



Human Rights  
Law Centre



Rights and  
Accountability  
in Development

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Complaint concerning G4S Australia Pty Ltd  
Submitted to the Australian and United Kingdom National  
Contact Points for the OECD Guidelines for Multinational  
Enterprises

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September 2014

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## About the Human Rights Law Centre

The Human Rights Law Centre is an independent, non-profit, non-government organisation which protects and promotes human rights.

We contribute to the protection of human dignity, the alleviation of disadvantage, and the attainment of equality through a strategic combination of research, advocacy, litigation and education.

## About Rights and Accountability in Development (RAID)

RAID is a non-governmental organisation based in the United Kingdom that works to ensure that companies that perpetrate human rights abuses, cause environmental harm or engage in corruption or financial impropriety are held to account.

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# 1. Executive Summary

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This complaint alleges that G4S Australia Pty Ltd (G4S) has been responsible for significant breaches of the OECD guidelines in relation to conditions and alleged abuse of detainees at the Manus Island Regional Processing Centre (MIRPC), a remote facility in Papua New Guinea about 800km north of Port Moresby where over 1,000 asylum seekers are currently detained.

The MIRPC was established as part of series of border control measures introduced by the Australian Government to try to deter asylum seekers from trying to reach Australia by boat. By agreement with Papua New Guinea, asylum seekers arriving in Australia are forcibly transferred to Manus Island where they are mandatorily detained pending consideration of their refugee status. Expert bodies such as the United Nations High Commissioner on Refugees (UNHCR) and the Australian Human Rights Commission have consistently stated that such policies breach fundamental principles of international human rights law.

G4S was contracted by the Australian Government to oversee management and security at the MIRPC between February 2013 and March 2014. Over this period, there have been persistent and credible reports of serious human rights abuses at the Centre. Of greatest concern was an outbreak of violence at the MIRPC on 16-17 February 2014 in which G4S personnel were directly involved. The violence resulted in the death of one asylum seeker and serious injuries to many others.

The complaint draws upon existing human rights monitoring reports, media reports and information submitted to the recent Senate Inquiry into the February violence, as well as interviews with individuals and organisations that have worked with asylum seekers on Manus Island or been involved in monitoring conditions there. It concludes that through its complicity in the unlawful detention of asylum seekers the MIRPC and its failures to maintain basic human rights standards at the facility and protect asylum seekers from harm, G4S has been responsible for significant breaches of its human rights obligations under the OECD guidelines.

## 2. Background Information about G4S Australia Pty Ltd

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G4S Australia Pty Ltd (“G4S”) is a private company incorporated in Australia in 1995.<sup>1</sup> It is a wholly owned subsidiary of G4S Plc, a UK publicly listed multinational that describes itself as the world’s “*leading international security solutions group*”.

The G4S group as a whole employs more than 620,000 people in over 120 countries. Its turnover in 2013 was 7.4 billion GBP,<sup>2</sup> 23% of which derived from government contracts to provide services in the areas of homeland security, defence, justice & policing and foreign affairs.<sup>3</sup> In Australia, G4S employs over 1700 people. Its core business focuses on “*manned and security justice services [and] electronic security systems*”.<sup>4</sup>

The group’s global corporate headquarters are located at The Manor, Manor Royal, Crawley, West Sussex, UK, RH10 9UN. Its Australian corporate headquarters are located at Level 4, 441 St Kilda Road Melbourne Vic 3004.

At **Appendix 1** to this complaint are copies of G4S’ human rights policy and guidelines, which, it is stated, aim to set expectations for the conduct of all companies in the G4S group, its employees and those with whom it does business.<sup>5</sup> In these documents, the company makes the following commitments:

- G4S is committed to applying the UN Guiding Principles on Business and Human Rights (2011) across all of its businesses, and those principles are adopted as the basis for human rights monitoring and reporting throughout G4S;<sup>6</sup>
- G4S sets as a “*human rights baseline*” for all businesses the standards set out in the Universal Declaration on Human Rights (1947), International Covenant on Civil and Political Rights (1966), International Convention and Social, Economic and Cultural Rights (1966) and the International Labour Organisation Declaration on Fundamental Rights at Work (1998);<sup>7</sup>

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<sup>1</sup> G4S, *G4S Leads the Security and Justice Markets*, Business Review Australia <[www.businessreviewaustralia.com/magazines/11277](http://www.businessreviewaustralia.com/magazines/11277)>.

<sup>2</sup> G4S, *Key facts and figures* <[www.g4s.com/en/Media%20Centre/Key%20facts%20and%20figures](http://www.g4s.com/en/Media%20Centre/Key%20facts%20and%20figures)>.

<sup>3</sup> G4S, *G4S plc Annual Report and Accounts 2013*, 2 <[www.g4s.com/~media/Files/Annual%20Reports/G4S%20Annual%20Report%202013.ashx](http://www.g4s.com/~media/Files/Annual%20Reports/G4S%20Annual%20Report%202013.ashx)>.

<sup>4</sup> G4S, above n 1.

<sup>5</sup> G4S, *G4S plc Corporate Social Responsibility Report 2012*, 16 <[www.g4s.com/~media/Files/CSR%20Reports/G4S\\_CSR12.ashx](http://www.g4s.com/~media/Files/CSR%20Reports/G4S_CSR12.ashx)>.

<sup>6</sup> G4S, *G4S Human Rights Guidance* (adopted 9 April 2013) <[www.g4s.com/~media/Files/Corporate%20Files/Group%20Policies/G4S%20Human%20Rights%20Guidance.ashx](http://www.g4s.com/~media/Files/Corporate%20Files/Group%20Policies/G4S%20Human%20Rights%20Guidance.ashx)>.

<sup>7</sup> Ibid 4.

- G4S is committed to making human rights due diligence an “essential and integrated” part of its business and to acting upon the findings of that due diligence to “ensure that we prevent human rights violations wherever possible, and deliver appropriate and effective remedy if we fail to prevent abuses”.<sup>8</sup>
- G4S is committed to working with States to reform and improve places of detention in a way that helps States to realise their human rights obligations. Moreover, where States and other parties are abusing human rights, G4S will be careful “not to exacerbate the situation...and to comply with international standards”.<sup>9</sup>

G4S signed the International Code of Conduct for Private Security Services Providers in November 2010. The Code sets out principles for security operations in so-called “complex environments” – areas experiencing or recovering from disaster or unrest and where governments and the rule of law are weak. It covers recruitment, vetting and training of staff, the use of force by security company staff, including the handling of firearms, health and safety and reporting and complaints handling.

G4S’ latest Corporate Social Responsibility report, released on 14 April 2014, describes how these policies are being implemented within its business, stating that:

*Throughout 2013, we have continued to embed our human rights framework into the organisation through an ongoing process of analysis, alignment and communication. Specifically, this has included:*

- *The development of a due diligence framework, providing an additional level of guidance to G4S managers and enabling them to review their operations against the standards set in our human rights policy.*
- *Reviewing existing internal audit processes, standards and training programmes to ensure they reflect the relevant human rights elements.*
- *Introducing a self-assessment checklist for G4S businesses operating in higher risk country environments.*

*In 2014, we are continuing to embed systematic human rights risks assessment and due diligence into our wider business processes, as well as building further*

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<sup>8</sup> G4S, *G4S Human Rights Policy* (adopted 9 April 2013) 4  
<[www.g4s.com/~media/Files/Corporate%20Files/Group%20Policies/G4S%20Human%20Rights%20Policy.ashx](http://www.g4s.com/~media/Files/Corporate%20Files/Group%20Policies/G4S%20Human%20Rights%20Policy.ashx)>..

<sup>9</sup> Ibid 5.

awareness of human rights issues and our responsibility to respect them throughout all levels of the organisation".<sup>10</sup>

### 3. Manus Island and Australia's Off-Shore Processing Policies

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The MIRPC was first set up in 2001 as part of the then Howard government's "Pacific Solution" to deter asylum seekers from attempting to reach Australia by boat. Under this policy, islands to the north of Australia such as Christmas Island were excised from Australia's migration zone so that asylum seekers arriving there could not make protection claims under Australia's *Migration Act*. Instead, the Government reached agreements with Nauru and Papua New Guinea under which asylum seekers whose boats were intercepted would be transferred for "off-shore" processing at specially created detention centres on Nauru and Manus Island.

The Pacific Solution was partially dismantled by the Labor government when it came to power in 2007 and the MIRPC was temporarily closed. In 2012, however, the Government decided to re-initiate offshore processing.<sup>11</sup> In July 2013, then Prime Minister Kevin Rudd announced that no asylum seeker coming by boat would ever be resettled in Australia. A new Regional Resettlement Arrangement had been reached with Papua New Guinea meant that all new boat arrivals would be transferred to either Nauru or Manus Island. Those found to be refugees would not be resettled in Australia, but would instead be resettled in Nauru, Papua New Guinea or possibly a third country. The Coalition government maintained the Regional Resettlement Arrangement when it came to power in September 2013.

Since the MIRPC was re-opened in November 2012, the number of asylum seekers held there has risen from around 200 to over 1300.<sup>12</sup> The detainee population originally included families and children, but since July 2013 it has been a "single adult male" only facility, although it is understood that there are still a number of unaccompanied boys under the age of 18 in the group.<sup>13</sup>

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<sup>10</sup> G4S, *G4S plc Corporate Social Responsibility Report 2013*, 22 <[www.g4s.com/~media/Files/CSR%20Reports/G4S%20CSR%20Report%202013.ashx](http://www.g4s.com/~media/Files/CSR%20Reports/G4S%20CSR%20Report%202013.ashx)>.

<sup>11</sup> At the same time, the government announced that all new arrivals would be subject to a "no advantage" policy, under which their protection visas would be delayed for approximately four or five years – the period they would hypothetically have had to await resettlement in refugee camps abroad.

<sup>12</sup> See Department of Immigration and Border Protection, *Immigration Detention and Community Statistics Summary* (31 January 2014) Commonwealth of Australia <[https://www.immi.gov.au/managing-australias-borders/detention/\\_pdf/immigration-detention-statistics-jan2014.pdf](https://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-jan2014.pdf)>.

<sup>13</sup> Amnesty International interviewed at least three asylum seekers during its visit to the facility in November 2013 who gave their ages as between 15 to 17: see Amnesty International, Submission No

The majority of asylum seekers currently held there are young men from Afghanistan, Sri Lanka, Iran, Sudan and Pakistan. Some are stateless and several have disabilities.

There is still no clear and adequate legal or regulatory framework for conducting refugee status determination in PNG. Section 15A of PNG's Migration Act 1980 (Act) empowers the Foreign Affairs Minister of PNG to determine whether a non-citizen is a "refugee", but provides no procedural or substantive guidance as to how a refugee status determination should be made by the Minister.<sup>14</sup> It is also not clear from that Act the consequences that would flow from such a determination, other than that the Minister is empowered to make directions to refugees to reside in a relocation centre.<sup>15</sup>

To date, no asylum seekers detained on Manus Island have had their protection claims determined by the Minister, no refugees have been resettled and there is still no final resettlement plan in place.<sup>16</sup>

## 4. G4S' involvement in the MIRPC

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G4S was contracted by the Australian Department of Immigration and Border Protection (DIBP) to provide "operational and maintenance services" to asylum seekers transferred to the MIRPC between 1 February 2013 and 28 March 2014, when it lost the contract to Transfield Services.<sup>17</sup> G4S had previously held similar contracts with the Department with respect to a number of other immigration detention centres in Australia, including the Maribyrnong IDC, Perth IDC, Port Hedland ICD, Christmas Island IDC, Villawood IDC and Baxter Immigration Centre.<sup>18</sup>

At **Appendix 2** to this complaint is a copy of G4S' contract with DIBP. The contract stipulates that G4S, as the service provider, is responsible for the day-to-day management of the MIRPC, including:

- maintenance of assets/infrastructure and grounds;

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22 (attachment 1) to Senate Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, 9 May 2014, 76.

<sup>14</sup> UNHCR Regional Representation, Canberra, *UNHCR Monitoring visit to Manus Island, Papua New Guinea 23 to 25 October 2013* (26 November 2013) 7 <<http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Manus%20Island%20PNG%2023-25%20October%202013.pdf>>.

<sup>15</sup> *Migration Act 1980* (Papua New Guinea) s 15C.

<sup>16</sup> Islands Business, *PNG PM cautious on asylum seekers* (6 August 2014) <[www.islandsbusiness.com/news/papua-new-guinea/5963/png-pm-cautious-on-asylum-seekers/](http://www.islandsbusiness.com/news/papua-new-guinea/5963/png-pm-cautious-on-asylum-seekers/)>.

<sup>17</sup> G4S Australia Pty Ltd, Submission No 29 to Senate Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, 14 May 2014, 3.

<sup>18</sup> In May 2008, G4S plc acquired Global Solutions Limited (Australia) Pty Ltd, which at the time had a multimillion-dollar contract with the Australian government to operate all of its immigration detention facilities. G4S operated the facilities until 2009.

- provision of food and water;
- provision of cleaning services and maintenance of hygiene;
- ensuring safety and security (including the development and implementation of emergency plans);
- management of utilities (water, power, sewage);
- daily operations (including movements in and out of staff and detainee accommodation);
- provision and replenishment of appropriate bedding, clothing, footwear and toiletries to Transferees (including soap and shampoo, razors, sunscreen and insect repellent); and
- provision of access to communication services (telephones, internet and television).

Of particular note, the contract required G4S to:

- provide and maintain a safe and secure environment for Transferees and other people at the site, ensuring that their human rights, dignity and well-being are preserved;<sup>19</sup>
- ensure that the needs of Transferees are identified and responded to openly and with integrity;<sup>20</sup>
- maintain assets and infrastructure to provide a safe, secure and healthy environment at the site;<sup>21</sup>
- ensure that all G4S personnel are and remain of good character and conduct, comply with G4S Group Ethical Policies and are appropriately skilled, trained and qualified to provide the services under the Contract;<sup>22</sup>
- establish processes to prevent Transferees being subjected to illegal and anti-social behaviour; and<sup>23</sup>
- implement management strategies to defuse tensions and conflicts before they escalate or become serious or violent.<sup>24</sup>

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<sup>19</sup> Clause 14.1.1.

<sup>20</sup> Clause 6.1.1(a).

<sup>21</sup> Clause 8.4.2.

<sup>22</sup> Clauses 5.4.2 (a), (e) and 5.5.2.

<sup>23</sup> Clause 6.1.1(b).

<sup>24</sup> Clause 6.9.

Under the contract, G4S was required to engage 50% of its security staff and 75% of its cleaning and gardening staff from the local Manus Island population.<sup>25</sup>

The company engaged local companies Loda Securities PNG Ltd to assist with security,<sup>26</sup> Spic-n-Span to provide cleaning services and Delta FM to provide maintenance. It also sub-contracted the provision of catering to Eurest. G4S retained responsibility for oversight of all these areas under its contract with DIBP.

Welfare services at the MIRPC over the period of G4S' contract were provided by the Salvation Army and medical services by the International Health and Medical Service (IHMS), both of whom had direct contracts with the DIBP. Under its contract, however, G4S was responsible for working with these organisations to ensure that Transferees' medical and welfare needs were properly addressed – for example by ensuring that any Transferee who requested or appeared to be in need of medical attention was referred to the appropriate health service provider.<sup>27</sup>

## 5. Human rights abuses at the MIRPC

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### 5.1 The Detention and Processing Framework

The legal framework under which asylum seekers are transferred to and held at Manus Island has been heavily criticised by leading international human rights organisations such as the United Nations High Commission on Refugees (UNHCR) and Amnesty International and by the Australian Joint Parliamentary Committee on Human Rights and the Australian Human Rights Commission. In particular, the regional processing arrangement has been criticised as violating the following tenets of international human rights law:

(a) *The prohibition on arbitrary detention*

Asylum seekers at the MIRPC are detained mandatorily and indefinitely without any assessment as to the necessity or proportionality of such detention, and without being brought before a judge or any other independent authority to enable them to challenge their detention. Indeed, as noted by UNHCR, there is no clear legal framework under Papua New Guinea law for them to do so.<sup>28</sup> Such detention has been found by UNCHR and others to violate the prohibition on arbitrary detention enshrined in Article 9 of the Universal Declaration

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<sup>25</sup> Clause 1.2.2.

<sup>26</sup> G4S Australia Pty Ltd, above n 17, 6.

<sup>27</sup> Clause 6.6.1.

<sup>28</sup> UNHCR Regional Representation, Canberra, above n 14, 1.

of Human Rights (UDHR) and Article 9 paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR).<sup>29</sup>

Australia's policy of mandatorily detaining asylum seekers in remote locations has long been the subject of international censure by bodies such as the United Nations Human Rights Committee.<sup>30</sup> It has been shown by medical professionals such as the Australian Medical Association and Royal Australian and New Zealand College of Psychiatrists to be a direct cause of mental health problems such as depression, anxiety and post-traumatic stress disorder, and to exacerbate the trauma that many asylum seekers have already experienced in their countries of origin.<sup>31</sup> As such, it has also been found to violate the prohibition on cruel, inhumane or degrading treatment by continuing to place asylum seekers in a situation that is known to contribute to mental illness.<sup>32</sup>

(b) *The right to seek asylum:*

Asylum seekers at the MIRPC are prevented from making refugee claims in Australia and are forcibly transferred to Papua New Guinea. They are thus penalised for their arrival in Australia by boat, contrary to Article 31(1) of the Refugee Convention.<sup>33</sup> Once at the MIRPC, they are given little information as to when their claims will be heard, when they will receive a decision about their claims or where they will be resettled if their refugee claims are recognised. The processing of refugee status determinations at the MIRPC has been extremely slow,<sup>34</sup> hampered, as the UNHCR has observed, by the fact that Papua New Guinea has no legal

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<sup>29</sup> *International Covenant on Civil and Political Rights* art 9(1): "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest and detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law".

<sup>30</sup> Human Rights Committee, *Views: Communication No 560/1993*, 59<sup>th</sup> sess, UN Doc CCPR/C/59/D/560/1993 (30 April 1997) ('*A v Australia*').

<sup>31</sup> Adrian Rollins, *Depression, anxiety soars among asylum seekers* (18 February 2014) Australian Medical Association <<https://ama.com.au/ausmed/depression-anxiety-soars-among-asylum-seekers>>; The Royal Australian & New Zealand College of Psychiatrists, *Position Statement 46: The provision of mental health services to asylum seekers and refugees* (February 2012) <[https://www.ranzcp.org/Files/Resources/College\\_Statements/Position\\_Statements/ps46-pdf.aspx](https://www.ranzcp.org/Files/Resources/College_Statements/Position_Statements/ps46-pdf.aspx)>.

<sup>32</sup> See eg Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest standard of physical and mental health – Mission to Australia*, 14<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/14/20/Add.4 (3 June 2010) annex ('*Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his mission to Australia*') [93] and [98]; Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 And 17 of the Covenant – Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, 42<sup>nd</sup> sess, 26<sup>th</sup> mtg, UN Doc E/C.12/AUS/CO/4 (12 June 2009) [25].

<sup>33</sup> *Convention relating to the Status of Refugees* 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".

<sup>34</sup> While the first asylum seekers were transferred to the MIRPC in November 2012, as at 15 November 2013, not a single refugee status determination had been granted and only 50 asylum seekers had even undergone an initial assessment interview: Amnesty International, above n 13, 62. The first 11 refugee status determinations were finally granted in April 2014.

framework for the conduct of such determinations.<sup>35</sup> It has been the policy of both the Australian and Papua New Guinea governments not to provide asylum seekers with timeframes for the assessment of their claims.<sup>36</sup>

As Amnesty International has pointed out, the lack of progress in the processing of refugee status determinations at the MIRPC and the uncertainties surrounding the process violate asylum seekers' fundamental right to seek asylum, as set out in Article 14(1) of the Universal Declaration on Human Rights,<sup>37</sup> which includes a right to have the claim heard and to receive procedural protections with respect to that hearing.<sup>38</sup> The failure to efficiently process claims has also been found to be a major contributing factor to the violence that engulfed the MIRPC in February 2014, discussed further below.<sup>39</sup>

(c) *The non-refoulement obligation:*

The regional processing arrangements include the forcible transfer of asylum seekers to PNG before their refugee claims or vulnerabilities can be properly assessed. As UNHCR observed following its visit to the MIRPC in October 2013:

*The pre-transfer assessments that are conducted within Australia within a targeted '48-hour' timeframe do not permit an adequate individualized assessment of health concerns or vulnerabilities (particularly for torture and trauma survivors), nor a considered assessment as to whether the nature of the facilities and services available at the RPC would be appropriate for the individual concerned or whether transfer should occur at all.*<sup>40</sup>

The organisation has also raised concerns as to whether the refugee status determination procedures at the MIRPC are adequate to ensure proper protection for asylum seekers and to guard against the risk that they could be returned to countries where they have a well-founded fear of persecution or other ill-treatment, in contravention of PNG and Australia's *non-refoulement* obligations under international law.<sup>41</sup>

Further, as noted by Amnesty International, the current conditions and indefinite detention on Manus may compel asylum seekers to return to their countries of origin irrespective of the risk

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<sup>35</sup> UNHCR Regional Representation, Canberra, above n 14, 1.

<sup>36</sup> *Ibid* 10.

<sup>37</sup> *Universal Declaration of Human Rights* art 14(1): "Everyone has the right to seek and to enjoy in other countries asylum from persecution".

<sup>38</sup> Amnesty International, above n 13, 89.

<sup>39</sup> Robert Cornall, *Report to the Secretary, Department of Immigration and Border Protection: Review into the Events of 16-18 February 2014 at the Manus Regional Processing Centre* (23 May 2014) 8 <[https://www.immi.gov.au/about/dept-info/\\_files/review-robert-cornall.pdf](https://www.immi.gov.au/about/dept-info/_files/review-robert-cornall.pdf)>.

<sup>40</sup> UNHCR Regional Representation, Canberra, above n 14, 3.

<sup>41</sup> *Ibid* 4.

of persecution, resulting in constructive *refoulement*.<sup>42</sup> Indeed, since the recent violence at the MIRPC, many refugee and human rights organisations have queried whether transferring asylum seekers to Manus Island constitutes unlawful *refoulement* in and of itself, given the apparent ongoing risks of violence at the facility.<sup>43</sup>

Serious concerns have also been raised for the safety and wellbeing of gay and lesbian asylum seekers transferred to Manus Island, as PNG criminalises homosexuality.<sup>44</sup>

(d) *The prohibition on discrimination:*

As noted by Australia's Parliamentary Joint Committee on Human Rights, the regional processing arrangements are also discriminatory in that they directly penalise asylum seekers for the manner and date of their arrival, applying only to those who arrive in Australia by boat. Such differential treatment of asylum seekers, the Committee observed, violates the prohibition on discrimination enshrined in Article 7 of the UDHR, Articles 2 and 26 of the ICCPR and elsewhere.<sup>45</sup>

## 5.2 Conditions at the MIRPC

Due to its remote location and restrictions on entry and reporting imposed by the Australian and PNG governments, regular human rights monitoring of the conditions at the MIRPC has been extremely difficult.<sup>46</sup> To date, UNHCR has been permitted to inspect the facility on three occasions in January, June and October 2013, and Amnesty International twice in November 2013 and March 2014. Both organisations found that at the time of their visits, conditions at the Centre breached basic minimum standards of detention under international law and required urgent remediation.

(a) *UNHCR Reports*

Following its initial visit to the MIRPC in January 2013, UNHCR reported that:

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<sup>42</sup> Amnesty International, above n 13, 86.

<sup>43</sup> See eg Castan Centre for Human Rights Law, Submission No 7 to Senate Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, May 2014, 4-5.

<sup>44</sup> Oliver Laughland, 'Gay asylum seekers told they could be reported to PNG police, Amnesty says', *The Guardian Australia* (online), 11 December 2013 <[www.theguardian.com/world/2013/dec/11/gay-asylum-seekers-told-they-could-be-reported-to-png-police-amnesty-says](http://www.theguardian.com/world/2013/dec/11/gay-asylum-seekers-told-they-could-be-reported-to-png-police-amnesty-says)>.

<sup>45</sup> Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Examination of Legislation in Accordance with the Human Rights (Parliamentary Scrutiny) Act 2011, Migration Legislation Amendment (Regional Processing and other Measures) Act 2012* (2013) [2.198]. *Universal Declaration of Human Rights* art 7(1) provides that: "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".

<sup>46</sup> UNHCR has been permitted to visit the Centre on four occasions in total and Amnesty International only once. Other human rights monitoring bodies, such as the Australian Human Rights Commission and the Immigration Ombudsman, have been denied access. The media have been permitted access at certain points but have not been permitted to speak directly with detainees.

- physical conditions at the facility were “*harsh...and extremely muddy*”, with large amounts of standing water in some areas of the compound;
- accommodations were inadequate, with most asylum seekers housed in “dongas” (shipping-container like structures, with no doors or blinds for the windows) or canvas tents, neither of which provided adequate privacy and were suffocating hot in the humid conditions. One marquee shared by 13 men, was described as “*deplorable*” with no floor, partial walls, no light and a leaking roof;
- asylum seekers in the single male compound were sharing a single toilet between 66 men;
- detainees, including children, were being confined to the Centre at all times;
- conditions for children were “*profoundly inadequate*”, with an inadequate physical structure for education, no proper space for play and insufficient protections or privacy; and
- asylum seekers had insufficient access to meaningful activities such as physical recreation, reading materials or internet access.

The organisation concluded that conditions at the Centre failed to meet basic protection standards under international law and were “*likely to have an increasingly negative impact on the psycho-social and physical health of those transferred*”.<sup>47</sup>

Subsequent UNHCR visits noted some minor improvements with respect to the physical accommodations (with tents gradually being replaced by hard-walled structures) and freedom of movement (with asylum seekers being permitted on limited excursions accompanied by G4S guards outside the Centre). The organisation noted that accommodations remained far from adequate, however, and that the excursions, while welcome, did not fundamentally alter the tightly controlled detention regime at the Centre. It also recorded worsening problems with lack of hygiene and privacy due to overcrowding. UNHCR’s final report in November 2013 found that:

- numbers of asylum seekers held at the Centre had increased from 302 in June to 1,093 in October with almost no corresponding increase in the physical boundaries of the RPC, resulting in significant overcrowding;
- the majority of asylum seekers were still living in cramped, oppressive conditions, with those in the P block particularly badly affected;
- the small amount of recreational space previously provided for asylum seekers had been constructed over;

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<sup>47</sup> UNHCR Regional Representation, Canberra, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea 15-17 January 2013* (4 February 2013) 2 <<http://unhcr.org.au/unhcr/images/2013-02-04%20Manus%20Island%20Report%20Final.pdf>>.

- conditions in the ablution blocks were generally unhygienic. One block in the Delta compound was observed to be particularly filthy, with blocked drains, dim lighting, a putrid smell and “*several inches of filthy water flooding the floor*”.

The organisation concluded that overall conditions at the Centre remained “*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*”.<sup>48</sup>

(b) *Amnesty Report*

Amnesty International made similarly damning findings about conditions at the Centre following its inspection of the facility in late November 2013, concluding that:

- accommodations for detainees were cramped and overcrowded with insufficient ventilation, cooling or natural light. These problems were found to be particularly acute within the P-dorm, a “*long hangar-like building dating from World War II which houses 112 detainees in bunk beds spaced very close together with only a few fans that offer little relief from the stifling heat and humidity*”;
- conditions in the toilet blocks were unhygienic, with insufficient soap, showers or toilets for the number of men in the facility;
- detainees had insufficient access to water, with many being provided with the equivalent of only one 500ml bottle of drinking water per day despite the heat and humidity;
- many detainees had little or no access to phones or internet;
- medical and mental health facilities at the Centre were insufficient for the number of detainees held there; and
- some detainees were not being provided with basic items like shoes, making it extremely difficult for them to participate in the limited excursions outside the Centre.

Amnesty concluded that the poor conditions of detention at the Centre, combined with the mandatory and indefinite nature of that detention, amounted to ill-treatment under Article 7 of the ICCPR, and that conditions in the P-dorm were sufficiently bad in and of themselves to amount to violations of the prohibitions of ill-treatment under the Convention on Torture (CAT) and the ICCPR.<sup>49</sup>

(c) *Submissions to the Senate Inquiry*

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<sup>48</sup> UNHCR Regional Representation, Canberra, above n 14, [93].

<sup>49</sup> Amnesty International, above n 13, 95.

Submissions made to the recent Senate Inquiry by former staff members employed at the MIRPC have corroborated these findings and provide further evidence of the sub-standard conditions at the facility over the period that it was operated by G4S.

Steve Kilburn, a G4S Safety & Security Officer at the MIRPC between October 2013 and February 2014, notes in his submission that:

- Workplace Health & Safety systems at the MIRPC were almost non-existent;
- gastroenteritis and other illnesses widespread amongst staff and clients;
- staff had to buy their own hand sanitiser as there was none available for either staff or detainees;
- client accommodation was substandard and breached Australian Fire regulations, in particular P-block in the Foxtrot compound where there were no smoke detectors or escape routes;
- clients were not issued with hats or regular access to sunscreen and had to line up in the sun for hours on end;
- toilet facilities for clients were “*a disgrace*” and inadequate – with Delta compound at one stage having only 3 toilets for 150 clients, many of whom were sick;
- clients and staff were obliged to remain in compounds while mosquito “fogging” was conducted, meaning they were forced to breathe in the fumes – on one occasion causing a transferee with asthma to collapse;
- transferees had difficulty getting medical appointments and had little or no access to dental care;
- facilities for transferees suffering mental health or attempting self-harm were inadequate and appeared to be making the situation for some transferees worse rather than better; and
- opportunities for physical exercise, particularly for detainees in the Delta compound, were extremely limited and excursions were frequently cancelled due to lack of vehicles or drivers.<sup>50</sup>

Nicole Judge, a former Salvation Army staff member at the MIRPC between September 2012 and February 2014, states that:

- conditions detainees held at the MIRPC were “*unsanitary, and grossly inadequate for holding human beings*”;

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<sup>50</sup> Steven Kilburn, Submission No 18 to Senate Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, undated, 6.

- access to medical services was very limited. Transferees had to fill out request forms to access medical treatment, irrespective of severity and request forms often went unanswered;
- toilet and shower facilities were not adequately cleaned and there was not enough toilet paper, soap or sanitizer for detainees to use. Other personal hygiene or grooming products like toothbrushes were likewise in very limited supply;
- food for transferees was of poor quality and often had small worms and flies in it;
- drinking water was in limited supply and transferees often had to wait for prolonged periods for water;
- transferees did not have enough clothing, with many having only a single pair of underpants, t-shirt and pair of shorts, and often had to wear their clothes wet after washing them;
- mental health problems were widespread with transferees frequently speaking of ending their lives and committing acts of self-harm. Mentally ill transferees were held in "Delta 9" an area with no recreational facilities or windows, poor lighting and cramped conditions; and
- freedom of movement for all detainees was extremely limited, with compounds kept padlocked at all times and thick green mesh covering the fences making it difficult to see out.<sup>51</sup>

Similar allegations are made in other statements, such as those of former G4S safety & security officer Martin Appleby and former Claims Assistance provider Elizabeth Thompson.<sup>52</sup>

### 5.3 Violence against Detainees held at the MIRPC

Over the period that G4S managed the MIRPC, there have been a series of credible reports of violence and threats of violence against detainees held there. By far the most serious incident occurred on 16<sup>th</sup> and 17<sup>th</sup> February 2014, when outbreaks of violence at the facility resulted in the death of Iranian asylum seeker, Reza Berati and injuries – many serious – to up to 69 others.

#### (a) *The February Violence*

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<sup>51</sup> Nicole Judge, Submission No 12 to Senate Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, undated, 6.

<sup>52</sup> See Martin Appleby, Submission No 10 to Senate Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014* and Elizabeth Thompson, Submission No 19 to Senate Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, 4 May 2014.

The events of 16<sup>th</sup> and 17<sup>th</sup> February 2014 have prompted a Departmental Review, a Senate Inquiry and various legal proceedings within Australia, as well as criminal investigations within PNG. Many of these investigations are ongoing.<sup>53</sup> On the basis of the evidence that has emerged to date, however, it is now clear that the worst of the violence was inflicted by G4S' own locally-employed security guards who, together with other local staff employed at the Centre, the PNG police and some ex-pat G4S security officers, attacked detainees within the facility on two separate occasions.

(i) Cornall Review

Public servant Mr. Robert Cornall was engaged by DIBP to conduct an independent investigation into the events of 16-18<sup>th</sup> February. His final report was made public on 26<sup>th</sup> May 2014.<sup>54</sup> The report has been criticised by many commentators for its narrow focus on security and its failure to attribute any institutional responsibility for the violence.<sup>55</sup> It nonetheless represents the most detailed account released to date of how the violence at the MIRPC unfolded and the involvement of G4S personnel in it.

The report notes that the violence at the MIRPC on 16<sup>th</sup> and 17<sup>th</sup> February 2014 took place following several weeks of protests by detainees at the lack of progress in the processing of refugee status determinations.

On 16<sup>th</sup> February, tensions reached a "flashpoint" following a meeting with PNG and Australian officials during which asylum seekers were informed that they would never be resettled in Australia and were likely to have to remain at the MIRPC for an indeterminate period and possibly up to four years.

Several hours after the meeting, a group of around 30-35 detainees escaped from the Oscar compound by running through the open gate when a food truck arrived. They were cut off on the road by around 100 local G4S guards, who tackled them, threatened them with sticks and dragged them back to the compound. During this incident, one detainee was attacked from behind by an unidentified local G4S guard who "*slashed his neck, causing a 10-12 cm horizontal slit across his throat*".<sup>56</sup> He was evacuated to the IHMS for emergency medical treatment.

The report then describes how local G4S guards, together with some other PNG nationals, pursued the detainees into the Oscar accommodation blocks and continued assaulting them inside the complex with large sticks and pipes. They broke windows and doors and began attacking transferees within their accommodation blocks.

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<sup>53</sup> The Australian Senate Inquiry is currently expected to table its report on 27 October 2014.

<sup>54</sup> Cornall, above n 39.

<sup>55</sup> See eg Max Opray, *Riot Review 'blames the victims'* (26 May 2014) The New Daily <<http://thenewdaily.com.au/news/2014/05/26/manus-review-delivers-recommendations-resignations/>.

<sup>56</sup> Cornall, above n 39, 5.

Following this first attack, 25 detainees were treated for casualties including “*broken bones, lacerations, loss of consciousness, a lung contusion and pain in various parts of the body*”.<sup>57</sup> The IHMS, who administered the medical treatment, confirmed that the type of injuries suffered by detainees suggested that they were “*attacked while running away when they were hit, or crouching down trying to protect their face and head behind a raised arm*”.<sup>58</sup>

Having witnessed the assaults, a large group of other detainees began protests within the Centre. Order was eventually restored, but tensions remained high.

On the night of 17<sup>th</sup> February, violent protests then broke out in several compounds of the Centre, during which internal fences were pushed over, property was damaged and rocks and various missiles were thrown.

At the height of these protests, members of the PNG mobile police squads pushed over the perimeter fence and entered the Mike compound and began firing shots within the accommodation blocks. An unspecified number of G4S local security personnel, local employees of other service-providers at the Centre and several ex-pat G4S staff then followed the police into the Mike compound and “*started bashing detainees*”.<sup>59</sup> Detainees reported being dragged from under beds and bashed with chairs, water pipes, stones and fists. Some were able to buy immunity from beatings with cigarettes. A number of detainees also reported that the attackers stole their belongings.

During the course of this violence, Iranian asylum seeker Reza Berati was attacked by a local employee of the Salvation Army, together with G4S guards and other locals while attempting to flee up some stairs. He fell down the stairs where his roommate, who witnessed the attack, said he was assaulted by a group of around 10 PNG locals, PNG G4S guards and Australian expats who kicked him repeatedly in the head. A local Salvation Army employee then brought down a large rock on his skull. Mr. Berati was treated by the IHMS for massive head injuries and died a short time later.

Two Papua New Guinean nationals have been arrested and charged with Mr Berati’s murder, including one man, Louie Efi, who was reportedly employed as a security guard by G4S.<sup>60</sup> Police investigations into the murder are ongoing.

Following the violence on 17th February, IHMS saw a further 77 detainees for a range of injuries including broken bones, lacerations and dislocations. Of these, 13 were deemed to have serious injuries and one was deemed critical. The serious injuries included “*open and*

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<sup>57</sup> Ibid 45.

<sup>58</sup> Ibid 45-46.

<sup>59</sup> Ibid 7.

<sup>60</sup> David Wroe and Sarah Whyte, ‘Reza Barati: Two men arrested over death of asylum seeker at PNG detention centre’, *The Sydney Morning Herald* (Sydney), 19 August 2014.

*closed head injuries with associated fitting and loss of consciousness*".<sup>61</sup> One detainee suffered a gunshot wound to the buttocks with a bullet lodged in his hip and another lost his right eye as a result of severe blows to the head. Eight detainees were taken to Port Moresby and one flown to Australia for specialised medical treatment. In the days following the incident, other detainees came forward for treatment, in particular Post Traumatic Stress Disorder (PTSD).

(ii) Submissions to the Senate Inquiry

Written submissions to the Senate Inquiry to date by former staff of the MIRPC broadly corroborate the factual account of the incident outlined in the Cornall Review with one important exception. The Cornall review accepted the evidence presented by G4S management that they did not invite the PNG police mobile squads into the MIRPC, despite the fact that a G4S incident report from the time suggested the contrary.<sup>62</sup> Former staff members giving evidence to the Senate Inquiry, however, have reported overhearing radio traffic confirming that G4S staff had "*lost control and were withdrawing*" from the compounds before the PNG police entered, suggesting that G4S may have handed over control to the mobile squads. Whether or not the squads forced their way in or were invited is central as the worst violence on 17<sup>th</sup> February occurred immediately after police entered the Mike compound.<sup>63</sup>

Submissions to the Senate Inquiry have also provided important additional evidence with respect to the lack of proper training provided by G4S to its security staff – in particular local staff – and the lack of emergency procedures at the MIRPC.

Martin Appleby, one of the G4S safety and security officers responsible for training the local G4S guards at the MIRPC, for example, notes in his submission that:

*The IRT squad was made up of PNG nationals that were given 3-4 days intensive training in defensive tactics....that should have taken a minimum of six weeks....I warned the Training Manager that the training package was insufficient to be able to deliver the correct training level to the PNG nationals.*

*...Why were these squads made up of PNG nationals? We had past army personnel, correctional personnel and police personnel whom all arrived on Manus to work as a SSO with the required experience and extensive training to take up the role of IRT member. The PNG nationals were poorly trained and did not have the capacity to perform such a task in a volatile and closed situation. These squads on occasion were lead by Romeo 1 that had no experience of dealing with or training with the*

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<sup>61</sup> Ibid 60.

<sup>62</sup> Cornall, above n 39, 53. The review concluded that the incident report must have been inaccurate.

<sup>63</sup> See Oliver Laughland, 'Whistleblower contradicts G4S account of night of fatal violence at Manus', *The Guardian* (online), 11 June 2014 <[www.theguardian.com/world/2014/jun/11/whistleblower-contradicts-g4s-account-of-night-of-fatal-violence-at-manus](http://www.theguardian.com/world/2014/jun/11/whistleblower-contradicts-g4s-account-of-night-of-fatal-violence-at-manus)>.

*PNG nationals that were in the role of IRT. I believe this is why G4S lost control of the team on that fateful night.*<sup>64</sup>

In his supplementary submission (provided to the Senate Committee in the form of a witness statement and attached as **Appendix 3**) Mr Appleby further notes that delivering the training package to the PNG nationals was almost impossible because most did not speak English and no trained interpreters were provided to facilitate communication. He eventually had to locate two personnel from the PNG navy to act as informal interpreters.<sup>65</sup>

These criticisms are echoed by other former guards employed by G4S. Steven Kilburn notes in his statement that:

*Initial training provided at the MIRPC was woefully inadequate. The training was supposed to take 6 days but probably consisted of less than 16 hours of actual training. There were no dedicated training facilities and we moved from place to place looking for rooms and areas to conduct training. The training was inconsistent and often contradictory regarding what powers SSOs had and what actions they could take in relation to use of force. Training was stopped prior to the 6 days due to staff shortages and we were placed on shift. No other training was provided to me at my time at the MIRPC....*

*...Lack of radios [also] meant SSO's could not call for assistance for their own safety or when help was required for a client. On one occasion I had a client who had attempted self-harm and none of the SSO's on duty...had a radio to call for assistance.*<sup>66</sup>

Another anonymous submission by an Australian former G4S guard states:

*On employment I arrived at the island and completed five days of training...I'd say it was the poorest form of instruction I've ever seen in my life. The information provided seemed to be in close relation to one of their prison contracts in Australia. It was embarrassing for the officers trying to learn....*

*There were little to no procedures up until January when we started to receive refresher training. We were informed by the G4S compliance manager that this was the worst project he had ever seen...G4S had received operating requirements and procedures from immigration but until he arrived little had been done with the documentation to formulate G4S operating procedures. For example, two to three*

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<sup>64</sup> Appleby, above n 52, 3-4.

<sup>65</sup> Martin Appleby, Supplementary submission to Senate Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, 12 June 2014, [18]-[19] <[www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Manus\\_Island/Additional\\_Documents](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Manus_Island/Additional_Documents)>

<sup>66</sup> Kilburn, above n 50.

*months prior to the incident there was a standoff between police and navy personnel outside the Centre. G4S guards were involved. A G4S senior manager made the call to evacuate the centre but there were no operating procedures that we were aware of, or had been trained on. Half of the G4S staff evacuated and the other half remained. Complete confusion.....Another example involved the three sets of SOPs at the front entrance to the center, all of which stipulated different procedures.<sup>67</sup>*

*(b) G4S' response to the February violence*

Immediately after the events of 16<sup>th</sup> and 17<sup>th</sup> February, G4S put out an official statement about what took place, which stated that:

*Last night G4S responded to a second disturbance by transferees on Manus Island, which included a breach of the perimeter fence by transferees. Claims that transferees breached the fence following internal attacks on them by local residents are unfounded. The breach of the perimeter fence followed two days of demonstrations by transferees.*

*G4S pre-emptively evacuated all non-essential staff because of the demonstrations, which had been escalating during the course of yesterday. G4S also moved transferees not participating in the demonstrations to a nearby oval for their safety.*

*A number of transferees were injured after they breached the perimeter fence and the matter became a law enforcement issue for PNG authorities. G4S staff were able to restore order within the Centre without the use of force.<sup>68</sup>*

This was clearly a serious and deliberate misrepresentation of what occurred, suggesting not only that G4S personnel were not involved in the violence, but that detainees effectively brought injuries upon themselves by trying to escape from the centre on 17<sup>th</sup> February.

G4S' final submission to the Senate Inquiry also contradicts the evidence of the Cornall Review and other witness evidence in some key respects. Most notably:

- it makes no mention of the violent assaults on detainees by G4S guards on the night of 16<sup>th</sup> February 2014, merely noting that the detainees who escaped from the Oscar compound were "*quickly rounded up and returned back inside the Centre by Centre staff*";<sup>69</sup> and
- it states that the violence in the Mike compound on 17<sup>th</sup> February occurred when "*the PNG police, along with PNG nationals and local villagers entered Mike compound*

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<sup>67</sup> Andrew Wilkie (on behalf of anonymous GS4 officer), Submission No 4 to Senate Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, 30 April 2014, 10-11.

<sup>68</sup> G4S, 'Statement Regarding Manus Island Unrest' (Media Release, 18 February 2014) <[www.abc.net.au/news/2014-02-18/g4s-statement-on-manus-island-unrest/5266612](http://www.abc.net.au/news/2014-02-18/g4s-statement-on-manus-island-unrest/5266612)>.

<sup>69</sup> G4S Australia Pty Ltd, above n 17, 17.

*and began fighting with the rioting transferees*".<sup>70</sup> Again, no mention is made of the fact that the "PNG nationals" were G4S local and ex-pat guards or other staff engaged by G4S' sub-contractors.

(c) *Other incidents of violence and threats against detainees*

Well prior to the February violence, a number of other incidents had already raised concerns about detainee safety within the MIRPC and the adequacy of procedures in place at the facility to protect them from harm.

(iii) *Sexual assaults*

In July 2013, a former manager for G4S, Mr. Rod St George, made allegations in the media that detainees held at the facility were being sexually assaulted by other detainees with the full knowledge of other staff at the MIRPC and the DIBP.

The DIBP subsequently set up an internal inquiry into these allegations, which found that one asylum seeker had reported two incidents of sexual assault and that there were concerns about a number of others who were believed to be receiving unwanted sexual attention. As almost all the alleged victims had subsequently been transferred out of PNG, however, the report found that they were beyond the jurisdiction of the PNG criminal law and nothing further could be done. The report recommended the establishment of a separate area in the Centre to accommodate vulnerable detainees, as well as the development of clear policies for dealing with any future allegations of sexual assault, including preventative strategies and staff training.<sup>71</sup>

G4S and other staff subsequently interviewed by Amnesty International in November 2013, however, appeared to be unaware of any official procedures in place for responding to allegations of sexual assault within the facility.<sup>72</sup>

Submissions subsequently made to the Senate Inquiry by other former staff members appear to corroborate Mr. St George's allegations that sexual violence between detainees at the facility was widespread:

- former G4S officer Martin Appleby reports in his supplementary submission to the Senate Inquiry (**Appendix 3**) that during his time at the MIRPC he had around four separate conversations with staff members regarding incidents of sexual assault between detainees that he regarded as having some basis to them, and that he personally dealt with one case involving an Iranian man who had been digitally raped

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<sup>70</sup> Ibid 19.

<sup>71</sup> Robert Cornall, *Report to the Secretary, Department of Immigration and Border Protection: Review into Allegations of Sexual and Other Serious Assaults at the Manus Regional Processing Centre* (September 2013) <[https://www.immi.gov.au/about/dept-info/\\_files/review-manus-offshore-processing-centre-publication-sep2013.pdf](https://www.immi.gov.au/about/dept-info/_files/review-manus-offshore-processing-centre-publication-sep2013.pdf)>.

<sup>72</sup> Amnesty International, above n 13, 50.

and was subsequently deemed a suicide risk. Further, he states that nothing was done to separate the man from the general detainee population following the assaults;<sup>73</sup>

- former Claims Assistance Provider Elizabeth Thompson notes in her submission that she dealt with a 17-year old Iranian boy during her employment at the facility who was believed by medical and welfare staff to have been sexually assaulted by other transferees and who “almost collapsed” during his interview with her. She also notes that no attempt was made at that time to separate the boy from the rest of the detainee population despite his obvious mental trauma;<sup>74</sup>
- former Salvation Army staff member Nicole Judge reports that the P1 block in the Foxtrot compound was referred to by G4S guards as a “rape dungeon” and that she observed a young Myanmar client frequently going into one of the toilet blocks with different men and emerging looking like he was in pain;<sup>75</sup> and
- a former Salvation Army staff member who spoke anonymously to the Sydney Morning Herald in March 2014 also stated that rape at the MIRPC was common, with younger boys in the compounds a target for older men, and that “*no service provider knew what they were doing*” in this regard.<sup>76</sup>

(iv) Assaults and abuse by G4S personnel:

Statements by detainees and former staff members have also detailed other incidents of physical violence, threats or aggression towards detainees by G4S personnel prior to the February violence:

- former Salvation Army officer Nicole Judge states in her submission to the Senate Inquiry that excessive force was often used by both expatriate and local G4S staff towards detainees and that she personally witnessed two expat guards beating an Iranian detainee in Oscar Compound and “*knocking him unconscious*”.<sup>77</sup> She also reports that expat and national PNG guards frequently talked to transferees in a derogatory and racist manner, including informing children in the Under Age Minor section of the camp to “*go fuck themselves*” and threatening beatings if they didn’t stop complaining;

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<sup>73</sup> Appleby, above n 65, [34]-[36].

<sup>74</sup> Thompson, above n 52, 8-9. See also the further witness statement of Elizabeth Maree Thompson dated 5 June 2014 (**Thompson Witness Statement**), appended to this report.

<sup>75</sup> Judge, above n 51, 5.

<sup>76</sup> Sarah Whyte, ‘Manus Island was mission impossible: ex-Salvos worker’, *The Age* (online), 30 March 2014 <[www.theage.com.au/federal-politics/political-news/manus-island-was-mission-impossible-exsalvos-worker-20140329-35q56.html](http://www.theage.com.au/federal-politics/political-news/manus-island-was-mission-impossible-exsalvos-worker-20140329-35q56.html)>.

<sup>77</sup> Judge, above n 51, 7.

- Elizabeth Thompson notes that during her deployment at the facility she was informed by a colleague that a 15-year old Somali boy had been beaten by G4S guards and was being interviewed by the PNG police;<sup>78</sup>
- Martin Appleby reports that he personally witnessed G4S ex-pat staff verbally abusing detainees, particularly when they thought they couldn't speak English;<sup>79</sup>
- The Cornall Review records an incident shortly prior to the February violence in which an Iranian asylum seeker was punched in the face by a G4S guard following an argument during which the asylum seeker slapped the guard across the cheek;<sup>80</sup> and
- detainees interviewed by Amnesty International during their inspection of the MIRPC in November 2013 also reported aggression and abuse by staff at the facility and being too scared to complain about such incidents for fear of the consequences for their refugee status determinations. The few who did complain reported that nothing was done about their complaints or that the staff members responsible were simply moved to another compound.<sup>81</sup>

(d) *The "October Incident"*

On 18 October 2013, a fight broke out immediately outside the MIRPC between a group of Papua New Guinea police and Papua New Guinea defense personnel. Staff at the centre were evacuated during the incident, but detainees were left behind in their compounds. Detainees interviewed by Amnesty International after the incident reported that during the conflict they were left unaccompanied in the compounds, with no information about what was happening, and that the gates of the compounds were left unlocked or with keys left in the lock. Many detainees feared for their lives, believing that members of the local PNG community were attacking the centre, and that the G4S guards had abandoned them. G4S staff interviewed by Amnesty about the incident were unwilling or unable to give any information about what procedures existed for evacuation of detainees in the event of emergencies beyond commenting that G4S was in the process of reviewing its transferee evacuation procedures due to the expansion of the facility.<sup>82</sup> Several staff former staff members have also pointed to this incident in their submissions to the Senate Inquiry to highlight the lack of emergency procedures at the MIRPC.

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<sup>78</sup> Thompson Witness Statement [35].

<sup>79</sup> Appleby, above n 65, [51].

<sup>80</sup> Cornall, above n 39, 35.

<sup>81</sup> Amnesty International, above n 13, 51.

<sup>82</sup> Ibid 49.

## 6. 2005 OECD complaint against GSL

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In 2005, RAID and other civil society groups including the Human Rights Council of Australia, Children Out of Detention (ChilOut), the Brotherhood of St Laurence and the International Commission of Jurists (ICJ) lodged an OECD complaint against Global Solutions Limited (Australia) Pty Ltd, a subsidiary of British security multinational GSL Ltd. That complaint, under the jurisdiction of the Australian National Contact Point, resulted in a mediation and a list of agreed outcomes (Appendix 4) including an acknowledgement by GSL that “as a corporation it has its own responsibilities and should be accountable for these responsibilities” and commitments by GSL to:

- ensure that any contract renegotiation with the Australian Department of Immigration make reference to appropriate international human rights standards and conventions as the appropriate framework for a service delivery model in all areas of detention and deportation;
- enhance the training curriculum it provides to its staff through the inclusion of appropriate human rights materials and references;
- make their training curriculum, manuals and materials available to external human rights trainers for review and comment; and
- develop systems to monitor and evaluate the effectiveness of its training in meeting desired organisational and individual behavioural and attitudinal changes.<sup>83</sup>

Approximately two years after these commitments were made, in May 2008, GSL was acquired by G4S Plc.<sup>84</sup> It is arguable that as a result of this acquisition, G4S inherited the commitments made by GSL in response to the previous OECD complaint.

The contract between G4S and the DIBP makes no reference to international human rights standards. Nor, as noted earlier, does G4S’ training programme for its personnel on Manus Island include any discussion of international human rights standards. Insofar as G4S is liable for the commitments made by GSL, it would therefore appear to have breached a number of the commitments made in 2006.

Breaches of commitments made under the OECD Guidelines are not, in and of themselves, breaches of the Guidelines. The 2005 complaint and the commitments made by GSL resulting from it are nonetheless relevant to G4S’ obligation to carry out human rights due diligence under Ch. IV, para 5 of the Guidelines. In light of G4S’ size and the severity of the

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<sup>83</sup> General Agreement n 3, Agreed Outcomes of Mediation Meeting, 28 February 2006.

<sup>84</sup> *G4S Completes Acquisition of Global Solutions Limited (“GSL”)* (12 May 2008) G4S <[www.g4s.com/en/Media%20Centre/News/2008/05/12/G4S%20Completes%20Acquisition%20of%20Global%20Solutions%20Limited%20GSL/](http://www.g4s.com/en/Media%20Centre/News/2008/05/12/G4S%20Completes%20Acquisition%20of%20Global%20Solutions%20Limited%20GSL/)>.

adverse human rights impacts alleged, the enterprise should be held to a high standard with respect to its due diligence obligations.

## 7. G4S' compliance with the 2011 OECD Guidelines for Multinational Enterprises

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The activities of G4S (Australia) Pty Ltd fall under the jurisdiction of the Australian National Contact Point (NCP) of the OECD Guidelines for Multinational Enterprises ("the Guidelines").

### 7.1 Chapter II: General Policies

Chapter II of the Guidelines addresses the general policies of enterprises and requires that companies:

- "...respect the internationally recognised human rights of those affected by their activities" (Ch. II, para A2)
- "Promote awareness of and compliance by workers... with respect to company policies through appropriate dissemination of these policies, including through training programmes (Ch II, para A8)
- "Carry out risk-based due diligence..." (Ch II, para A10)
- "Avoid causing or contributing to adverse impacts on matters covered by the *Guidelines*, through their own activities, and address such impacts when they occur" (Ch II, para A11)
- "Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship..." (Ch II, para A12)

### 7.2 Chapter IV: Human Rights

Chapter IV of the Guidelines sets out clear human rights standards for Enterprises in the context of their business operations. Specifically, the Guidelines state that Enterprises should, within the framework of internationally recognised human rights and the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

- "...avoid causing or contributing to adverse human rights impacts and address such impacts when they occur"; Ch. IV, para 2

- “...seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services...”; Ch. IV, para 3
- “...carry out human rights due diligence as appropriate to their size, the nature and context of operations, and the severity of the risks of adverse human rights impacts”; Ch. IV, para 5
- “...provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to those impacts...” Ch. IV, para 6

It is considered that G4S has violated these provisions of the Guidelines through:

- its complicity with the Australian and PNG Governments’ arbitrary and indefinite detention of asylum seekers at the MIRPC and violations of their procedural rights; and/or
- its failure to maintain basic human rights standards at the during the period it was responsible for the MIRPC’s management; and/or
- its manifest failures to ensure the safety and security of those in its care, including from its own personnel, resulting in the death of one detainee and serious injuries to many others; and/or
- its failure to conduct adequate risk-based due diligence and prevent or mitigate adverse impacts directly linked to its operations.

### 7.3 G4S’ complicity in the unlawful detention regime

By contracting with the Australian government to operate and provide security at the MIRPC, G4S was in breach of the requirements of the Guidelines Chapter II, para A2 and Chapter IV paras 1, 2, 3 and 5.

The adverse impacts of the detention and processing regime at the MIRPC on the internationally recognised human rights of the asylum seekers detained there include:

- violations of their right to seek asylum under Article 14(1) of the UDHR and Article 31(1) of the Refugee Convention;
- violations of fair process in the determination of their asylum claims;
- indefinite and mandatory detention in contravention of Article 9 of the UDHR and Article 9(1) of the ICCPR;
- impediments to their rights to work, to health, to education and to a standard of living under the ICESCR and UNCRC;
- violations of the principle of *non-refoulement*; and

- and discrimination on the basis of arrival in breach of Article 7 of the UDHR and Articles 2 and 26 of the ICCPR.

G4S made a substantial contribution to these adverse impacts, particularly with respect to arbitrary detention. The MIRPC is an integral part of the offshore detention and processing regime agreed by the Australian and PNG governments. Its operation between February 2013 and March 2014 depended on the security equipment and services provided by G4S.

Further or alternatively, G4S was directly linked by a business relationship to the adverse human rights impacts of the detention and processing regime. The business relationship in question was the contract between G4S and the Australian government to provide operational and security services at the MIRPC. Provision of such services permitted the administration of the detention and processing regime, which was directly linked to adverse impacts.

Further, entry into such a contract with the Australian Government indicates a failure of due diligence by G4S. At the time G4S entered into the Manus Island contract, Australia's policies with respect to the mandatory detention of asylum seekers and off-shore processing had already been the subject of condemnation by, among others, the UN Human Rights Committee, UN Working Group on Arbitrary Detention, UNHCR and the Australian Human Rights Commission for breaching international law. Moreover, G4S's predecessor, GSL (acquired by G4S in 2008) had been the subject of a previous complaint under the OECD Guidelines in 2005 with respect to the arbitrary detention of asylum seekers, particularly children, in Australian on-shore and off-shore detention facilities.

#### 7.4 G4S' failure to maintain basic human rights standards at the Centre

In failing to ensure that the conditions of detention at the MIRPC met international human rights standards, G4S was in breach of the requirements of the Guidelines Ch. II, para A2 and Ch. IV, paras 1, 2, 3 and 5.

The adverse impacts associated with the sub-standard accommodation and conditions at the MIRPC on the asylum seekers detained there included: violations of the right to health under the ICESCR, violations of the right to freedom of movement under Article 9 of the ICCPR and violations of the prohibition on ill-treatment under Article 7 of the ICCPR and Article 16 of the Convention Against Torture (CAT).

G4S was responsible for causing many of these adverse impacts. Under its contract with the Australian Government, its responsibilities clearly included the maintenance of infrastructure at the facility, provision of cleaning services, provision of food and water, clothing, bedding and shoes, ensuring detainees had access to communication services such as phone and internet and coordination with other service providers to facilitate the provision of health and welfare services. It was therefore directly responsible for the breaches of detainees' rights in

these areas. Having sub-contracted out a number of these services does not diminish its responsibility for ensuring that those services were of an appropriate standard.

Moreover, G4S appears to have taken no steps to use its leverage with the DIBP to mitigate the additional problems created by severe overcrowding as the number of asylum seekers transferred to the Centre rose over time, such as by seeking to impose under its contract an upper limit on the number of asylum seekers that could be transferred to the Centre.<sup>85</sup>

Insofar as the Governments of Australia and Papua New Guinea and/or other service providers also bear responsibility for conditions at the MIRPC, G4S has nonetheless contributed significantly to the adverse impacts outlined above.

Further, the failures with respect to the conditions at the Centre also represent a failure of due diligence by G4S as it knew or ought to have known, on entering the contract, that the existing facilities at the MIRPC did not comply with international standards.

## 7.5 G4S' failure to protect detainees from violence and violence perpetrated by its employees/sub-contractors

In failing to prevent and in directly contributing to violence against detainees at the Centre, G4S is in breach of the requirements of the Guidelines Ch. II paras A2, 8, 10, 11 and 12 and Ch. IV paras 1,2,3.

The adverse impacts associated with the violence include:

- serious violations of the prohibition on cruel, inhuman and degrading treatment and torture enshrined in Article 7 of the ICCPR and Article 16 of the CAT
- violations of the right to health enshrined in of the ICESCR; and
- violations of the right to life enshrined in Article 6(1) of the ICCPR and in the UDHR.

G4S has caused and contributed to these adverse impacts through:

- its failure to have in place adequate systems and policies to prevent such violence;
- its failure to properly train or equip its staff or sub-contractors to manage emergencies or situations of confrontation at the Centre, in direct contravention of commitments made in the Agreed Outcomes of Mediation between Global Solutions Limited (Australia) Pty Ltd in 2005;
- its failure to heed the prior warnings of staff members regarding the inadequate training of its personnel, in particular its PNG sub-contractors;

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<sup>85</sup> It is noted in this regard that clause 1.1.3 of the contract between G4S and the DIBP states that it was expected that the temporary facilities at the MIRPC would accommodate up to 500 Transferees and the permanent facilities up to 600. The ultimate number of detainees held at the MIRPC clearly greatly exceeded these estimates.

- its failure to agree clear incident management protocols with the PNG police which, as acknowledged in the company's own submission to the Senate Inquiry, may have persuaded the police to support de-escalation in response to the detainee protests at the centre rather than forcible intervention;<sup>86</sup>
- its failure to attempt to vary the terms of its contract with the DIBP with respect to the required ratio of local to expat staff when it became apparent that the local staff did not have the experience required to manage complex and volatile situations at the facility;<sup>87</sup>
- its failure to remove PNG personnel who had already participated in acts of serious violence against detainees on 16th February from the facility – thereby contributing to the further violence and loss of life on 17<sup>th</sup> February; and
- its contributions to creating the pre-conditions for violence through its failures to maintain basic human rights standards at the Centre over a prolonged period.

The participation by G4S employees and sub-contractors in violent attacks on detainees also strongly suggests a lack of due diligence by the company in the selection and vetting of its personnel.

Further, the public statements made by G4S subsequent to the February violence, which seriously misrepresented the events in question and suggested that no violence was carried out by G4S personnel constitute a further breach of the Consumer Interests provisions of the Guidelines. In particular, these statements represent a breach of Ch. VIII, para 4, which states that enterprises should “*not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair*”.

It is noted that G4S' failure to make any digital audio and visual recording of the events of 16<sup>th</sup> and 17<sup>th</sup> February, contrary to the stipulations of its contract,<sup>88</sup> has also made it more difficult for the relevant authorities to hold to account those persons who participated in the violence.

## 7.6 G4S' failure to conduct adequate risk-based due diligence and failure to prevent or mitigate adverse impacts

In failing to conduct adequate risk-based due diligence prevent and failing to prevent or mitigate the adverse impacts linked to its operations, G4S is in breach of the requirements of the Guidelines Ch. II paras A2, 8, 10, 11 and 12.

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<sup>86</sup> G4S Australia Pty Ltd, above n 17, 7.

<sup>87</sup> Ibid.

<sup>88</sup> Clause 15.5.1 of the Contract states that “*The Service Provider must, where practicable, digitally record an audio and visual record of all instances where there is any Incident where the Service Provider, acting reasonably, knows that the Department or local authorities may require evidence of the actions of Service Provider Personnel*”.

G4S entered into a contract with the DIBP to manage the MIRPC, which it knew or ought to have known would directly and materially conflict with principles of international human rights law. Australia's policy of mandatorily detaining asylum seekers had already been found by numerous bodies and inquiries to violate the prohibition on arbitrary detention and bodies such as UNHCR and the Joint Parliamentary Committee on Human Rights had already expressed grave concerns that the regional processing arrangements violated a number of additional principles of human rights law. Moreover, it was clear that the accommodation and facilities on Manus Island fell well short of both international and Australian mandated standards with respect to detention.

G4S failed to ensure over the course of its contract that the conditions of detention at the MIRPC complied with international human rights standards. Indeed, conditions in parts of the facility were found to be sufficiently bad as to amount in some instances to cruel, inhumane and degrading treatment.

G4S failed to provide proper training to the personnel and sub-contractors it engaged at the MIRPC:

- G4S' own submission to the Senate Inquiry, which summarises its training program, confirms that the program consisted of only six days of general induction training for safety and security officers and an additional 4 days of training in defensive techniques for officers in the Incident Response Team (IRT), most of whom had no background in security;<sup>89</sup> and
- the training program does not appear to have included any training in relation to international human rights law, international humanitarian law or the contents of the ICOC;

In any event, it is apparent from the testimony of former G4S officers to the Senate Inquiry that in practice the training package delivered was of extremely poor standard and in the case of many personnel was never completed. Further, it is unclear whether the PNG guards contracted via Loda Securities understood the training, given the evidence that most did not speak much English and G4S appears to have employed no qualified interpreters to assist in the delivery of the training.

It also appears that G4S failed to exercise due diligence with respect to the vetting, selection and ongoing performance review of its personnel and sub-contractors. Evidence presented to the Senate Inquiry suggests that most of the SSOs sub-contracted through Loda Securities had no qualifications or experience that would have equipped them to perform their security duties in accordance with international human rights standards.

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<sup>89</sup> See G4S Australia Pty Ltd, Submission No 29 (attachment 3) to Senate Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, 14 May 2014.

G4S failed to ensure that its personnel did not use disproportionate and violent force or subject detainees to cruel, inhumane and degrading treatment:

- Evidence given to the Senate Inquiry and to Amnesty International suggests that even prior to the February violence, a culture of intimidation and abuse of detainees by at least some G4S ex-pat and local guards was permitted to develop at the MIRPC;
- G4S failed to address the evident short-comings in the training and qualifications of its personnel, particularly its PNG personnel, thereby contributing to the likelihood of violent force being used in a volatile situation such as occurred on 16<sup>th</sup> and 17<sup>th</sup> February;
- G4S failed to remove from the MIRPC personnel who had already participated in violent attacks on detainees on 16<sup>th</sup> February, thereby contributing to the further violence and loss of life that took place on 17<sup>th</sup> February.

G4S also failed to put in place proper procedures to raise awareness of or respond to reported incidents of sexual violence between detainees and other unlawful conduct within the MIRPC:

- the company's training, as set out in G4S' submission to the Senate Inquiry, appears to have included no training with respect to sexual violence; and
- evidence given by detainees and former staff members suggests that staff were unaware of any official procedures in place for dealing with allegations of sexual violence at the facility;

Sexual violence between detainees at the facility appears to have been widespread.

## 8. Recommendations

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The complainants propose the following recommendations to bring G4S's policies and procedures in line with the OECD Guidelines:

- Commitments with respect to a human rights framework for any future contracts it may enter into with respect to the MIRPC or any other Australian immigration detention facilities including by:
  - refusing to detain people for prolonged periods unless that detention has been determined by a court to be appropriate, necessary and not arbitrary in light of the person's personal circumstances;
  - refusing to mandatorily detain asylum seekers under the age of 18; and

- ensuring that where it is responsible for the provision of health, housing, education and recreation for detainees, those services meet international human rights standards.
- Commitments with respect to the payment of financial compensation to detainees injured by G4S guards and to the family of Reza Berati, in fulfilment of the company's commitment under its own human rights policies to "*deliver appropriate and effective remedy*" where it fails to prevent abuses.
- Information on the outcomes of any internal investigations and disciplinary actions taken against staff involved in the violence.<sup>90</sup>
- Disclosure of key documents which the company has not provided to the Senate Inquiry, such as its complete training package for personnel engaged at the MIRPC, its contracts with its sub-contractors and its actual records with respect to the February violence.
- Commitments with respect to future human rights training of its employees and sub-contractors.

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<sup>90</sup> Note in this respect that G4S' Corporate Social Responsibility Report 2013 states: "*Last year, issues of conduct were raised in relation to our employees working on electronic monitoring within the United Kingdom, within a prison environment within South Africa, and within an immigration processing centre in Papua New Guinea. In all cases, detailed investigations were undertaken in conjunction with our customers to understand the situation and to assess whether the conduct of G4S employees was in question. Where we do find instances of inappropriate conduct, we take immediate action to resolve issues which may include disciplinary action in addition to a review of processes and practices*". See G4S, above n 10, 7.