

Both departmental staff and Service Providers are instructed to refer to all transferees using names. A transferees' Boat ID may be used as an additional identifier when there are a number of transferees with the same name.

3. *Ensure that harassment or acts of violence are addressed immediately and in a manner that is proportionate to the circumstances.*

Trained and qualified safety and security officers are present in transferee compounds and respond to any incident, including harassment or violence.

Issues relating to bullying or harassment are addressed through regular engagement with Transferee community leaders. Ultimately, however, all transferees at the Manus OPC are adults and there is an expectation that incidents of bullying will be reported, without which there is limited action that service providers can perform in this space.

4. *Ensure that reports or suspicion of sexual assault are taken seriously, with swift and appropriate protection provided to the alleged or suspected victim. A common protocol for responding to such reports should be expeditiously developed by detention centre staff and service providers.*

The department takes allegations of sexual assault very seriously. Personal care plans are developed with the alleged victim and all appropriate care is taken for his safety, including the opportunity to report the incident to the PNG police for investigation.

5. *Ensure that consensual sexual conduct between detainees is never a basis for discipline or referral to police.*

The department has been advised that although the act of homosexual sex is a criminal offence under Papua New Guinea (PNG) domestic law, the department does not have a mandatory requirement to report allegations of criminal activity to the police.

Service providers provide clear advice to transferees on the legal ramifications of

declaring homosexual activity and the department is unaware of any reports of sodomy being investigated by the police at the centre.

Health, including mental health

1. *Ensure that any request for medical attention is handled with appropriate seriousness and concern.*

All requests for medical attention are taken seriously and actioned appropriately.

2. *Take steps to remove unnecessary obstacles to timely attendance at medical appointments, including by ensuring that clocks are placed in public areas of each compound and by providing that detainees may be escorted to appointments on foot rather than waiting for vehicles to become available to transport them.*

There are no clocks in public areas however there is currently an undertaking to have clocks installed. Most transferees use wrist watches or ask a staff member the time to keep track of time.

3. *Ensure that detention centre administrators heed the advice of medical professionals to refer asylum seekers for further tests or treatment in Port Moresby or in Australia, as required, and that such referrals take place as expeditiously as possible.*

All referrals are considered on a case by case basis and are actioned accordingly.

4. *Ensure that detainees with disabilities are afforded reasonable accommodations to enable them to go about their daily lives with dignity, individual autonomy, and independence.*

People with disabilities are not transferred to an OPC unless there are appropriate services available.

5. *Ensure that detainees have access to appropriate malaria prevention measures consistent with World Health Organization standards.*

Anti-malarial medication and mosquito control services are provided on Manus by IHMS. A comprehensive mosquito-control programme is in place at the Manus OPC comprising:

- the removal or reduction of stagnant water
- the use of larvicides and insecticides to control mosquito populations
- the reduction of human/mosquito contact through measures such as resident education, insect repellent provision of bed-nets and window screens.

All transferees are issued with mosquito nets for their beds and offered anti-malarial medication.

6. *Ensure that asylum seekers are informed of the results of any medical tests that are performed in the detention centre or prior to transfer from Christmas Island.*

Transferees are advised of all medical results regardless of where the tests were performed.

RECOMMENDATIONS TO THE GOVERNMENT OF PAPUA NEW GUINEA
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1. On the strengthening of Refugee Status Determination procedures

- a) *As a matter of priority, work with UN HCR to remedy the inadequacies of Papua New Guinea's Refugee Status Determination processes.*
- b) *Ensure that asylum seekers receive adequate information relating to the Refugee Status Determination process, their rights to legal assistance or representation, and the likely time frame for their processing and any period of detention.*

These are matters for the PNG Government.

2. On the integration of refugees

- a) *Expediently develop an integration policy that identifies clear, practical measures to facilitate refugees' access to housing, employment, education, and health services and otherwise promote their effective integration into Papua New Guinean society.*
- b) *Ensure that recognised refugees of all nationalities have the right to freedom of movement within Papua New Guinea and are provided renewable multi-year work authorisation.*
- c) *Consult with local people, particularly those on Manus Island, and inform the public of new refugee laws, integration policies, and plans for their implementation.*

These are matters for the PNG Government.

3. On legislative reform

- a) *Ensure that the Manus Island Regional Processing Centre and all other processing centres, screening centres, or other detention centres for asylum seekers and refugees operate on the basis of a legislative framework and internal regulations that provide adequate safeguards to detainees, including reasonable standards of security and hygiene.*
- b) *Provide for the legal guardianship of unaccompanied children by an appropriate government agency, such as the Office of Child Welfare, with the allocation of such resources as are necessary to carry out this mandate.*

These are matters for the PNG Government.

4. On the oversight of detention at the Manus Island Regional Processing Centre

As interim measures until all asylum seekers detained in Papua New Guinea under the Regional Resettlement Arrangement are transferred to Australian territory:

- a) *Ensure that each decision to detain is automatically and regularly reviewed as to its lawfulness, necessity, and appropriateness by means of a prompt, oral hearing by a court or similar competent, independent, and impartial body, accompanied by the appropriate provision of legal aid.*

- b) *Seek financial and technical assistance from donor countries, UNHCR, and other UN agencies to enable it to carry out these steps.*
- c) *Ensure free and full access for independent agencies such as churches and community interest groups; local, national, and international governmental organisations; and non-governmental organisations, and permit them to monitor detention conditions.*

These are matters for the PNG Government.

5. On compliance with treaty obligations and customary international law

- a) *Withdraw its reservations to the Refugee Convention without qualification.*
- b) *Ratify the Statelessness Conventions and enact appropriate implementing legislation.*
- c) *Ratify the Convention against Torture and enact appropriate implementing legislation.*

These are matters for the PNG Government.

RECOMMENDATIONS TO BOTH GOVERNMENTS
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1. On the obligation to refrain from *refoulement*

- a) *Ensure that no individual is forced or pressured in any manner whatsoever to return to a country where he or she is at risk of persecution or other ill-treatment.*

These are matters for the Government of PNG under the memorandum of understanding (MOU) signed with the Commonwealth on 6 August 2013. The MOU provides assurances that PNG will not expel or return a person to a country where his or her life or freedom would be threatened in accordance with international non-refoulement principles.

2. On the protection of populations at risk

- a) *Take appropriate steps to protect stateless asylum seekers, including the following:*

- *Issue stateless persons identity and travel documents.*
- *Ensure that stateless persons are not expelled except on grounds of national security or public order and in those limited circumstances only if expulsion does not violate the principle of non-refoulement.*
- *Facilitate the assimilation and naturalisation of stateless persons, including by expediting naturalisation proceedings and reducing the costs of those proceedings as much as possible.*

- b) *Ensure that no policy or practice discriminates against asylum seekers on the basis of sexual orientation and gender identity, and take other measures to ensure the full enjoyment of all human rights by people of all sexual orientations and gender identities.*
- c) *Ensure the full and equal enjoyment of all human rights by all persons with disabilities and promote respect for their inherent dignity, in line with the principles set forth in the Convention on the Rights of Persons with Disabilities.*
- d) *Ensure that all child asylum seekers, including unaccompanied and separated children, receive the special care and protection to which they are entitled under the Convention on the Rights of the Child.*

These are matters for the Government of PNG under the MOU signed with the Commonwealth on 6 August 2013. Under the MOU PNG has agreed to treat refugees it settles in accordance with the Refugees Convention. The PNG Government has established a refugee visa for persons it determines to be refugee, which provides conditions consistent with the Refugees Convention.

3. On decisions to detain and the length of detention

- a) *Implement a presumption against the detention of asylum seekers whose claims are being processed. Alternative non-custodial measures, such as reporting requirements, should always be considered before resorting to detention. If detention is resorted to, it should be in strict compliance with relevant international refugee law and standards.*
- b) *Ensure that if detention is resorted to, the decision to detain is based on an individualised assessment including the personal history, and the risk of absconding, of the individual. Detention will only be lawful when the authorities can demonstrate in each individual case that alternatives will not be effective and that it is necessary and proportionate to achieve a legitimate objective.*
- c) *Provide for a statutory maximum duration for the detention of asylum seekers which should be reasonable in its length. Once this period has expired the individual should automatically be released.*
- d) *Prohibit the detention of vulnerable people who have sought asylum, including torture survivors, pregnant women, those with serious medical conditions, the mentally ill, people with disabilities, and the elderly.*
- e) *Prohibit the detention of unaccompanied children.*

These are matters for the Government of PNG under the MOU signed with the Commonwealth on 6 August 2013. Under the MOU, PNG has agreed to treat all transferees with dignity and respect and in accordance with relevant human rights standards. PNG is also a signatory to various international conventions regarding the protection of persons, including the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

4. On challenges to the lawfulness of detention

- a) *Ensure that detained asylum seekers are informed promptly of the order for their detention and the reasons for their detention, along with their rights in connection to the order of detention, in a language and in terms they understand.*
- b) *Ensure that detained asylum seekers are afforded the opportunity to challenge their detention in court. Because asylum seekers detained under the Regional Resettlement Arrangement with Papua New Guinea are first detained in Australia by Australian authorities, are then removed to Papua New Guinea by Australian authorities or their agents, and remain in Australia's effective power and control throughout their detention on Manus Island, their right to challenge the lawfulness of their detention before the Australian courts must be preserved. In addition, once they are present in Papua New Guinea, all detained asylum seekers have the right to challenge the lawfulness of their detention in Papua New Guinea's courts.*
- c) *Ensure that all detainees have the right of access to a lawyer of their choice and that Australian and Papua New Guinea authorities take all necessary steps to facilitate contact between detainees and lawyers, including by permitting lawyers to enter the centre to talk with detainees in private and by facilitating telephone contact with lawyers in private.*

These are matters for the Government of PNG under the memorandum of understanding signed with the Commonwealth on 6 August 2013. Transferees may commence legal proceedings in Australian and PNG courts against their transfer to a

regional processing centre or their detention in Manus OPC. Various legal actions are currently underway.

RECOMMENDATIONS TO COUNTRIES OF ORIGIN OF REFUGEES AND ASYLUM SEEKERS, INCLUDING AFGHANISTAN, BANGLADESH, EGYPT, LEBANON, IRAN, IRAQ, MYANMAR, NEPAL, PAKISTAN, SOMALIA, SUDAN, SRI LANKA, SYRIA, AND VIETNAM

1. *Work toward a genuine regional solution that protects the rights of asylum seekers and refugees in accordance with international human rights and refugee law.*
2. *Take all appropriate measures to protect the human rights of all individuals in their territory and jurisdiction, including by ending persecution and discrimination on the basis of race, religion, nationality, membership of particular social groups or political opinion, and providing protection to all individuals from other human rights abuses.*
3. *Review, amend, or repeal security and criminal laws that may be used to penalise the peaceful exercise of the rights to freedom of expression, association and assembly.*
4. *Take steps to end impunity by ensuring that all allegations of human rights violations and abuses are investigated in a timely, independent, and transparent manner and that perpetrators are brought to justice in accordance with international law and standards without recourse to the death penalty.*
5. *Ensure that all returning asylum seekers and internally displaced persons receive humanitarian assistance to provide for their immediate needs, including housing, food, water, health care, and education.*
6. *Ensure that internally displaced persons are able to choose to return voluntarily and in safety or resettle voluntarily in another part of the country and facilitate the assistance of independent humanitarian organisations and UN agencies to this end.*
7. *Work with national and international aid agencies to provide livelihood opportunities for the displaced and returnees and to encourage sustainable reintegration.*
8. *Protect from arbitrary arrest or detention returning nationals who may have sought asylum or residency elsewhere or who return with escorts or documentation issued by a third country.*

The Australian Government is unable respond on behalf of the countries of origin.

RECOMMENDATIONS TO ALL TRANSIT AND DESTINATION COUNTRIES OF REFUGEES AND ASYLUM SEEKERS, INCLUDING AUSTRALIA, INDONESIA, NEW ZEALAND, MALAYSIA, PAPUA NEW GUINEA, AND THAILAND

1. *Work toward a genuine regional solution that protects the rights of asylum seekers and refugees in accordance with international human rights and refugee law. In particular, ensure that laws, policies, practices, or agreements do not undermine the obligation of all states to respect the principle of non-refoulement and the right not to be subjected to indefinite and/or mandatory detention.*
2. *Allow persons to enter the country's own territory to seek asylum, regardless of their manner of entry.*
3. *Give all individuals who wish to seek asylum access to a full, effective, and fair procedure to assess their asylum claims.*
4. *Ensure that refugees and asylum seekers are not unlawfully or arbitrarily detained, that detention is only used as a last resort, and that asylum-seekers and refugees are not penalised for irregular entry or stay.*
5. *Not engage in refoulement by returning anyone to countries where he or she may be at risk of serious human rights violations.*
6. *Amend domestic legislation to ensure that refugees and registered asylum seekers are provided with the relevant documents that allow them to stay lawfully in the country.*
7. *Ensure that refugees and asylum seekers' rights to work, to education, to health care, to hold identity and travel documents, and to move freely are respected, protected and fulfilled.*
8. *Increase quotas of refugees accepted for resettlement.*
9. *Ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the Convention against Torture, and the Statelessness Conventions, if they have not already done so.*

Australia is an active member of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) and will continue to work closely with our regional partners to respond to the challenges of irregular migration and people smuggling. Australia reserves the right to implement policies to ensure the integrity of its borders and to effectively manage migration and humanitarian programmes. Australia has a long and proud history of refugee resettlement and boasts one of the world's best settlement programs. This year Australia has reserved 11 000 places for refugees and others in humanitarian need as part of its offshore humanitarian programme. Australia will continue to work with the United Nations High Commissioner for Refugees to provide resettlement to those in greatest humanitarian need.

Report 2 - This is still breaking people: Update on human rights violations at Australia's asylum seeker processing centre on Manus Island

ADDITIONAL RECOMMENDATIONS

1. Amnesty International makes the following recommendations to both the Australian and Papua New Guinean governments, in addition to previous recommendations:

- a) *End offshore processing on Manus Island, Papua New Guinea in order to guarantee the right to life and security of the person for asylum seekers there.*

The Australian Government is committed to the Regional Resettlement Arrangement.

2. Ensure that asylum seekers are not exposed to or put at risk of further violence or injury, including by:

- a) *Immediately removing to Australia all of the asylum seekers who witnessed or were injured in the violence, for their safety and protection.*

Efforts have been made to improve security at the centre since the events of February. It is difficult to ensure that transferees are not exposed to violence or injury in the same way that it is difficult to ensure that IMAs in the Australian community are not exposed to violence or injury. However, as long as transferees do not provoke or promote social disharmony, either among other transferees or with the local population, the department has full confidence in the security service provider and the PNG authorities to maintain the good working order of the centre.

- b) *Ensuring that the asylum seekers injured in the violence receive adequate professional assistance, including medical treatment, full rehabilitation and mental health services, as well as independent legal advice.*

On 25 February 2014, the Department approved IHMS to deploy additional health personnel to provide support at the centre; this included an emergency response and mental health teams.

IHMS continues to be heavily engaged in the follow-up care to the transferees and injured stakeholder staff.

The onsite health clinic operates seven days per week and after hours emergency coverage is provided.

If a transferee is assessed by clinicians as having a mental health condition they will receive appropriate support.

Transferees requiring more intensive health care support may be admitted to the local hospital.

If a transferee has a significant condition which cannot be treated in Papua New Guinea they may be transferred to Australia for treatment. The department is advised by IHMS on the need for such medical transfers. The transferee will be returned to Manus once they are assessed as clinically fit to travel.

Transferees are able to seek legal advice if requested.

- c) *Conducting an independent inquiry into the violence with the joint co-operation of the Australian and Papua New Guinean governments. Perpetrators of the violence must face criminal prosecution in accordance with international laws and standards, without recourse to the death penalty.*

There are a number of reviews into the incidents of 16-18 February 2014.

The Secretary of the Department of Immigration and Border Protection, Mr Martin Bowles PSM, initiated an independent review. Mr Robert Cornall AO, was requested to conduct the review. The final report is expected to be provided to the department at the end of May 2014.

The department has also initiated an internal review into the incident.

The Senate referred the matter of the incident Legal and Constitutional Affairs References Committee for inquiry. This inquiry is currently underway and is expected to be finalised in late June 2014.

Any evidence of possible criminal activity obtained by the reviews will be made available to relevant authorities.

- d) *Refrain from political or other interference with judicial processes within Papua New Guinea, and statements or actions which would undermine the independence of any refugee status determination process.*

This is not a matter for the Australian Government.

3. Ensure that asylum seekers have the right to access lawyers, including by:

- a) *Informing asylum seekers of their right to contact Papua New Guinea's Public Solicitor's Office, by providing contact phone numbers, and access to phones at reasonable times within office hours.*

This is a matter for the PNG Government

- b) *Facilitating unrestricted and confidential communication with lawyers by phone, mail or in person.*

Transferees are able to communicate with lawyers confidentially on the phone, through written correspondence (either via the internet or traditional mail). Access to lawyers in person is a matter for the PNG Government.

- c) *Removing any barriers which would restrict the right of an asylum seeker to obtain legal advice from Australian or Papua New Guinean lawyers, including onerous restrictions on visiting the centre.*

The Australian Government continues to fund the provision of independent protection claims advice and assistance to transferees as part of the refugee determination process. Furthermore, there are no restrictions placed on who transferees may contact via telephone, mail, email or internet. Access to the centre is a matter for the PNG Government.

- d) *Complying with court orders, including orders allowing lawyers access to the Manus Island detention centre.*

Access to the centre is at the discretion of the PNG Government.

- e) *Ensure access to the detention centre by lawyers and human rights organizations. Access to the centre should not be arbitrarily refused by the Australian and Papua New Guinean governments.*

Access to the centre is at the discretion of the PNG Government.

4. Ensure humane conditions of detention. In particular:

- a) *Cease using the confined living area for psychiatric patients. Any detainees requiring ongoing and intensive psychiatric care should be immediately returned to Australia for treatment as there is no full-time psychiatrist on Manus Island.*

Mental health services at the OPC are provided by IHMS general practitioners, mental health nurses, counsellors, psychologists and psychiatrists.

Mental health screening is provided at the OPCs regularly and on an ad-hoc basis, in line with the screening policies in operation in Australia.

Transferees of self-harm concern are placed on elevated levels of support and monitoring as required under the Psychological Support Programme (PSP). The care is guided by an inter-disciplinary team (including Transfield) led by an IHMS mental health clinician.

If a transferee has a significant condition which cannot be treated in Papua New Guinea (either through IHMS, at the local hospital or in Port Moresby) they may be transferred to Australia for treatment. The department is advised by IHMS on the need for such medical transfers. The transferee will be returned to Manus once they are assessed as clinically fit to travel.

IHMS have contracted Offshore Services for Survivors of Torture and Trauma (OSSTT) to provide dedicated torture and trauma counselling at the OPCs. Their services commenced on 21 April 2014 and replaced the services of the previous provider Survivors of Torture and Trauma Assistance and Rehabilitation Service (STARS).

IHMS are progressing the establishment of telemedicine at the OPC which will include additional access to specialists including, psychiatric services.

- b) *Cease using P Dorm as housing.*

While there are no plans to cease using P Block, there are plans to update the block and improve the air circulation.

- c) *Alleviate overcrowding, including by removing people to Australia if necessary.*

Infrastructure and facilities at the Manus OPC are consistent with current population needs and are continually being updated and improved.

- d) *Immediately improve the conditions of latrines and shower blocks, as is appropriate for the climate, to ensure that minimum standards are met in terms of sanitation, hygiene and cleanliness.*

Remedial works have taken place to address the drainage issues adjacent to the ablutions in the Oscar compound. The department is working with Transfield Services to deal with drainage and other issues at the Lombrum OPC site.

- e) *Implement rigorous age assessment processes in accordance with international standards, and ensure that children are not unlawfully disadvantaged in the processing of refugee claims by having claims placed on hold until they attain 18 years of age.*

The arrival of undocumented asylum seekers presents major challenges to asylum seeking countries in relation to their identity. This includes assessing persons who claim to be minors and vice versa.

There is no reliable medical test to determine if a person is more likely a minor or an adult. In consultation with a number of stakeholders, the department developed and implemented an age determination process which combines a focussed interview along with the assessment of any available information and documentation. The focussed interview considers a range of factors including physical appearance, behaviour and demeanour, education and employment, if any and social independence. This method received positive comment during the Australian Human Rights Commission inquiry into age determination and has been sighted as the best method available.

Where a person's claimed status as a minor or an adult is in dispute, they are referred for a formal age determination assessment shortly following arrival in Australia.

The 48 Hour Rapid Transfer Model does not apply to persons undergoing an age determination assessment. Claims are carefully considered and only those persons assessed as more likely than not to be adults are considered for transfer to Manus.

The department has not knowingly transferred unaccompanied minors (UAMs) to the Manus OPC.

There have been a number of instances where transferees on Manus, who had previously advised they were adults or were considered to be adults following an age determination process, raised claims of being a minor following transfer.

Where a transferee at an Offshore Processing Centre raises claims they are a minor, the department holds a conversation with the individual, utilising the expertise of trained Age Determination staff where available. The process, known as Offshore Age Consideration, includes conducting a discussion with the individual and providing a report to a senior age determination officer in Canberra who makes an assessment of the claims.

In September 2013, to mitigate the risk of unknowingly transferring minors to Manus, the department implemented a process to consider all detainees who state they are aged between 18 and 20 to assess if claims they are an adult are supported.

Of the 31 cases considered thus far, the department has accepted that five transferees on Manus, who arrived in Australia after 19 July 2013, were more likely than not minors and treated them accordingly. The transferees had presented as adults in Australia and raised claims of being a minor following transfer. Four of the

five transferees were returned to Australia following PNG Government approval. The remaining transferee turned 18 during the age consideration process and remained on Manus.

On 30 January 2014 there was a change to Age Determination policy regarding the allocation of default dates of birth to detainees who have undergone an age determination assessment onshore and have been found to be minors. This resulted in the default date of birth accorded to three transferees on Manus being reviewed to reflect they are under 18 years of age. These three transferees (who were previously assessed to be minors while in Australia and then transferred to Manus after turning 18) were quickly returned to Australia..

There are currently no outstanding cases under consideration where a transferee on Manus is claiming to be a minor.