



## **UNHCR Monitoring Visit to Manus Island, Papua New Guinea 11-13 June 2013**

*UNHCR undertook a visit to Manus Island on 11-13 June 2013 to assess progress by Australia and Papua New Guinea (PNG) in implementing their obligations under the 1951 Refugee Convention since UNHCR's January 2013 visit and to review the reception conditions at the Regional Processing Centre (RPC).*

### **Summary Findings**

UNHCR acknowledges a number of positive developments since its January visit, including the transfer of children and their families back to Australia, and was also impressed by the obvious sensitivity, dedication and good will of staff and officials on site.

Despite these efforts, conditions remain below international standards for the reception and treatment of asylum-seekers. Physical living conditions remain harsh, in particular for asylum-seekers living in the single adult males' compound.

While the ongoing development of excursions and activities available to asylum-seekers is welcomed, freedom of movement remains extremely limited.

The current PNG policy and practice of detaining all asylum-seekers at the closed Centre, on a mandatory and indefinite 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 amounts to arbitrary detention that is inconsistent with international human rights law.

Transfer arrangements remain problematic and do not appear to reflect the required procedural safeguards under international law, or under the bilateral agreement between Australia and PNG.

Pre-transfer assessments do not appear to assess the individual needs of children or persons of heightened vulnerability, or the nature of the facilities and services that would be available to them at the RPC.

UNHCR welcomes the commencement of refugee status determination (RSD) processing, but notes the shortcomings in the legal framework, including PNG laws and regulations. UNHCR considers changes to these laws and regulations need to be implemented to ensure that a fair and efficient process, which meets international standards and is accessible to all asylum-seekers in PNG, regardless of their means of arrival, is put in place.

UNHCR also reiterates the need for durable solutions for those found to be refugees or otherwise in need of international protection, within a reasonable time, consistent with both States' obligations under the 1951 Refugee Convention.

## Recommendations

### Refugee Status Determination

- A. The Government of PNG should amend the Migration Act and Regulation governing the RSD of asylum-seekers to:
  - I. ensure consistency of the domestic legal framework with the provisions of the 1951 Refugee Convention, in accordance with the detailed comments provided by UNHCR;
  - II. set out in detail the asylum processes and procedures in PNG, including to ensure an independent merit review process and to incorporate complementary protection and non-refugee statelessness claims to align the procedures with international standards to which Australia and PNG are party; and
  - III. ensure that the same regime applies to all asylum-seekers regardless of where they are from or their mode of arrival in PNG.
- B. The Governments of PNG and Australia should finalize and disseminate as a matter of urgency clear information to asylum-seekers about their legal rights and entitlements, and provide counselling on the procedures which will be followed to assess their claims for refugee status including the legal basis, the decision-making authority and the indicative time frames for these various steps.
- C. Additional and specific support should be provided to vulnerable persons, including children, to ensure that they are able to fully understand and benefit from the RSD processes and procedures. In the case of unaccompanied or separated children, an independent and qualified guardian as well as a legal adviser should be appointed and claims should be prioritized for early attention.
- D. The Government of PNG should proceed, as a matter of priority, to implement its pledge to lift the seven reservations to the 1951 Refugee Convention.

### Reception of Asylum-Seekers

- E. The need for detention of an asylum-seeker should be based on an assessment in the individual case of risk to public order, public health or national security.
- F. In the absence of reasonable and proportionate limitations arising from each individual case, asylum-seekers should be provided with freedom of movement as a matter of priority and the Centre on Manus Island should be made an open centre.
- G. The Government of PNG should establish a legal framework which outlines the permissible bases for detention, which should be consistent with international law and in line with UNHCR's Detention Guidelines. Such a legal framework would ensure that asylum-seekers be given reasons for their detention in writing and be allowed to challenge the decision to detain, with periodic reviews thereafter to ensure no one is

detained longer than necessary, with express maximum periods for such detention.

- H. The consideration of alternatives to detention, as well as improvements in the physical living conditions for asylum-seekers on Manus Island, are urgent and should be undertaken as soon as possible.

#### Children

- I. UNHCR recommends that children and their families not be transferred to Manus Island under these arrangements.
- J. If children are to be transferred, PNG should develop specific legal measures and administrative guidance to ensure that children are treated in full respect of their rights under the Convention on the Rights of the Child.
- K. In the event that, exceptionally and as a last resort, a child is detained, the safety, security and well-being of that child needs to be assured.
- L. As a matter of principle, the refugee claims of children and other vulnerable groups should be prioritised for assessment and these should be carried out by suitably qualified officials who are also able to conduct 'best interest determinations' (BIDs).

#### Mental Health

- M. Against a background of deteriorating mental health on the part of the asylum-seekers, the recommendations contained in this report should be addressed as a matter of urgency.

#### Oversight and Monitoring

- N. Australia and PNG should continue to ensure that appropriate independent oversight bodies are able to gain access to asylum-seekers at the Centre on Manus Island.
- O. Australia and PNG should consider establishing an Advisory Committee to provide advice to the respective Governments on issues arising out of the implementation of the arrangement and be a body to which the Governments might refer issues for guidance and advice.

#### Pre Transfer Assessments

- P. Pre-transfer assessments conducted in Australia should fully take into account the individualized needs of vulnerable individuals, including children, the elderly, survivors of torture or trauma, disabled persons and persons with specific health needs.
- Q. Pre-transfer assessments should also contain a realistic assessment of the actual quality of support and capacities of service providers on PNG, within the legal, operational and physical conditions currently prevailing.

## **I. Introduction**

1. On 11-13 June, a three-person UNHCR team visited Manus Island. The visit followed the earlier visit by UNHCR on 15-17 January 2013.<sup>1</sup>
2. UNHCR undertook both visits pursuant to its supervisory role under Article 35 of the 1951 Convention relating to the Status of Refugees and Article II of the 1967 Protocol relating to the Status of Refugees (collectively referred to as 'the 1951 Refugee Convention'), to which Papua New Guinea (PNG) is a party.
3. The terms of reference were to: assess the extent to which Australia and PNG were implementing their obligations under the 1951 Refugee Convention and other related international obligations; review the reception conditions for asylum-seekers and refugees at the temporary 'Regional Processing Centre' (RPC) located at Lombrum Naval Base, Manus Island; and meet with officials, service providers and asylum-seekers to hear any concerns they might have in relation to their situation.
4. During its 11-13 June visit, UNHCR met with senior officials from the Governments of Papua New Guinea (PNG Immigration and Citizenship Services Authority – PNG ICOSA) and Australia (Department of Immigration and Citizenship – DIAC), as well as senior staff of the key service providers: G4S (security and logistics); International Health and Medical Services (IHMS) (health and medical services); Salvation Army (case management and welfare); and, Save the Children (education and child welfare).
5. UNHCR also met with the majority of the asylum-seekers resident in the RPC at the time of the visit, all of whom were invited to come to meetings in linguistic groupings. UNHCR inspected the facilities and observed a 'transferee interview' undertaken by a PNGICSA official who had received mentoring from experienced DIAC officers to undertake such interviews.
6. UNHCR appreciates the assistance of the PNG Government for facilitating this visit and giving full access to all areas and persons at the Manus Island RPC. UNHCR also appreciates assistance provided by Australian officials and staff of the service providers, all of whom were helpful in ensuring that UNHCR was able to achieve the objectives of the visit.
7. UNHCR acknowledges the significant efforts being made to ensure the treatment of asylum-seekers, refugees and stateless persons is progressively improved in what continue to be extremely challenging conditions, in a remote and isolated location.
8. At the time of the 11-13 June 2013 visit, there were 302 asylum-seekers at the temporary RPC facility at Lombrum Naval Base. Some 200 of the asylum-seekers were single adult males. The breakdown by country of origin for the single adult males was as follows: Vietnamese (59), Afghan (50), Iranian (39), Iraqi (36) and Pakistani (16). The remaining 102 asylum-seekers consist of

---

<sup>1</sup> UNHCR Report on its 15-17 January 2013 visit was published on 4 February 2013 and is available online at: [www.unhcr.org.au](http://www.unhcr.org.au)

family groups, including 26 children.<sup>2</sup> The breakdown of the family groups by country of origin was as follows: Sri Lankan (64), Iranian (32), Iraqi (4), Afghan (1) and Pakistani (1).

9. The team reviewed progress in relation to recommendations made in February 2013, in light of major developments.

## **II. Legal framework for transfer arrangements**

10. UNHCR maintains its view that the transfer of asylum-seekers from Australia to PNG, as an arrangement agreed by two Convention States, does not extinguish the legal responsibility of the transferring State for the protection of the asylum-seekers affected by the arrangements.
11. UNHCR assessed the current conditions and treatment of transferees against the following standards and agreed principles, which must be guaranteed for each asylum-seeker transferred:
  - (i) be individually assessed as to the appropriateness of the transfer, subject to procedural safeguards, prior to transfer. Pre-transfer assessments are particularly important for vulnerable groups, including unaccompanied and separated children. The best interests of the child must be a primary consideration;
  - (ii) be admitted to the proposed receiving State;
  - (iii) be protected against *refoulement*;
  - (iv) have access to fair and efficient procedures for the determination of refugee status and/or other forms of international protection;
  - (v) be treated in accordance with applicable international refugee and human rights law standards, for example, appropriate reception arrangements; access to health, education and basic services; safeguards against arbitrary detention; identification and assistance of persons with specific needs; and
  - (vi) if recognized as being in need of international protection, be able to enjoy asylum and/or access a durable solution within a reasonable time.<sup>3</sup>
12. Furthermore, in addition to these standards against which the transfer arrangements are assessed, UNHCR is of the view that, at the time of the visit, the terms of the bilateral Memorandum of Understanding (MOU) relating to the transfer of asylum-seekers had also not been met. These terms included the commitment by PNG to make an assessment, or allow an assessment to be made, of claims for refugee status, and the commitment by both Governments to ensure that relevant human rights standards would be met.<sup>4</sup>

---

<sup>2</sup> As of 11 May 2013, there were 26 children, though, at the time of the visit, UNHCR understands that one child had turned 18, leaving 25 children.

<sup>3</sup> UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, May 2013, available at: <http://www.refworld.org/docid/51af82794.html>

<sup>4</sup> Clauses 14, 15, 16 and 18 of the 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 of persons in Papua New Guinea, and related issues, signed 8 September 2012.

### **III. Refugee Status Determination**

#### **Regulatory framework**

13. Since January 2013, the Government of PNG has passed Migration (Amendment) Regulation No. 1 of 2013 to provide the Immigration Minister of PNG with guidance in respect of determining refugee status of non-citizens who are transferred to PNG under the MOU between the Governments of PNG and Australia.
14. Several provisions of the Regulation are inconsistent with PNG's commitments under the 1951 Refugee Convention, including that it:
  - (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.
15. UNHCR encourages PNG to further amend the law and regulations to cover both complementary protection and non-refugee statelessness claims to align the treatment of transferees more closely to applicable international standards and commitments made by the two Convention States respectively.
16. UNHCR provided the Government of PNG with comments on the new Regulation, which should be further reviewed to reflect PNG's international obligations.
17. In particular, UNHCR recommends that the Government of PNG develop a legal framework for assessing the international protection needs of all asylum-seekers arriving in PNG, by whatever means.

#### **Capacity building**

18. The Government of PNG has recruited a number of officials who will undertake refugee status determination (RSD) in PNG, and UNHCR understands that, while these will initially be focusing on assessing the claims for refugee status of those asylum-seekers transferred from Australia to PNG, the intention is that they will also, in the future, undertake RSD for other asylum-seekers arriving in PNG.
19. UNHCR agreed to provide an introductory capacity-building session to officials of the Government of PNG, in keeping with its broader capacity-building activities in the Pacific region, to outline the key elements of the international

protection system. This training was completed in Sydney in the period following the visit, on 24-26 June 2013, and formed part of a broader three-week training programme being undertaken by the officials.

20. UNHCR understands that, subsequent to the three-week training programme, RSD officers will commence RSD with experienced DIAC officials mentoring them for a period of six months. In parallel, experienced DIAC decision makers will be seconded to the Government of PNG to increase its decision making capacity.
21. UNHCR welcomes these developments to improve capacity, but assesses that it will take a period of at least six months' before PNG officials are able to undertake RSD with any degree of self-sufficiency and that - even then - some 'quality oversight' mechanism could usefully be established, including ongoing mentoring support from the Australian Government.
22. It is also noteworthy that at the time of the capacity-building training, final procedural guidelines were not yet available. Although UNHCR notes that progress on drafting has been made, the final details of the process, including review mechanisms, were still to be finalized and promulgated.

#### *Progress on Manus Island towards establishing RSD*

23. During its visit to Manus Island, UNHCR held discussions with the Centre Manager (PNG Government) and the senior DIAC official (Australian Government) about progress towards establishing the RSD process for the asylum-seekers, some of whom have been at the temporary centre since 21 November 2012.
24. A team of Australian lawyers was to arrive on Manus Island to provide asylum-seekers with assistance in their refugee claims in the week beginning 24 June 2013. Eligibility interviews were to commence not long afterwards.
25. Initial interviews – described as 'transferee interviews' – that are designed to elicit details about the asylum-seekers, their families, the route they took to Australia and some basic information about why they came to Australia have commenced, with only 63 such interviews said to be outstanding at the time of the visit. Initially transfer interviews were undertaken by experienced DIAC officers with PNGICSA officers observing. As at the time of the visit, the interviews were being undertaken independently by PNGICSA officers.
26. UNHCR observed two half interviews (the second half of one, followed by the first half of another). They appear to be very similar in nature to 'entry interviews' conducted by the Government of Australia and observed by UNHCR in Australia.
27. UNHCR observed that the interviews were undertaken with professionalism, consistency and attention to detail. The interviews, however, were rigidly directed by use of a detailed template and script, leaving little scope for capture of information relating to individual circumstances of the applicant in his country of origin, or protection problems experienced in transit countries. In some instances, the observer noted that the nature of the interview template forced the interviewer to record information at variance from that being communicated by the applicant. A heavy focus on collection of information relating to routes,

methods and persons involved in irregular migration was evident. In light of this focus, it was of concern that applicants were informed that details may be shared with law enforcement agencies as appropriate, but were not offered access to legal advice or counselling.

28. Asylum-seekers who met with UNHCR continued to express confusion over the processing arrangements that would apply to them in PNG. As during UNHCR's 15-17 January 2013 visit, many advised that the information they received on arrival about the process was limited and confusing. Many were somewhat reassured by indications that processing would commence imminently, though most expressed severe anxiety and unhappiness about indications they continued to receive from RPC staff that the asylum-seekers were likely to remain on Manus Island anywhere from two to five years. Many expressed a deep sense of injustice about why such a small number of them had been selected for transfer to Manus Island out of the 20,000 or so who had arrived by boat to Australia. This sense of injustice was compounded by the harsh conditions, their likely protracted stay, and uncertainty about their eventual fate.
29. UNHCR understands information fact sheets about the process have been drafted but not yet finalized. UNHCR is keen to see these finalized and deployed, especially in view of the uncertainty and confusion expressed by asylum-seekers.
30. Some asylum-seekers expressed concern that they would be denied refugee status on the basis of having been charged with certain minor offences under PNG law. There are 18 asylum-seekers in this situation, all of whom remain on bail at the RPC, and regarding whom court cases are pending.
31. While UNHCR acknowledges that all asylum-seekers are subject to the laws of the country in which they find themselves, the 1951 Refugee Convention sets out exhaustive bases on which someone may be excluded from refugee status or expelled. The 1951 Refugee Convention does not allow for denial of status on the basis of minor criminal offences and to do so would be disproportionate to the potential harm resulting. Such matters can and should be properly dealt with under the ordinary criminal law of PNG, and not lead to the denial of refugee status.
32. UNHCR received positive indications from officials in PNG, including at the international Ministerial Meeting on 10 December 2011, that it would lift the seven reservations to the 1951 Refugee Convention. However, UNHCR notes that despite the positive pledges made, 18 months has elapsed without any apparent progress in having the reservations lifted.
33. UNHCR welcomes progress made towards the establishment of an RSD system to allow for processing of asylum-seekers transferred from Australia to PNG. UNHCR also appreciates the efforts made by PNG, in cooperation with Australia, to ensure there is sufficient capacity and expertise among officials to process all refugee claims fairly and expeditiously.
34. UNHCR reiterates its concerns that procedural guarantees, including access to fair and efficient RSD procedures, were not in place at the time of transfer, and that a significant period of time has elapsed between arrival of asylum-seekers in PNG and the establishment of an appropriate RSD process. Progress has



been made, but it remains to be seen how and when final RSD decisions will be made and handed down.

35. UNHCR notes that there has been progress on drafting the procedural guidelines which decision makers will be required to follow, and welcomes consultation on these, as well as on the procedures for merit review.

#### **Recommendations: Refugee Status Determination**

- A. The Government of PNG should amend the Migration Act and Regulation governing the RSD of asylum-seekers to:**
- I. ensure consistency of the domestic legal framework with the provisions of the 1951 Refugee Convention, in accordance with the detailed comments provided by UNHCR;**
  - II. set out in detail the asylum processes and procedures in PNG, including to ensure an independent merit review process and to incorporate complementary protection and non-refugee statelessness claims to align the procedures with international standards to which Australia and PNG are party; and**
  - III. ensure that the same regime applies to all asylum-seekers regardless of where they are from or their mode of arrival in PNG.**
- B. The Governments of PNG and Australia should finalize and disseminate as a matter of urgency clear information to asylum-seekers about their legal rights and entitlements, and provide counselling on the procedures which will be followed to assess their claims for refugee status including the legal basis, the decision-making authority and the indicative time frames for these various steps.**
- C. Additional and specific support should be provided to vulnerable persons, including children, to ensure that they are able to fully understand and benefit from the RSD processes and procedures. In the case of unaccompanied or separated children, an independent and qualified guardian as well as a legal adviser should be appointed and claims should be prioritized for early attention.**
- D. The Government of PNG should proceed, as a matter of priority, to implement its pledge to lift the seven reservations to the 1951 Refugee Convention.**

#### **IV. Reception conditions**

##### **Progress to permanent facility**

36. At the time of the visit, all asylum-seekers remained at the temporary RPC at Lombrum Naval Base pending the future construction of a permanent facility. PNGICSA confirmed to UNHCR that a site had been identified for the new permanent RPC, and advised UNHCR that the permanent facility will provide asylum-seekers with better conditions and greater freedom of movement.

37. This proposed site will be very close to Lorengau (the capital of Manus Island), which could be expected to allow for significantly greater opportunities for interaction with the local population and activities outside the RPC.<sup>5</sup> UNHCR viewed the designated site from the road and noted the site's close proximity to the Manus Island capital and secondary school.
38. UNHCR understands that the tender process sought a design which would accommodate 600 asylum-seekers in three blocks of 200 each. The design would be 'family friendly' with the possibility of conversion in part or in whole to accommodate single adult males.
39. Clearing and surveying the new site has commenced and it was anticipated by DIAC and PNGICSA officials that construction work would commence in July. Although UNHCR understands there is a rough estimate of seven months to completion of the new RPC, there was no clear time frame for the completion of the permanent facility and associated improvements in the conditions provided to asylum-seekers.

*Progress at temporary facility*

40. In the six months since UNHCR's 15-17 January 2013 visit, asylum-seekers have remained at the temporary facility at Lombrum Naval Base.
41. The facility is broadly divided into three sectors: a compound housing single adult males; a compound housing families; and operational, administrative and staff quarters. The single adult males are accommodated in tents, whilst the families are accommodated in demountable 'dongas'.
42. Although the facility remains essentially unchanged since January, some progress was observed in a number of areas. During the visit, UNHCR was able to observe the playing field in use as a recreational area for volleyball, soccer and other exercise, and a clearer separation between the single adult males and family groups has been created, introducing a narrow 'no man's land' space between the two compounds. Additionally, provision of excursions has increased and connections with local schools allow for some exchanges between local students and asylum-seeker children. Consultative groups with asylum-seekers have been instituted.
43. Nevertheless, UNHCR overall found the living conditions for all asylum-seekers to be harsh, as outlined below. Many of the service providers who spoke with UNHCR agreed with this assessment.
44. The single adult males are accommodated in canvas tents, some with tarpaulins over them to prevent leakage in the often heavy rains. Many of them were in need of repair. The tents are close together; the different ethnic groups are close together; the tents contain between four and six men in each. The temperature generally on Manus Island is high and inside the tents it is extremely high. All the tents have fans, but they only provide limited relief from the heat.

---

<sup>5</sup> The current, temporary RPC is located over 30 minutes drive from Lorengau, within the Lombrum naval base on Los Negros Island (though generally referred to as part of 'Manus Island').

45. During interviews with UNHCR, many of the single adult men expressed the following concerns about living conditions:
- (i) cramped conditions and need for more space;
  - (ii) hygiene issues in relation to ablutions block;
  - (iii) heat, especially late afternoon and at night in the tents;
  - (iv) desire for greater space between ethnic groups;
  - (v) the nature of the food being served (in terms of hygiene); and
  - (vi) the desire to be able to do their own cooking
46. The Family Compound houses asylum-seekers in 'dongas', similar to shipping containers, which are around three metres by three metres. Each of these is home to either a couple (two persons) or a couple with a child/minor relative (three persons). The dongas in which three persons were housed contain one camp bed and one pair of bunk beds, with limited space to store belongings.
47. For their part, the families expressed many of the same issues (though the actual living conditions are not quite as harsh as those of the 'tent city' experienced by the single adult men).
48. In addition, the families were particularly concerned about:
- (i) the close proximity of the children and young women to the single adult males, who are separated visually and physically by a narrow 'no man's land' and colorbond fences;
  - (ii) children continued to hear angry outbursts, fighting and other frightening sounds from the single adult male compound;
  - (iii) young women felt threatened by the close presence of so many single adult men; and
  - (iv) the proximity of the men was of general concern to the family groups who said they did not feel safe living so close to the large number of single adult males.

#### Freedom of movement

49. Progress has been slow to achieve greater freedom of movement and access to local schools. The lack of a clear legal framework for freedom of movement is compounded by the remoteness of the location and slow negotiations with the local community.
50. At the time of the visit, all but four asylum-seekers had cleared security and health requirements and were therefore able to take part in organized excursions. The health and quarantine requirements include inoculations, which have posed some issues for the four remaining asylum-seekers, which UNHCR understands are in the process of being resolved.
51. At the time of the visit, two excursions by bus were arranged each day, each of which catered for about thirty asylum-seekers. The asylum-seekers are able to register their interest and thereafter take it in turns to participate in excursions. Current capacity allowed for approximately two excursions per week per asylum-seeker. Excursions allowed asylum-seekers to alight from the bus in some locations around the island, under close escort, but there was limited scope for specific activities during these excursions on Manus Island.
52. Efforts were being made to introduce more meaningful activities, such as art or cultural awareness-raising activities, and options for allowing asylum-seekers to

undertake voluntary work in the community were, similarly, being explored. Use of the playing field within the RPC was provided to asylum-seekers for a couple of hours each afternoon to play sports and undertake other activities. Asylum-seekers were allowed to cook their own meals on two nights per week, with use of communal cooking facilities allocated by roster.

53. UNHCR welcomes the efforts officials and service providers working in the Centre have made to ameliorate the asylum-seekers' difficult living conditions, to organize excursions and to provide meaningful activities for the asylum-seekers.
54. Nevertheless, UNHCR was deeply concerned by the ongoing deprivation of freedom of the asylum-seekers in the Centre, especially in the harsh and crowded conditions. While the physical limitations of the Centre appear to be fairly low-security, there is a significant presence of security guards and no one is allowed to enter or leave without explicit permission.
55. The remoteness of the location, the nature of the facility (on a naval base) and the difficult living conditions appear to contribute to the all-pervasive sense of frustration and despondency which, if left unresolved for a protracted period, is likely to lead to increased levels of psycho-social and physical harm of those affected.
56. This is particularly serious for children (who are dealt with separately below).
57. Overall, UNCHR concludes that the current arrangement for the housing of asylum-seekers at the RPC constitutes detention under applicable international law. According to UNHCR's Detention Guidelines, 'detention':

*...refers to the deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities.<sup>6</sup>*

58. Most asylum-seekers have been detained for protracted periods, without processing or assessment of their claims to international protection, in difficult conditions.
59. Since UNHCR's last visit, there continues to be:
  - (i) no adequate domestic regulatory framework for detention;
  - (ii) no adequate process by which the necessity of detention of an individual is made or reviewable;
  - (iii) no clearly defined process in place to consider claims for refugee status, although such a process is imminent; and
  - (iv) no time limit on the period which detention will last.
60. The current PNG policy and practice of detaining all asylum-seekers at the closed Centre, on a mandatory and indefinite 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 amounts to arbitrary detention that is inconsistent with international human rights law.

---

<sup>6</sup> UNHCR Detention Guidelines: <http://www.refworld.org/pdfid/503489533b8.pdf>

### **Recommendations: Reception of Asylum-Seekers**

- E. The need for detention of an asylum-seeker should be based on an assessment in the individual case of risk to public order, public health or national security.**
- F. In the absence of reasonable and proportionate limitations arising from each individual case, asylum-seekers should be provided with freedom of movement as a matter of priority and the Centre on Manus Island should be made an open centre.**
- G. The Government of PNG should establish a legal framework which outlines the permissible bases for detention, which should be consistent with international law and in line with UNHCR's Detention Guidelines. Such a legal framework would ensure that asylum-seekers be given reasons for their detention in writing and be allowed to challenge the decision to detain, with periodic reviews thereafter to ensure no one is detained longer than necessary, with express maximum periods for such detention.**
- H. The consideration of alternatives to detention, as well as improvements in the physical living conditions for asylum-seekers on Manus Island, are urgent and should be undertaken as soon as possible.**

### **V. Children**

- 61. At the time of the visit, UNCHR observed that:
  - (i) there were 25 children housed at the Centre;
  - (ii) educational and child welfare services were provided by Save the Children Australia;
  - (iii) children were provided with formal education programmes in a classroom on site, and the education programme was coupled with extra-curricular activities; and
  - (iv) negotiations to send children to local schools had not been successful, for a number of reasons, including the fact that local schooling is conducted in the Tok Pisin language.
- 62. Asylum-seekers expressed particular concerns about:
  - (i) the deprivation of liberty for children;
  - (ii) the deteriorating mental health of children in the RPC, which was impacting on their ability to engage in educational activities;
  - (iii) the trauma caused to the children by being in close proximity to the single adult male compound, notwithstanding the additional measures taken at the Centre to provide a visual and greater physical barrier between the two groups;
  - (iv) the uncertainty associated with the length of time the children and youth were expected to spend on Manus Island, during their formative years;
  - (v) the lack of tertiary education for those children entering adulthood;

- (vi) the health issues associated with the Centre, including fear of malaria as well as fear of the measures being taken to prevent malaria (medication and spraying);
- (vii) inadequacy of educational facilities;
- (viii) the unsuitability of the terrain for children to play (including areas of rocky ground, with glass shards and other debris); and,
- (ix) lack of access to human rights institutions and lawyers.

63. Service providers also indicated that while all efforts were being made to organize excursions and other meaningful activities, the nature of detention and the conditions at the Centre, especially the proximity to the single adult males and the lack of adequate space, had caused significant distress to the families and huge stress on the children. This stress was only likely to increase with time.

64. Since the visit, the Governments of PNG and Australia began to transfer children and their families back to Australia from Manus Island. At the time of writing, UNHCR understands all family groups, including children, have been returned to Australia from PNG.

65. In view of the current shortcomings at the temporary facility, UNHCR welcomes this development and encourages the Governments of Australia and PNG to end the transfer and detention of children at the Manus Island RPC.

66. Under international law, children should only be held in immigration detention facilities as a 'last resort' and for the 'shortest appropriate period of time'.<sup>7</sup>

67. A child's best interest is a primary consideration in all decisions made in relation to children,<sup>8</sup> and refugee children are entitled to special protection and assistance.<sup>9</sup>

68. While the children's rights to education, to rest and leisure, to engage in play and recreational activities are actively promoted at the Centre, UNHCR is deeply concerned by the transfer of children to a closed detention facility with no time limit for when freedom of movement may be achieved. An overall ethic of care – and not of enforcement – is the appropriate response for all interactions with asylum-seeking children.<sup>10</sup>

---

<sup>7</sup> CRC, art. 37 (b); UNHCR Detention Guidelines, guideline 9.2.

<sup>8</sup> CRC, art. 3; UNHCR Detention Guidelines, guideline 9.2 [51]; UNHCR Guidelines on Determining the Best Interests of the Child; UN Committee on the Rights of the Child, General Comment 6 [31].

<sup>9</sup> CRC, art. 22.

<sup>10</sup> UNHCR Detention Guidelines, guideline 9.2.

### **Recommendations: Children**

- I. UNHCR recommends that children and their families not be transferred to Manus Island under these arrangements.**
- J. If children are to be transferred, PNG should develop specific legal measures and administrative guidance to ensure that children are treated in full respect of their rights under the Convention on the Rights of the Child.**
- K. In the event that, exceptionally and as a last resort, a child is detained, the safety, security and well-being of that child needs to be assured.**
- L. As a matter of principle, the refugee claims of children and other vulnerable groups should be prioritised for assessment and these should be carried out by suitably qualified officials who are also able to conduct 'best interest determinations' (BIDs).**

### **VI. Mental health**

- 69. Many of the asylum-seekers UNHCR met with expressed a profound sense of injustice and perceived discrimination arising from their selection for transfer to Manus Island while the vast majority of asylum-seekers who had arrived in Australia remained on Australian territory and, in many cases, had been released with freedom of movement into the Australian community.
- 70. All asylum-seeker groups expressed deep anxiety and said their mental health was deteriorating.
- 71. Despite the concerns voiced by asylum-seekers, UNHCR understands that there have been no incidents of self-harm recorded at the Manus Island facility in the period between its visits. It was clear that significant efforts of the Salvation Army and Save the Children, and the positive and empathetic approach of numerous G4S staff and officials on site are helping to defuse tensions and mitigate, as far as possible, the mental health effects of long term detention.
- 72. However, a number of officials and service providers to whom UNHCR spoke, expressed concerns over the likely deterioration of mental health of asylum-seekers at the facility if certainty and progress was not made in processing and case resolution. UNHCR welcomed advice that a torture and trauma counselling team was expected to arrive on Manus Island in early July, to have a permanent presence.
- 73. While UNHCR's Team did not include a medical officer, it noted that all asylum-seekers on Manus Island displayed apparent signs of anxiety and depression. While action to respond to this is welcome, it is regrettable that this action is remedial rather than preventative. UNHCR is left with the overall impression in the temporary RPC of a volatile environment in which otherwise minor disagreements or misunderstandings had the potential to spark significant

tensions or self-harm as pressure, uncertainty and feelings of vulnerability increased among the asylum-seekers.

#### **Recommendations: Mental health**

**M. Against a background of deteriorating mental health on the part of the asylum-seekers, the recommendations contained in this report should be addressed as a matter of urgency.**

#### **VII. Physical health**

74. UNHCR inspected the medical facilities in the Centre. These appeared small, but well-equipped and well managed by professional and sensitive service providers. The fact that asylum-seekers had to be driven to the medical centre, rather than having direct access continued to be an issue for many.
75. At the time of the visit, there were only limited dental services available on Manus Island.
76. IHMS advised that the pre-transfer screenings which take place in Australia are very thorough and the PNG Government is very strict in requiring asylum-seekers to be in good health prior to transfer, due to the tropical conditions and remote location of Manus Island.
77. Nonetheless, UNHCR noted that many asylum-seekers expressed concern about:
- (i) their deteriorating physical as well as mental health;
  - (ii) the limited medical services available;
  - (iii) the time it took to access medical treatment;
  - (iv) the limited medication they were issued with;
  - (v) the need for tranquillizers and sleeping pills to sleep; and
  - (vi) the need for more specialized gynaecological resources.

#### **VIII. Assisted voluntary returns**

78. UNHCR was informed that recently 19 Vietnamese nationals and one Iraqi had volunteered for assisted voluntary returns (AVR) to their countries of origin. The International Organization for Migration (IOM) had spent two weeks on Manus Island to discuss the possibility of assisted voluntary returns for asylum-seekers who expressed an interest.
79. In addition, asylum-seekers were able to access IOM by telephone at any time. ICSA and DIAC officials gave assurances that asylum-seekers were fully counselled and the voluntariness of any returns was fully explored and assured.
80. While UNHCR fully supports the need for a functional AVR programme to help any asylum-seeker return home at any time, it is concerned that some asylum-seekers who may be bona fide refugees might contemplate a return to a country of origin as a result of the uncertainty around processes in PNG, and the prospect of lengthy delays in accessing a permanent solution, in onerous detention conditions. This may be particularly prevalent where asylum-seekers



are reduced to a psycho-social state of hopelessness and despondency. UNHCR considers it essential that any returns are fully informed and consensual, and not prompted by uncertainty and protracted detention.

#### **IX. Oversight and monitoring**

81. Within the RPC, there is a complaints mechanism accessible to asylum-seekers and managed by the Salvation Army. Any complaints are referred to DIAC (as the manager of the service providers) for written response and delegated follow up as required. In this regard, UNHCR notes that in the environment of the RPC, there are few available spaces for staff to meet with asylum-seekers to discuss sensitive issues in private.
82. UNHCR recommends the Governments of PNG and Australia consider establishing an Advisory Committee which could advise them on issues arising out of the implementation of the arrangement and be a body to which the Governments might refer issues for consideration. Such an Advisory Committee has been established in the case of the Australia-Nauru transfer arrangements, and were contemplated in the Australia-Malaysia transfer arrangements. A similar advisory body would be of assistance to both States in addressing the challenges of processing in this location.
83. Such an Advisory Committee could allow the Governments to have the benefits of the advice of independent experts in various aspects of the reception, treatment and processing of claims for refugee status of asylum-seekers. It would also increase the transparency of the arrangements.
84. UNHCR appreciated full access to all areas and asylum-seekers at the RPC during its visit. It was grateful also, that the Centre Manager and senior DIAC officials indicated that they would be happy to put up posters informing asylum-seekers of the contact details for UNHCR. It also understands that the ICRC also has access to the Centre, which it welcomes.

#### **Recommendations: Oversight and Monitoring**

- N. Australia and PNG should continue to ensure that appropriate independent oversight bodies are able to gain access to asylum-seekers at the Centre on Manus Island.**
- O. Australia and PNG should consider establishing an Advisory Committee to provide advice to the respective Governments on issues arising out of the implementation of the arrangement and be a body to which the Governments might refer issues for guidance and advice.**

#### **X. Pre-transfer assessments**

85. As related in its 4 February 2013 Report, “special procedures for vulnerable individuals with clear pre-transfer assessments by qualified staff (including best interests determination for children, especially unaccompanied and separated

children)” [17] form an integral part of the suite of measures to be agreed by the transferring States and implemented in practice by those States.

86. In the period following its 4 February Report, UNHCR has reviewed a further sample of pre-transfer assessments conducted by DIAC prior to the transfer of asylum-seekers, including Best Interest Assessments (BIAs) where undertaken by Australian officials regarding the situation of children.
87. UNHCR remains concerned by a number of aspects of the pre-transfer assessment process, including the limited scope allowed by the assessment template for analysis of individual needs and vulnerabilities. The sample assessments reviewed continue to indicate that the assessment process does not appear to make a comprehensive analysis of the physical and mental characteristics (physical or mental health of the persons, special needs identified, fitness to travel, and other vulnerabilities), nor, apparently, are the actual resources at the RPC given adequate weight and consideration.
88. In the case of children, UNHCR considers a BIA should result in an individualized assessment of the situation of the child and include recommendations on protection and care interventions.<sup>11</sup>
89. UNHCR remains of the view that the legal framework and detention environment at the Manus Island facility fall short of international standards of protection, it is difficult to see how a determination of the best interests of transferee children, appropriately weighed, could lead to a conclusion that adequate and appropriate levels of care and support are currently available on the island. The recent transfer of children and their families to Australia, which UNHCR welcomes, appears to support this finding.

#### **Recommendations: Pre Transfer Assessments**

- P. Pre-transfer assessments conducted in Australia should fully take into account the individualized needs of vulnerable individuals, including children, the elderly, survivors of torture or trauma, disabled persons and persons with specific health needs.**
- Q. Pre-transfer assessments should also contain a realistic assessment of the actual quality of support and capacities of service providers on PNG, within the legal, operational and physical conditions currently prevailing.**

90. UNHCR stands ready to provide technical advice or assistance to the Governments of PNG and Australia in effecting the changes recommended in this report.

UNHCR Regional Representation  
Canberra, 12 July 2013

---

<sup>11</sup> UNHCR, Field Handbook for the Implementation of UNHCR BID Guidelines (November 2011), 7.