

AI Index: PRE01/341/2013  
19 June 2013

## **Nauru: Supreme Court ruling highlights plight of detained asylum-seekers**

Swift action is needed to remedy the situation of hundreds of asylum-seekers in indefinite detention on the Pacific island of Nauru who have become victims of Australia's second "Pacific solution", Amnesty International said today following a Nauru Supreme Court ruling on the issue.

On Tuesday 18 June 2013, in a case brought by six male asylum-seekers in Nauru, the island's highest court ruled that they were being detained at the Regional Processing Centre at Topside after being forcibly transferred to the island by the Australian authorities last year.

The Court's finding that the asylum-seekers are being deprived of their liberty, a conclusion that the Nauru government had opposed in Court, supports the asylum-seekers' claims that they are being held indefinitely. The Nauru court however ruled that their detention did not violate the country's domestic laws, including its constitution.

"While it is regrettable that the Supreme Court found that their detention is permitted by Nauru's domestic law, the decision threw into sharp relief the second wave of Australia's 'Pacific Solution' which has seen hundreds of asylum-seekers arriving in Australia by sea being forcibly transferred to Nauru and Papua New Guinea since last year," said Kate Schuetze, Pacific Researcher at Amnesty International.

"The indefinite detention of asylum-seekers and refugees violates Australia's and Nauru's obligations under the Refugee Convention and other relevant international human rights law and standards."

The Supreme Court decision states: "They are required to live in a location that effectively confines them in a limited and finite area that is isolated from the residential and urban areas of Nauru, and their lives are closely regulated and monitored 24 hours of each day. At all times they are effectively being guarded and watched to prevent their escape."

While the Court failed to find that the detention of the asylum seekers is unlawful, it nonetheless indicated that it could consider in the future whether their protracted detention continues to be "authorized by law". Amnesty International urges the Nauru authorities to consider this issue as a priority.

The six men who brought the case are part of a larger group of approximately 417 male adult asylum-seekers who have been in detention on Nauru since their forcible transfer to the Pacific island state by Australia in August last year.

Almost none of the asylum-seekers who have arrived in Australia by boat since August 2012 have had their claim processed. Around 90 per cent of all asylum-seekers arriving in the country by boat are eventually found to be refugees.

Australia has introduced its second "Pacific Solution" to process asylum-seekers arriving by boat –

including children – by forcibly transferring them to Nauru or Papua New Guinea. Once in either of those countries, asylum-seekers and refugees are detained indefinitely. These arrangements are in direct contravention of both the letter and the spirit of the 1951 Refugee Convention binding on all three countries since they penalize asylum-seekers and refugees by depriving them of their liberty, indefinitely, solely because they have sought to reach Australian shores without authorization.

As the judge pointed out in Tuesday’s decision, at the time of the conclusion of its agreement with Australia, Nauru perhaps did not appreciate that “the removal ... from Nauru would be subject to Australia’s ‘no advantage’ policy.” Estimates indicate that this may result in people being detained in Nauru for more than five years, including those who will eventually be recognized as entitled to international protection as refugees.

The court noted that 64 asylum-seekers who were forcibly transferred to Nauru and were waiting for their asylum claims to be processed have since applied to be returned to their country of origin.

“It’s shocking that dozens of asylum-seekers held in Nauru have now applied to return to the very countries they fled from and despite the fact that they may have a well-founded fear of persecution – no doubt the prospect of indefinite detention and prolonged separation from their families loomed large in their ‘choice’ to return,” said Schuetze.

“Amnesty International considers that returns in such circumstances may amount to constructive refoulement.”

As the Nauru Supreme Court judgment points out, the principle of non-refoulement – enshrined in Article 33 of the Refugee Convention – prohibits the forcible return of any asylum-seeker to a place where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion.

“Amnesty International continues to urge the Australian government to immediately abandon its second ‘Pacific Solution’ since it violates Australia’s refugee and human rights law obligations and it is causing untold suffering to asylum-seekers and refugees. At the same time, we will also continue to urge the Nauru government to ensure that asylum-seekers are not detained pending determination of their claims; further we urge that all asylum claims be processed in a timely manner,” said Schuetze.

It is clearly stated in the agreement between the Australian and Nauruan governments that the centre should be open, asylum-seekers should be treated with dignity and respect, and it must adhere to basic international human rights standards - but this has not been the case so far.

“By forcibly removing asylum-seekers to Nauru, the Australian government is attempting to circumvent its international legal obligations to provide them fair and effective asylum determination procedures on Australian territory without resorting to immigration detention,” said Schuetze.

## **Background**

Depriving asylum-seekers or refugees of their liberty solely because they have sought to reach Australian shores without authorization to do so amounts to a penalty under Article 31(1) of the Refugee Convention according to which asylum-seekers and refugees should not be penalized, including by being detained, for “illegal entry or stay”.

Immigration detention should never be indefinite and it should only be used as a last resort and only according to a lawful purpose other than the person concerned being an asylum-seeker or a refugee.

Australia introduced the first “Pacific Solution” in 2001. The policy directly contravened Australia's international human rights and refugee law obligations, and its implementation caused untold suffering to many refugees who spent prolonged periods in isolation, causing them mental hardship and separating them from their families for long periods of time. Pursuant to the first “Pacific Solution” Australia

forcibly removed 1,600 asylum-seekers to Nauru or Papua New Guinea, denying them access to Australian territory to lodge asylum claims. Australia eventually abandoned the scheme in 2008.

According to the United Nations High Commissioner for Refugees “under international law any excision of territory does not relieve Australia of its responsibilities to asylum-seekers.” UNHCR has also urged that “all asylum-seekers arriving into Australian territory, by whatever means, and wherever, be given access to a full and efficient refugee status determination process in Australia.”

In its visit to the Regional Processing Centre at Topside last November, Amnesty International found that asylum-seekers’ rights were not being respected. They were left in limbo, some held for lengthy periods of time – amid cramped and squalid conditions in Nauru’s harsh humid climate.