



Committee Secretary
Senate Legal and Constitutional References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

13 May 2014

Dear Committee Secretary,

**Submission to the Senate Legal and Constitutional Affairs References Committee
Inquiry into the Incident at the Manus Island Detention Centre from 16 to 18
February 2014**

We welcome the opportunity to provide information to the Committee on this important Inquiry.

The ASRC is deeply concerned for the ongoing safety of asylum seekers at the Manus Island Detention Centre following the horrific violence that occurred in February.

The injuries sustained by asylum seekers and the death of Reza Berati are matters of the most serious nature requiring swift action to bring those responsible to justice and to prevent any similar events reoccurring.

The ASRC believes the safety of asylum seekers cannot be secured. Manus Island Detention Centre must be closed and all asylum seekers fairly and efficiently processed in Australia.

Please do not hesitate to contact if you require any further information.

Yours sincerely,

Kon Karapanagiotidis

OAM CEO Asylum Seeker Resource Centre



**Submission to the Senate Legal and Constitutional Affairs
References Committee**

**Inquiry into the Incident at the Manus Island Detention Centre from 16 to 18
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1. Sequence of events and factors that caused the incident

Inhumane conditions

1. The conditions at the Manus Island Detention Centre (MIDC) are inhumane and this remains the case. UNHCR has deemed them in violation of international standards and found that safe and humane conditions are not provided at the MIDC.¹
2. Photos provided to the ASRC in March 2014 of inside the centre highlight these appalling conditions, including unsanitary toilets, severely crowded rooms and minimal shelter.
3. The extent of the conditions and human rights abuses were well documented by Amnesty International in November 2013² and have been further highlighted by Amnesty and the Human Rights Law Centre following a visit inside the detention centre in March 2014, as part of the PNG National Court Inquiry.
4. Amnesty made a series of recommendations to improve conditions, however most of these are yet to be implemented both months after the report and following these tragic incidents.
5. In addition to Amnesty and UNHCR reports, a former welfare worker at the centre has advised the ASRC that there is woefully inadequate mental health care and rapidly deteriorating mental health of asylum seekers.³

Delays and uncertainty in processing and settlement

6. The Manus Island Detention Centre received its first transfer of asylum seekers in November 2012.
7. In over 18 months, there has not been a single case processed or determined and no refugee has been resettled.
8. The new Memorandum of Understanding between the governments of Australia and PNG signed on 6 August 2013 (New MOU) references assessments being made, but does not outline or provide guidance on the process.⁴

¹ UNHCR, *UNHCR Monitoring Visit to Manus Island*, Papua New Guinea, 23 – 25 October 2013, 26 November 2013.

² Amnesty International, *This is Breaking People*, December 2013.

³ Information provided to ASRC, S4.

⁴ Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to, and assessment and settlement in, Papua New Guinea of certain persons, and related issues: <https://www.dfat.gov.au/geo/png/joint-mou-20130806.html>

9. PNG lacks a refugee status determination framework. The PNG *Migration Act 1980* empowers the Minister of Foreign Affairs and Immigration to determine whether a non-citizen is a refugee, however there is no procedural guidance as to how to undertake this assessment.
10. Regulations introduced in January 2013 to provide some guidance on the decision making process are now redundant, as the New MOU supersede these. Furthermore, UNHCR deemed these regulations inadequate and inconsistent with the Refugee Convention.⁵
11. Therefore, there remains some 18 months since the first asylum seekers were transferred to Manus Island Detention Centre, no legislative or regulatory process for refugee status determination.
12. While there is a contracted agency, Playfair, that has intermittently assisted asylum seekers compile evidence of their claims, as outlined in Amnesty International's report, *This is Breaking People*, this is a futile exercise given the inability of these workers to act as lawyers or provide any legal advice or advocacy assistance to asylum seekers.⁶
13. A former Playfair employee and Migration Agent who worked at the Centre has stated publicly that the support provided was 'fake' and there was no process.⁷
14. Asylum seekers should never have been transferred to Manus Island DC without a legislative refugee status determination process in place. It was completely foreseeable that asylum seekers were to be detained for extended periods given the lack of a legal framework or trained people to undertake a proper assessment of refugee applications.
15. The arrangement was hasty, ill thought out and has had grave consequences for asylum seekers. Asylum seekers have had no clear information or communication about how long they will be detained or when the processing of their claims will begin or be completed.
16. As is widely understood, the impact of detaining people without providing timeframes is debilitating. UNHCR recommends asylum seekers be informed of the process, approximate duration and resettlement arrangements as soon as possible and throughout the process. This has not occurred at the Manus Island DC and there continues to be a lack of clarity on processing, as well as resettlement arrangements.

⁵ UNHCR, *UNHCR Monitoring Visit to Manus Island*, Papua New Guinea 23 – 25 October 2013, 26 November 2013.

⁶ Amnesty International, *This is Breaking People*, December 2013, p 65.

⁷ 'I was told to Lie: Manus Island Staffer', SBS Dateline at <http://www.sbs.com.au/news/article/2014/02/25/i-was-told-lie-manus-island-staffer>. We note that Ms Thompson has also provided a submission to this inquiry.

17. As recently as this week, there were conflicting public statements of the PNG and Australian governments regarding where refugees will be resettled.⁸
18. The PNG government advised UNHCR during a monitoring visit in October 2013 that their policy position was to *not* implement timelines and to *not* advise asylum seekers of approximate timelines.⁹
19. Keeping people indefinitely in inhumane conditions with no information about their future or what will happen is cruel, damaging and punitive treatment. The peaceful protesting could foreseeably give rise to unrest given the clear distress these circumstances would cause any person.
20. The extended delay of any processing of refugee claims and the uncertainty of when and how this will occur caused great tension at the Manus Island DC in the lead up to events on 16 - 18 February, as asylum seekers were desperate to know their fate.
21. It is clear from the tragic outcomes of these events that the detention centre management and staff were completely ill equipped to protect asylum seekers and ensure their safety inside the centre.

Communications with asylum seekers on processing and resettlement

22. The ASRC received two phone calls from asylum seekers at the Manus Island Detention Centre on the night of Monday 17 February. As our office was closed, voicemail messages were left and these were accessed the following morning. Due to the timing of these calls and the consistency of these statements with other witnesses that have come forward, we believe these to be reliable accounts from when the events occurred.¹⁰
23. Asylum seekers at the MIDC communicated their concerns and raised questions regarding processing and resettlement at a meeting with Department of Immigration officials on 5 February. These questions were taken under advisement by officials to be answered at a follow up meeting.
24. This follow up meeting occurred on 16 February, at which time asylum seekers were told they would not be settled in Australia and that they should not hold any hope, even if they are refugees.¹¹

⁸ On 12 May 2014 Manus Island MP Ronnie Knight stated in an interview with SBS World News Radio, "I do not foresee many, if any, asylum seekers being settled in Papua New Guinea." Minister for Immigration, Scott Morrison in response re-issued an earlier statement which states asylum seekers will be settled in PNG, at <http://www.sbs.com.au/news/article/2014/05/12/png-may-not-allow-any-refugees-stay-mp>.

⁹ UNHCR, *UNHCR Monitoring Visit to Manus Island*, Papua New Guinea 11 – 13 June 2013, 12 July 2013, p 6.

¹⁰ Transcripts of the calls are attached to this submission. For access to the audio recordings, please see <http://www.asrc.org.au/2014/02/18/draft-transcript-of-phone-messages-received-from-asylum-seekers-at-manus-island-detention-centre/>

¹¹ Information provided to ASRC, S1.

Violence against asylum seekers

25. The ASRC received further statements from witnesses of the incident.¹² There were several inconsistencies across these accounts including:

- a) We had been peacefully protesting for almost two weeks about a lack of information about processing and resettlement
- b) We held a meeting on 5 February and raised our concerns with Department of Immigration officials
- c) Officials came back to us on 16 February and told us we would not be settled in Australia

Events of 17 February:

- d) We were attacked inside the centre by local G4S and other staff and also police
- e) Machetes were used and one asylum seeker had their throat slashed
- f) At least 20 gunshots were fired
- g) There was blood everywhere
- h) People ran to their rooms to try and hide and seek protection, but they were chased and attacked in their rooms
- i) The power was switched off and it was dark
- j) There was no one protecting us except a few ex-pat guards

26. Following the violence at the MIDC, there was no internet for up to eight days, prohibiting family members from finding out whether their loved ones were safe. The ASRC was contacted by family and other agencies to assist with information, as access to people in the centre was difficult and created grave concern for family members.

2. Department of Immigration and Minister's involvement, response and conduct

Lack of transparency, accountability and misinformation

27. The Minister for Immigration has been consistently reluctant to inform the public about the MIDC or offshore processing generally and often refuses to answer questions. This has reduced accountability and made it very difficult for the Australian public to understand what is occurring at the MIDC.

28. Statements made by the Minister from 17 February through to 22 February were inconsistent, incorrect and sought to hold asylum seekers that were victims of serious violence at fault and solely responsible for events that had occurred.

¹² Information provided to ASRC, S1, S2, S3, S5, S6.

29. The Minister’s early statements connected the incident to the behaviour of asylum seekers in the detention centre. Following the confirmation that Reza Berati had been killed, on 18 February he stated:

“This was a very dangerous situation where people decided to protest in a very violent way and to take themselves outside the centre and place themselves at great risk... When people engage in violent acts and in disorderly behaviour and breach fences and get involved in that sort of behaviour and go to the other side of the fence, well they will be subject to law enforcement as applies in Papua New Guinea.”

30. We would expect a Minister to be far more responsible and cautious about apportioning blame and making claims about why the events occurred given the serious circumstances.

31. At 9pm on Saturday evening 22 February, the Minister corrected his earlier statements regarding where the violence occurred. However, he continued to claim:

“In a situation where transferees engage in riotous and aggressive behaviour within the centre, this will escalate the risk to those who engage in such behaviour.”

32. Given the importance of providing correct information following very wrong and damaging information, it is not appropriate that this was done in a written statement late on a Saturday evening.

3. The Australian Government’s obligations and responsibilities

33. Australia cannot contract out of or outsource its legal obligations. As an arrangement between two state signatories to the Refugee Convention, Australia remains responsible for the protection of asylum seekers under the arrangement.¹³

34. Australia is in contravention of several of its international human rights obligations, including:

- a) The prohibition on imposing penalties on asylum seekers on account of illegal entry or presence in a territory¹⁴

Only asylum seekers that arrive by boat without a visa are subject to the punitive measure of offshore processing and mandatory detention, in direct contravention of the Refugee Convention.

¹³ UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea 23 – 25 October 2013*, 26 November 2013.

¹⁴ Article 31 (1) 1951 *Convention relating to the Status of Refugees* as amended by the 1967 Protocol relating to the Status of Refugees.

b) Freedom from arbitrary detention¹⁵

Asylum seekers are subject to mandatory detention for an indefinite period of time with no reasonable basis or assessment of proportionality.¹⁶

c) Freedom from torture or cruel, inhuman or degrading treatment¹⁷ and the right of all person deprived of their liberty to be treated with humanity and respect for the inherent dignity of the human person¹⁸

As is well documented in UNHCR, Amnesty International reports and outlined above, conditions inside the MIDC are abhorrent, cruel and degrading.

d) Right to life¹⁹

Reza Berati was arbitrarily deprived of his life in a detention centre paid for, overseen and supported by Australia.

4. Refugee status determination processing and resettlement arrangements in Papua New Guinea

35. As outlined above under section 1, the lack of a legal processing framework is a major ongoing concern. The criteria for determining refugee status has not been enshrined in law. This is inconsistent with fair and reasonable decision making and remains a major impediment to effective processing occurring.

36. Asylum seekers have still not received adequate information regarding the process and their rights. As the UNHCR outlines:

Asylum seekers have a right to be informed orally and in writing, in a language which they understand, of the processes and procedures to be followed, of their rights and obligations during the procedure and to consult in an effective manner a legal advisor.²⁰

37. The training and capability of RSD officers and decision makers is unclear, however given the lack of a legal framework and the fact that this is a system being developed and implemented simultaneously, there are concerns for the effectiveness of decision

¹⁵ Article 9, *International Convention on Civil and Political Rights* (ICCPR).

¹⁶ UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea* 23 – 25 October 2013, 26 November 2013.

¹⁷ Article 7, ICCPR.

¹⁸ Article 10, ICCPR.

¹⁹ Article 6, ICCPR.

²⁰ UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea*, 23 – 25 October 2013, 26 November 2013.

makers to adequately and fairly undertake the complex process of determining refugee status.

38. Given the continuing delays and the continued lack of clarity regarding the determination process and where refugees will be resettled when they do receive decisions, the likelihood of these tragic events reoccurring cannot be underestimated.

5. Recommendations

39. The Manus Island Detention Centre must be closed immediately. The conditions are inhumane and in contravention of international law and amount to arbitrary detention; the lack of a legal framework makes it impossible for fair and reasonable refugee status decisions to be made and the Australian government cannot guarantee the safety of asylum seekers on Manus Island.
40. All offshore processing should immediately cease, as these events demonstrate the inadequate control Australia exercises over the safety and protection of asylum seekers in offshore, remote relocations and the issues arising from processing and resettlement are consistent across offshore locations.
41. The investigation into the death of Reza Berati and the events on Manus Island have been woefully inadequate and are an injustice. There must be a full and impartial criminal investigation into the death of Reza Berati and an independent judicial inquiry into the incidents at the MIDC.
42. The Australian and PNG government's must immediately advise:
- a) The status of all investigations and make information available, including whether witnesses have been questioned; whether implicated staff members have been stood down; whether any witnesses or suspects in Australia will be expedited to PNG;
 - b) Why the MIDC was not treated as a crime scene and vital evidence was scrubbed clean and destroyed;
 - c) Why the Australian Federal Police refused to assist the PNG police when requested to do so;
 - d) Why no one has been charged with the death of Reza Berati when there are many witnesses and it is three months since he was killed;
 - e) The health and well-being of injured asylum seekers.

Recordings and draft transcript of phone messages received from asylum seekers at Manus Island Detention Centre

Please note this is a draft transcript only. The source recordings should be relied upon for accuracy.

The Asylum Seeker Resource Centre (ASRC) received two voicemail messages from asylum seekers at Manus Island Detention Centre on the night of 17 February 2014.

Statement 1 (S1)

Recording (2.50 mins) at <http://www.asrc.org.au/2014/02/18/draft-transcript-of-phone-messages-received-from-asylum-seekers-at-manus-island-detention-centre/>

“They report about an incident that happened in Manus Island and it started before 5 days from now when the people started to protest peacefully. Just call for freedom and justice but this let the Immigration officers to come and hold meetings with the transferees on 5th February. In this meeting the clients or transferees asked many questions but Immigration officers did not answer and they said we will be answering questions after maybe 2 weeks or 1 week. Then it came that Immigration, today they came with the management staff and military...[inaudible]. They said you will not be settled in Australia but in PNG and you stay here for long time and you don't have any hope even if you are genuine refugees. This let people made another peaceful protest and finally some of PNG G4S staff decided to beat the transferees or asylum seekers and then some of us run away from the compound, just escape and secure their lives when they couldn't secure their lives inside. And that was why the people run away from the compound but they didn't run away from the compound to go to anywhere or to run away but they couldn't secure their lives inside the compound so they tried to secure their lives outside the camp. That let other locals, some local people, to attack and assault the transferees, maybe approx 50 people were injured. Other Australian as well [inaudible]. Including this number, 2 were seriously injured. So this is the incident that happened and even it is happening that local people attacked us while we were inside the compound. Too strong, you know, too strong and you did whatever it takes to beat us, so this the report we wish you can take with any media and we need your response to cover it.”

Statement 2 (S2)

Recording (4.52 mins) at <http://www.asrc.org.au/2014/02/18/draft-transcript-of-phone-messages-received-from-asylum-seekers-at-manus-island-detention-centre/>

Sir, really I do not know what to say, in this situation we...[inaudible]...in Manus Island Regional Processing Centre, what happened is, you remember that after just 80 minutes I sent you an incident that happened last night. So this is the next time that G5S staff [inaudible] and the same time the PNG guys they attacked us before they switched off the electricity and then they attacked us with stones and with [inaudible at 6.39]...they are armed and are maybe like 200 or above. They broke down everything and they injured many, many of the transferees in this compound and I think at the same time maybe the other compounds they did to them. So we were locked in the rooms, still now we are in the rooms, I am talking to you now from the internet room and the telephone room. We locked the doors inside, you cannot open to anyone and they are still killing. I do not know until now if they killed many of us or they injured one of us. But it [inaudible]...everyone is bleeding. So this is the report about this incident and this is human suffering, not something easy. If you are the office for asylum seekers, we hope for you to do soon as possible to inform or contact with any media, anyone who can help us. We are not here by our choice. Australia government put us here by force and today this is happening. Who is responsible for our lives? We are dying here, maybe if we stay like this we are not even fighting them. We are just running away and trying to hide ourselves in the room. But they are following us every place and beating us, anyone they hate. I wish when this message reaches you, and you listen to it, you do something humanitarian. This is not a simple issue, it is urgent and maybe by tomorrow when you open your office, maybe there will be many people dead, maybe there will be many people seriously injured and I don't know, maybe this will be listed in the next day. So please prepare to report about this incident. It is not just an incident, it is a disaster. So please help us, stop our suffering, contact with anyone who have humanitarian...to do something to stop this. I am sure that the powerful government, the UNHCR and Amnesty International, even the Australian government, they can do something to stop this. We will were beaten by the G4S security guards in the compound and they have been as well arresting, and for the last five or six months we have been here they are using it to arrest anyone they see for false accusations and we were all, all the time patient and we didn't do any problems, the last time we were doing a peaceful protest, they started...we act dutifully [inaudible at 9.34]...so please this is not a simple report this is a disaster [inaudible]. Please we are human beings, we are not animals. We are put in a cage and we are forgotten. I wish that when you receive this message there will be something to be done, something. Thank you.