



# NAURU: STRENGTHEN HUMAN RIGHTS PROTECTIONS

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW, 37<sup>TH</sup> SESSION OF THE UPR WORKING GROUP, JANUARY-FEBRUARY 2021

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# INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Nauru to be held in January-February 2021. In it, Amnesty International evaluates the implementation of recommendations made to Nauru in its previous UPR and makes recommendations in relation to improving the national human rights framework, strengthening the right to a fair trial, protecting rights to freedom of expression and ending harmful refugee policies.

## FOLLOW UP TO THE PREVIOUS REVIEW

1. Amnesty International welcomes the positive steps taken by the Nauruan government to implement the recommendations it committed to at the last UPR session in November 2015, including:
  - a. In 2016, Nauru amended its criminal laws to decriminalize homosexual activity between consenting adults.<sup>1</sup>
  - b. In June 2018, the internet ban on access to some social media sites was lifted after being in place for three years.<sup>2</sup>
  - c. In February 2019, the last of the remaining refugee and asylum seeker children on Nauru were removed to Australia after concerns were raised related to their physical and mental wellbeing.<sup>3</sup>
  - d. As of March 2020, there were only 211 refugees and asylum seekers remaining on Nauru.<sup>4</sup> Amnesty International urges the Nauru government to continue to expedite arrangements with Australia, the United States of America and other willing countries until every refugee and asylum seeker who wishes to do so is settled in a country where they are safe and their human rights are respected.<sup>5</sup>
2. Further action is needed to end refugee policies set up by the Australian and Nauruan governments; protect the independence of the judiciary and right to a fair trial; and protect the rights to freedom of expression and peaceful assembly.<sup>6</sup>

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<sup>1</sup> A/HRC/31/7, recommendations 87.3-87.8 (Spain, United States of America, Australia, Chile, France and Argentina).

<sup>2</sup> A/HRC/31/7, recommendations 87.14 (Germany), 86.15 (France) and 87.18 (Costa Rica); UN Ref: A/HRC/31/7.

<sup>3</sup> A/HRC/31/7, recommendations were made in relation to improving conditions for refugee and asylum seeker children in Nauru at 87.19 (New Zealand), 87.22 (Germany), 87.27 (Kenya), 87.28 (Philippines), 87.29 (Slovenia).

<sup>4</sup> According to Australian Senate Estimate hearings in March 2020, only one is a woman and the remaining 210 asylum seekers and refugees are men.

<sup>5</sup> A/HRC/31/7, recommendations 87.19 (New Zealand), 87.22 (Germany), 87.24 (Uruguay), 87.25 (Brazil), 87.26 (Fiji), 87.27 (Kenya), 87.28 (Philippines).

<sup>6</sup> Amnesty International Annual Report 2018, Nauru, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/nauru/report-nauru/>; Amnesty International, *Trea\$ure Island: How companies are profiting from Australia's abuse of refugees on Nauru*, 5 April 2017, Index number: ASA 12/5942/2017 available at <https://www.amnesty.org/en/documents/asa12/5942/2017/en/>; Amnesty International, *Island of despair: Australia's 'processing' of refugees on Nauru*, 17 October 2016, <https://www.amnesty.org/en/documents/asa12/4934/2016/en/>;

3. It is not clear what legal, policy or practical measures the Nauru government has implemented since the last review to protect the rights of women and children and people with disabilities, but Amnesty International urges the Nauruan government to continue working to ensure substantive equality and freedom from violence and discrimination for all people.
4. Amnesty International notes that the UN Subcommittee on the Prevention of Torture was due to visit Nauru in late March 2020, but this was delayed due to the Covid-19 pandemic.<sup>7</sup> At the time of writing, Nauru is one of several Pacific Islands countries to have no reported cases of Covid-19. Amnesty International hopes this visit can go ahead with full co-operation of the Nauruan authorities as soon as it is safe to do so.
5. In spite of its commitments to do so at the previous review, Nauru has not yet ratified the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>8</sup>

# THE NATIONAL HUMAN RIGHTS FRAMEWORK

6. From 1976 until 2018, by treaty agreement between Australia and Nauru after its independence, the High Court of Australia was the ultimate appellate court for Nauru. In March 2018, the appellate jurisdiction of the High Court of Australia was removed. On 10 May 2018, Nauru passed a new law, the Nauru Court of Appeal Act 2018. On 4 December 2019, the Nauru government appointed six Court of Appeal judicial officers from Pacific Islands countries and stated that up to two Australian appointees would be named to hear appeals on refugee and asylum seeker cases.<sup>9</sup>
7. Nauru's judicial system comprises of a District Court (with limited jurisdiction for civil and criminal cases), the Supreme Court and the newly constituted Court of Appeal.
8. As noted above, Nauru is not yet party to the ICCPR and ICESCR.
9. In spite of accepting a recommendation to establish a national human rights institution, and making some progress (including the drafting of proposed laws), it has not yet been set up.<sup>10</sup> Amnesty International urges Nauru to continue to work with the support of regional partners such as the Asia Pacific Forum on National Human Rights Institutions and the Regional Rights Resource Team to set up a national human rights institution for the protection and promotion of human rights in accordance with the Paris Principles.

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Amnesty International, *Nauru: MSF ousting must spur Australia to evacuate refugees*, 11 October 2018, available at <https://www.amnesty.org/en/latest/news/2018/10/nauru-msf-ousting-must-spur-australia-to-evacuate-refugees/>;

Amnesty International, Nauru, *Nauru: Deterring essential medical transfers risks deadly consequences*, 20 February 2019, available at <https://www.amnesty.org/en/latest/news/2019/02/naurudeterring-essential-medical-transfers-risks-deadly-consequences/>; and Amnesty International, *Nauru: Government must lift press restrictions on ABC ahead of Pacific Islands Summit*, available at <https://www.amnesty.org/en/latest/news/2018/07/nauru-government-must-lift-press-restrictions-on-abc-ahead-of-pacific-islands-summit/>

<sup>7</sup> OHCHR, *UN torture prevention body suspends Argentina visit over Covid-19 concerns/Postpones scheduled visits to Bulgaria, Australia and Nauru*, 11 March 2020, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25710&LangID=E>

<sup>8</sup> A/HRC/31/7 - Para. 85 & A/HRC/31/7/Add.1 - Para. 1

<sup>9</sup> Government of the Republic of Nauru, *The first sitting of the Nauru Court of Appeal*, 13 December 2020, available at <http://nauru-news.com/first-sitting-nauru-court-appeal/>

<sup>10</sup> A/HRC/31/7, Para. 85 and A/HRC/31/7/Add.1 at Para. 5

# HUMAN RIGHTS SITUATION ON THE GROUND

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

10. The arbitrary removal of judicial officers has undermined the independence and integrity of the judiciary in Nauru. In 2014, Peter Law (former Magistrate), Geoffrey Eames (former Chief Justice) and Emma Garo (former Magistrate) were removed following their decisions in cases against the government. Geoffrey Muecke (former judge on the Nauru 19 case below) also had his contract terminated in September 2018, three days after handing down his decision that the defendants could not receive a fair trial in Nauru.<sup>11</sup>
11. Under the new Nauru Court of Appeal Act 2018, the President of Nauru appoints judicial officers, in consultation with the Chief Justice. Judicial officers may be appointed to hear one off cases, or for a fixed time. These powers may undermine the independence of the judiciary, the rule of law, the right to a fair trial and effective remedies, and other human rights, in general.
12. Judicial officers should have security of tenure to insulate them from concerns that they will be affected by a political reaction to their decisions,<sup>12</sup> the body responsible for the appointment of judicial officers must be independent from the executive in both its composition and its work,<sup>13</sup> and assignment of cases should be done by judicial administration in accordance with objective criteria.<sup>14</sup> In recognition of the challenges of establishing an independent and impartial judiciary in a country such as Nauru, the government should seek technical advice and assistance from the United Nations Special Rapporteur on the Independence of Judges and Lawyers, when necessary.

## RIGHTS TO FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY

13. Nauru requires high visa fees for international journalists (\$8000 AUD), limiting access to the country for foreign journalists. These prohibitively high visa fees, which are non-refundable if the visa is refused, in practice means that very few journalists have been able to access the country to report on human rights issues of international concern, such as the treatment of asylum seekers and refugees. Only two Australian journalists have visited Nauru since the new visa fees were introduced in January 2014. The fee was waived for journalists attending the Pacific Islands Forum Leaders' Meeting in September 2018, but New Zealand journalist Barbara Dreaver was questioned by police for alleged breach of visa conditions after speaking to a refugee.
14. The last UPR review noted charges against 19 opposition members of parliament and their supporters for a largely peaceful protest conducted outside parliament in 2015

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<sup>11</sup> Helen Davidson, *Nauru 19: Australian judge blasts 'appalling' persecution of protesters*, The Guardian, 15 November 2019, available at <https://www.theguardian.com/world/2019/nov/15/nauru-19-australian-judge-blasts-appalling-persecution-of-protesters>

<sup>12</sup> Principles 11, 12 and 18 of the Basic Principles on the Independence of the Judiciary.

<sup>13</sup> Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/11/41 (2009) paras 23-34, 97.

<sup>14</sup> Principle 14 of the Basic Principles on the Independence of the Judiciary

(three of people pleaded guilty to charges, and three fled the country).<sup>15</sup> In a retrial of an earlier hearing, the Supreme Court of Nauru in December 2019 convicted 12 people of various offences related to riot, peaceful assembly and assault.<sup>16</sup> Amnesty International remains concerned that the charges against opposition parliamentarians were politically motivated, and for those who are not alleged to have engaged in any acts of violence at the protests, amounts to an unlawful restriction on the right to peaceful assembly. The defendants also raised concerns about their lack of adequate legal representation after laws were changed to make it more difficult for them to use overseas qualified Counsel to represent them in Nauru (noting that Nauru does not have many independent lawyers working in the country).

## REFUGEES AND ASYLUM SEEKERS

15. In October 2018, the government forced Médecins Sans Frontières (MSF) to abandon its operations on Nauru where it had been providing critical mental health support to both local people and refugees. This ban is an example of ongoing obstruction by the Nauru government to working openly and transparently on refugee and asylum seeker issues, including with respected international health care providers.<sup>17</sup> In February 2019, MSF launched a free tele-mental health service to provide psychological support to former patients including Nauruan nationals, asylum seekers and refugees. However, two weeks later the Nauruan government banned telemedicine in the country, once again forcing MSF to suspend its services.<sup>18</sup>

# RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

## AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF NAURU TO:

### THE NATIONAL HUMAN RIGHTS FRAMEWORK

- Ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and, where necessary, seek international cooperation and assistance to incorporate these treaties into domestic law.
- Establish a national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

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

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<sup>15</sup> A/HRC/31/7, recommendations 86.15 (France) and 86.17 (Australia)

<sup>16</sup> Four people were convicted on assault charges, the other eight were convicted of non-violent offences related to peaceful assembly. See the full decision: *The Republic of Nauru v 12 Defendants*, decision 11 December 2019, available at <http://nauru-news.com/statement-government-republic-nauru-re-judgment-republic-nauru-v-12-defendants-11-december-2019/?fbclid=IwAR2mz5HCiW0IkWCWDTIMXsLZctZK5AYrszwiDDCfUaW0evGpFo4Y0g83sfc>

<sup>17</sup> Médecins Sans Frontiers, *Refugees' lives in danger with MSF forced to end mental healthcare activities*, Press Release, 11 October 2018, available at <https://www.msf.org/msf-slams-decision-ends-critically-needed-mental-healthcare-nauru>

<sup>18</sup> See: <https://www.msf.org/nauru>

- Strengthen the independence of the judiciary and of the governing bodies of the judiciary, including by ensuring that judicial officers cannot be arbitrarily removed from office without due process and are appointed independently in line with international human rights standards, including the UN Basic Principles on the Independence of the Judiciary

#### FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY

- Protect and uphold the right to free and independent media in Nauru, including by removing prohibitively high foreign journalist visa fees to enable foreign journalists to visit the country.
- Immediately and unconditionally release Members of Parliament and their supporters convicted of non-violent offences related to protests in 2015.

#### REFUGEES AND ASYLUM SEEKERS

- Immediately end 'offshore processing' arrangements with the Australian government and ensure that the 211 remaining refugees and asylum seekers who wish to do so are transferred to Australia or settled in a country where they are safe and their rights are respected and protected.
- Immediately reinstate mental health services provided by MSF and other qualified health providers for locals and refugees and asylum seekers. Noting the travel restrictions as a result of the Covid-19 health pandemic and the need to protect Nauru from exposure to the illness, health services should resume online and by phone until Nauru is capable of implementing human rights-compliant quarantine measures for travelers to and from the country.
- Ensure free and full access for independent agencies such as church and community groups, journalists, UN agencies, and non-governmental organisations and permit them to monitor the conditions for the refugees and asylum seekers who choose to remain.

# ANNEX

## AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE

*Trea\$ure Island: How companies are profiting from Australia's abuse of refugees on Nauru*, Report, 5 April 2017, ASA 12/5942/2017, at <https://www.amnesty.org/en/documents/asa12/5942/2017/en/>

*Island of despair: Australia's 'processing' of refugees on Nauru*, Report, 17 October 2016, ASA 12/4934/2016, at <https://www.amnesty.org/en/documents/asa12/4934/2016/en/>

*Amnesty International Annual Report 2018*, Nauru, at <https://www.amnesty.org/en/countries/asia-and-the-pacific/nauru/report-nauru/>

*Nauru: MSF ousting must spur Australia to evacuate refugees*, 11 October 2018, Press Release, at <https://www.amnesty.org/en/latest/news/2018/10/nauru-msf-ousting-must-spur-australia-to-evacuate-refugees/>

*Nauru: Deterring essential medical transfers risks deadly consequences*, 20 February 2019, at <https://www.amnesty.org/en/latest/news/2019/02/naurudeterring-essential-medical-transfers-risks-deadly-consequences/>

*Nauru: Government must lift press restrictions on ABC ahead of Pacific Islands Summit*, Public Statement, July 2018, at <https://www.amnesty.org/en/latest/news/2018/07/nauru-government-must-lift-press-restrictions-on-abc-ahead-of-pacific-islands-summit/>

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