



**Submission to the
Senate Legal and Constitutional Affairs Committee inquiry into the
Migration Amendment (Health Care for Asylum Seekers) Bill 2012**

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Submitted by

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About Amnesty International



Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the *Universal Declaration of Human Rights* (UDHR) and other international instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights. Amnesty International is the world's largest independent human rights organisation, comprising more than 3 million supporters in more than 160 countries and has 170,000 supporters in Australia. Amnesty International is impartial and independent of any government, political persuasion or religious belief. It does not receive funding from governments or political parties.

Introduction

Amnesty International holds concerns for the human rights and mental health of asylum seekers and refugees who arrive in Australia by boat and are sent offshore to Nauru and Papua New Guinea for processing. Amnesty International supports the proposal to establish a panel of experts to monitor the health of asylum seekers and recommends it be established as soon as possible, given the lack of adequate human rights protection for these individuals and the known detrimental mental-health effects of long-term indefinite detention. The organisation notes with concern the recent reports of self-harm by asylum seekers on Nauru¹ and fears such reports may increase as asylum seekers grow more anxious about their prolonged situation.

Background

The judgment of the High Court of Australia on 31 August 2011 in *Plaintiff M70/2011 v Minister for Immigration and Citizenship* effectively prevented the Australian Government's plans to implement offshore processing in third countries. This included its arrangement with the Malaysian Government to transfer up to 800 asylum seekers who arrived in Australia by boat to Malaysia in return for 4,000 refugees residing in Malaysia over four years.

To circumvent the High Court ruling, the Australian Government introduced legislation to remove section 198 A, the section that contained important human rights protections, from the Migration Act. The *Migration Amendment (Offshore Processing and Other Measures) Bill 2012* was passed on 16 August 2012. Without the human rights protections contained in section 198 A, the Australian Government was able to proceed with offshore processing in third countries. It is clear that the Australian Government would not have been able to send asylum seekers to Nauru and Manus Island without stripping important human rights protections out of the Migration Act.

Amnesty International considers that the amendments to the Migration Act removing important protections for asylum seekers and refugees contained in section 198 A have significantly weakened human rights protections for asylum seekers and refugees. As such, there is a critical need to establish independent means to, at the very least, monitor the physical welfare and mental health of individuals transferred to offshore processing locations.

Past experience – the Pacific Solution

¹ Taylor, P., 15 October 2012, 'Mental health fears as Nauru copes with self-harmers', The Australian, <http://www.theaustralian.com.au/national-affairs/immigration/mental-health-fears-as-nauru-copes-with-self-harmers/story-fn9hm1gu-1226495755344>



Amnesty International believes the long-term mental impact on asylum seekers being processed on Nauru and Papua New Guinea will resemble the mental health problems experienced by individuals detained under the previous instalment of the Pacific Solution, due to the indefinite nature of their detention and processing. Despite the fact that several groups of refugees have already been sent from Australia to Nauru, little detail has been disclosed about how people transferred to Nauru or Papua New Guinea will be treated or processed.

Under the Howard Government's Pacific Solution that operated from 2001 to 2008, asylum seekers and refugees were sent to the remote island of Nauru for processing. On 19 September 2001 Australia signed an Administrative Agreement with Nauru to accommodate asylum seekers for the duration of the processing of their applications. This was replaced by a Memorandum of Understanding (MOU) signed on 11 December 2001. Australia also signed an MOU with Papua New Guinea on 11 October 2001, allowing the construction of a processing centre to accommodate and assess the claims of asylum seekers on Manus Island. The centres were managed by the International Organisation for Migration (IOM).

Under the Pacific Solution unauthorised arrivals at excised locations were transferred to the Offshore Processing Centres on Nauru and Manus Island, where they were detained while their asylum claims were processed. Claims were not processed under Australian law and claimants had no access to legal assistance or judicial review. Instead claims were processed by Australian immigration officials, and in some cases United Nations High Commissioner for Refugees (UNHCR) officials in accordance with the criteria of the *1951 Convention relating to the Status of Refugees* (Refugee Convention). Persons who were found to be owed protection were eventually resettled either in Australia or in a third country (with the emphasis being on trying to find resettlement solutions in a third country in preference to Australia). Some asylum seekers were also processed on the excised offshore territory of Christmas Island.

Between 2001 and February 2008 a total of 1,637 people were detained in the Nauru and Manus Island facilities. Of these, 1153 (70 per cent) were ultimately resettled in Australia or other countries. Of those who were resettled 705 (around 61 per cent) were resettled in Australia."²

Lessons from the Pacific Solution – Health issues

Poor accommodation and living conditions and lack of adequate medical facilities contributed to disease among asylum seekers and refugees sent to Nauru and Manus Island during 2001-2008.

An Amnesty International report from 2002 details the conditions: "In November 2001, an Amnesty International delegate who visited Nauru reported that the camps are located in isolated areas and are surrounded by a high wire fence. The asylum seekers are housed in 'blocks' measuring some three metres in width and ... up to forty metres [in length], with a corrugated iron roof, and with sides made up of plastic sheeting, up to approximately head height, and completed with green nylon mesh. These are the 'sleeping' areas. ... Conditions are harsh, with the heat and humidity consistently in the upper thirties [degrees centigrade] and health facilities are basic."

² Parliamentary Library, Boat Arrivals since 1974, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/BoatArrivals



A group of Afghan women handed a letter to the Amnesty International delegate, stating that, "[w]e have a lot of problems here in Nauru Refugee camp. The weather is hot. There are mice and mosquitoes around. As a result we have developed rashes and it lead[s] to infections. We are living in plastic tent[s]. It is dangerous as it may get on fire on stormy nights."³

Significantly, the asylum seekers and refugees who have already been sent to Nauru in 2012 are currently being accommodated in tents.⁴

On Manus Island, accommodation had consisted of formerly disused Nissen huts and demountable buildings in an area initially enclosed by an improvised wire fence and flood lights. At the time of the first transfers, PNG media reported that conditions led to immediate protests among asylum seekers.

On 18 February 2002, the Royal Australasian College of Physicians called for the immediate removal of asylum seekers from Manus Island, in particular pregnant women and young children, "following recent cases of malaria among asylum seekers detained there, and the fact that chloroquine-resistant falciparum malaria is endemic on the Island in PNG"⁵.

Establishing a panel of medical experts to monitor and report on the health of individuals being held on Nauru and Manus Island is critical to ensure public and independent scrutiny of health conditions for refugees and asylum seek occurs.

Lessons from the Pacific Solution – the effects of long-term indefinite detention on mental health

The detrimental effect of long-term indefinite detention on the mental health of detainees is well known. The final report of the Joint Select Committee on Australia's Immigration Detention Network addressed the impact of detention on the mental health of detainees: "A number of circumstances associated with prolonged detention contribute to poor mental health outcomes. These include deprivation of freedom, a sense of injustice and inhumanity, isolation, and growing feelings of demoralisation and hopelessness. These factors conflate to slowly, persistently corrode mental health, resulting in both psychological and physical deterioration"⁶.

The Australian Human Rights Commission identified a number of factors contributing to the degradation of mental health across the detention network: "The Commission is troubled about a number of key factors that, in combination, are placing extreme pressures on asylum seekers and refugees in detention facilities. These include the psychological impacts of being detained for long periods with no certainty about when they will be released or what will happen to them when they are; confusion about the refugee status assessment process and frustration about delays with processing;

³ Amnesty International Australia, 2002, Australia-Pacific: Offending human dignity – the 'Pacific Solution', <http://www.amnesty.org/en/library/asset/ASA12/009/2002/en/fa6f5339-d7f2-11dd-9df8-936c90684588/asa120092002en.html>.

⁴ Minister for Immigration and Citizenship, 11 September 2012, transcript of interview with Marius Benson ABC News Radio, Asylum seeker transfers to Nauru, Malaysia Arrangement, people smugglers, <http://www.minister.immi.gov.au/media/cb/2012/cb189779.htm>.

⁵ "Health specialists call for immediate removal of asylum seekers at risk of malaria on Manus island", Royal Australasian College of Physicians media release, 18 February 2002.

⁶ Full report available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detenti_ctte/immigration_detenti_on/index.htm



frustration and uncertainty about ASIO security assessment processes and delays; and the fact that they are informed that if they seek judicial review of their negative refugee assessment, they will remain in immigration detention for the duration of that process⁷”.

Further evidence before the Committee consistently pointed to similar exacerbating features of the detention experience. These include:

- the undefined, uncertain length of detention;
- the remoteness of facilities and harshness of climatic and geographic environments;
- perceptions of unjust treatment and unjustified incarceration; and
- the absence of meaningful, stimulating activity.

From physicians, psychiatrists, human rights groups and refugee advocates, to academics, lawyers and detainees themselves, the Committee heard a consistent message from submitters and witnesses over the course of this inquiry: it is the length of time people spend in an information vacuum in detention that is the primary problem and contributor to stress. Not a single submission put forth arguments to the contrary.⁸

During visits to Australian Immigration Detention Centres in 2012, Amnesty International representatives were told by detainees that ongoing periods of detention lead to feelings of stress and tension, despair, helplessness and depression. Some detainees showed strong aggressive-impulsive and self-harming behaviours, reflected in self-harm and suicide attempts. On a broader scale, these behaviours have manifested in acts of mass violence, group break-outs, rioting, burning of facilities and hunger strikes. It is not unreasonable to conclude that refugees and asylum seekers sent to Nauru and Manus Island may have similar experiences.

The current policy favours implementation of a ‘no advantage’ principle, where asylum seekers and refugees sent to Nauru and Manus Island will remain on the islands for the same time it would have taken for them to be processed and resettled from transit countries in the region in order to “ensure that no benefit is gained through circumventing regular migration arrangements”.⁹ The Australian Government has provided no detail on how this will work in practice, except noting it will be “done under Nauruan law”.¹⁰ The UNHCR has expressed concerns about the application of the ‘no advantage’ principle, arguing “that the time taken to resettle cases referred to the UNHCR in South-East Asia may not be a ‘suitable comparator’; that there is no ‘average’ time for resettlement from transit countries; and that the test appears to be based on the longer term aspiration for regional processing to be in place.”¹¹

⁷ The full submission of the Australian Human Rights Commission is available here:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/immigration_detention/submissions.htm

⁸ Joint Select Committee on Australia’s Immigration Detention Network, Final Report, Chapter 5,

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/immigration_detention/report/c05.htm#anc2.

⁹ Report of the Expert Panel on Asylum Seekers, August 2012, Recommendation 1, p.14.

¹⁰ Minister for Immigration and Citizenship, 11 September 2012, transcript of interview with Marius Benson ABC News Radio, Asylum seeker transfers to Nauru, Malaysia Arrangement, people smugglers, <http://www.minister.immi.gov.au/media/cb/2012/cb189779.htm>.

¹¹ Gordon, M., 11 October 2012, ‘UN concerned by Gillard PNG plan’, Sydney Morning Herald, <http://www.smh.com.au/opinion/political-news/un-concerned-by-gillard-png-plan-20121011-27eno.html>.



Amnesty International is deeply concerned that the absence of any stated time-frames relating to the 'no advantage' principle will result in the indefinite detention of asylum seekers and refugees on Nauru and Manus Island, contravening Article 9 of the *International Covenant on Civil and Political Rights* (ICCPR).¹² Amnesty International fears the inevitable impact that this long-term indefinite detention will have on the mental health of detainees, who will include traumatised and vulnerable adults and children. For this reason, establishing a panel of medical experts to monitor and report to Parliament on the health of detainees on Nauru and Manus Island is critical.

Amnesty International continues to assert that the detention of individuals must have legislated reasonable maximum time limits. After this limit is over, assuming an individual does not pose a risk to the community, the individual should be automatically released.

Lessons from the Pacific Solution – lack of access to detainees

Amnesty International has previously expressed its concerns with the lack of access for media, lawyers, friends, family, religious clergy, community organisations, NGOs and community members to those detained on Nauru during 2001-2008.

In the past, the conditions in the detention facilities on Nauru and Manus Island could not be independently verified as Papua New Guinean and Nauruan authorities generally ignored or rejected requests to visit detention camps by independent media, lawyers and human rights organisations.

A number of organisations currently monitor Australian Immigration Detention Centres, including remote centres on Christmas Island, in the remote mining town of Leonora (WA) and in Weipa in far North Queensland. These organisations are already financially constrained in visiting centres in Australia, given the high cost of visiting such remote locations. The financial burdens for such monitoring organisations will be significantly higher when inspecting centres on Nauru or Manus Island. The establishment of an independent panel to monitor the health of asylum seekers and refugees sent to offshore locations will ensure regular scrutiny of conditions in these offshore centres.

Amnesty International's position on offshore third-country processing

Amnesty International has never supported offshore third-country processing of asylum seekers and refugees. The organisation has long argued that the policy breaches Australia's obligations to provide protection to asylum seekers under the Refugee Convention, discriminates against asylum seekers and refugees based on their mode of arrival, is unnecessary given the comparatively small amount of asylum seekers Australia receives, is expensive compared to other alternatives, and inhumane due to the indefinite nature of detention in remote locations with little access to basic services.

Amnesty International opposes Australia's punitive measures to deter asylum seekers by treating others harshly even though they have committed no crime. Specifically, the organisation objects to the use of detention of unspecified and potentially unlimited duration without judicial review, to the

¹² Office of the United Nations High Commissioner for Human Rights, International Covenant on Civil and Political Rights, <http://www2.ohchr.org/english/law/ccpr.htm#art9>.



automatic detention of children, and to detention in conditions which may be considered degrading or inhuman. Such violations of human rights cannot be justified as a method of deterring potential asylum seekers. Addressing the problem of international people smuggling requires an increase in international cooperation targeting the root causes of both refugee movements and of the people smuggling market, rather than in punitive measures against those they exploit.

The organisation is further concerned that the Australian Government's new policy of offshore processing, and other options such as the Malaysia arrangement, may lead other governments to evade their shared responsibilities to find effective protection and durable solutions for people fleeing countries where they are at risk of serious human rights violations. Australia's unilateral action undermines international efforts aimed at persuading other countries to respect the needs and rights of refugees and asylum seekers.

Amnesty International calls for government resources in refugee host countries to be concentrated on sharing - not shifting - responsibilities for refugee movements, on addressing their root causes and not just the symptoms, and for an end to the arbitrary detention of asylum seekers and refugees as practised or funded by Australia. Amnesty International is concerned about a detention regime which takes no account of the effect of prolonged detention on the mental health and well-being of detainees, particularly vulnerable groups such as children.

Conclusion

Amnesty International supports the establishment of an independent panel of medical experts to monitor and report on the health of asylum seekers and refugees in offshore detention.

Amnesty International encourages the Parliament to support the *Migration Amendment (Health Care for Asylum Seekers) Bill 2012* and establish the panel as soon as possible.