

Additional Comments from the Australian Greens

1.1 The inquiry into the events of 16 to 18 February 2014 on Manus Island, in which 70 asylum seekers were seriously injured and Mr Reza Barati was killed, has revealed that the Australian Government failed in its duty of care to protect asylum seekers from harm and that the future operation of the centre is untenable.

1.2 Whilst the Australian Greens agree with many aspects of the majority report into the incident, there are a number of important recommendations that are integral to upholding Australia's obligations to those detained at the Manus Island detention centre which have not been included. Whilst the major parties continue to tout the successes of offshore detention, the evidence provided to the committee suggests the contrary. Offshore detention is not sustainable.

1.3 There is no doubt that the event that took place at the Manus Island Centre was foreseeable and avoidable. The committee heard that there were a number of significant factors that contributed to the event, in particular the dramatic increase in the population at the centre, the harsh and inhumane conditions endured by asylum seekers whilst detained, and the complete absence of refugee status determination and resettlement arrangements (these issues are extensively covered in the majority report). These combined elements fuelled a toxic and hopeless culture in the centre.

1.4 Mr Steven Kilburn, a former G4S Safety and Security Officer at Manus Island RPC, gave an eloquent summary of his experiences at the centre:

Within a week of arriving on Manus Island I had formed the opinion, and I made comments to my wife and people that I know that there is only one possible outcome on Manus Island and that is bloodshed.

I felt violence was inevitable because of the location of the centre, the poor conditions that transferees and staff were required to live and work under, the tension between local PNG guards and transferees, concerns about the MIRPC in the local community, the time being taken to process the transferees asylum application and the decision by the Australian Government to tell the transferees that they would never set foot on Australian soil, which took away their hope for a quick resolution to their asylum applications.¹

Responsibility of the Australian Government and Australia's human rights breaches

1.5 The Australian Government failed in its obligations to prevent the death of Mr Reza Barati and protect asylum seekers from the violence that ensued. The Australian Greens agree with the majority report that Australia was, at the time of the incident, and is still exercising effective control over the centre and the individuals held there.

1.6 It is clear that offshore processing at the Manus centre has allowed for multiple violations of the basic human rights of asylum seekers, in particular, the right

1 Mr Steve Kilburn, *Submission 18*, p. 4.

to life, the right to security of person, and the right to an effective remedy. As outlined in chapter 7 of the majority report, Australia is continuing to breach its obligations under international human rights law, breaches which may substantially increase the risk of further instances of violence at the Manus Island detention centre. In light of this evidence, serious questions must be asked about the viability of the centre.

1.7 The committee heard distressing evidence throughout this inquiry in relation to the harsh and degrading living conditions transferees are subjected to at the Manus Island detention centre. These conditions have been assessed as inhumane and in breach of our international obligations by UN human rights bodies and other respected human rights organisations such as Amnesty International.

1.8 It is the view of the Australian Greens that the future operation of the Manus Island RPC is untenable. There is a compelling moral case for the government to take action to prevent harm where it is fundamentally in the government's power to do so. To that end, the closure of the Manus Island RPC and the bringing of persons held there back to Australia is the best way to ensure that the human rights of asylum seekers are protected in accordance with Australia's human rights obligations under international law.

Conduct of the Minister

1.9 The Australian Greens depart from the majority reports view that it is 'reasonable to assume that the Minister was relying on factually incorrect information' when informing the Australian public about the incidents. The public statements made by the Minister for Immigration and Border Protection following the violent attacks were selective and completely irresponsible. The Department was well aware on 18 February that that the incident did not occur outside the centre and the PNG mobile squad had in fact entered the centre, prior to the Minister's statements.

1.10 The Minister sought to deliberately apportion blame to the asylum seekers themselves for the violence and the injuries they sustained instead of taking responsibility for deceiving the public as to the severity of the attacks.

Actions of PNG police mobile squad

1.11 Through the course of the inquiry, witnesses recounted the harrowing and traumatic events that resulted in the death of Reza Barati. Witnesses described incidents of asylum seekers being dragged from their rooms and viciously beaten with excessive force. It is clear from the evidence provided to the committee that Reza Barati was brutally murdered at the hands of service provider staff and on the watch of the Australian Government.

1.12 As noted in the majority report, the violence dramatically increased when members of the PNG police mobile squad entered the centre on the evening of 17 February. The Australian Greens depart from the majority reports conclusion that G4S did not invite the mobile squad into the centre. The evidence suggests that G4S were well aware of the consequences of withdrawing the IRT from the centre and that the attacks were imminent following their departure. There were a number of serious concerns raised in the inquiry about the suitability of the mobile squad, in particular the squad's ability to deal with incidents using non-lethal force.

1.13 The Australian Greens are of the view that the presence of the PNG mobile squad at the centre is unnecessary and they engaged in an excessive use of force against asylum seekers. If the issues raised are not dealt with further attacks are inevitable.

Criminal investigations in PNG

1.14 The Australian Greens acknowledge that charges have been laid against two individuals in relation to the murder of Mr Barati, however this took some six months. There are believed to be three more suspects who authorities are still looking for, including expatriates. There have also been no arrests or charges laid in relation to the other criminal assaults perpetrated against asylum seekers between 16 and 18 February 2014. This is completely unacceptable and the Australian Government should have done more to ensure that the perpetrators were brought to justice.

1.15 The Australian Greens believe that a complete and thorough investigation of Mr Barati's death, capable of bringing the full facts to light, including in relation to individual responsibility, is necessary to fulfil the requirements of Australia's obligations in accordance with the standards set out in international human rights law. Further to this, the Australian Government must do far more to assist the PNG authorities with the criminal investigations, and this means making the AFP available to PNG authorities. Australia cannot wash its hands of responsibility.

Refugee status determination and resettlement processes

1.16 As noted in the majority report, the lack of progress on asylum seekers refugee status determination processing was a major factor leading to the events. The Australian Greens find it alarming that these issues are still not well advanced months after these events occurred.

1.17 It is unacceptable that asylum seekers were sent to PNG without any clear legislative or administrative framework in place for their processing and resettlement, and remain in limbo nearly 18 months later, with further uncertainty ahead. It is important to note that the PNG government has announced a review of the resettlement arrangements and that an extensive public consultation is underway due to community unrest, suggesting that genuine resettlement will not be forthcoming.²

1.18 Given the harsh and arbitrary nature of the conditions endured by asylum seekers while these processes continue, an outer limit should be placed on the time which transferees must spend on Manus Island before their asylum claims are settled. Given that Australia has established processes in place for dealing with refugee status determination, asylum seekers should have their claims processed in Australia if timely processing in PNG cannot occur.

2 Papua New Guinea to rewrite policy for resettling refugees from Manus Island detention centre, <http://www.abc.net.au/news/2014-10-20/png-to-rewrite-policy-for-resettling-refugees-from-manus-island/5827926> (accessed 9 December 2014).

Conclusion

1.19 It is the view of the Australian Greens that the events of 16–18 February were imminent and the Australian Government failed to acknowledge the warning signs and act. As a result of this inaction a young man was murdered and dozens injured. The evidence clearly states that the Australian Government had, and continues to have, effective control over the centre and is responsible for protecting those held within it. The viability of the centre is shot and should be closed immediately.

Recommendation 1

1.20 The Australian Greens recommend that the Australian Government close the Manus Island Regional Processing Centre and transfer asylum seekers back to Australia.

Recommendation 2

1.21 The Australian Greens recommend that the Minister for Immigration and Border Protection apologise for misleading the Australian public in relation to the incident which led to the death of Mr Reza Barati.

Recommendation 3

1.22 The Australian Greens recommend that the Australian Government ensure an adequate and effective investigation into the death of Mr Reza Barati in accordance with the requirements of Australia's duty to investigate under international human rights law. This includes:

- **working in coordination with PNG authorities and providing appropriate support and assistance to PNG police with their investigation;**
- **as required, either separately or in coordination with the PNG police, conducting a police investigation that takes witness testimony from individuals present at the incident who are now in Australian territory;**
- **as appropriate, removing witnesses held at the Manus Island Regional Processing Centre from PNG to Australia to ensure their safety; and**
- **extraditing or prosecuting those accused of Mr Reza Barati's death who now reside in Australia and ensuring that criminal prosecution is in accordance with international laws and standards, without recourse to the death penalty.**

Recommendation 4

1.23 The Australian Greens recommend that the Australian Government direct the Australian Federal Police to assist PNG authorities with the investigations in order to bring the perpetrators to justice.

Recommendation 5

1.24 The Australian Greens recommend that the Australian Government work with the Papua New Guinea Government to ensure that Refugee Status Determination processes for all asylum seekers at the Manus Island detention centre are finalised by the end of March 2015 with a plan to resettle people safely in Australia.

Senator Sarah Hanson-Young

Australian Greens

