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ISLAND OF DESPAIR

AUSTRALIA'S "PROCESSING" OF REFUGEES ON NAURU

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Cover photo: An Iranian refugee sits in an abandoned phosphate mine on Nauru
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1. EXECUTIVE SUMMARY

The 1951 Refugee Convention protects the right to seek and enjoy asylum, a right afforded to children, men and women who have to flee persecution or other serious human rights violations. However, the current policy of the Australian Government is that no person who arrives in the country by boat seeking asylum can ever settle in Australia. Instead, anyone who arrives by boat is forcibly taken by the Government of Australia to offshore “Refugee Processing Centres” on Manus Island in Papua New Guinea or the remote Pacific island of Nauru.

The Australian Government claims that the policy deters people-smugglers and protects people who might otherwise undertake the hazardous boat crossing to Australia. However, since its inception, offshore processing has been designed to be punitive and has been widely promoted by a succession of Australian governments as a deterrent and as a demonstration of Australia securing its borders.

Amnesty International reported on conditions on Manus Island in 2013 and 2014. This report focuses on the conditions on Nauru. The report exposes how the Government of Australia has flouted the Refugee Convention, undermining its purpose and the values for which it stands by subjecting children, men and women who have sought protection in Australia to egregious abuses as part of the Government’s policy of offshore “processing” of people seeking protection.

This report is based on field and desk research carried out between July and October 2016. The Refugee Processing Centre on Nauru is kept well-hidden from international scrutiny; most journalists are denied access and last year the Australian Government passed the Border Force Act, which carries a prison sentence of up to two years for any staff member who speaks publicly about conditions in the Centre. Nevertheless an Amnesty International researcher travelled to Nauru in July 2016, interviewing 58 refugees and asylum-seekers and gathering documentary, video and audio evidence about conditions on the island. Researchers also interviewed individuals who are currently employed by, or who have previously worked for, companies or organizations under contract to the Australian Department of Immigration and Border Protection on Nauru.

Nauru is not equipped to receive refugees. The country has an area of just 21 sq. km, much of which is uninhabitable due to large-scale phosphate mining that has significantly degraded the environment. Nauru has a population of 10,000. The 1,159 refugees and asylum-seekers currently living there add 10% to the total population.

The system for assessing asylum claims was set up and is funded by the Government of Australia, and is only nominally under Nauruan control. The Government of Australia has spent vast sums of money on offshore processing; the National Audit Office estimates that operations on Nauru and Manus cost over AUD\$573,000 (USD\$419,425) per person per year. Such massive expenditure should be directed at ensuring Australia’s asylum system is an effective tool for the protection of refugee rights. Instead it is being used to systemically undermine the right to seek asylum.

Mental illness and incidents of self-harm among refugees and asylum-seekers on Nauru are shockingly commonplace. Nearly all of the people whom Amnesty International's researcher met on Nauru in July 2016 reported mental health issues of some kind: high levels of anxiety, trouble sleeping, and mood swings were frequently mentioned. Almost all said that these problems began when they were transferred to Nauru.

Dozens of individuals interviewed on the island gave disturbing, detailed accounts of the disintegration of their own or others' mental health. One man told Amnesty International that he had tried to kill himself twice in the previous 10 weeks: once in May 2016 when he bought petrol and poured it on himself, and a second time in July 2016 when he drank washing-up liquid and had to be hospitalized. An Iranian refugee has tried to kill herself many times, sometimes two or more times a week. Eventually she set the family dwelling on fire, and is now confined to a medical ward in a Refugee Processing Centre. Another man described how his pregnant wife tried to hang herself – he found her in the bathroom with rope marks on her neck. A family with a young daughter spent 18 months in a tent during which time the child developed symptoms of distress and poor health. Her father told Amnesty International how she vomited, wet her bed every night, and would wake up screaming.

Another man described how his wife started having mental health problems after they arrived on Nauru. A week after their daughter was born, she witnessed a young Iranian man set himself on fire, and lost her breastmilk. She has barely talked or left her home since.

What drives so many people to this level of despair? One factor that plays a significant role in people's hopelessness is the fact that they are trapped on Nauru and face debilitating uncertainty about their future. Although asylum-seekers and refugees on Nauru are not technically detained, because they are able to move around the island, they are nonetheless in a detention-like environment. Nauru is to all intents and purposes an open-air prison that people cannot leave, even when they have been officially recognized as refugees.

Refugees described the mental and emotional impact of being trapped on the island. A 19-year old Syrian refugee said of his three years on the island: "I felt like I was a slave. Being detained is like feeling you did something wrong – like you are a criminal."

But it is not just that refugees cannot leave Nauru – the country is not a safe place for them to stay. Many of the refugees and asylum-seekers interviewed by Amnesty International described how they or their friends and family had been attacked and/or subjected to verbal abuse inside and outside of the Refugee Processing Centre. This includes physical attacks on men, children and women – including sexual assaults – as well as robbery and attempts to break into their homes.

"Akash," a refugee from Bangladesh, suffered serious head trauma in May 2016 when he was attacked by a group of Nauruan men. He said they threw a large rock at him, kicked him off his motorbike, and beat him after he fell: "They beat me unconscious and stole my motorbike. I am still in pain from the injuries," he told Amnesty International.

A young Somali woman, "Jamilah," reported that several Nauruan men attacked her husband in March 2016, hitting him on the head with a machete – her husband needed eight stitches. The following night, a group of Nauruans tried to break into the family's accommodation.

Refugees and asylum-seekers who were victims of crime said that the police failed to adequately investigate their complaints, a claim supported by Nauru's former Chief Justice and the UN. The persistent verbal and physical assaults on refugees and asylum-seekers on Nauru bear the hallmarks of persecution. The threats to refugees do not come from all Nauruans; some have tried to help and support them. However, the context on the island is one where impunity for attacks on refugees combines with political statements that make clear Nauru does not want refugees to remain there.

The health care available on Nauru is inadequate. Certain medical services, specialists, tests and procedures are not available on the island. Individuals said they had to wait for months to see a visiting specialist or

undergo a necessary test, even when, according to the doctors, their condition was serious, such as suspected cancer.

Descriptions of medical transfers to and from Nauru expose a system that traumatizes the patient and appears to be done in a manner that is not in the best interests of patients. The medical transfer of patients depends on Australian immigration officials, and medical professionals can be overruled or their advice disregarded. In one case, a man who suffered a heart attack after a year on the island was eventually sent to Australia, where he stayed for four months. When he arrived back on Nauru, a doctor saw his file and said, 'I cannot be responsible for you, they should not have sent you back'. He had another heart attack and doctors have said he needs more specialist treatment that is not available on Nauru.

Individuals who underwent treatment in Australia or Papua New Guinea also said that their returns to Nauru came without warning or explanation, and were sometimes carried out in a deeply humiliating and traumatizing way. A woman sent to Papua New Guinea for treatment for a broken tailbone described her return, which involved being told she was being taken to a medical appointment but then being put in a car and handcuffed.

Beyond serious human rights abuses, which contribute to the mental health decline discussed above, refugees and asylum-seekers have also been subjected to countless daily humiliations that have cumulatively served to dehumanize them and violate their dignity. The staff working for some contractors on Nauru call asylum-seekers only by their boat identification numbers rather than their names, and as soon as people obtain refugee status, they refer to people by their refugee identification numbers. Service-providers described a range of practices that appear to serve no purpose other than to break people's spirits, such as expelling asylum-seekers from the showers after two minutes, or forcing people to wait weeks or months to get basic necessities like underwear or shoes. Amnesty International also recorded incidents of abusive comments about refugees being posted on social media by people who appear to work on Nauru under contract to the Australian Government.

The extent to which child refugees are subjected to abuse on Nauru is chilling. Children who are refugees or are seeking asylum have been assaulted both by staff of companies hired by the Australian Government and by private individuals on Nauru. Parents' inability to protect their children is one of the many factors that exacerbates the suffering of refugees and asylum-seekers. One of the most harrowing stories told to Amnesty International on Nauru, and backed up by medical records, is that of a healthy, happy family being slowly and methodically destroyed by the circumstances of their life on the island. "Yasmin," "Amir" and their young son "Darius" arrived on Nauru in 2013. Yasmin's mental health began to deteriorate in the Refugee Processing Centre (RPC). In March 2015, when Darius was five years old, he was attacked by a guard in the RPC who threw a rock at a group of children whom she believed were misbehaving. A rock hit Darius in the face, chipping off his tooth. As far as the family could tell no action was taken to hold the guard accountable. Amir described the heartbreak of watching his wife and son descend into mental illness following this event. Yasmin retreated from the world and has struggled to cope, while Darius has developed what, according to his father, seems like autism, barely speaks and has nightmares and panic attacks.

Another harm inflicted on children is the denial of their right to education, as the majority of refugee and asylum-seeker children on Nauru are not going to school. One reason that children are not attending the local school is that they are being bullied or harassed by teachers or local children. Amnesty International documented several cases of physical and verbal abuse of refugee children at school by both teachers and local students.

The Government of Nauru is responsible for the violations of human rights occurring on its territory. However, when it comes to refugees and people seeking asylum, Nauru is not the state in control. The authority responsible for the systematic human rights abuses documented in this report is the Government of Australia. It is the Government of Australia that set up the offshore processing system and the Government of Australia that has forcibly transferred people seeking asylum to Nauru. A range of Australian Government officials and contractors – on Nauru and in Australia – are involved with running the Refugee Processing

Centre itself and with the management of the refugee population living outside of the centre. The Australian authorities are continuously informed about what is happening on Nauru.

The abuses on Nauru have been facilitated by a deliberate policy of secrecy, again established by the Government of Australia. Australian law gives the government the power to prosecute and imprison doctors, nurses and child welfare professionals who speak out about conditions in immigration detention. This has had a chilling effect on disclosures about human rights abuses, and many service-providers and asylum-seekers were too scared to speak with Amnesty International researchers.

The devastating effects of trapping people on a remote island, where many in the local population do not want them and the local police do not protect them, in the conditions established by the Government of Australia for refugee processing, were foreseeable. Even if they had not been, these negative impacts have been evident to the Government of Australia for years. The inescapable conclusion is that the abuse and anguish that constitutes the daily reality of refugees and asylum-seekers on Nauru is the express intention of the Government of Australia. In furtherance of a policy to deter people arriving in Australia by boat, the Government of Australia has made a calculation in which intolerable cruelty and the destruction of the physical and mental integrity of hundreds of children, men and women, have been chosen as a tool of government policy. In so doing the Government of Australia is in breach of international human rights law and international refugee law.

The conditions on Nauru – refugees’ severe mental anguish, the intentional nature of the system, and the fact that the goal of offshore processing is to intimidate or coerce people to achieve a specific outcome – amounts to torture.

As the shocking extent of the abuse on Nauru emerges, it is demolishing Australia’s international reputation. Yet the Australian Government argues that any change to Australia’s deterrence-oriented policies will create a “pull factor”, putting the lives of people seeking asylum at risk, specifically from drowning if they attempt dangerous boat journeys. For the Australian Government to attempt to justify the abuses inherent in its offshore system in the name of a fair and controlled immigration policy, or even to claim that it saves lives, is untenable. No state can justify subjecting some people to cruelty and abuse to prevent loss of life, never mind to reduce migration numbers. Ends do not justify means and such arguments lead down a very dark path.

Australia should be leading discussion and action with other countries in the region on how to address the refugee issue; providing resources and working towards a resolution of the global refugee crisis. However, the focus on deterrence has distracted successive Australian governments from exploring and putting into practice policies that protect the human rights of people seeking asylum whilst also preventing avoidable deaths and other harm. These policy options include cooperation arrangements with other countries in the Asia-Pacific region, expanding safe and legal pathways for those seeking asylum, and ensuring effective search and rescue capability. Specific policy actions that the Government of Australia should consider are:

- Boosting its aid program to help neighbouring countries better protect and support refugees. Australia could also use existing regional mechanisms like the Bali Process to reach agreement on improved rights protections for asylum-seekers and refugees throughout the region.
- Increasing access for refugees to Australia’s existing, non-humanitarian migration programmes. In addition to the core refugee resettlement program, Australia could recognize the valuable skills and qualifications of many refugees by including them when the government allocates student, work and family reunion visas.
- Expanding private sponsorship and family reunion visa options for refugees: Canada, for example, has put in place a private sponsorship program that has allowed Canadian families to bring nearly 11,000 Syrian refugees since the end of 2015.

- Actively participate in responsibility-sharing arrangements including ensuring asylum claims are processed in a timely manner and the most vulnerable people are resettled within the region and globally.

While expanding the range of policy options and exploring regional cooperation on refugees should be priorities for Australia, the people whom Australia has warehoused on Nauru cannot wait another day for a resolution to this acute crisis. Amnesty International is calling on the Government of Australia to immediately close down the Nauru processing operation and to bring all asylum-seekers and refugees on Nauru to Australia. All recognized refugees should have the right to settle in Australia and those seeking asylum should have their claims assessed in a timely and fair manner. No one should be subjected to detention while their asylum claim is assessed.

Amnesty International is also calling on the Government of Nauru to end the agreement with Australia to host a Refugee Processing Centre. The role of Australia on Nauru does not absolve the Government of Nauru of its legal obligations with respect to human rights. Pending the transfer of refugees and asylum-seekers off Nauru, the Government should take urgent action to protect their rights, including by requiring the police to investigate all allegations of attacks against refugees and asylum-seekers and by taking steps to combat bullying and discrimination against refugees and asylum-seekers. This should include clear public statements from all levels of government that violence and discrimination against refugees and asylum-seekers will not be tolerated, as well as measures to foster positive interaction between refugees and Nauruans.

1.1 METHODOLOGY

This report is based on field and desk research carried out between July and October 2016.

An Amnesty International researcher travelled to Nauru in July 2016, spending five days on the island, and meeting with 58 asylum-seekers and refugees from nine countries, as well as four service-providers. Following this visit, researchers conducted phone interviews with another four refugees on the island. In August-September 2016, an Amnesty International researcher interviewed 13 individuals who are currently employed by, or had previously worked for, companies or organizations that provide services on Nauru under contract to the Australian Department of Immigration and Border Protection. In Australia, researchers also met or spoke with family members of refugees on Nauru, Australian lawyers, Australian and international civil society organizations, representatives of the company that provides health care service on Nauru (International Health and Medical Services), as well as a range of UN representatives. An Amnesty International researcher also interviewed a refugee in Canada, who had previously been detained on Nauru for three years. In total the organization interviewed more than 100 people.

This report draws upon some of the dozens of interviews conducted on Nauru by a Human Rights Watch researcher, who travelled there for a week in July 2016.

The people interviewed by Amnesty International provided researchers with a wide range of corroborating evidence, including photos, videos, audio recordings, police records, written complaints to service-providers, confidential incident reports, employment contracts for service-providers, email exchanges with the Australian Department of Immigration and Border Protection, screen shots of dozens of social media exchanges, and hundreds of pages of medical records.

For this report, Amnesty International also read and coded the “Nauru Files,” a cache of over 2,000 leaked incident reports published by The Guardian in August 2016.¹ The incident reports, written by security contractors, child protection workers and teachers working at Australia’s Refugee Processing Centre on

¹ Paul Farrell, Nick Evershed and Helen Davidson, “The Nauru Files: Cache of 2000 Leaked Reports Reveal Scale of Abuse of Children in Australian Offshore Detention,” *The Guardian*, 10 August 2016, <https://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>.

Nauru, document situations such as physical and sexual abuse, hunger strikes, self-harm and medical emergencies, and provide each with a severity rating. Amnesty researchers analyzed all incident reports rated as “critical” or “major” from 2013, 2014 and 2015 (totalling 287 reports),² as well as 16 incident reports from 2016.³

In most cases, the names of the asylum-seekers, refugees, and service-providers have been changed or withheld at their request. All of the refugees and asylum-seekers whose cases are included in this report gave Amnesty International their consent for their case details to be published. Most asked for their names to be changed for personal reasons, but agreed to the details of their cases and their experiences being made public.

Prior to the publication of this report, Amnesty International wrote to International Health and Medical Services (IHMS), Broadspectrum (formerly Transfield), and Wilson Security. IHMS responded to Amnesty International and their response is reflected in the report. Neither Broadspectrum nor Wilson Security had responded at the time of printing, but both companies indicated their intention to do so at a later date. Any response received will be posted on Amnesty International’s website.

A summary of Amnesty International’s findings was shared with the Government of Australia in advance of publication and an advance copy of the report was sent to the Government of Nauru.

Amnesty International would like to thank everyone who contributed to this report, in particular the asylum-seekers and refugees, as well as the service-providers who risked criminal prosecution in order to share information about the situation on Nauru.

1.2 TERMINOLOGY

Australian Border Force: The ABF is the operational arm of the Australian Department of Immigration and Border Protection. It was created on 1 July 2015, after the merger of the Australian Customs and Border Protection Service and some parts of the Department of Immigration and Border Protection.

Australian Department of Immigration and Border Protection: This is the government department responsible for immigration and border control measures.

Offshore processing: Australia’s policy of deporting people who have reached Australian territory by boat without a visa, and holding them on remote islands such as Manus Island in Papua New Guinea, or on Nauru.

Pushbacks or turnbacks: These are military-led operations during which Australian officials intercept and repel asylum-seekers arriving by sea.

Refugee Processing Centre: This is the term that Amnesty International has chosen to describe the facilities where all asylum-seekers on Nauru used to be detained and where several hundred people still reside. The Government of Australia initially called these facilities an “Offshore Processing Centre,” and then a “Regional Processing Centre.” It has officially been an “open centre,” rather than a place of detention, since October 2015.

² Nick Evershed, Ri Liu, Paul Farrell, and Helen Davidson, “The Lives of Asylum Seekers in Detention Detailed in a Unique Database,” *The Guardian*, 10 August 2016, <https://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>.

³ Paul Farrell, “Newly Leaked Nauru Reports Detail Harrowing Accounts of Sexual Abuse and Self-Harm,” *The Guardian*, 19 September 2016, <https://www.theguardian.com/australia-news/2016/sep/19/newly-leaked-nauru-reports-detail-harrowing-accounts-of-sexual-abuse-and-self-harm>.

Service-providers: Employees of the companies contracted with the Australian Department of Immigration and Border Protection to provide services on Nauru. They include teachers, social workers, child protection workers, health professionals and security guards.

2. BACKGROUND

2.1 GOVERNMENT OF AUSTRALIA'S POLICIES TOWARDS PEOPLE SEEKING PROTECTION

The Government of Australia's approach to people seeking asylum is focused on deterrence – that is: discouraging anyone who cannot travel to Australia without a visa from attempting to enter the territory irregularly. The vast majority of people who come from countries from which refugees flee – such as Afghanistan, Iraq, Somalia, Sri Lanka, and Syria – would fall within that category.

The Australian authorities attempt to achieve deterrence through two principal means. One is a practice called “pushbacks” or “turnbacks”, which is a military-led operation during which Australian officials intercept and repel asylum-seekers arriving by boat. The second is the policy of “offshore processing,” which involves taking people who do reach Australia by boat to offshore places of detention.⁴

Australia's deterrence-oriented policies are not new, but have become distinctly harsher over the last 15 years. Australia first began transporting and detaining asylum-seekers offshore in 2001, under what the government called the “Pacific Solution.” Between 2001 and 2008, under successive Liberal and Labor governments, Australia ran an offshore detention regime in Papua New Guinea (PNG) and Nauru. During that period 1,637 people were detained; 70% were eventually found to be refugees and settled in Australia or other countries.⁵

The Pacific Solution was officially dismantled in February 2008 after a change of government, and in response to overwhelming evidence of the physical and psychological harm caused by prolonged offshore detention. In 2008 there were very few asylum-seekers arriving in Australia by boat: only seven boats carrying 161 asylum seekers came irregularly to Australia that year. However in 2012, 278 boats came to Australia irregularly, carrying 17,204 people.⁶ By global comparisons this is still an extremely low number, but in Australia the increase was met with public and political outcry.

In August 2012, Australia reintroduced an even harsher offshore detention regime, under which everyone arriving by boat to an external Australian territory (such as Christmas Island) would be detained in a Refugee Processing Centre on Nauru or PNG.⁷ In mid-2013, Australia enacted further legislation that meant anyone who arrived by boat anywhere in Australia – including the mainland – would be barred from seeking asylum

⁴ Other policies, such as temporary protection visas (TPVs) and Safe Haven Enterprise Visas (SHEVs), will not be discussed in this report. Under this policy, everyone who arrived to Australia by boat prior to July 2013 will only be entitled to a TPV or SHEV, meaning that they will never be entitled to permanent residence, never allowed to reunite with their family, and if they leave Australia they will be unable to return.

⁵ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, November 2014, https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf, p. 10

⁶ Parliament of Australia, “Boat Arrivals and Boat ‘Turnbacks’ in Australia since 1976: A Quick Guide to the Statistics,” 11 September 2015, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1516/Quick_Guides/BoatTurnbacks.

⁷ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, November 2014, https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf, p. 11.

in Australia and instead transferred to an offshore centre.⁸ In July 2013, then Prime Minister Kevin Rudd went even further to announce that refugees who had sought to come to Australia without a valid visa would never be permitted to enter Australia.⁹ This policy has been staunchly maintained by the current Australian government since 2013, under the banner of “Operation Sovereign Borders.”

An estimated 1,100-1,200 people drowned trying to reach Australia by boat between 2008 and the end of 2013, when the number of people arriving by boat began to slow.¹⁰ On this basis, the Australian government has argued that punitive deterrence measures are necessary to save lives. The humanitarian justification for the policy is a gross and cynical misrepresentation. As this report will show, in an effort to prevent people arriving by boat, the Australian Government has set up a deliberate system of abuse, which has caused irreparable harm to thousands of people. Offshore processing and detention have also resulted in numerous preventable deaths, as a result of poor medical treatment, horrific cases of self-harm resulting from mental anguish, as well as murder.¹¹

The idea that one group of people can be subjected to horrendous abuse in order to prevent another group from putting themselves in harms’ way is the flawed foundation of Australia’s policy towards asylum-seekers.

Since offshore processing was reinstated, the Government of Australia has spent vast sums on preventing people from coming to the country irregularly. A joint study by UNICEF and Save the Children estimated the cost of maintaining deterrence policies such as turnbacks, offshore processing, and mandatory immigration detention at AUD\$9.6 billion (USD\$7.3 billion) between 2013 and 2016.¹² This figure excludes costs associated with litigation or with the multiple reviews and inquiries conducted by government appointees and agencies. According to the Australian National Audit Office, offshore processing on Nauru and Manus Island has cost over AUD\$573,000 (USD\$419,425) per person, per year.¹³

Although the economic cost of deterrence can be estimated, the human cost is of course incalculable. Previous Amnesty International research has exposed the human rights consequences of Australian pushbacks,¹⁴ and of the detention of people on Manus Island in Papua New Guinea.¹⁵ This report focuses on the situation on Nauru.

2.2 NAURU

Nauru, formerly known as Pleasant Island, is a tiny island nation in the Pacific. Since the 19th century, a range of colonial and occupying powers – including Britain, Germany, and Japan – have controlled the

⁸ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, November 2014, https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf, p. 11.

⁹ For a more detailed analysis of these policy shifts see Amnesty International, *This is Breaking People: Human Rights Violations at Australia’s Asylum Seeker Processing Centre on Manus Island, Papua New Guinea*, 11 December 2013, <https://www.amnesty.org/en/documents/ASA12/002/2013/en/>

¹⁰ *The Conversation*, “Fact Check: Did 1200 Refugees Die at Sea under Labor?”, 3 March 2015, <http://theconversation.com/factcheck-did-1200-refugees-die-at-sea-under-labor-38094>.

¹¹ See for instance Border Crossing Observatory, “Australian Border Deaths Database,” September 2016, <http://artsonline.monash.edu.au/thebordercrossingobservatory/publications/australian-border-deaths-database/>.

¹² Save the Children Australia and UNICEF Australia, *At What Cost? The Human, Economic and Strategic Cost of Australia’s Asylum Seeker Policies and the Alternatives*, 13 September 2016, <http://www.unicef.org.au/blog/september-2016/the-true-cost-of-australias-refugee-policies>, p. 4.

¹³ Australian National Audit Office, *Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services*, 13 September 2016, <https://www.anao.gov.au/work/performance-audit/offshore-processing-centres-nauru-and-papua-new-guinea-procurement>, para. 21.

¹⁴ Amnesty International, *By Hook or by Crook: Australia’s Abuse of Asylum-Seekers at Sea*, 28 October 2015, <https://www.amnesty.org/en/documents/ASA12/2576/2015/en/>.

¹⁵ Amnesty International, *This is Still Breaking People: Update on Human Rights Violations at Australia’s Asylum Seeker Processing Centre on Manus Island, Papua New Guinea*, 12 May 2014, <https://www.amnesty.org/en/documents/asa12/002/2014/en/>; Amnesty International, *This is Breaking People: Human Rights Violations at Australia’s Asylum Seeker Processing Centre on Manus Island, Papua New Guinea*, 11 December 2013, <https://www.amnesty.org/en/documents/ASA12/002/2013/en/>.

country. At the time it gained independence in 1968, Nauru was a UN trust territory under Australian administration.¹⁶

Nauru has a population of 10,000 people, and with 1,159 asylum-seekers and refugees it is presently the country with the third highest proportion of refugees per capita in the world.¹⁷

The island's total land area is just 21 km². The habitable land area, however, is even smaller, as phosphate mining – conducted for nearly a century by foreign companies – has left the interior of the island uninhabitable. Indeed, by the mid-20th century, the environmental devastation wrought by the mining industry prompted various proposals by Australia to relocate Nauru's entire population to an Australian island off the coast of Queensland.¹⁸ In the years that followed independence, revenues from phosphate mining gave it the world's second-highest per-capita GDP, behind only Saudi Arabia,¹⁹ but by 2000, decreasing phosphate royalties and financial mismanagement had bankrupted the country.²⁰

Although an independent country, Nauru is, in many respects, effectively a client state of Australia. Australia is Nauru's most important development aid donor; in 2016-17 Australia will provide AUD\$25.5 million (USD\$19 million) in overseas development assistance.²¹ In comparison, the country's GDP in 2014 (the most recent data available) was USD\$117 million.²² Australia provides skilled personnel to fill senior management roles in Nauru's public service, including (in 2015-16), the Deputy Secretaries for Treasury, Finance, Customs, Planning and Aid Management, a Senior Tax Adviser as well as a Senior Human Resource Management Adviser to the Chief Secretary of the Nauru Public Service.²³ Furthermore, as the country lacks a private legal profession,²⁴ Australian judges and magistrates often serve on Nauru courts.²⁵ In 2015-16, Australia's Attorney-General's Department worked with Nauru's Department of Justice and Border Control to replace the *Nauru Criminal Code* of 1899 with the *Crimes Act 2016*.²⁶ The security sector is another sphere in which Australia is influential. In 2004, after an Australian Department of Foreign Affairs and Trade official described Nauru as being "on the verge of state failure,"²⁷ the two countries signed an agreement²⁸ under which the Australian Federal Police became embedded in the state, and effectively took charge of managing the Nauru Police Force.²⁹ Under this agreement, Australian personnel were immune from the civil and criminal jurisdiction of the Nauruan authorities.³⁰

¹⁶ Senate Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, *Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru*, 31 July 2015, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/~/_media/Committees/nauru_ctte/Final_Report/report.pdf, paras. 1.18-1.19.

¹⁷ Ben Doherty and Helen Davidson, "Self-Immolation: Desperate Protests against Australia's Detention Regime," *The Guardian*, 3 May 2016, <https://www.theguardian.com/australia-news/2016/may/03/asylum-seekers-set-themselves-alight-nauru>.

¹⁸ Jane McAdam, "How the Entire Nation of Nauru Almost Moved to Queensland," *The Conversation*, 14 August 2016, <http://theconversation.com/how-the-entire-nation-of-nauru-almost-moved-to-queensland-63833>.

¹⁹ Ben Doherty, "A Short History of Nauru, Australia's Dumping Ground for Refugees," *The Guardian*, 9 August 2016, <https://www.theguardian.com/world/2016/aug/10/a-short-history-of-nauru-australias-dumping-ground-for-refugees>.

²⁰ Senate Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, *Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru*, 31 July 2015, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/~/_media/Committees/nauru_ctte/Final_Report/report.pdf, paras. 1.18-1.19.

²¹ Australian Department of Foreign Affairs and Trade, "Overview of Australia's Aid Program to Nauru," n.d., <http://dfat.gov.au/geo/nauru/development-assistance/pages/development-assistance-in-nauru.aspx>.

²² Australian Department of Foreign Affairs and Trade, "Nauru Country Brief," n.d., <http://dfat.gov.au/trade/resources/Documents/naur.pdf>.

²³ Australian Department of Foreign Affairs and Trade, *Aid Program Performance Report 2015-16: Nauru*, September 2016, p. 1.

²⁴ UNICEF Pacific and Nauru Ministry of Home Affairs, *Review of the Child Protection System in Nauru*, 2016, <http://www.unicef.org.au/Upload/UNICEF/Media/Documents/Nauru-ChildProtection-Review.pdf>, p. 35.

²⁵ International Commission of Jurists, *Submission to the Universal Periodic Review of the Republic of Nauru*, March 2015, <http://icj2.wpengine.com/wp-content/uploads/2015/03/Nauru-UPR-Advocacy-2015-ENG.pdf>, para. 5.

²⁶ Australian Department of Foreign Affairs and Trade, *Aid Program Performance Report 2015-16: Nauru*, September 2016, p. 3.

²⁷ Damien White, quoted in Joint Standing Committee on Treaties, "Chapter 5: Agreement Concerning Police and Assistance to Nauru" from *Report 63: Treaties tabled on 7 December 2004*, 14 February 2005,

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/jsct/12may2004/report, para. 5.2.

²⁸ *Agreement between Australia and Nauru Concerning Additional Police and Other Assistance to Nauru*, 20 May 2004, http://www.pacii.org/pits/en/treaty_database/2004/5.html.

²⁹ Shahar Hameiri, "Governing Disorder: The Australian Federal Police and Australia's New Regional Frontier," *The Pacific Review* 22:5 (2009), p. 562.

³⁰ *Agreement between Australia and Nauru Concerning Additional Police and Other Assistance to Nauru*, 20 May 2004, http://www.pacii.org/pits/en/treaty_database/2004/5.html, Art. 7.

Nauru has become an increasingly authoritarian state, with the executive consolidating power at the expense of the judicial and legislative branches of government. In 2014, Nauru effectively eliminated its judiciary when it expelled its Chief Justice, Magistrate and Police Commissioner – all Australian citizens.³¹ Geoffrey Eames, Former Chief Justice of Nauru, who was forced to resign in March 2014 after the government revoked his visa, has accused the Government of Nauru of “flagrant breaches of the rule of law.”³² These actions were also denounced by the International Commission for Jurists,³³ and in September 2015 New Zealand suspended assistance to Nauru’s judicial sector “while clarification is sought on rule of law issues.”³⁴ The government has an increasingly wide discretion to cancel passports, such as that of opposition MP Ronald Kun, as well as former president Sprent Dabwido, who, in August 2016, was prevented from leaving Nauru to obtain urgent medical treatment.³⁵

Some circumstances under which people are expelled from Nauru raise questions about government corruption and authoritarianism. One of the people fired and deported – magistrate Peter Law – had been preparing an inquiry into the death of the wife of Nauruan Justice Minister David Adeang, Madelyn Adeang, who burned to death outside their home in April 2013.³⁶ Law had also criticized new legislation under which statements that are “likely to threaten public safety”³⁷ are punishable by seven years in jail.³⁸ The police commissioner who was fired and expelled had been investigating allegations of bribery involving President Baron Waqa and Justice Minister Adeang.³⁹

2.3 OFFSHORE “PROCESSING” OF REFUGEES

Nauru and Australia signed two memoranda of understanding about offshore processing on the island, the first in August 2012 and the second – which supersedes it – in August 2013. Under these agreements, Nauru agreed to assess people’s claims for international protection and host the facilities required to detain them, while Australia committed to bearing the entirety of the cost.⁴⁰ Australia sent asylum-seekers to Nauru between September 2012 and September 2014; there have not been any new transfers since that time.⁴¹ When people arrive on Nauru, they are detained in the Australian-run facilities until recognized as refugees, at which point they move into housing outside of the Refugee Processing Centre.

Currently, there are 1,159 asylum-seekers and refugees on Nauru: 410 people reside in the Refugee Processing Centre; 749 refugees live outside of the centre.⁴² The centre facilities are located in Nauru’s central plateau – the part of the island where phosphate strip mining has rendered the land uninhabitable. The majority of people on Nauru are from Iran, while many are stateless, and others come from Afghanistan,

³¹ Amy Nethery and Rosa Holman, “Secrecy and Human Rights Abuse in Australia’s Offshore Immigration Detention Centres,” *The International Journal of Human Rights*, July 2016, <http://dx.doi.org/10.1080/13642987.2016.1196903>, p. 11.

³² Geoffrey M. Eames AM QC, *Submission to Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru*, 27 May 2015, <http://www.aph.gov.au/DocumentStore.ashx?id=1c235c65-51bc-4979-93f3-320175ad7c9e&subId=352831>.

³³ International Commission of Jurists, “Nauru: Removal of Judges Violates Independence of Judiciary,” 21 January 2014, <http://www.icj.org/nauru-removal-of-judges-violates-independence-of-judiciary/>.

³⁴ New Zealand Foreign Affairs and Trade, “Aid Partnership with Nauru,” n.d., <https://www.mfat.govt.nz/en/aid-and-development/our-work-in-the-pacific/aid-partnership-with-nauru/>.

³⁵ “Nauru Legitimises Controversial Passport Ban,” *Radio New Zealand*, 7 September 2016, <http://www.radionz.co.nz/international/pacific-news/312779/nauru-legitimises-controversial-passport-ban>

³⁶ Amy Nethery and Rosa Holman, “Secrecy and Human Rights Abuse in Australia’s Offshore Immigration Detention Centres,” *The International Journal of Human Rights*, July 2016, <http://dx.doi.org/10.1080/13642987.2016.1196903>, p. 11.

³⁷ Government of the Republic of Nauru, “UN and Other Groups Need to Get Facts about Naurus [sic] New Criminal Amendments,” n.d., <http://www.naurugov.nr/government-information-office/media-release/un-and-other-groups-need-to-get-facts-about-nauru%E2%80%99s-new-criminal-amendments.aspx>.

³⁸ Eleanor Ainge Roy, “Nauru Opposition MP Secretly Granted NZ Citizenship Flees to Wellington,” *The Guardian*, 12 July 2016, <https://www.theguardian.com/world/2016/jul/12/nauru-opposition-mp-secretly-granted-nz-citizenship-flees-to-wellington>.

³⁹ Giff Johnson, “Nauru Must be Held to Account for its Human Rights Abuses,” *The Drum*, 12 July 2015, <http://www.abc.net.au/news/2015-06-30/johnson-nauru-must-be-held-to-account/6580944>.

⁴⁰ 2013 Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, *Relating to the Transfer to and Assessment of Persons in Nauru, and Related Issues*, <http://dfat.gov.au/geo/nauru/pages/memorandum-of-understanding-between-the-republic-of-nauru-and-the-commonwealth-of-australia-relating-to-the-transfer-to-and.aspx>, 3 August 2013, Clause 6.

⁴¹ Kaldor Centre, “Transfer Tracker,” 30 August 2016, <http://www.kaldorcentre.unsw.edu.au/publication/transfer-tracker>.

⁴² Australian Department of Immigration and Border Protection, email to Amnesty International, 23 September 2016. The data is from 31 August 2016.

Iraq, Myanmar, Pakistan and Sri Lanka. Of the entire refugee and asylum-seeker population on the island, 173 are children, 134 of whom are refugees and 39 of whom are seeking asylum.⁴³

Another population relevant to offshore processing on Nauru is a group of approximately 320 people currently in Australia.⁴⁴ These are refugees and people seeking asylum who were previously held on Nauru, and who were brought to Australia for their own, or a family member's, medical treatment. Some have been diagnosed with cancer or terminal illnesses. Some are women or children who have been sexually assaulted. Among the group are dozens of babies who were born in Australia to women who are seeking asylum.⁴⁵ Australian human rights litigation to prevent their return to Nauru was unsuccessful at the High Court in February 2016, but following a public outpouring of support (including the "Let them Stay" campaign), most of the group remains in Australia, pending the final resolution of their cases.⁴⁶

The entities operating in relation to the "processing" of refugees on Nauru include both state and non-state actors. Present on the island are officials from the Australian Department of Immigration and Border Protection, the Australian Federal Police, and the Nauruan Police Force.

There is also a range of companies and organizations that hold contracts with the Government of Australia, many of whom have recently announced their intention to leave Nauru:

- Broadspectrum (formerly called Transfield Services): This is the leading private contractor, which operates the Refugee Processing Centre on behalf of the Australian Department of Immigration and Border Protection. It provides "Garrison and Welfare Support Services" within the centre, as well as transport services for asylum-seekers and refugees in the community.⁴⁷ In April 2016, Broadspectrum's parent company, Ferrovial, announced that it would be abandoning offshore detention when its contract ends in October 2017 (it had planned on leaving Nauru and Manus Island in February 2017, but the Government of Australia unilaterally exercised an option to extend the contract for another eight months).⁴⁸
- Wilson Security: Broadspectrum subcontracts some of its responsibilities to this company, which hires a combination of Australian and local employees.⁴⁹ On 1 September 2016, it announced that it would be leaving Nauru when its contract expires in October 2017.⁵⁰
- Connect Settlement Services: This company took over from NGO Save the Children Australia in 2015, and provides welfare services.⁵¹ On 19 September 2016, it announced that it would be leaving Nauru in December 2016 and not retendering for the contract.⁵²
- International Health and Medical Services: This is the main healthcare provider for asylum-seekers and refugees on Nauru. The company operates a medical clinic at the Refugee Processing Centre (staffed by 57 people), as well as a "Settlement Clinic" (staffed by 10 people) at the Republic of Nauru

⁴³ Government of Nauru, "Opening Statement: Committee on the Rights of the Child," 13-14 September 2016, para. 16.

⁴⁴ Australian Department of Immigration and Border Protection, email to Amnesty International, 23 September 2016. There are also six people receiving medical treatment in Port Moresby, Papua New Guinea. The data is from 31 August 2016.

⁴⁵ Ben Doherty, "'Let them Stay': Backlash in Australia against Plans to Send Asylum Seekers to Detention Camps," *The Guardian*, 10 February 2016, <https://www.theguardian.com/australia-news/2016/feb/10/let-them-stay-australia-backlash-267-asylum-seekers-island-detention-camps>.

⁴⁶ Thomas Oriti, "Let Them Stay Labelled a Success, More than Half of 267 Asylum Seekers in Community Detention," ABC News, 2 April 2016, <http://www.abc.net.au/news/2016-04-02/let-them-stay-labelled-success-asylum-seeker-community-detention/7294456>.

⁴⁷ Broadspectrum, "Open Centre in Nauru," 6 October 2015, <http://www.broadspectrum.com/news/open-centre-in-nauru> (accessed 10 September 2016).

⁴⁸ Helen Davidson and Ben Doherty, "Nauru Support Workers to Leave before Christmas after Decision not to Retender," *The Guardian*, 19 September 2016, <https://www.theguardian.com/australia-news/2016/sep/19/nauru-support-workers-to-leave-before-christmas-after-decision-not-to-retender>.

⁴⁹ Wilson Security, *Nauru and Manus Island Fact Sheet*, n.d.,

<https://www.wilsonsecurity.com.au/ourexperience/Documents/Nauru%20and%20Manus%20Island%20Fact%20Sheet.pdf>.

⁵⁰ Ben Doherty, "Wilson Security to Withdraw from Australia's Offshore Detention Centres," *The Guardian*, 1 September 2016, <https://www.theguardian.com/australia-news/2016/sep/01/wilson-security-to-withdraw-from-australias-offshore-detention-centres>

⁵¹ Connect Settlement Services, "Our Services," n.d., <http://connect.com.nr/our-services/>.

⁵² Helen Davidson and Ben Doherty, "Nauru Support Workers to Leave before Christmas after Decision not to Retender," *The Guardian*, 19 September 2016, <https://www.theguardian.com/australia-news/2016/sep/19/nauru-support-workers-to-leave-before-christmas-after-decision-not-to-retender>.

Hospital.⁵³

- Overseas Services to Survivors of Torture and Trauma: This organization, subcontracted to IHMS, officially only provides support regarding trauma that took place before people's transfer to Nauru.
- Craddock Murray Neumann: An Australian law firm contracted to provide Refugee Status Determination advice and assistance.⁵⁴

The Government of Nauru has received substantial benefits for permitting its territory to be used to hold refugees and asylum-seekers. Currently, the income generated by the Australian Refugee Processing Centre and its related service-providers represents Nauru's most significant revenue stream.⁵⁵ Nauru charges the Government of Australia a monthly fee of AUD\$3,000 (USD\$2,270) for each refugee and AUD\$1,000 (USD 756) for each asylum-seeker⁵⁶ – this represents over AUD\$35.3 million (USD\$26 million) per year.⁵⁷ In 2015, the two governments concluded a five-year plan that guarantees to Nauru annual revenues a minimum of AUD\$31.5 million (USD 27.2 million) from visa fees for refugees and asylum-seekers, as well as other costs associated with hosting the Refugee Processing Centre.⁵⁸ The centre also provides significant employment opportunities, with one company alone (Broadspectrum) employing 382 Nauruan nationals.⁵⁹ The Australian Department of Immigration and Border Protection is also undertaking a range of infrastructure projects for Nauruan citizens: redeveloping the Nauru Primary School, building a new correctional facility, and redeveloping the Republic of Nauru Hospital.⁶⁰

2.4 LEGAL STANDARDS

Australia is entitled to control the entry and residence of foreign nationals on its territory. However, all of the government's policies and practices must comply with the state's international obligations. Australia's offshore "processing" of asylum-seekers and refugees on Nauru engages a number of fundamental human rights:

- *Non-refoulement* – i.e. the ban on transfer to a real risk of serious human rights violations⁶¹
- The ban on torture and other cruel, inhuman, or degrading treatment or punishment⁶²

⁵³ Australian Department of Immigration and Border Protection, *Submission: Senate Inquiry into the Conditions and Treatment of Asylum Seekers and Refugees at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea*, March 2016, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Offshore_RPCs/Submissions, p. 21.

⁵⁴ Government of Nauru, "Opening Statement: Committee on the Rights of the Child," 13-14 September 2016, para. 16.

⁵⁵ Australian Department of Foreign Affairs and Trade, *Nauru Economic Fact Sheet*, n.d., <http://dfat.gov.au/trade/resources/Documents/naur.pdf>.

⁵⁶ Save the Children Australia and UNICEF Australia, *At What Cost? The Human, Economic and Strategic Cost of Australia's Asylum Seeker Policies and the Alternatives*, 19 September 2016, http://www.savethechildren.org.au/_data/assets/pdf_file/0009/159345/At-What-Cost-Report-Final.pdf, p. 46.

⁵⁷ Based on Nauru population statistics provided by the Australian Department of Immigration and Border Protection, email to Amnesty International, 23 September 2016. The data is from 31 August 2016.

⁵⁸ Government of the Republic of Nauru, "Parliament Passes 2015-16 Budget," *Nauru Bulletin* (Issue 7-2015/125), 25 June 2015, http://www.naurugov.nr/media/45875/nauru_20bulletin_20_07_25jun2015_20_28125_29.pdf.

⁵⁹ Australian Department of Immigration and Border Protection, *Submission: Senate Inquiry into the Conditions and Treatment of Asylum Seekers and Refugees at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea*, March 2016, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Offshore_RPCs/Submissions, p. 16.

⁶⁰ Australian Department of Immigration and Border Protection, *Submission: Senate Inquiry into the Conditions and Treatment of Asylum Seekers and Refugees at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea*, March 2016, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Offshore_RPCs/Submissions, p. 26-27.

⁶¹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <http://www.refworld.org/docid/3be01b964.html>, Art. 31(1) [*Refugee Convention*]; UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, <http://www.refworld.org/docid/3ae6b3a94.html>, Art. 3(1) [*CAT*].

⁶² *CAT*, Arts. 1(1), 16; UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, <http://www.refworld.org/docid/3ae6b3aa0.html>, Art. 7 [*ICCPR*]; UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, <http://www.refworld.org/docid/3ae6b38f0.html>, Art. 37(a) [*CRC*].

- The right to security of the person – i.e. freedom from injury to the body and the mind, or bodily and mental integrity⁶³
- The right to life⁶⁴
- The right to liberty⁶⁵
- The ban on arbitrary detention⁶⁶
- The right to equality before the law⁶⁷
- The right to a fair trial⁶⁸
- The right to freedom of expression⁶⁹
- The right to health⁷⁰
- The best interests of the child principle⁷¹
- The right to education⁷²
- The right to family life⁷³
- The right to seek and enjoy asylum⁷⁴
- The right of refugees not to be penalized for irregular entry⁷⁵
- The right to leave any country⁷⁶

Under international law, Australia owes one set of obligations that arise before asylum-seekers are transferred to Nauru, and another set after transfers have taken place.

First, the principle of *non-refoulement* means that Australia cannot transfer anyone to a place where they are a real risk of serious human rights violations – such as persecution, or torture and other cruel, inhuman, or degrading treatment or punishment. *Non-refoulement* obligations also require Australian authorities to conduct a fair, case-by-case assessment, every time they transfer someone to Nauru, to determine whether or not the person would be at such a risk – or at being sent onwards to another country where they would be at risk. *Non-refoulement* applies to the initial decision to transfer people to Nauru from an Australian territory, as well as subsequent decisions to return people to Nauru after they have been sent to Australia or Papua New Guinea for medical treatment.

Second, Australia owes obligations to people after they have been transferred to Nauru. As a matter of international law, a state can be held responsible for the conduct of its officials when they are outside its territory. The test for whether Australia retains primary responsibility over asylum-seekers and refugees on Nauru is not whether those individuals are located on Australian soil, but whether Australia exercises “effective power and control” over them.⁷⁷ Indeed, the Australian authorities themselves have acknowledged that under such circumstances, they could bear responsibility.⁷⁸

⁶³ ICCPR, Arts. 9(1), 12(1); CRC, Art. 19(1); UN Human Rights Committee, *General Comment no. 35, Article 9 (Liberty and Security of Person)*, 16 December 2014, UN Doc. CCPR/C/GC/35, <http://www.refworld.org/docid/553e0f984.html>, para. 9.

⁶⁴ ICCPR, Art. 6(1); CRC, Art. 6(1).

⁶⁵ ICCPR, Art. 9(1); CRC, Art. 37(b).

⁶⁶ ICCPR, Art. 9(1); CRC, Art. 37(b).

⁶⁷ ICCPR, Art. 14(1).

⁶⁸ ICCPR, Art. 14.

⁶⁹ ICCPR, Art. 19(2); CRC Art 13(1)

⁷⁰ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, <http://www.refworld.org/docid/3ae6b36c0.html>, Art. 12(1) [ICESCR], CRC, Art. 24(1), UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, <http://www.refworld.org/docid/3ae6b3970.html>, Art. 12(1) [CEDAW].

⁷¹ CRC, Art. 3(1).

⁷² UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, <http://www.refworld.org/docid/3ae6b36c0.html>, Art. 13(1); CRC, Art. 28(1).

⁷³ CRC, Arts. 8(1), 9(1), 10(1), 22(2), 37(c); ICESCR, Art. 10(1); ICCPR, Arts. 23(1), 23(2); CEDAW, Art. 16(1).

⁷⁴ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), <http://www.refworld.org/docid/3ae6b3712c.html>, Art. 14(1) [UDHR].

⁷⁵ *Refugee Convention*, Art. 31(1).

⁷⁶ ICCPR, Art. 12(2); CRC, Art. 10(2).

⁷⁷ UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, (26 January 2007), <http://www.refworld.org/docid/45f17a1a4.html>, para. 35. See also id. Paras. 36-43.

⁷⁸ Australia, *Replies to the List of Issues (CCPR/C/AUS/Q/5) To Be Taken Up in Connection with the Consideration of the Fifth Periodic Report of the Government of Australia (CCPR/C/AUS/5)*, UN Doc CCPR/C/AUS/Q/5/Add.1 (5 February 2009), paras. 16-17; DIAC, *Answers to questions on notice*, 30 January 2013.

However, even if Australia's involvement did not meet the test of "effective power and control," it still retains joint responsibility, together with Nauru, for the human rights of people whom it transferred there. Both the UN refugee Agency, UNHCR,⁷⁹ and an Australian Senate Committee⁸⁰ reached the same conclusion regarding the Refugee Processing Centre.

Furthermore, the conduct of private companies and organizations that the Government of Australia has contracted to provide services on Nauru may also be attributable to Australia. These companies and organizations act on the instructions, as well as under the direction or control, of the Australian Government, as represented by the Department of Immigration and Border Protection.⁸¹

Amnesty International considers that Australia retains at a minimum joint responsibility – and likely principal responsibility – for the human rights of asylum-seekers and refugees on Nauru.⁸² Nauru continues to retain responsibility towards this population as well.

⁷⁹ UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea*, 23 to 25 October 2013 (Canberra: UNCHR Regional Representation, 26 November 2013), para. 16.

⁸⁰ Senate Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, *Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru*, 31 July 2015, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/-/media/Committees/nauru_ctte/Final_Report/report.pdf, para. 5.16.

⁸¹ Madeline Gleeson, "Offshore Processing: Australia's Responsibility for Asylum Seekers and Refugees in Nauru and Papua New Guinea," Kaldor Centre, 8 April 2015, <http://www.kaldorcentre.unsw.edu.au/publication/offshore-processing-australia%E2%80%99s-responsibility-asylum-seekers-and-refugees-nauru-and>.

⁸² International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, <http://www.refworld.org/docid/3ddb8f804.html>.

Article 16: Aid or assistance in the commission of an internationally wrongful act – A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
(b) the act would be internationally wrongful if committed by that State.

Article 17: Direction and control exercised over the commission of an internationally wrongful act – A State which directs and controls another State in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

(a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
(b) the act would be internationally wrongful if committed by that State.

Article 18: Coercion of another State – A State which coerces another State to commit an act is internationally responsible for that act if:

(a) the act would, but for the coercion, be an internationally wrongful act of the coerced State; and
(b) the coercing State does so with knowledge of the circumstances of the act.

3. DRIVEN TO THE BRINK

“We fled Syria, but Nauru was the hardest thing I ever had.”

Ali Kharsa, 19 years old, formerly detained on Nauru for three years, 9 August 2016⁸³

As this chapter will discuss, there are appallingly high rates of poor mental health outcomes among asylum-seekers and refugees on Nauru, resulting in many cases of self-harm and attempted suicide. This widespread anguish stems from a range of factors, including the fact that people are trapped in limbo with no clear future, and are denied appropriate medical care even for serious ailments. This regime of abuse and neglect does not even spare children, who also suffer specific human rights violations linked to their status as minors, such as being denied their right to education.

3.1 SUICIDE AND SELF-HARM

In late April 2016, Omid Masoumali, a 23-year-old refugee from Iran, set himself on fire on Nauru. He reportedly shouted, “This is how tired we are, this action will prove how exhausted we are. I cannot take it anymore.”⁸⁴ He later died in hospital in Australia. Several days later, in early May 2016, 21-year-old Somali refugee Hodan Yasin set herself on fire. She suffered serious burns to 70% of her body and lost some of her fingers, and is still – over five months later – recovering in a Brisbane hospital.⁸⁵

Omid and Hodan’s cases are horrific, but not isolated. When Amnesty International visited Nauru we found that serious incidents of self-harm and attempted suicides were commonplace amongst the refugee and asylum-seeker population.

Amnesty International spoke with 58 refugees and asylum-seekers on Nauru, most of whom reported feelings of anguish, acts of self-harm, and attempts to end their lives.

A Pakistani man – “Wishal” – told Amnesty International that he had tried to kill himself twice in the previous 10 weeks: once in May 2016 when he bought petrol and poured it on himself, and a second time in July 2016 when he drank washing liquid and had to be hospitalized: “I’d rather die than continue living here,” he

⁸³ Amnesty International interview with Ali Kharsa, Saskatoon, 9 August 2016.

⁸⁴ Quoted in Helen Davidson and Ben Doherty, “Iranian Asylum Seeker Severely Burnt after Setting Himself on Fire on Nauru,” *The Guardian*, 27 April 2016, <https://www.theguardian.com/australia-news/2016/apr/27/iranian-asylum-seeker-severely-burnt-after-setting-himself-on-fire-on-nauru>.

⁸⁵ Joshua Robertson, “Nauru Refugee who Set Herself Alight Denied Basic Social Support in Brisbane Hospital,” *The Guardian*, 22 September 2016, <https://www.theguardian.com/australia-news/2016/sep/22/nauru-refugee-who-set-herself-alight-denied-basic-social-support-in-brisbane-hospital>.

said. The death of Omid Masoumali had had a major effect on him: “I knew him well—I just couldn’t believe it was the same guy, always smiling, always kind to everyone.”⁸⁶

An Iranian man, “Payam,” said his wife “Raha” tried to hang herself when she was pregnant – he found her in the bathroom with rope marks on her neck. He said that she told him: “I’m homeless, I can’t bring another person into this world.” Payam cried when he told Amnesty International researcher about his struggles to care for his infant daughter alone, as Raha was unable to assist.⁸⁷ This case is discussed further in the annex.

“Edris”, an Iraqi man with serious health problems, said that he would like to end his life, but because of his nephews, for whom he is responsible, he feels that he cannot: “I am so tired; at night, I just start crying. But I am trying to not show weakness to my nephews. I wish I could kill myself, but because of them I cannot. That’s not what I came here for. I cannot go back. But here I am dying a thousand times. In Iraq, you get just one bullet or a bomb, and it’s over, and here I am slowly dying from the pain.”⁸⁸

A service-provider has provided extensive documentary evidence from a range of sources about a young refugee woman who is highly suicidal, and provided Amnesty International with photographs showing a person covered in hundreds of thin cuts on their arms, legs, and neck.⁸⁹

Even children are self-harming. A 13-year old Afghan boy has tried to kill himself multiple times – with a knife, with petrol, or by trying to drown himself in the sea. The boy told Amnesty International: “At times, I just feel like my breathing stops, I black out and start crashing [throwing] things around me.”⁹⁰ His father told Amnesty International: “I do not allow [him] to go outside anymore, and I hide everything in this small room [such as] knives and pills.”⁹¹ A 15-year old girl who said she had tried to commit suicide twice. She said: “I’m tired of my life.”⁹²

A family destroyed: the case of “Yasmin,” “Amir” and “Darius”

“Amir” was one of the few refugees who managed to obtain the medical files for his entire family. Hundreds of pages of medical reports seen by Amnesty International paint a devastating picture of a healthy, happy family that was hoping to build a safe future in Australia, being slowly destroyed.

Amir, a 28-year-old man from southern Iran, worked as a barber and his wife, “Yasmin,” ran a beauty salon. Amir said that he also worked in a prison, teaching prisoners barber skills. The family decided to flee Iran and head to Australia where they were hoping to find “freedom and safety.” Amir said the circumstances under which they had to flee were too traumatic to share.

With their son “Darius,” who was then three and a half years old, the couple went to Indonesia, and from there took a boat to Christmas Island where they spent six months in immigration detention. Amir said that then one day, without any explanation, the guards came for them at 4 a.m. and put them on a plane to Nauru.

They stayed in the Refugee Processing Centre until October 2015, when they received their refugee status and moved to the community accommodation. Amir said that Yasmin did not have mental health issues before they arrived in Nauru, but started deteriorating during her time in detention.

Medical reports show that Yasmin has regularly seen mental health specialists, who prescribed her medication for insomnia. The early reports also indicate that she and the family as a whole were doing their best under the circumstances: Yasmin is described as a “fit-looking lady,” “well cared [for], in jeans

⁸⁶ Amnesty International interview with refugee, Nauru, 24 July 2016.

⁸⁷ Amnesty International interview with refugee by phone, 16 August 2016.

⁸⁸ Amnesty International interview with refugee, Nauru, 25 July 2016.

⁸⁹ Information received from confidential source, September 2016. Details withheld to protect the refugee.

⁹⁰ Amnesty International interview with refugee, Nauru, 28 July 2016.

⁹¹ Amnesty International interview with refugee, Nauru, 28 July 2016.

⁹² Human Rights Watch interview with refugee, Nauru, 15 July 2016.

and top”, “talkative,” assertive, actively engaged in the conversation, although “tense” and “angry” about her and her family’s situation. According to the reports, she attended English classes and saw herself as a strong person who wanted to retain her strength. She was actively seeking psychological support, and attending various support groups.

In November 2014, according to Amir and medical records, Yasmin made her first attempt at self-harm or suicide, by drinking washing liquid and shampoo. After the incident, she was under continued observation, but, despite the incident, the reports continually evaluate her risk of self-harm as “low.”

Then, in March 2015, Darius, who was then five years old, was attacked by one of the guards in the camp who threw a rock at a group of children who she believed were misbehaving, and hit Darius in the face, chipping off his tooth. The incident was well-documented and reported and recently publicized as part of the Nauru Files released by The Guardian.

Amir said that when he tried to talk to the guard she did not deny the incident, but just said, ‘You have to control your children’. ““I complained to the Nauruan police, to the Australian ombudsman, to Wilson security, to immigration authorities; every week – but nothing happened. Eventually they said the guard was no longer there. They transferred her from the camp.”

“This incident affected my wife even more, and my son got mental issues since then as well: he started wetting his bed, developed what seems like autism – he almost doesn’t speak – has nightmares, panic attacks. My wife got anxiety; she started taking more pills, but nothing changed. For the last few months she just stayed in bed – [medical people] came to see her maybe once a week. I was basically a nurse for both my son and my wife.”

Medical records confirm this account. One of the reports following the incident with Darius states: “mental health personnel is aware of the incident but apparently nothing was done (came in and talked to the mother only but not with the child).” Darius was then seen by several different doctors, each of whom appeared to be offering a different diagnosis, and some went as far as stating “parental neglect” as the cause of his issues.

While Yasmin’s mental health appointments record clearly point to her deteriorating mental state (describing her as “teary” and with “limited eye contact”), they appear to be dismissive of her concerns for the well-being of her son and family. One of the reports reads: “Client then requested to be moved to SAA [special ward in RPC-1 for patients with mental health problems] however writer did explain to client that this was not to be facilitated and it was best for her to manage in the current environment” [emphasis added]. “Writer explained to client that she needs to be strong for her family and be at a point of accepting that she is in Nauru and until such a time she will be causing more harm to herself and family. Informed to take her place as a mother [emphasis added] as her family needs her.” The report concludes that Yasmin is “not willing to take responsibility hence blaming others.”

Amir said that Yasmin continued to try killing herself – “once with tablets, and once with a lighter” but he was there and managed to stop her. He said he kept begging the authorities to help him with [Yasmin], but “they just wouldn’t respond.” He said: “On May 22 or 23 [2016], I went out with my son [...] and when I came back I saw my house on fire. The door was locked; a construction worker who was nearby managed to get my wife out of the burning house through the window. She didn’t get burnt, but inhaled a lot of smoke.”

“They took her to the hospital and then to [a medical ward at the RPC]. She is there alone, in a room with a small fan. There is no change in her situation. My son and I are living in another block in the same camp. My wife doesn’t want me to visit; she doesn’t move; doesn’t want to see her son. And he doesn’t want to see her either. Once every 10 days I take him to see her for just a minute. It is very traumatising for my son. When my wife is screaming (it happens when nurses visit her), he can hear it, and gets very depressed afterwards.”

Detailed, hourly reports from nurses observing Yasmin in the psychiatric ward, describe a woman who bears little resemblance to her previous self. Yasmin refuses food and medication; she does not shower, brush her teeth, or change her clothes. She spends days on end in bed, crying or almost motionless, and does not engage with medical staff. She still tries to end her life. A report from 2 September 2016, describes Yasmin “suddenly and nimbly” jumping onto a washing machine and swinging herself “out from the steel beam in an attempt to get onto the water tank.” “This action failed,” the report says, “and she dropped to the ground, landing on her feet.” The report continues: “She has previously indicated she wants to climb to a high place and jump off in order to break her bones.”

Devastated, Amir said, “I have no hope. It’s end of time here. I can see my son and wife going down day by day.”

Amnesty International interviewed dozens of other women, men and children who described disturbing levels of mental distress and ill-health, despair, attempted suicides and self-harm. Detailed case studies are included in the annex.

Multiple sources confirm that there is an epidemic of self-harm on the island – both within the Refugee Processing Centre and among people living outside of the centre.⁹³ Most recently, a leaked UNHCR report about the situation on Nauru found that “[Post-Traumatic Stress Disorder] and depression have reached epidemic proportions. UNHCR anticipates that mental illness, distress and suicide will continue to escalate in the immediate and foreseeable future.”⁹⁴ Even management at IHMS – the government-contracted health service provider – admitted that the conditions on Nauru were “extreme” and told Amnesty International researchers:

“There’s no denying that the detention environment is a causative factor to mental health distress [...] People’s bodies and their health is one of the only recourses left to them; [...] this is people’s last resort, their only avenue of appeal.”⁹⁵

The evidence of mental health problems and acute distress amongst refugees and asylum-seekers on Nauru is incontrovertible. The factors that drive people to this point are discussed in detail below.

3.2 TRAPPED IN LIMBO

A significant factor playing a role in people’s despair is the fact that they are trapped on Nauru and are facing debilitating uncertainty about their future. An Iranian refugee told Amnesty International that there was no real difference between being detained in the Refugee Processing Centre and living “freely” as recognized refugees on Nauru:

“Now, the walls have changed, but nothing else. The situation is worse than in the camp [at the Refugee Processing Centre]. Before we were at least waiting, hoping that once we have the refugee status things will

⁹³ See for instance Senate Legal and Constitutional Affairs Committee Inquiry, Conditions and Treatment of Asylum Seekers and Refugees at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea, 5 May 2016, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Offshore_RPCs/~media/Committees/legcon_ctte/Offshore_RPCs/Interim_Report/c01.pdf; *Questions Taken on Notice by Transfield Services*, 19 May 2015, <http://www.aph.gov.au/DocumentStore.ashx?id=56c605b3-8d28-4737-850f-23b09dddbe90>, p. 19; Ben Doherty and Nick Evershed, “Immigration Detainees 400 Percent More Likely to Suffer Severe Mental Distress,” *The Guardian*, 18 January 2016, <https://www.theguardian.com/australia-news/2016/jan/19/immigration-detainees-400-percent-more-likely-to-suffer-severe-mental-distress>; Michael Koziol and Nicole Hasham, “Self-Harm in Detention Centres at Epidemic Levels, Internal Documents Show,” *Sydney Morning Herald*, 16 January 2016, <http://www.smh.com.au/federal-politics/political-news/selfharm-in-detention-centres-at-epidemic-levels-internal-documents-show-20160115-gm74q3.html#ixzz4DAvN8H5e>.

⁹⁴ Quoted in Martin McKenzie-Murray, “Leaked UNHCR Report: Manus Island World’s Worst,” 8 October 2016, <https://www.thesaturdaypaper.com.au/news/immigration/2016/10/08/leaked-unhcr-report-manus-island-worlds-worst/14758452003831>.

⁹⁵ Amnesty International interview with IHMS, Sydney, 30 August 2016.

change, but now we understand that it doesn't give us any freedom either. It is worse than a prison, because we have no idea how long we are in for and when we can get released."⁹⁶

Technically, refugees and asylum-seekers are no longer detained on Nauru. In October 2015, the Government of Nauru announced that the Australian Refugee Processing Centre was no longer a place of detention, but rather an open centre.⁹⁷ The policy change occurred just days before Australia's High Court heard a challenge against offshore processing, brought by people at risk of being returned from Australia to Nauru. In their judgment, six of the seven judges confirmed that, due to certain retrospective laws⁹⁸ and the transition to an open centre, the Australian Government's arrangements on Nauru did not breach Australian law.⁹⁹

Although asylum-seekers and refugees on Nauru are not technically detained, they are nonetheless in a detention-like environment, as they are forcibly confined to an island smaller than the size of many international airports. Unlike Nauruan citizens, asylum-seekers and refugees cannot leave the island. Recognized refugees have tried – and failed – to do so. Amnesty International has seen the identification documents issued by the Government of Nauru to refugees: the person's nationality is indicated as "refugee." Several refugees told researchers that they had tried to leave the island with their Nauruan documents – to Canada, Fiji, and New Zealand, but none of these countries would issue visas to them.¹⁰⁰ It is not always clear why these people were denied visas, but one Iranian couple reported that one reason was the fact that their nationality was listed as "refugee."¹⁰¹ A wife and husband said that they applied to more than 30 countries for visas; eventually a Canadian religious organization agreed to sponsor them, but when they sent copies of their Nauruan-issued documents, the organization responded that they "belonged to Australian authority."¹⁰²

Dozens and perhaps hundreds of people have left Nauru for their countries of origin. Between September 2012 and September 2016, 531 people were repatriated from Nauru and Manus Island (disaggregated figures are unavailable).¹⁰³ The countries to which people departed included places that are common source countries for refugees, such as Afghanistan, Iraq, Somalia, Sri Lanka, Sudan and Syria.¹⁰⁴ Given the abysmal conditions on Nauru, it is doubtful whether these departures were truly voluntary. For instance, the wife of Hamid Reza Nadaf, whose case is discussed at length in Chapter 4, apparently "accepted" a return to Iran in early October 2016 because of the inadequacy in the medical care she was receiving at the Refugee Processing Centre. These types of cases raise serious concerns about the violation of the ban on *refoulement*, which is the cornerstone of the international refugee protection system.

Currently, apart from returning home, the only country to which refugees can travel is Cambodia. Under a multimillion dollar¹⁰⁵ agreement signed between Australia and Cambodia on 26 September 2014, the Southeast Asian nation agreed to take recognized refugees from Nauru.¹⁰⁶ The deal has been a failure; a total of five refugees went to Cambodia, but as of June 2016, only a single refugee remained, as four of them had returned to their countries of origin.¹⁰⁷ Three people went back to Iran, and one went to Myanmar – both countries in which Amnesty International has documented serious human rights violations and where the

⁹⁶ Amnesty International interview with refugee, Nauru, 27 July 2016.

⁹⁷ Government of the Republic of Nauru, "No More Detention for Nauru Asylum Seekers," n.d., <http://www.naurugov.nr/government-information-office/media-release/no-more-detention-for-nauru-asylum-seekers.aspx>.

⁹⁸ *Migration Act 1958*, s.198AHA, http://www.austlii.edu.au/au/legis/cth/consol_act/ma1958118/s198aha.html.

⁹⁹ *Plaintiff M68-2015 v Minister for Immigration and Border Protection* [2016] HCA 1 (3 February 2016), <http://www.austlii.edu.au/au/cases/cth/HCA/2016/1.html>.

¹⁰⁰ Amnesty International interview with refugee, Nauru, 27 July 2016; Human Rights Watch interview with refugee, Nauru, 14 July 2016.

¹⁰¹ Human Rights Watch interview with refugees, Nauru, 14 July 2016.

¹⁰² Amnesty International interview with refugee, Nauru, 27 July 2016.

¹⁰³ Kaldor Centre, "Transfer Tracker," 30 August 2016, <http://www.kaldorcentre.unsw.edu.au/publication/transfer-tracker>.

¹⁰⁴ Parliament of Australia, "Australia's Offshore Processing of Asylum Seekers in Nauru and PNG: A Quick Guide to Statistics and Resources," 30 June 2016,

http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1516/Quick_Guides/Offshore.

¹⁰⁵ Madeline Gleeson, "Cambodia Agreement," Kaldor Centre, 11 April 2016, <http://www.kaldorcentre.unsw.edu.au/publication/cambodia-agreement>.

¹⁰⁶ BBC News, "Australia and Cambodia Sign Refugee Resettlement Deal," 26 September 2014, <http://www.bbc.co.uk/news/world-asia-29373198>

¹⁰⁷ Liam Cochrane, "Last Nauru Refugee in Cambodian Resettlement Program Set to Lose Australian Assistance," 2 June 2016, <http://www.abc.net.au/news/2016-06-03/nauru-refugee-in-cambodia-could-have-australian-funding-cut/7472966>

returnees might be at risk. Many refugees and asylum-seekers on Nauru said that Australian officials continuously pressured them to “accept” a transfer to Cambodia.

The only two refugees to have been “resettled” to a country other than Cambodia (see below) are a father and son, who left on Canadian-issued travel documents after the mother of the family sponsored them from Canada.¹⁰⁸

At the time that this report was being finalized in early October 2016, it was not clear whether recognized refugees on Nauru would be trapped there, or will eventually be permitted to leave the country. Refugees said that when they asked about how long they will remain on the island, the authorities give them varied and contradictory answers, ranging from one to 10 years. The documentation that Nauru gives refugees provides no clarity. A “Temporary Settlement Visa” issued by Nauru in 2014 was valid for only six months, whereas a Nauruan photo identification issued in 2015 is valid for three years.¹⁰⁹ In an August 2016 op-ed, Nauruan President Baron Waqa stated: “Any refugee who is genuinely fleeing persecution and danger would be thankful to be safe in our country, in the knowledge that one day they will leave and go to a more permanent home.”¹¹⁰ Justice Minister David Adeang echoed this sentiment when he addressed the UN General Assembly in September 2016, and asked for other nations’ assistance to find “permanent homes” for Nauru’s refugees.¹¹¹

3.3 INADEQUATE MEDICAL CARE

Another factor contributing to the acute anguish of asylum-seekers and refugees is being denied adequate mental care.

Without exception, all of the people interviewed by Amnesty international on Nauru expressed concern about inadequate physical and mental health care. Medical services on Nauru are provided by the International Health and Medical Services (IHMS), a private company contracted by the Australian Government, as well as by the doctors and nurses working at the Republic of Nauru hospital (known locally as RON Hospital). Cases described by refugees and asylum-seekers involved staff of both IHMS and RON Hospital. IHMS, in correspondence and at a meeting with Amnesty International, “strongly refuted” the claim that refugees and asylum-seekers receive poor quality treatment.

Testimonies from refugees, asylum-seekers, and service-providers, as well as medical records and audio recordings of refugees’ medical appointments reviewed by Amnesty International, paint a different picture. Medical problems, including serious heart and kidney conditions, improperly healed broken bones causing constant pain and disability, complications from diabetes, gynecological and urological problems, infections, skin diseases, and other ailments do not appear to have been treated in a timely way, despite individuals having multiple appointments with IHMS medical staff. Patients were left with limited information and deep anxiety about their health. As well, refugees and asylum-seekers suffering psychological trauma and severe mental health conditions do not appear to receive adequate support or treatment. According to asylum-seekers and refugees, the principal response to their mental health issues has been the prescription of strong sedatives and anti-psychotic medication. Refugees and asylum-seekers said that the medications prescribed to them have severe side effects but provide little relief. IHMS told Amnesty International that they had full-time psychiatrists, psychologists and mental health nurses on Nauru and that stated that they provide both “pharmacological and non-pharmacological treatments”.

¹⁰⁸ Amnesty International electronic communication with Ali Kharsa, 19 September 2016.

¹⁰⁹ Human Rights Watch photographs of identification documents, taken on Nauru, July 2016.

¹¹⁰ Baron Waqa, “Media Mudslingers Distort the Image of Nauru,” *The Australian*, <http://www.theaustralian.com.au/opinion/media-mudslingers-distort-the-image-of-nauru/news-story/e6330a8de43691a2b0fd882fee8a91>.

¹¹¹ Quoted in Radio New Zealand, “Nauru Calls for Help to Resettle Refugees,” 20 September 2016, <http://www.radionz.co.nz/international/pacific-news/313771/nauru-calls-for-help-to-resettle-refugees>; “United Nations Summit for Refugees and Migrants General Assembly Plenary Meeting: Statement by His Excellency President Baron Divavesi Waqa on behalf of the Republic of Nauru,” 19 September 2016, http://media.wix.com/ugd/a4e843_32e8d636d5f041f1ac44412077619956.pdf.

Certain medical services, specialists, tests, and procedures are not available on Nauru. Refugees and asylum-seekers said they had to wait for months to see a visiting IHMS specialist, or undergo a necessary test, even when, according to the doctors, their condition was serious, such as suspected cancer.

For instance, a young woman who had been forced to undergo genital mutilation in her home country said that as a result, she was experiencing severe pain and was not able to have sexual intercourse. She has received no treatment for her condition on Nauru. She said: “For five months, they just kept referring me to a mental health specialist. I had no idea what was wrong with me, and just kept blaming myself for everything. I’ve been able to see a gynecologist a few times since, but there is nothing they can do here for my condition, and for a year and a half now they keep telling me that I need to be transferred for treatment, but so far it has not happened.”¹¹²

“Nadim”, a 34-year old man from Iran, said that he has been having severe pain in his stomach, legs, and genitalia, as well as bleeding and vomiting. He said:

“I have pain urinating. They said I needed colonoscopy, and they can’t do it here. I have fever, vomiting, and cannot control my blood sugar [...] We go to see IHMS all the time, I am just tired of them. When I asked the doctor whether it was cancer, he said, “maybe.” They cannot do a biopsy here. A surgeon in the hospital said, “When I see you, it makes me sad, because I cannot help you.”¹¹³

Furthermore, the hospital appears ill-equipped to deal with serious emergencies. Several refugees who were in the hospital when Omid Masoumali, a young Iranian man who set himself on fire in April 2016, was brought in, said that the doctors and nurses seemed lost and unprepared to treat him, or even to alleviate his suffering. A service-provider confirmed: “It took 26 hours to evacuate Omid. He would have survived – he had less than 50% burns; it seemed like the doctors didn’t know what to do in such cases and were just experimenting.”¹¹⁴ A witness who was at the hospital said that there was not even a bedsheet for him, and showed Amnesty International a video of a severely burned man, pacing around a hospital room and screaming in agony.¹¹⁵ He received treatment in Brisbane Hospital, but died on 29 April 2016.¹¹⁶

Refugees and asylum-seekers reported multiple situations in which they tried calling an ambulance when their friends or family members needed urgent help, but the hospital refused to send one. A service provider confirmed these accounts: “When people call [an] ambulance, or even when we call, they sometimes come, and sometimes not, sometimes in 20 minutes and sometimes in three hours. But we are also not allowed to call ambulances for our clients, or transport them to the hospital in our vehicles—because it is considered ‘advocacy’, and we are supposed to help our clients be ‘independent’.”¹¹⁷ A 35-year-old Iranian man whose case is discussed at length in the annex told Amnesty International:

“When my baby was about 10 days old, my wife got high fever. I called an ambulance – it was 1 am. They said the ambulance was broken, I kept calling – at 3 am, at 5 am, and they said the driver wasn’t there. I took her to the hospital by bus in the end. When we arrived they said it wasn’t an emergency, take her to IHMS – they didn’t even check her! IHMS said it was noon – their lunch time – and told me to come back at 2 pm. I started shouting, saying my wife has had high fever since last night, explaining how we went to the hospital, and then they finally agreed to see us.”¹¹⁸

Furthermore, several refugees also said that even though their medical conditions was clearly incompatible with camp accommodation, their requests for assistance fell on deaf ears. “Rafi,” a 21-year-old man from Bangladesh, has had a disability – kyphosis, meaning his spine is severely curved– since childhood. He said

¹¹² Amnesty International interview with refugee, Nauru, 25 July 2016.

¹¹³ Amnesty International interview with refugee, Nauru, 27 July 2016.

¹¹⁴ Amnesty International interview with a service-provider, date and place withheld to protect them.

¹¹⁵ Confidential information provided to Amnesty International, 1 September 2016.

¹¹⁶ Helen Davidson and Ben Doherty, “Refugee who Set Himself Alight on Nauru Dies of Injuries in Hospital,” *The Guardian*, 29 April 2016, <https://www.theguardian.com/australia-news/2016/apr/29/refugee-who-set-himself-alight-on-nauru-dies-of-injuries-in-hospital>.

¹¹⁷ Amnesty International interview with a service-provider, date and place withheld to protect them.

¹¹⁸ Amnesty International interview with refugee, Nauru, 27 July 2016.

that on Nauru, he has been seeing doctors regularly, because due to harsh conditions in the RPC, he has been experiencing serious pain and could not sit or sleep properly. Both Rafi and his case manager have repeatedly requested appropriate accommodation given Rafi's chronic condition, but at the time of the interview, at the end of July 2016, he still had not received accommodation and continued to sleep on the floor in a tiny container-type room of his friend. Rafi explained that this was the only way he could function as the friend has been giving him daily massages to alleviate his back pain.¹¹⁹ "Homa," a 36-year-old woman from Iran, said that in the beginning of her stay on the island three years ago she fell and broke her tailbone, and since then her life had become a constant struggle. At the time of the interview in July 2016, Homa was limping significantly, had difficulty walking, and could not sit on a chair without using a special pillow. She told Amnesty International:

"First, IHMS gave me painkillers for a week, said it would be ok. I kept crying for 10 days, begging them to do something. Finally, they did an X-ray and found that my tailbone was broken. I begged them to move me to RPC-1 for two months (because conditions were a bit better there). After two months, I was still in a lot of pain, painkillers didn't work, but they sent me back to the camp, with crutches. IHMS doctor just kept telling me I should walk. When another doctor saw me, he said if I continue walking with crutches, I will lose mobility in my legs. For eight months [I] walked with one stick. After one year I got my refugee status, and moved out of the camp. The pain in my legs continued. I was seeing a surgeon every week, but he said he couldn't do anything because they didn't have [magnetic resonance imaging equipment] here."¹²⁰

Even the most basic medical services, such as dentistry or prescription glasses, are a major challenge for refugees. Many said they waited for months to get teeth fillings, only to discover later that the treatment was done so badly that the teeth then had to be removed. An Iranian mother of two young children said: "My daughter is losing her eyesight but there is no way to get glasses. The government here says they don't have any equipment to measure eyesight [...]. I've asked IHMS a hundred times for glasses, but they say they cannot provide it."¹²¹ A teenager said that he had to wait six months for his glasses to be replaced after his only pair got broken.¹²² A service provider confirmed: "Glasses are not available – I had a case of an 11-year-old who hadn't had a pair for three years; he cannot normally attend school, and has a friend taking notes for him."¹²³

Asylum-seekers and refugees also said that their test results were repeatedly lost, or they were never informed what the tests showed. One man said, "I've been having joint pain, the doctor took my blood six times, last time – in February 2016, and still there are no results. Yesterday [26 July 2016] I went there again and again they said I need to do another blood test!"¹²⁴ A service-provider told Amnesty International of a case in which a 27-year old asylum-seeker had a biopsy to remove a lump in her breast in April 2016; the doctor working at the Republic of Nauru Hospital reportedly lost the sample, meaning that she has no diagnosis of her condition, and another lump is already growing.¹²⁵

The majority of people interviewed by Amnesty International also said that they were unable to obtain their own or their relatives' medical records. Their requests, oral and written, have been denied or have yielded only partial records — lacking information on surgery they had undergone, for example. In some instances, they received pages that were blank except for their name and age and the doctor's initials. IHMS said that they "strongly refute the claim that asylum-seekers and refugees do not have access to their IHMS medical records".¹²⁶ However the testimonies from asylum-seekers and refugees suggest that there is a problem with

¹¹⁹ Amnesty International interview with refugee, Nauru, July 25, 2016. Copies of requests for appropriate accommodation on file with Amnesty International.

¹²⁰ Amnesty International interview with refugee, Nauru, 28 July 2016.

¹²¹ Amnesty International interview with refugee, Nauru, 24 July 2016.

¹²² Amnesty International interview with refugee, Nauru, 28 July 2016.

¹²³ Amnesty International interview with a service-provider, date and place withheld to protect them.

¹²⁴ Amnesty International interview with refugee, Nauru, 27 July 2016.

¹²⁵ Confidential information provided to Amnesty International, September 2016.

¹²⁶ "We strongly refute the claim that asylum seekers and refugees do not have access to their IHMS medical records. There was a brief period of time when settlement clinic records were not being released pending the outcome of negotiations with the Republic of Nauru Hospital regarding whether IHMS had authority to release these records. Asylum seekers on Nauru may request a copy of their IHMS medical record from the IHMS clinic at the RPC. Refugees may request a copy of their IHMS medical record from the IHMS settlement

regard to both the RON hospital and IHMS. One family shared with Amnesty International a copy of the response they received from IHMS on 21 September 2014, following their request for their daughter's medical records. The response stated that "There is currently a change in policy occurring on request of medical files. Once we are aware of the new procedures we will make contact and inform you how to obtain your daughter's medical files."¹²⁷ To this day, the family has been unable to obtain the full medical record, and a few documents they received contained nothing but blank pages with their daughter's name and the doctor's initials.¹²⁸

In some serious cases, patients have been transferred for treatment or checks to Australia or Papua New Guinea. The transfers, however, are becoming rarer, and are carried out in a way that would prevent the transferred patients from staying in Australia, regardless of medical necessities or the level of trauma caused to the patients and their families.

Service-providers told Amnesty International that beginning in February 2016, Australian immigration authorities have insisted on medical transfers to Papua New Guinea rather than Australia. In cases in which the transfer to Australia is still deemed necessary, Australian immigration officials usually authorize the transfer of the patient alone, without their family members. Service-providers said that this new practice was introduced after lawyers in Australia were successful in preventing the return of some of the refugees to Nauru following medical treatment. "Now that their families remain on the island, they have no choice but to return," one said.¹²⁹

"Farah," a 35-year-old Iranian woman, told Amnesty International that her husband has been transferred to Australia in a manner that left the entire family deeply traumatized. She said:

"Three months ago [in April 2016], he had a test and they determined that he had infection in his head, and they transferred him to Australia. They didn't tell us anything specific as to why they are transferring him. They also found hard masses in his testicle. When they decided to transfer him, they just came 30 minutes before and put him on a special flight. He's now been there for about two months. When I speak to him, he is worried about us. I am begging them to bring us there. I can only speak with him three times a week – have to go to Connect office, to call from there. He just says he has very bad headache. There is no info on when he would come back. They said they would transfer us too, but nothing yet."¹³⁰

Several people said that although their conditions continued to deteriorate, the necessary medical procedures were not available on the island, and the doctors on Nauru were clear that they needed a transfer, the transfers have not yet taken place.

Others said that given the seriousness of their medical problems, they were transferred for treatment to Australia or Papua New Guinea, but then returned to Nauru before their treatment was complete. A man who suffered a heart attack after a year on the island was eventually sent to Australia, where he stayed for four months: "When they came to take me back to Nauru, IHMS people were there, and I tried to plead with them and the security, but they just took me and my family. I was scared, because the doctors found a blood clot in my heart, and clogged arteries, and said it was very dangerous. When I arrived, an IHMS doctor saw my file and said, 'I cannot be responsible for you, they should not have sent you back'. I had another heart attack since, and the doctors keep saying that they cannot do anything here, that I need professional treatment and a proper hospital."¹³¹

clinic at site. IHMS does not however have authority to release Republic of Nauru Hospital medical records. This matter is not within the control of IHM and should be taken up with the Government of Nauru." IHMS letter to Amnesty International, 13 October 2016.

¹²⁷ Copy on file with Amnesty International.

¹²⁸ Copies on file with Amnesty International.

¹²⁹ Amnesty International interview with service providers, date and place withheld to protect the witnesses.

¹³⁰ Amnesty International interview with refugee, Nauru, 27 July 2016.

¹³¹ Amnesty International interview with refugee, Nauru, 26 July 2016.

People who underwent treatment in Australia or Papua New Guinea also said that their returns to Nauru came without a warning or explanation, and were sometimes carried out in a deeply humiliating and traumatizing way. “Homa,” who was eventually sent to Papua New Guinea for treatment for her broken tailbone, described her return: “I stayed there for 17 days. One day an officer came (I was in a room) and said – ‘Come, you have an appointment with a doctor.’ I said, ‘What appointment? I don’t have any.’ And already in the car he told me I was being transferred back to Nauru. I was screaming and crying, and they put handcuffs on me behind my back.”¹³² In one instance, a service-provider said that a refugee did not know that his critically ill wife had been flown to Australia for treatment until he saw news of her transfer on the Australian Broadcasting Corporation.¹³³

When Amnesty International asked IHMS if they had any medical concerns about the timing and manner of transfers, senior medical staff replied that the organization would have to ask the Australian Department of Immigration and Border Protection about this issue. In a meeting with Amnesty International, IHMS stated that the timing and method of transportation are outside of their jurisdiction; the Australian Border Force decides, and there is only a medical professional accompanying the person if there is a medical need.¹³⁴

Dehumanization

Beyond the serious human rights violations and abuses detailed in this report, refugees and asylum-seekers on Nauru have also been subjected to countless daily humiliations that have cumulatively served to dehumanize them and violate their dignity.

Asylum-seekers and refugees described how the refugee processing system on Nauru makes them feel like they are criminals. The environment at the Refugee Processing Centre is highly militarized, and many of the service-providers are former military personnel. One Iranian man said that when he first caught sight of the security fence around the facilities, “I felt like someone punched me in my heart.”¹³⁵ Ali Kharsa, a 19-year old Syrian refugee, described his three years on the island: “I felt like I was a slave. Being detained is like feeling you did something wrong – like you are a criminal.”¹³⁶ Similarly, a service-provider described a conversation she had with a seven-year old boy from Iran: “He would ask me so many questions. He’d say ‘I don’t understand this place. Prisons are for bad people, right? Bad people are the men who hurt my father [in Iran]. Why am I in prison? Does that mean I am a bad person?’”¹³⁷

All of the service-providers with whom Amnesty International spoke described practices that appear to serve no purpose but to break people’s spirits, such as forcibly expelling asylum-seekers from the showers after two minutes, with shampoo still in their hair, or making people wait weeks or months to get basic necessities like underwear or shoes. A former teacher told researchers of an incident in which she was accompanying a teenage girl back into the Refugee Processing Centre. The girl had pineapple candies that her boyfriend had given to her as a gift, and a security guard confiscated them. In the teacher’s view, “It’s the little things that break people.”¹³⁸

The practices and attitudes of some workers at the Refugee Processing Centre suggest that they view refugees and asylum-seekers as less than human. Whilst some service-providers try to act professionally and with empathy, and some take risks to protect refugees and asylum-seekers, others do not. The service-providers for certain contractors on Nauru only call asylum-seekers by their boat identification numbers rather than their names, and as soon as people obtain refugee status, they refer to people by their refugee identification numbers.¹³⁹ An Afghan refugee said that Wilson security guards called asylum-

¹³² Amnesty International interview with refugee, Nauru, 28 July 2016.

¹³³ Amnesty International interview with service-provider, Melbourne, 3 September 2016.

¹³⁴ Amnesty International interview with IHMS, Sydney, 30 August 2016.

¹³⁵ Amnesty International interview with refugee, Nauru, 25 July 2016.

¹³⁶ Amnesty International interview with Ali Kharsa, Saskatoon, 9 August 2016.

¹³⁷ Amnesty International interview with service-provider, Melbourne, 3 September 2016.

¹³⁸ Amnesty International interview with service-provider, Sydney, 6 September 2016.

¹³⁹ Amnesty International interview with service-provider, Sydney, 6 September 2016. IHMS told Amnesty International: “IHMS staff refer to asylum seekers and refugees on Nauru by name. In written documentation, numeric identifiers are regularly used in conjunction with names in order to ensure correct identity.” IHMS letter to Amnesty International, 13 October 2016.

seekers “rubbish.”¹⁴⁰ A person who identified themselves as a Transfield (now Broadspectrum) employee, discussed further in Chapter 4, posted derogatory comments about refugees on social media.¹⁴¹ A managerial-level service-provider said: “Being privy to what happens at the higher level really ate at my soul – it was gut-wrenching to hear ABF [Australian Border Force officials] talking about asylum-seekers and refugees like they were pieces of meat – like cattle. They would laugh about suicide attempts.”¹⁴²

3.4 VIOLATIONS OF CHILDREN’S RIGHTS

Nauru is a horrific place for refugee and asylum-seeker children, for not only are they at risk of the harms described above, but they are also in danger of human rights violations linked to their particular status as minors.

Nauru’s child protection framework is virtually non-existent. Nauru adopted its first *Child Protection Act* in June 2016.¹⁴³ A 2016 joint study commissioned by the Ministry of Home Affairs and UNICEF exposed a number of severe and structural inadequacies. The study found that “Nauru does not have a consistent reporting, data collection or monitoring system in relation to child maltreatment.”¹⁴⁴ The study cited Nauru police officials as saying that they “do not keep data on reported cases of child abuse” and that “it is extremely challenging to deal with child protection issues because they have had little training in such matters [...]”¹⁴⁵ Other officials failed to keep appropriate records: “The Ministries of Health and Education [...] also did not collect consistent departmental records of suspected or actual cases of violence, abuse, neglect or exploitation involving children.”¹⁴⁶ Medical staff at the Republic of Nauru Hospital admitted that they lacked training:

“There has been little training for nurses and doctors on how to identify family violence and child abuse cases, and health staff are unclear on where and how to report cases. No mandatory reporting exists for health staff, and workers are reportedly concerned that if they say something there will be retaliation from the family. No statistics are kept at the hospital or at the Public Health Centre on admissions due to suspected family violence or child abuse. According to health officials, generally, victims are treated for injuries with no other support or follow up. Obtaining reliable forensic evidence is problematic in Nauru due to the lack of trained specialists and the lack of sampling and processing equipment.”¹⁴⁷

These severe inadequacies in Nauru’s child protection framework have led to shocking mistakes. In 2015, the Nauru Police Force hired a man convicted of raping a child in 2011, as a reserve officer.¹⁴⁸ In another instance, “Firuz,” the father of a young girl “Nahal,” whose case is discussed further in Chapter 4 and in the annex, said that police officers twice took a statement from his daughter without any child protection specialists present, and that she has been re-traumatized as a result: “[Nahal] now doesn’t go to school, she won’t play, she is always scared. To this date [by July 2016], she hasn’t seen a child psychologist after the incident.”¹⁴⁹ The father of an eight-year-old Iranian boy said that when the two of them went to the Nauru

¹⁴⁰ Amnesty International interview with refugee, Nauru, 27 July 2016.

¹⁴¹ Confidential information provided to Amnesty International.

¹⁴² Amnesty International interview with service-provider, Melbourne, 2 September 2016.

¹⁴³ UNICEF, “UNICEF welcomes Nauru Child Protection Act,” 14 June 2016, http://www.unicef.org/pacificislands/1852_25560.htm?utm_content=buffer47ba3&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer

¹⁴⁴ UNICEF Pacific and Nauru Ministry of Home Affairs, *Review of the Child Protection System in Nauru*, 2016, <http://www.unicef.org.au/Upload/UNICEF/Media/Documents/Nauru-ChildProtection-Review.pdf>, p. 18.

¹⁴⁵ UNICEF Pacific and Nauru Ministry of Home Affairs, *Review of the Child Protection System in Nauru*, 2016, <http://www.unicef.org.au/Upload/UNICEF/Media/Documents/Nauru-ChildProtection-Review.pdf>, p. 34.

¹⁴⁶ UNICEF Pacific and Nauru Ministry of Home Affairs, *Review of the Child Protection System in Nauru*, 2016, <http://www.unicef.org.au/Upload/UNICEF/Media/Documents/Nauru-ChildProtection-Review.pdf>, p. 18.

¹⁴⁷ UNICEF Pacific and Nauru Ministry of Home Affairs, *Review of the Child Protection System in Nauru*, 2016, <http://www.unicef.org.au/Upload/UNICEF/Media/Documents/Nauru-ChildProtection-Review.pdf>, p. 37.

¹⁴⁸ Michael Walsh, “Nauruan Police Face Fresh Scrutiny after Convicted Rapist Allowed to Join Police Reserves,” 15 October 2015, <http://www.abc.net.au/news/2015-10-15/nauru-police-face-scrutiny-after-convicted-rapist-joined-reserve/6856298>.

¹⁴⁹ Amnesty International interview with refugee, Nauru, 26 July 2016.

police station on 30 May 2016, an Australian Federal Police office interrogated his son alone in a room – this case is discussed further in Chapter 4.¹⁵⁰

Another harm inflicted on children is the denial of their right to education, as the majority of refugee and asylum-seeker children on Nauru are likely not going to school. There are no precise enrollment numbers, but since the mid-2015 closure of Save the Children's school at the Refugee Processing Centre, this problem appears to have worsened. One service-provider said: "The kids loved going to school – it was the only time they felt normal. Closing the school was probably the worst thing they could have done."¹⁵¹ Another service-provider estimated that there had been 90% attendance at Save the Children's school, and although about 60% of refugee children attended the local school during the initial transition, within six months that figure had dwindled to 5%.¹⁵² According to three service-providers on the island, none of the approximately 40 asylum-seeker children still living in the Refugee Processing Centre attend school, even though they are entitled to do so.¹⁵³ Save the Children estimates that 15% of asylum-seeker and refugee children attend Nauruan schools.¹⁵⁴ The Nauruan authorities, for their part, claim that 141 (of 173) asylum-seeker and refugee children on the island are "enrolled in local Nauruan schools and are fluent in the Nauruan language."¹⁵⁵

One reason that children are not attending school is that they are being bullied, harassed, or physically assaulted by teachers or local children. A service-provider told Amnesty International that children who attended local schools were being hit by teachers, and threatened with machetes by Nauruan children.¹⁵⁶ Another service-provider told the story of a smart, motivated teenager who was continuously being harassed by local boys at school. After she had been trapped in the toilets by one of these boys, who waited outside her cubicle for an hour, the teacher reprimanded her for returning to class late – when she tried to explain, the teacher yelled at her: "You're not special – you're not going to be treated special."¹⁵⁷ This girl may be the one referred to in a May 2016 incident report released by The Guardian, in which a bright secondary student was reported to have dropped out of Nauru College [the secondary school] because she was being bullied by her teacher and other students. While the Principal had suggested she move from Year 7 to Year 8, the teacher reportedly mocked her in front of the class, telling her to "shut up" and stay in her allocated class, saying she was "nothing special."¹⁵⁸ In another incident report, a secondary student refused to go to Nauru College because she said the Nauruan boys "run up, hug her and touch her bottom."¹⁵⁹ A teenage girl told Amnesty International that she stopped going to school after local children tried to pull off her hijab: "I asked the principal and the teachers and they said they couldn't do anything to stop them."¹⁶⁰ A nine-year old child told Amnesty International: "Kids in school hit me two times, in the face and on the head. They were Grade Seven kids. They said 'Why did you come to our country? Go back to your country.' When I complained to the teacher, she just brushed me off."¹⁶¹ The 14-year old brother of the Afghan teenager who had tried to kill himself multiple times, mentioned earlier in this chapter, said that at school, "Local children threw rocks at us, and swore at us. And the principal just tells them to say 'sorry.' And after they leave the principal's office, the kids attack us even more."¹⁶² An incident report released by The Guardian noted a similar situation where a child was made to be present in the Principal's office while the Nauruan child who had bullied her had their ear pulled and the Principal yelled at them to apologize. That afternoon the bullying child told her

¹⁵⁰ Amnesty International interview with Hamid Reza Nadaf, 6 October 2016.

¹⁵¹ Amnesty International interview with service-provider, Melbourne, 2 September 2016.

¹⁵² Amnesty International interview with service-provider by phone, 16 September 2016.

¹⁵³ Confidential information provided to Amnesty International, 6 October 2016.

¹⁵⁴ Nicole Hasham, "'You Are Terrorists, You Make Bombs': Racist Taunts Help Keep Nauru Refugee Kids out of School," *Sydney Morning Herald*, 29 July 2016, <http://www.smh.com.au/federal-politics/political-news/you-are-terrorists-you-make-bombs-racist-taunts-help-keep-nauru-refugee-kids-out-of-school-20160729-gqglcp.html>.

¹⁵⁵ Government of Nauru, "Opening Statement: Committee on the Rights of the Child," 13-14 September 2016, para. 18.

¹⁵⁶ Amnesty International interview with service-provider, Sydney, 6 September 2016.

¹⁵⁷ Amnesty International interview with service-provider by phone, 16 September 2016.

¹⁵⁸ Incident report classified 'major', dated 16 July 2015, Nick Evershed, Ri Liu, Paul Farrell, and Helen Davidson, "The Lives of Asylum Seekers in Detention Detailed in a Unique Database," *The Guardian*, 10 August 2016, <https://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>.

¹⁵⁹ Incident report classified 'major', dated 15 September 2015, Nick Evershed, Ri Liu, Paul Farrell, and Helen Davidson, "The Lives of Asylum Seekers in Detention Detailed in a Unique Database," *The Guardian*, 10 August 2016, <https://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>.

¹⁶⁰ Amnesty International interview with refugee, Nauru, 28 July 2016.

¹⁶¹ Amnesty International interview with refugee, Nauru, 27 July 2016.

¹⁶² Amnesty International interview with refugee, Nauru, 28 July 2016.

“I’ll break your arse.”¹⁶³ The Guardian’s files also contain a report of four asylum-seeker children who were hit by their teacher with a ruler on their shoulders after arriving late to class.¹⁶⁴

The human potential of all asylum-seeker and refugee children on Nauru is being senselessly squandered. Service-providers expressed heartbreak at what they saw as the complete waste of these “brilliant minds.”¹⁶⁵ Former teachers spoke of watching the slow, inexorable deterioration of their students. One teacher said “Over 15 months, I saw these children change to be unrecognizable. There was a 12-year old student on psychotropic medication – she had been one of the brightest, bubbliest students – by the end [she] would just cry silently.”¹⁶⁶

The UN Committee on the Rights of the Child’s [CRC] findings on Nauru, issued on 30 September 2016, corroborate the evidence uncovered by Amnesty International in this report. The CRC found “persistent discrimination against asylum seeking and refugee children in all areas,”¹⁶⁷ and expressed deep concern at the:

- “(a) Limited capacity of the Nauruan Police to investigate allegations of sexual based violence against children;*
- (b) Investigative and other procedures which fail to provide guarantees of redress and lack a child sensitive approach;*
- (c) Insufficient cooperation and information sharing among relevant agencies and inadequate follow up of complaints;*
- (d) Inhuman and degrading treatment, including physical, psychological and sexual abuse, against asylum seeking and refugee children living in the Regional Processing Centres as evidenced by the Moss Review, as well as reports of intimidation, sexual assault, abuse and threats of violence against families living in refugee settlements around the island, all of which has a detrimental impact on the psychological well-being of their children;*
- (e) Lack of assistance for the physical and mental recovery of children who experienced trauma prior to their arrival in Nauru and the subsequent impact of prolonged periods of living in detention-like conditions, which has resulted in many cases of attempted suicide, self-immolation, acts of self-harm and depression.”¹⁶⁸*

The Committee also expressed grave concern at the:

- “(a) Fact that overall, the Memorandum of Understanding between Nauru and Australia as a means of processing asylum cases fails to take into account the best interests of the child;*
[...]
- (c) Living conditions in the Regional Processing Centres which combined with the lack of certainty for both asylum-seeking and refugee children is generating and exacerbating mental health issues, leading to feelings of hopelessness and often suicidal ideation;*
- (d) Lack of implementation of any integration programme for refugee children or their families;*
[...]
- (f) Pervasive reports of hostility and hate speech from the local Nauruan community.”¹⁶⁹*

¹⁶³ Incident report classified ‘major’, dated 16 July 2015, Nick Evershed, Ri Liu, Paul Farrell, and Helen Davidson, “The Lives of Asylum Seekers in Detention Detailed in a Unique Database,” *The Guardian*, 10 August 2016, <https://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>.

¹⁶⁴ Incident report classified ‘major’, dated 1 June 2014, Nick Evershed, Ri Liu, Paul Farrell, and Helen Davidson, “The Lives of Asylum Seekers in Detention Detailed in a Unique Database,” *The Guardian*, 10 August 2016, <https://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>.

¹⁶⁵ Amnesty International interview with service-provider, Melbourne, 2 September 2016.

¹⁶⁶ Amnesty International interview with service-provider by phone, 16 September 2016.

¹⁶⁷ UN Committee on the Rights of the Child, *Concluding Observations on the Initial Report of Nauru (Advance Unedited Edition)*, 30 September 2016, UN Doc. CRC/C/NRU/CO/1, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1041&Lang=en, para. 22.

¹⁶⁸ UN Committee on the Rights of the Child, *Concluding Observations on the Initial Report of Nauru (Advance Unedited Edition)*, 30 September 2016, UN Doc. CRC/C/NRU/CO/1, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1041&Lang=en, para. 30.

¹⁶⁹ UN Committee on the Rights of the Child, *Concluding Observations on the Initial Report of Nauru (Advance Unedited Edition)*, 30 September 2016, UN Doc. CRC/C/NRU/CO/1, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1041&Lang=en, para. 52.

4. ATTACKED AND AT RISK OF PERSECUTION

The persistent verbal and physical assaults on refugees and asylum-seekers on Nauru – discussed in this chapter – constitute the hallmarks of persecution. The threats to refugees do not come from all Nauruans; some local people have tried to help and support them. However, the context on the island is one where systemic impunity for attacks on refugees combines with pervasive hostility as well as arbitrary arrests and intimidation by people in positions of authority. Amnesty International considers that all refugees and asylum-seekers are at risk of serious human rights violations on Nauru.

4.1 ATTACKS AND THREATS

Many of the refugees and asylum-seekers whom researchers interviewed on Nauru said that they or their friends and family had been physically attacked by Nauruans outside of the Refugee Processing Centre.

“Akash,” a refugee from Bangladesh, suffered serious head trauma in May 2016 when he was attacked by a group of Nauruan men. He said they threw a large rock at him, kicked him off his motorbike, and beat him after he fell: “They beat me unconscious and stole my motorbike. I am still in pain from the injuries.”¹⁷⁰ A young Somali woman, “Jamilah,” reported that several Nauruan men attacked her husband in March 2016, hitting him on the head with a machete – her husband needed eight stitches. The following night, a group of Nauruans tried to break into the family’s accommodation.¹⁷¹ An Iranian woman told researchers that once she woke up in the middle of the night, having heard noises outside the house. When she got out, a local man, who was, according to the woman, trying to steal clothes hanging outside, hit her with a metal bar so hard that she lost consciousness, and had to get eight stitches in the hospital. .¹⁷² An Iranian man, “Rahim,” told Amnesty International that in 2014, he and his friend were near a cliff by the sea when they were approached by two locals asking for cigarettes: “Then they kicked us off the cliff. We fell some three to four metres, on the rocks. I broke two ribs, and we both had multiple scratches and bruises.”¹⁷³ A Pakistani man said that his friend was beaten so badly by a group of Nauruans that he had to be hospitalized and transferred to Australia.¹⁷⁴ Another Pakistani man said that two years previously, he was attacked by two Nauruans who were trying to steal his bike – he showed researchers old scars that were still visible on his head.¹⁷⁵

¹⁷⁰ Amnesty International interview with refugee, Nauru, 26 July 2016.

¹⁷¹ Amnesty International interview with refugee, Nauru, 25 July 2016.

¹⁷² Amnesty International interview with refugee, Nauru, 27 July 2016.

¹⁷³ Amnesty International interview with refugee, Nauru, 28 July 2016.

¹⁷⁴ Amnesty International interview with refugee, Nauru, 28 July 2016.

¹⁷⁵ Amnesty International interview with refugee, Nauru, 24 July 2016.

For women and children outside of the Refugee Processing Centre, sexual assault is another serious risk, and Amnesty International received credible testimonies about numerous incidents of gender-based violence. A father told Amnesty International that he interrupted the attempted rape of his young daughter “Nahal” in late 2015.¹⁷⁶ This case is discussed further in this chapter and in the annex. One refugee said that four Somali women were raped in the last two years.¹⁷⁷ A service-provider provided information and documentation about the case of a woman who has reportedly been physically and sexually assaulted several times.¹⁷⁸ An Iranian woman said that her friend was raped three years ago by three men.¹⁷⁹ The same woman also reported that a group of local men touched her back and neck: “I couldn’t say or do anything about it.”¹⁸⁰ A young Iranian woman said that in July 2016, she was out with a female friend on a motorbike: “Two men on a motorbike followed us, approached our bike, and started touching my breasts. We had to escape as fast as we could, and fell off the motorbike.”¹⁸¹ A female refugee said that on two occasions Nauruan men tried to drive her to “the jungle” when she was catching a ride with them, clearly intending to rape her. She also said that at one point she got a job at a shop on the island but had to quit after the first day because other employees kept touching her.¹⁸² The Guardian’s Nauru Files reveal at least two incidents of sexual assault outside of the Refugee Processing Centre: on 16 May 2015 a female refugee was found by the Nauru Police Force “walking naked in the community” after which “an allegation of sexual assault [was] made,”¹⁸³ and on 12 June 2015 a female refugee told Save the Children that she had been raped by a Nauruan man she did not know.¹⁸⁴ Further incident reports released by the Guardian include the disclosure by a refugee who had established a restaurant in the community but had to close it due to persistent sexual harassment by Nauruan men. She told Connect Settlement Services she was frequently requested for sexual intercourse in exchange for money using sexually explicit language and that people would throw rocks when she asked them to leave the restaurant. On two occasions other customers had to come to her aid when the men entered through the kitchen “wrapped their arms around her with force and tried to kiss her.” She reported that she had been too afraid to report the harassment to police.¹⁸⁵

Sexual violence is a risk for all women and girls on the island – including Nauruan citizens. The Nauru Women’s Affairs Department has said: “There is not enough legal protection available for victims of domestic violence and there is no standard policy or proper procedure for law enforcement officers on handling cases of domestic violence.”¹⁸⁶ The Women’s Affairs Department also characterizes gender equality as a new concept in Nauru, and says that “[t]here has not been any substantial programs government or otherwise, promoting women’s empowerment and gender equality in Nauru.”¹⁸⁷ A Nauru Family Health and Support study found that nearly half (48%) of women surveyed who had ever had an intimate relationship had experienced physical and/or sexual violence by a partner at least once, and that 30% of women surveyed

¹⁷⁶ Amnesty International interview with refugee, Nauru, 26 July 2016.

¹⁷⁷ Amnesty International interview with refugee, Nauru, 25 July 2016.

¹⁷⁸ Amnesty International interview with service-provider by phone, 30 August 2016.

¹⁷⁹ Amnesty International interview with refugee, Nauru, 25 July 2016.

¹⁸⁰ Amnesty International interview with refugee, Nauru, 25 July 2016.

¹⁸¹ Amnesty International interview with refugee, Nauru, 27 July 2016.

¹⁸² Amnesty International interview with refugee, Nauru, 24 July 2016.

¹⁸³ Incident report classified ‘major’, dated 16 May 2015, Nick Evershed, Ri Liu, Paul Farrell, and Helen Davidson, “The Lives of Asylum Seekers in Detention Detailed in a Unique Database,” *The Guardian*, 10 August 2016, <https://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>.

¹⁸⁴ Incident report classified ‘major’, dated 12 June 2015, Nick Evershed, Ri Liu, Paul Farrell, and Helen Davidson, “The Lives of Asylum Seekers in Detention Detailed in a Unique Database,” *The Guardian*, 10 August 2016, <https://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>.

¹⁸⁵ Incident report dated 29 February 2016, Paul Farrell, “Newly Leaked Nauru Reports Detail Harrowing Accounts of Sexual Abuse and Self-Harm,” 19 September 2016, *The Guardian*, <https://www.theguardian.com/australia-news/2016/sep/19/newly-leaked-nauru-reports-detail-harrowing-accounts-of-sexual-abuse-and-self-harm>.

¹⁸⁶ Nauru Women’s Affairs Department, *Beijing +20 Report*, n.d., http://www.unwomen.org/~media/Headquarters/Attachments/Sections/CSW/59/National_reviews/Nauru_review_Beijing20.pdf, p. 5; Also see Australian Women in Support of Women in Nauru, *Protection Denied, Abuse Condoned: Women in Nauru at Risk*, June 2016 http://apo.org.au/files/Resource/women_on_nauru_web.pdf.

¹⁸⁷ Nauru Women’s Affairs Department, *Beijing +20 Report*, n.d., http://www.unwomen.org/~media/Headquarters/Attachments/Sections/CSW/59/National_reviews/Nauru_review_Beijing20.pdf, 8.

had been sexually abused in childhood.¹⁸⁸ The Committee on the Rights of the Child has expressed serious concern at “[p]revailing societal attitudes that perceive domestic abuse to be a ‘private/family’ matter.”¹⁸⁹

In addition to harm in the form of physical assaults and gender-based violence, refugees and asylum-seekers on Nauru are also the target of hostility and threats. As discussed further in this chapter, Amnesty International is unaware of any of these threats being investigated by the Nauru Police Force. Many are anonymous comments posted on social media. On the “Nauru Updates” Facebook group, someone wrote on 6 June 2016: “Black women refugees from Somalia are the funniest story makers ever in Nauru. They always claimed of being raped by locals and yet still haven’t come up with on [sic] single evidence to proving their allegations.”¹⁹⁰ Another anonymous threat, which was extensively shared on social media, read:

“This is a warning to all refugees and asylum seekers in Nauru. We the Nauruan people are not intimidated. Do something stupid and Nauru will come to you and your entire family on the island and the police will not stop us.”¹⁹¹

This warning accompanied an English letter that was supposedly written by Hamid Reza Nadaf, an Iranian asylum-seeker who barely speaks English, and whose case is discussed at length further in this chapter.

Of particularly serious concern are the cases in which people in positions of authority on Nauru have made significant threats and derogatory comments towards asylum-seekers and refugees. On 2 June 2016, a Nauruan police officer posted a derogatory comment about refugees on a public social media page: “F*** you motherrr f***errr...[...] a**hole.”¹⁹² Throughout 2015 and 2016, a person who identified themselves as an employee of Transfield (now Broadspectrum) posted a number of disturbing comments on his personal Facebook page, including: positive remarks about right-wing extremist groups like the Klu Klux Klan and Soldiers of Odin; hateful posts about Islam and Muslim people; as well as profane and threatening comments about people seeking asylum – such as referring to refugees as “f***ing idiots” and calling a refugee child a “son of a b****.”¹⁹³ In 2016, a woman who identifies as a Nauruan trainee teacher wrote, in response to a posting about The Guardian’s Nauru Files: “Yeah yeah...LIARs! How many deaths have happened in Nauru?? And rapes??? I wanna slap your lying lips off your face.”¹⁹⁴ A person who identifies as an employee of International Health and Medical Services posted a comment on 13 April 2015, alleging that a refugee had made a veiled bomb threat and commenting: “These are the ‘people’ we have walking freely among us.”¹⁹⁵ A man who identifies as an “Independent Security and Investigations Professional” and who used to work on Nauru, wrote on 4 June 2016, “You destroyed your own country and now you want to destroy Nauru F off back to your own country then free flights leaving soon good bye. P.S good luck with going up against the Nauru people.”¹⁹⁶

The Guardian’s Nauru Files corroborate this research. There was a woman who said “she had been told that she was on a list of seven SAFs [Single Adult Females] that the local officers [security guards] had written as women they are waiting for when released to settlement [outside of the Refugee Processing Centre]” and had “received offers to get pregnant when she gets out.”¹⁹⁷ The files also reveal the case of a male child asylum-seeker in the Centre, who said that in retaliation for the boy eating a sandwich meant for the guards’ lunch, a Nauruan guard had told him that he would be waiting for him when he comes out of the Centre and

¹⁸⁸ Cited in UNICEF Pacific and Nauru Ministry of Home Affairs, *Review of the Child Protection System in Nauru*, 2016, <http://www.unicef.org.au/Upload/UNICEF/Media/Documents/Nauru-ChildProtection-Review.pdf>, p. 7.

¹⁸⁹ UN Committee on the Rights of the Child, *Concluding Observations on the Initial Report of Nauru (Advance Unedited Edition)*, 30 September 2016, UN Doc. CRC/C/NRU/CO/1, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1041&Lang=en, para. 32.

¹⁹⁰ Confidential information provided to Amnesty International.

¹⁹¹ Confidential information provided to Amnesty International.

¹⁹² Confidential information provided to Amnesty International.

¹⁹³ Confidential information provided to Amnesty International.

¹⁹⁴ Confidential information provided to Amnesty International.

¹⁹⁵ Confidential information provided to Amnesty International.

¹⁹⁶ Confidential information provided to Amnesty International.

¹⁹⁷ Incident report classified ‘major’, dated 6 July 2014, Nick Evershed, Ri Liu, Paul Farrell, and Helen Davidson, “The Lives of Asylum Seekers in Detention Detailed in a Unique Database,” *The Guardian*, 10 August 2016, <https://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>.

“after two weeks I will kick your arse.”¹⁹⁸ In another case noted in the files, a Save the Children caseworker made a safety plan with two boys in the Centre to protect themselves from a Nauruan guard who had grabbed one boy by the throat and pushed him to the ground, and picked up the other and thrown him through a doorway. The safety plan included “staying together, keeping in common areas and staying close to parents.”¹⁹⁹

4.2 IMPUNITY AND FAILURE TO PROTECT

Refugees and asylum-seekers who said they were victims of crime said that the police failed to adequately investigate their complaints.

The father of “Nahal,” mentioned above, said that he knew the man who tried to rape his daughter, and told the police. To the father’s knowledge, the police have not done anything to investigate the incident.²⁰⁰ This case is described in greater detail in the annex.

“Akash” from Bangladesh said of his attack, described earlier: “Once I came to, I called the police, but they didn’t come. [...] I filed the case with the police, and inquired several times, but they are not doing anything.”²⁰¹ Akash also said that a few months previously, someone stole his phone and money from his room – he said he filed a report with the police but that they did not do anything.

Iranian refugee “Rahim” said that after he and his friend were kicked off the cliff, “Police came, took us to the hospital in police car, we filed a report, but then the report disappeared. When Connect [Settlement Services] checked with the police, they said they didn’t have anything. Police just said nothing happened there. [...] Police just tell us, ‘Don’t go to places where most Nauruans live, because they get drunk, especially Saturday and Sunday, and we can’t do anything about it.’”²⁰²

“Jamilah” from Somalia said that after the machete attack on her husband, “We reported to the police, [but] there was nothing for five months; just this week two police office came to our house and looked around.”²⁰³

The husband of the Iranian woman attacked with a metal bar said that after visiting the hospital, they went to the police station to give a statement. He said: “They asked if I knew the perpetrators, and then after some time said, ‘Maybe she hit herself’. I said ‘Are you crazy?’ They didn’t type up a statement, didn’t even open a file.”²⁰⁴

“Jahan,” an Iranian refugee, told Amnesty International of two occasions when his complaints were not adequately followed up by the Nauru Police Force. On one occasion, in about September 2015, his 16-year old sister was punched in the face by a Nauruan boy – the police drove them to the hospital, but took no other action. At another time, Jahan said that in September 2016, a car collided into his parked car. He took a photo of the other car and its license plate, and called the police. They asked him many questions and took down the details of the incident. At the end of the phone call, Jahan said that the police asked him if he was a refugee. He answered yes, and told Amnesty International that at that point, “everything changed –

¹⁹⁸ Incident report classified ‘major’, dated 18 February 2015, Nick Evershed, Ri Liu, Paul Farrell, and Helen Davidson, “The Lives of Asylum Seekers in Detention Detailed in a Unique Database,” *The Guardian*, 10 August 2016, <https://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>.

¹⁹⁹ Incident report classified ‘major’, dated 22 February 2015, Nick Evershed, Ri Liu, Paul Farrell, and Helen Davidson, “The Lives of Asylum Seekers in Detention Detailed in a Unique Database,” *The Guardian*, 10 August 2016, <https://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>.

²⁰⁰ Amnesty International interview with refugee, Nauru, 26 July 2016.

²⁰¹ Amnesty International interview with refugee, Nauru, 26 July 2016.

²⁰² Amnesty International interview with refugee, Nauru, 28 July 2016.

²⁰³ Amnesty International interview with refugee, Nauru, 25 July 2016.

²⁰⁴ Amnesty International interview with refugee, Nauru, 27 July 2016.

they had thought I was an ex-pat.” Jahan speaks fully fluent English. The police told him they would send someone, but he waited two hours and no one came.²⁰⁵

An Iranian refugee recounted his experience of trying to report a robbery: “I went to the police station five or six times. They just said their computer was broken and they couldn’t take a report. Eventually I said ‘Let me write it down by hand,’ but they said they didn’t have paper.”²⁰⁶

These allegations of inadequate action are supported by other sources. Transfield Services (now called Broadspectrum) gave evidence to the Senate Select Committee that there had been 67 allegations of child abuse in Nauru, 12 of which had been referred to the NPF; but as of 20 July 2015, the police had not charged anyone in relation to any of these alleged incidents.²⁰⁷ According to the Australian Department of Immigration and Border Protection, service-providers working in the Centre had referred 50 cases involving physical and sexual assault to the Nauruan police between September 2012 and May 2015.²⁰⁸ Eleven of those cases involved children.²⁰⁹ The Department informed the Australian Senate Select Committee that the NPF had laid charges in five of these cases, resulting in two convictions, with the remaining 45 cases still under review by the NPF.²¹⁰ The question of convictions was raised again at a Senate Estimates hearing on 8 February 2016. The Department took the question on notice, replying: “Since 1 July 2015, the Department and its Service Providers have referred 20 matters [of assault, including sexual assault] to the Nauru Police Force. The number of criminal prosecutions resulting from such referrals is a matter for the Government of Nauru.”²¹¹ According to confidential information provided to Amnesty International in September 2016, in the preceding two years, there had not been a single prosecution involving refugees or asylum-seekers as complainants in cases of assault, rape or theft.²¹² Several service-providers, as well as two prominent lawyers in Australia, said that as far as they knew, no Nauruan had ever been charged for a crime committed against a refugee or asylum-seeker.²¹³ Amnesty International has copies of multiple reports that were filed with the Nauru Police Force, and which refugees and asylum-seekers say were not followed up on. Nauru’s former Chief Justice, Geoffrey Eames, stated that “there is a serious question about [the police’s] independence and about their willingness to investigate allegations against Nauruans who are charged with assaults of non-Nauruans.”²¹⁴ Likewise, after representatives of the UN Office for the High Commissioner for Human Rights (OHCHR) visited the island in August 2016, OHCHR representative Chitra Massey concluded: “We were unable to find much evidence that allegations made by refugees are properly investigated by the Nauru Police Force. None of them have reached the trial stage. This raises serious concerns about impunity.”²¹⁵

²⁰⁵ Amnesty International interview with refugee by phone, 6 October 2016.

²⁰⁶ Amnesty International interview with refugee, Nauru, 26 July 2016.

²⁰⁷ Cited in Senate Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, *Taking Responsibility: Conditions and Circumstances at Australia’s Regional Processing Centre in Nauru*, 31 July 2015, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/~media/Committees/nauru_ctte/Final_Report/report.pdf, para. 1.78.

²⁰⁸ *Senate Select Committee: Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru*, Hansard, 9 June 2015, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommsen%2Fcf736b90-95c1-47c2-8f8e-1562423baa0e%2F0005%22>.

²⁰⁹ “Answers to questions taken on notice, provided by the Department of Immigration and Border Protection, received 29 June 2015,” (No.21), relating to 9 June 2015 hearing, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Additional_Documents.

²¹⁰ *Senate Select Committee: Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru*, Hansard, 9 June 2015, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommsen%2Fcf736b90-95c1-47c2-8f8e-1562423baa0e%2F0005%22>.

²¹¹ *Questions Taken on Notice: Additional Estimates Hearing 8 February 2016, Immigration and Border Protection Portfolio (AE16/022 – Nauru – Data on complaints)*, http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/legconctte/estimates/add1516/DIBP/index.

²¹² Confidential information provided to Amnesty International, 2 September 2016.

²¹³ Amnesty International emails with lawyers, 24-27 September 2016; Amnesty International interview with service-provider, Nauru, 24 July 2016; Amnesty International interview with service-provider, Melbourne, 3 September 2016.

²¹⁴ Cited in Senate Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, *Taking Responsibility: Conditions and Circumstances at Australia’s Regional Processing Centre in Nauru*, 31 July 2015, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/~media/Committees/nauru_ctte/Final_Report/report.pdf, para. 2.36.

²¹⁵ OHCHR, “Nauru’s Migrant Dead End,” 30 September 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/MigrantsInNauru.aspx>.

4.3 ARBITRARY ARRESTS AND INTIMIDATION

According to consistent testimonies from a range of people and organizations, the Nauruan authorities have used law enforcement as a means to harass and intimidate asylum-seekers and refugees.

The Nauru Police Force has arrested refugees and asylum-seekers arbitrarily. Under international law, the notion of “arbitrariness” in relation to arrest and detention “is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.”²¹⁶ A service-provider said: “Arbitrary arrests as a form of intimidation are common on Nauru.”²¹⁷ In addition to the case of Hamid Reza Nadaf, which is discussed later in this chapter, an Iranian refugee told Amnesty International that he was jailed in 2015 following a protest action he engaged in.²¹⁸ Amnesty International also received information from a credible source that three refugee children were stripped naked and held overnight in a police cell in 2015.²¹⁹

People have also been arbitrarily arrested for self-harming. Sam Nemati, a recognized refugee and single father was “convicted” and jailed for trying to kill himself in April 2016.²²⁰ In late May 2016, Nauru decriminalized suicide, as well as homosexuality.²²¹ However, since that time, Amnesty International has received credible reports that people are still being jailed for threatening to or actually harming themselves, but on the basis of other provisions in the *Nauru Crimes Act*. Service-providers have also told Amnesty International that in May 2016, their managers instructed them to report self-harm incidents to the Nauru Police Force.²²² This has resulted in some service-providers being forced to testify against their own clients in court. As a result, there has been a drop in reported self-harming, as several service-providers said they felt it was their ethical duty to not take action that would result in criminalizing behaviour requiring mental healthcare – not law enforcement.²²³ But even if suicide and attempted suicide are no longer criminal offences, Nauruan law still permits refugees to be prosecuted for actions that took place before May 2016.²²⁴ Indeed, “Wishal,” a Pakistani refugee who was jailed for 15 days in May 2016 after he doused himself in petrol, told Amnesty International in July that the police released him from jail, but told him he might still be brought to court.²²⁵

The Nauruan authorities have also engaged in conduct that could reasonably be interpreted as threatening or intimidating towards refugees and asylum-seekers. In an astounding breach of basic police ethics, in October 2015 the Nauruan Government publicized the name of a sexual assault complainant, who was a refugee, along with graphic details of the alleged attack.²²⁶ On 2 June 2016, a Nauruan police officer posted a hateful comment about refugees on a public social media page.²²⁷ Hamid Reza Nadaf, whose case is discussed further in this chapter, said that a photo of him taken by an NPF officer on the officer’s personal mobile phone after he had been arrested was circulated on a closed Facebook page, with a caption warning that he was dangerous.²²⁸ In August 2016, President Baron Waqa accused refugees of fabricating stories of

²¹⁶ UN Human Rights Committee, *General Comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, UN Doc. CCPR/C/GC/35, <http://www.refworld.org/docid/553e0f984.html>, para. 12.

²¹⁷ Confidential information provided to Amnesty International.

²¹⁸ Amnesty International interview with refugee, Nauru, 26 July 2016.

²¹⁹ Confidential information provided to Amnesty International, 16 September 2016.

²²⁰ Helen Davidson, “Refugee on Nauru Convicted of Attempted Suicide to ‘Deter’ Others,” *The Guardian*, 15 April 2016, <https://www.theguardian.com/world/2016/apr/15/refugee-on-nauru-convicted-of-attempted-suicide-to-deter-others>

²²¹ The Government of the Republic of Nauru, “Nauru Government updates Criminal Code”, 27 May 2016, <http://www.nauru-news.com/#!/Nauru-Government-updates-Criminal-Code/cjds/57450aab0cf22b6a7596d9a4>.

²²² Amnesty International interviews with service-providers, Nauru, 24 and 25 July 2016; Amnesty International interview with service provider, Melbourne, 3 September 2016.

²²³ Amnesty International interviews with service-providers, Melbourne, 3 September 2016.

²²⁴ *Nauru Crimes Act*, Division 4.1, s. 54.

²²⁵ Amnesty International interview with refugee, Nauru, 24 July 2016.

²²⁶ Paul Farrell, “PR Firm Criticised for Release of Name and Graphic Details after Alleged Rape on Nauru,” 13 October 2015, *The Guardian*, <https://www.theguardian.com/world/2015/oct/13/release-of-name-and-graphic-details-of-alleged-on-nauru-extraordinary>.

²²⁷ Confidential information provided to Amnesty International, 18 September 2016.

²²⁸ Amnesty International interview with refugee by phone, 28 September 2016.

abuse in order to go to Australia.²²⁹ Similarly, the Nauru Police Force (NPF) has publicly said they are “sick of the lies told about them and the fabricated allegations of refugees.”²³⁰ NPF Commissioner Corey Caleb said that “refugees regularly fabricate allegations of assault and sexual assault as they know that Australian advocates and lawyers will publicise the lies as fact.” He continued:

“They [refugees] tell us they have been assaulted but their stories seldom add up; there is usually no physical evidence or witnesses or even any details. [...] Not only do police have nothing to investigate except an allegation with no information but even if we had a suspect, no prosecutor can build a case when the only piece of so-called evidence is an unsubstantiated allegation.”²³¹

Commissioner Caleb added: “Even in Australia, these allegations would be dismissed and those making them would be charged with making a false complaint.”²³²

These statements by the NPF Commissioner stand in sharp contrast to the testimony of refugees and asylum-seekers, Nauru’s former Chief Justice as well as representatives of the UN Office for the High Commissioner for Human Rights, all of whom have spoken out about the failure of the NPF to investigate or take seriously reports of crimes committed against non-Nauruans.

4.4 POLICE MISCONDUCT

Amnesty International has also received reports about misconduct on the part of the Nauru police. Researchers heard testimony from several different sources – both on and off Nauru – that the Nauruan Police Force may be liable for perverting the course of justice, which is a criminal offence under local law.²³³ The allegations relate to offences such as forcing asylum-seekers to sign pre-written and false statements²³⁴ and ripping up a refugee’s statement in front of him and forcing him to sign one written by the police.²³⁵ Furthermore, some refugees have claimed that Nauruan police officers have physically assaulted or robbed them. A service-provider said that in early 2016, a refugee woman was assaulted by police officers who entered the Refugee Processing Centre; according to incident reports seen by Amnesty International, after she had tried to bring her dessert with her outside of the eating area, “the police were called and took her away by dragging her roughly to the police station.”²³⁶ A Pakistani refugee said: “One of my friends got grabbed in a supermarket by a man in civilian clothes, and when he said he would complain to the police, the man took out a police card [badge] and said, ‘I am the police, go ahead and complain’.”²³⁷ An Iranian refugee said that he was robbed by two drunk police officers.²³⁸

A father’s three-month imprisonment and a son with tuberculosis: the case of Hamid and Irfan

The experience of one Iranian family exposes the range and severity of abuses that the Australian government has inflicted on people seeking asylum, such as discrimination, impunity, persecution, children’s rights violations, *refoulement* and denial of medical care.²³⁹ Their treatment also demonstrates

²²⁹ Government of the Republic of Nauru, “Media mudslingers distort the image of Nauru,” 22 August 2016, <http://www.nauru-news.com/single-post/2016/08/22/Media-mudslingers-distort-the-image-of-Nauru>.

²³⁰ Government of the Republic of Nauru, “‘We Won’t Cop it Anymore’ – Nauru Police,” 2 February 2016, <http://www.nauru-news.com/#/We-wont-cop-it-anymore-Nauru-Police/cjds/56b938030cf2dc1600ea69e6>.

²³¹ Government of the Republic of Nauru, “‘We Won’t Cop it Anymore’ – Nauru Police,” 2 February 2016, <http://www.nauru-news.com/#/We-wont-cop-it-anymore-Nauru-Police/cjds/56b938030cf2dc1600ea69e6>.

²³² Government of the Republic of Nauru, “‘We Won’t Cop it Anymore’ – Nauru Police,” 2 February 2016, <http://www.nauru-news.com/#/We-wont-cop-it-anymore-Nauru-Police/cjds/56b938030cf2dc1600ea69e6>.

²³³ *Nauru Crimes Act*, s. 227.

²³⁴ Amnesty International interview with refugee, Nauru, 28 July 2016; Confidential incident report from the Refugee Processing Centre.

²³⁵ Amnesty International interview with service-provider by phone, 29 August 2016.

²³⁶ Confidential information provided to Amnesty International, September 2016.

²³⁷ Amnesty International interview with refugee, Nauru, 28 July 2016.

²³⁸ Amnesty International interview with refugee, Nauru, 28 July 2016.

²³⁹ All information from this section comes from Amnesty International phone interviews with Hamid Reza Nadaf, 28 September 2016 and 10 October 2016, as well as electronic communication with former service-providers in September 2016.

the significant role that Australian officials play in these violations, and the lengths to which they go in efforts to hide such abuse.

Hamid Reza Nadaf is a 40-year-old mechanic from Iran, and his son Irfan is eight years old. They live at the Refugee Processing Centre (RPC), as they have not yet received a final decision on their applications for asylum. On 3 June 2016, Mr. Nadaf was arrested and subsequently jailed for over three months – until 7 September 2016. It appears that his arrest and imprisonment were unlawful.

Mr. Nadaf claims that the Nauruan authorities had long been looking for a pretext on which to arrest him. He is involved in a project documenting conditions at the RPC – his role is to take photos. Although people are not permitted to take pictures within the centre itself, it is not forbidden to do so from outside the RPC, which is what Mr. Nadaf did on several occasions. He said that Nauru Police Force (NPF) officers had warned him several times to stop, and had written down his name and other details. Amnesty International has seen a copy of a search warrant for Mr. Nadaf's premises on 8 June 2016, permitting the NPF to seize any "computer, laptop, printer and any electronic device" from his living quarters.

Immediately prior to the arrest, Mr. Nadaf had attempted to lodge complaints against both a guard at the RPC and an Australian Federal Police (AFP) officer. After a Nauruan security guard at the RPC threw Irfan out of the centre's store on 26 May – which Mr. Nadaf said resulted in an injury to his son's hand, and which required medical treatment – Mr. Nadaf wanted to lodge a complaint with the local police. He took his son to the station on 30 May 2016. When they arrived, a uniformed AFP officer who was present took Irfan into a room alone and questioned him for 20 minutes. When they emerged, Mr. Nadaf was angry – he said: "You should not have done that without me present." After he demanded a copy of any statement that Irfan had made, the AFP officer told him that the copy machine was not working and that he would be contacted at a later date. Mr. Nadaf kept pressing for a copy of the statement, without any result.

Finally, on the afternoon of 3 June, Mr. Nadaf was told that his son's statement was ready and that he should leave the RPC to collect it. Outside of the centre, there were three police cars. According to Mr. Nadaf he saw over 20 officers standing around: about 15 NPF officers, and five to seven AFP officers. Mr. Nadaf was told to get into one of the police cars. He responded: "Why? It was me who made the complaint."

He was driven to the police station, where there were a number of NPF officers as well as several AFP officers. He was then placed in a dark room for about four hours, until 9 pm. Two NPF officials then took him into another room where they told him that he had threatened a Nauru national. They were verbally abusive and showed him a letter – written in English – that Mr. Nadaf had supposedly written. Mr. Nadaf is a Farsi-speaker who has a very rudimentary understanding of English. He told Amnesty International that it was impossible for him to read the letter – let alone write it. A former service-provider who knows Mr. Nadaf told Amnesty International that he can barely speak English, and said that the letter "was clearly a set-up." The letter has been extensively shared on social media, accompanied with threatening comments from local Nauruans, as discussed earlier in this chapter.

After a night at the police station, on 4 June, Mr. Nadaf's case manager arrived with an interpreter, and together they attended the court at 4 pm. The judge, a woman from the Solomon Islands, told him that he was charged with threatening a Nauruan citizen. He was then transferred to the prison, where he was placed in solitary confinement. He said: "I was told I could be dangerous – you are a refugee – you might escape." It is unclear to where Mr. Nadaf could possibly have escaped, given that no refugees or asylum-seekers can leave the island, which – in any case – is extremely small. A week later, he was transferred into a room in the prison with two other refugees – an Iranian Kurdish man and an Iraqi man – both of whom appeared to be in acute mental distress.

Over the course of his 96-day imprisonment, Mr. Nadaf said he was never permitted to speak in court. He said that he had several court appearances – each time, the same judge asked his name, repeated that he was being charged with threatening a Nauruan citizen, and then adjourned. His court-appointed lawyer

attempted to get him released on bail, but did not succeed. Mr. Nadaf said he was not given any copies of the charges against him, but was told that if he were found guilty, he would be imprisoned for five years.

Eventually, a Nauruan guard who works at the RPC testified in court that Mr. Nadaf had thrown the threatening letter at him on 6 June, which is three days after Mr. Nadaf had been arrested. Mr. Nadaf believes that it was this inconsistency in the testimony that resulted in a finding of “not guilty” and his release on 7 September.

Mr. Nadaf told Amnesty International that since his release he has been a nervous wreck. His wife returned to Iran in early October 2016; he said she left because the medical care she received at Australia’s RPC was inadequate.

Irfan has suffered numerous human rights violations linked to his status as a child. Mr. Nadaf’s wife, who is not Irfan’s biological mother, has serious mental health issues and is unable to care for him, which meant that during the course of his father’s three-month imprisonment, Irfan was effectively alone at the RPC. Mr. Nadaf was asked to provide the names of two people who could care for Irfan, but eventually – for reasons that are not entirely clear – they were no longer able to do so, and his son was left in the care of workers at the centre. Given the overall situation at the RPC, as well as the specific treatment of Irfan and his father by security guards at the RPC, this is deeply concerning. After Mr. Nadaf had not seen his son for 16 days, he staged a hunger strike, after which Irfan was permitted to visit him occasionally.

Mr. Nadaf also said that Irfan also has tuberculosis, a highly infectious and sometimes deadly illness. Mr. Nadaf said that Irfan was diagnosed about 14 months previously – in August 2015. Irfan took the prescribed medication for six months, but it did not agree with him, and he has since refused to take it. Amnesty International has seen a photo of the medication – 250 mg of Isoniazid per day, which is a drug used to treat and prevent tuberculosis. Mr. Nadaf said that he was presented with a “consent form” stating that his son was refusing to take his medication, so if he has tuberculosis, “it was his own fault.” He refused to sign. Shockingly, Mr. Nadaf says that most of the approximately 40 children living in the RPC have tuberculosis, and that the conditions in the centre – in particular the dampness and the phosphate in the air – are particularly damaging for this illness.

5. GOVERNMENT OF AUSTRALIA'S DELIBERATE POLICY OF CRUELTY AND ABUSE

“When [Australia’s former Immigration] Minister Morrison came here in October 2013 [...], he was just pointing his finger at us, saying, ‘Don’t ask questions, just listen – call to your country, call to your village, and just tell them not to come to Australia, Australia is closed!’

Then I realized we were not in processing – we were hostages.”

“Hassan,” Afghan refugee on Nauru, 17 July 2016²⁴⁰

As this chapter will discuss, Australia must be held accountable under international law for the human rights violations endured by asylum-seekers and refugees trapped on Nauru. The Government of Australia has isolated vulnerable women, men and children on a remote place from which they cannot leave, with the specific intention that these people should suffer harm. As the evidence presented in this report has demonstrated, harm has indeed ensued – it has been devastating and, in some cases, irreparable. The Government of Australia’s “processing” of refugees and asylum-seekers on Nauru is a deliberate and systematic regime of neglect and cruelty, and amounts to torture under international law.

²⁴⁰ Amnesty International interview with refugee, Nauru, 27 July 2016.

5.1 AUSTRALIA IS RESPONSIBLE

A range of Australian Government officials – on Nauru and in Australia – are involved with running the Refugee Processing Centre itself and with the management of the refugee population living outside of the centre.

Many of these Australian officials are employees of the Department of Immigration and Border Protection. The Australian Border Force (ABF), which is the department's operational wing, is a significant presence on the island. The incident reports in the Nauru Files provide evidence of Department of Immigration personnel directing Centre operations.²⁴¹ All service-providers said that ABF had authority over them – “If you ask questions, you're told ‘It's an ABF directive.’”²⁴² One managerial-level service-provider explained that there was a daily meeting among service-provider managers and ABF officials, but that no one on the island had the authority to make any decisions: “They [ABF] didn't have any power – everything had to go back to Canberra. [...] They can't authorize anything, they can't do anything, unless Canberra said ‘Jump’.”²⁴³ The same person said that the ultimate authority for deciding on medical evacuations from Nauru also lay with ABF: “IHMS can't do anything unless Canberra authorizes it.”²⁴⁴ This was echoed by another service-provider,²⁴⁵ and by a refugee who said a psychologist told her that he was sorry, “but cannot do anything because Immigration doesn't allow.”²⁴⁶ A senior IHMS manager who met with Amnesty International researchers said that sometimes their requests for medical transfers were refused by the Australian authorities; when pressed on the question of whether medical transfers ever took place or failed to take place despite medical advice, the manager would only say “I can't recall.”²⁴⁷

The Australian Department of Immigration and Border Protection also provides substantial assistance in areas that are under the nominal control of the Nauruan authorities. Regarding decisions on people's refugee applications, the department has said that “[s]pecific expertise has been provided to mentor staff across the range of administrative functions including refugee status determination,”²⁴⁸ and that “[t]he Australian Government has assisted and continues to provide support to regional processing countries in the development and implementation of robust protection determination processes and settlement services.”²⁴⁹

Beyond officials from the Department of Immigration and Border Protection, the other principal Australian actors on Nauru are personnel from the Australian Federal Police (AFP). It is not clear how many AFP officers are on the island at any one time or how much authority they have, but at a minimum they play a key consultative and training role. Officially, AFP provides two “Police Advisors” to the NPF, as well as other “specialist advisors” on certain occasions.²⁵⁰ Charmaine Scotty, Nauru's Minister of Home Affairs, has said that the NPF have both “training and assistance” from the Australian Federal Police.²⁵¹ In July 2015, Australia's Senate Select Committee asserted: “While investigation of alleged crimes on Nauru is the primary

²⁴¹ “Advised by Control who was advised by DIBP to change to Information” (Incident report classified ‘major’, dated 26 June 2015); “Following directions from ABF that all pregnant women will be giving birth on Nauru...” (Incident report classified ‘major’, dated 25 September 2015); “As per [redacted] and [redacted] of ABF, downgraded to ‘information report’.” (Incident report classified ‘major’, dated 15 August 2015); “At 1935 hrs [redacted] (ABF) attended the control room and determined the incident to be classified as Threat of Self Harm – Major” (Incident report classified ‘major’, dated 12 August 2015). Nick Evershed, Ri Liu, Paul Farrell, and Helen Davidson, “The Lives of Asylum Seekers in Detention Detailed in a Unique Database”, *The Guardian*, 10 August 2016, <https://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>.

²⁴² Amnesty International interview with service-provider, Melbourne, 3 September 2016.

²⁴³ Amnesty International interview with service-provider, Melbourne, 2 September 2016.

²⁴⁴ Amnesty International interview with service-provider, Melbourne, 2 September 2016.

²⁴⁵ Amnesty International interview with service-provider, Melbourne, 3 September 2016.

²⁴⁶ Amnesty International interview with refugee, Nauru, 28 July 2016.

²⁴⁷ Amnesty International interview with IHMS, Sydney, 30 August 2016.

²⁴⁸ Australian Department of Immigration and Border Protection, *Submission to the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru*, May 2015, p. 12.

²⁴⁹ Australian Department of Immigration and Border Protection, *Submission: Senate Inquiry into the Conditions and Treatment of Asylum Seekers and Refugees at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea*, March 2016, p. 10.

²⁵⁰ Australian Minister for Immigration and Border Protection, “Australia Welcomes Nauru Open Centre,” 5 October 2015, <http://www.minister.border.gov.au/peterdutton/2015/Pages/australia-welcomes-nauru-open-centre.aspx>.

²⁵¹ Committee on the Rights of the Child session, Presentation by Nauru Minister of Home Affairs Charmaine Scotty, Geneva, 13 September 2016.

responsibility of the Nauru Police Force (NPF), Australian Federal Police officers have been deployed to Nauru specifically to assist the NPF with such investigations.”²⁵²

There is evidence that AFP’s role is more important than is generally acknowledged. Indeed, Nauru Police Commissioner Corey Caleb has suggested that AFP officials are not only informed but play an active role in investigations: “We have Australian Federal Police advisors who have day-to-day input into investigations and they know the facts.”²⁵³ The presence of AFP officers at the arrest – apparently unlawful – of Hamid Reza Nadaf, and an AFP officer’s solo questioning of his young son Irfan – expose the extent to which AFP is involved in law enforcement operations on Nauru.²⁵⁴ An Iranian refugee, “Jahan,” told Amnesty International that after a friend of his was arrested a few months previously, the man’s wife asked him to go to the station to make inquiries. Jahan said that there were two AFP officers present, and they told him that they were “on top of the investigation,” and that they had already questioned his friend.²⁵⁵

Another indication of Australia’s authority on Nauru is the fact that they have power over refugees’ departure from the island. The Government of New Zealand had made an offer to accept 150 refugees per year from Nauru and Manus Island. The offer appears to be entirely in the hands of the Australian Government, which rejected it for several years, but in September 2016 appeared to be withdrawing its opposition.²⁵⁶ Australia also assists with removals to people’s country of origin – which, as discussed earlier in Chapter 3, raises serious questions about the international legal principle of *non-refoulement*.

More evidence of Australian power on Nauru is clear in the incident-reporting framework. Australian authorities are continuously informed about what is happening on Nauru – both in and outside the Refugee Processing Centre. The Australian Department of Immigration and Border Protection affirms that “[s]ervice-providers are contractually required to report and record all alleged incidents and report those incidents to the Department. The Department maintains a record of all reported alleged incidents.”²⁵⁷ A confidential August 2015 Department of Immigration document – “Nauru Settlement Incident Reporting Protocol” – explains that all major and critical incidents must be reported to the ABF Duty Officer by phone, and that all “reportable incidents” require a written report to be sent to a list of 31 email addresses, most (19) of which appear to be Department of Immigration addresses (“border.gov.au”).²⁵⁸ The document makes it clear that “reportable incidents” include events that takes place anywhere on Nauru – not just in the Refugee Processing Centre.²⁵⁹ Beyond the incident reporting framework, Australian Department of Immigration and Border Protection managers also participate in daily and weekly meetings at the centre, during which incidents are discussed. The incident reporting framework on Nauru is mandatory, meaning that companies holding contracts with the Department of Immigration and Border Protection will be penalized financially if their employees fail to report. IHMS management, discussing this system, explained that ABF has daily meetings with service providers, and will know if an incident on the island has not been reported, as “incidents come to light” in these meetings.²⁶⁰

Nauruan officials do not appear to play any significant role in the management of “offshore processing” on their territory, providing further support for Australia bearing principal responsibility for the refugees and asylum-seekers on the island. Dr. Peter Young, former director of mental health for IHMS, said that on

²⁵² Senate Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, *Taking Responsibility: Conditions and Circumstances at Australia’s Regional Processing Centre in Nauru*, 31 July 2015, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/~/_media/Committees/nauru_ctte/Final_Report/report.pdf, para. 5.84.

²⁵³ Government of the Republic of Nauru, “‘We Won’t Cop it Anymore’ – Nauru Police,” 2 February 2016, <http://www.nauru-news.com/#/We-wont-cop-it-anymore-Nauru-Police/cjds/56b938030cf2dc1600ea69e6>.

²⁵⁴ See boxed text at the end of Chapter 4.

²⁵⁵ Amnesty International interview with refugee by phone, 6 October 2016.

²⁵⁶ “Peter Dutton: Behind Australia’s Tough Border Policies,” Al Jazeera, 17 September 2016, <http://www.aljazeera.com/programmes/talktojazeera/2016/09/peter-dutton-australia-tough-border-policies-160915133845743.html>.

²⁵⁷ Australian Department of Immigration and Border Protection, *Submission: Senate Inquiry into the Conditions and Treatment of Asylum Seekers and Refugees at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea*, March 2016, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Offshore_RPCs/Submissions, DIBP Mar 2016, p. 31.

²⁵⁸ Australian Department of Immigration and Border Protection, *Nauru Settlement Incident Reporting Protocol*, August 2015, p. 3-4.

²⁵⁹ Australian Department of Immigration and Border Protection, *Nauru Settlement Incident Reporting Protocol*, August 2015, p. 3.

²⁶⁰ Amnesty International interview with IHMS, Sydney, 30 August 2016.

Nauru, “it was very obvious that the [Immigration] Departmental person was the person in charge. There was a nominal local [Nauruan] person whom I never even met, who didn’t have any role apart from a ceremonial one.”²⁶¹ In an August 2015 Department of Immigration document – “Nauru Settlement Incident Reporting Protocol” – the Nauruan authorities do not appear to play any role in incident-reporting, nor in decision-making. Of the 31 email addresses that must be cc’d in all incident-reporting, there is only one (a “gmail” address) that does not appear to be from the Australian Department of Immigration and Border Protection or one of its contracted service-providers.²⁶² A former service-provider who worked on Nauru for 18 months said that the “Government of Nauru Office” in the Refugee Processing Centre was only occupied twice during that time, and that Nauruan officials were present at about 2% of the meetings that she attended.²⁶³ Similarly, in the incident reports released by The Guardian in August 2016, Nauruan authorities are virtually never mentioned as a stakeholder involved in decision-making or in the provision of services to asylum-seekers and refugees. Of all the major and critical incident reports from 2013, 2014 and 2015 (a total of 287 reports), Government of Nauru officials are one of the last stakeholders to be informed about an incident. In contrast, Australian authorities (often noted as DIBP [Department of Immigration and Border Protection] or ABF [Australian Border Force]) are one of the first. For example, in an incident when a Code Blue (Medical Emergency) was called after a female asylum-seeker was found in a tent trying to hang herself, Wilson Security notified the DIBP duty officer immediately once the woman had been taken from the Refugee Processing Centre to hospital via ambulance. The Nauru Government representative was the sixth stakeholder on the list. The entry reads: “Telephone call made to Nauru Govt Managers – 3 attempts made to [redacted] and [redacted]. No response to any of these attempts.”²⁶⁴

Notwithstanding Australia bearing principal – or at a minimum, joint – responsibility for the human rights violations suffered by asylum-seekers and refugees, Nauru continues to retain responsibility as well. Under international law, Nauru should be considered to be aiding or assisting in the commission of internationally wrongful acts.²⁶⁵

5.2 SUFFERING AS PART OF THE POLICY

The appalling harm that refugees and asylum-seekers have suffered is the inevitable and foreseeable consequence of transporting them there in the first place. Dr. Peter Young, former director for mental health at IHMS, said that the Department of Immigration and Border Protection “allowed a system to persist that would guarantee that a lot of things would fall through the cracks.”²⁶⁶ One service-provider said: “Nauru is built to fail these people: how much can we break them so that they go back, and no boats will ever come again?”²⁶⁷

²⁶¹ Amnesty International interview with Peter Young, Sydney, 6 September 2016.

²⁶² Australian Department of Immigration and Border Protection, *Nauru Settlement Incident Reporting Protocol*, August 2015, p. 3-4.

²⁶³ Amnesty International interview with service-provider, Melbourne, 2 September 2016.

²⁶⁴ Incident report classified ‘major’, dated 2 February 2014, Nick Evershed, Ri Liu, Paul Farrell, and Helen Davidson, “The Lives of Asylum Seekers in Detention Detailed in a Unique Database,” *The Guardian*, 10 August 2016, <https://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>.

²⁶⁵ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, <http://www.refworld.org/docid/3ddb8f804.html>.

Article 16: Aid or assistance in the commission of an internationally wrongful act – A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
(b) the act would be internationally wrongful if committed by that State.

Article 17: Direction and control exercised over the commission of an internationally wrongful act – A State which directs and controls another State in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

(a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
(b) the act would be internationally wrongful if committed by that State.

Article 18: Coercion of another State – A State which coerces another State to commit an act is internationally responsible for that act if:

(a) the act would, but for the coercion, be an internationally wrongful act of the coerced State; and
(b) the coercing State does so with knowledge of the circumstances of the act.

²⁶⁶ Amnesty International interview with Peter Young, Sydney, 6 September 2016.

²⁶⁷ Amnesty International interview with service-provider, Melbourne, 3 September 2016.

Refugees and asylum-seekers who have been forcibly placed on Nauru by the Government of Australia face indefinite and unlawful detention. Although the Refugee Processing Centre is described as an “open” centre, refugees and those seeking asylum are confined to a small island, much of which is uninhabitable, and from which they cannot leave – even when they are recognized as refugees. As one service-provider put it, “Inside or outside the [Centre’s] fence, the island is a prison – and nowhere is safe for them.”²⁶⁸ Detention is known to cause long-term harm, particularly with respect to vulnerable populations. The Royal Australian & New Zealand College of Psychiatrists has stated:

*“There is clear evidence that the risk and severity of mental illness increases the longer a person is in detention. Prolonged immigration detention has been shown to worsen mental illness in those already suffering when detained and to result in the development of completely new conditions in those without mental illness on arrival.”*²⁶⁹

The Royal Australian College of General Practitioners and the Australian College for Emergency Medicine, supported by the Australian Psychological Society, have said that “the health issues caused by detention cannot be addressed while people remain in detention, regardless of the extent or quality of the services available.”²⁷⁰ The Royal Australasian College of Physicians and Australian Psychological Society have called for the complete cessation of offshore immigration detention.²⁷¹ One of the current service-providers on the island, Overseas Services to Survivors of Torture and Trauma, has publicly called for people to be immediately removed from Nauru.²⁷²

Another guarantee of harm to people seeking asylum is the secrecy that surrounds offshore processing of refugees, which is discussed further in Chapter 6. In a detention-like environment such as Nauru, in order to ensure that people’s rights are respected – including their right to be free from torture or ill-treatment – independent scrutiny and regular monitoring are essential.²⁷³ As summarized by two Australian academics:

*“That human rights abuses will inevitably occur within unregulated, closed institutions is now well-established in social psychology, and reflected in national and international laws. Social psychologists point to the dangers of creating conditions whereby one group of people have unmitigated and arbitrary authority over another group, and particularly if the confined group has lesser social status. Abuse occurs not because of the inherent cruelty of prison guards, but because of environmental factors inherent to closed institutions: including group conformity, deference to authority, and the identification of an ‘outgroup’ as both ‘lesser’ in status and ‘threatening cherished values’.”*²⁷⁴

²⁶⁸ Amnesty International interview with service-provider, Melbourne, 3 September 2016.

²⁶⁹ RANZCP, Submission 25, p. 1, Senate Legal and Constitutional Affairs Reference Committee into the Conditions and Treatment of Asylum Seekers and Refugees at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Offshore_RPCs/Submissions.

²⁷⁰ RACGP & ACEM, Submission 19, p. 1, Senate Legal and Constitutional Affairs Reference Committee into the Conditions and Treatment of Asylum Seekers and Refugees at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Offshore_RPCs/Submissions.

²⁷¹ APS, Submission 23, p. 2; RACP, Submission 28, p. 2, Senate Legal and Constitutional Affairs Reference Committee into the Conditions and Treatment of Asylum Seekers and Refugees at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Offshore_RPCs/Submissions.

²⁷² The home page of OSSTT (<http://www.osstt.org.au/>) has the message: “Overseas Services to Survivors of Torture and Trauma shares the well-documented concerns expressed by a number of qualified people about the deteriorating mental health of refugees and asylum seekers on Nauru and Manus Island. We strongly endorse Foundation House’s call for the Australian Government to act immediately to resettle refugees from Nauru and Papua New Guinea to countries where they have the chance to live securely and productively. <http://www.foundationhouse.org.au/news/papua-new-guinea-nauru/>.”

²⁷³ UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, <http://www.refworld.org/docid/503489533b8.html>, Guideline 10; UN Human Rights Committee, *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, UN Doc. CCPR/C/GC/35, <http://www.refworld.org/docid/553e0f984.html>, para. 58; UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: resolution / adopted by the General Assembly, 9 December 1988, A/RES/43/173*, <http://www.refworld.org/docid/3b00f219c.html>; Principle 29; UN General Assembly, *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment*, 9 January 2003, A/RES/57/199, <http://www.refworld.org/docid/3de6490b9.html>.

²⁷⁴ Amy Nethery and Rosa Holman, “Secrecy and Human Rights Abuse in Australia’s Offshore Immigration Detention Centres,” *The International Journal of Human Rights*, July 2016, <http://dx.doi.org/10.1080/13642987.2016.1196903>, p. 4 [citations omitted]

Australia's Senate Committee has echoed these findings, stating that it was "gravely concerned that the culture of secrecy surrounding operations at the RPC, the lack of access for asylum seekers to information and support, and the lack of independent avenues of complaint and oversight, create a dangerous likelihood that the present incidence and apparent culture of abuse will continue and even intensify."²⁷⁵

5.3 THE PURPOSE OF THE ABUSE IS TO ACHIEVE DETERRENCE

In order to achieve the goal of deterring people from trying to seek asylum by boat, the Australian authorities have "made an example" of what happens when people do. As the Refugee Council of Australia expresses it: "The threat of being sent to an offshore processing centre can only 'work' as a deterrent if people seeking asylum believe that what they are seeking in Australia – safety, humane treatment – will not be available to them in Nauru and Papua New Guinea [...] In essence, the success of offshore processing depends on human suffering."²⁷⁶ Dr. Peter Young, former mental health director at IHMS, told Amnesty International that in offshore processing environments, "[e]verything became subservient to 'stopping the boats'" and that they were instructed by the Australian Department of Immigration and Border Protection that even as medical professionals, that was their role.²⁷⁷

Although the Australian government does not want the full extent of the abuse to be known, and has gone to extraordinary lengths to hide it (as discussed further in Chapter 6), potential asylum-seekers must be made aware of that the consequences of trying to seek protection in Australia by sea are punitive. The Australian Government says that it "is implementing the toughest border protection measures ever," and has produced posters in 17 languages explaining that "Asylum seekers who travel by boat without a visa will not end up in Australia. The rules apply to everyone; families, children, unaccompanied children, educated and skilled. There are no exceptions."²⁷⁸ The current Australian Prime Minister, Malcolm Turnbull, has maintained that the Government of Australia must ensure that its harsh offshore "professing" regime is harsh. As Communications Minister in May 2014, he stated: "We have harsh measures (and) some would say cruel measures ... [but] the fact is if you want to stop the people-smuggling business you have to be very, very tough."²⁷⁹ In September 2015, while admitting being concerned with the conditions on Nauru and Manus Island, the now Prime Minister Turnbull stated: "Now, I know that's tough, we do have a tough border protection policy, you could say it's a harsh policy, but it has worked."²⁸⁰

This combination of refugees' severe physical and mental anguish, the intentional nature of the harm, and the fact that the goal of offshore processing is to intimidate or coerce refugees and asylum-seekers to achieve a specific outcome, means that Australia's offshore processing regime fits the definition of torture under international law.²⁸¹ The UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading

²⁷⁵ Senate Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, *Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru*, 31 August 2015, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/~/_media/Committees/nauru_ctte/Final_Report/report.pdf, para. 5.87.

²⁷⁶ RCOA, Submission 22, p. 5, Senate Legal and Constitutional Affairs Reference Committee into the Conditions and Treatment of Asylum Seekers and Refugees at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Offshore_RPCs/Submissions.

²⁷⁷ Amnesty International interview with Peter Young, Sydney, 6 September 2016.

²⁷⁸ Australian Department of Immigration and Border Protection, "Counter People Smuggling Communication," <http://www.border.gov.au/about/operation-sovereign-borders/counter-people-smuggling-communication>.

²⁷⁹ AAP, "Malcolm Turnbull Admits Coalition Border Policies Harsh," *The Australian*, 7 May 2014, <http://www.theaustralian.com.au/national-affairs/immigration/malcolm-turnbull-admits-coalition-border-policies-harsh/story-fn9hm1gu-1226908408949?sv=b58f593c81a0a88da97155ba13a55f91>.

²⁸⁰ Francis Keaney, "Malcolm Turnbull 'Concerned' about Conditions on Manus and Nauru; Rules out Offshore Detention Centre Refugees in Australia," ABC, 23 September 2015, <http://www.abc.net.au/news/2015-09-23/turnbull-says-changes-to-asylum-seeker-policy-will-be-considered/6799162>.

²⁸¹ CAT, Art. 1: "Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any

Treatment or Punishment Juan Méndez, concluded that Australia's offshore processing regime in Papua New Guinea violated the right of asylum-seekers – including children – to be free from torture or cruel, inhuman or degrading treatment.²⁸² Likewise, the Association for the Prevention of Torture has also taken the position that “Australia's offshore detention of asylum seekers is likely to constitute a *prima facie* regime of cruel, inhuman or degrading treatment, and may even constitute torture.”²⁸³ Dr. Peter Young expressed it in this way: “If we take the definition of torture to be the deliberate harming of people in order to coerce them into a desired outcome, I think it does fulfil that definition.”²⁸⁴

kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

²⁸² *Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez*, 6 March 2015, UN Doc. A/HRC/28/68/Add.1, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_68_Add.1_AV.doc, para. 19.

²⁸³ Association for the Prevention of Torture, “APT Submission on Australia - UN Committee Against Torture 53rd Session (3-28 November 2014),” 17 October 2014, http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AUS/INT_CAT_NGO_AUS_18683_E.pdf, p. 9.

²⁸⁴ David Marr and Oliver Laughland, “Australia's Detention Regime Sets Out to Make Asylum Seekers Suffer, Says Chief Immigration Psychiatrist,” *The Guardian*, 5 August 2014, <https://www.theguardian.com/world/2014/aug/05/sp-australias-detention-regime-sets-out-to-make-asylum-seekers-suffer-says-chief-immigration-psychiatrist>.

6. THE ATTEMPTED COVER-UP

“You can’t allow transparency, if what you’re trying to do is inflict suffering. Secrecy is necessary because these places are designed to damage.”

Dr. Peter Young, former mental health director of IHMS, January 2016²⁸⁵

6.1 AUSTRALIAN LAW, POLICY, AND PRACTICE

On 1 July 2015, a new Australian law (introduced as part of the *Border Force Act*²⁸⁶ (the Act)) came into effect, giving the government the power to prosecute and imprison doctors, nurses and child welfare professionals who speak out about human rights abuses in immigration detention. In response, the UN Special Rapporteur on the Human Rights of Migrants François Crépeau cancelled his long-planned official visit to Australia, saying that the Act prevented him from fully and freely carrying out his duties.²⁸⁷ The law has also been criticized by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye, who said that the Act’s provisions were “a real threat” to sources and whistleblowers.²⁸⁸ The UN Special Rapporteur on the Situation of Human Rights Defenders visited Australia in early October 2016, in part to investigate the Act’s effects.

The existence of the Act has had a chilling effect on the disclosure of information about offshore processing. Astonishingly, in August 2016, IHMS staff said that the absence of any prosecutions to date under the *Border Force Act* was proof that the government was not engaged in censorship: “There hasn’t been a single physician reprimanded for commenting on service.”²⁸⁹ But there is no need for the Australian authorities to prosecute anyone under the *Border Force Act*, as the law’s purpose – to prevent the disclosure of information – has already been fulfilled. One service-provider estimated that 20 of her former colleagues refused to sign an open letter criticizing offshore processing,²⁹⁰ with one telling her that it was too much of a

²⁸⁵ Quoted in Ben Doherty, “Australia’s Offshore Detention Damages Asylum Seekers Because It’s Supposed to,” *The Guardian*, 19 January 2016, <https://www.theguardian.com/australia-news/2016/jan/19/australias-offshore-detention-damages-asylum-seekers-because-its-supposed-to>.

²⁸⁶ *Border Force Act 2015*, <https://www.legislation.gov.au/Details/C2016C00650>.

²⁸⁷ OHCHR, “Migrants / Human Rights: Official Visit to Australia Postponed Due to Protection Concerns,” 25 September 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16503&LangID=E>

²⁸⁸ Quoted in Paul Farrell, “Australians’ Rights and Freedom to Speak Out Under Threat Warns UN Official,” *The Guardian*, 13 October 2015, <https://www.theguardian.com/politics/2015/oct/13/australians-rights-and-freedom-to-speak-out-under-threat-warns-un-official>.

²⁸⁹ Amnesty International interview with IHMS, Sydney, 30 August 2016.

²⁹⁰ “‘This is Critical’: 103 Nauru and Manus Staff Speak Out – Their Letter in Full,” *The Guardian*, 17 August 2016, <https://www.theguardian.com/australia-news/2016/aug/17/this-is-critical-103-nauru-and-manus-staff-speak-out-their-letter-in-full>.

risk, even if they received legal advice that there was only one chance in a thousand of being prosecuted.²⁹¹ Indeed, several service-providers were nervous to speak with Amnesty International researchers, and were apprehensive that doing so would render them liable to criminal prosecution under the Act. Service-providers said that refugees present in Australia are scared as well, and that Australian Border Force officials have told both refugees and service-providers that they are not allowed to talk to anyone, especially the media.²⁹² No refugees in Australia who are at risk of being returned to Nauru were willing to meet with Amnesty International researchers. An Australian lawyer told Amnesty International that some of the people at risk of being returned will not speak with lawyers either, as “they are too scared to take steps to protect their own legal rights.”²⁹³

Dr. Barri Phatarfod, co-founder of Doctors for Refugees, an organization that campaigns for offshore refugees’ right to health, said that as a result of the *Border Force Act*, there are “so many cases” that have not come to light.²⁹⁴ Doctors for Refugees launched a constitutional challenge against the Act in July 2016, asking Australia’s highest court to consider whether it “inappropriately curtails people’s freedom to participate in political communication around conditions and care in detention.”²⁹⁵

Although there have not been any criminal prosecutions under the *Border Force Act*, there have nonetheless been significant consequences for people who have disclosed information about offshore processing. Dr. Peter Young, a psychiatrist and former director of mental health for International Health and Medical Services, who has spoken out about conditions in offshore detention places, has been under heavy surveillance. He filed a Freedom of Information request to obtain his AFP files, and in May 2016 received hundreds of pages of heavily redacted investigative file notes and reports, which state that he was a suspect because of “comments attributed to him being highly critical of [the immigration department] and IHMS in their handling of asylum seeker medical care” in two news reports.²⁹⁶ In April 2016, a former service provider received a threatening letter from Broadspectrum, reminding them that the obligations in the Australian Department of Immigration’s Confidentiality Deed are “perpetual.” In the letter, Broadspectrum referred to recent media articles in which the person had disclosed information about offshore processing, reminded them that they risk prosecution and imprisonment under the *Border Force Act* and the *Crimes Act 1914*, demanded that they sign an undertaking, and concluded that if the company receives further evidence of breaches of confidence, “Broadspectrum will immediately seek to take legal action against you.”²⁹⁷ Amnesty International asked Broadspectrum about this issue but had not received a response at the time of printing. In June 2016, a day after a psychologist who worked on Nauru denounced Australia’s treatment of offshore refugees as an “atrocious,” his employer cancelled his contract.²⁹⁸

Furthermore, service-providers consistently described an oppressive culture of secrecy on the island. One service-provider said her manager told her that ABF was watching everything they do – the manager also requested that she remove a post from her personal Facebook page.²⁹⁹ Staff have reportedly been fired for being “outspoken,” or for being seen to be “advocates.” One service-provider told Amnesty International: “Every day I think I’ll get fired.”³⁰⁰ A number of service-providers said that their managers forbade them from speaking with service-providers working for other companies. The company that runs the Refugee Processing Centre, Transfield (now called Broadspectrum), warned its staff in a leaked internal document that they can be fired for communicating in any way (social media, letter, fax, and “any other form of publication”) about offshore processing “operations,” or for sharing any information that “relates to the

²⁹¹ Amnesty International interview with service-provider, Melbourne, 3 September 2016.

²⁹² Amnesty International interview with service-provider, Sydney, 30 August 2016; Amnesty International interview with service-provider, Melbourne, 1 September 2016.

²⁹³ Amnesty International interview with lawyer, Melbourne, 5 September 2016.

²⁹⁴ Amnesty International interview with Barri Phatarfod, Sydney, 31 August 2016.

²⁹⁵ Ben Doherty, “Immigration Detention Doctors Challenge Border Force Act’s Secrecy Clause in Court,” *The Guardian*, 27 July 2016, <https://www.theguardian.com/australia-news/2016/jul/27/immigration-detention-doctors-challenge-border-force-acts-secrecy-clause-in-court>.

²⁹⁶ Quoted in Paul Farrell, “Australian Police Accessed Phone Records of Asylum Whistleblower,” *The Guardian*, 24 May 2016, <https://www.theguardian.com/australia-news/2016/may/24/australian-police-accessed-phone-records-of-asylum-whistleblower>.

²⁹⁷ Confidential information received by Amnesty International, 30 September 2016.

²⁹⁸ Ben Doherty, “Offshore Detention Whistleblower Loses Job after Condemning Atrocious of Camps,” *The Guardian*, 21 June 2016, <https://www.theguardian.com/australia-news/2016/jun/21/offshore-detention-whistleblower-loses-job-after-condemning-atrocious-of-camps>.

²⁹⁹ Amnesty International interview with service-provider, Melbourne, 2 September 2016.

³⁰⁰ Amnesty International interview with service-provider, Melbourne, 3 September 2016.

treatment of transferees [asylum-seekers] in relation to the operations.”³⁰¹ A confidential document written in February 2016 for the employees of Connect Settlement Services contains similar provisions, noting that the information technology section of DIBP will monitor and retain all communications (including the content of communications) sent or received by staff via email or social media in order to “ensure compliance.”³⁰² The document further notes that non-compliance may constitute “an offence under the *Crimes Act 1914*, punishment for which may include imprisonment.”³⁰³

These concerted efforts to monitor and control any disclosures about conditions on Nauru stand in sharp contrast to the way in which local people – including people in positions of authority such as police officers, security guards, and teachers – can threaten asylum-seekers and refugees with apparent impunity, as discussed in Chapter 4.

6.2 NAURUAN LAW, POLICY AND PRACTICE

Nauruan law does not conform with international human rights law and standards on the right to freedom of expression. On 12 May 2015, new criminal provisions (section 244A of the *Crimes Act*) imposed seven-year prison sentences for publishing statements which coerced, intimidated or caused emotional distress.³⁰⁴ UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression David Kaye urged Nauru to withdraw these amendments, as well as other measures that restrict access to internet and social media and curtail the freedom of the press. In 2015 the Nauruan authorities blocked access to several social media outlets, including Facebook, on the official justification to limit pornography, crime and cyberbullying, and to protect Nauru’s national culture. However, Kaye expressed concern that these restrictions are actually “designed to prevent asylum seekers and refugees in the country from sharing information on their situation.”³⁰⁵ A service-provider said that while on Nauru, she and her colleagues had to find out what was happening on the island via online news sources or social media.³⁰⁶

The Nauruan Government has also made it extremely difficult to access its territory. In January 2014, Nauru increased the price of a media visa from AUD\$200 (USD\$178) to AUD\$8,000 (USD\$7,126).³⁰⁷ Shortly thereafter, the Nauruan authorities cancelled a visit by the UN Working Group on Arbitrary Detention scheduled to have taken place in April 2014.³⁰⁸ The president of the Australian Human Rights Commission, Gillian Triggs, was also blocked from visiting Nauru in 2014 as part of her inquiry into Australia’s detention of children.³⁰⁹ In October 2015, conservative Australian journalist Chris Kenny became the first foreign news reporter in 18 months to be granted a visa by the Nauruan Government, in a highly controversial visit to the island.³¹⁰ In March 2016, Nauru further restricted access to the island by requiring all Australian and New Zealand visa applicants to obtain a sponsorship letter from a Nauruan citizen; visitors who breach the visa restrictions make their sponsors liable to a fine of AUD\$5,000 (USD\$3,733) and up to a year in prison.³¹¹ In

³⁰¹ Transfield, “Social Media Policy,” 2015, <http://static.guim.co.uk/ni/1427943384292/Transfield-Social-Media-pol.pdf>.

³⁰² Connect Settlement Services, *Code of Conduct*, February 2016, p.14.

³⁰³ Connect Settlement Services, *Code of Conduct, Schedule 3: Confidentiality Deed*, February 2016, p.18.

³⁰⁴ Amnesty International, “Amnesty International Annual Report 2015/16: State of the World’s Human Rights” – Chapter on Nauru, <https://www.amnesty.org/en/countries/asia-and-the-pacific/nauru/report-nauru/>.

³⁰⁵ OHCHR, “UN Rights Expert Urges Nauru to Withdraw Norms Threatening Freedom of Expression,” 22 May 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15995&LangID=E>

³⁰⁶ Amnesty International interview with service-provider, Melbourne, 3 September 2016.

³⁰⁷ Bridie Jabour and Daniel Hurst, “Nauru to Increase Visa Cost for Journalists from \$200 to \$8,000,” *The Guardian*, 8 January 2014, <https://www.theguardian.com/world/2014/jan/09/nauru-visa-to-cost-8000>.

³⁰⁸ OHCHR, “Cancellation of the First Official Visit to Nauru by the UN Working Group on Arbitrary Detention,” 9 April 2014, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14495&LangID=E>

³⁰⁹ Michael Gordon, “Human Rights Commission Boss Gillian Triggs Blocked from Visiting Nauru,” 14 February 2014, <http://www.smh.com.au/federal-politics/political-news/human-rights-commission-boss-gillian-triggs-blocked-from-visiting-nauru-20140203-31xg6.html>

³¹⁰ Amanda Meade, “Chris Kenny First Foreign News Reporter in 18 months to be Granted Nauru Visa,” *The Guardian*, 20 October 2015 <https://www.theguardian.com/world/2015/oct/20/chris-kenny-first-foreign-news-reporter-in-18-months-granted-nauru-visa>; Amanda Meade, “Abyan Reports Being ‘Scared’ after Chris Kenny’s Nauru Visit, Immigration Emails Reveal,” *The Guardian*, 9 March 2016, <https://www.theguardian.com/australia-news/2016/mar/09/abyan-reports-being-scared-after-chris-kennys-nauru-visit-immigration-emails-reveal>.

³¹¹ ABC News, “Nauru Visa Changes Slammed as ‘Crazy, Embarrassing’ by Former President,” 7 March 2016, <http://www.abc.net.au/news/2016-03-07/ex-president-of-nauru-slams-visa-changes/7227166>.

June 2016, the Government of Nauru said: “It is for reasons of safety and security that we are not able to allow all media onto Nauru, and we will never allow media who we believe will intentionally incite violence and unrest to further their story.”³¹² An Australian Senator and a Member of Parliament were separately refused visas in August and September 2016.³¹³

As for Amnesty International, in 2014 and 2015, the organization unsuccessfully requested access to Nauru six times.³¹⁴ A researcher who travelled to Nauru in July 2016, and who was not asked about their organizational affiliation when they completed entry formalities, was publicly called a “spy” and “secret agent” by Nauru’s Minister of Home Affairs Charmaine Scotty.³¹⁵

³¹² Government of the Republic of Nauru, “Statement,” 22 June 2016, <http://www.nauru-news.com/single-post/2016/06/22/Statement-from-Government-of-Nauru>.

³¹³ Radio New Zealand, “Australian MP Wilkie Refused Visa to Nauru,” 7 September 2016, <http://www.radionz.co.nz/international/pacific-news/312747/australian-mp-wilkie-refused-visa-to-nauru>.

³¹⁴ AI sent letters to the Government on 4 March 2014, 10 April 2014, 3 June 2015, November 2015, 14 November 2015, and 10 December 2015. The organization received one reply from Minister for Foreign Affairs Adeang on 24 March 2014, saying that it was not a good time for a visit. On 14 January 2016, after a follow-up email requesting a response to the December 2015 letter, the organization received an email from Filipo Masaurua (Secretary to Foreign Minister, now Human Rights Advisor), who said that the Minister would respond the following day. No response was received. On 2 May 2016, in response to another request for a reply to the December 2015 letter, Filipo Masaurua advised that the Department for Multicultural Affairs are now handling all refugee matters, subsequent to the change to an “open” Centre.

³¹⁵ Committee on the Rights of the Child session, Presentation by Nauru Minister of Home Affairs Charmaine Scotty, Geneva, 13 September 2016.

7. DETERRENCE VERSUS PROTECTION

7.1 THE AUSTRALIAN-LED RACE TO THE BOTTOM

It is a grave distortion of the truth to characterize the Government of Australia's deterrence-focused model as aimed at "saving lives," as some Australian officials attempt to do. The twin goal of any country's refugee policies should be to maximize protection and minimize harm. Although no one should be forced to risk their lives in perilous boat journeys, it is impossible – and indeed unlawful – to block them from doing so. People have the right to leave any country, including their own, and the *Universal Declaration of Human Rights* enshrines the right to seek and enjoy asylum from persecution.

From the evidence presented in this report, it is clear that the Australian Government's refugee policies – far from minimizing harm and maximizing protection – have been explicitly designed to inflict incalculable damage on hundreds of women, men and children on Nauru, whose only "crime" was to seek Australia's protection, and to lack a visa while doing so. These people, as Iraqi refugee "Edris" said, are "dying a thousand times."³¹⁶

Australian politicians have sought to "sell" their model to other countries.³¹⁷ And while some governments have criticized the Australian approach,³¹⁸ some politicians have viewed it favourably.³¹⁹ As a result,

³¹⁶ Amnesty International interview with refugee, Nauru, 25 July 2016.

³¹⁷ Melissa Clarke, "Tony Abbott Urges European Leaders to Turn Back Asylum Seekers or Risk 'Catastrophic Error,'" ABC News, 28 October 2015, <http://www.abc.net.au/news/2015-10-28/tony-abbott-urges-european-leaders-to-turn-back-asylum-seekers/6890886>; James Campbell, "Prime Minister Malcolm Turnbull on Border Protection, Refugee Crisis Ahead of UN Summit in New York," 18 September 2016, <http://www.news.com.au/national/politics/prime-minister-malcolm-turnbull-on-border-protection-refugee-crisis-ahead-of-un-summit-in-new-york/news-story/2031849e4f915944c7dd84ce94fef98b>.

³¹⁸ For example, at Australia's Universal Periodic Review at the United Nations Human Rights Council, Germany called on Australia to "review the policy of offshore processing of asylum seekers on Nauru and Manus Island" (136.281) and the United States stated that Australia should "[c]losely monitor the processing of refugees and asylum seekers in offshore centres to ensure that their human rights are respected." (136.275), *Report of the Working Group of the Universal Periodic Review: Australia*, 13 January 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/004/89/PDF/G1600489.pdf?OpenElement>.

³¹⁹ Karen Hargrave, Sara Pantuliano, with Ahmed Idris, *Closing Borders: The Ripple Effects of Australian and European Refugee Policy – Case Studies from Indonesia, Kenya and Jordan*, Overseas Development Institute, September 2016, <https://www.odi.org/publications/10557-closing-borders-ripple-effects-australian-and-european-refugee-policy-case-studies-indonesia-kenya>; ABC News, "Danish Politicians to Visit Nauru to Study Use of Offshore Detention Centres, Government Says," 24 August 2016, <http://www.abc.net.au/news/2016-08-25/danish-politicians-to-visit-nauru-offshore-detention-centre/7783164>; EurActiv and AFP, "Austrian Minister Wants to Replicate Australian Model for Refugees," 6 June 2016, <https://www.euractiv.com/section/justice-home-affairs/news/austrian-minister-wants-to-replicate-australian-model-for-migrants/>; Latika Bourke, "Europe Needs a Tony Abbott-Style Approach to Stopping the Boats, Says Tory MEP," *Sydney Morning Herald*, 3 June 2016, <http://www.smh.com.au/world/europe-needs-a-tony-abbottstyle-approach-to-stopping-the-boats-says-tory-mep-20160602-gpaggq.html>; Amos Roberts, "German Neo-Nazis Praise Australia's Refugee Policy," SBS, 9 October 2015, <http://www.sbs.com.au/news/dataline/article/2015/10/09/german-neo-nazis-praise-australias-refugee-policy>; Nick Miller, "Nigel Farage says Europe adopting Australia's refugee policy could have prevented tragic Deaths," *Sydney Morning Herald*, 5 September 2015, <http://www.smh.com.au/world/nigel-farage-says-australias-refugee-policy-could-have-prevented-tragic-deaths-20150904-gfpmb.html>.

Australia's model of deterrence has already harmed global standards on refugee protection. Because the "Australian model" violates people's human rights in so many serious ways, it has shifted the parameters of what governments view as "acceptable" so disgracefully far out of line that many governments are now routinely breaching international human rights law and international refugee law.

In 1954, Australia's signature of the 1951 *Refugee Convention* brought this seminal international instrument into force.³²⁰ Over six decades later, Australia's deterrence-oriented refugee policies are threatening to render that convention obsolete. As the Australian grandchildren of a Jewish refugee who arrived in the country by boat in the late 1930s stated, "If Australia had its current refugee policy in 1939, we wouldn't be alive today."³²¹

7.2 A U-TURN IS ACHIEVABLE

Australia's focus on deterrence has caused incalculable harm: causing severe and sometimes irreversible damage to thousands of asylum-seekers and refugees, demolishing Australia's international reputation, costing billions of dollars and undermining the international refugee protection system established after the horrors of the Second World War. The current *status quo* is not tenable.

Yet the Australian Government argues that any change to Australia's deterrence-oriented policies will create a "pull factor," putting the lives of people seeking asylum at risk, specifically at risk of drowning if they attempt dangerous boat journeys. This argument enjoys bi-partisan support in Australia.

This focus on deterrence has distracted successive Australian leaders from exploring and putting into practice the many achievable policies that are protection-oriented and human rights-compliant.

Amnesty International supports and commends efforts to explore policy proposals that comply with Australia's international human rights obligations.³²² These policy options include developing cooperation arrangements with other countries in the Asia-Pacific region, expanding safe and legal pathways for those seeking asylum, and improving search and rescue capability. These options are based on the reality that unless there are safe, legal and timely ways to seek asylum, people in fear of their lives will be forced to seek out irregular migration routes.

Amongst the policy options which the Government of Australia should consider are:

- Australia could boost its aid program to help neighboring countries better protect and support refugees. Australia could also use existing regional mechanisms like the Bali Process³²³ to reach agreement on improved rights protections for asylum-seekers and refugees throughout the region.
- Refugees should be better included in Australia's existing, non-humanitarian migration programs. In addition to the core refugee resettlement program, Australia could recognize the valuable skills and qualifications of many refugees by including them when the government allocates student, work and family reunion visas.
- Expanding private sponsorship and family reunion visa options for refugees is also a good option. Canada put in place an uncapped private sponsorship program which has allowed Canadian families to bring nearly 11,000 Syrian refugees since the end of 2015.

³²⁰ Khalid Koser, *Australia and the 1951 Refugee Convention*, 30 April 2015, Lowy Institute, <http://www.lowyinstitute.org/publications/australia-and-1951-refugee-convention>.

³²¹ Alyx Gorman and Rick Kuhn, "If Australia Had its Current Refugee Policy in 1939, We Wouldn't be Alive Today," *The Guardian*, 19 September 2016, <https://www.theguardian.com/commentisfree/2016/sep/19/if-australia-had-its-current-refugee-policy-in-1939-we-wouldnt-be-alive-today>.

³²² As one of several examples, see: Australian Human Rights Commission, *Pathways to Protection: A Human-Rights Based Response to the Flight of Asylum Seekers by Sea*, September 2016, <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/pathways-protection-human-rights-based-response>.

³²³ <http://www.baliprocess.net/>

- By assisting refugees to access other migration streams, Australia would benefit economically while providing a safe and legal alternative to irregular migration to Australia for many refugees and their families.
- Australia has a long history of refugee resettlement and plans to increase the number of places to 19,000 places per year by 2019. Australia can do much more by increasing the resettlement program significantly, and ensuring it strategically targets those most in need by prioritizing people referred by UNHCR.
- Australia should ensure timely search and rescue operations to save lives at sea. Instead of hazardous push-backs of boats at sea, Australia can run proper search and rescue operations to save lives.
- Amnesty International believes that states' respective contributions to refugee responsibility-sharing should be far more equitable, based on an objectively defined capacity of the state to host and assist refugees. While a small number of countries host millions of refugees, many countries provide nothing at all. Responsibility-sharing will never be a reality until there is a proper basis and structure to guide states on what their fair share of responsibility looks like.
- Australia could invest in international diplomacy to develop a global responsibility sharing agreement whereby each state accepts a proportion of the world's vulnerable refugee population, with each country's share of resettlement places based on objective criteria that reflect the country's capacity to host refugees.
- These approaches will require political leadership which has been severely lacking in Australia over the past two decades. This leadership should begin with a bi-partisan commitment to ensuring a genuine commitment to human rights and delivering the protections set out in the Refugee Convention are the bedrock upon which future refugee policy is built.

None of these policy options need to be put in place before resolving the crisis that refugees and asylum-seekers are facing currently on Nauru. The people whom Australia has warehoused on Nauru cannot wait another day for a resolution to this acute crisis, and the Australian Government must recognize that the remaining refugees on Nauru have the right to settle in Australia immediately.

8. RECOMMENDATIONS

GOVERNMENT OF AUSTRALIA

- End the policy of offshore processing and detention and permanently close the Refugee Processing Centres on Nauru and Manus Island;
- Bring all asylum-seekers and refugees on Nauru and Manus Island to Australia immediately;
- Assess, in a fair and timely manner, those whose international protection applications have not been finalized by the authorities in Nauru and Manus Island;
- Ensure that all those who were granted refugee status on Nauru and Manus Island have the right to settle in Australia;
- Commit not to return anyone, currently in Australia, to Nauru or Manus Island;
- Do not block offers made by other countries to resettle refugees from Nauru or Manus Island;
- Make full reparation to asylum-seekers and refugees for the harm they suffered since first being intercepted by the Australian authorities;
- Ensure that DIBP staff heed the advice of medical professionals to refer asylum seekers and refugees for further tests or treatment in Australia and that such referrals take place immediately;
- Legislate to end the detention of children for immigration purposes onshore and offshore;
- End the policy of indefinite and mandatory detention of asylum-seekers who arrive in Australian territory without a visa;
- Begin a process, in collaboration with other regional governments as well as refugee support organizations and experts, to develop and implement protection-based policies towards people seeking asylum;
- Work with regional neighbours to facilitate the processing of applications for international protection;
- Increase the annual refugee resettlement quota to a minimum of 30,000 people per year, prioritizing UNHCR-referred refugees;
- In addition to a humanitarian-based resettlement program, expand alternative pathways for refugees in other migration streams including in skilled, family reunion and student categories;

- End the moratorium on resettling refugees from Indonesia, who have arrived in Indonesia post-July 2014;
- End the agreement to transfer refugees from Nauru to Cambodia;
- Repeal section 42 of the *Border Force Act 2015* and other legislation designed to silence people from disclosing human rights abuses; and
- Cease promotion of Australia's abusive asylum-seeker policies to other countries.

GOVERNMENT OF NAURU

- End the agreement with Australia to host a Refugee Processing Centre on Nauru;
- Ensure full access to the island for independent media, lawyers, human rights organizations and researchers;
- Amend the *Nauru Crimes Act* to bring it in line with international human rights law; and
- Pending the transfer of refugees and asylum seekers off Nauru, take urgent action to protect their rights including:
 - Require the Nauru Police Force to investigate all allegations of attacks against refugees and asylum-seekers and that swift and appropriate protection provided to the victim;
 - Initiate a public campaign to combat bullying and discrimination against refugees and asylum-seekers. This should include clear public statements from all levels of government that violence and discrimination against refugees and asylum-seekers will not be tolerated, as well as measures to foster positive interaction between refugees and the local community;
 - Put in place urgent measures to ensure refugee children can access education in safety.

COMPANIES WORKING ON NAURU

- All companies working under contract to the Government of Australia on Nauru should urgently review whether their operations on Nauru are consistent with the corporate responsibility to respect human rights. Companies should take decisive action to end their involvement in any abuse of rights, bearing in mind that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties.

9. ANNEX: DETAILED CASES

All of the refugees and asylum-seekers whose cases are included in this report gave Amnesty International their consent for their case details to be published. Most asked for their names to be changed for personal reasons, but agreed to the details of their cases and their experiences being made public.

“Mirza” (41), “Shadi” (36), and “Shahin” (10)

“Mirza” fled Iran with his family due to religious persecution—he converted to Christianity and their life and safety were in danger back home, he said. His wife “Shadi” worked as an art teacher, Mirza was a teacher, and their son Shahin played music and had a black belt in Taekwondo. They stayed in the Refugee Processing Centre until June 2014, when they got their refugee status, and moved into community accommodation.

Mirza said that like everybody else, the family found it very difficult to live on Nauru with no clarity about their future, but until May 2015 they were coping. The problems began after a group of locals attacked their home around 4.30 am, breaking windows and trying to force their way in. His wife Shadi and their son Shahin were home when it happened. Mirza said he tried to stop them with a knife, and called the police – the police came an hour later, he filed a report, but there was no follow-up.

In April 2016, the family moved into a new accommodation – and shortly thereafter, they got attacked again; a group of locals came to the accommodation, Mirza said, smashing everything, and broke the windows in his car.

Since then, according to Mirza, and a few medical files that he was able to obtain and share with Amnesty International, Shahin has not been out of the house. He stopped going to school and doing all other activities.

Shadi was even more affected – she stopped eating, sleeping and talking. Mirza said: “She was talking to me about suicide. I told the case manager but she did nothing. Shadi was saying, ‘maybe we should commit suicide together,’ but I said, ‘No, we have a son’.”

According to an incident report classified as “Minor threat of self-harm,” on May 18, 2016, Mirza informed one of the service providers that over the last three days Shadi had made two attempts of self-harm, once with a knife and once by attempting to ingest a packet of anti-depressants and sleeping pills. The report indicates that Mirza was able to prevent the attempts both times, and that the service provider will engage with Mirza and Shadi in “temporary safety planning.”

Mirza said that he was watching Shadi constantly, but on 25 June, 2016, around 5 or 6 in the morning he stepped out of the house to have a smoke with a friend. He said: “When I came in, I saw a package from pills next to her bed. She took 25 pills. I tried to wake her up, but couldn’t. I called the ambulance, and they

took her to the hospital. They pumped her stomach. She stayed in the hospital for three days, and then they took her to [a medical ward at the RPC].

She's been there for 2 months. I've been visiting her there... She tried to kill herself again, about 10 times – tried to cut her hands with plastic knife, to hang herself with bedsheets, drank shampoo more than 5 times. They just have security there, but no help. She refuses everything – food, medication.”

Shadi's condition continued to deteriorate and had a tremendous negative effect on their son. Reports describe Shahin as “severely affected by his current environment and circumstance.”

Recently, Mirza and Shahin moved into RPC-1 to be closer to Shadi. Mirza is on a daily dose of strong painkillers to combat the pain he is suffering from kidney stones. He was told that he needs to go to PNG for treatment, but at this time he cannot leave his wife and son. “I am losing my family in front of my eyes and I cannot do anything about it,” Mirza said.

“Payam” 30, “Raha” and their 2 month-old daughter

“Payam,” a wrestling coach from Iran, married “Raha” in Nauru. According to Payam, Raha was suffering from depression, and when she realized she was pregnant, her condition worsened. He said:

“She didn't want to deliver the baby. She said, ‘I'm homeless, I can't bring another person into this world.’ When she was seven months pregnant she got into a fight with her brother. At 5 or 6 in the morning, I heard sounds from the bathroom – and found her there; she tried to hang herself. When I came in, she fell, there were rope marks on her neck. I took her to [local] hospital.

My mother in law went to see [a doctor] at IHMS, and he told her that maybe my wife wanted to kill herself because I had a girlfriend. When I confronted him, he said, ‘That's just what I thought.’ I complained to a manager, but he didn't do anything.

They transferred her to [a medical section of the RPC], but she kept refusing medication. After a week there, they sent her home. She kept crying and still wanted to kill herself. I had to watch her 24/7. At nine months, she started having contractions. She kept refusing to go to the hospital, but they took her by trick – they said they were taking her to the airport [to transfer her abroad], but took her to RON hospital.

Now she is really bad: she hates us, hates the baby, doesn't breastfeed her.

Psychologists kept coming, but she just wants to kill herself and refused to see them. And they said, ‘Now we close the file. When she wants to see us, we'll come.’ I tried to argue, but they said they couldn't do anything. IHMS just keeps saying, ‘It's normal, just give her time, it's post-partum depression.’”

At the time of the interview Payam's daughter was two months old. Payam was taking care of the baby with the help of his mother-in-law, who has asthma and mental health issues. Payam recently had surgery for tumours in his testicles, but the tumours have now returned. He said they live right next to the mine, where it is always noisy and dusty, and the baby is irritable and doesn't sleep well. He said that he asked IHMS to see a neonatal specialist for the baby, but IHMS sent him to the RON hospital where he got an appointment to come in two months.

“Jalil” (35), “Ghazal” (31), and their 3-month old daughter

“Jalil” and his wife “Ghazal” fled Iran because they converted to Christianity and their lives and safety were at risk due to religious persecution. They were on the first boat that reached Christmas Island after the 19 July 2013 policy was adopted, and were sent to Nauru in September 2013. Jalil described how their troubles started on Nauru. He said:

“Immigration has been playing mental games on us: one day they wouldn't give enough water, other day would say, ‘You would never go to Australia.’ We weren't allowed to smoke for seven months- they said they

were afraid we would set the camp on fire. We had to beg for slippers and clothes for our wives and children. Everything was so dirty—bathroom, shower. Healthcare was not available: every time you got sick, they would just give you Panadol and water. They would give us a few minutes to shower. They [the guards] said: ‘Our country – our water, so we decide when to turn it off.’ Everybody was on pills for mental health, crying every night, nobody believed in life anymore.”

The family stayed in the camp for ten months, and then received their refugee status and moved into community accommodation. There, they faced different challenges: Jalil described how he was on the beach once, and two locals, one in a police uniform and one in civil clothes, on a motorbike, both of them drunk, demanded his phone, took it and left. He said he went to the police station five or six times. He said, “They just said their computer was broken and they couldn’t take a report. Eventually, I said – ‘let me write it down by hand’, but they said they didn’t have paper.”

Jalil said Ghazal started having mental health problems after they arrived on Nauru, and has been taking pills. Her condition, he said, had a heavy toll on the family, and they started considering a divorce, but then decided to have a child, hoping it would make things better and give them a reason to live. But after the baby arrived, Ghazal got worse, Jalil said:

“After the baby was born, Ghazal had severe post-partum depression. A week after our daughter was born, Omid set himself on fire. She saw it, and lost her breastmilk. She got worse. [A] mental health nurse visits her twice a week, and gives her sleeping pills – so she is just asleep all the time.

I take care of the baby. I am so tired. Our room is next to the laundry, it’s always loud and the baby wakes up all the time. I just don’t know whether to care for my wife or child. My wife would just wake up in the middle of the night and want to go shopping or something. She’s been inside the house for three months, barely talking, just gets up, goes to the toilet, and sleeps again. She sleeps in the bed, and I sleep on the floor.

When my baby was about 10 days, my wife got high fever. I called an ambulance – it was 1 am. They said the ambulance was broken, I kept calling – at 3 am, at 5, and they said the driver wasn’t there. I took her to the hospital by bus in the end. When we arrived they said it wasn’t an emergency, take her to IHMS – they didn’t even check her! IHMS said it was noon – their lunch time – and told me to come back at 2 pm. I started shouting, saying my wife has had high fever since last night, explaining how we went to the hospital, and then they finally agreed to see us.”

Jalil said that he has health problems himself – tooth and chest pains – but he cannot leave his wife and baby alone to go see a doctor. Transportation is also a major problem for the family – every time they need to go somewhere, they have to wait for the bus, and if it doesn’t come, they miss an appointment and do not get seen. He asked Connect to get a nurse to help him take care of his baby and wife, but it did not happen. He said, “They are just offering to take my wife to RPC-1, but I know that everybody who gets there only gets worse.”

“Firuz” (33), “Laleh” (35), and their six-year old daughter “Nahal”³²⁴

“Firuz” and “Laleh” fled from Iran where Firuz worked in a car company and Laleh was a receptionist. They had to flee after Laleh’s first husband, a powerful man connected to the secret police, started pursuing them and got Firuz arrested.

They spent seven days on a boat from Indonesia to Christmas Island, with “Nahal” who was not even three years old at the time: the engine broke, they explained, and as the water started coming in, they were convinced they were going to die. An Australian ship rescued them, and took them first to Darwin camp, and then then to Christmas Island. Laleh said:

“On Christmas Island I found out I was pregnant. They took me to Melbourne. But after 4 months I decided to have an abortion - I just couldn’t bear the thought of bringing another child into the world when our future

³²⁴ Amnesty International interviews with Firuz and Laleh, Nauru, 26 July 2016.

was so uncertain. I had the abortion in Melbourne, then they returned me to Christmas Island, and after 1 month sent us to Nauru. They said it was just for processing. I had a huge depression, but they didn't care."

The family spent 18 months in a tent. The family says (and medical documents they shared with Amnesty International confirm their accounts) that after four months in the camp, Nahal started having health problems. Her father said:

"She was vomiting and wetting her bed every night. Doctor said she had asthma, gave her oxygen and pills. After three months, they said it wasn't asthma, but stomach problems. Then, after ultrasound and after she was taking all these pills, they said it was a mental problem and gave her pills for mental problems. They don't have a child psychologist on staff; she was being seen by different doctors.

Nahal was waking up screaming because the wind was shaking the tent. [...] I begged them to move us, but they didn't do anything.

They gave Nahal some pills for mental health issues, Fluvoxamine, 50 mg tablets, – after a month, we searched on internet and found out it was not suitable for children under 10. When we raised it with the doctor, he said, 'If you don't like it, go back to your home country.' The pills were making her crazy, and vomiting."

Firuz showed Amnesty International a complaint he sent to the Australian Human Rights Commission, and a response that came a year later, suggesting that the family should contact the ombudsman instead. "When ombudsman's people visited," Firuz said, "we talked to them, they just sent me to case manager."

When Firuz requested Nahal's medical files, he first got a refusal, and then mostly empty files with nothing but Nahal's name and the doctors' initials in them.

In June 2015 the family got their refugee status and moved into a house, and in December Nahal became a victim of sexual assault. The family opened a restaurant and Nahal stayed with them all the time, playing inside or outside. One night in December, Firuz said he couldn't find Nahal and went looking for her:

"I eventually found her behind the house, near the wall. She was with [...] – a 23-year-old refugee, we know him. When I saw them, he was pulling down his pants. I started punching him but he got on his motorbike and ran away. He was about to rape her, I just scared him off. I called the police and screamed, "Why are you not catching him?!" and they said that the judge was off duty. But they took a statement from Nahal, forcing her to write what happened."

The next day, they wanted to get a statement from Nahal again. "I said, "Why? Where is the doctor? Where is the child psychologist?" They produced someone with no document showing his qualifications. I requested to see the law, but they didn't give me anything."

In her statement, Nahal wrote, "There was this boy he took [me] somewhere. Then he took me there he started pulling my trousers first and then his trousers and I told him that is not the right thing to do to a child. Then that boy did something to me and my dad and mom came and became angry. [...] He pull down my pants, he cuddle me, but I don't know the name [of] the thing the person did to me."³²⁵ The statement is signed by the police officer and the interpreter, but there is no signature in the field marked "guardian."

The court opened after 6 days of holidays, Firuz said, "but nothing happened". "I think they took the accused person's statement, but never arrested him. He is still in a settlement with other families around. Two months ago [in May, 2016], a prosecutor came and again said that they also wanted to bring Nahal to court."

The parents said that Nahal does not go to school, does not play, and is always scared. In September 2016, the court requested to question Nahal as a witness, but a psychologist provided an assessment saying that given Nahal's current mental state and the trauma she experienced it is not advisable for her to appear in court.³²⁶ When Amnesty researchers followed up with Laleh in October 2016, she said that Nahal's condition continued to deteriorate, including increasing anxiety and nightmares, and that she currently takes 25 mg of Endep (a strong antidepressant) every night.

³²⁵ Copy of the statement on file with Amnesty International

³²⁶ Copy of the assessment on file with Amnesty International.

Medical cases

“Edris,” a 46-year-old man from Iran, said that despite his rapidly deteriorating health (various complications from diabetes, back and hip pain, urinary and rectal bleeding, heart problems),³²⁷ he was not provided adequate care, and lived in a tent in the Refugee Processing Centre for two and a half years, although tent accommodation appeared unsuitable given his reduced mobility. For years, he has been lodging complaints with IHMS and ABF, as well as Broadspectrum, to no avail.³²⁸ Although an emergency doctor clearly indicated that he required properly fitted shoes, as walking on stones in flip-flops was harmful to his diabetes-affected feet, it took at least six months to obtain proper footwear.³²⁹

A March 2016 IHMS response to Edris’s complaint, seen by Amnesty International, confirmed that tests “have revealed some degenerative changes in the lower spine” but went on say that “the most important aspects of treatment include regular exercise as well as simple analgesia and anti-inflammatories when required” and that “this is not a problem that will ‘go away’” and advised Edris “to keep active even when there is some pain present.” In reality, when Amnesty International met him in July 2016, Edris appeared to be in a lot of pain and could not sit on a chair, or walk without limping.³³⁰

“Jabez,” a young man with diabetes said that after he lost 27 kilogrammes (60 pounds) and started having other serious complications, such as vomiting, constipation and loss of eyesight, he went to see an IHMS manager. The family recorded the conversation on a mobile phone and provided a copy to Amnesty International. On the recording, the manager can be heard saying: “Your current weight is about perfect. If you continue to lose weight, I too would be worried. If you lose five kg, I would be worried – not seriously worried, just moderately worried.” He goes on to dismiss Jabez’s concerns about his eyesight: “You can stop worrying about damage to your eyes because it does take many years and we don’t want you to have damage to your eyes but this is not something you need to worry about. [...] So, you will be able to see your lovely wife for many, many tens of years.” The manager concludes the consultation by recommending that Jabez takes long morning walks – and, since he doesn’t have a dog, to take his wife along instead:

“I have not seen many nice dogs on this island [bursts into laughter]. But you have an advantage. Because you have a lovely wife and that’s why I suggested that she’d be part of this treatment. [...] Listen to my advice, set up your alarm and go for a walk in the early morning and evening because this is a beautiful time. And I will be walking alone. At least you have a lovely wife to walk with.”³³¹

“Noor,” a 51-year-old refugee from Egypt, said that as a result of a motorbike incident on Nauru in March 2015, he sustained an injury to his leg, and to this day it has not healed. He has been on antibiotics all this time, but the pain has persisted. When Amnesty International interviewed him in July 2016 his leg was still visibly swollen. The doctors, however, repeatedly dismissed his concerns and made recommendations that he simply could not follow while living in the Refugee Processing Centre: “When a local doctor saw me, he said I shouldn’t walk – but I said I had to go to the toilet, shower. He said, ‘It’s not my problem.’ And he just sent me to the IHMS.”³³²

Another refugee, a young man from Iran, said: “I also told the doctor that several times I saw fresh blood in my urine. And he laughed and said, “Hey, bro, it’s normal, one in 10 people have it.” He then sent me to a CT scan, and they found an eight-mm stone in my kidney. Today [27 July 2016] a doctor told me that a surgeon will be here in a month and will check me up.”³³³

“Mustafa,” a 40-year-old man from Pakistan, reported being humiliated and refused care in the Nauru hospital. He said that after Omid, whom he knew well, died, he was very angry and started punching a wall

³²⁷ Edris was unable to obtain his full medical records, but responses to his complaints received from IHMS confirm these conditions.

Copies are on file with Amnesty International

³²⁸ Copies of complaints and responses on file with Amnesty International.

³²⁹ Doctor’s note on file with Amnesty International.

³³⁰ On file with Amnesty International.

³³¹ Amnesty International interview with refugee, Nauru, 26 July 2016. Recordings on file with Amnesty International.

³³² Amnesty International interview with refugee, Nauru, 28 July 2016.

³³³ Amnesty International interview with refugee, Nauru, 27 July 2016.

with his fist, and as a result broke his hand in two places. He said that he got a splinter in the hospital, but the bones did not reconnect correctly, and he went back to the hospital to get it checked. He said: “When I came back and complained, a Nauruan nurse said, ‘Wait. Maybe a doctor would come [to see you], or maybe not.’ I said, ‘Why are you giving appointments to Nauruans and not to me?’ And she said, ‘Because they are Nauruans and you are rubbish.’”³³⁴

A service-provider [working on Nauru in July 2016] told Amnesty International that patients often get discharged from the [local] hospital long before their treatment is completed:

*“We often have people discharged while they are still sick, sometimes half-conscious; once a patient still had needles in the hands. We are not allowed to ask the hospital why they are being discharged, or what medication they’ve been prescribed, or for their medical records.”*³³⁵

³³⁴ Amnesty International interview with refugee, Nauru, 24 July 2016.

³³⁵ Amnesty International interview with a service provider, date and place withheld to protect the interviewee.

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ISLAND OF DESPAIR

AUSTRALIA'S "PROCESSING" OF REFUGEES ON NAURU

Under the Government of Australia's offshore "processing" regime, everyone who arrives in Australia by boat seeking asylum is forcibly taken to a "Refugee Processing Centre" on Manus Island in Papua New Guinea or the Pacific island of Nauru. The policy is designed to be punitive and has been widely promoted by a succession of Australian governments as a deterrent to potential asylum-seekers.

This report exposes how the Government of Australia has flouted the 1951 Refugee Convention, undermining its purpose and the values for which it stands by warehousing children, men and women on Nauru, which Australia has effectively turned into an open-air prison. People are trapped on a tiny, remote island, where they receive inadequate medical care, where they are the target of abuse by some of the local population, and where their children are subject to abuse and denied an education. They cannot leave Nauru even after they are recognized as refugees. Amnesty International considers that all refugees and asylum-seekers are at risk of serious human rights violations on Nauru.

The conditions on Nauru – refugees' severe mental anguish, the intentional nature of the system, and the fact that the goal of offshore processing is to intimidate or coerce people to achieve a specific outcome – amounts to torture.

Amnesty International is calling on the Government of Australia to immediately close down the Nauru processing operation and to bring all asylum-seekers and refugees to Australia.

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