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# 1. INTRODUCTION

On 11 December 2013, Amnesty International released a report – *This is Breaking People* – highlighting a range of serious human rights concerns at the Australian-run Manus Island Immigration Detention Centre.

The report's key findings were:

- Uncertainty about processing times and the lack of real plans for resettlement, combine to create a serious risk of *refoulement* – the transfer of a person to a place where they face a real risk of torture, persecution, death, or other serious harm.
- Asylum seekers are arbitrarily and indefinitely detained, with no clear means to seek review of the lawfulness of their detention.
- The combined effect of these detention conditions amounts to cruel, inhuman and degrading treatment or punishment. Some detention conditions, such as housing asylum seekers in the centre's P Dorm, violate the international prohibition on torture and other ill-treatment.

In the report, Amnesty International made a number of recommendations to the governments of Australia and Papua New Guinea. The Australian Minister for Immigration and Border Protection (DIBP), Scott Morrison, publicly committed to making changes 'where practical'.<sup>1</sup> On 28 April 2014, more than four months after the report was presented, Amnesty International Australia received a letter from the Minister stating that a response to the report's recommendations would, due to issues of sovereignty, be produced in cooperation with the Government of Papua New Guinea. Such a joint response has not yet been made available and Amnesty International has not received any response from the Papua New Guinea Government.

On 16 and 17 February 2014, violence at the detention centre led to the death of Reza Berati, a 23-year-old Iranian man, and injuries to more than 62 asylum seekers (some reports suggest up to 147 were injured). There are credible claims that the asylum seekers, after weeks of protesting, were attacked by private security guards, local police and possibly other contractors working at the centre. The response by security guards and local police to protests by asylum seekers was brutal and excessive. Australia and Papua New Guinea are obliged to protect asylum seekers under their jurisdiction or effective control, and provide appropriate medical care (including rehabilitation) and compensation for those who are injured. Paramount importance must be given to protecting the right to life. Amnesty International remains concerned about the health and safety of those who were injured in or witnessed the violence.

On 27 February 2014, the National Court of Papua New Guinea launched a human rights inquiry under section 57 of the country's Constitution. The inquiry raises important issues, such as which rights under the Constitution, if any, apply to

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asylum seekers. It is critical that the judicial process run its course, in accordance with fair trial standards, free from political or other interference. In addition to this, asylum seekers should have the right to participate in the inquiry, and if they cannot afford it, be provided with free legal assistance. On 21 March 2014, Amnesty International sought and received permission to join these proceedings as a third party, as an organization with a "genuine interest" in the protection and enforcement of human rights. The inquiry is currently on hold pending an appeal to the Supreme Court by the Papua New Guinea Government, amid claims that there is a reasonable apprehension of bias on the part of the judge heading the inquiry.

At the same time as the National Court inquiry, the Australian and Papua New Guinean governments made a number of announcements. These included:

- Statements by Papua New Guinean authorities that the majority of asylum seekers were expected to be 'economic migrants' and not genuine refugees.<sup>2</sup>
- Reports that both the Australian and Papua New Guinean governments supported moves to 'shut down' the human rights inquiry by the Papua New Guinea National Court and would deny asylum seekers access to a human rights lawyer.<sup>3</sup>
- Papua New Guinea agreeing to settle some, but not all, of those found to be refugees.<sup>4</sup>

It is unclear what will happen to those refugees not accepted by Papua New Guinea, nor is it clear whether accepted refugees will have the right to work, freedom of movement and other rights and protections which should be afforded to them under international refugee law. The governments' recent statements do nothing to alleviate the insecurity and uncertainty about processing and resettlement and show an alarming disregard for the rights of asylum seekers.

As of early May 2014, there has been no real attempt to address the major human rights violations raised in Amnesty International's report, *This is Breaking People*. Inhumane conditions of detention, detainees' lack of access to lawyers, authorities' failure to protect the right to life and security of the person, and the absence of detailed plans for processing and resettlement remain unaddressed.

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## 2. METHODOLOGY

From 20 to 29 March 2014, an Amnesty International researcher travelled with a representative from the Human Rights Law Centre in Australia to Lorengau on Manus Island and Papua New Guinea's capital Port Moresby, for the judicial inquiry into the human rights of asylum seekers. They obtained new information that is included in this briefing through meetings in Papua New Guinea, ongoing contact with asylum seekers and service providers from Australia, meetings and correspondence with Australian and Papua New Guinean government officials, as well as observations made during a tour of the Manus Island Immigration Detention Centre with the National Court on 21 March 2014.

Amnesty International wrote to Papua New Guinea's Chief Migration Officer on 20 March 2014 to apply to access to the centre again on 22 March. The organization was not able to complete application forms to access the facility before this date because there were delays in being issued visas. Access to the centre was refused and, as a result, Amnesty International was not able to conduct new face-to-face interviews with detainees in the detention centre.

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## 3. NEW AND ONGOING CONCERNS

### LIVING CONDITIONS

*This is Breaking People* raised a number of concerns about living conditions including overcrowding, cramped sleeping arrangements, exposure to the elements, as well as a lack of sufficient drinking water, sanitation, food and clothing.

Since our last visit, Mike compound (which was still being constructed in November 2013) has opened and 414 detainees were living there as of 20 March 2014, making it the most populated compound. It appears that around 200 additional detainees have arrived at the centre (there is some variation in official numbers). As of 2 May 2014, there were a total of 1,273 asylum seekers on Manus Island.<sup>5</sup> The opening of Mike compound appears to have somewhat alleviated the overcrowding in Foxtrot and Oscar compounds (now housing around 316 detainees, as opposed to close to 500 in November 2013).

Amnesty International remains concerned about overcrowding, particularly in relation to sleeping areas which house more than 40 detainees, and the lack of space for activities, privacy and freedom of movement. During the March visit, Amnesty International observed that P Dorm (a WWII hangar-shaped dormitory containing 112 bunk beds with little or no space between them) is still being used to accommodate asylum seekers, even though conditions within the dormitory amount to ill treatment.<sup>6</sup> Overcrowding and the number of detainees sleeping within confined spaces continue to be problems which were also acknowledged by Dr Crouch-Chivers, the Papua New Guinea National Court-appointed medical expert. Some living areas – including an area for mental health patients – no longer have beds, but just thin mattresses on the floor. Security officers claimed this was because some detainees ‘prefer to sleep on the floor.’ However, there are some reports that suggest bunk beds were dismantled by either guards or asylum seekers and used as weapons against asylum seekers in the February violence.<sup>7</sup>

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The recreation area outside Mike compound, Manus Island, 22 May 2014. © AI

Further shade for Oscar compound has not been provided. In fact, the shaded area outside the dining area, where detainees complained in November 2013 that they wait up to three hours in the direct sun for meals, has been reduced in size. No explanation was offered by officials for this alteration.

Since the violence on 16 and 17 February 2014, Papua New Guinean nationals no longer enter the compounds for catering or cleaning purposes. Asylum seekers are delivered meals in take-away packs for self-distribution and also bear sole responsibility for cleaning the ablution blocks. It is not clear if asylum seekers have been given appropriate cleaning equipment and products for this purpose. At the time of our site visit on 21 March 2014, ablution blocks in all compounds were dilapidated, dirty, mouldy, and several were broken or did not have running water. Delta compound was by far the worst, with many latrines broken and without running water. Katrina Nuess, the centre's Operations Manager from DIBP, claimed that Australian nationals are currently being recruited as cleaners to clean and maintain ablution blocks.

Amnesty International visited a new area between Oscar compound and the staff

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canteen which was described as being for 'psych (psychiatric) patients' by security staff. During the visit in November 2013, the organization was informed that former staff sleeping quarters would be converted to additional accommodation for Oscar compound. The new area includes two shipping containers facing inwards, split into four rooms. Each room has one mattress on the floor. Four psychiatric patients were detained there in March 2014. A security officer sat at a desk between the rooms to constantly watch these patients. There is a small unshaded area outside, approximately 3 x 2 metres with just enough room to sit or stand, surrounded by a three metre high corrugated iron wall. There is no air flow and no space to walk around. Patients must be escorted to toilets outside of this area. One of the asylum seekers was visibly shaking and said "I have been like this since the riots." An asylum seeker explained that another person there had been on a hunger strike for more than 20 days.

Amnesty International is deeply concerned that a security guard is responsible for supervising vulnerable individuals with serious mental health needs. It is not clear what training, if any, the security guard has in dealing with asylum seekers with mental health needs. Amnesty International's December 2013 report revealed that mental health professionals employed by International Health and Medical Services (IHMS) and Survivors of Torture and Trauma Assistance and Rehabilitation Service (STTARS) expressed concerns that they were struggling to cope with existing demand for their services. It is not clear whether the number of mental health staff has increased to cope with growing demand or growing numbers of asylum seekers since last year. In addition to this, Gareth Lee, IHMS Mental Health Team Leader, expressed concerns that he did not have a full-time psychiatrist at Manus Island as required under the agreement with DIBP. Lee also raised a specific case of referring an asylum seeker to Australia for psychiatric treatment but receiving no response from IHMS or DIBP, which raised concerns about liability and duty of care.<sup>8</sup>

A psychiatrist visited the centre shortly before Amnesty International's return visit in March 2014, but there is still no permanent full-time psychiatrist available. It is not known how long the psychiatrist stayed or how frequently they visit. In a letter to Amnesty International Australia in April 2014, DIBP Minister Scott Morrison claimed that a full-time psychiatrist was employed at the facility, in contradiction to evidence provided to the court and by centre management to Amnesty International in March.

Likewise, other aspects of the detention centre have not improved. It is not clear whether asylum seekers have appropriate access to shoes and sufficient clothing. For example, as we walked around the compound, some asylum seekers called out that they do not have more than one shirt. Amnesty International reported in December 2013 that detainees were provided with little more than one or two pairs of shorts and t-shirts and a pair of flip flops. Personal possessions were generally confiscated prior to transfer to Manus Island and not returned. The DIBP's Katrina Nuess said that detainees now have access to shoes. When asked for clarification, she said, "I have seen where they keep all the shoes. There are plenty there." Consistent with our previous findings, detainees confirmed that shoes continue to be a 'special request' which is not always granted. Moreover, asylum seekers continued to complain about the poor quality of the food, and Dr Crouch-Chivers noted that basic hygiene standards in the kitchens, such as wearing gloves, are not

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consistently applied.

On our tour of the compound, evidence of the February violence is apparent. In Oscar compound, glass doors to accommodation blocks and dining areas were broken or shattered and guards noted the absence of chairs and tables which were damaged in the violence. In Mike compound, two bullet holes were observed in a shipping container, less than one metre high (undermining claims that the only shots fired were warning shots fired into the air). Asylum seekers also claimed that there were similar bullet holes in at least two other sites in Mike compound which we did not visit. It does not appear that any effort has been made to replace broken windows and doors, tables, chairs or beds which had been damaged in the violence.

A new communications hub (including phones and internet accessible by all asylum seekers) has not been established, in spite of DIBP claiming they had plans to open this by December 2013. Australian immigration authorities claimed that all detainees access phone and internet regularly.<sup>9</sup> Logistically, this would require that detainees from all other compounds be escorted to Foxtrot and Mike compounds in order to access computer rooms. In November 2013, a number of detainees from other compounds complained that they had not had access to internet in weeks and that those in Foxtrot were the only ones who had regular access to internet. We were not able to verify internet and telephone access with asylum seekers or Transfield (the company that now organizes the communications roster for asylum seekers).

Amnesty International welcomes the changes made in the case of the Iranian asylum seeker with dwarfism, after a DIBP official informed us that he has now received appropriate equipment to offer him a degree of autonomy and dignity. However, the organization was unable to verify this with him directly.

## RISK OF REFOULEMENT

Amnesty International has highlighted a range of factors which create a serious risk of direct or constructive refoulement – the transfer of a person to a place where they face a real risk of torture, persecution, death or other serious harm – including the humiliating treatment of asylum seekers, lack of humane detention conditions, the profound uncertainty about timing for processing their claims, limited opportunities or lack of clear plans for resettlement in Papua New Guinea and actual or perceived pressure to return home.

Amnesty International heard from a number of asylum seekers in November 2013 who expressed fears about the dangers of life in Papua New Guinea, reinforced on a daily basis by detention centre practices. These fears have been exacerbated by the recent violence at the centre and the death of Iranian asylum seeker, Reza Berati. In addition to this, asylum seekers who are lesbian, gay, bisexual, or transgender have no real options for resettlement, because Papua New Guinea criminalizes same-sex activity between consenting adults.

At Port Moresby International Airport, Amnesty International met with three asylum seekers (two Iranians and one Lebanese asylum seeker) who were returning home. A total of 14 people were returning home on 29 March 2014. When asked if it was safe to return home, a young Iranian asylum seeker said:



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“I have been here for nine months. You can see it (the detention centre), you can speak with us, but it is not the same as living it. There is no life here. My life is in danger if I go home, but I cannot live like this.”

Between July and December 2013, a total of 166 people returned home. Since January 2014, approximately 50 people have returned home. Following the violence on 16 and 17 February 2014, there was a small increase in asylum seekers' requests to the International Organization for Migration (IOM) to return home from Manus Island. However, after the initial shock of the violence subsided, IOM claimed that some asylum seekers changed their mind and decided not to return home.

Amnesty International remains concerned about the risk of refoulement, as the underlying factors, including the uncertainty and lack of clear timeframes for assessing refugee claims and resettlement, have not been addressed.

In addition to this, a number of asylum seekers have contacted Amnesty International to express fear for their life and safety on Manus Island following the recent violence. Others have contacted Amnesty International claiming that they are being denied appropriate medical treatment, including pain relief medication for serious injuries sustained during the violence in February. Asylum seekers claim they escaped threats back in their home countries, only to be exposed to more threats and violence on Manus Island. The Australian Government also stated that it could not guarantee the protection of asylum seekers, even within the detention centre.<sup>10</sup> Sending asylum seekers to a country such as Papua New Guinea where their life is at risk, or there is a risk of torture or ill-treatment, is a clear violation of Australia's international obligations.

## AGE DETERMINATION

Unaccompanied children are being sent to Manus Island due to the lack of vigorous age determination processes on Christmas Island (another offshore processing facility run by Australia), and nearly a third of those undergoing an age determination process or review on Manus Island were found to be minors. It is not clear who is the lawful guardian of unaccompanied children, or if child protection officers are notified of the presence of children on Manus Island. Further details on the age determination process and applicable international standards for children in detention can be found on pages 76 to 82 of *This is Breaking People*.

Australian immigration officials confirmed that since 19 July 2013, 28 asylum seekers have claimed to be minors on Manus Island, nine of whom were previously age assessed on Christmas Island. A total of eight people have since been found to be minors (five of them had been previously assessed on Christmas Island, indicating a high rate of errors in initial assessments). All but one of these children was returned to Christmas Island. In the last case it was deemed 'not worthwhile' to send the child back to Christmas Island, as he was due to turn 18 within weeks. It is not clear whether or not this person was separated from other adults or if there are other persons in the centre claiming to be minors who have not been identified by Australian and Papua New Guinean authorities.

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The birth date given to children who are age assessed is 31 December 1996 (the end of the calendar year), regardless of their claimed age. In January 2014, this was increased by a year to give more leeway to those claiming to be minors and is now 31 December 1997. As a result, the age determination process assumes a person is no younger than 16 years of age when arriving in Australia. However, at least one asylum seeker identified himself to Amnesty International as being 15 years of age in November 2013, meaning that under current processes, he could be returned to Manus Island several months before he turns 18 and accommodated with other adults.

In addition to this, refugee status determination is placed on hold until children attain 18 years of age, resulting in children spending additional time in detention until they receive an assessment of their asylum claims. This policy is punitive and ensures that vulnerable young people remain in immigration detention for longer periods of time than adults. This may deter asylum seekers from self-identifying as a minor in the hopes that their claim may be processed quicker.

It is not clear whether persons claiming to be unaccompanied children on Manus Island have been informed of their rights, including their right to access a lawyer free of charge through Papua New Guinea's Public Solicitor's Office.

Australia's age determination process does not appear to have changed significantly since our last visit. Due to changes in circumstances, the Age Determination staff on Christmas Island claim that since late 2013, when the Australian Government began turning back boats carrying asylum seekers, the 48-hour pre-transfer age and medical assessment period has not been applied.

However, the process itself has not changed, and age assessment continues to rely heavily on physical appearance, with disregard for or lack of verification of documentation that might be considered as proof of age. Subsequent assessments on Manus Island are conducted by telephone with Australian Immigration officials in Australia's capital Canberra. It is not clear whether Papua New Guinean authorities play any role in the age determination process, other than to accept the recommendation of Australian officials.

While the age determination process itself has not changed, the changes in circumstances means that DIBP does not have to make rushed age determination assessments and transfer people within 48 hours. Amnesty International urges the Australian authorities not to revert to hasty and unreliable age determination processes, should circumstances change in the future.

## ACCESS TO LAWYERS AND HUMAN RIGHTS ORGANIZATIONS

Amnesty International is concerned that Australian and Papua New Guinean authorities are deliberately denying asylum seekers' right to access lawyers and human rights organizations. To ensure that systems of immigration detention comply with international legal principles, it is important that immigration detention facilities are open to scrutiny and monitoring by independent national and international human rights institutions and bodies, including UN bodies, civil society actors and non-governmental organizations<sup>11</sup>. Providing access to lawyers is

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essential to safeguard against unlawful and arbitrary detention. Asylum seekers should be able to readily access and have private communications with lawyers of their choice, or be provided with free legal advice if they cannot afford legal representation.

Current detention practices hinder the ability of lawyers to access the centre to speak with current or prospective clients, even with the benefit of court orders. Both Papua New Guinea's Public Solicitor's Office and Henao Lawyers, a law firm in Port Moresby, claimed they were denied access to speak with asylum seekers despite Papua New Guinean court orders to allow access. Furthermore, although Australian barrister Jay Williams had Papua New Guinean court orders facilitating access to asylum seekers from 21 to 28 March 2014, on 27 March 2014 he was denied access to the centre, asked to leave Papua New Guinea and subsequently deported when attempting re-entry.<sup>12</sup> Consistent with Amnesty International's previous recommendations in the December 2013 report, asylum seekers must have their right to challenge the lawfulness of their detention preserved in both Australian and Papua New Guinean courts. As a result, access to lawyers should include lawyers who are admitted to practice in Australia or Papua New Guinea.

The practice of denying or restricting access to asylum seekers in Australian-run immigration detention facilities offshore is following the alarming trend under Australia's domestic laws and policy, in violation of international laws and standards.

For example, DIBP refused Amnesty International access to an asylum seeker who was removed from Manus Island to be treated in a Brisbane Hospital on 4 March 2014. The organization is also concerned about the Australian Government's recent move to cut government-funded legal assistance for asylum seekers, which is a fundamental safeguard against arbitrary detention.<sup>13</sup>

Between 3 and 14 March 2014, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, who visited Manus Island, was not allowed to enter the camp itself or to speak to any of the detainees.

In addition to this, the UN Working Group on Arbitrary Detention has requested to visit Australia's immigration detention centre on Nauru twice – in both April and May 2014 – and was told that this was not an appropriate time. Amnesty International was also denied access to the asylum seeker detention centre on Nauru.

Access to lawyers, human rights organizations and UN bodies is critical to protecting the rights of asylum seekers and providing full accountability and transparency with respect to their detention.

## **VIOLENCE ON 16 AND 17 FEBRUARY 2014**

On 16 and 17 February 2014, violent incidents at the Manus Island immigration detention centre resulted in the death of Iranian asylum seeker Reza Berati, and injuries to more than 62 other asylum seekers.

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Regular, peaceful protests by asylum seekers had been taking place across all compounds (Oscar, Mike, Delta and Foxtrot) in the detention centre for at least an hour a day in the two weeks before the violent incidents on 16 and 17 February 2014.<sup>14</sup>

On 5 February, a meeting was held between immigration authorities and the language group representatives of the asylum seekers. In the meeting, asylum seekers were told that their questions would be answered in the following days. The peaceful protests called primarily for the Papua New Guinean and Australian immigration authorities to provide the asylum seekers with information on when their asylum claims would be processed, when they would be released and where they would be resettled.<sup>15</sup>

At some point before the violence, G4S – a British multinational security company contracted to provide security services at the centre at that time – distributed notices to asylum seekers in a variety of languages, stating that:

If the PNG [Papua New Guinea] Police are required to enter your compound, you will hear multiple fire engine sirens being switched on and off. If you hear sirens and are not a part of the riot, sit down and put your hands on your head. G4S personnel will then attempt to move you to a place of safety.<sup>16</sup>

On the morning of Sunday 16 February, cleaners and G4S staff cleared rocks from the ground of Mike compound, where most of the protests had taken place.<sup>17</sup>

At 4pm on 16 February, PNG immigration authorities held a meeting with representatives of the asylum seekers. The immigration authorities said that the purpose of the meeting was to answer the questions and concerns of the asylum seekers about processing and resettlement. Some witnesses claim that asylum seekers were told that they would not be resettled in Papua New Guinea, however this was denied by the Australian Government.<sup>18</sup> One asylum seeker present reported to Amnesty International that police with dogs were at the meeting.<sup>19</sup>

In the meeting, no new information was given to the asylum seekers and their questions were not answered. They were told that they would never be settled in Australia and that if they wished to settle in a third country, they would receive no support from Australia or Papua New Guinea to do this. They were not told when they would be processed, released or resettled in Papua New Guinea.<sup>20</sup>

Following the meeting, from 6pm onwards, asylum seekers gathered to protest.<sup>21</sup>

Between 14 and 35 asylum seekers left through a perimeter fence from Oscar compound.<sup>22</sup> In one report, it was claimed that asylum seekers left through a gate when a delivery van entered one of the compounds.<sup>23</sup> Some media reports claimed that this was an escape attempt, while others have said that asylum seekers merely continued their protest on the other side of the fence, on the road adjoining the detention centre. In any event, asylum seekers were quickly rounded up and returned to the centre. G4S security guards in riot gear and Papua New Guinean police were allegedly involved in containing this incident.<sup>24</sup>

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Later that evening, local G4S staff went into a compound (Oscar compound, according to one account) and attacked asylum seekers inside with metal poles, bats and sticks.<sup>25</sup> They also threw stones over the fence at the asylum seekers in Mike compound. One report claims that local G4S staff used the legs from dismantled tables to attack the asylum seekers. The tables had been left outside the compound stacked up awaiting removal.<sup>26</sup>

Shortly after this, around 100 people (largely consisting of G4S security and other staff from the centre who are Papua New Guinean nationals) gathered outside Mike, Foxtrot (and possibly Oscar) compounds with sticks and machetes. Verbal taunts were exchanged and rocks were thrown by both PNG nationals and asylum seekers. Some witnesses claim that local G4S staff started throwing rocks at asylum seekers from outside the compounds. Asylum seekers tried to move between Mike and Foxtrot compounds by going through an internal fence, either to escape rocks being thrown into Mike or to join with other asylum seekers. There are reports of minor property damage occurring on the Sunday night, including some broken glass on marquee doors and bunk beds and tables being broken and used as weapons against asylum seekers. Some asylum seekers, being unarmed, held up plastic chairs to defend themselves. There are also claims that asylum seekers were beaten by G4S guards and police during this incident. Amnesty International also received information that up to 19 asylum seekers received medical treatment from IHMS as a result of the incident on Sunday night, for non-life-threatening injuries, and that some G4S staff received minor injuries.<sup>27</sup>

The Manus Provincial Police Commander confirmed that on the night of Sunday 16 February:

- Asylum seekers had been protesting the length of time it was taking to process their claims and calling for their freedom.
- There was a meeting with centre management on Sunday afternoon, but asylum seekers were not satisfied with the response and continued to protest.
- Some rocks and sticks were thrown and that there were some minor injuries to both asylum seekers and staff at the centre. There was also some minor property damage.
- Some asylum seekers were 'chased out' of the fenced area and local police helped to round them up.
- Eight asylum seekers were charged with disturbing the peace as a result of incidents on 16 February 2014.

Some expatriate G4S staff attempted to intervene in the violence but were unable to prevent it. Some sustained injuries as a result.<sup>28</sup>

Local G4S staff were unable to enter Mike compound and the violence eventually subsided. Injured asylum seekers and expatriate G4S staff were taken to IHMS clinic for medical treatment.<sup>29</sup>

On the morning of Monday 17 February, the atmosphere in the detention centre was described by staff as tense and quiet. Signs of fighting the night before were apparent from debris on the ground.<sup>30</sup>

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Local staff, including G4S, catering and cleaning staff, were not allowed into the compounds with the asylum seekers. Asylum seekers were responsible for cleaning the toilets and showers and organizing access to telephone and internet; jobs usually done by local staff.<sup>31</sup>

At some point during the Monday around 150 local people (those employed at the centre) gathered outside the external fences with sticks and machetes and threatened the asylum seekers through the fences.<sup>32</sup>

At 6pm, the day workers ended their shift and returned to the accommodation vessel, the Bibby, leaving G4S, IHMS medical staff and some interpreters in the centre.<sup>33</sup>

After this time, some of the asylum seekers recommenced protesting, with some shouting abuse at the local G4S staff and others who were outside the external fences.<sup>34</sup>

A special squad of G4S staff in riot gear then attempted to suppress the protest but were outnumbered by the asylum seekers and retreated.<sup>35</sup>

Local G4S staff then entered the facility and the compounds and began attacking asylum seekers. It is not clear whether they were let in or if they broke in, but media reports, including from G4S, claim that damage to a fence shows that it was pushed inwards, suggesting that people broke into the centre.<sup>36</sup>

Papua New Guinean police officers also entered the compounds. They were armed with batons and guns. Multiple gunshots were heard from 8pm onwards. Papua New Guinea police and local security staff moved through Mike, Oscar and Foxtrot compounds attacking asylum seekers with machetes, sticks and bats. Asylum seeker witnesses state that an elderly man was attacked on his way back to his dormitory from the toilet block.<sup>37</sup>

Some asylum seekers hid under beds in dormitories and under demountable buildings, but were dragged out by local G4S staff and police and attacked with sticks, bats and machetes.<sup>38</sup>

Expatriate G4S staff generally did not intervene to prevent the violence on the Monday night.

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Blood spattered inside a dorm at the Manus Island Immigration Detention Centre following an incident between February 16 and 18, 2014. Image obtained 1 May 2014. © AAP Image/Supplied

An email received by an Australian refugee advocate at 11:30pm from inside the internet room (presumably in Mike compound but possibly in Foxtrot) suggests that the violence was still going on at that time.<sup>39</sup>

After the second night of violence had ended, the injured asylum seekers were taken out of the detention centre to the wharf adjacent to the Bibby, where they were treated by IHMS staff, The Salvation Army staff and others. There were numerous injuries including serious lacerations to the head and neck, broken bones (including facial fractures) and severe bruising.<sup>40</sup> Alarming video footage shows frantic medical and other staff assisting injured people by torchlight on the wharf between midnight and 1am on 18 February.<sup>41</sup>

One asylum seeker, 23 year old Reza Berati, was killed. Numerous witness reports state that he was attacked using fists, feet and bats by a group of expatriate and local G4S staff and at least one local staff member employed by The Salvation Army.<sup>42</sup> Several eyewitnesses reported that one attacker picked up a large rock and hit Mr Berati on the head with it several times. IHMS medical staff, assisted by interpreters and other non-medical staff, worked to save his life but were unable to revive him.<sup>43</sup>

During the tour of the Manus Island immigration detention centre with the National Court on 21 March 2014, Amnesty International was shown the lower level of a two storey accommodation block in Mike compound. Asylum seekers pointed out that the first room on the right (first floor) was Reza Berati's room and that three asylum

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seekers continue to sleep in the room. It is not clear whether evidence was properly gathered and preserved by police before asylum seekers returned to the area where Reza's death occurred. Regarding his death, Amnesty International was told by an asylum seeker that "they hit him, he fell from here (pointing to the stairs outside Reza Berati's room) and they hit him in the head until he died."<sup>44</sup>

Asylum seekers with serious injuries were treated in Lorengau Hospital or transferred to Port Moresby or Australia for medical treatment.<sup>45</sup>

After the violence, access to the internet was turned off (one report claims from 17 February to 3 March), preventing the asylum seekers from contacting the outside world.<sup>46</sup>

Amnesty International received a witness report that 350 of the 400 people living in Mike compound were beaten, and that 147 people received serious injuries (much higher than official statements by the Australian Government).<sup>47</sup>

The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, visited Manus Island in March 2014 but was prevented from entering the detention centre.<sup>48</sup> He commented on the unhealthy and volatile situation at the centre. In his report, it is noted that the police allegedly denied a person could have a bullet lodged in their buttock on the basis that they only use high-velocity weapons which would have passed through person with ease. Amnesty International shares Mr Heyns' alarm that such lethal weapons were used in a situation of crowd control against unarmed detainees.

The two bullet holes observed by Amnesty International in Mike compound (at around knee height) and the gunshot wound to the buttock received by one male asylum seeker, contradict claims by police that only two warning shots were fired into the air. Two witnesses claimed that more than 20 shots were fired.<sup>49</sup>



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A bullet hole in a wall at Manus Island Immigration Detention Central following an incident between February 16 and 18, 2014. Image supplied 1 May 2014. © AAP Image/Supplied

Amnesty International is alarmed by the scale and severity of the violence, which is reflected in the serious injuries received and the extent of ongoing medical care required. In some cases, asylum seekers have received permanent disabilities as a direct result of their injuries, including loss of an eye for one asylum seeker and vision impairment for another asylum seeker. More than a dozen people have been hospitalized, either in Port Moresby or Australia, as a direct result of injuries sustained in the violence. Some are receiving ongoing medical treatment more than two months later, and some have complained to Amnesty International about inappropriate or insufficient medical care.

Amnesty International met with two injured Iranian asylum seekers at Manus Island airport on 23 March 2014. One was using crutches, and another, suffering from an apparent head injury, had slurred speech and collapsed as the organization was talking with him. He was then escorted away by security officers.

Early comments by Australian immigration officials suggested that the violence took place outside the centre and that asylum seekers were protesting in a violent way.<sup>50</sup>

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This was later altered by the Australia's DIBP Minister Scott Morrison, who stated that in fact the violence, the death and the injuries sustained were all inside the detention centre.

Papua New Guinean nationals – those employed at the centre and police officers – are generally alleged to be the main perpetrators of the violence.<sup>51</sup> There is little evidence to suggest that locals not employed at the centre were involved in the violence.

On 18 February 2014, Amnesty International spoke with the Manus Provincial Police Commander, who gave a helpful summary of events on 16 February, but said he had not yet been briefed on the violence on 17 February 2014. Following this, Amnesty International made several calls to the Manus Provincial Police Commander and the Deputy Chief Commissioner of Police, Simon Kauba, but was unable to speak with them. Personnel at the Manus Island Police Station became increasingly uncooperative, refusing to transfer our calls to senior officers. Police Headquarters in Port Moresby did not reply to Amnesty International's email on 27 February 2014, requesting an update on the investigations into the violence.

Amnesty International notes that the United Nations Special Rapporteur requested a visit with the G4S head of operations in Papua New Guinea to discuss the violence, but the request was refused. G4S has provided a number of public statements on its website regarding the incident and claims that it takes the allegations seriously, has fully co-operated with Papua New Guinean police, that at no time did G4S consent to let Papua New Guinean police and locals into the compounds (it is claimed that fences were pushed inwards, suggesting people forced their way in), that G4S staff did not use force to suppress the 'riots' and that its staff are unarmed.<sup>52</sup> It is not clear whether G4S itself has investigated the violence, or if any disciplinary action has been taken against its staff, whether they are Australian or Papua New Guinean nationals. In addition to this, The Salvation Army was informed of allegations about its staff's involvement in the violence and the death of Reza Berati, but did not provide any official response.<sup>53</sup>

Any death in custody is a serious matter which should be promptly and independently investigated by the authorities. At the time of writing this report, there is an investigation by the Royal Papua New Guinea Constabulary into the violence, but no one had yet been charged with criminal offences relating to the violence. A police-led investigation fails to meet the requirement for an independent investigation when there are allegations that police officers were perpetrators of the violence. Perpetrators of the violence must be prosecuted in accordance with international fair trial standards, without recourse to the death penalty.

As a result of the violence on 16 and 17 February 2014, tensions between asylum seekers and staff remain high and there is an increased security presence at the centre. Understandably, there is a significant level of fear and distrust between asylum seekers and security contractors, particularly those who are Papua New Guinean nationals, as they have played a major role in the violence.

Security contractors have recently transitioned between those working for G4S and those with Wilson Security. Wilson Security is contracted through Transfield, which

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recently received the contract for running the centre after the contract with G4S expired. An increase in the number of security guards, or a change in security operators, is unlikely to improve safety and security at the centre for detainees, particularly when no assurances have been given that the same security officers allegedly involved in the violence will not continue to work at the centre.

For any improvements to be made, it is essential that the underlying causes of the violence are addressed. The United Nations Special Rapporteur supported this view following his visit to Papua New Guinea in March 2014:

“It is my impression that the situation was caused primarily by the fact that the detainees find themselves in a possible dead-end street. They are on the one hand told by the authorities in the camp that they will be allowed to resettle in PNG [Papua New Guinea] if they qualify as refugees, but on the other hand they receive information that the highest authorities of the land say this is a misunderstanding. This uncertainty is fuelled by the fact that the processing itself is very slow ... In the meantime it should be noted that the situation is clearly very unhealthy and volatile. Nothing has changed since February to alleviate the situation. Both [Papua New Guinea and Australia] remain responsible to protect the human rights – including [the] right to life – of the people in the camp.”<sup>54</sup>

Without any real attempts to address the uncertainty and indefinite detention of asylum seekers, the situation will remain volatile, and further violence is inevitable. The Australian and Papua New Guinean governments must take urgent steps to prevent further violence and give paramount importance to protecting the right to life and security of the person.

## INDEPENDENT INQUIRY INTO USE OF FORCE

At the heart of the international human rights standards governing the use of force by security forces, including police, lies the human right to life, enshrined in Article 3 of the Universal Declaration of Human Rights.

Under these standards, law enforcement officials are required to “as far as possible, apply non-violent means before resorting to the use of force”.<sup>55</sup> Where the use of force is unavoidable, they must “Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved”, minimize damage and injury and “Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment”.<sup>56</sup>

International standards emphasize the importance of proportionality in judging whether the use of force is legitimate and strictly unavoidable, in order to protect life. Principle 9 of the Basic Principles states that: “... officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury” or to prevent “a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger” and “only when less extreme means are insufficient to achieve these objectives”. The Principle continues: “In any event, intentional lethal use of firearms may only be made when strictly unavoidable to protect life”.

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Where private security officers such as those working for G4S are hired by the State, which is contracted by the Australian Government, the same standards on the use of force apply. There does not appear to have been any imminent or grave threat to life caused by the asylum seekers on Manus Island peacefully protesting. Even if some asylum seekers were engaged in throwing rocks or property damage, this does not justify the lethal and disproportionate use of force against them. In addition to this, the violent response did not distinguish between those involved in the protests, as there are reports of asylum seekers who were not participating in the protests being attacked.

Under Article 2 (3(a)) of the International Covenant on Civil and Political Rights (ICCPR), Australia and Papua New Guinea have an obligation to provide an "effective remedy" for anyone whose rights under the Convention have been violated. Failure to take effective measures to prevent such acts and provide effective remedies – Including investigating and ending these abuses, bringing perpetrators to justice, and compensating victims – violates states parties' obligations under the ICCPR, to which both Papua New Guinea and Australia are a party.

Nearly three months after the violence took place, neither the Australian nor Papua New Guinean government has proposed what could be described as an independent inquiry. The apparent reluctance by both governments to establish an independent inquiry is evidenced by their attempts to restrict access to information for the public and the media; restricting access to the centre by lawyers, human rights organizations and the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions; and failing to inform asylum seekers of their rights, including the right to access remedies in Australian and Papua New Guinean courts.

While the Australian Government launched a Senate Inquiry into the recent violence on Manus, it does not have the co-operation of Papua New Guinea's Government or the authority to operate across jurisdictions.<sup>57</sup>

Statements from both governments calling for the human rights inquiry by the Papua New Guinea National Court to be 'shut down' reinforces the veil of secrecy around the operations at the detention centre and call into serious question both countries' commitment to respecting their national and international human rights obligations.

An independent inquiry could take a variety of forms and would strengthen public accountability and trust in the police and other government institutions in both countries. It could take the form of a parliamentary inquiry, a judicial inquiry, or an inquiry by a national human rights institution or ombudsman's office. It is essential that the inquiry have the joint co-operation of the Australian and Papua New Guinean governments, as both owe a duty of care to asylum seekers detained on Manus Island and relevant information or persons are likely to be within both jurisdictions.

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Amnesty International calls for the prompt establishment of an independent body of inquiry, which will:

- Clearly and explicitly refer to human rights standards, including human rights under the laws of Papua New Guinea and Australia and international treaties ratified by both countries.
- Have diversity in its composition, including representation of different ethnicities (which is not exclusively comprised of Papua New Guinean and Australian nationals).
- Include persons with requisite experience in mental health issues, refugee issues and places of detention.
- Have sufficient resources to conduct an effective inquiry and to ensure its independence and impartiality.
- Have strong and clearly defined powers in laws with effect in both Australia and Papua New Guinea to carry out its work, including unhindered access to information, powers to issue subpoenas, compel disclosure of documents and order arrest of persons if necessary.
- Have the powers to make recommendations for disciplinary action, prosecution and compensation.
- Report its findings publicly.

A failure to provide an independent inquiry into the violence will add to the fear, mistrust and distress of the asylum seeker population detained on Manus Island.

Amnesty International also calls on the Papua New Guinean and Australian governments to ensure the safety and protection of asylum seekers in custody and to ensure the fair and timely prosecution of those responsible for the perpetrators of the violence.

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## 4. RECOMMENDATIONS

### IMPLEMENTATION OF PREVIOUS RECOMMENDATIONS

There appears to have been little or no effort by the Australian and Papua New Guinean governments to address the recommendations in Amnesty International's December 2013 report, *This is Breaking People*. The primary concerns around arbitrary and indefinite detention and lack of clear plans for processing and resettlement of asylum seekers remain unaddressed and are fuelling widespread anxiety and despair among detainees.

Proposed plans discussed with DIBP during our last visit, including an improved communications hub and increased shaded areas, have not been implemented. In some respects, conditions have deteriorated, particularly in relation to poor sanitation and the state of the ablution blocks. No attempt has been made to shut down P dorm, the conditions of which violate the prohibition on torture and other ill treatment. Amnesty International remains concerned about overcrowding, even though some attempts have been made to alleviate this through opening Mike compound.

Papua New Guinea has failed to address the lack of legal or policy framework to process refugee claims in a fair and timely manner and provide options for resettlement, contributing to the uncertainty and the indefinite nature of detention. On 11 March 2014, the Papua New Guinean parliament passed amendments to the Constitution, allowing them to detain persons transferred to its territory pursuant to an agreement with another country (gazetted on 17 March 2014). Previously, categories of lawful detention under the Constitution did not appear to include asylum seekers who were transferred to Manus Island.

Though a visa class has been introduced by the Papua New Guinean parliament to recognize refugees at the Manus Island detention centre, the rights afforded by this visa – the period of protection granted, the nature of work rights, freedom of movement, family reunion, access to welfare, health and resettlement services – have not been made public.

Papua New Guinea is still failing to provide an individualized assessment of the need to detain asylum seekers pending the outcome of their refugee claims. Furthermore, not a single refugee assessment has been made in more than 18 months since the centre was first opened.

Amnesty International calls on the governments of Papua New Guinea and Australia to immediately adopt the recommendations in the organization's December 2013 report, *This is Breaking People*, and makes further recommendations as outlined below.

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## ADDITIONAL RECOMMENDATIONS

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

- 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.
- Ensure that asylum seekers are not exposed to or put at risk of further violence or injury, including by:
  - Immediately removing to Australia all of the asylum seekers who witnessed or were injured in the violence, for their safety and protection.
  - 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.
  - 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.
- 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.
- Ensure that asylum seekers have the right to access lawyers, including by:
  - 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.
  - Facilitating unrestricted and confidential communication with lawyers by phone, mail or in person.
  - 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.
  - Complying with court orders, including orders allowing lawyers access to the Manus Island detention centre.

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- 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.
- Ensure humane conditions of detention. In particular:
  - 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.
  - Cease using P Dorm as housing.
  - Alleviate overcrowding, including by removing people to Australia if necessary.
  - 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.<sup>58</sup>
- 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.<sup>59</sup>



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## 5. ENDNOTES

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- <sup>2</sup> Lenore Taylor, *PNG will resettle some but not all asylum seekers found to be refugees*, The Guardian (Australia), available at: <http://www.theguardian.com/world/2014/mar/21/png-will-resettle-some-but-not-all-asylum-seekers-found-to-be-refugees> (accessed 2 April 2014)
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<sup>32</sup> Information obtained by Amnesty International from witness report GM17, witness report GM18

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<sup>42</sup> Michael Gordon and David Wroe, *Asylum seekers give police details of Manus slaying*, 29 March 2014, available at: <http://www.smh.com.au/national/asylum-seekers-give-police-details-of-manus-slaying-20140328-35on4.html> (accessed 9 May 2014)

<sup>43</sup> Information obtained by Amnesty International from witness report GM11, witness report GM13, witness report GM17; Statement by Australian Minister for Immigration & Border Protection, Scott Morrison MP, <http://www.minister.immi.gov.au/scottmorrison/media/speeches-and-transcripts/2014/> (accessed 7 May 2014); ABC News, *Interview by Richard Glover with Azita Bokan*, 21 February 2014, <http://www.abc.net.au/local/audio/2014/02/21/3949893.htm> (accessed 7 May 2014); Todagia Kelolaan, *I Killed in Manus Asylum Centre Riot*, Post Courier, 18 February 2014

<sup>44</sup> Information from tour of Manus Island Regional Processing Centre, Friday 21 March 2014.

<sup>45</sup> Statement by Australian Minister for Immigration & Border Protection, Scott Morrison MP, <http://www.minister.immi.gov.au/scottmorrison/media/speeches-and-transcripts/2014/> (accessed 7 May 2014); ABC News, *Interview by Richard Glover with Azita Bokan*, 21 February 2014, <http://www.abc.net.au/local/audio/2014/02/21/3949893.htm> (accessed 7 May 2014); Todagia Kelolaan, *I Killed in Manus Asylum Centre Riot*, Post Courier, 18 February 2014; Junior Ukaka & Elizabeth Miae, *Chaos on Manus*, The National, <http://www.thenational.com.pg/?q=node/64323> (accessed 7 May 2014)

<sup>46</sup> Information obtained by Amnesty International from witness report GM17

<sup>47</sup> Information obtained by Amnesty International from witness report GM17

<sup>48</sup> Christof Heyns, UN Special Rapporteur on Extra Judicial, Arbitrary or Summary Executions, Press Statement, 14 March 2014, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14373&LangID=E> (accessed 2 April 2014)

<sup>49</sup> Information from tour of Manus Island Regional Processing Centre, Friday 21 March 2014.

<sup>50</sup> Helen Davidson, Scott Morrison: Australia will not change policy on asylum seekers, The Guardian, 18 February 2014, available at: <http://www.theguardian.com/world/2014/feb/18/scott-morrison-australia-will-not-change-policy-on-asylum-seekers> (accessed 12 April 2014)

<sup>51</sup> Liam Cochrane, *Guards attacked asylum seekers with sticks and iron, witness says*, ABC news, available at: <http://www.abc.net.au/news/2014-02-19/guards-attacked-asylum-seekers-with-sticks-and-iron-witness-says/5270640> (accessed 12 April 2014); email received on 16 February 2014; Email received on 3 March 2014; Email received on 22 February 2014.

<sup>52</sup> G4S Australia, Manus Island Media Statements, available at: <http://www.au.g4s.com/media-centre/Manus/> (accessed 6 May 2014)

<sup>53</sup> Interview with The Salvation Army (Sydney Office) by telephone on 6 May 2014.

<sup>54</sup> Christof Heyns, UN Special Rapporteur on Extra Judicial, Arbitrary or Summary Executions, Press Statement, 14 March 2014, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14373&LangID=E> (accessed 2 April 2014)

<sup>55</sup> Principle 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>56</sup> UN Basic Principles, Principle 5.

<sup>57</sup> Parliament of Australia, *Incident at the Manus Island Detention Centre from 16 to 18 February 2014*, Senate Legal and Constitutional Affairs References Committee, available at:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Manus\\_Island](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Manus_Island) (accessed 8 May 2014)

<sup>58</sup> OHCHR Standard Minimum Rules for the Treatment of Prisoners (Rules 12 to 14), 13 May 1977, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx> (accessed 7 May 2014)

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