

THIS IS BREAKING PEOPLE

HUMAN RIGHTS VIOLATIONS
AT AUSTRALIA'S ASYLUM
SEEKER PROCESSING
CENTRE ON MANUS ISLAND,
PAPUA NEW GUINEA

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GLOSSARY

| | |
|--------------------|---|
| Asylum seeker | A person seeking recognition as a refugee |
| CAP | Claims Assistance Provider Scheme, a programme under which asylum seekers are assisted in compiling evidence to support their claim for protection |
| DIAC | Department of Immigration and Citizenship, the former name of the Australian Department of Immigration and Border Protection (DIBP) |
| DIBP | Australian Department of Immigration and Border Protection, formerly the Department of Immigration and Citizenship (DIAC) |
| G4S | The company contracted by DIBP that provides security guards for the Manus Island Regional Processing Centre. G4S does not provide security operations for detention facilities based in Australia or for transfers from Australia to Papua New Guinea. |
| IHMS | International Health and Medical Services, contracted by DIBP to provide health services to asylum seekers detained on Manus Island |
| PNG | Papua New Guinea |
| <i>Refoulement</i> | The forcible return of individuals to countries where they face a real risk of persecution or other serious harm |
| Refugee | Under the 1951 Refugee Convention and 1967 Refugee Protocol, a person who has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion and who is outside the country of nationality (or if stateless, outside the country of former habitual residence). The term “refugee” is also often used to refer to persons who are outside their country of nationality or habitual residence because of a serious threat to their life, liberty, or security as the result of generalised violence or other events that seriously disturb public order. |
| RSD | Refugee Status Determination |
| Separated children | Children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may include children accompanied by other adult family members. |
| Stateless person | A person who is not considered a national by any state under the operation of its law. In addition, a person is <i>de facto</i> stateless if he or she does not possess the effective nationality of any state and is unable or for valid reasons unwilling to avail himself or herself of the protection of any state. |
| STTARS | Survivors of Torture and Trauma Assistance and Rehabilitation Service, subcontracted to provide mental health services to asylum |

seekers detained on Manus Island

Tok Pisin

One of three official languages in Papua New Guinea (the others are Hiri Motu and English)

TSA

The Salvation Army, contracted by DIBP to provide a range of services to asylum seekers detained on Manus Island

Unaccompanied children

Children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

Wantok

Literally “one talk” in Tok Pisin, used to describe language group or people from the same location who share a strong social and cultural connection with each other.

1. INTRODUCTION AND SUMMARY

“All I was coming here for was to have a country. I thought if I went to Australia, I would find a country with respect for human rights. I was thinking to leave darkness for light, but what I find is that I have left darkness for even more darkness.”

—H.A., a Bidun who had lived in Dubai, interviewed 15 November 2013

Fleeing war, chilling acts of torture, threats of death, or profound discrimination, many asylum seekers make the desperate decision to undertake a perilous ocean voyage from Indonesia and other countries, including Sri Lanka, to Australia.

In response, Australia agreed with Papua New Guinea to reopen an offshore processing facility on Manus, a remote island located 800 kilometres to the north of the capital, Port Moresby. In November 2012, it began sending asylum seekers from Christmas Island, an Australian territory south of the Indonesian island of Java, to the Manus Island facility, over 4,800 kilometres away.

Australia then announced on 19 July 2013 that all asylum seekers arriving in its territory by boat would, if they establish that they are refugees, be resettled in Papua New Guinea, not Australia.

But for its relative proximity to Australia, Papua New Guinea is not an obvious choice for refugee processing or resettlement. It is an impoverished country with high rates of unemployment, serious problems with violence—particularly against women—and a general intolerance for outsiders. Police abuse is rampant. It has a poor track record of protecting the limited numbers of refugees it has received to date. The prospects of successfully integrating larger numbers of refugees from a greater variety of cultures and faiths are dim.

Nevertheless, Australia and Papua New Guinea moved immediately to implement the agreement.

A HOST OF HUMAN RIGHTS VIOLATIONS

Nearly five months into the new policy, it is clear that the Regional Resettlement Arrangement has resulted in a host of human rights violations:

- The combination of detention practices, the many unknowns about the Refugee Status Determination process and timetable, and the lack of real options for meaningful integration into Papua New Guinea society combine to create a serious risk of *refoulement*, the return of individuals to places where their lives or freedom is likely to be threatened or where they are at risk of torture and other ill-treatment.
- Asylum seekers are detained in the absence of any individualised assessment of the need for detention, with no definite date for their release, apparently without any framework

in Papua New Guinea law for their detention, and no clear means to seek review of the lawfulness of their detention. The result is arbitrary detention, prohibited by customary international law and by treaties to which both Australia and Papua New Guinea are party.

- Contrary to international law, the Regional Resettlement Arrangement with Papua New Guinea discriminates against asylum seekers on the basis of their means and date of arrival, treats as suspect all asylum seekers who arrive by boat, and penalises them for their manner of arrival.
- The marked inadequacies of Papua New Guinea's Refugee Status Determination processes are such that they fail to afford asylum seekers the procedural protections that are required under international law.
- Aspects of detention on Manus Island violate the obligation to treat all persons in detention humanely. The combined effect of the conditions of detention on Manus Island, the open-ended nature of that detention, and the uncertainty about their fates to which detainees are subjected amounts to cruel, inhuman, and degrading treatment or punishment. Moreover, some conditions of detention, particularly the housing of detainees in P Dorm, on their own violate the prohibition on torture and other ill-treatment.

Australia is responsible for these violations because it has effective power and control over the detention of asylum seekers on Manus Island. Its authorities intercept and apprehend asylum seekers who arrive in Australia by boat. These asylum seekers are detained on Australian territory before they are transferred to Papua New Guinea by security guards acting under the direction of DIBP. DIBP contracts the security guards, health providers, and other service providers who work in the Manus Island Regional Processing Centre. In fact, under the terms of the agreement between Australia and Papua New Guinea, Australia bears all the costs of implementing the Regional Resettlement Arrangement in Papua New Guinea.

Papua New Guinea, in turn, is also responsible for the human rights violations that take place in the course of implementing the Regional Resettlement Arrangement. It has accepted formal custody of asylum seekers, who are detained in Papua New Guinea and are subject to Papua New Guinea's laws. It has done so without the capacity to process their cases fairly and in a timely way, without clear plans for how those found to be refugees will be integrated into local communities, and without obvious prospects for remedying those serious shortcomings in the foreseeable future.

KEY RECOMMENDATIONS

In order to ensure that the rights of asylum seekers transferred by Australia to Papua New Guinea are protected at all times, Amnesty International recommends that the Australian Government:

- Immediately review the Regional Resettlement Arrangement with Papua New Guinea and end offshore processing and the offshore detention of asylum seekers. All asylum seekers held in the Manus Island detention centre must be transferred back to Australian territory and given full access to asylum procedures in Australia.
- Ensure that its own officials and those operating under its direction do not encourage or

otherwise facilitate the return of persons to persecution, other ill-treatment, or conditions of armed conflict.

- Until such time as the Manus Island detention centre is closed and all asylum seekers held there are transferred to Australian territory, take immediate steps to ensure that conditions in the detention centre comply with international standards. Among other steps, detention centre officials should:
 - Use the newly constructed compound in the Manus Island detention centre to relieve crowding in the other compounds.
 - Redesign those other compounds to ensure that detainees are not held inhumanely. In particular, the detention centre should cease to use P Dorm as housing and should significantly reduce the number of asylum seekers held in Oscar Compound.

Amnesty International also recommends that the Government of Papua New Guinea:

- Ensure that asylum seekers are not arbitrarily detained within its territory and that all detained asylum seekers have access to Papua New Guinea's courts to challenge the lawfulness of their detention.
- Work with UNHCR to remedy the inadequacies of its Refugee Status Determination processes.
- Develop a resettlement policy that identifies clear, practical measures to be taken to facilitate refugees' access to housing, employment, education, and health services and otherwise promotes their effective integration into Papua New Guinean society.

A complete list of recommendations appears at the end of this report.

SUMMARY OF FINDINGS

Removals from Christmas Island are carried out with little or no notice to asylum seekers. Security guards wake them up in the middle of the night or early in the morning and then make them wait for hours. Asylum seekers receive little to eat during their extended wait. Some are offered blankets and invited to sleep on the floor. Explanations are limited. Asylum seekers are pressured to sign statements that they are undertaking the journey to Papua New Guinea voluntarily, although this is patently not the case.

Asylum seekers are escorted onto the plane by two security guards, one on each side, firmly gripping them under each arm and moving them along. They are commonly filmed during the transfer. If they use the toilet on the plane, they are told to keep the door open, so they are forced to relieve themselves under the watchful eye of one or more guards. For many of those who had come to Australia to escape persecution at the hands of police or other authorities, this treatment was terrifying. All described it as deeply humiliating.

As a result of these transfers, at the end of November 2013 just over 1,100 asylum seekers were detained on Manus Island. The facility on Manus Island currently holds men who do not arrive with their families. It has also held some unaccompanied boys under the age of 18.

Families are generally sent to another offshore processing centre on the small Pacific island nation of Nauru, operated under a separate series of agreements between Australia and that country.

Asylum seekers are detained on Manus Island in crowded accommodations with little to occupy their days. One dormitory, a long, hangar-like building dating from World War II, houses 112 detainees in bunk beds spaced closely together, with only a few fans that offer little relief from the stifling heat and humidity.

The hodgepodge of World War II-era buildings and newer units, many of which are assembled from converted shipping containers, means that living conditions vary considerably. Some asylum seekers sleep in rooms holding four beds; many others are housed in 50-person dormitories. Two of the three main compounds have air-conditioned facilities; the third, Foxtrot Compound, does not. Whatever their size, all of these accommodations offer almost no natural light, fresh air, or personal space.

The dining facilities are too small for all detainees to sit at once; they queue for their meals, sometimes for hours, in the blistering sun and the frequent downpours, with no protection from the elements.

Most of the latrines had no hand soap when we inspected them. Detainees are issued bars of soap and shampoo, but they reported that the amounts they are given are insufficient. In addition, there are too few showers and toilets to accommodate the number of men in the facility, resulting in more queuing, frequent need for maintenance, and unhygienic conditions.

Staff and most detainees get drinking water in individual 500ml bottles, with no limit on their access to water. But in the largest compound, Oscar, where some detainees' use of the bottles is said to have resulted in blocked toilets, water is supplied through 19-litre bottles—a dozen bottles a day for nearly 500 men, according to the staff who supply them, or less than a single 500ml bottle per person, an amount that is clearly insufficient, especially given the heat and humidity.

Detention centre officials told us they had plans to reduce reliance on bottled water, pointing out two large desalination and water treatment units during our site visit. Until those operations come on line, Australian and Papua New Guinea authorities must find alternate means to provide adequate amounts of clean drinking water for all detainees.

Asylum seekers often arrive on Manus Island with little clothing—their possessions are usually stolen by smugglers before they reach Australia, and their remaining belongings are confiscated by Australian authorities on Christmas Island. The clothing provided in the detention centre is usually limited to one or two t-shirts and pairs of shorts, two pairs of underwear, and a single pair of socks. They receive flip-flops but no shoes, meaning that they cannot take part in the short excursions outside the detention centre that are among the few activities offered to detainees.

Asylum seekers in two of the three main compounds have little or no access to phones and internet. Contact with family and friends is limited even for those who are able to use the

phones and computers. Access to the website of the UN High Commissioner for Refugees (UNHCR) was blocked until detainees complained during UNHCR's last visit to the centre, and detainees reported that phone calls to the UNHCR office were still blocked at the time of our visit.

Construction of a new compound was near completion when Amnesty International visited the detention centre in mid-November. This new compound, known as Mike, will have improved accommodations for detainees, a larger dining hall than the other compounds, and dedicated spaces for classes and other activities.

In addition, senior staff told us that a new communications centre would provide greater access to telephones and computers for all detainees once it is put into service. They projected that the centre would open within two or three weeks of Amnesty International's visit in mid-November 2013.

If the new compound is used to alleviate crowding in Oscar and Foxtrot compounds, rather than simply adding to existing capacity, it will partially address some of the problems identified with the living conditions at the centre.

But if detention centre officials do not use the opening of Mike Compound to correct many of the shortcomings of Oscar and Foxtrot Compounds, the new compound will exacerbate current disparities in living conditions and foster further resentment among detainees who do not benefit from the newer facilities.

Medical facilities in the centre are limited and insufficient for the growing demand for health services, including mental health services. Requests by medical staff for basic measures that would improve health and sanitation have received no response. For example, staff have asked that detainees have greater opportunities for mental stimulation, more walks outside the detention centre, shade in the compounds, a sufficient supply of drinking water for those in Oscar compound, shoes for all detainees, and soap in the latrines. In addition, medical advice to send asylum seekers for further testing or specialised treatment in Port Moresby, or if necessary, Australia, has been ignored or refused, resulting in deteriorating health problems.

We heard particular concerns from several categories of asylum seekers. Gay men expressed considerable fear about resettlement in Papua New Guinea, where same-sex sexual conduct is criminalised and police abuse against gay and transgender people is common. Several of the men with whom we spoke were apprehensive about disclosing their sexual orientation during their Refugee Status Determination interviews even when it was a basis for their refugee claim. Their fears were even more pronounced because detention centre staff have warned them that any consensual sexual conduct between detainees will be reported to Papua New Guinea police for prosecution.

The detention centre housed at least three children under the age of 18 until just before our visit in mid-November 2013, reportedly as the result of an administrative error. The three were kept in a separate accommodation block with their meals delivered to them, meaning that they were separated from adults but also that they were left on their own, with no opportunity for schooling and little else to occupy their time. Two of the children were sent to

Christmas Island on 9 November. Australian immigration authorities determined that the third had turned 18, although he says that he is still underage, and returned him to the general population.

We interviewed three other asylum seekers who gave their ages as between 15 and 17. When we raised their cases with Australian senior immigration officials, they told us that each had been determined to be above the age of 18. The treatment of their cases raises serious concerns about the age assessment procedures employed by Australia's Department of Immigration and Border Protection (DIBP). Particularly since early September, with the introduction of a new rule that asylum seekers must be transferred to Papua New Guinea within 48 hours of arrival on Christmas Island, initial assessments are made within a short time frame and thus appear to rely heavily on observations of physical appearance.

Additionally, age determination interviews on Manus Island are carried out by teleconference with age determination officers in Australia. DIBP officials on Manus Island take part in those interviews even though they are not themselves trained in age assessment procedures. Manus Island-based DIBP officials may in practice weigh discrepancies in children's accounts heavily against them and appear to treat proffered identity documents as presumptively fraudulent. As a consequence, in practice DIBP may not give children the benefit of the doubt, as required by its own procedures and international standards.

One of the asylum seekers detained on Manus Island is a person with dwarfism. Despite his obvious difficulty in going about daily life at the detention centre, and in spite of his repeated requests for simple accommodations that would make his life easier—such as a stool to allow him to use the toilet without assistance—the centre had taken no steps that would afford him a measure of dignity and autonomy, in violation of Australia's and Papua New Guinea's obligations under the UN Convention on the Rights of Persons with Disabilities.

By far the most frequent complaint, and the one detainees almost universally regarded as the most serious, was that they have been left in uncertainty—about the timetable for Refugee Status Determination hearings and decisions on those hearings, about how long they would remain in detention, about where they would live and work in Papua New Guinea if they were accepted as refugees, about the culture and other aspects of life in Papua New Guinea, about their fate in every respect. Virtually all have family members—parents, spouses or partners, and/or children—in the countries from which they fled, and many expressed anguish at the prospect of being detained indefinitely and remaining powerless to safeguard their families' well-being.

No asylum seeker held on Manus Island since the facility reopened in November 2012 has yet received a Refugee Status Determination. Only 55 asylum seekers have had an initial assessment interview in that time. Just 160 asylum seekers have even been able to submit asylum applications. None of the Australian immigration officials with whom we spoke could give a time frame for the process. Papua New Guinea's Acting Chief Migration Officer could only say that the process would take a long time and would require considerable support from DIBP.

The Australian Government has released no precise estimate of the cost of the offshore facility on Manus Island. But it has told Parliament that it will exceed the budget allocated to

the operations on Manus Island and Nauru. At a minimum, then, Australia's taxpayers will spend over one billion dollars on the two offshore facilities in the current fiscal year, or more than half a million dollars per asylum seeker.

It is not clear what return Australia is getting for that substantial outlay. It would certainly be far more economical to admit asylum seekers to Australia and allow them to live and work in communities around the country while their asylum claims are pending.

Nor it is clear how Papua New Guinea has benefited from the arrangement. Approximately 220 Manusians have been hired to work at the detention centre. But Papua New Guinea has thus far seen no significant transfer of expertise or other material benefit from Australian immigration officials, medical staff, caseworkers, security staff, or other professionals. Papua New Guinea authorities remain dependent on their Australian counterparts for virtually every aspect of the administration and day-to-day operation of both the detention centre and the Refugee Status Determination process.

What is clear is that the Regional Resettlement Arrangement has resulted in a host of human rights violations. These violations must be remedied as a matter of the utmost priority, in line with the recommendations contained in this report.

REFUGEES AND INTERNATIONAL LAW

Under international law, a refugee is a person who (1) has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion, (2) is outside the country of his or her nationality (or, if stateless, outside the country of his or her former habitual residence), and (3) is unable to avail himself or herself of that country's protection or is unwilling to do so because of such fear.¹

A person is entitled to the protections of the 1951 Refugee Convention and its 1967 Protocol as soon as these conditions are met,² although as a practical matter the protections he or she is afforded are limited until a state recognises that person's refugee status.

Broader international protection criteria apply to those who are outside their country of nationality or habitual residence because of a serious threat to their life, liberty or security as a result of generalised violence or events that seriously disturb public order. The Office of the UN High Commissioner for Refugees (UNHCR) frequently recognises such persons as refugees even though they are not covered by the 1951 Refugee Convention and the 1967 Refugee Protocol. They are sometimes referred to as "mandate refugees" to distinguish them from "Convention refugees."³ This report uses the term "refugee" to refer both to mandate refugees and Convention refugees.

Australia and Papua New Guinea are party to the 1951 Refugee Convention and its 1967 Protocol.

ABOUT THIS REPORT

Amnesty International visited the Manus Island Regional Processing Centre from 11 to 16 November 2013. Three researchers, accompanied by professional interpreters for Arabic and Farsi, spent five days at the facility. They conducted in-depth individual interviews with 58 asylum seekers and spoke with many more on an informal basis during several tours of all areas of the detention centre at several points during the week. They also held three group

sessions with asylum seekers, one session each in Delta, Foxtrot, and Oscar Compounds, at the end of their visit.

At the detention centre, Amnesty International's researchers also met with representatives of Australia's Department of Immigration and Border Protection (DIBP), including Renate Croker, the senior DIBP official at the detention centre; Papua New Guinea's Immigration and Citizenship Service Authority, including its senior officer at the detention centre, Jeffrey Kiangali; and the principal contracted security and service providers: G4S, International Health and Medical Services (IHMS), the International Organization for Migration (IOM), The Salvation Army (TSA), and Survivors of Torture and Trauma Assistance and Rehabilitation (STTARS).

In Lorengau, Manus Island's principal town, we met with Mayor Ruth Maudrakamu and her executive assistant, Mr. Leo Namuu; medical staff at the Manus Hospital's dental, pathology, and X-ray clinics; and the Rev. Dominic Mwaka, the senior Catholic priest on Manus Island.

In Port Moresby, we met with Joseph Nobetau, Acting Chief Migration Officer, Papua New Guinea Immigration and Citizenship Service Authority; Clarence Pariseau, Special Projects Officer, Papua New Guinea Immigration and Citizenship Service Authority; Dr. Paul Alexander, Medical Director, Pacific International Hospital (PIH), along with other medical staff at PIH; staff with the UN Development Programme (UNDP); and Imam Mikail Abdul Aziz and his assistants. We conducted group and individual interviews in three Papuan communities, the population of which predominately consists of individuals who have left the Papua region in Indonesia to seek asylum in Papua New Guinea for political reasons.

We also communicated by phone and email with DIBP and UNHCR officials based in Canberra.

Amnesty International greatly appreciates the openness shown by the Papua New Guinea Government in authorising our visit to the Manus Island Regional Processing Centre and the efforts made by its officials and the staff of DIBP, G4S, IHMS, TSA, and STTARS to provide us with information and facilitate our access to the centre during our time there.

All interviews with asylum seekers were voluntary and followed a semi-structured format. Most of these interviews were conducted in Arabic, English, or Farsi, using our own interpreters. We conducted two interviews in Burmese and one in Rohingya, using the detention centre interpreters for those interviews. With the exception of asylum seekers who asked that we use their real names, this report identifies those we interviewed by initials that bear no relation to their actual names.

Australian officials carefully, and euphemistically, described detained asylum seekers as "transferees" rather than "detainees" and repeatedly told us that the facility was not a detention centre. It is. Those held in the Manus Island Regional Processing Centre are not free to leave; under international law and standards and Papua New Guinea law, they are deprived of their liberty. International standards such as the Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment apply to the centre. This report accordingly uses the terms "detention centre" to refer to the Manus Island Regional Processing Centre and

“detainee” or “detained asylum seeker” to refer to those held there.

2. AUSTRALIA'S OFFSHORE PROCESSING POLICIES

On 19 July 2013, the Australian Government, under then Prime Minister Kevin Rudd, and the Papua New Guinea Government, under Prime Minister Peter O'Neill, announced a new policy, the Regional Resettlement Arrangement.⁴ Under revised memoranda of understanding, this policy stated that, with immediate effect, all asylum seekers arriving in Australia by boat who are sent to Papua New Guinea would be processed in Papua New Guinea and would never be processed or resettled in Australia. In addition, all asylum seekers processed in Papua New Guinea and found to be refugees would ultimately be settled in Papua New Guinea unless the Papua New Guinea Government chose not to accept them, in which case they would be settled in a third country. No detail has been given to date on specific arrangements for those refugees Papua New Guinea does not accept for settlement. Also announced was the necessary expansion of the Manus Island Regional Processing Centre in Papua New Guinea to accommodate those transferred in line with the policy, as well as an undisclosed payment of aid and infrastructure funding from Australia to Papua New Guinea.⁵

The stated aim of the Regional Resettlement Arrangement is to undermine the people smuggling industry in Southeast Asia by providing a deterrent to asylum seekers attempting to travel to Australia by boat, primarily those coming from their countries of origin through Indonesia or those coming directly from Sri Lanka.

On 7 September 2013, an Australian federal election resulted in a change in government, with the Liberal Party leading a new coalition government, headed by Prime Minister Tony Abbott.

The new Australian Government committed to continuing and expanding the Regional Resettlement Arrangement, placing offshore processing under its "Operation Sovereign Borders" policy, which includes the turning back of boats carrying asylum seekers intercepted in Australian or international waters. Since the reopening of the Nauru and Papua New Guinea facilities in 2012 by the Labor Government under Prime Minister Julia Gillard, media and non-governmental organisations have been restricted from entering the Manus Island facility. Cameras, video recorders, and other recording devices are not allowed inside the facility.

Following the election, Minister for Immigration and Border Protection Scott Morrison introduced new restrictions on the availability of other information relating to the operation of policies falling under "Operation Sovereign Borders," including the number of boats arriving to Australia carrying asylum seekers.

Between the introduction of the Regional Resettlement Arrangement in July 2013 and Amnesty International's visit to the facility in mid-November 2013, the population of adult male asylum seekers in the detention centre has increased from around 200 to over 1,100. It

is likely that the population will increase further.⁶ There has been no corresponding expansion in the total area of the facility, although a new compound was under construction and near completion at the time of our visit.

Since August 2012, the Office of the UN High Commissioner for Refugees (UNHCR) has made four visits to the facility. Its findings have been increasingly critical. In its most recent report, which presented its conclusions from its monitoring visit in October 2013, UNHCR stated:

“Overall, UNHCR was deeply troubled to observe that the current policies, operational approaches and harsh physical conditions at the RPC [the Manus Island Regional Processing Centre] do not comply with international standards and in particular:

- “a) constitute arbitrary and mandatory detention under international law;
- “b) do not provide a fair, efficient and expeditious system for assessing refugee claims;
- “c) do not provide safe and humane conditions of treatment in detention; and
- “d) do not provide for adequate and timely solutions for refugees.

“Further, the ‘return-orientated environment’ observed by UNHCR at the RPC is at variance with the primary purpose of the transfer arrangements, which is to identify and protect refugees and other persons in need of international protection.”⁷

THE JOHN HOWARD LIBERAL GOVERNMENT (1996-2007)

The arrival of asylum seekers to Australia by boat has been a key issue in Australian politics since the 1970s, when Vietnamese refugees arrived by boat, fleeing the war.

However, the “Tampa incident” in August 2001 marked a turning point in the Australian Government’s response to boat arrivals. A Norwegian freighter, the *MV Tampa*, had rescued 438 asylum seekers after their boat sank during an attempt to reach Australia. The Australian Government, under Prime Minister John Howard, refused permission for the Norwegian freighter to enter Australian waters. When the *Tampa* entered Australian waters regardless, Australian troops boarded the ship to prevent it from approaching Christmas Island. As a result of the incident, the Australian Government “excised” Christmas Island from Australia’s migration law. The government claimed that, as a result, Australia was not obligated to accept protection claims from asylum seekers reaching Christmas Island by boat.⁸

In response to the Tampa incident, the Australian Government implemented the “Pacific Solution,” a raft of policies intended to deter asylum seekers attempting to reach Australia by boat. This saw the introduction of offshore processing of asylum seekers arriving in Australia by boat. Australia began to transfer these asylum seekers to detention centres in Nauru and Papua New Guinea for processing. These policies provided that those found to be refugees could ultimately be settled in Australia on Temporary Protection Visas, renewable every three years, or in a third country. Other elements of the Pacific Solution included:

- The excision of Australian external territories from Australia’s migration zone, and
- The Australian Defence Force commencing operations to intercept and in some cases turn back vessels carrying asylum seekers.

In 2001, 5,516 asylum seekers arrived in Australia by boat, the highest number since records began in 1976. In the same year, there were 7,026 other onshore protection visa applications, primarily from those arriving by plane.⁹ Subsequently, numbers of asylum seekers arriving by boat dropped to below 100 per year until 2007, while other onshore applications for protection visas reduced to 3,987 in 2007-08.¹⁰

The Pacific Solution was widely criticised by refugee advocacy and human rights groups as contrary to international refugee law, unjustifiably expensive to implement, and psychologically damaging for detainees. UNHCR commented on the end of the Pacific Solution: "Many bona fide refugees caught by the policy spent long periods of isolation, mental hardship and uncertainty—and prolonged separation from their families."¹¹

THE KEVIN RUDD LABOR GOVERNMENT (2007-2010)

Following the 2007 election, the Labor Government under Prime Minister Rudd vowed to dismantle the Pacific Solution and devote more funds toward combating people smuggling directly, and progressively end operations at the detention centres in Papua New Guinea and Nauru. The facility on Christmas Island, however, was expanded rather than closed, and Christmas Island remained excised from Australia's migration zone.

Temporary Protection Visas were replaced with Permanent Protection Visas and community processing was implemented in August 2008, although the Labor Government also continued to detain asylum seekers, including children, onshore.

After a surge in boat arrivals carrying asylum seekers from Sri Lanka and Afghanistan, the Australian Government suspended the processing of asylum applications of people arriving by boat from these countries for three and six months respectively. The affected asylum seekers were left in detention, resulting in a backlog of applications. The suspensions were lifted on 6 July and 30 September 2010 respectively.

By 2010, the number of asylum seekers arriving by boat to Australia had increased to 6,555. Other onshore protection visa applications, predominantly by those arriving by plane, reached 5,986.¹²

THE JULIA GILLARD LABOR GOVERNMENT (2010-2013)

In June 2010 Julia Gillard replaced Kevin Rudd as leader of the Labor party, and as Prime Minister of Australia.

In November 2010, the High Court in Australia ruled that two Sri Lankans had been denied procedural fairness in the review of their claims under the processing arrangements that apply to asylum seekers who enter Australia through excised offshore territory.¹³ In response to the High Court decision, the Gillard Government announced changes to the refugee determination system for asylum seekers arriving in excised territories, granting access to judicial review in situations where procedural fairness has been denied. The system on Christmas Island, however, continued to differ from the onshore process.

In May 2011, the Australian Government announced an agreement with the Malaysian Government to forcibly transfer 800 asylum seekers who arrived in Australia by boat to Malaysia. In return, Australia agreed to resettle 4,000 refugees from Malaysia over four years.

Ultimately, the deal was overruled following a High Court challenge based on Malaysia's refusal to sign the Refugee Convention along with that country's punitive practices, including corporal punishment, toward refugees, asylum seekers, and other migrants.¹⁴

From June 2011 to June 2012, 7,983 asylum seekers arrived by boat to Australia.¹⁵ There were 7,036 onshore protection visa applications, primarily from asylum seekers arriving by plane.¹⁶

In August 2012, the Australian Government accepted all the recommendations of the Expert Panel on Asylum Seekers, which had been commissioned in response to the drowning of a boatload of asylum seekers in June 2012 to investigate and provide policy options to address asylum seekers arriving by boat. The expert panel recommended the reintroduction of the Pacific Solution and the reopening of the detention centres on Manus Island and Nauru.

In November 2012, the Government announced that the offshore detention centres on Manus Island and Nauru would be reopened and used to process asylum seekers arriving by boat, including children. All asylum seekers arriving by boat, whether processed offshore or in Australia, would be subject to the "no advantage" principle, under which their protection visas would be delayed for a period of approximately four to five years to reflect the Government's estimated period that they would hypothetically have waited for resettlement in Australia from abroad. It was never made clear what status asylum seekers would receive during this four- to five-year period. No asylum seeker actually received a Refugee Status Determination through offshore processing during the "no advantage" policy.¹⁷

In May 2013, the Australian Government took steps to amend the Migration Act 1958, to excise the Australian coastline from its own migration zone. These steps meant that people who have arrived to seek asylum by boat after May 2013 are unable to apply for protection under Australia's immigration laws and to access Australian courts for judicial review.

In June 2013, the Australian Government announced that it would remove families with children and vulnerable men from the detention centre on Manus Island. Thirty to 40 children were among those affected by this change.

From June 2012 to June 2013, 25,173 asylum seekers travelled to Australia by boat. In this same period, there were 8,308 onshore applications for Protections Visas, primarily by those arriving by plane.¹⁸

THE SECOND RUDD GOVERNMENT (JUNE - SEPTEMBER 2013)

In June 2013 Kevin Rudd returned as Prime Minister and on 19 July 2013 announced the introduction of the Regional Resettlement Arrangement.

Under the Regional Resettlement Arrangement, the existing asylum seeker populations on Manus Island and Nauru—who would not be subject to third country resettlement—would be moved to Australia to have their claims processed there. All new arrivals by boat would be transferred to Papua New Guinea and Nauru, with women and families with children transferred to Nauru. Those with successful refugee claims would not be settled in Australia, but instead in Nauru or Papua New Guinea respectively, or possibly a third country. However,

Nauruan authorities later denied the claim that refugees would be permanently resettled in Nauru.¹⁹

THE TONY ABBOTT COALITION GOVERNMENT (SEPTEMBER 2013 - CURRENT)

A federal election in September 2013 resulted in a change of government, with the Liberal Party leading a coalition government headed by Prime Minister Tony Abbott. One of Mr. Abbott's key election promises was to "stop the boats."

The new Government reintroduced Temporary Protection Visas on 18 October 2013 for refugees already in Australia, as one element of their policy to stop the arrival of asylum seeker boats.²⁰ The visas met significant criticism from human rights groups—highlighting the significant negative impacts of the visas when they were in use prior to 2008. The visa category was subsequently disallowed by the Senate on 3 December.²¹

On 4 December 2013, in response to the Senate disallowance of Temporary Protection Visas, Minister Morrison announced the capping of onshore protection visas at 1,650 places for the financial year. This is equal to the number that had been already been issued—meaning that no further protection visas will be issued until July 2014. The Minister stated that this step fulfils the Government's commitment that no asylum seekers who had arrived in Australia by boat would receive a protection visa. At the time of writing, the cap extends to all asylum seekers, including those who arrive by plane. The Minister has indicated that he may have further announcements in relation to plane arrivals.²²

3. THE JOURNEY TO MANUS ISLAND

K.G. (not his real initials), age 20, left Yangon in October 2013. He explained, "I left Myanmar because there are many problems there. My family is Muslim. Because I'm Muslim, I have no ID. I can't go to class. I can't learn.

"One day [in May 2013] my father and I went to Yangon. On our way, there are 300 people there. They stopped the bus. They took all the Muslims, including my father and me, and made them lay on the ground. They started beating my father. My father told me to run away. I started running. Then one guy came after me on a motorbike. He came and started beating me. He hit me on my knee with a stick. He said to me, 'You motherfucker, why are you here? This is my country, not your country.' I fell down on the ground. I tried to run, but he was beating me. Then another person ran by, so the man was distracted. He turned to go after the other person, and I was able to run away.

"I went back home the same day. We waited for my father to return. He was not coming back. We learned that he and all the other people who were pulled off the bus that day all died.

"Because of this, my mother told me to leave. That same day, when I was back home, there is one family living in the neighbourhood. They asked me what happened in the city. I told them.

"After midnight, 15 or 20 people came and knocked on the door, asking about me. My mother said I was not there. She said I went to the city with my father. They all went away. So my mother sent me to my aunt's house.

"I don't have any identity card or citizen card in Myanmar. I am not able to study." He has finished 10th grade, but he says that he can't go further in his education without identification. His father taught him to be an electrician.

His knee is now misshapen, and the ankle on that leg is noticeably larger than the other. "This is where the man hit me with a big stick, three inches in diameter. . . . I walk with pain. I can bend my leg this far—"

He demonstrated, showing that that leg had about a third of the flexibility of his other leg.²³

K.G. and other asylum seekers on Manus Island left their homes and made their way to Australia after suffering beatings and other forms of abuse, watching as loved ones were killed, being subjected to forced evictions from their homes, having their possessions stolen or burned, or finding themselves barred by discriminatory laws or practices from holding most jobs or getting an education.

Many fled ongoing armed conflict or other violence in places such as Afghanistan, Darfur, Iraq, Lebanon, Pakistan, Somalia, and Syria. Some are stateless.

They often travel through countries that lack refugee protections. Thailand, Malaysia, and Indonesia are particularly hostile to refugees, who are regarded as undocumented migrants and are frequently targeted by police for arrest, extortion, and detention.

All of those interviewed by Amnesty International had endured harrowing ocean voyages, sometimes as long as a week or more, in boats that were often dangerously overcrowded, poorly supplied for the journey, decrepit, and unseaworthy.

We repeatedly heard that asylum seekers had chosen to travel to Australia because they believed that it was a strong supporter of human rights. Many expressed gratitude to the Australian authorities who rescued them at sea and provided them with food, shelter, and clothing on Christmas Island.

All were shocked to hear that the Australian Government had decided to hand them over to a country that many had never heard of.

Even more shocking to them was the manner in which they were transferred to Manus Island—woken in the middle of the night, told they were being removed to a country most had never heard of, made to wait for hours with little food, made to sign statements that they were undertaking the journey to Papua New Guinea voluntarily, and then escorted onto the plane by security guards, one on each side of each asylum seeker, holding him firmly by the arms. Once on the plane, asylum seekers were not allowed to leave their seats except to use the toilet; when they did so, they were accompanied by security guards and told to leave the door open as they relieved themselves.

In many cases, they expressed disillusionment with the way they had been treated. H.A. said, “In Dubai, I saw one of the foreign families there—I don't know if they were British or Australian—running around very worried because their dog was sick. I was so surprised. But I thought if that dog means that much to this family, how much they must care about humans. I started to think what the respect for people must be in this country. But what I see now, I see it's all lies. It's all false advertising when it comes to human rights.”²⁴

THE REASONS FOR LEAVING THEIR HOMES

Many of those we interviewed in November 2013 in the Manus Island detention centre related horrific accounts of torture and other ill-treatment suffered prior to undertaking their long journey to Australia. In some cases, the ill-treatment was inflicted on them because they were members of particular political parties (or were thought to be aligned with those parties), in others because of their religion, ethnicity, or sexual orientation. In some cases, they reported that these violent acts were committed by police and other state officials. In other cases, they suffered abuses at the hands of private individuals—acts that went unchecked by state authorities.

Some had run afoul of state security agencies. For instance, Y.M. reported that he was arrested and tortured by Iran's security forces in 2012 after he participated in a protest.²⁵

Other asylum seekers told us that they fled armed conflict or other situations of general unrest in fear of their lives. In many instances, they came from well-known conflicts or other violence in Afghanistan, Darfur, Iraq, Lebanon, Pakistan, Somalia, and Syria. H.S. fled Sudan in July 2013 because of the conflict in Darfur. “My life there was very bad,” he said. “They killed my eldest brother. They stole my cattle. I had to leave the university. If I go back there, they will kill me.”²⁶

Many asylum seekers spoke of suffering profound discrimination in their home countries, affecting their ability to obtain an education and make a living. As described more fully below, such discrimination against Rohingya and other ethnic minorities in Myanmar is notorious. Similarly, members of the Ahwazi Arab community in Iran face barriers to employment in law and practice, and many have been subjected to forced eviction from their ancestral lands. In Sri Lanka, where the government systematically represses any perceived dissent, ethnic Tamils are frequently suspected of links to the former opposition in the armed conflict that ended in 2009 and are subjected to surveillance, harassment and threats, rape and other forms of violence, and other human rights violations.

Some of those held on Manus Island—approximately 80 out of a total population of just over 1,100, according to UNHCR²⁷—are stateless. “I am Bidun. I am stateless. I don’t have a passport. I don’t belong to any country,” H.A. said.²⁸

We did not attempt to verify these individual accounts, but many of the stories we heard were consistent with abusive practices documented in the reports of Amnesty International and other human rights groups. Many of these accounts suggest that the detainees who related them have a well-founded fear of persecution.

In fact, some of those detained on Manus Island had already been recognised as refugees by UNHCR in Indonesia, Malaysia, or elsewhere before they travelled to Australia. They did not remain in those countries because their status was not fully protected. In many instances, they suffered additional ill-treatment during their time in Indonesia and Malaysia, as described more fully later in this chapter.

“We ran away from Myanmar because they were killing us. If we could stay in Myanmar, we would, because we would want to stay with our families.”

—T., a Burmese Muslim, 15 November 2013

TORTURE, ENFORCED DISAPPEARANCE, AND EXTRAJUDICIAL EXECUTION

As in the case of K.G., profiled at the beginning of this chapter, many asylum seekers fled their homes after suffering torture or other violent attacks. Some, like K.G., had watched as their relatives were killed. Others had family members who were subjected to enforced disappearance.

For example, T.K., an Iranian who repaired and sold satellite dishes and other electronics, told us that he had been arrested, blindfolded, and beaten by police in March 2013, suffering injuries to one of his kidneys and his arms, neck, nose, and one of his knees.²⁹ O.M., a Rohingya from Sittwe in Rakhine State, told Amnesty International that his family’s home had been burned down when Rohingyas in the area were attacked in 2012.³⁰ Noor Kobir, a Rohingya student from Rakhine State who asked that we use his real name, said that he fled in June 2013 after police and military surrounded his village and rounded up as many people as possible, killing some in the process, in response to student riots in the area.³¹

Many of these accounts fit well-known patterns of human rights violations and abuses. In

Myanmar, for instance, Rohingyas and other minority ethnic groups have long been subjected to discriminatory treatment (as outlined in the Discriminatory Treatment section, below), and Muslim populations in particular have been at serious risk of violence, displacement and other ill-treatment over the last 18 months.

Following large-scale and widespread violence between the Buddhist and mostly Rohingya Muslim communities in Rakhine state in 2012,³² predominantly anti-Muslim attacks erupted in several towns in Myanmar in 2013.³³ Credible sources have indicated that some of these incidents were planned and well-organized,³⁴ and that police largely failed to protect individuals from attacks. Following the attacks, Muslims have been disproportionately targeted for arrests and prosecution.

The anti-Muslim violence has resulted in the displacement of tens of thousands of people. More than 140,000—mostly from the Rohingya Muslim minority—remain displaced across Rakhine state,³⁵ with most living in official internally displaced person (IDP) camps and unofficial temporary shelters since the violence erupted in June 2012. Another 4,000 mostly Muslim individuals continue to live in makeshift camps after being displaced in March 2013 during the violence in Meikhtila in Mandalay region.³⁶ Hundreds who have recently been displaced in Thandwe township are now living in guarded tents.³⁷

In Sri Lanka, which has one of the highest numbers of reported enforced disappearances in the world, authorities continue to arrest and detain suspects without procedural safeguards. Sri Lankan law permits police to remove prisoners from their cells and transport them from place to place for the purpose of investigation – a practice that has contributed to torture and custodial killings. Detainees have been held incommunicado and tortured in unofficial places of detention which have included private homes, repurposed schools, administrative buildings and warehouses. Torture, enforced disappearances and extrajudicial executions continue in Sri Lanka in part because of these arbitrary detention practices. The culture of impunity that was established in Sri Lanka during the course of the armed conflict continues to pervert the rule of law and hamper the provision of justice.³⁸

As Amnesty International documented in an April 2013 report, one of the holdovers from the 26-year armed conflict between Sri Lankan government forces and the Liberation Tigers of Tamil Eelam (LTTE) is a security regime that criminalizes freedom of expression and an official attitude that equates dissent with treason. In Sri Lanka's north and east, where much of the armed conflict played out and where large concentrations of Tamils live, the army remains vigilant against even minor acts of dissent. Human rights defenders there report heavy police surveillance and repeated interrogation about their activities, international contacts and donors. Many victims of this new repression are not prominent activists engaged in advocacy at the international level, but local community workers providing assistance to people struggling to recover from decades of armed conflict.³⁹ Human Rights Watch reported in February 2013 that large numbers of ethnic Tamil women, men, and boys were raped and subjected to other acts of sexual violence between 2006 and 2012, with cases reported after the government's defeat of the LTTE in May 2009.⁴⁰

ARMED CONFLICT AND OTHER ONGOING VIOLENCE

The ongoing armed conflicts in Afghanistan, Iraq, Sudan, Syria, and the tribal areas of Pakistan near the Afghan border have produced significant refugee flows,⁴¹ and it is no

surprise that some who have fled those conflicts made their way to Christmas Island, where they were then removed to Papua New Guinea.

H.H., who fled Syria in June 2013, told Amnesty International:

"I have two brothers in Australia. They are there legally. They have been there for 20 years. Every year they are asking me to come. They were happy to sponsor me and for me to come legally with my family. I used to refuse. I was happy with my life. I had my children, my family, my job, my car. I was happy living there.

"But the recent events, the things that are happening now—people taken by trucks, chemical weapons—this meant that my situation, my position was very dangerous. I was an inspector in the Finance Ministry. I worked for the government, but I love freedom. We went to the streets and started calling for freedom like everybody else.

"I was arrested twice. After that I fled to my village. Then I was arrested again by al Qaeda. I didn't have an option but to flee, because my life was at risk. Even then, the government didn't allow me to travel. I fled across the border. If not for these events, the risk to my life, I wouldn't have come here."⁴²

A.M., a construction worker from Dera'a, Syria, fled when the ongoing armed conflict in his country made daily life too dangerous. His parents, wife, and two-and-a-half year old son have also left the country.⁴³ And M.H., who worked as a tailor and roofer in Kabul, left Afghanistan after surviving two suicide bombing attacks, one on a bridge and one in a market. "There are so many bombings every day, you say goodbye to your family when you leave the house, because you're not sure you'll come back," he said of his life in Afghanistan.⁴⁴

Another example is the case of M.M., who left his home in Parachinar, in the Federally Administered Tribal Areas of Pakistan (the "tribal areas"), because there were regular bomb blasts and kidnappings in the area by powerful factions of the Taliban and other groups. He said that he tried to work with other residents to prevent the passage of Taliban fighters through the area to Afghanistan, but the violence they endured in reprisal, including attacks on homes, murder, and mutilations, became too much to handle.⁴⁵ In a similar account, B.D., a 17-year-old Pashtun who had lived in Pakistan's tribal areas until he left for Australia in July 2013, told Amnesty International, "My life was in danger in Pakistan because of the Taliban. With the help of the ISI [Pakistan's Directorate for Inter-Services Intelligence, the principal intelligence agency in the country], they are targeting people. They think all Shi'as are infidels." He continued, "One day a bomb blast near our house put my mother under pressure," meaning that she became increasingly worried about his safety. "Many people were killed and injured. This was eight months ago. . . . She decided to send me to someplace safe."⁴⁶

Several of the asylum seekers we interviewed had fled sustained violence in northern Lebanon. For example, D.M. ran a clothing store in Tripoli, living there through several waves of violence between armed groups. Once he was shot in the face. His brother and his brother's children were recently injured in an explosion. He decided to leave Lebanon in July 2013.⁴⁷ Especially in and around the city of Tripoli, skirmishes between armed groups have been intermittent but ongoing for years. Violence intensified after May 2008, and clashes in 2013 were the deadliest since the resumption of violence between the groups of fighters,

some of whom support opposition fighters in Syria, with others strongly in favour of the Syrian government.⁴⁸

Others reported that they fled their countries years ago after conflict made it too unsafe for them to remain. For example, A.G., a Somali who gave his age as 15, told us that his older sister took him to Yemen when he was three years old.⁴⁹ Similarly, D.A., whose case is profiled in the box below, reported that he initially left Somalia for Kenya and then for South Africa in 1996, shortly after UN troops were withdrawn from the country.⁵⁰ And Mohammed Yahia, an asylum seeker from Sudan's Darfur province who asked that we use his real name, spent three years in Chad, two of them in a refugee camp, beginning in 2007.⁵¹

"I left Somalia the first time in 1996 and went to Kenya," D.A. told Amnesty International. "I was there for four years, living up and down the coast. I did lots of different kinds of jobs during this time. Then I went to live in South Africa.

"I spent eight years in South Africa in the Eastern Cape, in Port Elizabeth. I was working as a shopkeeper in a grocery store. After I worked there for one and a half years, I owned my own shop.

"I returned to Somalia on 22 February 2013. The situation in South Africa was very bad. They were destroying my shop and my goods. They attacked us.

"I spoke to my mother during this time. She was listening to the news and hearing about people killing immigrants and destroying shops. My mother said, 'Why don't you come back to your country so we can die together here?'

"I decided to go back to Mogadishu. I applied to a company to work as a driver.

"After one week, I received a phone call from some guys. They were part of al-Shabab. They said, 'If you don't stop that work, whatever we want we can do to you. You leave that job.'

"On 4 April I left Mogadishu and went back to Kenya. I was wishing to go to South Africa. A friend of mine said people were travelling to Australia."

Asked how al-Shabab threatened him, he explained, "They actually phone you. They get your phone number and they will phone you, and they will tell you what your name is and your full details. They give your full name, and they say, 'We know where you're from.' I don't know how they get this information or where they get it.

"They told me, 'You can choose—your life or you can go.' If you continue, they will kill you. They call people who they believe are supporting the government. They said, 'You must leave this job.' I was back in Somalia for about one week when this happened."⁵²

In many instances, asylum seekers found that they faced no less serious threats in the places where they had initially sought refuge. D.A., a Somali who spent eight years in South Africa, had his shop looted during the wave of xenophobic violence in that country.⁵³

And some asylum seekers reported that they feared reprisals because of the work they did or because they were otherwise presumed to side with one party to the conflict. For instance, W.K. worked as an interpreter in an embassy in Kabul; those who worked with foreign

officials are always at risk, he said.⁵⁴ H.K. told Amnesty International that in 2011, when he was working as a hotel waiter in Somalia, he was kidnapped by members of a local militia, held for 18 days, and stabbed in the stomach. On another occasion, militia members struck him in the face with the butt of a rifle. "The militias are more powerful than the government," he said. "You need to work for one or the other, but this also means that you are in danger; you have nowhere to run to."⁵⁵

EXTORTION ON THREAT OF DEATH

Several asylum seekers reported that they had received demands by political groups or armed groups for regular payments, often on pain of death.

For example, J.K. told us that he left Egypt after extremist groups affiliated with the Muslim Brotherhood demanded financial contributions from him. "How do you expect me to support them when my brother is in the army? We will kill each other in the family," he said. In addition, he could not afford to make the payments. "I was in need of every pound. My father is sick (he had a stroke), and my mother has an eye problem. My youngest brother has rheumatism and needs medicine." Despite his circumstances, he said, "They gave me one week to give an answer. They threatened, 'You will join us or be killed and your family displaced.'"⁵⁶

Criminal groups also flourish in environments of insecurity, and several men reported that they fled after they were targeted for extortion by criminal gangs. For instance, A.H. told us that he left Lebanon because of the violence in the north of the country, where he lived. He said that northern Lebanon "has people controlling the streets. These guards are controlled by politicians. This means that if I have a problem with any one of these gangs, I can't do anything. If I report them, the person will know I was the one who reported, and they can kill me. I have been exposed to threats indirectly three times, and once I was threatened directly by somebody asking for money from me."⁵⁷

DISCRIMINATORY TREATMENT

Severe discrimination is another common reason for seeking safety elsewhere. Most frequently, we heard that entire communities were deprived of access to employment and education, denied equal treatment before the law, and deprived of other rights on the basis of religion or ethnicity. In some cases, people sought refuge abroad because they could not be open about their sexual orientation in their own countries. In one case, a man told us that he had left his home because of the discrimination he endured on account of his disability.

As one example of widespread and severe discrimination, laws and policies in Myanmar explicitly discriminate against ethnic and religious minorities, particularly Rohingyas. The Rohingyas' freedom of movement is severely restricted, and Myanmar's 1982 Citizenship Law has rendered the vast majority of Rohingya Muslims effectively stateless.⁵⁸ Approximately 70 Rohingyas and 10 other Muslims from Myanmar out of a total population of just over 1,100 asylum seekers were held on Manus Island at the time of Amnesty International's visit.⁵⁹

Similarly, in Iran, Arabs, Kurds, and other minority groups are disproportionately targeted for arbitrary arrest, prolonged detention, and physical abuse and subjected to unfair trials. In particular, members of the Kurdish minority who express any form of peaceful dissent are vulnerable to accusations of participation in banned Kurdish political groups. More generally,

ethnic and religious minorities face discrimination in employment—indeed, for state and parastatal jobs, discriminatory selection criteria are provided by law under the 1995 Selection Law Based on Religious and Ethical Standards (establishing criteria often referred to as *gozinesh*). Ethnic minorities also face discrimination in the enjoyment of the right to adequate housing; for example, members of the Ahwazi Arab community are reported to have been forcibly evicted and expelled from their ancestral lands in the course of land expropriations for agricultural and other purposes. Many of those displaced have resettled in slums in Ahvaz city without access to adequate housing, sanitation or clean water.⁶⁰

“I’m originally Arabic. I’m of Arabic ethnicity, from Ahvaz,” G.A. told Amnesty International.

“I was born in Iran. I had it written on my documents that I’m Persian. I hate that. I don’t want to be Persian.

“When I went to university, I started to realise that this was my country. That Ahvaz was my country. Why are they putting me under Iran? I don’t want to be part of Iran. They don’t like us; they don’t want me to be Iranian, either.

“The university leaders, they were ignoring the Ahwazi students. They caused a lot of problems, so it was useless to complete my studies. Ahvaz is a place with oil. They are seeking to benefit from it and deprive us of our rights. It is a part of Arab lands.

“They used to say to me, ‘Because of your surname, you are Arab. You don’t belong in this university.’”⁶¹

J.M. gave an account similar to G.A.’s, above. “We are Arabs, but Iran took our country and stole all our resources,” he said. “We are deprived of our rights. We are deprived of working, deprived of education. We have an oil company next to us, but we are not allowed to work there. . . . We have no freedom. They are buying people. They are putting agents in every street. In every street, there are two agents. They are pressuring us to be their way. I am not able to pray. I am not able to practice my faith.”⁶² And R.M., from Kermanshah, Iran, reported similar restrictions on employment for Kurds living in Iran.⁶³

Several of the men we interviewed told us that they had left their home countries in part because they could not be open about their sexuality. Others were more circumspect about their sexual orientation when speaking to us, chiefly because engaging same-sex sexual conduct is illegal in Papua New Guinea and they feared that they would be presumed to be breaking the law if they were known to be gay (see Chapter 6). Same-sex relationships are reviled in many of the detainee’s countries of origin, and those who engage in same-sex relationships are frequently subjected to violence and harassment by private actors. Same-sex sexual conduct is illegal in many countries. Those who report acts of violence and harassment are often ignored and may be subjected to prosecution as well as, in some cases, additional violence at the hands of authorities.⁶⁴

One detainee told us that he had left his Iran in part because of discrimination directed at him because he was affected by dwarfism. “Because of the nature of my body, I have difficulty living in Iran. I had difficulty both with going about my day-to-day life and with being taunted and mistreated by other people,” said Madhi Sawari, a detainee held in Oscar compound, asking that we use his real name. “Shortly before I left Iran, I was kidnapped by five people. They threw me into a bush and let a few wild dogs attack me. I had bite marks

all over my body. Some people rescued me from the dogs. All those men wanted to do was to have fun, to have some laughs.”⁶⁵

STATELESS PEOPLE

About 80 of the men held on Manus Island are stateless, not considered as nationals by any country. In some countries, those without a recognised nationality face discrimination in access to education, health care, employment, and equality before the law. Lacking such recognition, stateless people are among the most vulnerable in the world.

In some countries, whole groups are affected by statelessness. For example, in some of the Gulf States, populations who were not included in nationality laws at independence are now referred to as Bidun, meaning "without" nationality in Arabic. Rohingyas were similarly excluded from the body of recognised citizens in Myanmar. In Iraq, many Feili Kurds were stripped of their nationality and expelled under the government of Saddam Hussein; although the decree that made them stateless was repealed in 2006, it has been difficult for many of those who were expelled to navigate the bureaucratic process of restoring their nationality. Kurdish populations in Syria became stateless even earlier, as the result of a census and legislative changes in the early 1960s. Still other Kurdish populations became stateless upon the dissolution of the Ottoman Empire.⁶⁶

Some of the stateless persons interviewed by Amnesty International had sought safety and security in several countries before attempting to travel to Australia. For example, A.A., a 22-year-old Rohingya born in Myanmar, was taken to Bangladesh by his family in 1993, when he was two years old. The family then moved to Pakistan in 2000, where he remained for ten years. In 2010, he went to Malaysia and lived there for three years. In March 2013, he travelled to Indonesia and spent about six months there before he was able to travel on to Australia. He arrived on Christmas Island in mid-September 2013 and was transferred to Manus Island at the beginning of October.⁶⁷

“We are stateless. We have no rights in Kuwait,” S.H., a 38-year-old Bidun told Amnesty International.

“I was detained because I protested in a demonstration in Kuwait. We were seeking our rights. They arrested us and detained us. There were a lot of demonstrations; that was not just the only one.” He was arrested and detained in October 2012 and held for 40 days. “It was the first time I was arrested.”

He has a wife and three children, two boys, age nine and seven, and one girl, two-and-a-half years old. He made a living tending sheep.

“I left Kuwait on 28 February 2013. I flew to Malaysia.” He used a Kuwaiti passport loaned to him by somebody who looked like him. He spent a month and a half in Malaysia and then travelled by boat to Indonesia, arriving on 15 April. He spent about five months in Indonesia and then travelled to Christmas Island, arriving there on 29 September.

“There were 74 on our boat. The others were from Lebanon, Iraq, and Iran.

“They divided the boat passengers up. Some have family; those went to one camp. The rest went to a different camp.”⁶⁸

THE ROUTE TO CHRISTMAS ISLAND

The circumstances of asylum seekers' departures from their homes vary considerably. Some were able to plan their departures. Others fled with little more than the clothes they were wearing. Mohammed Yahia said that when he and his family fled Darfur for Chad in 2007, "We took nothing with us; we were just running and walking for three days."⁶⁹ Similarly, when M.K. left Tehran in July 2013, he reported, "I took a lot of memories and my clothes."⁷⁰

Most travel, at least after the initial stages of their journey, with the aid of "agents," or smugglers. The amounts asylum seekers pay smugglers ranges from several thousand U.S. dollars to \$15,000 or more,⁷¹ depending on their personal circumstances and the route they take. One factor in the price is whether they have a valid passport and are able to obtain a visa to a transit country legitimately.

In a typical account of how trips with smugglers were arranged, D.A., from Somali, told us:

"A friend told me I can travel to Australia. I said I don't know the way to go. He tells me there is a person who can do this if I pay money. I said, "We are far away from Australia. I don't have a passport." He said, "Don't worry. If you have the money, I will organise it for you."

"We went to go meet that guy, a Somali guy. I told him my story. "You can assist me to go to Australia?" We discussed amounts. He said, "Do you have any passport?" He started by telling me I could go if I paid \$10,000. I said I don't have that money. We discussed it until the amount was \$8,000. I agreed to \$8,000.

"They applied for a passport for somebody who looked like me. They told me I must buy certain clothes. They said that somebody would phone me. I should say how I look and what I am wearing so that they would recognise me and take care of me.

"I got the clothes, and I travelled to Indonesia from there. When I arrived at the airport, they took me straight to one place, one room. I stayed there for four days. Then they took me to another house with more people. After two weeks they took us to the boat that was going to Australia."⁷²

The Syrians we interviewed told us that they first crossed the land border into Turkey or Lebanon, sometimes bribing border guards to be able to enter those countries. Some of the Kurdish asylum seekers from Iran also first travelled to Turkey. Afghan asylum seekers reported that they first flew to India, where they found smugglers to arrange the rest of their journey. Asylum seekers from Myanmar and Bangladesh often first travel to Thailand by boat and then make their way to Malaysia and Indonesia.

Others fly to Malaysia or Indonesia from their home countries, sometimes with layovers in Doha, Dubai, or other cities, before continuing their journey by road and sea. For example, H.S., a 24-year-old university student from Darfur, flew from Khartoum to Kuala Lumpur.⁷³ S.M., an electrical technician from Lebanon, flew directly to Indonesia, where immigration officials ushered him into a small room to demand a bribe; eventually, he was admitted without payment.⁷⁴

We heard of a variety of other routes. B.D., age 17, told us that when he left Pakistan in July 2013, his smuggler first arranged for him to travel to Iran on a pilgrimage. "From Iran I went

to Thailand. From Thailand to Malaysia and Indonesia, then Christmas Island," he said. "I travelled alone, but in Thailand, the agent just put another young person with me. The agent said, 'He is travelling with you to Christmas Island.' He was also from Pakistan. I think he was also under 18. He came with me to Indonesia, but from Indonesia somehow he left Indonesia before me."⁷⁵ M.M., a Pakistani civil engineer from Parachinar, in the tribal areas, first flew to Azerbaijan but was denied entry; he then made his way to Thailand.⁷⁶

The journeys followed a predictable pattern on arrival in Indonesia. The account of H.S., the university student from Darfur, was typical: Once he crossed into Indonesia from Malaysia, he said, "From the border, we got into cars. We drove for four days in a sedan car. The windows were tinted. It had black tinted windows. You have your water and food inside the car."

He continued, "There were six of us inside the car. I met the others on the boat while coming from Malaysia to Indonesia. The others were Afghans. We spoke in broken English. They speak a little; I speak a little."⁷⁷

The journey usually includes some time, often several weeks or even longer, in an apartment somewhere in or around Jakarta. H.S. said that when the vehicle he was in arrived in Jakarta, "The people I was with, they know the smuggler's number. They called, and the smuggler came. He put us in a place. He put me with other Sudanese people."⁷⁸ A.H., an electrical technician from northern Lebanon, told Amnesty International, "When I arrived in Indonesia, they took me to a place. They hid me in a house. I was there maybe 18 or 17 days."⁷⁹

Ten days before his group left for the boat that would take them to Christmas Island, A.H. said, the smugglers took all their phones. "They cut all means of communication," he told us, adding that every so often, one of the smugglers would come to the place where the group was staying and allow them to speak to their family members.⁸⁰

ABUSES EN ROUTE

Due to their precarious status, asylum seekers frequently suffer abuses during their journey, whether at the hands of the smugglers they are paying to arrange their travel, at the hands of the employers for whom they may work if they spend extended periods in transit countries, or at the hands of police and other officials.

COERCION BY SMUGGLERS

Asylum seekers are in an unequal bargaining position with smugglers and are often unprepared to deal with individuals who are by definition engaging in an organised criminal enterprise and frequently have little compunction about extracting maximum returns for as little outlay as possible. Particularly once they have begun their journey, they commonly find that smugglers employ coercive means to get them to pay the balance of the amount they owe. Among other tactics of coercion, many smugglers cut off all means of communication with friends and family members, as A.H. reported. Smugglers also commonly confiscate travel documents and may leave asylum seekers with only a minimal amount of money while they await transfer to the boats that will take them to Australian territory.

The line between people smuggling and human trafficking is a blurry one. H.H., from Iraq, told us that while he was in Indonesia, he decided that the ocean passage was too risky for his wife and three

children. "I heard that sometimes the boats sink on the way to Australia. I got worried for my family," he said.

"I had my wife and three children in Indonesia. I decided we should all go back." But he discovered that he had little say in the matter. "I had already met the smuggler and had already paid him. He refused to let me return. He refused to let me get the money back. I told him we would just stay in Indonesia and register with the UN, but he refused," he said.

He continued, "The smuggler refused to let me go back with my family and refused to return the money I had paid him. He was very threatening and put a lot of pressure on me. He took my wife and children in an abduction and kept them for three days. He said, 'I'm not going to return your money and I'm not going to let you go back. If you want your family safe—I'll let them free as long as you continue with the journey.' I went ahead with the trip just to release my family."⁸¹

EXPLOITATION AND OTHER ABUSES IN TRANSIT COUNTRIES

Asylum seekers are vulnerable to exploitation and other abuses in every country they pass through. Those who spent time in Malaysia and Indonesia reported the most frequent problems, including at the hands of police and other officials. For example, V.M. spent six months in Malaysia after he left his home in Bangladesh in 2012. The police he met were abusive, he said, taking passports and money from undocumented migrants, putting them in detention, and often beating them. In addition, he reported that members of the People's Volunteer Corps (Ikatan Relawan Rakyat or RELA), a civil volunteer corps with a paramilitary structure that operates with official sanction, frequently abused migrants and demanded bribes from them.⁸² O.M., a Rohingya from Rakhine State in Myanmar who spent half a year in Malaysia beginning in November 2012, gave a similar account.⁸³

THE ABSENCE OF REFUGEE PROTECTION IN TRANSIT COUNTRIES

There is no framework for refugee protection in many of the countries through which asylum seekers pass.

For example, Thailand is not party to the 1951 Refugee Convention and has no refugee law or formalised asylum procedures, and it has not allowed UNHCR to conduct Refugee Status Determination interviews since 2004.⁸⁴ Those who live outside of the refugee camps along the border with Myanmar run the risk of arrest and deportation. Lacking work authorisation, they are vulnerable to exploitation. Refugees who live in the camps have some protection against arrest and summary removal to Myanmar, but they lack basic freedoms, including freedom of movement.⁸⁵

Malaysia has a UNHCR office, but it does not itself recognise refugee status, meaning that refugees and asylum seekers are considered undocumented migrants. Without formal legal status or the right to work, they are subject to arrest and detention or, alternatively, extortion by police to avoid detention.⁸⁶ In addition, as some asylum seekers reported to Amnesty International, those who seek recognition of refugee status from UNHCR experience significant waiting time before they can be interviewed. When R.A. went to UNHCR to register for a Refugee Status Determination hearing, he told us, "The first appointment time they gave me was for 2015. It was a very long time away. When they gave me that appointment, I thought they made a mistake. I said, 'It is a very long time. Are you sure about this date?' They said yes. That was six months ago."⁸⁷

Similarly, the Indonesian Government allows UNHCR to conduct Refugee Status Determination hearings, but applicants face protracted delays in the processing of their cases. Human Rights Watch reported in June 2013 that the average time for first-instance Refugee Status Determination was 12 to 13 months for those in detention and 14 to 15 months for people who were not detained.⁸⁸ UNHCR issues documents to show that an asylum claim is pending (an Asylum Seeker Certificate) or in recognition of refugee status (a Refugee Certificate), but these documents do not allow bearers to choose their residence, move freely around the country, or work.⁸⁹ Those who violate conditions on their place of residence, who travel outside of their assigned residential area, or who work face arrest and detention.⁹⁰

CROSSING THE OCEAN

"When we reached the shore, they took us to a small boat. When I saw the boat, I was really terrified. It was like a piece of wood. I thought the boat would take us to a real ship, but in the middle of the ocean I realised that this was the actual boat we would take," R.A. said.⁹¹

G.A., an Arab Iranian, described his boat journey:

"We arrived at the water. The boat was there, ready, but we waited a bit, until about 1am. They said we couldn't sail at that moment; we had to wait until the water came back to a certain level. Then we got in the boat.

"I believe that this was just a game. I think they just stopped the boat from going until the smuggler received all the payments. They had all of us call the smuggler before we left.

"Two people on board were armed. They came with us on the boat and stayed with us until we had travelled for five or six hours, then they left in a small boat they were towing behind us. There was a crew of three that stayed on the boat.

"We travelled for seven nights and six days. It was very hard. We didn't have any food. There was just enough for everybody to have one potato or one egg. It was very dirty. There was a pregnant woman on the boat. It was very difficult.

"Something went wrong with the boat. It kept breaking down. They would fix it, and it would break down again.

"The water was coming into the boat, and everybody was trying to pour the water back into the ocean.

"There were 130 or 131 people on the boat. It was about 10 metres by 3 metres. It was very old. When the Navy took us onto their barge, we were looking at the boat, and we were surprised that we had made it."⁹²

Depending on the size of the vessel, anywhere between 70 and 200 people may travel on one boat. A.G., a 15-year-old from Somalia, reported that there were 90 to 100 on his boat.⁹³ B.D., a 17-year-old from Pakistan's tribal areas, told us that his boat "was a small boat, but it had between 183 and 186 people. They were from Iran, Bangladesh, Sudan, other countries. . . . There was another guy from Pakistan."⁹⁴

The journey is rough and extremely dangerous. "The water is black; the wave is seven metres

high. The edge of the wave is white, opening like the cobra opens its mouth to strike. I thought to myself, 'I can't fight that,'" recalled S.A., a 43-year-old man from Baghdad.⁹⁵ "It was a very dangerous journey," said A.G. "Every time, I think we're going to die. I'm crying. We spent 10 days on that boat."⁹⁶ "It was very tough and very long," B.D. said of his boat journey. "We were on the boat for five nights and four days."⁹⁷

Many boats are not seaworthy—they are making a one-way journey, and smugglers have no incentive to maintain or supply them beyond the barest minimum. Engine trouble is common, as are leaks, adding to the time and stress of the voyage. D.A. told us, "We spent eight days on that boat. The engine broke down. Even the diesel fuel was finished. I thought, 'Your life is gone.' It was bad."⁹⁸

When boats get close to Christmas Island, they are often spotted by planes that patrol the area. If a boat is not spotted, the crew may call Australian Customs to ask for assistance. "When we were about six or seven hours' distance from Christmas Island, they gave a satellite phone to someone who could speak English. The boat drivers knew we were close. They told him to speak to the Navy to ask them to come and take us. When the Navy arrived, the drivers threw the GPS into the water," J.M. told us. "I don't know why they did that. They say that if the Australian Navy got the GPS, the drivers will be in trouble, so they threw it in the water."⁹⁹

Most asylum seekers did not anticipate that the ocean voyage would be so dangerous. "I didn't expect this," A.H. told us. "The person who helped me get out of Lebanon didn't explain that the trip would be like this. The risk, the death, the danger I saw—I don't wish anyone to pass through it."¹⁰⁰

"On Christmas Island, they said to me they would send me to PNG. I was very frightened. I said I'm coming to seek asylum. My life was in danger in Pakistan. The situation was so harsh there. But my life is in danger here, too."

—B.D., a 17-year-old from Pakistan, November 2013

ARRIVAL ON CHRISTMAS ISLAND

The last day of his boat journey, G.A. said, "There was a plane going around monitoring us. One hour later, the Navy arrived. Five or six of the Navy came in a small boat. They came to our boat. They checked everything and reassured us we were safe now. After 30 minutes they took us to the big boat. They gave us water and put a wristband with numbers on each of us. They asked if anyone was suffering from a medical condition, although when anybody said anything, they said to drink a lot of water. They gave us lunch, and they gave us a place to sleep."¹⁰¹

Shortly after their arrival, asylum seekers are told about the new policy, under which they will be transferred to Papua New Guinea, have Refugee Status Determination hearings in that country, and be resettled there if their claims are accepted. "It was the first time I had heard of Papua New Guinea. I was looking at the map to find out where Papua New Guinea was," J.M. told Amnesty International.¹⁰²

"We arrived in Australia, that big country that calls for freedom, that big country that calls for

human rights. We don't want to say that all of this is lies, but I can say it was not true. It was a big shock for us," said H.H., a refugee from Syria.¹⁰³

Some arrivals are taken to Darwin instead of Christmas Island. For instance, G.A., who arrived in mid-August, told Amnesty International that Australian Customs took his boat directly to Darwin, where he and his fellow passengers had a medical screening and were allowed to call their families. "They took us by bus to Darwin city for the chest X-rays. They didn't tell us the results of those tests," he reported. "I know we were in Darwin because they told us we were in Darwin. When we went inside the city, it was written on the signs."¹⁰⁴

FORCIBLE REMOVAL TO PAPUA NEW GUINEA

After they spend some time on Christmas Island—the periods ranged from several weeks or more for those who arrived in July or August to five days or fewer for asylum seekers who arrived later—single men are moved to Manus Island. They are not told that they will be moved until that day, when they are often woken up late at night or early in the morning, told to assemble, and then made to wait, often for hours, until they are taken to the airport.

"Just in the morning, at 5 or 6am, they came, saying, 'We are moving you. You have a flight now.' They just took all of us into another compound. From 6am until 6 or 7pm, we were in that compound. It was not a comfortable place. There was no place to sleep. We were just sleeping on the ground. They gave us some small snacks to eat. We were there until our flight at 7 or 8 at night," R.A. told Amnesty International.¹⁰⁵

"They asked us for consent," H.A. said.

"They wanted us to sign, to consent, saying we wanted the transfer. All the people signed the consent except me. They said, 'Why don't you sign the consent?' I said, 'I am going to Australia. I'm not going to Papua New Guinea.' They replied, 'Why? Are you scared?' I told them I don't know anything about Papua New Guinea. I have a family. What about my family if I go to Papua New Guinea? If you don't sign the consent, they take you without signing."¹⁰⁶

D.A. reported, "They called my name on a list. They said, 'Let's go.' I said, 'Where are we going?' 'You are going to Papua New Guinea.' I went up to immigration. I said, 'Is this by force or what?' 'Yes, this is by force.' 'I asked to go back to my country. Why are you taking me to Papua New Guinea.' 'You have to go to Papua New Guinea. In Papua New Guinea you can apply to go back home.' I said, 'If I don't have a choice, why are you asking me? Whatever you want, I will sign.'"¹⁰⁷

S.Z. described the documents he was asked to sign:

"They gave me papers to sign, only the ones that related to the transfer to Papua New Guinea. The papers were in English, but an interpreter translated them verbally. Then I had to sign them. It was exactly like the Islamic Republic system: they give you a piece of paper to sign, and you really have no option but to sign. But they are kind enough to pretend that you have an option."¹⁰⁸

A.H. said, "They brought us a paper to sign that we wanted to go to Papua New Guinea. I told them I didn't want to go. They said, 'You will go. If you go involuntarily, we will take you by force. You have to go.'"¹⁰⁹

Some asylum seekers did not object to their removal. H.S., from Sudan, reported, "They said we would be transferred to Papua New Guinea. We decided that we are refugees, so this will be better than going back to the problems we have, and we signed the paper. I don't know what was on the paper we signed. It was in English. It looked like a ticket."

He went on, "I had an idea about life in Papua New Guinea. I knew it would be a different life. There is a lot of disease. But I am empty-handed. I came to these people. They brought me here."¹¹⁰

Regardless of whether they had signed or not, each asylum seeker was escorted onto the plane by two security guards. "They held us and carried us to the plane," R.A. recounted. "Two people took you to the plane, holding you on each arm. Maybe they thought we would refuse to go to Papua New Guinea. But we have no option. Wherever they take us, we will go. It was not necessary to take us this way."¹¹¹

He explained, "Two men, one at my right side and one on my left, took me from the minibus onto the aircraft. The distance was 10 or 15 metres, or maybe 20 metres. I didn't really see any reason to carry us this way because we were on an island. Even if someone runs, you can't go anywhere. They could have blocked that 10 or 15 metres of tarmac with people because they had enough crew. That way they would not be holding us by our arms."¹¹²

"The day of the transfer was very bad," J.M. told us. "They used ill-treatment when they brought us here. Two people were holding each of us, using curses and pushing us onto the plane. We were all surprised and shocked. They were treating us like criminals. At the doorway of the plane, one man put his hand on the back of my head, pushing me inside the plane. It was exactly how the police push criminals into a police car. I thought to myself, 'I am not a criminal. Why are they doing that?'"¹¹³

"They were recording everything that was happening. Some people tried to hide their faces by putting their heads down," R.A. said. "That was a very shameful moment."¹¹⁴

Once on the plane, J.M. said, "As soon as we sat down, we were not allowed to move. If we needed to go to the toilet, they escorted us one by one."¹¹⁵

A.H. told us, "In my case, half the plane was the three of us, the other half was the guards. There were too many security guards. More than 20, maybe 30. You feel like you are a criminal, 100 percent. You can't leave your seat. To go to the toilet, three guards escort you. You have to leave the door open. What is my crime? What have I done for this to happen to me? I fled war. I fled threats of being killed. I left my country. I fled my place, and now I'm being treated like a murderer."¹¹⁶

"The way they brought us here, they were treating us like we were really serious criminals," A.H. said. "The way we were treated, it was not even how they treat normal criminals; it was more like how I imagine they deal with war criminals. Guards holding each arm. Guards everywhere. Each person was seated next to a guard on the plane. It was very bad. It was very shocking, the way we were treated. It was like they were handing criminals from one authority to another authority. We were unable to understand what we were guilty of, that they were treating us like that, transferring us from one country to another like criminals. We asked

them why. They said, 'Because you came by boat.'"¹¹⁷

G.A. described his removal to Papua New Guinea after nine days in Darwin:

"They called my brother and me. They said, 'One of you is going to be transferred.' When I asked why, they started shouting at me. I didn't get any answers.

"Two hours after my brother left [for Manus Island], the doctor came. He was carrying a vaccination. He asked me whether I would like to take a vaccination. I took it. They didn't explain what these vaccinations were for.

"After the vaccination, I was taken to my room. Around 9 or 10pm, when we were all in our rooms, all of a sudden some people were opening the doors and coming in. They had scary faces; they were very tall and well-built. There were around 30 or 40 of them. They asked all of the people to gather in one spot. We were so astonished. Why was this happening, we were wondering. They just told us to sit down together. If we stood up, they told us to sit back down.

"Then they said, 'You will meet an immigration officer. You will be transferred to Papua New Guinea.' One by one, they had us check our belongings. Then we took a shower. They had us leave the door open; they watched us while we showered.

"Then they took each of us, each with a guard, to the immigration officer." The officer told them they would be transferred to Papua New Guinea. "'We are waiting for a call to approve your transfer to Papua New Guinea,' the officer said.

"I said to the officer, 'I know I will be transferred to Papua New Guinea. I just need to know where my brother is. Will I be transferred to where he is?' They told me they knew about my brother and that we were being transferred to the same place.

"They took us to a big hall to have a meal. We were surrounded by these strong, solidly built security guards. People were asking what would happen, under what law was this happening. We didn't understand it. They just told us to wait.

"We waited until 3am. They brought out some blankets and put them in the back of the hall. They told us those were for anybody who wanted to sleep, but it was very degrading and humiliating to sleep on the floor like that.

"At about 2.30am or 3am, the officer said, 'Now we have received a call approving your transfer. Now you will be transferred to Papua New Guinea. You will go.'

"We said, 'Okay, we just want to understand the policy and the legal steps. We have been here 10 days. Nobody has explained the steps. We need someone to speak to.'

"They said, 'You will be transferred to Papua New Guinea. If your case is accepted, you will stay in Papua New Guinea. If you don't agree to go, you will be transferred by force.'

"They gave us a tablet for malaria. Then they took us like murderers and criminals. They took us by both arms and escorted us inside the car. It was a minibus or van. Half of it was the security guards accompanying us.

"It was the same story when we got out of the car. They guarded us on both arms. There were guards everywhere. They guarded us until we got to the plane.

"The plane had three seats on each side of the aisle. They sat us so we were two on the inside seats. Each aisle seat had a security guard. This was how it was for every row.

"When we spoke or asked about anything, they talked to us in a very bad way, as if we were murderers.

"When we were about to reach Papua New Guinea, they gave us papers to sign. I asked someone what it was. I said, 'I want to know what it is before I sign it.' He said, 'No. You don't have any other option but to sign. You have to sign.' I said, 'Then why don't you bring us an interpreter to tell us what is in these papers so we know?' I was holding the paper, trying to read it. He just snatched it from me. He said, 'You don't want to sign, it's up to you.' The other security guard gave it back to me. I found out it was a landing card, and I signed it."¹¹⁸

He and his brother were detained together on Manus Island at the time of his interview with Amnesty International.

"I think it was more for psychological reasons that they were doing this, because they were recording everything. I think they wanted to show us something," R.A. said. "Many of us were disappointed by this. It was the most shameful thing I experienced in my detention time on Christmas Island."¹¹⁹

Actually, when they brought us here, we felt psychologically affected, not well," S.H. told us.¹²⁰

ARRIVAL IN PAPUA NEW GUINEA

On arrival, many of the same procedures are followed. G.A., who was taken directly to Darwin without spending time on Christmas Island, reported that when he landed on Manus Island, "Someone was taking photos of us as we were disembarking, one by one. It was someone here from Manus. Then as we were boarding the minibus or van someone gave us a small box of food. We got into the van. We drove about 20 minutes on the bus until we reached here."¹²¹

PRESSURE TO RETURN

"In Manus, the first thing that happened was that an Australian immigration officer said, 'You people are under PNG. You can't go to Australia. If you have problems and can't go to your country, you will stay in PNG. If any country wants to take you, you can go. If you want to go back, we can bring you.' We had two people who wanted to go back," I.K. told Amnesty International.¹²²

G.A. reported that when he arrived on Manus Island, "An immigration officer from Australia and another from Papua New Guinea came. I asked the immigration officers, 'We need someone to explain to us the law. If I am unable to return to my country and I cannot live in Manus, can I go to a third country? Is the UN aware of what is happening?' The officers said, 'I don't know anything.' Whatever you asked, they said, 'I don't know.' I requested that I wanted to see a representative from the UN. They said there was no way for that.

“They started their speech. It was all about Papua New Guinea, its population, how many languages they have, the size of Papua New Guinea, all about Papua New Guinea.

“Straightaway after Immigration finished their speech, IOM [the International Organization for Migration] came to take over. It was organised. They asked us who would like to return.

“We felt that IOM was working for Immigration, because they were actually pushing us to return. They were saying, ‘If you stay in Papua New Guinea, it’s not a good place for you.’ It was ‘return,’ ‘return,’ ‘return’ all the time. That’s what they kept saying. We were just annoyed. How could they keep talking to us about return?”¹²³

4. LIVING CONDITIONS AND DAILY LIFE

“The environment around us, the camp, it is looking like a prison. The fence, the compounds, they look similar to prisons.”

—S.H., a Bidun from Kuwait, 15 November 2013

The Manus Island Regional Processing Centre is located on a former World War II military base, now a Papua New Guinea Defence Force base. Located around 40 minutes' drive from Manus Island's principal town of Lorengau, the dirt road to the detention centre is uneven and scattered with potholes, banked by dense green rainforest, coastline, and the houses and roadside businesses of local people.

On the outskirts of town a large block of land is being cleared to make way for an entirely new facility that will house refugees to be resettled in Papua New Guinea. By the end of Amnesty International's visit on 16 November 2013, a number of white “demountables” (similar to converted shipping containers) had been delivered to the site.

The facility is a closed detention centre, resembling a combination of a prison and a military camp. Detainees are prevented from leaving by locked gates and security guards at the exits to each compound and the main entrance to the facility. Inside, the detention centre is a network of single-storey buildings, staff facilities, and “compounds” that house asylum seekers, all divided by fences of about 2.4 metres in height and connected by uneven dirt tracks. The structures are a combination of World War II-era buildings with concrete walls and corrugated iron roofs, temporary structures such as marquees and “demountables” (similar to converted shipping containers), and basic buildings used as offices by staff. Security staff from the Australian-contracted company G4S are visible at all times, positioned at all gates and patrolling all areas.

S.R., a 30-year-old from Pakistan, described his day in Oscar compound:

“I get about four to five hours' sleep a night, due to tension, and having nothing to keep me busy.

“I am just thinking and thinking through the night. I am mostly thinking about how I can't do anything for my family.

“I sleep from 10pm to 3am.

“I get up to pray at 4am.

“I go back to bed. I miss breakfast.

“I get up again at 9am. I shower, though the water pressure is low and the showers are dirty. I asked G4S

about fixing the water pressure, and they told me to go home if I want a good shower.

"I used to attend English class but now I miss it.

"I sit and discuss with friends what is happening and we all worry about what will happen to us.

"I have lunch."¹²⁴

LIVING CONDITIONS

At the time of Amnesty International's visit, there were just over 1,100 male asylum seekers in the facility—the total was 1,106 on 12 November 2013 and 1,157 on 16 November. Most of the men are housed in one of three main "compounds": Delta, Foxtrot, and Oscar. There were 200 men in Delta, 393 in Foxtrot, and 489 in Oscar on 12 November, with some variation in those numbers throughout the week.

Oscar is the most recently built of the compounds, constructed after July 2013. The structures, conditions and facilities in each compound vary. Each is surrounded by metal fences approximately 2.4 metres high with gates for entry and exit, locked and guarded by several G4S staff at a guard post either just inside or outside the compound. Persons entering the compounds must sign in and out for each visit.

The asylum seekers are from a number of different nationalities and ethnicities. The total includes approximately 500 Iranians, 100 Afghans (primarily of Hazara identity), 85 Iraqis, 60 Pakistanis, 80 Sudanese, 80 stateless people (primarily of Rohingya, Kurdish and Bidun identity), 50 Bangladeshis, 40 Lebanese, 30 Sri Lankans, 15 Myanmar, 15 Nepalese, 15 Somalis, four Syrians, two Vietnamese, two Egyptians, one Albanian, and one Algerian. These numbers vary from week to week due to returns and new arrivals but have increased steadily since the introduction of the Regional Resettlement Arrangement on 19 July 2013.¹²⁵

Various staff informed us that The Salvation Army (TSA) and G4S are responsible for deciding in which compound each asylum seeker is held. In general, men of the same nationality, language group, ethnicity, and religion are held in the same compound.

A separate area of the Delta Compound was used for six men awaiting transfer from Manus Island to Australia, who fell under the pre-19 July policy and whose transfers were delayed due to criminal charges for damage to property. The men were transferred to Australia during the course of Amnesty International's visit.

Bravo compound, at one end of the centre, was used as quarantine for some sick asylum seekers at the start of Amnesty International's visit. By 14 November 2013, those detainees had been moved to an isolated area within Foxtrot, and Bravo compound was used as a briefing area for 29 new arrivals

Asylum seekers who are returning to their country of origin are held in a separate marquee surrounded by fences.

PHYSICAL CONDITIONS

Senior staff from the Australian Department of Immigration and Border Patrol (DIBP) stated that in the four months since 19 July, the population of the detention centre has expanded from approximately 200 to over 1,100 asylum seekers, with no expansion of the facility. As a result, the compounds are very crowded with facilities built very close together and limited recreation areas.

The cramped conditions result in a lack of privacy or private space. Several detainees interviewed cited privacy as a problem, particularly in the dormitories, many of which have 50 beds in one room with no partitions. Mental health staff at the facility also expressed concern at the lack of privacy, stating that the men find it difficult to find time and space to be alone. This lack of privacy and personal space can also exacerbate symptoms of anxiety or Post-Traumatic Stress Disorder.¹²⁶

This is particularly problematic in Oscar Compound. It contains:

- an accommodation block divided into 10 rooms sleeping around 50 men each,
- two toilet blocks containing a total of 14 to 16 toilets,
- two shower blocks containing approximately 12 showers,
- an activities room (marquee) with no separated space, used for prayer, English classes, and a canteen, where a limited number of items can be purchased with points,
- a small roofed gym area without walls,
- an area with a volleyball net,
- another area used as a three-a-side soccer pitch,
- a marquee used as a dining hall, accessible only at mealtimes,
- three shipping containers holding 18 domestic washing machines and 18 domestic tumble dryers.

Additional accommodation was being arranged in a block of shipping containers adjoining Oscar Compound, which will presumably increase the number of people using the already cramped common areas.

Delta Compound is smaller, with very little outdoor space and almost no recreation or exercise facilities. It is a network of converted shipping containers, doors facing inward, containing bedrooms for 200 men. Most rooms accommodate four people each. It also includes a small prayer room, a combined toilet and shower block, and a laundry block. Corridors between the demountables are covered by a metal roof, making it extremely hot during the day.

Foxtrot Compound covers the largest area and accommodates 400 men. Many of the buildings date from the Second World War. A medium-sized white marquee serves as a dining hall. It is the only compound with a computer room, telephone facilities, and a small library. It contains a small gym, a prayer room, and a classroom. The accommodation varies in size, with some buildings sleeping four to a room and some larger rooms sleeping up to 12. One dormitory, P Dorm, is a long, low World War II-era building with a curved, corrugated iron roof that sleeps 112 men.

A new compound, Mike, was also under construction and close to completion when Amnesty International viewed it. Mike Compound is expected to accommodate 200 asylum seekers, but staff were unable to say whether it would be used to ease overcrowding or to accommodate new arrivals. One G4S guard mentioned that Mike would be used for the “good guys” but later said TSA would make the decision about who was to be accommodated there.

In areas of Delta and Foxtrot that have views of the sea, fences have been covered with green mesh, preventing people inside from seeing out, and vice versa. Several detainees complained about this. F.M. told Amnesty International that the mesh “exacerbates the sense of incarceration.” When he raised this issue with a G4S guard, he was told the issue would be investigated, but there was no change.¹²⁷ When asked, a senior DIBP staff member told us that the mesh prevents media from filming or photographing the men through the fence, which she said “happens all the time.”¹²⁸

“In Foxtrot, there is one place that is like a long corridor... I wish you could go and see it. There are 120 persons in that long room. The smell and the diseases and the illnesses in that place are shocking.”

—J.M., an Arab from Iran, 13 November 2013

P DORM

P Dorm, in Foxtrot Compound, stood out as the worst accommodation in the facility. P Dorm is a hangar-shaped World War II-era building approximately 40 metres long and four to five metres wide, with a low, curved corrugated metal roof. It sleeps 112 men on 56 sets of bunk beds arranged with no more than 20 centimetres between each. Two large free-standing fans were in use when we visited at the front of the room, but there was no air flow to the back of the building. The smell is overwhelmingly bad and the heat is stifling. There are no windows. Asylum seekers reported finding snakes in the room and flooding when it rained.

When Amnesty International spoke with Renate Croker, the senior Australian Department of Immigration and Border Protection (DIBP) official at the detention centre, about these conditions, she stated: “That’s good. When I went there last week there was one working fan.”¹²⁹ It appeared that no serious consideration had been given to improving or closing P Dorm.

SLEEPING CONDITIONS

Many detainees reported irregular sleeping patterns or problems sleeping, for a combination of reasons. A frequent reason given for lack of sleep was anxiety over the welfare of family members and uncertainty about the future and the situation at the detention centre. In

addition, asylum seekers cited boredom and lack of activity, the heat, noise from generators outside their bedrooms, mental health problems, and bullying from other detainees.

D.A., a 30-year-old shopkeeper from Somalia, told Amnesty International: "Life here is very difficult for me. I am thinking all the time. I sleep only four hours in a day. I end up sleeping when I don't want to sleep. I go back to bed to sleep, but I'm thinking too much."¹³⁰

"It's very hot at night. The smell is intense, because we're all sweating. Sweating into our clothes, the bedsheets, the mattress. It all stinks very badly, even after we wash them."

—R.A., a student from Iran, 12 November 2013

Sleeping conditions are very cramped. Rooms for four people consist of two sets of bunk beds in a room measuring two metres by three metres, with a space approximately as wide as the doorway between the beds. Larger rooms sleep between 12 and 50 men, with bunk beds arranged very close together with almost no room for storing personal items. Some men have containers to keep their belongings in.

Rooms in Oscar and Delta have air conditioning, but rooms in Foxtrot have only free-standing fans. Very few of the rooms have windows. In most of the rooms, particularly in Foxtrot, the rooms have a strong smell due to the number of men accommodated in them. Many asylum seekers reported that it was difficult to keep the rooms clean due to the number of people and the dusty ground in the compounds.

In one bedroom in the Oscar compound we were led by an asylum seeker to the back of the room. He jumped over a bed into a small space covered by sheets between two sets of bunk beds.

On the inside of the sheet the two men had drawn a large television, DVD player and games console. Using strips of bed sheet, they had made two mock electrical cords, at the end of which were two mock games controllers made from cardboard, with buttons drawn on them.

"We use this to pass the time. It is no laughing matter. We pretend to play and it brings back memories of home. We sit here and cry for three hours every day."¹³¹

EXPOSURE TO THE ELEMENTS

Manus Island is in the tropics. The temperature is between 30 and 40 degrees Celsius, and the humidity is high. It rains frequently and sometimes heavy downpours can last from a few hours to all day.

During Amnesty International's visit, the weather on Manus Island was very humid and alternated between intense sunshine, with a high of around 34 degrees Celsius, and rain lasting for several hours. During these periods of rain, water gathered on the ground in staff areas as we held interviews, and stagnant puddles could be observed under raised buildings at the end of the day.

Asylum seekers reported spending between one and five hours a day queuing for meals, for the canteen, for toilets and showers, and while waiting to be collected at the gates for

interviews and medical appointments. There is almost no shade to protect people from the sun, heat, or rain, particularly in Oscar Compound. International Health and Medical Services (IHMS) staff reported that the lack of shade has led to numerous health issues, including people collapsing from heat stroke. A senior DIBP official told Amnesty International that providing more shade is a priority.¹³² Nevertheless, no action has been taken to provide greater protection from the sun and rain despite repeated acknowledgement of these shortcomings.

A.H., held in Oscar Compound, told Amnesty International, "When we line up for food, you line up under the heat of the sun or the rain pouring on your head. The tent [outside the dining area] is four metres by six metres. You cannot have that many people under it when they are lining up for food."¹³³

When it rains, the camp smells strongly of sewage, particularly in Foxtrot Compound and near the entrance to the detention centre. Some detainees expressed concern at not having shoes or umbrellas, particularly when the weather is bad and it rains.

DRINKING WATER

Water in Oscar Compound is now provided in 19-litre water cooler bottles located in the gym. Two such bottles, nearly empty, stood on a table next to some plastic cups when we toured the area. The coolers themselves had been removed.

We heard frequent complaints that the quantity of water provided in Oscar Compound was insufficient. G4S and TSA staff reported delivering up to 12 water cooler bottles per day to the compound, but some staff acknowledged that delays in replacing empty bottles were a problem. A stock of new water bottles stood nearby on a palette in a fenced-off area behind one of the buildings, but detainees do not have access to this area and said they were not allowed to move the water bottles themselves.

In other compounds, drinking water is provided in individual 500ml bottles. Detainees in those compounds appear to have no restrictions on the amount of water they have access to.

Individual water bottles are not permitted in Oscar Compound. Amnesty International was told by staff that the reason for the ban was that bottles had been used to block the toilets. Some detainees acknowledged that water bottles were taken into toilets by Muslim asylum seekers to wash according to their religious custom. Some staff agreed that the toilets were not culturally appropriate. Maintenance staff said the toilets routinely became blocked because of the numbers who used them and the dusty conditions in the compound.

Whatever the reasons for the blocked toilets, it is not unreasonable for detention centre officials to decide how to deliver drinking water to detainees and to prohibit individual water bottles if that method of delivery becomes problematic. However, drinking water must be provided, and it must be clean and sufficient in quantity.¹³⁴ IHMS doctors routinely advise detainees to drink at least five litres of water a day to avoid dehydration. If Oscar Compound receives a dozen 19-litre bottles of water each day, the detention centre is supplying less than 500ml per person held in that compound, a tenth of the daily amount IHMS doctors recommend.

Even if more bottles are delivered, the current approach for the supply of drinking water is flawed, relying as it does on the availability and willingness of G4S guards to replenish the water supply periodically.

SANITATION

Asylum seekers' opinions varied on the suitability of the toilets and showers in the detention centre. However, it was clear that there are too few toilets and showers to accommodate the number of men in the facility, resulting in hygiene risks, frequent breakages, and more queuing.

In Oscar Compound, there are 16 toilets for just under 500 men. In Delta Compound, there are five to ten toilets and showers for around 200 men.

Detainees in Oscar Compound must collect handfuls of toilet paper from a guard post at the entrance to the compound before taking it to the toilet. Detainees told Amnesty International that, though the toilets and showers are cleaned on a regular basis, they quickly become dirty due to the high usage and are often broken. When we inspected the toilets and showers in the compound, many were wet and dirty.¹³⁵ Several had been damaged and were without hand soap.

One shower block in Oscar had no working light, and we were told by a detainee that this had been the case for at least two weeks. An asylum seeker showed us where some holes had been drilled in the floor of the shower block. He claimed that for months there had been dirty water building up in the corner of the shower block, but a few hours prior to Amnesty International's tour of the compound, a staff member had come and drilled holes in the floor for the water to drain out.¹³⁶ The most recent UNHCR report on Manus also cites this build-up of dirty water.¹³⁷

Many detainees reported a lack of essential hygiene items, including regular replacements of soap, shampoo, and razors. While these items are distributed periodically to detainees, usually every two to four weeks, many complained that they run out of soap or shampoo and razors become blunt long before they receive replacements. In addition, many said they were given little or no mosquito repellent or sunscreen.

Detainees are responsible for washing their own clothes and bedding. Many detainees reported that washing powder had not been available for more than a month. Detainees also said that the availability of functioning washing machines was also a problem. In Foxtrot, there was reported to be one working washing machine for around 400 people. The two others had reportedly stopped working two to three days prior to Amnesty International's visit. In Oscar, there were reported to be five working washing machines for 500 people. When touring Oscar Compound, Amnesty observed approximately 15 washing machines in three converted containers. A group of detainees standing nearby pointed out that one bank of machines was not working. Other detainees told Amnesty International that just prior to our tour of the area, the power had been switched on to two of the three containers; normally, they said, only one bank of machines was supplied with power.

FOOD

Among the detainees interviewed, opinions varied on the quantity and quality of food provided. Broadly, detainees were happy with the quantities available. All food served is Halal. Hindu, Buddhist and vegetarian detainees said that the vegetarian food was often limited to boiled vegetables and rice.

A variety of complaints were raised about the quality of the food, including that flies, worms and other items had been found in the food. R.A., a 20-year-old English language student from Iran, said: "The food is edible. But there are a lot of flies in the food. They even found a human tooth in the food, even one of the officers saw it himself. So the quality of the food is not like it should be."¹³⁸ Service providers acknowledged past issues with food quality, including an outbreak of gastroenteritis, and said these problems have now been addressed. Food preparation now takes place in a different, air conditioned marquee.

DIBP staff said that detainees receive the same food as the staff. However, the staff canteen offered a greater variety of food and included salads, fruit, and dessert items that were not available to detainees during the meal times when Amnesty International visited the compounds.

Sugar and fruit was withheld from detainees after some detainees had allegedly used it to make alcohol. We were told that fruit only became available again at the time of our visit, on the condition that it be consumed in the dining areas. Detainees also claimed the food was of much better quality because of our visit.

Some detainees reported skipping meals altogether or arriving late to avoid the queue, to discover that there was little or no food left.

CLOTHING AND SHOES

W.M., a 37-year-old maintenance man and father of five, from Pakistan, told Amnesty International, "I put in 10 requests for shoes. Someone told me that there are only 14 pairs available. I can't walk without them. I can't go for a walk outside the camp. I heard more than 200 people got shoes for health reasons, so I asked the IHMS doctor and the doctor said TSA [The Salvation Army] had told him there were no more shoes."¹³⁹

Detainees are given very limited clothing and no shoes. Many had their possessions taken from them by people smugglers prior to arriving at Christmas Island, or their possessions were confiscated by Australian authorities on Christmas Island and not returned.

Most asylum seekers receive one or two t-shirts, one or two pairs of shorts, two pairs of underwear, and one pair of socks. Almost all are given flip-flops but no shoes. Many detainees said that they have requested shoes from TSA. We heard from senior staff that TSA are responsible for ordering shoes, but there have been problems with the ordering system.¹⁴⁰

G4S security guards require that detainees have shoes in order to go on walking excursions outside of the detention centre. Many detainees reported that they do not play soccer on the rough ground, which is scattered with coral, because they are afraid of injuring themselves. The high demand and lack of availability of shoes has meant that shoes are traded for

cigarettes and other items. Other detainees also reported that shoes are sometimes shared so that asylum seekers can participate in walks outside the centre.

CONTACT WITH THE OUTSIDE WORLD

V.M., a 29-year-old clothing business owner from Bangladesh, told Amnesty International, "I have had to struggle to get telephone access. Eventually, after 10 days, I was allowed to go to the phones. The connection was very bad and I could only talk to my family for two to three minutes. At the moment, I get one call a week and they tell me what time I can call. For me it is often 3:30 or 4:30am. Sometimes that's too late at night for my family. Sometimes the phone room is closed at that time and I spend a long time waiting."¹⁴¹

There are 16 telephones for all detainees in the detention centre. Phones are available from 11am to 6am the following morning, but access varies considerably between compounds. Calls are strictly limited to 15 to 20 minutes. Access is organised according to a roster by TSA, and detainees must request a time for each occasion.

In Foxtrot, where the phones are located, detainees get more frequent access to the phone, sometimes every day. In Delta and Oscar, access to the phones is limited to one to two times per week. Limitations to access mean that asylum seekers are often scheduled to make their call in the middle of the night. All the men make their phone calls in one room, meaning that it gets very noisy and they have no privacy. Sometimes detainees are unable to contact family members because of the time difference or bad connection. Some detainees expressed concern and distress that they could not contact family members or friends who are being detained at Christmas Island or at other immigration detention facilities. Detainees claimed that if an asylum seeker overruns their allotted time, the phone may be switched off.

Access to the internet varies considerably between compounds. Many detainees emphasised the importance of internet access for staying up to date with news and events in their country of origin, as well as for staying in contact with family and friends. Detainees in Foxtrot are able to access the internet every two days for 50 minutes, though the connection is extremely slow. Detainees in Delta and Oscar do not have internet access.

Detainees also reported being denied mail from outside the detention centre and informed Amnesty International that relatives and girlfriends who had requested to visit had been denied access.

D.M., a 25-year-old from Lebanon, fled threats of violence and extortion from armed groups. His brother and his brother's children were recently injured in an explosion. His girlfriend lives in Paris.

"My girlfriend contacted the embassy in Port Moresby [the capital of Papua New Guinea] and asked if she could come and visit. The staff there advised her against it. She told them about me being in the RPC [the Manus Island Regional Processing Centre] and they said that she can't go to Manus."¹⁴²

Renate Croker, the senior DIBP official at the detention centre, said that there are plans for a new communications hub that would be accessible to all detainees. It was expected to be completed shortly after Amnesty International's visit.

Amnesty International is concerned that asylum seekers are given insufficient access to telephone and internet, with potentially serious impacts on families and asylum seekers' mental health.

ACTIVITIES

Many asylum seekers said they spend a large part of each day queuing, sleeping, sitting, thinking or doing nothing. The lack of stimulation and activities on offer for the detainees was often cited as a concern in interviews with health and mental health staff.¹⁴³

Some English language classes are offered, with one to two hour classes generally available each weekday. Some classes are taught by TSA staff, and some are taught by detainees with good or fluent English. While classes are reported to be popular, some detainees told Amnesty that the conditions in which the classes are held are not appropriate for the number of people and that the standard of teaching is poor. In Oscar, the education space shares a medium-sized marquee with the prayer room and the canteen, leaving little space for the activities to run concurrently.

R.A., a 20-year-old English language student from Iran, said: "For those classes, the conditions are very poor. One example is the English class, which is also in a thing like a tunnel. The sun is heating us in those classes, like a sauna. So many people are not willing to go for English classes."¹⁴⁴

H.M., a 29-year-old information technology student from Sudan, described the activities available in Delta compound:

"I have breakfast at 7am.

"Before there were exercise classes from 10-11am, but this only lasted for two weeks and has stopped now.

"I do nothing 'til lunch. Sometimes I attend the English class.

"Then I do nothing until dinner. I sleep, read, do nothing at all except think. I like to draw.

"There have been many requests from the men in Delta compound for exercise. We were given three treadmills but two were then taken away immediately. The one left is not plugged in to anything.

"I eat dinner between 7 and 7:30pm."¹⁴⁵

Detainees usually did not have access to televisions or radios during the time of our visit, although the new Mike Compound, still under construction at the time of Amnesty International's visit, has three television rooms that can also be used as classrooms. One or two times per week a television is moved into the compounds and a film is shown, although detainees said that the room is extremely small and hot and not enough people can get in.

Asylum seekers told us that MP3 players are difficult to obtain and are mostly obtained through trading cigarettes with staff.

There are also drawing classes and a small selection of board games available to detainees. TSA said that they take a box of games into each compound at the same time each day for one to two hours. When asked why games are not kept within the compounds for extended use, TSA said that certain ethnic groups do not share the games with others. During a tour of the compound, Amnesty International saw some men playing Ludo with a hand-drawn board.

OPPORTUNITIES FOR EXERCISE

There are some minimal physical activities available to the asylum seekers. In Oscar, there is a small three-a-side sized soccer pitch and a volleyball net. However, these facilities are not sufficient for 500 men, and many detainees reported that it was difficult to play sports without proper shoes. Approximately 100 metres from the main entrance to the detention facility, there is a sports oval within the military base grounds. Medical staff, who expressed frustration at the lack of activities, questioned why the asylum seekers were not permitted to use it.

There are small gyms in Oscar and in Foxtrot, where the weights are available for two-hour periods twice each day, once in the morning and once in the afternoon. The gyms are also used for cutting hair. Some of the minority groups within the compounds told Amnesty International that they are pushed out of the gyms or the soccer pitch by the larger groups.

R.A. said, "The gym is very dirty, not in a good place. The equipment is old and doesn't always work . . . It's not appropriate for this count of people. It would work for maybe 50 to 100 people, but not 400 or 500 people."¹⁴⁶

EXCURSIONS

Excursions are organised and authorised by G4S and TSA. Very few of the detainees Amnesty International spoke to had been on excursions outside the facility. In addition to short walks outside the centre, there have been bus excursions to Lorengau town, during which asylum seekers are not allowed to leave the bus. Many stated that they are unable to go on these excursions without shoes. IHMS staff informed us that the excursions are frequently cancelled by G4S with no reason given other than "security." DIBP told us that walks may be cancelled because of rain but said that they were not aware of any security reasons for cancelling particular excursions.

Mohamed Yahia, 25-year-old student from Myanmar who asked that his real name be used, had on one occasion been on a walk outside for one to one-and-a-half hours. The group of 12 was accompanied by a TSA staff member. Two G4S staff members followed them in a car. He had also been on a bus trip to Lorengau, the main town, but the group had not been allowed to leave the bus or open the windows.¹⁴⁷

THE "POINTS" SYSTEM

TSA run a points system for the asylum seekers, through which asylum seekers are granted 25 points each week which must be used at the canteen each week or lost. Additional points can be gained by participating in activities. TSA staff said that detainees can use points to purchase various items at the shop, including text books, cigarettes, phone cards, washing powder, toiletries, pens, pencils, drawing pads, snacks and soft drinks. Almost all the asylum seekers interviewed told us that until recently, they were unable to purchase anything other than cigarettes and phone cards.

OPPORTUNITIES TO PRACTICE RELIGION

Most detainees told Amnesty International they are able to pray and practice their faith. However, some complained that facilities were inappropriate; in particular, the shared space in Oscar compound, about which some detainees have complained several times. In Foxtrot, A.M. told Amnesty International that the prayer space “is not appropriate because it is open to the rain. It is too small to pray as a group”.¹⁴⁸

5. SAFETY AND SECURITY

Many detainees reported not feeling safe in the facility. For example, T., from Myanmar, told Amnesty International that he and others feared violence from other detainees. "A few days ago, we had haircuts. Somebody took a pair of scissors and kept it. Who kept it we don't know. Our lives are now in danger," he said. "In Myanmar, our lives were in danger, and here they are also in danger. At least in Myanmar we were with our families—our wives, children, brothers and sisters."¹⁴⁹

The heavy security around the centre and on any excursions reinforces the view that asylum seekers on Manus Island are not safe.

Service providers and government officials appear to have no clear policies and procedures around bullying, harassment or sexual assault.

FREEDOM OF MOVEMENT

Asylum seekers are not free to leave the detention centre on their own, and the movement of asylum seekers within the facility is highly regulated and securitised. Asylum seekers and visitors must sign in and out when entering and leaving the compounds, including to attend medical visits, and must be accompanied by a G4S guard at all times. G4S guards also accompany female service providers or visitors who enter the compounds.

Although the facility has secure walkways that detainees can use to move between areas, they are often transported less than 100 metres in a G4S vehicle.

Several staff described this practice as "excessive." G4S officials claimed it was a requirement under Papua New Guinea law. However, Renate Croker, the senior DIBP official on site, said it was a G4S decision. When Amnesty International asked Papua New Guinea's Acting Chief Migration Officer, Joseph Nobetau, about this policy, he stated that the use of vehicles to transport asylum seekers within the centre was not required by the Papua New Guinea Government but may be required by the local police.¹⁵⁰

Many detainees Amnesty International spoke to complained that they had been turned away at the gate by G4S staff or left waiting for long periods—sometimes more than an hour—to be collected by G4S, and had missed interviews and medical appointments as a result. These claims were supported by IHMS and mental health staff. Renate Croker told Amnesty that missed appointments are primarily due to the men oversleeping or forgetting their appointments. When asked if there are clocks in the compounds, she conceded that there were none; the batteries had died some weeks before and the clocks had been removed.¹⁵¹

THE OCTOBER "INCIDENT" AND "OPERATION *KILLUM DOG*"

When asked about safety and security, most asylum seekers expressed concern and alarm at a security incident that took place outside the detention centre on the morning of Friday, 18 October 2013. At around 9am, a fight took place between a group of Papua New Guinea police and Papua New Guinea Defence Force personnel outside the facility and within view of

those in Foxtrot Compound. Many detainees interviewed believed that members of the local community were attacking the facility and the asylum seekers.

Several asylum seekers said that they heard at least two shots fired, but those reports were denied by Australian authorities, who said there had been no gunfire.

Most staff were moved to an evacuation point, heightening the fears of asylum seekers left behind.

A mental health staff member stated that the situation and response from staff was “chaotic” and “confusing”.¹⁵² Detainees said they were left with one G4S staff member in Foxtrot (whom detainees dubbed “Suzie the Lionheart”), four G4S staff members in Oscar, and no G4S staff members in Delta. Some detainees said that the gates to the compounds were left unlocked or with the keys left in the lock. Asylum seekers reported being given no information about what was happening or how to react, except to stay gathered in the compounds. Detainees said they were left like this for one to two hours. A number of detainees were visibly upset by this event, even though it had taken place around a month prior to our visit.

D.M., a 25-year-old from Lebanon, told Amnesty International: “I am not safe, not protected on Manus Island. There was an incident with fighting outside the camp. The men were put in the kitchen and all the staff ran away. They left the keys in the gate. The men could have just walked out but we didn’t because we didn’t want to make trouble.”¹⁵³

When Amnesty International asked Renate Croker about these events, she criticised the media for sensationalising the incident. However, G4S staff confirmed that Australian Navy vessel *HMAS Choules*, which a number of staff used for accommodation at the time, was on stand by to respond to the incident.

When asked what evacuation procedures were in place for the detainees in the event of a security incident, fire, or tsunami, she stated that “We are currently reviewing transferee evacuation procedures due to the expansion. This is a G4S decision.” No other information on transferee evacuation details was provided and it is not clear if there are any existing procedures in place.¹⁵⁴

In what was described as another “incident,” local police shot stray dogs outside the detention facility in order to cull their number. DIBP said that staff were advised in advance of the operation, known as “*Killum Dog*” (meaning “kill the dogs”), but the gunfire caused distress to some asylum seekers.

Mental health staff in the facility told Amnesty International that the October incident, and the lack of information for detainees about what happened and on evacuation procedures, had resulted in distress and anxiety among several detainees for days afterwards and that this kind of experience could affect previous experiences of torture and trauma.¹⁵⁵

SEXUAL ASSAULT

In July 2013, a former manager for G4S, the security service provider at the Manus Island facility, spoke in the media about cases of sexual assault between asylum seekers in the

detention centre and accused Australian immigration officials and other staff of ignoring the abuses.¹⁵⁶ As a result, the Government set up an inquiry into the accusations. In November 2013 the inquiry released its report, stating that “staff had considered moving the detainee (the victim) to the family compound on Manus, following the allegations, but these suggestions were deemed inappropriate by the Department of Immigration and Border Protection as ‘single adult males could not live in a compound with families and children and appropriate medical treatment was available at the centre.’”¹⁵⁷ The report said the victim returned to the single adult male compound “of his own volition” and refused to speak to the police, despite the matter being reported. The report also found that any substantiated criminal allegations made on Manus in the time period covered would be unlikely to result in prosecution “as nearly all of the transferees who were accommodated at Manus RPC have now left PNG, they are beyond the jurisdiction of the PNG criminal law and nothing further can be done. Offences committed in PNG cannot be tried in another jurisdiction.”¹⁵⁸

When Amnesty International asked, staff did not know about any official procedures in place for responding to allegations or instances of sexual assault within the facility. As with guidelines on medical practice standards, there appears to be confusion as to whether Australian laws, policies and standards would still apply.

Papua New Guinea passed the Family Protection Act 2013 on 19 September 2013, which may allow a person who has experienced violence, abuse or threats to apply to the Papua New Guinea courts for a protection order. Service providers did not appear to be familiar with these new laws, which may provide an additional or alternative remedy to reporting cases of violence to police for criminal charges.

STTARS staff outlined their own approach to dealing with such circumstances, should they arise, which included reporting the case to the Papua New Guinea police if the victim so desired.¹⁵⁹

However, STTARS staff believed that there was no agreed response between services to instances of sexual assault and stated that “There are currently conversations happening across the services about how to respond to instances of sexual assault,” one staff member told us.¹⁶⁰ Mental health staff also stated that there is no area available for victims of sexual assault to be separated from their alleged attackers.¹⁶¹

A number of staff, including DIBP officials, were asked about Papua New Guinea notification procedures and services available and told us they had no knowledge of such procedures or services.

Given the serious issues with law and order in Papua New Guinea, Amnesty International is concerned about notification and reporting to local authorities. In particular, support structures for child protection, sexual assault, and understanding and responding to gender-based violence are poor or noticeably absent.¹⁶² While this is improving and some provinces have specialised Family and Sexual Violence Units within the police force, there is no specialised unit on Manus Island. In addition, police officers are in some reported cases the perpetrators of human rights abuses.¹⁶³ In such cases, reporting to local authorities would not absolve Australian authorities of a joint responsibility (along with the Papua New Guinea government) to protect those detained within the centre from harm.

In addition to this, a number of detainees reported being threatened with mandatory reporting to the Papua New Guinea police force for any criminal activity, including property damage and engaging in consensual homosexual activity (see Chapter 8, Asylum Claims on the Basis of Sexual Orientation). This is concerning given the lack of trust in local authorities following the October 2013 'incident' and the limited capacity of the Papua New Guinea police force.

TREATMENT BY STAFF

Asylum seekers are widely referred to by staff within the detention centre by their "boat ID," an alphanumeric code given to them on arrival at Christmas Island based on the boat they arrived on. Mental health staff expressed concerns that this practice adds to the impression that they are prisoners.¹⁶⁴ Amnesty International witnessed this practice among DIBP and G4S staff, while TSA and health staff more commonly referred to asylum seekers by their names.

Detainees also reported instances of verbal aggression or abuse by some staff. The most frequent was being told to return to their country of origin, "go home" or "go back to your country", particularly as a response by staff to requests for items or improvements in conditions.

Many of the detainees reported being too scared to complain for fear of repercussions from staff or consequences for their Refugee Status Determination process. Those who did complain often stated that nothing was done in response or that staff members responsible for abuse were simply moved to another compound. In a couple of instances reported, complaints resulted in a change in policy – such as monitoring of the queue for meals – or dispute resolution meetings being held.

BULLYING BY OTHER DETAINEES

Asylum seekers told Amnesty International of some instances of bullying between detainees. Most commonly, bullying was verbal or involved intimidation and was carried out by members of larger national groups against minority national or ethnic groups. Where complaints were made to staff, the response was generally not satisfactory to those involved, particularly if the detainees involved were not separated into different compounds. There appears to be no policies or procedures in place to adequately address complaints of bullying and harassment.

6. MEDICAL SERVICES

Muslim Qais Nacr, who asked that his real name be used, has been a diabetic for 15 years. Before leaving Iraq he self-administered insulin three times a day (20-25mg). On Manus Island he has to present at the gate to his compound with a medical note at 6am, 11am, and 6pm to visit the clinic.

He has a medical note so he can go to the front of the line at meal times. He said that sometimes G4S allow him to do this, but sometimes they make him wait. He reports that his blood sugar levels are too high since he has been on Manus. He has fainted three or four times. He believes that the high levels of stress, diet, and lack of exercise have contributed to his high blood-sugar levels.

"I am different from all the people here. I do not have good health. The situation I had in Christmas Island was not allowing me to come here. I have diabetes; my blood sugar level is fluctuating up and down. I had no insulin for four days on the boat to Christmas Island, I was like a dead body when I arrived, and they did not treat me.

"For the first four or five days my sugar levels were so high, the doctor said that I should not be transferred to PNG now. He wrote down specific notes to receive treatment. On the plane to PNG I was almost fainting, my blood sugar levels were very high and my eye sight was affected."¹⁶⁵

An IHMS doctor stated that diabetes can be managed by medication. When we asked about diet and exercise, she said, "We have not spoken to Eurest [which provides meals for the detention centre] about diet, but we need to do this."¹⁶⁶

Amnesty International is concerned that the medical facility within the camp is unable to cope with the growing demand for health and mental health services. Amnesty International interviewed a number of people with illnesses, disabilities and mental health issues, and health service providers working with IHMS, STTARS, Manus Hospital, and Pacific International Hospital.

Detainees frequently complained about delays in medical appointments or that certain treatment was not available on Manus Island.

Medical staff expressed frustration at the lack of response from Australian authorities to basic requests which would improve health and sanitation within the camp. Requests for mental stimulation, walks outside the camp, shade for the Oscar Compound, drinking water, shoes and soap were either refused or ignored, adding to the burden on health professionals. At the same time, health staff reported that detained asylum seekers suffered from heat stroke, fainting, skin conditions or infections, gastroenteritis, back problems, headaches, and lack of sleep.

On occasion, medical advice given on Christmas Island and Manus Island to send asylum seekers for further tests or treatment in Australia has been ignored or refused.

IHMS MEDICAL CLINIC

Medical facilities consist of a temporary medical clinic in subdivided shipping containers at one end of the detention facility. Refugees have been referred to Manus Hospital (the only hospital in the province) for dental work, X-rays and pathology. Asylum seekers with more serious medical conditions have been flown to Port Moresby for further treatment.

The IHMS clinic is essentially staffed by seven health professionals, including doctors, nurses, and psychologists. They have the ability to treat a range of conditions and can put a person on oxygen or life support.

Only one IHMS doctor whom Amnesty International spoke with had been to Manus Hospital.¹⁶⁷ Other staff from IHMS reported that they had not visited the hospitals in Lorengau or in Port Moresby even though patients had been referred to these facilities.¹⁶⁸

IHMS receives around 110 appointment requests per day and cannot meet demand for appointments. People can request a medical appointment at any time by filling out request forms and handing them to G4S. Some people make several requests in one day, and IHMS see them every two days. IHMS triage the requests based on urgency and try to see as many as they can in a day. IHMS need more space at the medical clinic, including for treatment of patients and storage.

If a person is in quarantine, they sleep in a separate area from the other detainees and IHMS visits them each day to provide appropriate medication. At the time we visited, there was one person in quarantine for an ear infection, another for a gastrointestinal infection, and a third person with mental health problems.

IHMS acknowledged that people may miss appointments due to long queues for meals, meaning people have to make the choice to go to their appointment or to eat. Some people have fainted from heat stroke in the meal line.

IHMS raised concerns about:

- Continuity of care when staff work on one month rotations.
- Lack of mental stimulation for detainees.
- Lack of privacy and space within the detention centre and declining mental health.

IHMS were clearly frustrated that people are deprived of activities or mental stimulation, which is escalating mental health problems within the detention centre.

Other medical staff expressed frustration that when certain conditions could not be treated in the centre, requests for transfer had been ignored. For example, one health professional referred to two cases, including a person with a goiter on his neck compressing half his airways, and another person who had gone blind in one eye since arriving on Manus Island. Another health professional referred to a psychiatric condition where a request for transfer to mainland Australia was ignored. These conditions could not be properly diagnosed on Manus Island, medical staff told Amnesty International.

MEDICAL COMPLAINTS BY DETAINEES

A number of detainees raised concerns that sometimes it takes between three and 10 days to receive a medical appointment after submitting a request. Some felt that they needed to make several requests in order to be taken seriously and many complained that water and paracetamol was common treatment. The lack of ability to self-administer paracetamol for headaches or antiseptic cream for minor cuts means asylum seekers people often have to seek many appointments for even basic medical care.¹⁶⁹ One doctor commented on the absurdity of requiring people to return to medical appointments several times to receive medication.¹⁷⁰

Details of medical appointments are announced on a notice board that detainees need to check themselves, and they are expected to present at the gates to the compound before the time of their appointment. They are transferred in a G4S vehicle or escorted to the medical facility.

We heard from IHMS, STTARS, detainees, and Manus Hospital staff that people are often late for their appointments because of this system. A number of factors may contribute to this, including:

Detainees not being aware of appointment times if they have not checked the notice board.

- Detainees waiting for a vehicle to arrive.
- Detainees not knowing the time.
- Delays at the gate.
- Clashes with activities or appointments with other service providers.
- Clashes with meal times (and long queues for meals).

STTARS have started a new appointment system where TSA will personally provide a slip to detainees to notify of their appointment times and have noticed an improvement as a result of this. STTARS continued to express concern that detainees are often required to wait for more than an hour and are sometimes turned away by G4S staff at the gate.

Physical disabilities raised by detainees included vision impairment, mobility impairment, hearing loss, and a person of short stature (dwarfism). One person reported that he was not allowed to use crutches because they were deemed a security risk. A number of detainees reported mental health problems or a deterioration of mental health since arriving on Manus Island.

Another person with epilepsy claimed he had had three seizures since arriving on Manus Island. He is receiving medication, but there is no electroencephalography (EEG) report. Amnesty International was later informed that there is no EEG machine in Papua New Guinea.

P.K. is a 34-year-old man from Lebanon who has had severe asthma since he was born. In Lebanon he went to hospital every three days to receive cortisone injections and a nebuliser to help him breathe. On Christmas Island he was told everyone goes to Manus, in spite of their medical conditions.

He relies on Seratide and Ventolin inhalers and cortisone tablets to treat his asthma. His condition is so severe that he goes through all his medication in around five days. He said that the medical clinic was out of Ventolin for two days. DIBP confirmed that a plane delivering the medication "was a few hours late."

He says the dust, humidity and heat agitates his condition. The fumigation smoke is bad for him. He was told to stay inside when they fumigate for mosquitoes, but the air conditioning draws the smoke inside. He has a note from the medical clinic about his condition which states he can see medical at any time and that he should not wait in the lunch queue where smokers are around. He says sometimes G4S allow him to use this note, but sometimes they do not. He said, "Humanity is all talk."¹⁷¹

Two people reported knee injuries as a result of torture and could demonstrate restricted and abnormal movement. They had not received further investigation or treatment for these injuries since arriving on Manus Island.¹⁷² K.G. claimed, "This is where the man hit me with a big stick, three inches in diameter. I can't sleep because of the tension and the pain [to his knee and ankle]. I walk with pain. I can bend my leg this far [about a third of the flexibility of the other leg], after that I feel pain."¹⁷³

A number of people reported eye conditions which cannot be addressed on Manus Island. R.A. said, "I have a problem with my glasses. Since I'm here, I can feel my eyes getting worse. I told them I need to change my prescription. They said we don't have an optometrist."¹⁷⁴

Mahdi Sawari, an Iranian who asked that his real name be used, pointed to his eyes, which were red and appeared to have a raised surface along the iris.

He said, "I have had a few medical conditions. I have serious coughing at night. Hair loss, a skin condition. I am losing my eyesight. And the mental pressures are having an effect on me as well. When I go to the doctors, all they ask us is to drink more water." Mahdi is a person of short stature and has not been provided with any assistance for his condition. "I can't go to the toilets here. The toilets are too high for me. I have put in multiple requests, but nothing has been done."¹⁷⁵

When Amnesty International raised these issues with senior DIBP staff, they were aware of a request made three weeks ago for a stool to access the toilet and an appropriate chair. No action had yet been taken on the request.

At least two people reported coughing up blood and had delays in obtaining medical treatment.¹⁷⁶ Amnesty International also received indirect reports of one detainee going blind and of at least one person having malaria.

The perception of detainees is that the only dental treatment available is tooth extraction. A number of detainees complained of toothaches, including as a result of torture injuries, but are unable to receive complex dental surgery on Manus Island.

MENTAL HEALTH

A number of service providers and asylum seekers expressed concern about deteriorating mental health. STTARS and IHMS mental health team are struggling to cope with existing demand for their services, and this is only expected to grow as the population and length of detention increases.

Some asylum seekers felt that there was a deliberate “psychological war”¹⁷⁷ on them (by the Australian Government). A service provider said, “This is the process of how you break someone mentally,” when describing the conditions in the detention centre.¹⁷⁸

“We are dying here... I am dying many times a day.”

—J.K., 15 November 2013

A number of factors including uncertainty around processing and resettlement, limited contact with family members, and lack of mental stimulation were seen as contributors to the growing mental health crisis within the camp. A number of people (including service providers) expressed frustration at the lack of activities or mental stimulation.

Amnesty International spoke to a number of asylum seekers who had self-harmed, attempted suicide, gone on hunger strikes or experienced mental health issues.

A person who was on a hunger strike for 16 days said, “We’re not looking for a better life, just a normal life. I have given myself until Christmas. If I’m not released or the conditions have not changed, I will take my own life.” His fellow detainees convinced him to break the hunger strike.¹⁷⁹

R.P. showed multiple scars on the inside of his left arm, from his wrist to his elbow.

“I am sure if I continue to stay here, I will take my own life.”

When asked about his scars, he said, “I am under intense pressure. Between the pressure they create here for you and the pressures where I come from, it is very intense. I tried to cut my veins just to take my own life.

“I don’t want to talk anymore. If you want to help me as a human being, talk to IOM. Get my ticket. Get me out of here as soon as you can.”¹⁸⁰

J.K., describing the stress and anxiety at being separated from his family, said, “I am very distressed here to the point that one side (of my body) sometimes feels numb, sometimes whole body is shaking. I feel my soul is leaving my body.”¹⁸¹

A.H. said, “I have never been to a psychologist [before]. In the time that I’ve been here, I’ve been to a psychologist seven times. When I’m falling asleep, I feel for myself.”¹⁸²

STTARS provide counselling for people who have experienced torture or trauma. They also teach people coping mechanisms and breathing techniques to relax them. They have three staff in total working in rotation, so that two people are based on Manus at any one time. They work six days a week and usually see four people a day for one-hour sessions. They have

a full caseload and 16 people are on a waiting list. STARRS mentioned that some barriers to their work include culture, masculinity (men being passive or reluctant to seek help), interpreters who are not familiar with counselling or who do not have a good rapport with clients, and low understanding of mental health issues by other service providers. STARRS is hoping to do some training for other service providers on mental health issues soon.

People can be referred from IHMS to STARRS, and other service providers can refer to IHMS.

IHMS Mental Health Team Leader Gareth Lee said they have seven mental health staff on his team. Referrals have increased dramatically over the past few weeks. They are getting eight to 12 requests for appointments a day (excluding existing clients). Up to 30 per cent of the persons detained have presented with some mental health conditions. IHMS needs more staff and facilities to be able to cope with the increasing demand. Lee also expressed concerns that they did not have a psychiatrist permanently based on Manus, even though this is required by DIBP.

Lee mentioned a significant case of self harm six to eight weeks prior to Amnesty International's visit in mid-November 2013. He recommended that a patient be transferred to the Australian mainland for treatment. The request went to IHMS in Sydney, who referred it to DIBP officials in Canberra for a decision. In spite of his repeated emails, there was no response from Sydney or Canberra to his requests for transfer. He received verbal recommendations regarding treatment that were made by telephone, but he felt it was not appropriate to guide treatment remotely. Eventually the person was transferred to Australia not for medical reasons, but because they arrived prior to the 19 July change in policy.

Lee raised concerns over liability and duty of care and said he was not sure if Australian laws and standards regarding medical care applied. He is not sure what facilities are available within Papua New Guinea for mental health care.¹⁸³

EXTERNAL MEDICAL FACILITIES

Papua New Guinea's health sector has a limited capacity to meet the existing demands of the local population. It has a low proportion of health professionals per population, lacks skilled professionals, and has problems with the drug supply chain (quality and delivery to health clinics). A number of internal and external factors contribute to problems within the health sector, including the geographical remoteness of parts of Papua New Guinea, poor implementation of policies, issues with financing, and relationships with key stakeholders within the health sector. While there have been recent improvements to the delivery of health services, the capacity of the health sector reflects the fact that Papua New Guinea is a developing nation.¹⁸⁴

Major health concerns within Papua New Guinea include a generalised human immunodeficiency virus (HIV) pandemic, malaria, high levels of tuberculosis (including drug-resistant strains), increasing maternal mortality, and increasing communicable diseases.¹⁸⁵

Health resources are generally concentrated in urban centres such as Port Moresby and Lae, although each province has a smaller hospital like the one on Manus Island. As a result, patients from the general public are referred to Port Moresby or Lae for more complicated

illnesses and treatment, and those who can afford to do so will often seek treatment overseas, in Australia or Asian countries.

The health sector is one of four key priorities for the delivery of Australian aid. In 2013, around one-quarter of the total aid budget (507 million Australian dollars) will be contributed to the Papua New Guinea health sector.¹⁸⁶ Amnesty International was shown a number of improvements which had recently been made to Manus Hospital as a result of AusAid funding. However, the capacity of the hospital is still very limited.

Manus Hospital is a series of clinics in separate buildings linked by covered pathways. Amnesty International visited the dental, X-ray, and pathology clinics, as asylum seekers have been referred to those clinics for these services.

The dental clinic does fillings and tooth extractions, but beyond this their capabilities are limited. They are unable to make false teeth. The dental clinic has seen 187 asylum seekers this year. Asylum seekers are seen two days a week, and local patients are turned away on the days that refugees are treated.¹⁸⁷

There is one dentist and one dental assistant, although they are sometimes assisted by the dentist at the Papua New Guinea Defence Force base. The clinic can only see up to four patients a day, as once the equipment is used it needs to be sterilised. They have two high-speed drills, one of which was broken at the time of our visit, and two low-speed drills. There is no water filter going to the dental chair, and the roof needs repairing.

The hospital has an X-ray machine from 1987 but we were told the dental clinic does not use it: It is unsafe for staff and patients because the room is not lead-lined.

The X-ray technician said around 100 refugees had used the X-ray machine since December last year, mostly for chest and limbs. We were told it is not safe for staff to be in the X-ray room as they do not have badges to count radiation exposure and the wall that they can stand behind is not lead-lined. The technician thought that some lead had been ordered to fix up the room.

The pathology unit can test for tuberculosis, malaria, dengue fever, diabetes, HIV, and other sexually transmitted illnesses. They test blood and urine samples through two standard microscopes, and their equipment is rudimentary at best. A week prior to our visit, AusAid delivered a new haematology machine for blood tests. Manus Hospital does not have the ability to do microbiology work (including for biopsies).

Amnesty International was informed that IHMS stopped referring blood samples to Manus Island Hospital after receiving false positive blood tests for malaria.¹⁸⁸ Blood tests are now sent to Port Moresby instead.

Amnesty International also visited the Pacific International Hospital (PIH) in Port Moresby, where a number of refugees have been sent for further treatment (including a person for surgery on a broken arm, malaria and a heart condition).¹⁸⁹ We spoke with Dr Paul Alexander, Medical Director, and were given a tour of the facilities by a senior nurse.

PIH has 23 hospital beds and limited resources. There are two intensive care beds and they operate with a ratio of one nurse per patient. The intensive care unit (ICU) is often full and they will refer patients to Port Moresby General Hospital, which also has limited ICU beds. Dr Alexander said their hospital is often used as transit and that people go overseas to Australia, Singapore or Manila for more extensive treatment.

PIH has a lead-lined X-ray machine, three dialysis machines (although one was broken when we were shown around), an ultrasound, a microbiology lab, two surgery rooms and a computerised tomography (CT) scanner. While PIH is much better equipped than Manus Hospital, it is still limited in its capacity by the small number of beds, the expertise of staff and equipment.

Dr Alexander acknowledged that there are limitations on medical treatment available within Papua New Guinea, including no practising neurosurgeon, no magnetic resonance imaging (MRI) or EEG in country. He explained that an EEG may be useful for a patient with epilepsy where a CT scan has not shown up anything. There is one radiation centre in Lae and chemotherapy is available at Port Moresby General Hospital, but there are limited options for cancer treatment within Papua New Guinea. There are only two to three psychiatrists in the country and one psychiatrist (also an Australian volunteer) consulting part time at PIH.

APPLICABLE LEGAL STANDARDS

A number of medical staff pointed out that applicable medical laws and standards at the centre are unclear and said that they had no knowledge of local laws and requirements.

Both the Australian and Papua New Guinea Governments have a responsibility for persons detained on Manus Island (see Chapter 10). As such, they must ensure that staff are fully informed of medical laws and standards.

While Papua New Guinea has limited capacity to meet the health care due to deficiencies in country, Australia has a responsibility to ensure those who are sent to Manus Island are not in anyway disadvantaged as a result of their medical condition, disability, or illness by virtue of their transfer to an off shore facility. In addition to this, both Australia and Papua New Guinea must ensure that asylum seekers on Manus are provided with appropriate health care in a timely manner.

Australian and Papua New Guinea authorities must ensure that asylum seekers detained on Manus Island receive the highest attainable standard of physical and mental health. In addition to this they must ensure that asylum seekers are treated with inherent dignity for the person and that appropriate arrangements are in place to ensure that:

- Adequate time is provided for proper health checks prior to transfer, and that asylum seekers are not transferred to a facility where these health needs would not be met or their health would be adversely affected.
- The advice of medical experts is promptly followed and that asylum seekers are referred for further tests or treatment in Port Moresby or Australia as required.

- Detainees with disabilities are afforded reasonable accommodations to enable them to go about their daily lives with dignity, individual autonomy, and independence.

INTERNATIONAL LAW ON HEALTH AND DISABILITIES

Australia and Papua New Guinea have ratified the Convention on Rights of Persons with Disabilities,¹⁹⁰ which creates obligations to ensure that persons with disabilities are treated with dignity and to ensure the full and equal enjoyment of other rights. Both countries are also party to the International Covenant on Economic, Social and Cultural Rights, which provides that "[e]veryone enjoys the right to the highest attainable standard of physical and mental health."¹⁹¹

Australia and Papua New Guinea must ensure that asylum seekers with disabilities are given access to appropriate health services as early as possible.

In addition to this, Australia must not transfer asylum seekers to facilities, such as Manus Island where asylum seeker's needs cannot be adequately addressed. A failure to do so would breach Australia's obligations under the Convention on Rights of Persons with Disabilities.¹⁹²

The failure to provide adequate health services¹⁹³ or reasonable adjustments for asylum seekers on Manus Island with disabilities is a clear breach of both Australia and Papua New Guinea's obligations under the convention and may also amount to cruel, inhuman, and degrading treatment.¹⁹⁴

AUSTRALIAN DOMESTIC LAWS ON HEALTH AND DISABILITIES

The Disability Discrimination Act¹⁹⁵ (DDA) protects people in Australia against discrimination on the basis of a disability. It includes a broad definition of 'disabilities' and covers people with past or present disabilities. Disability discrimination happens when a person is treated less favourably than people without a disability.

Indirect discrimination occurs if a condition or requirement, or a failure to make a reasonable adjustment, has the likely effect of disadvantaging a person with a disability.¹⁹⁶ As a result, a failure to take into consideration a person's health or disability before transferring them to Manus Island, where there is limited capacity to treat or manage certain conditions, or to make reasonable adjustments for a person with a disability, would amount to disability discrimination under the DDA.

As preliminary medical checks and screenings are completed on Christmas Island and other parts of Australia, Australian Immigration authorities cannot claim to be unaware of a person's disability when a decision is made to transfer them to Manus Island. If the effect of that decision is to disadvantage the person in some way then it would be disability discrimination in the provision of goods and services.¹⁹⁷ This may also amount to a breach of other international standards, including the prohibition on cruel, inhuman, and degrading treatment.

7. REFUGEE STATUS DETERMINATION, RETURNS, AND RESETTLEMENT

“I’m telling you that all the people who are in this psychological war, who are psychologically ill, under a lot of stress and depression, we need a bit of hope. We need someone to tap us on the shoulder and say we will be okay.”

—S.A., from Bagdad, 12 November 2013

Amnesty International met no detainees at the facility who had received a Refugee Status Determination. Following their visit to Manus Island in October 2013, the Office of the UN High Commission for Refugees (UNHCR) reported that, since the facility reopened on 21 November 2012, no asylum seekers detained there have received a Refugee Status Determination.

Although required by international refugee law standards, there is no mechanism in PNG migration law for an appeals or review process following a negative Refugee Status Determination decision.

THE AVAILABILITY OF INFORMATION

Asylum seekers are given little or no information on the Refugee Status Determination process, timeframes for processing and detention, or resettlement.

Where information was given, it varied considerably. Some asylum seekers were informed that the process would begin immediately (or within a month). Some were informed the process would take three months, others were told between two and five years.

Detainees interviewed consistently raised the lack of information and the resulting uncertainty about the process and their future as one of the main problems in the detention centre. Many informed us that the uncertainty and delays resulted in a range of mental health problems, including depression, anxiety and lack of sleep. These impacts were also cited by mental health staff at the facility, with one stating: “The biggest problem within the camp is the uncertainty and indefinite nature of detention.”¹⁹⁸

J.N., a 28-year-old asylum seeker from Iran, said, “The main problem here is that they are keeping us in limbo. We don’t know how long we will be here. The process is moving very, very slowly. We don’t know where we will end up. When I came here, I signed a piece of paper that said that the process would take three months and 10 days. But that period has finished.”¹⁹⁹

One Iraqi asylum seeker, a father of one, said: “I am now 43 years old. I am here, an unknown person. No one knows about us. We are on this island. We thank them for what they

are providing for us, these services, everything we need that they are providing for us. We just need to have some certainty. I have lived in war zones, with bombs and explosions. I have never experienced what I am experiencing here with the uncertainty we face. If we had died in the ocean, that would have been better. I just need to know my destiny so that I can sleep at night. Just to know, so I can be prepared for what will happen."²⁰⁰

A 30-year-old asylum seeker, a Somali shopkeeper who has been on Manus Island since September 2013, told us: "I have had no immigration interview yet. There is no answer. If anyone talks, we hear, 'We have to wait to see what they decide for you.' Whatever you say, no one will answer you."²⁰¹

Amnesty International also spoke with a number of DIBP officials about the process. DIBP's role is to build capacity as well as manage and mentor the five Papua New Guinea Immigration staff qualified to carry out interviews. There are no information sheets on the process available to the asylum seekers in the facility, although DIBP admitted this would be helpful. Asylum seekers get a harsh message from Australia and a welcoming message from PNG, but there is no information beyond that.²⁰²

DIBP appeared to be struggling with frequently changing government policies, unclear guidelines on their role, the rapid growth in the number of detainees, and local staff who have no knowledge or experience of processing refugee claims. They claimed more local staff will be recruited soon to cope with the increase in asylum seekers, but it would take time to train them. DIBP was not sure of the process beyond initial assessments and recommendations being made to the Papua New Guinea Minister for Foreign Affairs and Immigration.

WAITING TIMES FOR INTERVIEWS

At the time of visiting in mid-November 2013, of a total 1,100 detainees, only 50 had undergone an initial assessment interview since 1 August 2013, when the first of the new intake of asylum seekers (since the change of policy in July 2013) was transferred to the facility on Manus Island.

According to Papua New Guinea migration law, once interviews are completed and findings assessed, the final determination can only be made by the Minister for Foreign Affairs and Immigration. There are no mandated time frames for processing, and the legislation on processing asylum seekers in Papua New Guinea is still at the elementary stages.²⁰³

None of the immigration staff interviewed by Amnesty International gave a time-frame or limit for the Refugee Status Determination process.

Waiting periods varied depending on the time of arrival on Manus Island, but several of the asylum seekers had been in the detention centre for more than three months without an initial interview.

A 34-year-old Syrian construction worker said, "I have been in the centre for two months and 10 days. In all this period, there has been no progress, no processing, no future. I don't want to go to PNG or Australia, I want to go out and make money for my family. I can rescue my child if I am out."²⁰⁴

A 20-year-old student from Iran told us, "I haven't had an [immigration] interview since I've been here. Nobody's asked me what my problems were or why I came. It's been three months and four days. Nobody's asked me what the reasons were that I came here. I've requested to see immigration . . . DIAC says, 'You need to give us more information.' What we tell them goes through many people, so maybe there are things we don't want others to read, private things. But they say we have to give them more information."²⁰⁵

SYRIAN ASYLUM SEEKERS

In October 2013, UNHCR issued its second update of the *International Protection Considerations with regard to people fleeing the Syrian Arab Republic*. The document states that "solidarity can be expressed by ensuring appropriate treatment and protection for the relatively small numbers of Syrians arriving directly from Syria, through countries in the region or by sea in countries further afield, by ensuring access to territory and to swift and fair asylum procedures."²⁰⁶

UNHCR recommends, "The establishment of strict limits and safeguards on the use of detention, combined with the application of alternatives to detention and any measures improving the conditions for asylum seekers who are awaiting decisions on their protection claims would also be important elements of the response to Syrian arrivals in these countries."²⁰⁷

UNHCR concludes that "most Syrians seeking international protection are likely to fulfil the requirements of the refugee definition . . . since they will have a well-founded fear of persecution linked to one of the [1951 Refugee] Convention grounds."²⁰⁸

Amnesty International calls for Syrian asylum seekers to be *prima facie* in need of international protection. They should therefore not be subjected to immigration detention.

One of the four Syrian asylum seekers in the facility told us, "Seventeen countries are now requesting Syrians [for resettlement]. One of them is Australia. As long as they hear we are Syrians, they know straight away that we are genuine refugees. So why are they arresting me here? I have been locked up for four months. One month on Christmas Island, three months here. Nothing is happening."²⁰⁹

REFUGEE STATUS DETERMINATION INTERVIEWS

ACCESS TO LAWYERS

The first interview in the Refugee Status Determination process on Manus Island is with a representative from the Claims Assistance Provider Scheme (CAPS), who assists asylum seekers in compiling evidence to support their claim for protection. CAPS officials are contracted through the Australian Government and primarily come from Australian law firm Playfair. Immigration officials we spoke to informed us, however, that CAPS officials are not contracted to act as lawyers for the asylum seekers and do not provide legal or advocacy services.

Renate Croker, DIBP's senior official at the detention centre, informed us that following the Australian federal election in September 2013, the newly elected Coalition Government removed access to CAPS officials for asylum seekers in the facility. Following discussions between Australian and Papua New Guinea Immigration, CAPS services were reinstated three to four weeks prior to our visit. This indicates that asylum seekers at the facility were left without CAPS officials to assist in compiling evidence of their protection claims, and it is

unclear whether or not any new Refugee Status Determination interviews were carried out in the intervening period.

Many of the detainees interviewed referred to CAPS representatives as lawyers, or expressed confusion about whether or not they were lawyers.

Neither Papua New Guinea nor Australia provides a free legal service to asylum seekers during the Refugee Status Determination process. We were informed by Papua New Guinea and Australian immigration officials that asylum seekers will be provided with phone numbers for lawyers in Papua New Guinea on request and are free to hire private lawyers, though these must be from Papua New Guinea or have a licence to practise law in Papua New Guinea. Any lawyers would need to submit an application for entry one week prior to arrival at the facility.

Immigration staff also told us that detainees can receive mail and that TSA can facilitate confidential phone calls with lawyers if requested. We were also informed that asylum seekers can contact their lawyers on the internet. However, as those in Oscar and Delta Compounds do not have access to the internet, this would be difficult for a large number of the detainees.

When asked, none of the detainees interviewed said that they had been offered access to a lawyer or informed that they had a right to a lawyer during the Refugee Status Determination process. In addition, several detainees informed us that they had experienced barriers to hiring lawyers. For example, one detainee told Amnesty International that he had asked if he could hire a private lawyer and was told that no lawyers are allowed to come to assist with cases.²¹⁰ Another detainee stated that his wife, who is not in the detention centre, had tried to hire a solicitor for him, but he was not allowed to bring the solicitor in.²¹¹

EXPERIENCES IN INTERVIEWS

All detainees Amnesty International spoke to had undergone a brief interview on arrival at Christmas Island, which reportedly explored their asylum claim, their life in their country of origin, details of their family, details of their journey from their country of origin to Christmas Island, and any knowledge of people smugglers they had paid or encountered.

Joseph Nobetau, Papua New Guinea's Acting Chief Migration Officer, informed us that interviews at the facility on Manus Island are intended to build on any interviews carried out on Christmas Island. However, he also stated that interviews at the Manus Island facility could not be cross-checked against those carried out on Christmas Island.²¹²

He stated that the Papua New Guinea Immigration and Citizenship Service Authority have all the necessary staff to carry out the Refugee Status Determination process for the asylum seekers in the Manus Island detention centre. The DIBP official overseeing the Refugee Status Determination process told Amnesty International that there are three Papua New Guinea Refugee Status Determination officials for more than 1,100 detainees.²¹³ There are plans to increase the number of Papua New Guinea immigration officials to 20, though all recruitment of additional Refugee Status Determination officials requires Papua New Guinea Cabinet approval.²¹⁴

Initial interviews are with CAPS officials who assist in compiling the asylum cases. Second interviews are carried out with interpreters provided by DIBP and with an Australian Immigration official present for at least a portion of the interview.

Immigration staff told Amnesty International that there are currently no procedures or methods of assistance in place for asylum seekers who are illiterate or have learning difficulties or disabilities. We were informed by DIBP that this would be developed as they go.²¹⁵

One detainee had an interview with CAPS two months ago. After this, he had an interview with PNG Immigration, where an Australian Immigration official came in for the last 20 minutes of the interview.

He was asked questions about personal information, his family and his work, the nature of his claim to asylum and how he came to Christmas Island. He was also asked about his experiences in transit countries, his contact with people smugglers and the cost of the journey.

He was given no information on the timeframe for his processing and he was not informed that he could have a lawyer.²¹⁶

One of the two asylum seekers we spoke with who had completed all three Refugee Status Determination interviews described his experience, "I have had three interviews. I wrote a request and it took many days for a response. It took 25 days from the CAPS interview to the next interview. An Australian official asked four questions, including why I came here illegally. Other questions were asked by the PNG lady. I asked how long the process will take, and they said they have no idea."²¹⁷

The second asylum seeker was seen by immigration officials within one week after arriving at the facility at the end of July 2013, with all three required interviews completed 10 days later. He believed that his case was of particular interest to the Australian authorities because he had worked, and had family connections, in Iran's intelligence service. He was told he would receive a decision on his status within 28 days of the final interview, but he had not received a decision when Amnesty International spoke with him in mid-November 2013.²¹⁸

RETURNS

Amnesty international interviewed two representatives from the International Organization for Migration (IOM), a non-profit international body that is contracted by governments to facilitate voluntary returns of asylum seekers. In addition to facilitating passports, visas, and other documents to assist with returns, IOM can also provide a package of funds for returnees to use to assist with living costs and the setting up of businesses in their country of origin. These packages total \$3,300, or \$4,000 for those returning to Iraq or Afghanistan.

There were two IOM staff at the detention centre, with plans for three additional staff to arrive by the following week. Since May 2013, IOM staff at the facility have had appointments with 600 asylum seekers and facilitated the return of 132.

The predominant reasons given for return are:

- Illness of a family member or concerns about security of family members
- Conditions within the detention centre, including accommodation, meals and weather. The IOM staff stated that every element affects different asylum seekers differently
- Concerns about post-settlement conditions. Many asylum seekers have talked to locals about life in Papua New Guinea and/or have decided they do not desire a future in Papua New Guinea

“I went to IOM and applied directly. I am sure if I continue to stay here, I will take my own life... Between the pressure they create here for you and the pressures where I come from, it is very intense... I don't want to talk any more. If you want to help me as a human being, talk to IOM. Get my ticket. Get me out of here as soon as you can.”

—R.P., from Iran, 15 November 2013

IOM claimed that the facility was run very differently between 2001 and 2007. When we asked them to explain this, they said IOM prioritises the rights of the individual, focusing on protecting people and on respect and dignity for the person. They declined to comment further.

Several detainees interviewed reported being introduced to IOM staff by DIBP officials immediately after their arrival (see Chapter 3, “Forcible Removal to Papua New Guinea” section). When detainees were asked if any staff at the facility had talked to them about returning, responses varied. Some said that only IOM had talked to them about returning.

Other asylum seekers stated that various staff told them to “go home” or “go back to your country” on a regular basis and said that some staff regularly emphasised that detainees would be held in the facility for a long time.

One detainee, a 28-year-old I.T. student from Darfur, said, “I hear lots of propaganda about going back home. G4S staff, everyone among the staff, talk about this. I and a friend were called into IOM and were told that our names were on a list to request to go back. We had not requested to go back. IOM apologised and said it was a mistake. I was really troubled and I said to IOM that such mistakes could cost me my life.”²¹⁹

Another asylum seeker told us, “Every day, I hear about returning 70 times a day for the last four months. On top of that, every gathering we get told to return or you will stay in PNG.”²²⁰

INABILITY TO RETURN

There are some asylum seekers in the detention centre who cannot be assisted by IOM to return. These include Syrians, Somalis, and Rohingya and other stateless groups.

IOM staff told us that if detainees from these groups can find a third country willing to accept them, they can be assisted to resettle in that country. However, no assistance can be offered by IOM in identifying or arranging resettlement to a third country.

Amnesty International is concerned that, given the limited communications available to the detainees, it would be difficult for an asylum seeker to arrange this resettlement without assistance, leaving these detainees with no options but to be detained indefinitely on Manus Island.

IOM reported mental health impacts resulting from the inability to return, including incidents of self-harm. IOM staff referred these cases to International Health and Medical Services (IHMS) and Survivors of Torture and Trauma Assistance and Rehabilitation Service (STTARS).

One Syrian detainee who was unable to be returned said, "We went to the IOM. We said we want to go back to our country; we want to die there. The IOM responded that unfortunately because we are from Syria, they have instructions that they can't return us there.

"How can you know that? How can you know how dangerous is it for us to be returned, and still keep us locked up? We are genuine. They have to let us out so we can see what has happened with our families. We need to know their fates. We need to know if they still live."²²¹

BARRIERS TO RESETTLEMENT

Amnesty International is concerned that resettlement plans are unclear and very little information about resettlement has been communicated to asylum seekers and to Papua New Guineans, fuelling fears and misconceptions on both parts. In addition, those who are resettled in Papua New Guinea are likely to face a number of barriers to resettlement—including cultural, social, and economic concerns—that will impact on their ability to seek employment, obtain education and health care, exercise their right to freedom of movement, and enjoy access to adequate housing. While it is acknowledged that many Papua New Guineans also face challenges to realising these rights, the *wantok* system offers Papua New Guineans a degree of social support that most foreigners will not enjoy.

For the UN Universal Periodic Review of Papua New Guinea in 2011, a number of human rights concerns were raised. These included abuse (including rape and torture) by the police force, limited access to health services (particularly in rural areas), lack of services, and discrimination against people with disabilities.²²² While there have been a number of recent improvements, including the passing of new laws to address family violence, law and order remains a serious issue in Papua New Guinea, which has high rates of violent crime and an under-resourced police force. This issue is one of four key priorities for Australian aid money directed to Papua New Guinea, along with health, education, and transport infrastructure.²²³

Over the course of Amnesty International's visit to Manus Island, many asylum seekers raised concerns about security for themselves and their families if they are to be resettled in Papua New Guinea, particularly following an October 2013 incident where the police and the military were involved in a fight outside the detention facility (see Chapter 4, "Living Conditions" section).

PAPUAN REFUGEES LIVING IN PAPUA NEW GUINEA

There are an estimated 10,000 people who originally came from Indonesia's Papua region now living in Papua New Guinea, some of whom have lived there for more than 30 years. In November 2013, Amnesty International met some of the representatives of this community in Port Moresby claimed to have left Indonesia to seek asylum for political reasons. Not all Papuans whom Amnesty International spoke with were seeking formal recognition as refugees; some had relocated for other reasons, and others were not seeking Papua New Guinean citizenship.

The primary concern raised by Papuans living in Papua New Guinea was that they do not have official documentation to show a right to reside and work in Papua New Guinea. Some initially had documentation, but it has not been renewed over the years. In addition, they do not have passports, which can hinder their freedom of movement, including their ability to take up scholarships and other opportunities overseas. Some Papuans reported that they are able to vote and access education, health care and work on a similar basis as Papua New Guinea nationals, but others felt not enough had been done to support them with resettlement. People from Papua in Indonesia are frequently referred to as "Melanesian brothers," including by Papua New Guinea Immigration officials. This kinship tie to Papuans from Indonesia has aided the integration policy, as Papuans are widely accepted by the local population.

A number of those who claimed they came to Papua New Guinea to avoid political persecution said they do not feel safe and did not feel that Papua New Guinea could adequately protect them due to its geographical and political connections with Indonesia.

Despite the length of time some Papuans have resided in Papua New Guinea, they still have no formal documentation of their status and remain unable to obtain Papua New Guinea passports, including for children who are born in Papua New Guinea to Papuan parents. There seems to be little political will to address the issue of official documentation for Papuans living in Papua New Guinea, although there has been talk of reducing citizenship fees to make this more accessible for Papuans.²²⁴ Amnesty International was told that this policy has not yet been implemented, and the 10,000 kina (\$5,000) fee is unattainably high for most people.

Amnesty International met with one of seven Papuans who recently travelled to Australia by boat on 24 September 2013. After arriving in the Torres Strait in Australia, he was picked up along with the others by Australian Customs officials. They were given basic medical screening and told that they would be processed as asylum seekers on the Australian mainland. However, after they had boarded a plane and the door had been closed, they were told that they would instead be sent to Papua New Guinea. They arrived in Papua New Guinea with no visas but were allowed entry.

They were met by IOM officials and stayed in a hotel in Port Moresby for a few days. Papua New Guinea police then forcibly removed them and sent them to a camp near the Papua New Guinea-Indonesian border. The man interviewed by Amnesty International said the conditions in the camp were not good and he did not feel safe being so close to Indonesia, so he left and returned to Port Moresby.

The expulsion of the seven Papuans from Australia and their transfer to Papua New Guinea appears to have been in breach of Australia's own immigration laws and policies. Initially, Australia's Minister for Immigration and Border Protection claimed that the Papuans were sent to Papua New Guinea under a 2003 Memorandum of Understanding, but he later admitted that this agreement was not followed.²²⁵ In addition to this, IOM (who ordinarily provide repatriation services for those who wish to return to their country of origin) assisted in the transfer of the seven Papuans to Papua New Guinea, which was not their country of origin.

ASYLUM SEEKERS TRANSFERRED UNDER THE 19 JULY POLICY

Asylum seekers sent to Manus Island expressed a diverse range of views regarding possible resettlement in Papua New Guinea. Some expressed resignation at this proposal but were concerned about delays in processing and the ongoing uncertainty they faced. Others expressed concern and anxiety at the thought of resettling in Papua New Guinea, mostly due to security reasons.²²⁶ Some suggested that if Australia was unwilling to accept refugees, they should have the option to resettle in a third country.

Many were not aware of Papua New Guinea before arriving in Australia and still know very little about the social, economic, cultural, and political issues within Papua New Guinea. Asylum seekers' interaction with Papua New Guinea is limited to what they search on the internet and discussions with and observations of local staff working for G4S, TSA, or Papua New Guinea's immigration service. As a result, perceptions were often negative. People raised concerns about security, crime, high rates of HIV, malaria, and poverty in Papua New Guinea.

When raising security concerns, many asylum seekers referred to the October 2013 fight between members of the defence force and the police outside the detention centre. This incident only heightened their anxiety about being released into the community.

One asylum seeker said, "If they [Australia] want to take us to another country where we can be recognised as refugees, they have to treat us with dignity and respect. Not grab our arms and drag us along the ground to the plane and take us to a country with too many problems. . . . This country has other problems. It's not safe, and it's really poor. People here might do something dangerous. We are in danger here. The seventh most unsafe city in the world is Port Moresby."²²⁷

Generally people felt that they were delivered a harsh message from the Australian Government—a message that DIBP officials repeated to us—and felt that they were being punished for arriving by boat.

One person from Syria said, "Australia does not have the right to transfer us in this way. Even if there is an agreement between Australia and Papua New Guinea, it doesn't give them the right to undervalue my life Maybe if they transfer us to a country with the same standards, the same economy, the same level of security. But I see they have taken us to a country that, even for us, coming from third world countries, is not at this standard. It is one of the least developed countries. There is no safety and no stability. Not even the people here will accept us. There is discrimination here between white and black. There is even religious discrimination."²²⁸

Many asylum seekers appreciated the welcome they received from Papua New Guinea even if they would not seek resettlement here. One asylum seeker said, "As for Papua New Guinea, I don't blame them. They welcomed us. I understand it is a poor country. They have made a deal. I have nothing to say against Papua New Guinea."²²⁹

Nevertheless, a number of people expressed concern that Papua New Guinea has not ratified the Convention against Torture.²³⁰

At the end of our visit, TSA confirmed that DIBP had approved an education model for asylum seekers which included some information on Papua New Guinea, including local customs and basic Tok Pisin language skills.

RESETTLEMENT OF REFUGEES

While local community leaders expressed interest in further information from the centre and about proposed resettlement, lack of information appears to be hindering constructive relationships between asylum seekers and the local community. In addition to this, none of the people who Amnesty International had met with had been informed of how to access the centre by Papua New Guinea or Australian Immigration officials, but it was widely known that access is restricted. This environment and the high level security around the centre reinforces the misleading perception that asylum seekers have committed a crime and are somehow people to be feared.

To address these concerns, Australian and Papua New Guinea authorities should take immediate steps to provide information publicly on resettlement plans and move to a more open facility where there is greater freedom of movement for asylum seekers and access to the centre by local community groups is not restricted.

Amnesty International met with the Mayor of Lorengau, the Hon. Ruth Maudrakamu, and her Executive Assistant, Mr Leo Namuu; the Catholic priest in Manus Province, Father Domenic; and the Imam at Port Moresby Mosque, Imam Mikail Abdul Aziz and his assistants, Kalil Ullah and Tariq, to hear how officials at the Refugee Processing Centre have involved them in discussions about the eventual resettlement of refugees.

Amnesty International also met with Adam Warzel, the Community Liaison Officer for DIBP. Warzel has been at Manus Island for around 10 weeks; this is the first time they have employed someone in this role. Warzel liaises with the community stakeholders at a formal level, including church groups, political leaders at the provincial and local government levels, the hospital, schools, and the media. He said they are not yet at the phase of larger meetings and made a point of saying that Papua New Guinea authorities run the centre and decide who can access the centre. Warzel confirmed that there is a hunger for information outside the centre and that the vacuum of information is not conducive to long term sustainable relations between the centre and the community.

Mayor Maudrakamu expressed great interest and enthusiasm for more interaction with asylum seekers on Manus Island; however, she felt that local officials have been left in the dark since the beginning. She felt that the Papua New Guinea Government should have been in dialogue with local government from the start, particularly in relation to any development assistance for Manus Island. She noted that any expansion of detention facilities or

resettlement of refugees will have a social impact, including an increase in local people seeking work in town, an impact on housing, and essential services and law and order, she noted.

Mayor Maudrakamu felt that Australia is clearly in charge of the detention centre. Her only interaction has been with a DIBP Community Liaison Officer. Initially they discussed bringing asylum seekers to town to play soccer with young locals. In spite of her enthusiasm for this, she said "it was taken off the cards" after their first meeting. Now there are some discussions about local women's organisations interacting with asylum seekers, but this has not taken place. She felt that there was a mixed community reaction to asylum seekers and the centre: some were fearful, but others say why not interact with them if they are going to resettle here. Mayor Maudrakamu expressed concern that if there is no interaction with asylum seekers and the local community, the result will be to create fear and confusion. She was interested in visiting the centre but had not done so yet.

The Rev. Dominic Mwaka heads the Catholic Church in Manus Province. He has met with the DIBP Community Liaison Officer. TSA representatives came to visit him once but have not returned since. He said people on Manus have "a certain fear" and think that asylum seekers are in prison because they have done something wrong. He also felt that the detention centre's efforts to interact with the local community had come late and that proper protocol was not followed. Some Catholic nuns visited Vietnamese asylum seekers and were happy to go there but said there was an atmosphere of being in prison and that they were not free to walk around.

Father Dominic would be willing to engage with asylum seekers if there was some indication that this was wanted by those in detention or his government. The Church could offer spiritual guidance, counselling and services. He believes there needs to be more information given to the people on Manus and in Papua New Guinea about what the agenda is with asylum seekers. He said, "Misinformation leads to uneasiness and reluctance to assist. It makes cooperation difficult and brings fear." He also said that the Australian Government appears to be in charge of the centre from an external point of view.

There is only one mosque in Papua New Guinea, in Port Moresby. In some provinces, there are places of worship for Muslims, but these are often in houses and other buildings. Amnesty International met with Imam Mikail Abdul Aziz and his assistant, Khalil, in Port Moresby. He came to Papua New Guinea from Nigeria 30 years ago. At the time, there were few Muslims in Papua New Guinea, and they faced many challenges. Today there are around 1,300 Muslims living in Port Moresby and around 3,000 in Papua New Guinea as a whole. Khalil said that when he first converted to Islam, his family in Mount Hagen did not understand why he changed. He said, "Sometimes people threw rocks at me, called me a terrorist." He said people are much more accepting now.

Imam Aziz did not appear concerned about the announcement on 15 July 2013 of a parliamentary inquiry to restrict the right of freedom of religion and particularly non-Christian faiths.²³¹ In response, he said that Islam faced many challenges and had survived for a long time.

Amnesty International also spoke to the Chief Migration Officer about resettlement plans.

Resettlement plans for non-Melanesian refugees were described as a “delicate” issue. There were plans to expedite asylum claims for skilled workers and assist them with finding work. They were also exploring employment options for unskilled work.

The longer the lack of information to the local community persists, the more detrimental it will be to long term relationships with the centre and asylum seekers within the centre. The lack of information around future proposals for resettlement is a cause of great anxiety to asylum seekers and the local community.

8. ASYLUM CLAIMS ON THE BASIS OF SEXUAL ORIENTATION

SEXUAL ORIENTATION AND THE LAW IN PAPUA NEW GUINEA

Same-sex acts between men are illegal under Section 210 of the Papua New Guinea Criminal Code (1974). This applies to all penetrative sex between two men, whether consensual or non-consensual, and carries a penalty of up to 14 years imprisonment. Section 212 of the code makes it an offence to engage in "gross indecency between males," which carries a penalty not exceeding three years' imprisonment. This latter offence applies to all non-penetrative sexual acts between two men.²³² In 2011, at the Universal Periodic Review for Papua New Guinea before the UN Human Rights Council, the Papua New Guinea Government said it would not change these laws.

The Constitution of Papua New Guinea protects the right to privacy and equality, and it is possible that if tested, these laws may be invalid due to inconsistency with the bill of rights.²³³ However, the mere existence of these laws could put those who are claiming asylum on the basis of their sexual orientation at risk if they are to be resettled in Papua New Guinea. It also creates concerns for those within the centre, if they are accused of engaging in sexual activity.

While there have been no recently reported cases of prosecutions or convictions under Sections 210 and 212 of the Criminal Code in recent years, the lack of mandatory reporting of court cases means that there may have been unreported convictions.

People who are lesbian, gay, transgender and intersex (LGBTI), sex workers and HIV/AIDS workers in Papua New Guinea are often vulnerable to stigmatisation, harassment, violence and discrimination, including by service providers and the police.²³⁴ During our visit, Amnesty International was informed of a recent case of an LGBTI sex worker who was gang raped by police.

Amnesty International is extremely concerned about the criminalisation of same-sex sexual conduct in Papua New Guinea and calls for the repeal of laws that criminalise sexual and reproductive rights, including Sections 210 and 210 of the Criminal Code. There should also be measures in place to protect lesbian, gay, bisexual, transgender, and intersex people from discrimination and harassment. In addition, asylum seekers who claim asylum on the basis of sexual orientation are at risk in Papua New Guinea, and Amnesty International concludes that their transfer to Papua New Guinea amounts to *refoulement*.

POLICIES AT THE DETENTION CENTRE

Same-sex sexual activity is forbidden at the detention centre and detainees said they were informed of Papua New Guinea laws by service providers.

We were informed by Renate Croker, the senior DIBP official at the detention centre, that if staff within the facility become aware of same-sex sexual activity between the detainees, they

are required under law to report it to the Papua New Guinea police.²³⁵ It is not clear what her statements are based on, as the Criminal Code does not require mandatory reporting.

In addition, it is forbidden to distribute condoms to the detainees. We were told that Papua New Guinea law requires such a ban. However, HIV awareness programs, including condom distribution, have been operating in Papua New Guinea for a number of years, although not without difficulty.

G4S have carried out "safe sex discussions" in one of the compounds. Health staff and detainees informed us that this consisted of the detainees being instructed not to have sex with each other. Renate Croker also informed us that she was unaware of any asylum claims being made on the basis of LGBTI identity.

THE EXPERIENCES OF GAY AND BISEXUAL ASYLUM SEEKERS AT THE DETENTION CENTRE

"We have no support for our emotional problems. I'd like to have a boyfriend, to talk about the future with, to share my feelings with, but I'm too scared. All I want is a couple of hours to be together without attracting attention." —"Alex," November 2013

Amnesty International interviewed several gay asylum seekers at the detention centre. One detainee informed us that he was asked on Christmas Island, prior to transfer, whether there was any reason he should not be sent to Manus Island. He objected on the grounds of his sexual orientation—the basis for his asylum claim—along with a pre-existing health condition. He said, "The staff were sympathetic but told me I was going [to Papua New Guinea] anyway."²³⁶

At the detention centre, he and the other gay men were informed that if they were caught committing a sexual act, the staff were obligated to report the incident to the Papua New Guinea police. He informed us that, after this announcement, many of the gay men became distressed, anxious, and could not sleep.

The detainee informed us that his biggest fear was being identified as gay and being turned in to the Papua New Guinea police. He stated that this is also true of other gay men in the detention centre. There are several problems created as a result.

First, he told us that due to fear of identification and prosecution, some of the men have changed or are considering changing their asylum claim, from persecution on the basis of their sexuality to a political or religious persecution claim. However, as these are false claims, they are less convincing and harder to sustain than their original, genuine claim.

Second, though "most of the men are okay with [homosexuality],"²³⁷ some of the gay men suffer bullying and harassment from other detainees and staff. This has included physical and verbal abuse and attempted molestation. As a result of Papua New Guinea law and the detention centre's policy, the men are afraid to report or complain about this abuse to the

staff. Further, "Alex" explained that some gay men have chosen to return to their home countries with IOM's assistance, despite the risks they face upon return.

9. UNACCOMPANIED AND SEPARATED CHILDREN

The Manus Island Regional Processing Centre housed at least three children under the age of 18 until several days before Amnesty International's visit. In addition, we spoke to at least three other detained asylum seekers who gave their ages as 15 to 17.

The three whom Australia's Department of Immigration and Border Protection (DIBP) found to be children were held in a separate area of the detention centre in conditions that kept them separated from adult asylum seekers but also meant that they were deprived of meaningful opportunities for exercise and recreation and had only each other for company for much of the day. The others, evidently determined by DIBP to be 18 or older, are housed with the general population, in conditions they described, with obvious emotion, as unsuitable and traumatising for persons of their age.

Under international law, children must never be detained with unrelated adults. International standards call on states not to detain unaccompanied or separated children²³⁸ for immigration purposes. More generally, in all actions concerning children, their best interests should be a primary consideration.

Asylum seekers often arrive without documents. They may have fled their homes suddenly. Documentation they once possessed may have been lost, stolen, or damaged beyond recognition during their journey. And the lack of effective birth registration systems in many countries means that many never had identity documents to begin with. Moreover, children may claim to be adults if they believe that being thought to be over the age of majority will result in more rapid processing of their case or yield other perceived benefits.

Because of these factors, age assessment is not always straightforward, and immigration authorities must take particular care to ensure that they do not treat children under the age of 18 as adults. Comprehensive age assessments must take into account factors such as psychological maturity as well as physical appearance and must reflect the inherent uncertainties of any age determination method. To avoid depriving children of the special measures of protection to which they are entitled by virtue of their age and relative lack of maturity, international standards call for the benefit of the doubt to be given in close cases.

The age determination procedures employed by DIBP are plainly inadequate. The rapid turnaround time on Christmas Island—now 48 hours—is insufficient to permit the comprehensive assessments called for by international standards. In addition, in practice DIBP does not appear to apply a benefit-of-the-doubt standard, particularly when questions about an asylum seeker's age are raised for the first time once he is on Manus Island rather than during intake on Christmas Island.

To the contrary, the triage system employed by DIBP in determining who receives an age assessment hearing appears to rely heavily on physical appearance. If an asylum seeker has an age determination hearing on Manus Island, the experts conducting the assessment do so

remotely, limiting their ability to interact with the asylum seeker. Although a DIBP official is also physically present at these hearings, DIBP could not identify any officials on Manus Island who had been trained in the age assessment methods its guidelines call for. Moreover, DIBP officials on Manus Island told us that inconsistencies in children's reports of their age weigh heavily against them, a practice that does not recognise variations in calendars, differing cultural conceptions of adulthood, or possible motivations for claiming to be older.

In consequence, Australia is in violation of its obligations under the Convention on the Rights of the Child to safeguard the rights of children in its custody.

“There were three 17-year-olds who were kept separately from the rest of us. When one turned 18, they brought him to the section. He has a heart condition, and he also gets nightmares. He wakes up screaming.” —J.N., 12 November 2013

THE DETENTION OF CHILDREN ON MANUS ISLAND

The three asylum seekers whom DIBP found to be under the age of 18 were housed for at least several weeks in a separate part of the detention facility. When Amnesty International visited the living quarters several days after they had been moved, we saw several rooms grouped around a covered space with a television and a table with supplies for tea, and a small open-air courtyard. The three had their meals delivered to them, staff told us.

Their relative isolation kept them separated from adult asylum seekers but also meant that they had few opportunities for recreation, exercise, and meaningful interaction with others. No education or specific activities were offered to them, we were told.

B.D. was one of the three children held for a time in separate quarters adjacent to Foxtrot Compound. He was transferred to the general population when DIBP determined he had turned 18, although he said he would not be 18 for another year.

He has had a difficult time adjusting to life in Oscar, where he is now housed. “Because of my age, nobody has befriended me. Sometimes they are putting pressure on me. They are saying things like, ‘What are you doing here? This is not the place for you.’ I can’t eat freely. I can’t go around freely in this situation.

“I can’t sleep. I’m in a room with more than 50 people. It’s a big room. Some people are teasing me, saying mean things to me, telling me that I’m shit. I am so frightened that I stay up all night keeping watch. Sometimes they just punch me or yell at me.

“I came here to seek asylum. I don’t deserve to be in jail. I want to go to school.” He pointed out that he’s not able to go to school while he’s in detention, and he was not sure that he would find a school in Papua New Guinea if he is released.²³⁹

As with B.D., the others we spoke with who said they were under the age of 18 reported that the experience of being housed with adults was traumatic.

H.M., an Afghan asylum seeker who gave his age as 16, told us, "I'm worried every night. I sleep, and I dream of my family. I see their faces in front of me every night I sleep. Here is a very bad place."²⁴⁰

A.G., originally from Somalia, told us that he was 15. "I can't live here with the adults," he said. "Here I can't learn because there's no school here. . . . I went to mental health because of my situation. I am not happy that I can't go to school, and I can't sleep."²⁴¹

As Terry Smith and Laura Brownlees write in a UNICEF-sponsored review of age assessment practices:

For a juvenile to be wrongly identified as an adult can have life-changing consequences when he or she should instead be afforded consideration of his/her maturity and capacity, guarantees of due process and support for reintegration. To be processed as an adult puts the child at increased risk of abuse in a system that makes no consideration for the child's situation, age or maturity.²⁴²

For these reasons, as discussed below, international standards call for care in conducting age assessments, which should employ a holistic approach that includes an examination of psychological maturity, and rules that give the benefit of the doubt to children in close cases.

AGE ASSESSMENT PROCEDURES

A.G., age 15, told Amnesty International:

"I don't know why they put another date of birth on my records here. They told me, 'How are you saying you're under age? You are not under age. Your mentality shows you are not under age.' They estimated my age and gave me this date of birth. When I objected, they said, 'Bring anything to confirm your age.'

"I had an interview with immigration. It was an age determination interview. They determined me as an adult and sent me to adult camp. I told them I'm underage, and they said, 'Bring the confirmation, and we'll change it for you.' This was on Christmas Island."

His sister emailed him a scanned copy of a document showing his date of birth, which he printed out, he said. He wasn't certain what kind of document it was; he described it as "a letter that said my age, stamped by the Somali Government."

"I showed this letter to many people. I said, 'This is my letter. This is my age.' I gave it to immigration. 'This is my proof of age,' I said. I'm waiting now for the answer. I talked to them again last Tuesday. They said I would get an answer that afternoon. All this time I still have no answer."²⁴³

B.D., one of the three unaccompanied children housed for a time in separate quarters on Manus Island, told immigration officials on Christmas Island that his birth date was 4 November 1996, meaning that he had just turned 17 a few weeks before we spoke to him. When he received his centre identification card, however, his date of birth was listed as 31 December 1994, meaning that he had been assigned an age of nearly 19. Other detention centre records listed different dates of birth.

He arrived on Christmas Island on or about 11 September, he told us. "I showed all of my documents to the immigration centre on Christmas Island. Somehow they didn't accept it. They just transferred me here," he said, reporting that he was sent to Manus Island on 2 October.²⁴⁴

Since early September 2013, DIBP is expected to send asylum seekers to the offshore processing centres on Manus Island or Nauru within 48 hours of their arrival on Christmas Island. This time frame requires a rapid turnaround, meaning that DIBP employs a triage system to handle cases in which immigration officials have questions that a person may be a child.

Triage involves looking at physical appearance and assessing demeanour to establish whether there is any doubt about an asylum seeker's age claim, according to DIBP officials who are familiar with the process. If the triage process raises doubts about a person's age claim in the triage process, the asylum seeker has an interview with two age determination officers.

The two age determination officers are both trained in such assessments and have extensive experience interviewing children, the officials told us. In addition to the two officers and an interpreter, an independent observer is also present during the interview. Independent observers are employed by a contracted service provider that supplies these staff for monitoring interviews with children, whether or not they are unaccompanied.

The interview involves questions about background, family, education, their journey, establishing a chronology of their life, and assessing whether the story adds up. The interviewers also assess demeanour, testing whether the asylum seeker's behaviour matches the expectation that children interact with less authority than adults, she explained. No medical testing or intervention is carried out as part of the assessment because of concerns about the ethics and reliability of such methods, the officials reported.

The officials agreed that the process could not determine age with certainty. For this reason, the result of the process is a finding that the asylum seeker is "likely to be a minor" or "likely to be an adult"; officials conducting the assessment do not determine an age or specify an age, they said.

Asked what weight the process gives to birth certificates and other documents, they replied that DIBP gives significant weight to such evidence. Nevertheless, they said that it was rare for asylum seekers to present original documents and difficult for immigration officers to judge the bona fides of scanned or photocopied documents. In any case, they told us, many asylum seekers do not have documentation.

The two officers reach their conclusions independently. If both consider the claimant an adult, the finding is "likely to be an adult." If both consider the claimant to be under age 18, the finding is "likely to be a minor." In cases where the interviewers reach different conclusions, the finding is "likely to be a minor," giving the claimant the benefit of the doubt, they reported.

They told Amnesty International that those who are believed to be children under this process are recorded with the date of birth they provide. If an asylum seeker who is considered "likely

to be a minor" does not give a date of birth, the asylum seeker is assigned a date of birth of 31 December. Those considered adults who do not give a date of birth are assigned a birth date of 31 December of the year that would make them 18. This approach allows them to be considered as young as possible while still over the age of 18, giving as much benefit of the doubt as possible, she explained. DIBP assigns notional dates of birth where none is provided because the systems require a date of birth, they added.

Under previous policies, which brought asylum seekers to the Australian mainland, DIBP staff had more time to establish an individual's age. A review process would then be held with the benefit of a fuller basis for the initial finding.

The review process sits with a director, who considers age determination information and makes a final decision. Reviews have overturned the initial finding, the officials told Amnesty International.²⁴⁵

However well the two-officer assessment interviews work when they are held, in practice several factors substantially reduce the likelihood that children will receive full assessments:

First, the new requirement that all asylum seekers be transferred to offshore facilities within 48 hours means that triage is conducted rapidly. In addition, DIBP's guidelines on interviewing children calls for interviews of no more than two hours, with regular breaks. As a result, when asylum seekers are referred for fuller assessment, their interviews last between 90 minutes to two hours. As the officials conceded, the quick turnaround times mean that the officers who conduct the assessments may not be able to obtain relevant information.

Second, at least on Manus Island, assessments take place without the appointment of an independent guardian to advise the child.

Third, assessments conducted on Manus Island follow procedures that are meaningfully different from the approach taken on Christmas Island. The two age determination officers conduct their assessments remotely, working with officers in the detention centre who may not be trained in methods of age assessment.

Renate Croker, the senior DIBP official in the Manus Island detention centre, described age assessment methods in terms that gave significant weight to physical appearance. In reference to several of the individual cases Amnesty International raised with her, she noted inconsistencies in asylum seekers' accounts of their age as a significant negative factor in the determination that they were adults.²⁴⁶

The DIBP official who oversees Refugee Status Determination proceedings was not familiar with the age determination procedures employed by the department and told us that the relevant expertise was provided by officials in Canberra.²⁴⁷

Neither official actually takes part in age assessment interviews, they each told us, so their unfamiliarity with the procedures outlined in the published guidance and described to us by DIBP officials in Canberra does not necessarily mean that those procedures are not followed, though it is worrisome. More concerning is the fact that neither could point us to any other DIBP staff who have been trained in the procedures described to Amnesty International.

Fourth, it is not clear that those who are found “likely to be an adult” have the opportunity to seek review of that decision, that they are informed that they have such a right, or that they are told how to seek review of an adverse decision. Certainly none of the asylum seekers we interviewed expressed any understanding that they could ask for review of an age assessment. Indeed, several appeared not to understand that an adverse decision had been made in their cases.

Fifth, it is not clear who in the Manus Island detention centre is responsible for referring cases for review, and what criteria they employ for such referrals.

INTERNATIONAL STANDARDS APPLICABLE TO CHILD ASYLUM SEEKERS

“Evidence shows that most experts agree that age assessment is not a determination of chronological age but an educated guess, and can only ever provide an indication of skeletal or developmental maturity from which conclusions about chronological age may be inferred,” Terry Smith and Laura Brownlees write in their review of age assessment practices.²⁴⁸

As the UN Committee on the Rights of the Child urges:

[I]dentification measures including age assessment should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such.²⁴⁹

UNHCR calls on states to take into account both psychological maturity as well as physical appearance when conducting age assessments: “[T]he guiding principle is whether an individual demonstrates an ‘immaturity’ and vulnerability that may require more sensitive treatment.”²⁵⁰ It advises:

Age assessments are conducted in cases when a child’s age is in doubt and need to be part of a comprehensive assessment that takes into account both the physical appearance and the psychological maturity of the individual. It is important that such assessments are conducted in a safe, child- and gender-sensitive manner with due respect for human dignity. The margin of appreciation inherent to all age-assessment methods needs to be applied in such a manner that, in case of uncertainty, the individual will be considered a child. As age is not calculated in the same way universally or given the same degree of importance, caution needs to be exercised in making adverse inferences of credibility where cultural or country standards appear to lower or raise a child’s age. Children need to be given clear information about the purpose and process of the age-assessment procedure in a language they understand. Before an age assessment procedure is carried out, it is important that a qualified independent guardian is appointed to advise the child.²⁵¹

And the Statement of Good Practice of the Separated Children in Europe Programme

recommends that “[a]ge assessment procedures should only be undertaken as a measure of last resort, not as standard or routine practice, where there are grounds for serious doubt and where other approaches, such as interviews and attempts to gather documentary evidence, have failed to establish the individual's age.”²⁵² These standards further recommend:

If an age assessment is thought to be necessary, informed consent must be gained and the procedure should be multi-disciplinary and undertaken by independent professionals with appropriate expertise and familiarity with the child's ethnic and cultural background. They must balance physical, developmental, psychological, environmental and cultural factors. It is important to note that age assessment is not an exact science and a considerable margin of uncertainty will always remain inherent in any procedure. When making an age assessment, individuals whose age is being assessed should be given the benefit of the doubt.²⁵³

Under the principle that the best interests of the child should be a primary consideration in all matters that affect them,²⁵⁴ the committee calls for a guardian to be appointed for all unaccompanied or separated children,²⁵⁵ a protection that should be afforded them during the age assessment process as well as in any other proceedings.

Unaccompanied and separated children should have access to asylum procedures, and states should ensure that those procedures are “handled in an age and gender-sensitive manner.”²⁵⁶ They should have legal representation in such proceedings, in addition to the appointment of a guardian.²⁵⁷

The committee has also stated that “tracing is an essential component of any search for a durable solution and should be prioritized except where the act of tracing, or the way in which the tracing is conducted, would be contrary to the best interest of the child or jeopardize fundamental rights of those being traced. In any case, in conducting tracing activities, no reference should be made to the status of the child as an asylum-seeker or refugee.”²⁵⁸ UNHCR's Executive Committee also found that “every effort should be made to trace the parents or other close relatives of unaccompanied minors.”²⁵⁹

More generally, unaccompanied and separated children are entitled to all of the rights guaranteed under the Convention on the Rights of the Child. For instance:

- Unaccompanied and separated children should have full access to education.²⁶⁰
- Detention of unaccompanied and separated children should not as a rule be detained. When exceptional circumstances justify the detention of a particular child, it should be a measure of last resort and for the shortest appropriate period of time.²⁶¹
- In such exceptional circumstances, children who are detained must be separated from adults.²⁶²
- Because unaccompanied and separated children are temporarily or permanently deprived of their family environment, they are entitled to special protection and assistance by the state.²⁶³

10. BREACHES OF INTERNATIONAL LAW

Asylum seekers detained on Manus Island are exposed to the risk of *refoulement*—the forcible return of individuals to countries where they face a real risk of persecution or other serious harm. They have been denied their right to present asylum claims on arrival in Australia and to have those claims heard in Australia. They have not been afforded a full right to seek asylum, nor have they enjoyed their right to a fair process in the determination of their asylum claims. They have been subjected to arbitrary detention in Papua New Guinea. Many have suffered inhumane treatment in detention.

Australia continues to bear responsibility for safeguarding the human rights of the asylum seekers it transfers to Papua New Guinea. It is responsible for these and other human rights violations suffered by detained asylum seekers.

Papua Guinea is responsible on a joint basis with Australia for human rights violations resulting from the Regional Resettlement Arrangement and taking place on its territory.

AUSTRALIA'S EXTRATERRITORIAL OBLIGATIONS

The transfer of asylum seekers to Papua New Guinean territory does not relieve Australia of its international legal obligations with respect to those individuals. The legal test for whether Australia's international obligations extend beyond its borders is whether it is exercising "effective power and control" in the circumstances. Indeed, Australia has accepted that its human rights obligations extend outside Australian territory—including to asylum seekers—when it exercises effective control.²⁶⁴

There is little question that individuals arrested in Australian territory, transferred to Papua New Guinea, and detained under the Regional Resettlement Arrangement are under Australia's effective power and control. Even if there were some question as to whether Australia's involvement meets the test of effective power and control, its engagement certainly establishes that it has at least joint responsibility, together with Papua New Guinea, for human rights violations committed in the handling of asylum claims and the detention of asylum seekers in Papua New Guinea.

FACTORS THAT ESTABLISH AUSTRALIA'S CONTINUING INTERNATIONAL RESPONSIBILITY FOR THOSE TRANSFERRED UNDER THE REGIONAL RESETTLEMENT ARRANGEMENT

Australian authorities are intimately involved in every aspect of the arrest, transfer, and detention of asylum seekers under the Regional Resettlement Arrangement with Papua New Guinea. Indeed, but for their repeated assertions that the Manus Island Regional Processing Centre was a Papua New Guinean facility, most observers would regard it as an Australian-run facility that happened to be based on Papua New Guinean soil.

Australia's involvement in the transfer of asylum seekers to Papua New Guinea and their detention on Manus Island establishes Australia's effective power and control or, at a minimum, engages Australia's responsibility on a joint basis with Papua New Guinea.

The following factors are among those that establish Australia's continuing international responsibility for those transferred under the Regional Resettlement Arrangement with Papua New Guinea:

- Under the current domestic framework, individuals who are considered "unauthorised maritime arrivals" are intercepted and apprehended by Australian authorities, usually in Australian territorial waters. Their boats are escorted or towed to the Australian territory of Christmas Island or to the Australian mainland. Alternatively, when a boat is unable to make that journey, the occupants may be taken on board an Australian Government vessel for transport to Christmas Island or the mainland.
- The asylum seekers are detained on Australian territory, usually on Christmas Island but occasionally in facilities on the mainland, for several days or longer.
- Private security guards acting under the direction of the Australian Department of Immigration and Border Protection (DIBP) effect the transfers to Papua New Guinea.
- DIBP officials are present on Christmas Island or elsewhere in Australian territory at the commencement of transfers and are present when asylum seekers reach Manus Island.
- The aircraft in which individuals are transferred to Papua New Guinea originate in Australia, usually land in Darwin for refuelling if they have departed from Christmas Island, and fly through Australian airspace.
- DIBP has contracted with private security guards, health providers, and other service providers to work in the Manus Island Regional Processing Centre, and DIBP managers posted to the centre oversee the delivery of services under those contracts.
- Indeed, Australia bears all the costs of implementing the Regional Resettlement Arrangement with Papua New Guinea.²⁶⁵
- In addition, DIBP co-chairs the committee responsible for overseeing the implementation of the MOU.²⁶⁶
- Australia has also committed to providing support to any refugees who are resettled in Papua New Guinea, and to assisting Papua New Guinea in effecting the transfer of individuals who have agreed to return to another country.²⁶⁷

EFFECTIVE POWER AND CONTROL

A state cannot avoid its human rights obligations toward an individual simply by removing that individual from its territory. As the UNHCR, the Human Rights Committee (which monitors compliance with the ICCPR), the Committee against Torture (which monitors compliance with the Convention against Torture), and other international bodies have confirmed, the state's human rights obligations toward an individual attach as long as that

person is subject to the state's effective power and control. An advisory opinion prepared for UNHCR described the test in this way:

In determining whether a State's human rights obligations with respect to a particular person are engaged, the decisive criterion is not whether that person is on the State's national territory, or within a territory which is *de jure* under the sovereign control of the State, but rather whether or not he or she is subject to that State's effective authority and control.²⁶⁸

The "effective control" standard has been accepted across a wide range of jurisdictions. Reviewing the jurisprudence of the Supreme Court of Canada, the Supreme Court of the United Kingdom, the European Court of Human Rights, the Inter-American Commission on Human Rights, the International Court of Justice, the Committee against Torture, and the Human Rights Committee, Professor Oona Hathaway found "a remarkable degree of coherence and consistency" with respect to their respective approaches to the extraterritorial application of human rights treaty obligations. The virtual consensus is that the question is whether the government has effective control over the territory, person, or situation in question.²⁶⁹

The interception of vessels is an exercise of power and control. As the European Court of Human Rights has concluded, from the moment a state establishes effective control over a boat, all persons on it are within the state's jurisdiction, and that state has the responsibility to secure and protect their human rights.²⁷⁰

In relation to the Regional Resettlement Arrangement, UNHCR concluded in May 2013: "Under international law any excision of territory for a specific domestic purpose has no bearing on the obligation of a country to abide by its international treaty obligations which apply to all of its territory. This includes the 1951 Refugee Convention, to which Australia is a party"²⁷¹

JOINT RESPONSIBILITY

Even if Australia's involvement does not reach the level of effective control, its engagement in the day-to-day operations of the Regional Resettlement Arrangement is certainly sufficient to establish that it is jointly responsible, together with Papua New Guinea, for safeguarding the human rights of those who are transferred.

As the Parliamentary Joint Committee on Human Rights noted, regardless of whether effective control is established, "the level of Australia's involvement gives rise to Australia's responsibility under international law in relation to internationally wrongful acts that may be involved in the treatment of asylum seekers in [Papua New Guinea.] Such responsibilities arise irrespective of whether Papua New Guinea . . . might also be jointly responsible for the same acts."²⁷²

UNHCR has also affirmed that "[t]he terms under which transfers have taken place and will continue to take place as well as the significant *de facto* control exercised by Australian officials and contractors on Manus Island reinforce UNHCR's view that legal responsibility under international law for the care and protection of all transferees from Australia to PNG remains with both contracting States equally."²⁷³ In its most recent monitoring report of

conditions in the Manus Island detention centre, UNHCR concluded:

[T]he physical transfer of asylum-seekers from Australia to PNG, as an arrangement agreed by two 1951 Refugee Convention States, does not extinguish the legal responsibility of Australia for the protection of the asylum-seekers affected by the transfer arrangements. In short, both Australia and PNG have shared and joint responsibility to ensure that the treatment of all transferred asylum-seekers is fully compatible with their respective obligations under the 1951 Refugee Convention and other applicable international instruments.²⁷⁴

PAPUA NEW GUINEA'S OBLIGATIONS UNDER INTERNATIONAL LAW

Papua New Guinea is obligated under customary international law and as a party to the Refugee Convention and its Protocol to respect the principle of *non-refoulement*. It must also ensure the right to seek asylum and guarantee procedural protections in the determination of asylum claims, as required by international refugee law. It must respect the principle of avoidance of statelessness, a requirement of customary international law. It must refrain from arbitrary detention and ill-treatment, as required by the International Covenant on Civil and Political Rights (ICCPR) and customary international law. Under the ICCPR and international detention standards, it must also respect the obligation to treat detainees humanely and ensure safeguards for those who are deprived of their liberty.

VIOLATIONS OF THE PRINCIPLE OF *NON-REFOULEMENT*

The Regional Resettlement Arrangement does not respect the principle of *non-refoulement*. The Australian practice of sending "unauthorised maritime arrivals" to Papua New Guinea with only the barest initial assessment of their claims for asylum carries with it an inherent risk of direct *refoulement*. Furthermore, if the refugee claim procedures that take place on Manus Island are inadequate or faulty, individuals could be returned to countries where they have a well-founded fear of persecution or other ill-treatment. Additionally, the inadequate conditions and prolonged and arbitrary detention experienced by asylum seekers on Manus Island may compel them to return to their country of origin or to another country where their rights as refugees will not be respected, resulting in constructive *refoulement*.

THE PROHIBITION ON *REFOULEMENT*

The principle of *non-refoulement* prohibits states from transferring anyone, directly or indirectly, to a place where she or he would have a well-founded fear of persecution or would face a risk of torture or other cruel, inhuman or degrading treatment or punishment. Australia is obliged to respect the principle of *non-refoulement* through its obligations under the Refugee Convention,²⁷⁵ the Convention against Torture,²⁷⁶ the International Covenant on Civil and Political Rights (ICCPR),²⁷⁷ and customary international law.²⁷⁸

As the International Commission of Jurists has observed, the protection afforded by the principle of *non-refoulement's* against threats to life or freedom "is also broader than, and includes, the refugee definition. It has, indeed, been read as encompassing circumstances of generalised violence which pose a threat to the life or freedom of the person but which do not give rise to persecution."²⁷⁹ As a result, the principle of *non-refoulement* applies to risks of violations of the prohibition of torture and cruel, inhuman or degrading treatment or punishment, the right to life, and flagrant denial of fair trial and arbitrary detention. The

principle of *non-refoulement* also applies to situations where individuals would face violations of economic, social, and cultural rights that separately and/or cumulatively amount to persecution.

Concerns about Australia's observance of the principle of *non-refoulement* are not new. In 2009, the UN Human Rights Committee, which monitors compliance with the ICCPR, urged the state to "take urgent and adequate measures, including legislative measures, to ensure that nobody is returned to a country where there are substantial grounds to believe that they are at risk of being arbitrarily deprived of their life or being tortured or subjected to other cruel, inhuman or degrading treatment or punishment."²⁸⁰ In 2008, the UN Committee against Torture, the body charged with monitoring compliance with the Convention against Torture, expressed its concern that the prohibition of *non-refoulement* is not enshrined in Australia's legislation, which may result in practices contrary to the convention.²⁸¹

FACTORS THAT RAISE THE POSSIBILITY OF DIRECT OR CONSTRUCTIVE *REFOULEMENT*

Numerous aspects of the Regional Resettlement Arrangement combine to create a serious risk of direct or constructive *refoulement*. Chief among these factors are the following:

- The deeply humiliating treatment most asylum seekers were subjected to upon their transfer to Papua New Guinea, which has coloured their further experiences of detention on Manus Island.
- For some detained asylum seekers, the lack of humane conditions of detention—conditions that, for those housed in P Dorm, amount to prohibited ill-treatment.
- The profound uncertainty detained asylum seekers are left in about the nature and timing of the Refugee Status Determination process, coupled with the pressures of living in a closed detention centre with limited opportunity to contact family and friends or otherwise lead an ordinary life.
- Limited opportunities for employment and for continuing their education for those whose claims to refugee status are accepted.
- More generally, the unlikelihood of real integration into Papua New Guinean society for those whose claims are accepted.
- Fears about the dangers of life in Papua New Guinea, reinforced on a daily basis by detention centre practices.
- Actual or apparent pressure to accept return to home countries.
- Because Papua New Guinea criminalises same-sex sexual conduct between consenting adults, gay, bisexual, and transgender asylum seekers held on Manus Island may be deterred from pursuing their refugee claims or may face persecution in Papua New Guinea if they are eventually resettled there.

In the context of the designation of the Independent State of Papua New Guinea as a regional processing country under the Migration Act 1958, the UN High Commissioner for

Refugees expressed his concern to the Australian Immigration Minister that the risk of *refoulement* persists in spite of written undertakings: "Papua New Guinea has land and sea borders that are extensive, porous and often unregulated. The level of training and understanding by border officials (who are usually not immigration officers) of asylum and of Papua New Guinea's protection responsibilities is, at best, limited."²⁸²

Furthermore, the High Commissioner also referred to the "level of human insecurity and extremely high cost of living in Port Moresby [which] make life very difficult for asylum seekers and refugees and render local integration almost impossible."²⁸³ As UNHCR explained in its most recent monitoring report:

From UNHCR's first-hand experience in supporting Melanesian and non-Melanesian refugees for nearly 30 years, it is clear that sustainable integration of non-Melanesian refugees in the socio-economic and cultural life of PNG will raise formidable challenges and protection. Indeed, UNHCR has been obliged to remove 'non-Melanesian' refugees for resettlement to third countries, including Australia, precisely because of severe limitations of finding safe and effective durable solutions in PNG itself.²⁸⁴

The report goes on to note that "currently, non-Melanesian refugees in PNG are unable to access State education and employment. Even if these barriers are overcome, in relation to finding employment, the PNG 'wantok' system of kinship and affiliation is not likely to provide any real measure of security for non-Melanesian refugees from outside the region."²⁸⁵

As the UNHCR monitoring report also observes, "there is likely to be little community understanding of Islam and few places of worship available to Muslims" in the predominantly Christian country.²⁸⁶

Likewise, the Parliamentary Joint Committee on Human Rights has noted that it "shares the concerns raised by numerous stakeholders that the regional processing arrangements do not ensure that Australia's non-refoulement obligations will be respected."²⁸⁷

VIOLATIONS OF THE RIGHT TO SEEK ASYLUM

Individuals seeking asylum—including those who enter a territory irregularly—are not criminals. They are exercising a human right proclaimed in the Universal Declaration of Human Rights.²⁸⁸ Under the Refugee Convention, asylum seekers may not be punished on the basis of their manner of arrival.²⁸⁹

Contrary to international law, the Regional Resettlement Arrangement with Papua New Guinea treats as suspect all asylum seekers who reach Australia by boat and penalises them for their manner of arrival. Asylum seekers are prevented from making refugee claims in Australia. Instead, they are forcibly removed to Papua New Guinea in a manner that many find deeply humiliating. They are left in uncertainty about when their claims will be heard, what opportunities they will have to present their case, what assistance, if any, they will be afforded in preparing their claims, when they will receive decisions on their claims, and what their fate will be if their claims are recognised. Many have been held for months in conditions that, taken as a whole, amount to prohibited ill-treatment. Some are subjected to ill-

treatment from the outset, particularly detainees held in P Dorm and those with serious medical conditions whose health needs are not met.

Furthermore, as Australia's Parliamentary Joint Committee on Human Rights recognized, this regime—which differentiates between asylum seekers on the basis of their mode and date of arrival—is inconsistent with the right to freedom from discrimination,²⁹⁰ a basic principle of international human rights law that is protected in numerous international instruments, including the Universal Declaration of Human Rights.²⁹¹

The right to seek asylum is not a guarantee that asylum will be granted, but it includes a right to have the claim heard and to receive other procedural protections in the course of the hearing.²⁹² As discussed in the following section, there are serious reasons for concluding that these procedural protections are not afforded to asylum seekers who are transferred to Papua New Guinea.

VIOLATIONS OF THE RIGHT TO A FAIR PROCESS IN THE DETERMINATION OF ASYLUM CLAIMS

Most asylum seekers detained on Manus Island have not yet been afforded a hearing on their claim to refugee status. They have not been informed of what the Refugee Status Determination processes are. Indeed, very few asylum seekers have been able to present claims, and even fewer have had hearings on those claims.

REQUIRED PROCEDURAL PROTECTIONS

Asylum seekers have a right to a hearing to determine whether they meet the criteria for refugee status. They have the right to appeal the initial decision.²⁹³ As the Inter-American Commission has noted, there is a need for predictable procedures and consistency in decision making at every stage of the process.²⁹⁴

As a critical procedural safeguard, asylum seekers must be informed of what the Refugee Status Determination processes are. UNHCR observes:

In particular, asylum-seekers have the right to be informed orally and 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 with a legal adviser. The communication of these rights is essential in order for asylum-seekers to be able to exercise their rights, as rights are rendered ineffective if an asylum-seeker is unable to act on them due to a failure of being informed of what those rights are.²⁹⁵

States must adopt particular measures to ensure that asylum procedures provide appropriate protection to children.²⁹⁶

States should also take appropriate measures to identify and register refugees with disabilities, identify the protection and assistance needs of refugees and asylum seekers with disabilities and provide them access to relevant services, and ensure that Refugee Status Determination procedures are accessible to and designed to enable persons with disabilities to represent their claims fully and fairly with the necessary support.²⁹⁷

THE INADEQUACY OF PAPUA NEW GUINEA'S REFUGEE DETERMINATION PROCESS

At the end of October 2013, only 160 of over 1,000 detained asylum seekers had been able to submit asylum applications, and only 55 had received Refugee Status Determination interviews since November 2012, UNHCR found.²⁹⁸ Shockingly, no decision had yet been reached in any case in the 11 months since Australia and Papua New Guinea agreed to the initial version of the Regional Resettlement Arrangement.²⁹⁹

In 2012, in the context of Australia's designation of Papua New Guinea as a regional processing country under the Migration Act 1958, the UN High Commissioner for Refugees described Papua New Guinea's lack of legal framework and capacity:

[T]here is, at present, no effective national legal or regulatory framework to address refugee issues. Importantly, there are currently no laws or procedures in place in the country for the determination of refugee status under the Refugee Convention. [...] There are currently no immigration officers with the experience, skill or expertise to undertake Refugee Status Determination under the Refugee Convention.³⁰⁰

To compound the challenges, as UNHCR has observed, "based on their countries of origin, the asylum-seekers at the RPC are likely to present very complex cases requiring a high level of skill, experience and expertise by decision makers. UNHCR is very concerned that the current and projected RSD officers from ICSA will have great difficulty in producing timely, accurate and fair assessments, unless DIBP decision makers are available to ensure adequate mentoring and quality assurance for the foreseeable future."³⁰¹

In 2013, Papua New Guinea passed the Migration (Amendment) Regulation No. 1 (Regulation), which provides the country's Immigration Minister with guidance regarding the Refugee Status Determination of noncitizens transferred under the Regional Resettlement Arrangement. UNHCR has expressed concern that this regulation's provisions are inconsistent with Papua New Guinea's obligations under the Refugee Convention. For instance, UNHCR judged that the Regulation:

- (i) reinforces differential treatment of asylum-seekers depending on manner of arrival, which could amount to discrimination;
- (ii) incorrectly applies the limited exclusion provisions of the 1951 Refugee Convention to ordinary criminal matters more properly dealt with under PNG criminal law, which could lead to wrongful denial of refugee status for certain categories of persons;
- (iii) incorrectly allows for exclusion on the basis of 'a demeanour incompatible with a person of good character and standing' in relation to behaviour carried out at or after arrival in PNG; and
- (iv) does not provide for adequate procedural safeguards, such as independent merits review of first instance decisions.³⁰²

Similarly, in July 2013, the Law Council of Australia expressed its concern that the system under development in Papua New Guinea may not ensure procedural fairness or access to justice. The Law Council also drew attention to the lack of an appeal mechanism for asylum seekers whose claims are refused, and affirmed its intention to “urgently seek advice from the Prime Minister and the Attorney-General on how the arrangement complies with the rule of law and Australia’s international obligations.”³⁰³

Grave concerns have been raised in Australian courts about similar arrangements with other countries. In 2011 the Australian High Court ruled that Australia’s attempted “refugee swap” with Malaysia violated the requirements of both international law and domestic law to provide asylum seekers with effective procedures for assessing their refugee claims, provide protection for asylum seekers pending determination of their refugee status, and provide protection for persons granted refugee status pending their voluntary return to their country of origin or resettlement in another country.³⁰⁴

THE RIGHT TO SEEK ASYLUM IN THE COUNTRY OF ARRIVAL

As a fundamental right, the right to seek and enjoy asylum must be interpreted broadly, in light of its purpose and in good faith.³⁰⁵ Where an individual is subject to the effective power and control of a state, he or she has the right to choose—but is not obliged—to seek asylum in that state.

States must not seek to avoid their international responsibilities by concluding private transfer agreements with other states. Permitting states to transfer asylum seekers to third countries for the processing of their refugee claims could undermine the entire international refugee protection system.

As UNHCR has observed in a recent guidance note on transfer arrangements, “[t]he primary responsibility to provide protection rests with the State where asylum is sought” and “[t]he intentions of an asylum-seekers . . . ought to be taken into account to the extent possible.”³⁰⁶

More generally, UNHCR’s Executive Committee has concluded that “[i]t is the humanitarian obligation of all coastal States to allow vessels in distress to seek haven in their waters and to grant asylum, or at least temporary refuge, to persons on board wishing to seek asylum.”³⁰⁷ It calls on states to ensure that interception measures not result in the denial of access to international protection for asylum seekers and refugees, nor should interception result in those in need of international protection being returned, directly or indirectly, to the frontiers of territories where their life or freedom would be threatened on account of a Convention ground, or where the person has other grounds for protection based on international law.³⁰⁸ In cases of large-scale influx, “asylum-seekers rescued at sea should always be admitted, at least on a temporary basis. States should assist in facilitating their disembarkation by acting in accordance with the principles of international solidarity and burden-sharing in granting resettlement opportunities.”³⁰⁹

Along similar lines, the Facilitation Committee of the International Maritime Organisation’s principles aimed at fostering the respect of human rights and refugee law in rescue operations³¹⁰ stress that “[i]f a person rescued expresses a wish to apply for asylum, great consideration must be given to the security of the asylum seeker. When communicating this information, it should therefore not be shared with his or her country of origin or any other

country in which he or she may face threat.”³¹¹ The Facilitation Committee has specifically noted “the need to avoid disembarkation in territories where the lives and freedoms of those alleging a well-founded fear of persecution would be threatened is a consideration in the case of asylum-seekers and refugees recovered at sea.”³¹²

INADEQUATE SAFEGUARDS FOR STATELESS PERSONS

Approximately 80 of the asylum seekers detained on Manus Island are stateless. There appears to be no specific process for handling the claims of stateless asylum seekers and no recognition of the fact that they are entitled to specific protections, independent of any claim to refugee status, because they are stateless. Indeed, without any country to which they can return, it is possible that some stateless persons will be held indefinitely if their asylum claims are not successful.

A stateless person is someone who is not considered as a national by any state.³¹³ This definition of a stateless person and the principle of avoidance of statelessness are norms of customary international law.³¹⁴ As the International Commission of Jurists observes, “while the definition seems to require verification that an individual lacks the nationality of any State, in fact it is only required that such checks be made as regards States with which the individual enjoys a relevant link (in particular birth on the territory, descent, marriage or habitual residence). Failing these, he or she should be recognised as a stateless person.”³¹⁵

In addition to this formal definition, international authorities recognise the concept of *de facto* statelessness, created by circumstances in which an individual is unable or for valid reasons unwilling to obtain the protection of his or her country.³¹⁶ The International Commission of Jurists notes, for example, that “prolonged non-cooperation by the country of nationality in the identification procedure or other proceedings can . . . be considered a refusal of protection, thus making the migrant *de facto* stateless. Similarly, this condition may also be satisfied in a situation where a country is unable to exercise diplomatic or consular protection.”³¹⁷ The Final Act of the Convention on Reduction of Statelessness of 1961 recommended that “persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality.”³¹⁸

UNHCR “recommends that the Governments of PNG and Australia clarify how the question of statelessness persons will be dealt with and resolved. In the meantime, Australia’s obligations to such persons in accordance with the Statelessness Conventions remain extant.”³¹⁹

ARBITRARY DETENTION

Without exception, all asylum seekers are held in the Manus Island detention centre with no definite date for their release. Indeed, there appears to be no framework in Papua New Guinea law for the detention of asylum seekers and no clear means for those detained to seek review of the lawfulness of their detention.³²⁰

In fact, Papua New Guinea’s Constitution protects the liberty of the person and provides for lawful detention only in specific circumstances.³²¹ Immigration detention is only permissible for the purpose of preventing the unlawful entry of a person into Papua New Guinea, or for the purpose of effecting the expulsion, extradition or other lawful removal of a person from Papua New Guinea, or the taking of proceedings for any of those purposes.³²² Those who

arrive at the Manus Island detention centre under the MOU with Australia are not unlawful entrants to Papua New Guinea and are unlawfully detained under national law. They have not been afforded safeguards against arbitrary detention, including their right to be informed about their rights under national law, their right to have access to legal advice, and their right to be promptly brought before a court. In fact, Henao Lawyers from Port Moresby attempted to visit detainees in February 2013 pursuant to a court order for the purpose of providing legal advice and were denied entry to the detention centre.³²³

In the absence of an individualised assessment of the need for detention, including an assessment of whether less restrictive measures would be sufficient, and the lack of an opportunity to seek review of the decision to detain, asylum seekers who are transferred to Manus Island are held in arbitrary detention. Arbitrary detention is prohibited by several international instruments, including the ICCPR³²⁴ and the Universal Declaration of Human Rights.³²⁵

As the UN Human Rights Committee has affirmed in several cases, including in cases brought against Australia, prolonged mandatory detention of asylum seekers may violate the guarantee against arbitrary detention in Article 9 of the ICCPR.³²⁶ Similarly, the UN Working Group on Arbitrary Detention regards deprivation of liberty as arbitrary, among other cases, “[w]hen asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy.”³²⁷

UNHCR has declared that the detention of asylum seekers is “inherently undesirable” and “should only be resorted to in cases of necessity. The detention of asylum seekers who come ‘directly’ in an irregular manner should, therefore, not be automatic, or unduly prolonged.”³²⁸

UNHCR has expanded on the legal basis for this principle, observing:

According to Article 14 of the *Universal Declaration of Human Rights*, the right to seek and enjoy asylum is recognised as a basic human right. In exercising this right asylum seekers are often forced to arrive at, or enter, a territory illegally. However the position of asylum seekers differs fundamentally from that of ordinary immigrants in that they may not be in a position to comply with the legal formalities for entry. This element, as well as the fact that asylum seekers have often had traumatic experiences, should be taken into account in determining any restrictions on freedom of movement based on illegal entry or presence.³²⁹

In its 2008 report on Australia, the United Nations Committee against Torture noted that detaining people who irregularly entered a State party’s territory should be only used as a measure of last resort, and that a reasonable time limit for detention should be set. Further, it urged Australia to “consider abolishing its policy of mandatory detention of those entering irregularly the State’s territory,” and recommended that “non-custodial measures and alternatives to detention be made available to persons in immigration detention.”³³⁰

As Amnesty International observed in its 2009 report on immigration detention:

To establish that detention is necessary and proportionate in the particular circumstances of each case, consideration must be given to 'less invasive means of achieving the same ends.'³³¹ Thus, states must consider the use of alternative, less restrictive measures, such as reporting requirements, sureties or other conditions, taking into account the particular circumstances of the individual. These less restrictive means must always be considered first. Detention is only permissible where it has been found that less restrictive means would be ineffective; it should be used only as a last resort, where it is demonstrably necessary and proportionate in the individual circumstances to achieve one of three legitimate objectives: to prevent absconding, to verify identity or to ensure compliance with a removal order.³³²

With respect to the detention of asylum seekers on Manus Island, UNHCR has concluded:

The current PNG policy and practice of detaining all asylum-seekers at the closed RPC, on a mandatory and open-ended basis without an assessment as to the necessity and proportionality of the purpose of such detention in the individual case, and without being brought promptly before a judicial or other independent authority for review of that decision amounts, in UNHCR's assessment, to arbitrary detention that is inconsistent with international law.³³³

VIOLATIONS OF THE PROHIBITION ON ILL-TREATMENT AND THE OBLIGATION TO TREAT ALL PERSONS IN DETENTION HUMANELY

The International Covenant on Civil and Political Rights obliges Australia and Papua New Guinea to ensure that all persons in detention are treated humanely, and to respect the ban on torture and all forms of ill-treatment.³³⁴

The International Covenant on Economic, Social and Cultural Rights requires Australia to take steps to achieve the full realization of the right to the enjoyment of the highest attainable standard of physical and mental health, and protects the right to work and to an adequate standard of living.³³⁵

In addition, Papua New Guinea's Bill of Rights specifically protects against torture, cruelty and inhuman treatment.³³⁶ The courts have held that even though a prisoner is not entitled to the normal privileges of a free person, he or she has a right to be treated in a way which is not cruel, inhuman or oppressive.³³⁷ This requirement has been applied to a variety of forms of custody and not just prisons.³³⁸

Australia's Parliamentary Joint Committee on Human Rights considered the Regional Resettlement Arrangement inconsistent with Australia's legal obligations and expressed its concern at the absence of legally binding requirements relating to minimum conditions of detention:

The committee recognises that detention necessarily involves constraints on the full enjoyment of rights by detainees. However, in view of the material presented to the committee by government and others and even accepting that conditions may have improved since the first transfers of asylum seekers, the committee does not consider that the government has demonstrated that the

conditions are consistent with the provisions of the ICCPR, the ICESCR, the CRC, and the CAT. The cumulative effect of the arrangements, which is likely to have a significant impact on the physical and mental health of asylum seekers, contrary to the right to health in article 12 of the ICESCR and the prohibition against degrading treatment in article 7 of the ICCPR.³³⁹

In UNHCR's assessment, "Despite some positive developments, UNHCR is of the view, overall, that conditions at the RPC remain harsh and unsatisfactory, particularly when viewed against the mandatory detention environment, slowness of processing and lack of clarity and certainty surrounding the process as a whole."³⁴⁰

Amnesty International concludes that conditions in the Manus Island detention centre violates these standards. In particular, all detainees held in P Dorm—a long, single-room, hangar-like building in which 112 men sleep in 56 bunk beds spaced no more than 20 centimetres apart, with only a few fans to provide relief from the stifling heat—are subjected to ill-treatment, prohibited under the Convention against Torture and the ICCPR. In addition, detainees who are held for protracted periods in other parts of the detention centre are also subjected to ill-treatment because of the combination of poor conditions of detention, the open-ended nature of that detention, and the uncertainty about their fates that they are forced to endure.

11. CONCLUSION AND RECOMMENDATIONS

Offshore detention is contrary to the object and purpose of the Refugee Convention and international human rights law. It has led to a host of human rights violations, including arbitrary detention, a serious risk of *refoulement*, the denial of the right to seek asylum, the denial of required procedural protections, and violations of the prohibition on ill-treatment.

Australia has effective power and control at all times over the asylum seekers transferred to Papua New Guinea under the Regional Resettlement Arrangement. It is therefore responsible for all human rights violations committed in the course of implementing the Regional Resettlement Arrangement, whether they take place in Australia, in Papua New Guinea, or in transit.

For its part, Papua New Guinea is responsible for human rights violations committed on its territory. Accordingly, it is responsible on a joint basis with Australia for the human rights violations committed in the Manus Island detention centre.

Amnesty International calls on the Australian Government to cancel its offshore processing policies with immediate effect. The transfer of asylum seekers to Papua New Guinea must end. Asylum seekers who reach Australian territory, including Australia's territorial waters, must have access to asylum procedures in Australia. Those who are otherwise under Australia's jurisdiction or effective power and control must also have access to asylum procedures in Australia.

As interim measures until the Australian government cancels its offshore processing policies and transfers all asylum seekers held in the Manus Island detention centre to Australian territory, Amnesty International calls on both Governments to take measures to ensure that conditions of detention on Manus Island comply with international standards.

RECOMMENDATIONS TO THE AUSTRALIAN GOVERNMENT

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

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

On the transfer of asylum seekers to Papua New Guinea

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

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

- Take immediate steps to ensure that contracted security guards do not employ force during the transfer of asylum seekers from Australia to Papua New Guinea unless strictly necessary for the maintenance of security and order, or when personal safety is threatened.
- Take immediate steps to ensure that security guards do not engage in other practices that are degrading or humiliating in effecting the transfer of asylum seekers.
- Ensure that any further transfer of asylum seekers to Manus Island does not exceed the detention centre's capacity or lead to detention in inhumane conditions.
- Ensure adequate time for rigorous age assessment processes, including contact with home country and the gathering of relevant documentation and other information, prior to any transfer.
- Ensure adequate time for proper health checks prior to transfer, including appropriate assessment, diagnoses, and treatment of any illnesses, injuries or disabilities and that asylum seekers are not transferred to a facility where these health needs cannot be addressed or under circumstances in which their health would be adversely affected.

On the promotion of refugee protection in transit countries

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

On conditions of detention in the Manus Island Regional Processing Centre

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

Accommodations

- Use the newly constructed compound in the Manus Island detention centre to relieve crowding in the other compounds, and redesign other compounds to ensure that detainees are not held inhumanely. In particular:
 - Cease the use of P Dorm as housing.
 - Reduce the number of asylum seekers held in Oscar compound, for example by reconfiguring it to create several compounds, with sufficient latrines and other services for each.

Clothing

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

Protection from the elements

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

Access to drinking water

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

Hygiene

- Ensure that all latrines are adequately supplied with hand soap at all times and replenished as often as necessary.
- Ensure that all detainees receive an adequate supply of personal care and hygiene items, including soap, shampoo, washing powder, and shaving implements.
- Take immediate steps to ensure appropriate drainage so that no standing water remains in latrines or other areas.

Meals

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

Access to information and contact with the outside world

- Ensure that all detained asylum seekers are able to communicate freely and in full confidentiality with visitors and that they have adequate opportunity to communicate with the outside world, subject to reasonable conditions to ensure security and good order.
- Ensure that all detained asylum seekers are able to exercise their right to access to legal counsel, interpreters, doctors, refugee and migrant assisting organizations, members of their families, friends, religious and social assistance and the UNHCR, and that this right is not impeded in practice.
- Ensure that all detained asylum seekers are afforded regular and sufficient periods to make telephone calls at times that are appropriate for the part of the world they are calling. One group of detainees should not receive less access to telephones than other groups by virtue, for example, of the compound to which they are assigned.
- Ensure that all detained asylum seekers are given regular and sufficient periods of time to send and receive email and to receive information. No group of detainees should receive less computer time than any other group due to factors such as the compound to which they are assigned.
- Ensure that there are no limits on the number of letters that can be sent and received by detainees. Legal mail should not be opened or otherwise read by detention centre staff.
- Allow any detained asylum seeker to have a radio and allow regular opportunities to watch television.

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

Activities

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

Protection from harassment and violence

- Take appropriate steps to ensure that particular individuals or groups are not subjected to bullying by other detainees.
- Take appropriate steps to ensure that detention centre staff never engage in insulting or demeaning behaviour, including the use of "Boat IDs" in place of names to refer to detained asylum seekers.
- Ensure that harassment or acts of violence are addressed immediately and in a manner that is proportionate to the circumstances.
- Ensure that reports or suspicion of sexual assault are taken seriously, with swift and appropriate protection provided to the alleged or suspected victim. A common protocol for responding to such reports should be expeditiously developed by detention centre staff and service providers.
- Ensure that consensual sexual conduct between detainees is never a basis for discipline or referral to police.

Health, including mental health

- Ensure that any request for medical attention is handled with appropriate seriousness and concern.
- Take steps to remove unnecessary obstacles to timely attendance at medical appointments, including by ensuring that clocks are placed in public areas of each compound and by providing that detainees may be escorted to appointments on foot rather than waiting for vehicles to become available to transport them.
- Ensure that detention centre administrators heed the advice of medical professionals to refer asylum seekers for further tests or treatment in Port Moresby or in Australia, as required, and that such referrals take place as expeditiously as possible.
- Ensure that detainees with disabilities are afforded reasonable accommodations to enable them to go about their daily lives with dignity, individual autonomy, and independence.
- Ensure that detainees have access to appropriate malaria prevention measures consistent with World Health Organization standards.
- Ensure that asylum seekers are informed of the results of any medical tests that are

performed in the detention centre or prior to transfer from Christmas Island.

RECOMMENDATIONS TO THE GOVERNMENT OF PAPUA NEW GUINEA

On the strengthening of Refugee Status Determination procedures

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

On the integration of refugees

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

On legislative reform

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

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

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

- Ensure that each decision to detain is automatically and regularly reviewed as to its lawfulness, necessity, and appropriateness by means of a prompt, oral hearing by a court or similar competent, independent, and impartial body, accompanied by the appropriate provision of legal aid.
- Seek financial and technical assistance from donor countries, UNHCR, and other UN agencies to enable it to carry out these steps.
- Ensure free and full access for independent agencies such as churches and community interest groups; local, national, and international governmental organisations; and non-governmental organisations, and permit them to monitor detention conditions.

On compliance with treaty obligations and customary international law

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

RECOMMENDATIONS TO BOTH GOVERNMENTS

On the obligation to refrain from *refoulement*

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

On the protection of populations at risk

- Take appropriate steps to protect stateless asylum seekers, including the following:
 - Issue stateless persons identity and travel documents.
 - Ensure that stateless persons are not expelled except on grounds of national security or public order, and in those limited circumstances only if expulsion does not violate the principle of *non-refoulement*.
 - Facilitate the assimilation and naturalisation of stateless persons, including by expediting naturalisation proceedings and reducing the costs of those proceedings as much as possible.
- Ensure that no policy or practice discriminates against asylum seekers on the basis of sexual orientation and gender identity, and take other measures to ensure the full enjoyment of all human rights by people of all sexual orientations and gender identities.
- Ensure the full and equal enjoyment of all human rights by all persons with disabilities and promote respect for their inherent dignity, in line with the principles set forth in the Convention on the Rights of Persons with Disabilities.
- Ensure that all child asylum seekers, including unaccompanied and separated children, receive the special care and protection to which they are entitled under the Convention on the Rights of the Child.

On decisions to detain and the length of detention

- Implement a presumption against the detention of asylum seekers whose claims are being processed. Alternative non-custodial measures, such as reporting requirements, should always be considered before resorting to detention. If detention is resorted to, it should be in strict compliance with relevant international refugee law and standards.
- Ensure that if detention is resorted to, the decision to detain is based on an individualised assessment including the personal history, and the risk of absconding, of the individual. Detention will only be lawful when the authorities can demonstrate in each individual case that alternatives will not be effective and that it is necessary and proportionate to achieve a legitimate objective.

- Provide for a statutory maximum duration for the detention of asylum seekers which should be reasonable in its length. Once this period has expired the individual should automatically be released.
- Prohibit the detention of vulnerable people who have sought asylum, including torture survivors, pregnant women, those with serious medical conditions, the mentally ill, people with disabilities, and the elderly.
- Prohibit the detention of unaccompanied children.

On challenges to the lawfulness of detention

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

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

- Work toward a genuine regional solution that protects the rights of asylum seekers and refugees in accordance with international human rights and refugee law.
- Take all appropriate measures to protect the human rights of all individuals in their territory and jurisdiction, including by ending persecution and discrimination on the basis of race, religion, nationality, membership of particular social groups or political opinion, and providing protection to all individuals from other human rights abuses.
- Review, amend, or repeal security and criminal laws that may be used to penalise the peaceful exercise of the rights to freedom of expression, association and assembly.
- Take steps to end impunity by ensuring that all allegations of human rights violations and abuses are investigated in a timely, independent, and transparent manner and that

perpetrators are brought to justice in accordance with international law and standards without recourse to the death penalty.

- Ensure that all returning asylum seekers and internally displaced persons receive humanitarian assistance to provide for their immediate needs, including housing, food, water, health care, and education.
- Ensure that internally displaced persons are able to choose to return voluntarily and in safety or resettle voluntarily in another part of the country and facilitate the assistance of independent humanitarian organisations and UN agencies to this end.
- Work with national and international aid agencies to provide livelihood opportunities for the displaced and returnees and to encourage sustainable reintegration.
- Protect from arbitrary arrest or detention returning nationals who may have sought asylum or residency elsewhere or who return with escorts or documentation issued by a third country.

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

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

- Ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the Convention against Torture, and the Statelessness Conventions, if they have not already done so.

ENDNOTES

¹ Convention Relating to the Status of Refugees, opened for signature 28 July 1954, 189 UNTS 137 (entered into force 22 April 1954), art. 1(A)(2); Protocol Relating to the Status of Refugees, 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967). Australia ratified the Refugee Convention on 22 January 1954 and acceded to the Protocol on 13 December 1973. Papua New Guinea acceded to both the Refugee Convention and Protocol on 17 July 1986, with reservations to the convention. On 20 August 2013, these reservations were partly withdrawn in respect to refugees transferred to Papua New Guinea by Australia but would remain in effect for all other persons. See "Papua New Guinea: Partial Withdrawal of Reservation," Ref. C.N.558.2013.TREATIES-V.2 (Depository Notification), <http://treaties.un.org/doc/Publication/CN/2013/CN.558.2013-Eng.pdf> (viewed 7 December 2013).

² See *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* [the UNHCR Handbook] (Geneva: UNHCR, September 1979).

³ See, for example, UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan," U.N. Doc. HCR/EG/AFG/10/04 (17 December 2010), pp. 33-34 & n.240.

⁴ Regional Resettlement Arrangement Between Australia and Papua New Guinea, 19 July 2013 [hereinafter "Regional Resettlement Arrangement"], <http://www.dfat.gov.au/issues/rra-png.pdf> (viewed 7 August 2013).

⁵ "Regional Resettlement Arrangement (RSA) and Australian Aid to Papua New Guinea," 26 July 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprspub%2F2626173%22> (viewed 6 December 2013).

⁶ See UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 23 to 25 October 2013*, ¶¶ 7-9.

⁷ UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 23 to 25 October 2013* (26 November 2013), p. 1 <http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Manus%20Island%20PNG%2023-25%20October%202013.pdf> (viewed 27 November 2013).

⁸ See Migration Amendment (Excision from Migration Zone) Act 2001, No. 127, 2001 (assented to 27 September 2001), <http://www.comlaw.gov.au/Details/C2004A00887> (viewed 10 December 2013).

⁹ Refugee Council of Australia, "Statistics on Asylum Seekers Arriving in Australia," February 2013, <http://www.refugeecouncil.org.au/r/stat-as.php> (viewed 7 December 2013).

¹⁰ Janet Phillips and Harriet Spinks, *Boat Arrivals in Australia Since 1976*, Research Paper (Canberra: Parliamentary Library, updated 23 July 2013), http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/5P1X6/upload_binary/5P1X6.pdf;fileType=application/pdf#search=%22boat%20arrivals%20in%20Australia%20since%22 (viewed 7 December 2013).

¹¹ "UN Refugee Agency Hails Closure of Australia's Pacific Offshore Detention Centre," UN News Centre, 8 February 2008, http://www.un.org/apps/news/story.asp?NewsID=25554&Cr=australia&Cr1#.UqLQI_QW3E8 (viewed 7 December 2013).

¹² Refugee Council of Australia, "Statistics on Asylum Seekers Arriving in Australia."

¹³ *Plaintiff M61/2010E v Commonwealth of Australia and Ors; Plaintiff M69 of 2010 v Commonwealth of Australia and Ors*, [2010] HCA 41.

¹⁴ *Plaintiff M106 of 2011 by his litigation guardian, Plaintiff M70/2011 v Minister for Immigration and Citizenship*, [2011] HCA 32.

¹⁵ Phillips and Spinks, *Boat Arrivals in Australia Since 1976*.

¹⁶ Refugee Council of Australia, "Statistics on Asylum Seekers Arriving in Australia."

¹⁷ On the ambiguities in the policy, see Bianca Hall and Michael Gordon, "No-Advantage Policy Springs a Few Leaks," *The Sydney Morning Herald*, 1 June 2013, <http://www.smh.com.au/federal-politics/political-news/noadvantage-policy-springs-a-few-leaks-20130531-2nh61.html> (viewed 10 December 2013).

¹⁸ Australian Department of Immigration and Border Protection, *Asylum Trends Australia 2012-13 – Annual Publication* (2013).

¹⁹ Daniel Flitton, "Nauru Denies Rudd Claim Refugees Will Be Resettled on Island," *The Sydney Morning Herald*, 5 August 2013, <http://www.smh.com.au/federal-politics/federal-election-2013/nauru-denies-rudd-claim-refugees-will-be-resettled-on-island-20130804-2r7q5.html> (viewed 6 December 2013).

²⁰ Migration Amendment (Temporary Protection Visas) Regulation 2013, Select Legislative Instrument No. 234, F2013L01811 (17 October 2013, disallowed in full 2 December 2013) (Australia), <http://www.comlaw.gov.au/Details/F2013L01811> (viewed 6 December 2013).

²¹ Notification of disallowance – Migration Amendment (Temporary Protection Visas) Regulation 2013 – SLI 234 of 2013, *Gazette* C2013G01820 (4 December 2013) (Australia) <http://www.comlaw.gov.au/Details/C2013G01820> (viewed 6 December 2013).

²² "Government Acts Swiftly to Deny People Smugglers' Promise of Permanent Visas," Press Release, Scott Morrison MP, Minister for Immigration and Border Protection, 4 December 2013, <http://www.minister.immi.gov.au/search/cache.cgi?collection=immirss&doc=2013%2Fsm210040.xml> (viewed 5 December 2013).

²³ Amnesty International interview with K.G., Manus Island Regional Processing Centre, 14 November 2013.

²⁴ Amnesty International interview with H.A., Manus Island Regional Processing Centre, 15 November 2013.

²⁵ Amnesty International interview with Y.M., Manus Island Regional Processing Centre, 13 November 2013.

²⁶ Amnesty International interview with H.S., Manus Island Regional Processing Centre, 12 November 2013.

²⁷ Amnesty International telephone interview with UNHCR, November 2013.

²⁸ Amnesty International interview with H.A., Manus Island Regional Processing Centre, 15 November 2013.

²⁹ Amnesty International interview with T.K., Manus Island Regional Processing Centre, 12 November 2013.

³⁰ Amnesty International interview with O.M., Manus Island Regional Processing Centre, 14 November 2013.

³¹ Amnesty International interview with Noor Kobir, Manus Island Regional Processing Centre, 14 November 2013.

³² Violence between Buddhist and Muslim communities broke out in Rakhine state in June 2012 following the murder and alleged rape of a Buddhist Rakhine woman by three Muslim men and the subsequent revenge killing of 10 Muslim men. Attacks continued in the following months and led to considerable deaths and injuries as well as widespread destruction and displacement. While both communities were affected, the Muslim community, mainly the Rohingya minority, were the primary victims. The Rohingya have faced

discrimination for generations in Myanmar. They are not recognized as an official ethnic group and as such many continue to be discriminatorily denied equal access to citizenship. Their rights to study, work, travel, marry, practise their religion, and receive health services are restricted to various degrees.

³³ Three days of violence in Meikhtila in Mandalay Region in March 2013 resulted in at least 40 deaths, widespread property damage, including the destruction of mosques, and the displacement of over 12,000 residents. Violence in Thandwe Township in Rakhine state in September 2013 affected at least five villages and led to the death of at least five Muslims, the destruction of some 70 houses and two mosques destroyed, and the displacement of at least 400 individuals. Violence erupted in Kantbalu in Sagaing Region in August 2013, resulting in the destruction of dozens of Muslim homes and shops. Three days of violence in Lashio in Shan state in May 2013 resulted in the death of one Muslim man as well as the destruction of several Muslim homes and shops, a mosque, and a Muslim orphanage. Violence in Okkan town in Yangon region in April 2013 led to the death of one Muslim man and the destruction of several houses in and around the town.

³⁴ Thein Sein, the Myanmar President has also referred to “unruly instigators, taking advantage of the disingenuousness of the public, tried to spread the riots to other parts of the country”. See, for example, “Burma’s President Thein Sein Warns ‘Extremists,’” BBC News, 28 March 2013, <http://www.bbc.co.uk/news/world-asia-21968040> (viewed 8 December 2013).

³⁵ See “Myanmar must continue making gains in democratic transition – UN chief,” UN News Centre, 26 September 2013, <http://www.un.org/apps/news/story.asp/html/realfile/story.asp?NewsID=46059&Cr=myanmar&Cr1=#.UmEry9lqai4> (viewed 18 October 2013).

³⁶ See “Thousands of Burmese remain homeless after communal clashes,” IRIN, 20 September 2013, <http://www.irinnews.org/report/98795/thousands-of-burmese-remain-homeless-after-communal-clashes> (viewed 18 October 2013).

³⁷ Many of those displaced do not have sustained access to food, medical care, sanitation facilities, and other humanitarian necessities. Government-imposed restrictions on the freedom of movement, particularly for the Rohingya communities in Rakhine state, continue to hamper access to humanitarian assistance, including medical services.

³⁸ See Amnesty International, *Locked Away: Sri Lanka's Security Detainees* (London: Amnesty International, March 2012).

³⁹ See Amnesty International, *Sri Lanka's Assault on Dissent* (London: Amnesty International, 2013).

⁴⁰ See Human Rights Watch, *“We Will Teach You a Lesson”: Sexual Violence Against Tamils by Sri Lankan Security Forces* (New York: Human Rights Watch, 2013).

⁴¹ On the situation in Afghanistan, see, for example, United Nations Assistance Mission in Afghanistan, *Mid-Year Report 2013: Protection of Civilians in Armed Conflict* (Kabul: UNAMA, July 2013). On the ongoing armed conflicts in Sudan's Blue Nile State, Darfur, and Southern Kordofan State, see, for example, Amnesty International, *“We Had No Time to Bury Them”: War Crimes in Sudan's Blue Nile State* (London: Amnesty International, 2013); Amnesty International, *Sudan: Civilians Caught in Unending Crisis in Southern Kordofan* (London: Amnesty International, 2013); Human Rights Watch, “Satellite Images Confirm Villages Destroyed,” 18 June 2013, <http://www.hrw.org/news/2013/06/18/sudan-satellite-images-confirm-villages-destroyed> (viewed 30 November 2013) (on destruction of villages in Central Darfur in April 2013). On the conflict in Syria and the resulting refugee crisis, see, for example, Amnesty International, *Growing Restrictions, Tough Conditions: The Plight of Those Fleeing Syria to Jordan* (London: Amnesty International, 2013); Amnesty International, “We

Cannot Live Here Anymore": Refugees from Syria in Egypt (London: Amnesty International, 2013); Amnesty International, *Syria: Civilians in al-Baydah and Baniyas Exposed to Summary Executions* (London: Amnesty International, 2013); Amnesty International, *Turkey: National Authorities and the International Community Must Act in Partnership to Meet the Needs of Syrian Refugees* (London: Amnesty International, 2013); Amnesty International, *Syria: Government Bombs Rain on Civilians* (London: Amnesty International, 2013); Amnesty International, *Syria: Summary Killings and Other Abuses by Armed Opposition Groups* (London: Amnesty International, 2013); Human Rights Watch, *"You Can Still See Their Blood": Executions, Indiscriminate Shootings, and Hostage Taking by Opposition Forces in Latakia Countryside* (New York: Human Rights Watch, 2013); Human Rights Watch, *"No One's Left": Summary Executions by Syrian Forces in al-Bayda and Baniyas* (New York: Human Rights Watch, 2013); Human Rights Watch, *Attacks on Ghouta: Analysis of Alleged Use of Chemical Weapons in Syria* (New York: Human Rights Watch, 2013); Human Rights Watch, *Death from the Skies: Deliberate and Indiscriminate Air Strikes on Civilians* (New York: Human Rights Watch, 2013). On the armed conflict in Pakistan's Tribal Areas, see, for example, Amnesty International, *"Will I Be Next?": US Drone Strikes in Pakistan* (London: Amnesty International, 2013). On the situation in other countries in the Middle East, see generally Amnesty International, *Year of Rebellion: The State of Human Rights in the Middle East and North Africa* (London: Amnesty International, 2012).

⁴² Amnesty International interview with H.H., Manus Island Regional Processing Centre, 12 November 2013.

⁴³ Amnesty International interview with A.M., Manus Island Regional Processing Centre, 12 November 2013.

⁴⁴ Amnesty International interview with M.H., Manus Island Regional Processing Centre, 12 November 2013.

⁴⁵ Amnesty International interview with M.M., Manus Island Regional Processing Centre, 14 November 2013.

⁴⁶ Amnesty International interview with B.D., Manus Island Regional Processing Centre, 15 November 2013.

⁴⁷ Amnesty International interview with D.M., Manus Island Regional Processing Centre, 15 November 2013.

⁴⁸ See Human Rights Watch, "Lebanon: Take New Approach to Protect Tripoli," 28 May 2013, <http://www.hrw.org/news/2013/05/28/lebanon-take-new-approach-protect-tripoli-0> (viewed 30 November 2013). See also "Deadly Gun Battles Erupt in Lebanon's Tripoli," Al Jazeera, 30 November 2013, <http://www.aljazeera.com/news/middleeast/2013/11/deadly-gun-battles-erupt-lebanon-tripoli-20131130132134726621.html> (viewed 1 December 2013).

⁴⁹ Amnesty International interview with A.G., Manus Island Regional Processing Centre, 15 November 2013.

⁵⁰ Amnesty International interview with D.A., Manus Island Regional Processing Centre, 14 November 2013.

⁵¹ Amnesty International interview with Mohammed Yahia, Manus Island Regional Processing Centre, 12 November 2013.

⁵² Amnesty International interview with D.A., Manus Island Regional Processing Centre, 14 November 2013.

⁵³ Amnesty International interview with D.A., Manus Island Regional Processing Centre, 14 November 2013. For background on the xenophobic violence in South Africa, see Amnesty International, *"Talk for Us Please": Limited Options Facing Individuals Displaced by Xenophobic Violence* (London: Amnesty International, 2008).

⁵⁴ Amnesty International interview with W.K., Manus Island Regional Processing Centre, 12 November 2013.

⁵⁵ Amnesty International interview with H.K., Manus Island Regional Processing Centre, 15 November 2013.

⁵⁶ Amnesty International interview with J.K., Manus Island Regional Processing Centre, 15 November 2013.

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⁵⁸ See, for example, Amnesty International, *Myanmar: The Rohingya Minority: Fundamental Rights Denied* (London: Amnesty International, 2004); "Briefing: Myanmar's Rohingya Crisis," IRIN, 16 November 2012, <http://www.irinnews.org/report/96801/briefing-myanmar-s-rohingya-crisis> (viewed 30 November 2013).

⁵⁹ Amnesty International interview with T., 15 November 2013.

⁶⁰ See Amnesty International, *"We Are Ordered to Crush You": Expanding Repression of Dissent in Iran* (London: Amnesty International, 2012), pp. 47-53, <http://www.amnesty.org/en/library/asset/MDE13/002/2012/en/2b228705-dfba-4408-a04b-8ab887988881/mde130022012en.pdf> (viewed 30 November 2013); Amnesty International, "Iran: Submission to the UN Committee on Economic, Social and Cultural Rights," March 2012, pp. 4-5, 9, <http://www.amnesty.org/en/library/asset/MDE13/019/2012/en/340c32a7-46c1-4573-b023-cbd8a93c8ebd/mde130192012en.pdf> (viewed 30 November 2013).

⁶¹ Amnesty International interview with G.A., Manus Island Regional Processing Centre, 13 November 2013.

⁶² Amnesty International interview with J.M., Manus Island Regional Processing Centre, 13 November 2013.

⁶³ Amnesty International interview with R.M., Manus Island Regional Processing Centre, 13 November 2013.

⁶⁴ See, for example, Amnesty International, *Making Love a Crime: Criminalisation of Same-Sex Conduct in Sub-Saharan Africa* (London: Amnesty International, 2013); Human Rights Watch, *"We Are a Buried Generation": Discrimination and Violence Against Sexual Minorities in Iran* (New York: Human Rights Watch, 2010).

⁶⁵ Amnesty International interview with Mahdi Sawari, Manus Island Regional Processing Centre, 15 November 2013.

⁶⁶ Statelessness is also created by discriminatory nationality laws. Some countries recognise a child as their national only if the mother is a national; other countries recognise the child as their national only if the father is a national. In some countries, women may lose their nationality if they marry foreigners and are then unable to pass their nationality on to their children. In addition, a person may be *de facto* stateless if, for example, his or her country of nationality refuses to issue a passport or denies other benefits of citizenship.

⁶⁷ Amnesty International interview with A.A., Manus Island Regional Processing Centre, 15 November 2013.

⁶⁸ Amnesty International interview with S.H., Manus Island Regional Processing Centre, 15 November 2013.

⁶⁹ Amnesty International interview with Mohammed Yahia, Manus Island Regional Processing Centre, 12 November 2013.

⁷⁰ Amnesty International interview with M.K., Manus Island Regional Processing Centre, 12 November 2013.

⁷¹ Because asylum seekers typically made reference to sums in U.S. dollars, all dollar amounts are in U.S. dollars unless otherwise noted. One U.S. dollar was equal to approximately 1.09 Australian dollars at the time of writing.

⁷² Amnesty International interview with D.A., Manus Island Regional Processing Centre, 14 November 2013.

⁷³ Amnesty International interview with H.S., Manus Island Regional Processing Centre, 12 November 2013.

⁷⁴ Amnesty International interview with S.M., Manus Island Regional Processing Centre, 12 November 2013.

⁷⁵ Amnesty International interview with B.D., Manus Island Regional Processing Centre, 15 November 2013.

⁷⁶ Amnesty International interview with M.M., Manus Island Regional Processing Centre, 14 November 2013.

⁷⁷ Amnesty International interview with H.S., Manus Island Regional Processing Centre, 12 November 2013.

⁷⁸ Amnesty International interview with H.S., Manus Island Regional Processing Centre, 12 November 2013.

⁷⁹ Amnesty International interview with A.H., Manus Island Regional Processing Centre, 13 November 2013.

⁸⁰ Amnesty International interview with A.H., Manus Island Regional Processing Centre, 13 November 2013.

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⁸² Amnesty International interview with V.M., Manus Island Regional Processing Centre, 14 November 2013.

⁸³ Amnesty International interview with O.M., Manus Island Regional Processing Centre, 14 November 2013.

⁸⁴ See Amnesty International, "Open Letter on the Treatment of Rohingya Asylum-Seekers and Migrants," 10 June 2013, <http://www.amnesty.org/en/library/asset/ASA39/002/2013/en/db59dc4c-bcf6-4ad9-9e7c-26dc6688b176/asa390022013en.pdf> (viewed 8 December 2013).

⁸⁵ See Human Rights Watch, *Ad Hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers* (New York: Human Rights Watch, 2012).

⁸⁶ See Amnesty International, *Abused and Abandoned: Refugees Denied Rights in Malaysia* (London: Amnesty International, 2010); Amnesty International, *Trapped: The Exploitation of Migrant Workers in Malaysia* (London: Amnesty International, 2010), pp.82-83.

⁸⁷ Amnesty International interview with R.A., Manus Island Regional Processing Centre, 12 November 2013.

⁸⁸ Human Rights Watch, *Barely Surviving: Detention, Abuse, and Neglect of Migrant Children in Indonesia* (New York: Human Rights Watch, 2013), p. 62.

⁸⁹ *Id.*, p. 63.

⁹⁰ *Id.*, pp. 67-70.

⁹¹ Amnesty International interview with R.A., Manus Island Regional Processing Centre, 12 November 2013.

⁹² Amnesty International interview with G.A., Manus Island Regional Processing Centre, 13 November 2013.

⁹³ Amnesty International interview with A.G., Manus Island Regional Processing Centre, 15 November 2013.

⁹⁴ Amnesty International interview with B.D., Manus Island Regional Processing Centre, 15 November 2013.

⁹⁵ Amnesty International interview with S.A., Manus Island Regional Processing Centre, 12 November 2013.

⁹⁶ Amnesty International interview with A.G., Manus Island Regional Processing Centre, 15 November 2013.

⁹⁷ Amnesty International interview with B.D., Manus Island Regional Processing Centre, 15 November 2013.

⁹⁸ Amnesty International interview with D.A., Manus Island Regional Processing Centre, 14 November 2013.

⁹⁹ Amnesty International interview with J.M., Manus Island Regional Processing Centre, 13 November 2013.

¹⁰⁰ Amnesty International interview with A.H., Manus Island Regional Processing Centre, 13 November 2013.

¹⁰¹ Amnesty International interview with G.A., Manus Island Regional Processing Centre, 13 November 2013.

¹⁰² Amnesty International interview with J.M., Manus Island Regional Processing Centre, 13 November 2013.

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- ¹⁰³ Amnesty International interview with H.H., Manus Island Regional Processing Centre, 12 November 2013.
- ¹⁰⁴ Amnesty International interview with G.A., Manus Island Regional Processing Centre, 13 November 2013.
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- ¹⁰⁷ Amnesty International interview with D.A., Manus Island Regional Processing Centre, 14 November 2013.
- ¹⁰⁸ Amnesty International interview with S.Z., Manus Island Regional Processing Centre, 14 November 2013.
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- ¹²⁸ Amnesty International interview with Renate Croker, DIBP, Manus Island Regional Processing Centre, 16 November 2013.
- ¹²⁹ Amnesty International interview with Renate Croker, DIBP, Manus Island Regional Processing Centre, 16 November 2013.
- ¹³⁰ Amnesty International interview with D.A., Manus Island Regional Processing Centre, 14 November 2013

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- ¹³² Amnesty International interview with Renate Croker, DIBP, Manus Island Regional Processing Centre, 16 November 2013.
- ¹³³ Amnesty International interview with A.H., Manus Island Regional Processing Centre, 13 November 2013.
- ¹³⁴ The Standard Minimum Rules for the Treatment of Prisoners provide that “[d]rinking water shall be available to every prisoner whenever he needs it.” Standard Minimum Rules for the Treatment of Prisoners, Rule 20(2). The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment routinely examines whether clean drinking water is accessible in sufficient quantity when inspecting conditions in places of detention. See, for example, “Ghana’s Criminal Justice and Mental Health Practices Need Critical Attention to Be More Humane,” 14 November 2013 (summarising preliminary findings of his visit to Ghana), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13990&LangID=E> (viewed 7 December 2013); Human Rights Council, 22d sess., agenda item 3, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, Addendum: Mission to Tajikistan*, UN Doc. A/HRC/22/53/Add.1 (2013), ¶ 69; Human Rights Council, 19th sess., agenda item 3, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, Addendum: Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2 (2012), ¶¶ 60, 64; Human Rights Council, 19th sess., agenda item 3, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, Addendum: Mission to Tunisia*, UN Doc. A/HRC/19/61/Add.1 (2012), ¶¶ 42, 55.
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- ¹⁶⁰ Amnesty International interview, Manus Island Regional Processing Centre, 14 November 2013.
- ¹⁶¹ Amnesty International telephone interview, 30 November 2013.
- ¹⁶² See, for example, Amnesty International, *Papua New Guinea: Violence Against Women, Sorcery-Related Killings and Forced Evictions: Amnesty International Submission to the UN Universal Period Review, May 2011* (London: Amnesty International, 2011); Amnesty International, *Violence Against Women: Not Inevitable, Never Acceptable!* (London: Amnesty International, 2006); Human Rights Watch, *Still Making Their Own Rules: Ongoing Impunity for Police Beatings, Rape, and Torture in Papua New Guinea* (New York: Human Rights Watch, 2006); Human Rights Watch, *"Making Their Own Rules": Police Beatings, Rape, and Torture of Children in Papua New Guinea* (New York: Human Rights Watch, 2005).
- ¹⁶³ See generally Amnesty International, *Undermining Rights: Forced Evictions and Police Brutality Around the Porgera Gold Mine, Papua New Guinea* (London: Amnesty International, 2010);
- ¹⁶⁴ Amnesty International interviews, 11-14 November 2013.
- ¹⁶⁵ Amnesty International interview with Muslim Qais Nacr, Manus Island Regional Processing Centre, 15 November 2013.
- ¹⁶⁶ Amnesty International interview, Manus Island Regional Processing Centre, November 2013.
- ¹⁶⁷ Amnesty International interview, Lorengau, Manus Island, 16 November 2013.
- ¹⁶⁸ Amnesty International interview, Manus Island Regional Processing Centre, 14 November 2013.

¹⁶⁹ Amnesty International interview with A.H., Manus Island Regional Processing Centre, 13 November 2013. Amnesty International observed that Dettol is available for purchase at the canteen in Foxtrot through a points system, but many asylum seekers said that the canteen had only started selling more than cigarettes and phone cards since we arrived.

¹⁷⁰ Amnesty International interview, Lorengau, 16 November 2013.

¹⁷¹ Amnesty International interview with P.K., Manus Island Regional Processing Centre, November 2013.

¹⁷² Amnesty International interviews with K.G., Manus Island Regional Processing Centre, 14 November 2013; Amnesty International interview with T.K., Manus Island Regional Processing Centre, 12 November 2013.

¹⁷³ Amnesty International interview with K.G., Manus Island Regional Processing Centre, 14 November 2013.

¹⁷⁴ Amnesty International interview with R.A., Manus Island Regional Processing Centre, 12 November 2013.

¹⁷⁵ Amnesty International interview with Mahdi Sawari, Manus Island Regional Processing Centre, 15 November 2013.

¹⁷⁶ Amnesty International interview with A.H., Manus Island Regional Processing Centre, 13 November 2013; Amnesty International interview with A.A., Manus Island Regional Processing Centre, 15 November 2013.

¹⁷⁷ Amnesty International interview with S.H., Manus Island Regional Processing Centre, 15 November 2013.

¹⁷⁸ Amnesty International interview, Manus Island Regional Processing Centre, 14 November 2013.

¹⁷⁹ Amnesty International interview, Manus Island Regional Processing Centre, 15 November 2013.

¹⁸⁰ Amnesty International interview with R.P., Manus Island Regional Processing Centre, 15 November 2013.

¹⁸¹ Amnesty International interview with J.K., Manus Island Regional Processing Centre, 15 November 2013.

¹⁸² Amnesty International interview with A.H., Manus Island Regional Processing Centre, 13 November 2013.

¹⁸³ Amnesty International interview with Gareth Lee, Mental Health Team Leader, Manus Island Regional Processing Centre, 14 November 2013.

¹⁸⁴ See World Health Organisation, "Papua New Guinea Country Co-operation Strategy at a Glance," http://www.who.int/countryfocus/cooperation_strategy/ccsbrief_png_en.pdf (viewed 10 December 2013).

¹⁸⁵ See *id.*

¹⁸⁶ See Australian Government, Department of Foreign Affairs and Trade, "Where We Give Aid," Papua New Guinea Country Page, <http://aid.dfat.gov.au/countries/pacific/png/Pages/default.aspx> (viewed 7 December 2013) (click on "Overview" tab, then on "How We Are Helping" tab, and then on "Raw Data" tab).

¹⁸⁷ Amnesty International interview with service provider, Dental Clinic, Manus Hospital, Lorengau, 15 November 2013.

¹⁸⁸ Amnesty International interview, Lorengau, 16 November 2013.

¹⁸⁹ There may have been more referrals, but these were the specific cases which people could recall.

¹⁹⁰ Convention on the Rights of Persons with Disabilities, adopted 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008). Australia ratified the convention in 17 July 2008; Papua New Guinea ratified it on 26 September 2013.

¹⁹¹ International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976). Australia ratified the covenant on 10 December 1975. Papua New Guinea acceded to the covenant on 21 July 2008.

¹⁹² Convention on the Rights of Persons with Disabilities, art 25.

¹⁹³ *Id.*, art 25 (b).

¹⁹⁴ *Id.*, art 15.

¹⁹⁵ Disability Discrimination Act 1992 (Cth) (Australia).

¹⁹⁶ *Id.* §§ 6(1)(c), 6(2)(c).

¹⁹⁷ *Id.* § 24.

¹⁹⁸ Amnesty International interviews, 11-30 November 2013.

¹⁹⁹ Amnesty International interview with J.N., Manus Island Regional Processing Centre, 12 November 2013.

²⁰⁰ Amnesty International interview with S.A., Manus Island Regional Processing Centre, 12 November 2013.

²⁰¹ Amnesty International interview with D.A., Manus Island Regional Processing Centre, 14 November 2013.

²⁰² Amnesty International interview, Manus Island Regional Processing Centre, 11 November 2013.

²⁰³ Amnesty International interview, Manus Island Regional Processing Centre, 11 November 2013.

²⁰⁴ Amnesty International interview with A.M., Manus Island Regional Processing Centre, 12 November 2013.

²⁰⁵ Amnesty International interview with R.A., Manus Island Regional Processing Centre, 12 November 2013.

²⁰⁶ UNHCR, *International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic, Update II*, 22 October 2013, ¶ 22.

²⁰⁷ *Id.*

²⁰⁸ *Id.* ¶ 14.

²⁰⁹ Amnesty International interview with H.H., Manus Island Regional Processing Centre, 12 November 2013.

²¹⁰ Amnesty International interview with S.M., Manus Island Regional Processing Centre, 13 November 2013.

²¹¹ Amnesty International interview, Manus Island Regional Processing Centre, 15 November 2013.

²¹² Amnesty International interview with Joseph Nobetau, Acting Chief Migration Officer, Papua New Guinea Immigration and Citizenship Service Authority, Port Moresby, 18 November 2013.

²¹³ Amnesty International interview with DIBP official, Manus Island, 16 November 2013.

²¹⁴ Amnesty International interview with Joseph Nobetau, Acting Chief Migration Officer, Papua New Guinea Immigration and Citizenship Service Authority, Port Moresby, 18 November 2013.

²¹⁵ Amnesty International interview, Manus Island Regional Processing Centre, 11 November 2013.

²¹⁶ Amnesty International interview with M.H., Manus Island Regional Processing Centre, 13 November 2013.

²¹⁷ Amnesty International interview with A.K., Manus Island Regional Processing Centre, 13 November 2013.

²¹⁸ Amnesty International interview with S.Z., Manus Island Regional Processing Centre, 14 November 2013.

²¹⁹ Amnesty International interview with S.M., Manus Island Regional Processing Centre, 14 November 2013.

²²⁰ Amnesty International interview, Manus Island Regional Processing Centre, 15 November 2013.

²²¹ Amnesty International interview with H.H., Manus Island Regional Processing Centre, 12 November 2013.

²²² UNOHCHR, Summary of Stakeholders' Submissions, UPR to PNG, 2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/104/94/PDF/G1110494.pdf?OpenElement> (viewed 3 December 2013).

²²³ Department of Foreign Affairs and Trade (Australia), "Aid: Where we give aid: PNG," <http://aid.dfat.gov.au/countries/pacific/png/Pages/default.aspx> (viewed 7 December 2013).

²²⁴ "Papua New Guinea, West Papuan Refugees Hope for Citizenship," IRIN, 17 December 2012, <http://www.irinnews.org/report/97057/papua-new-guinea-west-papuan-refugees-hope-for-citizenship> (viewed 7 December 2013).

²²⁵ Marnie Cornell, "West Papuan Asylum Seekers to Be Sent to Camp on PNG-Indonesia border," *The Guardian*, 11 October 2013, <http://www.theguardian.com/world/2013/oct/11/west-papuans-refugee-camp-border> (viewed 1 December 2013).

²²⁶ Amnesty International interviews, Manus Island Regional Processing Centre, 12, 14, 15 November 2013.

²²⁷ Amnesty International interview with M.R., Manus Island Regional Processing Centre, 12 November 2013.

²²⁸ Amnesty International interview with H.H., Manus Island Regional Processing Centre, 12 November 2013.

²²⁹ Amnesty International interview with A.H., Manus Island Regional Processing Centre, 13 November 2013.

²³⁰ Amnesty International interviews with T.K., D.K., Manus Island Regional Processing Centre, 12 November 2013; Amnesty International interviews, Manus Island Regional Processing Centre, 15 November 2013.

²³¹ East-West Centre, "PNG Parliament Calls for Religious Freedom Consultations: Nationwide Discussions to Consider Banning Non-Christian faiths," first reported in *The Post Courier* (Port Moresby), 15 July 2013, <http://pidp.eastwestcenter.org/pireport/2013/July/07-15-11.htm> (viewed 28 November 2013).

²³² http://www.aidsdatahub.org/sites/default/files/documents/Policy_Brief_Pacific.pdf

²³³ In *McKoskar v The State* [2005] FJHC 500, the Fiji High Court considered that similar homosexuality laws were an unjust imposition on the right to privacy and was therefore unconstitutional.

²³⁴ Peterson Magoola, Programme Specialist for the UN Development Programme, who runs programs for HIV/Aids and Gender-based Violence told Amnesty International that he often encounters in his work reports of harassment against gay people, trans people, men who have sex with men and sex workers.

²³⁵ Amnesty International interview with Renate Croker, DIBP, Manus Island Regional Processing Centre, 16 November 2013.

²³⁶ Amnesty International interview, Manus Island Regional Processing Centre, November 2013.

²³⁷ Amnesty International interview, Manus Island Regional Processing Centre, November 2013.

²³⁸ "Unaccompanied children" are children "who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so." Committee on the Rights of the Child, *General Comment No. 6*, ¶ 7. "Separated children" are children "who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family

members." *Id.* ¶ 8.

²³⁹ Amnesty International interview with B.D., Manus Island Regional Processing Centre, 15 November 2013.

²⁴⁰ Amnesty International interview with H.M., Manus Island Regional Processing Centre, 14 November 2013.

²⁴¹ Amnesty International interview with A.G., Manus Island Regional Processing Centre, 15 November 2013.

²⁴² Terry Smith and Laura Brownlees, *Age Assessment Practices: A Literature Review & Annotated Bibliography*, Discussion Paper (New York: United Nations Children's Fund, 2011), p. 1.

²⁴³ Amnesty International interview with A.G., Manus Island Regional Processing Centre, 15 November 2013.

²⁴⁴ Amnesty International interview with B.D., Manus Island Regional Processing Centre, 15 November 2013.

²⁴⁵ Amnesty International telephone interviews with DIBP officials, 5 December 2013.

²⁴⁶ Amnesty International interview with Renate Croker, DIBP, Manus Island, 16 November 2013.

²⁴⁷ Amnesty International interview, DIBP, Manus Island, 16 November 2013.

²⁴⁸ Smith and Brownlees, p. 13 (citing Dr. Heaven Crawley, *When Is a Child Not a Child? Asylum, Age Disputes and the Process of Age Assessment* (London: Immigration Law Practitioners' Association, 2007), p. 36).

²⁴⁹ Committee on the Rights of the Child, *General Comment No. 6*, ¶ 31. Similarly, the committee recommends, in its general comment addressing the situation of children in conflict with the law, that "if there is no proof of age, the child is entitled to a reliable medical and social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt." Committee on the Rights of the Child, *General Comment No. 10: Children's Rights in Juvenile Justice*, UN Doc. CRC/C/GC/10 (2007), ¶ 39. See also *id.* ¶ 35 ("if there is no proof of age and it cannot be established that the child is at or above the MACR [minimum age of criminal responsibility], the child shall not be held criminally responsible").

²⁵⁰ UNHCR, "Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum," February 1997, p. 5.

²⁵¹ UNHCR, *Guidelines on International Protection: Child Asylum Claims Under Articles 1(A)(2) ad 1(F) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, UN Doc. HCR/GIP/09/08 (2009), ¶ 75.

²⁵² Separated Children in Europe Programme, *Statement of Good Practice* (Copenhagen: Save the Children, UNHCR, and UNICEF, 4th rev. ed. 2009), § D.5.1.

²⁵³ *Id.*

²⁵⁴ See Convention on the Rights of the Child, art. 3(1); UNHCR, Executive Committee, *Conclusion No. 47 (XXXVIII): Refugee Children* (1987), ¶ (d); UNHCR, Executive Committee, *Conclusion No. 84 (XLVIII) on Refugee Children and Adolescents* (1997), ¶ (b)(i); UNHCR, Executive Committee, *Conclusion No. 107 (LVIII) on Children at Risk* (2007), ¶ v. For further guidance on applying the best interests principle in cases involving refugee children, see UNHCR, *UNHCR Guidelines on Determining the Best Interests of the Child* (Geneva: UNHCR, 2008).

²⁵⁵ Committee on the Rights of the Child, *General Comment No. 6*, ¶¶ 21, 33-35, 69. In particular, the committee cautions, "Agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship." *Id.* ¶ 33.

²⁵⁶ Committee on the Rights of the Child, *General Comment No. 6*, ¶ 3. See also *id.* ¶¶ 66-75, 77-78; International Committee of the Red Cross, Central Tracing Agency and Protection Division, Inter-Agency Guiding Principles on Unaccompanied and Separated Children, January 2004, pp. 60-63. See also UNHCR, *UNHCR Guidelines on Determining the Best Interests of the Child*, ¶¶ 65-77.

²⁵⁷ Committee on the Rights of the Child, *General Comment No. 6*, ¶ 36.

²⁵⁸ *Id.* ¶ 80.

²⁵⁹ UNHCR, Executive Committee, *Conclusion No. 24 (XXXII): Family Reunification* (1981), ¶ 7; UNHCR, Executive Committee, *Conclusion No. 84*, ¶ (b)(i) (XLVIII) on *Refugee Children and Adolescents*, ExCom, UNHCR, 48th session, 1997, ¶ (b)(i). See also *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*, UNHCR, February 1997.

²⁶⁰ Convention on the Rights of the Child, arts. 28, 29; Committee on the Rights of the Child, *General Comment No. 6*, ¶¶ 41-43.

²⁶¹ Convention on the Rights of the Child, art. 37(b); Committee on the Rights of the Child, *General Comment No. 6*, ¶¶ 61-62.

²⁶² Convention on the Rights of the Child, art. 37(c); Committee on the Rights of the Child, *General Comment No. 6*, ¶ 63.

²⁶³ See Convention on the Rights of the Child, art. 20; Committee on the Rights of the Child, *General Comment No. 6*, ¶ 39.

²⁶⁴ See, for example, Australia, *Replies to the List of Issues (CCPR/C/AUS/Q/5) To Be Taken Up in Connection with the*

Consideration of the Fifth Periodic Report of the Government of Australia (CCPR/C/AUS/5), ¶¶ 16-17, UN Doc CCPR/C/AUS/Q/5/Add.1 (5 February 2009); DIAC, *Answers to questions on notice*, 30 January 2013.

²⁶⁵ *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*, p. 3.

²⁶⁶ *Id.*, p. 5.

²⁶⁷ *Regional Resettlement Arrangement Between Australia and Papua New Guinea*, p. 2.

²⁶⁸ UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, (26 January 2007), <http://www.refworld.org/docid/45f17a1a4.html> (viewed 14 November 2013), ¶ 35. See also *id.* ¶¶ 36-43.

²⁶⁹ Oona Hathaway et al., "Human Rights Obligations Abroad: When Do Human Rights Treaty Obligations Apply Extraterritorially?" *Arizona State Law Journal*, vol. 43 (2011), p. 2.

²⁷⁰ See, for example, *Hirsi Jamaa and Others v. Italy*, App. No. 27765/09 (Eur. Ct. H.R. Grand Chamber), ¶¶ 74-75, 79-82; *Medvedyev and Others v. France*, App. No. 3394/03, Judgement of 29 March 2010 (Eur. Ct. H.R. Grand Chamber), ¶¶ 62-67.

²⁷¹ UNHCR, "New 'Excision' Law Does Not Relieve Australia of Its Responsibilities Towards Asylum-Seekers," Press Release, 22 May 2013), <http://www.unhcr.org/519ccec96.html> (viewed 14 November 2013).

²⁷² Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Ninth Report of 2013: Migration*

Legislation Amendment (Regional Processing and Other Measures) Act 2012 and related legislation (2013), http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2013/92013/index (viewed 22 November 2013), ¶ 2.56.

²⁷³ UNHCR, "Mission to Manus Island, Papua New Guinea, 15-17 January 2013," <http://unhcr.org.au/unhcr/images/2013-02-04%20Manus%20Island%20Report%20Final.pdf> (viewed 22 November 2013), para. 22.

²⁷⁴ UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 23 to 25 October 2013* (Canberra: UNCHR Regional Representation, 26 November 2013), ¶ 16.

²⁷⁵ Refugee Convention, art. 33: "No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

²⁷⁶ Convention against Torture, art. 3: "1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

²⁷⁷ ICCPR, art 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation;" Human Rights Committee, *General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)*, U.N. Doc. HRI/ GEN/1/Rev.7 (1992), ¶ 9: "States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement."

²⁷⁸ For a discussion of states' *non-refoulement* obligations under customary international law, see UNHCR, *The Principle of Non-Refoulement as a Norm of Customary International Law: Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, 31 January 1994*; UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, para. 15. See also *Conclusion No. 6 (XXVIII) Non-Refoulement*, ExCom, UNHCR, 28th Session, 1977, para. (a).

²⁷⁹ Massimo Frigo, *Migration and Human Rights Law*, Practitioners' Guide No. 6, (Geneva: International Commission of Jurists, 2011), p. 97.

²⁸⁰ Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Australia*, 7 May 2009, UN Doc. CCPR/C/AUS/CO/5, <http://www.refworld.org/docid/4a129b130.html> (viewed 22 November 2013), para. 19.

²⁸¹ Committee against Torture, *Concluding observations of the Committee against Torture: Australia*, 22 May 2008, CAT/C/AUS/CO/3, <http://www.unhcr.org/refworld/docid/4885cf7f0.html> (viewed 14 November 2013), para. 15.

²⁸² UNHCR, Antonio Guterres' Letter to Chris Bowen, Minister for Immigration and Citizenship of Australia, 9 October 2012, p. 3, <http://unhcr.org.au/unhcr/images/121009%20response%20to%20minister%20on%20png.pdf> (viewed 23 November 2013).

²⁸³ *Id.*

²⁸⁴ UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 23 to 25 October 2013*, ¶ 122. In addition, UNHCR noted in its 2010 submission on Papua New Guinea's Universal Periodic Review, "Crime in PNG is frequent and largely violent, usually committed by gangs and often directed at foreigners. Persons of concern, unlike most expatriates in PNG, cannot afford additional security. Non-Melanesian asylum-seekers and refugees in PNG are particularly vulnerable to xenophobia and racism amongst the local population. Non-Melanesian refugees are perceived to be foreigners and are unlikely to integrate into local society or overcome the obstacles they face preventing their legal integration (e.g. access to the labour market). ...Non-Melanesian refugees are more likely to be marginalized and unable to access formal or informal protection systems, especially in the Highlands and in Port Moresby. Harassment is experienced by the majority of asylum-seekers and refugees, including non-Asian refugees. The involvement of the police and the very poor record they have with regard to human rights also represents a risk of escalation to urban warfare." *Id.*, p. 25 n.3 (quoting from its 2010 submission as part of the UPR process).

²⁸⁵ UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 23 to 25 October 2013*, ¶ 124.

²⁸⁶ *Id.*

²⁸⁷ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Ninth Report of 2013: Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012 and related legislation* (2013), para. 2.195, http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2013/92013/index (viewed 22 November).

²⁸⁸ "Everyone has the right to seek and to enjoy in other countries asylum from persecution." Universal Declaration of Human Rights, art. 14(1).

²⁸⁹ *Refugee Convention*, Art 31(1): "Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened...enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

²⁹⁰ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Ninth Report of 2013: Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012 and related legislation* (2013), para. 2.198, http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2013/92013/index (viewed 22 November).

²⁹¹ *UDHR*, Article 7: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

²⁹² See, for example, *Report on the Situation of Asylum Seekers within the Canadian Refugee Determination System*, OAS Doc. OEA/Ser.LV/II.106, Doc.40 rev. (Inter-Am. Comm'n H.R. 28 February 2000) [*Report on Canada*], ¶ 60.

²⁹³ *Id.* ¶ 109.

²⁹⁴ *Id.* ¶ 52.

²⁹⁵ UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 23 to 25 October 2013*, ¶ 48.

²⁹⁶ Convention on the Rights of the Child, art. 22.

²⁹⁷ Conclusion No. 110 (LXI), *Conclusion on Refugees with Disabilities and Other Persons with Disabilities Protected and Assisted by UNHCR* (2010), ¶¶ c, d, j.

²⁹⁸ UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 23 to 25 October 2013*, ¶ 31.

²⁹⁹ *Id.* ¶ 32.

³⁰⁰ UNHCR, Antonio Guterres' Letter to Chris Bowen, Minister for Immigration and Citizenship of Australia, 9 October 2012, p. 2, <http://unhcr.org.au/unhcr/images/121009%20response%20to%20minister%20on%20png.pdf> (viewed 23 November 2013).

³⁰¹ UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 23 to 25 October 2013*, ¶ 33.

³⁰² UNHCR, *Monitoring Visit to Manus Island, Papua New Guinea (11-13 June 2013)*, para. 14, <http://www.refworld.org/pdfid/51f61ed54.pdf> (viewed 14 November 2013).

³⁰³ Law Council of Australia, "Law Council expresses concerns over PNG Asylum Seeker Arrangement" (Media Release, MR1334, 25 July 2013), http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/mediaReleases/1334_--_Law_Council_expresses_concerns_over_PNG_Asylum_Seeker_Arrangement.pdf (viewed 23 November 2013).

³⁰⁴ *Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 v Minister for Immigration and Citizenship* [2011] HCA 32 (31 August 2011).

³⁰⁵ See Universal Declaration of Human Rights, art. 14; Refugee Convention; Vienna Convention on the Law of Treaties, art. 26.

³⁰⁶ UNHCR, Division of International Protection, "Guidance Note on Bilateral or Multilateral Transfer Arrangements of Asylum-Seekers," May 2013, <http://www.refworld.org/pdfid/51af82794.pdf> (viewed 2 December 2013), ¶¶ 1, 3(i).

³⁰⁷ Conclusion No. 15, UNHCR, para. (c). See also Conclusion No. 23 (XXXII) Problems Related to the Rescue of Asylum-Seekers in Distress at Sea, ExCom, UNHCR, 32nd Session, 1981, para. (1); Conclusion No. 38 (XXXVI) Rescue of Asylum-Seekers in Distress at Sea, ExCom, UNHCR, 36th Session, 1985, para. (a).

³⁰⁸ Conclusion No. 97 (LIV) Protection Safeguards in Interception Measures, ExCom, UNHCR, 54th Session, 2003, para. (a)(iv).

³⁰⁹ Conclusion No. 23, UNHCR, para. (3)

³¹⁰ Article 3, Principles relating to administrative procedures for disembarking persons rescued at sea, adopted on 22 January 2009, Doc. No. FAL.3/Circ.194 (Disembarking Principles). See also Guidelines on the Treatment of Persons Rescued at Sea, Maritime Safety Committee, IMO, Resolution MSC.167(78) (IMO Rescued Guidelines), adopted on 20 May 2004; and, Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases, IMO Assembly, Resolution A.871(20), adopted on 27 November 1997 (IMO Stowaway Guidelines).

³¹¹ Article 2, Disembarking Principles.

³¹² IMO Rescued Guidelines, para. 6.17.

³¹³ Convention relating to the Status of Stateless Persons, art. 1.

³¹⁴ See The Concept of Stateless Persons under International Law, Summary Conclusions of the Expert Meeting organised by the Office of the UNHCR, Prato, Italy, 27-28 May 2010, para. 2. Report of the International Law Commission, Text of the draft articles on diplomatic protection adopted by the Commission on first reading: commentary on article 8, General Assembly, Fifty-ninth session, Supplement No. 10 (A/59/10), 2004, at page 46.

³¹⁵ Massimo Frigo, *Migration and Human Rights Law*, Practitioners' Guide No. 6, (Geneva: International Commission of Jurists, 2011), p. 92 (citing The Concept of Stateless Persons under International Law, Summary Conclusions of the Expert Meeting organised by the Office of the UNHCR, paras. 14 and 22).

³¹⁶ A UNHCR Expert Meeting has defined de facto stateless persons as "persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality." The Concept of Stateless Persons under International Law, para. II(2). For an alternative definition that does not restrict de facto statelessness to persons outside their country of nationality, see Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons*, London, July 2010, pp. 63-64.

³¹⁷ Frigo, *Migration and Human Rights Law*, pp. 93-94.

³¹⁸ Article I, Final Act of the Convention on the Reduction of Statelessness, adopted on 30 August 1961.

³¹⁹ *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 23 to 25 October 2013*, ¶ 53.

³²⁰ See *Belden Norman Namah MP, Leader of the Opposition, v. Rimbink Pato MP, Minister for Foreign Affairs and Immigration et al.*, OS(HR) No. 9 of 2013 (National Ct. of Justice 13-14 February 2013) (Cannings, J.), ¶¶ 9-10 (finding that the issue of whether the detention of asylum seekers after transfer from Australia violates the constitutional guarantee against deprivation of personal liberty is a serious question).

³²¹ See Papua New Guinea Const. § 42 (guaranteeing the right of personal liberty on all persons in Papua New Guinea except in specified circumstances).

³²² *Id.* § 42(1)(g).

³²³ Amnesty International interview with Loani R. Henao, Heano Lawyers, Port Moresby, 18 November 2013.

³²⁴ *ICCPR*, Art. 9(1): "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

³²⁵ *UDHR*, Art. 9: "No one shall be subjected to arbitrary arrest, detention or exile."

³²⁶ Human Rights Committee, *A v Australia*, Communication No 560/1993 (3 April 1997); *D and E v Australia*, Communication No 1050/2002 (9 August 2006).

³²⁷ UN Working Group on Arbitrary Detention, *Deliberation No. 9 Concerning the Definition and Scope of Arbitrary Deprivation of Liberty Under Customary International Law*, ¶ 38(d), in Human Rights Council, 22d sess., agenda item 3, *Report of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/22/44 (24 December 2012), http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44_en.pdf (viewed 3 December 2013). See also Human Rights Council, Working Group on Arbitrary Detention, *Opinions Adopted by the Working Group on Arbitrary Detention at Its Sixty-Fourth Session, 27-31 August 2012, No. 20/2012 (Israel)*, U.N. Doc. A/HRC/WGAD/2012/20 (23 November 2012), ¶ 2(d).

<http://unispal.un.org/UNISPAL.NSF/0/236B3F4C7F20AA4885257AC50065F29E> (viewed 3 December 2013).

³²⁸ UNHCR, *Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers* (26 February 1999), <http://www.unhcr.org/refworld/docid/3c2b3f844.html> (viewed 14 November 2013), ¶¶ 1, 3.

³²⁹ *Id.*, Guideline 2.

³³⁰ Committee against Torture, *Concluding observations of the Committee against Torture: Australia*, 22 May 2008, CAT/C/AUS/CO/3, <http://www.unhcr.org/refworld/docid/4885cf7f0.html> (viewed 14 November 2013), para. 11.

³³¹ Human Rights Committee, *C v. Australia*, Communication No. 900/1999, 13 November 2002, CCPR/C/76/D/900/1999, paragraph 8.2.

³³² Amnesty International, *Irregular Migrants and Asylum-Seekers: Alternatives to Immigration Detention* (POL 33/001/2009), p. 7.

³³³ UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 23 to 25 October 2013*, ¶ 80.

³³⁴ ICCPR, Art. 10(1): "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

ICCPR, Art. 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

³³⁵ ICESCR, Art. 12(1): "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

ICESCR, Art. 6(1): "The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."

ICESCR, Art. 11(1): "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

³³⁶ Section 36, *Constitution of the Independent State of Papua New Guinea (1975)*.

³³⁷ *Tom Amaiu v Commissioner for Corrective Institutions* [1983] PNGLR 449.

³³⁸ *David Wari Kofowei v Augustine Siviri* [1983] PNGLR 449 held that the protection extends to police custody.

³³⁹ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Ninth Report of 2013: Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012 and related legislation* (2013), http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2013/92013/index (viewed 22 November), para. 2.195.

³⁴⁰ UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 23 to 25 October 2013*, ¶ 93.

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