

NAURU

WEAKENING HUMAN RIGHTS PROTECTIONS AND THE RULE OF LAW

*Amnesty International
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2015*

**AMNESTY
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EXECUTIVE SUMMARY

This submission was prepared for the Universal Periodic Review (UPR) of Nauru taking place in November 2015. In it, Amnesty International evaluates the implementation of recommendations made in the previous UPR, assesses the national human rights framework and the situation of human rights on the ground, and makes a number of recommendations to the government of Nauru to strengthen the protection of human rights and address human rights challenges.

Nauru has taken some steps to strengthen the national human rights framework, most notably toward ratification of outstanding international human rights treaties, despite current resource constraints. However, the legal protection of human rights remains weak in Nauru.

Amnesty International is concerned about the level of violence against women and children in Nauru. Asylum seeker children continue to be subjected to mandatory detention at Australia's Immigration Detention Centre on Nauru and have allegedly been sexually assaulted. The organization is also concerned about the lack of independence of the judiciary and breaches of the right to a fair trial.

FOLLOW UP TO THE PREVIOUS REVIEW

Amnesty International regrets the lack of progress made by Nauru in implementing many of the recommendations made during its previous UPR in 2011, despite accepting the majority of them. Nauru has not made significant progress towards reforming national laws and policies to better protect human rights. Domestic violence and women's rights,¹ children's rights,² and access to justice³ remain major issues of concern.

Nauru also committed to improve measures to safeguard the rights of refugees and asylum seekers and to raise public awareness of refugee and asylum seeker issues.⁴ Despite some efforts by the Nauruan Government to address asylum seeker and refugee rights, the re-opening of Australia's Immigration Detention Centre on Nauru in 2012 has led to a string of human rights abuses, including unreasonable delays in processing asylum seeker claims, harsh living conditions, allegations of physical and sexual abuse, and arbitrary and indefinite detention of adult and child asylum seekers. Nauru remains ill-equipped to provide the necessary safeguards to protect asylum seekers from harm, to fairly and promptly process asylum seeker claims, and to meet the needs of refugees who are settled in the community.

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Nauru*, A/HRC/17/3, 8 March 2011, recommendations 79.54 (Cuba), 79.55 (Spain), 79.56 (Trinidad and Tobago), 79.58 (Algeria), 79.59 (Australia), 79.60 (Slovakia), 79.61 (Argentina), 79.62 (Italy), 79.63 (Malaysia), 79.64 (Brazil), 79.65 (Canada), 79.66 (United States of America), 79.67 (Maldives), (A/HRC/17/3).

² A/HRC/17/3, recommendations 79.68 (Israel), 79.69 (Italy), 79.70 (United States of America), 79.71 (Spain) and 79.72 (Slovakia).

³ A/HRC/17/3, recommendation 79.73 (Maldives).

⁴ A/HRC/17/3, recommendations 79.94 (Germany), 79.95 (Sweden) and 79.96 (Argentina).

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Amnesty International welcomes Nauru's accession to the Convention on the Elimination of All Forms of Discrimination against Women on 23 June 2011; the 1951 Convention relating to the Status of Refugees and its 1967 Protocol on 28 June 2011; the Convention on the Rights of Persons with Disabilities on 27 June 2012; its ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 26 September 2012; and its accession to its Optional Protocol on 24 June 2013.

Despite this progress, legal protection of human rights remains weak in Nauru. This is due primarily to poor incorporation of human right treaties into domestic law and a lack of domestic legislative provisions guaranteeing human rights protection. Accepted recommendations during Nauru's previous UPR to ratify or accede to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights⁵ have also not been implemented.

Amnesty International acknowledges that Nauru's capacity to ratify and implement international human rights treaties is constrained by financial considerations as well as the reporting burden.⁶ The review of the Constitution and the Criminal Code, which was frequently cited by Nauruan representatives during the previous UPR,⁷ has not been completed.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

VIOLENCE AGAINST WOMEN

While there are no statistics available on family violence in Nauru, such violence, including sexual violence against women and children, is recognised by the authorities as a problem.⁸ During Nauru's previous UPR, elimination of family violence was identified by government officials as a national priority, with the review

⁵ A/HRC/17/3, recommendations 79.1 (New Zealand), 79.2 (Algeria), 79.3 (United States of America), 79.4 (United Kingdom), 79.5 (Sweden), 79.6 (Brazil), 79.14 (Argentina), 79.19 (Israel), 79.24 (Slovakia), and 79.25 (Poland).

⁶ A/HRC/17/3, paragraph 20 (Presentation by the State under review).

⁷ A/HRC/17/3 paragraphs 6 – 9 (Presentation by the State under review).

⁸ Human Rights Council, *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 – Nauru*, A/HRC/WG.6/10/NRU/1, 5 November 2010, paras 45 – 46, (A/HRC/WG.6/10/NRU/1) ; See also, Australian Government Department of Foreign Affairs and Trade, *Pacific Women Shaping Pacific Development: Nauru Country Plan Summary, July 2014*, p. 3, available at <http://www.pacificwomen.org/wp-content/uploads/Nauru-Country-Plan-Summary.pdf>, accessed 26 February 2015.

of the Criminal Code cited as the primary strategy to address this problem.⁹

While the government had introduced a number of initiatives in 2008 to address gender based violence, including establishing a trained Domestic Violence Unit in the Police Force and a women's shelter,¹⁰ the lack of statistical data makes it difficult to assess the effectiveness of these measures in reducing violence against women.

Australian assistance in reviewing the Criminal Code to include provisions on family violence is currently ongoing; however, the proposed changes have yet to be implemented.¹¹ Existing laws prohibit assault but do not explicitly protect against all forms of violence against women. While the revision of the Criminal Code remains incomplete, the legal protection of women experiencing family violence remains seriously lacking.

RIGHTS OF CHILDREN

Nauru accepted a range of recommendations at its previous UPR to eliminate physical and sexual abuse of children.¹² However, since the last review the government has failed to strengthen laws and policies to address child abuse.¹³ The lack of a domestic child protection framework in Nauru is of particular concern given the level of child abuse in the community and allegations of sexual assault on children at Australia's Immigration Detention Centre on Nauru.¹⁴

Mandatory detention of asylum seeker children violates Nauru's obligations under the Convention on the Rights of the Child, which it acceded to in 1994. As at 31 May 2015 there were 81 children in detention in Nauru.¹⁵

⁹ A/HRC/WG.6/10/NRU/1, p. 14, accessed on 26 February 2015, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/171/50/PDF/G1017150.pdf?OpenElement>.

¹⁰ Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1, Nauru, A/HRC/17/WG.6/10/BRU/1 at para 34, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/162/11/PDF/G1016211.pdf?OpenElement>, accessed 4 August 2015.

¹¹ Australian Government Department of Foreign Affairs and Trade, *Aid Program Performance Report 2013-14: Nauru, September 2014*, p. 8, available at <http://www.dfat.gov.au/about-us/publications/Documents/nauru-appr-2013-14.pdf>, accessed 26 February 2015.

¹² A/HRC/17/3, recommendation 79.68 (Israel), 79.69 (Italy), 79.70 (United States of America), 79.71 (Spain), 79.72 (Slovakia).

¹³ N Procter, S Sundram, G Singleton, G Paxton, A Block, *Nauru Site Visit Report, Physical and Mental Health Subcommittee* of the Joint Advisory Committee for Nauru Regional Processing Arrangements, (16-19 February 2014), p. 35, available at <http://www.theguardian.com/world/interactive/2014/may/29/nauru-family-health-risks-report-in-full>, accessed 26 February 2015.

¹⁴ Susan McDonald & Eliza Borrello, ABC News, "Immigration Department investigating 44 allegations of sex abuse in detention centres, cannot say how many involve children," 23 February 2015, available at <http://www.abc.net.au/news/2015-02-23/allegations-of-child-sexual-abuse-in-detention/6219014>.

¹⁵ *Immigration Detention and Community Statistics Summary, 31 May 2015*, <http://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-may2015.pdf>, p3.

INDEPENDENCE OF THE JUDICIARY, RIGHT TO A FAIR TRIAL AND ACCESS TO JUSTICE

Amnesty International is concerned that the arbitrary dismissal of judicial officers, significant delays in court cases and the lack of affordable legal services, undermine the independence of the judiciary and the right to a fair trial.

In January 2014, Nauru's only Magistrate and Chief Justice were dismissed by the government,¹⁶ without following constitutional procedures for the removal of judicial officers. The arbitrary removal of judicial officers, without due process, undermines the actual and perceived independence of the judiciary.

In September 2014, the government appointed a new Chief Justice, two Justices and a Magistrate.¹⁷ However, the lapse of nine months before appointing new judicial officers has resulted in significant delays in cases pending before the courts, which may undermine the right to a fair trial.

The government has acknowledged the lack of affordable legal services available to the public and the need to address the issue of capacity in the legal sector.¹⁸ It is not clear what steps have been taken to implement the accepted recommendation to seek assistance from the international community to expand and strengthen the legal and judicial sectors.¹⁹

FREEDOM OF EXPRESSION

Amnesty International remains concerned about restrictions on the right to freedom of expression. For example, in June 2014, five opposition Members of Parliament were suspended for criticising the government in international media.²⁰ Since then, those members have not been permitted to participate in parliamentary discussions.

In July 2015, more than eighty prominent Australian constitutional and human rights law academics wrote to the Foreign Ministers of Australia and New Zealand in relation to Nauruan Opposition Member of Parliament Mr Roland Kun, who has been "suspended from Parliament and had his passport cancelled due to his criticism of the Nauruan government".²¹ Nauru has also revoked the resident's visa of Dr Katy Le Roy, Mr Kun's Australian wife who works in New Zealand and who cares for their three children. There is speculation that the action against Mr Kun was in response to his criticism of the dismissal of the Magistrate and Chief Justice in January 2014. The forced separation of the family raises significant international human rights issues and is symptomatic of the deteriorating rule of law in Nauru.

¹⁶ Amnesty International, *Amnesty International Report 2014/15: The State of the World's Human Rights*, p. 266,

http://reliefweb.int/sites/reliefweb.int/files/resources/POL1000012015ENGLISH_0.PDF.

¹⁷ The Government of the Republic of Nauru, "Nauru appoints new CJ, justices and magistrate", 9 September 2014, available at <http://naurugov.nr/government-information-office/media-release/nauru-appoints-new-cj,-justices-and-magistrate.aspx>, accessed 27 February 2015.

¹⁸ A/HRC/17/3 at paragraph 12.

¹⁹ A/HRC/17/3, recommendation 79.73 (Maldives).

²⁰ *Amnesty International Report 2014/15*, p. 266-7.

²¹ Australian National University, 29 July 2015, media release, *Australia and New Zealand urged to take action over Nauru rights*.

REFUGEES AND ASYLUM SEEKERS

In September 2012, Australia resumed the transfer to Nauru of asylum seekers who had arrived by boat in Australia. Under an agreement between the Australian and Nauruan governments, asylum seekers are to be processed and settled in Nauru. In November 2012, Amnesty International visited the Immigration Detention Centre and found that asylum seekers were detained arbitrarily and in harsh conditions.²²

It took nearly two years for Nauru to approve the first refugee claims on 22 May 2014. While their claims are being processed, asylum seekers are subject to mandatory detention. As of May 2015, approximately 400 refugees were living in the community,²³ while 634 people, including 81 children, remained in detention.²⁴

A small number of asylum seekers at the Immigration Detention Centre are now allowed to leave the Centre during the day for three days a week. While this has alleviated the conditions of detention for some, the vast majority of asylum seekers remain detained for lengthy periods of time in harsh conditions, in violation of international laws.

Amnesty International is alarmed at reports of sexual abuse at the Immigration Detention Centre and the apparent failure by the government to investigate these complaints and prosecute the alleged perpetrators. In November 2014, Amnesty International wrote to both the Nauruan and Australian governments requesting information regarding allegations of sexual abuse. The Nauruan government did not respond.

On 20 March 2015, the Australian government released a review undertaken by former Australian Integrity Commissioner, Phillip Moss, into allegations of sexual abuse at the Immigration Detention Centre on Nauru. The review documents reports of rape and other sexual assaults, including on children, and of guards trading certain commodities for sexual favours from female detainees, as well as cases of harassment and physical assault. The review also found that some cases of sexual and physical assault were not being reported. The report concluded that many asylum seekers living in the detention centre were apprehensive about their personal safety and have privacy concerns.²⁵

²² Amnesty International, *Nauru camp a human rights catastrophe with no end in sight*, 23 November 2012, available at

<http://www.amnesty.org.au/images/uploads/news/NauruOffshoreProcessingFacilityReview2012.pdf>, accessed 26 February 2015.

²³ The Hon Scott Morrison MP, Minister for Immigration and Border Protection, "First refugees settled in Nauru," 22 May 2014, available at

<http://pandora.nla.gov.au/pan/143035/20141222-1032/www.minister.immi.gov.au/media/sm/2014/sm214755.htm>; Peter Dutton MP, Minister for Immigration and Border Protection, "Minister-Nauru reaffirms regional processing partnership," 19 February 2015, available at <http://www.minister.immi.gov.au/peterdutton/2015/Pages/nauru-visit.aspx>.

²⁴ *Immigration Detention and Community Statistics Summary, 31 May 2015*, <http://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-may2015.pdf>, p. 3.

²⁵ *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru: Final report*, <http://www.immi.gov.au/about/dept-info/files/review-conditions-circumstances-nauru.pdf>.

The review's findings underscore conclusions of research carried out by Amnesty International and other NGOs; Amnesty International considers that a major shift is needed in policy towards asylum seekers.

ACCESS TO NAURU IMMIGRATION DETENTION CENTRE

The government cancelled a visit by the UN Working Group on Arbitrary Detention scheduled to have taken place on 14-19 April 2014.²⁶ Since then, UN and NGO access to Nauru has been restricted without explanation.

Amnesty International requested access to the Immigration Detention Centre on three occasions in 2014. On 24 March 2014, Amnesty International received an official response from the government rejecting its request for access on the grounds that it was not a good time to visit. The government has not responded to subsequent requests for access.

In a recent report, the UN Special Rapporteur on Torture noted that one of the most important safeguards against ill-treatment of children in detention is to ensure regular and independent monitoring of such places.²⁷ However, without access to the centre, it is difficult to promote and protect the rights of asylum seekers, including children.

It has been increasingly difficult for foreign journalists to access the country and to report on the treatment of asylum seekers or other human rights issues. In January 2014, Nauru increased the price of a media visa from \$183 USD to \$7,328 USD.²⁸ The fee is non-refundable regardless of whether the visa application is approved or rejected. International journalists are deterred from travelling to Nauru by the excessive fees.

Amnesty International notes that the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment visited Nauru in May 2015. Once the Subcommittee has produced its report it is critically important that the government makes it public.

²⁶ United Nations Office of the High Commissioner for Human Rights, *"Cancellation of the first official visit to Nauru by the UN Working Group on Arbitrary Detention"*, 9 April 2014, accessed on 11 March 2015, available at

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14495&LangID=E>.

²⁷ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/28/68*, 5 March 2015, para. 83, (A/HRC/28/68).

²⁸ *Amnesty International Report 2014/15*, p. 267.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Nauru to:

The national human rights framework

- Implement recommendations from the previous UPR to ratify core human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights;
- Incorporate the provisions of core human rights instruments, including the Convention on Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, into domestic law and implement them in policy and practice;
- Establish without delay a national preventive mechanism in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Violence against women

- Amend the Constitution and the Criminal Code to include provisions which specifically protect against sexual and gender based violence, including against threatened or actual violence, as a matter of urgency;
- Provide training to relevant law enforcement officials and the community on eliminating gender based violence.

Children's rights

- Strengthen national laws to include provisions which specifically protect against physical and sexual abuse against children;
- Develop and implement a national child protection framework;
- End mandatory indefinite detention, amounting to arbitrary detention, of children in the Immigration Detention Centre;
- Implement the Convention on the Rights of the Child consistently in law, policy and practice.

Independence of the judiciary, right to a fair trial and access to justice

- Strengthen the independence of the judiciary, including by ensuring that judicial officers cannot be arbitrarily removed from office without due process;
- Seek assistance from the international community to expand and strengthen the legal and judicial sectors, including by improving access to affordable legal advice on civil and criminal matters and ensuring that court cases are not subject to lengthy delays.

Freedom of expression

- Guarantee that individuals who publically disclose information about human rights abuses or criticize the government are not subject to reprisals, including through enacting legislation to expressly protect persons who

expose such information, including journalists, politicians, and human rights advocates;

- Fully and immediately reinstate the five suspended Members of Parliament and ensure that they are able to fully participate in parliamentary discussions.

Refugees and asylum seekers

- Immediately review the regional resettlement arrangement with the Australian government with a view to ending offshore processing and offshore detention of asylum seekers;
- Release asylum seekers from detention while their claims are being processed and ensure that their rights to freedom of expression and freedom of movement are respected, with priority given to releasing children and families as soon as possible. In the interim, provide adequate safeguards for the detainees in detention, including reasonable standards of security and hygiene;
- Take immediate steps to ensure that contracted security guards and other staff at the Immigration Detention Centre do not harass, intimidate or physically or sexually assault asylum seekers detained at the Centre;
- Establish a process to ensure the prompt and independent investigation of allegations of sexual abuse at the Immigration Detention Centre and ensure that alleged perpetrators are charged and prosecuted in accordance with the law;
- Consult with the public and inform them of any new refugee laws, integration policies and plans for their implementation;
- Work with the UN and other governments in the region, including inter-governmental organizations such as the Pacific Islands Forum, to ensure a regional approach to the processing and settlement of asylum seekers in the Pacific which meets international human rights laws and standards.

Access to the Immigration Detention Centre

- Extend a standing invitation to the Special Procedures of the Human Rights Council, and fully co-operate with any visits by the Special Procedures including to the Immigration Detention Centre;
- Ensure free and full access to the Immigration Detention Centre for independent agencies, such as church and community groups, journalists, local, national and international governmental and non-governmental organizations, and permit them to monitor detention conditions;
- Make public the report by the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment reports on its May 2015 mission to Nauru.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE²⁹

Amnesty International Australia, *Submission to the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru*, 28 April 2015.

Amnesty International, *Nauru's refusal of access to detention centre another attempt to hide conditions*, 29 April 2014.

Amnesty International, *Nauru Camp a Human Rights Catastrophe with no end in sight*, Media Release and Nauru Brief (Index: ASA 42/002/2012).

Amnesty International, *Report 2015/14*, except on Nauru,
<https://www.amnesty.org/en/countries/asia-and-the-pacific/nauru/report-nauru/>.

²⁹ All of these documents are available on Amnesty International's website:
www.amnesty.org.au